

**MATTHEW D. UHLE**  
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MATTHEWUHLE@AOL.COM

RECEIVED  
APR 21 2011

COMMUNITY DEVELOPMENT

April 19, 2011

Sandy Stilwell, Chairwoman  
Captiva Community Panel  
P.O. Box 72  
Captiva, FL 33924

Re: Workshop

Dear Ms. Stilwell:

Thank you for your letter of April 13. The workshop described in the letter should provide an excellent opportunity for all Captivans to obtain a better understanding of the practical implications of the Panel's height proposal. As a result, the CCA will encourage its members to attend and to participate in whatever manner they see fit. However, no individual member of the CCA will have the authority to bind the organization at the workshop, and if my client decides to reconsider its position on the height limit in light of the information provided by the staff, it will do so at a later date in accordance with the procedures set out in its governing documents.

The meeting has been called on extremely short notice, and was scheduled without consulting the CCA or its members. As a result, we cannot guarantee that a large number of CCA members will be able to attend.

From my review of the CD of the Panel's April 12 meeting, it appears that some Panel members believe that the CCA, and its individual members, can somehow be barred from effectively participating in the public review of the Panel's Lee Plan and LDC amendments unless they speak at the workshop. Please be advised that my clients have a right under the First Amendment and Florida law to contact their public representatives, County staff, and other Captivans without any preconditions set by the Panel, and that they will continue to exercise those rights regardless of the opinions of the Panel.

I will not be attending the workshop, largely because, based on the tenor of the discussion at the April 12 meeting, I have no confidence that some Panel members will treat me or the CCA with any degree of respect and civility. I am, however, attaching my written comments on the May 17, 2010 draft, which is the last version of the LDC amendment that has been provided to me.

These comments are consistent with the CCA's previous written opinions on the questions raised in the survey. If a new draft is generated between the present date and the workshop, it should be circulated for further public review and comment a reasonable time prior to any final action by the Panel.

Sincerely,

A handwritten signature in black ink that reads "Matt Uhle". The signature is written in a cursive, slightly slanted style.

Matthew D. Uhle

Cc: Paul Garvey  
Matt Noble

To: Captiva Community Panel  
From: Matt Uhle  
Date: April 19, 2011  
Re: Draft LDC Amendments

The following is a list of my concerns with the May 17, 2010 draft of the LDC amendments. It does not address the height limits, which are covered in the attached March 28 letter to Matt Noble. I also support most of the comments made by the staff on December 27, 2010; references to them are largely omitted from this memo:

1. Section 33-511: I agree with the staff's position on the removal of subsection (B). The regulation should be written to be clear without adding this statement of intent.
2. Section 33-512: Technically, the section also applies to uses and activities which are not "development," as that term is defined in the LDC.
3. Section 33-513: This section is not completely accurate. To the extent that the Captiva regulations encompass issues that are not covered by the Administrative Interpretation (e.g., signage), they should govern activity at SSP.
4. Section 33-522(A): This language is premature in light of evolving positions at the state and county levels. In addition, to tie the inspection requirement to conveyances in the LDC is inconsistent with Florida case law limiting local government authority in this field, does not provide buyers and sellers with adequate notice of the requirement (does the average buyer or seller read the LDC?), will require local resources for enforcement which may well not exist, and creates legal obligations without an obvious remedy.
5. Section 33-531: The zoning district does not belong in Chapter 33, as noted by the staff. My client has previously noted its opposition to any liberalization of the rental rules.
6. Section 33-532: See attached letter to Matt Noble.
7. Signage sections, in general: The existing Captiva sign ordinance is obsolete; however, most of the problems with Captiva signage revolve around enforcement, not the regulations themselves. If the Panel wants to make changes to fix the regulations, it would make more sense to start with the general sign ordinance, and then to make minor changes to address items that are specific to Captiva (e.g., identification signs), then to do what is being proposed here. For example, the general sign ordinance prohibits roof signs, but the Captiva ordinance permits them. The amendment itself says that the more restrictive provision control. What is the point of that?
8. Section 33-559: If "the effective date of this ordinance" is the date of adoption of the new Chapter 33 regulations, then all illegal signs that are not specifically listed as "prohibited signs" become nonconforming and can remain, which is not appropriate.

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March 28, 2011

Mr. Matt Noble  
Lee County Division of Planning  
P.O. Box 398  
Fort Myers, FL 33901

Re: County Review of Captiva Height Policy

Dear Matt:

My client, the Captiva Civic Association, opposes any amendments to the Captiva height policy, for the following reasons:

1. There is no community consensus supporting the amendment. Even assuming, for purposes of argument, that the survey methodology employed by the panel was appropriate (which it was not, as one panel member reportedly voted nine times, and another six times), the results indicated that roughly half of the respondents supported maintaining the status quo.
2. The current version of the height policy was included in the Captiva Plan in 2003 in response to overwhelming support from the community, as shown in the data and analysis supporting that amendment. Nothing has happened in the interim that would justify such a dramatic revision to the policy.
3. The panel's ostensible rationale for the amendment is the need for owners with houses built prior to the current height restriction to build back at that height after a natural disaster. It should be noted that there were no known problems with buildback after Hurricane Charley, and that waivers to setback requirements are available under the Post-Disaster Ordinance to permit buildback to the existing square footage. However, to the extent this issue is perceived to be legitimate, it can be addressed through an amendment to the Post-Disaster Ordinance to authorize exceptions to the height restrictions in the event that setback relief does not guarantee buildback to the existing square footage.
4. The panel is currently exploring the possibility of exempting the Village area, whose precise geographic boundaries have not yet been defined, from the new standard. Given the small size of Captiva Island, the CCA does not believe it is necessary or appropriate to create multiple height requirements in the Lee Plan.

5. The current version of the height policy is consistent with the method of limiting heights on other County islands, including Pine Island. The proposed language is less so, and will permit significantly taller buildings on some parts of Captiva, which is inconsistent with the character of the community.

Sincerely,

A handwritten signature in black ink that reads "Matt Uhle". The signature is written in a cursive, slightly slanted style.

Matthew D. Uhle

Cc: Paul Garvey

The Captiva Community Panel was formed in 2002 as a way to bring land use and zoning decisions affecting the island to a community forum for open and honest discussion and debate, rather than having island issues decided by a small minority of voices downtown. It has also evolved into a forum for community issues on a larger scale, allowing a place for people to ask questions and get answers from county officials and staff as well as other island residents and business owners.

As a follow-up to the March 31 meeting between Max Forgey and county staff members, there's some clarifications and some questions I'd like to address.

- **Clarification: The Captiva Civic Association does have representation on the Captiva Community Panel.**

As part of the original 2002 agreement that created the panel, the Board of County Commissioners included (at the public hearing, in response to CCA complaints) two new seats on the panel to be appointed by the CCA in addition to the original five seats proposed in the agreement. (Subsequently, the panel created three additional seats to be appointed by the panel itself to bring it to the current 10-member size.) The CCA has named a number of representatives to those seats since that time; the current occupants are Gordon Hullar and Mike Kelly, who has been the lead panel member in this Land Development Code effort over the past 3-4 years. (Note: While the CCA has two seats it can appoint on the panel, it has never supported panel operations financially, in any board votes or in its communications to its members over the years.)

- **Clarification: The CCA was able to express its opinion repeatedly during the LDC drafting process.**

The CCA and its representatives were consistently invited (or at least notified) to attend the numerous (26 and counting since starting the process of hiring a professional planner, which the CCA representatives endorsed at the time; see attached list) public meetings and workshops so far. The organization has specifically been solicited to be part of the discussion in the community so that its concerns could be aired, discussed and hopefully resolved before drafts were submitted for county approval. The CCA has been clearly aware of the two surveys conducted so far -- one islandwide and one for the Village area only -- and for both surveys the CCA solicited its member to answer in a very specific way to the questions being posed (see attached letters/emails from the organization).

If the CCA chose not to share its views during the community discussions, it was not for lack of invitation; however, their aggressive messages to their membership indicates they had full knowledge of the LDC draft discussions and chose not to participate in the public discussions. When the community surveys did not turn out the way the organization's leaders had urged, they have now decided to bypass the community participation portion of this process and go straight to county staff to make their case -- thus seeking to supersede months of work by people in the community to bring the community to a point of agreement on some very complex issues. This seems contrary to the community planning process both in the ideal and as promoted by the county in the past.

- **Question: What input from the CCA and its members has been received by the county?**

At the March 31 meeting, mention was made of input from the CCA opposing the proposed height standards. Since the panel's process of drafting this language and addressing community concerns has been open and transparent, it seems certain panel members will want to know what level of CCA input has been received by the county since it has occurred outside of public forums and workshops. If not specific contacts, can the panel be given a sense if this CCA input is only from paid staff and consultants, a small group of persistent protestors or a larger group that might claim to have a substantial stake in this issue? The CCA is prone to claim support of its membership, but to our knowledge it has never asked its members to make any indication of that support in a way that can be documented...say, such as a survey, a series of public meetings or workshops, etc.

- **Question: If the panel is going to be tasked with proving that consensus exists, what definition is the county using of the term?**

If "consensus" can be a majority as documented using some generally recognized method of assessing community opinion (such as a survey), is that sufficient in the eyes of county staff? Does that need to be a majority, a super-majority, a specific percentage using a specific methodology, or near-unanimous assent. Each of those thresholds offers a different obstacle and, if the panel is going to be held to a standard, it might be useful to know what it is going in.

Clearly, the panel has been working on the majority-rule approach, much as the county commission that formed it does. However, if a small minority of persistent protestors can thwart a simple majority in the eyes of county staff, then a clearer standard is in order for all concerned so the panel (and other similar groups) understand what level of "consensus" is actually expected of them before they embark on any new efforts.

The panel appreciates county staff's concern over bringing issues that have been fully vetted in the community before the Board of County Commissioners. However, the panel hopes that staff likewise appreciates that, when the panel has gone above and beyond the norm to solicit opinion, inform residents and seek meaningful discussion to bring the community closer to consensus, having those extensive and expensive efforts undone by a few dissenting voices subverting the community planning process is frustrating and counter to the openness vital to the community planning effort.

-- Ken Gooderham, administrator  
Captiva Community Panel

## ***Captiva Panel LDC meeting chronology***

The Captiva Community Panel had worked on a draft of a Captiva Land Development Code for at least two years leading up to June 2009, developing working language on a variety of topics stretching over seven drafts. The panel then applied to Lee County for a Community Planning Grant (#5117) to continue its planning efforts toward a completed LDC draft submittal by the end of 2010. This following is a summary of the efforts put forth under and subsequent to this grant, which also lead up to the Lee Plan Amendment now submitted for county review and approval.

**June 2009:** Draft 7 of proposed Land Development Code finalized, panel decides to issue RFP for planner to address four areas of concern: Height restrictions, RSC-2 zoning, mangrove protection, signs.

**July 2009:** Proposals from five planners reviewed by the panel at its public meeting.

**August 2009:** Planner hired (Morris-Depew Associates Inc.) based on recommendation from a panel subcommittee.

**September 2009:** Grant application with Lee County initiated, planner reviews current LDC draft.

**October 2009:** Planner presents Draft 9, sets workshop review schedule at Oct. 13 panel meeting; workshop on mangroves and water quality held Oct. 27.

**November 2009:** Workshop discussions reviewed at Nov. 11 panel meeting.

**December 2009:** Workshop on height restrictions held on Dec. 1. Discussions reviewed at the Dec. 8 panel meeting, RSC-2 zoning options discussed.

**January 2010:** Workshop on height restrictions and RSC-2 zoning issues held Jan. 7. Discussions reviewed at the Jan. 12 panel meeting. Another workshop on height restrictions and RSC-2 issues held Jan. 28.

**February 2010:** Workshop discussions reviewed at the Feb. 9 panel meeting. Another workshop on height restrictions (with specific requests to planner for illustrations of options) and signs held Feb. 18.

**March 2010:** Discussions reviewed at the March 9 panel meeting. Revisions suggested, reviewed at a special panel meeting March 24. Draft 12E was adopted by the panel as a final staff draft (working draft) of the LDC proposals at the end of the March 24 meeting.

**April 2010:** Discussions reviewed at the April 13 panel meeting, and a decision was made to allow electronic surveying of the community on the proposed LDC draft. A special meeting on the proposed rental restrictions was held April 27, where the islandwide restrictions were deleted from the working draft and additional research was requested.

**May 2010:** Research was reviewed at the May 11 panel meeting, where the RSC-2 specific restrictions were deleted from the working draft and the final proposed LDC draft was accepted. A survey committee was formed to refine the staff draft of survey questions and report back to the panel to devise a final survey draft.



**June 2010:** The idea of an online community survey was discussed, and necessary bylaw changes were advanced to make this possible.

**July 2010:** A draft of the proposed survey (including structure and graphics) was developed and approved by the panel.

**August 2010:** The final version of the survey was approved at a public meeting. All registered voters and property owners were notified by postcard in on Aug. 20 and Sept. 1, with additional information provided in the local weekly newspaper and to an islandwide email message send to a maintained list twice. A Sept. 30 deadline was established, with a report to the panel at a public meeting in October.

**September 2010:** A retainer with Max Forgey/Forgey Planning Services is approved to allow Forgey to continue his role as the panel's planning consultant begin during his work with Morris-Depew Associates.

**October 2010:** Survey results were extensively discussed at an Oct. 19 public meeting, which was publicly noticed repeated in advance. The panel voted to send the May 2010 LDC draft to county staff for comments while continuing to review and discuss survey results and comments at its November meeting.

**November 2010:** Discussion continued on the LDC draft and survey, with the panel opting to more thoroughly review the language in conjunction with expected county reaction to draft language.

**December 2010:** After further discussion, the panel voted to exempt the Village from the proposed new building height regulations and allow it to stay under the existing uniform-height rules. More input from Village residents was solicited on this and any other LDC issues the Village wanted to address, and panel consultants were instructed to work with residents as requested.

**January 2011:** The panel confirmed its support for a Village exemption to the new building height rules, and a Village workshop was scheduled later in the month to discuss Village boundaries and issues. At that workshop, a definition for the Village was confirmed and the decision was to limit the discussion to building heights at this point and report this discussion back to the panel at its Feb. 8, 2011, public meeting.

**February 2011:** A discussion of the Jan. 20 meeting of Village owners was held, along with further discussion of the height exemption in general. One panel member (also a Village property owner), who was unable to attend this meeting, asked that the Village height exemption issue be out on the March agenda for discussion.

**March 2011:** A number of letters opposing the height exemption as approved by the panel were presented to the panel, and a panel member offered optional language both for defining the Village and how the height exemption would be configured. As the discussion progressed, a consensus was reached by panel members that further soliciting of opinion from Village property owners was crucial to move forward. A mail survey was approved, with the results to be presented and discussed at the April panel meeting. The survey -- a explanatory cover letter and a postage-paid return card -- was mailed March 15 with an April 1 deadline. Additional information on the issue was posted online at the panel's website.

All panel meetings are recorded and have minutes posted on the panel Web site; meetings are advertised in the island's weekly newspaper. All panel workshops are recorded and noticed in the island weekly newspaper. Both events are noticed to an islandwide email list, and materials are posted on the panel Web site in advance when possible ([www.captivacommunitypanel.com](http://www.captivacommunitypanel.com)). All panel events are open to the public and provide opportunities for public comment.

## ***March 23, 2011 CCA email to members***

From: "Captiva Civic Association" <captivacivic@embarqmail.com>

Date: March 23, 2011 5:39:13 PM EDT

To: "Captiva Civic Association Member " <captivacivic@embarqmail.com>

Subject: Urgent: Proposed Height Change to the Captiva Height Policy

Dear Captiva Civic Association Member,

Recently the Captiva Property Owners Association's Planning Panel for Captiva (CPOA Panel) mailed a post card survey to selected Captiva addresses with a brief, and possibly confusing, explanatory flier in an attempt to find out whether the "village area" should be exempted from the CPOA Panel's proposed increased building height changes to the existing code.

The Captiva Civic Association has repeatedly expressed strong opposition to changes to the existing height policy during public meetings of the CPOA Panel and its sub-committees as well as expressing skepticism concerning the merits of these changes. We are also opposed to exempting any portion of the island from overall island height regulations.

Existing maximum building heights on Captiva, similar to other island communities in Lee County, are 35 foot above grade or 42 foot above mean sea level, whichever is less. The CPOA Panel has endorsed much higher building height limits up to 54.5 feet above mean sea level. The Captiva Civic Association believes building height increases are neither necessary nor in the best interests of Captivans.

The CPOA Panel's survey methodology, which shows about a 50-50 split in support or opposition to height increases, is seriously flawed. For example, certain property owners, among them CPOA Panel members, submitted multiple votes. The Captiva Civic Association believes that zoning changes should be proposed only when a compelling need is demonstrated and is supported by a super majority of (one-vote-per-person) voters, typically two-thirds.

The CPOA Panel's argument concerning reconstruction after a catastrophic fire or storm event to a pre-existing non-conforming elevation is worth addressing. However, the place to fix this issue is in a modification of the build back provisions found in the Post-Disaster Ordinance and the Administrative Code, rather than make changes to the existing height policy which has served this island community well for many years. The Captiva Civic Association would support such an effort. CPOA Panel proponents for raising heights offered no examples of build back permit denials to achieve pre-existing building heights damaged in excess of 50% of their replacement values following Hurricane Charley.

