

**2007/2008 REGULAR LEE PLAN AMENDMENTS
TRANSMITTAL HEARING**

**COMMISSION CHAMBERS
2120 MAIN STREET
OCTOBER 22, 2008
9:30 A.M.**

AGENDA

- 1. Call to order; Small Scale Adoption Hearing**
- 2. Certification of Affidavit of Publication by County Attorney**
 - A. CPA2007-61 – Formosa**

Amend the Future Land Use Map Series for an approximate 9.91 +/- acre site located in Section 04, Township 46 South, Range 25 East, to change the classification shown on Map 1, the Future Land Use Map, from Industrial Development to Commercial. The site is generally located at the northeast corner of Alico Road and Lee Road.
Sponsor: Alico Land Investment, LLC
 - B. Adopt the following ordinance which adopts CPA 2007-61:**

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE PLAN, COMMONLY KNOWN AS THE “LEE PLAN” AS ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT SMALL SCALE AMENDMENT CPA2007-61 (PERTAINING TO THE DESIGNATION OF A 9.91-ACRE PARCEL FROM INDUSTRIAL DEVELOPMENT TO COMMERCIAL FUTURE LAND USE CATEGORY) APPROVED DURING A SMALL SCALE COMPREHENSIVE PLAN AMENDMENT EFFORT; PROVIDING FOR AMENDMENT TO THE FUTURE LAND USE MAP SERIES, MAP 1; PURPOSE AND SHORT TITLE; LEGAL EFFECT OF “THE LEE PLAN”; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER’S ERRORS, AND AN EFFECTIVE DATE.
- 1. Call to order; 2007/2008 Regular Lee Plan Amendments Transmittal Hearing**
- 2. Certification of Affidavit of Publication**
- 3. Consent Agenda**
 - A. CPA2006-15 – Cauthen**

Amend the Future Land Use Map Series, Map 1, for an approximate 13.5 +/- acre site located in Section 20, Township 44 South, Range 23 East, to change the Future Land Use classification from the “Rural” Future Land Use Category to the “Commercial” Future Land Use Category. The site is

generally located in the southeast corner of Pine Island Road and Veterans Parkway.

Sponsor: John Cauthen

B. CPA2006-20 – Water Supply Facilities Work Plan

Amend the Community Facilities and Services, Potable Water sub-element, the Conservation and Coastal Management Element, and the Intergovernmental Coordination Element of the Lee Plan to coordinate appropriate aspects of the comprehensive plan with the South Florida Water Management District Water Supply Plan and to include a ten year Water Supply Facilities Work Plan as required by s. 163.3177 (6)(c), F.S.

Sponsor: Board of County Commissioners

C. CPA2006-21 – Capital Improvement Program

Amend the Capital Improvements Element (Tables 3 & 4) to reflect the latest adopted Capital Improvement Program.

Sponsor: Board of County Commissioners.

D. CPA2006-26 – Conservation Lands Update

Amend the Future Land Use Map series, Map 1, by updating the Conservation Lands land use categories.

Sponsor: Board of County Commissioners

E. CPA2006-27 – Corridor Access Management Plans

Amend the Future Land Use Element of the Lee Plan to update Policy 1.8.2 to reflect the status of the Corridor Access Management Plans for State Route 82 and for Gunnery Road.

Sponsor: Board of County Commissioners

F. CPA2007-48 – Page Field Airport Layout Plan

Amend the Future Land Use Map Series Map 1 to change the Future Land Use designation of a specified portion of the Page Field Airport property from the "Public Facilities" Future Land Use Category to the "Airport" Future Land Use Category. Revise Map 3G to reflect the latest approved Airport Layout Plan. Amend: the Vision Statement; the Future Land Use Element; the Ports, Aviation, and Related Facilities sub-element of the Transportation Element; the Intergovernmental Coordination Element; and, the Glossary of the Lee Plan to incorporate the Page Field Airport Master Plan, Airport Layout Plan, into the Lee Plan thereby exempting the airport from the DRI process pursuant to section 163.3177(6)(k), F.S.

Sponsor: Lee County Port Authority

G. CPA2007-52 – Cowart

Amend the Future Land Use Map Series, Map 1, to redesignate a 15-acre parcel from the "Open Lands" future land use category to the "Rural" future land use category. The property is located in Section 5 of Township 46 South, Range 25 East. The property is located on Musketeer Lane one half mile south of Briarcliff Road.

Sponsor: Richard Cowart

H. CPA2007-57 – Southwest Florida International Airport Table 5 Update

Amend Table 5, pertaining to the development schedule for the Southwest Florida International Airport, by reformatting and updating the table to: broaden the allowable uses; recognize existing as built conditions; recognize existing airport facilities inadvertently omitted from Table 5 when originally adopted in 2004; incorporate two conversion options for “non-aviation uses;” and, to delete several completed projects.

Sponsor: Lee County Port Authority

I. CPA2007-59 – Hurricane Evacuation/Coastal High Hazard Area

Amend the Conservation and Coastal Management Element of the Lee Plan to establish a Category 5 hurricane evacuation standard, a shelter time standard, and mitigation measures. Amend Map 5, Coastal High Hazard Area, of the Future Land Use Map Series and the Lee Plan Glossary to redefine the Coastal High Hazard Area.

Sponsor: Board of County Commissioners

4. Administrative Agenda - Community Plans Transmittal

A. CPA2006-09 – Alva Community Plan

Amend the Vision Statement and the Future Land Use element to add a new Goal, Objectives, and Policies specific to a portion of the Alva Community. Amend Map 1, Page 2 of 6, Special Treatment Areas to indicate that a new Goal specific to a portion of the Alva Community has been adopted.

