

ORDINANCE NO. 01- 34



AN ORDINANCE AMENDING ORDINANCE NUMBER 91-102, AS AMENDED, THE COLLIER COUNTY LAND DEVELOPMENT CODE, WHICH INCLUDES THE COMPREHENSIVE ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF COLLIER COUNTY, FLORIDA, BY PROVIDING FOR: SECTION ONE, RECITALS: SECTION TWO, FINDINGS OF FACT: SECTION THREE, ADOPTION OF AMENDMENTS TO THE LAND DEVELOPMENT CODE, MORE SPECIFICALLY AMENDING THE FOLLOWING: ARTICLE 1, GENERAL PROVISIONS, DIVISION 1.8. NONCONFORMITIES; DIVISION 1.19. AMENDMENTS TO THIS CODE; ARTICLE 2, ZONING, DIVISION 2.2. ZONING DISTRICTS, PERMITTED USES, CONDITIONAL USES, DIMENSIONAL STANDARDS, DIVISION 2.3. OFF-STREET PARKING AND LOADING; DIVISION 2.4 LANDSCAPING AND BUFFERING, DIVISION 2.5. SIGNS; DIVISION 2.6. SUPPLEMENTAL DISTRICT REGULATIONS; DIVISION 2.7. ZONING ADMINISTRATION AND PROCEDURES; DIVISION 2.8. ARCHITECTURAL AND SITE DESIGN STANDARDS AND GUIDELINES FOR COMMERCIAL BUILDINGS AND PROJECTS; ARTICLE 3, DIVISION 3.2. SUBDIVISIONS; DIVISION 3.3. SITE DEVELOPMENT PLANS; DIVISION 3.5 EXCAVATION; DIVISION 3.8 ENVIRONMENTAL IMPACT STATEMENTS (EIS); DIVISION 3.9 VEGETATION REMOVAL, PROTECTION AND PRESERVATION; DIVISION 3.13. COASTAL CONSTRUCTION SETBACK LINE VARIANCE; DIVISION 3.14. VEHICLE ON THE BEACH REGULATIONS; ARTICLE 5, DIVISION 5.1 BOARD OF COUNTY COMMISSIONERS; DIVISION 5.2 PLANNING COMMISSION; DIVISION 5.3 BOARD OF ZONING APPEALS; AND TO ADD DIVISION 5.5 HEARING EXAMINER; DIVISION 5.13 ENVIRONMENTAL ADVISORY COUNCIL; ARTICLE 6, DIVISION 6.3. DEFINITIONS, INCLUDING, BUT NOT LIMITED TO THE DEFINITIONS OF DESTINATION RESORT HOTELS, PARTICIPANT, PSI (POUNDS PER SQUARE INCH), RIGHT-OF-WAY, STRUCTURE, UNAUTHORIZED COMMUNICATION AND YARDS; ADDING APPENDIX G STANDARD BEACH EVENT PERMIT CONDITIONS; SECTION FOUR, CONFLICT AND SEVERABILITY; SECTION FIVE, INCLUSION IN THE COLLIER COUNTY LAND DEVELOPMENT CODE; AND SECTION SIX, EFFECTIVE DATES.

DEPARTMENT OF STATE  
TALLAHASSEE, FLORIDA  
2001 JUN 29 AM 9:07

FILED

WHEREAS, on October 30, 1991, the Collier County Board of County Commissioners adopted Ordinance No. 91-102, the Collier County Land Development Code (hereinafter LDC) , which has been subsequently amended; and

WHEREAS, the LDC may not be amended more than two times in each calendar year pursuant to Section 1.19.1., LDC; and

WHEREAS, this is the first amendment to the LDC, Ordinance 91-102, for the calendar year 2001; and

WHEREAS, on March 18, 1997, the Board of County Commissioners adopted Resolution 97-177 establishing local requirements and procedures for amending the LDC; and

WHEREAS, all requirements of Resolution 97-177 have been met; and

WHEREAS, the Board of County Commissioners, in a manner prescribed by law, did hold advertised public hearings on June 6, 2001 and June 20, 2001, and did take action concerning these amendments to the LDC; and

WHEREAS, the subject amendments to the LDC are hereby determined by this Board to be consistent with and to implement the Collier County Growth Management Plan as required by Subsections 163.3194 (1) and 163.3202 (1), Florida Statutes; and

WHEREAS, all applicable substantive and procedural requirements of the law have been met.

NOW, THEREFORE BE IT ORDAINED by the Board of County Commissioners of Collier County, Florida, that:

**SECTION ONE: RECITALS**

The foregoing recitals are true and correct and incorporated by reference herein as if fully set forth.

**SECTION TWO: FINDINGS OF FACT**

The Board of County Commissioners of Collier County, Florida, hereby makes the following findings of fact:

1. Collier County, pursuant to Sec. 163.3161, et seq., Fla. Stat., the Florida Local Government Comprehensive Planning and Land Development Regulations Act (hereinafter the "Act"), is required to prepare and adopt a Comprehensive Plan.

2. After adoption of the Comprehensive Plan, the Act and in particular Sec. 163-3202(1). Fla. Stat., mandates that Collier County adopt land development regulations that are consistent with and implement the adopted comprehensive plan.

3. Sec. 163.3201, Fla. Stat., provides that it is the intent of the Act that the adoption and enforcement by Collier County of land development regulations for the total unincorporated area shall be based on; be related to, and be a means of implementation for, the adopted Comprehensive Plan as required by the Act.

4. Sec. 163.3194(1)(b), Fla. Stat., requires that all land development regulations enacted or amended by Collier County be consistent with the adopted Comprehensive Plan, or element or portion thereof, and any land development regulations existing at the time of adoption which are not consistent with the adopted Comprehensive Plan, or element or portion thereof, shall be amended so as to be consistent.

5. Sec. 163.3202(3), Fla. Stat., states that the Act shall be construed to encourage the use of innovative land development regulations.

6. On January 10, 1989, Collier County adopted the Collier County Growth Management Plan (hereinafter the "Growth Management Plan" or "GMP") as its Comprehensive Plan pursuant to the requirements of Sec. 1634.3161 et seq. Fla. Stat., and Rule 9J-5, F.A.C.

7. Sec. 163.3194(1)(a), Fla. Stat., mandates that after a Comprehensive Plan, or element or portion thereof, has been adopted in conformity with the Act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such Comprehensive Plan or element or portion thereof shall be consistent with such Comprehensive Plan or element or portion thereof.

8. Pursuant to Sec. 163.3194(3)(a), Fla. Stat., a development order or land development regulation shall be consistent with the Comprehensive Plan if the land uses, densities or intensities, in the Comprehensive Plan and if it meets all other criteria enumerated by the local government.

9. Section 163.3194(3)(b). Fla. Stat., requires that a development approved or undertaken by a local government shall be consistent with the Comprehensive Plan if the land uses, densities or intensities,

capacity or size, timing, and other aspects of development are compatible with, and further the objectives, policies, land uses, densities or intensities in the Comprehensive Plan and if it meets all other criteria enumerated by the local government.

10. On October 30, 1991, Collier County adopted the Collier County Land Development Code, which became effective on November 13, 1991 and may be amended twice annually.

11. Collier County finds that the Land Development Code is intended and necessary to preserve and enhance the present advantages that exist in Collier County; encourage the most appropriate use of land, water and resources, consistent with the public interest; overcome present handicaps; and deal effectively with future problems that may result from the use and development of land within the total unincorporated area of Collier County and it is intended that this Land Development Code preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, and general welfare of Collier County; prevent the overcrowding of land and avoid the undue concentration of population; facilitate the adequate and efficient provision of transportation, water, sewerage schools, parks, recreational facilities, housing, and other requirements and services, conserve, develop, utilize, and protect natural resources within the jurisdiction of Collier County; and protect human, environmental, social, and economic resources; and maintain through orderly growth and development, the character and stability of present and future land uses and development in Collier County.

12. It is the intent of the Board of County Commissioners of Collier County to implement the Land Development Code in accordance with the provisions of the Collier County Comprehensive Plan, Chapter 125, Fla. Stat., and Chapter 163, Fla. Stat., and through these amendments to the Code.

### **SECTION THREE: ADOPTION OF AMENDMENTS TO THE LAND DEVELOPMENT CODE**

#### **SUBSECTION 3.A. AMENDMENTS TO AMENDMENTS TO THIS CODE DIVISION**

Division 1.19., Amendments to this Code, of Ordinance 91-102, as amended, is hereby amended to read as follows:

#### **DIVISION 1.19. AMENDMENTS TO THIS CODE**

##### **Sec. 1.19.1. Timing.**

Amendments to this code may be made not more often than two times during any calendar year as scheduled by the county manager, except:

- 1.19.1.3. ~~In the case of an emergency, A~~amendments to this code may be made more often than twice during the calendar year if the Collier County Board of County Commissioners, by at least a super-majority vote, directs that additional amendments be made for specific purposes. ~~additional code amendment receives the approval of all of the members of the board. For this purpose, "emergency" means any occurrence or threat thereof whether accidental or natural, caused by man, in war or peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property or public funds.~~

#### **SUBSECTION 3.B. AMENDMENTS TO ZONING DISTRICTS, PERMITTED USES, CONDITIONAL USES, DIMENSIONAL STANDARD DIVISION**

Division 2.2., Zoning Districts, Permitted Uses, Conditional Uses, Dimensional Standards, of Ordinance 91-102, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

#### **DIVISION 2.2. ZONING DISTRICTS, PERMITTED USES, CONDITIONAL USES, DIMENSIONAL STANDARDS**

##### **Sec. 2.2.2. Rural agricultural district (A).**

2.2.2.2.1. *Permitted uses*

\* \* \* \* \*

2. Agricultural activities, including, but not limited to: crop raising; horticulture; fruit and nut production; forestry; groves; nurseries; ranching; beekeeping; poultry and egg production; milk production; livestock raising, and aquaculture for native species subject to the State of Florida Game and Freshwater Fish Commission permits. The following permitted uses shall only be allowed on parcels 20 acres in size or greater: dairying; ranching; poultry and egg production; milk production; livestock raising; and animal breeding, raising, training, stabling or kenneling. This is not to preclude an individual property owner from the keeping of fowl or poultry, not to exceed 25 in total number, and the keeping of horses and livestock (except for hogs) not to exceed two such animals for each acre, and with not open feedlots, for personal use and not in association with commercial agricultural activity on parcels less than 20 acres in size.

a. Owning, maintaining or operating any facility or part thereof for the following purposes is prohibited:

- 1. Fighting or baiting any animal by the owner of such facility or any other person or entity.
- 2. Raising any animal or animals intended to be ultimately used or used for fighting or baiting purposes.
- 3. For purposes of this subsection, the term baiting is defined as set forth in section 828.122 (2)(a), Florida Statutes, as it may be amended from time to time.

\* \* \* \* \*

**Sec. 2.2.3. Estates district (E).**

2.2.3.2.2. *Uses accessory to permitted uses.*

\* \* \* \* \*

3. Keeping of fowl or poultry, not to exceed 25 in total number, provided such fowl or poultry are kept in an enclosure located a minimum of 30 feet from any lot line, and a minimum of 100 feet from any residence on an adjacent parcel of land.

a. Owning, maintaining or operating any facility or part thereof for the following purposes is prohibited:

- 1. Fighting or baiting any animal by the owner of such facility or any other person or entity.
- 2. Raising any animal or animals intended to be ultimately used or used for fighting or baiting purposes.
- 3. For purposes of this subsection, the term baiting is defined as set forth in section 828.122 (2)(a), Florida Statutes, as it may be amended from time to time.

\* \* \* \* \*

7. Excavation and related processing and production subject to the following criteria:

- a. These activities are incidental to the permitted used on site.
- b. The amount of excavated material to be removed from the site cannot exceed 4,000 cubic yards total. Amounts in excess of 4,000 cubic yards shall require conditional use approval for earth mining, pursuant to the procedures and conditions set forth in section 2.7.4. and 2.2.3.3. of the code

\* \* \* \* \*

Sec. 2.2.3.3. *Conditional uses.* The following uses are permissible as conditional uses in the estates district (E), subject to the standards and procedures established in division 2.7.4:

\* \* \* \* \*

- 7. Extraction or earthmining, and related processing and production not incidental to the development of the property subject to the following criterion.
  - a. The site must be 20 acres in size.

\* \* \* \* \*

**Sec. 2.2.8. Residential Tourist District (RT).**

*Maximum density permitted.* A maximum of 26 units per acre for hotels and motels, and 16 units per acre for timeshares and multifamily uses when located within an activity center or if the RT zoning was in existence at the time of adoption of this Code. When located outside an activity center, except as provided above, the density shall be determined through application of the density rating system established in the Collier County growth management plan, but shall not exceed 16 units per acre. Any project which received approval at a public hearing prior to July 1, 2000 shall not be deemed to be non-conforming as a result of inconsistency with density limitations.

2.2.8.4.7. *Floor area requirements.*

\* \* \* \* \*

2.2.8.4.7.2.1. 300 square foot minimum for hotels and motels. Three hundred (300) square foot minimum with a five hundred (500) square foot maximum for hotels and motels, except that twenty percent (20%) of the total units may be utilized for suites.

2.2.8.4.8. ~~(Reserved) Floor area ratio. The maximum floor area ratio for hotels, motels and timeshare facilities shall not exceed a factor of 0.60, except for destination resort hotels as defined in article 6.3 where a floor area ratio of 0.80 is permitted.~~

\* \* \* \* \*

**Sec. 2.2.12. Commercial professional district (C-1) and commercial professional transitional district (C-1/T).**

Sec. 2.2.12.2.1 *Permitted Uses*

1. Accounting, auditing and bookkeeping services (8721).
2. Automobile parking (7521).
3. Barber shops (7241).
4. Beauty shops (7231).

- 5. Business services (groups 7311, 7313, 7322--7331, 7338, 7361, 7371, 7372, 7374--7376, 7379).
- 6. Child day care services (8351).
- 7. Churches and other places of worship
- ~~78.~~ Group care facilities (category I and II, except for homeless shelters); care units, except for homeless shelters; nursing homes; assisted living facilities pursuant to § 400.402 F.S. and ch. 58A-5 F.A.C.; and continuing care retirement communities pursuant to § 651 F.S. and ch. 4-193 F.A.C.; all subject to section 2.6.26.
- ~~89.~~ Offices for engineering, architectural, and surveying services (groups 0781, 8711--8713).
- ~~910.~~ Health services (8011--8049).
- ~~1011.~~ Individual and family social services (8322 activity centers, elderly or handicapped; adult day care centers; and day care centers, adult and handicapped only).
- ~~1112.~~ Insurance carriers, agents and brokers (groups 6311--6399, 6411).
- ~~1213.~~ Legal services (8111).
- ~~1314.~~ Management and public relations services (groups 8741--8743, 8748).
- ~~1415.~~ Miscellaneous personal services (7291).
- ~~1516.~~ Museums and art galleries (8412).
- ~~1617.~~ Nondepository credit institutions (groups 6141--6163).
- ~~1718.~~ Photographic studios (7221).
- ~~1819.~~ Physical fitness facilities (7991).
- ~~1920.~~ Real estate (groups 6531--6541).
- ~~2021.~~ Shoe repair shops and shoeshine parlors (7251).
- ~~2122.~~ Any other commercial use or professional services which is comparable in nature with the foregoing uses including those that exclusively serve the administrative as opposed to the operational functions of a business, and are purely associated with activities conducted in an office.

\* \* \* \* \*

2.2.15.3

*Conditional uses for C-4.* The following uses are permitted as conditional uses in the general commercial district (C-4), subject to the standards and procedures established in division 2.7.4.

\* \* \* \* \*

- 18. Motor Freight transportation and warehousing ( 4225 air conditioned and mini-and self storage warehousing only).

\* \* \* \* \*

**Sec. 2.2.16 ½ . Business park PUD district (BP).**

2.2.16 ½. 2. *Permitted uses.* The following uses, as identified within the latest edition of the Standard Industrial Classification Manual, or as otherwise provided for within this section, are permitted as a of right, or as uses accessory to permitted primary and secondary uses in the business park PUD district. ~~or as uses accessory to permitted primary and secondary uses in the business park PUD district (BP).~~

2.2.16 ½. 2.1. *Permitted Primary Uses - 100% One-hundred percent* of the total business park PUD district acreage is allowed to be developed with the following uses:

\* \* \* \* \*

- 24. Motor freight transportation and warehousing (4225 mini- and self-storage warehousing only and subject to the following criteria:
  - a. The use of metal roll-up garage doors located on the exterior of the perimeter buildings and walls of buildings which are visible from a public right-of-way is prohibited; and
  - b. Access to individual units whether direct or indirect must be from the side of a building that is oriented internally; and
  - c. No building shall exceed 100 feet in length when adjacent to a residential zoning district; and
  - d. No outdoor storage of any kind is permitted; and
  - e. Storage units shall be utilized for storage purposes only.
- 24 ~~5~~. Paper and allied products (groups 2621-2679)
- 25 ~~6~~. Plastic materials and synthetics (groups 2821, 2834)
- 26 ~~7~~. Printing, publishing and allied industries (groups 2711-2796)
- 27 ~~8~~. Professional offices; insurance agencies; (group 6411); insurance carriers (groups 6311-6399); real estate (groups 6531, 6541, 6552, 6553); holding and other investment offices (groups 6712-6799); attorneys (group 8111)
- 28 ~~9~~. Rubber and miscellaneous plastic products (groups 3021, 3052, 3053)
- ~~29~~ 30. Security/commodity brokers (group 6211)
- 30 ~~1~~. Transportation equipment (groups 3714, 3716, 3731, 3732, 3751, 3792, 3799)
- 31 ~~2~~. United States Postal Service (group 4311)
- 32 ~~3~~. Wholesale trade durable goods (groups 5021, 5031, 5043-5049, 5063-5078, 5091, 5092, 5094-5099)
- 33 ~~4~~. Wholesale trade nondurable goods (groups 5111 - 5159, 5181, 5182, 5191 except that wholesale distribution of chemicals, fertilizers, insecticides, and pesticides shall be a minimum of 500 feet from a residential zoning district, 5192-5199)
- 35. Any other use which is comparable in nature with the forgoing uses and is otherwise clearly consistent with the intent and purpose statement of the district.

2.2.16 ½.2.2. *Permitted secondary uses accessory to the business park PUD district.* - Development is limited to a maximum of 30 % of the total acreage of the business park district for the following uses:

1. Business services (groups 7312, 7313, 7319, 7331, 7334-7336, 7342, 7349, 7352, 7361, 7363, 7371-7384, 7389)
2. Child day care services (group 8351)
3. Depository and non-depository institutions (groups 6021-6062, 6091, 6099, 6111-6163)
4. Drug stores (group 5912, limited to drug stores and pharmacies) in conjunction with health services groups and medical laboratories/research/rehabilitative groups.
5. Hotels (group 7011 hotels only). Maximum density 26 units per acre when located within activity centers and 16 units per acre when located outside activity centers. The maximum floor area ratio for hotels shall not exceed a factor of 0.60.
6. Membership organizations (group 8611); business associations (group 8621); professional organizations (group 8631); labor unions and similar labor organizations\_ )
7. Personal services (groups 7215 – 7231, 7241)
8. Physical fitness facilities and bowling centers (groups 7991, 7933)
9. Professional offices; travel agencies (group 4724)

\* \* \* \* \*

**Sec. 2.2.20. Planned unit development district (PUD).**

2.2.20.3.7. *Dedication of the public facilities and development of prescribed amenities.*

Public Facility Dedication. The board of county commissioners may, as a condition of approval and adoption of a ~~the~~ PUD rezoning and in accordance with the approved master plan of development, require that suitable areas for streets, public rights-of-way, schools, parks, and other public facilities be set aside, improved, and/or dedicated for public use. Where impact fees are levied for one or more required ~~certain~~ public facilities, the market value of the land set aside for the public purpose may shall be credited towards such impact fees to the extent authorized by the County’s Consolidated Impact Fee Ordinance. Said credit shall be based on a negotiated amount no greater than the market value of the set aside land prior to the rezoning action, as determined by an accredited appraiser from a list approved by Collier County. Said appraisal shall be submitted to the county attorney's office and the real property office within 90 days of the date of approval of the rezone, or as otherwise extended in writing by ~~Collier~~ the County manager, so as to establish the amount of any impact fee credits resulting from said dedication. Failure to provide said appraisal within this time frame shall automatically authorize the county to determine the market value of the set aside property. Impact fee credits shall only be effective after recordation of the document conveying the dedicated property to Collier County. Where the term Collier County is used in this section, it shall be construed to include the Collier County Water and Sewer District or other agency or dependent district of Collier County Government.

