

ORDINANCE NO. 94-14

AN ORDINANCE RESTATING IN ITS ENTIRETY AND FURTHER AMENDING THE LEE COUNTY TREE PROTECTION ORDINANCE, NO. 86-34, AS AMENDED BY ORDINANCES 88-33, 90-41, AND 91-04, TO CLARIFY EXISTING REGULATIONS AFFECTING THE PROTECTION OF TREES IN THE UNINCORPORATED AREAS OF LEE COUNTY; PROVIDING FOR AMENDMENTS TO SECTION SEVEN, EXEMPTIONS, TO SPECIFICALLY ADDRESS LANDS ADJACENT TO THE ORANGE RIVER, CONSISTENT WITH THE LEE COUNTY COMPREHENSIVE LAND USE PLAN POLICY 19.3.1; PROVIDING FOR INCLUSION IN CODE; CORRECTION OF SCRIVENER'S ERRORS; SEVERABILITY; AND AN EFFECTIVE DATE

Whereas, the Board of County Commissioners of Lee County, Florida has adopted a Comprehensive Land Use Plan, by Ordinance No. 89-02, as amended, (the "Lee Plan") pursuant to the terms of Chapter 125, Florida Statutes, and Sections 163.3161 through 163.3211, Florida Statutes, The Local Government Comprehensive Planning and Land Development Regulation Act; and

Whereas, the Lee County Board of Commissioners approved an amendment to the Lee Plan on July 9, 1991 which added Goal 19 pertaining to the Buckingham region of Lee County; and

Whereas, Policy 19.3.1 provides that agricultural and single-family exemptions from the Lee County Tree Protection Ordinance shall not apply within 25 feet of the Orange River; and

Whereas, the Board of County Commissioners desire to amend the Lee County Tree Protection Ordinance to incorporate this Policy; and

Whereas, the Lee County Tree Protection Ordinance has been amended numerous times since 1986 and the Board desires to restate and codify same and have such restatement replace the original ordinance as

amended.

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

The Lee County Tree Protection Ordinance No. 86-34, as amended by 88-33, 90-41, and 91-04, is hereby restated to incorporate all past amendments into one ordinance document, and amended to reflect Lee Plan Policy 19.3.1, with underlined language being an addition to the previously adopted text.

SECTION ONE: RESTATEMENT

Lee County Ordinances No. 86-34, as amended by 88-33, 90-41, and 91-04, is hereby amended and restated in its entirety. The amended language is illustrated by underlining, except for section headings.

SECTION TWO: SHORT TITLE

This ordinance shall be known and may be cited as the "Lee County Tree Protection Ordinance".

SECTION THREE: INTENT, PURPOSE AND SCOPE

A. The intent of this ordinance is to provide protection of tree(s) through the preservation, protection, and planting of trees in order to aid in the stabilization of soil by the prevention of erosion and sedimentation; reduce stormwater runoff and the costs associated therewith and maintaining permeable land areas for aquifer recharge and surface water filtration; aid in the removal of carbon dioxide and generation of oxygen in the atmosphere; provide a buffer and screen against noise pollution; promoting energy conservation through the creation of shade, reducing heat gain in or on buildings or paved areas, and reducing the temperature of the microclimate through

evapotransportation; provide protection against severe weather; aid in the control of drainage and restoration of denuded soil subsequent to construction of grading; provide a haven for birds which in turn assists in the control of insects; protect and increase property values; conserve and enhance the County's physical and aesthetic environment; and generally protect and enhance the quality of life and the general welfare of the County.

B. The purpose of this ordinance is to provide protection of trees from abuse and/or mutilation, and to regulate the removal and planting of trees in the unincorporated areas of Lee County in order to enhance and protect the environmental quality of the County.

SECTION FOUR: FINDINGS OF FACT

The Board of County Commissioners hereby finds and determines that trees promote the health and general welfare of the citizens of Lee County, Florida, specifically:

A. Trees transpire considerable amounts of water each day and assist in purifying the air; and

B. Trees precipitate dust and other particulate airborne pollutants from the air; and

C. Trees, through their root systems stabilize the soil and play an important and effective part in County-wide soil conservation, erosion control, and flood control; and

D. Trees are an invaluable amenity to the County, providing shade and cooling the air and land, and reducing noise levels and glare; and

E. The protection of trees within Lee County is not only

desirable, but essential to the health, safety, and welfare of all the citizens, present and future, of Lee County; and,

F. Some trees are more beneficial than others as necessary contributions to the County's environment, and it is not necessary to protect each and every tree in order to attain the publicly beneficial result of a tree protection ordinance.

SECTION FIVE: DEFINITIONS

For the purposes of this ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words in the present tense include the future and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

A. "Administrator" shall mean the Administrative Director of the Department of Community Development, or his or her designee, who is the person responsible for administering the provisions of this ordinance.

B. "Bona fide agricultural purposes" means good faith commercial or domestic agricultural use of the land. In determining whether the proposed agricultural use of land is bona fide, the following factors shall be taken into consideration by the Administrator:

1. Whether the property could qualify as a bona fide agricultural purpose within the meaning of Section 193.461(3)(b), Florida Statutes; and

2. The relationship of the property to the Lee Plan;

and

3. The current zoning of the property shall be agricultural.

C. "Commission" is the Board of County Commissioners.

D. "County" shall mean Lee County, Florida.

E. "Critical Areas for Surface Water Management" means the Six Mile Cypress Basin, as defined in Section 16 of the Lee County Development Standards Ordinance Number 92-44, as amended, (DSO) and the Density Reduction/Groundwater Resource Land Use category, as defined in the Lee County Comprehensive Plan, adopted by Ordinance Number 90-43 and subsequently re-adopted by Ordinance Number 90-44. A map of the Critical Areas for Surface Water Management is attached as Appendix B and incorporated herein.

