

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

<u>CATEGORY:</u> Development/Planning/Zoning	<u>CODE NUMBER:</u> AC-13-7
<u>TITLE:</u> Procedures for Tall Structures Permitting	<u>ADOPTED:</u> 04/02/19
	<u>AMENDED:</u>
	<u>ORIGINATING DEPARTMENT:</u> Community Development

A. PURPOSE/SCOPE:

Chapter 333, Florida Statutes (F.S.), Airport Zoning (2016) requires that every political subdivision having an airport hazard area within its territorial limits adopt, administer, and enforce airport zoning regulations in accordance with Chapter 333, F.S. (2016). The Land Development Code establishes the Airport Compatibility District and defines the LCPA Airport Obstruction Notification Zone within Lee County.

This administrative code establishes procedures for permitting of vertical objects that exceed thresholds of the LCPA Airport Obstruction Notification Zone, requiring Tall Structures Permit review. The LCPA Tall Structures Permit review applies when the defined vertical threshold of the LCPA Airport Obstruction Notification Zone is exceeded by any proposed permanent or temporary construction or alteration of an object, terrain or structure, equipment or materials or alteration of any permanent or temporary existing structure by a change in the structure’s height, including appurtenances, lateral dimensions, and equipment or materials used in the structure.

These procedures supplement the Land Development Code. If there is a conflict between this code and the Land Development Code, the provisions of the Land Development Code will control.

B. PROCEDURE FOR TALL STRUCTURES PERMITTING:

- (1) *Tall Structures Permit.* The Department of Community Development (DCD) will make the initial determination during the zoning, development order, building permit, or other relevant application process as to whether proposed development, construction, alteration, equipment or materials exceed height limits of the Lee County Port Authority (LCPA) Airport Obstruction Notification Zone surface as defined in Division 12 of Article VI of Chapter 34 of the Land Development Code. Tall structures may be identified in the following circumstances:
 - (a) *Proposed new development.* Tall structures associated with proposed new development are identified at time of zoning, development order, building permit, or other relevant application process. The applicant must submit a completed Tall Structures Permit application and obtain a Permit from the LCPA. Failure to obtain a Permit from the LCPA is subject to enforcement in accordance with F.S. § 333.09(3) and F.S. § 333.13.
 - (b) *Temporary construction equipment.* Temporary tall structures may be necessary during a construction project. If DCD determines that the proposed use of temporary construction equipment including derricks, draglines, cranes or other boom-equipped machinery will exceed

the height limitations identified in the LCPA Airport Obstruction Notification Zone, the applicant must submit a completed Tall Structures Permit application and obtain a Permit from the LCPA before erecting the equipment. For temporary construction equipment, the Permit may be in the form of written approval. Failure to obtain a Permit from the LCPA is subject to enforcement in accordance with F.S. § 333.09(3) and F.S. § 333.13.

- (c) *Short term, temporary, emergency equipment.* Short term, temporary, emergency tall structures or equipment must be evaluated by the LCPA on a case-by-case basis to address airspace issues. The applicant must submit a completed Tall Structures Permit application and obtain a Permit from the LCPA before erecting equipment on a short term, temporary, emergency basis. For short term, temporary, emergency equipment, the Permit may be in the form of written approval. Failure to obtain a Permit from the LCPA is subject to enforcement in accordance with F.S. § 333.09(3) and F.S. § 333.13.
- (2) *Permitting procedure.* Tall Structures Permits are administered by the LCPA as either Tier 1 or Tier 2 Permits according to the following procedures:
- (a) DCD will give a written notice to the applicant when a Tall Structures Permit is required and that no further permits or development orders can be issued and no activity associated with a tall structure can be conducted until a Tall Structures Permit is obtained from LCPA.
- (b) *Application and review.* The applicant must submit a completed Tall Structures Permit application to the Planning and Environmental Compliance Department, LCPA, 11000 Terminal Access Road, Ft. Myers, Florida 33913. The LCPA will review the application as either a Tier 1 or Tier 2 Tall Structures Permit as described below.
1. *Tier 1 Tall Structures Permit.* If the LCPA determines that the proposed structure does not exceed the federal notification criteria contained in Federal Aviation Regulations (FAR) Part 77, the LCPA will review the application using the criteria in subsection C. below before issuing approval or denial of the Tier 1 Tall Structures Permit.
 2. *Tier 2 Tall Structures Permit.* If the LCPA determines that the proposed structure exceeds federal notification criteria contained in FAR Part 77, or otherwise violates any provisions of the Airport Compatibility District or any applicable federal or state rules or regulations, the LCPA will notify the applicant in writing that the proposed structure may adversely affect the airspace surrounding LCPA airports.
 - a. *FAA Form 7460-1.* The applicant must file a Notice of Proposed Construction or Alteration with the Federal Aviation Administration (FAA) through the submittal of FAA Form 7460-1 per the requirements outlined in FAR Part 77. LCPA will suspend the Tall Structures Permit review process until FAA findings of aeronautical effect are received and reviewed.
 - b. *FAA findings of aeronautical effect.* It is the responsibility of the applicant to forward the FAA findings of aeronautical effect, along with a copy of the completed original FAA Form 7460-1, to the LCPA in order to continue the Tall Structures Permit review process. The FAA findings constitute a statement regarding compliance with federal regulations governing airspace obstructions. The FAA does not have authority to grant local development approval. Consequently, Lee County may deny development approvals for a structure even if the FAA has determined that the structure does not constitute a hazard and does not exceed the thresholds set forth in FAR Part 77.
 - c. *Florida Department of Transportation (FDOT) review.* After receipt of a complete Tier 2 Tall Structures Permit application and a determination by the FAA of an