Land set aside and/or to be improved as committed in the PUD document, or master plan, as the case may be, shall be deeded or dedicated to Collier County

within 90 days of receipt of notification by the county that the property is needed for certain pending public improvements or as otherwise approved by the board of county commissioners during the PUD rezoning approval process. In any case, however, the county shall take title to the set aside property, at the latest, by a date certain established during, and conditioned on, the approval of the PUD zoning. At no cost to the County, ~~the~~ land set aside and/or to be improved shall be made free and clear of all liens, encumbrances and improvements, ~~at the developer's sole expense,~~ except as otherwise approved by the board. Failure to convey the deed or complete the dedication within the appropriate time frame noted above may result in a recommendation to the board of consideration of rezoning the subject parcel from its current PUD zoning district to an appropriate zoning district and may result in a violation of this Code pursuant to subsection 1.9.2.

Should said dedication of land also include agreed upon improvements, said improvements shall be completed and accepted by the Collier County Board of Commissioners at the development phase which has infrastructure improvements available to the parcel of land upon which said improvements are to be made, or at a specified time provided for within the PUD document.

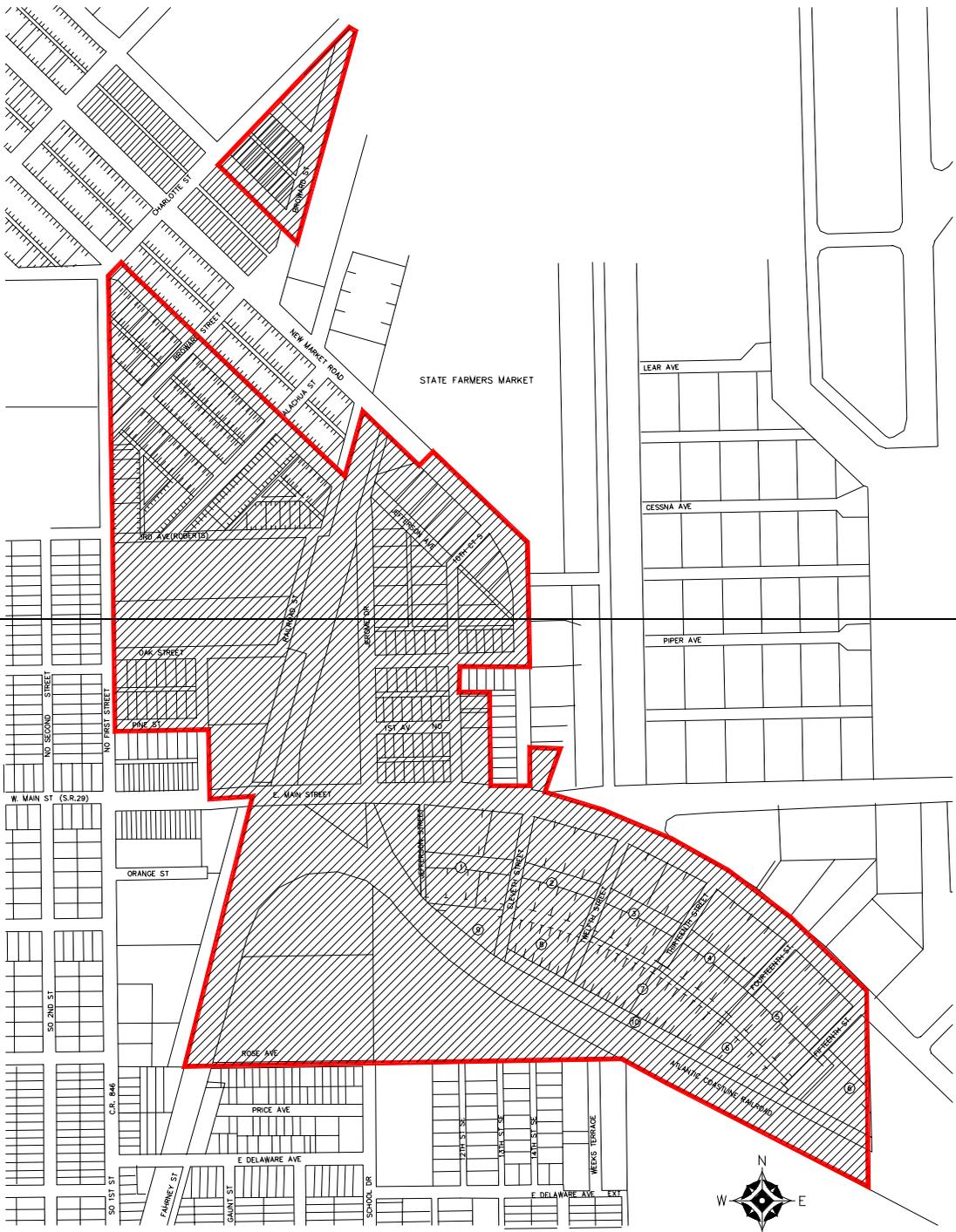
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**Sec. 2.2.28. Immokalee Overlay Districts.**

\* \* \* \* \*

2.2.28.6. *Agribusiness Overlay Subdistrict:* Special conditions for the properties identified on Map 5; and further identified by the designation "AOSD" on the applicable official Collier County Zoning Atlas Maps.

**AGRIBUSINESS OVERLAY SUB-DISTRICT (AOSD)**



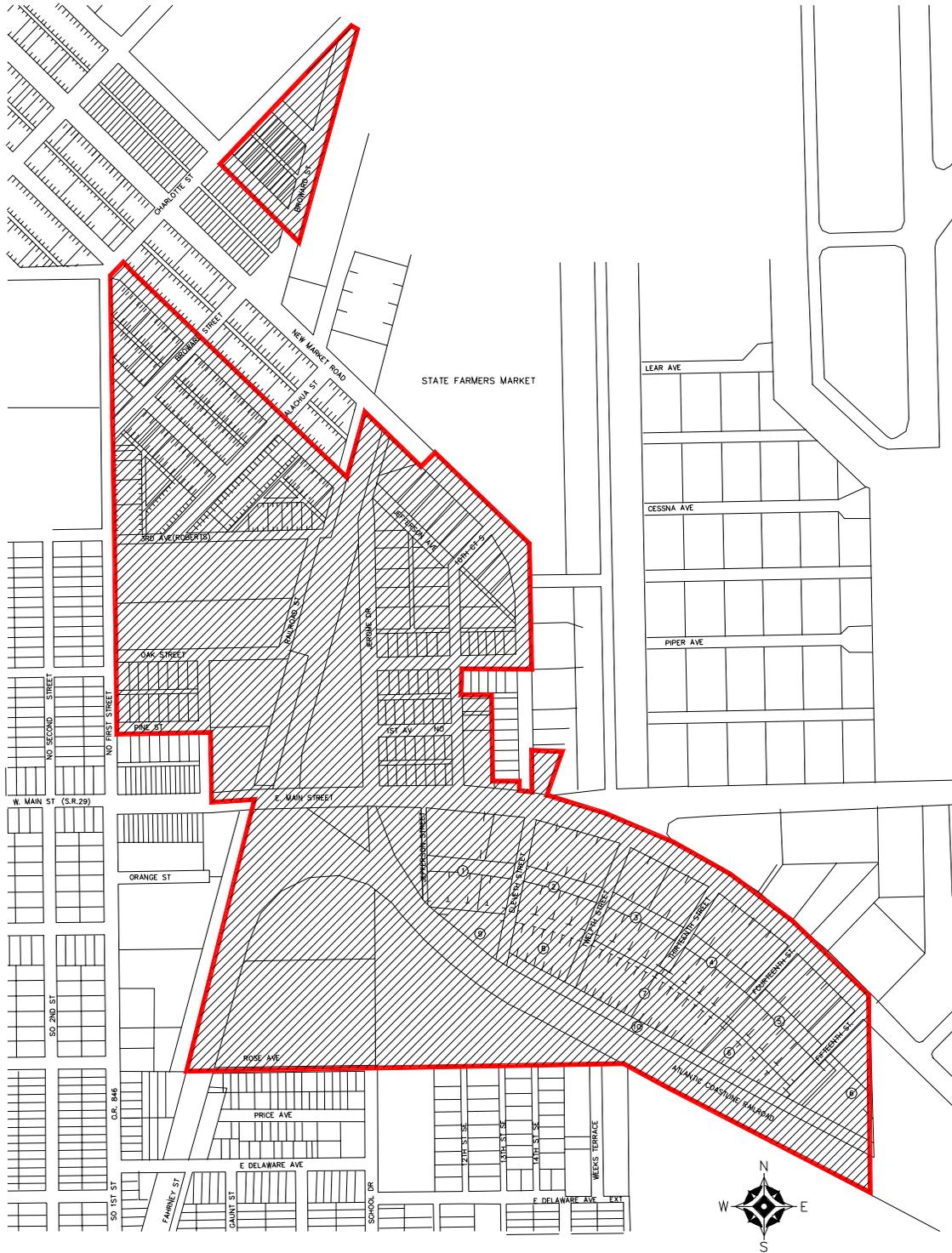
— INDICATES AGRIBUSINESS OVERLAY SUB-DISTRICT

PREPARED BY: GRAPHICS AND TECHNICAL SUPPORT SECTION  
 COMMUNITY DEVELOPMENT AND ENVIRONMENTAL SERVICES DIVISION  
 DATE: 4-24-98 FILE: AGSD.DWG

AGRIBUSINESS OVERLAY SUB-DISTRICT (AOSD)

Map 5 (Delete this Map)

# AGRIBUSINESS OVERLAY SUB-DISTRICT (AOSD)



INDICATES AGRIBUSINESS OVERLAY SUB-DISTRICT

PREPARED BY: GRAPHICS AND TECHNICAL SUPPORT SECTION  
 COMMUNITY DEVELOPMENT AND ENVIRONMENTAL SERVICES DIVISION  
 DATE: 4-24-98 FILE: AOSD.DWG

AGRIBUSINESS OVERLAY SUB-DISTRICT (AOSD)

Map 5 (Replace with this Map)

2.2.28.8. Main Street Overlay Subdistrict.

\* \* \* \* \*

2.2.28.8.3. *Permitted uses.* For all properties within the Main Street Overlay Subdistrict, except for properties hatched as indicated on Map 7, the Main Street Overlay subdistrict, all permitted uses within the uses within the underlying zoning districts contained within this subdistrict, and the following uses may be permitted as of right in this subdistrict:

- 1. Hotel and Motels (group 7011).
- 2. Communication towers, as defined in section 2.6.35. of this code subject to the following:
  - a. such tower is an essential service use as defined by subsection 2.6.9.1. of this code; and
  - b. such tower may not exceed a height of 75 feet above grade including any antennas attached thereto.

2.2.28.8.4. *Permitted uses.* For hatched properties within the Main Street Overlay subdistrict, all permitted uses within the underlying zoning districts contained within this subdistrict, and the following uses are permitted as of right in this subdistrict:

- 1. All uses allowed in the Commercial Professional district (C-1), of this code, except for group (7521).
- 2. Communication towers, as defined in section 2.6.35. of this code subject to the following:
  - b. such tower is an essential service use as defined by subsection 2.6.9.1. of this code; and
  - c. such tower may not exceed a height of 75 feet above grade including any antennas attached thereto.

2.2.28.8.5. *Prohibited uses.* All uses prohibited within the underlying residential and commercial zoning districts contained within this subdistrict, and the following uses, shall be prohibited in the Main Street Overlay subdistrict:

\* \* \* \* \*

- 10. ~~Communication towers, as defined in section 2.6.35 of this code, except as otherwise permitted in this subdistrict, are prohibited except as an accessory or stand alone essential service use. Such towers are a permitted use up to a height of 75 feet above grade, inclusive of antennas. Such towers that exceed such height shall require site specific conditional use approval.~~

\* \* \* \* \*

2.2.28.8.6. *Accessory uses.*

- 1. Uses and structures that are accessory and incidental to the permitted uses as of right in the underlying zoning districts contained within this subdistrict and are not otherwise prohibited by this subdistrict.
- 2. Communication towers, as defined in section 2.6.35 of this code subject to the following:
  - a. such tower is accessory to an essential service use as defined by subsection 2.6.9.1. of this code; and
  - b. such tower may not exceed a height of 75 feet above grade including any antennas attached thereto.

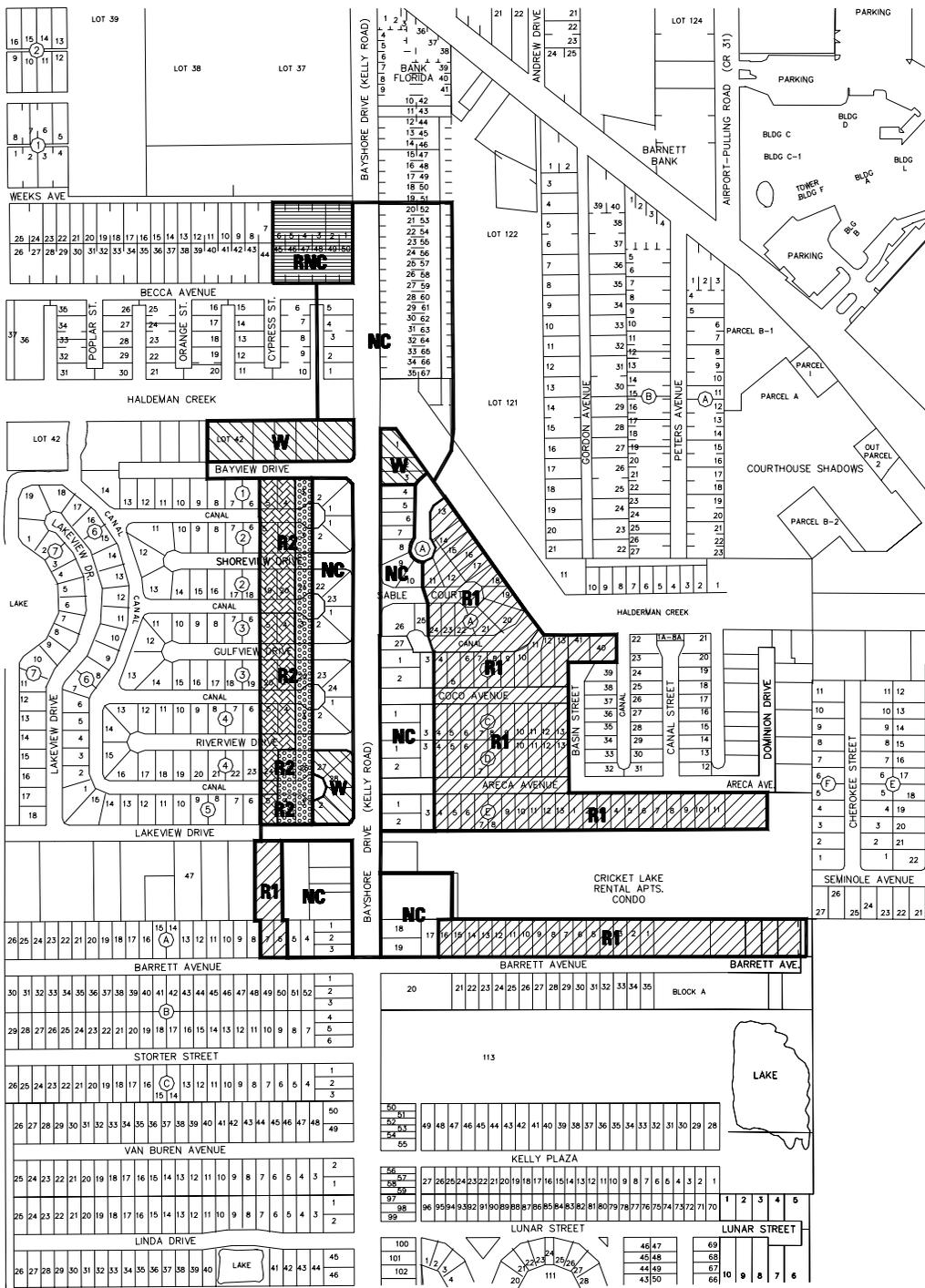
2.2.28.8.7. *Conditional uses.*

1. Conditional uses of the underlying zoning districts contained within this subdistrict, subject to the standards and procedures established in section 2.7.4 and as set forth below:
  - A. Local and suburban passenger transportation (groups 4131, 4173) located upon commercially zoned properties within the Main Street Overlay subdistrict.
  - B. Communication towers, as defined in section 2.6.35. of this code for essential service uses as defined by subsection 2.6.9.1 of this code that exceed a height of 75 feet above grade including any antennas attached thereto.

\* \* \* \* \*

**Section 2.2.33. Bayshore Drive Mixed Use Overlay District.**

# BAYSHORE DRIVE MIXED USE OVERLAY DISTRICT

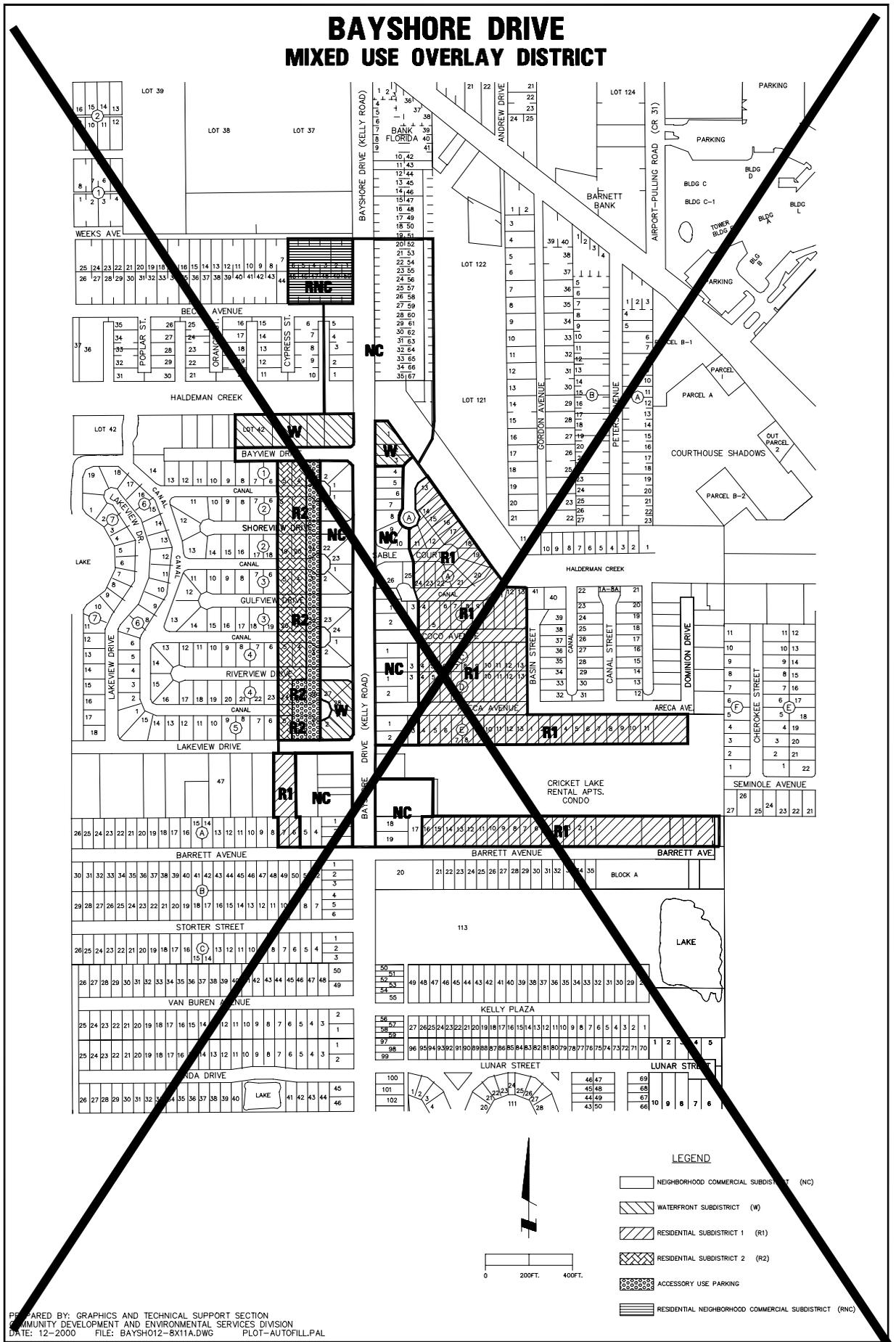


- LEGEND**
- NEIGHBORHOOD COMMERCIAL SUBDISTRICT (NC)
  - WATERFRONT SUBDISTRICT (W)
  - RESIDENTIAL SUBDISTRICT 1 (R1)
  - RESIDENTIAL SUBDISTRICT 2 (R2)
  - ACCESSORY USE PARKING
  - RESIDENTIAL NEIGHBORHOOD COMMERCIAL SUBDISTRICT (RNC)

PREPARED BY: GRAPHICS AND TECHNICAL SUPPORT SECTION  
 COMMUNITY DEVELOPMENT AND ENVIRONMENTAL SERVICES DIVISION  
 DATE: 3-2001 FILE: BAYSH012-BX11A2.DWG PLOT-AUTOFILL.PAL

Bayshore Drive-BMUD Map 1  
(Replace with this map)

# BAYSHORE DRIVE MIXED USE OVERLAY DISTRICT



~~Bayshore Drive BMUD Map 1~~  
(Delete this map)

2.2.33.11 *Dimensional standards.*

2.2.33.11.1 *Minimum yard requirements.*

\* \* \* \* \*

7. To allow the maximum use of the waterfront, building placement on a lot can vary from the required setbacks, provided such variation is

Words ~~struck through~~ are deleted, words underlined are added.

recommended by the CRA staff and the county architect and approved by the planning services department director.

