



LEE COUNTY BOARD OF COUNTY COMMISSIONERS
COMPREHENSIVE PLAN AMENDMENT HEARING AGENDA

BOARD CHAMBERS

2120 MAIN STREET, FORT MYERS, FL 33901

WEDNESDAY, MAY 17, 2017

9:30 A.M.

CPA2016-00007	TIMBER CREEK – TRANSMITTAL
CPA2016-00011	CENTERPLACE – ADOPTION
CPA2014-00008	OVERRIDING PUBLIC NECESSITY - ADOPTION

**NOTICE OF PROPOSED AMENDMENT 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 Wednesday, May 17, 2017. 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:

CPA2016-00007, Timber Creek: Amend the Future Land Use Map to redesignate 628 acres from the Density Reduction/Groundwater Resource and Wetlands future land use categories to the Sub-Outlying Suburban and Wetlands future land use categories. Amend Table 1(b), Year 2030 Allocations, to accommodate additional residential development for the Sub-Outlying Suburban future land use category within the Gateway/Airport Planning Community. Amend the following Lee Plan maps for internal consistency: Map 1, Pages 2 and 4; Map 4; Map 6; Map 7; Map 14; Map 16; Map 17; Map 20; and Map 25. The property is located near the intersection of SR 82 and Daniels Parkway.

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.

This meeting is open to the public. 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.

Lee County will not discriminate against individuals with disabilities. To request an accommodation, contact Joan LaGuardia, (239) 533-2314, Florida Relay Service 711, or jlaguardia@leegov.com, at least five business days in advance.

**NOTICE OF PROPOSED AMENDMENT TO THE
LEE COUNTY COMPREHENSIVE LAND USE PLAN
(ADOPTION HEARING)**

The Lee County Board of County Commissioners will hold a public hearing to consider the adoption of proposed amendments to the Lee County Comprehensive Land Use Plan (Lee Plan) on Wednesday, May 17, 2017. The hearing will commence at 9:30 a.m., or as soon thereafter as can be heard, in the Board Chambers, 2120 Main Street in Downtown Fort Myers.

The Board proposes to adopt an ordinance amending the Lee Plan as follows:

CPA2014-00008 – Overriding Public Necessity Definition: Amend the Lee Plan to remove the overriding public necessity requirement found in Objective 17.1, Objective 20.1, Policy 21.1.5, and Policy 26.2.2 with regards to the Buckingham, Caloosahatchee Shores, Alva, and Bayshore community plans.

CPA2016-00011 – Centerplace: Amend Lee Plan Policy 1.1.9, Goal 18, and Table 1(a) to remove site specific requirements for Area 9 of the University Community. Also amend Lee Plan Map 1, Page 2 to identify the subject property in the correct community planning area.

This meeting is open to the public. 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.

Lee County will not discriminate against individuals with disabilities. To request an accommodation, contact Joan LaGuardia, (239) 533-2314, Florida Relay Service 711, or jlguardia@leegov.com, at least five business days in advance.

CPA2014-00008

**OVERRIDING
PUBLIC NECESSITY
DEFINITION**

Summary Sheet

Overriding Public Necessity, CPA2014-08

Request:

To remove the Overriding Public Necessity (OPN) requirement found in Lee Plan Objectives 17.1 and 20.1 and Policies 21.1.5 and 26.2.2 with regards to the Buckingham, Caloosahatchee Shores, Alva, and Bayshore community plans.

Transmittal Hearing:

The Board of County Commissioners voted 4-1 to transmit the amendment on March 22, 2017.

Ten members of the public addressed the BoCC concerning the proposed amendment. They were all opposed to staff's recommendation to remove OPN. The primary concern by the public was the belief that without OPN, the communities will lose their voice and the ability to retain the rural character.

State Reviewing Agency Objections, Recommendations, and Comments:

Lee County received responses from the following review agencies addressing the transmitted amendment: Department of Environmental Protection; Department of Agriculture and Consumer Services; Department of Transportation, Florida Fish and Wildlife Conservation Commission; South Florida Water Management District; Department of Economic Opportunity; and Southwest Florida Regional Planning Council. All correspondence from the state reviewing agencies has been attached to the staff report. There were no objections to the proposed amendments.

Staff Recommendation:

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

LEE COUNTY ORDINANCE NO. _____
(Overriding Public Necessity Definition)
(CPA2014-00008)

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 THE OVERRIDING PUBLIC NECESSITY DEFINITION (CPA2014-00008) APPROVED DURING A PUBLIC HEARING; PROVIDING FOR PURPOSE, INTENT, AND SHORT TITLE; AMENDMENTS TO ADOPTED TEXT; LEGAL EFFECT OF “THE LEE PLAN”; PERTAINING TO MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; 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 amendment in accordance with Florida Statutes and the Lee County Administrative Code on February 27, 2017; and,

WHEREAS, the Board held a public hearing for the transmittal of the proposed amendment on March 22, 2017. At that hearing, the Board approved a motion to send, and did later send, proposed amendment pertaining to Overriding Public Necessity (CPA2014-00008) to the reviewing agencies set forth in Section 163.3184(1)(c), F.S. for review and comment; and,

WHEREAS, at the March 22, 2017 meeting, the Board announced its intention to hold a public hearing after the receipt of the reviewing agencies’ written comments; and,

WHEREAS, on May 17, 2017, the Board held a public hearing and adopted the proposed amendment 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 "Overriding Public Necessity Ordinance (CPA2014-00008)."**

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, to remove the Overriding Public Necessity (OPN) requirement found in Lee Plan Objectives 17.1 and 20.1 and Policies 21.1.5 and 26.2.2 with regards to the Buckingham, Caloosahatchee Shores, Alva, and Bayshore community plans, known as Overriding Public Necessity (CPA2014-00008).

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: MODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION FIVE: 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 SIX: 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 SEVEN: 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 EIGHT: 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 17th day of May 2017.

