

Lee County Board of County Commissioners
Agenda Item Summary

DATE CRITICAL
Blue Sheet No. 20030639

1. **REQUESTED MOTION:**

ACTION REQUESTED: Conduct first public hearing on proposed amendments to the Lee County Land Development Code (LDC). After public hearing, direct the ordinance to the second public hearing on June 24, 2003 at 5:05 p.m.

WHY ACTION IS NECESSARY: Public Hearings are necessary to adopt amendments to the LDC.

WHAT ACTION ACCOMPLISHES: Allows for discussion and public input on proposed LDC amendments.

2. **DEPARTMENTAL CATEGORY:**
COMMISSION DISTRICT

5:05 #1

3. **MEETING DATE:**

06-10-2003

4. **AGENDA:**

CONSENT
ADMINISTRATIVE
APPEALS
 PUBLIC
WALK ON

5. **REQUIREMENT/PURPOSE:**
(Specify)

STATUTE
 ORDINANCE (LDC)
ADMIN. CODE
OTHER

6. **REQUESTOR OF INFORMATION:**

A. COMMISSIONER
B. DEPARTMENT County Attorney
C. DIVISION Land Use

BY:

Joan C. Henry
Joan C. Henry
Assistant County Attorney

TIME REQUIRED:

7. **BACKGROUND:**

County staff and the Land Development Advisory Committee (LDCAC) have proposed amendments to the LDC. Proposed amendments to LDC Chapters 2, 6, 10, 14, 30 and 34 are in the attached draft of the Spring 2003 LDC Amendments prepared by staff (labeled "Draft Amendment 0527" in the footer).

- Attachments:
- Summary of Amendments
 - Draft of Spring 2003 LDC Amendments labeled "Draft Amendment 0527" in the footer. Draft does not include illustrations.
 - Financial & Administrative Impact Statement (FAIS)

8. **MANAGEMENT RECOMMENDATIONS:**

9. **RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>Joan C. Henry</i>	OA RK 5/27	OM 5/28	RISK 5/28/03	GC 5/28/03	<i>Joan C. Henry</i> 5-29-03

10. **COMMISSION ACTION:**

APPROVED

DENIED

DEFERRED

OTHER

CO. ATTY.
FORWARDED
TO CO. COMM.
5/27/03 4:10 p.m.

CO. ATTY.	<i>JK</i>
CO. COMM.	<i>JK</i>
CO. ADMIN.	<i>JK</i>
FORWARDED TO:	<i>JK</i>

**LEE COUNTY, FLORIDA
FINANCIAL & ADMINISTRATIVE IMPACT STATEMENT
PROPOSED COUNTY ORDINANCE**

SPRING 2003 LDC AMENDMENTS

II. Fiscal Impact on County Agencies/County Funds.
(This section to be completed by Division of Budget Services)

- A. What is estimated Demand? (Develop Indicators) N/A
- B. What is estimated Workload? (Develop Indicators) N/A
- C. What are estimated costs?

	1st Year \$'s		2nd Year \$'s	
	<u>Existing</u>	<u>New</u>	<u>Existing</u>	<u>New</u>
Personnel	N/A		N/A	
Fringe	N/A		N/A	
Operating	N/A		N/A	
Capital Outlay	<u>N/A</u>		<u>N/A</u>	
Total	N/A		N/A	

D. List the anticipated revenues to cover costs identified in II, C, above. If a fee is to be charged, answer the following:

- 1. What is the basis (rationale) for the fee? N/A
- 2. Do the anticipated fees cover the full cost of operation? If not, what percentage of the costs are covered? N/A

E. Give a brief narrative analysis of the information contained in II, A-D, above.

Attached is a brief synopsis of proposed LDC changes. The two main issues are mining standards for excavations (updated and enhanced – meaning, more restrictive), and new lighting standards (new criteria for outdoor lighting, including a ten year amortization schedule).

The financial impact with regard to any of the attached proposed changes is minimal to the county but will result in additional applicant costs to comply.

SPRING 2003 AMENDMENTS TO LAND DEVELOPMENT CODE SUMMARY

RECOMMENDATIONS

LDC SECTIONS	SUBJECT	CONTENT	STAFF	LDCAC	EROC	LPA	BOCC ACTION REQUIRED
2-485	Hurricane Impact Mitigation	Sets standards for hurricane shelters	Supports	Supports			
6-408	Flood hazard Areas	Adopts latest FEMA Maps	Supports	Supports			
10-1, 10-121, 10-153, 10-154, 10-174, 10-217, 34-202	Submittal Requirements for Authorizations by Applicants	Streamlines and simplifies the authorization requirements for DO and Zoning applicants	Supports	Supports			
10-7	Estero Planning Community Meetings	Establishes requirement for meeting with community on all DO applications	Supports	Supports			
10-8, 10-154, 10-610, 34-2, 34-624, 34-625, 6-113	Outdoor lighting Standards	Sets standards and criteria for outdoor lighting including on-site and off-site illuminance standards and standards for light fixtures, mounting, etc.	Supports including Option 1 of Sec. 34-625(4)b.	Supports including Option 1 of Sec. 34-625(4)b.			Section 34-625(4)b. outlines 3 options for Lamp Standards. Staff and LDCAC recommend Option 1 allowing applicant to select lamp type. BOCC must select an option.
10-256	Bikeways and pedestrian ways	Requires facility to be constructed when parcel is developed on arterial or collector street and for commercial and office development on minor collector or local street. Phasing is permitted.	Supports	Supports			
10-285	Connection separation	Clarifies entitlement to median openings	Supports	Supports			
10-298	Controlled Access Roads	Clarifies that right to access, turning movements, etc. are reserved to the BOCC.	Supports	Supports			
10-329	Excavations	Establishes added standards for excavations as part of DO including bathymetric surveys to verify excavation depth and fine for excavating below permitted depth.	Supports	Supports			
14-471 et. seq.	Clean Water Provisions	Brings standards up to date with EPA and FDEP requirements.	Supports	Supports			
30-5, 30-54, 30-151	Prohibited and temporary signs	Expand permitted use of special occasion signs (balloons, etc.).	NOT Supported	NOT Supported			BOCC must decide whether to expand permitted use of special occasion signs as put forth by citizen
34-2	Animal Kennel definition	Expand definition to include boarding and foster care of animals	NOT Supported	NOT Supported			BOCC must decide whether to expand the definition as put forth by citizen
34-111 thru 34-115	Local Planning Agency	Update membership (include non voting representative of School Board) and procedures	Supports	Supports			
34-83(c), 34-145	Appeals of Hearing examiner Decisions to BOCC	Provides for the appeal of hearing Examiner decisions to the BOCC. Establishes Fire District as party in appeals of fire impact fees.	County Attorney Proposal				
34-145(a)(2)b.	Considerations of Hearing Examiner in Appeals	Excludes the testimony of the public as consideration in appeals	Hearing Examiner proposal	Supports			BOCC must decide whether to exclude public testimony as consideration in appeals
34-83(b), 34-145(d)(1) b.7., 34-381	Extension and Reinstatement of Master Concept Plans	Establishes procedures for single hearing for extensions (prior to expiration) and two hearings for reinstatements (after expiration of MCP).	Supports	Supports			
34-653, 34-694, 34-735, 34-843, 34-934	Keeping and Breeding of Class 1 and Class 2 Animals	Class 1 not permitted in AG; Class 2 allowed by SE in AG; Class 1 & 2 not permitted in RS and MH; Class 1 & 2 allowed by SE in C-1, C-2, C-2A, CT, CFPD & MPD.	Supports	Supports			

RECOMMENDATIONS

LDC SECTIONS	SUBJECT	CONTENT	STAFF	LDCAC	EROC	LPA	BOCC ACTION REQUIRED
34-694	Clubs, Membership Organization	Allows Clubs, membership organization (e.g. unions, trade organizations, political & religious organizations, unions) in RS-1 district	NOT Supported	Supports			BOCC must decide whether these clubs should be allowed in RS-1 district
34-1181	Truck Parking in AG	Clarifies permitted truck parking in AG	Supports	Supports			
34-1411(a)	Hurricane preparedness impact mitigation for ALFs	Specifies the threshold number of ALF beds for compliance with mitigation provisions	Supports 17 or more beds	Supports 25 or more beds			BOCC must decide the threshold level of number of ALF beds
34-1671 thru 34-1681, Mining Map	Mining Provisions	Establishes preferred locations for mining (map) and new standards and criteria for mining operations	Supports	Supports			
34-3070	Telephone Booths and Pay Stations	Removes County regulations of these uses to comply with court decision	Supports	Supports			
34-3102	Number of Principal Buildings on Site	Allows more than one principal building on site in CS-2 district	Supports	Supports			

LEE COUNTY ORDINANCE NO.

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE (LDC) TO AMEND CHAPTERS 2, 6, 10, 14, 30 AND 34; AND AMENDING CHAPTER 2 (ADMINISTRATION); AMENDING IMPACT MITIGATION (§2-485); AND

AMENDING CHAPTER 6 (BUILDINGS AND BUILDING REGULATION); CREATING COMPLIANCE WITH OUTDOOR LIGHTING STANDARDS (§6-113); BASIS FOR ESTABLISHING AREAS OF SPECIAL FLOOD HAZARD (§6-408); AND

AMENDING CHAPTER 10 (DEVELOPMENT STANDARDS); AMENDING DEFINITIONS AND RULES OF CONSTRUCTION (§10-1); AMENDING AND RENUMBERING GENERAL REQUIREMENTS (§10-7); AMENDING SPECIFIC REQUIREMENTS (§10-8); TRANSFER (§10-121); AMENDING AND RENUMBERING APPLICATION FORM AND CONTENTS (§10-153); ADDITIONAL REQUIRED SUBMITTALS (§10-154); AMENDING TYPES OF DEVELOPMENT ENTITLED TO LIMITED REVIEW (§10-174); FINAL INSPECTION AND CERTIFICATE OF COMPLIANCE (§10-183); REQUIRED (PLATS) (§10-211); LOT RECOMBINATIONS (§10-217); CONSTRUCTION OF SOIL CONDITIONS AND FLOOD HAZARDS (§10-253); BIKEWAYS AND PEDESTRIAN WAYS (§10-256); CONNECTION SEPARATION (§10-285); CONTROLLED ACCESS ROADS (§10-298); EXCAVATIONS (§10-329); SITE DESIGN STANDARDS AND GUIDELINES FOR COMMERCIAL BUILDINGS AND DEVELOPMENTS (§10-610); AND

AMENDING CHAPTER 14 (ENVIRONMENT AND NATURAL RESOURCES); AMENDING PURPOSE AND INTENT (CLEAN WATER PROVISIONS) (§14-471); PROHIBITIONS (§14-473); DEFINITIONS (§14-475); INDUSTRIAL ACTIVITY (§14-476); STORMWATER POLLUTION PREVENTION PLAN (SWP3) CRITERIA (§14-477); MONITORING (§14-478); ENFORCEMENT (§14-479); AND

AMENDING CHAPTER 30 (SIGNS); AMENDING PROHIBITED SIGNS (§30-5); PERMITS; INSPECTIONS (§30-54); TEMPORARY SIGNS (§30-151); CREATING ARTICLE VI. "ESTERO OVERLAY DISTRICT" AND CREATING PURPOSE OF ARTICLE (§30-400); DEFINITIONS (§30-401); APPLICABILITY OF ARTICLE; CONFLICTING PROVISIONS (§30-402); NON-CONFORMING SIGNS (§30-403); PROHIBITED SIGNS (§30-404); TEMPORARY SIGNS (§30-405); PERMANENT SIGNS IN COMMERCIAL AND INDUSTRIAL AREAS (§30-406); AND

AMENDING CHAPTER 34 (ZONING); AMENDING, PROVIDING FOR OR REMOVING DEFINITIONS OF "ANIMAL KENNEL", "AMBIENT LIGHT", "ARTIFICIAL LIGHT OR ARTIFICIAL LIGHTING", "AVERAGE LIGHTING", "BACK-LIGHTING", "BULB", "CANDELS OR CD", "CUMULATIVELY ILLUMINATED", "DIRECT LIGHT", "EXISTING OUTDOOR LIGHTING", "EXTERIOR LIGHTING", "FIXTURE", "FLOOD OR SPOT LIGHT", "FOOTCANDLE", "FULL CUTOFF", "FULLY SHIELDED", "HIGH PRESSURE SODIUM OR HPS", "ILLUMINANCE", "ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA OR IESNA", "INDIRECT LIGHT", "LAMP", "LIGHT LOSS FACTOR OR LLF", "LIGHT POLLUTION", "LIGHTING", "LOW PRESSURE SODIUM OR LPS", "LUMINAIRE", "LUMEN", "MERCURY VAPOR", "METAL HALIDE OR MH", "NON-ESSENTIAL LIGHTING", "OUTDOOR LIGHTING", "PARTIALLY SHIELDED", "PHOTOMETRICS", "PLANNED DEVELOPMENT", "RECESSED", "SINGLE

MANAGEMENT", "SKYGLOW", "UNIFIED CONTROL", "UNIFIED CONTROL, COVENANT OF", "TELEPHONE BOOTH OR PAY TELEPHONE STATION", "UPLIGHTING" (§34-2); AMENDING FUNCTIONS AND AUTHORITY (BOARD OF COUNTY COMMISSIONERS) (§34-83); LOCAL PLANNING AGENCY (§34-111); MEMBERSHIP; TERM OF OFFICE (§38-112); COMPENSATION OF MEMBERS; FUNDING (§34-113); ORGANIZATION AND OPERATION (§34-114); FUNCTIONS AND AUTHORITY (LOCAL PLANNING AGENCY) (§34-115); FUNCTIONS AND AUTHORITY (HEARING EXAMINER) (§34-145); FINAL DECISION; JUDICIAL REVIEW (§34-146); AMENDING AND RENUMBERING GENERAL SUBMITTAL REQUIREMENTS FOR APPLICATIONS REQUIRING PUBLIC HEARING (§34-202); AMENDING ADDITIONAL REQUIREMENTS FOR APPLICATIONS REQUIRING PUBLIC HEARING (§34-203); APPLICATIONS (§34-373); DELETING COVENANT OF UNIFIED CONTROL AND RESERVING SECTION (§34-374); AMENDING PUBLIC HEARING (§34-377); EFFECT OF PLANNED DEVELOPMENT ZONING (§34-378); AMENDING AND RENUMBERING DURATION OF RIGHTS CONFERRED BY ADOPTED MASTER CONCEPT PLAN (§34-381); AMENDING PERFORMANCE STANDARDS, CREATION OF NUISANCE (§34-624); CREATING OUTDOOR LIGHTING STANDARDS (§34-625); AMENDING USE REGULATIONS TABLE FOR AGRICULTURAL DISTRICTS (§34-653); USE REGULATIONS TABLE FOR ONE AND TWO FAMILY DISTRICTS (§34-694); USE REGULATIONS FOR ONE- AND TWO- FAMILY RESIDENTIAL DISTRICTS (§34-694); USE REGULATIONS TABLE FOR MOBILE HOME DISTRICTS (§34-735); USE REGULATIONS TABLE FOR CONVENTIONAL COMMERCIAL DISTRICTS (§34-843); USE REGULATIONS TABLE FOR PLANNED DEVELOPMENT DISTRICTS (§34-934); DEFINITIONS (PLANNED DEVELOPMENT DISTRICTS) (§34-1033); TRUCKS AND COMMERCIAL VEHICLES IN RESIDENTIALLY AND AGRICULTURALLY ZONED DISTRICTS (§34-1181); ASSISTED LIVING FACILITIES (§34-1411); AMENDING PURPOSE OF SUBDIVISION (MINING) (§34-1671); CREATING APPENDIX "N" (POTENTIAL MINING AREAS OF LEE COUNTY) (§34-1672) AMENDING AND RENUMBERING PERMIT REQUIRED (§34-1673); GENERAL POLICIES FOR APPROVAL AND OPERATION (§34-1674); APPLICATION FOR A GENERAL MINING PERMIT; ISSUANCE OF PERMIT (§34-1675); APPLICATION FOR A MINING OPERATION PERMIT (§34-1676); DURATION OF MINING PERMIT (§34-1677); RENEWAL OF PERMITS (§34-1678); ADDITIONAL PHASE APPROVALS (§34-1679); INSPECTIONS (§34-1680); SITE REQUIREMENTS (§34-1681); AMENDING AND RENUMBERING RESERVED PROVISIONS (§§34-1681 - 34-1710); AMENDING REQUIRED SPACES (§34-2020); MINIMUM DIMENSIONS GENERALLY (§34-2221); AMENDING AND RENUMBERING RESERVED PROVISIONS (§§34-3051 - 34-3100); DELETING DIVISION 38 (TELEPHONE BOOTHS AND PAY PHONE STATIONS; DELETING LOCATION (§34-3070); DELETING LIGHTING AND SIGNAGE (§34-3071); RENUMBERING DIVISION 38 (USE, OCCUPANCY AND CONSTRUCTION REGULATIONS); AMENDING NUMBER OF PRINCIPAL BUILDINGS ON LOT (§34-3102); RENUMBERING DIVISIONS 40 THRU 42 AS 39 THRU 41; AND

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

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

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

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

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

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

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

WHEREAS, the Land Development Code Advisory Committee has reviewed the proposed amendments to the Code and recommended modifications as indicated; and

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on May 14, 2003, and recommended their adoption; and

WHEREAS, the Local Planning Agency reviewed the proposed amendments on May 28, 2003, and found them consistent with the Lee Plan, as indicated.

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

SECTION ONE: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 2

Lee County Land Development Code Chapter 2, Article XI is amended to read as follows with strike through identifying deleted language and underline identifying additional language:

[NOTE: UNLESS NOTED TO THE CONTRARY, THE FOLLOWING AMENDMENTS ARE ENDORSED BY STAFF AND LDCAC.]

CHAPTER 2

ARTICLE XI. HURRICANE PREPAREDNESS

Sec. 2-485. Impact mitigation.

(a) **No change**

(b) *Shelter Impacts.* One or a combination of the following options may be used to address the impacts on the hurricane shelter program precipitated by the proposed residential development except for those residential developments listed in section (5) below. The division will determine acceptability and appropriateness of the type of mitigation proposed.

(1) **No change**

(2) *Donate use of private structure.* A donation of the use of a private structure must meet the following minimum criteria:

a. **No change**

b. The structure must be constructed and capable of use as a primary public hurricane shelter. Specifically, the structure must be:

- i. elevated to the anticipated landfalling category three flood level; and
- ii. constructed to withstand winds of at least ~~110~~ 130 miles per hour according to the Florida Building Code; and equipped with emergency power and potable water supplies;
- iii. constructed with a minimum of exterior glass, with all glazed openings provided with impact protection in accordance with the Florida Building Code; and while providing adequate protection by shutters or boards for any glass used;
- iv. equipped with emergency power and potable water supplies; and;
- v. have adequate ventilation, sanitary facilities and first aid equipment.

c. **No change**

(3) **No change**

(4) *On-site shelter.* Provision of an on-site shelter must meet the following minimum criteria:

a. & b. **No change**

c. The structure must be:

- i. elevated to the anticipated landfalling category three flood level; and
- ii. constructed to withstand winds of at least ~~110~~ 130 miles per hour for an essential facility—according to the Florida Building Code; and equipped with emergency power and potable water supplies;

- iii. ~~constructed either with exterior glass meeting STTD 12-97 standard (or equivalent) or with a minimum of exterior glass while providing adequate protection by shutters; with all glazed openings provided with impact protection in accordance with the Florida Building Code; and~~
- iv. equipped with emergency power and potable water supplies; and
- v. have provided with adequate ventilation, sanitary facilities and first aid equipment.

d. & e. No change

(5) Health Care Facilities - Group I (Nursing and personal care facilities) and Group II (skilled nursing care facilities and hospices) and assisted living facilities with 17 or more beds.

- a. The facility must be located outside the coastal high hazard area.
- b. Facilities located within the category 2 or 3 landfalling storm surge areas must construct sufficient hurricane shelter space for its residents meeting the construction standards set forth in either Sec. 2-485 (b)(2)b or Sec. 2-485(b)(4)c. This requirement may not be satisfied by payment in lieu of constructing the shelter.

(c) No change

(d) *Mitigation options that will address both shelter and evacuation impacts:* One or a combination of the following options will constitute full mitigation of both shelter and hurricane evacuation impacts for residential development, with the exception of those residential developments listed in Sec. 2-485(b)(5)b:

(1) & (2) No change

(e) No change

SECTION TWO: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 6

Lee County Land Development Code Chapter 6, Articles II and IV are amended to read as follows with strike through identifying deleted language and underline identifying additional language:

CHAPTER 6

Article II. CODES AND STANDARDS

Division 3. Building Code

Sec. 6-113. Compliance with outdoor lighting standards.

