

**CPA 2008-18
UPDATE DENSITY CALCULATIONS
BOCC SPONSORED
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

BoCC Public Hearing Document
for the
September 23, 2009 Public Hearing

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September 11, 2009



Text Amendment



Map Amendment

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

INITIAL STAFF REPORT PREPARATION DATE: August 17, 2009

REVISED: September 11, 2009

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
REPRESENTED BY LEE COUNTY OFFICE OF SMART GROWTH

2. REQUEST:

Clarify the calculation of Lee Plan Wetland densities and Wetland density transfers.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:

1. RECOMMENDATION:

Smart Growth Staff recommends that the Board of County Commissioners transmit this proposed amendment to the Florida Department of Community Affairs for their review.

2. PROPOSED TRANSMITTAL LANGUAGE

The language change affects Table 1(a) Summary of Residential Densities, with revisions to footnote 8:

Density for Wetlands allowed to be filled by permitting agencies will be calculated at the standard density range for wetlands. Higher densities may be allowed under the following circumstances:

- (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) Wetland density from preserved jurisdictional wetlands ~~Dwelling units~~ may be relocated to developable contiguous uplands designated Intensive Development, Central Urban, or Urban Community 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
- (c) Wetland density from preserved jurisdictional wetlands ~~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.

C. BACKGROUND INFORMATION

The existing regulatory structure of the Lee Plan unintentionally provides an incentive to fill wetlands by allowing filled areas to be treated as uplands for the purpose of calculating residential density. Lee County accepts the State of Florida's decision that a wetland is expendable through the Environmental Resource Permitting process, as it is the permitting agency for wetland impacts. Permit applicants obtain permits from State agencies for the dredge and fill of wetlands and then utilize the filled wetland areas as if they were uplands when calculating residential density for the overall development. This is in fact a density reward for the filling of jurisdictional wetlands.

Through time, this practice has then has led to the increase of units and intensities eligible for development beyond that which the FLUM is calculated to provide, and upon which various public services have been planned or assessed. It also has resulted in the mitigation for these wetland impacts to occur, not only outside of the impacted watershed, but often outside of Lee County entirely.

Such changes individually have been de facto future land use map changes. Collectively, these changes have edged up the "buildout" calculations by which the County distributes its population forecasts.

The Board of County Commissioners has directed staff to be proactive with the permit agencies in the review and comment upon permits. This is occurring with improved results. However, the unexpected incentive of increased unit and intensity calculations leads to continued applications for the filling of wetlands.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

The existing regulatory structure of the Lee Plan unintentionally provides an incentive to fill wetlands by allowing filled areas to be treated as uplands for the purpose of calculating residential density. Lee County accepts the State of Florida's wetland determinations as it is the permitting agency for wetland impacts. Permit applicants obtain permits from State agencies for the dredge and fill of wetlands and then utilize the wetland areas approved for fill when calculating density for the overall parcel.

The intent of the Lee Plan is to protect wetlands. However, the county's regulations allow for impacted wetlands to be treated as uplands when calculating permissible density on a parcel of land. This practice does not promote the intent of the plan to protect wetlands. Eliminating the ability to gain density from filled wetlands will remove the Lee Plan's unintentional incentive to fill wetlands, it will reflect the legislative intent to promote wetland protection, and may make developers more inclined to take advantage of natural conditions when designing a project's storm water management system.

Stormwater management is becoming increasingly important for area water supplies and receiving waterbody's water quality. Basin planning for stormwater has also become more important. Wetlands remain the basic surface water storage and treatment system upon which flowways, water assessments, and water quality conditions depend. By eliminating this discretionary and unexpected incentive, stormwater management utilizing natural conditions is more likely to occur.

The County Attorney's Office (CAO) has raised a concern about potential liability under the Bert J Harris Act for the loss of the opportunity to gain density from filled wetland areas. The CAO is also concerned that there is potential liability for inverse condemnation if there are existing zoning approvals that allow the counting of filled wetland areas for the purpose of calculating density. Once the amendment is adopted, no development order or building permit could be issued that would allow density to be attributed to the filled area.

