

**BOARD OF COUNTY COMMISSIONERS**

Writer's Direct Dial Number: (941) 479-8585

Bob Janes  
*District One*      September 19, 2002

Douglas R. St. Cerny  
*District Two*

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John E. Albion  
*District Five*

Donald D. Stilwell  
*County Manager*

James G. Yaeger  
*County Attorney*

Diana M. Parker  
*County Hearing Examiner*

Ray Eubank, Administrator  
Florida Department of Community Affairs  
Division of Community Planning  
Bureau of Local Planning  
2555 Shumard Oak Boulevard  
Tallahassee, FL. 32399-2100

Re: Amendments to the Lee Plan  
Transmittal Submission Package for the 2001/2002 Regular Amendment Cycle

Dear Mr. Eubank:

In accordance with the provisions of F.S. Chapter 163.3184 and of 9J-11.006, this submission package constitutes the transmittal of the proposed 2001/2002 Regular Amendment Cycle to the Lee Plan. The Local Planning Agency held public hearings for these plan amendments on the following dates: March 25, 2002; April 22, 2002; July 22, 2002; August 26, 2002. The Board of County Commissioners transmittal hearing for the plan amendments was held on September 4, 2002 and September 5, 2002. Per 9J-11.006(1)(a)(3), Lee County is requesting that the Department review the proposed amendments and provide an Objections, Recommendations, and Comments (ORC) Report. The proposed amendments are not applicable to an area of critical state concern. The Board of County Commissioners has stated its intent to hold an adoption hearing upon receipt of the ORC Report.

A summary of the plan amendment content and effect is attached to this letter. The name, title, address, telephone number, facsimile number, and email address of the person for the local government who is most familiar with the proposed amendments is as follows:

Mr. Paul O'Connor, AICP  
Lee County Planning Division Director  
P.O. Box 398  
Fort Myers, Florida 33902-0398  
(941)479-8585  
Fax (941)479-8319  
Email: oconnops@leegov.com

Included with this package, per 9J-11.006, are six copies of the adopted amendment, and supporting data and analysis. By copy of this letter and its attachments I certify that these amendments have been sent to the Regional Planning Council, the Florida Department of Transportation (FDOT),

the Department of Environmental Protection, Florida Department of State, Florida Fish and Wildlife Conservation Commission, the Department of Agriculture and Consumer Services, Division of Forestry, and the South Florida Water Management District.

Sincerely,  
**DEPT. OF COMMUNITY DEVELOPMENT**  
**Division of Planning**



Paul O'Connor, AICP  
Director

All documents and reports attendant to this transmittal are also being sent, by copy of this cover, to:

David Burr  
Interim Director  
Southwest Florida Regional Planning Council

Mike Rippe, District Director  
FDOT District One

Executive Director  
South Florida Water Management District

Plan Review Section  
Department of Environmental Protection

Florida Department of State

Florida Fish and Wildlife Conservation Commission

The Department of Agriculture and Consumer Services, Division of Forestry

## 2001/2002 LEE PLAN AMENDMENT CYCLE

### SUMMARY OF PLAN AMENDMENT CONTENT AND EFFECT

- CPA 2001-09** Amends the Future Land Use text by adding a new Vision Statement, Goal, Objectives and Policies specific to the Bayshore Community. The Policies generally address Land Use, Transportation, Sewer and Water, and Parks and Recreation. The intent of the amendment is, in part, to provide for slow and steady growth in the Bayshore Community and to prevent incompatible uses such as mining and intense commercial uses from developing in the community.
- CPA 2001-10** Amends the Future Land Use text by adding a new Goal, Objective and ten Policies specific to the Captiva Island Community. The policies address such things as establishing a landscaping code for Captiva, creating a document clearing house to aid residents in monitoring development requests, a requirement for owners or agents for any rezoning, variance, or special exception to hold a public informational session on Captiva and a policy for Lee County to encourage and support efforts by Captivans to develop and submit ordinances that help maintain the historical character of the land. This is a privately initiated amendment sponsored, in part, by Lee County Government.
- CPA2001-11** Amends the Future Land Use Element, Policy 1.2.2, the Airport Commerce descriptor policy, to broaden the allowable uses and to establish relationships and criteria for those uses. Providing for Commercial Retail uses in Airport Commerce allows the County to better use the airport to attract new business in order to promote economic growth and diversification. Flexibility in the planning requirements for future business and industrial lands in the Airport Commerce category is of paramount importance. Commercial functions located within business and industrial parks provide beneficial services to employees. In addition Policy 1.2.2 is being amended by removing "and other hospitality services" due to the fact that it is not a defined term. The LDC does not have this as a use group or a defined use. Also, the Lee County Land Development Code (LDC) provides that caretakers residences can be approved in association with an industrial development, therefore Policy 1.2.2 is being amended to allow caretakers residences.
- CPA2001-12** The amendment adds to Policy 1.3.8 a specific access management plan for Alico Road in the vicinity of the I-75 interchange, and adds maps of the specific access management plans to the Future Land Use Map series. The addition of specific access management plans for the four County-maintained roads that connect to the interstate allows for a recognition of already-existing conditions and previous development approvals, rather than relying on the generalized spacing standards included in Policy 1.3.8. This action is a follow-

