

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20061581

1. ACTION REQUESTED/PURPOSE: Adopt a resolution approving the amendments to Administrative Code 7-10, Derelict Vessel Removal Program.

2. WHAT ACTION ACCOMPLISHES: Amendments allow for the correction of scrivener's errors and for the auction of abandoned vessels, or parts thereof, and for the proceeds of the sales to offset the costs of removal of derelict and abandoned vessels. Updates definition of derelict vessel to coincide with State definition.

3. MANAGEMENT RECOMMENDATION: Staff recommends approval.

4. Departmental Category: 8 C8B		5. Meeting Date: 12-12-06
6. Agenda: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	7. Requirement/Purpose: (specify)	
	Statute _____	
	Ordinance _____	
	<input checked="" type="checkbox"/> Admin. Code 7-10	
	Other _____	
		8. Request Initiated: Commissioner _____ Department _____ Division <u>Natural Resources</u> By: <u>Roland Ottolini, Division Director</u> <i>[Signature]</i> for R. Ottolini

9. Background: Administrative Code 7-10 provides the mechanism to address the problem of abandoned vessels in Lee County waters. Section 4 of this Code currently allows for the auction of certain vessels. These amendments detail the process for the auctioning of vessels and/or their parts and also how the resulting funds will be handled and utilized. Resulting funds will only be utilized for the future removal of other abandoned or derelict vessels.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>[Signature]</i> 11-30-06	N/A	N/A		<i>[Signature]</i> 11/30/06	<i>[Signature]</i> 11/30/06	<i>[Signature]</i> 11/30/06	<i>[Signature]</i> 11/30/06	<i>[Signature]</i> 11-30-06	

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN
11-30-06 2:10 MP.
COUNTY ADMIN FORWARDED TO:
11/30/06 MP. PR

Rec. by CoAtty
Date: 11/30/06
Time: 11:55am
Forwarded To:

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

CATEGORY:	CODE NUMBER: 7-10
TITLE: Derelict Vessel Removal Program	ADOPTED:
	AMENDED:
	ORIGINATING DEPARTMENT: Division of Natural Resources

PURPOSE/SCOPE:

This program provides for a mechanism to address the problem of derelict or abandoned vessels in coastal waters of the State and Lee County.

POLICY/PROCEDURE:

The Board of County Commissioners finds that there has been an increase in the number of derelict and abandoned vessels that are either grounded or anchored upon publicly owned submerged lands. These vessels are public nuisances and safety hazards as they often pose hazards to navigation, detract from the aesthetics of Lee County's waterways, and threaten the environment with the potential release of hazardous materials. The increased costs associated with the disposal of derelict and abandoned vessels are substantial, and that in many cases there is no way to track down the current vessel owners in order to seek compensation. As a result, the cost associated with the removal of derelict vessels becomes a burden on public entities and the taxpaying public.

The legal authority extended to Authorized Public Entities (APEs) through Fla. Stat. §376.15(2)(b) and §823.11(2) is intended to provide coastal local governments with the tools to deal with the public nuisances and safety hazards caused by abandoned and derelict vessels.

DEFINITIONS

For the purposes of this code, the following terms, phrases, words and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The words "shall" or "will" are always mandatory and not merely directory.

A. Abandoned Vessel

A vessel is considered abandoned if the vessel's owner is not known or cannot be located, or if the vessel's owner is known and located but is unwilling to take control of the vessel, and the vessel has been left, moored, or anchored in the same area without the express consent, or contrary to the rules, of the owner, manager, or lessee of the aquatic lands below or on which the vessel is located for either a period of more than thirty consecutive days or for more than a total of ninety days in any three hundred sixty five day period.

B. Aquatic Lands

Aquatic lands include all tidelands, shorelands, harbor areas, and the beds of navigable waters, including lands owned by the state and lands owned by other public or private entities.

C. Authorized Public Entity

An authorized public entity can be any of the following: the Lee County Division of Natural Resources; the State of Florida Fish and Wildlife Commission; a port district; and any city, town, or county with ownership, management, or jurisdiction over the aquatic lands where an abandoned or derelict vessel is located, which has been given removal authority by the Florida Fish and Wildlife Commission as required by Fla. Stat. § 823.11(2).

D. Derelict Vessel

As defined by Fl. Statute 823.11

(1) "Derelict vessel" means any vessel, as defined in s. 327.02, that is left, stored, or abandoned:

(a) In a wrecked, junked, or substantially dismantled condition upon any public waters of this state.

(b) At any port in this state without the consent of the agency having jurisdiction thereof.

(c) Docked or grounded at or beached upon the property of another without the consent of the owner of the property.

~~A vessel is considered derelict if the vessel's owner is known and can be located, and is unwilling to exert control of a vessel that:~~

- ~~a. — Has been moored, anchored, or otherwise left in the waters of the state or on public property contrary to Fla. Stat. §376.15(1) or the regulations adopted by Lee County or other authorized public entity;~~
- ~~b. — Has been left on private property without authorization of the owner; or~~
- ~~c. — Has been left for a period of seven consecutive days, and:
 - ~~i. — Is sunk or in danger of sinking;~~
 - ~~ii. — Is obstructing a waterway, or~~
 - ~~iii. — Is endangering life or property~~~~

E. Beach

"Beach" means the soft sand portion of land lying seaward of a seawall or line of permanent vegetation and seaward of the mean high water line.

F. Littoral Waters

"Littoral Waters" means that part of the ocean or sea which abuts the shoreline and includes the shore to the ordinary high watermark.

G. Operate

"Operate" means to navigate or otherwise use any vessel in, on or under the water.

H. Person

"Person" means any individual, partnership, firm, corporation, association or other entity.

I. Vessel

"Vessel" means an engine propelled or other artificially-propelled vehicle and every other description of boat, watercraft, tug, barge, and air boat other than a seaplane on the water, used or capable of being used as a means of transportation on water including personal watercraft. This term shall not include unpowered rafts, floats or floatation devices, whether of canvas, vinyl, rubber, Styrofoam or other substance, intended or capable of assisting in the floatation of a person on or in the water.