ATTEST:
LINDA DOGGETT, CLERK

LEE COUNTY BOARD OF
COUNTY COMMISSIONERS

BY: _____
Deputy Clerk

BY: _____
John Manning, Chair

DATE: _____

Approved as to Form for the
Reliance of Lee County Only

County Attorney's Office

Exhibit A: Adopted revisions to Lee Plan Goals 17, 20, 21 and 26
(Adopted by BOCC May 17, 2017)



**COMPREHENSIVE PLAN
AMENDMENT**

**CPA2014-08
OVERRIDING PUBLIC NECESSITY**

County Initiated Amendment

BOCC ADOPTION DOCUMENT

5/17/2017

**STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2014-08**

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 Review Agencies' Comments
	Board of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: February 17, 2017

**PART I
REQUEST, RECOMMENDATION AND FINDINGS OF FACT**

A. COUNTY INITIATED AMENDMENT:

To remove the Overriding Public Necessity (OPN) requirement found in Lee Plan Objectives 17.1 and 20.1 and Policies 21.1.5 and 26.2.2 with regards to the Buckingham, Caloosahatchee Shores, Alva, and Bayshore community plans.

B. RECOMMENDATION:

Staff recommends that the BoCC *transmit* amendments that delete the OPN provisions from Lee Plan Objectives 17.1 and 20.1 and Policies 21.1.5 and 26.2.2 in order to address potential legal challenges that extend beyond just defining the term. The proposed amendments are provided in strike-through and underline in Attachment 1.

C. FINDINGS OF FACT:

- The OPN requirements in Objectives 17.1 and 20.1 and Policies 21.1.5 and 26.2.2 do not provide adequate notice of the criteria a property owner must satisfy to permit approval of a future land use amendment.
- There is a lack of clear standards or criteria for providing evidence and demonstrating compliance with OPN.
- The OPN provisions create potential legal challenges to its application based on substantive and due process claims.
- Existing Lee Plan policies are in place and are adequate to provide protection of rural character against the encroachment of inconsistent and incompatible land uses in the Buckingham, Caloosahatchee Shores, Alva, and Bayshore communities.
- Deleting OPN from the Lee Plan in no way precludes the Board from reviewing the compatibility and consistency of future cases in these four communities.

PART II DISCUSSION AND ANALYSIS

The Buckingham, Caloosahatchee Shores, Alva, and Bayshore community planning areas identified in the Lee Plan contain an OPN provision as a standard for approving density increases on lands within their respective communities. OPN is not a defined term in the Lee Plan and there are no clear standards or criteria for its application. The ambiguity of the OPN provisions creates potential legal challenges to its use. Legal concerns regarding OPN provisions are detailed in a memo from the County Attorney's Office dated January 12, 2017, attached hereto as Exhibit 3. After considering the advice and recommendation of the County Attorney's Office and conducting thorough analysis, it is staff's recommendation that the OPN provisions be deleted from the Lee Plan. There are existing provisions throughout the Lee Plan that provide protections against inconsistent and incompatible development making OPN unnecessary.

The ambiguity of OPN became apparent during the River Hall Comprehensive Plan Amendment proceedings during which the Board directed staff to obtain public input and amend the Lee Plan to define OPN and clarify its application to comprehensive plan amendments.

Staff held a workshop in the Alva, Bayshore, Buckingham and Caloosahatchee Shores communities as provided below:

Buckingham Community
February 19, 2015 @ 6PM
Mosquito District

Bayshore Community
February 10, 2015 @ 6:30PM
New Hope Church, N. Fort Myers

Caloosahatchee Shores/
East Lee County Council
March 17, 2015 @ 6PM
Olga Community Center

Alva Community
February 9, 2015 @ 7PM
Alva Community Center

Each one of these communities has community-specific OPN language contained in Objective 17.1 (Buckingham), Objective 20.1 (Bayshore), Policy 21.1.5 (Caloosahatchee Shores) and Policy 26.2.2 (Alva). The goal of the workshops was to create a single definition of OPN with criteria for approval that apply to all four communities. This task was proved impossible. Although the four communities agreed on a general definition for OPN, they could not reach a consensus on standards for its application. In general, each community indicated that OPN should be based on the unmet needs of the individual planning community and not based on the overall needs of the residents of Lee County.

The definition submitted by the four communities in a joint letter dated March 14, 2015, attached hereto as Exhibit 2, was as follows:

Overriding Public Necessity - An essential need of the residents of the individual Planning Community as a whole, where the interests of the individual Planning Community are regarded as superior to the interests of individuals and businesses, and when there is a conflict between them, the latter must give way. Increases in density to support services and/or infrastructure (e.g. schools, hospitals, fire and rescue services, water and sewer, etc.) do not qualify as an "overriding public necessity." The

requirement of overriding public necessity applies to the actual land use amendment being requested, not the need for amenities offered, and will be considered only for the actual footprint of the intended use.”

Like the existing policy language requiring an OPN, this definition includes vague and ambiguous terms as well as regulatory language not appropriate for a definition. The County Attorney’s Office memo (Exhibit 3) highlights the challenge of creating a single definition of OPN with a single set of criteria to be applied to all four distinct areas: “For example, what qualifies as an overriding public necessity in Alva may not be an overriding public necessity in Bayshore. Additionally, the criteria for determining OPN in Alva could differ from the criteria in Bayshore, even though the term is defined the same.” In order to objectively and consistently apply OPN, specific standards or criteria are mandatory. Without the specificity for how to apply OPN, it remains a nebulous and futile provision that undermines the legal integrity of the Lee Plan.

Beyond the issue of defining OPN, are procedural due process concerns. As written, applicants are required to demonstrate compliance with the OPN standard. The Lee Plan does not provide procedures for providing evidence and demonstrating compliance with OPN. The OPN requirement created a quasi judicial process within a historically legislative forum. As a result, Board decisions regarding OPN must be based on competent substantial evidence and provide applicant’s with certain due process rights under state law for quasi judicial proceedings. These concerns are conveyed in the County Attorney’s Office memo which asserts, “In short, any decision the Board makes regarding the application of the existing OPN provisions may lead to costly and lengthy legal challenges stemming from unknown criteria.”

To overcome the complexities of defining and objectively applying OPN and avoid potential legal challenges, the OPN provisions must be removed from Lee Plan Objective 17.1 (Buckingham), Objective 20.1 (Bayshore), Policy 21.1.5 (Caloosahatchee Shores) and Policy 26.2.2 (Alva). Removing the OPN provisions does not preclude review of compatibility and consistency required by other provisions of the Lee Plan from being applied, such as:

- Objectives 2.1 and 2.2 direct new growth to urban areas in contiguous and compact patterns, in part, to contain urban sprawl. Proposed developments in non-urban areas must demonstrate during the rezoning process consistency with these Objectives.
- Goal 5 contains policies that protect existing residential areas by prohibiting residential uses in areas where flood and other hazards exist and from the encroachment of uses that are potentially destructive to the character and integrity of the residential environment.
- Commercial development is limited in rural areas by Goal 6 to serving the needs of the residents in the immediate area. Compatibility, impact on infrastructure, locating the commercial development at intersections, protecting against premature, scattered, or strip development and encouraging infill development are key to protecting the non-urban areas.
- Goal 9 is to protect existing and potential agricultural lands from the encroachment of incompatible land uses

In addition to the County-wide provisions, each of the four community planning areas has community-specific provisions that address the unique community character of each area. The Lee Plan Goal for each of the four communities is provided, in part, below:

GOAL 17: BUCKINGHAM. To manage the future growth in the Buckingham Community; to preserve the existing rural and agricultural land use pattern; to diversify the choice of housing for Lee County by maintaining and enhancing the historic and rural character; and to protect the unique historical and environmental values of the Buckingham Community.

