

# PLANNING DIVISION

M E M O R A N D U M



LEE COUNTY  
SOUTHWEST FLORIDA

**to:** Local Planning Agency  
**from:** Paul O'Connor, AICP, Director  
**subject:** Revised Buckingham Staff Report  
**date:** May 27, 2009

Planning Staff has revised the staff report for CPA 2007-49 to make the references to the Buckingham Planning area more consistent. The area covered by the plan amendment is now referred to throughout the report as the Buckingham community. Please disregard the report dated May 20, 2009 that was mailed to you previously. The enclosed report dated May 27, 2009 includes the revised language.

At the April 27, 2009 LPA meeting the LPA directed staff to work with the community to draft revised policies that were acceptable to both staff and the Buckingham Community Planning Panel. Staff made several attempts to schedule a meeting with the planning panel members, but were told that the planning panel members had not suggested any revisions and that it did not appear that a meeting would be productive. Attached are copies of correspondence between staff and the planning panel president.

**Mudd, James**

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**From:** Mudd, James  
**Sent:** Monday, April 27, 2009 3:44 PM  
**To:** billburdette@comcast.net  
**Cc:** Noble, Matthew; O Connor, Paul; Lehnert, Dawn; Dr. Margaret Banyan  
**Subject:** Buckingham amendment

Bill, the LPA gave clear direction today with how to proceed with the Buckingham plan amendment. The LPA gave three options for the Buckingham amendment. 1. To recommend denial. 2. To recommend the Board transmit staff's recommendation. 3. To send it back to the community to arrive at an acceptable plan amendment. Please let me know if you intend on pursuing #3 and when the planning panel is available to further discuss the amendment with staff.

The LPA asked us to bring the Buckingham amendment back to them at the June 3, 2009 LPA meeting, which gives us until May 15 to revise the report and recommendations. Staff is going to look over the amendment and will try to standardize the language referencing the Buckingham planning area.

Time is of the essence and I am available to meet with the panel most evenings.

James Mudd, AICP  
Principal Planner, Division of Planning  
Lee County Department of Community Development  
1500 Monroe Street  
Fort Myers, FL 33901-5500  
P.O. Box 398  
Fort Myers, FL 33902-0398

Phone: (239) 533-8180  
Fax: (239) 485-8319

**Mudd, James**

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**From:** Mudd, James  
**Sent:** Tuesday, May 05, 2009 7:23 AM  
**To:** billburdette@comcast.net; Dr. Margaret Banyan  
**Cc:** O Connor, Paul; Noble, Matthew  
**Subject:** Buckingham amendment

Just a reminder that the LPA directed staff to bring the Buckingham amendment back to them on June 3. Is the planning panel available to meet with me to discuss the amendment and address staff's concerns? We do not have a lot of time. Please let me know.

James Mudd, AICP  
Principal Planner, Division of Planning  
Lee County Department of Community Development  
1500 Monroe Street  
Fort Myers, FL 33901-5500  
P.O. Box 398  
Fort Myers, FL 33902-0398

Phone: (239) 533-8180  
Fax: (239) 485-8319

**Mudd, James**

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**From:** Mudd, James  
**Sent:** Friday, May 08, 2009 9:17 AM  
**To:** billburdette@comcast.net; bill@burdetteinc.com  
**Cc:** O Connor, Paul; Noble, Matthew  
**Subject:** Buckingham amendment

Bill, we only have until next Friday to try and arrive at some mutually agreeable plan language to send back to the LPA on June 3rd. I'm more than happy to meet with the planning panel to discuss the amendment as directed by the LPA last month. Please let me know when we can meet.

James Mudd, AICP  
Principal Planner, Division of Planning  
Lee County Department of Community Development  
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Phone: (239) 533-8180  
Fax: (239) 485-8319



**Mudd, James**

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**From:** Bill Burdette [billburdette@comcast.net]  
**Sent:** Tuesday, May 12, 2009 3:49 PM  
**To:** Noble, Matthew  
**Cc:** bill@burdetteinc.com; Mudd, James; O Connor, Paul; Bob Murray; Bruce Strayhorn; chrisbundschu@bundschkraft.com; Christina Hatch; Gloria Vernay; Gordon L Brandt; Matt Steele; Mike Roeder; Sawyer Smith; Tim Mann; Tom Feminella; Tommy Lee Cook; Banyan, Dr. Margaret; Collins, Donna Marie; Lehnert, Dawn  
**Subject:** Re: Buckingham amendment  
**Attachments:** billburdette.vcf

Hi Matt,

The Planning Panels members have not suggested any revisions. Since neither Panel nor staff propose revised language, it does not appear that a community meeting would be productive. I'll work on presentations to clarify some of the polices prior to the LPA meeting. Okay?

Bill Burdette

Noble, Matthew wrote:

Bill,

Staff was luke warm at best to the extension, but it is clear to us now that this is all being done to take property rights away from those properties. The County is facing several Bert Harris claims, and staff really does not want to create additional claims. I take it from your email that we are at an impasse...the staff report contains the staff recommendation. If the panel would like to propose alternative language, staff is willing to consider it...I believe we have a mail deadline approaching...

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**From:** Bill Burdette [mailto:billburdette@comcast.net]  
**Sent:** Monday, May 11, 2009 8:27 AM  
**To:** Mudd, James  
**Cc:** bill@burdetteinc.com; O Connor, Paul; Noble, Matthew; Bob Murray; Bruce Strayhorn; chrisbundschu@bundschkraft.com; Christina Hatch; Gloria Vernay; Gordon L Brandt; Matt Steele; Mike Roeder; Sawyer Smith; Tim Mann; Tom Feminella; Tommy Lee Cook; Banyan, Dr. Margaret; Tina Mayfield  
**Subject:** Re: Buckingham amendment

Hello Jim,

I'm not sure what LPA really expects us to provide.

Certainly, the proposed boundary and land use classifications is confusing. I can provide LPA with an illustrated map and simple rationale to explain the boundary. I cannot explain why staff supported the change for so long, then suddenly reversed position and opposed it. What is the explanation for that?

You suggest "mutually agreeable language." Are you prepared to propose language that serves to implement the proposed policies? That would be very helpful, but at the last meeting we were told that staff was not negotiable on core issues. Has that changed?

Thanks for your help,

Bill Burdette

Mudd, James wrote:

Bill, we only have until next Friday to try and arrive at some mutually agreeable plan language to send back to the LPA on June 3rd. I'm more than happy to meet with the planning panel to discuss the amendment as directed by the LPA last month. Please let me know when we can meet.

James Mudd, AICP  
Principal Planner, Division of Planning  
Lee County Department of Community Development  
1500 Monroe Street  
Fort Myers, FL 33901-5500  
P.O. Box 398  
Fort Myers, FL 33902-0398

Phone: (239) 533-8180  
Fax: (239) 485-8319

**Dunn, Brandon**

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**From:** Banyan, Dr. Margaret [mbanyan@fgcu.edu]  
**Sent:** Wednesday, September 02, 2009 9:13 AM  
**To:** Noble, Matthew; Bill Burdette  
**Cc:** Dunn, Brandon  
**Subject:** RE: Buckingham Plan Amendment

**Attachments:** Buckingham Proposed Language April 24 Revision.doc



Buckingham  
Proposed Language A

Hi Matt:

Attached is the last revision to the Buckingham Goal 17 that was approved by the planning panel. Because there were conversion problems with word perfect, this is not in MS word's 'track changes' but is underlined instead.

Let me know if you need any more back up information.

Thanks ~~

Margaret

\*\*\*\*\* Confidentiality Notice \*\*\*\*\*

Florida has a very broad public records law. As a result, any written communication created or received by Florida Gulf Coast University employees is subject to disclosure to the public and the media, upon request, unless otherwise exempt. Under Florida law, e-mail addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

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From: Noble, Matthew [NOBLEMA@leegov.com]  
Sent: Tuesday, September 01, 2009 11:23 AM  
To: Bill Burdette; Banyan, Dr. Margaret  
Cc: Dunn, Brandon  
Subject: Buckingham Plan Amendment

Bill & Margaret,

Would you be able to send us an electronic copy of the policy changes that the community is seeking. We are trying to get back up to speed on this proposed amendment, and any help you can give us would be appreciated.

Matthew A. Noble, Principal Planner  
Lee County Division of Planning  
P.O. Box 398  
Fort Myers, Florida 33902-0398  
Phone: 239-533-8548  
Fax: 239-533-8319

**GOAL 17: BUCKINGHAM.** To manage the future growth in the Buckingham area to preserve the existing agricultural land use pattern; to diversify the choice of housing for Lee County by maintaining and enhancing the historic rural character; and to protect the unique historical and environmental values of the Buckingham Community. The boundaries of the Buckingham community shall be extended to the Buckingham Planning Community boundaries. For the purposes of this plan, the precise boundaries of Buckingham are indicated on Lee Plan Map 16, as amended August 13, 2007. (Adopted by Ordinance No. 98-09; Amended by Ordinance No. 02-02, 07-09, 07-13)

**OBJECTIVE 17.1: LAND USE.** The primary land use designation for the Buckingham area is "Rural Community Preserve." Other smaller land use designations exist in the boundaries, such as public facilities, urban community, outlying suburban. Existing 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 property is within a pre-existing higher density or a finding of overriding public necessity is determined by three members of the Board of County Commissioners. (Amended by Ordinance No. 00-22)

**POLICY 17.1.1:** No property within the Buckingham community will be rezoned to RVPD. (Amended by Ordinance No. 00-22)

**POLICY 17.1.2:** The southeast and northeast quadrants of the intersection of Orange River Boulevard and Buckingham Road is designated as the commercial node for the Buckingham area. No new commercial activities development (as defined by F.S 380.04) will be located outside of this commercial node. All new commercial developments in the node are required to provide a minimum of 30% open space. This commercial node is described as those lands 300 feet eastward from the easterly right-of-way of Buckingham Road and lying between Cemetery Road and a point 300 feet north of the intersection of Buckingham Road and Orange River Boulevard. In no way should this policy be construed to prohibit the designation of or commercial uses allowed in agricultural zoning districts. (Amended by Ordinance No. 94-30, 98-09, 00-22)

**POLICY 17.1.3:** Except for those clustered areas as approved by Policy 17.1.5, Any lot created in the Rural Community Preserve land use category after the adoption of this amendment must have a minimum area of 43,560 square feet. Existing lots are excluded. Any residential planned development zoning granted in the Rural Community Preserve land use category will require a minimum size of one acre (43,560 square feet) for every residential lot. (Amended by Ordinance No. 00-22)

**POLICY 17.1.4:** Density within the Rural Community Preserve will be no more than one unit per buildable acre. A buildable acre will not include more than 20% wetlands and will exclude road right of ways, water management areas, or natural water bodies. Bonus density is prohibited within the Rural Community Preserve. The community strongly recommends

density of no more than one unit per acre throughout the remainder of the Buckingham Community and bonus density to be disallowed.

**POLICY 17.1.5:** Clustering of residential development is allowed in the Buckingham Community only with residential planned development (RPD) zoning. In no case will clustered developments exceed the overall density of 1 unit per buildable acre. Density in clustered developments will be based on buildable acreage and be moved away from the property boundaries. No additional commercial space will be granted, regardless of clustered development. Clustering of residential development is achieved by limiting the areas of property available for residential homesites in the following fashion:

- 1) Homesites must be no less than 100 feet away from the RPD boundary.
- 2) The RPD must have a minimum of 10 acres in order to cluster homesites.

**POLICY 17.1.6:** Residential development along the Buckingham Community boundary should make appropriate transitions to the community by allowing only single-family homes with a graduated density as development moves away from the planning community boundaries.

**POLICY 17.1.7:** To preserve the shoreline, all new residential buildings, including attached screen enclosures will be no closer than 50 feet from the top of bank of the Orange River.

**OBJECTIVE 17.2: TRANSPORTATION AND ROADS.** To protect the rural character of the Buckingham area, the following restrictions apply:

1. The existing publicly maintained Luckett Road segments currently functioning as local roads will be retained. Any proposal to change the functionality of Luckett Road, such as to provide Lehigh Acres with access to I-75 at the Luckett Road interstate interchange, will require an analysis (Alignment Study, including public input) of the impacts to the Buckingham Rural community Preserve. This analysis will include the review of alignments including diverting the proposed collector or arterial corridor as far south as possible, starting east of Pangola, in order to skirt the Buckingham area.
2. The extension of State Route 31 south of the Orange River is prohibited;
3. The extension of Ellis Road is prohibited;
4. The extension of Staley Road to State Route 82 is prohibited;
5. No new east/west collector roadways will be planned or built within the Buckingham Rural Community Preserve;
6. All ~~future~~ rights-of-way in Buckingham will be no greater than ~~100~~ 80 feet (except for Buckingham Road and Luckett Road extensions);

7. The extension and connection of Long Road to Ellis Road is prohibited. (Amended by Ordinance No. 94-30, 99-15, 00-22)

**POLICY 17.2.1:** The Lee County Department of Transportation will work with the Buckingham Community to identify issues, propose options, and develop a plan directed at improving safety on roads, limiting the negative effects of traffic, and improving the overall functionality of roads within the Buckingham Community.

**POLICY 17.2.2:** The Director of Development Services shall have the authority under Section 10-104 of the LDC to grant administrative variances to Section 10-174(4)(c) for minor subdivisions of at least 2.5 acre lots when, in the Director's sole discretion, it is determined that such a variance would be consistent with the road network in the area and not cause any other negative impacts or jeopardize the health, safety, and welfare of the general public.

**OBJECTIVE 17.3: SEWER AND WATER PUBLIC FACILITIES AND UTILITIES.** ~~In order to discourage unwanted urban development, central sewer lines will not be extended into the Buckingham Rural Community Preserve, except in the areas identified by Map 7 as Future Sanitary Sewer Service Areas, the existing Resource may be extended along major roads of the Buckingham Rural Preserve upon request of property owners, with extension and connection fees paid by the person(s) requesting the water service. Connection to this expanded water service network will be on a voluntary basis. Under no circumstances will the availability of central water be accepted as justification for a density increase, or reduction of lot size requirements, within the Buckingham Rural Community Preserve. (Amended by Ordinance No. 00-22, 03-19)~~ To protect the rural character of the Buckingham community, public facilities and utilities that detract or diminish the overall community character are prohibited.

