

**CPA2011-22
HAZARDOUS
WILDLIFE UPDATE
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

Lee County Board of County Commissioners
Sponsored Amendment and Staff Analysis

BoCC Adoption Document

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June 17, 2013

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2011-22**

Text Amendment

Map Amendment

This Document Contains the Following Reviews	
✓	Staff Review
✓	Local Planning Agency Review and Recommendation
✓	Board of County Commissioners Hearing for Transmittal
✓	Staff Response to Review Agencies' Comments
✓	Board of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: January 18, 2013

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT/REPRESENTATIVES:

LEE COUNTY PORT AUTHORITY / Laura DeJohn, AICP, Johnson Engineering

2. REQUEST:

Amend Policy 1.2.1, Policy 1.2.7, and Policy 1.9.8 to make the Lee Plan consistent with Federal and State requirements to reduce hazardous wildlife on airport property.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

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

POLICY 1.2.1: Airport Lands include the existing facility and projected growth areas for the Southwest Florida International Airport and Page Field General Aviation Airport

through the year 2030. The Airport Lands comprising the Southwest Florida International Airport includes airport and airport-related development as well as non-aviation land uses as proposed in the approved 2003 Airport Master Plan update and as depicted on the Airport Layout Plan sheet (Map 3F) and the Southwest Florida International Airport Proposed Development Schedule (Table 5(a)). This mix of uses is intended to support the continued development of the Southwest Florida International Airport. Future development at the Southwest Florida International Airport will also include non-aviation related land uses such as hotels/motels, light industrial, service stations, retail/shopping, and office development. Any future airport expansion or development of aviation-related and non-aviation uses at Southwest Florida International Airport will offset environmental impacts through the Airport Mitigation Lands Overlay (Map 3M) or other appropriate mitigation ~~acceptable to the permitting agencies and to Lee County~~. The physical design of the airport expansion will minimize any degradation of the recharge capability of land being developed. Wetland mitigation for any future expansion or development of aviation and non-aviation uses on Airport Lands must be designed so it does not create a wildlife hazard. Development and land management practices on airport property will be in accordance with FAA directives and other required agency approvals. Airport expansion beyond the present boundaries will be subject to necessary amendments to the Lee Plan.

All development on Airport Lands comprising Southwest Florida International Airport must be consistent with Map 3F and Table 5(a). Map 3F depicts the planned expansion of the Southwest Florida International Airport through 2020.

Future development on Airport Lands comprising Page Field General Aviation Airport must be consistent with Objective 1.9 and related policies as well as Map 3G and Table 5(b).

If the airport master planning process precipitates a substantive change to the Airport Layout Plan (Map 3F or Map 3G), then the Port Authority must amend Map 3F or Map 3G, as appropriate, prior to obtaining local development approval.

The non-aviation related development areas have been depicted on the approved Airport Layout Plan sheets (Maps 3F and 3G). These uses will be constructed upon Airport lands with long term leases. All development within the non-aviation land use areas will be subject to mitigation requirements for wetland impacts. Mitigation of wetland impacts will be in accordance with the U.S. Army Corps of Engineers and South Florida Water Management District requirements. ~~To the greatest extent reasonably possible, development of non-aviation land use areas must avoid wetland impacts.~~ All non-aviation land use development will meet the indigenous vegetation requirements set forth in the Lee County Land Development.

