



LEE COUNTY BOARD OF COUNTY COMMISSIONERS

LEE COUNTY ZONING HEARING

and

COMPREHENSIVE PLAN AGENDA

Wednesday, February 7, 2018

9:30AM

MUD2017-00052	170 DAMFINO ST – MINIMUM USE DETERMINATION
DCI2015-00018 Z-15-037A	ARBORWOOD VILLAGE CPD – CORRECTING SCRIVENER'S ERROR
DRI2016-00014 Z-18-003	JETPORT/INTERSTATE COMMERCE PARK
CPA2015-00009	CAPTIVA COMMUNITY PLAN – ADOPTION
CPA2017-00008	CHAPTER 13 – ADOPTION
CPA2016-00013	BABCOCK CPA – ADOPTION
DCI2016-00022 Z-17-026	BABCOCK MIXED USE PLANNED DEVELOPMENT

CPA2017-00008

Chapter 13

Summary Sheet

Chapter XIII

CPA2017-08

Request:

Amend the Procedures and Administration Element of the Lee Plan to remain compliant and consistent with state statutes; remove redundancies within the Lee Plan and with state statutes; and relocate procedural provisions to an administrative code. The proposed Administration Element addresses the effect and legal status of the plan, administrative and legislative interpretations of the plan and amendments to the plan. In addition, minor amendments will be made in the future land use element and the glossary to remove or update cross references.

LPA Motion:

The LPA recommends the Board of County Commissioners transmit CPA2017-08. **The motion was passed 5 to 0.**

Transmittal Hearing:

A motion was made to transmit CPA2017-00003 as recommended by staff and the LPA. **The motion was passed 4 to 0.**

Public Comments:

There have been no public comments.

State Reviewing Agency Objections, Recommendations, and Comments:

Lee County received responses from the following review agencies addressing the transmitted amendment:

- Florida Department of Economic Opportunity,
- Florida Department of Environmental Protection,
- Florida Department of Transportation,
- Florida Fish and Wildlife Conservation Commission,
- Florida Department of Agriculture and Consumer Services, and
- Southwest Florida Regional Planning Council.

There were no objections or comments concerning the proposed amendments.

Staff Recommendation:

Staff recommends that the Board of County Commissioners **adopt** the amendments to the Lee Plan as transmitted to the State Reviewing Agencies and as provided in Attachment 1.

LEE COUNTY ORDINANCE NO. _____

Chapter 13
(CPA2017-00008)

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE PLAN, COMMONLY KNOWN AS THE “LEE PLAN,” ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENT PERTAINING TO THE CHAPTER 13 (CPA2017-00008) APPROVED DURING A PUBLIC HEARING; PROVIDING FOR PURPOSE, INTENT, AND SHORT TITLE; AMENDMENTS TO ADOPTED TEXT; LEGAL EFFECT OF “THE LEE PLAN”; PERTAINING TO MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER’S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, the Lee County Comprehensive Plan (“Lee Plan”) Policy 2.4.1. and Chapter XIII, provides for adoption of amendments to the Plan in compliance with State statutes and in accordance with administrative procedures adopted by the Board of County Commissioners (“Board”); and,

WHEREAS, the Board, in accordance with Section 163.3181, Florida Statutes, and Lee County Administrative Code AC-13-6 provide an opportunity for the public to participate in the plan amendment public hearing process; and,

WHEREAS, the Lee County Local Planning Agency (“LPA”) held a public hearing on the proposed amendment in accordance with Florida Statutes and the Lee County Administrative Code on October 23, 2017; and,

WHEREAS, the Board held a public hearing for the transmittal of the proposed amendment on November 22, 2017. At that hearing, the Board approved a motion to send, and did later send, proposed amendment pertaining to Chapter 13 (CPA2017-00008) to the reviewing agencies set forth in Section 163.3184(1)(c), F.S. for review and comment; and,

WHEREAS, at the November 22, 2017 meeting, the Board announced its intention to hold a public hearing after the receipt of the reviewing agencies’ written comments; and,

WHEREAS, on February 7, 2018, the Board held a public hearing and adopted the proposed amendment to the Lee Plan set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, THAT:

SECTION ONE: PURPOSE, INTENT AND SHORT TITLE

The Board of County Commissioners of Lee County, Florida, in compliance with Chapter 163, Part II, Florida Statutes, and with Lee County Administrative Code AC-13-6, conducted public hearings to review proposed amendments to the Lee Plan. The purpose of this ordinance is to adopt text amendments to the Lee Plan discussed at those meetings and approved by a majority of the Board of County Commissioners. The short title and proper reference for the Lee County Comprehensive Land Use Plan, as hereby amended, will continue to be the "Lee Plan." **This amending ordinance may be referred to as the "Chapter 13 Ordinance (CPA2017-00008)."**

SECTION TWO: ADOPTION OF COMPREHENSIVE PLAN AMENDMENT

The Lee County Board of County Commissioners amends the existing Lee Plan, adopted by Ordinance Number 89-02, as amended, by adopting an amendment, which amends the Procedures and Administration Element of the Lee Plan known as Chapter 13 (CPA2017-00008).

The corresponding Staff Reports and Analysis, along with all attachments and application submittals for this amendment are adopted as "Support Documentation" for the Lee Plan. Proposed amendments adopted by this Ordinance are attached as Exhibit A.

SECTION THREE: LEGAL EFFECT OF THE "LEE PLAN"

No public or private development will be permitted except in conformity with the Lee Plan. All land development regulations and land development orders must be consistent with the Lee Plan as amended.

SECTION FOUR: MODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION FIVE: GEOGRAPHIC APPLICABILITY

The Lee Plan is applicable throughout the unincorporated area of Lee County, Florida, except in those unincorporated areas included in joint or interlocal agreements with other local governments that specifically provide otherwise.