We feel that these proposed changes are in effect, special interest legislation proposed by a few for the benefit of a few with the potential for significant detrimental effects to Captiva's living environment and ambiance. Furthermore, dividing the island into areas where increased building heights are permitted on the basis of inputs from a post card survey sent to only a portion of the island's property owners in order to advance a very controversial proposal makes no sense to the Captiva Civic Association. Loosening zoning requirements should not be accomplished without significant greater good for the whole community, not just certain neighborhoods. This entire increased building height proposal should be scrapped.

The Captiva Civic Association Board and Land Use Committee urges members to express their views directly to CPOA Panel members at their next public meeting on April 12th - 9:00 AM at Tween Waters Inn or by emailing the CCA at [CaptivaCivic@embarqmail.com](mailto:CaptivaCivic@embarqmail.com) and we will forward same to the CPOA Panel.

Sincerely,

CCA Board of Governors

CCA Land Use Committee

Captiva Civic Association Online Administrator

[CaptivaCivic@embarqmail.com](mailto:CaptivaCivic@embarqmail.com)



## Captiva Civic Association

August 25, 2010

Dear Captiva Property Owner:

As you may know, the Captiva Island Property Owners Association's community planning panel for Captiva, a self-appointing advisory group to Lee County, has been working over the last 18 months on amendments for submittal to county officials on regulations pertaining to Captiva in the Lee County Land Development Code. You have probably recently received an invitation to participate in an online survey regarding some of their amendments. We would encourage you to review the amendments, including the backup material and to participate in the survey which is available on the panel's website or by using the web link: <http://www.surveymonkey.com/s/CaptivaLDCsurvey>.

Recognizing that the review process for these amendments is still in its early stage and that technical drafting issues may be resolved over time, the long standing Land Use Committee of the Captiva Civic Association (CCA) takes the following conceptual positions with regard to these amendments:

**MANGROVE PROTECTION:** The CCA is in general agreement with the draft mangrove protection language and **supports** this amendment.

**SEPTIC SYSTEMS:** While the CCA supports the objective of protecting water quality through the proper use and regulation of septic tanks, we believe the proposed language requiring sellers of property to provide documentation of an inspection is an inappropriate local development regulation, may create undue burdens on buyers and sellers of property, and will be extremely difficult to enforce, particularly in the period prior to the creation of the state inspection system in 2016. The **CCA does not support** this amendment in its current form.

**ESTATE ZONE RENTALS:** The Lee County Land Development Code currently contains a definition of countywide applicability which prohibits the rental of single-family homes for less than a week. While this regulation has been enforced sporadically, the County has acknowledged that it does exist and does apply to Captiva. The section on estate zone rentals is drafted in a very confusing way, but it appears to be an effort to permit short-term rentals in the RSC-2 zone (majority of parcels south of Tween Waters Inn to Blind Pass). The CCA opposes any attempt to permit either short-term rentals or any rentals of "caretaker residences," both of which will inappropriately increase the intensity of existing and future uses in the RSC-2 district. The **CCA does not support** this amendment.

**HEIGHT RESTRICTITONS:** The CCA believes that the current height restrictions in the LDC and the Lee Plan have improved the quality of life on Captiva and that the proposal to substantially loosen these restrictions by tying building heights to flood elevations has not been adequately justified. The **CCA does not support** this amendment.

**SIGNS:** The CCA believes the principal problem with the sign regulations is with enforcement--not the regulations themselves. We object to language which, intentionally or not, appears to have the effect of grandfathering signs which do not comply with the current regulations, but which are not specifically listed as "prohibited" signs. We also have questions about the "Maintenance of nonconforming signs" section. While the sign section is complicated, and cannot be adequately addressed in a short communication, our general position is that this section should be deleted from the amendment package and subjected to further review and drafting. The **CCA does not support** this amendment in its current form.

Thank you for taking the time and interest to participate in the panel's land use survey. If you have any questions regarding any of these proposed land use and code changes, please do not hesitate to contact the CCA office at (239) 472-2111 or email us at [CaptivaCivic@embarqmail.com](mailto:CaptivaCivic@embarqmail.com).

Sincerely,

Jeff Morgan  
CCA President

Bill Riley  
CCA Land Use Committee Chairman



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August 25, 2010

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Thank you for taking the time and interest to participate in this land use survey. If you have any questions regarding these proposed land use changes, please do not hesitate to contact the CCA office at (239) 472-2111 or [CaptivaCivic@embarqmail.com](mailto:CaptivaCivic@embarqmail.com).

Sincerely,

Jeff Morgan  
CCA President

Bill Riley  
CCA Land Use Committee Chairman



Captiva Island

# Building Heights

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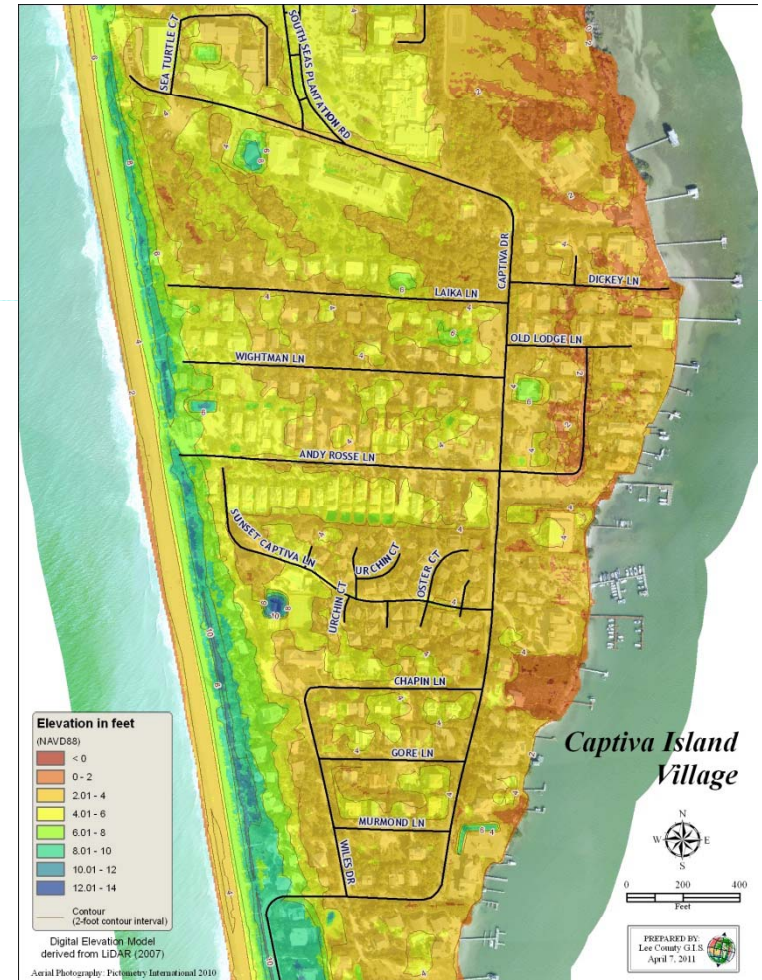
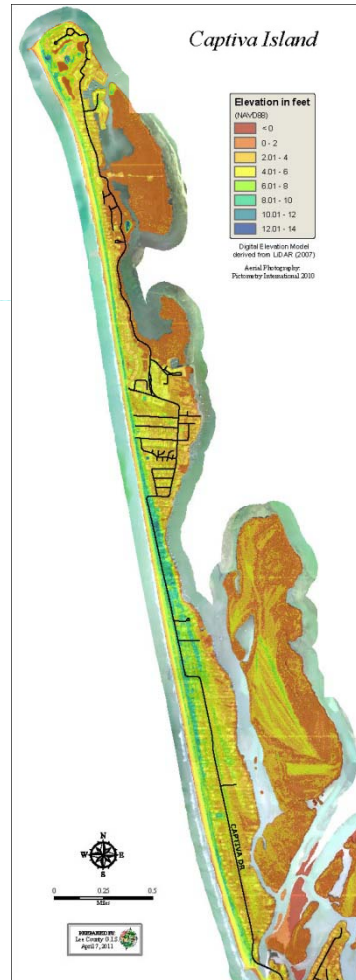




# Height Regulations on Captiva Island

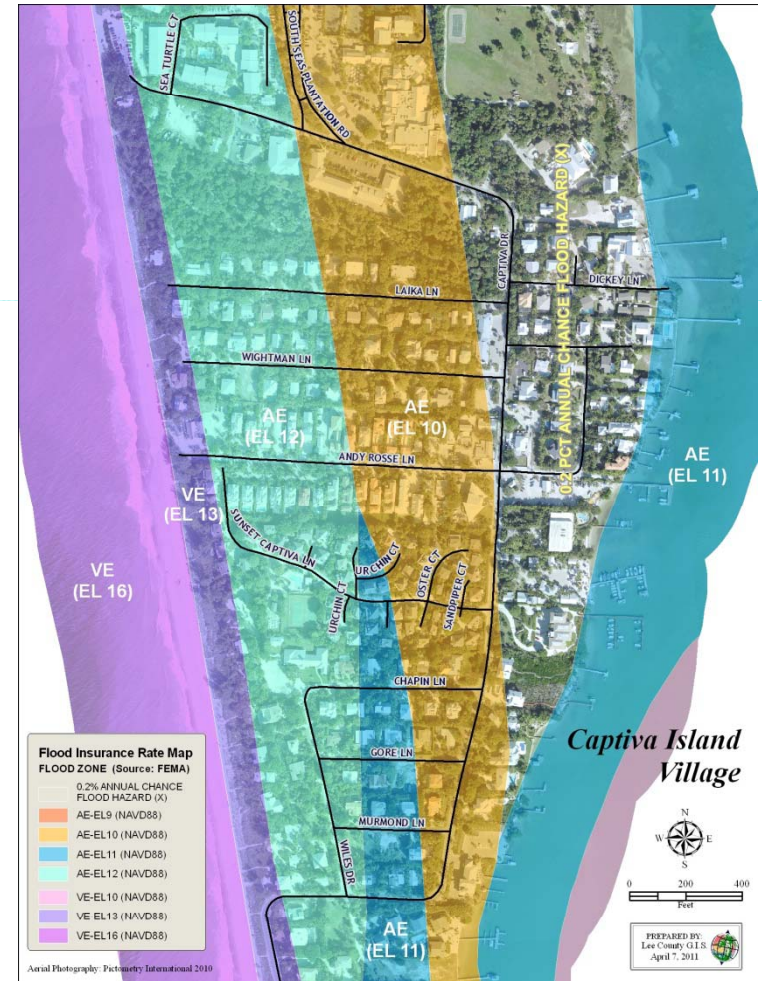
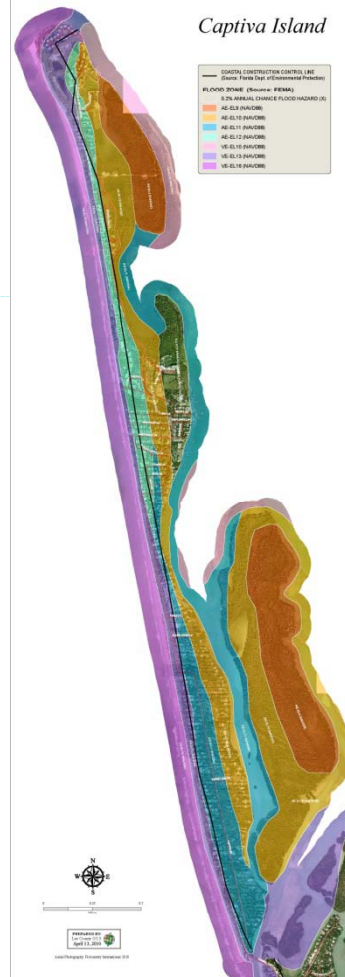
- Current:
  - **Policy 13.1.2:** No building or structure may be erected or altered so that the peak of the roof exceeds 35 feet above the average grade of the lot in question or 42 feet above mean sea level, whichever is lower.
- Proposed:
  - **Policy 13.1.2:** No building or structure may be erected or altered so that the peak of the roof, or the mean height level between eaves and ridge in the case of gable, hip and gambrel roofs, exceeds 28 feet above the lowest horizontal member at or above the lawful base flood elevation. In those areas of the island as specified in the Land Development Code only, no building or structure may be erected or altered so that the peak of the roof exceeds 35 feet above the average grade of the lot in question or 42 feet above mean sea level, whichever is lower.