2.2.33.11.4 *Maximum height of structures.*

\* \* \* \* \*

4. The first floor of the building at the sidewalk level shall be no less than 12 feet and no more than 18 feet in height from the finished floor to the finished ceiling and shall be ~~occupied~~ limited to by-commercial uses only.

\* \* \* \* \*

2.2.33.12 *Parking standards.*

\* \* \* \* \*

9. The off-site parking requirements of section 2.3.4.11 of the ~~LDC~~ code shall apply, ~~except for the requirements of subsection 2.3.4.11 (4) (g).~~ Vehicular egress points may be located on local streets opposite residential homes provided they are within the Bayshore Mixed Use Overlay District. ~~Off-site parking facilities outside of the BMUD are subject to all of the requirements of subsection 2.3.4.11 of the Code.~~

10. Shared parking requirements shall be consistent with those provided in subsection ~~2.3.5~~ 2.3.4.11.2.c of the code except that the planning services department director can approve or deny requests instead of the board of zoning appeals or planning commission, ~~and under Section 2.3.5.3.3,~~ sShared parking spaces ~~can~~may be separated by Bayshore Drive provided the two properties are located within the BMUD.

2.2.33.13 *Landscaping.* As required by division 2.4 of this Code unless specified otherwise below:

2.2.33.13.1. *Special buffer requirements for development areas contiguous to residentially zoned property.* A 15-foot wide landscape buffer area shall be required. This area shall include a six (6) foot high wall, fence or berm, or combination thereof, a row of trees spaced no more than 25 feet on center, and a single row of shrubs at least 24 inches in height at the time of planting. Landscaping shall be on the residential side of the wall.

\* \* \* \* \*

2.2.33.14. *Special provisions.*

\* \* \* \* \*

3. All dumpsters must be located in the rear yard and not visible from Bayshore Drive.

2.2.33.15. *Architectural standards.*

1. All buildings shall meet the requirements set forth in division 2.8 unless otherwise specified below.
2. All buildings adjacent to Bayshore Drive will have the principal pedestrian entrance fronting Bayshore Drive.
3. Thirty-five percent of the building façade that faces Bayshore Drive will be clear glass.
4. Clear glass windows between the height of three and eight feet above sidewalk grade are required on the primary façade of the first floor of any building.

- 4.5. Attached building awnings may encroach over the setback line by a maximum of five feet.
- 5.6. Neon colors shall not be used as accent colors.

\* \* \* \* \*

2.2.33.17. *Waterfront subdistrict.* The purpose of this subdistrict is to allow maximum use of the waterfront for entertainment while enhancing the area for use by the general public. Development standards for the district are the same as those set forth for the Neighborhood Commercial subdistrict, unless set forth below. Development in this subdistrict is encouraged to be a mix of restaurant and retail uses while allowing for limited marina uses.

2.2.33.18. *Permitted uses:*

- a. All uses permitted within the Neighborhood Commercial subdistrict are permitted.
- b. Marinas. (group 4493, except all repair and storage of boats must be conducted in an covered area or area internal to the site.) Boats available for rental purposes shall be located in the water or properly screened from the roadways. ~~No outside display of boats for sale or rent shall be visible from Bayshore Drive.~~

2.2.33.20. *Special conditions for marinas:*

- a. ~~All~~ Repair and storage areas shall not be visible from the local street.
- ~~b. All sales of boats shall occur in a covered area that is architecturally consistent with the building it serves.~~
- ~~e.b.~~ Boats available for rental purposes shall be located in the water or properly screened from the local roadways and not visible from Bayshore Drive.
- ~~d. No outside display of boats for sale or rent shall be visible from Bayshore Drive.~~
- ~~e.c.~~ All boat racks shall be enclosed.
- ~~f.d.~~ Height of structures may be increased to a maximum height of 50 feet by the board of zoning appeals (BZA) upon approval of a variance petition. The BZA, in addition to the findings in section 2.7.5, shall consider whether or not the following: Will a literal interpretation of the provisions of this zoning code imposes a financial hardship on the applicant.
- e. Outdoor displays of new boats for sale on properties fronting Bayshore Drive shall be limited to the following:
  - 1. All areas used for new boat sales activities shall occupy no more than 35 percent of the linear frontage of the property.
  - 2. All boat sale activities are limited to new boat sales.
  - 3. All new boat sale areas shall not be closer to the frontage line than the primary building they serve unless it is otherwise recommended by the CRA staff and administratively approved by the planning services department director.
  - 4. All new boats located within an outdoor sale area shall not exceed the height of 17 feet above existing grade.
  - 5. Outdoor sales areas shall be connected to the parking area and primary structure by a pedestrian walkway.
  - 6. An additional landscape buffer is required around the perimeter of the outdoor boat sales area. This buffer must include, at a minimum 14 foot high trees, spaced at 30 feet on center and a 3 foot high double row hedge spaced at 3 feet on center at the time of planting.
- f. Outdoor displays of boats on properties fronting Haldeman Creek shall be limited to the following:
  - 1. All areas used for boat sales shall utilize no more than 50 percent of the linear frontage of the property.

2. All boat sale areas shall be no closer to the frontage line than the primary building they serve unless it is otherwise recommended by the CRA staff and approved by the planning services department director.
3. All boats located within outdoor sales areas shall not exceed a height of 35 feet above the existing grade. Sailboat masts are exempt from this limitation.
4. Outdoor sales areas shall be connected to the parking area and primary structure by a pedestrian walkway.
5. An additional landscape buffer is required around the perimeter of the outdoor sales area. This buffer must include, at a minimum 14 foot high trees, spaced at 30 feet on center and a 3 foot high double row hedge spaced at 3 feet on center at the time of planting.

2.2.33.22.9. *Building placement and design.* Buildings and their elements shall adhere to the following: (See BMUD figure 34):

\* \* \* \* \*

2.2.33.22.13. *Accessory units.* An accessory unit is a separate structure located at the rear of the property and related to the primary residence for uses which include, but are not limited to: ~~Library~~, studio, workshop, playroom, or guest quarters. Ownership of an accessory unit ~~may~~ shall not be transferred independently of the primary residence.

The following regulations regarding accessory units apply:

1. Only one accessory unit is permitted per principal ~~primary residence structure~~.
2. The maximum area of an accessory unit is 550 square feet, limited to one habitable floor.
3. The accessory unit may be above ~~or on the side of a garage and~~ or may be connected to the primary residence by an enclosed breezeway or corridor not to exceed eight feet in width.

\* \* \* \* \*

2.2.33.22.15. *Fencing standards.*

Fencing forward of the primary façade of the structure is permitted subject to the following conditions:

1. The fence does not exceed four feet in height.
2. The fence is not opaque but provides an open view.
3. Chain link fence is prohibited.
4. The fence material shall be wood, vinyl, or iron.
5. A masonry wall is permitted and shall not exceed three feet in height.
6. Fencing and walls must architecturally complement the primary structure as determined by the CRA staff and the planning services department director.



BMUD figure 3 – Examples of typical fencing permitted.

2.2.33.24. *Residential Neighborhood Commercial subdistrict (RNC)*. The purpose and intent of this subdistrict is to allow limited home occupational businesses. Home occupations ~~requirements set forth as required~~ in section 2.6.20 of the code, shall apply unless specified otherwise below. Development standards for the subdistrict are the same as those set forth for the residential subdistrict 2, unless otherwise set forth below.

2.2.33.24.1. The home occupations permitted include: Accounting (8721), auditing and bookkeeping services (8721), barber shops and beauty salons (7231 except beauty culture schools, cosmetology schools, or barber colleges), engineer or architectural services (8713,8712,8711), insurance agents and brokers (6411), legal services (8111), and real estate agents (6531 except manufactured home brokers, on site; housing authorities, operating).

2.2.33.24.2. The home occupation shall be clearly incidental to and secondary to the use of the dwelling for residential dwelling purposes and shall not change the character of the dwelling unit. The following conditions shall be met:

1. There shall be a minimum of one residential dwelling unit.
- ~~1. 2.~~ The resident of the home shall be the owner and operator of the home occupation business.
- ~~2. 3.~~ The home occupation business shall not occupy more than 30 percent of the primary residential structure.
- ~~3. 4.~~ The home occupation business shall not employ more than two employees at any given time. Parking requirements must be met that are consistent with the parking requirements outlined in the Neighborhood Commercial subdistrict of this Code.
- ~~4.~~ Employees, customers or clients of the home occupation are permitted to travel to and from the residence.
5. One wall sign shall be permitted provided it does not exceed 6 square feet in area, and shall not project more than 4 feet from the building on which the sign is attached.
6. A total of 2 parking spaces shall be provided for clients or customers. Two additional parking spaces shall be provided for employees, if any. The required parking area or areas shall not be located in the front yard of the residence.
7. Parking areas shall consist of a dust free surface such as; mulch, shell, or asphalt. A single row hedge at least 24 inches in height at the time of planting shall be required around all parking areas.
8. There shall be no additional driveway to serve such home occupation.
9. There shall not be outdoor storage of materials or equipment used or associated with the home occupation.

~~2.2.33.25~~ *Effective date*. This section, known as the Bayshore Mixed Use Overlay district shall not become legally effective until the comprehensive plan amendment, adopted December 12, 2000, as Ordinance Number 2000-87, upon which this section is based becomes legally effective.



BMUD Figure 34-Typical front elevation for residential development.  
(Figures ~~struck through~~ are deleted, figures underlined are added)

\* \* \* \* \*

**Sec. 2.2.34. Goodland Zoning Overlay (GZO) District.**

\* \* \* \* \*

2.2.34.4.3 Minimum lot requirements. As provided for in the residential single family district (RSF-4) for each permitted, accessory, and conditional use except for the following:

- a. Minimum lot area: 5,000 square feet.
- b. Minimum lot width: 50 feet.

2.2.34.4.4 Minimum yard requirements. As provided for in the residential single family district (RSF-4) for each permitted, accessory, and conditional use except for the following:

- a. Side yard: 5 feet.

2.2.34.5. Parking/storage of major recreational equipment and personal vehicles.

2.2.34.5.1. Within the VR and RSF-4 zoning districts, except for specifically designated travel trailer subdivisions, boats, trailers, recreational vehicles and other recreational equipment may be stored in any yard subject to the following conditions.

- a. No recreational equipment shall be used for living, sleeping, or housekeeping purposes when parked or stored.
- b. No recreational vehicle or equipment shall exceed 35 feet in length .
- c. No recreational vehicle or equipment shall be parked, stored nor encroach in any county right-of-way or easement.
- d. Recreational vehicles or equipment that exceed 35 feet in length shall be subject to the provisions of subsection 2.6.7.2 of this code.

2.2.34.5.2. Personal vehicles may be parked in drainage swales in the VR and RSF-4 zoning districts subject to the following conditions.

- a. No vehicle shall block or impede traffic.

2.2.34.6. Storage and display of fishing related equipment.

2.2.34.6.1. Within the VR and RSF-4 zoning districts, fishing equipment, such as crab traps, anchors and other similar items, may be displayed or stored in any yard subject to the following conditions.

- a. The storage of fishing related equipment is permitted only in association with a fishing related business.
- b. Storage of toxic materials is prohibited.
- c. The storage or display area shall be located a minimum of 5 feet from any property line or county right-of-way.
- d. Fishing related items may be used for decorative purposes.

\* \* \* \* \*

**SUBSECTION 3.D. AMENDMENTS TO SUPPLEMENTAL DISTRICT REGULATIONS DIVISION**

Division 2.6., Supplemental District Regulations, of Ordinance 91-102, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

**DIVISION 2.6. SUPPLEMENTAL DISTRICT REGULATIONS**

**2.6.34.1. Annual beach events permit:**

2.6.34.3.1. ~~1.~~ The owner of beach-front commercial hotel-resort property shall apply for an annual beach events permit. The planning services director, or his designee, may grant the permit following review of an application for such permit. The application shall be submitted on the form prescribed by Collier County together with the applicable fee for the number of planned annual beach events as indicated on the permit form and exhibits thereto. Permits issued pursuant to this section are not intended to authorize any violation of § 370.12, F.S., or any of the provisions of the Endangered Species Act of 1973, as it may be amended.

2.6.34.3.2. For purposes of this section, a “beach event” shall mean and refer to any social, recreational or entertainment event (whether public or private), conducted on the beach and satisfying one or more of the following criteria:

1. The event involves the use of dining/picnic tables and chairs, serving tables, or other ancillary equipment typically used to serve an on-site meal; or
2. The event involves the use of staging equipment, amplified music, or the use of other types of electrical equipment for purposes of enhanced light and/or sound; or
3. The event:
  - (a) is attended by 25 or more people and is organized by or with the help of the commercial property owner; and
  - (b) is of a nature not commonly associated with the day-to-day use of the beach by the general public.

2.6.34.3. *Notice of scheduled events:*

2.6.34.3.1. On or before the 25<sup>th</sup> day of each calendar month, the holder of such permit shall cause Collier County to be furnished with written notice of all beach events scheduled for the following month, in the form and content made a part of the annual beach events permit application. The notice shall indicate the date, time and duration of each event.

2.6.34.3.2. If a beach event is scheduled after the monthly notification has been furnished to Collier County, the property owner shall furnish the county with a separate written notice at least 48-hours prior to such event.

2.6.34.3.3. All notices or documents furnished to Collier County pursuant to the permit or these regulations shall be sent to Collier County Planning Services Department and for events that occur during sea turtle nesting season, to the Collier County Natural Resource Department as well.

2.6.34.4. *Event Cancellations and postponements:*

2.6.34.4.1. If a scheduled beach event is canceled or postponed, the property owner shall furnish Collier County with written notification of such cancellation or postponement. It is understood that weather conditions may cause last minute cancellations, however the property owner shall make every effort to notify the county staff a minimum of 4 hours prior to the scheduled event time. If such event is rescheduled, notice of the date and time of the rescheduled event shall be provided.

2.6.34.4.2. If a beach event is canceled or postponed, and no other beach events are scheduled for the date of the canceled/postponed event, and Collier County has

been notified of such cancellation or postponement, then the canceled or postponed event shall not count towards the maximum number of beach events authorized by the permit.

- 2.6.34.5. *Sea turtle nesting season.* Annual beach events which occur during Sea Turtle Nesting Season (May 1<sup>st</sup> through October 31<sup>st</sup> of each year): ~~During sea turtle nesting season beach events shall be~~ are also subject to the following ~~conditions~~ regulations:
- 2.6.34.5.1. ~~A copy of the All~~ required Florida Department of Environmental Protection (FDEP) Field Permits, ~~if required by FDEP,~~ shall be obtained and a copy furnished to Collier County prior to the time of the scheduled event as set forth in section 2.6.34.3.
- 2.6.34.5.2. Consistent with section 3.13.7.3, and 3.14.6, no structure ~~S~~ set up, including or beach raking, or mechanical cleaning activity for any particular Beach Event shall ~~not~~ commence until after monitoring conducted by personnel with prior experience and training in nest surveys procedures and possessing a valid Fish and Wildlife Conservation Commission Marine Turtle Permit has been completed ~~the daily sea turtle monitoring are completed by the Collier County Natural Resources Department staff.~~
- 2.6.34.5.3. Prior to all scheduled beach events, every beach event permit holder is required to rope off (or otherwise identify with a physical barrier) an area with no less than a 15-foot radius out from each sea turtle nest that has been identified and marked on a beach , unless a greater distance is required by an applicable State permit..
- 2.6.34.5.3 ~~4.~~ Use of vehicles on the beach is prohibited, except as may be permitted under in ~~Section 3.14.3, 3.14.5, or 3.14.6. of this code.~~
- 2.6.34.5.4 ~~5.~~ Consistent with section 3.13.7.3, ~~A~~ all materials placed on the beach for the purpose of conducting the permitted beach events shall : 1) must be removed from the beach by no later than 9:30 p.m. ~~9:00 p.m.~~ of the date of the event; and 2) no structures may be set, placed, or stored on, or within ten feet of any beach dune, except that materials may remain in an identified staging area until 10:00 p.m. The location and size of all staging areas will be as identified in the permit.
- 2.6.34.5.5 ~~6.~~ All lights that are visible from the beach and cast a shadow thereon shall be turned off by no later than 9:00 p.m. of the date of the event.
- 2.6.34.5.6 ~~7.~~ Identification of sea turtle nests on the beach may cause the Beach Event to be relocated from its planned location or to have additional reasonable limitations placed on the event pursuant to the recommendation of Collier County ~~Natural Resources Department~~ staff in order to protect the identified sea turtle nests in this permit; except that county staff may relocate a staging area as provided for in 2.6.34.5.5, as part of its daily sea turtle monitoring.
- 2.6.34.5.7 ~~8.~~ Pole lighting, and any other object or structure designed to penetrate the beach surface by more than three (3) inches shall be subject to the approval of the FDEP and Collier County.
- 2.6.34.5.8 ~~9.~~ A copy of all N ~~otices~~ required by this any permit or these regulations shall ~~must~~ also be ~~furnished~~ provided by the permit holder to Collier County Natural Resources Department.

Note: When a State permit is more restrictive than the code requirements, the State requirements shall supersede, and the County shall enforce these requirements.

2.6.34.6. Penalties. Notwithstanding the penalties set forth elsewhere in this Code, the following violations of this section are subject to the following penalties, except that the Annual Beach Events Permit may not be suspended or revoked:

1. Violations which do not occur during sea turtle nesting season, i.e., occur outside of sea turtle nesting season, are subject to up to a \$500 fine per violation.

2. Violations which occur during sea turtle nesting season and are:

a. any activity that may cause immediate harm to sea turtles or their nesting activities; which include, but are not limited to the following: 1) setting up a beach event prior to daily sea turtle monitoring; 2) failing to remove beach event materials from the beach by 9:30 p.m.; 3) failing to have lights, so required, turned out by 9:00 p.m.; or 4) not placing additional barriers around nests as required by sec. 2.6.34.5.3; are subject to the following penalties:

<u>First violation:</u>	<u>\$1,000 fine</u>
<u>Second violation:</u>	<u>\$2,500 fine</u>
<u>Third or more violation:</u>	<u>\$5,000 fine</u>

b. any activity that would not cause immediate harm to sea turtles or their nesting activities; which include, but are not limited to the following: 1) failing to notify the County of a beach event; 2) failing to provide the County with copies of Florida Department of Protection permits prior to each beach event; or 3) having beach event materials or related structures set, placed, stored on, or within ten feet of any beach dune; are subject to up to a \$500 fine.

\* \* \* \* \*

**SUBSECTION 3.E. AMENDMENTS TO ZONING AND ADMINISTRATION PROCEDURES DIVISION**

Division 2.7., Zoning and Administration Procedures, of Ordinance 91-102, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

**DIVISION 2.7. ZONING AND ADMINISTRATION PROCEDURES**

**Sec. 2.7.2. Amendment procedures.**

*2.7.2.3. Notice.*

2.7.2.3.4. *Notice and public hearing where proposed amendment initiated by the board of county commissioners would change the zoning map designation of a parcel or parcels of land involving ten contiguous areas or more of land in the county or would change the actual list of permitted, conditional, or prohibited uses of land within a zoning category. In cases initiated by the board of county commissioners in which the proposed change to the zoning map designation of a parcel or parcels of land involves ~~then ten~~ ten contiguous ~~areas of~~ acres or more of land or changes the actual list of permitted, conditional or prohibited uses of land within a zoning category such provisions shall be enacted or amended pursuant to the public notice and hearing requirements by the planning commission and the board of county commissioners.*

*2.7.2.4. Planning commission hearing and report to the board of county commissioners.*

1. *Time limits.* Hearings by the planning commission on applications for rezoning of land shall be held at least 24 times a year. For applications not involving the rezoning of land, but which involve amendments to these zoning regulations, the planning commission shall hold its public hearings

twice per calendar year. ~~In the case of an emergency, except~~ amendments to these zoning regulations may be made more often than twice during the calendar year if the additional amendment cycle receives the approval of a super-majority vote of the board of county commissioners. Unless a longer time is mutually agreed upon by the planning commission and the board of county commissioners, the planning commission shall file its recommendations for either type of amendment with the board of county commissioners within 45 days after the public hearing before the planning commission has been closed.

