



**LAND DEVELOPMENT CODE ADVISORY COMMITTEE  
COMMUNITY DEVELOPMENT/PUBLIC WORKS BUILDING  
1500 MONROE STREET, FORT MYERS**

**First Floor Conference Room 1B**

**FRIDAY, MAY 13, 2016  
8:00 A.M.**

**AGENDA**

1. Call to Order/Review of Affidavit of Publication
2. Approval of Minutes – APRIL 8, 2016
3. LDC AMENDMENTS  
Continuation of LDC Regular Two-Year Cycle of Amendments –  
Ch 2\*, 10, 22, 32 and 34  
\* with Draft Administrative Code AC-13-16 Transportation Proportionate Share  
Calculations for new Development projects
4. Adjournment  
Next Meeting date: JUNE 10, 2016

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**MINUTES REPORT  
LAND DEVELOPMENT CODE ADVISORY COMMITTEE  
(LDCAC)  
Friday, April 8, 2016  
8:00 a.m.**

**Committee Members Present:**

Richard Ibach  
Patrick Vanasse  
Linda Stewart  
Randy Krise

Jay Johnson  
Tom Lehnert  
Bill Prys  
Al Quattrone

**Absent:**

Gerald Murphy  
Peter Kemezys  
Jennifer Sapen

Bill Morris  
Tom McLean

**Lee County Government Staff Present:**

Neysa Borkert, Assistant County Attorney  
Debbie Carpenter, DCD Admin Svcs., Recorder  
David Loveland, Director, Community  
Development  
Andy Getch, LCDOT  
Dan Kirkpatrick, LCDOT

Pam Houck, Zoning Manager  
Tony Palermo, Zoning  
Nettie Richardson, Zoning  
Beth Workman, Zoning  
Aaron Martin, Dev.Review  
Ben Dickson, Dev. Review Manager

**Consultants/Members of the Public Present:**

Charles Schmuth, Holy Trinity Church  
Gerald Strohmenger, Holy Trinity Church  
Tom Mouracade  
Kitty Green, Habitat for Humanity  
Bob Murphy, International Worship Center  
Laura DeJohn, Johnson Engineering

Ian McKay, Lee County Port Authority  
Ellen Lindblad, LCPA  
Austin Turner, Lee County Mosquito Control  
Tom Burt  
Ralph Morris, International Worship Center  
Jim Thomas, ADSystems

**CALL TO ORDER AND AFFIDAVIT:**

The Chairman, Patrick Vanasse, called the meeting to order at 8:00 a.m. in the first floor conference room (1B), 1500 Monroe Street, Fort Myers, Florida.

Ms. Neysa Borkert, Assistant County Attorney, confirmed the quorum, reviewed the Affidavit of Posting, found it legally sufficient as to form and content, and advised that the meeting could proceed.

Nettie Richardson introduced Mr. Tony Palermo, Senior Planner in the Zoning division. Tony will be handling all of the staff initiated LDC amendments in the future. He will be the LDCAC liaison.

**APPROVAL OF MINUTES – January 8, 2016**

**Mr. Randy Krise made a motion to approve the January 8, 2016 minutes; seconded by Mr. Richard Ibach. The motion was called and approved unanimously.**

**LAND DEVELOPMENT CODE AMENDMENTS**

Mr. David Loveland spoke briefly about the LDC amendments, stating that the committee had already reviewed two separate amendments based on Hearing Examiner recommendations, as well as the Pine Island amendments. The amendments currently proposed have been compiled over time by staff and are part of the regular two year cycle. This includes clean up and clarification language. This packet also includes specific requests from the public and these will be presented

separately. Members of the public were in attendance to make their presentations.

Mr. Palermo recommended looking at the public amendments first. He stated all had been vetted by the County Attorney's office and appropriate staff. He summarized the five proposed public amendments. First, electronic messaging centers are currently prohibited in the future land use category for North Fort Myers. Holy Trinity Presbyterian Church and International Worship Center are proposing an amendment to allow electronic messaging centers for places of worship in North Fort Myers. Habitat for Humanity has requested an amendment concerning temporary RV sites on non-profit facilities. The law firm of Henderson Franklin, representing Mosquito Control, has proposed an amendment to the regulations related to development adjacent to permitted heliport facilities. Henderson Franklin also representing the Buckingham Airpark, has proposed changes that would provide for consistent zoning uses for the entire airfield property. The Lee County Port Authority, represented by Ian McKay and Ellen Lindblad, and Laura DeJohn of Johnson Engineering, has proposed amendments to Section 34-1004, "Airport Noise Zones" and Map 1 to provide consistency between the LDC and the Lee Plan.

Mr. Palermo suggested that the speakers make their presentations after which the committee could make one motion, and then move on to the packet of staff amendments.

Mr. Krise asked Ms. Borkert whether he should recuse himself with respect to the Port Authority item since he sits as a member of the Lee County Port Authority Special Management Committee. Ms. Borkert was unsure, but advised in the interest of safety, that he abstain from the vote.

Mr. Vanasse commented that in addition to Mr. Krise's conflict, there could be comments or discussion concerning each individual item so he suggested a separate motion for each.

#### **Electronic Messaging Centers, North Fort Myers**

Mr. Jerry Stromenger spoke on behalf of the Holy Trinity Presbyterian Church, located on US 41 in North Fort Myers approximately a mile north of the Del Prado intersection. There are commercial properties along the north and south borders. The church has approximately 200 feet of road frontage and sits back from the roadway 200 feet. This, along with an old and obsolete sign, makes it difficult to get their message out. They wish to replace their old sign with a tasteful electronic message sign (he showed an artist rendering of the proposed sign). He said the proposal had been reviewed and was supported by the North Fort Myers planning panel and he asked for the committee's support of the changes to Chapter 33 to allow electronic messaging centers for places of worship in North Fort Myers.

Mr. Ralph Morris spoke on behalf of the International Worship Center. He was accompanied by Mr. Bob Murphy, the pastor and Mr. Jim Thomas, a sign company owner. Mr. Morris said their current sign was obsolete and an eye sore and they wished to replace it with an electronic message center (also presented a rendering of the proposed sign) and asked the committee to support the proposed amendment.

Mr. Palermo said staff supported the language. Two presentations were made to the North Fort Myers panel and they were supportive of the changes as well.

Mr. Bill Pysi wanted to see an endorsement from the North Fort Myers panel. He pointed out that this amendment pertained to every arterial road in North Fort Myers and until Lee County has better control of regulations concerning electronic signs, he was troubled with the precedence being set.

**Mr. Pysi made a motion to table the item until the language was better vetted. There was no second. The motion failed for lack of second.**

**Mr. Krise made a motion to accept the proposed amendment as written. Mr. Tom Lehnert seconded. The motion passed by majority with Mr. Pysi opposed.**

### **Temporary Use of RV(s)**

Ms. Kitty Green spoke on behalf of the Habitat for Humanity in support of the Temporary RV amendment, outlining the reasons for the request. Habitat builds homes with the help of volunteers. Last year, 6000 volunteers produced 55 homes. A national program called Care-A-Vanners (travel with a purpose) invites people with RVs to travel to any affiliate and in exchange for a free RV hookup, they work for free for two weeks. Habitat has a vacant lot with six RV hookups behind their construction warehouse, but recently became aware that this was not allowed. During the months of January through March, volunteers donated 2100 hours, an equivalent of \$50,000 so they are anxious to continue hosting volunteers. Habitat has been working with staff and has special permission to use the site while going through the process. The only disagreement involves the number of hook-ups. Habitat would like to continue to have six sites, staff has recommended two.

Mr. Vanasse asked for staff comments. Mr. Palermo said this applies to all non-profits, therefore staff thought it sensible to limit the number of sites to two. There was a short discussion about the Temporary Use Permit with the suggestion that the language be changed to recommend a "maximum" of six. Mr. Palermo said staff could not arbitrarily limit the number; there would have to be other site specific issues that would allow the limitation. Ms. Borkert referred to Condition #4, that the RV may be occupied by volunteers and employees of non-profit organizations, stating that if this was to be an actual condition, there was no way to enforce it. Ms. Neale Montgomery made the distinction that this pertains to lots which are already there. If another non-profit comes in asking to do the same thing, then the opportunity would be there to look at all the normal compatibilities. The language is limited and narrow and works for Habitat, it may not work as well for another non-profit.

Mr. Lehnert asked about the genesis of the code amendment, why not just deal with the Habitat site specifically. Ms. Montgomery said it could be related to potential equal protection issues and staff wished to avoid any questions on why Habitat could do this but another non-profit could not. Mr. Lehnert said he would be comfortable supporting a maximum of six sites with the ability for staff (like with density) to lower it for cause. The suggestion was made to clarify the language concerning Temporary Use Permits; that sites must be built to code with water, sewer, electric and all appropriate permits.

**Mr. Krise made a motion to support the request from Habitat for a maximum of six RV sites with a request for staff to look at the language to be sure there are provisions through the Temporary Use permit process that provides discretion for staff to review the request and determine if the number of sites requested is appropriate specific to the site, and include language that to obtain a Temporary Use Permit the RV sites must be built to code. Seconded by Mr. Lehnert. Motion passed unanimously.**

### **Lee County Mosquito Control Facilities & Operations**

Mr. Austin Turner with Henderson Franklin spoke on behalf of the Lee County Mosquito Control concerning two amendments. The first was related to development that occurs in close proximity to heliports and the second item was to allow aircraft landing facilities to be permitted within the CF district.

He distributed a map showing a number of heliport facilities operated by government or quasi-governmental agencies which provide important public services such as mosquito control and medical transport. The amendment provides operators of these facilities the opportunity to review and comment on proposed development that falls within a certain proximity to their facilities. When that happens, staff will refer the applicant to the licensed heliport entity and the operator will have 20 days in which to comment. The County may consider comments or objections but retains all permitting authority.

The second amendment relates to the Buckingham Airpark. Community Facilities district does not allow aircraft landing facilities. This is not consistent with the other conventional zoning districts.

The Buckingham Airpark, owned by Lee County Mosquito Control is presently a mix of RS-1, AG-2, RM and CF zoning. The amendment proposes to remove the inconsistency with the airfield's historical and present use and provide for consistent zoning use for the entire site.

Mr. Vanasse asked why the heliport amendment was necessary. Mr. Turner responded that originally heliports were in remote areas, but through time development and hazards are getting closer to the facilities. Mr. Ibach asked what types of things would be reviewed. Mr. Turner said the comments would relate to noise mitigation, height, building materials, and encroachment into airspace. Mr. Turner confirmed that the FAA creates the zones and has standards, but the operators have no opportunity to make comments. Mr. Krise asked about the ultimate goal of the amendment and Mr. Turner responded that as development gets closer to established heliports it is a public health, safety and welfare issue.

Mr. Vanasse asked if the review criteria was codified anywhere. Mr. Turner responded that the criteria was listed in 34-1016 (c) 3.

Mr. Prysi asked if the comments were advisory or regulatory. Mr. Loveland responded that comments are advisory and that the County can consider those in the context of the larger approval of whatever is to be approved. In response to Mr. Vanasse's question concerning the timeframe for comments, Mr. Loveland said the 20 days was a window of opportunity, otherwise it is lost.

**Mr. Prysi made a motion to move both amendments as presented forward. Seconded by Mr. Krise. Motion carried unanimously.**

#### **Lee County Port Authority Airport Noise Zones**

Ms. Laura DeJohn, Johnson Engineering, presented the request concerning an update of Southwest Florida International Airport Noise Zones and corresponding update to Map 1. She was accompanied by Ellen Lindblad, Ian McKay and Emily Underhill of the Lee County Port Authority.

The Southwest Florida International Airport (SWFIA) Noise Zones, as established by the FAA, have been in place for many years. Federal regulations require that the noise zones be updated periodically and most recently this was done in September of 2013 (*Part 150 Study*). An amendment to the Lee County Comprehensive Plan (Lee Plan) is pending to incorporate the updates of the Part 150 Study; language in the Land Development Codes must be brought into compliance as well.

There are 4 Noise Zones. Zone A is the highest noise level and applies only to airport property. Zones B and C have contracted, meaning less area of impact; affecting less people. Zone D is east of the airport and consists of the area designated for Flight Training associated with the planned parallel runway.

Sec 34-1004(c) concerns the notification process for property within Airport Noise Zones B, C and D. Shown is the existing language but the Port Authority is working with the County Attorney's office to bring the notification language up to current standards, such as having noise zones reflected on the current zoning map or including a disclosure statement in the conditions of a PD zoning or on a plat, for property located within those areas. Ms. Borkert said language in this section will be more general in nature; specific requirements will be handled and implemented in other places, such as in the administration code for plats.

Mr. Vanasse asked about the potential impact to existing businesses or residences as zones expand or contract. Ms. DeJohn said only Zone B would have that potential and already has limits with respect to assembly (places of worship, schools, nursing homes and more) but has language vesting current, existing residential uses in the area. In this case Zone B is contracting and will affect less people. Mr. Loveland commented that not much development would be affected since much of the land on the south side is designated Tradeport or Industrial and those land use categories have limitations concerning residential use.

**Mr. Bill Prysi made a motion to approve the amendment as presented. Seconded by Mr. Lehnert. The motion was approved with Mr. Krise abstaining due to his potential conflict of interest as a member of the Lee County Port Authority committee.**

That concluded the public amendments. Mr. Vanasse asked Mr. Palermo to summarize the proposed staff amendments. Mr. Palermo apologized for the 109 pages but said a large portion included strike-thru sections regarding the Estero Planning Community which was being deleted in its entirety.

Mr. Prysi questioned whether striking the Estero's Planning Community regulations from the LDC was premature as Estero has not yet adopted their own plan. Ms. Borkert responded that once Estero incorporated and Lee County no longer regulated their plan, there was no need to have it in Lee County's code. Estero was supposed to have taken a "snapshot" of the community plan at the time of incorporation to memorialize it. Applicants can contact Estero with questions related to their community plan.

Mr. Palermo provided a brief summary of the proposed changes then referred to the staff memo concerning Social Services in Chapters 33 and 34. He said one issue, related to 100-foot building setback, was county-wide, the other pertained to the North Fort Myers Community specifically. The Hearing Examiner brought a discrepancy related to the 100 foot setback in Group II to light stating it was inconsistent with other more intensive commercial uses (including Social Services Group I, III and IV) and this could incur Fair Housing concerns. Secondly, in North Fort Myers' newly created LDC regulations, Sec 33-1596 permits Social Services, Group I in the Commercial Corridor but Social Services Group II thru IV are not permitted. This also is a reasonable accommodation issue and needed to be addressed. Mr. Palermo said there were members of the public present that wished to comment on the Social Services amendment.

Mr. Tom Burt addressed the committee concerning the proposal to strike the 100 foot setback language from Social Services Group II. His opinion was that the uses within Group II were more intensive than small office use. The memo staff prepared speculated that the 100 foot setback instituted in 1994 may have been intended for Group III not II. Mr. Birch compared a recreational hall or private club with a 40 foot required setback from a residential unit to a juvenile detention center with a 7 foot setback, he thought more protection (than 7 feet) was necessary. He did not feel that removing the setback language was appropriate.

Mr. Vanasse asked staff about the protections for the more intense uses. Mr. Palermo explained that the zoning districts where these uses are allowed are limited and the solution is generally to go through the public hearing process where ultimately the approval or denial is decided by the County Commissioners. Groups III and IV are permitted by right only in the CFPD (Community Facilities Planning District) or within a Mixed Use Planned Development, otherwise have to go through the public hearing process which allows conditions such as buffers and setbacks to be addressed on a case by case basis. Specifically, the Hearing Examiner realized there was a discrepancy in the law; that the 100 foot setback applied to this particular group of uses, but not the other groups making it appear that it was an arbitrary regulation. Staff recommended removal of the 100-foot building setback language to avoid a potential conflict with reasonable accommodation requirements. **(Sec 34-2443).**

Mr. Tom Mouracade also addressed the committee with respect to the removal of the 100 foot setback condition. He agreed with the staff proposal. He said Social Services Group II includes vital uses to the community such as self help groups like Alcoholics Anonymous, Gamblers Anonymous and Over Eaters Anonymous. A good number of the meetings are held in churches but many are held in residential areas as well and have been for many years. He said it was in the community's best interest not to impede these groups from meeting freely. His opinion was that this is a very tranquil use and Group II is much different than the others. Nationwide, there is a serious problem

with abuses that require a 12 step program and locally, he did not want to see anyone deprived of services that they need.

**Sec 33-1596.** Mr. Palermo said there was a consensus from the North Fort Myers planning panel and staff to permit Groups I & II uses where zoning permits and to allow Groups III and IV through the planned development process only.

**Sec 34-2443.** Mr. Vanasse said he understood the concerns with respect to the 100 foot setback language but cautioned that from a legal standpoint there could be potential ramifications of how to deal with this issue. He was supportive of the staff's recommendation.

Ms. Borkert reminded the group that a motion concerning Social Services would pertain to Sec 34-2443 and to Sec 33-1596 - amendments presented by staff.

**Mr. Krise made a motion to approve the staff amendments as presented. Mr. Richard Ibach seconded. Motion carried unanimously.**

## **Chapter 2**

Mr. Andy Getch, Planning Manager LCDOT reviewed the history associated with Chapter 2 and the changes related to Concurrency.

Concurrency was mandated early in 1980's. Local government was required to have developers install transportation infrastructure if their development caused a level of service deficit, or was required to deny the development. In the mid-to-late 2000's, the state gave local governments the option of accepting, if they chose to, a proportionate fair share type agreement with developers. Following that, rather than giving local governments the *option* of accepting a proportionate fair share agreement, the state mandated that jurisdictions were required to accept an offer from a developer and the current language reflects that. In 2011, the state passed the Community Planning Act, making transportation concurrency optional, but still including the proportionate share option. Concurrency changes have been adopted into the Lee Plan and the proposed amendments seek to make **Sec 2-45 and 2-46** consistent with Florida Statutes and recent Lee Plan changes. Mr. Getch said Administrative Code 13-16, referred to within, will be amended as well and brought to the committee in the future. Ms. Borkert reminded the committee that administrative processes were being taken out of the LDC and moved into the administrative codes.

Mr. Vanasse understood that Lee County had the option to replace the concurrency management with this proportionate share option as explained by Mr. Getch. Although he had no specific objections to the amendments, he was concerned about the repercussions, wondered what the "five areas of significant impact" referred to, and asked if local developers or transportation consultants had been given the opportunity to review and if so, what the comments were. Mr. Getch responded that the changes had not been vetted locally, but it is not a new process rather a modification or substitute of past practices, is site specific and will only happen on rare occasions. Of note is that neither development orders nor zoning can be denied on a transportation deficiency alone. Following discussion, it was decided that without a better understanding of all the ramifications, approval of the amendment was not appropriate. Mr. Vanasse suggested tabling the amendment to a later date after local developers and transportation consultants had been given the opportunity to review and comment and the committee agreed.

**Motion by Mr. Lehnert to table the Chapter 2 amendment. Seconded by Mr. Prysi. Motion carried.**

## **Chapter 6**

No comments or discussion.

**Motion to approve by Mr. Lehnert, seconded by Mr. Prysi. The motion carried.**



## **Chapter 10**

**Sec 10-104(a)(15)** Mr. Vanasse questioned the removal of language concerning administrative deviations for water mains. Mr. Ben Dickson, Development Services Manager, said it was being removed because water mains fall under the fire code which falls under Board of Adjustments and Appeals jurisdiction. Mr. Ibach said he understood the fire code dealt with hydrants and flows, not intersecting water lines and thought this was going to be a problem as very few developments can meet Lee County's standards. Historically the solution to dead ends, intersecting water lines or water main alignment issues has been to "remodel it, provide the required fire flow and upsize the water lines", which was all done administratively as part of the approval process.

Mr. Vanasse asked why the authority was being changed. It appears to make the process more onerous and certainly will cause time delays. Ms. Borkert agreed to look at the code and see if she could ascertain the reason for the change.

**Sec 10-154.** Mr. Lehnert had questions related to the ownership and encumbrance report and asked why it was being removed as a form of title certification. Ms. Borkert stated it was being removed according to state statute. Mr. Lehnert suggested in that case that it be removed from **Sec 34-202** also.

**Sec 10-415. Open Space.** Mr. Prysi was troubled by the addition of the above ground irrigation system requirement in (2) *Salvaging existing native plants*. Ms. Workman responded. She explained the reasoning behind it that it was temporary, that it was to be taken out after a certain time of establishment and it was optional as a way to meet some requirements.

Mr. Prysi noted that in (2)b. with the deletion of Environmental Sciences Director, the last sentence was incomplete. Ms. Borkert said staff would add either Development Services Manager or Community Development Director to complete the sentence.

### **Sec 10-416(6)**

Mr. Vanasse asked about the strike thru section concerning compact communities. Staff confirmed those requirements were being eliminated because they were duplicative. The Compact Community regulations include landscape requirements.

Mr. Prysi and staff had discussion as follows:

- **Sec 10-416(a).** Recommended leaving the *alternative landscape betterment plan* language in (a). Ms. Workman responded. Discussion followed. Staff agreed to review that section.
- Wanted more flexibility in (4) *Heritage Trees* and asked that additional language be included. Ms. Workman said adding specific language as Mr. Prysi suggested would remove flexibility and discussion followed.
- Asked staff to review the language concerning the use of sand, gravel, rock, shell or pavement (building perimeter materials and parking island sections) stating there were instances where these materials are needed to prevent erosion or to help with drainage. Staff said these materials change the climate of the plant bed, are impervious, and not considered green infrastructure; although their use is not prohibited they need to be included in open space calculations. Following more discussion, it was decided that this requirement was already in the code and not part of the amendment being proposed. Mr. Prysi on behalf of the committee asked staff to review the section regardless.
- **Sec 10-418(3)a.** Removal of the 50 percent coverage language. Discussion followed on how best to calculate the required plant quantity. Staff agreed to review the language to be sure the math was correct.

