



LEE COUNTY
SOUTHWEST FLORIDA
BOARD OF COUNTY COMMISSIONERS

November 25, 2013

John E. Manning
District One

Cecil L. Pendergrass
District Two

Larry Kiker
District Three

Brian Hamman
District Four

Frank Mann
District Five

Roger Desjarlais
County Manager

Richard Wm. Wesch
County Attorney

Donna Marie Collins
Hearing Examiner

Ray Eubanks, Plan Processing Administrator
State Land Planning Agency
Caldwell Building
107 East Madison – MSC 160
Tallahassee, FL. 32399-0800

Re: Amendment to the Lee Plan
Transmittal Submission Package
Publicly Sponsored Amendments, CPA2013-03 and CPA2013-05

Dear Mr. Eubanks:

In accordance with the provisions of F.S. Chapter 163, please find attached the proposed Publicly Sponsored Comprehensive Plan amendments, known locally as CPA2013-03 and CPA2013-05. The proposed amendments are being submitted through the expedited state review process as described in Chapter 163.3184. The amendments are as follows:

CPA2013-03 is to amend Lee Plan Map 3F, Airport Layout Plan, for the Southwest Florida International Airport (RSW), to reflect the revised Airport Layout Plan (ALP) approved by the Federal Aviation Administration.

CPA2013-05 is to 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.

The Local Planning Agency held a public hearing for the plan amendments on October 28, 2013. The Board of County Commissioners transmittal hearing for the plan amendments was held on November 18, 2013. The Board of County Commissioners voted to transmit the attached Lee Plan amendment packages at the November 18, 2013 transmittal hearing. The proposed amendments are not applicable to an area of critical state concern. The Board of County Commissioners has stated its intent to hold an adoption hearing following the receipt of the review agencies' comments.

The name, title, address, telephone number, facsimile number, and email address of the person for the local government who is most familiar with the proposed amendment is as follows:

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

P.O. Box 398, Fort Myers, Florida 33902-0398 (239) 533-2111
Internet address <http://www.lee-county.com>
AN EQUAL OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER

(239) 533-8309
Fax (239) 485-8319
Email: oconnops@leegov.com

Included with this package are one paper copy and two CD ROM copies, in PDF format, of the proposed amendment and supporting data and analysis. By copy of this letter and its attachments, I certify that this amendment and supporting data and analysis have been sent on this date to the agencies listed below.

Sincerely,

DEPT. OF COMMUNITY DEVELOPMENT
Division of Planning

A handwritten signature in black ink, appearing to read "Matthew W. For:", is written over the typed name and title of Paul O'Connor.

Paul O'Connor, AICP, Director
Director

All documents and reports attendant to this transmittal are also being sent, by copy of this cover in a CD ROM format, to:

Comprehensive Plan Review
Department of Agriculture and Consumer Services

Tracy D. Suber
Department of Education

Jim Quinn
Department of Environmental Protection

Susan Harp
Florida Department of State

Scott Sanders
Florida Fish and Wildlife Conservation Commission

Lawrence Massey
FDOT District One

Margaret Wuerstle
Southwest Florida Regional Planning Council

Terry Manning, A.I.C.P., Senior Planner, Intergovernmental Coordination Section
South Florida Water Management District

THE NEWS-PRESS
Published every morning
Daily and Sunday
Fort Myers, Florida
Affidavit of Publication

STATE OF FLORIDA
COUNTY OF LEE

Before the undersigned authority, personally appeared **Teri Halm** who on oath says that he/she is the **Legal Assistant** of the News-Press, a daily newspaper, published at Fort Myers, in Lee County, Florida; that the attached copy of advertisement, being a

Notice of Public Hearing

In the matter of: **Monday, November 18th.**

In the court was published in said newspaper in the issues of

November 8, 2013

Affiant further says that the said News-Press is a paper of general circulation daily in Lee, Charlotte, Collier, Glades and Hendry Counties and published at Fort Myers, in said Lee County, Florida and that said newspaper has heretofore been continuously published in said Lee County, Florida, each day, and has been entered as a second class mail matter at the post office in Fort Myers in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of the advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Teri Halm

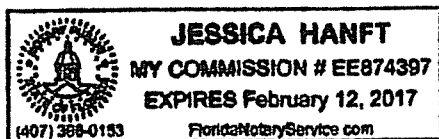
Sworn to and subscribed before me this 8th day of November, 2013.

