

# **Attachment ‘E’**

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# CHAPTER 166 - ENVIRONMENTAL AND NATURAL RESOURCE PROTECTION

## ARTICLE I. - IN GENERAL

### Sec. 166-1. - Water preservation in new developments.

- (a) All development regulations in the county shall accommodate the following provisions for water preservation or as may be specified in the County Stormwater Manual:
  - (1) All new development that requires irrigation shall be connected to the County's reclaimed water system if available. If reclaimed water is not available shallow wells with an adequate distribution system to serve that need for irrigation shall be installed and operated for that purpose. The distribution system for irrigation shall not be connected to the county or municipal potable water sources.
  - (2) With respect to the drainage system of all new developments, maximum use shall be made of lakes and retention ponds for irrigation purposes and to reduce the runoff. The stormwater runoff should not exceed the runoff from the site in the undeveloped state. .
  - (3) All water systems shall prohibit the installation of water meters of a size that would provide for lawn sprinkling in conjunction with domestic use.
- (b) All territory within the legal boundaries of the county, including all incorporated and unincorporated areas that are served by or connected to the county water system, shall be embraced by the provisions of this section.
- (c) For the purposes of this Section only the following definitions shall apply:

*Irrigation* means water used for the purpose of maintaining landscaped material such as grass, trees, shrubs and other flora.

*New Development* means any change to the existing state of land development on any given parcel, including new construction and substantial remodeling of existing structures.

### Sec. 166-2. - Variances.

Variances and modifications to the requirements of this Article may be reviewed and processed pursuant to *Chapter 138 Article II Division 7 – Variances, Waivers, and Administrative Adjustments*.

### Sec. 166-3. - Appeals.

Any persons adversely affected by a decision of the county administrator in the permitting, enforcement or interpretation of any of the terms or provisions of this article may appeal such decision as allowed and defined in Chapter 138 Article II pursuant to the required project review type.

### Secs. 166-4—166-35 - Reserved.

## ARTICLE II. - HABITAT MANAGEMENT AND PROTECTION

### DIVISION 1. - GENERALLY

#### Sec. 166-36. – Definitions.

*Adverse impact* means any direct or indirect action likely to cause, or actually causing, a measurable decline in the stability, natural function, or natural diversity of a body of water or

floodprone lands or the quiet, peaceful, safe or healthful use of occupancy of any property. This includes, but is not limited to the quality, quantity, hydrodynamics, surface area, species composition, living resources, aesthetics or usefulness for human or natural uses which are or potentially may be harmful or injurious to human health, welfare, safety or property, to biological productivity, diversity or stability or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation. The term includes secondary and cumulative as well as direct impacts.

*Approved species list* means a list of tree species approved as replant or landscape trees and which is available from the department.

*Caliper* means trunk diameter measured six inches above the soil line. Also see Diameter Breast Height (DBH)

*Compensation* means measures provided to offset adverse impacts to wetlands, including one or more of the following:

- (1) Mitigation;
- (2) Inclusion of upland areas, beyond any required buffer zones, to maintain upland/wetland habitat diversity;
- (3) Establishment of vegetated littoral zones in on-site open water bodies;
- (4) Restoration of wetlands that have been previously impacted;
- (5) Compensation on off-site lands; and
- (6) Other reasonable measures, such as providing unlike wetland habitat.

*Development or Development Activity* means:

- (1) The construction, installation, alteration, demolition or removal of a structure or an impervious surface.
- (2) Clearing, scraping, grubbing or otherwise removing, altering or destroying the vegetation of a site.
- (3) Adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling, dredging, or otherwise significantly disturbing the soils or altering the natural topographic elevations of the site.
- (4) The maintenance of a lawn and its ancillary vegetation, excluding uplands as required in section 166-50 is exempted.

*Diameter Breast Height (DBH)* means the diameter, in inches, of a tree measured at 4½ feet above the natural grade. The diameter of multiple trunks shall be added together for this measurement.

*Dripline* means an imaginary, perpendicular line that extends downward from the outermost tips of the tree branches to the ground.

*Effectively remove* means to trim or prune to the extent that a plant's natural function is severely altered.

*Endangered, threatened or species of special concern* means the list of plant and animal species as defined pursuant to rules 39-27.003—.005, Florida Administrative Code, or 50 CFR 17.11-12, or F.S. § 581.185.

*Ground cover* means low-growing plants, other than deciduous varieties, installed to form a continuous cover over the ground.

*Grubbing* means the effective removal of understory vegetation such as, but not limited to, palmetto from the site. As herein defined, no tree four inches dbh or greater shall be removed.

*Hedge* means a continuous arrangement of shrubs for the purpose of screening or dividing spaces which are planted at a minimum height of 24 inches and maintained at a minimum of 36 inches.

*Historic tree* means a tree which has been found by a professional forester, horticulturist, or other suitable professional to be of notable historic interest to the county because of its age, type, size, or historic association and has been so designated and that designation has been officially made and promulgated as part of the official records of the county.

*Isolated wetland* means any wetland as defined in this article which is not contiguous with the waters of the state as defined in the Florida Administrative Code.

*Landscape tree* means a tree from the approved species list which is a minimum 1½-inch caliper and six feet tall at time of planting, unless approved otherwise by the county administrator, and is a state department of agricultural nursery grade no. 1 or better.

*Native vegetative communities* means those plant communities naturally occurring in the county. Native vegetative communities shall include but not be limited to sandhill, xeric hammock, upland hardwood forest, pine flatwoods, sand pine scrub and wetlands.

*Mangrove* means any rooted trees or seedlings, of any size, including the following species: White mangrove (*laguncularia racemosa*), red mangrove (*rhizophora mangle*), black mangrove (*avicennia germinans*), and buttonwood (*conocarpus erectus*). This definition is to include all subspecies and varieties of the listed species as well as their synonyms.

*Mitigation* means the creation of habitat in compensation for the adverse impacts associated with a permitted activity. Includes the replacement of a wetland, type for type, to restore those specific physical and functional characteristics which will be lost as a result of the proposed activity.

*Pine flatwoods* consist of flat topography; sand substrate with an organic hardpan; vegetation characterized by slash pine or longleaf pine, Chapman's oak, and myrtle oak or wax myrtle with a midstory of saw palmetto, gallberry or wiregrass understory.

*Plant material* means plants which conform to the standards for Florida No. 1, or better, as given in the existing Grade and Standards for Nursery Plants, State of Florida, Department of Agriculture, Tallahassee, or equal thereto at the time of purchase of plant material.

*Protective barrier* means a physical structure limiting access to a protected area, composed of wooden and/or other suitable materials, which assures compliance with the intent of this article. Diagrams of suitable protective barriers shall be available from the department. Options and/or variations of these methods may be permitted upon written request if they satisfy the intent of this article.

*Preliminary land clearing* means those operations where trees and vegetation are removed within designated road rights-of-way, drainage and utility areas as depicted on a preliminary site plan and which occur previous to the construction of buildings.

*Remove or removal* means the actual removal of vegetation by digging up or cutting down, or damage of the vegetation or alteration of a site through the application of herbicides or other chemical agents.

*Replant tree* means a tree from the approved species list which is a minimum 1½-inch caliper and six feet tall at time of planting unless approved otherwise by the county administrator and is a state department of agricultural nursery grade no. 1 or better.

*Sand pine scrub* consists of upland plant communities found on relict dunes or present and former shorelines where the soil is composed of any well-drained, sterile sands. The community is composed of two layers with sand pine occupying the top layer and various scrub oaks and

shrub species creating a thick understory. The understory typically includes myrtle oak, Chapman's oak, sand live oak, rosemary or lyonia.

*Sandhill* means deep sand substrate; xeric; vegetation characterized by longleaf pine, turkey oak or bluejack oak with wiregrass understory.

*Site* means any tract, lot or parcel or combination of lots or parcels of land where development or redevelopment can occur and which any modification, new construction or split is subject to site plan requirements as defined in chapter 138, article II, division 5.

*Site plan* means a graphically drawn plan view of a site which shows all proposed or existing manmade improvements and which includes buildings, parking areas, utility lines, drives, roads, topographic changes, and natural features.

*Specimen tree* means:

- (1) Any tree in fair or better condition which equals or exceeds the following diameter sizes:
  - a. Large hardwoods, e.g., oaks, hickories, sweetgums, gum, etc., 36 inches dbh.
  - b. Large softwoods, e.g., pines, cypress, cedars, etc., 20 inches dbh.
- (2) A tree in fair or better condition must meet the following minimum standards:
  - a. A life expectancy of greater than 15 years.
  - b. A relatively sound and solid trunk with no extensive decay or hollow, and less than 20 percent radial trunk dieback.
  - c. No more than one major and several minor dead limbs (hardwoods only).
  - d. No major insect or pathological problem.
- (3) A lesser sized tree can be considered a specimen if it is a rare or unusual species, of exceptional quality, or of historical significance.
- (4) A lesser size tree can be considered a specimen if it is specifically used by a builder, developer, or design professional as a focal point in a project of landscape.

*Specimen tree stands* means a contiguous grouping of trees which has been determined to be of high aesthetic or ecological value by the judgment of a professional forester, horticulturalist, or other suitable professional. Determination is based upon the following criteria:

- (1) A relatively mature even-aged stand; and
- (2) A stand with purity of species composition or of a rare or unusual nature; or
- (3) A stand of historical significance; or
- (4) A stand with exceptional aesthetic quality; or
- (5) A stand which provides wildlife habitat diversity which is important for species existence.

*Structure* means any object, constructed or installed by man, including, but without limitation thereof, buildings, towers, smokestacks, utility poles and overhead transmission lines. The term "structure" shall be construed as if followed by the words "or part thereof."

*Transplant* means the digging up of a tree from one place on a site and the planting of the same tree in another location.

*Tree survey* means a maximum one inch equals 50 feet scale drawing which provides the following information: Location of all trees protected under the provisions of this article, plotted by accurate techniques; the common name of all the trees; and the dbh of each tree.

*Trim or prune* means to cut away or remove any portion of a plant.



*Upland hardwood forest* consist of rich sandy substrate; best developed where limestone or phosphate outcrops occur; mesic; rare or no fire; vegetation may be characterized by magnolia, pignut hickory, laurel oak and other hardwoods. Species composition varies. A major variation of this vegetative association includes live oak-cabbage palm hammock.

*Vehicular use area* means and includes all areas used for the circulation, parking, or display of any and all types of vehicles, boats or heavy construction equipment, whether self-propelled or not, and all land upon which vehicles traverse as a function of the primary use. This shall include, but is not limited to, activities of a drive-in nature.

*Wetland* means all those waters, fresh and saline, or areas which are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation specifically adapted to life in saturated conditions. Such wetland vegetative indicators shall be those species listed in the Florida Administrative Code. Wetlands include, but are not limited to, rivers, lakes, streams, springs, impoundments, swamps, hydric hammocks, marshes, bogs, sinkholes, estuaries, sloughs, cypress heads, mangrove forests, bayheads, bayous, bays, and open marine waters, whether on private or public lands and whether they are manmade or natural. Wetlands shall not include stormwater retention ponds.

Xeric hammock consist of deep sand substrate; xeric; vegetation characterized by sand live oak or Chapman's oak.

**Sec. 166-37. - Intent.**

Trees, native vegetative, and wetland communities provide and maintain beneficial public resources; therefore, it is the intent of the Board of County Commissioners to protect such environmental resources as set forth in this article. In addition, it is further the intent of the board of county commissioners to protect and maintain environmental features affected by site development and land usage.

**Sec. 166-38. - Territory embraced.**

This article shall be effective in the incorporated as well as unincorporated areas of the county; however, to the extent this article conflicts with a municipal ordinance, the municipal ordinance shall prevail.