GOAL 20: BAYSHORE COMMUNITY. To protect the existing rural residential, agricultural and equestrian-oriented character of the community by maintaining low residential densities and minimal commercial activities, while excluding incompatible uses that are destructive to the character of this rural residential environment.

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.

GOAL 26: ALVA. To support and enhance Alva's unique rural, historic, agricultural character and natural environment and resources, including the rural village and surrounding area.

The Alva, Bayshore, Caloosahatchee Shores and Buckingham community plans, with the recommended amendments, are attached hereto as Exhibit 1. This exhibit demonstrates that there are adequate objectives and policies in place without the OPN requirement that further the Goal of each individual community. Striking the OPN requirement from the Lee Plan does not preclude the Board from reviewing future cases for consistency and compatibility with these plans.

PART III CONCLUSION

There are existing Lee Plan policies in place that are adequate to provide the protections against incompatible uses and urban encroachment into rural areas without needing to define OPN and develop criteria that apply throughout all four communities. The practical approach is to delete the OPN provisions from Lee Plan Objectives 17.1 and 20.1 and Policies 21.1.5 and 26.2.2. By doing so, potential legal liabilities and ambiguity are removed from the Lee Plan.

EXHIBITS:

- Exhibit 1 Lee Plan Goals 17, 20, 21 and 26 with proposed amendments
- Exhibit 2 Communities' letter dated March 14, 2015
- Exhibit 3 County Attorney Memorandum dated January 12, 2017

**PART IV
LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: February 27, 2017

A. LOCAL PLANNING AGENCY REVIEW

Staff gave a brief presentation on the amendment recommending removal of the term Overriding Public Necessity (OPN) from Lee Plan Objectives 17.1 and 20.1 and Policies 21.1.5 and 26.2.2. LPA members asked about the communities' involvement and for input from the County Attorney's office.

Ten members of the public spoke against removing OPN from the Lee Plan.

The first motion was made ***not transmit*** the amendment and to send it back to staff to work with the communities to define OPN. The motion was called and failed 2 - 3.

The second motion was to ***transmit*** the amendment as proposed by staff. The motion was called and passed 3 - 2.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

The LPA recommended that the Board of County Commissioners transmit the amendment to the Lee Plan as proposed by staff.

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	NAY
DENNIS CHURCH	AYE
JIM GREEN	NAY
CHRISTINE SMALE	ABSENT
STAN STOUDE	AYE
GARY TASMAN	ABSENT
JUSTIN THIBAUT	AYE

**PART V
BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: March 22, 2017

A. BOARD REVIEW:

Staff gave a brief presentation and made a recommendation that the BOCC transmit the proposed amendment. The Board asked staff several questions about the legal procedure and community input.

Eleven members of the public spoke opposing the amendment.

A motion was made that the BOCC transmit the proposed amendments as recommended by staff. The motion was called and passed 4-1.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

The Board of County Commissioners *transmitted* the proposed amendment as recommended by staff and the Local Planning Agency.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The Board of County Commissioners accepted the findings of fact as advanced by staff and the Local Planning Agency.

C. VOTE:

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

PART VI
OBJECTIONS, RECOMMENDATIONS AND COMMENTS
FROM STATE REVIEWING AGENCIES

DATE OF REVIEWING AGENCY COMMENTS: Due by April 29, 2017

A. OBJECTIONS, RECOMMENDATIONS AND COMMENTS:

Lee County received responses from the following review agencies addressing the transmitted amendment: Department of Environmental Protection; Department of Agriculture and Consumer Services; Department of Transportation, Florida Fish and Wildlife Conservation Commission; South Florida Water Management District; Department of Economic Opportunity; and Southwest Florida Regional Planning Council. All correspondence from the state reviewing agencies has been attached to the staff report.

There were no objections to the proposed amendments.

B. STAFF RECOMMENDATION

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

EXHIBIT 1

LEE PLAN GOALS 17, 20, 21 AND 26 WITH PROPOSED AMENDMENTS

GOAL 17: BUCKINGHAM. To manage the future growth in the Buckingham Community; to preserve the existing rural and agricultural land use pattern; to diversify the choice of housing for Lee County by maintaining and enhancing the historic and rural character; and to protect the unique historical and environmental values of the Buckingham Community. For the purposes of this plan, the precise boundaries of the Buckingham Community are indicated on the Future Land Use Map Series, Map 1, Page 2 of 8, Special Treatment Areas. To help maintain the rural and historic character, and create a visually attractive community, the Buckingham Community will draft and submit amendments to the Lee County Land Development Code to implement the intent of the Buckingham Community objectives and policies for Lee County to review and consider for adoption. (Added by Ordinance No. 91-19, Amended by Ordinance No. 93-25, 94-30, 10-15)

OBJECTIVE 17.1: LAND USE. ~~The primary land use designation for the Buckingham Community is "Rural Community Preserve." Other land use designations exist within the Buckingham Community, such as Rural, Sub-Outlying-Suburban, Conservation Lands, and Wetlands. Public Facilities have also been designated as appropriate. No land in the Buckingham Community 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. Land use decisions will be guided by preserving the Land uses in the Buckingham Community will be developed in a manner that is consistent with the rural and agricultural land use pattern.~~

POLICY 17.1.1: No property within the Buckingham Community will be rezoned to RVPD. (Amended by Ordinance No. 00-22, 10-15)

