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 **The Regular Meeting of the Board of Lee County Commissioners was held this date with the following Commissioners present:**

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[SEPTEMBER 04, 2002](#)

A Meeting of the Board of Lee County Commissioners was held this date, to conduct a Public Hearing to consider the transmittal of the [2001/2002 Regular Lee Plan Amendments to the Lee County Comprehensive Plan](#), with the following Commissioners present:

[Robert P. Janes](#), Chairman  
[Ray Judah](#), Vice-Chairman  
[John E. Albion](#)  
[Douglas R. St. Cerny](#)  
[Andrew W. Coy](#)

ON FILE IN THE MINUTES OFFICE:

THE LEE PLAN AMENDMENTS, INCLUDING STAFF REPORTS, RECOMMENDATIONS, AND MAPS; AND RECOMMENDATIONS FROM THE LOCAL PLANNING AGENCY (LPA).

**1. Call to Order; Certification of Affidavit of Publication**

The Chairman called the meeting to order at 9:30 a.m. Assistant County Attorney Timothy Jones approved as to legal form and sufficiency, the Affidavit of Publication regarding this item.

**2. Proposed Community Plans**

**A. CPA 2001-09**

Amend the Future Land Use Element text of the Lee Plan to incorporate the recommendations of the Bayshore Steering Committee, establishing a Vision Statement, Goal, and subsequent Objectives and Policies specific to the Bayshore Community.

RECOMMENDATIONS:

Per Administrative Code AC-13-6, the recommendation of the LPA is to **not** transmit the proposed amendment. Administrative Code AC-13-6 provides that in "those instances where the vote results in a tie vote...the recommendation of the LPA will be conclusively presumed to be a recommendation not to transmit the proposal and will satisfy the requirements of Section 163.3174(1) and (4)(a), Florida Statutes."

Staff recommends that the Board of County Commissioners transmit the proposed amendment with staff's recommended language as shown in the Staff Report (Part I, Section B.1).

Community Development Planner Matt Noble explained that the privately-sponsored Community Planning effort began after a mine request caused some community residents to question Lee County's land use policies. He noted that the matter of "due process" was not a substantive issue because two public information meetings were well-attended, the Steering Committee mailed several notices to residents, and the plan was discussed at three duly-advertised LPA public hearings. He added that, if the proposal is transmitted to the Florida Department of Community Affairs (DCA), another public hearing will be held to consider adoption after the DCA review. Mr. Noble then briefly reviewed the language of the proposed Vision Statement and Goal, which convey the community's desire to protect the rural, agricultural, equestrian, and residential character of the area. Utilizing a color-coded Future Land Use Map (FLUM), he described the allowable densities of the various areas within the Planning Community

boundaries; and emphasized that no FLUM categories would be changed by the amendment. Referring to Objective 20.1, Mr. Noble stated that the language was identical to existing Lee Plan language concerning Buckingham (Objective 17.1), which would prohibit land use map amendments to a more intensive category "unless a finding of overriding public necessity is made by three members of the Board of County Commissioners". He then briefly explained each of the proposed Policies 20.1.1 through 20.1.4, dealing with limitations and/or prohibitions of new commercial, industrial, mining, and excavation uses; and observed that "Minor Commercial", as defined by the Lee Plan, would not include commercial stables or tack and feed stores. Referring to the graphic land use map (Attachment B to the Amendment Application), included in the backup material for this item, Mr. Noble described the predominantly residential nature of the community; and clarified staff's conclusion that mining activities would not be compatible with the existing land use pattern. He then explained that staff's concerns with the original transportation language have been addressed; that the language has been substantially revised; and that the proposed Objective 20.2 and Policies 20.2.1 through 20.2.3 constitute direction to the County to actively solicit input from residents for future road projects. Referring to Objective 20.3 and Policies 20.3.1 and 20.3.2, Mr. Noble pointed out that there are no allowable densities in the community in excess of the threshold that would require connection to a public water system or sanitary sewer system; described the concerns of the residents about potential costs and assessments; and added that connection to public systems would be encouraged for development at the interstate interchange. Mr.

