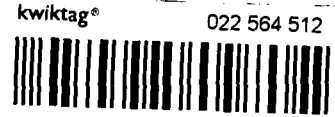


**2004/2005 REGULAR LEE PLAN AMENDMENTS
ADOPTION HEARING**

**COMMISSION CHAMBERS, 2120 MAIN STREET
OCTOBER 12, 2005
9:30 A.M.**



AGENDA

1. CALL TO ORDER; CERTIFICATION OF AFFIDAVIT OF PUBLICATION

2. CONSENT AGENDA

- **Public Comment on Consent Agenda**
- **Consent Items to be Pulled for Discussion by the Board**
- **Motion on the Balance of Items**
- **Consideration of Items Pulled for Discussion**

A. CPA2004-02 – Estero Outdoor Display

Amend the Future Land Use Element, Policy 19.2.5., to allow outdoor display in excess of one acre at the intersection of I-75 and Corkscrew Road.

Sponsor: Argonaut Holdings, Inc.

B. CPA2004-08 – Oak Creek

Amend the Future Land Use Map series for a 27.25± -acre portion of land located in Section 17, Township 43 South, Range 25 East, to change the classification shown on Map 1 from "Rural" to "Suburban." Amend the Future Land Use Map series for a 17.81±-acre portion of land located in Section 19, Township 43 South, Range 25 East, to change the classification shown on Map 1 from "Suburban" to "Rural."

Sponsor: S.W. Florida Land 411, LLC

C. CPA2004-09 – Captiva

Amend Goal 13 of the Lee Plan specific to the Captiva community to incorporate the recommendations of the Captiva Island Community Planning effort. Amend Goal 84: Wetlands to add a new Policy 84.1.4.

Sponsor: Board of County Commissioners

D. CPA2004-12 - Boca Grande

Amend the Future Land Use Element to incorporate the recommendations of the Boca Grande Community Planning effort, establishing a new Vision Statement and a new Goal, including Objectives and Policies specific to Boca Grande.

Sponsor: Board of County Commissioners

E. CPA2004-14 – Coastal High Hazard Area

Amend the Conservation and Coastal Management Element, Policy 105.1.4., to consider limiting the future population exposed to coastal flooding while considering applications for rezoning in the Coastal High Hazard Area.

Sponsor: Board of County Commissioners

F. CPA2004-15 - Fort Myers Shores Table 1b Update

Revise the Lee Plan Land Use Allocation Table (Table 1b) for the Fort Myers Shores Planning Community to address the establishment of the Outlying Suburban future land use category within the Planning Community.

Sponsor: Board of County Commissioners

G. Adopt the following Ordinance, which adopts the Consent Agenda items:

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE LAND USE PLAN, COMMONLY KNOWN AS THE “LEE PLAN” ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENTS APPROVED ON THE CONSENT AGENDA DURING THE COUNTY’S 2004/2005 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO ADOPTED TEXT, MAPS AND TABLES; PURPOSE AND SHORT TITLE; LEGAL EFFECT; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER’S ERRORS, AND AN EFFECTIVE DATE.

3. ADMINISTRATIVE AGENDA

A. CPA2004-13 - I-75 and S.R. 80 Interchange

Amend the future land use designations of Map 1, the Future Land Use Map, for the Interstate 75 and State Road 80 Interchange to balance existing and future land use designations in this area.

Sponsor: Board of County Commissioners

B. Adopt the following Ordinance, which adopts CPA2004-13:

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 CPA2004-13 (PERTAINING TO I-75 AND S.R. 80 INTERCHANGE) APPROVED DURING THE COUNTY'S 2004/2005 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO THE FUTURE LAND USE MAP; PURPOSE AND SHORT TITLE; LEGAL EFFECT OF "THE LEE PLAN"; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

C. CPA2004-16 – Pine Island Compromise

The compromise proposes to amend the Lee Plan as follows:

Amend the Future Land Use Map series for specified parcels of land (total of approximately 157 acres) located in Section 31, Township 43 South, Range 22 East, to change the Future Land Use classification from "Coastal Rural" to "Outlying Suburban." The property is generally located in the Bokeelia area south of Barrancas Avenue and north of Pinehurst Road.