**Sec. 166-39. - Penalty for violation of article.**

Whoever shall violate the provisions of this article, as defined pursuant to section 166-43, may be subject, upon conviction, to punishment as provided in section 134-8. In any prosecution under this article, the violation of any provision of this article may constitute a separate offense for each tree. Each separate protected plant removed or trimmed without a permit will also constitute a separate violation. Further, each day of the violation of the provision(s) of this article may constitute a separate offense. In addition to the sanctions contained in this section, the county may take any other appropriate legal action, including, but not limited to, emergency injunctive action, to enforce the provisions of this article. The county may also seek civil remedies pursuant to Laws of Fla. ch. 90-403, the "Pinellas County Environmental Enforcement Act" (compiled in ch. 58, art. II).

**Sec. 166-40. – 166-41 – Reserved.**

**Sec. 166-42. - Emergencies.**

In case of emergencies, such as hurricane, windstorm, flood, freeze or other disasters, the requirements of this article may be waived by the county administrator or designee, upon finding that such waiver is necessary so that public or private work to restore order in the county will not be impeded.

**Sec. 166-43. - Liability for violation of article.**

Whenever a violation of this article occurs or exists, or has occurred or existed, any person, individually or otherwise, who has a legal, beneficial or equitable interest in the facility or instrumentality causing or contributing to the violation, or who has a legal, beneficial or equitable interest in the real property upon which such violation occurs or exists, or has occurred or existed, shall be jointly and severally liable for such violation.

- (1) This provision shall be construed to impose joint and several liability upon all persons, individually or otherwise, who, although such persons may no longer have any such legal, beneficial or equitable interest in such facility or instrumentality or real property, did have such an interest at any time during which such violation existed or occurred or continued to exist or to occur.
- (2) This provision shall be liberally construed to protect the public health, safety, and welfare and to accomplish the purposes of this article.

**Sec. 166-44. - Civil penalties.**

In addition to the penalties provided in section 166-39, the board of county commissioners may institute a civil action in a court of competent jurisdiction to recover damages for any degradation, alteration, or elimination of or to the water, soil, natural resources, or animal or plant life of the county caused by a violation of this article. The computation of civil damages will incorporate the expense of restoring the damaged habitat to its pre-violation condition and function. The civil penalty for violations of this article, which consist of trees removed, damaged or killed without a permit, will be computed using the following criteria:

- (1) Tree valuation. The valuation of tree(s) removed, damaged or killed without a permit will be calculated utilizing the following methods:
  - a. Inch-for-inch diameter at breast height (dbh) replacement: The replacement of a tree with a tree or trees of the same or similar species in sufficient number so that the sum of the dbh of the replacement trees equals or exceeds the dbh of the tree(s) that were removed, damaged or killed without a permit. Number of inches of trees removed may be determined by surveys, field inspection, aerial interpretation, ground truthing, statistical analysis of trees on adjacent properties, and other appropriate methods and criteria.
  - b. Values as established by the International Society of Arboriculture, shade tree formula.
  - c. Other professionally accepted methods.
  - d. Other replacement requirements pursuant to Chapter 138 Article X Division 3.
- (2) Method of payment. The civil penalty for violations of this article will be paid to the county as follows:
  - a. Tree replant requirements: The violator must fulfill the tree replant requirements for the subject property as specified in the guideline for tree replant requirements in section 138-3654 and 138-3655. If, as determined by the county, required tree replant requirements cannot be adequately met on site, then the violator shall contribute to the tree bank fund, per subsection b., below.
  - b. Tree bank fund: Valuation of trees as computed in subsection (1) of this section shall be paid to the tree bank fund either by the planting of or transference of the appropriate number of tree replants or money, or a combination of tree replants and money.

**Sec. 166-45. - Withholding of certificate of occupancy.**

The county administrator may withhold the issuance of the required certificate of occupancy, or permits and inspections, on any development permitted under this article until the provisions of this article, including conditions of any permits issued under this article, have been fully met.

**Sec. 166-46. - Active site plan exemptions.**

Site plans which were accepted for review by the county prior to **ADOPTION DATE OF THIS UPDATE**, and which have an active status as determined pursuant to chapter 138, shall not be required to comply with the specific provisions of section 166-50, and section 166-51, provided that:

- (a) When final site plan comments or reports defined pursuant to the zoning ordinance are provided to a site plan applicant, the applicant shall have 90 days in which to revise and resubmit a site plan, in compliance with such comments or reports, to the county for further review. Site plans not revised and received within such 90-day period shall be reviewed for compliance with all the requirements of this article in effect on the date of resubmittal. When the resubmitted site plan is received within such 90 days, the plan shall be reviewed under the requirements of this article with the exception of the specific requirements of section 166-50.
- (b) The terms and conditions of subsection (2) of this section shall also apply to preliminary site plans except that the referred 90-day time frame shall be 180 days.

**Sec. 166-47. - Ratification of prior regulations.**

All actions previously taken by the board of county commissioners pursuant to previously enacted rules and regulations are hereby confirmed and ratified.

**Sec. 166-48. - Interpretation of other laws and regulations.**

Where other lawful codes, ordinances, regulations or statutory provisions are referenced within this article, such references shall include lawful revisions or amendments thereto which may occur from time to time.

**Sec. 166-49. - Vegetation protection during construction.**

- (a) Placement of solvents, material, construction machinery, or soil. It shall be unlawful for any person engaged in development activity to place solvents, construction material, construction machinery, or temporary soil deposits within six feet or two-thirds of the dripline, whichever is greater, of any tree to be retained of four inches dbh or greater or within six feet of other protected vegetation as required under the provisions of this article.
- (b) Protective barriers. Prior to land development activity, the owner or his agent shall be required to erect a suitable protective barrier(s) for all protected vegetation and placards, posted on the barricades, indicating the purpose of such barriers and the penalties for unauthorized removal. The protective barrier(s) and placards shall remain erected until such time as they are authorized to be removed by the county or upon completion of final lot grading and placement of final ground cover. Removal of vegetation within the protective barriers shall require approval by the department. Failure to obtain such approval shall be considered a violation of this article. Diagrams of suitable protective barriers and placard(s) shall be available from the department. During construction, no attachments or wires shall be attached to any protected vegetation. Wood, metal or other substantial material shall be utilized in the construction of barriers.

**Sec. 166-50. - Upland buffers adjacent to wetlands.**

- (a) *Wetland Protection Buffers.* It is the purpose of an upland buffer to further protect wetlands, their associated wildlife and water quality from adjacent development impacts. Such impacts include siltation, eutrophication, noise, artificial light intrusion and human and domestic animal intrusion. Upland buffers will also provide for preservation of upland wildlife habitat.
- (1) Upland buffer requirements.
    - a. Upland buffers shall be required immediately adjacent to a wetland in accordance with *Table 138-3660.a Wetland Protection Upland Buffers*, or as otherwise specified in this section.
    - b. The upland buffers are required to be shown on a site plan upon submittal through the County's site plan regulations and review procedures. The buffers must be preserved during site development.
  - (2) The upland buffer and its associated wetlands shall be recorded in the public records of the County as a conservation easement in accordance with F.S. § 704.06 or created as a conservation easement on the record plat for the development.
  - (3) The following exemptions shall apply to the wetland protection buffer requirements:
    - a. Individual single-family lots are exempt; however, replats and subdivisions are subject to the standards of this article.
    - b. Catwalks, boardwalks, and walkways.
  - (4) Where the wetland protection upland buffers conflict with any applicable buffering standards from Chapter 138, Article IX Specific Use Standards AND/OR the Design Criteria for the underlying zoning district, the wetland buffers shall prevail.
  - (5) Wetland Protection Upland Buffer areas may be combined with any required open space area from Chapter 138, Article IX Specific Use Standards AND/OR the Design Criteria for the underlying zoning district.

WETLAND PROTECTION BUFFER TYPE	ADJACENT WETLAND FEATURE	MINIMUM REQUIRED WETLAND PROTECTION BUFFER
Type 1	Isolated Wetlands	15-ft
Type 2	Creeks, channels, ditches, canals or other waterways which are not designated as preservation land use areas and which are connected with waters of the state as defined in the Florida Administrative Code	15-ft outside the top of bank or contiguous wetlands, whichever is greater
Type 3	County approved retention ponds adjacent to wetlands which provide the intent as described in purpose of this section.	15-ft from edge of wetlands to top of bank of retention pond
Type 4	All other wetlands	50-ft without enhanced buffer; 25-ft with enhanced buffer
General Notes:		

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|---|
| <ol style="list-style-type: none"> <li>1. Isolated wetland means any wetland as defined in this article which is not contiguous with the waters of the state as defined in the Florida Administrative Code.</li> <li>2. Enhanced buffers include appropriate wetland plantings replicates the natural Florida environment and other physical improvements that increase protection of the wetland from upland activities such as mowing and other lawn maintenance activities.</li> </ol> |
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(6) Alternative Wetland Protection: Buffer Options and Restrictions

- a. Buffers may be reduced to 15 feet in width for portions along a wetland, so long as additional widths are provided in other areas to result in an overall buffer width average that complies with Table 166.50.a.
- b. Wetland buffers may not be reduced through these options on properties in the R-A, R-E, and/or R-R districts with active livestock activities adjacent to wetlands.

(7) *Activities prohibited within upland buffers.* In general, the following activities within a buffer shall be prohibited:

- a. Placement of a structure, road, utilities, and retention pond.
- b. Planting of exotic vegetation.
- c. Removal of native vegetation, to include mowing or trimming, except as might be required for health, welfare and safety purposes as determined by the county.
- d. Fill with dirt, topsoil, sand, gravel or other similar material.
- e. Excavation.
- f. Maintaining livestock.
- g. Storage of equipment, supplies, materials, machinery, portable buildings, etc.
- h. Application of herbicides, pesticides, fertilizers, or chemical agents injurious to vegetation.

(b) *Wetland Vegetation.* Mangroves and other wetlands, regardless of size, are recognized to be of special ecological value. No wetland vegetation shall be removed, trimmed, pruned, chemically treated, filled upon or altered without a permit or exemption. Guidelines for trimming or pruning of mangroves shall be made available from the County.

- (1) Where wetlands are approved for removal by a permit which was issued by Pinellas County Water and Navigation, a permit under the provisions of this Division pertaining to those wetlands shall not be required. However, wetlands removal not authorized by the Water and Navigation Permit, and otherwise subject to the County's jurisdiction, shall be subject to enforcement action.
- (2) Due to the vegetative characteristics of these plant communities, wetlands will be exempted from the tree survey requirements, however, they shall be designated by name and have their boundary surveyed.
- (3) Applicants must provide mitigation for all regulated wetland impacts and must demonstrate that the proposed mitigation measures are consistent with the County's intent to protect and manage fish, wildlife and hydrologic features. All required mitigation shall provide for equivalent habitat value to the wetland system impacted.

**Sec. 166-51. - Reserved.**

**Sec. 166-52. - Protection of endangered, threatened, or species of special concern.**

- (a) Upon field review of the site plan and determination that a site contains plant or animal species which are endangered, threatened or species of special concern, the applicant shall obtain and submit to the county administrator written comments and recommendations concerning the impact of the proposed use on such species from the appropriate agency such as the Florida Fish and Wildlife Conservation Commission, the United States Fish and Wildlife Service or the state department of agriculture and consumer services. Compliance with all state and federal permit conditions must be met prior to site development.

**Sec. 166-53. – Undesirable Trees/Plants.**

- (a) Chapter 138, Article X, Division 3 shall address undesirable trees/plant species within the unincorporated areas within the County.
- (b) The protection standards in this chapter shall not apply to undesirable trees/plants as defined by this code. However, a no-cost permit may be required to remove said species.

**Sec. 166-54. - Removal of trees from public right-of-way.**

No trees shall be removed from a public right-of-way under the management of the county without a valid permit or the county administrator's authorization.

