

**PAT 96-42
BoCC SPONSORED
EAR ADDENDUM AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

BoCC Adoption Document

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**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
PAT 96-42**

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

ORIGINAL STAFF REPORT PREPARATION DATE: October 27, 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 Ports, Aviation and Related Facilities Element, Objectives 94.3 and its attendant Policies, Objective 94.4, and Policy 94.4.1 to update the status of establishing management standards for marine sanitation and vessel mooring.

B. BACKGROUND INFORMATION

1. EVALUATION AND APPRAISAL REPORT RECOMMENDATION

The 1995 EAR Update Addendum contained the following discussion and recommendations regarding marine sanitation and mooring for liveaboard vessels (pg. 59):

“The SWFRPC is developing a marina siting plan which will address the issue of pump-out facilities at marinas which serve liveaboards. The Florida Clean Vessel Act, effective October 1, 1994, changed state standards pertaining to marine sanitation. Lee County should re-evaluate the necessity for county marine sanitation regulations due to the 1994 passage of

stricter state marine sanitation standards (Florida Clean Vessel Act, Section 327.02, F.S.); the incorporation of Matanzas Harbor into the town of Fort Myers Beach; and due to a provision of the ordinance pertaining to anchorages which has been deemed unconstitutional. Objective 94.3 and its policies should be revised to reflect these changes in circumstances [Emphasis added].

Florida Department of Environmental Regulation, Southwest Florida Regional Planning Council, West Coast Inland Navigation District, and BAIL are developing an anchorage pilot project. Objective 94.4 and its policies should be revised to reflect that Lee County is coordinating with the lead agencies which are developing the anchorage project. The incorporation of Matanzas Harbor into Fort Myers Beach and the anchorage project eliminate the major impetus for Objective 94.4 its policies. Objective 94.4 and its policies should be revised or deleted to acknowledge this change. [Emphasis added.]”

C. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION: Planning staff recommends the following changes:

OBJECTIVE 94.3: MARINE SANITATION. The county ~~shall monitor and evaluate its marine sanitation ordinance to~~ will provide for effective control of waste disposal by 1994 and shall formulate a water pollution control program based on the results of the evaluation by 1995. by maintaining local marine sanitation regulations in the Land Development Code which complement the Florida Clean Vessel Act and by cooperating with the Southwest Florida Regional Harbor Board to develop regional guidelines for marine sanitation systems by 2001. (Amended by Ordinance No. 94-30)

POLICY 94.3.1: The county ~~shall~~ will continue to assist federal and state agencies to maintain an inventory and promote the public awareness of existing marine sanitation facilities . (Amended by Ordinance No. 94-30)

POLICY 94.3.2: ~~By 1994, the county shall evaluate the 1993 marine sanitation pilot project for managing solid and liquid effluent and formulate a long-term water pollution control program. (Added by Ordinance No. 94-30)~~

POLICY 94.3.3: ~~Based on identified marine sanitation needs, by 1995 the county shall develop a system that quantifies the marine sanitation needs and deficiencies and also monitors their improvement. (Amended by Ordinance No. 94-30)~~

POLICY 94.3.42: The county ~~shall~~ will continue and expand, as needed, its efforts to coordinate with appropriate law enforcement and environmental agencies in designing enforcement and education measures for current and future marine sanitation laws. (Amended by Ordinance No. 94-30)

~~**POLICY 94.3.5:** The county in conjunction with other enforcement agencies shall assess the number and types of live-aboard vessels, their location, their existing marine sanitation systems, and their impact on marine traffic.~~

POLICY 94.3.3: The county will provide regulations in the Land Development Code for marine sanitation and waste disposal in marinas, docks, wharfs, piers, seawalls, or other docking structures attached to real property.

POLICY 94.3.4: The county will coordinate with the Southwest Florida Regional Harbor Board in the development of management standards for marine sanitation in anchorages.

OBJECTIVE 94.4: LIVE-ABOARD VESSELS. The county ~~shall study~~ will re-evaluate the feasibility of establishing regulations to control vessel mooring upon the completion of the Southwest Florida Regional Harbor Board Management Plan. (Amended by Ordinance No. 94-30)

~~**POLICY 94.4.1:** The county shall coordinate with the Florida Department of Environmental Protection and the U.S. Coast Guard, and, by 1994, prepare a proposal for a public marine anchorage area. The county will coordinate with the Southwest Florida Regional Harbor Board to establish management standards for vessel mooring in anchorages.(Amended by Ordinance No. 94-30)~~

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

As discussed in Part II.A.-Staff Discussion, the passage of the Florida Clean Vessel Act and the establishment of the Southwest Florida Regional Harbor Board have changed the role of Lee County with respect to the management and regulation of liveaboard vessel mooring and marine sanitation. The regulation and management of marine sanitation devices and vessel mooring in anchorages are currently under the purview of the U.S. Coast Guard, Florida Department of Environmental Protection, Florida Marine Patrol, and Southwest Regional Harbor Board. Lee County's regulations pertaining to these issues are targeted on shoreline uses in the Land Development Code.

Planning staff recommends that Objectives 94.3 and 94.4, and associated policies, be updated to reflect the current status of the management of liveaboards and marine sanitation.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

1. UPDATE OF EAR DISCUSSION Following is an update of the 1996 EAR Addendum discussion:

- * The Southwest Florida Regional Planning Council did not complete a regional marina siting plan as originally anticipated. Instead, they completed an informational document which included an inventory of marinas.
- * Revisions to the Lee Plan as a result of the incorporation of Matanzas Harbor into Fort Myers Beach are being addressed in another plan amendment (PAT 96-27).
- * The U.S. Fish and Wildlife Service maintains an inventory of marina facilities. This inventory is available through a toll-free number (1-800-ASKFISH). A number of federal and state agencies coordinate to maintain this inventory, including the Florida Department of Environmental Protection (FDEP). Lee County provides assistance to the FDEP to help maintain these inventories and promotes public awareness of the availability of this data in boat registration mailouts. (See Policy 94.3.1)
- * The anchorage pilot project proposed to use a mobile barge with a pump-out facility to serve liveaboard vessels with holding tanks. This proposed project was terminated because it was determined to not be cost-effective. (See Policy 94.3.2.)

