

ORDINANCE NO. 05-14

ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE, AMENDING CHAPTER 2, ADMINISTRATION, PERTAINING TO TRANSFER OF DEVELOPMENT RIGHTS (§2-147); AND

AMENDING CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS, AMENDING DEFINITIONS OF "BEACH OR SHORE" AND "DUNE" (§6-333); AND

AMENDING CHAPTER 10, DEVELOPMENT STANDARDS, CREATING DEFINITION OF "DEWATER" (§10-1); AMENDING APPLICABILITY OF REQUIREMENTS FOR DEVELOPMENT ORDERS (§10-101); ADDITIONAL REQUIRED SUBMITTALS (§10-154); TYPES OF DEVELOPMENT ENTITLED TO LIMITED REVIEW (§10-174); PROVIDING FOR SITE GRADING IN CONJUNCTION WITH SURFACE WATER MANAGEMENT (§10-321); EXCAVATION REQUIREMENTS WITH RESPECT TO SPOIL REMOVAL AND APPROVAL TO DEWATER (§10-329); AMENDING SUBMITTAL REQUIREMENTS FOR LANDSCAPE PLANS (§10-414); OPEN SPACE (§10-415); LANDSCAPE STANDARDS (§10-416); SURFACE WATER MANAGEMENT SYSTEMS (§10-418); ALTERNATE LANDSCAPE BETTERMENT PLAN (§10-419); PLANT MATERIAL STANDARDS (§10-420); PLANT INSTALLATION AND MAINTENANCE STANDARDS (§10-421); ESTABLISHING LANDSCAPE REQUIREMENTS FOR SPECIFIC USES (§10-424); PROVIDING FOR DESIGN STANDARD APPLICABILITY TO ABOVE GRADE PARKING GARAGES (§10-602); AND

AMENDING CHAPTER 14, ENVIRONMENT AND NATURAL RESOURCES, AMENDING DEFINITIONS OF "BEACH", "DUNE", "FWC", "MECHANICAL BEACH CLEANING", "NEST", AND "NEW DEVELOPMENT" (§14-72); PROVIDING FOR ADMINISTRATIVE EXEMPTIONS FROM THE SEA TURTLE REQUIREMENTS (§14-74); AMENDING STANDARDS APPLICABLE TO LIGHTING FOR EXISTING DEVELOPMENT (§14-75); LIGHTING FOR NEW DEVELOPMENT (§14-76); PROVIDING FOR ADDITIONAL REGULATIONS AFFECTING SEA TURTLE NESTING

HABITAT (§14-78); GUIDELINES FOR MITIGATION AND ABATEMENT OF PROHIBITED ARTIFICIAL LIGHTING (§14-79); CREATING DIVISION 5, BEACH AND DUNE MANAGEMENT, PROVIDING FOR DEFINITIONS (§14-170); PURPOSE AND INTENT (§14-171); DESTRUCTION OR DIMINISHMENT OF DUNE OR BEACH SYSTEM (§14-172); BEACH FURNITURE AND EQUIPMENT (§14-173); BEACH RAKING AND WRACK LINE POLICY (§14-174); PROHIBITION OF VEHICULAR TRAFFIC ON THE BEACH (§14-175); SPECIAL EVENTS ON THE BEACH (§14-176); ENFORCEMENT (§14-177); RESTORATION STANDARDS FOR DUNE VEGETATION ALTERATION VIOLATIONS (§14-178); AMENDING DEFINITIONS APPLICABLE TO WELLFIELD PROTECTION, SPECIFICALLY "DEWATER" (§14-203); PROVIDING FOR A CEASE TO DEWATER NOTICE (§14-218); AND

AMENDING CHAPTER 30, SIGNS, AMENDING NONCONFORMING SIGNS (§30-55); PERMANENT SIGNS IN COMMERCIAL AND INDUSTRIAL DISTRICTS (§30-153); BILLBOARDS (§30-183); AND

AMENDING CHAPTER 34, ZONING, PROVIDING FOR DEFINITIONS OF "CABANA", "DEWATER", "FUEL PUMP", "FULL SERVICE FUEL PUMP", "SUFFICIENCY", AND "TACTICAL TRAINING FACILITY", AND AMENDING DEFINITIONS OF "CONVENIENCE FOOD AND BEVERAGE STORE", "FUEL PUMP STATION", "SELF SERVICE FUEL PUMPS", AND "STABLE, BOARDING" (§34-2); PROVIDING FOR FUNCTIONS AND AUTHORITY FOR REMAND BY THE BOARD OF COUNTY COMMISSIONERS (§34-83); AMENDING GENERAL SUBMITTAL REQUIREMENTS FOR APPLICATIONS REQUIRING PUBLIC HEARING (§34-202); ADDITIONAL REQUIREMENTS FOR APPLICATIONS REQUIRING PUBLIC HEARING (§34-203); DEFERRAL OR CONTINUANCE OF PUBLIC HEARING (§34-235); AMENDING THE APPLICATION REQUIREMENTS APPLICABLE TO PLANNED DEVELOPMENTS (§34-373); PUBLIC HEARING (§34-377); AMENDING USE ACTIVITY GROUPS (§34-622); USE REGULATIONS TABLE FOR AGRICULTURAL DISTRICTS (§34-653); USE REGULATIONS TABLE FOR MULTIPLE-FAMILY RESIDENTIAL DISTRICTS (§34-714); USE REGULATIONS TABLE FOR MOBILE HOME DISTRICTS (§34-735); AMENDING REGULATIONS APPLICABLE TO ADDITIONS TO RECREATIONAL

VEHICLES (§34-788); AMENDING USE REGULATIONS TABLE FOR RECREATIONAL VEHICLE DISTRICTS (§34-791); USE REGULATIONS TABLE FOR COMMUNITY FACILITIES DISTRICTS (§34-813); USE REGULATIONS TABLE FOR CONVENTIONAL COMMERCIAL DISTRICTS (§34-843); USE REGULATIONS TABLE FOR INDUSTRIAL DISTRICTS (§34-903); USE REGULATIONS TABLE FOR PLANNED DEVELOPMENT DISTRICTS (§34-934); AMENDING PROPERTY DEVELOPMENT REGULATIONS (§34-935); MIXED USE PLANNED DEVELOPMENTS (§34-940); CREATING SUPPLEMENTARY DISTRICT REGULATIONS APPLICABLE TO CABANAS (§34-1182); AMENDING SALE OR SERVICE FOR ON-PREMISES CONSUMPTION (§34-1264); COASTAL ZONE PROVISIONS (§34-1575); PROVIDING DEWATERING APPLICATION REQUIREMENTS FOR GENERAL MINING PERMIT AND ISSUANCE OF PERMIT (§34-1675); AMENDING PROVISIONS APPLICABLE TO RESIDENTIAL PROJECT WALLS (§34-1743); REQUIRED PARKING SPACES (§34-2020); HEIGHT LIMITATIONS FOR SPECIAL AREAS AND LEE PLAN LAND USE CATEGORIES (§34-2175); AMENDING CLEARING, GRADING, AND FILLING OF LAND PROVISIONS TO PROVIDE FOR SITE GRADING AND LOT GRADING PLANS (§34-3104); PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION AND SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, Goal 25 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, Lee Plan Policies 14.5.3, 77.1.1 and 158.6 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 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 endorsed amendments to Land Development Code Chapters 2, 6, 10, 14, 30, and 34 to implement Goal 25 of the Lee Plan; and

WHEREAS, the Executive Oversight Regulatory Committee has reviewed and endorsed the proposed amendments to the Code; and

WHEREAS, the Local Planning Agency reviewed the proposed amendments on July 27, 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 LDC CHAPTER 2**

Lee County Land Development Code Chapter 2 is hereby amended as follows with deleted text identified by strike through and added text identified by underlining.

**Chapter 2**

**ADMINISTRATION**

**ARTICLE IV. TRANSFER OF DEVELOPMENT RIGHTS**

**Sec. 2-147. Transfer of development rights process.**

- (a) through (b) No change.
- (c) *Development/building permit approval.* After the property owner or developer has received approval to use TDR units, he may apply for final development orders or building permits, as applicable.
  - (1) No change.
  - (2) Before the issuance of construction or building permits, the developer must provide to the department a copy of the recorded deed of transfer required in accordance with section 2-149(a)(6) 2-147(a)(6) encompassing the TDR units he intends to use. This deed must include a restriction on the development rights of the sending parcel in perpetuity.
  - (3) No change.

## **SECTION TWO: AMENDMENT TO LDC CHAPTER 6**

Lee County Land Development Code Chapter 6 is hereby amended as follows with deleted text identified by strike through and added text identified by underlining.

### **Chapter 6**

#### **BUILDINGS AND BUILDING REGULATIONS**

#### **ARTICLE III. COASTAL CONSTRUCTION CODE**

##### **DIVISION 1. GENERALLY**

###### **Sec. 6-333. Definitions.**

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

*Beach or shore* means the zone of unconsolidated material that extends landward from the mean low-water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves. has the same meaning given it in section 14-170.

*Dune* means a mound or ridge of loose sediments, usually sand-sized, lying landward of the beach, and deposited by any natural or artificial means has the same meaning given it in section 14-170.

## **SECTION THREE: AMENDMENT TO LDC CHAPTER 10**

Lee County Land Development Code Chapter 10 is hereby amended as follows with deleted text identified by strike through and added text identified by underlining.

**Chapter 10**  
**DEVELOPMENT STANDARDS**  
**ARTICLE I. IN GENERAL**

**Sec. 10-1. Definitions and rules of construction.**

- (a) No change.
- (b) *Definitions.* Except where specific definitions are used within a specific section of this chapter for the purpose of such sections, the following terms, phrases, words and their derivations will have the meaning given in this subsection when not inconsistent with the context:

Dewater means the use of pumps or other equipment to temporarily withdraw water to a lower surface water level, an aquifer water level, or a groundwater level to accommodate development activities.

**ARTICLE II. ADMINISTRATION**  
**DIVISION 2. DEVELOPMENT ORDERS**

*Subdivision II. Procedure*

**Sec. 10-101. Applicability of requirements.**

- (a) *Development orders.* All developments, as defined in this chapter, including subdivisions, are required to obtain a development order prior to commencing any land development activities or receiving any development permit, including a building permit, with the exception of the following, which are not subject to review pursuant to this chapter except as noted herein:

- (1) No change.
- (2) Agriculture, as defined herein except as required for excavations permitted under section 10-329.

- (3) through (9) No change.
- (b) and (c) No change.

### *Subdivision III. Submittals*

#### **Sec. 10-154. Additional required submittals.**

The following must be submitted with an application for development order approval:

- (1) through (5) No change.
- (6) *Existing conditions and improvements drawing.* An existing conditions and improvements drawing showing at minimum the following:
  - a. through d. No change.
  - e. Identification of State jurisdictional wetlands as defined in section 14-292. The applicant may be required to flag these areas for site inspection by the staff of the department of community development.
  - f. through l. No change.
  - m. A diagram depicting the existing surface hydrology of the property. Existing flow-ways must be delineated.
- (7) through (26) No change.

### **DIVISION 3. LIMITED REVIEW PROCESS**

#### **Sec. 10-174. Types of development entitled to limited review.**

The following types of development may be processed in accordance with this division:

- (1) through (3) No change.
- (4) Any one-time subdivision of land into four or less lots for single-family detached dwelling units or two-family detached dwelling units, where zoning district regulations permit such subdivision; provided, however, that:
  - a. through d. No change.
  - e. No Creation of new road rights-of-way or road easements, and the

construction of new roadways or upgrading of road rights-of-way or road easements existing roadways to meet the minimum standards contained in this chapter is required will require development order approval.

- (5) Any one time subdivision of land into four lots or less for a use other than single-family detached dwelling units, two-family detached dwelling units or agricultural; provided, however, that:
- a. through f. No change.
  - g. No Creation of new road rights-of-way or road easements, and the construction of new roadways or upgrading of road rights-of-way or road easements existing roadways to meet the minimum standards contained in this chapter are required. This provision requires that a development order be obtained in order to establish or upgrade a road right-of-way or a road easement or to construct or upgrade a road will require development order approval; and
  - h. No change.
- (6) through (12) No change.

## **ARTICLE III. DESIGN STANDARDS AND REQUIREMENTS**

### **DIVISION 3. SURFACE WATER MANAGEMENT**

#### **Sec. 10-321. Generally.**

- (a) through (f) No change.

(g) Site grading. Site grading for all developments must be performed in accordance with the plans approved under the development order; and, must conform to the performance standards set forth in section 34-3104(b).

#### **Sec. 10-329. Excavations.**

- (a) No change.

(b) Excavation types and required approvals. Excavations are generally constructed either for mining operations, for stormwater retention or as a development site amenity. Table 1 summarizes the various types of excavations and the permits and approvals required for each excavation type.

**TABLE 1**  
**TYPES OF EXCAVATIONS, REGARDLESS OF SIZE, AND THE PERMITS  
 AND APPROVALS REQUIRED FOR EACH EXCAVATION TYPE**

<i>Excavation Type</i>	<i>Excavated Materials Destination</i>	<i>Permits/Approvals Required<sup>1</sup></i>
Excavations for an agricultural use or as an amenity to a single-family residence.	ON-SITE OR less than 1,000 cubic yards of material to be moved off-site.	Notice of Intent to Commence Water Retention Excavation Application.
	OFF-SITE - Between 1,000, but less than 10,000 cubic yards to be moved off-site	1. Type 12 Limited Review Development Order; 2. SFWMD permit (if applicable); and 3. An approved Excess Spoil Removal Plan
	OFF-SITE - 10,000 or more cubic yards to be moved off-site OR 10 % or more of the total material to be excavated, whichever is less	1. <u>Type 12 Limited Review</u> Full Development Order; 2. SFWMD permit (if applicable); and 3. either a) an approved "Excess Spoil Removal Plan"; OR b) Planned Development Zoning with "mining" or "excess spoil removal" as an approved use. The decision as to whether a) or b) above will be required will be determined by the director, based on conditions specified in subsection (c)(3),
Development project - stormwater retention, i.e. lakes and ponds, etc. where the material to be moved off-site qualifies as "Surplus material"	ON-SITE	1. Development Order; and 2. SFWMD permit (if applicable)
	OFF-SITE - material to be moved off-site is less than 20,000 cubic yards in volume; AND is less than 10% of the total material to be excavated.	1. Development Order; and 2. SFWMD permit (if applicable); 3. An approved "Excess Spoil Removal Plan".
	OFF-SITE - material to be moved off-site is 20,000 or more cubic yards in volume; OR	1. Development Order; and 2. SFWMD permit; and 3. Either a) an approved "Excess Spoil Removal Plan";

	10% or more of the total material to be excavated, whichever is less	OR b) Planned Development Zoning with "mining" <u>or</u> "excess spoil removal" as an approved use. The decision as to whether a) or b) above will be required will be determined by the director, based on conditions specified in sub-section (c)(3);
Development project - stormwater retention, i.e. lakes and ponds, where the material to be moved off-site does not qualify as "surplus material". OR General mining	OFF-SITE	1. Planned Development Zoning with "mining" listed as an approved use; and 2. Development Order; and 3. SFWMD permit; and 4. An Approved Excess Spoil Removal Plan

<sup>1</sup>The requirements for planned developments with zoning approval for mining are specified in Chapter 34, Article VII, division 15, Subdivision II.