F. "Diameter Breast Height (DBH)" means the diameter, in inches, of a tree measured fifty-four (54) inches above natural grade.

G. "Drip line" means an imaginary vertical line running from the outermost branches or portion of the tree crown to the ground.

H. "Indigenous Vegetation" means those plants which are characteristic of the major plant communities of Lee County, as listed in Appendix 1-1 of the DSO, as amended.

I. "Massing of Trees" means to cluster trees in a random fashion.

J. "Notice of Clearing" shall mean the permit issued by the Administrator after it has been recorded by the Clerk's Office.

K. "Person" is any public or private individual, group,

company, partnership, association, society, or other combination of human beings whether legal or natural.

L. "Protective barrier" means a physical structure not less than three (3) feet in height composed of lumber made of no less than 1" x 1" for shielding of protected trees from the movement of equipment or the storage of equipment, material, debris, or fill. Equivalent materials may be used to provide a protective barrier if first approved by the Administrator.

M. "Removal" is the deliberate removal of a tree or causing the effective removal of a tree through damaging, poisoning, or other direct or indirect actions resulting in the death of the tree.

N. "Resource Protection Area" means a land use category as defined by the Lee Plan which is characterized by lands that exhibit the soil types set forth in Appendix "B" of the Lee County Wetlands Protection Ordinance, 86-31, as amended; vegetation as set forth in Appendix "A" of the Lee County Wetlands Protection Ordinance, 86-31, as amended; and hydrology, which are characteristic of freshwater and saltwater wetlands.

O. "Transition Zone" means a land use category as defined by the Lee Plan which is characterized by lands that may be seasonally inundated from one to three months as indicated by water marks, do not have depressional soils, and are characterized by a mixture of plant species typical of uplands and wetlands.

P. The word "tree" shall mean a living, woody, self supporting plant, ten (10) feet or more in height having one or more well-defined main stems or trunks, and any one stem or trunk four (4)

inches DBH and as listed in Appendix "A". For the purpose of this ordinance, those palms listed on Appendix "A" are declared to be a tree and are protected by the provisions of this ordinance.

Q. "Tree Protection Map" means a drawing or aerial photograph which provides the following information: Location of all trees protected under the provisions of this ordinance, plotted by ground truthing or any other accurate scientific techniques; common or scientific name of all trees; and diameter at breast height. Groups of trees in close proximity (5 feet spacing or closer) may be designated as a "clump" of trees, with the predominate species, estimated number, and average size listed.

R. "Tree worthy of preservation" is any tree listed in the Florida Champion Tree records as compiled by the State of Florida.

S. "Upland" means land other than Resource Protection Areas or Transition Zones.

Unless specifically defined below, the other words or phrases used in this ordinance and not defined in Section Five shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

SECTION SIX: PROHIBITION

No person, organization, society, association, corporation, or any agency or representative thereof, shall deliberately cut down, destroy, remove, relocate, defoliate through the use of chemicals or other methods, or otherwise damage any tree that is herein protected and located in the unincorporated areas of Lee County, Florida, without first obtaining a permit as herein provided.

SECTION SEVEN: EXEMPTION

This ordinance shall not apply to the following:

A. The removal of trees, other than trees worthy of preservation, on lands classified as "agricultural land" for ad valorem taxation purposes pursuant to Section 193.461(3)(b), Florida Statutes. Trees other than trees worthy of preservation, may be removed from agriculturally zoned lands only after the owner or his agent shall procure a "notice of clearing" from the Administrator. However, if an application to rezone the subject lands is filed within three (3) years from the date when the most recent "notice of clearing" was issued, and the rezoning is granted, the applicable minimum open space requirements of the County's development standard regulations shall be satisfied in the following manner:

1. A sufficient number of trees listed in Appendix "A" hereto, shall be placed, planted, and maintained consistent with Sections Nineteen A. through D. of this ordinance to the extent that said minimum open space requirements cannot be satisfied by then existing natural forest;

2. Such reforestation as required above shall be satisfied by imposing the necessary conditions to any final development order issued at any time within eight (8) years after the land in question is rezoned;

3. In the event that subsequent to the issuance of the "notice of clearing" the owner or agent of the said land obtains an "agricultural lands" classification for ad valorem taxation purposes pursuant to Section 193.461(3)(b), Florida Statutes, then the

restrictions and requirements contained in Section Seven A.1. and 2. of this ordinance shall not apply. These same said lands shall then be regulated pursuant to Section Seven A. of this ordinance.

B. Removal of trees on land which is used for agricultural purposes and which is exempt from the provisions of this ordinance and which meets the criteria of or has been designated as Resource Protection Area or Transition Zone shall be subject to Lee County Wetland Protection Ordinance 86-31 as the same now exists and may from time to time be amended or replaced by subsequent legislation.

C. If the property is located in the "Critical Areas for Surface Water Management," and is not used for bona fide agricultural purposes, indigenous vegetation shall not be cleared in areas that serve as listed species occupied habitat as defined in Section 15 of the DSO (Protected Species Requirements). The following shall apply:

1. The Administrator shall determine the location of protected species to be preserved based on the criteria set forth in the DSO (Protected Species Requirements). This review shall not be substituted for surveys required under Section 15C. of the DSO (Protected Species Requirements).

