

To Janet



# Southwest Florida Regional Planning Council

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March 29, 2013

Mr. D. Ray Eubanks  
Administrator  
Plan Review and Processing  
Department of Economic Development  
Caldwell Building  
107 East Madison – MSC 160  
Tallahassee, Florida 32399-0800

**RECEIVED**  
APR 02 2013

COMMUNITY DEVELOPMENT

**Re: Lee County / DEO 13-1ESR**

Dear Mr. Eubanks:

The staff of the Southwest Florida Regional Planning Council has reviewed the proposed amendments (DEO 13-1ESR) to the Lee Plan. The review was performed according to the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act.

The Council will review the proposed amendments to the Lee Plan and the staff recommendations at its April 18, 2013 meeting. Council staff has recommended that Council find the requested changes procedural because the changes are a result of directives of the FAA and regionally significant because the changes impacts regional facilities found in the Strategic Regional Policy Plan (SRPP). Council staff is also recommending that the proposed changes are consistent with the SRPP and do not produce extra-jurisdictional impacts that are inconsistent with the comprehensive plans of other local governments, and are consistent with the Strategic Regional Policy Plan.

A copy of the official staff report explaining the Council staff's recommendation is attached. If Council action differs from the staff recommendation, we will notify you.

Sincerely,

**Southwest Florida Regional Planning Council**

Margaret Wuerstle, AICP  
Executive Director

MW/DEC  
Attachment

Cc: Mr. Paul O'Connor, AICP, Planning Division Director, Lee County

**LOCAL GOVERNMENT COMPREHENSIVE PLAN AMENDMENTS  
LEE COUNTY**

The Council staff has reviewed proposed changes to the Lee County Growth Management Plan (DEO 13-1ESR). A synopsis of the requirements of the Act and Council responsibilities is provided as Attachment I. Comments are provided in Attachment II. Site location maps can be reviewed in Attachment III.

Staff review of the proposed amendments was based on whether they were likely to be of regional concern. This was determined through assessment of the following factors:

1. Location--in or near a regional resource or regional activity center, such that it impacts the regional resource or facility; on or within one mile of a county boundary; generally applied to sites of five acres or more; size alone is not necessarily a determinant of regional significance;
2. Magnitude--equal to or greater than the threshold for a Development of Regional Impact of the same type (a DRI-related amendment is considered regionally significant); and
3. Character--of a unique type or use, a use of regional significance, or a change in the local comprehensive plan that could be applied throughout the local jurisdiction; updates, editorial revisions, etc. are not regionally significant.

A summary of the results of the review follows:

<u>Proposed Amendment</u>	<u>Location</u>	<u>Factors of Regional Significance</u>		
		<u>Magnitude</u>	<u>Character</u>	<u>Consistent</u>
DEO 13-1ESR (CPA 2011-22)	no	no	yes	(1) procedural (2) regionally significant; and (3) consistent with SRPP

**RECOMMENDED ACTION:** Approve staff comments. Authorize staff to forward comments to the Department of Economic Opportunity and Lee County.

**COMMUNITY PLANNING ACT**

**Local Government Comprehensive Plans**

The Act requires each municipal and county government to prepare a comprehensive plan that must include at least the following nine elements:

1. Future Land Use Element;
2. Traffic Circulation Element;  
A local government with all or part of its jurisdiction within the urbanized area of a Metropolitan Planning Organization shall prepare and adopt a transportation element to replace the traffic circulation; mass transit; and ports, aviation, and related facilities elements. [9J-5.019(1), FAC]
3. General Sanitary Sewer, Solid Waste, Drainage, and Potable Water and Natural Groundwater Aquifer Recharge Element;
4. Conservation Element;
5. Recreation and Open Space Element;
6. Housing Element;
7. Coastal Management Element for coastal jurisdictions;
8. Intergovernmental Coordination Element; and
9. Capital Improvements Element.

The local government may add optional elements (e. g., community design, redevelopment, safety, historical and scenic preservation, and economic).