up to PAT 99-27, which added the specific access management plan for Corkscrew Road. Future amendments are anticipated to add the specific access management plans for Lockett Road and Bonita Beach Road.

- CPA2001-15** Amends the Future Land Use Map (FLUM) series to include in the Conservation Lands category those lands acquired by Lee County, the State of Florida (TIITF), and the private conservation foundation, the Calusa Land Trust, and reclassify an FDOT maintenance yard from the Conservation Lands FLUM category to the Public Facilities FLUM category.
- CPA2001-18** Amends the Future Land Use text by replacing the existing Vision Statement with new language, and by adding new policies and amending existing policies specific to the Pine Island Community. Amends the Future Land Use Map by creating a new Coastal Rural Land Use Category. Highlights of the Plan are the creation of the Coastal Rural Land Use Category which will replace the Rural designation on Pine Island and replace an additional 157 acres of land currently in the Outlying Suburban designation. Another policy changes the way development orders will be allocated once the 910 vehicle trip calculation has been reached. Other policies address changes to the sign regulations, architectural and site design standards, riparian areas, septic drainfields and historic building designation on Pine Island.
- CPA2001-22** Amends Map 12 of the Future Land Use Map Series, 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 zones. This amendment addresses 40 WDO zones, of which 6 are proposed for amendment. The remaining zones do not present compelling reasons for amendment. As currently codified, the Lee Plan Goals, Objectives, and Policies sufficiently address WDO concerns.
- CPA2001-23** Amends the Future Land Use Map series, Map 20, The “Contiguous Agricultural Parcels Over 100 Acres” map by updating the overlay to reflect current conditions. Changes to the map include mapping lands that are currently in agricultural use and meet the other criteria outlined in Objective 9.1 (as proposed in this amendment). Objective 9.1 is being amended to clarify the criteria for selecting properties to be included on the overlay map. The existing Lee Plan language does not match the parcels that are shown on the current overlay. The adopted 1994 Overlay included parcels that were smaller than 100 acres; however, Objective 9.1 states “Place all existing active and passive agricultural uses on all parcels in excess of 100 acres...” The revised language clarifies that Ag parcels less than 100 acres in size will only be included on the overlay if they are contiguous to other Ag uses resulting in an “Ag Area” larger than 100 acres. The new language clarifies that properties must be outside of Future Land Use Categories that are anticipated to develop with urban uses during the life of the plan. Finally, language is added to require this overlay to be reviewed every 2 years.

**CPA2001-24**

This amendment simply updates Table 2(b), Recommended Operational Improvements on Constrained Roads, to reflect the latest thinking on operational improvements for the constrained roads. The table is also being expanded to include all of the constrained roads, whether an operational improvement is identified at this time or not, to avoid any confusion when comparing to Table 2(a) (the list of constrained roads). A note is also being added to make clear that, even if no specific operational improvement is identified in the table at this time, operational improvements may be determined to be necessary in relation to specific development requests.

**CPA2001-27**

Amends the Community Facilities and Services Element, Goal 40: Coordinated Surface Water Management and Land Use Planning on a Watershed Basis by adding a new Objective and Policy regarding incorporation of green infrastructure into the surface water management systems of proposed developments, and providing definitions for green infrastructure and flow-way in the Glossary. Incorporating green infrastructure and flow-ways into surface water management design will help protect the groundwater and surface water in Lee County. Also, green infrastructure furthers Lee County's efforts in achieving EPA's non-degradation water quality criteria for stormwater discharges to designated Outstanding Florida Waterways and compliance with future total maximum daily loads established for impaired water-bodies.

