

**CPA2010-06  
PINE TARR, LLC  
PRIVATELY SPONSORED  
AMENDMENT TO THE**

---

**LEE COUNTY COMPREHENSIVE PLAN**

---

**THE LEE PLAN**

Privately Sponsored Amendment and Staff Analysis

---

**BoCC Adoption Document**

---

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

**December 16, 2011**

**LEE COUNTY  
DIVISION OF PLANNING  
STAFF REPORT FOR  
COMPREHENSIVE PLAN AMENDMENT  
CPA2010-06**

**Text Amendment**

**Map Amendment**

<b>This Document Contains the Following Reviews</b>	
<b>✓</b>	<b>Staff Review</b>
<b>✓</b>	<b>Local Planning Agency Review and Recommendation</b>
<b>✓</b>	<b>Board of County Commissioners Hearing for Transmittal</b>
<b>✓</b>	<b>Staff Response to Review Agencies' Comments</b>
<b>✓</b>	<b>Board of County Commissioners Hearing for Adoption</b>

STAFF REPORT PREPARATION DATE: March 17, 2011

**PART I - BACKGROUND AND STAFF RECOMMENDATION**

**A. SUMMARY OF APPLICATION**

**1. APPLICANT:**

PINE TARR, LLC and LAKE JEFFERSON, LLC  
3050 Horseshoe Drive, Suite105  
Naples FL, 34104

REPRESENTED BY MATTHEW D. UHLE, ESQ.  
1617 Hendry Street, Suite 411  
Fort Myers FL, 33901

**2. REQUEST:**

Amend policy 14.1.5 to permit clearing of wetlands in accordance with an approved Environmental Resource Permit for commercial planned development twenty-five acres or larger.

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

**1. RECOMMENDATION:**

Staff recommends that the Board of County Commissioners *adopt* the proposed amendment to Lee Plan Policy 14.1.5.

**POLICY 14.1.5:** New development, including "planned development" zoning approvals, new subdivisions, and agriculture, that adjoin state-designated aquatic preserves and associated wetlands and natural tributaries must preserve or create a 50-foot-wide native vegetated buffer area between the development and the waterbody or associated wetlands. This requirement will not apply to existing subdivided lots. For agriculture, this requirement:

- will be implemented through the notice-of-clearing process in chapter 14 of the Land Development Code;
- will include a requirement to use this area as a riparian forest buffer with an adjoining filter strip wherever farmland abuts wetlands; and
- if native vegetation does not currently exist, native tree cover will be established within three years of issuance of the notice of clearing.

The placement and width of the 50 foot vegetated buffer can be modified to accommodate development; however, the development must meet all of the following criteria:

- impact less than 1.5 acres of the associated wetlands; and,
- the impacted area must consist primarily of exotic vegetation; and,
- avoid all impacts to mangrove swamps and tidal flats (FLUCCS Code 612 and 651); and,
- be in the Urban Community Future Land Use Category; and,
- be a Planned Development.

In addition to the listed criteria, the development must create an onsite wetland area. The created wetland area must meet the following:

- must be a minimum of 1.5 square feet for each square foot of impacted associated wetlands; and,
- consist of 100 % native wetland species; and,
- consist of 6' wetland trees to be planted 15' on center and 3 gallon wetland shrubs planted 3' on center; and,
- maintain a hydrologic connection with the remaining preserved associated wetlands; and,
- the wetland creation area may be comprised of planted dry detention, filter marsh or other similar green infrastructure techniques; and,
- the created wetlands are not intended to replace any state or federal required offsite mitigation for permitted impacts to wetlands.

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

- The Greater Pine Island Community Plan was initially incorporated into the Lee Plan in 1989.
- The Greater Pine Island Goal and subsequent Objectives and Policies were amended in 1994, 2000, 2003, and 2010.
- A main theme in the Greater Pine Island Community Plan and the Lee Plan is natural resource protection.
- Wetlands associated with state aquatic preserves on Pine Island help to filter surface water that flows directly into the Matlacha Pass Aquatic Preserve, the Pine Island Sound Aquatic Preserve, and the Gasparilla Sound – Charlotte Harbor Aquatic Preserve.
- Seagrass beds have been negatively impacted by reduced light availability due to runoff from rapidly urbanizing coastal areas.
- Filling of jurisdictional wetlands does not preserve the County’s ability to meet its responsibility to the public in protecting and restoring the quality of our public waters.
- Wetlands aid in filtration of runoff, filtering sediment and pollutants while improving water quality.
- Coastal wetlands help to protect the island from flooding.
- The required 50-foot native vegetated buffer is meant to protect existing wetlands and natural water bodies from the effects of development.
- In specific cases, the proposed amendment would create a mechanism that would allow development to fill wetlands associated with state-aquatic preserves.
- The Proposed amendment lessens protection for the aquatic preserves and associated wetlands.
- The proposed amendment removes an easily understood Lee Plan buffer requirement and replaces it with a state process that could result on no wetland preservation or buffer.
- The proposed amendment to Policy 14.1.5 is not consistent with the Vision of Lee County and Pine Island.

- The proposed amendment could set a precedent, reducing the wetland protections elsewhere on Pine Island, such as Bokeelia or St. James City.

### **C. BACKGROUND INFORMATION**

**CASE HISTORY** – While this request is a text amendment that could be applicable to several properties in Pine Island Center, there is a particular property to which this amendment is directed. This property has had a history of requests for various kinds of approvals over time. Community Development staff’s position regarding the Lee Plan and particularly Policy 14.1.5 has remained consistent throughout the zoning and permitting history for this subject property.

On October 10, 2007, Pine Tarr, LLC filed an application for a residential lot split with Lee County Division of Development Services (LDO2007-00391). The intent of the residential lot split was to create two parcels – one 7.9 acre parcel and one 10.5 acre parcel. That application was deemed inactive and the case was closed on August 19, 2009.

On August 1, 2008, the property owner applied for an Environmental Resource Permit (ERP) from South Florida Water Management District (SFWMD). This application was for a proposed commercial development on the subject property. The South Florida Water Management District approved the ERP, Permit #36-07179-P, for the commercial project, called Calusa Cay, on September 21, 2009. That permit allowed 2.64 acres of impacts to coastal wetlands on the east side of the property.

On September 16, 2008 a rezoning application (DCI2008-00035) was submitted to Lee County Division of Zoning to rezone the property from C-1A and AG-2 to commercial planned development (CPD). The zoning application, called Calusa Cay CPD, was for a maximum of 121,400 square feet of commercial floor area including a maximum of 100,000 square feet of commercial retail. The Master Concept Plan for the CPD showed impacts to jurisdictional wetlands that are associated with the adjacent state aquatic preserve. Lee County Planning staff issued a memo that stated that the commercial project was inconsistent with the Lee County Comprehensive Plan, including natural resource protection. Specifically, the proposed commercial development was found to be inconsistent with Lee Plan Objective 14.1, Policy 14.1.5, and Policy 113.1.2. Environmental Sciences staff also recommended denial of the rezoning application, finding inconsistency with Lee Plan goals, objectives and policies relevant to protection of environmental and natural resources. The Lee County Zoning Staff report recommended denial of the application based on the findings of Environmental Sciences and Planning divisions. The rezoning application was withdrawn by the applicant on December 16, 2009.

