



**VILLAGE COUNCIL
REGULAR MEETING
Agenda**

**Village Hall
21500 Three Oaks Parkway,
Estero, FL**

**Wednesday, June 3, 2015
10:00 a.m.**

Village Council: District 1 – Bill Ribble; District 2 – Howard Levitan, Deputy Mayor; District 3 – Donald Brown; District 4 – Katy Errington; District 5 – Jim Boesch; District 6 – Nick Batos, Mayor; District 7 – Jim Wilson

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **INVOCATION**

Pastor Frank Brand – First Baptist Church of Estero
4. **ROLL CALL**
5. **PROCLAMATIONS AND EXPRESSIONS OF APPRECIATION**
6. **APPROVAL OF AGENDA**
7. **CONSENT AGENDA**
8. **COUNCIL BUSINESS**

The public will have an opportunity to speak during each agenda item. Each individual has one opportunity to speak for three minutes per agenda item.

- (A) APPROVAL OF MINUTES – Approval of minutes for the May 15, 2015 Regular Meeting and the May 15, 2015 Workshop.

Attachment Included

(B) SECOND READING AND PUBLIC HEARING OF ORDINANCE 15-05

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, ESTABLISHING AND ADOPTING UNIFORM TRAVEL POLICIES AND PROCEDURES; PROVIDING A PROCESS FOR AMENDING TRAVEL POLICIES AND PROCEDURES;

PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE

Attachment Included

(C) SECOND READING AND PUBLIC HEARING OF ORDINANCE 15-06

AN ORDINANCE OF THE VILLAGE OF ESTERO, FLORIDA; ESTABLISHING PURCHASING PROCEDURES; DESIGNATING A PURCHASING AGENT; PROVIDING FOR LIMITATIONS ON PURCHASES; PROVIDING FOR COMPETITIVE BIDDING; ESTABLISHING COMPETITIVE BIDDING AND BID OPENING PROCEDURES; PROVIDING FOR AWARDED OF BIDS; PROVIDING FOR WAIVER OF COMPETITIVE BIDDING; PROVIDING FOR EXEMPTIONS FROM COMPETITIVE BIDDING; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY, INCLUSION ON THE CODE AND IN AN EFFECTIVE DATE.

Attachment Included

(D) FIRST READING AND PUBLIC HEARING – ORDINANCE 15-07

AN ORDINANCE OF THE VILLAGE OF ESTERO, FLORIDA, RELATING TO THE LOCAL COMMUNICATIONS SERVICES TAX; PROVIDING FOR THE LEVY OF THE LOCAL COMMUNICATIONS SERVICES TAX AND SPECIFYING A RATE; ELECTING TO ADJUST THE TAX RATE IN LIEU OF PERMIT FEES; PROVIDING FOR NOTICE TO THE DEPARTMENT OF REVENUE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Attachment Included

(E) FIRST READING AND PUBLIC HEARING – ORDINANCE 15-08

AN ORDINANCE OF THE VILLAGE OF ESTERO, FLORIDA, ADOPTING LEE COUNTY ORDINANCE NO. 15-09 AMENDING THE LEE COUNTY CODE OF ORDINANCES IN EFFECT IN THE VILLAGE OF ESTERO, PURSUANT TO SECTION 12(5)(a) OF THE

OF ESTERO CHARTER AMENDING LEE COUNTY LAND DEVELOPMENT CODE CHAPTERS 6 AND 10 AND CERTAIN SECTIONS OF THE FLORIDA BUILDING CODE TO AUTHORIZE THE BOARD OF ADJUSTMENTS AND APPEALS TO HEAR CERTAIN VARIANCE REQUESTS FROM THE FLORIDA BUILDING CODE; LIMIT BUILDING PERMITS BASED ON AFFIDAVIT; AMEND THE DEFINITION OF SUBSTANTIAL IMPROVEMENT; REPEAL AND REPLACE LAND DEVELOPMENT CODE ARTICLE IV FLOOD HAZARD REDUCTION (SECS. 6-401 - 6-476) IN ITS ENTIRETY, TO ADOPT FLOOD HAZARD MAPS, DESIGNATE A FLOODPLAIN ADMINISTRATOR, ADOPT PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS, AND FOR OTHER PURPOSES; PROVIDE FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION AND SCRIVENER'S ERRORS, MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING AND AN EFFECTIVE DATE.

Attachment Included

- (F) RESOLUTION - Resolution Regarding Development on Corkscrew Road (Vice-Mayor Levitan)

Attachment Included

- (G) RESOLUTION – Resolution Regarding the Creation of the Department of Community Development (Vice-Mayor Levitan, Interim Village Manager Peter Lombardi)

Attachment Included

- (H) RESOLUTION – Resolution Adopting Interlocal Agreement With Lee County Regarding Floodplain Management (Burt Saunders)

Attachment Included

- (I) DISCUSSION – Discussion Regarding the Metropolitan Planning Organization (Mayor Batos)
- (J) DISCUSSION – Discussion Regarding Capital Projects (Mayor Batos)

9. **PUBLIC INPUT OF NON-AGENDA ITEMS**
10. **COUNCIL COMMUNICATIONS/FUTURE AGENDA ITEMS**
11. **INTERIM VILLAGE MANAGER COMMENTS**
12. **VILLAGE ATTORNEY COMMENTS**
13. **ADJOURN**

If you desire to address the Board, please complete a Public Comment Card located on the table in the lobby and return it to the Clerk. Citizens desiring to speak must step up to the podium, state their full name and address and/or whom he or she represents.

ADA Assistance – Anyone needing special assistance at the Board meeting due to a disability or physical impairment, should contact Peter Lombardi, at 239-390-8000, at least 48 hours prior to the meeting.

Pursuant to Section 286.0105, Florida Statutes:
“If a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a recording of the proceeding, and that, for such purpose, he or she may need to ensure that a verbatim recording of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

VILLAGE COUNCIL REGULAR MEETING OF MAY 15, 2015

The Village of Estero Council Regular Meeting was held on this date at the Estero Fire Rescue District Meeting Room, 21500 Three Oaks Parkway, Estero, Florida, with the following Council members present:

Nick Batos – Mayor, District 6
Howard Levitan – Vice-Mayor, District 2
Bill Ribble - District 1
Donald Brown - District 3
Katy Errington - District 4
Jim Boesch - District 5
Jim Wilson - District 7

The Mayor called the meeting to order at 10:00 am, followed by the Pledge of Allegiance to the flag.

INVOCATION

The Invocation was offered by Rabbi Greenberg, Chabad of Bonita Springs and Estero.

ROLL CALL

Interim Village Manager Peter Lombardi called the roll; all members were present.

APPROVAL OF AGENDA

Mayor Batos requested the addition of three items to the agenda:

- 6(E) – Resolution on the Gas Tax Issue
- 6(F) – Discuss a resolution to appoint a liaison for the SW Chapter, Florida League of Cities
- 6(G) – Resolution regarding Village Clerk

Vice-Mayor Levitan requested the addition of one item to the agenda:

- 6(H) – Update on discussions with the County Department of Community Development

Mr. Ribble moved approval as amended, seconded by Mr. Wilson, called and carried unanimously.

COUNCIL BUSINESS

6(A) Approval of April 24, 2015 Regular Meeting Minutes; April 24, 2015 Workshop Minutes and March 20, 2015 Workshop Minutes

Vice-Mayor Levitan noted an error in the roll-call vote on Item 5(D) of the April 24 Regular Meeting. Mr. Ribble moved approval as amended, seconded by Mr. Boesch, called and carried unanimously.

6(B) FIRST READING AND PUBLIC HEARING – ORDINANCE 15-04 An Ordinance of the Village Council of the Village of Estero, Florida Amending Section 3-2(2)(B) of Ordinance 15-01 to Change Qualifications for Membership of the Design Review Board; Providing a Severability Clause; and Providing an Effective Date

Vice-Mayor Levitan moved the amendment to a second reading on May 20, 2015, seconded by Mr. Ribble. The Vice-Mayor explained the purpose of the amendment; reported that a Fort Myers architect might be able to fill one vacancy; and stated that the Planning and Zoning Board would review the amendment before the second reading. The Mayor called for public comment, and no one came forward to speak. The motion was called and carried unanimously via roll-call vote.

6(C) RESOLUTION – A Resolution Adopting the 2014-15 Village of Estero Budget

Mayor Batos noted a possible misunderstanding about numbers presented at the last meeting as they related to projections made during the incorporation process. Interim Village Manager Peter Lombardi explained the rationale for adopting a 2014-15 budget; reviewed the numbers for estimated revenues, expenses, and surplus; and pointed out that the budget was based on feasibility studies and cash flow projections done by Mr. Lienesch for the Estero Council of Community Leaders (ECCL). Referring to a copy of the “Cash Flow Projections” (copy on file), he clarified that the total of the revenue and expenditure estimates for the months of April through September equal the budget amounts of \$1,002,320 and \$944,030, respectively. Council discussion followed regarding shortcomings of the feasibility studies and unknown costs for several expense categories. Mr. Lombardi reviewed the figures from the “Budget Report as of April 30, 2015” (copy on file) and emphasized that the monthly report would reflect actual revenues and expenses for the period. Responding to questions from Vice-Mayor Levitan, Village Attorney Burt Saunders clarified that Section 12(4) of the Village Charter did not preclude the Council from borrowing money if a budget was adopted. The Vice-Mayor requested an addition to the Resolution of a document (Attachment “A”) showing the monthly figures that correspond to the gross totals. Interim Finance Director Lisa Pace responded to questions from Council regarding projections for the various Revenue categories, especially Franchise Fees. Additional Council discussion followed regarding communication service taxes, franchise fees, and the tourist “bed tax”. The Mayor called for public comment, and the following individual came forward:

Stoneybrook resident, Chris Patricca – possible State cuts in communication taxes

Ms. Errington moved approval of the Resolution with the addition of Attachment “A”, seconded by Mr. Ribble, called and carried unanimously.

RESOLUTION NO. 2015-27

6(D) DISCUSSION – County Interlocal Agreement for Municipal Services

Interim Village Manager Peter Lombardi presented a document entitled “Lee County Proposal to Provide Services to Village of Estero FY15-16” (copy on file); and noted that Estero allocations were based on a population of 8.2% of the Municipal Services Taxing Unit (MSTU), with total charges of \$3,730,136. Council discussion followed regarding actual costs and revenues for FY2014-15, charges for services not requested or provided, and excessive charges for specific services. The Mayor called for public comment, and no one came forward: He then asked whether a liaison from the Council and/or Village Attorney Saunders should join in negotiations which currently involve only Mr. Lombardi and a County Finance person. Additional discussion ensued regarding services that the Village might take over, the split between General Fund and MSTU costs, and possible participation by the County Attorney. Vice-Mayor Levitan moved that Mayor Batos and Attorney Saunders be delegated to be part of negotiations, and report back to the Council at a Workshop, seconded by Mr. Brown. After Mayor Batos suggested, and Council agreed, that the term “negotiations” be amended to “fact-finding”, the motion was called and carried unanimously.

6(E) DISCUSSION – Proposed County Interlocal Agreement for Gas Tax Sharing

Interim Village Manager Peter Lombardi presented a draft Interlocal Agreement from Lee County (copy on file). After Village Attorney Burt Saunders confirmed that he had found no issues with the document, Mr. Lombardi noted that the latest estimate received from the County was \$400,000 per 12-month year. Discussion followed regarding potential responsibilities of the Village, differences between local and through roads, calculation of centerline miles, available options if the agreement is not signed by June 1, and whether the agreement should be only for one year. There was consensus that Mayor Batos, Attorney Saunders and Mr. Lombardi will meet with County staff to obtain additional information in time for additional action at the meeting on May 20.

6(F) DISCUSSION – Appointment of Liaison for Florida League of Cities, (FLC) SW Chapter

Mayor Batos reported receipt of an invitation for a Council liaison to attend a meeting of the FLC on May 21, and nominated Mr. Ribble as the liaison. There were no objections to the appointment.

6(G) RESOLUTION – Village Clerk

Interim Village Manager Peter Lombardi requested approval of a resolution consenting to the appointment of Kathy M. Hall MMC as Village Clerk; and noted that Ms. Hall would begin employment on June 1. Mr. Wilson moved approval, seconded by Ms. Errington. Mr. Lombardi briefly reviewed Ms. Hall's qualifications and experience; responded to Council members' questions; and noted that the salary would be \$80,000 annually. Council discussion ensued regarding benefits and office space. The Mayor called for public comment, and no one came forward to speak. The motion was called and carried unanimously
RESOLUTION NO. 2015-28

6(H) DISCUSSION - Update on discussions with the County Department of Community Development

Mayor Batos noted that Vice-Mayor Levitan was Council Liaison to Lee County on Community Development/Land Use Issues, and that the County has requested something in writing as to what the Council wants them to do about Administrative items on which there is a difference of opinion. He requested authorization to notify the County of Mr. Levitan's status as liaison, and there were no objections. Vice-Mayor Levitan commented that the first full meeting of the Planning and Zoning Board (PZB) was scheduled for next week; and noted that the PZB is waiting for the County staff report on one agenda item. He added that he was meeting with PZB Chair Roger Strelow and Interim Village Manager Peter Lombardi to develop a plan to deal with requests received for public information meetings. After pointing out that the Village is paying for County staff to provide the necessary reports, he requested authorization to explore costs and services available from third party contractors. Following brief discussion of reasons for delays in County response, there was consensus to authorize the fact-finding.

PUBLIC INPUT ON NON-AGENDA ITEMS

The Mayor called for public input; and no one came forward:

COUNCIL / MANAGER/ATTORNEY COMMUNICATIONS AND FUTURE AGENDA ITEMS**Council Members' Comments:**

Ms. Errington expressed concern about a lack of information regarding Healthcare Village. Mr. Brown, Council liaison for Lee Memorial Health System (LMHS), responded that he planned to report at the Workshop meeting; and that LMHS is committed to come to the area and grateful for the community support.

Vice-Mayor Levitan asked to reserve time during the Workshop meeting to discuss two important land use issues outside of Estero.

Mr. Boesch noted an upcoming issue with the opening of a new Wal-Mart and sidewalks, which should be addressed once a decision is reached concerning responsibility for Estero Parkway.

Mr. Wilson reported that Estero residents had actually been given a tax reduction because the Council had elected not to collect the All Hazards Tax.

Mayor Batos asked whether Interim Village Manager Peter Lombardi had information to provide regarding the mechanics for the search for the permanent Manager, and Mr. Lombardi responded that it would be available for next week's agenda. The item dealing with a process for acquiring future facilities will also be moved to next week.

Village Attorney's Comments:

Village Attorney Burt Saunders had no comments.

Interim Village Manager's Comments:

Interim Village Manager Peter Lombardi had no comments.

ADJOURN

The Mayor adjourned the meeting at 12:09 pm.

ATTEST:

VILLAGE OF ESTERO, FLORIDA

By: _____

By: _____

Interim Village Clerk

Mayor

VILLAGE COUNCIL WORKSHOP MEETING OF MAY 15, 2015

The Village of Estero Council Workshop Meeting was held on this date at the Estero Fire Rescue District Meeting Room, 21500 Three Oaks Parkway, Estero, Florida, with the following Council members present:

Nick Batos – Mayor, District 6
Howard Levitan – Vice-Mayor, District 2
Bill Ribble - District 1
Donald Brown - District 3
Katy Errington - District 4
Jim Boesch - District 5
Jim Wilson - District 7

The Mayor called the meeting to order at 1:33 pm, followed by the Pledge of Allegiance to the flag.

ROLL CALL

Interim Village Manager Peter Lombardi called the roll; all members were present.

APPROVAL OF AGENDA

Ms. Errington moved approval, seconded by Mr. Brown, called and carried unanimously.

COUNCIL BUSINESS

MAYOR BATOS ANNOUNCED THAT ITEMS 5(E) AND 5(F) WOULD BE DISCUSSED SIMULTANEOUSLY BEFORE THE OTHER ITEMS ON THE AGENDA.

5(A) DISCUSSION – Ordinance Establishing Purchasing Procedures

Interim Village Manager Peter Lombardi noted that the draft ordinance was similar to that used in Pinecrest. Village Attorney Burt Saunders mentioned that he would be working with Mr. Lombardi on some changes; and Mayor Batos suggested some general benchmarks for activating portions of the procedures. Council discussion followed regarding non-applicability of the Consultants Competitive Negotiation Guide, purchase amount limits, and the requirement for competitive bids. The Mayor called for public comment, and no one came forward. There was consensus that the draft ordinance would be presented for first public hearing at the May 20 Council Meeting.

5(B) DISCUSSION – Ordinance Regarding Local Communications Services Tax

Interim Village Manager Peter Lombardi explained that the ordinance must be adopted and rates set before the revenue could be received from the state, and suggested that the rate be set at the current County rate of 3.61%, less than the allowable maximum of 5.22%. Discussion followed regarding the effective date of January 1, 2016; the receipt of some funds retroactive to incorporation; the estimated annual amount of \$518,000; and methods for dealing with possible state tax reductions. The Mayor called for public comment, and no one came forward. There was consensus that the draft ordinance would be presented for first public hearing at the May 20 Council Meeting.

5(C) DISCUSSION – Ordinance Regarding Non-Exclusive Franchise to Florida Power & Light (FPL)

Interim Village Manager Peter Lombardi explained that the rate in the current Lee County franchise agreement with FPL is 4.5%, recommended that the Village negotiate an agreement with the same rate, and stated that no revenue estimate was available at this time. Discussion followed regarding the effective date and duration of the agreement, clarification of the need for control of the roads, and neighborhood concerns

about trees near the FPL easements. There was consensus that Village Attorney Burt Saunders would provide answers to some of the questions at the May 20 Council Meeting. The Mayor called for public comment, and no one came forward.