Sponsor: Board of County Commissioners/Alva Community Planning Panel

B. CPA2006-11 – Page Park Community Plan

Amend the Future Land Use Element of the Lee Plan to incorporate the recommendations of the Page Park Community Planning effort. Amend the Future Land Use element to add a new Vision Statement, Goal, Objectives, and Policies that address the long range development of Page Park. Amend Map 1, Page 2 of 6, Special Treatment Areas to indicate that a new Goal specific to the Page Park Community has been adopted. Amend the Lee Plan to include a Page Park Overlay Map.

Sponsor: Board of County Commissioners/Page Park Community Planning Panel

C. CPA2007-01 – Caloosahatchee Community Plan

Amend the Future Land Use Element, Goal 21, to add a policy that provides that no land use map amendments to the remaining rural lands category will be permitted unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

Sponsor: Board of County Commissioners/East Lee County Council

D. CPA2007-50 – North Captiva Community Plan

Amend the Future Land Use Element of the Lee Plan to incorporate the recommendations of the North Captiva Community Planning effort. Establish a new Vision Statement and a new Goal, Objectives, and Policies specific to North Captiva. Amend Map 1, Page 2 of 6, Special Treatment Areas to

indicate that a new Goal specific to the North Captiva Community has been adopted. Amend Policy 1.4.2.

Sponsor: Board of County Commissioners/North Captiva Community Planning Panel

E. CPA2006-03 – Olga Community Plan

Amend the Future Land Use Element of the Lee Plan to add a new Goal, Objective, and Policies specific to the Olga community located within the Caloosahatchee Shores planning area. Amend the Future Land Use Map series, Map 1, Page 1 of 6, for specified parcels located east of South Olga Road fronting SR 80 containing approximately 48.7 acres from Suburban and Rural to the Commercial and Conservation Lands Future Land Use Map categories. Amend the Future Land Use series, Map 1, Page 2 of 6, Special Treatment Areas, to indicate that a new Goal specific to the Olga Community has been adopted.

Sponsor: Board of County Commissioners/The East Lee County Council

F. CPA2007-49 – Buckingham Community Plan Update

Amend the Future Land Use Element, text and Future Land Use Map series to incorporate the recommendations of the Buckingham Community Planning effort. Update Goal 17 of the Lee Plan to revise policies specific to the Buckingham Community and expand the affect of Goal 17 beyond the Rural Community Preserve land use category to the Buckingham Planning Community boundary. Amend Map 1, Page 2 of 6, Special Treatment Areas to indicate that a revised Goal specific to the Buckingham Planning Community has been adopted. Update Table 1(b), Year 2030 Allocations, for the Buckingham community to allow for the projected growth through the year 2030.

Sponsor: Board of County Commissioners/Buckingham Community Planning Panel

G. CPA2007-56 – North Fort Myers Community Plan

Amend the Future Land Use Element of the Lee Plan to incorporate the recommendations of the North Fort Myers Community Planning effort. Establish a new Vision Statement, Goal, Objectives, and Policies specific to North Fort Myers. Amend the Future Land Use Map for property containing approximately 85.3 acres located between Orchid Road and Barrett Road; south of Pine Island Road, from Suburban, Central Urban, and Sub-Outlying Suburban to Commercial and Conservation Lands. Amend Map 1, Page 2 of 6, Special Treatment Areas to indicate that a revised Goal specific to the North Fort Myers Planning Community has been adopted.

Sponsor: Board of County Commissioners/North Fort Myers Community Planning Panel

5. Administrative Agenda - Transmittal

A. CPA2006-14 - Raymond Building

Amend the Lee Plan Map 1, Future Land Use Map for a 14 acre parcel from the "Suburban" Future Land Use Category to the "Industrial Development" Future Land Use Category. This parcel is on the north side of Bayshore Road approximately 1 mile west of I-75.

Sponsor: Raymond Building Supply Corp.

B. CPA2007-51 – San Carlos Island

Amend the Future land Use Map Series, Map 1 to change 28.97 acres of land designated "Urban Community", "Suburban" and "Industrial Development" to "Destination Resort Mixed-Use Water-Dependent", and 7.09 acres of land designated "Wetlands" to "Conservation Lands." Incorporate a New Land use category as well as new Objectives and Policies guiding development in this area. Add one foot note to Table 1(a). Amend Table 1 (b) to incorporate the new Future Land Use category.

The property is located in Section 19, Township 46, South, Range 24 East. The property is generally located on San Carlos Island on both sides of Main Street, and is bordered by Hurricane Bay to the north and Matanzas Pass to the south.

Sponsor: McHarris Planning and Design

C. CPA2007-53 – NUHA,LLC

Amend the Future Land Use Element, Policy 1.8.2, to allow for right-in/right-out access to Gunnery Road for the property at the southwest corner of Gunnery Road and Leonard Boulevard.

Sponsor: NUHA, LLC

D. CPA2007-55 – Commercial/Industrial Study

Evaluate and incorporate into the Future Land Use Element and Glossary appropriate Lee Plan policy changes and additions consistent with the Commercial/Industrial Study.

Sponsor: Board of County Commissioners

E. CPA2007-54 – Realmark Burnt Store Marina, LLC

Amend the Future Land Use Map Series, Map 1, for an approximate 18.25 +/- acre site located in Section 1, Township 43 South, Range 22 East and Section 6, Township 43 South, Range 23 East, to change the Future Land Use Classification from Rural to the proposed Burnt Store Marina Village future land use classification. Amend the Future Land Use Element of the Lee Plan to incorporate a new policy specific to the proposed Burnt Store Marina Village land use category. The site is generally located west of Burnt Store Road within the Burnt Store Community.

