

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

**LEE COUNTY COMPREHENSIVE PLAN**

**THE LEE PLAN**

LPA Public Hearing Document  
for the  
August 24, 2009 Public Hearing

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

**August 17, 2009**

Text Amendment

Map Amendment

<b>This Document Contains the Following Reviews:</b>	
✓	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

## PART I - BACKGROUND AND STAFF RECOMMENDATION

### A. SUMMARY OF APPLICATION

#### 1. APPLICANT:

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

#### 2. REQUEST:

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

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

#### 1. RECOMMENDATION:

Planning 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, footnote 8, with a new "d" section:

(d) For developments that exceed the limits established in (b) and (c) above and in non-urban areas, the density of wetlands filled via dredge and fill permits will be calculated at the maximum density for Wetland, 1 du/20 acres.

## **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 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**

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

**1. RECOMMENDATION:**

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

**C. VOTE:**

**NOEL ANDRESS**

**CINDY BUTLER**

**CARIE CALL**

**JIM GREEN**

**MITCH HUTCHCRAFT**

**RONALD INGE**

**CARLA JOHNSON**

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**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**

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

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

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

**B. STAFF RESPONSE**

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

**DATE OF ADOPTION HEARING:**

**A. BOARD REVIEW:**

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

**1. BOARD ACTION:**

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

**C. VOTE:**

**BRIAN BIGELOW**

**TAMMARA HALL**

**BOB JANES**

**RAY JUDAH**

**FRANK MANN**

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