\* \* \* \* \*

2.7.2.8.1. *Dedication of the public facilities and development of prescribed amenities.*

Public Facility Dedication. The board of county commissioners may, as a condition of approval and adoption of the rezoning required that suitable areas for streets, public rights-of-way, schools, parks, and other public facilities be set aside, improved, and/or dedicated for public use. Where impact fees are levied for ~~certain~~ one or more such public facilities, the market value of the land set aside for such public facilities ~~the public purpose may shall~~ be credited towards impact fees to the extent authorized by the County's Consolidated Impact Fee Ordinance. Said credit shall be based on a negotiated amount not greater than the market value of the set aside land prior to the rezoning action, as determined by an accredited appraiser from a list approved by Collier County. Said appraisal shall be submitted to the county attorney's office and the real property office within 90 days of the date of approval of the rezone, or as otherwise extended in writing by Collier County, so as to establish the amount of any impact fee credits resulting from said dedication. Failure to provide said appraisal within this 90 day time frame shall automatically authorize the county to determine the market value of the property. Impact fee credits shall only be effective after recordation of the conveyance document conveying the dedicated property to Collier County. Where the term Collier County is used in this section, it shall be construed to include the Collier County Water and Sewer District or other agency or dependent district of Collier County Government.

Land set aside and/or to be improved as committed as part of the rezoning approval shall be deeded or dedicated to Collier County within 90 days of receipt of notification by the county that the property is needed for certain pending public improvements or as otherwise approved by the board of county commissioners during the rezoning approval process. In any case, however, the county shall take title to the set aside property, at the latest, by a date certain established during, and conditioned on, the approval of the rezoning action. At no costs to the county, the land set aside and/or to be improved shall be made free and clear of all liens, encumbrances and improvements, ~~at the developer's sole expense,~~ except as otherwise approved by the board. Failure to deed the land or complete the dedication within the 90 day ~~appropriate~~ time frame noted above may result in a recommendation to the board of consideration of rezoning the subject parcel from its current zoning district to an appropriate zoning district and may result in a violation of this Code pursuant to subsection 1.9.2.

Should said dedication of land also include agreed upon improvements, said improvements shall be completed and accepted by the Collier County Board of Commissioners at the development phase which has infrastructure improvements available to the parcel of land upon which said improvements are to be made, or at a specified time provided for within the ordinance approving the rezone.

\* \* \* \* \*

**Sec. 2.7.6. Building or land alteration permit and certificate of occupancy compliance process.**

\* \* \* \* \*

5. *Improvement of property prohibited prior to issuance of building permit.* No site work, removal of protected vegetation, grading, improvement of property or construction of any type may be commenced prior to the issuance of a building permit where the development proposed requires a building permit under this land development code or other applicable county regulations. Exceptions to this requirement may be granted by the community development and environmental services administrator for an approved subdivision or site development plan to provide for distribution of fill excavated on site or to permit construction of an approved water management system, to minimize stockpiles and hauling off-site or to protect the public health, safety and welfare where clearing, grading and filling plans have been submitted and approved meeting the warrants of section 3.2.8.3.6 of this code; removal of exotic vegetation shall be exempted upon receipt of a vegetation removal permit for exotics pursuant to division 3.9.
  - a. In the event the improvement of property, construction of any type, repairs or remodeling of any type that requires a building permit has been completed, all required inspection(s) and certificate(s) of occupancy must be obtained within sixty (60) days after the issuance of after the fact permit(s).

\* \* \* \* \*

**SUBSECTION 3.F. AMENDMENTS TO ARCHITECTURAL AND SITE DESIGN STANDARDS AND GUIDELINES FOR COMMERCIAL BUILDINGS AND PROJECTS DIVISION**

Division 2.8., Architectural and Site Design Standards and Guidelines for Commercial Buildings and Projects, of Ordinance 91-102, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

**DIVISION 2.8. ARCHITECTURAL AND SITE DESIGN STANDARDS AND GUIDELINES FOR COMMERCIAL BUILDINGS AND PROJECTS**

**Sec. 2.8.3. Architectural and site design standards and guidelines for commercial buildings and projects with a gross building area of 20,000 square feet or larger.**

\* \* \* \* \*

2.8.3.7.2. *Landscaping.* The following requirements, with the exception of building perimeter plantings, shall be counted toward the required greenspace and open space requirements of division 2.4. of this code.

1. Until the time specified below, Aa at time of planting, trees in vehicular use areas shall be a minimum of 12 to 14 feet height with a six-foot spread and a two and one-half inch caliper and shall have a clear trunk area to a height of seven feet.
2. Beginning on June 1, 2002, at time of planting, trees in vehicular use areas shall be a minimum of 14 to 16 feet height with a six to eight foot spread and a three to four inch caliper and shall have a clear trunk area to a height of six feet.
- ~~3.~~ 3. The first row of landscape islands located closest to the building front and sides shall be landscaped with trees, palms, shrubs and groundcovers and

shall have a clear trunk area to a height of seven feet (see Illustration 17 below).

- 3 4. Tree and lighting locations shall be designed so as not to conflict with one another (see Illustration 18 below).

**SUBSECTION 3.G. AMENDMENTS TO SUBDIVISIONS DIVISION**

Division 3.2., Subdivisions, of Ordinance 91-102, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

**DIVISION 3.2. SUBDIVISIONS**

**Sec. 3.2.6. Subdivision review procedures.**

\* \* \* \* \*

3.2.6.5.3. *Procedures for acceptance of required improvements.* The applicant shall submit the following data, certifications, inspections and documents for review and approval by the site development review director prior to the county administrator, or his designee denying, granting, or granting with conditions preliminary approval of any completed required improvements and prior to authorizing the site development review director to issue any building permits, except as provided for in section 3.2.7.3.4. of this Code, for structures to be constructed within a subdivision or development, where the developer has chosen to construct the improvements prior to recording of the plat.

3. *Completion certificate, record improvement plans and supportive documents.* The required improvements shall not be considered complete until a statement of substantial completion by the applicant’s professional engineer of record along with the final development records have been furnished to, reviewed and approved by the development services director for compliance with this division. The applicant’s professional engineer of record shall also furnish one set of record improvement plans on a mylar or other similar acceptable material, with a minimum of two mil thickness, and two sets of certified prints acceptable to the development services director, showing the original design in comparison to the actual finished work. The mylars shall be labeled as record drawings on each sheet prior to printing of the required sets of prints. The applicant’s professional engineer shall also submit ~~a computer disk containing the drawing file in auto CAD software format, or a similar format, which is translatable to auto CAD and acceptable to the planning services director.~~ digitally created construction / site plan documents, one (1) disk (CDROM) of the master plan file, including, where applicable, easements, water/wastewater facilities, and storm water drainage system. The digital data to be submitted shall follow these formatting guidelines: All data shall be delivered in the State Plane coordinate system, with a Florida East Projection, and a North American Datum 1983/1990 (NAD83/90 datum), with United States Survey Feet (USFEET) units; as established by a Florida registered surveyor and mapper. All information shall have a maximum dimensional error of +0.5 feet. Files shall be in a Digital Exchange File (DXF) format; information layers shall have common naming conventions (i.e. right-of-way - ROW, centerlines - CL, edge-of-pavement - EOP, etc.). For a plan to be deemed complete, the layering scheme must be readily understood by county staff. All property information (parcels, lots, and requisite annotation) shall be drawn on a unique information layer, with all linework pertaining to the property feature located on that layer. Example: parcels - all lines that form the parcel boundary will be located on one parcel layer. Annotations pertaining to property information shall be on a unique layer. Example:

lot dimensions - lottxt layer. In addition, a copy of applicable measurements, tests and reports made on the work and material during the progress of construction must be furnished. The record construction data shall be certified by the applicant's professional engineer and professional land surveyor and shall include but not be limited to the following items which have been obtained through surveys performed on the completed required improvements:

\* \* \* \* \*

**Sec. 3.2.8. Improvement plans.**

3.2.8.2.18. Upon re-submittal of construction plans and plats, the engineer shall identify all revisions to the construction plans by lettering or numbering; the surveyor shall identify all revisions to the plat by highlighting the current revisions. The applicant shall also provide a written response to the county's comments, responding to each comment individually.

\* \* \* \* \*

**Sec. 3.2.9. Final Subdivision Plat.**

\* \* \* \* \*

3.2.9.1.6. After the final subdivision plat has been approved by the development services director for compliance with this code as provided in this division, the applicant shall resubmit five certified sets of the previously approved improvement plans along with approved copies of all required county, state and federal construction permits. ~~The applicant shall also submit~~ The applicant's professional engineer shall also submit a digitally created construction / site plan documents, one (1) disk (CDROM) of the master plan file, including, where applicable, easements, water/wastewater facilities, and storm water drainage system. The digital data to be submitted shall follow these formatting guidelines: All data shall be delivered in the State Plane coordinate system, with a Florida East Projection, and a North American Datum 1983/1990 (NAD83/90 datum), with United States Survey Feet (USFEET) units; as established by a Florida registered surveyor and mapper. All information shall have a maximum dimensional error of +0.5 feet. Files shall be in a Digital Exchange File (DXF) format; information layers shall have common naming conventions (i.e. right-of-way - ROW, centerlines - CL, edge-of-pavement - EOP, etc.). For a plan to be deemed complete, the layering scheme must be readily understood by county staff. All property information (parcels, lots, and requisite annotation) shall be drawn on a unique information layer, with all linework pertaining to the property feature located on that layer. Example: parcels - all lines that form the parcel boundary will be located on one parcel layer. Annotations pertaining to property information shall be on a unique layer. Example: lot dimensions - lottxt layer. ~~a computer disk containing the drawing file in auto CAD software format, or a similar format, which is translatable to auto CAD and acceptable to the development services director, or alternatively, the applicant may submit a dimensionally stable one inch equals 100 feet plate containing all dimensions otherwise suitable for digitization.~~ All construction permits required from local, state and federal agencies must be submitted to the development services director prior to commencing development within any phase of a project requiring such permits.

**SUBSECTION 3.H. AMENDMENTS TO SITE DEVELOPMENT PLANS DIVISION**

Division 3.3., Site Development Plans, of Ordinance 91-102, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

**DIVISION 3.3. SITE DEVELOPMENT PLANS**

\* \* \* \* \*

**Section 3.3.12. Electronic data requirements.**

After the final site development plan has been approved by the development services director for compliance with this code as provided in this division, the applicant’s professional engineer shall also submit digitally created construction / site plan documents, one (1) disk (CDROM) of the master plan file, including, where applicable, easements, water/wastewater facilities, and storm water drainage system. The digital data to be submitted shall follow these formatting guidelines: All data shall be delivered in the State Plane coordinate system, with a Florida East Projection, and a North American Datum 1983/1990 (NAD83/90 datum), with United States Survey Feet (USFEET) units; as established by a Florida registered surveyor and mapper. All information shall have a maximum dimensional error of +0.5 feet. Files shall be in a Digital Exchange File (DXF) format; information layers shall have common naming conventions (i.e. right-of-way - ROW, centerlines - CL, edge-of-pavement - EOP, etc.). For a plan to be deemed complete, the layering scheme must be readily understood by county staff. All property information (parcels, lots, and requisite annotation) shall be drawn on a unique information layer, with all linework pertaining to the property feature located on that layer. Example: parcels - all lines that form the parcel boundary will be located on one parcel layer. Annotations pertaining to property information shall be on a unique layer. Example: lot dimensions - lottxt layer.

**SUBSECTION 3.I. AMENDMENTS TO EXCAVATION DIVISION**

Division 3.5. Excavation, of Ordinance 91-102, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

**DIVISION 3.5 EXCAVATION**

**Sec. 3.5.3. Applicability; permit required.**

It shall be unlawful for any person, association, corporation or other entity to create, attempt to create, or alter an excavation without having obtained a permit therefor, except for public capital facility projects, or as otherwise provided herein.

\* \* \* \* \*

**SUBSECTION 3.J. AMENDMENTS TO COASTAL CONSTRUCTION SETBACK LINE VARIANCE DIVISION**

Division 3.13., Coastal Construction Setback Line Variance, of Ordinance 91-102, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

**DIVISION 3.13. COASTAL CONSTRUCTION SETBACK LINE VARIANCE**

**Sec. 3.13.7. Exemptions.**

Sec. 3.13.7.3. Any structure(s) ~~such as beach umbrellas and beach furniture,~~ that: 1) do not constitute fixed structure(s), 2) do not require a building permit, 3) weigh less than 100 pounds, and 4) upon review by the development

planning services director or his designees, is/are determined to not present an actual or potential threat to the beach and the dune system and adjacent properties are exempt from the variance requirements of this division. This exemption shall not be effective during sea turtle nesting season (May 1 – October 31) unless the structures are removed daily from the beach prior to ~~9:00 p.m.~~ 9:30 p.m. and are not moved onto, or placed on, the beach before completion of monitoring conducted by personnel with prior experience and training in nest surveys procedures and possessing a valid Fish and Wildlife Conservation Commission Marine Turtle Permit (daily sea turtle monitoring), or unless the beach furniture is being actively used or attended during the period of time from 9:30 pm until the next day’s monitoring. Exemptions allowed under this provision are not intended to authorize any violation of § 370.12, F.S., or any of the provisions of the Endangered Species Act of 1973, as it may be amended.

**Sec. 3.13.9. Penalty and civil remedies**

\* \* \* \* \*

3.13.9.3.1 Penalty for a violation of subsection 3.13.7.3 Notwithstanding the penalties set forth elsewhere in this Code, the following violations of subsection 3.13.7.3, which occur during sea turtle nesting season:

A) 1) setting up of any structures as defined in 3.13.7.3, prior to daily sea turtle monitoring, 2) failing to remove all structures from the beach by 9:30 p.m., or 3) failing to have lights, so required, turned off by 9:00 pm., are subject to the following penalties:

First violation: Up to \$1,000 fine.  
Second violation: \$2,500 fine  
Third or more violation: \$5,000 fine

B) Beach front property owners who leave beach furniture unattended on the beach between 9:30 pm and the time of the next day’s sea turtle monitoring, are subject to the following penalties:

First violation: Written notice of ordinance violation  
Second violation: Up to \$1,000 fine  
Third or more violation: \$2,500 fine  
More than three violations: \$5,000 fine

\* \* \* \* \*

**SUBSECTION 3.K. AMENDMENTS TO VEHICLE ON THE BEACH REGULATIONS DIVISION**

Division 3.14., Vehicle On The Beach Regulations, of Ordinance 91-102, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

**DIVISION 3.14. VEHICLE ON THE BEACH REGULATIONS**

**Sec. 3.14.3. Exceptions; permit.**

\* \* \* \* \*

3.14.3.4 Vehicle-on-the-beach permits issued in conjunction with special or annual beach events: Vehicles which are used in conjunction with functions on the beach, as permitted by an approved special event temporary use permit, or annual beach events permit, are exempt from the provisions of this division if a vehicle-on-the-

beach permit has been granted by the planning services director or his designee. All permits issued are subject to the following conditions and limitations:

- 3.14.3.4.1. The use of vehicles shall be limited to set-up and removal of equipment for the permitted function.
- 3.14.3.4.2. Said permits shall be prominently displayed on the vehicle and kept with the vehicle and available for inspection;
- 3.14.3.4.3. The types of vehicles permitted for this use may include ATVs, non-motorized handcarts or dollies, and small utility wagons, which may be pulled behind the ATVs.
- 3.14.3.4.4. All vehicles shall be equipped with large pneumatic tires ~~inflated to no more than~~ having a maximum ground-to tire pressure of 10 PSI (pounds per square inch), as established by the Standard PSI Formula. Calculations for tire pressure using the standard formula shall be included with each permit application.
- 3.14.3.4.5. Permits shall only be issued for ATVs when staff has determined that: 1) due to the distance and the excessive weight of the equipment to be moved that it would be prohibitive in nature to use push carts or dollies or 2) a limited designated work area has been established at the foot of the dune walkover for loading and unloading and the ATV use is restricted to that limited area.
- 3.14.3.4.6. When not in use all vehicles shall be stored off the beach;
- ~~3.14.3.4.7. Use of such vehicles on the beach shall be prohibited during sea turtle nesting season~~ During sea turtle nesting season, the following shall apply: 1) no vehicle may be used on the beach until after completion of daily sea turtle monitoring conducted by personnel with prior experience and training in nest surveys procedures and possessing a valid Fish and Wildlife Conservation Commission Marine Turtle Permit; 2) consistent with sec. 3.13.7.3., there shall be no use of vehicles for set up of chairs or hotel or commercial beach equipment, etc. until after the beach has been monitored; 3) one (1) ingress/egress corridor onto and over the beach, perpendicular to the shoreline from the owner's property, shall be designated by the Collier County Natural Resources Department (CCNRD); additional corridors may be approved when appropriate and necessary; a staging area may be approved for large events and 4) except for designated corridors, all motorized vehicles shall be operated below the Mean High Water line (MHW), as generally evidenced by the previous high tide mark. If at anytime CCNRD determines that the designated corridor may cause adverse impacts to the beach, nesting sea turtles, or the ability of hatchlings to traverse the beach to the water, an alternative corridor shall be designated. If no alternative is available, the Vehicle on the Beach permit may be suspended for the remaining period of the sea turtle season.
- 3.14.3.5. Vehicle-on-the-beach permits issued in conjunction with permanent concession facilities: shall be exempt from the provisions of this division if a vehicle-on-the-beach permit has been granted by the planning services director or his designee. Vehicles which are used in conjunction with approved permitted beach concession activities may be used to set up concession equipment and may be used to remove the equipment from the beach and return it to the approved storage area, subject to the following conditions and limitations:
  - 3.14.3.5.1. The types of vehicles permitted for this use may include ATVs, non-motorized handcarts or dollies, and small utility wagons, which may be pulled behind the ATVs.
  - 3.14.3.5.2. Said permit shall be prominently displayed on the vehicle and kept with the vehicle and available for inspection.
  - 3.14.3.5.3. All vehicles shall be equipped with large pneumatic tires ~~inflated to no more than~~ having a maximum ground-to tire pressure of 10 PSI (pounds per square inch), as

established by the Standard PSI Formula. Calculations for tire pressure using the standard formula shall be included with each permit application.

3.14.3.5.4. Permits shall only be issued for ATV's when one of the following criteria has been met:

- 1) Evidence has been provided that there is a need to move equipment, which, due to the excessive weight and distance, of equal to or greater than 200 feet, would be prohibitive in nature to move with, push carts or dollies.
- 2) A limited designated work area has been established at the foot of the dune walkover for loading and unloading and the ATV use is restricted to that limited identified area.

3.14.3.5.5. When not in use all vehicles shall be stored off the beach;

3.14.3.5.6. These vehicles may not be used for transportation of people or equipment throughout the day. The permit shall designate a limited time for equipment set up and for the removal of the equipment at the end of the day.

~~3.14.3.5.7. Use of such vehicles on the beach shall be prohibited during sea turtle nesting season~~  
During sea turtle nesting season, the following shall apply: 1) no vehicle may be used on the beach until after completion of daily sea turtle monitoring conducted by personnel with prior experience and training in nest surveys procedures and possessing a valid Fish and Wildlife Conservation Commission Marine Turtle Permit; 2) consistent with sec. 3.13.7.3., there shall be no use of vehicles for set up of chairs or hotel or commercial beach equipment until after the beach has been monitored; 3) one (1) ingress/egress corridor onto and over the beach, perpendicular to the shoreline from the owner's property, shall be designated by the Collier County Natural Resources Department (CCNRD); additional corridors may be approved when appropriate and necessary and 4) except for designated corridors, all motorized vehicles shall be operated below MHW, as generally evidenced by the previous high tide mark. If at anytime CCNRD determines that the designated corridor may cause adverse impacts to the beach, nesting sea turtles, or the ability of hatchlings to traverse the beach to the water, an alternative corridor shall be designated. If no alternative is available, the Vehicle on the Beach permit may be suspended for the remaining period of the sea turtle season.

3.14.3.6. *Vehicle-on-the-beach permits for other routine functions associated with permitted uses of commercial hotel property:* Vehicles which are used in conjunction with tasks such as routine equipment set-up that cannot reasonably be accomplished without the use of such vehicle due to size, weight, volume and such, shall be exempt from the provisions of this division if a vehicle-on-the-beach permit has been granted by the planning services director or his designee, subject to the following conditions and limitations:

3.14.3.6.1. Use of the vehicle shall be limited to a one-time set up and a one-time removal of equipment each day.

3.14.3.6.2. Said permit shall be prominently displayed on the vehicle and kept with the vehicle and available for inspection.

3.14.3.6.3. The types of vehicles permitted for this use may include ATVs, non-motorized handcarts or dollies.

3.14.3.6.4. Permits shall only be issued for ATVs when one of the following criteria has been met:

- 1) Evidence has been provided that there is a need to move equipment, which, due to the excessive weigh and distance of equal to or greater than 200 feet, would be prohibitive in nature to move with, push carts or dollies.

- 2) A limited designated work area has been established at the foot of the dune walkover for loading and unloading and the ATV use is restricted to that limited identified area.

3.14.3.6.5. All vehicles shall be equipped with large pneumatic tires inflated to no more than having a maximum ground-to tire pressure of 10 PSI (pounds per square inch), as established by the Standard PSI Formula. Calculations for tire pressure using the standard formula shall be included with each permit application.

