

**CPA2010-21  
BEACH RENOURISHMENT  
RESOURCE PROTECTION  
BOCC SPONSORED  
AMENDMENT  
TO THE**

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**LEE COUNTY COMPREHENSIVE PLAN**

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**THE LEE PLAN**

Lee County Board of County Commissioners  
Sponsored Amendment and Staff Analysis

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**BoCC Public Hearing Document  
for the  
September 28<sup>th</sup> 2011 Adoption Hearing**

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**September 14, 2011**

**LEE COUNTY  
DIVISION OF PLANNING  
STAFF REPORT FOR  
COMPREHENSIVE PLAN AMENDMENT  
CPA2010-21**

**Text Amendment**

**Map Amendment**

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

STAFF REPORT PREPARATION DATE: March 14, 2011

**PART I - BACKGROUND AND STAFF RECOMMENDATION**

**A. SUMMARY OF APPLICATION**

**1. APPLICANT:**

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
REPRESENTED BY DIVISION OF NATURAL RESOURCES & DIVISION OF  
PLANNING

**2. REQUEST:**

Amend Policy 113.3.1 to clarify that beach renourishment sand sources should be identified and protected.

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

**1. RECOMMENDATION:**

Staff recommends that the Board of County Commissioners *adopt* the proposed amendment to the Conservation and Coastal Management Element of the Lee Plan as shown below. Proposed text has been depicted in strikethrough and underline format as it relates to the existing provisions of the Lee Plan.

**OBJECTIVE 113.3: BEACH AND DUNE SYSTEMS.** Lee County will continue to implement a beach preservation and management plan through the Lee County Coastal Advisory Council or successor agency. (Amended by Ordinance No. 98-09)

**POLICY 113.3.1:** The Division of Natural Resources Management, or successor agency, will be responsible for the beach and dune management program. This program will include:

1. Preparing beach and dune management plans, with priority to areas designated by the Florida Department of Environmental Protection as critically eroded in the report entitled Critically Eroded Beaches in Florida (as updated April, 2006).
2. Coordinating with local municipalities and the Captiva Erosion Prevention District in preparing beach and dune management plans.
3. ~~Collecting information on available~~ Coordinate with government and private entities to identify sources of beach-quality sand for renourishment projects, concentrating on areas ~~which that~~ will have minimal impacts on the county's aquatic resources.
4. Utilize all possible means to protect beach-quality sand resources from use by public and private out of county users. Lee County will provide comments to the U.S. Army Corps of Engineers and the Florida Department of Environmental Protection (or successor) regarding impacts to off-shore beach-quality sand resources. Protect sand resources from the placement of infrastructure that may impede access to the resource such as, but not limited, to pipelines and transmission cables.

Subsequent paragraphs renumbered.

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

- The Board of County Commissioners initiated this plan amendment on September 28, 2010 as a result of discussions by the Coastal Advisory Council.
- The Coastal Advisory Council was established by the Lee County Board of County Commissioners by Resolution 95-12-02.
- Lee County regularly conducts beach renourishment projects at local beaches.
- Protecting local beach-quality sand sources will reduce transportation costs associated with sand sources located further from Lee County beach renourishment projects.
- The Coastal Advisory Council desires to enhance coordination with state and local governmental agencies and the protection of local beach-quality sand resources.

- The criteria used by the Coastal Advisory Council to review proposed projects must be consistent with the Lee Plan.
- Planning staff presented proposed amendments to the Lee County Comprehensive Plan to enhance coordination and protection of beach quality sand sources to the Coastal Advisory Council on January 24<sup>th</sup>, 2011.
- Planning staff presented revised amendment language to the Coastal Advisory Council on February 21<sup>st</sup>, 2011. The Coastal Advisory Council Voted unanimously to support the proposed amendment.

### **C. BACKGROUND INFORMATION**

Lee County does not have direct jurisdiction over the submerged lands that contain the beach-quality sand sources. However, Florida Statutes section 161.25 states that:

*“The board of county commissioners of any county and its successors in office, as an ex officio duty, are hereby severally constituted as the beach and shore preservation authority for their county. In this capacity, any such board of county commissioners may at its own initiative take all necessary steps as soon as practicable and desirable to implement the provisions of this chapter.”*

The Coastal Advisory Council (CAC) was established by Lee County Board of County Commissioners Resolution 95-12-02, as an advisory board to both the Lee County Board of County Commissioners and the Tourist Development Council. The CAC’s general duties, as articulated in Resolution 95-12-02 include:

1. Advise the Tourist Development Council and Lee County staff concerning the distribution of beach renourishment trust fund assets;
2. Review all proposed coastal construction projects defined in Chapter 161 of the Florida Statutes;
3. Work with and support the efforts of any legally constituted city, special erosion prevention district, or any special assessment unit that chooses to manage its own beaches; and
4. Take into consideration that the flow of funds back into the community is sufficient to protect the very assets that are generating the tax revenue.