Southwest Florida International Airport

POLICY 1.2.7: ~~Future non-aviation areas depicted on the Airport Layout Plan (Map 3F) will be developed, to the greatest extent possible, only within existing upland areas.~~

~~Impacts to wetlands in the future non-aviation areas will be minimized by site design, whenever possible, in compliance with the Lee County Land Development Code. In cooperation with local, state, and Federal regulatory agencies, the Port Authority will work to minimize and correct any wildlife hazards arising from existing wetlands located on airport property. Site improvements on airport property will be designed to minimize attractiveness to wildlife of natural areas and man-made features on airport property such as detention/retention ponds, landscaping, and wetlands, which can provide wildlife with ideal locations for feeding, loafing, reproduction, and escape. Development within the non-aviation area, as designated on Map 3F, is limited to a maximum of 300 acres north of runway 6-24 and approximately 52 acres within the midfield terminal area. All development must be in compliance with Map 3F and the intensities outlined in Table 5(a). Development of additional acreage will require prior Lee Plan amendment approval.~~

Page Field General Aviation Airport

~~**POLICY 1.9.8:** Future non-aviation areas depicted on the Airport Layout Plan (Map 3G) will be developed, to the greatest extent possible, within existing upland areas. Impacts to wetlands in the future non-aviation areas will be minimized by site design whenever possible in compliance with the Lee County Land Development Code. In cooperation with local, state, and Federal regulatory agencies, the Port Authority will work to minimize and correct any wildlife hazards arising from existing wetlands located on airport property. Site improvements on airport property will be designed to minimize attractiveness to wildlife of natural areas and man-made features on airport property such as detention/retention ponds, landscaping, and wetlands, which can provide wildlife with ideal locations for feeding, loafing, reproduction, and escape.~~

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The Board of Port Commissioners requested this plan amendment at the April 24, 2012 Lee County Port Authority Airports Special Management Committee Meeting.
- The Board of County Commissioners initiated this plan amendment on June 19, 2012 as requested by the Lee County Port Authority.
- Federal Aviation Administration (FAA) Certalert #09-10, issued June 11, 2009, direct airport operators to avoid wildlife hazards and hazardous wildlife attractants on airport properties.
- Lee County Port Authority prepared a “Wildlife Hazard Management Plan” which was approved by the FAA in 2011
- Lee Plan Policy 1.2.1, Policy 1.2.7, and Policy 1.9.8 are inconsistent with the Wildlife Hazard Mitigation Plan.

- Lee County and the Lee County Port Authority have properties set aside to mitigate future impacts to environmental features at Page Field and Southwest Florida International Airport. As these properties are used for mitigation purposes they will be added to the Airport Mitigation Lands Overlay on Map 3M.

C. BACKGROUND INFORMATION

The Lee County Port Authority (LCPA) operates Lee County-owned aviation facilities under the direction of the Lee County Board of Port Commissioners. The two aviation facilities owned by Lee County are Page Field General Aviation Airport (Page Field) and Southwest Florida International Airport (SWFIA). Both airports are included within the U.S. Department of Transportation's National Plan of Integrated Airport System (NPIAS) and the Florida Aviation System Plan (FASP).

Although SWFIA serves as the Port Authority's only commercial service airport with Page Field serving as a Regional Reliever airport, both SWFIA and Page Field are operated according to most of the same rules and regulations of Federal, state, and local agencies. General descriptions of these regulations are provided below:

Federal: The U.S. Department of Transportation Federal Aviation Administration (FAA) is responsible for regulating civil aviation throughout the United States. The FAA issues regulations (Code of Federal Regulations or "CFR") and guidance for all aspects of aviation facility operation and development that must be followed by airport operators. The primary objective of FAA regulations and guidance is public safety.

In order to operate a commercial service facility, the FAA issues CFR Part 139 Certifications, which authorize and govern airport operations. A significant source of funding for airport facility operations is derived from the FAA. The Certification that authorizes an airport's operation and the supplemental grant funding both issued by the FAA are contingent on the airport operator's compliance with FAA regulations and guidance issued through Advisory Circulars (AC) and Certalerts. AC 15015200-33B dated August 28, 2007, Certalert Number 06-07 dated November 21, 2006, and Certalert Number 09-10 dated June 11, 2009 direct airport operator activity in regard to avoidance of wildlife hazards and hazardous wildlife attractants on or near airports.