5(D) DISCUSSION – Ordinance Regarding Non-Exclusive Franchise to People’s Gas System (PGS), a Division of Tampa Electric

Interim Village Manager Peter Lombardi stated that this item was similar to the previously discussed agreement with FPL, and clarified that cable and telephone franchises were included in the communications tax. He stated that Lee County has no gas franchise agreement, and that the Bonita Springs rate is 5%. Discussion took place regarding the potential increased costs to Estero residents, the reasons that Lee County has no agreement, and rates in other local communities. Mayor Batos suggested that he could bring this up at a meeting next week with other mayors. There was consensus that more information would be provided at next week’s meeting regarding the number of residents involved, potential costs to them, and potential revenue for the Village. Village Finance Director Lisa Pace explained that it would be difficult to get records from PGS as they do not have to disclose records, and suggested “borrowing” invoices from gas customers for use in calculating costs. Additional discussion ensued about alternate methods for estimating costs, the Bonita Springs agreement, the differences between a public services tax and a franchise tax, and whether the revenue was needed. The Mayor called for public comment, and no one came forward.

5(E) DISCUSSION – Resolution of Intent for Village of Estero’s Participation in the National Flood Insurance Program

ITEMS 5(E) AND 5(F) WERE DISCUSSED SIMULTANEOUSLY

Interim Village Manager Peter Lombardi introduced Josh Overmyer, area representative of the Florida Division of Emergency Management. Mr. Overmyer described the purpose of the Division’s Community Rating System Initiative (CRSI), explained the “point” system that determines premium reductions for a given area, and noted that the two requirements for enrollment in the National Flood Insurance Program (NFIP) were adoption of a local flood damage prevention ordinance and submittal of a copy of the community boundaries. In response to questions from the Council, he explained that the Village’s initial scoring would include credit for County activities; and described factors that could improve the rating. Mr. Lombardi clarified that the required ordinance was in place because the Village had adopted Lee County Ordinances at incorporation; and that the cost of updated flood maps was included in the proposed interlocal agreement. Discussion followed regarding possible Bert Harris lawsuits, pending legislation that precludes such lawsuits, time required to review the application, rate policies of insurance companies, and unrelated insurance surcharges. After Mr. Overmyer reviewed specific activities that could help achieve a higher rating, further discussion occurred regarding the role of a “coordinator” and the ordinance requirement. The Mayor called for public comment, and no one came forward: Mr. Lombardi confirmed that a resolution would be presented at the May 20 Council Meeting.

5(F) DISCUSSION – Interlocal Agreement with Lee County Regarding Enforcement of Floodplain Management Regulations

ITEMS 5(E) AND 5(F) WERE DISCUSSED SIMULTANEOUSLY. SEE DISCUSSION ABOVE.

5(G) DISCUSSION – Ordinance Establishing Uniform Travel and Expense Reimbursement Procedures

Interim Village Manager Peter Lombardi noted that the draft was a copy of the Marco Island ordinance. Discussion followed regarding reimbursement for non-mandatory conferences, the rationale for Village Manager approval, possible reimbursement for supplies, the importance of having a policy in place for Council members and staff, limits on number of attendees at a single conference, gratuity and meal allowances, the definition of “local travel”, reimbursement approval for the Village Manager, possible reimbursement for Planning and Zoning/Design Review Board members, and a budget line item in next year’s budget. The Mayor called for public comment, and no one came forward. There was consensus that a revised draft ordinance would be presented at the May 20 Council Meeting.

5(H) DISCUSSION – Resolution Establishing Public Records Fees

Interim Village Manager Peter Lombardi pointed out that the state public records laws allow for reasonable per copy and hourly charges to provide records requested. Discussion ensued regarding reasonable fees and record requests from Council members. The Mayor called for public comment, and the following individual came forward:

Maryann Batlle – Naples Daily News – Calculation of hourly rates

Following discussion, there was consensus to consider the resolution at the May 20 Council Meeting.

5(I) DISCUSSION – Discussion Regarding Citizen Advisory Committees

Mayor Batos commented that any committees should be self-sustaining and that the Council would appoint liaisons. Discussion topics included a Transportation committee, limitations in staff time and meeting facilities, the need for mission statements, possible duplication of efforts, the desire for citizen involvement, applicability of Sunshine Laws, a committee for Old Historic Estero, and possibilities for creating independent committees. Village Attorney Burt Saunders responded to questions and provided information throughout the discussion. Vice-Mayor Levitan stated that Council members who felt a formal advisory committee was needed should bring it back to the Council with a specific mission statement and proposal. The Mayor called for public comment, and the following individuals came forward:

Don Eslick Estero Council of Community Leaders (ECCL) – Opposed to creation of ad hoc committees on subjects of concern to ECCL membership

Old Estero resident, Patty Whitehead – Possibility that presence of appointed Board members at discussions of ad hoc committees might jeopardize official responsibilities

Vice-Mayor Levitan responded, and Attorney Saunders agreed, that Board members could listen and ask questions but could not take a position on issues that might come before a quasi-judicial board. There was consensus that Council members would submit committee requests as suggested, to be brought before Council as soon as possible

5(J) DISCUSSION – Village of Estero Employment Policy Manual

Interim Village Manager Peter Lombardi commented that a Manual was nearly complete, and that it would be reviewed by Village Attorney Saunders before being brought back to a Workshop Meeting. The Mayor called for public comment, and no one came forward:

PUBLIC INPUT ON NON-AGENDA ITEMS

The Mayor called for public input, and no one came forward:

COUNCIL/MANAGER/ATTORNEY COMMUNICATIONS AND FUTURE AGENDA ITEMS

Council Members' Comments:

Mr. Ribble – Mentioned most Council members had attended the Economic Development Summit, expressed concern about employer statements regarding a shortfall of talent for hiring locally, and suggested a process of matching employer needs with student education. Mr. Boesch mentioned that local colleges already have that information.

Mr. Levitan – Reported on two local developments – Wild Blue and Corkscrew Farms
He explained his opinion that a new Land Use category created by Lee County poses a serious threat to the Density Reduction/Groundwater Resource (DR/GR), remarked that local environmental groups were not taking a stand, and urged Council members to learn about the issue and appear before the County Commissioners. Following discussion, Mr. Levitan pointed out that the developers were giving concessions to organizations that might otherwise oppose the projects. Don Eslick of the Estero Council of Community Leaders (ECCL) suggested that the Council and ECCL should pass resolutions, then try to get support from environmental groups. There was consensus that a resolution should be drafted for approval within the next two weeks. Old Estero resident Patty Whitehead noted that the Responsible Growth

Management Coalition was opposed to Corkscrew Farms, which would be located over several important aquifers.

Village Attorney's Comments:

Village Attorney Burt Saunders reported that a planned meeting with Assistant County Manager Pete Winton had been changed to 11:00 am on Tuesday morning. At Mayor Batos' request, Vice-Mayor Levitan agreed to attend with Attorney Saunders.

Interim Village Manager's Comments:

Interim Village Manager Peter Lombardi had no comment.

ADJOURN

The Mayor adjourned the meeting at 4:09 pm.

ATTEST:

VILLAGE OF ESTERO, FLORIDA

By: _____

By: _____

Interim Village Clerk

Mayor

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VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 15 - 05

**AN ORDINANCE OF THE VILLAGE COUNCIL OF THE
VILLAGE OF ESTERO, FLORIDA, ESTABLISHING AND
ADOPTING UNIFORM TRAVEL POLICIES AND
PROCEDURES; PROVIDING A PROCESS FOR AMENDING
TRAVEL POLICIES AND PROCEDURES; PROVIDING FOR
SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

WHEREAS, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the Village of Estero desires to regulate travel policies and procedures for the Village of Estero in order to effectively allocate limited funds available for business related expenses, including training and professional development of elected and appointed officials and employees; and

WHEREAS, travel policies and procedures provide for the reasonable and prudent payment for and reimbursement of allowable expenditures.

NOW, THEREFORE, be it ordained by the Village Council of the Village of Estero, Florida:

SECTION ONE. Adoption of Travel Policies and Procedures

The document entitled Travel Policies and Procedures as described in the attached Exhibit "A", attached hereto and incorporated herein, is hereby adopted.

SECTION TWO. Amending Travel Policies and Procedures

The Village Council may amend, by resolution, the subsistence allowance, as provided in Section 7 of this Ordinance, provided such subsistence allowance is appropriated in the annual budget adopted by Village Council.

SECTION THREE. Severability

The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

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SECTION FOUR. Effective Date

This Ordinance shall take effect immediately upon adoption

PASSED and ADOPTED on first reading this 20th day of May, 2015.

PASSED and ADOPTED on second reading this 3rd day of June, 2015

Attest:

VILLAGE OF ESTERO, FLORIDA

By: _____

By: _____

Peter Lombardi
Interim Village Manager/
Custodian of Village Records

Nicholas Batos
Mayor

Reviewed for legal sufficiency:

By: _____

Burt Saunders, Esq.
Interim Village Attorney

EXHIBIT "A"

VILLAGE OF ESTERO, FLORIDA TRAVEL POLICIES AND PROCEDURES

Uniform Travel Policy and Procedures.

Section 1. Purpose

The purpose of the Village of Estero Travel Policy (hereinafter "Travel Policy") is to effectively allocate limited funds available for business related expenses, including training and professional development of elected and appointed officials and employees. This Travel Policy is established to pay for and reimburse all allowable expenditures, while reducing required paperwork to a minimum. Business and travel expenditures, as with other purchases, represent an expenditure of Village funds. Each employee is responsible for assuring that expenditures are prudent and necessary.

Section 2. Definitions

For the purposes of this Travel Policy, the following words shall have the meanings indicated in this Section:

- (1) *Authorized Individual* shall mean a public officer or employee, whether elected or not, who is authorized by the Village Manager to incur travel expenses in the performance of his or her duties, including but not limited to board and committee members performing services on behalf of the Village and persons who are candidates for executive or professional positions.
- (2) *Common Carrier* shall mean a train, bus, commercial airline operating scheduled flights or rental cars of an established rental car firm.
- (3) *Public Employee* shall mean an individual, either elected or appointed, who in the performance of his or her official duties is vested by law with powers of government.

Section 3. Authority to Incur Travel and Business Expenses.

If a member of the Village Council or the Village Manager finds it necessary to incur travel and business expenses, and when the expenses are within the intent of the adopted budget, the expenditures are authorized. All travel and business expenses by public employees must be authorized by the Village Manager.

- a. Traveling expenses shall be limited to those expenses necessarily incurred by the traveler in the performance of duties related to the functions and responsibilities of the Village.
- b. Traveling expenses of prospective employees for the sole purpose of taking merit system or other job placement examinations, interviews, etc. may be authorized by Village Council or the Village Manager.
- c. Business expenses shall apply to those expenditures which are incurred in the performance of a public purpose, including meetings with governmental officials, seminars and training programs, pickup and delivery of parts and equipment, recruitment of personnel, community promotion, and any other related activities.

Section 4. Funding.

- a. All travel must have prior authorization through the completion of a travel authorization form showing the itinerary, the source of funding and whether or not a travel advance is needed.
- b. Travel advances may be issued to authorized persons or individuals prior to departure on an authorized trip. The cash amount will be based on a schedule commensurate with the known expenses as stated in the travel authorization. All travel reservations for a common carrier must be made by the Village Manager or his authorized representative, with the exception of emergencies that occur after 5:00 p.m. and on weekends, or if the return flight has to be changed or cannot be scheduled. If common carrier tickets are necessary, issuance of such tickets shall be made only upon receipt of a travel authorization with proper approval signatures. The authorized traveler receiving a travel advance must keep a record of all travel expenses and report the same. If an authorized travel advance is less than the approved actual expenses, the difference will be paid to the traveler. If the travel advance is greater than the actual or allowed travel expenses, then the difference shall be reimbursed to the Village within 30 days after return of traveler. Payment shall be made to the Finance Department and all receipts forwarded to the Finance Director or designee.

Section 5. Expense Forms and Regulations.

The Village Manager shall provide forms for travel requests, expenses and reimbursements, and mileage allowances, where applicable, and prescribe such regulations as are reasonable and necessary to effectuate the purpose of this policy. The Finance Director, or person otherwise designated, shall cause requests for travel expenses and reimbursements to be verified before payment is made.

Section 6. Schedule for Meal Allowance and Accommodations.

For the purpose of reimbursements, the allowance for meals will be based on the following schedule where each period covered must be of three (3) hours duration or longer to be valid:

- (1) Breakfast allowance will be made when travel begins before 6:00 a.m. and extends beyond 8:00 a.m. Lunch allowance will be made when travel begins before 12:00 noon and extends beyond 2:00 p.m.
- (2) Dinner allowance will be made when travel begins before 6:00 p.m. and extends beyond 7:00 p.m., or when travel occurs during night time hours due to special assignment.
- (3) Hotel or accommodations allowances will be made when travel extends overnight and requires lodging not within Lee County at the single occupancy rate. An employee taking a guest will pay any cost differences for double occupancy. Only business phone calls will be paid by the Village. Room service expenses will not be reimbursed by the Village.
- (4) No expenses incurred by employees in ~~Lee and Collier Counties~~ Estero shall be reimbursed unless approved by the Village Manager.

Section 7. Subsistence.

- a. When the period of travel conforms to the schedule of allowances in Section 6, all authorized travelers may be allowed subsistence when traveling to a convention, conference, seminar, activity or on Village-related business which serves a direct public purpose.
- b. Subsistence will consist of the basic travel allowance for meals as listed below and actual hotel or accommodation charges when the period of travel extends overnight:

| MEAL | ALLOWANCE |
|-----------|-----------|
| Breakfast | \$ 8.00 |
| Lunch | \$ 11.00 |
| Dinner | \$ 25.00 |

Actual meal charges may be reimbursed if accompanied by a receipt and justification for incurring the additional cost. Alcoholic beverages are not eligible for reimbursement. Approval to submit receipts in lieu of the above subsistence rates must be approved by the Village Manager in advance of the required travel. Hotel or accommodation charges must be single-occupancy rate and substantiated by receipt. Basic travel allowance for meals shall exclude meals which have been prepaid as a part of registration fees.

- c. Tips and gratuities are included in the basic travel allowance for meals. When actual meal charges are reimbursed, approximately 15% may be added to the meal charges provided the cost is stated on the receipt.

Section 8. Transportation.

- a. All travel must be on a convenient and mainly traveled route. Air travel shall be at the coach fare. If a person travels by an indirect route for his convenience, any extra costs shall be borne by the traveler. Reimbursement for expenses shall be made accordingly upon the presentation of receipts.
- b. If a privately owned vehicle is used for travel, the vehicle owner shall be entitled to a mileage reimbursement at a cents per mile rate equal to the IRS allowable rate then in effect.
- c. Transportation by a common carrier which has not been prepaid and for which the authorized traveler seeks reimbursement, must be substantiated by an official receipt from the common carrier.
- d. Transportation by charter vehicles may be authorized when it is determined to be the most economical method of travel when considering the nature of the business, the number of people making the trip and the most efficient and economical means of travel (considering the time of the traveler, cost of transportation and subsistence required.)

Section 9. Authorized Travel.

- a. Travelers shall not be allowed either mileage or transportation expenses when they are transported gratuitously by another person or when they are transported by another authorized traveler who is entitled to mileage or transportation expense.
- b. Reimbursement for expenditures related to the operation, maintenance, depreciation and ownership of a vehicle shall not be allowed when a privately owned vehicle is used on public business or mileage allowance is paid.
- c. The Village Manager may permit an authorized traveler to regularly, on a monthly basis, use a privately owned vehicle on Village business. In these instances, the traveler must submit a monthly log of the actual miles traveled and a monthly request for reimbursement. Travel occurring outside the county or travel in conjunction with the authorized traveler receiving reimbursement for meals and lodging expense or for travel to and from home shall not be included in the log,

Section 10. Reimbursable Incidental Expenses.

An authorized traveler may be reimbursed for incidental travel expenses incurred during the course of travel. These incidental travel expenses include but are not limited to the following:

- 1, Taxi, ferry and airport limousine fares.
2. Bridge, road and tunnel tolls.
3. Storage and parking fees.
4. Telephone and facsimile charges relating to Village business.
- 5, Registration, convention, conference, seminars, or training.

Section 11. Auditing.

A travel expense report of vouchers as developed by the Village Manager shall be submitted to the Finance Director within 30 days after the travel expense. Each approved travel expense report will be audited by the Finance Director or his designee, when received.

Section 12. Fraudulent Claims.

Claims submitted pursuant to this policy shall be signed by the authorized traveler and shall be verified by written declaration that it is true and correct as to every material matter. Any individual who makes or aids in the making of a false or fraudulent claim shall be guilty of a violation against the Village, and upon conviction thereof, shall be punished as provided in the Village's personnel rules and regulations. In addition, any person who receives a travel allowance, advance or reimbursement by means of a false claim, shall be civilly liable for the repayment of the amount into the public fund from which the claim as paid.

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VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 15 - 06

**AN ORDINANCE OF THE VILLAGE OF ESTERO, FLORIDA;
ESTABLISHING PURCHASING PROCEDURES;
DESIGNATING A PURCHASING AGENT; PROVIDING FOR
LIMITATIONS ON PURCHASES; PROVIDING FOR
COMPETITIVE BIDDING; ESTABLISHING COMPETITIVE
BIDDING AND BID OPENING PROCEDURES; PROVIDING
FOR AWARDING OF BIDS; PROVIDING FOR WAIVER OF
COMPETITIVE BIDDING; PROVIDING FOR EXEMPTIONS
FROM COMPETITIVE BIDDING; PROVIDING FOR REPEAL
OF CONFLICTING PROVISIONS; PROVIDING FOR
SEVERABILITY, INCLUSION IN THE CODE AND IN AN
EFFECTIVE DATE.**

WHEREAS, the Village Council has determined that purchasing guidelines and procedures are essential elements in the administration of the Village's day to day activities; and

WHEREAS, the Village's Charter requires that contract for public improvements and purchases of supplies, materials, or services shall be awarded or made on the basis of specifications and competitive bids, except in cases where the Village Council specifically determines that it is impractical to do so; and

WHEREAS, the Village Council hereby determines that it is impractical to purchase, through competitive bidding, materials, supplies, equipment, improvements or services for which funds are provided in the budget and for which the total amount to be expended is \$ 10,000 or less;

NOW, THEREFORE, be it ordained by the Village Council of the Village of Estero, Florida, that the Village of Estero's Purchasing Procedures are as follows:

SECTION 1. PURCHASING AGENT.