On December 12, 2009, Pine Tarr, LLC filed an application for a Notice of Clearing with the Lee County Division of Environmental Sciences (VEG2009-00252). The application was for

agricultural use and only included the AG-2 portion of the property. The applicant proposed to fill wetlands associated with the adjacent aquatic preserves, just like this portion of the Calusa Cay Master Concept Plan and the SFWMD ERP permit. Due to these proposed impacts, staff could not issue the Notice of Clearing. On January 11, 2010 a conditioned Notice of Clearing was approved by Environmental Sciences staff. Section 14-412(h) of the Lee County Land Development Code gives staff the authority to impose conditions on the notice of clearing “relating to the method of identifying, designating and protecting” those items which are not to be impacted. The condition required the 50' vegetated buffer based on the jurisdictional wetlands, consistent with Policy 14.1.5 of the Lee Plan.

The Notice of Clearing approval was appealed (ADM2010-00001) to the Hearing Examiner based on Section 34-145(a) of the Lee County Land Development Code, which states:

*“The Hearing Examiner will hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, determination or action of any administrative official charged with the administration and enforcement of the provisions of this land development code or any other ordinance that provides for similar review.”*

Pine Tarr, LLC, the appellant in the Administrative Appeal case, argued that “the literal language of LDC Section 33-1031(a) does not preclude any filling of wetlands. It merely requires an upland buffer between the agricultural uses and the wetland line.” Staff responded Section 33-1031 of the LDC must be interpreted alongside Objective 14.1 and Policy 14.1.5 of the Lee Plan, which require that:

*“new subdivisions, and agriculture, that adjoin state-designated aquatic preserves and associated wetlands and natural tributaries must preserve or create a 50-foot-wide native vegetated buffer area between the development and the waterbody or associated wetlands.”*

In this case the Hearing Examiner found that “staff made no error in their interpretation and application of the provisions of LDC Section 33-1031 to the facts of this case.” Therefore the only recourse the applicant has to develop the property consistent with the South Florida Water Management District ERP is an amendment to the Lee Plan.

**HISTORY OF LEE PLAN POLICY 14.1.5** - Greater Pine Island is part of unincorporated Lee County. Greater Pine Island residents have always been vocal about public affairs, especially planning and zoning related issues. An informal coalition of Pine Island residents formulated the original “future land use map” for Pine Island that was adopted by Lee County into the 1984 Comprehensive Plan (the original Lee Plan).

Policy 14.1.5 is within the Greater Pine Island Goal of the Lee Plan, Goal 14. Goal 14 of the Lee Plan summarizes the Greater Pine Island Planning Community’s efforts to balance growth with protecting the island’s natural resources and community character. Efforts to

address these issues through a “Pine Island Plan” have been ongoing. The Pine Island Plan was originally adopted in 1989 and has been amended several times. In the 1989 plan both Objective 14.1 and Policy 14.1.5 were adopted but were referenced as Objective 16.1 and Policy 16.1.3. The opening statement of the original community plan explained its purpose:

*GOAL 16: To manage future growth on and around Greater Pine Island so as to maintain the island's unique natural resources and character and to insure that island residents and visitors have a reasonable opportunity to evacuate when a hurricane strike is imminent.*

The Greater Pine Island Civic Association elected to re-examine the Greater Pine Island Community Plan to address development patterns that were unforeseen when the community’s plan was originally adopted. The “Greater Pine Island Community Plan Update,” prepared by Spikowski Planning Associates, was submitted to Lee County on September 28, 2001. The 2001 plan update begins with a general description of Greater Pine Island and its past and present residents, referred to in this plan simply as Pine Islanders. The Plan Update included discussion of major planning issues. The discussion of each plan issue includes specific recommendations for changes to the Lee Plan and the land development code. Included in the planning issues discussed was “The Environment”.

The natural environment has been an important and valued characteristic of the Greater Pine Island Community. The first sentence of Goal 14 is “*To manage future growth...so as to maintain the island’s unique natural resources...*” Additionally, Objective 14.1 of the Lee Plan, among other things, is meant to stop degradation of estuarine and wetland resources. To protect the estuarine and wetland resources, Policy 14.1.5 of the Lee Plan required a 50 foot wide vegetated buffer between the development and the waterbody.

During the 2001 update of the community’s plan it was determined that Policy 14.1.5 had proven to be largely ineffective because it did not apply to agricultural uses, which experienced rapid growth on Pine Island following the adoption of the original community plan. During the Greater Pine Island Community Plan update, the community elected to amend Policy 14.1.5, making it applicable to notice-of-clearing process for agricultural uses. Amendments to Policy 14.1.5 also extended protections to include wetlands associated with state-designated aquatic preserves. Policy 14.1.5 was amended as follows (language added at that time is shown in strikethrough and underline formatting):

**POLICY 14.1.5:** *New development, including "planned development" rezoning approvals ~~and~~, new subdivisions, and agriculture, that adjoining state-designated aquatic preserves and associated wetlands and natural tributaries must ~~provide~~ preserve or create a 50-foot-wide native vegetated buffer area between the development and the waterbody or associated wetlands. This requirement will not apply to existing subdivided lots. For agriculture, this requirement:*

- *will be implemented through the notice-of-clearing process in chapter 14 of the land development code;*

- will include a requirement to use this area as a riparian forest buffer with an adjoining filter strip wherever farmland abuts wetlands; and
- if native vegetation does not currently exist, native tree cover will be established within three years of issuance of the notice of clearing.

These amendments to Policy 14.1.5 were adopted by Lee County Ordinance 03-03.

Subsequent to the amendments included in Ordinance 03-03, additional amendments to the Greater Pine Island Community Plan were adopted by Lee County Ordinance 05-21 and Ordinance 10-17. However, these amendments are not applicable to the current proposed amendment to Policy 14.1.5 of the Lee Plan.

## PART II - STAFF ANALYSIS

### A. STAFF DISCUSSION

#### **Introduction – Applicant Proposed Amendment**

Pine Tarr, LLC, and Lake Jefferson LLC filed an application to amend Policy 14.1.5 of the Lee Plan on September 29, 2010. The applicant is proposing to amend Policy 14.1.5 to permit clearing of wetlands in accordance with an approved ERP for commercial planned developments on parcels meeting specific criteria. The language proposed by the applicant is shown below in strikethrough and underline:

**Policy 14.1.5:** New development, including "planned development" zoning approvals, new subdivisions, and agriculture, that adjoin state-designated aquatic preserves and associated wetlands and natural tributaries must preserve or create a 50-foot-wide native vegetated buffer area between the development and the waterbody or associated wetlands. This requirement will not apply to existing subdivided lots. For commercial planned developments in excess of 25 acres on property with Pine Island Road frontage in the Pine Island Center Urban Community area, the buffer (including any fill necessary to facilitate the survival of the required upland species within it), must be located between the development areas on the site and all wetlands required to be preserved by an approved state environmental resource permit. For agriculture, this requirement:

- will be implemented through the notice-of-clearing process in chapter 14 of the Land Development Code;
- will include a requirement to use this area as a riparian forest buffer with an adjoining filter strip wherever farmland abuts wetlands; and
- if native vegetation does not currently exist, native tree cover will be established within three years of issuance of the notice of clearing.