State: Florida Statutes and the Florida Administrative Code establish standards for the operation, location, and compatibility of airports throughout Florida. The Florida Department of Transportation issued an "Airport Compatible Land Use Guidebook" in March 2010 which outlines how airport development should be managed to comply with compatibility standards. Florida Administrative Code Rule 68A-9.012 became effective July 27, 2010 which allows any airport to take wildlife on airport property for safety purposes.

Local: Lee County governs local land use and development order procedures through the goals, objectives, policies, and standards in the Lee Plan, Land Development Code, and administrative codes. The coordination of airport planning occurs at the local level through the incorporation of the Airport Master Plans: Map 3F for SWFIA, and Map 3G for Page Field which were adopted consistent with FAA Advisory Circular 15015070-6B "Airport Master Plans," and incorporated in the Lee Plan. Policy 1.2.1, Policy 1.2.7, and Policy 1.9.8 in part require non-aviation development on airport properties to develop within upland areas so as to avoid any impacts to wetlands that are found on airport properties.

Specific details about federal and state regulations are provided in the application materials.

Page Field consists of 587.50 acres just south of the City of Fort Myers, and SWFIA occupies approximately 6,366 acres east of Treeline Avenue, south of Daniels Parkway and north of Alico Road. Both airports contain land areas within their respective boundaries for aviation related and non-aviation related uses. Current Lee Plan Policy allows for impacts to wetlands (with appropriate offsite mitigation) in the aviation areas as depicted on Maps 3F and 3G. However, areas that are depicted on these maps in the non-aviation areas are required to avoid wetland impacts by building only on the upland portions of the property. This is inconsistent with state and federal guidance to reduce hazardous wildlife attractants on the airport properties.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

An important aspect of governmental planning activities is the promotion of general welfare, health, and safety of the public. From the Federal level to the local level, public safety is a primary principle of planning and policy development. Materials provided by the applicant outlines Federal and state policies that address public safety concerns with wildlife hazards and hazardous wildlife attractants. Lee County staff has worked with the Port Authority to develop the proposed Lee Plan amendment, which will make Policy 1.2.1, Policy 1.2.7, and Policy 1.9.8 consistent with the requirements of the Federal and state governments.

The proposed amendments affect the development regulations only in the non-aviation areas of Southwest Florida International Airport and Page Field General Aviation Airport. The proposed amendment would make development requirements in the non-aviation areas similar to the requirements of airport-related development areas in that wetlands and other hazardous wildlife attractants could be impacted with off-site mitigation. The proposed amendments to Policy 1.2.1, 1.2.7, and Policy 1.9.8 do not propose any new development. All future development approvals will be obtained through the appropriate permitting agency.

Lee County staff has identified the following factors that justify allowing impacts to wetlands on airport properties.

1. RSW is a certificated airport as established by the Federal Aviation Administration (FAA) under Code of Federal Regulation (CFR) Title 14 Federal Aviation Regulation (FAR) Part 139 - Certification of Airports; as such the airport must comply with FAA regulations. FAR Part 139.337 Wildlife Hazard Management requires airports to conduct Wildlife Hazard Assessments (WHA), if certain criteria are met. RSW completed a WHA in 2009. The WHA was presented to the FAA in December of the same year. In January 2010, the FAA approved the RSW WHA without any changes and recommended that a Wildlife Hazard Management Plan (WHMP) be written and submitted for their approval. The Lee County Port Authority submitted a Wildlife Hazard Management Plan to the FAA, and received notice of its approval in September of 2011.
2. Florida Statute 379.2293 declares that airports have the ability to manage wildlife hazards necessary to prevent jeopardy to human life and aircraft safety consistent with the airport's Wildlife Hazard Mitigation Plan, as approved by the FAA.
3. Lee County has lands available for offsite mitigation of impacts to wetlands within Southeast Lee County. These lands are identified on Lee Plan Map 3M and more fully described in Lee Plan Policy 1.7.11. Policy 1.7.11 states in part that "(Map 3M) depicts lands owned by Lee County that were acquired for the purpose of mitigating environmental impacts attributable to development of the Southwest Florida International Airport."