The Village Manager or his/her designee shall be the chief purchasing agent of the Village. The purchasing agent shall contract for, purchase, store and distribute all supplies, materials and equipment required by any office, department or agency of the Village the purchasing agent shall establish and enforce specifications, inspect or supervise the inspection of all deliveries and have full and complete charge of, and be responsible for, all supplies, materials, and equipment purchased for or belonging to the Village.

SECTION 2. PURCHASING LIMITATIONS; COMPETITIVE BIDDING.

(A) Purchases less than \$10,000. Purchases of, or contracts for materials, supplies, equipment, improvements or services for which funds are provided in the budget, where

47 the total amount to be expended is not in excess of \$10,000 may be made or entered into
48 by the Village Manager without submittal to the Village Council and without competitive
49 bidding. Single purchases or contracts in excess of \$10,000 shall not be broken down to
50 amounts less than \$10,000 to avoid the requirements of this section.
51

52 (B) Purchases more than \$10,000 but less than \$50,000. Purchases of or contracts for
53 materials, supplies, and equipment, improvements or services for which funds are
54 provided in the budget, where the total amount to be expended is in excess of \$10,000 but
55 which do not exceed \$50,000 may be made or entered into by the Village Manager
56 without submittal to the Village Council, but shall require compliance with the
57 competitive bidding requirements set forth in Section 3 of this Ordinance. Single
58 purchases or contracts in excess of \$10,000 shall not be broken down to amounts less
59 than \$10,000 to avoid the requirements of this section.
60

61 (C) Purchases in excess of \$50,000. The Village Council shall approve all purchases
62 of or contracts for materials, supplies, equipment, public improvements or services where
63 the total amount to be expended is more than \$50,000.
64

65 (D) The Village Manager may not purchase or contract for any item or service which
66 exceeds any budget appropriation until such a time the Village Council amends the
67 budget to increase the appropriation to the applicable level.
68

69 **SECTION 3. COMPETITIVE BIDDING PROCEDURE.**

70
71 (A) Whenever competitive bidding is required by this Ordinance, the Village Manager
72 shall direct that bid proposals which provide specifications for the purchase or contract be
73 prepared.
74

75 (B) The Village Manager shall solicit sealed bids from at least three persons or
76 entities engaged in the business of furnishing such materials, supplies, equipment and
77 public improvements or rendering such services.
78

79 (C) The Village Manager may publish a public invitation to bid.
80

81 (D) Bids shall be awarded to the lowest, most responsive, responsible bidder, as
82 determined by the Village Council and/or the Village Manager as the case may be,
83 subject to the right of the Village to reject any and all bids, to waive any irregularity in
84 the bids or bidding procedures and subject also to the right of the Village to award bids
85 and contracts to bidders other than the low bidder.
86

87 **SECTION 4. BID OPENING PROCEDURE; AWARDING OF BIDS.**

88
89 (A) Sealed bids shall be opened by the Village Manager or his appointed
90 representative and recorded by the Village Manager or his representative on the date and
91 time specified in the bid proposal.
92

93 (B) Whenever required by the bid proposal, all bid bonds, cash, insurance, checks or
94 other security accompanying the bid shall be received and maintained for safekeeping by
95 the Village Manager. The Village Manager shall be responsible for the return of the bid
96 bonds, cash, insurance, checks or other security of unsuccessful bidders.
97

98 (C) Upon completion of the bid opening and reading, all bids received will be
99 deposited with the Village Manager for tabulation and/or recommendation to the Village
100 Council.
101

102 (D) Upon submission of the bid tabulation and recommendation to the Village
103 Manager or Village Council, as the case may be, the Village Manager or the Village
104 Council shall either accept, reject or refer for additional review the bid tabulation and
105 recommendation.
106

107 **SECTION 5. WAIVER OF COMPETITIVE BIDDING PROCEDURES**

108
109 The Village Council may, by majority vote, waive the competitive bidding procedures outlined
110 in this ordinance if the Village Council determines that it is impractical to do so.
111

112 **SECTION 6. GOVERNMENTAL CONTRACTS.**

113
114 The Village Manager is hereby authorized to enter into bids or contracts entered into by other
115 governmental authorities provided that the governmental authority has followed a competitive
116 bidding procedure leading to the award of the bid or contract in question which is substantially
117 similar to the competitive bidding procedure outlined in this Ordinance.
118

119 **SECTION 7. EXEMPTIONS FROM COMPETITIVE BIDDING.**

120
121 The following shall be exempt from the competitive bidding procedures outlined in this
122 ordinance:
123

124 (A) Transactions described in Section 2(A) of this Ordinance.

125
126 (B) Contracts for professional services.

127
128 (C) Other contracts as provided by State Law.
129

130 **SECTION 8. REPEAL OF CONFLICTING PROVISIONS.**

131
132 All provisions of the Code of Lee County as made applicable to the Village by ~~Article _____,~~
133 ~~Section _____ of the Village Charter~~ which are in conflict with this Ordinance are hereby
134 repealed.
135

139 **SECTION 9. SEVERABILITY.**
140

141 The provisions of this Ordinance are declared to be severable and if any section, sentence, clause
142 or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such
143 decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of
144 this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance
145 shall stand notwithstanding the invalidity of any part.
146

147 **SECTION 10. INCLUSION IN THE CODE.**
148

149 It is the intention of the Village Council, and it is hereby ordained that the provisions of this
150 Ordinance shall become and made a part of the Village of Estero Code; that the sections of this
151 Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word
152 “Ordinance” shall be changed to “Section” or other appropriate word.
153

154 **SECTION 11. EFFECTIVE DATE.**
155

156 This Ordinance shall be effective upon adoption on second reading.
157

158 PASSED and ADOPTED on first reading this 20th day of May, 2015.
159

160 PASSED and ADOPTED on second reading this 3rd day of June, 2015
161

162
163 Attest:

VILLAGE OF ESTERO, FLORIDA

164
165 By: _____
166 Peter Lombardi
167 Interim Village Manager/
168 Custodian of Village Records
169

165 By: _____
166 Nicholas Batos
167 Mayor
168

170
171 Reviewed for legal sufficiency:
172

173 By: _____
174 Burt Saunders, Esq.
175 Village Attorney
176

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VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 15 - 07

AN ORDINANCE OF THE VILLAGE OF ESTERO, FLORIDA, RELATING TO THE LOCAL COMMUNICATIONS SERVICES TAX; PROVIDING FOR THE LEVY OF THE LOCAL COMMUNICATIONS SERVICES TAX AND SPECIFYING A RATE; ELECTING TO ADJUST THE TAX RATE IN LIEU OF PERMIT FEES; PROVIDING FOR NOTICE TO THE DEPARTMENT OF REVENUE; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, during the 2000 regular Session, the Florida Legislature passed the “Communications Services Tax Simplification Law”, creating Chapter 202, Florida Statutes, and

WHEREAS, Section 202.19, Florida Statutes, authorizes the Village of Estero to adopt a local communications services tax at a rate of up to 5.10 percent. This maximum rate does not include the add-on of up to 0.12 percent for municipalities which choose not to levy permit fees; and

WHEREAS, the Village of Estero is a newly incorporated municipality and therefore was not authorized to adopt a conversion rate in accordance with 202.20(1)(b), Florida Statutes.

NOW, THEREFORE, be it ordained by the Village Council of the Village of Estero, Florida:

SECTION ONE. Adoption of Local Communications Services Tax Rate

There is no local communications services tax conversion rate established under Section 202.20(1)(b), Florida Statutes for the Village of Estero. Therefore, the Village adopts the local communications services tax pursuant to 202.19(2)(a), Florida Statutes. The Village of Estero hereby imposes a local communications services tax at the rate of 3.49 percent.

SECTION TWO. Adjustment of Tax Rate for Permit Fees

a. The Village of Estero hereby elects not to require and collect permit fees from any provider of communications services that uses or occupies municipal roads or rights-of-way for the provision of communications services, as provided in Section 337.401(3)(c) and (j), Florida Statutes.

b. The Village of Estero hereby elects to increase its local communications services tax rate as provided in Section 202.19, Florida Statutes, by an amount equal to 0.12 percent to replace revenue the Village of Estero would otherwise receive from permit fees as authorized by Section 337.401(3)(c) and (j), Florida Statutes.

46 c. In the aggregate, the combined local communications services tax rate for the
47 Village of Estero is 3.61 percent

48
49 **SECTION THREE.** Notice to the Department of Revenue

50
51 The Village of Estero directs the Village Manager to provide notice of the local
52 communications services tax rate to the Florida Department of Revenue by September 1, 2015.
53 The Department of Revenue Form DR-700021 and a copy of this Ordinance shall be submitted
54 with the notification.

55
56 **SECTION FOUR.** Severability

57
58 The provisions of this Ordinance are declared to be severable and if any section,
59 sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or
60 unconstitutional, such decision shall not affect the validity of the remaining sections, sentences,
61 clauses, and phrases of this Ordinance but shall remain in effect, it being the legislative intent
62 that this Ordinance shall stand notwithstanding the invalidity of any part.

63
64 **SECTION FIVE.** Effective Date

65
66 This Ordinance shall take effect immediately upon its passage by the Village of Estero.
67 The imposition and collection of the combined local communications services tax rate shall
68 commence effective January 1, 2016.

69
70 PASSED and ADOPTED on first reading this 3rd day of June, 2015.

71
72 PASSED and ADOPTED on second reading this ____ day of ____, 2015

73
74 Attest:

VILLAGE OF ESTERO, FLORIDA

75
76 By: _____

By: _____

77 Peter Lombardi
78 Interim Village Manager/
79 Custodian of Village Records

Nicholas Batos
Mayor

80
81
82 Reviewed for legal sufficiency:

83
84 By: _____

85 Burt Saunders, Esq.
86 Village Attorney

TALLAHASSEE
1500 Mahan Drive
Suite 200
Tallahassee, Florida 32308
(850) 224-4070 Tel
(850) 224-4073 Fax

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(954) 315-3852 Tel

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2502 Rocky Point Drive
Suite 1060
Tampa, Florida 33607
(813) 281-2222 Tel
(813) 281-0129 Fax

Memo

DATE: MAY 27, 2015
TO: VILLAGE COUNCIL OF THE VILLAGE OF ESTERO
FROM: SARAH M. BLEAKLEY, ESQ.
SUBJECT: COMMUNICATIONS SERVICES TAX ORDINANCE 15-07 FIRST
READING AND PUBLIC HEARING

Executive Summary: Ordinance 15-07 provides for the imposition and administration of the Communications Services Tax (CST) at the rate of 3.61 percent effective January 1, 2016, which will generate an estimated \$518,000 in revenue for the part of the 2015-16 fiscal year from January 1, 2016, the effective date of the levy, through September 30, 2016.

Background: Section 202.19, Florida Statutes, authorizes the Council of the Village of Estero to levy a CST on the purchase of communications services by customers within the corporate limits of the Village. The CST is applied to a broad range of communications services, including telecommunications, cell phones, cable television and other video services, direct-to-home satellite, and related services. See § 202.11(1), Fla. Stat

Under chapter 202, Florida Statutes, the Florida Department of Revenue (DOR) is responsible for collecting the State CST and the local CST from communications companies with customers in Florida. The DOR collects the Village's CST from communications customers with a service address within the Village's corporate limits. The law requires the DOR to develop and update an electronic data base identifying the addresses within each local jurisdiction, and requires the local governments to periodically provide address information to the DOR so that the jurisdictional addresses are current. See § 202.22(2)(b), Fla. Stat.

The law requires a January 1 effective date for the CST levy. It also requires that the ordinance levying a CST and a DOR form be sent to the Florida DOR by September 1 prior to the start of the tax.

The statute authorizes the Village to levy the CST at a rate set locally. The maximum authorized rate is 5.22 percent if the Village decides not to separately levy a permit fee

on communications providers, or 4.98 percent if the Village decides to levy a permit fee of \$100 or less for each permit issued by the Village to a communications provider. See §§ 202.19(2)(a) and 337.401(3)(c), Fla. Stat. Regarding CST rates within Lee County, five of the six municipalities levy the maximum rate of 5.22 percent. The City of Bonita Springs levies a 1.82 percent rate. The Board of County Commissioners levies the CST at a rate of 3.61 percent within the unincorporated area, which includes a rate of 0.12 for its agreement to forgo levying permit fees on communications companies.

The CST revenues may be expended for any public purpose, including general fund uses and the repayment of debt issued for a public purpose. See § 202.19(8), Fla. Stat.

On December 31, the County's CST will no longer be imposed within the Village. The Ordinance does not address the requirement in the Village charter directing Lee County to share its CST revenue with the Village from the date of incorporation through December 31, 2015. See § 12(9), Ch. 2014-249, Laws of Fla.

Regarding ordinance adoption, section 166.041, Florida Statutes, requires a municipality to consider an ordinance on two readings. Prior to the second reading, a notice must be published at least ten days prior to adoption in a newspaper of general circulation in the municipality.

Analysis: Ordinance 15-07 provides for the levy of a CST effective January 1, 2016 at a rate of 3.61 percent, which includes an elective 0.12 percent for forgoing permit fees. The 3.61 percent rate is identical to the rate currently imposed by the Lee County Board of County Commissioners throughout the unincorporated area, including the Village. The Ordinance provides that the Village elects not to separately levy permit fees.

If the Village decides to levy less than the maximum rate at this time, the Village Council retains the authority levy an additional CST rate up to an aggregate 5.22 percent through the adoption of another ordinance and by providing the required notice to the DOR by September 1 prior to the increased rate taking effect on the subsequent January 1. The Village also retains the authority to reduce the CST rate through the same procedure.

Fiscal Impact: It is estimated that the CST will generate \$518,000 in revenues for the part of the 2015-16 fiscal year from January 1, 2016 (the effective date of the levy) through September 30, 2016.

Recommendation: Adopt the ordinance on first reading and provide for a second reading and a noticed public hearing pursuant to section 166.041, Florida Statutes.

Attachment: Ordinance 15-07, relating to the Local Communications Services Tax.

Action Taken:

Motion to: _____, Made by: _____;

Seconded by: _____.

Approved ____; Approved as amended ____; Defeated ____.

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VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 15 - 08

AN ORDINANCE OF THE VILLAGE OF ESTERO, FLORIDA, ADOPTING LEE COUNTY ORDINANCE NO. 15-09 AMENDING THE LEE COUNTY CODE OF ORDINANCES IN EFFECT IN THE VILLAGE OF ESTERO, PURSUANT TO SECTION 12(5)(a) OF THE VILLAGE OF ESTERO CHARTER AMENDING LEE COUNTY LAND DEVELOPMENT CODE CHAPTERS 6 AND 10 AND CERTAIN SECTIONS OF THE FLORIDA BUILDING CODE TO AUTHORIZE THE BOARD OF ADJUSTMENTS AND APPEALS TO HEAR CERTAIN VARIANCE REQUESTS FROM THE FLORIDA BUILDING CODE; LIMIT BUILDING PERMITS BASED ON AFFIDAVIT; AMEND THE DEFINITION OF SUBSTANTIAL IMPROVEMENT; REPEAL AND REPLACE LAND DEVELOPMENT CODE ARTICLE IV FLOOD HAZARD REDUCTION (SECS. 6-401 - 6-476) IN ITS ENTIRETY, TO ADOPT FLOOD HAZARD MAPS, DESIGNATE A FLOODPLAIN ADMINISTRATOR, ADOPT PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS, AND FOR OTHER PURPOSES; PROVIDE FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION AND SCRIVENER'S ERRORS, MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING AND AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida has, in Chapter 166, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the Village of Estero and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, the Village of Estero anticipates immediate acceptance in the National Flood Insurance Program and the Village Council desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, established by Lee County necessary for such participation; and

45 **WHEREAS**, Chapter 553, Florida Statutes, was adopted by the Florida Legislature to
46 provide a mechanism for the uniform adoption, updating, amendment, interpretation and
47 enforcement of a state building code, called the Florida Building Code; and
48

49 **WHEREAS**, pursuant to Section 12 (5)(a) of the Village of Estero Charter, the Village of
50 Estero adopted all Lee County codes and ordinances in place at the time of passage of the
51 municipal referendum; and
52

53 **WHEREAS**, on May 19, 2015, the Lee County Board of County Commissioners adopted
54 Ordinance No. 15-09, amending the Lee County Land Development Code which was necessary
55 to remain consistent with the National Flood Insurance Program requirements and the Florida
56 Building Code; and
57

58 **WHEREAS**, the Village Council has determined that it is in the public interest to adopt
59 the Lee County Ordinance No. 15-09, to protect the public health, safety and general welfare of
60 the residents of the Village of Estero.
61

62 **NOW, THEREFORE**, be it ordained by the Village Council of the Village of Estero,
63 Florida:
64

65 **SECTION ONE. RECITALS**
66

67 The foregoing clauses are incorporated herein by reference and made a part hereof.
68

69 **SECTION TWO. ADOPTION OF LEE COUNTY ORDINANCE NO. 15-09**
70

71 Lee County Ordinance No. 15-09 is hereby adopted and incorporated herein as Exhibit A.
72

73 **SECTION THREE. SEVERABILITY**
74

75 The provisions of this Ordinance are declared to be severable and if any section,
76 sentence, clause or phrase of this Ordinance shall, for any reason, be held to be invalid or
77 unconstitutional, such decision shall not affect the validity of the remaining sections, sentences,
78 clauses, and phrases of this Ordinance but shall remain in effect, it being the legislative intent
79 that this Ordinance shall stand notwithstanding the invalidity of any part.
80

81 **SECTION FOUR. EFFECTIVE DATE**
82

83 This Ordinance shall take effect immediately upon adoption.
84
85
86
87
88
89

91 PASSED and ADOPTED on first reading this 3rd day of June, 2015.

92

93 PASSED and ADOPTED on second reading this ____ day of ____, 2015

94

95 Attest:

VILLAGE OF ESTERO, FLORIDA

96

97 By: _____

By: _____

98 Peter Lombardi
99 Interim Village Manager/
100 Custodian of Village Records

Nicholas Batos
Mayor

101

102

103 Reviewed for legal sufficiency:

104

105 By: _____

106 Burt Saunders, Esq.
107 Village Attorney

108

LEE COUNTY ORDINANCE NO. 15-09

AN ORDINANCE AMENDING LEE COUNTY LAND DEVELOPMENT CODE CHAPTERS 6 AND 10 AND CERTAIN SECTIONS OF THE FLORIDA BUILDING CODE TO AUTHORIZE THE BOARD OF ADJUSTMENTS AND APPEALS TO HEAR CERTAIN VARIANCE REQUESTS FROM THE FLORIDA BUILDING CODE; LIMIT BUILDING PERMITS BASED ON AFFIDAVIT; AMEND THE DEFINITION OF SUBSTANTIAL IMPROVEMENT; REPEAL AND REPLACE LAND DEVELOPMENT CODE ARTICLE IV FLOOD HAZARD REDUCTION (SECS. 6-401 - 6-476) IN ITS ENTIRETY, TO ADOPT FLOOD HAZARD MAPS, DESIGNATE A FLOODPLAIN ADMINISTRATOR, ADOPT PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS, AND FOR OTHER PURPOSES; PROVIDE FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION AND SCRIVENER'S ERRORS, MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING AND AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida has, in Chapter 125, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of Lee County and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, Lee County was accepted for participation in the National Flood Insurance Program on September 19, 1984 and the Board of County Commissioners desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

WHEREAS, Chapter 553, Florida Statutes, was adopted by the Florida Legislature to provide a mechanism for the uniform adoption, updating, amendment, interpretation and enforcement of a state building code, called the *Florida Building Code*; and

WHEREAS, section 553.73(5), Florida Statutes, allows adoption of local administrative amendments to the *Florida Building Code* (FBC) to implement the National Flood Insurance Program; and

WHEREAS, the amendments to Chapter 6 and Chapter 10 of the Lee County Land Development Code (LDC) are necessary to remain consistent with the National Flood Insurance Program requirements and the Florida Building Code and to protect the public health, safety and general welfare; and

WHEREAS, the Land Development Code Advisory Committee reviewed the proposed floodplain management amendments in conjunction with general LDC amendments on December 12, 2012, February 8, 2013, March 8, 2013, April 12, 2013, and recommended approval of the amendments; and

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed floodplain management amendments in conjunction with general LDC amendments on January 9, 2013, March 13, 2013, May 8, 2013 and recommended adoption of the amendments; and

WHEREAS, the Local Planning Agency reviewed the proposed floodplain management amendments in conjunction with general LDC amendments on March 25, 2013, and found them consistent with the Lee Plan; and

WHEREAS, the Lee County Board of County Commissioners has determined that it is in the public interest to adopt the proposed floodplain management amendments that are coordinated with the *Florida Building Code*.