**(c) Procedures:**

(1) through (3) No change.

**(4) Administrative approval of an Excess Spoil Removal Plan.**

- a. *Applicability.* The director of development services may authorize the removal of excavated excess spoil material in all zoning districts, with the exception of the Environmentally Critical (EC) district, for agricultural, residential and commercial projects PROVIDED that:
  - 4. ~~The excavated material will be from a agricultural, residential or commercial project that is located within a conventional zoning district;~~
  - 21. ~~An development order application of a limited review or full a development order (as applicable) for the project has been filed and approved;~~
  - 32. ~~No blasting is proposed;~~
  - 43. ~~The excess material to be removed results from the minimum excavation required to:~~

- i. Meet SFWMD permit requirements; OR
  - ii. Provide a viable agricultural or recreational amenity that does not exceed 8.0 feet below the dry season water table (DSWT) elevation.
- b. and c. No change.

(5) Approval to dewater.

- a. General submittal requirements. Where dewatering is proposed as part of a development project (of any size), except as provided in subsection (c), the following must be provided as part of the development order submittal:
  1. Dewatering method and procedure to be used to complete the excavation.
  2. Estimated volumes of water to be extracted, impounded or diverted per hour and per day for the duration of the dewatering.
  3. A map specifically depicting the location of all dewatering pumps and withdrawal points.
  4. A plan/map showing the disposition of the dewatered effluent, whether on or off the development site. The map must depict the size and location of the proposed holding ponds or trenches as well as the calculations used to determine the size of the proposed holding ponds and trenches. A soils report must be included that documents the ability of the sub-surface soils, in the subject location, to percolate the dewatered effluent. If an off-site location is proposed, then the application must include permission from each property owner whose property will be traversed or used to accomplish the dewatering as proposed. This permission/consent must be in writing, signed by the property owner, and acknowledged before a notary. Consents signed by an agent of the property owner will not satisfy this requirement.
  5. A copy of the SFWMD Water Use Permit (WUP) application, staff report/recommendation and WUP permit approval.
- b. Additional submittal requirements for dewatering sensitive areas. If

dewatering is proposed to facilitate development of a site known or believed to be subject to dewatering sensitive conditions (examples include but are not limited to: wetlands, existing wells, groundwater contamination, karst induced subsidence), or located in the vicinity of an area subject to dewatering sensitive conditions, then the following additional information may be required at the director's sole discretion.

1. Engineering estimates of the monthly water balance for the projected highest, lowest and average rainfall sequence for the operation life of the excavation. This estimate must account for all sources of water input to the water recirculation facilities and processing steps, and all water outputs and losses from the system. The submittal must also include a detailed explanation of the computation methods and assumptions used to derive the estimate.
  2. Engineering estimates demonstrating that the proposed dewatering will not adversely impact adjacent wetlands and groundwater resource aquifer supply must be submitted if the excavation will extend below the normal wet season groundwater elevation.
  3. A proposed groundwater level monitoring plan that specifies the location of all wells comprising the monitoring well network. The proposed water level monitoring plan and process must be sufficient to document changes that are a result of the proposed dewatering with respect to groundwater levels and groundwater flow directions on and/or off the subject project site.
- c. Dewatering for underground utility installations are exempt from the requirements of this section.
- (d) No change.
- (e) Violations.
- (1) through (3) No change.
- (4) SFWMD will receive a copy of any notice of violation issued by Lee County with respect to dewatering activity.

#### DIVISION 6. OPEN SPACE, BUFFERING AND LANDSCAPING

**Sec. 10-414. Submittal requirements.**

(a) *Landscape plan required.* Prior to the approval of a development order, an applicant whose development is covered by the requirements of this section must submit a landscape plan. The landscape plan must be prepared by and bear the seal of a landscape architect registered in the State of Florida. The plan must include the narrative and calculations to ensure that the proposed landscaping will be in compliance with requirements of this code. However, small projects may qualify for a hardship waiver if the cost of compliance with the landscape architect requirement is disproportionate to the cost of the entire project. This waiver is subject to the sole discretion of the director.

The landscape plan must be drawn at the same scale as the development order plans and include, at a minimum, the following items where applicable:

<b>LANDSCAPE PLAN REQUIREMENTS</b>	
Title of Project including Project Owner's Name	Preserved trees <u>and palms</u>
Preparer's Name	Trees <u>and palms</u> to be relocated
Dimensions and North arrow	Construction vegetation protection barricades
All open space	Permanent vegetation protection techniques
Indigenous open space	Tree and palm staking detail
All landscape areas	Mulch details
Highlight all code required landscaping	<u>Safe sight distance triangles</u>
Vehicle use areas - parking, aisle, driveways	<u>Locations of proposed and existing parking lot lighting</u>
Roadways and access points <u>existing and proposed</u>	<u>Locations of proposed signs and existing signs to remain</u>
Overhead and underground utilities <u>existing and proposed</u>	All easements <u>existing and proposed</u>
<u>Indigenous Vegetation Management Plan</u>	Reference chart that includes: Graphic plant symbols Plants botanical and common name plant quantity, height, <u>trunk caliper</u> and spread Plant spacing and native status

(b) No change.

**Sec. 10-415. Open space.**

(a) *Open space calculations.* All development must contain the minimum percentage of open space as outlined in the following table below.

<b>OPEN SPACE REQUIREMENTS</b>		
	<i>Open Space as a % of Development Area</i>	
<i>Type of Development</i>	<i>Small projects</i>	<i>Large projects</i>
<i>Residential:</i> Type of dwelling units as defined in chapter 34-2 located in conventional zoning districts <u>with conventional zoning district lot coverage.</u>		
Single-family residence or Mobile Home on a single lot with a minimum size of 6,500 sq. ft.	None	None
Duplex on a single lot with a minimum lot size of 7,500 sq. ft.	None	None
Two-family attached each on an individual lot with a minimum lot size of 3,750 sq. ft. per unit	None	None
All other residential	35%	40%
<i>Industrial</i>	10%	20%
<i>Other:</i> All other uses including, but not limited to commercial, places of worship, recreational vehicle parks, community facilities, schools (excluding Lee County School district), etc.	20%	30%
<i>Note:</i> multiple use sites with conventional zoning must comply with each corresponding use percentage in this table.		
<i>Planned Development Zoning:</i> Planned developments must provide open space as required in chapter 34 and per the approved master concept plan and resolution. Consistency with the master concept plan is in addition to the requirements of this provision, unless deviations have been granted.		

- (b) *Indigenous native vegetation and trees* .
- (1) *Preservation*.
- a. No change.
  - b. If the development area does not contain existing indigenous native vegetation communities, but does contain existing indigenous native trees, then 50 percent of their open space percentage requirement must be met through the onsite preservation of existing native trees consistent with subsection 1 through 4 below. Refer to Appendix E and section 34-373(6)(g).
    1. No change.
    2. No change.
    3. Native trees (four to 15-inch caliper dbh) may be relocated to open space areas when proper horticultural methods (e.g. root pruning; use of antitranspirants) are utilized to insure the survivability of the trees, and a Vegetation Removal Permit is obtained.
    4. No change.
  - c. A minimum setback of 20 feet from buildings is required. For indigenous plant communities subject to fire, such as pine flatwoods, palmetto prairie and xeric scrub, a 30 feet setback is required for fire protection.
- (2) *Salvaging existing native plants*. Open space areas must be designed to incorporate as many of the existing large native trees and sabal palms as possible. Irrigation water must be available on the development site and provisions for adequate irrigation provided.
- a. *Sabal palms*. Healthy sabal palms with a minimum eight foot clear trunk must be salvaged if conditions (e.g., no rock) and sequence of construction allows. If sequence of construction does not allow the on-site relocation of sabal palms, then the sabal palms must be salvaged for an off-site recipient site or sale. The salvage efforts must be coordinated with the division of environmental sciences staff whether used on-site or otherwise. The number of sabal palms to be

relocated or salvaged must be shown on the landscape plan approved as part of the development order. Any sabal palms being relocated must be moved in a horticulturally correct manner per Lee County Extension Services brochure Lee 8/2000A. A 90% survival for relocated sabal palms is required. Death of over 10% of the relocated sabal palms will require a 1:1 replanting.

- b. Other Trees. Healthy native trees with a minimum caliper of four inches at 4 1/2 feet above the ground (dbh) may be relocated onsite for five tree credits toward code required landscaping. The trees must be properly prepared for relocation through root pruning or other horticulturally correct methods approved by the environmental sciences director.

**(23) Credits.**

- a. For all developments with required open space, except single-family subdivisions with individual lot area of 6,500 square feet or greater and a maximum lot coverage of 45%, an incentive to preserve indigenous native upland plant communities or indigenous native trees in large tracts, a scaled open space credit for single contiguous preserve areas will be granted as follows:

<b><u>INDIGENOUS PLANT COMMUNITY &amp; NATIVE TREE PRESERVATION AREA</u></b>		
<b><u>CREDITS</u></b>		
<b><u>VEGETATION CHART</u></b>		
<i>Credit provided</i>	<i>Minimum size</i>	<i>Minimum width</i>
110%	1/2 acre	50 feet
125%	1 acre	75 feet
150%	3 acres	100 feet

- b. No change.

- (4) **Maintenance.** A plan must be submitted for the long term maintenance of vegetation in indigenous open space areas. This indigenous vegetation management plan must include the following criteria:

- a. Method and frequency of pruning and trimming.
- b. Methods to remove and control all exotic and nuisance plants in perpetuity.
- c. Debris removal.

- d. Protected species management plan conditions.
  - e. Drafts of educational materials (signage and brochures) to be provided to the residents about the purpose and function of these areas.
  - f. Monitoring reports, including photos, that narratively document preserve area conditions must be submitted to obtain development order approval; and, again after project construction in order to obtain a Certificate of Compliance (CC). The CC monitoring report must describe and document ecological restoration activity that has occurred in the preserve areas. If review of the monitoring reports reveals death or significant decline to preserve vegetation, then revision of the management plan and restoration in accord with section 10-423 will be required.
- (35) ***Administrative deviation.*** Consistent with the provisions of section 10-104, the director may permit administrative deviations to reduce the minimum 50 percent indigenous native vegetation requirement within this subsection to a lower percentage. Existing, approved indigenous preserve areas within planned developments are not eligible for administrative deviations, unless the preserve areas are interior to the project (100 feet or more from the property line). The administrative deviation request must include the unique conditions or circumstances that make the property unusable and unreasonably burdensome, and demonstrate why granting the deviation is in the public interest. The applicant must provide details of other actions that will be taken to offset the reduction (mitigation). Mitigation must, at a minimum, meet a one-to-one (1:1) ratio of reduction of indigenous area to mitigated area. Mitigation that will be considered includes, but is not limited to:
- a. Onsite ecological creation/restoration, with long-term management. A minimum two to one ratio of creation/restoration area to indigenous area to be mitigated.
  - b. Offsite land acquisition with perpetual conservation protection. A minimum three to one ratio of acquired land to indigenous area to be mitigated.
  - c. Offsite ecological restoration on public lands or protected private lands. A minimum three to one ratio of acquired land to indigenous area to be mitigated.
  - d. Purchase of appropriate credits from a permitted mitigation bank.

- e. A minimum three to one ratio of acquired land to indigenous area to be mitigated. Indigenous preservation area credits listed in section 10-41(b)(3)a. do not apply to onsite ecological creation/restoration areas or offsite areas.
- (c) *Minimum dimensions.*
  - (1) No change.
  - (2) No change.
  - (3) For projects under 10 acres in size, indigenous open space areas must have a minimum average width of 20 feet and minimum area of 400 square feet.  
For projects over 10 acres in size, indigenous open space areas must have a minimum average width of 40 feet and minimum area of 1,500 square feet. The average minimum width may be reduced to 30 feet when the preserve is adjacent to a public road.
  - (4) No change.
  - (5) Native tree preservation areas must extend to the full drip line of slash pine, three quarter drip line for all canopy type trees, and six feet from the trunk of any native palm, -OR- or other protective means, such as retaining walls, must be provided. Except for work related to approved ecological restoration activities, no filling, grading or excavating is allowed in open space preservation areas.
  - (6) Surface water management systems may overlap with native tree preservation areas only where it can be clearly demonstrated that the effects of water management system construction or operation will not cause death or harm to the preserve tree and indigenous plant community of protected species.
- (d) *Use of open space.*
  - (1) No change.
  - (2) The following uses may contribute to the open space requirements provided the minimum dimensions are met:
    - a. through c. No change.
    - d. Active and passive recreation areas such as playgrounds, golf courses, beach frontage, native nature trails, bikeways, pedestrian

ways, tennis courts, swimming pools and other similar open spaces, as long as not more than 20 percent of the recreational area credited as open space consists of impervious surface.

- e. and f. No change.
- g. Removal of native vegetation from indigenous open space areas by mechanical or chemical means is prohibited unless specified by the indigenous vegetation management plan.

#### **Sec. 10-416. Landscape standards.**

(a) *General.* Landscaping for all new developments, except community and regional parks as defined in the Lee Plan, must include, at a minimum, the following number of trees, in addition to the landscaping required for parking and vehicle use areas and buffers. General tree requirements may be reduced through the utilization of larger trees as specified in section 10-420(c)(2) or through use of an alternative landscape betterment plan (see section 10-419). Existing waterbodies within the development area will not be included in the calculation for general tree requirements.

(1) through (3). No change.

(4) *All other developments.* One tree must be provided per each 3,500 square feet of development area. ~~No more than 50 percent of the required trees may be located in the area between the rear lot line and a line created by extending the rear wall of the principal structure (defined as the wall closest to, and running roughly parallel to, the rear lot line) to the side lot lines for lots fronting on a single street. Where lots front on two streets, no more than 50 percent of the required trees may be located in the area between the rear lot line and the line created by extending the rear wall of the principal structure to the side lot line and the street right-of-way line.~~

(b) *Building perimeter plantings.* All new development in commercial zoning districts and commercial components of planned development districts and DRIs must provide building perimeter plantings equal to ten percent of the proposed building gross ground level floor area. These planting areas must be located abutting ~~all~~ three sides of the building with emphasis on the sides most visible to the public, not including the loading area. The perimeter planting areas must consist of landscape areas, raised planters or planter boxes that are a minimum of five feet wide. These landscape areas must include shrubs and ground cover plants with a minimum of 50 percent coverage of the landscape area at the time of planting. Shrubs must meet the size requirements of section 10-420(d). General trees may be planted within the building perimeter planting areas, especially effective are clusters (3 or more) of sabal palms. Turfgrass is discouraged and is limited

to 10 percent of the landscape area. Water management areas may not be a part of this five-foot planting area. Pedestrian access ways may cross and loading areas may be placed in the perimeter planting area, but may not be used to meet minimum planting area or open space requirements.

An enlarged perimeter landscape area is required in the front of shopping centers and freestanding retail uses that constitute a large development. An area that is at least five percent of the size of the vehicular use area must be developed as green space within the front of shopping centers and retail establishments and be an enlargement to the front building perimeter planting area. However, it is not a requirement that this area directly abut the front of the building. The enlarged perimeter planting areas must consist of landscape areas, raised planters or planter boxes that are a minimum of five feet wide. These enlarged perimeter planting areas must include trees, shrubs and ground cover plants with a minimum of 50 percent coverage of the landscape area at the time of planting. Turfgrass is discouraged and is limited to ten percent of the landscape area. Water management areas may not be a part of this enlarged planting area.