All local governments in Southwest Florida have adopted revised plans:

Charlotte County, Punta Gorda  
Collier County, Everglades City, Marco Island, Naples  
Glades County, Moore Haven  
Hendry County, Clewiston, LaBelle  
Lee County, Bonita Springs, Cape Coral, Fort Myers, Fort Myers Beach, Sanibel  
Sarasota County, Longboat Key, North Port, Sarasota, Venice

## **Comprehensive Plan Amendments**

A local government may amend its plan at any time during the calendar year. Six copies of the amendment are sent to the Department of Economic Opportunity (DEO) for review. A copy is also sent to the Regional Planning Council, the Water Management District, the Florida Department of Transportation, and the Florida Department of Environmental Protection.

The proposed amendments will be reviewed by DEO in two situations. In the first, there must be a written request to DEO. The request for review must be received within forty-five days after transmittal of the proposed amendment. Reviews can be requested by one of the following:

- the local government that transmits the amendment,
- the regional planning council, or
- an affected person.

In the second situation, DEO can decide to review the proposed amendment without a request. In that case, DEO must give notice within thirty days of transmittal.

Within five working days after deciding to conduct a review, DEO may forward copies to various reviewing agencies, including the Regional Planning Council.

### **Regional Planning Council Review**

The Regional Planning Council must submit its comments in writing within thirty days of receipt of the proposed amendment from DEO. It must specify any objections and may make recommendations for changes. The review of the proposed amendment by the Regional Planning Council must be limited to "effects on regional resources or facilities identified in the Strategic Regional Policy plan and extra-jurisdictional impacts which would be inconsistent with the comprehensive plan of the affected local government.

After receipt of comments from the Regional Planning Council and other reviewing agencies, DEO has thirty days to conduct its own review and determine compliance with state law. Within that thirty-day period, DEO transmits its written comments to the local government.

**NOTE: THE ABOVE IS A SIMPLIFIED VERSION OF THE LAW. REFER TO THE STATUTE (CH. 163, FS) FOR DETAILS.**

**SOUTHWEST FLORIDA REGIONAL PLANNING COUNCIL**  
**LOCAL GOVERNMENT COMPREHENSIVE PLAN REVIEW**  
**FORM 01**

Pursuant to Section 163.3184, Florida Statutes, Council review of proposed amendments to local government Comprehensive Plans is limited to adverse effects on regional resources and facilities identified in the Strategic Regional Policy Plan and extra-jurisdictional impacts that would be inconsistent with the Comprehensive Plan of any affected local government within the region. A written report containing the evaluation of these impacts, pursuant to Section 163.3184, Florida Statutes, is to be provided to the local government and the State land planning agency within 30 calendar days of receipt of the amendment.

**LOCAL GOVERNMENT:**

Lee County

**DATE AMENDMENT RECEIVED:**

March 12, 2013

**DATE AMENDMENT MAILED TO LOCAL GOVERNMENT AND STATE:**

March 29, 2013

**1. AMENDMENT NAME**

Port Authority Hazardous Wildlife Update (CPA 2011-22)

**2. DESCRIPTION OF AMENDMENT(S):**

Based on the following findings and facts, the Lee County Port Authority requested changes to the Lee Plan to make the Plan consistent with Federal and State requirements to reduce hazardous wildlife on airport property.

- Federal Aviation Administration (FAA) Certalert #09-10, issued June 11, 2009, directed airport operators to avoid wildlife hazards and hazardous wildlife attractants on airport properties;
- Lee Plan Policy 1.2.1, Policy 1.2.7, and Policy 1.9.8 are inconsistent with the Lee Plan Wildlife Hazard Mitigation Plan;
- The Board of Port Commissioners requested this plan amendment at the April 24, 2012 Lee County Port Authority Airports Special Management Committee Meeting;
- The Board of County Commissioners initiated this plan amendment on June 19, 2012 as requested by the Lee County Port Authority;

- Lee County Port Authority prepared a “Wildlife Hazard Management Plan” which was approved by the FAA in 2011; and
- Lee County and the Lee County Port Authority have properties set aside to mitigate future impacts to environmental features at Page Field and Southwest Florida International Airport. As these properties are used for mitigation purposes they will be added to the Airport Mitigation Lands Overlay on Map 3M.