Not approving the proposed amendment could also create a potential liability for the County by failing to meet water quality standards and water storage needs for water supply and natural systems. The Environmental Resource Permit (ERP) process is done on a site by site basis and does not ensure that area wide water quality standards, which the County must meet under the Federal TMDL /NPDES programs, will be met on a cumulative basis. This could lead to expensive public remedies or penalties. The ERP also may not ensure that the increased impervious surfaces caused by the fill will meet the stormwater storage provided by wetlands, the flood prevention provided by the wetlands (leading to flooding elsewhere), and the maintenance of water tables provided by the wetlands.

It is worthwhile to provide an incentive to encourage developers to design storm water management systems that incorporate on site wetlands. Continuing to allow developers to count wetland areas that have been incorporated into a project's storm water management system as upland area for density purposes encourages this. Rewarding the filling of wetlands beyond the

current limitations in the footnotes does not conform to the Lee Plan's intent to protect and enhance wetlands.

Making the recommended change will eliminate any county unintentional incentive for filling land, restore the existing language to the legislative intent of promoting wetland protection, and provide for the normal public approach for what is now a defacto land use map change.

B. CONCLUSIONS

The proposed amendment will not adversely affect the overall land use and population forecasts of the County. This amendment will reinforce one of the main tenants of the Lee Plan, protecting and enhancing wetlands as per Lee Plan Goal 60 and 61, and their subsequent objectives and policies. For example, Objective 60.5 seeks the incorporation of green infrastructure into surface water management systems and Objective 61.2 seeks to mimic the functions of natural systems and natural features, such as flowways, sloughs, and strands into area wide stormwater management systems.

C. STAFF RECOMMENDATION

Staff recommends that the Board of County Commissioners transmit this proposed amendment to the Florida Department of Community Affairs for their review.

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

DATE OF PUBLIC HEARING: August 24, 2009

A. LOCAL PLANNING AGENCY REVIEW

Mr. Noble provided a summary of the proposed amendment and staff recommendations. This was followed by questions and answers between the LPA; planning staff; and Wayne Datltry, Smart Growth Director. Through the questions the LPA was seeking additional information and examples of places where developers have used filled wetlands to get additional density, amounts of wetlands filled, and how many additional units have been allowed.

Following the question and answer session, the item was opened for public comment. Three members of the public, who represented developers and large property owners, stated that they were against the proposed amendment.

The LPA stated that they did not feel that they had enough information to address this item. Members of the LPA did not agree that impacts to wetlands are happening solely because of the density incentive that is provided. And further the LPA members did not agree that this regulation would have the desired result. One member stated that if the real issue is wetlands and stormwater storage, then provide the same incentive if you don't fill in the wetlands. He also reiterated that the two issues should be separated (density issue and wetland issue). Other members of the LPA stated their agreement with this.

Planning staff noted there would not be another LPA meeting before the September 23rd and 24th BOCC Transmittal Hearing. He stated the LPA could make a motion stating they did not feel enough information was provided and that they are recommending non-transmittal. The outcome of this meeting will be presented to the Board of County Commissioners.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

The LPA recommends that the Lee County Board of County Commissioners does not transmit the proposed amendment. The LPA did not feel that there was adequate data and analysis or knowledge about the extent of the problem to know whether or not the proposal is a solution to the stated problem.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The LPA did not agree with the basis and recommended findings of fact. Specifically the LPA did not agree that filling of wetlands and density are directly related.

C. VOTE:

| | |
|-------------------------|-----|
| NOEL ANDRESS | AYE |
| CINDY BUTLER | AYE |
| CARIE CALL | NAY |
| JIM GREEN | AYE |
| MITCH HUTCHCRAFT | AYE |
| RONALD INGE | AYE |
| CARLA JOHNSON | AYE |

D. ADDITIONAL STAFF ANALYSIS AND RESPONSE TO LPA CONCERNS.

Lee Plan Wetlands and Uplands Density Update

On May 5th, 2008, the attached issue paper was presented to the Lee County Board of County Commissioners. It described the unintentional and unanticipated impacts of a Board Comprehensive Plan policy that was intended to protect wetlands. At the conclusion of the presentation, the Board indicated they wished the item to be memorialized in a memorandum or blue sheet the understanding of the Board that the wetland densities are not to be manipulated in ways that promote filling of wetlands for bonus.