The proposed amendment to Lee Plan Policy 14.1.5 raises several potential issues. These issues include amending a community plan, The Greater Pine Island Plan, impacting the character of the area in a way the community does not desire. The amendment, as proposed by the applicant would also create more reliance on Florida rules and regulations as opposed



to the self-determined provisions of the Lee Plan. The proposed amendment would also replace a clear standard (50-foot buffer from a real wetland jurisdictional line) with a standard that is subject to an applicant proposed wetland line that is part of the Environmental Resource Permit process. And finally, staff is concerned that the reduction of protections to the adjacent aquatic preserves and associated wetlands will lead to degradation of the wetlands and the water quality within the preserves. These issues are discussed in greater detail in the following sections.

### **Environmental Issues**

There are a multitude of reasons for the preservation of wetlands associated with the state aquatic preserves including:

- Flood Control
- Reduction in Total Maximum Daily Loads (TMDL's)
- Filtration of pollutants from storm water runoff
- Preservation of habitat for native wildlife

*Flood Control* - Wetlands aid in slowing the flow of water during heavy storm events allowing time to process the additional flows without flooding of adjacent uplands.

*The Total Maximum Daily Load program is going into effect, 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 alternative of these are wetlands and 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.

*Filtration of pollutants from storm water runoff* - Wetlands aid in filtration of runoff, filtering sediment and pollutants while improving water quality.

*Preservation of habitat for native wildlife* - Wetlands are habitat for a multitude of listed species including: the Florida Manatee, Roseate Spoonbill, Atlantic Loggerhead Turtle White Ibis, Little Blue Heron, Wood Stork and a multitude of other migratory wading birds.

Lee County has recognized the importance of wetlands, and has included numerous provisions in the Lee Plan to protect wetlands in general. The sensitivity of the waters surrounding Pine Island has led to additional provisions for wetlands within the Greater Pine Island Planning community.

Identified below are Goals, Policies, and Objectives that offer protections to wetlands in Lee County and specifically for Greater Pine Island:

**Lee Plan Objective 107.1: Resource Management Plan.** *The county will continue to implement a resource management program that ensures the long-term protection and enhancement of the natural upland and wetland habitats through the retention of interconnected, functioning, and maintainable hydroecological systems where the remaining wetlands and uplands function as a productive unit resembling the original landscape.*

**Lee Plan Policy 107.2.13:** *Promote optimal conditions rather than minimum conditions for the natural system as the basis for sound planning.*

The proposed amendment to Lee Plan Policy 14.1.5 does not utilize optimal conditions with regard to wetland impacts. Impacting wetlands reduces the capacity of the wetlands to filter pollutants, increasing the potential for water degradation.

**Lee Plan Policy 113.1.1:** *Coastal areas with significant public value for water retention and purification, wildlife habitat, and primary productivity will be protected through the development permitting process and enforcement of appropriate codes and regulations.*

**Lee Plan Policy 113.1.2:** *All development within the coastal planning area must be compatible with protection of natural systems.*

**Lee Plan Policy 113.1.5:** *Lee County will protect and conserve the following environmentally sensitive coastal areas: wetlands, estuaries, mangrove stands, undeveloped barrier islands, beach and dune systems, aquatic preserves and wildlife refuges, undeveloped tidal creeks and inlets, critical wildlife habitats, benthic communities, and marine grass beds.*

**Lee Plan Goal 114:** *To maintain and enforce a regulatory program for development in wetlands that is cost-effective, complements federal and state permitting processes, and protects the fragile ecological characteristics of wetland systems.*

**Lee Plan Objective 114.1:** *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).*

The proposed revisions to Policy 14.1.5 would permit impacts to wetlands that abut the state designated Matlacha Pass Aquatic Preserve, Pine Island Sound Aquatic Preserve, and Gasparilla Sound - Charlotte Harbor Aquatic Preserve, if permitted by an Environmental Resource Permit. These preserves are home to 86 of Florida's threatened and endangered species. The mangrove fringe and sea grasses that surround Pine Island are home to wading birds, amphibians, manatees, and are used by a multitude of Florida's game fish as nurseries. The Aquatic Preserves are a fragile ecological system that can be affected by water quality and must be protected from nutrient loading, sedimentation and pollution associated with

storm water runoff. Encroachment of development into the existing wetlands conveys fill, fertilizer and other pollutants close to the mangrove fringe.

***Lee Plan Goal 115: Water Quality and Waste Water:*** *To ensure that water quality is maintained or improved for the protection of the environment and people of Lee County.*

***Lee Plan Objective 115.1:*** *Maintain high water quality, meeting or exceeding state and federal water quality standards.*

The proposed amendment to Lee Plan Policy 14.1.5 would be counter to improving water quality for the protection of the environment, and would not assist meeting or exceeding state and federal water quality standards.

Environmental Sciences staff provided the following analysis:

*ES Staff has concerns with the amount of impacts that would occur to wetlands with the proposed language change. The intent of Objective 14.1 and Policy 14.1.5 is to preserve wetlands from encroachment of development with no wetland impacts.*

*ES Staff and the applicant have disagreed on the placement of a 50-foot natural vegetated buffer since the applicant first applied for LDO 2007-00391. Through subsequent applications and appeals ES Staff has consistently applied Policy 14.1.5 to permit no further degradation of wetlands to meet the intent of Objective 14.1.*

*The applicant argues that a project must provide a 50-foot natural vegetated buffer to separate development from any adjacent wetlands. The applicant denotes that the buffer is for water quality and to safe guard any preserved wetlands. And the intent of the buffer is to separate a project from preserved wetlands allowing wetland impacts onsite, if approved by state and federal permits, to create the buffer.*

*ES Staff does not agree with the applicant's Lee Plan analysis. Objective 14.1 states that Pine Island will permit no further degradation of wetlands on Pine Island and Policy 14.1.5 states that the development must provide a 50-foot natural vegetated buffer between the development and all jurisdictional wetlands with no impacts.*

*Several projects have been approved since the adoption of the latest revisions of Goal 14 in compliance with the 50-foot native vegetative buffer including Orchid Cove (this project abuts the subject property to the north) DOS2005-00354, a Residential Planned Development with 156 units on ± 63 acres; Demere Preserve DOS2005-00290 a Residential Planned Development with 74 single-family dwelling units on ± 92.5 acres; and Tranquility Bay DOS2006-00061 a Residential Planned Development with 60 single-family dwelling units on ± 74 acres. All three projects are residential developments that have provided the 50-foot native vegetative buffer.*

*Another issue of concern for ES Staff is the potential impact to the adjacent Matlacha and Charlotte Harbor Aquatic Preserves. The Aquatic Preserves are part of the greater*

*Charlotte Harbor estuary, the second largest and one of the least contaminated estuaries in Florida. Established in 1978, The Charlotte Harbor and Matlacha Aquatic Preserves are home to more than 40% of the state's endangered and threatened species. The Florida Department of Environmental Protection's (FDEP), Staff has conducted annual monitoring at five sites within the Matlacha Aquatic Preserve for seven years. Water quality in the preserve has been steadily declining with native sea grasses showing a 29% decline. The FDEP monitoring indicates "that sea grass beds have been negatively impacted by reduced light availability due to runoff from rapidly urbanizing coastal areas." Sea grasses are important to several of Florida's listed species including the Florida manatee. The mangrove fringe and sea grasses that surround Pine Island are home to wading birds, amphibians, manatees, and are used by a multitude of Florida's game fish as nurseries. Encroachment of development into the existing wetlands conveys fill, fertilizer and other pollutants into the mangrove fringe.*