Sponsor: Realmark Burnt Store Marina, LLC

6. Administrative Agenda - Non-Transmittal

A. CPA2005-49 – Update Goal 10 Natural Resource Extraction

Adopt a new Objective and Policies under Goal 10: Natural resource Extraction to address the further impacts of mining and the steps needed for adequate mitigation or prevention of adverse impacts. Further, recommendations are made to prevent future land use conflicts between mining and other uses in rural areas. More specifically, Goal 10, Natural Resource Extraction, will be expanded to include measures for rock mining, and for mitigation of rock mining impacts with adjacent land uses.

Sponsor: Board of County Commissioners

7. Adjourn

**CPA2007-01
CALOOSAHATCHEE SHORES
BoCC SPONSORED
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

**BoCC Public Hearing Document
for the
October 22, 2008 Transmittal Hearing**

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

October 8, 2008

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2007-00001**

Text Amendment

Map Amendment

✓	This Document Contains the Following Reviews:
✓	Staff Review
✓	Local Planning Agency Review and Recommendation
	Board of County Commissioners Hearing for Transmittal
	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
	Board of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: November 20, 2007

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. SPONSOR/APPLICANT:

A. SPONSOR:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

B. APPLICANT

THE EAST LEE COUNTY COUNCIL
REPRESENTED BY KRIS CELLA McGUIRE

2. REQUEST:

Amend the Future Land Use Element, Goal 21, to add a policy that provides that no land use map amendments to the remaining rural lands category will be permitted unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

POLICY 21.1.4: One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' rural character and rural land use where it currently exists. Therefore no land use map amendments to the remaining rural lands category will be permitted after {scrivener will insert

effective date of policy}, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:

1. RECOMMENDATION: Planning staff recommends that the Board of County Commissioners transmit this proposed amendment.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The Caloosahatchee Shores Community Plan was submitted to Lee County in September, 2002.
- The Caloosahatchee Shores Community Plan resulted in a Lee Plan amendment adopted in October, 2003.
- The Lee Plan amendment specific to Caloosahatchee Shores is now Goal 21 of the Lee Plan.
- Goal 21 was amended on May 16, 2007 when a new Policy 21.1.4 was adopted.
- The East Lee County Council submitted an application to make a second amendment to Goal 21 in April, 2007.
- This amendment would add a new Policy 21.1.5 to Goal 21 of the Lee Plan.

C. BACKGROUND INFORMATION

The Caloosahatchee Shores Community Plan was undertaken by the Caloosahatchee Shores Community Planning Panel working as a sub group of the ELCC. The planning area encompasses that portion of the Fort Myers Shores planning community located east of I-75. The community plan was financed, in part, with \$25,000 of community planning funds from Lee County.

The Caloosahatchee Shores community plan was submitted to Lee County in September, 2002. The plan contained a Goal, Objectives, and Policies. The Goal for Caloosahatchee Shores was adopted into the Lee Plan in October, 2003 and is now Goal 21.

The East Lee County Council has continued to work on improvements to Goal 21, and submitted an amendment to the Goal in September, 2005 that was adopted as Policy 21.1.4 on May 16, 2007. This second proposed amendment to Goal 21 would add a new Policy 21.1.5.

A. STAFF DISCUSSION

Goal 21 of the Lee Plan is intended to express the communities desire to protect the existing character of the community and to maintain the existing rural character of the Caloosahatchee shores area. Goal 21 reads as follows:

GOAL 21: CALOOSAHATCHEE SHORES: To protect the existing character, natural resources and quality of life in Caloosahatchee Shores, while promoting new development, redevelopment and maintaining a more rural identity for the neighborhoods east of I-75 by establishing minimum aesthetic requirements, planning the location and intensity of future commercial and residential uses, and providing incentives for redevelopment, mixed use development and pedestrian safe environments. This Goal and subsequent objectives and policies apply to the Caloosahatchee Shores boundaries as depicted on Map 1, page 2 of 5 in the Appendix. (Added by Ordinance No. 03-21)

STAFF COMMENTS: This proposed amendment is consistent with Goal 21 of the Lee Plan and may help further the intent of the Caloosahatchee Shores community. This proposed new Policy contains language very similar to Objective 17.1 pertaining to the Buckingham community and Objective 20.1 pertaining to the Bayshore community. Objective 17.1 of the Lee Plan reads:

OBJECTIVE 17.1: LAND USE. The primary land use designation for the Buckingham area is "Rural Community Preserve." Public Facilities have also been designated as appropriate. After the adoption of this amendment, no land in Buckingham will be changed to a land use category more intense than Rural Community Preserve (including Public Facilities) unless a finding of overriding public necessity is determined by three members of the Board of County Commissioners. (Amended by Ordinance No. 00-22)

Objective 20.1 of the Lee Plan reads:

OBJECTIVE 20.1: LAND USE. The existing land use designations of the Lee Plan (as of September 30, 2001) are appropriate to achieving the goal of the Bayshore Plan. No land use map amendments to a more intensive category will be permitted after March 11, 2003, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners. (Added by Ordinance No. 03-02)

STAFF COMMENTS: The County Attorney's office issued two separate memorandum on this plan amendment. One is dated October 24, 2007 and the other is dated November 2, 2007. The October 24 memorandum concludes that the proposed amendment to the Caloosahatchee Shores Community Plan may create potential liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act. The November 2 memorandum states that the proposed limitation on further amendments to the Future Land Use Map for lands currently designated as Rural, will result in liability under the Bert J. Harris, Jr., Private Property Rights Protection Act. Those memorandum are attached to this report.