3.14.3.6.6. When not in use all vehicles shall be stored off the beach;

3.14.3.6.7 Use of such vehicles on the beach shall be prohibited during sea turtle nesting season. During sea turtle nesting season, the following shall apply: 1) no vehicle may be used on the beach until after completion of daily sea turtle monitoring conducted by personnel with prior experience and training in nest surveys procedures and possessing a valid Fish and Wildlife Conservation Commission Marine Turtle Permit; 2) consistent with sec. 3.13.7.3., there shall be no use of vehicles for set up of chairs or hotel or commercial beach equipment until after the beach has been monitored; 3) one (1) ingress/egress corridor onto and over the beach, perpendicular to the shoreline from the owner's property, shall be established by the Collier County Natural Resources Department (CCNRD); additional corridors may be approved when appropriate and necessary and 4) except for designated corridors, all motorized vehicles shall be operated below MHW, as generally evidenced by the previous high tide mark. If at anytime CCNRD determines that the designated corridor may cause adverse impacts to the beach, nesting sea turtles, or the ability of hatchlings to traverse the beach to the water, an alternative corridor shall be designated. If no alternative is available, the Vehicle on the Beach permit may be suspended for the remaining period of the sea turtle season.

3.14.3.7. Tire tread identifications: All rear tires shall be marked with raised metal lettering (minimum 1/2 inch thick attached to the raised tread of the tires) in order that field identifications can be made when vehicles are used on the beach. This identification shall be required for all new vehicle on the beach permits issued for ATV's and for all vehicles using the beach during sea turtle season.

\* \* \* \* \*

**Sec. 3.14.5. Beach raking and mechanical beach cleaning.**

3.14.5.1. Beach raking and mechanical beach cleaning shall be prohibited on undeveloped coastal barriers unless a state permit is ~~required.~~ obtained.

3.14.5.2. Beach raking and mechanical beach cleaning ~~shall be subject to~~ must comply with the provisions of section 3.14.6 of this division.

3.14.5.3. Beach raking and mechanical beach cleaning shall not interfere with sea turtle nesting, shall preserve or replace any native vegetation on the site, and shall maintain the natural existing beach profile and minimize interference with the natural beach dynamics and function.

3.14.5.4. Beach raking and mechanical beach cleaning devices shall not disturb or penetrate beach sediments by more than the minimum depth necessary, not to exceed one inch, in order to avoid a potential increase in the rate of erosion. In cases where the one-inch depth is not sufficient, a maximum depth of two inches, as allowed by the department of natural resources, will be permitted where approved in writing by the development services director.

3.14.5.5. Heavy equipment shall not be used to conduct beach raking and mechanical beach cleaning. Lightweight vehicles having wide, low profile, low pressure tires shall be used to conduct beach raking and mechanical beach cleaning operations.

**Sec. 3.14.6. Operations of vehicles on the beach during marine turtle nesting season.**

The operations of motorized vehicles, including but not limited to ~~and~~ self-propelled, wheeled, tracked, or belted conveyances, ~~shall be~~ is prohibited on coastal beaches above mean high water during sea turtle nesting season, May 1 to October 31, of each year, except ~~in cases~~ for purposes of law enforcement, emergency, or conservation of sea turtles, unless such vehicles have a valid permit issued pursuant to this division. Permits issued pursuant to this division are not intended to authorize any violation of § 370.12, F.S., or any of the provisions of the Endangered Species Act of 1973, as it may be amended.

3.14.6.1 All Bbeach raking and mechanical beach cleaning during sea turtle nesting season, May 1 to October 31, of each year, ~~shall be confined to the area of beach below mean high water as generally evidenced by or below or the previous high-tide mark and only where a state-certified sea turtle monitoring has been conducted by a state-certified sea turtle permit~~ must not begin before completion of monitoring conducted by personnel with prior experience and training in nest surveys procedures and possessing a valid Fish and Wildlife Conservation Commission Marine Turtle Permit.

3.14.7. Penalties. Notwithstanding the penalties set forth elsewhere in this Code, violations of this division are subject to the following penalties:

3.14.7.1. Violations of section 3.14.5., which do not occur during sea turtle nesting season, i.e., occur outside of sea turtle nesting season, are subject to up to a \$500 fine per violation.

3.14.7.2. 1. Minor infractions of section 3.14.5 which occur during sea turtle nesting season are subject to up to a \$500 fine per violation. Minor infractions are defined as any activity that will not cause immediate harm to sea turtles or their nesting activity; and include, but are not limited to, the following: 1) use of an unpermitted vehicle; 2) vehicles being operated: a) without required tire tread identification; b) without permit being available for inspection; or c) with improper tire pressure.

2. Major infractions of section 3.14.5 which occur during sea turtle nesting season are subject to the following penalties. Major infractions are defined as any activity that may cause immediate harm to sea turtles or their nesting activities; and include, but are not limited to, the following: 1) use of a vehicle prior to daily sea turtle monitoring, 2) use of a vehicle after 9:30 pm, or 3) use of a vehicle outside of a designated corridor.

First violation: \$1000 fine and a suspension of permitted activities, including but not limited to: beach raking or mechanical cleaning activities, for 70 days or the balance of sea turtle nesting season, whichever is less.

Second violation: \$2,500 fine and a suspension of permitted activities, including but not limited to: beach raking or mechanical cleaning activities, for 70 days or the balance of sea turtle nesting season, whichever is less.

Third or more violation: \$5,000 fine and a suspension of permitted activities, including but not limited to: beach raking or mechanical cleaning activities, for 70 days or the balance of sea turtle nesting season, whichever is less.

3.14.7.3. Violations of sections 3.14.3.2.; 3.14.3.4.; 3.14.3.5.; or 3.14.3.6., which do not occur during sea turtle nesting season, i.e., occur outside of sea turtle nesting season, are subject to up to a \$500 fine per violation.

3.14.7.4 Violations of sections 3.14.3.2.; 3.14.3.4.; 3.14.3.5.; or 3.14.3.6., which occur during sea turtle nesting season are subject to the following penalties:

1. Minor infractions are subject to up to a \$500 fine per violation. Minor infractions are defined as any activity that will not cause an immediate harm to sea turtles or their nesting activity; and include, but are not limited to, the following: 1) use of an unpermitted vehicle; 2) vehicles being operated: a) without required tire tread identification; b) with permit not available for inspection; or c) with improper tire pressure.

2. Major infractions are defined as any activity that may cause harm to sea turtles or their nesting activities; and include, but are not limited to, the following: 1) use of a vehicle prior to daily sea turtle monitoring, 2) use of a vehicle after 9:30 p.m. ~~9:00 pm~~, or 3) vehicle being operated outside of a designated corridor. Major violations are subject to the following penalties:

First violation: \$1000 fine.

Second violation: \$2,500 fine

Third or more violation: \$5,000 fine

\* \* \* \* \*

**SUBSECTION 3.L. AMENDMENTS TO DEFINITIONS DIVISION**

Division 6.3., Definitions, of Ordinance 91-102, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

**DIVISION 6.3. DEFINITIONS**

*Destination Resort Hotel* : A means a transient lodging facility where patrons generally stay for several days in order to utilize, enjoy, or otherwise participate in certain amenities, natural or man-made, ~~such as frontage on or access to the Gulf of Mexico, ability to use a golf course, and other recreational amenities all of which serve to encourage occupancy by persons who primarily patronize the destination resort hotels for those specific purposes as opposed to a visitor to the area in general or otherwise conducting a business activity~~ including but not limited to: (i) direct access to the Gulf of Mexico, (ii) on-site golf course and golf-related facilities, (iii) health spa and/or fitness center, (iv) other recreational amenities and on-site services, including full dining services and cocktail lounge, entertainment rooms for video and movies, and concierge services. Except that, for destination resort hotels fronting on the Gulf of Mexico, an on-site golf course is not required. In all cases, a destination resort hotel must include full dining services and a cocktail lounge, and not less than twenty-five(25) percent of the gross floor area must be devoted to common usage and support service areas, such as but not limited to fitness room, health spa, media room, meeting rooms, dining and lounge facilities, and spaces in support of hotel functions.

*Participant*: A person who appears at a hearing examiner proceeding, in person or through counsel or authorized representative and provides legal argument, testimony, or other evidence. A participant is entitled to receive a written notice of the hearing examiner's decision or recommendation. This term includes county staff and the applicant where appropriate. Status as a participant under this Code is not intended to enhance or diminish a person's standing in other legal proceedings, and as such will not alter a person's standing under the common law or other applicable procedural rules for civil, administrative, appellate, or other proceedings.

*PSI (Pounds per Square Inch): Standard Formula for Establishing Ground-to-tire (PSI)*

Formula for establishing a vehicles maximum ground-to-tire pressure in pounds per square inch (psi) for vehicle on the beach and beach cleaning permit conditions (See section 3.14.3):  $psi = \frac{\text{Vehicle weight (lbs)}}{\text{footprint (in}^2\text{)}}$ .

Example:  $\frac{404 \text{ lbs (ATV weight)} + 200 \text{ (person and equipment weight)}}{198 \text{ inches}^2}$  (ATV with a 6"X8.25" foot print X 4 tires) = 3.1 psi

*Right-of-way:* A strip of land, public or private, occupied or intended to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, storm water drainageway facility, water main, sanitary or storm sewer main, or for similar special use. The usage of the term "right-of-way" for land platting purposes shall mean that every right-of-way, whether public or private, hereafter established and shown on a plat is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels. (See division 3.2.)

*Structure:* Anything constructed or erected which requires a fixed location on the ground, or in the ground, or attached to something having a fixed location on or in the ground, including buildings, towers, smokestacks, utility poles, and overhead transmission lines. Fences and walls, gates or posts are not intended to be structures. (See division 3.4.)

Unauthorized communication: A direct or indirect communication, in any form, whether written, verbal or graphic, with the hearing examiner or the hearing examiner's staff, by any person outside of a public hearing and not on the record, concerning substantive issues in any proposed or pending matter relating to variances, conditional uses, rezonings, or any other matter assigned by statute, ordinance, or administrative code to the hearing examiner for decision or recommendation, except as otherwise permitted.

*Yard:* The required open space, unoccupied and ~~obstructed~~ unobstructed by any structure or portion of a structure from 30 inches above the general ground level of the graded lot upward, provided, however, that fences and walls may be permitted in any yard subject to height limitations indicated herein.

\* \* \* \* \*

**SUBSECTION 3.M. AMENDMENTS TO VARIOUS DIVISIONS OF THE LAND DEVELOPMENT CODE CREATING THE HEARING EXAMINER PROGRAM**

**ARTICLE 1: GENERAL PROVISIONS**

**DIVISION 1.8 NON-CONFORMITIES**

**Sec. 1.8.6. Change in use.**

If no structural alterations are made, upon application to the planning services director, any nonconforming use of a structure, or of a structure and premises in combination, may be changed to another nonconforming use of the same character, or to a more restricted nonconforming use, provided the ~~board of zoning appeals~~ hearing examiner, ~~upon application to the development services director~~, shall find after public notice and hearing that the proposed use is equally or more appropriate to the district than the existing nonconforming use and that the relation of the structure to surrounding properties is such that adverse effect on occupants and neighboring properties will not be greater than if the existing nonconforming use is continued, and so recommends to the board of county commissioners. In permitting such change, the ~~board of zoning appeals~~ hearing examiner may recommend, and the board of county commissioners may require, appropriate conditions and safeguards in accordance with the intent and purpose of this code.

**Sec. 1.8.10. Nonconforming structures.**

\* \* \* \* \*

1.8.10.4. Nonconforming residential structures, which for the purpose of this section shall mean detached single-family dwellings, duplexes, or mobile homes in existence at the effective date of this zoning code or its relevant amendment and in continuous residential use thereafter, may be altered, expanded, or replaced upon ~~recommendation of the Collier County planning commission and approval of the board of zoning appeals by resolution~~ hearing examiner.

Notwithstanding the foregoing restrictions as to reconstruction, any residential structure or structures in any residential zone district may after destruction be rebuilt ~~after destruction~~ to its ~~the~~ prior extent, height and density of units per acre regardless of the percentage of destruction, subject to compliance with the applicable Building Code requirements in effect at the time of redevelopment. In the event of such rebuilding, all setbacks and other applicable district requirements shall be met unless a variance therefor is obtained from the ~~board of zoning appeals~~ hearing examiner. For the purpose of this division, a hotel, motel, or boatel shall be considered to be a residential structure.

Since the size and nature of the alteration, expansion, or replacement of such nonconforming structures may vary widely, a site plan, and if applicable, preliminary building plans indicating the proposed alteration, expansion, or replacement shall be presented with each petition. Prior to granting such alteration, expansion, or replacement of a nonconforming single-family dwelling, duplex or mobile home, the ~~planning commission and the board of county commissioners~~ hearing examiner shall consider and base ~~its~~ his or her approval on the following standards and criteria:

\* \* \* \* \*

## ARTICLE 2: ZONING

### DIVISION 2.2. ZONING DISTRICTS, PERMITTED USES, CONDITIONAL USES, DIMENSIONAL STANDARDS

#### Sec. 2.2.2. Rural agricultural district (A).

2.2.2.3. *Conditional uses.* The following uses are permitted as conditional uses in the rural agricultural district (A), subject to the standards and procedures established in division 2.7.4.

\* \* \* \* \*

23. Cultural, educational, or recreational facilities and their related modes of transporting participants, viewers or patrons where applicable, subject to all applicable federal, state and local permits. Tour operations, such as, but not limited to airboats, swamp buggies, horses and similar modes of transportation, shall be subject to the following criteria:

- (1) Permits or letters of exemption from the US Army Corps of Engineers, the Florida Department of Environmental Protection, and the South Florida Water Management District shall be presented to the Planning Services Director prior to Site Development Plan approval.
- (2) The petitioner shall post the property along the entire property line with no trespassing signs approximately every 300 yards.
- (3) The petitioner shall utilize only trails identified and approved on the Site Development Plan. Any existing trails shall be utilized before the establishment of new trails.

- (4) Motor vehicles shall be equipped with engines which include spark arrestors and mufflers designed to reduce noise.
- (5) The maximum size of any vehicle, the number of vehicles, and the passenger capacity of any vehicle shall be determined ~~by the Board of Zoning Appeals~~ during the conditional use process.
- (6) Motor vehicles shall be permitted to operate during daylight hours which means, one hour after sunrise to one hour before sunset.
- (7) Molestation of wildlife, including feeding, shall be prohibited.
- (8) Vehicles shall comply with State and United States Coast Guard regulations, if applicable.
- (9) ~~Annually, all The Board of Zoning Appeals shall review such a conditional uses for tour operations, annually shall be reviewed by the hearing examiner.~~ Annually, all The Board of Zoning Appeals shall review such a conditional uses for tour operations, annually shall be reviewed by the hearing examiner. If during the review, at an advertised public hearing ~~meeting the requirements of section 2.7,~~ meeting the requirements of section 2.7, it is determined ~~by the Board of Zoning Appeals~~ that the tour operation is detrimental to the environment, and no adequate corrective action has been taken by the petitioner, then the hearing examiner will recommend to the Bboard of Zoning Appeals county commissioners may that it rescind the conditional use at an advertised public hearing meeting the requirements of section 2.7.

**Sec. 2.2.23. Airport overlay district (APO): special regulations for specified areas in and around the airports in Collier County.**

2.2.23.3.3. *Variances.* Any person desiring to erect or increase the height of any structure or use his property not in accordance with the regulations prescribed in this ~~ordinance Code~~ may apply to the ~~Board of Zoning Appeals~~ hearing examiner for a variance from such regulations pursuant to Section 2.7.5. of this Code, except for provisions herein or by Chapter 333, F.S., that are not variable.

**Sec. 2.2.24. Special treatment overlay district (ST); special regulations for areas of environmental sensitivity and lands and structures of historical and/or archaeological significance and the Big Cypress Area of Critical State Concern.**

\* \* \* \* \*

2.2.24.5. *Site alteration plan or site development plan approval required.* Prior to the clearing, alteration, or development of any land designated ST or ACSC-ST, the property owner or his legally designated agent shall apply for and receive approval of a site alteration plan or site development plan, as the case may be, ~~by the board of county commissioners~~ as provided in section 2.2.24.6.

2.2.24.6. *Procedures for site alteration plan or site development plan approval for development in ST or ACSC-ST designated land.*

2.2.24.6.1. *Preapplication conference.* Prior to filing a petition for site alteration or site development approval of ST or ACSC-ST land, the petitioner shall request and hold a preapplication conference with the ~~development~~ development planning services director and appropriate county staff. The preapplication conference is for the purpose of guidance and information, and for insuring insofar as is possible, that the petition is in conformity with these regulations. No petition for the site alteration or site development approval will be accepted for formal processing until the ~~development~~ development planning services director has reviewed the petition to determine that all required data is included; a minimum of 30 days shall be allowed for this phase of the review process. County staff shall visit the site, where appropriate.

2.2.24.6.2. ~~Review and recommendation by development planning services director, planning commission and environmental advisory board.~~ decision by hearing examiner. The site alteration plan or site development plan shall be submitted to the development planning services director who shall have it reviewed by the appropriate county staff. The development planning services director shall then forward the site alteration plan or site development plan and the county staff recommendations to the planning commission and the environmental advisory board (EAB) hearing examiner for review and ~~recommendation~~ a final determination by the hearing examiner within thirty (30) days. ~~Neither the planning commission nor the EAB review shall require a public hearing nor notice to the abutting property owners, but shall be held in a regular meeting. The planning commission and EAB recommendations and county staff recommendations shall be forwarded to the board of county commissioners for final action.~~

2.2.24.6.3. ~~Final action by board of county commissioners.~~ Final action on the site alteration plan or site development plan lies with the board of county commissioners hearing examiner as action on an administrative matter. The board hearing examiner shall review the proposed site alteration plan or site development plan ~~in regular session~~ and shall act formally by ~~resolution~~ a written decision stipulating reasons for approval, or approval with modification, or denial of the site alteration plan or development plan.

**Sec. 2.2.26. Golden Gate Parkway Professional Office Commercial Overlay District (GGPPOCO): special conditions for the properties abutting Golden Gate Parkway east of Santa Barbara Boulevard as referenced in the Golden Gate Parkway Professional Office Commercial District Map (Map 2) of the Golden Gate Area Master Plan.**

\* \* \* \* \*

2.2.26.3.14. *Variance request.* Owners of isolated lots, as of February 5, 1991, (The Adoption of the Golden Gate Master Plan), may petition the ~~board of zoning appeals~~ hearing examiner for a variance from the standards in this district as will not be contrary to the public interest when owing to special conditions peculiar to the property, a literal enforcement of these standards would result in unnecessary and undue hardship. The procedures and standards for granting such variance shall be similar to those set forth in section 2.7.5.6 and the following: The variance shall not confer on the petitioner special privileges denied to others in the same zoning district; the variance shall not be injurious to the surrounding neighborhood or otherwise detrimental to the public welfare; and the variance shall be the minimum variance that makes possible a reasonable use of the land, building or structure.

**Sec. 2.2.28. Immokalee Overlay Districts.**

2.2.28.3.3.2. Owners of lots or combinations of lots having less than the required street frontage may petition the ~~board of zoning appeals~~ hearing examiner for a variance from the standard in this sub-district as will not be contrary to the public interest when owing to special conditions peculiar to the property, a literal enforcement of these standards would result in unnecessary and undue hardship.

2.2.28.4.3.2. Owners of lots or combination of lots having less than the 150-foot of required frontage may petition the ~~board of zoning appeals~~ hearing examiner for a variance from the standard in this sub-district as will not be contrary to the public interest when owing to special conditions peculiar to the property, a literal enforcement of these standards would result in unnecessary and undue hardship.

**Sec. 2.2.32. Santa Barbara Commercial Overlay District (SBCO).**

2.2.32.3.14. *Variance request.* Owners of property within the Santa Barbara Commercial Overlay District may petition the ~~board of zoning appeals~~ hearing examiner for a variance from the standards in this district (Sec. 2.2.32.3.1. and Sec. 2.2.32.3.4-2.2.32.3.13) as will not be contrary to the public interest when, owing to special conditions peculiar to the property, a literal enforcement of these standards would result in unnecessary and undue hardship. The procedures and standards for granting such variances are as set forth in section 2.7.5.6. of this code.

**Sec. 2.2.33. Bayshore Drive Mixed Use Overlay District.**

2.2.33.12 *Parking Standards*

\* \* \* \* \*

10. Shared parking requirements shall be consistent with those provided in subsection 2.3.4.11.2.c. of the code except that the planning services department director can approve or deny requests instead of the ~~hearing examiner board of zoning appeals or planning commission~~. Shared parking spaces can be separated by Bayshore Drive provided the two properties are located within the BMUD.

2.2.33.20 *Special conditions for marinas*

\* \* \* \* \*

d. Height of structures may be increased to a maximum height of 50 feet ~~by the board of zoning appeals (BZA)~~ upon approval of a variance petition. ~~The BZA;~~ In addition to the findings in section 2.7.5, the hearing examiner shall consider whether or not the literal interpretation of the provisions of this zoning code impose a financial hardship on the applicant.