**CPA2001-28**

Amends the Capital Improvements Element (Tables 3 & 4) to reflect the latest adopted Capital Improvement Program. Lee Plan Policy 70.1.1 requires a Capital Improvements Program to be prepared and adopted on an annual basis. Florida Statute 163.3177(3)(b) requires that the Capital Improvements Element of the comprehensive plan be amended annually to reflect the modifications of the adopted Capital Improvement Program (CIP). This amendment incorporates the most recently adopted CIP in the Capital Improvements Element.

**CPA2001-31**

Amends Policy 80.1.7 of the Conservation and Coastal Management Element by updating the policy to reflect a new percentage for replacement values and revising the target date when development regulations will require implementation of this policy. At this time the Lee County Land Development Code addresses these issues through Sections 6-405 and 6-472. The amendment also changes modifications to buildings from 20% to 25% of its replacement value which is consistent with the Federal Emergency Management Agency's current threshold. Additionally the amendment changes the policy language from 'one or more losses of \$1,000.00 or more' to a repetitive loss as defined by the Federal Emergency Management Agency. The intent of the policy has been recorded into the county regulations.

**CPA2001-32**

Amends the Intergovernmental Coordination Element and the Community Facilities Element to bring the element into compliance with the provisions of F.S. Chapter 163.3177. In order to comply with the provisions of F.S. Chapter 163.3177 the Lee Plan should be amended to include a new policy in the Intergovernmental Coordination Element, under Goal 109, that refers to Goal 46: Education as the source for coordinating the comprehensive plan with the plans of the school board. Staff also recommends that a new policy, under Goal 46: Education, be adopted to address the coordination of population projection planning.

**CPA2001-33**

Amends the Build Back Policy of the Procedures and Administration Element by replacing references to the term "cost" with the term "value." The proposed amendment will clear up language differences between the Lee Plan and what is contained in the Lee County Post Disaster Ordinance No. 95-14. Both of the terms "replacement cost" and "replacement value" are found in the Post Disaster Ordinance. By replacing the current term "replacement cost" with the term "replacement value," structure damage will be defined to account for variability in the market, such as labor and materials.

**CPA2001-35**

Amends all elements of the Lee Plan, where applicable, by replacing references to the Lee County Regional Water Supply Authority with Lee County Utilities or the Division of Natural Resources in conjunction with the County taking over the responsibilities of the Water Supply Authority. The Lee County Regional Water Supply Authority is referenced in several instances throughout the Lee Plan with regard to their role in water resource issues. The Lee County Regional Water Supply Authority was officially dissolved as of June 30, 2001. Most of the functions of the Lee County Regional Water Supply Authority have been taken over by Lee County Utilities and Lee County Division of Natural Resources.

**CPA 2001-31  
BoCC SPONSORED  
AMENDMENT  
TO THE**

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**LEE COUNTY COMPREHENSIVE PLAN**

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**THE LEE PLAN**

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**DCA Transmittal Document**

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*Lee County Planning Division  
1500 Monroe Street  
P.O. Box 398  
Fort Myers, FL 33902-0398  
(941) 479-8585*

**September 4, 2002**

**LEE COUNTY  
DIVISION OF PLANNING  
STAFF REPORT FOR  
COMPREHENSIVE PLAN AMENDMENT  
CPA 2001-31**

|   |   |
|---|---|
| ✓ | <b>This Document Contains the Following Reviews:</b>                                    |
| ✓ | <b>Staff Review</b>   |
| ✓ | <b>Local Planning Agency Review and Recommendation</b>                                  |
| ✓ | <b>Board of County Commissioners Hearing for Transmittal</b>                            |
|   | <b>Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report</b> |
|   | <b>Board of County Commissioners Hearing for Adoption</b>                               |

STAFF REPORT PREPARATION DATE: April 15, 2002

**PART I - BACKGROUND AND STAFF RECOMMENDATION**

**A. SUMMARY OF APPLICATION**

**1. APPLICANT:**

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING AND  
DIVISION OF PUBLIC SAFETY

**2. REQUEST:**

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 revising the target date when development regulations will require implementation of this policy.