# Captiva 2007 LiDAR Elevations:

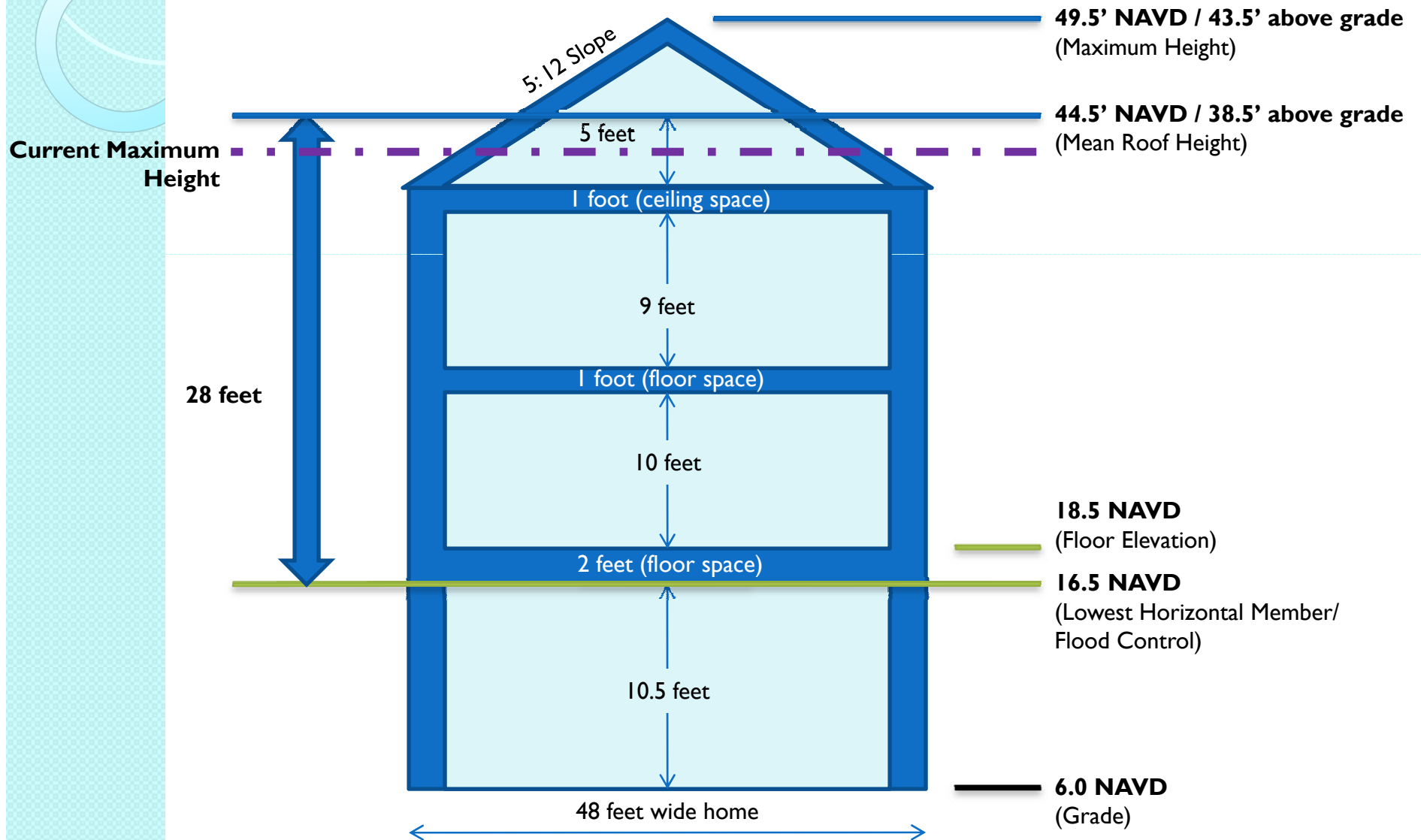




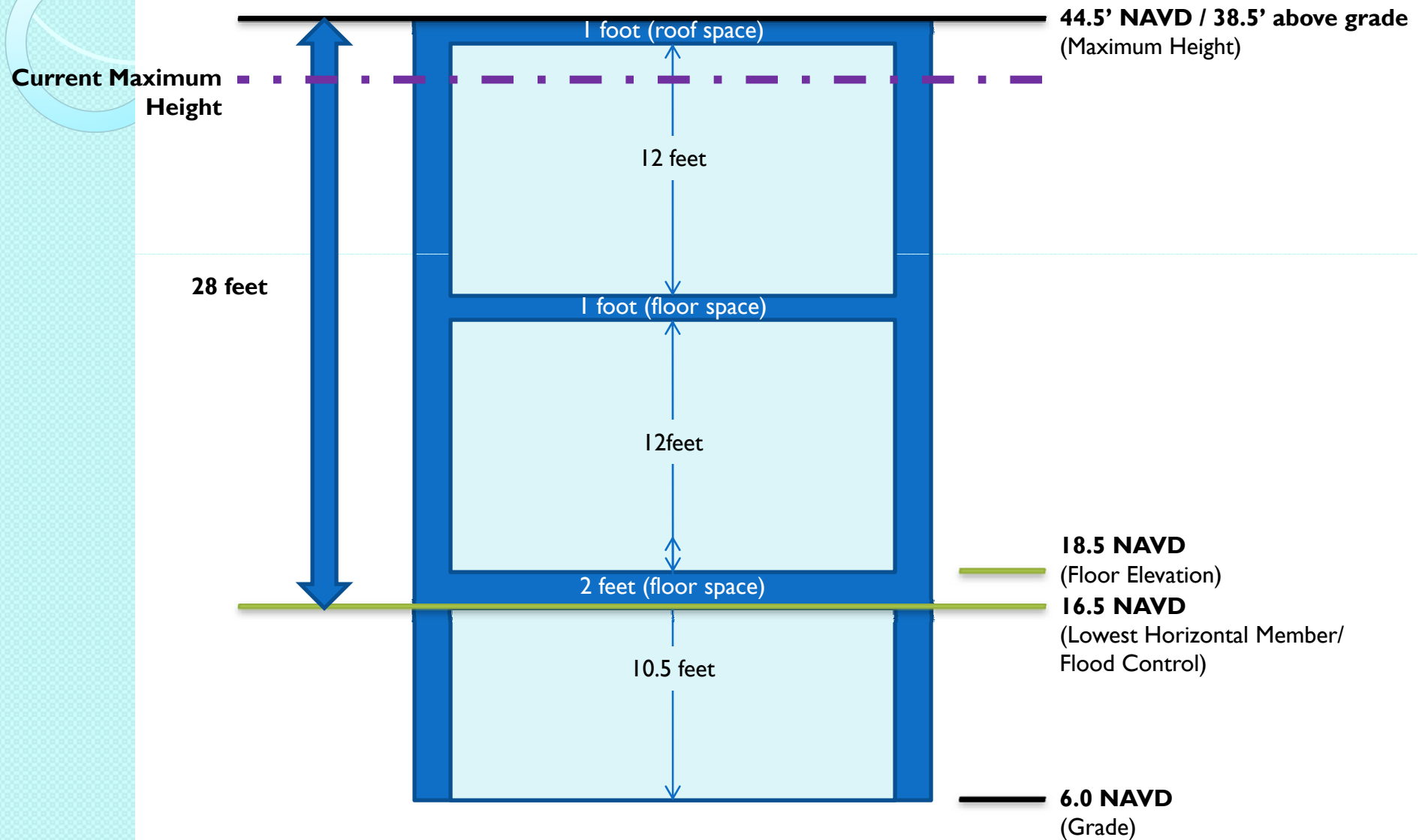
# Captiva FEMA Flood Zones:



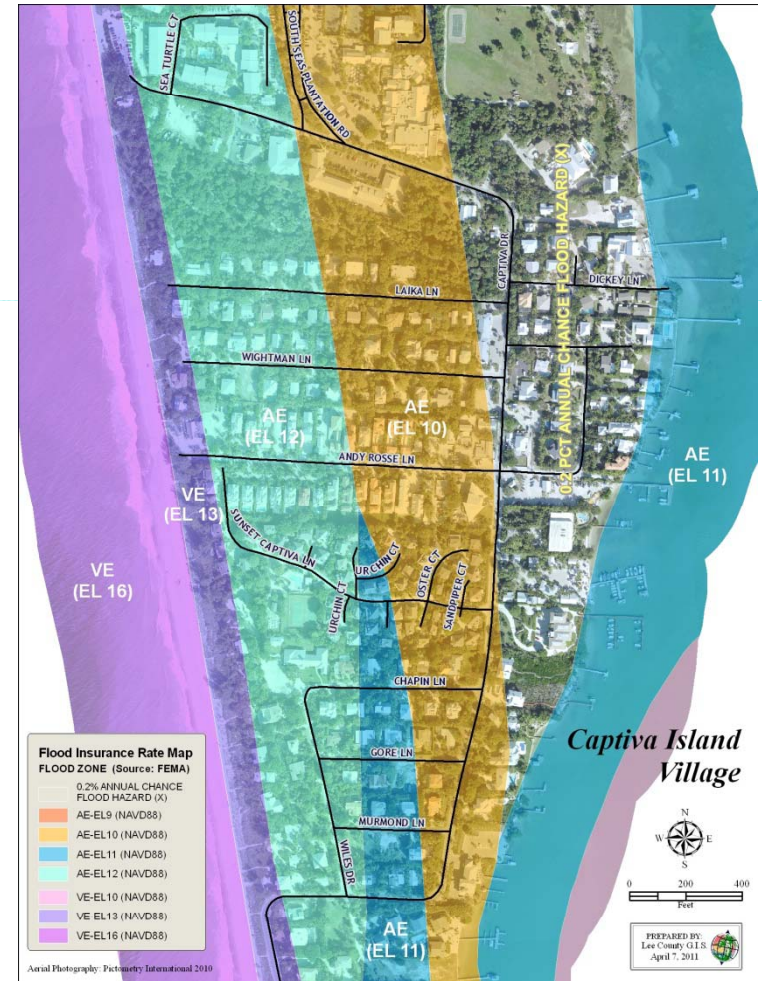
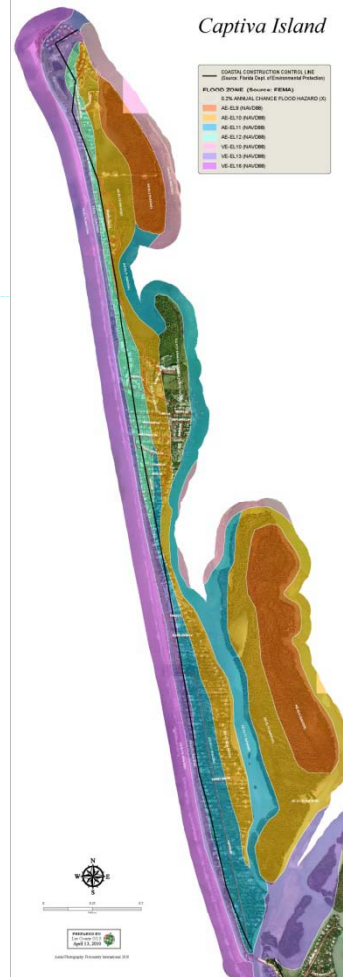
# VEI3 Zone (16.5' required elevation)



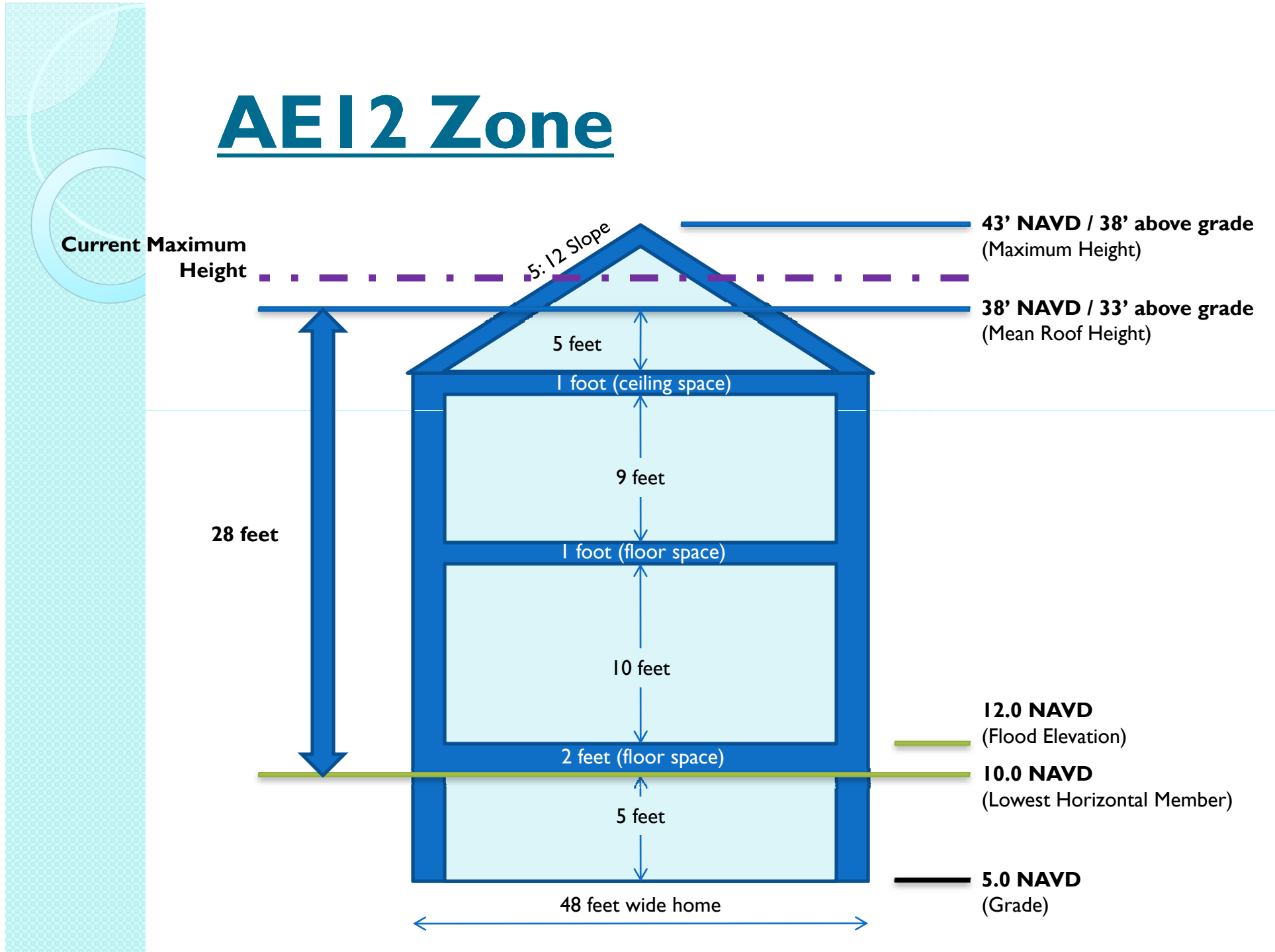
# VEI3 Zone (16.5' required elevation)



# Captiva FEMA Flood Zones:



# AEI2 Zone





# AEI2 Zone

**Current Maximum Height**

**40' NAVD / 35' above grade**  
(Maximum Height)

1 foot (roof space)

10 feet

1 foot (floor space)

11 feet

2 feet (floor space)

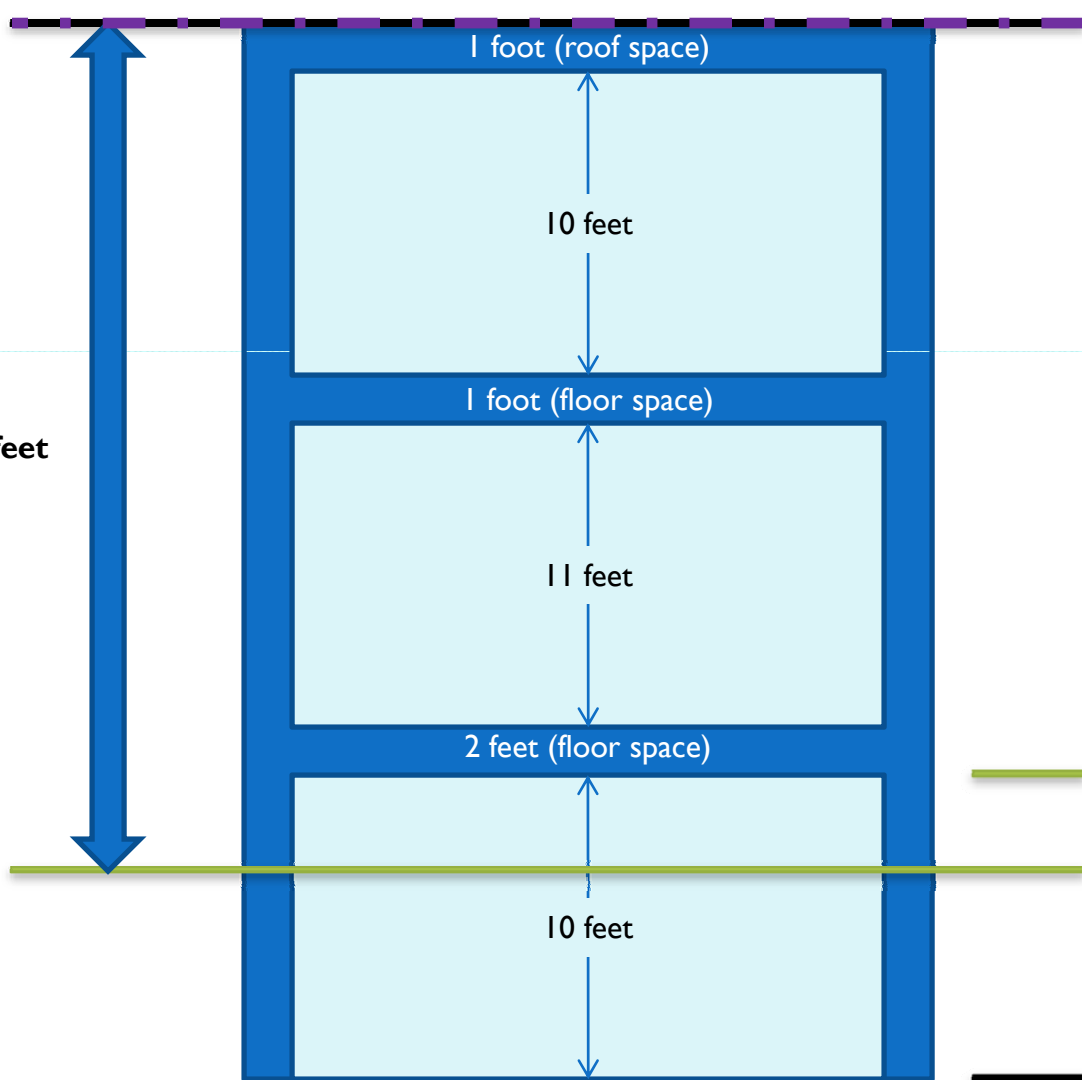
10 feet

**28 feet**

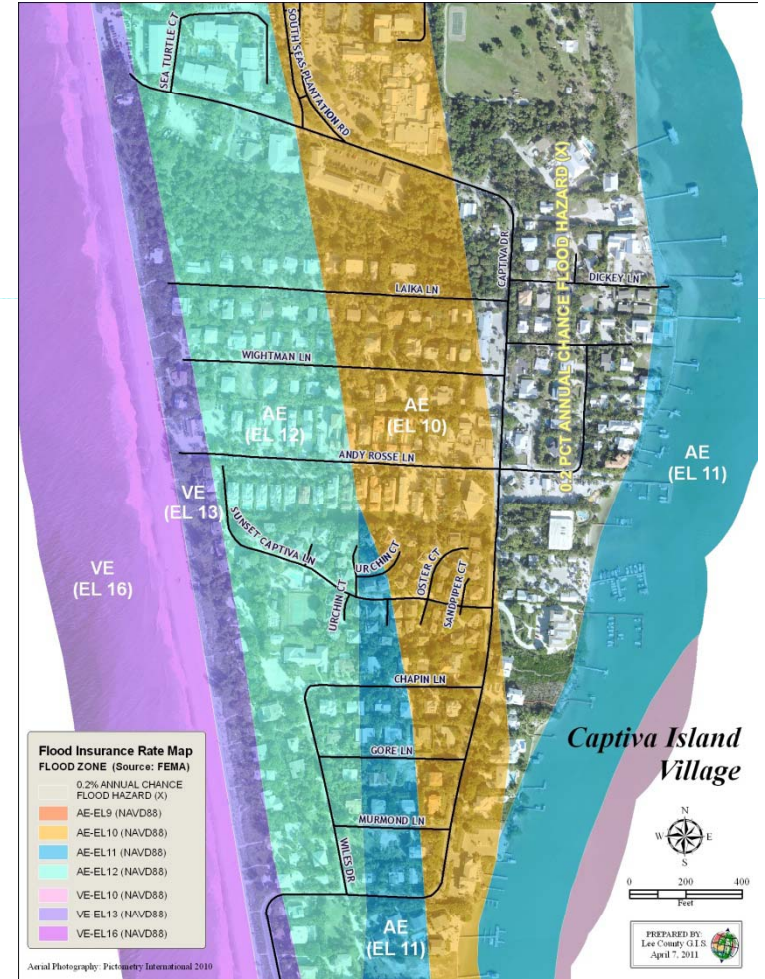
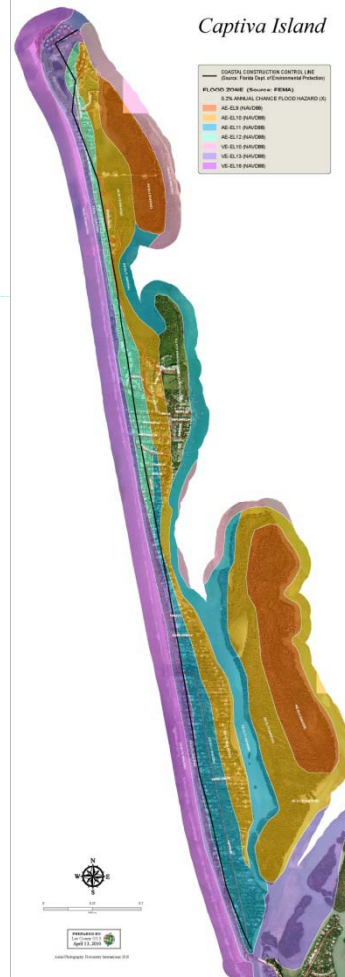
**15.0 NAVD**  
(Lowest Horizontal Member)