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

SECTION ONE: AMENDMENTS TO LDC CHAPTER 6

Lee County Land Development Code Chapter 6 is amended as follows with strike through identifying deleted text and underline identifying new text where shown and deletion and replacement in its entirety where noted.

Chapter 6. BUILDINGS AND BUILDING REGULATIONS

ARTICLE II. CODES AND STANDARDS

DIVISION 2. BOARD OF ADJUSTMENT AND APPEALS

Sec. 6-81. Variations; modification of orders.

(a) through (b) remain unchanged.

(c) Pursuant to section 553.73(5), F.S., the variance procedures adopted in Article IV Flood Hazard Reduction will apply to requests submitted for variances to the provisions of section 1612.4 of the Florida Building Code, Building or, as applicable, the provisions of section R322 of the Florida Building Code, Residential. This section does not apply to section 3109 of the Florida Building Code, Building.

DIVISION 3. BUILDING CODE

Sec. 6-118. Building permits issued on the basis of an affidavit.

Amend the FBC, Building by adding Section 107.6.1, as follows:

107.6.1 Building permits issued on the basis of an affidavit. Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44.C.F.R. Sections 59 and 60), the authority granted to the Building Official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to section 105.14 and section 107.6, shall not extend to the flood load and flood resistance construction requirements of the Florida Building Code.

Sec. 6-119. Substantial Improvement.

Amend FBC, Building Section 1612.2 and Existing Building Section 202, pertaining to the definition of substantial improvement, as follows:

Substantial improvement. Any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, taking place during a five-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. For each building or structure, the five-year period begins on the date of the first improvement or repair of the building or structure subsequent to the date specified in the Local Floodplain Management Ordinance. If the structure has incurred "substantial damage," any repairs are

considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- (2) Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure.

Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. The term also includes buildings and structures that have experienced repetitive loss.

Sec. 6-120. Critical facilities.

Amend FBC, Building Section 1612.4, pertaining to elevation of buildings, as follows:

1612.4.1 Elevation of Category III and IV buildings (critical facilities).

Critical facilities, as defined in the Flood Hazard Reduction Ordinance, shall be located outside the limits of the special flood hazard area where feasible. Construction of new critical facilities shall be permissible within the special flood hazard area if no feasible alternative site is available. If permitted, critical facilities shall be elevated or protected to or above the base flood elevation plus two (2) feet or the 500-year (0.2 percent chance) flood elevation, whichever is higher. Flood proofing and sealing measures must be implemented to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the base flood elevation shall be provided to all critical facilities to the maximum extent possible. Critical facilities shall be designed to remain operable during such an event.

Secs. 6-418-6-121 - 6-210. Reserved.

Delete ARTICLE IV. FLOOD HAZARD REDUCTION (SECS. 6-401 – 6-476) in its entirety and replace with:

ARTICLE IV. FLOOD HAZARD REDUCTION

DIVISION 1. ADMINISTRATION

Subdivision I. Generally

Sec. 6-401. Scope.

The provisions of this article apply to all development that is wholly within or partially within any flood hazard area, including but not limited to the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the *Florida Building Code*; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other development.

Sec. 6-402. Intent.

The purposes of this article and the flood load and flood resistant construction requirements of the *Florida Building Code* are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:

- (1) Minimize unnecessary disruption of commerce, access and public service during times of flooding;
- (2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
- (3) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential;
- (4) Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
- (5) Minimize damage to public and private facilities and utilities;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;

- (7) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and
- (8) Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.

Sec. 6-403. Coordination with the Florida Building Code.

This article is intended to be administered and enforced in conjunction with the Florida Building Code. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the Florida Building Code.

Sec. 6-404. Warning.

The degree of flood protection required by this article and the Florida Building Code, as amended by Lee County, is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This article does not imply that land outside of mapped special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring this community to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with this article.

Sec. 6-405. Disclaimer of Liability.

This article will not create liability on the part of Lee County or by any officer or employee thereof for any flood damage that results from reliance on this article or any administrative decision lawfully made there under.

Secs. 6-406 – 6-410. Reserved.

Subdivision II. Applicability

Sec. 6-411. General.

- (1) Where there is a conflict between a general requirement and a specific requirement, the specific requirement will be applicable.
- (2) This article applies to all flood hazard areas within Lee County, as established in Section 6-411(3).
- (3) The Flood Insurance Study for Lee County, Florida and Incorporated Areas, effective August 28, 2008, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this article and will serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the Lee County Department of Community Development.

Sec. 6-412. Submission of additional data to establish flood hazard areas.

To establish flood hazard areas and base flood elevations, pursuant to Division 1, Subdivision V of this article the Floodplain Administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the community indicates that ground elevations:

- (1) Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area will be considered as flood hazard area and subject to the requirements of this article and, as applicable, the requirements of the *Florida Building Code*.
- (2) Are above the closest applicable base flood elevation, the area will be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.

Sec. 6-413. Other laws.

The provisions of this article will not be deemed to nullify any provisions of local, state or federal law.

Sec. 6-414. Abrogation and greater restrictions.

This article supersedes any article in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing articles including but not limited to land development regulations, zoning resolutions, stormwater management regulations, or the Florida Building Code. In the event of a conflict between this article and any other article, the more restrictive will govern. This article will not impair any deed restriction, covenant or easement, but any land that is subject to such interests will also be governed by this article.

Sec. 6-415. Interpretation.

In the interpretation and application of this article, all provisions will be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

Secs. 6-416 – 6-420. Reserved.

Subdivision III. Duties and Powers of the Floodplain Administrator

Sec. 6-421. Designation.

The Building Official is designated as the Floodplain Administrator. The Floodplain Administrator may delegate performance of certain duties to other employees.

Sec. 6-422. General.

The Floodplain Administrator is authorized and directed to administer and enforce the provisions of this article. The Floodplain Administrator will have the authority to render interpretations of this article consistent with the intent and purpose of this article and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures will not have the effect of waiving requirements specifically provided in this article without the granting of a variance pursuant to Division 1, Subdivision VII of this article.

Sec. 6-423. Applications and permits.

The Floodplain Administrator, in coordination with other pertinent offices of the community, will:

- (1) Review applications and plans to determine whether proposed new development will be located in flood hazard areas;
- (2) Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this article;
- (3) Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination will have the opportunity to appeal the interpretation;
- (4) Provide available flood elevation and flood hazard information;
- (5) Determine whether additional flood hazard data will be obtained from other sources or will be developed by an applicant;
- (6) Review applications to determine whether proposed development will be reasonably safe from flooding;
- (7) Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*, when compliance with this article is demonstrated, or disapprove the same in the event of noncompliance; and
- (8) Coordinate to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this article.

Sec. 6-424. Substantial improvement and substantial damage determinations.

For applications' for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator will:

- (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure will be

the market value before the damage occurred and before any repairs are made;

- (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of "substantial improvement" and previous permits issued for repair of flood-related damage; and
- (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the *Florida Building Code* and this article is required.

Sec. 6-425. Modifications of the strict application of the requirements of the *Florida Building Code*.

The Floodplain Administrator will review requests submitted to the Building Official that seek approval to modify the strict application of the flood load and flood resistant construction requirements of the *Florida Building Code* to determine whether such requests require the granting of a variance pursuant to Division 1, Subdivision VII of this article.

Sec. 6-426. Notices and orders.

The Floodplain Administrator will coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this article.

Sec. 6-427. Inspections.

The Floodplain Administrator will make the required inspections as specified in Division 1, Subdivision VI of this article for development that is not subject to the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*. The Floodplain Administrator will inspect flood hazard areas to determine if development is undertaken without issuance of a permit.

Sec. 6-428. Other duties of the Floodplain Administrator.

The Floodplain Administrator will have other duties, including but not limited to:

- (1) Establish procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to Section 6-424 of this article;
- (2) Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);
- (3) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions will be made within 6 months of such data becoming available;
- (4) Review required design certifications and documentation of elevations specified by this article and the *Florida Building Code* and this article to determine that such certifications and documentations are complete;
- (5) Notify the Federal Emergency Management Agency when the corporate boundaries of Lee County are modified; and
- (6) Advise applicants for new buildings and structures, including substantial improvements, which are located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591) that federal flood insurance is not available on such construction; areas subject to this limitation are identified on Flood Insurance Rate Maps as "Coastal Barrier Resource System Areas" and "Otherwise Protected Areas."

Sec. 6-429. Floodplain management records.

Regardless of any limitation on the period required for retention of public records, the Floodplain Administrator will maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this article and the flood resistant construction requirements of the *Florida Building Code*, including Flood Insurance Rate Maps; Letters of Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial

improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the *Florida Building Code* and this article; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this article and the flood resistant construction requirements of the *Florida Building Code*. These records are available for public inspection at the Lee County Department of Community Development.

Secs. 6-430 – 6-432. Reserved.

Subdivision IV. Permits

Sec. 6-433. Permits required.

Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this article, including buildings, structures and facilities exempt from the *Florida Building Code*, which is wholly within or partially within any flood hazard area must first make application to the Floodplain Administrator and must obtain the required permit(s) and approval(s). No such permit or approval will be issued until compliance with the requirements of this article and all other applicable codes and regulations has been satisfied.

Sec. 6-434. Floodplain development permits or approvals.

Floodplain development permits or approvals will be issued pursuant to this article for any development activities not subject to the requirements of the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

Sec. 6-435. Buildings, structures and facilities exempt from the Florida Building Code.

Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain development permits or approvals will be required for buildings, structures and facilities that are exempt from the Florida Building Code and any further exemptions provided by law, which are subject to the requirements of this article.

Sec. 6-436. Application for a permit or approval.

To obtain a floodplain development permit or approval the applicant must first file an application in writing on a form furnished by the community. The information provided must:

- (1) Identify and describe the development to be covered by the permit or approval.
- (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
- (3) Indicate the use and occupancy for which the proposed development is intended.
- (4) Be accompanied by a site plan or construction documents as specified in Division 1, Subdivision V of this article.
- (5) State the valuation of the proposed work.
- (6) Be signed by the applicant or the applicant's authorized agent.
- (7) Give such other data and information as required by the Floodplain Administrator.

Sec. 6-437. Validity of permit or approval.

The issuance of a floodplain development permit or approval pursuant to this article must not be construed to be a permit for, or approval of, any violation of this article, the Florida Building Codes, or any other article of this community. The issuance of permits based on submitted applications, construction documents, and information will not prevent the Floodplain Administrator from requiring the correction of errors and omissions.

Sec. 6-438. Suspension or revocation.

The Floodplain Administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this article or any other article, regulation or requirement of this community.

Sec. 6-439. Other permits required.

Floodplain development permits and building permits must include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including but not limited to the following:

- (1) The South Florida Water Management District; section 373.036, F.S.
- (2) Florida Department of Health for onsite sewage treatment and disposal systems; section 381.0065, F.S. and Chapter 64E-6, F.A.C.
- (3) Florida Department of Environmental Protection for construction, reconstruction, changes, or physical activities for shore protection or other activities seaward of the coastal construction control line; section 161.141, F.S.
- (4) Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; section 161.055, F.S.
- (5) Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.
- (6) Federal permits and approvals.

Secs. 6-440 – 6-443. Reserved.

Subdivision V. Site Plans and Construction Documents

Sec. 6-444. Information for development in flood hazard areas.

The site plan or construction documents for any development subject to the requirements of this article must be drawn to scale and must include, as applicable to the proposed development:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.

- (2) Where base flood elevations, or floodway data are not included on the FIRM or in the Flood Insurance Study, they must be established in accordance with Section 6-445(2) or (3).
- (3) Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than 5 acres and the base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations must be established in accordance with Section 6-445(1).
- (4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas, new buildings must be located landward of the reach of mean high tide.
- (5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
- (6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
- (7) Delineation of the Coastal Construction Control Line or notation that the site is seaward of the coastal construction control line, if applicable.
- (8) Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is approved by the Florida Department of Environmental Protection.
- (9) Existing and proposed alignment of any proposed alteration of a watercourse.

The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by this article but that are not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this article.

Sec. 6-445. Information in flood hazard areas without base flood elevations (approximate Zone A).

Where flood hazard areas are delineated on the FIRM and base flood elevation data have not been provided, the Floodplain Administrator will:

- (1) Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices.

- (2) Obtain, review, and provide to applicants base flood elevation and floodway data available from a federal or state agency or other source or require the applicant to obtain and use base flood elevation and floodway data available from a federal or state agency or other source.
- (3) Where base flood elevation and floodway data are not available from another source, where the available data are deemed by the Floodplain Administrator to not reasonably reflect flooding conditions, or where the available data are known to be scientifically or technically incorrect or otherwise inadequate:
 - (a) Require the applicant to include base flood elevation data prepared in accordance with currently accepted engineering practices; or
 - (b) Specify that the base flood elevation is two (2) feet above the highest adjacent grade at the location of the development, provided there is no evidence indicating flood depths have been or may be greater than two (2) feet.
- (4) Where the base flood elevation data are to be used to support a Letter of Map Change from FEMA, advise the applicant that the analyses must be prepared by a Florida licensed engineer in a format required by FEMA, and that it must be the responsibility of the applicant to satisfy the submittal requirements and pay the processing fees.

Sec. 6-446. Additional analyses and certifications.

As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant must have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

- (1) For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant must submit such analysis to FEMA as specified in Section 6-447 of this article and must submit the Conditional Letter of Map Revision, if issued by FEMA, with the site plan and construction documents.
- (2) For development activities proposed to be located in a riverine flood hazard area for which base flood elevations are included in the Flood Insurance Study or on the FIRM and floodways have not been designated,

hydrologic and hydraulic analyses that demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated flood hazard area encroachments, will not increase the base flood elevation more than one (1) foot at any point within the community. This requirement does not apply in isolated flood hazard areas not connected to a riverine flood hazard area or in flood hazard areas identified as Zone AO or Zone AH.

- (3) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse must be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant must submit the analysis to FEMA as specified in Section 6-447 of this article.
- (4) For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (Zone V), an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage.

Sec. 6-447. Submission of additional data.

When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses must be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees will be the responsibility of the applicant.

Secs. 6-448 – 6-450. Reserved.

Subdivision VI. Inspections

Sec. 6-451. General.

Development for which a floodplain development permit or approval is required will be subject to inspection.

Sec. 6-452. Development other than buildings and structures.

The Floodplain Administrator will inspect all development to determine compliance with the requirements of this article and the conditions of issued floodplain development permits or approvals.

Sec. 6-453. Buildings, structures and facilities exempt from the *Florida Building Code*.

The Floodplain Administrator will inspect buildings, structures and facilities exempt from the *Florida Building Code* to determine compliance with the requirements of this article and the conditions of issued floodplain development permits or approvals.

Sec. 6-454. Buildings, structures and facilities exempt from the *Florida Building Code*, lowest floor inspection.

Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure or facility exempt from the *Florida Building Code*, or the owner's authorized agent, must submit to the Floodplain Administrator:

- (1) If a design flood elevation was used to determine the required elevation of the lowest floor, the certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor; or
- (2) If the elevation used to determine the required elevation of the lowest floor was determined in accordance with Section 6-445 of this article, the documentation of height of the lowest floor above highest adjacent grade, prepared by the owner or the owner's authorized agent.

Sec. 6-455. Buildings, structures and facilities exempt from the *Florida Building Code*, final inspection.

As part of the final inspection, the owner or owner's authorized agent must submit to the Floodplain Administrator a final certification of elevation of the lowest floor or final documentation of the height of the lowest floor above the highest adjacent grade; such certifications and documentations must be prepared as specified in Section 6-454 of this article.

Sec. 6-456. Manufactured homes.

The Building Official must inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this article and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor must be submitted to the Building Official.

Secs. 6-457 – 6-460. Reserved.

Subdivision VII. Variances and Appeals

Sec. 6-461. General.