**Sec. 166-55. – Reserved.**

**Sec. 166-56. - Vegetation installation and maintenance.**

- (a) All vegetation planted in conformance with this article shall be installed in acceptance with good planting procedures as prescribed by the American Society of Landscape Architects, or other professional horticultural and arboricultural association.
- (b) Landscape or replant trees and other required plant material shall be maintained in healthy growing condition or shall be promptly replaced within 30 days.
- (c) Inappropriate pruning or maintenance practices of required plant materials that result in stunted, abnormal, or other unreasonable deviation from their normal healthy growth shall be considered as the destruction of these materials and replacement may be required as described in this section.

**Sec. 166-57. - Tree bank fund.**

- (a) Creation; purpose. There is hereby created the county tree bank fund for the purpose of:
  - (1) Acquiring, protecting, and maintaining native vegetative communities in the county;
  - (2) Acquiring, protecting, and maintaining land for the placement of trees acquired pursuant to this section;
  - (3) Purchasing vegetation for placement on public properties in the county and their maintenance; and
  - (4) Mitigating the impact of any damage from violations of this article.
- (b) Maintenance of fund. Moneys of the tree bank fund may be used as a matching fund contribution towards the acquisition of native vegetative communities in the county in association with other public land acquisition programs and/or the management of

environmental lands. Such tree bank fund shall be kept, maintained and identified by the board of county commissioners solely for the purposes set forth in this section.

- (c) Source of moneys. The tree bank fund shall consist of the following moneys:
  - (1) All moneys collected by the county administrator pursuant to the provisions of this article which are obtained through civil action and consent agreements.
  - (2) All moneys offered to and accepted by the county for the tree bank fund in the form of federal, state, or other governmental grants, allocations or appropriations, as well as foundation or private grants and donations.
  - (3) Contributions in lieu of, or in conjunction with, the replacement planting provisions of section 166-84. The county administrator shall collect funds designated for the tree bank fund when the replacement planting requirements of section 166-84 cannot be met.
  - (4) All county revenue generated from tree thinning or other ecologically beneficial tree removal activities occurring within Pinellas County.
- (d) Interest. Unless otherwise restricted by the terms and conditions of a particular grant, gift, appropriation or allocation, all interest earned by the investment of all moneys in the tree bank fund shall accrue to the fund and shall be disbursed for any project authorized consistent with this section. Tree bank fund moneys shall be invested only in accordance with the laws pertaining to the investment of county funds.
- (e) Effect on permitting. Decisions to grant or deny permits provided for by this article shall be made without consideration of the existence of the tree bank fund or offers of donations of moneys thereto.

**Secs. 166-58—166-80. - Reserved.**

## **DIVISION 2. – PERMITS.**

### **Sec. 166-81. - General permit/application provisions.**

- (a) A permit is required for the following activities on developed or undeveloped property:
  - (1) to remove or relocate a protected tree as defined in Chapter 138, Article X, Division 3 and specifically Section 138-3654;
  - (2) to remove vegetation in an upland buffer or upland preservation area;
  - (3) to perform preliminary land clearing or grubbing;
  - (4) to remove, trim or prune wetlands, specimen tree(s),
  - (5) to remove/alter specimen tree stand(s) or historic tree(s); or
  - (6) to conduct any activity which may have a detrimental effect on protected vegetation as defined under the provisions of this article.
  - (7) to trim or prune mangroves as required with Sec 58-605
- (b) Permits and applications shall be reviewed and processed pursuant to Chapter 138, Article II, Division 3.

### **Sec. 166-82. - Specific permit application provisions.**

- (a) Required landscaping and trees. Chapter 138, Article X, Division 3 establishes the required landscaping and tree standards for site development and property maintenance; the provisions of Chapter 138, Article X, Division 3 shall apply in addition to this article.
- (b) Preliminary land clearing and grubbing. Upon application, review and issuance of a permit, preliminary land clearing and grubbing shall be permitted within designated road

rights-of-way, drainage and other utility areas as depicted on a site plan, as required pursuant to chapter 138 Article II, Division 5. The decision-making authority must have no objection to the issuance of such permits and must require no revisions or alterations to the site plan which would change the size or location of buildings, parking, utility lines, topographic elevations, and other relevant elements which could result in substantial changes to the remaining protected vegetation.

- (c) Wetland vegetation. All mangroves and other wetlands, regardless of size, are recognized to be of special ecological value. No wetland vegetation shall be removed, trimmed, pruned, chemically treated, filled upon or altered without a permit or exemption. Guidelines for trimming or pruning of mangroves shall be available from the County.
  - (1) Where wetlands are approved for removal by a permit which was issued by the county water and navigation control authority, a permit under the provisions of this article pertaining to those wetlands shall not be required. However, wetlands removal not authorized by the water and navigation control authority permit, and otherwise subject to the county's jurisdiction, shall be subject to enforcement action under the provisions of this article.
  - (2) Due to the vegetative characteristics of these plant communities, wetlands will be exempted from the tree survey requirements, except that they shall be designated by name and their boundary surveyed.
  - (3) Applicants must provide compensation for all regulated wetland impacts and must demonstrate that the proposed compensation measures are consistent with the county's intent to protect and manage fish, wildlife and hydrologic features. All compensation required shall provide for equivalent habitat value to the wetland system destroyed.
- (d) Historic/Specimen trees. It shall be unlawful to remove, trim, prune or alter a specimen tree, specimen tree stand or historic tree (as defined in this article) except as allowed in Chapter 138, Article X, Division 3.

**Sec. 166-83. - Applications.**

- (a) Procedure. Applications for permits may be reviewed as a Type 1 review pursuant to Chapter 138, Article II. An application for a permit under this article shall be made by filing a written permit application with the County and paying such fee as is established by the board of county commissioners as necessary to cover the costs of processing the application.
- (b) The following information may be required as part of the permit application in order to conduct a thorough review and finding:
  - (1) The shape and dimensions of the lot or parcel, together with the existing and proposed locations of structures and improvements, if any.
  - (2) If existing trees are to be transplanted, the proposed new location for such trees, together with a statement as to how such trees are to be protected during land clearing and construction.
  - (3) A statement and drawing showing how vegetation not proposed for removal or relocation is to be protected during land clearing and construction, i.e., a diagram and notation of a protective barrier as defined in this article.
  - (4) Locations and dimensions of all setbacks and easements required by chapter 138.
  - (5) A topographical survey sealed by a registered engineer or surveyor indicating grade changes proposed for the site, except when the grade changes are limited to beneath the floor area of the dwelling unit.



- (6) The location of all trees, historic trees, specimen trees, specimen tree stands, wetlands, native vegetative communities, buffers or upland preservation areas which are on or within ten feet of the site being developed. Vegetation proposed to remain, to be transplanted or to be removed shall be identified. Areas designated as preservation on the comprehensive land use plan which are within 50 feet of the site must also be shown where applicable.
  - (7) All proposed replants of trees or other vegetation, by species and size, along with the type of ground cover to be installed.
- (c) Additional application requirements for site plans. Development projects and land use activity that require a site plan as determined by Chapter 138, Article II, Division 5, shall provide the plan sheets as defined by said division. This shall include a tabulation of existing protected vegetation, proposed vegetation to be impacted, and proposed replacement vegetation.
- (d) Application information waiver. In the event that there are no trees or vegetation located on or within ten feet of preservation areas within 50 feet of the site to be developed which are required to be protected under the provisions of this article, the applicant shall so state in his application for a permit.
- (e) Permit/application evaluation criteria. The county administrator or designee shall consider the potential for significant adverse impacts in the following areas on the urban and natural environment in granting a permit and meeting the other provisions of this article:
- (1) Groundwater and surface water stabilization: Whether the removal of trees or other protected vegetation will substantially alter the water table adversely or water assimilation and transpiration by vegetation or the interception of solar radiation as it affects the evaporation potential of associated soils and bodies of water.
  - (2) Water quality and/or aquifer recharge: Whether the removal of trees or other protected vegetation will lessen the ability for the natural assimilation of nutrients, chemical pollutants, heavy metals, silt and other noxious substances from groundwaters and surface waters.
  - (3) Ecological impacts: Whether the removal of trees or other protected vegetation will have an adverse impact upon existing biological and ecological systems, microclimatic conditions which directly affect these systems, or whether such removals will create conditions which may adversely affect the interrelationships of ecological systems.
  - (4) Noise pollution: Whether the removal of trees or other protected vegetation will significantly increase ambient noise levels to the degree that a nuisance is anticipated to occur or that a violation of chapter 58, article XII is anticipated to occur.
  - (5) Air movement: Whether the removal of trees or other protected vegetation will significantly reduce the ability of the remaining vegetation to reduce wind velocities to the degree that a nuisance is anticipated to occur.
  - (6) Air quality: Whether the removal of trees or other protected vegetation will significantly affect the natural cleaning of the atmosphere by vegetation through particulate matter interception or the release of oxygen to the atmosphere as a byproduct of photosynthesis.
  - (7) Wildlife habitat: Whether the removal of trees or other protected vegetation will significantly reduce available habitat for wildlife existence and reproduction, or result in the emigration of wildlife from adjacent or associated ecosystems.

- (8) Aesthetic degradation: Whether the removal of trees or other protected vegetation will have an adverse effect on property values in the neighborhood where the applicant's property is located and other existing vegetation in the vicinity.
- (9) Endangered, threatened and species of special concern: Whether the removal of trees or other protected vegetation will significantly affect endangered, threatened, or species of special concern when reasonable scientific judgment indicates that the trees or vegetation provide a function including but not limited to nesting, reproduction, critical food source, critical habitat or cover for such species or whether the vegetation itself is endangered, threatened, or a species of special concern.
- (10) Soil stabilization: Whether the removal of trees or other protected vegetation will result in uncontrollable erosion of soils into surface waters, or adjacent properties.
- (f) Exceptions: The above evaluation criteria may be waived by the county administrator if one or more of the following conditions exist:
  - (1) The vegetation is located in an area where a structure or improvements may be placed according to an approved site plan and to preserve the vegetation would unreasonably restrict the economic enjoyment of the property or the site is recognized as a redevelopment or infill site;
  - (2) The vegetation is diseased, injured, too close to existing or proposed structures, interferes with existing utility service, creates unsafe vision clearance, or conflicts with other ordinances or regulations; or
  - (3) It is in the welfare of the general public or citizens that the vegetation be removed for a reasons other than set forth above.
- (g) Permit/application denial. The county administrator or designee, upon a determination that an application for a permit under this article is to be denied, shall state the basis for such denial specifically and shall notify the applicant of the criteria outlined in subsections (e) and (f) of this section upon which such denial is predicated.

**Sec. 166-84. - Permit conditions.**

- (a) Conditions. The decision making authority may assign special conditions to any approved permits based on the findings of the evaluation criteria in Section 166.83. The following standards may apply.
- (b) Special design criteria. As a condition of granting a permit, the applicant may be required to provide special construction techniques and designs to increase oxygen exchange and water and nutrient availability to a tree such as but not limited to tree wells, turf or paving block, aeration systems and stem walls.
- (c) Tree donation. Where a tree is to be removed under the provisions of this article, the county shall have the option, with the owner's permission, of relocating the tree at the county's expense and at no liability to the owner to county-owned property for replanting, either for permanent utilization at a new location or for future use at other county property. Such relocation shall be accomplished in accordance with a schedule agreed upon by all parties. If the county does not elect to relocate any such tree, it may give to any city within the county the right to acquire any such tree at the city's expense and at no liability to the owner for relocation within the city's incorporated area for public use.
- (d) Erosion control. Silt barriers, hay bales, or similar erosion control barriers will be required in any area where erosion or siltation may cause protected vegetation to be damaged.