The County Attorney's Office recommended that planning staff provide an inventory of land designated Rural in the Caloosahatchee Shores planning area. There are approximately 3,189 acres of Rural land in the Caloosahatchee Shores planning area. The County Attorney's office also suggested that an estimate of the possible relief that may be sought by these property owners. Short of having appraisals for all of the Rural designated property with each possible land use category change that could be sought, assigning a dollar amount to the amount of exposure the County may or will be exposing itself to is impossible.

Planning staff questions that there are valid investment backed expectations on the Rural properties in Caloosahatchee Shores, or anywhere else for that matter. If you purchase a piece of property that is designated as Rural, it would be reasonable to expect that is what you have. Planning staff does not believe that any investment backed expectations beyond the uses allowed in the Rural category is reasonable foreseeable and speculative. In addition, this amendment does not preclude a property owner from requesting a change to their Future Land Use Map designation. It does heighten the scrutiny of that request. Additionally, very similar language is in place in two other communities in Lee County, namely Buckingham and Bayshore.

Planning staff recommends that the Board of County Commissioners transmit this proposed amendment.

PART III - LOCAL PLANNING AGENCY REVIEW AND RECOMMENDATION

DATE OF PUBLIC HEARING: December 17, 2007

A. LOCAL PLANNING AGENCY REVIEW

Staff gave a brief review of the staff report and recommendations. Following staff's presentation one LPA member expressed concern with designating a permanence of rural and ignoring the fact that this area will continue to grow and may need commercial at some point. He felt there should be an analysis done to determine what part of the 3,189 affected acres would be appropriate for commercial development. Staff noted that if there is a need in the community for commercial development then three members of the Board of County Commissioners can find that there is an overriding public need and make that change.

Another member appreciated the fact that this community based amendment underscores the desires of the community to emphasize the rural character of their area and preserve it as has been done with the Buckingham community and the Bayshore community.

The LPA had a lengthy discussion about Mr. Spickerman's memorandum dated October 24, 2007 regarding Bert J. Harris implications.

An LPA member stated that when someone applies for a plan amendment, they must go through an analysis from the Planning Division, various other departments, the LPA, and the Board of County Commissioners. This rigorous process will continue regardless of whether or not this plan amendment is adopted.

The LPA asked if anyone from the public wished to speak and the sponsor of the proposal spoke in favor of transmitting CPA 2007-01.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

- 1. RECOMMENDATION: The LPA Recommends that the Board of County Commissioners transmit CPA 2007-00001 as recommended by staff.**
- 2. BASIS AND RECOMMENDED FINDINGS OF FACT: The LPA accepted the findings of fact as advanced by staff.**

C. VOTE:

NOEL ANDRESS	AYE
DEREK BURR	AYE
LES COCHRAN	AYE
RONALD INGE	AYE
CARLETON RYFFEL	AYE
RAE ANN WESSEL	AYE
LELAND TAYLOR	AYE

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

DATE OF TRANSMITTAL HEARING: October 22, 2008

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

A. BRIAN BIGELOW

TAMMARA HALL

ROBERT P. JANES

RAY JUDAH

FRANKLIN B. MANN

**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: _____

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS

B. STAFF RESPONSE

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

DATE OF ADOPTION HEARING: _____

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

A. BRIAN BIGELOW

TAMMARA HALL

ROBERT P. JANES

RAY JUDAH

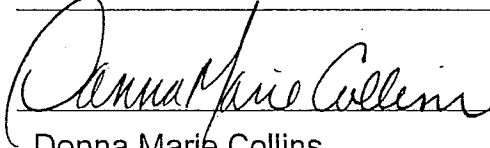
FRANKLIN B. MANN

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

RECEIVED
NOV 21 2007

DATE: November 2, 2007 **COMMUNITY DEVELOPMENT**

To: Jim Mudd
Planning Division

FROM: 
Donna Marie Collins
Assistant County Attorney

RE: Caloosahatchee Shores Community Plan
CPA2007-00001
LU-07-10-2090.I.5.

Thank you for forwarding the application filed by the East Lee County Council to amend the Caloosahatchee Shores Community Plan. The Office of the County Attorney has reviewed the proposed text amendment. Please be advised that the proposed limitation on further amendments to the Future Land Use Map for lands currently designated as Rural, will result in liability under the Bert J. Harris, Jr., Private Property Rights Protection Act. For this reason, it is our recommendation that the Planning Division prepare an inventory of the properties that will be affected by the proposed limitation so that the Board will be informed of the magnitude of property affected by the proposed limitation. This information will also be necessary to evaluate the scope of the County's exposure to liability under the Act. The inventory should include those properties currently designated as Rural on the Future Land Use Map located within the boundaries of the Caloosahatchee Shores Community.

A detailed examination of the implications of the proposed plan amendment are set forth in the attached memorandum prepared by Robert Spickerman of this Office. If I may be of further assistance, do not hesitate to contact me.


DMC/amp
Attachment

cc: Matt Noble, Planning Division w/attachment

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: October 24, 2007

TO: Donna Marie Collins
Assistant County Attorney

FROM: 
Robert Spickerman
Assistant County Attorney

RE: Caloosahatchee Shores Community Plan - Proposed Text Amendment
LU-07-10-2090.I.5.
CPA 2007-00001

Issue:

Whether the proposed amendment to the Caloosahatchee Shores Community Plan raises any potential liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act.

