

## Alternative 1

### ORDINANCE NO. 04-

AN ORDINANCE OF LEE COUNTY, FLORIDA, ESTABLISHING A PROHIBITION ON DEVELOPMENT BLASTING ACTIVITY IN THE UNINCORPORATED AREA OF LEE COUNTY; PROVIDING FOR LEGISLATIVE FINDINGS; PURPOSE AND INTENT; DEVELOPMENT BLASTING PROHIBITION; REPEAL OF LEE COUNTY ORDINANCES 02-26, 3-17, 3-27 AND 4-01; PROVIDING FOR CONFLICTS OF LAW; CODIFICATION AND SCRIVENER'S ERRORS; SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 1 of the Florida Constitution and Chapter 125 of the Florida Statutes, Lee County is authorized and required to protect the public health, safety and welfare of its citizens and has the power and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and

WHEREAS, Florida Statutes Sections 125.01(1)(h) and (t) authorize counties to establish, coordinate, and enforce regulations necessary for the protection of the public; and

WHEREAS, the Board of County Commissioners adopted Lee County Ordinance 02-26, known as the Lee County Blasting ordinance, to protect citizens and property from the ill effects of development blasting; and

WHEREAS, recent violations of the existing Blasting Ordinance have lead to numerous citizen complaints; and

WHEREAS, the circumstances surrounding the recent violations demonstrates that there is an immediate potential harm to property and individuals that will likely occur by allowing continued development blasting under the current regulations; and

WHEREAS, Lee County Comprehensive Plan Policy 5.1.5 provides protection for future and existing residential uses from the encroachment of uses that are destructive to the character and integrity of the residential environment; and

WHEREAS, continuation of the status quo under the current regulatory scheme will likely cause irreparable injury to citizens, neighborhoods, communities and homes; and

WHEREAS, after extensive review and re-evaluation, the Board has concluded one set of regulations applicable to the entire unincorporated area of County will not effectively preserve or protect the public health, safety, and welfare of citizens and their homes in the areas near ongoing development blasting in all instances; and

WHEREAS, the Board further concluded that total prohibition of blasting in the unincorporated areas of Lee County is the most effective means to ameliorate the ill effects of development blasting.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Lee

County, Florida:

**SECTION ONE: LEGISLATIVE FINDINGS**

The Board hereby adopts the recitals set forth above as the legislative findings and conclusions necessary to support adoption of this ordinance.

Additionally, the Board recognizes that the status of development in unincorporated Lee County indicates it is not possible to establish a viable distance separation between existing residential development and proposed development blasting sites that will accomplish the Board's desire to protect existing residential property from the ill effects of development blasting.

**SECTION TWO: PURPOSE AND INTENT**

The purpose of this prohibition is to protect existing infrastructure, utilities and residential uses against the ill effects associated with development blasting. The provisions of this ordinance are not intended to apply to bona fide construction materials mining activities, approved by the County and conducted in compliance with the provisions of Florida Statutes Chapter 552.

**SECTION THREE: PROHIBITION**

No blasting activity may occur, even if previously permitted, within the unincorporated areas of Lee County.

The County will not accept or approve permits for blasting activity within the unincorporated areas of Lee County. Pending applications currently awaiting approval will be returned with a refund of the application fees paid.

Blasting permits previously issued by Lee County will continue in force and effect for the term of the permit or 6 months, whichever is less, in accordance with Lee County Ordinances 02-26 and 04-01. No existing permit may be renewed or extended.

**SECTION FOUR: REPEALER**

Lee County Ordinances 02-26, 03-17, 03-27 and 04-01 are hereby repealed and of no further force or effect, except as specifically provided in section three of this ordinance.

**SECTION FIVE: CONFLICTS OF LAW**

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of other lawfully adopted ordinances or statutes, the most restrictive requirements will apply.

**SECTION SIX: CODIFICATION AND SCRIVENER'S ERRORS**

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase

to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

**SECTION SEVEN: SEVERABILITY**

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

**SECTION EIGHT: EFFECTIVE DATE**

The ordinance will take effect upon filing with the Secretary of State.

THE FOREGOING ORDINANCE was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner Andrew W. Coy and, being put to a vote, the vote was as follows:

ROBERT JANES  
DOUGLAS ST. CERNY  
RAY JUDAH  
ANDREW W. COY  
JOHN E. ALBION

DULY PASSED AND ADOPTED THIS    day of    , 2004

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairman

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Dawn E. Perry-Lehnert  
Office of County Attorney