This five percent green space area may be used to meet open space requirements if they are in compliance with section 10-415(c), but may not be used to reduce the perimeter planting areas on the sides and rear of the building. These areas must be designed for scenic, noncommercial recreation purposes and be pedestrian-friendly and aesthetically appealing. They may include the following: limited turfgrass, mulch, decorative plantings, landscape, walkways within the interior of the green space area not used for shopping, fountains, manmade watercourses (but not water retention areas), park benches, site lighting, sculptures, gazebos, and any other similar items.

(c) *Landscaping of parking and vehicle use areas.* The provisions of this section apply to all new off-street parking or other vehicular use areas. Existing landscaping that does not comply with the provisions of this code must be brought into conformity, to the maximum extent possible, when: the vehicular use area is altered or expanded except for restriping of lots/drives, the building square footage is changed, or the structure has been vacant for a period of one year or more and a request for an occupational license to resume business is made. Consistent with the provisions of section 10-104, the director may permit administrative deviations where a conflict exists between the application of this division and the requirements for the number of off-street parking spaces or area of off-street loading facilities.

- (1) No change.
- (2) *Internal landscaping.* All parking areas must be internally landscaped to provide visual relief and cooling effects and to channelize and define logical areas for pedestrian and vehicular circulation, as follows:
  - a. Trees must be planted or retained in landscaped areas in parking areas, including landscaped areas reserved for future parking spaces,

to provide for canopy coverage when the trees mature. At least one canopy tree or a cluster of three sabal palms must be planted or retained for every 250 square feet of required internal planting area, and no parking space may be more than ~~100~~ 200 feet from a tree planted in a permeable island, peninsula or median of ~~ten-foot~~ 18 foot minimum width. Canopy requirements must be met with existing indigenous native trees whenever such trees are located within the parking area.

- b. No change.
- c. The minimum average dimension of any required internal landscaped area must be ten feet for projects less than 10 acres and 18 feet for projects 10 acres or larger.
- d. No more than an average of ~~ten~~ 20 parking spaces must occur in an uninterrupted row unless optional divider medians, as specified in subsection (c)(2)f of this section, are used. Where existing trees are retained in a landscape island the amount of parking spaces in that row may be increased to 15 ~~25~~.
- e. No change.
- f. Optional divider medians may be used to meet interior landscape requirements. If divider medians are used, they must form a landscaped strip between abutting rows of parking spaces. The minimum width of a divider median must be ~~ten~~ 18 feet. One tree must be planted for each 40 linear feet of divider or fraction thereof. Trees in a divider median may be planted singly or in clusters. The maximum spacing of trees must be 60 feet.
- g. No change.

(d) *Buffering adjacent property.* Buffering and screening applies to all new development. Existing landscapes that do not comply with the provisions of this section must be brought into conformity to the maximum extent possible when: the vehicular use area is altered or expanded, except for restriping of lots/drives, the building square footage is increased, or there has been a discontinuance of use for a period of one year or more and a request for an occupational license to resume business is made.

- (1) No change.
- (2) *Use categories.* In interpreting and applying the provisions of this section, development is classified into the following use categories:

USES	
AG	Agricultural uses
SF-R	Single-family, duplex or two-family attached situated on individual lots
MF-R	Residential structures containing three or more dwelling units on a single parcel
COM	Commercial uses, public facilities, schools (other than Lee County School District), and recreational vehicle parks
WOR	Places of worship (df)
IND	Industrial use
STP	Sewer treatment plant or water treatment plant
ROW	Public street right-of-way or roadway easement
<u>REC</u>	Public active recreational park
<u>PRE</u>	Public preserve lands for conservation and/or passive recreation

- (3) *Buffer requirements.* The following table provides the required buffer type when a proposed use is abutting an existing use or, in the absence of an existing use, the existing zoning.

BUFFER REQUIREMENTS												
Permitted or Existing Uses												
Proposed Uses		AG	SF-R	MF-R	CO	WOR	IND	STP	RO	<u>REC</u>	<u>PRE</u>	
	AG	—	—	—	—	—	—	—	—	=	=	
	SF-	—	—	—	—	—	—	—	—	B	F (2)	
	MF-	—	B	—	—	—	—	—	D	B	F (2)	
	CO	—	C/F	C/F	A	A	—	—	D	A	F (2)	
	WO	—	C/F	C/F	A	A	—	—	D	A	F (2)	
	IND	—	(1)	(1)		(1)	—	—	D	=	F (2)	
	STP	C/F	E	E	E	E	C/F	—	D	=	F (2)	
	<u>REC</u>	=	<u>C/F</u>	<u>C/F</u>	<u>A</u>	<u>A</u>	=	=	<u>D</u>	<u>E</u>	<u>F (2)</u>	
	<u>PRE</u>	=	E	E	=	=	=	=	=	E	=	

**Notes a for Buffer Requirements Table:**

1. All uses or activities must provide a Type E buffer unless the director determines that the proposed use or activity will not have an adverse impact on adjacent property. If the director determines that a Type E buffer is not required, a Type F buffer must be constructed.
  2. The required buffer landscaping must be 100% native.
- (4) **Buffer types.** The following table provides six different buffer types. Each type buffer, identified by a letter, provides the minimum number of trees and shrubs per 100 linear foot segment and indicates whether or not a wall or hedge is required.

BUFFER TYPES (per 100 linear feet)						
Buffer types	A	B	C	D (3)	E	F
Minimum width in feet	5	15	15	18	25	30
Minimum # of trees	4	5	5	5	5	10
Minimum # of shrubs	—	Hedge (2)	18 (4)	Hedge (2)	30 (4)	Hedge (2)
Wall required (1)	No	No	Yes	No	Yes	No

**Notes for Buffer Types Table:**

1. A solid wall, berm or wall and berm combination, not less than eight feet in height as measured from the finished grade of the project site. All trees and shrubs required in the buffer must be placed on the residential side of the wall. The height of the wall must be measured from the average elevation of the street or streets abutting the property as measured along the centerline of the streets, at the points of intersection of the streets with the side lot lines (as extended) and the midpoint of the lot frontage (see section 34-2172). Walls must be constructed to ensure that historic flow patterns are accommodated and all stormwater from the site is directed to on-site detention/retention areas in accordance with the SFWMD requirements.
2. No change.
3. Trees within the ROW buffer must be appropriately sized in mature form so that conflicts with overhead utilities, lighting and signs are avoided. Palms are limited to a maximum of 50% of the ROW tree requirement. Palms must be clustered and cannot be planted in a "soldiering" effect, where they are equal distance and in a single row. South Florida slash pine (*Pinus elliottii* var. *densa*) and Longleaf pine

(*Pinus palustris*) trees are encouraged for use in the ROW buffers due to their high crown, which provides tree canopy while maintaining good visibility to the development site. The clustering of trees and use of palms within the ROW buffer will add design flexibility and reduce conflicts.

4. Shrubs required by this section are intended to provide visual screening and may not be pruned to reduce height.

- (5) No change.
- (6) If roads, drives, or parking areas are located less than 125 feet from an existing single family residential subdivision or single family residential lots, a solid wall or combination berm and solid wall not less than eight feet in height must be constructed not less than 25 feet from the abutting property and landscaped (between the wall and the abutting property) with a minimum of five trees and 18 shrubs per 100 lineal feet or a 30-foot wide Type F buffer with the hedge planted a minimum of 20 feet from the abutting property. Where residences will be constructed between the road, drive or parking area and the existing residential subdivision or lots, the wall or wall and berm combination are not required.

- (7) and (8) No change.

- (9) *Development abutting natural waterway.* Except where a stricter standard applies for the Greater Pine Island Area (as defined in Goal 14 of the Lee Plan), there must be a 25-foot wide vegetative buffer landward from the mean high water line of all tidally influenced nonseawalled natural waterways or from the top of bank of non-tidal waterways. Where a proposed planned development or subdivision is located in the Greater Pine Island Area abutting state-designated aquatic preserves and associated natural tributaries, the width of the required buffer will be 50 feet.

Existing native vegetation within the buffer area must be retained. The natural waterway buffer must at a minimum include ten native trees per 100 linear feet, which may be met through tree credits with existing native trees. The removal or control of exotic pest plants must not involve the use of heavy mechanical equipment such as bulldozers, front end loaders, or hydraulic excavators, unless approved at the time of development order.

- (10) and (11) No change.

**Sec. 10-418. Stormwater ponds Surface water management systems.**

*Design standards.* Techniques to mimic the function of natural systems in stormwater surface water management ponds systems are as follows:

- (1) *Shoreline configuration of surface water management lakes or ponds.* Shorelines must be sinuous in configuration to provide increased length and diversity of the littoral zone. Sinuous is defined as serpentine, bending in and out, wavy or winding. See Illustration 10-418(1).

[MCC Editor Note: Insert attached Illustration 10-418(1) here.]

- (2) *Plant materials.* The following are considered sufficient to mimic the function of natural systems in ponds with slopes from 6(H) to 1(V) to not more than 4(H) to 1(V):

- a. No change.
- b. The minimum required number of native wetland herbaceous plants is one plant per linear foot of lake shoreline as measured at the control elevation water level. Native wetland trees or shrubs may be substituted for up to 25 50 percent of the total number of herbaceous plants required. One tree (minimum 4-foot height; 3-gallon container size at planting) or two one shrubs (minimum 24-inch height; 3-gallon container size at planting) may be substituted for ten herbaceous plants.
- c. and d. No change.
- e. Sodding or mulching of native wetland plant materials is allowed to establish plantings at the minimum required density in lieu of planted liners.
- f. No change.

- (3) *Bulkheads, riprap revetments or other hardened shoreline structures.* Bulkheads, riprap revetments or other hardened shoreline structures may comprise up to 20% of an individual lake shoreline. Hardened shoreline structures cannot be used adjacent to single-family residential uses. A compensatory littoral zone equal to the linear footage of the bulkhead must be provided within the same lake meeting the following criteria:

- a. a five foot wide littoral shelf planted with herbaceous wetland plants to provide 50% coverage at time of planting; or

- b. an 8:1 slope littoral shelf with herbaceous wetland plants to provide 50% coverage at time of planting; or
  - c. an equivalent littoral shelf design as approved by the director.
- (4) For each 400 square feet of dry detention area or drainage swale planted with appropriate native herbaceous vegetation (minimum 1-gallon container size planted 3-foot on center) the general tree requirement may be reduced by one 10-foot tree.

#### **Sec. 10-419. Alternate landscape betterment plan.**

Applications pursuant to this division are entitled to demonstrate that the intent of this division can be more effectively accomplished through an alternate landscape betterment plan. Alternative, creative designs are encouraged for difficult sites for landscape design, such as "in-fill" and irregularly shaped parcels. The following conditions must be met:

- (1) and (2) No change.
- (3) ~~No less than 75~~ 100 percent of the required trees installed must be native species.
- (4) ~~If larger trees are substituted to reduce the minimum number of general trees required, all substituted trees must be no less than three inches in diameter at 12 inches above the ground or less than 12 feet in height at the time of planting. In no case may general trees be reduced in number by more than 50 percent of the requirement. The actual ratio of the number of general trees reduced from the requirement will be dependent on:~~
  - a. ~~The proposed size and number of substituted trees;~~
  - b. ~~Similarity to native vegetation on-site or in the immediate vicinity;~~
  - c. ~~Appropriate plant grouping for water needs; and~~
  - d. ~~The amount of immediate increase in site canopy.~~
- (54) The plan must ~~specifically~~ designate the botanical name (genus and species) and location of all plant material to be installed.
- (65) The proposed alternate landscape betterment plan ~~may not be approved if staff determines that the intent of the minimum requirements of these provisions is not being exceeded.~~ must exceed the intent of the minimum landscape requirements.

**Sec. 10-420. Plant material standards.**

- (a) and (b) No change.
- (c) *Trees and palms.*
  - (1) For Code-required trees, at least 50 percent of the trees at the time of installation must be a minimum of 10 feet in height, have a two-inch caliper (at 12 inches above the ground) and a four-foot spread at the time of installation. The remaining code-required trees, at the time of installation, must be a minimum six feet in height, have a one-inch caliper (at 12 inches above the ground) and a three-foot spread. Palms must have a minimum of ten feet of clear trunk at planting. Trees having an average mature spread or crown less than 20 feet may be substituted by grouping the same so as to create the equivalent of a 20-foot crown spread. Trees adjacent to walkways, bike paths and rights-of-way must be maintained with eight feet of clear trunk. ~~All applications received after January 1, 2000 must meet the larger size tree requirement specified above.~~
  - (2) Larger trees substituted to reduce the minimum number of general trees, ~~without the use of an alternative landscape betterment plan~~, must be no less than four inches in diameter at 12 inches above the ground and no less than 16 feet in height at the time of planting. The general tree requirement cannot be reduced in number by more than 50 percent.
- (d) *Shrubs and hedges.* Shrubs must be a minimum of 24 inches (48 inches for type F buffers) in height, ~~above the on-site adjacent pavement surface required to be buffered and/or screened, when measured at time of planting. They~~ Saw palmettos (*Serenoa repens*) and coonties (*Zamia floridana*) may be used as shrubs, provided they are 12 inches in height at time of planting. ~~All shrubs~~ must be a minimum three-gallon container size and be spaced 18 to 36 inches on center. They must be at least 36 inches (60 inches for type F buffers) in height within 12 months of time of planting and maintained in perpetuity at a height of no less than 36 inches (60 inches for type F buffers), ~~above the adjacent pavement finished grade of the project site required to be buffered and/or screened, except for visibility at intersections and where pedestrian access is provided.~~
- (e) Required hedges must be planted in double staggered rows and maintained so as to form a continuous, unbroken, solid visual screen within a minimum of one year after time of planting.
- (f) The height of all trees and shrubs must be measured from the final grade of the project site.
- (eg) *Mulch requirements.* A two-inch minimum layer, after watering-in, of mulch

or other recycled materials must be placed and maintained around all newly installed trees, shrubs, and groundcover plantings. Each tree must have a ring of mulch no less than 24 inches beyond its trunk in all directions. The use of cypress mulch is strongly discouraged.

(fh) *Invasive exotics.* The following highly invasive exotic plants may not be planted, (ie. are prohibited) and must be removed from the development area. Methods to remove and control invasive exotic plants must be included on the development order plans. A statement must also be included on the development order that the development area will be maintained free from invasive exotic plants in perpetuity. For purposes of this subsection, invasive exotic plants include:

Species to Be Removed <i>Prohibited Invasive Exotics</i>			
Common name	Scientific name	Common name	Scientific name
earleaf acacia	<i>Acacia auriculiformis</i>	Old World climbing fern	<i>Lygodium microphyllum</i>
woman's tongue	<i>Albizia lebbeck</i>	Melaleuca, paper tree	<i>Melaleuca quinquenervia</i>
bishopwood	<i>Bischofia javanica</i>	downy rose myrtle	<i>Rhodomyrtus tomentosus</i>
Australian pines	<i>All Casuarina species</i>	Chinese tallow	<i>Sapium sebiferum</i>
carrotwood	<i>Cupianopsis anacardioides</i>	Brazilian pepper, Florida holly	<i>Schinus terebinthifolius</i>
rosewood	<i>Dalbergia sissoo</i>	tropical soda apple	<i>Solanum viarum</i>
air potato	<i>Dioscorea alata</i>	Java plum	<i>Syzygium cumini</i>
murray red gum	<i>Eucalyptus camaldulensis</i>	rose apple	<i>Syzygium jambos</i>
weeping fig	<i>Ficus benjamina</i>	cork tree	<i>Thespesia populnea</i>
Cuban laurel fig	<i>Ficus retusa microcarpa</i>	Wedelia	<i>Wedelia trilobata</i>
Japanese Climbing fern	<i>Lygodium japonicum</i>		

- (g) ~~Prohibited species. The following species of exotic plants are considered invasive and may not be used to fulfill any requirements of this division:~~

[Note: Table entitled *Prohibited Species List* is also deleted.]

