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COMMUNITY DEVELOPMENT

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RE: CPA 2009-01 Alico West

Sent Via E-Mail and Post

Dear Mr. Eubanks:

The Conservancy of Southwest Florida, Estero Council of Community Leaders and Brooks Concerned Citizens request the Florida Department of Community Affairs (DCA) object to CPA 2009-01, the Alico West privately sponsored amendment, based upon its inconsistency with recently adopted Lee County Comprehensive Plan (Lee Plan) amendments; its failure to be included in the recently submitted Density Reduction/Groundwater Resource area (DR/GR) Comprehensive Plan amendments (CPA); the precedent it sets for others to avoid and undermine the DR/GR Transfer of Development Rights (TDR) program and its failure to provide any resources for implementation of the DR/GR plan, in spite of its desire to be removed from the DR/GR.

This amendment proposes to remove 919 acres from the DR/GR and place it into the University Community (UC) land use designation. However, the applicant has not demonstrated that removal from the DR/GR is necessary in order to allow for a future mixed-use, University focused community on their property. In fact, the applicant could seek to have the DR/GR mixed-use community overlay amended to allow such a mix of uses as part of the new DR/GR TDR program. Therefore, our organizations ask DCA to object to this amendment and consider recommending that the Alico West site work within the newly adopted overlay for the DR/GR to accommodate their proposed development. If DCA rejects this approach we would urge DCA to require that Alico West contribute to the restoration of a significant amount of the high priority restoration lands identified by the DR/GR Comp Plan amendments.

Background on Alico West Site and the DR/GR Designation

The 919-acre parcel referred to as Alico West is part of the 82,560-acre Lee County DR/GR. As DCA is aware, the entirety of the DR/GR has been the

subject of a multi-year study to determine how various land uses should be allocated in order to protect ground and surface water resources, while allowing more intensive land uses where appropriate. Countless technical reports and data sources were utilized in the creation of the DR/GR amendments, resulting in a proposed overlay that is comprehensive, data-driven, equitable and defensible.*

The initial significance of this area was recognized by both the DCA and Lee County through the 1990 DR/GR designation, which acknowledged this land's importance for reducing density in order to protect the County's water supply. The allowable land uses were limited to residential at one unit per 10 acres, agriculture, conservation, recreation and mining (with an approved rezone). While this mix of uses seemed reasonable at the time, the reality is that significant land use incompatibility was created, especially by allowing mining in close proximity to water resources and rural residential communities. Since the DR/GR was created, its effectiveness has been greatly reduced by approval of several amendments to the Comprehensive Plan that have greatly diminished its size and allowed significant increases in intensity in the use of former DR/GR lands.

In response to the need for balancing environmental considerations, public water supply needs and private property rights, Lee County and their consultants worked with a large number of stakeholders to create DR/GR plan amendments that comprehensively address future needs without compromising good land use and environmental principles. This balance of use resulted in the creation of four key elements that, taken together, will protect the DR/GR while allowing appropriate and compatible activities. These elements are:

Future Limerock Mining Overlay

New mines will be located within the Alico Road corridor, separated from other land uses. This will tremendously reduce negative impacts to groundwater recharge, conservation and existing residential uses within the remainder of the DR/GR.

Historic Surface and Groundwater Levels Overlay

Water resources will be protected by ensuring that new development mimics historic surface and groundwater levels.

Priority Restoration Overlay

* At this time, DCA finds portions of these amendments to be Not-in-Compliance due to specific concerns regarding how the TDR program will function. These issues are currently being addressed through the administrative hearing process. Our organizations are also involved in this matter, as our Motion to Intervene has been approved. We fully expect that the outstanding issues regarding the DR/GR amendments will soon be resolved and the overlay will be implemented.

Lands important for future restoration and/or acquisition are identified and prioritized.

Transfer of Development Rights Program

Residential development can be transferred from environmentally-sensitive lands to more appropriate locations where sustainable mixed-use development will be allowed.

One important result of this DR/GR planning process will be the ability of landowners within the Priority Restoration Overlay to be able to sell their TDRs to property owners in designated TDR receiving areas. These restoration overlay lands will then be protected through either a perpetual conservation or an agricultural easement, with additional incentives being given for restoration of land to its original condition. Conversely, landowners located within a designated mixed-use community who want to intensify use on their lands must purchase TDRs in order to increase density and intensity. The result is protection of restoration overlay lands and sustainable mixed-use development in appropriate locations.

With regard to the future success of the DR/GR comp plan amendments and the TDR program, one of the most damaging scenarios that could occur if Alico's application is approved would be for other landowners who want to intensify the use of their property to avoid the TDR program and, like Alico, apply to be removed from the DR/GR and re-designated to a different, and more intensive, land use category.

Alico West Proposal

The Alico West property has been actively mined for several decades. The land has been extensively cleared and heavily impacted by excavation and placement of excavation byproduct materials, or fines, on the site. The applicant has accurately stated that the property is a peninsula of DR/GR jutting out into the UC and Tradeport land use designations.

However, it is important to point out that the site forms such a peninsula because all of the surrounding lands, which were designated DR/GR in 1990, have been piecemeal removed from the DR/GR, most notably the 2,604 acres removed in order to accommodate the development of Florida Gulf Coast University (FGCU) and University-related development. At that time, Alico made the conscious decision to have the Alico West property remain in the DR/GR in order to maximize profit through mining, as this use is not allowed in the UC designation. Now that Alico has mined it to the extent they desired, they are requesting a CPA to remove the property from the DR/GR. Currently, DR/GR zoning on the land would permit less than 100 dwelling units and no commercial development on the site. If this CPA is approved, Alico will be gifted over 1,800 housing units (for a total of 1,909 units) and 1.6 million square feet of commercial development.