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Noble then distributed and reviewed a handout describing "Recommendations Regarding Surface Water Management" (copy is on file in the Minutes Office), which had been recently received from Mr. Rick Barber. He pointed out that the proposed language for Objective 20.5: Stormwater Management, was received too late to be reviewed by either the LPA or the community; and that staff has reviewed and is in support of the language. He added that Mr. Barber had withdrawn the recommendation for Policy 20.5.3, and that the language is consistent with the existing Lee Plan and with an amendment to be considered later in the meeting. Following brief remarks by Commissioner Judah regarding the importance of effective stormwater management, Commissioner Coy noted that Mr. Barber's ideas had been given last week to the principal community plan proposers. Referring to data and analysis requirements, Mr. Noble clarified that the Florida Statutes and Administrative Code only require the use of best available data; and that the planning effort included review of County-sponsored studies from 1982 and 1987. He concluded by stating staff's recommendation that the Board transmit the proposed Community Plan, as contained in the staff report, to the DCA. In response to Commissioner Coy's questions, Mr. Noble confirmed that the language in Objective 20.1 is the same as Objective 17.1 of the Buckingham Community Plan; and Attorney Jones advised that the term "overriding public necessity" refers to whatever is designated as such by the Board. Mr. Noble clarified that the language in Policy 20.1.2 was not intended to prohibit commercial stables or tack and feed stores, but was meant to exempt those operations from the Lee Plan standards for "Minor Commercial" uses. Commissioner Albion asked whether a Board decision to transmit this amendment, with its prohibition of mining uses, would influence the Strategic Mining Plan study currently being conducted. After Attorney Jones noted that planning staff would probably consider transmittal as an indication of the Board's wish to prohibit mining, Community Development Planning Director Paul S. O'Connor pointed out staff's opinion that mining is not compatible with the character of the community. In response to Commissioner Judah's question, Attorney Jones confirmed that legal issues could arise from removal of a use allowed by previous regulations. Brief Board discussion ensued regarding the timeline for completion of the mining study relative to the amendment adoption hearing after DCA review and the possibility of County liability under the Bert Harris Act from both the proposed amendment and the eventual Strategic Mining Plan. The Chairman called for public input and the following concerned citizens came forward to speak in opposition to the proposed Community Plan:

Scott Carter presented a petition signed by several Bayshore Community landowners (copy is on file in the Minutes Office), requesting additional study prior to Plan approval.

James R. Smith

Jim Cochran

A. Ernest Hansen

Joseph McFarland on behalf of Dorene McFarland

Ric Pritchett

Russ Atlee

Andy Tilton

The following concerned citizens came forward to speak in support of the proposed Community Plan as presented:

Troy Dunn

Joseph Brown

Patricia Brown

Jean Kendrick

Andrew Jamison



Amy Fanner distributed information about area wildlife (copy is on file in the Minutes Office).

Dusty Glaze

Linda Carpenter

Shari Shifrin

James Bartleson

Patricia Boyden

Kathy Corlieto

Doris Maitland

Kevin Schappert

Mary Zettel

Russ Vought

Larry Webb

Arthur Pohle

Matt Smith

Victor Hein

Piper Hunt

Dianna James

Helen Johns

Ralph Ruckle

Gary Simmons

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Linda Ritter

Lee Ritter

Butch Ritter

James Minick

Bonnie Rose

Paul Rose

Larry Frappier submitted a copy of the list used for mailing notices (on file in the Minutes Office).

Nick Mellis

Jeanne Cornele

Mark Penfield

The following concerned citizens came forward to request deletion of a parenthetical phrase, in the Vision Statement, regarding future allowable density; and to express support for the remainder of the proposed Community Plan:

Stephanie Smith

Steven Brodtkin

Kip Bryant

Lynne Bryant

Shelley Traurig

Richard Coolick

The following concerned citizens, who planned to speak on Administrative Agenda Item 6.B., expressed their concerns about the possible inclusion of the stormwater management language submitted by Mr. Barber:

Sam Marshall

Mitch Hutchcraft

One concerned citizen who submitted a card indicating opposition, and twenty-two concerned citizens who submitted cards indicating support, did not speak. Commissioner Judah left the meeting briefly during the public comment period. Among the concerns expressed by those in opposition were: the potential loss of individual property rights, the insufficient notice to non-resident property owners, the "last-minute" nature of Mr. Barber's recommendation, the severe restrictions placed on development, the removal of previously allowed uses, the potential for Bert Harris Act litigation, the need for an independent Strategic Mining Study, the possible shortage of local building materials, and the proposed limitations on utility systems. Proponents cited the need to preserve wildlife habitat, the incompatibility of intensive development, the adverse effects of additional truck traffic, and the property rights of current residents. Mr. Mike Roeder, Consultant for the Bayshore Steering Committee, commented that the Committee had considered language similar to that suggested by Mr. Barber; that the consensus had been that no specific Bayshore component was needed; and that the Committee was neutral on whether to transmit language that had not been thoroughly reviewed. Those speakers who were concerned about the inclusion in the Vision Statement of the parenthetical phrase "(i.e., up to two units per acre with proper zoning)" asserted that the language was unnecessary and might be

