

**CPA2009-09  
DESTINATION RESORT MIXED USE  
WATER DEPENDANT  
FUTURE LAND USE CATEGORY  
BoCC SPONSORED  
AMENDMENT  
TO THE**

---

**LEE COUNTY COMPREHENSIVE PLAN**

---

**THE LEE PLAN**

**Lee County Board of County Commissioners  
Sponsored Amendment and Staff Analysis**

---

**BoCC Adoption Document**

---

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

**October 20, 2010**

**LEE COUNTY  
DIVISION OF PLANNING  
STAFF REPORT FOR  
COMPREHENSIVE PLAN AMENDMENT  
CPA2009-09**

**Text Amendment**

**Map Amendment**

✓	<b>This Document Contains the Following Reviews:</b>
✓	<b>Staff Review</b>
✓	<b>Local Planning Agency Review and Recommendation</b>
✓	<b>Board of County Commissioners Hearing for Transmittal</b>
✓	<b>Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report</b>
✓	<b>Board of County Commissioners Hearing for Adoption</b>

STAFF REPORT PREPARATION DATE: February 15, 2010

**PART I - BACKGROUND AND STAFF RECOMMENDATION**

**A. SUMMARY OF APPLICATION**

**1. APPLICANT:**

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

**2. REQUEST:**

Amend Goal 12, San Carlos Island, to accommodate the addition of the Destination Resort Mixed Use Water Dependant land use category, and clarify the requirement for developer funded structural improvements to Main Street in Policy 31.7.4.

**B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY**

**1. RECOMMENDATION:**

Planning staff recommends that the Board of County Commissioners transmit the language for Policy 12.1.1 and Policy 31.7.4 as revised below:

**POLICY 12.1.1:** New development and substantial redevelopment within the Industrial Development and the Destination Resort Mixed Use Water Dependant land use categories on San Carlos Island will be permitted only in accordance with the following criteria. (See glossary for definitions and Map 2 for map boundaries.) However, in no event will Lee County permit new or expanded petroleum facilities which would serve uses other than marine-related uses.

**Paragraph 1 and 2, no proposed changes. Paragraph 3 proposed changes:**

3. South of Main Street - Within the water-dependent overlay zone which is defined as land within 300 feet of the shoreline: water-dependent marine industrial uses only as well as those uses described under Goal 31 and Policy 31.3.4.
  - Landward of the overlay zone (300-foot line): marine industrial uses; in addition, dry-storage recreational marinas may also be permitted through the “planned development” rezoning process, provided the following is clearly demonstrated:
    - Water access can be provided with only minimal interference to the waterfront industrial uses; and
    - Adequate road access is provided for the waterfront industrial uses; and
    - Any other commercial uses (such as food service or retail space) must be clearly ancillary to the recreational marina or industrial uses and comprise no more than five percent (5%) of the site, unless located within the Destination Resort Mixed Use Water Dependant future land use category.

**Paragraph 4 and 5 no proposed changes. Proposed paragraph 6:**

6. Destination Resort Mixed Use Water Dependant Future Land Use Category - Development within this land use category must be consistent with the requirements of Goal 31.

**POLICY 31.7.4:** As part of any rezoning action, the existing roadways that are adjacent to or run through the project, particularly Main Street, will be evaluated with a cross-sectional analysis to identify needed upgrades of driver and bicycle/pedestrian safety and bus access to and from the property. At a minimum, one bus stop will be provided along Main Street ~~to~~ meeting Lee Tran standards or better. Improvements to bring Main Street up to Class A road standards, subject to deviations where appropriate, will be provided by the developer. Where bicycle/pedestrian upgrades or additions are determined by Lee County to be desirable along Main Street or other area streets, those improvements will be eligible for road impact fee credits in accordance with the Lee County Land Development Code.

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

- Map 2 of the Lee Plan, the San Carlos Island Water Dependent Overlay Zones, identifies three distinct water dependent overlay zones on San Carlos Island.
- The Future Land Use Map, Map 1, was amended during the 2007/2008 regular amendment cycle with Lee County Ordinance 09-15 to include the Destination Resort Mixed Use Water Dependent Future Land Use Category.
- The Future Land Use Element was amended to include Goals, Objectives and Policies to guide future development within the Destination Resort Mixed Use Water Dependent Future Land Use Category.

