



**LOCAL PLANNING AGENCY
LEE COUNTY ADMINISTRATION BUILDING
2115 SECOND STREET
FORT MYERS, FL 33901
ADMINISTRATION CONFERENCE ROOM**

**MONDAY, JULY 22, 2013
8:30 AM**

AGENDA

1. Call to Order/Review of Affidavit of Publication
2. Pledge of Allegiance
3. Public Forum
4. 2013 Regular Lee Plan Amendment Cycle
 - A. [CPA2013-00001 - West Lakes Excavation Small Scale Amendment](#)
Amend Map 6 of the Lee Plan, the Lee County Utilities Future Water Service Areas Map, to provide service to an existing office building on 2.62± acres within the West Lakes Excavation IPD project.
5. New Horizon 2035: Plan Amendments
 - A. [CPA2011-00016 – Procedures and Administration Element](#)
Amend the Procedures and Administration Element of the Lee Plan in accordance with state statutes to remove unnecessary language; incorporate the recommendations of the County Attorney's Office; and, ensure the protection of judicially acknowledged or constitutionally protected private property rights.
6. Other Business
7. Adjournment – Next Meeting Date: Monday, August 26, 2013

A verbatim record of the proceeding will be necessary to appeal a decision made at this hearing. Contact the Lee County Division of Planning at 239-533-8585 for further information on obtaining a record. In accordance with the Americans with Disabilities Act, reasonable accommodations will be made upon request. Contact Janet Miller at 239-533-8583.



**CPA2011-16
PROCEDURES AND
ADMINISTRATION ELEMENT
BOCC SPONSORED
EAR BASED AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

Publicly Sponsored Amendment and Staff Analysis

**LPA Public Hearing Document
For the
July 22nd, 2013 Public Hearing**

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

July 12, 2013

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2011-16**

Text Amendment

Map Amendment

This Document Contains the Following Reviews	
<input checked="" type="checkbox"/>	Staff Review
	Local Planning Agency Review and Recommendation
	Board of County Commissioners Hearing for Transmittal
	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
	Board of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: July 12, 2013

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT/REPRESENTATIVE:

Lee County Board of County Commissioners
Represented by Lee County Division of Planning

2. REQUEST:

Amend the Procedures and Administration Element of the Lee Plan in accordance with state statutes to remove unnecessary language; incorporate the recommendations of the County Attorney's Office; and, ensure the protection of judicially acknowledged or constitutionally protected private property rights.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

Staff recommends that the Board of County Commissioners *transmit* the proposed amendment to the Procedures and Administration Element of the Lee Plan as shown in Attachment 1.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The Procedures and Administration Element of the Lee Plan is intended to provide direction for implementation and interpretation of the Plan.
- The adopted New Horizon 2035 Evaluation and Appraisal Report found that the updated Lee Plan should address issues regarding element clarity, effectiveness, and clarity.
- The proposed amendments meet the statutory requirements of FS 163.3177.
- The proposed revisions to the other Lee Plan elements are removing outdated procedures and language that need to be reflected in the Procedures and Administration Element.

C. BACKGROUND INFORMATION

The Procedures and Administration Element of the Comprehensive Plan is an important component of the Lee Plan. The purpose of the Element is to address how the Lee Plan should be implemented and provides direction for interpretation of the Plan. The Procedures and Administration Element was originally incorporated into the Lee Plan in 1984, to provide direction and guidance. Revisions are necessary to reflect the proposed revised elements.

The Procedures and Administration Element addresses requirements of Chapter 163.3177, Florida Statutes (F.S.). Specifically, the statute states, “*The comprehensive plan and its elements shall contain guidelines or policies for the implementation of the plan and its elements.*”

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

Portions of the Procedures and Administration Element have been in place since the 1984 Lee Plan. Amendments have been made to the Element each time the Lee Plan has undergone major amendments, including 1989 and 1994. The Procedures and Administration Element provides detailed guidelines concerning the effect and legal status of the Plan, administrative interpretations of the Plan, legislative interpretations of the Plan, procedures to amend the Plan, and monitoring and evaluation of the Plan.

In 1994, the last time the Procedures and Administration Element was substantially amended, Chapter 163 of the Florida Statutes did not provide the same level of guidance as it provides today. Since 1994 Lee County has also adopted Administrative Codes that help to provide direction in making changes to the Lee Plan. These Administrative Codes include AC-13-6, “Annual Plan Amendment Procedures to the Lee (Comprehensive) Plan;” and AC-13-7, “Public Participation Procedures Relating to Comprehensive Plan Amendments.” In addition to AC-13-6 and AC-13-7 the Lee County Land Development Code has recently been amended so that Master Concept Plans that accompany planned development zoning do not expire. Due to these actions

during the past 19 years, the Procedures and Administration Element can be substantially streamlined. In addition, the outline format the element currently uses has been simplified.

Sub-Element A can be simplified based on the definition of “Development Permit” in Chapter 163 of the Florida Statutes, which is inclusive of many of the types of development approvals currently described in the Sub-Element. Chapter 163 states that:

“Development permit” includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

The County Attorney’s Office has provided streamlined language that is consistent with and not duplicative of Florida Statutes, Lee County administrative codes, or the Lee County Land Development Code. Below the current language is shown as being struck through followed by the new proposed language, which is shown as underlined.

~~XIII. Procedures and Administration~~

~~a. Effect and Legal Status of the Plan~~

~~Upon adoption of this amended plan, all development and all actions taken in regard to development orders must be consistent with the plan as adopted. All land development regulations enacted or amended after the effective date of the Lee Plan must be consistent with the Lee Plan. Land development regulations in existence as of the effective date of the Lee Plan which are inconsistent with the Lee Plan will be amended to conform to the goals, objectives, and policies of the Lee Plan, as provided for in the implementation section of the plan.~~

~~The terms "consistent with" and "in conformity with" will mean that all development actions or orders will tend to further the goals, objectives, and policies of the plan and will not specifically inhibit or obstruct the attainment of articulated policies. Where goals, objectives, or policies of particular elements appear to be in conflict, such conflicts will be resolved upon an analysis of the entire Lee Plan as it may apply to the particular area at issue.~~

~~The impact of the Lee Plan upon ongoing development may involve a balancing of public needs reflected in the Lee Plan and the expectations of those persons in the process of developing property in a manner inconsistent with the goals, objectives, and policies of the Lee Plan. Moreover, Section 163.3202(2)(g), Florida Statutes, imposes restrictions on the ability of Lee County to grant development permits notwithstanding an otherwise satisfactory balancing of such needs and expectations. Therefore, there will necessarily be a transition period in which such development rights will have to be balanced with the public needs and purposes expressed in the Lee Plan and this transition may be further complicated by the impact of Section 163.3202(2)(g). During this transition period, in instances where development has been reviewed~~

~~and determined to be consistent with the 1979 Comprehensive Plan, as amended, and/or the 1984 Lee Plan, as amended, and/or the 1989 Lee Plan, as amended, and a development order or final development order has been issued, such development, to the extent it cannot reasonably comply with the standards established in the Lee Plan, will be deemed consistent with the Lee Plan as outlined below. (Amended by Ordinance No. 94 30, 00 22)~~

~~A. A preliminary development order, not otherwise vested, issued prior to the effective date of this plan, and subsequently issued, will be deemed consistent with this plan for a period of three years, only as to:~~

- ~~1. terms specifically approved in writing; or~~
- ~~2. accompanying plans expressly approved as to matters requested to be in said plans and requested to be approved as part of the preliminary development order process.~~