To achieve the goal of making the Lee Plan consistent with Federal and State requirements to reduce hazardous wildlife on airport property, changes to Policy 1.2.1, Policy 1.2.7, and Policy 1.9.8 of the Lee Plan are being requested in this Lee Plan amendment. The specific changes to the above Lee Plan policies are shown below with strikeout for the text that is to be removed and underline for the text that is being added:

**POLICY 1.2.1:** Airport Lands include the existing facility and projected growth areas for the Southwest Florida International Airport and Page Field General Aviation Airport through the year 2030. The Airport Lands comprising the Southwest Florida International Airport includes airport and airport-related development as well as non-aviation land uses as proposed in the approved 2003 Airport Master Plan update and as depicted on the Airport Layout Plan sheet (Map 3F) and the Southwest Florida International Airport Proposed Development Schedule (Table 5(a)). This mix of uses is intended to support the continued development of the Southwest Florida International Airport. Future development at the Southwest Florida International Airport will also include non-aviation related land uses such as hotels/motels, light industrial, service stations, retail/shopping, and office development. Any future airport expansion or development of aviation-related and non-aviation uses at Southwest Florida International Airport will offset environmental impacts through the Airport Mitigation Lands Overlay (Map 3M) or other appropriate ~~mitigation acceptable to the permitting agencies and to Lee County.~~ mitigation acceptable to the permitting agencies and to Lee County. The physical design of the airport expansion will minimize any degradation of the recharge capability of land being developed. Wetland mitigation for any future expansion or development of aviation and non-aviation uses on Airport Lands must be designed so it does not create a wildlife hazard. Development and land management practices on airport property will be in accordance with FAA directives and other required agency approvals. Airport expansion beyond the present boundaries will be subject to necessary amendments to the Lee Plan.

All development on Airport Lands comprising Southwest Florida International Airport must be consistent with Map 3F and Table 5(a). Map 3F depicts the planned expansion of the Southwest Florida International Airport through 2020.

Future development on Airport Lands comprising Page Field General Aviation Airport must be consistent with Objective 1.9 and related policies as well as Map 3G and Table 5(b). If the airport master planning process precipitates a substantive change to the Airport Layout Plan (Map 3F or Map 3G ), then the Port Authority must amend Map 3F or Map 3G, as appropriate, prior to obtaining local development approval.

The non-aviation related development areas have been depicted on the approved Airport Layout Plan sheets (Maps 3F and 3G). These uses will be constructed upon Airport lands with long term leases. All development within the non-aviation land use areas will be subject

to mitigation requirements for wetland impacts. Mitigation of wetland impacts will be in accordance with the U.S. Army Corps of Engineers and South Florida Water Management District requirements. ~~To the greatest extent reasonably possible, development of non-aviation land use areas must avoid wetland impacts.~~ All non-aviation land use development will meet the indigenous vegetation requirements set forth in the Lee County Land Development.

### **Southwest Florida International Airport**

**POLICY 1.2.7:** ~~Future non-aviation areas depicted on the Airport Layout Plan (Map 3F) will be developed, to the greatest extent possible, only within existing upland areas. Impacts to wetlands in the future non-aviation areas will be minimized by site design, whenever possible, in compliance with the Lee County Land Development Code. In cooperation with local, state, and Federal regulatory agencies, the Port Authority will work to minimize and correct any wildlife hazards arising from existing wetlands located on airport property. Site improvements on airport property will be designed to minimize attractiveness to wildlife of natural areas and man-made features on airport property such as detention/retention ponds, landscaping, and wetlands, which can provide wildlife with ideal locations for feeding, loafing, reproduction, and escape.~~ Development within the non-aviation area, as designated on Map 3F, is limited to a maximum of 300 acres north of runway 6-24 and approximately 52 acres within the midfield terminal area. All development must be in compliance with Map 3F and the intensities outlined in Table 5(a). Development of additional acreage will require prior Lee Plan amendment approval.