The Board of Adjustment and Appeals must hear and decide on requests for appeals and requests for variances from the strict application of this article. Pursuant to section 553.73(5), F.S., the Board of Adjustment and Appeals hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the *Florida Building Code*. This section does not apply to Section 3109 of the *Florida Building Code, Building*.

Sec. 6-462. Appeals.

The Board of Adjustment and Appeals will hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the administration and enforcement of this article. Any person aggrieved by the decision of Board of Adjustment and Appeals may appeal such decision to the Circuit Court, as provided by Florida Statutes.

Sec. 6-463. Limitations on authority to grant variances.

The Board of Adjustment and Appeals will base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in Section 6-467 of this article, the conditions of issuance set forth in Section 6-468 of this article, and the comments and recommendations of the Building Official. The Board of Adjustment and Appeals has the right to attach such conditions as it deems necessary to further the purposes and objectives of this article.

Sec. 6-464. Restrictions in floodways.

A variance will not be issued for any proposed development in a floodway if any increase in base flood elevations would result, as evidenced by the applicable analyses and certifications required in Section 6-446 of this article.

Sec. 6-465. Historic buildings.

A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the *Florida Building Code, Existing Building*, Chapter 11 Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance will not be granted and the building and any repair, improvement, and rehabilitation will be subject to the requirements of the *Florida Building Code*.

Sec. 6-466. Functionally dependent uses.

A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this article, provided the variance meets the requirements of Section 6-464 is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

Sec. 6-467. Considerations for issuance of variances.

In reviewing requests for variances, the Board of Adjustment and Appeals will consider all technical evaluations, all relevant factors, all other applicable provisions of the *Florida Building Code*, this article, and the following:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
- (2) The danger to life and property due to flooding or erosion damage;

- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
- (4) The importance of the services provided by the proposed development to the community;
- (5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
- (6) The compatibility of the proposed development with existing and anticipated development;
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
- (8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

Sec. 6-468. Conditions for issuance of variances.

Variances may be issued only upon:

- (1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this article or the required elevation standards;
- (2) Determination by the Board of Adjustment and Appeals that:
 - (a) Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
 - (b) The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and articles; and

- (c) The variance is the minimum necessary, considering the flood hazard, to afford relief;
- (3) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the Floodplain Administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25 for \$100 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

Secs. 6-469 – 6-470. Reserved.

Subdivision VIII. Violations

Sec. 6-471. Violations.

Any development that is not within the scope of the Florida Building Code but that is regulated by this article that is performed without an issued permit, that is in conflict with an issued permit, or that does not fully comply with this article, will be deemed a violation of this article. A building or structure without the documentation of elevation of the lowest floor, other required design certifications, or other evidence of compliance required by this article or the Florida Building Code is presumed to be a violation until such time as that documentation is provided.

Sec. 6-472. Authority.

For development that is not within the scope of the Florida Building Code but that is regulated by this article and that is determined to be a violation, the Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner's agent, or to the person or persons performing the work.

Sec. 6-473. Unlawful continuance.

Any person who continues any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, will be subject to penalties as prescribed by law.

Sec. 6-474 – 6-476. Reserved.

DIVISION 2. DEFINITIONS

Subdivision 1. General

Sec. 6-477. Terms defined in the Florida Building Code.

Where terms are not defined in this article and are defined in the Florida Building Code, such terms will have the meanings ascribed to them in that code.

Sec. 6-478. Terms not defined.

Where terms are not defined in this article or the Florida Building Code, such terms will have ordinarily accepted meanings such as the context implies.

Sec. 6-479. Definitions.

Unless otherwise expressly stated, the following words and terms, for the purposes of this article, have the meanings shown in this section.

Alteration of a watercourse. A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal. A request for a review of the Floodplain Administrator's interpretation of any provision of this article or a request for a variance.

ASCE 24. A standard titled *Flood Resistant Design and Construction* that is referenced by the Florida Building Code. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.

Base flood. A flood having a 1-percent chance of being equaled or exceeded in any given year. [Also defined in FBC, B, Section 1612.2.] The base flood is commonly referred to as the "100-year flood" or the "1-percent-annual chance flood."

Base flood elevation. The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM).

Basement. The portion of a building having its floor subgrade (below ground level) on all sides.

Coastal construction control line. The line established by the State of Florida pursuant to section 161.053, F.S., and recorded in the official records of the community, which defines that portion of the beach-dune system subject to severe fluctuations based on a 100-year storm surge, storm waves or other predictable weather conditions.

Coastal high hazard area. A special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal high hazard areas are also referred to as "high hazard areas subject to high velocity wave action" or "V Zones" and are designated on Flood Insurance Rate Maps (FIRM) as Zone V1-V30, VE, or V. [Note: The FBC,B defines and uses the term "flood hazard areas subject to high velocity wave action" and the FBC, R uses the term "coastal high hazard areas."]

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Critical facility means one or more of the following:

- (1) Structures or facilities that commercially produce, use or store highly volatile, flammable, explosive, toxic and/or water-reactive materials that are defined as extremely hazardous substances by the Environmental Protection Agency under section 302 of the Emergency Planning and Community Right-to-Know Act, Title III of the Superfund amendments and Reauthorization Act of 1986, 42, USC.;
- (2) Hospitals, nursing homes, assisted living facilities and health care facilities Groups I, II and IV;
- (3) Structures used as law enforcement stations, fire stations, governmental vehicle and equipment storage facilities, and emergency operations centers that are needed for emergency response activities before, during and after a flood incident; and

- (4) Public or private utility facilities that are vital to maintaining and restoring normal services to flooded areas before, during and after a flood incident.

Design flood. The flood associated with the greater of the following two areas:

- (1) Area with a floodplain subject to a 1-percent or greater chance of flooding in any year; or
(2) Area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Design flood elevation. The elevation of the "design flood," including wave height, relative to the datum specified on the community's legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation will be the elevation of the highest existing grade of the building's perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where the depth number is not specified on the map, the depth number will be taken as being equal to 2 feet.

Development. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or materials, mining, dredging, filling, grading, paving, excavations, drilling operations or any other land disturbing activities.

Encroachment. The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

Existing building and existing structure. Any buildings and structures for which the "start of construction" commenced before September 19, 1984.

Existing manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before September 19, 1984.

Expansion to an existing manufactured home park or subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal Emergency Management Agency (FEMA). The federal agency that, in addition to carrying out other functions, administers the National Flood Insurance Program.

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood damage-resistant materials. Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair.

Flood hazard area. The greater of the following two areas:

- (1) The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.
- (2) The area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Flood Insurance Rate Map (FIRM). The official map of the community on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study (FIS). The official report provided by the Federal Emergency Management Agency that contains the Flood Insurance Rate Map, the Flood Boundary and Floodway Map (if applicable), the water surface elevations of the base flood, and supporting technical data.

Floodplain Administrator. The office or position designated and charged with the administration and enforcement of this article (may be referred to as the Floodplain Manager).

Floodplain development permit or approval. An official document or certificate issued by the community, or other evidence of approval or concurrence, which authorizes performance of specific development activities that are located in flood hazard areas and that are determined to be compliant with this article.

Floodway. The channel of a river or other riverine watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Floodway encroachment analysis. An engineering analysis of the impact that a proposed encroachment into a floodway is expected to have on the floodway boundaries and base flood elevations; the evaluation must be prepared by a qualified Florida licensed engineer using standard engineering methods and models.

Florida Building Code. The family of codes adopted by the Florida Building Commission, including: *Florida Building Code, Building*; *Florida Building Code, Residential*; *Florida Building Code, Existing Building*; *Florida Building Code, Mechanical*; *Florida Building Code, Plumbing*; *Florida Building Code, Fuel Gas*.

Functionally dependent use. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

Historic structure. Any structure that is determined eligible for the exception to the flood hazard area requirements of the *Florida Building Code, Existing Building*, Chapter 11 Historic Buildings.

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

Letter of Map Change (LOMC). An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

Light-duty truck. As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

- (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (2) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (3) Available with special features enabling off-street or off-highway operation and use.

Lowest floor. The lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the Florida Building Code or ASCE 24.

Manufactured home. A structure, transportable in one or more sections, which is eight (8) feet or more in width and greater than four hundred (400) square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle" or "park trailer."

Manufactured home park or subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value. The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this article, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, Actual Cash Value (replacement cost depreciated for age and

quality of construction), or tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser.

New construction. For the purposes of administration of this article and the flood resistant construction requirements of the *Florida Building Code*, structures for which the "start of construction" commenced on or after September 19, 1984 and includes any subsequent improvements to such structures.

New manufactured home park or subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after September 19, 1984.

Park trailer. A transportable unit which has a body width not exceeding fourteen (14) feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances.

Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Recreational vehicle. A vehicle, including a park trailer, which is:
[See section 320.01, F.S.)

- (1) Built on a single chassis;
- (2) Four hundred (400) square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck;
and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Repetitive loss means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Sand dunes. Naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Special flood hazard area. An area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V.

Start of construction. The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns.

Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. The term also includes buildings and structures that have experienced repetitive loss.

Substantial improvement. Any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, taking place during a five-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. For each building or structure, the five-year period begins on the date of the first improvement or repair of the building or structure subsequent to November 18, 1992. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.

- (2) Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure.

Variance. A grant of relief from the requirements of this article, or the flood resistant construction requirements of the *Florida Building Code*, which permits construction in a manner that would not otherwise be permitted by this article or the *Florida Building Code*.

Watercourse. A river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

DIVISION 3. FLOOD RESISTANT DEVELOPMENT

Subdivision I. Buildings and Structures

Sec. 6-480. Design and construction of buildings, structures and facilities exempt from the Florida Building Code.

Pursuant to Section 6-435 of this article, buildings, structures, and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, must be designed and constructed in accordance with the flood load and flood resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings must comply with the requirements of Division 3, Subdivision VII of this article.

Sec. 6-481. Buildings and structures seaward of the coastal construction control line.

If extending, in whole or in part, seaward of the coastal construction control line and also located, in whole or in part, in a flood hazard area:

- (1) Buildings and structures must be designed and constructed to comply with the more restrictive applicable requirements of the Florida Building Code, Building Section 3109 and Section 1612 or Florida Building Code, Residential Section R322.
- (2) Minor structures and non-habitable major structures as defined in section 161.54, F.S., must be designed and constructed to comply with the intent and applicable provisions of this article and ASCE 24.

Subdivision II. Subdivisions

Sec. 6-482. Minimum requirements.

Subdivision proposals, including proposals for manufactured home parks and subdivisions, must be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths must be provided to guide floodwaters around and away from proposed structures.

Sec. 6-483. Standards for subdivision and other development proposals.

Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following will be required:

- (1) Where the subdivision has more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM, the base flood elevations determined in accordance with Section 6-445(1) of this article; and
- (2) Compliance with the site improvement and utilities requirements of Division 3, Subdivision III of this article.

Subdivision III. Site Improvements, Utilities and Limitations

Sec. 6-484. Minimum requirements.

All proposed new development will be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;

- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths must be provided to guide floodwaters around and away from proposed structures.

Sec. 6-485. Sanitary sewage facilities.

All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems must be designed in accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.

Sec. 6-486. Water supply facilities.

All new and replacement water supply facilities must be designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.

Sec. 6-487. Limitations on sites in regulatory floodways.

No development, including but not limited to site improvements, and land disturbing activity involving fill or regrading, may be authorized in the regulatory floodway unless the floodway encroachment analysis required in Section 6-446(1) of this article demonstrates that the proposed development or land disturbing activity will not result in any increase in the base flood elevation.

Sec. 6-488. Limitations on placement of fill.

Subject to the limitations of this article, fill must be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill must comply with the requirements of the *Florida Building Code*.

Sec. 6-489. Limitations on sites in coastal high hazard areas (Zone V).

In coastal high hazard areas, alteration of sand dunes and mangrove stands will be permitted only if such alteration is approved by the Florida Department of Environmental Protection and only if the engineering analysis required by Section 6-446(4) of this article demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures must comply with Section 6-512 of this article.

Subdivision IV. Manufactured Homes

Sec. 6-490. General.

All manufactured homes installed in flood hazard areas must be installed by an installer that is licensed pursuant to section 320.8249, F.S., and must comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this article. If located seaward of the coastal construction control line, all manufactured homes must comply with the more restrictive of the applicable requirements.

The placement of manufactured homes or recreational vehicles is prohibited in coastal high hazard areas (Zone V), except in an existing manufactured home or recreational vehicle park or subdivision. A replacement manufactured home or recreational vehicle may be placed on a lot in an existing manufactured home or recreational vehicle park or subdivision, provided the anchoring standards of Section 6-492 and the elevation standards of Sections 6-494 and 6-495, as applicable, are met. New or expanded manufactured home or recreational vehicle parks or subdivisions are prohibited until such time, if ever, that Lee Plan Policy 80.1.2 is amended or repealed so as to allow such new or expanded manufactured home or recreational vehicle development.

Sec. 6-491. Foundations.

All new manufactured homes and replacement manufactured homes installed in flood hazard areas must be installed on permanent, reinforced foundations that:

- (1) In flood hazard areas (Zone A) other than coastal high hazard areas, are designed in accordance with the foundation requirements of the *Florida Building Code, Residential* Section R322.2 and this article.
- (2) In coastal high hazard areas (Zone V), are designed in accordance with the foundation requirements of the *Florida Building Code, Residential* Section R322.3 and this article.

Sec. 6-492. Anchoring.

All new manufactured homes and replacement manufactured homes must be installed using methods and practices which minimize flood damage and must be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.

Sec. 6-493. Elevation.

Manufactured homes that are placed, replaced, or substantially improved must comply with Section 6-494 or 6-495, as applicable.

Sec. 6-494. General elevation requirement.

Unless subject to the requirements of Section 6-495, all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, must be elevated such that the top or the lowest floor is at or above the elevation required, as applicable to the flood hazard area, in the *Florida Building Code, Residential* Section R322.2 (Zone A) or Section R322.3 (Zone V).

Sec. 6-495. Elevation requirement for certain existing manufactured home parks and subdivisions.

Manufactured homes that are not subject to Section 6-494, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, must be elevated such that either the:

- (1) Top or the lowest floor of the manufactured home is at or above the elevation required, as applicable to the flood hazard area, in the *Florida Building Code, Residential* Section R322.2 (Zone A) or Section R322.3 (Zone V); or

- (2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.

Sec. 6-496. Enclosures.

Enclosed areas below elevated manufactured homes must comply with the requirements of the Florida Building Code, Residential Section R322 for such enclosed areas, as applicable to the flood hazard area.

Sec. 6-497. Utility equipment.

Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, and air conditioning equipment and other service facilities, must comply with the requirements of the Florida Building Code, Residential Section R322, as applicable to the flood hazard area.

Subdivision V. Recreational Vehicles and Park Trailers

Sec. 6-498. Temporary placement.

Recreational vehicles and park trailers placed temporarily in flood hazard areas must:

- (1) Be on the site for fewer than 180 consecutive days; or
- (2) Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.

Sec. 6-499. Permanent placement.

Recreational vehicles and park trailers that do not meet the limitations in Section 6-498 of this article for temporary placement must meet the requirements of Division 3, Subdivision IV of this article for manufactured homes.

Subdivision VI. Tanks

Sec. 6-500. Underground tanks.

Underground tanks in flood hazard areas must be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.

Sec. 6-501. Above-ground tanks, not elevated.

Above-ground tanks that do not meet the elevation requirements of Section 6-502 of this article must:

- (1) Be permitted in flood hazard areas (Zone A) other than coastal high hazard areas, provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.
- (2) Not be permitted in coastal high hazard areas (Zone V).

Sec. 6-502. Above-ground tanks, elevated.

Above-ground tanks in flood hazard areas must be attached to and elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures must meet the foundation requirements of the applicable flood hazard area.

Sec. 6-503. Tank inlets and vents.

Tank inlets, fill openings, outlets and vents must be:

- (1) At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
- (2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

Subdivision VII. Other Development

Sec. 6-504. General requirements for other development.

All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this article or the Florida Building Code, must:

- (1) Be located and constructed to minimize flood damage;
- (2) Meet the limitations of Section 6-487 of this article if located in a regulated floodway;
- (3) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
- (4) Be constructed of flood damage-resistant materials; and
- (5) Have mechanical, plumbing, and electrical systems above the design flood elevation, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

Sec. 6-505. Accessory structures.

Accessory structures are not required to meet the elevation requirements if they meet all of the following requirements, in addition to those set forth in Section 6-487:

- a. The structure is securely anchored to resist flotation, collapse, and lateral movement;
- b. The building is a minimal investment and the total size of the building does not exceed 1,000 square feet in floor area;
- c. The structure is used exclusively for uninhabitable parking or storage purposes;
- d. All electrical or heating equipment is elevated above the base flood elevation or otherwise protected from intrusion of floodwaters; and
- e. For accessory structures located in coastal high-hazard areas (V zones), breakaway walls are used below the lowest floor.

Sec. 6-506. Fences in regulated floodways.

Fences in regulated floodways that have the potential to block the passage of floodwaters must meet the limitations of Section 6-487 of this article.

Sec. 6-507. Retaining walls, sidewalks and driveways in regulated floodways.

Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways must meet the limitations of Section 6-487 of this article.

Sec. 6-508. Roads and watercourse crossings in regulated floodways.

Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways must meet the limitations of Section 6-487 of this article. Alteration of a watercourse that is part of a road or watercourse crossing must meet the requirements of Section 6-446(3) of this article.

Sec. 6-509. Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses in coastal high hazard areas (Zone V).

In coastal high hazard areas, concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses are permitted beneath or adjacent to buildings and structures provided the concrete slabs are designed and constructed to be:

- (1) Structurally independent of the foundation system of the building or structure;
- (2) Frangible and not reinforced, so as to minimize debris during flooding that is capable of causing significant damage to any structure; and
- (3) Have a maximum slab thickness of not more than four (4) inches.

Sec. 6-510. Decks and patios in coastal high hazard areas (Zone V).