J. In the Same Area

A vessel is considered to be in the same area if it is within a radius of five miles of any location where the vessel was previously moored or anchored on aquatic lands.

K. Moorage Facility

Moorage facility means any properties or facilities owned or operated by any port district, city, town, metropolitan park district, or county, which are capable of use for the moorage or storage of vessels.

L. Owner

An owner can be any natural person, firm, partnership, corporation, association, government entity, or organization that has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

M. Pollutants

"Pollutants" includes oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.

N. Pollution

"Pollution" means the presence in the outdoor atmosphere or waters of the state of any one or more substances or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

O. Water-oriented Structure

"Water-oriented structure" shall mean and include without limitation, any fishing pier, pier, wharf, observation walkway, platform, boathouse, mooring pile, riprap, revetment, seawall, bulkhead, retaining wall, jetty, boat lift, davit, boat ramp, or any other obstacle, obstruction or protrusion used primarily for the landing or launching of watercraft, erosion control and shoreline stabilization, or for water oriented activities.

SECTION 1: ENFORCEMENT

I. AREA OF ENFORCEMENT

The area of enforcement of the provisions of this Code shall be all public navigable waters, creeks, bayous, canals and channels, whether natural or man-made, located within the unincorporated areas of Lee County, including all public waters within the jurisdiction of the County in which the tide ebbs and flows.

II. MEANS OF ENFORCEMENT - Roles and Responsibilities

The provisions of this Code will be enforced by members of all duly authorized law enforcement agencies within the County and by appropriate Lee County Department(s) or Division(s) other Authorized Public Entity (APE).

A. PRIVATE LANDOWNERS, LESSEES, AND OPERATORS

If an abandoned or derelict vessel is located on privately owned aquatic lands or leased public lands, and the owner of the vessel is not known or cannot be located, the owner, operator, or lessee of the private facility or the owner of the privately owned aquatic lands will have the primary responsibility for the removal of the vessel.

B. REMOVAL AUTHORITY

The County has the authority, subject to the processes and limitations outlined in Fla. Stat. §705.103(2)(b) to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above aquatic lands within the jurisdiction of Lee County in a manner that best benefits the citizens of Lee County and minimizes environmental impacts.

If another Authorized Public Entity (APE) with the primary removal responsibility is unwilling or unable to exercise removal authority, it may request that Lee County assume the Authorized Public Entity's authority for a particular vessel. The County may, at its discretion, assume the APE's authority after being requested to do so. The criteria Lee County will consider when deciding whether or not to assume an APE's authority for a vessel is found below in the succeeding paragraph.

C. REQUESTING LEE COUNTY DEPARTMENT OF NATURAL RESOURCES (DNR) TO ASSUME PRIMARY RESPONSIBILITIES OF ANOTHER APE

If an APE has the primary responsibility for a vessel and is unwilling or unable to exercise its authority, it may request, in writing, that DNR assume the APE's authority for the vessel. This would be the case when another APE owned, leased, or operated aquatic lands, or when another APE had been authorized by an owner, lessee, or operator of aquatic lands to act on their behalf. The DNR may, at its discretion, assume the APE's authority for a particular vessel after being requested to do so. The criteria Lee County will use to determine whether or not it will assume an APE's authority for a vessel include, but are not limited to:

1. **Ability of the Primary APE to Fund the Removal**

Primary APEs that do not have the financial ability to fund the removal, but are willing to partner and/or share costs may use this as a valid reason to request DNR take responsibility for the removal of a vessel. Primary APEs with the ability to fund a vessel removal will be required to demonstrate that other conditions exist that would justify DNR assuming responsibility for the removal of that vessel.

2. Technical Complexity of the Removal

If the technical complexity of a removal operation exceeds the ability of the primary APE to perform the operation, it may request DNR assume responsibility for the removal. Factors adding to the technical complexity of a removal include, but are not limited to, complex permitting, sensitive environmental conditions, coordination between multiple governmental entities and agencies, large quantities of hazardous materials, and complex legal considerations.

3. Availability of Funds

When considering whether or not to assume primary responsibility for the removal of a vessel when requested to do so by another APE, Lee County will consider if grant funds or other funds are available for reimbursement of project costs. In the case where grant funds are not available but can be secured through an assurance of future funds, Lee County may choose to accept primary responsibility for the removal of the vessel.

4. Property Ownership

DNR will take into consideration whether a public or private entity owns the aquatic lands where the vessel is located. Ownership will be considered to ensure that grant funds and the resources of Lee County are committed to providing the maximum benefit possible to the public.

5. Town and Cities

The role of cities and towns in Lee County with jurisdiction over aquatic lands in the derelict vessel removal program is that of an APE. They may use their own assets or contract with other entities to effect marine salvage operations. Such towns and cities have a primary responsibility to remove derelict and abandoned vessels that are located in areas where they own, lease, or operate aquatic lands.

SECTION 2: VESSEL IDENTIFICATION AND REPORTING

A. Vessel Identification

To identify an abandoned or derelict vessel, the reporting party should get the vessel name and identification number if there is one present, get a description of the vessel size (length and width), color, type, and try to identify what type of fuel the vessel use to determine whether or not there are any hazardous materials present. Describe the general location of the vessel, the date, approximate depth of water, and the ownership of the property the vessel is located on, if known. The reporting party should write down any additional comments or features that will help describe the site or provide further information, to the extent possible without compromising their health or safety.

B. Vessel Reporting

Anyone may report a vessel to the Program. Derelict vessel reporting forms (see Exhibit A) may be obtained from Lee County Division of Natural Resources. Once the report is received, an identification number will be given to that reporting form, and a funding prioritization number will be given to the vessel based on the information that is reported. Section 3 below describes the Funding Prioritization Criteria.