POLICY 17.1.2: The southeast and northeast quadrants of the intersection of Orange River Boulevard and Buckingham Road is designated as the commercial node for the Buckingham Community. With the exception of the uses and the property identified in this policy, no new commercial development will be located outside of this commercial node. All new commercial developments in the node are required to provide a minimum of 30% open space. This commercial node is described as those lands 300 feet eastward from the easterly right-of-way of Buckingham Road and lying between Cemetery Road and a point 300 feet north of the intersection of Buckingham Road and Orange River Boulevard. Commercial uses permitted in agricultural zoning districts, such as Feed and Tack stores, are allowed outside of the commercial node if appropriate zoning approval is granted. Commercial boarding stables throughout the Rural Community Preserve will be allowed to give lessons and clinics if lawfully existing or appropriate zoning approval is granted. Commercial uses are permitted on the property zoned C-1 located at 9140 Buckingham Road. (Amended by Ordinance No. 94-30, 98-09, 00-22, 10-15)

POLICY 17.1.3: Except for those clustered areas approved in accordance with Policy 17.1.5, all lots created in the Rural Community Preserve land use category must have a minimum area of 43,560 square feet, unless a Minimum Use Determination has been issued. Calculation of lot size must exclude any road right-of-way or easement areas, water management areas, and natural water bodies. (Amended by Ordinance No. 00-22, 10-15)

POLICY 17.1.4: Bonus density is prohibited in the Rural Community Preserve. (Added by Ordinance No. 10-15)

POLICY 17.1.5: Clustering of residential development in the Rural Community Preserve requires residential planned development (RPD) zoning. Density in clustered developments will be based on upland acreage. Dwelling units must be located away from the property boundaries. Clustering of residential development is limited in the following fashion:

- Buildings must be set back a minimum of 100 feet from the RPD boundary.
- The RPD must have a minimum of 10 acres in order to cluster homesites.

(Added by Ordinance No. 10-15)

POLICY 17.1.6: When possible, residential development adjacent to the Rural Community Preserve boundary should make appropriate transitions to the community with a graduated increase in density as development moves away from the Rural Community Preserve boundaries. Appropriate buffers will be established for projects adjacent to the Rural Community Preserve. (Added by Ordinance No. 10-15)

POLICY 17.1.7: To preserve the shoreline, a 50 foot set back is required from the Orange River. The setback will be measured from the mean high water line or from the top of bank of the Orange River, whichever is further landward. Docks are exempt from this setback requirement. (Added by Ordinance No. 10-15)

OBJECTIVE 17.2: TRANSPORTATION. Lee County supports the community desire to protect the rural character of the Buckingham Community by keeping the majority of the roadways within the community to two lanes. For purposes of this objective, improvements related to bicycle, pedestrian and equestrian facilities or safety improvements, including but not limited to intersection and turn lane additions or improvements, will not be deemed an expansion of the roadway. (Amended by Ordinance No. 94-30, 99-15, 00-22, 10-15)

POLICY 17.2.1: Future multi-lane expansions within the Buckingham Community will be limited to the four-laning of Buckingham Road (except for the portion of Buckingham Road that is encompassed by the Lockett Road Extension). All other existing roadways within the boundaries of the Buckingham Community will remain in their two-lane configuration. This policy does not include bicycle, pedestrian and equestrian facilities or safety improvements on roadways within the boundaries of the Buckingham Community that may be deemed necessary by the Lee County Department of Transportation. As part of any future expansions of Buckingham Road or segments of Buckingham Road within the boundaries of the Buckingham Community, the Lee County Department of Transportation must have at least one public meeting within the community, and the Lee County Board of County Commissioners must have at least one public meeting after 5:00 p.m. regarding the proposed road expansion. (Added by Ordinance No. 10-15)

POLICY 17.2.2: Future extensions of roadways into or through the boundaries of the Buckingham Community will be limited to the Lockett Road Extension on the alignment and in the configuration as adopted by the Board of County Commissioners on June 3, 2008. During the June 3rd meeting the Board recognized the potential to avoid bisecting the Heritage Lakes parcel by shifting the alignment to the east, and that this could be accomplished if the Heritage Lakes parcel is ultimately acquired through the Conservation 20/20 program. If the Heritage Lakes parcel is acquired, a revision in the alignment will be coordinated with CLASAC. Any proposal to further change the adopted alignment of the Lockett Road Extension within the Buckingham Community (beyond the one discussed above) will require analysis and public input. The Lee County Department of Transportation must have at least one public meeting within the community, and the Lee County Board of County Commissioners must have at least one public meeting after 5:00 p.m. regarding the proposed road changes. The analysis must consider the community's desire to have this alignment as far south as possible, starting east of Pangola, in order to skirt the Buckingham Community. In addition, specific roadway extensions are prohibited as follows:

1. The extension of State Road 31 south of the Orange River is prohibited.

2. The extension of Ellis Road is prohibited.
3. The extension of Staley Road to State Road 82 is prohibited.
4. The extension and connection of Long Road to Ellis Road is prohibited.
5. No new east/west collector roadways will be planned or built within the Rural Community Preserve.
(Added by Ordinance No. 10-15)

POLICY 17.2.3: The Lee County Department of Transportation will work with the Buckingham Community to identify issues, propose options, and develop a plan directed at improving safety on roads, limiting the negative effects of traffic, and improving the overall functionality of roads within the Buckingham Community to the extent practicable and consistent with the balance of applicable policies.
(Added by Ordinance No. 10-15)

OBJECTIVE 17.3: PUBLIC FACILITIES AND UTILITIES. To protect the rural character of the Buckingham Community, public facilities and utilities will be designed to maintain or enhance the overall rural character of the community.(Amended by Ordinance No. 00-22, 03-19, 10-15)

POLICY 17.3.1: In order to discourage unwanted urban development, central sewer lines will not be extended into the Rural Community Preserve, except to the areas identified by Lee Plan Map 7 as Future Sanitary Sewer Service Areas, the existing Resource Recovery Facility, the adjacent Lee County Parks and Recreation Facility, and any future public facility. Sewer lines may be extended to future public facilities after one or more public meetings are held in the community and a public hearing is held before the Board of County Commissioners. The County may also extend transmission/force mains through the Rural Community Preserve, if necessary. Under no circumstances will the availability of central sewer lines be accepted as justification for a density or intensity increase, or reduction of lot size requirements (except as provided in Policy 17.1.5), within the Rural Community Preserve. The County will consider waivers to Lee County Utility's central sewer mandatory connection requirement in the Buckingham Community. A waiver may not be granted unless the landowner has the approval of the Health Department, and the request is in accordance with section 381.00655(2)(b), F.S. (Added by Ordinance No. 10-15)