- **Sec. 10-419 Alternate landscape betterment plan (ALBP).** Mr. Prysi said he took exception to the language being added. His opinion was that a betterment plan should be allowed to be applied to any application. He said there is a mathematically calculated landscape code now and in order to create a design scenario not based on math, an ALBP is the only avenue to do so. This language defeats the intent of what the betterment plans are for. Ms. Workman responded and discussion followed concerning specific design scenarios. Mr. Lehnert and Mr. Vanasse each had a concern with this section as well.
- Asked staff to strike the “100% native rule” language because it limits flexibility and “closes the door on many things”. Staff stated that language was in section **2 thru 6** which was not changing and not presented as part of these amendments, but staff agreed to look at that criteria.
- **10-420 (c)(2) Plant material standards.** Recommended keeping the requirement the same or changing the standard to be consistent with Grade and Standards which has a measurement of 6” versus 12”. Ms. Workman responded. Discussion followed. Staff agreed to review the section.
- **10-420 (c)(f)** Disagreed with the change that measurement of plant material be based on the parking lot grade. Ms. Workman and Mr. Aaron Martin responded. Discussion followed. Mr. Prysi understood the intent of the measurement as it applied to the buffers, but thought it was counterproductive to the entire project. Staff agreed to review the language.

Mr. Vanasse asked if there was a motion for Chapter 10. Mr. Prysi recommended tabling all of the landscaping section; especially the betterment plan section.

Ms. Borkert addressed the water main question. In **Sec 10-104**, the code gave the Director the ability to grant or authorize deviations for water mains. In **Sec 10-383**, the Board of Adjustments and Appeals (BOAA) has jurisdiction from the provisions of this division. This causes a competing authorization in the code and needs to be addressed. Traditionally water main deviations have been granted by the Director. She suggested amending the language in **Sec 10-383(d)** to clarify that deviations/variances would be granted administratively by the Director, and that the BOAA would oversee appeals.

Because of time restraints and the possibility of losing the quorum, Mr. Vanasse suggested leaving discussion of Chapter 34 until the next meeting.

**Mr. Prysi made a motion to table Chapter 10 in particular regarding the betterment plan and landscaping items, until the next meeting to give staff an opportunity to address items as discussed. He was all right with approving the rest. Seconded by Mr. Ibach. The motion carried.**

**Mr. Lehnert made a motion to approve Chapter 14 amendments. Mr. Prysi seconded. Motion carried unanimously.**

**Mr. Lehnert made a motion to approve Chapter 30. Mr. Ibach seconded. Motion carried unanimously.**

**Mr. Lehnert made a motion to approve Chapter 33. Mr. Ibach seconded. Motion carried unanimously.**

**Mr. Lehnert made a motion to table the rest of the items on the agenda. Seconded by Mr. Prysi. Motion carried.**

Ms. Borkert clarified that the motion to table included just the landscape portion of Chapter 10, and the Chapter 34 amendments not already reviewed (Sec 34-622 included the Social Services item already approved). This is in addition to the already tabled Chapter 2. Ms. Linda Stewart asked about the three walk on items; staff confirmed those would be included in the items tabled for review and discussion at the next meeting as well.

Mr. Ibach asked if there was a timetable for board review. Staff said there was no date certain yet. Due to the size of the packet it was anticipated that it would take some time to work through. There will be time to bring this back to the committee.

Mr. Vanasse asked Mr. Getch if he needed assistance obtaining input from the development community concerning Chapter 2. Mr. Getch said he had an extensive list of transportation related consultants, developers, planners and attorneys. He will solicit comments from that group.

**Motion to adjourn by Mr. Prysi. Seconded by Mr. Lehnert. Motion carried. Meeting adjourned at 10:35 a.m.**

The next meeting was tentatively scheduled for May 13, 2016.

DRAFT



**APPOINTED OFFICERS (continued)**

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

**DISCLOSURE OF LOCAL OFFICER'S INTEREST**

I, Randy L. Krise, hereby disclose that on April 8, 20 16:

(a) A measure came or will come before my agency which (check one or more)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, \_\_\_\_\_;
- inured to the special gain or loss of my relative, \_\_\_\_\_;
- inured to the special gain or loss of \_\_\_\_\_, by whom I am retained; or
- inured to the special gain or loss of Lee County Port Authority, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

*I am an appointed member of the Airport Special Management Committee and recused myself from voting on a measure brought by the Lee County Port Authority. I do not know if it is a conflict but out of an abundance of caution I abstained from voting*

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

~~April 12, 2016~~ April 12, 2016  
Date Filed

Randy L. Krise  
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

# LEE COUNTY STAFF AMENDMENTS

## SUMMARY

### STAFF-PROPOSED LDC AMENDMENTS (LDCAC)

#### Chapter 2

*LDC Sec. 2-45 & 2-46; LDC Sec. 66 - 76; Concurrency Definitions, Certification, Proportionate Share, General Requirements, Agreement Process, etc. (Pages 1-13)*

**Change:** Definitions edited; “Proportionate Fair-Share” renamed to “Proportionate Share”; Sections on concurrency edited and rewritten.

**Reason:** To make consistent with changes in Florida Statutes, Lee Plan amendments to transportation and parks concurrency, and internal practices.

*LDC Sec. 2-268 Benefit Districts. (Pages 14-18)*

**Change:** Replaced Road Impact Fee Benefit District Map with a new map and corrected language relating to the number of road impact fee benefit districts.

**Reason:** There was a reduction from 5 road impact fee districts to 4.

*LDC Sec. 2-351 Refund of Paid Fees (Page 18)*

**Change:** Corrected “community” parks impact fee to “regional” | parks impact fee.

**Reason:** Correction of a wording error in the code identified by Parks Planning staff.

## Chapter 10

### *LDC Sec. 10-1 Definitions (Page 19)*

**Change:** Changed definition of subdivision from division of a lot into two or more parcels to three or more parcels.

**Reason:** To make consistent with the current definition of subdivision under Florida Statutes.

### *LDC Sec. 10-104 Deviation and variances (Page 19)*

**Change:** Made reference to LDC Sec. 34-380 (Planned Development Deviations).

**Reason:** LDC Sec. 34-380 is the correct reference for deviations to a master concept plan.

### *LDC Sec. 10-154 Development Order Submittal Requirements. (Pages 19-20)*

**Change:** Ownership and encumbrance report requirement updated.

**Reason:** To make consistent with changes in Florida Statutes.

**Change:** No hazardous materials plan for development order applications.

**Reason:** Unnecessary for development orders.

### *LDC Sec. 10-383 Interpretation of Division; Conflicting Provisions (Page 20)*

**Change:** Clarify that Development Services Director has jurisdiction to grant deviations for water main installation.

**Reason:** To eliminate confusion as to the jurisdiction for these deviations.

### *LDC Sec. 10-384 Minimum Standards for All Developments (Page 20)*

**Change:** Reference to LDC Sec. 10-104(a)(13) changed to 10-104(a)(15).

**Reason:** Water Mains reference (13) was incorrect. Sec. 10-104(a)(15) is the correct reference.

### *LDC Sec. 10-414 – 420 Landscape Plan Requirements. (Pages 20-26)*

**Change:** Replace “project” with “development” overall.

**Reason:** “Development” is currently defined in the LDC.



*LDC Sec. 10-415 Open Space. (Pages 21-23)*

**Change:** Revise Salvaging Native Plants language;

**Reason:** To clarify temporary above ground irrigation or other means must be provided to ensure survivability;

**Change:** Revise language regarding indigenous preserve monitoring report submittals;

**Reason:** Clarifies timing of reports;

**Change:** Remove the Sabal palm relocation requirements;

**Reason:** Cost-prohibitive for developers to comply and for staff to enforce.

*LDC Sec. 10-416 Landscape Standards. (Pages 23-25)*

**Change:** Move the Heritage Tree and dry detention planting code under the general tree section;

**Reason:** Clarity;

**Change:** Consolidate the general tree requirements for residential developments;

**Reason:** Clarity;

**Change:** Revise tree installation specifications;

**Reason:** Clarity;

*LDC Sec. 10-418 Surface Water Management Systems. (Page 25)*

**Change:** Revise compensatory littoral area calculation.

**Reason:** To better clarify the requirement.

*LDC Sec. 10-419 Alternative landscape betterment plan (Page 25)*

**Change:** Rewrite the Alternate Landscape Betterment Plan section.

**Reason:** To better define when the section is appropriate to use.

*LDC Sec. 10-420 Plant Material Standards. (Page 26)*

**Change:** Modify standards for trees and palms;

**Reason:** Clarity;

**Change:** Add language regarding inappropriate mulch materials;

**Reason:** To make consistent with existing language per LDC Sec. 10-416(c)(2)(g);

*LDC Sec. 10-716 Piping Materials For Use in Right of Way. (Pages 27-28)*

**Change:** Changes to chart regulating utility piping materials in right of way.

**Change:** Technical corrections per Lee County Utilities and Transportation staff.

## **Chapter 22**

*LDC Sec. 22-102, 22-103, 22-106 and 22-203 Historic Preservation: Division 3 Certificate of Appropriateness. (Pages 29-30)*

**Change:** Make changes to required mailings, availability of staff reports for regular certificate of appropriateness, special certificate of appropriateness, certificate to dig, and notice of historic preservation board actions.

**Reason:** Clarified language, allows more utilization of electronic mail, and other changes recommended by Planning/Historic Preservation staff.

## **Chapter 32**

*LDC Sec. 32-243 Property Development Regulations (Compact Communities) (Page 31)*

**Change:** Corrects street setbacks and height regulations.

**Reason:** Corrects error identified by the County Attorney's Office.

## Chapter 34

### *LDC Sec. 34-2 Definitions. (Page 32)*

**Change:** Agritourism activity definition updated to include livestock operation, civic, ceremonial, training, and exhibition.

**Reason:** This definition mirrors the most recent definition of Agritourism in Florida Statutes as recently amended.

**Change:** Storage definition corrected.

**Reason:** Clarification and removal of grammatical errors.

### *LDC Sec. 34-6 Planning Communities. (Page 32)*

**Change:** Remove Estero and include San Carlos Island in list of Planning Community regulations.

**Reason:** Incorporation of the Village of Estero; Moved San Carlos Island to Community Planning, Chapter 33.

### *LDC Sec. 34-145 Functions and Authority (Hearing Examiner) (Page 32)*

**Change:** Strike language on equitable jurisdiction.

**Reason:** Correction recommended by the County Attorney's Office to address a court decision relating to a code enforcement case.

### *LDC Sec. 34-202 General Submittal Requirements (Public Hearing) (Pages 33-34)*

**Change:** Corrected language; Ownership and encumbrance report requirement updated; Hazardous material emergency plan requirement removed; bonus density application documents required updated.

**Reason:** Consistency with Florida Statutes; Hazardous material emergency plan requirement removed not necessary for zoning cases; Made consistent with new amendments related to Pine Island/TDR program.

### *LDC Sec. 34-204 Submittal requirements for Administrative Action applications. (Page 34)*

**Change:** Administrative changes only require a parcel number, rather than a metes and bounds legal description.

**Reason:** Reduces burden on applicants; staff can identify property with a valid parcel number.

*LDC Sec. 34-210 Temporary Use Permits. (Page 34)*

**Change:** Noise ordinance reference updated to Ord. 14-18.

**Reason:** Approval of Ord. 14-18 (Noise Ordinance).

*LDC Sec. 34-622(c) (38) Use Activity Group – Recreation Facilities, Commercial. (Pages 34-35)*

**Change:** Coin-operated games do not include gambling; Adds indoor gun range to list of Group IV Recreational Facilities, Commercial uses (indoor facilities).

**Reason:** Clarity; Updates with appropriate commercial indoor uses which currently include bingo and bowling.

*LDC Sec. 34-625 Outdoor Lighting Standards. (Page 35)*

**Change:** Clarifies language to permit canopy backlighting (provided there is no off-sight light spillage).

**Reason:** Canopy back-lighting commonly used by convenience stores - appropriate as long as there is not off-site light spillage.

*LDC Sec. 34-619 Purpose and Intent (RSC-1 Residential Zoning Districts). (Pages 35-36)*

**Change:** Adds reference to Sec. 33-1626 (Captiva) where the RSC-2 (Residential Single-Family Estate) district is described.

**Reason:** Makes it easier to locate RSC-2 regulations (in Chapter 33).

*LDC Sec. 34-715 Multi-Family Property Development Regulations. (Pages 36-37)*

**Change:** “Per Unit” regulations for lot area and dimensions in multi-family zoning removed.

**Reason:** Regulating “per unit” is unnecessary.

*LDC Sec. 34-813 Use Regulations Table – Community Facilities District (Pages 37-38)*

**Change:** Maintenance Facility (Government) added to permitted uses in Community Facility (CF) district.

**Reason:** Appropriate use in CF was left out of the list of permitted uses.

*LDC Sec. 34-844 Use Regulations Table - Commercial Districts. (Page 38)*

**Change:** Commercial Recreation Facilities, Group IV (Indoor facilities such as bingo and bowling) – added use to Commercial (C-1A) district.

**Reason:** Appropriate use currently not permitted in C-1A.

*LDC Sec. 34-903 Use Regulations Table - Industrial Districts. (Pages 38-39)*

**Change:** Adds Food and Kindred Products, Group II (manufacturing of prepared meat, dairy products, cereals, malt beverages, wine, liquor, etc.) to Light Industrial (IL) district.

**Reason:** Currently a special exception only. Permitted in General Industrial (IG). Appropriate in IL.

*LDC Sec. 34-934 Use Regulations Table - Planned Development Districts (Page 39-40)*

**Change:** Note 21 Accessory Apartments – Clarifies that planned developments may require a special exception. Currently says a special exception is required.

**Reason:** Accessory apartments may be approved administratively or by special exception.

*Division 11 Redevelopment Overlay Districts (Page 40)*

**Change:** Struck reference to San Carlos Redevelopment Overlay District

**Reason:** Moved from Chapter 34 to Chapter 33.

*LDC Sec. 34-1177 Accessory Apartments. (Page 40)*

**Change:** Accessory apartments may be administratively approved. Currently a special exception is required.

**Reason:** Reflects current practice; Staff can determine if accessory apartment meets LDC regulations and Lee Plan requirements for density.

*LDC Sec. 34-1261 Definitions/Consumption on Premises (Pages 40)*

**Change:** Noise ordinance reference updated to Ord. 14-18.

**Reason:** Approval of Ord. 14-18 (Noise Ordinance).

*LDC Sec. 34-1264 On Premises Consumption. (Pages 40-41)*

**Change:** Adds “Movie Theater” to potential uses with on premises consumption of alcohol (including bowling alleys) provided other LDC standards met.

**Reason:** Movie theater is a similar indoor-oriented use to a bowling alley.

*LDC Sec. 34-1292 Horses and Other Equines. (Page 41)*

**Change:** Noise ordinance reference updated to Ord. 14-18.

**Reason:** Approval of Ord. 14-18 (Noise Ordinance).

*LDC Sec. 34-1352 Display, Sale, Rental or Storage for Motor Vehicles, Boats, Recreational Vehicles, Trailers, Mobile Homes or Equipment. (Page 41)*

**Change:** Amended language regarding commercial storage, enclosed buildings and buffer. Added reference to LDC Sec. 10-416(d) – buffering adjacent properties.

**Reason:** Clarity for staff and applicants.

*LDC Sec. 34-1353 Convenience Food and Beverages, Automobile Service Stations, Fast Food, Car Washes. (Pages 41-42)*

**Change:** Allows for flat roof canopies and accent banding unless prohibited in a planned development.

**Reason:** Commonly-requested and approved deviation request for convenience store uses.

*LDC Sec. 34-1354 Variances or Deviations from 34-1352 (Vehicle Sales) and 34-1353 (Convenience Store/Fast Food, etc.) (Page 42)*

**Change:** Administrative relief may be permitted to allow for infill commercial redevelopment on properties less than 3 acres.

**Reason:** Adds flexibility to promote redevelopment on infill sites. Staff can condition appropriately.

*LDC Sec. 34-1414 Continuing Care Facilities & LDC Sec. 34-1494 Density Equivalents. (Pages 42-44)*

**Change:** Density equivalent section for assisted living relocated to LDC Sec. 34-1414.

**Reason:** Currently in two sections of the code.

*LDC Sec. 34-2019 Other Use of Parking Lot (Page 44)*

**Change:** Carnivals, Fairs and Amusement Attractions and Devices language deleted.

**Reason:** Relocated to 34-3042 “Carnivals, Fairs and Amusement Attractions and Devices.”

*LDC Sec. 34-2020 Required Parking Spaces. (Pages 44-51)*

**Change:** Assisted Living, Corrected LDC references; Clubhouse (and ancillary uses) within a Residential Community Without Golf – Provided required parking space regulations; Corrected other references and notes for Non-Residential Uses.

**Reason:** Clarification and consistence with other code changes; It was unclear what the parking requirements were for residential clubhouses in communities without golf.

*LDC Sec. 34-2479 Sound Systems (Page 51)*

**Change:** Noise ordinance reference updated to Ord. 14-18.

**Reason:** Approval of Ord. 14-18 (Noise Ordinance).

*LDC Sec. 34-3042 Carnivals, Fairs, Circuses and Amusement Devices. (Page 109)*

**Change:** Off-street parking regulations for carnivals, fairs and amusement attractions and devices added.

**Reason:** Relocated from LDC Sec. 34-2019 "Other Use of Parking Lot."

*LDC Sec. 34-3050 Temporary Storage Facilities & Sec. 34-3105 Use of Vehicles, Truck Trailers, or Shipping Containers for Storage. (Pages 51-52)*

**Change:** Permits vehicles, truck trailers, or shipping containers for storage where open storage in commercial or industrial zoning is a permitted use.

**Reason:** Storage containers are an appropriate use in intensive zoning districts where open storage is permitted by right.

*Sec. 34-3272. Lot of record defined; general development standards. (Page 52)*

**Change:** Removes references to single-family residences for setback and separation regulations for mobile home and RV lots of record.

**Reason:** Single-family is addressed in Sec. 34-3273 and does not need to be included in Sec. 34-3272 also.

**Appendixes (Pages 53-54)**

*Appendix "1" – Planning Community and Redevelopment Overlay District Boundaries and Legal Descriptions.*

**Change:** Remove Estero maps.

**Reason:** Incorporation of the Village of Estero.

## CHAPTER 2

### Sec. 2-45. - Definitions.

~~*De minimus transportation impact* means an impact created by a use that would not affect more than one percent of the maximum volume at the adopted level of service of the affected transportation facility as determined by the County. No impact will be considered de minimus if the impact would exceed the adopted level of service standard of an affected designated hurricane evacuation route.~~

~~*Long term transportation concurrency management system* means a financially feasible system to ensure that existing deficiencies are corrected within a specified time frame and to establish priorities for addressing backlogged facilities in special concurrency district or areas.~~

~~*Multimodal Transportation District* means areas designated under the Lee Plan where community design features reduce the use of private vehicles and support an integrated multimodal transportation system. Multimodal transportation districts are designated in accordance with F.S. § 163.3180(15).~~

~~*Permanent traffic* means the traffic that a development can reasonably be expected to generate on a continuing basis upon completion of the development. It does not mean the temporary construction traffic.~~

~~*Transportation concurrency* means transportation facilities needed to serve new development must be in place or under actual construction within three years after the local government approves a development permit, or its functional equivalent, that results in traffic generation.~~

~~*Transportation concurrency exception areas* means areas designated under the Lee Plan that allow exceptions to the transportation concurrency management requirement to promote urban infill development, urban redevelopment, or downtown revitalization.~~

~~*Transportation concurrency management areas* means compact geographic areas designated under the Lee Plan with existing or proposed multiple, viable alternative travel paths or modes for common trips, which employ the use of an area-wide level of service standard and an accommodation and management of traffic congestion for the purpose of promoting infill development or redevelopment in a manner that supports more efficient mobility alternatives.~~

Cost - All improvements and associated costs of capital improvement implementation, such as design, right-of-way acquisition, planning and design studies, engineering, inspection, and physical development costs directly associated with construction of motor vehicle, transit, pedestrian and bicycle facilities, as may be adjusted to the anticipated year it will be incurred.

Development Trips - Estimated vehicular traffic volume assigned to a roadway segment(s) from the stage or phase of development under review.

Phase - A discrete, five-year or lesser construction timeframe of development, including the local government issuance of certificates of occupancy for that construction or its functional occupancy.

Proportionate Share – A contribution calculated based upon the number of trips from the proposed project expected to reach roadways during the peak hour from the stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain or achieve the adopted level of service, multiplied by the construction cost, at the time of development payment, of the improvement necessary to maintain or achieve the adopted level of service.

Roads Impact Fee District – The geographic area in which road impact fees may be collected and spent as depicted in the Lee County Land Development Code Appendix K, Map 1.



Service Volume – The highest number of vehicles for a given level of service.

Service Volume Increase - The additional number of vehicles for a given level of service resulting from an improvement to a roadway segment.

Significant Impact - The traffic projected to be generated at the end of any stage or phase of the proposed project, cumulatively with previous stages or phases, will utilize five percent or more of the adopted peak hour level of service maximum service volume of the roadway, and the roadway is projected to be operating below the adopted level of service standard at buildout of that stage or phase.