SECTION 3: REIMBURSEMENT REMOVAL PRIORITIZATION CRITERIA

A. Purpose

The priority for use of the derelict vessel removal account (DVRA) funded in part by grant funds from WCIND (West Coast Inland Navigation District) is for abandoned and derelict vessels that are in danger of sinking, breaking up, or blocking navigation channels, or that present environmental risks such as leaking fuel or other pollutants. The criteria listed below are intended to assign each abandoned or derelict vessel a priority. These criteria do not necessarily determine the order in which vessels are removed but do have some bearing on removal. The criteria below further prioritize vessels within the major categories listed above.

Priority 1

A Priority 1 Vessel is a vessel considered in imminent danger of sinking, that is, it will sink without immediate intervention. If a vessel is in imminent danger of sinking and the owner is not able or is unwilling to take responsibility for the vessel, Lee County, through its Division of Natural Resources will coordinate a potential removal and disposal plan. Priority 1 vessels are further prioritized as follows:

Priority 1A

Priority 1A vessels are those vessels that, if allowed to sink, will be responsible for significant impacts to human health or safety. Severity of potential threats to human health will be evaluated based on:

- a. Extent of population at risk;
- b. The toxicity or hazard potential of the hazardous substance(s) or pollutants;
- c. Threats to human food web;
- d. Volume of pollutants or pollution released;
- e. Proximity of release to potential receptors, and
- f. Potential for contamination of drinking water.

Priority 1B

Priority 1B vessels are those vessels that, if allowed to sink, will be responsible for significant impact to the environment, including natural resource damages. Severity of potential environmental hazard will be evaluated based on:

- a. Extent of wildlife population at risk;
- b. The toxicity or hazard potential of the pollutants;
- c. Threats to wildlife food web;
- d. Volume of pollutants released, and
- e. Proximity of release to potential receptors.

Priority 1C

Priority 1C vessels are those vessels that, if allowed to sink, will be responsible for significant impacts to navigation

Priority 1D

Priority 1D vessels are those vessels that are in imminent danger of sinking, but if allowed to sink, will not have the potential to significantly impact human health or safety, the environment, or navigation.

Priority 2

Priority 2 vessels are those vessels, floating or sunken, that pose a direct threat to human health and safety, including safe navigation. Priority 2 vessels are further prioritized as follows:

Priority 2A

A Priority 2A vessel is any vessel, floating or sunken, which presents an acute or immediate threat to human health. Severity of potential threats to human health will be evaluated based on:

- a. Extent of population at risk;
- b. The toxicity or hazard potential of the pollutants;
- c. Threats to human food web;
- d. Volume of hazardous substance(s) or pollutants release;
- e. Proximity of release to potential receptors, and
- f. Potential for contamination of drinking water.

A Priority 2A vessel is a vessel blocking entrance to an embayment or other important navigation route, which may pose a serious risk to safe navigation.

Priority 2B

A Priority 2B vessel is any vessel, floating or sunken, which presents an acute or immediate threat to human safety. Severity of potential threats to human safety will be evaluated based on:

- a. Extent of population at risk;
- b. The toxicity or hazard potential of the hazardous substance(s) or pollutants;
- c. Threats to human food web;
- d. Volume of hazardous substance(s) or pollutants release;
- e. Proximity of release to potential receptors, and
- f. Potential for contamination of drinking water.

A Priority 2B vessel is a vessel in such a location that is immediately adjacent to a navigation channel, route, or area commonly used as a navigation route and could pose a serious threat to safe navigation.

Priority 3

A Priority 3 vessel is any vessel, floating or sunken, that poses a direct threat to the elements of the natural environment. Priority 3 vessels are further prioritized as follows:

Priority 3A

Priority 3A vessels are those vessels currently discharging, or with the potential to discharge, refined petroleum products, oils, lubricants, solvents or other pollutants. Potential to discharge is defined as a high probability of discharge within the foreseeable future. (30 days).

Priority 3B

Priority 3B vessels are those vessels impacting any plant or wildlife species listed on a state or federal endangered, threatened, proposed, sensitive, candidate, concern or monitor list.

Priority 3C

Priority 3C vessels are those vessels impacting any other plant or animal species afforded protection by any local, state, or federal agency.

Priority 3D

Priority 3D vessels are those vessels impacting the culture and/or farming of food fish, shellfish, and other aquatic plants and animals in fresh water, brackish water or salt water areas. Aquaculture practices may include but are not limited to hatching, seeding or planting, cultivating, feeding, raising, harvesting of planted crops or of natural crops so as to maintain an optimum yield, and processing of aquatic plants or animals.

Priority 3E

Priority 3E vessels are those vessels impacting a marine protected area. A vessel may impact a marine protected area without being located within its boundaries.

Priority 3F

Priority 3F vessels are those vessels impacting air quality, resulting in air that is likely to be injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property, but does not include contaminants emitted in compliance with applicable state statutes.

Priority 4

Priority 4 vessels are those vessels that meet the criteria of abandoned or derelict, but do not satisfy any of the criteria listed above.

SECTION 3 4: REMOVAL PROCEDURE

A. Funding

In the event that funding is not available to assist in funding a removal project, the APEs or other local governmental entities requesting that Lee County remove a derelict vessel that is under its jurisdiction will be required to provide the County with written assurances that funding is available to reimburse Lee County for the removal project.

B. Contracts

When assuring funds for a particular removal project is appropriate, given the balance of the funds and the details of the proposed action, the applicant will enter into a contract with Lee County. The contract will assure that the funds as estimated in the application are available and sufficient to fully reimburse Lee County.

C. Progress Payments

For removal operations with an assurance of funds and a total reimbursement eligible cost over \$50,000, progress payments can be made to Lee County during the removal operations for completed work.

D. Obtaining Custody of a Vessel

Prior to exercising its removal authority, Lee County will provide notice to putative owners and the public in the following forms:

1. Mail notice by certified mail, return receipt requested, of its intent to obtain custody, at least five (5) days prior to taking custody, to the last known address of the previous owner and to any lien holder. Notice shall be in the format described in Exhibit "B".
2. Post notice of its intent clearly on the vessel, or if sunk the notice may be posted on its marker buoy, for at least five (5) days. Such notice shall be no less than 8 inches by 10 inches and should be sufficiently waterproof; and
3. Post notice of its intent on the DNR's internet web site on a page specifically designated for such notices.

