

LEE COUNTY ORDINANCE NO. 10-39
(Wetlands Density Calculations)
(CPA2008-00018)

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE PLAN, COMMONLY KNOWN AS THE "LEE PLAN," ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENT CPA2008-18 (UPDATING THE WETLANDS DENSITY CALCULATIONS) APPROVED DURING THE COUNTY'S 2009/2010 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR PURPOSE, INTENT AND SHORT TITLE; AMENDMENTS TO ADOPTED TEXT AND TABLES; LEGAL EFFECT OF "THE LEE PLAN"; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, the Lee County Comprehensive Plan ("Lee Plan") Policy 2.4.1. and Chapter XIII, provides for adoption of amendments to the Plan in compliance with State statutes and in accordance with administrative procedures adopted by the Board of County Commissioners ("Board"); and,

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

WHEREAS, the Lee County Local Planning Agency ("LPA") held a public hearing on the proposed amendment in accordance with Florida Statutes and the Lee County Administrative Code on May 24, 2010; and,

WHEREAS, the Board held a public hearing for the transmittal of the proposed amendment on June 16, 2010. At that hearing, the Board approved a motion to send, and did later send, proposed amendment CPA2008-00018 updating the Density Calculations of the Lee Plan Wetland Densities and Wetland Density Transfers to the Department of Community Affairs ("DCA") for review and comment; and,

WHEREAS, at the June 16, 2010 meeting, the Board announced its intention to hold a public hearing after the receipt of DCA's written comments commonly referred to as the "ORC Report." DCA issued their ORC report on August 27, 2010; and,

WHEREAS, on October 20, 2010, the Board held a public hearing and adopted the proposed amendment to the Lee Plan set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, THAT:

SECTION ONE: PURPOSE, INTENT AND SHORT TITLE

The Board of County Commissioners of Lee County, Florida, in compliance with Chapter 163, Part II, Florida Statutes, and with Lee County Administrative Code AC-13-6, conducted public hearings to review proposed amendments to the text and tables of the Lee Plan. The purpose of this ordinance is to adopt the amendments to the text and tables discussed at those meetings and approved by a majority of the Board of County Commissioners. The short title and proper reference for the Lee County Comprehensive Land Use Plan, as hereby amended, will continue to be the "Lee Plan." **This amending ordinance may be referred to as the "2008/2009 Regular Comprehensive Plan Amendment Cycle CPA2008-18, Wetlands Density Calculations Ordinance."**

SECTION TWO: ADOPTION OF LEE COUNTY'S 2009/2010 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE

The Lee County Board of County Commissioners amends the existing Lee Plan, adopted by Ordinance Number 89-02, as amended, by adopting an amendment, as revised by the Board on October 20, 2010, known as CPA2008-00018. CPA2008-00018 amends the method of calculating density of wetland property.

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

The text and tables to be amended are set forth below. Underscored text represents additions to the Lee Plan. Strike-through text represents deletions from the Lee Plan.

POLICY 114.1.2.

Staff is proposing additional Policy language and changes to Table 1a) expressing Lee County's commitment to wetland preservation to assist state agencies in the prevention of wetland impacts.

Policy 114.1.2: The county's wetlands protection regulations will be consistent with the following: **No changes are proposed for paragraphs 1 through 5.**

6. Wetland density will be determined by the jurisdictional wetland line. Impacted wetlands may not be calculated at the underlying upland density rate. Density calculations for impacted wetlands must be at 1 dwelling unit per 20 acres.

TABLES

Staff recommends that the Board of County Commissioners transmit the following amendments to the "Clarifications and Exceptions" of Table 1(a) of the Lee Plan.

No changes are proposed for the Table

No changes are proposed for clarifications 1 through 7

8: Higher densities may be allowed under the following circumstances where wetlands are preserved on the subject site:

(a) **no changes**

(b): Dwelling units may be relocated to developable contiguous uplands designated Intensive Development, Central Urban, ~~or~~ Urban Community, Suburban, Outlying Suburban, or Sub-Outlying Suburban from preserved freshwater wetlands at the same underlying density as is permitted for those uplands. Impacted wetlands will be calculated at the standard Wetlands density of 1 dwelling unit per 20 acres., so long as the uplands density does not exceed the maximum standard density plus one-half of the difference between the maximum total density and the maximum standard density; or. Planned Developments or Development Orders approved prior to October 20, 2010, are permitted the density approved prior to the adoption of CPA2008-18.

