

---

## **PROCEDURES AND MONITORING**

---

### **EFFECT AND LEGAL STATUS OF THIS PLAN**

Upon adoption of this plan, all development and all actions taken in regard to development orders shall be consistent with this plan. All land development regulations enacted or amended after its effective date shall be consistent with this plan. Land development regulations in existence as of the effective date of this plan which are inconsistent with this plan shall be amended to conform to its goals, objectives, and policies (see implementation section below).

The terms “consistent with” and “in conformity with” shall mean that all development actions or orders will tend to further the goals, objectives, and policies of the plan and will not specifically inhibit or obstruct the attainment of articulated policies. Where goals, objectives, or policies of particular elements appear to be in conflict, such conflicts shall be resolved upon an analysis of the entire plan as it may apply to the particular area at issue.

The density limits and land-use restrictions in the Future Land Use Element described above for each category are legally binding immediately upon adoption of this comprehensive plan. During the preparation of the new Land Development Code that will fully implement this plan, conflicts may arise between this plan and previous regulations and zoning districts. Until those conflicts are resolved through amendments to the code, the more restrictive regulations shall control land development activities. If the more restrictive regulation causes a result that is contrary to the intent of this plan, a landowner may seek an administrative interpretation of this plan during the first year after its adoption, as described below.

The impact of this plan upon ongoing development may involve a balancing of the public needs as reflected in this plan and the expectations of those persons in the process of developing property in a manner inconsistent with its goals, objectives, and policies. Moreover, Section 163.3202(2)(g), *Florida Statutes*, restricts the ability of the town to grant development permits despite an otherwise satisfactory balancing of such needs and expectations. There will be a transition period during which such development rights will have to be balanced with public needs. In instances where development has been determined to be consistent with previous plans, as amended, and a development order has been issued, such development will be deemed consistent to the extent it cannot reasonably comply with the standards established in this plan, as outlined below:

- A. A formal development order, not otherwise vested, shall be deemed consistent with this plan for a period of three years from the date of issuance of the development order, only as to:
  - 1. terms specifically approved in writing; or
  - 2. accompanying plans expressly approved as to matters requested to be in said plans and requested to be approved as part of the development order process.To be deemed consistent, such development orders shall also meet all applicable public health, safety, and welfare standards.
  
- B. In addition to such formal development orders, the following categories of approvals, projects, and developments shall be deemed to be consistent with this plan, subject to the applicable conditions as set forth below:
  - 1. a development or project that has a building permit issued by the Town of Fort Myers Beach that is valid on the effective date of this plan and has not expired;
  - 2. a site plan approved by court order or stipulated settlement which is the result of litigation in which the Town of Fort Myers Beach was a party, or in which Lee County

- was a party prior to incorporation;
3. an approved, platted subdivision pursuant to Part I of Chapter 177, *Florida Statutes*;
  4. “planned development” zoning approvals which have not been vacated due to inactivity by the developer;
  5. “planned development” zoning approvals granted by the Town Council since incorporation; and
  6. for ongoing commercial operations, an addition or interior remodeling, limited to 25% of the existing floor area or 1,500 square feet, whichever is less (this is a one-time addition).

The following general conditions shall apply to these six categories:

- the activity must comply with all applicable public health, safety, and welfare standards and regulations;
- these categories shall be deemed consistent only insofar as those items specifically approved; and
- the activity shall not be deemed consistent if there has been a substantial deviation from the approval granted.

Notwithstanding anything in this section to the contrary, an approval or development order, which would otherwise be deemed consistent, shall not be deemed consistent upon a showing by the town of a peril to the public health, safety, or general welfare of the residents of Lee County or the Town of Fort Myers Beach, which peril was unknown at the time of approval. Moreover, notwithstanding the fact that an approval or development order is deemed consistent, no development order or permit, as defined in Section 163.3164, *Florida Statutes*, shall be issued which results in a reduction in the levels of service below the minimum acceptable levels established in this plan, as required by Section 163.3202(2)(g), *Florida Statutes*.