POLICY 17.3.2: Central water lines may be extended along roads of the Rural Community Preserve upon request of property owners, with extension and connection fees paid by the person(s) receiving the water service. The County may also extend central water lines through the Rural Community Preserve, if necessary. Extension of public central water lines will require the Lee County Board of County Commissioners to hold at least one public meeting after 5:00 p.m. Connection to this expanded water service network will be on a voluntary basis. Under no circumstances will the availability of central water be accepted as justification for a density or intensity increase, or reduction of lot size requirements (except as provided in Policy 17.1.5), within the Rural Community Preserve. (Added by Ordinance No. 10-15)

POLICY 17.3.3: All new large developments (as defined in chapter 10 of the Land Development Code) must install utilities underground. Utilities include, but are not limited to, electricity, telephone, and cable lines. (Added by Ordinance No. 10-15)

POLICY 17.3.4: East County Water Control District is encouraged to continue to develop and maintain its infrastructure to minimize flooding, manage flows down the Orange River, and improve water quality. In addition, ECWCD is encouraged to work with the Lee County Emergency Operations Center to develop a system to warn residents in advance of large releases of water. (Added by Ordinance No. 10-15)

POLICY 17.3.5: Any development or redevelopment of the property must be developed in a manner

that does not adversely impact the rural community. Any use must provide appropriate separation, buffering, traffic mitigation and control, and environmental protection. (Added by Ordinance No. 10-15)

POLICY 17.3.6: Detention and correctional facilities are prohibited within the Buckingham Community boundaries. (Added by Ordinance No. 10-15)

POLICY 17.3.7: No new landfills or resource recovery facilities are permitted in the Buckingham Community. Expansion of the Resource Recovery facilities located on the County property is permitted, including the introduction of new operations and facilities to address solid waste needs. (Added by Ordinance No. 10-15)

POLICY 17.3.8: Lee County Staff will continue to participate in the selection of proper locations and routes for electrical and natural gas transmission lines, and utilities facilities, such as electrical substations and power plants, by facilitating public input from the affected communities. However, the final determination of location and transmission line routes is determined by the State of Florida. (Added by Ordinance No. 10-15)

OBJECTIVE 17.4: LANDSCAPING, BUFFERING, COMMUNITY AESTHETICS, AND QUALITY OF LIFE. Adequate and appropriate landscaping, open space, and buffering must be provided as a means of protecting and enhancing the Buckingham Community's historic rural character and environmental values from developments, utilities, public services, roads, and land use changes or other improvements. (Added by Ordinance No. 10-15)

POLICY 17.4.1: Essential Service and Community Facilities must provide an appropriate native vegetative buffer to address compatibility issues and to enhance the Buckingham Community's rural and low density residential character. Buffering materials must be designed to enhance and protect the aesthetic values inherent to the Buckingham Community. (Added by Ordinance No. 10-15)

POLICY 17.4.2: Lee County will continue, through Lee County Solid Waste Collection Agreements, to require all current and future solid waste collection contractors to perform weekly litter collection along approximately one and one half miles of Buckingham Road, in the vicinity of the Resource Recovery Facility. (Added by Ordinance No. 10-15)

POLICY 17.4.3: Within the Buckingham Community, residential walls are prohibited as boundaries for housing subdivisions or large residential developments. Berms are allowed in accordance with the Lee County Land Development Code, but must be designed to be undulating. (Added by Ordinance No. 10-15)

POLICY 17.4.4: Residential and commercial lighting must be designed to reduce light pollution and light trespass in the Buckingham Community. (Added by Ordinance No. 10-15)

POLICY 17.4.5: Lee County is discouraged from approving any deviation that would result in a reduction of landscaping, buffering, or signage guidelines. (Added by Ordinance No. 10-15)

OBJECTIVE 17.5: ENVIRONMENT, OPEN SPACE AND PARKS. The Buckingham Community values its rural environment and has a goal of protecting open space for the present and future generations. (Added by Ordinance No. 10-15)

POLICY 17.5.1: Lee County will work with the Buckingham Community to develop a plan for an interconnected system of parks, hiking, and horse riding trails within the Buckingham Community. (Added by Ordinance No. 10-15)

POLICY 17.5.2: The Orange River has areas where it is narrow, with fluctuating levels of water flow and surrounding low density residential uses. Any access to the Orange River, except for single family docks, will be reviewed through the Planned Development zoning process to insure consistency with surrounding areas. Docks, except for single family docks, approved prior to March 3, 2010 may remain but may not be expanded unless the expansion complies with this policy. (Added by Ordinance No. 10-15)

POLICY 17.5.3: The removal of invasive exotic plants, as defined by the state or county, is required for all new development within the Rural Community Preserve. (Added by Ordinance No. 10-15)

OBJECTIVE 17.6: It is the policy of Lee County to protect the historical agricultural uses within the Buckingham Community. These uses include a variety of agricultural applications such as tree farms, citrus farms, stables, cattle, cows, goats, and other livestock and crops of varying sizes. Lee County will accommodate existing agriculture uses into the future. (Added by Ordinance No. 10-15)

POLICY 17.6.1: Lee County will, when asked by the Property Appraiser, advise the Property Appraiser that it is the intent of the Lee Plan to protect and maintain agriculture in the Buckingham Community. (Added by Ordinance No. 10-15)

POLICY 17.6.2: Growing of crops for alternative energy sources on an experimental basis, such as *Jatropha curcas*, will be considered an agricultural use. (Added by Ordinance No. 10-15)

OBJECTIVE 17.7: PUBLIC PARTICIPATION. Lee County will encourage and solicit public input and participation prior to and during the review and adoption of county regulations, Land Development Code provisions, Lee Plan provisions, and zoning approvals that affect the Buckingham Community. (Added by Ordinance No. 10-15)

POLICY 17.7.1: As a courtesy, Lee County will register citizen groups and civic organizations within the Buckingham Planning Community that desire notification of pending review of Land Development Code amendments and Lee Plan amendments. Upon registration, Lee County will provide registered groups with documentation regarding these pending amendments through mail, email, or other electronic means. This notice is a courtesy only and is not jurisdictional. Accordingly, the County's failure to mail/email or to timely provide the notice, or failure of a group to receive notice, will not constitute a defect in notice or bar a public hearing from occurring as scheduled. (Added by Ordinance No. 10-15)