All building permits must comply with the requirements of section 34-625 of the Land Development Code.

Secs. 6-114-6-210. Reserved.

[NOTE: THE FOLLOWING AMENDMENT to Section 6-408 IS TIME URGENT AND NECESSARY TO MAINTAIN THE FEMA COMMUNITY RATING.]

Article IV. FLOOD HAZARD REDUCTION

Division 1. Generally

Sec. 6-408. Basis for establishing areas of special flood hazard.

The areas of special flood hazard established by this article are those identified by the Federal Emergency Management Agency (FEMA) in its flood hazard boundary Map FHB No. H-12-071-0000, dated October 30, 1970, and any revisions thereto, are adopted by reference and declared to be a part of this article. The flood insurance study for the unincorporated areas of the county, and any revisions thereto, dated June 15, 1984, with accompanying flood insurance rate maps, and any revisions thereto, is hereby adopted by reference and declared to be a part of this article. Flood Insurance Rate Map for the unincorporated areas of Lee County, Florida and the underlying Community Panels as revised and adopted by FEMA through May 5, 2003.

SECTION THREE: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 10

Lee County Land Development Code Chapter 10, Articles I, II, III and IV are amended to read as follows with strike through identifying deleted language and underline identifying additional language:

CHAPTER 10

ARTICLE I. IN GENERAL

Sec. 10-1 Definitions and rules of construction.

~~Unified control document means a notarized statement evidencing a property owner's or entity's right and authority to impose covenants and restrictions on the parcel or otherwise bind the property with respect to conditions necessary to secure the approval requested. A notarized statement submitted to the county establishing a property owner or entity's right and authority to impose covenants and restrictions on a parcel as a result of the issuance of development~~

approval in accordance with this Code. The unified control document also constitutes an agreement that the property owner will not transfer, convey, sell or subdivide the subject parcel unencumbered by the covenants and restrictions imposed as part of the development order permitting process.

No further changes to Sec. 10-1

Sec. 10-7 General Requirements.

(a), (b), and (c) **No change**

(d) Estero Planning Community: All applications for Development Orders and Type 1, 2, 8, 10, and 12 Limited Review Development Orders requested within the Estero Planning Community must submit evidence of compliance with the following requirement of Section 34-1042 of this code:

The owner or agent for any of the referenced Development Orders must conduct one public informational session within the Estero Planning Community where the agent will provide an overview of the project for interested citizens. This meeting must be conducted before the application is submitted. The applicant is fully responsible for providing the meeting space and providing security measures as needed. Subsequent to this meeting, the applicant must provide County staff with a meeting summary document that contains the following information: the date, time and location of the meeting; a list of attendees; a summary of the concerns or issues that were raised at the meeting; and, a proposal for how the applicant will respond to any issues that were raised.

Renumber (d), (e) and (f) as (e), (f) and (g).

(h) Improvements constructed pursuant to a development order may not be placed into service or otherwise used until the required certificate of compliance has been issued for the development order.

(i) During development and construction activities, the developer must take every reasonable precaution to avoid undue noise or activities that might cause unreasonable impacts or nuisance to adjacent properties. If, in the director's opinion, construction activities could be, or are, generating noise, nuisance, or other adverse impacts that may unreasonably affect adjacent properties, he may establish reasonable working hours or other conditions for construction activities as a condition of the development order. If the stipulated working hours or conditions are violated, a stop work order may be issued until the conditions are mitigated.

No further changes to Sec. 10-7

Sec 10-8. Specific Requirements.

(1) -(14) Unchanged.

- (15) Outdoor Lighting. All outdoor lighting must be designed and maintained to curtail and reverse the degradation of the night time visual environment by minimizing light pollution, glare, and light trespass through the form and use of outdoor lighting; and to conserve energy and resources while maintaining night-time safety, utility, security and productivity.

No further changes to Sec. 10-8

Article II. ADMINISTRATION

Division 2. Development Orders

Subdivision II. Procedures

Sec. 10-121. Transfer.

A development order runs with the land and is transferable to the subsequent owner of the property covered by the development order. In order for a subsequent owner of property that is covered by a development order to ensure that the development order file is current, the new owner of the property must submit the following documents:

- (1) A recorded deed or current title opinion to prove ownership of the property.
- (2) A list of all owners of the property.
- ~~(3) A notarized statement of ownership or unified control for the entire development.~~
- ~~(4)~~ (3) A notarized statement, signed by the property owner designating the individual or firm that is authorized to act on behalf of the owner on all matters pertaining to the development order: applicant, under oath, that he is the authorized representative of the owner(s) of the property and has full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of the issuance of a development order in accordance with this code. The signed statement also constitutes an acknowledgment that the property will not be transferred, conveyed, sold or subdivided unencumbered by the covenants and restrictions imposed as part of the development order.

No further changes to Sec. 10-121

Subdivision III. Submittals

Sec. 10-153. Application form and contents.

The application form for development order approval may be obtained from the department of community development. At a minimum, the following information must be included in any application form for a development order:

(1) A statement signed by the applicant, under oath, that he is the authorized representative of the owner(s) of the property and has full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of the issuance of a development order in accordance with this code. The signed statement also constitutes an acknowledgment that the property will not be transferred, conveyed, sold or subdivided unencumbered by the covenants and restrictions imposed as part of the development order.

(+ 2) Owner, applicant and developer information.

a. thru d. **No change**

e. ~~The name of all persons or entities having an ownership interest in the property, including the names of all stockholders and beneficiaries of trusts. Disclosure with respect to a beneficial ownership interest in any entity registered with the federal securities exchange commission or registered pursuant to Chapter 517, whose interest is for sale to the general public, is exempt from the provision of this subsection.~~

f. A listing of the professional consultants employed in preparing the application or submitted documents. The names, addresses and telephone numbers shall be provided for consultants such as but not limited to architects, engineers, attorneys, landscape architects, planners, surveyors.

RENUMBER (2) thru (5) as (3) thru (6)

Sec. 10-154. Additional required submittals.

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

~~(1) Letter of authorization. If the applicant is not the owner, a notarized letter signed by the owner of the property authorizing the applicant to submit and be responsible for the application.~~

~~(2) Ownership and unified control. A notarized statement of ownership or unified control document.~~

RENUMBER (3) thru (8) as (1) thru (6)

(97) *Proposed development plan drawings.* Proposed development plan drawings showing at a minimum the following:

(a) thru (k) **No change**

- I. Landscaping and buffering. A landscaping plan shall must be submitted showing not less than the required open space and buffer areas, and including:

1. thru 3. **No change**

4. All proposed signs ~~and exterior lighting.~~

5. **No change**

- m. thru r. **No change**

- (8) Exterior Lighting Plan, Photometrics and Calculations. An exterior lighting plan and photometric information must be submitted. The plan and photometric information must be provided in full compliance with Section 34-625 of the Land Development Code and must demonstrate compliance with all standards and criteria specified therein.

RENUMBER (10) - (27) as (9) - (26).

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) thru (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. thru d. **No Change**

- e. No new road rights-of-way or road easements or upgrading of road rights-of-way or road easements to minimum standards contained in this chapter is 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.~~

- (5) thru (7) **No Change**

- (8) An excavation or mining operation ~~which that~~ is subject to chapter 34, sections 34-1651 through 34-1682~~1~~ and ~~which that~~ received a general excavation permit, or a renewal permit, from the Board of County Commissioners after August 1, 1984.

- (9)–(12) **No change**

Sec. 10-183 Final inspection and certificate of compliance.

(a) thru (e) **No change**

(f) Improvements constructed pursuant to a development order may not be placed into service or otherwise utilized until the required certificate of compliance has been issued for the development order. This provision does not apply to redevelopment of existing developments that previously received a certificate of compliance.

No further changes to Sec. 10-183

Division 5. Plats

Sec. 10-211. Required.

All subdivisions as defined in this chapter are required to have a plat of the parcel of land containing the subdivision, showing all of the information required by F.S. ch. 177, pt. I, by this chapter and by any adopted administrative code, approved by the county and recorded in the official records of the county, prior to the approval of any building permits. Building permits may be issued for model buildings and sales centers prior to recording of the plat, subject to evidence of a unified control agreement and provided that any certificate of occupancy issued is for model or sales use only, until the plat has been recorded. Plats are not required for lot splits granted under the limited review process.

Sec. 10-217. Lot recombinations.

The director of development review may permit the combination or recombination of up to three lots of record provided the resulting lots comply with chapter 34, the Lee Plan, and all other applicable provisions of this chapter.

(1) *Application.* The application for a lot recombination must be made in writing on the form provided by the division of development review and must include:

a. thru c. **No change**

d. ~~A notarized unified control document or a notarized statement of agreement for the lot recombination if co-applicants are applying for the recombination;~~ A statement signed by the applicant, under oath, that he is the authorized representative of the owner(s) of the property and has full authority to secure the approval(s) requested must be included with the application.

e. thru g. **No change**

(2) thru (4) **No change**

Article III. DESIGN STANDARDS AND REQUIREMENTS

Division 1. Generally

Sec. 10-253. Consideration of soil conditions and flood hazards.

No development plan ~~shall~~ will be approved unless the developer submits substantial and competent evidence that all lands intended for use as development sites can be ~~used~~ safely developed ~~and for building purposes~~ without undue danger from flood or adverse soil or foundation conditions. The following standards ~~shall~~ must also be adhered to, as applicable:

- (1) In order to utilize property located within the 100-year floodplain, or property which is subject to inundation from overland flow on an average of once every five years or more frequently, the developer ~~shall~~ must submit a plan for adequate flood protection. Such lands ~~shall~~ may be developed or subdivided only after proper provisions are made for protection against flooding of sewage systems and building areas intended for human occupancy. The first habitable floor elevation ~~shall~~ must be a minimum of 18 inches above the street centerline elevation but in no case less than seven feet above mean sea level.
- (2) ~~An engineer shall~~ The developer must provide a plan prepared and sealed by a professional engineer to compensate for any loss of flood storage due to the filling of an area within the floodplain or flow-way in accordance with South Florida Water Management District criteria.
- (3) Approval of plans for flood protection does not constitute a representation, guarantee or warranty of any kind by the county or any officer or employee as to the practicality or safety of any flood protection measure. Likewise, approval of such plans ~~shall~~ does not create no any liability upon or cause of action against such public body, officers or employees for any damage that may result pursuant thereto. ~~The applicant shall execute a waiver and release of any and all liability of the county regarding the applicant's flood protection plan.~~
- (4) Properties which exhibit soils, hydrology and vegetation characteristic of saltwater inundation or freshwater ponding ~~shall be~~ are subject to chapter 14, article IV, pertaining to wetlands protection.
- (5) Land affected by chapter 6, article III, pertaining to coastal zone protection, ~~shall~~ must have the control line depicted on the site plan and the plat. When lots are created using land seaward of the control line to comply with lot area requirements, the lots ~~shall~~ must possess adequate buildable area landward of the line.

No further changes to Sec. 10-253

Sec. 10-256. Bikeways and pedestrian ways.

- (a) **No change**

(b) *Provision of off-site bikeways and pedestrian ways.*

(1) **No change**

(2) *Off-site facilities.*

- a. Off-site facilities shown on the bikeways/walkways facilities plan. The developer must construct a bikeway or pedestrian way in the public road right-of-way if the subject property abuts a street shown on the plan.

Note: The developer may choose to construct the facility outside the public road right-of-way on his own property. If the developer opts to construct the facility across the property in this manner, the easement must be at least two feet wider in width than the bikeway or pedestrian way and perpetually open to the public.

b. *Off-site facilities; other.*

1. When any portion of the property to be developed is located within one-quarter mile (as measured along the principal perimeter street) of a collector or arterial road shown on the plan as requiring either a bikeway or pedestrian way, or within a quarter mile (as measured along the principal perimeter street) of an existing facility, the developer must construct a similar facility within the existing road right-of-way from the subject property to the existing or proposed facility. This section will not require the purchase of right-of-way or easements where none exist and will only apply where the required new facility can be constructed along a collector or arterial road.
2. When any portion of a proposed residential subdivision is located within one-quarter mile (as measured along the principal perimeter street) of an existing or proposed pedestrian generator such as schools, parks, playgrounds, shopping centers or employment centers, or transit facilities, the developer must construct a bikeway or pedestrian way not less than 8 feet in width within the existing road right-of-way connecting the subdivision to the pedestrian generator. This section will not require the purchase of right-of-way or easements where none exist and will only apply where the required new facility can be constructed along a collector or arterial road.
3. In instances where a proposed development is within one-quarter mile of a collector or arterial road shown on the plan as requiring a bikeway or pedestrian way and is also within one-quarter mile of an existing facility in the opposite direction on the same principal perimeter street, only one connecting link will be required. The director of zoning and development services will determine which link would be most beneficial to the intent and purpose of this ordinance.
4. When any portion of the parcel located along an arterial or major collector is developed, sidewalk(s), or multi-use facility(ies) if depicted on the plan, are required. When any portion of a parcel along a minor collector or local street is developed with office or commercial uses, a sidewalk is required.

c. *Impact fee credit.* Upon county acceptance of the required off-site facility or a bond or other security assuring construction of the facility, the applicant will be entitled to road and/or park impact fee credits for off-site facilities beyond the abutting subject property boundaries as noted in subsections 10-256(b)(2)b.1., 2., and 3. only.

(3) **No change**

(4) *Time of construction.* All off-site bikeways and pedestrian ways must be constructed prior to issuance of a certificate of compliance for the infrastructure of the development unless the developer posts a bond or other surety acceptable to the county as assurance of completion of the improvements. As an alternative to posting surety, the director has the discretion to accept a phasing plan that will provide for the continuous extension of the sidewalk facility and establish a bona fide construction schedule for the off-site facility prior to issuance of any building permit for vertical construction on property adjacent to the proposed facility. The county will not require construction of the bikeways or pedestrian way where the right-of-way is scheduled for improvement within two years pursuant to the current CIP and the right-of-way improvement would result in the destruction of the facility.

(c) thru (f) **No change**

Division 2. Transportation, Roadways, Streets and Bridges

Sec. 10-285. Connection Separation.

(a)-(f) **No change**

(g) Approval of connection locations along multi-lane divided roadways, or along roadways that the director of transportation has verified will be multi-lane divided roadways, does not guarantee that the connection is permitted a crossover through the median divider. In these instances, access approval of the median opening or turning movement will be determined on a case-by-case basis. The purpose of this subsection is to make it clear that even though a parcel may be entitled to access to the County road system, there is no entitlement to a median opening or left-in movement in conjunction with an approved access point.

(h)-(i) **No change**

(j) The County retains the right and authority to modify or restrict access, turning movements, median openings and use of traffic control devices on or affecting County rights-of-way as it deems necessary to address operational and safety issues. This provision is applicable to existing as well as future development in Lee County. No deviation or variance may be granted from this subsection.

No further changes to Sec. 10-285

Sec. 10-298. Controlled access roads.

(a) & (b) **No change**

(c) Vested right. Adoption of a controlled access road resolution does not guarantee, create or vest, in any property owner, a right or property interest with respect to the designated access points, median openings or turning movements. Approval for construction of a new, or use of an existing, access point, median opening or turning movement is reserved to the County. County approval will be based upon facts and circumstances applicable to the request at the time the application for development order or permit approval is submitted. No deviation or variance may be granted from this subsection.

(ed) *Amendment to controlled access road resolutions.*

No change

(de) *Applicability of section.*

No change

Division 3. Surface Water Management.

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

Excavation Type	Excavated Materials Destination	Permits/Approvals Required ¹
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	<ol style="list-style-type: none"> 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	<ol style="list-style-type: none"> 1. 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" 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, etc. where the material to be moved off-site qualifies as "Surplus material"	ON-SITE	<ol style="list-style-type: none"> 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	<ol style="list-style-type: none"> 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 10 % or more of the total material to be excavated, whichever is less	<ol style="list-style-type: none"> 1. Development Order; and 2. SFWMD permit; and 3. either a) an approved "Excess Spoil Removal Plan"; OR b) Planned Development Zoning with "mining" 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	<ol style="list-style-type: none"> 1. Planned Development Zoning with "mining" listed as an approved use; OR a Special Exception for mining in the AG zoning District; and 2. Development Order; and 3. SFWMD permit; and 4. <u>an</u> Approved Excess Spoil Removal Plan

¹ The requirements for planned developments with zoning approvals and for special exception for a mining are specified in Chapter 34, Article VII, division 15, Subdivision II.

Sec. 10-329(c) No change

(d) *Standards.* All new excavations for water retention and detention are subject to the following standards:

(1)–(2) No change

(3) *Maximum controlled water depth.* Excavations for water retention or detention permitted under this section may not penetrate through impervious soil or rock layer that prohibits intermingling of various watery strata. The controlled water depth for water retention or detention excavations may not be greater than 12 feet unless the following criteria are met:

a. Excavation depth may exceed 12 feet, to a maximum of 20 feet, if the water depth does not penetrate impervious soil or rock layer. For all lakes deeper than 12 feet, a "Deep Lake Management Plan" must be submitted and approved prior to development order issuance. The Deep Lake Management Plan must address long-term management strategies and include, at a minimum, the following:

1. thru 3. **No change**

4. A post-construction bathymetric survey, sealed by a professional surveyor and mapper, must be submitted prior to certificate of compliance ~~for all lakes deeper than 12 feet.~~

b. and c. **No change**

[NOTE: EROC does not recommend adoption of subsection d. below]

d. A post-construction bathymetric survey, sealed by a professional surveyor and mapper, must be submitted prior to certificate of compliance for all lakes regardless of their depth.

e. If the excavation exceeds the maximum controlled water depth of 20 feet, the developer will be liable for a fine of two dollars (\$2.00) per cubic yard (in-situ measure) for each cubic yard of material excavated beyond the maximum controlled water depth. This remedy is in addition to other remedies for violations described in section 10-122.

10-329(d)(4)–(5) **No change.**

(6) *Test borings.* Test borings must be conducted in conformity with section 34-16775(b)(4),(5) when required by the director of zoning and development services.

10-329(d)(7) thru (9) **No change**

10-329(e) **No change**

Article IV. DESIGN STANDARDS AND GUIDELINES FOR COMMERCIAL BUILDINGS AND DEVELOPMENTS

Sec. 10-610. Site design standards and guidelines for commercial developments.

Purpose and intent: The purpose and intent of these provisions is to supplement and enhance existing regulations and to encourage the design of developments which will provide safe, convenient, and efficient access for vehicles while also providing safe, convenient, and efficient passage for pedestrians from the public right-of-way to the commercial building or development, and between buildings within the commercial development. It is further the purpose and intent of these provisions to require parking, lighting, and lighting fixtures to be designed, installed, and maintained in a consistent and coordinated manner for the entire site (including their out parcels) and integrated and designed so as to enhance the visual appearance and impact on the community. The development services director is hereby authorized to grant deviations from the technical standards in this sub-section, subject to the criteria set forth in section 10-104.

(a) **No change**

(b) *Lighting standards.* All outdoor lighting must comply with section 34-625 of the Land Development Code.

~~(1) Shielding. Lighting must be designed so as to prevent direct glare, light spillage or hazardous interference with automotive and pedestrian traffic on abutting streets and all abutting properties.~~

~~(2) Fixture height. Lighting fixtures may not exceed a maximum of 30 feet in height within the parking lot and a maximum of 15 feet in height within non-vehicular pedestrian areas. (See Illustration 3 below.)~~

Illustration 3 Reserved.

(c) thru (d) **No change**

SECTION FOUR: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 14

Lee County Land Development Code Chapter 14, Articles VII is amended to read as follows with strike through identifying deleted language and underline identifying additional language:

CHAPTER 14

Article VII. Clean Water Provisions

Sec. 14-471. Purpose and intent.

The purpose of this article is to provide clear guidance and regulation with respect to discharges into the Lee County Municipal Separate Storm Sewer System (MS4). In order to comply with the requirements of the Federal National Pollution Discharge Elimination System (NPDES) Permit, the county must establish regulations that will prohibit illicit discharges into the MS4 and provide sufficient means to monitor and enforce local discharge regulations.

It is the intent of this article to prohibit any illicit, inappropriate or harmful discharges into the MS4 or waters of Lee County.

Sec. 14-473. Prohibition.

Illicit stormwater and non-stormwater discharges into the MS4 are prohibited. Unless otherwise permitted, there are no discharges allowed to Lee County MS4 except uncontaminated stormwater runoff or one of the exemptions as listed in section 14-474.