- Existing Lee Plan language at Policy 12.1.1, paragraph 3, is not consistent with the development envisioned within the Destination Resort Mixed Use Water Dependent future land use category.
- Review of development proposed within the Destination Resort Mixed Use Water Dependent Future Land Use Category has identified language in Policy 31.7.4 that is difficult to enforce and open to interpretation.

### **C. BACKGROUND INFORMATION**

The Destination Resort Mixed Use Water Dependent future land use category was created by a privately initiated Comprehensive Plan Amendment, CPA2007-51, that affected 36.06 acres on San Carlos Island. The existing uses included an RV park, a restaurant and a marina. The applicants were Darrell Hanson and Ramon Alvarez. The amendment included a new future land use category, Goals, Objectives and Policies codified under Goal 31 and a change to the Future Land Use Map Series of the Lee Plan.

CPA 2007-51 was initially reviewed by the Local Planning Agency on September 29, 2008. The LPA recommended transmittal of the then proposed amendment to the Board of County Commissioners by a vote of 3 to 1 with 3 members absent. The Board of County Commissioners voted to Transmit CPA2007-51 to the Department of Community Affairs on October 23, 2008 by a vote of 3 to 2. The Board of County Commissioners voted to adopt CPA2007-51 on February 25, 2009 by a vote of 4 to 1.

As a result of the amendment Staff has identified an inconsistency within the Lee Plan that must be addressed. The inconsistency is between the Policy 12.1.1, paragraph 3, (which outlines development guidelines for San Carlos Island Water-Dependent Overlay Zone south of Main Street) and Goal 31. This was an oversight by staff as Goal 12 should have also been amended through CPA2007-51. Staff has also identified language within Policy 31.7.4 that is unclear about the responsibility of required improvements to Main Street.

## **PART II - STAFF ANALYSIS**

### **A. STAFF DISCUSSION**

#### Policy 12.1.1

Map 2 of the Lee Plan identifies the land that is subject to the San Carlos Island Water-Dependent Overlay Zone. Policy 12.1.1 outlines development criteria for this Overlay Zone. Some of the criteria found in Policy 12.1.1 is inconsistent with the Destination Resort Mixed Use Water Dependent future land use category. Specifically the San Carlos Island Water-Dependent Overlay Zone only provides for water-dependent marine industrial uses and ancillary commercial uses that are to be limited to no more than five percent (5%) of the project site. Lee County Planning staff is proposing to amend Policy 12.1.1 to acknowledge the Destination Resort Mixed Use Water Dependent Future Land Use Category. The proposed amendment to Policy 12.1.1 will correct the identified internal inconsistency within the Lee Plan.

#### Policy 31.7.4

Policy 31.7.4 currently reads as follows:

***POLICY 31.7.4:*** *As part of any rezoning action, the existing roadways that are adjacent to or run through the project, particularly Main Street, will be evaluated with a cross-sectional analysis to identify needed upgrades of driver and bicycle/pedestrian safety and bus access to and from the property. At a minimum, one bus stop will be provided along Main Street to Lee Tran standards or better. Where bicycle/pedestrian upgrades or additions are determined by Lee County to be desirable along Main Street or other area streets, those improvements will be eligible for road impact fee credits in accordance with the Lee County Land Development Code.*

The existing language in Policy 31.7.4 does not clearly demonstrate consistency with existing Lee Plan language in Policy 31.2.2, which requires that development within the Destination Resort Mixed Use Water Dependent future land use category must have adequate transportation facilities. The existing language, of Policy 31.7.4 is unclear with respect to the improvements to Main Street that will be required in connection with the proposed development. Through the creation of the Destination Resort Mixed Use Water Dependent future land use category and the adoption of CPA 2007-51 it was understood that the developer would be responsible for bringing Main Street up to Lee County Standards. This amendment will provide the clarification as to the responsible party for the improvements,

To clarify the developer's responsibility for improvements to Main Street, Lee County Planning staff is proposing that the policy be revised as follows:

**POLICY 31.7.4:** As part of any rezoning action, the existing roadways that are adjacent to or run through the project, particularly Main Street, will be evaluated with a cross-sectional analysis to identify needed upgrades of driver and bicycle/pedestrian safety and bus access to and from the property. At a minimum, one bus stop will be provided along Main Street to meeting Lee Tran standards or better. Any improvements necessary to bring Main Street up to Lee County Category A road standards will be provided by the developer. Where bicycle/pedestrian upgrades or additions are determined by Lee County to be desirable along Main Street or other area streets, those improvements will be eligible for road impact fee credits in accordance with the Lee County Land Development Code.