SECTION SIX: SEVERABILITY

The provisions of this ordinance are severable and it is the intention of the Board of County Commissioners of Lee County, Florida, to confer the whole or any part of the powers herein provided. If any of the provisions of this ordinance are held

unconstitutional by a court of competent jurisdiction, the decision of that court will not affect or impair the remaining provisions of this ordinance. It is hereby declared to be the legislative intent of the Board that this ordinance would have been adopted had the unconstitutional provisions not been included therein.

SECTION SEVEN: INCLUSION IN CODE, CODIFICATION, SCRIVENERS' ERROR

It is the intention of the Board of County Commissioners that the provisions of this ordinance will become and be made a part of the Lee County Code. Sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or other appropriate word or phrase in order to accomplish this intention; and regardless of whether inclusion in the code is accomplished, sections of this ordinance may be renumbered or relettered. The correction of typographical errors that do not affect the intent, may be authorized by the County Manager, or his designee, without need of public hearing, by filing a corrected or recodified copy with the Clerk of the Circuit Court.

SECTION EIGHT: EFFECTIVE DATE

The plan amendments adopted herein are not effective until 31 days after the State Land Planning Agency notifies the County that the plan amendment package is complete. If timely challenged, an amendment does not become effective until the State Land Planning Agency or the Administrative Commission enters a final order determining the adopted amendment to be in compliance. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before the amendment has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status.

THE FOREGOING ORDINANCE was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____. The vote was as follows:

John Manning	_____
Cecil Pendergrass	_____
Larry Kiker	_____
Brian Hamman	_____
Frank Mann	_____

DONE AND ADOPTED this 7th day of February, 2018.

ATTEST:
LINDA DOGGETT, CLERK

LEE COUNTY BOARD OF
COUNTY COMMISSIONERS

BY: _____
Deputy Clerk

BY: _____
Cecil Pendergrass, Chair

DATE: _____

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

County Attorney's Office

Exhibit A: Adopted revisions to Procedures and Administration Element of the Lee Plan
(Adopted by BOCC February 7, 2018)

EXHIBIT A

**Note: Text depicted with underscore represents additions to the Lee Plan.
Strike-through text represents deletions from the Lee Plan.**

II. Future Land Use

POLICY 1.1.10: The Commercial future land use category is located in close proximity to existing commercial areas or corridors accommodating employment centers, tourist oriented areas, and where commercial services are necessary to meet the projected needs of the residential areas of the County. These areas are specifically designated for commercial uses. Residential uses, other than bona fide caretaker residences, are not permitted in this future land use category ~~except to the extent provided in Chapter XIII.~~ The Commercial future land use category is in areas where residential uses are not expected or compatible due to the nature of the surrounding land uses and their location along major travel corridors. The commercial category is intended for use where residential development would increase densities in areas such as the Coastal High Hazard Areas of the County or areas such as Lehigh Acres where residential uses are abundant and existing commercial areas serving the residential needs are extremely limited.

The requisite infrastructure needed for commercial development is generally planned or in place. New developments in this category must connect to a potable water and sanitary sewer system. Commercial retail developments, hotels and motels, banks, all types of office development, research and development, public, and other similar development will be predominate in the Commercial future land use category. Limited light industrial uses are also permitted, excluding outdoor storage type uses. Any redesignation of land to the Commercial land use category should occur along major travel corridors and at road intersections. The planned development rezoning process must be used to prevent adverse impacts to the surrounding areas and to ensure that appropriate site development regulations are incorporated into the development plans of each site. (Added by Ordinance No. 07-09, Amended by Ordinance No. 10-34)

POLICY 1.2.2: The Tradeport areas are commercial and industrial lands adjacent to the airport needed to accommodate projected growth through the year 2030. These areas will include developments consisting of light manufacturing or assembly, warehousing, and distribution facilities; research and development activities; laboratories; ground transportation and airport related terminals or transfer facilities; hotels/motels, meeting facilities; and office uses. Stand alone retail commercial uses intended to support and compliment the surrounding business and industrial land uses are permitted if they are approved as part of a Development of Regional Impact (DRI) or Planned Development rezoning. Stand alone retail commercial uses are limited to 1 acre out of every 10 Tradeport and preserved wetland acres within the project. To provide an incentive to preserve upland habitat, Developments of Regional Impact or Planned Developments may also receive additional stand alone retail acres at the rate of 1 additional acre out of every 10 acres of preserved and enhanced uplands within the project that protect wetlands, flowways or occupied listed species habitat. Ancillary retail commercial uses,

related directly to the sale of products manufactured or services provided in the Tradeport, are allowed if they are part of a Planned Development. Residential uses, other than bona fide caretaker residences, are not permitted in this category ~~except to the extent provided in Chapter XIII of the Plan~~. Caretaker residences are not permitted in the Airport Noise Zone B. Limerock mining may be approved through the Mine Excavation Planned Development rezoning process for the land designated Tradeport on the Future Limerock Mining map (Map 14.) Because this area is located within the Six Mile Cypress Basin and is also a primary point of entry into Lee County, special environmental and design review guidelines will be applied to its development to maintain the appearance of this area as a primary point of entry into Lee County. Property in Section 1 and the east ½ of Section 2, Township 46 South, Range 25 East, and in Section 6, Township 46 South, Range 26 East, must be rezoned to a planned development zoning category prior to any development other than the construction of essential public services. During the rezoning process, the best environmental management practices identified on pages 43 and 44 of the July 28, 1993 Henigar & Ray study entitled, "Groundwater Resource Protection Study" will be rebuttably presumed to be necessary to protect potential groundwater resources in the area. (Amended by Ordinance No. 94-30, 02-02, 03-04, 04-16, 07-09, 09-06, 10-14, 10-20, 10-37)

OBJECTIVE 1.3: INTERSTATE HIGHWAY INTERCHANGE AREAS. Special areas adjacent to the interchanges of Interstate 75 that maximize critical access points will be designated on the Future Land Use Map. Development in these areas must minimize adverse traffic impacts and provide appropriate buffers, visual amenities, and safety measures. Each interchange area is designated for a specific primary role: General, General Commercial, Industrial Commercial, Industrial, and University Village. Residential uses are only permitted in these categories in accordance with ~~Chapter XIII or as provided in~~ Policy 1.3.2. (Amended by Ordinance No. 94-30, 99-18, 00-22, 16-02)