~~To be deemed consistent, such preliminary development orders must also meet all applicable public health, safety, and welfare standards.~~

~~(Amended by Ordinance No. 00-22)~~

~~B. A final development order, not otherwise vested, will be deemed consistent with the amended plan for a period of five years from the date of issuance of the development order, only as to:~~

- ~~1. terms specifically approved in writing; or~~
- ~~2. accompanying plans expressly approved as to matters requested to be in said plans and requested to be approved as part of the development order process.~~

~~To be deemed consistent, such final development orders must also meet all applicable public health, safety, and welfare standards.~~

~~(Amended by Ordinance No. 00-22)~~

~~C. A development order, not otherwise vested, will be deemed consistent with the amended plan for a period of three years (six years for development orders approved after October 16, 1994) from the date of issuance of the development order, only as to:~~

- ~~1. terms specifically approved in writing; or~~
- ~~2. accompanying plans expressly approved as to matters requested to be in said plans and requested to be approved as part of the development order process.~~

~~To be deemed consistent, such development orders must also meet all applicable public health, safety, and welfare standards.~~

~~(Added by Ordinance No. 94-30, Amended by Ordinance No. 00-22)~~

~~D. In addition to above-mentioned development orders, preliminary and final development orders, the following categories of approvals, projects, and developments will be deemed to be consistent with the Lee Plan, subject to the applicable conditions as set forth below:~~

- ~~1. a development or project that has a building permit issued by Lee County, valid on the effective date of the 1993/94 amendments to the Lee Plan;~~
- ~~2. a development or project that has been granted an approval under the site plan approval process of the Lee County Administrative Code F 0015, or its predecessors, and the approval was obtained prior to the effective date of the Lee Plan (December 21, 1984), PROVIDED THAT construction of the development or project was begun within two (2) years of the approval date and construction has been diligently pursued;~~
- ~~3. a site plan approved by court order or stipulated settlement which is the result of litigation in which Lee County was a party;~~
- ~~4. an approved, platted subdivision pursuant to Part I of Chapter 177, Florida Statutes;~~
- ~~5. final P.U.D. approvals, PROVIDED THAT construction began (or begins) within two (2) years of the final P.U.D. approval and construction has been (is) diligently pursued;~~
- ~~6. all developments approved under a site specific P.U.D. ordinance;~~
- ~~7. "planned development" zoning approvals which have not been vacated due to inactivity by the developer;~~
- ~~8. for ongoing commercial operations, an addition or interior remodeling, limited to 25% of the existing floor area or 1,500 square feet, whichever is less (this is a one-time addition); no addition or remodeling will be permitted within wetlands (as defined in Goal 114);~~

- ~~9. development that has been granted an exemption from the requirements of Ordinance No. 82-42, as amended, or Ordinance 92-44, as amended, prior to the effective date of the 1988/89 or the 1993/94 plan, whichever is applicable; and~~
- ~~10. a project which received a final favorable vested rights determination pursuant to Chapter XIV of the 1984 Lee Plan before its amendment in 1986, if the construction of the project has been or is actually commenced within five years of the date of such determination and construction continues at a reasonable rate under the circumstances to completion of the project; provided, however, that any substantial deviation from a prior approval which has received vested rights or partial vested rights status will cause the development involved to be subjected to the policies and implementing decisions and regulations set forth in the 1988/89 and subsequent amendments to the Lee Plan. These vested rights, as conditioned herein, run with the land and therefore may be transferred from owner to owner. However, even subsequent owners are subject to the possibility that any vested rights determination may be revoked upon a showing by the county of a peril to the public health, safety, or general welfare of the residents of Lee County unknown at the time of approval.~~

~~The following general conditions will apply to the above ten categories:~~

- ~~1. the activity must comply with all applicable public health, safety, and welfare standards and regulations;~~
- ~~2. these categories will be deemed consistent only insofar as those items specifically approved; and~~
- ~~3. the activity will not be deemed consistent if there has been a substantial deviation from the approval granted.~~

~~Notwithstanding anything in this section to the contrary, an approval, project, development order, preliminary development order, or a final development order, which would otherwise be deemed consistent, will not be deemed consistent upon a showing by the county of a peril to the public health, safety, or general welfare of the residents of Lee County, which peril was unknown at the time of approval. Moreover, notwithstanding the fact that an approval, project, development order, preliminary development order, or a final development order is deemed consistent, no development order or permit, as defined in Section 163.3164, Florida Statutes, will be issued which results in a reduction in the levels of service below the minimum acceptable levels established in this plan, as required by Section 163.3202(2)(g), Florida Statutes.~~

~~Nothing in the Lee Plan will limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to Chapter 380, Florida Statutes.~~

~~(Amended by Ordinance No. 94-30, 00-22)~~

~~E. In other circumstances where development expectations may conflict with the Lee Plan but judicially defined principles of equitable estoppel may override the otherwise valid limitations imposed by the Lee Plan, such expectations may be recognized by Lee County, acting by resolution of its Board of County Commissioners, on a case-by-case basis. (Amended by Ordinance No. 94-30, Amended and Relocated by Ordinance No. 00-22)~~

~~F. Build back Policy~~

~~Structures which have been damaged by fire or other natural forces to the extent that the cost of their reconstruction or repair exceeds 50% of the replacement value of the structure may be reconstructed at (but not to exceed) the legally documented actual use, density, and intensity existing at the time of destruction, thereby allowing such structures to be rebuilt or replaced to the size, style, and type of their original construction, including their original square footage; provided, however, that the affected structure, as rebuilt or replaced, complies with all applicable federal and state regulations, local building and life safety regulations, and other local regulations which do not preclude reconstruction otherwise intended by this policy.~~

~~In order to reconstruct at the legally documented previous use, density, and intensity, a building permit must be applied for within five years after the date of destruction. The date of destruction must be legally documented. Such documentation may include a local, state, or federal declaration of disaster; a fire or police department report on the event; or any insurance claims filed as a result of the destruction. If a building permit is not applied for within five years of the destruction, the property will then become subject to current regulations on use, density, and intensity.~~

~~In accordance with this policy, the post-disaster ordinance (Objective 111.2) will provide that:~~

- ~~1. Structures damaged less than 50% of their replacement value at the time of damage can be rebuilt to their original condition, subject only to current building and life safety codes.~~

- ~~2. Structures damaged more than 50% of their replacement value at the time of damage can be rebuilt to their original square footage and density, provided that they comply with:
 - ~~a. federal requirements for elevation above the 100-year flood level;~~
 - ~~b. building code requirements for floodproofing;~~
 - ~~c. current building and life safety codes;~~
 - ~~d. state Coastal Construction Control Lines; and~~
 - ~~e. any required zoning or other development regulations (other than density or intensity), unless compliance with such regulations would preclude reconstruction otherwise intended by the buildback policy.~~~~
- ~~3. The ordinance may establish blanket reductions in non-vital development regulations (e.g. buffering, open space, side setbacks, etc.) to minimize the need for individual variances or compliance determinations prior to reconstruction.~~
- ~~4. The ordinance may establish procedures to document actual uses, densities, and intensities, and compliance with regulations in effect at the time of construction, through such means as photographs, diagrams, plans, affidavits, permits, appraisals, tax records, etc.~~
- ~~5. No provision is made to redevelop property containing damaged structures for a more intense use or at a density higher than the original lawful density except where such higher density is permitted under current regulations.~~
~~(Added by Ordinance No. 94-30, Relocated and Amended by Ordinance No. 00-22, Amended by Ordinance No. 03-04)~~

A. Effect and Legal Status of the Plan

After the Lee Plan or portion thereof has been adopted in conformity with Chapter 163, Fla. Stat., all development undertaken by, and all actions taken in regard to development orders by Lee County in regard to land covered by the Lee Plan or element must be consistent with the adopted Plan or Element. Development permits issued by the County must be consistent with the Plan as adopted on the date of issuance.