incorrectly construed as an indication that residents approved of the higher density. Attorney Steven C. Hartsell, of the law firm of Paves, Haverfield, et al., representing O.C. Home Corporation, explained that his client is in the process of requesting zoning on approximately 750 acres, at the currently allowable density of two units per acre, in Outlying Suburban areas; and that the parenthetical phrase clarified that the Vision Statement was not intended to change the densities in those areas. He opined that the additional language submitted by Mr. Barber should not be transmitted; commented that the plan was privately funded; pointed out that the proposed plan represents much consensus-building and compromise; and remarked on the concern of some residents that County public works projects were exempt from notice requirements. In response to Commissioner Coy's questions, Mr. O'Connor confirmed that no plan change would be required to allow the County to build, widen, improve, or extend roads; and that the County could approve gated golf course communities that were consistent with allowable densities and other plan policies. After Mr. Noble clarified the plan's limitations on public water and sewer systems, Mr. O'Connor described the residents' concern that improved infrastructure would increase pressure for additional development. Commissioner Coy asked whether the plan should address the flooding issue; and Mr. O'Connor responded that either flooding was not considered a pressing concern or the plan designers perceived a lack of expertise to address the issue. Mr. O'Connor confirmed Commissioner Coy's understanding that the plan would not prohibit a Wal-Mart, Publix, or other similar large project that was otherwise consistent with legal requirements. Attorney Jones stated that Bert Harris liability could arise from the plan's total prohibition of mining, that any new application for a mining operation would have to come before the Board, and that the pending rezoning application for a mine in the Bayshore area had been deemed sufficient. Attorney Jones and Mr. Noble briefly discussed misunderstandings as to whether the subject application had been deemed withdrawn or scheduled for a hearing. In reply to Commissioner Coy's questions, Attorney Jones confirmed that the private planning group would not be subject to Sunshine Law requirements; and that any future change to the Community Plan would be made through the public Comprehensive Plan Amendment process. Attorney Jones further clarified that, although the Land Use category boundaries would not be changed, the uses allowed within those categories would be changed. After remarking on the possibility that some mining land use

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areas might become Conservation 2020 lands, Commissioner Coy asked Commissioner Judah to comment on the language "discouraging" central sewer in new developments. Commissioner Judah observed that the area's low density would make it difficult to connect to a central system, and expressed concern that the language encourages central sewers south of Bayshore Road but discourages them north of Bayshore Road. Commissioner Albion suggested, and Commissioners Coy and Judah concurred, that the plan's language could discourage central sewers in areas with less than two units per acre and remain silent on higher density areas. General discussion ensued regarding conditions under which expansion of an existing commercial facility would require connection to an available central system, after which Commissioner Judah requested that staff develop alternate language to reflect Commissioner Albion's suggestions. After Commissioner Judah commented on the desire of the residents to ensure that no mining would occur in the area, Commissioner St. Cerny requested clarification of the time line for the Strategic Mining Study, the DCA review, and the Board's adoption hearing. Attorney Jones emphasized that neither the plan's prohibition nor the study would become effective until final adoption by the Board, unless the Board directs staff to implement the Smith v. Clearwater ruling to put a hold on any new applications for development that would be inconsistent with the pending study; and noted that the ruling is normally not used for pending plan amendment issues. He added that adoption of the implementation ordinance would not occur for some months after the DCA review is complete, and that adoption of the Strategic Mining Study would involve at least LDC amendments. Extensive Board discussion followed regarding the advantages and disadvantages of including the mining prohibition in the transmitted amendment, the Board's options for dealing with amendments after DCA review, and the need for an unbiased mining study. Commissioner Judah suggested that the language in Policy 20.1.4 could be transmitted with the addition of the phrase, "subject to the outcome of the mining study currently being conducted by the County Department of Community Development". In response to questions from the Commissioners, Attorney Jones explained that the language submitted by Mr. Barber could not be transmitted because it had not been considered by the LPA; reviewed the legal requirements of the amendment process; confirmed that addition of the un-reviewed language could jeopardize approval of the entire Community Plan; and emphasized that an addendum would not be permitted. Following brief Board discussion of Mr. O'Connor's suggested wording for Objective 20.3, Mr. O'Connor read the following into the record: "Given the desire to maintain a low residential density, new central sewage service is not economically feasible and is discouraged north of Bayshore Road ~~within the future non-urban land use categories~~ ", with the second sentence to remain as written. His suggestion for the revised wording of Policy 20.3.1: "Central sewage service will be encouraged for existing ~~and future~~ high density ~~and intensity developments south of Bayshore Road~~ **within the future urban land use categories** ". Commissioner Coy made a motion to transmit, for DCA's opinion, the Bayshore Community Plan as written, except for the changes to Objective 20.3 as read by Mr. O'Connor, with the understanding that, if any new or different information is received within the next three to six months, the Board has the full right and responsibility to make additional changes as needed prior to adoption. Commissioner Judah seconded the motion for discussion. Commissioner Judah clarified that any language in the Bayshore Community Plan amendment to the Comprehensive Plan pertaining to mining uses would be subject to the findings of the mining study being conducted by the Department of Community Development. The maker of the motion agreed. Commissioner Albion suggested that simpler language would be that "it must be consistent with the



findings from the study agreed upon by the Board of County Commissioners". The maker and seconder of the motion agreed. Commissioner Albion pointed out that the Bayshore residents should continue to work toward consensus on remaining issues, and suggested that the Board be made aware of any unwillingness to cooperate on either side. After Commissioner Coy agreed to monitor the situation, the motion was called and carried. Commissioner Albion noted that Board approval of the Community Plan was not intended to bias the results of the Strategic Mining Study.