Amend the Pine Island Vision Statement and Goal 14 to recognize the value of preserving agricultural activities on the island;

Amend the Future Land Use Element Policy 1.4.7, the Coastal Rural Policy, to allow the retention of active or passive agriculture in lieu of habitat restoration to regain density;

Amend the current percentages of preserved or restored uplands in Policy 1.4.7;

Add a policy that further defines the restoration standards referred to in Policy 1.4.7;

Amend Housing Element Policy 135.2.3. to incorporate a reference to the Coastal Rural future land use category;

Amend the Pine Island Vision Statement, Goal 14, Table 1(a) footnote 4, the Definition of Density in the Glossary, and other Plan provisions to create a new transfer of development rights program for Pine Island; Amend the definition of Density to allow mixed use projects to retain some or all residential density that is typically lost to commercial acreage, if Pine Island TDRs are utilized to regain density; Amend the Mixed Use definition in the Glossary to redefine mixed use projects;

Evaluate creating a concurrency exception area for a portion of Pine Island Center; and,

Evaluate establishing additional Urban Infill areas on the mainland portion of the County to be receiving areas for Pine Island TDRs. Evaluate increasing allowable bonus densities in specific locations based on a point system that incorporates several criteria.

Sponsor: Board of County Commissioners

D. Adopt the following Ordinance which adopts CPA2004-16:

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 CPA2004-16 (PERTAINING TO THE PINE ISLAND COMMUNITY PLAN COMPROMISE) APPROVED DURING THE COUNTY'S 2004/2005 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO ADOPTED TEXT AND MAPS; PURPOSE AND SHORT TITLE; LEGAL EFFECT OF "THE LEE PLAN"; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

4. ADJOURN

These meetings are open to the public and all interested parties are encouraged to attend. Interested parties may appear and be heard with respect to all proposed actions. Pursuant to Florida Statutes Section 163.3184(7), persons participating in the Comprehensive Plan Amendment process, who provide their name and address on the record, will receive a courtesy informational statement from the Department of Community Affairs prior to the publication of the Notice of Intent to find a plan amendment in compliance.

If a person decides to appeal any decision made by the board, agency or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Further information may be obtained by contacting the Lee County Division of Planning at 479-8585.

In accordance with the Americans with Disabilities Act, reasonable accommodations will be made upon request. If you are in need of a reasonable accommodation, please contact Janet Miller at 479-8583.

LEE COUNTY ORDINANCE NO. 05-____
(Consent Ordinance)

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE LAND USE PLAN, COMMONLY KNOWN AS THE "LEE PLAN" ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENTS APPROVED ON THE CONSENT AGENDA DURING THE COUNTY'S 2004/2005 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO ADOPTED TEXT, MAPS AND TABLES; PURPOSE AND SHORT TITLE; LEGAL EFFECT; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, the Lee County Comprehensive Plan (hereinafter referred to as the "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; and,

WHEREAS, the Lee County Board of County Commissioners, 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 public hearings pursuant to Chapter 163, Part II, Florida Statutes, and the Lee County Administrative Code on January 24, 2005, March 28, 2005, April 25, 2005, and May 23, 2005; and,

WHEREAS, the Board of County Commissioners, pursuant to Florida Statutes and the Lee County Administrative Code held a public hearing for the transmittal of the proposed amendments on June 1, 2005. At that hearing, the Board approved a motion to send, and did later send, the proposed amendment to the Florida Department of Community Affairs ("DCA") for review and comment; and,

WHEREAS, at the transmittal hearing on June 1, 2005, the Board announced its intention to hold a public hearing after the receipt of DCA's written comments commonly referred to as the "ORC Report." DCA issued their ORC report on August 19, 2005; and,

WHEREAS, the Board moved to adopt the proposed amendments to the Lee Plan set forth herein during its statutorily prescribed public hearing for the plan amendments on October 12, 2005.