OBJECTIVE 2.4: FUTURE LAND USE MAP AMENDMENTS. To require formal findings for certain Future Land Use Map Amendments. ~~Regularly examine the Future Land Use Map in light of new information and changed conditions, and make necessary modifications.~~

~~**POLICY 2.4.1:** The county will accept applications from private landowners or non-profit community organizations to modify the boundaries as shown on the Future Land Use Map. Procedures, fees, and timetables for this procedure will be adopted by administrative code. (Amended by Ordinance No. 94-30)~~

POLICY 2.4.12: Renumber Only
POLICY 2.4.23: Renumber Only
POLICY 2.4.34: Renumber Only

POLICY 5.1.4: Prohibit residential development in all Industrial Development areas and Airport Noise Zone B as indicated on the Future Land Use Map, except for residences in the Industrial Development area for a caretaker or security guard, ~~and except as provided in Chapter XIII.~~ (Amended by Ordinance No. 94-30, 07-09)

POLICY 14.6.2: The Greater Pine Island TDR program will have the following characteristics:

- a. Creation of Transferable Development Units (TDUs).
 - 1. Up to one (1) TDU may be created per five (5) acres of wetlands.
 - 2. Up to one (1) TDU may be created per one (1) acre of uplands located in non-urban future land use categories.
 - 3. Up to three (3) TDUs may be created per one (1) acre of uplands located in the Outlying Suburban future land use categories.
 - 4. Up to two (2) TDUs may be created in a single-family lot or parcel designated as wetlands that holds an affirmative Minimum Use D ~~determination of the single family residence provision~~ pursuant to Chapter XIII of the Lee Plan.

POLICY 33.4.2: The Southeast Lee County TDR program will have the following characteristics:

- 1. Creation of Transferable Development Units (TDUs).
 - a. Up to one (1) TDU may be created per twenty (20) acres of preserved or indigenous wetlands.
 - b. Up to two (2) TDUs may be created from a single-family lot or parcel designated as wetlands that holds an affirmative Minimum Use D ~~determination of the single family residence provision~~ pursuant to Chapter XIII of the Lee Plan.

XII. Glossary

DENSITY – The number of residential dwelling or housing units per gross acre (du/acre). Densities specified in this plan are gross residential densities. For the purpose of calculating gross residential density, the total acreage of a development includes those lands to be used for residential uses, and includes land within the development proposed to be used for streets and street rights of way, utility rights-of-way, public and private parks, recreation and open space, schools, community centers, and facilities such as police, fire and emergency services, sewage and water, drainage, and existing man-made waterbodies contained within the residential development.

When the calculation of the gross density of a development results in a fractional density, 0.50 of a dwelling unit or greater shall be rounded up to the next whole number and fractions less than 0.50 shall be rounded down. No further rounding is permitted. Fractional density rounding may not be applied to parcels subject to the Gasparilla Island Conservation District Act of 1980 (as amended) or existing, undersized parcels that would require a Minimum Use Determination through the Single Family Residence provision of the Lee Plan, pursuant to Chapter XIII to permit one single-family residence on said parcel. Fractional density rounding may not be applied to parcels of land created (subdivided or combined) after March 16, 2016 in a manner that would permit greater gross density than that was permitted (with fractional density rounding) prior to creation of the new parcel.

Lands for commercial, office, industrial uses, natural water bodies, and other non-residential uses must not be included in the density calculation, unless otherwise stated in this plan

XIII. ~~Procedures and Administration~~

A. Effect and Legal Status of the Plan

After the Lee Plan or portion thereof has been adopted in conformity with Chapter 163, F. S., 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 established regulatory requirements of 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, F.S.
 - b. Development authorized pursuant to a Development of Regional Impact created under Chapter 380, F.S.
 - 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.
 - g. Development orders and development permits authorizing development contemplated by an administrative interpretation or a legislative interpretation.
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

An applicant of a development permit whose property rights are directly affected by the Lee Plan have the right to an administrative interpretation of the Plan as to its application to their property. 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. Administrative interpretations will be determined by the Community Development Director or designee.

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.

Applicants seeking an administrative interpretation must submit an application demonstrating compliance with the standards below. Procedures for obtaining an administrative interpretation are provided in Lee County Administrative Code 13-2.

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.
- b. Whether a parcel has been properly designated as Wetlands. A Jurisdictional Determination approved by SFWMD or Florida DEP must be submitted 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.
- e. In addition to the above, interpretations for a Minimum Use Determination (MUD) will be determined under the following standards:
 - (1) 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:

(a) 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.

(b) 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.

(c) 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, F.S., provided the subdivision access and drainage improvements have been constructed or the developer has posted security for their completion.

- (d) There is no other permitted use allowed on the property.
- (2) When the right to build a single-family residence on a lot/parcel has been established with a Minimum Use Determination, the following will apply:
- (a) The residential structure must comply with applicable health, safety, and welfare regulations.
- (b) Lots/parcels that contain wetlands will be subject to the Wetlands Protection Ordinance as codified in the Land Development Code.
- (c) If two or more contiguous lots/parcels have each qualified for the right to build a single-family residence, the property owner may reapportion the lots/parcels provided the number of lots/parcels created through reapportionment does not exceed the number of single-family residences approved for each lot/parcel.
- (d) 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.
- (e) If two or more contiguous properties have each qualified for the right to construct a single-family residence and if the lots/parcels are located in a zoning district that permits duplex or two-family dwellings, the lots/parcels may be combined to build a single duplex or two-family building in lieu of constructing two single-family residences.
- (3) A Minimum Use Determination will run with the land and is available to subsequent owners if the property is transferred in its entirety.
- (4) Lots/parcels with a favorable Minimum Use Determination may be permitted non-residential uses in addition to a single family residence if:
- (a) The lot/parcel is located in the Open Lands or Density Reduction/Groundwater Resource (DR/GR) land use category and the use is allowed by the future land use category and complies with the Land Development Code; or
- (b) The lot/parcel is located on Captiva Island in an area identified by Policy 13.2.1 and is approved as a Commercial or Mixed-Use Planned Development.
- (5) A Minimum Use Determination may be vacated on a property that is brought into compliance with the standard density requirements of the Lee Plan.
- (6) In the General Interchange future land use category, property that is less than one acre in size and qualifies for a Minimum Use Determination may be permitted a

single-family residence. Property that is an acre or more in size does not qualify for a Minimum Use Determination and will be required to meet the minimum density of 8 units per acre and limited to multi-family dwelling units.