Land development regulations adopted or amended after the effective date of the Lee Plan, or amendments thereto, must be consistent with the Lee Plan. Land development regulations that are no longer consistent with the Lee Plan must be amended to conform to the goals, objectives, and policies of the Plan. During the interim period when the provisions of the most recently adopted comprehensive plan, or element or portion thereof, and the land development regulations are inconsistent, the provisions of the most recently adopted comprehensive plan, or element or portion thereof, will govern actions taken in regard to an application for a development order.

A development order or land development regulation will be deemed consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan, and if it meets all other criteria enumerated by the County.

Where goals, objectives, or policies of particular elements conflict, those conflicts will be resolved based on an analysis of the Lee Plan as a whole. Conflicts between the land development regulations and the Lee Plan will be resolved in favor of the Lee Plan.

1. The following development approvals will be considered consistent with the Lee Plan:

- a. Development permits authorizing development contemplated by a valid Development Agreement adopted under section 163.3220, Fla. Stat.
- b. Development authorized pursuant to a Development of Regional Impact created under Chapter 380, Fla. Stat.
- c. Development permits, as defined in § 380.031, F.S., where the development began prior to adoption of the amendment and has continued in good faith. Consistency will be limited to the development parameters approved in writing and depicted on accompanying development plans expressly approved under the development order process prior to adoption of the amendment.
- d. Development authorized by court order resulting from litigation in which Lee County was a party.
- e. Development permits for reconstruction of structures damaged by fire or other natural forces, so long as reconstruction does not exceed the legally permitted use, density, and intensity existing at the time of destruction and the rebuilt or replaced structure complies with federal and state regulations, local building, and life safety regulations.
- f. In circumstances where judicially defined principles of equitable estoppel override valid limitations imposed by the Lee Plan, the Board of County Commissioners, acting by resolution on a case-by-case basis, may issue the minimum development permit necessary to authorize development to avoid a Bert Harris or inverse condemnation action.

2. Development approvals consistent under subsection 1 may be modified if the modifications make the development more consistent with the current Lee Plan than the original approval.

Similar to Sub-Element A, the County Attorney's Office has provided language for Sub-Element B that is consistent with, but not duplicative of Florida Statutes and other existing Lee County codes.

There are two substantive differences in Sub-Element B which should be noted. Both of the differences are in the Minimum Use Determination (MUD) section which was formerly known as the single family residence provision. One of these changes is the ability to transfer the right to construct a single family dwelling unit if the property that received the MUD is within an

environmentally critical area. The second substantive change is the ability to have a second use on properties receiving MUDs within the DR/GR and Open Lands future land use categories if the lot/parcel meets the requirements of the Land Development Code. Otherwise Sub-Element B has been modified to provide additional clarity and consistency with the formatting in the rest of the element. Below the current language is shown struck through and the proposed language follows in underline.

b. Administrative Interpretations of the Plan

~~Persons or entities whose interests are directly affected by the Lee Plan have the right to an administrative interpretation of the plan as it affects their specific interest. Such an interpretation, under the procedures and standards set forth below, will remain in effect and thereafter be binding upon the county only as to the legally described property and any plan of development upon which the interpretation was based. If the plan of development is proposed to be, or is changed, through any action of any owner or developer of the property, then the administrative interpretation is no longer binding on the county. Actions that will render a previous interpretation no longer binding include any of the following: significant changes in parcel or platted lot(s) configuration; changes to land uses; decreases in the amount of open space or preserved land; increases in density or intensity of use; increases in the size or acreage of the property; or any other change that makes the plan of development less consistent with the current Lee Plan. (Note: ~~combing lands consistent with XIII.b.B.4.b.(4) is allowed.~~) A determination of whether or not a plan of development has been, or would be changed sufficiently to render the previous interpretation no longer binding on the county will be made on a case by case basis by the Administrative Designee using the above described criteria.~~

~~Administrative interpretations are intended to expedite and reduce disputes over interpretations of the Lee Plan, resolve certain map or boundary disputes, avoid unnecessary litigation, ensure consistency in plan interpretation, and provide predictability in interpreting the plan. All such administrative interpretations, once rendered, are subject to challenge under the provisions of Section 163.3215, Florida Statutes.~~

~~Anyone seeking an administrative interpretation must submit an application with requested information and will have the burden of demonstrating compliance with the standards set forth below.~~

~~(Amended by Ordinance No. 00-22)~~

A. Subject Matter of Administrative Interpretations

~~Administrative interpretations will be provided only as to the matters set forth below. In no event will administrative interpretations hereunder involve questions of the consistency of development or land use regulations with the Lee Plan. Administrative~~

~~interpretations will be determined by the County Manager or his designee and are limited to:~~

- ~~1. Whether the single family residence provision as hereinafter defined applies and the applicant desires a written opinion for future use, or in conjunction with a concurrent building permit application. If said single family residence provision application is not approved, an application for appeal of the single family residence denial may be submitted to the County Attorney's Office for final review.~~
- ~~2. Whether an area has been (or should have been) designated Wetlands on the basis of a clear factual error. A field check will be made prior to the issuance of such an interpretation.~~
- ~~3. Clarification of land use map boundaries as to a specific parcel of property.
(Amended by Ordinance No. 94-30, 00-22, 07-09)~~

~~B. Standards for Administrative Interpretations~~

~~Administrative interpretations of the Lee Plan will be determined under the following standards:~~

- ~~1. Interpretations which would be confiscatory, arbitrary, capricious, unreasonable, or which would deny all economically viable use of property will be avoided;~~
- ~~2. Interpretations should be consistent with background data, other policies, and objectives of the plan as a whole;~~
- ~~3. Interpretations should, to the extent practical, be consistent with comparable prior interpretations;~~
- ~~4. Single Family Residence Provision:
 - ~~a. Applicability — Notwithstanding any other provision of this plan, any entity owning property or entering or participating in a contract for purchase agreement of property, which property is not in compliance with the standard density requirements of the Lee Plan, will be allowed to construct one single family residence on said property PROVIDED THAT: (Amended by Ordinance No. 07-09)~~~~

~~(1) Date Created:~~

- ~~(a) the lot or parcel must have been created and recorded in the official Plat Books of Lee County prior to the effective date of the Lee Plan (December 21, 1984), and the configuration of said lot has not been altered; OR~~
 - ~~(b) a legal description of the lot or parcel was lawfully recorded in the Official Record books of the Clerk of Circuit Court prior to December 21, 1984; OR~~
 - ~~(c) the lot was lawfully created after December 21, 1984, and the lot area was created in compliance with the Lee Plan as it existed at that time.~~
- ~~(2) Minimum Lot Requirements: In addition to meeting the requirements set forth above, the lot or parcel must:~~
- ~~(a) have a minimum of 4,000 square feet in area if it was created prior to June 27, 1962; OR~~
 - ~~(b) have a width of not less than 50 feet and an area of not less than 5,000 square feet if part of a subdivision recorded in the official Plat Books of Lee County after June 27, 1962, and prior to December 21, 1984; OR~~
 - ~~(c) have a minimum of 7,500 square feet in area if it was created on or after June 27, 1962, and prior to December 21, 1984, if not part of a subdivision recorded in the official Plat Books of Lee County; OR~~
 - ~~(d) have been in conformance with the zoning regulations in effect at the time the lot or parcel was recorded if it was created after December 21, 1984; OR~~
 - ~~(e) have been approved as part of a Planned Unit Development or Planned Development.~~
- ~~(3) Access and Drainage: In addition to meeting the requirements set forth above:~~
- ~~(a) the road that the lot or parcel fronts on must have been constructed and the lot must be served by drainage swales or equivalent drainage measures. The road must have, at a minimum, a graded surface of shell, marl, gravel base rock, or other compacted fill material, suitable for year round use; OR~~