**POLICY 17.3.1: SEWER AND WATER.** ~~In order to discourage unwanted urban development, central sewer lines will not be extended into the Buckingham Rural Community Preserve Buckingham Community, except in the areas identified by Lee Plan Map 7 (effective January 21, 2004) as Future Sanitary Sewer Service Areas, the existing Resource Recovery Facility, and the adjacent Lee County Parks and Recreation Facility.~~

**POLICY 17.3.2:** Central water lines may be extended along major roads of the Buckingham Rural Preserve upon request of property owners, with extension and connection fees paid by the person(s) requesting the water service. Connection to this expanded water service network will be on a voluntary basis. Under no circumstances will the availability of central water be accepted as justification for a density increase, or reduction of lot size requirements, within the Buckingham Rural Community Preserve Buckingham Community. (Amended by Ordinance No. 00-22, 03-19)

**POLICY 17.3.3:** Residential natural gas lines are allowed within the Buckingham Community. All other fuel transmission lines, including commercial natural gas lines are

prohibited. An exception should be made for a methane gas line to the Resource Recovery Facility that does not encroach on any other property within the Buckingham Community.

**POLICY 17.3.4:** All new large developments for which a local development order is required, shall install utilities underground. Utilities include, but not limited to, electricity, telephone, and cable lines.

**POLICY 17.3.5:** The Buckingham community recognizes the historic value of the Buckingham Army Airfield, the residential airparks, and the public service contributions of the Mosquito Control District and other public safety uses of the airfield. The Buckingham Community supports the Mosquito Control District in limiting its activities to those consistent with its purpose and the provision of other public services.

**POLICY 17.3.6:** The Buckingham community encourages Lee County to acquire Gulf Coast Center for uses consistent with and appropriate to those values of historic rural character and environmental protection expressed in Goal 17 of the Lee Plan. No temporary or emergency operation disaster aftermath facilities will be allowed, including FEMA trailers.

**POLICY 17.3.7:** Detention and correctional facilities are prohibited within the Buckingham Community boundaries.

**POLICY 17.3.8:** Additional water treatment, sewage treatment, reclamation facilities, landfills, industrial facilities, and resource recovery facilities are prohibited in the Buckingham Community.

**POLICY 17.3.9:** East County Water Control District is encouraged to continue to develop and maintain its infrastructure to minimize flooding and manage flows down the Orange River. In addition, ECWCD is encouraged to develop a system to warn residents in advance of large releases of water. ECWCD is also encouraged to develop means to improve water quality.

**OBJECTIVE 17.4: LANDSCAPING, BUFFERING, AND COMMUNITY AESTHETICS, AND QUALITY OF LIFE.** As a means for protecting and enhancing the Buckingham community's historic rural character and environmental values, developments, utilities, public services, road, and land use changes or improvements shall provide appropriate landscaping, buffering, and community aesthetics to ensure that a rural lifestyle is preserved.

**POLICY 17.4.1:** Public facilities are required to establish and maintain an appropriate vegetative buffer using native materials. Buffering materials must be designed to enhance and protect the aesthetic values inherent to the Buckingham community. This is to include, electrical facilities, substations, distribution and transmission lines; resource recovery

facilities; and telephone facilities should install and maintain buffers that obscure unsightly facilities.

**POLICY 17.4.2:** Lee County will mitigate the negative aesthetic effects of the waste-to-energy incinerator in the Buckingham Community by regularly providing trash pick up on affected roads and establishing and maintaining an appropriate vegetative buffer.

**POLICY 17.4.3:** Within the Buckingham Community, residential walls are prohibited as boundaries for housing subdivisions or large residential developments. Berms are allowed in accordance with the Lee County Land Development Code, but should be designed to be undulating.

**POLICY 17.4.4:** Residential and commercial lighting should be designed to reduce light pollution and light trespass in the Buckingham Community.

**OBJECTIVE 17.5: ENVIRONMENT, OPEN SPACE AND PARKS.** The Buckingham community values its rural environment and has a goal of protecting open space for the present and future generations.

**POLICY 17.5.1:** Lee County will work with the Buckingham community to develop a plan for an interconnected system of parks, hiking, and horse riding trails within the Buckingham Community.

**POLICY 17.5.2:** Any access to the Orange River within the Buckingham Community will be limited to non-commercial residential use.

**POLICY 17.5.3:** The removal of invasive exotic plants, as defined by the state or county, is encouraged within the Buckingham Community.

**OBJECTIVE 17.6: AGRICULTURE.** In order to preserve and promote the existing agricultural land use pattern in the Buckingham Community, all policies in the Buckingham Plan shall consider and under this objective will be applied in a manner that will protect agricultural activity and small family farms.

**POLICY 17.6.1:** Lee County will work closely with the Property Appraiser to insure that the Goal, Objectives and Policies of the Buckingham Plan are given full consideration in assessing the value of land in Buckingham and in the granting of agricultural exemptions.

**POLICY 17.6.2:** The Buckingham Community Plan recognizes the land use of small family farms of no more than ten acres, where the owner resides on the property, and stipulates that it can be a viable commercial activity.



**POLICY 17.6.3:** If a small family farm loses its agricultural exemption, the Property Appraiser will utilize appropriate formulas for applying the homestead exemption to the former agricultural land.

**POLICY 17.6.4:** The Property Appraiser will give full consideration to any agricultural or conservation easements when assessing property in Buckingham.

**POLICY 17.6.5:** Crops grown for alternative energy sources on an experimental basis, such as Jatropha curcas, shall be considered as a commercial agricultural activity by the Property Appraiser.

**POLICY 17.6.6:** Boarding stables will be allowed to give lessons and clinics if the operation does not create a use, road access, or drainage nuisance to its neighbors.

**Dunn, Brandon**

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**From:** Noble, Matthew  
**Sent:** Thursday, October 08, 2009 9:01 AM  
**To:** Dunn, Brandon  
**Subject:** FW: Buckingham

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**From:** Newman, William  
**Sent:** Thursday, October 08, 2009 8:59 AM  
**To:** Noble, Matthew  
**Subject:** Buckingham

Matt:

Sorry I didn't get back to you sooner but my advanced age has ruined my memory (I just forgot to send the e-mail). I suggest the following language for the Buckingham Plan: "Current and future Lee County Solid Waste Collection Agreements require contractors to provide personnel to perform litter collection on approximately one and one half miles of Buckingham Road in the vicinity of the Resource Recovery Facility on a weekly basis."

Bill Newman  
Operations Manager  
Solid Waste Division  
(239) 533-8000

**Noble, Matthew**

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**From:** Newman, William  
**Sent:** Thursday, October 08, 2009 3:32 PM  
**To:** Noble, Matthew  
**Cc:** Sampson, Lindsey  
**Subject:** RE: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

Matt:

17.3.3 Requires public hearings for pipelines including Methane (landfill gas). This may cause delays if we ever want to do

something with landfill gas.

17.3.6 Requires visual buffering for temporary disaster aftermath facilities. This is not practical or reasonable.

17.3.8 Prohibits certain solid waste facilities. We don't need this in the Plan. The normal permitting process should be sufficient.

17.4.2 The language I sent you should suffice.

Bill Newman  
Operations Manager  
Solid Waste Division  
(239) 533-8000

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**From:** Noble, Matthew  
**Sent:** Thursday, October 08, 2009 1:56 PM  
**To:** Loveland, David; Pavese, Michael; Houck, Pamela; Gibbs, Mary; Daltry, Wayne; Wegis, Howard; Newman, William; O Connor, Paul; Ottolini, Roland; Price, Robert; Horsting, Michael; Sweigert, Rebecca; Griffith, Douglas; Eckenrode, Peter  
**Subject:** FW: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

Can you all look this over and provide any comments or concerns ASAP. This plan amendment will go back to the BoCC on October 28th...

---

**From:** Neale Montgomery [mailto:NealeMontgomery@Paveselaw.com]  
**Sent:** Tuesday, October 06, 2009 8:42 AM  
**To:** Noble, Matthew  
**Subject:** Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

**Ok, here is my draft. Bill burdette sent me an email and submitted that it is a good start. This indicates that he isn't entirely happy with what I did. The only way I know to get done by the bocc date is for you to look at it at the same time they look at it in an effort to try to find the common ground. I know you are in a hearing, but when you get out and have a chance give either me or Kathleen a call and I'll run over and sit down with it and you can tell me what works, what is a good start, and what can be improved, and hopefully there isn't anything you totally hate.**

10/12/2009

**Dunn, Brandon**

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**From:** Noble, Matthew  
**Sent:** Friday, October 09, 2009 2:50 PM  
**To:** Dunn, Brandon  
**Subject:** FW: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc  
**Attachments:** Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

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**From:** Osterhout, Thom  
**Sent:** Friday, October 09, 2009 1:58 PM  
**To:** Lavender, James; Meurer, Douglas; Wegis, Howard  
**Cc:** Noble, Matthew  
**Subject:** FW: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

It looks okay to me Howard; we will have to jump through some hoops for lack of better verbiage if we decide to site a WTP or WWTP at Gulfcoast (GCC). The 300' set back should not be a deal breaker in my opinion. Yes I did forward this to Jim and Doug for there input as well since we already filed a letter of interest to purchase GCC.

Thanks  
Thom Osterhout  
Senior Manager  
Development  
Lee County Utilities  
1500 Monroe Street  
Fort Myers, Florida 33901  
TOsterhout@leegov.com  
(239) 533-8165  
Fax (239) 485-8385

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**From:** Wegis, Howard  
**Sent:** Thursday, October 08, 2009 3:17 PM  
**To:** Osterhout, Thom  
**Subject:** FW: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

Thom,  
Matt sent this to me. I think you should take a look at it to see if it looks O.K. to you. I think we should also share it with Doug. Your thoughts?

Howard S. Wegis  
Staff Engineer  
Lee County Utilities  
P.O. Box 398  
Fort Myers, FL 33901  
Phone#: (239) 533-8163  
Fax#: (239) 485-8385

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**From:** Noble, Matthew  
**Sent:** Thursday, October 08, 2009 1:56 PM  
**To:** Loveland, David; Pavese, Michael; Houck, Pamela; Gibbs, Mary; Daltry, Wayne; Wegis, Howard; Newman, William; O Connor, Paul; Ottolini, Roland; Price, Robert; Horsting, Michael; Sweigert, Rebecca; Griffith, Douglas; Eckenrode, Peter

10/15/2009

**Subject:** FW: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

Can you all look this over and provide any comments or concerns ASAP. This plan amendment will go back to the BoCC on October 28th...

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**From:** Neale Montgomery [mailto:NealeMontgomery@Paveselaw.com]

**Sent:** Tuesday, October 06, 2009 8:42 AM

**To:** Noble, Matthew

**Subject:** Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

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**Dunn, Brandon**

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**From:** Noble, Matthew  
**Sent:** Friday, October 09, 2009 11:13 AM  
**To:** Dunn, Brandon  
**Subject:** FW: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

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**From:** Horsting, Michael  
**Sent:** Thursday, October 08, 2009 4:02 PM  
**To:** Noble, Matthew  
**Subject:** RE: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

No Comments

Mike Horsting, AICP  
Principal Planner - Lee County Transit  
239-533-0333 tel

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**From:** Noble, Matthew  
**Sent:** Thursday, October 08, 2009 1:56 PM  
**To:** Loveland, David; Pavese, Michael; Houck, Pamela; Gibbs, Mary; Daltry, Wayne; Wegis, Howard; Newman, William; O Connor, Paul; Ottolini, Roland; Price, Robert; Horsting, Michael; Sweigert, Rebecca; Griffith, Douglas; Eckenrode, Peter  
**Subject:** FW: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

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**Sent:** Tuesday, October 06, 2009 8:42 AM  
**To:** Noble, Matthew  
**Subject:** Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

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**Noble, Matthew**

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**From:** Wilson, John  
**Sent:** Saturday, October 10, 2009 5:40 PM  
**To:** Noble, Matthew  
**Cc:** Dickerson, Kim (Mary); Saniter, David  
**Subject:** RE: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

**Matt:**

**OBJECTIVE 17.1: LAND USE.** The primary land use designation for the Buckingham area is "Rural Community Preserve." Other land use designations exist within the boundaries in a lesser amount, such as Public Facilities, Urban Community, and Outlying Suburban. Existing public facilities have also been designated as appropriate. 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 a super majority of the Board of County Commissioners. The Board of County Commissioners must ensure the land is developed in a manner that will not adversely impact the Buckingham Rural Community Preserve.. (Amended by Ordinance No. 00-22)

**Would this language preclude us from building or placing an EMS station in this area should response time considerations warrant it?**

**POLICY 17.3.6:** The Gulf Coast Center may be acquired by Lee County or other public entity. The development, redevelopment, or temporary uses on the property must be developed in a manner that does not adversely impact the rural community. Any use must provide appropriate separation or buffering, traffic mitigation and control, and environmental protection. Any additional uses or facilities must be approved through the planned development zoning process. If the property is used for temporary or emergency operation disaster aftermath facilities, the facilities must be located internal to the site and visually buffered from the surrounding rural community with adequate environmental protection and rodent control. No uses will be permitted that will increase the ambient noise level in the Buckingham Community. No industrial uses can be located on the property within five hundred (500) feet of the Buckingham Community..

**While the language precluding the County from putting a temporary mobile home site on the property has been removed (assuming we get a chance to purchase the land over FGCU's request), the new conditions in the proposed language severely hamper the ability to put such a facility in place within 90 days following a major or catastrophic disaster. What standards will constitute "location internal to the site" and "visually buffered from the surrounding rural community" after a major or catastrophic disaster impacts Lee County (where they maybe debris all over the place)? What standards will be used to determine "adequate environmental protection and rodent control" following a disaster? Do any exist now to evaluate this or will this be used to delay or otherwise inhibit the use of the land for such purposes because none exist? FEMA and Corps of Engineers have developed some pretty strict standards for developing these "emergency group sites" and I believe these should apply under these circumstances rather than the County placing additional land use or zoning requirements taking precedence over providing safe, sanitary and secure housing facilities for those having none.**

John Wilson, Director Lee County Public Safety

NOTE NEW PHONE # 239-533-3911

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**From:** Noble, Matthew  
**Sent:** Fri 10/9/2009 8:01  
**To:** Wilson, John; Campbell, Harry; Dickerson, Kim (Mary)  
**Subject:** FW: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

Could you look at this ASAP, pretty please! This will be discussed at a BoCC hearing on October 28th. We see issues, we would appreciate your comments...

---

**From:** Neale Montgomery [mailto:NealeMontgomery@Paveselaw.com]  
**Sent:** Tuesday, October 06, 2009 8:42 AM  
**To:** Noble, Matthew  
**Subject:** Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

**Ok, here is my draft. Bill burdette sent me an email and submitted that it is a good start. This indicates that he isn't entirely happy with what I did. The only way I know to get done by the bocc date is for you to look at it at the same time they look at it in an effort to try to find the common ground. I know you are in a hearing, but when you get out and have a chance give either me or Kathleen a call and I'll run over and sit down with it and you can tell me what works, what is a good start, and what can be improved, and hopefully there isn't anything you totally hate.**

10/12/2009



**Dunn, Brandon**

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**From:** Lehnert, Dawn  
**Sent:** Monday, October 12, 2009 8:41 AM  
**To:** Noble, Matthew; Dunn, Brandon  
**Subject:** RE: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

With respect to the first comment, I think the answer is yes. The word "existing" appears to be the impediment to future creation.