#### **B. CONCLUSIONS**

Planning staff believes that the proposed amendments to Policy 12.1.1 and Policy 31.7.4 will effectively correct inconsistencies within the Lee Plan and better articulate the intent of the Board of County Commissioners concerning needed structural improvements to Main Street on San Carlos Island.

#### **C. STAFF RECOMMENDATION**

Planning staff recommends that the Board of County Commissioners transmit this amendment to correct the identified internal inconsistencies within the Lee Plan and clarify the intent of Policy 31.7.4.



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

DATE OF PUBLIC LPA HEARING: February 22, 2010

### **A. LOCAL PLANNING AGENCY REVIEW**

Staff gave a brief presentation of the proposed Lee Plan amendment that included an overview of the staff report. Staff indicated that the purpose of the proposed amendment would not change the uses allowed on the site, but only clarified the responsibilities of the developer. One member of the Local Planning Agency asked for clarification concerning the requirements to provide transit facilities. There was concern that all individual developments along Main Street would be required to provide a bus stop, which would be redundant and inefficient. Policy 31.7.4, including amendments recommended by staff, reads as follows:

**POLICY 31.7.4:** As part of any rezoning action, the existing roadways that are adjacent to or run through the project, particularly Main Street, will be evaluated with a cross-sectional analysis to identify needed upgrades of driver and bicycle/pedestrian safety and bus access to and from the property. At a minimum, one bus stop will be provided along Main Street ~~to~~ meeting Lee Tran standards or better. Any improvements necessary to bring Main Street up to Lee County Class A road standards, from the eastern property line to the intersection with San Carlos Boulevard, will be provided by the developer. Where bicycle/pedestrian upgrades or additions are determined by Lee County to be desirable along Main Street or other area streets, those improvements will be eligible for road impact fee credits in accordance with the Lee County Land Development Code.

Staff clarified that the proposed Lee Plan amendments were only applicable to the Destination Resort Mixed Use Water Dependent (DRMUD) future land use category, and not all the properties along Main Street. Staff also stated that a single unified development proposal for the DRUMD future land use category had been submitted meaning that only one bus stop will be required by Policy 31.7.4. Staff does not believe that additional clarification is needed to this policy.

No additional issues were discussed by members of the Local Planning Agency. No members of the public were appeared to address the proposed amendment.

### **B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY**

- 1. RECOMMENDATION:** The LPA recommends that the Board of County Commissioners transmit the proposed amendment.
- 2. BASIS AND RECOMMENDED FINDINGS OF FACT:** The LPA accepted the findings of fact as presented by staff.

**C. VOTE:**

**NOEL ANDRESS**

---

**AYE**

---

**CINDY BUTLER**

---

**AYE**

---

**CARIE CALL**

---

**AYE**

---

**WAYNE DALTRY**

---

**AYE**

---

**JIM GREEN**

---

**AYE**

---

**MITCH HUTCHCRAFT**

---

**AYE**

---

**RONALD INGE**

---

**AYE**

---

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

DATE OF TRANSMITTAL HEARING: June 16, 2010

**A. BOARD REVIEW:**

This proposed amendment had been presented to the Board of County Commissioners on the consent agenda. During the public hearing portion of the consent agenda, one member of the public addressed the Board of County Commissioners concerning this item. The concern was expressed that the proposed changes affect their property and they felt they were not properly noticed. This member of the public also pointed out inconsistent language within the staff report. The County Attorney's Office also raised concern about the public notice. Due to the questions concerning the proposed amendment, the Board of County Commissioners elected to pull this item from the consent agenda.