Lee County Staff concurs with the Port Authority that the primary objective of local regulations affecting airport properties should be public safety including the avoidance of wildlife hazards and hazardous wildlife attractants on airport properties.

CONSISTENCY WITH THE LEE PLAN

Planning staff finds that allowing for the removal of hazardous wildlife attractants with appropriate offsite wetland mitigation by amending Policies 1.2.1, 1.2.7, and 1.9.8 is consistent with the remainder of the Lee Plan.

Goal 47 of the Lee Plan states that Lee County will "develop and maintain a coordinated system of aviation facilities to facilitate the safe, cost-effective, and efficient movement of commerce." Goal 46 is more general in that it speaks to the development of a wider array of transportation facilities such as railways, aviation, ports, roads and other related facilities, but also requires "safe and efficient movement of commerce." The presence of wetlands and other hazardous wildlife attractants is a safety concern and is an impediment to developing safe aviation facilities.

Policy 47.6.4 states that *“The safety of aircraft operators, aircraft passengers, and persons on the ground will guide the Port Authority in the operation of county airports, and hazardous wildlife attractants on or near the airports will be avoided.”* The proposed amendments to Policy 1.2.1, Policy 1.2.7, and Policy 1.9.8 are consistent with Policy 47.6.4 because it will allow for the removal of hazardous wildlife attractants with offsite mitigation. Current policy requires that impacts to wetlands in the non-aviation development areas be avoided or mitigated with onsite mitigation. Such actions could require the formation of new hazardous wildlife attractant areas, which is inconsistent with Policy 47.6.4 and federal guidelines.

Policy 47.7.1 of the Lee Plan requires that the impacts to natural resources and wildlife be mitigated consistent with FAA policies and procedures and in coordination with federal, state, regional and local environmental agencies. Policy 47.7.1 is not proposed to be amended and will remain enforceable. The proposed amendments would allow for impacts to natural resources in the non-aviation development areas, which is consistent with Federal and state requirements.

CONSISTENCY WITH FLORIDA FEDERAL AND STATE REQUIREMENTS

The amendment addresses FAA policy to avoid wildlife hazards and hazardous wildlife attractants so that the Port Authority can fulfill requirements of Part 139 Certifications and associated Wildlife Hazardous Management Plan (WHMP) adopted for SWFIA. The proposed amendment to the Lee Plan will align county policies with the FAA, which is necessary for the Port Authority to maintain compliance for continued airport operation and continued supplemental grant funding from the FAA. All future development approvals will be obtained through applicable permitting agencies as required.

The proposed amendment addresses the need for the Port Authority to consider potential hazards on airport property, which is necessary to preclude obstructions to airport operations that can be caused by wildlife and to ensure land use compatibility as outlined in the FDOT "Airport Compatible Land Use Guidebook.”

The proposed amendment puts policies in place to ensure future development of airport facilities will be consistent with the Lee Plan, and all relevant state and federal statutes, rules, and regulations relating to wildlife hazards, environmental impacts and compatibility.

B. STAFF RECOMMENDATION

County staff recommends that the Board of County Commissioners transmit the proposed amendments to Policy 1.2.1, Policy 1.2.7, and Policy 1.9.8 allow impacts to wetlands.