In other circumstances where development expectations may conflict with this plan but judicially defined principles of equitable estoppel may override the otherwise valid limitations imposed by

this plan, such expectations may be recognized by the Town of Fort Myers Beach, acting by resolution of its Town Council, on a case-by-case basis.

Nothing in this plan shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to Chapter 380, *Florida Statutes*.

## ***IMPLEMENTATION SCHEDULE***

Many parts of this comprehensive plan will be implemented through major changes to the Land Development Code, which by state law must conform with this plan within one year (163.3202, *Florida Statutes*).

The new Land Development Code may have the effect of rezoning many or all properties for various reasons, such as:

- to conform the zoning district of specific properties to the requirements of this plan; or
- to combine several similar zoning districts into a single new district to simplify the Land Development Code.

Landowners whose property is proposed for rezoning will receive notice in accordance with state law.

Some provisions of the plan are self-implementing; they guide actions on a day-to-day basis without the need for further implementing legislation. Other provisions indicate that detailed regulations may be needed to implement a general policy statement. When such a policy makes reference to a specific year of completion, the town’s intent is to have such regulations in place by the end of that year. Finally, some objectives and policies indicate the town intends to complete programs or plans by a specific year; this should be interpreted as intending completion of the task by the end of the designated year.

## ***ADMINISTRATIVE INTERPRETATIONS***

Persons or entities whose interests are directly affected by this plan have the right to an administrative interpretation of the plan as it affects their specific interest. Such an interpretation, under the procedures and standards set forth below, shall thereafter be binding upon the Town of Fort Myers Beach. Such administrative interpretations are intended to expedite and reduce disputes over plan interpretations, resolve certain map or boundary disputes, avoid unnecessary litigation, ensure consistency in plan interpretation, and provide predictability in interpreting the plan. All such administrative interpretations, once rendered, are subject to challenge under the provisions of Section 163.3215, *Florida Statutes*.

A. *Subject Matter of Administrative Interpretations*. Administrative interpretations shall be provided only as to the following matters:

1. Whether an area has been (or should have been) designated "Wetlands" on the basis of a clear factual error. A field check shall be made prior to the issuance of such an interpretation.
2. Clarification of Future Land Use Map boundaries as to a specific parcel of property.
3. Conflicts between pre-existing land development regulations and this comprehensive plan during the first year after its adoption (until those conflicts are resolved through amendments to the Land Development Code).
4. Single-family residence provision as defined in subsection E. below.

B. *Procedures for Administrative Interpretations*.

1. Anyone seeking an administrative interpretation shall submit an application to the Town Clerk with requested information, and shall have the burden of demonstrating compliance with the standards set forth below.
2. The Local Planning Agency's attorney shall review each application and request additional information or conduct

research as necessary. The Local Planning Agency's attorney may issue a written administrative interpretation or may, at the attorney's sole discretion, refer the request to the Local Planning Agency which will then make the administrative interpretation.

C. *Standards for Administrative Interpretations*. Administrative interpretations of this plan shall be determined under the following standards:

1. Interpretations which would be confiscatory, arbitrary, capricious, unreasonable, or which would deny all economically viable use of property shall be avoided;
2. Interpretations should be consistent with background data, other policies, and objectives of the plan as a whole; and
3. Interpretations should, to the extent practical, be consistent with comparable prior interpretations.

D. *Appeals of Administrative Interpretations*. The following procedures shall apply in appealing administrative interpretations:

1. An administrative interpretation may be appealed to the Town Council by filing a written request within fifteen days after the administrative interpretation has issued in writing. In reviewing such an appeal, the Town Council shall consider only information submitted in the administrative interpretation process and shall review only whether the proper standards set forth in this plan have been applied to the facts presented. No additional evidence shall be considered by the Town Council.
2. The Council shall conduct such appellate review at a public meeting to be held within thirty days after the date of the written request for appeal. The Council may adopt the administrative interpretation being appealed, or may overrule it, with a written decision to be rendered by the Town Clerk in writing within thirty days after the date of the hearing.

3. Where appropriate and necessary, administrative interpretations shall be incorporated into this plan during the next amendment cycle.

