

**PAT 96-32  
BoCC SPONSORED  
EAR ADDENDUM AMENDMENT  
TO THE**

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**LEE COUNTY COMPREHENSIVE PLAN**

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**THE LEE PLAN**

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BoCC Adoption Document

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**June 3, 1998**

**LEE COUNTY  
DIVISION OF PLANNING  
STAFF REPORT FOR  
COMPREHENSIVE PLAN AMENDMENT  
PAT 96-32**

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

ORIGINAL STAFF REPORT PREPARATION DATE: April 29, 1997

**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

**2. REQUEST:**

Amend the Conservation and Coastal Management Element of the Lee Plan to revise the status of the Lee County Surface Water Management Master Plan. Specifically amend Policies 37.1.1 and 38.1.1 to revise the completion dates.

**B. BACKGROUND INFORMATION**

**1. CURRENT LEE PLAN TEXT (1994 LEE PLAN (1996 CODIFICATION))**

Following are the existing Lee Plan goals, objectives, and policies which pertain to the completion of the LCSWMMP.

***ELEMENT V. COMMUNITY FACILITIES AND SERVICES c. Surface Water Management***

**GOAL 37: PROTECTION OF LIFE AND PROPERTY.** *To reduce the hazards to life, health, and property created by flooding due to rainfall in a manner consistent with the community's criteria for the preservation of environmental values and the conservation of natural resources.*

**OBJECTIVE 37.1:** *Lee County shall continue its efforts in developing a surface water management planning process designed to produce and maintain an up-to-date body of technical information, and, based on that information, the necessary surface water management plans, regulatory mechanisms, and facility proposals that will improve the protection of present and future uses of real property from stormwater flooding, while preserving or enhancing the environmental and natural resource values of both land and water. (Amended by Ordinance No. 94-30)*

**POLICY 37.1.1:** *Complete by 1995 a comprehensive county-wide surface water management master plan, with full attention to issues of regional water quality and environmental integrity. As each basin plan is completed, it shall be scheduled for adoption by the Board of County Commissioners. (Amended by Ordinance No. 94-30)*

**GOAL 38: COORDINATED SURFACE WATER MANAGEMENT AND LAND USE PLANNING ON A WATERSHED BASIS.** *To protect or improve the quality of receiving waters and surrounding natural areas and the functions of natural groundwater aquifer recharge areas while also providing flood protection for existing and future development.*

**OBJECTIVE 38.1: COUNTY-WIDE PROGRAM.** *Lee County shall continue its efforts in developing a surface water management program that is multi-objective in scope and is geographically based on basin boundaries. (Amended by Ordinance No. 94-30)*

**POLICY 38.1.1:** *The detailed Surface Water Management Master Plan to identify the existing watershed basin boundaries within Lee County, to evaluate the storm capacity and establish design criteria, and to determine costs for surface water management within each basin to meet applicable design storm standards that was initiated in 1989 shall be completed by 1995. (Amended by Ordinance No. 94-30)*

## **2. RELEVANT EAR ADDENDUM DISCUSSION**

### **a. 1995 EAR UPDATE ADDENDUM EVALUATION AND RECOMMENDATION, SECTION D. Lee County Surface Water Management Plan, (Pg. 58)**

In July of 1995, the Lee County Board of County Commissioners held two public hearings on 19 watershed studies completed to implement the Lee County Surface Water Management Plan. The Board of County Commissioners adopted the studies as a "planning tool." Six more watershed studies were contracted to begin work in early 1996. Lee County staff is still in the process of completing a county-wide E.P.A. National Pollution Discharge Elimination System (NPDES) MS4 Permit for non-point source pollution. Phase I of the NPDES permit was completed in 1994. Phase II will be completed by 1996, as required by federal law.

**b. THE LEE PLAN EVALUATION AND APPRAISAL REPORT ADDENDUM, 2/1/96, (Pg. 24)**

Lee County is continuing to implement the Lee County Surface Water Management Master Plan (LCSWMMP). The third phase of this plan, consisting of nineteen more watershed studies, was formulated in December 1992 and was adopted by the Board of County commissioners in July 1995. Recently, Lee County contracted for six more watershed studies to be completed. There is currently no schedule for the completion of the remaining lower priority watershed studies.

EAR RECOMMENDATION: Lee County should update the probable completion dates of the LCSWMMP and its watersheds in the upcoming EAR amendment cycle.

**C. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY**

- 1. RECOMMENDATION:** Staff recommends that the text for Policies 37.1.1 and 38.1.1 be amended as follows:

**POLICY 37.1.1:** The County will continue to prepare and implement ~~Complete by 1995~~ a comprehensive county-wide surface water management master plan, with full attention to issues of regional water quality and environmental integrity. The County will complete basin plans for all of the remaining watersheds in Lee County by 2005. As each basin plan is completed, it ~~shall~~ will be scheduled for adoption by the Board of County Commissioners.

