



LEE COUNTY
SOUTHWEST FLORIDA
BOARD OF COUNTY COMMISSIONERS

January 23, 2014

John E. Manning
District One

Cecil L. Pendergrass
District Two

Larry Kiker
District Three

Brian Hamman
District Four

Frank Mann
District Five

Roger Desjarlais
County Manager

Richard Wm. Wesch
County Attorney

Donna Marie Collins
Hearing Examiner

Ray Eubanks, Plan Processing Administrator
State Land Planning Agency
Caldwell Building
107 East Madison – MSC 160
Tallahassee, FL. 32399-0800

Re: Amendment to the Lee Plan
Transmittal Submission Package
Publicly Sponsored Amendment, CPA2013-07

Dear Mr. Eubanks:

In accordance with the provisions of F.S. Chapter 163, please find attached the proposed Publicly Sponsored Comprehensive Plan amendment, known locally as CPA2013-07. The proposed amendment is being submitted through the expedited state review process as described in Chapter 163.3184. The amendment is as follows:

CPA2013-07 is to amend the Lee Plan to remove provisions which regulate permitting of the use of water for irrigation from the Lower Tamiami aquifer as requested by the South Florida Water Management District. Also update Map 8 of the Lee Plan, which identifies the Wellfield Protection Zones for Lee County public wells and Aquifer Storage and Recovery wells.

The Local Planning Agency held a public hearing for this plan amendment on December 11, 2013. The Board of County Commissioners transmittal hearing for the plan amendment was held on January 22, 2014. The Board of County Commissioners voted to transmit the attached Lee Plan amendment package at the January 22, 2014 transmittal hearing. The proposed amendment is not applicable to an area of critical state concern. The Board of County Commissioners has stated its intent to hold an adoption hearing following the receipt of the review agencies' comments.

The name, title, address, telephone number, facsimile number, and email address of the person for the local government who is most familiar with the proposed amendment is as follows:

Mr. Paul O'Connor, AICP
Lee County Planning Division Director
P.O. Box 398
Fort Myers, Florida 33902-0398
(239) 533-8309
Fax (239) 485-8319
Email: occonnops@leegov.com

P.O. Box 398, Fort Myers, Florida 33902-0398 (239) 533-2111
Internet address <http://www.lee-county.com>
AN EQUAL OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER

Included with this package are one paper copy and two CD ROM copies, in PDF format, of the proposed amendment and supporting data and analysis. By copy of this letter and its attachments, I certify that this amendment and supporting data and analysis have been sent on this date to the agencies listed below.

Sincerely,

DEPT. OF COMMUNITY DEVELOPMENT
Division of Planning



Paul O'Connor, AICP, Director
Director

All documents and reports attendant to this transmittal are also being sent, by copy of this cover in a CD ROM format, to:

Comprehensive Plan Review
Department of Agriculture and Consumer Services

Tracy D. Suber
Department of Education

Jim Quinn
Department of Environmental Protection

Susan Harp
Florida Department of State

Scott Sanders
Florida Fish and Wildlife Conservation Commission

Lawrence Massey
FDOT District One

Margaret Wuerstle
Southwest Florida Regional Planning Council

Terry Manning, A.I.C.P., Senior Planner, Intergovernmental Coordination Section
South Florida Water Management District

THE NEWS-PRESS
Published every morning
Daily and Sunday
Fort Myers, Florida
Affidavit of Publication

STATE OF FLORIDA
COUNTY OF LEE

Before the undersigned authority, personally appeared **Shari Terrell** who on oath says that he/she is the **Legal Assistant** of the News-Press, a daily newspaper, published at Fort Myers, in Lee County, Florida; that the attached copy of advertisement, being a

Notice of Public Hearing

In the matter of:
Proposed Amendments to the Lee County Comprehensive Land Use Plan (Transmittal Hearing)

In the court was published in said newspaper in the issues of

Jan. 14, 2014

Affiant further says that the said News-Press is a paper of general circulation daily in Lee, Charlotte, Collier, Glades and Hendry Counties and published at Fort Myers, in said Lee County, Florida and that said newspaper has heretofore been continuously published in said Lee County, Florida, each day, and has been entered as a second class mail matter at the post office in Fort Myers in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of the advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Shari Terrell

Sworn to and subscribed before me this 14th day of January, 2014

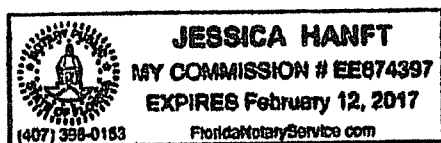
by **Shari Terrell**
personally known to me or who has produced

as identification, and who did or did not take an oath.