- (i) If dry detention areas are planted with native clump grasses in lieu of sod or seeding, then the plants must be a minimum one-gallon container size planted three-foot on center.

- (h) Credits.

- (1) Except for prohibited invasive exotic species as listed above, every consideration must be given to retaining as much of the existing plant material as possible.

- (2) No change.

- (3) Credits will apply where the preserved tree is in a barricaded area at least two-thirds the radius of the crown spread of the tree measured from the trunk center. In no case may this area radius be less than two and one-half feet. For indigenous native pine trees, the barricaded area may be no less than the full crown spread of the tree, unless other measures such as tie-walls or special slope treatment are constructed for additional protection. Prior to the land clearing stage of development, the owner, developer or agent must erect protective barriers that are at minimum made of one-inch-by-one-inch lumber three foot high silt fence, three foot high orange construction fence or approved alternative barricading material. For all native, indigenous open space areas, including shrubs and ground cover, barricades must be erected around the perimeter of the vegetation. The owner, developer or agent may not cause or permit the movement of equipment or the storage of equipment, material, debris or fill to be placed within the required protective barrier. The protected trees must remain alive and healthy at the end of the construction in order for this credit to apply.

#### **Sec. 10-421. Plant installation and maintenance standards.**

- (a) *Installation.* Plant materials must be installed in soil conditions that are conducive to the proper growth of the plant material. Limerock located within planting areas must be removed and replaced with native or growing quality soil before planting.

A plant's growth habit must be considered in advance of conflicts that might be created (e.g. views, signage, overhead power lines, lighting, buildings, circulation). Trees may not be placed where they interfere with site drainage, subsurface utilities, or overhead

utility lines, or where they will require frequent pruning in order to avoid interference with overhead power lines. See Illustration 10-421(a).

[MCC Editor Note: Insert attached Illustration 10-421(a) here.]

All landscape materials must be installed in a recognized horticultural correct manner. At a minimum, the following installation requirements must be met:

- (1) All landscape areas must be mulched unless vegetative cover is already established.
- (2) Trees and shrubs used in buffers must be planted in a minimum width area equal to one-half the required width of the buffer. However, in no case may the planting area be less than five feet in width.
- (3) All landscaped areas must be provided protection from encroachment by any type of vehicle.
- (4) All required plants used in buffers and landscaping must be installed using xeriscape principles. Xeriscape principles include water conservation through drought-tolerant landscaping, the use of appropriate plant material, mulching, and the reduction of turf areas.
- (5) Utility or drainage easements may overlap required buffers; however, no buffer code required trees or shrubs may be located in any utility or drainage easement unless a written statement, from the entity holding the beneficial interest in the easement, is submitted specifically stating that the entity has no objection to the landscaping and, that the proposed landscaping will not interfere with the long term maintenance of the infrastructure within easement area. No code required landscaping may be located in any or street easement or right-of-way. To avoid conflicts with overhead utility lines, only trees less than 20 feet in height at maturity may be used directly adjacent to an overhead line. Variances or deviations from the requirements of this subsection are prohibited, ~~except when included in an approved Alternate Landscape Betterment Plan.~~
- (6) No change.
- (7) Signage located within or adjacent to landscape buffer area. All trees and shrubs located within landscape buffer must be located so as not to block the view of signage as shown in Illustration 10-421(a)(7).

[MCC Editor Note: Insert attached Illustration 10-421(a)(7) here.]

(8) If a wall or fence is proposed, but not required, then the required buffer plantings must be installed on the exterior side (between the wall and the abutting property or street right-of-way) of the wall or fence.

(b) No change.

(c) Pruning. Vegetation required by this code may only be pruned to promote healthy, uniform, natural growth of the vegetation (except where necessary to promote health, safety, and welfare) and be in accordance with "Pruning Standards (Revised 1988)" of the National Arborist Association American National Standard for Tree Care Operations - Tree, Shrub, and Other Woody Plant Maintenance - Standard Practices (Pruning) (A300, Part 1)" by the American National Standard Institute, and "Best Management Practices: Tree Pruning" by the International Society of Arboriculture (ISA).

Trees must not be severely pruned to permanently maintain growth at a reduced height or spread. Pruning must not interfere with the design intent of the original installation. Severely pruned trees must be replaced by the property owner. Replacement trees must meet the tree size requirements of LDC section 10-420. A plant's growth habit must be considered in advance of conflicts which might arise (i.e. views, signage, overhead power lines, lighting, circulation, sidewalks, buildings, and similar conflicts).

#### **Sec. 10-424. Landscape requirements for specific uses.**

The following uses require landscaping or screening beyond the minimum standard requirements.

Recreational Vehicle Planned Developments, section 34-939(a)(3)

Private Recreational Facilities Planned Developments, section 34-941

Display, sale, rental or storage facilities for motor vehicles, boats, recreational vehicles, trailers, mobile homes or equipment, section 34-1352

Wireless Communications Facilities, section 34-1447(c)(4)(c)

Essential Services and Facilities, section 34-1616(b)

Mining, section 34-1674(b)(8)

Residential Project Walls, section 34-1743(b)(3)

Open Storage, section 34-3005(b)(1)

San Carlos Island Redevelopment Overlay Districts, chapter 33

## ARTICLE IV. DESIGN STANDARDS AND DESIGN GUIDELINES FOR COMMERCIAL BUILDINGS AND DEVELOPMENTS

### Sec. 10-602. Applicability.

(a) *Applicability.* Provisions of this article are applicable to all new development and for renovations and redevelopments (as provided below) in all commercial zoning districts as well as in commercial components of planned development districts and DRIs. However, places of worship (df) are specifically excluded. Above grade parking garages in all zoning districts must comply with the provisions of this article.

Where a proposed parking garage is located on a parcel adjacent to or abutting an existing taller residential use, all exposed parking spaces on the top level of the garage must provide additional design treatments, at the Director's discretion, to obscure view of the spaces from residential use. Design treatments may include, but are not limited to, a combination of landscaped trellises, opaque covers and permanent landscaping. In addition, surfaces of exposed parking aisles and drives must be comprised of specialty pavers or colored stamped concrete having nonreflective matte surface.

(b) and (c) No change.

### SECTION FOUR: AMENDMENT TO LDC CHAPTER 14

Lee County Land Development Code Chapter 14 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 II. WILDLIFE AND HABITAT PROTECTION DIVISION 2. SEA TURTLE CONSERVATION

### Sec. 14-72. Definitions.

When used in this division, the following words, terms and phrases have the meanings set forth below, except where their context clearly indicates a different meaning:

~~Beach means the zone of unconsolidated material that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of~~

~~storm waves as, more particularly described in appendix B.~~ has the same meaning given it in section 14-170.

~~Dune means a mound or ridge of loose sediments, usually sand-sized, lying landward of the beach and deposited by any natural or artificial mechanism.~~ has the same meaning given it in section 14-170.

FWC means the Florida Fish and Wildlife Conservation Commission or its successor.

~~Mechanical beach cleaning means the act of cleaning the beach with a motor-powered vehicle and beach cleaning equipment that does not penetrate deeper than two inches into the surface of the beach, or what may be approved by the DEP following a storm.~~ has the same meaning given it in section 14-170.

Nest means an area where sea turtle eggs have been naturally deposited or subsequently relocated by an authorized permittee of the DEP. FWC - authorized marine turtle permit holder.

New development means construction of new buildings or structures as well as renovation or remodeling of existing development, and includes the alteration of exterior lighting, including lighted signs, occurring after January 31, 1998.

#### **Sec. 14-74. Exemptions from division.**

(a) Research or patrol vehicles. Only authorized permittees of the DEP, and law or code enforcement officers conducting bona fide research or investigative patrols, may operate a motor vehicle on the beach or in sea turtle nesting habitat during the nesting season, so long as appropriate red-colored filters are used to ensure no more artificial lighting than that necessary for the safe operation of their vehicles is visible.

(b) Mechanical beach cleaning. During the nesting season mechanical beach cleaning requires a valid DEP beach cleaning permit, and must not occur before 10:00 a.m., or disturb any sea turtle nest.

(c) Administrative exemptions. The administrator may authorize, in writing, any activity or use of lighting otherwise prohibited by this division for a specified location and period of time. The authorization must be for the minimum duration and amount of lighting from a point source(s) of light.

#### **Sec. 14-75. Lighting for eExisting development.**

Existing development must ensure that sea turtle nesting habitat is not directly or indirectly illuminated by artificial lighting originating from the existing development during the nesting season. ~~Artificial lighting from existing development must not directly or~~

~~indirectly illuminate sea turtle nesting habitat during the nesting season. Existing development must incorporate and follow the measures outlined in section 14-79 to reduce or eliminate interior light emanating from doors and windows visible from the beach, a dune, or other sea turtle nesting habitat.~~

**Sec. 14-76. Lighting for new development.**

New development must comply with the following requirements:

- (a) Artificial lighting must conform to the general requirements of section 14-75;
- (b) A lighting plan must be submitted to the county for review prior to the earlier of building permit or development order issuance for all new development on the barrier islands identified in appendix B, as follows:
  - (1) For new development Seaward of the coastal construction control line, as defined in section 6-333 (CCCL), a copy of a DEP approved lighting plan is required for all new development.
  - (2) For new development Landward of the CCCL, a lighting plan is required for all commercial and industrial development, and for all multi-story developments in multi-family zoning districts.
  - (3) The location, number, wattage, elevation, orientation, fixture cut sheets, and all types of all proposed exterior artificial light sources, including landscape lighting, must be included on the lighting plan. A county approved lighting plan is required before a building permit will be issued and final inspections for a certificate of occupancy or certificate of compliance will be performed by the county; and
  - (4) Tinted glass, or any window film applied to window glass that meets the definition for tinted glass in section 14-72, must be installed on all windows and glass doors visible from the beach. The alternative selected to comply with this subsection must be identified on the building permit plans.
  - (5) Exterior light fixtures visible from the beach must meet all of the following criteria to be considered appropriately designed:
    - a. Completely shielded downlight-only fixtures or recessed fixtures having 25-watt yellow bug type bulbs and non-reflective interior surfaces are used. Other fixtures that have appropriate shields, louvers, or cutoff features may also be used, if they comply with section 14-75. Mercury vapor and metal halide lighting is prohibited.

- b. All fixtures must be mounted as low as possible through the use of low-mounted wall fixtures, low bollards, and ground level fixtures.
- c. All exterior lighting must be installed so that the cone of light will fall substantially within the perimeter of the property. Through the use of shielding and limitations on intensity, artificial light traveling outward and upward producing a sky glow must be reduced to the greatest extent possible without unduly interfering with the purpose of the exterior lighting.
- d. Lighting on ceiling fans placed on balconies or porches visible from the beach is prohibited.
- e. Artificial lighting, including but not limited to uplighting, is not permitted seaward of the 1978 CCCL.
- f. A colored or partially opaque lens must be installed over pool and spa lights.

(6) Parking lot lighting must use:

- a. Poles no higher than 12 feet in height;
- b. Shoebox-style fixtures containing high pressure sodium or low pressure sodium bulbs 150 watts or less; and
- c. Opaque shields with a non-reflective black finish on the inside that completely surrounds each fixture and extends below each fixture at least 12 inches.

(7) Low profile artificial lighting is encouraged, such as step lighting or bollards with louvers and shields that are no taller than 48 inches with bulbs of 35 watts or less. Opaque shields must surround 180 degrees of each fixture to keep direct light off the beach.

(8) Illuminated signs must conform to the requirements of section 14-76. Reverse lighting signs are recommended, where the background is opaque and the letters/logo are illuminated from within the sign. If exterior lighting is used to illuminate the sign, the lights must be downlights with shields and louvers to pin point the light. The use of neon is not permitted.

(c) No change.

**Sec. 14-78. Additional regulations affecting sea turtle nesting habitat.**

(a) *Fires.* Fires that directly or indirectly illuminate sea turtle nesting habitat are prohibited on the beach during the sea turtle nesting season.

(b) *Driving on the beach.* Driving on sea turtle nesting habitat, specifically including the beach, is prohibited during the nesting season, except as allowed under section 14-74(a): follows:

(1) *Research or patrol vehicles.* Only authorized permittees of the FWC, DEP officials, and law or code enforcement officers conducting bona fide research or investigative patrols, may operate a motor vehicle on the beach or in sea turtle nesting habitat during the nesting season. No lights may be used on the vehicles during the nesting season unless they are covered by appropriate red-colored filters. The vehicles must travel below the previous night's mean high tide line to avoid dunes, dune vegetation, sea turtle nests and bird nesting areas.

(2) *Mechanical beach raking.*

The mechanical raking of the beach or wrack line is prohibited, except in accordance with section 14-174. During the nesting season, mechanical beach raking:

- a. must not occur before 9:00 a.m. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first; and
- b. must not disturb any sea turtle or sea turtle nest; and,
- c. must avoid all staked sea turtle nests by a minimum of 10 feet.

(3) *Beach furniture and equipment transport.* During the nesting season, the transport of beach furniture and equipment:

- a. may not be set out in the morning until after a sea turtle monitor has inspected the beach in the area of the authorized activity to ensure any new sea turtle nests are identified and marked.
- b. may not travel within 10 feet of a sea turtle nest or dune vegetation.

(4) See section 14-175 for other restrictions on vehicular traffic on the beach that apply before and after the nesting season.

(c) No change.

**Sec. 14-79. Guidelines for mitigation and abatement of prohibited artificial lighting.**

- (a) Appropriate techniques to achieve lighting compliance include, but are not limited to:
- (1) fitting lights with hoods or shields;.
  - (2) utilizing recessed or down fixtures with low wattage bulbs;.
  - (3) screening light with vegetation or other ground-level barriers;.
  - (4) directing light away from sea turtle nesting habitat;.
  - (5) utilizing low-profile lighting;.
  - (6) turning off artificial light during the nesting season;.
  - (7) motion detectors set on the minimum duration;.
  - (8) ~~and lowering the light intensity of the lamps, preferably to 25 watt, but no more than 40 watt yellow bug lights;.~~
  - (9) spraying reflective surfaces within fixtures or globes on fixtures with a flat black grill or oven paint.

Although plastic sleeves for fluorescent bulbs may help to reduce the amount of artificial light to an acceptable level if the bulbs are of sufficiently low wattage, ~~in most instances additional shielding is still needed as sea turtles are more sensitive to the wavelengths of fluorescent light.~~

- (b) No change.
- (c) Floodlights, uplights, spotlights, and decorative lighting directly or indirectly visible from sea turtle nesting habitat should not be used during the nesting season. The ideal alternatives within direct line-of-sight of the beach are completely shielded downlight-only fixtures or recessed fixtures, with any visible interior surfaces or baffles covered with a matt black non-reflective finish.
- (d) No change.