POLICY 17.7.2: The owner or agent of a requested zoning action (planned development, conventional rezoning, special exception, or variance requests) within or adjacent to the Buckingham Planning Community, or with access to Buckingham Road must conduct one public informational session within the Buckingham Community where the agent will provide a general overview of the project for any interested citizens. Lee County encourages zoning staff to participate in such public workshops. This meeting must be conducted before the application can be found sufficient. The applicant is fully responsible for providing the meeting space, providing notice of the meeting, and providing security measures as needed. Subsequent to this meeting, the applicant must provide County staff with a meeting summary document that contains the following information: the date, time, and location of the meeting; a list of attendees; a summary of the concerns or issues that were raised at the meeting; and a proposal for how the applicant will respond to any issues that were raised. (Added by Ordinance No. 10-15)

GOAL 20: BAYSHORE COMMUNITY. To protect the existing rural residential, agricultural and equestrian-oriented character of the community by maintaining low residential densities and minimal commercial activities, while excluding incompatible uses that are destructive to the character of this rural residential environment. For the purposes of this goal and related objectives and policies, the boundaries of the Bayshore Community will be I-75 on the west, SR 31 on the east, the Caloosahatchee River on the south and the Charlotte County line on the north. (Added by Ordinance No. 03-02).

OBJECTIVE 20.1: COMMERCIAL AND INDUSTRIAL LAND USE. Commercial and industrial land uses will be located and developed in a manner consistent with the Bayshore Community rural character. 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.

POLICY 20.1.1: Retail commercial activity will be limited to the Interstate Interchange designation at Bayshore and I-75, plus minor commercial uses at the intersections of Nalle Road and Bayshore, SR 31 and Bayshore, and SR 31 and Old Bayshore. Non-retail commercial uses are permitted elsewhere consistent with the Lee Plan and the Land Development Code. (Added by Ordinance No. 03-02)

POLICY 20.1.2: Commercial stables or tack and feed stores are exempt from meeting commercial site location standards. The existing 7.1 acre +/- retail commercial center at 10440 Bayshore Road, the 0.66 acre +/- retail commercial property at 19451 SR 31, the 0.83 +/- acre retail commercial property at 17270 Durrance Road, and the 0.36 +/- acre retail commercial property described in resolution Z-72-93, which is part of the property at 6600 Nalle Grade Road, will be deemed consistent with Policy 20.1.1. (Added by Ordinance No. 03-02)

POLICY 20.1.3: No new industrial activities or industrial rezonings are permitted. (Added by Ordinance No. 03-02)

POLICY 20.1.4: No new mining uses or commercial excavations are permitted. (Added by Ordinance No. 03-02)

OBJECTIVE 20.2: TRANSPORTATION. All road improvements within the Bayshore Community considered by the County will address the community's goal to maintain its rural character and give preference to alternatives that allow existing roads to function at their current capacity. (Added by Ordinance No. 03-02)

POLICY 20.2.1: Any expansion of the state arterial roadways should include physically separated provisions for bicyclists/pedestrians. (Added by Ordinance No. 03-02)

POLICY 20.2.2: Road capacity improvements needed within the Bayshore Community to serve demands generated outside the community will be designed to minimize the impacts on the community and its rural character. (Added by Ordinance No. 03-02)

POLICY 20.2.3: If a need to extend Del Prado Boulevard east of I-75 through the Bayshore Community is demonstrated, the corridor evaluation must include alternatives to using the existing Nalle Grade Road alignment. The evaluation will address (but not be limited to) access, safety and community character issues. Alternatives will be presented at evening public workshops within the Bayshore community. (Added by Ordinance No. 03-02)

OBJECTIVE 20.3: SEWER AND WATER. Given the desire to maintain a low residential density, new central sewage service is not economically feasible and is discouraged north of Bayshore Road within the future non-urban land use categories. Central water service for enhanced fire protection will be encouraged where economically feasible. (Added by Ordinance No. 03-02)

POLICY 20.3.1: Central sewage service will be encouraged for existing and future high density and intensity developments south of Bayshore Road within the future urban land use categories and for new developments that are required to provide such service under the provisions of Standard 11.2 of the Lee Plan. (Added by Ordinance No. 03-02)

POLICY 20.3.2: No landowner will be required to connect to central sewer or water utilities or be assessed for same unless a threat to public health can be documented, or if a new development proposes an intensity that exceeds the thresholds in Standards 11.1 and 11.2 of the Lee Plan. (Added by Ordinance No. 03-02)

OBJECTIVE 20.4: PARKS AND RECREATION. The County will explore, with the support of the residents of Bayshore, the feasibility of establishing an equestrian park as the primary recreation facility for this community. (Added by Ordinance No. 03-02)

POLICY 20.4.1: The support of the Bayshore residents may include assistance with development and maintenance of such a recreation facility. (Added by Ordinance No. 03-02)

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 8 in the Appendix. (Added by Ordinance No. 03-21)

OBJECTIVE 21.1: COMMUNITY CHARACTER. The Caloosahatchee Shores community will draft and submit regulations, policies and discretionary actions affecting the character and aesthetic appearance of the Caloosahatchee Shores for Lee County to consider for adoption and enforcement to help create a visually attractive community. (Added by Ordinance No. 03-21)

POLICY 21.1.1: By the end of 2007, the Caloosahatchee Shores community will draft and submit regulations for Lee County to review and consider for amendment or adoption as Land Development Code regulations that provide for enhanced landscaping, signage and architectural standards consistent with the Community Vision. (Added by Ordinance No. 03-21, Amended by Ordinance No. 07-12)

POLICY 21.1.2: In order to maintain the Old Florida rural identity for the Caloosahatchee Shores Community, commercial developments are encouraged to use vernacular Florida architectural styles for all buildings. The use of Mediterranean styles of architecture is discouraged. (Added by Ordinance No. 03-21)

POLICY 21.1.3: Lee County is discouraged from approving any deviation that would result in a reduction of landscaping, buffering, signage guidelines or compliance with architectural standards. (Added by Ordinance No. 03-21)

POLICY 21.1.4: By the end of 2007, the Caloosahatchee Shores community will draft enhanced code enforcement standards to be considered by staff for possible inclusion in Chapter 33 of the LDC. (Added by Ordinance No. 07-09)

POLICY 21.1.5: ~~One important aspect of the 'Protect Caloosahatchee Shores' Community Plan goal is to retain its rural character from the encroachment of inconsistent and incompatible urban development, and rural land uses where it currently they exist as of May 15, 2009. Therefore no land use map amendments to the remaining rural lands category will be permitted after May 15, 2009, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.~~