by **Teri Halm**
personally known to me or who has produced

_____ as identification, and who did or did not take an oath.

Notary Public *Jessica Hanft*

Print Name: **Jessica Hanft**
My commission Expires: **February 12, 2017**



NOTICE OF PROPOSED AMENDMENTS TO THE LEE COUNTY COMPREHENSIVE LAND USE PLAN (TRANSMITTAL HEARING)

The Lee County Board of County Commissioners will hold a public hearing to consider proposed amendments to the Lee County Comprehensive Land Use Plan (Lee Plan) on Monday, November 18, 2013. The hearing will commence at 9:30 a.m., or as soon thereafter as can be heard, in the Board Chambers at 2120 Main Street in Downtown Fort Myers. At the hearing, the Board will consider the proposed amendments for transmittal to the Florida Department of Economic Opportunity:

A. CPA2013-00003 RSW Revised Airport Layout Plan - Map 3F

Amend Lee Plan Map 3F, the Southwest Florida International Airport, RSW, Airport Layout Plan, to reflect the revised Airport Layout Plan approved by the Federal Aviation Administration.

B. CPA2013-00005 University Community DRI Requirement

Amend Policy 18.1.5, Policy 18.1.16, Policy 18.1.16.6 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.

This transmittal hearing is the first step in a two step public hearing process to amend the Lee Plan. A second hearing will follow the Department of Economic Opportunity's review of the application.

Interested parties may appear at the meeting and be heard with respect to the proposed plan amendment.

A verbatim record of the proceeding will be necessary to appeal a decision made at this hearing. Contact the Lee

County Division of Planning at 239-533-8585 for further information on obtaining a record.

In accordance with the Americans with Disabilities Act, reasonable accommodations will be made upon request. Contact Janet Miller at 239-533-8583 No. 1480208 November 8, 2013

2013 NOV 12 PM 12:56
RECEIVED BY
LEE CO. ATTORNEY

**CPA2013-05
UNIVERSITY COMMUNITY
DRI REQUIREMENT
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

Lee County Board of County Commissioners
Sponsored Amendment and Staff Analysis

DEO Transmittal Document

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

November 18, 2013

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2013-05**

Text Amendment

Map Amendment

This Document Contains the Following Reviews	
<input checked="" type="checkbox"/>	Staff Review
<input checked="" type="checkbox"/>	Local Planning Agency Review and Recommendation
<input checked="" type="checkbox"/>	Board of County Commissioners Hearing for Transmittal
	Staff Response to the Review Agencies' Comments
	Board of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: October 18, 2013

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT/REPRESENTATIVES:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS / LEE COUNTY DIVISION OF PLANNING

2. REQUEST:

Amend Policy 18.1.5, Policy 18.1.16, Policy 18.1.16.6 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.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

Staff recommends that the Board of County Commissioners *transmit* the proposed amendment to the Future Land Use Element of the Lee Plan as shown below. Proposed text has been depicted in strikethrough and underline format as it relates to the existing provisions of the Lee Plan.

TEXT AMENDMENTS:

POLICY 18.1.5: In order to create a cohesive community, site design within the University Community must utilize alternative modes of transportation such as pedestrian networks, mass transit opportunities, sidewalks, bike paths and similar facilities. Site design must link related land uses through the use of alternative modes of transportation thus reducing automobile traffic within the University Community. The county will work cooperatively with the University on these matters as the University proceeds through the Campus Master Plan Process.

Prior to local Development Order approval on property within Area 9, the University Community, the developer must demonstrate that the proposed plan of development supports pedestrian, bicycle and transit opportunities. A multi-modal interconnection between the property and the FGCU campus must be provided at no cost to Lee County. The owner/developers must dedicate the right of way for the 951 extension between Alico Road and Corkscrew Road to Lee County prior to ~~Development of Regional Impact Development Order~~ rezoning approval. The value of the right of way on the date of dedication must not reflect the added value of the lands changed from DR/GR to University Community by virtue of CPA 2009-01. The county will issue road impact fee credits for the dedication. (Amended by Ordinance No. 94-30, 00-22, 10-40)

No changes proposed to Policy 18.1.6 to Policy 18.1.15

POLICY 18.1.16: For those lands in Area 9, all development must be designed to enhance and support the University. All rezonings in this area must include a specific finding that the proposed uses qualify as Associated Support Development, as that term is defined in the glossary. The final design and components will be determined as part of the ~~DRI~~ rezoning process and must be consistent with the following development standards:

No changes proposed to Policy 18.1.16 numbered paragraph 1 through 5

6. Development Acreage: The previous mining and crushing operations in Area 9 have rendered a large portion of the property unsuitable for development. Some areas that were previously mined have been filled with materials left over from the crushing operations known as fines. These and other activities have left an area of approximately 350 acres that has never been mined that remains suitable for development of structures and other site improvements. Development is therefore limited to this area. The previously impacted areas may only be used for reclamations and development as unoccupied open space. Property may be designated for residential use, non-residential use, or a combination of uses classified as mixed use. Out of the 350 acres available for development, 40 acres of developable land, not including right-of-way which is intended to serve as the connection between Area 9 and FGCU, will be dedicated to FGCU concurrent with ~~DRI~~ rezoning approval. The

40 acres dedicated to FGCU will become part of the FGCU campus and development there will not be calculated against the maximum residential unit count, nor maximum commercial square footage otherwise allowed.

No changes proposed to Policy 18.1.16 numbered paragraph 7 to Policy 18.2.1

POLICY 18.2.2: The University Village is an area which provides the associated support development and synergism to create a viable University Community. This sub-category allows a mix of land uses related to and justified by the University and its development. Predominant land uses within this area are expected to be residential, commercial, office, public and quasi-public, recreation, and research and development parks. ~~In addition to complying with the Conceptual Master Plan required by Policy 18.1.10, all property within the University Village must undergo a Development of Regional Impact review.~~

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The Board of County Commissioners initiated this plan amendment on August 27, 2013.
- Changes to the Florida Statutes in 2011, HB7207, prohibit local governments from requiring projects to undergo Development of Regional Impact (DRI) review if they did not meet the established DRI thresholds.
- Lee Plan Policy 18.1.5, Policy 18.1.16, and Policy 18.2.2 are inconsistent with Florida Statutes as amended. These policies are all specific to the University Community future land use category.
- Requiring DRI review for projects that are below the DRI threshold has proved to be problematic.
- Deleting a mandatory DRI review requirement will not negatively impact the original vision for the University Community area.

C. BACKGROUND INFORMATION

The University Community future land use category was initially adopted into the Lee Plan and Future Land Use Map on October 27, 1992 by Ordinance 92-47, which adopted PAM/T 92-02, Florida's Tenth University. This Plan amendment adopted the University Community future land use category descriptor policy, Policy 1.1.9, and Goal 20 (later renumbered to Goal 18): University Community, which provided detailed descriptions of the development that was anticipated to surround what is now Florida Gulf Coast.

Since its initial adoption in 1992, all privately owned property within the University Community designation, have been required to undergo a DRI review. This requirement was put in place to help ensure that the University Community area developed as a cohesive

community. The specific requirement for the DRI review was contained in Policy 20.2.4, which described the “University Village.”

POLICY 20.2.4: *The University Village is an area which provides the associated support development and synergism to create a viable University Community. This sub-category allows a-mix-of land uses related to and justified by the University and its development. Predominant land uses within this area are expected to be residential, commercial, office, public and quasi-public, recreation, and research and development parks. In addition to complying with the Conceptual Master Plan required by Policy 20.1.10, all property within the University Village shall undergo a Development of Regional Impact review. [As it was adopted by Ordinance 92-47]*

This policy has since been renumbered to Policy 18.2.2.

The University Community area was expanded in 2010 to include a 9th area. This was accomplished through an amendment to the Lee Plan adopted on October 20, 2010 by Ordinance 10-40, which adopted CPA2009-00001, Alico West. The Alico West Lee Plan amendment included details about the development of Area 9 of the University Community. The property that was the subject of Area 9 was previously an aggregate mine and was not originally included in the University Community area because it was not consistent with the desired uses. Consistent with development requirements within the University Community area as originally adopted, development within Area 9 would be required to undergo DRI review.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

The 2011 legislative amendments adopted by HB7207 changed the Development of Regional Impacts Statute to prohibit local governments from imposing DRI review on developments that do not exceed the state thresholds for DRIs. The pertinent part of the DRI Statute, F.S. 380.06(24)(u), is reproduced below:

(u) Notwithstanding any provisions in an agreement with or among a local government, regional agency, or the state land planning agency or in a local government's comprehensive plan to the contrary, a project no longer subject to development-of-regional-impact review under revised thresholds is not required to undergo such review.