(7) Properties within future land use categories that do not permit residential density, as summarized on Table 1(a), do not qualify for a Minimum Use Determination.

3. Standards for Appeal

The Board will consider information submitted during the administrative interpretation process and will review only whether the standards set forth in subsection (2) above have been properly applied to the facts.

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 will have the force of law, unless the Lee Plan is amended to change the effect of the legislative interpretation.

Requests for legislative interpretations may be placed before the Comprehensive Plan Annotations Committee (CPAC) 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 Local Planning Agency (LPA), by the Lee County Hearing Examiner, or by any applicant for development regulated by the Plan. Legislative interpretations will be made using the procedures provided in Lee County Administrative Code 13-2.

Comprehensive Plan Annotations Committee (CPAC). The three members of the CPAC are the Director of Community Development, the Planning Manager, and the County Attorney, or designee. Only one vote may be cast by or on behalf of each official. The CPAC is subject to the sunshine regulations and all meetings must be open to the public. The CPAC will function in an informal workshop atmosphere, with an emphasis on the timely production of concise, written recommendations to the LPA.

D. Amendments to the Plan

This plan, including the Future Land Use Map, may be amended in accordance with Florida Statutes and administrative procedures adopted by the Board of County Commissioners in Lee County Administrative Code 3-6. In accordance with § 163.3177(1)(f), F.S., all amendments must be based upon relevant and appropriate data and analysis.

The decision of the Board of County Commissioners on a plan amendment is final and deemed rendered on the date the Board votes on the matter denying or approving the requested amendment. In accordance with § 163.3181(4), F.S., if an Applicant's request for an amendment to the Lee Plan, which is applicable to the Applicant's property, is denied by the Board of County Commissioners, the Applicant may request informal mediation or other

alternative dispute resolution agreed upon by the Applicant and the County to attempt to resolve issues raised regarding the proposed amendment. The costs of the mediation or other alternative dispute resolution shall be borne equally by the County and the Applicant. A written request under this section must be submitted to the Chairman of the Board of County Commissioners within 30 days from the date the application was denied by the Board. Failure to make the request will be deemed a waiver of the opportunity afforded under § 163.3181(4), F.S. All public and private discussions in furtherance of settlement under the informal mediation or alternative dispute resolution process are inadmissible in subsequent litigation.

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.

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:~~

- ~~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.~~

~~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.~~

~~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.~~

~~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.~~

~~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.~~

~~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.~~

~~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:~~

~~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.~~

~~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:~~

~~(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 reappportion 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 reapportionment 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.~~
- ~~e. 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.~~

~~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.~~

c. 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 aforementioned 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.~~

~~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)~~

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.~~

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)~~



Applicant:

Board of County
Commissioners

Representative:

Department of
Community
Development

Location:

County Wide

Amended

Elements:

Procedures and
Administration

Attachments:

1. Text
Amendments
2. Administrative
Code 13-2

Hearing Dates:

LPA:
10/23/17

BoCC Transmittal:
11/22/17

BoCC Adoption:
2/7/2018

REQUEST

Amend the Procedures and Administration Element of the Lee Plan to remain compliant and consistent with state statutes; remove redundancies within the Lee Plan and with state statutes; and relocate procedural provisions to an administrative code. The proposed Administration Element addresses the effect and legal status of the plan, administrative and legislative interpretations of the plan and amendments to the plan. In addition, minor amendments will be made in the future land use element and the glossary to remove or update cross references.

RECOMMENDATION

Staff recommends that the Board of County Commissioners **transmit** the proposed amendments based on the analysis and findings in this staff report.

SUMMARY OF SUBSTANTIVE CHANGES

- The amendments to Objective 2.4 removes redundant language found in Chapter 13, Part E and Administrative Code 13-6 and renumbers policies to remain sequential.
- The title of Chapter XIII is renamed to Administration to reflect the administrative procedures being moved to an administrative code.
- Updates references to state statutes, eliminates redundancies of state statutes, and relocates procedural provisions to an administrative code.

STATUTORY REQUIREMENTS

The 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.*” These amendments meet this requirement.

PART 1
BACKGROUND INFORMATION

On November 17, 2015, the Board of County Commissioners provided direction for staff to complete a coordinated planning review to identify Lee Plan amendments that: better align with the BoCC strategic planning initiatives; streamline; eliminate potential liabilities; reduce redundancy and conflict within and between Lee Plan Goals; and, relocate regulatory provisions to the Land Development Code and procedures to the administrative codes. Based on this direction, staff identified and presented potential amendments to the Board at the May 3, 2016 Board Work Session. These proposed amendments specifically aim to streamline, reduce redundancies and conflicts, and relocate the administrative procedures to the administrative codes.

The Administration Element 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 remain in compliance and consistent with state statute and remove redundancies and conflict in procedures.

PART 2
STAFF DISCUSSION and ANALYSIS

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 current 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. Administrative code AC-13-6, "Comprehensive Plan Amendment Procedures" provides procedures for privately requested amendments and county initiated amendments meeting the requirements of Florida Statute 163. The Procedures and Administration Element can be substantially streamlined to reflect these changes and

create a new administrative code with procedures for administrative and legislative interpretations.

Below is a summary of the amendments proposed to the Future Land Use Element and the Glossary and a description of the sub-elements as proposed through this amendment. The full proposed strikethrough and underline text amendments are included in Attachment 1.