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 a series of public hearings to consider proposed amendments to the Lee Plan. The purpose of this ordinance is to adopt the certain amendments to the Lee Plan discussed at those meetings and approved by a majority of the Board. The short title and proper reference for the Lee County Comprehensive Land Use Plan, as amended, will continued to be the "Lee Plan." **This ordinance may be referred to as the "2004/2005 Regular Comprehensive Plan Amendment Cycle Consent Ordinance."**

SECTION TWO: ADOPTION OF LEE COUNTY'S 2004/2005 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE (Consent Agenda Items)

The Lee County Board of County Commissioners amends the existing Lee Plan, adopted by Ordinance Number 89-02, as amended, by adopting amendments, as revised by the Board of County Commissioners on October 12, 2005, known as: CPA2004-02, CPA2004-08, CPA2004-09, CPA2004-12, CPA2004-14, and CPA2004-15. The aforementioned amendments amend the text of the Lee Plan including the Future Land

Use Map series and the Lee Plan Land Use Allocation Table (Table 1b). A brief summary of the content of those amendments is set forth below:

CPA2004-02 (Estero Outdoor Display)

Amend Lee Plan Policy 19.2.5. of the Future Land Use Element to allow outdoor display in excess of one acre at the intersection of I-75 and Corkscrew Road. Sponsor: Argonaut Holdings, Inc.

CPA2004-08 (Oak Creek)

Amend the Future Land Use Map Series for a 27.25±-acre portion of land located in Section 17, Township 43 South, Range 25 East, to change the classification shown on Map 1, the Future Land Use Map, from "Rural" to "Suburban." Amend the Future Land Use Map Series for a 17.81±-acre portion of land located in Section 19, Township 43 South, Range 25 East, to change the classification shown on Map 1, the Future Land Use Map, from "Suburban" to "Rural." Sponsor: S.W. Florida Land 411, LLC.

CPA2004-09 (Captiva)

Amend Goal 13 of the Lee Plan pertaining to the Captiva Community to incorporate recommendations of the Captiva Island Community Planning effort. Amend Goal 84: Wetlands to add a new policy 84.1.4. Sponsor: BOCC.

CPA2004-12 (Boca Grande)

Amend the Future Land Use Element of the Lee Plan to incorporate recommendations of the Boca Grande Community Planning effort. Establish a new Vision Statement and a new Goal, including Objectives and Policies specific to Boca Grande. Sponsor: BOCC.

CPA2004-14 (Coastal High Hazard Area Density)

Amend the Lee Plan's Conservation and Coastal Management Element Policy 75.1.4. to consider limiting the future population exposed to coastal flooding while considering applications for rezoning in the Coastal High Hazard Area. Sponsor: BOCC

CPA2004-15 (Fort Myers Shore Table 1b Update)

Text amendment to revise the Lee Plan Land Use Allocation Table (Table 1b) for the Fort Myers Shores Planning Community to address the establishment of the Outlying Suburban Future Land Use Category within the planning community. Sponsor: BOCC

The corresponding Staff Reports and Analysis, along with all attachments for these amendments are adopted as "Support Documentation" for the Lee Plan.

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: 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 FIVE: 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 of County Commissioners that this ordinance would have been adopted had the unconstitutional provisions not been included therein.

SECTION SIX: 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 or her designee, without need of public hearing, by filing a corrected or recodified copy with the Clerk of the Circuit Court.

SECTION SEVEN: EFFECTIVE DATE

The plan amendments adopted herein are not effective until a final order is issued by the DCA or Administrative Commission finding the amendment in compliance with Section 163.3184, Florida Statutes, whichever occurs earlier. 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. A copy of such resolution will be sent to the DCA, Bureau of Local Planning, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

THE FOREGOING ORDINANCE was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and, when put to a vote, the vote was as follows:

- Robert P. Janes
- Douglas St. Cerny
- Ray Judah
- Tammy Hall
- John Albion

DONE AND ADOPTED this 12th day of October 2005.