The Chairman recessed the meeting until 1:30 p.m. The Chairman called the meeting back to order at 1:34 p.m. with all Commissioners present with the exception of Commissioner Coy, who arrived at 1:50 p.m.

**B. CPA 2001-10**

Amend the Lee Plan to incorporate the recommendations of the Captiva Island Community Planning effort, establishing a Goal and subsequent Objectives and Policies specific to the Captiva Island community.

RECOMMENDATIONS:

The LPA recommends that the Board of County Commissioners transmit the proposed amendment with the LPA's recommended language as shown in the Staff Report (Part IV, Section D).

Staff recommends that the Board of County Commissioners transmit the proposed amendment with staff's recommended language as shown in the Staff Report (Part I, Section B.1).

Planning Division Community Planner James Mudd noted that the Captiva Community Planning Panel (CCPP) includes four members of the Captiva Civic Association (CCA), four members of the Captiva Property Owners' Association (CPOA), and one person who belongs to both the CCA and CPOA. Mr. Mudd reported that staff agrees with LPA's recommendation to remove proposed Policy 21.3 (Page 5 of 30 of the Staff Report), to limit development at South Seas Plantation to a maximum of 912 dwelling units, which is a departure from the intent not to single out

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specific developments in a Comprehensive Planning document; and to remove proposed Policy 21.10 (Page 7 of 30), to eliminate all relief from the requirements of the Land Development Code (LDC), which would be too restrictive. Mr. Mudd added that the language of proposed Objective 21 (Page 5 of 30) was either vague or redundant, and that the language of Policy 21.11 (Page 7 of 30) would not accomplish what the Applicant intended. In response to Commissioner Albion's question, Mr. Mudd asserted that the LPA members had only minor differences on parts of the proposal. Mr. David Depew, Morris-Depew Associates Inc., representing the CCPP, distributed and reviewed a handout (copy is on file in the Minutes Office), with suggested changes to the LPA-approved language for Policies 21.5 and 21.8. He commented on the rationale for scheduling land use change hearings only between October 1 and June 1, and for requiring notification of both registered voters and property owners of applicable Comprehensive Plan amendments. In response to Commissioner Judah's question as to whether the CCPP wished to delete the phrase "through the use of environmentally responsible methods" from Policy 21.5, Mr. Depew stated that the change was suggested in recognition of the efforts of the Captiva Erosion Prevention District (CEPD); and agreed that there would be no objection to inclusion of all the language shown. The Chairman called for public input and the following concerned citizens came forward:

- CCA Past President Bill Fenniman distributed and reviewed a letter and "Proposed Captiva Specific Plan Amendment" from the CCA (copies on file in the Minutes Office).
- CCA President Sharon Brace offered additional comments on the letter and document from the CCA.
- CCA and CCPP member Robert Brace reviewed the proposed limitation on South Seas Plantation.
- Attorney Matthew Uhle, of the law firm of Knott, Consoer, Ebelini, Hart, & Swett PA, representing the CCA, commented on proposed prohibitions on relief from LDC regulations; limitations on new/expanded commercial uses; restrictions on wash-out repairs on Captiva Drive; increased levels of Code Enforcement services; building height restrictions; and concerns about future density transfers.
- CPOA Executive Director Kate Gooderham requested transmittal of the LPA recommendation.
- Attorney Steven C. Hartsell, of the law firm of Pavese, Haverfield, et al., representing Plantation Developments LTD, a property owner of South Seas Plantation, explained his client's opposition to the proposed development limitation; and described the potential liabilities associated with Policies 21.1 and 21.11.

COMMISSIONER COY ENTERED THE MEETING DURING MR. FENNIMAN'S PRESENTATION.

Commissioner Judah remarked on the confusing information in the packet, noted that the LPA had made separate motions on various policies, and requested clarification of the recommendation for each proposed policy. Mr. Mudd



explained that Pages 3 and 4 of 30 contain the language recommended by staff and the LPA for transmittal; and that Page 5 of 30, which includes the language submitted by the CCPP and corrected by staff and the LPA, would be the easiest to follow in a detailed review. After adding that "shall" had been changed to "will" throughout the document, he reviewed each of the proposed policies:

Goal 21 - Neither staff nor the LPA had a problem.

