

**CPA2010-02  
UNIVERSITY HIGHLANDS  
DRIAMENDMENT TO THE**

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**LEE COUNTY COMPREHENSIVE PLAN**

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**THE LEE PLAN**

**Privately Sponsored Application and Staff Analysis**

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BoCC Public Hearing Document  
for the  
June 23<sup>rd</sup>, 2010 Transmittal Hearing

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**LOCAL PLANNING AGENCY RECOMMENDATION**

*Lee County Planning Division  
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P.O. Box 398  
Fort Myers, FL 33902-0398  
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**June 18, 2010**

**LEE COUNTY  
DIVISION OF PLANNING  
STAFF REPORT FOR  
COMPREHENSIVE PLAN AMENDMENT  
CPA2010-02**

Text Amendment

Map Amendment

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

STAFF REPORT PREPARATION DATE: June 14, 2010

**PART I - BACKGROUND AND STAFF RECOMMENDATION**

**A. SUMMARY OF APPLICATION**

**1. APPLICANT/REPRESENTATIVES:**

**A. APPLICANT/REPRESENTATIVE**

University Highlands Limited Partnership, LLC/Represented by Neale Montgomery of Pavese Law Firm, and Margaret Perry of WilsonMiller, Inc.

**2. REQUEST:**

The applicant proposes to amend the Future Land Use Map, Map 1, of the Lee Plan to re-designate 208.4 acres from the Suburban future land use category to the Urban Community future land use category.

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

**1. RECOMMENDATION:**

Planning staff recommends that the Board of County Commissioners *transmit* the proposed amendment to the Lee Plan. Planning staff recommends that the Board of County Commissioners include the subject site on Map 1, Page 6 of 8, the Mixed Use Overlay. Planning staff also recommends that Policy 1.1.4 be amended as follows:

**POLICY 1.1.4:** The Urban Community areas are areas outside of Fort Myers and Cape Coral that are characterized by a mixture of relatively intense commercial and residential uses. Included among them, for example, are parts of Lehigh Acres, San Carlos Park, Fort Myers Beach, South Fort Myers, the city of Bonita Springs, Pine Island, and Gasparilla Island. Although the Urban Communities have a distinctly urban character, they should be developed at slightly lower densities. As the vacant portions of these communities are urbanized, they will need to maintain their existing bases of urban services and expand and strengthen them accordingly. As in the Central Urban area, predominant land uses in the Urban Communities will be residential, commercial, public and quasi-public, and limited light industry (see Policy 7.1.6) with future development in this category encouraged to be developed as a mixed-use, as described in Policy 2.12.3., where appropriate. Standard density ranges from one dwelling unit per acre (1 du/acre) to six dwelling units per acre (6 du/acre), with a maximum of ten dwelling units per acre (10 du/acre). Any bonus densities approved on the properties added to the Urban Community future land use category in conjunction with CPA2010-00002 must be achieved through use of the transfer of development rights program.

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

- The subject 208.4 acre site is located within the Suburban future land use category, which permits densities of 1 to 6 dwelling units per acre.
- The Urban Community future land use category permits densities of 1 to 6 dwelling units per acre, with the possibility of receiving bonus density of up to 10 dwelling units per acre.
- The subject site is bordered by Interstate 75 to the west, Estero Parkway to the north, Ben Hill Griffin Parkway to the east, and the Miromar Outlet Mall to the south.
- The subject site is bordered by the Urban Community future land use category to the west, the University Community future land use category to the north, the Suburban future land use category to the east, and the General Interchange future land use category to the south.
- The site is currently subject to Development of Regional Impact (DRI) approval, which permits 1,235 multi-family units, a 200 room hotel, and a sports complex that includes 5,000 square feet of ancillary commercial uses. The sports complex, Germain Arena, has been developed (KTB Florida Sports Arena Limited Partnership).
- The applicant is requesting to amend the DRI to allow up to 1,300 dwelling units, 150,000 square feet of office, and 99,384 square feet of commercial retail uses.
- The subject site is an appropriate location to be utilized as a Transfer of Developments Rights (TDR) receiving site.
- The use of TDRs to achieve bonus density will not increase the population accommodation capacity of Lee County's Future Land Use Map.
- Bonus density utilizing TDRs on the subject site would provide for increased conservation and/or retained agricultural lands offsite, furthering protection of environmentally sensitive and rural areas.

- Infrastructure adequacy issues are required by the Lee County Land Development Code to be addressed by applicants before any TDR units can be developed on any site.

**C. PROJECT SUMMARY DISCUSSION:**

The University Highlands Comprehensive Plan Amendment was filed by University Highlands Limited Partnership on March 12, 2010. The applicant proposes to re-designate 208.4 acres of land from the Suburban future land use category to the Urban Community future land use category. The applicant is not proposing any text amendments, however, the applicant has stated in their application that they were not seeking the use of any additional densities, through the bonus density that can be permitted within the Urban Community future land use category. The subject site is located in the northwest corner of the Timberland and Tiburon MPD and DRI, which is also proposed to be amended to accommodate the proposed development.