Under further staff review, the conclusion was drawn that the Comprehensive Plan needed to be amended to provide that guidance. Under that conclusion, an addition was made to the list of Plan amendments to be developed under the Plan amendment cycle of 08-09. To that end, a simple Plan amendment was drafted in November, 2008, that stated the issue and that the results promoting wetland filling were unanticipated and unintentional. The Plan amendment stated the issues of water storage, water quality, natural systems, and that the conversion of wetlands (a Lee Plan Future Land Use Map category) to any other use was a de facto land use map change.

The Plan amendment (CPA 2008-18, Upland Density Calculations BOCC Sponsored Amendment to the Lee County Comprehensive Plan) was reviewed by the Local Planning Agency on August 24th. Commentary by the LPA members and the public speakers indicated their perception that the filling of wetland for density was intentional and anticipated, contradicting staff conclusions.

At the end of the discussion, the LPA voted to not provide a recommendation that the Plan amendment be included in the cycle of Plan amendments to be forwarded to DCA for review. The minutes will provide the exact wording and reasoning, but two comments stood out for the purpose of this review: there wasn't information provided to demonstrate the problem, and that the proposed amendment would not resolve the problem.

The LPA meeting was the last meeting (and the item, the last item) the LPA would hold before the packet of Plan amendments was to be reviewed by the Board of County Commissioners. Consequently, staff was unable to address the LPA concerns about information, although the public testimony demonstrated that

the impacts were occurring, and the impacts were contrary to the various comprehensive Plan policies that have largely been in place for wetlands, water storage, water quality, and natural systems since Plan adoption. The two sections below describe the information depicting the some of the impact, supporting reports from other sources on the process, and some of the appropriate Lee Plan policies.

Information on Wetland and Upland Densities.

A review of SFWMD permits over the last four years provides a number of examples wherein substantial portions of wetlands were promoted to be filled for urban purposes.

The staff review recognized that there is a three fold test and priorities for wetland filling, (1) can it be avoided, (2) can the need for wetland filling be satisfied on site, (3) can it be mitigated offsite. Under that categorization, staff focused on the offsite and unmitigated projects of significant percentages of wetlands.

The preliminary staff review indicates there are approximately 43 “urban” Environmental Regulatory Permits (ERP) that had approximately 1/3rd wetlands (or more) and that also proposed filling approximately 1/2 of such wetlands (or more). There were also numerous examples of “urban” projects that were 1/3rd wetlands (or more) that proposed little or no wetland filling, that were not included in the summary of 43 projects. These other projects simply indicate that some developments can work within the constraints of avoidance or onsite remediation.

The 43 projects over a 4 year period proposed a net filling of 1814 acres, averaging 453 acres a year. Since filling a wetland makes the filled land’s land use designation that of the adjacent upland, a substantial amount of “unrecorded” small scale plan amendments are being proposed through the permit process. The acreage, if realized, exceeds the recorded proposed land use map changes for the same period.

A more in depth review by County Environmental Services staff indicated at least 12 projects were tied to significant increases in total units once a permit for filling wetlands was pursued. For those projects, a partial estimate of 1921 additional units was derived, or an increase in “buildout” of approximately 4600 persons, at the common estimate of 2.4 persons per household.