2. The Administrator, or the property owner with the Administrator's approval, shall develop a management plan based on the criteria set forth in Section 15 D. of the DSO (Protected Species Requirements). Preparation and review criteria for the plan shall be subject to the provisions of an appropriate Administrative Code. Up to ten percent (10%) of the upland acreage shall be preserved in areas where listed species are present. No more than two separate areas

shall be set aside on any given parcel. Any state-mandated upland listed species preserves shall be included within the referenced ten percent (10%) preservation area. Bald Eagles (Haliaeetus leucocephalus) shall be protected pursuant to the Lee County Bald Eagle Ordinance.

D. If the property is located in the "Critical Areas for Surface Water Management," indigenous vegetation shall not be cleared within twenty-five feet (25') of the mean high water line or ordinary high water line, whichever is applicable, of any natural waterway listed in Appendix "C" attached hereto and incorporated herein. Indigenous vegetation may be cleared selectively to allow the placement of docks, pipes, pumps, and other similar structures pursuant to applicable Lee County Ordinances.

E. The removal of trees on public rights-of-way conducted by or on behalf of a federal, state, county, municipal, or other governmental agency in pursuance of its lawful activities or functions in the construction or improvement of public rights-of-way or in the performance of its official duties.

F. The removal of a protected tree that is dead or which has been destroyed or damaged by natural causes beyond saving or which is a hazard as the result of an Act of God and constitutes an immediate peril to life and property;

G. The removal of trees by duly constituted communication, water, sewer, or electrical utility companies or federal, state, or county agency, engineer or surveyor, working under a contract with such federal, state, or county agency, or when such tree removal is

done as a governmental function of such agency.

H. The removal of trees by duly constituted communication, water, sewer, or electrical utility companies in or adjacent to a public easement or right-of-way, provided such removal is limited to those areas necessary for maintenance of existing lines or facilities or for construction of new lines or facilities in furtherance of providing utility service to its customers, and provided further that such removal is conducted so as to avoid any unnecessary damage or removal of trees.

I. The removal of trees protected by this ordinance, other than a tree worthy of preservation, by a Florida licensed land surveyor in the performance of his duties. The removal of trees protected by this ordinance in a manner which requires clearing a swath of greater than three (3) feet in width shall require approval of the Administrator prior to such removal and clearance.

J. The removal of protected trees on a lot zoned for single-family residential use or being used lawfully as a single family residence or mobile home where the residence or proposed residence is located on a lot no greater than five (5) acres in area.

K. The removal of protected trees other than a tree worthy of preservation on the premises of a licensed plant or tree nursery or tree farm where such trees are intended for sale in the ordinary course of the licensee's business.

L. Any Final Development Order or other final approval issued by Lee County which was granted after January 27, 1983, but before December 4, 1986, may, at the discretion of the Administrator,

be exempted from compliance with this ordinance, to the extent that the restrictions imposed by this ordinance conflict with the approvals given in said Final Development Order or other final approval, in which case the Final Development Order or other final approval shall supersede this ordinance as to those areas in conflict.

M. However, the exemptions herein for agriculturally zoned lands, agricultural lands classified as exempt pursuant to Section 193.461(3)(b), Florida Statutes, and single family lots shall not apply to land within 25 feet of the Orange River which is also within the Buckingham Sector Plan Area as defined in Goal 19 of the Lee Plan. This provision shall sunset two years from the effective date of this Ordinance.

SECTION EIGHT: LIST OF PROTECTED TREES

A. Any tree delineated in the attached Appendix "A" shall henceforth be a protected tree and shall thereby come under the provisions of this ordinance, except those trees exempted pursuant to Section Seven.

B. All other species of trees not named in Appendix "A" may be removed without a permit, but only in such a manner so as not to disturb or destroy surrounding protected trees.

SECTION NINE: PROTECTION OF TREES FROM REMOVAL, ABUSE, OR MUTILATION

It shall be a violation of this ordinance for any person to remove, injure, disfigure, or destroy a tree in preparation for, in connection with, or in anticipation of development of land except in accordance with the provisions of this ordinance.

SECTION TEN: REMOVAL OF TREES

A. Any tree, as defined in and protected by this ordinance, may be lawfully removed only after a permit therefore has been secured from the Administrator. Failure to comply with the requirements of a tree removal permit shall be a violation of this ordinance.

B. Where a tree(s) is (are) to be removed under the provisions of this ordinance, the County may, with the owner's permission, relocate the tree(s) (not being relocated within the property) at the County's expense to County-owned property for replanting, either for permanent utilization at a new location, or for future use at other County property. If the County does not elect to relocate any such tree, it may give any city within the County the ability to acquire such tree(s) at the city's expense for relocation within the city's incorporated area for public use. The relocation shall be accomplished within fifteen (15) working days of the issuance of a permit, unless it is necessary to root prune the tree(s) to assure its survival, in which case, the relocation shall be accomplished within thirty (30) working days of the issuance of a permit or other suitable schedule as agreed to by all parties.

SECTION ELEVEN: ISSUANCE OF PERMITS: CRITERIA, SITE PLANS, AND FEES

A. Application for a permit to remove any protected tree defined herein shall be submitted to the Administrator in writing on a form provided by the Administrator, accompanied by a written statement indicating the reasons for removal.

B. The Administrator shall have the authority to issue said

permit and to inspect all work performed under any permit issued under this ordinance.

