

## Dunn, Brandon

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**From:** Jacob, Michael  
**Sent:** Thursday, May 15, 2014 11:43 AM  
**To:** Dunn, Brandon  
**Subject:** FW: CPA2014-00004 WildBlue (Alico East)

Here's what I previously sent.

Michael D. Jacob  
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*"Whatever the consequences, we must accept the plain meaning of plain words."* Justice Oliver Wendell Holmes-*United States v. Brown*, 206 U.S. 240, 244 (1907).

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**From:** Jacob, Michael  
**Sent:** Thursday, April 24, 2014 2:44 PM  
**To:** O'Connor, Paul  
**Cc:** Dunn, Brandon  
**Subject:** RE: CPA2014-00004 WildBlue (Alico East)

Paul,

I've reviewed the Wild Blue Comp Plan amendment and I offer the following suggested changes, questions, and requests for clarification for the Applicant and Staff to consider:

Proposed Amendments:

**POLICY 1.7.14 and Objective 33.3:**

5. "Environmental Restoration Overlay Communities:" Property with previously approved mining activity, approved residential uses, and having the potential for significant environmental restoration and preservation of natural resources.

...and previously mined properties with existing residential approvals and significant restoration and enhanced protection potential for onsite natural resources (Environmental Restoration Overlay).

**Question #1:** The use of the criteria "approved residential uses" is ambiguous and needs some clarification. Are we restricting this to property that has approved residential zoning? Conventionally zoned Ag property is approved for residential uses, but isn't zoned for residential uses.

**Question #2:** Due to the subjective nature of the term "significant environmental restoration," and the potential use of this overlay in other areas, would the creation of numerical criteria or qualifiers be appropriate here?

For example, significant environmental restoration and preservation of natural resources under this Policy may be satisfied if conditions of development approval or development agreement include the minimum restoration of X% or X number of acres of land? That percentage or size of restoration could be determined on a case by case basis and could be tied to the level of previously impacted wetlands or habitat on the site. Also, the addition of qualifiers could allow staff to create criteria for the minimum type of restoration required to trip the "significant" threshold.

**Question #3:** What is the minimum restoration criteria needed to comply?

**Question #4:** The language in Policy 1.7.14 and Objective 33.3 are not consistent. The "*potential for significant environmental restoration and preservation*" is different than "*significant restoration and enhanced protection potential...*" Please consider making the language in 33.3 consistent with 1.7.14 (or vice versa).

Proposed Amendment with suggested changes:

#### **POLICY 1.7.15**

Re-establishment and restoration of flowways in the DR/GR areas and establishment of wildlife corridors are in the public interest and properties containing significant portions of such will be eligible for consideration for development incentives as further defined herein if owners commit through development conditions or development agreements to their restoration and/or preservation.

**Question #1:** Is there a better place to put this additional language? The first paragraph in the existing policy deals with the requirements for analysis of historic Surface and Groundwater Levels. Adding this language to Policy 1.7.15 seems out of place. Would inclusion in 33 be better?

Proposed Amendment with suggested changes:

#### **POLICY 33.2.1: suggested changes:**

or the within the specific conditions imposed in planned development zoning approvals resolution or other development permits issued approving development for development of property located within the Environmental Restoration Overlay.

Proposed Amendment:

#### **POLICY 33.3.3:**

Properties within the DR/GR that have existing approvals for residential development inconsistent with the current DR/GR density requirements or properties with previous mining activities and residential approvals, that may damage surface and sub-surface water resources, impact habitat, and encroach on environmentally important land if developed consistent with the vested approvals.

Comments:

While primarily an existing provision, this portion of Policy 33.3.3 doesn't appear to be a complete sentence. Is the Policy stating those existing approvals are inconsistent with the current DR/GR if developed in accordance with their current approvals? If so, then I recommend the following changes:

Properties within the DR/GR that have existing approvals for residential development or were subject to previously approved mining activities that include vested development approvals that would be inconsistent with the current DR/GR density requirements and have the potential to damage surface and sub-surface water resources, impact habitat, and encroach on environmentally important land, should development occur in accordance with those approvals, may be granted additional densities as an incentive to reduce these potential impacts or to encourage significant environmental restoration and preservation of natural resources if strict criteria improving the adverse impacts are followed.

Proposed Amendment:

d. Is not already designated on Lee Plan Map 17 as an Existing Acreage Subdivision or a Mixed Use Community ***unless the property is located within the “Environmental Restoration Overlay.”***

Comments:

Its not clear why the bolded, proposed language is added in subsection d. Under subsection 1, it provides that the property would be designated as “Environmental Restoration Overlay.”

Proposed Amendment with suggested changes:

3. Properties meeting the above criteria and requirements and located in the Improved Residential Communities overlay may be permitted additional residential dwelling units in addition to the already existing approvals, but in no case in excess of three (3) dwelling units per DR/GR upland acre. The application for ~~Residential~~ the required Planned Development must identify the source of the additional residential dwelling units from the criteria below. Approval of the rezoning will be conditioned to reflect the source of additional dwelling units:

**Question #1:** why is the additional language regarding Improved Residential Communities added? Should this be designated as “Environmental Restoration Overlay”?