In its capacity to carry out the responsibilities identified above, the CAC has grown concerned that off shore construction of pipelines and transmission cables; and the potential use of local sand resources by out of county users prompt the need to protect areas with beach-quality sand sources for future renourishment projects. To address these concerns the Coastal Advisory Council has requested an amendment to the Lee Plan that will provide for increased coordination with other government agencies to achieve greater protection of beach-quality sand sources. Planning staff has assisted the Coastal Advisory Council in developing the proposed Lee Plan amendment.

In its advisory capacity, the CAC voted unanimously to recommend modifications to Policy 113.3.1 of the Lee Plan to identify and protect potential sand sources for beach restoration and nourishment, and enhance coordination efforts with federal, state, local governments, as well as private entities. On January 24, 2011 Lee County Planning Staff presented proposed amendments to the Coastal Advisory Council at their monthly meeting. The Coastal Advisory Council provided comments to Planning staff and recommended revisions to the proposed amendment. Planning staff revised the proposed amendment and presented the revised language at the Coastal Advisory Council's February 21, 2011 meeting. The Coastal Advisory Council accepted the language presented by Planning Division staff, and voted unanimously to move forward with the proposed amendment to Policy 113.3.1 of the Lee Plan.

## **PART II - STAFF ANALYSIS**

### **A. STAFF DISCUSSION**

Offshore construction of pipelines and transmission cables may impede access to areas with beach-quality sand sources for future renourishment projects. In its capacity to review beach renourishment projects, the CAC has found that beach quality materials are becoming more difficult to locate and more expensive to obtain from aquatic locations. Underwater infrastructure such as pipelines and transmission cables can reduce access to beach-quality sediment due to restrictions created by the overlying infrastructure on the bottom of bays, harbors, sounds, and the Gulf of Mexico.

The Coastal Advisory Council has cited four factors with the potential to affect Lee County sand sources as justification to increase protection of offshore sand resources.

1. The Governor of Florida, the Florida Legislature and some members of the Florida Congressional Delegation have shown interest in developing offshore oil near Florida. Not only will there be a need for drilling platforms, but a need for pipelines and other infrastructure connecting the platforms to land based support systems to operate these offshore platforms.
2. The enlarged Panama Canal will cause dramatic shifts in shipping in the Gulf of Mexico, which could have an undetermined impact on Lee County in terms of changing the delivery of materials to the region.
3. Alternate energy sources are becoming more practical. Alternative energy sources located offshore can impact offshore and near-shore sand resources.
4. The telecommunications revolution is resulting in more conduits being laid along the sea floor with the potential to impact underwater resource areas.

Planning Staff concurs with the Coastal Advisory Council that beach-quality sand sources should be protected to assure availability for future beach renourishment projects when needed.

## **CONSISTENCY WITH THE LEE PLAN**

Planning staff finds that increased protection of these sources requires an amendment to the Lee Plan to maintain compliance with Lee County Resolution 95-12-02. Resolution 95-12-02 states that:

*“The Criteria used by the Coastal Advisory Council reviewing proposed projects will be consistent with the Lee County Comprehensive Plan and Land Development Code.”*

Lee Plan Policy 113.3.1 provides review criteria to the Division of Natural Resources and the Coastal Advisory Council to review proposed beach projects. Policy 113.3.1, Paragraph #3 requires that Division of Natural Resources “*collect information on available sources of beach-quality sand*” for renourishment projects, but the Policy currently does not provide for the protection of sand sources. The proposed amendment would permit the Division of Natural Resources and the Coastal Advisory Council to identify and protect sand sources for anticipated beach renourishment projects. The proposed amendment will also provide the opportunity for Lee County, through the Division of Natural Resources and the Coastal Advisory Council, to provide comments to the U.S. Army Corps of Engineers and Florida Department of Environmental Protection regarding use of, or impacts to, offshore beach-quality sand sources.

## **CONSISTENCY WITH FLORIDA STATE STATUTES**

The proposed amendment is consistent with Chapter 161: Beach and Shore Preservation of the Florida Statutes. The amendment will add two provisions to Policy 113.3.1 of the Lee Plan. One requires coordination with local, state, and federal governments on potential impacts to beach-quality sand sources. The other provision of the proposed amendment includes the ability to protect beach-quality sand sources for local renourishment projects.

Florida Statutes section 161.33 states that the county:

*“...may enter into cooperative agreements and otherwise cooperate with, and meet the requirements and conditions of, federal, state and other local governments and political entities, or any agencies or representative thereof, for the purpose of improving, furthering and expediting the beach and shore preservation program.”*

The proposed amendment to Policy 113.3.1 of the Lee Plan will add a new paragraph 4, which states that “*Lee County will provide comments to the U.S. Army Corps of Engineers and the Florida Department of Environmental Protection (or successor) regarding use of identified off-shore beach-quality sand sources.*” This addition is consistent with section 161.33 of the Florida Statutes.