Under the provisions of the Suburban future land use category the applicant would be limited to retail commercial development no greater than that of a neighborhood center. The Urban Community future land use category would permit retail commercial development up to a Regional Commercial Center based on the site's location at the intersection of two arterial roads. The development parameters that are being applied for through the applicant's DRI amendment application include 1,300 residential dwelling units, 150,000 square feet of office space, 99,384 square feet of retail commercial uses, and 200 hotel units.

**D. BACKGROUND INFORMATION**

**1. EXISTING CONDITIONS:**

**SIZE OF PROPERTY:** 208.4 Acres.

**PROPERTY LOCATION:** The subject site is located at the southwest corner of Estero Parkway and Ben Hill Griffin Parkway.

**EXISTING USE OF LAND:** Parcel is vacant and includes an existing stormwater lake.

**CURRENT ZONING:** MPD (Z-97-010, as amended)

**CURRENT FUTURE LAND USE CATEGORY:** Suburban (208.3 acres); and Wetlands (0.3 acres).\*

\*Staff notes that these acreages are based on the current Future Land Use Map and do not reflect jurisdictional wetlands.

**2. INFRASTRUCTURE AND SERVICES:**

**FIRE:** Estero Fire and Rescue District.

**EMS:** Lee County EMS service area.

**LAW ENFORCEMENT:** Lee County Sheriff's Office.

**SOLID WASTE:** The subject site is located in solid waste Service Area 3.

**MASS TRANSIT:** LeeTran provides regular service to the Miromar Lakes Outlet Mall and to the intersection of Estero Parkway and Ben Hill Griffin Parkway.

**WATER AND SEWER:** The subject site is within the Lee County water and sewer Future Service Areas as identified on Maps 6 and 7 of the Lee Plan.

### **3. COMPREHENSIVE PLAN BACKGROUND DISCUSSION:**

The subject property was designated “Fringe” by the original Lee County Future Land Use Map, adopted in 1984. Lands in the Fringe land use category typically bordered Urban Service Areas. The 1984 Lee Plan recognized that potential development may be appropriate at Urban Community densities at these locations, but approval for such development was wholly based on the provision of necessary infrastructure. The Fringe land use category was retired by Lee County in the mid-1980's. At that time, the subject site was re-designated to the Suburban future land use category.

The Suburban future land use category was a future urban area with a density range of 1 to 6 dwelling units per acre. The Suburban future land use category is intended to protect existing or emerging residential neighborhoods, but is not intended to provide the full mix of land uses found in urban areas.

## **PART II - STAFF ANALYSIS**

### **A. STAFF DISCUSSION**

The applicant, University Highlands Limited Partnership, on March 12, 2010, filed a Lee Plan map amendment to re-designate 208.4 acres from the Suburban future land use category to the Urban Community future land use category. Discussion with the applicant has indicated that Land Development Code (LDC) height restrictions is one of the factors that has led to this comprehensive plan amendment application. LDC Section 34-2175(b)(5) limits building height in “Suburban” to 45 feet above minimum flood elevation with no more than three habitable stories. This section also provides that buildings may be as tall as 75 feet above minimum flood elevation with no more than six habitable stories when the applicant demonstrates that the additional height is required to increase common open space for the purposes of preserving environmentally sensitive land. The applicant has indicated a desire for this increased height but does not have the ability to provide increased common open space as this is the only tract left to develop in the already approved DRI.

### **APPLICANT JUSTIFICATION**

The applicant has provided a justification discussion concerning the proposed amendment. This discussion is reproduced below:

*The entire Timberland and Tiburon DRI is currently located in three land use categories, General Interchange, Suburban and Wetlands. The Miromar Outlets to the south are located in General Interchange, the Publix shopping center and Grandezza are located in the Suburban and Wetland future land use categories. The subject 208.4 acres are located in the Suburban future land use category. At this juncture, the subject property is clearly infill development, as all properties north of Corkscrew Road, south of Daniels Road, west of Ben Hill Griffin Parkway, and east of I-75 are*

*in a more intensive land use category. The area has become decidedly less residential, and the subject property finds itself surrounded on three sides by major arterial roadways, one of which is an elevated roadway. Florida Gulf Coast University was not contemplated at the time the Timberland and Tiburon DRI was originally approved. The Suburban designation is described as being on the fringe of either Central Urban or Urban Community areas, as is the case with the subject property. The parcel is surrounded on three sides by three different land use designations, isolating this property from similarly situated Suburban lands. To the north are Estero Parkway and the University Community Future Land Use designation, to the west is I-75 and the Urban Community Future Land Use designation and to the south is the Miromar Outlets and the General Interchange Future Land Use designation. Directly across Ben Hill Griffin Parkway to the east is the balance of the subject DRI which is developed with the Grandezza community, is located in the Suburban Future Land Use designation, and is separated from the balance of the DRI areas by a substantial landscape berm. Based upon sound planning principles, it makes sense to designate the subject property Urban Community.*

Staff's analysis of the application is provided below.