As to the second comment, I agree with John. The proposed text attempts to create a set of constraints designed to make the County simply give up instead of suing the site. The FEMA standards should be the benchmark in the disaster scenario as the public health, safety and welfare should be deemed paramount during that time.

Dawn E. Perry-Lehnert  
 Assistant County Attorney  
 Lee County Attorney's Office  
 Phone: 239-533-2236  
 Fax: 239-485-2106  
[Lehnertd@leegov.com](mailto:Lehnertd@leegov.com)

*Please note: Florida has a very broad public records law. Most written communications to or from County Employees and Officials regarding County business are public records available to the public and media upon request. Your email communication may be subject to public disclosure.*

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**From:** Noble, Matthew  
**Sent:** Monday, October 12, 2009 8:21 AM  
**To:** Dunn, Brandon; Lehnert, Dawn  
**Subject:** FW: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

FYI...

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**From:** Wilson, John  
**Sent:** Saturday, October 10, 2009 5:40 PM  
**To:** Noble, Matthew  
**Cc:** Dickerson, Kim (Mary); Saniter, David  
**Subject:** RE: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

**Matt:**

**OBJECTIVE 17.1: LAND USE.** The primary land use designation for the Buckingham area is "Rural Community Preserve." Other land use designations exist within the boundaries in a lesser amount, such as Public Facilities, Urban Community, and Outlying Suburban. Existing public facilities have also been designated as appropriate. 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 a super majority of the Board of County Commissioners. The Board of County Commissioners must ensure the land is developed in a

10/15/2009

manner that will not adversely impact the Buckingham Rural Community Preserve.. (Amended by Ordinance No. 00-22)

**Would this language preclude us from building or placing an EMS station in this area should response time considerations warrant it?**

**POLICY 17.3.6:** The Gulf Coast Center may be acquired by Lee County or other public entity. The development, redevelopment, or temporary uses on the property must be developed in a manner that does not adversely impact the rural community. Any use must provide appropriate separation or buffering, traffic mitigation and control, and environmental protection. Any additional uses or facilities must be approved through the planned development zoning process. If the property is used for temporary or emergency operation disaster aftermath facilities, the facilities must be located internal to the site and visually buffered from the surrounding rural community with adequate environmental protection and rodent control. No uses will be permitted that will increase the ambient noise level in the Buckingham Community. No industrial uses can be located on the property within five hundred (500) feet of the Buckingham Community..

**While the language precluding the County from putting a temporary mobile home site on the property has been removed (assuming we get a chance to purchase the land over FGCU's request), the new conditions in the proposed language severely hamper the ability to put such a facility in place within 90 days following a major or catastrophic disaster. What standards will constitute "location internal to the site" and "visually buffered from the surrounding rural community" after a major or catastrophic disaster impacts Lee County (where they maybe debris all over the place)? What standards will be used to determine "adequate environmental protection and rodent control" following a disaster? Do any exist now to evaluate this or will this be used to delay or otherwise inhibit the use of the land for such purposes because none exist? FEMA and Corps of Engineers have developed some pretty strict standards for developing these "emergency group sites" and I believe these should apply under these circumstances rather than the County placing additional land use or zoning requirements taking precedence over providing safe, sanitary and secure housing facilities for those having none.**

John Wilson, Director Lee County Public Safety  
NOTE NEW PHONE # 239-533-3911

---

**From:** Noble, Matthew  
**Sent:** Fri 10/9/2009 8:01  
**To:** Wilson, John; Campbell, Harry; Dickerson, Kim (Mary)  
**Subject:** FW: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

Could you look at this ASAP, pretty please! This will be discussed at a BoCC hearing on October 28th. We see issues, we would appreciate your comments...

---

**From:** Neale Montgomery [mailto:NealeMontgomery@Paveselaw.com]  
**Sent:** Tuesday, October 06, 2009 8:42 AM  
**To:** Noble, Matthew  
**Subject:** Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

10/15/2009

**Ok, here is my draft. Bill burdette sent me an email and submitted that it is a good start. This indicates that he isn't entirely happy with what I did. The only way I know to get done by the boccc date is for you to look at it at the same time they look at it in an effort to try to find the common ground. I know you are in a hearing, but when you get out and have a chance give either me or Kathleen a call and I'll run over and sit down with it and you can tell me what works, what is a good start, and what can be improved, and hopefully there isn't anything you totally hate.**

**Noble, Matthew**

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**From:** Burris, Richard  
**Sent:** Monday, October 12, 2009 9:17 AM  
**To:** Noble, Matthew  
**Subject:** Start of Comments

17: - the additional "and" between historic and rural makes the last part of the sentence redundant – this verbiage is more specific.

The boundary expansion description only describes one tract of land but the maps add in 2 additional areas. The description should either be changed to address all of the proposed expansions, or exclude all of that portion of the proposed Goal change and rely on the map amendment for the actual boundary of the community plan area. The correct map to depict the "special treatment area (community plan) is Map 1 page 2. The goal could state that the boundary on page 2 is the same as the Buckingham Planning Community as depicted on map 16.

17.1: The Outlying Suburban area was changed to Sub-Outlying Suburban. The objective may need to have a provision that changes in the Community Plan boundaries will also be approved by a super majority. The last statement is vague, it may be directed to the previously mentioned FLUM change – this may be better stated in a separate policy, the Goal already states the intent to preserve the character of Buckingham.

17.1.1: The term "Buckingham Community" should be more specific, is it the Buckingham Planning Community, or the Buckingham Community Plan area.

17.1.2: The added language could be reworded to be more clear

Commercial uses, permitted by right, in the existing agricultural districts are allowed outside of the designated commercial node. Boarding Stables, permitted by the existing zoning, will be allowed to offer riding lessons and clinics as an accessory use. (need clear definition of lessons and clinics as an accessory use)

17.1.3: &

17.1.4: All lots created in the Rural Community Preserve land use category not zoned RPD must have a minimum of 43,560 square feet of buildable land area excluding ROW, easements, water management areas, and natural water bodies. Ponds used for agricultural purposes will be considered as "buildable land area" provided the pond is within the lot boundaries.

(legally created lots not meeting these requirements are protected with the minimum use provision)

17.1.5: Within the Rural Community Preserve land use category, smaller clustered lots are allowed as part of a RPD

RPD's must consist of a minimum of 10 acres if clustered lots are requested.

Density will be based on the upland portion of the RPD no density will be calculated from wetland portions of the project (internal ROW, easements, and water management areas will be used for calculating density)

Buildings must be set back a minimum of 100 feet from the boundary of the RPD.

The new policy that follows 17.1.5 is inconsistent with the request which is to expand the Buckingham Community Plan area to coincide with the Buckingham Planning Community boundary. The term "immediately adjacent to" is also confusing, the word immediate would imply that the property abuts the Buckingham Planning Community (shares a border with) but the policy states that any project within 200 feet implying that a gap could exist between the project and the planning community boundary (or is the 200 feet to ensure that tracts of land across roads and canals are included?).

Richard R. Burris, AICP  
Principal Planner  
Lee County Department of Community Development/Division of Planning  
burrisrx@leegov.com  
239-533-8526

**Dunn, Brandon**

---

**From:** Charles Basinait [Charles.Basinait@henlaw.com]  
**Sent:** Tuesday, October 13, 2009 1:08 PM  
**To:** Dunn, Brandon; NealeMontgomery@Paveselaw.com  
**Subject:** FW: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc  
**Importance:** High  
**Attachments:** Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

Brandon and Neale

My initial reaction to this document is that I received the draft document this morning and I only have about 2 weeks left before the BOCC hearing and it is very little time to be able to give meaningful comment on the draft and get some revisions made if necessary. My second comment is that I do not understand Goal 17—it appears that some verbiage has been left out concerning the boundaries of the Buckingham Community. Can one of you fill this in for me. Obviously this paragraph is critical to how my clients will view the remainder of the document and no meaningful review can be commenced until this paragraph is cleared up.

Thank you.

Chuck

**Charles Basinait**

Attorney at Law  
Henderson, Franklin, Starnes & Holt, P.A.  
1715 Monroe Street  
P.O. Box 280  
Fort Myers, FL 33902  
Direct Dial: 239.344.1204  
Direct Fax: 239.344.1580  
Charles.Basinait@henlaw.com  
[www.henlaw.com](http://www.henlaw.com)



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**CONFIDENTIALITY STATEMENT**

Henderson, Franklin, Starnes & Holt, P.A.

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To reply to our e-mail administrator directly, please send an e-mail to [administrator@henlaw.com](mailto:administrator@henlaw.com)

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**From:** Dunn, Brandon [mailto:BDunn@leegov.com]  
**Sent:** Tuesday, October 13, 2009 10:55 AM  
**To:** Charles Basinait; Fred@qainc.net  
**Cc:** Noble, Matthew  
**Subject:** FW: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

Here is language for the Buckingham Community Plan that has been written by Neale Montgomery. It is the latest correspondence we have received from the community. We are in the process of revising/rewriting this and are looking for any comments that you may have about Neale's proposed language.

If you have comments or concerns please get them to us as soon as possible.

Thank you,

*Brandon D Dunn,*

Development Review Representative  
Lee County Community Development  
(239) 533-8989 ext. 48809  
[bdunn@leegov.com](mailto:bdunn@leegov.com)



Think Green & please print this e-mail only if necessary.

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**From:** Noble, Matthew  
**Sent:** Wednesday, October 07, 2009 7:51 AM  
**To:** Dunn, Brandon  
**Subject:** FW: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

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**From:** Neale Montgomery [mailto:NealeMontgomery@Paveselaw.com]  
**Sent:** Tuesday, October 06, 2009 8:42 AM  
**To:** Noble, Matthew  
**Subject:** Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

**Ok, here is my draft. Bill burdette sent me an email and submitted that it is a good start. This indicates that he isn't entirely happy with what I did. The only way I know to get done by the bocc date is for you to look at it at the same time they look at it in an effort to try to find the common ground. I know you are in a hearing, but when you get out and have a chance give either me or Kathleen a call and I'll run over and sit down with it and you can tell me what works, what is a good start, and what can be improved, and hopefully there isn't anything you totally hate.**

**Dunn, Brandon**

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**From:** Noble, Matthew  
**Sent:** Wednesday, October 14, 2009 1:20 PM  
**To:** Dunn, Brandon  
**Subject:** FW: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

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**From:** Loveland, David  
**Sent:** Wednesday, October 14, 2009 11:13 AM  
**To:** Noble, Matthew  
**Cc:** Gibbs, Mary; Daltry, Wayne; O Connor, Paul; Campbell, Harry; Getch, Andrew; Collins, Donna Marie; Deberry, Donald; Gilbertson, Scott  
**Subject:** RE: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

First let me say that I don't think it's fair to staff for the Buckingham reps to introduce a whole bunch of additional changes in the month between one transmittal hearing and another – if we are to seriously consider their new proposals, this package should be pushed to the next amendment cycle. Also, Neale's submittal doesn't seem to accurately reflect the changes from existing plan language in terms of strike-through/underline designations, which has created a confusing mish-mash.

Going back to my general comments from 2007 and 2008, "the Buckingham community may not like it, but they can't ignore the fact that they are positioned between Lehigh Acres and Fort Myers and that traffic is going to come through their community. From a traffic circulation standpoint, we can't treat them like a gated community – the more we try to restrict traffic in Buckingham, the more traffic we force to other roads that are unable to handle it. We have to address the big picture from a regional traffic standpoint, we can't look at this community in isolation." Also, "What if every community doing a plan has the same objective, limiting traffic impacts in their community – then regional transportation planning throughout the County is doomed."

On a more specific basis:

Objective 17.2

At the last minute they are now proposing to revise this objective, and in a very significant way. The new language requires DOT and the BOCC to have one or more public meetings in Buckingham after 5:30 p.m. on any proposed roadway expansion or extension into their planning area. DOT already as a matter of practice has public meetings within the affected community for our major road projects, to answer questions and get input during the corridor alignment study or design process. We did that for the Lockett Road Extension. Those meetings are typically scheduled over a two-hour window, from 4-6 p.m. We don't agree with this specific requirement that treats Buckingham differently than the rest of the County, forcing meetings after 5:30 p.m. And what about intersection safety improvements, smaller scale improvements that we don't consider a "proposed road expansion or extension" like the left turn lane we just added at the Buckingham Road/Cemetary Road intersection? We typically don't have public meetings for those type of improvements, and we have a duty and obligation to determine which safety improvements are appropriate and implement them. Also, if an alignment issue has to be decided by the Board, that is normally done at a regularly scheduled Board meeting in Chambers, open to the public – staff shouldn't agree to forcing the Board to have meetings at a specific time and in locations other than Chambers.

The other part of Objective 17.2 that is revised is changing the general reference of "protecting the rural character of the Buckingham planning area" to "all roadway extensions or expansions shall consider the protection of the low density residential uses and rural character of the Buckingham area." I am not clear how this would be implemented, since widening an existing roadway or extending a roadway corridor by itself does not change surrounding land use density in any way, shape or form. Changing density requires a separate plan amendment or rezoning process, so how exactly do we consider the protection of low density residential uses when considering a road improvement. This language would seem to open the door for a lot of arguing about the



potential impact of a road improvement, and we cannot support it.

New Policy 17.2.1

In relation to subsection 1, I had noted back in December 2008 that the Lockett Road Extension corridor study was already completed. We don't agree with the revisions proposed by Neale, and agree with you that this section should probably be rewritten to reflect the fact that the scale and alignment of the Lockett Road Extension has already been approved by the Board.

In relation to subsection 6, we had already agreed to the ROW limitation of 100 feet as reflected in the current plan language – going back to 2007, we have never agreed with further reducing that limitation to 80 feet. As we noted then, this appears to be an attempt to limit collector roadways, since the minimum ROW standards in the LDC for collector roads start at 100 feet, but we don't feel that is good planning.

New Policy 17.2.2 (which Neale has numbered 17.2.1)

This language is a compromise based on DOT's objection to an earlier proposal, but we would note that there would be a significant cost to doing such a plan (estimated over \$100,000), which raises the question of how that would be funded, since this would not be a top DOT priority given our County-wide needs. Also, the language that says "limiting the negative effects of traffic, and improving the overall functionality of roads" is actually contradictory, since implementing context sensitive solutions that limit the negative effects of traffic will reduce the overall functionality of the road. Collector roads need to function as collector roads.