~~(c): Dwelling units may be relocated from freshwater wetlands, to developable contiguous uplands designated Suburban, Outlying Suburban, or Sub-Outlying Suburban at the same underlying density as is permitted for those uplands, so long as the uplands density does not exceed eight (8) dwelling units per acre for lands designated Suburban, four (4) dwelling units per acre for lands designated Outlying Suburban, and three (3) dwelling units per acre for lands designated Sub-Outlying Suburban. (Amended by Ordinance No. 00-22, 07-09)~~

No changes are proposed for clarifications 9 through 12

SECTION THREE: LEGAL EFFECT OF THE "LEE PLAN"

No public or private development will be permitted except in conformity with the Lee Plan. All land development regulations and land development orders must be consistent with the Lee Plan as amended.

SECTION FOUR: GEOGRAPHIC APPLICABILITY

The Lee Plan is applicable throughout the unincorporated area of Lee County, Florida, except in those unincorporated areas included in joint or interlocal agreements with other local governments that specifically provide otherwise.

SECTION FIVE: SEVERABILITY

The provisions of this ordinance are severable and it is the intention of the Board of County Commissioners of Lee County, Florida, to confer the whole or any part of the powers herein provided. If any of the provisions of this ordinance are held unconstitutional by a court of competent jurisdiction, the decision of that court will not affect or impair the remaining provisions of this ordinance. It is hereby declared to be the legislative intent of the Board that this ordinance would have been adopted had the unconstitutional provisions not been included therein.

SECTION SIX: INCLUSION IN CODE, CODIFICATION, SCRIVENERS' ERROR

It is the intention of the Board of County Commissioners that the provisions of this ordinance will become and be made a part of the Lee County Code. Sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or other appropriate word or phrase in order to accomplish this intention; and regardless of whether inclusion in the code is accomplished, sections of this ordinance may be renumbered or relettered. The correction of typographical errors that do not affect the intent, may be authorized by the County Manager, or his or her designee, without need of public hearing, by filing a corrected or recodified copy with the Clerk of the Circuit Court.

SECTION SEVEN: EFFECTIVE DATE

The plan amendment adopted herein is not effective until a final order is issued by the DCA or Administrative Commission finding the amendment in compliance with Section 163.3184(9), Florida Statutes, or until the Administrative Commission issues a final order determining the adopted amendment to be in compliance in accordance with 163.3184(10), Florida Statutes, whichever occurs earlier. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before the amendment has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status. A copy of such resolution will be sent to the DCA, Bureau of Local Planning, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

THE FOREGOING ORDINANCE was offered by Commissioner Judah, who moved its adoption. The motion was seconded by Commissioner Manning. The vote was as follows:

John E. Manning	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DONE AND ADOPTED this 20th day of October 2010.

ATTEST:
CHARLIE GREEN, CLERK

LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: *Ina S. Pierce*
Deputy Clerk

BY: *R. Judah*
Tammara Hall, Chairwoman

DATE: 10/20/10



Approved as to form by:

Donna Marie Collins
Donna Marie Collins
County Attorney's Office

Exhibit: Table 1(a) - Adopted by BOCC on 10/20/10

**PROPOSED
TABLE 1(a)
SUMMARY OF RESIDENTIAL DENSITIES ¹
CPA2008-18**

FUTURE LAND USE CATEGORY	STANDARD OR BASE DENSITY RANGE		BONUS DENSITY
	MINIMUM ² (Dwelling Units per Gross Acre)	MAXIMUM (Dwelling Units per Gross Acre)	MAXIMUM TOTAL DENSITY ³ (Dwelling Units per Gross Acre)
Intensive Development	8	14	22
Central Urban	4	10	15
Urban Community ^{4,5}	1	6	10
Suburban	1	6	No Bonus
Outlying Suburban	1	3	No Bonus
Sub-Outlying Suburban	1	2	No Bonus
Rural ¹⁰	No Minimum	1	No Bonus
Outer Islands	No Minimum	1	No Bonus
Rural Community Preserve ⁶	No Minimum	1	No Bonus
Open Lands ⁷	No Minimum	1 du/5 acres	No Bonus
Resource	No Minimum	1 du/10 acres	No Bonus
Wetlands ⁸	No Minimum	1 du/20 acres	No Bonus
New Community	1	6	No Bonus
University Community ⁹	1	2.5	No Bonus
Destination Resort Mixed Use Water Dependent ¹¹	6	9.36	No Bonus
Burnt Store Marina Village ¹²	No Minimum	160 Dwelling Units; 145 Hotel Units	No Bonus