E. Notice Requirements

All notices (Exhibit "B") sent, posted, or published must, at a minimum, explain:

1. The intent of the APE or DNR to take custody of the vessel;
2. The rights of the APE or DNR after taking custody of the vessel;
3. The financial liabilities that the owner may incur.

F. Costs

The owner of any abandoned or derelict vessel who, after notice as described above, does not remove such property within the specified period, will be liable to the County for all costs of removal, storage, and destruction of such property.

SECTION 4 5: REQUIREMENTS FOR REMOVAL

A. Custody

Custody of the vessel must be obtained prior to the removal operation unless the vessel is a Priority 1.

B. Use or Disposal of the Vessel

After taking custody of a vessel, or any of its parts, Lee County will use or dispose of the vessel in any appropriate and environmentally sound manner and in the public's best interests without further notice to any owners. However, preference will be given to uses that derive some monetary benefit from the vessel, either in whole, in part, or in scrap. If no value can be derived from the vessel, the County will give preference to the least costly, environmentally sound, reasonable disposal option. The vessel, and any parts thereof, will not be subject to Administrative Code 3-14, Policy on Tangible Personal Property Owned by Local Governments.

C. Auction

If the vessel, or any parts thereof, is offered at auction, a minimum bid, a letter of credit, or both will be required to discourage future re-abandonment of the vessel. Vessels, or parts thereof, can be auctioned off through any appropriate process, such as the annual County auction or online auctioning houses such as Ebay, and the resulting funds will be deposited into a County account specific to abandoned vessel removal. All parts will be inventoried and documented prior to sale and the written inventory will be approved by the Natural Resources Division Director prior to the parts being offered at auction. The County's Code of Ethics, Section 206, prohibits any employee involved in the auction process to bid on any of the vessels or their parts.

D. Proceeds of Sale

~~The proceeds derived from the sale of the vessel, or any of its parts, will be applied to the costs incurred by the County for its removal deposited in an account for the specific purpose of offsetting the costs pertaining to future abandoned vessels. If the proceeds exceed the costs incurred by the County, the remaining money will be deposited into the Derelict Vessel Removal Program fund to further offset expenses of removals. A Budget Amendment will be performed no less than once per Fiscal Year to allow funds that have accrued to be utilized for payment of removal and disposition costs of future abandoned vessels. Financial records of each transaction will be maintained by the Division of Natural Resources.~~

E. Actions to Prevent Future Abandonment

In order to discourage future abandonment of a vessel that has been removed and sold at auction, the County will set a minimum bid and/or require a letter of credit from the entity purchasing the vessel.

SECTION 5 6: REIMBURSEMENT

A. Reimbursement by Vessel Owner

The owner of an abandoned or derelict vessel will be held responsible for reimbursing the County for all reasonable and auditable costs associated with the removal or disposal of the owner's vessel. These costs include, but are not limited to, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel. Reimbursement for costs may be sought from an owner who is identified subsequent to the vessel's removal and disposal.

B. Actions to Recover Reimbursement from Vessel Owner

If the full amount of all costs due to the County is not paid within thirty days after first notifying the responsible parties of the amounts owed, the County may bring an action in any court of competent jurisdiction to recover the costs, plus reasonable attorney's fees.

C. Revocation of Boat Registration Privileges

In the case of an abandoned or derelict vessel, any person who neglects or refuses to pay such amount owed to Lee County for removal will not be entitled to be issued a Certificate of Registration for any other boat until such costs have been paid in full. In accordance with the provisions contained in Fla. Stat. §705.103(4) Lee County will supply the DHSMV with a list of persons whose boat registration privileges have been revoked for failure to pay costs associated with abandoned or derelict vessel removal.

Complete and return this form to:
 Lee County Department of Natural Resources
 Derelict Vessel Removal Program, Marine Services
 1500 Monroe Street
 Fort Myers, Florida 33901

Instructions: Please enter as much of the information below as possible. If information is estimated, please indicate that. **Items marked with an asterisk are required to be filled in.** Once this form has been received by the program, the derelict vessel will receive an identification number that is required on the application for removal. That number will be sent to the reporting individual unless no contact information is supplied or the reporting individual expressly requests not to be contacted.

<u>DERELICT VESSEL INFORMATION</u>		
* Today's date:	* Date sighted:	Date of incident:
* Reported by: * Address:		* Phone number:
* General location:		
Latitude:	Longitude:	Water Depth:
* Type of hazard (check all that apply): Navigation <input type="checkbox"/> ; Human health <input type="checkbox"/> ; Environmental <input type="checkbox"/> ; Aesthetic <input type="checkbox"/> ; Other		
Vessel name:	Identification number:	
Length: feet	Beam (width): feet	Gross tonnage:
Hull type (wood, fiberglass, etc.):	Propulsion (Power, sail, other):	Type of fuel (gas, diesel):
Estimated fuel capacity of all tanks on board:	Estimated fuel on board when the vessel sank: (gallons)	
Other hazardous materials on board (e.g. hydraulic fluid, propane, oil) and estimated amounts:		
Vessel is located on: State-owned aquatic land <input type="checkbox"/> ; DNR leasehold <input type="checkbox"/> (Type); Private land <input type="checkbox"/> ; Other		
What government agencies have responded to this incident? (Include copies of all incident reports)	Summary of actions by other government agencies:	
Additional comments:		

LEE COUNTY RESOLUTION NO. _____

A RESOLUTION OF THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS RELATING TO AMENDMENTS TO THE LEE COUNTY ADMINISTRATIVE CODE SECTION 7-10, DERELICT VESSEL REMOVAL PROGRAM; PROVIDING FOR APPROVAL OF CERTAIN AMENDMENTS TO THE LEE COUNTY ADMINISTRATIVE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners is the governing body in and for Lee County, a political subdivision of the State of Florida; and,