Notary Public

Jessica Hanft

Print Name: **Jessica Hanft**
My commission Expires: **February 12, 2017**



NOTICE OF PROPOSED AMENDMENTS TO THE LEE COUNTY COMPREHENSIVE LAND USE PLAN (TRANSMITTAL HEARING)

The Lee County Board of County Commissioners will hold a public hearing to consider proposed amendments to the Lee County Comprehensive Land Use Plan (Lee Plan) on Wednesday, January 22, 2014. The hearing will commence at 9:30 a.m., or as soon thereafter as can be heard, in the Board Chambers at 2120 Main Street in Downtown Fort Myers. At the hearing, the Board will consider the proposed amendments for transmittal to the Florida Department of Economic Opportunity, CPA 2013-00007 Wellfield Protection. This amendment proposes two changes to the Lee Plan. The first change, following a request by the South Florida Water Management District (SFWMD), removes language in the Plan pertaining to SFWMD permitting authority. The second change updates the Lee Plan Map that identifies Lee County Utility wells and their associated protection zones which identify adjacent lands needed to protect the public water supply. This transmittal hearing is the first step in a two step public hearing process to amend the Lee Plan. A second hearing will follow the Department of Economic Opportunity's review of the application. This meeting is open to the public. Interested parties may appear at the meeting and be heard with respect to the proposed plan amendment. A verbatim record of the proceeding will be necessary to appeal a decision made at this hearing. In accordance with the Americans with Disabilities Act, reasonable accommodations will be made upon request. To make arrangements or for further information contact Janet Miller at 239-533-8583. No. 1482532 January 14, 2014

2014 JAN 15 PM 1:06
RECEIVED BY
LEE CO. ATTORNEY

**CPA2013-07
WELLFIELD AND IRRIGATION
OVERLAY COMPREHENSIVE PLAN
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

Lee County Board of County Commissioners
Sponsored Amendment and Staff Analysis

DEO Transmittal Document

*Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(239) 533-8585*

January 22, 2014

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2013-07**

Text Amendment

Map Amendment

This Document Contains the Following Reviews	
<input checked="" type="checkbox"/>	Staff Review
<input checked="" type="checkbox"/>	Local Planning Agency Review and Recommendation
<input checked="" type="checkbox"/>	Board of County Commissioners Hearing for Transmittal
	Staff Response to Review Agencies' Comments
	Board of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: November 26, 2013

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. EXECUTIVE SUMMARY:

This amendment proposes two changes to the Lee Plan. The first change, following a request by the South Florida Water Management District (SFWMD), removes language in the Plan pertaining to SFWMD permitting authority.

The second change updates the Lee Plan Map that identifies Lee County Utility wells and their associated protection zones. These zones regulate uses which may contaminate the public water supply.

2. RECOMMENDATION:

Staff recommends that the Board of County Commissioners *transmit* the proposed amendment to the Lee Plan. This recommendation includes deleting Map 13, updating Map 8, and renaming Map 8 to "Wellfield Protection Zones." The recommendation includes transmitting the following modified Lee Plan language shown in strikethrough/underline form:

~~**POLICY 1.7.10:** The Irrigation Well overlay in Bonita Springs (as defined in this plan) is hereby declared a critical area for future potable water supply, based on evidence that withdrawals from the main potable aquifer, the lower Tamiami aquifer, are approaching or exceeding the maximum safe yield. In response to this designation, the county will maintain current regulations to provide that new irrigation well permits in the Irrigation Well overlay may not utilize the main potable water source. For the purposes of this plan, the boundaries of the Irrigation Well overlay are indicated on Map 13 of the Future Land Use Map series. (Also see Policy 54.1.9 for new permit requirements for wells in Lehigh Acres, and Policy 2.4.2 for special requirements for amendments to the Future Land Use Map). (Amended by Ordinance No. 94-30, 00-22, Amended and Relocated by Ordinance No. 02-02)~~

POLICY 2.4.2: All proposed changes to the Future Land Use Map in critical areas for future potable water supply (~~Bonita Springs as described in Policy 1.7.10;~~ Lehigh Acres as described in Policy 54.1.9; and all land in the Density Reduction/ Groundwater Resource land use category) will be subject to a special review by the staff of Lee County. This review will analyze the proposed land uses to determine the short-term and long-term availability of irrigation and domestic water sources, and will assess whether the proposed land uses would cause any significant impact on present or future water resources. If the Board of County Commissioners wishes to approve any such changes to the Future Land Use Map, it must make a formal finding that no significant impacts on present or future water resources will result from the change. (Amended by Ordinance No. 92-47, 94-30, 00-22, 02-02)