### **SURROUNDING ZONING, LAND USES, AND FUTURE LAND USE DESIGNATIONS**

The surrounding future land use categories consist of General Interchange, University Community, Urban Community and other Suburban lands. General Interchange designated lands occur to the south of the subject site. The University Community designated lands are directly adjacent to the subject site to the north across the Estero Parkway right-of-way. Urban Community lands are located west of the subject site, west of I-75. To the east of the subject site are other lands located in the Suburban future land use category.

South of the subject property is the General Interchange future land use category. The property is the site of the Miromar Outlets with Commercial Planned Development (CPD) zoning. Also south of the main part of the subject site is the Germain Arena, a 7,950 seat hockey arena that was developed as part of the Timberland and Tiburon DRI. West of the subject site, on the opposite side of Interstate 75 is are multi-family residential development within the Urban Community future land use category. North of the subject site is the Miromar Lakes Golf and Country Club that is zoned as a Mixed-use Planned Development. The Urban Community future land use category as proposed by the applicant is consistent with the surrounding land uses.

### **INTERNAL CONSISTENCY WITH THE LEE PLAN**

The subject property is currently within the Suburban future land use category. The Suburban category is described by Policy 1.1.5 of the Lee Plan, which reads as follows:

***POLICY 1.1.5:*** *The Suburban areas are or will be predominantly residential areas that are either on the fringe of the Central Urban or Urban Community areas or in areas where it is appropriate to protect existing or emerging residential neighborhoods. These areas provide housing near the more urban areas but do not provide the full mix of land uses typical of urban areas. The standard residential densities are the same as the Urban Community category. Higher densities, commercial development greater than neighborhood centers, and industrial land uses are not permitted. Bonus densities are not allowed.*

The subject site is currently vacant and is located north of the Germain Arena and the Miromar Outlets. This is the only property that borders directly on the subject site, all other property boundaries are major

roadways, including Interstate 75, and two Lee County arterial roads. The subject site also has more intense future land use categories on two and arguably three sides. One of the primary purposes of the Suburban future land use category is to “protect existing or emerging residential neighborhoods.” The location, the surrounding uses, and the adjacent transportation network of the subject site make it so that the intent of protecting existing and emerging residential neighborhoods is less of a concern at the subject site.

The applicant is proposing 1,300 dwelling units, 150,000 square feet of office space, and 99,384 square feet of retail commercial uses. The Suburban future land use category permits commercial development no greater than neighborhood centers, which would be limited to 2 to 10 acres and 30,000 to 100,000 square feet at each intersection by Policy 6.1.2 of the Lee Plan. The development that is proposed by the applicant would be consistent with the Suburban future land use category except that Section 34-2175(b)(5) of the Lee County Land Development Code limits the height in the Suburban Future Land Use Category to 45 feet or 3 stories. Another issue that the applicant’s proposal would have in the Suburban future land use category is the residential density. The applicant is proposing 1,300 units on 208.4 acres which is a density of 6.24 dwelling units an acre. The Suburban future land use category does not permit bonus density so the applicant would be required to slightly reduce the number of proposed units. The Urban Community designation would be a better category to describe the proposed commercial intensity as well as the mixed uses proposed by the DRI for the subject site.

The applicant has requested that the subject site should be re-designated to the Urban Community future land use category as described in Policy 1.1.4, which reads as follows:

***POLICY 1.1.4:*** *The Urban Community areas are areas outside of Fort Myers and Cape Coral that are characterized by a mixture of relatively intense commercial and residential uses. Included among them, for example, are parts of Lehigh Acres, San Carlos Park, Fort Myers Beach, South Fort Myers, the city of Bonita Springs, Pine Island, and Gasparilla Island. Although the Urban Communities have a distinctly urban character, they should be developed at slightly lower densities. As the vacant portions of these communities are urbanized, they will need to maintain their existing bases of urban services and expand and strengthen them accordingly. As in the Central Urban area, predominant land uses in the Urban Communities will be residential, commercial, public and quasi-public, and limited light industry (see Policy 7.1.6) with future development in this category encouraged to be developed as a mixed-use, as described in Policy 2.12.3., where appropriate. Standard density ranges from one dwelling unit per acre (1 du/acre) to six dwelling units per acre (6 du/acre), with a maximum of ten dwelling units per acre (10 du/acre).*

The Urban Community future land use category could accommodate the applicant’s proposed development consistent with the provisions of the Lee Plan. Staff believes that the Urban Community future land use category is the appropriate category for the subject site. The areas around this parcel have experienced intense developments over the past 10 to 20 years including the Germain Arena, Miromar Outlets, the Florida Gulf Coast University, and the expansion of Estero Parkway. The Grandezza residential development is close to the subject site, but it is on the opposite side of a divided Lee County arterial road, Ben Hill Griffin Parkway. To afford additional protections to the Grandezza community it would be appropriate to have any commercial development along Ben Hill Griffin provide parking lots that are oriented internal to the site with appropriate landscaping. These details can be addressed by the DRI, zoning approval, and Development Order approvals.