C. All applications to remove any protected tree defined herein shall be on forms provided by the Administrator. Where an application has been submitted to the Administrator for the removal of more than five (5) trees, no tree removal permit shall be issued by the Administrator until a site plan for the lot or parcel has been reviewed and approved by the Administrator, and shall include the following minimum information:

1. The shape and dimensions of the lot or parcel, together with the existing and proposed locations of the structures and improvements, if any;

2. A tree location map for the lot or parcel, in a form acceptable to the Administrator. For the removal of five (5) trees or less, an on-site examination by the Administrator's designee shall be made in lieu of the tree location map requirement.

3. Any proposed grade changes that might adversely affect or endanger any trees on the lot or parcel, together with specifications reflecting how the trees can be safely maintained;

4. Any proposed tree replacement plan.

D. Criteria for Granting Tree Removal Permits. The Administrator shall approve a permit for issuance for the removal of any protected tree if the Administrator finds one or more of the following conditions is present:

1. Trees which pose a safety hazard to pedestrian or vehicular traffic or threaten to cause disruption to public utility

services.

2. Trees which pose a safety hazard to existing buildings or structures.

3. Trees which prevent reasonable access to a lot or parcel so long as the proposed access point complies with all other County regulations.

4. Diseased trees which are a hazard to people, buildings, or other improvements on a lot or parcel or to other trees.

5. Trees so weakened by age, storm, fire, or other injury so as to, in the opinion of the Administrator, jeopardize the life and limb of persons or cause a hazard to property.

6. The Administrator may require that a tree protected by this ordinance be relocated on the same lot or parcel in lieu of approval.

7. Trees which prevent the lawful development of a lot or parcel or the physical use thereof.

E. Where a building permit issuance is not required because no structure or structures are to be constructed and no other development of the lot is to occur, any person seeking to remove a tree protected under this ordinance shall first file a site plan with the Administrator meeting the requirements of Section Eleven C. herein, prior to receiving a tree removal permit from the Administrator.

F. On-Site Inspection. The Administrator may conduct an on-site inspection to determine if any proposed tree removal conforms to the requirements of this ordinance and what effect, if any, removal

of said tree or trees will have upon the natural resources, as identified in the Lee Plan, of the affected area prior to the granting or denying of said application. A permit fee will be required for the removal or relocation of any tree protected under the provisions of this ordinance and shall be paid at the time of issuance of the permit. The fees established will be set in accordance with the Lee County Administrative Code and paid to the Administrator. Such fees are hereby declared to be necessary for the purpose of processing the application and making the necessary inspection for the administration and enforcement of this ordinance.

G. Issuance of Permit. Based upon the information contained in the application and after investigation of same, the Administrator shall approve or deny the application, and if approved, the Administrator is the party so designated by the Commission to issue said permit for a period not to exceed one (1) year and to collect said permit fee.

H. Conditions of the Permit. The Administrator may attach conditions to the permit relating to the method of identifying, designating, and protecting those trees which are not to be removed in accordance with Section Eleven G. herein. A violation of these conditions shall automatically invalidate the permit. Special conditions which may be attached to the permit may include a requirement for successful replacement of trees of the same size, compatible species, and same number of any trees permitted to be removed.

SECTION TWELVE: VARIANCES

Requests for variances from the terms of this ordinance shall be administered and decided in conformance with the requirements for variances which are set forth in Lee County Zoning Ordinance No. 86-17, as may be amended or replaced from time to time.

SECTION THIRTEEN: TREE PROTECTION DURING THE DEVELOPMENT OF LAND

A. Prior to the land clearing stage of development, the owner or developer shall clearly mark all protected trees for which a tree removal permit has not been issued and shall erect barriers for the protection of the trees according to the following:

1. At or greater than a six (6) foot radius of all species of mangroves and protected cabbage palms;
2. At or greater than the full drip line of all protected native pines;
3. At or greater than two-thirds (2/3) of the drip line of all other protected species.

B. No person shall attach any sign, notice, or other object to any protected tree or fasten any wires, cables, nails, or screws to any protected tree in any manner that could prove harmful to the protected tree except as necessary in conjunction with activities in the public interest.

C. During the construction stage of development, the owner or developer shall not cause or permit the cleaning of equipment or material within the outside perimeter of the crown ("drip line") or on nearby ground of any tree or group of trees which are to be preserved. Within the outside perimeter of the crown ("drip line") of any tree or

on nearby ground, the owner or developer shall not cause or permit storage of building material and/or equipment, or disposal of waste material such as paints, oil, solvents, asphalt, concrete, mortar, or any other material harmful to the life of the tree.

D. No person shall permit any unnecessary fire or burning within thirty (30) feet of the drip line of a protected tree.

E. Any landscaping activities within the barrier area shall be accomplished with hand labor.

F. Prior to the Administrator issuing a Certificate of Occupancy or Compliance for any development, building, or structure, all trees designated to be preserved that were destroyed during construction shall be replaced by trees of equivalent DBH tree caliper and same species as specified by the Administrator, before occupancy or use, unless approval for their removal has been granted under permit..

G. The Administrator may conduct periodic inspections of the site during land clearance and construction.

H. If in the opinion of the Administrator, development activities will so severely stress Slash Pines or any other protected tree, such that they are made susceptible to insect attack, preventative spraying of these trees may be required.

SECTION FOURTEEN: EMERGENCY TREE REMOVAL

Upon the declaration of a state of emergency pursuant to Chapter 252, Florida Statutes, the Administrator may suspend the enforcement of the requirements of this ordinance for a period of thirty (30) days in order to expedite the removal of damaged and destroyed trees in the

interest of public safety, health, and general welfare.

SECTION FIFTEEN: NON-LIABILITY OF COUNTY

Nothing in this ordinance shall be deemed to impose any liability upon the County or upon any of its officers or employees, nor to relieve the owner and/or occupant of any duty to keep trees and shrubs upon private property or under his control in a safe condition.