Objective 21 - The language shown on Page 3 of 30 is better because it is more specific.

Policy 21.1 - In response to Commissioner Judah's question regarding the proposed limitation on new residential rezoning to one unit per acre, Mr. Noble explained that current LDC limits on Captiva were three units per acre. Mr. Noble and Attorney Jones briefly discussed the Bert Harris implications of this policy.

Policy 21.2 - Neither staff nor the LPA had a problem.

Policy 21.3, which was not struck from staff's original recommendation, had been deleted from the final recommendation shown on Page 3 of 30. Attorney Jones explained that development at South Seas Plantation was already limited by existing zoning approvals and LDC regulations, opined that Policy 21.3 was proposed to provide the basis for future litigation, and briefly described the points of contention in the current CCA lawsuit against the County.

Policy 21.4 (21.3 on page 3) - Neither staff nor the LPA objected. Mr. Noble confirmed Commissioner Judah's understanding that LDC building height limitations were already in effect for Captiva.

Policy 21.5 (21.4 on Page 3) - Considered to be a good policy.

Policy 21.6 on Page 6 of 30 (21.5 on Page 3) - Consistent with current County policy. Commissioner Judah asked whether the language pertaining to the CEPD, as suggested by Mr. Depew, would be included. Mr. Noble stated that staff would have no objection to that inclusion, and read the following language into the record: "Lee County will continue to support the efforts of the Captiva Erosion Prevention District, a beach and shore preservation authority under provisions of Chapter 161, Florida Statutes, to preserve, protect and maintain Captiva's beaches through the use of environmentally responsible methods." General discussion followed, resulting in Board consensus that the suggested language would replace the originally recommended language; and that the phrase "through the use of" would be replaced with "using".

Policy 21.7 (21.6 on Page 4) - The submitted phrase "shall give preference to individual owner control" had been replaced with clearer language regarding sewers.

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Policies 21.8 and 21.9 (deleted) - Completely unacceptable to staff, because they would require public hearings to be held on Captiva during a limited time period each year, which would be different from all other communities in the County. After Commissioner Coy remarked that County business goes on 12 months per year, Mr. Mudd stated that staff recommended replacement of those two policies with language similar to that written for Estero (21.7 and 21.8 on Page 4). Commissioner Judah inquired about the possibility that property owners who could not attend a hearing could write a letter as evidence, with copies to all parties. Attorney Jones explained that such letters would become part of the record, but would not allow the writer to appear before the Board at the final hearing; and described the problems that would result from allowing letters to serve as evidence. There was Board consensus that the phrase "on Captiva" should be added to Policy 21.8 (Page 4), following "one public informational meeting", as requested on Page 2 of Mr. Depew's handout.

Policy 21.10 (21.9 on Page 4) - Staff was unsure of the nature of a "compatibility ordinance", but would find out once the Captiva residents had prepared it. Commissioner Janes asserted that the term should be defined in order to avoid confusion; and, following discussion, there was Board consensus to eliminate the proposed policy.

Policy 21.11 (21.10 on Page 4) - The last sentence as submitted had been deleted, because it would have committed County staff to provide special notice and services regarding plan amendments.

Policy 21.12 (21.11, deleted) - It would be impossible to demonstrate beforehand whether the absence of relief would result in a "taking". Commissioner Coy suggested that prohibition of variances, deviations, and administrative relief would be equivalent to a claim that existing rules are perfect. Referring to one speaker's comments that variances had been granted too liberally by the Hearing Examiner, Commissioner Judah suggested that such variance requests should come directly to the Board. After Mr. Noble reported that there were fewer than one variance request per year for Captiva over the last seven to eight years, Attorney Jones opined that the phrase "regulatory taking" would guarantee lawsuits; pointed out that, unless the Board wished to sit through lengthy variance hearings as the principal hearing body, the Board could allow an appeal from any aggrieved person of variances granted by the Hearing Examiner; and remarked on the probability that other communities would also ask the Board to prohibit variances. Following extensive Board discussion as to the most appropriate alternative, there was consensus that any limitation on granting of setback variances should be included

