

**LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
2013 REGULAR LEE PLAN AMENDMENTS  
TRANSMITTAL/ADOPTION HEARING**

**COMMISSION CHAMBERS  
2120 MAIN STREET**

**JANUARY 22, 2014  
9:30 A.M.**

**AGENDA**

**1. Call to order; Certification of Affidavit of Publication**

**2. Consideration and Motion for Transmittal:**

- A. **[CPA2013-07: Wellfield Protection.](#)** This amendment proposes two changes to the Lee Plan. The first change, following a request by the South Florida Water Management District (SFWMD), removes language in the Plan pertaining to SFWMD permitting authority. The second change updates the Lee Plan Map that identifies Lee County Utility wells and their associated protection zones which identify adjacent lands needed to protect the public water supply.

**3. Consideration and Motion for Adoption:**

- A. **[CPA2013-02: Agricultural Rezoning in Suburban Areas.](#)** Amend Policy 9.2.1 to allow rezoning to Agricultural land uses in the Suburban land use categories in the Greater Pine Island and Caloosahatchee Shores planning areas.
- B. **[CPA2013-03: Southwest Florida International Airport Layout Plan Update.](#)** Amend Lee Plan Map 3(f) to incorporate the Airport Layout Plan (ALP) for Southwest Florida International Airport that was recently adopted by the Federal Aviation Administration (FAA).
- C. **[CPA2013-05: University Community DRI Requirement.](#)** Amend Policy 18.1.5, Policy 18.1.16, and Policy 18.2.2 to make the Lee Plan consistent with State requirements that prohibit local governments from requiring Development of Regional Impact (DRI) review for projects that don't meet or exceed state established thresholds.

**4. Motion to Adjourn**

**CPA2013-02**  
**POLICY 9.2.1.**

**LEE COUNTY ORDINANCE NO. \_\_\_\_\_**  
**AG REZONING IN SUBURBAN AREAS**  
**(CPA2013-00002)**

**AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE PLAN, COMMONLY KNOWN AS THE “LEE PLAN,” ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENTS PERTAINING TO AG REZONING IN SUBURBAN AREAS – POLICY 9.2.1 (CPA2013-00002) APPROVED DURING A PUBLIC HEARING; PROVIDING FOR PURPOSE, INTENT, AND SHORT TITLE; AMENDMENTS TO ADOPTED TEXT; LEGAL EFFECT OF “THE LEE PLAN”; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER’S ERRORS, AND AN EFFECTIVE DATE.**

WHEREAS, the Lee County Comprehensive Plan (“Lee Plan”) Policy 2.4.1. and Chapter XIII, provides for adoption of amendments to the Plan in compliance with State statutes and in accordance with administrative procedures adopted by the Board of County Commissioners (“Board”); and,

WHEREAS, the Board, in accordance with Section 163.3181, Florida Statutes, and Lee County Administrative Code AC-13-6 provide an opportunity for the public to participate in the plan amendment public hearing process; and,

WHEREAS, the Lee County Local Planning Agency (“LPA”) held a public hearing on the proposed amendments in accordance with Florida Statutes and the Lee County Administrative Code on September 23, 2013; and,

WHEREAS, the Board held a public hearing for the transmittal of the proposed amendment on October 21, 2013. At that hearing, the Board approved a motion to send, and did later send, proposed amendments pertaining to Policy 9.2.1, Ag Rezoning in Suburban Areas (CPA2013-00002) to the reviewing agencies set forth in Section 163.3184(1)(c), F.S. for review and comment; and,

WHEREAS, at the October 21, 2013 meeting, the Board announced its intention to hold a public hearing after the receipt of the reviewing agencies’ written comments; and,

WHEREAS, on January 22, 2014, the Board held a public hearing and adopted the proposed amendments to the Lee Plan set forth herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, THAT:**

## SECTION ONE: PURPOSE, INTENT AND SHORT TITLE

The Board of County Commissioners of Lee County, Florida, in compliance with Chapter 163, Part II, Florida Statutes, and with Lee County Administrative Code AC-13-6, conducted public hearings to review proposed amendments to the Lee Plan. The purpose of this ordinance is to adopt text amendments to the Lee Plan discussed at those meetings and approved by a majority of the Board of County Commissioners. The short title and proper reference for the Lee County Comprehensive Land Use Plan, as hereby amended, will continue to be the "Lee Plan." **This amending ordinance may be referred to as the "Ag Rezoning in Suburban Areas Ordinance (CPA2013-00002)."**

## SECTION TWO: ADOPTION OF COMPREHENSIVE PLAN AMENDMENT

The Lee County Board of County Commissioners amends the existing Lee Plan, adopted by Ordinance Number 89-02, as amended, by adopting an amendment, which amends Policy 9.2.1 to Goal 9: Agricultural Land Uses known as Ag Rezoning in Suburban Areas (CPA2013-00002).

The corresponding Staff Reports and Analysis, along with all attachments for this amendment are adopted as "Support Documentation" for the Lee Plan. Proposed amendments adopted by this Ordinance are attached as Exhibit A.

## SECTION THREE: LEGAL EFFECT OF THE "LEE PLAN"

No public or private development will be permitted except in conformity with the Lee Plan. All land development regulations and land development orders must be consistent with the Lee Plan as amended.

## SECTION FOUR: GEOGRAPHIC APPLICABILITY

The Lee Plan is applicable throughout the unincorporated area of Lee County, Florida, except in those unincorporated areas included in joint or interlocal agreements with other local governments that specifically provide otherwise.