Chapter 2 (Future Land Use Element)

Policy 1.1.10

Change: Remove cross reference to Chapter 13.

Reason: A Minimum Use Determination is not permitted in land use categories that do not permit residential density.

Policy 1.2.2

Change: Remove cross reference to Chapter 13.

Reason: A Minimum Use Determination is not permitted in land use categories that do not permit residential density.

Objective 1.3

Change: Remove cross reference to Chapter 13.

Reason: A Minimum Use Determination is not permitted in land use categories that do not permit residential density.

Policy 5.1.4

Change: Remove cross reference to Chapter 13.

Reason: A Minimum Use Determination is not permitted in land use categories that do not permit residential density.

Policy 14.6.2

Change: Change reference from a single-family residence provision to a Minimum Use Determination.

Reason: Reflect change made within Chapter 13.

Policy 33.4.2

Change: Change reference from a single-family residence provision to a Minimum Use Determination.

Reason: Reflect change made within Chapter 13.

Chapter 12 (Glossary)

Density:

Change: Change reference from a single-family residence provision to a Minimum Use Determination.

Reason: Reflect change made within Chapter 13.

Chapter 13 (Administration)

- An Editorial change to the title of Chapter XIII, removing reference to “Procedures”.
- Sub-element A can be simplified based on the definition of “Development Permit” in Chapter 163 of the state 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 procedure for administrative interpretations has been removed from Sub-Element B and outlined within Administrative Code 13-2 (Attachment 2). This modification is made with the effort to reflect the appropriate roles of both the Lee Plan as well as Administrative Codes. The subject matters, standards/outline for administrative interpretations and appeal standards remain in the Lee Plan.
- Sub-element C has been modified to remove the procedures for requesting legislative interpretations of the Lee Plan. These procedures have been relocated to Administrative Code 13-2. The language in the Lee Plan provides guidelines for legislative interpretations.
- Sub-element D, concerning amendments to the Lee Plan, provides cross reference to applicable state statutes and the existing administrative code. It also provides guidelines and policy for amendments that are denied by the board. The proposed language is consistent with, but not duplicative of state statutes and other existing Lee County codes.

- Sub-element E is proposed to be deleted due to changes in state statutes, which provide for monitoring and evaluation of the comprehensive plan. Lee County will continue to monitor the Lee Plan as required for consistency with Florida State Statute 163.3191.

PART 3 CONCLUSION

The proposed amendments provide streamlined language that is consistent with and not duplicative of state statutes and Lee County administrative codes. As seen in Attachment 1, the new language is shown as being underlined, followed by the current language, which is shown as being struck through.

Administrative Code 13-2, as seen in Attachment 2, outlines the procedures for requesting administrative and legislative interpretations of the Lee Plan. This administrative code will outline the process for applicants seeking interpretation of the Lee Plan as well as the process to appeal decisions made by county staff. Administrative Code 13-2 will be adopted concurrent with the proposed amendments to Chapter 13.

**PART 4
LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: October 23, 2017

A. LOCAL PLANNING AGENCY REVIEW:

Staff provided a brief presentation for the proposed amendments which covered consistency with the Lee Plan, reasons for the proposed amendments, and staff recommendation.

Following staff's presentation members of the LPA asked for, and were provided, clarification that the procedural language from Chapter XIII would be relocated to the Administrative Code 13-2.

B. LOCAL PLANNING AGENCY RECOMMENDATION:

A motion was made to recommend that the Board of County Commissioners transmit CPA2017-00008 as recommended by staff. The motion was passed 5 to 0.

VOTE:

NOEL ANDRESS	<u>AYE</u>
DENNIS CHURCH	<u>AYE</u>
JIM GREEN	<u>ABSENT</u>
CHRISTINE SMALE	<u>AYE</u>
STAN STOUDE	<u>AYE</u>
GARY TASMAN	<u>ABSENT</u>
JUSTIN THIBAUT	<u>AYE</u>

C. STAFF RESPONSE TO LPA RECOMMENDATION:

Staff recommends that the Board of County Commissioners transmit CPA2017-00008. Staff's complete and updated recommendation is included within Attachment 1 to the staff report.

PART 5
BOARD OF COUNTY COMMISSIONERS
TRANSMITTAL HEARING FOR PROPOSED AMENDMENT

DATE OF PUBLIC HEARING: November 22, 2017

A. BOARD REVIEW:

Staff provided a brief presentation for the proposed amendments, which covered consistency with the Lee Plan, reasons for the proposed amendments, and staff recommendation. No members of the public addressed the board concerning the proposed amendments, as none were present.

B. BOARD ACTION:

A motion was made to transmit CPA2017-00008 as recommended by staff. The motion was passed 4 to 0.

VOTE:

BRIAN HAMMAN	<u>AYE</u>
LARRY KIKER	<u>AYE</u>
FRANK MANN	<u>AYE</u>
JOHN MANNING	<u>ABSENT</u>
CECIL L. PENDERGRASS	<u>AYE</u>

PART 6
STATE REVIEWING AGENCIES'
OBJECTIONS, RECOMMENDATIONS, AND COMMENTS

Comments from the State Reviewing Agencies were due to Lee County by January 3, 2018.

A. OBJECTIONS, RECOMMENDATIONS AND COMMENTS:

Lee County received responses from the following review agencies addressing the transmitted amendment:

- Florida Department of Economic Opportunity,
- Florida Department of Environmental Protection,
- Florida Department of Agriculture and Consumer Services
- Florida Department of Transportation,
- Florida Fish and Wildlife Conservation Commission, and
- The Southwest Florida Regional Planning Council

There were **no objections or comments** concerning the amendments.

B. STAFF RECOMMENDATION

Staff recommends that the Board of County Commissioners ***adopt*** the amendments to the Lee Plan as provided in Attachment 1.

