

LEE COUNTY ORDINANCE NO. 09-09  
(North Captiva Community Plan)  
(CPA2007-50)

**AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE PLAN, COMMONLY KNOWN AS THE "LEE PLAN," ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENT CPA2007-50 (PERTAINING TO THE NORTH CAPTIVA COMMUNITY PLAN) APPROVED DURING THE COUNTY'S 2007/2008 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO ADOPTED TEXT AND MAPS; PURPOSE AND SHORT TITLE; LEGAL EFFECT OF "THE LEE PLAN"; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.**

WHEREAS, the Lee County Comprehensive Plan ("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 ("Board"); and,

WHEREAS, the Board, in accordance with Section 163.3181, Florida Statutes, and Lee County Administrative Code 13-6, provide an opportunity for private individuals to participate in the plan amendment public hearing process; and,

WHEREAS, the Lee County Local Planning Agency ("LPA") held public hearings pursuant to Florida Statutes and the Lee County Administrative Code on June 23, 2008, and August 25, 2008; and,

WHEREAS, the Board held a public hearing for the transmittal of the proposed amendment on October 22, 2008. At that hearing, the Board approved a motion to send, and did later send, proposed amendment CPA2007-50 pertaining to the North Captiva Community Planning effort to the Florida Department of Community Affairs ("DCA") for review and comment; and,

WHEREAS, at the October 22, 2008 meeting, 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 January 16, 2009; and,

WHEREAS, at a public hearing on February 25, 2009, the Board moved to adopt the proposed amendment to the Lee Plan adopting the North Captiva Community Plan as more particularly set forth herein.

**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 13-6, conducted public hearings to review proposed amendments to the Lee Plan. The purpose of this ordinance is to adopt the amendments to the Lee Plan discussed at those meetings and approved by a majority of the Board of County Commissioners. The short title and proper reference for the Lee County Comprehensive Land Use Plan, as hereby amended, will continue to be the "Lee Plan." **This amending ordinance may be referred to as the "2007/2008 Regular Comprehensive Plan Amendment Cycle CPA2007-50 North Captiva Community Plan Ordinance."**

## SECTION TWO: ADOPTION OF LEE COUNTY'S 2007/2008 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE

The Lee County Board of County Commissioners hereby amends the existing Lee Plan, adopted by Ordinance Number 89-02, as amended, by adopting an amendment, as revised by the Board of County Commissioners on February 25, 2009, known as CPA2007-50. CPA2007-50 amends the Plan to incorporate the recommendations of the North Captiva Community Planning effort by establishing new Goal, Objectives, and Policies specific to North Captiva as set forth below.

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

**POLICY 1.4.2:** The Outer Islands are sparsely settled, have minimal existing or planned infrastructure, and are very distant from major shopping and employment centers. Except for those services as provided in compliance with other sections of this plan, they are not expected to be programmed to receive urban-type capital improvements in the time frame of this plan, and as such can anticipate a continued level of public services below that of other land use categories. The continuation of the Outer Islands essentially in their present character is intended to provide for a rural character and lifestyle, and conserve open space and important natural upland resources. Maximum density is one dwelling unit per acre (1 du/acre).

**GOAL 25: NORTH CAPTIVA (Upper Captiva).** The North Captiva Community seeks to preserve its character, scale, fragile environment, and way of life by guiding future land use; transportation and roads; conservation and coastal management; Safety Harbor; shore and water quality, water and waste management; open space, recreation, and quality of life; and citizen participation and community education.

**OBJECTIVE 25.1: FUTURE LAND USE:** Preserve the traditional character, scale, and tranquility of the North Captiva community by continuing to limit the densities and intensities of use and development to sustainable levels that will not adversely impact the natural environment or overburden the existing infrastructure.

**POLICY 25.1.1:** The owner or agent for any rezoning, variance or special exception request within the North Captiva community must conduct at least one duly noticed public informational meeting on North Captiva where the owner or agent will provide a general overview of the project and answer questions from interested citizens. Lee County encourages zoning staff to participate in such public workshops. This meeting must be conducted before the application can be found sufficient. A minimum of ten days written notice of the public meeting must be given. The applicant is fully responsible for providing the meeting space and providing security measures as needed. Subsequent to this meeting, the applicant must provide County staff with a meeting summary document that contains the following information: the date, time, and location of the meeting; a list of attendees; a summary of the concerns or issues that were raised at the meeting; and a proposal for how the applicant will respond to any issues that were raised.

