



**LEE COUNTY**  
SOUTHWEST FLORIDA

**BOARD OF COUNTY COMMISSIONERS**

kwiktag<sup>®</sup>

022 586 855



(239) 479-8585

Writer's Direct Dial Number: \_\_\_\_\_

Bob Janes  
District One

Douglas R. St. Cerny  
District Two     **October 20, 2005**

Ray Judah  
District Three

Tammy Hall  
District Four

John E. Albion  
District Five

Donald D. Stilwell  
County Manager

David M. Owen  
County Attorney

Ray Eubanks, Administrator, Plan Review and Processing  
Florida Department of Community Affairs  
Bureau of State Planning  
Plan Processing Section  
2555 Shumard Oak Boulevard  
Tallahassee, FL. 32399-2100

Diana M. Parker  
County Hearing  
Examiner

**Re: Amendments to the Lee Plan**  
**Adoption Submission Package (DCA No. 05-1) for the 2004/2005 Regular Amendment Cycle**

Dear Mr. Eubanks:

In accordance with the provisions of F.S. Chapter 163.3184 and of 9J-11.011, this submission package constitutes the adopted 2004/2005 Regular Comprehensive Plan Amendment Cycle to the Lee Plan (DCA No. 05-1), known locally as CPA 2004-02, CPA 2004-08, CPA 2004-09, CPA 2004-12, CPA 2004-13, CPA 2004-14, CPA 2004-15, and CPA 2004-16. The adoption hearing for these plan amendments was held at 9:30 am on October 12, 2005.

Included with this package, per 9J-11.011(5), are three copies of the adopted amendments, supporting data and analysis, and the following three adopting ordinances: Ordinance No. 05-19, Ordinance No. 05-20, and Ordinance No. 05-21. Also included, per F.S. 163.3184(7) and (15), is the required sign in form allowing a courtesy informational statement to interested citizens. By copy of this letter and its attachments I certify that this amendment has been sent to the Regional Planning Council, the Florida Department of Transportation (FDOT), the Department of Environmental Protection, the Florida Department of State, the Florida Fish and Wildlife Conservation Commission, the Department of Agriculture and Consumer Services, Office of Planning and Budgeting, and the South Florida Water Management District.

The initial staff reports for the proposed amendments were sent to the DCA with a transmittal cover letter dated June 15, 2005. All amendments previously reviewed by the Department in this current cycle of amendments were adopted by the Board of County Commissioners. Changes have occurred in CPA 2004-16 since the time of transmittal. Staff has modified Policy 14.6.1 and 14.6.3 and has added Policies 14.6.4 through 14.6.8. CPA 2004-16 has been revised to address the objections, comments, and recommendations raised by the DCA.

If you have any questions, or if I can be of any assistance in this matter, please feel free to call me at the above telephone number.

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

A handwritten signature in black ink, appearing to read "Paul O'Connor", written over a horizontal line.

Paul O'Connor, AICP  
Director

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

David Burr  
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, Office of Planning and Budgeting

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To  
Mr. Ray Eubanks, Administrator  
Plan Review and Processing  
Bureau of State Planning/Plan Processing Sec  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100

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South Florida Water Management District  
3301 Gun Club Road  
West Palm Beach, FL 33406

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To  
Mr. Michael Ripp  
Florida Department of Transportation  
P.O. Box 1030  
2292 Victoria Avenue; Suite 292  
Fort Myers, FL 33902-1030

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Sent To  
Mr. David Burr  
S.W. Florida Regional Planning Council  
1926 Victoria Avenue  
Fort Myers, FL 33901

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To  
Department of Agriculture and Consumer Services  
Office of Planning and Budgeting  
The Capitol PL8  
400 South Monroe Street  
Tallahassee, FL 32399-0810  
Attn: Emily

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The Capitol  
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## Comprehensive Plan Citizen Courtesy Information List

Local Government:

Lee County

Hearing Date:

October 12, 2005

Type Hearing:

☐ Transmittal (Proposed)

☒ Adoption

☐ Local Planning Agency

DCA Amendment Number: 05-1

**Please Print Clearly**

By providing your name and address, you will receive information concerning the date of publication of the Notice of Intent by the Department of Community Affairs.

Citizen Name	Address, City, State, Zip Code	✓ Check Appropriate Response(s)		Identify Amendment which is of Interest
		Written Comment	Spoken Comment	
Richard Purcell	135 META ST Fort Myers, FL 33905	✓	✓	CPA-2004-13 Adoption
Sharon Lee Bowman	260 Alameda Ave Fort Myers FL		✓	CPA 2004-14
Boca Grande Community Planning Panel	P.O. Box 2404 Boca Grande, FL 33921	✓	✓	CPA 2004-12
Angela Hill The News-Press	4720 SE 15th Ave Suite 112 Cape Coral FL 33904	✓	✓	CPA 2004-10

## Comprehensive Plan Citizen Courtesy Information List

Local Government:

Lee County

Hearing Date:

June 1, 2005

Type Hearing:

☒ Transmittal (Proposed)

☐ Adoption

☐ Local Planning Agency

DCA Amendment Number:

N/A

**Please Print Clearly**

By providing your name and address, you will receive information concerning the date of publication of the Notice of Intent by the Department of Community Affairs.