New Policy 17.2.2 (as numbered by Neale, not in the staff report)

This is not a DOT issue, so I'll leave it to you and Development Services; I would simply question whether it belongs under this objective.

David M. Loveland, AICP  
 Manager, Transportation Planning  
 Lee County Dept. of Transportation  
 1500 Monroe Street  
 Fort Myers, FL 33901  
 NOTE CHANGE: (239)533-8509  
 loveladm@leegov.com

**From:** Noble, Matthew

**Sent:** Thursday, October 08, 2009 1:56 PM

**To:** Loveland, David; Pavese, Michael; Houck, Pamela; Gibbs, Mary; Daltry, Wayne; Wegis, Howard; Newman, William; O Connor, Paul; Ottolini, Roland; Price, Robert; Horsting, Michael; Sweigert, Rebecca; Griffith, Douglas; Eckenrode, Peter

**Subject:** FW: Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

Can you all look this over and provide any comments or concerns ASAP. This plan amendment will go back to the BoCC on October 28th...

**From:** Neale Montgomery [mailto:NealeMontgomery@Paveselaw.com]

**Sent:** Tuesday, October 06, 2009 8:42 AM

**To:** Noble, Matthew

**Subject:** Buckingham Proposed Language April 24 Revision NM Edits 9-30-09.doc

**Ok, here is my draft. Bill burdette sent me an email and submitted that it is a good start. This indicates that he isn't entirely happy with what I did. The only way I know to get done by the boccc date is for you to look at it at the same time they look at it in an effort to try to find the common ground. I know you are in a hearing, but when you get out and have a chance give either me or Kathleen a call and I'll run over and sit down with it and you can tell me what works, what is a good start, and what can be improved, and hopefully there isn't anything you totally hate.**

10/15/2009

## Dunn, Brandon

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**From:** Sweigert, Rebecca  
**Sent:** Thursday, October 15, 2009 1:28 PM  
**To:** Browning, Bradley; Dunn, Brandon  
**Cc:** Lis, Carol; Noble, Matthew  
**Subject:** RE: Buckingham comments.

Brandon,

On proposed policy 17.5.2 for docks on the orange river, in case the board decides to keep the language maybe we suggest the following alterative

The Orange River has large areas where it is narrow, with low flows and surrounding low density residential. Any access to the Orange River, except for single family docks, will be reviewed through a rezoning to a planned development to insure consistency with surrounding areas. Any previously approved ~~permitted~~ docks prior to this plan date, may remain without additional rezoning or public hearings.

I think it should be much simpler language if left within the Lee Plan . Too many details are mentioned within the proposed policy that should be left for LDC language.

Just a thought...

Becky Sweigert  
Principal Environmental Planner  
Lee County Division of Environmental Sciences  
PO Box 398  
Fort Myers, FL 33902-0398  
[rsweigert@leegov.com](mailto:rsweigert@leegov.com)

239-533-8552  
239-485-8344 (fax)

---

**From:** Browning, Bradley  
**Sent:** Thursday, October 15, 2009 10:43 AM  
**To:** Dunn, Brandon  
**Cc:** Sweigert, Rebecca  
**Subject:** Buckingham comments.

Brandon- Below are ES staff comments for Buckingham Community.

Policy 17.1.2- The land development code will need to be amended to require 30% open space for all commercial developments located in the commercial node for the rural community preserve.

Policy 17.1.7- ES staff has no issues with the proposed language created by staff.

Policy 17.4- ES staff suggest replacing "shall provide" with "must provide" in the proposed language.

Policy 17.4.1- Buffering requirements for public facilities (Essential Services) are regulated by Section 10-416 and Section 34-1616 of the land development code. If the Buckingham community would like to increase the current buffer requirements and require all native plant material for public facilities (Essential Services) then the Land Development Code will have to be amended. Again, some buffer standards need to provided or clarification on buffer proposal. If the community is requesting additional buffering requirements beyond LDC 10-416 and 34-1616 then that needs to be stated in the policy.

Policy 17.4.5- ES staff suggest striking out this language because the variance and deviation process is already discouraged by the county but is sometimes necessary to due to existing site constraints.

Objective 17.5- ES staff has no issues with this policy but if the Buckingham community would like to increase the required open space then the Land Development Code will have to be amended.

10/15/2009

Policy 17.5.2.- ES staff suggest striking out this language because this language could affect docks that have been approved thru zoning but has not applied for or been issued a Dock and Shoreline permit.  
Objective 17.6- ES staff suggest striking out this Objective and the polices because the County does not have any control over what the Property Appraiser does or how land is valued.

Brad Browning

Senior Environmental Planner

Lee County Environmental Sciences

[bbrowning@leegov.com](mailto:bbrowning@leegov.com)

Phone:239-533-8157

Fax:239-485-8344

October 27, 2009

Mr. Paul O'Connor  
Mr. Matt Noble  
Lee County Planning Department  
1500 Monroe Street  
Fort Myers, FL 33901

RECEIVED  
OCT 29 2009

COMMUNITY DEVELOPMENT

**RE: Buckingham Plan Amendments**

Dear Mr. O'Connor and Mr. Noble:

I want to say how much I appreciate the time and effort expended by Brandon Dunn, Matt Noble, Dawn Lehnert and Donna Marie Collins. Brandon and Matt worked especially hard on verbiage changes to the policies to address the concerns of the staff and the community. A lot of progress was made at our meetings. I am dismayed that the information provided to the Board of County Commissioners belies the tremendous progress. The list of unresolved issues includes issues that are resolved. Please allow me to respond to the staff memorandum.

**1. Object 17.1 - Super Majority Vote to change the FLUM**

The objective provides, in part:

"No land in the Buckingham community 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."

The staff accurately notes that the Community requested a super majority instead of three members. The community would prefer the super majority language, but the staff made a valid point that if a super majority requirement were included in the Buckingham Community Plan then other communities would want a similar provision in their community plan. The concern about creating a precedent is understandable, and if the Board of County Commissioners (BOCC) determines that it would not establish a precedent then the community would favor the change.

**2. Policy 17.1.3 – MUD versus Vested Rights**

There is no disagreement.

The community and the staff understand the need to protect those parties that have a pre-existing legal right. The staff preference was to use the minimum use determination process. This process addresses the legal concern and it provides the opportunity to address vested rights situations in a way that is fair to the community and the landowners.

**3. Policy 17.1.6.**

There is no disagreement.

This policy requires appropriate buffers and an appropriate transition of uses. The policy as worded by the staff provides a framework for addressing the community concerns. If a setback is necessary to protect the community, the staff will be able to rely on this policy to provide for an appropriate buffer and transition of uses instead of relying on an automatic 100 foot setback. If the standard buffers and setbacks in a standard zoning district don't meet the requirements of this policy, the community assumes that the staff will encourage someone seeking a rezoning to proceed with a planned development zoning application as the staff often does.

**4. Objective 17.2.**

There is no disagreement.

The community language originally included a 5:30 meeting time since most of residents in the community work. The staff was persuasive in noting that the 5:05 time frame is consistent with normal County practice. The community would love for it to be at 5:30, but 5:05 is acceptable.

**5. Policy 17.2.1.6. – Future Right of Way Widths**

This is an unresolved issue.

"All future rights-of-way in the Buckingham Community will be no greater than ~~400~~80 feet (except for Buckingham Road and Lockett Road extensions)."

The staff is correct, the community disagrees with the increase in roadway width. The community wants to retain the rural character. The Buckingham Community is the home of families, dogs, and an array of large animals in a bucolic setting. The community wants roads designed for slower speeds to reduce high speeds, cut through traffic, and pedestrian and animal conflicts with speeding vehicles.

**6. Policy 17.3.1. – Acknowledging the Ability to Have a Waiver from Sewer Connection**

This is an unresolved issue.

The community does not want sewer lines extended into the area in a manner that compels residents to connect, especially when the residents are located on small family farms. The community is keenly aware of the negative fiscal impact on residents in Cape Coral when they were compelled to connect at a high cost. The staff has submitted that it may be necessary to extend sewer lines to provide relief for projects such as The Hut. The community doesn't want to prevent properties on failing systems from connecting to a central system, but the community doesn't want to be compelled to assist in the funding of The Hut's connection especially when it would cause an economic hardship that could result in the loss of the family farm. The BOCC was previously advised that the statute mandated a connection. The current staff memorandum accurately notes that the BOCC has the ability to waive the obligation to connect. Section 381.00655(2)(b), F.S. provides, "A publically owned or investor-owned sewerage system may, with the approval of the department, waive the requirements of mandatory onsite sewage disposal connection if it

determines that such connection is not required in the public interest due to public health considerations." An Attorney General Opinion is attached hereto which confirms the ability to grant a waiver. The Community would recommend an amendment to the staff policy 17.3.1.

*Staff recommendation:*

In order to discourage unwanted urban development, central sewer lines will not be extended in the Rural Community Preserve, except to the areas identified by Lee Plan Map 7 as future Sanitary Sewer Service Areas, the existing Resource Recovery Facility, the adjacent Lee County Parks and Recreation Facility, and any future public facility. Sewer lines may be extended to future public facilities after one or more public meetings are held in the community and a public hearing is held before the Board of County Commissioners. The County may also extend transmission/force mains through the Rural Community Preserve, if necessary. Under no circumstances will the availability of central sewer lines be accepted as justification for a density or intensity increase, or reduction of lot size requirements (except as provided in Policy 17.1.5), within the Rural Community Preserve.

*Proposed Addition:*

The Board of County Commissioners will consider waivers to the County's central sewer mandatory connection requirement in the Buckingham Community. A waiver cannot be granted unless the landowner has the approval of the Health Department and the request is in accordance with the Section 381.00655(2)(b), F.S.

The community has been advised and some Board members have been advised that waivers cannot be granted, and the community wants to be assured that everyone knows that the Board can and will consider waivers. The primary concern is an economic one.

**7. Policy 17.3.3. – Limit or Preclude New Fuel/Chemical Transmission Lines**

The staff expressed a need for more information.

The staff advised the applicant that they were not certain the policy as originally proposed could be implemented due to concerns about pre-emption.

*Original Proposed Language:*

Residential natural gas lines and the existing TECO natural gas line are allowed within the Buckingham Community. New petroleum, methane, or fuel transmission lines are presumed to be incompatible with the Buckingham Community. No new petroleum, methane or other fuel transmission lines, including commercial natural gas lines are permitted without a public meeting in the Community. A public hearing would also be required and the Board of County Commissioners would have to make a finding that the presumption of incompatibility has been overcome. Notice of the public hearing shall be provided to all landowners within 2,000 feet of the proposed fuel transmission line. Any transmission line must be located in a manner that does not bisect existing residential and agricultural uses and does not adversely impact the Rural Community Preserve.

The state requirements for the siting of transmission lines, petroleum lines, and natural gas lines include provisions for comments from the local community. The Community would suggest the following change:

*Proposed change:*

The Board of County Commissioners will hold a public meeting after 5:00 to obtain input from the Buckingham Community before commenting to any state agency on the appropriateness of a new or expanded natural gas, petroleum, methane or other chemical or fuel transmission line proposed to pass into or through the Buckingham Community. If the County is permitted by law to restrict the location of a petroleum, methane or other fuel transmission line, including commercial natural gas lines, the Board of County Commissioners will evaluate the impacts of said line on the Buckingham Community at a noticed public hearing. The Board will evaluate the impact on the Rural Community Preserve, and the potential adverse impacts on the Rural Community Preserve.

**8. The Buckingham Army Airfield.**

This is an unresolved issue.

The community proposed the following as Policy 17.3.5:

The historic value and historic uses of the Buckingham Army Airfield, and the residential airparks should be protected. Any new uses of the Buckingham Army Airfield must be approved through the planned development zoning process. A public meeting with the community must be held in the community prior to completion of the sufficiency process for the planned development. Minutes of the meeting must be taken and made part of the record. Any new uses must be developed in a manner that is consistent with the rural community.

The staff has noted that the property is already zoned CF-3. CF-3 permits uses that do not currently exist and which are incompatible with the surrounding community. It is understood that the Board does not want to be in a position of taking away legally permitted uses. Thus, the community would recommend the following revised recommendation:

Any use of the Buckingham Army Airfield that is not permitted by the zoning in place on [Date of Plan Amendment Adoption] 2010, must be rezoned to a planned development in accordance with all pertinent provisions of the Buckingham Community Plan.

**9. Gulf Coast Center**

This is no disagreement with the staff on Gulf Coast Center.

The Community concerns will be addressed if the staff language is accepted. The policy should be written to include any owner.

Any development or redevelopment of the property must be accomplished in a manner that does not adversely impact the rural community. Any use must provide appropriate separation, buffering, traffic mitigation and control, and environmental protection.

I appreciate the opportunity to respond to the staff memorandum. I am hopeful that the hard work of the community and the staff will be reflected in the final product.

Messrs. O'Connor and Noble  
October 27, 2009  
Page 5 of 5

Your consideration of this matter is greatly appreciated.

Sincerely,

*Neale Montgomery*

Signed in absentia  
to avoid delay

Neale Montgomery

NM/kc

cc: Lee County Board of County Commissioners  
Mr. Charles Basinait  
Mr. Bruce Strayhorn  
Mr. Chris Bundschu  
Mr. Bob Murray  
Mr. Bill Burdette

Attachment



# Florida Attorney General Advisory Legal Opinion

1. Number: AGO 2000-71

Date: December 14, 2000

Subject: Sewers--mandatory connection sewerage system

---

Mr. Michael S. Mullin  
Nassau County Attorney  
Post Office Box 1010  
Fernandina Beach, Florida 32035-1010

RE: COUNTIES--SEWER SYSTEMS--residential owners whose property is served by onsite septic system required to connect with an investor-owned sewerage system after written notification of system's availability. s. 381.00655, Fla. Stat.

Dear Mr. Mullin:

On behalf of the Nassau County Board of County Commissioners, you ask substantially the following question:

Does section 381.00655, Florida Statutes, mandate that residential property owners whose property is currently served by an onsite septic system connect to an investor-owned sewerage system, and may the costs of such sewerage line be assessed to the property owners that do not hook up to the system?

In sum:

The Legislature, through the enactment of section 381.00655, Florida Statutes, has required residential owners whose property is served by an onsite septic system to connect with an investor-owned sewerage system after written notification by the owner of the investor-owned sewerage system that the system is available for connection. The statute, however, permits the investor-owned sewerage system to waive the connection with the consent of the Department of Health.