POLICY 54.1.9: Lehigh Acres (as defined by outer boundaries of its Privately Funded Infrastructure overlay on the Future Land Use Map) is hereby declared a critical area for future potable water supply due to fluctuating water levels in the Sandstone aquifer. In response to this designation, the county will amend current regulations to provide that new wells in Lehigh Acres must be constructed to accommodate submersible pumps. (~~Also see Policy 1.7.10 for new permit requirements for irrigation wells in Bonita Springs, and Policy 2.4.2 for special requirements for amendments to the Future Land Use Map.~~) (Amended by Ordinance No. 94-30, 00-22, 02-02)

3. APPLICANT/REPRESENTATIVES:

Lee County Board of County Commissioners/Lee County Division of Planning staff in conjunction with Lee County Utilities and Natural Resources staff.

4. REQUEST:

Amend the Lee Plan to remove provisions which regulate permitting of the use of water for irrigation from the Lower Tamiami aquifer. Also update Map 8 of the Lee Plan, which identifies the Wellfield Protection Zones for Lee County public wells and Aquifer Storage and Recovery wells.

B. FINDINGS OF FACT SUMMARY

BASIS AND RECOMMENDED FINDINGS OF FACT:

- The Lee County Board of County Commissioners initiated the proposed amendment on November 19, 2013 through Blue Sheet No. 20130964.
- Florida Statute Section 373.016(4)(a) states that waters in the state should be managed on a regional basis.
- Florida Statute 373.217 gives the Department of Environmental Protection (DEP) or water management districts exclusive authority for requiring permits for water consumption.
- Currently, Lee Plan Map 13 depicts the Irrigation Well Overlay.
- The South Florida Water Management District (SFWMD) currently maintains a comprehensive regulatory program.
- SFWMD has determined that Lee Plan Policy 1.7.10 conflicts with the districts jurisdiction.
- The proposed amendment would remove a redundant water management policy.
- Map 8 identifies Wellfield Protection Zones for permitted wells in the County.
- Lee County Land Development Code Chapter 14 Article III addresses contamination of potable water supplies through the creation of Wellfield Protection Zones. These zones are defined by the transit time of water within the aquifer.
- The Florida DEP is requiring Lee County to expand Aquifer Storage and Recovery (ASR) well protection zones.
- New public water supply production wells have been installed, and Map 8 should also be updated to include these new wells and provide more accurate location of existing wells.

C. BACKGROUND INFORMATION

Lee Plan Map 13, The Irrigation Well Overlay, depicts the area identified in Policy 1.7.10 as a critical area for future potable water supply. The Overlay originally depicted a large area in the southern portion of the County including areas in Bonita Springs. The incorporation of the City of Bonita Springs and the subsequent removal of regulations specific to the area of the city from the Lee Plan resulted in the current extent of Map 13. The Overlay currently covers portions of the Southeast Lee County and Estero Planning Communities.

Lee Plan Map 8, currently titled "Cones of Influence," indicates the travel time of groundwater surrounding various wellfields within the County and establishes protection from certain land uses within these zones. Florida DEP is currently requiring Lee County Utilities to expand ASR protection zones from 500 to 2,640 feet. These zones are not depicted on the current Map 8.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

INTRODUCTION

In a letter dated October 16, 2013 (see Attachment #1), the South Florida Water Management District (SFWMD) identified provisions in the Lee Plan that do not conform to Florida Statutes. This letter provides that these provisions intrude on the jurisdiction of the SFWMD in regards to the permitting of irrigation wells in the Lower Tamiami Aquifer. The main source of this conflict is Policy 1.7.10 which regulates permits in the Irrigation Well Overlay identified in Lee Plan Map 13. To remove this conflict, the SFWMD has requested that Policy 1.7.10 be deleted. This will require deletion of references to Policy 1.7.10 in two other policies, Policy 2.4.2 and 54.1.9. Lee Plan Map 13 will also be deleted as it will be unnecessary without Policy 1.7.10.