~~(b) the lot or parcel must be located within a subdivision which was approved under Chapter 177, Florida Statutes, as long as the subdivision improvements have been made or security for their completion has been posted by the subdivider.~~

~~If the lot or parcel cannot meet the requirement of access and drainage, this requirement will not apply to the extent that it may result in an unconstitutional taking of land without due process.~~

~~(4) Interchange, Tradeport, and Industrial Development land use categories: In addition to the requirements set forth above, a residential use must be the only reasonable use of the lot or parcel. The existence of a reasonable commercial or industrial use will be determined by reference to all of the applicable facts and circumstances, including, but not limited to, the nature of the surrounding uses, the adequacy of the lot size (pursuant to Chapter 34 of the Land Development Code) for commercial or industrial uses, and whether adequate infrastructure exists or can reasonably be provided to serve a commercial or industrial use at the location in question.~~

~~b. Construction Regulations—Subsequent to a property owner establishing the right to build a single family residence on a lot through the procedures set forth in this plan, the following policies will prevail:~~

~~(1) The residential structure must be in compliance with all applicable health, safety, and welfare regulations, as those regulations exist at the time the application for construction of the residence is submitted.~~

~~(2) Lots or parcels which qualify for the right to construct a residence and which contain wetlands will be subject to special provisions of the Wetlands Protection Ordinance.~~

~~(3) If two or more contiguous lots or parcels have each qualified for the right to build a single family residence, the property owner is permitted and encouraged to reapportion properties if the result of the reappointment is a lot or lots which come closer to meeting the property development regulation standards for the zoning district in which it is located and as long as no property becomes non-conforming or increases in its non-conformity as a result of the reappointment and as long as the density will not increase.~~

~~(4) If a lot or parcel has qualified for the right to construct a single family residence, nothing herein will be interpreted as prohibiting the combining of said lot or parcel with other contiguous property provided the density will not increase.~~

~~(5) If two or more contiguous properties have each qualified for the right to construct a single family residence and if the lots or parcels are located in a zoning district which permits duplex or two family dwellings, the property owner(s) may combine the lots to build a single duplex or two family building in lieu of constructing two single family residences.~~

~~(6) For mixed use developments in the Captiva community in the areas identified by Policy 13.2.1, such developments may be allowed one residential unit in addition to commercial uses. A Minimum Use Determination will not be required to construct a residential unit for mixed use developments as defined in the Lee Plan, and mixed use developments containing both commercial and residential uses within the same structure on those parcels identified by Policy 13.2.1. (Added by Ordinance No. 07-09)~~

~~c. Transferability— This right will run with the land and be available to any subsequent owner if the property which qualifies for the single family provision is transferred in its entirety. (Amended by Ordinance No. 00-22)~~

~~C. Procedure for Administrative Interpretations~~

~~The following procedures will apply in obtaining administrative interpretations:~~

~~1. Except as provided in 3. below, anyone seeking an administrative interpretation of the plan will submit an application, on an appropriate form provided by the county, with all requested information to the Zoning and Development Review Division (single-family residence provision) or the Planning Division (all other applications), or to their successor agencies.~~

~~2. The person authorized by Section A.1. or 2. above will review such information and issue an administrative interpretation in writing within sixty (60) days after submittal of the application and all requested information to the appropriate division. The interpretation will contain findings and reasons for the interpretation rendered.~~

~~3. If the request for a single family residence provision or Wetlands determination is in conjunction with an application for a building permit, development order, or planned~~

~~development rezoning, a separate application will not be required. The interpretation will be noted on the building permit, development order, or planned development rezoning approval, or will be contained in the reasons for denial where applicable.~~

- ~~4. An administrative interpretation may be appealed to the Board of County Commissioners by filing a written request within fifteen (15) days after the administrative interpretation has been made. In reviewing such an appeal, the Board will consider only information submitted in the administrative interpretation process and will review only whether the designated individual has properly applied to the facts presented and the standards set forth in the plan for such administrative interpretation. No additional evidence will be considered by the Board. The Board of County Commissioners will conduct such appellate review at a public meeting.~~
- ~~5. The Board of County Commissioners will consider the appeal at a hearing to be held within thirty (30) days after the date of the written request for appeal. A decision overruling the written interpretation will be in writing and will be rendered by the Board within thirty (30) days after the date of the hearing. Alternatively, the Board may adopt the administrative interpretation being appealed.~~
- ~~6. Where appropriate and necessary all administrative interpretations rendered by the designated persons (or upon appeal, approved by the Board of County Commissioners) will be incorporated into the Plan during the next amendment cycle. (Amended by Ordinance No. 94 30, 00 22)~~

B. Administrative Interpretations of the Plan

Persons or entities whose interests are directly affected by the Lee Plan have the right to an administrative interpretation of the Plan as it affects their specific interest. Administrative interpretations are intended to expedite and reduce disputes over interpretations of the Lee Plan, resolve map or boundary disputes, avoid unnecessary litigation, ensure consistency in Plan interpretation, and provide predictability in interpreting the Plan. Interpretations will remain in effect and bind the county only as to the legally described property and the plan of development upon which the interpretation was based. If the plan of development is changed, then the administrative interpretation is no longer binding. Actions that render a previous interpretation no longer binding include the following: significant changes in parcel or platted lot(s) configuration; changes to land uses; decreases in open space or preserved land; increases in density or intensity; increases in the acreage or other changes that make the plan of development less consistent with the Lee Plan. Determinations of whether a plan of development will be changed so as to render the previous interpretation no longer binding on the county will be made on a case by case basis. Once rendered, administrative interpretations are subject to challenge under the provisions of Chapter 163.3215, Florida Statutes. Administrative interpretations will be determined by the Community Development Director.

Applicants seeking an administrative interpretation must submit an application demonstrating compliance with the standards below:

1. Subject Matter of Administrative Interpretations

Administrative interpretations are limited to:

- a. Whether the Minimum-Use Determination, formerly known as the single-family residence provision applies to a lot/parcel. If the application is denied, the applicant may submit a request for a formal opinion from the County Attorney's Office on the basis of denial.
- b. Whether a parcel has been properly designated as Wetlands. A Jurisdictional Determination approved by SFWMD or Florida DEP, must be submitted and a field check will be made prior to the issuance of such an interpretation.
- c. Providing clarification of Land Use Map boundaries.

2. Standards for Administrative Interpretations

- a. Interpretations that are confiscatory, arbitrary, capricious, unreasonable, or which would deny all economically viable use of property must be avoided;
- b. Interpretations must be consistent with background data, other policies, and objectives of the plan as a whole;
- c. Interpretations should, to the extent practical, be consistent with prior interpretations; and
- d. Interpretations must be consistent with Statutory Rules of Construction.

3. Minimum-Use Determination (MUD):

a. Applicability

Property not in compliance with the standard density requirements of the Lee Plan may construct one single-family residence on the property PROVIDED the lot/parcel meets the requirements below:

(1) Date Created:

- (i) the lot/parcel must have been created and recorded in the official Plat Books of Lee County prior to December 21, 1984, and the configuration of the lot has not been altered; OR
- (ii) a legal description of the property was lawfully recorded in the Official Record books of the Clerk of Circuit Court prior to December 21, 1984; OR

(iii) the lot was lawfully created after December 21, 1984, and the lot area was created in compliance with the Lee Plan as it existed at that time.