The Legislature has enacted section 381.00655, Florida Statutes, which requires property owners who currently have onsite sewage

treatment and disposal systems to connect to available central sewerage systems. An onsite sewage treatment system includes such things as septic systems.[1] Pursuant to the statute:

"The owner of a properly functioning onsite sewage treatment and disposal system . . . must connect the system or the building's plumbing to an available publicly owned or investor-owned sewerage system within 365 days after written notification by the owner of the publicly owned or investor-owned sewerage system that the system is available for connection. The publicly owned or investor-owned sewerage system must notify the owner of the onsite sewage treatment and disposal system of the availability of the central sewerage system. No less than 1 year prior to the date the sewerage system will become available, the publicly owned or investor-owned sewerage system shall notify the affected owner of the onsite sewage treatment and disposal system of the anticipated availability of the sewerage system and shall also notify the owner that the owner will be required to connect to the sewerage system within 1 year of the actual availability. . . ."[2] (e.s.)

If an onsite sewage treatment and disposal system must be repaired in order to function or to comply with the requirements of sections 381.0065-381.0067, Florida Statutes, or rules adopted thereunder, the owner of such system must connect to an available publicly owned or investor-owned sewerage system within 90 days after written notification from the department.[3] In hardship cases, upon request of the owner the department may approve one extension of not more than 90 days for sewerage connection.

The statute recognizes that there may be instances where the requirement of mandatory sewer hookup may be waived. Section 381.00655(2)(b), Florida Statutes, provides:

"A publicly owned or investor-owned sewerage system may, with the approval of the [Department of Health], waive the requirement of mandatory onsite sewage disposal connection if it determines that such connection is not required in the public interest due to public health considerations."

It is, however, the publicly owned or investor-owned system that determines, with the approval of the Department of Health, whether the mandatory hookup provisions of section 381.00655, Florida Statutes, may be waived. The statute makes no provision for the property owner to decline to connect to the system.

Section 381.00655(1)(a), Florida Statutes, grants the property

owner the option of prepaying the amortized value of required connection charges in equal monthly installments over a period not to exceed 2 years from the date of the initial notification of anticipated availability. In addition, the local governing body of the jurisdiction in which the owner of the onsite sewage treatment and disposal system resides may provide that any connection fee charged under this section by an investor-owned sewerage system may be paid without interest in monthly installments, over a period of time not to exceed 5 years from the date the sewerage system becomes available, if it determines that the owner has demonstrated a financial hardship.[4]

Although the statute requires sewer hookup and makes provision for payment of hookup fees, there are no statutorily prescribed penalties for failure to connect to the system within the designated time period. A companion bill in the House of Representatives to Committee Substitute for Senate Bill 158 provided:

"If the owner of an onsite sewage treatment and disposal system has not connected to an available publicly owned or investor-owned sewerage system within the time required by this subsection, the publicly owned or investor-owned sewerage system may charge the owner any connection fees, customer charges, or minimum billing charges as if the owner had connected to the available sewerage system on the last day of the notification period. Such charges may be collected or enforced as permitted by applicable tariffs or rules and regulations of the sewerage system or as otherwise permitted by law." [5]

No such provisions are contained in the Senate Bill that passed as Chapter 93-151, Laws of Florida, creating section 381.00655, Florida Statutes. Nor does section 381.00655, Florida Statutes, specifically grant enforcement authority to any agency or entity.

This office, however, has stated that a county or a municipality may take local legislative action providing for the enforcement of section 381.00655, Florida Statutes, under home rule powers. [6] The statute itself clearly recognizes the authority of counties and municipalities to "enforce other laws for the protection of the public health and safety." [7] Moreover, section 381.0065(5)(b)1., Florida Statutes, provides that the Department of Health may issue citations containing an order of correction or an order to pay a fine, or both, for violations of sections 381.0065-381.0067 or the rules adopted by the department, when a violation of these sections or rules is enforceable by an

administrative or civil remedy, or when a violation of these sections or rules is a misdemeanor of the second degree.[8] A citation issued under sections 381.0065-381.0067, Part I of Chapter 386, or Part III of Chapter 489, Florida Statutes, constitutes a notice of proposed agency action.

Accordingly, I am of the view that the Legislature, through the enactment of section 381.00655, Florida Statutes, requires residential owners whose property is served by an onsite septic system to connect with an investor-owned sewerage system after written notification by the owner of the investor-owned sewerage system that the system is available for connection, unless the investor-owned sewerage system waives the connection with the consent of the Department of Health.

Sincerely,

Robert A. Butterworth  
Attorney General

RAB/tjw

-----  
[1] See, s. 381.0065(2)(j), Fla. Stat., as amended by s. 10, Ch. 2000-242, Laws of Florida, defining an "Onsite sewage treatment and disposal system" as used in ss. 381.0065-381.0067, Fla. Stat., to mean

"a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a *septic tank*; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under chapter 403." (e.s.)

[2] Section 381.00655(1)(a), Fla. Stat.

[3] Section 381.00655(1)(b), Fla. Stat.

[4] Section 381.00655(2)(a), Fla. Stat. The statute requires the local governing body to establish criteria for making the determination that the owner has demonstrated a financial hardship, taking into account the owner's net worth, income, and financial needs.

[5] Section 2, HB 2133, 1993 legislative session.

[6] See, Op. Att'y Gen Fla. 96-09 (1996), and Inf. Op. to Alan C. Jensen, dated August 27, 1999.

[7] Section 381.00655(1)(a), Fla. Stat.

[8] Cf., Rule 64E-6.022(1)(p), Fla.Admin.C., establishing disciplinary guidelines for the installation, modification, or repair of an onsite sewage treatment and disposal system in violation of the standards of s. 381.0065 or s. 381.00655, Fla. Stat., or chapter 64E-6, Fla.Admin.C.: First violation, \$500 per specific standard violated; repeat violation, 90 day suspension or revocation.

File:  
CPA 2007-49

**Buckingham Community Planning Panel, Inc.**  
4931 Shady River Lane, Fort Myers, Florida 33905

January 6, 2010

Paul O'Connor  
Lee County Community Development  
PO Box 398  
Fort Myers, Florida 33902-0398

Dear Mr. O'Connor:

The Buckingham Community Planning Panel has been officially dissolved as a Florida corporation, effective December 30, 2009.

We remain committed to serving the community and available to advise the County individually, to the best of our ability, on matters relative to Buckingham. Please let me know if assistance is needed in preparing the Buckingham plan amendment for final adoption.

I request that notices of applications for zoning, development approval, plan amendments, and similar matters of interest to Buckingham be provided to the Buckingham Conservancy, Inc. Notices may be sent in care of the Conservancy's president, Chris Bundschu, [chrisbundschu@bundschukraft.com](mailto:chrisbundschu@bundschukraft.com), or the vice president, Bill Burdette, [bill@burdetteinc.com](mailto:bill@burdetteinc.com).

Respectfully,

Bill Burdette  
Former President, Buckingham Community Planning Panel, Inc.

copy: Board of County Commissioners  
Buckingham Community Planning Panel  
Mary Gibbs  
Joan LaGuardia  
Kim Kirtin  
Matt Noble



Reply to  
Charles J. Basinait  
Direct Fax Number 239.344.1580  
Direct Dial Number 239.344.1204  
E-Mail: charles.basinaid@henlaw.com

January 22, 2010

**HAND DELIVERY AND E-MAIL**

Matt Noble  
Lee County Community Development  
1500 Monroe Street  
Fort Myers, FL 33901

Re: CPA2007-49 Buckingham Community Plan/Mosquito Control District

Dear Matt:

Please be advised that this law firm represents the interests of the Mosquito Control District (MCD) in connection with the above referenced proposed Lee County Comprehensive Plan amendment relating to the Buckingham Community Plan.

As you may recall, both myself and, as I understand it, Carmen McKinney with the MCD, have spoken to you prior to and during the BoCC transmittal hearings in September and October of 2009 on the subject amendment and made it abundantly clear that the MCD vigorously opposes any comprehensive plan amendment which would require the MCD to seek a planned development rezoning in order to modify the zoning for either all or a portion of the MCD property. The specific language I am referring to is contained in a October 27, 2009 letter from Neale Montgomery (copy attached) on page 4 of 5 of the letter and is delineated as Policy 17.3.5. To be clear, Ms. Montgomery's letter includes an original proposal and a revised proposal---my clients object to both.

In addition to the Montgomery proposal in her October 27 letter, another version of the proposal was contained in the staff analysis that was attached to the transmittal document that was attached as a part of the Buckingham Plan amendment that was transmitted to the Department of Community Affairs (DCA). The provision was contained on page 23 of 38 in the staff analysis portion of the transmittal document and is also delineated as Policy 17.3.5. In this instance the staff does not agree with the proposed language and recommends against transmitting it to DCA. The BoCC agreed and this language was stricken from the version of the Buckingham Community Plan that was transmitted to DCA. My clients agree with the staff position regarding this

Matt Noble  
January 22, 2010  
Page 2

version of Policy 17.3.5 and MCD would note for the record its objection if this policy were to be included in the Lee Plan.

While none of the above proposals were approved by the BoCC and transmitted to the DCA as a part of the Buckingham Community Plan I did not want there to be any confusion on the part of the County as to the position of the MCD on this subject. The MCD is prepared to comply with the Land Development Code with respect to any future development of the site but they do not want to be singled out and made to comply with special restrictions relating to a possible rezoning of the property. Further, if there is any attempt to include this requirement in the adopted version of the Buckingham Community Plan my clients will oppose this at the March 3 and 4, 2010 BoCC adoption hearings.

We appreciate the staff's prior concurrence and cooperation with the MCD position on this matter.

Thank you for the opportunity to provide input and please let me know if you have any questions or if staff's position has changed on this subject. Certainly I would also appreciate it if you would notify me if there is any indication that the BoCC's position has changed. I would also like to receive copies of any correspondence you may receive on this matter and please notify me if you become aware that the Buckingham community intends to raise this issue at the adoption hearings.

Sincerely,



Charles J. Basinait

CJB/sbm  
Enclosure

cc: Carmen McKinney - Lee County Mosquito  
Control District



October 27, 2009

Mr. Paul O'Connor  
Mr. Matt Noble  
Lee County Planning Department  
1500 Monroe Street  
Fort Myers, FL 33901

**RE: Buckingham Plan Amendments**

Dear Mr. O'Connor and Mr. Noble:

I want to say how much I appreciate the time and effort expended by Brandon Dunn, Matt Noble, Dawn Lehnert and Donna Marie Collins. Brandon and Matt worked especially hard on verbiage changes to the policies to address the concerns of the staff and the community. A lot of progress was made at our meetings. I am dismayed that the information provided to the Board of County Commissioners belies the tremendous progress. The list of unresolved issues includes issues that are resolved. Please allow me to respond to the staff memorandum.

**1. Object 17.1 - Super Majority Vote to change the FLUM**

The objective provides, in part:

"No land in the Buckingham community 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."

The staff accurately notes that the Community requested a super majority instead of three members. The community would prefer the super majority language, but the staff made a valid point that if a super majority requirement were included in the Buckingham Community Plan then other communities would want a similar provision in their community plan. The concern about creating a precedent is understandable, and if the Board of County Commissioners (BOCC) determines that it would not establish a precedent then the community would favor the change.

**2. Policy 17.1.3 – MUD versus Vested Rights**

There is no disagreement.

The community and the staff understand the need to protect those parties that have a pre-existing legal right. The staff preference was to use the minimum use determination process. This process addresses the legal concern and it provides the opportunity to address vested rights situations in a way that is fair to the community and the landowners.

**3. Policy 17.1.6.**

There is no disagreement.

This policy requires appropriate buffers and an appropriate transition of uses. The policy as worded by the staff provides a framework for addressing the community concerns. If a setback is necessary to protect the community, the staff will be able to rely on this policy to provide for an appropriate buffer and transition of uses instead of relying on an automatic 100 foot setback. If the standard buffers and setbacks in a standard zoning district don't meet the requirements of this policy, the community assumes that the staff will encourage someone seeking a rezoning to proceed with a planned development zoning application as the staff often does.

**4. Objective 17.2.**

There is no disagreement.

The community language originally included a 5:30 meeting time since most of residents in the community work. The staff was persuasive in noting that the 5:05 time frame is consistent with normal County practice. The community would love for it to be at 5:30, but 5:05 is acceptable.

**5. Policy 17.2.1.6. – Future Right of Way Widths**

This is an unresolved issue.

"All future rights-of-way in the Buckingham Community will be no greater than 400-80 feet (except for Buckingham Road and Lockett Road extensions)."

The staff is correct, the community disagrees with the increase in roadway width. The community wants to retain the rural character. The Buckingham Community is the home of families, dogs, and an array of large animals in a bucolic setting. The community wants roads designed for slower speeds to reduce high speeds, cut through traffic, and pedestrian and animal conflicts with speeding vehicles.

**6. Policy 17.3.1. – Acknowledging the Ability to Have a Waiver from Sewer Connection**

This is an unresolved issue.

The community does not want sewer lines extended into the area in a manner that compels residents to connect, especially when the residents are located on small family farms. The community is keenly aware of the negative fiscal impact on residents in Cape Coral when they were compelled to connect at a high cost. The staff has submitted that it may be necessary to extend sewer lines to provide relief for projects such as The Hut. The community doesn't want to prevent properties on failing systems from connecting to a central system, but the community doesn't want to be compelled to assist in the funding of The Hut's connection especially when it would cause an economic hardship that could result in the loss of the family farm. The BOCC was previously advised that the statute mandated a connection. The current staff memorandum accurately notes that the BOCC has the ability to waive the obligation to connect. Section 381.00655(2)(b), F.S. provides, "A publically owned or investor-owned sewerage system may, with the approval of the department, waive the requirements of mandatory onsite sewage disposal connection if it

determines that such connection is not required in the public interest due to public health considerations." An Attorney General Opinion is attached hereto which confirms the ability to grant a waiver. The Community would recommend an amendment to the staff policy 17.3.1.

*Staff recommendation:*

In order to discourage unwanted urban development, central sewer lines will not be extended in the Rural Community Preserve, except to the areas identified by Lee Plan Map 7 as future Sanitary Sewer Service Areas, the existing Resource Recovery Facility, the adjacent Lee County Parks and Recreation Facility, and any future public facility. Sewer lines may be extended to future public facilities after one or more public meetings are held in the community and a public hearing is held before the Board of County Commissioners. The County may also extend transmission/force mains through the Rural Community Preserve, if necessary. Under no circumstances will the availability of central sewer lines be accepted as justification for a density or intensity increase, or reduction of lot size requirements (except as provided in Policy 17.1.5), within the Rural Community Preserve.

*Proposed Addition:*

The Board of County Commissioners will consider waivers to the County's central sewer mandatory connection requirement in the Buckingham Community. A waiver cannot be granted unless the landowner has the approval of the Health Department and the request is in accordance with the Section 381.00655(2)(b), F.S.

The community has been advised and some Board members have been advised that waivers cannot be granted, and the community wants to be assured that everyone knows that the Board can and will consider waivers. The primary concern is an economic one.