ATTEST:
CHARLIE GREEN, CLERK

LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: _____
Deputy Clerk

BY: _____
Chairman

DATE: _____

Approved as to form by:

Donna Marie Collins
County Attorney's Office

CPA 2004-14
CONSIDERATION OF REDUCED DENSITY
IN THE COASTAL HIGH HAZARD AREA
BOCC SPONSORED AMENDMENT
TO THE

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

**Publically Initiated Application
and Lee County Staff Analysis**

**BoCC Public Hearing Document
for the
October 12th Adoption Hearing**

*Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(239) 479-8585*

August 19, 2005

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA 2004-14**

Text Amendment

Map Amendment

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

ORIGINAL STAFF REPORT PREPARATION DATE: March 21, 2005

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

Lee County Board of County Commissioners, represented by the Lee County Division of Planning.

2. REQUEST:

Amend the Lee Plan's Conservation and Coastal Management element Policy 75.1.4 to consider limiting the future population exposed to coastal flooding while considering applications for rezoning in the Coastal High Hazard Area.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION: Planning staff recommends that the Board of County Commissioners transmit the proposed Lee Plan amendment to the Florida Department of Community Affairs for their review. This recommendation has been updated to include the LPA recommended language.

Recommended Text Changes:

POLICY 75.1.4: Through the Lee Plan amendment process, future land use designations of undeveloped areas within coastal high hazard areas will be considered for reduced density categories ~~(or assignment of minimum allowable densities where density ranges are permitted)~~ in order to limit the future population exposed to coastal flooding.

POLICY 75.1.5: Zoning requests located in the coastal high hazard area will be considered for reduced or minimum density assignments, in accordance with their future land use category density range. This evaluation should be done in concert with an evaluation of other individual characteristics such as compatibility with existing uses, desired urban form, and availability of urban services.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- Goal 75, and notably Policy 75.1.4, are contained within the existing Conservation and Coastal Management element of the Lee Plan.
- A Conservation and Coastal Zone element was contained in the 1984 Lee Plan. The 1984 plan did not include Goal 75 and subsequent policies.
- The State of Florida adopted the 1985 Local Government Comprehensive Planning and Land Development Regulation Act and the 1986 Department of Community Affairs Minimum Criteria for Review of Local Government Comprehensive Plans and Determination of Compliance.
- The 1984 Conservation and Coastal Zone element was substantially revised and slightly renamed to meet these new requirements as a result of the 1988 Lee County Coastal Study. As a result, Goal 75 and subsequent Objectives and Policies were incorporated into the Lee Plan.
- The 1988 Coastal study recognized the importance of balancing coastal development with limiting public expenditures to limit the exposure to storm hazards.
- The 1988 Coastal Study proposed three major goals to manage land use in the "Coastal Study Area." The proposed goals were "aimed at Resource Protection, Protection of Life and Property, and Limitation of Public Expenditures in Hazard Areas."
- The policy has been the subject of some debate as to the meaning or applicability of the parenthetical phrase.
- The assignment of density for a particular property happens in several instances, once when the property is included in a Future Land Use category, and when the property is zoned to allow specific uses.

- At the October 19, 2004 regular Board of County Commissioners meeting, Commissioner Judah suggested that the provisions of Policy 75.1.4 should apply during the rezoning process and not only through the Lee Plan amendment process.

C. BACKGROUND INFORMATION

1. EXISTING GOAL 75, OBJECTIVE 75.1, AND SUBSEQUENT POLICIES:

GOAL 75: PROTECTION OF LIFE AND PROPERTY IN COASTAL HIGH HAZARD AREAS. *To protect human life and developed property from natural disasters. (See also Goal 80.) (Amended by Ordinance No. 94-30)*

OBJECTIVE 75.1: DEVELOPMENT IN COASTAL HIGH HAZARD AREAS. *Development seaward of the 1991 Coastal Construction Control Line will require applicable State of Florida approval; new development on barrier islands will be limited to densities that meet required evacuation standards; new development requiring seawalls for protection from coastal erosion will not be permitted; and allowable densities for undeveloped areas within coastal high hazard areas will be considered for reduction. (Amended by Ordinance No. 92-35, 93-25, 94-30, 00-22)*