**DIVISION 5. BEACH AND DUNE MANAGEMENT**

**Sec. 14-170. Definitions.**

Beach means the area of sand along the Gulf of Mexico that extends landward from the mean low water line to the place where there is a marked change in material or

physiographic form, usually the effective limit of storm waves. Beaches include dunes and dune vegetation.

Beach furniture or equipment means any manmade apparatus or paraphernalia designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include: chairs, tables, cabanas, lounges, umbrellas, sailing vessels up to 16 feet in length, personal watercraft, concession storage units, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents, and bicycles.

Coastal Construction Control Line (CCCL) has the same meaning given it in section 6-333.

Dune means a mound, bluff, ridge, or emergent zone of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation, and is subject to fluctuations in configuration and location (see, FS §161.54; FAC Rule 62B-33.002). It encompasses those ecological zones that, when left undisturbed, will support dune vegetation. As to areas restored or renourished pursuant to a permit issued by the County or state, it encompasses the area specified in the permit as a dune or any area specified as suitable for establishment of dune vegetation.

Dune vegetation means pioneer species of native vegetation which, if left undisturbed by manmade forces, will begin to grow on a dune, including species such as bitter panicum, coastal panic grass, crowfoot grass, saltmeadow cordgrass, sandbur, seacoast bluestem, sea oats, seashore dropseed, seashore paspalum, seashore saltgrass, stiffleaf eustachys, beach bean, blanket flower, dune sunflower, fiddle-leaf morning glory, partridge pea, railroad vine, sea purslane, beach creeper, nicker bean, coin vine, inkberry, lantana, saw palmetto, seashore elder, baycedar, and seagrape.

Mechanical beach raking means the cleaning of the beach seaward of the dune and vegetation line of trash and other debris on or near the surface by use of a rake or other similar porous device that penetrates no more than two inches below existing ambient grade and results in no removal of *in situ* sand.

Wrack means the natural organic marine material cast on the shore, including seaweed and other vegetative and animal debris, but excluding manmade material.

#### Sec. 14-171. Purpose and intent.

The purpose of this division is to encourage a steward-like attitude toward one of

the County's most valuable assets, the beach. It is the intent of this division to preserve and improve the condition of the beach asset as a place for recreation, solitude, and preservation of beach vegetation and marine wildlife.

This division establishes minimum standards to safeguard the beach.

**Sec. 14-172. Destruction or diminishment of dune or beach system.**

(a) No person may conduct or allow any of the following activities on the beach, upon a dune, or in the water adjacent to the beach, unless otherwise specifically permitted in accordance with section 14-172(b).

- (1) harass, molest, or disturb wildlife;
- (2) plant vegetation other than native dune vegetation;
- (3) destroy or harm a dune or mow or remove native dune vegetation;
- (4) maintain a dump of, or discard or leave litter, garbage, trash or refuse, vegetative clippings, or debris;
- (5) deposit and leave human or animal waste;
- (6) destroy or grossly interfere with the natural wrack line as by grooming or non-selective raking except as authorized in section 14-174;
- (7) operate any air-powered or any engine-powered non-watercraft vehicle, machine, or implement, including any battery or electrical powered vehicle, machine, or implement, except for a wheelchair or approved conveyance for a person with a disability which is actually being used by the person with a disability or as authorized in section 14-175;
- (8) excavate, mine, and remove, or haul sand or soil from the beach or dune except in emergency situations as permitted by DEP;
- (9) detonate any explosive devices, including fireworks;
- (10) discharge any firearms;
- (11) light or maintain any open fire on the beach;
- (12) temporarily reside, camp, or sleep overnight;

- (13) deposit/install rocks, concrete, or other shoreline stabilization materials without a permit from DEP and the County;
  - (14) deposit/add sand to the beach and dune system without a permit from DEP. All fill material will be sand that is similar to the existing beach sand in both coloration and grain size and be free of debris, rocks, clay, or other foreign matter; or
  - (15) conduct any commercial activities not explicitly authorized by this code or by other County ordinances.
- (b) Permits may be issued by the County for activities prohibited under section 14-172(a), which the director finds are:
- (1) necessary for reasonable accommodation of persons with disabilities;
  - (2) adjunct to a lawfully existing activity;
  - (3) for the conduct of a civic or educational activity; for the conduct of scientific research; or
  - (4) for any purpose otherwise necessary to protect or to promote the public welfare.

To the extent that a permit is issued for any of the above activities, the standards and procedures for issuance will be governed by this code.

#### Sec. 14-173. Beach furniture and equipment.

- (a) From May 1 through October 31, all beach furniture and equipment must be removed from the beach as follows:
- (1) All beach furniture and equipment must be removed daily from the beach to behind the 1978 CCCL between the hours of 9:00 p.m. until 8:00 a.m.
  - (2) Beach furniture and equipment that is removed from the beach must be safely stacked in areas no larger than 10 feet by 10 feet and each stack must be at least 50 feet removed or apart from the next stack.
- (b) Trash containers are not included in the definition of beach furniture and equipment and may be left in place on the beach at all times.

(c) All beach furniture and equipment (such as chairs, umbrellas, cabanas, and rental podiums) must be set landward of the mean high water line and at least 10 feet from a sea turtle nest or dune vegetation.

(d) Vendors or property owners using a vehicle to transport furniture and equipment to and from the beach are required to follow these additional restrictions:

- (1) Equipment may not be set out in the morning before 8:00 a.m. or completion of daily monitoring by a FWC-authorized marine turtle permit holder examining the beach in the area of the authorized activity to ensure any new sea turtle nests are identified and marked, whichever occurs first.
- (2) Transporting vehicles may not travel within 10 feet of a sea turtle nest or dune vegetation.
- (3) The vehicle, trailer, and equipment may not exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the formula in section 14-174(a)(3)d.1. Beach furniture and equipment may be placed on a vehicle or on a wheeled trailer, but may not be dragged or pushed by a vehicle. After setup, the vehicle and trailer must be removed from the beach.

**Sec. 14-174. Beach raking and wrack line policy.**

(a) Under normal circumstances, the raking of the beach or wrack line is prohibited. The only exceptions require an appropriate DEP permit based on a determination that existing health or safety issues require action in accord with the following:

- (1) A larger than normal wrack line resulting from extraordinary circumstances may be raked if the wrack line is at least 10 feet landward of the normal high tide line.
- (2) If health or safety issues are present, such as a large fish kill or a red tide event, the wrack line may be raked up to 10 feet landward of the normal high tide line.
- (3) If this occurs during sea turtle season (May 1 through October 31), the raking must be in compliance with the following conditions:
  - a. Mechanical beach raking activities must be confined to daylight hours and may not begin before 9:00 a.m. or completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first.

- b. The permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted beach raking area. Surveys and associated conservation measures must be completed after sunrise and prior to the commencement of any mechanical beach raking. The sea turtle survey, protection, and monitoring program may be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid FAC Rule 68-E Permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Protected Species Management.
- c. All turtle nests will be marked with wooden stakes, flagging tape, and an FWC sea turtle nest sign. No mechanical raking equipment is allowed inside of the staked area. All equipment operators must be briefed on the types of marking utilized and must be able to easily contact the individual responsible for the nest survey to verify any questionable areas.
- d. Mechanical beach raking equipment must meet the following standards:
1. The vehicle and equipment may not exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the following formula:

PSI = vehicle weight in pounds (includes person and equipment) divided by the footprint in square inches

EXAMPLE: 404 lbs. (ATV weight) + 200 (person + equipment) divided by 198 square inches (ATV with 6" x 8.25" footprint x 4 tires) = 3.1 PSI
  2. Raking must be accomplished with a pronged rake that limits penetration into the surface of the beach to a maximum of two inches. Box blades, front- or rear-mounted blades, or other sand sifting/filtering vehicles are not allowed.
  3. Operators of mechanical beach raking equipment must avoid all native salt-tolerant dune vegetation and staked sea turtle nests by a minimum of 10 feet.
  4. Burial or storage of any debris (biotic or abiotic) collected is prohibited seaward of any frontal dune, vegetation line, or

armoring structure. Removal of all accumulated material from the beach must occur immediately after raking has been performed in an area. Prior to removing the debris, and to the greatest extent possible, beach compatible sand must be separated from the debris and kept on site.

5. Mechanical beach raking equipment must travel seaward of the mean high water line with the rake disengaged when driving on the beach from one raking area to another, and may not disturb any dune or dune vegetation.

(b) The use of box blades on the beach or dune is prohibited. In an emergency or storm event the use of a box blade may be allowed with the approval of DEP.

#### **Sec. 14-175. Prohibition of vehicular traffic on the beach.**

The operation of any engine-powered vehicle, machine, or implement, including any electrical powered vehicle, machine, or implement, on the beach, dune, or sea turtle nesting habitat, as defined in section 14-72, is prohibited except for the following:

- (a) Research or patrol vehicles. Only authorized permittees of the FWC, DEP officials, and law or code enforcement officers, EMS and firefighters, scientific monitoring conducting bona fide research, or investigative patrols, may operate a motor vehicle on the beach or in sea turtle nesting habitat during the nesting season. No lights may be used on these vehicles during the nesting season unless they are covered by appropriate red-colored filters. These vehicles must travel below the previous night's mean high tide line to avoid dunes, dune vegetation, sea turtle nests and bird nesting areas.
- (b) Mechanical beach raking. Vehicles operating under permits issued pursuant to section 14-174.
- (c) Beach furniture and equipment transport. Vehicles operating under permits issued pursuant to section 14-173.
- (d) Wheelchairs. A wheelchair, or other conveyance with prior approval from the County, for a person with a disability, which is actually being used by the person with a disability. Handicap access to the beach is encouraged through use of wheelchairs equipped with special beach friendly tires that are available for rent or purchase.
- (e) Maximum tire pressure. Any vehicle authorized to drive on the beach may not exceed a ground-to-tire pressure of 10 PSI as computed in accordance

with section 14-174, except for wheelchairs permitted in accordance with section 14-175(d).

- (f) Sea turtle nesting season. See section 14-78 for additional restrictions during the sea turtle nesting season.

**Sec. 14-176. Special events on the beach.**

(a) Special events on the beach are temporary, short-term activities, which may include the construction of temporary structures; temporary excavation, operation, transportation, or storage of equipment or materials; or, nighttime lighting that is visible seaward of the CCCL. Generally, activities within this category include but are not limited to: sporting events (e.g. volleyball, personal watercraft races), festivals, competitions, organized parties (e.g. weddings), promotional activities, concerts, film events, balloon releases, and gatherings under tents.

(b) Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases this is due to the type of activity, where permit conditions alone cannot provide adequate protection. In other cases, the density of sea turtle nesting prevents certain activities from being conducted safely.

(c) Special events proposed on or near the beach or dune, or where lighting from the special events will directly or indirectly illuminate sea turtle nesting habitat, require a permit from DEP and the County. The permit may contain special conditions for the protection of the beach, dune, and sea turtles.

(1) Site-specific conditions related to identifying, designating, and protecting existing vegetation and sea turtle nests in accordance with this code may be imposed. These conditions are in addition to the following standard permit conditions for all special events on the beach:

- a. During the sea turtle nesting season (May 1 through October 31), special event activities including construction must be confined to daylight hours and may not begin before 8:00 a.m. However, the daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder must be completed before the special event activity may commence.
- b. All turtle nests will be marked with wooden stakes, flagging tape, and an FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of a marked nest and 10 feet from dune vegetation. The permittee must

ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the individual responsible for the nest survey to verify any questionable areas.

- (2) A violation of these conditions will automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this code.
- (3) Release of balloons is prohibited, except as permitted by FS section 372.995.

#### Sec. 14-177. Enforcement.

- (a) The director is authorized to pursue any one, or a combination of the enforcement mechanisms provided in this code (for example, section 1-5, or chapter 2, article V) for any violation of this article.
- (b) The successful replacement of the illegally removed dune vegetation and restoration of the subject area may be considered when determining whether the violator has eliminated or significantly decreased the ability of the dune system to recover or perform those functions for which it is being protected.

#### Sec. 14-178. Restoration standards for dune vegetation alteration violations.

- (a) Upon written agreement between the director and the violator in accord with section 2-2, or if they cannot agree, then, upon action by the court or hearing examiner, a restoration plan may be ordered using the standards in this section. The restoration plan must require replacement of the same species or any species approved under the written agreement or order.
- (b) The restoration plan must include the following minimum standards:
  - (1) Restoration plantings for vegetation other than trees must be nursery grown, containerized, and planted at a minimum density of no less than one and one half feet on center. The number of replacement plantings will be computed by the square footage of the area destroyed. The replacement stock must be a minimum of a two inch size container. Higher density plantings may be required at the discretion of the director based upon density and size of the vegetation on the site prior to the violation. If it is not reasonably possible to determine the density or species of the vegetation in the area where the violation occurred, then the density and the species will be deemed to be the same as those located on similar properties. The director has the discretion

to allow a deviation from the above specified ratio. When a deviation is requested, the total size must equal or exceed that specified in the above standards.

- (2) Dune vegetation alteration violations caused by raking, excavation, or clearing must be restored to natural ground elevation and soil conditions prior to commencement of replanting.
- (3) Replacement plantings must have a guaranteed minimum of 80 percent survivability for a period of no less than five years; however, success will be evaluated on an annual basis.
- (4) Only temporary above ground irrigation may be installed and must be removed no later than one year from the date of planting. Temporary irrigation must be turned off within 50 feet of a sea turtle nest.
- (5) The plan must specify that, within 90 days of restoration completion, a written report, prepared by or on behalf of the violator, must be submitted to the County. This report must include the date of completion, copies of the nursery receipts, a drawing showing the locations of the plantings, and color photographs of the planting areas from fixed reference points.
- (6) The restoration plan must include a maintenance provision of no less than five years for the control of invasive exotic vegetation, with annual monitoring and maintenance of the restored area to include the following:
  - a. Removal of all exotic and nuisance vegetation in the area without disturbing the existing dune vegetation.
  - b. Replacement of dead vegetation in order to assure at least 90 percent coverage at the end of the five-year period. Replacement vegetation must be nursery grown and of the same species and at least the same size as those originally planted.
  - c. Submittal of an annual monitoring report to the director for five years following the completion of the restoration describing the conditions of the restored site. The monitoring report must include mortality estimates, causes for mortality (if known), growth, invasive exotic vegetation control measures taken, and any other factors that indicate the functional health of the restored area.
  - d. The monitoring report must be submitted on or before each anniversary date of the effective date of the restoration plan. Failure to submit the report in a timely manner constitutes a violation of this code.

- e. To verify the success of the mitigation efforts and the accuracy of the monitoring reports, the director may periodically inspect the restoration.

## ARTICLE III. WELLFIELD PROTECTION

### DIVISION 1. GENERALLY

#### **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:

Dewater has the same meaning given it in section 10-1.

#### **Sec. 14-218. Cease to dewater notice.**

If, as a result of monitoring, investigation or analysis, the County determines that groundwater resources have been adversely effected by dewatering activity, the County may issue a cease to dewater notice. The notice may be issued to all persons involved in any dewatering activity in Lee County. The existence of a permit from Lee County or other regulatory agency does not prohibit the issuance of this notice.