**POLICY 38.1.1:** The detailed Surface Water Management Master Plan that was initiated in 1989 to identify the existing watershed basin boundaries within Lee County, to evaluate the storm capacity and establish design criteria, and to determine costs for surface water management within each basin to meet applicable design storm standards ~~that was initiated in 1989 shall~~ will be completed by ~~1995~~ 2005.

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

Lee County began a phased Comprehensive Surface Water Management Plan in 1989 with an extensive study of the Six Mile Cypress Watershed adopted in 1990 by the Board of County Commissioners. The county has completed Phases I and II of the Surface Water Management Master Plan. The third phase of this plan, consisting of nineteen more watershed studies, was formulated in December 1992.

In 1994, the Lee County Board of County Commissioners adopted the Lee County Surface Water Management Plan by Resolution 94-11-16. The plan was adopted for use as an engineering reference and planning tool in conjunction with the development of property in the unincorporated areas of Lee County. The purpose of this plan is to identify and document existing conveyances, wet season water tables, allowable discharge rates, and water quality for each basin in the county; and to provide recommendations for the protection of those conveyances. By documenting the characteristics of each basin, the county can better quantify a development's impact to the basin caused by the disruption of historical stormwater runoff patterns.

Resolution 94-11-16 expected the county to complete the studies of all of the watersheds by 1995. This target date was adopted in the Lee Plan under Policies 37.1.1 and 38.1.1. In 1997, Lee County is continuing to implement the Lee County Surface Water Management Master Plan. In 1996, Lee County contracted for six more watershed studies to be completed. There is currently no schedule or funding to complete the remaining four lower priority watershed studies.

Due to the uncertainty of the Surface Water Management Master Plan completing the remaining lower priority basins, staff recommends that the 1995 date be changed to 2005 so that the County continues to pursue the completion of this policy. It is presumed that by 2005, there will sufficient priority and funds to complete the basin planning for all of Lee County.

## **PART II - STAFF ANALYSIS**

### **A. STAFF DISCUSSION**

The Lee Plan currently targets the completion of a surface water management master plan by 1995 in Policies 37.1.1 and 38.1.1. The Lee County Surface Water Management Master Plan (LCSWMMP) has completed nineteen watershed studies out of the 29 watersheds in Lee County. Six of the remaining ten watersheds are currently under study. The remaining four watersheds are not scheduled to be completed due to funding limitations and low anticipated development of the area.

The County is continuing to work toward the completion of the LCSWMMP. The third phase of the LCSWMMP, consisting of nineteen more watershed studies, were formulated in December 1992 and were adopted by the Board of County Commissioners in July 1995. In 1996, Lee County contracted for six more watershed studies to be completed. A surface water management plan was recently completed for the northeasterly watersheds area known as "Surface Water Management Plan - Four Corners Area" by Craig A. Smith & Associates and funded by the SFWMD.

At the present time, only four watersheds are not scheduled for completion. These northwesterly watersheds are considered to be low priority due to their non-urban land use classification "Open Lands" and due to the low development pressures in the area.

### **B. CONCLUSIONS**

The county has made continuous progress toward the implementation of the Lee County Surface Water Management Plan which was initiated in 1989. The County has completed all but four of the 29 watershed studies. There are presently no funds to complete the four remaining watersheds. It is presumed that by 2005, there will sufficient priority and funds to complete the basing planning for all of Lee County.

### **C. STAFF RECOMMENDATION**

Change the target deadline to complete the Surface Water Management Master Plan from 1995 to 2005.

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

DATE OF PUBLIC HEARING: May 6, 1997

**A. LOCAL PLANNING AGENCY REVIEW**

On May 6, 1997, the Local Planning Agency held a public hearing to receive public comment on this proposed amendment. No one from the public commented on the proposal. The LPA also had no discussion on this amendment.

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

The LPA concurs with the finding of fact as advanced in the staff report and recommends that the Board of County Commissioners transmit this amendment.

**C. VOTE:**

<b>CARRON DAY</b>	<b>ABSENT</b>
<b>RICHARD DURLING</b>	<b>AYE</b>
<b>EARL HAMILTON</b>	<b>ABSENT</b>
<b>RONALD INGE</b>	<b>AYE</b>
<b>BILL SPIKOWSKI</b>	<b>AYE</b>
<b>GREG STUART</b>	<b>AYE</b>
<b>MATT UHLE</b>	<b>AYE</b>

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

DATE OF TRANSMITTAL HEARING: November 5, 1997

**A. BOARD REVIEW:** There was no public comment or Board discussion of this amendment.

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

**1. BOARD ACTION:** The Board approved the transmittal of this amendment.

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board concurs with the finding of fact as advanced in the staff report.