WHEREAS, the Board of County Commissioners has previously enacted Lee County Ordinance No. 96-01, creating a charter form of government for Lee County pursuant to Section 125.80 and ff., Florida Statutes, and which was approved and ratified by the Electorate of Lee County on November 5, 1996; and,

WHEREAS, the Board of County Commissioners has previously enacted Lee County Ordinance No. 97-23, which adopted the Lee County Administrative Code pursuant to Section 2.2.E. of Ordinance No. 96-01, the Lee County Charter; and,

WHEREAS, Lee County Ordinance No. 97-23 at Section III allows and provides for amendments to the Lee County Administrative Code to be made by Resolution of the Board of County Commissioners at a regularly scheduled Board of County Commissioners' meeting; and,

WHEREAS, certain amendments to the Lee County Administrative Code are now being proposed, and the Board of County Commissioners finds that such proposed

amendments are acceptable, serve a public purpose and are consistent with the terms and conditions of Lee County Ordinance No. 96-01, the Lee County Charter.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

1. The above preamble is hereby accepted and approved as being true and accurate, and is adopted and incorporated herein as if set out further at length.
2. The proposed amendments to the Lee County Administrative Code 7-10, Derelict Vessel Removal Program (attached hereto as Exhibit A), are approved, and are hereby directed to be incorporated into the Lee County Administrative Code as indicated in the amendments.
3. The provisions of this Resolution are severable, and it is the intention to confer to the whole or any part of this Resolution, the powers herein provided for. If any of the provisions of this Resolution shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other remaining provisions of this Resolution. It is hereby declared to be the Board's legislative intent that this Resolution would have been adopted had such an unconstitutional provision not been included herein.
4. This Resolution shall become effective immediately upon its adoption by the Board of County Commissioners.

Commissioner _____ made a motion to adopt the foregoing resolution, seconded by Commissioner _____. The vote was as follows:

ROBERT JANES	_____
BRIAN BIGELOW	_____
RAY JUDAH	_____
TAMMARA HALL	_____
FRANKLIN MANN	_____

DULY PASSED AND ADOPTED THIS _____ day of _____, 2006.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Robert Janes, Chairman

APPROVED AS TO FORM:

BY: _____
Office of the County Attorney

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

CATEGORY:	CODE NUMBER: 7-10
TITLE: Derelict Vessel Removal Program	ADOPTED:
	AMENDED:
	ORIGINATING DEPARTMENT: Division of Natural Resources

PURPOSE/SCOPE:

This program provides for a mechanism to address the problem of derelict or abandoned vessels in coastal waters of the State and Lee County.

POLICY/PROCEDURE:

The Board of County Commissioners finds that there has been an increase in the number of derelict and abandoned vessels that are either grounded or anchored upon publicly owned submerged lands. These vessels are public nuisances and safety hazards as they often pose hazards to navigation, detract from the aesthetics of Lee County's waterways, and threaten the environment with the potential release of hazardous materials. The increased costs associated with the disposal of derelict and abandoned vessels are substantial, and that in many cases there is no way to track down the current vessel owners in order to seek compensation. As a result, the cost associated with the removal of derelict vessels becomes a burden on public entities and the taxpaying public.

The legal authority extended to Authorized Public Entities (APEs) through Fla. Stat. §376.15(2)(b) and §823.11(2) is intended to provide coastal local governments with the tools to deal with the public nuisances and safety hazards caused by abandoned and derelict vessels.

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B. Aquatic Lands

Aquatic lands include all tidelands, shorelands, harbor areas, and the beds of navigable waters, including lands owned by the state and lands owned by other public or private entities.

C. Authorized Public Entity

An authorized public entity can be any of the following: the Lee County Division of Natural Resources; the State of Florida Fish and Wildlife Commission; a port district; and any city, town, or county with ownership, management, or jurisdiction over the aquatic lands where an abandoned or derelict vessel is located, which has been given removal authority by the Florida Fish and Wildlife Commission as required by Fla. Stat. § 823.11(2).

D. Derelict Vessel

As defined by FL Statute 823.11

(1) "Derelict vessel" means any vessel, as defined in s. 327.02, that is left, stored, or abandoned:

(a) In a wrecked, junked, or substantially dismantled condition upon any public waters of this state.

(b) At any port in this state without the consent of the agency having jurisdiction thereof.

(c) Docked or grounded at or beached upon the property of another without the consent of the owner of the property.

~~A vessel is considered derelict if the vessel's owner is known and can be located, and is unwilling to exert control of a vessel that:~~

- ~~a. Has been moored, anchored, or otherwise left in the waters of the state or on public property contrary to Fla. Stat. §376.15(1) or the regulations adopted by Lee County or other authorized public entity;~~
- ~~b. Has been left on private property without authorization of the owner; or~~
- ~~c. Has been left for a period of seven consecutive days, and:
 - ~~i. Is sunk or in danger of sinking;~~
 - ~~ii. Is obstructing a waterway, or~~
 - ~~iii. Is endangering life or property~~~~

E. Beach

"Beach" means the soft sand portion of land lying seaward of a seawall or line of permanent vegetation and seaward of the mean high water line.

F. Littoral Waters

"Littoral Waters" means that part of the ocean or sea which abuts the shoreline and includes the shore to the ordinary high watermark.

G. Operate

"Operate" means to navigate or otherwise use any vessel in, on or under the water.

H. Person

"Person" means any individual, partnership, firm, corporation, association or other entity.

I. Vessel

"Vessel" means an engine propelled or other artificially-propelled vehicle and every other description of boat, watercraft, tug, barge, and air boat other than a seaplane on the water, used or capable of being used as a means of transportation on water including personal watercraft. This term shall not include unpowered rafts, floats or floatation devices, whether of canvas, vinyl, rubber, Styrofoam or other substance, intended or capable of assisting in the floatation of a person on or in the water.

J. In the Same Area

A vessel is considered to be in the same area if it is within a radius of five miles of any location where the vessel was previously moored or anchored on aquatic lands.