Inappropriate Removal of Lands from the DR/GR Designation

As some of the many stakeholders who participated in the DR/GR review process, our organizations believe the newly adopted DR/GR amendments should and will provide a comprehensive framework for the future of the DR/GR area. However, these amendments can only result in a successful DR/GR plan if all landowners located within the DR/GR remain in the DR/GR and develop, mine, farm or restore their lands in accordance with the newly adopted amendments. Based upon the need for a cohesive DR/GR that protects both the spatial extent of the DR/GR and the integrity of the implementing policies, the Alico West CPA threatens the DR/GR's effectiveness.

Negative Precedent Set by Allowing Alico West to be Removed from DR/GR

It is extremely concerning that while most DR/GR landowners actively participated in the DR/GR review and amendment process, put their ideas on the table for future use of their land and worked within the DR/GR framework, Alico West did not. Instead of taking advantage of this opportunity, they instead chose to simultaneously apply for a CPA to remove their land from the DR/GR. The intent of the DR/GR amendments was to create a comprehensive plan for the future of the area, including designated mixed use communities, structured separation of potentially conflicting uses and protection of natural resources. In order for this to work, the piecemeal chipping away of the DR/GR through amendments like this one must be avoided.

There is no question that this site is tremendously impacted by mining, and remediation will be required regardless of whether the land is developed as DR/GR or UC. With such an environmentally-sterile footprint, one must question why Alico did not actively engage in the DR/GR process, requesting designation as a mixed-use community or a special designation that would serve the University. If Alico would have worked through the DR/GR plan amendment process, they could have designed a development footprint to benefit the University while jump-starting and enhancing the viability of the TDR program designation as a receiving area and by acquisition of credits for future development of their land consistent with the DR/GR overlay. This would also have benefitted the DR/GR by providing resources for protecting a significant amount of priority restoration land through agricultural or conservation easements and/or restoration of environmental lands.

If other landowners within the DR/GR's mixed use communities are expected to purchase TDRs in order to intensify development on their lands, this standard should also apply to Alico. Approval of this amendment may have the unintended consequence of other DR/GR landowners also asking for a CPA to remove them from the DR/GR in order to increase density and intensity of land use without having to purchase TDRs.

Failure to Demonstrate a University focused Mixed-Use Development Cannot Occur as Part of the DR/GR Overlay

The inclusion of mixed-use communities within the DR/GR is a cornerstone of the new DR/GR plan. As such, several properties have been identified along major existing roadways as future sites for intensified mixed use communities. Based upon the location of the Alico West site proximate to FGCU and the environmental needs of the site, there is no doubt that the property should be considered for a future mixed-use development. However, if Alico wants to intensify the allowed use on this site they should do so as part of the DR/GR.

Alico accurately states that this CPA would not result in any additional density countywide, since they would simply be absorbing density and commercial square footage that has been allocated to the UC designation. However, while the amendment does not increase the overall County density, it results in a tremendous gift of density and intensity to Alico – over 1,800 housing units and 1.6 million square feet of commercial use. Such gifts of density should not be allowed when the applicant has the ability to increase utilization of their land through the TDR program, but chooses not to. In this case, intensification could occur through Alico requesting a Future Land Use Map (FLUM) amendment on the DR/GR overlay to designate a mixed-use community on their site with the density being transferred from targeted restoration areas within the DR/GR. Instead, Alico makes this application in order to avoid purchasing the TDRs that would be necessary for their development proposal should they continue to be in the DR/GR.

Recommendation

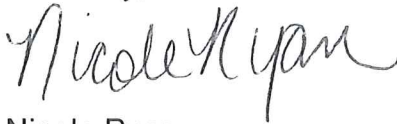
At the County's transmittal hearing, Alico had stated on the record that if the company should re-acquire the 4,100 acres of the Ginn development, located to the east of Alico West and currently going through foreclosure, they would maintain the current easements that are already stipulated in Ginn's Development Order (DO). These easements would help to protect a major slough system including important habitat for the Florida panther. We support upholding the requirement to protect lands as part of the current the Ginn DO for any future development of this site. However, as these lands are already designated for preservation within a protective easement, we do not believe that Alico's promise to uphold these easements if they re-acquire the property is sufficient compensation for the generous increase in density provided by the Alico West CPA.

Our organizations suggest that if Alico desires to increase density and intensity on the Alico West site, this should be done through an amendment to the new DR/GR FLUM and policies, as amended by the Division of Administrative Hearings process. Such an application would provide a benefit to FGCU and

Lee County by requiring the development utilize TDRs. This also resolves the equity issue, since every other landowner in the DR/GR is expected to utilize TDRs to increase density and intensity on their lands. However, if DCA determines that this amendment could be found in compliance, we urge you to require that the applicant make a meaningful contribution to the restoration of a significant amount of the high priority restoration lands identified by the DR/GR Comp Plan amendments, above and beyond simply agreeing to protect lands already required for protection on the Ginn parcel.

We thank you for your time and consideration on this matter. If you have any questions, please call contact Nicole Ryan at (239) 403-4220 or nicoler@conservancy.org.

Sincerely,



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Conservancy of Southwest Florida

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