POLICY 75.1.1: *County policy regarding development seaward of the updated 1991 Coastal Construction Control Line will be re-evaluated approximately every five years beginning in 1995 to assess the adequacy of policies and practices developed by the Department of Environmental Protection. (Amended by Ordinance No. 92-35, 94-30, 00-22)*

POLICY 75.1.2: *Rezoning to allow higher densities will not be permitted on barrier and coastal islands if the capacity of critical evacuation routes would thereby be exceeded (see Objective 79.1). (Amended by Ordinance No. 92-35, 00-22)*

POLICY 75.1.3: *Shoreline development in V Zones will be protected from coastal erosion, wave action, and storms by vegetation, setbacks, and/or beach renourishment, rather than by seawalls or other hardened structures which tend to hasten beach erosion (see also policies under Objective 83.2). Repairs of lawfully constructed, functional, hardened structures as defined in F.S. Chapter 161 may be allowed subject to applicable state and local review and approval. (Amended by Ordinance No. 92-35, 00-22)*

POLICY 75.1.4: *Through the Lee Plan amendment process, land use designations of undeveloped areas within coastal high hazard areas will be considered for reduced density categories (or assignment of minimum allowable densities where density ranges are permitted) in order to limit the future population exposed to coastal flooding. (Amended by Ordinance No. 92-35, 94-30, 00-22)*

2. BACKGROUND DISCUSSION:

At the October 19, 2004 regular Board meeting, Commissioner Judah suggested that the provisions of Policy 75.1.4 (consideration of reduced density in the Coastal High Hazard Area) should apply during the rezoning process, and not only through the Lee Plan amendment process. The official meeting minutes contain the following:

DENSITY IN COASTAL HIGH HAZARD AREAS - *Commissioner Judah requested appropriate language in the Comprehensive Plan (Comp Plan) to allow the Board to identify proposed increases in density in the coastal high hazard areas and discourage it; noted that the Comp Plan contains language pertaining to amendments to the Comp Plan, not zoning cases; and directed the County Attorney's Office to formulate the appropriate language in an amendment for the Board to consider during the next round of amendments. Discussion ensued concerning the proper committees and departments that would participate in creating this amendment. Commissioner Albion requested an update in two months.*

Staff prepared a Board of County Commissioners Agenda Item Summary ("the Bluesheet") for the November 9, 2004 Board meeting date to initiate a Lee Plan amendment to reevaluate this issue. The Bluesheet provided that "Approving this action will allow staff to perform a reevaluation of this policy in the current Lee Plan amendment cycle." The Bluesheet further provided that "The focus of this reevaluation will be the merits of considering lower densities within the coastal high hazard areas during the rezoning process."

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

INTRODUCTION

Goal 75, and notably Policy 75.1.4, are contained within the existing Conservation and Coastal Management element of the Lee Plan. In 1984 a Conservation and Coastal Zone element was incorporated into the Lee Plan. This plan did not include Goal 75 and subsequent policies. Subsequent to Lee County adopting the 1984 Lee Plan, the State of Florida adopted the 1985 Local Government Comprehensive Planning and Land Development Regulation Act and the 1986 Department of Community Affairs Minimum Criteria for Review of Local Government Comprehensive Plans and Determination of Compliance. The 1984 Conservation and Coastal Zone element was substantially revised and slightly renamed to meet these new requirements as a result of the 1988 Lee County Coastal Study.

The 1988 Lee County Coastal Study was the result of a collaboration of a consultant team and Lee County staff. The study involved both collection of new data and the compilation of existing data. The study provided a definition and map of the "Coastal Study Area." The study also examined "projected coastal area growth" and "potential buildout" which equated to an increase of 99,384 dwelling units over the 1986 inventory total of 61,410 dwelling units. In addition, the study covered the following aspects of the coastal study area: Economics, Land Use and Growth Management, Ecological Inventory and Analysis, Estuarine Water Quality, Beach and Dune Systems, Hurricane Evacuation and Hazard Mitigation, and Intergovernmental Relations.