OBJECTIVE 21.2: COMMERCIAL LAND USES. New commercial uses will be limited to properties already zoned for commercial uses as well as commercial centers designated on Map 19, the intersection of I-75 and S.R. 80, the intersection of S.R. 31 and S.R. 80, properties located in the State Route 80 Corridor Overlay District, the Verandah Boulevard commercial node, lands with the Commercial Future Land Use designation, and Future Urban Areas including the central urban and suburban categories adjacent to S.R. 80. New commercial zoning must be approved through the Planned Development rezoning process. Existing and future county regulations, land use interpretations, policies, zoning approvals, and administrative actions should be undertaken in an effort to promote the goal of commercial redevelopment along SR 80 and increased commercial opportunities to service the needs of the Caloosahatchee Shores community and surrounding areas. County regulations should attempt to ensure that commercial areas maintain a unified and pleasing aesthetic/visual quality in landscaping, architecture, lighting and signage. Commercial land uses must be designed to be compatible with and further the

historic character and identity of existing rural Old Florida and Florida Vernacular styles of architecture and the historic identity of Olga. (Added by Ordinance No. 03-21, Amended by Ordinance No. 11-24)

POLICY 21.2.1: To service the retail needs of Caloosahatchee Shores and the surrounding rural communities, the intersection of SR 80 and SR 31, north of SR 80 and east and west of SR 31 are designated as commercial nodes to allow for greater commercial intensity. Commercial nodes are intended for development or redevelopment at Community Commercial levels as defined in Policy 6.1.2 of the Lee Plan. The Verandah Boulevard commercial node is intended for Minor Commercial levels as defined in Policy 6.1.2. Office and residential uses consistent with the Suburban designation are also allowed in this Minor Commercial node. (Added by Ordinance No. 03-21, Amended by Ordinance No. 11-24)

POLICY 21.2.2: In order to protect the rural residential character of Buckingham Road, new retail uses along Buckingham Road outside the commercial node identified on Map 19, will be prohibited. (Added by Ordinance No. 03-21, Amended by Ordinance No. 11-24)

POLICY 21.2.3: The Olga Mall property, 2319 S. Olga Drive, may continue to provide minor commercial retail services for the Olga community. (Added by Ordinance No. 03-21, Amended by Ordinance No. 11-24)

POLICY 21.2.4: Commercial developments within the Caloosahatchee Shores Community must provide interconnect opportunities with adjacent commercial uses in order to minimize access points onto primary road corridors; and residential developments should provide interconnect opportunities with commercial areas, including but not limited to bike paths, pedestrian access ways and equestrian trails. (Added by Ordinance No. 03-21)

POLICY 21.2.5: To promote the redevelopment of commercial uses along SR 80, Commercial uses are encouraged to increase lot depth and size by extending north of SR 80 to First Street. Lee County will encourage the use of First Street as a reverse frontage Road to provide access. This policy hereby adopts Exhibit 1 as a conceptual redevelopment plan for this corridor. (Added by Ordinance No. 03-21)

OBJECTIVE 21.3: RESIDENTIAL USES: Lee County will protect and enhance the residential character of the Caloosahatchee Shores Community by strictly evaluating adjacent uses, natural resources, access and recreational or open space. (Added by Ordinance No. 03-21)

POLICY 21.3.1: By the end of 2007, the Caloosahatchee Shores community will draft and submit regulations and policies for Lee County to review and consider for amendment or adoption as regulations in the Land Development Code to provide for greater buffering between distinctly different adjacent commercial and residential properties, modified however when a project is of mixed use nature. (Added by Ordinance No. 03-21, Amended by Ordinance No. 07-12)

OBJECTIVE 21.4: MIXED USE DEVELOPMENT. Lee County will encourage mixed-use developments in specific areas of the Caloosahatchee Shores planning area through a variety of incentives. (Added by Ordinance No. 03-21)

POLICY 21.4.1: With the exception of mixed-use projects, residential uses fronting SR 80 and Buckingham Road are limited to no more than four dwelling units per acre. (Added by Ordinance No. 03-21)

POLICY 21.4.2: Mixed-use developments, as defined in the Lee Plan, and mixed-use developments containing both commercial and residential uses within the same structure and that provide for an

integration of commercial with residential uses with pedestrian linkages are strongly encouraged at the commercial nodes of SR 80 and SR 31 and SR 80 and Buckingham Road, as well as the commercial strip between First Street and SR 80 in Fort Myers Shores. With the exception of SR 80 and SR 31, which will be allowed densities consistent with the Urban Community future land use designation, mixed-use developments will be limited to six dwelling units per acre at those locations.

- Bicycle & Pedestrian facilities will be provided throughout the development. Connections between all uses are required to facilitate these alternative modes of transportation. When possible, connections to adjacent developments will be provided.

- Vehicular connections between residential and non-residential uses will be provided to facilitate the internal capture of trips. When possible, connections to adjacent developments will be made to provide alternative access to the non-residential components of this development other than the arterial interchange of SR 80 and SR 31. Non-residential components at SR 80 and Buckingham Road should, when possible, provide alternative access off of Buckingham Road and Non-residential components at SR 80 and First Street should, when possible, provide alternative access off of First Street. (Added by Ordinance No. 03-21)

POLICY 21.4.3: Any existing or future regulation in the Land Development Code that is shown by the applicant of a planned development to inhibit the development of a mixed-use project will be given strong consideration for a waiver. By the end of 2007, the Caloosahatchee Shores community will draft and submit regulations and policies for Lee County to review and consider for amendment or adoption as Land Development Code regulations that encourage mixed-use developments. (Added by Ordinance No. 03-21, Amended by Ordinance No. 07-12)

OBJECTIVE 21.5: COMMUNITY FACILITIES/PARKS. Lee County will work with the Caloosahatchee Shores Community to provide and facilitate the provision of a broad mix of Community Facilities. (Added by Ordinance No. 03-21)

POLICY 21.5.1: The Caloosahatchee Shores Community will work with Lee County, the State of Florida and the National Parks Service to provide appropriate passive recreational opportunities, parks, nature, pedestrian and equestrian trails, potentially enhanced by public/private partnerships. This may include easy access, parking, trails, and other non-intrusive uses. (Added by Ordinance No. 03-21)

POLICY 21.5.2: Lee County will work with the community and private landowners to identify opportunities to maintain and enhance public access to the Caloosahatchee River, including access through the Florida Power and Light Plant. All new development of commercial, industrial or public facility properties along the Caloosahatchee River are strongly encouraged to provide for public access to the riverfront. (Added by Ordinance No. 03-21)