## SECTION FIVE: SEVERABILITY

The provisions of this ordinance are severable and it is the intention of the Board of County Commissioners of Lee County, Florida, to confer the whole or any part of the powers herein provided. If any of the provisions of this ordinance are held unconstitutional by a court of competent jurisdiction, the decision of that court will not affect or impair the remaining provisions of this ordinance. It is hereby declared to be the legislative intent of the Board that this ordinance would have been adopted had the unconstitutional provisions not been included therein.

SECTION SIX: INCLUSION IN CODE, CODIFICATION, SCRIVENERS' ERROR

It is the intention of the Board of County Commissioners that the provisions of this ordinance will become and be made a part of the Lee County Code. Sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or other appropriate word or phrase in order to accomplish this intention; and regardless of whether inclusion in the code is accomplished, sections of this ordinance may be renumbered or relettered. The correction of typographical errors that do not affect the intent, may be authorized by the County Manager, or his or her designee, without need of public hearing, by filing a corrected or recodified copy with the Clerk of the Circuit Court.

SECTION SEVEN: EFFECTIVE DATE

The plan amendments adopted herein are not effective until 31 days after the State Land Planning Agency notifies the County that the plan amendment package is complete. If timely challenged, an amendment does not become effective until the State Land Planning Agency or the Administrative Commission enters a final order determining the adopted amendment to be in compliance. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before the amendment has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status.

THE FOREGOING ORDINANCE was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_. The vote was as follows:

John E. Manning	_____
Cecil L Pendergrass	_____
Larry Kiker	_____
Brian Hamman	_____
Frank Mann	_____

DONE AND ADOPTED this 22<sup>nd</sup> day of January 2014.

ATTEST:  
LINDA DOGGETT, CLERK

LEE COUNTY  
BOARD OF COUNTY  
COMMISSIONERS

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
Larry Kiker, Chair

DATE: \_\_\_\_\_

Approved as to form by:

\_\_\_\_\_  
Michael D. Jacob  
County Attorney's Office

Exhibit A: Adopted revisions to Policy 9.2.1 (Adopted by BOCC January 22, 2014)

## EXHIBIT A

**Note:** Text depicted with underscore represents additions to the Lee Plan. Strike-through text represents deletions from the Lee Plan.

**POLICY 9.2.1:** Rezoning of land to agricultural zoning districts is prohibited in those areas designated by the Lee Plan as Future Urban Areas, with the exception of those areas designated as Sub-Outlying Suburban, Outlying Suburban, or Suburban where parcels five acres or larger may request rezoning to an agricultural zoning district. These requests will be reviewed on a case by case basis. Approval will be based on:

- a. current and future availability of urban infrastructure;
- b. compatibility of the existing and future land uses;
- c. acreage of rezoning request;
- d. cumulative effect on county tax base; and
- e. Suburban and Sub-Outlying Suburban lands must be located within the Pine Island and Caloosahatchee Shores Planning Communities;
- f. evaluation of how environmental features, including but not limited to flowways, protected species, and habitat, will be protected or mitigated.

~~In Outlying Suburban areas, such requests will be reviewed on a case by case basis, and recommendations will be made based on current and future availability of urban infrastructure and compatibility with existing and future land uses.~~

**CPA2013-02  
AG REZONING  
IN SUBURBAN AREAS  
PLAN AMENDMENT  
TO THE**

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**LEE COUNTY COMPREHENSIVE PLAN**

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**THE LEE PLAN**

Privately Initiated Amendment and Staff Analysis

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**BoCC Public Hearing Document  
For the  
January 22<sup>nd</sup>, 2014 Adoption Hearing**

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

**January 15, 2014**



**LEE COUNTY  
DIVISION OF PLANNING  
STAFF REPORT FOR  
COMPREHENSIVE PLAN AMENDMENT  
CPA2013-02**

**Text Amendment**

**Map Amendment**

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

STAFF REPORT PREPARATION DATE: September 13, 2013

**PART I - BACKGROUND AND STAFF RECOMMENDATION**

**A. SUMMARY OF APPLICATION**

**1. APPLICANT/REPRESENTATIVES:**

Barry C. Denicola and Toni O. Denicola / Beverly Grady, Roetzel & Andress

**2. REQUEST:**

Amend Policy 9.2.1 of the Lee Plan to allow for rezoning to an agricultural zoning district on a case by case basis in the Suburban future land use categories.

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

**1. RECOMMENDATION:**

Staff recommends that the Board of County Commissioners *adopt* the proposed amendment to Policy 9.2.1 of the Lee Plan as transmitted by the Board of County Commissioners. The specific language is provided below:

## TEXT AMENDMENT

**Policy 9.2.1:** Rezoning of land to agricultural zoning districts is prohibited in those areas designed by the Lee Plan as Future Urban Areas, with the exception of those areas designated as Sub-Outlying Suburban, Outlying Suburban, or Suburban where parcels five acres or larger may request rezoning to an agricultural zoning district. These requests will be reviewed on a case by case basis. Approval will be based on:

- a. current and future availability of urban infrastructure;
- b. compatibility of the existing and future land uses;
- c. acreage of rezoning request
- d. cumulative effect on county tax base; and
- e. Suburban and Sub-Outlying Suburban lands must be located within the Pine Island and Caloosahatchee Shores Planning Communities.
- f. evaluation of how environmental features, including but not limited to flowways, protected species, and habitat, will be protected or mitigated.