**12.0 NAVD**  
(Flood Elevation)

**5.0 NAVD**  
(Grade)

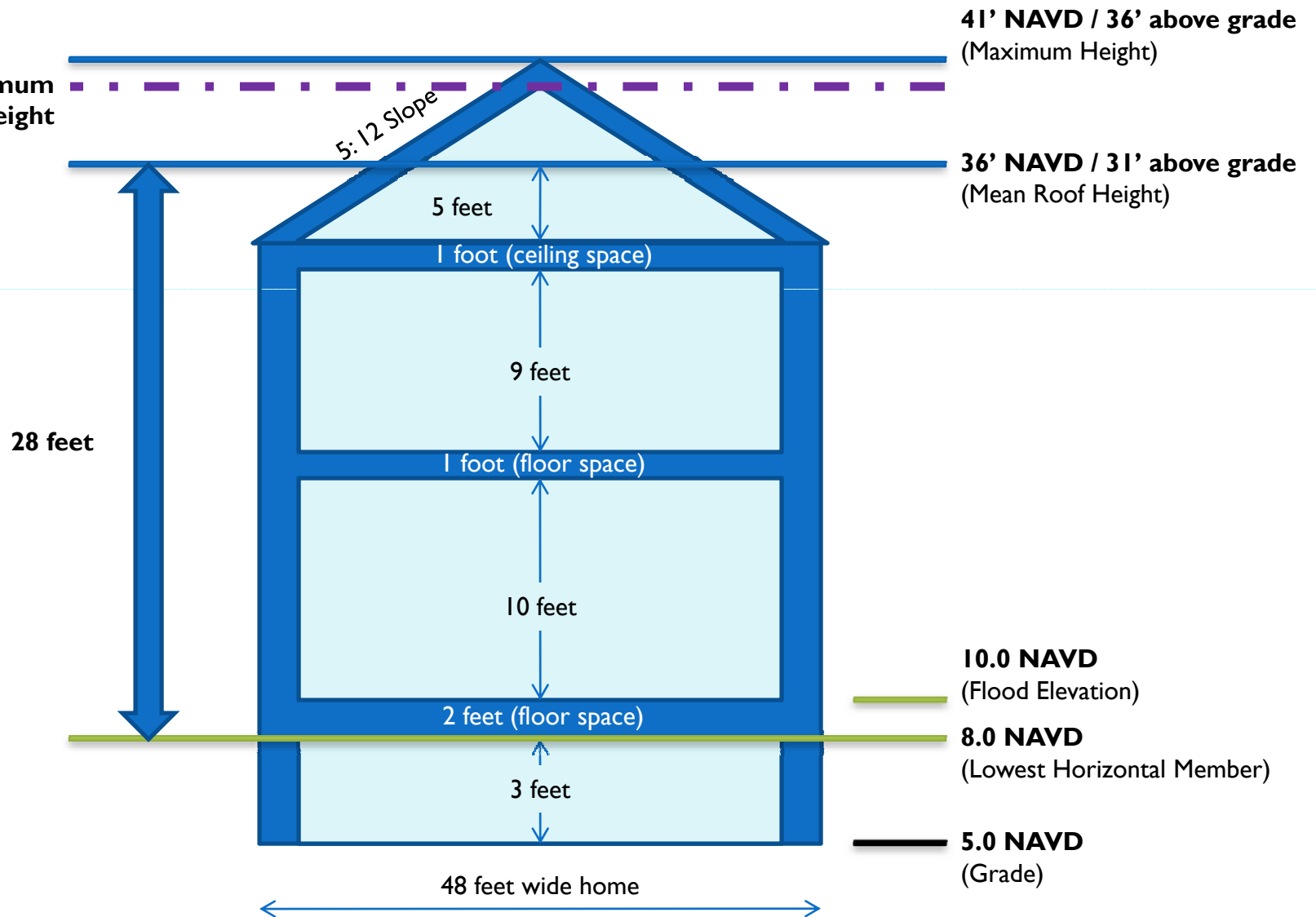


# Captiva FEMA Flood Zones:



# AEI0 Zone

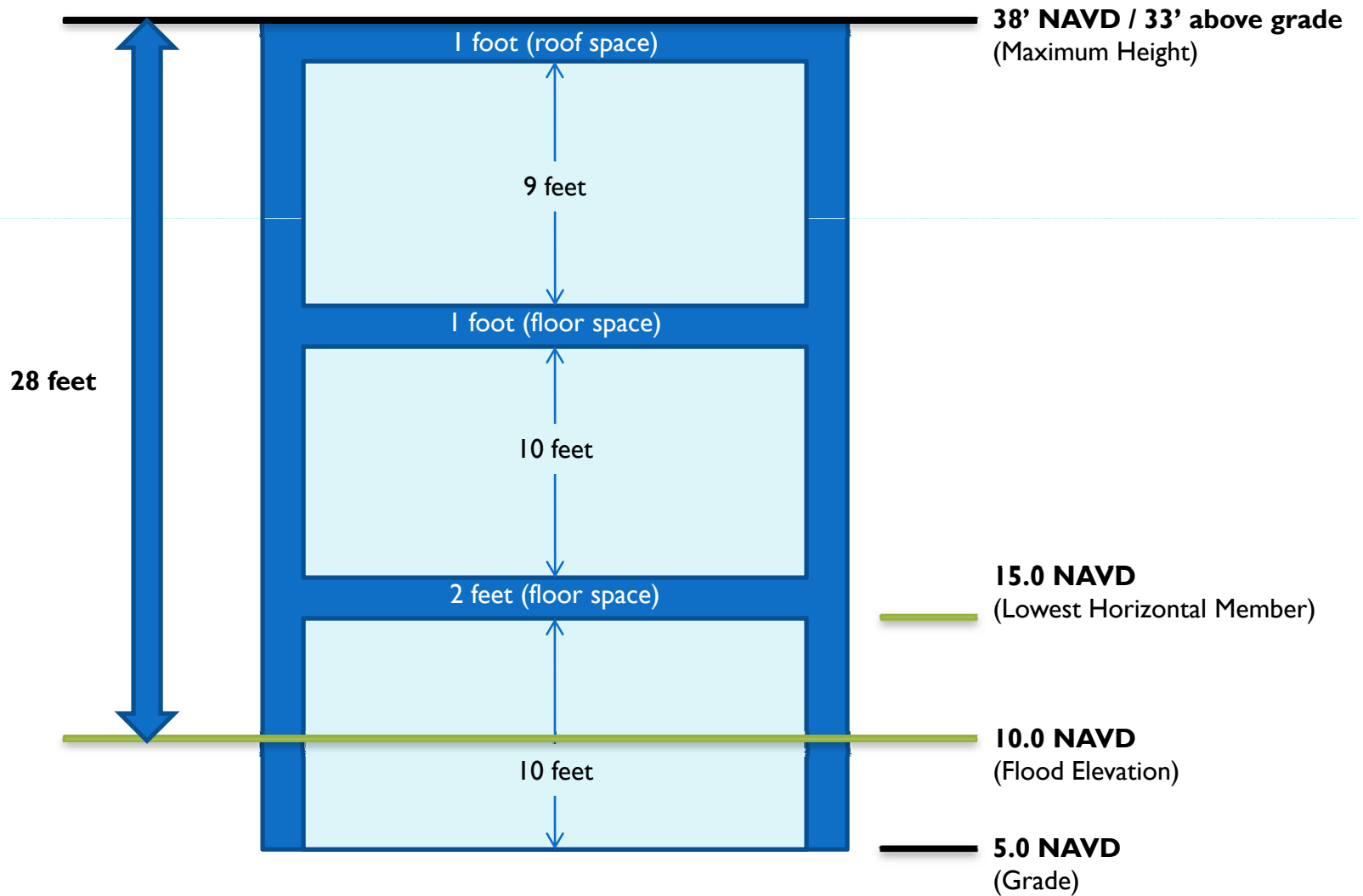
Current Maximum Height



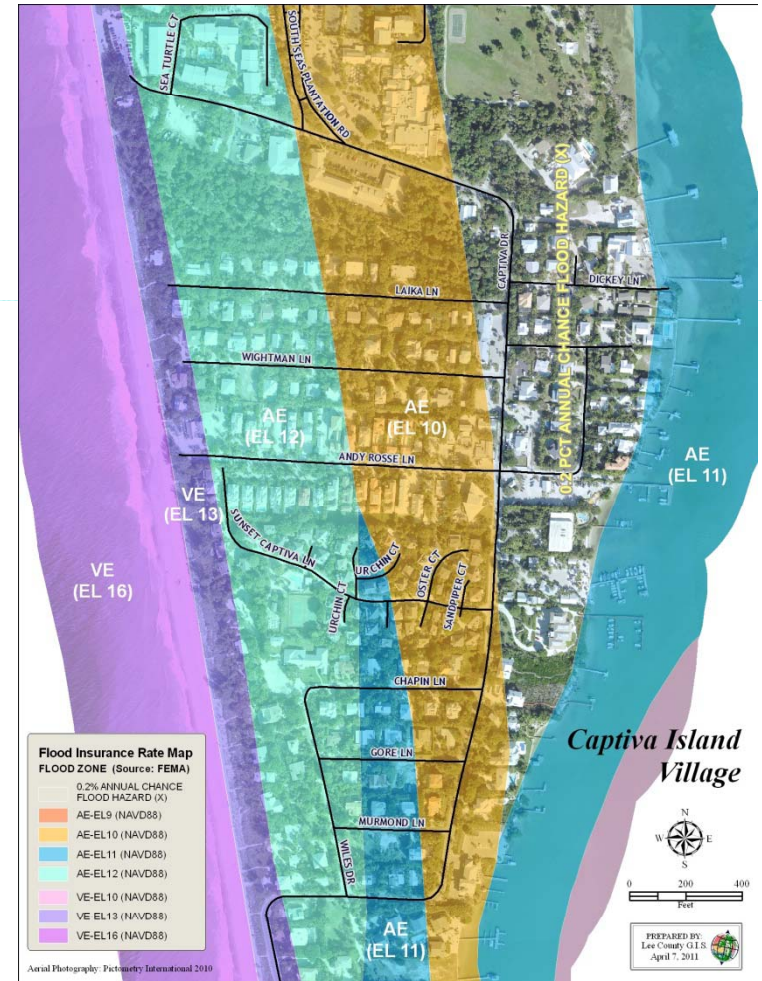
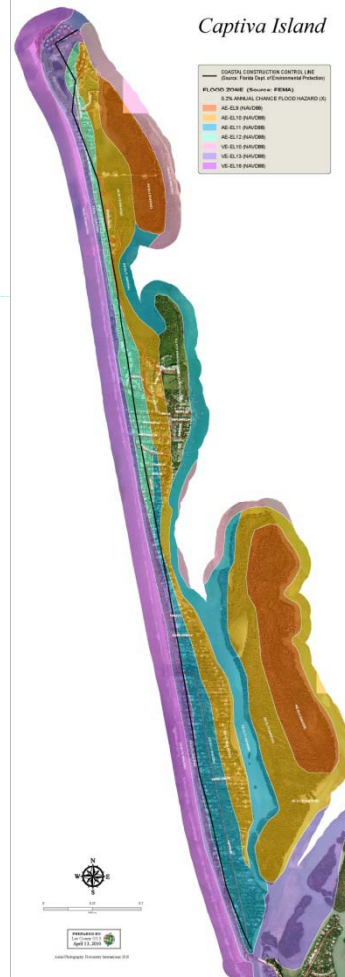


# AEI0 Zone

Current Maximum Height



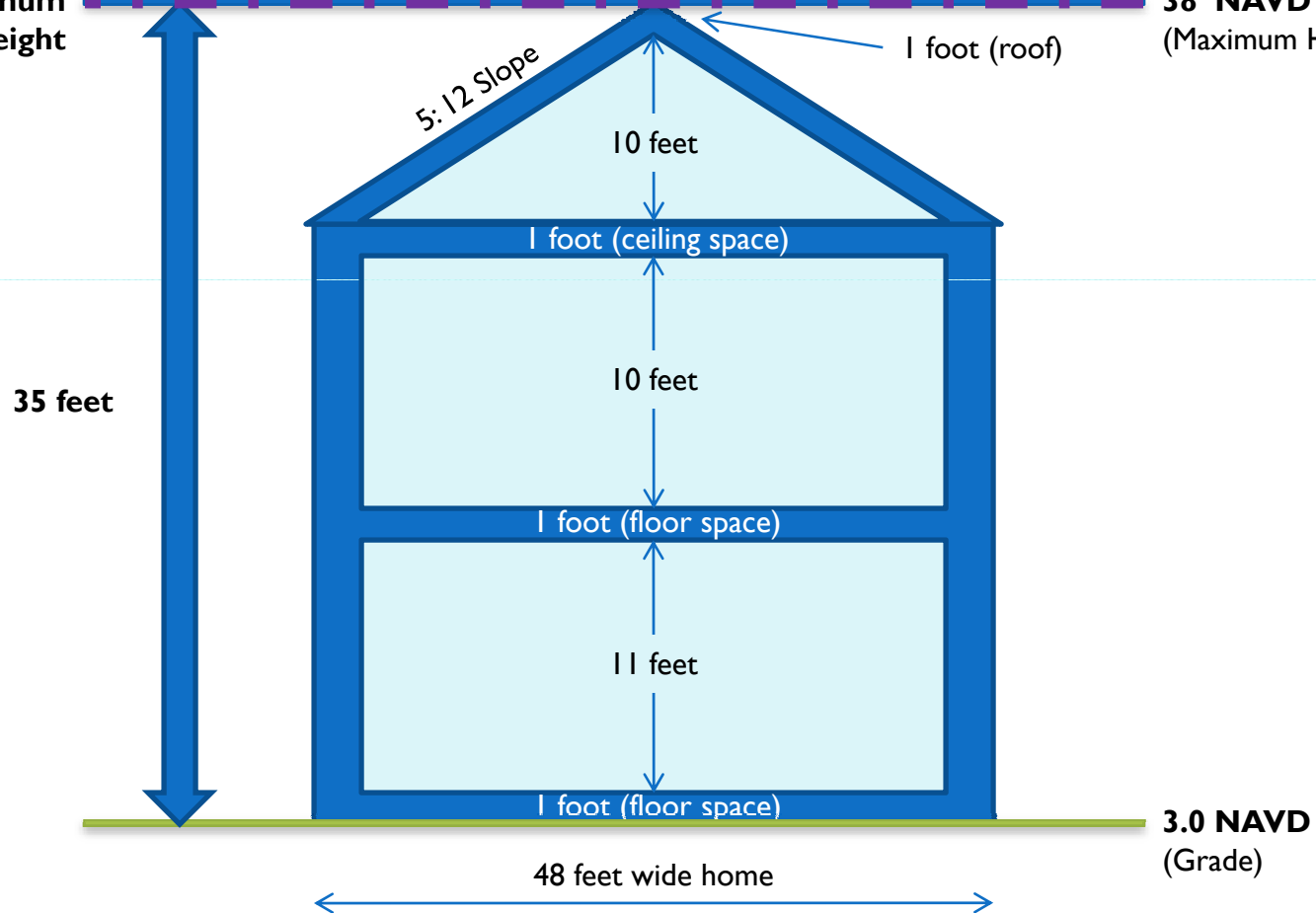
# Captiva FEMA Flood Zones:



# X Zone

Current Maximum Height

38' NAVD / 35' above grade  
(Maximum Height)



48 feet wide home

3.0 NAVD  
(Grade)

# X Zone

Current Maximum Height

38' NAVD / 35' above grade  
(Maximum Height)

35 feet

1 foot (ceiling space)