E. Single-Family Residence Provision. Notwithstanding any other provision of this plan, any entity owning property or entering or participating in a contract for purchase agreement of property, which property is not in compliance with the density requirements of this plan, shall be allowed to construct one single-family residence on said property, provided that:

1. *Date Created:*
  - a. the lot shall have been created and recorded in the official Plat Books of Lee County prior to the effective date of the Lee County Comprehensive Plan (December 21, 1984), and the configuration of said lot has not been altered; OR
  - b. a legal description of the lot was lawfully recorded in the Official Record books of the Clerk of Circuit Court prior to December 21, 1984; OR
  - c. the lot was lawfully created after December 21, 1984, and the lot area was created in compliance with the Lee County or Fort Myers Beach Comprehensive Plan, whichever controlled at the time, as either plan existed at the time the lot was created.
2. *Minimum Lot Requirements:* In addition to meeting the requirements set forth above, the lot shall have:
  - a. a minimum of 4,000 square feet in area if it was created prior to June 27, 1962; OR
  - b. a width of not less than 50 feet and an area of not less than 5,000 square feet if part of a subdivision recorded in the official Plat Books of Lee County after June 27, 1962, and prior to December 21, 1984; OR
  - c. a minimum of 7,500 square feet in area if it was created on or after June 27, 1962, and prior to December 21, 1984, if not part of a subdivision recorded in the official Plat Books of Lee County; OR
  - d. been in conformance with the zoning regulations in

effect at the time the lot or parcel was recorded if it was created after December 21, 1984; OR

- e. been approved as part of a Planned Unit Development or Planned Development.
3. *Ownership.* In addition to meeting the requirements set forth above, prior to November 21, 2000, the lot shall have been vacant or shall have been improved with one structure located wholly on this lot. If a structure had been placed on two or more adjoining lots at any time prior to November 21, 2000, the individual lots shall not qualify for this single-family residence provision.
  4. *Construction Regulations.* Once a property owner establishes the right to build a single-family residence through these procedures, the following policies shall prevail:
    - a. The residence shall comply with all applicable health, safety, and welfare regulations, as those regulations exist at the time a building permit is requested.
    - b. Lots containing wetlands shall be subject to special provisions of the Land Development Code.
    - c. If two or more contiguous lots qualify, property owners are encouraged to reapportion lots if the result would be lots that come closer to meeting the standards for the lots' zoning district, as long as no property becomes non-conforming or increases in its non-conformity and as long as the density will not increase.
    - d. Nothing herein shall be interpreted as prohibiting the combining of qualifying lots with other contiguous property providing the density will not increase.
    - e. Two or more contiguous qualifying lots that are located in a zoning district which permits duplexes may be combined to support a single duplex in lieu of two single-family residences.
  5. *Transferability.* These rights shall run with the land and be available to any subsequent owner if the property which qualifies for the single-family provision is transferred in its entirety.

## **LEGISLATIVE INTERPRETATIONS**

In order to apply the plan consistently and fairly, it will be necessary from time to time to interpret provisions in the plan in a manner which insures that the legislative intent of the Town Council which adopted the plan be understood and applied by subsequent councils, town employees, private property owners, and all other persons whose rights or work are affected by the plan. When the plan is interpreted, it should be done in accordance with generally accepted rules of statutory construction, based upon sound legal advice, and compiled in writing in a document which can be a companion to the plan itself.

- A. *Requests.* Requests for interpretations may be made by any Town Council member, the Town Manager, the Local Planning Agency, or any applicant for a type of development regulated by this plan.
- B. *Local Planning Agency.* Upon receiving a request and written recommendations from the Town Manager, the Local Planning Agency shall review the same and forward them to the Town Council with its comments and recommendations.
- C. *Town Council.* Upon receiving the recommendations of the Local Planning Agency, the Town Council shall render a final decision as to the correct interpretation to be applied. This interpretation shall be that which is adopted by absolute majority of the Town Council, and, upon being reduced to a board resolution drafted in response to the board majority, it shall be signed by the Mayor and recorded in the town's official records. The Town Clerk shall be responsible for maintaining copies of all such resolutions in a single document which shall be appropriately indexed and provided to all persons upon request. The document shall be updated regularly and the latest version thereof furnished to all persons requesting copies of the plan itself.