~~In Outlying Suburban areas, such requests will be reviewed on a case by case basis, and recommendations will be made based on current and future availability of urban infrastructure and compatibility of existing and future land uses.~~

## 2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- CPA2013-02, a privately sponsored amendment was submitted by the applicant on June 25, 2013.
- Policy 9.2.1 currently allows for rezoning an agriculture zoning district in the Outlying Suburban Future Land Use Category on a case by case basis.
- Policy 9.2.1 was added to the Lee Plan on November 1, 2000 by PAT98-18.
- A new category, the Sub-Outlying Suburban future land use category, was created by the 2004 Evaluation and Appraisal Amendments. CPA2005-40 was adopted by the Board of County Commissioners on May 16, 2007 by Ordinance 07-09. Policy 9.2.1 was not modified to reflect this new category.
- Prior to CPA2005-40, the Sub-Outlying Suburban areas were designated Outlying Suburban with a footnote on Table 1(a) limiting density to 2 dwelling units per acre.
- Several community plans have been adopted expressing a desire to preserve or maintain a rural character.
- The proposed amendment will still preclude the consideration of new agriculture uses in the more urban land use categories (Intensive Development, Central Urban, and Urban Community).
- The proposed plan amendment requires evaluation of the potential loss of tax revenue over time.
- The proposed amendment addresses efficient use of infrastructure and compatibility with neighboring uses.

## C. BACKGROUND INFORMATION

The policy subject to this private amendment request, Policy 9.2.1, was incorporated into the Lee Plan as part of a publically sponsored amendment to the plan known as PAT98-18. PAT 98-18

amended Goal 9, Agricultural Lands, by adding a new objective and subsequent policies that address the permitting of new, or extension of existing agricultural uses within lands designated as Future Urban Areas. PAT98-18 provided in part the following background discussion:

*This amendment was initiated in response to several rezoning requests in which property owners attempted to down zone property to an agricultural category in a Future Urban Area, as designated by the Lee Plan. In many cases, these requests are made for the sole purpose of gaining an agricultural tax exemption. Prior to 1989, one could obtain the exemption regardless of the zoning of the property. After 1989, however, land had to be zoned agricultural in order to receive the Agricultural Exemption. In these down zoning cases, the County has opposed such requests, with a couple of notable exceptions. The following paragraphs discuss some of the zoning history that is relevant to the plan amendment at hand.*

*A parcel of land on Fiddlesticks Boulevard, located in the Outlying Suburban land use category was proposed for a rezoning from RM-2 to AG-2 on two separate occasions in the early 1990s (Case #91-05-14-Z-04, Resolution Z-91-057 and Case #93-09-21-Z-01, Resolution Z-93-073). In both cases, the request was denied by the Hearing Examiner and the Board. The first request was denied solely on the basis that the proposed rezoning would allow a range of agricultural activities on the subject property, many of which would have been incompatible with the residential uses on abutting properties. Despite its ultimate denial, this request was found to be compatible with the Outlying Suburban land use category, and was recommended for approval by county staff. The second request, however, received a more thorough analysis by staff, and received a denial recommendation based upon substantial Lee Plan inconsistencies. Staff asserted that the rezoning was not consistent with the Lee Plan because the designation description for the Outlying Suburban category did not identify "agriculture" as a permitted use, whereas the various Non-Urban classifications did. The staff analysis went on to note that such a rezoning would have been inconsistent with Goal 9 of the Lee Plan which is, "To protect existing and potential agricultural lands from the encroachment of incompatible land uses." This Goal supports the basic dichotomy set out in the Lee Plan which is to direct agricultural development to rural areas rather than urban areas. The staff denial was also based upon the lack of compatibility between some of the potential agricultural uses and the surrounding residential properties. The lack of compatibility made the request inconsistent with Policy 5.1.5 which requires the protection of existing and future residential areas from the encroachment of uses which are destructive to the character and integrity of the residential environment. Based on these inconsistencies, the second request received a recommendation of denial from the Hearing Examiner and a denial by the Board of County Commissioners.*

*In 1993, a request to rezone from IL to AG-2 within the Intensive Development land use category was denied by the Board (Case #93-11-02-Z-01, Resolution Z-93-083).*

*Planning staff recommended denial of the request because it was inconsistent with the intent of Future Urban Areas, and because it represented an inefficient use of existing and planned infrastructure. The Board of County Commissioners denied the request based on inconsistency with Lee Plan Policy 1.1.2 which defines the Intensive Development land use category, and inconsistency with Policy 5.1.5, which requires the protection of existing and future residential areas from encroachment of uses that are potentially destructive to the character and integrity of the residential neighborhood.*

*Two down zonings to AG-2 within the Outlying Suburban land use category have been approved by the Board, but there were unique circumstances that warranted down zoning in each case. Both parcels were part of the abandoned Danport DRI and CPD. Both sites were being utilized at the time of the rezoning request for agricultural purposes. One tract was a 45-acre tract that was shown on the Master Concept Plan as the water management area for the overall DRI (Case #97-03-029.03Z 01.01, Resolution Z-97-078). Without a rezoning to something other than CPD, the owner would have been bound by the Master Concept Plan of that CPD, which would have made other development on that site unachievable. The only thing that could have built on this property was a lake/water management system. The DRI ownership was fragmented and no longer under unified control, so an amendment of the DRI/CPD was determined to be inappropriate. It was determined that the AG-2 zoning district could act as a “holding district” until firm plans were made. The other site within the DRI was a five acre tract that did not have road access (Case #99-02-193.01Z 01.01, Resolution Z-99-083).*

*A recent request to down zone a property from Community Commercial (CC) to Agricultural (AG-2) in the Urban Community land use category (Case #REZ1999-00018) further highlights this issue. Staff was prepared to recommend denial of the request based on the potential underutilization of public services and the potential for urban sprawl. Also, the subject property is at an intersection that can meet the current Lee Plan interpretation for retail site location standards for a Neighborhood Commercial project. Staff asserted that CC is the correct zoning for the property because it has commercial potential and it is within a Future Urban Area. This case was withdrawn by the applicant as the County Attorney’s Office opined that the 1981 rezoning was void. The Development Services letter to the applicant’s representative informing him of this decision provides the following:*