Sec. 14-475. Definitions.

Best management practices (BMPs) means methods and practices used to control and manage stormwater runoff that have been determined most appropriate by state and federal agencies such as Florida Department of Environmental Protection and United States Environmental Protection Agency.

Construction site means a site where the land surface has been disturbed to accommodate development or redevelopment, as defined in this section. The act of soil disturbance is considered industrial activity for purposes of this article.

Development means an improvement to land, as that phrase is defined in section 10-1.

Discharge means any material, solid or liquid, that is conveyed, placed or otherwise enters the municipal separate storm sewer system. It includes, without qualification, the discharge of a pollutant.

Illicit discharge or *illicit stormwater discharge* means any discharge into the Lee County MS4 that is not composed entirely of stormwater, except discharges made in accordance with a county issued development order consistent with the Lee County MS4 permit, an independent NPDES permit, as a result of fire fighting activities or otherwise specifically exempted under this article.

Industrial activity development means those functions associated with an industrial site as defined herein.

Industrial site means a site directly related to manufacturing, processing or raw materials storage. This term includes, but is not limited to, industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling (including the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product) sites; refuse sites; sites used for the application or disposal of processed wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas for raw materials (including tank farms), and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater.

In accordance with NPDES standards found in 40 CFR § 122.26, "industrial site" also includes those facilities engaging in the following categories of "industrial" activity:

- (a) Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N;
- (b) Facilities classified as Standard Industrial Classifications (SIC) 20, 21, 22, 23, 24, 25, 26, 27, 28, 285, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 4221, 4222, 4223, 4224 and 4225;
- (c) Facilities classified as SIC 10 through 14 (mineral industry) including active or inactive mining operations (inactive mining operations are mining sites not being actively mined that have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation or possessing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim) and ore and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge stormwater contaminated by contact with, or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operation;
- (d) Hazardous waste treatment storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;
- (e) Landfills, land application sites, and open dumps that receive or have received any industrial wastes including those that are subject to regulation under subtitle D of RCRA;
- (f) Steam electric power generating facilities;

- (g) Transportation facilities classified as SIC 40, 41, 42, 43, 44, 45, and 5171 that have vehicle maintenance shops or equipment cleaning operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment clearing operations, or which are otherwise identified under § 122.26(b)(14)(i)-(vii) or (ix)-(xi), F.A.C., are associated with industrial activity;
- (h) Treatment works treating domestic sewage or any other sewage, sludge or wastewater treatment device or system, used in storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pre-treatment program under 40 CFR part 403. Not included are farm lands, domestic gardens, lands used for sludge management where sludge is beneficially reused (and not physically located in the confines of the facility) or areas that are in compliance with § 405 of the Federal Clean Water Act;
- (i) Any construction activity including clearing, grading and excavation activities except, operations resulting in the disturbance of less than ~~five~~ one acres of total land area that is not part of a larger common plan of development or sale;
- (j) Any construction activity including clearing, grading and excavation activities resulting in disturbance of less than ~~five~~ one acres where the property is part of a larger development that obtained approval after October 1, 1992, and was required to obtain an NPDES permit;
- (k) Facilities involved in the recycling of materials including metal scrap yards, battery reclaimers, salvage yards, and automobile junk yards, including but not limited to those classified as SIC 5015 and 5093.

MS4 means Lee County Municipal Separate Storm Sewer System.

NPDES means National Pollution Discharge Elimination System. Lee County's NPDES MS4 permit number is FLS000035.

Site means the physical real property, with or without structures, where development or other types of activity involving the real property may result in stormwater runoff.

Standard Industrial Code (SIC) means a class of industrial activity as specified in the Standard Industrial Classification Manual, 1987 edition.

Street wash water means any runoff from the washing of streets, culverts or other MS4 facilities operated and maintained by Lee County.

Stormwater discharge means the discharge from any conveyance used for collecting and conveying stormwater.

Stormwater Pollution Prevention Plan (SWP3) means a document as defined in 40 CFR 122.26 prepared by a professional engineer registered in the State of Florida (construction

site SWP3s must also be prepared in accordance with DEP Document No. 62-621) outlining the means and methods of managing stormwater onsite using BMPs.

Water Quality Criteria means minimum water quality standards as defined in the Surface Water Quality Standards of Chapter 62-302, F.A.C.

Sec. 14-476. Industrial activity.

- (a) *Industrial activity classification.* For purposes of this article all industrial activity falls into one of two major categories:
- (1) Construction related activity. ~~†~~This includes sites of new development or significant redevelopment falling within the industrial activity categories (i) and (j), as set forth in section 14-475.
 - (2) On-going industrial activity. ~~†~~This includes sites that encompass uses or activities that are identified in industrial activity categories (a--h) and (k), as set forth in section 14-475.
- (b) *Construction site runoff.* Compliance with this subsection applies to all construction associated with an industrial activity category, identified in section 14-475, that is not complete prior to ~~July 1, 1998~~ July 1, 2003. Projects under construction on ~~July 1, 1998~~ July 1, 2003 or beginning construction thereafter must comply with the requirements set forth in this section.

All development approvals, including development orders and building permits, must address stormwater quality issues, including construction runoff, as follows:

- ~~(1)~~ For ~~Ø~~development of five acres or more than one acre.
- ~~a-~~(1) Submit an SWP3 for construction meeting the criteria set forth in section 14-477, prior to development order approval. If a development order is not required, then the SWP3 must be submitted prior to building (or vegetation removal) permit issuance. At the discretion of the director of development services, an affidavit or certification from a Florida licensed professional engineer may be submitted, prior to start of construction activity, attesting that the SWP3 for construction has been prepared in accordance with section 14-477 and will be on site and available for review during all phases of construction;
- ~~b-~~(2) Maintain a copy of the SWP3 on site at all times for review by the county; and
- ~~c-~~(3) File a notice of intent (NOI) ~~with the EPA,~~ with FDEP, Tallahassee in accordance with the direction of DEP Document No. 62-621 and with development services at least 48 hours prior to start of construction.
- ~~(2)~~ Development of one to five acres.

- a. ~~File NOI with the EPA and Development Services at least 48 hours prior to start of construction;~~
- b. ~~If a development order is necessary, submit a SWP3 for construction meeting the requirements of section 14-477 prior to development order approval or as otherwise provided in subsection (1)a. above; and~~
- c. ~~In the event the site is part of a larger project and the current construction requires only a building permit (i.e., residential subdivision), then the developer must submit a construction SWP3 (or copy of the SWP3 for the entire project) prior to building permit approval or as otherwise provided in subsection (1)a.~~

(c) *Industrial site runoff.*

(1) and (2) **No change**

(3) *Industrial activity beginning after July 1, 1998.* All sites proposing to engage in industrial activity categories, as set forth in section 14-475, that are required to hold a valid NPDES permit for either the discharge of stormwater or regulated industrial activity, other than stormwater discharge, must provide copies of the permit and SWP3 for site operation to the ~~environmental services division,~~ nNatural Resources section, Division for review upon receipt from the EPA or FDEP, as appropriate. If a permit is required for both stormwater discharge and site activity, one permit encompassing both activities is sufficient.

(4) **No change**

Sec. 14-477. Stormwater pollution prevention plan (SWP3) criteria.

For purposes of this article, all SWP3s must:

- a. Comply with the requirements of 40 CFR 122.4426;
- b. Use best management practices for sediment and erosion control as outlined in the Virginia Erosion Sediment Control Manual, the Manual for Erosion Control and Sediment Control in Georgia, the Florida Land Development Manual or a similar quality guidance manual;
- c. Be prepared by a Florida licensed professional engineer in accordance with DEP Document No. 62-621; and
- d. Remain on site and be available for review during all phases of construction and, if required, during on-going operations activity.

Sec. 14-478. Monitoring.

Lee County Department of Community Development may, at the request of ~~Environmental Services~~ Natural Resources Division, require high risk runoff facilities to provide annual monitoring reports as a condition of development order approval or continued operation. Data collected by the facility to satisfy monitoring requirements for a NPDES or state discharge permit may be used to satisfy this requirement. At minimum the monitoring report must include quantitative data on the following constituents:

(a) thru (j) **No change**

Sec. 14-479. Enforcement.

- (a) *Responsibility.* Lee County ~~Environmental Services~~ Natural Resources Section Division and Lee County Code Enforcement are responsible to coordinate the enforcement of this article with the South Florida Water Management District (SFWMD), Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP). In order to facilitate enforcement, ~~environmental services'~~ Natural Resources' staff has full authority to act as a code enforcement officer or inspector, as those terms are defined in LDC sections 2-423 and 2-430.
- (b) *Procedure.* Any violation of this article may result in prosecution by any of the methods or procedures set forth below, or by any combination of these procedures. The choice of procedure rests within the reasonable discretion of the director of public works, based upon the nature of the violation, the number of previous violations, and the magnitude of the violation and its threat to the public health, safety and welfare.
- (1) *Hearing examiner.* Any violation of this article may be prosecuted in accordance with the provisions found in chapter 2, article VII.
- (2) *Administrative shut down.*
- a. If ~~environmental services'~~ Natural Resources' staff documents competent proof that the discharge from a specific activity or industrial site falls below the NPDES approved level ~~does not meet minimum water quality criteria as defined in the Surface Water Quality Standards of Chapter 62-302, F.A.C., or site specific permit levels~~, staff will notify the owner/operator in writing and provide no more than 14 days to return the site to minimum discharge standards or be ordered to shut down.
 - b. If the owner/operator fails to remedy the substandard discharge violation, the director of public works may order the facility to shut down. The director's order must be in writing and set forth the basis for the decision to shut the facility down. A copy of the order will be provided to the owner/operator by hand delivery, certified mail or any other legal means of delivery.
 - c. Once the facility is shut down, it cannot reopen without the prior written approval of the director of public works. Approval is appropriate only where the owner/operator can demonstrate by substantial competent proof that the

operation will meet minimum NPDES discharge water quality standards or site specific permit levels.

(3) thru (5) **No change**

(c) **No change**

SECTION FIVE: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 30

Lee County Land Development Code Chapter 30, Articles I, II and IV are amended to read as follows with strike through identifying deleted language and underline identifying additional language:

CHAPTER 30 SIGNS

Article I. IN GENERAL

[NOTE: THE FOLLOWING PROPOSED CHANGES TO THE SIGN REGULATIONS WERE DISCUSSED AT THE SEPTEMBER MEETING AND ARE NOT SUPPORTED BY THE LDCAC OR BY COUNTY STAFF:]

Sec. 30-5. Prohibited signs.

The only commercial advertising signs permitted in the county, are those expressly authorized by the provisions of this chapter. The following types of signs are prohibited, but this enumeration does not limit the general prohibition set forth in this subsection:

(1) thru (15) **No change**

(16) Portable signs, except as permitted in sections 30-6 or 30-151(1)b or 30-151(7).

(17) **No change**

(18) Roof signs as defined in this chapter, except where allowed by section 30-6 or 30-151(7).

(19) thru (25) **No change**

Article II. ADMINISTRATION AND ENFORCEMENT

Sec. 30-54. Permits; inspection.

(a) thru (f) **No change.**

(g) For inflatable signs, a copy of flame retardant certificate (fabric) must be attached to the sign permit.

No further changes to Sec. 30-54

Article IV. RESTRICTIONS BASED ON LOCATION

Sec. 30-151. Temporary signs.

The following types of temporary signs that are in compliance with the regulations set forth in their indicated sections will not be required to obtain sign location permits:

- residential construction signs, subsection (2)c. of this section;
- political or campaign signs, subsection (4) of this section; and
- real estate signs, subsection (6) of this section.

The following types of temporary signs are permitted in all zoning districts subject to the following regulations.

(1) thru (6) **No change**

(7) *Special occasion signs.*

a. Temporary on-site signs may be issued for special occasions such as holidays (other than Christmas and Hanukkah which are addressed in section 30-6), car, boat or craft shows, carnivals, parking lot sales, annual and semiannual promotions or other similar events, provided that:

1. A special occasion sign permit is issued by the building official;
2. The special occasion sign permit is issued for a period of time not to exceed 15 days; or may be extended to run concurrent with the special event permit;
3. Special occasion signs defined as animated, balloon, emitting, figure structured, motion picture signs, must be approved by the director of community development: ~~The director's decision is discretionary and is not subject to appeal;~~ and
4. No business may be permitted more than ~~two~~ six special occasion permits in any calendar year;

b. thru d. **No change**

[PROPOSED AMENDMENTS TO CHAPTER 30 "SIGNS" REQUESTED BY THE ESTERO PLANNING COMMUNITY TO CREATE SECTIONS 30-400 THROUGH 30-406. ALSO NOTE: THIS VERSION INCLUDES STRIKE-THRU TO ILLUSTRATE HOW EXISTING LANGUAGE IS BEING MODIFIED FOR THE BENEFIT OF PERSONS REVIEWING THE PROPOSED AMENDMENT. THE STRUCK-THRU LANGUAGE WILL NOT BE SHOWN IN THE FINAL ORDINANCE.]

ARTICLE VI. ESTERO SIGN OVERLAY DISTRICT

Sec. 30-400. Purpose of article.

The purpose and intent of this article is to modify and supplement the this chapter to protect and preserve the character and appearance of the Estero Planning Community.

Sec. 30-401 Definitions. The following definitions are in addition to the definitions set forth in Section 30-2(b).

Freestanding sign is a sign that is permanently affixed in or upon the ground, supported by one or more structural members, with air space between the sign and the ground space.

Monument sign or monument-style sign is a freestanding or ground sign, the structural base of which is on the ground. The height of the base must not exceed 24 inches above the adjacent ground. The average width of the sign structure must exceed the total height of the sign structure. The width of the top of the sign structure must not exceed 120 percent of the width of the base. The face of sign area for a monument sign is measured as a rectangle enclosing the entire width and height of the sign structure.

Pole sign is a freestanding sign composed of a single, double, or multiple pole or support structure, that is not a solid monument-style support, which pole is in excess of twelve (12) inches in height.

Pylon sign is a ground sign having a vertical dimension greater than its horizontal dimension.

Sec. 30-402 Applicability of article; conflicting provisions.

This article is adopted as an addendum to the general sign ordinance of the county set out in articles I through IV of this chapter. The provisions of articles I through IV of this chapter remain in full force in the Estero Planning Community. In the case of conflicts between provisions of this article and other provisions of this chapter, the more restrictive will control.

Sec. 30-403 Non-conforming signs.

[Section 30-55 "Nonconforming signs" is amended to read as follows:]

- (a) *Status of signs deemed non-conforming.* Every sign, except billboards, as of [the effective date of this article (insert adoption date of this ordinance)] ~~the ordinance from which this chapter is derived, which is a permitted legally existing sign that was constructed or is in place with a valid~~

~~permit from the county shall but that does not comply with the provisions of this article, is be 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 legal nonconforming signs shall will be subject to the provisions of this subsection (b). All existing signs which are not legal nonconforming signs must comply with the terms of this chapter.~~

Delete: (a)(1) thru (4)

Delete: (b)

(b) Removal. All legal nonconforming signs must be altered, moved, or removed to conform with the requirements of this article within eight (8) years of [the effective date of the ordinance from which this article is derived (insert adoption date of this ordinance)].

Sec. 30-404. Prohibited signs.

[Section 30-5 “Prohibited Signs” is amended to read as follows:]

(1) thru (4) no changes

(5) ~~Animated signs as defined in this chapter, except where allowed by sections 30-6 or 30-151(7).~~

(6) ~~Emitting signs as defined in this chapter, except where allowed by sections 30-6 or 30-151(7).~~

(7) ~~Balloons, including all inflatable air signs or other temporary signs that are inflated with air, helium or other gaseous elements, except where allowed by sections 30-6 or 30-151(7).~~

(8) ~~Banners, pennants or other flying paraphernalia, except an official federal, state or county flag, and one symbolic flag not to exceed 15 square feet in area for each institution or business, or except where allowed by sections 30-6 or 30-151(7)~~30-405.

(9) no change

(10) ~~Billboards, except as permitted in section 30-183.~~

(11) ~~Changing sign (automatic): off-site and on-site in residential areas only. including~~ electronic changing message centers

(12) ~~Figure-structured signs as defined in this chapter., except where allowed by sections 30-6 or 30-151(7).~~

(13) thru (24) no change

(25) Pole signs.

(26) Pylon signs.

(27) Off-site directional signs.

Sec 30-405 Temporary signs

[(a) Sec 30-151 "Temporary signs," subsection (7) *Special occasion signs* is amended to read as follows:]

(7) Special occasion signs.

a. Temporary on-site signs may be issued for special occasions such as holidays (other than Christmas and Hanukkah, which are addressed in section 30-6), ~~car, boat or craft shows,~~ carnivals, parking lot sales, annual and semiannual promotions or other similar events, provided:

1. A special occasion sign permit is issued by the building official;
2. The special occasion sign permit is issued for a period of time not to exceed 15 days;
3. ~~Special occasion signs defined as animated, balloon, emitting, figure structured, or motion picture signs, must be approved by the director of community development. The director's decision is discretionary and is not subject to appeal; and~~

~~4. No business may be permitted more than two special occasion permits in any calendar year; and~~

~~4. Any business found in violation of the time limitation in 2., above, within a calendar year is not eligible to receive a temporary sign permit.~~

- b. Signs must be located on-site only and in such a manner as to not create any traffic or pedestrian hazard;
- c. Signs ~~animated, inflated or illuminated~~ by electricity must comply with all electrical and safety codes; and
- d. Signs must be constructed and secured in accordance with all applicable standards.

Sec. 30-406 Permanent signs in commercial and industrial areas.

[(a) Sec. 30-153 "Permanent signs in commercial and industrial areas," subsection (2) *Nonresidential subdivisions and multiple-occupancy complexes with more than five establishments*, sub-part "a" *Identification sign*, is amended to read as follows:]

a. *Identification sign.* A nonresidential subdivision or a multiple-occupancy complex of more than five establishments ~~shall~~ will be permitted one ~~ground-mounted monument-style~~ identification sign along any street which provides access to the property as follows:

1. Sign area. One (1) square foot of sign area per face shall will be permitted for every one (1) linear foot of frontage, provided that:

- i. Every parcel will be allowed one monument-style identification sign but no sign shall may exceed 200 square feet in area per sign face.
- ii. Only one monument-style identification sign shall will be permitted along any street frontage of less than 330 linear feet. A second monument-style identification sign may be permitted if the frontage along any one street exceeds 330 linear feet, provided that the total combined sign area of both signs does not exceed 300 square feet.
- iii. On corner lots, the developer may either place one monument-style identification sign on both streets providing access as stipulated in subsections (2)a.1.i and ii of this section, or he may place one sign in the corner with a total sign area based upon the total frontage of both streets provided the maximum sign area shall does not exceed 300 square feet per face.
- iv. Where a nonresidential subdivision has more than one entrance from the same street, one additional monument-style identification sign not exceeding 16 square feet in area, not illuminated, and displaying the name of the development only may be permitted at each additional entrance.

2. Except as provided in sub-section 4, below, the maximum height of any identification sign shall will be 24 feet.

3. Lighting

a. Permissible lighting. Except as provided in subsection (2)a.1.iv of this section, the monument-style identification sign may be illuminated with a steady light, but the sign shall not be animated by:

- i. Individual internally illuminated letters and logo on an unlit background;
- ii. Lighting behind the letters and logo that illuminates the sign background;
- iii. A combination of a. and b., above; or
- iv. Edge-lit letters using concealed neon or remotely lit fiber optics.

b. Prohibited lighting. Monument-style identification signs must not be animated and must not be illuminated by:

- i. Visible external floodlighting.
- ii. Exposed neon, unless integral to the architectural feature design.
- iii. Exposed raceways.

c. All electrical connections, wiring, etc., must be concealed.

4. Except as provided herein, monument-style identification signs shall must be set back a minimum of 15 feet from any street right-of-way or easement, and ten feet from any other property line. In no case shall will an monument-style identification sign be permitted between a collector or arterial street and a frontage road.

Exception: Where the building is within 15 feet of the street right-of-way or road easement the sign may be placed closer than 15 feet to the right-of-way or easement provided it does not project over any right-of-way or easement, the height does not exceed 7 feet, and the sign is not located within 10 feet of any overhead electrical supply.

5. All monument-style identification signs must display the street address of the property. Street numbers must measure between a minimum of four inches and a maximum of six inches, in height. The copy area of the street address will not be counted toward the allowable sign copy area.
6. Copy area may not exceed 75 percent of the total sign area and 25 percent of the sign area must be devoted to architectural features.
7. Signs identifying individual businesses must be easily read from the pedestrian level.
8. Signs must match the architectural style of the building or development.