Stage - One in a series of approximately equal increments in the development of a proposed project upon which are placed quantified limits for construction that are reasonably calculated to ensure that the state and regional roadway network affected by the proposed project will not be overburdened by development traffic. A stage is to be a subset of a particular project phase of project planned for a project by a developer. A stage of development includes both a specific type and amount of development and the associated, approved buildout timeframe for that project.

State Highway System – All existing roads maintained by the Florida Department of Transportation.

Transportation Deficiency - A facility or facilities on which the adopted level-of-service standard is exceeded by the existing, committed, and vested trips, plus additional projected background trips from any source other than the development project under review, and trips that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida's Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review.

## **Sec. 2-46. - Concurrency certification.**

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

(c) *Consideration of impacts.* If the director determines that a development permit is not exempt from the minimum concurrency requirements of the Lee Plan, the director will consider the impact the development will have on potable water, sanitary sewer, surface water management, solid waste disposal, ~~parks and recreation, roadway facilities~~ and public schools. The director will consider the type and intensity of use of the proposed development in relation to the demands the use can reasonably be expected to make on those facilities and the times when the demand can reasonably be expected to occur during the course of the development. When measuring the expected impacts of a development, the director will include only the ~~impacts of permanent traffic (see definitions) and other similar~~ continuing infrastructure demands of the development. The director will disregard temporary impacts such as fire flow tests. The director may rely upon studies, measurements or calculations prepared by qualified professionals, or upon generally accepted guidelines, rules, formulas, studies or other theories developed by professional experts working or publishing in this field of inquiry, or upon relevant historical trends or experiences, or upon related rules and standards adopted by other governmental agencies, or upon any combination of these sources. The burden of disproving the accuracy of the director's determination lies with the person who disputes it.

To promote uniformity in the application of this subsection, the director may prepare administrative rules prescribing the methodology by which the impacts of a proposed development will be determined. Those rules will be set forth in an Administrative Code adopted by the Board of County Commissioners.

(d) *Determination of sufficient capacity.* Once the director has considered the impacts of a proposed development in accordance with subsection (c) of this section, he will then determine whether there will be sufficient capacity for these facilities to serve the development at the time the impacts of the development will occur without causing these facilities and services to function at a level of service below the minimum regulatory levels established for these facilities and services in the Lee Plan. ~~Except for traffic impacts, which will be determined in accordance with the policies under objectives~~

~~37.3 and 37.4 of the Lee Plan, the~~ The director will add the expected impacts of the development to the levels of use of the facility at the time of the determination. Anticipated additional use will be derived from other reasonably foreseeable factors. If this sum is less than the capacity of the facility in question to operate during the effective period of a certificate of concurrency compliance at the minimum regulatory levels of services prescribed in the Lee Plan ~~and the development's projected traffic is in compliance with objectives 37.3 and 37.4 of the Lee Plan,~~ the director will certify the conclusion by a written statement. The written statement will identify the development in question and the development permit for which the certification has been made. The director's statement will be known as a certificate of concurrency compliance and is limited to the exact development permit application for which he has issued his certificate. Applications for an amendment to a development order granting a development permit for which a certificate of concurrency compliance has been issued will require another, separate concurrency review by the director.

*(e) Means of measuring level of service in relation to location of development.* When measuring the availability of a public facility to serve a development, the level of service at which the facility is operating or is expected to operate will be measured in relation to its location to the development as follows:

**No change 1-4.**

~~(5) Parks and recreation.~~ The quantity of regional parks will be measured in acres and applied to the total permanent and seasonal resident population in the County. The quantity of community parks will be measured in acres within the unincorporated area of the county and applied within each community park impact fee district to the permanent resident population within the unincorporated portion of that district.

~~(6) Roads.~~ Concurrency on all roads will be determined on a roadway segment by segment basis consistent with the level of service standards set forth in Lee Plan Policy 37.1.1, except where the Board has:

- ~~a. Designated constrained roads,~~
- ~~b. Created transportation concurrency management areas,~~
- ~~c. Created transportation concurrency exception areas,~~
- ~~d. Created long-term transportation management systems pursuant to Florida Administrative Code 9J-5.0055, or~~
- ~~e. Designated multimodal transportation districts pursuant to F.S. § 163.3180(15) or similar allowable modifications to standard road concurrency.~~

**No change 7.**

**No change (f) and (g).**

~~(h) For parks and recreation facilities, the development must meet one of the following two standards:~~

~~(1) At the time of development order or permit is issued, the necessary facilities and services must be in place or under actual construction; or~~

~~(2) A development order or permit is issued with a stipulation that, at the time of the issuance of a certificate of occupancy or its functional equivalent, the acreage for the necessary facilities and services to serve the new development is dedicated to or acquired by the local government; and~~

~~a. The necessary facilities and services needed to serve the new development are scheduled to be in place or under actual construction not more than one year after issuance of a certificate of occupancy or its functional equivalent as provided in the adopted Lee County five-year schedule of capital improvements; or~~

~~b. At the time the development order or permit is issued, the necessary facilities and services are the subject of a binding executed agreement that requires the necessary facilities and services to serve the new development to be in place or under actual construction not more than one year after issuance of a certificate of occupancy or its functional equivalent; or~~

~~c. At the time the development order or permit is issued, the necessary facilities and services are guaranteed in an enforceable development agreement, pursuant to F.S. § 163.3220, or an agreement or a development order issued pursuant to F.S. ch. 380, to be in place or under actual construction not more than one year after issuance of a certificate of occupancy or its functional equivalent.~~

~~(i) *Determination of road facility capacity.* In determining the capacity of a road facility, the director will include existing roadways and committed improvements, as provided in Policy 37.3.2 of the Lee Plan.~~

**No change (j) – (n).**

~~(o) *Requirements for activity affecting constrained roads.* Concurrency compliance for land development activity affecting constrained roads will be determined in accordance with Lee Plan objective 22.2 to the extent these policies provide additional restrictions that supplement other provisions of this article. The requirements of these policies are as follows:~~

~~(1) A maximum volume to capacity (v/c) ratio of 1.85 for all constrained roads.~~

~~(2) The director may not issue permits that cause the maximum volume to capacity ratio to be exceeded or that affect the maximum volume to capacity ratio once exceeded.~~

~~(3) Once the maximum volume to capacity ratio is achieved, permits may only be issued where capacity enhancements and operational improvements have been identified and commitments to implement those improvements are made that will maintain the volume to capacity ratio on the constrained segment at or below 1.85.~~

~~(p) *De minimus impact.* The Florida Legislature has found that a de minimus impact is consistent with Part II of Chapter 163. Therefore, the impact of a single-family home on an existing lot will constitute a de minimus impact on all roadways regardless of the level of deficiency of the roadway.~~

~~Other than single-family homes on existing lots, no impact will be de minimus if the sum of existing roadway volumes and the projected volumes from approved projects on a transportation facility would exceed 110 percent of the maximum volume at the adopted level of service of the affected transportation facility. Further, except for single-family homes on existing lots, no impact will be de minimus if it would exceed the adopted level of service standard of any affected designated hurricane evacuation route.~~

~~Lee County will maintain records to ensure that the 110 percent criteria is not exceeded. Annually, Lee County will submit to the State Land Planning Agency a summary of the de minimus records along with its updated Capital Improvements Element. In the event the State Land Planning Agency determines that~~

~~the 110 percent criteria has been exceeded, the County will be notified of the exceedence and no further de minimus exceptions for the applicable roadway will be granted until the volume is reduced below the 110 percent. The County will provide proof of the reduction to the State Land Planning Agency prior to issuing further de minimus exceptions.~~

## **DIVISION 2. - PROPORTIONATE FAIR-SHARE PROGRAM**

### **Sec. 2-66. - Purpose and intent.**

The purpose of this Division is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, to be known as ~~the~~ Proportionate Fair-Share, ~~as required by and~~ in a manner consistent with §163.3180(16), F.S., as amended.

### **Sec. 2-67. - Findings.**

- (a) Transportation capacity is a commodity that has a value to both the public and private sectors.
- (b) ~~The Lee County Proportionate Fair-Share Program:~~
  - (1) Provides a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sector;
  - (2) Provides a means by which developers may proceed ~~under certain conditions, notwithstanding the failure of transportation concurrency,~~ by contributing their proportionate ~~fair share~~ of the cost to improve/construct a transportation facility;
  - (3) Maximizes the use of public funds for adequate transportation facilities to serve future growth, and may, in certain circumstances, allow the county to expedite transportation improvements by supplementing funds currently allocated or planned for transportation improvements in the Capital Improvement Element (CIE), Lee Plan Map 3A, or the Lee County MPO Long Range Transportation Plan (LRTP); and,
  - (4) Is consistent with §163.3180(16)(4)(i), F.S., as amended, and supports the policies ~~under Goals 37 and 38 in the Lee Plan; and,~~
  - (5) ~~Works within the county's existing concurrency management system.~~

## **Sec. 2-68. - Applicability.**

~~The Proportionate Fair Share applies to all developments in unincorporated Lee County that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility, identified one or more significant impacts, and the total proportionate share calculation exceeds road impact fees. in the County Concurrency Management System, including transportation facilities maintained by FDOT or another jurisdiction that are relied upon for concurrency determination. This provides a funding mechanism to implement County transportation needs through the Capital Improvement Element (CIE.) The Proportionate Fair Share is not available to developments of regional impact (DRIs) using proportionate fair share under shall not be applied in a manner that imposes upon new development any responsibility for funding an existing transportation deficiency., § 163.3180(12), F.S., or to developments exempted from concurrency as provided in 2-46(p).~~

## **Sec. 2-69. - General requirements.**

(a) ~~A developer may choose to satisfy the transportation concurrency requirements of the county by making make a proportionate fair-share contribution, pursuant to the following requirements:~~

(1) ~~The proposed development project is consistent with the Lee Plan and applicable land development regulations; and~~

(2) ~~The five-year schedule of capital improvements in the County Capital Improvement Element (CIE) or the long-term schedule of capital improvements for an adopted long-term concurrency management system, Map 3A, or the Lee County MPO Long Range Transportation Plan (LRTP), includes, or may be amended to include, a transportation improvement(s) that, upon completion, will mitigate additional traffic generated by the proposed development, and the improvement does not represent an existing or projected transportation deficiency. If the County transportation concurrency management system indicates that the capacity of the improvement has been consumed by the vested trips of previously approved development, then the provisions of 2-69(b) apply.~~

*Commentary:* ~~Pursuant to §163.3180(16)(b)1, F.S., the transportation improvement in section (a)(2) above may be a programmed capital improvement that enhances the capacity of the transportation system to accommodate the impacts of development. For example, this may involve widening and/or reconstructing a roadway or where the primary roadway is constrained or widening is no longer desired, this could involve creating new reliever roadways, new network additions, new transit capital facilities (e.g., bus rapid transit corridor), or other major mobility improvements, such as expansion of bus fleets to increase service frequency. Local governments may, at their discretion, wish to make short-term operational improvements in advance of the capacity project. If the capacity of the planned improvement is fully committed, or there is no eligible project in an adopted work program, a developer could potentially still participate at the discretion of the local government pursuant to (b) below.~~

(b) ~~The county may choose to allow a developer to satisfy transportation concurrency for a deficient road segment through the Proportionate Fair-Share Program by contributing to an improvement that is not contained in the five-year schedule of capital improvements in the Capital Improvement Element or a long-term schedule of capital improvements for an adopted long-term concurrency management system but which, upon completion, will satisfy the requirements of the County Transportation Concurrency Management System, where the following apply:~~

~~(1) The county conducts an advertised public hearing to consider the proportionate fair share agreement and corresponding future changes to the five-year CIP; and,~~

~~(2) The county adopts, by resolution or ordinance, a commitment to add the improvement to the 5-year schedule of capital improvements in the Capital Improvement Element (CIE) no later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be reviewed by the Board and determined to be financially feasible pursuant to §163.3180(16) (b) 1, F.S., consistent with the Lee Plan, and in compliance with the provisions of this Article. Financial feasibility means that additional contributions, payments or funding sources are reasonably anticipated during a period not to exceed 10 years to fully mitigate impacts on the transportation facilities.~~

~~(c) If the funds allocated for the 5-year schedule of capital improvements in the County CIE are insufficient to fully fund construction of a transportation improvement required by the concurrency management system, the County may still enter into a binding proportionate fair share agreement with a developer authorizing construction of that amount of development on which the proportionate fair share is calculated, if in the opinion of Lee County DOT, the proposed proportionate fair share amount is sufficient to pay for one or more improvements that will, by itself or in combination with other committed contributions, significantly benefit the transportation system. To qualify for consideration under this section, the proposed improvement must be contained in an adopted short- or long-range county plan or program, MPO, FDOT or local or regional transit agency. Proposed improvements not reflected in an adopted plan or improvement program but that would significantly reduce access problems and congestion or trips on a major corridor, such as new roads, service roads, or improved network development and connectivity, may be considered at the discretion of the Board. The improvements funded by the proportionate fair share component must be adopted into the 5-year capital improvements schedule for the Lee Plan CIE in the next annual capital improvement element update.~~

~~(d) Any improvement project proposed to meet the developer's fair share obligation must meet the county design standards for locally maintained roadways and those of the FDOT for the state highway system.~~

### **Sec. 2-70. - Intergovernmental coordination.**

~~Pursuant to policies in the Intergovernmental Coordination Element of the Lee Plan and applicable policies in the Southwest Florida Regional Planning Council's Strategic Regional Policy Plan, the county will coordinate with affected jurisdictions, including FDOT, regarding mitigation to impacted facilities not under the jurisdiction of the county receiving the application for proportionate fair share mitigation. An interlocal agreement may be established with other affected jurisdictions for this purpose.~~

### **Sec. 2-710. Application Agreement process.**

~~(a) Upon Notification of a lack of capacity to satisfy transportation concurrency, the county must also notify the applicant/developer in writing of the opportunity to satisfy transportation concurrency in accordance with the requirements for the proportionate share program set forth in Section 2-69. **Applicability.** This section applies if there are additional developer mitigation responsibilities resulting from one or more significant impacts.~~

The determination of significant impact(s) will be based on a Lee County approved traffic analysis contained in an Application for Public Hearing for a Development of Regional Impact (DRI), or an Application For Development Order for development outside of a DRI as outlined in AC-13-16.

This section outlines the agreement process for mitigation responsibilities and payments.

~~(b) **Meeting Required.** Prior to submitting an application for a proportionate fair share agreement t~~  
The applicant must attend schedule a pre-application meeting with the County Attorney, Directors or designees of Lee County Department of Community Development Planning and Lee County Department of Transportation (DOT) to discuss eligibility, application submittal requirements additional transportation analysis at the option of the Directors or applicant, potential mitigation options, and related issues prior to initiating a proportionate share agreement with the County. If the an impacted facility is on the Strategic Intermodal System (SIS) state highway system, or a roadway maintained by or within another municipality, then the applicant must notify and invite the Florida Department of Transportation (FDOT) and/or the chief municipal transportation agency representative to participate in the pre-application meeting.

~~(c) Eligible applicants must submit an application to the county that includes an application fee set forth in the fee manual and the following:~~

- ~~(1) Name, address and phone number of owner(s), developer and agent;~~
- ~~(2) Property location, including parcel identification numbers;~~
- ~~(3) Legal description and survey of property;~~
- ~~(4) Project description, including type, intensity and amount of development;~~
- ~~(5) Proposed phasing schedule, if applicable;~~
- ~~(6) Description of requested proportionate fair share mitigation method;~~
- ~~(7) Copy of concurrency application;~~
- ~~(8) Copy of the project's Traffic Impact Statement (TIS); and,~~
- ~~(9) Location map depicting the site and affected road network.~~

(c) **Agreement.** Application procedures, requirements and review criteria for proportionate share agreements are contained in Lee County Administrative Code AC13-16. All AC13-16 requirements must be complied with in order for the County and applicant to enter into a proportionate share agreement. The agreement must be approved by the Lee County Board of County Commissioners.

~~(d) The director or the designee will review the application and certify that the application is sufficient and complete within 20 business days. If an application is determined to be insufficient, incomplete or inconsistent with the general requirements of the Proportionate Fair Share Program as indicated in Section 2-69, then the county will notify the applicant in writing of the reasons for such deficiencies~~

~~within 20 business days of submittal of the application. If the deficiencies are not remedied by the applicant within 20 business days of receipt of the written notification, then the application will be deemed abandoned. The director may, in his discretion, grant a one-time extension not to exceed 60 calendar days.~~

~~(e) Pursuant to §163.3180(16) (e), F.S., proposed proportionate fair-share mitigation for development impacts to facilities on the SIS requires the agreement of the Florida Department of Transportation (FDOT). If an SIS facility is proposed for proportionate share mitigation, the applicant must submit a copy of the executed agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.~~

(d) **Shared Transportation Facilities.** Proposed proportionate share mitigation for development impacts to facilities on the state highway system or facilities maintained by another municipality requires the agreement of the Florida Department of Transportation (FDOT) or the municipality. The applicant must submit a copy of the executed agreement(s) for inclusion in the proportionate share agreement. The county may enter into proportionate share agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.

~~(f) When an application is deemed sufficient, complete, and eligible, the county will advise the applicant in writing. The county attorney will prepare a proportionate fair-share obligation and binding agreement. A draft agreement will be delivered to the appropriate parties for review, including a copy to the FDOT for proposed proportionate fair-share mitigation on SIS facilities, no later than 60 calendar days from the date the applicant received the notification of a sufficient application and no fewer than 14 calendar days prior to the meeting when the agreement will be considered.~~

~~(g) The county will notify the applicant regarding the date the agreement will be considered for final approval by the Board. No proportionate fair-share agreement will be effective until approved by the commission, or pursuant to staff approval for agreements below a certain dollar amount.~~

(e) **Payment of Proportionate Share.** Payment of the proportionate share mitigation is due in accordance with the terms of the finalized and executed proportionate share agreement. All payments are non-refundable.

(f) **Dedications.** Dedication of necessary right-of-way for facility improvements pursuant to a proportionate share agreement must be completed prior to, or as part of final plat approval or issuance of the development order for infrastructure improvements for the project.

## **Sec. 2-721. - Determining proportionate fair-share obligation.**

(a) **Timing.** Unless an application for Development Order is part of a Development of Regional Impact, significant impacts will be determined based on projected traffic at the end of an approved stage or phase. Proportionate fair-share mitigation for ~~concurrency~~ transportation impacts may include, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities. The fair market value of the proportionate share mitigation for the impacted facilities will not differ regardless of the form of the mitigation.



~~(b) A development is not required to pay more than its proportionate fair share unless the road impact fee obligation under the adopted fee schedule exceeds the proportionate fair share mitigation of the project. The fair market value of the proportionate fair share mitigation for the impacted facilities will not differ regardless of the form of the mitigation.~~

(e b) **Calculation.** The methodology formula that will be used to calculate an applicant's proportionate fair share obligation on each significantly impacted roadway is stated in § 163.3180 (12), F.S., as follows:

~~"The cumulative number of trips from the proposed development expected to reach roadways during peak hours from the complete build out of a stage or phase divided by the change in the peak hour maximum service volume (MSV) of roadways resulting from construction of an improvement necessary to maintain the adopted LOS, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted LOS."~~

OR

~~Proportionate Fair-Share =  $\frac{\text{Development Trips}_{i}}{\text{ServiceVolume Increase}_{i}} \times \text{Cost}_{i}$~~

~~(Note: In the context of the formula, the term "cumulative" does not include a previously approved stage or phase of a development.)~~

Where:

~~Development Trips<sub>i</sub> = Those trips from the stage or phase of development under review that are assigned to roadway segment "i" and have triggered a deficiency per the concurrency management system;~~

~~SV Increase<sub>i</sub> = Service volume increase provided by the eligible improvement to roadway segment "i" per section 2-69;~~

~~Cost<sub>i</sub> = Adjusted cost of the improvement to segment "i". Cost includes all improvements and associated costs, such as design, right-of-way acquisition, planning, engineering, inspection, and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred.~~

~~Commentary: Under the definition of "development trips," only those trips that trigger a concurrency deficiency would be included in the proportionate fair share calculation.~~

(d c) **Cost Determination.** For the purposes of determining proportionate fair-share obligations, the county will determine improvement costs based upon the actual maximum estimated cost of the improvement as reflected in the Capital Improvement Element CIE, the MPO/Transportation Improvement program Long Range Transportation Plan LRTP, or the FDOT Work Program. Where this information is not available, improvement the cost of full capital improvement implementation identified in Section 2-71(b) will be determined at the discretion of ~~by~~ the Lee County Department of Transportation Director using one of the following methods:

(1) An analysis of ~~by the county or appropriate entity of costs by cross section type that incorporates data from recent projects and is updated annually and approved by the commission.~~ In order to accommodate increases in construction material costs, project costs which will be adjusted by an inflation factor, if warranted; or

(2) FDOT Cost Per Mile Models for construction, as adjusted to include all costs of capital improvement implementation; or

~~The most recent issue of FDOT Transportation Costs, as adjusted based upon the type of cross-section (urban or rural); locally available data from recent projects on acquisition, drainage and utility costs; and significant changes in the cost of materials due to unforeseeable events. Cost estimates for state road improvements not included in the adopted FDOT Work Program will be determined using this method in coordination with the FDOT District; or~~

(3) An engineer's certified cost estimate provided by the applicant and accepted by the Director of Lee County DOT.

(d) **Impact fee obligation.** A development is not required to pay more than its proportionate share unless the road impact fee obligation under the adopted fee schedule exceeds the proportionate share mitigation of the project.