**DIVISION 2.3. OFF-STREET PARKING AND LOADING**

**Sec. 2.3.4. Off-street vehicular facilities: design standards.**

2.3.4.11. *Locational requirements.*

\* \* \* \* \*

2. Exemptions to locational requirements:

\* \* \* \* \*

*c. Parking exemption.*

1. The ~~board of zoning appeals~~ hearing examiner, after review and recommendation by the ~~planning commission~~ county staff, may approve a parking exemption under the following circumstances:
  - (1) The permitted use and the proposed off-site parking lot are separated by a collector or arterial roadway;
  - (2) The lot proposed for off-site parking is not zoned commercial;
  - (3) Shared parking, in which two or more permitted uses utilize the same, or a portion of the same required parking.

(4) Parking reservation, in which the petitioner believes that the number of required parking spaces is excessive and wishes to reduce the number of parking spaces required to be constructed, while reserving the land area for future parking spaces if determined necessary by the planning services director, or the board of zoning appeals hearing examiner.

2. The ~~planning commission hearing examiner and the board of zoning appeals~~ shall consider the following criteria for the approval of a parking exemption:

\* \* \* \* \*

**Sec. 2.3.16. Off-street parking and stacking: required amounts.**

Minimum off-street parking space requirements are set forth below. Where stacking is required, the amount listed does not include the first vehicle being serviced (for drive-in windows, stacking starts ten feet behind the middle of the pickup window) and is computed at 20 feet per vehicle (turns are computed at 22 feet per vehicle, measured at the outside of the driveway). Stacking for one lane may be reduced if the reduction is added to the other lane(s).

Child care/day nursery/ adult day care center	1 per employee of the largest workshift plus 1 space for every 10 children/adults. In addition, adequate dropoff and pickup areas shall be provided.
Church/house of worship/temple/ Synagogue	3 for each 7 seats in chapel or assembly area. Other uses are not counted except for residential uses. A reduction of this standard to a minimum of 1 space for each 4 seats, may be applied for in conjunction with an application for a site development plan, through the <del>board of zoning appeals</del> <u>hearing examiner</u> after review and recommendation of the <del>planning commission</del> <u>county staff</u> . This reduction will only be allowed for expansion created by congregational growth, for existing church buildings where the applicant can demonstrate a significant hardship exists.

**DIVISION 2.4. LANDSCAPEING AND BUFFERING**

**Sec. 2.4.5. Minimum landscaping required for vehicular use areas.**

2.4.5.1. *Applicability.* The provisions of this section shall apply to all new off-street parking or other vehicular use areas. Existing landscaping which does not comply with the provisions of this code shall be brought into conformity to the maximum extent possible when: the vehicular use area is altered or expanded except for restriping of lots/drives, the building square footage is changed, or the structure has been vacant for a period of 90 days or more and a request for an occupational license to resume business is made. These provisions shall apply to all developments with the exception of single-family, two-family, mobile home dwelling units, and dwellings on individually platted lots. Any appeal from an administrative determination relating to these regulations shall be to the ~~board of zoning appeals~~ hearing examiner as an appeal of an administrative matter or equivalent. Prior to issuing occupancy permits for new construction, implementation and completion of landscaping requirements in off-street vehicular facilities shall be required. Where a conflict exists between the strict

application of this division and the requirements for the number of off-street parking spaces or area of off-street loading facilities, the requirements of this division shall apply.

**DIVISION 2.5. SIGNS**

**Sec. 2.5.5. Permitted signs.**

2.5.5.1.2. *Real estate signs.* The following signs classified as real estate signs shall be permitted in residential districts subject to the following:

1. One ground sign with a maximum height of 6 feet or wall "For Sale," "For Rent," or similar sign, with a maximum of four square feet in size, per street frontage for each parcel, or lot less than one acre in size. Said sign shall be located no closer than ten feet from any adjacent residentially used property and may be placed up to the property line abutting a right-of-way, provided it is a minimum of ten feet from the edge of pavement. (No building permit required.)
2. One ground sign with a maximum height of 8 feet or wall "For Sale," "For Rent," or similar sign, with a maximum of 12 square feet in size, per street frontage for each parcel, or lot one to ten acres in size. (No building permit required.)
3. One pole sign with a maximum height of 15 feet or wall "For Sale," "For Rent," or similar sign, with a maximum of 64 square feet in size, per street frontage for each parcel or lot in excess ten acres in size.
4. Real estate signs shall not be located closer than 10 feet from any property line. In the case of undeveloped parcels where the existing vegetation may not allow the location of the sign 10 feet from the property line, the planning services director may allow a reduction in the amount of the required setback however, in no case shall said sign be located closer than five feet from any property line unless authorized by the ~~board of zoning appeals~~ hearing examiner through the variance process.

\* \* \* \* \*

2.5.5.2. *Signs within non-residential districts:*

\* \* \* \* \*

2.5.5.2.3. *Real estate signs:* The following signs classified as real estate signs shall be permitted in non-residential districts subject to the following:

1. One ground sign with a maximum height of 10 feet or wall "For Sale," "For Rent," or similar sign with a maximum area of twelve square feet in size per street frontage for each parcel, or lot less than one acre in size. (No building permit required.)
2. One ground sign with a maximum height of 10 feet or wall "For Sale," "For Rent," or similar sign, with a maximum 32 square feet in size, per street frontage for each parcel, or lot one to ten acres in size. (No building permit required.)
3. One ground sign with a maximum height of 15 feet or wall "For Sale," "For Rent," or similar sign, with a maximum of 64 square feet in size, per street frontage for each parcel or lot in excess of ten acres in size.
4. Real estate signs shall not be located closer than 10 feet from any property line. In the case of undeveloped parcels where the existing vegetation may

not allow the location of the sign 10 feet from the property line, the planning services director may allow a reduction in the amount of the required setback however, in no case shall said sign be located closer than five feet from any property line unless authorized by the ~~board of zoning appeals~~ hearing examiner through the variance process.

**Sec. 2.5.11. Variances.**

The ~~hearing examiner, board of zoning appeals~~ based upon the evidence given in public hearing; and the findings of the ~~planning commission~~ hearing examiner should determine to the maximum extent possible if the granting of the variance will diminish or otherwise have a detrimental effect on the public interest, safety or welfare. A variance from the terms of this zoning code may be granted based on the requirements of section 2.7.5. or where it can be demonstrated that a sign has significant historic or community significance, and pursuant to the criteria and procedures set forth in section 2.7.5 of this code. In granting any variance, the ~~board of zoning appeals~~ hearing examiner may prescribe the following:

1. Appropriate conditions and safeguards in conformity with this code or other applicable county ordinances. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this code.
2. A reasonable time limit within which the action for which the variance required shall be begun or completed or both.

**DIVISION 2.6. SUPPLEMENTAL DISTRICT REGULATIONS**

**Sec. 2.6.10. Locational restrictions for businesses serving alcoholic beverages.**

2.6.10.1.1. No such use shall be located within 500 feet of any established elementary, middle or high school, child care center, public library, church, public park, or public playground, unless a waiver of said distance requirement is granted by a ~~board of zoning appeals resolution~~ the hearing examiner pursuant to section 2.6.10.3. This does not include beach access points. The distance of 500 feet shall be measured as the shortest distance between the lot on which the school, child care center, public library, church, public park or public playground is located and the lot on which the alcoholic beverages are to be sold, except that establishments located in shopping centers shall be measured to the outer wall of the establishment.

2.6.10.3. *Waiver of distance requirement.* The ~~hearing examiner~~ board of zoning appeals may, ~~by resolution,~~ grant a waiver of part or all of the minimum distance requirement set forth in section 2.6.10. if it is demonstrated by the applicant and determined by the ~~hearing examiner~~ board of zoning appeals that the site proposed for the sale and consumption of alcoholic beverages is separated from an established business whose primary function is the sale of alcoholic beverages for consumption on premises, school, child care center, public library, church, public park or public playground by natural or manmade boundaries, structures or other features which offset or limit the necessity for such minimum distance requirement. The ~~hearing examiner's~~ board of zoning appeal's decision to waive part or all of the distance requirement shall be based upon the following factors:

2.6.10.3.1. The nature and type of natural or manmade boundary, structure or other feature lying between the proposed establishment and an existing school, child care center, public library, church, public park or public playground which is determined by the ~~hearing examiner~~ board of zoning appeals to lessen the need for the total 500-foot distance requirement. Such boundary, structure or other feature may include, but not be limited to, lakes, marshes, nondevelopable wetlands, designated preserve areas, canals, and major rights-of-way.

\* \* \* \* \*

2.6.10.3.4. Prior to consideration of such waiver by the hearing examiner ~~board of zoning appeals~~, the applicant shall provide to the planning services director a written application for waiver of the distance limitation on an application form supplied by the planning services director, including a legal description of all applicable structures with a survey or boundary sketch to scale, and such other information which the applicant can supply which would assist the hearing examiner ~~board of zoning appeals~~ in its his evaluation pursuant to the factors set forth above. Upon receipt of the applicant's application and the applicable application fee established by the hearing examiner ~~board of county commissioners~~, a public hearing date shall be scheduled before the hearing examiner ~~board of zoning appeals~~ for a determination on the proposed waiver. The applicant shall notify, by certified mail, the owners or representatives of the subject school, child care center, public library, church, public park or public playground, of the application at least 15 days prior to the public hearing; and evidence of such notification shall be supplied to the planning services director.

**Sec. 2.6.21. Dock facilities.**

2.6.21.3. *Dock facility extension; boathouse establishment criteria.* Additional length/protrusion beyond said respective distances specified in section 2.6.21.2.1 and 2.6.21.2.2 for dock facilities; and all boathouses, regardless of the extent of the protrusion into the waterway or the width of the waterway, shall require public notice and a hearing by the ~~Collier County Planning Commission~~ hearing examiner. As to any boat dock extension petition upon which the ~~planning commission~~ hearing examiner takes action, pursuant to section ~~5.2.11~~ 5.5.5 of this Code, an aggrieved petitioner or adversely affected property owner may appeal such final action as set forth in section 5.5.6. ~~to the board of zoning appeals.~~ ~~The board of zoning appeals may affirm, affirm with conditions, reverse, or reverse with conditions the action of the planning commission.~~ Such appeal shall be filed with the community development and environmental services commission and shall be noticed for hearing with the board of zoning appeals pursuant to the procedures and applicable fee set forth in section 1.6.6 of this Code. The ~~planning commission~~ hearing examiner shall base ~~its~~ his or her decision for approval, approval with conditions, or denial, on the following criteria:

\* \* \* \* \*

2.6.21.3.3. If deemed necessary based upon review of the above criteria, the hearing examiner may impose such conditions upon the approval of an extension request it deems as necessary to accomplish the purposes of this code and protect the safety and welfare of the public. Such conditions may include, but shall not be limited to, greater side setback(s), and provision of light(s), additional reflectors, or reflectors larger than four inches.

\* \* \* \* \*

2.6.21.3.11. If deemed necessary based upon review of the above criteria, the ~~planning commission~~ hearing examiner may impose such conditions upon the approval of an extension request ~~if he or she~~ deems as necessary to accomplish the purposes of this code and protect the safety and welfare of the public. Such conditions may include, but shall not be limited to, greater side setback(s), provision of light(s), additional reflectors, or reflectors larger than four inches, and prohibiting or permitting mooring on the outside of the dock facility.

2.6.21.4. Boathouse requirements: Boathouses, including any roofed structure built on a dock, may be approved by the hearing examiner using the same procedures described in section 2.6.21.3; however, the criteria in section 2.6.21.3. shall apply only to simultaneous application for both a dock extension and a boathouse. In cases where the boathouse is to be constructed on an existing, legally permitted, dock, these criteria shall not apply since the dock itself is already in compliance with the code. In all cases, the following additional criteria shall apply to

boathouses, and all of these criteria must be met in order for the hearing examiner to approve the request :

**Sec. 2.6.27. Cluster development.**

2.6.27.4.6. *Additional reduction to development standards for common architectural theme projects.* Additional reduction to the development standards provided at sections 2.6.27.4.2, 2.6.27.4.3, 2.6.27.4.4 and 2.6.27.4.5 may be approved ~~by the Collier County planning commission~~ for projects defined as common architectural theme projects. In determining whether or not a project qualifies as a common architectural theme project, and if so, the amount of the reduction to development standards which may be approved, the hearing examiner must find and the board of commissioners shall determine that all of the following design features are incorporated into the project:

\* \* \* \* \*

**Sec. 2.6.28. Automobile service stations.**

2.6.28.4. *Waiver of distance requirements.* The hearing examiner board of zoning appeals ~~may, by resolution,~~ grant a waiver of part or all of the minimum separation requirements set forth in section 2.6.28. if it is demonstrated by the applicant and determined by the hearing examiner board of zoning appeals that the site proposed for development of an automobile service station is separated from another automobile service station by natural or man-made boundaries, structures or other features which offset or limit the necessity for such minimum distance requirements. The hearing examiner's board of zoning appeals decision to waive part or all of the distance requirements shall be based upon the following factors:

\* \* \* \* \*

2.6.28.4.2. *Additional conditions.* The hearing examiner board of zoning appeals shall have the right to add additional conditions or requirements to its approval of a distance waiver request in order to insure compatibility of the automobile service station with the surrounding area and the goals and objectives of the Growth Management Plan.

**Sec. 2.6.35. Communications towers.**

2.6.35.6.26 *Additional findings for variance and conditional use applications.* In addition to the findings for conditional use applications and variance applications as required in sections 2.7.4 and 2.7.5 respectively of this code, the following additional findings shall be made by the Collier County ~~planning commission~~ hearing examiner or the board of county commissioners, as may be applicable when considering such applications:

**Division 2.7. Zoning Administration and Procedures**

**Sec. 2.7.2. Amendment procedures.**

2.7.2.1. *Purpose and intent.* This zoning code and the official zoning atlas may, from time to time, be amended, supplemented, changed or repealed. Procedures shall be as follows:

2.7.2.2. *Initiation of proposals for amendment.* A zoning amendment may be proposed by:

2.7.2.2.1. Board of county commissioners.

2.7.2.2.2. Planning commission.

- 2.7.2.2.3. Board of zoning appeals.
- 2.7.2.2.4. Any other department or agency of the county.
- 2.7.2.2.5. Any person other than those listed in subsections 2.7.2.2.1--2.7.2.2.4 above; provided, however, that no person shall propose an amendment for the rezoning of property (except as agent or attorney for an owner) which he does not own. The name of the owner shall appear in each application.

All proposals for zoning amendments shall be considered first by the planning commission or hearing examiner in the manner herein set out.

All proposals for zoning amendments shall be submitted in writing to the office of the ~~development~~ planning services director accompanied by all pertinent information required by this zoning code and which may be required by the planning commission or hearing examiner for proper consideration of the matter, along with payment of such fees and charges as have been established by the board of county commissioners. No application for zoning amendment shall be heard by the planning commission or hearing examiner until such fees and charges have been paid.

**Sec. 2.7.4. Conditional uses procedures.**

2.7.4.1. *General.* A conditional use is a use that would not be appropriate generally or without restriction throughout a particular zoning district or classification, but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, or the general welfare. Such uses may be permissible in zoning district as a conditional use if specific provision for such conditional use is made in this zoning code. All petitions for conditional uses shall be considered first by the ~~planning commission~~ hearing examiner in the manner herein set out. Decisions regarding conditional uses shall be quasijudicial in nature.

2.7.4.2. *Written petition.* A written petition for conditional use shall be submitted to the ~~development~~ planning services director indicating the basis in this zoning code under which the conditional use is sought and stating the grounds upon which it is requested, with particular reference to the types of findings which the board of ~~zoning appeals~~ county commissioners must make under section 2.7.4.4. The petition should include material necessary to demonstrate that the grant of conditional use will be in harmony with the general intent and purpose of this zoning code, will be consistent with the growth management plan, will not be injurious to the neighborhood or to adjoining properties, or otherwise detrimental to the public welfare. Such material shall include, but is not limited to, the following, where applicable:

\* \* \* \* \*

2.7.4.3. *Notice and public hearing.* Notice and public hearing by the ~~planning commission~~ hearing examiner and the board of ~~zoning appeals~~ county commissioners shall be as provided for under subsection 2.7.2.3.2. All testimony given shall be under oath and the action by the board of county commissioners shall be quasi-judicial in nature.

2.7.4.4. *Findings.* Before any conditional use shall be recommended for approval to the board of ~~zoning appeals~~ county commissioners, the ~~planning commission~~ hearing examiner shall make a finding that the granting of the conditional use will not adversely affect the public interest and that the specific requirements governing the individual conditional use, if any, have been met by the petitioner and that, further, satisfactory provision and arrangement has been made concerning the following matters, where applicable:

\* \* \* \* \*

2.7.4.5. *Conditions and safeguards.* In recommending approval of any conditional use, the ~~planning commission~~ hearing examiner may also recommend appropriate conditions and safeguards in conformity with this zoning code. Violation of such conditions and safeguards, which are made a part of the terms under which the conditional use is granted, shall be deemed a violation of this zoning code.

\* \* \* \* \*

2.7.4.5.3. The board of ~~zoning appeals~~ county commissioners may grant a maximum of one one-year extension of an approved conditional use upon written request of the petitioner following recommendation of the hearing examiner.

2.7.4.6. *Denial.* If the ~~planning commission~~ hearing examiner shall recommend denial of a conditional use, it shall state fully in its record its reason for doing so. Such reasons shall take into account the factors stated in section 2.7.4.4 or such of them as may be applicable to the action of denial and the particular regulations relating to the specific conditional use requested, if any.

2.7.4.7. *Status of ~~planning commission~~ hearing examiner report and recommendations.* The report and recommendations of the ~~planning commission~~ hearing examiner required above shall be advisory only and shall not be binding upon the board of county commissioners ~~zoning appeals~~.

2.7.4.8. *Board of ~~zoning appeals~~ county commissioners action on ~~planning commission~~ hearing examiner report.*

Upon receipt of the ~~planning commission's~~ hearing examiner's report and recommendations, the board of ~~zoning appeals~~ county commissioners shall approve, by resolution, or deny a petition for a conditional use. Action on ~~The~~ approval of a conditional use petition ~~shall~~ will require four affirmative votes of said board.

**Sec. 2.7.5. Variance procedures.**

2.7.5.1. *Purpose.* In specific cases, variance from the terms of this zoning code may be granted by the hearing examiner where said variance will not be contrary to the public interest, safety, or welfare and where owing to special conditions peculiar to the property, a diminution of a regulation is found to have no measurable impact on the public interest, safety or welfare; or a literal enforcement of the zoning code would result in unnecessary and undue hardship, or practical difficulty to the owner of the property and would otherwise deny the property owner a level of utilization of his/her property that is consistent with the development pattern in the neighborhood and clearly has no adverse effect on the community at large or neighboring property owners.

The ~~board of zoning appeals~~ based upon the evidence given in public hearing; and the findings and conclusions of the ~~Planning Commission~~ hearing examiner should determine to the maximum extent possible if the granting of the variance will diminish or otherwise have detrimental effect on the public interest, safety or welfare. A variance from the terms of this zoning code may be granted based on the requirements of this section.

\* \* \* \* \*

2.7.5.4. *Notice of ~~Planning Commission~~ hearing examiner public hearing.* Notice of public hearing before the ~~Planning Commission~~ hearing examiner is given at least 15 days in advance of the public hearing. The owner of the property for which variance is sought, or his agent or attorney designated by him on his petition, shall be notified by mail. Notice of the public hearing shall be prominently posted on

the property for which the variance is sought. Notice of the public hearing shall be advertised in a newspaper of general circulation in the county at least one time 15 days prior to the hearing.

Notice of the time and place of the public hearing before the ~~Planning Commission~~ hearing examiner shall be sent at least 15 days in advance of the hearing by mail to all owners of property within 300 feet of the property lines of the land for which a variance is sought.

2.7.5.5. ~~Planning Commission Hearing examiner public hearing.~~ The public hearing(s) shall be held by the ~~Planning Commission~~ hearing examiner. Any party may appear in person, by agent or attorney, or may submit written comments to the ~~Planning Services Director~~.

2.7.5.6. *Findings.* Before any variance shall may be ~~recommended for approval to the board of zoning appeals,~~ approved the Planning Commission hearing examiner shall will consider and be guided by the following standards in making a determination:

\* \* \* \* \*

2.7.5.7. *Conditions and safeguards.* ~~In recommending approval of any variance, the~~ planning commission hearing examiner may recommend impose appropriate conditions and safeguards in conformity with this zoning code including, but not limited to, reasonable time limits within which the action for which the variance is required shall be begun or completed, or both. In the case of after-the-fact variances, the ~~planning commission hearing examiner may recommend impose,~~ as a condition of approval, that in the case of the destruction of the encroaching structure, for any reason, to an extent equal to or greater than 50 percent of the actual replacement cost of the structure at the time of its destruction, any reconstruction shall conform to the provisions of this Code in effect at the time of reconstruction. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this zoning code.

2.7.5.8. *Recommendation of a Denial.* If the ~~planning commission hearing examiner recommends denial of~~ denies a variance request, ~~it~~ the record shall state fully ~~in its record~~ it's the hearing examiner's reason for doing so. Such reasons shall take into account the factors stated in section 2.7.5.6, or such of them as may be applicable to the action of denial and the particular regulations relating to the specific variance requested if any.