obstruction, the LCPA will send a copy of such application to the FDOT Aviation Office by certified mail, return receipt requested, or by a delivery service that provides a receipt evidencing delivery. Pursuant to F.S. § 333.025(4), the FDOT will have 15 days to review the application and provide comments, if any, said time running concurrently with the review of the application by the LCPA.

- (3) *Review criteria.* The LCPA will consider the following criteria in determining approval or denial of a Tall Structures Permit:
- (a) The safety of persons on the ground and in the air.
 - (b) The safe and efficient use of navigable airspace.
 - (c) The nature of the terrain and height of any existing structures.
 - (d) The effect of the construction or alteration on the state licensing standards for a public-use airport contained in F.S. Chapter 330 and rules adopted thereunder.
 - (e) The character of existing and planned flight operations and developments at public-use airports.
 - (f) Federal airways, visual flight rules, flyways and corridors, and instrument approaches as designed by the FAA.
 - (g) The effect of the construction or alteration of an obstruction on the minimum descent altitude or the decision height at the affected airport.
 - (h) The cumulative effects on navigable airspace of all existing structures and all other known proposed structures in the area.
 - (i) Comments provided by other affected municipal jurisdictions, if any.
- (4) *LCPA findings.*
- (a) *Tier 1 Permit approval.* If the LCPA finds that the proposed construction or alteration does not adversely affect the LCPA airports after considering the review criteria above, the LCPA will issue a Tier 1 Tall Structures Permit to the applicant with or without stipulations and conditions. The applicant must present the Tall Structures Permit, along with all LCPA comments and stipulations if applicable, to DCD.
 - (b) *Tier 1 Permit denial.* If the LCPA finds that the proposed construction or alteration adversely affects the LCPA airports, the LCPA will issue a written denial stating the reasons for denial. A denial will also state that the variance process is outlined in Land Development Code Section 34-1109.
 - (c) *Tier 2 Permit approval.* If the LCPA finds that the proposed construction or alteration does not adversely affect the LCPA airports after considering the FAA's comments and the review criteria above, the LCPA will issue a Tier 2 Tall Structures Permit to the applicant with or without stipulations and conditions. The applicant must present the Tall Structures Permit, along with all LCPA comments and stipulations if applicable, to DCD. If the Tall Structures Permit is accompanied by stipulations for compliance, it is the responsibility of DCD to ensure that these stipulations are adequately addressed prior to the issuance of any zoning, development order or building permit approvals. DCD will not issue approval if conditions and stipulations are not adequately addressed.
 - (d) *Tier 2 Permit denial.* After considering the FAA's comments and the review criteria above, if the LCPA finds that the proposed construction or alteration does adversely affect the LCPA airports, the LCPA will issue a written denial stating the reasons for denial. A denial will also state that the variance process is outlined in Land Development Code Section 34-1109.

- (e) *No temporary or conditional permits.* Temporary or conditional Tall Structures Permits pending completion of the FAA's or the LCPA's review will not be issued.
- (5) *FDOT permit required in municipalities absent an interlocal agreement.* Lee County does not have jurisdiction to issue a permit within an incorporated municipality absent an interlocal agreement between Lee County and the municipality. If the proposed construction or alteration: (1) exceeds the federal obstruction standards; and, (2) is within ten nautical miles of the airport reference point, or the geographic center of an LCPA airport; and, (3) is located within an incorporated municipality that has not entered into an interlocal agreement with the County and LCPA regarding Tall Structures Permitting, then the applicant must obtain an Airspace Obstruction Permit from the FDOT. This permit request must be submitted to the FDOT Aviation Office in Tallahassee in compliance with the provisions of F.S. Chapter 333.
- (6) *Review timing.*
 - (a) *Tier 1.* Unless an applicant agrees to an alternative review period, LCPA has 30 calendar days to issue a written response to a complete Tall Structures Permit application.
 - (b) *Tier 2.* When an FAA airspace determination is required, the LCPA will notify the applicant of this fact in writing within 30 calendar days of the submittal of a complete application. Once the applicant obtains the necessary FAA determination, the LCPA will have an additional 35 calendar days to consider the review criteria in subsection C. above in conjunction with the FAA determination, forward the application to FDOT for concurrent review as applicable, and issue a Tier 2 Permit approval or denial.
- (7) *Permit validity.* A Tall Structures Permit is valid for a period of one year after the date of issuance, unless noted otherwise on the Permit.
- (8) *Development approval.* Lee County may not issue approval or permission for development or activity that is subject to these procedures until the required Tall Structures Permit has been issued by the LCPA.