Staff is also taking this opportunity to update Lee Plan Map 8 to more accurately identify the purpose of the map. The map should be named "Wellfield Protection Zones." Map 8 needs to be updated for several reasons. New public water supply production wells have been installed, and the map should also be updated to include these new wells. In addition, due to recent groundwater modeling FDEP is currently requiring Lee County Utilities to expand the ASR well protection zones from 500 feet to 2,640 feet. These ASR boundaries are depicted on proposed Map 8.

PROPOSED CHANGES

The amendment proposes the deletion of Policy 1.7.10. This will remove a conflict between the Lee Plan and the SFWMD in the Estero area. Lee Plan Policies 1.7.11 through 1.7.15 will be renumbered. Lee Plan Policies 2.4.2 and 54.1.9 both contain references to Policy 1.7.10. The references will be deleted. Policies 2.4.3 and 2.4.4 will be renumbered as will Policies 54.1.10 through 54.1.12.

Another proposed change is the deletion of Lee Plan Map 13, the Irrigation Well Overlay. The deletion of Policy 1.7.10 will render this map irrelevant and it should be removed from the Lee Plan.

The last proposed change is to adopt an updated version of Lee Plan Map 8, Cones of Influence, in order to include the latest data from the Division of Utilities and rename the map as previously discussed.

The changes to the relevant Lee Policies are shown here in strikethrough/underline format:

~~**POLICY 1.7.10:** The Irrigation Well overlay in Bonita Springs (as defined in this plan) is hereby declared a critical area for future potable water supply, based on evidence that withdrawals from the main potable aquifer, the lower Tamiami aquifer, are approaching or exceeding the maximum safe yield. In response to this designation, the county will maintain current regulations to provide that new irrigation well permits in the Irrigation Well overlay may not utilize the main potable water source. For the purposes of this plan, the boundaries of the Irrigation Well overlay are indicated on Map 13 of the Future Land Use Map series. (Also see Policy 54.1.9 for new permit requirements for wells in Lehigh Acres, and Policy 2.4.2 for special requirements for amendments to the Future Land Use Map). (Amended by Ordinance No. 94-30, 00-22, Amended and Relocated by Ordinance No. 02-02)~~

Lee Plan policies 1.7.11 through 1.7.15 will be renumbered to reflect this deletion.

~~**POLICY 2.4.2:** All proposed changes to the Future Land Use Map in critical areas for future potable water supply (~~Bonita Springs as described in Policy 1.7.10;~~ Lehigh Acres as described in Policy 54.1.9; and all land in the Density Reduction/ Groundwater Resource land use category) will be subject to a special review by the staff of Lee County. This review will analyze the proposed land uses to determine the short-term and long-term availability of irrigation and domestic water sources, and will assess whether the proposed land uses would cause any significant impact on present or future water resources. If the Board of County Commissioners wishes to approve any such changes to the Future Land Use Map, it must make a formal finding that no significant impacts on present or future water resources will result from the change. (Amended by Ordinance No. 92-47, 94-30, 00-22, 02-02)~~

~~**POLICY 54.1.9:** Lehigh Acres (as defined by outer boundaries of its Privately Funded Infrastructure overlay on the Future Land Use Map) is hereby declared a critical area for future potable water supply due to fluctuating water levels in the Sandstone aquifer. In response to this designation, the county will amend current regulations to provide that new wells in Lehigh Acres must be constructed to accommodate submersible pumps. (Also see ~~Policy 1.7.10 for new permit requirements for irrigation wells in Bonita Springs, and Policy 2.4.2 for special requirements for amendments to the Future Land Use Map.~~) (Amended by Ordinance No. 94-30, 00-22, 02-02)~~

Deletion of Policy 1.7.10 and references to it will bring the Lee Plan into conformance with Florida Statute 373.106(4)(a). Deleting Lee Plan Map 13 will remove an unnecessary provision from the Lee Plan. Adoption of an updated Lee Plan Map 8 will

keep groundwater protection policies current, will more accurately depict existing and new wells, and will now depict ASR well protection zones.

B. STAFF RECOMMENDATION

County staff recommends that the Board of County Commissioners *transmit* the proposed amendment.

**PART III - LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: December 11, 2013

A. LOCAL PLANNING AGENCY REVIEW

Staff gave a brief presentation regarding the proposed amendment. LPA member asked if there were other regulations addressing water permitting in Bonita Springs. Natural Resources Staff answered that there are and that staff is currently addressing them. No members of the public spoke, appeared, or addressed the proposed plan amendment.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

The LPA recommends that the Lee County Board of County Commissioners *transmit* the proposed Lee Plan amendment as recommended by staff.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The LPA accepted the basis and recommended findings of fact as advanced by staff.