SECTION SIX: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 34

Lee County Land Development Code Chapter 34, Articles I, II, VI, VII are amended to read as follows with strike through identifying deleted language and underline identifying additional language:

CHAPTER 34 ZONING

Article I. IN GENERAL

Sec. 34-2. Definitions

[NOTE: THE STAFF AND THE LAND DEVELOPMENT CODE ADVISORY COMMITTEE RECOMMEND NOT AMENDING THE DEFINITION of ANIMAL KENNEL. EROC RECOMMENDS AMENDING THE DEFINITION of ANIMAL KENNEL without the addition of “a fee or for”.]

Animal kennel means an establishment where more than four dogs or cats (except litters of ~~animals~~ dogs of not more than six four months of age) are kept, raised, bred, cared for or boarded for a fee or for others, excluding foster care givers who notify Lee County Animal Services and licensed pet sitters.

[NOTE: THE STAFF AND THE LAND DEVELOPMENT CODE ADVISORY COMMITTEE RECOMMEND AMENDING THE FOLLOWING DEFINITIONS.]

Planned development means a development that is designed and developed as a cohesive, integrated unit under ~~single ownership or unified control~~ which that permits flexibility in building siting, mixture of housing types or land uses, clustering, common functional open space, the sharing of services, facilities and utilities and protection of environmental and natural resources.

Single Management means that a single entity is responsible for the daily management and operation of the establishment or place of business.

~~*Telephone booth or pay telephone station* means a telephone installation made available for use by the general public for a fee, whether installed in an enclosed booth, attached to a pole, post or pedestal, or attached to a building. A telephone booth or pay telephone station is not an "essential service" or an "essential service facility", nor is it considered to be a "residential accessory use" under LDC section 34-622, use activity groups, subsection (c)(42).~~

~~*Unified control* means the unrestricted right of any owner or agent to enforce whatever conditions are set on the use and development of a parcel of land through the provisions of this chapter, by binding his heirs, assigns or other successors in title with covenants or restrictions on the development and subsequent use of the property.~~

~~*Unified control, covenant of* means the demonstration and documentation that an owner or agent has unified control over a piece of property and is competent and willing to bind his heirs, assigns or other successors in title in the public interest to whatever conditions are placed on the development and subsequent use of the property through the provisions of this chapter.~~

Unified control means that a single property owner or entity has been authorized by all owners of the property to represent them and to encumber the parcel with covenants and restrictions applicable to development of the property as approved by the county.

[NOTE: THE STAFF AND THE LAND DEVELOPMENT CODE ADVISORY COMMITTEE RECOMMEND ADDING THE FOLLOWING DEFINITIONS.]

Ambient light means light not emanating from the site, such as moonlight.

Artificial light or artificial lighting means the light emanating from any manmade device.

Average lighting means the sum of the calculated illuminance points on the photometric plan divided by the total number of calculated illuminance points within the site boundary. Sub-area averages, such as canopies, fuel pumps, telephone, drive thru, ATM, and the like, shall

only include points within that sub-area. Illuminance levels will be computed over developed portions of each site and specified adjacent land and do not include enclosed building pad areas. Time-averaged or other alternative methods of computing illuminance levels are not be permitted.

Back-lighting means the illumination of an awning, canopy or building roof, fascia, facade or through similar area by any type of lighting source from behind the fascia, facade or roof in order to be seen through those structures.

Bulb means the source of electric light. To be distinguished from the whole assembly (See luminaire).

Candela or cd means the fundamental photometric quantity, luminous intensity, as defined in The International System of Units (SI).

Canopy means any raised, protective cover such as, but not limited to, awnings, marquees, overhangs, porte cochere, and drive-thru's.

Cumulatively illuminated means illuminated by numerous artificial light sources.

Direct light means light emitted directly from the lamp, off the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

Existing outdoor lighting means a light fixture and support installed, or approved by the county to be installed, before the effective date of the outdoor lighting provisions (insert date of adoption).

Exterior lighting means temporary or permanent lighting that is installed, located or used in such a manner to cause light rays to shine outside. Fixtures that are installed indoors that are intended to light something outside or act to draw attention are considered exterior lighting.

Fixture means the assembly that holds the lamp in a lighting system. It includes the elements designed to give light output control, such as a reflector (mirror) or refractor (lens), the ballast, housing, and the attachment parts.

Flood or spot light means any light fixture or lamp that incorporates a reflector or refractor to concentrate the light output into a directed beam in a particular direction.

Footcandle means illuminance produced on a surface one foot from a uniform point source of one candela. Measured by a light meter.

Full cutoff means that a light fixture in its installed position does not emit any light, either directly or by reflection or diffusion, above a horizontal plane running through the lowest light-emitting part of the fixture. Additionally, the fixture in its installed position does not emit more than 10% of its total light output in the zone between (a) the horizontal plane through the lowest light-emitting part of the fixture and (b) 10 degrees below the horizontal plane (80 degrees above the vertical plane).

Fully shielded means that a light fixture is constructed so that in its installed position all of the light emitted by the fixture is projected below the horizontal plane passing through the lowest light-emitting part of the fixture.

High Pressure Sodium or HPS means a bulb that is filled with high pressure sodium vapor. HPS emits a yellow/orange light but color correct lamps are available.

Illuminance means density of luminous flux incident on a surface. Unit is footcandle.

Illuminating Engineering Society of North America or IESNA means the professional society of lighting engineers, including those from manufacturing companies, and others professionally involved in lighting.

Indirect light means direct light that has been reflected or has scattered off of other surfaces.

Lamp means the source of electric light; the component of a luminaire that produces the actual light; the bulb and its housing. This is to be distinguished from the whole assembly. (See luminaire).

Light Loss Factor or LLF means a percentage applied to the actual anticipated foot-candle levels of a fixture, that reduces the calculated light level output on the photometric plan to account for lower light level output from a fixture due to the age of the bulb, and dirt that occurs over time.

Light pollution means any adverse effect of artificial light emitted into the atmosphere, either directly or indirectly by reflection, including, but not limited to, light trespass, uplighting, the uncomfortable distraction to the eye, night blindness, or any manmade light that diminishes the ability to view the night sky or interferes with the natural functioning of nocturnal native wildlife.

Lighting means any or all parts of a luminaire that function to produce light.

Low Pressure Sodium or LPS means a bulb that is filled with low pressure sodium vapor, that has a nearly monochromatic spectrum. LPS emits light that is deep orange in color.

Luminaire means the complete lighting assembly including the lamp, the fixture and other parts, less the support assembly.

Lumen means a unit of light emission. For example, incandescent light bulbs with outputs of 60, 75 and 100 watts emit approximately 840, 1170, and 1690 lumens, respectively.

Mercury Vapor means a bulb that is filled with mercury gas under pressure. Emits a blue/white light. Mercury vapor lamps are now classified as hazardous waste.

Metal Halide or MH means a bulb that is filled with metal halides as well as argon gas and mercury vapor. MH emits a light that is white in color.

Non-essential lighting means lighting that is not necessary for an intended purpose after the purpose has been served. For example, lighting for a business sign, architectural accent lighting, and parking lot lighting, may be considered essential during business or activity hours, but is considered non-essential once the activity or business day has concluded.

Outdoor lighting means any outdoor artificial lighting device, fixture, lamp, or other similar device, permanently installed or portable, that is intended to provide illumination for either visibility or decorative effects. Vehicle lights and flashlights are not included in this definition.

Partially shielded means that the outdoor lighting fixture is constructed so that at least ninety percent of the light emitted by the fixture is projected below the horizontal plane of the lowest point of the fixture.

Photometrics means the display of the measurement of the quantities associated with light.

Recessed means a lamp built into a horizontal fixture or portion of a fixture, or into an outdoor ceiling or canopy so that the lamp is fully cut-off and no part of the lamp extends or protrudes beyond the underside of a fixture or portion of a fixture or structure.

Skyglow means illumination of the sky from artificial sources.

Uplighting means lighting that directly or indirectly projects light in such a manner as to shine light rays above the horizontal plane passing through the lowest point of a luminaire.

Article II. ADMINISTRATION

Division 2. Board of County Commissioners

[NOTE: THE FOLLOWING AMENDMENT TO SEC. 34-83(b) IS SUPPORTED BY STAFF, LDCAC AND EROC.]

Sec. 34-83. Functions and authority.

(a) **No change.**

(b) *Zoning actions.*

(1) *Function.*

- a. The Board of County Commissioners must hold public hearings (see sections 34-231 through 34-236) on the following applications: rezoning, extension and reinstatement of master concept plans, the special exceptions that meet the criteria for developments of county impact, appeals from decisions of the hearing examiner concerning wireless communications facilities, developments of regional impact, and any other action in conjunction with such applications.
- b. **No changes**

[NOTE: FOLLOWING ARE THREE ALTERNATIVES REGARDING APPEALS TO THE BOARD OF COUNTY COMMISSIONERS FROM HEARING EXAMINER DECISIONS. THESE CHANGES AFFECT SECTIONS 34-83, 34-145 AND 34-146. STAFF AND LDCAC RECOMMEND ALTERNATIVE 1 OR 3. EROC RECOMMENDS ALTERNATIVE 3.]

[Alternative 1]

Sec. 34-145. Functions and authority.

(a) Appeals from administrative action.

- (1) Function. The hearing examiner will hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, determination or action of any administrative official charged with the administration and enforcement of the provisions of this land development code or any other ordinance which that provides for similar review; provided, however, that:
 - a. No appeal to the hearing examiner may lie from any act by an administrative official pursuant to:
 1. An order, resolution or directive of the Board of County Commissioners directing him to perform such act; or
 2. Any ordinance or other regulation or provision in this Code which that provides a different appellate procedure.
 - b. The appeal to the hearing examiner must be in writing on forms provided by the hearing examiner, and must be duly filed with the hearing examiner within 30 calendar days, but not thereafter, after such act or decision by the administrative official. The appeal must specify the grounds for the appeal.
 - c. No appeal may be considered by the hearing examiner where it appears to be a circumvention of an established or required procedure. Specifically, in no case may an appeal be heard when the hearing examiner determines that the case should more appropriately be heard on a request for a variance.
 - d. Notices of hearings on appeals will be provided in accordance with the provisions of an applicable administrative code adopted by the Board of County Commissioners.
 - e. The hearing examiner will not consider appeals for challenges to a development order controlled by F.S. § 163.3215. ~~In cases of challenges to development orders controlled by F.S. § 163.3215, no suit may be brought and no verified complaint, as explained in F.S. § 163.3215(4), may be filed or accepted for filing until the development order giving rise to the complaint has become final by virtue of its having been issued by the director, or by virtue of its having been ordered by the county hearing examiner on an appeal~~

~~reversing the director's denial of the development permit or denial of a development order extension, or by the Board of County Commissioners in cases where the Board of County Commissioners has granted planned development zoning. Once a development order has been granted, the provisions of F.S. § 163.3215 will be the sole means of challenging the approval of a development order, as that term is defined in F.S. § 163.3164(6), when the approval of the development order is alleged to be inconsistent with the Lee Plan, in which case an action brought pursuant to F.S. § 163.3215 will be limited exclusively to the issue of comprehensive plan consistency.~~

- f. Except as may be required by F.S. 163.3215, and then only pursuant to that statute, a third party will not have standing to appeal an administrative action. Only the applicant or his agent will be permitted to appeal such administrative action as set forth in this section.

(2) *Considerations.*

- a. In reaching his decision, the hearing examiner must consider the following criteria, as well as any other issues ~~which~~ that are pertinent and reasonable:
 1. Whether appeal is of a nature properly brought to him for decision, or whether there is an established procedure for handling the request other than through the appeal process (i.e., a variance or special exception, etc.).
 2. The intent of the ordinance applied or interpreted.
 3. The effect the ruling will have when applied generally to this Code.
- b. Staff recommendations; and the testimony of the appellant ~~and testimony of the general public~~ must also be considered.
- c. Cases under this section will be handled as a de novo proceeding and all parties will be entitled to present evidence and testimony as to any law or fact supporting their position in the case.

- (3) *Findings.* Before granting any appeal, the hearing examiner must find that an error was made in the order, requirement, decision, interpretation, determination or action of the administrative official charged with the administration and enforcement of the provisions of this Code or other ordinance ~~which~~ that provides for similar review.

(4) *Authority.*

- a. In exercising his authority, the hearing examiner may reverse, affirm or modify any decision or action of any administrative official charged with the administration or enforcement of this chapter.
- b. Subject to the limitations set forth in subsection (a)(4)a. of this section, the hearing examiner may make a decision to take the appropriate action ~~which~~ that the hearing

examiner finds the administrative official should have taken. To that end, he has the powers of the administrative official from whom the appeal is taken.

- (5) Judicial review. Judicial review of final decisions of the hearing examiner with respect to administrative actions are to the circuit court in accordance with section 34-146.

(b) through (c) - No Change.

(d) *Zoning matters.*

- (1) *Functions.* Regarding zoning matters, the hearing examiner has the following prescribed duties and responsibilities:

a. **No change.**

b. Make recommendations to the Board of County Commissioners on applications relating to the following:

1. thru 6. **No change.**

7. Reinstatements of master concept plans for planned developments.

c. No change.

- (2) *Considerations.* In preparing his recommendation on any matter, the hearing examiner must consider the criteria set forth in subsection (c)(2) of this section as well as the following, if applicable:

a. thru c. **No change**

d. Whether the level of access and traffic flow (i.e. median openings, turning movements etc.) is sufficient to support the proposed development intensity.

(3) thru (5) **No change**

(e) **No change**

Sec. 34-146. Final decision; judicial review.

No Change.

[END OF ALTERNATIVE 1]

[ALTERNATIVE 2]

Sec. 34-83. Functions and authority.

(a) & (b) - No Change

(c) Appeals of Hearing Examiner Decisions on Appeals of Administrative Actions affecting Fire Impact Fee Regulation

(1) Function. The Board of County Commissioners may hear appeals from Hearing Examiner decisions on appeals of an administrative action related to fire impact fee regulation as follows:

- a. Any party may file a request to appeal such a decision of the Hearing Examiner within fifteen (15) calendar days after the decision is rendered.
- b. Requests for appeal must be in writing and state with particularity, the points of law or fact that the Hearing Examiner has overlooked or misunderstood.
- c. Requests for appeal must be filed with the Hearing Examiner's office. The appellant must also provide copies to the County Attorney and all other parties in the case. Any party may file a written response with the Hearing Examiner's office within fifteen (15) calendar days after the request for appeal is filed, but not thereafter. The Board of County Commissioners will decide whether to grant or deny the request based exclusively upon the appellant's written request, any response filed by another party and the Hearing Examiner's written decision.
- d. The deliberations of the Board of County Commissioners with respect to the question of whether to hear the appeal do not constitute a public hearing, and no oral testimony will be allowed or considered by the Board of County Commissioners in the course of these deliberations.
- e. The procedure for handling of such appeals will be specified in the county's administrative codes.

(2) Considerations

a. Relevant Matters

If the Board of County Commissioners decides to accept the appeal of a matter pursuant to Section 34-145(a)(5), it will confine its review of the matter exclusively to the written record prepared by the Hearing Examiner and such oral arguments and discussion as may be permitted to identify errors of fact or law or to allege the discovery of new evidence. The Board will conduct its review as an appellate proceeding, and not as a de novo proceeding. The Board may orally question its staff, its attorneys, and any party who is present about matters contained in the written record and points of law or procedure.

b. Irrelevant Matters

The Board of County Commissioners will not take testimony from any person or accept into evidence any document which is not in the record provided by the Hearing Examiner.

(3) Standard of Review

The Board of County Commissioners will uphold the decision of the Hearing Examiner unless it finds that it is not supported by the record, or is incorrect as a matter of law as to any conclusion of law made by the Hearing Examiner.

(4) Decisions and Authority. In exercising its authority after deciding to hear an appeal, the Board of County Commissioners will consider the decision of the Hearing Examiner but may reverse or affirm in whole or in part, or modify, the decision. The Board of County Commissioners may also remand the case to the Hearing Examiner for additional proceedings if deemed necessary to provide fundamental fairness or prevent injustice. Unless the case is remanded, the decision of the Board of County Commissioners is final. If there is a tie vote, the matter considered will be continued until the next regularly scheduled meeting for decisions on zoning matters by the Board of County Commissioners, unless a majority of the members present and voting agree by motion, before the next agenda item is called, to take some other action. Such other action may be moved or seconded by any member, regardless of his vote on any earlier motion.

(5) Judicial review. Judicial review of final decisions under this section will be in accordance with section 34-85.

Sec. 34-145. Functions and authority.

(a) Appeals from administrative action.

(1) Function. The hearing examiner will hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, determination or action of any administrative official charged with the administration and enforcement of the provisions of this land development code or any other ordinance which that provides for similar review; provided, however, that:

a. No appeal to the hearing examiner may lie from any act by an administrative official pursuant to:

1. An order, resolution or directive of the Board of County Commissioners directing him to perform such act; or
2. Any ordinance or other regulation or provision in this Code which that provides a different appellate procedure.

b. The appeal to the hearing examiner must be in writing on forms provided by the hearing examiner, and must be duly filed with the hearing examiner within 30 calendar days, but

not thereafter, after such act or decision by the administrative official. The appeal must specify the grounds for the appeal.

- c. No appeal may be considered by the hearing examiner where it appears to be a circumvention of an established or required procedure. Specifically, in no case may an appeal be heard when the hearing examiner determines that the case should more appropriately be heard on a request for a variance.
- d. Notices of hearings on appeals will be provided in accordance with the provisions of an applicable administrative code adopted by the Board of County Commissioners.
- e. The hearing examiner will not consider appeals for challenges to a development order controlled by F.S. § 163.3215. ~~In cases of challenges to development orders controlled by F.S. § 163.3215, no suit may be brought and no verified complaint, as explained in F.S. § 163.3215(4), may be filed or accepted for filing until the development order giving rise to the complaint has become final by virtue of its having been issued by the director, or by virtue of its having been ordered by the county hearing examiner on an appeal reversing the director's denial of the development permit or denial of a development order extension, or by the Board of County Commissioners in cases where the Board of County Commissioners has granted planned development zoning. Once a development order has been granted, the provisions of F.S. § 163.3215 will be the sole means of challenging the approval of a development order, as that term is defined in F.S. § 163.3164(6), when the approval of the development order is alleged to be inconsistent with the Lee Plan, in which case an action brought pursuant to F.S. § 163.3215 will be limited exclusively to the issue of comprehensive plan consistency.~~
- f. ~~Except as may be required by F.S. 163.3215, and then only pursuant to that statute, provided in subsection g. below, a third party will not have standing to appeal an administrative action to the hearing examiner. Only the applicant or his agent will be permitted to appeal such administrative action as set forth in this section.~~
- g. With regard to administrative actions arising out of fire impact fee regulations:
 - 1. The Fire District with jurisdiction over the property affected by the action appealed is a necessary party in any appeal of such actions.
 - 2. A Fire District may appeal such actions under this section, but only if the action by itself, or in conjunction with future actions that will necessarily flow from the decision being appealed, will result in a cumulative reduction of impact fee revenues to the district that exceeds \$25,000. The appeal filed by the district must contain a clear explanation of how the action appealed will produce the cumulative reduction in revenues. If there is a dispute over whether the action appealed falls within this subsection, it will be resolved by the hearing examiner before the hearing on the appeal.

(2) *Considerations.*

- a. In reaching his decision, the hearing examiner must consider the following criteria, as well as any other issues ~~which~~ that are pertinent and reasonable:

1. Whether appeal is of a nature properly brought to him for decision, or whether there is an established procedure for handling the request other than through the appeal process (i.e., a variance or special exception, etc.).
 2. The intent of the ordinance applied or interpreted.
 3. The effect the ruling will have when applied generally to this Code.
- b. Staff recommendations; and the testimony of the appellant ~~and testimony of the general public~~ must also be considered.
 - c. Cases under this section will be handled as a de novo proceeding and all parties will be entitled to present evidence and testimony as to any law or fact supporting their position in the case.
- (3) *Findings.* Before granting any appeal, the hearing examiner must find that an error was made in the order, requirement, decision, interpretation, determination or action of the administrative official charged with the administration and enforcement of the provisions of this Code or other ordinance ~~which~~ that provides for similar review.
- (4) *Authority.*
- a. In exercising his authority, the hearing examiner may reverse, affirm or modify any decision or action of any administrative official charged with the administration or enforcement of this chapter.
 - b. Subject to the limitations set forth in subsection (a)(4)a. of this section, the hearing examiner may make a decision to take the appropriate action ~~which~~ that the hearing examiner finds the administrative official should have taken. To that end, he has the powers of the administrative official from whom the appeal is taken.
- (5) ~~Judicial~~ Review of Decisions. Any party to a fire impact fee regulation case may file a request to appeal a decision made by the hearing examiner under this section to the Board of County Commissioners within 15 calendar days after such decision is rendered. (See section 34-83(c)) Judicial review of final decisions of the hearing examiner with respect to administrative actions are to the circuit court in accordance with section 34-146.