**Sec. 166-85. - Reserved.**

**Sec. 166-86. - Expiration.**

Permits under this article shall be declared expired if commencement of work so permitted is not started within 90 days. In no case will the permit remain valid unless construction activity is continuous and uninterrupted for no more than 60 days. Permits not used within this period will expire, and future work will require a new application and permit. Permit extensions may be granted at the County's discretion based on wildlife activity, extreme weather, natural disaster, declared emergencies or similar circumstances.

**Sec. 166-87. - Revocation.**

- (a) The county administrator or designee may revoke any permit issued pursuant to this article for fraud, misrepresentation or violation of conditions imposed pursuant to the permit, or other good cause. In the event the county administrator chooses to revoke a permit, written notice of the intent of the county administrator to revoke such permit shall be provided to the applicant, setting forth the specific reasons for the revocation. The applicant shall have the right to appear before the county administrator at a time and date specified in such notice to show cause why the permit issued to the applicant should not be revoked.
- (b) If the county administrator or designee determines to revoke a permit issued pursuant to this article, after the notice procedure as provided in subsection (a) of this section, the applicant shall immediately cease all exterior work on the site. The applicant shall have the right to appear before the board of county commissioners, in accordance with section 166-40, to show cause why the permit issued to the applicant should be reinstated.

**Sec. 166-88. - Cease and desist orders.**

The county administrator or designee may issue a cease and desist order for any permit issued pursuant to this article for fraud, misrepresentation, or violation of conditions imposed pursuant to the permit, or other good cause, or for any site where work has commenced and a permit has not been obtained but is required pursuant to this article. Any person receiving such an order for cessation of operations shall immediately comply with the requirements thereof. It shall be a violation of this article for any person to fail to or refuse to comply with a cease and desist order issued and served under the provisions of this section.

**Secs. 166-89—166-110. - Reserved.**

**ARTICLE III. - RESERVED.**

**Secs. 166-111—166-160. - Reserved.**

**ARTICLE IV. - WELLHEAD PROTECTION.**

**Sec. 166-161. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Aquifer* means a groundwater bearing geologic formation, or formations, that contains enough saturated permeable material to yield a minimum of 100 gallons per minute quantities of water.

*Classification of groundwater, usage, reclassification.* All groundwater of the county is classified by the board of county commissioners according to designated uses as follows:

- (1) *Class G-I:* Potable water use, groundwater in aquifers which has a total dissolved solids content of less than 3,000 mg/l in an unconfined or leaky confined aquifer and is restricted to zones of protection around major public community drinking water supplies, and has been classified as G-1 by the board of county commissioners.
- (2) *Class G-II:* Potable water use, groundwater in aquifers which has a total dissolved solids content of less than 10,000 mg/l, unless otherwise classified by the board.
- (3) *Class G-III:* Nonpotable water use, groundwater in unconfined aquifers which has a total dissolved solids content of 10,000 mg/l or greater, or which has total dissolved solids of 3,000—10,000 mg/l and which has been classified by the board as having no reasonable potential as a future source of drinking water, or has been designated by the county water system as an exempted aquifer using the standards contained in section 17-28.130(C), Florida Administrative Code (F.A.C.).
- (4) *Class G-IV:* Nonpotable water use, groundwater in confined aquifers which has a total dissolved solids content of 10,000 mg/l or greater.

*Closure permit* means that permit required by activities which must cease operation pursuant to the provisions of section 166-165 of this article, the criteria for which are set forth under section 166-166 of this article.

*Completed application* means an application which includes all materials and documents which are necessary to support the application and which has been accepted as complete by the county water system.

*County administrator* means the county administrator of Pinellas County or the administrator's designee.

*Designated public utility* means that public utility which has been designated by federal, state, regional or local law, regulation, resolution, rule, ordinance or requirement as having jurisdiction to provide potable water or residential wastewater service to the property on which the nonresidential activity is located.

*Discharge to groundwater* means treated or untreated wastewater, stormwater leachate, leachate from a solid waste facility, or leaked product generated by the construction or operation of an installation and discharging directly or indirectly to groundwater.

*Emergency hazardous situation* means a situation which exists whenever there is an immediate and substantial danger to human health, safety, or welfare or to the environment.

*EPA* means the United States Environmental Protection Agency.

*Facility* means main structures, accessory structures and activities which store, handle, use or produce regulated substances. Where contiguous facilities exist and such facilities are separate in the nature of the businesses, they shall remain separate under this article.

*FDEP* means the Florida Department of Environmental Protection.

*Generic substance list* means those general categories of substances set forth in appendix A to Ordinance No. 90-2 and incorporated herein by reference. This list is equivalent to the regulated substances.

*Groundwater* means water that fills all the unblocked voids of underlying material below the ground surface, which is the upper limit of saturation, or water which is held in the unsaturated zone by capillarity.

*Laboratory* means a designated area or areas used for testing, research, experimentation, quality control, or prototype construction, but not used for repair or maintenance activities (excluding laboratory equipment), the manufacturing of products for sale, or pilot plant testing.

*Major public community drinking water supply* means those community water systems as defined in section 17-550.200(7), F.A.C., that are permitted by consumptive use permit to withdraw an average daily amount of 100,000 gallons or greater of groundwater.

*New discharge* means, for the purpose of the zone of protection, a discharge from a new installation, or a discharge for which a permit is required which is significantly different and causing a negative impact on groundwater, from the permit conditions as of the effective date of the zone of protection classification for the chemical, microbiological, physical quality, quantity, or point of discharge.

*New installation* means, for the purpose of the zone of protection, facilities located in areas receiving protection through classification by the board of county commissioners within the zone of protection that have neither filed a complete permit application nor received an appropriate permit prior to the effective date of classification.

*Nonresidential activity* means any activity which occurs in any building, structure or open area which is not used primarily as a private residence or dwelling.

*Open interval of a well* means the uncased or screened length of the well within the saturated zone of an aquifer.

*Operating permit* means the permit required of certain activities under section 166-165 to operate, the criteria for which are set forth under section 166-166.

*Person* means any natural person, individual, public or private corporation, firm, association, joint venture, partnership, municipality, governmental agency, political subdivision, public officer, owner, lessee, tenant or any other entity whatsoever or any combination of such, jointly or severally.

*Potable water* means water that is intended for drinking, culinary or domestic purposes, subject to compliance with county, state or federal drinking water standards.

*Public utility* means any privately owned, municipally owned, county-owned, special district-owned, or state-owned system providing water or resident wastewater service to the public which has at least 15 service connections or regularly serves at least 25 individuals daily for at least 60 days of the year.

*Regulated substances* means those deleterious substances, contaminants, priority pollutants (in accordance with chapter 17-22, F.A.C.), and potable water quality primary and secondary standards parameters (in accordance with chapter 3, part 4, F.A.C., and appendices A and E), which, because of quality, concentration, or physical, chemical, including ignitability, corrosivity, reactivity, synergistic, and toxicity; or infectious characteristics, radioactivity, mutagenicity, carcinogenicity, teratogenicity, bioaccumulative effect, persistence, or nondegradability in nature, or any other characteristic, may cause significant harm to human health and the environment, including surface water and groundwater, plants, and animals.

*Spill* means the unpermitted release or escape of a regulated substance directly or indirectly to soils, surface waters or groundwaters.

*Underground facilities for transportation of wastewater of industrial chemical products* means underground facilities for transportation of waste effluent of industrial chemical products, including piping, sewer lines, and ducts or other conveyances designed to transport industrial pollutants as defined in F.S. § 376.301(12), and contaminants as defined in F.S. § 403.031(1).

*Underground storage facility* means and includes any enclosed structure, container, tank or other enclosed stationary devices used for storage or containment of pollutants as defined in F.S. § 376.301(18) or any contaminant as defined in F.S. § 403.031(1). Nothing in this definition is intended to include septic tanks, enclosed transformers or other similar enclosed underground facilities.

*Utility* means a public utility (power company or telephone company) which serves the general public.

*Variance* means a grant of relief to a person or entity from the requirements of this article, which permits construction in a manner otherwise prohibited by this article where specific enforcement would result in inequitable hardship. The county administrator shall have the authority to grant variances.

*Water table* means the surface between the vadose zone and the groundwater, that surface of a body of unconfined groundwater at which the pressure is equal to that of the atmosphere.

*Well* means a pit or hole sunk into the earth to reach a resource of potable supply, such as water, to be used for domestic purposes by municipalities. Irrigation wells and privately owned wells for domestic consumption are not included in the scope of this article.

*Wellfield* means an area of land which contains more than one well for obtaining water.

*Zone of protection* means the total area contributing water to a well under a given set of circumstances. This area changes over time in response to changes in the water table or potentiometric surface, well pumpage, and other withdrawals in the vicinity. It is determined by the construction of a flow net, based on potentiometric surface contours.

*Zone of protection map* means the map at the scale determined by the county administrator showing the location on the ground of the outer limits of the zone of protection for present and future public potable water supply wells and wellfields of 100,000 gallons per day or more. This zone is described in section 166-164.

**Sec. 166-162. - Authority.**

- (a) This article is adopted in compliance with, and pursuant to, the local government comprehensive planning and land development regulation act, F.S. § 163.3161 et seq. This article is adopted pursuant to the constitutional and home rule powers of article VIII, Florida Constitution, F.S. ch. 125, and article II of the Pinellas County Home Rule Charter.
- (b) All provisions of this article shall be effective within the incorporated and unincorporated areas of the county, as delineated by a zone of protection map, and shall set restrictions, constraints and prohibitions to protect present and future public potable water supply wells and wellfields from degradation by contamination from regulated substances.

**Sec. 166-163. - Purpose and intent.**

- (a) In order to properly protect existing and future potable water supply sources within the zone of protection area, the board of county commissioners declares that the storage, handling, use, disposal, or production of hazardous or toxic substances in close proximity to public potable water supply wells is potentially harmful to the drinking water of the

county, and that certain land uses and activities involving regulated or generic substances are hereby prohibited or regulated within the defined zone of protection area.

Therefore, the intent of this article is to protect and safeguard the health, safety, and welfare of the residents and visitors of the county by providing criteria for regulating and prohibiting the use, handling, production, disposal, and storage of certain regulated substances which may impair present and future public potable water supply wells and wellfields.

It is the intent of the board of county commissioners to augment the policies within the adopted comprehensive plan that protect the wells and wellfields through land use controls and environmental regulations. It is essential to protect the environmentally sensitive area adjacent to wells and wellfields from disruption and encroachment in order to preserve vital natural functions relating to water quality, water quantity and other elements of aquatic ecosystems.

- (b) It is the intent of the county to enter into interlocal agreements with Pasco County and Hillsborough County to exercise jointly any power, privilege or authority to protect from degradation all potable water wells within the zone of protection. The agreements shall be construed as accomplishing a joint use of powers subject to the terms and conditions stated in this article, in addition to any ordinance and regulations of Pasco County and/or Hillsborough County if the development proposal lies within their jurisdiction.

The agreement shall at a minimum include provisions for administration and enforcement of label development regulations within any area of the zone of protection and shall be undertaken by the jurisdiction within whose boundaries that area is located. With respect to the issuance of any development order or development permit within the zone of protection, the nonjurisdictional counties shall receive notice prior to any decision or determination on an application for development with adequate time for the nonjurisdictional counties to review and comment on the development permit application.

- (c) The generic substance list attached to Ordinance No. 90-2 and incorporated in this article as appendix A is provided for informational and regulatory purposes and may be amended from time to time by the board of county commissioners. Persons using, handling, producing or storing a substance on the generic list may be using, handling, producing or storing a regulated substance as defined by this article. Persons unsure as to whether they are subject to this article may wish to consult with the county water system.

**Sec. 166-164. - Maps delineating zone of protection.**

- (a) The zone of protection maps developed as described in subsection (b) are incorporated herein and made a part of this article. These maps shall be on file and maintained by the county administrator's designated departments. Any amendments, additions or deletions to such maps shall be approved by amendment to this article pursuant to the provisions established by F.S. § 125.66(5).
- (b) The zone of protection map is developed by the following procedure:
  - (1) The historic water level data is obtained for each of the U.S. Geological Survey and county water system Floridan monitor wells shown on the zone of protection map and listed in appendix I.
  - (2) The average water level is calculated for each well for the period of record available for each well.