**B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:**

**1. RECOMMENDATION:** Staff recommends that the Board of County Commissioners transmit this proposed amendment. The specific language modifications that staff recommends is provided below:

**POLICY 80.1.7:** ~~By 1995, Maintain the current county development regulations with requiring~~ that any building that is improved, modified, added on to, or reconstructed by more than ~~twenty (20)~~ twenty five (25) percent of its replacement value and which has recorded ~~one or more~~ National Flood Insurance Program (NFIP) flood losses of ~~\$1000.00 or more since 1978~~ a repetitive loss as defined by the Federal Emergency Management Agency will be brought into compliance with current regulatory standards for new construction. (Amended by Ordinance No. 92-35, 94-30, 00-22)



## 2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The policy currently has an outdated implementation date of 1995. The policy has been incorporated into existing county regulations and the policy should be updated to reflect this fact.
- The amendment will reflect a new percentage for replacement values which is consistent with the Federal Emergency Management Agency's current threshold.
- The amendment updates the policy language by using the term repetitive losses as defined by the Federal Emergency Management Agency as well as the Lee County Land Development Code.

### C. BACKGROUND INFORMATION

This amendment was initiated by the Board of County Commissioners on September 25, 2001. Policy 80.1.7 was originally adopted in August of 1992 as part of the 1991/1992 Regular Comprehensive Plan Amendment Cycle. At the time the policy was proposed, existing buildings in flood plain areas could be improved or reconstructed without meeting the current codes and standards at that time as long as the project did not exceed 50% of the building's value. Lee County staff found that a more effective way of providing flood protection for older buildings was requiring compliance with flood plain management regulations when requested improvements were less than 50% of the building's value, bringing more non-conforming buildings up to flood protection standards. As shown above in the strike-through/underline proposed language, the originally adopted policy used a lower threshold for substantial improvements for any building that has suffered a recorded flood loss of \$1,000.00 or more and reduced the threshold from more than 50% to more than 20% of the building's replacement value. Staff is proposing the changes noted above as an update to Policy 80.1.7 of the Conservation and Coastal Management Element of the Lee Plan.

## PART II - STAFF ANALYSIS

### A. STAFF DISCUSSION

The proposed amendment to Policy 80.1.7 removes the 1995 target date of incorporating the Policy into County regulations. At this time the Lee County Land Development Code addresses these issues through Sections 6-405 and 6-472. The amendment also changes modifications to buildings from 20% to 25% of its replacement value which is consistent with the Federal Emergency Management Agency's current threshold. Additionally the amendment changes the policy language from 'one or more losses of \$1,000.00 or more' to a repetitive loss as defined by the Federal Emergency Management Agency. This change will allow flood insurance funds available in an increased cost of construction clause in flood insurance policies to be used to bring these buildings into compliance. It also significantly reduces the number of properties that would have to comply with these provisions through the definition of repetitive loss, which means two or more, rather than the current one or more. The definition of repetitive loss, as defined by the Federal Emergency Management Agency and the Lee County Land Development Code is reproduced below:

*Repetitive loss means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each flood event, on the*

*average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.*

Staff can now narrow down repetitive losses with the County's current database as well as the fact that repetitive loss is easier to prove due to the record of added claims, provided through the Federal Emergency Management Agency's yearly records.

Again, as noted above, the Lee County Land Development Code addresses these issues through sections 6-405 and 6-472. Section 6-405 defines repetitive loss as follows:

*Repetitive loss means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.*

Section 6-405 also defines substantial improvement as follows:

*Substantial improvement means any repair, reconstruction, rehabilitation, or improvement to a structure, the cost of which equals or exceeds, over a five-year period, a cumulative total of 50 percent of the market value of the structure:*

- (1) before the repair or improvement is started; or*
- (2) If the structure has been damaged and is being restored, before the damage occurred.*

*For purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.*

*This term includes structures that have incurred repetitive loss or substantial damage, regardless of the actual repair work performed.*

*The term does not include any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that are necessary solely to ensure safe living conditions; or any alteration of a structure listed on the National Register of Historic Places or the state inventory of Historic Places, or designated as a historic resource, individually, or as a contributing property in a historic district, under chapter 22.*

As noted in the above citation, the definition for substantial improvements includes the term repetitive loss.