Proposed Amendment:

4. Properties located within the “Environmental Restoration Overlay,” depicted on Map 17, must demonstrate the protection, conservation, enhancement and/or restoration of natural resources such as flowways and indigenous habitats, protection of panther habitat, ***and/or other community and regional benefits***. Properties added to Map 17, as part of the “Environmental Restoration Overlay,” will be incentivized based upon the specific merits associated with the reclamation and restoration plans proposed.

**Question #1:** what type of indigenous habitats are included (endangered, protected species, or all types of habitats)?

**Question #2:** As written, the language would require the protection, conservation, enhancement and/or restoration of “other community and regional benefits.” I’m not sure how that is accomplished. Does the drafter intend this to mean and/or provide “other community and regional benefits?” If so, I would recommend the following:

Suggested changes:

4. Properties located within the “Environmental Restoration Overlay,” depicted on Map 17, must demonstrate the protection, conservation, enhancement and/or restoration of natural resources, such as flowways and indigenous habitats, protection of panther habitat, and provide other community and regional benefits. Properties added to Map 17, as part of the “Environmental Restoration Overlay,” will may be incentivized based upon the specific merits associated with the reclamation and restoration plans proposed.

Comments:

Leaving the “or” in the “and/or” would arguably allow an applicant to satisfy the listed items by only providing one of them. For example, the applicant would only have to demonstrate that it is providing a community and regional benefit (ie regional park) and protection of natural resources would not have to occur (which is not the apparent intent for these amendments) .

Proposed Amendment:

- i. Provision of ±1,318 acres in a conservation easement, subject to enhancement and/or restoration;

Comments:

First, as written (but not apparently intended), the criteria would be met by a conservation easement that provides that it is subject to enhancement and/or restoration. Next, as stated above, the requirements for restoration should be identified. Likewise, the requirements for enhancement should be spelled out, to the extent possible. At a minimum, the types of activities that would be deemed restoration or enhancement should be listed.

Suggested changes:

- i. Placement of ±1,318 acres [ON THE SUBJECT PARCEL?] into a conservation easement approved by the County;
- ii. Restoration and enhancement of the property placed within the Conservation Easement;

Proposed Amendment:

- iv. Provision of enhanced **lake reclamation elements**.

Comments:

As above, lake reclamation elements should be identified.

Proposed Amendment with suggested changes:

c. In recognition of the preservation, enhancement, and protection of WildBlue's flowways and natural habitat corridors, the interconnection with existing off-site conservation areas, and the significant east-of-enhancing enhancement and ~~protecting~~ protection of these lands, additional density ~~will~~ may be approved through the planned development zoning process consistent with the following:

Comments:

Adding the "will" language would appear to create an obligation to approve the rezoning regardless of consistency and other zoning considerations. This leads to the rezoning through a Comp Plan amendment concerns that have been raised in other cases and a potential "contract zoning" issue.

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**From:** Miller, Janet

**Sent:** Tuesday, April 15, 2014 2:47 PM

**To:** Campbell, Gerald; Dave Lindsay, East County Water Control District; Dawn Huff, Lee County School Board; Dickson, Benjamin; ext-Linblad, Ellen (flylcpa.com); Farmer, Robert; Fredyma, John; Gaither, Wayne; Harner, David; Houck, Pamela; Jacob, Michael; Josh Philpott, Lee County Port Authority; Kantor, Brigitte; Karuna-Muni, Anura; Kevin Farrell, Sheriff's Office; Keyes, Pamela; Lamey, Jason; Lee, Samuel; LeSage, Tessa; Lis, Carol; Loveland, David; Maguire, Karen L; Miller, Janet; Moore, James; Myers, Steve; Noe, Susan; Olson, Cathy; Ottolini, Roland; Pavese, Michael; Price, Robert; Roberts, Rickey; Sajgo, Gloria; Sampson, Lindsey; Schwartz, Holly; Stewart, Robert; Sweigert, Rebecca; Wayne Gale, Director Mosquito Control; Wegis, Howard; Werst, Lee; Wolf, Emma; Wu, Lili; Zettel, Mary

**Cc:** Dunn, Brandon

**Subject:** CPA2014-00004 WildBlue (Alico East)

Good Morning:

Lee County Planning staff has recently received a privately sponsored amendment to the Lee Plan. Below is a link so you can access the application. It is a large file and may take a minute to open.

<http://www.leegov.com/gov/dept/dcd/Planning/Amendments/Pages/amendment.aspx?aid=628>

Please review the application provided and advise Lee County Planning staff if it is sufficient for review, or if additional materials are needed for a complete review.

Please provide this sufficiency review to Brandon Dunn by **Friday, May 2, 2014**.

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Janet Miller  
Administrative Assistant  
DCD Administration  
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Join our online public forum at [www.leecountytownhall.com](http://www.leecountytownhall.com)

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