**7. Policy 17.3.3. – Limit or Preclude New Fuel/Chemical Transmission Lines**

The staff expressed a need for more information.

The staff advised the applicant that they were not certain the policy as originally proposed could be implemented due to concerns about pre-emption.

*Original Proposed Language:*

Residential natural gas lines and the existing TECO natural gas line are allowed within the Buckingham Community. New petroleum, methane, or fuel transmission lines are presumed to be incompatible with the Buckingham Community. No new petroleum, methane or other fuel transmission lines, including commercial natural gas lines are permitted without a public meeting in the Community. A public hearing would also be required and the Board of County Commissioners would have to make a finding that the presumption of incompatibility has been overcome. Notice of the public hearing shall be provided to all landowners within 2,000 feet of the proposed fuel transmission line. Any transmission line must be located in a manner that does not bisect existing residential and agricultural uses and does not adversely impact the Rural Community Preserve.

The state requirements for the siting of transmission lines, petroleum lines, and natural gas lines include provisions for comments from the local community. The Community would suggest the following change:

*Proposed change:*

The Board of County Commissioners will hold a public meeting after 5:00 to obtain input from the Buckingham Community before commenting to any state agency on the appropriateness of a new or expanded natural gas, petroleum, methane or other chemical or fuel transmission line proposed to pass into or through the Buckingham Community. If the County is permitted by law to restrict the location of a petroleum, methane or other fuel transmission line, including commercial natural gas lines, the Board of County Commissioners will evaluate the impacts of said line on the Buckingham Community at a noticed public hearing. The Board will evaluate the impact on the Rural Community Preserve, and the potential adverse impacts on the Rural Community Preserve.

**8. The Buckingham Army Airfield.**

This is an unresolved issue.

The community proposed the following as Policy 17.3.5:

The historic value and historic uses of the Buckingham Army Airfield, and the residential airparks should be protected. Any new uses of the Buckingham Army Airfield must be approved through the planned development zoning process. A public meeting with the community must be held in the community prior to completion of the sufficiency process for the planned development. Minutes of the meeting must be taken and made part of the record. Any new uses must be developed in a manner that is consistent with the rural community.

The staff has noted that the property is already zoned CF-3. CF-3 permits uses that do not currently exist and which are incompatible with the surrounding community. It is understood that the Board does not want to be in a position of taking away legally permitted uses. Thus, the community would recommend the following revised recommendation:

Any use of the Buckingham Army Airfield that is not permitted by the zoning in place on [Date of Plan Amendment Adoption] ,2010, must be rezoned to a planned development in accordance with all pertinent provisions of the Buckingham Community Plan.

**9. Gulf Coast Center**

This is no disagreement with the staff on Gulf Coast Center.

The Community concerns will be addressed if the staff language is accepted. The policy should be written to include any owner.

Any development or redevelopment of the property must be accomplished in a manner that does not adversely impact the rural community. Any use must provide appropriate separation, buffering, traffic mitigation and control, and environmental protection.

I appreciate the opportunity to respond to the staff memorandum. I am hopeful that the hard work of the community and the staff will be reflected in the final product.

Messrs. O'Connor and Noble  
October 27, 2009  
Page 5 of 5

Your consideration of this matter is greatly appreciated.

Sincerely,

*Neale Montgomery*

Signed in absentia  
to avoid delay

Neale Montgomery

NM/kc

cc: Lee County Board of County Commissioners  
Mr. Charles Basinait  
Mr. Bruce Strayhorn  
Mr. Chris Bundschu  
Mr. Bob Murray  
Mr. Bill Burdette

Attachment

# Florida Attorney General Advisory Legal Opinion

1. Number: AGO 2000-71

Date: December 14, 2000

Subject: Sewers--mandatory connection sewerage system

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Mr. Michael S. Mullin  
Nassau County Attorney  
Post Office Box 1010  
Fernandina Beach, Florida 32035-1010

RE: COUNTIES--SEWER SYSTEMS--residential owners whose property is served by onsite septic system required to connect with an investor-owned sewerage system after written notification of system's availability. s. 381.00655, Fla. Stat.

Dear Mr. Mullin:

On behalf of the Nassau County Board of County Commissioners, you ask substantially the following question:

Does section 381.00655, Florida Statutes, mandate that residential property owners whose property is currently served by an onsite septic system connect to an investor-owned sewerage system, and may the costs of such sewerage line be assessed to the property owners that do not hook up to the system?

In sum:

The Legislature, through the enactment of section 381.00655, Florida Statutes, has required residential owners whose property is served by an onsite septic system to connect with an investor-owned sewerage system after written notification by the owner of the investor-owned sewerage system that the system is available for connection. The statute, however, permits the investor-owned sewerage system to waive the connection with the consent of the Department of Health.

The Legislature has enacted section 381.00655, Florida Statutes, which requires property owners who currently have onsite sewage

treatment and disposal systems to connect to available central sewerage systems. An onsite sewage treatment system includes such things as septic systems.[1] Pursuant to the statute:

"The owner of a properly functioning onsite sewage treatment and disposal system . . . must connect the system or the building's plumbing to an available publicly owned or investor-owned sewerage system within 365 days after written notification by the owner of the publicly owned or investor-owned sewerage system that the system is available for connection. The publicly owned or investor-owned sewerage system must notify the owner of the onsite sewage treatment and disposal system of the availability of the central sewerage system. No less than 1 year prior to the date the sewerage system will become available, the publicly owned or investor-owned sewerage system shall notify the affected owner of the onsite sewage treatment and disposal system of the anticipated availability of the sewerage system and shall also notify the owner that the owner will be required to connect to the sewerage system within 1 year of the actual availability. . . ."[2] (e.s.)

If an onsite sewage treatment and disposal system must be repaired in order to function or to comply with the requirements of sections 381.0065-381.0067, Florida Statutes, or rules adopted thereunder, the owner of such system must connect to an available publicly owned or investor-owned sewerage system within 90 days after written notification from the department.[3] In hardship cases, upon request of the owner the department may approve one extension of not more than 90 days for sewerage connection.

The statute recognizes that there may be instances where the requirement of mandatory sewer hookup may be waived. Section 381.00655(2)(b), Florida Statutes, provides:

"A publicly owned or investor-owned sewerage system may, with the approval of the [Department of Health], waive the requirement of mandatory onsite sewage disposal connection if it determines that such connection is not required in the public interest due to public health considerations."

It is, however, the publicly owned or investor-owned system that determines, with the approval of the Department of Health, whether the mandatory hookup provisions of section 381.00655, Florida Statutes, may be waived. The statute makes no provision for the property owner to decline to connect to the system.

Section 381.00655(1)(a), Florida Statutes, grants the property

owner the option of prepaying the amortized value of required connection charges in equal monthly installments over a period not to exceed 2 years from the date of the initial notification of anticipated availability. In addition, the local governing body of the jurisdiction in which the owner of the onsite sewage treatment and disposal system resides may provide that any connection fee charged under this section by an investor-owned sewerage system may be paid without interest in monthly installments, over a period of time not to exceed 5 years from the date the sewerage system becomes available, if it determines that the owner has demonstrated a financial hardship.[4]

Although the statute requires sewer hookup and makes provision for payment of hookup fees, there are no statutorily prescribed penalties for failure to connect to the system within the designated time period. A companion bill in the House of Representatives to Committee Substitute for Senate Bill 158 provided:

"If the owner of an onsite sewage treatment and disposal system has not connected to an available publicly owned or investor-owned sewerage system within the time required by this subsection, the publicly owned or investor-owned sewerage system may charge the owner any connection fees, customer charges, or minimum billing charges as if the owner had connected to the available sewerage system on the last day of the notification period. Such charges may be collected or enforced as permitted by applicable tariffs or rules and regulations of the sewerage system or as otherwise permitted by law." [5]

No such provisions are contained in the Senate Bill that passed as Chapter 93-151, Laws of Florida, creating section 381.00655, Florida Statutes. Nor does section 381.00655, Florida Statutes, specifically grant enforcement authority to any agency or entity.

This office, however, has stated that a county or a municipality may take local legislative action providing for the enforcement of section 381.00655, Florida Statutes, under home rule powers.[6] The statute itself clearly recognizes the authority of counties and municipalities to "enforce other laws for the protection of the public health and safety." [7] Moreover, section 381.0065(5) (b)1., Florida Statutes, provides that the Department of Health may issue citations containing an order of correction or an order to pay a fine, or both, for violations of sections 381.0065-381.0067 or the rules adopted by the department, when a violation of these sections or rules is enforceable by an



administrative or civil remedy, or when a violation of these sections or rules is a misdemeanor of the second degree.[8] A citation issued under sections 381.0065-381.0067, Part I of Chapter 386, or Part III of Chapter 489, Florida Statutes, constitutes a notice of proposed agency action.

Accordingly, I am of the view that the Legislature, through the enactment of section 381.00655, Florida Statutes, requires residential owners whose property is served by an onsite septic system to connect with an investor-owned sewerage system after written notification by the owner of the investor-owned sewerage system that the system is available for connection, unless the investor-owned sewerage system waives the connection with the consent of the Department of Health.

Sincerely,

Robert A. Butterworth  
Attorney General

RAB/tjw

-----  
[1] See, s. 381.0065(2)(j), Fla. Stat., as amended by s. 10, Ch. 2000-242, Laws of Florida, defining an "Onsite sewage treatment and disposal system" as used in ss. 381.0065-381.0067, Fla. Stat., to mean

"a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under chapter 403." (e.s.)

[2] Section 381.00655(1)(a), Fla. Stat.

[3] Section 381.00655(1)(b), Fla. Stat.

[4] Section 381.00655(2)(a), Fla. Stat. The statute requires the local governing body to establish criteria for making the determination that the owner has demonstrated a financial hardship, taking into account the owner's net worth, income, and financial needs.

[5] Section 2, HB 2133, 1993 legislative session.

[6] See, Op. Att'y Gen Fla. 96-09 (1996), and Inf. Op. to Alan C. Jensen, dated August 27, 1999.

[7] Section 381.00655(1)(a), Fla. Stat.


[8] Cf., Rule 64E-6.022(1)(p), Fla.Admin.C., establishing disciplinary guidelines for the installation, modification, or repair of an onsite sewage treatment and disposal system in violation of the standards of s. 381.0065 or s. 381.00655, Fla. Stat., or chapter 64E-6, Fla.Admin.C.: First violation, \$500 per specific standard violated; repeat violation, 90 day suspension or revocation.

**MEMORANDUM  
FROM THE  
OFFICE OF COUNTY ATTORNEY**

VIA EMAIL ONLY

DATE: February 12, 2010

To: Brandon Dunn  
Development Review  
Representative

FROM:   
Dawn E. Perry-Lehnert  
Assistant County Attorney

RE: **Buckingham Planning Community (CPA2007-49)  
Transmission Line Siting Acts  
LU-2090.N**

As part of its Community Planning effort the Buckingham Community Planning Panel raised an issue with respect to utility transmission lines running through the community planning area. The Community's main concern appears to be the extension of fuel transmission lines through the community, though other utility facilities also present a concern.

The attempt to locally control the siting and construction of electrical transmission lines (including power plant transmission lines that may include pipelines and fuel-up loading facilities) or natural gas transmission lines raises a legal concern. Under the Florida Statutes, the County is pre-empted with respect to the siting of Electrical power plants, substations and transmission lines; and Natural Gas transmission lines. See F.S. §§ 403.510; 403.536; and 403.942. Consequently, it does not appear appropriate to adopt a Lee Plan provision that prohibits the siting of electrical and gas utility facilities in the Buckingham Community.

Although local governments do not have the authority to certify/approve the location of transmission lines and related facilities, the statutes do afford the local government an opportunity to hold informational public meetings and provide input for consideration by an Administrative Law Judge in the Department of Administrative Hearings (DOAH) process. There may also be a limited opportunity for a directly affected private property owner to provide additional input or alternatives for consideration in the DOAH process. An overview of the processes involved are set forth in Attachment A.

In light of the above, please consider recommending adoption of a policy that reads as follows:

**POLICY 17.3.3: All new large developments (as defined in chapter 10 of the Land development Code) subject to permit and approval by Lee County must install utilities underground. Utilities include, but are not limited to electricity, telephone, and cable lines.**

Brandon Dunn  
February 12, 2010  
Page 2

Re: Buckingham Planning Community (CPA2007-49)  
Transmission Line Siting Acts  
LU-2090.N

With respect to the siting of electrical transmission lines, electrical power plants, natural gas transmission lines and the related facilities, the County will hold a public informational meeting in accord with the appropriate provision as set forth in Florida States Chapter 403.

Should you have any questions concerning the above, please do not hesitate to contact me.

DPL:tlb  
Attachment

cc via email only: David M. Owen, County Attorney  
Mary Gibbs, Director, DCD  
Paul O'Connor, Director, Planning Division  
Donna Marie Collins, Chief Assistant County Attorney  
Gregory S. Hagen, Chief Assistant County Attorney  
Matt Noble, Principal Planner, DCD

## ATTACHMENT A

To follow is an overview of the statutes applicable to Natural Gas and Electrical Transmission Line and Power Plant Siting Acts. The overview is intended to provide a general understanding of the process involved. Please be sure to review the Acts in their entirety.

### Natural Gas Transmission Pipeline Siting Act (FS §§403.9401-403.9425)

- 403.9402** The legislative intent of the act is to
1. Establish a centralized and coordinated permitting process for the location of natural gas transmission pipeline corridors and the construction and maintenance of the pipelines.
  2. Further the goal of ensuring, through available and reasonable methods, that the location of natural gas transmission pipelines produce minimal adverse affect on the environment and public health, safety and welfare.
  3. To fully balance the need for natural gas supplies with the broad interest of the public in order to affect a reasonable balance between the need for the transmission pipeline, the impact on the public and the environment.
- 403.9403** Certification means the approval by the Governor and Cabinet of a corridor, and of the construction and maintenance of a pipeline within that corridor, along with any changes or conditions the Governor and Cabinet considers appropriate. Certification is evidenced by a written order of the Governor and Cabinet.
- 403.9405** Applicability, exemptions...
- 403.94055** Application filed with the Department of Environmental Protection (DEP). Must include the beginning and ending point of a pipelining/corridor along with all structures and maintenance and access roads required to be constructed. As proposed the width of the corridor is limited to 1/3 of a mile wide. The corridor is narrowed after the property acquisition process to include only land within pipeline right-of-way.
- 403.9406.** An Administrative Law Judge (ALJ) is selected within 7 days after application filing.
- 403.9407** A list of those affected or agencies entitled to notice and copies of application is prepared. 7 days after DEP determines the application is complete a schedule for submissions by agencies and affected parties is established and copies of application and supporting documents are distributed.