CLARIFICATIONS AND EXCEPTIONS

- ¹ See the glossary in Chapter XII for the full definition of "density."
- ² Adherence to minimum densities is not mandatory but is recommended to promote compact development.
- ³ These maximum densities may be permitted by transferring density from non-contiguous land through the provisions of the Housing Density Bonus Ordinance (No. 89-45, as amended or replaced) and the Transfer of Development Rights Ordinance (No. 86-18, as amended or replaced).
- ⁴ Within the Future Urban Areas of Pine Island Center, rezonings that will allow in excess of 3 dwelling units per gross acre must "acquire" the density above 3 dwelling units per gross acre utilizing TDRs that were created from Greater Pine Island Coastal Rural or Greater Pine Island Urban Categories. (Amended by Ordinance No. 05-21)
- ⁵ In all cases on Gasparilla Island, the maximum density must not exceed 3 du/acre.
- ⁶ Within the Buckingham area, new residential lots must have a minimum of 43,560 square feet.
- ⁷ The maximum density of 1 unit per 5 acres can only be approved through the planned development process (see Policy 1.4.4), except in the approximately 135 acres of land lying east of US41 and north of Alico Road in the northwest corner of Section 5, Township 46, Range 25. (Amended by Ordinance No. 99-15)
- ⁸ Higher densities may be allowed under the following circumstances where wetlands are preserved on the subject site:
- (a) If the dwelling units are relocated off-site through the provisions of the Transfer of Development Rights Ordinance (No. 86-18, as amended or replaced); or
- (b) Dwelling units may be relocated to developable contiguous uplands designated Intensive Development, Central Urban, or Urban Community, Suburban, Outlying Suburban, or Sub-Outlying Suburban from preserved freshwater wetlands at the same underlying density as is permitted for those uplands, so long as the uplands density does not exceed the maximum standard density plus one-half of the difference between the maximum total density and the maximum standard density; or Impacted wetlands will be calculated at the standard Wetlands density of 1 dwelling unit per 20 acres. Planned Developments or Development Orders approved prior to October 20, 2010 are permitted the density approved prior to the adoption of CPA2008-18.
- (c) Dwelling units may be relocated from freshwater wetlands to developable contiguous uplands designated Suburban, Outlying Suburban, or Sub-Outlying Suburban at the same underlying density as is permitted for those uplands, so long as the uplands density does not exceed eight (8) dwelling units per acre for lands designated Suburban, four (4) dwelling units per acre for lands designated Outlying Suburban, and three (3) dwelling units per acre for lands designated Sub-Outlying Suburban. (Amended by Ordinance No. 00-22, 07-09)
- ⁹ Overall average density for the University Village sub-district must not exceed 2.5 du/acre. Clustered densities within the area may reach 15 du/acre to accommodate university housing.
- ¹⁰ In the Rural category located in Section 24, Township 43 South, Range 23 East and south of Gator Slough, the maximum density is 1 du/2.25 acres. (Added by Ordinance No. 02-02)
- ¹¹ Overall number of residential dwelling units is limited to 271 units in the Destination Resort Mixed Use Water Dependent district.
- ¹² The residential dwelling units and hotel development portions of this redevelopment project must be located outside of the designated Coastal High Hazard Area in accordance with Lee Plan, Map 5. (Added by Ordinance No. 09-16)

STATE OF FLORIDA

COUNTY OF LEE

I Charlie Green, Clerk of Circuit Court, Lee County, Florida, and ex-Officio Clerk of the Board of County Commissioners, Lee County, Florida, do hereby certify that the above and foregoing, is a true and correct copy of Ordinance No. 10-39, adopted by the Board of Lee County Commissioners, at their meeting held on the 20th day of October, 2010 and same filed in the Clerk's Office.

Given under my hand and seal, at Fort Myers, Florida, this 21st day of October 2010.

CHARLIE GREEN,
Clerk of Circuit Court
Lee County, Florida

By:



Deputy Clerk