II. Future Land Use

POLICY 1.1.10: The Commercial future land use category is located in close proximity to existing commercial areas or corridors accommodating employment centers, tourist oriented areas, and where commercial services are necessary to meet the projected needs of the residential areas of the County. These areas are specifically designated for commercial uses. Residential uses, other than bona fide caretaker residences, are not permitted in this future land use category ~~except to the extent provided in Chapter XIII.~~ The Commercial future land use category is in areas where residential uses are not expected or compatible due to the nature of the surrounding land uses and their location along major travel corridors. The commercial category is intended for use where residential development would increase densities in areas such as the Coastal High Hazard Areas of the County or areas such as Lehigh Acres where residential uses are abundant and existing commercial areas serving the residential needs are extremely limited.

The requisite infrastructure needed for commercial development is generally planned or in place. New developments in this category must connect to a potable water and sanitary sewer system. Commercial retail developments, hotels and motels, banks, all types of office development, research and development, public, and other similar development will be predominate in the Commercial future land use category. Limited light industrial uses are also permitted, excluding outdoor storage type uses. Any redesignation of land to the Commercial land use category should occur along major travel corridors and at road intersections. The planned development rezoning process must be used to prevent adverse impacts to the surrounding areas and to ensure that appropriate site development regulations are incorporated into the development plans of each site. (Added by Ordinance No. 07-09, Amended by Ordinance No. 10-34)

POLICY 1.2.2: The Tradeport areas are commercial and industrial lands adjacent to the airport needed to accommodate projected growth through the year 2030. These areas will include developments consisting of light manufacturing or assembly, warehousing, and distribution facilities; research and development activities; laboratories; ground transportation and airport related terminals or transfer facilities; hotels/motels, meeting facilities; and office uses. Stand alone retail commercial uses intended to support and compliment the surrounding business and industrial land uses are permitted if they are approved as part of a Development of Regional Impact (DRI) or Planned Development rezoning. Stand alone retail commercial uses are limited to 1 acre out of every 10 Tradeport and preserved wetland acres within the project. To provide an incentive to preserve upland habitat, Developments of Regional Impact or Planned Developments may also receive additional stand alone retail acres at the rate of 1 additional acre out of every 10 acres of preserved and enhanced uplands within the project that protect wetlands, flowways or occupied listed species habitat. Ancillary retail commercial uses,

related directly to the sale of products manufactured or services provided in the Tradeport, are allowed if they are part of a Planned Development. Residential uses, other than bona fide caretaker residences, are not permitted in this category ~~except to the extent provided in Chapter XIII of the Plan~~. Caretaker residences are not permitted in the Airport Noise Zone B. Limerock mining may be approved through the Mine Excavation Planned Development rezoning process for the land designated Tradeport on the Future Limerock Mining map (Map 14.) Because this area is located within the Six Mile Cypress Basin and is also a primary point of entry into Lee County, special environmental and design review guidelines will be applied to its development to maintain the appearance of this area as a primary point of entry into Lee County. Property in Section 1 and the east ½ of Section 2, Township 46 South, Range 25 East, and in Section 6, Township 46 South, Range 26 East, must be rezoned to a planned development zoning category prior to any development other than the construction of essential public services. During the rezoning process, the best environmental management practices identified on pages 43 and 44 of the July 28, 1993 Henigar & Ray study entitled, “Groundwater Resource Protection Study” will be rebuttably presumed to be necessary to protect potential groundwater resources in the area. (Amended by Ordinance No. 94-30, 02-02, 03-04, 04-16, 07-09, 09-06, 10-14, 10-20, 10-37)

OBJECTIVE 1.3: INTERSTATE HIGHWAY INTERCHANGE AREAS. Special areas adjacent to the interchanges of Interstate 75 that maximize critical access points will be designated on the Future Land Use Map. Development in these areas must minimize adverse traffic impacts and provide appropriate buffers, visual amenities, and safety measures. Each interchange area is designated for a specific primary role: General, General Commercial, Industrial Commercial, Industrial, and University Village. Residential uses are only permitted in these categories in accordance with ~~Chapter XIII or as provided in~~ Policy 1.3.2. (Amended by Ordinance No. 94-30, 99-18, 00-22, 16-02)

OBJECTIVE 2.4: FUTURE LAND USE MAP AMENDMENTS. To require formal findings for certain Future Land Use Map Amendments. ~~Regularly examine the Future Land Use Map in light of new information and changed conditions, and make necessary modifications.~~

~~**POLICY 2.4.1:** The county will accept applications from private landowners or non-profit community organizations to modify the boundaries as shown on the Future Land Use Map. Procedures, fees, and timetables for this procedure will be adopted by administrative code. (Amended by Ordinance No. 94-30)~~

- POLICY 2.4.12:** Renumber Only
- POLICY 2.4.23:** Renumber Only
- POLICY 2.4.34:** Renumber Only

POLICY 5.1.4: Prohibit residential development in all Industrial Development areas and Airport Noise Zone B as indicated on the Future Land Use Map, except for residences in the Industrial Development area for a caretaker or security guard, ~~and except as provided in Chapter XIII.~~ (Amended by Ordinance No. 94-30, 07-09)

POLICY 14.6.2: The Greater Pine Island TDR program will have the following characteristics:

- a. Creation of Transferable Development Units (TDUs).
 - 1. Up to one (1) TDU may be created per five (5) acres of wetlands.
 - 2. Up to one (1) TDU may be created per one (1) acre of uplands located in non-urban future land use categories.
 - 3. Up to three (3) TDUs may be created per one (1) acre of uplands located in the Outlying Suburban future land use categories.
 - 4. Up to two (2) TDUs may be created in a single-family lot or parcel designated as wetlands that holds an affirmative Minimum Use D~~determination of the single family residence provision~~ pursuant to Chapter XIII of the Lee Plan.

POLICY 33.4.2: The Southeast Lee County TDR program will have the following characteristics:

- 1. Creation of Transferable Development Units (TDUs).
 - a. Up to one (1) TDU may be created per twenty (20) acres of preserved or indigenous wetlands.
 - b. Up to two (2) TDUs may be created from a single-family lot or parcel designated as wetlands that holds an affirmative Minimum Use D~~determination of the single family residence provision~~ pursuant to Chapter XIII of the Lee Plan.