Florida Statutes section 161.34 requires that the county:

*“...shall establish working liaison with each municipality and other agencies and groups involved in beach and shore preservation within the county.”*

The proposed amendments to Policy 113.3.1, paragraph 3, provide for coordination with governmental and private entities to identify sources of beach-quality sand for renourishment projects. This is consistent with section 161.34 of the Florida Statutes.

The Florida Statutes also infers that Florida counties, through their board of county commissioners should protect beach-quality sand sources. Florida Statutes section 161.088 states that beach restoration and nourishment projects are “governmental responsibilities” and that the government should assure these projects “cost-effectively provide beach-quality material for adjacent critically eroded beaches.” Florida Statutes section 161.25 states that the board of county commissioners carries out the beach and shore preservation program.

The proposed amendment to Policy 113.3.1 of the Lee Plan will help to assure that “beach-quality material” will be available to renourish adjacent beaches as needed. Additionally, protection of local sources of beach-quality materials is consistent with providing cost effective restoration and nourishment projects. Protection of local beach-quality sand sources is consistent with Sections 161.088 and 161.25 of the Florida Statutes.

## **B. STAFF RECOMMENDATION**

County staff recommends that the Board of County Commissioners transmit the proposed amendments to Policy 113.3.1 to enhance the protection of beach-quality sand sources and to increase coordination efforts with federal, state, and local entities.

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

DATE OF PUBLIC HEARING: March 28<sup>th</sup>, 2011

**A. LOCAL PLANNING AGENCY REVIEW**

Staff provided a brief presentation to discuss the proposed Lee Plan amendment. One member of the LPA asked for clarification as to the location of the sand sources. Natural Resources staff responded that the sand sources were about three miles from Lee County shores in state and federal waters, which is why the coordination aspect of the amendment is important. One member of the LPA sought clarification that amendment would not preclude locating of potential underwater infrastructure such as transmission lines, staff clarified that the amendment would give Lee County a voice to help determine the appropriate path of the planned infrastructure so that our future use of local sand sources would not be impacted, but that the amendment would not preclude potential underwater infrastructure adjacent to Lee County coasts.

No members of the public appeared to address the LPA concerning the proposed amendment.

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

**1. RECOMMENDATION:**

The LPA recommends that the Lee County Board of County Commissioners *transmit* the proposed amendment.

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

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

**C. VOTE:**

|                               |               |
|-------------------------------|---------------|
| <b>NOEL ANDRESS</b>           | <b>AYE</b>    |
| <b>CINDY BUTLER</b>           | <b>AYE</b>    |
| <b>JIM GREEN</b>              | <b>AYE</b>    |
| <b>MITCH HUTCHCRAFT</b>       | <b>AYE</b>    |
| <b>RONALD INGE</b>            | <b>AYE</b>    |
| <b>JACK MEEKER</b>            | <b>AYE</b>    |
| <b>CAROL E. NEWCOMB-JONES</b> | <b>ABSENT</b> |

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

DATE OF TRANSMITTAL HEARING: June 13<sup>th</sup>, 2011

**A. BOARD REVIEW:**

The proposed amendment was heard as part of the consent agenda. The Board of Commissioners provided no comment concerning the amendment. No member of the public appeared or provided comment concerning the proposed amendment.

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

**1. BOARD ACTION:**

The Board voted to *transmit* the proposed amendment as part of the Consent Agenda.

**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:**

|                      |            |
|----------------------|------------|
| <b>BRIAN BIGELOW</b> | <u>AYE</u> |
| <b>TAMMARA HALL</b>  | <u>AYE</u> |
| <b>RAY JUDAH</b>     | <u>AYE</u> |
| <b>FRANK MANN</b>    | <u>AYE</u> |
| <b>JOHN MANNING</b>  | <u>AYE</u> |

**PART V – REVIEWING AGENCIES’ OBJECTIONS,  
RECOMMENDATIONS, AND COMMENTS**

DATE OF DCA COMMENTS: July 29<sup>th</sup>, 2011

**A. COMMENTS FROM REVIEWING AGENCIES:**

No reviewing agency provided comments concerning the proposed amendment that need to be addressed.

**B. STAFF RECOMMENDATION:**

Staff recommends that the Board of County Commissioners adopt the proposed amendment as transmitted.

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

DATE OF ADOPTION HEARING: September 28<sup>th</sup>, 2011

**A. BOARD REVIEW:**

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

**1. BOARD ACTION:**

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

**C. VOTE:**

|                      |       |
|----------------------|-------|
| <b>BRIAN BIGELOW</b> | _____ |
| <b>TAMMARA HALL</b>  | _____ |
| <b>RAY JUDAH</b>     | _____ |
| <b>FRANK MANN</b>    | _____ |
| <b>JOHN MANNING</b>  | _____ |