*Runoff from development can cause reduced water quality. The intent of creating a 50-foot buffer to separate the development from the wetlands is to increase filtration of storm water runoff before reaching wetlands to reduce impacts to the Aquatic Preserve, increasing water clarity and reducing nutrients. The applicant is proposing to revise the language in Policy 14.1.5 to allow impacts to wetlands to create the 50-foot buffer. This will detract from the purpose of the buffer which is to protect the wetlands from development. This will potentially decrease detention time for water filtration causing additional sediments, nutrients and pollution to enter the Aquatic Preserve. The 50-foot buffer that could be created with the proposed language change would potentially alter the topography of natural grade by creating a change of elevation within the buffer area, disrupting surface water hydrology and increasing the opportunity for erosion.*

*Furthermore, vegetated buffer zones separating wetlands from development act as transition zones, to lessen the impacts of development to environmentally critical areas. Publications such as M.T. Brown and J. Orell, Tomoka River and Spruce Creek Riparian Habitat Protection Zone, p. 4 (St. Johns River Water Management District, 1995.) states:*

*"Lands immediately adjacent to an upland or wetland are transition zones between wetlands and uplands. They are zones that are wetland at times and upland at times, exhibiting characteristics of each and vegetated by species that are found in each. They are important to both the wetland and upland as seed reservoirs, as habitat for aquatic and wetland-dependent wildlife species, as refuge to wildlife species during high water events, as buffers to the extreme environmental conditions that result from sharp vegetated edges. When development activities occur in transition zones, wetland dependent wildlife species that are frequent users of these areas are excluded, silt laden surface waters are generated and cannot be filtered, and groundwater may be diverted or drained."*

*The 50-foot natural vegetated buffer acts as a transition zone separating the development from the adjacent wetland and as such impacting these transition Zones result in loss of habitat that filters pollutants from stormwater and development.*

### **Consistency with the Lee Plan**

Staff does not believe that the proposed amendment to Policy 14.1.5 of the Lee Plan could be limited to only the applicant's properties, STRAP #s 28-44-22-00-00012.0000, 28-44-22-00-00012.002A, and 28-44-22-00-00012.002B. There are currently several properties, or contiguous properties under single ownership that could be aggregated to be in excess of 25 acres with access to Pine Island Road. For example, a single property owner controls the adjacent parcel on the north side of Pine Island Road, and three contiguous parcels on the south side of Pine Island Road that would meet the conditions provided by the applicant in the proposed Lee Plan amendment. Additionally, staff is concerned that this could set a precedent to reducing the wetland protections elsewhere on Pine Island, such as Bokeelia or St. James City.

Even if Policy 14.1.5 could be amended in such a way that would allow the applicant to impact wetlands associated with the state aquatic preserve, this would not be consistent with the direction provided by the Lee Plan when viewed as a whole. A single policy is difficult to interpret correctly, if taken in isolation. In the review of other Goals, Objectives and Policies in the Lee Plan, the general theme is to NOT support degradation of estuarine and wetland resources. Objective 14.1 of the Lee Plan is reproduced below:

***OBJECTIVE 14.1: NATURAL RESOURCES.** County regulations, policies, and discretionary actions affecting Greater Pine Island will permit no further degradation of estuarine and wetland resources and no unnecessary loss of native upland vegetation and wildlife habitat.*

The proposed amendment to Policy 14.1.5 of the Lee would allow impacts to wetland resources if permitted by the Environmental Resource Permit. This is inconsistent with the policies' higher objective.

The history of Policy 14.1.5, which the applicant is proposing to amend, provides insight into the intent of the policy, and the vision of the Greater Pine Island Community. During the 2001 update of the community's plan it was determined that Policy 14.1.5 as originally adopted had not provided the results the community was seeking because it did not apply to agricultural uses. Agricultural uses were the predominate new land use on Pine Island between 1990 and 2000. During the Greater Pine Island Community Plan update, the community proposed and the Board of County Commissioners elected to amend Policy 14.1.5, making it applicable to agricultural uses. Amendments to Policy 14.1.5 also extended protections to include wetlands associated with state-designated aquatic preserves. The amendments to Policy 14.1.5, adopted by the Board of County Commissioners with county ordinance 03-03, generally provided increased protections to wetlands and applied these protections to more uses. The proposed amendment would reduce protections for wetlands.

This is inconsistent with the intent expressed by the Greater Pine Island Community at the time of their last Lee Plan update.

The Lee Plan vision includes six “themes of great importance.” Included in these themes is the protection of natural resources and a specific vision for Pine Island.

The theme to protect natural resources throughout Lee County is shown below:

- *The county will protect its natural resource base in order to maintain a high quality of life for its residents and visitors. This will be accomplished through an aggressive public land acquisition program and by maintaining and enforcing cost-effective land use and environmental regulations that supplement, where necessary, federal, state, and regional regulatory programs.*

The proposed amendment to Policy 14.1.5 of the Lee Plan would reduce the protections currently provided to the “associated wetlands” of the state-aquatic preserve. The proposed amendment to Policy 14.1.5 of the Lee Plan is inconsistent with the vision of the Lee Plan.

The Greater Pine Island Community has also developed a statement to represent the future vision of the planning community. The Pine Island vision statement is shown below:

**16. Pine Island** - *This community includes Greater Pine Island as described under Goal 14 along with surrounding smaller islands and some unincorporated enclaves near Cape Coral. Its future, as seen by Pine Islanders, will be a matter of maintaining an equilibrium between modest growth, a fragile ecology, and a viable and productive agricultural community. Pine Island will continue to be a haven between urban sprawl approaching from the mainland and the wealth of the outer islands; a quiet place of family businesses, school children, farmers, and retirees enjoying the bounties of nature; a place devoid of high-rises, strip malls, and gated communities. Traffic constraints caused by the narrow road link to the mainland will limit future development, allowing the islands to evacuate from storms and protecting natural lands from unsustainable development. Wildlife and native vegetation will be protected; loss of wildlife habitat will be reversed; sidewalks and bike paths will connect neighborhoods for young and old alike. Architectural standards for commercial buildings will encourage “Old Florida” styles, and historic buildings will be treasured. Pine Island will continue to be a place where people, nature and agriculture exist in harmony, a place not very different from what it is today, an island as state-of-mind as much as a physical entity, its best features preserved and enhanced. Pine Islanders are historically vigilant about protecting their community and will work to ensure that their plans are carried out.*

Protection of the environment is a prominent focus of the Pine Island vision statement. The Pine Island vision statement calls for maintaining equilibrium between agriculture, modest

growth, and a fragile ecology. The Pine Island vision statement also states that “*Wildlife and native vegetation will be protected; loss of wildlife habitat will be reversed.*” The proposed amendment to Policy 14.1.5 of the Lee Plan would reduce the protections currently provided to the “associated wetlands” of the state aquatic preserves. The “associated wetlands” provide wildlife habitat and include native vegetation. Reducing protection for the wetlands is counter to the vision of the Pine Island Community which is a part of the Lee County Vision Statement. The proposed amendment to Policy 14.1.5 of the Lee Plan is inconsistent with the vision of the Lee Plan.