*Mr. Paletsky has not attempted to develop the parcel based upon the rights apparently granted in the Resolution and does not claim any benefit of equitable estoppel relating to the 1981 Resolution. Mr. Paletsky has indicated, by requesting a rezoning to AG-2 the original zoning, that the property revert to the agricultural zoning that existed prior to the 1981 action.*

*The County Attorney's Office reviews conventional rezoning resolutions containing conditions on a case-by-case basis. Where the facts establish the basis of an equitable estoppel claim, that office will generally consider the zoning change, without the conditions, as appropriate and correct. When the facts establish that an equitable estoppel claim is not appropriate, then that office will generally recommend that the rezoning be considered void ab initio, causing the zoning district to be the one applicable prior to the void zoning action. The County Attorney's office has opined that Zoning Resolution Z-81-29 is void ab initio with respect to the 10 acre parcel currently owned by Steven Paletsky.*

*Also at issue with this plan amendment is the establishment of new agricultural lands within Planned Development zoning districts once the property has been rezoned. After a property has been rezoned to a Planned Development district, there is a period of time, sometimes several years, before a development order is approved and development begins. There have been instances where agricultural uses have expanded within a vacant Planned Development, and land has been cleared or otherwise disturbed in areas that are shown on the Master Concept Plan as conservation or open space. It has been the policy of the County in such cases to allow existing bona fide agricultural uses to continue within a newly established Planned Development until development commences, but to prohibit the establishment of new agricultural uses on the property once rezoning has been approved. The Board has supported this position for a long period of time.*

PAT98-18 recognized that the establishment of new agricultural uses could potentially be appropriate in Outlying Suburban areas based on a lack of available infrastructure, compatibility with surrounding land uses, and the location of these areas at the urban fringe. This amendment recognized that permitting new agricultural uses in the Future Urban Areas could represent an underutilization of existing and planned infrastructure in these areas. Rezoning for agricultural uses in Future Urban Areas potentially could lead to tax revenue losses that could hinder the County's ability to provide urban services in these areas.

The amendment also recognized that down zoning to agricultural zoning districts within the Future Urban Areas could cause compatibility problems between urban uses such as residences and businesses, and agricultural uses such as raising of livestock and other farming activities. The amendment staff report also noted that the Lee Plan does not envision the establishment of new agricultural uses within the Future Urban Areas, with the exception of the Outlying Suburban category. PAT98-18 contained the following discussion concerning this point:

*As the above-referenced cases show, rezoning to Agricultural districts has been consistently denied by the Board in all Future Urban land use categories except Outlying Suburban. The requests have been denied based mainly on the inefficient use of existing or planned infrastructure, and the lack of compatibility with surrounding land uses.*

*Rezoning were approved in Outlying Suburban because of a lack of available infrastructure and because the property was beyond the existing urban fringe. According to the Lee Plan, Outlying Suburban areas are characterized by their peripheral location in relation to established urban areas. Some, but not all of the requisite infrastructure needed for higher density development is generally planned or in place. Given the nature of the Outlying Suburban category, rezonings to agricultural districts should be given consideration in these areas.*

PAT98-18 was adopted by the Board of County Commissioners on November 1, 2000.

Subsequent to the adoption of PAT98-18 and Policy 9.2.1, the Lee Plan incorporated a new category out of areas that were designated Outlying Suburban and limited to a maximum of 2 dwelling units per acre. This new category, the Sub-Outlying Suburban future land use category, was called for by the 2004 Evaluation and Appraisal Report (EAR). An EAR plan amendment, CPA2005-40, was prepared by staff, and adopted by the Board of County Commissioners on May 16, 2007 by Ordinance 07-09. Policy 9.2.1 was not modified to reflect this new category. Not referencing this new category in Policy 9.2.1 was an oversight, as these lands had previously been allowed the consideration of agricultural rezoning under Policy 9.2.1 when they were designated as Outlying Suburban.

## **PART II - STAFF ANALYSIS**

### **A. STAFF DISCUSSION**

The applicant of this instant request, CPA2013-00002, submitted a privately sponsored text amendment on June 25th, 2013. The amendment is similar to a staff proposed modification contained in the EAR based amendments.

The applicant is proposing the following amendment to Policy 9.2.1:

**Policy 9.2.1:** Rezoning of land to agricultural zoning districts is prohibited in those areas designed by the Lee Plan as Future Urban Areas, with the exception of those areas designated as Outlying Suburban or Suburban where rezoning of parcels five acres or more to an agriculture zoning district may be reviewed and approved on a case by case basis. The recommendations will be based on:

- a. current and future availability of Urban infrastructure;
- b. compatibility of the existing and future land uses;
- c. acreage of rezoning request; and
- d. consideration of applicable community plans.

~~In Outlying Suburban areas, such requests will be reviewed on a case by case basis, and recommendations will be made based on current and future availability of urban infrastructure and compatibility of existing and future land uses.~~

Staff notes that several community plans have been adopted expressing a desire to preserve or maintain a rural character. The Pine Island and Caloosahatchee Shores community plans are two examples. The EAR process also stressed maintaining rural character in appropriate communities. Staff finds that allowing rezoning for new agricultural uses on a case by case basis, with the criteria that is outlined by the EAR amendment language and the applicant submitted language may be appropriate in Suburban areas. The specific criteria include consideration of applicable community plans. The criteria also include assuring compatibility of existing and future land uses as well as the efficient use of infrastructure. The proposed language also incorporates a minimum parcel size of 5 acres, further assuring compatibility and preventing single family lot consideration in existing subdivisions. Rezoning to achieve new agriculture uses in the more urban land use categories (Intensive Development, Central Urban, and Urban Community) will remain inconsistent with the Lee Plan.

