

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Direct amendments to the Land Development Code (LDC) pertaining to excavation regulations; authorize publication of amendments; and direct amendments to public hearings for adoption.

Recommended hearing dates are as follows: Management & Planning Review Committee (M&P): March 11, 2002  
LDC Advisory Committee (LDCAC): January 11, 2002  
Local Planning Agency (LPA): February 25, 2002  
Exec. Regulatory Oversight Committee (EROC): March 13, 2002  
BOCC 1<sup>st</sup> Public Hearing: March 26, 2002  
BOCC 2<sup>nd</sup> Public Hearing: April 9, 2002

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

**WHAT ACTION ACCOMPLISHES:** Set hearing dates before M&P, LDCAC, LPA, EROC and the Board of County Commissioners (BOCC).

<b>2. DEPARTMENTAL CATEGORY:</b> 04 Community Development		<b>3. MEETING DATE:</b> 03-12-2002
<b>COMMISSION DISTRICT #:</b> A12B		
<b>4. AGENDA:</b>	<b>5. REQUIREMENT/PURPOSE:</b> (Specify)	<b>6. REQUESTOR OF INFORMATION:</b>
<input type="checkbox"/> CONSENT  <input checked="" type="checkbox"/> ADMINISTRATIVE <input type="checkbox"/> APPEALS <input type="checkbox"/> PUBLIC <input type="checkbox"/> WALK ON TIME REQUIRED: 5 Mins.	<input type="checkbox"/> STATUTE  <input checked="" type="checkbox"/> ORDINANCE    LDC <input type="checkbox"/> ADMIN. CODE <input type="checkbox"/> OTHER	A. COMMISSIONER B. DEPARTMENT    County Attorney C. DIVISION        Land Use BY: <i>John J. Fredyma</i> John J. Fredyma, Asst. County Atty

**7. BACKGROUND:**

In 2000, changes were made to LDC Chapter 10 with respect to excavation and mining activities. In particular, regulations were adopted to regulate the removal of surplus material from development sites where the amount of material

(Continued on Page 2)

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	Risk	GC	
				<i>[Signature]</i>	<i>CP</i>	<i>2/27/02</i>	<i>RP</i>	<i>2/27</i>	<i>LG</i>
				<i>[Signature]</i>	<i>2/28/02</i>	<i>2/27/02</i>	<i>2/27</i>	<i>2-27-02</i>	<i>[Signature]</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

CO. ATTY.  
FORWARDED  
TO CO. ADMIN.  
*2-26-02 5:00 PM*

RECEIVED BY  
COUNTY ADMIN.  
*2/27/02*  
*8:30 am*  
COUNTY ADMIN.  
FORWARDED TO:  
*2/28/02*

being excavated was in excess of the amount otherwise required to be excavated to meet water management requirements. The proposed amendments further refine earlier changes to Chapter 10 by creating an administrative approval process based on the quantity and destination of material to be excavated and removed from the site. Any project where blasting is proposed must go to a public hearing for approval.

Attachment: Ordinance (labeled "Draft 2" in the footer)

**ATTACHMENT TO  
BLUE SHEET #20020204**

**LEE COUNTY ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE (LDC) TO AMEND CHAPTERS 10 AND 34; AMENDING CHAPTER 10 (DEVELOPMENT STANDARDS); AMENDING AND PROVIDING FOR DEFINITIONS OF "AGRICULTURE", "EXCAVATION" AND "EXCESS SPOIL" (§10-1); AMENDING, RENUMBERING AND PROVIDING FOR DESIGN, STANDARDS AND REQUIREMENTS FOR EXCAVATIONS (§10-329); AND

AMENDING CHAPTER 34 (ZONING); AMENDING THE DEFINITION OF "EXCAVATION" (§34-2); AND

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

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

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

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

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

WHEREAS, in furtherance of Lee Plan Policy 10.1.4 county staff seeks to maintain appropriate regulations with respect to the excavation and transport of fill material; and

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

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

WHEREAS, the Land Development Code Advisory Committee has reviewed the proposed amendments to the Code on January 11, 2002, and recommended modifications as indicated; and

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on \_\_\_\_\_, 2002, and recommended their adoption; and

WHEREAS, the Local Planning Agency reviewed the proposed amendments on February 25, 2002, and found them consistent with the Lee Plan policies cited above, as indicated.

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

**SECTION ONE: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 10.**

Lee County Land Development Code Chapter 10, Articles I and III are amended as follows with deleted language identified by strike-through and new language identified by underlining.