In response to these amendments to the Florida Statutes, the County Attorney's Office has advised staff that the requirement that all development within the University Community area undergo a DRI review is no longer consistent with Florida Statutes. Staff was also advised that this requirement may not be enforced and should be removed from the Lee Plan.

Lee County Planning staff has reviewed the Goals, Objectives and Policies of the Lee Plan and has identified two policies that either directly require development to undergo a DRI review or identify the DRI as a tool that can be used to implement additional requirements. These policies are Policy 18.1.16, Policy 18.1.16 numbered paragraph 6, and Policy 18.2.2.

Policy 18.1.16 is specific to Area 9 of the University Community. The policy utilizes the DRI process to assure that specific design requirements and development commitments will be addressed. Staff finds that assurance for the design requirements and development commitments can be addressed at another phase in the development process. Staff recommends the following changes to Policy 18.1.16 and paragraph 6 that recognize development within Area 9 may not undergo the DRI review process.

***POLICY 18.1.16:** For those lands in Area 9, all development must be designed to enhance and support the University. All rezonings in this area must include a specific finding that the proposed uses qualify as Associated Support Development, as that term is defined in the glossary. The final design and components will be determined as part of the ~~DRI~~ rezoning process and must be consistent with the following development standards:*

***6. Development Acreage:** The previous mining and crushing operations in Area 9 have rendered a large portion of the property unsuitable for development. Some areas that were previously mined have been filled with materials left over from the crushing operations known as fines. These and other activities have left an area of approximately 350 acres that has never been mined that remains suitable for development of structures and other site improvements. Development is therefore limited to this area. The previously impacted areas may only be used for reclamations and development as unoccupied open space. Property may be designated for residential use, non-residential use, or a combination of uses classified as mixed use. Out of the 350 acres available for development, 40 acres of developable land, not including right-of-way which is intended to serve as the connection between Area 9 and FGCU, will be dedicated to FGCU concurrent with ~~DRI~~ rezoning approval. The 40 acres dedicated to FGCU will become part of the FGCU campus and development there will not be calculated against the maximum residential unit count, nor maximum commercial square footage otherwise allowed.*

Policy 18.2.2 directly requires that development within the University Community area undergo a DRI review. Staff suggests that Policy 18.2.2 should be amended to delete the requirement to undergo a DRI review as follows:

***POLICY 18.2.2:** The University Village is an area which provides the associated support development and synergism to create a viable University Community. This sub-category allows a mix of land uses related to and justified by the University and its development. Predominant land uses within this area are expected to be residential, commercial, office, public and quasi-public, recreation, and research and development parks. ~~It~~*

~~addition to complying with the Conceptual Master Plan required by Policy 18.1.10, all property within the University Village must undergo a Development of Regional Impact review.~~

CONSISTENCY WITH THE LEE PLAN

Planning staff finds that allowing for the removal of the requirement that all development within the University Community area undergo DRI review by amending Policy 18.2.2, and recognizing in Policy 18.1.16 that development within Area 9 may not require DRI review is consistent with the remainder of the Lee Plan.

Goal 18: University Community and its subsequent objectives and policies provide guidance for development within the University Community. Goal 18 of the Lee Plan states that Lee County will:

“ensure that development within the University Community land use category protects and enhances the ability of Florida's tenth university to provide secondary education as described in the Mission Statement of that institution and to assure that land uses or development activities do not interfere with, disrupt, or impede the efficient operation of that institution...”

Objective 18.1 speaks more specifically to land use, and states that:

“In order to ensure that the location and timing of development within the University Community is coordinated with the development of the University and the provision of necessary infrastructure; and, that all associated support development within the University Community is designed to enhance the University; all development within the University Community will be subject to cooperative master planning...”

Policy 18.1.10 specifically requires that development within the University Community area is consistent with the Generalized Land Use Map and (9) area descriptions within the University Community Conceptual Master Plan.

Staff finds that deleting a mandatory DRI review requirement will not negatively impact the original vision for the University Community area. Lee Plan Goal 18 and its subsequent objectives and policies and the University Community Conceptual Master Plan will continue to assure that development within the University Community area will be developed as a cohesive community that provides the “associated support development and synergism” anticipated in Policy 18.2.2.