Regarding the comment about the amendment not fixing the problem, the review of the 43 proposals noted a substantial number involved commercial or other intense urban uses without residential components. Such uses should be able to meet floor area ratios without filling, through multistory structures, but given that the wetland filling also grants the use-not just density—of the upland piece, the criticism has merit. *An incentive is being given to wetland filling for other urban uses, also.*

It should be noted that such proposed filling activity is not restricted to Lee County’s urban land use designation, nor Lee County itself. Growth Management Regulation, Public Investment and Resource Implications for the Estero Bay Watershed 2006-2007– Southwest Lee County, Florida by SWFRPC (Jim Beaver, principal author) indicated a potential conversion of 1734 acres from wetlands to other uses in the Estero basin in one year, 580 without mitigation, through permitting, which is a significant land use map change, unrecorded. Paving Paradise, by Pittman and Waite, chronicles similar losses statewide.

Wetland, Water Storage, Water Quality, and Natural System policies for protection from urban encroachment.

The importance of wetlands in Lee County is emphasized by the existence of a land use category within the Lee Plan and Future Land Use Map for wetlands, which is described in its entirety below:

OBJECTIVE 1.5: WETLANDS. *Designate on the Future Land Use Map those lands that are identified as Wetlands in accordance with F.S. 373.019(17) through the use of the unified state delineation methodology described in FAC Chapter 17-340, as ratified and amended in F.S. 373.4211. (Amended by Ordinance No. 94-30)*

POLICY 1.5.1: *Permitted land uses in Wetlands consist of very low density residential uses and recreational uses that will not adversely affect the ecological functions of wetlands. All development in Wetlands must be consistent with Goal 114 of this plan. The maximum density is one dwelling unit per twenty acres (1 du/20 acre) except as otherwise provided in Table 1(a) and Chapter XIII of this plan. (Amended by Ordinance No. 94-30)*

POLICY 1.5.2: *When the exact location of Wetlands boundaries is in question, Chapter XIII of this plan provides an administrative process, including a field check, to precisely define the boundary. (Amended by Ordinance No. 94-30)*

POLICY 1.5.3: *Wetlands that are conservation lands will be subject to the provisions of Policy 1.4.6 as well as the provisions of Objective 1.5. The most stringent provisions of either category will apply. Conservation wetlands will be identified on the FLUM to distinguish them from nonconservation wetlands. (Added by Ordinance No. 98-09)*

Elsewhere in the Plan in multiple locations wetlands and the interrelated functions of water storage, water quality, and natural systems is described. Of specific interest, however, is the cluster of policies in the Conservation and Coastal Zone Element, which states how densities may be transferred and administrative determination of wetlands on site can be made:

POLICY 114.1.1: *Development in wetlands is limited to very low density residential uses and uses of a recreational, open space, or conservation nature that are compatible with wetland functions. The maximum density in the Wetlands category is one unit per 20 acres, except that one single family residence will be permitted on lots meeting the standards in Chapter XIII of this plan, and except that owners of wetlands adjacent to Intensive Development, Central Urban, Urban Community, Suburban, and Outlying Suburban areas may transfer densities to developable contiguous uplands under common ownership in accordance with Footnotes 8(b) and 8(c) of Table 1(a), Summary of Residential Densities. (Amended by Ordinance No. 94-30, 00-22)*

POLICY 114.1.2: *The county's wetlands protection regulations will be consistent with the following:*

- 1. In accordance with F.S. 163.3184(6)(c), the county will not undertake an independent review of the impacts to wetlands resulting from development in wetlands that is specifically authorized by a DEP or SFWMD dredge and fill permit or exemption.*
- 2. No development in wetlands regulated by the State of Florida will be permitted by Lee County without the appropriate state agency permit or authorization.*
- 3. Lee County will incorporate the terms and conditions of state permits into county permits and will*

prosecute violations of state regulations and permit conditions through its code enforcement procedures.
4. *Every reasonable effort will be required to avoid or minimize adverse impacts on wetlands through the clustering of development and other site planning techniques. On- or off-site mitigation will only be permitted in accordance with applicable state standards.*

5. *Mitigation banks and the issuance and use of mitigation bank credits will be permitted to the extent authorized by applicable state agencies. (Amended by Ordinance No. 94-30, 00-22, 07-12)*

Conservation and Coastal Management VII-21 August 2007

POLICY 114.1.3: *The Future Land Use Map shows the approximate boundaries of wetlands in Lee County. The map will be updated as needed based on the definitions in this plan and new information. If the Future Land Use Map is incorrect due to a clear factual error, or if an exact boundary determination is desired, an administrative process is set out in Chapter XIII of this plan to establish the precise boundary of the wetland. (Amended by Ordinance No. 94-30, 07-12)*

In Conclusion

The classification of “Wetlands” as an important and discrete land use is laid out in the Plan.