- in the LDC rather than in the Comprehensive Plan.
- Policy 21.13-~~11~~ (21.11 on Page 4) - Senior Environmental Planner Kim Trebatoski explained that the Florida Department of Environmental Protection (FDEP) has regulatory authority over the trimming of mangroves; and noted that the phrase "County discretionary acts" could be interpreted in many different ways and is inconsistent with other language in the Lee Plan. In response to Commissioner Judah's question, Ms. Trebatoski clarified that staff recommended replacement of the original language, as approved by the LPA, with the language shown on Page 4. AT THIS TIME, COMMISSIONER COY LEFT THE MEETING; AND WAS ABSENT FOR THE REMAINDER OF THE MEETING. Attorney Jones expressed his concern that the ambiguity of the phrases "will be protected to the greatest extent possible" and "reduce impacts through redesign" could result in litigation. He pointed out current LDC policies to incorporate the permitting conditions of stated and federal agencies into the County's development orders, and opined that the proposed policy would constitute a redundant review process. Commissioner Janes commented on the residents' concern about the mangroves and on the absence of County authority over mangrove management; and voiced concern regarding the language that would require previously approved projects to reduce impacts "through redesign". Commissioner Albion suggested elimination of the words "to the greatest extent possible" and "through redesign", and replacement of "will be protected" with "should be protected". As an alternative, he suggested elimination of the entire second sentence dealing with previously approved projects. After Mr. Noble asserted that those changes would be consistent with the community's desire, brief Board discussion occurred regarding whether the County should seek authorization from the state to regulate mangroves within the County. There was consensus that only the first sentence, with "should" instead of "will", should be transmitted.
- Policy 21.14 on Page 7 (deleted) - DOT Deputy Director David Loveland clarified the rationale used by staff and the LPA to recommend elimination of this policy, and the Board concurred with the recommendation.
- Policy 21.15-~~12~~ (21.12 on Page 4) - Mr. Mudd explained staff's recommendation to remove the words "innovative" and "unobtrusive". Commissioner Janes suggested that the phrase "in addition to the height ordinance" could be stricken, and Mr. Noble agreed that building heights were addressed elsewhere.
- Policy 21.16 (deleted) - Mr. Mudd explained that, because code enforcement is complaint-driven, there was no basis for assigning priority status to Captiva Island; and Commissioner St. Cerny commented that this sort of management authority did not belong in the Comp Plan. Following a brief general discussion about the disadvantages of code enforcement "sweeps", there was Board consensus that sufficient procedures were already in place.

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Mr. O'Connor provided suggested wording for the motion to transmit:

- Goal 21 and Objective 21 to be transmitted as presented on Page 3 of 30.
- Policy 21.1 not to be transmitted.
- Policies 21.2, 21.3, and 21.4 to be transmitted as presented on Page 3 of 30.
- Policy 21.5 to be transmitted with corrected wording "Lee County will continue to support the efforts of the Captiva Erosion Prevention District, a beach and shore preservation authority under provisions of Chapter 161, Florida Statutes, to preserve, protect, and maintain Captiva's beaches using environmentally responsible methods".
- Policies 21. 6 and 21.7 to be transmitted as presented on Page 4 of 30.
- Policy 21.8 to be transmitted with the words "on Captiva" added after "one public informational session".
- Policies 21.9 not to be transmitted.
- Policy 21.10 to be transmitted as presented on Page 4 of 30.
- Policy 21.11 to be transmitted as corrected: "Mangroves on Captiva Island should be protected".
- Policy 21.12 to be transmitted without the phrase "in addition to the height ordinance".

Commissioner Judah moved to transmit the amendment as specified above, seconded by Commissioner St. Cerny, called and carried with Commissioner Coy absent. Commissioner Janes commended the citizens of Captiva for their demonstration of cooperation, and noted the Board's responsibility to provide a County-wide viewpoint.

Following a short break, the Chairman called the meeting back to order at 3:55 p.m., with all Commissioners present with the exception of Commissioner Coy, who was absent for the remainder of the meeting; and Commissioner St. Cerny, who entered the meeting at 3:56 p.m.

AT THIS TIME, THE BOARD CONSIDERED ADMINISTRATIVE AGENDA ITEM 6.B. SEE THAT PORTION



OF THE MEETING.

**3. Public Comment on Consent Agenda**

No one came forward to offer comment.

**4. Consent Agenda Items to be Pulled**

There were no requests for Consent Agenda items to be pulled for discussion by the individual Commissioners.

**5. Lee Plan Amendments Transmittal Consent Agenda**

**A. CPA 2001-22**

Amend the Future Land Use Map Series, Map 12, the Water Dependent Overlay (WDO) Zones, by evaluating and updating the status of the overlay areas and the Goals, Objectives, and Policies that pertain to the WDO.

**RECOMMENDATIONS:**

The LPA recommends that the Board of County Commissioners transmit the proposed amendments to Map 12 of the Lee Plan Map Series.

Planning staff recommends that the Board of County Commissioners transmit the proposed plan amendment.

Commissioner Judah moved to transmit the amendment as presented, seconded by Commissioner St. Cerny, called and carried with Commissioner Coy absent.

**B. CPA 2001-23**

Evaluate and amend the Future Land Use Map Series, Map 20, the Agricultural Overlay; and Goal **9**, Agricultural Land Uses and its subsequent Objectives and Policies.

