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APR - 2 2007

COMMUNITY DEVELOPMENT

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Lee County Board of County Commissioners  
Department of Community Development  
Division of Planning  
Post Office Box 398  
Fort Myers, FL 33902-0398  
Telephone: (239) 479-8585  
FAX: (239) 479-8519

## APPLICATION FOR A COMPREHENSIVE PLAN AMENDMENT

(To be completed at time of intake)

DATE REC'D 4-4-07

REC'D BY: [Signature]

APPLICATION FEE N/A

TIDEMARK NO: CPA2007-00001

### THE FOLLOWING VERIFIED:

Zoning ☐

Commissioner District ☐

Designation on FLUM ☐

(To be completed by Planning Staff)

Plan Amendment Cycle: ☒ Normal ☐ Small Scale ☐ DRI ☐ Emergency

Request No: Request

### APPLICANT PLEASE NOTE:

Answer all questions completely and accurately. Please print or type responses. If additional space is needed, number and attach additional sheets. The total number of sheets in your application is: 9

Submit 6 copies of the complete application and amendment support documentation, including maps, to the Lee County Division of Planning. Additional copies may be required for Local Planning Agency, Board of County Commissioners hearings and the Department of Community Affairs' packages.

I, the undersigned owner or authorized representative, hereby submit this application and the attached amendment support documentation. The information and documents provided are complete and accurate to the best of my knowledge.

4/2/07

[Signature]

DATE

SIGNATURE OF OWNER OR AUTHORIZED REPRESENTATIVE

RECEIVED  
APR - 4 2007

COMMUNITY DEVELOPMENT

2007-00001

**I. APPLICANT/AGENT/OWNER INFORMATION**

|  |       |              |
|--|-------|--------------|
| APPLICANT                                    |       |              |
| East Lee County Council                      |       |              |
| ADDRESS                                      |       |              |
| c/o Cella Molnar & Assoc. 1631 Hendry St.    |       |              |
| CITY   | STATE | ZIP          |
| Fort Myers                                   | FL    | 33901        |
| TELEPHONE NUMBER                             |       | FAX NUMBER   |
| 239-337-1071                                 |       | 239-337-1076 |
| AGENT*                                       |       |              |
| Kris Cella, McBurnie ELCC Board of Directors |       |              |
| ADDRESS                                      |       |              |
| Same as above                                |       |              |
| CITY   | STATE | ZIP          |
| TELEPHONE NUMBER                             |       | FAX NUMBER   |
| OWNER(s) OF RECORD                           |       |              |
| Caloosahatchee Shores Community Plan c/o     |       |              |
| East Lee County Council                      |       |              |
| ADDRESS                                      |       |              |
| same as above                                |       |              |
| CITY   | STATE | ZIP          |
| TELEPHONE NUMBER                             |       | FAX NUMBER   |

Name, address and qualification of additional planners, architects, engineers, environmental consultants, and other professionals providing information contained in this application.

\* This will be the person contacted for all business relative to the application.

**II. REQUESTED CHANGE (Please see Item 1 for Fee Schedule)**

A. TYPE: (Check appropriate type)

☒ Text Amendment

☐ Future Land Use Map Series Amendment  
(Maps 1 thru 21)

List Number(s) of Map(s) to be amended  
\_\_\_\_\_

B. SUMMARY OF REQUEST (Brief explanation):

Amend the Calusa Hatchee Community  
Plan text see attached.

**III. PROPERTY SIZE AND LOCATION OF AFFECTED PROPERTY  
(for amendments affecting development potential of property)**

A. Property Location:

1. Site Address: \_\_\_\_\_

see attached map

2. STRAP(s): \_\_\_\_\_

B. Property Information

Total Acreage of Property: \_\_\_\_\_

Total Acreage included in Request: \_\_\_\_\_

Area of each Existing Future Land Use Category: \_\_\_\_\_

Total Uplands: \_\_\_\_\_

Total Wetlands: \_\_\_\_\_

Current Zoning: \_\_\_\_\_

Current Future Land Use Designation: \_\_\_\_\_

Existing Land Use: \_\_\_\_\_

April 2, 2007  
Lee County Department of Community Development Services  
1500 Monroe Street  
Fort Myers, Florida 33901

Subject: Caloosahatchee Shores Community Plan – Text Amendment Requested

On January 22, 2007, at the regularly scheduled meeting of the East Lee County Council, the Council unanimously voted to amend the text of the referenced community plan with the following language:

"One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' rural character and rural land use where it currently exists. Therefore no land use map amendments to the remaining rural lands category will be permitted after {scrivener will insert effective date of policy}, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners."

Kris Cella McGuire  
Board of Directors  
East Lee County Council



- C. State if the subject property is located in one of the following areas and if so how does the proposed change effect the area:

Lehigh Acres Commercial Overlay: \_\_\_\_\_

Airport Noise Zone 2 or 3: \_\_\_\_\_

Acquisition Area: \_\_\_\_\_

Joint Planning Agreement Area (adjoining other jurisdictional lands): \_\_\_\_\_

Community Redevelopment Area: \_\_\_\_\_

- D. Proposed change for the Subject Property:

No change to remain Rural Land Use

- E. Potential development of the subject property:

1. Calculation of maximum allowable development under existing FLUM:

Residential Units/Density \_\_\_\_\_

Commercial intensity \_\_\_\_\_

Industrial intensity \_\_\_\_\_

2. Calculation of maximum allowable development under proposed FLUM:

Residential Units/Density \_\_\_\_\_

Commercial intensity \_\_\_\_\_

Industrial intensity \_\_\_\_\_

#### IV. AMENDMENT SUPPORT DOCUMENTATION

At a minimum, the application shall include the following support data and analysis. These items are based on comprehensive plan amendment submittal requirements of the State of Florida, Department of Community Affairs, and policies contained in the Lee County Comprehensive Plan. Support documentation provided by the applicant will be used by staff as a basis for evaluating this request. To assist in the preparation of amendment packets, the applicant is encouraged to provide all data and analysis electronically. (Please contact the Division of Planning for currently accepted formats)

- A. General Information and Maps

*NOTE: For each map submitted, the applicant will be required to provide a reduced map (8.5" x 11") for inclusion in public hearing packets.*

3. Requests involving lands in critical areas for future water supply must be evaluated based on policy 2.4.2.
4. Requests moving lands from Density Reduction/Groundwater Resource must fully address Policy 2.4.3 of the Lee Plan Future Land Use Element.

G. Justify the proposed amendment based upon sound planning principles. Be sure to support all conclusions made in this justification with adequate data and analysis.

**Item 1: Fee Schedule**

|  |                                     |
|--|-------------------------------------|
| Map Amendment Flat Fee                   | \$2,000.00 each                     |
| Map Amendment > 20 Acres                 | \$2,000.00 and \$20.00 per 10 acres |
| Small Scale Amendment (10 acres or less) | \$1,500.00 each                     |
| Text Amendment Flat Fee                  | \$2,500.00 each                     |

**AFFIDAVIT**

I, Kris Cella McGuire, certify that I am the owner or authorized representative of the property described herein, and that all answers to the questions in this application and any sketches, data, or other supplementary matter attached to and made a part of this application, are honest and true to the best of my knowledge and belief. I also authorize the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made through this application.

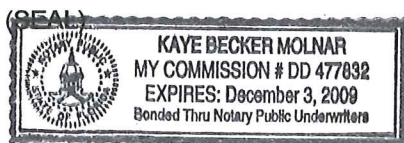
Kris Cella McGuire  
Signature of owner or owner-authorized agent

4/2/07  
Date

Kris Cella McGuire  
Typed or printed name

STATE OF FLORIDA )  
COUNTY OF LEE )

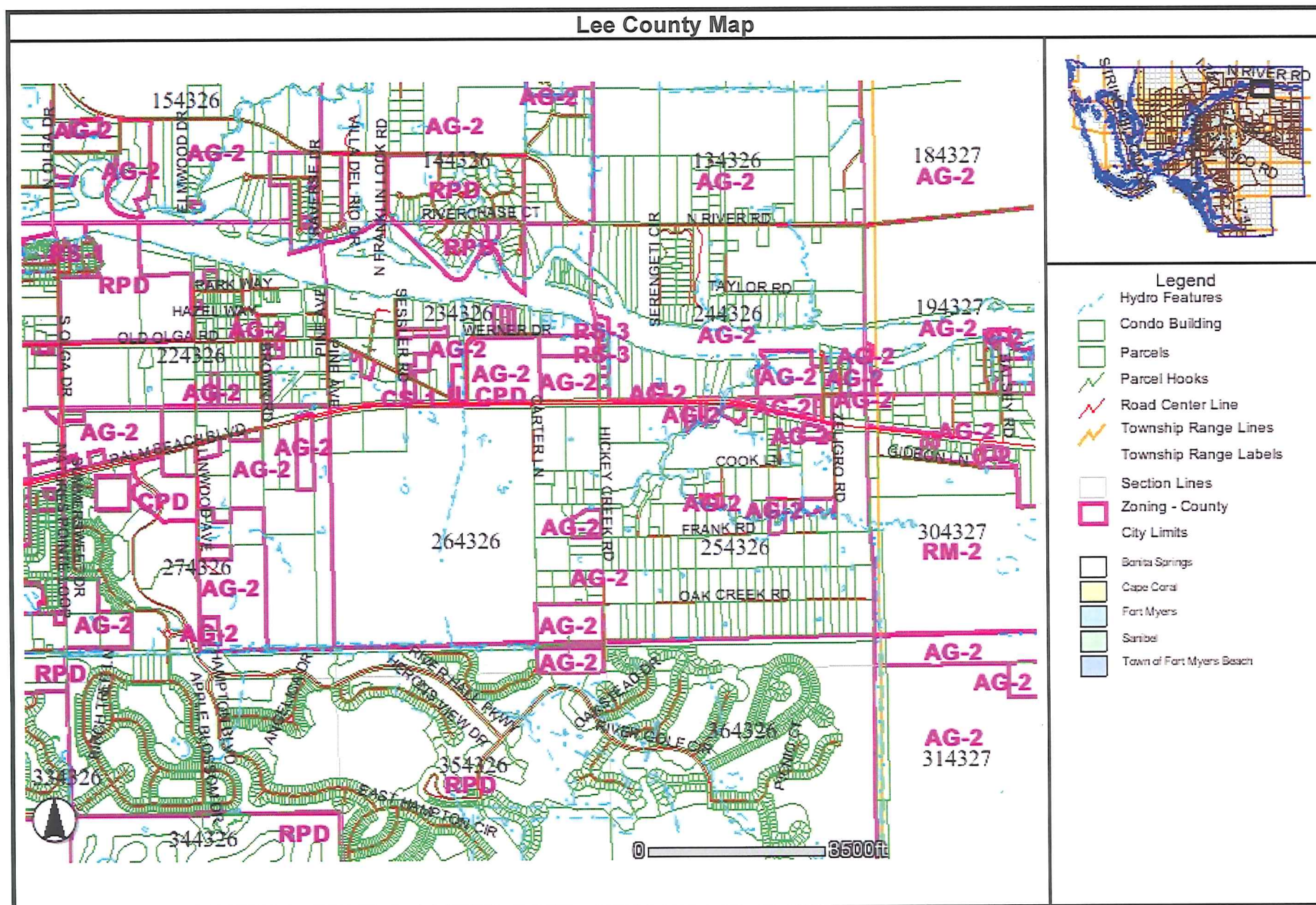
The foregoing instrument was certified and subscribed before me this 2nd day of April, 2007,  
by Kris Cella McGuire, who is personally known to me or who has produced  
as identification.



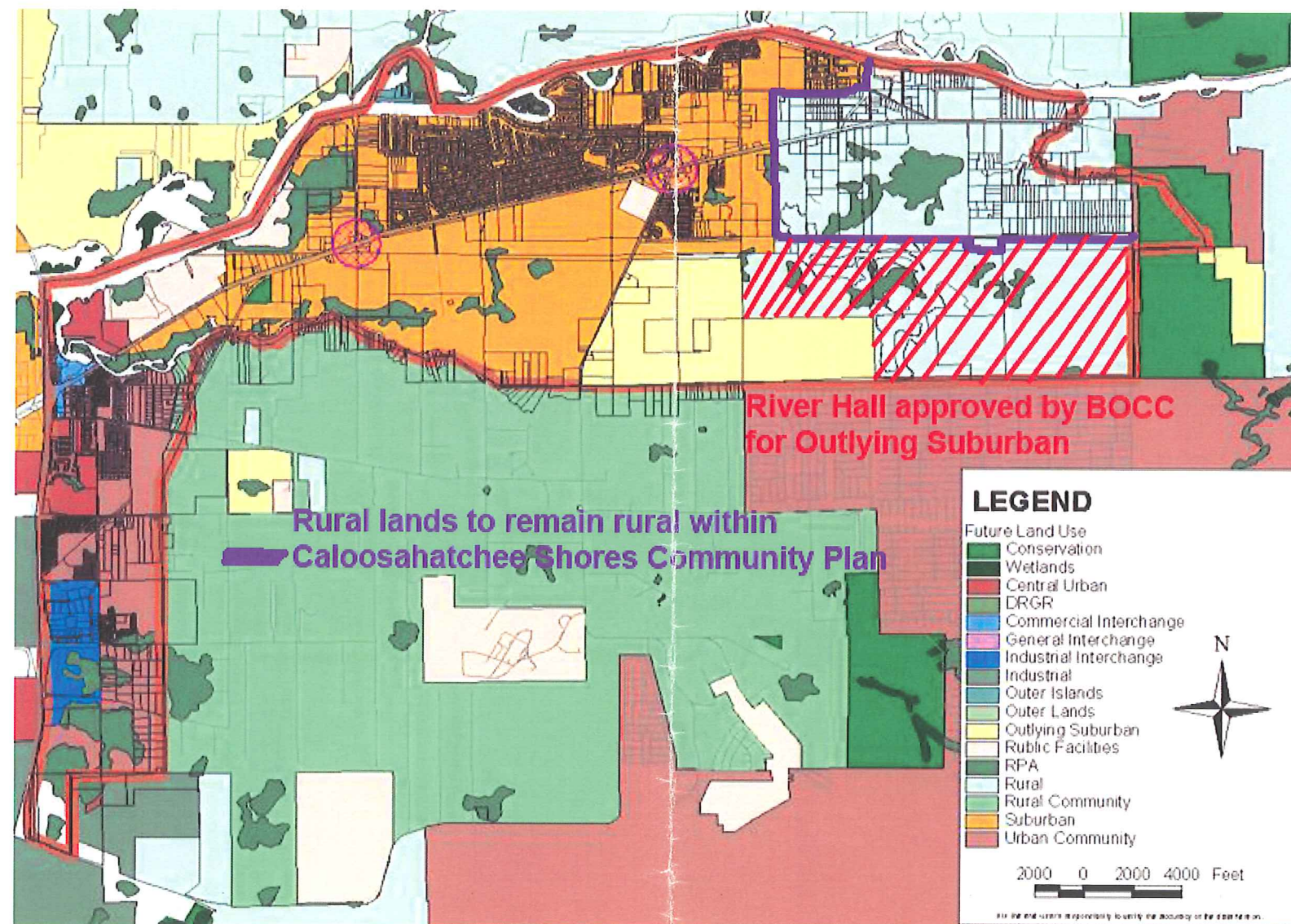
Kaye Becker Molnar  
Signature of notary public

Kaye Becker Molnar  
Printed name of notary public

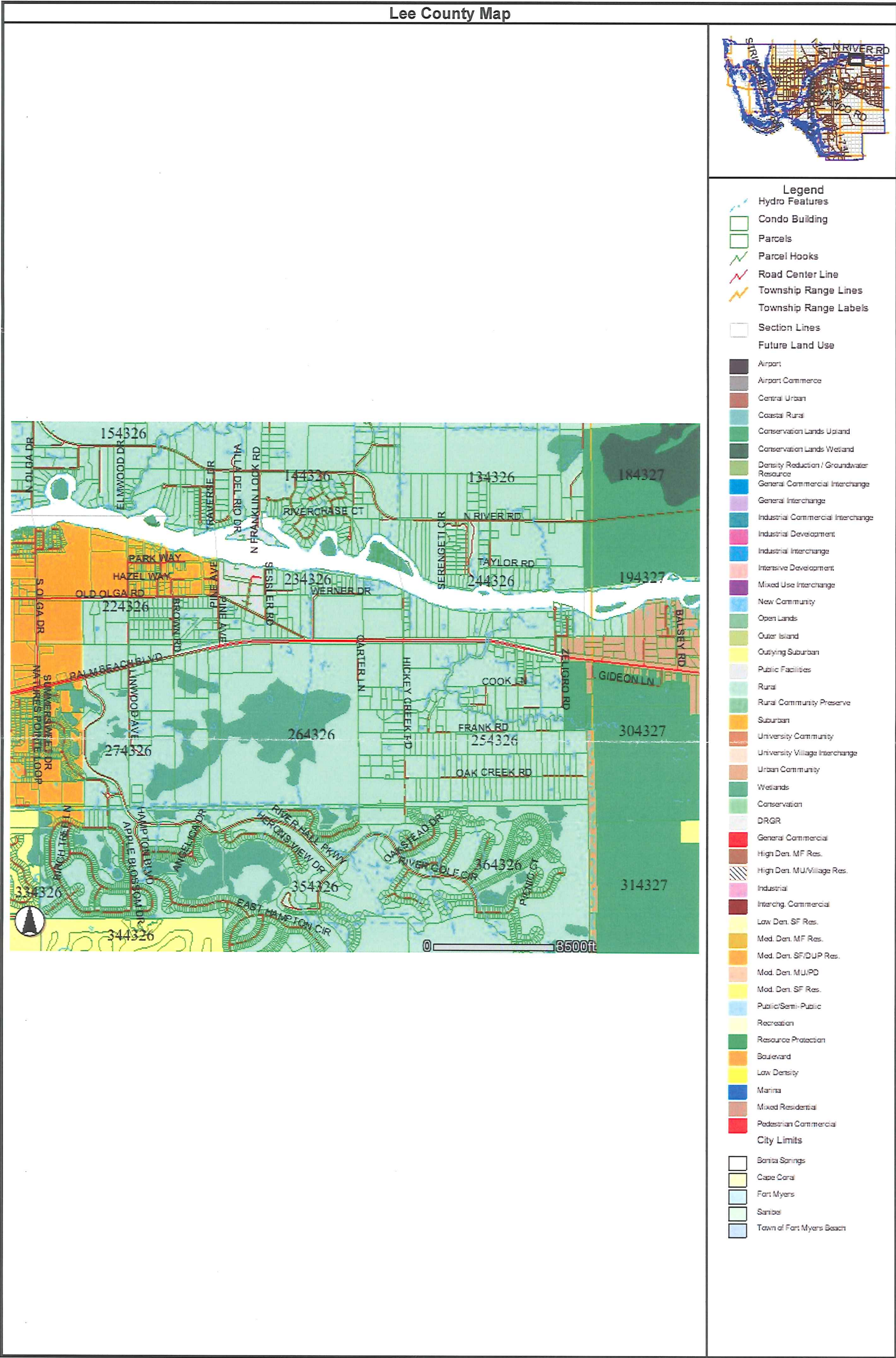










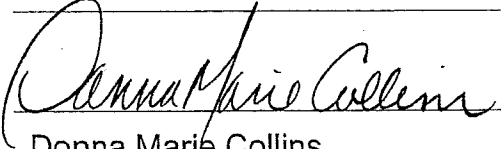




**MEMORANDUM**  
**FROM THE**  
**OFFICE OF COUNTY ATTORNEY**

**DATE:** November 2, 2007

**To:** Jim Mudd  
Planning Division

**FROM:**   
Donna Marie Collins  
Assistant County Attorney

**RE: Caloosahatchee Shores Community Plan**  
**CPA2007-00001**  
**LU-07-10-2090.1.5.**

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Thank you for forwarding the application filed by the East Lee County Council to amend the Caloosahatchee Shores Community Plan. The Office of the County Attorney has reviewed the proposed text amendment. Please be advised that the proposed limitation on further amendments to the Future Land Use Map for lands currently designated as Rural, will result in liability under the Bert J. Harris, Jr., Private Property Rights Protection Act. For this reason, it is our recommendation that the Planning Division prepare an inventory of the properties that will be affected by the proposed limitation so that the Board will be informed of the magnitude of property affected by the proposed limitation. This information will also be necessary to evaluate the scope of the County's exposure to liability under the Act. The inventory should include those properties currently designated as Rural on the Future Land Use Map located within the boundaries of the Caloosahatchee Shores Community.

A detailed examination of the implications of the proposed plan amendment are set forth in the attached memorandum prepared by Robert Spickerman of this Office. If I may be of further assistance, do not hesitate to contact me.


DMC/amp  
Attachment

cc: Matt Noble, Planning Division w/attachment

**MEMORANDUM  
FROM THE  
OFFICE OF COUNTY ATTORNEY**

DATE: October 24, 2007

TO: Donna Marie Collins  
Assistant County Attorney

FROM:   
Robert Spickerman  
Assistant County Attorney

RE: Caloosahatchee Shores Community Plan - Proposed Text Amendment  
LU-07-10-2090.I.5.  
CPA 2007-00001

**Issue:**

Whether the proposed amendment to the Caloosahatchee Shores Community Plan raises any potential liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act.

**Brief Answer:**

The proposed text amendment for the Caloosahatchee Shores Community Plan may create liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act. The sources for potential liability are the proposed amendment's use of the term "rural character" and the prohibition against intensifying the future land use of properties currently existing within the rural lands future land use category.

**Analysis:**

On January 22, 2007, at the regularly scheduled meeting of the East Lee County Council, the Council unanimously voted to amend the text of the Caloosahatchee Shores Community Plan with the following language:

One important aspect of the Caloosahatchee Shores Community Plan goal is to retain it's rural character and rural land use where it currently exists. Therefore, no land use map amendments to the remaining rural lands category will be permitted after (scrivener will insert affective date of policy), unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

The main issue is whether under the Bert J. Harris, Jr., Private Property Rights Protection Act (Act), Lee County may be liable to property owners detrimentally affected by the proposed plan amendment. The Act is codified in the Florida Statutes as Fla. Stat. §70.001. The Act states, in part, that when a specific action of a governmental entity has inordinately burdened an existing use of real property or vested right to a specific use of real property, the property owner of that real property is entitled to relief. The Act is premised on a belief that the proper balance between protection of public good and private property interests can best be achieved on a case by case basis. (Article on Private Property Rights, Local Government Law Section Newsletter). As such, the terms used by the Act are unclear and broadly defined.

The terms "inordinate burden" or "inordinately burdened" are defined by § 70.001(3)(e) as an action of one or more governmental entities restricting or limiting the use of real property such that the property owner suffers a permanent loss of a reasonable investment backed expectation for an existing use of the landowner's real property or a vested right to a specific use of the landowner's real property.

Section 70.001(3)(b) defines existing use as the actual, present use of real property or a use that is "reasonably foreseeable though non-speculative." In order to be reasonably foreseeable though non-speculative, the use must be suitable for the real property, must be compatible with the adjacent lands, and must create a greater fair market value in the real property that is greater than the fair market value of the actual, present use of the real property. Fla. Stat. §70.001(3)(b).

The limits and impacts of the Act are still being developed by the courts. As such, a liberal interpretation of the Act should be used when evaluating potential liability. The Act's definition of existing use as including a use that is "reasonably foreseeable though non-speculative" is the most problematic for the proposed amendment.

The first issue raised by the proposed amendment arises from the use of the term "rural character". The amendment identifies a goal of the Caloosahatchee Shores Community Plan as being to retain the rural character of the Community. The use of the term "rural character" is excessively vague. If the term is being used merely as identifying a goal and the only means to achieve the goal is the prohibition against intensifying the future land use of the rural lands future land use categories, then the use of the term "rural character" is acceptable. If however, other means in addition to the aforementioned prohibition are contemplated for the preservation of the Community's rural character, then the use of the term is not acceptable. Either way, a more detailed explanation of the use of the term "rural character" is necessary for further liability analysis.

The second issue raised by the proposed amendment deals with the prohibition against land use map amendments to properties that are subject to a future rural land use category within the boundaries of the Caloosahatchee Shores Community. The broad definition of "existing use" to include a use that is reasonably foreseeable though non-speculative, provides a property owner

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

with a possible avenue for recovery against Lee County pursuant to the Act. As stated before, "reasonably foreseeable though non-speculative" means that the use must be suitable for the real property, must be compatible with the adjacent land, and must create a greater fair market value in the real property that is greater than the fair market value of the actual, present use of the real property. Fla. Stat. §70.001(3)(b). In Palm Beach Polo, Inc. V. The Village of Wellington, 918 So.2d 988(Fla. 4DCA 2006), a developer purchased a large tract of property at a bankruptcy auction. At the time of the bankruptcy sale, the property was subject to a development plan requiring the preservation and restoration of a forest on the property. See *id* at 991. The Village of Wellington subsequently identified the subject forest property as conservation in its comprehensive plan. See *id* at 992. The developer protested the conservation designation and made a claim pursuant to the Bert J. Harris Act. See *id*. The court concluded that since the developer purchased the property subsequent to the required preservation and restoration of the forest property, the developer failed to establish any reasonable investment-backed expectations with respect to development of the forest property. See *id* at 993.