C. VOTE:

NOEL ANDRESS	<u>ABSENT</u>
STEVE BRODKIN	<u>AYE</u>
WAYNE DALTRY	<u>AYE</u>
JIM GREEN	<u>AYE</u>
MITCH HUTCHCRAFT	<u>AYE</u>
ANN PIERCE	<u>ABSENT</u>
ROGER STRELOW	<u>ABSENT</u>

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: January 22, 2014

A. BOARD REVIEW:

Staff provided a brief overview of the proposed amendment. The Board of County Commissioners did not make any comments or have any questions concerning the proposed amendment. No members of the public addressed the Board of County Commissioners concerning the proposed amendment.

A motion was made to transmit the proposed amendment. The motion passed 5-0.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

The Board of County Commissioners transmitted the proposed amendment as recommended by staff.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The Board of County Commissioners accepted the findings of fact as advanced by staff and the LPA.

C. VOTE:

BRIAN HAMMAN	<u>AYE</u>
LARRY KIKER	<u>AYE</u>
FRANK MANN	<u>AYE</u>
JOHN MANNING	<u>AYE</u>
CECIL L PENDERGRASS	<u>AYE</u>



SOUTH FLORIDA WATER MANAGEMENT DISTRICT

October 16, 2013

Lee Werst
Lee County Natural Resources Management
1500 Monroe Street
Ft. Myers, Florida 33901

LEE COUNTY DIV. OF
NATURAL RESOURCES
OCT 18 2013

RECEIVED

Re: Lee County Comprehensive Plan

Dear Mr. Werst:

Thank you for providing the South Florida Water Management District (District) with the opportunity to review Lee County's proposed changes to Ordinance No. 06-09. As noted in its September 12, 2013 letter, the District requested deletion of the renumbered Section 8.3.2(16), previously Section 9.3.2(16), purporting to regulate the use of water for irrigation from the Lower Tamiami aquifer, as such regulation is preempted to the District.

It has come to the District's attention that Policy 1.7.10 of the Lee County Comprehensive Plan ("Lee Plan") also intrudes into the District's exclusive jurisdiction. The Policy states:

The Irrigation Well overlay in Bonita Springs (as defined in this plan) is hereby declared a critical area for future potable water supply, based on evidence that withdrawals from the main potable aquifer, the lower Tamiami aquifer, are approaching or exceeding the maximum safe yield. In response to this designation, the county will maintain current regulations to provide that new irrigation well permits in the Irrigation Well overlay may not utilize the main potable water source. For the purposes of this plan, the boundaries of the Irrigation Well overlay are indicated on Map 13 of the Future Land Use Map series.

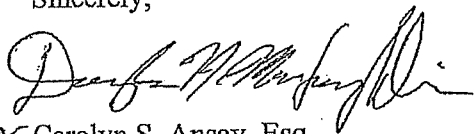
The Legislature stated that the waters in the state should be managed on a statewide and regional basis. See § 373.016(4)(a), Fla. Stat. (2013). To effectuate this goal, the Legislature enacted Section 373.217, Fla. Stat., giving the Department of Environmental Protection or water management districts exclusive authority for requiring permits for the consumptive use of water under Part II of Chapter 373, F.S. The law also superseded any existing state or local laws that conflicted with the Part II of Chapter 373, F.S., and preempted the enactment of future regulations.

The District adopted a comprehensive regulatory program. The Consumptive Use Permitting (CUP) Program protects the water resources from harm. § 373.216, Fla. Stat. (2013). All CUPs issued have been technically evaluated to determine if the water use has the potential to cause harm to the resources of the area. To further protect the Lower Tamiami aquifer, the District has adopted a minimum level for the aquifer. Fla. Admin. Code R. 40E-8.331. To prevent the

aquifer from reaching the minimum level, maximum developable limits have been set. See Section 3.2.4 of the Basis of Review for Water Use Permits within the South Florida Water Management District. Taken together, these rules and criteria are sufficient to accomplish the goals espoused by the Lee Plan.