Conversion of wetlands to other land uses should be required to go through a FLUM amendment process, consistent with the appropriateness of scale of small scale or large scale amendments.

Any public interpretation that wetlands should be filled to increase the land use entitlements of the site is an incorrect interpretation of public policy.

That incorrect interpretation is held by members of both the public and private sector, and needs to be corrected.

The proposed Plan amendment does not address the other non-residential land uses.

LeePlan: Wetlands and Uplands Densities

Issue: the granting of upland densities on lands filled in wetlands.

As part of the expanding County coordination with natural resource management and permitting agencies, the Lee County Board directed a more proactive staff presence. To this end, a particular position has been created, approved, and staffed to track and comment on environmental permits. When this topic was first drafted, there was a permit undergoing review, which proposed the destruction of a large percentage of the site’s wetlands, and the site itself was mostly wetlands. The site’s wetlands were described as deteriorated, and the site itself abuts wetlands purchases into public conservation programs.

As staff reviewed the permit information, it became more broadly known that the County practice has been to grant upland density to the part of any site that receives “dredge and fill” permits. In that light, it can be expected that it would be an uncommon practice for land trustees- with a fiduciary responsibility- to pursue wetland integrity.

Current County policy is described in Footnote A, below. In summary the policies as described provide for the conversion of wetlands from having a stated density of 1 unit per 20 acres, to an allowable density as high as 14 units an acre, if transferred to uplands.

The practice that has occurred, though, has been to pursue a dredge and fill permit to destroy wetlands, and make the dredge and fill permit the basis for claiming upland status for the fill area for the land use plan, and then pursue the densities of the remaining wetlands in accord with the footnotes above. The practice, though, is pursued as a speculative effort under the discretion of the Board of County Commissioners.

An example is provided in footnote B in regard to how a hypothetical 30 acre parcel can triple its building density by achieving dredge and fill permits prior to county approvals.

As a side note, each “filled area” receiving increases in density through changing wetlands to “non-wetlands” are de facto small scale- or not so small scale -amendments to the Future Land Use Map of the Comprehensive Plan. This conclusion is tied to the policy that notes that wetlands, whether shown on the Future Land Use Map or not, are “wetlands” for the calculation of land use density. (LeePlan Objective 114.1: The natural functions of wetlands and wetlands systems will be protected and conserved through the enforcement of the county’s wetland protection regulations and the goals, objectives and policies of the is plan. “Wetlands” include all those lands, whether shown on the Future Land use Map or not, that are identified as wetlands in accordance with FS 373.019 (17), through he use of the unified state delineation methodology described in FAC Chapter 17-340, as ratified and amended by FS 373.4211.)

Using the permits to convert wetlands to uplands does physically change the nature of the resource at a geographically specific setting, and thus makes a geographically specific change of the land use.

Changing Conditions and Public Policy

Recently, there have been three events that provide a basis for reexamining the current practice. These are:

1. *The Board approved staff position for tracking permit agency permits has been filled.* The County does get copies of the permit requests. We now have the capacity to notify the permit agency and applicant of the land use plan’s density and intensity ranges, tied to the jurisdictional determination line BEFORE any permit is issued. The agencies then lack or have reduced the hypothetical “public benefit test” that is claimed for development. This review would not particularly impact permit requests for infrastructure (unless we proffer a different approach).