Other than rural related future land uses, the Caloosahatchee Shores Community also includes suburban, outlying suburban, central urban, urban community, and public facilities future land uses. The Caloosahatchee Shores Community also contains many major roadways including, Palm Beach Blvd., Buckingham Road, Orange River Blvd. and Tice Street. Also, the Caloosahatchee Shores Community is bordered on the West by I-75. Some of the properties within the rural lands future land use categories border land within a more intense future land use category. With increased development, there will be increased demand for intensifying the use of properties, especially near the transportation corridors previously identified within the Caloosahatchee Shores Community. Current owner's of property within the rural land use categories of the Caloosahatchee Shores Community will be able to provide a stronger argument regarding reasonable investment-backed expectations than that made by the developer in the Wellington case discussed above. An owner of property located within a rural future land use category may not find it unreasonable to foresee a use of their property that is more intense than the rural lands future land use category will allow. The proposed amendment would prevent that property owner from amending the future land use map as contemplated by policy 2.4.1 of the Lee Plan.

### **Conclusion:**

The proposed amendment to the Caloosahatchee Shores Community Plan may create potential liability for Lee County pursuant to the Act. As the Act is premised on the belief that the proper balance between protection of the public good and private property interests can best be achieved on a case by case basis, critical terms used in the Act are broadly defined. The definition for the terms "inordinately burdened" and "existing use" are the most problematic.

Donna Marie Collins  
October 24, 2007  
Page 4

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

The proposed amendment's use of the term "rural character" must be further defined in order to properly evaluate any impact the Act may have on the amendment. The prohibition against amending the future land use map to change a future land use category currently identified as rural, may create future liability for Lee County pursuant to the Act.

RDS/amp



**CPA2007-01  
CALOOSA HATCHEE SHORES  
BoCC SPONSORED  
AMENDMENT  
TO THE**

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**LEE COUNTY COMPREHENSIVE PLAN**

---

**THE LEE PLAN**

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**LPA Public Hearing Document  
for the  
November 19, 2007 Public Hearing**

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*Lee County Planning Division  
1500 Monroe Street  
P.O. Box 398  
Fort Myers, FL 33902-0398  
(239) 533-8585*

**October 25, 2007**

**LEE COUNTY  
DIVISION OF PLANNING  
STAFF REPORT FOR  
COMPREHENSIVE PLAN AMENDMENT  
CPA2007-00001**

☒

**Text Amendment**

☐

**Map Amendment**

|                                     |   |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <b>This Document Contains the Following Reviews:</b>                                    |
| <input checked="" type="checkbox"/> | <b>Staff Review</b>   |
| <input type="checkbox"/>            | <b>Local Planning Agency Review and Recommendation</b>                                  |
| <input type="checkbox"/>            | <b>Board of County Commissioners Hearing for Transmittal</b>                            |
| <input type="checkbox"/>            | <b>Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report</b> |
| <input type="checkbox"/>            | <b>Board of County Commissioners Hearing for Adoption</b>                               |

STAFF REPORT PREPARATION DATE: October 25, 2007

**PART I - BACKGROUND AND STAFF RECOMMENDATION**

**A. SUMMARY OF APPLICATION**

**1. SPONSOR/APPLICANT:**

**A. SPONSOR:**

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

**B. APPLICANT**

THE EAST LEE COUNTY COUNCIL  
REPRESENTED BY KRIS CELLA McGUIRE

**2. REQUEST:**

Amend the Future Land Use Element of the Lee Plan, Goal 21, to add a policy that provides that no land use map amendments to the remaining rural lands category will be permitted unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

POLICY 21.1.4: One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' rural character and rural land use where it currently exists. Therefore no land use map

amendments to the remaining rural lands category will be permitted after {scrivener will insert effective date of policy}, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

## **B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:**

**1. RECOMMENDATION:** Planning staff recommends that the Board of County Commissioners transmit this proposed amendment.

## **2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

- The Caloosahatchee Shores Community Plan was submitted to Lee County in September, 2002.
- The Caloosahatchee Shores Community Plan resulted in a Lee Plan amendment adopted in October, 2003.
- The Lee Plan amendment specific to Caloosahatchee Shores is now Goal 21 of the Lee Plan.
- Goal 21 was amended on May 16, 2007 when a new Policy 21.1.4 was adopted.
- The East Lee County Council submitted an application to make a second amendment to Goal 21 in April, 2007.
- This amendment would add a new Policy 21.1.5 to Goal 21 of the Lee Plan.

## **C. BACKGROUND INFORMATION**

The Caloosahatchee Shores Community Plan was undertaken by the Caloosahatchee Shores Community Planning Panel working as a sub group of the ELCC. The planning area encompasses that portion of the Fort Myers Shores planning community located east of I-75. The community plan was financed, in part, with \$25,000 of community planning funds from Lee County.

The Caloosahatchee Shores community plan was submitted to Lee County in September, 2002. The plan contained a Goal, Objectives, and Policies. The Goal for Caloosahatchee Shores was adopted into the Lee Plan in October, 2003 and is now Goal 21.

The East Lee County Council has continued to work on improvements to Goal 21, and submitted an amendment to the Goal in September, 2005 that was adopted as Policy 21.1.4 on May 16, 2007. This second proposed amendment to Goal 21 would add a new Policy 21.1.5.

## **A. STAFF DISCUSSION**

Goal 21 of the Lee Plan is intended to express the communities desire to protect the existing character of the community and to maintain the existing rural character of the Caloosahatchee shores area. Goal 21 reads as follows:

**GOAL 21: CALOOSAHATCHEE SHORES:** *To protect the existing character, natural resources and quality of life in Caloosahatchee Shores, while promoting new development, redevelopment and maintaining a more rural identity for the neighborhoods east of I-75 by establishing minimum aesthetic requirements, planning the location and intensity of future commercial and residential uses, and providing incentives for redevelopment, mixed use development and pedestrian safe environments. This Goal and subsequent objectives and policies apply to the Caloosahatchee Shores boundaries as depicted on Map 1, page 2 of 5 in the Appendix. (Added by Ordinance No. 03-21)*

This proposed amendment is consistent with Goal 21 of the Lee Plan and may help further the intent of the Caloosahatchee Shores community. This proposed new Policy contains language very similar to Objective 17.1 pertaining to the Buckingham community. Objective 17.1 of the Lee Plan reads:

**OBJECTIVE 17.1: LAND USE.** *The primary land use designation for the Buckingham area is "Rural Community Preserve." Public Facilities have also been designated as appropriate. After the adoption of this amendment, no land in Buckingham will be changed to a land use category more intense than Rural Community Preserve (including Public Facilities) unless a finding of overriding public necessity is determined by three members of the Board of County Commissioners. (Amended by Ordinance No. 00-22)*

Planning staff recommends that the Board of County Commissioners transmit this proposed amendment.

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

DATE OF PUBLIC HEARING: November 19, 2007

**A. LOCAL PLANNING AGENCY REVIEW**

**B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT  
SUMMARY**

**1. RECOMMENDATION:**

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

**C. VOTE:**

**NOEL ANDRESS**

\_\_\_\_\_

**DEREK BURR**

\_\_\_\_\_

**LES COCHRAN**

\_\_\_\_\_

**RONALD INGE**

\_\_\_\_\_

**CARLETON RYFFEL**

\_\_\_\_\_

**RAE ANN WESSEL**

\_\_\_\_\_

**LELAND TAYLOR**

\_\_\_\_\_



**PART IV - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: \_\_\_\_\_

**A. BOARD REVIEW:**

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

**C. VOTE:**

**A. BRIAN BIGELOW**

**TAMMARA HALL**

**ROBERT P. JAMES**

**RAY JUDAH**

**FRANKLIN B. MANN**

|       |
|-------|
| _____ |
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**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,  
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: \_\_\_\_\_

**A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS**

**B. STAFF RESPONSE**

**PART VI - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: \_\_\_\_\_

**A. BOARD REVIEW:**

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

**C. VOTE:**

**A. BRIAN BIGELOW**

**TAMMARA HALL**

**ROBERT P. JAMES**

**RAY JUDAH**

**FRANKLIN B. MANN**

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RECEIVED  
APR - 2 2007



LEE COUNTY  
SOUTHWEST FLORIDA

COMMUNITY DEVELOPMENT

Lee County Board of County Commissioners  
Department of Community Development  
Division of Planning  
Post Office Box 398  
Fort Myers, FL 33902-0398  
Telephone: (239) 479-8585  
FAX: (239) 479-8519

**APPLICATION FOR A  
COMPREHENSIVE PLAN AMENDMENT**

(To be completed at time of intake)

DATE REC'D \_\_\_\_\_ REC'D BY: \_\_\_\_\_

APPLICATION FEE \_\_\_\_\_ TIDEMARK NO: \_\_\_\_\_

**THE FOLLOWING VERIFIED:**

Zoning ☐

Commissioner District ☐

Designation on FLUM ☐

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(To be completed by Planning Staff)

Plan Amendment Cycle: ☐ Normal ☐ Small Scale ☐ DRI ☐ Emergency

Request No: \_\_\_\_\_

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4/2/07

DATE

*Chris Cella McDaniel*

SIGNATURE OF OWNER OR AUTHORIZED REPRESENTATIVE

RECEIVED  
APR - 4 2007

COMMUNITY DEVELOPMENT

2007-00001

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| East Lee County Council                                 |       |              |
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| 239-337-1071  |       | 239-337-1076 |
| AGENT*  |       |              |
| Chris Cella, <sup>McGuire</sup> ELCC Board of Directors |       |              |
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| ADDRESS   |       |              |
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Name, address and qualification of additional planners, architects, engineers, environmental consultants, and other professionals providing information contained in this application.

\* This will be the person contacted for all business relative to the application.



**II. REQUESTED CHANGE (Please see Item 1 for Fee Schedule)**

A. TYPE: (Check appropriate type)

☒ Text Amendment

☐ Future Land Use Map Series Amendment  
(Maps 1 thru 21)

List Number(s) of Map(s) to be amended  
\_\_\_\_\_

B. SUMMARY OF REQUEST (Brief explanation):

Amend the Calousa Hatchee Community  
Plan text see attached.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**III. PROPERTY SIZE AND LOCATION OF AFFECTED PROPERTY  
(for amendments affecting development potential of property)**

A. Property Location:

1. Site Address: see attached map  
2. STRAP(s): \_\_\_\_\_

B. Property Information

Total Acreage of Property: \_\_\_\_\_

Total Acreage included in Request: \_\_\_\_\_

Area of each Existing Future Land Use Category: \_\_\_\_\_

Total Uplands: \_\_\_\_\_

Total Wetlands: \_\_\_\_\_

Current Zoning: \_\_\_\_\_

Current Future Land Use Designation: \_\_\_\_\_

Existing Land Use: \_\_\_\_\_

April 2, 2007  
Lee County Department of Community Development Services  
1500 Monroe Street  
Fort Myers, Florida 33901

Subject: Caloosahatchee Shores Community Plan – Text Amendment Requested

On January 22, 2007, at the regularly scheduled meeting of the East Lee County Council, the Council unanimously voted to amend the text of the referenced community plan with the following language:

"One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' rural character and rural land use where it currently exists. Therefore no land use map amendments to the remaining rural lands category will be permitted after {scrivener will insert effective date of policy}, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners."

Kris Cella McGuire  
Board of Directors  
East Lee County Council

- C. State if the subject property is located in one of the following areas and if so how does the proposed change effect the area:

Lehigh Acres Commercial Overlay: \_\_\_\_\_

Airport Noise Zone 2 or 3: \_\_\_\_\_

Acquisition Area: \_\_\_\_\_

Joint Planning Agreement Area (adjoining other jurisdictional lands): \_\_\_\_\_

Community Redevelopment Area: \_\_\_\_\_

- D. Proposed change for the Subject Property:

No change to remain Rural Land Use

- E. Potential development of the subject property:

1. Calculation of maximum allowable development under existing FLUM:

Residential Units/Density \_\_\_\_\_

Commercial intensity \_\_\_\_\_

Industrial intensity \_\_\_\_\_

2. Calculation of maximum allowable development under proposed FLUM:

Residential Units/Density \_\_\_\_\_

Commercial intensity \_\_\_\_\_

Industrial intensity \_\_\_\_\_

#### IV. AMENDMENT SUPPORT DOCUMENTATION

At a minimum, the application shall include the following support data and analysis. These items are based on comprehensive plan amendment submittal requirements of the State of Florida, Department of Community Affairs, and policies contained in the Lee County Comprehensive Plan. Support documentation provided by the applicant will be used by staff as a basis for evaluating this request. To assist in the preparation of amendment packets, the applicant is encouraged to provide all data and analysis electronically. (Please contact the Division of Planning for currently accepted formats)

A. General Information and Maps

*NOTE: For each map submitted, the applicant will be required to provide a reduced map (8.5" x 11") for inclusion in public hearing packets.*

3. Requests involving lands in critical areas for future water supply must be evaluated based on policy 2.4.2.
  4. Requests moving lands from Density Reduction/Groundwater Resource must fully address Policy 2.4.3 of the Lee Plan Future Land Use Element.
- G. Justify the proposed amendment based upon sound planning principles. Be sure to support all conclusions made in this justification with adequate data and analysis.

**Item 1: Fee Schedule**

|  |                                     |
|--|-------------------------------------|
| Map Amendment Flat Fee                   | \$2,000.00 each                     |
| Map Amendment > 20 Acres                 | \$2,000.00 and \$20.00 per 10 acres |
| Small Scale Amendment (10 acres or less) | \$1,500.00 each                     |
| Text Amendment Flat Fee                  | \$2,500.00 each                     |

**AFFIDAVIT**

I, Kris Cella McGuire certify that I am the owner or authorized representative of the property described herein, and that all answers to the questions in this application and any sketches, data, or other supplementary matter attached to and made a part of this application, are honest and true to the best of my knowledge and belief. I also authorize the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made through this application.

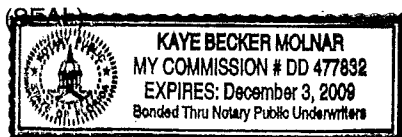
Kris Cella McGuire  
Signature of owner or owner-authorized agent

4/2/07  
Date

Kris Cella McGuire  
Typed or printed name

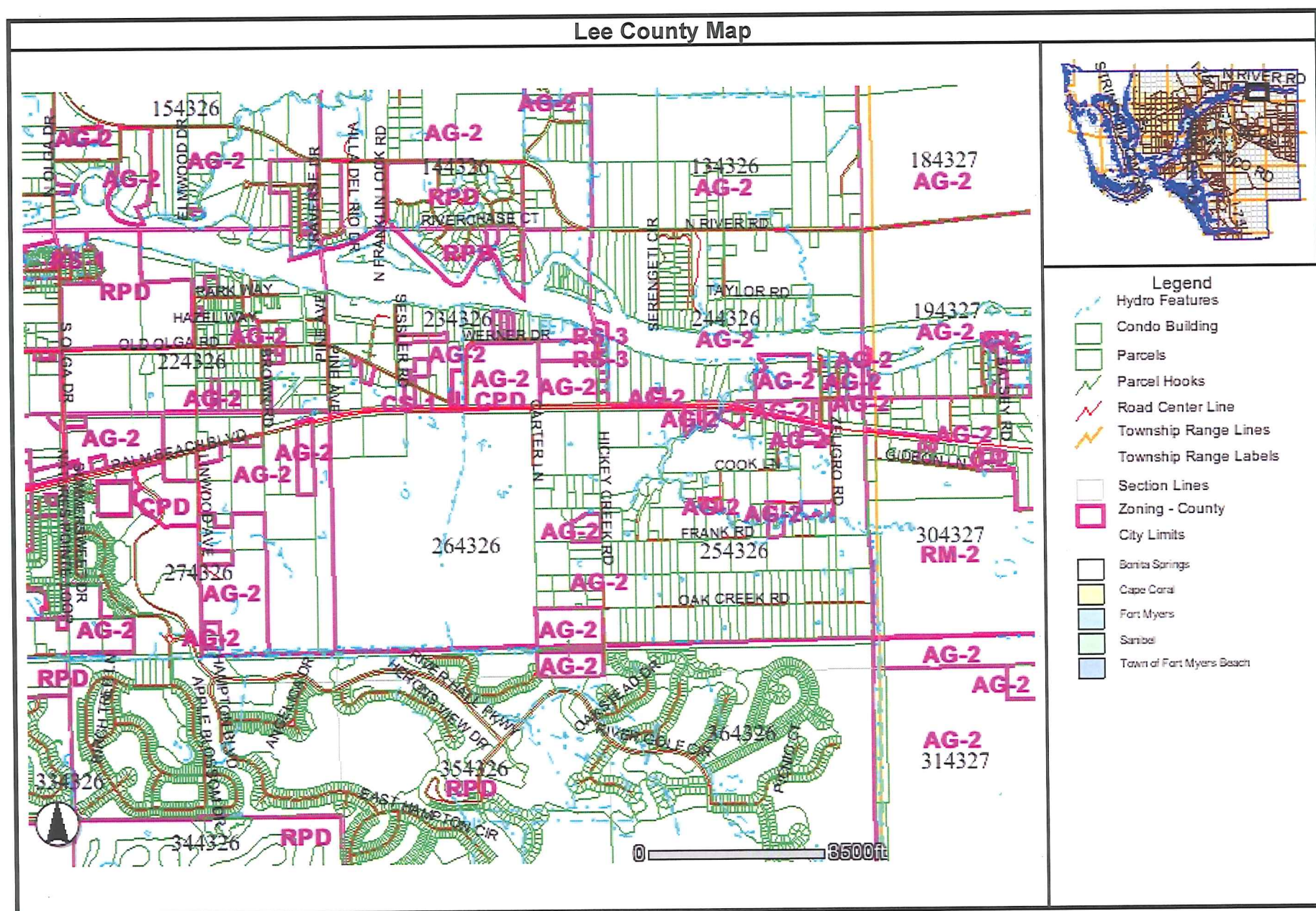
STATE OF FLORIDA )  
COUNTY OF LEE )

The foregoing instrument was certified and subscribed before me this 2nd day of April 2007, by Kris Cella McGuire, who is personally known to me or who has produced as identification.

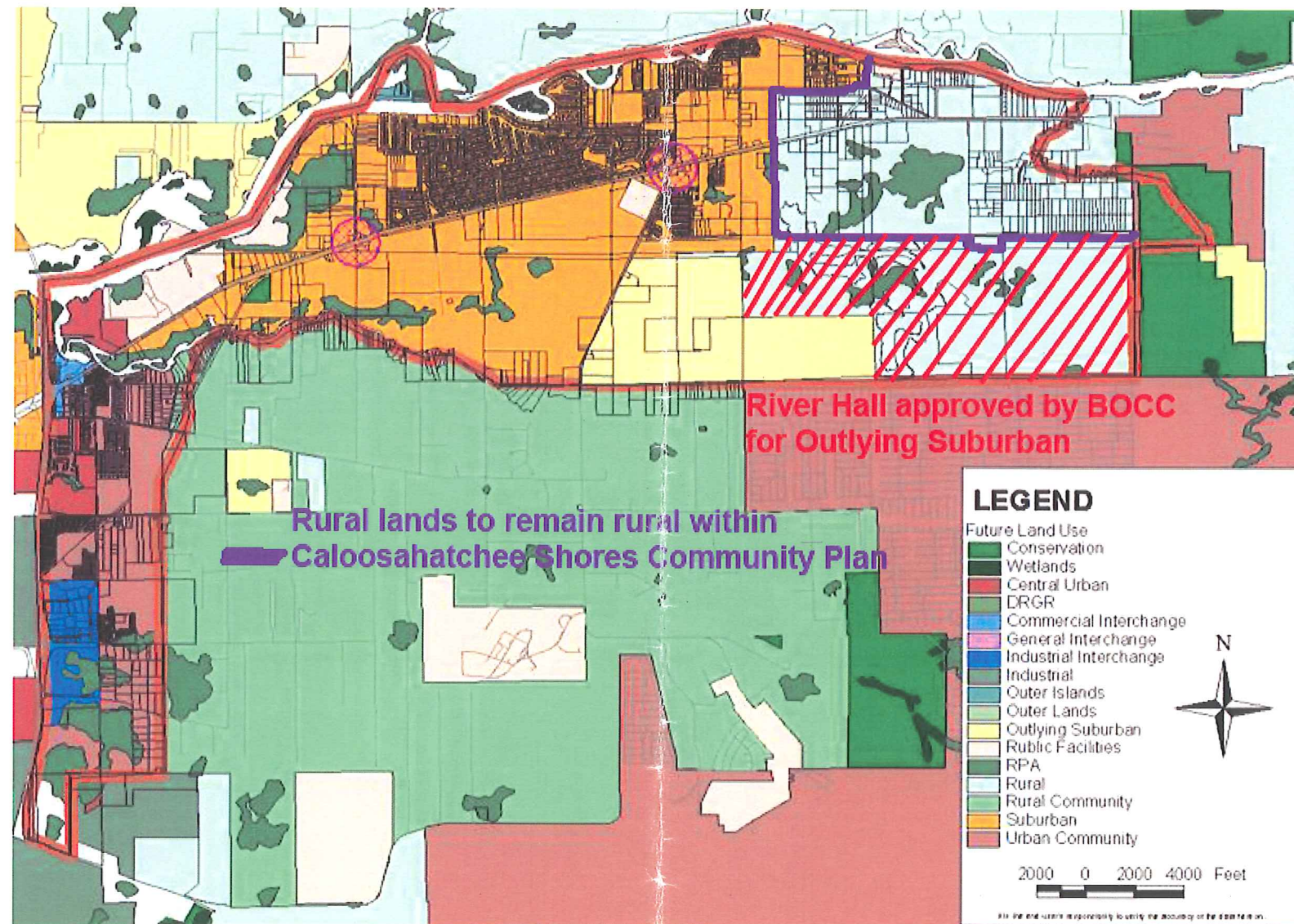


Kaye Becker Molnar  
Signature of notary public

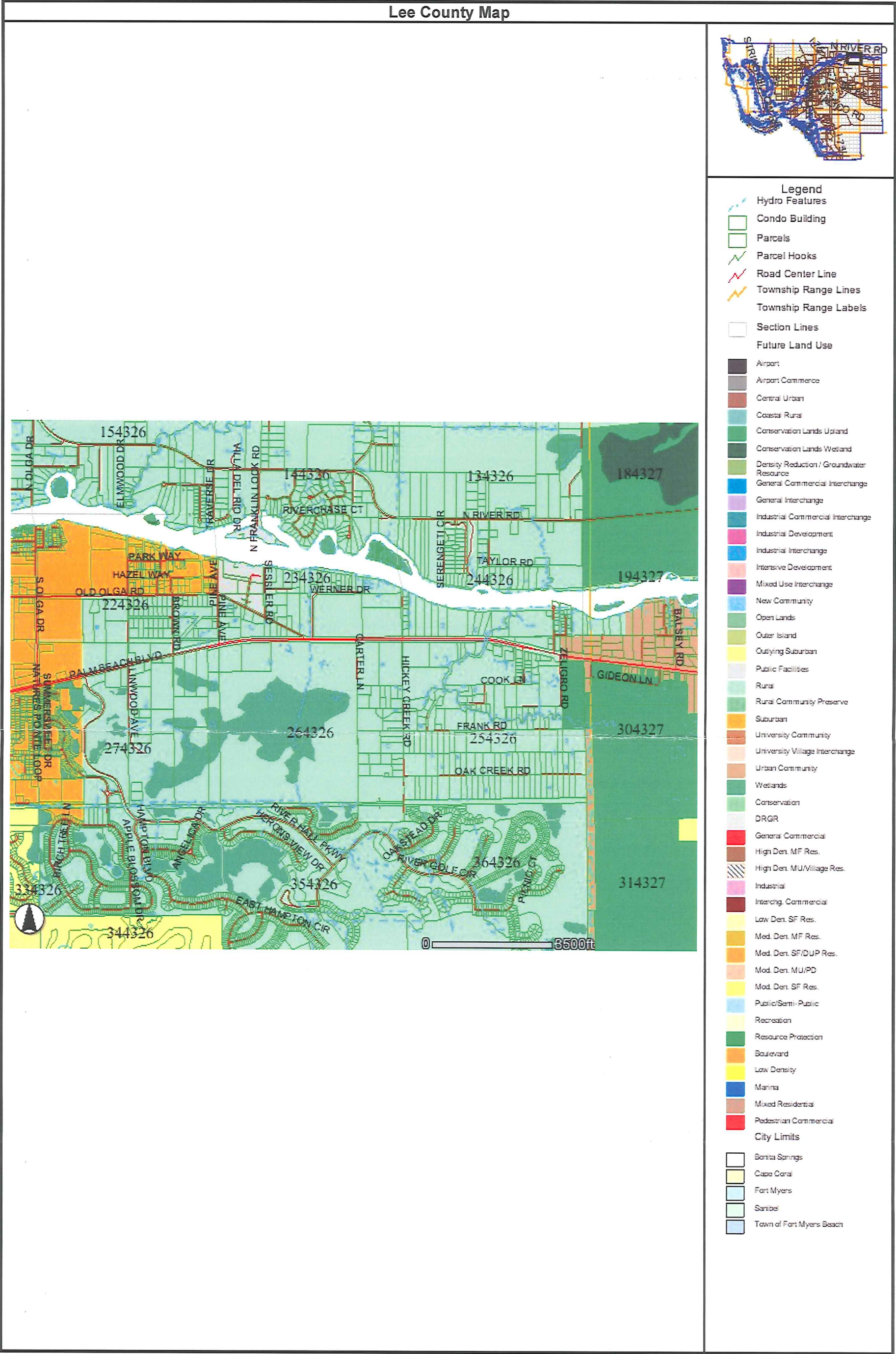
Kaye Becker Molnar  
Printed name of notary public











**CPA2007-01  
CALOOSAHATCHEE SHORES  
BoCC SPONSORED  
AMENDMENT  
TO THE**

---

**LEE COUNTY COMPREHENSIVE PLAN**

---

**THE LEE PLAN**

---

**LPA Public Hearing Document  
for the  
December 17, 2007 Public Hearing**

---

*Lee County Planning Division  
1500 Monroe Street  
P.O. Box 398  
Fort Myers, FL 33902-0398  
(239) 533-8585*

**December 10, 2007**



**LEE COUNTY  
DIVISION OF PLANNING  
STAFF REPORT FOR  
COMPREHENSIVE PLAN AMENDMENT  
CPA2007-00001**

☒

Text Amendment

☐

Map Amendment

|                                     |  |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | <b>This Document Contains the Following Reviews:</b>                             |
| <input checked="" type="checkbox"/> | Staff Review   |
| <input type="checkbox"/>            | Local Planning Agency Review and Recommendation                                  |
| <input type="checkbox"/>            | Board of County Commissioners Hearing for Transmittal                            |
| <input type="checkbox"/>            | Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report |
| <input type="checkbox"/>            | Board of County Commissioners Hearing for Adoption                               |

STAFF REPORT PREPARATION DATE: November 20, 2007

**PART I - BACKGROUND AND STAFF RECOMMENDATION**

**A. SUMMARY OF APPLICATION**

**1. SPONSOR/APPLICANT:**

**A. SPONSOR:**

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

**B. APPLICANT**

THE EAST LEE COUNTY COUNCIL  
REPRESENTED BY KRIS CELLA McGUIRE

**2. REQUEST:**

Amend the Future Land Use Element of the Lee Plan, Goal 21, to add a policy that provides that no land use map amendments to the remaining rural lands category will be permitted unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

**POLICY 21.1.4:** One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' rural character and rural land use where it currently exists. Therefore no land use map

amendments to the remaining rural lands category will be permitted after {scrivener will insert effective date of policy}, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

## **B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:**

**1. RECOMMENDATION:** Planning staff recommends that the Board of County Commissioners transmit this proposed amendment.