## SECTION FIVE AMENDMENT TO LDC CHAPTER 30

Lee County Land Development Code Chapter 30 is hereby amended as follows with deleted text identified by strike through and added text identified by underlining.

### Chapter 30

#### SIGNS

## ARTICLE II. ADMINISTRATIVE AND ENFORCEMENT

#### **Sec. 30-55. Nonconforming signs.**

- (a) **Status.** Every sign, ~~as of the effective date of the ordinance from which this~~

~~chapter is derived~~ ~~erected before August 21, 1985, which is~~ ~~was~~ a permitted legally existing sign ~~shall be~~ ~~is~~ deemed a legal nonconforming sign. A permitted sign means a sign that was constructed or is in place with a valid permit from the county. All nonconforming signs ~~shall be~~ ~~are~~ subject to the provisions of this section. All existing signs ~~which~~ ~~that~~ are not legal nonconforming signs must comply with the terms of this chapter.

- (1) through (3) No change.
  - (4) A replacement billboard structure may be rebuilt in its present location provided that the structure is in compliance with the following conditions:
    - a. through c. No change.
    - d. The land use category in which the replacement sign is to be erected ~~shall~~ ~~must~~ be the less restrictive of the two land use categories where the two removed nonconforming billboard structures were located. If the land use category is the same for both nonconforming billboard structures, the replacement structure may be located at either site. For purposes of this section, the following hierarchy of land use categories should be used to determine the least restrictive land use categories, with the most appropriate categories listed in descending order:
      - 1. Intensive development, industrial development, ~~airport~~ commerce tradeport and interchange areas;
      - 2. through 5. No change.
      - e. and f. No change.
- (b) No change.

## ARTICLE IV. RESTRICTIONS BASED ON LOCATION

### DIVISION 2. ON-SITE SIGNS

#### Sec. 30-153. Permanent signs in commercial and industrial areas.

In order to provide fair, equal and adequate exposure to the public, and to prevent a single property owner from visually dominating neighboring properties with signs, all nonresidential uses are limited to a total permissible sign area in accordance with the provisions of this section. Signs for buildings and developments subject to a unified sign plan must be designed and constructed in accordance with the approved unified sign plan.

(1) through (4) No change.

(5) *Electronic changing message centers.* Electronic message centers are permitted along I-75 and arterial streets, subject to the following limitations:

a. *Location.*

1. Electronic changing message centers are permitted in any zoning district, provided the area to be used is shown on the county comprehensive plan as intensive development, industrial development, interchange areas or ~~airport commerce tradeport~~, or
2. No change.

b. through e. No change.

### DIVISION 3. OFF-SITE SIGNS

#### **Sec. 30-183. Billboards.**

Billboards are permitted along I-75; and Alico Road, west of I-75; and Metro Parkway, from Daniels Parkway to Ben C. Pratt/Six Mile Cypress Parkway; and any arterial street within the county subject to the following limitations:

(1) *Location.*

- a. Except as otherwise provided in this section, billboards are permitted in any zoning district provided the area is shown on the county comprehensive plan as intensive development, industrial development, interchange areas or ~~airport commerce tradeport~~. Arterial streets must be designated on the existing functional classification map, as in effect on March 20, 1991.

b. No change

(2) *Separation.* Minimum distance separation will be as follows:

a. through b. No change

c. Within ~~airport commerce tradeport~~ areas, 2000 feet from any other billboard on the same side of the street.

No billboard may be located closer than 100 feet to any intersection with another arterial road.

(3) through (12) No change.

## **SECTION SIX: AMENDMENT TO LDC CHAPTER 34**

Lee County Land Development Code Chapter 34 is hereby amended as follows with deleted text identified by strike through and added text identified by underlining.

### **Chapter 34**

#### **ZONING**

#### **ARTICLE I. IN GENERAL**

##### **Sec. 34-2. Definitions.**

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

*Cabana* means a structure that must be used for recreational purposes only, and may not be used by unit owners, their guests or invitees for occupancy as a rooming unit, housing unit, accessory apartment, guest unit or dwelling unit, as those terms are defined by this code. Overnight sleeping is prohibited in a cabana. Stoves, with either a cook top range or an oven, are prohibited. Lease of the cabana structure for use by someone other than the unit owner is prohibited. This recorded covenant must be consistent with section 34-1182 and may not be amended without the written consent of the director of Lee County Community Development.

*Convenience food and beverage store* means a store which that specializes in sale of convenience products and other commodities which may have self-service fuel pumps (see definition of self-service fuel pumps) intended primarily to serve the day-to-day needs of residents in the immediate neighborhood, or the traveling public, which is normally typically or generally open to the public beyond the normal sales hours of other retail stores. Fuel pumps (see definition of fuel pumps) may accompany the store.

*Dewater* has the same meaning given it in section 10-1.

*Fuel pump* means a vehicle fuel dispensing device, other than a portable fuel container or fuel dispensing vehicle, which can be self-service or full-service (see definitions of self-service fuel pump, and full-service fuel pump). A single fuel pump is a fuel pump that can serve only one vehicle at-a-time. Any vehicle fuel dispensing device that can service more than one vehicle at-a-time consists of multiple fuel pumps. The number of pumps is determined by the maximum number of vehicles that can be serviced at the same time. For example, a fuel dispensing device that can fuel two vehicles at once is considered two fuel pumps, and a fuel dispensing device that can fuel three vehicles at once is considered three fuel pumps, and so on.

**Full-service fuel pump** means a fuel pump where an employee of the business operates the fuel pump and dispenses fuel for each customer (not self-service). The business may include other minor vehicle services such as washing the windows, checking tire pressure, checking oil level, and checking the windshield washer fluid level, but does not include other services typically associated with an automobile service station or automobile repair and service.

**Self-service fuel pump station.** See convenience food and beverage store fuel pump.

**Self-service fuel pumps** means vehicle fuel dispensing devices in which only self-service is permitted and no other vehicle service is provided. For purposes of determining the number of "pumps," a "pump" may serve only one vehicle at a time. If a pump island contains a pump which can be used simultaneously by two vehicles, then it counts as two pumps a fuel pump that requires the consumer to operate (self-serve) the pump and no other vehicle service is provided.

**Stable, boarding** means any location where horses are kept for a fee, which is not a private or commercial recreation stable. Dressage and riding lessons may occur for the boarders only.

**Sufficiency** means that the application is not only complete but that all sections are sufficient in the comprehensiveness of data or in the quality of information provided to allow the county to determine whether the application affords the reviewing agencies adequate information to prepare the reports required.

**Tactical training facility** means a venue that provides facilities for the practical training of government funded law enforcement, fire, emergency medical and emergency management personnel. Such venues may include indoor and outdoor facilities, and may incorporate the use of vehicles and equipment relating to the performance of these jobs. Practical Training Facilities may include: shooting ranges, Military Operations on Urban Terrain (MOUT) sites, explosives handling, chemical munitions handling, hazardous materials handling, riot control training, K-9 training, mounted patrol training, obstacle courses, physical conditioning courses, rappelling towers, driving courses, emergency response training, fire training, confined space training, police and fire academy training, storage, classroom and other ancillary facilities necessary and related to these activities.

## **ARTICLE II. ADMINISTRATION**

### **DIVISION 2. BOARD OF COUNTY COMMISSIONERS**

#### **Sec. 34-83. Functions and authority.**

- (a) No change.

(b) *Zoning actions.*

(1) through (6) No change.

(7) *Remand by Board of County Commissioners.* An application remanded for further consideration must be brought to hearing before the Hearing Examiner within 6 months of the date the remand order is rendered. If the application is not brought forward as ordered within 6 months, it will be deemed withdrawn. Thereafter, the applicant will be required to file a new application for consideration by the Hearing Examiner and the Board.

(c) No change.

#### DIVISION 6. APPLICATIONS AND PROCEDURES FOR CHANGES, PERMITS, INTERPRETATIONS AND APPROVALS

##### **Sec. 34-202. General submittal requirements for applications requiring a public hearing.**

(a) *All applications.* Every request for actions requiring a public hearing under this chapter must include the following. However, upon written request, on a form prepared by the county, the director may modify the submittal requirements contained in this section where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request for a waiver or modification must be submitted to the director prior to submitting the application. A copy of the request and the director's written response must accompany the application and will become a part of the permanent file.

(1) *Legal description and sketch to accompany legal description.* A metes and bounds legal description of the property, prepared by a Florida Licensed Surveyor and Mapper, must be submitted, unless the property The application must include a copy of the plat or plats, if any, and a copy of the STRAP number (s). If the application includes multiple abutting parcels or consists of other than one or more undivided platted lots within a subdivision platted in accordance with Florida Statutes, Chapter 177., the The legal description must specifically describe the entire perimeter boundary of the total property subject to the zoning action, by metes and bounds with accurate bearings and distances for every line, but need not describe each individual parcel. However, the application must provide the STRAP number for every parcel. The director has the right to reject any legal description which that is not sufficiently detailed so as to locate the property on county maps. In accordance with Rule 61G-17, F.A.C., the legal description must be accompanied by a sealed sketch of the legal description.

A list of all STRAP numbers subject to the zoning request must accompany the legal description.

- (2) Boundary survey or certified sketch of description. A certified sketch of description unless the subject property consists of one or more undivided platted lots in a subdivision recorded in the official county plat books. If the application is for a conventional rezoning, variance or special exception for property encompassing less than ten acres, the director may require a boundary survey where there is a question regarding the accuracy of the legal description of the property or a question regarding the location of structure(s) or easement(s), relevant to the review of the application. If the application is for property encompassing ten acres or more or for a planned development, a boundary survey is required. A boundary survey of the subject property must be submitted, unless the property consists of one or more undivided lots within a subdivision platted in accordance with Florida Statutes, Chapter 177. The boundary survey must identify and depict all easements effecting the subject property, whether recorded or unrecorded, and all other physical encumbrances readily identified by a field inspection.

All certified sketches and boundary surveys must meet the minimum technical standards for land surveying in the state, as set out in chapter 61G 17-6, F.A.C. If the property encompasses ten or more acres the survey must be tied to the state plane coordinate system for the Florida West Zone (North America Datum of 1983/1990 Adjustment) with two coordinates, one coordinate being the point of beginning (POB) and the other an opposing corner. The perimeter boundary must be clearly marked with a heavy line and must include the entire area to be developed.

If the subject property consists of one or more undivided lots within a subdivision, then a copy of the subdivision plat may be submitted in lieu of the boundary survey.

- (3) through (9) No change.

- (b) Additional submittal requirements for owner-initiated applications. In addition to the submittal requirements set forth in (a), every application initiated by a property owner involving a change in the zoning district boundaries, or a request for special exception, deviation or variance, applicable to the property owner's land must include the following:

- (1) through (6) No change.

- (7) A statement from the property owner describing the type and intensity of agricultural uses in existence on the property on the date of the application. Existing agricultural use affidavit. The statement must include acreage figures for each use and must also include an exhibit depicting the location

of the uses on a copy of the boundary sketch. If the property owner intends to continue an existing agricultural use subsequent to the zoning approval, an affidavit signed by the property owner and sworn before a notary must be submitted. The affidavit must consist of: (1) a statement as to the specific type and location of the agricultural uses existing on the property at the time of the application; and, (2) a map or sketch of the property, preferably in metes and bounds, identifying with specificity the location and type of ongoing agricultural use as stated in the affidavit. The exhibit should be entitled "Agricultural Uses at time of Zoning Application."

\*Note: No change.

**Sec. 34-203. Additional requirements for applications requiring public hearing.**

(a) through (d) No change.

(e) *Special exceptions.* Except for special exceptions that are developments of county impact (see section 34-341), all applications for a special exception must, in addition to the requirements of sections 34-202(a) and (b) and 34-203(e)(1) and (2), include the following:

(1) through (7) No change.

(8) *Private aircraft landing facilities.* Applications for private aircraft landing facilities must:

a. and b. No change.

c. Submit a certified list of all airports and municipalities within 15 miles of the proposed site and all property owners within 1,000 feet of the property or within the minimum required approach zone, whichever is greater.

The department of community development will forward a copy of the application to the department of airports for comment prior to any public hearings. No proposed airport will be granted a special exception if the department of airports finds that the proposed site would interfere with any other lawfully existing aircraft landing facility, airport or heliport.

All property owners listed in subsection (d)(8)c. of this section will be sent written notice by certified mail, return receipt requested, of the date, time and place of any public hearing. The applicant will bear the cost of the notification.

## DIVISION 7. PUBLIC HEARINGS AND REVIEW

### **Sec. 34-235. Deferral or continuance of public hearing.**

The following procedures and regulations for deferring or continuing a public hearing apply for the hearing examiner, local planning agency and Board of County Commissioners:

- (1) No change.
- (2) *Continuance.* A scheduled, advertised public hearing may be continued by the county or by the applicant as follows:
  - a. No change.
  - b. *Applicant-initiated continuance.*
    1. No change.
    2. The applicant is entitled to one continuance before each decision-making body as a matter of right. A request for continuance by the applicant for a case scheduled before the Board of County Commissioners must be submitted to the department of community development no later than five calendar days before the scheduled hearing. Each decision-making body has the authority to grant additional continuances upon a showing of good cause.
      - i. and ii. No change.
    3. No change.

## ARTICLE IV. PLANNED DEVELOPMENTS

### DIVISION 2. APPLICATION AND PROCEDURE FOR APPROVAL

### **Sec. 34-373. Application.**

- (a) *Minimum required information for all planned development zoning applications.* Rezoning applications for planned developments must include the following information, supplemented, where necessary, with written material, maps, plans, or diagrams. Wherever this section calls for the exact or specific location of anything on a

map or plan, the location must be indicated by dimensions from an acceptable reference point, survey marker or monument.

(1) through (3) No change.

(4) *Description of existing conditions.* The application for a planned development must be accompanied by:

a. A boundary survey, prepared and sealed by a professional surveyor, that meets the minimum technical standards ~~as set out forth~~ in chapter 61G-17-6, F.A.C., ~~and which survey has been signed and sealed within one year of the application date, and which shows existing conditions on the property to full survey accuracy. The boundary survey must identify and depict all easements effecting the subject property, whether recorded or unrecorded, and all other physical encumbrances readily identified by a field inspection.~~ On applications seeking to amend an approved planned development, the director may waive certain requirements for the survey on a case by case basis through the formal request process set forth in section 34-202(a).

b. through d. No change.

e. Maps drawn at the same scale as the master concept plan marked or overprinted to show:

i. through iii. No change.

iv. a county topographic map (required if available) or a USGS quadrangle map showing the subject property; and

v. existing and historic flow-ways.

f. through i. No change.

(5) No change.

(6) *Master concept plan.* Except for PRFPDs, all applications must be accompanied by a graphic illustration (master concept plan) of the proposed development. PRFPDs must comply with section 34-941.

If blasting is proposed to be conducted on the property in order to excavate lakes or other site elements, the location(s) of all proposed blasting must be shown. See section 34-202(b)(6) for other required information.

Copies of the master concept plan must be provided in two sizes, 24 inches

by 36 inches, and 11 inches by 17 inches in size. Both sizes of the master concept plan must be clearly legible and drawn at a scale sufficient to adequately show and identify the following information:

- a. through e. No change.
  - f. The general location of proposed parks and recreation areas and facilities, as well as indigenous areas and flow-ways to be preserved, restored or created.
  - g. through l. No change.
- (7) through (10) No change.
- (b) through (d) No change.