Staff clarified the language and the intent of the proposed amendment. Staff also clarified and acknowledged that the language used for the notice had been from an earlier iteration of the staff report and did not encompass the entire intent of the proposed amendment to the Lee Plan. The Board sought additional clarifications from the County Attorney's Office. A motion was made to transmit only the portion of the proposed amendment that had been properly noticed, which does not include the proposed amendment to Policy 31.7.4 of the Lee Plan.

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

The Board of County Commissioners voted to transmit the proposed amendment to Policy 12.1.1 of the Lee Plan.

The language that the Board of County Commissioners transmitted is as follows:

**POLICY 12.1.1:** New development and substantial redevelopment within the Industrial Development and the Destination Resort Mixed Use Water Dependant land use categories on San Carlos Island will be permitted only in accordance with the following criteria. (See glossary for definitions and Map 2 for map boundaries.) However, in no event will Lee County permit new or expanded petroleum facilities which would serve uses other than marine-related uses.

**Paragraph 1 and 2, no proposed changes. Paragraph 3 proposed changes:**

3. South of Main Street - Within the water-dependent overlay zone which is defined as land within 300 feet of the shoreline: water-dependent marine industrial uses only as well as those uses described under Goal 31 and Policy 31.3.4.
  - Landward of the overlay zone (300-foot line): marine industrial uses; in addition, dry-storage recreational marinas may also be permitted through the "planned development" rezoning process, provided the following is clearly demonstrated:

- Water access can be provided with only minimal interference to the waterfront industrial uses; and
- Adequate road access is provided for the waterfront industrial uses; and
- Any other commercial uses (such as food service or retail space) must be clearly ancillary to the recreational marina or industrial uses and comprise no more than five percent (5%) of the site, unless located within the Destination Resort Mixed Use Water Dependant future land use category.

**Paragraph 4 and 5 no proposed changes. Proposed paragraph 6:**

6. Destination Resort Mixed Use Water Dependant Future Land Use Category - Development within this land use category must be consistent with the requirements of Goal 31.

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

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

**C. VOTE:**

<b>BRIAN BIGELOW</b>	<u>    <b>AYE</b>    </u>
<b>TAMMARA HALL</b>	<u>    <b>AYE</b>    </u>
<b>VACANT</b>	<u>                    </u>
<b>RAY JUDAH</b>	<u>    <b>AYE</b>    </u>
<b>FRANK MANN</b>	<u>    <b>AYE</b>    </u>

**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,  
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

**DATE OF ORC REPORT:** August 27, 2010

**A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS:**

The Florida Department of Community Affairs provided no objections, recommendations, or comments concerning the proposed amendment.

**B. BOARD DIRECTED ACTIONS SUBSEQUENT TO THE TRANSMITTAL HEARING**

The Board of County Commissioners directed staff to correct the language used in the legal notice for the adoption hearing so that the proposed clarifications to Policy 31.7.4 of the Lee Plan were included. Staff has revised the notice to reference the proposed change to Policy 31.7.4, and has also worked with representatives of the owner of the affected property to assure that they are fully aware of the proposed changes. The owner's representative submitted revised language for Policy 31.7.4 on August 3, 2010 which was found to be acceptable by Lee County Division of Planning Staff.

Therefore in addition to the language that was transmitted to the Florida Department of Community Affairs staff recommends that the Board of County Commissioners adopt Policy 31.7.4 as submitted by the owner's consultant below:

**POLICY 31.7.4:** As part of any rezoning action, the existing roadways that are adjacent to or run through the project, particularly Main Street, will be evaluated with a cross-sectional analysis to identify needed upgrades of driver and bicycle/pedestrian safety and bus access to and from the property. At a minimum, one bus stop will be provided along Main Street ~~to~~ meeting Lee Tran standards or better. Any improvements necessary to bring Main Street up to Lee County Class A road standards, subject to any deviations which are determined to be appropriate during the rezoning and development order processes, will be provided by the developer. Where bicycle/pedestrian upgrades or additions are determined by Lee County to be desirable along Main Street or other area streets, those improvements will be eligible for road impact fee credits in accordance with the Lee County Land Development Code.