The applicant has proposed to limit itself to not using the bonus density that can be permitted within the Urban Community future land use category. The primary reason that the applicant has given for volunteering not to utilize the bonus density is to avoid potential objections from the Florida Department of Community Affairs concerning over accommodating for the population that is expected within the current planning horizon. Staff appreciates and shares this concern, however, limiting the potential for bonus density would ignore other issues that Lee County will face in the future.

The applicant is proposing 1,300 units on 208.4 acres which is a density of approximately 6.24 dwelling units an acre. If bonus densities were not permitted on the subject property the applicant would be required to slightly reduce the number of proposed units. The request would have to be further reduced to accommodate the proposed commercial uses. Staff finds that bonus densities could potentially be accommodated at this location, and does not support an outright prohibition.

Lee County currently has a Transfer of Developments Rights (TDR) program in place, as provided for in Chapter Two of the Lee County Land Development Code. This program permits the transfer of development rights from environmentally sensitive lands categorized as Wetlands by the Lee Plan to inland areas of Lee County that are within the Intensive Development, Central Urban or Urban Community future land use categories. Receiving areas for these development rights must also be located outside of the Category 1 Storm Surge Zone for a land-falling storm. In practice, the program has been utilized to move several hundred dwelling unit rights from coastal wetland areas to interior locations in Lee County such as Lehigh Acres.

The subject site either meets all of the receiving area requirements of Lee County's existing TDR program or could be made to meet these requirements as condition of approval. There are currently about 100 TDR units available on the open market.

Lee County is also working to establish a TDR program for the DR/GR lands located in Southeast Lee County. Once established, additional units would be available to receiving sites such as the subject site. Through these TDR programs, the subject site has the potential to help preserve environmentally sensitive areas such as coastal wetlands and lands in Southeast Lee County without increasing Lee County's population accommodation. Therefore the potential bonus density on the subject site should not be removed outright. In order to assure that Lee County's population accommodation is not increased by allowing bonus on the subject site, staff is proposing the following amendment to Policy 1.1.4 of the Lee Plan:

**POLICY 1.1.4:** The Urban Community areas are areas outside of Fort Myers and Cape Coral that are characterized by a mixture of relatively intense commercial and residential uses. Included among them, for example, are parts of Lehigh Acres, San Carlos Park, Fort Myers Beach, South Fort Myers, the city of Bonita Springs, Pine Island, and Gasparilla Island. Although the Urban Communities have a distinctly urban character, they should be developed at slightly lower densities. As the vacant portions of these communities are urbanized, they will need to maintain their existing bases of urban services and expand and strengthen them accordingly. As in the Central Urban area, predominant land uses in the Urban Communities will be residential, commercial, public and quasi-public, and limited light industry (see Policy 7.1.6) with future development in this category encouraged to be developed as a mixed-use, as described in Policy 2.12.3., where appropriate. Standard density ranges from one dwelling unit per acre (1 du/acre) to six dwelling units per acre (6 du/acre), with a maximum of ten dwelling units per acre (10 du/acre). Any bonus densities approved on the properties added to the Urban Community future



land use category in conjunction with CPA2010-00002 must be achieved through use of the transfer of development rights program.

The text amendment as proposed above will would allow the applicant to choose if they wanted to use bonus densities without increasing the County's population accommodation. The applicant would not be required to use the bonus density if they do not find it necessary. However, this amendment would not remove the potential receiving site if the site is found to be needed in the future.

Additionally, staff believes that the subject site is ideally situated to incorporate elements of a mixed use design, and is proposing that the site should be added to the Mixed Use Overlay as shown on Map1, page 6 of the Lee Plan. The subject parcel is located between Ben Hill Griffin Parkway and Interstate 75, north of Corkscrew Road and South of Estero Parkway. A portion of the mixed use overlay area is located at the intersection of Estero Parkway and Three Oaks Parkway, and fronts on Interstate 75. The subject site is connected to the properties in the mixed use overlay by the Estero Parkway Interstate 75 overpass, and fronts on Interstate 75 opposite of lands already located in the existing Mixed Use Overlay. The subject property is adjacent to the Miromar Outlets shopping center and the Germain Arena which would allow for direct connections to both entertainment and shopping venues in Estero. The close proximity to educational facilities, including Florida Gulf Coast University (FGCU), is consistent with the sustainable development design standards of Goal 4 of the Lee Plan. Additionally, the close proximity to an existing residential community, Grandezza to the east, with approximately 80 residences within the immediate pedestrian shed and 140 residences within the extended pedestrian shed, also supports the mixed use development and provisions of Goal 4 of the Lee Plan.

