

TRANSMITTAL PROCEDURES

The process for adoption of local comprehensive plan amendments is outlined in Section 163.3184, F.S., and Rule 9J-11.011, Florida Administrative Code (F.A.C.).

Within ten working days of the date of adoption, the Town must submit the following to the Department:

- Three copies of the adopted comprehensive plan amendment;
- A copy of the adoption ordinance;
- A listing of additional changes not previously reviewed;
- A listing of findings by the local governing body, if any, which were not included in the ordinance; and
- A statement indicating the relationship of the additional changes to the Department's Objections, Recommendations and Comments Report.

The above amendment and documentation are required for the Department to conduct a compliance review, make a compliance determination and issue the appropriate notice of intent.

In order to expedite the regional planning council's review of the amendment, and pursuant to Rule 9J-11.011(5), F.A.C., please provide a copy of the adopted amendment directly to Executive Director of the Southwest Florida Regional Planning Council.

Please be advised that the Florida legislature amended Section 163.3184(8)(b), F.S., requiring the Department to provide a courtesy information statement regarding the Department's Notice of Intent to citizens who furnish their names and addresses at the local government's plan amendment transmittal (proposed) or adoption hearings. In order to provide this courtesy information statement, local governments are required by the law to furnish to the Department the names and addresses of the citizens requesting this information. This list is to be submitted at the time of transmittal of the adopted plan amendment (a sample Information Sheet is attached for your use).

INTRODUCTION

The following objections, recommendations and comments are based upon the Department's review of the Town of Fort Myers Beach proposed comprehensive plan amendment, pursuant to Section 163.3184, Florida Statutes (F.S.).

The objections relate to specific requirements of relevant portions of Chapter 9J-5, Florida Administrative Code (F.A.C.), and Chapter 163, Part II, F.S. The objections include a recommendation of approaches that might be taken to address the cited objections. Other approaches may be more suitable in specific situations. Some of these objections may have initially been raised by one of the other external review agencies. If there is a difference between the Department's objection and the external agency advisory objection or comment, the Department's objection would take precedence.

The Town should address each of these objections when the amendment is resubmitted for our compliance review. Objections that are not addressed may result in a determination that the amendment is not in compliance. The Department may have raised an objection regarding missing data and analysis items that the Town considers not applicable to its amendment. If that is the case, a statement, justifying its non-applicability, pursuant to Rule 9J-5.002(2), F.A.C., must be submitted. The Department will make a determination on the non-applicability of the requirement, and if the justification is sufficient, the objection will be considered addressed.

The comments that follow the objections and recommendations are advisory in nature. Comments will not form the basis of a determination of non-compliance. They are included to call attention to items raised by our reviewers. The comments can be substantive, concerning planning principles, methodology or logic, as well as editorial in nature dealing with grammar, organization, mapping, and reader comprehension.

Appended to the back of the Department's report are the comment letters from the other state review agencies and other agencies, organizations and individuals. These comments are advisory to the Department and may not form the basis of Departmental objections unless they appear under the "Objections" heading in this report.

DEPARTMENT OF COMMUNITY AFFAIRS
OBJECTIONS, RECOMMENDATIONS AND COMMENTS
FOR
TOWN OF FORT MYERS BEACH
AMENDMENT 09-1ER

March 13, 2009
Division of Community Planning
Bureau of Local Planning

This report is prepared pursuant to Rule 9J-11.010, F.A.C.

**OBJECTIONS, RECOMMENDATIONS AND COMMENTS
FOR
TOWN OF FORT MYERS BEACH
AMENDMENT 09-1ER**

I. CONSISTENCY WITH CHAPTER 163, PART II, F.S., AND RULE 9J-5, F.A.C.

The proposed Amendment 09-1ER consists of Evaluation and Appraisal Report (EAR) based plan amendments to update the Comprehensive Plan.

A. The Department raises the following objections to the proposed amendments:

1. Objection (Planning Timeframe): The adopted portion of the Comprehensive Plan does not establish the long-term planning timeframe of the Comprehensive Plan.