2. *The Total Maximum Daily Load program is going into affect, requiring basin wide approaches to water quality improvements.* The County is liable for the costs of water quality improvements. The most common form of water quality improvement is retention and detention systems, and the natural variety of these are wetlands and other natural water bodies, which are “public trust” systems. Preventing filling of jurisdictional wetlands helps preserve the County’s ability to meet its responsibility to the public in protecting and restoring the quality of our public waters. Wetlands thus preserved will also help the County meet its water supply needs for the public and for the public resources, including the receiving waters of the estuaries.

3. *The Comprehensive Plan amendments included new policy direction.* The Board stated an intention to manage towards optimal rather than minimal outcomes for natural systems, “promote optimal conditions rather than minimum conditions for the natural system, as the basis for sound planning.” (LeePlan policy 107.2.13)

Affirming the Current Policy’s Intent

A single policy is difficult to interpret correctly, if taken in isolation. In the review of other County Policy in the LeePlan, the general theme is to NOT support wetland destruction. There is also a theme, however, to eliminate unnecessary duplication, AND also subordinate the County determination of parcel density to another agency. Direction is given on that 114.1.2, specifically parts 1-2:

1. In accordance with FS 163.3184 (6)(c), the county will not undertake an independent review of the impact to wetlands resulting from development in wetlands that is specifically authorized by a DEP or SFWMD dredge and fill permit or exemption.
2. No development in wetlands regulated by the State of Florida will be permitted by Lee County without the appropriate state agency permit or authorization.

In summary, the county policy is to not second guess permit agencies decisions, but to still protect wetlands (and the habitat of species dependent upon such wetlands). The question lies in a possible interpretation of 114.1.1-1, above, (..”independent review”...) in how far should staff go in assisting other agencies in their permit reviews. The direction requested is to actively engage in other agencies’ decision making and, if necessary, establish standing.

Recommended Change in Practice

The County is often invited to participate in agency permit reviews, and does get notification of permit submittals. The SFWMD invites the County and others to monthly meetings to review District activities, and County staff-DCD Environmental Services and Public Works-Natural Resources-will provide input and written comments to the FDEP, SFWM District and US Corps of Engineers, which often lead to improvements in project design. Board guidance for staff participation, though, has been the practice mentioned above (114.1.2 (1).)

Agency permit issuance is dependent upon an evaluation of the public interest. Lee County needs to be more explicit on the public interest, as determined by the Lee Plan, at strategically important points of the permit review.

The most strategically important point of the review process, and consistent with existing policy, is the determination of the wetland jurisdictional line. This is an early step of the permit review, and determines the jurisdiction the permit agency has to exercise. This step—the determination of the wetland boundary—is quite compatible with the Lee Plan’s intent to identify wetlands for the application of land use categories.

1. Upon determination of the wetland jurisdiction line, Lee County staff should provide an immediate assessment of allowable densities of the parcel under review, based upon the wetland and upland densities.

_ This should be a strict interpretation, with the bonus underlying density provided as an option, made clearly dependent upon the existing, predevelopment boundaries of wetlands and degree of protection and restoration afforded the wetlands. This serves the permitting agency notice in regard to the land planning agency of jurisdiction's determination of public interest density, and bonuses tied to good environmental management. This would supplement the environmental agency's review of impacts of development in wetlands not submitted to Lee County for development or zoning approval, and restore the appropriate responsibility for land use management decisions to Lee County.

2. The record of density determination should then be part of any file for a land use approval which is subsequently requested for the property.

3. In the event that the land use approvals are solicited first, prior to environmental permits, the owner's incorporation of good wetlands management and protection should be considered the basis for recommendations of bonuses tied to the underlying density assumptions. For those sites where wetlands are impacted and mitigated off site, mitigation consistent with the Lee County Master Mitigation Plan and the Board's resolution promoting in-county mitigation should also be evaluated in determining appropriate density.

4. In the event that the site is within the "mixed use" overlay, the application of densities and intensities consistent with the mixed use overlay should apply, also. This would provide for transfer of floor area ratios from the wetland component to the upland component.