Brief Answer:

The proposed text amendment for the Caloosahatchee Shores Community Plan may create liability for Lee County pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act. The sources for potential liability are the proposed amendment's use of the term "rural character" and the prohibition against intensifying the future land use of properties currently existing within the rural lands future land use category.

Analysis:

On January 22, 2007, at the regularly scheduled meeting of the East Lee County Council, the Council unanimously voted to amend the text of the Caloosahatchee Shores Community Plan with the following language:

One important aspect of the Caloosahatchee Shores Community Plan goal is to retain it's rural character and rural land use where it currently exists. Therefore, no land use map amendments to the remaining rural lands category will be permitted after (scrivener will insert affective date of policy), unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

The main issue is whether under the Bert J. Harris, Jr., Private Property Rights Protection Act (Act), Lee County may be liable to property owners detrimentally affected by the proposed plan amendment. The Act is codified in the Florida Statutes as Fla. Stat. §70.001. The Act states, in part, that when a specific action of a governmental entity has inordinately burdened an existing use of real property or vested right to a specific use of real property, the property owner of that real property is entitled to relief. The Act is premised on a belief that the proper balance between protection of public good and private property interests can best be achieved on a case by case basis. (Article on Private Property Rights, Local Government Law Section Newsletter). As such, the terms used by the Act are unclear and broadly defined.

The terms "inordinate burden" or "inordinately burdened" are defined by § 70.001(3)(e) as an action of one or more governmental entities restricting or limiting the use of real property such that the property owner suffers a permanent loss of a reasonable investment backed expectation for an existing use of the landowner's real property or a vested right to a specific use of the landowner's real property.

Section 70.001(3)(b) defines existing use as the actual, present use of real property or a use that is "reasonably foreseeable though non-speculative." In order to be reasonably foreseeable though non-speculative, the use must be suitable for the real property, must be compatible with the adjacent lands, and must create a greater fair market value in the real property that is greater than the fair market value of the actual, present use of the real property. Fla. Stat. §70.001(3)(b).

The limits and impacts of the Act are still being developed by the courts. As such, a liberal interpretation of the Act should be used when evaluating potential liability. The Act's definition of existing use as including a use that is "reasonably foreseeable though non-speculative" is the most problematic for the proposed amendment.

The first issue raised by the proposed amendment arises from the use of the term "rural character". The amendment identifies a goal of the Caloosahatchee Shores Community Plan as being to retain the rural character of the Community. The use of the term "rural character" is excessively vague. If the term is being used merely as identifying a goal and the only means to achieve the goal is the prohibition against intensifying the future land use of the rural lands future land use categories, then the use of the term "rural character" is acceptable. If however, other means in addition to the aforementioned prohibition are contemplated for the preservation of the Community's rural character, then the use of the term is not acceptable. Either way, a more detailed explanation of the use of the term "rural character" is necessary for further liability analysis.

The second issue raised by the proposed amendment deals with the prohibition against land use map amendments to properties that are subject to a future rural land use category within the boundaries of the Caloosahatchee Shores Community. The broad definition of "existing use" to include a use that is reasonably foreseeable though non-speculative, provides a property owner

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

with a possible avenue for recovery against Lee County pursuant to the Act. As stated before, "reasonably foreseeable though non-speculative" means that the use must be suitable for the real property, must be compatible with the adjacent land, and must create a greater fair market value in the real property that is greater than the fair market value of the actual, present use of the real property. Fla. Stat. §70.001(3)(b). In Palm Beach Polo, Inc. V. The Village of Wellington, 918 So.2d 988(Fla. 4DCA 2006), a developer purchased a large tract of property at a bankruptcy auction. At the time of the bankruptcy sale, the property was subject to a development plan requiring the preservation and restoration of a forest on the property. See *id* at 991. The Village of Wellington subsequently identified the subject forest property as conservation in its comprehensive plan. See *id* at 992. The developer protested the conservation designation and made a claim pursuant to the Bert J. Harris Act. See *id*. The court concluded that since the developer purchased the property subsequent to the required preservation and restoration of the forest property, the developer failed to establish any reasonable investment-backed expectations with respect to development of the forest property. See *id* at 993.

Other than rural related future land uses, the Caloosahatchee Shores Community also includes suburban, outlying suburban, central urban, urban community, and public facilities future land uses. The Caloosahatchee Shores Community also contains many major roadways including, Palm Beach Blvd., Buckingham Road, Orange River Blvd. and Tice Street. Also, the Caloosahatchee Shores Community is bordered on the West by I-75. Some of the properties within the rural lands future land use categories border land within a more intense future land use category. With increased development, there will be increased demand for intensifying the use of properties, especially near the transportation corridors previously identified within the Caloosahatchee Shores Community. Current owner's of property within the rural land use categories of the Caloosahatchee Shores Community will be able to provide a stronger argument regarding reasonable investment-backed expectations than that made by the developer in the Wellington case discussed above. An owner of property located within a rural future land use category may not find it unreasonable to foresee a use of their property that is more intense than the rural lands future land use category will allow. The proposed amendment would prevent that property owner from amending the future land use map as contemplated by policy 2.4.1 of the Lee Plan.

Conclusion:

The proposed amendment to the Caloosahatchee Shores Community Plan may create potential liability for Lee County pursuant to the Act. As the Act is premised on the belief that the proper balance between protection of the public good and private property interests can best be achieved on a case by case basis, critical terms used in the Act are broadly defined. The definition for the terms "inordinately burdened" and "existing use" are the most problematic.