The proposed amendment to Lee Plan Policy 14.1.5 also has the potential to be in conflict with the Wetlands future land use category and Objective 1.5: Wetlands. Objective 1.5 of the Lee Plan clarifies, that in addition to the lands identified on Map 1 as being in the Wetlands future land use category, wetlands that are delineated in accordance with the methodologies of FAC 17-340 will also be considered to be within the Wetlands future land use category. Objective 1.5 is shown 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.*

Wetlands delineated using the methodology described in FAC Chapter 17-340 must be considered to be in the Wetlands future land use category even though not specifically delineated on Future Land Use Map, Lee Plan Map 1. Therefore, the proposed amendment to Policy 14.1.5 would allow filling of wetlands within the Wetlands future land use category for uses not permitted within that category. Once the wetlands are filled they could no longer be delineated using the methodology described in Objective 1.5 of the Lee Plan, and therefore would no longer be in the Wetland future land use category. This amounts to an administrative amendment to the Lee Plan’s Future Land Use Map through a state permitting process that does not consider Lee County’s Comprehensive Plan or Land Development Code. Staff recognizes that this issue is not limited to Pine Island.

Policy 1.5.1 of the Lee Plan, shown below, identifies the uses permitted in the Wetlands future land use category.

***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.*

Permitted uses include very low density residential uses (1 dwelling unit for every 20 acres), or recreational uses that will not adversely affect the ecological functions of wetlands. The proposed amendment to Lee Plan Policy 14.1.5 would allow an exception to fill wetlands for development associated with commercial uses. Commercial uses are not included in the list of permitted land uses identified in Lee Plan Policy 1.5.1. The proposed amendment to Lee Plan Policy 14.1.5 is inconsistent with Policy 1.5.1 of the Lee Plan because filling of the Wetlands future land use category would negatively affect the ecological functions of wetlands.

The proposed amendment would also replace a clear standard that requires a 50-foot native vegetated buffer from an existing wetland jurisdictional line with a standard that is subject to an applicant's proposed wetland line as part of an Environmental Resource Permit. The wetland line determined through the Environmental Resource Permit is subject to negotiation and may not reflect what is actually on the ground at the time the application is submitted.

#### **Utilities**

The proposed amendment will not affect the availability of potable water or sanitary sewer.

#### **Solid Waste**

Lee County Division of Solid Waste provided comments on December 15, 2010 stating there are no solid waste issues with the proposed amendment.

#### **Parks, Recreation and Open Space**

Lee County Department of Parks and Recreation provided comments on March 8, 2011 stating they have no issues with the proposed amendment.

#### **Transportation Issues**

Lee County Department of Transportation provided comments on December 28, 2010 stating there are no transportation issues with the proposed amendment.

## **B. CONCLUSIONS**

A single policy can be difficult to interpret correctly, if taken in isolation. However, in the review of other Goals, Objectives and Policies in the Lee Plan, a general theme is to not support wetland destruction. County staff has been consistent on Pine Island in regards to where the 50 foot buffer, required by Lee Plan Policy 14.1.5, should be placed. Staff has also remained consistent that no impacts may occur to existing wetlands associated with the state aquatic preserves. Staff has arrived at this interpretation by interpreting Policy 14.1.5 in context with Objective 14.1, which states that "County regulations, policies and discretionary actions affecting Greater Pine Island will permit no further degradation of estuarine and wetland resources." County Staff has consistently applied the requirement to provide the 50' native upland buffer from the existing wetland line in compliance with this Objective. The



requirement of Lee Plan Policy 14.1.5 has been applied with rezoning applications, Development Orders and agricultural notice of clearings. In each circumstance, the county has required the 50' buffer from the wetland line existing at the time of the application. Staff's interpretation of Lee Plan Policy 14.1.5 was validated by the Hearing Examiner Decision issued for the Administrative Appeal ADM2010-00001, filed by the applicant.

The proposed language change would be in direct conflict with the Pine Island Plan. The inconsistencies with the Greater Pine Island Plan include the Pine Island Vision, Goal 14, and Objective 14.1. Furthermore, when reading Policy 14.1.5, in conjunction with the remainder of the Lee Plan, the proposed revisions to Policy 14.1.5 would be inconsistent with numerous Goals, Objectives, and Policies in addition to those included in the Greater Pine Island Plan. These include The Lee County vision statement, Objective 1.5, Policy 1.5.1, Objective 107.1, Policy 107.2.13, Policy 113.1.1, Policy 113.1.2, Policy 113.1.5, Goal 114, Objective 114.1, Goal 115, and Objective 115.1.

The intent of Objective 14.1 and Policy 14.1.5 is to preserve wetlands from encroachment of development and create a 50-foot upland buffer between the development and associated wetlands that currently exist, with no impacts to those wetlands. Amending Policy 14.1.5 would provide an incentive through the Lee Plan to impact jurisdictional wetlands, by permitting the impacted areas to be used for commercial development. The proposed amendment to Policy 14.1.5 is not consistent with the Lee County Comprehensive Plan. The proposed amendment would also replace a clear standard that requires a 50-foot buffer from an existing wetland jurisdictional line, with a standard that is subject to an applicant's proposed wetland line as part of a State permitting process.

### **C. STAFF RECOMMENDATION**

Staff recommends that the Board of County Commissioners *not transmit* the proposed amendment to Lee Plan Policy 14.1.5.

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

DATE OF PUBLIC HEARING: March 28<sup>th</sup>, 2011

**A. LOCAL PLANNING AGENCY REVIEW**

Planning staff provided a brief summary of the proposed plan amendment request, including the proposed amendment to the Lee Plan, permitting history of the applicant's site, findings of fact, and staff recommendation. One member of the LPA stated that they were in agreement with staff findings and recommendation.

The applicant's attorney provided a presentation for the proposed amendment discussing permitting history, language of the proposed amendment with justification that it was based on planning rational but that the proposed language was also tailored to his client's property. The presentation included pictures of the wetlands on the applicant's property, and concluded that the wetlands are marginal and do not deserve the protections currently in the Greater Pine Island Community Plan. The applicant's representative stated that no other wetlands in Lee County are protected from impacts absolutely. Members of the LPA requested clarifications to the maps provided during the applicant's presentation. One member of the LPA stated that maybe there should be some flexibility within the Lee Plan policy.

One member of the public, representing the Greater Pine Island Civic Association, addressed the LPA concerning the proposed amendment. This member of the public conveyed that the Greater Pine Island Civic Association is not in favor of the exception to the protection of associated wetlands on Pine Island as proposed by the applicant. This member of the public also noted that there are plenty of properties in the Pine Island center zoned for commercial development, and that Lee County should not defer this issue to the state permitting process. One member of the LPA questioned if the required 50-foot native vegetated buffer should include marginal wetlands. The representative of the Greater Pine Island Civic Association responded that the interpretation of Policy 14.1.5 by staff is the way the policy was intended but that the association was not close minded. No other members of the public addressed the LPA concerning the proposed amendment and the public comment portion of the hearing was closed.