### **2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

- The Caloosahatchee Shores Community Plan was submitted to Lee County in September, 2002.
- The Caloosahatchee Shores Community Plan resulted in a Lee Plan amendment adopted in October, 2003.
- The Lee Plan amendment specific to Caloosahatchee Shores is now Goal 21 of the Lee Plan.
- Goal 21 was amended on May 16, 2007 when a new Policy 21.1.4 was adopted.
- The East Lee County Council submitted an application to make a second amendment to Goal 21 in April, 2007.
- This amendment would add a new Policy 21.1.5 to Goal 21 of the Lee Plan.

## **C. BACKGROUND INFORMATION**

The Caloosahatchee Shores Community Plan was undertaken by the Caloosahatchee Shores Community Planning Panel working as a sub group of the ELCC. The planning area encompasses that portion of the Fort Myers Shores planning community located east of I-75. The community plan was financed, in part, with \$25,000 of community planning funds from Lee County.

The Caloosahatchee Shores community plan was submitted to Lee County in September, 2002. The plan contained a Goal, Objectives, and Policies. The Goal for Caloosahatchee Shores was adopted into the Lee Plan in October, 2003 and is now Goal 21.

The East Lee County Council has continued to work on improvements to Goal 21, and submitted an amendment to the Goal in September, 2005 that was adopted as Policy 21.1.4 on May 16, 2007. This second proposed amendment to Goal 21 would add a new Policy 21.1.5.

## **A. STAFF DISCUSSION**

Goal 21 of the Lee Plan is intended to express the communities desire to protect the existing character of the community and to maintain the existing rural character of the Caloosahatchee shores area. Goal 21 reads as follows:

**GOAL 21: CALOOSAHATCHEE SHORES:** To protect the existing character, natural resources and quality of life in Caloosahatchee Shores, while promoting new development, redevelopment and maintaining a more rural identity for the neighborhoods east of I-75 by establishing minimum aesthetic requirements, planning the location and intensity of future commercial and residential uses, and providing incentives for redevelopment, mixed use development and pedestrian safe environments. This Goal and subsequent objectives and policies apply to the Caloosahatchee Shores boundaries as depicted on Map 1, page 2 of 5 in the Appendix. (Added by Ordinance No. 03-21)

**STAFF COMMENTS:** This proposed amendment is consistent with Goal 21 of the Lee Plan and may help further the intent of the Caloosahatchee Shores community. This proposed new Policy contains language very similar to Objective 17.1 pertaining to the Buckingham community and Objective 20.1 pertaining to the Bayshore community. Objective 17.1 of the Lee Plan reads:

**OBJECTIVE 17.1: LAND USE.** The primary land use designation for the Buckingham area is "Rural Community Preserve." Public Facilities have also been designated as appropriate. After the adoption of this amendment, no land in Buckingham will be changed to a land use category more intense than Rural Community Preserve (including Public Facilities) unless a finding of overriding public necessity is determined by three members of the Board of County Commissioners. (Amended by Ordinance No. 00-22)

Objective 20.1 of the Lee Plan reads:

**OBJECTIVE 20.1: LAND USE.** The existing land use designations of the Lee Plan (as of September 30, 2001) are appropriate to achieving the goal of the Bayshore Plan. No land use map amendments to a more intensive category will be permitted after March 11, 2003, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners. (Added by Ordinance No. 03-02)

**STAFF COMMENTS:** The County Attorney's office issued two separate memorandum on this plan amendment. One is dated October 24, 2007 and the other is dated November 2, 2007. The October 24 memorandum concludes that the proposed amendment to the Caloosahatchee Shores Community Plan may create potential liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act. The November 2 memorandum states that the proposed limitation on further amendments to the Future Land Use Map for lands currently designated as Rural, will result in liability under the Bert J. Harris, Jr., Private Property Rights Protection Act. Those memorandum are attached to this report.

The County Attorney's Office recommended that planning staff provide an inventory of land designated Rural in the Caloosahatchee Shores planning area. There are approximately 3,189 acres of Rural land in the Caloosahatchee Shores planning area. The County Attorney's office also suggested that an estimate of the possible relief that may be sought by these property owners. Short of having appraisals for all of the Rural designated property with each possible land use category change that could be sought, assigning a dollar amount to the amount of exposure the County may or will be exposing itself to is impossible.

Planning staff questions that there are valid investment backed expectations on the Rural properties in Caloosahatchee Shores, or anywhere else for that matter. If you purchase a piece of property that is designated as Rural, it would be reasonable to expect that is what you have. Planning staff does not believe that any investment backed expectations beyond the uses allowed in the Rural category is reasonable foreseeable and speculative. In addition, this amendment does not preclude a property owner from requesting a change to their Future Land Use Map designation. It does heighten the scrutiny of that request. Additionally, very similar language is in place in two other communities in Lee County, namely Buckingham and Bayshore.

Planning staff recommends that the Board of County Commissioners transmit this proposed amendment.

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

DATE OF PUBLIC HEARING: December 17, 2007

**A. LOCAL PLANNING AGENCY REVIEW**

**B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT  
SUMMARY**

**1. RECOMMENDATION:**

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

**C. VOTE:**

**NOEL ANDRESS**

\_\_\_\_\_

**DEREK BURR**

\_\_\_\_\_

**LES COCHRAN**

\_\_\_\_\_

**RONALD INGE**

\_\_\_\_\_

**CARLETON RYFFEL**

\_\_\_\_\_

**RAE ANN WESSEL**

\_\_\_\_\_

**LELAND TAYLOR**

\_\_\_\_\_

**PART IV - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: \_\_\_\_\_

**A. BOARD REVIEW:**

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

**C. VOTE:**

**A. BRIAN BIGELOW**

\_\_\_\_\_

**TAMMARA HALL**

\_\_\_\_\_

**ROBERT P. JANES**

\_\_\_\_\_

**RAY JUDAH**

\_\_\_\_\_

**FRANKLIN B. MANN**

\_\_\_\_\_

\_\_\_\_\_

**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,  
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: \_\_\_\_\_

**A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS**

**B. STAFF RESPONSE**

**PART VI - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: \_\_\_\_\_

**A. BOARD REVIEW:**

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

**C. VOTE:**

**A. BRIAN BIGELOW**

\_\_\_\_\_

**TAMMARA HALL**

\_\_\_\_\_

**ROBERT P. JANES**

\_\_\_\_\_

**RAY JUDAH**

\_\_\_\_\_

**FRANKLIN B. MANN**

\_\_\_\_\_

\_\_\_\_\_

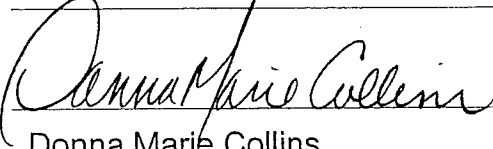


MEMORANDUM  
FROM THE  
OFFICE OF COUNTY ATTORNEY

RECEIVED  
NOV 21 2007

DATE: November 2, 2007 **COMMUNITY DEVELOPMENT**

To: Jim Mudd  
Planning Division

FROM:   
Donna Marie Collins  
Assistant County Attorney

RE: Caloosahatchee Shores Community Plan  
CPA2007-00001  
LU-07-10-2090.1.5.

Thank you for forwarding the application filed by the East Lee County Council to amend the Caloosahatchee Shores Community Plan. The Office of the County Attorney has reviewed the proposed text amendment. Please be advised that the proposed limitation on further amendments to the Future Land Use Map for lands currently designated as Rural, will result in liability under the Bert J. Harris, Jr., Private Property Rights Protection Act. For this reason, it is our recommendation that the Planning Division prepare an inventory of the properties that will be affected by the proposed limitation so that the Board will be informed of the magnitude of property affected by the proposed limitation. This information will also be necessary to evaluate the scope of the County's exposure to liability under the Act. The inventory should include those properties currently designated as Rural on the Future Land Use Map located within the boundaries of the Caloosahatchee Shores Community.

A detailed examination of the implications of the proposed plan amendment are set forth in the attached memorandum prepared by Robert Spickerman of this Office. If I may be of further assistance, do not hesitate to contact me.

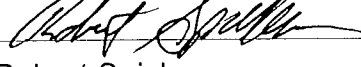
DMC/amp  
Attachment

cc: Matt Noble, Planning Division w/attachment

**MEMORANDUM**  
**FROM THE**  
**OFFICE OF COUNTY ATTORNEY**

**DATE:** October 24, 2007

**To:** Donna Marie Collins  
Assistant County Attorney

**FROM:**   
Robert Spickerman  
Assistant County Attorney

**RE:** Caloosahatchee Shores Community Plan - Proposed Text Amendment  
LU-07-10-2090.I.5.  
CPA 2007-00001

**Issue:**

Whether the proposed amendment to the Caloosahatchee Shores Community Plan raises any potential liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act.

**Brief Answer:**

The proposed text amendment for the Caloosahatchee Shores Community Plan may create liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act. The sources for potential liability are the proposed amendment's use of the term "rural character" and the prohibition against intensifying the future land use of properties currently existing within the rural lands future land use category.

**Analysis:**

On January 22, 2007, at the regularly scheduled meeting of the East Lee County Council, the Council unanimously voted to amend the text of the Caloosahatchee Shores Community Plan with the following language:

One important aspect of the Caloosahatchee Shores Community Plan goal is to retain it's rural character and rural land use where it currently exists. Therefore, no land use map amendments to the remaining rural lands category will be permitted after (scrivener will insert affective date of policy), unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

The main issue is whether under the Bert J. Harris, Jr., Private Property Rights Protection Act (Act), Lee County may be liable to property owners detrimentally affected by the proposed plan amendment. The Act is codified in the Florida Statutes as Fla. Stat. §70.001. The Act states, in part, that when a specific action of a governmental entity has inordinately burdened an existing use of real property or vested right to a specific use of real property, the property owner of that real property is entitled to relief. The Act is premised on a belief that the proper balance between protection of public good and private property interests can best be achieved on a case by case basis. (Article on Private Property Rights, Local Government Law Section Newsletter). As such, the terms used by the Act are unclear and broadly defined.

The terms "inordinate burden" or "inordinately burdened" are defined by § 70.001(3)(e) as an action of one or more governmental entities restricting or limiting the use of real property such that the property owner suffers a permanent loss of a reasonable investment backed expectation for an existing use of the landowner's real property or a vested right to a specific use of the landowner's real property.

Section 70.001(3)(b) defines existing use as the actual, present use of real property or a use that is "reasonably foreseeable though non-speculative." In order to be reasonably foreseeable though non-speculative, the use must be suitable for the real property, must be compatible with the adjacent lands, and must create a greater fair market value in the real property that is greater than the fair market value of the actual, present use of the real property. Fla. Stat. §70.001(3)(b).

The limits and impacts of the Act are still being developed by the courts. As such, a liberal interpretation of the Act should be used when evaluating potential liability. The Act's definition of existing use as including a use that is "reasonably foreseeable though non speculative" is the most problematic for the proposed amendment.

The first issue raised by the proposed amendment arises from the use of the term "rural character". The amendment identifies a goal of the Caloosahatchee Shores Community Plan as being to retain the rural character of the Community. The use of the term "rural character" is excessively vague. If the term is being used merely as identifying a goal and the only means to achieve the goal is the prohibition against intensifying the future land use of the rural lands future land use categories, then the use of the term "rural character" is acceptable. If however, other means in addition to the aforementioned prohibition are contemplated for the preservation of the Community's rural character, then the use of the term is not acceptable. Either way, a more detailed explanation of the use of the term "rural character" is necessary for further liability analysis.

The second issue raised by the proposed amendment deals with the prohibition against land use map amendments to properties that are subject to a future rural land use category within the boundaries of the Caloosahatchee Shores Community. The broad definition of "existing use" to include a use that is reasonably foreseeable though non-speculative, provides a property owner

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

with a possible avenue for recovery against Lee County pursuant to the Act. As stated before, "reasonably foreseeable though non-speculative" means that the use must be suitable for the real property, must be compatible with the adjacent land, and must create a greater fair market value in the real property that is greater than the fair market value of the actual, present use of the real property. Fla. Stat. §70.001(3)(b). In Palm Beach Polo, Inc. V. The Village of Wellington, 918 So.2d 988(Fla. 4DCA 2006), a developer purchased a large tract of property at a bankruptcy auction. At the time of the bankruptcy sale, the property was subject to a development plan requiring the preservation and restoration of a forest on the property. See *id* at 991. The Village of Wellington subsequently identified the subject forest property as conservation in its comprehensive plan. See *id* at 992. The developer protested the conservation designation and made a claim pursuant to the Bert J. Harris Act. See *id*. The court concluded that since the developer purchased the property subsequent to the required preservation and restoration of the forest property, the developer failed to establish any reasonable investment-backed expectations with respect to development of the forest property. See *id* at 993.

Other than rural related future land uses, the Caloosahatchee Shores Community also includes suburban, outlying suburban, central urban, urban community, and public facilities future land uses. The Caloosahatchee Shores Community also contains many major roadways including, Palm Beach Blvd., Buckingham Road, Orange River Blvd. and Tice Street. Also, the Caloosahatchee Shores Community is bordered on the West by I-75. Some of the properties within the rural lands future land use categories border land within a more intense future land use category. With increased development, there will be increased demand for intensifying the use of properties, especially near the transportation corridors previously identified within the Caloosahatchee Shores Community. Current owner's of property within the rural land use categories of the Caloosahatchee Shores Community will be able to provide a stronger argument regarding reasonable investment-backed expectations than that made by the developer in the Wellington case discussed above. An owner of property located within a rural future land use category may not find it unreasonable to foresee a use of their property that is more intense than the rural lands future land use category will allow. The proposed amendment would prevent that property owner from amending the future land use map as contemplated by policy 2.4.1 of the Lee Plan.

### **Conclusion:**

The proposed amendment to the Caloosahatchee Shores Community Plan may create potential liability for Lee County pursuant to the Act. As the Act is premised on the belief that the proper balance between protection of the public good and private property interests can best be achieved on a case by case basis, critical terms used in the Act are broadly defined. The definition for the terms "inordinately burdened" and "existing use" are the most problematic.

Donna Marie Collins  
October 24, 2007  
Page 4

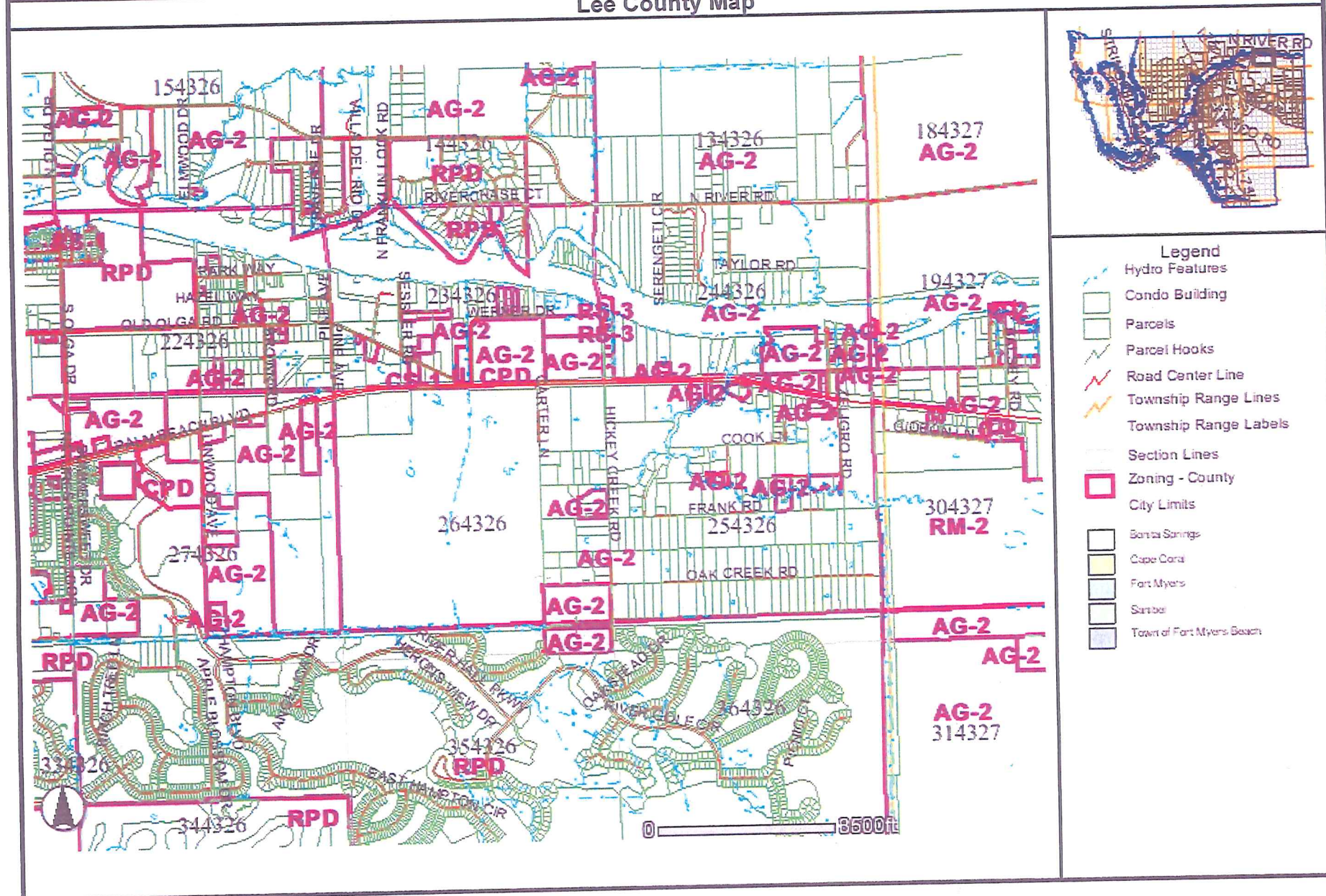
Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

The proposed amendment's use of the term "rural character" must be further defined in order to properly evaluate any impact the Act may have on the amendment. The prohibition against amending the future land use map to change a future land use category currently identified as rural, may create future liability for Lee County pursuant to the Act.

RDS/amp



## Lee County Map



RECEIVED  
APR - 2 2007



LEE COUNTY  
SOUTHWEST FLORIDA

COMMUNITY DEVELOPMENT

Lee County Board of County Commissioners  
Department of Community Development  
Division of Planning  
Post Office Box 398  
Fort Myers, FL 33902-0398  
Telephone: (239) 479-8585  
FAX: (239) 479-8519

**APPLICATION FOR A  
COMPREHENSIVE PLAN AMENDMENT**

(To be completed at time of intake)

DATE REC'D \_\_\_\_\_ REC'D BY: \_\_\_\_\_  
APPLICATION FEE \_\_\_\_\_ TIDEMARK NO: \_\_\_\_\_

**THE FOLLOWING VERIFIED:**

Zoning ☐ Commissioner District ☐  
Designation on FLUM ☐

-----  
(To be completed by Planning Staff)

Plan Amendment Cycle: ☐ Normal ☐ Small Scale ☐ DRI ☐ Emergency

Request No: \_\_\_\_\_

**APPLICANT PLEASE NOTE:**

Answer all questions completely and accurately. Please print or type responses. If additional space is needed, number and attach additional sheets. The total number of sheets in your application is: 9

Submit 6 copies of the complete application and amendment support documentation, including maps, to the Lee County Division of Planning. Additional copies may be required for Local Planning Agency, Board of County Commissioners hearings and the Department of Community Affairs' packages.

I, the undersigned owner or authorized representative, hereby submit this application and the attached amendment support documentation. The information and documents provided are complete and accurate to the best of my knowledge.

4/2/07  
DATE

Chris Cella McDaniel  
SIGNATURE OF OWNER OR AUTHORIZED REPRESENTATIVE

RECEIVED  
APR - 4 2007

2007-00001

I. APPLICANT/AGENT/OWNER INFORMATION

|  |       |              |
|--|-------|--------------|
| APPLICANT  |       |              |
| East Lee County Council                                |       |              |
| ADDRESS  |       |              |
| c/o Cella Molnar Assoc. 1631 Hendry St.                |       |              |
| CITY   | STATE | ZIP          |
| Ford Myers   | FL    | 33401        |
| TELEPHONE NUMBER                                       |       | FAX NUMBER   |
| 239-337-1071   |       | 239-337-1076 |
| AGENT*   |       |              |
| Kris Cella, <sup>McGuire</sup> ELCC Board of Directors |       |              |
| ADDRESS  |       |              |
| Same as above  |       |              |
| CITY   | STATE | ZIP          |
| TELEPHONE NUMBER                                       |       | FAX NUMBER   |
| OWNER(s) OF RECORD                                     |       |              |
| Caloosahatchee Shores Community Plan c/o               |       |              |
| East Lee County Council                                |       |              |
| ADDRESS  |       |              |
| Same as above  |       |              |
| CITY   | STATE | ZIP          |
| TELEPHONE NUMBER                                       |       | FAX NUMBER   |

Name, address and qualification of additional planners, architects, engineers, environmental consultants, and other professionals providing information contained in this application.

\* This will be the person contacted for all business relative to the application.



**II. REQUESTED CHANGE (Please see Item 1 for Fee Schedule)**

A. TYPE: (Check appropriate type)

☒ Text Amendment

☐ Future Land Use Map Series Amendment  
(Maps 1 thru 21)

List Number(s) of Map(s) to be amended

B. SUMMARY OF REQUEST (Brief explanation):

Amend the Calusa Hatchee Community  
Plan text see attached.

**III. PROPERTY SIZE AND LOCATION OF AFFECTED PROPERTY  
(for amendments affecting development potential of property)**

A. Property Location:

1. Site Address: see attached map
2. STRAP(s): \_\_\_\_\_

B. Property Information

Total Acreage of Property: \_\_\_\_\_

Total Acreage included in Request: \_\_\_\_\_

Area of each Existing Future Land Use Category: \_\_\_\_\_

Total Uplands: \_\_\_\_\_

Total Wetlands: \_\_\_\_\_

Current Zoning: \_\_\_\_\_

Current Future Land Use Designation: \_\_\_\_\_

Existing Land Use: \_\_\_\_\_

April 2, 2007

Lee County Department of Community Development Services  
1500 Monroe Street  
Fort Myers, Florida 33901

Subject: Caloosahatchee Shores Community Plan – Text Amendment Requested

On January 22, 2007, at the regularly scheduled meeting of the East Lee County Council, the Council unanimously voted to amend the text of the referenced community plan with the following language:

"One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' rural character and rural land use where it currently exists. Therefore no land use map amendments to the remaining rural lands category will be permitted after {scrivener will insert effective date of policy}, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners."