Donna Marie Collins
October 24, 2007
Page 4

Re: Caloosahatchee Shores Community Plan - Proposed Text Amendment

The proposed amendment's use of the term "rural character" must be further defined in order to properly evaluate any impact the Act may have on the amendment. The prohibition against amending the future land use map to change a future land use category currently identified as rural, may create future liability for Lee County pursuant to the Act.

RDS/amp

RECEIVED
APR - 2 2007



LEE COUNTY
SOUTHWEST FLORIDA

COMMUNITY DEVELOPMENT

Lee County Board of County Commissioners
Department of Community Development
Division of Planning
Post Office Box 398
Fort Myers, FL 33902-0398
Telephone: (239) 479-8585
FAX: (239) 479-8519

APPLICATION FOR A
COMPREHENSIVE PLAN AMENDMENT

(To be completed at time of intake)

DATE REC'D _____ REC'D BY: _____

APPLICATION FEE _____ TIDEMARK NO: _____

THE FOLLOWING VERIFIED:

Zoning Commissioner District

Designation on FLUM

(To be completed by Planning Staff)

Plan Amendment Cycle: Normal Small Scale DRI Emergency

Request No: _____

APPLICANT PLEASE NOTE:

Answer all questions completely and accurately. Please print or type responses. If additional space is needed, number and attach additional sheets. The total number of sheets in your application is: 9

Submit 6 copies of the complete application and amendment support documentation, including maps, to the Lee County Division of Planning. Additional copies may be required for Local Planning Agency, Board of County Commissioners hearings and the Department of Community Affairs' packages.

I, the undersigned owner or authorized representative, hereby submit this application and the attached amendment support documentation. The information and documents provided are complete and accurate to the best of my knowledge.

4/2/07 _____
DATE SIGNATURE OF OWNER OR AUTHORIZED REPRESENTATIVE

RECEIVED
APR - 4 2007

2007-00001

I. APPLICANT/AGENT/OWNER INFORMATION

APPLICANT East Lee County Council
ADDRESS C/O Cella Molnar & Assoc. 1631 Hendry St.
CITY Kort Myers STATE FL ZIP 33901
TELEPHONE NUMBER 239-337-1071 FAX NUMBER 239-337-1076

AGENT* Miss Cella ^{McGuire} Board of Directors
ADDRESS same as above
CITY _____ STATE _____ ZIP _____
TELEPHONE NUMBER _____ FAX NUMBER _____

OWNER(s) OF RECORD & Caloosahatchee Shores Community Plan c/o
ADDRESS East Lee County Council
CITY same as above STATE _____ ZIP _____
TELEPHONE NUMBER _____ FAX NUMBER _____

Name, address and qualification of additional planners, architects, engineers, environmental consultants, and other professionals providing information contained in this application.

* This will be the person contacted for all business relative to the application.

II. REQUESTED CHANGE (Please see Item 1 for Fee Schedule)

A. TYPE: (Check appropriate type)

Text Amendment

Future Land Use Map Series Amendment
(Maps 1 thru 21)

List Number(s) of Map(s) to be amended

B. SUMMARY OF REQUEST (Brief explanation):

Amend the Calousa Hatchee Community
Plan text see attached.

**III. PROPERTY SIZE AND LOCATION OF AFFECTED PROPERTY
(for amendments affecting development potential of property)**

A. Property Location:

1. Site Address: see a Hatched map

2. STRAP(s): _____

B. Property Information

Total Acreage of Property: _____

Total Acreage included in Request: _____

Area of each Existing Future Land Use Category: _____

Total Uplands: _____

Total Wetlands: _____

Current Zoning: _____

Current Future Land Use Designation: _____

Existing Land Use: _____

April 2, 2007
Lee County Department of Community Development Services
1500 Monroe Street
Fort Myers, Florida 33901

Subject: Caloosahatchee Shores Community Plan – Text Amendment Requested

On January 22, 2007, at the regularly scheduled meeting of the East Lee County Council, the Council unanimously voted to amend the text of the referenced community plan with the following language:

"One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' rural character and rural land use where it currently exists. Therefore no land use map amendments to the remaining rural lands category will be permitted after {scrivener will insert effective date of policy}, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners."

Kris Cella McGuire
Board of Directors
East Lee County Council

C. State if the subject property is located in one of the following areas and if so how does the proposed change effect the area:

Lehigh Acres Commercial Overlay: _____

Airport Noise Zone 2 or 3: _____

Acquisition Area: _____

Joint Planning Agreement Area (adjoining other jurisdictional lands): _____

Community Redevelopment Area: _____

D. Proposed change for the Subject Property:

No change to remain Rural Land Use

E. Potential development of the subject property:

1. Calculation of maximum allowable development under existing FLUM:

Residential Units/Density _____

Commercial intensity _____

Industrial intensity _____

2. Calculation of maximum allowable development under proposed FLUM:

Residential Units/Density _____

Commercial intensity _____

Industrial intensity _____

IV. AMENDMENT SUPPORT DOCUMENTATION

At a minimum, the application shall include the following support data and analysis. These items are based on comprehensive plan amendment submittal requirements of the State of Florida, Department of Community Affairs, and policies contained in the Lee County Comprehensive Plan. Support documentation provided by the applicant will be used by staff as a basis for evaluating this request. To assist in the preparation of amendment packets, the applicant is encouraged to provide all data and analysis electronically. (Please contact the Division of Planning for currently accepted formats)

A. General Information and Maps

NOTE: For each map submitted, the applicant will be required to provide a reduced map (8.5" x 11") for inclusion in public hearing packets.