(b) through (c) - No Change.

(d) *Zoning matters.*

- (1) *Functions.* Regarding zoning matters, the hearing examiner has the following prescribed duties and responsibilities:
 - a. **No change.**
 - b. Make recommendations to the Board of County Commissioners on applications relating to the following:

1. thru 6. **No change.**

7. Reinstatements of master concept plans for planned developments.

c. **No change**

(2) *Considerations.* In preparing his recommendation on any matter, the hearing examiner must consider the criteria set forth in subsection (c)(2) of this section as well as the following, if applicable:

a. thru c. **No change**

d. Whether the level of access and traffic flow (i.e. median openings, turning movements etc.) is sufficient to support the proposed development intensity.

(3) thru (5) **No change**

(e) **No change**

Sec. 34-146. Final decision; judicial review.

- (a) The decision of the hearing examiner will be final on applications for administrative appeals that are not appealed to and decided by the Board of County Commissioners, variances, and special exceptions, when such variances or special exceptions are not part of a rezoning or development of county impact request that requires final decision by the Board of County Commissioners. Judicial review of a final decision of the hearing examiner concerning an administrative appeal, variance or special exception will be in circuit court. This review may only be obtained through filing a petition for writ of certiorari pursuant to the Florida Rules of Appellate Procedure. The petition must be filed within 30 calendar days after the decision has been rendered.
- (b) For the purposes of this subsection, a decision is "rendered" as of the date when it is reduced to writing, signed and dated by the hearing examiner. Decisions will be delivered or mailed by the hearing examiner to parties of record and each individual County Commissioner on the date it is rendered or on the next regular working day thereafter. In some cases, notice of the decision may be provided pursuant to applicable administrative codes.
- (c) The person making application to the hearing examiner for a final decision that is entitled to judicial review, is a necessary and indispensable party to an action seeking judicial review.
- (d) This section is not intended to preclude actions pursuant to F.S. § 70.51 or § 163.3215.

[END of ALTERNATIVE 2]

[ALTERNATIVE 3]

Sec. 34-83. Functions and authority.

(a) & (b) - No Change

(c) Appeals of Hearing Examiner Decisions on Appeals of Administrative Actions

(1) Function. The Board of County Commissioners may hear appeals from Hearing Examiner decisions on appeals of an administrative action as follows:

- a. Any party may file a request to appeal such a decision of the Hearing Examiner within fifteen (15) calendar days after the decision is rendered.
- b. Requests for appeal must be in writing and state with particularity, the points of law or fact that the Hearing Examiner has overlooked or misunderstood.
- c. Requests for appeal must be filed with the Hearing Examiner's office. The appellant must also provide copies to the County Attorney and all other parties in the case. Any party may file a written response with the Hearing Examiner's office within fifteen (15) calendar days after the request for appeal is filed, but not thereafter. The Board of County Commissioners will decide whether to grant or deny the request based exclusively upon the appellant's written request, any response filed by another party and the Hearing Examiner's written decision.
- d. The deliberations of the Board of County Commissioners with respect to the question of whether to hear the appeal do not constitute a public hearing, and no oral testimony will be allowed or considered by the Board of County Commissioners in the course of these deliberations.
- e. The procedure for handling of such appeals will be specified in the county's administrative codes.

(2) Considerations

a. Relevant Matters

If the Board of County Commissioners decides to accept the appeal of a matter pursuant to Section 34-145(a)(5), it will confine its review of the matter exclusively to the written record prepared by the Hearing Examiner and such oral arguments and discussion as may be permitted to identify errors of fact or law or to allege the discovery of new evidence. The Board will conduct its review as an appellate proceeding, and not as a de novo proceeding. The Board may orally question its staff, its attorneys, and any party who is present about matters contained in the written record and points of law or procedure.

b. Irrelevant Matters

The Board of County Commissioners will not take testimony from any person or accept into evidence any document which is not in the record provided by the Hearing Examiner.

(3) Standard of Review

The Board of County Commissioners will uphold the decision of the Hearing Examiner unless it finds that it is not supported by the record, or is incorrect as a matter of law as to any conclusions of law made by the Hearing Examiner.

(4) Decisions and Authority. In exercising its authority after deciding to hear an appeal, the Board of County Commissioners will consider the decision of the Hearing Examiner but may reverse or affirm in whole or in part, or modify, the decision. The Board of County Commissioners may also remand the case to the Hearing Examiner for additional proceedings if deemed necessary to provide fundamental fairness or prevent injustice. Unless the case is remanded, the decision of the Board of County Commissioners is final. If there is a tie vote, the matter considered will be continued until the next regularly scheduled meeting for decisions on zoning matters by the Board of County Commissioners, unless a majority of the members present and voting agree by motion, before the next agenda item is called, to take some other action. Such other action may be moved or seconded by any member, regardless of his vote on any earlier motion.

(5) Judicial review. Judicial review of final decisions under this section will be in accordance with section 34-85.

Sec. 34-145. Functions and authority.

(a) Appeals from administrative action.

(1) Function. The hearing examiner will hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, determination or action of any administrative official charged with the administration and enforcement of the provisions of this land development code or any other ordinance which that provides for similar review; provided, however, that:

a. No appeal to the hearing examiner may lie from any act by an administrative official pursuant to:

1. An order, resolution or directive of the Board of County Commissioners directing him to perform such act; or
2. Any ordinance or other regulation or provision in this Code which that provides a different appellate procedure.

b. The appeal to the hearing examiner must be in writing on forms provided by the hearing examiner, and must be duly filed with the hearing examiner within 30 calendar days, but

not thereafter, after such act or decision by the administrative official. The appeal must specify the grounds for the appeal.

- c. No appeal may be considered by the hearing examiner where it appears to be a circumvention of an established or required procedure. Specifically, in no case may an appeal be heard when the hearing examiner determines that the case should more appropriately be heard on a request for a variance.
- d. Notices of hearings on appeals will be provided in accordance with the provisions of an applicable administrative code adopted by the Board of County Commissioners.
- e. The hearing examiner will not consider appeals for challenges to a development order controlled by F.S. § 163.3215. ~~In cases of challenges to development orders controlled by F.S. § 163.3215, no suit may be brought and no verified complaint, as explained in F.S. § 163.3215(4), may be filed or accepted for filing until the development order giving rise to the complaint has become final by virtue of its having been issued by the director, or by virtue of its having been ordered by the county hearing examiner on an appeal reversing the director's denial of the development permit or denial of a development order extension, or by the Board of County Commissioners in cases where the Board of County Commissioners has granted planned development zoning. Once a development order has been granted, the provisions of F.S. § 163.3215 will be the sole means of challenging the approval of a development order, as that term is defined in F.S. § 163.3164(6), when the approval of the development order is alleged to be inconsistent with the Lee Plan, in which case an action brought pursuant to F.S. § 163.3215 will be limited exclusively to the issue of comprehensive plan consistency.~~
- f. ~~Except as may be required by F.S. 163.3215, and then only pursuant to that statute, provided in subsection g. below, a third party will not have standing to appeal an administrative action to the hearing examiner. Only the applicant or his agent will be permitted to appeal such administrative action as set forth in this section.~~
- g. With regard to administrative actions arising out of fire impact fee regulations:
 - 1. The Fire District with jurisdiction over the property affected by the action appealed is a necessary party in any appeal of such actions.
 - 2. A Fire District may appeal such actions under this section, but only if the action by itself, or in conjunction with future actions that will necessarily flow from the decision being appealed, will result in a cumulative reduction of impact fee revenues to the district that exceeds \$25,000. The appeal filed by the district must contain a clear explanation of how the action appealed will produce the cumulative reduction in revenues. If there is a dispute over whether the action appealed falls within this subsection, it will be resolved by the hearing examiner before the hearing on the appeal.

(2) *Considerations.*

- a. In reaching his decision, the hearing examiner must consider the following criteria, as well as any other issues which that are pertinent and reasonable:

1. Whether appeal is of a nature properly brought to him for decision, or whether there is an established procedure for handling the request other than through the appeal process (i.e., a variance or special exception, etc.).
 2. The intent of the ordinance applied or interpreted.
 3. The effect the ruling will have when applied generally to this Code.
- b. Staff recommendations; and the testimony of the appellant ~~and testimony of the general public~~ must also be considered.
 - c. Cases under this section will be handled as a de novo proceeding and all parties will be entitled to present evidence and testimony as to any law or fact supporting their position in the case.
- (3) *Findings.* Before granting any appeal, the hearing examiner must find that an error was made in the order, requirement, decision, interpretation, determination or action of the administrative official charged with the administration and enforcement of the provisions of this Code or other ordinance ~~which~~ that provides for similar review.
- (4) *Authority.*
- a. In exercising his authority, the hearing examiner may reverse, affirm or modify any decision or action of any administrative official charged with the administration or enforcement of this chapter.
 - b. Subject to the limitations set forth in subsection (a)(4)a. of this section, the hearing examiner may make a decision to take the appropriate action ~~which~~ that the hearing examiner finds the administrative official should have taken. To that end, he has the powers of the administrative official from whom the appeal is taken.
- (5) ~~Judicial~~ Review of Decisions. Any party may file a request to appeal a decision made by the hearing examiner under this section to the Board of County Commissioners within 15 calendar days after such decision is rendered. (See section 34-83(c)) Judicial review of final decisions of the hearing examiner with respect to administrative actions are to the circuit court in accordance with section 34-146.

(b) through (c) - No Change.

(d) *Zoning matters.*

- (1) *Functions.* Regarding zoning matters, the hearing examiner has the following prescribed duties and responsibilities:
 - a. **No change.**
 - b. Make recommendations to the Board of County Commissioners on applications relating to the following:

1. thru 6. **No change.**

7. Reinstatements of master concept plans for planned developments.

c. **No change.**

(2) *Considerations.* In preparing his recommendation on any matter, the hearing examiner must consider the criteria set forth in subsection (c)(2) of this section as well as the following, if applicable:

a. thru c. **No change**

d. Whether the level of access and traffic flow (i.e. median openings, turning movements etc.) is sufficient to support the proposed development intensity.

(3) thru (5) **No change**

(e) **No change**

Sec. 34-146. Final decision; judicial review.

- (a) The decision of the hearing examiner will be final on applications for administrative appeals that are not appealed to and decided by the Board of County Commissioners, variances, and special exceptions, when such variances or special exceptions are not part of a rezoning or development of county impact request that requires final decision by the Board of County Commissioners. Judicial review of a final decision of the hearing examiner concerning an administrative appeal, variance or special exception will be in circuit court. This review may only be obtained through filing a petition for writ of certiorari pursuant to the Florida Rules of Appellate Procedure. The petition must be filed within 30 calendar days after the decision has been rendered.
- (b) For the purposes of this subsection, a decision is "rendered" as of the date when it is reduced to writing, signed and dated by the hearing examiner. Decisions will be delivered or mailed by the hearing examiner to parties of record and each individual County Commissioner on the date it is rendered or on the next regular working day thereafter. In some cases, notice of the decision may be provided pursuant to applicable administrative codes.
- (c) The person making application to the hearing examiner for a final decision that is entitled to judicial review, is a necessary and indispensable party to an action seeking judicial review.
- (d) This section is not intended to preclude actions pursuant to F.S. § 70.51 or § 163.3215.

[END OF ALTERNATIVE 3]

Division 3. Local Planning Agency

Sec. 34-111. Established

A local planning agency is hereby established having the powers and authority set forth in this division. It is the intent that the local planning agency described herein serve as the local planning agency referenced in Florida Statutes Section 163.3174.

Sec. 34-112. Membership; term of office.

(a) *Appointment of members.*

- (1) All appointments to the local planning agency ~~shall~~ require an affirmative vote of three members of the Board of County Commissioners at a regularly scheduled meeting. Each term ~~shall~~ will last for a period of one year. Members may be reappointed.
- (2) The local planning agency ~~shall~~ will be composed of seven voting members, appointed by the Board of County Commissioners. In addition, the local planning agency will also include a representative of the School Board. This representative will be a non-voting member of the local planning agency and will attend those meetings where the local planning agency considers comprehensive plan amendments that would, if approved, increase the potential residential density on the subject property.

(b) *Qualifications of members.* Members of the local planning agency ~~shall~~ must be knowledgeable in the field of comprehensive planning and ~~shall be~~ familiar with the Lee Plan, this chapter and other applicable regulations.

(c) **No change**

(d) *Vacancies.* Vacancies on the local planning agency ~~shall~~ will be filled, ~~under~~ consistent with the procedures for appointment, for the unexpired term of any member whose term becomes vacant for any reason.

Sec. 34-113. Compensation of members; funding.

- (a) The local planning agency ~~shall~~ will serve without compensation, but members ~~shall~~ will be paid actual expenses incurred in performance of their duties, which ~~shall~~ may not exceed allowances as prescribed by state law.
- (b) The Board of County Commissioners ~~shall~~ will appropriate funds for expenses necessary for the conduct of work by the local planning agency. The local planning agency may expend all sums appropriated in order to accomplish the purposes and activities required by this chapter and the Local Government Comprehensive Planning and Land Development Regulation Act.

Sec. 34-114. Organization and operation.

(a) *Officers and staff.*

- (1) The local planning agency, from among its members, ~~shall~~ will elect a chairman and such other officers as the members deem necessary. Each officer ~~shall~~ will serve until his successor is elected.
- (2) The department director ~~shall~~ will serve as secretary to the local planning agency, but ~~shall~~ will not be a voting member.

(b) *Rules of procedure.* The local planning agency ~~shall~~ will adopt rules for the transaction of its business, and conduct meetings pursuant to the provisions of any resolution, regulation or administrative code of the Board of County Commissioners.

(c) *Meetings.*

- (1) The department director ~~shall~~ will set the time and place of the meetings of the local planning agency. However, if a meeting, once started, exceeds the time which has been scheduled for the meeting, it may be continued to a date, time and place certain, as the local planning agency ~~shall~~ determines. The local planning agency ~~shall~~ will meet at least once a month, unless no business is pending before it. Additional meetings ~~shall~~ will be held at the call of the chairman or secretary and at all such other times as the members may determine.
- (2) Any action by the local planning agency ~~shall~~ requires the presence of a quorum. Four members ~~shall~~ will constitute a quorum of the local planning agency.
- (3) All meetings ~~shall~~ will be open to the public.
- (4) The local planning agency ~~shall~~ will adopt procedures for public participation. Such procedures ~~shall~~ will comply with the criteria set forth in F.S. §163.3181.

(d) *Voting.*

(1) *Generally.*

- a. The majority vote of the quorum present ~~shall~~ will be required to make any recommendation to the Board of County Commissioners.
- b. If a majority decision cannot be obtained, or if a tie vote results from a motion to recommend to the Board of County Commissioners that a proposed matter be approved, or to recommend that it be denied, then the matter ~~being~~ considered ~~shall~~ will be deemed to have been denied, unless a majority of the members present and voting agree by motion, before the next agenda item is called, to take some other action in lieu of a denial. Such other action may be moved or seconded by any member, regardless of his vote on any earlier motion. If such other action is not agreed to be taken, the minutes of

the local planning agency ~~shall~~ will show that the motion was called and that the matter voted upon was denied.

(2) *Absenteeism and abstentions.*

- a. If a A member's is absence from the a meeting; it ~~shall~~ will be reflected in the minutes.
- b. Any request by a A member may to abstain from a vote ~~shall be done~~ only in accordance with F.S. ch. 112 and F.S. §286.012.

(e) *Records.*

- (1) The secretary ~~shall~~ must record and transcribe minutes of all proceedings. At a minimum, such minutes ~~shall~~ must summarize testimonies, and ~~shall~~ reflect the motion and the votes.
- (2) The department staff ~~shall~~ must keep indexed records of all meetings, agendas, findings, determinations and resolutions. Such Those records ~~shall be~~ are public records.

Sec. 34-115. Functions and authority.

(a) *Functions.* The local planning agency ~~shall~~ will have the following statutorily prescribed duties and responsibilities:

- (1) Have general responsibility for the conduct of the comprehensive planning program.
- (2) Be responsible for preparation of the local comprehensive plan and make recommendations to the Board of County Commissioners regarding the adoption of such plan or element or portion thereof.
- (3) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the Board of County Commissioners such changes in the comprehensive plan as may be required, including preparation of the periodic reports required by F.S. §163.3191.
- (4) Review proposed land development regulations and land development codes or amendments thereto, and make recommendations to the Board of County Commissioners as to consistency of the proposal with the adopted comprehensive plan or element or portion thereof.
- (5) Perform any other functions, duties and responsibilities which may be assigned to it by the Board of County Commissioners or general or special law.

(b) *Considerations.* In preparing its recommendation on any matter as described in subsection (a) of this section, the local planning agency ~~shall~~ will consider the following, whenever applicable:

- (1) Whether there exists an error or ambiguity which must be corrected.

- (2) Whether there exist changed or changing conditions which make approval of the matter appropriate.
- (3) the testimony of any applicant.
- (4) The recommendation of staff.
- (5) The testimony of the public.
- (6) Whether a proposed matter is consistent with the goals, objectives, policies and intent of the Lee Plan.

(c) *Decisions and authority.* The local planning agency shall must make recommendations concerning determinations of Lee Plan consistency, as the Lee Plan relates to proposed land development regulations and ordinances, to the Board of County Commissioners.

Secs. 34-116--34-140. Reserved.

Sec. 34-146. Final decision; judicial review.

(a) The decision of the hearing examiner will be final on applications for administrative appeals that are not appealed to the Board of County Commissioners, variances, and special exceptions, when such variances or special exceptions are not part of a rezoning or development of county impact request that requires final decision by the Board of County Commissioners. Judicial review of a final decision of the hearing examiner concerning an ~~administrative appeal~~, variance or special exception will be in circuit court. This review may only be obtained through filing a petition for writ of certiorari pursuant to the Florida Rules of Appellate Procedure. The petition must be filed within 30 calendar days after the decision has been rendered.

Appeals from hearing examiner decisions concerning wireless communication facilities must be to the Board of County Commissioners pursuant to sections 34-1445(b) and 34-1453, as applicable.

(b) For the purposes of this subsection, a decision is "rendered" as of the date when it is reduced to writing, signed and dated by the hearing examiner. Decisions will be delivered or mailed by the hearing examiner to parties of record and each individual County Commissioner on the date it is rendered or on the next regular working day thereafter. In some cases, notice of the decision may be provided pursuant to applicable administrative codes.

(c) The person making application to the hearing examiner for a final decision that is entitled to judicial review, is a necessary and indispensable party to an action seeking judicial review.

(d) This section is not intended to preclude actions pursuant to F.S. § 70.51 or § 163.3215.

Division 6. Applications and Procedures for Changes, Permits, Interpretations and Approvals

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

(a) No change

(b) *Additional submittal requirements for owner-initiated applications.*

(1) *Evidence of Authority.*

- a. ~~Ownership interests.~~ A list of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure with respect to a beneficial ownership interest in any entity registered with the federal Securities Exchange Commission or registered pursuant to Chapter 517, whose interest is for sale to the general public, is exempt from the provision of this sub-section.
- b. ~~Unified control document.~~ A notarized statement evidencing ~~from the applicant a property owner's or entity's right and authority that he has unified control of the property. to impose covenants and restrictions on the parcel or otherwise bind the property with respect to conditions necessary to secure the approval requested. A notarized statement submitted to the County establishing a property owner or entity's right and authority to impose covenants and restrictions on a parcel as a result of the issuance of development approval in accordance with this code. The unified control document also constitutes an agreement that the property owner will not transfer, convey, sell or subdivide the subject parcel unencumbered by the covenants and restrictions imposed as part of the development order permitting process.~~
- a. Applicant's statement. The applicant for any action requiring a public hearing must sign a statement, under oath, that he is the owner or the authorized representative of the owner(s) of the property and that he has full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of the action approved by the County in accordance with this code. This statement must contain state that the property owner will not transfer, convey, sell or subdivide the subject parcel unencumbered by the covenants and restrictions imposed by the approved action.
- c.b. ~~Agent authorization.~~ If the owner authorizes an agent to submit the application and represent the owner in all matters pertaining to the application, the owner must provide the agent with a notarized statement evidencing the agent's authority to act on the owner's behalf and encumber the property with conditions applicable to the approval requested in the application. An agent The applicant may authorize additional agents to assist in the preparation and presentation of the application. However, an ~~can not transfer authority to bind the property with respect to conditions . This later authority will only be recognized by the County when it is provided directly to the agent by the owner.~~

The county will presume that any agent authorized by the applicant has the authority to bind the property with respect to conditions

~~d. *Contract purchaser/vendee authorization* If a contract purchaser or vendee is the applicant, a notarized statement from the property owner authorizing the contract purchaser/vendee to act as an agent of the property owner for purposes of application submittal and agreement to conditions applicable to approval of the request is necessary.~~

(2) thru (7) **No change**

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

(a) - (g) **No change.**

(h) *Modifications to submittal requirements.* Upon written request, on a form prepared by the county, the director may modify the submittal requirements contained in this section, and for those specifically eligible for waiver in section 34-373, where it can be clearly demonstrated by the applicant that the submission will have no bearing on the review and processing of the application. The request and the director's written response must accompany the application submitted and will become a part of the permanent file. The decision of the director is discretionary and may not be appealed.