**RECOMMENDATIONS:**

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

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Planning staff recommends that the Board of County Commissioners transmit the proposed amendment to Goal **9** and its subsequent Objectives and Policies, and Map 20, with language as shown in the Staff Report (Part I, Section B.1.).

Commissioner Judah moved to transmit the amendment as presented, seconded by Commissioner St. Cerny, called and carried with Commissioner Coy absent.

**C. CPA 2001-24-T**

Update Table 2(b), Recommended Operational Improvements on Constrained Roads.

**RECOMMENDATIONS:**

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

Planning and DOT staff recommends that the Board of County Commissioners transmit the proposed amendment, incorporating the changes identified in the update of Table 2(b).

Commissioner Judah moved to transmit the amendment as presented, seconded by Commissioner St. Cerny, called and carried with Commissioner Coy absent.



**D. CPA 2001-28**

Amend the Capital Improvements Element (Tables 3 and 4) to reflect the latest adopted Capital Improvement Program.

## RECOMMENDATIONS:

The LPA recommends that the Board of County Commissioners transmit the proposal to amend the Capital Improvements Element (Tables 3 and 4) to reflect the latest adopted Capital Improvement Program.

Planning staff recommends that the Board of County Commissioners transmit the proposed amendment to incorporate revised Tables 3 and 4 into the Capital Improvements Element.

Commissioner Judah moved to transmit the amendment as presented, seconded by Commissioner St. Cerny, called and carried with Commissioner Coy absent.

**E. CPA 2001-31**

Amend Policy 80.1.7 of the Conservation and Coastal Management Element by updating the policy to reflect a new percentage for replacement values, and by revising the target date when development regulations will require implementation of this policy.

## RECOMMENDATIONS:

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

Planning staff recommends that the Board of County Commissioners transmit the proposed amendment, with modifications to Policy 80.1.7, as shown in the Staff Report (Part I, Section B.1.).

Commissioner Judah moved to transmit the amendment as presented, seconded by Commissioner St. Cerny, called and carried with Commissioner Coy absent.

**F. CPA 2001-33**

Amend the Build Back Policy of the Procedures and Administration Element by replacing references to the term "cost" with the term "value".

## RECOMMENDATIONS:

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

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Planning staff recommends that the Board of County Commissioners transmit the proposed amendment with staff's recommended language as shown in the Staff Report (Part I, Section B.1).

Commissioner Judah moved to transmit the amendment as presented, seconded by Commissioner St. Cerny, called and carried with Commissioner Coy absent.

**G. CPA 2001-35**

Review all elements of the Lee Plan; and replace, where applicable, references to the "Lee County Regional Water Supply Authority" (LCRWSA) with "Lee County Utilities" or the "Division of Natural Resources", in conjunction with the County taking over the responsibilities of the LCRWSA.

## RECOMMENDATIONS:

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

Staff recommends that the Board of County Commissioners transmit the proposed amendment with staff's recommended language as shown in the Staff Report (Part I, Section B.1).

Commissioner Judah moved to transmit the amendment as presented, seconded by Commissioner St. Cerny, called and carried with Commissioner Coy absent.

6. Lee Plan Amendments Transmittal Administrative Agenda

A. CPA 2001-15

Amend the Future Land Use Map (FLUM) Series Map 1, by updating the Conservation Lands land use categories.

RECOMMENDATIONS:

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

Planning staff recommends that the Board of County Commissioners transmit the proposed amendment to amend the FLUM Series to include in the Conservation Lands category those lands acquired by the County through the Conservation 2020 Program and the Florida Forever Program, and Calusa Land Trust properties; and reclassify the Trustees of the Internal Improvement Trust Fund (TIITF) property in Fort Myers Shores from the Conservation Lands FLUM category to the Public Facilities FLUM category.

Commissioner Judah moved to transmit the amendment, seconded by Commissioner St. Cerny. Planning Division Inspector Robert Irving explained the purpose of the amendment, and noted that a Florida Department of Transportation (FDOT) maintenance facility was to be transferred to the Public Facilities category. He added that two parcels purchased by Conservation 2020 should not be included in the amendment: Nomination 59, Bunche Beach acquisition; and Nomination 154, 15 acres in the Flint Pen/Corkscrew Regional Ecosystem Watershed (CREW) Trust area. He explained the concerns of the County Lands Division that re-classification would devalue the Bunche Beach property, for which the County has requested \$3 million federal reimbursement; and that there is a possibility of selling Nomination 154 to the South Florida Water Management District (SFWMD). The maker and seconder agreed to amend the motion to reflect the exceptions noted by Mr. Irving. The Chairman called for public input; however, no one came forward. The motion was called and carried with Commissioner Coy absent.