- (3) Potentiometric surface contours are then constructed based on these average water levels.
  - (4) A flow net is then constructed across the potentiometric contours by constructing flow lines perpendicular to potentiometric contours.
  - (5) The zone of protection is delineated by extending a line along the convergence of those flow lines that enter the wells or wellfields (flow lines converge in areas of discharge and diverge in areas of recharge).
  - (6) As additional Floridan monitor wells are constructed in the map area, this additional water level data will be incorporated into the zone of protection map. Accumulated annual water level data may be evaluated annually and adjustments to the zone of protection will be made as the data dictates.
  - (7) Measurement of the zone around a wellfield will be established for the entire wellfield by calculating the zone of protection for the wellfield as a whole. In the case of unclustered wells, individual zones of protection around each well will be calculated.
  - (8) Rebuttable presumption: Affected parties wanting to challenge the county's determination of the zone of protection may do so during the public hearings by generating more precise site-specific data concerning potentiometric levels that would allow more accurate calculations of the zone.
  - (9) The county administrator may change the zone of protection based on reconfiguration of a wellhead or wellfield, changes in open interval, proper abandonment of a well pursuant to rule 17-522, F.A.C., or permitted increase in the permitted average daily pumping rate. Such changes in the zone of protection shall follow the requirements as described in subsection (c) of this section. The zone of protection may be established for newly approved/permitted well(s) or wellfield(s), after the appropriate hydrogeologic testing and impact analyses have been performed in accordance with Southwest Florida Water Management District permitting consumptive use from the wells or wellfields.
- (c) The zone of protection maps may be reviewed at least on an annual basis. However, failure to conduct such review shall not affect the validity of the existing approved map. The basis for updating such map may include, but is not limited to, the following:
- (1) Changes in the technical knowledge concerning the applicable aquifer.
  - (2) Changes in pumping rates of wellfields.
  - (3) Wellfield reconfiguration.
  - (4) Designation of new wellfields.
- (d) In determining the location of properties and facilities within the zones depicted on the zone of protection map, the following rules shall apply:
- (1) Properties located partially within the zone of protection reflected on the applicable zone of protection maps shall be governed by the restrictions applicable to that zone.
  - (2) Where a zone of protection contour passes through a facility, the entire facility shall be considered to be in the more restrictive zone.
- (e) The legal description of the area of the county zone of protection is as follows:
- Commence at the intersection of the centerline at East Lake Road (C.R. 77) and the northern boundary line of Pinellas County; thence run easterly along said northern boundary line of Pinellas County to its intersection with the eastern boundary line of Pinellas County; thence run southerly along said eastern boundary line of Pinellas County to its intersection with the easterly extension of the Florida Power Corporation right-of-



way, said intersection being 1290'+ north of the southeast corner of Section 12, Township 28 South, Range 16 East; thence westerly along the easterly extension of the centerline and the centerline of said Florida Power Corporation right-of-way to its intersection with the centerline of Tampa Road (S.R. 584); thence northwesterly along the centerline of Tampa Road (S.R. 584) to its intersection with the centerline of the aforementioned East Lake Road (C.R. 77); thence northerly along the centerline of East Lake Road (C.R. 77) to the point of beginning.

**Sec. 166-165. - Conditions of permitting, planning, and zoning within zone of protection.**

- (a) The use, handling, production, disposal, and storage of regulated substances associated with nonresidential activities is prohibited in the zone of protection, except as provided under the general exemptions and special exemptions provisions of this article (sections 166-170 and 166-171). All existing nonresidential activities within the zone of protection which store, handle, use, dispose of, or produce any regulated substance are prohibited from doing so unless they qualify as a general exemption, obtain a special exemption, or receive an operating permit from the county administrator. The owners or operators of such activities within the zone of protection shall be notified in writing, by certified mail, or hand delivery, within 90 days of the effective date of this article, as to the requirements to cease the use, handling, storage, disposal, and production of regulated substances. All existing nonresidential activities within the zone of protection which store, use, handle, or produce regulated substances shall file an application for an operating permit, or an operating permit with a general exemption application, or an operating permit with special exemption application, or a closure permit, within 90 days of receipt of notice from the county administrator. Such permit application shall be prepared and signed by a professional registered engineer and a geologist certified in the state, or either if the applicant can demonstrate to the county administrator that conditions will only require an engineer or a geologist. Within 30 days of receipt of such notice, the owner or operator shall file with the county administrator proof of retention of such engineer and geologist, or submit to the county administrator a written notice to obtain either an engineer or geologist.
- (b) Any nonresidential activity in the zone of protection which is allowed to continue or commence in accordance with the general exemptions or special exemptions set forth in sections 166-170 and 166-171 shall obtain an operating permit which shall indicate the special conditions to be instituted and the dates on which such conditions shall be instituted. No expansions, modifications or alterations which would increase the storage, handling, use or production of regulated substances shall be permitted in the zone of protection. An owner or operator that is denied a special exemption shall be issued a closure permit as part of the denial process. Any operating permit required in this article shall be filed with the applications for general exemption or special exemption.
- (c) All new nonresidential discharges, new nonresidential activities, and installations shall be prohibited subject to conditions including but not limited to the following:
  - (1) No nonresidential installation shall discharge into groundwater, either directly or indirectly, any contaminant that causes a violation in the water quality standards and criteria for the receiving groundwater as established in chapter 17-3, part IV, F.A.C.
  - (2) Discharges through natural or manmade conduits, such as wells and sinkholes, that allow direct contact with class G-1 and class G-2 groundwater are prohibited, except for projects designed to recharge aquifers with surface water of comparable quality, or projects designed to transfer water across or between aquifers of comparable quality for the purpose of storage or conservation, or residential stormwater discharging through wet retention/detention ponds.

- (3) Industrial stormwater discharges to retention/detention ponds are prohibited.
  - (4) New discharge to groundwater of industrial waste that contains hazardous constituents listed in the department of environmental protection's publication, G-1, Modified Hazardous Constituents List (December 1, 1986), which is hereby adopted and incorporated by reference, shall be prohibited.
  - (5) There will be no new industrial land use zoning within the zone of protection.
  - (6) Construction and operation of new sanitary landfills as defined by applicable state rules shall be prohibited. Operation of all existing sanitary landfills will be terminated within one year and a permanent leachate monitoring system installed to monitor movement of leachate.
  - (7) Commercial or industrial septic tank disposal systems are prohibited in the zone of protection.
  - (8) Construction of interstate highway system is prohibited for construction within one-half mile of public supply wells, unless stormwater drainage is collected and piped beyond the half-mile radius of the wellhead. There will be no stormwater retention within this half-mile radius around the zone of the wellhead.
- (d) New and existing nonresidential discharge to groundwater within the zone of protection shall comply with the primary and secondary standards at the end of the discharge pipe. Additionally, more stringent monitoring requirements than the existing state law may be implemented. More stringent monitoring requirements may include increased monitoring frequency, increased number of parameters, or increased number of monitoring wells. Such determinations will be made by the county on a case-by-case basis by considering soil conditions, quality and volume of the waste stream, and the point of discharge.
- (1) Stormwater discharge within the zone of protection: Direct and indirect discharge from new stormwater facilities serving an area ten acres or larger with a 40 percent impervious surface excluding building tops shall be required to monitor the discharge to groundwater according to section 17-28.700(6), F.A.C. Such facilities may be required to implement more stringent monitoring requirements which may include increased monitoring frequency, increased number of parameters, or increased number of wells. Such determination will be made by the county administrator on a case-by-case basis by considering soil conditions, quality and volume of the waste stream, and the point of discharge.
  - (2) Commercial stormwater runoff will be required to have a double pond detention/retention system for new facilities. The first pond will be off line and lined to prevent leakage and be designed to hold the first inch of runoff. Sludge from the first pond will be disposed of in accordance with FDEP rules and regulations. The second retention pond will accept overflow from the detention pond. Existing facilities will be required to obtain an operating permit and perform groundwater quality monitoring for groundwater pollution.
 

Variance. In order to authorize any variance to the stormwater runoff requirements of this subsection (d)(2), the county administrator shall consider the following criteria:

    - a. *Special conditions*: That special conditions and circumstances exist which are peculiar to the land, structure, or building involved, including the nature of and to what extent these special conditions and circumstances may exist as direct results from actions by the applicant.
    - b. *No special privilege*: That granting the variance requested will not confer on the applicant any special privilege that is denied by this article to other similar lands, buildings, or structures in the zone of protection.

- c. *Unnecessary hardship*: That literal interpretation of the provisions of this article would deprive the applicant of rights commonly enjoyed by other properties under the terms of this article.
  - d. *Minimum variance necessary*: That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.
  - e. *Purpose and intent compliance*: That the grant of the variance will be in harmony with the general intent, purpose, and spirit of this article, and with the comprehensive plan adopted pursuant to state law.
  - f. *No detriment to public welfare*: That such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
  - g. *Establishing conditions or safeguards*: That in granting any variance, the county administrator may prescribe appropriate conditions and safeguards to ensure proper compliance with the general spirit, purpose, and intent of this article. Noncompliance with such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article.
  - h. *Expiration*: All variances granted by the County Administrator shall be deemed to automatically expire in the event a structure or use of land which is the subject of the variance has been discontinued.
- (3) New underground storage facilities within the zone of protection shall meet the following requirements:
- a. Double-walled tank and piping with a continuous leak detection system in between the walls; or
  - b. An impervious secondary containment having monitoring well(s) or detector located therein; and
  - c. For each of the above options, it is required that the facility install, maintain, and monitor a groundwater program approved by the County.
- (4) Existing underground storage facilities within the zone of protection not meeting the construction retrofit requirements of chapter 17-61, F.A.C., on the effective date of aquifer classification as class G-1 by the Board of County Commissioners shall be retrofitted in accordance with chapter 17-61, F.A.C., and shall also meet the requirements for new facilities under subsection (d)(3) of this section.
- (5) Existing underground storage facilities within the zone of protection meeting the construction retrofit requirements of chapter 17-61, F.A.C., on the effective date of aquifer classification within the zone of protection by the Board of County Commissioners are exempt from the requirements above, with the exception of being required to increase their groundwater monitoring programs. Nothing herein shall be construed to relieve facilities subject to chapter 17-61, F.A.C., requirements from complying with the requirements of that chapter.
- (6) New underground facilities for transportation of domestic raw wastewater within the zone of protection shall be constructed not to allow leakage of more than 25 gallons per inch of pipe diameter per mile per day into the soil or groundwater. These facilities, however, shall not cause violations of groundwater quality standards (as referenced in applicable state rules).
- (7) New underground facilities for transportation of chemical products within the zone of protection shall be constructed to ensure no leakage into the soil or groundwater.

- (8) Discharge to groundwater from the state department of environmental protection approved remedial corrective actions for contaminated sites located within the zone of protection shall not be subject to the G-1 discharge criteria.
- (9) New discharge to groundwater of treated domestic waste effluent meeting domestic wastewater plant class I reliability; daily monitoring to assure proper treatment plant process control; and 24-hour-a-day attendance by a wastewater operator as required by chapter 17-16, F.A.C., and under the general supervision of a class A certified wastewater operator, shall be allowed to operate provided that the discharge from such plant shall meet the groundwater criteria as specified in section 17-520.420, F.A.C., prior to contact with groundwater (end of pipe). Treated domestic waste effluent discharge employing land application shall be restricted to slow-rate infiltration methods. At no time will an effluent disposal area be within 500 feet of potable supply wells.
- (10) New single-family residential septic tanks will be exempt from this article, provided they meet the minimum criteria of one unit per two acres.
- (e) A notice to cease, or a permit or an exemption issued under this article shall not relieve the owner or operator of the obligation to comply with any other applicable federal, state, regional or local regulation, rule, ordinance or requirement, nor shall such notice, permit, or exemption relieve any owner or operator of any liability for violation of such regulations, rules, ordinances or requirements.