2. STATUS OF MARINE SANITATION AND LIVEABOARD REGULATIONS

a. LEE COUNTY REGULATIONS

In 1985, the Lee County Board of County Commissioners (Board) adopted the Marine Sanitation Ordinance (LCO 85-21). In 1988, the Board amended the Marine Sanitation Ordinance to add mooring restrictions for liveaboard vessels (LCO 88-52). In 1992, the County Court found in the “State Of Florida V.S. Thomas St. Leger Moncure, Et al.” that the mooring restrictions in LCO 88-52 were “invalid and unconstitutional” because they were “overbroad and not reasonably tailored to address (their) stated purpose”. Later that year, the Board adopted LCO 92-30 which repealed the illegal mooring restrictions. The provisions of LCO 85-21, as amended, are now codified in the Lee County Land Development Code and are generally limited to the regulation of shoreline uses related to liveaboards and marine sanitation [see Attachment 1].

b. FEDERAL AND STATE REGULATIONS

The 1994 Florida Clean Vessel Act (HB 389) adopted marine sanitation standards which are stricter than Lee County marine sanitation standards. The Florida Clean Vessel Act amended the Florida Vessel Registration and Safety Law (Chapter 327, Florida Statutes). Marine Sanitation Devices are regulated by the U.S. Coast Guard, Department of Transportation, in CFR Title 33, Part 159.

c. SOUTHWEST FLORIDA REGIONAL HARBOR BOARD

On June 13, 1995, the Boaters' Action and Information League, Florida Department of Environmental Protection, Florida Sea Grant College Program, Southwest Florida Regional Planning Council, and West Coast Inland Navigation District executed a Memorandum of Agreement to create the Southwest Florida Regional Harbor Board to prepare and implement a non-regulatory regional management plan for anchoring of vessels in Southwest Florida. The Regional Management Plan will address marine sanitation and liveaboard anchorage issues [see Attachment 2].

On February 5, 1997, Lee County entered into a Memorandum of Agreement with the Southwest Florida Regional Harbor Board to cooperatively work together toward a regional management approach for vessel mooring.

- * The County agreed to suspend local anchorage regulations for five years and to use as its anchorage guidelines the Regional Harbor Board's "Standards for Anchorage: The Regional Umbrella".
- * The Regional Harbor Board agreed to provide technical assistance and mediation services within anchorages to the County [see Attachment 2].

B. CONCLUSIONS

1. REVISE OBJECTIVES 94.3 & 94.4 AND POLICIES 94.3.1 & 94.4.1

Planning staff recommends that the above objectives and policies be revised to reflect the role of Lee County in relationship to other agencies. The most notable change is the creation of the Southwest Florida Regional Harbor Board which will develop a regional management plan for vessel mooring and marine sanitation by 2001. Lee County will continue to maintain regulations for shoreline docking facilities.

2. DELETE POLICIES 94.3.2, 94.3.3 & 94.3.5

Policy 94.3.2 should be deleted because the proposed marine sanitation pilot project was determined that it would not be cost effective. Policies 94.3.3 & 94.3.5 should be deleted because the Southwest Florida Regional Harbor Board is currently responsible for implementing these policies. Lee County will assist, as needed, in this effort.

3. ADD POLICIES 94.3.3 and 94.3.4 to indicate that Lee County will maintain shoreline regulations for liveaboards and marine sanitation and that the Southwest Florida Regional Harbor Board will provide management guidelines for these issues in anchorages.

4. RENUMBER AND REVISE POLICY 94.3.4 to use consistent terminology with current county practice.

C. STAFF RECOMMENDATION

Planning staff recommends that Objectives 93.4 and 94.4, and their attendant policies be revised as shown in Part I.C.1.

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

DATE OF PUBLIC HEARING: June 26, 1997

A. LOCAL PLANNING AGENCY REVIEW

No one from the public commented on the amendment. One LPA member asked staff whether or not the new Florida Clean Vessel Act preempts or makes it unnecessary for local government to have local regulations addressing anchorage and marine sanitation issues in waters of the state. Staff replied that the dock and shoreline regulations in the Land Development Code were modified in 1995 to be consistent and compatible with the new state law. Further research by staff indicated that the new state law does not preempt Lee County from adopting local regulations. However, Lee County has agreed to suspend adopting any anchoring regulations for five years to allow the Regional Harbor Board to develop regional guidelines.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

- 1. RECOMMENDATION:** The LPA recommends that the Board of County Commissioners transmit this amendment.
- 2. BASIS AND RECOMMENDED FINDINGS OF FACT:** The LPA accepted the findings of fact as advanced by the staff.

C. VOTE:

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

**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 testimony or Board discussion on this plan amendment.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION: The Board approved the transmittal of this plan amendment to DCA.

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

C. VOTE:

JOHN ALBION	AYE _____
ANDREW COY	AYE _____
RAY JUDAH	AYE _____
JOHN MANNING	AYE _____
DOUG ST. CERNY	AYE _____

**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

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: May 27, 1998

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.

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

C. VOTE:

JOHN ALBION	AYE
ANDREW COY	AYE
RAY JUDAH	AYE
JOHN MANNING	AYE
DOUG ST. CERNY	ABSENT