CONSISTENCY WITH FEDERAL AND STATE REQUIREMENTS

The amendment addresses changes to the Florida Statutes adopted by HB7207, which prohibit local governments from requiring projects to undergo Development of Regional Impact (DRI) review if they did not meet the DRI thresholds. The proposed amendment is consistent with federal and state requirements.

B. STAFF RECOMMENDATION

County staff recommends that the Board of County Commissioners transmit the proposed amendments to Policy 18.1.16, Policy 18.1.16.6 and Policy 18.2.2 of the Lee Plan.

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

DATE OF PUBLIC HEARING: October 28, 2013

A. LOCAL PLANNING AGENCY REVIEW

Staff gave a brief presentation regarding the proposed amendment. No members of the public were present to address the LPA concerning the proposed amendment. One member of the LPA expressed concern that the state's prohibition was taking away a level of review, and that it would leave surrounding property owners vulnerable to changes to the developments in the University Community. This member made a recommendation that if Lee County was to remove the DRI requirement from the University Community that it should be replaced with a requirement for rezonings to hold a community input meeting.

Another member of the LPA expressed concern that the proposed change was simply to remove a requirement for DRI review in the University Community that is inconsistent with the Florida Statutes, and that the recommendation by the other LPA member could potentially have impacts on the vesting of other DRIs. This member also thought that the regular rezoning process allowed for adequate public input. **A motion was made to transmit the amendment as recommended by staff. This motion did not receive a second.**

Two other members of the LPA also questioned language in the policies that is unrelated to the proposed amendment to remove the mandatory DRI review. Staff explained that this was not part of the current amendment and that those changes should be vetted with a separate amendment, or through the EAR process.

A motion was made to transmit the amendment with the condition that rezonings within the University Community future land use category would require a public information meeting prior to being found sufficient for public hearing.

Concern was expressed that the condition was a new requirement for rezonings within a planning community that has not itself expressed the need for additional public input.

The motion passed with 5 being in favor and 2 being opposed.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

The LPA recommends that the Lee County Board of County Commissioners *transmit* the proposed Lee Plan amendment as recommended by staff as well as requiring an informational meeting for rezonings within the University Community future land use category.

Staff has reviewed the University Community future land use category, and finds that the following modification to Policy 18.2.2 could accommodate the LPA’s recommendation:

POLICY 18.2.2: The University Village is an area which provides the associated support development and synergism to create a viable University Community. This sub-category allows a mix of land uses related to and justified by the University and its development. Predominant land uses within this area are expected to be residential, commercial, office, public and quasi-public, recreation, and research and development parks. In addition to complying with the Conceptual Master Plan required by Policy 18.1.10, the owner or agent for any zoning request all property within the University Village must undergo a Development of Regional Impact review conduct one public informational session, within the University Village, where the agent will provide a general overview of the project for any interested citizens.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

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

C. VOTE:

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

D. STAFF RESPONSE TO LPA RECOMMENDATION:

Staff recommends limiting the amendment to only modifying the language that is inconsistent with state statutes, and not including the condition requiring a public informational meeting as recommended by the Local Planning agency for the following reasons:

- The Lee County Board of County Commissioners initiated the proposed amendment on August 27, 2013 through Blue Sheet No. 20130718. The conditions proposed by the LPA appear to be outside of the scope of the amendment initiated by the Board of County Commissioners.
- The conditions proposed by the LPA may be beyond the scope of the amendment that was advertised in the News-Press on October 18, 2013. Staff is concerned that property owners within the University Community future land use category were not properly notified that additional requirements for their properties might be recommended by the LPA.

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

DATE OF TRANSMITTAL HEARING: November 18, 2013

A. BOARD REVIEW:

Planning staff provided a brief summary of the proposed amendment. One Board member asked a question about the Local Planning Agency motion. The Chairman next called for public input. One member of the public came forward to address the proposed amendment, and stated support for the staff recommended language to the amendment.

A motion was made to transmit the proposed amendment. The motion passed 5-0.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

The Board of County Commissioners transmitted the proposed amendment as recommended by staff.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The Board of County Commissioners accepted the findings of fact as advanced by staff.

C. VOTE:

BRIAN HAMMAN	<u>AYE</u>
LARRY KIKER	<u>AYE</u>
FRANK MANN	<u>AYE</u>
JOHN MANNING	<u>AYE</u>
CECIL L PENDERGRASS	<u>AYE</u>