10 feet

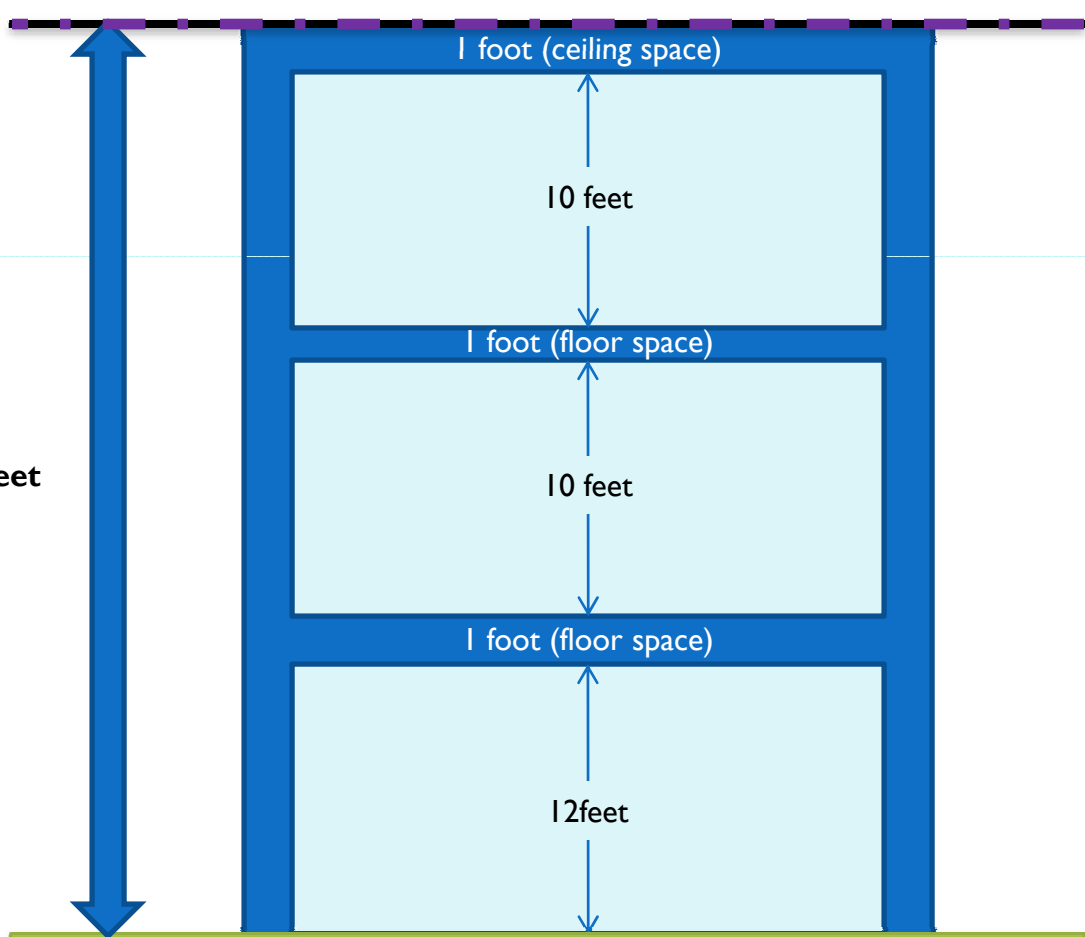
1 foot (floor space)

10 feet

1 foot (floor space)

12 feet

3.0 NAVD  
(Grade)



# Lee County Comprehensive Plan Amendment Application Form

CPA 2010-00015

RECEIVED  
MAY 11 2011

COMMUNITY DEVELOPMENT

## I. APPLICANT/AGENT/OWNER INFORMATION

APPLICANT Captiva Community Panel  
ADDRESS P.O. Box 72  
CITY, STATE, ZIP Captiva, FL 33924  
TELEPHONE/FAX N/A  
AGENT\* Ken Gooderham  
ADDRESS 5460 Beaujolais Lane  
CITY, STATE, ZIP Fort Myers, FL 33919  
TELEPHONE/FAX (239) 489-2616 / (239) 362-9771 fax  
OWNER(s) OF RECORD N/A  
ADDRESS  
CITY, STATE, ZIP  
TELEPHONE/FAX

Name, address and qualification of additional planners, architects, engineers, environmental consultants, and other professionals providing information contained in this application.

Max Forgey  
Forgey Planning Services  
P.O. Box  
Cape Coral, FL

\* This will be the person contacted for all business relative to the application.

## II. REQUESTED CHANGE (Please see Item 1 for Fee Schedule)

A. TYPE: (Check appropriate type)  
Text Amendment

B. SUMMARY OF REQUEST (Brief explanation):

Revise existing Lee Plan Policy 13.1.2 to reflect community-generated change in building height regulations.

## III. PROPERTY SIZE AND LOCATION OF AFFECTED PROPERTY

(for amendments affecting development potential of property)

A. Property Location: Captiva Island  
1. Site Address: N/A  
2. STRAP(s): N/A

**B. Property Information**

Total Acreage of Property: 724+

Total Acreage included in Request: 724+

Total Uplands: 684+

Total Wetlands: 40+

Current Zoning:

Current Future Land Use Designation:

Outlying Suburban and Wetlands

Area of each Existing Future Land Use Category:

Existing Land Use:

- Estate residential
- Multi-family residential
- Resort commercial
- Single-family residential
- Commercial
- Community facilities

C. State if the subject property is located in one of the following areas and if so how does the proposed change affect the area:

NO Lehigh Acres Commercial Overlay:

NO Airport Noise Zone 2 or 3:

NO Acquisition Area:

NO Joint Planning Agreement Area (adjoining other jurisdictional lands):

NO Community Redevelopment Area:

D. Proposed change for the subject property:

Revise existing Lee Plan Policy 13.1.2 to reflect community-generated change in building height regulations.

E. Potential development of the subject property:

1. Calculation of maximum allowable development under existing FLUM:

Residential Units/Density: 2,502+ units (3 units per acre, per ordinance)

Commercial intensity: N/A

Industrial intensity: N/A

2. Calculation of maximum allowable development under proposed FLUM:

Residential Units/Density: 2,502+ units (3 units per acre, per ordinance)

Commercial intensity: N/A

Industrial intensity: N/A

**IV. AMENDMENT SUPPORT DOCUMENTATION**

At a minimum, the application shall include the following support data and analysis. These items are based on comprehensive plan amendment submittal requirements of the State of Florida, Department of Community Affairs, and policies contained in the Lee County Comprehensive Plan. Support documentation provided by the applicant will be used by staff as a basis for evaluating this request. To assist in the preparation of amendment packets, the applicant is encouraged to provide all data and analysis electronically. (Please contact the Division of Planning for currently accepted formats.)

**A. General Information and Maps**

NOTE: For each map submitted, the applicant will be required to provide a reduced map (8.5" x 11") for inclusion in public hearing packets.

The following pertains to all proposed amendments that will affect the development potential of properties (unless otherwise specified).

1. Provide any proposed text changes.

**POLICY 13.1.2:** Due to the nature of a barrier island, the height of buildings and structures is dependent on conditions such as elevation of the site above sea level and FEMA minimum flood elevation requirements. In response to these conditions, the height of buildings and structures may not exceed the least restrictive of the two following options:

- a) 35 feet above the average grade of the lot in question or 42 feet above mean sea level at the peak of the roof, whichever is lower; or
- b) 28 feet above the lowest horizontal member at or below the lawful base flood elevation at the mean level between eaves and ridge in the case of gable, hip, and gambrel roofs. If the lowest horizontal member is set above the base flood elevation, the 28-foot measurement will be from the base flood elevation.

Notwithstanding the above height limitations, purely ornamental structural appurtenances and appurtenances necessary for mechanical or structural functions may be permitted to exceed the maximum height allowable by this policy so long as these elements equal 20% or less of the total roof area.

2. Provide a current Future Land Use Map at an appropriate scale showing the boundaries of the subject property, surrounding street network, surrounding designated future land uses, and natural resources.

N/A

3. Provide a proposed Future Land Use Map at an appropriate scale showing the boundaries of the subject property, surrounding street network, surrounding designated future land uses, and natural resources.

N/A

4. Map and describe existing land uses (not designations) of the subject property and surrounding properties. Description should discuss consistency of current uses with the proposed changes.

N/A

5. Map and describe existing zoning of the subject property and surrounding properties.

ENCLOSED

6. The certified legal description(s) and certified sketch of the description for the property subject to the requested change. A metes and bounds legal description must be submitted specifically describing the entire perimeter boundary of the property with accurate bearings and distances for every line. The sketch must be tied to the state plane coordinate system for the Florida West Zone (North America Datum of 1983/1990 Adjustment) with two coordinates, one coordinate being the point of beginning and the other an opposing corner. If the subject property contains wetlands or the proposed amendment includes more than one land use category a metes and bounds legal description, as described above, must be submitted in addition to the perimeter boundary of the property for each wetland or future land use category.

7. A copy of the deed(s) for the property subject to the requested change.

N/A

8. An aerial map showing the subject property and surrounding properties.

N/A

9. If applicant is not the owner, a letter from the owner of the property authorizing the applicant to represent the owner.

The Captiva Community Panel is a citizens' advisory group authorized by the Lee County Board of County Commissioners under Lee County Administrative Code 13-3. The panel is operated by

the Captiva Island Property Owners Association Inc. (the panel sponsor) under a contract with Lee County approved by the Lee County Board of County Commissioners on Jan. 8, 2002.

### **B. Public Facilities Impacts**

NOTE: The applicant must calculate public facilities impacts based on a maximum development scenario (see Part II.H.).

#### 1. Traffic Circulation Analysis

The analysis is intended to determine the effect of the land use change on the Financially Feasible Transportation Plan/Map 3A (20-year horizon) and on the Capital Improvements Element (5-year horizon). Toward that end, an applicant must submit the following information:

Long Range – 20-year Horizon:

Short Range – 5-year CIP horizon:

The proposed changes will have no impact on existing or projected traffic. See the enclosed amendment analysis for more detail.

#### 2. Provide an existing and future conditions analysis for (see Policy 95.1.3):

- a. Sanitary Sewer
- b. Potable Water
- c. Surface Water/Drainage Basins
- d. Parks, Recreation, and Open Space
- e. Public Schools.

The proposed changes will have no impact on existing or projected needs concerning sewer, water drainage or open space. See the enclosed amendment analysis for more detail.

#### 3. Provide a letter from the appropriate agency determining the adequacy/provision of existing/proposed support facilities, including:

- a. Fire protection with adequate response times;
- b. Emergency medical service (EMS) provisions;
- c. Law enforcement;
- d. Solid Waste;
- e. Mass Transit; and
- f. Schools.

The proposed changes will have no impact on existing or projected needs concerning fire protection, EMS provisions, law enforcement, solid waste, mass transit or schools. See the enclosed amendment analysis for more detail.

### **C. Environmental Impacts**

Provide an overall analysis of the character of the subject property and surrounding properties, and assess the site's suitability for the proposed use upon the following:

- 1. A map of the Plant Communities as defined by the Florida Land Use Cover and Classification system (FLUCCS).
- 2. A map and description of the soils found on the property (identify the source of the information).
- 3. A topographic map depicting the property boundaries and 100-year flood prone areas indicated (as identified by FEMA).
- 4. A map delineating the property boundaries on the Flood Insurance Rate Map effective August 2008.



5. A map delineating wetlands, aquifer recharge areas, and rare & unique uplands.
6. A table of plant communities by FLUCCS with the potential to contain species (plant and animal) listed by federal, state or local agencies as endangered, threatened or species of special concern. The table must include the listed species by FLUCCS and the species status (same as FLUCCS map).

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The proposed changes will have no environmental impact.

#### **D. Impacts on Historic Resources**

List all historic resources (including structure, districts, and/or archeologically sensitive areas) and provide an analysis of the proposed change's impact on these resources. The following should be included with the analysis:

1. A map of any historic districts and/or sites, listed on the Florida Master Site File, which are located on the subject property or adjacent properties.
2. A map showing the subject property location on the archeological sensitivity map for Lee County.

The proposed changes will have no impact on historical resources.

#### **E. Internal Consistency with the Lee Plan**

1. Discuss how the proposal affects established Lee County population projections, Table 1(b) (Planning Community Year 2030 Allocations), and the total population capacity of the Lee Plan Future Land Use Map.
2. List all goals and objectives of the Lee Plan that are affected by the proposed amendment. This analysis should include an evaluation of all relevant policies under each goal and objective.
3. Describe how the proposal affects adjacent local governments and their comprehensive plans.
4. List State Policy Plan and Regional Policy Plan goals and policies which are relevant to this plan amendment.
  1. This proposed amendment will not affect population projections or capacity.
  2. See enclosed analysis for details.
  3. This proposed amendment has no impact on adjacent local governments and their comprehensive plans.
  4. The issues addressed by this proposed amendment is not cited by state or regional policy plans.

#### **F. Additional Requirements for Specific Future Land Use Amendments**

1. Requests involving Industrial and/or categories targeted by the Lee Plan as employment centers (to or from)
  - a. State whether the site is accessible to arterial roadways, rail lines, and cargo airport terminals,
  - b. Provide data and analysis required by Policy 2.4.4,
  - c. The affect of the proposed change on county's industrial employment goal specifically policy 7.1.4.
2. Requests moving lands from a Non-Urban Area to a Future Urban Area
  - a. Demonstrate why the proposed change does not constitute Urban Sprawl. Indicators of sprawl may include, but are not limited to: low-intensity, low-density, or single-use development; 'leap-frog' type development; radial, strip, isolated or ribbon pattern type development; a failure to protect or conserve natural resources or agricultural land; limited accessibility; the loss of large amounts of functional open space; and the installation of costly and duplicative infrastructure when opportunities for infill and redevelopment exist.
3. Requests involving lands in critical areas for future water supply must be evaluated based on policy 2.4.2.

4. Requests moving lands from Density Reduction/Groundwater Resource must fully address Policy 2.4.3 of the Lee Plan Future Land Use Element.

1/2/3/4: Not applicable.

**G. Justify the proposed amendment based upon sound planning principles.** Be sure to support all conclusions made in this justification with adequate data and analysis.

AFFIDAVIT

# *CCP Lee Plan amendment discussion*

May 9, 2011

The revisions in the base flood elevation (BFE) for Captiva Island, approved by the Federal Emergency Management Agency (FEMA) in 2006 (and partially revised in 2008), served as a reminder to Captivans that even minor changes in BFE could have a serious impact on structures given the island's long-standing building height restrictions.

The current height restrictions, enacted in the 1990s, capped building heights at 42 feet above "mean sea level" or 35 feet above "average grade of the lot." This language was adopted in reaction to concerns about even taller homes being built on the island, in an effort to strengthen existing height regulations under a uniform cap.

In theory, this standard works. In practice, on a barrier island in which multiple layers of government may impose BFE rules, it meant that homes with higher BFE requirements were squeezed under the uniform restrictions, encroaching on living space. This has been evident with ceiling heights (particularly in second stories) which have been cramped and architectural elements (roof lines) which have been flattened or eliminated in an effort to stay under the 42/35 cap while still allowing something taller than eight-foot-high ceilings.

The issue was particularly acute for those lots seaward of the state's 1991 Coastal Construction Control Line (CCCL), a line of jurisdiction established based on the estimated damages resulting from a so-called 100-year storm event (a storm of such severity that, in theory, it should strike the coastline only once in every 100 years) to an island's shoreline and the adjacent upland properties and structures. Construction seaward of the 1991 CCCL requires approvals from the Florida Department of Environmental Protection (FDEP), including setting the mandated elevation for a structure's lowest horizontal structural member.

Typically, FDEP sets those elevations 2-3 feet higher than the FEMA-mandated BFEs, along with setting other construction requirements (such as requiring lowest horizontal structural members to be at or above the minimum BFE, not at or below as is allowed landward of the CCCL) to help ensure that structures seaward of the 1991 CCCL have a better design likelihood of surviving storm surge and winds intact, or with a minimum of damage. However, under a uniform maximum building height cap as exists on Captiva, any increase in FDEP-mandated construction elevations eats into buildable area in order to accommodate all the necessary structural and HVAC requirements -- meaning lower ceiling heights for no good reason except to maintain building height uniformity.

There are several BFE zones which affect buildable lots on Captiva, ranging from VE-13 on the seaward-most lots on the Gulf to AE-12, -11, -10 and -9 further inland. There is also an area, dubbed the "X Zone," on the bayside of the Village, where BFE requirements were eliminated in the last FEMA revision. In other words, there is no federally mandated base flood elevation in the X zone.

When the last series of FEMA elevation changes caused building heights in some areas to move a little higher -- and, inexplicably, some areas to move lower or without BFE requirements altogether -- some

property owners saw that a uniform building height regulation was not uniformly fair to island property owners. The uniform height problem would become an even greater issue in the event of a catastrophic storm in which might cause structural damage sufficient to require rebuilding under the new code language. Since (unlike most county communities) Captiva's height regulations are encoded in the Lee Plan, they have the same legal status as the county's buildback policy -- which could create an administrative conflict in the event of a structure-damaging storm where one section of the Lee Plan limits building heights lower than another portion of the Lee Plan allows under its buildback regulations.

Accordingly, the Captiva Community Panel sought to investigate its options as part of its planned update of the Lee County Land Development Code (LDC) as it affects Captiva Island. The current building height language was already in place in both the LDC and the Lee Plan, incorporated into the latter in 2003 as a show of the island's commitment to maintain low-rise structures without the option for variance and to withstand any legal challenge. The panel's feeling was this planned LDC revision process was the ideal opportunity to engage islanders in a discussion about building heights. If the panel could identify a consensus in support of change, it would recommend amended language to the Board of County Commissioners. In any case, the panel would provide a forum for community dialogue on the subject.

Through its mission and bylaws, the panel was and is committed to soliciting public input and discussion on land use and zoning issues affecting the island, using its public, advertised meetings, its website and targeted outreach to island residents and groups to encourage the widest possible scope of discussion and consensus.

At a series of meetings and workshops open to the public and advertised or announced, the panel's planner first offered background on building heights and the impact of various changes, then proceeded to offer a number of drafts of new language to provoke discussion and refinement through public input and interaction. (A chronology of the 32 [and counting] public meetings, workshops and actions is attached; minutes [also available on the panel website] and/or recordings of all of them are available on request.)