(2) Minimum Lot Requirements:

(i) A lot/parcel created before June 27, 1962 must be a minimum of 4,000 square feet in area; OR

(ii) A lot/parcel that is part of a subdivision recorded in the official Plat Books of Lee County on or after June 27, 1962, and prior to December 21, 1984, must have a width of at least 50 feet and an area of at least 5,000 square feet; OR

(iii) A lot/parcel created on or after June 27, 1962, and prior to December 21, 1984, that is not part of a subdivision recorded in the official Plat Books of Lee County must be a minimum of 7,500 square feet in area; OR

(iv) A lot/parcel created on or after December 21, 1984 that was in conformance with the zoning regulations in effect at the time the lot/parcel was recorded; OR

(v) A lot/parcel approved as part of a Planned Unit Development or Planned Development.

(3) Access and Drainage:

(i) the lot/parcel must front on a constructed road and the lot/parcel must be served by drainage swales or equivalent drainage measures. The road must have, at a minimum, a graded surface of shell, marl, gravel base rock, or other compacted fill material, suitable for year-round use; OR

(ii) the lot/parcel must be located within a subdivision approved under Chapter 177, Florida Statutes, provided the subdivision access and drainage improvements have been constructed or the developer has posted security for their completion.

(4) There is no other permitted use allowed on the property, with the exception identified in section 3(d).

b. Construction Regulations

When the right to build a single-family residence on a lot/parcel has been approved pursuant to the Minimum Use Determination, the following requirements must be established:

(1) The residential structure must comply with applicable health, safety, and welfare regulations.

- (2) Lots/parcels that contain wetlands will be subject to the Wetlands Protection Ordinance.
- (3) If two or more contiguous lots or parcels have each qualified for the right to build a single-family residence, the property owner may reapportion the lots. Notwithstanding, the number of lots created through reapportionment may not exceed the number of Minimum Use Determinations approved for the lots.
- (4) Lots/parcels that qualify for the right to construct a single-family residence, may be combined with contiguous property provided overall density will not increase.
- (5) If two or more contiguous properties have each qualified for the right to construct a single-family residence and if the lots or parcels are located in a zoning district that permits duplex or two-family dwellings, the property owner(s) may combine the lots to build a single duplex or two-family building in lieu of constructing two single-family residences.
- (6) Mixed use developments in areas identified by Policy 13.2.1 on Captiva Island may be allowed one residential unit in addition to commercial uses.

c. Transferability

- (1) The right to construct a single family dwelling under this provision will run with the land and is available to subsequent owners if the property is transferred in its entirety.
- (2) The right to construct a single family dwelling under this provision may be transferred to another property if the property that received the MUD is within an environmentally critical area as defined in this Plan and the property proposed to receive the transferred development right is within a land use category that permits incentive density.

- d. Once a MUD is issued, the property owner may not increase the density or intensity of uses on the property, subject to the following exception: In addition to a single family residential use, a lot/parcel in Open Lands or Density Reduction/Groundwater Resource land use categories may be permitted an additional use that would otherwise be allowed within the land use category as long as it meets the requirements of the Land Development Code. Appropriate uses may include as boarding stables, kennels, plant nurseries, and bona fide agricultural uses.

4. Procedures for Administrative Interpretations

- a. Submit an application, on a form provided by the county, with all requested information to the Zoning and Development Review Division (MUD) or the Planning Division (all other applications).

- b. Staff will issue an administrative interpretation in writing within sixty (60) days after submittal of a complete application. The interpretation will contain findings and set forth the basis for the interpretation.
- c. A separate application fee will not be required if the request for a MUD or Wetlands determination is in conjunction with an application for a building permit, development order, or planned development rezoning. The interpretation will be noted on the development permit approval, or included in a letter of denial.
- d. Administrative interpretations may be appealed to the Board of County Commissioners by filing a written request within fifteen (15) days after issue date of the administrative interpretation. The Board will consider information submitted during the administrative interpretation process and will review only whether the designated individual has properly applied the standards set forth in the plan to the facts.
- e. The Board will consider the appeal at a public hearing held within thirty (30) days after the written request for appeal. The Board may affirm or overrule the administrative interpretation. The Board's decision to overrule an administrative interpretation will be in writing and will be rendered within thirty (30) days after the date of the hearing.

Sub-Element C has been modified to provide additional clarity and consistency with the formatting in the rest of the element. The County Attorney's Office has provided language that is consistent with, but not duplicative of Florida Statutes and other existing Lee County codes. Below the current language is shown struck through and the proposed language follows in underline.

~~e. Legislative Interpretations of the Plan~~

~~In order to apply the plan consistently and fairly, it will be necessary from time to time to interpret provisions in the plan in a manner which insures that the legislative intent of the Board of County Commissioners which adopted the plan be understood and applied by subsequent boards, county employees, private property owners, and all other persons whose rights or work are affected by the plan. When the plan is interpreted, it should be done in accordance with generally accepted rules of statutory construction, based upon sound legal advice, and compiled in writing in a document which should be a companion to the plan itself. These goals will be accomplished by the procedures which are set forth below:~~

~~A. Comprehensive Plan Annotations Committee~~

~~The Director of Community Development, the Planning Director, and the County Attorney will together be empowered to sit as the Comprehensive Plan Annotations Committee. In each instance, these persons may designate one or more subordinates to~~

~~serve in their place, but only one vote may be cast by or on behalf of each of the
aforenamed officials. The purpose of the committee is to make written recommendations
to the Local Planning Agency in response to requests for interpretations of specific
provisions in the plan. If the committee cannot recommend an interpretation
unanimously, then both a majority and minority recommendation will be made to the
Local Planning Agency. Similarly, if the committee cannot reach a majority position
with respect to an interpretation, then each official will submit a separate
recommendation to the Local Planning Agency. In accomplishing its work, the
committee will operate as follows:~~

~~1. Organization — The committee will meet regularly at such times and places as it
may choose. Its meetings will be either private or open to the public, or a
combination thereof, as the committee chooses. The committee will have total
discretion in this matter. No public notices of its meetings will be required. It may
invite to its meetings such persons as it believes will best assist it in its work. It is
intended that the committee will function in an informal workshop atmosphere, with
emphasis to be placed on the timely production of concise, written recommendations
to the Local Planning Agency in response to requests for interpretations of specific
provisions in the plan. The County Attorney will be responsible for reducing the
recommendations of the committee in writing, unless he is in the minority, in which
case the Planning Director will be responsible for reducing the majority
recommendation to writing. In every case, the Planning Director will be responsible
for delivering the recommendations to the Local Planning Agency on a timely basis
as part of the published agenda of the Local Planning Agency.~~

~~2. Requests for Interpretations — Requests for interpretations will be placed before
the Comprehensive Plan Annotations Committee by any one of its three members in
response to a question raised by the Board of County Commissioners, collectively or
by any one commissioner, by any member of the county administration who is
responsible for administering the plan, by the Local Planning Agency, by the Lee
County Hearing Examiner, or by any applicant for a type of development regulated
by the plan. In each case, the Planning Director will be responsible for reducing the
questions to writing and, to the extent possible, linking them to specific plan
provisions which might affect the answer.~~