### **Page Field General Aviation Airport**

**POLICY 1.9.8:** ~~Future non-aviation areas depicted on the Airport Layout Plan (Map 3G) will be developed, to the greatest extent possible, within existing upland areas. Impacts to wetlands in the future non-aviation areas will be minimized by site design whenever possible in compliance with the Lee County Land Development Code. In cooperation with local, state, and Federal regulatory agencies, the Port Authority will work to minimize and correct any wildlife hazards arising from existing wetlands located on airport property. Site improvements on airport property will be designed to minimize attractiveness to wildlife of natural areas and man-made features on airport property such as detention/retention ponds, landscaping, and wetlands, which can provide wildlife with ideal locations for feeding, loafing, reproduction, and escape.~~

## **3. ADVERSE EFFECTS TO SIGNIFICANT REGIONAL RESOURCES AND FACILITIES IDENTIFIED IN THE STRATEGIC REGIONAL POLICY PLAN:**

The Lee County Port Authority (LCPA) operates Lee County-owned aviation facilities under the direction of the Lee County Board of Port Commissioners. The two aviation facilities owned by Lee County are Page Field General Aviation Airport (Page Field) and Southwest Florida International Airport (SWFIA). Both airports are included within the U.S. Department of Transportation's National Plan of Integrated Airport System (NPIAS) and the Florida Aviation System Plan (FASP).

Although SWFIA serves as the Port Authority's only commercial service airport with Page Field serving as a Regional Reliever airport, both SWFIA and Page Field are operated according to most of the same rules and regulations of Federal, state, and local agencies. General descriptions of these regulations are provided below:

**Federal:** The U.S. Department of Transportation Federal Aviation Administration (FAA) is responsible for regulating civil aviation throughout the United States. The FAA issues regulations (Code of Federal Regulations or "CFR") and guidance for all aspects of aviation facility operation and development that must be followed by airport operators. The primary objective of FAA regulations and guidance is public safety.

In order to operate a commercial service facility, the FAA issues CFR Part 139 Certifications, which authorize and govern airport operations. A significant source of funding for airport facility operations is derived from the FAA. The certification that authorizes an airport's operation and the supplemental grant funding both issued by the FAA are contingent on the airport operator's compliance with FAA regulations and guidance issued through Advisory Circulars (AC) and Certalerts. AC 15015200-33B dated August 28, 2007, Certalert Number 06-07 dated November 21, 2006, and Certalert Number 09-10 dated June 11, 2009 direct airport operator activity in regard to avoidance of wildlife hazards and hazardous wildlife attractants on or near airports.

**State:** Florida Statutes and the Florida Administrative Code establish standards for the operation, location, and compatibility of airports throughout Florida. The Florida Department of Transportation issued an "Airport Compatible Land Use Guidebook" in March 2010 which outlines how airport development should be managed to comply with compatibility standards. Florida Administrative Code Rule 68A-9.012 became effective July 27, 2010 which allows any airport to take wildlife on airport property for safety purposes.

**Local:** Lee County governs local land use and development order procedures through the goals, objectives, policies, and standards in the Lee Plan, Land Development Code, and administrative codes. The coordination of airport planning occurs at the local level through the incorporation of the Airport Master Plans: Map 3F for SWFIA, and Map 3G for Page Field which were adopted consistent with FAA Advisory Circular 15015070-6B "Airport Master Plans," and incorporated in the Lee Plan. Policy 1.2.1, Policy 1.2.7, and Policy 1.9.8 in part require non-aviation development on airport properties to develop within upland areas so as to avoid any impacts to wetlands that are found on airport properties.

Page Field consists of 587.50 acres just south of the City of Fort Myers, and SWFIA occupies approximately 6,366 acres east of Treeline Avenue, south of Daniels Parkway and north of Alico Road. Both airports contain land areas within their respective boundaries for aviation related and non-aviation related uses. Current Lee Plan Policy allows for impacts to wetlands (with appropriate offsite mitigation) in the aviation areas as depicted on Maps 3F and 3G. However, areas that are depicted on these maps in the non-aviation areas are required to avoid wetland impacts by building only on the upland portions of the property. This is inconsistent with state and federal guidance to reduce hazardous wildlife attractants on the airport properties.



An important aspect of governmental planning activities is the promotion of general welfare, health, and safety of the public. From the Federal level to the local level, public safety is a primary principle of planning and policy development. Materials provided by the applicant outlines Federal and state policies that address public safety concerns with wildlife hazards and hazardous wildlife attractants. Lee County staff has worked with the Port Authority to develop the proposed Lee Plan amendment, which will make Policy 1.2.1, Policy 1.2.7, and Policy 1.9.8 consistent with the requirements of the Federal and state governments.