What eventually emerged was a concept of creating a consistent building "envelope" atop whatever BFE requirement governed a particular island lot. All property owners would thus be assured 28 feet of buildable height on top of the governing BFE requirements, which would allow a two-story home with 9- to 10-foot ceilings for both floors... perhaps more for one and less for the other, if that was a design choice. Also, by measuring building height from the **mean roof height** (rather than the absolute peak), some allowance for moderate architectural embellishment was afforded to designers; in return, however, the overall height and mass of such accoutrement was limited to eight feet over the mean roof height, rather than the unlimited amount allowed under current LDC language.

For those homes in the X Zone, the existing uniform building height rules were kept in place, so those owners could decide whether to build a multi-storied structure with minimal mandated elevation and adjacent parking or (given the rather limited lot sizes in the X Zone) elevate the structure to allow parking underneath while still making possible two stories with reasonable ceiling heights as allowed under the current rules. Given the island's low elevation, distance from the mainland and designation as a coastal high-hazard area, encouraging new construction to elevate even if it is now federally required is prudent, improving the chances for structural survival in the event of an overwhelming storm.

After a working LDC draft was finalized by the panel in May 2010, the group decided to offer islanders the additional opportunity for input through an online community survey, targeting eight questions covering four main areas (including building heights) to allow feedback on the proposed code changes. Voters and property owners were notified how to access this survey via postcard, and allowed one survey per property owned or voter registration. The survey opened Aug. 20, 2010 and closed Sept. 30, 2010, with final results presented to the panel and public at its Oct. 19, 2010, meeting.

Those results were:

- Total responses 430
- Accepted responses 384 (89.3%)
- Disputed responses 46 (10.7%)
  - No STRAP or voter ID 24
  - Duplicate ID, older responses 18 (likely changed answers)
  - Duplicate ID, incomplete responses 3 (likely abandoned)
  - Duplicate voter ID 1
- 430 total responses out of 1,510 mailed (28.47% response)
- 95 voters responded out of 361 mailed (26.3%)
- 374 property owners responded out of 1,149 mailed (32.55%)

**HEIGHT RESTRICTIONS:** Allow owners to construct at least a two-story, 28-foot-high home over base flood elevation, even in areas of the island where federal or state requirements force structures to be built higher above sea level. (Areas where no minimum flood elevations are required must build no higher than 42 feet above sea level or 35 feet above average grade.) Measurement of height will begin at the lowest horizontal member, and will end at the mean (middle) of the roof slope (Sec. 33-532(A and C)). This proposal will maintain the "no variance" policy for building heights allowed on the island.

- Support 187 49.73%
- Don't support 180 47.87%
- Don't know 9 2.39%

**As a straight "Yes-No" question: 50.95% support ... 49.05% don't support.**

Zones	Support		Don't support		Don't know		Responses
Total	187	49.73%	180	47.87%	9	2.39%	376
Gold Coast	46	52.87%	40	45.98%	1	1.15%	87
Tween Waters	18	54.55%	13	39.39%	2	6.06%	33
Village	65	44.52%	77	52.74%	4	2.74%	145
South Seas	58	52.73%	50	45.45%	2	1.82%	110

**HEIGHT RESTRICTIONS:** Encourage more sloped roofs (resulting in less boxiness or bulk) and more roof articulation (details such as cupolas, etc.), but set a limit on how high and large this articulation can be (four feet above roof peak or eight feet above sea level) and not to exceed 20% of the total front facade area (Sec. 33-532(A)).

- Support 193 51.88%
- Don't support 161 43.28%
- Don't know 18 4.84%

**As a straight "Yes-No" question: 54.52% support ... 45.48% don't support.**

Zones	Support		Don't support		Don't know		Responses
Total	193	51.88%	161	43.28%	18	4.84%	372
Gold Coast	49	57.65%	34	40.00%	2	2.35%	85

Tween Waters	21	63.64%	9	27.27%	3	9.09%	33
Village	62	42.76%	75	51.72%	8	5.52%	145
South Seas	61	55.96%	43	39.45%	5	4.59%	109

After these results were released and discussed publicly, the panel took another look at the LDC draft -- and, in particular, the building height issue. Prompted both by the survey responses and by public feedback that the rules being proposed for the entire island might not work as well for the unique Village properties, the panel voted at its Dec. 14, 2010, meeting to exempt the Village from the proposed building height rule revision and retain the existing uniform building height rules for that area while encouraging residents and property owners there to discuss the issue and report back to the panel with feedback prior to any final panel action.

The panel reaffirmed its support for a Village height exemption at its Jan. 11, 2011, meeting, pending a definite show of support for the exemption by Village residents and owners. The panel sought input from Village residents at a Jan. 20, 2011, informal workshop, where the desire for the uniform-height standard and the definition of the Village itself was again confirmed by those attending (albeit a small group).

To ensure that as many Village residents as possible are heard from regarding this important issue, at its March 8, 2011, meeting the panel voted to conduct a mail survey of all Village property owners to assess the consensus on which building height standard should be applied to the Village -- the new islandwide standard being proposed or the existing standard. Postcards were mailed with a return date of April 1, 2011, and the following was the result

- Total surveys mailed: 330
- Total mailings returned as undeliverable/uncountable: 10 (3.0%)
- Total cards returned: 139 (42.12%)
- Supports an islandwide building height standard as proposed: **82 (58.99%)**
- Supports maintaining the current standard in the Village: **57 (41.01%)**

After discussion, at its April 12, 2011, meeting the Panel voted to remove the Village exemption and instead submit an islandwide building height language as originally worded. It also voted to hold a public meeting solely focused on building heights and the draft LDC on April 26, 2011, in order to make a decision on building height language to keep the proposed Lee Plan amendment on building heights on schedule. County building and planning staff members would be in attendance to make comments and answer islanders' questions. This meeting was advertised in the local newspaper and through the email list, and those who could not attend or who had very specific questions were asked to submit them electronically for staff to address and respond.

Following extensive discussion by the panel planner and county staff members, the panel voted to amend the islandwide building height standard to allow those properties not federally required to elevate sufficiently to allow under-structure parking the option of constructing under the current 35/42 height rule, so those property owners would not lose any use of their property under a new standard and new construction would be encouraged to elevate even if not required to do so by federal flood insurance rules.

That resulted in the proposed Lee Plan amendment language being presented in this application:

**POLICY 13.1.2:** Due to the nature of a barrier island, the height of buildings and structures is dependent on conditions such as elevation of the site above sea level and FEMA minimum flood elevation requirements. In response to these conditions, the height of buildings and structures may not exceed the least restrictive of the two following options:

- a) 35 feet above the average grade of the lot in question or 42 feet above mean sea level at the peak of the roof, whichever is lower; or
- b) 28 feet above the lowest horizontal member at or below the lawful base flood elevation at the mean level between eaves and ridge in the case of gable, hip, and gambrel roofs. If the lowest horizontal member is set above the base flood elevation, the 28-foot measurement will be from the base flood elevation.

Notwithstanding the above height limitations, purely ornamental structural appurtenances and appurtenances necessary for mechanical or structural functions may be permitted to exceed the maximum height allowable by this policy so long as these elements equal 20% or less of the total roof area.

This is a reasonable compromise that balances the equitable expectation of Gulf-front owners to be able to build a reasonable home even in the face of rising base flood elevations with the desire of Village owners in the X Zone (or one of the lower FIRM designations) to elevate their homes sufficiently for under-structure parking and greater structural survivability. This also ensures no property rights would be even remotely threatened, and maintains a continuity of structural height that is in line with older building height rules that governed the island (examples included in this package).

Finally, this proposed language reflected extensive public discussion and consensus-seeking, far beyond what is required for community panels or typical Lee Plan amendment – but what the Captiva panel has set as its standard for achieving community education and consensus on difficult or confusing land use and zoning issues. We believe this amendment reflects a real community consensus crafted over extensive public meetings and input on an issue that is difficult for many property owners to fully grasp until those rules need to be implemented.

— *Ken Gooderham, administrator*

# *Panel meeting chronology*

May 9, 2011

The Captiva Community Panel had worked on a draft of a Captiva Land Development Code for at least two years leading up to June 2009, developing working language on a variety of topics stretching over seven drafts. The panel then applied to Lee County for a Community Planning Grant (#5117) to continue its planning efforts toward a completed LDC draft submittal by the end of 2010. This following is a summary of the efforts put forth under and subsequent to this grant, which also lead up to the Lee Plan Amendment now being submitted for county review and approval.

**Prelude:** Once its previous Lee Plan amendments had been adopted in 2003 and 2005, the panel began the effort of drafting Land Development Code language to implement those amendments more fully. In public panel meetings throughout 2007, 2008 and 2009, code language was drafted by the panel and its administrative staff, in hopes that many of the implementation issues could be worked through by community input in order to narrow the issues of import down to a manageable level. As this process slowly moved forward, it became clear that four major issues would be best served by engaging a professional planner in a more formal process, and that the community's intent as reflected in this informal code-development process would likewise be enhanced by the skills of an experienced planner to polish and refine this rough draft developed by the panel and the community.

**June 2009:** Draft 7 of proposed Land Development Code finalized, panel decides to issue RFP for planner to address four areas of concern: Height restrictions, RSC-2 zoning, mangrove protection, signs.

**July 2009:** Proposals from five planners reviewed by the panel at its public meeting.

**August 2009:** Planner hired (Morris-Depew Associates Inc.) based on recommendation from a panel subcommittee.

**September 2009:** Grant application with Lee County initiated, planner reviews current LDC draft.

**October 2009:** Planner presents Draft 9, sets workshop review schedule at Oct. 13 panel meeting; workshop on mangroves and water quality held Oct. 27.

**November 2009:** Workshop discussions reviewed at Nov. 11 panel meeting.

**December 2009:** Workshop on height restrictions held on Dec. 1. Discussions reviewed at the Dec. 8 panel meeting, RSC-2 zoning options discussed.

**January 2010:** Workshop on height restrictions and RSC-2 zoning issues held Jan. 7. Discussions reviewed at the Jan. 12 panel meeting. Another workshop on height restrictions and RSC-2 issues held Jan. 28.

**February 2010:** Workshop discussions reviewed at the Feb. 9 panel meeting. Another workshop on height restrictions (with specific requests to planner for illustrations of options) and signs held Feb. 18.

**March 2010:** Discussions reviewed at the March 9 panel meeting. Revisions suggested, reviewed at a special panel meeting March 24. Draft 12E was adopted by the panel as a final staff draft (working draft) of the LDC proposals at the end of the March 24 meeting.



**April 2010:** Discussions reviewed at the April 13 panel meeting, and a decision was made to allow electronic surveying of the community on the proposed LDC draft. A special meeting on the proposed rental restrictions was held April 27, where the islandwide restrictions were deleted from the working draft and additional research was requested.

**May 2010:** Research was reviewed at the May 11 panel meeting, where the RSC-2 specific restrictions were deleted from the working draft and the final proposed LDC draft was accepted. A survey committee was formed to refine the staff draft of survey questions and report back to the panel to devise a final survey draft.

**June 2010:** The idea of an online community survey was discussed, and necessary bylaw changes were advanced to make this possible.

**July 2010:** A draft of the proposed survey (including structure and graphics) was developed and approved by the panel.

**August 2010:** The final version of the survey was approved at a public meeting. All registered voters and property owners were notified by postcard in on Aug. 20 and Sept. 1, with additional information provided in the local weekly newspaper and to an islandwide email message send to a maintained list twice. A Sept. 30 deadline was established, with a report to the panel at a public meeting in October.

**September 2010:** A retainer with Max Forgey/Forgey Planning Services is approved to allow Forgey to continue his role as the panel's planning consultant begin during his work with Morris-Depew Associates.

**October 2010:** Survey results were extensively discussed at an Oct. 19 public meeting, which was publicly noticed repeated in advance. The panel voted to send the May 2010 LDC draft to county staff for comments while continuing to review and discuss survey results and comments at ist November meeting. (See attached for a full survey report and breakdown.)

**November 2010:** Discussion continued on the LDC draft and survey, with the panel opting to more thoroughly review the language in conjunction with expected county reaction to draft language.

**December 2010:** After further discussion, the panel voted to exempt the Village from the proposed new building height regulations and allow it to stay under the existing uniform-height rules. More input from Village residents was solicited on this and any other LDC issues the Village wanted to address, and panel consultants were instructed to work with residents as requested.

**January 2011:** The panel confirmed its support for a Village exemption to the new building height rules, and a Village workshop was scheduled later n the moth to discuss Village boundaries and issues. At that workshop, a definition for the Village was confirmed and the decision was to limit the discussion to building heights at this point and report this discussion back to the panel at its Feb. 8, 2011, public meeting.

**February 2011:** After concerns about how the Village was defined for the purposes of the exemption were raised by a property owner, that item was put on the March 2011 meeting agenda.

**March 2011:** After discussion about how the Village would be defined and the efforts which brought the proposed Village exemption into being, the panel voted to conduct a mail survey of Village property

owners to determine whether they wanted to be covered by the proposed new building height language or be exempted to stay under the existing height restrictions. The panel extends its retainer with Forgey Planning Services for an additional six months.

**April 2010:** Results from the Village survey on building heights were presented and discussed, and the panel then voted to remove the exemption and stay with an islandwide building height language as originally proposed. The panel also voted to hold a public meeting on April 26 solely focusing on building heights and the current LDC draft, where islanders could submit questions in advance or ask questions of key county staff members on building height and LDC issues. At the April 26 public meeting, following an extensive presentation by the panel planner and county staff members on the building heights issue, the panel voted to further amend the Lee Plan language to allow owners the option of retaining the current height restrictions if the new regulations would prove too (or more) restrictive than the current rules.

All panel meetings are recorded and have minutes posted on the panel website; meetings are advertised in the island's weekly newspaper. All panel workshops are recorded and noticed in the island weekly newspaper. Both events are noticed to an islandwide email list, and materials are posted on the panel Web site in advance when possible ([www.captivacommunitypanel.com](http://www.captivacommunitypanel.com)). All panel events are open to the public and provide opportunities for public comment.



## ***Survey height questions***

- **HEIGHT RESTRICTIONS:** Allow owners to construct at least a two-story, 28-foot-high home over base flood elevation, even in areas of the island where federal or state requirements force structures to be built higher above sea level. (Areas where no minimum flood elevations are required must build no higher than 42 feet above sea level or 35 feet above average grade.) Measurement of height will begin at the lowest horizontal member, and will end at the mean (middle) of the roof slope (Sec. 33-532(A and C)). This proposal will maintain the "no variance" policy for building heights allowed on the island.

<input type="checkbox"/> Support	187	49.73%
<input type="checkbox"/> Don't support	180	47.87%
<input type="checkbox"/> Don't know	9	2.39%

**As a straight "Yes-No" question: 50.95% support ... 49.05% don't support.**

Zones	Support		Don't support		Don't know	
Total	187	49.73%	180	47.87%	9	2.39%
Gold Coast	46	52.87%	40	45.98%	1	1.15%
Tween Waters	18	54.55%	13	39.39%	2	6.06%
Village	65	44.52%	77	52.74%	4	2.74%
South Seas	58	52.73%	50	45.45%	2	1.82%

- **HEIGHT RESTRICTIONS:** Encourage more sloped roofs (resulting in less boxiness or bulk) and more roof articulation (details such as cupolas, etc.), but set a limit on how high and large this articulation can be (four feet above roof peak or eight feet above sea level) and not to exceed 20% of the total front facade area (Sec. 33-532(A)).

<input type="checkbox"/> Support	193	51.88%
<input type="checkbox"/> Don't support	161	43.28%
<input type="checkbox"/> Don't know	18	4.84%

**As a straight "Yes-No" question: 54.52% support ... 45.48% don't support.**

Zones	Support		Don't support		Don't know	
Total	193	51.88%	161	43.28%	18	4.84%
Gold Coast	49	57.65%	34	40.00%	2	2.35%
Tween Waters	21	63.64%	9	27.27%	3	9.09%
Village	62	42.76%	75	51.72%	8	5.52%
South Seas	61	55.96%	43	39.45%	5	4.59%

## ***Village-only height survey***

BACKGROUND: A second survey was requested by the panel based on input from residents in the Village area of the island concerning an exemption from the islandwide building height standard being proposed. The decision was made to conduct a mail survey of Village property owners only, with each owners receiving a letter explaining the issue (with supporting information on the panel website) and postage-paid postcard to send back their response. Letters/cards were mailed March 14, 2011, with a April 1, 2011 postmark deadline so that survey results could be discussed at the April 12, 2011, panel meeting.

The final results from the recent survey by the Captiva Community Panel asking property owners in the Village to comment on proposed building height standards for their neighborhood:

- Total surveys mailed: 330
- Total mailings returned as undeliverable/uncountable: 10 (3.0%)
- Total cards returned: 139 (42.12%)
- Supports a new islandwide building height standard as proposed: 82 (58.99%)
- Supports maintaining the current building height standard in the Village: 57 (41.01%)

Comments:

- One mentioned the small lot sizes as a reason to maintain the current height standard.
- One mentioned keeping the current standard to maintain the Village ambience
- One cited structures on Andy Rosse Lane as a reason to keep the current height standard for the Village.
- Ten mentioned they would prefer to keep the current height standards throughout the entire island.

**Methodology:** All property owners in the Village (from the northern end of Captiva Drive to 15300 Captiva Drive) were mailed a survey package of a cover letter and stamped survey reply card, and asked to indicate their support for one of the two statements made on the postcard:

- I want the proposed island-wide standard to apply to the Village as well.
- I do not support the proposed island-wide standard for the Village, and want to retain the current height standards.