**CHAPTER 10**

**ARTICLE I. IN GENERAL**

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

(a) - unchanged

(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:

*Agriculture* means the growing and harvesting, primarily for sale, of vegetation, crops or plants, or the feeding and raising, primarily for sale, of livestock, and timber production. The definition shall include any normal accessory structures thereto, provided, however, the following shall not be included in this definition: commercially owned or operated citrus plants, livestock sales facilities, packing plants and other similar commercial or industrial type facilities. Whenever the term "agriculture" or "agricultural use" is used in this chapter, it will be interpreted to mean "bonafide agriculture or bonafide agricultural use."

*Excavation* means the stripping, grading or removal by any process of natural minerals or deposits, including but not limited to peat, sand, rock, shell, soil, fill dirt or other extractive materials, from their natural state and location. ~~This definition does not include:~~

- a: ~~The removal of excess spoil material resulting from the excavation of a building foundation or swimming pool in conjunction with a valid building permit; or~~
- b: ~~The temporary removal of topsoil from a lot for landscaping purposes.~~

*Excess spoil* means excavated material that will be removed from the premises including "surplus material" as well as material excavated to provide a viable agricultural or recreational amenity.

*Mining* means an excavation for the primary purpose of removing the extracted material for use off site. This does not include the removal of surplus materials defined herein.

*Surplus material* means material that absolutely must be excavated in order to comply with permit requirements and which cannot reasonably be expected to be used on the same premises for any purpose.

## ARTICLE III. DESIGN, STANDARDS AND REQUIREMENTS

### DIVISION 3. SURFACE WATER MANAGEMENT

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

- (a) *Applicability.* This section provides the permitting and development order requirements for all excavations except:
- (1) The removal of surplus material generated from the construction of roads, sewer lines, storm sewers, water mains or other utilities;
  - (2) Moving materials for purposes of surface water drainage, i.e., (swales, ditches, or dry retention), etc. or landscaping, provided that the excavated materials are not removed from the premises and no blasting is proposed;
  - (3) Excavations for mining activities regulated by sections 34-1651 through 34-1682;
  - (4) The temporary removal of topsoil from a lot for landscaping purposes; OR
  - (5) The removal of excess spoil material resulting from the excavation of a building foundation or swimming pool in conjunction with a valid building permit.
- (b) ~~*Permit required.* Except as provided in (10-329 c) herein, it is unlawful for any person, partnership or other legal entity to excavate materials within the unincorporated area of the county, or for an owner to allow excavation activities on his property, without first obtaining the approvals and permits specified in subsection (e) Table 1.~~
- (be) *Excavation types and required approvals.* Excavations are generally constructed either for mining operations, for stormwater retention or as a development site amenity. Table 1 summarizes the various types of excavations and the permits and approvals required for each excavation type.
- (c) ~~*Exceptions:*~~
- (1) ~~Excavations for bonafide agricultural uses in an Agricultural zoning district that will not result in the removal of the excavated materials from the premises. However, excavation activity falling within this exception must comply with the regulations set forth in subsections 10-329(d) (notice) and 10-329(e)(1) (setback), (3) (depth) and (4) (bank slope ratio only) and are not required to obtain a development order.~~  
  
~~Excavations for bona fide agricultural uses in non-agricultural zoning districts OR where the excavated material will be removed from the premises must obtain the approvals and permits specified in subsection (e) Table 1.~~
  - (2) ~~Excavation for a pond accessory to one single-family residence. However, excavation activity falling within this exception must comply with the minimum notice requirements of section 10-329(d) (notice) and 10-329(e)(1) (setback), (3) (depth) and (4) (bank slope ratio only).~~