Rules 9J-5.005(1), (2), (4), (5), and (6); 9J-5.006; 9J-5.010; 9J-5.011; 9J-5.013; 9J-5.015; 9J-5.016; 9J-5.019; and 9J-5.025, Florida Administrative Code (F.A.C.); and Sections 163.3177(2), (5), and (6); and 163.3191, Florida Statutes (F.S.).

Recommendation: Revise the adopted portion of the Comprehensive Plan to establish a long-term planning timeframe that is uniform and consistent among the plan elements. The long-term planning timeframe shall address at least a ten-year planning period.

2. Objection (Data and Analysis): The EAR-based plan amendments do not propose to update the data and analysis of existing conditions and projected future conditions of the short-term and long-term planning timeframes of the plan elements (Future Land Use Element, Transportation Element, Housing Element, Utilities Element, Recreation and Open Space Element) to be based on best available data and analysis, except with regard to potable water facilities.

Rules 9J-5.005(2) and (5); 9J-5.006(1) and (2); 9J-5.010(1) and (2); 9J-5.011(1); 9J-5.012(3); 9J-5.015(1) and (2); 9J-5.016(1) and (2); and 9J-5.019(2) and (3), F.A.C.; and Sections 163.3177(2), (3), (4), (6), (8), and (10); 163.3178; and 163.3191, F.S.

Recommendation: The EAR-based plan amendments are supposed to update the comprehensive plan, including the data and analysis. Revise the comprehensive plan to include updated data and analysis for each plan element, including existing conditions and projections of future conditions for the short-term and long-term planning timeframes. The updated data and analysis should be based on best available data and analysis and be consistent with the proposed population estimates and projections contained in the EAR-based plan amendments.

3. Objection (Energy Efficiency and Green House Gas Reduction):

The proposed amendment does not include plan policies, based on supporting data and analysis, which establish meaningful and predictable guidelines and standards addressing the following: (1) Future Land Use Element policies addressing greenhouse gas reduction strategies pursuant to Section 163.3177(6)(a), F.S.; (2) Transportation Element policies addressing transportation strategies to address reduction in greenhouse gas emissions from the transportation sector pursuant to Section 163.3177(6)(b and j), F.S.; (3) Housing Element policies addressing principles to be followed in: (a) energy efficiency in the design and construction of new housing; and (b) use of renewable energy sources; pursuant to Section 163.3177(6)(f), F.S.; and (4) Conservation Element policies addressing energy conservation pursuant to Section 163.3177(6)(d), F.S.

Rules 9J-5.005(1), (2), (5), and (6), F.A.C.; and Sections 163.3177(6)(a), (b), (d), (f), and (j); 163.3177(2), (8), and (10); and 163.3191, F.S.

Recommendation: Revise the Future Land Use Element to establish policies addressing greenhouse gas reduction strategies pursuant to Section 163.3177, F.S. Revise the Transportation Element to establish policies addressing transportation strategies to address reduction in greenhouse gas emissions from the transportation sector pursuant to Section 163.3177(6)(b and j), F.S. Revise the Housing Element to establish policies addressing principles to be followed in: (a) energy efficiency in the design and construction of new housing; and (b) use of renewable energy sources; pursuant to Section 163.3177(6)(f), F.S. Revise the Conservation Element to establish policies addressing energy conservation pursuant to Section 163.3177(6)(d), F.S.

4. Objection (Coastal High Hazard Area): The proposed EAR-based amendments do not include an amendment to the Coastal Management Element to define the Coastal High Hazard Area as is defined by Section 163.3178, F.S. The Town's Comprehensive Plan Future Land Use Map (or map series) does not depict the Coastal High Hazard Area, and the proposed Amendment 09-1ER does not amend the Future Land Use Map (or map series) to depict the Coastal High Hazard Area, supported by data and analysis, consistent with the new definition of the Coastal High Hazard Area.

Rules 9J-5.005(2), (5), and (6); 9J-5.006(1), (2), and (4); 9J-5.012(1), (2), and (3), F.A.C.; and Sections 163.3177(6)(a); 163.3177(2), (8), and (10); 163.3178; 163.3191, F.S.