The property is located along Lee Tran Route 60, which connects with the LeeTran Route 140 at the San Carlos Plaza on US 41 through San Carlos Park, then south along Three Oaks Parkway between Alico Road and Corkscrew Road, then north along Ben Hill Griffin Parkway to the FGCU campus and the Gulf Coast Town Center. Addition of this property to the Mixed Use Overlay would allow Transit Oriented developments supporting improved transit service in this area. This LeeTran route currently serves a multitude of employment types including retail, service, professional, medical, and educational.

Existing infrastructure along Ben Hill Griffin Parkway also supports the mixed use development and sustainable development design by minimizing the need for major extensions or improvements to the existing infrastructure. Proposed uses can be distributed within the site to complement existing uses, including entertainment type venues at the southwest part of the site to complement and connect with Germain Arena and Miromar Outlets. The site could accommodate a residential neighborhood that is well connected to existing entertainment, service, and employment centers through existing transit and pedestrian facilities.

### **TRANSPORTATION/TRAFFIC CIRCULATION IMPACTS**

As previously discussed, the property is bounded by 2 arterial roadways, Estero Parkway and Ben Hill Griffin Parkway and Interstate 75. Miromar Outlets and Corkscrew Road are located to the south of the site. The application included a "Comprehensive Plan Amendment Traffic Study." Staff from the Department of Transportation did review the application and provided comments dated June 14, 2010. These comments are reproduced below:

*The Department of Transportation has reviewed the above-referenced privately-initiated comprehensive plan amendment, submitted in conjunction with a DRI application. The request is to change the land use designation for approximately 208.4 acres on the west side of Ben Hill*

*Griffin Parkway south of the Estero Parkway Extension from “Suburban” to “Urban Community”. The property is part of the Timberland & Tiburon DRI. The development parameters that are being applied for through the DRI amendment are 1,300 multi-family residential units, 100,000 square feet of general office space, 50,000 square feet of medical office space, 99,384 square feet of retail commercial uses, and 200 hotel units; however, for purposes of the comprehensive plan traffic analysis, the applicant assumed the 1,300 multi-family residential units and 1,120,000 square feet of retail commercial uses as a “worst case” scenario associated with the land use change. The applicant noted that the “worst case” scenario is highly unlikely and may not even be possible given the development acreage of the site. Although there are some roadway segments in the area that are projected to fail by 2030, both with and without the land use modification, the land use change doesn’t really allow much more development than could already be built under the existing designation (part of the applicant’s interest in the change was more height). The area is also served by multiple major arterials and non-highway modes of transportation (actually making it appropriate for mixed uses and intensification), and the property is part of an already-established DRI with a specific mitigation plan to cover its proportionate share obligation, through the payment of road impact fees and contributions to the Corkscrew Road Service Area (CRSA) special assessment. Therefore, DOT staff concludes the projected negative conditions are off-set and recommends the amendment be transmitted.*

#### *Analysis of Impacts - 2030*

*In order to analyze the impact of this proposal on the Lee County MPO’s 2030 Financially Feasible Plan, the applicant’s consultant added the “worst case” development parameters to the zonal data for existing traffic analysis zone (TAZ) 1380, and ran the FSUTMS travel demand model. Based on the model runs on the financially feasible plan network, two roadway segments within a 3-mile radius of the site are projected to exceed their adopted level of service standard in 2030 with or without this amendment. They are:*

*I-75 from Bonita Beach Road to Corkscrew Road  
I-75 from Corkscrew Road to Alico Road*

*In addition, two more roadway segments are projected to exceed their adopted level of service standard in 2030 with the addition of this “worst case” land use change. They are:*

*Ben Hill Griffin Parkway from FGCU Entrance to College Club Drive  
Three Oaks Parkway from Williams Road to Corkscrew Road*

#### *Applicant’s Proposed Mitigation*

*The applicant’s consultant suggests that the CPA’s traffic impacts will be fully mitigated through the Timberland & Tiburon DRI, which as noted requires the payment of road impact fees and the CRSA contribution to address the proportionate share obligation. The applicant’s consultant estimates that the “worst case” scenario would generate about \$20.5 million in road impact fees under today’s rate schedule, and suggests that these payments can be used to fund whatever improvements are found to be necessary to support general growth in the area.*

#### *2014 Analysis*

*The applicant’s consultant also performed an analysis of the project impacts for the year 2014, using historic growth rates for the background traffic (2% a year increase) and the model for the*

*project traffic. DOT staff agrees with the applicant's conclusion that all the study area roadway segments will operate at or better than adopted level of service standards with and without the CPA in year 2014.*