XII. Glossary

DENSITY – The number of residential dwelling or housing units per gross acre (du/acre). Densities specified in this plan are gross residential densities. For the purpose of calculating gross residential density, the total acreage of a development includes those lands to be used for residential uses, and includes land within the development proposed to be used for streets and street rights of way, utility rights-of-way, public and private parks, recreation and open space, schools, community centers, and facilities such as police, fire and emergency services, sewage and water, drainage, and existing man-made waterbodies contained within the residential development.

When the calculation of the gross density of a development results in a fractional density, 0.50 of a dwelling unit or greater shall be rounded up to the next whole number and fractions less than 0.50 shall be rounded down. No further rounding is permitted. Fractional density rounding may not be applied to parcels subject to the Gasparilla Island Conservation District Act of 1980 (as amended) or existing, undersized parcels that would require a Minimum Use Determination through the Single Family Residence provision of the Lee Plan, pursuant to Chapter XIII to permit one single-family residence on said parcel. Fractional density rounding may not be applied to parcels of land created (subdivided or combined) after March 16, 2016 in a manner that would permit greater gross density than that was permitted (with fractional density rounding) prior to creation of the new parcel.

Lands for commercial, office, industrial uses, natural water bodies, and other non-residential uses must not be included in the density calculation, unless otherwise stated in this plan

XIII. ~~Procedures and Administration~~

A. Effect and Legal Status of the Plan

After the Lee Plan or portion thereof has been adopted in conformity with Chapter 163, F. S., 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 established regulatory requirements of 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, F.S.
 - b. Development authorized pursuant to a Development of Regional Impact created under Chapter 380, F.S.
 - 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.
 - g. Development orders and development permits authorizing development contemplated by an administrative interpretation or a legislative interpretation.
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

An applicant of a development permit whose property rights are directly affected by the Lee Plan have the right to an administrative interpretation of the Plan as to its application to their property. 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. Administrative interpretations will be determined by the Community Development Director or designee.

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.

Applicants seeking an administrative interpretation must submit an application demonstrating compliance with the standards below. Procedures for obtaining an administrative interpretation are provided in Lee County Administrative Code 13-2.

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.
- b. Whether a parcel has been properly designated as Wetlands. A Jurisdictional Determination approved by SFWMD or Florida DEP must be submitted 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.
- e. In addition to the above, interpretations for a Minimum Use Determination (MUD) will be determined under the following standards:
 - (1) 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:

(a) 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.

(b) 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.

(c) 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, F.S., provided the subdivision access and drainage improvements have been constructed or the developer has posted security for their completion.

- (d) There is no other permitted use allowed on the property.
- (2) When the right to build a single-family residence on a lot/parcel has been established with a Minimum Use Determination, the following will apply:
- (a) The residential structure must comply with applicable health, safety, and welfare regulations.
- (b) Lots/parcels that contain wetlands will be subject to the Wetlands Protection Ordinance as codified in the Land Development Code.
- (c) If two or more contiguous lots/parcels have each qualified for the right to build a single-family residence, the property owner may reapportion the lots/parcels provided the number of lots/parcels created through reapportionment does not exceed the number of single-family residences approved for each lot/parcel.
- (d) 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.
- (e) If two or more contiguous properties have each qualified for the right to construct a single-family residence and if the lots/parcels are located in a zoning district that permits duplex or two-family dwellings, the lots/parcels may be combined to build a single duplex or two-family building in lieu of constructing two single-family residences.
- (3) A Minimum Use Determination will run with the land and is available to subsequent owners if the property is transferred in its entirety.
- (4) Lots/parcels with a favorable Minimum Use Determination may be permitted non-residential uses in addition to a single family residence if:
- (a) The lot/parcel is located in the Open Lands or Density Reduction/Groundwater Resource (DR/GR) land use category and the use is allowed by the future land use category and complies with the Land Development Code; or
- (b) The lot/parcel is located on Captiva Island in an area identified by Policy 13.2.1 and is approved as a Commercial or Mixed-Use Planned Development.
- (5) A Minimum Use Determination may be vacated on a property that is brought into compliance with the standard density requirements of the Lee Plan.
- (6) In the General Interchange future land use category, property that is less than one acre in size and qualifies for a Minimum Use Determination may be permitted a

single-family residence. Property that is an acre or more in size does not qualify for a Minimum Use Determination and will be required to meet the minimum density of 8 units per acre and limited to multi-family dwelling units.

(7) Properties within future land use categories that do not permit residential density, as summarized on Table 1(a), do not qualify for a Minimum Use Determination.

3. Standards for Appeal

The Board will consider information submitted during the administrative interpretation process and will review only whether the standards set forth in subsection (2) above have been properly applied to the facts.

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 will have the force of law, unless the Lee Plan is amended to change the effect of the legislative interpretation.

Requests for legislative interpretations may be placed before the Comprehensive Plan Annotations Committee (CPAC) 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 Local Planning Agency (LPA), by the Lee County Hearing Examiner, or by any applicant for development regulated by the Plan. Legislative interpretations will be made using the procedures provided in Lee County Administrative Code 13-2.

Comprehensive Plan Annotations Committee (CPAC). The three members of the CPAC are the Director of Community Development, the Planning Manager, and the County Attorney, or designee. Only one vote may be cast by or on behalf of each official. The CPAC is subject to the sunshine regulations and all meetings must be open to the public. The CPAC will function in an informal workshop atmosphere, with an emphasis on the timely production of concise, written recommendations to the LPA.

D. Amendments to the Plan

This plan, including the Future Land Use Map, may be amended in accordance with Florida Statutes and administrative procedures adopted by the Board of County Commissioners in Lee County Administrative Code 3-6. In accordance with § 163.3177(1)(f), F.S., all amendments must be based upon relevant and appropriate data and analysis.