- D. *Legal Effect of Legislative Interpretations.* Any provision of the plan specifically construed in accordance with the foregoing procedures may not be re-interpreted or modified except by a formal amendment of the plan itself. Once formally adopted in accordance with these procedures, the annotation shall have the force of local law and all persons shall be placed on constructive notice of it. Any development orders issued in reliance on legislative interpretations of this plan are subject to challenge under the provisions of Section 163.3215, *Florida Statutes*.

## **AMENDMENT PROCEDURES**

This plan, including the Future Land Use Map, may be amended with such frequency as may be permitted by applicable state statutes and in accordance with such administrative procedures as the Town Council may adopt. Petitions for changes from land-owners will be accepted annually; the Town Council may accept applications more frequently at its sole discretion.

Sections of this plan may be renumbered or relettered, and typographical errors which do not affect the intent, may be authorized by the Town Manager without need of a public hearing, by filing a corrected copy of same with the Town Clerk.

## **MONITORING, EVALUATING, AND UPDATING**

Any comprehensive plan needs to be updated regularly. Conditions change; knowledge is gained about the effects of the plan; and new opportunities and problems arise. The Town Council will initiate amendments or additions to this plan as needed, in addition to the following regularly scheduled updates.

### **Annual Capital Improvements Update**

The Capital Improvements Element shall be updated annually following the adoption of the town's budget. This update, at a minimum, shall review expected revenues and include a new financially feasible five-year schedule of capital improvements to replace the existing schedule.

### **Scheduled Evaluation and Appraisal**

State law requires a periodic evaluation and appraisal of all adopted comprehensive plans. The Local Planning Agency shall complete a formal evaluation and appraisal process in the year 2005, unless the Town Council chooses an earlier schedule or if state regulations change. The Local Planning Agency's report shall address the following (in addition to any other requirements set out in 163.3191 FS and Rule 9J-5.0053 FAC):

- A. Citizen participation in the planning process. The town shall update procedures to encourage public participation in the planning process, specifically including the following:
1. Procedures to assure that real property owners are put on notice, through newspaper advertisements or other methods adopted by the town, of official actions that may affect the use of their property.
  2. Notices to keep the general public informed.
  3. Opportunities for the public to provide written comments.

4. Assurances that required public hearings are held.
  5. Consideration of and response to public comments.
- B. Updating appropriate baseline data and forecasts and preparing measurable objectives to be accomplished in the next five-year period of the plan and for the long-term period.
- C. Accomplishments in the seven years since adoption, describing the degree to which the goals, objectives, and policies have been successfully reached and the extent to which unanticipated problems and opportunities have occurred, including major social and economic problems of development and deterioration.
- D. Obstacles or problems which resulted in underachievement of goals, objectives, or policies. Proposals for modifying or eventually achieving the goals, objectives, and policies shall be formulated.
- E. Effect of changes to other plans and regulations such as the state and regional comprehensive plans and regulations governing local comprehensive plans.
- F. New or modified goals, objectives, policies, or actions needed to correct discovered problems. Along with failure to meet stated objectives, the evaluation will recommend new goals, objectives, or policies that will either correct past problems in achievement, or modify the general direction or aim.
- G. A means of ensuring continuous monitoring and evaluation of the plan during the next five-year period.

---

# ***PROCEDURES AND MONITORING***

---

**EFFECT AND LEGAL STATUS OF THIS PLAN . . . . . 15 - 1**

**IMPLEMENTATION SCHEDULE . . . . . 15 - 2**

**ADMINISTRATIVE INTERPRETATIONS . . . . . 15 - 3**

**LEGISLATIVE INTERPRETATIONS . . . . . 15 - 4**

**AMENDMENT PROCEDURES . . . . . 15 - 5**

**MONITORING, EVALUATING, AND UPDATING . . . . . 15 - 6**

    Annual Capital Improvements Update . . . . . 15 - 6

    Scheduled Evaluation and Appraisal . . . . . 15 - 6