#### Median Opening Changes

*Although perhaps more of an issue for the University Highlands DRI than this CPA, DOT staff has a concern about the project's access to the approved median openings on Ben Hill Griffin Parkway. The median openings and allowed movements on Ben Hill Griffin Parkway were established when the right-of-way was provided to the County back in 1996. Since then, a new full-movement median opening with a traffic signal has been established just north of the project site, as part of the Estero Parkway Extension. When this University Highlands site was under consideration as a potential location for the new Red Sox spring training stadium, DOT staff had noted that the full median opening just to the south of the Estero Parkway Extension needed to be changed to only allow right-in/right-out and directional left-in movements. The next median opening to the south from there, which currently has limited movements allowed, could then become a full-movement opening. This would allow for better spacing of the full-movement openings, which are candidates for future traffic signals. The applicant accepted the need to change the full median opening to a right-in/right-out/directional left-in movement during the Red Sox stadium discussions. This modification must be implemented as part of the proposed intensification of the land use classification to Urban Community.*

#### Conclusions

*While the projected roadway failures in 2030 both with and without the CPA would normally be a cause for concern and could lead to a recommendation of non-transmittal absent a financial commitment to make the necessary improvements. DOT staff concludes that the project impacts will be adequately addressed for the following reasons: (1) the land use change is not really different than what is already allowed, and the "worst case" scenario is unlikely to be realized; (2) the site is part of a long-established DRI that already has a specific traffic mitigation plan in place, involving the payment of road impact fees and the payment of the CRSA special assessment; and (3) this site actually makes sense as a location for infill and mixed use development. Therefore, LCDOT staff recommends transmitting this amendment.*

### **CORKSCREW ROAD SERVICE AREA**

The subject site is located within the Corkscrew Road Service Area. The applicant has provided the following discussion:

*All of the property that has been developed has paid funds to the CRSA. The money is paid at the time of building permits. The applicant is not asking to amend the CRSA and anyone who pulls permits in the undeveloped portions of the T and T DRI will continue to pay Road Impact Fees and the CRSA fee at the time of building permit.*

*As each unit of development within the CRSA is developed, CRSA payments are required in accordance with County regulations. Therefore, it's our understanding that all CRSA development to date has made the appropriate CRSA payments.*

*The proposed Timberland & Tiburon/University Highland NOPC will not change this requirement. All development within University Highland will be required to make appropriate CRSA payments.*

## LEE COUNTY PORT AUTHORITY COMMENTS

The Lee County Port Authority provided comments on June 2, 2010 stating that they have no issues with the proposed Lee Plan amendment.

## SOILS

The applicant has provided a description of the soils that are found on site. For a detailed description please see the application materials

## POPULATION ACCOMMODATION

The proposed and existing future land use categories permit the same density range of 1 to 6 dwelling units an acre, therefore the proposed Lee Plan amendment will not have an effect on Lee County's population accommodation. The effect of TDR bonus density on the Future Land Use Map's accommodation capacity has previously been discussed, but will have no impact as sending lands will have to be encumbered with Conservation easements. The proposed amendment have no effect on the Future Land Use Map's population accommodation capacity.

## ENVIRONMENTAL CONSIDERATIONS

A vegetative community assessment and protected species survey for Lee County listed species meeting the requirements of Lee County Land Development Code (LDC) Section 10-473 was conducted by Wilson Miller, Inc. in March 2010. The assessment and a Florida Land Use, Cover and Classification System (FLUCCS) map was submitted by the applicant. County Staff conducted a site inspection on March 19, 2010 which confirmed the applicants species survey and FLUCCS map.

The site is comprised of: 1.2 acres Pine Flatwoods with 10-24% exotic coverage, 2.92 acres Pine Flatwoods with 25-49% exotic coverage, 40.11 acres Pine Flatwoods with 50-75% exotic coverage, 7.12 acres Pine Flatwoods with 76-100% exotic coverage, 2.91 acres Ditches, 13.98 acres Stormwater Management Lake, 20.87 acres Exotic Wetland Hardwoods, 75.39 acres Hydric Pine Flatwoods with 50-75% exotic coverage, 32.56 acres Hydric Pine Flatwoods with 76-100% exotic coverage, 0.79 acres Spoil Areas, 9.36 acres Roads and Rights of Ways, and 1.21 acres Primitive Trails.

Within the 411 FLUCCS community the canopy vegetation is slash pine (*Pinus elliotti*), live oak (*Quercus virginiana*), cabbage palm (*Sabal palmetto*), and scattered melaleuca (*Melaleuca quinquenervia*). The midstory contains scattered Brazilian pepper (*Schinus terebinthifolius*), stagger bush (*Lyonia* sp.), gallberry (*Ilex glabra*), myrsine (*Rapanea punctata*), saltbush (*Baccharis* sp.), and wax myrtle (*Myrica cerifera*). The ground cover is dominated by saw palmetto (*Serenoa repens*), and also contains species such as wire grass (*Artistida stricta*), grapevine (*Vitis rotundifolia*), and greenbriar (*Smilax glauca*).