K. Moorage Facility

Moorage facility means any properties or facilities owned or operated by any port district, city, town, metropolitan park district, or county, which are capable of use for the moorage or storage of vessels.

L. Owner

An owner can be any natural person, firm, partnership, corporation, association, government entity, or organization that has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

M. Pollutants

"Pollutants" includes oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.

N. Pollution

"Pollution" means the presence in the outdoor atmosphere or waters of the state of any one or more substances or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

O. Water-oriented Structure

"Water-oriented structure" shall mean and include without limitation, any fishing pier, pier, wharf, observation walkway, platform, boathouse, mooring pile, riprap, revetment, seawall, bulkhead, retaining wall, jetty, boat lift, davit, boat ramp, or any other obstacle, obstruction or protrusion used primarily for the landing or launching of watercraft, erosion control and shoreline stabilization, or for water oriented activities.

SECTION 1: ENFORCEMENT

I. AREA OF ENFORCEMENT

The area of enforcement of the provisions of this Code shall be all public navigable waters, creeks, bayous, canals and channels, whether natural or man-made, located within the unincorporated areas of Lee County, including all public waters within the jurisdiction of the County in which the tide ebbs and flows.

II. MEANS OF ENFORCEMENT - Roles and Responsibilities

The provisions of this Code will be enforced by members of all duly authorized law enforcement agencies within the County and by appropriate Lee County Department(s) or Division(s) other Authorized Public Entity (APE).

A. PRIVATE LANDOWNERS, LESSEES, AND OPERATORS

If an abandoned or derelict vessel is located on privately owned aquatic lands or leased public lands, and the owner of the vessel is not known or cannot be located, the owner, operator, or lessee of the private facility or the owner of the privately owned aquatic lands will have the primary responsibility for the removal of the vessel.

B. REMOVAL AUTHORITY

The County has the authority, subject to the processes and limitations outlined in Fla. Stat. §705.103(2)(b) to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above aquatic lands within the jurisdiction of Lee County in a manner that best benefits the citizens of Lee County and minimizes environmental impacts.

If another Authorized Public Entity (APE) with the primary removal responsibility is unwilling or unable to exercise removal authority, it may request that Lee County assume the Authorized Public Entity's authority for a particular vessel. The County may, at its discretion, assume the APE's authority after being requested to do so. The criteria Lee County will consider when deciding whether or not to assume an APE's authority for a vessel is found below in the succeeding paragraph.

C. REQUESTING LEE COUNTY DEPARTMENT OF NATURAL RESOURCES (DNR) TO ASSUME PRIMARY RESPONSIBILITIES OF ANOTHER APE

If an APE has the primary responsibility for a vessel and is unwilling or unable to exercise its authority, it may request, in writing, that DNR assume the APE's authority for the vessel. This would be the case when another APE owned, leased, or operated aquatic lands, or when another APE had been authorized by an owner, lessee, or operator of aquatic lands to act on their behalf. The DNR may, at its discretion, assume the APE's authority for a particular vessel after being requested to do so. The criteria Lee County will use to determine whether or not it will assume an APE's authority for a vessel include, but are not limited to:

1. **Ability of the Primary APE to Fund the Removal**

Primary APEs that do not have the financial ability to fund the removal, but are willing to partner and/or share costs may use this as a valid reason to request DNR take responsibility for the removal of a vessel. Primary APEs with the ability to fund a vessel removal will be required to demonstrate that other conditions exist that would justify DNR assuming responsibility for the removal of that vessel.

2. Technical Complexity of the Removal

If the technical complexity of a removal operation exceeds the ability of the primary APE to perform the operation, it may request DNR assume responsibility for the removal. Factors adding to the technical complexity of a removal include, but are not limited to, complex permitting, sensitive environmental conditions, coordination between multiple governmental entities and agencies, large quantities of hazardous materials, and complex legal considerations.

3. Availability of Funds

When considering whether or not to assume primary responsibility for the removal of a vessel when requested to do so by another APE, Lee County will consider if grant funds or other funds are available for reimbursement of project costs. In the case where grant funds are not available but can be secured through an assurance of future funds, Lee County may choose to accept primary responsibility for the removal of the vessel.

4. Property Ownership

DNR will take into consideration whether a public or private entity owns the aquatic lands where the vessel is located. Ownership will be considered to ensure that grant funds and the resources of Lee County are committed to providing the maximum benefit possible to the public.

5. Town and Cities

The role of cities and towns in Lee County with jurisdiction over aquatic lands in the derelict vessel removal program is that of an APE. They may use their own assets or contract with other entities to effect marine salvage operations. Such towns and cities have a primary responsibility to remove derelict and abandoned vessels that are located in areas where they own, lease, or operate aquatic lands.

SECTION 2: VESSEL IDENTIFICATION AND REPORTING

A. Vessel Identification

To identify an abandoned or derelict vessel, the reporting party should get the vessel name and identification number if there is one present, get a description of the vessel size (length and width), color, type, and try to identify what type of fuel the vessel use to determine whether or not there are any hazardous materials present. Describe the general location of the vessel, the date, approximate depth of water, and the ownership of the property the vessel is located on, if known. The reporting party should write down any additional comments or features that will help describe the site or provide further information, to the extent possible without compromising their health or safety.

B. Vessel Reporting

Anyone may report a vessel to the Program. Derelict vessel reporting forms (see Exhibit A) may be obtained from Lee County Division of Natural Resources. Once the report is received, an identification number will be given to that reporting form, and a funding prioritization number will be given to the vessel based on the information that is reported. Section 3 below describes the Funding Prioritization Criteria.

SECTION 3: REIMBURSEMENT REMOVAL PRIORITIZATION CRITERIA

A. Purpose

The priority for use of the derelict vessel removal account (DVRA) funded in part by grant funds from WCIND (West Coast Inland Navigation District) is for abandoned and derelict vessels that are in danger of sinking, breaking up, or blocking navigation channels, or that present environmental risks such as leaking fuel or other pollutants. The criteria listed below are intended to assign each abandoned or derelict vessel a priority. These criteria do not necessarily determine the order in which vessels are removed but do have some bearing on removal. The criteria below further prioritize vessels within the major categories listed above.