Staff pointed out that the Greater Pine Island Community Plan is clear about protection of wetlands associated with the surrounding aquatic preserves. Staff pointed out that Pine Island deals with the wetlands protection issue through planning and not through the permitting process. Staff also responded to the applicant's claim that wetlands are treated differently on Pine Island than they are throughout the rest of Lee County by pointing out that Pine Island is unique. Pine island is an island that is surrounded by state and federal aquatic preserves. Staff, the community and the Board of County Commissioners have found that the wetlands associated with these

aquatic preserves are deserving of enhanced protections. Staff also pointed out that the applicant’s property could be developed consistent with the Lee Plan as it stands today with a modified design. Staff also responded to the applicant’s claim that the wetlands proposed to be impacted on the site lacked ecological value because they are infested with exotic plant species by pointing out that the wetlands will improve if maintained and exotics are removed. One member of the LPA asked if the applicant would remove the exotics. Staff responded that the applicant would because exotic removal is a requirement of the Lee County Land Development Code.

One member of the LPA agreed that the aquatic preserves should be protected citing their importance to the fishing and tourism industry. This member also agreed that Pine Island currently has more commercial zoning than is needed.

A motion was made to recommend to not transmit the proposed amendment. One member of the LPA commented during discussion of the motion that the community and staff should be careful not to “draw a line in the sand” because there may be instances where it would be beneficial to impact some wetlands. Another member of the LPA said that staff did a good job with the staff report and that there should be concern about setting a precedent with the reduction of existing wetland protections.

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

**1. RECOMMENDATION:**

The LPA recommends that the Lee County Board of County Commissioners *not transmit* the proposed amendment.

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

The LPA accepted the basis and recommended findings of fact as advanced by staff.

**C. VOTE:**

<b>NOEL ANDRESS</b>	<b>AYE</b>
<b>CINDY BUTLER</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>
<b>JACK MEEKER</b>	<b>AYE</b>
<b>CAROL E. NEWCOMB-JONES</b>	<b>ABSENT</b>

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

DATE OF TRANSMITTAL HEARING: June 13<sup>th</sup>, 2011

**A. BOARD REVIEW:**

The staff provided a brief summary of the proposed text amendment. Staff does not believe that the proposed amendment, as currently worded, would be limited to only the applicant's property. There are currently several properties, or contiguous properties under single ownership that could be aggregated to be in excess of 25 acres with access to Pine Island Road. Staff stated that wetlands associated with state aquatic preserves on Pine Island help to filter surface water that flows directly into the Matlacha Pass Aquatic Preserve, the Pine Island Sound Aquatic Preserve, and the Gasparilla Sound – Charlotte Harbor Aquatic Preserve. - improving water quality. Staff provided that Pine Island is unique, as it is surrounded by state and federal aquatic preserves. Staff stated that in the past, staff, the community, and the Board of County Commissioners have found that the wetlands associated with these aquatic preserves are deserving of enhanced protections. Staff stated that removal of exotic plant species is a requirement of the Lee County LDC. Staff also noted that The Florida Department of Environmental Protection has found that seagrass beds have been negatively impacted by reduced light availability due to runoff from rapidly urbanizing coastal areas. In specific cases, such as on the applicants own property, the proposed amendment would create a mechanism that would allow development to fill wetlands associated with state-aquatic preserves. Staff stated that the proposed amendment could set a precedent, reducing the wetland protections elsewhere on Pine Island, such as Bokeelia or St. James City. Staff also stated that the applicant's property could be developed with the proposed uses consistent with the current Lee Plan with a modified design. Staff provided that the intent of Objective 14.1 and Policy 14.1.5 is to preserve wetlands from encroachment of development and create a 50-foot upland buffer between the development and associated wetlands that currently exist, with no impacts to those wetlands.

The applicant's representatives were invited to address the Board of County Commissioners. A local land use attorney provided two photographs from the Pine Tarr property. The applicant's representatives stated that the issue with the proposed amendment is whether the Board of County Commissioners should amend this policy to allow flexibility to Policy 14.1.5 that would allow impacts to certain wetlands associated with the adjacent aquatic preserves. This representative also provided two maps depicting the subject property's location and the property's jurisdictional wetlands. The representative stated that this issue goes back to 2003. At that time the Lee Plan was amended to require that the 50 buffer required between the aquatic preserves and development was also required between the wetlands associated with the aquatic preserves and development. The representative stated they had reviewed the legislative history and there was never any discussion that this change was going to prohibit all wetland removal for associated wetlands. The representative stated that this standard does not exist anywhere else in Lee County and does not leave any discretion thru the review process. The representative also stated that language could be drafted to be more site specific if the Board of County Commissioners desired. The representative asked for the amendment to be transmitted and that the applicant would work

with the staff and the civic association to draft compromise language. An additional local consultant next addressed the Board and discussed two site plans. The applicant's consultant stated that the site could not be designed in a way that would avoid all impacts to the wetlands associated with the aquatic preserves. This consultant also stated that the applicant would not be required to remove the exotic plant species based on the requirements of the Lee County Land Development Code.

A member of the public, representing the Greater Pine Island Civic Association, addressed the Board concerning the proposed amendment. This member of the public stated that the Civic Association was in agreement with the staff recommendation. For 20 years the Civic Association has been working for the protection of the island's wetlands. This member stated they were looking at existing wetland jurisdictional lines, not some line that can be re-negotiated. The staff has consistently interpreted this policy in the manner in which the Civic Association intended. The Hearing Examiner has upheld this interpretation as well. The Board has invoked this provision in the rezoning process. This member of the public also noted that there were several hundred acres of vacant commercially zoned land on Pine Island, and that impacts to wetlands associated with the aquatic preserves is not necessary and requested that the Board does not transmit the proposed amendment.

An employee of the applicant addressed the Board of County commissioners concerning the proposed amendment as a member of the public. The applicant stated that they had provided the Greater Pine Island Civic Association (GPICA) opportunity to comment on the proposed rezoning request and had received favorable comments.

A member of the public, representing the Little Pine Island Wetland Restoration and Mitigation Bank, addressed the Board concerning the proposed amendment. This member of the public stated that the Lee Plan was being interpreted to prohibit any impacts to wetlands on Pine Island. This member of the public expressed the opinion that the site plan proposed by the applicant represented a "net improvement" from current conditions based on the removal of exotic species that are currently in the wetlands.

The Board requested clarification that they could transmit the amendment and direct the applicant and staff to reach a compromise on the proposed Lee Plan amendment prior to the adoption hearing without committing to adoption of the proposed amendment. Staff and the County Attorney's Office responded that the Board could do that.

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

### **1. BOARD ACTION:**

The Board of County Commissioners voted to *transmit* the proposed amendment. The Board also provided direction to staff, the applicant and the citizens of Pine Island to work together to see if the policy could be refined to satisfy all parties involved and review the need for additional commercial properties on Pine Island.

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

The Board of County Commissioners did not accept the findings of fact as advanced by staff and the Local Planning Agency.