No further changes to Sec. 34-203

Article IV. PLANNED DEVELOPMENTS

Division 2. Application and Procedure for Approval

[NOTE: THE FOLLOWING CHANGES ARE SUPPORTED BY THE STAFF AND THE LDCAC]

Sec. 34-373 Applications

(a) *Minimum required information for all planned development zoning applications.*

(1) thru (9) **No change**

(10) *Developments located within the Estero Planning Community.* Pursuant to policy 19.5.3 of the Lee Plan, the owner or agent for any planned development request within the Estero Planning Community must conduct one public informational session where the agent will provide a general overview of the project for any interested citizens. This meeting must be conducted before the application can be found sufficient. The applicant is fully responsible for providing the meeting space and providing security measures as needed. Subsequent to this meeting, the applicant must provide County staff with a meeting summary document that contains the following information: the date, time, and

location of the meeting; a list of attendees; a summary of the concerns or issues that were raised at the meeting; and a proposal for how the applicant will respond to any issues that were raised.

(b) - (d) **No change**

Sec. 34-374. ~~Governant of unified control.~~ Reserved

~~(a) Any applicant for a rezoning or master concept plan confirmation under the planned development regulations as provided in this article must submit documentation corroborating unified control over the subject property.~~

~~(b) If the initial applicant conveys all or part of the subject property to a subsequent purchaser, the conveyance is subject to the original covenant of unified control unless an amended covenant is filed with the director. This document must be filed within 60 days of closing, and must be recorded with other notices related to the planned development. This requirement does not apply to individual homesites or units (apartments) of a residential development or to any development wherein the obligation to enforce the regulations and conditions or covenants and restrictions is delegated to property owners or a condominium association or cooperative.~~

Sec. 34-377. Public hearing.

(a) *Hearing before hearing examiner.* After the staff prehearing conference required by this division, the application will be scheduled for a public hearing before the hearing examiner.

(1)-(5) **No change**

(6) The hearing examiner recommendation must consider whether the proposed development intensity is supported by sufficient vehicular access and traffic flow from the county street system. However, the hearing examiner may not recommend a condition that appears to guarantee or approve a temporary or permanent median opening, turning movement or traffic control device in order to address any deficiency.

(b) *Hearing before Board of County Commissioners.*

(1)-(7) **No change**

Sec. 34-378. Effect of planned development zoning.

(a)-(d) **No change**

- (e) ~~The obligation to enforce the any conditions attached to the master concept plan remains in effect with the original applicant until all of the subject property is developed and certificated for use and occupancy or until a subsequent owner assumes that obligation for all or part of the subject property. Completion or vacation of a phase of the development, or conveyance of a development parcel or outparcel, will relieve the original applicant only as to that phase, development parcel or outparcel, and then only when notice is filed and recorded in accordance with section 34-374. The obligation to enforce the conditions and to maintain all common amenities attached to a reaffirmed master concept plan will lies with the property owner, his heirs, assigns or other successors. whomever files the covenant of unified control for that reaffirmation.~~

The terms and conditions of the zoning approval (other than the master concept plan as set forth in section 34-381) run with the land and remain effective in perpetuity or until a new zoning action is approved by the Board of County Commissioners. All developments must remain in compliance with the terms and conditions of the zoning approval.

- (f) **No change**

- (g) Access points (e.g. driveway) directly onto the County street system must be in substantial compliance with the approved MCP. Turning movements other than right-in right-out at approved locations shown on the MCP, median openings and traffic control devices depicted on a MCP are not guaranteed nor vested.

Approval for construction of access points, median openings, turning movements and traffic control devices (e.g. traffic lights) is reserved to the County. County approval will be based upon facts and circumstances applicable to the request at the time the application for development or permit approval is submitted.

No further changes to Sec. 34-378

Sec. 34-381. Duration of rights conferred by adopted master concept plan.

- (a) Duration of rights:

- (1) Master concept plans approved prior to December 2, 1991, are subject to the following:
- a. A master concept plan and its attendant documentation, approved prior to December 2, 1991, remains valid for no more than three (3) years from the date that the Board of County Commissioners first approved the master concept plan. ~~If final plan approval was not granted~~ must be obtained within three (3) years and six (6) months following the original master concept plan approval, then or the master concept plan is deemed vacated, null, void and without effect, ~~regardless of the failure to revise the zoning map. If the master concept plan receives final plan approval but no development order(s) for a substantial portion of the project is approved before [one year after the date of adoption of this amendment], the master concept plan is vacated.~~

- b. If the planned development ~~was~~ is proposed in two (2) or more phases, the final ~~development~~ approval of the first phase is ~~guided~~ regulated by subsection (a)(1)a. of this section, and subsequent phases ~~will be~~ are regulated by the adopted phasing program, ~~except that, if a phase was~~ is not commenced within one (1) year of its programmed date, the remainder of the ~~development~~ master concept plan ~~will be deemed~~ is vacated. Any phase permitted and ongoing or completed ~~will continue to be~~ is governed by the original master concept plan, final plan approval, and attendant documentation. However, no vacation of a master concept plan will result from the nonfeasance of the county.

(2) Master concept plans approved after December 2, 1991, are subject to the following:

- a. ~~An Option 1 master concept plan and its attendant documentation approved as an Option 1 type master concept plan after December 2, 1991 will be deemed~~ is vacated unless the property owner either obtains a development order for a substantial portion of the project within five years of the date of the original approval or obtains administrative approval or Final Plan Approval of a master concept plan, within five (5) years of the date of the approval of the planned development, that conforms to current standards. Master concept plans that obtained final plan approval within the required time must also obtain a development order for a substantial portion of the project [within one (1) year of the adoption of this amendment (insert date of adoption)] or the master concept plan is vacated.

Additional development order approvals necessary to complete the project must be obtained from the department within two (2) years of the date of the first development order approval or the remainder of the master concept plan is vacated.

- b. ~~An Option 2 master concept plan and its attendant documentation approved as an Option 2 type master concept plan after December 2, 1991, will be deemed~~ is vacated unless the property owner obtains a development order for a substantial portion of the project within five (5) years of the date of the original zoning approval of the planned development.
- c. ~~Any master concept plan and its attendant documentation approved other than as an Option 1 or Option 2 type master concept plan after March 8, 2001, will be deemed~~ is vacated if ~~unless the property owner obtains a development order(s) for a substantial portion of the project are not approved within five years (5) of the date of the original zoning approval of the planned development.~~
- d. Master concept plans for planned developments that do not require development orders are not subject to the timeframes for vacation in this section.

Substantial portion: A substantial portion of the project consists of no less than 20 percent of the lots, dwelling units, square footage feet or other applicable measurements of intensity, as applicable for the development in question unless a lesser percentage is approved by the Board of County Commissioners. **[RELOCATED from sec. 34-381(2)a.]**

e. ~~Phased Plans~~

- ~~1. Time frames for approval of subsequent portions of the development will be governed by a phasing plan, which must be included in the resolution rezoning the subject parcel. Phases may be defined by geographical areas, units of intensity, traffic impacts or any other units of measurement deemed appropriate by the Board of County Commissioners.~~
- ~~2. Any phase for which a development order has not been requested by the time specified in the resolution and all subsequent phases will be deemed vacated.~~
- ~~3. Failure to complete development within a phase or the entire project, whichever is applicable, prior to the expiration of rights established by the development order for the phase or project will result in the vacation of the applicable phase (and all subsequent phases) of the project.~~
- ~~4. Phasing plans may be amended in accordance with section 34-380.~~

(b) Zoning status of ~~vacated master concept plans~~ --Effect on Zoning

When any portion of a master concept plan is vacated pursuant to section 34-381(a), the unbuilt or incomplete~~vacated area~~ portion of the planned development~~master concept plan~~ will remain zoned for planned development, but no additional development can occur or be approved ~~may not be developed~~ until a new master concept plan is approved in compliance with section 34-373 et. seq., ~~or the original master concept plan is reinstated; or the property is rezoned~~ extended by the Board of County Commissioners, ~~or the property is rezoned to some other use(s) or district.~~

An extension or reinstatement may not add new uses or increase density or intensity of the master concept plan. The BOCC may, however, remove uses or decrease the density or intensity of the master concept plan. A master concept plan with new uses or increased density or intensity must be reviewed in accordance with section 34-373 et. seq.

(c) Extensions of Master Concept Plans

(1) An approved master concept plan that is not vacated may be extended by the Board of County Commissioners at a public hearing provided that:

- a. The applicant submits a completed application form for extension (on a form provided by the department of community development) not more than one year and not fewer than 120 days prior to the date the current master concept plan vacates as provided in subsection (a), above together with the appropriate fee. The application must include, at a minimum:

[NOTE: EROC does not recommend adoption of subsection vi. below]

- i. All submittal requirements for a public hearing pursuant to sections 34-201 and 34-202;

- ii. A copy of the approved master concept plan amended in accordance with subsections 34-377(b)(6) and (7) reflect the uses, deviations and other modifications set forth in the approving resolution (no changes may be made to the master concept plan);
- iii. A copy of the approved planned development zoning resolution and all approved amendments;
- iv. A written statement describing how the criteria listed in subsection (c)(1)c. below have been met;
- v. A current Traffic Impact Statement (TIS) pursuant to subsection 34-373(a)(7); and
- vi. A detailed narrative explaining why the required development order(s) is not approved and a chronology documenting that the required development order(s) has been diligently pursued.

The director may require additional information as described in Section 34-373 if necessary to review the request.

eb. The Board of County Commissioners, after reviewing the recommendation of the staff, determines that:

[NOTE: EROC does not recommend adoption of subsection iv. below]

- i. The master concept plan is consistent with the current Lee Plan;
- ii. The master concept plan is compatible with existing and approved development in the planning community;
- iii. The master concept plan will not, by itself or in conjunction with existing and approved development, place an unreasonable burden on essential public facilities; and
- iv. The reasons the required development order(s) is not approved is reasonably beyond the control of the applicant and the applicant is diligently pursuing approval of the required development order(s).

(2) The decision of the Board of County Commissioners to approve or deny the extension request is discretionary. The Board of County Commissioners may approve an extension for a period of time not greater than ten (10) years from the date of original planned development approval.

A master concept plan that has not received a development order and diligently pursued construction, prior to the master concept plan extension expiration, may not receive a second extension but must be reviewed in accordance with section 34-373 et. seq.

(e d) Reinstatement of Master Concept Plans . Extensions approved by the Board of County Commissioners

(1) An approved vacated master concept plan or a phase of a master concept plan may be extended reinstated by the Board of County Commissioners at a public hearing as follows: provided that: the reinstatement for a period is for of no more than two ten (10) years from the date of the extension original planned development approval and is based on the considerations listed in section 34-83(b)(2) and the following findings of fact:

(1) A vacated master concept plan or a phase of a planned development may be extended by the Board of County Commissioners for

- a. The applicant is proposing no changes to the original approved master concept plan; and
- ab. The master concept plan is consistent with the current Lee Plan, including, but not limited to, density, intensity and concurrency requirements; and
- bc. The development shown by the master concept plan has not become incompatible is compatible with existing and proposed approved uses in the surrounding area as the result of development approvals issued subsequent to the original approval of the master concept plan; and
- ed. The development shown by the master concept plan will not, by itself or in conjunction with other development, place an unreasonable burden on essential public facilities.

(2) Before preparing a recommendation to the Board of County Commissioners on a reinstatement, the hearing examiner must find that:

- a. The criteria set forth in section 34-145(d)(2), which are applicable to the case, are satisfied; and
- b. The criteria listed in subsection (d)(1) above are satisfied.

(23) An application for an extension- reinstatement may be filed at any time after the vacation of the master concept plan and must consist of the following:

- a. A completed application form provided by the department of community development; that will include, at a minimum:
 - i. All submittal requirements for a public hearing pursuant to section 34-201 and 34-202;
 - ii. The following submittal requirements as set forth in Section 34-373(a)(4):
 - a. a boundary survey unless the original application included one and there has been no change to the property;

- b. a map showing current zoning and uses within 500 feet;
- c. a current aerial photograph; and
- f. a FLUCCS map.
- iii. The submittal requirements as set forth in Section 34-373(a)(6) only if they are required to indicate a reduction of uses or a decrease in the density or intensity of the development;
- iv. A current Traffic Impact Statement (TIS) pursuant to subsection 34-373(a)(7);
- v. A schedule of uses keyed to the master concept plan ONLY if previously approved uses are being removed; and
- vi. A schedule of deviations keyed to the master concept plan ONLY if previously approved deviations are being removed;

- b. A legible copy of the approved master concept plan (where applicable, the master concept plan must be amended to reflect the uses, deviations and other modifications set forth in the approving resolution). See section 34-377(b)(6) and (7);
- c. Legible copies of the applicable zoning resolution and all approved amendments;
- d. A written statement describing how the criteria listed in subsection (e)(1)a (d)(1) above have been met are satisfied; and
- e. The appropriate fee, in accordance with an adopted administrative code.

~~(3) No more than two extensions may be granted for any development or phase thereof, and in no case, may extensions be approved that would extend the life of the master concept plan more than ten years from the date of original approval.~~

~~Master concept plans that have not received a development order within ten years of the original master concept plan approval date, must submit a new master concept plan for approval in compliance with section 34-373.~~

(e) Vacated Master Concept plans that have not been extended or reinstated.

No development is allowed within a planned development zoning district, if the master concept plan has been vacated, until a master concept plan has been approved in accordance with this code.

No further changes to Sec. 34-381

Article VI. DISTRICT REGULATIONS.

Division 1. Generally

Sec. 34-622. Use activity groups.

(a) and (b) **No change**

(c) (1) thru (12) **No change**

- (13) Essential service facilities. This group includes buildings or above-ground structures, exceeding 27 cubic feet in volume, required to provide essential services, including electricity, communications, telephone, cable television, gas, water, sewage, solid waste and resource recovery. This does not include wireless communication facilities which are regulated by section 34-1441 et seq. ~~or telephone booths or pay phone stations which are addressed in section 34-3070.~~

GROUPS I, II, and III No change

(c) (14) through (56) **No change**

Sec. 34-624. Performance standards, creation of nuisance.

All uses and activities permitted by right, special exception or temporary permit in any zoning district, including planned development and PUD districts, must be constructed, maintained, placed, conducted, and operated so as to:

1. Not be injurious or offensive and thereby constitute a nuisance to owners or occupants of adjacent premises, nearby residents, or to the community, by reason of the emission or creation of noise, vibration, smoke, dust or other particulate matter, toxic or noxious waste materials, odors, fire or explosive hazard, light pollution, or glare; and

2. and 3. **No change**

[NOTE: THE FOLLOWING CHANGES ARE SUPPORTED BY THE STAFF AND THE LDCAC]

Sec. 34-625. Outdoor Lighting Standards.

1. Purpose. The purpose of this provision is to curtail and reverse the degradation of the night time visual environment by minimizing light pollution, glare, and light trespass

through regulation of the form and use of outdoor lighting; and to conserve energy and resources while maintaining night-time safety, utility, security and productivity.

2. Applicability. All new luminaires, regardless of whether a development order is required, must comply with the provisions and standards of this section.
3. General exemptions. The following are generally exempt from the provisions of this section:
 - a. Emergency lighting required for public safety and hazard warning luminaires required by federal or state regulatory agencies;
 - b. Outdoor light fixtures producing light directly by the combustion of fossil fuels, such as kerosene and gasoline;
 - c. Low wattage holiday decorative lighting fixtures (comprised by incandescent bulbs of less than 8 watts each or other lamps of output less than 100 lumens each) used for holiday decoration; and
 - d. Lighting for public roads except as provided in section 14-77.
4. Standards and Criteria. In addition to the standards and criteria for outdoor lighting established in this subsection, there are standards for sea turtle lighting in chapter 14, Article I, division 2 of this code and further technical standards are specified in a related county administrative code. When specific standards are not addressed in these sources, the standards of the Illuminating Engineering Society of North America (IESNA) will apply.
 - a. Illuminance. Table 1 is provided as a general synopsis of the illumination level requirements. These levels are based upon general use or task categories and are measured in footcandles on the task surface (for example the parking lot or area surface) with a light meter held parallel to the ground or other surface, facing up, unless otherwise specifically stated.

Table 1. Illumination Level Requirements (1)

<u>Use/Task</u>	<u>Initial Actual Footcandles (2),(4)</u>	<u>Initial Uniformity Avg. (3)</u>
<u>Parking, multi-family</u>		
<u>Low vehicular/pedestrian activity</u>	<u>0.3 min.</u>	<u>4:1</u>
<u>Medium vehicular/pedestrian activity</u>	<u>0.8 min.</u>	<u>4:1</u>
<u>Parking, industrial/commercial/ institutional, municipal</u>		
<u>High activity, e.g., shopping centers, fast food facilities, major athletic/civic, cultural events.</u>	<u>1.2 min.</u>	<u>4:1</u>

Medium activity, e.g., office parks, hospitals, commuter lots, cultural/civic/recreational events	0.8 min.	4:1
Low activity, e.g., neighborhood shopping, industrial employee parking, school, church parking	0.3 min.	4:1
Non-residential walkways and bikeways	0.3 min.	5:1
Canopy, drive-thru, fuel pumps, overhang	6.0 min	5:1

Notes:

(1) These specified illumination level criteria are the initial actual levels to be measured at the time of final inspection for a certificate of compliance. The outdoor lighting must be maintained so the average illumination levels do not increase above the specified values. The minimum illumination levels may decreased over time consistent with the Light Loss Factor (LLF) associated with the installed fixtures.

(2) In no case may the illumination exceed 0.5 footcandle measured at the property line. The amount of illumination projected onto a residentially zoned property or use from another property, may not exceed 0.2 footcandle measured at 10 feet from the property line onto the adjacent residential property.

(3) Uniformity ratios dictate that the average illumination values may not exceed initial values by more than the product of the initial value and the specific ratio. For example, in the case of commercial parking and high activity, the initial average illuminance may not be in excess of 4.8 footcandles (1.2 x 4).

(4) Where all night safety or security lighting is to be provided, the lighting intensity levels should provide the lowest possible illumination to discourage crime and undesirable activity and to effectively allow surveillance but may not exceed 50% of the levels normally permitted for the use as specified in this code.

[Presented below are 3 options for b. Lamp Standards.]

[NOTE: STAFF, LDCAC and EROC RECOMMEND OPTION 1.]

[Option1. Provide flexibility, with minimum restriction, in the selection of the types of lamps with the opportunity to make modifications to the specifications by amendments to the standards through the administrative code.]

b. Lamp Standards. Lamp types and colors must be in harmony with the adjacent community, any special circumstances existing on the site, and with surrounding installations. Lamp types must be consistent with the task and setting and should not create a mix of colors unless otherwise specifically approved by the director for a cause shown. Specifically, mercury vapor lamps are prohibited. The installation, sale, offering for sale, lease or purchase of any mercury vapor light fixture or lamp for use as outdoor lighting in the county is specifically prohibited.

[Option 2. Provide flexibility, with minimum restriction, in the selection of the types of lamps but provide recommendation for preferred lamp type still retaining the opportunity to make modifications to the specifications by amendments to the standards through the administrative code.]

b. Lamp Standards. Lamp types and colors must be in harmony with the adjacent community, any special circumstances existing on the site, and with surrounding installations. Lamp types must be consistent with the task and setting and should not create a mix of colors unless otherwise specifically approved by the director for a cause shown. Specifically, mercury vapor lighting is prohibited. High pressure sodium vapor (HPS) lighting is permitted and encouraged. The installation, sale, offering for sale, lease or purchase of any mercury vapor light fixture or lamp for use as outdoor lighting in the county is specifically prohibited.