The proposed amendments affect the development regulations only in the non-aviation areas of Southwest Florida International Airport and Page Field General Aviation Airport. The proposed amendment would make development requirements in the non-aviation areas similar to the requirements of airport-related development areas in that wetlands and other hazardous wildlife attractants could be impacted with off-site mitigation. The proposed amendments to Policy 1.2.1, 1.2.7, and Policy 1.9.8 do not propose any new development. All future development approvals will be obtained through the appropriate permitting agency.

Lee County staff identified the following factors that justify allowing impacts to wetlands on airport properties.

1. RSW is a certificated airport as established by the Federal Aviation Administration (FAA) under Code of Federal Regulation (CFR) Title 14 Federal Aviation Regulation (FAR) Part 139 - Certification of Airports; as such the airport must comply with FAA regulations. FAR Part 139.337 Wildlife Hazard Management requires airports to conduct Wildlife Hazard Assessments (WHA), if certain criteria are met. RSW completed a WHA in 2009. The WHA was presented to the FAA in December of the same year. In January 2010, the FAA approved the RSW WHA without any changes and recommended that a Wildlife Hazard Management Plan (WHMP) be written and submitted for their approval. The Lee County Port Authority submitted a Wildlife Hazard Management Plan to the FAA, and received notice of its approval in September of 2011;
2. Florida Statute 379.2293 declares that airports have the ability to manage wildlife hazards necessary to prevent jeopardy to human life and aircraft safety consistent with the airport's Wildlife Hazard Mitigation Plan, as approved by the FAA; and
3. Lee County has lands available for offsite mitigation of impacts to wetlands within Southeast Lee County. These lands are identified on Lee Plan Map 3M and more fully described in Lee Plan Policy 1.7.11. Policy 1.7.11 states in part that "(Map 3M) depicts lands owned by Lee County that were acquired for the purpose of mitigating environmental impacts attributable to development of the Southwest Florida International Airport."

Council staff concurs with the Port Authority and the Lee County Staff that the primary objective of local regulations affecting airport properties is a matter of public safety including the avoidance of wildlife hazards and hazardous wildlife attractants on airport properties.

Council staff has reviewed the proposed map and text amendments to the Lee County Comprehensive Plan and finds that the proposed changes is provided for in updated airport land use map overlays in order to properly manage airport wetlands to minimize potential wildlife hazards to flights using the regional airport facilities. The proposed changes are important for the health, safety and welfare of population of the region. Based on the fact that the requested policy changes to the Lee Plan are the results of directives from the FAA and in order to be in compliance with FAA regulations, Council staff finds the proposed amendments are procedural in nature and do not adversely affect any significant regional resources or facilities that are identified in the Strategic Regional Policy Plan.

**4. EXTRA-JURISDICTIONAL IMPACTS INCONSISTENT WITH THE COMPREHENSIVE PLANS OF LOCAL GOVERNMENTS WITHIN THE REGION**

Council staff has reviewed the proposed amendments with respect to extra-jurisdictional impacts on surrounding local government Comprehensive Plans and finds that the proposed amendments do not negatively impact and are not inconsistent with adjacent local governmental Comprehensive Plans.