Section 6-472 requires that any new residential construction or substantial improvements be elevated to the base flood elevation. Section 6-472, Specific standards, is reproduced below:

*In all areas of special flood hazard where base flood elevation data has been provided as set forth in this article, the following provisions are required:*

*(1) Residential construction. New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the base flood elevation. This shall apply to manufactured homes that are to be placed or substantially improved on sites in a new manufactured home park or subdivision, in an expansion of an existing manufactured home park or subdivision, in an existing manufactured home park or subdivision on which a manufactured home on that specific site has incurred substantial damage as a result of a flood, and outside of a manufactured home park or subdivision. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of subsection (3) of this section.*

As can be noted from these Land Development Code Citations, the intent of Policy 80.1.7 has been incorporated into the county development regulations.

## **B. CONCLUSIONS**

The current policy was created initially to model the 20% figure after what the Federal Emergency Management Agency would be bringing about as a threshold. Today the Federal Emergency Management Agency uses a 25% threshold and the Lee Plan policy should reflect this. The intent of the policy has been recorded into the county regulations.

## **C. STAFF RECOMMENDATION**

Planning staff recommends that the Board of County Commissioners transmit this proposed amendment. This recommendation is based upon the previously discussed issues and conclusions of this report. Staff recommends that Policy 80.1.7, as provided in the Conservation and Coastal Management Element of the Lee Plan be modified as follows:

**POLICY 80.1.7:** By 1995, Maintain the current county development regulations will requireing that any building that is improved, modified, added on to, or reconstructed by more than twenty (20) twenty five (25) percent of its replacement value and which has recorded one or more National Flood Insurance Program (NFIP) flood losses of \$1000.00 or more since 1978 a repetitive loss as defined by the Federal Emergency Management Agency will be brought into compliance with current regulatory standards for new construction. (Amended by Ordinance No. 92-35, 94-30, 00-22)

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

DATE OF PUBLIC HEARING: April 22, 2002

**A. LOCAL PLANNING AGENCY REVIEW**

Planning staff provided the LPA a brief presentation concerning the amendment. Staff stated that the amendment reflects a new percentage for replacement values and a revision to the target date for implementation. Staff provided that the intent of the policy has been incorporated into the Land Development Code, and the Lee Plan should reflect this fact. Staff also stated that the 25 percent replacement value is consistent with the Federal Emergency Management Agency.

The LPA provided no discussion concerning the proposed amendment.

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

1. **RECOMMENDATION:** The Local Planning Agency recommends that the Board of County Commissioners transmit the proposed amendment to the Florida Department of Community Affairs.
2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** As contained in the staff report.

**C. VOTE:**

|                         |            |
|-------------------------|------------|
| <b>NOEL ANDRESS</b>     | <u>AYE</u> |
| <b>MATT BIXLER</b>      | <u>AYE</u> |
| <b>SUSAN BROOKMAN</b>   | <u>AYE</u> |
| <b>RONALD INGE</b>      | <u>AYE</u> |
| <b>GORDON REIGELMAN</b> | <u>AYE</u> |
| <b>ROBERT SHELDON</b>   | <u>AYE</u> |
| <b>GREG STUART</b>      | <u>AYE</u> |

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

DATE OF ADOPTION HEARING: September 4, 2002

**A. BOARD REVIEW:** The Board of County Commissioners provided no discussion concerning the proposed plan amendment. This item was approved on the consent agenda.

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

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

**C. VOTE:**

**JOHN ALBION**

\_\_\_\_\_  
**AYE**  
\_\_\_\_\_

**ANDREW COY**

\_\_\_\_\_  
**ABSENT**  
\_\_\_\_\_

**BOB JANES**

\_\_\_\_\_  
**AYE**  
\_\_\_\_\_

**RAY JUDAH**

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**AYE**  
\_\_\_\_\_

**DOUG ST. CERNY**

\_\_\_\_\_  
**AYE**  
\_\_\_\_\_



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

DATE OF ADOPTION HEARING: \_\_\_\_\_

**A. BOARD REVIEW:**

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

**C. VOTE:**

**JOHN ALBION**

\_\_\_\_\_

**ANDREW COY**

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**BOB JANES**

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**RAY JUDAH**

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**DOUG ST. CERNY**

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