### **Sec. 2-732. - Impact fee credit for proportionate fair-share mitigation.**

(a) **Credit.** Proportionate fair-share mitigation will be applied as a credit against road impact fees assessed to the project to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the county's impact fee ordinance.

(b) **Road Impact Fee Credits.** Road impact fee credits for the proportionate fair-share contribution will be determined when the ~~transportation road~~ impact fee obligation is calculated for the ~~proposed development project~~. If the developer's proportionate fair-share obligation is less than the development's anticipated road impact fee for the specific stage or phase of development under review, then the developer or its successor must pay the ~~remaining~~ impact fee amount to the county in accordance with the governing fee schedule at the time of permitting. If the developer's proportionate share obligation is greater than the development's anticipated road impact fee, the developer will enter into an agreement as outlined in Section 2-70, as amended. Developer initiated roadway capital improvements or right-of-way dedication consistent with LDC Article VI, Division 2 (Roads Impact Fee), may be included in proportionate share mitigation.

~~(c) The proportionate fair-share obligation is intended to mitigate the transportation impacts of a proposed development at a specific location. Road impact fee credit based upon proportionate fair-share contributions for a proposed development cannot be transferred to another district unless the road improvement will provide relief in an adjacent district.~~

~~(d) Major projects, not included within the local government's impact fee ordinance that can demonstrate a significant benefit to the impacted transportation system, may be eligible for impact fee credit at the county's discretion consistent with the standards for Class 3 roadways set forth in section 2-275(a)(3).~~

### **Sec. 2-74. Proportionate fair-share agreements.**

~~(a) Upon execution of a proportionate fair-share agreement (agreement) the applicant will receive a county certificate of concurrency approval. If the applicant fails to apply for a development permit within three years of the execution of the agreement, then the agreement will be considered null and~~

~~void, and the applicant must reapply for a concurrency certificate. Once paid, proportionate share payments and impact fees are not refundable.~~

- ~~(b) Payment of the proportionate fair-share contribution is non-refundable and due in full within 60 days of execution of the Agreement, or prior to the issuance of the first development order, whichever occurs first. If the payment is not made in the time frame stated above, then the proportionate share cost will be recalculated and a new agreement must be executed.~~
- ~~(c) Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement must be completed prior to issuance of the development order.~~
- ~~(d) Requested changes to a development project subsequent to a development order may be subject to additional proportionate fair-share contributions to the extent the change would generate additional traffic that would require mitigation.~~
- ~~(e) Applicants may submit a letter to withdraw from the proportionate fair-share agreement prior to the execution of the agreement. The application fee and any associated advertising costs to the county will be non-refundable.~~
- ~~(f) The county may enter into proportionate fair-share agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.~~

### **Sec. 2-753. Appropriation of fair-share revenues.**

~~(a) The county has the authority to will deposit appropriate proportionate fair-share revenues for transportation improvements at its discretion in the appropriate project account for funding of scheduled improvements in the County Capital Improvement Element CIE, or as otherwise established agreed upon in the terms of the proportionate fair-share agreement. At the discretion of the county, proportionate fair-share revenues may be used for operational improvements prior to construction of the capacity project from which the proportionate fair-share revenues were derived. Proportionate fair-share revenues may also be used as the 50 percent local match for funding under the FDOT TRIP.~~

~~(b) If a scheduled facility improvement is removed from the Capital Improvement Element CIE, then the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor or sector that would mitigate the impacts of development pursuant to the requirements of section 2-69.~~

~~(c) Where an impacted regional facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan as provided in Section 339.155, F.S., the county may coordinate with other impacted jurisdictions and agencies to apply proportionate fair-share contributions and public contributions to seek funding for improving the impacted regional facility under the FDOT TRIP. The coordination must be ratified by the county through an interlocal agreement establishing a procedure for earmarking the developer contributions for the purpose of improving the impacted regional facility.~~

### **Sec. 2-764. - Cross jurisdictional impacts.**

*Commentary:* This section provides a concept to advance intergovernmental coordination objectives in local government comprehensive plans and applicable policies in adopted regional plans. It provides an opportunity for a local government to address the impacts of a proposed development in an adjacent local government that is at or near its border. It is intended as a means of managing development on a regional thoroughfare, and not for application to minor roadways. A regional transportation facility in this context would most likely be an arterial roadway, but could be a major collector roadway that is planned for expansion and reclassification as an arterial. To apply this method, each participating local government must first enter an interlocal agreement to incorporate the provision into their respective land

~~development regulations. The permitting local government would use the methodology in this section to determine whether a significant impact may occur across its border and offer its neighbor an opportunity to evaluate the proposed development to determine if it would exceed their adopted LOS standards for concurrency. Where the proposed development would trigger a concurrency failure on the neighboring local government's roadway, that local government would use the proportionate fair-share methodology to determine the applicant's obligation. In this situation, the applicant would need to provide a proportionate fair-share contribution to the adjacent local government that experiences a concurrency deficiency, as well as to the permitting local government.~~

~~(a) In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the county may enter an agreement with one or more adjacent local governments to address cross jurisdictional impacts of development on regional transportation facilities. The agreement must provide for application of the methodology in this section to address the cross jurisdictional transportation impacts of development. Application procedures, requirements and review criteria agreements for intergovernmental coordination agreements to address cross jurisdictional impacts are contained in Lee County Administrative Code AC13-16, as amended. All AC13-16 requirements must be complied with in order for an intergovernmental coordination agreement to be approved and executed by the Board of County Commissioners.~~

~~(b) A development application submitted to the county subject to a transportation concurrency determination meeting all of the following criteria will be subject to this section:~~

- ~~(1) All or part of the proposed development is located within five mile(s) of the area which is under the jurisdiction, for transportation concurrency, of an adjacent local government; and~~
- ~~(2) Using its own concurrency analysis procedures, the county concludes that the additional traffic from the proposed development would use [five percent or more of the adopted peak hour LOS maximum service volume] of a regional transportation facility within the concurrency jurisdiction of the adjacent local government ("impacted regional facility"); and~~
- ~~(3) The impacted regional facility is projected to be operating below the level of service standard, adopted by the adjacent local government, when the traffic from the proposed development is included.~~

~~(c) Upon identification of an impacted regional facility pursuant to subsection (b)(1)–(3), the county will notify the applicant and the affected adjacent local government in writing of the opportunity to derive an additional proportionate fair-share contribution, based on the projected impacts of the proposed development on the impacted adjacent facility.~~

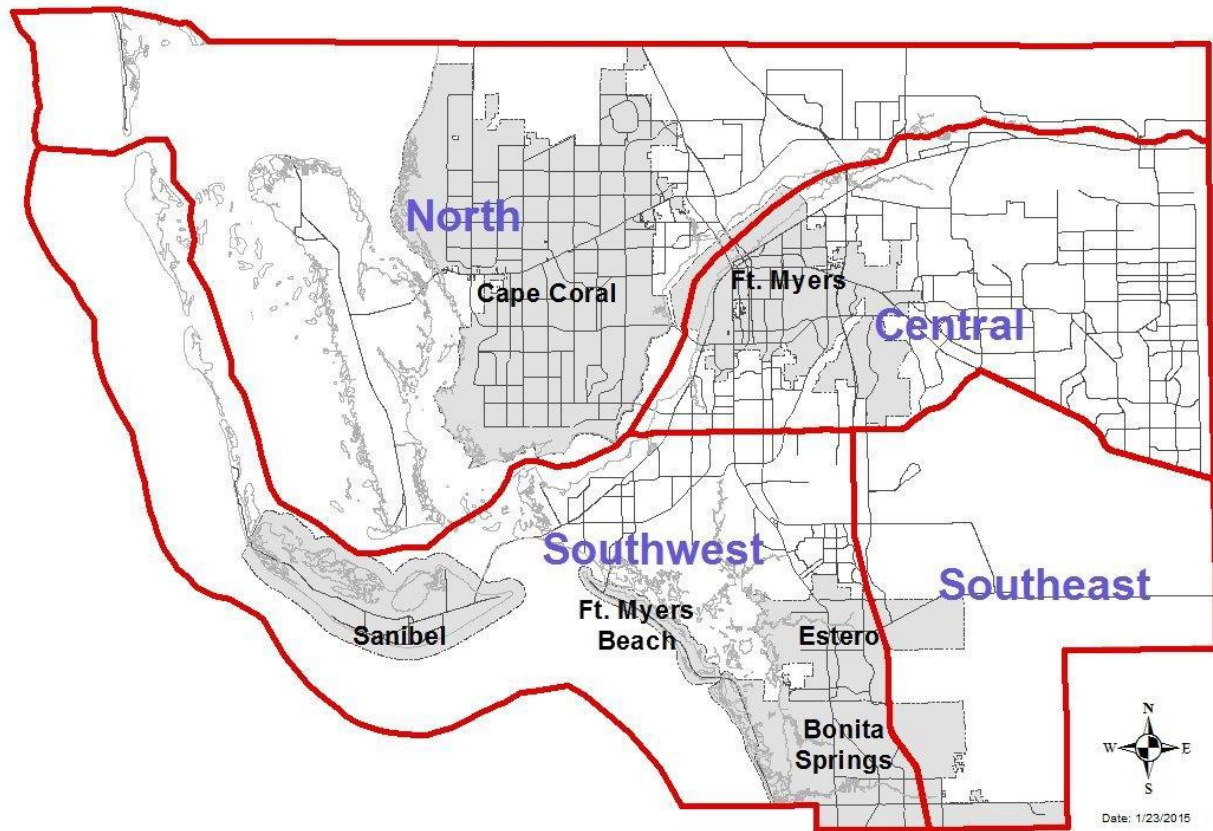
- ~~(1) The adjacent local government has up to 90 days in which to notify the county of a proposed specific proportionate fair-share obligation, and the intended use of the funds when received. The adjacent local government must provide reasonable justification that both the amount of the payment and its intended use comply with the requirements of Section 163.3180(16), F.S. If the adjacent local government declines proportionate fair-share mitigation under this section, then the provisions of this section would not apply and the applicant would be subject only to the proportionate fair share requirements of the county.~~
- ~~(2) If the subject Application is subsequently approved by the county, the approval will may include a condition that the applicant provides, prior to the issuance of building permits covered by that application, evidence that the proportionate fair-share obligation to FDOT or the adjacent local government has been satisfied. The county may require the adjacent local government to declare, in a resolution, ordinance, or equivalent document, its intent for the use of the concurrency funds to be paid by the applicant.~~

**Sec. 2-268. Benefit districts established.**

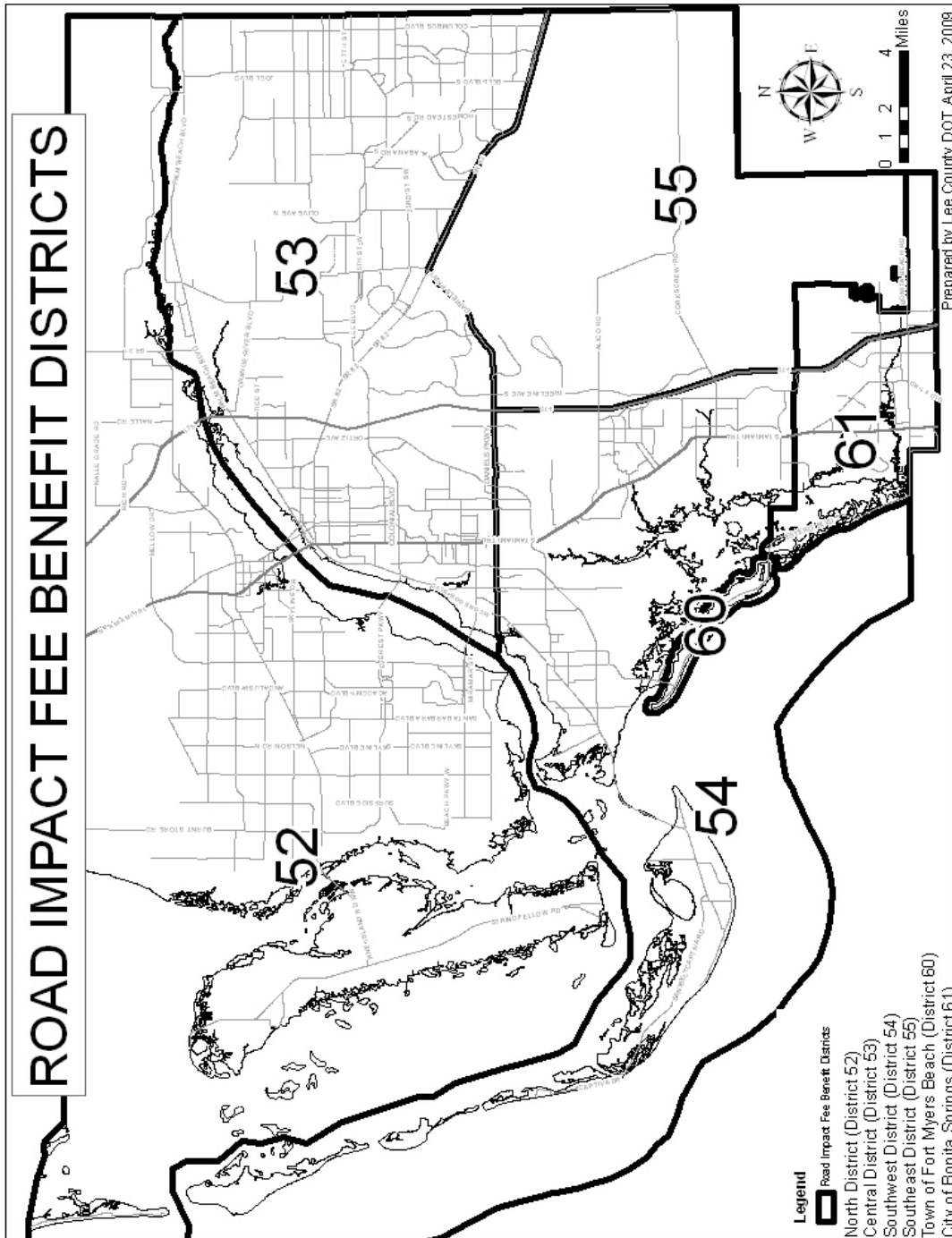
- (a) Benefit districts. There are hereby established ~~five~~ four roads impact fee benefit districts as shown in Appendix K - Map 1. Impact fees collected and impact fee credits issued prior to November 3, 2003 will be retained in the accounts for the previous eight districts shown in Appendix K - Map 2 and spent within the benefit district from which they were originally collected or issued to benefit.
- (b) Subdistricts may be created by interlocal agreement. Incorporated municipalities constitute sub districts for the purpose of this division. All or a portion of a municipality may be within the established districts set forth in Appendix K-4. Municipal district boundaries will expand and contract as the municipality boundaries are amended in accordance with Florida law.

**APPENDIX K ROAD IMPACT FEE BENEFIT DISTRICT DESCRIPTIONS <sup>(1)</sup>**

Map 1



**ADD THIS MAP**



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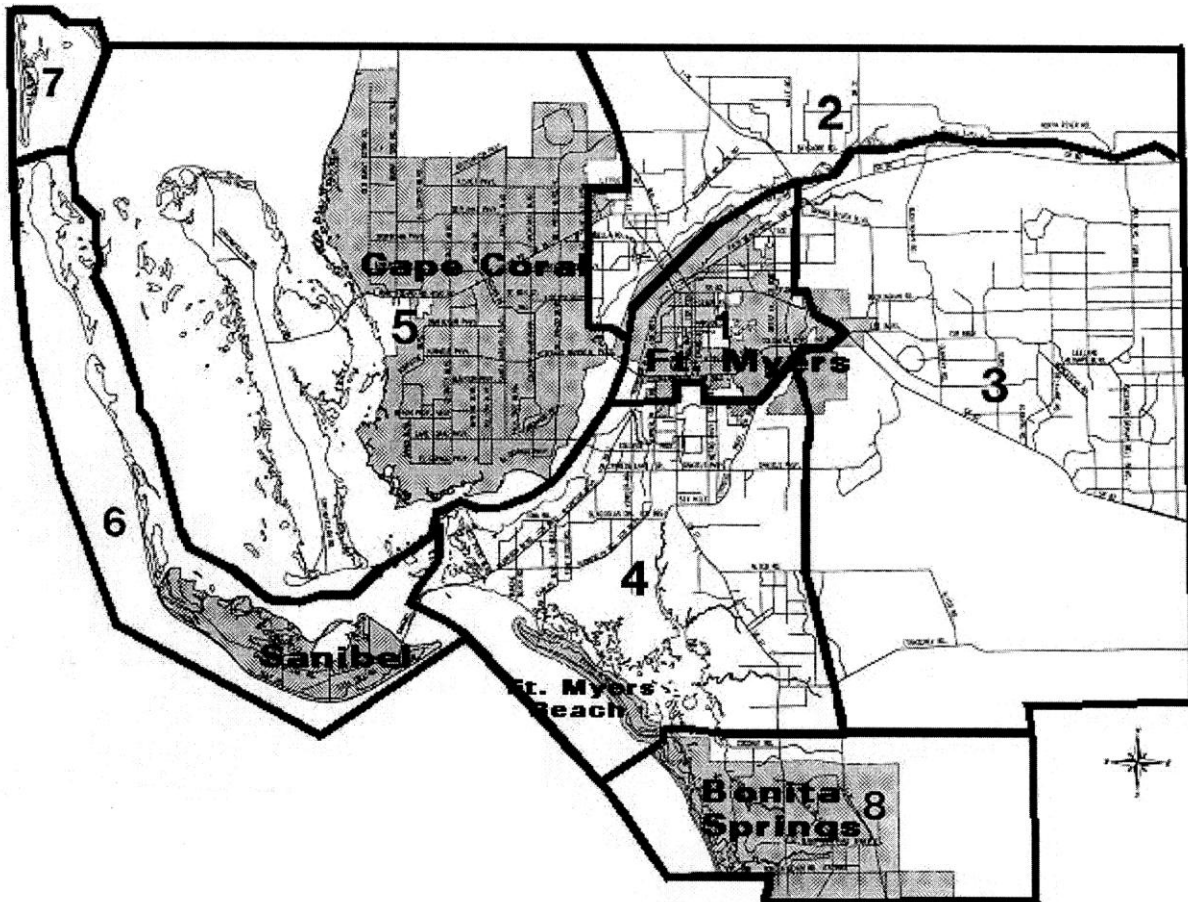
Central District. (District 53) Bounded on the north and west by the Okeechobee Waterway; on the south by Cypress Lake Drive, Daniels Parkway and SR 82; and on the east by the Hendry County line.

Southeast District. (District 55) Bounded on the west by Interstate 75 (I-75); on the north by the Central District; on the east by the Hendry County line and the Collier County line; and on the south by the Collier County line.

Southwest District. (District 54) Bounded on the east by I-75; on the south by Collier County line; on the west by the Gulf of Mexico; and on the north by the navigational channel into Boca Grande Pass, the Intracoastal Waterway within Pine Island Sound and San Carlos Bay, the Okeechobee Waterway, and the southern boundary of the Central District.

North District. Bounded on the north by the (District 52) Charlotte County line; on the east by the Hendry County line; on the south by the Intracoastal Waterway within San Carlos Bay, the Okeechobee Waterway and the main navigational channel into Boca Grande Pass; and on the west by the Gulf Mexico from the Boca Grande Pass to the Charlotte County line.

Map 2



District 1. Bounded on the north and west by the Okeechobee Waterway (located within the bounds of the Caloosahatchee River); including Lofton's Island. The eastern and southern borders follow I-75 from the Okeechobee Waterway south to the northern section line of Section 22, Township 44, Range 25, then east along said section line to the northeast corner of Section 23, Township 44, Range 25, then south along said section line to the Buckingham Road ROW (SR 82A), then west along said ROW to its intersection with the State Road 82 ROW, then southeast along said ROW to the intersection of the LDCAC DRAFT II LDCAC DRAFT 2 LDC Regular Cycle Package.docx

proposed State Road 884 ROW extension, follow the SR 884 ROW extension to its intersection with the western boundary of the Six Mile Cypress Slough and the City of Fort Myers city limits, then following the city limits line southwesterly to its intersection with Six Mile Cypress Parkway, continue southwesterly along the Six Mile Cypress Parkway to the southern section lines of Section 4, Township 45, Range 25, then west along the southern sections 4, 5, and 6, Township 45, Range 25 to the southwest corner of Section 6, Township 45, Range 25, then north along the western section line of Section 6, Township 45, Range 25 to the City of Fort Myers city limits, then follow the Fort Myers city limits to the southern section line of Section 2, Township 45, Range 24, then west along the southern section lines of Sections 2 and 3, Township 45, Range 24 to the Okeechobee Waterway.

District 2. Bounded on the north by the Charlotte County line, and on the east by the Hendry County line. The southern boundary is the Okeechobee Waterway beginning in the west at the Cape Coral/North Fort Myers line, then following the waterway east to the Hendry County line. The western border of District 2 follows U.S. 41 south from the Charlotte county line to Littleton Road, runs west on Littleton Road to 24th Street and south along 24th Street to the Cape Coral/North Fort Myers city boundary to the Okeechobee Waterway.

District 3. Bounded on the north by the Okeechobee Water east of the Hendry County line, and on the east by the Hendry County Line, on the south by the northern boundary of District 8, and on the west by I-75 from the northern boundary of District 8 to the intersection of the District 1 border and I-75, then follow the eastern border of District 1 to the Okeechobee Waterway.