SECTION SIXTEEN: INSPECTIONS AND NOTICES OF VIOLATION

A. The County may conduct on-site inspections to determine if a violation of this ordinance has occurred.

B. Whenever it is determined that there is a violation of this ordinance, a Notice of Violation shall be issued and delivered. A notice shall be sent by certified mail, return receipt requested, or, when mail would not be effective, by hand-delivery. The notice shall be delivered to the owner of the property, or to his agent, or to the person doing the work. When mail or hand-delivery prove ineffective, the notice may be provided by any other statutorily prescribed method. The Notice of Violation issued shall:

1. Be in writing;
2. Be dated and signed by the authorized County agent issuing the Notice;
3. Specify the violation or violations;
4. State that said violation(s) shall be corrected within a specified period of time;
5. State that, if the required corrective action is not taken within the time specified by the Notice of Violation, the County may use any available means of enforcement to secure

compliance.

SECTION SEVENTEEN: STOP WORK ORDERS

Upon notice from the Administrator, work being done contrary to the provisions of this ordinance or in a dangerous or unsafe manner, shall be immediately stopped. Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, or shall be posted on the property, and shall state the conditions under which work may be resumed. Where an emergency exists, written notice shall not be required to be given by the Administrator.

SECTION EIGHTEEN: PENALTIES

A. Any person, organization, society, association or corporation, or any agent or representative thereof, who violates any provision of this ordinance shall, upon conviction, be subject to the following penalties:

1. Criminal Penalties

a. A fine per violation not to exceed five hundred dollars (\$500.00).

b. Imprisonment in the County Jail for a term not exceeding sixty (60) days per violation; or

c. By both such fine and imprisonment.

2. Civil Penalties

a. Injunctive relief to enjoin and restrain any person from violating the provisions of this ordinance; and

b. A fine not to exceed five hundred dollars

(\$500.00) per violation; and

c. Revocation, suspension, or amendment of any land development permit granted pursuant to this ordinance; and

d. Restoration pursuant to the standards contained in Section Nineteen of this ordinance; and

e. Any other relief available pursuant to law.

B. Any equitable, legal, or leasehold owner of property who knew, or should have known, that illegal removal of trees was occurring on property in which that individual has any equitable, legal, or leasehold interest, and who permitted that activity to occur without notifying the Administrator of the person, organization, society, association, corporation, or any agency or representative thereof, of the improper or illegal removal of said tree(s) shall be equally subject to any civil or criminal penalty set forth in this ordinance.

C. In any prosecution under this ordinance for the removal of a tree without a permit, each tree so removed will constitute a separate offense.

SECTION NINETEEN: RESTORATION STANDARDS

A. If a violation of this ordinance has occurred and upon agreement of the Administrator and the violator, or if they cannot agree, then, upon conviction by the court, the Code Enforcement Board or the Hearing Examiner, a restoration plan shall be ordered in accordance with the following standards:

1. The restoration plan shall include the following minimum planting standards:

a. Planting Plan for All Protected Trees -

Replacement stock shall be computed on a three (3) for one (1) basis according to the total number of unlawfully removed trees. The phrase "three (3) for one (1)" in this ordinance refers to the requirement of replacing an illegally removed tree with three (3) live trees according to the provisions of this ordinance. Replacement trees shall be nursery-grown, containerized, and no less than six (6) feet in height. It shall be within the discretion of the Administrator to allow a deviation from the above specified ratio. When such deviation is sought, the total of heights and calipers shall equal or exceed that specified in the above standards. An example of this might be one in which trees four (4) feet in height might be planted in a ratio of five (five) replacement trees to one (1) illegally removed tree. Justification for such a deviation shall be provided to the Administrator.

b. Planting Plan for Understory Vegetation

Understory - Vegetation shall be restored to the area from which protected trees were unlawfully removed or mutilated. The plant selection shall be based on that characteristic of the Florida Land Use, Cover, and Classification System (FLUCCS) Code. Shrubs, ground cover, and grasses shall be restored as delineated in the FLUCCS Code. Up to seven (7) species shall be utilized with relative proportions characteristic of those in the FLUCCS Code. The exact number and type of species required shall also be based upon the existing indigenous vegetation on adjacent property. Replacement stock shall be no less than one gallon-size, nursery-grown,

containerized stock planted at no less than three (3) feet on center in the area from which protected trees were unlawfully removed or mutilated. This area shall be defined by the drip line of the trees. The number of shrubs shall not exceed, but may be less than, twenty-five (25) shrubs per tree unlawfully removed or mutilated. The understory of the restored site shall be protected for a period of no less than ten (10) years, unless its removal is a provision of a development order which has been approved after the restoration of the site.

c. If the unlawful removal or mutilation of trees has caused any change in hydrology or surface water flows, then the hydrology or surface water flows shall be restored to pre-violation condition.

B. Massing of replacement stock shall be subject to agreement of the parties or, if appropriate, then by approval of the court, the Code Enforcement Board or the Hearing Examiner as long as the minimum number of trees and/or seedlings are provided. Replacement stock, with the exception of palms, shall be Florida Number 1 or better grade. Replacement stock shall have a guaranteed eighty percent (80%) survivability for a period of no less than five (5) years. A maintenance provision of no less than five (5) years must be provided in the restoration plan to control invasion of exotic vegetation. Replacement stock shall not be located on any property line, underground utility, or county easement. The Administrator may at his/her discretion allow the replacement stock to be planted off-site where approved development displaces areas to be restored.