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

DATE OF PUBLIC HEARING: January 28, 2013

A. LOCAL PLANNING AGENCY REVIEW

Staff provided a brief summary of the proposed Lee Plan amendment and staff recommendation. One member of the LPA asked how panthers would be affected by the amendment. A representative of the Port Authority stated that the goal was to reduce attractants to hazardous wildlife on the airport property, including panthers, but that birds are the primary concern. The representative further stated that the Port Authority would follow the Wildlife Hazard Management Plan. In a follow up question the LPA member asked if Lee County had sufficient mitigation land to accommodate off-site mitigation when impacts are made to wetlands on the airport properties. The Port Authority responded that that wouldn't be known until a site plan had been developed and the impacts were applied for. Another member of the LPA requested clarification about the shape of stormwater management ponds. Another member of the LPA requested clarification that any development activities would have to meet the requirements of the South Florida Water Management District. Staff responded that all other permit requirements would have to be met.

Staff recommended a change to Policy 1.2.1. The new language is identified with a double underline, as follows:

POLICY 1.2.1: ...Wetland mitigation for any future expansion or development of aviation and non-aviation uses on Airport Lands must be designed so it does not create a wildlife hazard. Development and land management practices on airport property shall will be in accordance with FAA directives and other required agency approvals. Airport expansion beyond the present boundaries will be subject to necessary amendments to the Lee Plan.

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

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

The LPA recommends that the Lee County Board of County Commissioners *transmit* the proposed Lee Plan amendment as recommended by staff.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

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

C. VOTE:

NOEL ANDRESS	AYE
STEVE BRODKIN	AYE
WAYNE DALTRY	AYE
JIM GREEN	AYE
MITCH HUTCHCRAFT	AYE
ANN PIERCE	AYE
ROGER STRELOW	AYE

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

DATE OF TRANSMITTAL HEARING: March 4th, 2013

A. BOARD REVIEW:

Staff provided a brief overview of the proposed amendment. The Board of County Commissioners did not make any comments or have any questions concerning the proposed amendment. No members of the public addressed the Board of County Commissioners concerning the proposed amendment.

A motion was made to transmit the proposed amendment. The motion passed 4-0.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION: The Board of County Commissioners transmitted the proposed amendment as recommended by staff.

2. BASIS AND RECOMMENDED FINDINGS OF FACT: The Board of County Commissioners accepted the findings of fact as advanced by staff and the LPA.

C. VOTE:

TAMMARA HALL	ABSENT
LARRY KIKER	AYE
FRANK MANN	AYE
JOHN MANNING	AYE
CECIL L PENDERGRASS	AYE

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

DATE OF REVIEWING AGENCY COMMENTS: Comments from the State Reviewing Agencies were due to Lee County by April 17, 2013.

A. OBJECTIONS, RECOMMENDATIONS AND COMMENTS:

Lee County received responses from the following review agencies addressing the transmitted amendment: Florida Departments of Agriculture and Consumer Services, Economic Opportunity, Education, Environmental Protection, and Transportation; the South Florida Water Management District; and the Southwest Florida Regional Planning Commission.

These agencies stated that they had no further comments or concerns about the proposed amendment.

B. STAFF RECOMMENDATION

Staff recommends that the Board of County Commissioners *adopt* the amendments to the Lee Plan as transmitted.

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

DATE OF PUBLIC HEARING: June 17, 2013

A. BOARD REVIEW

Staff made a brief presentation to the Board of County Commissioners, providing summaries of the proposed Lee Plan amendments. Staff noted that the state reviewing agencies provided no substantive comments and therefore recommend adoption of the amendment as it was transmitted to the Department of Economic Opportunity. The Board of County Commissioners did not make any comments or have any questions concerning the proposed amendment.

No members of the public addressed the BoCC concerning the proposed Lee Plan amendment.

A motion was made to adopt the proposed amendment as recommended by staff.

The motion passed 5-0.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY

1. **BOARD ACTION:** The Board of County Commissioners adopted the proposed amendment as recommended by staff.
2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board of County Commissioners accepted the findings of fact as advanced by staff and the LPA.

C. VOTE:

TAMMARA HALL	AYE _____
LARRY KIKER	AYE _____
FRANK MANN	AYE _____
JOHN MANNING	AYE _____
CECIL L PENDERGRASS	AYE _____