The decision of the Board of County Commissioners on a plan amendment is final and deemed rendered on the date the Board votes on the matter denying or approving the requested amendment. In accordance with § 163.3181(4), F.S., if an Applicant's request for an amendment to the Lee Plan, which is applicable to the Applicant's property, is denied by the Board of County Commissioners, the Applicant may request informal mediation or other

alternative dispute resolution agreed upon by the Applicant and the County to attempt to resolve issues raised regarding the proposed amendment. The costs of the mediation or other alternative dispute resolution shall be borne equally by the County and the Applicant. A written request under this section must be submitted to the Chairman of the Board of County Commissioners within 30 days from the date the application was denied by the Board. Failure to make the request will be deemed a waiver of the opportunity afforded under § 163.3181(4), F.S. All public and private discussions in furtherance of settlement under the informal mediation or alternative dispute resolution process are inadmissible in subsequent litigation.

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.

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.~~

- ~~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.~~

~~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.~~

~~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.~~

~~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.~~

~~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.~~

~~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.~~

~~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.~~

~~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.~~

~~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:~~

~~(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 reappportion 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 reapportionment 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.~~

~~e. 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.~~

~~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.~~

c. 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 aforementioned 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.~~

~~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)~~

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.~~

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)~~

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

<u>CATEGORY:</u> <u>Development/Planning/Zoning</u>	<u>CODE NUMBER:</u> <u>AC-13-2</u>
<u>TITLE:</u> <u>Procedures for Administrative and Legislative Interpretations of the Lee County Comprehensive Plan</u>	<u>ADOPTED:</u> <u>XX/XX/XX</u>
	<u>AMENDED:</u>
	<u>ORIGINATING DEPARTMENT:</u> <u>Community Development</u>

A. PURPOSE/SCOPE:

This administrative code establishes procedures for administrative and legislative interpretations of the Lee County Comprehensive Plan (the Lee Plan). These procedures supplement the Administration Chapter of the Lee Plan. If there is a conflict between this code and the Lee Plan, the Lee Plan will prevail.

B. APPLICABILITY:

Administrative Interpretations. The Lee Plan provides an applicant of a development permit whose property rights are directly affected by the Plan the right to an administrative interpretation of the Plan as it affects their property.

Legislative Interpretations. The Lee Plan provides requests for legislative interpretations by any one member of the Comprehensive Plan Annotations Committee (CPAC), as described in the Lee Plan, 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 Local Planning Agency (LPA), by the Lee County Hearing Examiner, or by any applicant for development regulated by the Plan.

C. PROCEDURE FOR ADMINISTRATIVE INTERPRETATIONS OF THE LEE PLAN:

(1) Interpretation Request. Applicants seeking an administrative interpretation must submit a written request, on a form provided by the County, with the necessary information specified in the application for the subject matter of the interpretation, and, the following:

- a. The Request must clearly and concisely state the Lee Plan provision(s) in question, the affected property and property rights, the proposed development parameters subject to the interpretation, and the specific question to be answered. If the Request is predicated on a particular set of facts or circumstances, these must be fully explained.
- b. The Request must include an opinion or memorandum of law providing the Applicant's interpretation of the Lee Plan provision(s) and a discussion of the legal issues involved. A separate planning analysis must also be provided demonstrating the applicant's interpretation is consistent with other provisions of the Lee Plan.

c. Requests that do not sufficiently demonstrate that property rights of a specific property will be directly affected by the Lee Plan will not be processed.

(2) Submittal and Filing Fee.

a. *Submittal.* The request and required materials must be submitted to the Department of Community Development. Upon receipt of the request, the Department will assign a case number and date-stamp it received.

b. *Filing Fee.* All requests must be submitted in conjunction with the required filing fee, as set forth in the Lee County External Fees and Charges Manual, as amended. A separate application fee will not be required if the request for a Minimum Use 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.

(3) Administrative Interpretation. 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.

(4) Appeal. The Board will consider information submitted during the administrative interpretation process and will review only whether the standards set forth in the Lee Plan have been properly applied to the facts.

a. 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.

b. 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. Once rendered, administrative interpretations are subject to challenge under the provisions of Chapter 163.3215, F.S.

D. PROCEDURE FOR LEGISLATIVE INTERPRETATIONS OF THE LEE PLAN:

(1) Interpretation Request. Applicants seeking an legislative interpretation must submit a written request, on a form provided by the County, with the necessary information specified in the application for the subject matter of the interpretation, and, the following:

a. The Request must clearly and concisely state the Lee Plan provision(s), the affected property and property rights, the proposed development parameters subject to the interpretation, and the specific question to be answered. If the Request is predicated on a particular set of facts or circumstances, these must be fully explained.

b. The Request must include an opinion or memorandum of law providing the Applicant's interpretation of the Lee Plan provision(s) and a discussion of the legal issues involved. A separate planning analysis must also be provided demonstrating the applicant's interpretation is consistent with other provisions of the Lee Plan.

c. Requests that do not sufficiently demonstrate that property rights of a specific property will be directly affected by the Lee Plan will not be processed.

(2) CPAC Recommendation. The County Attorney will reduce the recommendations of the CPAC in writing, unless he or she is in the minority, in which case the Planning Manager will reduce the majority recommendation to writing. The Planning Manager will deliver the recommendations to the LPA for consideration as an agenda item at a future meeting of the LPA. 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.

(3) LPA Recommendation. The LPA will review the recommendation of the CPAC at a publicly noticed meeting. The LPA will then consider the CPAC's recommendation (including minority recommendation, if applicable) and forward the LPA's recommendation and comments to the Board of County Commissioners.

(4) Final Interpretation. The Board of County Commissioners will render a final decision as to the interpretation to be applied, which will be memorialized in a resolution, and will direct Department of Community Development staff to initiate a Comprehensive Plan Amendment consistent with the interpretation.

(5) Legal Effect of Legislative Interpretation. Once a Final Interpretation is approved by the Board, the interpretation will have the force of law, unless the Lee Plan is amended to change the effect of the Final Interpretation. The resolution will control until such time the resulting Comprehensive Plan Amendment goes into effect or an alternative Lee Plan amendment nullifying the Final Interpretation is adopted.