**Sec. 34-377. Public hearing.**

- (a) No change.
- (b) *Hearing before the Board of County Commissioners.*
- (1) through (7) No change.
- (8) An application remanded for further consideration must be brought to hearing before the hearing examiner within 6 months of the date the remand order is rendered. If the application is not brought forward as ordered within 6 months, it will be deemed withdrawn. Thereafter, the applicant will be required to file a new application for consideration by the hearing examiner and the Board.

**ARTICLE VI. DISTRICT REGULATIONS**

**DIVISION 1. GENERALLY**

**Sec. 34-622 Use activity groups.**

- (a) and (b) No change.
- (c) Use activity groups are as follows:
  - (1) No change.
  - (2) *Automobile repair and service (article VII, division 8)*

GROUP I - [Add the following underlined text, balance remains unchanged]  
Automotive tops (canvas or plastic) installation or repair, including  
installation and repair of canvas or plastic truck bedliners.

(3) through (56) No change.

## ARTICLE VI. DISTRICT REGULATIONS

### DIVISION 2. AGRICULTURAL DISTRICTS

#### **Sec. 34-653. Use regulations table.**

Use regulations for agricultural districts are as follows:

TABLE 34-653. USE REGULATIONS FOR AGRICULTURAL DISTRICTS

	Special Notes or Regulations	AG-1	AG-2	AG-3
Assisted living facility	Note (1), (21), 34-1411	EO/SE	EO/SE	EO/SE
Bed and breakfast (df)	Note (16), 34-14934	SE	SE	-
Health care facilities (34- 622(c)( <del>1020</del> )), groups I and II (less than 50 beds)	Note (8) and (16)	EO	EO	EO

*[Balance of table remains unchanged.]*

## DIVISION 3. RESIDENTIAL DISTRICTS

### *Subdivision III. Multiple-Family Districts*

#### **Sec. 34-714. Use regulations table.**

Use regulations for multiple-family districts are as follows:

TABLE 34-714. USE REGULATIONS FOR  
MULTIPLE-FAMILY RESIDENTIAL DISTRICTS

	Special Notes or Regulations	RM-2	RM-3, RM-6, RM-8, RM-10
Bed and Breakfast (df)	Note (10), 34-1494	P	P

*[Balance of table remains unchanged.]*

### *Subdivision IV. Mobile Home Residential Districts*

#### **Sec. 34-735. Use regulations table.**

Use regulations for mobile home districts are as follows:

TABLE 34-735. USE REGULATIONS FOR MOBILE HOME DISTRICTS

	Special Notes or Regulations	MHC-1, MHC-2	MH-1	MH-2	MH-3	MH-4
Gatehouses, Entrance gates, gatehouses	34-1741 et seq.	P	P	P	P	P

*[Balance of table remains unchanged.]*

## DIVISION 4. RECREATIONAL VEHICLE PARK DISTRICTS

### *Subdivision II. Conventional Recreational Vehicle Districts*

#### **Sec. 34-788. Additions to recreational vehicles.**

Additions to recreational vehicles may be permitted in non-transient parks on permanent recreational vehicles provided:

(1) through (4)      No change.

(5)    The 120 square foot deck may be enclosed in screen and covered with a metal pan roof. (May not be enclosed with any material other than screen.)

- (56) Stair or stair landings attached to an addition and not incorporated into an open deck, may be permitted to encroach three feet into the side and rear setbacks. ~~No~~ sStair landings may not exceed 12 18 square feet in area.

## DIVISION 4. RECREATIONAL VEHICLE PARK DISTRICTS

### *Subdivision II. Conventional Recreational Vehicle Districts*

#### **Sec. 34-791. Use regulations table.**

Use regulations for recreational vehicle districts are as follows:

TABLE 34-791. USE REGULATIONS FOR RECREATIONAL VEHICLE DISTRICTS

	Special Notes or Regulations	RV-1	RV-2	RV-3	RV-4
Gatehouses, <u>Entrance gates, gatehouses</u>	34-1741 et seq.	P	P	P	P

*[Balance of table remains unchanged.]*

## DIVISION 5. COMMUNITY FACILITIES DISTRICTS

#### **Sec. 34-813. Use regulations table.**

Use regulations for the community facilities districts are as follows:

TABLE 34-813. USE REGULATIONS FOR COMMUNITY FACILITIES DISTRICTS

	Special Notes or Regulations	CF-1	CF-2	CF-3	CF-4
Health care facilities (34-622(c)(20))					
Group I ( <u>less than 50 beds</u> )	Note (1) and (7)	—	P	—	—
Group II ( <u>less than 50 beds</u> )	Note (1) and (7)	—	P	—	—
Group III ( <u>less than 50 beds</u> )	Note (1)	—	—	EO	P
Schools, noncommercial:					
Lee County School District	Note (7), 34-2381	P	P	P	P
Other	Note (2) and (7), 34-2381	—	P	—	—
Tactical training (df)		—	—	SE	—

*[Balance of table remains unchanged.]*

## DIVISION 6. COMMERCIAL DISTRICTS

### Sec. 34-843. Use regulations table.

Use regulations for conventional commercial districts are as follows:

TABLE 34-843. USE REGULATIONS FOR CONVENTIONAL COMMERCIAL DISTRICTS

	Special Notes or Regulations	C-1A	C-1	C-2	C-2A	CN-1	CN-2	CN-3 (21, 23)	CC	CG	CS-1	CS-2	CH	CT	CR	CI	CP
Automobile repair and service (34-622(c)(2)): Group I Group II		--	P --	P P	P P	--	--	--	P --	--	--	--	--	--	--	P P	--
Automobile service station	<u>Note (33)</u>	--	P	P	P	--	P	--	P	P	--	--	P	SE	P	P	--
Bed and Breakfast (df)	<u>Note (25), 34-1494</u>	--	P	P	P	--	--	--	--	--	--	SE	--	P	--	--	--
Farm equipment, sales, storage, rental <u>or</u> service		--	--	--	--	--	--	--	P	--	--	--	--	P	--	--	
Health care facility (34-622(c)(20)): Group I ( <u>less than 50 beds</u> ) Group II ( <u>less than 50 beds</u> ) Group III Group IV	<u>Note (25)</u> <u>Note (25)</u> <u>Note (25)</u>	--	--	--	--	--	--	--	--	P(13) P(13) P(13)	SE(13) SE(13) SE(13)	--	--	--	--	--	
Hobby, toy <u>and</u> game shops (34-622(c)(21))		P	P	P	P	--	P	P	P	P	--	--	--	--	--	--	
Government <u>Maintenance</u> facility ( <u>Government</u> )		P	P	P	P	--	--	--	P	P	SE	--	--	--	P	--	

Research and development laboratories (34-622(c)(41) Group II Group IV		P --	P --	P P	--	--	--	--	P --	P --	P --	SE --	--	--	--	--	--
--	--	---------	---------	--------	----	----	----	----	---------	---------	---------	----------	----	----	----	----	----

Notes:

(33) Limited to four pumps, unless a greater number is approved as part of a special exception.

*[Balance of table remains unchanged.]*

## DIVISION 8. INDUSTRIAL DISTRICTS

### Sec. 34-903. Use regulations table.

Use regulations for industrial districts are as follows:

Table 34-903. USE REGULATIONS FOR INDUSTRIAL DISTRICTS

	Special Notes or Regulations	IL Note (14)	IG Note (14)	IR Note (14)
<u>Government</u> <del>m</del> Maintenance facility (Government)	Note (2)	P	P	--
Mini-warehouse		P	P	--
<del>Landfills, s</del> Sanitary landfills	IPD only, 34-1831 et seq., Note (9)	--	--	--

*[Balance of table remains unchanged.]*

## DIVISION 9. PLANNED DEVELOPMENT DISTRICTS

**Sec. 34-934. Use regulations table.**

Use regulations for planned development districts are as follows:

TABLE 34-934. USE REGULATIONS FOR PLANNED DEVELOPMENT DISTRICTS

	Special Notes and Regulations	RP D	MH PD	RV PD	CF PD	CP D	IPD Note (37 )	AO PD	MP D
Automobile repair and service (34-622(c)(2)), all groups	34-1351	--	--	--	--	P	P	--	P
Automobile service station	<u>Note (38)</u>	P(4 )	P(4 )	--	--	P	P	P	P
Bed and Breakfast (df)	<u>Note (28), 34-1494</u>	P	--	--	--	P	--	--	P
<u>Excess spoil removal</u>	<u>Note (39), 10-329</u>	P	P	P	=	P	P	=	P
<u>Government maintenance facility (Government)</u>		--	--	--	P	P	P	P	P
Mini-warehouse		-	-	-	-	P	P	-	P
<u>Tactical training (df)</u>	<u>34-2471</u>	=	=	=	P	=	=	=	=

Notes:

- (38) Limited to four pumps, unless a greater number is approved as part of a planned development.
- (39) In an existing planned development, the director has the discretion to require removal of excess spoil to be reviewed through the public hearing process.  
*[Balance of table remains unchanged.]*

### **Sec. 34-935. Property development regulations.**

The provisions of this section do not apply to PRFPDs. Property development regulations for PRFPDs are set forth in section 34-941.

(a) through (e) No change.

(f) *Height of buildings.*

(1) and (2) No change.

(3) *Other planned developments.* Except as restricted by section 34-2175, height of buildings in all other planned developments will vary in accordance with the land use classification of the subject property according to the Lee Plan land use plan map as follows:

a. and b. No change.

c. In the airport and ~~airport commerce~~ tradeport commerce land use categories, buildings may be as tall as 45 feet above minimum flood elevation with no more than three habitable stories. With the consent of the port authority, the Board of County Commissioners may approve building heights up to 95 feet above minimum flood elevation with no more than eight habitable stories.

d. and e. No change.

(g) No change.

### **Sec. 34-940. Mixed use planned developments.**

(a) All mixed use planned developments must meet or exceed at least two of the following thresholds:

- (1) A residential or mobile home development of ~~450~~ 50 or more dwelling units.
- (2) A commercial development or activity ~~which that~~ is either located on a parcel of ~~five~~ two or more acres ~~or and~~ may includes ~~50,000~~ 30,000 square feet or more of floor area.
- (3) An industrial development or activity ~~which that~~ is located on a parcel of ~~five~~ two or more acres ~~or and~~ which may includes ~~50,000~~ 30,000 square feet or more of floor area.

(4) A community facility development of five two or more acres.

(b) and (c). No change.

## ARTICLE VII. SUPPLEMENTARY DISTRICT REGULATIONS

### DIVISION 2. ACCESSORY USES, BUILDINGS AND STRUCTURES

#### Sec. 34-1182. Cabanas.

(a) A cabana may be used only for recreational purposes.

(b) As a condition of building permit approval, the property owner must record a covenant in the public records that clearly indicates the uses allowed or prohibited within the cabana structure. This covenant must be consistent with this section and may not be amended without the written consent of the director of Lee County Community Development.

(c) Overnight sleeping in a cabana is prohibited.

(d) Installation and use of stoves, cooktops, ranges or ovens within the cabana is prohibited.

### DIVISION 5. ALCOHOLIC BEVERAGES

#### Sec. 34-1264. Sale or service for on-premises consumption.

(a) *Approval required.* The sale or service of alcoholic beverages for consumption on the premises is not permitted until the location has been approved by the county as follows:

(1) *Administrative approval.* The director of the department of community development may administratively approve the sale or service of alcoholic beverages for consumption on premises when in conjunction with the following uses, if the proposed use satisfies the requirements set forth in this division. When circumstances so warrant the director may determine administrative approval is not the appropriate action and that the applicant must instead apply for approval as a special exception. Such circumstance may include the previous denial by the director or by a hearing board of a similar use at that location, the record of public opposition to a similar use at that location, and similar circumstances. When the director has approved a request for consumption on the premises at a location where the actual building has not been constructed, the director may not approve another request for consumption on the premises within one year's time, which could potentially violates the distance requirements. If the first building is

completed within less than one year, and it can be shown the second use would not violate the prescribed distance requirements, the director may approve the second location subject to all other requirements contained in this division.

a. through h. No change.

i. Beer and wine taste testing in conjunction with package sales (consumption off premises).

(2) and (3) No change.

(b) through (j) No change.

## DIVISION 13. ENVIRONMENTALLY SENSITIVE AREAS

### **Sec. 34-1575. Coastal zones.**

(a) Development, other than minor structures, is prohibited seaward of the three-dimensional coastal construction control line as established by the state department of environmental protection, ~~as such line existed in 1988 and defined in section 6-333~~. For purposes of this section, minor structures mean pile supported elevated dune and beach walk-over structures; beach access ramps and walkways; stairways; fences and pile-supported viewing platforms, boardwalks and lifeguard support stands. Minor structures do not include septic tanks or other structures appurtenant to, cantilevered, or supported by, or an extension of or overhanging, or extending the principal structure. The minor structures identified herein are considered expendable under design wind, wave and storm forces.

(b) and (c) No change.

(d) No development will be permitted which:

(1) No change.

(2) Alters or removes protection vegetation from the frontal or primary dune system, except for excavations for the installation of pilings necessary for the construction of elevated structures as permitted by the state department of environmental protection.

## DIVISION 16. EXCAVATION ACTIVITIES

### *Subdivision II. Mining*

#### **Sec. 34-1675. Application for general mining permit; issuance of permit.**

(a) No change.

(b) *Application for public hearing.* In addition to the public hearing requirements set forth in articles II and IV for planned developments, all applications for a mining permit must include the following information:

(1) through (6) No change.

(7) *Proposed mining plan.*

a. through h. No change.

i. Where dewatering is proposed as part of a mining operation, the following information must be provided:

1. Detailed description of the dewatering method and procedure to be used to facilitate the excavation.
2. Estimated volumes of water to be extracted, impounded or diverted per hour and per day for the duration of the dewatering.
3. A map specifically depicting the location of all dewatering pumps and withdrawal points.
4. A plan/map showing the disposition of the dewatered effluent, whether on or off the development site. The map must depict the size and location of the proposed holding ponds or trenches as well as the calculations used to determine the size of the proposed holding ponds and trenches. A soils report must be included that documents the ability of the sub-surface soils, in the subject location, to percolate the dewatered effluent. If an off-site location is proposed, then the application must include permission from each property owner whose property will be traversed or used to accomplish the dewatering as proposed. This permission/consent must in writing, signed by the property owner and acknowledged before a notary. Consents signed by an agent of the property owner will not satisfy this requirement.
5. Engineering estimates of the monthly water balance for the

projected highest, lowest and average rainfall sequence for the operation life of the excavation. This estimate must account for all sources of water input to the water recirculation facilities and processing steps, and all water outputs and losses from the system. The submittal must also include a detailed explanation of the computation methods and assumptions used to derive the estimate.

6. Engineering estimates demonstrating that the proposed dewatering will not adversely impact adjacent wetlands and groundwater resource aquifer supply must be submitted if the excavation will extend below the normal wet season groundwater elevation.
7. A proposed groundwater level monitoring plan that specifies the location of all wells comprising the monitoring well network. The proposed water level monitoring plan and process must be sufficient to document changes that are a result of the proposed dewatering with respect to groundwater levels and groundwater flow directions on and/or off the subject project site.
  - j. A copy of the SFWMD Water Use Permit (WUP) application for dewatering, including the support documentation.
  - k. A copy of the SFWMD WUP staff report/recommendation and WUP permit approval when and if issued.