Kris Cella McGuire  
Board of Directors  
East Lee County Council

- C. State if the subject property is located in one of the following areas and if so how does the proposed change effect the area:

Lehigh Acres Commercial Overlay: \_\_\_\_\_

Airport Noise Zone 2 or 3: \_\_\_\_\_

Acquisition Area: \_\_\_\_\_

Joint Planning Agreement Area (adjoining other jurisdictional lands): \_\_\_\_\_

Community Redevelopment Area: \_\_\_\_\_

- D. Proposed change for the Subject Property:

No change to remain Rural Land Use

- E. Potential development of the subject property:

1. Calculation of maximum allowable development under existing FLUM:

Residential Units/Density \_\_\_\_\_

Commercial intensity \_\_\_\_\_

Industrial intensity \_\_\_\_\_

2. Calculation of maximum allowable development under proposed FLUM:

Residential Units/Density \_\_\_\_\_

Commercial intensity \_\_\_\_\_

Industrial intensity \_\_\_\_\_

#### IV. AMENDMENT SUPPORT DOCUMENTATION

At a minimum, the application shall include the following support data and analysis. These items are based on comprehensive plan amendment submittal requirements of the State of Florida, Department of Community Affairs, and policies contained in the Lee County Comprehensive Plan. Support documentation provided by the applicant will be used by staff as a basis for evaluating this request. To assist in the preparation of amendment packets, the applicant is encouraged to provide all data and analysis electronically. (Please contact the Division of Planning for currently accepted formats)

A. General Information and Maps

*NOTE: For each map submitted, the applicant will be required to provide a reduced map (8.5" x 11") for inclusion in public hearing packets.*

3. Requests involving lands in critical areas for future water supply must be evaluated based on policy 2.4.2.
  4. Requests moving lands from Density Reduction/Groundwater Resource must fully address Policy 2.4.3 of the Lee Plan Future Land Use Element.
- G. Justify the proposed amendment based upon sound planning principles. Be sure to support all conclusions made in this justification with adequate data and analysis.

**Item 1: Fee Schedule**

|  |                                     |
|--|-------------------------------------|
| Map Amendment Flat Fee                   | \$2,000.00 each                     |
| Map Amendment > 20 Acres                 | \$2,000.00 and \$20.00 per 10 acres |
| Small Scale Amendment (10 acres or less) | \$1,500.00 each                     |
| Text Amendment Flat Fee                  | \$2,500.00 each                     |

**AFFIDAVIT**

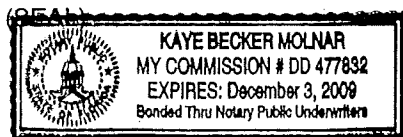
I, Kris Cella McGuire certify that I am the owner or authorized representative of the property described herein, and that all answers to the questions in this application and any sketches, data, or other supplementary matter attached to and made a part of this application, are honest and true to the best of my knowledge and belief. I also authorize the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made through this application.

Kris Cella McGuire \_\_\_\_\_ 4/2/07  
Signature of owner or owner-authorized agent Date

Kris Cella McGuire  
Typed or printed name

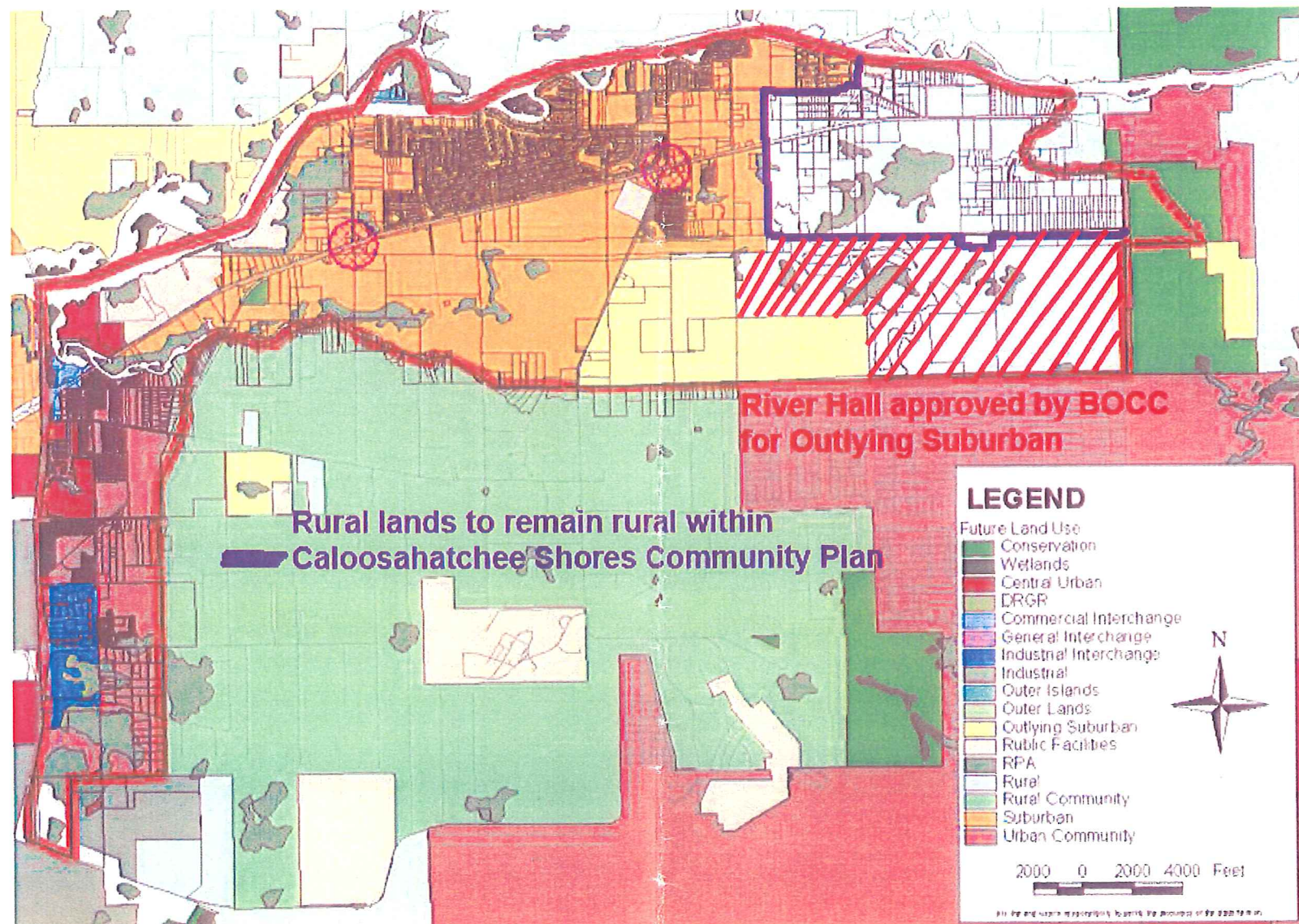
STATE OF FLORIDA )  
COUNTY OF LEE )

The foregoing instrument was certified and subscribed before me this 2nd day of April, 2007, by Kris Cella McGuire, who is personally known to me or who has produced \_\_\_\_\_ as identification.



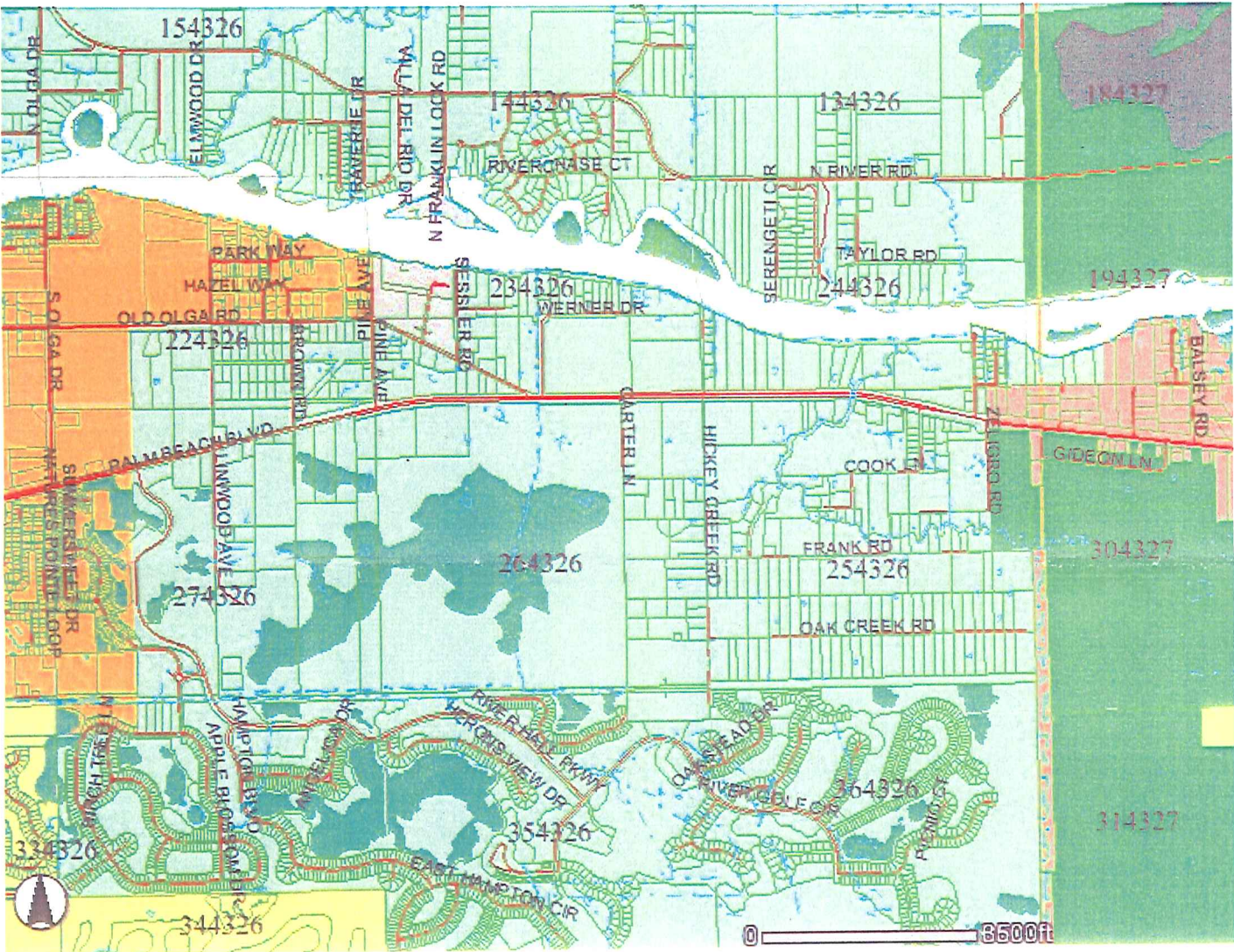
Kaye Becker Molnar  
Signature of notary public

Kaye Becker Molnar  
Printed name of notary public





Lee County Map



- Legend**
- Hydro Features
  - Condo Building
  - Parcels
  - Parcel Hooks
  - Road Center Line
  - Township Range Lines
  - Township Range Labels
  - Section Lines
  - Future Land Use
- Airport
  - Airport Containment
  - Central Urban
  - Coastal Rural
  - Conservation Lands Upland
  - Conservation Lands Wetland
  - Density Reduction / Groundwater Resource
  - General Contingential Interchange
  - General Interchange
  - Industrial Contingential Interchange
  - Industrial Development
  - Industrial Interchange
  - Intensive Development
  - Mixed Use Interchange
  - New Community
  - Open Lands
  - Outer Island
  - Outlying Suburban
  - Public Facilities
  - Rural
  - Rural Community Preserve
  - Suburban
  - University Community
  - University Village Interchange
  - Urban Community
  - Wetlands
  - Conservation
  - DRGR
  - General Contingential
  - High Den. MF Res.
  - High Den. MU/Village Res.
  - Industrial
  - Interch. Contingential
  - Low Den. SF Res.
  - Med. Den. MF Res.
  - Med. Den. SF/DUP Res.
  - Med. Den. MU/PO
  - Med. Den. SF Res.
  - Public/Semi-Public
  - Recreation
  - Resource Protection
  - Soulevard
  - Low Density
  - Marinas
  - Mixed Residential
  - Pedestrian Contingential
  - City Limits
  - Baron Springs
  - Cape Coral
  - Fort Myers
  - Santibel
  - Town of Fort Myers Beach

**CPA2007-01  
CALOOSA HATCHEE SHORES  
BoCC SPONSORED  
AMENDMENT  
TO THE**

---

**LEE COUNTY COMPREHENSIVE PLAN**

---

**THE LEE PLAN**

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**BoCC Public Hearing Document  
for the  
October 22, 2008 Transmittal Hearing**

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*Lee County Planning Division  
1500 Monroe Street  
P.O. Box 398  
Fort Myers, FL 33902-0398  
(239) 533-8585*

**October 8, 2008**

**LEE COUNTY  
DIVISION OF PLANNING  
STAFF REPORT FOR  
COMPREHENSIVE PLAN AMENDMENT  
CPA2007-00001**

☒

**Text Amendment**

☐

**Map Amendment**

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

STAFF REPORT PREPARATION DATE: November 20, 2007

**PART I - BACKGROUND AND STAFF RECOMMENDATION**

**A. SUMMARY OF APPLICATION**

**1. SPONSOR/APPLICANT:**

**A. SPONSOR:**

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

**B. APPLICANT**

THE EAST LEE COUNTY COUNCIL  
REPRESENTED BY KRIS CELLA McGUIRE

**2. REQUEST:**

Amend the Future Land Use Element, Goal 21, to add a policy that provides that no land use map amendments to the remaining rural lands category will be permitted unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

**POLICY 21.1.4:** One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' rural character and rural land use where it currently exists. Therefore no land use map amendments to the remaining rural lands category will be permitted after {scrivener will insert



effective date of policy}, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

## **B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:**

**1. RECOMMENDATION:** Planning staff recommends that the Board of County Commissioners transmit this proposed amendment.

## **2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

- The Caloosahatchee Shores Community Plan was submitted to Lee County in September, 2002.
- The Caloosahatchee Shores Community Plan resulted in a Lee Plan amendment adopted in October, 2003.
- The Lee Plan amendment specific to Caloosahatchee Shores is now Goal 21 of the Lee Plan.
- Goal 21 was amended on May 16, 2007 when a new Policy 21.1.4 was adopted.
- The East Lee County Council submitted an application to make a second amendment to Goal 21 in April, 2007.
- This amendment would add a new Policy 21.1.5 to Goal 21 of the Lee Plan.

## **C. BACKGROUND INFORMATION**

The Caloosahatchee Shores Community Plan was undertaken by the Caloosahatchee Shores Community Planning Panel working as a sub group of the ELCC. The planning area encompasses that portion of the Fort Myers Shores planning community located east of I-75. The community plan was financed, in part, with \$25,000 of community planning funds from Lee County.

The Caloosahatchee Shores community plan was submitted to Lee County in September, 2002. The plan contained a Goal, Objectives, and Policies. The Goal for Caloosahatchee Shores was adopted into the Lee Plan in October, 2003 and is now Goal 21.

The East Lee County Council has continued to work on improvements to Goal 21, and submitted an amendment to the Goal in September, 2005 that was adopted as Policy 21.1.4 on May 16, 2007. This second proposed amendment to Goal 21 would add a new Policy 21.1.5.

## **A. STAFF DISCUSSION**

Goal 21 of the Lee Plan is intended to express the communities desire to protect the existing character of the community and to maintain the existing rural character of the Caloosahatchee shores area. Goal 21 reads as follows:

**GOAL 21: CALOOSAHATCHEE SHORES:** To protect the existing character, natural resources and quality of life in Caloosahatchee Shores, while promoting new development, redevelopment and maintaining a more rural identity for the neighborhoods east of I-75 by establishing minimum aesthetic requirements, planning the location and intensity of future commercial and residential uses, and providing incentives for redevelopment, mixed use development and pedestrian safe environments. This Goal and subsequent objectives and policies apply to the Caloosahatchee Shores boundaries as depicted on Map 1, page 2 of 5 in the Appendix. (Added by Ordinance No. 03-21)

**STAFF COMMENTS:** This proposed amendment is consistent with Goal 21 of the Lee Plan and may help further the intent of the Caloosahatchee Shores community. This proposed new Policy contains language very similar to Objective 17.1 pertaining to the Buckingham community and Objective 20.1 pertaining to the Bayshore community. Objective 17.1 of the Lee Plan reads:

**OBJECTIVE 17.1: LAND USE.** The primary land use designation for the Buckingham area is "Rural Community Preserve." Public Facilities have also been designated as appropriate. After the adoption of this amendment, no land in Buckingham will be changed to a land use category more intense than Rural Community Preserve (including Public Facilities) unless a finding of overriding public necessity is determined by three members of the Board of County Commissioners. (Amended by Ordinance No. 00-22)

Objective 20.1 of the Lee Plan reads:

**OBJECTIVE 20.1: LAND USE.** The existing land use designations of the Lee Plan (as of September 30, 2001) are appropriate to achieving the goal of the Bayshore Plan. No land use map amendments to a more intensive category will be permitted after March 11, 2003, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners. (Added by Ordinance No. 03-02)

**STAFF COMMENTS:** The County Attorney's office issued two separate memorandum on this plan amendment. One is dated October 24, 2007 and the other is dated November 2, 2007. The October 24 memorandum concludes that the proposed amendment to the Caloosahatchee Shores Community Plan may create potential liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act. The November 2 memorandum states that the proposed limitation on further amendments to the Future Land Use Map for lands currently designated as Rural, will result in liability under the Bert J. Harris, Jr., Private Property Rights Protection Act. Those memorandum are attached to this report.

The County Attorney's Office recommended that planning staff provide an inventory of land designated Rural in the Caloosahatchee Shores planning area. There are approximately 3,189 acres of Rural land in the Caloosahatchee Shores planning area. The County Attorney's office also suggested that an estimate of the possible relief that may be sought by these property owners. Short of having appraisals for all of the Rural designated property with each possible land use category change that could be sought, assigning a dollar amount to the amount of exposure the County may or will be exposing itself to is impossible.

Planning staff questions that there are valid investment backed expectations on the Rural properties in Caloosahatchee Shores, or anywhere else for that matter. If you purchase a piece of property that is designated as Rural, it would be reasonable to expect that is what you have. Planning staff does not believe that any investment backed expectations beyond the uses allowed in the Rural category is reasonable foreseeable and speculative. In addition, this amendment does not preclude a property owner from requesting a change to their Future Land Use Map designation. It does heighten the scrutiny of that request. Additionally, very similar language is in place in two other communities in Lee County, namely Buckingham and Bayshore.

Planning staff recommends that the Board of County Commissioners transmit this proposed amendment.



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

DATE OF PUBLIC HEARING: December 17, 2007

#### **A. LOCAL PLANNING AGENCY REVIEW**

Staff gave a brief review of the staff report and recommendations. Following staff's presentation one LPA member expressed concern with designating a permanence of rural and ignoring the fact that this area will continue to grow and may need commercial at some point. He felt there should be an analysis done to determine what part of the 3,189 affected acres would be appropriate for commercial development. Staff noted that if there is a need in the community for commercial development then three members of the Board of County Commissioners can find that there is an overriding public need and make that change.

Another member appreciated the fact that this community based amendment underscores the desires of the community to emphasize the rural character of their area and preserve it as has been done with the Buckingham community and the Bayshore community.

The LPA had a lengthy discussion about Mr. Spickerman's memorandum dated October 24, 2007 regarding Bert J. Harris implications.

An LPA member stated that when someone applies for a plan amendment, they must go through an analysis from the Planning Division, various other departments, the LPA, and the Board of County Commissioners. This rigorous process will continue regardless of whether or not this plan amendment is adopted.

The LPA asked if anyone from the public wished to speak and the sponsor of the proposal spoke in favor of transmitting CPA 2007-01.

#### **B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY**

- 1. RECOMMENDATION: The LPA Recommends that the Board of County Commissioners transmit CPA 2007-00001 as recommended by staff.**
- 2. BASIS AND RECOMMENDED FINDINGS OF FACT: The LPA accepted the findings of fact as advanced by staff.**

#### **C. VOTE:**

|                        |            |
|------------------------|------------|
| <b>NOEL ANDRESS</b>    | <u>AYE</u> |
| <b>DEREK BURR</b>      | <u>AYE</u> |
| <b>LES COCHRAN</b>     | <u>AYE</u> |
| <b>RONALD INGE</b>     | <u>AYE</u> |
| <b>CARLETON RYFFEL</b> | <u>AYE</u> |
| <b>RAE ANN WESSEL</b>  | <u>AYE</u> |
| <b>LELAND TAYLOR</b>   | <u>AYE</u> |

**PART IV - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: October 22, 2008

**A. BOARD REVIEW:**

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

**C. VOTE:**

**A. BRIAN BIGELOW**

**TAMMARA HALL**

**ROBERT P. JANES**

**RAY JUDAH**

**FRANKLIN B. MANN**

|       |
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**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,  
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: \_\_\_\_\_

**A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS**

**B. STAFF RESPONSE**

**PART VI - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: \_\_\_\_\_

**A. BOARD REVIEW:**

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

**C. VOTE:**

**A. BRIAN BIGELOW**

**TAMMARA HALL**

**ROBERT P. JANES**

**RAY JUDAH**

**FRANKLIN B. MANN**

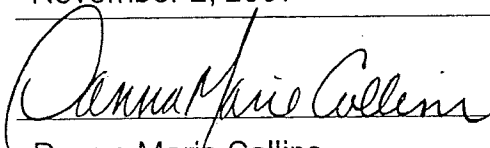
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MEMORANDUM  
FROM THE  
OFFICE OF COUNTY ATTORNEY

RECEIVED  
NOV 21 2007

DATE: November 2, 2007 **COMMUNITY DEVELOPMENT**

To: Jim Mudd  
Planning Division

FROM:   
Donna Marie Collins  
Assistant County Attorney

RE: **Caloosahatchee Shores Community Plan**  
**CPA2007-00001**  
**LU-07-10-2090.1.5.**

Thank you for forwarding the application filed by the East Lee County Council to amend the Caloosahatchee Shores Community Plan. The Office of the County Attorney has reviewed the proposed text amendment. Please be advised that the proposed limitation on further amendments to the Future Land Use Map for lands currently designated as Rural, will result in liability under the Bert J. Harris, Jr., Private Property Rights Protection Act. For this reason, it is our recommendation that the Planning Division prepare an inventory of the properties that will be affected by the proposed limitation so that the Board will be informed of the magnitude of property affected by the proposed limitation. This information will also be necessary to evaluate the scope of the County's exposure to liability under the Act. The inventory should include those properties currently designated as Rural on the Future Land Use Map located within the boundaries of the Caloosahatchee Shores Community.

A detailed examination of the implications of the proposed plan amendment are set forth in the attached memorandum prepared by Robert Spickerman of this Office. If I may be of further assistance, do not hesitate to contact me.

DMC/amp  
Attachment


cc: Matt Noble, Planning Division w/attachment



**MEMORANDUM**  
FROM THE  
**OFFICE OF COUNTY ATTORNEY**

DATE: October 24, 2007

TO: Donna Marie Collins  
Assistant County Attorney

FROM:   
Robert Spickerman  
Assistant County Attorney

RE: Caloosahatchee Shores Community Plan - Proposed Text Amendment  
LU-07-10-2090.1.5.  
CPA 2007-00001

**Issue:**

Whether the proposed amendment to the Caloosahatchee Shores Community Plan raises any potential liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act.

**Brief Answer:**

The proposed text amendment for the Caloosahatchee Shores Community Plan may create liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act. The sources for potential liability are the proposed amendment's use of the term "rural character" and the prohibition against intensifying the future land use of properties currently existing within the rural lands future land use category.

**Analysis:**

On January 22, 2007, at the regularly scheduled meeting of the East Lee County Council, the Council unanimously voted to amend the text of the Caloosahatchee Shores Community Plan with the following language:

One important aspect of the Caloosahatchee Shores Community Plan goal is to retain it's rural character and rural land use where it currently exists. Therefore, no land use map amendments to the remaining rural lands category will be permitted after (scrivener will insert affective date of policy), unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

The main issue is whether under the Bert J. Harris, Jr., Private Property Rights Protection Act (Act), Lee County may be liable to property owners detrimentally affected by the proposed plan amendment. The Act is codified in the Florida Statutes as Fla. Stat. §70.001. The Act states, in part, that when a specific action of a governmental entity has inordinately burdened an existing use of real property or vested right to a specific use of real property, the property owner of that real property is entitled to relief. The Act is premised on a belief that the proper balance between protection of public good and private property interests can best be achieved on a case by case basis. (Article on Private Property Rights, Local Government Law Section Newsletter). As such, the terms used by the Act are unclear and broadly defined.

The terms "inordinate burden" or "inordinately burdened" are defined by § 70.001(3)(e) as an action of one or more governmental entities restricting or limiting the use of real property such that the property owner suffers a permanent loss of a reasonable investment backed expectation for an existing use of the landowner's real property or a vested right to a specific use of the landowner's real property.

Section 70.001(3)(b) defines existing use as the actual, present use of real property or a use that is "reasonably foreseeable though non-speculative." In order to be reasonably foreseeable though non-speculative, the use must be suitable for the real property, must be compatible with the adjacent lands, and must create a greater fair market value in the real property that is greater than the fair market value of the actual, present use of the real property. Fla. Stat. §70.001(3)(b).

The limits and impacts of the Act are still being developed by the courts. As such, a liberal interpretation of the Act should be used when evaluating potential liability. The Act's definition of existing use as including a use that is "reasonably foreseeable though non-speculative" is the most problematic for the proposed amendment.

The first issue raised by the proposed amendment arises from the use of the term "rural character". The amendment identifies a goal of the Caloosahatchee Shores Community Plan as being to retain the rural character of the Community. The use of the term "rural character" is excessively vague. If the term is being used merely as identifying a goal and the only means to achieve the goal is the prohibition against intensifying the future land use of the rural lands future land use categories, then the use of the term "rural character" is acceptable. If however, other means in addition to the aforementioned prohibition are contemplated for the preservation of the Community's rural character, then the use of the term is not acceptable. Either way, a more detailed explanation of the use of the term "rural character" is necessary for further liability analysis.