**403.9408** DEP determines whether the application is complete within 15 days of receipt. If not complete, then a request is made to the applicant for information. This process continues until a determination of completeness is rendered or the application is withdrawn.

**403.9409** Within 45 days after the completeness determination is issued, DEP files a statement with DOAH regarding sufficiency of the application. This continues until the application is found sufficient or is withdrawn.

**403.941** Reports

1. The affected agencies have 60 days after the application is first received to issue a preliminary statement regarding issues. This statement is made available to local governments for use in the informational meeting under 403.9424.
2. 60 days after application is deemed sufficient, affected agencies must provide a report to DEP regarding:
  - a. *DEP report*: impact on matters under its jurisdiction;
  - b. *Water Management (WMD) District report*: impact on water resources and other matters under their jurisdiction;
  - c. *DCA report*: recommendations addressing impact upon the public; consistency with the state comprehensive plan; consistency with strategic regional policy/plans, local comprehensive plans and land development regulations (LDRs).
  - d. *Fish and Wildlife Conservation (FWC) report*: impact on fish and wildlife resources.
  - e. *Local Government report*: consistency with local ordinances, regulations, standards, criteria, including local comprehensive plans, zoning regulations, LDRs, environmental regulations. [Local government can not amend its regulations applicable to the certification area after the report is filed, unless certification is denied or application is withdrawn.]
  - f. *Regional Planning Council (RPC) report*: impacts on the public, degree of consistency with strategic regional policy
  - g. *Florida Department of Transportation report*: matters within its jurisdiction, including roadway crossings  
All reports must include information regarding variance and proposed conditions of certification.
3. DEP prepares written analysis summarizing and compiling agency reports; including variances, exemptions, exceptions and conditions. DEP report due to ALJ 115 days after app sufficient.
4. Issues not raised by an agency in their report will be precluded at the DOAH hearing and are deemed waived.

Notice Requirements; Parties.

1. Notices
  - a. Within 15 days after application is complete, applicant publishes notice of the application.
  - b. Applicant publishes notice of hearing date at least 80 days before date set by ALJ. Notice includes deadline for filing notice of intent to be a party.
  - c. Applicant publishes reminder notice 10 days before certification hearing.
  - d. Specific newspaper publication criteria required.
  - e. DEP publishes notice in Florida Administrative Weekly.
2. DOAH hearing required to be conducted no later than 215 days after application complete [unless the hearing is rescheduled due to alternate corridor proposals]. Hearing located in central proximity of proposed corridor.
3. Optional local public hearing.
  - a. Local government has until 50 days after application is complete to notify ALJ they want to hold a local public hearing. (This is different than the informational public meeting.)
  - b. Within 5 days after request, ALJ determines date of local government hearing. County chooses location, unless 2 or more local governments in same county notify ALJ requesting a hearing. Then ALJ consolidates the public hearings and chooses a central location.
  - c. Local public hearing is for members of the public that are not parties to the certification hearing to testify.
  - d. If the County (local government) does not request a hearing, people residing in the County may testify during the public hearing portion of certification hearing. (This testimony is not sworn.)
4. ALJ Recommendation to Governor and Cabinet: issued no later than 60 days after the transcripts of certification and public hearings are filed with DOAH. Order must include findings of fact and conclusions of law.
5. Parties
  - a. Includes all person/entities with right to file a report to DEP.
  - b. However, County must file notice of intent to be a party at least 30 days before certification hearing, or the County will be deemed to have waived its right to be a party.
  - c. Additional potential parties:
    1. Agency not required to file a report, if notice is filed.
    2. Domestic nonprofit corporation/associations formed for a variety of listed purposes and operating within the area encompassed by the proposed corridor. This includes community planning panels and homeowners associations. Notice of intent to be a party is required.

3. Persons with substantial interests affected. Petition for intervention required to be filed at least 30 days before certification hearing.
- d. ALJ provides opportunity for public comment during hearing by non-parties. Statements provided whether written or oral are unsworn.

**403.9412. Alternate Corridors**

1. Any party can propose an alternate corridor. Proposals must be filed 50 days before the originally scheduled certification hearing. Proposals must be accompanied by certain supporting documentation.
2. Within 7 days after receipt of notice as to alternate corridor, applicant and DEP file, with ALJ and parties, a notice of acceptance or rejection of proposed alternate corridor.
  - a. If rejected by either DEP or Applicant, the certification hearing is held on date originally scheduled.
  - b. If accepted, the certification hearing is rescheduled and held no later than 135 days after original hearing to allow a review of alternate corridors. [No additional alternate corridor proposals are permitted during this time, unless the applicant amends the application and the proposed corridor alignment.]
  - c. Within 25 days after proposed alternate corridor accepted, proposing party must provide supplementary data to support alternate. If data is not sufficient, then additional time is provided. Agencies file reports regarding alternative corridors no later than 45 days after data submitted is sufficient.
  - d. DEP prepares supplemental written analysis to ALJ at least 40 days before certification hearing.
3. During certification hearing, any party can discuss proposed alternate corridors, whether rejected or not, and present testimony showing the corridor does or does not meet the statutory criteria in 403.9415.

**403.9415 Final Disposition by Governor and Cabinet ("Board")**

1. Board considers and acts on ALJ recommendation within 60 days after receipt by accepting, rejecting or modifying recommendation.
2. Board may hold a hearing. Issues at hearing a limited to those raised in certification proceedings or ALJ recommended order.
3. If denied, Board must state action necessary to secure approval.
4. Board must consider whether, and to what extent the location, construction and maintenance of the corridor will effect a reasonable balance between the need for the natural gas transmission pipeline as a means of providing natural gas energy, and the impact upon the public and environment resulting from the proposed location of the corridor. This balance is based upon whether and the extent to which the project will:



- a. Ensure natural gas delivery reliability and integrity;
  - b. Meet the natural gas energy needs of the state in an orderly and timely fashion;
  - c. Comply with the nonprocedural requirements of agencies;
  - d. Adversely affect historical sites and natural environment;
  - e. Adversely affect health, safety and welfare of the residents of the affected local government;
  - f. Be consistent with applicable local government comprehensive plans and LDRs; and
  - g. Avoid densely populated areas to the maximum extent feasible. If densely populated areas cannot be avoided, locate, to the maximum extent feasible, within existing utility corridors or rights-of-way.
5. The Board will certify the corridor that meets the criteria and has the least adverse impact regarding the criteria, including costs. The Board can chose to certify a rejected corridor if it meets the criteria and has the least adverse impact. If two or more corridors meet the criteria and area is substantially equal with respect to adverse impacts, the Board will certify the corridor preferred by the applicant.

**403.9416**

Effect of Certification

1. Certification constitutes the sole license of the state and any agency as to the approval of the corridor location and construction. Certification is valid for the life of the transmission pipeline. But certification is void if construction is not commenced within 5 years after certification is issued, unless otherwise authorized by Board.
2. Certification authorizes location, construction and maintenance, subject only to stated conditions.
3. Certification may include conditions that constitute variances and exemption from nonprocedural standards/regulations expressly considered in the proceeding. Each party has an obligation to notify the applicant of any nonprocedural requirements that are not listed in the application from which a variance, exemption, exception or other relief is necessary in order for the Board to certify the proposed corridor (as part of report to DEP regarding the application or a proposed alternate corridor).
4. Certification is in lieu of any other permits, certificates, licenses etc.

**403.9417**

The applicant has 60 days after the certification is issued to file a notice of the certified route.

**403.9418**

Modification of certification is possible in accord with the specified process.

403.942

Superseded Laws, Regulations and Certification Power.

1. *Act controls.* Any provision limitation, restriction, regulation, rule, or ordinance of the state or any political subdivision, municipality or agency that conflicts Act is deemed superceded.
2. The state preempts the certification and regulations of natural gas transmission pipelines and corridors subject to the Act.

403.9424

Local Government: Informational Meetings

1. Local government (County) may hold informational public meetings in addition to the hearings authorized by the ALJ. Informational meetings should be held no later than 80 days after the complete application is filed. The purpose of the meeting is to inform the public about the proposed natural gas pipeline, obtain comments and formulate a recommendation. Neither the meetings nor the recommendation may address the need for the pipeline.
2. Informational meetings are optional.

Florida Electrical Power Plant Siting Act

FS §§403.501-403.518

403.502

It is the intent of the legislature to seek courses of action that will fully balance the increasing demand for electrical power plant location and operation with the broad interests of the public and to

1. Assure Florida citizens that the operation safeguards are technically sufficient for their welfare and protection.
2. Effect a reasonable balance between the need for the facility and the environmental impact resulting from construction and operation of the facility, including air and water quality, fish and wildlife, and the water resources and other natural resources of the state.
3. Meet the need for electrical energy established in 403.519.
4. Assure citizens that renewable energy sources and technologies, as well as conservation measures, are used to the extent reasonably available.

Policy of the state: ensure through available and reasonable methods that the location and operation of electrical power plants will produce minimal adverse impacts on human health, the environment, the ecology of the land, wildlife, state waters, and aquatic life, and not unduly conflict with the goals established by the applicable local comprehensive plans.

403.506

Applicability. The Act basically applies to any electrical power plant except a power plant of less than 75 megawatts in gross capacity, unless the applicant chooses to request certification.

Certification is not required under the Act if the proposed/expanded electrical plant will use nuclear materials as fuel. This exemption applies to the related transmission lines, among other things.

Any facilities necessary for the construction of the electrical power plant become part of the certified power plant upon completion of construction.

**403.5064**

Application filing.

1. Application filed with DEP.
2. Alternate corridor option. If the applicant exercises its option to allow alternate corridor considerations, the transmission line corridors are processed in accord with electrical transmission line siting act provisions.
3. Within 7 days after application filed.
  - a. DEP provides notice/list to DOAH regarding agencies and persons entitled to notice of application. Applicant has 5 days to provide copies to those on list.
  - b. DEP establishes a schedule for filings etc. related to processing the application. This schedule is sent to DOAH and an order regarding the schedule is issued.
  - c. Administrative Law Judge (ALJ) is appointed (403.5065)
4. Notice of filing application is published in accord with public notice provisions (403.5115).

**403.5066**

Application Completeness Determination

1. 30 days after filing application affected agencies file statement with DEP regarding completeness.
2. 40 days after app filed, DEP files statement with DOAH regarding completeness. If application not complete, applicant has 15 days to take action. Applicant can withdraw application; file additional information within 30 days after statement filed with DOAH; contest determination; or request more time. This continues until application is complete.

**403.50663**

Informational Public Meeting

1. Within 70 days after application filed, local government may hold a public informational meeting, which is in addition to any hearings required by the Act. If the local government does not hold a meeting, the Regional Planning Council may chose to do so.
2. The purpose of the meeting is to inform the public about the proposed electrical power plant and associated facilities, and obtain comments to assist in preparing the required recommendation.
3. The applicant may, but is not required, to attend the meeting.
4. 5 days before meeting, published notice is required in accord with 403.5115(5).
5. Failure to hold a meeting is not a basis for denial of certificate.

**403.50665**

Land Use Consistency

1. The application must include a statement regarding consistency of the site and facilities with existing land use plan and zoning regulations in

- effect on the date the application was filed. The application must also identify the facilities that are exempt from land use and zoning requirements under FS ch 163 and 380.04(3).
2. 45 days after application is filed, County must file statement with DEP and all other parties regarding consistency of the site and associated facilities that are not exempt from land use and zoning regulations in effect on date of application.
  3. Notice of consistency determination must be published.
  4. Applicant may file for local approval to address inconsistencies identified by County. County must commence proceedings to consider application within 45 days after receipt and issue a revised determination 30 days following conclusion of local proceeding. Filing of application with County tolls time for certification hearings.
  5. A substantially affected person can dispute the County determination by filing a petition with the ALJ 21 days after notice of consistency published.
  6. If the County determines a proposed site or nonexempt facility conforms to the land use plan and zoning regulations, the County can not take action to change regulations to prevent construction or operation of the facilities unless certification is withdrawn or denied.

403.507

Reports

1. 40 days after application is determined complete all agencies (includes County) are to submit a preliminary statement.
2. 100 days after application is determined complete, the following agencies must submit a report to DEP and applicant regarding:
  - a. *DCA report*: recommendations to address impact on public; degree proposed plant is consistent with state comprehensive plan and other matters within its jurisdiction; may also comment on consistency with local comp plan and LDRs.
  - b. *WMD report*: impact on water resources, regional water supply and district-owned lands/works.
  - c. *County report*: consistency of proposed plant with applicable local regulations that apply to the proposed electrical power plant, including environmental regulations.
  - d. *FWC report*: matters under FWC jurisdiction.
  - e. *RPC report*: recommendation to address impact of plant on the public; consistency of plant with strategic regional plan.
  - f. *FDOT report*: matters under its jurisdiction.
3. Each report must contain:
  - a. Notice of nonprocedural requirements from which a variance, exemption, exception or other relief is necessary to certify the plant. Failure to notify DEP as to these items constitutes a waiver.
  - b. Recommendation to approve or deny.

- c. Proposed conditions of certification on matters under agency jurisdiction.
- 4. 150 days after application filed, Public Service Commission (PSC) prepares a report regarding present and future need for the electrical generating capacity to be supplied by the proposed plant.
- 5. 130 days after application deemed complete DEP files analysis including
  - a. Statement whether the proposed plant will be in compliance/consistent with DEP standards as well as nonprocedural requirements of affected agencies.
  - b. Copies of required reports and studies.
  - c. Comments from other agencies.
  - d. Recommendation as to disposition of application, variances, exemptions, and other relief; proposed conditions on certification.

403.508

Land Use and Certification Hearings; Parties.

- 1. If a petition is filed under 403.50665 disputing the local government determination with respect to consistency of proposed plant with land use plan and LDRS, the ALJ has 5 days to schedule a hearing, which must occur no later than 30 days after the petition is received. Notice must be published in accord with 403.5115.
- 2. The sole issue for determination at the hearing on the land use petition is whether or not the proposed site or non exempt associated facility is consistent and in compliance with existing land use plans and zoning ordinances.  
If the ALJ concludes the plant or facilities are not consistent with the land use plan or zoning regulations, then the ALJ receives evidence during the course of this hearing and, includes in the recommended order any changes to or approvals or variances under, the applicable land use plans or zoning regulations that will render the proposed site/facilities consistent and in compliance with local regulations.
- 3. ALJ has 30 days after hearing concludes to issue recommended order; Board (Governor and Cabinet) have 60 days after receipt of ALJ recommendation to review it.
- 4. If Board determines plant/facilities in compliance with local regulations, then County can't changes regulations to create inconsistency or prevent construction.
- 5. If Board determines plant/facilities not consistent with local regulations, then Board may authorize a variance or other necessary approval to the adopted land use plan or zoning regulations required to render the site/facilities consistent with local regulations (based upon a determination after notice, hearing and consideration of recommended order that the plant/facilities are in the public interest).