~~(Amended by Ordinance No. 00-22)~~

~~B. — Local Planning Agency~~

~~Upon receiving the recommendations from the Comprehensive Plan Annotations
Committee, the Local Planning Agency will review the same and forward them to the~~

~~Board of County Commissioners with such comments and recommendations of its own that the Local Planning Agency believes to be appropriate. (Amended by Ordinance No. 00-22)~~

~~C. — Board of County Commissioners~~

~~Upon receiving the recommendations of the Comprehensive Plan Annotations Committee, with such other comments and recommendations as the Local Planning Agency submits with the committee's recommendations, the Board of County Commissioners will render a final decision as to the correct interpretation to be applied. This interpretation will be that which is adopted by absolute majority of the Board of County Commissioners and, upon being reduced to a board resolution drafted by the County Attorney in response to the board majority, it will be signed by the Chairman and recorded in the county's Official Records. The Planning Director will be responsible for maintaining copies of all such resolutions in a single document which will be appropriately indexed and provided to all persons upon request. The document will be updated regularly and the latest version thereof furnished to all persons requesting copies of the plan itself. (Amended by Ordinance No. 00-22)~~

~~D. — Legal Effect of Annotations~~

~~Any provision of the plan specifically construed in accordance with the foregoing procedures may not be re-interpreted or modified except by a formal amendment of the plan itself. Once formally adopted in accordance with these procedures, the annotation will have the force of local law and all persons will be placed on constructive notice of it. Any development orders issued in reliance on legislative interpretations of this plan are subject to challenge under the provisions of Section 163.3215, Florida Statutes. (Amended by Ordinance No. 00-22)~~

C. Legislative Interpretations of the Plan

The Lee Plan will be interpreted in accordance with generally accepted rules of statutory construction, based upon sound legal advice. Legislative interpretations of the Lee Plan will be compiled in writing in a document that will be a companion to the Plan.

1. Comprehensive Plan Annotations Committee

Together, the Director of Community Development, the Planning Director, and the County Attorney will sit as the Comprehensive Plan Annotations Committee. These persons may designate a subordinate to serve in their place, but only one vote may be cast by or on behalf of each official. The purpose of the committee is to make written recommendations to the Local Planning Agency (LPA) in response to requests for legislative interpretations of

specific provisions in the plan. If the committee cannot recommend an interpretation unanimously, then both a majority and minority recommendation will be made to the LPA. If the committee cannot reach a majority position, then each official will submit a separate recommendation to the LPA. The committee will operate as follows:

a. Organization

The committee has the discretion to meet privately or publicly, or a combination thereof, as the committee chooses. The committee will function in an informal workshop atmosphere, with an emphasis on the timely production of concise, written recommendations to the LPA. The County Attorney will reduce the recommendations of the committee in writing, unless he or she is in the minority, in which case the Planning Director will reduce the majority recommendation to writing. The Planning Director will deliver the recommendations to the LPA for consideration as an agenda item at a future meeting of the LPA.

b. Requests for Interpretations - Requests for legislative interpretations may be placed before the Comprehensive Plan Annotations Committee by any one of its three members in response to a question raised by the Board of County Commissioners, collectively or by any one commissioner, by any member of the county administration responsible for administering the Plan, by the LPA, by the Lee County Hearing Examiner, or by any applicant for development regulated by the Plan. The Planning Director will be responsible for reducing the questions to writing and, to the extent possible, linking them to specific plan provisions that might affect the answer.

2. Local Planning Agency

The LPA will review the recommendation of the committee at a publicly noticed meeting. The LPA will then consider the Committee's recommendation and forward the LPA's recommendation and comments to the Board of County Commissioners.

3. Board of County Commissioners

The Board of County Commissioners will render a final decision as to the interpretation to be applied, which will be memorialized in a resolution. The Planning Director will maintain copies of the resolutions in a single document that will be updated regularly and furnished to persons requesting copies of the Lee plan.

4. Legal Effect of Legislative Interpretation

Once formally adopted in accordance with these procedures, an interpretation will have the force of law, unless the Lee Plan is amended to change the effect of the legislative interpretation.

Sub-Element D, concerning Lee Plan amendment procedures, is only proposed to receive minor edits based on current terminologies. The proposed language is consistent with, but not duplicative of Florida Statutes and other existing Lee County codes.

Below the current language is shown struck through and the proposed language follows in underline.

~~d. Plan Amendment Procedures~~

~~This plan, including the Future Land Use Map, may be amended with such frequency as may be permitted by applicable state statutes and in accordance with such administrative procedures as the Board of County Commissioners may adopt.~~

~~Sections of this plan may be renumbered or relettered, and typographical errors which do not affect the intent, may be authorized by the County Administrator, or his designee, without need of Public Hearing, by filing a corrected copy of same with the Clerk of the Circuit Court.
(Amended by Ordinance No. 94-30)~~

D. Plan Amendment Procedures

This plan, including the Future Land Use Map, may be amended in accordance with Florida Statutes and the County's Administrative procedures.

Sections of this plan may be renumbered or relettered, and typographical errors which do not affect the intent, may be authorized by the County Manager, or his designee, without a Public Hearing, by filing a corrected copy with the Clerk of the Circuit Court.

Lee County Department of Community Development and the County Attorney's Office are proposing to delete Sub-Element E because Chapter 163.3191 of the Florida Statutes addresses requirements of evaluation and appraisal of comprehensive plans. Lee County will comply with Chapter 163.3191 as follows:

163.3191 Evaluation and appraisal of comprehensive plan.—

- (1) At least once every 7 years, each local government shall evaluate its comprehensive plan to determine if plan amendments are necessary to reflect changes in state requirements in this part since the last update of the comprehensive plan, and notify the state land planning agency as to its determination.*
- (2) If the local government determines amendments to its comprehensive plan are necessary to reflect changes in state requirements, the local government shall prepare and transmit within 1 year such plan amendment or amendments for review pursuant to s. 163.3184.*

- (3) *Local governments are encouraged to comprehensively evaluate and, as necessary, update comprehensive plans to reflect changes in local conditions. Plan amendments transmitted pursuant to this section shall be reviewed pursuant to s. 163.3184(4).*
- (4) *If a local government fails to submit its letter prescribed by subsection (1) or update its plan pursuant to subsection (2), it may not amend its comprehensive plan until such time as it complies with this section.*
- (5) *The state land planning agency may not adopt rules to implement this section, other than procedural rules or a schedule indicating when local governments must comply with the requirements of this section.*

e. Monitoring and Evaluation

~~Lee County approved the Evaluation and Appraisal Report (EAR) in accordance with F.S. 163.3191 on July 7, 1994. The 1994 Lee Plan is designed to implement the recommendations in the EAR. An addendum addressing statutory and rule changes that were not discussed in the 1994 EAR will be transmitted to DCA on or before the date prescribed by rule. The Capital Improvements element will be evaluated and amended annually in accordance with FAC Rule 9J 5.016. EAR's meeting the requirements in F.S. 163.3191 and DCA's rules will be adopted and transmitted after 1996 consistent with the timeframe provided by law.~~

~~A. Annual Review: Capital Improvements Element~~

~~One procedure for evaluating and monitoring the plan will involve an annual review and update of the Capital Improvements Program and the Capital Improvements element coinciding with the county's budget adoption process. This annual review will meet the evaluation and monitoring requirement for the Capital Improvements element as provided by Rule 9J 5.016(5) FAC. Those policies in other elements of the comprehensive plan affecting capital improvements will also be reviewed. Other more recent events which may have affected the outcome of those policies will be taken into consideration. An annual report will be prepared based upon this examination. This report will address any plan amendments to date, as well as amendments to any local ordinances affecting the implementation of the plan. This annual report will be prepared by the Department of Community Development and will be submitted to the Local Planning Agency and the Board of County Commissioners for review. This report will also identify which agencies within the county government organization have been assigned specific tasks or studies mentioned in the plan. (Amended by Ordinance No. 94 30, 00 22)~~