The second issue raised by the proposed amendment deals with the prohibition against land use map amendments to properties that are subject to a future rural land use category within the boundaries of the Caloosahatchee Shores Community. The broad definition of "existing use" to include a use that is reasonably foreseeable though non-speculative, provides a property owner

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

with a possible avenue for recovery against Lee County pursuant to the Act. As stated before, "reasonably foreseeable though non-speculative" means that the use must be suitable for the real property, must be compatible with the adjacent land, and must create a greater fair market value in the real property that is greater than the fair market value of the actual, present use of the real property. Fla. Stat. §70.001(3)(b). In Palm Beach Polo, Inc. V. The Village of Wellington, 918 So.2d 988(Fla. 4DCA 2006), a developer purchased a large tract of property at a bankruptcy auction. At the time of the bankruptcy sale, the property was subject to a development plan requiring the preservation and restoration of a forest on the property. See *id* at 991. The Village of Wellington subsequently identified the subject forest property as conservation in its comprehensive plan. See *id* at 992. The developer protested the conservation designation and made a claim pursuant to the Bert J. Harris Act. See *id*. The court concluded that since the developer purchased the property subsequent to the required preservation and restoration of the forest property, the developer failed to establish any reasonable investment-backed expectations with respect to development of the forest property. See *id* at 993.

Other than rural related future land uses, the Caloosahatchee Shores Community also includes suburban, outlying suburban, central urban, urban community, and public facilities future land uses. The Caloosahatchee Shores Community also contains many major roadways including, Palm Beach Blvd., Buckingham Road, Orange River Blvd. and Tice Street. Also, the Caloosahatchee Shores Community is bordered on the West by I-75. Some of the properties within the rural lands future land use categories border land within a more intense future land use category. With increased development, there will be increased demand for intensifying the use of properties, especially near the transportation corridors previously identified within the Caloosahatchee Shores Community. Current owner's of property within the rural land use categories of the Caloosahatchee Shores Community will be able to provide a stronger argument regarding reasonable investment-backed expectations than that made by the developer in the Wellington case discussed above. An owner of property located within a rural future land use category may not find it unreasonable to foresee a use of their property that is more intense than the rural lands future land use category will allow. The proposed amendment would prevent that property owner from amending the future land use map as contemplated by policy 2.4.1 of the Lee Plan.

### **Conclusion:**

The proposed amendment to the Caloosahatchee Shores Community Plan may create potential liability for Lee County pursuant to the Act. As the Act is premised on the belief that the proper balance between protection of the public good and private property interests can best be achieved on a case by case basis, critical terms used in the Act are broadly defined. The definition for the terms "inordinately burdened" and "existing use" are the most problematic.

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

The proposed amendment's use of the term "rural character" must be further defined in order to properly evaluate any impact the Act may have on the amendment. The prohibition against amending the future land use map to change a future land use category currently identified as rural, may create future liability for Lee County pursuant to the Act.

RDS/amp

RECEIVED  
APR - 2 2007



COMMUNITY DEVELOPMENT

Lee County Board of County Commissioners  
Department of Community Development  
Division of Planning  
Post Office Box 398  
Fort Myers, FL 33902-0398  
Telephone: (239) 479-8585  
FAX: (239) 479-8519

APPLICATION FOR A  
COMPREHENSIVE PLAN AMENDMENT

(To be completed at time of intake)

DATE REC'D \_\_\_\_\_ REC'D BY: \_\_\_\_\_

APPLICATION FEE \_\_\_\_\_ TIDEMARK NO: \_\_\_\_\_

THE FOLLOWING VERIFIED:

Zoning ☐ Commissioner District ☐

Designation on FLUM ☐

-----  
(To be completed by Planning Staff)

Plan Amendment Cycle: ☐ Normal ☐ Small Scale ☐ DRI ☐ Emergency

Request No: \_\_\_\_\_

APPLICANT PLEASE NOTE:

Answer all questions completely and accurately. Please print or type responses. If additional space is needed, number and attach additional sheets. The total number of sheets in your application is: 9

Submit 6 copies of the complete application and amendment support documentation, including maps, to the Lee County Division of Planning. Additional copies may be required for Local Planning Agency, Board of County Commissioners hearings and the Department of Community Affairs' packages.

I, the undersigned owner or authorized representative, hereby submit this application and the attached amendment support documentation. The information and documents provided are complete and accurate to the best of my knowledge.

4/2/07 Kris Cella McDevitt  
DATE SIGNATURE OF OWNER OR AUTHORIZED REPRESENTATIVE

RECEIVED  
APR - 4 2007

2007-00001

I. APPLICANT/AGENT/OWNER INFORMATION

|  |       |              |
|--|-------|--------------|
| APPLICANT  |       |              |
| East Lee County Council                                |       |              |
| ADDRESS  |       |              |
| C/O Cella Molnar & Assoc. 1631 Hendry St.              |       |              |
| CITY   | STATE | ZIP          |
| Fort Myers   | FL    | 33901        |
| TELEPHONE NUMBER                                       |       | FAX NUMBER   |
| 239-337-1071   |       | 239-337-1076 |
| AGENT*   |       |              |
| Kris Cella, <sup>McGuire</sup> ELCC Board of Directors |       |              |
| ADDRESS  |       |              |
| Same as above  |       |              |
| CITY   | STATE | ZIP          |
| TELEPHONE NUMBER                                       |       | FAX NUMBER   |
| OWNER(s) OF RECORD                                     |       |              |
| Caloosahatchee Shores Community Plan c/o               |       |              |
| East Lee County Council                                |       |              |
| ADDRESS  |       |              |
| same as above  |       |              |
| CITY   | STATE | ZIP          |
| TELEPHONE NUMBER                                       |       | FAX NUMBER   |

Name, address and qualification of additional planners, architects, engineers, environmental consultants, and other professionals providing information contained in this application.

\* This will be the person contacted for all business relative to the application.



**II. REQUESTED CHANGE (Please see Item 1 for Fee Schedule)**

A. TYPE: (Check appropriate type)



Text Amendment



Future Land Use Map Series Amendment  
(Maps 1 thru 21)

List Number(s) of Map(s) to be amended  
\_\_\_\_\_

B. SUMMARY OF REQUEST (Brief explanation):

Amend the Calousa Hatchee Community  
Plan text see attached.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**III. PROPERTY SIZE AND LOCATION OF AFFECTED PROPERTY  
(for amendments affecting development potential of property)**

A. Property Location:

1. Site Address: see attached map  
2. STRAP(s): \_\_\_\_\_

B. Property Information

Total Acreage of Property: \_\_\_\_\_

Total Acreage included in Request: \_\_\_\_\_

Area of each Existing Future Land Use Category: \_\_\_\_\_

Total Uplands: \_\_\_\_\_

Total Wetlands: \_\_\_\_\_

Current Zoning: \_\_\_\_\_

Current Future Land Use Designation: \_\_\_\_\_

Existing Land Use: \_\_\_\_\_

April 2, 2007

Lee County Department of Community Development Services  
1500 Monroe Street  
Fort Myers, Florida 33901

Subject: Caloosahatchee Shores Community Plan – Text Amendment Requested

On January 22, 2007, at the regularly scheduled meeting of the East Lee County Council, the Council unanimously voted to amend the text of the referenced community plan with the following language:

"One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' rural character and rural land use where it currently exists. Therefore no land use map amendments to the remaining rural lands category will be permitted after {scrivener will insert effective date of policy}, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners."

Kris Cella McGuire  
Board of Directors  
East Lee County Council

- C. State if the subject property is located in one of the following areas and if so how does the proposed change effect the area:

Lehigh Acres Commercial Overlay: \_\_\_\_\_

Airport Noise Zone 2 or 3: \_\_\_\_\_

Acquisition Area: \_\_\_\_\_

Joint Planning Agreement Area (adjoining other jurisdictional lands): \_\_\_\_\_

Community Redevelopment Area: \_\_\_\_\_

- D. Proposed change for the Subject Property:

No change to remain Rural Land Use

- E. Potential development of the subject property:

1. Calculation of maximum allowable development under existing FLUM:

Residential Units/Density \_\_\_\_\_

Commercial intensity \_\_\_\_\_

Industrial intensity \_\_\_\_\_

2. Calculation of maximum allowable development under proposed FLUM:

Residential Units/Density \_\_\_\_\_

Commercial intensity \_\_\_\_\_

Industrial intensity \_\_\_\_\_

#### IV. AMENDMENT SUPPORT DOCUMENTATION

At a minimum, the application shall include the following support data and analysis. These items are based on comprehensive plan amendment submittal requirements of the State of Florida, Department of Community Affairs, and policies contained in the Lee County Comprehensive Plan. Support documentation provided by the applicant will be used by staff as a basis for evaluating this request. To assist in the preparation of amendment packets, the applicant is encouraged to provide all data and analysis electronically. (Please contact the Division of Planning for currently accepted formats)

A. General Information and Maps

**NOTE:** For each map submitted, the applicant will be required to provide a reduced map (8.5" x 11") for inclusion in public hearing packets.

3. Requests involving lands in critical areas for future water supply must be evaluated based on policy 2.4.2.

4. Requests moving lands from Density Reduction/Groundwater Resource must fully address Policy 2.4.3 of the Lee Plan Future Land Use Element.

G. Justify the proposed amendment based upon sound planning principles. Be sure to support all conclusions made in this justification with adequate data and analysis.

**Item 1: Fee Schedule**

|  |                                     |
|--|-------------------------------------|
| Map Amendment Flat Fee                   | \$2,000.00 each                     |
| Map Amendment > 20 Acres                 | \$2,000.00 and \$20.00 per 10 acres |
| Small Scale Amendment (10 acres or less) | \$1,500.00 each                     |
| Text Amendment Flat Fee                  | \$2,500.00 each                     |

**AFFIDAVIT**

I, Kris Cella McGuire certify that I am the owner or authorized representative of the property described herein, and that all answers to the questions in this application and any sketches, data, or other supplementary matter attached to and made a part of this application, are honest and true to the best of my knowledge and belief. I also authorize the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made through this application.

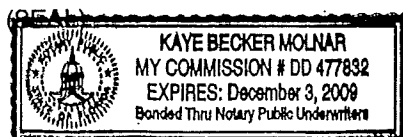
Kris Cella McGuire  
Signature of owner or owner-authorized agent

4/2/07  
Date

Kris Cella McGuire  
Typed or printed name

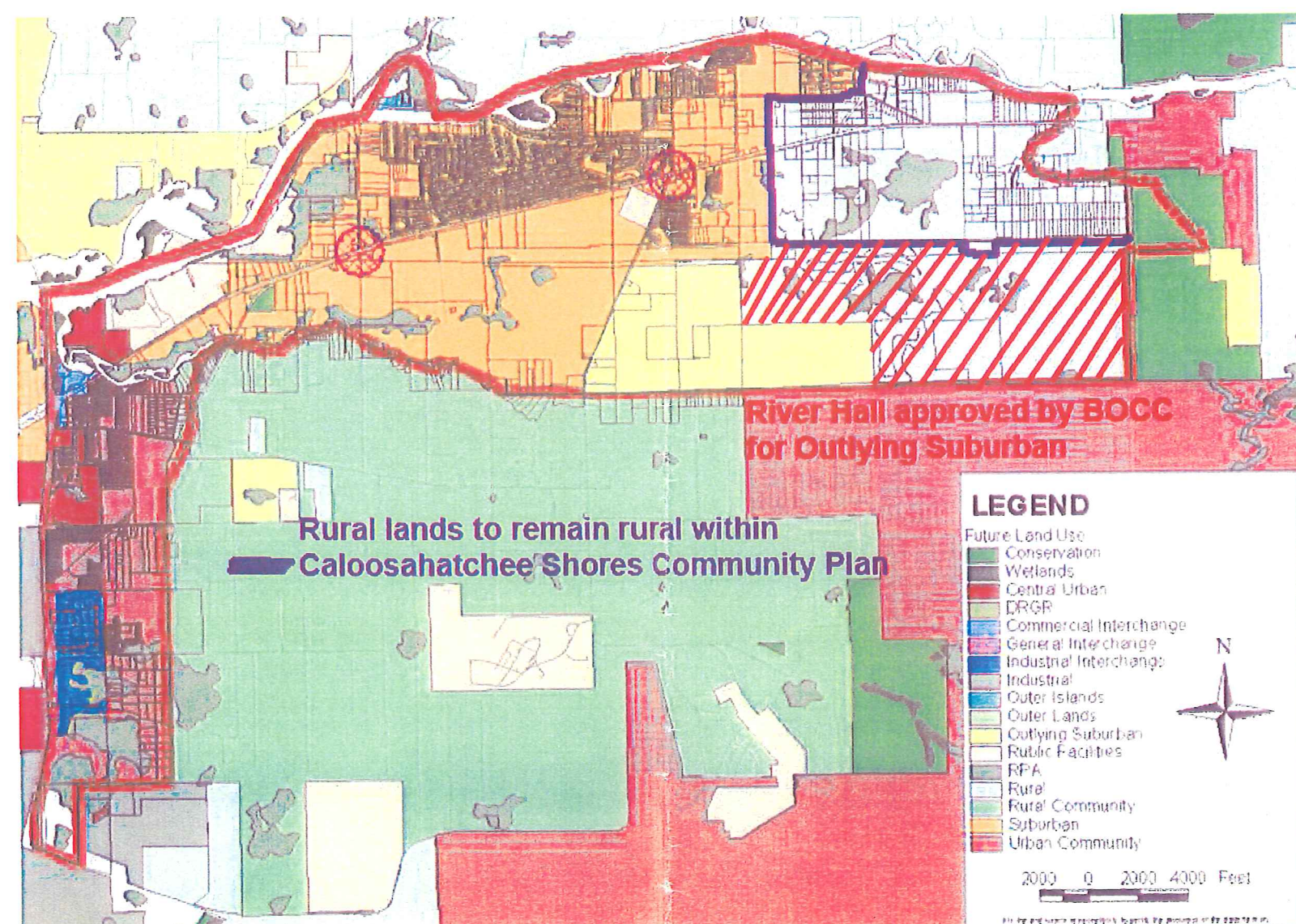
STATE OF FLORIDA )  
COUNTY OF LEE )

The foregoing instrument was certified and subscribed before me this 2nd day of April 2007,  
by Kris Cella McGuire, who is personally known to me or who has produced  
as identification.



Kaye Becker Molnar  
Signature of notary public

Kaye Becker Molnar  
Printed name of notary public

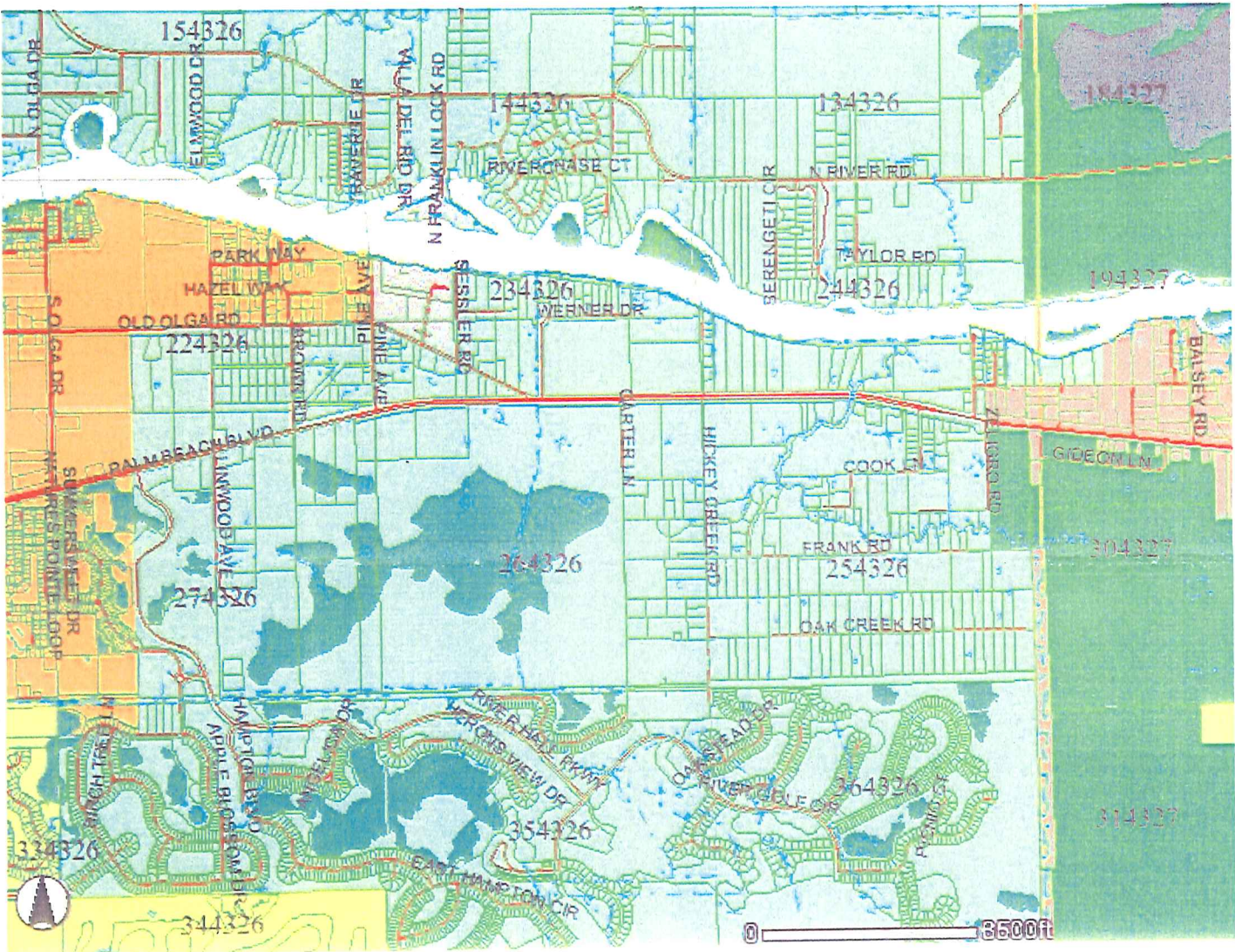




Lee County Map



- Legend**
- Hydro Features
- Condo Building
  - Parcels
  - Parcel Hooks
  - Road Center Line
  - Township Range Lines
  - Township Range Labels
  - Section Lines
  - Future Land Use
- Airport
  - Airport Contingency
  - Central Urban
  - Coastal Rural
  - Conservation Lands Upland
  - Conservation Lands Wetland
  - Density Reduction / Groundwater Resource
  - General Contingency Interchange
  - General Interchange
  - Industrial Contingency Interchange
  - Industrial Development
  - Industrial Interchange
  - Intensive Development
  - Mixed Use Interchange
  - New Contingency
  - Open Lands
  - Outer Upland
  - Outlying Suburban
  - Public Facilities
  - Rural
  - Rural Contingency Preserve
  - Suburban
  - University Contingency
  - University Village Interchange
  - Urban Contingency
  - Wetlands
  - Conservation
  - DRGR
  - General Contingency
  - High Den. MF Res.
  - High Den. MU/Village Res.
  - Industrial
  - Interchng. Contingency
  - Low Den. SF Res.
  - Med Den. MF Res.
  - Med Den. SF/DUP Res.
  - Med Den. MU/PS
  - Med Den. SF Res.
  - Partial/Semi-Public
  - Recreation
  - Resource Protection
  - Seaview
  - Low Density
  - Marina
  - Mixed Residential
  - Pedestrian Contingency
  - City Limits
  - Donor Springs
  - Camp Cents
  - Fort Myers
  - Sewer
  - Yards of Fort Myers Beach






**MEMORANDUM**  
FROM THE  
**OFFICE OF COUNTY ATTORNEY**

DATE: October 24, 2007

TO: Donna Marie Collins  
Assistant County Attorney

FROM:   
Robert Spickerman  
Assistant County Attorney

RE: Caloosahatchee Shores Community Plan - Proposed Text Amendment  
LU-07-10-2090.I.5.  
CPA 2007-00001

**Issue:**

Whether the proposed amendment to the Caloosahatchee Shores Community Plan raises any potential liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act.

**Brief Answer:**

The proposed text amendment for the Caloosahatchee Shores Community Plan may create liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act. The sources for potential liability are the proposed amendment's use of the term "rural character" and the prohibition against intensifying the future land use of properties currently existing within the rural lands future land use category.

**Analysis:**

On January 22, 2007, at the regularly scheduled meeting of the East Lee County Council, the Council unanimously voted to amend the text of the Caloosahatchee Shores Community Plan with the following language:

One important aspect of the Caloosahatchee Shores Community Plan goal is to retain it's rural character and rural land use where it currently exists. Therefore, no land use map amendments to the remaining rural lands category will be permitted after (scrivener will insert affective date of policy), unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

The main issue is whether under the Bert J. Harris, Jr., Private Property Rights Protection Act (Act), Lee County may be liable to property owners detrimentally affected by the proposed plan amendment. The Act is codified in the Florida Statutes as Fla. Stat. §70.001. The Act states, in part, that when a specific action of a governmental entity has inordinately burdened an existing use of real property or vested right to a specific use of real property, the property owner of that real property is entitled to relief. The Act is premised on a belief that the proper balance between protection of public good and private property interests can best be achieved on a case by case basis. (Article on Private Property Rights, Local Government Law Section Newsletter). As such, the terms used by the Act are unclear and broadly defined.

The terms "inordinate burden" or "inordinately burdened" are defined by § 70.001(3)(e) as an action of one or more governmental entities restricting or limiting the use of real property such that the property owner suffers a permanent loss of a reasonable investment backed expectation for an existing use of the landowner's real property or a vested right to a specific use of the landowner's real property.

Section 70.001(3)(b) defines existing use as the actual, present use of real property or a use that is "reasonably foreseeable though non-speculative." In order to be reasonably foreseeable though non-speculative, the use must be suitable for the real property, must be compatible with the adjacent lands, and must create a greater fair market value in the real property that is greater than the fair market value of the actual, present use of the real property. Fla. Stat. §70.001(3)(b).

The limits and impacts of the Act are still being developed by the courts. As such, a liberal interpretation of the Act should be used when evaluating potential liability. The Act's definition of existing use as including a use that is "reasonably foreseeable though non speculative" is the most problematic for the proposed amendment.

The first issue raised by the proposed amendment arises from the use of the term "rural character". The amendment identifies a goal of the Caloosahatchee Shores Community Plan as being to retain the rural character of the Community. The use of the term "rural character" is excessively vague. If the term is being used merely as identifying a goal and the only means to achieve the goal is the prohibition against intensifying the future land use of the rural lands future land use categories, then the use of the term "rural character" is acceptable. If however, other means in addition to the aforementioned prohibition are contemplated for the preservation of the Community's rural character, then the use of the term is not acceptable. Either way, a more detailed explanation of the use of the term "rural character" is necessary for further liability analysis.

The second issue raised by the proposed amendment deals with the prohibition against land use map amendments to properties that are subject to a future rural land use category within the boundaries of the Caloosahatchee Shores Community. The broad definition of "existing use" to include a use that is reasonably foreseeable though non-speculative, provides a property owner

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

with a possible avenue for recovery against Lee County pursuant to the Act. As stated before, "reasonably foreseeable though non-speculative" means that the use must be suitable for the real property, must be compatible with the adjacent land, and must create a greater fair market value in the real property that is greater than the fair market value of the actual, present use of the real property. Fla. Stat. §70.001(3)(b). In Palm Beach Polo, Inc. V. The Village of Wellington, 918 So.2d 988(Fla. 4DCA 2006), a developer purchased a large tract of property at a bankruptcy auction. At the time of the bankruptcy sale, the property was subject to a development plan requiring the preservation and restoration of a forest on the property. See *id* at 991. The Village of Wellington subsequently identified the subject forest property as conservation in its comprehensive plan. See *id* at 992. The developer protested the conservation designation and made a claim pursuant to the Bert J. Harris Act. See *id*. The court concluded that since the developer purchased the property subsequent to the required preservation and restoration of the forest property, the developer failed to establish any reasonable investment-backed expectations with respect to development of the forest property. See *id* at 993.

Other than rural related future land uses, the Caloosahatchee Shores Community also includes suburban, outlying suburban, central urban, urban community, and public facilities future land uses. The Caloosahatchee Shores Community also contains many major roadways including, Palm Beach Blvd., Buckingham Road, Orange River Blvd. and Tice Street. Also, the Caloosahatchee Shores Community is bordered on the West by I-75. Some of the properties within the rural lands future land use categories border land within a more intense future land use category. With increased development, there will be increased demand for intensifying the use of properties, especially near the transportation corridors previously identified within the Caloosahatchee Shores Community. Current owner's of property within the rural land use categories of the Caloosahatchee Shores Community will be able to provide a stronger argument regarding reasonable investment-backed expectations than that made by the developer in the Wellington case discussed above. An owner of property located within a rural future land use category may not find it unreasonable to foresee a use of their property that is more intense than the rural lands future land use category will allow. The proposed amendment would prevent that property owner from amending the future land use map as contemplated by policy 2.4.1 of the Lee Plan.

### **Conclusion:**

The proposed amendment to the Caloosahatchee Shores Community Plan may create potential liability for Lee County pursuant to the Act. As the Act is premised on the belief that the proper balance between protection of the public good and private property interests can best be achieved on a case by case basis, critical terms used in the Act are broadly defined. The definition for the terms "inordinately burdened" and "existing use" are the most problematic.