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Footnote A. More specifically, the county practice is tied to two footnotes in a table (Table 1a of the Lee Plan), with a reference in Lee Plan Policy 114.1.1

Policy 114.1.1: Development in wetlands is limited to very low density residential uses and uses of a recreational, open space, or conservation nature that are compatible with wetland functions. The maximum density in the wetland category is one unit per 20 acres, except that one single family residence will be permitted on lots meeting the standards in Chapter XIII of this Plan, and except that owners of wetlands adjacent to Intensive Development, Central Urban, Urban Community, Suburban, and Outlying Suburban areas may transfer densities to developable contiguous uplands under common ownership in accordance with Footnotes 8b and 8c of Table 1(a), Summary of Residential Densities.

Intensive Development has a maximum standard density of 14 dwelling units per gross acre (du/ga), (a possible maximum total density of 22, counting bonuses) Central Urban has a maximum 10 du/ga, (possible maximum of 15, counting bonuses), Urban Community has a maximum of 6 du/ga (possible maximum of 10, counting bonuses), Suburban has a maximum standard density of 6 du/ga (no bonuses) and Outlying Suburban has a maximum of 3 du/ga (no bonuses).

Table 1(a) footnote 9(b) states: *dwelling units may be relocated to developable contiguous uplands designated Intensive Development, Central urban, or Urban Community 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. Using the Intensive Development as an example, the standard maximum density is 14, the maximum total is 22, so one half of the difference added on is 18. Note the additional density is discretionary—“...may be located...”

Table 1 (a) footnote 9 (c) states: *Dwelling units may be relocated from freshwater wetlands to developable contiguous uplands designated Suburban or 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 and four (4) dwelling units per acre for lands designated Outlying Suburban, unless the Outlying Suburban lands are located in those areas described in 6 above (a footnote that describes where Outlying Suburban is limited to 2 dwelling units per acre), in which case the maximum upland density will be three (3) units per acre.* Note the additional density is discretionary—“...may be located...”

Footnote B. Providing this example shows the dramatic change the impact the dredge and fill permit is having on overall development:

A hypothetical site of 30 acres is designated “Central Urban”. Such a site, if all upland, would have a maximum per acre (without bonuses) of 10 units, and a total number units for the site of 300 units. For this example though, the site will be described as having 10 acres of uplands, and 20 acres of wetlands, after a wetland jurisdiction line determination is made by a permit agency. Under a straight up calculation, the central urban would generate 100 units, and the wetlands 1 unit=101 units.

The uplands are eligible for a wetland transfer bonus, of up to 50% of the receiving property’s density. So, should the owner pursue the density bonus without filling, the 10 acres of upland could be eligible for up to 200 more units if the underlying density was able to be fully applied, but since the cap is 5 additional per acre, only 50 could be captured. Central Urban, 10 per acre, bonus 5 per acre, total units=150 units.

Getting a dredge and fill permit for 10 acres, half of the remainder, and then given the standard density, increases the unit count even more, with the unfilled Central Urban getting 10/acre=100 units, and the filled 10 acres getting 10 per acre=100 units, new total=200 units.

However, the remaining 10 acres of unfilled wetlands now give the maximum benefit to the proposed development, with the bonus, with the original Central urban getting 10 units per acre, standard, and 5 per acre bonus=150 units, and the filled land getting 10 units per acre, standard, and 5 units per acre bonus=150 units, new grand total =300 units.

In summary, adhering to the land use map densities provides 101 to (discretionary) 150 units, pursuing the dredge and filling permits provides 200 to (discretionary) 300 units.* (*Other restrictions reduce the 300 to 275, which in turn still provides an incentive for a developer to pursue filling all wetlands to get the remaining 25 units)

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

DATE OF TRANSMITTAL HEARING:

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

BRIAN BIGELOW

TAMMARA HALL

BOB JANES

RAY JUDAH

FRANK MANN

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

DATE OF ORC REPORT: _____

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS

B. STAFF RESPONSE

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

DATE OF ADOPTION HEARING:

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

BRIAN BIGELOW

TAMMARA HALL

BOB JANES

RAY JUDAH

FRANK MANN