In addition to the requirements of the *Florida Building Code*, in coastal high hazard areas decks and patios must be located, designed, and constructed in compliance with the following:

- (1) A deck that is structurally attached to a building or structure must have the bottom of the lowest horizontal structural member at or above the design flood elevation and any supporting members that extend below the design flood elevation must comply with the foundation requirements that apply to the building or structure, which must be designed to accommodate any increased loads resulting from the attached deck.
- (2) A deck or patio that is located below the design flood elevation must be structurally independent from buildings or structures and their foundation systems, and must be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.
- (3) A deck or patio that has a vertical thickness of more than twelve (12) inches or that is constructed with more than the minimum amount of fill necessary for site drainage must not be approved unless an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to the building or structure or to adjacent buildings and structures.
- (4) A deck or patio that has a vertical thickness of twelve (12) inches or less and that is at natural grade or on nonstructural fill material that is similar to and compatible with local soils and is the minimum amount necessary for site drainage may be approved without requiring analysis of the impact on diversion of floodwaters or wave runup and wave reflection.

Sec. 6-511. Other development in coastal high hazard areas (Zone V).

In coastal high hazard areas, development activities other than buildings and structures may be permitted only if also authorized by the appropriate federal, state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

- (1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;

- (2) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters; and
- (3) On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C., as filled systems or mound systems.

Sec. 6-512. Nonstructural fill in coastal high hazard areas (Zone V).

In coastal high hazard areas:

- (1) Minor grading and the placement of minor quantities of nonstructural fill may be permitted for landscaping and for drainage purposes under and around buildings.
- (2) Nonstructural fill with finished slopes that are steeper than one unit vertical to five units horizontal may be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures.
- (3) Where authorized by the Florida Department of Environmental Protection or applicable local approval, sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runup and wave reflection if the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.

Sec. 6-513. Critical Facilities.

Critical facilities, as defined in the Flood Hazard Reduction Ordinance, shall be located outside the limits of the special flood hazard area where feasible. Construction of new critical facilities shall be permissible within the special flood hazard area if no feasible alternative site is available. If permitted, critical facilities shall be elevated or protected to or above the base flood elevation plus two (2) feet or the 500-year (0.2 percent chance) flood elevation, whichever is higher. Flood proofing and sealing measures must be implemented to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the base flood elevation shall be provided to all critical facilities to the maximum extent possible. Critical facilities shall be designed to remain operable during such an event.

Sec. 6-514. Standards for areas in the B, C, and X Zones.

All new buildings not located in the areas of special flood hazard established in Section 6-411(3) must have the lowest floor elevation (including basement) constructed at least 12 inches above the crown of the nearest local street unless the building official determines there are extenuating circumstances that would preclude meeting that elevation.

Secs. 6-515 – 6-520. Reserved.

ARTICLE V. RESERVED

Secs. 6-504—6-521 - 6-550. Reserved.

SECTION THREE: AMENDMENTS TO LDC CHAPTER 10

Lee County Land Development Code Chapter 10 is amended as follow with strike through identifying deleted text and underline indentifying new text.

Chapter 10. DEVELOPMENT STANDARDS

ARTICLE I. IN GENERAL

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

Base flood elevation means the elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM).

ARTICLE II. ADMINISTRATION

DIVISION 2. DEVELOPMENT ORDERS

Subdivision II. Procedures

Sec. 10-101. Applicability of requirements.

- (a) *Development orders.* All developments, as defined in this chapter, including subdivisions, are required to obtain a development order prior to commencing any land development activities or receiving any development permit, including a building permit, with the exception of the following, which are not subject to review pursuant to this chapter except as noted herein:

- (1) *remains unchanged.*

- (2) Agriculture, as defined herein except as required for excavations permitted under section 10-329 and improvements to the land subject to provisions of Chapter 6, Article IV;

Remainder of Section is unchanged.

ARTICLE III. DESIGN STANDARDS AND REQUIREMENTS

DIVISION 1. GENERALLY

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

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

(1) through (5) remain unchanged.

- (6) Land affected by Chapter 6, Article IV, pertaining to flood hazard reduction, must show the base flood elevation expressed in NAVD 1988 datum on the site plan and the plat.

SECTION FOUR: 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 FIVE: 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 become 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 unconstitutional provision was not included.

SECTION SIX: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intends that this ordinance will be made part of the Lee County Code Land Development Code. Sections of this ordinance can be

renumbered or relettered and the word "ordinance" can be changed to "section", "article," or 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 Administrator, County Manager or his designee, without the need for a public hearing.

SECTION SEVEN: MODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION EIGHT: EFFECTIVE DATE

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

Commissioner Cecil L Pendergrass made a motion to adopt the foregoing ordinance, seconded by Commissioner Frank Mann. The vote was as follows:

| | |
|---------------------|-----|
| John Manning | Aye |
| Cecil L Pendergrass | Aye |
| Larry Kiker | Aye |
| Brian Hamman | Aye |
| Frank Mann | Aye |

DULY PASSED AND ADOPTED this 19th day of May, 2015.

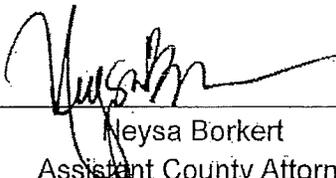
ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Brian Hamman, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By:  _____
Neysa Borkert
Assistant County Attorney
Office of the County Attorney

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VILLAGE OF ESTERO, FLORIDA

RESOLUTION NO. 15 - _____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, STATING THE OPPOSITION OF THE VILLAGE OF ESTERO TO FURTHER DEVELOPMENT IN THE DR/GR COMMUNITY PLANNING DISTRICT OF LEE COUNTY WITHOUT FIRST CONDUCTING A COMPREHENSIVE TRANSPORTATION, ENVIRONMENTAL, AND WILD LIFE STUDY CONCERNING FUTHER DEVELOPMENT IN THE DRGR EAST OF THE BOUNDARIES OF THE VILLAGE OF ESTERO; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Estero was incorporated by referendum held on November 4, 2014 and the Village Council was elected on March 3, 2015, pursuant to the Charter of the Village of Estero (“Charter”) created by Ch. 2014-249, Laws of Florida; and

WHEREAS, the Charter provides that the Village Council shall have the broadest exercise of home rule powers permitted under the state Constitution and the laws of the state; and

WHEREAS, Section 12(6) of the Charter provides that: “Until such time as the Village adopts a comprehensive plan, the Lee County Comprehensive Plan, as it exists on the day that the Village commences corporate existence, shall remain in effect as the Village’s transitional comprehensive plan.”; and

WHEREAS, Policy 19.5.4 of the Estero Community Plan, which is a part of Goal 19 of the Lee County Comprehensive Plan (“Lee Plan”) which has now become the Estero Transitional Comprehensive Plan, provides that “The Estero Community attaches great importance to the integrity of provision in the Lee Plan and the Land Development Code with respect to the Density Reduction/Groundwater Resource Area (DR/GR) in so far as actions with respect to the DR/GR have an impact on the environment, natural resources, mobility, sense of place and character of Estero”; and

WHEREAS, The Vision for 2030 Statement which is Part I of the Lee Plan/Estero Transitional Comprehensive Plan, provides with respect to the DR/GR, in part, at Paragraph 18 that: “Residential and Commercial Development will not be significantly increased except in very limited areas where development rights are concentrated by this plan. Some existing farmlands will be restored to natural conditions to increase the natural storage of water and improve wildlife habitat”; and

WHEREAS, The Lee County Department of Community Development (“DCD”) has recommended the approval of two privately originated amendments to the Lee Plan with respect to large-scale planned development proposals in the DR/GR east of the Village of Estero boundaries by the name of Wild Blue and Corkscrew Farms; and

47
48 **WHEREAS**, The Lee Plan amendments recommended for approval by the DCD includes
49 the adoption of a new “Environmental Enhancement and Preservation Communities Overlay”
50 (“EEPCO”) in the DR/GR which provides for a plan to restore and protect important natural
51 resources in the DR/GR as an alternative to the Transfer of Development Rights Program which
52 most experts will agree has failed to incentivize developer participation and protect the
53 environment in the DR/GR; and
54

55 **WHEREAS**, The DCD planned EEPCO contains incentives to protect and enhance
56 shallow aquifers in the DR/GR by requiring new planned developments in such overlay to
57 implement a hydrological restoration plan to restore and improve regional flow ways, and to
58 preserve wetlands, and other ground water resources, and further requires a significant
59 percentage of the lands in such planned developments to be preserved and to provide for wildlife
60 connectivity; and
61

62 **WHEREAS**, The DCD planned EEPCO requires each planned development to mitigate
63 traffic impacts and to provide its proportionate share of the costs of needed roadway
64 improvements to be determined based on a transportation study of collective traffic impacts to be
65 completed by July of 2017, well after the planned approval of such planned developments and
66 the initial start of construction thereof; and
67

68 **WHEREAS**, The DCD planned EEPCO would reward development plans that comply
69 with the provisions of the new EEPCO with residential development densities of up to a
70 maximum of 1 unit per acre for Tier 1 lands within the Priority Restoration Strategy (the highest
71 level of environmental criticality for restoration) instead of the normal 1 unit per 10 acres as
72 currently allowed; and
73

74 **WHEREAS**, The planned development proposals for Wild Blue and Corkscrew Farms,
75 would allow such developments to have a maximum density of 1100 units for Wild Blue and
76 1325 units for Corkscrew Farms, which, along with other planned or approved residential
77 developments along the Corkscrew Road corridor, will likely create significant increased traffic
78 on Corkscrew Road and Ben Hill Griffin Parkway; and
79

80 **WHEREAS**, The Lee County Local Planning Agency has voted affirmatively to
81 recommend that both such proposed amendments to the Lee Plan be transmitted to the State
82 Department of Economic Opportunity (“DEO”), and the Lee County Board of County
83 Commissioners (“BOCC”) has voted in the affirmative to transmit the Wild Blue proposed
84 amendment to the Lee Plan to the DEO; and
85

86 **WHEREAS**, The BOCC will hold a hearing on the transmittal of the amendment to the
87 Lee Plan proposed by Corkscrew Farms at their meeting on June 17, 2015; and
88

89 **WHEREAS**, The addition of a maximum of 2425 total units in the DR/GR to the east of
90 the boundaries of the Village of Estero, when combined with the existing and already planned
91 additional residential units on Corkscrew Road east of I75 are likely to cause significant traffic
92 and safety impacts on the Village of Estero and its residents; and

93
94 **WHEREAS**, The environmental benefits to be derived from the EEPOC restoration of
95 flow ways, and other protection of wild life, wetlands and ground water resources, will not
96 outweigh the costs to society which will be caused by additional sprawl and development into
97 the DR/GR to the east of the Village of Estero.

98
99 **NOW, THEREFORE**, be it resolved by the Village Council of the Village of Estero,
100 Lee County, Florida:

101
102 **SECTION ONE.** The Village Council hereby determines that it is in the best interests
103 and welfare of the Village and its residents to declare its opposition to the approval of the
104 development proposals for Wild Blue and Corkscrew Farms by the Lee County BOCC; and

105
106 **SECTION TWO.** In light of the serious and long-lasting negative impacts which
107 would be created by the urban sprawl resulting from such development proposals, and which the
108 Village Council finds would clearly outweigh any benefits to the environment and wildlife, the
109 Village Council hereby, and with all due respect, urges the Lee County BOCC to disapprove
110 both the amendments to the Lee Plan and the planned development proposals sought by both
111 Wild Blue and Corkscrew Farms.

112
113 **SECTION THREE.** In the event that the Lee County BOCC determines that they will
114 approve such amendments to the Lee Plan, the Village Council respectfully urges the BOCC to
115 delay and defer any action on the planned development proposals for Wild Blue and Corkscrew
116 Farms until a comprehensive study of the collective impacts on the roadways east of I75, and of
117 the effects of such planned development density on the environment and wildlife in the DR/GR
118 can be completed, and the major traffic and safety impacts on the residents of the Village of
119 Estero can both be determined and funding provided to alleviate such adverse impacts.

120
121 **SECTION FOUR.** This Resolution shall take effect immediately upon adoption.

122
123 **ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero, Florida this
124 _____ day of June, 2015.

125
126
127 Attest:

VILLAGE OF ESTERO, FLORIDA

128
129 By: _____

By: _____

130 Peter Lombardi
131 Interim Village Manager/
132 Custodian of Village Records

Nicholas Batos
Mayor

133
134 Reviewed for legal sufficiency:

135
136 By: _____

137 Burt Saunders, Esq.
38 Village Attorney

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VILLAGE OF ESTERO, FLORIDA

RESOLUTION NO. 15 - _____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, ESTABLISHING THE POSITION OF COMMUNITY DEVELOPMENT DIRECTOR; PROVIDING FOR THE AUTHORITY OF THE VILLAGE MANAGER TO FILL THE POSITION OF COMMUNITY DEVELOPMENT DIRECTOR AS EITHER AN EMPLOYEE OR AS A CONTRACTOR OF OR COUNSULTANT TO THE VILLAGE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII of the State Constitution, and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the Village of Estero was incorporated by referendum held on November 4 3, 2014 and the Village Council was elected on March 3, 2015, pursuant to the Charter of the Village of Estero ("Charter") created by Ch. 2014-249, Laws of Florida; and

WHEREAS, the Charter provides that the Village Council shall have the broadest exercise of home rule powers permitted under the state Constitution and the laws of the state; and

WHEREAS, the Village of Estero has immediate need of a Community Development Director, as either an employee of the Village or as a contractor of or consultant to the Village, in order to manage the large number of applications that it receives pursuant to its Transitional Comprehensive Plan and Transitional Land Development, and to supervise and coordinate the land use and building permit process with respect to all zoning, planning, building and development requests, and with respect to all code enforcement activities, by acting as the principal liaison with the Lee County Department of Community Development, or whichever private contractor(s) are providing such services to the Village of Estero; and

WHEREAS, the Village Council desires to have the engagement of such a Community Development Director in place at the earliest possible time; and

NOW, THEREFORE, be it resolved by the Village Council of the Village of Estero, Lee County, Florida:

SECTION ONE. Establishment of Position of Community Development Director.

45 The Village Council hereby establishes the position of Community Development Director
46 with the duties and responsibilities as are detailed and set forth in Exhibit A attached hereto and
47 made a part hereof.
48

49 **SECTION TWO. Reporting Relationship.**

50
51 The Community Development Director shall report to the Village Manager.
52

53 **SECTION THREE. Filling such position.**

54
55 The Village Manager shall take all reasonably and necessary steps to fill such position as
56 soon as possible. Due to the need for such a position to be filled immediately, no posting or
57 request for qualifications shall be required, unless the Village Manager determines such action
58 would be in the best interest of the Village. The Village manager is authorized to fill such
59 position as either an employee of the Village or as a contractor of or consultant to the Village, on
60 such reasonable terms as the Village Manager may negotiate.
61

62 **SECTION FOUR. Effective Date.**

63
64 This Resolution shall take effect immediately upon adoption.
65

66 **ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero, Florida this
67 _____ day of June, 2015.
68

69
70 Attest:

VILLAGE OF ESTERO, FLORIDA

71
72 By: _____

By: _____

73 Peter Lombardi
74 Interim Village Manager/
75 Custodian of Village Records
76

Nicholas Batos
Mayor

77
78 Reviewed for legal sufficiency:
79

80 By: _____

81 Burt Saunders, Esq.
82 Village Attorney

VILLAGE OF ESTERO

COMMUNITY DEVELOPMENT DIRECTOR

DUTIES AND RESPONSIBILITIES

A. General Scope: The Village of Estero is in need of an individual to serve as its first Community Development Director. The Village Manager shall fill this by engaging either an employee of the Village of Estero, or a contractor or consultant to the Village. All specific persons who will provide such services as an employee or as a contractor or consultant shall be identified and shall provide detailed resumes. This position shall report to the Village Manager.

B. Services to be Provided:

1. Provide information to the general public as it relates to all land development, zoning and planning, building services, and code enforcement activities within the Village;

2. Provide information to builders and developers, and their representatives, as it relates to policies and procedures within the Village relative to land development, zoning and planning, building and code enforcement activities within the Village;

3. Oversee the development, maintenance, and updating of land use and zoning maps as required by local and state agencies;

4. Attend all Village staff meetings, all Village Council meetings, and any workshops of the Village Council at which attendance by the Community Development Director is deemed necessary by the Village Manager;

5. Attend all meetings of the Village Planning and Zoning Board and the Design Review Board, and all workshops of such. Advise and assist such Village Boards in all of their meeting preparations, hearings, and deliberations;

6. Advise and assist the Village Planning and Zoning Board with respect to its duties as the Local Planning Agency for the Village, and with respect to all of its other powers and duties under Village Ordinance No. 2015-01, including, without limitation, with respect to the comprehensive planning program of the Village, the development the

EXHIBIT A TO VILLAGE OF ESTERO RESOLUTION NO. 15-____

initial comprehensive of the land development code for the Village, and the development of the initial land development code for the Village;

7. Advise and assist the Village Design Review Board with respect to its duties under Ordinance No. 2015-01;
8. Attend all County and State agency meetings and forums relating to land development, zoning and planning, and building activities as requested by the Village Manager, and report back to the Village Manager regarding meeting agendas, goals, and any relevant discussions;
9. Supervise and coordinate the land use and building permit process with respect to all zoning, planning, building and development requests, and with respect to all code enforcement activities, by acting as the principal liaison with the Lee County Department of Community Development, or whichever private contractor(s) are providing such services to the Village of Estero;
10. Develop, establish, and supervise the system for the issuance of certificates of use and occupational licenses for the Village of Estero;
11. Act as liaison between the Village, County, SW Florida Regional Planning Council, South Florida Water Management Agency, State Department of Economic Opportunity, and other governmental agencies or boards having an impact on land development, zoning and planning, building, and code enforcement activities within the Village of Estero;
12. Develop ordinances, policies and procedures regarding all land development planning and zoning, building and code enforcement activities, and develop schedules and time frames for the processing of all such activities;
13. Provide information to the Village Manager and Village Council on all relevant and applicable planning issues relating to the foregoing services;
14. If this position is filled by a contractor or consultant, provide their own internal support services attendant to the above; and
15. Perform any and all related services required by this position as directed by the Village Manager.