Recommendation: Revise the amendment to adopt a Coastal Management Element policy that defines the Coastal High Hazard Area consistent with the definition in Section 163.3178, F.S. Revise the Future Land Use Map (or map series) to depict the Coastal High Hazard Area, supported by data and analysis, consistent with the definition of the Coastal High Hazard Area.

B. The Department raises the following objections and comment to the proposed Amendment 2008-02-TEXT:

5. Objection (Data and Analysis): The proposed Public Schools Element is not supported by appropriate and relevant data and analysis required under Section 163.3177(12)(c), F.S., and Rule 9J-5.025, F.A.C., regarding the following: (1) a map or maps depicting the existing location of public school facilities by type and existing location of ancillary plants; and (2) school facilities needed for each concurrency service area to accommodate projected enrollment at the adopted level of service standard each year for the five-year planning period, and for the end of the long-range planning period of the host county, including ancillary plants and land area requirements.

Rules 9J-5.005(2); 9J-5.025(2)(e); 9J-5.025(4), F.A.C.; and Sections 163.3177(12)(c); and 163.3191, F.S.

Recommendation: Revise the Public Schools Element to be supported by the data and analysis identified above.

6. Objection (Concurrency Exemption): The Public Schools Element Policy 16-C-1.iv provides for exemptions from school concurrency, including an exemption for “other uses as provided in the code amendments.” This exemption does not establish meaningful and predictable guidelines and does not ensure the provision of school facilities for residential development consistent with Sections 163.3177(12) and 163.3180(13), F.S.

Rules 9J-5.005(6); and 9J-5.025(3)(g), F.A.C.; and Sections 163.3177(12)(g); 163.3180(13); and 163.3191, F.S.

Recommendation: Revise the amendment to delete the exemption.

7. Objection (Maps, Objectives and Policies): The proposed Public Schools Element and proposed amendments to the Intergovernmental Coordination Element do not propose adoption of the required map series or include plan objectives and policies addressing the following requirements:

- a. (Public Schools Element): An objective to coordinate the location of public schools with the future land use map or map series of the relevant jurisdiction to ensure that existing and proposed school facilities are located consistent with the existing and proposed residential areas they serve and are proximate to appropriate existing and future land uses. The use of schools to serve as community focal points should also be addressed. [163.3177(12)(g)6., F.S., and 9J-5.025(3)(b)4., F.A.C.]
- b. (Public Schools Element): A policy to include standards for revision of concurrency service area boundaries to ensure that the utilization of school capacity is maximized to the greatest extent possible, taking into account transportation costs, court approved desegregation plans, as well as other factors Policy 16-B-3 establishes guidelines and standards for modifications to “these standards” but does not specifically identify that this

applies to the current concurrency service areas and/or changes in the use of schools. [163.3177(12)(f), F.S., and 9J-5.025 (3)(c), F.A.C.]