Current Policy 75.1.4 originated in a recommendation that was contained in the "Coastal Area Land Use and Growth Management" Chapter of the 1988 Lee County Coastal Study. The stated purpose of this Chapter is reproduced below:

Purpose

The purpose of this chapter is to inventory existing land uses and to analyze the effects of future land uses within the Coastal Study Area, and to recommend goals, objectives, and policies needed to achieve sound coastal land use patterns under the comprehensive plan. According to Florida law, these land use patterns must account for protection of coastal resources from development, and for protection of human life and limitation of public expenditures in areas subject to destruction by natural disasters. The chapter reviews existing land use for each planning district within the Coastal Study Area and discusses projected future land use in each district at two periods: 1) the year 2010 and, 2) buildout -- the future time when the area has been fully developed. It recommends goals, objectives, and policies to balance land development, resource protection, disaster protection, and public expenditures.

The Chapter discusses existing land uses and potential uses allowed by the respective Lee Plan land use categories in the different portions of the study area. The Chapter also notes, by then designated Planning Districts important planning considerations such as hurricane evacuation, storm hazard mitigation, provision of adequate infrastructure and resource protection issues unique to the district. The Chapter provides the following discussion concerning "Land Use and Infrastructure Issues:"

Lee County has a very extensive, highly developed, and complex coastal area. The Coastal Study Area includes some 163 square miles of land, or about a fifth of the land area of the County. Because so much of the County lies within the 100 year flood zone, coastal management issues have a dominant role in overall land use planning and growth management. Despite extensive areas of protected wetlands, the Coastal Study Area includes some 40% of the 1985 tax base of the County; 16% of this tax base is located in the V (Velocity) Zone, the shoreline area most vulnerable to storm hazards. Because such a high proportion of the existing development is subject to coastal flooding, disaster management issues play a large role in land use planning and growth management. Finally, the complex geography of the Coastal Study Area with its barrier and sound coastal islands, its multiple rivers and bays, and its salt and freshwater wetlands, requires a sophisticated planning process that blends land use and environmental management with progressive public policymaking.

Because Lee County is subject to coastal storm and hurricanes, its land use and growth management policies must account for these potential natural disasters. While not a frequent target of hurricanes, the Lee shore has been struck in the past and prudence requires that the possibility of future strikes be considered in land use and coastal management policy. Because of uncertainty about the exact location and force of future hurricanes, plans for mitigating or reducing the negative impacts of such strikes are usually based on two time frames: 1) before the storm, when general mitigation measures may be taken, and 2) after the storm, when the worst is known about specific destruction and plans can be adjusted on the basis of actual damage assessments.

The Chapter then provides a brief discussion concerning “Pre-Storm Hazard Mitigation and Development Management:”

In the face of certain future coastal storms and likely future sea level rise, the dynamic barrier islands and beaches will be unstable platforms for urban development. Different policies are needed for the undeveloped barriers, which should be conserved in their natural state, exempted from public infrastructure investments, and allowed to retreat before wave forces; and for the developed barriers, which require a balance of conservation, beach replenishment, and development management to ensure protection of coastal resources, property, and human life. Similarly, the developed coastal sound islands, while not exposed to the same wave action as the barriers, also require a balance of conservation and development management to avoid overloading the carrying capacity of both ecological and manmade systems (such as evacuation routes).

Mainland areas subject to coastal flooding constitute a large proportion of existing and future development within the County. The shoreline of most of this area is now protected under the Lee Plan through designation of the coastal wetlands as very low density Resource Protection (environmentally critical) Areas. These wetlands must be strictly protected from urban development in the future, and conservation practices extended inland through drainage basin plans that recognize the interconnected nature of coastal natural resource systems. Future land development in all areas subject to coastal flooding must be regulated to ensure that public expenditures are not unduly exposed to storm hazards, that measures are taken to protect people and property, and that natural systems are conserved and enhanced.