[Option 3. Restrict the type of lamp to that specified in the Land Development Code to High Pressure Sodium (HPS) and require that any changes to the specification come through the LDC amendment process.]

b. Lamp Standards. High pressure sodium vapor lamps (HPS) are the only permitted lamp with an output of 1800 or more lumens of output (the approximate output of one 100 watt incandescent light bulb) except as provided below.

(1) Lighting of outdoor recreational facilities (public or private) such as, but not limited to, football fields, soccer fields, baseball fields, softball fields, tennis courts, etc. are exempt from the lamp type standards provided that all other applicable provisions are met.

End of options for b. Lamp Standards.

c. Luminaire Standards. Fully shielded, full cutoff luminaires with recessed bulbs and flat lenses are the only permitted fixtures for outdoor lighting, with the following exceptions.

- (1) Luminaires that have a maximum output of 260 lumens per fixture (the approximate output of one 20 watt incandescent bulb), regardless of number of bulbs, may be left unshielded provided the fixture has an opaque top to keep light from shining directly up.
- (2) Luminaires that have a maximum output of 1,000 lumens per fixture (the approximate output of one 60 watt incandescent bulb), regardless of number of bulbs, may be partially shielded, provided the bulb is not visible, and the fixture has an opaque top to keep light from shining directly up.
- (3) Sensor activated lighting may be unshielded provided it is located in such a manner as to prevent direct glare and lighting into properties of others or into a public right-of-way, and provided the light is set to only go on when activated and to go off within five minutes after activation has ceased, and the light must not be triggered by activity off the property.
- (4) Flood or spot luminaires with a lamp or lamps rated at 900 lumens or less may be used except that no spot or flood luminaire may be aimed, directed, or focused such as to cause direct light from the luminaire to be directed toward residential buildings on adjacent or nearby land, or to create glare perceptible to persons operating motor vehicles on public ways, or directed skyward, or directed towards the shoreline areas. The luminaire must be redirected or aimed so that illumination is directed to the designated areas and its light output controlled as necessary to eliminate such conditions. Illumination resulting from such lighting must be considered as contributing to the illumination levels specified herein.
- (5) All externally illuminated billboards and signs must be lighted by shielded fixtures mounted at the top of the sign and aimed downward. Outdoor advertising signs of the type constructed of translucent materials and wholly illuminated from within do not require shielding. Dark backgrounds with light lettering or symbols is preferred to minimize detrimental effects. Illumination resulting from sign lighting must be considered as contributing to the illumination levels specified herein.
- (6) Fixtures used to accent architectural features, materials, colors, style of buildings, landscaping, or art must be located, aimed and shielded so that light is directed only on those features. Such fixtures must be aimed or shielded to minimize light spill onto adjacent properties or into the night sky in conformance with illumination and luminaire standards.

- (7) All non-essential exterior commercial lighting must be turned off after business hours.

d. Luminaire Mount Standards. The following standards apply to luminaire mountings.

- (1) Free Standing Luminaires. Light poles must be placed on the interior of the site. When light poles are proposed to be placed on the perimeter of the site, specific consideration should be addressed to compliance with the illumination standards at the property line and off the property onto adjacent residential property. The maximum height of light poles for parking lots and vehicular use areas may not exceed twenty five (25) feet measured from the ground level directly below the luminaire to the bottom of the lamp itself. Light poles located within fifty (50) feet of a residentially zoned property or use may not exceed fifteen (15) feet. Poles used to illuminate pedestrian walkways may not exceed fifteen (15) feet. Lighting for outdoor recreational facilities (public or private) such as, but not limited to, football fields, soccer fields, baseball fields, softball fields, tennis courts, etc., are exempt from the mounting height standards provided that all other applicable provisions are met.
- (2) Building Mounted Luminaires. These luminaires may only be attached to the building walls and the top of the fixture may not exceed the height of the parapet, or the roof, or twenty five (25) feet, whichever is the lowest.
- (3) Canopy Lighting. Light fixtures mounted on the underside of a canopy must be recessed or shielded full cutoff type so that the light is restrained to eighty five (85) degrees or less from the vertical. As an alternative (or supplement) to the canopy ceiling lights, indirect lighting may be used where the light is beamed upward and then reflected down from the underside of the canopy. When this method is used, light fixtures must be shielded so that direct illumination is focused exclusively on the underside of the canopy. No part of the canopy may be back-lighted. Lights may not be mounted on the top or sides (fascias) of the canopy. The sides (fascias) of the canopy may not be illuminated in any manner.
- (4) Trees and Landscaping. To avoid conflicts, locations of all light poles and fixtures must be coordinated with the locations of all trees and landscaping whether existing or shown on the landscaping plan. Vegetation screens may not be employed to serve as the means for controlling glare. Glare control must be achieved through the use of such means as cutoff fixtures, shields and baffles, and appropriate application of fixture mounting height, wattage, aiming angle and fixture placement.

5. Development Order and Permit Criteria. The applicant for any development order or building permit, as applicable under the provisions of this code involving outdoor

lighting fixtures, must submit as part of the application evidence that the proposed work will comply with the outdoor lighting standards of this code. Specifically the submission must include the following:

- a. Plans indicating the location on the premises and the type of illuminating devices, fixtures, lamps, supports, reflectors and other devices.
- b. A detailed description of the illuminating devices, fixtures, lamps, supports, reflectors, and other devices. The description must include manufacturer's catalogue cuts and drawings, including pictures, sections, and proposed wattages for each fixture.
- c. All applications for development orders or building permits, except for single family and duplex building permits, must provide photometric data, such as that furnished by the manufacturer of the proposed illuminating devices, showing the angle of cut-off and other characteristics of the light emissions including references to the standards contained herein.
- d. All applications for development orders or building permits, except for single family and duplex building permits, must provide photometrics in initial footcandles output for all proposed and existing fixtures on-site shown on a 20 foot by 20 foot grid on an appropriately scaled plan. On-site lighting to be included in the calculations must include, but is not limited to, lighting for parking lot, canopies, and building mounted and recessed lighting along the building facades and overhangs. The photometric plan must include a table showing the average, minimum, and maximum foot-candles of illumination on the site and within 50 feet of the site and the calculations deriving the averages. Evidence must be provided demonstrating that the proposed lighting plan will comply with the requirements of this code. The use of a Light Loss Factor (LLF) is not permitted in these photometrics. This photometric plan must be coordinated with the landscape plan to identify the location of trees and other landscaping features with respect to the lighting devices. Rejection or acceptance of the photometric plan will be based on this code.

6. Compliance.

- a. Prior to the final inspection for a certificate of compliance pursuant to section 10-183, site verified foot-candle readings must be provided demonstrating that the outdoor lighting, as installed, conforms with the proposed photometrics and the letter of substantial compliance provided by a registered professional engineer must include a certification that the outdoor lighting is in compliance with this code.

b. If any outdoor light fixture or the type of light source therein, is changed after the permit or development order has been issued, a change request or development order amendment must be submitted for approval together with adequate information to assure compliance with this code. This request or amendment must be approved prior to the installation of the proposed change.

c. Outdoor lighting must be maintained in compliance with this code.

7. Existing Outdoor Lighting. Light pole height requirements do not apply to existing light poles. Existing light fixtures must be brought into compliance with this code within ten (10) years of the adoption of this code (insert date of adoption). Any fixtures replaced after the date of the adoption of this code (insert the date) must be replaced with fixtures that comply with the standards established herein. Illuminance levels specified in this code apply to all outdoor lighting.

Secs. ~~34-624626~~–34-650. Reserved.

Division 2. Agricultural Districts

[NOTE: In an effort to conserve paper and reduce the overall length of the draft document, only the changed portion of each Use Regulation Table is shown. All other portions of each Use Regulation Table remains unchanged.]

Sec. 34-653. Use regulations table.

Use regulations for agricultural districts are as follows:

(Part of) TABLE 34-653. USE REGULATIONS FOR AGRICULTURAL DISTRICTS

	Special Notes or Regulations	AG-1	AG-2	AG-3
Animals, reptiles, marine life:				
Animals (excluding exotic species)	34-1291 et seq.	P	P	P
Animal clinic (df) or animal kennel (df)	34-1321 et seq.	EO/SE	EO/SE	EO/SE
Keeping, raising or breeding of domestic tropical birds (df) for commercial purposes	Note (12), 34-1291 et seq.	SE	SE	SE
Keeping, raising or breeding of American alligators, venomous reptiles or Class I or Class II animals (df)	34-1291 et seq.	SE	SE	SE

No further changes to Table 34-653.

Division 3. Residential Districts

Subdivision II. One- and Two- Family Residential Districts

Sec. 34-694 Use Regulations Table (One- & Two family residential districts)

NOTE: STAFF IS OPPOSED TO THIS AMENDMENT. LDCAC VOTED TO SUPPORT IT.

ADD to the matrix, Table 34-694: "Clubs, Membership organization" by SE in the RS-1 district only.

[NOTE: THE FOLLOWING CHANGES RELATED TO ANIMALS ARE SUPPORTED BY THE STAFF, LDCAC AND EROC]

Sec. 34-694. Use regulations table.

Use regulations for one- and two-family residential districts are as follows:

(Part of) TABLE 34-694. USE REGULATIONS FOR ONE- AND TWO-FAMILY RESIDENTIAL DISTRICTS

	Special Notes or Regulations	RSC-1	RSC-2	RSA	RS-1	RS-2	RS-3	RS-4	RS-5	TFC-1	TFC-2	TF-1
Animals and reptiles												
Keeping, raising or breeding of Class I animals (df)	34-1291	--	--	--	--	--	SE	SE	SE	--	--	--
Keeping, raising or breeding of american alligators, or venomous reptiles or Class II animals (df)	34-1291 et seq.	--	--	--	SE	SE	SE	SE	SE	--	--	--

No further changes to Table 34-694.

Subdivision IV. Mobile Home Residential Districts

Sec. 34-735. Use regulations table.

Use regulations for mobile home districts are as follows:

(Part of) 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
Animals and reptiles:						
Keeping, raising or breeding of Class I animals (df)	34-1291	--	--	--	SE	SE
Keeping, raising or breeding of American alligators; or venomous reptiles or Class II animals (df)	34-1291 et seq.	SE	SE	SE	SE	SE

No further changes to Table 34-735.

DIVISION 6. Commercial Districts

Sec. 34-843. Use regulations table.

Use regulations for conventional commercial districts are as follows:

(Part of) TABLE 34-843. USE REGULATIONS FOR CONVENTIONAL COMMERCIAL DISTRICTS

	Special Notes or	C- 1A	C-1	C-2	C- 2A	CN- 1	CN- 2	CN-3	CC	CG	CS- 1	CS- 2	CH	CT	CR	CI	CP
<u>Animals</u> <u>Keeping and breeding of</u> <u>Class 1 or Class 2</u>		=	<u>SE</u>	<u>SE</u>	<u>SE</u>	=	=	=	=	=	=	=	=	<u>SE</u>	=	=	=
<u>34-1291 et</u> <u>seq.</u>																	

No further changes to Table 34-843.

DIVISION 9. Planned Development Districts

Sec. 34-934. Use regulations table.

Use regulations for planned development districts are as follows:

(Part of) TABLE 34-934. USE REGULATIONS FOR PLANNED DEVELOPMENT DISTRICTS

	Special Notes or Regulations	RPD	MHPD	RV PD	CF PD	CP D	IPD Note (37)	AO PD	MPD
Animals:									
Clinic or kennel	34-1321 et seq.	--	--	--	--	P	P	--	P
Control center (including Humane Society)		--	--	--	P	P	--	--	P
<u>Keeping and breeding of Class 1 or Class 2 animals (df)</u>	<u>34-1291 et seq.</u>				<u>SE</u>	<u>SE</u>			<u>SE</u>

No further changes to Table 34-934.

Division 10. Special purpose Districts

Subdivision IV. Planned Unit Development District

[NOTE: THE FOLLOWING CHANGES ARE SUPPORTED BY THE STAFF AND THE LDCAC]

Sec. 34-1033. Definitions.

- (a) All definitions in section 34-2 shall will be applicable to this subdivision, except to the extent of inconsistency with any definitions contained in this subdivision.
- (b) For purposes of this subdivision, the following words and terms shall will have the meaning given in this subsection:

Planned unit development (PUD) means a tract of land ~~which~~ that is developed as a unit under ~~single ownership or unified control~~ and which is planned and developed in a single operation or within a proposed period of time by a series of scheduled development phases according to an officially approved final PUD development plan, ~~which~~ that does not necessarily correspond to the property development and use regulations of the conventional zoning districts but ~~which~~ permits flexibility in building siting and mixtures of housing types and land uses, and encourages the utilization of usable open space and the maintenance of significant natural features.

~~*Unified control* means a recorded agreement or covenant running with a parcel of land stipulating that the subject parcel shall be held under single ownership or control and shall not be transferred, conveyed, sold or divided in any unit other than in its entirety, provided however, that individual condominium units, or subdivision lots, if any, may be conveyed to a bona fide ultimate individual purchaser if not intended for resale.~~

Article VII. SUPPLEMENTARY DISTRICT REGULATIONS

Division 2. Accessory Uses, Buildings and Structures

Section 34-1181. Trucks and commercial vehicles in residentially and agriculturally zoned districts.

- (a) **No change**
- (b) Exceptions:
 1. Daytime deliveries or service calls;
 2. Trucks and equipment parked or stored within a completely enclosed building in conjunction with an approved home occupation pursuant to section 34-1772;
 3. ~~A trucks~~ A trucks or commercial vehicles parked or stored on any property zoned AG, provided:

- a) The property is not vacant; AND
- b) The truck or commercial vehicle is part of and primarily used for a legally permitted agricultural use in existence on the property, OR
- c) The person operating the truck or commercial vehicle is owned, leased or operated by a person who is a resident of the property and is appropriately licensed to drive the truck or commercial vehicle. This provision is intended to allow a resident in the agriculturally zoned districts (AG) to drive one truck home from work. It is not intended to allow a business to be run from the property.

4. **No change**

Division 10. Care Facilities and Centers

Sec. 34-1411. Assisted Living Facilities

[NOTE: STAFF PROPOSES 17 or more beds; 25 or more beds SUPPORTED BY LDCAC.]

- (a) *Location.* Assisted Living Facilities (ALFs) having 49 beds or less, may be located in zoning districts by right or by special exception, as specified in the district use regulations, but they are subject to the density ranges for the land use category applicable to the subject property. Density must be calculated in accordance with sections 34-1491 through 1495. Facilities with 50 or more beds are permissible in RPD, CFPD, CPD and MPD districts when approved as part of the master concept plan. All assisted living facilities with 17 or more beds must comply with the hurricane preparedness impact mitigation provisions contained in Sec. 2-485(b)(5)b.

(b) - (d) **No change**

Division 15. Excavation Activities

[NOTE: THE FOLLOWING CHANGES ARE SUPPORTED BY THE STAFF AND THE LDCAC. EROC DOES NOT SUPPORT THESE CHANGES.]

Subdivision II. Mining

Sec. 34-1671. Purpose of subdivision.

Mining operations, by their very nature, are incompatible with most other uses. In order to address this incompatibility concern, the following regulations and standards are hereby established. This subdivision establishes those areas that are most appropriate for mineral and fill dirt extraction operations. Appendix N provides a map of areas identified as the most appropriate location for these uses and applications for mining within these designated upland areas and wetlands areas subject to wetlands permitting will be rebuttably presumed compatible. This subdivision also establishes the general requirements for mining activities and ~~The purpose of this subdivision is to~~ sets forth the procedures, requirements and regulations pertaining to application for approval of mining activities.

Sec. 34-1672. Appendix N

Appendix N provides a map that identifies the areas deemed appropriate for mining and fill dirt extraction operations. Requests for mining uses within these designated upland areas and wetland areas subject to permitting will be rebuttably presumed compatible. Requests for mining uses located outside of the areas depicted on this map will be assumed to have compatibility concerns relative to existing uses. Compatibility concerns include, but are not limited to: blasting activities, dewatering, the creation of noise and dust, vibrations associated with blasting and crushing operations, impacts from associated intensive industrial operations including, but not limited to, cement and asphalt batch plants, cement product plants, and significant truck traffic. Applicants for mining operations outside the "Potential Mining Areas of Lee County," depicted in Appendix N, must address these compatibility concerns during the rezoning process.

Sec. 34-16723. Permit required.

It is unlawful for any person to commence mining activities within the unincorporated area of the county, or for an owner to allow the conduct of mining activities on his property, without first obtaining a general mining permit and a mining operation permit. All permits required by this section must be posted ~~by the applicant~~ at the mining site. Any violation of mining permit conditions, including zoning or development order terms or conditions, may result in the issuance of a cease and desist order to stop all operations until corrected. Failure to comply with a cease and desist order will result in penalties as described in section 1-5 of this code.

Sec. 34-16734. General policies for approval and operation.

The following Lee Plan policies must be adhered to in applying for and conducting mining activities:

- (1) Mining activities and mining reclamation plans in or near important groundwater resource areas must be designed to minimize the possibility of contamination of the groundwater during mining activity and after completion of the reclamation.

- (2) Mining operations must meet or exceed local, state and federal standards for noise, air and water quality, and vibration. (Lee Plan Policy 7.1.1)
- (3) Mining activities must be located and designed so as to minimize adverse environmental impacts.
- (4) Mining activities, and industrial uses ancillary to mining activities, must:
 - a. have adequate fire protection, transportation facilities, wastewater treatment and water supply, and
 - b. have no significant adverse effects such as dust, glare, light trespass and noise on surrounding land uses and natural resources.
- (5) The maximum length of a new mining operation zoned for mining use after [insert the date of adoption of this ordinance] may not exceed the current planning horizon of the Lee Plan. Once that horizon year is established, any request to extend this use beyond the horizon year must go through the public hearing process.

Sec. 34-16745. Application for a general mining permit; issuance of permit.

(a) *General procedure.*

- (1) New general mining permits may only be approved by the Board of County Commissioners as a planned development or as part of a planned development.
- (2) A general mining permit may be issued with ~~or without~~ conditions if necessary to protect the public health, safety and welfare or to ensure compliance with the plan or other applicable regulations. A mining operation permit is also required prior to any activity on the site (see section 34-16756).

(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) *Names, addresses and telephone numbers of:*

- a. the owner of the property and its agents located in the county upon which whom service general notices and notices of papers violation under this chapter may be made.
- b. the applicant or operator, if other than the owner, and its agent residing in the county upon which whom service general notices and notices of any papers violation under this chapter may be made. The application must state the applicant's legal interest in the lands comprising the project tract.
- c. the Florida registered professional engineer of record for the project, who has prepared and signed all engineering documents submitted to the county.

(2) *Historical and archaeological data.* Information on whether the property:

- a. is located within a Level 1 or Level 2 zone of archaeological sensitivity pursuant to the survey titled "An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida," or
- b. contains an archaeological site that is listed on the Florida Master Site File.

If either is the case, a certificate to dig, pursuant to chapter 22, will be required prior to issuance of a mining operation permit.

(3) *Environmental assessment report.* An environmental assessment report including consideration of:

- a. air emissions existing conditions of the site, including Florida Land Use and Cover and Classification System (FLUCCS) mapping, wetland boundary delineation and general locations of existing native trees;
- b. impact on environmental, historical and natural resources, including but not limited to wetlands, natural flowway corridors, sloughs, creeks, ponds and lakes, and native plant communities and native trees;
- c. an open space design plan based on the assessment of the existing native plant communities, native trees and connection to adjacent preserve areas;
- ed. a protected species survey as required by section 10-471 et seq.;

de. effect on nearby land uses;

ef. degradation or depletion of water quality and quantity;

fg. drainage;

gh. fire and safety;

hi. noise, odor, visual impacts;

i. air emissions; and

ik. sewage disposal and solid waste disposal.

(4) *Traffic impact statement.* In lieu of the traffic impact statement required by section 34-373(a)(7), the following information must be submitted:

a. Projected yearly volume and the total amount of excavated material to be removed from the site;

b. Projected number of peak hour and annual average daily truck trips;

c. Ownership, condition and maintenance plans for access routes from the actual excavation to the nearest county-maintained road; and

d. Projected distribution of truck trips on the county and state road network.

(5) *Test boring data.* Data from test borings conducted on each proposed excavation-site at intervals determined by the division of natural resources. Information submitted must include the:

a. locations of the test borings;

b. nature and depth of overburden;

c. likely yield of extractive material; and

- d. complete chemical characteristics of water in each water-bearing strata to be penetrated; and
- e. groundwater levels.