**C. VOTE:**

<b>JOHN ALBION</b>	<b>AYE</b> _____
<b>ANDREW COY</b>	<b>AYE</b> _____
<b>RAY JUDAH</b>	<b>AYE</b> _____
<b>JOHN MANNING</b>	<b>AYE</b> _____
<b>DOUG ST. CERNY</b>	<b>AYE</b> _____

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

DATE OF ORC REPORT: February 5, 1998

**A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS**

7. **Amendment PAT 96-32:** This is a proposal to revise Conservation and Coastal Management Element's Policies 37.1.1 and 38.1.1 to extend the date of completing surface water management master plan from 1995 to 2005.

**Objection:** The proposed change extends by ten years (from 1995 to 2005) the date by which the surface water management master plan would be completed. This proposal is inadequate because it delays the correction of existing surface water management problems. Rule 9J-5.011(2)(1)(f), (2)(c)l., F.A.C.

**Recommendation:** Revise the amendment to identify a shorter time frame for the completion of the stormwater management study and indicate the programs to be undertaken to address stormwater management concerns, in the interim, prior to the completion of the stormwater management master plan. Alternatively, provide justification through adequate data and analysis, to demonstrate that drainage problems will not occur in the affected areas or otherwise would be addressed.

**B. STAFF RECOMMENDATION**

Adopt the amendment as transmitted.

**C. STAFF RESPONSE TO ORC REPORT**

The four remaining watersheds are Yucca Pen Creek, Durden Creek, Greenwell Branch, and Longview Run. They are located in northwest Lee County in an area known locally as the Yucca Pen (see Attachment 1). According to the Property Appraiser's Geographic Information System (PAGIS), these four watersheds include approximately 13,383 acres. This area, and the area to the north, includes the largest and highest quality slash-pine flatwoods left in southwest Florida - the Charlotte Harbor Flatwoods.

The majority of these "flatwoods" are proposed for public acquisition and are included in the Conservation and Recreation Lands (CARL) Charlotte Harbor Flatwoods project (see Attachment 2). The Charlotte Harbor Flatwoods CARL project general description of this area includes the following:

"This project encompasses the largest remaining tract of intact pine flatwoods in southwestern Florida. Old-growth South Florida slash pines on site are home to red-cockaded woodpeckers, bald eagles and Florida panthers, are known to use the site. The tract also provides habitat for several rare plants, most notably the federally endangered beautiful pawpaw, *Deeringothamnus pulchellus*. The project provides additional protection for the Outstanding Florida Waters of the Gasparilla Sound-Charlotte Harbor Aquatic Preserve and will also connect the Charlotte Harbor State Reserve and the Cecil M. Webb Wildlife Management Area..."

CARL program staff have indicated to planning staff that three sections of land, sections 1, 2, and 3, Township 43 South Range 23 East, located in these watersheds, are in final negotiations for acquisition. The anticipated closing date for this acquisition is in July of this year. This proposed acquisition, of just the three sections, would result in 1,869 acres coming into state ownership in these four watersheds. Additional lands are proposed for later acquisition efforts (see Attachment 2).

In other acquisition efforts the state, through the Charlotte Harbor CARL project, has recently acquired 925 acres in these watersheds (see Attachment 2). These lands include portions of the Yucca Pen Creek, an important flow way located west of Burnt Store road, and a significant portion of the mangrove fringe and other coastal wetlands along Charlotte Harbor. This purchase also includes some high quality Pine Flatwoods uplands that buffer the wetland areas.

Lee County's new Conservation 2020 land acquisition program has also targeted purchases in this area. The rest of the Yucca Pen Creek property west of burnt store road has been nominated for acquisition. To date the prioritization process has not been completed, but this property has a high score utilizing the ranking system. This property is immediately south of the CARL purchase and will assure complete protection of the flow-way.

These watersheds have two distinct characteristics east and west of Burnt Store Road. East of Burnt Store Road the four watersheds are characterized by an ownership pattern of large tracts of vacant land. Those lands west of Burnt Store Road, are located in the City of Cape Coral. These lands are a mixture of undeveloped property and platted lots consisting of quarter acre lots on improved roadways, some with canal access. The western portion of this area was the subject of the recent CARL discussed above.

#### The Eastern Property

As stated above east of Burnt Store Road the four watersheds are characterized by an ownership pattern of large tracts of vacant land. One family owns over nine thousand acres in this area of Lee County. This property, along with a significant portion of the remaining eastern property, has been granted agricultural exemptions for silva culture activities, as per Florida Statute 193.461. There has been very limited development activity in this area. There is one half of a section quarter that has been divided by meets and bounds descriptions. The area consists of 13 five acre parcels and 6 two and one-half acre lots. There are three single family homes currently developed here. This otherwise large tract ownership pattern is a strong indication of the low level of development pressure in this area.