C. Requirements.

1. Experience: The principal provider of the foregoing services shall be a graduate of an accredited four-year college or university with a degree in Urban Planning, Public Administration, Architecture, Historic Preservation or Urban Design or a closely related field (preferred would be a Master's degree in planning, public administration, business management, or a related field). Such education would be supplemented by at least 10 years of progressively responsible experience in planning, zoning, growth management, and managing public sector community development programs, resources and operations. An equivalent combination of training and experience may be substituted at the Village's discretion for required education, experience and/or management experience. AICP designation required. Residency in the Village of Estero is not required.

In addition, the ideal person to provide such services will be expected to interact with customer and stakeholder groups to identify and implement creative improvements to the land development, zoning and planning building, and code enforcement process. There should be a proven record of embracing innovation and encouraging cross-functional partnerships to achieve results. Such person should possess high personal integrity and ethical behavior with a proven record of progressive leadership and accomplishment, preferably in the public sector. The candidate should have experience managing opportunities and challenges presented by steady growth in development, population and demand for services.

2. Time. The position shall be filled immediately. No posting or request for qualifications is required unless the Village Manager deems it would be in the best interest of the Village.

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VILLAGE OF ESTERO, FLORIDA

RESOLUTION NO. 15 - _____

A RESOLUTION APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE VILLAGE OF ESTERO AND LEE COUNTY TO ADMINISTER AND ENFORCE LAND DEVELOPMENT REGULATIONS REGARDING FLOODPLAIN MANAGEMENT; AUTHORIZING THE VILLAGE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village of Estero is requesting participation in the National Flood Insurance Program and desires to meet the requirements of Title 44 Code of Federal Regulations necessary for such participation; and

WHEREAS, Lee County has been a participant in the National Flood Insurance Program since October 19, 1984, and continues to meet the requirements of Title 44 Code of Federal Regulations necessary for such participation; and

WHEREAS, the Village Council of the Village of Estero has determined that it is in the best interest of the Village of Estero to enter into an Interlocal Agreement with Lee County to provide services to the Village of Estero to administer and enforce floodplain management regulations.

NOW, THEREFORE, be it resolved by the Village Council of the Village of Estero, Florida:

SECTION ONE. The Village Council hereby approves the Interlocal Agreement between the Village of Estero and Lee County to administer and enforce floodplain management regulations for the Village of Estero, a copy of which is attached hereto and incorporated herein by this reference.

SECTION TWO. The Village Council authorizes the Village Mayor to execute the Interlocal Agreement between the Village of Estero and Lee County to administer and enforce floodplain management regulations for the Village of Estero.

SECTION THREE. This Resolution shall take effect immediately upon adoption.

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ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida this
day of June, 2015.

Attest:

VILLAGE OF ESTERO, FLORIDA

By: _____
Peter Lombardi
Interim Village Manager/
Custodian of Village Records

By: _____
Nicholas Batos
Mayor

Reviewed for legal sufficiency:

By: _____
Burt Saunders, Esq.
Village Attorney

INTERLOCAL AGREEMENT
BETWEEN
LEE COUNTY
a political subdivision of the State of Florida
AND
VILLAGE OF ESTERO, FLORIDA,
a Florida Municipal Corporation

THIS INTER-LOCAL AGREEMENT is made and entered into on this _____ day of _____, 2015, by and between the Lee County Board of County Commissioners, a political subdivision of the State of Florida (hereinafter "COUNTY") and Village of Estero, a municipal corporation of the State of Florida (hereinafter "VILLAGE"), both of which understand and agree as follows:

WHEREAS, COUNTY and VILLAGE have legal authority to perform general government services within their respective jurisdictions; and

WHEREAS, in accordance with Chapters 125, 163, 166, and 553, Florida Statutes, the Parties hereto have the common power and responsibility to adopt, administer, and enforce land development regulations, including floodplain management regulations, and to enforce the Florida Building Code within their jurisdictional limits; and

WHEREAS, pursuant to Section 12.5(a) of the Charter of the Village of Estero, all Lee County codes and ordinances, which included floodplain management, became codes and ordinances of the Village until changed or repealed by the Village; and

WHEREAS, the VILLAGE desires and requests the COUNTY to provide services necessary to administer and enforce the floodplain management regulations adopted by the VILLAGE within the corporate limits of the VILLAGE; and

WHEREAS, the COUNTY is willing and able to provide such services subject to the terms and conditions set forth herein; and

WHEREAS, pursuant to Chapter 163, Florida Statutes, the Parties are authorized to enter into Inter-Local agreements;

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the COUNTY and the VILLAGE hereby agree as follows:

1. PURPOSE.

Pursuant to Section 163.01, Florida Statutes, the purpose of this Agreement is to establish the responsibilities of the Parties and procedures whereby COUNTY will provide specified services

to administer and enforce the floodplain management regulations of the VILLAGE within the corporate limits of the VILLAGE.

2. ADMINISTRATION AND ENFORCEMENT OF FLOODPLAIN MANAGEMENT REGULATIONS DEFINED.

The Parties agree that the administration and enforcement duties of COUNTY contemplated by this Agreement are those duties that are necessary and appropriate to enforce the floodplain management regulations within VILLAGE, including the duties of the Floodplain Administrator set forth therein, and other duties that shall generally and naturally stem from the participation of the VILLAGE in the National Flood Insurance Program. Activities required to be performed only by the VILLAGE under the National Flood Insurance Program are not included in this Agreement.

The Parties expressly agree that, unless explicitly identified in writing by the VILLAGE, no performance standards other than those which are generally applicable to similar enforcement activities by COUNTY elsewhere outside of the corporate limits of the VILLAGE, are intended or should be inferred as a result of this Agreement.

The Parties also expressly agree that COUNTY may elect to enforce the regulations of the VILLAGE using any of the methods established by COUNTY.

3. REPRESENTATIVES OF THE PARTIES.

The Parties hereby designate the following as their duly authorized representatives responsible for the implementation of this Agreement, including establishment of specific procedures and processes to facilitate the purpose and intent:

LEE COUNTY

(County Official, by title)
(Address)

VILLAGE OF ESTERO

Peter Lombardi, Interim Village Manager
21500 Three Oaks Parkway
Estero, FL 33928

4. DUTIES OF THE VILLAGE, acting through its designed representative shall:

a. Be responsible to the National Flood Insurance Program for administration and enforcement of the floodplain management regulations of the VILLAGE.

b. Upon request by the Florida Division of Emergency Management or the Federal Emergency Management Agency, attend meetings and/or participate in telephonic and electronic communications related to the VILLAGE's participation in the National Flood Insurance Program, including but not limited to Community Assistance Visits, Community Assistance Contacts, and Community Rating System verification visits, if applicable.

c. In coordination with COUNTY, undertake appropriate actions identified in writing by the Florida Division of Emergency Management or the Federal Emergency Management Agency as

necessary to resolve matters related to continued participation in good standing in the National Flood Insurance Program.

d. In coordination with COUNTY, support actions deemed appropriate after events that damage buildings, to determine whether such buildings, if located in special flood hazard areas, have sustained substantial damage as such term is defined in the floodplain management regulations of the VILLAGE.

5. DUTIES OF COUNTY.

COUNTY, acting through its designated representative, shall administer and enforce the floodplain management regulations of the VILLAGE throughout the term of this Agreement, and shall:

a. Maintain records identified in said regulations in a form and manner that allows production of records pertinent to the VILLAGE upon request by the VILLAGE, the Florida Division of Emergency Management, or the Federal Emergency Management Agency.

b. COUNTY will provide supporting documentation necessary for Community Rating System matters.

c. Upon request by the Florida Division of Emergency Management or the Federal Emergency Management Agency, attend meetings and/or participate in telephonic and electronic communications related to the VILLAGE's participation in the National Flood Insurance Program, including but not limited to Community Assistance Visits, Community Assistance Contacts, and Community Rating System verification visits, if applicable.

d. In coordination with the VILLAGE, undertake appropriate actions identified in writing by the Florida Division of Emergency Management or the Federal Emergency Management Agency as necessary to resolve matters related to continued participation in good standing in the National Flood Insurance Program.

e. In coordination with the VILLAGE, undertake actions deemed appropriate after events that damage buildings, to determine whether such buildings, if located in special flood hazard areas, have sustained substantial damage as such term is defined in the floodplain management regulations of the VILLAGE.

6. MODIFICATION.

This Agreement may not be modified unless such modifications are in the form of a written amendment, executed by both Parties.

7. TERMINATION.

a. This Agreement shall remain in effect until September 30, 2015, unless an extension is agreed upon by both Parties. This Agreement may be terminated by either Party, without cause, for any reason upon thirty (30) days written notice to the other Party.

b. Upon termination, the Parties shall concur on an appropriate transition that ensures adequate administration and enforcement of the floodplain management regulations of the VILLAGE, with particular attention to the delivery by the COUNTY to the VILLAGE, of all records and data in its possession, regardless of the medium. Costs associated with delivery of records and data to the VILLAGE shall be borne by the VILLAGE.

8. REIMBURSEMENT.

For the initial period of this Interlocal Agreement, the VILLAGE, through the currently existing MSTU, has provided funds for this program to the COUNTY through September 30, 2015. As additional compensation for COUNTY's services, COUNTY shall collect and retain all revenues derived from permit and/or inspection fees relating to floodplain management generated within the VILLAGE; such fees shall not exceed fees charged COUNTY residents for similar services.

Appropriate compensation for services provided by COUNTY shall be negotiated for any extension of this Agreement.

9. LIABILITY.

The Parties, their respective elected officials, officers, and employees shall not be deemed to assume any liability for the acts, omissions, or negligence of the other Party:

a. The VILLAGE, as a subdivision of the State of Florida and pursuant to Section 768.28, Florida Statutes, agrees to be fully responsible for its negligent acts or omissions or tortuous acts which result in claims or suits against COUNTY and agrees to be fully liable for any damages proximately caused by said acts or omissions.

b. COUNTY, as a subdivision of the State of Florida and pursuant to Section 768.28, Florida Statutes, agrees to be fully responsible for its negligent acts or omissions or tortuous acts which result in claims or suits against the VILLAGE and agrees to be fully liable for any damages proximately caused by said acts or omissions.

Nothing herein is intended to serve as a waiver of sovereign immunity by the VILLAGE or by COUNTY. Nothing herein shall be construed to create any indemnification by one Party of another, and nothing herein shall be construed as consent by the VILLAGE or COUNTY to be sued by third parties in any matter arising out of this Agreement.

10. CLAIMS.

COUNTY shall notify the VILLAGE in writing, within 5 days of its receipt or knowledge of any claims or pending claims arising out of the performance of the services rendered hereunder.

11. SEVERABILITY.

If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability, or the occurrence of any event rendering any portion or provision of this Agreement void, shall not be deemed to affect the validity and enforceability of any other parts of the Agreement.

12. ASSIGNMENT.

This Agreement shall be binding on the Parties, their representatives, successors and assigns, and any interest herein shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by either Party, without the prior written consent of the Parties. Specifically, no duty or responsibility of the Parties shall be assigned or contracted to a third Party, whether a public or private entity, unless the Parties first modify this Agreement to set forth the duties of said third Party.

13. APPLICABLE LAW.

This Agreement shall be construed, controlled and interpreted according to the laws of the State of Florida. The parties agree that any action relating to this Agreement shall be instituted and prosecuted in the courts of Lee County, Florida, and therefore, each Party to this Agreement hereby waives the right to any change of venue.

14. PRIOR AGREEMENTS SUPERSEDED.

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understanding applicable to the matters contained herein, and the Parties agree that there are no commitments that are not contained in this Agreement or the written procedures and processed developed by the representatives of the Parties.

15. ENTIRETY OF AGREEMENT.

This Agreement sets forth the entire agreement between the Parties and that there are no promises or understands other than those stated herein.

16. EXECUTION.

This Agreement shall be executed in triplicate, with each fully executed copy treated as an original.

17. EFFECTIVE DATE.

This Agreement shall become effective upon the filing of fully executed copies with the Clerk of the Circuit Court of Lee County, Florida. A copy of the executed Agreement shall be provided to the Florida Division of Emergency Management.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates under each signature: Lee County, Florida through its Board of County Commissioners, signing by and through its authorized Chair, and the Village of Estero, signing by and through its authorized Mayor.

Brian Hamman, Chair
Lee County Commission

Nicholas Batos, Mayor
Village of Estero



2015 APPORTIONMENT PLAN

Approved by MPO Board

Adopted (Approved by FDOT and/or Governor):

Lee County Metropolitan Planning Organization
P.O. Box 150045
Cape Coral, Florida 33915-0045
239-330-2241

www.leempo.com

REVIEW AND APPROVAL OF THE DRAFT APPORTIONMENT PLAN TO ADD THE VILLAGE OF ESTERO REPRESENTATIVE

RECOMMENDED ACTION: Review and approval of the draft apportionment plan to add the Village of Estero representative to the MPO Board (see **attached** apportionment plan).

The apportionment of MPO members is guided by F.S. 339.175 through agreement between the Governor and local jurisdictions. The designation requires approval of the member jurisdictions representing 75% of the population of the urbanized area and the largest City (Cape Coral). The Lee MPO Board currently consists of sixteen voting members apportioned as shown on the attached plan and on the existing apportionment graph. The maximum number of allowed members by State Statute is twenty-five members, and as such this is not an issue. **Attached** is the proposed plan to add one voting member for the Village of Estero to the MPO Board consistent with the apportionment of members by jurisdiction. Once the apportionment is approved by the MPO Board and FDOT, the Interlocal agreements will be changed to reflect the addition, and then be brought through each of the jurisdictions for approval. Following the approval of the Interlocal agreements by the Councils and Commission, FDOT and the Governor will approve the addition making it final.

At the April 8th Executive Committee, the Committee discussed the addition of another City of Cape Coral representative and staff has included a table showing that change for the Board's discussion.

DESCRIPTION

The Lee Metropolitan Planning Organization (MPO) and the area it covers is depicted on the statewide map in **Attachment B**. The map in **Attachment C** shows the MPO boundary, the municipal boundaries and the 2013 population for each of the jurisdictions for a total current Lee County population of 661,115 (Bureau of Economic Business Research).

The Lee MPO is going through the apportionment process to add the Village of Estero, the newly incorporated jurisdiction that was approved by the State Legislature and the voters in 2014. The Lee MPO planning area now includes six (6) municipalities within the metropolitan area. The six (6) incorporated areas are: the City of Cape Coral, the City of Fort Myers, the City of Bonita Springs, the City of Sanibel, Town of Fort Myers Beach and Village of Estero. Of these, the City of Cape Coral is the largest with a 2013 population of 165,831.

BACKGROUND

APPORTIONMENT 2000

At the April 2000 TAC and CAC meetings, the TAC and CAC approved Plan #1, which called for inclusion of Bonita Springs to the MPO membership without disturbing the membership apportionment of the participating jurisdictions. The TAC requested that the actual apportionment of the MPO plan be based upon geography and population and that it should be deferred until after the 2000 census. At the MPO meeting, comments were received from the public in favor of apportioning an additional representative to the City of Cape Coral in addition to the City of Bonita Springs representative.

At the April 2000 MPO meeting, Staff provided seven (7) different reapportionment options to the MPO Board for their review. Plan #1, stated that all jurisdictions would retain their current voting members and the new City of Bonita Springs would receive one (1) voting member.

During the April 2000 MPO meeting, Commissioner Coy made a motion to recommend Plan #2 which included the incorporation of the City of Bonita Springs with an MPO representative and also an additional member to the City of Cape Coral, based on their increase in population. Commissioner St. Cerny seconded the motion and it carried unanimously. The number of MPO members was increased to fifteen (15) members.

APPORTIONMENT 2001 (from the 2000 Census)

In 2001, after the census data was available, the MPO reaffirmed what had changed when the City of Bonita Springs was added and the City of Cape Coral was given an additional representative. The fifteen (15) member MPO Board included the following members by jurisdiction:

- Lee County Board of County Commissioners – 5 members
- City of Cape Coral – 4 members
- City of Fort Myers – 3 members
- City of Bonita Springs – 1 member
- City of Sanibel – 1 member
- Town of Fort Myers Beach – 1 member

The other major transportation systems (airports, transit and the Southwest Florida Expressway Authority) were considered to be covered by members on the Board who also oversee or serve on their Boards. The five Board of County Commissioners on the MPO Board serve as the Board of Port Commissioners which governs the Lee County Port Authority covering the Southwest Florida International Airport and Page Field General Aviation Airport. In addition, Lee Tran, the local transit agency reports to the five County Commissioners. In 2005, the Southwest Florida Expressway Authority was created by the Florida Legislature and two members of the Authority Board were representatives on the MPO Board, one voting (County Commissioner) and one non-voting member (FDOT District Secretary).

APPORTIONMENT 2009

The City of Bonita Springs requested that the apportionment of the MPO members be brought to the MPO Board as a discussion item. At the February 2008 MPO meeting the MPO discussed looking at other MPO areas in Florida to see how they are apportioned and to see if there are any other ways to re-apportion the members. At the meeting the Board directed staff to research how other MPO's in Florida are apportioned, answer some questions regarding the maximum number of members that the MPO could have and determine the process and bring back that information at a future meeting.

At the May 2008 MPO meeting, the Board discussed the follow up items and gave direction to bring back a draft apportionment plan that added one member for the City of Bonita Springs. This change kept the population per member fairly consistent among the participating jurisdictions.

At the June 20, 2008 MPO meeting, the MPO Board discussed the draft apportionment plan which included adding the one (1) additional MPO representative for the City of Bonita Springs, and it was approved by a 9 to 4 vote. The Board then gave direction to staff to seek a resolution of support from each of the jurisdictions that would then be attached to this document for submittal to FDOT and the Governor for approval. The addition of one member

for the City of Bonita Springs was approved by FDOT in 2009, making the Board membership sixteen (16) members as it is today and apportioned as listed below:

- Lee County Board of County Commissioners – 5 members
- City of Cape Coral – 4 members
- City of Fort Myers – 3 members
- City of Bonita Springs – 2 members
- City of Sanibel – 1 member
- Town of Fort Myers Beach – 1 member

APPORTIONMENT 2013 (from the 2010 Census)

Following the 2010 census, the Lee MPO reconfirmed the existing MPO Board membership based on the 2010 census population for each of the jurisdictions. No changes were made at this time as there was little that changed from the apportionment that was done in 2009. The apportionment of the MPO Board was approved by the Governor in the fall of 2013.