In these situations, off-site plantings shall be on lands under the control of a public agency. The off-site location is subject to the approval of the administrator.

C. In the event of impending development on property wherein protected trees are unlawfully removed, the restoration plan shall indicate the location of the replacement stock consistent with any approved plans for subsequent development. For the purposes of this ordinance, impending development shall mean that a developer has made application for a preliminary development order or applied for a building permit.

D. In the event that identification of the specie of trees is impossible for any reason on property wherein protected trees were unlawfully removed, then a presumption is raised that the trees illegally removed were of a similar species and mix as those found on adjacent properties.

E. A monitoring report shall be submitted to the Administrator on an annual basis for five (5) years describing the conditions of the restored site. The monitoring report shall be submitted on or before each anniversary date of the effective date of the restoration plan. Mortality estimates per species planted, estimated causes for mortality, growth of the vegetation, and other factors which would indicate the functional health of the restored systems shall be included in the monitoring report. Failure to submit the report in a timely manner shall constitute a violation of this ordinance. When mitigation is required pursuant to this ordinance, monitoring reports are necessary to ensure that the mitigation efforts

have been successful. In order to verify the success of the mitigation efforts and the accuracy of the monitoring reports, periodic inspections by county staff are necessary. In order that Lee County be compensated by the violator for the costs of these periodic inspections of the restored site by county staff, schedule of inspection fees shall be established by Administrative Code to be approved by the Board of County Commissioners.

F. In the event that a violation of Section Thirteen of this ordinance occurs, then the restoration provisions contained within Section Thirteen herein shall govern and supersede any other restoration provisions contained within this ordinance.

SECTION TWENTY: ENFORCEMENT JURISDICTION

Prosecution of violations of this ordinance shall be before the court, the Lee County Code Enforcement Board or the Hearing Examiner.

SECTION TWENTY-ONE: INCLUSION IN CODE, CODIFICATION, AND SCRIVENER'S ERRORS

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Lee County Code; and that sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions; and, regardless of whether such inclusion in the Code is accomplished, sections of this Ordinance may be renumbered or relettered, and typographical errors which do not affect the intent may be authorized by the County Administrator, or his designee, without need of Public Hearing, by filing a corrected or

recodified copy of same with the Clerk of the Circuit Court.

SECTION TWENTY-TWO: SEVERABILITY

The provisions of this Ordinance are severable. If any of the provisions of this Ordinance shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such unconstitutional provision not been included therein.

SECTION TWENTY-THREE: EFFECTIVE DATE

This Ordinance shall become effective immediately upon receipt of official acknowledgment from the Office of Secretary of State of Florida that this Ordinance has been filed with said office.

The foregoing Ordinance was offered by Commissioner John E. Manning who moved its adoption. The motion was seconded by Commissioner Douglas St. Cerny and, upon being put to a vote, the vote was as follows:

JOHN E. MANNING	<u>AYE</u>
DOUGLAS ST. CERNY	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
FRANKLIN MANN	<u>AYE</u>
JOHN ALBION	<u>AYE</u>

Duly passed and adopted this 18th day of May, 1994.

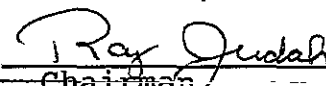
ATTEST:

CHARLIE GREEN, CLERK

By: 

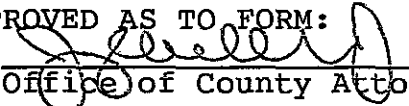
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: 

Chairman

APPROVED AS TO FORM:

By: 

Office of County Attorney

(7200)

APPENDIX A

LEE COUNTY PROTECTED TREE LIST
ALPHABETICAL INDEX TO TREE FAMILIES*

<u>FAMILY</u>	<u>COMMON NAME</u>	<u>PAGE</u>
ACERACEAE	MAPLE FAMILY	4
ANACARDIACEAE	CASHEW FAMILY	4
ANNONACEAE	CUSTARD APPLE FAMILY	2
AQUIFOLIACEAE	HOLLY FAMILY	4
ARECACEAE	PALM FAMILY	1
AVICENNIACEAE	BLACK MANGROVE FAMILY	6
BETULACEAE	BIRCH FAMILY	1
BORAGINACEAE	BORAGE FAMILY	6
BURSERACEAE	TORCHWOOD FAMILY	4
CAPPARACEAE	CAPER FAMILY	3
COMBRETACEAE	WHITE MANGROVE FAMILY	4
CORNACEAE	DOGWOOD FAMILY	5
CUPRESSACEAE	CYPRESS FAMILY	1
EBENACEAE	EBONY FAMILY	5
FABACEAE	PEA FAMILY	3
FAGACEAE	OAK FAMILY	2
HAMAMELIDACEAE	WITCH-HAZEL FAMILY	3
JUGLANDACEAE	WALNUT AND HICKORY FAMILY	1
LAURACEAE	LAUREL FAMILY	3
MAGNOLIACEAE	MAGNOLIA FAMILY	2
MELIACEAE	MAHOGANY FAMILY	4
MORACEAE	MULBERRY FAMILY	2
MYRTACEAE	MYRTLE FAMILY	5

<u>FAMILY</u>	<u>COMMON NAME</u>	<u>PAGE</u>
NYSSACEAE	SOUR GUM FAMILY	5
OLACACEAE	KIKENIA FAMILY	2
OLEACEAE	OLIVE FAMILY	5
PINACEAE	PINE FAMILY	1
PLATANACEAE	SYCAMORE FAMILY	3
POLYGONACEAE	BUCKWHEAT FAMILY	2
RHIZOPHORACEAE	RED MANGROVE FAMILY	4
ROSACEAE	ROSE FAMILY	3
RUTACEAE	RUE FAMILY	3
SALICACEAE	WILLOW FAMILY	1
SAPOTACEAE	SAPODILLA FAMILY	5
SIMAROUBACEAE	QUASSIA FAMILY	3
TAXODIACEAE	BALD CYPRESS FAMILY	1
THEACEAE	CAMELLIA FAMILY	4
THEOPHRASTACEAE	JOEWOOD FAMILY	5
ULMACEAE	ELM FAMILY	2

*Note: All members of these families are not included on the Lee County Protected Tree List, only those species listed on the following pages 1-6.