**POLICY 25.1.2:** Variances should be limited to unique, specifically authorized circumstances and be allowed only in situations where unnecessary hardship would otherwise occur; i.e., where all of the following criteria are met:

- (a) the hardship cannot be corrected by other means allowed in the land development regulations;
- (b) strict compliance with the applicable regulations allows the property owner no reasonable use of the property;
- (c) the variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties located on the same street and within the same Future Land Use category, unless denial of the variance would allow no reasonable use of the property;
- (d) the applicant did not cause the need for the variance, and;
- (e) the variance is not contrary to the spirit of the Land Development Code.

**POLICY 25.1.3:** By the end of 2013, the North Captiva community will draft and submit Land Development Code regulations applicable to North Captiva for Lee County to review and consider, based upon the unique nature of the community, its status as a bridgeless barrier island, the limitations on supporting infrastructure, and the seasonal nature of the demand upon public facilities.

**POLICY 25.1.4:** The location of North Captiva provides a view of the night sky that is virtually unparalleled in Lee County. By the end of 2013, the North Captiva community will develop land development regulations for the County to review and consider that are applicable to exterior residential and

commercial lighting as a means to limit light pollution, light trespass and its potential detrimental effects on wildlife to the greatest extent possible.

**OBJECTIVE 25.2 TRANSPORTATION AND PATHWAYS.** Ensure that the character of North Captiva is retained while providing adequate facilities for ingress, egress, and intra-island transportation consistent with property rights.

**POLICY 25.2.1:** Lee County will cooperate with the North Captiva community in the location and provision of public boat ramps, access facilities, and parking for the purpose of providing access to North Captiva.

**POLICY 25.2.2:** The North Captiva community may collaborate with and seek technical advice from Lee County from time to time on procedures necessary to accomplish pathway maintenance and safety.

**POLICY 25.2.3:** Except for emergency events, public purposes, approved community needs, and permitted heavy construction equipment, internal combustion powered vehicles are banned from all pathways on North Captiva.

**OBJECTIVE 25.3: CONSERVATION AND COASTAL MANAGEMENT.** Preserve, protect and enhance the natural resources, wildlife habitat, and natural beauty of North Captiva, by maintaining diverse and healthy native vegetation, clear offshore waters, diverse and abundant native marine life, wildlife resources, and by minimizing harm resulting from human activity.

**POLICY 25.3.1:** The North Captiva community will work with Lee County to support the efforts of the Federal, State and County authorities to preserve, protect, and enhance its positive environmental qualities. Lee County will involve the North Captiva community organizations in the planning process.

**POLICY 25.3.2:** The North Captiva community and Lee County will support the State of Florida and Lee County's efforts to protect and preserve the distinct environmental resources on North Captiva to the greatest extent possible, while addressing the other defined needs and objectives of the community. These resources include but are not limited to:

- : mangroves
- : the beach dune system, beach dune vegetation, and beach dune wildlife
- : coastal dunes, beaches, and coastal scrub vegetation

- beach dune wildlife, including shorebird nesting habitat and sea turtle habitat
- the marine habitat, including sea grass beds and fisheries

**POLICY 25.3.3:** It is the intent of the North Captiva community that, except for emergency events, public purposes, and human powered vehicles, vehicular traffic be banned from all beaches on North Captiva.

**POLICY 25.3.4:** The North Captiva community and Lee County will cooperate to stop the proliferation of invasive exotic vegetation and nuisance pests as identified by the Exotic Pest and Plant Council of Florida incentives, disincentives and regulations may be developed to accomplish this policy.

**OBJECTIVE 25.4: WATER AND WASTE MANAGEMENT.** Ensure a high quality of living by managing natural resources and waste products in a way that is sustainable, cost effective, and agreeable to island residents and island taxpayers.

**POLICY 25.4.1:** The North Captiva community may conduct a feasibility study of cisterns and other water conservation systems, the long-term development of an island-wide potable water system, and the development of an island-wide wastewater treatment system. The feasibility study will include, but not be limited to, costs estimates, new or innovative technologies, grant funding assistance and other funding opportunities.

**POLICY 25.4.2:** The North Captiva community may conduct a potable water hydrology study to support potable water planning.

**POLICY 25.4.3:** Lee County Solid Waste Division will review, document, and compile a report on existing solid waste management practices and future options for the North Captiva community. This report will focus on residential, commercial, construction, horticulture, and special waste. Following this report, Lee County will present programmatic options that could be implemented to provide the North Captiva island community with a more comprehensive and uniform solid waste management system.