TABLE 1

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

Excavation Type	Excavated Materials Destination	Permits/Approvals Required <sup>1</sup>
<p><u>Excavations for an agricultural use or as an amenity to a single-family residence.</u></p>	<p><u>ON-SITE OR less than 1,000 cubic yards of material to be moved off-site.</u></p>	<p><u>Notice of Intent to Commence Water Retention Excavation Application.</u></p>
	<p><u>OFF-SITE - between 1,000, but less than 10,000 cubic yards to be moved off-site</u></p>	<p>1. Type 12 Limited Review Development Order; 2. SFWMD permit (if applicable); and 3. an approved Excess Spoil Removal Plan</p>
	<p><u>OFF-SITE - 10,000 or more cubic yards to be moved off-site OR 10 % or more of the total material to be excavated, whichever is less.</u></p>	<p>1 Full Development Order; 2. SFWMD permit (if applicable); and 3. either a) an approved "Excess Spoil Removal Plan"; OR b) Planned Development Zoning with "mining" as an approved use. The decision as to whether a) or b) above will be required will be determined by the director, based on conditions specified in sub-section (c)(3).</p>
<p>Development project - stormwater retention, i.e. lakes and ponds, etc. where the material to be moved off-site qualifies as "Surplus material"</p>	<p>ON-SITE</p>	<p>1. Development Order; and 2. SFWMD permit (if applicable)</p>
	<p><u>OFF-SITE -Material to be moved off-site is less than 20,000 cubic yards in volume; AND is less than 10 % of the total material to be excavated</u></p>	<p>1. Development Order; and 2. SFWMD permit (if applicable); 3. an approved "Excess Spoil Removal Plan";</p>
	<p><u>OFF-SITE - material" to be moved off-site is 20,000 or more cubic yards in volume; OR 10 % or more of the total material to be excavated, whichever is less</u></p>	<p>1. Development Order; and 2. SFWMD permit; and 3. either a) an approved "Excess Spoil Removal Plan"; OR b) Planned Development Zoning with "mining" as an approved use. The decision as to whether a) or b) above will be required will be determined by the director, based on conditions specified in sub-section (c)(3).</p>
<p>Development project - stormwater retention, i.e. lakes and ponds, where the material to be moved off-site does not qualify as "surplus material".  OR General mining Excavation</p>	<p>OFF-SITE</p>	<p>1. Planned Development Zoning with "mining" listed as an approved use, OR a Special Exception for mining in the AG zoning District; and 2. Development Order; and 3. SFWMD permit; and 4. Approved Excess Spoil Removal Plan</p>

<sup>1</sup> The requirements for planned development zoning approvals and for special exception for a mining are specified in Chapter 34, Article VII, division 15, Subdivision II.

(c) Procedures:

(d) (1) Projects where spoil materials to be kept on-site or where less than 1,000 cubic yards of excess spoil will be moved off-site. ~~Notice requirements for excavations that are not required to obtain development orders.~~

a. Notice required. ~~The A property owner must submit a notice of intent to commence excavation to the director of development services when proposing any excavation that:~~

1). is accessory to a single family residence or is for an agricultural purpose and is located in an AG Agricultural zoning district; AND

2). will keep the excavated materials on the same site or proposes to move less than 1,000 cubic yards of excess material off-site; AND

3). does not include blasting. (See section 34-341.)

b. Notice content. ~~The notice must contain the following information:~~

(1) 1. the STRAP number and location of the property;

(2) 2. the name of the owner and signature of the owner authorizing the excavation;

(3) 3. a site plan showing the proposed location of the excavation relative to all property lines, easements, rights-of-way, and existing and proposed structures; the proposed slopes, of the proposed excavation, the maximum depth of the excavation and the controlled water depth of the excavation; and the location, distribution and method of stabilization of the excavated spoil;

(4) 4. the proposed date of commencement, which may not be less than ten days from the date of the submittal; and

5. an affidavit that the excavation will be in compliance with the setback, depth, and bank slope requirements set forth in sub-section (d).

(2) Projects where 1,000 or more cubic yards, but less than 10,000 cubic yards, of excess spoil will be moved off-site. ~~Notice requirements for excavations that are not required to obtain development orders. The A property owner must receive an approved Limited Review Development Order prior to commencing excavation activities when proposing any excavation that:~~

a. is accessory to a single-family residence; OR

is for an existing non-conforming agricultural use that IS NOT located in an AG Agricultural zoning district; OR

is for an agricultural purpose and IS located within an AG Agricultural zoning district;

AND



- b. anticipates removing 1,000 or more cubic yards, but less than 10,000 cubic yards, of excavated material from the premises;

AND

- c. does not include blasting. (See section 34-341.)

In addition to submitting the information required for a Limited Review Development Order, the applicant must provide the information required in subsections 10-329(c)(1).

(3) Projects where 10,000 or more cubic yards of excess spoil or surplus material will be moved off-site. Notice requirements for excavations that are not required to obtain development orders. The A property owner must receive an approved Development Order AND administrative approval of an Excess Spoil Removal Plan, OR Planned Development zoning with mining as an approved use, prior to commencing excavation activities when proposing an excavation that:

- a. 1. is accessory to a single-family residence; OR
- 2. for an existing non-conforming agricultural use that IS NOT located in an AG Agricultural zoning district; OR
- 3. is for an agricultural purpose and IS located within an agricultural zoning district;

AND

- 4. anticipates removing 10,000 or more cubic yards of excavated material from the premises;

OR

- b. is for a development that has 20,000 or more cubic yards of surplus material to be moved off-site;

OR

- c. will be moving more than ten percent of the total excavated material off-site.