- c. (Public Schools Element): A policy which requires the adoption of annual plan amendments adding a new fifth year, updating the financially feasible public schools capital facilities program, coordinating the program with the 5-year district facilities work plan, the plans for other local governments, and, as necessary, updates to the concurrency service area map. The annual plan amendments shall ensure that the capital improvements program continues to be financially feasible and that the level of service standards will continue to be achieved and maintained. Public Schools Element Policy 16-D1 includes some of the required language, but does not fully address the statutory and Rule requirements. [9J-5.025(3)(c)2., F.A.C., and 163.3177(12)(g)1., F.S.]
- d. (Public Schools Element): A policy addressing coordination of the annual review of the element with the school board, the county and applicable municipalities; coordination of annual review of school enrollment projections, and establishing the procedures for the annual update process. [9J-5.025(3)(c)3., F.A.C., and 163.3177(12)(g)1., F.S.]
- e. (Public Schools Element): A policy addressing coordination of school site selection, permitting, and collocation of school sites with other public facilities such as parks, libraries and community centers. While the Town provides an extensive discussion of the existing collocated facilities, the policy language is not included. [9J-5.025(3)(c)4., F.A.C., and 163.3177(12)(g)1., 2., and 5., F.S.]
- f. (Public Schools Element): A policy addressing coordination of the long range public school facility map with the local government's comprehensive plan, including the future land use map. [9J-5.025(3)(c)6., F.A.C., and 163.3177(12)(g)9., F.S.]
- g. (Public Schools Element): A future conditions map or map series which depicts the planned general location of public school facilities and ancillary plants and renovated facilities by year for the five year planning period, and for the end of the long range planning period of the host county. [9J-5.025(4)(b), F.A.C., and 163.3177(12)(h), F.S.]
- h. The Intergovernmental Coordination Element does not include a policy addressing joint processes for collaborative planning and decision making on population projections and public school siting, the location and extension of public facilities subject to concurrency, and siting facilities with countywide significance. [163.3177(6)(h)2., F.S.]
- i. The Intergovernmental Coordination Element does not include a policy requiring an interlocal agreement with the district school board, the county, and nonexempt municipalities pursuant to s. 163.31777, F.S., and providing that coordination between the local government and school board is pursuant to the agreement and shall state the obligations of the local government under the agreement. [163.3177(6)(h)4.a., F.S.]

Rules 9J-5.005(6); 9J-5.025(3)(b) and (c); and 9J-5.025(4), F.A.C.; and Sections 163.3177(6)(h); 163.3177(12)(f), (g) and (h); 163.31777; and 163.3191, F.S.

Recommendation: Revise the Public Schools Facilities Element to include the plan objectives, policies, and maps identified above. Revise the Intergovernmental Coordination Element to include the policies identified above.

8. Objection (Financial Feasibility): Capital Improvements Element Policy 11-A-7, states, “Table 11-7 of the proposed Amendment presents the five-year schedule of capital improvements to be undertaken by the Town of Fort Myers Beach....To comply with § 163.3180(13)(d), *F.S.*, the required five-year schedule of capital improvements also includes the capacity-enhancing school improvements and summary of estimated revenues as presented by the Lee County School District through its Five-Year District Facilities Work Program, as updated each September. For FY 2008/09 through 2012/13, the specific capacity-enhancing school improvements are listed in Table 16-7 of the Public Schools Element and the formal demonstration that those improvements meet all requirements of state law is set forth in that element.” Table 16-7 of the Public Schools Element, is inconsistent with the adopted Lee County School District’s 2008-2009 District Facilities Five Year Work Plan, dated September 9, 2008. The numerical totals do not match the totals listed in the “Capacity Project Schedule” and “Other Project Schedule” Tables in the 2008-2009 District Facilities Five Year Work Plan. Therefore, the proposed Public Education Facilities Element is not demonstrated to be financially feasible. In addition, the proposed Five-Year Schedule of Capital Improvements does not identify the project cost, funding source, and timing for the following three school capacity projects: (1) New Elementary South Zone; (2) New Elementary West Zone; and (3) New Elementary East Zone. The Five-Year Schedule has not been demonstrated to be financially feasible for these projects.

Rules 9J-5.005(2) and (5); 9J-5.016(1), (2), (3), and (4); and 9J-5.025(1), (2), and (3), F.A.C.; and Sections 163.3164(32); 163.3177(2), (3), (8), (10), and (12); 163.3180(13); and 163.3191, F.S.

Recommendation: In order to demonstrate financial feasibility at the time of adoption of this Amendment, revise Table 16-7 of the Public Schools Element to incorporate the exact Project Schedule and Revenue tables from the Lee County School District’s 2008-2009 District Facilities Five Year Work Plan, dated September 9, 2008. Alternatively revise the policy to adopt by reference the Lee County School District’s annually updated financially feasible Lee County School District’s 2008-2009 District Facilities Five Year Work Plan. The policy and/or actual tables should include a reference that identifies the document by title, volume and date.” To comply with Rule 9J-5.005(2)(g), F.A.C., documents adopted by reference that are revised subsequent to Plan adoption will need to have their reference updated within the Plan through the annual amendment process. The policy or table should indicate the date, title, author and volume of the document being referenced, and where possible the applicable pages.