Donna Marie Collins  
October 24, 2007  
Page 4

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

The proposed amendment's use of the term "rural character" must be further defined in order to properly evaluate any impact the Act may have on the amendment. The prohibition against amending the future land use map to change a future land use category currently identified as rural, may create future liability for Lee County pursuant to the Act.

RDS/amp

**CPA2007-01  
CALOOSAHATCHEE SHORES  
BoCC SPONSORED  
AMENDMENT  
TO THE**

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**LEE COUNTY COMPREHENSIVE PLAN**

---

**THE LEE PLAN**

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**DCA Transmittal Document**

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*Lee County Planning Division  
1500 Monroe Street  
P.O. Box 398  
Fort Myers, FL 33902-0398  
(239) 533-8585*

**October 22, 2008**

**LEE COUNTY  
DIVISION OF PLANNING  
STAFF REPORT FOR  
COMPREHENSIVE PLAN AMENDMENT  
CPA2007-00001**

☒

**Text Amendment**

☐

**Map Amendment**

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

STAFF REPORT PREPARATION DATE: November 20, 2007

**PART I - BACKGROUND AND STAFF RECOMMENDATION**

**A. SUMMARY OF APPLICATION**

**1. SPONSOR/APPLICANT:**

**A. SPONSOR:**

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

**B. APPLICANT**

THE EAST LEE COUNTY COUNCIL  
REPRESENTED BY KRIS CELLA McGUIRE

**2. REQUEST:**

Amend the Future Land Use Element, Goal 21, to add a policy that provides that no land use map amendments to the remaining rural lands category will be permitted unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

**THE BOARD OF COUNTY COMMISSIONERS VOTED TO TRANSMIT THE FOLLOWING  
POLICY TO THE DEPARTMENT OF COMMUNITY AFFAIRS:**



**POLICY 21.1.4:** One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' rural character and rural land use where it currently exists. Therefore no land use map amendments to the remaining rural lands category will be permitted after {scrivener will insert effective date of policy}, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

## **B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:**

**1. RECOMMENDATION:** Planning staff recommends that the Board of County Commissioners transmit this proposed amendment.

### **2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

- The Caloosahatchee Shores Community Plan was submitted to Lee County in September, 2002.
- The Caloosahatchee Shores Community Plan resulted in a Lee Plan amendment adopted in October, 2003.
- The Lee Plan amendment specific to Caloosahatchee Shores is now Goal 21 of the Lee Plan.
- Goal 21 was amended on May 16, 2007 when a new Policy 21.1.4 was adopted.
- The East Lee County Council submitted an application to make a second amendment to Goal 21 in April, 2007.
- This amendment would add a new Policy 21.1.5 to Goal 21 of the Lee Plan.

## **C. BACKGROUND INFORMATION**

The Caloosahatchee Shores Community Plan was undertaken by the Caloosahatchee Shores Community Planning Panel working as a sub group of the ELCC. The planning area encompasses that portion of the Fort Myers Shores planning community located east of I-75. The community plan was financed, in part, with \$25,000 of community planning funds from Lee County.

The Caloosahatchee Shores community plan was submitted to Lee County in September, 2002. The plan contained a Goal, Objectives, and Policies. The Goal for Caloosahatchee Shores was adopted into the Lee Plan in October, 2003 and is now Goal 21.

The East Lee County Council has continued to work on improvements to Goal 21, and submitted an amendment to the Goal in September, 2005 that was adopted as Policy 21.1.4 on May 16, 2007. This second proposed amendment to Goal 21 would add a new Policy 21.1.5.

## A. STAFF DISCUSSION

Goal 21 of the Lee Plan is intended to express the communities desire to protect the existing character of the community and to maintain the existing rural character of the Caloosahatchee shores area. Goal 21 reads as follows:

**GOAL 21: CALOOSAHATCHEE SHORES:** To protect the existing character, natural resources and quality of life in Caloosahatchee Shores, while promoting new development, redevelopment and maintaining a more rural identity for the neighborhoods east of I-75 by establishing minimum aesthetic requirements, planning the location and intensity of future commercial and residential uses, and providing incentives for redevelopment, mixed use development and pedestrian safe environments. This Goal and subsequent objectives and policies apply to the Caloosahatchee Shores boundaries as depicted on Map 1, page 2 of 5 in the Appendix. (Added by Ordinance No. 03-21)

**STAFF COMMENTS:** This proposed amendment is consistent with Goal 21 of the Lee Plan and may help further the intent of the Caloosahatchee Shores community. This proposed new Policy contains language very similar to Objective 17.1 pertaining to the Buckingham community and Objective 20.1 pertaining to the Bayshore community. Objective 17.1 of the Lee Plan reads:

**OBJECTIVE 17.1: LAND USE.** The primary land use designation for the Buckingham area is "Rural Community Preserve." Public Facilities have also been designated as appropriate. After the adoption of this amendment, no land in Buckingham will be changed to a land use category more intense than Rural Community Preserve (including Public Facilities) unless a finding of overriding public necessity is determined by three members of the Board of County Commissioners. (Amended by Ordinance No. 00-22)

Objective 20.1 of the Lee Plan reads:

**OBJECTIVE 20.1: LAND USE.** The existing land use designations of the Lee Plan (as of September 30, 2001) are appropriate to achieving the goal of the Bayshore Plan. No land use map amendments to a more intensive category will be permitted after March 11, 2003, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners. (Added by Ordinance No. 03-02)

**STAFF COMMENTS:** The County Attorney's office issued two separate memorandum on this plan amendment. One is dated October 24, 2007 and the other is dated November 2, 2007. The October 24 memorandum concludes that the proposed amendment to the Caloosahatchee Shores Community Plan may create potential liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act. The November 2 memorandum states that the proposed limitation on further amendments to the Future Land Use Map for lands currently designated as Rural, will result in liability under the Bert J. Harris, Jr., Private Property Rights Protection Act. Those memorandum are attached to this report.

The County Attorney's Office recommended that planning staff provide an inventory of land designated Rural in the Caloosahatchee Shores planning area. There are approximately 3,189 acres of Rural land in the Caloosahatchee Shores planning area. The County Attorney's office also suggested that an estimate of the possible relief that may be sought by these property owners. Short of having appraisals for all of the Rural designated property with each possible land use category change that could be sought, assigning a dollar amount to the amount of exposure the County may or will be exposing itself to is impossible.

Planning staff questions that there are valid investment backed expectations on the Rural properties in Caloosahatchee Shores, or anywhere else for that matter. If you purchase a piece of property that is designated as Rural, it would be reasonable to expect that is what you have. Planning staff does not believe that any investment backed expectations beyond the uses allowed in the Rural category is reasonable foreseeable and speculative. In addition, this amendment does not preclude a property owner from requesting a change to their Future Land Use Map designation. It does heighten the scrutiny of that request. Additionally, very similar language is in place in two other communities in Lee County, namely Buckingham and Bayshore.

Planning staff recommends that the Board of County Commissioners transmit this proposed amendment.

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

DATE OF PUBLIC HEARING: December 17, 2007

#### **A. LOCAL PLANNING AGENCY REVIEW**

Staff gave a brief review of the staff report and recommendations. Following staff's presentation one LPA member expressed concern with designating a permanence of rural and ignoring the fact that this area will continue to grow and may need commercial at some point. He felt there should be an analysis done to determine what part of the 3,189 affected acres would be appropriate for commercial development. Staff noted that if there is a need in the community for commercial development then three members of the Board of County Commissioners can find that there is an overriding public need and make that change.

Another member appreciated the fact that this community based amendment underscores the desires of the community to emphasize the rural character of their area and preserve it as has been done with the Buckingham community and the Bayshore community.

The LPA had a lengthy discussion about Mr. Spickerman's memorandum dated October 24, 2007 regarding Bert J. Harris implications.

An LPA member stated that when someone applies for a plan amendment, they must go through an analysis from the Planning Division, various other departments, the LPA, and the Board of County Commissioners. This rigorous process will continue regardless of whether or not this plan amendment is adopted.

The LPA asked if anyone from the public wished to speak and the sponsor of the proposal spoke in favor of transmitting CPA 2007-01.

#### **B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY**

- 1. RECOMMENDATION:** The LPA Recommends that the Board of County Commissioners transmit CPA 2007-00001 as recommended by staff.
- 2. BASIS AND RECOMMENDED FINDINGS OF FACT:** The LPA accepted the findings of fact as advanced by staff.

**C. VOTE:**

**NOEL ANDRESS**

AYE

**DEREK BURR**

AYE

**LES COCHRAN**

AYE

**RONALD INGE**

AYE

**CARLETON RYFFEL**

AYE

**RAE ANN WESSEL**

AYE

**LELAND TAYLOR**

AYE

**PART IV - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: October 22, 2008

**A. BOARD REVIEW:**

Staff gave a brief presentation and explained that proposed Policy 21.1.4 contains language that is very similar to Objective 17.1 for Buckingham, and Objective 20.1 for Bayshore. Staff told the Board that both staff and the LPA are recommending transmittal of CPA 2007-00001.

One Board member expressed concern over the phrase "finding of overriding public necessity". That Board member wanted less ambiguity in the policy, but supported transmittal of the amendment.

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

**Transmit CPA 2007-00001 as recommended by staff and the LPA.**

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

The Board of County Commissioners accepted the findings of fact as advanced by staff and the LPA.

**C. VOTE:**

|                         |            |
|-------------------------|------------|
| <b>A. BRIAN BIGELOW</b> | <b>AYE</b> |
| <b>TAMMARA HALL</b>     | <b>AYE</b> |
| <b>ROBERT P. JANES</b>  | <b>AYE</b> |
| <b>RAY JUDAH</b>        | <b>AYE</b> |
| <b>FRANKLIN B. MANN</b> | <b>AYE</b> |



**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,  
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: \_\_\_\_\_

**A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS**

**B. STAFF RESPONSE**

**PART VI - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: \_\_\_\_\_

**A. BOARD REVIEW:**

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

**C. VOTE:**

**A. BRIAN BIGELOW**

**TAMMARA HALL**

**ROBERT P. JANES**

**RAY JUDAH**

**FRANKLIN B. MANN**

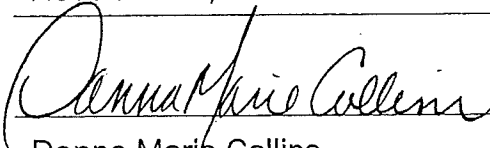
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MEMORANDUM  
FROM THE  
OFFICE OF COUNTY ATTORNEY

RECEIVED  
NOV 21 2007

To: Jim Mudd  
Planning Division

DATE: November 2, 2007 COMMUNITY DEVELOPMENT

FROM:   
Donna Marie Collins  
Assistant County Attorney

RE: Caloosahatchee Shores Community Plan  
CPA2007-00001  
LU-07-10-2090.1.5.

Thank you for forwarding the application filed by the East Lee County Council to amend the Caloosahatchee Shores Community Plan. The Office of the County Attorney has reviewed the proposed text amendment. Please be advised that the proposed limitation on further amendments to the Future Land Use Map for lands currently designated as Rural, will result in liability under the Bert J. Harris, Jr., Private Property Rights Protection Act. For this reason, it is our recommendation that the Planning Division prepare an inventory of the properties that will be affected by the proposed limitation so that the Board will be informed of the magnitude of property affected by the proposed limitation. This information will also be necessary to evaluate the scope of the County's exposure to liability under the Act. The inventory should include those properties currently designated as Rural on the Future Land Use Map located within the boundaries of the Caloosahatchee Shores Community.

A detailed examination of the implications of the proposed plan amendment are set forth in the attached memorandum prepared by Robert Spickerman of this Office. If I may be of further assistance, do not hesitate to contact me.

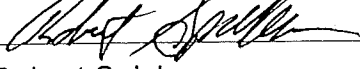
DMC/amp  
Attachment

cc: Matt Noble, Planning Division w/attachment

**MEMORANDUM**  
FROM THE  
**OFFICE OF COUNTY ATTORNEY**

DATE: October 24, 2007

TO: Donna Marie Collins  
Assistant County Attorney

FROM:   
Robert Spickerman  
Assistant County Attorney

RE: Caloosahatchee Shores Community Plan - Proposed Text Amendment  
LU-07-10-2090.I.5.  
CPA 2007-00001

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**Brief Answer:**

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**Analysis:**

On January 22, 2007, at the regularly scheduled meeting of the East Lee County Council, the Council unanimously voted to amend the text of the Caloosahatchee Shores Community Plan with the following language:

One important aspect of the Caloosahatchee Shores Community Plan goal is to retain it's rural character and rural land use where it currently exists. Therefore, no land use map amendments to the remaining rural lands category will be permitted after (scrivener will insert affective date of policy), unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

The main issue is whether under the Bert J. Harris, Jr., Private Property Rights Protection Act (Act), Lee County may be liable to property owners detrimentally affected by the proposed plan amendment. The Act is codified in the Florida Statutes as Fla. Stat. §70.001. The Act states, in part, that when a specific action of a governmental entity has inordinately burdened an existing use of real property or vested right to a specific use of real property, the property owner of that real property is entitled to relief. The Act is premised on a belief that the proper balance between protection of public good and private property interests can best be achieved on a case by case basis. (Article on Private Property Rights, Local Government Law Section Newsletter). As such, the terms used by the Act are unclear and broadly defined.

The terms "inordinate burden" or "inordinately burdened" are defined by § 70.001(3)(e) as an action of one or more governmental entities restricting or limiting the use of real property such that the property owner suffers a permanent loss of a reasonable investment backed expectation for an existing use of the landowner's real property or a vested right to a specific use of the landowner's real property.

Section 70.001(3)(b) defines existing use as the actual, present use of real property or a use that is "reasonably foreseeable though non-speculative." In order to be reasonably foreseeable though non-speculative, the use must be suitable for the real property, must be compatible with the adjacent lands, and must create a greater fair market value in the real property that is greater than the fair market value of the actual, present use of the real property. Fla. Stat. §70.001(3)(b).

The limits and impacts of the Act are still being developed by the courts. As such, a liberal interpretation of the Act should be used when evaluating potential liability. The Act's definition of existing use as including a use that is "reasonably foreseeable though non-speculative" is the most problematic for the proposed amendment.

The first issue raised by the proposed amendment arises from the use of the term "rural character". The amendment identifies a goal of the Caloosahatchee Shores Community Plan as being to retain the rural character of the Community. The use of the term "rural character" is excessively vague. If the term is being used merely as identifying a goal and the only means to achieve the goal is the prohibition against intensifying the future land use of the rural lands future land use categories, then the use of the term "rural character" is acceptable. If however, other means in addition to the aforementioned prohibition are contemplated for the preservation of the Community's rural character, then the use of the term is not acceptable. Either way, a more detailed explanation of the use of the term "rural character" is necessary for further liability analysis.

The second issue raised by the proposed amendment deals with the prohibition against land use map amendments to properties that are subject to a future rural land use category within the boundaries of the Caloosahatchee Shores Community. The broad definition of "existing use" to include a use that is reasonably foreseeable though non-speculative, provides a property owner

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

with a possible avenue for recovery against Lee County pursuant to the Act. As stated before, "reasonably foreseeable though non-speculative" means that the use must be suitable for the real property, must be compatible with the adjacent land, and must create a greater fair market value in the real property that is greater than the fair market value of the actual, present use of the real property. Fla. Stat. §70.001(3)(b). In Palm Beach Polo, Inc. V. The Village of Wellington, 918 So.2d 988(Fla. 4DCA 2006), a developer purchased a large tract of property at a bankruptcy auction. At the time of the bankruptcy sale, the property was subject to a development plan requiring the preservation and restoration of a forest on the property. See *id* at 991. The Village of Wellington subsequently identified the subject forest property as conservation in its comprehensive plan. See *id* at 992. The developer protested the conservation designation and made a claim pursuant to the Bert J. Harris Act. See *id*. The court concluded that since the developer purchased the property subsequent to the required preservation and restoration of the forest property, the developer failed to establish any reasonable investment-backed expectations with respect to development of the forest property. See *id* at 993.

Other than rural related future land uses, the Caloosahatchee Shores Community also includes suburban, outlying suburban, central urban, urban community, and public facilities future land uses. The Caloosahatchee Shores Community also contains many major roadways including, Palm Beach Blvd., Buckingham Road, Orange River Blvd. and Tice Street. Also, the Caloosahatchee Shores Community is bordered on the West by I-75. Some of the properties within the rural lands future land use categories border land within a more intense future land use category. With increased development, there will be increased demand for intensifying the use of properties, especially near the transportation corridors previously identified within the Caloosahatchee Shores Community. Current owner's of property within the rural land use categories of the Caloosahatchee Shores Community will be able to provide a stronger argument regarding reasonable investment-backed expectations than that made by the developer in the Wellington case discussed above. An owner of property located within a rural future land use category may not find it unreasonable to foresee a use of their property that is more intense than the rural lands future land use category will allow. The proposed amendment would prevent that property owner from amending the future land use map as contemplated by policy 2.4.1 of the Lee Plan.

### **Conclusion:**

The proposed amendment to the Caloosahatchee Shores Community Plan may create potential liability for Lee County pursuant to the Act. As the Act is premised on the belief that the proper balance between protection of the public good and private property interests can best be achieved on a case by case basis, critical terms used in the Act are broadly defined. The definition for the terms "inordinately burdened" and "existing use" are the most problematic.



Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

The proposed amendment's use of the term "rural character" must be further defined in order to properly evaluate any impact the Act may have on the amendment. The prohibition against amending the future land use map to change a future land use category currently identified as rural, may create future liability for Lee County pursuant to the Act.

RDS/amp

RECEIVED  
APR - 2 2007



LEE COUNTY  
SOUTHWEST FLORIDA

COMMUNITY DEVELOPMENT

Lee County Board of County Commissioners  
Department of Community Development  
Division of Planning  
Post Office Box 398  
Fort Myers, FL 33902-0398  
Telephone: (239) 479-8585  
FAX: (239) 479-8519

APPLICATION FOR A  
COMPREHENSIVE PLAN AMENDMENT

(To be completed at time of intake)

DATE REC'D \_\_\_\_\_ REC'D BY: \_\_\_\_\_

APPLICATION FEE \_\_\_\_\_ TIDEMARK NO: \_\_\_\_\_

THE FOLLOWING VERIFIED:

Zoning ☐ Commissioner District ☐

Designation on FLUM ☐

-----  
(To be completed by Planning Staff)

Plan Amendment Cycle: ☐ Normal ☐ Small Scale ☐ DRI ☐ Emergency

Request No: \_\_\_\_\_

APPLICANT PLEASE NOTE:

Answer all questions completely and accurately. Please print or type responses. If additional space is needed, number and attach additional sheets. The total number of sheets in your application is: 9

Submit 6 copies of the complete application and amendment support documentation, including maps, to the Lee County Division of Planning. Additional copies may be required for Local Planning Agency, Board of County Commissioners hearings and the Department of Community Affairs' packages.

I, the undersigned owner or authorized representative, hereby submit this application and the attached amendment support documentation. The information and documents provided are complete and accurate to the best of my knowledge.

4/2/07  
DATE

*Chris Cella McDevitt*  
SIGNATURE OF OWNER OR AUTHORIZED REPRESENTATIVE

RECEIVED  
APR - 4 2007

2007-00001

I. APPLICANT/AGENT/OWNER INFORMATION

APPLICANT East Lee County Council  
ADDRESS C/O Cella Molnar & Assoc. 1631 Hendry St.  
CITY Fort Myers STATE FL ZIP 33901  
TELEPHONE NUMBER 239-337-1071 FAX NUMBER 239-337-1076

AGENT\* Kris Cella, <sup>McGuire</sup> ELCC Board of Directors  
ADDRESS Same as above

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
TELEPHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

OWNER(s) OF RECORD Caloosahatchee Shores Community Plan c/o  
ADDRESS East Lee County Council  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
TELEPHONE NUMBER \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

Name, address and qualification of additional planners, architects, engineers, environmental consultants, and other professionals providing information contained in this application.

\* This will be the person contacted for all business relative to the application.

**II. REQUESTED CHANGE (Please see Item 1 for Fee Schedule)**

A. TYPE: (Check appropriate type)

☒ Text Amendment

☐ Future Land Use Map Series Amendment  
(Maps 1 thru 21)

List Number(s) of Map(s) to be amended  
\_\_\_\_\_

B. SUMMARY OF REQUEST (Brief explanation):

Amend the Calusa Hatchee Community  
Plan text see attached.

**III. PROPERTY SIZE AND LOCATION OF AFFECTED PROPERTY  
(for amendments affecting development potential of property)**

A. Property Location:

1. Site Address: see attached map

2. STRAP(s): \_\_\_\_\_

B. Property Information

Total Acreage of Property: \_\_\_\_\_

Total Acreage included in Request: \_\_\_\_\_

Area of each Existing Future Land Use Category: \_\_\_\_\_

Total Uplands: \_\_\_\_\_

Total Wetlands: \_\_\_\_\_

Current Zoning: \_\_\_\_\_

Current Future Land Use Designation: \_\_\_\_\_

Existing Land Use: \_\_\_\_\_

April 2, 2007

Lee County Department of Community Development Services  
1500 Monroe Street  
Fort Myers, Florida 33901

Subject: Caloosahatchee Shores Community Plan – Text Amendment Requested

On January 22, 2007, at the regularly scheduled meeting of the East Lee County Council, the Council unanimously voted to amend the text of the referenced community plan with the following language:

"One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' rural character and rural land use where it currently exists. Therefore no land use map amendments to the remaining rural lands category will be permitted after {scrivener will insert effective date of policy}, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners."

Kris Cella McGuire  
Board of Directors  
East Lee County Council

- C. State if the subject property is located in one of the following areas and if so how does the proposed change effect the area:

Lehigh Acres Commercial Overlay: \_\_\_\_\_

Airport Noise Zone 2 or 3: \_\_\_\_\_

Acquisition Area: \_\_\_\_\_

Joint Planning Agreement Area (adjoining other jurisdictional lands): \_\_\_\_\_

Community Redevelopment Area: \_\_\_\_\_

- D. Proposed change for the Subject Property:

No change to remain Rural Land Use

- E. Potential development of the subject property:

1. Calculation of maximum allowable development under existing FLUM:

Residential Units/Density \_\_\_\_\_

Commercial intensity \_\_\_\_\_

Industrial intensity \_\_\_\_\_

2. Calculation of maximum allowable development under proposed FLUM:

Residential Units/Density \_\_\_\_\_

Commercial intensity \_\_\_\_\_

Industrial intensity \_\_\_\_\_

#### IV. AMENDMENT SUPPORT DOCUMENTATION

At a minimum, the application shall include the following support data and analysis. These items are based on comprehensive plan amendment submittal requirements of the State of Florida, Department of Community Affairs, and policies contained in the Lee County Comprehensive Plan. Support documentation provided by the applicant will be used by staff as a basis for evaluating this request. To assist in the preparation of amendment packets, the applicant is encouraged to provide all data and analysis electronically. (Please contact the Division of Planning for currently accepted formats)

A. General Information and Maps

*NOTE: For each map submitted, the applicant will be required to provide a reduced map (8.5" x 11") for inclusion in public hearing packets.*

3. Requests involving lands in critical areas for future water supply must be evaluated based on policy 2.4.2.
  4. Requests moving lands from Density Reduction/Groundwater Resource must fully address Policy 2.4.3 of the Lee Plan Future Land Use Element.
- G. Justify the proposed amendment based upon sound planning principles. Be sure to support all conclusions made in this justification with adequate data and analysis.

**Item 1: Fee Schedule**

|  |                                     |
|--|-------------------------------------|
| Map Amendment Flat Fee                   | \$2,000.00 each                     |
| Map Amendment > 20 Acres                 | \$2,000.00 and \$20.00 per 10 acres |
| Small Scale Amendment (10 acres or less) | \$1,500.00 each                     |
| Text Amendment Flat Fee                  | \$2,500.00 each                     |

**AFFIDAVIT**

I, Kris Cella McGuire certify that I am the owner or authorized representative of the property described herein, and that all answers to the questions in this application and any sketches, data, or other supplementary matter attached to and made a part of this application, are honest and true to the best of my knowledge and belief. I also authorize the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made through this application.