District 4. Bounded on the north, between the Okeechobee Waterway and I-75, by the southern boundary of District 1, on the east by I-75 from the intersection of the southern District 1 boundary and I-75 to the north boundary of District 8. Bounded on the south by the District 8 boundary, and on the west by the Gulf of Mexico from I-75, west to the main navigational channel entering San Carlos Bay, then following that channel to channel marker 101, then turning northeast following the Okeechobee Waterway to meet the southern boundary of District 1.

District 5. Represents the city of Cape Coral, Pine Island, Matlacha and is bounded on the north by Charlotte Harbor and the Charlotte County line, on the East by the western boundary of District 2 and the Okeechobee Waterway, on the south by the Intracoastal Waterway within San Carlos Bay, and on the west by the Intracoastal Waterway within Pine Island Sound and Charlotte Harbor.

District 6. Represents Sanibel, North Captiva and Cayo Costa and is bounded on the north by the navigational channel into Boca Grande Pass, on the east by the Intracoastal Waterway within Pine Sound and San Carlos Bay and western boundary of District 4, and on the south by the Gulf of Mexico, from the western boundary of District 4 to the main navigational channel into Boca Grande Pass.

District 7. Represents Gasparilla Island bounded by the Charlotte County line on the north, on the east by the Intracoastal Waterway within Charlotte Harbor from the Charlotte County Line to Boca Grande Pass including Cayo Pelau, on the south by the main navigational channel into Boca Grande Pass, and on the west by the Gulf of Mexico from Boca Grande Pass to the Charlotte County Line.

District 8. Bounded on the north by a line defined by the northern section lines of sections 7, 8, 9, 10, 11, and 12 of township 47 south, range 26 east, sections 7, 8, 9, 10, 11, and 12 of township 47 south, range 25 east, then proceeding westerly into Estero Bay, running north of Monkey Joe Key and then southwest through Big Carlos Pass. Bounded on the west by the Gulf of Mexico, and on the south and east by the Collier County Line.

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FOOTNOTE(S):

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**Editor's note**—Appendix K was added by Ord. No. 95-22, § 2, adopted Nov. 1, 1995. Subsequently, Ord. No. 03-22, § 2, adopted Oct. 28, 2003, amended App. K, in its entirety, to read as herein set out. See also the Code Comparative Table. [\(Back\)](#)

**Sec. 2-351. - Refund of fees paid.**

- (a) If a building permit, mobile home move-on permit or recreational vehicle development order expires, is revoked or voluntarily surrendered, and therefore voided, and no construction or improvement of land (including moving a mobile home onto land) has commenced, then the feepayer is entitled to a refund of the community parks impact fee paid in cash as a condition for its issuance, except up to three percent of the impact fee paid, which will be retained as an administrative fee to offset the costs of processing the refund. This administrative fee is in addition to the administrative charge collected at the time of fee payment. No interest will be paid to the feepayer on refunds due to noncommencement.
- (b) Funds not expended or encumbered by the end of the calendar quarter immediately following 20 years from the date the ~~community~~ regional parks impact fee was paid will, upon application of the feepayer within 180 days of that date, be returned to the feepayer with interest at the rate of three percent per annum.

# CHAPTER 10

## Sec. 10-1. Definitions.

(b) *Definitions.* Except where specific definitions are used within a specific section of this chapter for the purpose of such sections, the following terms, phrases, words and their derivations will have the meaning given in this subsection when not inconsistent with the context:

### *Subdivision.*

- (1) A subdivision is a type of development. The term "subdivision" means the following:
  - a. The division of a lot into ~~two~~ three or more parcels; or
  - b. The division of a lot that results from the extension of an existing street or the establishment of a new street; or
  - c. Creation of a condominium as defined in F.S. chs. 718 and 721, except that condominium developments are exempt from the provisions of this Code that require platting under F.S. ch. 177.

## Sec. 10-104. Deviation and variances.

No change (a) through (h).

- (i) Variances or deviations in planned developments. For developments that have received zoning as a planned development, specific variances or deviations from the terms of these regulations are not required if the variances or deviations were approved as part of the schedule of deviations attendant to the master concept plan. Any requests for variances or deviations that were not included on the approved master concept plan must be processed in accordance with ~~this section~~ 34-380.

No change (j).

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

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

- (2) *Title certification.* Certification of title for property subject to development order approval must meet the following criteria:
  - a. *Form.* The certification of title must be in one of the following forms:
    - i. Title certificate or title opinion, no greater than 90 days old at the time of the initial development order submittal. The title certification submittal must be either an opinion of title meeting the Florida Bar Standards prepared by a licensed Florida attorney or a certification of title/title certification prepared by a title abstractor or company.
    - ~~ii. Ownership and encumbrance report, no greater than 30 days old at the time of the initial development order submittal.~~
    - ~~iii-ij.~~ Title insurance policy with appropriate schedules, no greater than five years old at the time of the initial development order submittal and an affidavit of no change covering the period of time between issuance of the Policy and the application date. If submission of a complete affidavit of

no change is not possible, a title certificate, or title opinion ~~or ownership and encumbrance report~~ must be submitted in the alternative.

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

(12) Reserved.

~~Hazardous materials emergency plan. Any applicant for a private port facility which did not receive approval of a hazardous materials emergency plan at the time of rezoning shall be required to submit a hazardous materials emergency plan, which shall be subject to the approval of the County Divisions of Emergency Management, Water Resources and Planning, and of the appropriate fire district. The plan shall also provide for annual monitoring for capacity and effectiveness of implementation. At the minimum, the plan shall comply with the spill prevention control and countermeasure plan (SPCC) as called for in the federal oil pollution prevention regulations, 40 CFR 112, as amended.~~

**Sec. 10-383. Interpretation of division; conflicting provisions.**

- (a) This division shall be construed to be the minimum regulations necessary for the purpose of meeting the general and specific requirements named in this division.
- (b) Where any provision of this division imposes a restriction different from that imposed by any other provision of this chapter or any other ordinance, regulation or law, the provision which is more restrictive shall apply.
- (c) Formal interpretations on water supplies and fire department access shall be made by the County Fire Official.
- (d) The Board of Adjustments and Appeals holds the jurisdiction to grant variances from the provisions of this division, except as otherwise provided herein. The procedure and criteria applicable to the variance proceedings is set forth in section 6-71 et. seq. The Development Services Director holds the jurisdiction to grant administrative deviations from water main installation per LDC Sec. 10-104(15) and 10-384(c)(6).

**Sec. 10-384. Minimum standards for all developments.**

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

- (c) Water main installation. Water main installation will be provided in accordance with the following standards.

**No change 1-5.**

- (6) The applicant may submit a request for an administrative deviation in accordance with section 10-104(a)(~~13~~)(15) for alternatives to line sizing, dead-end and intersecting water main criteria if they embody sound engineering practices and are demonstrated by the applicant's professional engineer.

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

- (a) Landscape plan required. Prior to the approval of a development order, an applicant whose development is covered by the requirements of this section must submit a landscape plan. The landscape plan must be prepared by and bear the seal of a landscape architect registered in the

State of Florida. The plan must include the narrative and calculations to ensure that the proposed landscaping will be in compliance with requirements of this code. However, small ~~projects~~ developments may qualify for a hardship waiver if the cost of compliance with the landscape architect requirement is disproportionate to the cost of the entire ~~project~~ development. This waiver is subject to the sole discretion of the Director.

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

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

OPEN SPACE REQUIREMENT		
Type of Development	Open Space as % of Development Area	
	<u>Small Projects Development</u>	<u>Large Projects Development</u>
Residential: Type of dwelling units as defined in chapter 34-2 located in conventional zoning districts with conventional zoning district lot coverage.		
Single-family residence or Mobile Home on a single lot with a minimum lot size of 6,500 sq. ft.	None	None
Duplex on a single lot with a minimum lot size of 7,500 sq. ft.	None	None
Two-family attached each on an individual lot with a minimum lot size of 3,750 sq. ft. per unit	None	None
All other residential	35%	40%
Industrial	10%	20%
Other: All other uses including, but not limited to commercial, places of worship, recreational vehicle parks, community facilities, schools (excluding Lee County School District), etc.	20%	30%
Note: multiple use sites with conventional zoning must comply with each corresponding use percentage in this table.		

Planned Development Zoning: Planned developments must provide open space as required in chapter 34 and per the approved master concept plan and resolution. Consistency with the master concept plan is in addition to the requirements of this provision, unless deviations have been granted.

Compact Communities: Development constructed in accordance with chapter 32 of this Code will provide open spaces in accordance with the provisions of that chapter.

(b) Indigenous native vegetation and trees.

(1) Preservation.

- a. Large developments, with existing indigenous native vegetation communities must provide 50 percent of their open space percentage requirement through the onsite preservation of existing native vegetation communities. Refer to section 10-701 for major indigenous plant communities of the County and section 10-1 for the definition of indigenous open space.
- b. If the development area does not contain existing indigenous native vegetation communities, but does contain existing indigenous native trees, then 50 percent of their open space percentage requirement must be met through the onsite preservation of existing native trees consistent with subsection 1 through 4 below. Refer to Appendix E and section 34-373(6)(g).

**No change 1-3.**

~~4. Effort must be made to preserve heritage trees with at least a 20 inch caliper dbh, including but not limited to live oak, South Florida slash pine, or longleaf pine. If a heritage tree must be removed from a site then a replacement tree with a minimum 20-foot height must be planted within an appropriate open space area.~~

5 4. Projects Developments greater than five acres in size that abut an arterial or collector road and have existing native trees within 50-feet of the right-of-way must be designed to provide a 50-foot right-of-way buffer for tree preservation. Drainage or utility easements located within or adjacent to the 50-foot right-of-way buffer area must be established in the location with the least amount of trees as determined by onsite inspection by Lee County. The preservation of the existing trees will not require a double hedge row to be installed as part of the right-of-way buffer. The preserve area may not be utilized for drainage or other similar uses that may adversely affect the existing native trees. To increase long-term survival of the existing trees to be retained, appropriate arboricultural techniques to reduce impacts to the existing trees must be used. Those techniques must include ways to reduce impacts to the trees' root systems and crowns during construction and must be clearly provided on the landscape plans of the development order. The native tree preservation right-of-way buffer may be used toward meeting the indigenous preservation requirement.

Applications submitted pursuant to this section encompassing difficult sites, such as irregularly shaped parcels or indigenous areas, may demonstrate that the intent of this section can be more effectively accomplished through an alternative right-of-way buffer design. Approval of an alternative design is at the discretion of the Director or designee.

**No change c.**

- (2) Salvaging existing native plants. Open space areas must be designed to incorporate as many of the existing large native trees and sabal palms as possible. ~~Irrigation water must be available on~~

~~the development site and provisions for adequate irrigation provided. Salvaged native plants relocated to an indigenous preserve must be provided with a temporary above ground irrigation system or other means of irrigation to ensure survivability.~~

- a. ~~Sabal palms. For projects greater than ten acres, healthy sabal palms with a minimum eight-foot clear trunk and maximum of 25-foot clear trunk must be salvaged if conditions (e.g., no rock) and sequence of construction allows. If sequence of construction does not allow the on-site relocation of sabal palms, then the sabal palms must be salvaged for an off-site recipient site or sale. The salvage efforts must be coordinated with the division of environmental sciences staff whether used on-site or otherwise. The number of sabal palms to be relocated or salvaged must be shown on the landscape plan approved as part of the development order. Any sabal palms being relocated must be moved in a horticulturally correct manner per Lee County Extension Services brochure Lee 8/2000A. A 90 percent survival for relocated sabal palms is required. Death of over ten percent of the relocated sabal palms will require a 1:1 replanting.~~
- b. ~~Other trees. Healthy native trees with a minimum caliper of four inches at four and one-half feet above the ground (dbh) may be relocated onsite for five tree credits toward ~~needed~~ required landscaping general tree requirements. The trees must be properly prepared for relocation through root pruning or other horticulturally correct methods, ~~approved by the Environmental Sciences Director.~~~~

**No change (3)**

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

**No change a-e.**

- f. ~~Written m~~Monitoring reports, including photos, that ~~narratively~~ document preserve area conditions must be submitted ~~prior to obtain~~ development order approval; and, again ~~after project~~ following construction completion in order to obtain but prior to issuance of a certificate of compliance (CC). The CC monitoring report submitted following construction completion must describe and document ecological restoration activity that has occurred in the preserve areas. If review of the monitoring reports reveals death or significant decline to preserve vegetation, then revision of the management plan and restoration in accord with section 10-423 will be required.

**No change (5)**

- (c) Minimum dimensions.

- (1) The minimum average width of open space areas must be ten feet.
- (2) The minimum area of open space must be 180 square feet.
- (3) For ~~projects~~ developments under less than ten acres in size, indigenous open space areas must have a minimum average width of 20 feet and minimum area of 400 square feet.

For ~~projects~~ developments over greater than ten acres in size, indigenous open space areas must have a minimum average width of 40 feet and minimum area of 1,500 square feet.

**No change 4-6.**

**No change (d).**

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

- (a) General Trees. Landscaping for all new developments, except community and regional parks as defined in the Lee Plan, must include, at a minimum, the following number of trees, in addition to the

landscaping required for parking and vehicle use areas and buffers. General tree requirements may be reduced through the utilization of larger trees as specified in section 10-420(c)(2) ~~or through use of an alternative landscape betterment plan (see section 10-419)~~ or through the use of planted detention areas as specified in section 10-416(a)(5). Existing waterbodies within the development area will not be included in the calculation for general tree requirements.

- ~~(1) Single-family r Residential developments including recreational vehicle developments that are constructed on individual (single) lots. One tree must be provided per 3,000 square feet of development area. The preferred location to install these trees is on common property (clubhouse, lakes, dry detention or other similar property) prior to the issuance of a certificate of completion. Tree credits should be utilized per section 10-420(j) for indigenous preserves, where applicable following the guidelines set forth in LDC Sec. 10-414(c).~~
- ~~(2) Single-family developments with a conventional zoning district lot and lot coverage with minimum lot sizes of 6,500 square feet or greater. Single-family developments with a conventional zoning district lot and lot coverage with minimum lot sizes of 6,500 square feet or greater will be required to provide a minimum of two trees per lot.~~
- ~~(3) All other residential developments. All other residential developments must provide one tree per 3,000 square feet of development area.~~
- ~~(4) Recreational vehicle developments. One tree must be provided per 3,000 square feet of development area.~~
- ~~(5) All other developments. One tree must be provided per each 3,500 square feet of development area.~~
- ~~(6) Compact communities. Development constructed in accordance with chapter 32 must provide street trees on both sides of all streets. Street trees located between a lot and a street may be counted towards the tree planting requirements of this section.~~
- (4) Heritage Trees. For large developments effort must be made to preserve native heritage trees with at least a 20 inch caliper dbh, Preserved Heritage Trees may be counted at a 5:1 credit ratio towards the general tree requirement. If a heritage tree must be removed from a site then a replacement native canopy tree with a minimum 20 foot height must be planted within an appropriate open space area. The replacement tree can only be counted at a 1:1 ratio towards meeting the general tree requirement.
- (5) For each 400 square feet of dry detention or drainage area planted with appropriate native herbaceous vegetation (minimum one-gallon container size planted three-foot on center) and mulched with pine straw, the general tree requirement may be reduced by one ten-foot tree.

#### **No change (b)**

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

#### **No change (1)**

- (2) Internal landscaping. All parking areas must be internally landscaped to provide visual relief and cooling effects and to channelize and define logical areas for pedestrian and vehicular circulation, as follows:

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

**No change b-g.**

### **Sec. 10-418. Surface water management systems.**

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

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

- (3) Bulkheads, geo-textile tubes, riprap revetments or other similar hardened shoreline structures. Bulkheads, Geo-textile tubes, riprap revetments or other similar hardened shoreline structures may comprise up to 20 percent of an individual lake shoreline. These structures cannot be used adjacent to single-family residential uses. A compensatory littoral zone equal to the linear footage of the shoreline structure must be provided within the same lake meeting the following criteria:
  - a. A five-foot wide littoral shelf planted with herbaceous wetland plants ~~to provide 50 percent coverage at time of planting~~. To calculate the littorals for this shelf design indicate the number of linear feet of shoreline structure multiplied by five feet for the littoral shelf width divided by 2 to obtain the required plant quantity ~~multiplied by 50 percent for the plant coverage at time of planting~~; or
  - b. ~~An 8:1 slope littoral shelf with herbaceous wetland plants to provide 50 percent coverage at time of planting; or~~
  - e b. An equivalent littoral shelf design as approved by the Director.
- ~~(4) For each 400 square feet of dry detention area or drainage swale planted with appropriate native herbaceous vegetation (minimum one-gallon container size planted three-foot on center) the general tree requirement may be reduced by one ten-foot tree.~~
- ~~(5~~ 4) Restoration of existing bank slopes that have eroded over time and no longer meet the minimum littoral design criteria applicable at the time the lakes were excavated will be in accordance with section 10-329(f).

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

Projects that can not comply with the criteria of this division may demonstrate how the requirements can be more effectively accomplished through an alternate landscape betterment plan. Alternative, creative designs are encouraged for difficult sites for landscape design, including but not limited to ~~"in-fill" developments~~, existing developments, and irregularly shaped parcels. The approval of the alternate landscape betterment plan is at the Development Services Director's discretion and may include conditions to ensure that the overall landscape design complies with the intent of this division.

The following conditions must be met:

- (1) The plan ~~may not deviate from~~ must provide the minimum open space requirements of section 10-415.

**No change (2) – (6).**



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

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

#### (c) Trees and palms.

- (1) Code-required trees must be a minimum of ten feet in height, have a two-inch caliper (at ~~42~~ 6 inches above the ground) and a four-foot spread at the time of installation. Palms must have a minimum of ten feet of clear trunk at planting. Trees having an average mature spread or crown less than 20 feet may be substituted by grouping the same so as to create the equivalent of a 20-foot crown spread. Trees adjacent to walkways, bike paths and rights-of-way must be maintained with eight feet of clear trunk.
- (2) Larger trees substituted to reduce the minimum number of general trees (palms excluded) must be no less than four inches in diameter at ~~42~~ 6 inches above the ground and no less than 16 feet in height at the time of planting. The general tree requirement cannot be reduced in number by more than 50 percent.

### **No change (d) and (e)**

- (f) The height of all trees, palms, and shrubs located within the buffer areas must be measured from the ~~final~~ parking lot grade of the project site. All other plants are measured from the final grade in which they reside. Tree and shrub heights may not be less than the minimum requirements set forth in LDC10-420(c) and LDC10-420(d).
- (g) Mulch requirements. A two-inch minimum layer, after watering-in, of mulch or other recycled materials must be placed and maintained around all newly installed trees, shrubs, and groundcover plantings. Each tree must have a ring of mulch no less than 24 inches beyond its trunk in all directions. The use of cypress mulch is strongly discouraged. Sand, gravel, rock, or shell are not appropriate mulch materials.

### **No change (h) and (i)**

- (j) Credits.

### **No change (1)**

- (2) Each existing indigenous native tree preserved in place, which has a trunk diameter of four inches or greater measured at four and one-half feet above the ground (dbh) will receive a credit of five trees against the general ~~landscape tree~~ requirements. Native palms preserved in place that are eight feet or greater from ground level to base of fronds, will receive a credit of three trees. Existing sabal palms, identified on the development order plans that are relocated onsite will be given a two tree credit. Credits for existing trees may not be used to reduce the required parking canopy trees in parking or vehicle use areas. Existing native trees in buffers may be used for credit provided they occur within the required 100-foot buffer segment.

Credits will apply only when the trees are labeled as protected-credit trees. If the protected-credit trees die within three years from the development order certificate of compliance, they must be replaced by the number of credit trees taken.

### **No change (3) and (4)**

**Sec. 10-716. Piping materials for use in right-of-way.**

Approved utility piping materials for use in rights-of-way are as follows:

	Concrete	Plastic Type	DI	Steel	Aluminum	HDPE
Lines in traveled way:						
Water	No	Yes (2)	Yes(2)	No	No	Yes (2)
Sewer force main	No	Yes (2)(4)	<del>Yes(2)</del> No	No	No	Yes (2)
Sewer gravity main	No	Yes (2)	No	No	No	No
Reuse main	No	Yes (2)	Yes (2)	No	No	Yes (2)
Stormwater drain	Yes	Yes (3)(5)	No	No	No	Yes (3)(5)
Utility conduit	Yes	Yes (2 <u>1</u> )	Yes	Yes	Yes	Yes (1)
Lines in right-of-way:						
Water	No	<del>Yes(3)(9)</del> <u>(2)</u>	Yes (2)	No	No	Yes (2)
Sewer force main	No	Yes (2)(4)	<del>Yes (2)</del> No	No	No	Yes (2)
Sewer gravity main	No	Yes (2)	No	No	No	No
Reuse main	No	Yes (2)	Yes (2)	No	No	Yes (2)
Stormwater drain	Yes	Yes (3)	No	<del>Yes (1)(8)</del> (4)	Yes (4)	Yes (3)
Utility conduit	Yes	Yes (1)	Yes	Yes	Yes	Yes (1)
Stormwater lines in drainage easement	Yes	No	No	Yes (4)	Yes (4)	No

- (1) Encased in concrete, if in banks more than one layer; otherwise, SDR 26, ASTM 2241 or DR 25 AWWA C 900, DR17 HDPE, or thicker.
- (2) In accordance with the LCU Design Manual requirements or all requirements, specifications, and design manual of the utility service area provider (including all casing pipe requirements), whichever is more stringent.
- (3) In compliance with the latest edition of the FDOT Standards for Road and Bridge Construction and related indexes, including, but not limited to, supplemental specifications, Standard Modifications and approved materials list.
- (4) Not on County-maintained roads.
- (5) Not on County-maintained Arterial or Collector roads.