(4127X)

SCIENTIFIC NAMEFAMILY NAMECOMMON NAMEPINACEAE
(PINE FAMILY)Pinus elliotii var densa
Pinus palustrisSlash Pine
Long-leaf PineTAXODIACEAE
(BALD CYPRESS FAMILY)Taxodium ascendens
Taxodium distichumPond Cypress
Bald CypressCUPRESSACEAE
(CYPRESS FAMILY)

Juniperus silicicola

Southern Red Cedar

ARECACEAE
(PALM FAMILY)Cocos nucifera
Roystonea elata
Sabal palmetto
Coccothrinax argentataCoconut Palm
Florida Royal Palm
Cabbage Palm
Silver PalmSALICACEAE
(WILLOW FAMILY)

Salix caroliniana

Coastal-Plain Willow

JUGLANDACEAE
(WALNUT AND HICKORY FAMILY)Carya aquatica
Carya glabraWater Hickory
Pignut HickoryBETULACEAE
(BIRCH FAMILY)

Carpinus caroliniana

Iron Wood

FAGACEAE
(OAK FAMILY)

Quercus chapmani
Quercus cinerea
Quercus laevis
Quercus laurifolia
Quercus myrtifolia
Quercus nigra
Quercus virginiana
Quercus virginiana geminata

Chapman Oak
 Bluejack Oak
 Turkey Oak
 Laurel Oak
 Myrtle Oak
 Water Oak
 Live Oak
 Sand Live Oak

ULMACEAE
(ELM FAMILY)

Ulmus americana
Celtis laevigata

American Elm
 Hackberry

MORACEAE
(MULBERRY FAMILY)

Ficus aurea
Ficus citrifolia
Morus rubra

Strangler Fig
 Short-leaf Fig
 Red Mulberry

OLACACEAE
(XIMENIA FAMILY)

Ximenia americana

Tallowwood

POLYGONACEAE
(BUCKWHEAT FAMILY)

Coccoloba uvifera
Coccoloba diversifolia

Sea Grape
 Pigeon Plum

MAGNOLIACEAE
(MAGNOLIA FAMILY)

Magnolia grandiflora
Magnolia virginiana

Southern Magnolia
 Sweetbay

ANNONACEAE
(CUSTARD-APPLE FAMILY)

Annona glabra

Pond Apple

Lauraceae
(Laurel Family)

Magnolia virginiana
Persea borbonia
Persea palustris

Sweet Bay
Red Bay
Swamp Bay

Capparaceae
(Caper Family)

Capparis cynophallophora

Jamaica Caper

Hamamelidaceae
(Witch-Hazel Family)

Liquidambar styraciflua

Sweet Gum

Rosaceae
(Rose Family)

Prunus caroliniana

Cherry Laurel

Platanaceae
(Sycamore Family)

Platanus occidentalis

Sycamore

Fabaceae
(Pea Family)

Lysiloma latisiliqua
Pithecellobium unguis-cati
Acacia farnesiana
Piscidia piscipula

Wild Tamarind
Cat Claw
Sweet Acacia
Jamaica Dogwood

Rutaceae
(Rue Family)

Zanthoxylum clava-herculis

Hercules Club

Simaroubaceae
(Quassia Family)

Simarouba glauca

Paradise Tree

BURSERACEAE
(TORCHWOOD FAMILY)

Bursera simaruba

Cumbo limbo

MELIACEAE FAMILY
(MAHOGANY FAMILY)

Swietenia mahogoni

West Indian Mahogany

ANACARDIACEAE
(CASHEW FAMILY)

Rhus copallina

Southern Sumac

AQUIFOLOIACEAE
(HOLLY FAMILY)

Ilex cassine

Dahoon Holly

ACERACEAE
(MAPLE FAMILY)

Acer rubrum

Red Maple

THEACEAE
(CAMELLIA FAMILY)

Gordonia lasianthus

Loblolly Bay

RHIZOPHORACEAE
(RED MANGROVE FAMILY)

Rhizophora mangle

Red Mangrove

COMBRETACEAE
(WHITE MANGROVE FAMILY)

Conocarpus erecta

Buttonwood

Bucida bucerus

Black Olive

Laguncularia racemosa

White Mangrove

MYRTACEAE
(MYRTLE FAMILY)

Eugenia axillaris
Eugenia rhombea
Eugenia confusa
Eugenia myrtoides
Myrcianthes fragans

White Stopper
 Red Stopper
 Ironwood
 Spanish Stopper
 Simpson Stopper

NYSSACEAE
(SOUR GUM FAMILY)

Nyssa sylvatica

Black Gum

CORNACEAE
(DOGWOOD FAMILY)

Cornus foemina

Swamp Dogwood

THEOPHRASTACEAE
(JOEWOOD FAMILY)

Jacquinia keyensis

Joewood

SAPOTACEAE
(SAPODILLA FAMILY)