Therefore, the District respectfully requests Lee County remove Policy 1.7.10 of the Lee Plan which purports to prohibit the construction of irrigation wells into the Lower Tamiami aquifer within a portion of Bonita Springs. If you have any questions, feel free to contact Jennifer Bokankowitz at 561-682-2258, or jbokanko@sfwmd.gov

Sincerely,


for Carolyn S. Ansay, Esq.
General Counsel

CSA/jdb

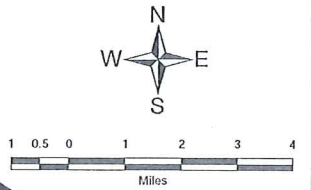
IRRIGATION WELL OVERLAY

(Lee Plan Map 13)

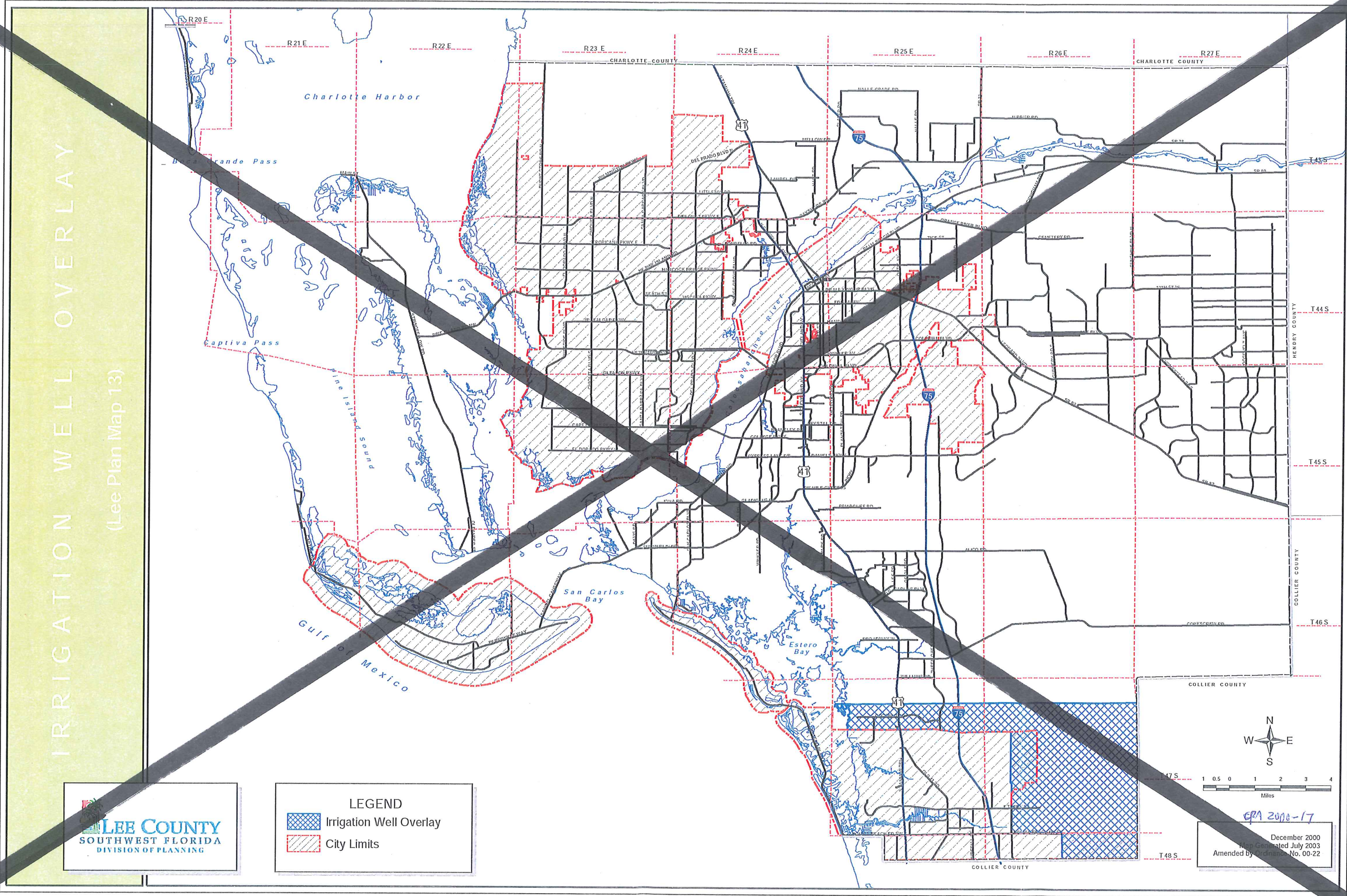


LEGEND

- Irrigation Well Overlay
- City Limits



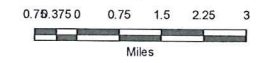
December 2000
Map Generated July 2003
Amended by Ordinance No. 00-22