**Sec. 166-166. - Permits.**

- (a) *Compliance with article required.* The permit conditions shall ensure compliance with all the prohibitions, restrictions, and requirements as set forth in this article. Such conditions may include, but are not limited to, monitoring wells, periodic groundwater analysis reports, and compliance schedules. Such conditions may also include requirements in a closure permit to reduce the risk in the interim of contamination of the groundwaters, taking into account cost, likely effectiveness and degree of risk to the groundwater.
- (b) Requirements for issuance of other permits:
  - (1) No site plan approval, building permit, or certificate of occupancy for any nonresidential activity shall be issued by the County or any city located within the County that would allow development or construction in the zone of protection, that is contrary to the restrictions and provisions provided in this article. Permits issued in violation of this section confer no right or privilege on the grantee.
  - (2) The requirements and provisions of this article shall apply immediately on February 17, 1990, to all new nonresidential activities.
  - (3) An existing activity is one for which a building permit had been issued by the appropriate jurisdiction prior to February 17, 1990, and which had not expired on or before February 17, 1990, or for which a completed building permit application had been filed and accepted with the appropriate jurisdiction prior to February 17, 1990. All other activities shall be deemed new.
  - (4) Any application for a nonresidential or residential development greater than 25 units for a site plan approval, building permit or nonresidential development subject to review by an advisory planning body and approval by the local governing authority or Zoning Board of Appeals that includes property wholly or partially within the zone of protection of a wellfield shall include the following:
    - a. Notification by the local governing authority of the location of the property in the zone of protection and a notarized letter from the applicant admitting acceptance of notification; notification shall be prepared by the County

- Administrator providing details of zones, prohibitions, and measures required for compliance; or
- b. Any application submitted for site plan approval or certification of occupancy for any use within the zone of protection shall require certification by the County Administrator that the use meets the applicable requirements of this article.
- (5) It shall be the duty of each local agency to screen all applications for the zone of protection site plans.
  - (6) The County Administrator shall provide a list to all local agencies of potentially prohibited operations in the zone of protection.
  - (7) Copies of building permits of residential activities larger than 25 units, all nonresidential projects, and all site plans, or nonresidential certificates of occupancy issued for the zone of protection shall be submitted to the County Administrator on a weekly basis.
- (c) *Change of ownership.* In the event there is a change of ownership, a new lease, or an assignment of a lease, a sublease or any other change in regard to the person conducting the operation regulated, the County Administrator shall be notified by the property owner upon payment of the appropriate application fee and completion of processing of an application. In the event of leasing of space, the lessee will obtain the permit, but the property owner will be liable for the on-site activities relative to the conditions of the permit. The property owner will be notified by the County Administrator regarding the permit application or condition.
- (d) Issuance, fees, inspections.
- (1) An application which satisfied the requirements of the applicable zone of protection, section 166-165, and this section and, if applicable, section 166-164, shall be approved and a permit issued. In addition to the failure to satisfy these requirements, the County Administrator may deny a permit based on repeated violations of this article.
  - (2) An operating permit shall remain valid provided the permittee is in compliance with the terms and conditions of the permit.
  - (3) Permittees shall not be required to pay annual renewal fees until March 1, 1991. Beginning March 1, 1991, all current and future permittees are subject to an annual renewal license fee as adopted by the Board of County Commissioners.
  - (4) The County Administrator shall have the right to make inspections of facilities at reasonable times to determine compliance with this article.
  - (5) All of the facilities owned and/or operated by one person, when these structures and activities are located on contiguous parcels of property, even where there are intervening public or private roads, may be covered under one permit.
- (e) Requirements and liabilities.
- (1) Leakproof trays under containers, floor curbing or other containment systems to provide secondary liquid containment shall be installed. The containment shall be of adequate size and design (no less than 150 percent of container volume) to handle all spills, leaks, overflows, and precipitation until appropriate action can be taken. The specific design and selection of materials shall be sufficient to preclude any regulated substance loss to the external environment. Containment systems shall be sheltered so that the intrusion of precipitation is effectively prevented. The owner/operator may choose to provide adequate and appropriate liquid collection methods rather than sheltering only after approval of the design by the

County Administrator. These requirements shall apply to all areas of use, production, and handling, to all storage areas, to loading and off-loading areas, and to aboveground and underground storage areas. The containment devices and liquid collection systems shall be certified in the operating permit application by a professional engineer certified in the State.

- (2) Vacuum suction devices, absorbent scavenger materials or other devices approved by the County Administrator shall be present on-site or available within four hours in the zone of protection 24 hours per day and seven days per week by contract with a cleanup company approved by the County Administrator, in sufficient magnitude so as to control and collect the total quantity of regulated substances present. To the degree feasible, emergency containers shall be present and of such capacity as to hold the total quantity of regulated substances plus absorbent material. The presence of such emergency collection devices shall be certified annually in the operating permit applications for existing activities. Such certification for new activities shall be provided to the County water system prior to the presence of regulated substances on the site. Certification shall be provided by a professional registered engineer certified in the State.
- (3) An emergency plan shall be prepared and filed with the operating permit application indicating the procedures which will be followed in the event of spillage of a regulated substance so as to control and collect all such spilled material in such a manner as to prevent it from reaching any storm or sanitary drains or the ground.
- (4) A responsible person designated by the permittee who stores, handles, uses or produces the regulated substances shall check, on every day of operation, for breakage or leakage or any container holding the regulated substances. Electronic sensing devices may be employed as part of the inspection process, if approved by the County Administrator, and provided the sensing system is checked daily for malfunctions. The manner of daily inspection shall not necessarily require physical inspection of each container provided the location of the containers can be inspected to a degree which reasonably assures the County Administrator that breakage or leakage can be de-tected by the inspection. Monitoring records shall be kept, submitted quarterly, and made available to the County Administrator within 24 hours, upon request. Quarterly, each facility will be inspected, its monitoring procedures reviewed, and quality water samples taken.
- (5) Procedures shall be established for the quarterly in-house inspection and maintenance of containment and emergency equipment. Such procedures shall be in writing, a regular checklist and schedule of maintenance shall be established, and a log shall be kept of inspections and maintenance. Such logs and records shall be available for inspection by the County Administrator.
- (6) Any spill of a regulated substance shall be reported by telephone to the County health unit and designated public utility within one hour, and the County Administrator within one hour of discovery of the spill. Cleanup shall commence immediately upon discovery of the spill. A full written report including the steps taken to contain and clean up the spill shall be submitted to the County Administrator within 15 days of discovery of the spill.
- (7) The County water system will establish a schedule of raw water analysis if inspection of a facility indicates signs of contamination, in which case the County Administrator shall require a sampling schedule. The analysis shall be for all substances which are listed on the operating permit. The analytical reports shall be prepared by a state certified laboratory, certified for the applicable analyses. The analytical reports shall be reviewed by the County water system.

- (8) Groundwater monitoring wells shall be provided at the expense of the permittee in a manner, number and location approved by the County Administrator as shown in appendix G, exhibit A. Except for existing wells found by the County Administrator to be adequate for this provision, the required well or wells shall be designed by a professional registered engineer or a state certified geologist, and installed by a state-licensed water well contractor under the supervision of a professional registered engineer or a state certified geologist. On completion of well construction, a report will be submitted by the geologist or engineer to the County Administrator detailing final well construction geology and a map of the facility showing well location. Quarterly, water quality samples shall be taken by a state certified laboratory during the quarterly inspection of each facility. Analytical reports prepared by a certified laboratory of the quantity present in each monitoring well of the regulated substances listed in the activity's operating permit shall be filed at least annually, or more frequently as determined by the County Administrator, based upon site conditions and operations.
- (9) The County Administrator shall be notified in writing prior to the expansion, alteration or modification of a business or individual holding an operating permit. Such expansion, alteration, or modification may result from increased square footage of production or storage capacity, or increased quantities of regulated substances, or changes in types of regulated substances beyond those square footages, quantities, and types upon which the permit was issued. Excluded from notification prior to alteration or modification are changes in types of regulated substances used in a laboratory or laboratories designed as such in the currently valid permit and which are within the generic substances listed in such permit based upon the generic substance list incorporated in this article as exhibit A. Should a facility add new regulated substances, it shall notify the County Administrator on a quarterly basis of the types and quantities of such substances added and the location of the use, handling, storage, and production of such substances. Any such expansion, alteration or modification shall be in strict conformity with this article. Further, except as provided in this article, any existing operating permit shall be amended to reflect the introduction of any new regulated substances resulting from the change. However, the introduction of any new regulated substance shall not prevent the revocation or revision of any existing operating permit if, in the opinion of the County Administrator, such introduction substantially or materially modifies, alters or affects the conditions upon which the existing operating permit was granted or the ability to remain qualified as a general exemption, if applicable, or to continue to satisfy any conditions that have been imposed as part of a special exemption, if applicable. The County Administrator shall notify the permittee in writing within 60 days of receipt of the permittee's notice that the County Administrator proposes to revoke or revise the permit and stating the grounds therefor.
- (10) Reconstruction of any portion of a structure or building in which there is any substance or facility subject to the provisions of this article which is damaged by fire, vandalism, flood, explosion, collapse, wind, war or other catastrophe shall be in strict conformity with this article.
- (11) All existing nonresidential activities in the zone of protection which use, handle, store, dispose, or produce regulated substances shall file an application for an operating permit within 90 days or a closure permit, general exemption application or special exemption application within 90 days of the receipt of written notice from the County Administrator. Such permit application shall be prepared and signed by a professional registered engineer and a geologist certified in the State, or either at the option of the County Administrator if conditions dictate. Within 30

days of receipt of such notice, the owner or operator shall file with the County Administrator proof of retention of such engineer and geologist or submit to the County Administrator a written notice to obtain either an engineer or geologist, in accordance with FDEP statutes. If application is made for an operating permit, such a permit shall be issued or denied within 60 days of the filing of the completed application. If the application for an operating permit is denied, then the activity shall cease within one year of the denial and an application for a closure permit shall be filed within 120 days of the denial of the operating permit.

- (f) *Operating permit applications.* Operating permit applications, as a minimum, shall provide the following information:
- (1) A list of all regulated substances and substances on the generic substance list which are to be stored, handled, used, disposed of, or produced in the nonresidential activity being permitted, including their quantities.
  - (2) A detailed description of the nonresidential activities that involve the storage, handling, use, disposal, or production of the regulated substances indicating the unit quantities in which substances are contained or manipulated.
  - (3) A description of the containment, the emergency collection devices and containers and copy of the emergency plan that will be employed to comply with the restrictions required for the zone of protection.
  - (4) A description of the daily monitoring activities that have been or will be instituted to comply with the restrictions for the zone of protection.
  - (5) A description of the maintenance that will be provided for the containment facility, monitoring system, and emergency equipment required to comply with the restrictions of the zone of protection.
  - (6) A description of the groundwater monitoring wells, including the latitude and longitude, location map, construction design, geology log and water quality analysis that have been or will be installed and the arrangements made or which will be made for certified quarterly analyses for specified regulated substances in the zone of protection.
  - (7) Evidence of arrangements made with the appropriate designated public utility for sampling analysis of the raw water from the potable water well.
  - (8) An agreement to indemnify and hold the County harmless from any and all claims, liabilities, causes of action, or damages arising out of the issuance of the permit. The County shall provide reasonable notice to the permittee of any such claims.
  - (9) The application for the operating permit shall be filed with the County Administrator within 90 days of receipt of written notification from the County Administrator of the requirement for the facility to obtain an operating permit. In the event of verification of groundwater contamination at a facility within the zone of protection, the Board of County Commissioners will have the option of requiring the bond or letter of credit with a corporate surety in the amount required by appendix B, incorporated in this article, to ensure that:
    - a. The permittee will operate its nonresidential activities and/or closure of such nonresidential activities, as applicable, in accordance with the conditions and requirements of this article and permits issued under this article.
    - b. Before a bond or letter of credit is accepted by the County Administrator as being in compliance with this section, the bond or letter of credit shall be reviewed and approved by the County Insurance and Risk Management Department and the County Attorney's Office and shall be filed with the Clerk of the Board of County Commissioners. A corporate bond shall be



executed by a corporation authorized to do business in the State as a surety. A cash bond shall be deposited with the Clerk of the Board of County Commissioners, who shall give receipt therefor.