**No change 1-3.**

# CHAPTER 22

## Chapter 22 HISTORIC PRESERVATION

### ARTICLE II. ADMINISTRATION AND ENFORCEMENT

#### *DIVISION 3. CERTIFICATE OF APPROPRIATENESS*

##### **Sec. 22-102. - Regular certificate of appropriateness.**

**(a) Remains unchanged.**

- (b) The historic preservation board staff will, within five working days from the date a complete application has been filed, approve, deny or approve with conditions an application for a regular certificate of appropriateness presented by the owner of a designated historic resource or a property within a designated historic district. The findings of the staff will be mailed to the applicant by regular mail, or when available, via electronic means, within two working days of the staff decision, accompanied by a statement explaining the decision. The applicant will have an opportunity to appeal the staff decision by applying for a special certificate of appropriateness within 30 calendar days of the date the decision is issued.

##### **Sec. 22-103. Special certificate of appropriateness.**

**(a) Through (b) remain unchanged.**

- (c) Public hearing. The historic preservation board shall hold a public hearing upon an application for a special certificate of appropriateness affecting designated historic resources or districts. Notice of the public hearing shall be given to the property owner(s) by ~~certified regular mail, or when available, via electronic means, return receipt requested,~~ and to other interested parties by an advertisement in a newspaper of general circulation at least five calendar days but no sooner than 20 calendar days prior to the date of hearing. The written staff report will be available to the public and distributed to the applicant and the historic preservation board at least 7 days prior to the public hearing. The staff report is final once distributed to the historic preservation board. The applicant may request a meeting with staff to discuss the recommendation made in the staff report prior to the public hearing.

(d) through (e) remain unchanged.

##### **Sec. 22-106. Archaeological sites and districts.**

**(a) through (b) remain unchanged.**

- (c) Certificate to dig. The survey entitled "An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida" will be used to identify areas of archaeological sensitivity levels 1 and 2.

(1) through (2) remain unchanged.

- (3) The staff of the historic preservation board must, within 15 calendar days of receipt of a complete application for a certificate to dig, approve the application for a certificate to dig, or approve the certificate to dig subject to specified conditions, including but not limited to a delay not to exceed 60 days to allow any necessary site excavation or additional archaeological assessment prior to commencement of the proposed construction activity. Staff's decision must be based on the application and any other guidelines the historic preservation board may establish. If the approved certificate to dig requires archaeological excavation, the certificate must specify a period of time during which excavation may occur, not to exceed 60 days unless the owner agrees to an extension. The owner must have an archaeologist conduct excavations

as necessary during this period. The certificate to dig and any staff findings must be mailed by regular mail, or when available, via electronic means, to the applicant ~~by certified mail, return receipt requested~~, within seven calendar days of its review and approval.

**(4) through (5) remain unchanged.**

### **Sec. 22-203. Required notices; action by historic preservation board.**

The historic preservation board will hold timely public hearings on every petition for designation made pursuant to this chapter. References in this chapter to calendar days will include Saturdays, Sundays and legal holidays. References in this chapter to working days exclude Saturdays, Sundays and legal holidays.

- (1) Notice to owner. The historic preservation board shall notify the property owner(s) of its intent to consider a proposed designation at least 20 calendar days prior to the date of the public hearing. When designation is proposed by the owner pursuant to Section 22-201(1), notice will be sent to the applicant by regular mail, or when available, via electronic means. When designation is proposed by the preservation board or Board of County Commissioners pursuant to Section 22-201(2), ~~Notice shall~~ will be sent by certified mail, return receipt requested, to the record owners of the property as reflected by the current ad valorem tax roll. The designation report will be available to the public and distributed to the applicant and the historic preservation board at least 7 days prior to the public hearing. The designation report is final once distributed to the historic preservation board. The applicant may request a meeting with staff to discuss the designation report prior to the public hearing. Prior to the hearing, the county staff shall furnish the owners with copies of the designation report and this chapter. County staff shall make a reasonable effort to contact the owners after mailing the notice of intent to designate, answer the owner's questions and address areas of concern prior to the public hearing.

**(2) through (5) remain unchanged.**

# CHAPTER 32

## Sec. 32-243. - Property development regulations.

TABLE 32-243 — PROPERTY DEVELOPMENT REGULATIONS FOR EACH LOT TYPE

Setbacks						
Street (min/max)				Side Yard (min)	Rear Yard <sup>1,2</sup> (min)	Water Body <sup>3</sup> (min)
Core	Center	General	Edge			
0/10	0/10	<del>not permitted</del> 0/10	not permitted	0	0	25

Height <sup>4</sup> (min/max in stories; max in feet)					Accessory Apartments <sup>5</sup> (max bldg footprint in sf)
Core	Center <sup>9</sup>	General	Civic	Edge	
2/6; 65'	2/4; 65'	<del>not permitted</del> 55'	not permitted	not permitted	not permitted

All other portions of Table 32-243 remain unchanged.

# CHAPTER 34

## Sec. 34-2. Definitions.

**Agritourism activity** means any agricultural related activity on land classified as agricultural under F.S. § 193.461 that is consistent with and accessory to a bona fide farm, livestock operation, or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training and exhibition, or harvest-your-own activities and attractions. An agritourism activity does not include the construction of new or additional structures or facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the general public. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

**Storage** means the safekeeping of goods, wares, products or other commodities in an area for more than 48 hours for later use or disposal. The term "storage" includes the keeping of boats, cars, recreational vehicles, etc., for others, whether or not compensation is made to the property owner. The term does not include animals, nor does it apply to the outdoor display of products for sale by such as boats, mobile homes, construction equipment ~~or vehicles~~ dealers, ~~or~~ landscaping materials, or customary and usual activities accessory to agricultural or residential uses ~~dwelling~~.

## Sec. 34-6. Compliance with specific planning community requirements.

If the subject property is located in one of the following communities, the owner/applicant will be required to demonstrate compliance with the requirements applicable to the specific community as outlined in Chapter 33.

- ~~(1)~~ Estero Planning Community.
- ~~(1) (2)~~ Greater Pine Island.
- ~~(2) (3)~~ Page Park.
- ~~(3) (4)~~ Caloosahatchee Shores.
- ~~(4) (5)~~ Lehigh Acres.
- ~~(5) (6)~~ North Fort Myers.
- ~~(6) (7)~~ Matlacha.
- ~~(7) (8)~~ Upper Captiva.
- ~~(8) (9)~~ North Olga.
- ~~(9)~~ San Carlos Island Overlay District

## Sec. 34-145 Functions and Authority (Hearing Examiner)

### No change (a) through (e)

~~(f) Equitable jurisdiction. The Hearing Examiner does not have the authority to render decisions based on the law of equity in proceedings under this section.~~

~~(g)~~ (f) The Hearing Examiner is limited to the authority granted within County regulations. The Hearing Examiner may consider state, federal, or common law in the application of the County regulations.

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

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

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

- (3) Certification of title and encumbrances. Certification of title and encumbrances submitted for property subject to zoning approval must meet the following criteria:

- a. Form. The certification of title must be in one of the following forms:

- i. Title certificate or title opinion, no greater than 90 days old at the time of the initial development order submittal. The title certification submittal must be either an opinion of title meeting the Florida Bar Standards prepared by a licensed Florida attorney or a certification of title/title certification prepared by a title abstractor or company.

- ~~ii. Ownership and encumbrance report, no greater than 30 days old at the time of the initial development order submittal.~~

- ~~iii.~~ ii. Title Insurance Policy with appropriate schedules, no greater than five years old at the time of the initial ~~development order~~ zoning case submittal and an affidavit of no change covering the period of time between issuance of the policy and the application date. If submission of a complete affidavit of no change is not possible, a title certificate, or title opinion ~~or ownership and encumbrance report~~ must be submitted in the alternative.

- b. Content. The certification of title must include, at a minimum, the following:

- i. The name of the owner or owners of the fee title;
- ii. All mortgages secured by the property;
- iii. All easements encumbering the property;
- iv. The legal description of the property; and
- v. The certification of title documentation must be unequivocal.

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

**No change (1), (2) and (3).**

- (4) Reserved.

~~Hazardous materials emergency plan for port facilities. Any applicant seeking a rezoning for a private port facility must submit a hazardous materials emergency plan, which will be subject to the approval of the County Divisions of Emergency Management, Water Resources and Planning, and of the appropriate fire district. The plan must provide for annual monitoring for capacity and effectiveness of implementation. At the minimum, the plan must comply with the spill prevention control and countermeasure plan (SPCC) called for in the Federal Oil Pollution Prevention Regulations, 40 CFR 112, as amended.~~



- (5) *Bonus density*. When applicable, the number of bonus density units requested, ~~the source of the bonus density units (TDR's, housing density bonus, etc.), and the resulting gross residential density of the proposal, and documentation substantiating compliance with each of the review criteria set forth in section 2-146. A copy of the bonus density application must also be included as an attachment to the zoning application.~~

**No change (6), (7) and (8).**

#### **Sec. 34-204. Submittal requirements for Administrative Action applications.**

- (a) All applications. Every request for Administrative actions not requiring a public hearing under this chapter must include the following. Upon written request, on a form prepared by the County, the Director may modify the submittal requirements as set forth in section 34-203(h).

- (1) The STRAP (Section, Township, Range, Area, Parcel) number for the subject property. This number is used by the Property Appraiser to identify the subject property.

If the subject property includes a portion of property within one STRAP, than in addition to the STRAP number, a metes and bounds legal description must also be submitted as follows:

Legal description and sketch to accompany legal description. A metes and bounds legal description along with a sketch of the legal description, prepared by a Florida Licensed Surveyor and Mapper, must be submitted, unless the property consists of one or more undivided lots within a subdivision platted in accordance with F.S. Ch. 177. If the subject property is one contiguous parcel, the legal description must specifically describe the entire continuous perimeter boundary of the property subject to the zoning action with accurate bearings and distances for every line. If the application seeks to rezone undivided, platted lots, then a complete legal description (i.e. lot, block, subdivision name, public records recording information) of the platted subject property is required. The Director has the right to reject any legal description that is not sufficiently detailed so as to locate the property on County maps.

- (2) ~~Reserved. The STRAP (Section, Township, Range, Area, Parcel) number for the subject property. This number is used by the Property Appraiser to identify the subject property.~~

#### **Sec. 34-210. Temporary use permits.**

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

- (d) Additional required information. In addition to the application information, the applicant shall submit satisfactory evidence of the following:

**No change (1) – (5).**

- (6) Evidence shall be submitted that, where applicable, the applicant for a proposed use has complied with Ordinance No. ~~94-26~~ 14-18 of the County, pertaining to special events.

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

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

**No change (1) through (37)**

(c) Use activity groups are as follows:

- (38) Recreation facilities, commercial. Recreational facilities, not specifically regulated elsewhere in this Code, operated as a business and open to the public for a fee. This does not include facilities owned or operated by a government unit.

<b>GROUP I</b>
Coin-operated amusement establishments that primarily provide coin-operated amusement devices; coin-operated includes coins, tokens or other similar devices
<u>This neither authorizes nor permits any use or activity in violation of the provisions found in Florida Statutes Chapter 849, Gambling.</u>
<b>GROUP IV. Indoor facilities.</b>
<u>Indoor Gun Range</u>

#### **Sec. 34-625. Outdoor lighting standards.**

(d) 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 contained in the Illuminating Engineering Society of North America (IESNA) Handbook, (latest edition) will apply.

(4) Luminaire mount standards. the following standards apply to luminaire mountings.

- c. *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 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.~~ Exposed-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 as long as the illumination is consistent with the county restrictions on off-site light spillage which must be analyzed in the photometry plan.

#### **Sec. 34-691. Purpose and intent.**

- (a) RSC-1 residential single-family conservation district. The purpose and intent of the RSC-1 residential single-family conservation district is to recognize and protect existing single-family residential developments, lots, structures and uses, previously permitted but not conformable to the regulation for other single-family residential districts set forth in this chapter, and to accommodate residential use of lawfully existing lots nonconforming under previous zoning regulations. This district may be applied to any land use category allowing residential uses set

forth under the Lee Plan. This district is not available for new developments, but may be used only by property owners in existing developments that comply with the property development regulations or by the Board of County Commissioners upon its own initiative to achieve the purpose mentioned in this section. For the RSC-2 zoning district see Sec. 33-1626.

**Sec. 34-715. Property development regulations table.**

Property development regulations for multiple-family districts are as follows:

TABLE 34-715. PROPERTY DEVELOPMENT REGULATIONS FOR MULTIPLE-FAMILY RESIDENTIAL DISTRICTS

	Special Notes or Regulations	RM-2	RM-3	RM-6	RM-8	RM-10
Minimum lot area and dimensions:	34-1493, 34-1494, 34-2221, 34-2222, 34-2142					
Single-family detached:	Note (7)					
Minimum lot size (square feet)		6,500 (1)	14,500	7,500	6,500	6,500
<del>Lot area per unit (square feet)</del>		<del>6,500 (1)</del>	<del>14,500</del>	<del>7,500</del>	<del>6,500</del>	<del>6,500</del>
Lot width (feet)		65	75	75	65	65
Lot depth (feet)		100	100	100	75	75
Duplex, two-family, townhouse:	Note (7)					
Minimum lot size (square feet)	34-713	7,500 (2)	29,000	14,000	10,000	10,000
<del>Lot area per unit (square feet)</del>		<del>3,750</del>	<del>14,500</del>	<del>7,000</del>	<del>5,000</del>	<del>5,000</del>
<del>Lot width per unit (feet)</del>		<del>37.5</del>	<del>50</del>	<del>50</del>	<del>40</del>	<del>40</del>
Lot depth (feet)		100	100	100	100	100

Multiple-family:	Note (7)					
Minimum lot size (square feet)		10,000	43,500	20,500 (3)	15,000	12,000
Lot area per unit (square feet)		3,000	14,500	6,500 (3)	5,000	4,000
Lot width (feet)		100	100	100	100	100
Lot depth (feet)		100	120	120	120	120
Nonresidential uses:						
Lot area (square feet)		10,000	20,000	10,000	10,000	10,000
Lot width (feet)		75	100	75	100	100
Lot depth (feet)		100	100	100	100	100

Notes:

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

~~(3) 14,000 square feet for the first two dwelling units plus 6,500 square feet for each additional dwelling unit in the same building. Reserved.~~

**No change Note (4) through (7).**

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

Use regulations for the community facilities districts are as follows:

TABLE 34-813. USE REGULATIONS FOR COMMUNITY FACILITIES DISTRICTS

	Special Notes or Regulations	CF
<u>Maintenance facility</u>		<u>P</u>

(government)		
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**Sec. 34-844. Use regulations table.**

Use regulations for conventional commercial districts are as follows:

TABLE 34-844. USE REGULATIONS FOR CONVENTIONAL COMMERCIAL DISTRICTS

	Special Notes or Regulations	C-1A	C-1	C-2	C-2A	CN-1	CN-2	CN-3 (21, 23)	CC	CG	CS-1	CS-2	CH	CT	CR	CI	CP
Recreation, facilities:																	
Commercial (34-622(c)(38))																	
Group I		P	P	P	P	—	—	P	P	P	—	—	—	P	—	—	—
Group III	Note(20)	—	P/SE	P/SE	P/SE	—	—	—	—	—	—	—	—	P/SE	—	—	—
Group IV	Note(20)	<u>P</u>	—	—	—	—	—	—	P/SE	P/SE	—	—	—	P/SE	—	—	—

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

Use regulations for industrial districts are as follows:

TABLE 34-903. USE REGULATIONS FOR INDUSTRIAL DISTRICTS

	Special Notes or Regulations	IL Note (14)	IG Note (14)	IR Note (14)
Food and kindred products (34-622(c)(15)):				

	Group I	Note (9)	—	P	P
	Group II	Note (9)	<del>SE P</del>	P	P
	Group III	Note (9)	P	P	—

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

Use regulations for planned development districts are as follows:

TABLE 34-934. USE REGULATIONS FOR PLANNED DEVELOPMENT DISTRICTS

	Special Notes or Regulations	RPD	MHPD	RVPD	Compact PD	CFPD	CPD	IPD Note (37)	AOPD	MPD	MEPD
Accessory uses and structures	Note (1), 34-1171 et seq., 34-2441 et seq., 34-1863, 34-2141 et seq., 34-3106	P	P	P	—	P	P	P	P	P	—
Accessory apartment	Note (2), (21), & (28), 34-1177	P	—	—	—	—	—	—	—	P	—

Notes:

**No change Note (1) through (20).**

(21) In RPDs, MHPDs, and residential areas of MPDs, a special exception ~~is~~ may be required.

**No change Note (22) through (49).**

## ***DIVISION 11. REDEVELOPMENT OVERLAY DISTRICTS***

Subdivision I. - General Requirements

Subdivisions II—V. - Reserved

~~Subdivision VI. — The San Carlos Island Redevelopment Overlay District~~

### **Sec. 34-1177. Accessory apartments.**

**No change (a)**

- (b) Applicability. This section sets forth the requirements for accessory apartments, when subordinate to a single-family detached dwelling unit. The requirements of this section apply to accessory apartments whether they are listed as a permitted use or a use by ~~special exception~~ administrative approval.

### **Sec. 34-1261. Definitions.**

For purposes of this division and when referred to elsewhere in this chapter, certain terms or phrases shall have the following meaning:

Noise means sound or vibrations which are defined as either noise or noise disturbance in the Lee County Noise Control Ordinance, Ordinance No. 82-32, as amended by Ordinance No. 83-22-14-18 and as subsequently amended.

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

- (a) Approval required. The sale or service of alcoholic beverages for consumption on the premises is not permitted until the location has been approved by the County as follows:
- (1) Administrative approval. The Director of the Department of Community Development may administratively approve the sale or service of alcoholic beverages for consumption on the premises when in conjunction with the following uses, if the proposed use satisfies the requirements set forth in this division. When circumstances so warrant the Director may determine administrative approval is not the appropriate action and that the applicant must instead apply for approval as a special exception. Such circumstances may include the previous denial by the Director or by a hearing board of a similar use at that location, the record of public opposition to a similar use at that location, and similar circumstances. When the Director has approved a request for consumption on the premises at a location where the actual building has not been constructed, the Director may not approve another request for consumption on the premises within one year's time, which could potentially violate the distance requirements. If the first building is completed within less than one year, and it can be shown the second use would not violate the prescribed distance requirements, the Director may approve the second location subject to all other requirements contained in this division.

- a. County-owned airports, arenas and stadiums, including liquor, beer, malt liquor and wine in restaurants, bars, lounges, concessions, concession stands and package stores at County-owned airports;
- b. Bars, cocktail lounges, or night clubs located in commercial and industrial zoning districts that permit bars, cocktail lounges or night clubs, provided the standards set forth in subsections (b)(1) and (3) of this section are met;
- c. Bowling alleys and movie theaters provided the standards set forth in subsections (b)(2)a and (b)(3) of this section are met;

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

**Sec. 34-1292. Horses and other equines.**

The keeping, raising or breeding of horses or other equines is a permitted use or special exception in the AG, RS-4, RS-5 and MH-4 districts and in the RPD, MHPD, and MPD districts when approved as part of the master concept plan, as follows:

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

- (3) Commercial stables. Commercial stables are permitted by special exception, as specified in zoning district regulations, provided that there is compliance with this division. Commercial stables may allow horse shows and exhibitions, which may include riding exhibitions, riding lessons, dressage, roping and cutting, as ancillary uses subject to the following:

**No change a. through d.**

- e. Music and noise audible at the property line must be measured and restricted as provided in the Lee County Noise Control Ordinance, Ordinance No. 82-32, 14-18 as subsequently amended.

**No change f. and g.**

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

**No changes (a) though (d)**

- (e) ~~Storage areas~~ facilities. Areas used only for the commercial storage of motor vehicles, boats, trailers, recreational vehicles, mobile homes and construction or farm equipment which is not being displayed for sale or rent must be enclosed and buffered (see section 34-3005(b) and 10-416(d)).

**Sec. 34-1353. Convenience food and beverage stores, ~~automotive~~ automobile service stations, fast food restaurants, and car washes.**

(g) *Canopies.*

- (1) Flat-roof canopies are ~~prohibited~~ allowed unless prohibited by conditions in a Planned Development. Canopies must be consistent with the architectural design, predominant color and features of the principal structure.
- (2) Canopy lighting must comply with section 34-625(d)(4)c.



- (3) Canopies must be ~~of one color,~~ consistent with the predominant color of the principal structure.
- (h) Accent banding: Color accent banding on all structures, including canopies, is prohibited and raised architectural features are permitted unless prohibited by conditions in a Planned Development.

### **Sec. 34-1354. Variances or deviations.**

The provisions of this section apply to all new development, including redevelopment.

- (1) A deviation or variance from the requirements stated in sections 34-1352 and 34-1353 must be obtained through the public hearing process unless the project qualifies for administrative relief under section 34-1354(3).
- (2) The applicant must demonstrate that the granting of the deviation or variance will not have an adverse impact on adjacent land uses in addition to the requirements set forth in section 34-145.
- (3) Project rendered nonconforming by the adoption of section 34-1352 and 34-1353 Commercial or Industrial-zoned properties less than 3 acres in size may obtain administrative relief from section 34-1352 and/or 34-1353 to facilitate new development or redevelopment of the site. Development of these nonconforming projects sites will be limited to development that will bring the site more into greater compliance with sections 34-1352 and 34-1353 given the existing site constraints such as location and configuration of existing buildings, parking areas, drainage, easements and/or other conditions. Commercial or industrial zoned properties 3 acres or greater in size may utilize the public hearing process for deviations or variances from section 34-1352 and/or 34-1353.