Property owners addresses were acquired from the Lee County Property Appraiser's database and survey packages were mailed first-class to ensure forwarding. Response were compiled on delivery, then confirmed once the deadline had passed.

# ***Captiva height regulations: A history***

One aspect that was mentioned at times in discussion about changing the building height standards for Captiva was a desire to return to rules that more closely mirrored those which had governed building heights on the island prior to the last rule change in 1999. In the course of the public meetings and discussion about building heights that resulted in this Lee Plan amendment, we research the building height rules Lee County has used for Captiva dating back to 1971. It is interesting to note the consistent use of a building-height “envelope” – allowing a certain number of feet over some pre-set standard – in many of these old regulations:

## ***Proposed Lee Plan amendment language***

**POLICY 13.1.2:** Due to the nature of a barrier island, the height of buildings and structures is dependent on conditions such as elevation of the site above sea level and FEMA minimum flood elevation requirements. In response to these conditions, the height of buildings and structures may not exceed the less restrictive of the two following options:

- a) 35 feet above the average grade of the lot in question or 42 feet above mean sea level at the peak of the roof, whichever is lower; or
- b) 28 feet above the lowest horizontal member at or below the lawful base flood elevation at the mean level between eaves and ridge in the case of gable, hip, and gambrel roofs. If lowest horizontal member is set above the base flood elevation, the 28-foot measurement will be from the base flood elevation.

Notwithstanding the above height limitations, purely ornamental structural appurtenances and appurtenances necessary for mechanical or structural functions may be permitted to exceed the maximum height allowable by this policy so long as these elements equal 20% or less of the total roof area.

## ***Proposed Land Development Code (LDC) language***

(A) Due to the nature of a barrier island, the height of buildings and structures is dependent on conditions such as elevation of the site above sea level and FEMA minimum flood elevation requirements. In response to these conditions, the height of buildings and structures may not exceed the less restrictive of the two following options:

- a) 35 feet above the average grade of the lot in question or 42 feet above mean sea level at the peak of the roof, whichever is lower; or
- b) 28 feet above the lowest horizontal member at or below the lawful base flood elevation at the mean level between eaves and ridge in the case of gable, hip, and gambrel roofs. If the lowest horizontal member is set above the base flood elevation, the 28-foot measurement will be from the base flood elevation.

Notwithstanding the above height limitations, purely ornamental structural appurtenances and appurtenances necessary for mechanical or structural functions may be permitted to exceed the

maximum height allowable by this policy so long as these elements equal 20% or less of the total roof area.

(B) The existing telecommunications tower facility located in the maintenance and engineering area of South Seas Resort may be replaced in such area to a height not to exceed 170 feet, provided that said new facility makes space available to the county for adequate emergency communications service coverage for Captiva, as well as co-location capability for all wireless carriers desirous of serving Captiva. Destruction of mangroves will not be allowed in order to build or operate such a tower or related tower facilities. The telecommunication tower will be a monopole, unless public safety is compromised.

### ***Current LDC language***

#### **Sec. 34-2174. - Additional permitted height when increased setbacks provided.**

(a) Subject to conditions set forth in section 34-2175, any building or structure may be permitted to exceed the height limitations specified by the zoning district regulations in which the property is located provided every required street, side, waterbody, and rear setback is increased by one-half foot for every one foot by which the building or structure exceeds the specified height limitation.

(b) In zoning districts that do not specify a maximum height limitation, the increase to setbacks stated in this section will apply to all buildings or structures exceeding 35 feet in height.

(c) The height increases described in section 34-2174(a) and (b) may not be used in Greater Pine Island.

#### **Sec. 34-2175. - Height limitations for special areas and Lee Plan land use categories.**

The following areas have special maximum height limitations applicable to all conventional and planned development districts:

(a) Special areas.

(1) **Upper Captiva Island.** The height of a structure may not exceed 35 feet above grade (base flood elevation). The provisions of section 34-2174(a) do not apply to Upper Captiva Island. No variance or deviation from the 35-foot height restriction may be granted.

In addition to compliance with all applicable building codes (including Fire and Life Safety Codes), any building with two or more stories or levels must provide an exterior stairway from the uppermost levels (including "widow's walks" or observation decks) to the ground OR a one-hour fire rated interior means of egress from the uppermost levels (including "widow's walks" or observation decks) to the ground.

(2) **Captiva Island.** No building or structure may be erected or altered so that the peak of the roof exceeds 35 feet above the average grade of the lot in question or 42 feet above mean sea level, whichever is lower. The provisions of section 34-2174(a) do not apply to Captiva Island. No variance or deviation from this height restriction may be granted; provided however, one communication tower, not to exceed 170 feet in height, may be constructed in accord with Lee Plan Policy 13.1.14.

(3) **San Carlos Island.** The height of a structure may not exceed 35 feet above grade, except as provided for in section 34-2174. If seaward of the coastal construction control line, elevations may exceed the 35-foot limitation by three feet for nonconforming lots of record.



(4) **Gasparilla Island conservation district.** No building or other structure may be erected or altered so that the peak of the roof is more than 38 feet above the average grade of the lot or parcel on which the building or structure is located, or is more than 42 feet above mean sea level, whichever is lower.

(5) **Greater Pine Island.** See section 33-1088.

(6) **All other islands:** The height of a structure may not exceed 35 feet above grade (base flood elevation). Except as provided in subsections 34-2175(3), (4), and (5), the provisions of section 34-2174(a) do not apply to islands. No variance or deviation from the 35-foot height restriction may be granted.

### ***Ordinance 99-13***

Sec. 34-2175. Height limitations for special areas.

The following areas have special maximum height limitations applicable to all conventional and planned development districts:

(2) Captiva Island. No building or structure may be erected or altered so that the peak of the roof exceeds 35 feet above the average grade of the lot in question or 42 feet above mean sea level, whichever is lower. The provisions of section 34-2174(a) do not apply to Captiva Island. No variance or deviation from this height restriction may be granted.

If the county received a coastal preapplication compliance determination request relating to construction of a single family home on property located on Captiva Island seaward of the coastal construction control line before February 1, 1998 and the property owner received construction approval for the home from the Florida Department of Environmental Protection (DEP) before August 25, 1998, then the home may be built according to the height regulations and limitations in effect on the date the coastal

### ***Ordinance 97-10***

**Sec. 34-2175: Height limitations for special areas:**

(2) Captiva Island. No building or structure shall may be erected or altered so that the height exceeds two stories above the lowest habitable floor. ~~however, in no case shall~~ However a building or structure may not be erected or altered so that the peak of the roof exceeds the height of 28 feet above the lowest habitable floor.

### ***Ordinance 78-07***

**Section 4.** Height Regulations: No building or structure shall be erected or altered so that the peak of the roof exceeds a height of 35 feet. The building height shall be measured from the elevation from the lowest occupied floor but in no case from an elevation higher than 10 feet above the average ground level, unless Flood Insurance or Coastal Code Regulations, require the elevation to be higher than 10 feet.

## ***Ordinance 74-09***

**SECTION 2.2:** No building or structure shall be erected or altered so that the peak of the roof exceeds a height of 35 feet. The building height shall be measured from the elevation (above mean sea level) of the floor of the first occupied story of the building but in no event from an elevation higher than that required by federal authorities to establish eligibility or insurance under the flood insurance program; in the absence of such flood insurance eligibility requirements, the building height shall be measured from the elevation of the lowest occupied floor but in no case from an elevation higher than ten feet above mean sea level.

## ***Ordinance 73-7***

Section (2) of Ordinance No. 1, Lee County, Florida, is respectfully amended to read as follows:

Section (2). No building or structure shall be erected or altered to exceed the height of 35 feet from the average fill-grade level of the site and that in no case shall this datum be greater than 10 feet above mean sea level.

## ***Ordinance 71-1***

Section 2: No building or structure shall be erected or altered to exceed the height of thirty-five (35) feet above the mean average ground level of the building site on Sanibel and Captiva islands.

Section 3: Building site are herein defined shall be the average ground level of the land surrounding any building or other structural improvement.

Section 4. The height limitation of this ordinance shall not apply to church spires, belfries, cupolas, domes, monuments, utility towers, forest fire observation towers when operated by a branch of the government, transmission towers, chimneys, aerals, or other appurtenance, either temporary or permanent, which are usually required to be placed above the roof level and not intended for home occupancy.

# Maximum building heights chart

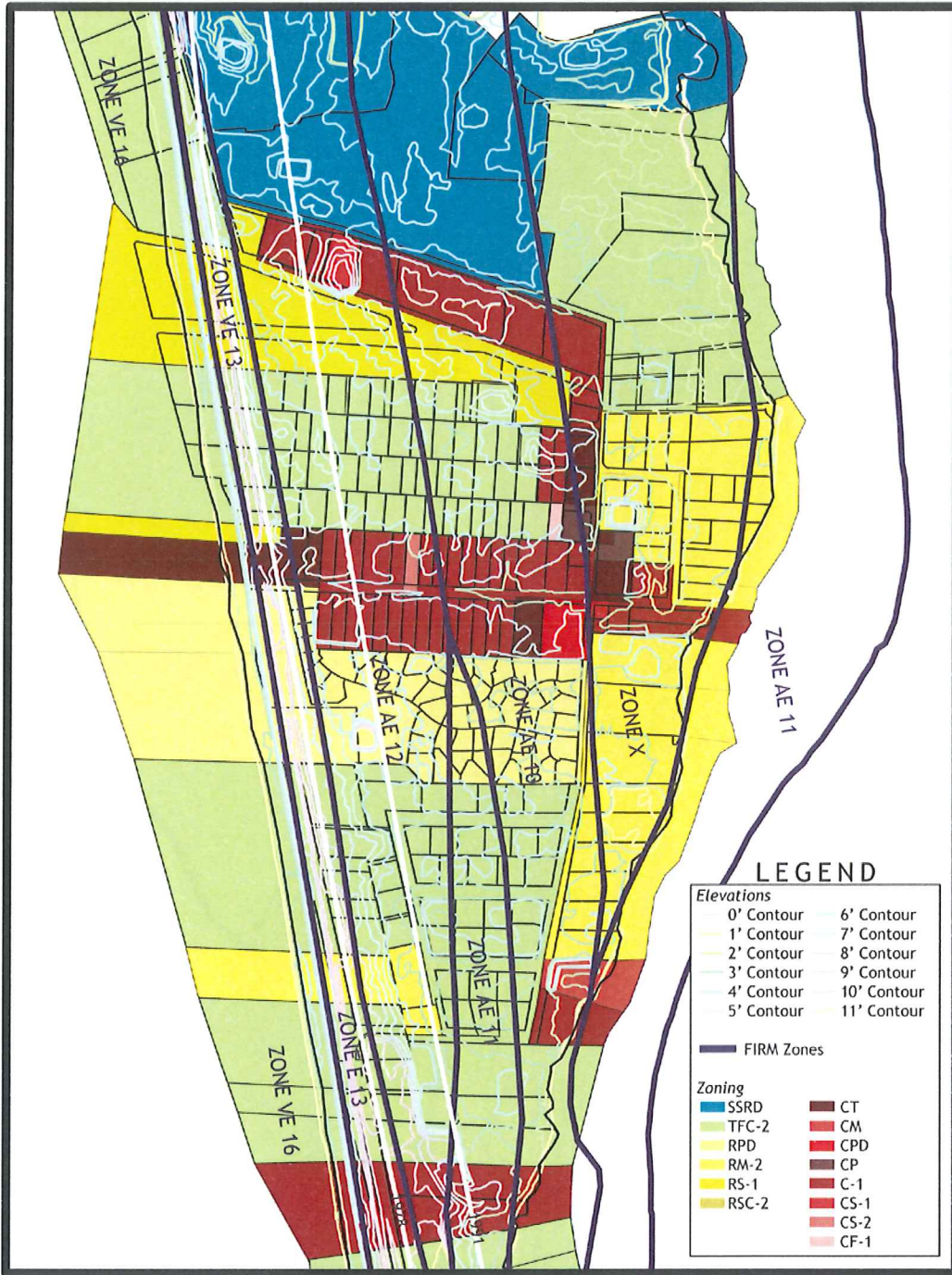
FIRM Flood zone	Base elevation (above SL)	A. Lowest possible horizontal member	B. Maximum vertical distance to: (1) Peak of flat roof OR (2) Mean of slope	C. Additional vertical articulation <sup>1</sup>	D. Illustrative building height (A+B+C)=D	Comment
VE 13 (CCL)	16.5	16.5	28.0	8.0	52.5	Seaward of 1991 Coastal Construction Control Line (extreme case)
AE 12	12.0	~10.5 <sup>2</sup>	28.0	8.0	~46.5	
AE 11	11.0	~9.5	28.0	8.0	~45.5	
AE 10	10.0	~8.5	28.0	8.0	~44.5	
AE 9	9.0	~7.5	28.0	8.0	~43.5	
X	0	0	35.0 <sup>3</sup>	0	42.0 <sup>4</sup>	

<sup>1</sup> 8 feet above peak of flat roof or 4 feet above the peak of a sloped roof, whichever is lower. For illustrative purposes, assume an additional 8 feet above the mean of the roofline.

<sup>2</sup> For flood insurance purposes, base elevations in AE flood zones are measured from the finished floor. These illustrations assume that the lowest horizontal member will be approximately 18 inches lower.

<sup>3</sup> Peak of roof. The mean of slope option is not available in the X zone.

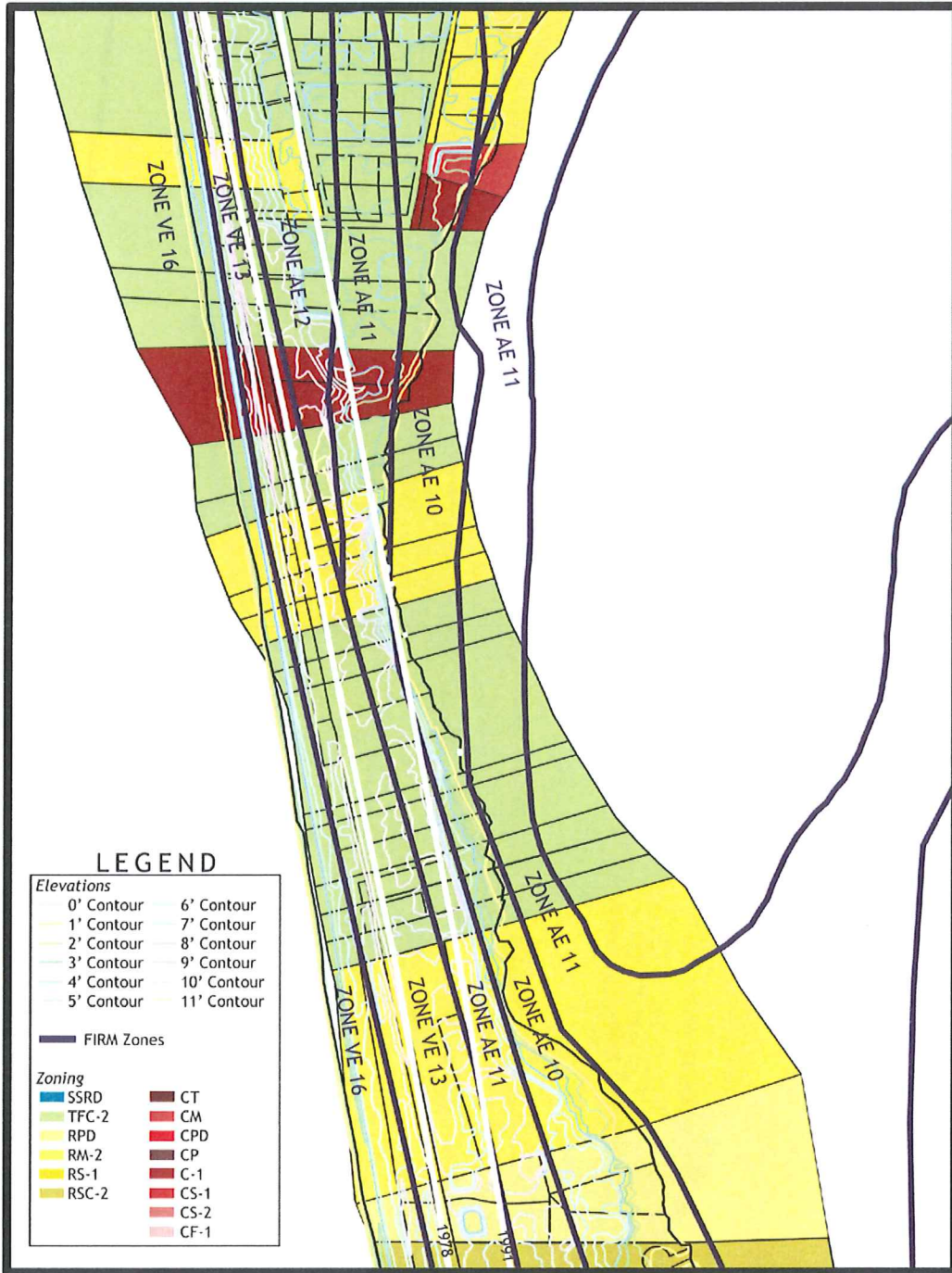
<sup>4</sup> In the X zone, residential units may be built to 35.0 feet above the mean grade of the lot or 42.0 feet above sea level, whichever is lower.