- c. Any person subject to regulation under this article shall be liable with respect to regulated substances emanating on or from the person's property for all costs of removal or remedial action incurred by the County and damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss resulting from the release or threatened release of a regulated substance as defined in this article. Such removal or remedial action by the County may include, but is not limited to, the prevention of further contamination of groundwater, monitoring, containment, and cleanup or disposal of regulated substances resulting from the spilling, leaking, pumping, pouring, emitting or dumping of any regulated substance or material which creates an emergency hazardous situation or is expected to create an emergency hazardous situation.

(g) *Closure permit applications.* Closure permit applications shall provide the following information:

- (1) A schedule of events to complete the closure of a facility that does or did store, handle, use, dispose, or produce regulated substances. At a minimum, the following actions shall be addressed:
  - a. Disposition of all regulated substances and contaminated containers.
  - b. Cleanup of the activity and environs to preclude leaching of unacceptable levels or residual regulated substances into the aquifer.
  - c. Certification by a professional registered engineer or a geologist certified in the State that disposal and cleanup have been completed in a technically acceptable manner.
  - d. An appointment for an inspection by the County Administrator.
  - e. An agreement to indemnify and hold the County harmless from any and all claims, liabilities, causes of action, or damages arising out of the issuance of the permit. The County shall provide reasonable notice to the permittee of any such claims.
- (2) The issue of well reconfiguration shall be evaluated by the County Administrator and the affected public utility as an alternative to a closure permit during the permit application process.
- (3) The County water system shall be advised in writing of each closure permit application.

(h) Fee schedule.

- (1) The fee for an operating permit under this article shall be as shown in appendix C, incorporated in this article. A late fee shall be charged if the application for a permit or renewal is late. The operating permit fee shall be used to defray the cost of monitoring compliance with this article.
- (2) The fee for a closure permit under this article regulation shall be as shown in appendix C.
- (3) The fee for a transfer of an operating permit or closure permit shall be in accordance with the fee schedule set out in appendix C to defray the cost of processing the transfer. Application for transfer permit is to be made within 60 days of transfer of ownership of the activity.

- (4) The fee schedule may be revised from time to time by resolution of the Board of County Commissioners.
- (i) Revocation or revision of permits, general exemption or special exemption.
    - (1) Any permit issued under the provisions of this article shall not become vested in the permittee. The County Administrator will revoke any permit by first issuing a written notice of intent to revoke by certified mail, return receipt requested, or hand delivery, if he finds that the permit holder:
      - a. Has failed or refused to comply with any of the provisions of this article, including but not limited to permit conditions and bond requirements in this article;
      - b. Has submitted false or inaccurate information in his application;
      - c. Has failed to submit operational reports or other information required by this article;
      - d. Has refused lawful inspection; or
      - e. Is subject to revocation.
    - (2) The County Administrator may revise any permit by first issuing a written notice of intent to revise, sent by certified mail, return receipt requested, or hand delivery.
    - (3) In addition to the provisions of subsections (i)(1) and (i)(2) of this section, within 30 days of any spill of a regulated substance in the zone of protection, the County Administrator shall consider revocation or revision of the permit or revise the bond amount. Upon such consideration the County Administrator may issue a notice of intent to revoke or revise which shall be subject to the provisions of section 166-169, or elect not to issue such notice. In consideration of whether to revoke or revise the permit, the County Administrator may consider the intentional nature or degree of negligence, if any, associated with the spill, and the extent to which containment or cleanup is possible, the nature, number and frequency of previous spills by the permittee, and the potential degree of harm to the groundwater and surrounding wells due to such spill.
    - (4) For any revocation or revision by the County Administrator of a special exemption or general exemption that requires an operating permit as provided under the terms of this article, the County Administrator shall issue a notice of intent to revoke or revise which shall contain the intent to revoke or revise both the applicable exemption and the accompanying operating permit.
    - (5) The written notice of intent to revoke or revise shall contain the following information:
      - a. The name and address of the permittee, if any, and property owner, if different.
      - b. A description of the facility which is the subject of the proposed revocation or revision.
      - c. Location of the spill, if any.
      - d. Concise explanation and specific reasons for the proposed revocation or revision.
      - e. A statement that "Failure to file a petition within 30 days after the date upon which permittee receives written notice by certified or registered letter to the lessor and landowner of the intent to revoke or revise shall render the proposed revocation or revision final and in full force and effect."
    - (6) Failure of the permittee to file a petition shall render the proposed revocation or revision final and in full force and effect.

- (7) Nothing in this section shall preclude or be deemed a condition precedent to the County Administrator seeking a temporary or permanent injunction.

**Sec. 166-167. - Powers and duties of county administrator.**

- (a) The County Administrator or the administrator's designee shall have the power and duty to:

- (1) Administer and enforce the provisions of this article.
- (2) Investigate complaints, study and observe pollution conditions, and make recommendations as to the institution of action necessary to abate nuisances caused by pollution, and as to prosecution of any violation of this article.
- (3) Make appropriate surveys, tests, and inspections of property, facilities, equipment, and processes operating under the provisions of this article to determine whether the provisions of this article are being complied with; interact with the state department of environmental protection, and make recommendations for methods by which pollution may be reduced or eliminated. Inspections shall be conducted in accordance with subsection (b) of this section.
- (4) Maintain, review, and supervise all operating records required to be filed with the county administrator by persons operating facilities subject to the provisions of this article.
- (5) Render all possible assistance and technical advice to persons owning and/or operating regulated facilities, except that the county administrator and/or his employees shall not design the facility systems for any person.
- (6) Perform such other administrative duties as may be assigned by the board of county commissioners.
- (7) Issue or deny permits.

- (b) Inspections shall be conducted as follows:

- (1) Any duly authorized representative of the county administrator may, at any reasonable time, enter and inspect for the purpose of ascertaining the state of compliance with this article, any property, premises, or place, except a building which is used exclusively for a private residence, on or at which a regulated facility is located or is being constructed or installed or where records which are required under this article are kept.
- (2) Any duly authorized representative may, at reasonable times, have access to and copy any records required under this article; inspect any monitoring equipment or method; sample for any hazardous material which the owner or operator of such source may be discharging or which may otherwise be located on or underlying the owner's or operator's property; and obtain any other information necessary to determine compliance with permit conditions or other requirements of this article.
- (3) No person shall refuse reasonable entry or access to any authorized representative of the county administrator who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with any such inspection. The owner or operator of the premises shall receive a report, if requested, setting forth all facts found which relate to compliance status.
- (4) Install and sample monitor wells in facilities suspected of causing groundwater pollution. All costs associated with these activities will be borne by the facility if they are proved to be the source of pollution, or the facility is in noncompliance with its operating permit.

**Sec. 166-168. - Protection of future wellfields.**

The prohibitions and restrictions set forth in this article and in regulations promulgated pursuant hereto shall apply to any sites officially designated by the board of county commissioners as future wellfields. Such prohibitions and restrictions shall become effective upon approval by the board of county commissioners of the zone of protection maps for the designated future wellfield. Prior to final action by the board of county commissioners in designating a future wellfield or approving the zone of protection map for those wellfields, all property owners and discernable operating activities within the area affected shall receive notice pursuant to the provisions established by F.S. § 125.66(5).

**Sec. 166-169. - Appeals.**

- (a) Any applicant or permittee affected by a decision of the county administrator in the enforcement or interpretation of any of the terms or provisions of this article may appeal such decision to the board of county commissioners. Such appeal shall be taken by filing written notice thereof with the clerk of the board of county commissioners, within ten days after notice of the decision of the county administrator.
  - (1) Upon receipt of a timely filed appeal, the clerk to the board of county commissioners shall schedule and properly notice a public hearing to be held before the board of county commissioners as soon as practicable.
  - (2) At the public hearing, the board of county commissioners may consider the record developed in proceedings before the county administrator, as well as all testimony and evidence presented at the public hearing.
  - (3) The board of county commissioners shall make its determination based upon this record in light of the standards and factors outlined in this article and such other factors as the board of county commissioners may deem relevant.
  - (4) An applicant or permittee denied relief may seek judicial review of the board of county commissioners' determination by the timely filing of an action in a court of competent jurisdiction.
- (b) Any person may appeal to the board of county commissioners for the following reasons:
  - (1) To appeal the county administrator's permit conditions, denial of a permit, general exemption or nondisclosure of a trade secret.
  - (2) To appeal an intent to revoke or revise an operating permit and a general or special exemption.
  - (3) To request a special exemption. When requesting special exemption, written petitions for relief shall be filed with the clerk of the board of county commissioners and the factual basis for the relief requested. Such petitions shall include all materials and documents which are necessary to support the specific relief requested. Except in the case of an application for special exemption, a written request for relief shall be filed with the clerk of the board of county commissioners within 20 days after the date upon which the petitioner receives a permit, or written notice of an intent to revoke or revise his permit, general exemption, or that trade secret protection has been denied. Failure to file within 20 days shall constitute a waiver of the person's right to an administrative hearing. The filing of a petition authorized by this section shall stay all proceedings with respect to the matters that are contained in the petition until there is a final decision of the board of county commissioners as provided in this section.
- (c) Hearing date:

- (1) All appeals and applications shall be heard within 45 days of the date from which the petition and supporting data are filed with the clerk of the board of county commissioners. An extension of time for the hearing may be granted by the board for good cause shown.
  - (2) Notice of hearing shall be served upon the applicant or permittee and property owner, if different, by hand delivery or by certified mail, return receipt requested, no less than ten days prior to the hearing. When the owner or responsible individuals are not present or are avoiding service of the notice of hearing, service shall be accomplished by posting copies of the notice of hearing in a conspicuous place on the premises of the facility that is the subject of the appeal.
- (d) The notice of hearing provided for in this section shall contain the following information:
- (1) Name and address of the petitioner and property owner, if different;
  - (2) Description of the facility;
  - (3) Ordinance section (of this article) or regulation section alleged to have been the basis of the denial or proposed revocation or revision;
  - (4) Time, date and place of the hearing;
  - (5) A statement that "Failure to attend may result in an order being issued adverse to your interest";
  - (6) A statement that all parties shall be given the opportunity to present witnesses and evidence in support of their position; and
  - (7) A statement reflecting the requirements of F.S. ch. 286, regarding a verbatim record of the proceedings.
- (e) In computing the period of time within which an appeal must be taken from the permit conditions, denial of a permit, general exemption or application for nondisclosure or from intent to revoke or revise a permit, general exemption or special exemption, the day of receipt of notice of such denial or intent to revoke or revise shall not be included. In computing the period of time in which the board of county commissioners must set a hearing date, the date on which the clerk of the board receives the written petition and accompanying information shall not be included. In computing the period within which notice shall be provided prior to the hearing, the date of the hearing shall not be included. The last day of any period of time provided in this article shall be counted, unless it is a Saturday, Sunday or a legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or a legal holiday. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation when any period of time prescribed in this article is less than ten days; where such period is ten days or greater, Saturday, Sunday and legal holidays shall be included.
- (f) Hearing procedure. The procedure for hearing of appeals under this article shall be as follows:
- (1) All testimony shall be under oath and shall be recorded.
  - (2) If there is a proper notice of hearing as provided in subsection (c)(2) of this section, the hearing may proceed in the absence of the alleged petitioner and property owner, if different.
  - (3) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence shall be admissible in a trial in the courts of the state. Any part of the evidence may be received in written form. Hearsay evidence may be used for the purpose of

supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

- (4) Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available.
- (5) The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions.
- (6) Each party shall have the following rights:
  - a. To be represented by counsel;
  - b. To call and examine witnesses;
  - c. To introduce exhibits;
  - d. To cross examine opposing witnesses on any relevant matter, even though the matter was not covered under direct examination;
  - e. To impeach any witness, regardless of which party called the witness to testify;
  - f. To rebut the evidence.
- (7) Any interested party or person whose substantial interests are affected may make application, and upon good cause shown, may be allowed by the board of county commissioners to intervene in a pending proceeding.
- (8) In an appeal of an intent to revoke or revise a special exemption or general exemption that also requires an operating permit under the terms of this article, the appeal of both the intent to revoke or revise the applicable exemption and the accompanying permit shall be consolidated into one hearing.
- (g) At all hearings under this article, the board of county commissioners shall hear and consider all facts material to the appeal or application for special exemption and shall thereafter issue a decision based on the competent and substantial evidence presented at the hearing. Such decision may affirm, reverse or modify the action or proposed action of the county administrator.
- (h) The decision of the board of county commissioners, as applicable, shall be the final administrative action on behalf of the county administrator and the county. Any person who is a party to the proceeding before the board of county commissioners, if applicable, may appeal to the circuit court of the county in accordance with applicable Florida Appellate Rules.