Within the 625 FLUCCS community the canopy vegetation is slash pine (*Pinus elliotti*), laurel oak (*Quercus laurifolia*), cabbage palm (*Sabal palmetto*), bald cypress (*Taxodium distichum*), and scattered melaleuca (*Melaleuca quinquenervia*). The midstory contains scattered Brazilian pepper (*Schinus terebinthifolius*), dahoon holly (*Ilex cassine*), myrsine (*Rapanea punctata*), and wax myrtle (*Myrica cerifera*). The ground cover contains some scattered saw palmetto (*Serenoa repens*), and also contains species such as wire grass (*Artistida stricta*), muhly grass (*Muhlenbergia* spp.), and love grass (*Eragrotis* spp.).

Listed species identified on site included gopher tortoise, tricolored heron, little blue heron, snowy egret, white ibis, wood stork, and american alligator. There are an estimated one to two gopher tortoises on site, along the edge of an upland trail. Given the wet nature of the site and the location of the burrows along

an upland trail it is believed that these tortoises were placed on the site illegally. The applicant has indicated in their current DRI/DCI request that they will be relocating these tortoises offsite given the lack of suitable habitat on site. In addition, approximately 132.9 acres of the property is located within the panther primary zone. At time of local development this site will have to undergo a section 7 consultation with FWS and address any required mitigation.

### **Wetlands:**

The only wetlands shown on the current FLUM is a 0.3 acre wetland along the north property line. The proposed FLUM demonstrates that same wetland area as remaining in its current land use category. The site overall contains approximately 133 acres of jurisdictional wetlands per the Army Corp of Engineers (ACOE) and the South Florida Water Management District (SFWMD).

**Lee Plan Objective 114.1** states The natural functions of wetlands and wetland systems will be protected and conserved through the enforcement of the county's wetland protection regulations and the goals, objectives, and policies in this plan. "Wetlands" include all of those lands, whether shown on the Future Land Use Map or not, 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 by F.S. 373.4211.

Consequently, the wetlands on this site have become degraded over time due to surrounding development and changes in hydrologic connections. Because of the road construction, the surface water flow in this area has been rerouted along the roads through the drainage ditches, severely impacting the function of the wetlands on site and allowing for increased exotic infestation. Because of these circumstances and the fact that the applicant has obtained an Environmental Resource Permit from the South Florida Water Management District, and substantial portions of the DRI are already developed, planning staff believes any revisions to the wetland mapping for the site is not necessary.

In addition to the surrounding development and impacts to surface water flow, the site has been previously permitted to be impacted by both the ACOE and the SFWMD. Development of the entire DRI, including the subject property, was reviewed and conceptually approved by SFWMD as part of ERP Permit No. 36-018171-S in 1991. The SFWMD ERP Permit No. 36-01871-S was extended on July 9, 2009 until May 22, 2011. In addition the applicant has applied for a modification of this site to allow the new proposed development parameters as discussed previously to be permitted. In addition to the SFWMD ERP permit, the development of this site was previously reviewed and approved by the ACOE in 1993 as part of a Section 404 Individual Permit No. 1993-2371-IP. This ACOE permit expired in May of 2006 and the applicant has reapplied for a new permit (Application No. SAJ-2009-01116-IP-MJD) which is currently under review.

### **FEMA FLOODWAY ISSUE**

Currently County records show that approximately 27 percent of the subject site is located within a FEMA identified flowway, which would allow for no fill within those areas. Concerning this issue, the application materials provide the following discussion:

*A Letter of Map Revision (LOMR) has been submitted to correct the location of the FEMA floodway from where it has been currently designated on the UHLP site to its actual location in the Stewart Cypress Slough (the regional flowway north of the UHLP site). FEMA's designation of a floodway on the UHLP Site was based on outdated and incorrect information. The FEMA designation did not properly account for homes, roadways, and improved surface water*

*management systems that isolate the UHLP site from the regional flowway. The existing development surrounding and within the Timberland and Tiburon DRI, such as Grandezza, prevent flow from offsite areas from entering the UHLP site. The property owner has provided FEMA a summary of the physical features that are not accounted for in FEMA's incorrect designation and a corrected model that reflects the actual physical site conditions. The property owner anticipates that the correction of the map will be adopted by FEMA in the coming months.*

Staff has attached a copy of the proposed revision of the FEMA floodway on the applicant's site. Staff believes that the approval of this revision should happen in the near future.

## **HISTORIC RESOURCES**

Portions of this site are within the level 2 sensitivity areas for archeological and historic resources. Prior to development a Certificate to Dig will be required.

## **SCHOOL IMPACTS**

The Lee County School District provided correspondence dated March 22, 2010 and provided the following response: "After reviewing the submittal, this amendment should have no impact on classroom needs."

## **EMERGENCY MEDICAL SERVICES (EMS)**

Lee County EMS provided correspondence dated March 19, 2010 concerning the proposed Lee Plan amendment and stated that they did not have any concerns regarding the proposed project.