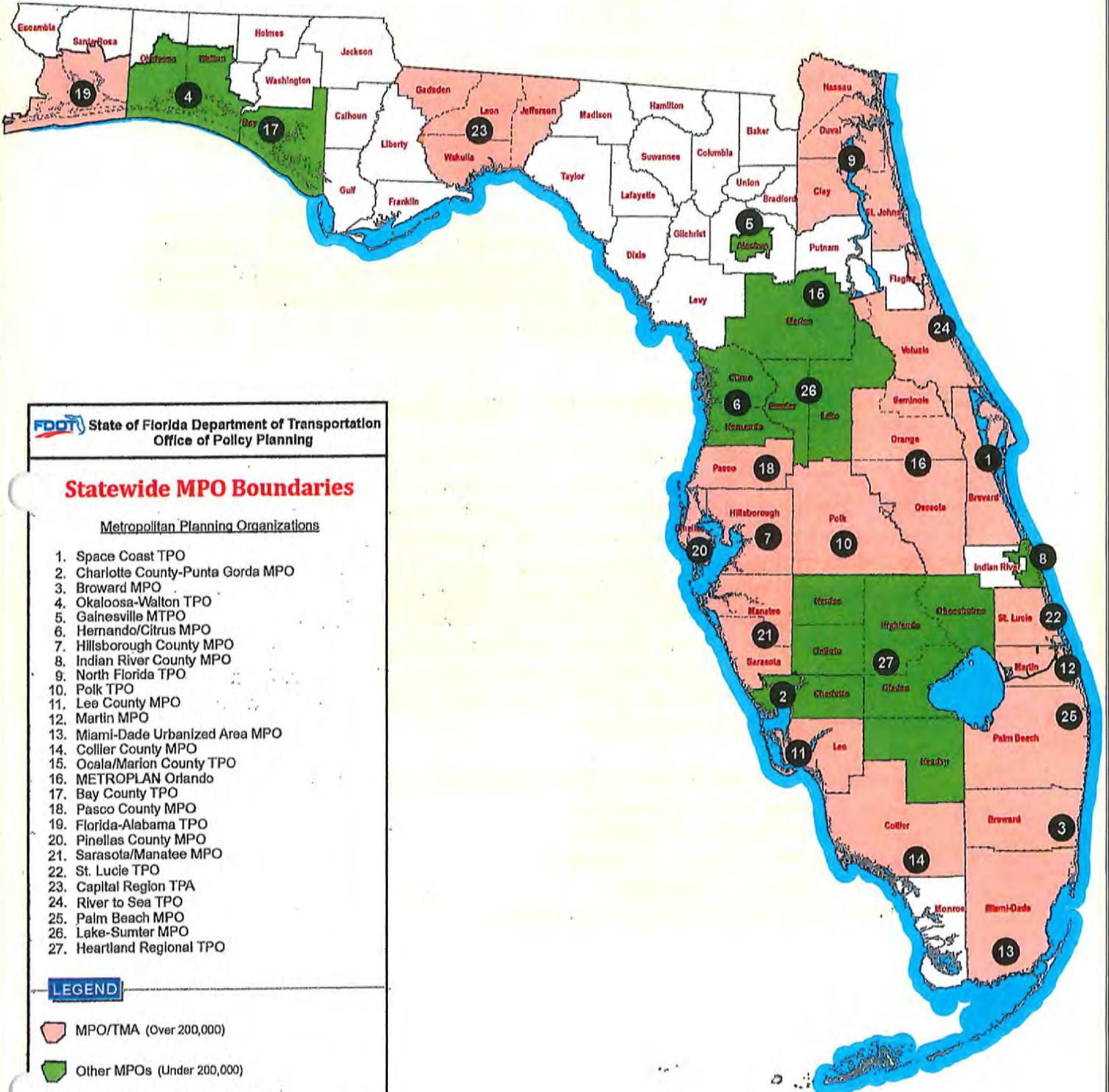
APPORTIONMENT 2015 (addition of the Village of Estero)

The addition of a representative to the MPO Board for the Village of Estero is governed by FS 339.175 and includes a comparison of how this compares with the other represented communities. The proposed apportionment plan change is required to be approved by the jurisdictions representing seventy five percent of the population of the MPO planning area (County) and approval by the largest incorporated jurisdiction (City of Cape Coral). **Attachment E** includes the results of the proposed apportionment (with the 2014 BEBR populations for each of the jurisdictions) of adding one member for the Village of Estero. The MPO representative per member is fairly consistent among the jurisdictions and the proposed membership for the MPO Board will increase to seventeen (17) members apportioned as listed below:

- Lee County Board of County Commissioners – 5 members
- City of Cape Coral – 4 members
- City of Fort Myers – 3 members
- City of Bonita Springs – 2 members
- City of Sanibel – 1 member
- Town of Fort Myers Beach – 1 member
- Village of Estero – 1 member

Metropolitan Planning Organizations and Designated Transportation Management Areas

(As of December 8, 2014)



FDOT State of Florida Department of Transportation
Office of Policy Planning

Statewide MPO Boundaries

Metropolitan Planning Organizations

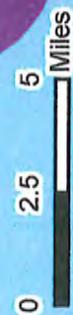
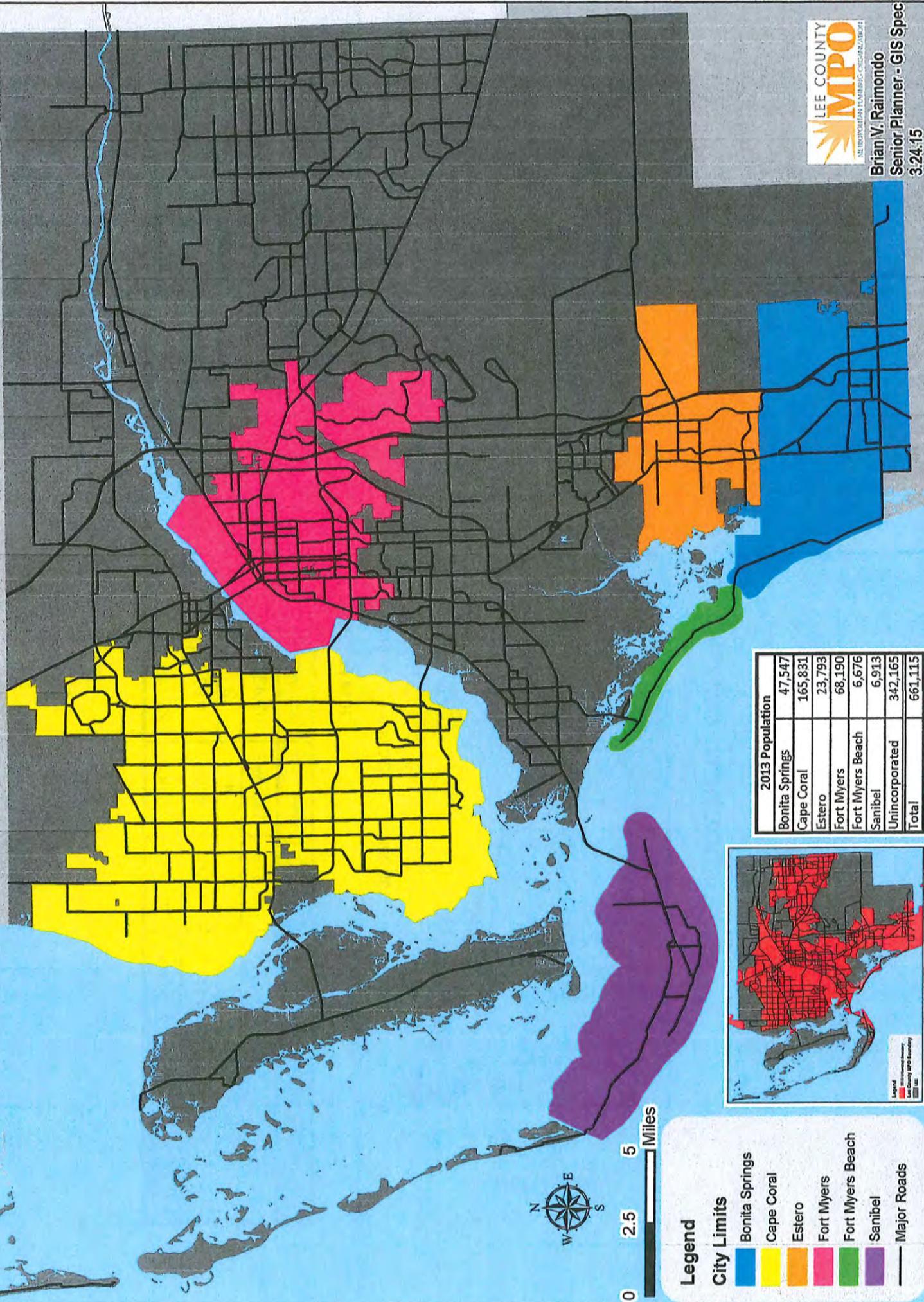
1. Space Coast TPO
2. Charlotte County-Punta Gorda MPO
3. Broward MPO
4. Okaloosa-Walton TPO
5. Gainesville MPO
6. Hernando/Citrus MPO
7. Hillsborough County MPO
8. Indian River County MPO
9. North Florida TPO
10. Polk TPO
11. Lee County MPO
12. Martin MPO
13. Miami-Dade Urbanized Area MPO
14. Collier County MPO
15. Ocala/Marion County TPO
16. METROPLAN Orlando
17. Bay County TPO
18. Pasco County MPO
19. Florida-Alabama TPO
20. Pinellas County MPO
21. Sarasota/Manatee MPO
22. St. Lucie TPO
23. Capital Region TPA
24. River to Sea TPO
25. Palm Beach MPO
26. Lake-Sumter MPO
27. Heartland Regional TPO

LEGEND

-  MPO/TMA (Over 200,000)
-  Other MPOs (Under 200,000)
-  MPO/TPO Identification Number



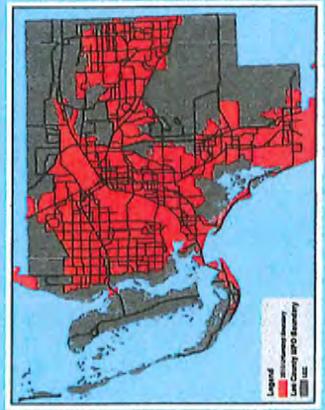
2015 LEE COUNTY APPORTIONMENT PLAN



Legend

City Limits

- Bonita Springs
- Cape Coral
- Estero
- Fort Myers
- Fort Myers Beach
- Sanibel
- Major Roads

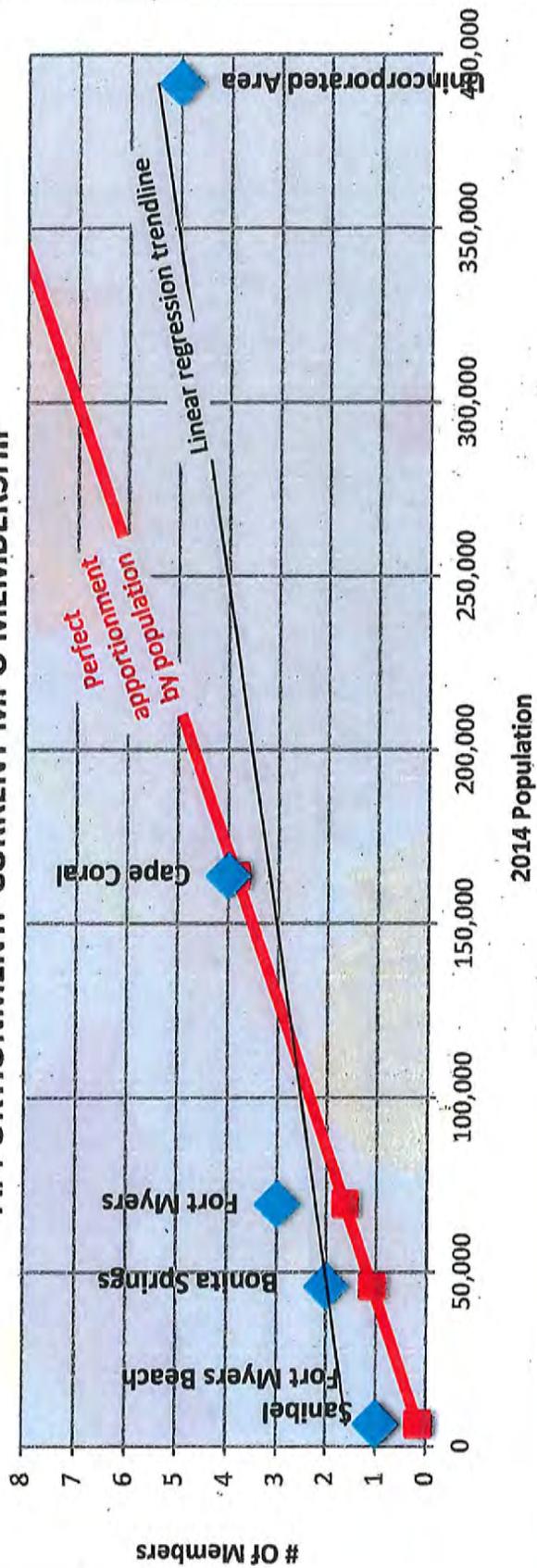


| 2013 Population | |
|------------------|----------------|
| Bonita Springs | 47,547 |
| Cape Coral | 165,831 |
| Estero | 23,793 |
| Fort Myers | 68,190 |
| Fort Myers Beach | 6,676 |
| Sanibel | 6,913 |
| Unincorporated | 342,165 |
| Total | 661,115 |



Brian V. Raimondo
Senior Planner - GIS Spec
3.24.15

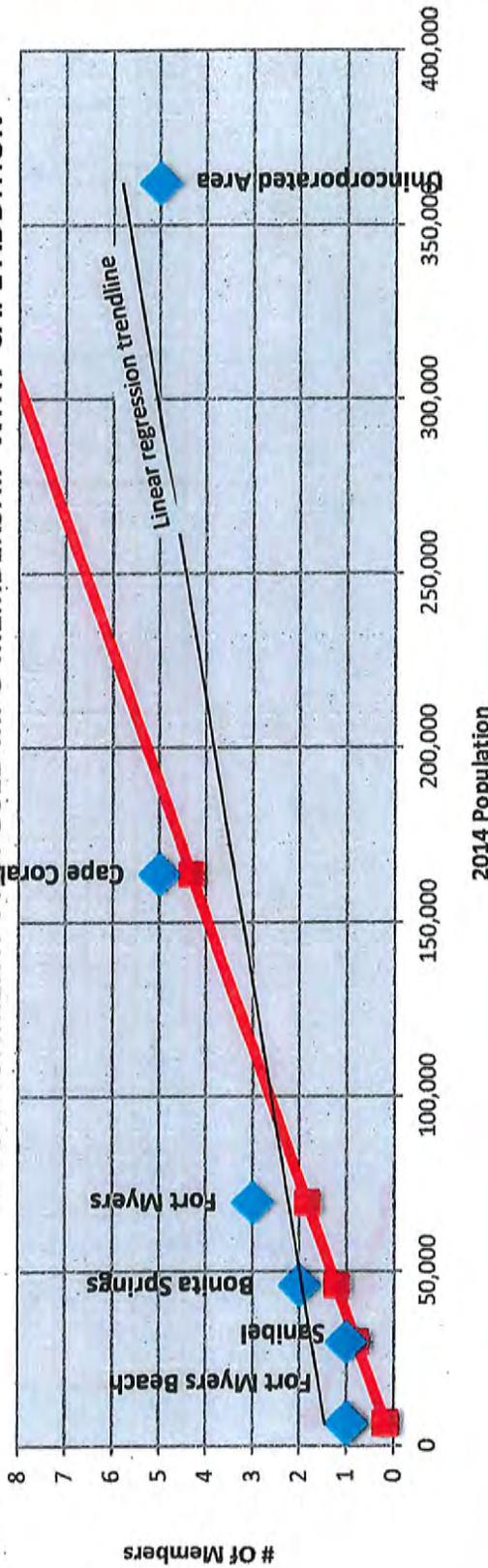
APPORTIONMENT: CURRENT MPO MEMBERSHIP



| Participating Agency | Unincorporated Area | Bonita Springs | Cape Coral | Fort Myers | Fort Myers Beach | Sanibel | Countywide Total | Pearson's Coefficient | Correlation Coefficient | Percent RMS Error |
|---------------------------|---------------------|----------------|------------|------------|------------------|---------|------------------|-----------------------|-------------------------|-------------------|
| 2014 BEBR Population | 391,522 | 45,819 | 163,599 | 69,437 | 6,250 | 6,490 | 683,117 | 0.95 | 0.91 | 78% |
| Current Membership | 5 | 2 | 4 | 3 | 1 | 1 | 16 | | | |
| Apportioned by Population | 9.17 | 1.07 | 3.83 | 1.63 | 0.15 | 0.15 | 16.00 | | | |
| Population per Member | 78,304 | 22,910 | 40,900 | 23,146 | 6,250 | 6,490 | 42,695 | | | |

MPO Apportionment 2015

APPORTIONMENT: PROPOSED MPO MEMBERSHIP WITH CAPE ADDITION



| Participating Agency | Unincorporated Area | Bonita Springs | Cape Coral | Fort Myers | Estero | Fort Myers Beach | Sanibel | Countywide Total | Pearson's Coefficient | Correlation Coefficient | Percent RMS Error |
|---------------------------|---------------------|----------------|------------|------------|--------|------------------|---------|------------------|-----------------------|-------------------------|-------------------|
| 2014 BEBR Population | 361,890 | 45,819 | 163,599 | 69,437 | 29,632 | 6,250 | 6,490 | 683,117 | 0.96 | 0.87 | 74% |
| Current Membership | 5 | 2 | 5 | 3 | 1 | 1 | 1 | 18 | | | |
| Apportioned by Population | 9.54 | 1.21 | 4.31 | 1.83 | 0.78 | 0.16 | 0.17 | 18.00 | | | |
| Population per Member | 72,378 | 22,910 | 32,720 | 23,146 | 29,632 | 6,250 | 6,490 | 37,951 | | | |

M/MPO Apportionment 2015