**Sec. 166-170. - General exemptions.**

- (a) Facilities and activities qualifying for a general exemption include public utilities, commercial lawn maintenance businesses that use regulated substances, parks, maintenance of office facilities, and retail sales.
  - (1) A general exemption application and operating permit in compliance with the provisions of section 166-165(d) shall be required for any nonresidential activity claiming a general exemption under this section and shall be filed with the county administrator.
  - (2) Such application shall contain a concise statement by the applicant detailing the circumstances upon which the applicant believes would entitle him to an exemption.
  - (3) A fee as listed in exhibit C shall be filed with the application to defray the costs of processing such application.
  - (4) Within 30 working days of receipt of an application for general exemption, the county administrator shall inform the applicant whether such application contains

sufficient information for a proper determination to be made. If the application is found to be insufficient, then the county administrator shall provide to the applicant a written statement by certified mail or hand delivery requesting the additional information required. The applicant shall inform the county administrator within ten working days of the date of the written statement of his intent to furnish the information. The applicant has 30 days to furnish the required information after so informing the county administrator. The county administrator shall have 90 working days from either the rendering of a sufficiency determination or receipt of additional information making an application sufficient to make a decision.

- (b) Existing fire, police, emergency medical services and county emergency management center facilities are required to obtain an operating permit and general exemption.
- (c) Utilities as defined in this article shall be exempt from the zone of protection prohibitions as set forth in section 166-165(c). However, an operating permit and special exemption shall be obtained pursuant to section 166-165(d) for the refueling facilities within the zone of protection.
- (d) The transportation of any regulated substance through the zone of protection shall be exempt from the provisions of this article, provided the transporting motor vehicle is in continuous transit. The transport of such substances through existing permanent pipelines is also exempt, provided that the currently authorized use or uses are not changed and provided that leak detection and monitoring as approved by the county administrator are employed. No general exemption or operating permit application is required except that an operating permit is required to establish the leak detection and monitoring requirements for such existing pipelines.
- (e) The use in a residential vehicle, commercial lawn service vehicle or residential lawn maintenance equipment of any regulated substance solely as fuel in that vehicle or equipment fuel tank or as lubricant in that vehicle or equipment shall be exempt from the provisions of this article. No general exemption or operating permit application is required.
- (f) The commercial or residential application on residential lawn or commercial landscaping of those regulated substances used as pesticides, herbicides, fungicides, and rodenticides in recreation, agriculture, pest control and aquatic weed control activities shall be exempt from the provisions of this article, provided that:
  - (1) In the zone of protection, the application is in strict conformity with the use requirement as set forth in the substances' EPA registries and as indicated on the containers in which the substances are sold.
  - (2) In the zone of protection, the application is in strict conformity with the requirements as set forth in F.S. chs. 482 and 487, and chapters 5E-2 and 5E-9, Florida Administrative Code.
  - (3) In the zone of protection, the application of any of the pesticides, herbicides, fungicides, and rodenticides shall be flagged in the records of the certified operator supervising the use. The certified operator shall provide specific notification in writing to the applicators under his supervision that they are working at a site located in the zone of protection for which particular care is required. Records shall be kept of the date and amount of these substances applied at each location and such records shall be available for inspection at reasonable times by the county administrator.
  - (4) In the zone of protection, the pesticides, herbicides, fungicides, and rodenticides for lawn, golf courses or agricultural application shall not be handled during application in a quantity exceeding 700 gallons of formulation.

- (5) All nonresidential applicators of pesticides, herbicides, fungicides, and rodenticides who apply those substances within the zones of protection shall obtain an operating permit covering all application operations under one permit using these materials and shall comply with all the requirements of section 166-165.  
This exemption applies only to the application of pesticides, herbicides, fungicides, and rodenticides.
- (g) Retail sales establishments in the zone of protection that store and handle regulated substances for resale in their original unopened containers shall be exempt from the prohibition in the zone of protection provided that those establishments obtain an operating permit pursuant to the provisions of section 166-165.
- (h) Office uses, including the use of regulated substances for the maintenance and cleaning of office buildings in volumes less than ten gallons, shall be exempt from the provisions of this article. No general exemption or operating permit applications are required.
- (i) The activities of constructing, repairing or maintaining any facility or improvement on lands within the zone of protection shall be exempt from the provisions of this article, provided that all contractors, subcontractors, laborers, material men and their employees when using, handling, storing or producing regulated substances in the zone of protection use those applicable best management practices set forth in appendix D, incorporated in this article. No general exemption or operating permit applications are required.
- (j) Residential development greater than 25 units shall be required to file a general exemption application and an operating permit application with the county administrator; however, the annual renewal application is not required.

**Sec. 166-171. - Special exemptions.**

- (a) An affected person in the zone of protection may petition the board of county commissioners for a special exemption from the prohibitions and monitoring requirements set out in section 166-165. In order to obtain such an exemption such person must demonstrate by a preponderance of competent, substantial evidence that:
  - (1) Special or unusual circumstances and adequate technology exist to isolate the facility or activity from the potable water supply.
  - (2) In granting the special exemption, the board of county commissioners may prescribe any additional appropriate conditions and safeguards which are necessary to protect the wellfield.
- (b) Activities claiming special exemption with adequate technology to isolate the facility or activity from the potable water supply and protect the wellfield must submit:
  - (1) A special exemption application claiming special or unusual circumstances and adequate protection technology shall be filed with the county administrator. It shall be signed by the applicant and by a professional engineer and certified geologist registered in the state.
  - (2) Such application shall contain a concise statement by the applicant detailing the circumstances which the applicant feels would entitle him to an exemption pursuant to subsection (b)(1) of this section.
  - (3) A nonrefundable fee as listed in exhibit C shall be filed with the application to defray the costs of processing such application.
  - (4) The application for special exemption shall contain but not be limited to the following elements:



- a. A description of the situation at the site requiring isolation from the wellfield, including:
  1. A list of the regulated substances in use at the site;
  2. A site plan of the facility including all storage, piping, dispensing, shipping, etc., facilities;
  3. What operations at the facility involve regulated substances which must be isolated from the wellfields;
  4. The location of all operations involving regulated substances;
  5. A sampling and analysis of the groundwater on the site of the activity seeking a special exemption shall be performed to the satisfaction of the county to determine if any regulated substances are already present which constitute a threat to the water supply;
  6. An analysis of the affected well showing whether or not such well is already contaminated by any regulated substances and the extent of such contamination;
  7. A hydrogeologic assessment of the site which shall address, at a minimum, soil characteristics and groundwater levels, directional flow, and water quality and which shall be performed by a registered geologist, certified by the state.
- b. A technical proposal to achieve the required isolation, including:
  1. Components to be used and their individual functions;
  2. Systems tying the components together;
  3. A discussion and documentation, such as published technical articles, substantiating the performance and reliability of the components individually and the system as a whole; if the system has not been field tested, a discussion and laboratory test documentation to substantiate the proposed performance and reliability of the system;
  4. Details of the specific plans to install the system at the site.
- c. Testing procedures: If the proposed system does not have a proven history of successful in-field operation, it may still be proposed using proven components. A test plan for the system as installed shall be provided to prove that the proposed system works in the field.
- d. A technical proposal for backup detection of regulated substances that may elude the isolation system and escape to outside a perimeter to be established by the county administrator. Such proposal shall include emergency measures to be initiated in case of escape of regulated substances.
- e. Criteria for success: Site-specific, system performance criteria shall be proposed to ascertain the success of the system. Such criteria shall include but shall not be limited to:
  1. Performance;
  2. Reliability;
  3. Level of maintenance;
  4. Level of sensitivity to regulated substances;
  5. Effect of rain, flood, power failure or other natural disaster.
- f. Precautions in event of failure: The applicant shall provide information on the on-site availability of substance removal technologies sufficient to remediate

any introduction of regulated substances into the water table at the site. Where water is removed from on-site wells during the remedial process, a plan shall be proposed for the disposal of such water.

- g. A closure plan shall be provided in the event the system does not prove successful in the testing required by subsection (b)(4)c of this section.
  - h. Any other reasonable information deemed necessary by the county water system due to site-specific circumstances.
- (5) Within 30 working days of receipt of an application for special exemption, the county administrator shall inform the applicant whether such application contains sufficient information for a proper determination to be made. If the application is found to be insufficient, then the county administrator shall provide to the applicant a written statement by certified mail or hand delivery requesting the additional information required. The applicant shall inform the county administrator within ten working days of the date of the written statement of his intent to furnish the information. The applicant has 30 days to furnish the required information or have the application processed as it stands. At the end of such 30-day period, the county administrator shall have 14 days to inform the board of county commissioners of such application and shall transfer all information accompanying the application to the board of county commissioners, who shall then proceed with the hearing procedures as provided under section 166-169.
- (c) Granting special exemptions:
- (1) Any special exemption to this article granted by the board of county commissioners shall be subject to the applicable conditions of sections 166-165 and 166-166 and any other reasonable and necessary special conditions imposed by the board of county commissioners. An operating permit shall be issued by the department with the applicable conditions of sections 166-165 and 166-166 and any other reasonable and necessary special conditions imposed by the board of county commissioners. Such special exemptions shall be subject to revocation or revision by the department for violation of any condition of such special exemption by first issuing a written notice of intent to revoke or revise by certified mail, return receipt requested, or hand delivery. Upon revocation or revision, the activity will immediately be subject to the enforcement provisions of this article.
  - (2) Special exemptions for the zone of protection are for existing nonresidential facilities only. No new nonresidential activity shall be permitted into the zone of protection after February 17, 1990, if the new nonresidential facility stores, handles, produces, disposes of, or uses any regulated substance.

**Sec. 166-172. - Trade secrets.**

The department shall not disclose any trade secrets of the permittee under this article that are exempted from such disclosure by federal or state law; provided, however, that the burden shall be on the permittee to demonstrate entitlement to such nondisclosure. Decisions by the county administrator as to such entitlement shall be subject to challenge by the permittee by filing a petition with the county administrator pursuant to section 166-169.

**Secs. 166-173—166-210. - Reserved.**

**ARTICLE V. - RESERVED.**

**ARTICLE VI. - RESERVED.**