# CAPTIVA CODE REVISIONS 'The Village'

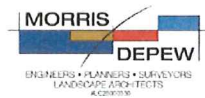
February 2010



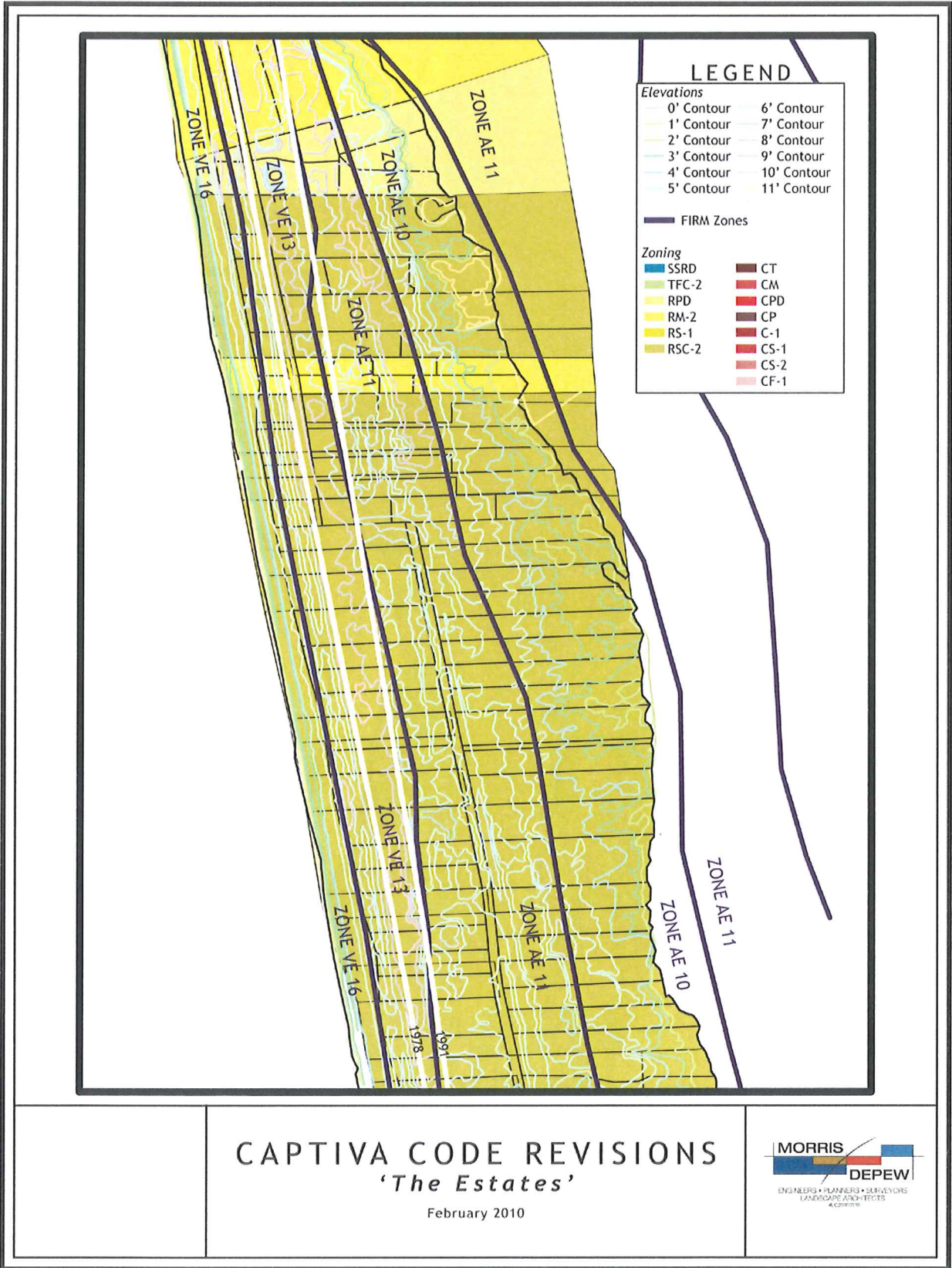


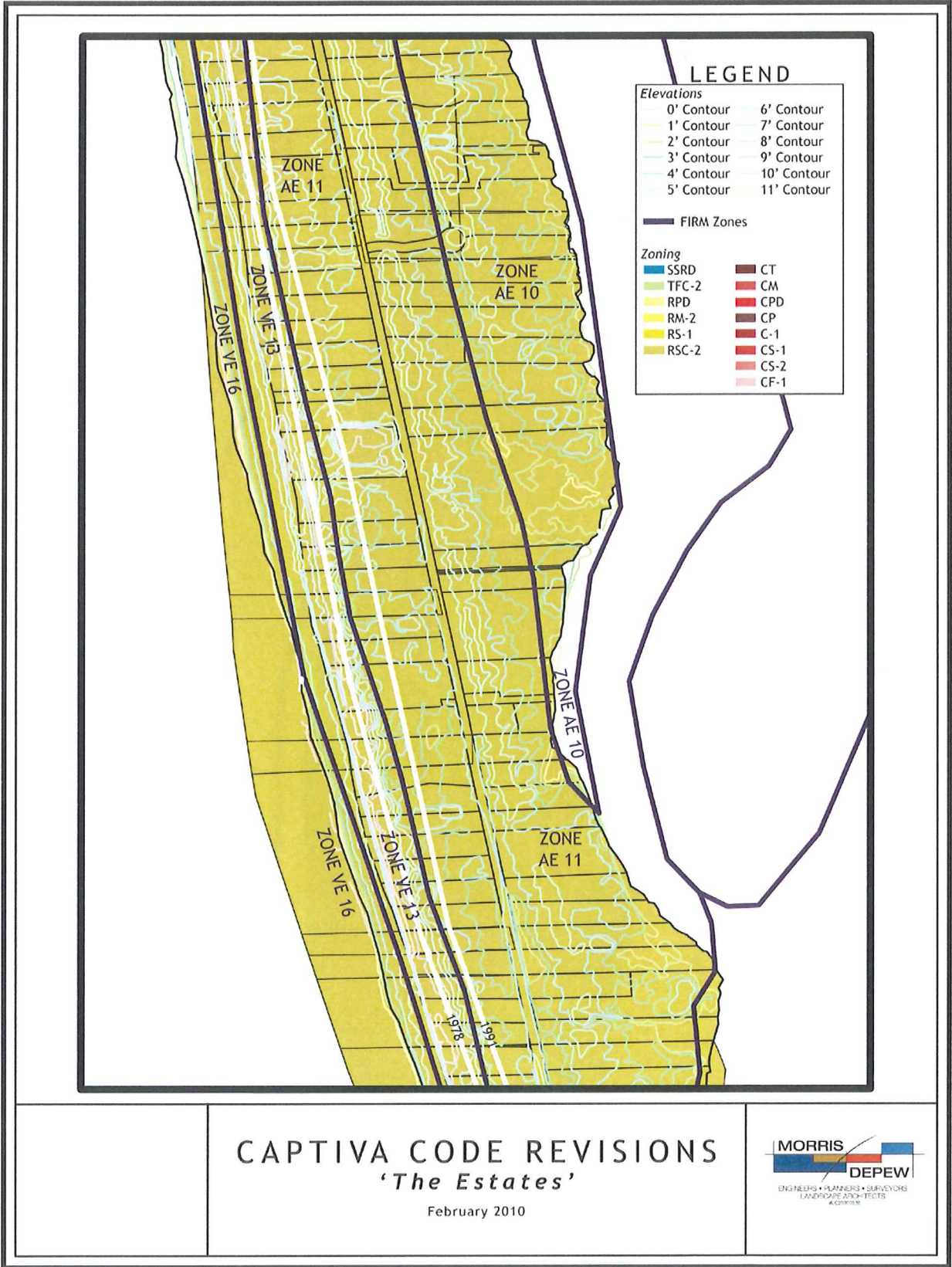
# CAPTIVA CODE REVISIONS 'Tween Waters'

February 2010

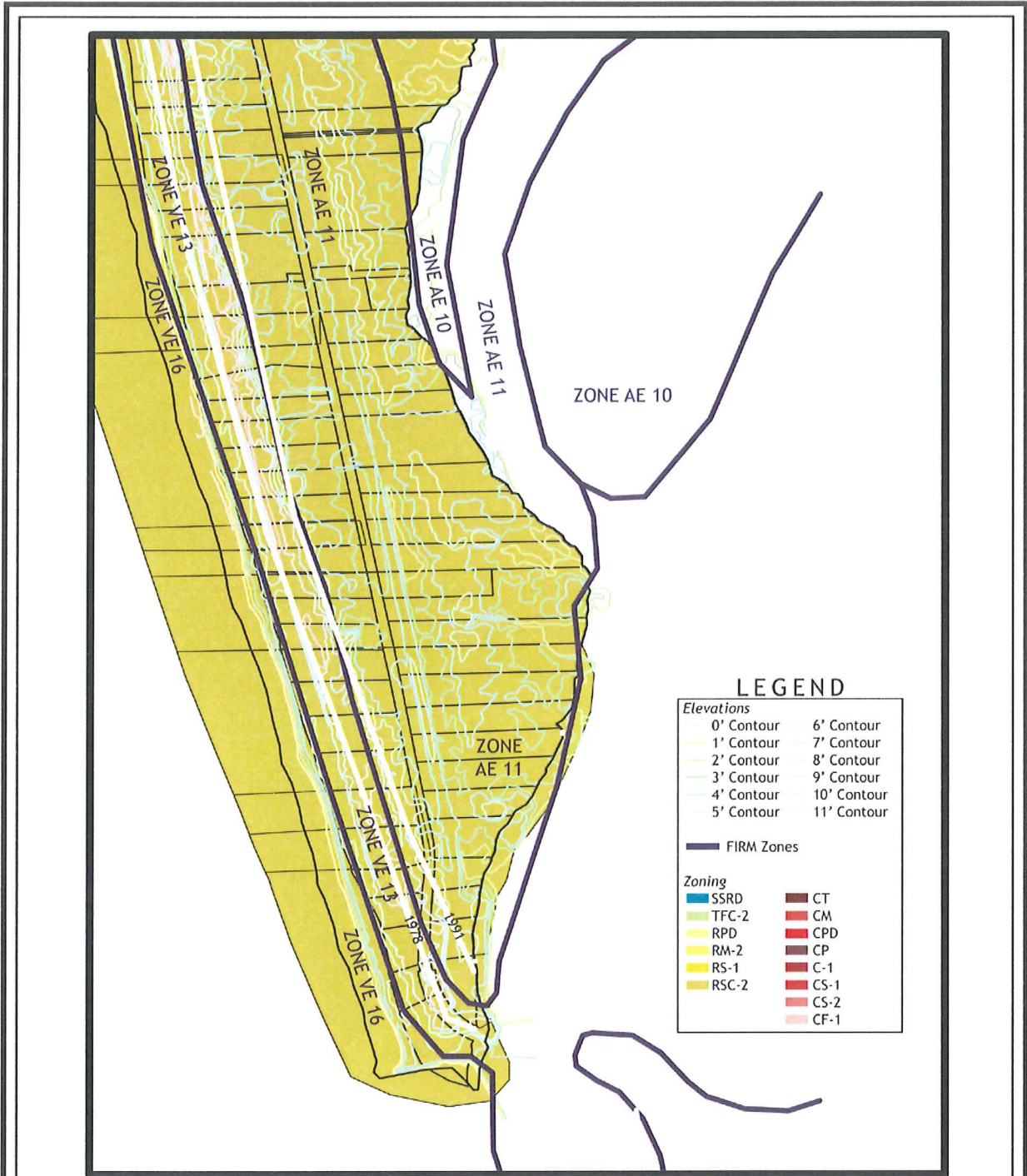












CAPTIVA CODE REVISIONS  
*'The Estates'*

February 2010



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LAW OFFICE OF MATTHEW D. UHLE, LLC

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**MATTHEW D. UHLE**

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May 18, 2011

Mr. Mitch Hutchcraft, Chairman  
Lee County Local Planning Agency  
P.O. Box 398  
Fort Myers, FL 33902

Re: Captiva Height Amendment/CPA2010-15

Dear Chairman Hutchcraft:

My client, the Captiva Civic Association, is an organization of approximately 400 Captiva registered voters and property owners (this represents roughly 25% of all island property owners) that was created in 1936 for the purpose of preserving the quality of life on Captiva Island. Please be advised that the CCA opposes the Captiva height amendment for the following historical, factual, and policy reasons:

1. Prior to 1998, the Captiva height requirement in the LDC read as follows:  
No building and/or structure shall be erected or altered so that the height exceeds two (2) stories above the lowest habitable floor; however a building may not be erected or altered so that the peak of the roof exceeds the height of 28 feet above the lowest habitable floor.
2. The County amended the LDC in 1998 at the request of the CCA to change the standard to 35 feet above existing grade and 42 feet above sea level. The new requirement was based on, and is similar to, the height requirements for Pine Island and Gasparilla Island.
3. Around 2000, many Captiva residents, in response to unwelcome development proposals for property on the island, began pursuing incorporation as a solution to this perceived problem. An organization called the Captiva Property Owners Association (CPOA) was subsequently created to resist the incorporation effort. The CPOA consisted, both then and now, primarily of business owners. It proposed to create a community plan as a substitute for incorporation.
4. In 2002, the CPOA presented its proposal for a community plan, under the auspices of a panel under its control, to the Lee County Board of County Commissioners. The BOCC approved a contract for the expenditure of County funds for the creation of a community plan in response to this initiative. The BOCC responded to the CCA's concerns regarding the makeup of the panel by including a provision in the contract which authorized the CCA to appoint two members to the panel. This language was not included in subsequent contracts between the County and the CPOA, and the CPOA has also increased the number of members of the panel to ten to further dilute the CCA's

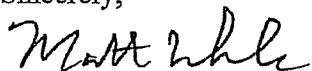
- representation. As a practical matter, the CCA currently has very little influence on the decisions of the panel, which only represents a small faction of the community.
5. The CCA found the CPOA's initial iteration of the community plan to be inadequate, and proposed its own version of the plan. The two were ultimately merged, with the final product receiving the support of both parties. During this process, the CCA conducted a survey of property owners and registered voters on the island and found that no less than 86 percent of the respondents (approximately 30 percent of the recipients of the survey) supported the concept of including the LDC height limit in the community plan. There was, therefore, a demonstrated consensus in favor of the LDC standard in 2003.
  6. The panel has been working on LDC amendments to implement the community plan for several years. In response to the request of some CPOA members for taller buildings, the panel decided to promote a revised height limit. This could not be accomplished without a Lee Plan amendment, so the panel persuaded the staff to put a re-evaluation of the height limit on its 2010-2011 list of amendments.
  7. The panel created a height limit proposal which mirrored the pre-1998 28 foot standard, with three significant differences: first, the height was tied to minimum flood elevations, not the lowest habitable floor, which was stricter than the previous standard; second, the height would be measured to the midpoint of particular kinds of roofs and not to the peak of the roof, which is more liberal than the previous standard; and third, the original limitation to two stories has been eliminated.
  8. The panel then conducted an online web survey of property owners and registered voters. Owners of multiple parcels thereby received multiple votes; for example, we understand that one panel member voted nine times, while another voted six times. The outcome of this process was that 51 percent of the responses were in favor of the panel's proposal, while 49 percent opposed it. Similarly, when a second survey was conducted on the height issue that was geographically limited to the "Village" area, more than half of the 82 votes that were consistent with the panel's position were cast by six people, using multiple votes. The appropriateness of the panel's vote counting methodology is, therefore, highly suspect.
  9. The panel's proposed language has been revised significantly in light of staff's concerns, so it is impossible to tell if the results of the survey (even ignoring its flaws) are valid today.
  10. It is the CCA's position that:
    - (a) The Captiva height limit is primarily an aesthetic issue that should be resolved in a manner consistent with the desires of the residents of the island. The County's interest in the issue is limited to making certain that the restriction is practically enforceable;
    - (b) The current height limit is easily understood, is consistent with the limits applied to other, similar islands, and has been enforced without undue difficulty since 1998;
    - (c) There was a clearly demonstrated consensus in favor of the current height limit in 2002, as shown by the results of the survey;
    - (d) The results of the flawed 2010 survey do not reflect the existence of any such community consensus in favor of height increases;
    - (e) Due to changes in the language that have occurred since the 2010 survey, it is impossible to tell if the proposed language commands the support of a majority of

Captivans, even if it is accepted that 51 percent approval constitutes a community "consensus;"

- (f) There is no compelling policy reason or change in circumstances that provides adequate justification for the revision to the 2003 language. The adjustments to the FEMA maps were not significant on Captiva, and there is no history of prohibiting buildback after Hurricane Charley. To the extent that buildback might be viewed as an issue in the future, it can easily be addressed by amendments to the County's Post-Disaster Ordinance without changing the requirements for new development on the island; and
- (g) The mere fact that the panel supports the amendment does not establish the existence of any kind of community consensus, since the panel is not an elected body and does not otherwise represent a majority of residents of the island.

The CCA consequently requests you to vote against the height increases proposed in this amendment.

Sincerely,



Matthew D. Uhle

Cc: Paul Garvey