The current language of Policy 9.2.1 allows consideration for agricultural rezoning in the Outlying Suburban future land use category. The Sub-Outlying Suburban future land use category is a less intense category and should be allowed this same consideration. The applicant, however, neglected to include this category in their proposed language. Staff finds that the applicant's language should be modified to include the Sub-Outlying Suburban category. Staff also proposes an additional criterion to assure that the cumulative affect of new rezonings to agricultural districts in these suburban categories is evaluated over time. In addition, staff proposes other minor modifications to more closely match the proposed EAR amendment language. Staff proposes the following modifications to Policy 9.2.1 below:

**Policy 9.2.1:** Rezoning of land to agricultural zoning districts is prohibited in those areas designed by the Lee Plan as Future Urban Areas, with the exception of those areas designated as Sub-Outlying Suburban, Outlying Suburban, or Suburban where parcels five acres or larger may request rezoning to an agricultural zoning district. These requests will be reviewed on a case by case basis. Approval will be based on:

- a. current and future availability of urban infrastructure;
- b. compatibility of the existing and future land uses;
- c. acreage of rezoning request
- d. cumulative effect on county tax base; and
- e. support of applicable community plans.

~~In Outlying Suburban areas, such requests will be reviewed on a case by case basis, and recommendations will be made based on current and future availability of urban infrastructure and compatibility of existing and future land uses.~~

## **B. STAFF RECOMMENDATION**

Staff recommends that the Board of County Commissioners **transmit** the proposed amendment to Policy 9.2.1 of the Lee Plan.



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

DATE OF PUBLIC HEARING: September 23, 2013

**A. LOCAL PLANNING AGENCY REVIEW**

Planning staff provided a brief summary of the proposed amendment. The staff offered revised language that includes an additional Suburban category not included in the applicant's proposed language. The recommended revision includes criteria that should be evaluated at time of rezoning such as impact on the county tax rolls. One LPA member asked a question concerning zoning and an agricultural exemption. Staff responded that zoning is just one factor; the actual use is also another important factor. One LPA member asked for a clarification concerning the compatibility criteria in 9.2.1.b. as to whether it is the subject parcel or surrounding parcels. This member suggested adding the word "surrounding" to the criteria. One LPA member stated that rezoning to an AG district in one of the Suburban areas should not be seen as a precedent to preclude development rights on adjacent properties. Staff agreed that the rezoning should not be seen as a precedent.

The applicant's representative addressed the LPA and introduced the applicant's to the Board. He discussed the applicant's property on S. Olga Road and the recent planned development rezoning on the property, and their desire to rezone the property back to an agricultural district. The representative next responded to LPA questions about agricultural exemptions by citing Supreme Court of Florida case, *Schultz v. Love PGI Partners, LP*, 1999. The court found that, "Thus, making the good faith agricultural use determination based exclusively on zoned use as a matter of law, would violate the broad examination required by statute, which is properly focused on the actual use of the land." The representative stated that the property appraiser will make the determination on the actual use of the property. The representative provided that the Florida legislature has been concerned with preservation of agricultural lands. The representative also provided that the Caloosahatchee Shores planning panel reviewed the application on September 17<sup>th</sup> and supports the application.

No members of the public appeared before the LPA.

One LPA member further discussed the issue of not limiting suburban uses for adjacent parcels as a result of a rezoning back to an agricultural use. Another member brought up that many agricultural uses are not compatible with Suburban residential uses, such as slaughterhouses, hog farms, chicken farms, and runoff issues that may have an adverse impact on adjacent uses. Staff responded that these are factors to be considered at the

rezoning stage. One member brought up the goat farm on College Parkway adjacent to a shopping center, and that they seemed to coexist, and that his point was to have these issues discussed on the record for later reference.

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

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

**C. VOTE:**

<b>NOEL ANDRESS</b>	<b>AYE</b>
<b>STEVE BRODKIN</b>	<b>AYE</b>
<b>WAYNE DALTRY</b>	<b>AYE</b>
<b>JIM GREEN</b>	<b>AYE</b>
<b>MITCH HUTCHCRAFT</b>	<b>AYE</b>
<b>ANN PIERCE</b>	<b>AYE</b>
<b>ROGER STRELOW</b>	<b>AYE</b>

**D. ACTIONS SUBSEQUENT TO THE LPA MEETING**

Following the LPA meeting, Lee County Planning staff met with Zoning and Environmental Sciences staff. At this meeting potential adverse environmental impacts of rezoning to an agricultural district were discussed. Staff also discussed possible land clearing activities that could occur as part of an agricultural operation. Planned development rezoning allow for conditions to be placed on the approval. These conditions are often used to address environmental features on the site such as protection of flowways, protected species, and indigenous habitat. These types of environmental features can occur in all future land use categories. Conventional rezonings do not allow for conditions to be attached to the approval. However, the Land Development Code (LDC) contains minimum requirements to address these features for residential, commercial and industrial uses. The LDC does not have minimum development requirements for agricultural uses, and Development Orders are not required for most

agricultural activities. Agricultural operations are protected under the state's "Right to Farm" act as defined in the Florida Statutes.

The applicant for the proposed Lee Plan amendment has also submitted a rezoning case that would rezone a Residential Planned Development to AG-2. The approved planned development provided for the protection of onsite flowways. Rezoning the applicant's property to an agricultural district would eliminate the conditions that protect the onsite flowways.