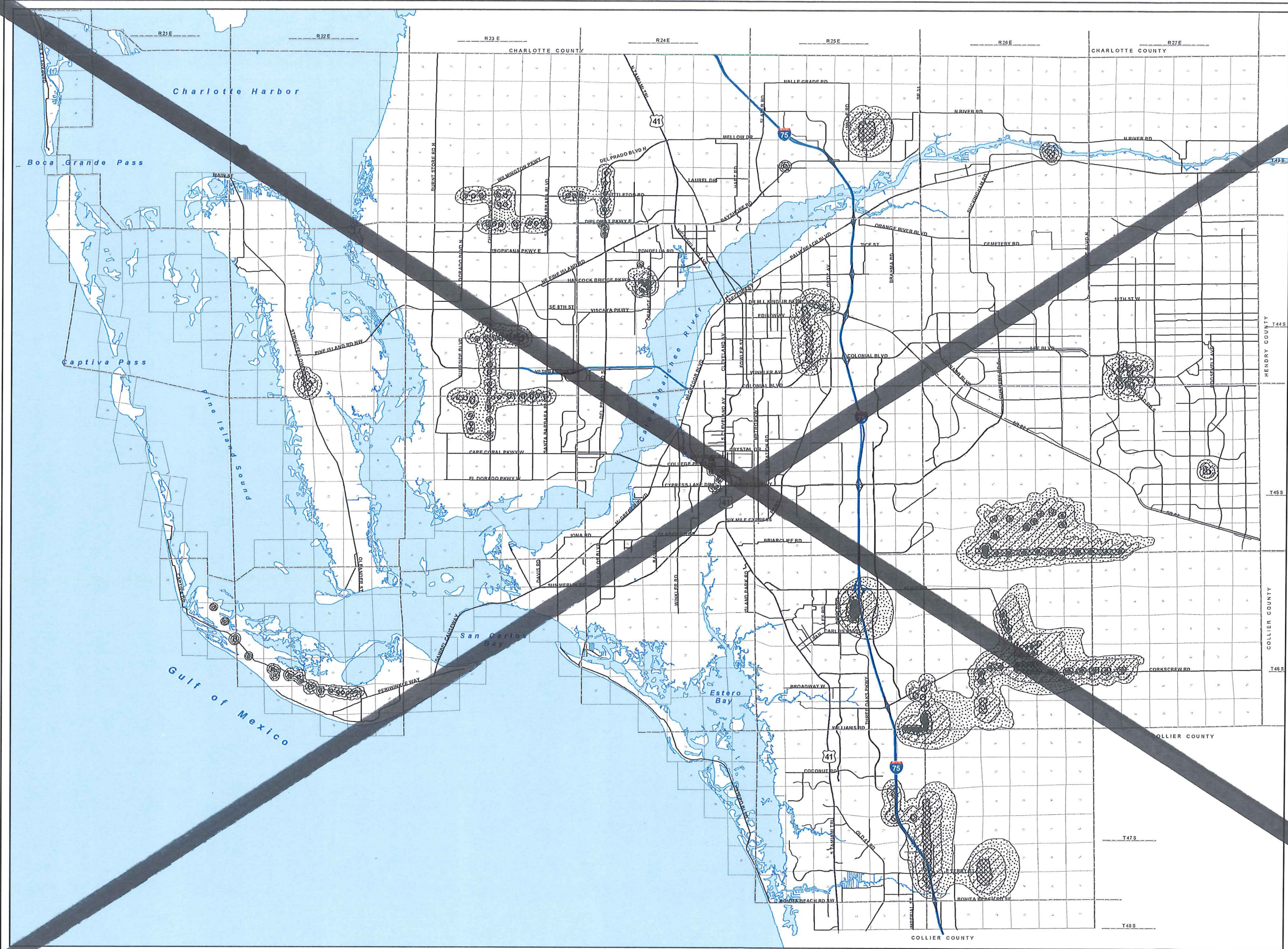
CONES OF INFLUENCE

Travel Times

- * Permitted Wells
- 6-Months
- ▨ 1-Year
- ▧ 5-Years
- ▩ 10-Years



Map Generated: January 2008
 City Limits current to date of map generation
 Last Amended: August 13, 2007
 Amended by Ordinance No. 07-13