9. Comment: At the end of the proposed Public Schools Element, the Town includes a reference to the “Draft Lee Public School Facilities Element, prepared by Lee County School District, revised October 2008.” The Department recommends that the Town revise the Amendment to

reference, as a source of data and analysis in support of the Element, the adopted Lee County Public Education Facilities Amendment, DCA Number 09-1, approved by Ordinance 08-21 on September 11, 2008. The entire Amendment file can be accessed through the following links, which could be incorporated into the Element consistent with the existing format.

<http://dcapapers.eoconline.org/FloridaPAPERS/FlashAug16/Model/documentView.cfm?UserID=6239&AreaID=11&DocumentID=435854>

<http://dcapapers.eoconline.org/FloridaPAPERS/FlashAug16/Model/documentView.cfm?UserID=6239&AreaID=11&DocumentID=435854>

C. The Department raises the following objection to the proposed Amendment 2008-11/12-TEXT:

10. Objection: Proposed Utilities Element Policy 8-B-3 states that prior to issuance of building permits, the Town must obtain assurances from Lee County Utilities that an adequate bulk water supply will be available to the Towns' water distribution system to serve new development at the rates specified in Policy 8-B-1. The proposed Utilities Element Policy 8-B-3 does not establish concurrency management system requirements for water supply consistent with the requirements of Section 163.3180(2)(a), F.S., that prior to the approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier to determine whether adequate water supplies to serve new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent.

The data and analysis does not quantify the projected water supplies in the Town's proposed Work Plan by providing details from the Bulk Water Agreement with Lee County Utilities covering water demands, agreement timelines, and level of service. The proposed plan amendment does not include plan policy language that adopts by reference the adopted Lee County Work Plan. The proposed amendment does not include plan policies addressing on-going coordination with Lee County to ensure that water supplies will be sufficient to meet water demand, including coordinating peak seasonal demands and allocations based on consistent population projections and level of service standards, and to provide coordination with Lee County on water conservation that includes implementation plans for a conservation rate structure and a leak detection program for the Town. Policy 14-A-5 does not ensure that the future Water Supply Facilities Work Plan amendments will be adopted within 18 months after updates or amendments to the *Lower West Coast Water Supply Plan Update* are adopted by the District.

Rules 9J-5.005(2), (5), and (6); 9J-5.011(1) and (2); 9J-5.013(1) and (2), F.A.C.; and Sections 163.3177(6)(a), (c), and (d); 163.3177(2), (3), (4), (8), and (10); and 163.3191, F.S.

Recommendation: Revise Utilities Element Policy 8-B-3 to establish concurrency management system requirements for water supply consistent with the requirements of Section 163.3180(2)(a), F.S. Revise the data and analysis to quantify the projected water supplies in the Town's proposed Work Plan by providing details from the Bulk Water Agreement with Lee

County' Utilities covering water demands, agreement timelines, and level of service. Revise the amendment to adopt plan policies that address the following: (1) adopt the Lee County Work Plan by reference; and (2) address ongoing coordination with Lee County to ensure that water supplies will be sufficient to meet water demand, including coordinating peak seasonal demands and allocations based on consistent population projections and level of service standards, and to provide coordination with Lee County on water conservation that includes implementation plans for a conservation rate structure and a leak detection program for the Town. Revise Policy 14-A-5 to ensure that the future Water Supply Facilities Work Plan amendments will be adopted within 18 months after updates or amendments to the *Lower West Coast Water Supply Plan Update* are adopted by the District.