Thus the 1988 Coastal study recognized the importance of balancing coastal development with limiting public expenditures to limit the exposure to storm hazards. The 1988 Coastal Study proposed three major goals to manage land use in the "Coastal Study Area." The proposed goals were "aimed at Resource Protection, Protection of Life and Property, and Limitation of Public Expenditures in Hazard Areas." The study numbered the recommended Goals and Policies sequentially and the subject of this staff report (Policy 75.1.4) appeared under Goal 2, Protection of Life and Property and was numbered as Policy 2.1.4. This Policy is reproduced below:

Policy 2.1.4: Land use designations of undeveloped areas within the A Zone shall be considered for reduced density categories or assignment of minimum allowable densities where density ranges are permitted, in order to limit the future population exposed to coastal flooding and hurricane damage.

Staff prepared a draft Conservation and Coastal Management Element and presented the draft element at a series of Local Planning Agency (LPA) Public Hearings during 1988. The draft element was numbered in a different fashion than today. The specific policy subject to this amendment was discussed through this process. For example, at the May 19, 1988 LPA Public Hearing, Mr. Matt Uhle addressed the LPA in part stating the following:

The next one I'm concerned about is objective 5.1 which refers to densities within vulnerable A-zone areas being reduced where possible. The A-zones, I'm sure you all know, are almost all the property that we have on the coastward side of U.S. 41 and includes very large areas which are designated as being in urban service areas. I have grave concerns about a policy that says that densities within those areas will be reduced where possible. First of all it seems inconsistent with the whole thrust of the plan, secondly there are no standards in here at all, so if you own property in an A-zone and this policy is adopted you're looking at some sort of vague policy saying, well sometime in the future the government may try to reduce your density but maybe not, who knows.

I have serious problems with that. That's kind of implemented in policy 5.1.4, which is "land use designations of undeveloped areas within the A-zone shall be considered for reduced density categories."

Mr. Mike Roeder also addressed this topic at the same public hearing:

Another point was brought up about the idea of reducing densities in the A-zone where possible. This underlines a conflict that was pointed out in the 1984 plan, which is that when you overlay the urban service categories on the flood hazard zones you get a pretty neat fit and that seems to be an internal inconsistency in the whole plan. In the preface to the 1984 plan they tried to address that and basically talked around the problem without resolving it. This new policy seems to bring it up to the forefront again in saying we'll try and reduce densities because of flooding and at the same time all the other elements of the plan say we want to concentrate population where we have the infrastructure and services. It's a large problem that needs some more attention because the two elements are working at cross purposes.

The staff produced a revised draft element and the draft was discussed at the June 10, 1988 LPA Public Hearing. At this Public Hearing Mr Matt Uhle again addressed this topic:

The second thing that I'm concerned about is that the language about lowering densities in A zones has been watered down to some extent, but it's still there. In objective 5.1, in policy 5.1.5, it still maintains that the A zones include most of the valuable and developable land in Lee County, and that all these policies are going to do is give a lot of people a lot of fears about what's going to happen to their property without creating any real standards about when and if it's going to happen. I really don't think that that language ought to remain in the policy.

In response to a member of the public asking staff to clarify the intent of the proposed policy, Mr. Bill Spikowski provided:

We've included a new introductory sentence that says, "though the Lee Plan amendment process." There was fear at the last meeting that this would be a staff determination or something. We wanted to make it clear that this is through the formal plan amendment process.

In a later response to a question raised by an LPA member, Mr. Spikowski in part provided the following:

...But the intent of the change here is indicating that the plan amendment process is where that should be since there is reference to the lower ends of the density ranges. It implied that when you come in to get your development order under existing zoning, you'd get strong-armed and we don't want that impression to remain.

Staff believes the important point is that it was not staff's intent to apply the proposed policy to existing zoned property. A slightly modified version of this recommended language was adopted (January 31, 1989) into the 1989 Lee Plan. This Policy is reproduced:

Policy 75.1.5: Through the Lee Plan amendment process, land use designations of undeveloped areas within the A Zone shall be considered for reduced density categories (or assignment of minimum allowable densities where density ranges are permitted) in order to limit the future population exposed to coastal flooding and hurricane damage.

The policy language has changed slightly as a result of two amendments. The first changes occurred during the 1993/1994 EAR process. The reference to "A Zone" was amended to "coastal high hazard areas" and the reference to "hurricane damage" was eliminated. The published EAR document carries no explanation for these changes. The second amendment replaced the word "shall" with the word "will."