**C. VOTE:**

<b>BRIAN BIGELOW</b>	<b>AYE</b>
<b>TAMMARA HALL</b>	<b>AYE</b>
<b>RAY JUDAH</b>	<b>AYE</b>
<b>FRANK MANN</b>	<b>AYE</b>
<b>JOHN MANNING</b>	<b>AYE</b>

**PART V – REVIEWING AGENCIES’ OBJECTIONS,  
RECOMMENDATIONS, AND COMMENTS**

DATE OF DCA COMMENTS: July 29<sup>th</sup>, 2011

**A. COMMENTS FROM REVIEWING AGENCIES:**

One comment was received from the Florida Department of Environmental Protection (FDEP) concerning this proposed amendment. The comment and Lee County staff’s response are provided below:

Florida Department of Environmental Protection Comment:

*The Department is concerned about the effect that the proposed amendment to Policy 14.1.5 will have on the Matlacha Pass Aquatic Preserve, which is also designated as an Outstanding Florida Water (OFW). The aquatic preserve contains seagrass beds, oyster bars, beaches, salt marshes, mangroves and bottom communities that make it a productive part of the County’s marine ecosystem and a critical source of its economic vitality. Waters designated as OFWs are afforded a high level of protection under Florida law, including subsections 62-302.700(9) and 62-4.242(2), Florida Administrative Code. Under those provisions, activities that adversely impact the waters of an OFW are prohibited if they are not "clearly in the public interest."*

*The Department commends the County’s Environmental Sciences staff for its detailed review and analysis of the proposed changes to Policy 14.1.5. As transmitted, however, the proposed policy could allow impacts to approximately 25 acres of wetlands that buffer the aquatic preserve from development within the Pine Island Center Urban Community Area. We understand that during the transmittal hearing, the Lee County Board of County Commissioners directed the applicant, County staff and Pine Island citizens to work together to reach a mutually acceptable solution to address the environmental concerns raised by the proposed amendment prior to the adoption hearing.*

*The Department therefore recommends that the changes to Policy 14.1.5 be narrowed in scope to reduce potential adverse impacts to wetlands in undeveloped areas along the affected portions of Pine Island Road. The policy amendment should be crafted to conform to the determination of total wetland impacts and mitigation set forth in the South Florida Water Management District’s Environmental Resource Permit No. 36-06753-P.*

Staff Response

Staff does not agree with the Florida Department of Environmental Protection’s (FDEP) recommendation. The FDEP letter recommends that “*The policy amendment should be crafted to conform to the determination of total wetland impacts and mitigation set forth in the South Florida Water Management District’s Environmental Resource Permit No. 36-06753-P.*” Staff finds that the FDEP recommendation

would have the same effect as the amendment originally proposed by the applicant, which staff does not find to be consistent with the Lee Plan. The recommendation by the FDEP and the proposed amendment as transmitted would create more reliance on Florida rules and regulations as opposed to the self-determined provisions of the Lee Plan. The proposed amendment would also replace a clear standard (50-foot buffer from a real wetland jurisdictional line) with a standard that is subject to an applicant proposed wetland line that is part of the Environmental Resource Permit process.

**B. RESPONSE TO BOARD DIRECTION AT TRANSMITTAL HEARING:**

The Board of County Commissioners provided direction to staff, the applicant and the citizens of Pine Island to work together to see if the policy could be refined to satisfy all parties involved and review the need for additional commercial properties on Pine Island.

**Development of Possible Alternative Language**

County staff and the applicant's representatives met on July 19<sup>th</sup>, 2011. At this meeting the applicant's representatives discussed two concepts to modify the proposed amendment. Staff was not able to support the ideas that were discussed at this meeting and presented the applicant with a modification to the proposed amendment on August 30<sup>th</sup>, 2011. The language proposed by staff is below:

***POLICY 14.1.5:** New development, including "planned development" zoning approvals, new subdivisions, and agriculture, that adjoin state-designated aquatic preserves and associated wetlands and natural tributaries must preserve or create a 50-foot-wide native vegetated buffer area between the development and the waterbody or associated wetlands. This requirement will not apply to existing subdivided lots. For agriculture, this requirement:*

- *will be implemented through the notice-of-clearing process in chapter 14 of the Land Development Code;*
- *will include a requirement to use this area as a riparian forest buffer with an adjoining filter strip wherever farmland abuts wetlands; and*
- *if native vegetation does not currently exist, native tree cover will be established within three years of issuance of the notice of clearing.*

*An exception to the placement of the buffer maybe allowed to accommodate one Community Commercial shopping center. The shopping center must meet all of the following criteria:*

- *impact less than 1 acre of the associated wetlands;*
- *be located in Pine Island Center;*
- *be in the Urban Community Future Land Use Category;*
- *have access to Pine Island Road;*
- *be a Planned Development;*
- *be consistent with the size and floor area limitations of Community Commercial, as specified in Goal 6;*

*In addition to the listed criteria, the shopping center must create an onsite wetland mitigation area. The mitigation area must meet the following:*



- be at a ratio on 1.5 square feet for each square foot of impacted associated wetlands;
- consist of 100 % native wetland species;
- maintain a hydrologic connection with the remaining preserved associated wetlands; and,
- the required 50 foot buffer must be located between the development area and the created wetland.

The applicant provided staff with proposed changes to staff's language on September 6, 2011. The language as proposed by applicant is provided below.

An exception to the placement of the buffer may be allowed to accommodate one Community Commercial shopping center. The shopping center must meet all of the following criteria:

1. impact less than 1.5 acres of the associated wetlands;
2. impact only associated wetlands which consist primarily of exotic vegetation;
3. be located in Pine Island Center;
4. be in the Urban Community Future Land Use Category
5. have direct access to Pine Island Road;
6. be a Planned Development; and
7. be consistent with the size and floor area limitations of Community Commercial centers, as specified in Policy 6.1.2.

In addition to the listed criteria, the shopping center must provide an onsite wetland mitigation area, in addition to any other mitigation which may be required by state and federal agencies. Wetland mitigation, for purposes of this policy, is defined as wetland enhancement (treatment of exotic vegetation where such species constitute more than 75 percent cover), wetland restoration (re-establishment of historic wetland conditions in degraded wetlands), and wetland creation (creation of wetlands in degraded uplands). The mitigation area must meet the following standards:

1. the area must be at a ratio of a minimum of 1.5 square feet for each square foot of impacted associated wetlands;
2. all plantings must consist of 100% native wetland species;
3. a hydrologic connection must be maintained with the remaining preserved associated wetlands; and
4. the required 50 foot buffer must be located between the development area and the wetland mitigation area.

Staff shared the staff and applicant proposals with the Pine Island Community. Some provisions of the applicant's proposal are consistent with the Pine Island community objective of "no further degradation of estuarine and wetland resources and no unnecessary loss of native upland vegetation and wildlife habitat." However, other provisions would allow for a net loss of wetlands associated with the adjacent aquatic preserves which would degrade estuarine and wetland resources. Staff has incorporated the provisions that are consistent with the Greater Pine Island Community Plan below:

**POLICY 14.1.5:** *New development, including "planned development" zoning approvals, new subdivisions, and agriculture, that adjoin state-designated aquatic preserves and associated wetlands and natural tributaries must preserve or create a 50-foot-wide native vegetated buffer area between the development and the waterbody or associated wetlands. This requirement will not apply to existing subdivided lots. For agriculture, this requirement:*

- *will be implemented through the notice-of-clearing process in chapter 14 of the Land Development Code;*
- *will include a requirement to use this area as a riparian forest buffer with an adjoining filter strip wherever farmland abuts wetlands; and*
- *if native vegetation does not currently exist, native tree cover will be established within three years of issuance of the notice of clearing.*

*An exception to the placement of the buffer maybe allowed to accommodate one Community Commercial shopping center. The shopping center must meet all of the following criteria:*

- *impact less than 1.5 acres of the associated wetlands;*
- *impact only associated wetlands that consist primarily of exotic vegetation;*
- *be located in Pine Island Center;*
- *be in the Urban Community Future Land Use Category;*
- *have direct access to Pine Island Road;*
- *be a Planned Development;*
- *be consistent with the size and floor area limitations of Community Commercial, as specified in Goal 6;*