D. The Department raises the following objections to the proposed Amendment 2008-01-TEXT:

11. Objection (Concurrency Management): The proposed amendments do not revise the Capital Improvements Element to establish concurrency management system requirements for water supply, transportation, and schools that are consistent with Sections 163.3180(2)(a and c) and 1623.3180(13)(e), F.S. Capital Improvements Element Policy 11-B-5 (existing policy) establishes requirements for the Town's concurrency management system. Policy 11-B-5 allows public facilities for transportation and schools to meet concurrency if the necessary facilities are in place and available to serve the development at the time of the issuance of the certificate of occupancy. Policy 11-B-5 is inconsistent with Section 163.3180(2)(c), F.S., because Policy 11-B-5 does not ensure that transportation facilities needed to serve new development shall be in place or under actual construction within 3 years after the local government approves a building permit or its functional equivalent that results in traffic generation. Policy 11-B-5 is inconsistent with Section 163.3180(13)(e), F.S., because Policy 11-B-5 does not ensure that adequate school facilities will be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval, or the functional equivalent. The Town's Comprehensive Plan (Utilities Element Policy 8-B-3) does not establish concurrency management system requirements for water supply consistent with the requirements of Section 163.3180(2)(a), F.S., that prior to the approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier to determine whether adequate water supplies to serve new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent.

Rules 9J-5.005(6); 9J-5.0055; 9J-5.016(3), F.A.C.; and Sections 163.3177(3) 163.3180(2)(a) and (c); 163.3180(13)(e); and 163.3191, F.S.

Recommendation: Revise Capital Improvements Element Policy 11-B-5 to address concurrency for transportation consistent with Section 163.3180(2)(c), F.S. Revise Capital Improvements Element Policy 11-B-5 to address concurrency for schools consistent with the requirements Section 163.3180(13)(e), F.S. Revise Utilities Element Policy 8-B-3 to establish concurrency management system requirements for water supply consistent with the requirements of Section 163.3180(2)(a), F.S.

11. Objection (Data and Analysis): The Capital Improvements Element update to the Five-Year Schedule of Capital Improvements is not supported by appropriate data and analysis addressing

the public facilities (transportation, sanitary sewer, solid waste, parks and recreation, and stormwater/drainage) that are needed to maintain the adopted level of service standards through to fiscal year 2012/13.

Rules 9J-5.005(2), (3), (5), and (6); 9J-5.0055; 9J-5.016(1), (2), and (4); 9J-5.011(1); 9J-5.019; F.A.C.; and Sections 163.3164(32); 163.3177(2), (3), (4), and (8); and 163.3191, F.S.

Recommendation: Support the amendment with data and analysis addressing the five-year projected operating level of service of the public facilities and identify the need for any public facilities improvements that are to meet the adopted level of service standards. If capital improvements are needed to public facilities in order to achieve and maintain the adopted level of service standards, then revise the Five-Year Schedule of Capital Improvements to include financially feasible public facility projects that are needed to achieve and maintain level of service.

II. CONSISTENCY WITH STATE COMPREHENSIVE PLAN

Objection: The proposed Comprehensive Plan amendments related to the objections raised above are not consistent with and do not further the following provisions of the State Comprehensive Plan (Chapter 187, Florida Statutes) for the reasons noted in the objections raised above in Section I:

- (a) Goal 6.a (Public Safety); Policy 6.b.23 (the amendments related to Objection 4);
- (b) Goal 7.a (Water Resources); Policy 7.b.5 (the amendments related to Objections 2, 10, and 11);
- (c) Goal 11.a (Energy); Policies 11.b.4 and 11.b.5 (the amendments related to Objection 3);
- (d) Goal 15.a (Land Use); Policies 15.b.1, 15.b.6; (the amendments related to Objections 1, 10, and 11);
- (e) Goal 16.a (Urban and Downtown Revitalization); Policy 16.b.8; (the amendments related to Objections 5, 6, 7, and 8);
- (f) Goal 17.a (Public Facilities); Policy 7.b.7; (the amendments related to Objections 2);
- (g) Goal 19.a (Transportation); Policies 19.b.3, 19.b.9, and 19.b.13; (the amendments related to Objections 2 and 11); and
- (h) Goal 25.a (Plan Implementation); Policy 25.b.7; (the amendments related to Objections 1, 2, 3, 4, 5, 6, 7, 8, 10, and 11).

Recommendation: Revise the plan amendments as recommended for the objections raised above.