In light of these discussions, staff believes that Policy 9.2.1 should be revised to address potential environmental impacts as the result of allowing rezonings to agricultural districts in suburban areas. Staff recommends that a criterion be added to Policy 9.2.1 to address this. Staff recommends the following additional criteria:

- f. evaluation of how environmental features, including but not limited to flowways, protected species, and habitat, will be protected or mitigated.

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

DATE OF PUBLIC HEARING: October 21, 2013

**A. BOARD REVIEW**

Planning staff provided a brief summary of the proposed amendment. One Board member expressed concern over compatibility issues created by agricultural uses with surrounding urban uses. This member also expressed concern as to the type of agricultural uses that could result such as hog and chicken farms and potential runoff and odor concerns. Another Board member asked for clarification of the land use categories that this amendment affects. Staff responded that the Suburban and Sub-Outlying Suburban categories would be added for case by case consideration in addition to the already permitted Outlying Suburban category. Staff stated that compatibility concerns could lead to a recommendation of denial of a requested rezoning. The Assistant County Attorney clarified that the requested zonings would be conventional requests with no ability to condition the requested uses.

The applicant's representative next provided a brief presentation concerning the request. The Chairman next called for public input, however, no members of the public came forward to address the proposed amendment.

The Chairman asked the Assistant County Attorney the extent of liability that the amendment could potentially create. The Attorney said liability exposure does not exist in denying the transmittal request. Liability may exist on individual rezoning requests. The applicant's representative suggested that the Board could limit the applicability of the proposed policy to the Pine Island and Caloosahatchee Shores Community Planning areas. The Board accepted this restriction and incorporated this into the transmittal motion.

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

1. **RECOMMENDATION:** The Board approved a motion to transmit the proposed amendment and restrict the applicability of the proposed amendment to the Pine Island and the Caloosahatchee Shores Community Plan areas.
2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the recommended findings of fact with the restriction of applicability to the Pine Island and Caloosahatchee Shores Community Plan areas.

**C. VOTE:**

<b>LARRY KIKER</b>	<b>AYE</b>
<b>FRANK MANN</b>	<b>ABSENT</b>
<b>JOHN MANNING</b>	<b>AYE</b>
<b>CECIL L PENDERGRASS</b>	<b>AYE</b>
<b>VACANT</b>	<b>VACANT</b>

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

**DATE OF REVIEWING AGENCY COMMENTS:** Comments from the State Reviewing Agencies were due to Lee County by November 30, 2013.

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

Lee County received responses from the following review agencies addressing the transmitted amendment: Florida Departments of Agriculture and Consumer Services, Economic Opportunity, Education, Environmental Protection, and Transportation; and the South Florida Water Management District.

These agencies stated that they had no further comments or concerns about the proposed amendment.

**B. STAFF RECOMMENDATION**

Staff recommends that the Board of County Commissioners *adopt* the amendments to the Lee Plan as transmitted.

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

DATE OF PUBLIC HEARING: January 22, 2014

**A. BOARD REVIEW**

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

**1. BOARD ACTION:**

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

**C. VOTE:**

**BRIAN HAMMAN**

\_\_\_\_\_

**LARRY KIKER**

\_\_\_\_\_

**FRANK MANN**

\_\_\_\_\_

**JOHN MANNING**

\_\_\_\_\_

**CECIL L PENDERGRASS**

\_\_\_\_\_

# **AGENCY COMMENTS**



Rick Scott  
GOVERNOR



Jesse Panuccio  
EXECUTIVE DIRECTOR

RECEIVED  
DEC 02 2013

November 25, 2013

COMMUNITY DEVELOPMENT

The Honorable Cecil L. Pendergrass, Chairman  
Lee County Board of County Commissioners  
Post Office Box 398  
Fort Myers, Florida 33902-0398

Dear Chairman Pendergrass:

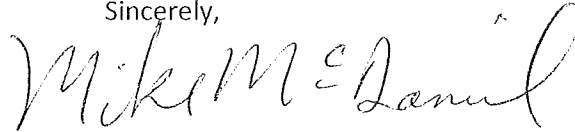
The Department of Economic Opportunity has completed its review of the proposed comprehensive plan amendment for Lee County (Amendment 13-2ESR) which was received on October 31, 2013. We have reviewed the proposed amendment pursuant to Sections 163.3184(2) and (3), Florida Statutes (F.S.), and identified no comments related to important state resources and facilities within the Department of Economic Opportunity's authorized scope of review that will be adversely impacted by the amendment if adopted.

The County is reminded that pursuant to Section 163.3184(3)(b), F.S., other reviewing agencies have the authority to provide comments directly to the County. If other reviewing agencies provide comments, we recommend the County consider appropriate changes to the amendment based on those comments. If unresolved, such comments could form the basis for a challenge to the amendment after adoption.

The County should act by choosing to adopt, adopt with changes, or not adopt the proposed amendment. Also, please note that Section 163.3184(3)(c)1, F.S., provides that if the second public hearing is not held and the amendment adopted within 180 days of your receipt of agency comments, the amendment shall be deemed withdrawn unless extended by agreement with notice to the Department of Economic Opportunity and any affected party that provided comment on the amendment. For your assistance, we have attached procedures for adoption and transmittal of the comprehensive plan amendment.

If you have any questions relating to this review, please contact Scott Rogers, Planning Analyst, at (850) 717-8510, or by email at [scott.rogers@deo.myflorida.com](mailto:scott.rogers@deo.myflorida.com).

Sincerely,

A handwritten signature in black ink that reads "Mike McDaniel". The signature is written in a cursive style with a large, looping "M" and "D".