~~B. Five Year Evaluation and Appraisal~~

~~The next EAR required by law will address the following in addition to any other requirements set out in F.S. 163.3191 and FAC Rule 9J-5.0053:~~

~~1. Citizen participation in the planning process. The county will update procedures to provide for and encourage public participation in the planning process, including amendments to the comprehensive plan and preparation of evaluation and appraisal reports. The procedures which are mandated by the Southwest Florida Regional Comprehensive Policy Plan (25-C) will involve a series of advertised public workshops and hearings, the opportunity to provide written comments, and the publication of an executive summary. Specifically, the public participation procedures must include the following:~~

~~a. Procedures to assure that real property owners are put on notice, through advertisement in a newspaper of general circulation in the area or other method adopted by the county to notify the public of official actions that will affect the use of their property.~~

~~b. Provisions for notice to keep the general public informed.~~

~~c. Provisions to assure that there are opportunities for the public to provide written comments.~~

~~d. Provisions to assure that the required public hearings are held.~~

~~e. Provisions to assure the consideration of and response to public comments.~~

~~2. Updating appropriate baseline data and measurable objectives to be accomplished in the first five year period of the plan and for the long term period. This will be accomplished through the on-going collection of pertinent data and the systematic recording of progress on the accomplishment of measurable objectives.~~

~~3. Accomplishments in the first five year period, describing the degree to which the goals, objectives, and policies have been successfully reached. This process will involve summarizing the annual reports which coincide with the county's budget adoption process. Progress on non-capital projects will be summarized as well.~~

~~4. Obstacles or problems which resulted in underachievement of goals, objectives, or policies. In the analysis of the annual reports on the comprehensive plan, the underachievement of goals, objectives, or policies will be assessed and evaluated. Proposals for modifying or eventually achieving the goals, objectives, and policies will be made.~~

~~5. New or modified goals, objectives, or policies needed to correct discovered problems. Along with failure to meet stated objectives, the evaluation will recommend new goals, objectives, or policies that will either correct past problems in achievement, or modify the general direction or aim.~~

~~6. A means of ensuring continuous monitoring and evaluation of the plan during the five year period. The annual report process will accomplish a timely and consistent review of the county's progress in implementing the comprehensive plan. This will summarize plan amendments, budget allocation, deferrals or deletions, and the initiation or completion of programs and projects. (Amended by Ordinance No. 94-30, 00-22)~~

C. STAFF RECOMMENDATION

County staff recommends that the Board of County Commissioners *transmit* the proposed amendments to the Procedures and Administration Element as provided in Attachment 1.

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

DATE OF PUBLIC HEARING: July 22, 2013

A. LOCAL PLANNING AGENCY REVIEW

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

1. RECOMMENDATION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

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

A. Effect and Legal Status of the Plan

After the Lee Plan or portion thereof has been adopted in conformity with Chapter 163, Fla. Stat., all development undertaken by, and all actions taken in regard to development orders by Lee County in regard to land covered by the Lee Plan or element must be consistent with the adopted Plan or Element. Development permits issued by the County must be consistent with the Plan as adopted on the date of issuance.

Land development regulations adopted or amended after the effective date of the Lee Plan, or amendments thereto, must be consistent with the Lee Plan. Land development regulations that are no longer consistent with the Lee Plan must be amended to conform to the goals, objectives, and policies of the Plan. During the interim period when the provisions of the most recently adopted comprehensive plan, or element or portion thereof, and the land development regulations are inconsistent, the provisions of the most recently adopted comprehensive plan, or element or portion thereof, will govern actions taken in regard to an application for a development order.

A development order or land development regulation will be deemed consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan, and if it meets all other criteria enumerated by the County.

Where goals, objectives, or policies of particular elements conflict, those conflicts will be resolved based on an analysis of the Lee Plan as a whole. Conflicts between the land development regulations and the Lee Plan will be resolved in favor of the Lee Plan.

1. The following development approvals will be considered consistent with the Lee Plan:

- a. Development permits authorizing development contemplated by a valid Development Agreement adopted under section 163.3220, Fla. Stat.
- b. Development authorized pursuant to a Development of Regional Impact created under Chapter 380, Fla. Stat.
- c. Development permits, as defined in § 380.031, F.S., where the development began prior to adoption of the amendment and has continued in good faith. Consistency will be limited to the development parameters approved in writing and depicted on accompanying development plans expressly approved under the development order process prior to adoption of the amendment.
- d. Development authorized by court order resulting from litigation in which Lee County was a party.
- e. Development permits for reconstruction of structures damaged by fire or other natural forces, so long as reconstruction does not exceed the legally permitted use, density, and intensity existing at the time of destruction and the rebuilt or replaced structure complies with federal and state regulations, local building, and life safety regulations.
- f. In circumstances where judicially defined principles of equitable estoppel override valid limitations imposed by the Lee Plan, the Board of County Commissioners, acting by resolution

on a case-by-case basis, may issue the minimum development permit necessary to authorize development to avoid a Bert Harris or inverse condemnation action.

2. Development approvals consistent under subsection 1 may be modified if the modifications make the development more consistent with the current Lee Plan than the original approval.

B. Administrative Interpretations of the Plan

Persons or entities whose interests are directly affected by the Lee Plan have the right to an administrative interpretation of the Plan as it affects their specific interest. Administrative interpretations are intended to expedite and reduce disputes over interpretations of the Lee Plan, resolve map or boundary disputes, avoid unnecessary litigation, ensure consistency in Plan interpretation, and provide predictability in interpreting the Plan. Interpretations will remain in effect and bind the county only as to the legally described property and the plan of development upon which the interpretation was based. If the plan of development is changed, then the administrative interpretation is no longer binding. Actions that render a previous interpretation no longer binding include the following: significant changes in parcel or platted lot(s) configuration; changes to land uses; decreases in open space or preserved land; increases in density or intensity; increases in the acreage or other changes that make the plan of development less consistent with the Lee Plan. Determinations of whether a plan of development will be changed so as to render the previous interpretation no longer binding on the county will be made on a case by case basis. Once rendered, administrative interpretations are subject to challenge under the provisions of Chapter 163.3215, Florida Statutes. Administrative interpretations will be determined by the Community Development Director.

Applicants seeking an administrative interpretation must submit an application demonstrating compliance with the standards below:

1. Subject Matter of Administrative Interpretations

Administrative interpretations are limited to:

- a. Whether the Minimum-Use Determination, formerly known as the single-family residence provision applies to a lot/parcel. If the application is denied, the applicant may submit a request for a formal opinion from the County Attorney's Office on the basis of denial.
- b. Whether a parcel has been properly designated as Wetlands. A Jurisdictional Determination approved by SFWMD or Florida DEP, must be submitted and a field check will be made prior to the issuance of such an interpretation.
- c. Providing clarification of Land Use Map boundaries.

2. Standards for Administrative Interpretations

- a. Interpretations that are confiscatory, arbitrary, capricious, unreasonable, or which would deny all economically viable use of property must be avoided;
- b. Interpretations must be consistent with background data, other policies, and objectives of the plan as a whole;

c. Interpretations should, to the extent practical, be consistent with prior interpretations; and

d. Interpretations must be consistent with Statutory Rules of Construction.