Citizen Name	Address, City, State, Zip Code	✓ Check Appropriate Response(s)		Identify Amendment which is of Interest
		Written Comment	Spoken Comment	
Richard J. Purcell	135 META ST. FT. MYERS, FL 33905	✓	✓	CPA - 2004-13 CPA - 2004-01 <del>CPA - 2004-</del>
Dr. A. D. Ali	17140 Dale Creek Rd. Alva, FL 33920	✓		River Hall / Hawk's Haven
Bob Iverson	Old Hickory G&CC 14401 Old Hickory Blvd FT. MYERS, FL 33912	✓	✓	CPA 2004-04
Sandra Ellett	6971 Slater Pines Dr N Ft Myers FL 33917	✓		Oak Creek
Walter Fluegel	4715 SW 24 PL Cape Coral, FL 33914	✓	✓	All

Citizen Name	Address, City, State, Zip Code	✓ Check Appropriate Response(s)		Identify Amendment which is of Interest
		Written Comment	Spoken Comment	
Glenn Hedmon	PO Box 2266 Pineland, Fla 33945	✓	✓	Pine Island
James and Alicia Waller	17270 Oak Creek Rd Alva, FL 33920	✓		River Hall Development
G JOHN SHARPES	2299 SYCAMORE ST ST. JAMES CITY		✓	PINE ISLAND
Phil BUCHANAN	3881 GALT IS AVE ST JAMES CITY, FL		✓	Pine Island
BARBARA K. Dubin	16185 Bowline ST Bokelia, FL 33922		✓	PINE ISLAND
Jennifer A. Bonifield	3277 Fruitville Rd., Unit Sarasota FL 34237 E			Pine Island
Gary Davis	2248 Dale St. St. James City, FL 33956	✓	✓	Pine Island
D.W. WOOLSEY JR	14630 CEMETERY RD FT MYERS FL 33915			RIVER HALL HAWKS HAVEN

Citizen Name	Address, City, State, Zip Code	✓ Check Appropriate Response(s)		Identify Amendment which is of Interest <del>CPA 2004-13</del>
		Written Comment	Spoken Comment	
Sharon Bowman	260 Alameda Ave Ft Myers FL 33905	✓	✓	CPA 2004-13 Item F.
Neale Monty	6685 Penzance Blvd Ft Myers FL 33912		✓	OK with
W. D. N. R. O. B. D.	13350 MORNING STAR CAVS BOKEELIA FL	✓		
BREESE GLENNON	16280 ROWLINE ST. BOKEELIA, FLA. 33922	✓	✓	P.I. COMPROMISE — 8/10/9/10
Eileen + Jimmy Brennan	243 Connecticut Ave. Ft Myers 33905		✓	CPA 2004-13
David W. Deper	2216 Altamont Ave. Ft. Myers, FL 33901		✓	<del>CPA</del> CPA-2004-12 CPA-2004-08
Nancy Thompson	7661 Bocilla Ln Bokeelia FL 33922	—		
MIKE ROEDER	625 HENRY ST FT MYERS 33901	✓	✓	ALL

Citizen Name	Address, City, State, Zip Code	✓ Check Appropriate Response(s)		Identify Amendment which is of Interest
		Written Comment	Spoken Comment	
Vincent and Eileen Brennan	243 Connecticut Ave. Fort Myers, FL 33905	✓		CPA2004-13



LEE COUNTY ORDINANCE NO. 05-19  
(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 Albion, who moved its adoption. The motion was seconded by Commissioner Hall, and, when put to a vote, the vote was as follows:

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

DONE AND ADOPTED this 12<sup>th</sup> day of October 2005.

ATTEST:  
CHARLIE GREEN, CLERK

BY: \_\_\_\_\_

Deputy Clerk

LEE COUNTY  
BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_

Chairman

DATE: \_\_\_\_\_

10/12/05

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 Adoption Document**

---

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

**October 12, 2005**

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

☒

**Text Amendment**

☐

**Map Amendment**

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

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.

**C. VOTE:**

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

**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:**

<b>JOHN ALBION</b>	<u>AYE</u>
<b>TAMMY HALL</b>	<u>AYE</u>
<b>BOB JANES</b>	<u>AYE</u>
<b>RAY JUDAH</b>	<u>AYE</u>
<b>DOUG ST. CERNY</b>	<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:** The Board provided no discussion on this amendment. This item was approved on the consent agenda.

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

1. **BOARD ACTION:** The Board voted to adopt this amendment as previously transmitted to the DCA.
2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the findings of fact as advanced by staff and the local planning agency.

**C. VOTE:**

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