The policy has been the subject of some debate as to the meaning or applicability of the parenthetical phrase. Staff recognizes that the assignment of density for a particular property happens in several instances, once when the property is included in a Future Land Use category, and when the property is zoned to allow specific uses. At the October 19, 2004 regular Board of County Commissioners meeting, Commissioner Judah suggested that the provisions of Policy 75.1.4 should apply during the rezoning process and not only through the Lee Plan amendment process. Staff believes that this makes sense and does not impact properties that already have achieved zoning approvals. Staff believe it is appropriate to consider a rezoning proposal in light of the individual and surrounding properties characteristics. Staff recommends that the Lee Plan be amended as depicted below:

POLICY 75.1.4: Through the Lee Plan amendment process, future land use designations of undeveloped areas within coastal high hazard areas will be considered for reduced density categories ~~(or assignment of minimum allowable densities where density ranges are permitted)~~ in order to limit the future population exposed to coastal flooding.

POLICY 75.1.5: Zoning requests located in the coastal high hazard area will be considered for reduced or minimum density assignments, in accordance with their future land use category density range.

This proposed language separates the issue, allowing consideration during the plan amendment process and during any rezoning process.

B. CONCLUSIONS

The proposed amendment represents a minor adjustment in Board policy. The proposed policy represents sound Board policy to evaluate through the zoning process individual properties circumstances. This evaluation should be done in concert with an evaluation of other individual characteristics such as compatibility with existing uses, desired urban form, and availability of urban services.

C. STAFF RECOMMENDATION

Staff recommends that the Board of County Commissioners transmit the proposed plan amendment to the Florida Department of Community Affairs for their review.

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

DATE OF PUBLIC HEARING: March 28, 2005

A. LOCAL PLANNING AGENCY REVIEW

Staff provided a brief summary concerning the amendment.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** The LPA recommends that the Board of County Commissioners transmit the proposed amendment. The LPA recommends adding the last sentence from the Staff Report section B. Conclusions to the end of proposed Policy 75.1.5. The LPA recommended language for Policy 75.1.5 is as follows:

POLICY 75.1.5: Zoning requests located in the coastal high hazard area will be considered for reduced or minimum density assignments, in accordance with their future land use category density range. This evaluation should be done in concert with an evaluation of other individual characteristics such as compatibility with existing uses, desired urban form, and availability of urban services.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** As contained in the Staff Report.

D. VOTE:

NOEL ANDRESS	<u>AYE</u>
MATT BIXLER	<u>ABSENT</u>
DEREK BURR	<u>AYE</u>
RONALD INGE	<u>AYE</u>
CARLETON RYFFEL	<u>ABSENT</u>
RAYMOND SCHUMANN	<u>AYE</u>
VACANT	<u> </u>

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

DATE OF TRANSMITTAL HEARING: June 1, 2005

A. BOARD REVIEW: Staff provided a brief overview of the proposed amendment. Staff noted that the proposal is to split the consideration into two distinct policies, one addressing the Lee Plan amendment process, and one addressing the re-zoning process. Staff indicated its support for the Local Planning Agency (LPA) added language, the last sentence in proposed Policy 75.1.5.

One member of the public stated his support for the amendment including the LPA language. This individual provided that the location of a property in the Coastal High Hazard Area should only be one factor "considered" in determining a properties ultimate density, and that the LPA added language achieves this.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. **BOARD ACTION:** The Board voted to transmit the proposed amendment, as recommended by the staff and local planning agency, to the Florida Department of Community Affairs for their review.
2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the finding of facts as advanced by the staff report.

C. VOTE:

JOHN ALBION	<u>AYE</u>
TAMMY HALL	<u>AYE</u>
BOB JANES	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
DOUG ST. CERNY	<u>AYE</u>

**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: August 19, 2005

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS

The DCA had no objections, recommendations, or comments concerning this amendment.

B. STAFF RECOMMENDATION

Adopt the amendment as transmitted.

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

DATE OF ADOPTION HEARING: October 12, 2005

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

BOB JANES

RAY JUDAH

DOUG ST. CERNY