In addition to submitting the information required for a Development Order, the applicant must provide the information required in subsection 10-329(c)(1).

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

a. Applicability: The Director of Development Services may authorize the removal of excavated excess spoil material for agricultural, residential and commercial projects PROVIDED that:

- 1. the excavated material will be from a agricultural, residential or commercial project that is located within a conventional zoning district;

2. an application of a Limited Review or Full Development Order (as applicable) for the project has been filed and approved;
  3. no blasting is proposed;
  4. the excess material to be removed results from the minimum excavation required to:
    - i. meet SFWMD permit requirements; OR
    - ii. provide a viable agricultural or recreational amenity that does not exceed 8.0 feet below the dry season water table (DSWT) elevation.
- b. *Excess Spoil Removal Plan:* Any applicant requesting administrative approval to remove excavated material to an off-site location must submit an "Excess Spoil Removal Plan" with the Development Order application so as to provide the Director of Development Services sufficient information to determine whether off-site hauling may be approved administratively or if a Public Hearing will be required.

The "Plan" must include the following information:

1. the approximate location, shape and dimensions of the area to be excavated relative to all property lines, easements, rights-of-way, and existing and proposed structures;
2. the proposed slopes, the maximum and average depth, and the controlled water depth of the proposed excavation;
3. the estimated quantity of excavated material that will be hauled off-site;
4. the proposed truck traffic volume in trips per day;
5. the duration of the off-site hauling;
6. the destination of the removed excavated material;
7. the proposed haul route(s);
8. the proposed method to control dust, mud and debris along the proposed haul route;
9. identification of the proposed lake maintenance entity together with the submittal of documents creating the entity and establishing its obligations;
10. evidence that the "destination property" has received or is in the process of receiving a development order indicating where and how the materials will be stored, stockpiled, leveled, contoured and stabilized; and
11. any other information deemed reasonably necessary by the director.

c. Minimum Requirements for approval:

1. Prior to commencement of off-site hauling, areas within the project proposed for development must be cleared and filled to within one foot of final design grade OR the amount of fill required to meet that requirement must be stockpiled and stabilized on-site for future use.
2. If the material will be moved to contiguous property, the receiving parcel must also have a Development Order indicating how the material will be distributed and stabilized.
3. If the material will be moved to property that is not contiguous, the applicant must show that the path of the hauling route will not adversely affect existing development such as residences, playgrounds, schools, etc.
4. The estimated period of hauling may not exceed one year from issuance of the Development Order.

d. Director may impose conditions:

The director's discretion includes the ability to impose additional conditions as he may deem necessary to ensure compliance with the requirements of the Excess Spoil Removal Plan.

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

(1) *Setbacks for water retention or detention excavations.*

a. No excavations will be allowed within:

1. Twenty-five feet of an existing street right-of-way line or easement for a local street.
2. Fifty feet of any existing or proposed right-of-way line or easement for a collector or arterial street unless granted an administrative deviation in accordance with section 10-104. The setback may be reduced to not less than 25 feet if the developer provides for the protection of wayward vehicles through the use of guardrails, berms, swales, vegetation or other suitable methods as determined by the Director.
3. Fifty feet of any private property line under separate ownership unless granted an administrative deviation in accordance with section 10-104. The setback for an excavation from a private property line may not be less than 25 feet. This setback does not apply to lots developed concurrently with the excavation for water retention when part of a development order.

b. In all cases, the most restrictive setback will apply.