**OBJECTIVE 25.5: OPEN SPACE, RECREATION, AND QUALITY OF LIFE.** Lee County will seek to promote, protect, and enhance existing and potential open space, minimal recreational facilities and the quality of life for residents and visitors to North Captiva. The intent of these efforts is to enrich the island's aesthetic qualities while preserving its fragile barrier island character. At the same time, Lee County will consider the demands on the island's limited infrastructure.

**POLICY 25.5.1:** The North Captiva community and Lee County cooperate to preserve, protect, and enhance open space, passive recreation areas, and beach access points, regardless of size on North Captiva. This may be accomplished by Lee County acquiring property or conservation easements on private lands or vacant lots.

**POLICY 25.5.2:** The North Captiva community and Lee County will cooperate in the community's efforts to obtain an accessible community facility and library for the purposes of meeting, recreation, and community education.

**POLICY 25.5.3:** The North Captiva community will work with Lee County, the State of Florida, and the National Parks Service and other agencies to provide appropriate new or enhanced greenways, ecological corridors, or recreational trail systems. These opportunities may include passive parks or nature and pedestrian trails, and may be developed through public/private partnerships.

**OBJECTIVE 25.6: CITIZEN PARTICIPATION AND COMMUNITY EDUCATION.**

The North Captiva community will seek to enhance the community character, sustain natural resources, and involve the public in decisions that affect them, by providing educational and participation opportunities.

**POLICY 25.6.1:** Lee County will work with the North Captiva community to establish an electronic Document Clearing House, where copies of selected documents will be available. These documents will include permit applications, variance requests, staff reports, Hearing Examiner recommendations and resolutions, administrative variances, and changes to the Lee Plan and Land Development Code for any development on North Captiva, barrier islands, and Pine Island Sound. The county's failure to provide or to provide in a timely manner a document to the Document Clearing House, or failure of the Document Clearing house to receive documents, will not constitute a defect in notice or bar a public hearing from occurring as scheduled.

**POLICY 25.6.2:** Lee County will involve the North Captiva community in planning processes that relate specifically to North Captiva and generally to barrier islands, island ingress and egress, and other changes that may affect the island and its environment.

**POLICY 25.6.3:** Through the Document Clearinghouse Lee County will provide notice to the North Captiva island community of proposed actions (i.e. zoning, construction projects) to be considered or undertaken by Lee County that will impact the island.

**POLICY 25.6.4:** Upon request Lee County will collaborate with the North Captiva island community to develop an understanding of natural resources by providing educational programs on energy conservation, solid waste management, hazardous waste, surface water runoff, septic maintenance, water conservation, xeriscaping, green building, harbor management, cultural resources, and history. The site for these programs will be located on North Captiva.

**OBJECTIVE 25.7: PUBLIC SAFETY.** Preserve the character of North Captiva by providing for a law enforcement presence on North Captiva island.

**POLICY 25.7.1:** The North Captiva Community will encourage the Lee County Sheriff's Office to be present during special events and during periods of high occupancy on North Captiva. The North Captiva community will work to identify housing and other resources as necessary in support of enforcement activities.

**POLICY 25.7.2:** Lee County will continue to ensure viable hurricane evacuation for hurricanes and other emergencies as well as emergency communication options for the residents and other affected persons.

### **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 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 Comprehensive Land Use Plan. 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(9), Florida Statutes, or until the Administrative Commission issues a final order determining the adopted amendment to be in compliance in accordance with 163.3184(10), 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.

Commissioner Hall made a motion to adopt the foregoing ordinance, seconded by Commissioner Janes. The vote was as follows:

Robert P. Janes	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DONE AND ADOPTED this 25th day of February 2009.

ATTEST:  
CHARLIE GREEN, CLERK

LEE COUNTY  
BOARD OF COUNTY COMMISSIONERS

BY: Marcia Wilson  
Deputy Clerk

BY: Ray Judah  
Ray Judah, Chairman

DATE: 2/25/09

Approved as to form by:

Dawn E. Perry-Lehnert  
Dawn E. Perry-Lehnert  
County Attorney's Office







## FLORIDA DEPARTMENT of STATE

**CHARLIE CRIST**  
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

**KURT S. BROWNING**  
Secretary of State

March 12, 2009

Honorable Charlie Green  
Clerk of Court  
Lee County  
Post Office Box 2469  
Fort Myers, Florida 33902-2469

Attention: Ms. Marcia Wilson, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated March 2, 2009 and certified copies of Lee County Ordinance Nos. 09-06 through 09-17, which were filed in this office on March 9, 2009.

Sincerely,

Liz Cloud  
Program Administrator

LC/srd

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DIRECTOR'S OFFICE

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