3. Requests involving lands in critical areas for future water supply must be evaluated based on policy 2.4.2.
 4. Requests moving lands from Density Reduction/Groundwater Resource must fully address Policy 2.4.3 of the Lee Plan Future Land Use Element.
- G. Justify the proposed amendment based upon sound planning principles. Be sure to support all conclusions made in this justification with adequate data and analysis.

Item 1: Fee Schedule

Map Amendment Flat Fee	\$2,000.00 each
Map Amendment > 20 Acres	\$2,000.00 and \$20.00 per 10 acres
Small Scale Amendment (10 acres or less)	\$1,500.00 each
Text Amendment Flat Fee	\$2,500.00 each

AFFIDAVIT

I, Kris Cella McGuire certify that I am the owner or authorized representative of the property described herein, and that all answers to the questions in this application and any sketches, data, or other supplementary matter attached to and made a part of this application, are honest and true to the best of my knowledge and belief. I also authorize the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made through this application.

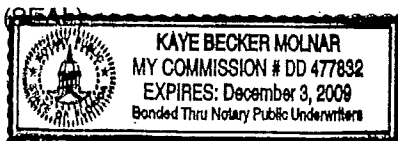
Kris Cella McGuire
 Signature of owner or owner-authorized agent

4/2/07
 Date

Kris Cella McGuire
 Typed or printed name

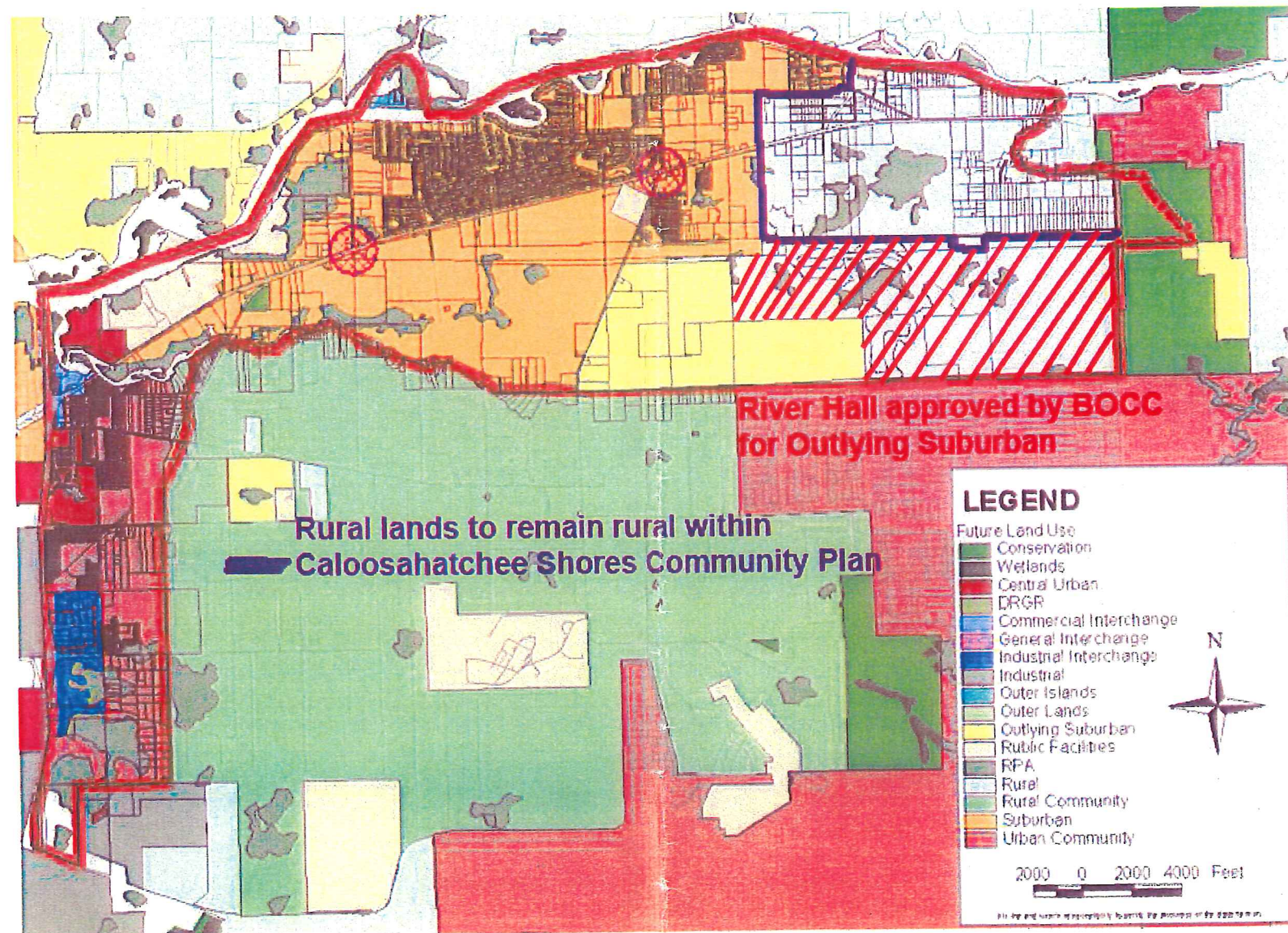
STATE OF FLORIDA)
 COUNTY OF LEE)

The foregoing instrument was certified and subscribed before me this 2nd day of April 2007,
 by Kris Cella McGuire, who is personally known to me or who has produced
 _____ as identification.