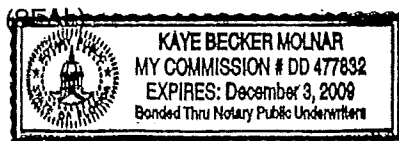
Kris Cella McGuire  
Signature of owner or owner-authorized agent

4/2/07  
Date

Kris Cella McGuire  
Typed or printed name

STATE OF FLORIDA )  
COUNTY OF LEE )

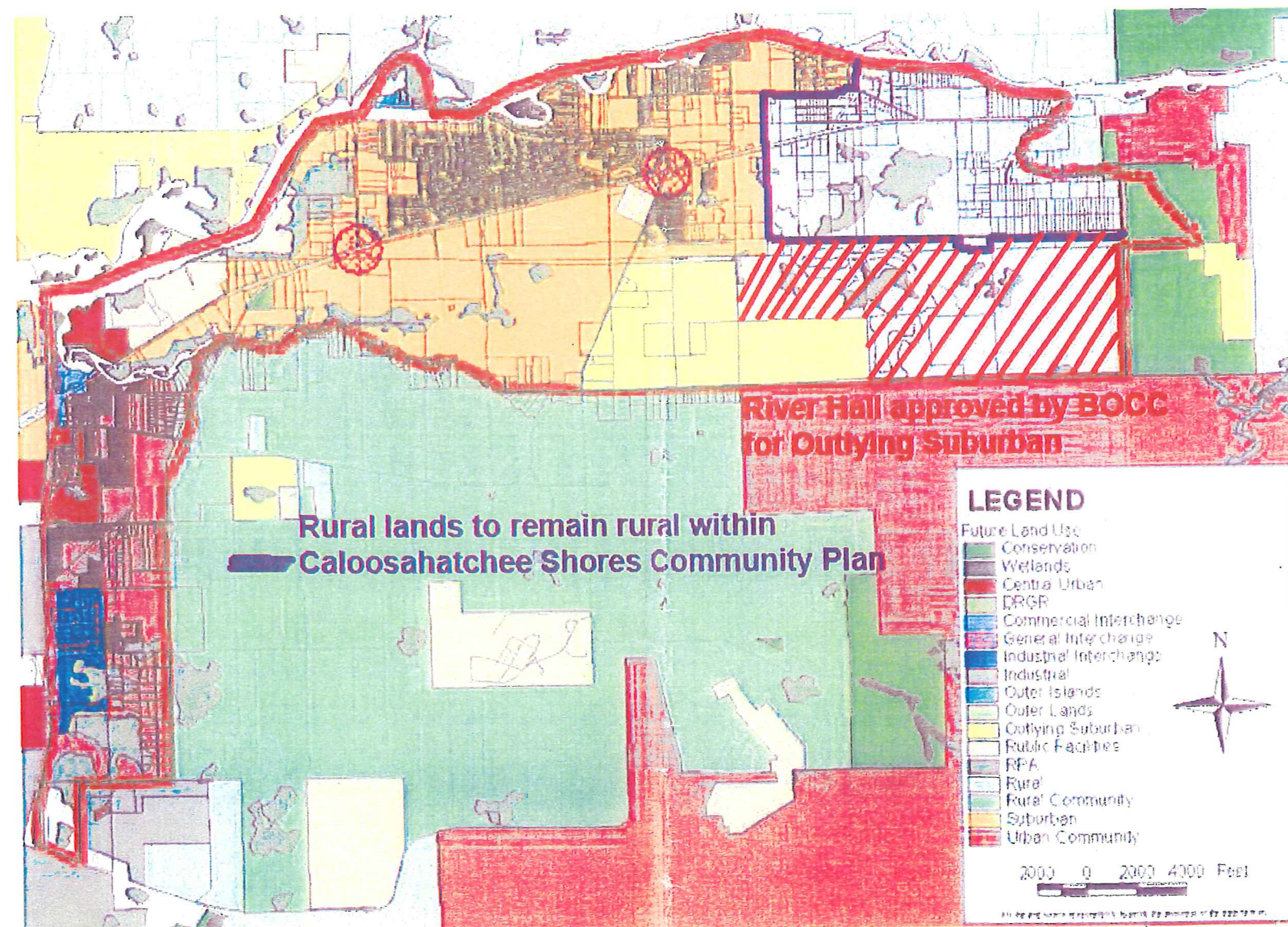
The foregoing instrument was certified and subscribed before me this 2nd day of April 2007, by Kris Cella McGuire, who is personally known to me or who has produced as identification.



Kaye Becker Molnar  
Signature of notary public

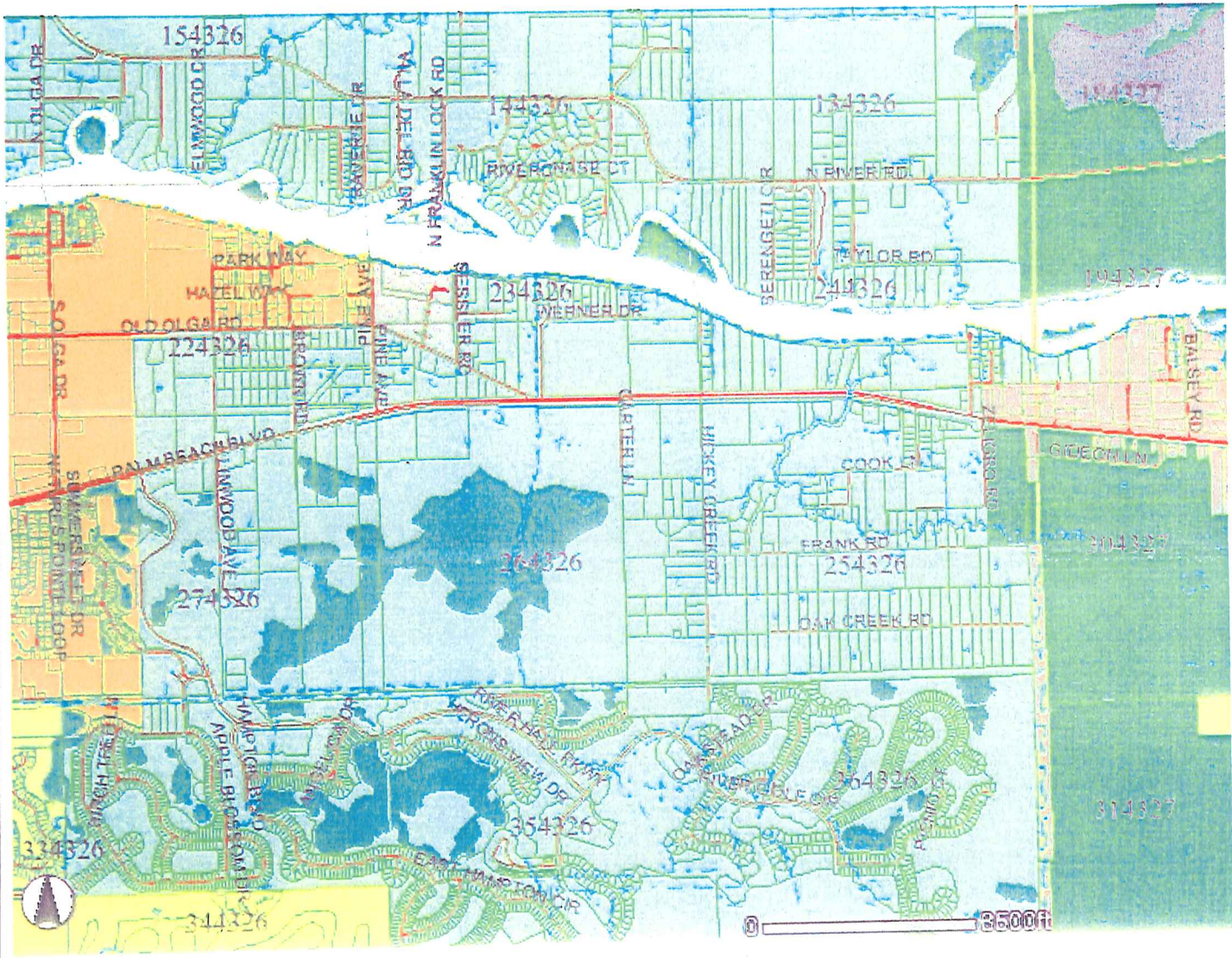
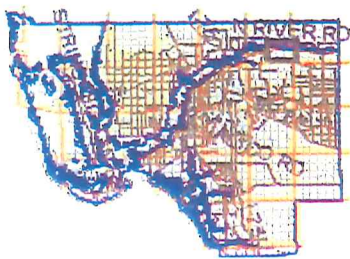
Kaye Becker Molnar  
Printed name of notary public







Lee County Map



- Legend**
- Hydro Features
- Canals Building
  - Parcels
  - Parcel Hooks
  - Road Center Line
  - Township Range Lines
  - Township Range Labels
  - Section Lines
  - Future Land Use
- Airport
  - Airport Commerce
  - Central Urban
  - Coastal Rural
  - Conservation Lands Upland
  - Conservation Lands Wetland
  - Densely Residential / Groundwater Resource
  - General Commercial Interchange
  - General Interchange
  - Industrial Commercial Interchange
  - Industrial Development
  - Industrial Interchange
  - Interstate Development
  - Mixed Use Interchange
  - New Commercial
  - Open Land
  - Open Upland
  - Outlying Suburban
  - Public Facilities
  - Rural
  - Rural Development Preserve
  - Suburban
  - University Commercial
  - University Village Interchange
  - Urban Commercial
  - Wetlands
  - Wetlands
  - DRGR
  - General Commercial
  - High Density Urban
  - High Density Urban Interchange
  - Industrial
  - Interchange Commercial
  - Low Density Urban
  - Medium Density Urban
  - Medium Density Suburban
  - Medium Density Urban
  - Medium Density Urban
  - Public Office / Public
  - Recreation
  - Resource Protection
  - Shrubland
  - Job Center
  - Marina
  - Mixed Residential
  - Residential Commercial
  - City Limits
  - Barred Springs
  - Camp Ground
  - Fish Market
  - Sanitary
  - Location of Fish Market Board

**CPA2007-01  
CALOOSA HATCHEE SHORES  
BoCC SPONSORED  
AMENDMENT  
TO THE**

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**LEE COUNTY COMPREHENSIVE PLAN**

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**THE LEE PLAN**

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**BoCC Public Hearing Document  
for the  
February 25<sup>th</sup>, 2009 Adoption Hearing**

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*Lee County Planning Division  
1500 Monroe Street  
P.O. Box 398  
Fort Myers, FL 33902-0398  
(239) 533-8585*

**January 16, 2009**

**LEE COUNTY  
DIVISION OF PLANNING  
STAFF REPORT FOR  
COMPREHENSIVE PLAN AMENDMENT  
CPA2007-00001**

☒

**Text Amendment**

☐

**Map Amendment**

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

STAFF REPORT PREPARATION DATE: November 20, 2007

**PART I - BACKGROUND AND STAFF RECOMMENDATION**

**A. SUMMARY OF APPLICATION**

**1. SPONSOR/APPLICANT:**

**A. SPONSOR:**

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

**B. APPLICANT**

THE EAST LEE COUNTY COUNCIL  
REPRESENTED BY KRIS CELLA McGUIRE

**2. REQUEST:**

Amend the Future Land Use Element, Goal 21, to add a policy that provides that no land use map amendments to the remaining rural lands category will be permitted unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

**THE BOARD OF COUNTY COMMISSIONERS VOTED TO TRANSMIT THE FOLLOWING  
POLICY TO THE DEPARTMENT OF COMMUNITY AFFAIRS:**



**POLICY 21.1.5:** One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' rural character and rural land use where it currently exists. Therefore no land use map amendments to the remaining rural lands category will be permitted after {scrivener will insert effective date of policy}, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

## **B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:**

**1. RECOMMENDATION:** Planning staff recommends that the Board of County Commissioners transmit this proposed amendment.

### **2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

- The Caloosahatchee Shores Community Plan was submitted to Lee County in September, 2002.
- The Caloosahatchee Shores Community Plan resulted in a Lee Plan amendment adopted in October, 2003.
- The Lee Plan amendment specific to Caloosahatchee Shores is now Goal 21 of the Lee Plan.
- Goal 21 was amended on May 16, 2007 when a new Policy 21.1.4 was adopted.
- The East Lee County Council submitted an application to make a second amendment to Goal 21 in April, 2007.
- This amendment would add a new Policy 21.1.5 to Goal 21 of the Lee Plan.

## **C. BACKGROUND INFORMATION**

The Caloosahatchee Shores Community Plan was undertaken by the Caloosahatchee Shores Community Planning Panel working as a sub group of the ELCC. The planning area encompasses that portion of the Fort Myers Shores planning community located east of I-75. The community plan was financed, in part, with \$25,000 of community planning funds from Lee County.

The Caloosahatchee Shores community plan was submitted to Lee County in September, 2002. The plan contained a Goal, Objectives, and Policies. The Goal for Caloosahatchee Shores was adopted into the Lee Plan in October, 2003 and is now Goal 21.

The East Lee County Council has continued to work on improvements to Goal 21, and submitted an amendment to the Goal in September, 2005 that was adopted as Policy 21.1.4 on May 16, 2007. This second proposed amendment to Goal 21 would add a new Policy 21.1.5.

## **A. STAFF DISCUSSION**

Goal 21 of the Lee Plan is intended to express the communities desire to protect the existing character of the community and to maintain the existing rural character of the Caloosahatchee shores area. Goal 21 reads as follows:

**GOAL 21: CALOOSAHATCHEE SHORES:** To protect the existing character, natural resources and quality of life in Caloosahatchee Shores, while promoting new development, redevelopment and maintaining a more rural identity for the neighborhoods east of I-75 by establishing minimum aesthetic requirements, planning the location and intensity of future commercial and residential uses, and providing incentives for redevelopment, mixed use development and pedestrian safe environments. This Goal and subsequent objectives and policies apply to the Caloosahatchee Shores boundaries as depicted on Map 1, page 2 of 5 in the Appendix. (Added by Ordinance No. 03-21)

**STAFF COMMENTS:** This proposed amendment is consistent with Goal 21 of the Lee Plan and may help further the intent of the Caloosahatchee Shores community. This proposed new Policy contains language very similar to Objective 17.1 pertaining to the Buckingham community and Objective 20.1 pertaining to the Bayshore community. Objective 17.1 of the Lee Plan reads:

**OBJECTIVE 17.1: LAND USE.** The primary land use designation for the Buckingham area is "Rural Community Preserve." Public Facilities have also been designated as appropriate. After the adoption of this amendment, no land in Buckingham will be changed to a land use category more intense than Rural Community Preserve (including Public Facilities) unless a finding of overriding public necessity is determined by three members of the Board of County Commissioners. (Amended by Ordinance No. 00-22)

Objective 20.1 of the Lee Plan reads:

**OBJECTIVE 20.1: LAND USE.** The existing land use designations of the Lee Plan (as of September 30, 2001) are appropriate to achieving the goal of the Bayshore Plan. No land use map amendments to a more intensive category will be permitted after March 11, 2003, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners. (Added by Ordinance No. 03-02)

**STAFF COMMENTS:** The County Attorney's office issued two separate memorandum on this plan amendment. One is dated October 24, 2007 and the other is dated November 2, 2007. The October 24 memorandum concludes that the proposed amendment to the Caloosahatchee Shores Community Plan may create potential liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act. The November 2 memorandum states that the proposed limitation on further amendments to the Future Land Use Map for lands currently designated as Rural, will result in liability under the Bert J. Harris, Jr., Private Property Rights Protection Act. Those memorandum are attached to this report.

The County Attorney's Office recommended that planning staff provide an inventory of land designated Rural in the Caloosahatchee Shores planning area. There are approximately 3,189 acres

of Rural land in the Caloosahatchee Shores planning area. The County Attorney's office also suggested that an estimate of the possible relief that may be sought by these property owners. Short of having appraisals for all of the Rural designated property with each possible land use category change that could be sought, assigning a dollar amount to the amount of exposure the County may or will be exposing itself to is impossible.

Planning staff questions that there are valid investment backed expectations on the Rural properties in Caloosahatchee Shores, or anywhere else for that matter. If you purchase a piece of property that is designated as Rural, it would be reasonable to expect that is what you have. Planning staff does not believe that any investment backed expectations beyond the uses allowed in the Rural category is reasonable foreseeable and speculative. In addition, this amendment does not preclude a property owner from requesting a change to their Future Land Use Map designation. It does heighten the scrutiny of that request. Additionally, very similar language is in place in two other communities in Lee County, namely Buckingham and Bayshore.

Planning staff recommends that the Board of County Commissioners transmit this proposed amendment.



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

DATE OF PUBLIC HEARING: December 17, 2007

#### **A. LOCAL PLANNING AGENCY REVIEW**

Staff gave a brief review of the staff report and recommendations. Following staff's presentation one LPA member expressed concern with designating a permanence of rural and ignoring the fact that this area will continue to grow and may need commercial at some point. He felt there should be an analysis done to determine what part of the 3,189 affected acres would be appropriate for commercial development. Staff noted that if there is a need in the community for commercial development then three members of the Board of County Commissioners can find that there is an overriding public need and make that change.

Another member appreciated the fact that this community based amendment underscores the desires of the community to emphasize the rural character of their area and preserve it as has been done with the Buckingham community and the Bayshore community.

The LPA had a lengthy discussion about Mr. Spickerman's memorandum dated October 24, 2007 regarding Bert J. Harris implications.

An LPA member stated that when someone applies for a plan amendment, they must go through an analysis from the Planning Division, various other departments, the LPA, and the Board of County Commissioners. This rigorous process will continue regardless of whether or not this plan amendment is adopted.

The LPA asked if anyone from the public wished to speak and the sponser of the proposal spoke in favor of transmitting CPA 2007-01.

#### **B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY**

- 1. RECOMMENDATION:** The LPA Recommends that the Board of County Commissioners transmit CPA 2007-00001 as recommended by staff.
- 2. BASIS AND RECOMMENDED FINDINGS OF FACT:** The LPA accepted the findings of fact as advanced by staff.

**C. VOTE:**

|                        |            |
|------------------------|------------|
| <b>NOEL ANDRESS</b>    | <u>AYE</u> |
| <b>DEREK BURR</b>      | <u>AYE</u> |
| <b>LES COCHRAN</b>     | <u>AYE</u> |
| <b>RONALD INGE</b>     | <u>AYE</u> |
| <b>CARLETON RYFFEL</b> | <u>AYE</u> |
| <b>RAE ANN WESSEL</b>  | <u>AYE</u> |
| <b>LELAND TAYLOR</b>   | <u>AYE</u> |

**PART IV - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: October 22, 2008

**A. BOARD REVIEW:**

Staff gave a brief presentation and explained that proposed Policy 21.1. contains language that is very similar to Objective 17.1 for Buckingham, and Objective 20.1 for Bayshore. Staff told the Board that both staff and the LPA are recommending transmittal of CPA 2007-00001.

One Board member expressed concern over the phrase "finding of overriding public necessity". That Board member wanted less ambiguity in the policy, but supported transmittal of the amendment.

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

**Transmit CPA 2007-00001 as recommended by staff and the LPA.**

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

The Board of County Commissioners accepted the findings of fact as advanced by staff and the LPA.

**C. VOTE:**

|                         |            |
|-------------------------|------------|
| <b>A. BRIAN BIGELOW</b> | <b>AYE</b> |
| <b>TAMMARA HALL</b>     | <b>AYE</b> |
| <b>ROBERT P. JANES</b>  | <b>AYE</b> |
| <b>RAY JUDAH</b>        | <b>AYE</b> |
| <b>FRANKLIN B. MANN</b> | <b>AYE</b> |

**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,  
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: January 16, 2009

**A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS**

The DCA ORC Report contained the following comment:

*A proposed amendment to add a new Future Land Use Element Policy 21.1.5 to Goal 21 (Caloosahatchee Shores Community Plan). The Department raises the following comment to proposed Amendment 2007-01:*

*Comment: The amendment support material states that the proposed amendment is to establish a new Policy 21.1.5; however, the transmitted proposed text of the amendment is to establish Policy 21.1.4. The Comprehensive Plan currently includes a Policy 21.1.4, and it does not appear as though that policy is intended to be revised but rather a new Policy 21.1.5 is to be added. Therefore, renumber the proposed amendment to utilize Policy 21.1.5.*

**B. STAFF RESPONSE**

The staff report and amendment language have been corrected to reference Policy 21.1.5 where appropriate.

**C. STAFF RECOMMENDATION**

Staff believes the corrected report adequately addresses DCA's comment and staff recommends the Board adopt CPA 2007-01 Caloosahatchee Shores.

**PART VI - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: February 25<sup>th</sup>, 2009

**A. BOARD REVIEW:**

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

**C. VOTE:**

**A. BRIAN BIGELOW**

**TAMMARA HALL**

**ROBERT P. JANES**

**RAY JUDAH**

**FRANKLIN B. MANN**

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**CPA2007-01  
CALOOSAHATCHEE SHORES  
BoCC SPONSORED  
AMENDMENT  
TO THE**

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LEE COUNTY COMPREHENSIVE PLAN

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**THE LEE PLAN**

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BoCC Adoption Document

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*Lee County Planning Division  
1500 Monroe Street  
P.O. Box 398  
Fort Myers, FL 33902-0398  
(239) 533-8585*

**February 25, 2009**

**LEE COUNTY  
DIVISION OF PLANNING  
STAFF REPORT FOR  
COMPREHENSIVE PLAN AMENDMENT  
CPA2007-00001**

☒

**Text Amendment**

☐

**Map Amendment**

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

STAFF REPORT PREPARATION DATE: November 20, 2007

**PART I - BACKGROUND AND STAFF RECOMMENDATION**

**A. SUMMARY OF APPLICATION**

**1. SPONSOR/APPLICANT:**

**A. SPONSOR:**

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

**B. APPLICANT**

THE EAST LEE COUNTY COUNCIL  
REPRESENTED BY KRIS CELLA McGUIRE

**2. REQUEST:**

Amend the Future Land Use Element, Goal 21, to add a policy that provides that no land use map amendments to the remaining rural lands category will be permitted unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

**THE BOARD OF COUNTY COMMISSIONERS VOTED TO TRANSMIT THE FOLLOWING  
POLICY TO THE DEPARTMENT OF COMMUNITY AFFAIRS:**



**POLICY 21.1.5:** One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' rural character and rural land use where it currently exists. Therefore no land use map amendments to the remaining rural lands category will be permitted after {scrivener will insert effective date of policy}, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

## **B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:**

**1. RECOMMENDATION:** Planning staff recommends that the Board of County Commissioners transmit this proposed amendment.

### **2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

- The Caloosahatchee Shores Community Plan was submitted to Lee County in September, 2002.
- The Caloosahatchee Shores Community Plan resulted in a Lee Plan amendment adopted in October, 2003.
- The Lee Plan amendment specific to Caloosahatchee Shores is now Goal 21 of the Lee Plan.
- Goal 21 was amended on May 16, 2007 when a new Policy 21.1.4 was adopted.
- The East Lee County Council submitted an application to make a second amendment to Goal 21 in April, 2007.
- This amendment would add a new Policy 21.1.5 to Goal 21 of the Lee Plan.

## **C. BACKGROUND INFORMATION**

The Caloosahatchee Shores Community Plan was undertaken by the Caloosahatchee Shores Community Planning Panel working as a sub group of the ELCC. The planning area encompasses that portion of the Fort Myers Shores planning community located east of I-75. The community plan was financed, in part, with \$25,000 of community planning funds from Lee County.

The Caloosahatchee Shores community plan was submitted to Lee County in September, 2002. The plan contained a Goal, Objectives, and Policies. The Goal for Caloosahatchee Shores was adopted into the Lee Plan in October, 2003 and is now Goal 21.

The East Lee County Council has continued to work on improvements to Goal 21, and submitted an amendment to the Goal in September, 2005 that was adopted as Policy 21.1.4 on May 16, 2007. This second proposed amendment to Goal 21 would add a new Policy 21.1.5.

## **A. STAFF DISCUSSION**

Goal 21 of the Lee Plan is intended to express the communities desire to protect the existing character of the community and to maintain the existing rural character of the Caloosahatchee shores area. Goal 21 reads as follows:

**GOAL 21: CALOOSAHATCHEE SHORES:** To protect the existing character, natural resources and quality of life in Caloosahatchee Shores, while promoting new development, redevelopment and maintaining a more rural identity for the neighborhoods east of I-75 by establishing minimum aesthetic requirements, planning the location and intensity of future commercial and residential uses, and providing incentives for redevelopment, mixed use development and pedestrian safe environments. This Goal and subsequent objectives and policies apply to the Caloosahatchee Shores boundaries as depicted on Map 1, page 2 of 5 in the Appendix. (Added by Ordinance No. 03-21)

**STAFF COMMENTS:** This proposed amendment is consistent with Goal 21 of the Lee Plan and may help further the intent of the Caloosahatchee Shores community. This proposed new Policy contains language very similar to Objective 17.1 pertaining to the Buckingham community and Objective 20.1 pertaining to the Bayshore community. Objective 17.1 of the Lee Plan reads:

**OBJECTIVE 17.1: LAND USE.** The primary land use designation for the Buckingham area is "Rural Community Preserve." Public Facilities have also been designated as appropriate. After the adoption of this amendment, no land in Buckingham will be changed to a land use category more intense than Rural Community Preserve (including Public Facilities) unless a finding of overriding public necessity is determined by three members of the Board of County Commissioners. (Amended by Ordinance No. 00-22)

Objective 20.1 of the Lee Plan reads:

**OBJECTIVE 20.1: LAND USE.** The existing land use designations of the Lee Plan (as of September 30, 2001) are appropriate to achieving the goal of the Bayshore Plan. No land use map amendments to a more intensive category will be permitted after March 11, 2003, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners. (Added by Ordinance No. 03-02)

**STAFF COMMENTS:** The County Attorney's office issued two separate memorandum on this plan amendment. One is dated October 24, 2007 and the other is dated November 2, 2007. The October 24 memorandum concludes that the proposed amendment to the Caloosahatchee Shores Community Plan may create potential liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act. The November 2 memorandum states that the proposed limitation on further amendments to the Future Land Use Map for lands currently designated as Rural, will result in liability under the Bert J. Harris, Jr., Private Property Rights Protection Act. Those memorandum are attached to this report.

The County Attorney's Office recommended that planning staff provide an inventory of land designated Rural in the Caloosahatchee Shores planning area. There are approximately 3,189 acres

of Rural land in the Caloosahatchee Shores planning area. The County Attorney's office also suggested that an estimate of the possible relief that may be sought by these property owners. Short of having appraisals for all of the Rural designated property with each possible land use category change that could be sought, assigning a dollar amount to the amount of exposure the County may or will be exposing itself to is impossible.