This Pine Flatwoods system is the last remaining natural undisturbed area in northeast Lee County, the rest having been developed into quarter acre residential lots within the City of Cape Coral. The Yucca Pen area has maintained the historic sheet flow drainage pattern. With no development pressures and no drainage problems identified, expenditure of the limited surface water funds to conduct a basin study, with real infrastructure need already identified in other parts of the county, would not be rational.

Planning staff have reviewed the files maintained by the Department of Community Development and determined that there has not been any permit activity or development orders issued by Lee County other than the three houses noted above. Planning staff also reviewed aerial photos over time which also confirmed the lack of development activity in these watersheds. Staff also reviewed existing demographic sources such as census information. The census geography included large areas outside of the study area, such as in the City of Cape Coral. This skewed the data with developments that are occurring outside of the watersheds.

The Lee Plan severely restricts the future intensity and density of development that is allowable in these areas. This portion of the these four watersheds are classified by the Lee Plan as "Open Lands." The Lee Plan policy descriptor, Policy 1.4.4 provides the following:

Open Lands are upland areas that are located north of Rural and/or sparsely developed areas in Township 43 South. These areas are extremely remote from public services and are characterized by agricultural and low-density residential uses. Commercial and industrial uses are permitted in this category in accordance with the standards in the Rural category. The maximum density in this category is one dwelling unit per ten acres (1 du/10 acres); except that a maximum density of one dwelling unit per five acres (1 du/5 acres) is permitted if the planned development process is used to prevent adverse impacts on environmentally sensitive lands (as defined in Policy 77.1.1.4).

Thus the Lee Plan recognizes the locational attributes of the area, the "sparse" development pattern, and that this area is characterized by predominantly passive agricultural use and a lesser amount of low-density residential uses which is the City of Cape Coral platted lands.

#### The Western Property

As stated above these lands are a mixture of undeveloped property and platted lots consisting of quarter acre lots on improved roadways, some with canal access. Planning staff asked City staff to review development activity within the City in these watersheds. On April 1, 1998 City staff responded with the following:

There is only one notable proposed development in this area and that is a 100 unit residential/resort hotel for Burnt Store Marina. The rest of the Burnt Store Marina South DRI has been abandoned and sold to the State through the CARL program.

#### Conclusions

There are no identified existing surface water management problems in the four watersheds. The majority of lands within these four watersheds are still in a natural undisturbed state. The purpose of the Surface Water Management Master Plan process is to identify and document existing conveyances, wet season tables, allowable discharge rates, water quality for each basin, and to provide recommendations for the protection of those conveyances. The Master Plan process affords the County the opportunity, by documenting the characteristics of each basin, to better quantify a development's impact to the basin caused by the disruption of historical stormwater runoff patterns. Staff sees no reason why this process should be accelerated when there is little existing or planned development in these watersheds and there is a major public effort underway to acquire the majority of the lands in these watersheds. Additionally, there is no documented or identified surface water management problems that necessitate immediate action. Natural resources staff has indicated to Planning staff, in a memo dated May 14, 1998, that there has been "minimal documented flooding complaints" (see Attachment 3). Thus the proposed amendment will not delay the "correction of existing surface water management problems."

Additionally, as part of another amendment, the updated Lee County Capital Improvement Program (CIP) is being adopted into the Lee Plan. The CIP is balanced between revenue and expenses and extends out to the year 2003. This current CIP has no money allocated to complete the studies of these four watersheds. To complete these basins before 2002 the current CIP would have to be modified to either identify additional revenue or "rob" the money from some other prioritized project. This CIP earmarks almost 23 million dollars for surface water related

projects over the next five years. These projects address known and anticipated surface water management problems. All of the appropriate revenue sources have been identified. Modifying the basin study completion date to the year 2005 allows the county just the three years between 2002 and 2005 to complete the four studies. When this is done Lee County will have conducted specific scientific studies of **all** of the basins in the county.

Staff believes the modifications to Policy 37.1.1 and Policy 38.1.1 that were transmitted to the DCA are the appropriate ones to make given the facts outlined above.

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

DATE OF ADOPTION HEARING: May 27, 1998

**A. BOARD REVIEW:** The Board provided no discussion on this amendment and there was no public comment. This item was approved on the administrative agenda.

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

**1. BOARD ACTION:** The Board voted to adopt this amendment.

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the findings of fact as advanced by staff.

**C. VOTE:**

<b>JOHN ALBION</b>	<b>AYE</b>
<b>ANDREW COY</b>	<b>AYE</b>
<b>RAY JUDAH</b>	<b>AYE</b>
<b>JOHN MANNING</b>	<b>AYE</b>
<b>DOUG ST. CERNY</b>	<b>ABSENT</b>