Mike McDaniel  
Comprehensive Planning Manager

MM/sr

Enclosure: Procedures for Adoption

cc: Paul O'Connor, Director, Lee County Division of Planning  
Margaret Wuerstle, Executive Director, Southwest Florida Regional Planning Council

**SUBMITTAL OF ADOPTED COMPREHENSIVE PLAN AMENDMENTS  
FOR EXPEDITED STATE REVIEW**

Section 163.3184(3), Florida Statutes

**NUMBER OF COPIES TO BE SUBMITTED:** Please submit three complete copies of all comprehensive plan materials, of which one complete paper copy and two complete electronic copies on CD ROM in Portable Document Format (PDF) to the Department of Economic Opportunity and one copy to each entity below that provided timely comments to the local government: the appropriate Regional Planning Council; Water Management District; Department of Transportation; Department of Environmental Protection; Department of State; the appropriate county (municipal amendments only); the Florida Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services (county plan amendments only); and the Department of Education (amendments relating to public schools); and for certain local governments, the appropriate military installation and any other local government or governmental agency that has filed a written request.

**SUBMITTAL LETTER:** Please include the following information in the cover letter transmitting the adopted amendment:

\_\_\_\_\_ Department of Economic Opportunity identification number for adopted amendment package;

\_\_\_\_\_ Summary description of the adoption package, including any amendments proposed but not adopted;

\_\_\_\_\_ Identify if concurrency has been rescinded and indicate for which public facilities. (Transportation, schools, recreation and open space).

\_\_\_\_\_ Ordinance number and adoption date;

\_\_\_\_\_ Certification that the adopted amendment(s) has been submitted to all parties that provided timely comments to the local government;

\_\_\_\_\_ Name, title, address, telephone, FAX number and e-mail address of local government contact;

\_\_\_\_\_ Letter signed by the chief elected official or the person designated by the local government.

**ADOPTION AMENDMENT PACKAGE:** Please include the following information in the amendment package:

\_\_\_\_\_ In the case of text amendments, changes should be shown in strike-through/underline format.

\_\_\_\_\_ In the case of future land use map amendments, an adopted future land use map, **in color format**, clearly depicting the parcel, its future land use designation, and its adopted designation.

\_\_\_\_\_ A copy of any data and analyses the local government deems appropriate.

**Note:** If the local government is relying on previously submitted data and analysis, no additional data and analysis is required;

\_\_\_\_\_ Copy of the executed ordinance adopting the comprehensive plan amendment(s);

Suggested effective date language for the adoption ordinance for expedited review:

The effective date of this plan amendment, if the amendment is not timely challenged, shall be 31 days after the Department of Economic Opportunity notifies the local government that the plan amendment package is complete. If timely challenged, this amendment shall become effective on the date the Department of Economic Opportunity or the Administration Commission enters a final order determining this adopted amendment to be in compliance. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before it has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status, a copy of which resolution shall be sent to the Department of Economic Opportunity.

\_\_\_\_\_ List of additional changes made in the adopted amendment that the Department of Economic Opportunity did not previously review;

\_\_\_\_\_ List of findings of the local governing body, if any, that were not included in the ordinance and which provided the basis of the adoption or determination not to adopt the proposed amendment;

\_\_\_\_\_ Statement indicating the relationship of the additional changes not previously reviewed by the Department of Economic Opportunity in response to the comment letter from the Department of Economic Opportunity.

## Dunn, Brandon

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**From:** O'Connor, Paul  
**Sent:** Monday, December 02, 2013 8:22 AM  
**To:** Noble, Matthew; Dunn, Brandon  
**Subject:** FW: Lee County 13-2ESR Proposed

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**From:** Stahl, Chris [<mailto:Chris.Stahl@dep.state.fl.us>]  
**Sent:** Monday, November 25, 2013 3:34 PM  
**To:** O'Connor, Paul  
**Cc:** Craig, Kae; 'DCPexter@deo.myflorida.com' ([DCPexter@deo.myflorida.com](mailto:DCPexter@deo.myflorida.com))  
**Subject:** Lee County 13-2ESR Proposed

To: Paul O'Connor, Lee County Planning Division Director

Re: Lee County 13-2ESR – Expedited Review of Proposed Comprehensive Plan Amendment

The Office of Intergovernmental Programs of the Florida Department of Environmental Protection (Department) has reviewed the above-referenced amendment package under the provisions of Chapter 163, Florida Statutes. The Department conducted a detailed review that focused on potential adverse impacts to important state resources and facilities, specifically: air and water pollution; wetlands and other surface waters of the state; federal and state-owned lands and interest in lands, including state parks, greenways and trails, conservation easements; solid waste; and water and wastewater treatment.

Based on our review of the submitted amendment package, **the Department has found no provision that, if adopted, would result in adverse impacts to important state resources subject to the Department's jurisdiction.** Please feel free to contact me with any questions.

Christopher Stahl  
DEP Office of Intergovernmental Programs  
3900 Commonwealth Blvd., MS 47  
Tallahassee, FL 32399-3000  
(850) 245-2169 office

Thank you!  
cjs

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Please note: Florida has a very broad public records law. Most written communications to or from County Employees and officials regarding County business are public records available to the public and media upon request. Your email communication may be subject to public disclosure.