**Request a copy of the adopted version of the amendment?  Yes  No**

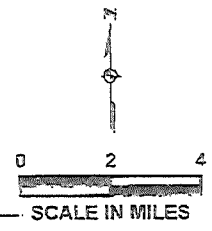
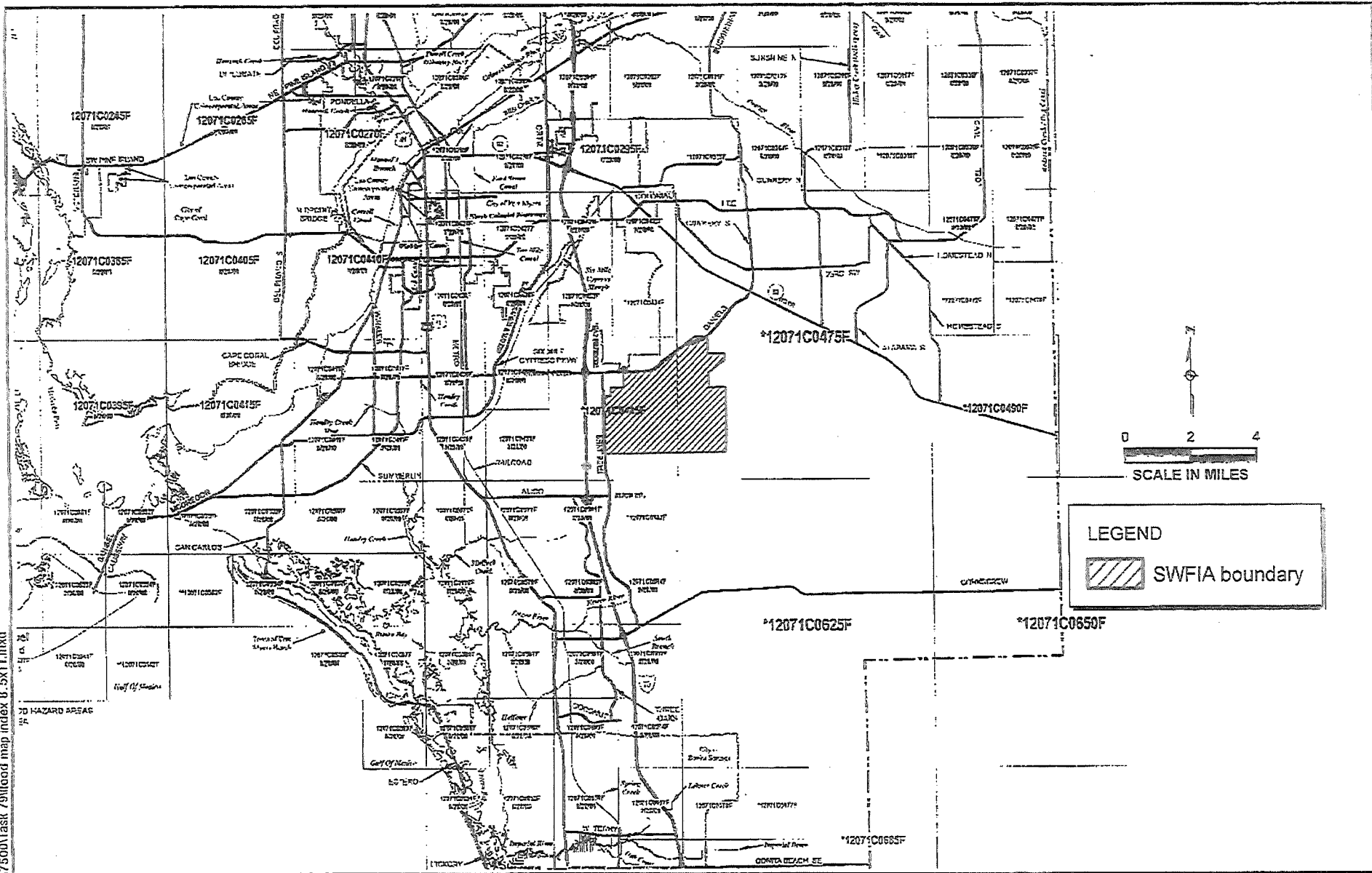
**Attachment III**