IMMEDIATELY PRIOR TO CONSIDERATION OF THE CONSENT AGENDA:

B. CPA 2001-27

Amend the Community Facilities and Services Element, Goal 40: Coordinate Surface Water Management and Land Use Planning on a Watershed Basis, to add a new Objective and Policy regarding incorporation of green infrastructure into the surface water management systems of proposed developments; and to provide definitions for "green infrastructure" and "flow-way" in the Glossary.

RECOMMENDATIONS:

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

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Planning staff recommends that the Board of County Commissioners transmit the proposed amendment with staff's recommended language as shown in the Staff Report (Part I, Section B.1).

Senior Environmental Planner Kim Trebatoski briefly reviewed the proposed amendment, and clarified staff's opinion that the zoning review process could be streamlined by specific definitions for "green infrastructure" and "flow-way". She noted that flow-way types included "natural", "man-made naturalized", and "man-made hard structure"; and pointed out that, from an Environmental Sciences standpoint, flow-ways provide wildlife habitat, water recharge, and nutrient uptake. She commented on staff's belief that natural features should be considered and incorporated in the site design process; pointed out that the recommendation had been reviewed by several County divisions; and stated that Smart Growth Task Force Executive Director Wayne Daltry, who had wished to address the Board, had left the meeting earlier to attend a meeting elsewhere. COMMISSIONER ST. CERNY ENTERED THE MEETING DURING MS. TREBATOSKI'S PRESENTATION. The Chairman called for public input; and the following concerned citizens came forward to express their concerns about the proposed amendment:



Attorney Steven C. Hartsell, of the law firm of Pavese, Haverfield, et al., representing the Real Estate Investment Society (REIS)

Barraco and Associates Engineer Carl Barraco

Civil Engineer Sam Marshall

Bonita Bay Group representative Mitch Hutchcraft

Johnson Engineering representative Andy Tilton

The following concerned citizen expressed support for the proposed amendment:

Conservancy of Southwest Florida representative Matt Bixler

Among the concerns expressed by the speakers were: whether new regulations are necessary; the lack of adequate public discussion; the possible duplication of existing water management regulations; the lack of specificity in the "flow-way" definition; the inadequacy of the proposed objective to enhance flood protection; the possible disadvantages of flow-way restoration; the need for specific professional site studies; and the lack of maps, data, analysis, modeling, and funding. Mr. Bixler cited the need to balance population growth with environmental protection, the consistency of the amendment with the Smart Growth concept, the enhancement of water storage and filtering capabilities, and the importance of preparation for the pending total maximum daily volume restrictions. Community Development Planner Matt Noble clarified staff's opinion that the "flow-way" definition should be broad, with specific details to be provided through the LDC; and that the amendment represents a community policy to encourage developers to incorporate the natural features of each site. Mr. Noble pointed out that consultants had not responded to staff requests for alternate definitions, that the language reflects nationally-evolved planning thought, and that there is no general map due to staff's belief that each site should be evaluated individually. Natural Resources Director Roland Ottolini commented that the County is ultimately responsible for its water quality, that the recommendation is consistent with Board direction to create a natural resources preservation mitigation plan, and that developers will be encouraged to utilize natural features instead of diverting water around projects. Commissioner Judah commented that, although a few developers have already incorporated the "green infrastructure" and "flow-way" principals, others have continued to use ditches and dikes to divert water flow; and opined that the recommended approach could provide connectivity to an overall system of water quality and quantity preservation. Commissioner Judah then moved to transmit the amendment, seconded by Commissioner St. Cerny. Commissioner Albion remarked that the lack of specific details could cause inconsistency with the intended purpose of the flow-way system, noted the credentials of the speakers, and asked whether staff is certain that this amendment would contribute to an effective program. After Commissioner Judah commented that there would be fewer current problems if "green infrastructure" had been in place 25 years ago, Commissioner St. Cerny observed that staff should consider the speakers' remarks when refining the definition and preparing detailed specifications. In response to Commissioner Albion's inquiry, Ms. Trebatoski reported that Smart Growth Task Force Executive Director Wayne Daltry believed the amendment was a necessary step in line with Smart Growth initiatives; and Mr. Ottolini noted that Mr. Daltry had written that "where flow-ways exist, maps should indicate which ones need remediation". Commissioner Albion requested a progress report from staff at the December or January Management and Planning meeting. Mr. Ottolini commented that, although the overall mitigation flow-way strategy would prioritize key flow-ways, sites could be found to have flow-ways not on the map; and added that detailed site-specific modeling would be very costly. After Commissioner Albion suggested that staff work closely with the development and consultant sectors, the motion was called and carried with Commissioner Coy absent.

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The Chairman adjourned the meeting at 4:45 p.m.

ATTEST:

CHARLIE GREEN, CLERK

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Deputy Clerk

\_\_\_\_\_  
Chairman, Lee County Commission

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