Planning staff questions that there are valid investment backed expectations on the Rural properties in Caloosahatchee Shores, or anywhere else for that matter. If you purchase a piece of property that is designated as Rural, it would be reasonable to expect that is what you have. Planning staff does not believe that any investment backed expectations beyond the uses allowed in the Rural category is reasonable foreseeable and speculative. In addition, this amendment does not preclude a property owner from requesting a change to their Future Land Use Map designation. It does heighten the scrutiny of that request. Additionally, very similar language is in place in two other communities in Lee County, namely Buckingham and Bayshore.

Planning staff recommends that the Board of County Commissioners transmit this proposed amendment.

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

DATE OF PUBLIC HEARING: December 17, 2007

#### **A. LOCAL PLANNING AGENCY REVIEW**

Staff gave a brief review of the staff report and recommendations. Following staff's presentation one LPA member expressed concern with designating a permanence of rural and ignoring the fact that this area will continue to grow and may need commercial at some point. He felt there should be an analysis done to determine what part of the 3,189 affected acres would be appropriate for commercial development. Staff noted that if there is a need in the community for commercial development then three members of the Board of County Commissioners can find that there is an overriding public need and make that change.

Another member appreciated the fact that this community based amendment underscores the desires of the community to emphasize the rural character of their area and preserve it as has been done with the Buckingham community and the Bayshore community.

The LPA had a lengthy discussion about Mr. Spickerman's memorandum dated October 24, 2007 regarding Bert J. Harris implications.

An LPA member stated that when someone applies for a plan amendment, they must go through an analysis from the Planning Division, various other departments, the LPA, and the Board of County Commissioners. This rigorous process will continue regardless of whether or not this plan amendment is adopted.

The LPA asked if anyone from the public wished to speak and the sponser of the proposal spoke in favor of transmitting CPA 2007-01.

#### **B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY**

- 1. RECOMMENDATION: The LPA Recommends that the Board of County Commissioners transmit CPA 2007-00001 as recommended by staff.**
- 2. BASIS AND RECOMMENDED FINDINGS OF FACT: The LPA accepted the findings of fact as advanced by staff.**

**C. VOTE:**

**NOEL ANDRESS**

AYE

**DEREK BURR**

AYE

**LES COCHRAN**

AYE

**RONALD INGE**

AYE

**CARLETON RYFFEL**

AYE

**RAE ANN WESSEL**

AYE

**LELAND TAYLOR**

AYE

**PART IV - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: October 22, 2008

**A. BOARD REVIEW:**

Staff gave a brief presentation and explained that proposed Policy 21.1. contains language that is very similar to Objective 17.1 for Buckingham, and Objective 20.1 for Bayshore. Staff told the Board that both staff and the LPA are recommending transmittal of CPA 2007-00001.

One Board member expressed concern over the phrase "finding of overriding public necessity". That Board member wanted less ambiguity in the policy, but supported transmittal of the amendment.

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

**Transmit CPA 2007-00001 as recommended by staff and the LPA.**

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

The Board of County Commissioners accepted the findings of fact as advanced by staff and the LPA.

**C. VOTE:**

|                         |            |
|-------------------------|------------|
| <b>A. BRIAN BIGELOW</b> | <b>AYE</b> |
| <b>TAMMARA HALL</b>     | <b>AYE</b> |
| <b>ROBERT P. JANES</b>  | <b>AYE</b> |
| <b>RAY JUDAH</b>        | <b>AYE</b> |
| <b>FRANKLIN B. MANN</b> | <b>AYE</b> |

**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,  
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: January 16, 2009

**A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS**

The DCA ORC Report contained the following comment:

*A proposed amendment to add a new Future Land Use Element Policy 21.1.5 to Goal 21 (Caloosahatchee Shores Community Plan). The Department raises the following comment to proposed Amendment 2007-01:*

*Comment: The amendment support material states that the proposed amendment is to establish a new Policy 21.1.5; however, the transmitted proposed text of the amendment is to establish Policy 21.1.4. The Comprehensive Plan currently includes a Policy 21.1.4, and it does not appear as though that policy is intended to be revised but rather a new Policy 21.1.5 is to be added. Therefore, renumber the proposed amendment to utilize Policy 21.1.5.*

**B. STAFF RESPONSE**

The staff report and amendment language have been corrected to reference Policy 21.1.5 where appropriate.

**C. STAFF RECOMMENDATION**

Staff believes the corrected report adequately addresses DCA's comment and staff recommends the Board adopt CPA 2007-01 Caloosahatchee Shores.



**PART VI - BOARD OF COUNTY COMMISSIONERS  
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: February 25<sup>th</sup>, 2009

**A. BOARD REVIEW:** Two members of the public spoke in favor of the amendment during public comment. 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 as previously transmitted to DCA.

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

The Board accepted the findings of fact as advanced by staff and the Local Planning Agency.

**C. VOTE:**

|                         |                   |
|-------------------------|-------------------|
| <b>A. BRIAN BIGELOW</b> | <u><b>AYE</b></u> |
| <b>TAMMARA HALL</b>     | <u><b>AYE</b></u> |
| <b>ROBERT P. JANES</b>  | <u><b>AYE</b></u> |
| <b>RAY JUDAH</b>        | <u><b>AYE</b></u> |
| <b>FRANKLIN B. MANN</b> | <u><b>AYE</b></u> |

MEMORANDUM  
FROM THE  
OFFICE OF COUNTY ATTORNEY

RECEIVED  
NOV 21 2007

DATE: November 2, 2007 **COMMUNITY DEVELOPMENT**

To: Jim Mudd  
Planning Division

FROM: Donna Marie Collins  
Donna Marie Collins  
Assistant County Attorney

RE: **Caloosahatchee Shores Community Plan**  
**CPA2007-00001**  
**LU-07-10-2090.1.5.**

Thank you for forwarding the application filed by the East Lee County Council to amend the Caloosahatchee Shores Community Plan. The Office of the County Attorney has reviewed the proposed text amendment. Please be advised that the proposed limitation on further amendments to the Future Land Use Map for lands currently designated as Rural, will result in liability under the Bert J. Harris, Jr., Private Property Rights Protection Act. For this reason, it is our recommendation that the Planning Division prepare an inventory of the properties that will be affected by the proposed limitation so that the Board will be informed of the magnitude of property affected by the proposed limitation. This information will also be necessary to evaluate the scope of the County's exposure to liability under the Act. The inventory should include those properties currently designated as Rural on the Future Land Use Map located within the boundaries of the Caloosahatchee Shores Community.

A detailed examination of the implications of the proposed plan amendment are set forth in the attached memorandum prepared by Robert Spickerman of this Office. If I may be of further assistance, do not hesitate to contact me.


DMC/amp  
Attachment

cc: Matt Noble, Planning Division w/attachment

**MEMORANDUM**  
FROM THE  
**OFFICE OF COUNTY ATTORNEY**

DATE: October 24, 2007

TO: Donna Marie Collins  
Assistant County Attorney

FROM:   
Robert Spickerman  
Assistant County Attorney

RE: **Caloosahatchee Shores Community Plan - Proposed Text Amendment**  
**LU-07-10-2090.I.5.**  
**CPA 2007-00001**

**Issue:**

Whether the proposed amendment to the Caloosahatchee Shores Community Plan raises any potential liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act.

**Brief Answer:**

The proposed text amendment for the Caloosahatchee Shores Community Plan may create liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act. The sources for potential liability are the proposed amendment's use of the term "rural character" and the prohibition against intensifying the future land use of properties currently existing within the rural lands future land use category.

**Analysis:**

On January 22, 2007, at the regularly scheduled meeting of the East Lee County Council, the Council unanimously voted to amend the text of the Caloosahatchee Shores Community Plan with the following language:

One important aspect of the Caloosahatchee Shores Community Plan goal is to retain it's rural character and rural land use where it currently exists. Therefore, no land use map amendments to the remaining rural lands category will be permitted after (scrivener will insert affective date of policy), unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

The main issue is whether under the Bert J. Harris, Jr., Private Property Rights Protection Act (Act), Lee County may be liable to property owners detrimentally affected by the proposed plan amendment. The Act is codified in the Florida Statutes as Fla. Stat. §70.001. The Act states, in part, that when a specific action of a governmental entity has inordinately burdened an existing use of real property or vested right to a specific use of real property, the property owner of that real property is entitled to relief. The Act is premised on a belief that the proper balance between protection of public good and private property interests can best be achieved on a case by case basis. (Article on Private Property Rights, Local Government Law Section Newsletter). As such, the terms used by the Act are unclear and broadly defined.

The terms "inordinate burden" or "inordinately burdened" are defined by § 70.001(3)(e) as an action of one or more governmental entities restricting or limiting the use of real property such that the property owner suffers a permanent loss of a reasonable investment backed expectation for an existing use of the landowner's real property or a vested right to a specific use of the landowner's real property.

Section 70.001(3)(b) defines existing use as the actual, present use of real property or a use that is "reasonably foreseeable though non-speculative." In order to be reasonably foreseeable though non-speculative, the use must be suitable for the real property, must be compatible with the adjacent lands, and must create a greater fair market value in the real property that is greater than the fair market value of the actual, present use of the real property. Fla. Stat. §70.001(3)(b).

The limits and impacts of the Act are still being developed by the courts. As such, a liberal interpretation of the Act should be used when evaluating potential liability. The Act's definition of existing use as including a use that is "reasonably foreseeable though non-speculative" is the most problematic for the proposed amendment.

The first issue raised by the proposed amendment arises from the use of the term "rural character". The amendment identifies a goal of the Caloosahatchee Shores Community Plan as being to retain the rural character of the Community. The use of the term "rural character" is excessively vague. If the term is being used merely as identifying a goal and the only means to achieve the goal is the prohibition against intensifying the future land use of the rural lands future land use categories, then the use of the term "rural character" is acceptable. If however, other means in addition to the aforementioned prohibition are contemplated for the preservation of the Community's rural character, then the use of the term is not acceptable. Either way, a more detailed explanation of the use of the term "rural character" is necessary for further liability analysis.

The second issue raised by the proposed amendment deals with the prohibition against land use map amendments to properties that are subject to a future rural land use category within the boundaries of the Caloosahatchee Shores Community. The broad definition of "existing use" to include a use that is reasonably foreseeable though non-speculative, provides a property owner

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

with a possible avenue for recovery against Lee County pursuant to the Act. As stated before, "reasonably foreseeable though non-speculative" means that the use must be suitable for the real property, must be compatible with the adjacent land, and must create a greater fair market value in the real property that is greater than the fair market value of the actual, present use of the real property. Fla. Stat. §70.001(3)(b). In Palm Beach Polo, Inc. V. The Village of Wellington, 918 So.2d 988(Fla. 4DCA 2006), a developer purchased a large tract of property at a bankruptcy auction. At the time of the bankruptcy sale, the property was subject to a development plan requiring the preservation and restoration of a forest on the property. See *id* at 991. The Village of Wellington subsequently identified the subject forest property as conservation in its comprehensive plan. See *id* at 992. The developer protested the conservation designation and made a claim pursuant to the Bert J. Harris Act. See *id*. The court concluded that since the developer purchased the property subsequent to the required preservation and restoration of the forest property, the developer failed to establish any reasonable investment-backed expectations with respect to development of the forest property. See *id* at 993.

Other than rural related future land uses, the Caloosahatchee Shores Community also includes suburban, outlying suburban, central urban, urban community, and public facilities future land uses. The Caloosahatchee Shores Community also contains many major roadways including, Palm Beach Blvd., Buckingham Road, Orange River Blvd. and Tice Street. Also, the Caloosahatchee Shores Community is bordered on the West by I-75. Some of the properties within the rural lands future land use categories border land within a more intense future land use category. With increased development, there will be increased demand for intensifying the use of properties, especially near the transportation corridors previously identified within the Caloosahatchee Shores Community. Current owner's of property within the rural land use categories of the Caloosahatchee Shores Community will be able to provide a stronger argument regarding reasonable investment-backed expectations than that made by the developer in the Wellington case discussed above. An owner of property located within a rural future land use category may not find it unreasonable to foresee a use of their property that is more intense than the rural lands future land use category will allow. The proposed amendment would prevent that property owner from amending the future land use map as contemplated by policy 2.4.1 of the Lee Plan.

### **Conclusion:**

The proposed amendment to the Caloosahatchee Shores Community Plan may create potential liability for Lee County pursuant to the Act. As the Act is premised on the belief that the proper balance between protection of the public good and private property interests can best be achieved on a case by case basis, critical terms used in the Act are broadly defined. The definition for the terms "inordinately burdened" and "existing use" are the most problematic.

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

The proposed amendment's use of the term "rural character" must be further defined in order to properly evaluate any impact the Act may have on the amendment. The prohibition against amending the future land use map to change a future land use category currently identified as rural, may create future liability for Lee County pursuant to the Act.

RDS/amp

RECEIVED  
APR - 2 2007



LEE COUNTY  
SOUTHWEST FLORIDA

COMMUNITY DEVELOPMENT

Lee County Board of County Commissioners  
Department of Community Development  
Division of Planning  
Post Office Box 398  
Fort Myers, FL 33902-0398  
Telephone: (239) 479-8585  
FAX: (239) 479-8519

APPLICATION FOR A  
COMPREHENSIVE PLAN AMENDMENT

(To be completed at time of intake)

DATE REC'D \_\_\_\_\_ REC'D BY: \_\_\_\_\_  
APPLICATION FEE \_\_\_\_\_ TIDEMARK NO: \_\_\_\_\_

THE FOLLOWING VERIFIED:

Zoning ☐ Commissioner District ☐  
Designation on FLUM ☐

-----  
(To be completed by Planning Staff)

Plan Amendment Cycle: ☐ Normal ☐ Small Scale ☐ DRI ☐ Emergency

Request No: \_\_\_\_\_

APPLICANT PLEASE NOTE:

Answer all questions completely and accurately. Please print or type responses. If additional space is needed, number and attach additional sheets. The total number of sheets in your application is: 9

Submit 6 copies of the complete application and amendment support documentation, including maps, to the Lee County Division of Planning. Additional copies may be required for Local Planning Agency, Board of County Commissioners hearings and the Department of Community Affairs' packages.

I, the undersigned owner or authorized representative, hereby submit this application and the attached amendment support documentation. The information and documents provided are complete and accurate to the best of my knowledge.

4/2/07  
DATE

*Chris Cella McDevitt*  
SIGNATURE OF OWNER OR AUTHORIZED REPRESENTATIVE

RECEIVED  
APR - 4 2007

2007-00001



I. APPLICANT/AGENT/OWNER INFORMATION

|  |       |              |
|--|-------|--------------|
| APPLICANT                                    |       |              |
| East Lee County Council                      |       |              |
| ADDRESS                                      |       |              |
| C/O Cella Molnar Assoc. 1631 Hendry St.      |       |              |
| CITY   | STATE | ZIP          |
| Fort Myers                                   | FL    | 33901        |
| TELEPHONE NUMBER                             |       | FAX NUMBER   |
| 239-337-1071                                 |       | 239-337-1076 |
| AGENT*                                       |       |              |
| Miss Cella, McBurnie ELCC Board of Directors |       |              |
| ADDRESS                                      |       |              |
| Same as above                                |       |              |
| CITY   | STATE | ZIP          |
| TELEPHONE NUMBER                             |       | FAX NUMBER   |
| OWNER(s) OF RECORD                           |       |              |
| Caloosahatchee Shores Community Plan c/o     |       |              |
| East Lee County Council                      |       |              |
| ADDRESS                                      |       |              |
| Same as above                                |       |              |
| CITY   | STATE | ZIP          |
| TELEPHONE NUMBER                             |       | FAX NUMBER   |

Name, address and qualification of additional planners, architects, engineers, environmental consultants, and other professionals providing information contained in this application.

\* This will be the person contacted for all business relative to the application.

**II. REQUESTED CHANGE (Please see Item 1 for Fee Schedule)**

A. TYPE: (Check appropriate type)



Text Amendment



Future Land Use Map Series Amendment  
(Maps 1 thru 21)

List Number(s) of Map(s) to be amended

B. SUMMARY OF REQUEST (Brief explanation):

Amend the Calousa Hatchee Community  
Plan text see attached.

**III. PROPERTY SIZE AND LOCATION OF AFFECTED PROPERTY  
(for amendments affecting development potential of property)**

A. Property Location:

1. Site Address: See a Hatched map

2. STRAP(s):

B. Property Information

Total Acreage of Property:

Total Acreage included in Request:

Area of each Existing Future Land Use Category:

Total Uplands:

Total Wetlands:

Current Zoning:

Current Future Land Use Designation:

Existing Land Use:

April 2, 2007

Lee County Department of Community Development Services  
1500 Monroe Street  
Fort Myers, Florida 33901

Subject: Caloosahatchee Shores Community Plan – Text Amendment Requested

On January 22, 2007, at the regularly scheduled meeting of the East Lee County Council, the Council unanimously voted to amend the text of the referenced community plan with the following language:

"One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' rural character and rural land use where it currently exists. Therefore no land use map amendments to the remaining rural lands category will be permitted after {scrivener will insert effective date of policy}, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners."

Kris Cella McGuire  
Board of Directors  
East Lee County Council

- C. State if the subject property is located in one of the following areas and if so how does the proposed change effect the area:

Lehigh Acres Commercial Overlay: \_\_\_\_\_

Airport Noise Zone 2 or 3: \_\_\_\_\_

Acquisition Area: \_\_\_\_\_

Joint Planning Agreement Area (adjoining other jurisdictional lands): \_\_\_\_\_

Community Redevelopment Area: \_\_\_\_\_

- D. Proposed change for the Subject Property:

No change to remain Rural Land Use

- E. Potential development of the subject property:

1. Calculation of maximum allowable development under existing FLUM:

Residential Units/Density \_\_\_\_\_

Commercial intensity \_\_\_\_\_

Industrial intensity \_\_\_\_\_

2. Calculation of maximum allowable development under proposed FLUM:

Residential Units/Density \_\_\_\_\_

Commercial intensity \_\_\_\_\_

Industrial intensity \_\_\_\_\_

#### IV. AMENDMENT SUPPORT DOCUMENTATION

At a minimum, the application shall include the following support data and analysis. These items are based on comprehensive plan amendment submittal requirements of the State of Florida, Department of Community Affairs, and policies contained in the Lee County Comprehensive Plan. Support documentation provided by the applicant will be used by staff as a basis for evaluating this request. To assist in the preparation of amendment packets, the applicant is encouraged to provide all data and analysis electronically. (Please contact the Division of Planning for currently accepted formats)

A. General Information and Maps

*NOTE: For each map submitted, the applicant will be required to provide a reduced map (8.5" x 11") for inclusion in public hearing packets.*

3. Requests involving lands in critical areas for future water supply must be evaluated based on policy 2.4.2.
  4. Requests moving lands from Density Reduction/Groundwater Resource must fully address Policy 2.4.3 of the Lee Plan Future Land Use Element.
- G. Justify the proposed amendment based upon sound planning principles. Be sure to support all conclusions made in this justification with adequate data and analysis.

**Item 1: Fee Schedule**

|  |                                     |
|--|-------------------------------------|
| Map Amendment Flat Fee                   | \$2,000.00 each                     |
| Map Amendment > 20 Acres                 | \$2,000.00 and \$20.00 per 10 acres |
| Small Scale Amendment (10 acres or less) | \$1,500.00 each                     |
| Text Amendment Flat Fee                  | \$2,500.00 each                     |

**AFFIDAVIT**

I, Kris Cella McGuire certify that I am the owner or authorized representative of the property described herein, and that all answers to the questions in this application and any sketches, data, or other supplementary matter attached to and made a part of this application, are honest and true to the best of my knowledge and belief. I also authorize the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made through this application.

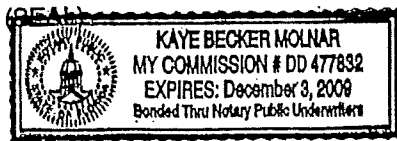
Kris Cella McGuire  
Signature of owner or owner-authorized agent

4/2/07  
Date

Kris Cella McGuire  
Typed or printed name

STATE OF FLORIDA )  
COUNTY OF LEE )

The foregoing instrument was certified and subscribed before me this 2nd day of April 2007,  
by Kris Cella McGuire, who is personally known to me ~~or who has produced~~  
~~as identification.~~

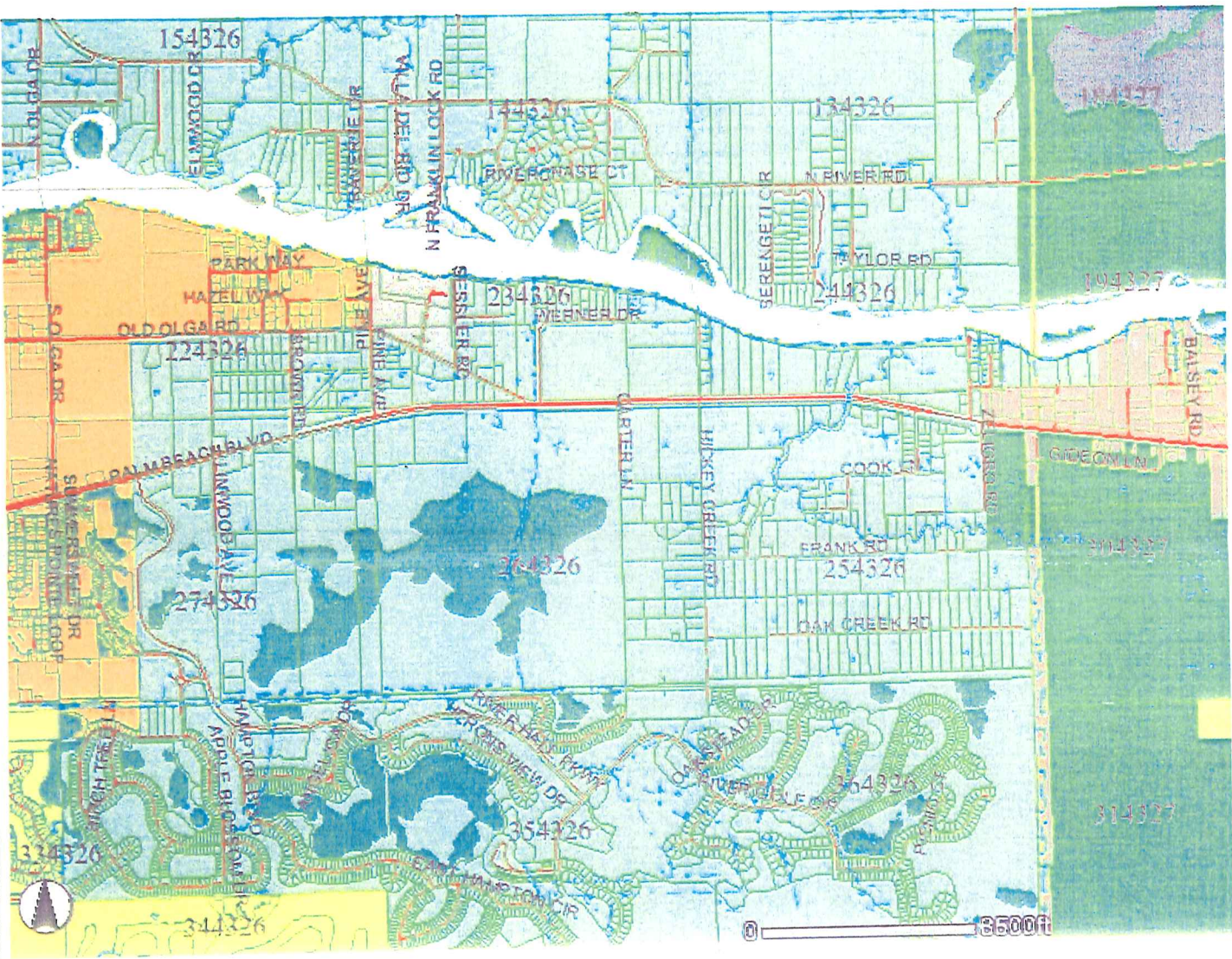


Kaye Becker Molnar  
Signature of notary public

Kaye Becker Molnar  
Printed name of notary public



Lee County Map



- Legend**
- Hydro Features
  - Condo Building
  - Parcels
  - Parcel Hooks
  - Road Center Line
  - Township Range Lines
  - Township Range Labels
  - Section Lines
  - Future Land Use
  - Airport
  - Airport Contingency
  - Central Urban
  - Central Rural
  - Conservation Lands Upland
  - Conservation Lands Wetland
  - Density Reduction / Groundwater Resource
  - General Contingency Interchange
  - General Interchange
  - Industrial Contingency Interchange
  - Industrial Contingency
  - Industrial Interchange
  - Industrial Contingency
  - Mixed Use Interchange
  - New Contingency
  - Open Land
  - Other Island
  - Outlying Suburban
  - Public Facilities
  - Rail
  - Rail Contingency Preserve
  - Suburban
  - University Contingency
  - University Village Interchange
  - Urban Contingency
  - Wetlands
  - Conservation
  - DRGR
  - General Contingency
  - High Den. MT Res
  - High Den. M/W/Trade Res
  - Industrial
  - Interchange Contingency
  - Low Den. SF Res
  - Med Den. MT Res
  - Med Den. SF/DP Res
  - Med Den. M/UPD
  - Med Den. SF Res
  - Pass of State Public
  - Recreation
  - Resource Protection
  - Boulevard
  - Low Density
  - Marina
  - Mixed Residential
  - Recreation Contingency
  - City Limits
  - Serial Springs
  - Coastal Cont
  - Fort Myers
  - Sanctuary
  - Town of Fort Myers Beach