Bumelia celastrina
Bumelia tenax
Chrysophyllum oliviforme
Mastichodendron foetidissimum

Buckthorn
 Buckthorn
 Satinleaf
 Wild Hastic

EBENACEAE
(EBONY FAMILY)

Diospyros virginiana

Persimmon

OLEACEAE
(OLIVE FAMILY)

Forestiera segregata
Fraxinus caroliniana

Florida Privet
 Pop Ash

BORAGINACEAE
(BORAGE FAMILY)

Cordia sebestena

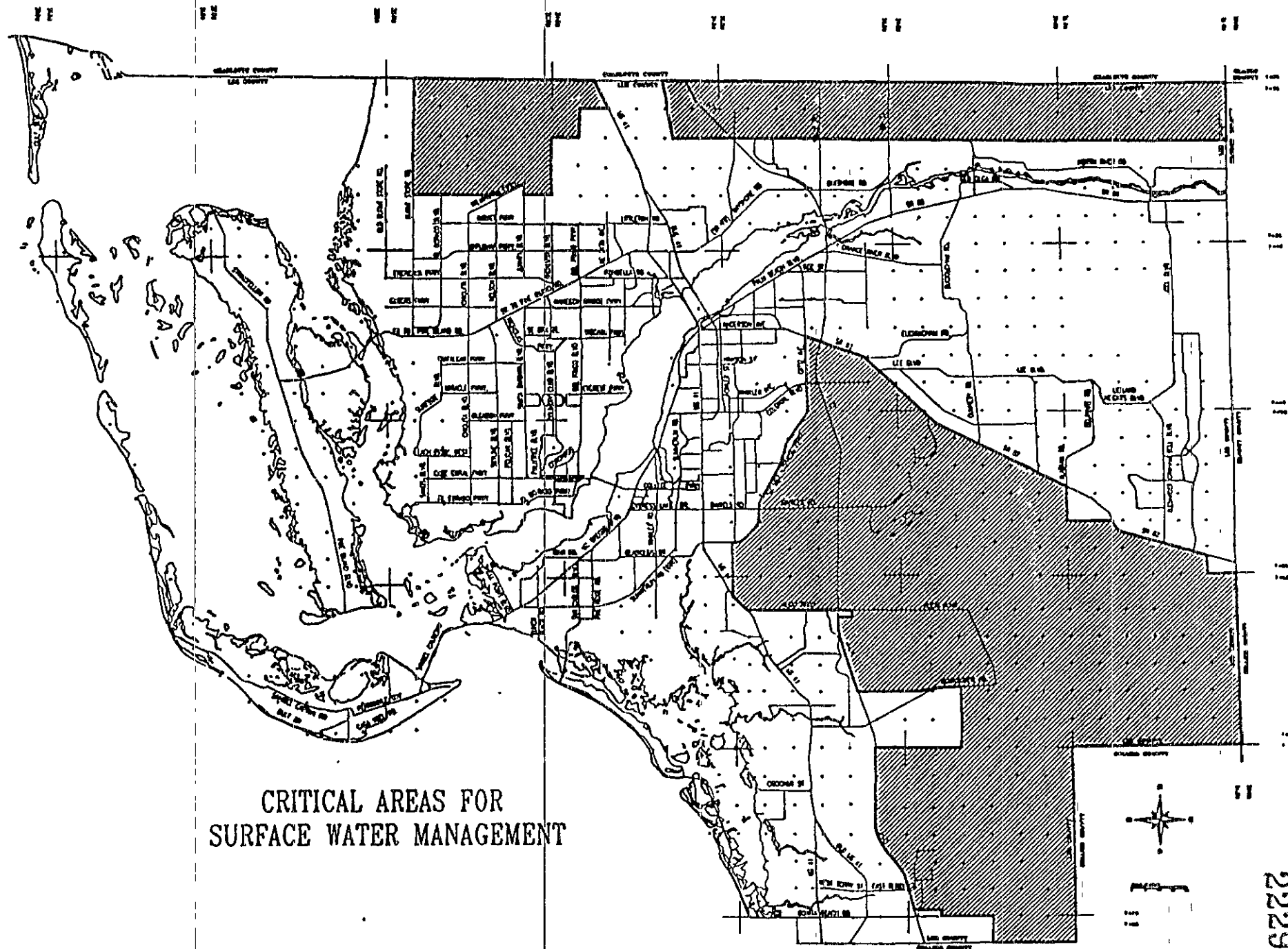
Geiger Tree

AVICENNIACEAE
(BLACK MANGROVE FAMILY)

Avicennia germinans

Black Mangrove

APPENDIX "B"



PROPOSED GROUNDWATER RESOURCE LAND USE CATEGORY
(NAMED CREEKS AND RIVERS FOR 25 FOOT SETBACK)

NAME	SECTIONS	TOWNSHIP	RANGE
SPANISH CREEK	10	43	27
CYPRESS CREEK	4,9	43	27
TELEGRAPH CREEK/ ADJOINING TRIBS.	11,12 2,11,12 2,11 12	43 43 43 43	26 26 26 26
STRICKLIN GULLY	3,9,10	43	26
TROUT CREEK/ ADJOINING TRIBS.	4,8,9 4,9 8	43 43 43	26 26 26
OWL CREEK	7 1,12	43 43	26 25
DAUGHTREY CREEK/ EAST BRANCH	8	43	25
CHAPEL BRANCH CREEK	8	43	25
BAYSHORE CREEK	9	43	25
POPASH CREEK	10	43	25
STROUD CREEK	2,3,10	43	25
THOMPSON CUTOFF	11	43	25