## **SOLID WASTE**

The Lee County Solid Waste Division provided correspondence to the Planning Division of March 29, 2010 stating that they had no objections to the Lee Plan Amendment.

## **MASS TRANSIT**

Lee County Transit provided the applicant a letter dated April 21, 2010 stating that property is within the Treeline Avenue /Ben Hill Griffin Parkway transit corridor and within the existing services area. The letter states that additional capacity may be needed to provide adequate service to the subject site at project buildout.

## **POLICE**

The Lee County Sheriff's Office provided a letter to the applicant on April 21, 2010 stating that the proposed Lee Plan amendment "would not affect the ability of the Lee County Sheriff's Office to provide core services as this time."

## **FIRE**

The Estero Fire and Rescue District provided a letter to the applicant dated March 15, 2010, stating that services were available.

## **UTILITIES**

Lee County Utilities provided the following:

*The off-site utility improvements required for providing adequate sanitary sewer service to the University Highlands site are the construction of two recognized LCU CIP projects that have been placed on hold for at least the current and next fiscal years. The CIPs consist of the extension of*

*a parallel 16” diameter sewage force main along Ben Hill Griffin Parkway commencing at the entrance to the Florida Gulf Coast University north approximately 3,500’, then approximately 1,500’ west under I-75 to our Three Oaks WWTP. These improvements will accommodate the flows generated from the site plus providing regional benefit for future development along this corridor. The anticipated cost of the above referenced improvements is in excess of \$800,000.00. This cost does not include the acquisition of any additional easements if needed. This will bring two Lee County CIP projects to fruition available for public use years before current Lee County funding would allow and provide regional benefit to our existing and future customers as well.*

*Adequate potable water infrastructure exists adjacent to the site within the right-of-way of Ben Hill Griffin Parkway and will be served by our Pinewoods WTP.*

Planning staff notes that, at the time of this writing, the applicant has not agreed to fund the referenced \$800,000 of sewage infrastructure improvements. Therefore, the project may have to wait until the County funds these improvements, in any case this issue will be dealt with prior to any development order approval. The proposed development is required to connect to a sanitary sewer system per Lee Plan Standard 11.2. The project is also required to connect to a public water system or a “community” water system per Lee Plan Standard 11.1.

## **B. CONCLUSIONS**

The location of the subject site, and its proximity to existing transportation networks and public infrastructure creates an opportunity for increased development potential consistent with the Urban Community future land use category. The surrounding future land use categories and uses are consistent with the development potential that is associated with the Urban Community future land use category. The environment of the subject site has been impacted by the surrounding development, including construction of the surrounding road network. Staff finds the existing characteristics of the site to be more in line with the Urban Community future land use category than the Suburban future land use category.

## **C. STAFF RECOMMENDATION**

Staff recommends that the Board of County Commissioners *transmit* the proposed Lee Plan amendment.

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

DATE OF PUBLIC HEARING: June 18, 2010

**A. LOCAL PLANNING AGENCY REVIEW**

Staff provided a brief presentation to the Local Planning Agency addressing the proposed Lee Plan amendment. One member of the Local Planning Agency asked why DOT staff, in the staff report, stated that “the land use change is not really different than what is already allowed” when planning staff stated that increased intensities could be permitted with the new future land use category, but found that it was appropriate for the area. Staff responded that the concurrent DRI amendment application provided assurances to county staff concerning the development that is actually anticipated on the subject site, allowing DOT to make that statement concerning anticipated impacts on the County’s road network. The applicant stated that they were in agreement with staff and staff’s presentation. No members of the public were present to address the proposed amendment.

A motion was made to recommend that the Board of County Commissioners transmit the proposed amendment. The motion passed unanimously.

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

1. **RECOMMENDATION:** The LPA recommends that the Board of County Commissioners transmit the proposed amendment.
  
2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The LPA accepted the findings of fact as advanced by staff.

**C. VOTE:**

<b>NOEL ANDRESS</b>	<b>AYE</b> _____
<b>CINDY BUTLER</b>	<b>AYE</b> _____
<b>CARIE CALL</b>	<b>AYE</b> _____
<b>WAYNE DALTRY</b>	<b>AYE</b> _____
<b>JIM GREEN</b>	<b>AYE</b> _____
<b>MITCH HUTCHCRAFT</b>	<b>AYE</b> _____
<b>RONALD INGE</b>	<b>AYE</b> _____



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

DATE OF TRANSMITTAL HEARING: June 23, 2010

**A. BOARD REVIEW:**

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

**1. BOARD ACTION:**

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

**C. VOTE:**

**A. BRIAN BIGELOW**

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**TAMMARA HALL**

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**VACANT**

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**RAY JUDAH**

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**FRANKLIN B. MANN**

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

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

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

**B. STAFF RESPONSE**

**C. RECOMMENDATION**

**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**

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**TAMMARA HALL**

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**VACANT**

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**RAY JUDAH**

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**FRANKLIN B. MANN**

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