# **Maps**


**Lee County  
DEO 13-1ESR**

**Growth Management Plan  
Comprehensive Plan Amendments**

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**LEGEND**

 SWFIA boundary

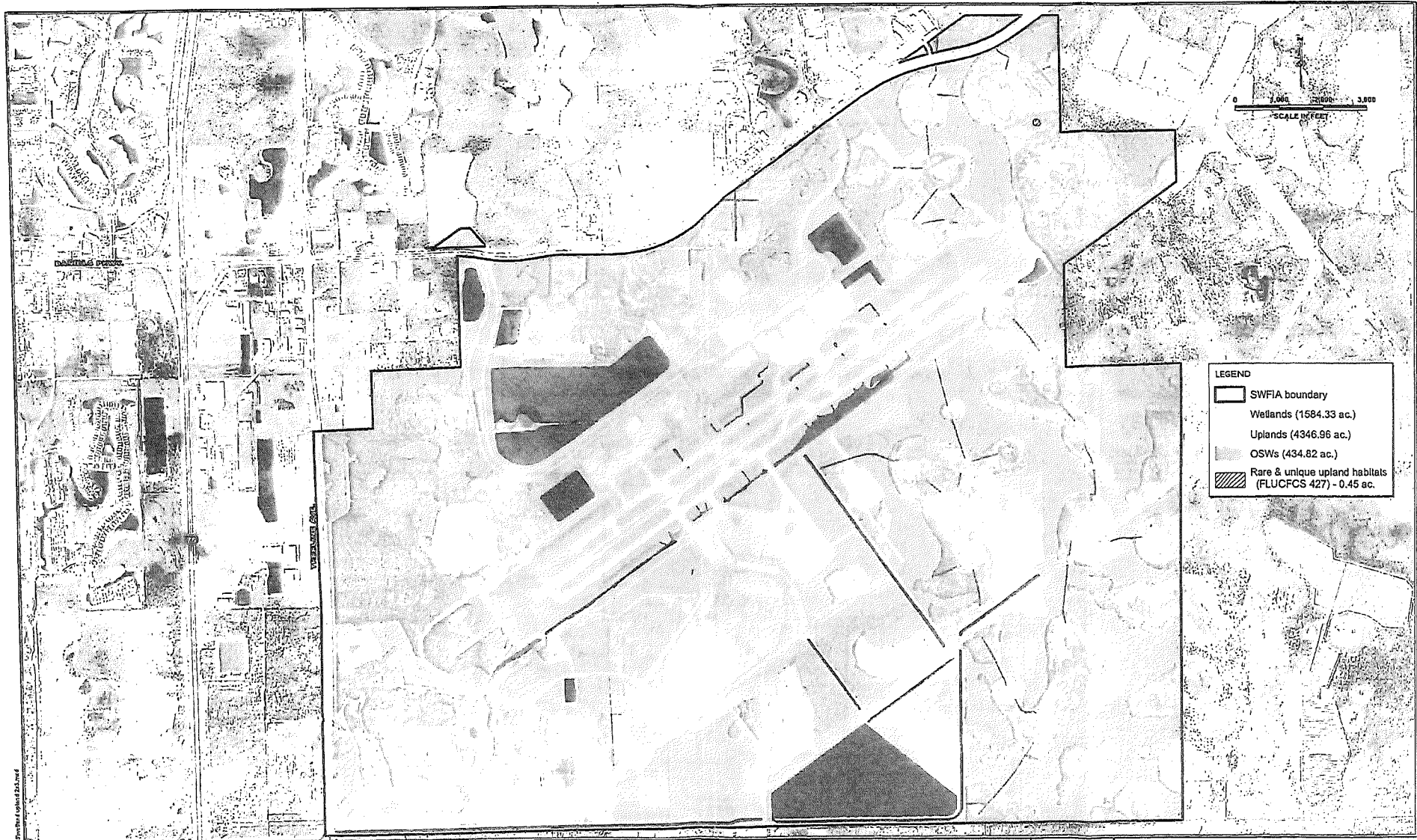
Comprehensive Plan  
Amendment  
Lee County, Florida








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E.B. #642 & L.B. #542

Flood Map Index  
Exhibit IV.C.RSW.4.2

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
March 2012	20087500-079	-	As Shown	IV C RSW 4 2



**LEGEND**

-  SWFIA boundary
-  Wetlands (1584.33 ac.)
-  Uplands (4346.96 ac.)
-  OSWs (434.82 ac.)
-  Rare & unique upland habitats (FLUCFCS 427) - 0.45 ac.