Priority 1

A Priority 1 Vessel is a vessel considered in imminent danger of sinking, that is, it will sink without immediate intervention. If a vessel is in imminent danger of sinking and the owner is not able or is unwilling to take responsibility for the vessel, Lee County, through its Division of Natural Resources will coordinate a potential removal and disposal plan. Priority 1 vessels are further prioritized as follows:

Priority 1A

Priority 1A vessels are those vessels that, if allowed to sink, will be responsible for significant impacts to human health or safety. Severity of potential threats to human health will be evaluated based on:

- a. Extent of population at risk;
- b. The toxicity or hazard potential of the hazardous substance(s) or pollutants;
- c. Threats to human food web;
- d. Volume of pollutants or pollution released;
- e. Proximity of release to potential receptors, and
- f. Potential for contamination of drinking water.

Priority 1B

Priority 1B vessels are those vessels that, if allowed to sink, will be responsible for significant impact to the environment, including natural resource damages. Severity of potential environmental hazard will be evaluated based on:

- a. Extent of wildlife population at risk;
- b. The toxicity or hazard potential of the pollutants;
- c. Threats to wildlife food web;
- d. Volume of pollutants released, and
- e. Proximity of release to potential receptors.

Priority 1C

Priority 1C vessels are those vessels that, if allowed to sink, will be responsible for significant impacts to navigation

Priority 1D

Priority 1D vessels are those vessels that are in imminent danger of sinking, but if allowed to sink, will not have the potential to significantly impact human health or safety, the environment, or navigation.

Priority 2

Priority 2 vessels are those vessels, floating or sunken, that pose a direct threat to human health and safety, including safe navigation. Priority 2 vessels are further prioritized as follows:

Priority 2A

A Priority 2A vessel is any vessel, floating or sunken, which presents an acute or immediate threat to human health. Severity of potential threats to human health will be evaluated based on:

- a. Extent of population at risk;
- b. The toxicity or hazard potential of the pollutants;
- c. Threats to human food web;
- d. Volume of hazardous substance(s) or pollutants release;
- e. Proximity of release to potential receptors, and
- f. Potential for contamination of drinking water.

A Priority 2A vessel is a vessel blocking entrance to an embayment or other important navigation route, which may pose a serious risk to safe navigation.

Priority 2B

A Priority 2B vessel is any vessel, floating or sunken, which presents an acute or immediate threat to human safety. Severity of potential threats to human safety will be evaluated based on:

- a. Extent of population at risk;
- b. The toxicity or hazard potential of the hazardous substance(s) or pollutants;
- c. Threats to human food web;
- d. Volume of hazardous substance(s) or pollutants release;
- e. Proximity of release to potential receptors, and
- f. Potential for contamination of drinking water.

A Priority 2B vessel is a vessel in such a location that is immediately adjacent to a navigation channel, route, or area commonly used as a navigation route and could pose a serious threat to safe navigation.

Priority 3

A Priority 3 vessel is any vessel, floating or sunken, that poses a direct threat to the elements of the natural environment. Priority 3 vessels are further prioritized as follows:

Priority 3A

Priority 3A vessels are those vessels currently discharging, or with the potential to discharge, refined petroleum products, oils, lubricants, solvents or other pollutants. Potential to discharge is defined as a high probability of discharge within the foreseeable future. (30 days).

Priority 3B

Priority 3B vessels are those vessels impacting any plant or wildlife species listed on a state or federal endangered, threatened, proposed, sensitive, candidate, concern or monitor list.

Priority 3C

Priority 3C vessels are those vessels impacting any other plant or animal species afforded protection by any local, state, or federal agency.

Priority 3D

Priority 3D vessels are those vessels impacting the culture and/or farming of food fish, shellfish, and other aquatic plants and animals in fresh water, brackish water or salt water areas. Aquaculture practices may include but are not limited to hatching, seeding or planting, cultivating, feeding, raising, harvesting of planted crops or of natural crops so as to maintain an optimum yield, and processing of aquatic plants or animals.

Priority 3E

Priority 3E vessels are those vessels impacting a marine protected area. A vessel may impact a marine protected area without being located within its boundaries.

Priority 3F

Priority 3F vessels are those vessels impacting air quality, resulting in air that is likely to be injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property, but does not include contaminants emitted in compliance with applicable state statutes.

Priority 4

Priority 4 vessels are those vessels that meet the criteria of abandoned or derelict, but do not satisfy any of the criteria listed above.

SECTION 3 4: REMOVAL PROCEDURE

A. Funding

In the event that funding is not available to assist in funding a removal project, the APEs or other local governmental entities requesting that Lee County remove a derelict vessel that is under its jurisdiction will be required to provide the County with written assurances that funding is available to reimburse Lee County for the removal project.

B. Contracts

When assuring funds for a particular removal project is appropriate, given the balance of the funds and the details of the proposed action, the applicant will enter into a contract with Lee County. The contract will assure that the funds as estimated in the application are available and sufficient to fully reimburse Lee County.

C. Progress Payments

For removal operations with an assurance of funds and a total reimbursement eligible cost over \$50,000, progress payments can be made to Lee County during the removal operations for completed work.

D. Obtaining Custody of a Vessel

Prior to exercising its removal authority, Lee County will provide notice to putative owners and the public in the following forms:

1. Mail notice by certified mail, return receipt requested, of its intent to obtain custody, at least five (5) days prior to taking custody, to the last known address of the previous owner and to any lien holder. Notice shall be in the format described in Exhibit "B".
2. Post notice of its intent clearly on the vessel, or if sunk the notice may be posted on its marker buoy, for at least five (5) days. Such notice shall be no less than 8 inches by 10 inches and should be sufficiently waterproof; and
3. Post notice of its intent on the DNR's internet web site on a page specifically designated for such notices.