### **Sec. 34-1414. Continuing care facilities.**

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

- (c) Density. Density equivalents for a continuing care facility will be calculated for any assisted living facility units and nursing beds pursuant to division 12, subdivision II, of this article, and for independent living units on the basis of two independent living units equal to one residential dwelling unit.

(1) Where health care, social service, adult living facilities (ALF), continuing care facilities, or other "group quarters" (df) are provided in dwelling units, wherein each unit has its own cooking facilities, density equivalents will be calculated on a 1:1 ratio.

(2) Except as may be specifically set forth elsewhere in this chapter, where health care, social service, adult living facilities (ALF), continuing care facilities (CCF), or other "group quarters" (df) are provided in dwelling units or other facilities wherein each unit does not have individual cooking facilities and where meals are served at a central dining facility or are brought to the occupants from a central kitchen, density equivalents will be calculated at the ratio of four people equals one dwelling unit.

A planned development, for which the master concept plan states the number of persons that may occupy an approved adult living facility (ALF) or Continuing Care Facility (CCF), may request an amendment to the approved master concept plan to reflect the increased number of occupants based upon the equivalency factor set forth in this section (if applicable). Such amendment will be considered a minor administrative amendment that will be deemed to not

increase density and may be approved pursuant to section 34-380(b) as long as existing floor space is not increased to accommodate the increased number of occupants. If increased floor space is required, then a public hearing will be required.

Also see Sec. 34-1394 Density equivalents.

**No change (d), (e) and (f).**

### **Sec. 34-1494. Density equivalents.**

**No change (a).**

(b) Equivalency factors:

(See Sec. 34-1414(c) for assisted living facility units and nursing beds, independent living units, health care, social service, adult living facilities (ALF), continuing care facilities (CCF), or other "group quarters")

~~(1) Where health care, social service, adult living facilities (ALF), continuing care facilities, or other "group quarters" (df) are provided in dwelling units, wherein each unit has its own cooking facilities, density equivalents will be calculated on a 1:1 ratio.~~

~~(2) Except as may be specifically set forth elsewhere in this chapter, where health care, social service, adult living facilities (ALF), continuing care facilities (CCF), or other "group quarters" (df) are provided in dwelling units or other facilities wherein each unit does not have individual cooking facilities and where meals are served at a central dining facility or are brought to the occupants from a central kitchen, density equivalents will be calculated at the ratio of four people equals one dwelling unit.~~

~~A planned development, for which the master concept plan states the number of persons that may occupy an approved adult living facility (ALF) or Continuing Care Facility (CCF), may request an amendment to the approved master concept plan to reflect the increased number of occupants based upon the equivalency factor set forth in this section (if applicable). Such amendment will be considered a minor administrative amendment that will be deemed to not increase density and may be approved pursuant to section 34-380(b) as long as existing floor space is not increased to accommodate the increased number of occupants. If increased floor space is required, then a public hearing will be required.~~

~~(3) 1) Notwithstanding subsection (b)(2) above Sec. 34-1414(c)(2), no density equivalency calculation is required for a bed and breakfast (df) in an owner-occupied conventional single-family residence (df) accommodating four or less lodgers. If the bed and breakfast will accommodate more than four lodgers, then the equivalency will be calculated as four lodgers equals one dwelling unit.~~

~~(4) 2) Notwithstanding subsection (b)(2) above Sec. 34-1414(c)(2), no density calculation is required for hospital, prison, jail, boot camp, detention center, or other similar type facility owned or operated by a County, state or federal agency.~~

~~(5) 3) Where dwelling or living units have "lock-off accommodations," density will be calculated as follows:~~

- ~~a. Hotels/motels: "Lock-off units" will be counted as separate rental units regardless of size.~~
- ~~b. Timeshare units: Lockoff units will be counted as separate dwelling units whether or not they contain cooking facilities, as follows:~~
  - ~~i. Studio units will be counted as 0.1 dwelling units;~~
  - ~~ii. One bedroom units will be counted as 0.25 dwelling units;~~

- iii. Two bedroom units will be counted as 0.5 dwelling units;
- iv. Three or more bedrooms will be counted as a full dwelling unit.

**No change (c).**

**Sec. 34-2019. Other use of parking lots.**

Except as provided in this section, required off-street parking areas may not be utilized for the sale, display or storage of merchandise, or for repair, dismantling or servicing of vehicles or equipment.

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

~~(3) Carnivals, fairs and amusement attractions and devices.~~

- ~~a. If the uses are located in an existing parking lot, the parking lot must have enough spaces to comply with the minimum requirements for the principal use and the carnival, fair or amusement attraction or device (see section 34-2020(b)). Prior to obtaining a temporary use permit (see division 37 of this article) for the temporary use of a parking lot, the applicant must submit a site plan showing there will be no net loss or reduction in the number of parking spaces required for any existing principal use that relies on the parking lot.~~
- ~~b. The temporary uses may not be located in a parking lot that is nonconforming as to the number of spaces needed for the existing uses.~~

**Sec. 34-2020. Required parking spaces.**

All uses are required to provide off-street parking based on the single-use development requirement unless the use is located in a development that qualifies as a multiple-use development, in which case, the minimum required spaces for multiple-use developments may be used. Use of the multiple-use development minimum parking regulations is optional.

Parking for uses not specifically mentioned in this section must meet the minimum parking requirement for the use most similar to that being requested.

- (a) Residential uses. Residential uses permitted under this chapter are subject to the following minimum requirements:

TABLE 34-2020(a). REQUIRED PARKING SPACES FOR RESIDENTIAL USES

	Use	Special Notes or Regulations	Special Notes or Regulations	Minimum Required Spaces for Multiple-Use Development
1.	Single-family, duplex, two-family attached and mobile home units.		2 spaces per unit	—
2.	Townhouses.	Note (1)	2 spaces per unit	—
3.	Multiple-family and timeshare units.	Note (1) & (3)	2 spaces per unit	—

4.	Assisted living facilities.	Note (2), <u>34-1414(c) et seq. &amp; 34-1494 et seq.</u>	0.54 spaces per unit	0.41 spaces per unit
5.	Continuing care facilities.	Note (2), <u>34-1414(c) et seq. &amp; 34-1494 et seq.</u>	1.12 spaces per unit	1 space per unit
6.	Independent (self-care) living facilities, including group quarters, health care (grps I & II), social services (grps III & IV) and other similar uses.	Note (2), <u>34-1414(c) et seq. &amp; 34-1494 et seq.</u>	1 space per unit	0.59 spaces per unit
7.	<u>Clubhouse and Ancillary Uses within a Residential Community without a Golf Course</u>	<u>Note 4.</u>	<u>4 spaces per 1000 square feet of total floor area</u>	<u>3.5 spaces per 1000 square feet of total floor area</u>

Notes:

**No change Note (1), (2) and (3).**

(4). May include administrative office or other ancillary uses to the clubhouse such as a gyms and/or meeting rooms.

(b) Non-residential uses. Non-residential uses permitted under this chapter are subject to the following minimum requirements:

TABLE 34-2020(b). REQUIRED PARKING SPACES FOR NON-RESIDENTIAL USES

Use	Special Notes or Regulations	Minimum Required Spaces for Single-Use Development	Minimum Required Spaces for Multiple-Use Development
Airports, landing strips and heliports.		Determined by the Director	—
Animal clinics.		5 spaces per veterinarian plus 1 space per employee	—
Animal kennels.		5 spaces	—
Automotive drive-in oil change establishments.	34-2021(c)	1.5 spaces per service bay	—

Automotive repair and service (excluding drive-in oil change establishments); automotive service stations.		4 spaces per service bay plus 1 space per employee	—
Banks and financial establishments.	34-2021(a)	3 spaces per 1,000 square feet of total floor area	2.5 spaces per 1000 square feet of total floor area
Bars and cocktail lounges, nightclubs.	Note (1)	21 spaces per 1,000 square feet of total floor area	14 spaces per 1,000 square feet of total floor area
Barbershops, beauty shops, massage parlors, etc. (personal services group II)		3 spaces per operator (chair) or 1 space per 100 square feet, whichever is greater, with a minimum of 5 spaces	—
Bed and breakfast.	34-1494(b)(3 1)	1.2 spaces per rental unit	—
Bowling alleys.	Note (1)	4 spaces for each lane	—
Carnivals, fairs and amusement attractions and devices.	<del>34-2019(3)</del> 34-3042(b)	10 spaces per amusement device	—
Car washes.	34-2021(b)	1.5 spaces per car stall	—
Convenience food and beverage stores.	Notes (1) & (15)	1 space per 200 square feet of total floor area (one parking space per four fuel pumps will be credited against the required parking), with a minimum of 5 spaces	—
Day care centers.	Note (2)	2 spaces per employee	—
Educational institutions:			
a. Public schools.		Parking must be provided in compliance with state law	—

b. Private or parochial schools:		—	—
1. Elementary or middle schools.		1 space per employee plus 1 space per 40 students	—
2. High schools.		1 space per employee plus 1 space per 10 students	—
3. Colleges, universities and trade and vocational institutions.	Note (3)	1 space per employee plus student parking as the Director deems necessary	—
Essential service facilities.		1 space per employee on the largest shift	—
Flea market, Indoor.		1 space per 100 square feet of total floor area	—
Flea market, Open.		5 spaces per rental space or booth	—
Funeral homes.	Note (14)	1 space per 4 seats or 4 spaces per 250 square feet of chapel area, whichever is greater	—
Golf courses.	Note (4)	6 spaces per hole	—
Health and Fitness Clubs.	<del>34-2020(b)</del>	7 spaces per 1,000 square feet of total floor area	5 spaces per 1,000 square feet of total floor area
Hospitals (health care facilities, group IV).		1 space per bed, excluding bassinets and gurneys, plus 1 space per employee on the largest shift	—
Hotels and motels.	Note (1), 34-1801 et seq.	1.2 spaces per rental unit	—
Marinas and other water-oriented uses.	Note (1)	—	—

a. Boat slips.		1 space for every 2 slips	—
b. Boat ramps.	Note (5)	10 spaces per boat ramp	—
c. Multi-slip docking facility.		Determined by Director	—
d. Dry storage.		1 space per 5 unit stalls	—
e. Charter or party fishing boat.	Note (6)	1 space per 3 people	—
f. Local cruise ships.	Note (6)	1 space per 2 people	—
g. International cruise ships.	Note (6)	1 space per 3 people	—
h. Live-aboards.		2 spaces per 3 live-aboards	—
Manufacturing and light industrial.	Note (1)	1.75 spaces per 1,500 square feet of total floor area	1.5 spaces per 1,500 square feet of total floor area
Meeting halls, clubs (fraternal and membership) and other places for group assembly not otherwise listed.	Notes (7) & (14)	1 space per 100 square feet of total floor area	—
Miniature golf.	Note (1)	1.5 spaces per hole	—
Multiple-occupancy complex with total floor area of 350,000 square feet or more.	Note (16)	—	4.5 spaces per 1,000 square feet of total floor area
Museums, art galleries, libraries, studios and other similar uses not covered elsewhere.		3 spaces per 1,000 square feet of total floor area	—
Offices, excluding medical. (Including but not limited to: business services group I, contractors and builders, insurance companies, nonstore retailers, personal services group IV, social services group I, and other similar offices.)		1 space per 300 square feet of total floor area	1 space per 350 square feet of total floor area
Offices, medical and health care facilities		4.5 spaces per 1000 square	4 spaces per 1000

group III.		feet of total floor area	square feet of total floor area
Places of worship.	Note (14); 34-2051 et seq.	1 space per 3 seats	1 space per 5 seats
Recreation facilities, indoor.	Note (1)	4 spaces per 1000 square feet of total floor area	3.5 spaces per 1000 square feet of total floor area
Recreation facilities, outdoor, commercial.		Determined by the Director.	—
Religious facility.	Notes (1) & (14); 34-2051 et seq.	1 space per 3 seats	—
Restaurants.	Notes (8), (9) & (10)	14 spaces per 1,000 square feet of total floor area; outdoor seating area is calculated at same rate	12.5 spaces per 1,000 square feet of total floor area; outdoor seating area is calculated at same rate
Restaurants, fast food.	Note (9)	13 spaces per 1000 square feet of total floor area; outdoor seating area is calculated at same rate	—
Retail or business establishments.			
a. Small products or commodities: Auto and boat parts; clothing stores; department stores; drugstores; food stores; hardware stores; hobby, toy and game shops; package stores; household/office furnishings, group, II; personal services group I (excluding barbershops, beauty shops & massage establishments); specialty retail shops groups I, II and III; used merchandise stores group I; variety stores; and other similar type establishments.	34-2021 et seq.	1 space per 250 square feet of total floor area, with a minimum of 5 spaces; dead storage is calculated at same rate	1 space per 350 square feet of total floor area; dead storage is calculated at same rate



b. Large products or commodities: Used merchandise stores groups II and III; vehicle and equipment dealers group II; and other similar type establishments.	Note (1); 34-2021 et seq.	2.5 spaces per 1,000 square feet of total floor area, with a minimum of 5 spaces; dead storage is calculated at 1 space per 1,000 square feet	2.5 spaces per 1,000 square feet of total floor area; no parking is required for areas of the building used only as dead storage and not available to the public
c. Very large products or commodities: Household/office furnishings groups I & III; mobile home dealers; specialty retail stores group IV; used merchandise stores group IV; vehicle and equipment dealers groups I, III, IV and V; and other similar type establishments.	<u>Note (1); 34-2021 et seq.</u>	1 space per 700 square feet, with a minimum of 5 spaces; dead storage is calculated at 1 space per 1,500 square feet	1 space per 700 square feet of total floor area; no parking is required for areas of the building used only as dead storage and not available to the public
Schools, commercial.		2 spaces per 100 square feet of total classroom floor area	1 space per 100 square feet of total classroom floor area
Tennis courts, commercial.	Note (14)	3 spaces per court plus one space per 3 spectator seats	—
Theaters, auditoriums, stadiums, arenas and other similar places of public assembly.	Notes (1) & (14)	1 space per 4 seats	1 space per 4 seats
Warehouse, high-cube.	Note (1)		
a. Passenger car parking		1 space per 1,000 square feet of total floor area for the first 20,000 square feet, plus 1 space per 2,000 square feet for the second 20,000 square feet to 99,999 square feet, plus 1 space per 5,000 square feet for that portion over 100,000 square feet	—
b. Truck and trailer parking	Notes (12) & (13)	1 space for every 5,000 square feet of total floor area	—

Warehouse, mini-warehouse.		1 space per 25 storage units, with a minimum of 5 spaces	—
Wholesale, processing and warehousing establishments.	Note (1)	1.25 spaces per 1,500 square feet of total floor area	0.75 spaces per 1,500 square feet of total floor area

Notes:

- (1) Accessory or ancillary uses must be calculated separately and in compliance with this division.

**Sec. 34-2479. Sound systems.**

Sound systems for sports/amusement parks and recreational facilities shall meet the requirements of the Lee County Noise Control Ordinance, Ordinance Nos. ~~82-32 and 83-22.~~ 14-18 as subsequently amended.

**Sec. 34-3042. Carnivals, fairs, circuses and amusement devices.**

**No changes (a)**

- (b) Off-street parking. If the uses are located in an existing parking lot, the parking lot must have enough spaces to comply with the minimum requirements for the principal use and the carnival, fair or amusement attraction or device (see section 34-2020(b)). Prior to obtaining a temporary use permit for the temporary use of a parking lot, the applicant must submit a site plan showing there will be no net loss or reduction in the number of parking spaces required for any existing principal use that relies on the parking lot.

The temporary uses may not be located in a parking lot that is nonconforming as to the number of spaces needed for the existing uses.

~~Refer to sections 34-2019(3) and 34-2020(b).~~

**No changes (c) (d) and (e)**

**Sec. 34-3050. Temporary storage facilities.**

The following regulations do not apply in commercial, industrial or mixed-use zoning districts where open storage is a permitted use, on property with a bona fide agricultural use located in an AG zoning district, or to contractor's office and equipment storage sheds (see section 34-3044).

- (a) The use of vehicles, truck trailers, or shipping containers for storage of merchandise, produce, or commodities for periods of 48 hours or more is prohibited in all districts except as a temporary use.
- (b) The use of vehicles, truck trailers, or shipping containers for storage of merchandise, produce, or commodities for periods of 48 hours or more may be permitted as a temporary use in a non

residential district upon application and issuance of a temporary use permit (see section 34-210) so long as:

- (1) The vehicles, truck trailers, or shipping containers used for storage comply with all setback requirements for accessory structures.
- (2) No more than two vehicles, truck trailers, or shipping containers are permitted at one time, and they cannot be stacked on top of one another.
- (3) The maximum length of time for use of a vehicle, truck trailer or shipping container for storage of merchandise, produce, or commodities is 60 days. One extension, not to exceed 60 days, maybe approved at the Director's discretion.

**Sec. 34-3105. Use of vehicles, truck trailers, or shipping containers for storage ~~for non-agricultural purposes.~~**

Except for a bonafide agricultural use located in an AG zoning district, or where open storage is a permitted use in a commercial, industrial or mixed use zoning district, vehicles, truck trailers, shipping containers, and other similar structures may not be stored or used to store goods, produce or other commodities in any zoning district unless approved on a temporary basis in accordance with sections 34-3044 and 34-3050.

Where allowed as open storage per this Section, vehicles, truck trailers, shipping containers and other similar structures may not be stacked on top of one another and must be in compliance with Chapter 34, Division 36, including Sec. 34-3005 "Storage Facilities".

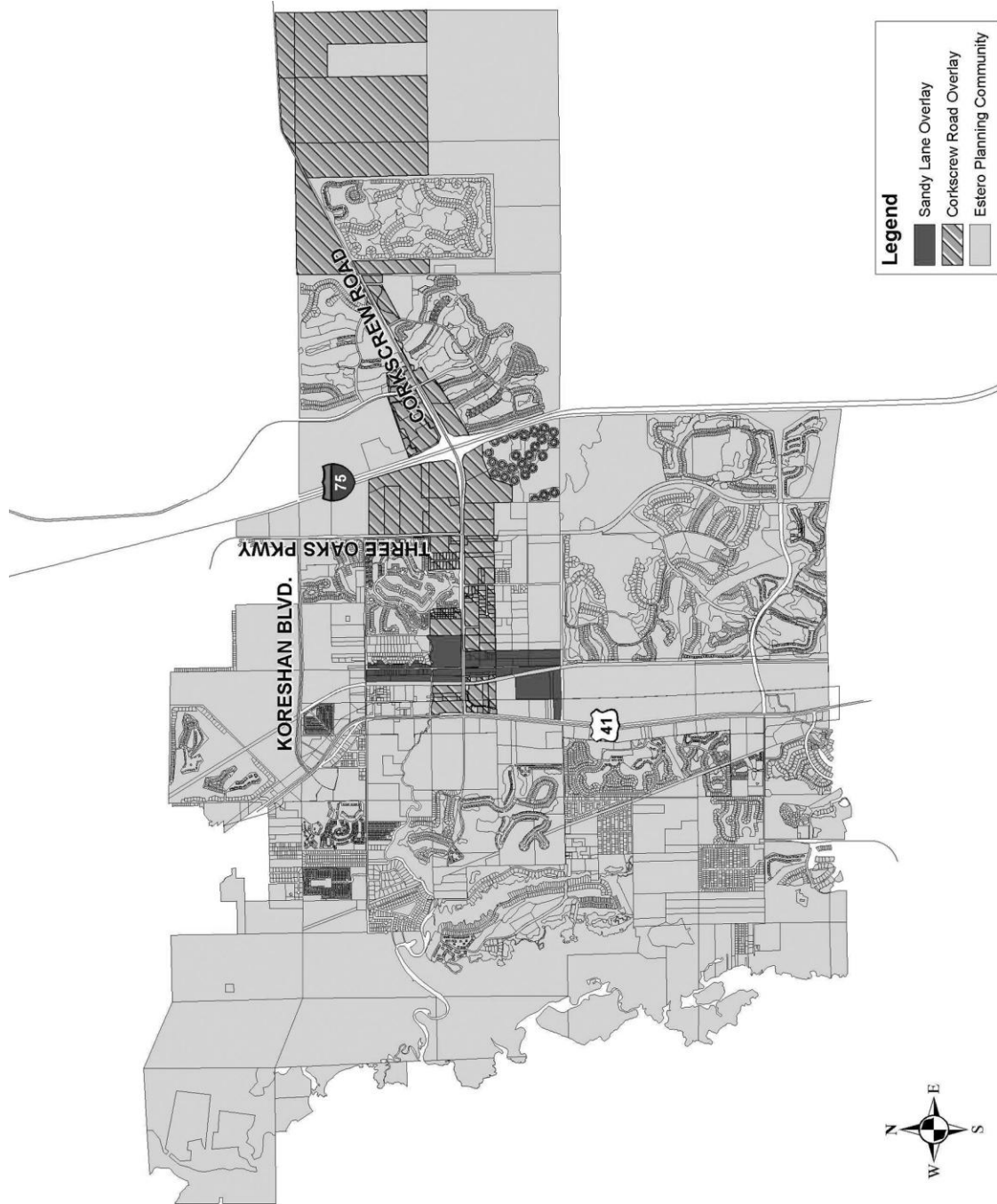
**Sec. 34-3272. Lot of record defined; general development standards.**

**No changes (1) through (3) b.**

c. For mobile home or recreational vehicle lots of record, the following will also apply:

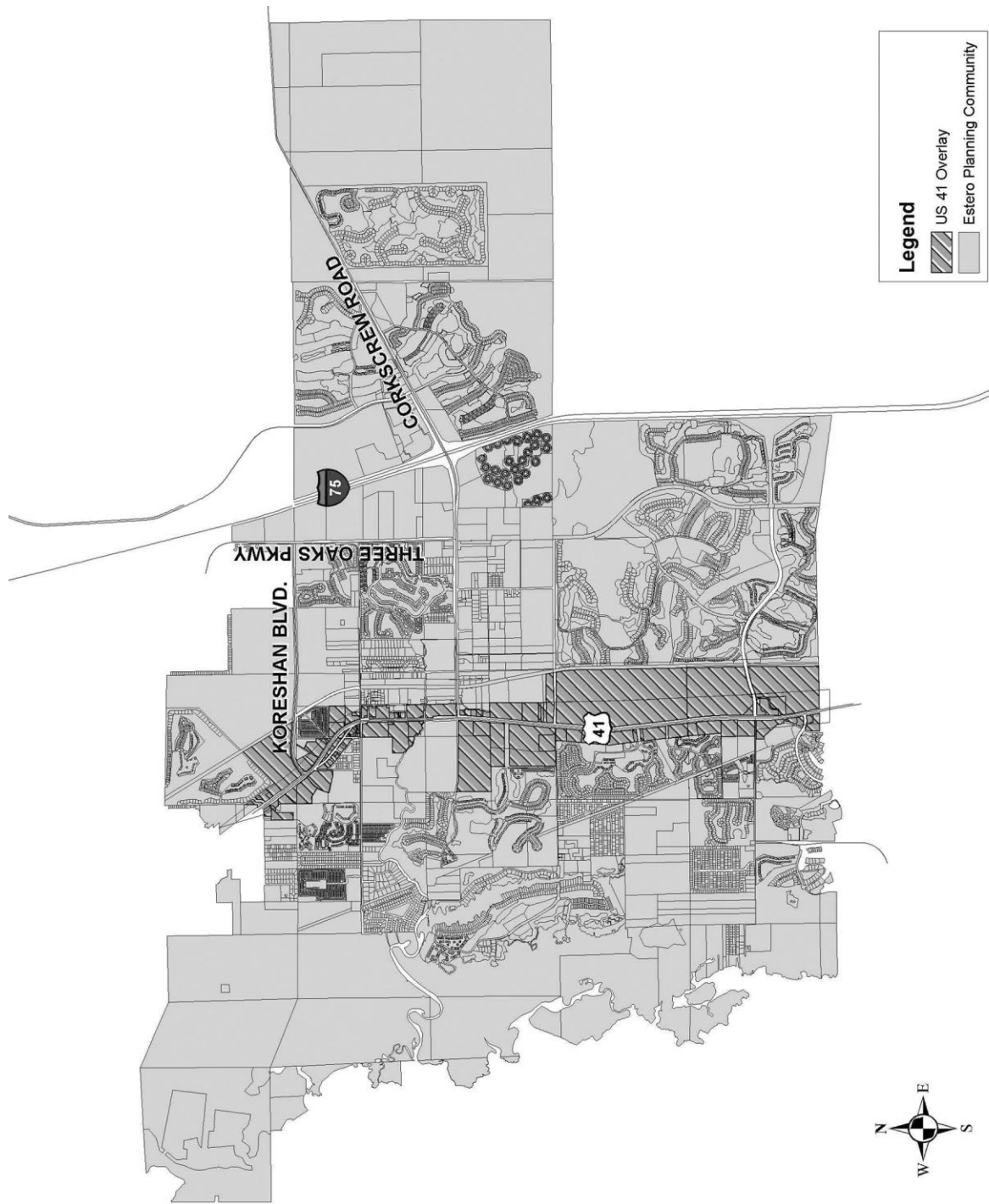
1. All mobile homes, or recreational vehicles, ~~or conventional single family residences,~~ including any attachments, must be placed at least five feet from any body of water or waterway.
2. All mobile homes, or recreational vehicles, ~~or conventional single family residences,~~ must have a minimum separation of ten feet between units (body to body) and appurtenances thereto. Each unit will be permitted to have eaves which encroach not more than one foot into the ten-foot separation.

**APPENDIX I PLANNING COMMUNITY AND REDEVELOPMENT OVERLAY  
DISTRICT BOUNDARIES AND LEGAL DESCRIPTIONS** [\[1\]](#)



~~Map 1— Estero Planning Community, Corkscrew/Sandy Lane Overlay~~

**DELETE MAP**



Map 2—Estero Planning Community, US 41 Overlay

**DELETE MAP**

**DRAFT ADMINISTRATIVE  
CODE AC-13-16  
TRANSPORTATION  
PROPORTIONATE SHARE  
CALCULATIONS FOR NEW  
DEVELOPMENT  
PROJECTS**

**ADMINISTRATIVE CODE  
BOARD OF COUNTY COMMISSIONERS**

<b>CATEGORY:</b> DEVELOPMENT/PLANNING/ZONING	<b>CODE NUMBER:</b> AC-13-16
<b>TITLE:</b> TRANSPORTATION PROPORTIONATE SHARE CALCULATIONS FOR NEW DEVELOPMENT PROJECTS	<b>ADOPTED:</b> 8/21/91
	<b>AMENDED:</b> 1/4/95 7/7/98 __/__/1_
	<b>ORIGINATING DEPARTMENT:</b> COMMUNITY DEVELOPMENT AND TRANSPORTATION

**DRAFT**

**I. PURPOSE**

This document describes procedures to calculate proportionate share costs for projects that may be subject to development agreements, and proportionate share agreements. All new development is required to pay road impact fees under the terms of Lee County Ordinance 15-03, Lee County Land Development Code (LDC), Chapter 2, Article VI, Division 2, as amended. Some developments may be required to pay a proportionate share of roadway improvement costs in excess of road impact fees pursuant to Chapter 163.3180(5)(i), F.S., as amended and in the LDC, based on their larger size, use, character, or location. Mitigation of impacts on the County's road system is mandated by the Lee Plan Policy 38.1.1.

**II. SCOPE**

The policies and procedures contained in this code have been prepared to aid the development community, Lee County Board of County Commissioners (BOCC) and staff in assessing mitigation for significant impacts of developments on the surrounding road network. This code is supplemental in nature:

- A. As to a Developments of Regional Impact (DRI), this by supplementing the provisions of Chapter 380, Florida Statutes, and Rule-73C-40.045, Florida Administrative Code for determination of significant impacts.
- B. As to Development Agreements and proportionate share agreements, pursuant to Chapter 163, F.S.,
- C. As to the Lee County Land Development Code (LDC) Chapter 2 provisions for payment of road impact fees and determination of proportionate share.

### III. POLICY/PROCEDURE

#### A. Definitions

Cost - All improvements and associated costs of capital improvement implementation, such as design, right-of-way acquisition, planning and design studies, engineering, inspection, and physical development costs directly associated with construction of motor vehicle, transit, pedestrian and bicycle facilities, as may be adjusted to the anticipated year it will be incurred.

Development Trips - Estimated vehicular traffic volume assigned to a roadway segment(s) from the stage or phase of development under review;

Phase - a discrete, five year or lesser construction timeframe of development, including the local government issuance of certificates of occupancy for that construction or its functional occupancy.

Potential Significant Impact - When traffic projected to be generated at the end of any stage or phase of the proposed development, cumulatively with previous stages or phases, will utilize five percent or more of the adopted peak hour level of service maximum service volume of the roadway.

Proportionate Share – Calculated and based upon the number of trips from the proposed development expected to reach roadways during the peak hour from the stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain or achieve the adopted level of service, multiplied by the construction cost, at the time of development payment, of the improvement necessary to maintain or achieve the adopted level of service.

Roads Impact Fee District – The geographic area in which road impact fees may be collected and spent, as depicted in the Lee County Land Development Code Appendix K, Map 1.

Service Volume – The highest number of vehicles for a given level of service.

Service Volume Increase - The additional number of vehicles for a given level of service resulting from an improvement to a roadway segment.

Significant Impact - When traffic projected to be generated at the end of any stage or phase of the proposed development, cumulatively with previous stages or phases, will utilize five percent or more of the adopted peak hour level of service maximum service volume of the roadway, and the roadway is projected to be operating below the adopted level of service standard at buildout of that stage or phase.

Stage - one in a series of approximately equal increments in the development of a proposed development upon which are placed quantified limits for construction that are reasonably calculated to ensure that the state and regional roadway network affected by the proposed development will not be overburdened by development traffic. A stage is to be a subset of a particular project phase of development planned for a project by a developer. A stage of development includes both a specific type and amount of development and the associated,



approved buildout timeframe for that development.

State Highway System – All streets, road, highways, and other public ways open to travel by the public generally and dedicated to the public use according to law or by prescription and designated by the Florida Department of Transportation (FDOT), consistent with Chapters 334 and 335, F.S.

Transportation Deficiency - a transportation facility or facilities on which the adopted level-of-service standard is exceeded by the existing, committed, and vested trips, plus additional projected background trips from any source other than the development project under review, and trips that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida's Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review.

#### B. Applicability of Significant Impacts

1. For a stage or phase of DRI development, the determination of significant impacts and proportionate share is based on a multiagency review process outlined in Florida Statute 380.06 and Florida Administrative Code 73C-40.045. DRI traffic impact analysis will generally follow the preferred methodology procedures adopted by the Southwest Florida Regional Planning Council (SWFRPC) and typically be included in an Application for Development Approval (ADA) or Notice of Proposed Change (NOPC). Revisions to mitigation requirements in an approved DRI Development Order condition will require further traffic analysis and must be submitted in a NOPC. Specific assumptions for a DRI traffic analysis may be discussed at the transportation methodology meeting held prior to submittal of the DRI application. The methodology meeting for an unincorporated Lee County DRI will be conducted with Lee County DCD/DOT staff and review staff from SWFRPC, FDOT, and all other municipalities or agencies that maintain roadway segments in the study area.
2. A rezoning, unless coincident with a DRI ADA or NOPC, will not include the determination of significant impacts for calculation of proportionate share.
3. The approved Development Order (DO) traffic analysis will include a determination of potential significant impacts and significant impacts. If there are significant impacts, then the approved DO may include a stipulation requiring the applicant to enter into a proportionate share agreement. Analysis based on the methodology described in III.D. is required when the projected development traffic:
  - a. generated at the end of any DO stage or phase of a proposed non-DRI development, cumulatively with previous stages or phases, will exceed 300 trip ends during the peak hour, or
  - b. shows a potential significant impact.
4. Staff will calculate a preliminary proportionate share based on an approved Traffic Impact Statement (TIS), as outlined in III.F. and as demonstrated in the example scenarios in Exhibit 1, to determine whether a proportionate share agreement will be necessary.
  - a. No agreement is required with Lee County if the proportionate share is less than road impact fees for the stage or phase of the development. Proportionate share mitigation

will be satisfied by payment of road impact fees. The applicant may initiate an agreement at their option.

- b. An agreement with Lee County is required if the proportionate share for significant impacts on county maintained roadways is greater than road impact fees for the stage or phase of the development. Proportionate share mitigation will be satisfied through a schedule of payments, which may include road impact fees.
- c. Lee County may, at its option, participate in an agreement with other agencies when the proportionate share of significant impacts on county maintained roadways is less than road impact fees for the stage or phase of the development, and there are significant impacts to roadways under other jurisdictions. Proportionate share mitigation will be satisfied through payment of road impact fees or as outlined in the agreement.

### C. Methodology

The Lee County Concurrency Report and the DO TIS will identify preliminary transportation deficiencies. The applicant's TIS data will be used to develop a preliminary proportionate share analysis and will determine significant impacts based on this administrative code. When a significant impact is identified, the applicant has the option to perform a more detailed traffic study to further evaluate significant impacts and transportation deficiencies to determine the proportionate share. The applicant may request a methodology meeting for a more detailed study prior to, or coincident with, the pre-application meeting. All components of the methodology for the applicant to calculate a proportionate share are subject to review and approval by Lee County. The following may be discussed in the methodology meeting and must be documented in a more detailed study to determine the proportionate share:

1. Study area - Identify significant impacts and transportation deficiencies and include any roadway segment and parcels that are :
  - a. Adjacent to, within one mile of, or between, each potential significant impact roadway segment,
  - b. Within three miles of each potential significant impact roadway segment and approved for development with 300 or more PM peak hour trips,
2. Traffic analysis year of completion of the development phase or stage.
3. Approved development trips.
  - a. Potential traffic from all existing land uses within the study area, including DRI, Planned Development, DO, commercial and residential conventional zoning approvals.
  - b. Approximation of approved development trips outside the study area by use of a manual estimated increase in traffic or a Florida Standard Urban Transportation Modeling Structure (FSUTMS) analysis. Include assumptions, source data and adjustments.
4. Existing plus committed network - Include committed improvements programmed for full funding of construction within the first five years of an adopted local or state capital improvement program.

5. Service volumes - As adopted by the agency or jurisdiction responsible for maintenance of each significantly impacted roadway segment. Generalized service volumes must be used on county-maintained facilities for traffic analysis of a phase or stage more than five years from the date of the last update of the link-specific service volumes.

6. Road improvement cost - Calculations specific to the identified project for the significantly impacted roadway and based on the best available data.

- a. Capital improvement program costs determined by local or state agencies in an adopted study or as contained in an adopted capital improvement program.
- b. If the project is not included in any capital improvement program, then the cost may be obtained from the current Lee County Metropolitan Planning Organization's Long Range Transportation Plan.
- c. If project costs are unavailable in a local or state program or plan, then total average cost per mile figures, and estimated component costs may be utilized.
  1. Construction costs must be based on average FDOT cost per mile or square foot data.
  2. Right-of-way acquisition costs based on property appraisals and comparable sales with review and input from County Lands.
  3. Project planning, management, design, studies, permitting, and inspection cost varies by project, and may initially be estimated as 60 percent of the construction cost.

7. Trip generation – Use of the current edition of ITE Trip Generation, ITE Trip Generation Handbook, or alternative calculation methods and data sources as approved by DCD/DOT staff to determine project trip generation, internal capture, pass-by capture, and net new trips.

8. Trip distribution and assignment – Allocation of project traffic to the existing plus committed network.

9. Background traffic – Methods to estimate traffic volume based on the adopted LOS. Sources for traffic and permanent count station data such as truck factors, 100<sup>th</sup> highest volume hour of the year (K-100), peak season factor, and directional (D) factors.

10. Level-of service determinations – Method to calculate background traffic, project traffic from the stage or phase being considered, directional and total traffic in the 100<sup>th</sup> highest volume hour of the project stage or phase buildout year. Identify any transportation deficiency.

11. Determination of proportionate share – Input data for all calculations and comparison to roads impact fees. The proportionate share calculation will not include road segments with an identified transportation deficiency.

#### D. Proportionate Share Application Process

If an agreement is needed based on the calculations described in III.B.4., then it will be based on the following process:

##### 1. Agreement Meeting

- a. The applicant must schedule a meeting with the County Attorney, DOT and DCD directors, or designee(s), to discuss the legal and technical aspects of the proportionate share agreement,
- b. If preliminary significant impacts are identified on a roadway maintained by another jurisdictional agency, then a representative from that agency will be invited to the meeting.

2. Application - When a proportionate share agreement is submitted, the developer must submit a package containing the following to the County Attorney and DCD to initiate agreement preparation. The application must include:

- a. Name, address and phone number of owner(s), developer and agent;
- b. Property location, including parcel identification numbers;
- c. Legal description and survey of property;
- d. Project description, including type, intensity and amount of development;
- e. Proposed phasing or staging schedule, if applicable;
- f. Description of requested proportionate share mitigation method;
- g. Copy of DRI/Zoning condition(s) requiring a proportionate share agreement;
- h. Copy of the project's TIS; and,
- i. Location map depicting the site and affected road network.

##### 3. Draft agreement

The County Attorney's Office prepares proportionate share agreements with Lee County. The County Attorney, or designee, may prepare a draft agreement or may permit an applicant to prepare a draft agreement for review. Other jurisdictional agencies whose road segments are impacted may be a party to an agreement with Lee County, or enter into a separate agreement with the applicant. A draft agreement for review under this administrative code will be delivered to all parties for review. DCD and DOT will provide technical support for traffic analysis review, proportionate share calculations and agreement content.

4. The county will notify the applicant regarding the date the agreement will be considered for final approval by the Board. The agreement will go into effect upon execution by the Board and must be executed prior to approval of the first DO for vertical construction.

#### E. Proportionate Share Calculations

1. Proportionate shares must be calculated using the formula in the Land Development Code Section 2-72:

$$\text{Proportionate Share} = \text{Development Trips}/(\text{Service Volume increase}) * \text{Cost}$$

2. This proportionate share formula is applied to each roadway segment on which the development has significant impacts. The sum of these computations is the development's proportionate share. The method and timing of payment of proportionate share amounts above roads impact fees will be established in a proportionate share agreement as required by the Lee County Land Development Code Section 2-74 and as further specified herein.
3. The applicant shall receive a credit against proportionate share on a dollar-for-dollar basis for impact fees and other transportation mitigation requirements paid or payable in the future for the project. The credit shall be reduced up to 20 percent by the percentage share that the project's traffic represents of the added capacity of the selected improvement.

#### F. Appropriation of revenues

The county will deposit proportionate share revenues in the appropriate roads impact fee district for funding of scheduled improvements in the Capital Improvement Element (CIE), or as otherwise established in the terms of the proportionate share agreement.

If a scheduled transportation facility improvement is removed from the CIE, then the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor or sector that would mitigate the impacts of development pursuant to the requirements of [Lee County Land Development Code section 2-69](#).

#### G. Intergovernmental Coordination

- (1) Where an impacted regional transportation facility has been designated as regionally significant in an adopted regional transportation plan as provided in Section 339.155, F.S., the county may coordinate with other impacted jurisdictions and agencies to apply proportionate share contributions to seek funding for improving the impacted regional facility-through an interlocal agreement. Coordination will begin with the agreement process described herein. After initial notification, the impacted jurisdiction has up to 90 days in which to notify the county of intent to participate in an agreement regarding the proportionate share obligation. If the impacted jurisdiction declines participation, then the applicant would be subject only to the proportionate share requirements of the county, and county approval may include a condition that the applicant provides evidence that the proportionate share obligation to the impacted jurisdiction has been satisfied.
- (2) Pursuant to policies in the Intergovernmental Coordination Element of the Lee Plan and applicable policies in the Southwest Florida Regional Planning Council's Strategic Regional Policy Plan, the county will coordinate with affected jurisdictions, including FDOT, regarding mitigation to impacted transportation facilities not under the jurisdiction

of the county. An interlocal agreement may be established with other affected jurisdictions to address the cross jurisdictional transportation impacts of development.

Exhibits:

Sample proportionate share calculation

Scenario One

Development “A” includes Congested Road, a four-lane arterial, in the study area. The traffic analysis indicates the project, including all approved phases and stages, will add 120 vehicle trips to Congested Road from 100<sup>th</sup> Avenue to 110<sup>th</sup> Avenue in the peak hour peak direction. The maximum service volume at LOS “E” is 2,000 vehicles in the peak hour in the peak direction.

Based on the calculation below, Development “A” utilizes six percent of the adopted service volume.

Significance determination

$$\text{percentage} = (\text{Cumulative project traffic}) / (\text{maximum service volume at LOS standard}) = (120) / (2000) = 6 \text{ percent}$$

The approved traffic analysis indicates an unacceptable LOS “F”, without the project stage on Congested Road from 100<sup>th</sup> Avenue to 110<sup>th</sup> Avenue. This meets the definition of an identified transportation deficiency. The development is not required to pay a proportionate share towards a future improvement to Congested Road,

Scenario Two

Development “B” includes Destination Parkway, a four-lane arterial, in the study area. The maximum service volume at LOS “E” is 2,000 vehicles in the peak hour in the peak direction. The approved traffic analysis indicates an acceptable LOS “D”, and no identified transportation deficiencies without the project stage, and an unacceptable LOS “F” with the project stage. The traffic analysis indicates the project, including all approved phases and stages, will add 180 vehicle trips to Destination Parkway from 150<sup>th</sup> Street to 160<sup>th</sup> Street in the peak hour peak direction. Based on the calculation below, Development “B” utilizes nine percent of the adopted service volume.

Significance determination

$$\text{percentage} = (\text{Cumulative project traffic}) / (\text{maximum service volume at LOS standard}) = (180) / (2000) = 9 \text{ percent}$$

This meets the definition of a significant impact on Destination Parkway with five percent or more of the adopted peak hour level of service maximum service volume of the roadway, and the roadway is projected to be operating below the adopted level of service standard at buildout of that stage or phase.

The traffic analysis indicates the project stage under review will add 40 vehicle trips to Destination Parkway from 150<sup>th</sup> Street to 160<sup>th</sup> Street in the peak hour, peak direction. An improvement is identified in the MPO LRTP with an estimate cost of \$5,000,000 for six-laning Destination Parkway from 150<sup>th</sup> Street to 160<sup>th</sup> Street. The service volume will increase from 2,000 to 3,000 vehicles in the peak hour in the peak direction.

Applying the data to the proportionate share formula

Development trips = 40 (vehicle trips in the peak hour, in the peak direction from the phase or stage under review)

Service Volume Increase = (SV at 6-lanes) – (SV at 4-lanes) = 3,000 – 2,000 = 1,000

Cost = \$5,000,000

Development “B” Proportionate Share for Destination Parkway from 150<sup>th</sup> Street to 160<sup>th</sup> Street

= Development Trips/(Service Volume Increase) \* Cost

= (40)/(1000) \* \$5,000,000

= 0.04 \* \$5,000,000

= \$200,000.