REVISIONS

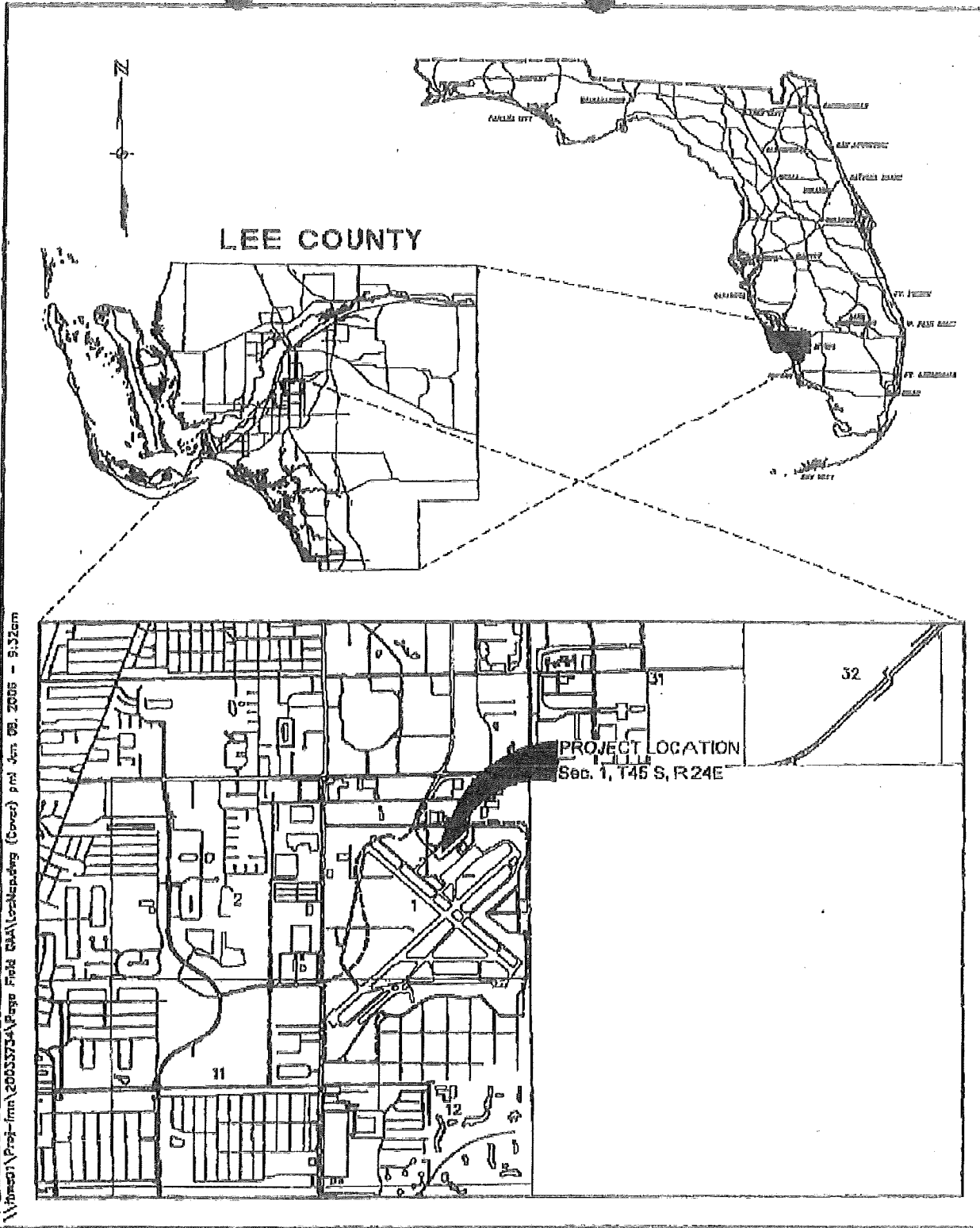
**NOTES**  
 The aerial photograph shown was taken in 2011 and was provided by Lee County government.

Comprehensive Plan Amendment  
 Lee County, Florida

**JOHNSON ENGINEERING**

2122 JOHNSON STREET  
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 PHONE: (239) 334-0066  
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 E.B. #042

Wetland / Upland Map Exhibit IV.C.RSW.5.1				
DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
March 2012	2008760-078	-	As Shown	IV.C.RSW.5.1



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**JOHNSON**  
**ENGINEERING**

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 C.D. #642 & L.B. #842

Page Field  
 Location Map

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
Sept. 2004	21033734		N.T.S.	Figure 1-1