3. Minimum-Use Determination (MUD):

a. Applicability

Property not in compliance with the standard density requirements of the Lee Plan may construct one single-family residence on the property PROVIDED the lot/parcel meets the requirements below:

(1) Date Created:

(i) the lot/parcel must have been created and recorded in the official Plat Books of Lee County prior to December 21, 1984, and the configuration of the lot has not been altered; OR

(ii) a legal description of the property was lawfully recorded in the Official Record books of the Clerk of Circuit Court prior to December 21, 1984; OR

(iii) the lot was lawfully created after December 21, 1984, and the lot area was created in compliance with the Lee Plan as it existed at that time.

(2) Minimum Lot Requirements:

(i) A lot/parcel created before June 27, 1962 must be a minimum of 4,000 square feet in area; OR

(ii) A lot/parcel that is part of a subdivision recorded in the official Plat Books of Lee County on or after June 27, 1962, and prior to December 21, 1984, must have a width of at least 50 feet and an area of at least 5,000 square feet; OR

(iii) A lot/parcel created on or after June 27, 1962, and prior to December 21, 1984, that is not part of a subdivision recorded in the official Plat Books of Lee County must be a minimum of 7,500 square feet in area; OR

(iv) A lot/parcel created on or after December 21, 1984 that was in conformance with the zoning regulations in effect at the time the lot/parcel was recorded; OR

(v) A lot/parcel approved as part of a Planned Unit Development or Planned Development.

(3) Access and Drainage:

(i) the lot/parcel must front on a constructed road and the lot/parcel must be served by drainage swales or equivalent drainage measures. The road must have, at a minimum, a graded surface of shell, marl, gravel base rock, or other compacted fill material, suitable for year-round use; OR

(ii) the lot/parcel must be located within a subdivision approved under Chapter 177, Florida Statutes, provided the subdivision access and drainage improvements have been constructed or the developer has posted security for their completion.

(4) There is no other permitted use allowed on the property, with the exception identified in section 3(d).

b. Construction Regulations

When the right to build a single-family residence on a lot/parcel has been approved pursuant to the Minimum Use Determination, the following requirements must be established:

(1) The residential structure must comply with applicable health, safety, and welfare regulations.

(2) Lots/parcels that contain wetlands will be subject to the Wetlands Protection Ordinance.

(3) If two or more contiguous lots or parcels have each qualified for the right to build a single-family residence, the property owner may reappportion the lots. Notwithstanding, the number of lots created through reappportionment may not exceed the number of Minimum Use Determinations approved for the lots.

(4) Lots/parcels that qualify for the right to construct a single-family residence, may be combined with contiguous property provided overall density will not increase.

(5) If two or more contiguous properties have each qualified for the right to construct a single-family residence and if the lots or parcels are located in a zoning district that permits duplex or two-family dwellings, the property owner(s) may combine the lots to build a single duplex or two-family building in lieu of constructing two single-family residences.

(6) Mixed use developments in areas identified by Policy 13.2.1 on Captiva Island may be allowed one residential unit in addition to commercial uses.

c. Transferability

(1) The right to construct a single family dwelling under this provision will run with the land and is available to subsequent owners if the property is transferred in its entirety.

(2) The right to construct a single family dwelling under this provision may be transferred to another property if the property that received the MUD is within an environmentally critical area as defined in this Plan and the property proposed to receive the transferred development right is within a land use category that permits incentive density.

d. Once a MUD is issued, the property owner may not increase the density or intensity of uses on the property, subject to the following exception: In addition to a single family residential use, a lot/parcel in Open Lands or Density Reduction/Groundwater Resource land use categories may be permitted an additional use that would otherwise be allowed within the land use category as long as it meets the requirements of the Land Development Code. Appropriate uses may include as boarding stables, kennels, plant nurseries, and bona fide agricultural uses.

4. Procedures for Administrative Interpretations

- a. Submit an application, on a form provided by the county, with all requested information to the Zoning and Development Review Division (MUD) or the Planning Division (all other applications).
- b. Staff will issue an administrative interpretation in writing within sixty (60) days after submittal of a complete application. The interpretation will contain findings and set forth the basis for the interpretation.
- c. A separate application fee will not be required if the request for a MUD or Wetlands determination is in conjunction with an application for a building permit, development order, or planned development rezoning. The interpretation will be noted on the development permit approval, or included in a letter of denial.
- d. Administrative interpretations may be appealed to the Board of County Commissioners by filing a written request within fifteen (15) days after issue date of the administrative interpretation. The Board will consider information submitted during the administrative interpretation process and will review only whether the designated individual has properly applied the standards set forth in the plan to the facts.
- e. The Board will consider the appeal at a public hearing held within thirty (30) days after the written request for appeal. The Board may affirm or overrule the administrative interpretation. The Board's decision to overrule an administrative interpretation will be in writing and will be rendered within thirty (30) days after the date of the hearing.

C. Legislative Interpretations of the Plan

The Lee Plan will be interpreted in accordance with generally accepted rules of statutory construction, based upon sound legal advice. Legislative interpretations of the Lee Plan will be compiled in writing in a document that will be a companion to the Plan.

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Together, the Director of Community Development, the Planning Director, and the County Attorney will sit as the Comprehensive Plan Annotations Committee. These persons may designate a subordinate to serve in their place, but only one vote may be cast by or on behalf of each official. The purpose of the committee is to make written recommendations to the Local Planning Agency (LPA) in response to requests for legislative interpretations of specific provisions in the plan. If the committee cannot recommend an interpretation unanimously, then both a majority and minority recommendation will be made to the LPA. If the committee cannot reach a majority position, then each official will submit a separate recommendation to the LPA. The committee will operate as follows:

- a. Organization

The committee has the discretion to meet privately or publicly, or a combination thereof, as the committee chooses. The committee will function in an informal workshop atmosphere, with an emphasis on the timely production of concise, written recommendations to the LPA. The County Attorney will reduce the recommendations of the committee in writing, unless he or she is in the minority, in which case the Planning Director will reduce the majority recommendation to writing. The Planning Director will deliver the recommendations to the LPA for consideration as an agenda item at a future meeting of the LPA.

- b. Requests for Interpretations - Requests for legislative interpretations may be placed before the Comprehensive Plan Annotations Committee by any one of its three members in response to a question raised by the Board of County Commissioners, collectively or by any one commissioner, by any member of the county administration responsible for administering the Plan, by the LPA, by the Lee County Hearing Examiner, or by any applicant for development regulated by the Plan. The Planning Director will be responsible for reducing the questions to writing and, to the extent possible, linking them to specific plan provisions that might affect the answer.

2. Local Planning Agency

The LPA will review the recommendation of the committee at a publicly noticed meeting. The LPA will then consider the Committee's recommendation and forward the LPA's recommendation and comments to the Board of County Commissioners.

3. Board of County Commissioners

The Board of County Commissioners will render a final decision as to the interpretation to be applied, which will be memorialized in a resolution. The Planning Director will maintain copies of the resolutions in a single document that will be updated regularly and furnished to persons requesting copies of the Lee plan.

4. Legal Effect of Legislative Interpretation

Once formally adopted in accordance with these procedures, an interpretation will have the force of law, unless the Lee Plan is amended to change the effect of the legislative interpretation.

D. Plan Amendment Procedures

This plan, including the Future Land Use Map, may be amended in accordance with Florida Statutes and the County's Administrative procedures.

Sections of this plan may be renumbered or relettered, and typographical errors which do not affect the intent, may be authorized by the County Manager, or his designee, without a Public Hearing, by filing a corrected copy with the Clerk of the Circuit Court.