- c. Excavation setbacks must be measured from the mean high water (MHW) or the waterbody control elevation line.
- (2) *Setbacks for buildings, accessory buildings, equipment and other structures.* All setbacks for accessory buildings or structures must be shown on the site plan required as part of the application for a development order and must comply with the setback requirements of the zoning district in which the project is located.
- (3) *Maximum controlled water depth.* Excavations for water retention or detention permitted under this section may not penetrate through impervious soil or rock layer that prohibits intermingling of various watery strata. The controlled water depth for water retention or detention excavations may not be greater than 12 feet unless the following criteria are met:
- a. Excavation depth may exceed 12 feet, to a maximum of 20 feet, if the water depth does not penetrate any impervious soil or rock layer. For all lakes deeper than 12 feet, a "Deep Lake Management Plan" must be submitted and approved prior to development order issuance. The Deep Lake Management Plan must address long-term management strategies for the lakes greater than 12 feet in depth that include, at a minimum, the following:
    - 1. A destratification system must be installed in any lake that exceeds 12 feet in depth prior to certificate of compliance for the development order. Documentation that the proposed destratification system is adequately sized and designed for each lake deeper than 12 feet must be submitted prior to development order issuance.
    - 2. Native shade trees, meeting the specifications of section 10-416(a)(1) must be planted around the lake perimeter, calculated at one tree per 100 feet of lake shoreline measured at control elevation. The tree planting is in addition to other required trees and must be coordinated with lake littoral plant requirements. The planting locations proposed to meet the wetland herbaceous plant requirements set forth in section 10-418, and other additional trees, must be graphically detailed as part of the Deep Lake Management Plan. All plants must be grouped or clustered together around the lake perimeter.
    - 3. The property owner must record covenants, in a form acceptable to the county attorney's office, providing that the lake management techniques, including operation of the destratification system specified in the Deep Lake Management Plan, will be maintained for the life of the lake.
    - 4. A post-construction bathymetric survey, sealed by a professional surveyor and mapper, must be submitted prior to certificate of compliance for all lakes deeper than 12 feet.
  - b. Any water retention or detention pond proposed to be greater than 20 feet in depth must be approved as a planned development rezoning deviation or as a condition of a zoning special exception.

- c. Approval of a maximum excavation depth does not grant the right to achieve that depth if it creates surplus material that would not otherwise be created if the excavation was ceased at a lesser depth.
- (4) *Excavation bank slopes.* The design of shorelines of retention and detention areas must be sinuous rather than straight, as described in division 6 of this article. The banks of excavations permitted under this section must be sloped at a ratio not greater than 4 horizontal to 1 vertical from the top of the excavation to a water depth of four feet below the dry season water table. The slopes must be not greater than 2 horizontal to 1 vertical thereafter, except where the director of development services determines that geologic conditions would permit a stable slope at steeper than a two to one ratio. Excavation bank slopes must comply with the shoreline configuration, slope requirements and planting requirements for mimicking natural systems specified in section 10-418.
- (5) *Fencing.* A four-foot fence may be required, at the discretion of the director, to be placed around excavations for water retention when located less than 100 feet from any property under separate ownership.
- (6) *Test borings.* Test borings must be conducted in conformity with section 34-1677(b)(4), when required by the director of zoning and development services.
- (7) *Excavation or Fill material.* All large projects where off-site removal is proposed, must provide soil displacement - cut/fill - calculations and plans certified by a registered engineer indicating:
- a. the volume of material proposed to be excavated for water retention\detention purposes with plans showing the areas and cross sections associated with the excavation(s);
  - b. the volume of the excavated material to be used on-site, with plans showing the areas and cross sections associated with the on-site materials;
  - c. the volume of material (if any) to be removed from or imported to, the premises; and
  - d. if the applicant proposes to remove from or import material to the premises, he must submit a map indicating the proposed access route to the nearest collector or arterial road.
- (8) Planned Development Zoning and General Mining Permit. If the director determines the project does not ~~volume of the material proposed to be removed from the premises does not meet the standard for "surplus material" as defined herein, or if more than ten percent of the total excavated material is to be removed from the premises,~~ qualify for administrative approval under section (c) "Procedures," then the developer must apply for Planned Development Zoning and a General Mining Permit pursuant to Section 34-1671 et seq. Approval from the Board of County Commissioners must be obtained prior to the removal of any materials from the excavation site.
- (9) Director's decision. The decision of the director is discretionary and may not be appealed.

## **SECTION TWO: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 34.**

Lee County Land Development Code Chapter 34, Article I is amended as follows with deleted language identified by strike-through and new language identified by underlining.

### **CHAPTER 34**

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

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

*Excavation.* Excavation means the stripping, grading or removal by any process of natural minerals or deposits, including but not limited to peat, sand, rock, shell, soil, fill dirt or other extractive materials, from their natural state and location. ~~This definition does not include:~~

- a: ~~The removal of excess spoil material resulting from the excavation of a building foundation or swimming pool in conjunction with a valid building permit; or~~
- b: ~~The temporary removal of topsoil from a lot for landscaping purposes;~~

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

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

## **SECTION FOUR: SEVERABILITY**

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will be considered a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such invalid or unconstitutional provision was not included.

## **SECTION FIVE: CODIFICATION AND SCRIVENER'S ERRORS**

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager, or his designee, without the need for a public hearing.

**SECTION SIX: EFFECTIVE DATE**

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

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

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

DULY PASSED AND ADOPTED THIS \_\_\_\_ day of April, 2002.

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairman

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of County Attorney

S:\LU\JJF\LDC AMEND\Excavation Ordinance (Draft 2).wpd