2.7.5.9. *Status of ~~planning commission hearing examiner report and rezoning recommendations.~~* The report ~~and recommendation~~ of the ~~planning commission hearing examiner~~ required above shall be final in all cases except those requests for variances which accompany and are a part of a petition for rezoning, in which case the report will be included with the hearing examiner's recommendation for the rezoning request and be advisory only and shall not be binding upon the board of county commissioners zoning appeals.

2.7.5.10. ~~Notice of board of zoning appeals public hearing.~~ Upon completion of the public hearing before the ~~planning commission,~~ the petition shall be heard by the board of zoning appeals. Notice of public hearing shall be given at least 15 days in advance of the public hearing before the board of zoning appeals. The owner of the property for which the variance is sought, or his agent or attorney designated by him on his petition, shall be notified by mail. Notice of public hearing shall be advertised in a newspaper of general circulation in the county at least one time 15 days prior to the hearing.

~~2.7.5.11. Board of zoning appeals public hearings. The public hearing shall be held by the board of zoning appeals. Any party may appear in person by agent or attorney, or may submit written comments to the board of zoning appeals.~~

~~2.7.5.12. Board of zoning appeals action. Upon consideration of the planning commission's report, findings and recommendations, and upon consideration of the standards and guidelines set forth in section 2.7.5.6, the board of zoning appeals shall approve, by resolution, or deny a petition for a variance.~~

**Sec. 2.7.6. Building or land alteration permit and certificate of occupancy compliance process.**

1. *Zoning action on building or land alteration permits.* The planning services director shall be responsible for determining whether applications for building or land alteration permits, as required by the Collier County building code or this code are in accord with the requirements of zoning code and the land development code, and no building or land alteration permit shall be issued without written approval that plans submitted conform to applicable zoning regulations, and other land development regulations. For purposes of this section a land alteration permit shall mean any written authorization to alter land and for which a building permit may not be required. Examples include but are not limited to clearing and excavation permits, site development plan approvals, agricultural clearing permits, and blasting permits. No building or structure shall be erected, moved, added to, altered, utilized or allowed to exist and/or no land alteration shall be permitted without first obtaining the authorization of the required building permit(s), inspections and certificate(s) of occupancy as required by the Collier County building code or this code. and Additionally, no building or land alteration permit application shall be approved by the ~~planning services director for the erection, moving, addition to, or alteration of any building or structure or land except in conformity with the provisions of this zoning code and the land development code unless he shall receive a written order from the board of zoning appeals in the form of an administrative review of the an interpretation, or variances from the hearing examiner as provided by this code is obtained, or unless ~~he shall receive a written order from a court or tribunal of competent jurisdiction is obtained.~~~~

**ARTICLE 3: DEVELOPMENT REQUIREMENTS**

**DIVISION 3.9. VEGETATION REMOVAL, PROTECTION, AND PRESERVATION**

**Sec. 3.9.6. Review Procedures.**

**3.9.6.4. Exceptions.**

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- 3.9.6.4.8. The Collier County ~~planning commission~~ hearing examiner may grant a variance to the provisions of this section if compliance with the mangrove tree preservation standards of this division would impose a unique and unnecessary hardship on the owner or any other person in control of affected property. Relief shall be granted only upon demonstration by the landowner or affected party that such hardship is peculiar to the affected property and not self-imposed, and that the grant of a variance will be consistent with the intent of this division and the growth management plan.

## ARTICLE 5: DECISION-MAKING AND ADMINISTRATIVE BODIES

### DIVISION 5.1. BOARD OF COUNTY COMMISSIONERS

#### Sec. 5.1.1. Powers and duties.

In addition to any authority granted to the board of county commissioners by general or special law, the board of county commissioners shall have the following powers and duties:

- 5.1.1.1. To initiate, hear, consider, and adopt amendments to either, or both the text of the Collier County growth management plan or the land development code future land use map of the Collier County growth management plan.
- 5.1.1.2. To initiate, hear, consider, and adopt amendments to either, or both the land development code, future land use map of the Collier County growth management plan or the official zoning atlas of the land development code.
- 5.1.1.3. To designate and appoint hearing examiners or officers to make decisions or recommendations as the board may deem appropriate.
- 5.1.1.4. To act to ensure compliance with development orders or permits as approved and issued.
- 5.1.1.5. To establish reasonable fees to be paid by applicants to recoup the county's expenses and other costs and to reimburse the county for the administrative time and effort spent in accepting, processing, reviewing, or enforcing development orders, development permits, or any other development approvals or applications.
- 5.1.1.6. To take such other action not delegated to the planning commission, the board of zoning appeals, the hearing examiner, the building board of adjustments and appeals, or the heads of county departments, county divisions and county sections as the board of county commissioners may deem desirable and necessary to implement the provisions of the Collier County growth management plan, the land development code, and any other legitimate governmental interest.

#### Sec. 5.1.2. Public participation.

Participation before Board of County Commissioners; zoning matters. At public hearings on zoning matters including conditional use petitions, any participant or his representative at the proceeding before the hearing examiner will be afforded the right to address the board of county commissioners, but only as to the correctness of findings of fact or conclusions of law contained in the record, or to allege the discovery of relevant new evidence which was not known by the participant at the time of the hearing before the hearing examiner and not otherwise disclosed in the record. The board of county commissioners may, upon approval of a motion, elect to hear testimony or to receive other evidence from persons other than participants or their representatives who appeared before the hearing examiner, subject to the foregoing limitations regarding comments on matters within the written record and new evidence. The board of county commissioners may orally question its staff, its attorneys, and any participant or person who is present about matters contained in the written record and points of law or procedure.

### DIVISION 5.2. PLANNING COMMISSION\*

#### Sec. 5.2.1. Establishment and purpose.

There is hereby established a planning commission.

#### Sec. 5.2.2. Powers and duties.

The planning commission shall have the following powers and duties:

- 5.2.2.1. To serve as the local planning agency (LPA), and land development regulation commission as required by F.S. §§ 163.3174 and 163.3194.

- 5.2.2.2. To prepare or cause to be prepared the Collier County growth management plan or element or portion thereof and to submit to the board of county commissioners an annual report recommending amendments to such plan, element or portion thereof.
- 5.2.2.3. To prepare or cause to be prepared the land development regulations and code to implement the Collier County growth management plan, and to submit to the board of county commissioners an annual report recommending amendments to the land development code.
- 5.2.2.4. To initiate, hear, consider and make recommendations to the board of county commissioners on applications for amendment to the text of the Collier County growth management plan and the land development code.
- 5.2.2.5. To initiate, review, hear and make recommendations to the board of county commissioners on applications for amendment to the future land use map of the Collier County growth management plan or the official zoning atlas of the land development code.
- 5.2.2.6. ~~To hear, consider, and make recommendations to the board of county commissioners on applications for conditional use permits.~~
- ~~5.2.2.7.~~ To make its special knowledge and expertise available upon reasonable written request and authorization of the board of county commissioners to any official, department, board, commission or agency of the county, state or federal governments.
- ~~5.2.2.8.~~ 5.2.2.7. To recommend to the board of county commissioners additional or amended rules of procedure not inconsistent with this division to govern the planning commission's proceedings.
- ~~5.2.2.9.~~ 5.2.2.8. To perform those functions, powers and duties of the planning commission as set forth in chapter 67-1246, Laws of Florida, incorporated herein and by reference made a part hereof, as said chapter has been or may be amended.
- ~~5.2.2.10.~~ 5.2.2.9. To consider and take final action regarding preliminary subdivision plats processed pursuant to the provisions of division 3.2.

**Sec. 5.2.3. Commission membership.**

- 5.2.3.1. *Qualifications.* Members of the planning commission shall be permanent residents and qualified electors of Collier County. Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration shall be given to applicants who have experience or who have shown interest in the area of planning, zoning and related fields. Further consideration in the appointment of planning commission members shall be made so as to provide the planning commission with the needed technical, professional, business and/or administrative expertise to accomplish the duties and functions of the planning commission as set forth in this code. The appointment of all members to the planning commission shall be by resolution of the board of county commissioners. In the event that any member is no longer a qualified elector or is convicted of a felony or an offense involving moral turpitude while in office, the board of county commissioners shall terminate the appointment of such person as a member of the planning commission.
- 5.2.3.2. *Appointment.* The planning commission shall be composed of nine members to be appointed by the board of county commissioners.
- 5.2.3.3. *Initial appointments.* Initial appointments to the planning commission shall be made by selection from those members and/or alternates serving on the Coastal Area planning commission and those members and/or alternates serving on the

Immokalee Area planning commission immediately prior to the effective date of Ordinance 85-51. The board of county commissioners shall designate seven members from the regular members and/or alternates of the Coastal Area planning commission and two members from the regular members and/or alternates of the Immokalee Area planning commission. If, for any reason, there is an insufficient number of regular and/or alternate members from which to designate the membership of the planning commission, the board shall request and accept applications from the general public to complete the initial appointment of members to the planning commission. Initial members shall be appointed and designated pursuant to resolution of the board of county commissioners.

5.2.3.4. *Reappointments.* All reappointments to the planning commission shall be made so as to achieve the following geographical distribution of membership:

One member: County Commission District No. 4.

Two members: County Commission District No. 1.

Two members: County Commission District No. 2.

Two members: County Commission District No. 3.

Two members: County Commission District No. 5 (one from Immokalee).

**Sec. 5.2.4. Terms of office.**

The initial terms of office of the planning commission shall be as follows:

Three members shall be appointed for a term of two years.

Three members shall be appointed for a term of three years.

Three members shall be appointed for a term of four years.

Thereafter, each appointment or reappointment shall be for a term of four years. Each appointment and reappointment shall be made so that the terms of any two members from a single commission district shall not expire in the same year.

At the first official meeting of the planning commission, the members of the planning commission shall decide, by mutual consent, and thereafter recommend to the board of county commissioners a term for each of the members that shall address the requirements of section ~~3-2.3~~-5.2.3 of this code. After consideration and approval of the recommendation of the planning commission, the board of county commissioners may set forth the recommendation in the form of a resolution. In the event that terms cannot be recommended for any reason, the board shall adopt such resolution as it determines to be appropriate. The resolution adopted by the board shall set forth the date of appointment, term and district for each member appointed.

A member may be reappointed by the board of county commissioners for only one successive term, unless there are no other qualified applicants for the member's position. Appointments to fill any vacancy on the planning commission shall be for the remainder of the unexpired term of office.

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**Sec. 5.2.9. Staff.**

The ~~community development~~ planning services division shall be the professional staff of the planning commission.

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**Sec. 5.2.11. Appeals.**

As to any ~~land development petition or application~~ action upon which the planning commission takes final action, an aggrieved petitioner, applicant or an aggrieved party may appeal such final action to the board of county commissioners. An aggrieved or adversely affected party is defined as any person or group of persons which will suffer an adverse affect to an interest protected or furthered by the Collier County growth management plan, land development code, or building code(s). The alleged adverse interest may be shared in common with other members of the community at large, but shall exceed in degree the general interest in community good shared by all persons. The board of county commissioners may affirm, affirm with conditions, reverse or reverse with conditions the action of the planning commission. Such appeal shall be filed with the ~~development~~ planning services director within 30 days of the date of the final action by the planning commission and shall be noticed for hearing with the board of county commissioners, as applicable, in the same manner as the petition or application was noticed for hearing with the planning commission. The cost of notice shall be borne by the petitioner, applicant or aggrieved party.

**DIVISION 5.3. BOARD OF ZONING APPEALS\***

**Sec. 5.3.1. Establishment and purpose.**

There is hereby established a board of zoning appeals.

**Sec. 5.3.2. Powers and duties.**

The board of zoning appeals shall have the following powers and duties:

- 5.3.2.1. ~~To hear, review and approve, approve with conditions, or deny zoning variances, conditional uses, nonconforming use amendments, flood variances and off street parking and shared parking agreements in accordance with the terms of these regulations.~~
- ~~5.3.2.2.~~ To hear, review and approve, approve with conditions, or deny appeals from interpretations made by the ~~development~~ planning services director or the long range planning director or administrative decisions pertaining to the growth management plan, the future land use map, the land development code, or the official zoning atlas by the ~~development~~ planning services director or the long range planning director or their designees.
- ~~5.3.2.3.~~5.3.2.2. To make its special knowledge and expertise available upon written request and authorization of the board of county commissioners to any official, department, board, or commission of the county.
- ~~5.3.2.4.~~5.3.2.3. To recommend to the board of county commissioners additional or amended rules of procedure not inconsistent with this division to govern the board of zoning appeals' proceedings.
- ~~5.3.2.5.~~5.3.2.4. To perform those functions, powers and duties of the board of zoning appeals as set forth in chapter 67-1246, Laws of Florida, incorporated herein and by reference made a part hereof, as said chapter has been or may from time to time be amended.

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**Sec. 5.3.3. Board membership.**

5.3.3.1. *Qualifications.* Members of the board of ~~adjustment~~ zoning appeals shall be qualified electors in Collier County and residents of the county for two years prior to appointment. In the event that any member is no longer a qualified elector or is convicted of a felony or an offense involving moral turpitude while in office, the board of county commissioners shall terminate the appointment of such person as a member of the board of zoning appeals.

5.3.3.2. *Appointment.* The board of county commissioners may appoint a board or boards of zoning appeals for its planning area or areas, or may act as such board or boards of zoning appeals itself. Boards of zoning appeals shall have not less than five nor more than ten members. Not more than two members of a board of zoning appeals may be members of a planning commission.

**Sec. 5.3.7. Staff.**

The ~~community development~~ planning services division shall be the professional staff of the board of adjustment.

**Sec. 5.3.8. Quorum and voting.**

No meeting of the board of zoning appeals shall be called to order, nor may any business be transacted by the board of zoning appeals without a quorum consisting of at least three members of the board of zoning appeals being present. All actions shall require a simple majority of the members of the board of zoning appeals then present and voting ~~except for conditional uses, which require four affirmative votes.~~

**Sec. 5.3.10. Operating procedures.**

5.3.10.1. The board of zoning appeals may, from time to time, adopt and amend bylaws and rules of procedure not inconsistent with the provisions of these regulations. Such proposed rules of procedure shall be considered as if they were amendments to this article.

5.3.10.2. All meetings and hearings of the board of ~~adjustment~~ zoning appeals shall be open to the public.

5.3.10.3. Public hearings shall be set for a time certain.

**DIVISION 5.5. HEARING EXAMINER**

**Sec. 5.5.1. Office established.**

Pursuant to the powers set forth in section 5.1.1.3., the office of hearing examiner is hereby established. The hearing examiner shall have the powers and authority set forth in this division.

**Sec. 5.5.2. Appointment; qualifications.**

The board of county commissioners shall appoint the hearing examiner, and may, as necessary, appoint any deputy hearing examiners or hearing examiners pro tempore. Such hearing examiners shall hold their positions at the pleasure of the board of county commissioners. Appointment to, removal from, and qualifications for, such offices shall be according to an administrative code specifically covering this subject matter.

**Sec. 5.5.3. Funding.**

The board of county commissioners shall establish the office of the hearing examiner and appropriately budget such office annually.

**Sec. 5.5.4 Conduct of meetings; reports and records.**

5.5.4.1. *Rules of procedure.* The board of county commissioners shall adopt rules for transaction of hearing examiner business and the hearing examiner shall conduct all required hearings or meetings pursuant to the provisions of applicable regulations and administrative codes of the board of county commissioners.

5.5.4.2. Meetings. Meetings for the purpose of holding public hearings shall be scheduled, noticed, and conducted pursuant to any applicable administrative codes and the provisions contained in this Code.

5.5.4.3. Participation before hearing examiner. At a public hearing before the hearing examiner, all persons will be heard as participants. However, the hearing examiner has the right to refuse to hear testimony which is irrelevant, repetitive, defamatory, or spurious, and to establish reasonable time limits on testimony.

5.5.4.4. Reports of decisions. After a public hearing is held, the hearing examiner shall make a written report of his decision in accordance with the rules and procedures set forth in this Code and any applicable administrative code, and provide a copy of the report of decision to all parties of record, including participants, appropriate county staff, including the county attorney and the county manager, and the Board of County Commissioners.

5.5.4.5. Records.

(1) The hearing examiner shall provide for a court reporter at all proceedings. At a minimum, a summary of testimonies shall be provided in the report of decision itself or as a separate document in addition thereto. Complete transcripts of the entire record shall be provided only at an appellant's request, and the appellant shall bear the costs thereof.

(2) The hearing examiner shall keep indexed records of all meetings, agendas, findings, determinations, and reports of decision. Such records shall be public records.

5.5.4.6. Attendance at hearings. The hearing examiner may request staff members with personal knowledge of relevant facts to attend hearings and produce relevant documents, and shall advise the county manager of any failure to comply with his requests.

## **Sec. 5.5.5. Functions and authority.**

5.5.5.1. Action on administrative matters:

5.5.5.1.1. Administrative recommendations, hearing examiner decisions. After staff review and written recommendation on an administrative application directed by a specific provision of this Code to be decided by the hearing examiner, a written final decision will be rendered by the hearing examiner within thirty (30) days of such meeting. In reaching his or her decision, the hearing examiner must consider:

1. the criteria for the type of application being requested, in particular, those factors set forth in the recommendation of staff;
2. testimony from the applicant; and
3. testimony from any members of the public.

5.5.5.1.2. Administrative appeals, hearing examiner decisions. After staff or the planning services director's review and determination on those administrative applications which do not otherwise require a public hearing, but by specific provision of this Code may proceed directly to the hearing examiner for review on appeal, will result in final decision by the hearing examiner within thirty (30) days.

5.5.5.1.3. Judicial review. Judicial review of final decisions of the hearing examiner with respect to administrative matters are to the circuit court in accordance with sec. 5.5.6.

5.5.5.2. Variances.

5.5.5.2.1. Function. The hearing examiner will hear and decide all requests for variances from the terms of the regulations or restrictions of the zoning code and such other codes or ordinances as may be assigned to him by the Board of County Commissioners, except that no use variance may be heard or considered.

5.5.5.2.2. Considerations. In reaching his or her decision, the hearing examiner must consider:

- a. the criteria for the type of variance being requested, in particular those set forth in section 2.7.5.
- b. Staff recommendations;
- c. Testimony from the applicant; and
- d. Testimony from the public.

5.5.5.2.3. Findings. Before granting any variance, the hearing examiner must make a finding with respect to each of the criteria set forth in sec. 2.7.5.6.

5.5.5.2.4. Authority.

- a. The hearing examiner has the authority to grant, deny, or modify any request for a variance from the regulations or restrictions of this Code as specifically set forth in sec. 2.7.5.1.1.; provided, however, that no use variance as defined in this code, or any variance from definitions or procedures set forth in this Code, may be granted.
- b. In reaching his decision, the hearing examiner has the authority to attach conditions and requirements necessary for the protection of the health, safety, comfort, convenience and welfare of the general public. The conditions or requirements must be reasonably related to the variance requested and conform to the requirements of sec. 2.7.5.7.
- c. Variances may be reviewed by themselves or as part of a conditional use petition.
- d. All decisions of the hearing examiner concerning variances filed as part of a conditional use petition must be in the form of a written recommendation to the board of county commissioners and follow the procedures for such petitions set forth in 5.5.5.3. and 5.5.5.4. below, as applicable.

5.5.5.2.5. Judicial review. Judicial review of final decisions of the hearing examiner with respect to variances are to the circuit court in accordance with sec. 5.5.6.

5.5.5.3. Conditional Uses.

5.5.5.3.1. Function. The hearing examiner will hear and make written recommendations to the board of county commissioners on all applications for conditional uses which may be permissible by the district use regulations set forth in division 2.2., subject to the exemption set forth in sec. 2.7.4.9.

5.5.5.3.2. Considerations. In reaching his or her recommendation, the hearing examiner must consider the factors and criteria set forth in sec. 2.7.4.4., as well as the following, whenever applicable:

- a. the relevant matters set forth in an applicant's written petition;
- b. the testimony of any applicant or agent;
- c. the recommendation of staff; and
- d. the testimony of the public.