E. Notice Requirements

All notices (Exhibit "B") sent, posted, or published must, at a minimum, explain:

1. The intent of the APE or DNR to take custody of the vessel;
2. The rights of the APE or DNR after taking custody of the vessel;
3. The financial liabilities that the owner may incur.

F. Costs

The owner of any abandoned or derelict vessel who, after notice as described above, does not remove such property within the specified period, will be liable to the County for all costs of removal, storage, and destruction of such property.

SECTION 4 5: REQUIREMENTS FOR REMOVAL

A. Custody

Custody of the vessel must be obtained prior to the removal operation unless the vessel is a Priority 1.

B. Use or Disposal of the Vessel

After taking custody of a vessel, or any of its parts, Lee County will use or dispose of the vessel in any appropriate and environmentally sound manner and in the public's best interests without further notice to any owners. However, preference will be given to uses that derive some monetary benefit from the vessel, either in whole, in part, or in scrap. If no value can be derived from the vessel, the County will give preference to the least costly, environmentally sound, reasonable disposal option. The vessel, and any parts thereof, will not be subject to Administrative Code 3-14, Policy on Tangible Personal Property Owned by Local Governments.

C. Auction

If the vessel, or any parts thereof, is offered at auction, a minimum bid, a letter of credit, or both will be required to discourage future re-abandonment of the vessel. Vessels, or parts thereof, can be auctioned off through any appropriate process, such as the annual County auction or online auctioning houses such as Ebay, and the resulting funds will be deposited into a County account specific to abandoned vessel removal. All parts will be inventoried and documented prior to sale and the written inventory will be approved by the Natural Resources Division Director prior to the parts being offered at auction. The County's Code of Ethics, Section 206, prohibits any employee involved in the auction process to bid on any of the vessels or their parts.

D. Proceeds of Sale

~~The proceeds derived from the sale of the vessel, or any of its parts, will be applied to the costs incurred by the County for its removal deposited in an account for the specific purpose of offsetting the costs pertaining to future abandoned vessels. If the proceeds exceed the costs incurred by the County, the remaining money will be deposited into the Derelict Vessel Removal Program fund to further offset expenses of removals. A Budget Amendment will be performed no less than once per Fiscal Year to allow funds that have accrued to be utilized for payment of removal and disposition costs of future abandoned vessels. Financial records of each transaction will be maintained by the Division of Natural Resources.~~

E. Actions to Prevent Future Abandonment

In order to discourage future abandonment of a vessel that has been removed and sold at auction, the County will set a minimum bid and/or require a letter of credit from the entity purchasing the vessel.

SECTION 5 6: REIMBURSEMENT

A. Reimbursement by Vessel Owner

The owner of an abandoned or derelict vessel will be held responsible for reimbursing the County for all reasonable and auditable costs associated with the removal or disposal of the owner's vessel. These costs include, but are not limited to, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel. Reimbursement for costs may be sought from an owner who is identified subsequent to the vessel's removal and disposal.

B. Actions to Recover Reimbursement from Vessel Owner

If the full amount of all costs due to the County is not paid within thirty days after first notifying the responsible parties of the amounts owed, the County may bring an action in any court of competent jurisdiction to recover the costs, plus reasonable attorney's fees.

C. Revocation of Boat Registration Privileges

In the case of an abandoned or derelict vessel, any person who neglects or refuses to pay such amount owed to Lee County for removal will not be entitled to be issued a Certificate of Registration for any other boat until such costs have been paid in full. In accordance with the provisions contained in Fla. Stat. §705.103(4) Lee County will supply the DHSMV with a list of persons whose boat registration privileges have been revoked for failure to pay costs associated with abandoned or derelict vessel removal.

Complete and return this form to:
 Lee County Department of Natural Resources
 Derelict Vessel Removal Program, Marine Services
 1500 Monroe Street
 Fort Myers, Florida 33901

Instructions: Please enter as much of the information below as possible. If information is estimated, please indicate that. **Items marked with an asterisk are required to be filled in.** Once this form has been received by the program, the derelict vessel will receive an identification number that is required on the application for removal. That number will be sent to the reporting individual unless no contact information is supplied or the reporting individual expressly requests not to be contacted.

DERELICT VESSEL INFORMATION			
* Today's date:	* Date sighted:	Date of incident:	
* Reported by:		* Phone number:	
* Address:			
* General location:			
Latitude:	Longitude:	Water Depth:	
* Type of hazard (check all that apply): Navigation <input type="checkbox"/> ; Human health <input type="checkbox"/> ; Environmental <input type="checkbox"/> ; Aesthetic <input type="checkbox"/> ; Other <input type="checkbox"/>			
Vessel name:	Identification number:		
Length: feet	Beam (width): feet	Gross tonnage:	
Hull type (wood, fiberglass, etc.):	Propulsion (Power, sail, other):	Type of fuel (gas, diesel):	
Estimated fuel capacity of all tanks on board:	Estimated fuel on board when the vessel sank: (gallons)		
Other hazardous materials on board (e.g. hydraulic fluid, propane, oil) and estimated amounts:			
Vessel is located on: State-owned aquatic land <input type="checkbox"/> ; DNR leasehold <input type="checkbox"/> (Type); Private land <input type="checkbox"/> ; Other			
What government agencies have responded to this incident? (Include copies of all incident reports)		Summary of actions by other government agencies:	
Additional comments:			

**NOTICE TO THE OWNER AND ALL PERSONS
INTERESTED IN THE ATTACHED PROPERTY.**

**By
Lee County Derelict Vessel Removal
Department of Natural Resources, Marine Services
1500 Monroe Street, 3rd Floor
Fort Myers, Florida 33901
Telephone: 239-479-8109**

This property, to wit: (Description of article)_____

_____, is unlawfully upon public property known as
(description of location)_____ and must be
removed within 5 days; otherwise, it will be removed and disposed of
pursuant to Fla. Stat. § 705.103 and Lee County Administrative Code
7-10. The owner will be liable for the costs of removal, storage,
and publication of notice. Failure to pay costs may result in revocation
of future boat registration motor vehicle privileges.

Dated: _____

Signed: _____