Under Florida law, email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

OFFICE OF THE COMMISSIONER  
(850) 617-7700



THE CAPITOL  
400 SOUTH MONROE STREET  
TALLAHASSEE, FLORIDA 32399-0800

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES  
COMMISSIONER ADAM H. PUTNAM

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November 20, 2013

VIA EMAIL (oconnops@leegov.com)

Lee County Planning Division Director  
Attn: Paul O'Connor  
P.O. Box 398  
Fort Myers, Florida 33902-0398

Re: DACS Docket # -- 20131031-290  
Lee County CPA A2013-02  
Submission dated October 24, 2013

Dear Mr. O'Connor:

The Florida Department of Agriculture and Consumer Services (the "Department") received the above-referenced proposed comprehensive plan amendment on October 31, 2013 and has reviewed it pursuant to the provisions of Chapter 163, Florida Statutes to address any potential adverse impacts to important state resources or facilities related to agricultural, aquacultural, or forestry resources in Florida if the proposed amendment(s) are adopted. Based on our review of your county's submission, the Department has no comment on the proposal.

If we may be of further assistance, please do not hesitate to contact me at 850-410-2291.

Sincerely,

A handwritten signature in black ink, appearing to read "Sergio Alvarez".

Sergio Alvarez  
Senior Economist  
Office of Policy and Budget

cc: Florida Department of Economic Opportunity  
(SLPA #: Lee County 13-2 ESR)





## Florida Department of Transportation

RICK SCOTT  
GOVERNOR

10041 Daniels Parkway  
Fort Myers, FL 33913

ANANTH PRASAD, P.E.  
SECRETARY

November 22, 2013

Mr. Paul O'Connor, AICP  
Lee County Planning Division Director  
P.O. Box 398  
Fort Myers, FL 33902-0398

**RE: Lee County 13-2ESR Proposed Comprehensive Plan Amendment (Expedited State Review Process) – FDOT Comments and Recommendations**

Dear Paul:

The Florida Department of Transportation, District 1, has reviewed the Lee County 13-2ESR, Proposed Comprehensive Plan Amendment (*transmitted by the Board of County Commissioners on October 21, 2013*) in accordance with the requirements of Florida Statutes (F.S.) Section 163 and Chapter 9J-11 of the Florida Administrative Code (F.A.C.).

The Department reviewed the proposed CPA 2013-02 and determined that the changes associated with this amendment are not anticipated to adversely impact important state transportation resources or facilities. **Therefore FDOT offers no comment.**

Thank you for providing the Department with the opportunity to review and comment on the proposed amendment. If you need additional information or would like to discuss these comments, please contact me at (239) 461-4300 or [lawrence.massey@dot.state.fl.us](mailto:lawrence.massey@dot.state.fl.us).

Sincerely,

Lawrence Massey  
District 1 Growth Management Coordinator  
Southwest Area Urban Office

LLM/lm

Cc: Mr. Ray Eubanks, Florida Department of Economic Opportunity  
Ms. Scott Rogers, Florida Department of Economic Opportunity

# FLORIDA DEPARTMENT OF EDUCATION



STATE BOARD OF EDUCATION

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JOHN A. COLON

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KATHLEEN SHANAHAN

Pam Stewart  
Commissioner of Education

November 22, 2013

Mr. Paul O'Connor, AICP  
Lee County Planning Division Director  
P.O. Box 398  
Fort Myers, Florida 33902-0398  
Via E-mail: [occonnops@leegov.com](mailto:occonnops@leegov.com)

Dear Mr. O'Connor:

Re: Lee County 13-2 ESR

Thank you for the opportunity to review the Lee County 13-2 ESR amendment package, which the Florida Department of Education received on October 30, 2013. According to the department's responsibilities under section 163.3184(3), Florida Statutes, I reviewed the amendment considering provisions of chapter 163, part II, F.S., and to determine whether the proposal, if adopted, would have potential to create significant adverse effects on public school facilities.

The proposal would amend Policy 9.2.1 related to agricultural zoning in certain areas. Because the amendment does not appear to create adverse effects on public school facilities or sites, I offer no comment.

Again, thank you for the opportunity to review the amendment package. If I may be of assistance, please contact me at (850) 245-9312 or [Tracy.Suber@fldoe.org](mailto:Tracy.Suber@fldoe.org).

Sincerely,

Tracy D. Suber  
Growth Management and Facilities Policy Liaison

TDS/

cc: Ms. Dawn Huff, Lee County School District  
Mr. Scott Rogers and Ms. Brenda Winningham, DEO/State Land Planning Agency

THOMAS H. INSERRA  
DIRECTOR, OFFICE OF EDUCATIONAL FACILITIES





## SOUTH FLORIDA WATER MANAGEMENT DISTRICT

November 19, 2013

Mr. Paul O'Connor, AICP  
Lee County Planning Division Director  
P.O. Box 398  
Fort Myers, FL 33902-0398

**Subject: Lee County, DEO #13-2ESR  
Comments on Proposed Comprehensive Plan Amendment Package**

Dear Mr. O'Connor:

The South Florida Water Management District (District) has completed its review of the proposed amendment package submitted by Lee County (County). A text amendment allowing rezoning to agricultural zoning on a case by case basis in the Suburban future land use categories. There appear to be no regionally significant water resource issues; therefore, the District forwards no comments on the proposed amendment package.

The District offers its technical assistance to the County and the Department of Economic Opportunity in developing sound, sustainable solutions to meet the County's future water supply needs and to protect the region's water resources. Please forward a copy of adopted amendments to the District. For assistance or additional information, please contact Deborah Oblaczynski, Policy and Planning Analyst, at (561) 682-2544 or [doblaczy@sfwmd.gov](mailto:doblaczy@sfwmd.gov).

Sincerely,

A handwritten signature in black ink that reads "De Powell".

Dean Powell  
Water Supply Bureau Chief

DP/do

c:

Ray Eubanks, DEO  
Deborah Oblaczynski, SFWMD  
Brenda Winningham, DEO  
Margaret Wuerstle, SWFRPC