(8) and (9) No change.

## DIVISION 17. FENCES, WALLS, GATES AND GATEHOUSES

### **Sec. 34-1743. Residential project walls.**

- (a) No change.
- (b) *A residential project fence or wall:*
  - (1) and (2) No change.
- (3) Required or optional residential project walls must be landscaped on the exterior side (between the wall and the abutting property or street right-of-way) with a minimum of five trees per 100 lineal feet and shrub hedges, within a minimum plantable width of 7.5 feet located on the exterior side of the wall or fence.
  - a. No change.

- b. No change.
- (4) and (5) No change.

## DIVISION 26. PARKING

### Sec. 34-2020. Required spaces.

All uses permitted under this chapter are subject to the following minimum requirements:

- (1) No change.
- (2) *Commercial uses.*
  - a. through h. No change.
  - i. *Funeral homes.* There must be at least one parking space for each four seats, or four spaces per 25 250 square feet of chapel area, whichever is requires the greater number of spaces. (See subsection (7) of this section.)
- (3) No change.
- (4) *Miscellaneous uses.*
  - a. through i. No change.
  - j. *Marinas and other water-oriented uses.*
    - 1. through 3. No change.
    - 4. *Charter or party fishing boat:* One space per three people based upon the boat manufacturer's specifications related to the maximum passenger capacity of the boats using the dock or loading facility.
    - 5. *Local cruise ships:* One space per two people based on the ship manufacturer's specifications related to the maximum passenger and crew capacity of the ship. Local cruise ships are ships that usually leave port and return in less than 24 hours and that usually provide at least one meal, gambling or other entertainment.
    - 6. *International cruise ships:* one space per three people based on the ship manufacturer's specifications related to the maximum passenger and crew capacity of the ship.

International cruise ships are ships that usually leave port for 24 hours or more and that provide meals, sleeping accommodations, gambling or other entertainment for customers.

7. No change.

k. through t. No change.

(5) through (7) No change.

## DIVISION 30. PROPERTY DEVELOPMENT REGULATIONS

### *Subdivision II. Height*

#### **Sec. 34-2175. Height limitations for special areas and Lee Plan land use categories.**

The following areas have special maximum height limitations applicable to all conventional and planned development districts:

##### **(a) Special Areas**

(1) *Upper Captiva Island.* The height of a structure may not exceed 35 feet above grade (base flood elevation). The provisions of section 34-2174(a) do not apply to Upper Captiva Island. No variance or deviation from the 35-foot height restriction may be granted.

In addition to compliance with all applicable building codes (including Fire and Life Safety codes), any building with two or more stories or levels must provide an exterior stairway from the uppermost levels (including "widow's walks" or observation decks) to the ground OR a one-hour fire rated interior means of egress from the uppermost levels (including "widow's walks" or observation decks) to the ground.

(2) *Captiva Island.* No building or structure may be erected or altered so that the peak of the roof exceeds 35 feet above the average grade of the lot in question or 42 feet above mean sea level, whichever is lower. The provisions of section 34-2174(a) do not apply to Captiva Island. No variance or deviation from this height restriction may be granted.

(3) *San Carlos Island.* The height of a structure may not exceed 35 feet above grade, except as provided for in section 34-2174. If seaward of the coastal construction control line, elevations may exceed the 35-foot limitation by three feet for nonconforming lots of record.

- (4) *Gasparilla Island conservation district*. No building or other structure may be erected or altered so that the peak of the roof is more than 38 feet above the average grade of the lot or parcel on which the building or structure is located, or is more than 42 feet above mean sea level, whichever is lower.
  - (5) *Greater Pine Island*. No building or structure may be erected or altered so that the peak of the roof exceeds 38 feet above the average grade of the lot in question or 45 feet above mean sea level, whichever is lower. The term "building or structure," as used in this subsection, does not include a building or structure used for an industrial purpose.
  - (6) *All other islands*: The height of a structure may not exceed 35 feet above grade (base flood elevation). Except as provided in subsections 34-2175 (3), (4), and (5), the provisions of section 34-2174(a) do not apply to islands. No variance or deviation from the 35-foot height restriction may be granted.
  - (7) *Airport hazard zone*. Height limitations for the airport hazard zone are set forth in article VI, division 10, subdivision III, of this chapter.
- (b) Lee Plan land use categories.
- (1) Intensive development and central urban land use categories. Buildings may be as tall as 135 feet above minimum flood elevation with no more than 12 habitable stories.
  - (2) Urban community land use category. Buildings may be as tall as 95 feet above minimum flood elevation with no more than eight habitable stories.
  - (3) Airport lands and tradeport land use categories. Buildings may be as tall as 45 feet above minimum flood elevation with no more than three habitable stories. With the consent of the Port Authority, the Board of County Commissioners may approve building heights up to 95 feet above minimum flood elevation with no more than eight habitable stories.
  - (4) Industrial interchange, industrial commercial interchange, general interchange and general commercial interchange land use categories. Buildings may be as tall as 75 feet above minimum flood elevation with not more than six habitable stories.
  - (5) Suburban, outlying suburban and rural land use categories. Buildings may be as tall as 45 feet above minimum flood elevation with no more than three habitable stories, except that such buildings may be as tall as 75 feet above minimum flood elevation with no more than six habitable stories when the applicant demonstrates that the additional height is required to increase common open space for the purposes of preserving environmentally sensitive land, securing areas of native vegetation and wildlife habitat, or preserving historical, archaeological or scenic resources.

(6) Variances or deviations from this subsection are prohibited.

## DIVISION 39. USE, OCCUPANCY AND CONSTRUCTION REGULATIONS

### Sec. 34-3104. Clearing, grading or filling of land.

(a) No land may be cleared, graded, excavated or filled, or otherwise altered, except in conformity with the regulations contained in this chapter and all other applicable county ordinances.

(b) Site grading and surface water management standards for single family residential and duplex lots.

(1) Site grading during construction activities. The building site must be graded and maintained during construction to:

- a. prevent erosion of soil onto adjacent or abutting properties and street rights-of-way or improved drainage conveyances; and
- b. control surface water runoff to ensure that no surface water in excess of the preconstruction discharge flows onto developed adjacent or abutting properties; and
- c. maintain the flow capacity and function of existing drainage conveyances on or abutting the site including adjacent street rights of way/easements or improved drainage conveyances.

(2) Final site grading. Final grading of a lot must:

- a. Control and direct surface water runoff to ensure that surface water discharge is directed into an existing surface water management system or other offsite drainage conveyance; and
- b. preserve or relocate existing drainage conveyances necessary to maintain preconstruction flow capacity and function.
- c. Final site grading plan features must be maintained in perpetuity by the property owner. A property owner may not alter or modify the lot grading in a manner that will prevent continued drainage of the site in accordance with the lot grading plan in effect at the time the Certificate of Occupancy was issued.

(3) Lot grading plan.

- a. Where the proposed final grade on any part of a lot is greater than 18

inches above the centerline elevation of the adjacent street or the elevation of any adjacent developed lot as measured at the property line, a grading and drainage plan demonstrating compliance with the performance standards outlined in section 34-3104(b)(1) and (2) must be submitted with the application for building permit approval.

- b. Prior to issuance of a certificate of occupancy, the building site must be graded in accordance with the grading and drainage plan and a final inspection must be approved by Lee County.

## **SECTION SEVEN: 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 EIGHT: 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 NINE: 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 TEN: EFFECTIVE DATE**

The ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

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

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

DULY PASSED AND ADOPTED THIS 23<sup>rd</sup> day of August, 2005.

ATTEST:

CHARLIE GREEN, CLERK

By: *Spira J. Pierce*  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: *Mark Hall*  
Chairman

APPROVED AS TO FORM:

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



Attachments:

Illustration 10-418(1) - Lake shoreline configuration  
Illustration 10-421(a) - Compatible tree and lighting design

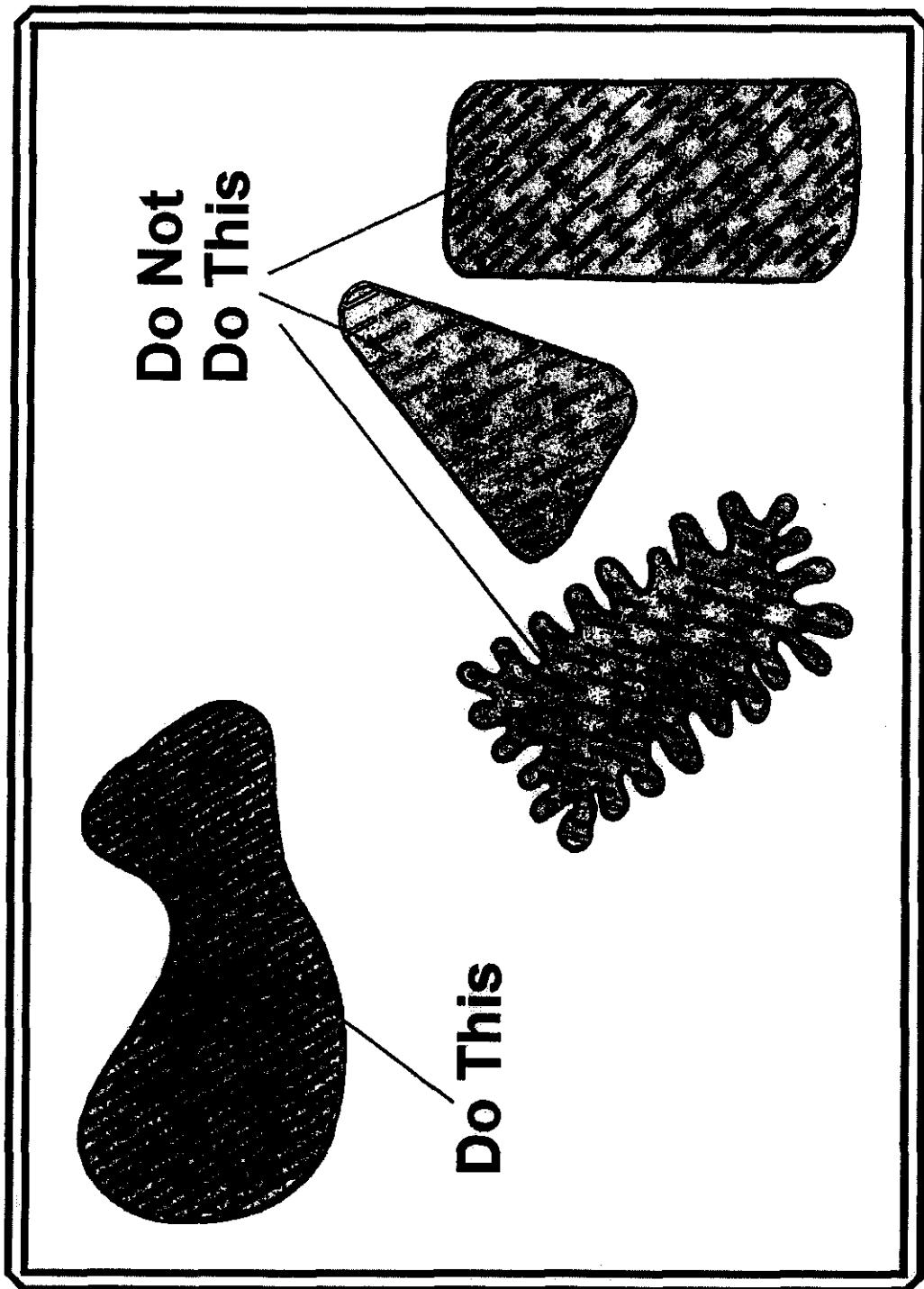
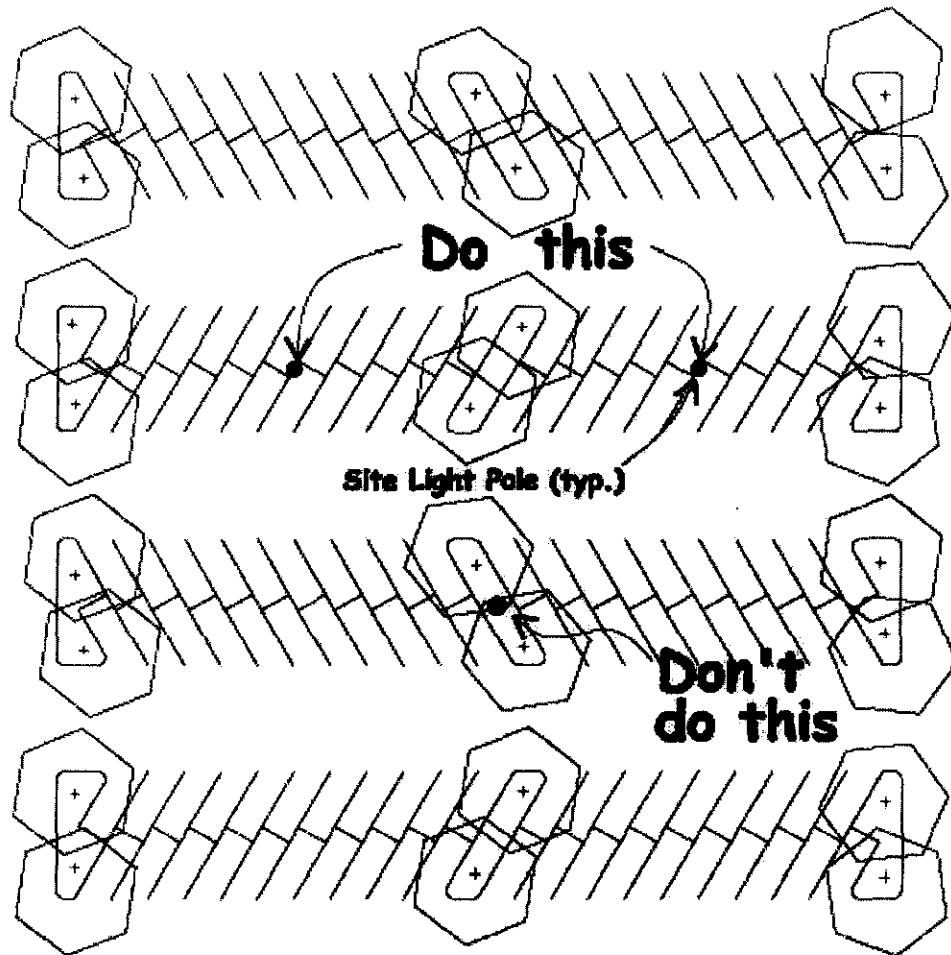
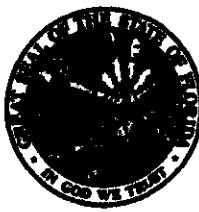


ILLUSTRATION 10-418(1)



**COMPATIBLE TREE AND LIGHTING DESIGN**

ILLUSTRATION 10-421(a)



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

September 2, 2005

Honorable Charlie Green  
Clerk of Circuit 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 August 29, 2005 and certified copies of Lee County Ordinance Nos. 05-13 through 05-15, which were filed in this office on August 31, 2005.

Sincerely,

*Liz Cloud* <sup>ak</sup>  
Liz Cloud  
Program Administrator

LC/kcs

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