After evaluation by the division of natural resources, the test borings must be plugged from bottom to top with cement under the supervision of that division.

(6) *Site map.* Drawn at the same scale as the master concept plan, Prepared and certified by a registered engineer or surveyor showing:

- a. the date ~~map(s)~~ were prepared and any revision date(s);
- b. a north directional arrow;
- c. the names and locations of all streams, creeks, sloughs, natural flow-ways, wetlands, water bodies, private or public owned conservation lands, percolation ponds and drainfields, roads, railroads, utility lines, buildings, cemeteries and easements within the subject property and within 500 1000 feet of the property line; and
- d. location of test borings.

The certification on the map(s) must state: "I, the undersigned, hereby certify that this map is correct, and shows the information required by the requirements of this Land Development Code to obtain a general mining permit."

(7) *Proposed mining plan.*

- a. A site plan, drawn to scale, showing:
 - 1. The proposed area to be excavated, as follows:
 - i. Projects anticipated to be completed within ten years must show areas to be excavated in two-year increments; and
 - ii. Long duration projects (ten or more years) with projected annual production in excess of 500,000 cubic yards must show areas to be excavated in ten-year increments.

2. The general location and description of all physical plant facilities or other facilities for the operation.
 3. Location and description of all existing and proposed monitoring wells.
 4. Location and description of all vehicle access routes, to the nearest county-maintained road.
 5. Location of all conservation and preservation areas, streams, creeks, sloughs, flow-ways, and cypress heads (domes) and the location of connection to adjacent conservation or preserve areas.
- b. A profile plan showing the proposed depth of excavation and slope of banks during excavation operations and after reclamation.
 - c. A description of the excavation operation, including a description of methods to be employed in removing extractive materials from the ground and from the premises. If blasting is to be used, the type of blasting material as well as the frequency and hours of blasting contemplated. See section 34-202(b)(6) for other required information.
 - d. Hours of Operation:
 1. The proposed hours for office operations and business transactions and the hours that trucks will enter and leave the site with excavated materials. No blasting, excavation or trucking operations may be conducted on Sunday.
 2. The proposed hours for excavation operations (i.e. dragline operations and blasting activities) and rock crushing operations.
 - e. Whether the rock crushing operations, if requested, will be conducted within a fully enclosed building.
 - f. Whether dewatering is a requested activity. If dewatering is proposed the applicant must provide assurances that there will be no adverse impacts to existing wellfields, nearby developed properties, or wetlands adjacent to the excavation operation associated with withdrawals from the project.

- g. Whether the use of Stone, Clay, Glass, and Concrete Products Manufacturing, Group III (concrete block and brick), if requested, will be conducted entirely within an enclosed building.
 - h. A pre-development groundwater and surface water analysis must be conducted and submitted for approval. This analysis is intended to establish baseline data for groundwater and surface water monitoring for the mining project area. The analysis must be designed to identify groundwater level and groundwater and surface water quality baseline data. Prior to commencing the baseline study, the methodology of the study must be submitted for review, comment, and approval by the county.
- (8) *Rehabilitation and reclamation plan.* Plans and other appropriate documents accurately depicting the plan of reclamation, consistent with the standards detailed in section 34-1681, for each increment of the mining plan as outlined in the proposed mining plan submitted pursuant to subsection (b)(7)a.1. of this section. The plans must include:
- a. A typical section indicating the steepness of side slopes and depth of excavation and separate section of the littoral shelf of the excavation;
 - b. The type of reclamation to take place along the perimeter of the excavation Proposed elevations and final grading plan;
 - c. A statement that reclamation will begin within ~~six months~~ 30 calendar days after completion in any ~~area phase~~ that will not be disturbed by future operations, and will be completed within 12 months or whenever the permitted operations have been ~~abandoned-completed~~ or the general excavation permit expires, whichever comes first; and
 - d. An estimated cost for the reclamation program for each increment of the mining plan, including breakdowns for the cost of revegetation grading, grass stabilization, littoral shelf creation, any plant installation and monitoring, resloping of the lake banks and any other required site work required to complete the reclamation of the area.
- (9) *Other permits.*
- a. Copies of all local, water management district, state and federal permits issued for the project, or any applications for ~~any such~~ pending permits;
 - b. A summary listing of all required project permits by agency, identification number, date of issuance and date of expiration.

Sec. 34-16756. Application for a mining operation permit.

- (a) Upon approval of the general mining permit, the applicant may ~~proceed to~~ file for a mining operation permit. The development services staff will issue a mining operation permit after reviewing the application for compliance with the conditions placed on the general mining permit.

- (b) In addition to the submittal requirements of set forth in section 10-1745, the applicant must submit the following information:
 - (1) A list of the conditions placed on the mining operation by the Board of County Commissioners for the approved phase, as well as specific proposals to comply with the conditions.

 - (2) A performance bond, cash in escrow or letter of credit in an amount to be determined by the director but not less than 110 percent of the amount calculated pursuant to subsection 34-1675(b)(8)d. of this section, or other agreement acceptable to the county attorney to ensure the applicant's compliance in all respects with the conditions of the general mining permit for the phase or portion thereof covered by the mining operation permit.

 - (3) A survey of the area and depth of the excavation site certified by a professional surveyor and mapper (PSM) ~~to the division of development services~~, as part of each renewal application for a mining operation permit.

- (c) All on-site or off-site improvements required or imposed as a condition of zoning or development order approval must be completed and issued a certificate of compliance in accordance with the provisions contained in section 10-183 prior to commencement of mining activities and off site distribution of mining materials for the phase where the improvements are required.

Sec. 34-16767. Duration of mining operation permit.

- (a) Mining operation permits for the area or phase approved in the general mining permit will be valid for two years from the date of issuance unless a lesser period of time has been stipulated by the Board of County Commissioners.

Applications for renewal must be made at least 90 days prior to expiration.

- (b) Long duration projects, ~~which qualify under~~ described in section 34-16745(b)(7)a.1.ii, will be valid for five years from the date of permit issuance unless a lesser time has been stipulated by the Board of County Commissioners.

- (c) The Board of County Commissioners ~~has the authority to~~ may issue a general mining permit for all increments of long duration projects after the public hearings required by article II of this chapter.

Sec. 34-16778. Renewal of permits.

- (a) An application to renew a mining operation permit renewal must contain the same information required in section 34-16756, updated to reflect current conditions. Other information, sufficient to demonstrate compliance with the conditions of the original approval, must be submitted upon request by the ~~department~~ development services division.
- (b) Renewal of mining operation permits may be issued by the director after analysis of relevant information and a determination of compliance with the provisions of:
- (1) the original mining operation permit approval, including any conditions placed on the general mining permit by the Board of County Commissioners; and
 - (2) the reclamation plan, ~~and~~
 - ~~(3) an analysis of any supplemental relevant information.~~
- (c) Renewal permits will be valid for two years or until the expiration date of the general mining permit, whichever occurs first. Renewal permits for long duration projects, that qualify under section 34-16745(b)(7)a.1.ii. will be valid for five years or until the expiration date of the general mining permit, whichever occurs first. Renewal permits will be subject to the procedural standards and requirements of this subdivision including, but not limited to, reporting requirements and maintenance of a Pollution Prevention Plan.
- (d) Mining operation permits may be modified by making application to the director stating the reason for the modification and ~~by~~ providing a necessary documentation for the change.

Sec. 34-16789. Additional phase approvals.

If a project subject to this subdivision has not received a general mining operation permit for each increment shown in accordance with section 34-16745(b)(7)a.1.ii, the developer must submit a detailed mining plan and reclamation plan in accordance with the procedures for a minor planned development prior to obtaining the mining operation permit for the next increment.

Sec. 34-167980. Inspections.

The county's designated representatives have the right to enter mining sites at all reasonable hours, whenever entry is necessary for the proper discharge of their duties under this subdivision.

Sec. 34-16801. Site requirements.

(a) Design Standards. Mining activities will be subject to the following design standards. The Board of County Commissioners may modify these standards as a condition of approval when ~~necessary~~ and in the public interest, or where they ~~deem~~ determine a particular requirement unnecessary due to unusual circumstances.

(1) General Provisions

a. ~~Minimum land area.~~ All uses permitted under this subdivision must have a minimum lot size of ten five acres.

b. The mining operation must be designed to provide adequate fire protection, transportation facilities, wastewater treatment and water supply. The owner or operator, at its sole cost, will be responsible for providing these services and facilities in the event of a deficiency.

c. Mining operations must be located, designed and operated to:

1. Be compatible with adjacent private and publicly owned lands with special consideration given to adjacent conservation owned lands; and

2. Avoid adverse effects to existing abutting agricultural, residential or conservation activities; and

3. Avoid adverse effects from dust, noise, lighting, or odor on surrounding land uses and natural resources; and

4. Comply with the outdoor lighting provisions (except fixture mounting height standards) of this code; and

5. Not degrade the ambient surface or groundwater levels and quality.

(2) Setbacks for excavation site.

- a. ~~No excavation may be allowed~~ Excavations are prohibited within:
1. One hundred fifty feet of an existing street right-of-way line or easement;
 2. One hundred feet of any private property line under separate ownership.

In all cases, the most restrictive setback will apply.

b. A 500' radial setback is required from existing well sites.

~~b.c.~~ The Board of County Commissioners may allow ~~lesser~~ reduced setbacks in the context of a planned development approval provided:

1. The reclamation plan indicates how access will be made to future development;
2. The reclamation plan indicates that the setback area will not be developed after restoration; or
3. A closer setback will not be injurious to other property owners and the applicant mining owner or operator agrees to fence the mining site nearest private property under separate ownership if deemed necessary by the Board of County Commissioners.

(3) *Setbacks for accessory buildings or structures.*

- a. Setbacks for accessory buildings or structures must be shown on the site plan ~~required as part of the application~~ for a general mining permit and a mining operation permit.
- b. No crusher, mixing plant, bin, tank or structure directly involved in the production process may be located less than:
1. ~~600~~ 660 feet from any residentially zoned property area or district use under separate ownership, or
 2. 250 feet from all nonresidential ~~areas~~ zoning districts under separate ownership ~~or zoning districts.~~

To allow flexibility, the general area of accessory buildings, structures and processing facilities must be shown on the site plan with the appropriate setbacks as noted in this subsection listed as criteria for the final placement of these buildings, structures or facilities.

(4) *Security.* All entrances to mining activity areas must be restricted from public access during working hours and locked at all other times.

(5) *Observation wells.* Refer to The South Florida Water Management District Water Use permit for these requirements must be satisfied.

(6) *Maximum depth.* The Board of County Commissioners will establish maximum excavation depths after reviewing the findings and recommendations of the South Florida Water Management District or county staff, as applicable. The permitted depth may not exceed the depth permitted by the South Florida Water Management District or county staff, as applicable and may not penetrate through any impervious soil or other confining layer that presently prohibits intermingling of two or more aquifers.

(7) *Penalty for excessive depth.* If the excavation exceeds the established maximum excavation depth, the operator of the mining operation together with the property owner will be liable for a fine of two dollars (\$2.00) per cubic yard (in-situ measure) for each cubic yard of material excavated beyond the maximum excavation depth. This remedy is in addition to other remedies for violations described in this code.

~~(7)~~(8) *Bank slope.*

a. After excavation is complete and upon reclamation of the site, the banks of the excavations must be sloped at a ratio not greater than 6 horizontal to 1 vertical from the top of the finished grade to a water depth of four feet below the dry season depth. The excavation banks must also have a revegetated linear edge of at least 150 feet along the perimeter when abutting a residentially zoned area or district; or

b. The bank may be sloped a minimum of 4 horizontal to 1 vertical to four feet below the dry season water table if planted with suitable native wetland vegetation according to a plan approved by the Board of County Commissioners. Requests for 4 to 1 slopes must be included in the schedule of deviations (see section 34-412).

(b) *Performance Standards.* Mining operations will be subject to the following performance standards. The Board of County Commissioners may modify these standards as a condition of approval when in the public interest, or where they determine a particular requirement unnecessary due to unusual circumstances.

- (1) The Mining Operation must provide paved access connections to the County's road network. Paved access connections must:
 - a. satisfy the minimum street construction standards for industrial development specified in this code; and
 - b. be constructed to a minimum depth of 300 feet on the mine property.

- (2) The use of a truck/tire wash system is mandatory for all projects where the paved access connection is less than 0.5 (one-half) mile in length. The truck/tire wash must:
 - a. be installed on the property with a minimum setback of 100 feet from the project boundary; and
 - b. be located on the paved access connection at least 100 feet from the interior terminus of the paved access connection.

- (3) The operator of the mining operation or the property owner must prepare and keep on-site a Pollution Prevention Plan. The plan must address potential sources of contamination and provide Best Management Practices (BMPs) to avoid on-site and off-site surface water and groundwater contamination. The plan must include an inspection program to ensure the proper operation of the implemented BMPs and contaminant spill containment and disposal procedures. The operator must submit a copy of the Pollution Prevention Plan when applying for the Mining Operations Permit.

- (4) The operator of the mining operation together with the property owner must provide a bi-annual report that provides:
 - a. copies of periodic surface and groundwater quality monitoring requirements, at intervals directed by the director of natural resources or as conditioned in the zoning approval, pertaining to the baseline levels identified in the approved pre-development analysis (required by section 34-1675(b)(7)(h.) and those anticipated for use in conjunction with the proposed mining project; and
 - b. signed and sealed surveys that provide the depth of the existing excavation.

This report must be submitted to the Department of Community Development bi-annually beginning on the second anniversary of the date that the mining operation received the first local development order to commence the mining operation. A report must be submitted bi-annually until the reclamation of the mining operation is complete.

(5) Damage directly attributable to this mining operation to the improved or unimproved roadways must be repaired by the holder of the excavation/mining operation permit.

(6) Contractors, sub-contractors, laborers, material men, and their employees using, handling, storing, or producing regulated substances must use applicable best management practices.

(c) Reclamation Standards. Mining operations will be subject to the following reclamation standards. The Board of County Commissioners may modify these standards as a condition of approval when in the public interest, or where they determine a particular requirement unnecessary due to unusual circumstances. These conditions are not intended to conflict with the wetland permitting requirements of the U.S. Army Corps of Engineers, Florida Department of Environmental Protection or South Florida Water Management District. If differences exist, adjustments necessary to resolve the conflict(s) are acceptable for review.

(1) All disturbed areas of the mine site including the top of lake banks must be stabilized with native plants, sod or grass seeding at completion of mining or completion of each mining phase.

(2) Reclamation must be completed along the perimeter of the excavation. A minimum of twenty five percent (25 %) of the post construction lake (mine) perimeter length is required to have planted littoral shelves. The littoral shelf must be a creative design to improve water quality and create wildlife habitat. The littoral shelf must be a minimum of 10 feet wide. This minimum mine reclamation is required and should be planned to compliment post mine uses. The littoral shelf may be used as wetland impact mitigation as required by federal, state or water management district permits.

(3) Littoral plants must meet the standards of LDC Section 10-418. Trees smaller than those specified in section 10-420 may be used at equivalent value ratios to required herbaceous plants.

(4) The littoral shelf must be protected from impacts during and after mining. If the agricultural use of livestock is the intended post mine use, adequate fencing must be installed to protect the littoral shelf from livestock damage.

(5) If appropriate, organic soils (muck) must be excavated from any impacted wetlands on the site and placed in the littoral shelf creation areas.

Secs. 34-16842-34-1710. Reserved.

Division 26. Parking

Sec. 34-2020. Required spaces.

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

- (1) *Dwelling, housing and living units.* For all common parking lots, in addition to the spaces required in this subsection, additional parking spaces equal to ten percent of the total required must be provided to accommodate guest parking.

a. - c. **No change**

- d. *Assisted living facilities (section 34-1411), continuing care facilities (section 34-1414), health care facilities - groups I & II (section 34-622(c)(20), social services - groups III and IV (section 34-622(c)(46) and other similar uses.*

1. Any living unit designed as a dwelling unit and intended primarily as a self-care facility will be treated as a dwelling unit and will be required to provide parking spaces as set forth in section 34-2020(1)a.--c. for similar type dwelling units. For purposes of this section, a microwave oven or other cooking facilities such as a toaster or a hot plate using 115-120 volt electrical service do not constitute customary cooking facilities.

Where the living units are maintained under ~~unified control~~ single management and the residents are not capable or permitted to bring or operate private vehicles on the same premises, the director of zoning and development services may authorize up to a 75 percent reduction in required parking spaces provided sufficient parking is provided for employees and visitors.

2. Living units which do not contain customary cooking facilities within the individual units but instead have a central kitchen for food preparation and where meals are served in a central dining area or individual rooms must calculate parking requirements as follows: one parking space per four residents or four beds (whichever is greater), plus ten percent.

Where the living units are maintained under ~~unified control~~ single management and the residents are not capable or permitted to own or operate private vehicles on the same premises, the director of zoning and development services may authorize up to a 75 percent

reduction in required parking spaces provide sufficient parking is provided for employees and visitors.

No further changes to Section 34-2020.

Division 30. Property Development Regulations

Subdivision IV. Lots

Sec. 34-2221. Minimum dimensions generally.

Unless specifically approved otherwise as part of a planned development district approval or as set forth in article VII of this chapter:

- (1) All specified lot area, width and depth dimensions are mandatory minimums.
 - a. **No change**
 - b. Applicants seeking such relief ~~shall~~ must submit the following:
 1. - 3. **No change**
 4. Documents, satisfactory to the county, assuring that all common elements of the overall development are subject to unified control and will be perpetually maintained through a property owners association. The common elements ~~shall~~ must include, but are not limited to, streets and accessways, off-street parking, water management facilities, buffering, fences or walls, and open space.
 - c. Exemptions granted under the provisions of this section ~~shall~~ may not be construed as providing relief from any development regulations not specifically listed and approved. Compliance with chapter 10, and other land development ordinances ~~shall~~ must be based on the overall development as though the lots created under this exemption did not exist. For example developments subdivided under the provisions of this section, ~~shall~~ may be considered as multiple-occupancy complexes or as developments created under unified control for the purpose of determining identification signs, directory signs, and total sign area; and the ground-mounted identification sign and directory signs permitted for the overall development ~~shall~~ will not

be construed as off-site advertising for businesses located on the subdivided lots.

(2) thru (4) No changes

DIVISION 37. Subordinate and Temporary Uses

Subdivision II. Temporary Uses

Secs.34-3051 -- ~~3069~~3100. Reserved.

No further changes to Subdivision II.

~~DIVISION 38. TELEPHONE BOOTHS AND PAY PHONE STATIONS~~

~~Sec. 34-3070. Location:~~

~~a) Residential Districts: No telephone booth or pay telephone station may be located in any residentially zoned district (including Planned Development Districts), unless attached or affixed:~~

~~1) inside a residential building, or~~

~~2) inside of an approved bus shelter.~~

~~b) Non-residential Districts: A telephone booth or pay telephone station may be located in any non-residential zoning district or Planned Development district only if located:~~

~~1) inside of an approved bus shelter, or~~

~~2) outside of all required building and street setbacks.~~

~~Sec. 34-3071. Lighting & Signage:~~

~~a) The installation may include limited lighting for nighttime identification and use:~~

~~b) A sign may be installed to identify the telephone as being available for use by the general public, however, no commercial advertising (other than the name and address of the carrier/provider) may be attached or affixed to the installation.~~

~~Secs. 34-3072 -- 34-3100. Reserved.~~

Division ~~39~~38. Use, Occupancy and Construction Regulations

Sec. 34-3102. Number of principal buildings on lot.

(a) **No change**

(b) In the AG districts, a single parcel may be developed with two conventional single-family residences provided that the parcel is developed consistent with the supplemental regulations set forth in section 34-1180. In the RM-2 and CS-2 districts, a single parcel developed under unified control may have more than one principal building on the lot provided that the property is developed as a condominium or a cooperative, or is retained under single ownership.

(c) and (d) **No change**

Re-number Divisions 40 thru 42 as 39 thru 41.

No further changes.

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 be considered a separate provision and will not affect the remaining provisions of

this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such invalid or unconstitutional provision was not included.

SECTION 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 Manager, or his designee, without the need for a public hearing.

SECTION TEN: EFFECTIVE DATE

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. The provisions of this ordinance will apply to all projects or applications subject to the LDC unless the application for such project is complete and found sufficient before the effective date hereof.

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

ROBERT P. JANES
DOUGLAS ST. CERNY
RAY JUDAH
ANDREW W. COY
JOHN E. ALBION

DULY PASSED AND ADOPTED THIS ___ day of June, 2003.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of County Attorney