The Board action is not controlled by any other procedural requirements of law.

If the Board denies the variance or other approvals, the applicant must seek the necessary approvals (as determined by the Board) to make the proposed site/facilities consistent/compliant with local land use plan and zoning regulations before the application can move forward.

6. Within 265 days after the application is filed, the certification hearing must be held. The hearing must be located in proximity to the proposed site.
7. Required parties to the proceeding include: Applicant, PSC, DCA, FWC, WMD, RPC, County, FDOT. But parties can waive right to participate if they fail to file notice of intent to be a party 90 days before certification hearing.
8. Others can become a party by filing a notice of intent with ALJ no later than 75 days after application is filed.
9. ALJ may give any person an opportunity to present oral or written communications at the hearing. If considered by ALJ, then the communication must be subject to cross-examination.
10. ALJ has 45 days after transcript is filed to issue a recommended order.
11. DEP can request that the ALJ cancel the hearing if all parties agree to application. If granted, DEP issues the final order on the application.

#### 403.509

##### Final Disposition by Governor and Cabinet ("Board")

1. Board considers and acts on ALJ recommendation within 60 days after receipt by accepting, rejecting or modifying recommendation.
2. Board may hold a hearing. Issues at hearing are limited to those raised in certification proceedings or ALJ recommended order.
3. If denied, Board must state action necessary to secure approval.
4. Board must consider whether, and to what extent the location, construction and operation of the plant will:
  - a. Provide reasonable assurance that operational safeguards are technically sufficient for public welfare and protection;
  - b. Comply with the nonprocedural requirements of agencies;
  - c. Be consistent with applicable local government comprehensive plans and LDRs;
  - d. Meet electrical energy needs of the state in an orderly, reliable, and timely fashion;
  - e. Effect a reasonable balance between the need for the facility and the impacts upon air and water quality, fish and wild life, water resources, and other natural resources;
  - f. Minimize through reasonable and available methods, the adverse effects on human health, the environment and the ecology of the land, wildlife, state waters and aquatic life; and

- g. Serve and protect the broad interests of the public.
5. The Board will certify the corridor that meets the criteria and has the least adverse impact regarding the criteria, including costs. If the board finds that a rejected alternate corridor meets the criteria and has the least adverse impact, the Board may deny the certification or allow the applicant to submit and amend application to include the corridor. If two or more corridors meet the criteria and area is substantially equal with respect to adverse impacts, the Board will certify the corridor preferred by the applicant.

**403.510** Superseded Laws, Regulations and Certification Power.

1. *The Act controls.* Any provision limitation, restriction, regulation, rule, or ordinance of the state or any political subdivision, municipality or agency that conflicts with the Act is deemed superceded.
2. The state preempts the certification and regulations of natural gas transmission pipelines and corridors subject to the Act.

**403.511** Effect of Certification.

1. Certification constitutes the sole license of the state and any agency as to the approval of the site/facility location and construction.
2. Certification authorizes location, construction and maintenance, subject only to stated conditions.
3. Certification may include conditions that constitute variances and exemption from nonprocedural standards/regulations expressly considered in the proceeding.
4. Certification is in lieu of any other permits, certificates, licenses etc.
5. Act does not affect PSC ratemaking power; or ability of County to charge fees or require construction in compliance with building code.

**403.5185** Applicable law

Any application for electrical power plant certification filed pursuant to §§403.501-403.518 "shall" be processed under the provisions of the law applicable at the time the application was filed.

**Florida Electric Transmission Line Siting Act**  
 §§403.52-403.5365

**403.521** Intent

1. Establish a centralized and coordinated licensing process for the location, construction, operation and maintenance of electric transmission lines.
2. Ensure through available and reasonable methods that location, construction, operation and maintenance of electric transmission corridors and lines produce minimal adverse effects on environment, public health, safety and welfare.

3. Fully balance the need for transmission lines with broad interest of the public to effect reasonable balance between need for facility and impact on the public and environment.

**403.524** Applicability

1. Act applies to each transmission line, except a line certified under the Florida Electrical Power Plant Siting Act.
2. Exemptions: for lines approved under FS ch. 380; lines in established rights-of-way for roads, railroads, gas, water, oil, electricity, sewage or any other public purpose; transmission lines that are less than 15 miles in length or located in a single county within the state.
3. Exemption of transmission line under this Act does not constitute an exemption from applicable permitting processes or local government regulations.

**403.525** Within 7 days after application received, DEP request DOAH to designate ALJ.

**403.5251** Application

1. Formal application filing date established when copies of application filed and fee paid.
2. DEP identifies additional agencies to receive notice of application and provides copies to these entities within 7 days of application filing.
3. Application must identify starting and ending points for transmission lines.
4. Within 15 days of application filing DEP determines schedule for completeness, reports, etc.

**403.5252** Completeness Determination

1. Within 30 days of application filing, affected agencies must file statement with DEP containing recommendations as to completeness.
2. Within 37 days of application filing, DEP files statement with DOAH, applicant and parties regarding completeness based upon input from affected agencies.
3. If DEP declares application incomplete, the applicant must take action within 14 days. Actions include withdrawing application; providing additional information; contest the DEP's determination, request additional time to respond.
4. If applicant contests determination, ALJ sets a hearing not later than 21 days after DEP files statement. ALJ renders a decision within 7 days after hearing.
  - a. If deemed incomplete, applicant must withdraw application or make necessary submittals to reach completeness.
  - b. If application deemed complete, the time schedule commences.



- c. If additional information needed applicant has 14 days to submit, and the process continues until completeness is reached.

403.526

Reports

1. Each affected agency files a preliminary statement of issues to DEP.
2. No later than 90 days after application filed, agencies must submit report to DEP regarding:
  - a. *DEP report*: impact of each proposed line/corridor as it relates to matters within its jurisdiction.
  - b. *Water Management District report*: impact on water resources and other matters within jurisdiction.
  - c. *DCA report*: recommendation to address the impact of the proposed line/corridor on the public based upon degree to which the line/corridor is consistent with state comprehensive plan, emergency management; consistency with applicable strategic regional policy plans or local comprehensive plans and LDRs.
  - d. *FWC report*: impact on fish and wildlife.
  - e. *County report*: impact of each line/corridor on matters within County jurisdiction including consistency with local regulations, standards, criteria that apply to transmission lines/corridor, local comp plan, zoning, environmental and land development regulations. Regulation amendments accomplished after transmission line application filed do not affect the application.
  - f. *RPS report*: impact on public based upon degree line/corridor is consistent with strategic regional policy plan and other matters under its jurisdiction.
  - g. *PSC report*: determination under 403.537 and other matters within jurisdiction.
3. Reports must contain:
  - a. Notice of any nonprocedural requirements from which a variance, exemption, exception or other relief is necessary in order for the proposed corridor to be certified. Failure to provide notice constitutes a waiver from the nonprocedural requirement.
  - b. Recommendation of approval or denial.
  - c. Proposed conditions, including reference to regulations upon which condition is based.
4. 115 days after application filed, DEP provides analysis to ALJ based upon reports from agencies and includes:
  - a. Statement of compliance with rules of DEP and other agencies.
  - b. Comments received.

- c. Recommendation as to disposition of application, variances, exemptions, exceptions, and other proposed relief; conditions of certification.

403.527

Certification Hearing: Parties

1. No later than 145 days after application filed, ALJ must conduct certification hearing at a central location in proximity to proposed lines/corridor.
2. Notice of certification hearing must be published in accord with 403.5363.
3. Hearing parties include: Applicant, DEP, PSC, DCA, FWC, FDOT, WMD, County, RPC.
4. 30 days before certification hearing, parties must file a notice of intent to participate. Failure to file notice constitutes waiver of the right to participate.
5. A notice of intent to be a party or a petition for intervention may be filed with ALJ no later than 30 days before hearing to achieve recognition as a party by agencies not listed above or certain nonprofit corporations or associations; or any person whose substantial interests are effected or determined by the proceedings.
6. The ALJ may give any person an opportunity to present oral or written communications. If considered by the ALJ, the communications must be subject to cross-examination, challenge and rebuttal.
7. One Public hearing where nonparty members of the public may testify "shall" be held in conjunction with the certification hearing.
  - a. Local government (County) requests right to hold public hearing for non-parties who reside within the County
  - b. County must notify ALJ and all parties no later than 50 days after application filing regarding intent to hold a meeting. County is responsible for providing the location if the meeting is held separately from the certification hearing.
  - c. Within 5 days after notice, ALJ determines the date of the public hearing. If 2 or more local governments in the same county request a public hearing, the ALJ will consolidate the hearings and the locations is determined by the ALJ.
  - d. If County does not request public hearing in 50 days, nonparty members of the public who reside in the County may testify during certification hearing.
8. No later than 45 days after receipt of transcripts for public hearing and certification hearing, ALJ must issue recommendation.
9. No later than 29 days before certification hearing, DEP may request ALJ to relinquish jurisdiction because there are no disputed issues of material fact or law.  
If ALJ grants DEPs request, then DEP prepares and issues the final order.

403.5271

Alternate Corridors

1. No later than 45 days before the originally scheduled certification hearing any party may propose an alternative corridor.
2. Notice of the proposed alternative must be filed with ALJ, all parties and affected local government. Filing must include maps etc and statement why alternate corridor should be certified.
3. Within 7 days after notice of alternative filed, applicant and DEP file notice of acceptance or rejection of proposed alternate. If rejected, certification hearing goes on as scheduled. If accepted, certification hearing is rescheduled. Rescheduled certification hearing must be held no more than 90 days after the previously scheduled hearing date, unless the data supporting the alternative is not complete. Then the proposer gets additional time to provide the information.
4. Proponent of alternate corridor is responsible to publish notice of alternative. If notice is not timely published, the alternative is deemed withdrawn.
5. Within 21 days after acceptance of proposed alternate, proposing party must provide data to all agencies; agencies must issue supplemental report to DEP within 15 days after submittal. DEP issues determination of completeness 22 days after receipt of data. If deemed not complete the proposing party gets additional time to submit data to reach completeness.
6. 24 days after alternative deemed complete, supplementary reports must be submitted to DEP.
7. 16 days after DEP receives reports, DEP files report with ALJ.
8. Evidence may be presented at certification hearing on any corridor, whether accepted or rejected, provided the alternate corridor was proposed at least 45 days before the originally scheduled certification hearing date.
9. Party proposing alternative has burden to prove corridor can be certified.
10. If an alternate corridor is accepted by the applicant and DEP based upon a notice of acceptance and the corridor is ultimately determined to be the corridor meeting the criteria set forth in 403.529(4) and (5), the Board "shall" certify the corridor.

403.5272

Informational Public Hearing

1. Within 55 days after application filed, local government may hold a public informational meeting, which is in addition to any hearings required by the Act. If the local government does not hold a meeting, the Regional Planning Council may chose to do so. (The meetings are optional.)
2. The purpose of the meeting is to inform the public about the proposed transmission line and obtain comments to assist in preparing the require recommendation.

3. Informational meetings are held solely at the local government or RPC's option. No party, other than the applicant and DEP, is required to attend.
4. Not less than 15 days before meeting, the County/RPC is required to publish notice in accord with 403.527(2)(a) and 403.5363(4).
5. Failure to hold a meeting is not a basis for denial of certificate.

**403.529**

Final Disposition by Governor and Cabinet ("Board")

1. Board considers and acts on ALJ recommendation within 60 days after receipt by accepting, rejecting or modifying recommendation.
2. Board may hold a hearing. Issues at hearing are limited to those raised in certification proceedings or ALJ recommended order.
3. If denied, Board must state action necessary to secure approval.
4. Board must consider whether, and to what extent the location, construction, operation and maintenance of the line/corridor will:
  - a. Ensure electrical power system reliability and integrity;
  - b. Meet electrical energy needs of the state in an orderly, economical and timely fashion;
  - c. Comply with the nonprocedural requirements of agencies;
  - d. Be consistent with applicable local government comprehensive plans; and
  - e. Effect a reasonable balance between the need for the lines and the impacts upon the public and environment resulting from location, construction, operation and maintenance of the lines.
5. The Board will certify the corridor that meets the criteria and has the least adverse impact regarding the criteria, including costs. If the board finds that a rejected alternate corridor meets the criteria and has the least adverse impact, the Board may deny the certification or allow the applicant to submit and amend application to include the corridor. If two or more corridors meet the criteria and area is substantially equal with respect to adverse impacts, the Board will certify the corridor preferred by the applicant.

**403.531**

Effect of Certification.

1. Certification constitutes the sole license of the state and any agency as to the approval of the line/corridor location, construction, operation and maintenance. Certification is valid for the life of the transmission line if action to construction or acquire the right-of-way occurs within 5 years after the date of the certification.
2. Certification authorizes location, construction and maintenance, subject only to stated conditions.

3. Certification may include conditions that constitute variances and exemptions from nonprocedural standards/regulations expressly considered in the proceeding.
4. Certification is in lieu of any other permits, certificates, licenses etc.
5. Act does not affect PSC ratemaking power; or ability of County to charge fees or require construction in compliance with the National Electrical Safety Code.

**403.536**

Superseded Laws, Regulations and Certification Power.

1. *The Act controls.* Any provision limitation, restriction, regulation, rule, or ordinance of the state or any political subdivision, municipality or agency that conflicts with the Act is deemed superseded.
2. The state preempts the certification and regulations of transmission lines and corridors.

**Dunn, Brandon**

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**From:** Bill Burdette [bill@burdetteinc.com]  
**Sent:** Friday, February 19, 2010 8:38 AM  
**To:** Dunn, Brandon  
**Cc:** neale montgomery; Noble, Matthew  
**Subject:** Buckingham plan

Brandon,

I recommend the following revisions to the draft plan amendment:

**OBJECTIVE 17.2: TRANSPORTATION**

***Item 5 should remain*** (as recommended by staff at transmittal hearing)

***last paragraph - revise first sentence to state "Lee County supports the community desire to protect the rural character of the Buckingham Community by keeping the majority of the roadways within the community to 2 lanes." delete the second sentence***  
(simplifies and clarifies the intent)

I don't detect any problems with rest of transportation policies. Disappointed with Policy 17.3.8 regarding transmission lines but don't see a solution.

Let me know if you have any questions. I thank you for the opportunity to review and comment.

Bill Burdette  
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Fax (239) 936-1802  
[bill@burdetteinc.com](mailto:bill@burdetteinc.com)

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I am using the Free version of SPAMfighter.  
We are a community of 6 million users fighting spam.  
SPAMfighter has removed 94960 of my spam emails to date.  
The Professional version does not have this message.