*In addition to the listed criteria, the shopping center must create an onsite wetland area. The created wetland area must meet the following standards:*

- *must be 1.5 square feet for each square foot of impacted associated wetlands;*
- *all plantings must consist of 100 % native wetland species;*
- *maintain a hydrologic connection with the remaining preserved associated wetlands; and,*
- *the required 50 foot buffer must be located between the development area and the created wetland area.*

### **Analysis of Need for Commercial Properties**

Additionally staff reviewed the commercially zoned properties that are within the Greater Pine Island Community (See Attached Map). Staff found that there are 754 acres that are zoned for commercial uses within Greater Pine Island. Next staff reviewed the properties that are zoned for commercial development to determine if these properties had been previously developed, or if they were vacant properties. Staff determined that of the 754 acres that are zoned for commercial uses 421 acres are vacant. This is consistent with an earlier study completed by Lee County in 1989. At the time the earlier study was completed there were 602 acres of commercially zoned lands within Greater Pine Island. This study also indicated that there was an over allocation of commercial properties on Pine Island based on the need of the projected population. Staff does not find there is need to amend the Lee Plan to

permit additional commercial development at the expense of wetlands associated with the adjacent aquatic preserves.

**C. STAFF RECOMENDATION:**

Staff recommends that the Board of County Commissioners *not adopt* the proposed amendment to Lee Plan Policy 14.1.5.

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

DATE OF ADOPTION HEARING: September 28<sup>th</sup>, 2011

CONTINUED DATE: October 19<sup>th</sup>, 2011

CONTINUED DATE: December 14<sup>th</sup>, 2011

**A. BOARD REVIEW:**

September 28<sup>th</sup>, 2011

Staff provided a brief presentation to the Board of County Commissioners for the proposed amendment. Staff's initial recommendation to the Board of County Commissioners was to deny the proposed amendment. During the public input portion of the hearing concerns were expressed regarding wetland impacts and other changes proposed to Policy 14.1.5. Questions were raised concerning the possibility of mangroves being impacted with adoption of the amendment and if exotics would be removed from the site. There was also concern that the inability to impact wetlands would mean that degraded wetlands would not be restored or improved. The Board asked several questions of staff and of members of the public.

The Board did not agree with the findings that were advanced by staff and the Local Planning Agency. The Board found that limited impacts could be made to wetlands associated with the adjacent aquatic preserves by development that would not result in negative impacts to the natural environment. The Board voted 5 – 0 to continue the hearing and directed staff to work with the various participants to try to come up with revisions to the language agreeable to all parties. The Hearing was continued to October 19, 2011.

October 19<sup>th</sup>, 2011

The continued Pine Tarr Adoption Hearing was held on October 19, 2011. Staff presented proposed language to the Board that was agreeable to staff and the applicant. However, concerns were still being raised by the public. Concerns raised by the public included wetland impacts, exotic removal, and mangrove preservation. The Board directed staff to continue to work with the various parties to keep the integrity of the Pine Island Plan intact while allowing for development to occur that is beneficial to the residents of Pine Island. In addition, staff was also directed to address preservation for all mangroves and restoration of exotic wetlands on Pine Island.

The Board voted 5 – 0 to continue the hearing and directed staff to continue to work with the applicant, Greater Pine Island Civic Association, Little Pine Island Mitigation Bank, and Conservancy of Southwest Florida to come up with revisions to the proposed language agreeable to all parties. The Hearing was continued to December 14, 2011.

### Subsequent Coordination

In furtherance of Board direction, staff met several times as well as continued communication with the applicant and other interested parties to understand and address their expressed concerns. These concerns included addressing mangrove impacts, restoration of exotics and a solution satisfactory to all parties that would apply to a broader area of Pine Island. Several drafts of the proposed language was circulated for comments. On December 5<sup>th</sup>, a final meeting was held with staff, and representatives of the applicant, Greater Pine Island Civic Association, Little Pine Island Mitigation Bank, and the Conservancy of Southwest Florida. All parties agreed on compromised language that should be presented to the Board of County Commissioners for approval, although some believed that there were unresolved issues that remained. At this meeting it was proposed that the following amendments would be recommended for adoption.

***POLICY 14.1.5:*** *New development, including "planned development" zoning approvals, new subdivisions, and agriculture, that adjoin state-designated aquatic preserves and associated wetlands and natural tributaries must preserve or create a 50-foot-wide native vegetated buffer area between the development and the waterbody or associated wetlands. This requirement will not apply to existing subdivided lots. For agriculture, this requirement:*

- *will be implemented through the notice-of-clearing process in chapter 14 of the Land Development Code;*
- *will include a requirement to use this area as a riparian forest buffer with an adjoining filter strip wherever farmland abuts wetlands; and*
- *if native vegetation does not currently exist, native tree cover will be established within three years of issuance of the notice of clearing.*

*The placement and width of the 50 foot vegetated buffer can be modified to accommodate development; however, the development must meet all of the following criteria:*

- *impact less than 1.5 acres of the associated wetlands; and,*
- *the impacted area must consist primarily of exotic vegetation; and,*
- *avoid all impacts to mangrove swamps and tidal flats (FLUCCS Code 612 and 651); and,*
- *be in the Urban Community Future Land Use Category; and,*
- *be a Planned Development.*

*In addition to the listed criteria, the development must create an onsite wetland area. The created wetland area must meet the following:*

- *must be a minimum of 1.5 square feet for each square foot of impacted associated wetlands; and,*
- *consist of 100 % native wetland species; and,*

- consist of 6' wetland trees to be planted 15' on center and 3 gallon wetland shrubs planted 3' on center; and,
- maintain a hydrologic connection with the remaining preserved associated wetlands; and,
- the wetland creation area may be comprised of planted dry detention, filter marsh or other similar green infrastructure techniques; and,
- the created wetlands are not intended to replace any state or federal required offsite mitigation for permitted impacts to wetlands.

December 14<sup>th</sup>, 2011

The Board of County Commissioners started the continued adoption hearing by requesting input from the public. Four members of the public addressed the Board concerning the proposed amendment. All members of the public expressed support for the proposed amendment, however the Little Pine Island Mitigation Bank requested a Board initiated amendment to continue review of wetland impacts on Pine Island. One member of the Board requested clarification from staff concerning the need for an additional amendment. Staff opined that an additional amendment was not necessary. A motion was made to adopt the amendment to Policy 14.1.5 as shown above.

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

**1. BOARD ACTION:**

The Board voted to *adopt* the proposed amendment as part of the Consent Agenda.

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

The Board did not accept the findings of fact as advanced by staff and the Local Planning Agency, and requested that staff develop policy language to allow flexibility to the protection of associated wetlands with development that benefits Pine Island. The Board found that limited impacts could be made to wetlands associated with the adjacent aquatic preserves by development that would not result in negative impacts to the natural environment.

**C. VOTE:**

<b>BRIAN BIGELOW</b>	<b>AYE</b>
<b>TAMMARA HALL</b>	<b>AYE</b>
<b>RAY JUDAH</b>	<b>AYE</b>
<b>FRANK MANN</b>	<b>AYE</b>
<b>JOHN MANNING</b>	<b>AYE</b>