- 5.5.5.3.3. *Findings.* Before making any recommendation for a conditional use, the hearing examiner must make the findings required by sec. 2.7.4.4.
- 5.5.5.3.4. *Authority.* Petitions for conditional uses filed as part of a rezoning will be reviewed and considered as part of such rezoning petition according to the procedures set forth in this Code.
- 5.5.5.3.5. *Review.* Review of the hearing examiner's recommendations with respect to conditional uses will be as set forth in sec. 2.7.4.8.
- 5.5.5.4. *Authority of hearing examiner decisions-recommendations.*
- a. The hearing examiner serves in an advisory capacity to the board of county commissioners with respect to those matters set forth in subsection 5.5.5.3. of this section, and in such capacity, may not make final determinations with regard to these matters.
  - b. The hearing examiner may not recommend the approval of a conditional use, and the board of county commissioners may not approve a conditional use, other than the request advertised or published pursuant to this Code, unless the conditional use proposed by the hearing examiner is more restrictive and the uses being approved are less intense and otherwise permitted within the corresponding land use classification as set forth in the growth management plan.
  - c. In reaching his or her decisions, the hearing examiner has the authority to recommend or impose appropriate and reasonably related conditions and requirements to be attached to any request for a conditional use or variance, as may be applicable.
- 5.5.5.5. *Decisions.* All decisions of the hearing examiner concerning conditional use matters will be in the form of a written recommendation to the board of county commissioners. Decisions will be delivered or mailed by the hearing examiner to all parties of record, including participants, each individual county commissioner, the county attorney, and the county manager, on the date it is rendered or on the next regular working day thereafter. Except as provided for in section 5.1.2., only a participant or his representative will be afforded the right to address the board of county commissioners at any subsequent hearing considering such recommendations.
- 5.5.5.6. *Notice of intent to deny based on insufficient information.*
- 5.5.5.6.1. If the hearing examiner intends to deny or recommend denial of an application described in this section based on the applicant's failure to provide information adequate in scope and detail to address particular issues, he or she may, in his or her discretion, send a notice of intent to deny based on insufficient information to all participants in lieu of a denial or a recommendation to deny the application. The notice must state the issues on which additional information is necessary and must direct the applicant to indicate within ten working days whether he or she intends to provide the information and the date upon which the information will be provided (not to exceed 30 working days).
  - 5.5.5.6.2. If the applicant does not respond affirmatively within ten working days of the date of the notice, the hearing examiner must prepare and submit a recommendation or decision, whichever is applicable, denying the application to the board of county commissioners and all participants. If the applicant does respond affirmatively, the hearing examiner must send a copy of the response to all participants of record along with a notice of a new hearing date, at which time the new evidence will be considered.

5.5.5.6.3. The applicant must submit all of the new evidence provided in accordance with this section to the zoning staff, who will review it and prepare a supplementary staff report addressing only those issues to which the new evidence is relevant.

5.5.5.6.4. The hearing following the receipt of the new evidence will be limited to those issues to which the new evidence is relevant.

5.5.5.6.5. No applicant will be entitled to more than one notice of intent to deny based on insufficient information.

**Sec. 5.5.6. Final decision; judicial review.**

5.5.6.1. Unless otherwise specified, the decision of the hearing examiner will be final only on administrative matters or variances which are not part of a rezoning or other development approval request which requires final decision by the board of county commissioners. Judicial review of a final decision of the hearing examiner concerning such administrative matters or variances will be in circuit court. Jurisdiction for review of any final decision of the hearing examiner lies exclusively in circuit court. This review may only be obtained through filing a petition for writ of certiorari in accordance with code of laws section 250-60 and pursuant to the Florida Rules of Appellate Procedure. Any such petition must be filed within 30 calendar days after the decision has been rendered.

5.5.6.2. For the purposes of this section, a decision is "rendered" as of the date when it is reduced to writing, signed and dated by the hearing examiner. Decisions will be delivered or mailed by the hearing examiner on the date it is rendered or on the next regular working day thereafter.

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

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

**Sec. 5.5.7. Unauthorized communications with hearing examiner.**

5.5.7.1. *Definitions.* The following words, terms and phrases, when used in this section, will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Application and appeal* mean any matter lying within the jurisdiction of the hearing examiner and any application for rezoning which will be or is scheduled to be heard by the Board of County Commissioners.

*Hearing examiner* means the county hearing examiner or any member of his or her staff, including hearing examiners pro tempore.

*Unauthorized communication* means any direct or indirect communication in any form, whether written, verbal or graphic, with the hearing examiner, or the hearing examiner's staff, by any person outside of a public hearing and not on the record, concerning substantive issues in any proposed or pending matter relating to variances, conditional uses, or any other matter assigned by statute, ordinance, or administrative code to the hearing examiner for discussion or recommendation, except as may otherwise be permitted in the county administrative code.

5.5.7.2. *Unauthorized communications prohibited.*

5.5.7.2.1. No person shall knowingly have, or attempt to initiate, an unauthorized communication with a hearing examiner, including members of the hearing examiner's staff, concerning substantive issues relating to a pending or proposed variance or zoning application.

- 5.5.7.2.2. No member of the board of county commissioners shall knowingly have or attempt to initiate an unauthorized communication with a hearing examiner concerning any substantive issue relating to an application which will be or is currently before a hearing examiner for consideration.
- 5.5.7.2.3. Neither the hearing examiners nor any member of their staff shall knowingly have or attempt to initiate unauthorized communication with the board of county commissioners concerning substantive issues in an application which will be or is pending for the hearing examiner's consideration. However, the hearing examiners may communicate with the board of county commissioners concerning procedural matters and the administration of their office.
- 5.5.7.2.4. The hearing examiners shall scrupulously avoid improper influences in their deliberations. They shall not initiate or consider an unauthorized communication concerning a pending application.
- 5.5.7.2.5. In reaching a decision, a hearing examiner may obtain the written advice of a disinterested expert other than another county hearing examiner or employee of the county (except a member of the hearing examiner's staff) concerning a matter of law, planning, or zoning applicable to a proceeding before him. A hearing examiner must give notice of his or her intention to solicit such advice to all interested participants who appeared at the public hearing personally, by agent or through counsel, or have filed documents or statements in the public record under consideration in the pending matter. Once such advice has been received, the hearing examiner will then forward copies of the written advice received as a result of his request to each participant; and afford all interested participants reasonable opportunity to respond to and rebut the advice on the record prior to rendering his decision. The opportunity to respond may include a noticed public hearing granted at the hearing examiner's sole discretion when a written request for same has been filed with a participant's response demonstrating how a participant may be prejudiced or irreparably harmed if such hearing is not afforded.
- 5.5.7.2.6. If an unauthorized communication is knowingly made or attempted to be made to a hearing examiner or a member of the hearing examiner's staff, such communication shall be publicly disclosed, placed in the public record, and reported by filing a citizen's complaint with the citizen's complaint division of the county sheriff's department or by filing a complaint directly with the state attorney's office on forms to be made available by the hearing examiner's office. If, in their opinion, the attempted or completed unauthorized communication has prejudiced a hearing examiner's ability to decide a case based objectively and exclusively on the record of public proceedings, the hearing examiner shall immediately recuse himself and abstain from participating in any consideration of the pending matter. Failure to disclose the receipt of an unauthorized communication is a violation of this section and shall subject the hearing examiner or his or her staff to the penalties described in this section.
- 5.5.7.2.7. Any unauthorized communication received by a member of the hearing examiner's staff concerning a pending matter and prior to the hearing on such matter shall be copied or transcribed, if necessary, and entered into the record of the pending proceedings. Copies of any unauthorized communication shall be furnished to all interested parties of record. In establishing rules of procedure for the hearing examiner's office, the hearing examiner and board of county commissioners shall set filing deadlines prior to each hearing after which no further submittals, except those presented at the hearing, will be included in the public record for consideration by the hearing examiner. Any materials received after this date will be returned. All items submitted for inclusion in the public record within the adopted timeframes must be forwarded to the hearing examiner's office. Items not included in the public record or presented at the hearing will not be considered by the hearing examiner or the board of county commissioners.

- 5.5.7.2.8. Nothing set forth in this section shall prohibit the discussion of any pending or proposed cases or appeals by and between hearing examiners or between a hearing examiner and any employee of the office of the hearing examiner.
- 5.5.7.3. Penalties. Any person who knowingly makes or attempts to initiate an unauthorized communication to or with a hearing examiner or a member of the hearing examiner's staff, or any hearing examiner or his or her staff who fails to publicly disclose and report an unauthorized communication or an attempt to initiate an unauthorized communication, shall be subject to any, or all, of the following penalties:
- 5.5.7.3.1. Criminal penalties. Such person shall be subject to punishment as provided in section 1.9.6
- 5.5.7.3.2. Civil penalties. Such person shall be subject to:
- a. Revocation, suspension, or amendment of any permit, variance, or conditional use, granted as a result of the hearing examiner action which is the subject of the unauthorized communication.
  - b. Any other relief available at law or equity.
- 5.5.7.3.3. Each unauthorized communication or attempt to initiate an unauthorized communication shall constitute a separate offense under the provisions of this section.

## **DIVISION 5.13. ENVIRONMENTAL ADVISORY COUNCIL**

### **Sec. 5.13.2. Authority, functions, powers and duties.**

- 5.13.2.1. The EAC obtains its jurisdiction, powers, and limits of authority from the board of county commissioners, hereinafter referred to as the board, and pursuant to this code, shall act in an advisory capacity to the board in matters dealing with the regulation, control, management, use or exploitation of any or all natural resources of or within the county and the review and evaluation of specific zoning and development petitions and their impact on those resources.
- 5.13.2.2. The EAC will function to:
- (1) Advise on the preservation, conservation, protection, management and beneficial use of the physical and biological natural resources (atmospheric, terrestrial, aquatic and hydrologic) of the county in regard to the safety, health and general well-being of the public;
  - (2) Advise and assist the county staff and board toward developing the purpose, intent and criteria of all county ordinances, policies, programs and other initiatives dealing with natural resources.
  - (3) Provide written and oral reports directly to the board regarding recommendations on matters dealing with the protection of natural resources.
  - (4) Review and recommend stipulations addressing the preservation, conservation, protection, management and beneficial use of the county's physical and biological natural resources (atmospheric, terrestrial, aquatic and hydrologic) for petitions and/or plans for selected development orders, including but not limited to rezones, developments of regional impact, provisional uses, subdivision master plans and planned unit development amendments that are directed to the EAC by ~~county staff~~, the board provisions of this Code.

**5.13.2.3.** The powers and duties of the EAC are as follows:

- (1) Identify, study, evaluate, and provide technical recommendations to the board on programs necessary for the conservation, management and protection of air, land, and water resources and environmental quality in the county.
- (2) Advise the board in establishing goals and objectives for the county's environmental conservation and management programs.
- (3) Advise the board in developing and revising, as appropriate, local rules, ordinances, regulations, programs and other initiatives addressing the use, conservation and preservation of the county's natural resources.
- (4) Advise the board in the implementation and development of the growth management plan regarding environmental and natural resource issues.
- (5) Advise the board in identifying and recommending solutions to existing and future environmental issues.
- (6) Serve as the technical advisory committee to advise and assist the county in the activities involved in the development and implementation of the county environmental resources management program as stated in policy 1.1.1 of the conservation and coastal management element of the growth management plan.
- (7) Implement the water policy pursuant to chapter 90, article II of ~~this the~~ code of laws and ordinances, as directed by the board of county commissioners.
- (8) Provide an opportunity for public comment on environmental issues, ordinances and programs.
- (9) Implement the provisions of the conservation and coastal management element of the county's comprehensive plan during the review process for development petitions and/or plans.
- (10) Participate in the review and recommendation process for excavations over 500,000 C.Y., as provided for in division 3.5.
- (11) Assist in the implementation of any new programs, ordinances and/or policies adopted by the board which deal with the conservation, management and protection of air, land, water and natural resources and environmental quality in Collier County.
- ~~(12) Provide an appellate forum and process to hear disputes between county staff and applicants concerning land development projects and recommend proposed stipulations for project approval or grounds for project denial for board consideration.~~
- ~~(13)~~ (12) Function as an environmental impact statement (EIS) review board pursuant to division 3.8.
- ~~(14)~~ (13) The EAC shall present an annual report to the board at a regular board meeting in May of each year. The report shall list the EAC's achievements for the prior year, present its objectives for the coming year and highlight environmental issues that need further study.

**Sec. 5.13.6. Scope of land development project reviews.**

The EAC shall review all land development petitions which require the following: an environmental impact statement (EIS) per section 3.8 of the LDC; all developments of regional impact (DRI); ~~lands with special treatment (ST) or area of critical state concern/special treatment (ACSC/ST) zoning overlays; or any petition for which environmental issues cannot be resolved between the applicant and staff and which is requested by either party to be heard by the EAC.~~ The EAC shall also review any petition which requires approval of the Collier County Planning Commission (CCPC) or the board of county commissioners (BCC) where staff receives a request from the chairman of the EAC, CCPC or the BCC, for that petition to be reviewed by the EAC.

Any petitioner may request a waiver to the EAC hearing requirement, when the following considerations are met: 1) no protected species or wetland impacts are identified on the site; 2) an EIS waiver has been administratively granted; 3) ST zoning is present and an administrative approval has been granted; or 4) an EIS was previously completed and reviewed by staff and heard by a predecessor environmental board, and that EIS is less than five years old (or if older than five years, has been updated within six months of submittal) and the master plan for the site does not show greater impacts to the previously designated preservation areas.

The surface water management aspects of any petition, that is or will be reviewed and permitted by South Florida Water Management District (SFWMD), are exempt from review by the EAC.

**Sec. 5.13.7. Appeal**

~~Any person aggrieved by the decision of the county administrator, or his designee regarding any section of division 5.13 may file a written request for appeal, not later than ten days after said decision, with the EAC. The EAC will notify the aggrieved person and the county administrator, or his designee of the date, time and place that such appeal shall be heard; such notification will be given 21 days prior to the hearing unless all parties waive this requirement. The appeal will be heard by the EAC within 60 days of the submission of the appeal. Ten days prior to the hearing, the aggrieved person shall submit to the EAC and to the county administrator, or his designee, copies of the data and information he intends to use in his appeal. Upon conclusion of the hearing the EAC will submit to the board of county commissioners its facts, findings and recommendations. The board of county commissioners, in regular session, will make the final decision to affirm, overrule or modify the decision of the county administrator, or his designee, taking into account of the recommendations of the EAC.~~

**Sec. 5.13.8. Reimbursement of expenses.**

Members of the EAC shall serve without compensation, but shall be entitled to receive reimbursement for expenses reasonably incurred in the performance of their duties upon prior approval of the board of county commissioners.

**Sec. 5.13.9-8. Review process.**

This EAC shall be reviewed for major accomplishments and whether it is serving the purpose for which it was created once every four years commencing with 2003 in accordance with the procedures contained in Collier County Ordinance No. 86-41, as amended. [Code ch. 2, art. VIII, div. 2].

\* \* \* \* \*

**SECTION FOUR: CONFLICT AND SEVERABILITY**

In the event this Ordinance conflicts with any other Ordinance of Collier County and other applicable law, the more restrictive shall apply. If any phrase or portion of the Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

**SECTION FIVE: INCLUSION IN THE COLLIER COUNTY LAND DEVELOPMENT CODE**

The provisions of this Ordinance shall become and be made a part of the Land Development Code of Collier County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

**SECTION SIX: EFFECTIVE DATES**

This Ordinance shall become effective upon filing with the Department of State, except that Section 3.M. of these Land Development Code amendments will not become effective until such date as the Board of County Commissioners may establish by separate resolution passed with at least a four-fifths majority vote. On that resolution's effective date all applications, requests, petitions, or other forms seeking development approval from the county that are deemed sufficient by the County Manager will be considered and reviewed under the regulations set forth in Section 3.M., and the then current Code, ordinances, and laws, except that those projects already heard, or properly advertised to be heard, by the Environmental Advisory Council or Planning Commission, or both, as of the effective date set forth in the above-stated resolution will be heard, reviewed, and considered under those rules, regulations, and procedures in effect immediately prior to said resolution's effective date. Any such project which fails to be fully heard and have a final decision rendered by the County within six months from said resolution's effective date will be deemed denied without prejudice, and will subsequently be considered and reviewed under the then current rules, regulations, and procedures of this Code, and other applicable ordinances or laws. Either the resolution referred to above, or an executed copy, will immediately be recorded by the Clerk of the Board in the Official Records of Collier County, thereafter, a certified copy of said recorded resolution will be forwarded to the Secretary of State for filing. The failure to record or file said resolution will not otherwise act to invalidate or delay the effective date of said regulation.

PASSED AND DULY ADOPTED by the Board of County Commissioners of  
Collier County, Florida, this 20th day of June, 2001.

Attest as to Chairman's  
signature only.

ATTEST:

By: Ellie Hoffman, D. C.  
DWIGHT E. BROCK, CLERK

Approved As To Form And Legal Sufficiency

Marjorie M. Student  
Marjorie M. Student  
Assistant County Attorney

HALDC CYCLE I - 2001/LDC ORD CYCLE I - 2001

BOARD OF COUNTY COMMISSIONERS  
COLLIER COUNTY, FLORIDA

BY: [Signature]  
JAMES D. CARTER, CHAIRMAN

This ordinance filed with the  
Secretary of State's Office the  
29th day of June, 2001  
and acknowledgement of that  
filing received this 3rd day  
of July, 2001

By: [Signature]  
Deputy Clerk

## APPENDIX "G"

COLLIER COUNTY COMMUNITY DEVELOPMENT &  
ENVIRONMENTAL SERVICES  
2800 North Horseshoe Drive  
Naples, FL 34104  
941-403-2400

APPENDIX G  
ANNUAL BEACH EVENT  
STANDARD PERMIT CONDITIONS

1. Security:

Property Owner is responsible for ensuring that adequate security is provided for each Beach Event.
2. Traffic Safety:

Authorization from the Collier County Sheriffs office may be required for certain Beach Events. Property Owner is responsible for consulting the Collier County Sheriffs Office to determine whether separate authorization for a particular event is required.
3. Use of Electrical Apparatus: Need to speak with Building Department
4. Signage: Use of signs shall be subject to the provisions of the Collier County Land Development Code.
5. Noise: All music shall be subject to the terms and conditions of Property Owner's Music Permit, which permit may be obtained from Collier County on an annual basis.
6. Restrooms: Existing restroom facilities must be adequate, or additional portable facilities made available and not located on the beach.
7. Vehicles On Beach: Use of vehicles shall be subject to provision of Collier County Land Development Code §3.14.
8. Public Access: Beach Events shall be conducted in a manner that does not interfere with the public's ability to traverse that portion of the beach owned by the State of Florida.
9. No structures may be set, placed, or stored on, or within ten feet of, any beach dune.
10. Annual beach events which occur during Sea Turtle Nesting Season (May 1<sup>st</sup> through October 31<sup>st</sup> of each year): are also subject to the following regulations:
  - A. All required Florida Department of Environmental Protection (FDEP) Field Permits, shall be obtained and a copy furnished to Collier County prior to the time of the scheduled event as set forth in section 2.6.34.3.
  - B. Consistent with section 3.13.7.3, and 3.14.6, no structure set up, or beach raking, or mechanical cleaning activity for any particular Beach Event shall ~~not~~ commence until after monitoring conducted by personnel with prior experience and training in nest surveys procedures and possessing a valid Fish and Wildlife Conservation Commission Marine Turtle Permit has been completed
  - C. Prior to all scheduled beach events, every beach event permit holder is required to rope off (or otherwise identify with a physical barrier) an area with no less than a 15 foot radius around each sea turtle nest that has been

identified and marked on a beach, unless a greater distance is required by an applicable State permit.

- D. Use of vehicles on the beach is prohibited, except as may be permitted under ~~in~~ Section 3.14.3, 3.14.5, or 3.14.6.
- E. Consistent with section 3.13.7.3 all materials placed on the beach for the purpose of conducting permitted Beach Events must be: 1) removed from the beach by no later than 9:30 p.m. the date of the event; and 2) no structures may be set, placed, or stored on, or within ten feet of any beach dune, except that materials may remain in an identified staging area until 10:00 p.m. The location and size of all staging areas will be as identified in the annual beach events permit.
- F. All lights that are visible from the beach and cast a shadow thereon shall be turned off by no later than 9:00 p.m. of the date of the event.
- G. Identification of sea turtle nests on the beach may cause the Beach Event to be relocated from its planned location or to have additional reasonable limitations placed on the event pursuant to the recommendation of Collier County staff in order to protect the identified sea turtle nests in this permit; except that county staff may relocate a staging area as provided for in standard condition 10 E, as part of its daily sea turtle monitoring.
- H. Pole lighting, and any other object or structure designed to penetrate the beach surface by more than three (3) inches shall be subject to the approval of the FDEP and Collier County.
- I. A copy of all notices required by any permit or these regulations must also be provided by the permit holder to Collier County Natural Resources Department.

Note: When a State permit is more restrictive than the LDC requirements, the State requirements shall supersede, and the County shall enforce these requirements.

STATE OF FLORIDA)  
COUNTY OF COLLIER)

I, DWIGHT E. BROCK, Clerk of Courts in and for the Twentieth Judicial Circuit, Collier County, Florida, do hereby certify that the foregoing is a true and correct copy of:

ORDINANCE 2001-34

Which was adopted by the Board of County Commissioners on the 20<sup>th</sup> day of June, 2001, during Special Session.

WITNESS my hand and the official seal of the Board of County Commissioners of Collier County, Florida, this day of June, 2001.

DWIGHT E. BROCK  
Clerk of Courts and Clerk  
Ex-officio to Board of  
County Commissioners

*Ellie Hoffman*

By: Ellie Hoffman,  
Deputy Clerk

FILED  
2001 JUN 29 AM 9:07  
DEPARTMENT OF STATE  
TALLAHASSEE, FLORIDA