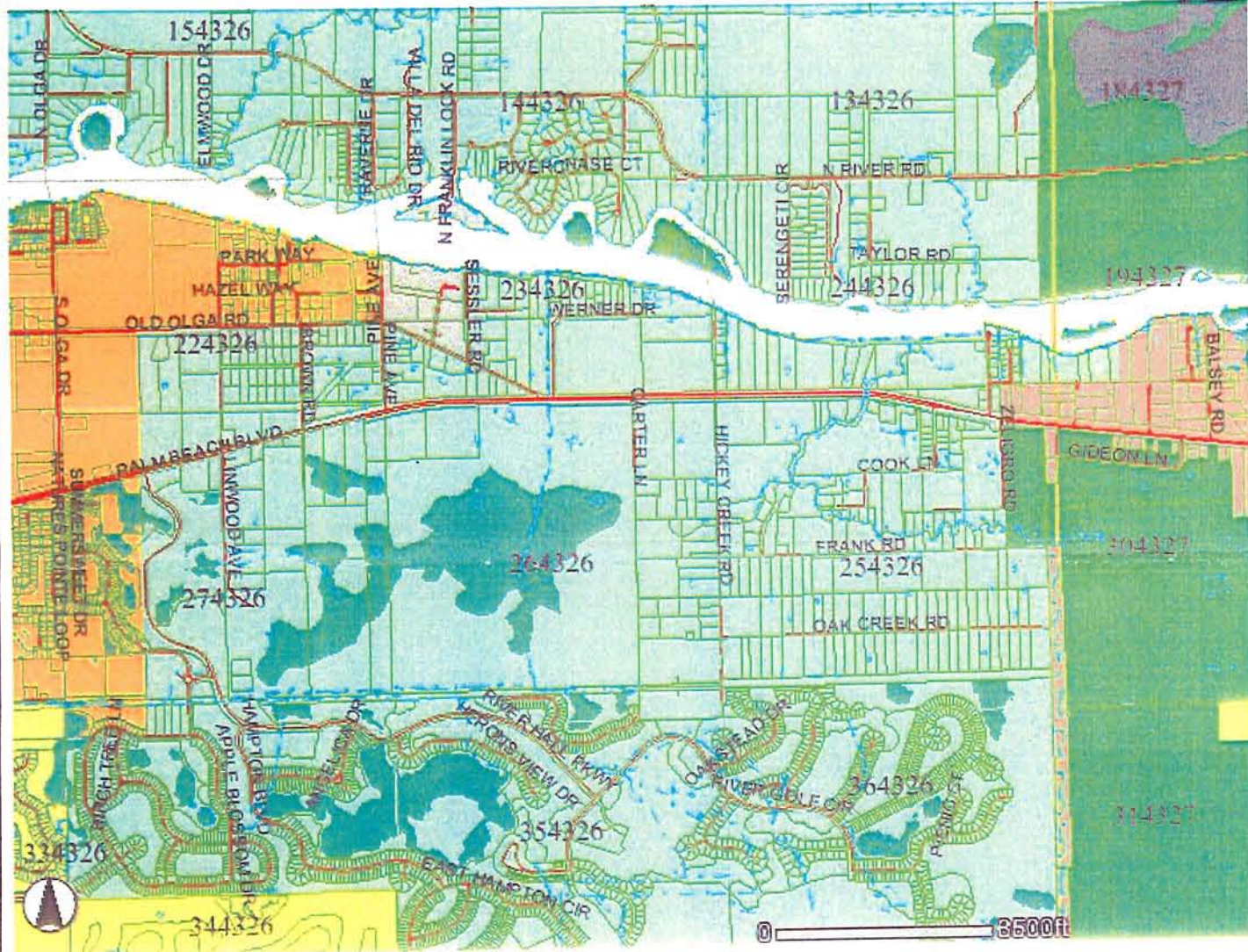


Kaye Becker Molnar
 Signature of notary public

Kaye Becker Molnar
 Printed name of notary public



Lee County Map



- Legend**
- Hydro Features
 - Condo Building
 - Parcels
 - Parcel Hooks
 - Road Center Line
 - Township Range Lines
 - Township Range Labels
 - Section Lines
 - Future Land Use
 - Arrest
 - Arrest Containment
 - Central Urban
 - Coastal Rural
 - Conservation Lands Upland
 - Conservation Lands Wetland
 - Density Reduction / Groundwater Resource
 - General Commercial Interchange
 - General Interchange
 - Industrial Commercial Interchange
 - Industrial Development
 - Industrial Interchange
 - Intensive Development
 - Mixed Use Interchange
 - New Community
 - Open Lands
 - Outer Island
 - Outlying Suburban
 - Public Facilities
 - Rural
 - Rural Community Preserve
 - Suburban
 - University Community
 - University Village Interchange
 - Urban Community
 - Wetlands
 - Conservation
 - DRGR
 - General Commercial
 - High Den. MF Res.
 - High Den. MU/Village Res.
 - Industrial
 - Interchg. Commercial
 - Low Den. SF Res.
 - Med. Den. MF Res.
 - Med. Den. SF/DUP Res.
 - Med. Den. MU/PD
 - Med. Den. SF Res.
 - Public/Semi-Public
 - Recreation
 - Resource Protection
 - Scenic
 - Low Density
 - Marina
 - Mixed Residential
 - Residential Commercial
 - City Limits
 - Boat Springs
 - Cape Coral
 - Fort Myers
 - Sanibel
 - Town of Fort Myers Beach