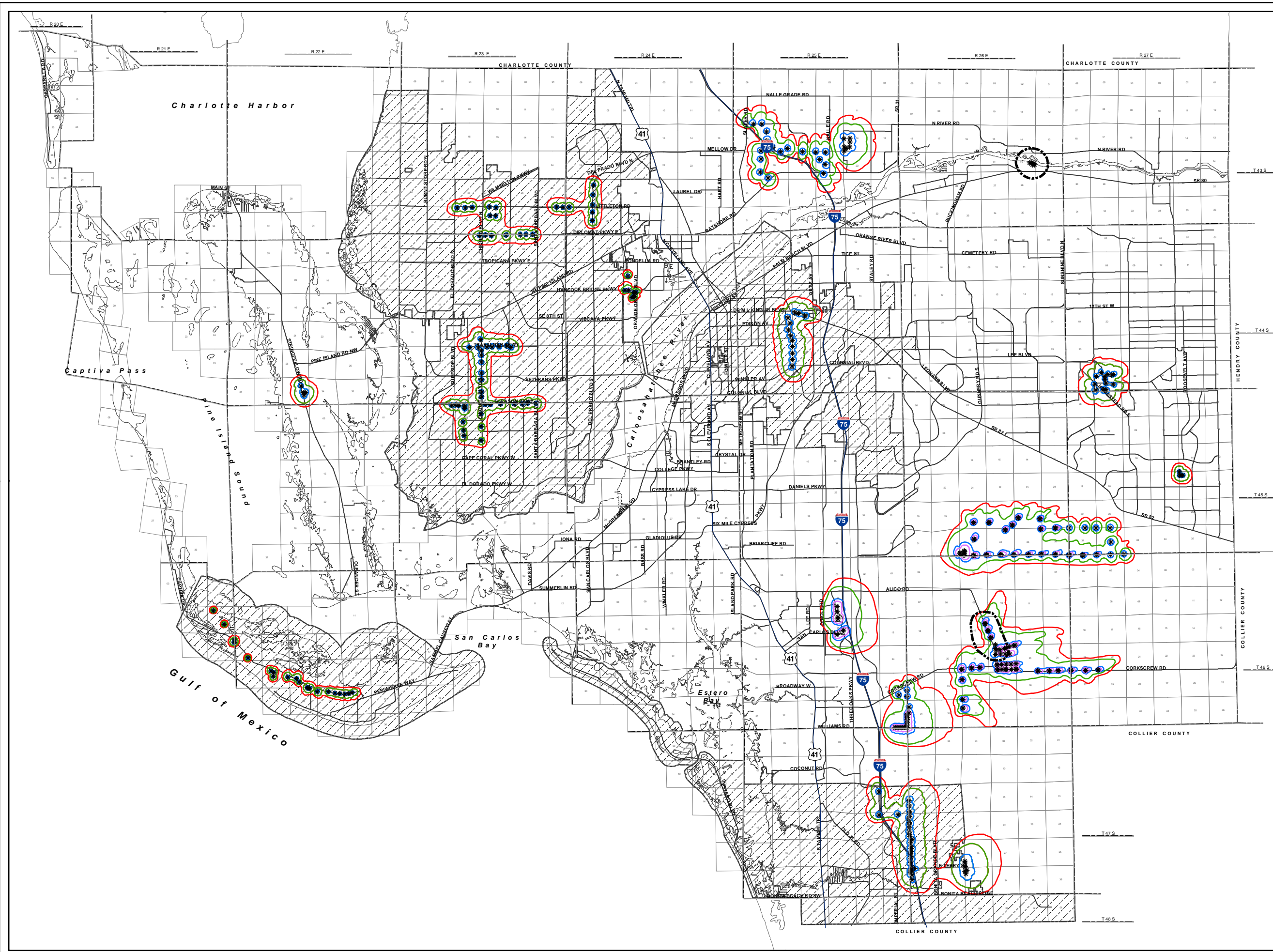


Wellfield Protection Zones

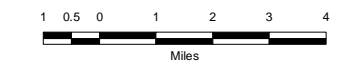
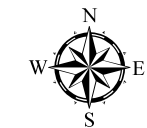
COMPOSITE ISO-TRAVEL TIME MAP

Travel Time

- 6-MONTHS
- 1-YEAR
- 5-YEARS
- 10-YEARS
- ASR PROTECTION ZONE
- * Permitted Well
- City Limits



LEE COUNTY
SOUTHWEST FLORIDA
DIVISION OF PLANNING



Map Generated: November 2013
City Limits current to date of map generation

Last Amended: August 13, 2007
Amended by Ordinance No. 07-13