**C. STAFF RECOMMENDATION**

Staff recommends adoption of the language as transmitted and the revised language to Policy 31.7.4 as discussed above. Complete language recommended for adoption is shown below:

**POLICY 12.1.1:** New development and substantial redevelopment within the Industrial Development and the Destination Resort Mixed Use Water Dependant land use categoryies on San Carlos Island will be permitted only in accordance with the following criteria. (See glossary for definitions and Map 2 for map boundaries.) However, in no event will Lee County permit new or expanded petroleum facilities which would serve uses other than marine-related uses.

**Paragraph 1 and 2, no proposed changes. Paragraph 3 proposed changes:**

3. South of Main Street - Within the water-dependent overlay zone which is defined as land within 300 feet of the shoreline: water-dependent marine industrial uses only as well as those uses described under Goal 31 and Policy 31.3.4.

- Landward of the overlay zone (300-foot line): marine industrial uses; in addition, dry-storage recreational marinas may also be permitted through the “planned development” rezoning process, provided the following is clearly demonstrated:
  - Water access can be provided with only minimal interference to the waterfront industrial uses; and
  - Adequate road access is provided for the waterfront industrial uses; and
  - Any other commercial uses (such as food service or retail space) must be clearly ancillary to the recreational marina or industrial uses and comprise no more than five percent (5%) of the site, unless located within the Destination Resort Mixed Use Water Dependant future land use category.

**Paragraph 4 and 5 no proposed changes. Proposed paragraph 6:**

6. Destination Resort Mixed Use Water Dependant Future Land Use Category - Development within this land use category must be consistent with the requirements of Goal 31.

**POLICY 31.7.4:** As part of any rezoning action, the existing roadways that are adjacent to or run through the project, particularly Main Street, will be evaluated with a cross-sectional analysis to identify needed upgrades of driver and bicycle/pedestrian safety and bus access to and from the property. At a minimum, one bus stop will be provided along Main Street ~~to~~ meeting Lee Tran standards or better. Any improvements necessary to bring Main Street up to Lee County Class A road standards, subject to any deviations which are determined to be appropriate during the rezoning and development order processes, will be provided by the developer. Where bicycle/pedestrian upgrades or additions are determined by Lee County to be desirable along Main Street or other area streets, those improvements will be eligible for road impact fee credits in accordance with the Lee County Land Development Code.

**PART VI - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: October 20<sup>th</sup>, 2010

**A. BOARD REVIEW:**

This amendment to the Lee Plan was included on the Administrative Agenda due to the proposed revision to Policy 31.7.4. This revision clarified who the responsible entity will be for the necessary improvements to Main Street. The reason that these changes were not transmitted is discussed in Part V of this report.

At the hearing, Staff presented an errata sheet with further revisions that were requested by the County Attorney's Office as shown below:

**POLICY 31.7.4:** As part of any rezoning action, the existing roadways that are adjacent to or run through the project, particularly Main Street, will be evaluated with a cross-sectional analysis to identify needed upgrades of driver and bicycle/pedestrian safety and bus access to and from the property. At a minimum, one bus stop will be provided along Main Street ~~to~~ meeting Lee Tran standards or better. Improvements to bring Main Street up to Class A road standards, subject to deviations where appropriate, will be provided by the developer. Where bicycle/pedestrian upgrades or additions are determined by Lee County to be desirable along Main Street or other area streets, those improvements will be eligible for road impact fee credits in accordance with the Lee County Land Development Code.

A representative of the affected property owner reviewed the revision prior to the adoption hearing. This representative confirmed in an e-mail to staff that the modification recommended by the County Attorney's Office did not change the substantive meaning of the amendment and he had no issues with this revision.

No members of the public addressed the Board of County Commissioners concerning this amendment. The Board of County Commissioners provided no discussion concerning the proposed amendment.

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

The Board of County Commissioners voted to adopt the proposed amendment, including the revision to Policy 31.7.4 as noted above.

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

The Board accepted the findings of fact as advanced by staff and the Local Planning Agency.

**C. VOTE:**

**BRIAN BIGELOW**

---

**AYE**

---

**TAMMARA HALL**

---

**AYE**

---

**RAY JUDAH**

---

**AYE**

---

**FRANK MANN**

---

**AYE**

---

**JOHN MANNING**

---

**AYE**

---