POLICY 21.5.3: Lee County will work with the community to ensure that the development of new parks or enhancement of existing parks meets the recreational needs of the community and are integrated into the surrounding developments and open space areas. The concept would be for a park to act as a hub, connected to other open space/recreational opportunities through pedestrian, bicycle or equestrian linkages, either along public rights of way or through adjacent developments. (Added by Ordinance No. 03-21)

POLICY 21.5.4: Lee County Department of Parks and Recreation will work with the residents of the Caloosahatchee Shores to publicize and increase the usage of existing public parks and recreation facilities. (Added by Ordinance No. 03-21)

OBJECTIVE 21.6: PUBLIC PARTICIPATION. Lee County will encourage and solicit public input and participation prior to and during the review and adoption of county regulations, Land Development Code provisions, Lee Plan provisions, and zoning approvals. (Added by Ordinance No.03-21)

POLICY 21.6.1: As a courtesy, Lee County will register citizen groups and civic organizations within the Caloosahatchee Shores Planning Community that desire notification of pending review of Land Development Code amendments and Lee Plan amendments. Upon registration, Lee County will provide registered groups with documentation regarding these pending amendments. This notice is a courtesy only and is not jurisdictional. Accordingly, the county's failure to mail or to timely mail the notice, or failure of a group to receive mailed notice, will not constitute a defect in notice or bar a public hearing from occurring as scheduled. (Added by Ordinance No. 03-21)

POLICY 21.6.2: The Caloosahatchee Shores Community will establish a "document clearing house," where copies of selected zoning submittal documents, staff reports, Hearing Examiner recommendations and resolutions will be provided for public inspection. The County's failure to provide or to timely provide documents to the document clearing house, or failure of the document clearing house to receive documents, will not constitute a defect in notice or bar a public hearing from occurring as scheduled. (Added by Ordinance No. 03-21)

POLICY 21.6.3: The owner or agent of a requested Lee Plan amendment or zoning action (planned development, conventional rezoning, special exception, or variance requests) within the Caloosahatchee Shores Community must conduct one public informational session where the agent will provide a general overview of the project for any interested citizens. Lee County encourages zoning staff to participate in the public information session. This meeting must be conducted before the application can be found sufficient. The applicant is fully responsible for providing the meeting space, providing notice of the meeting, and providing security measures as needed. Subsequent to this meeting, the applicant must provide County staff with a meeting summary document that contains the following information: the date, time, and location of the meeting; a list of attendees; a summary of the concerns or issues that were raised at the public information session; and a proposal for how the applicant will respond to any issues that were raised. (Added by Ordinance No. 03-21, Amended by Ordinance No. 11-24)

GOAL 26: ALVA. To support and enhance Alva's unique rural, historic, agricultural character and natural environment and resources, including the rural village and surrounding area, the boundaries of which are depicted on Map1, page 2 of 8. (Added by Ordinance No. 11-21)

OBJECTIVE 26.1: RURAL CHARACTER. Maintain and enhance the rural character and environment of Alva through planning practices that:

1. Manage growth and protect Alva's rural nature.
2. Maintain agricultural lands and rural land use patterns.
3. Provide needed community facilities, transportation systems, and infrastructure capacity.
4. Protect and enhance native species, ecosystems, habitats, natural resources, and water systems.
5. Preserve Alva's historic places and archaeological sites.

(Added by Ordinance No. 11-21)

POLICY 26.1.1: By 2014, Alva will work with Lee County to evaluate and identify appropriate commercial areas with a focus on the rural village area described under Goal 26 and as identified on Map 1, page 6 of 8. (Added by Ordinance No. 11-21)

POLICY 26.1.2: Alva will work with Lee County to develop sustainable land use practices through which transportation and infrastructure systems, public services, and parks are provided consistent with Alva's rural character. (Added by Ordinance No. 11-21)

POLICY 26.1.3: Alva will work with Lee County to identify appropriate locations for and promote the establishment of community gardens. (Added by Ordinance No. 11-21)

POLICY 26.1.4: New industrial activities or changes of land use that allow future industrial activities, not directly associated with Alva's commercial agriculture, are prohibited in Alva. By 2014, Alva will work with Lee County to establish regulations in the land development code to further this policy. (Added by Ordinance No. 11-21)

POLICY 26.1.5: New natural resource extraction mining activities are prohibited in Alva. By 2014, Alva will work with Lee County to establish regulations in the land development code to further implement this policy. (Added by Ordinance No. 11-21)

POLICY 26.1.6: Outdoor display in excess of one (1) acre and commercial uses that require outdoor display to such an extent are prohibited. (Added by Ordinance No. 11-21)

OBJECTIVE 26.2: RURAL LANDS FRAMEWORK. Provide for the varied residential, commercial, and natural resource needs of Alva's rural lands by establishing a planning framework that serves the area's different users. (Added by Ordinance No. 11-21)

POLICY 26.2.1: Alva will work with Lee County to ensure that future development projects maintain or enhance Alva's rural character by establishing planning policies and land development code standards that are compatible with Alva's vision and guiding principles. (Added by Ordinance No. 11-21)

POLICY 26.2.2: ~~Future Lland use map~~ amendments that would increase the allowable total density of Alva are discouraged. ~~Future Lland use map~~ amendments that would decrease the allowable total density of ~~the area~~ Alva and that are otherwise consistent with the objectives and policies of this goal are encouraged. ~~No land use amendments to a more intensive category will be permitted unless a finding of overriding public necessity is made by a supermajority of the members of the Board of County Commissioners.~~

POLICY 26.2.3: By 2014, Alva will work with Lee County to promote sustainable residential development patterns and promote Alva's rural character by utilizing rural planning practices to establish land development code requirements that:

1. Limit new residential development clustered in compact, interconnected neighborhoods situated in appropriate locations.
2. Designate appropriate allowed uses.
3. Establish compatible parcel sizes, density, and intensity standards.
4. Conserve natural resources.
5. Provide standards for adequate open space.
6. Maintain commercial agricultural uses.
7. Incorporate green building standards.
8. Identify locations suitable for public services.

(Added by Ordinance No. 11-21)

POLICY 26.2.4: By 2014, utilize the land development code to establish architectural standards that support and enhance Alva's historic rural character and quality of life by:

1. featuring architectural and design themes consistent with Alva's historic architectural styles.
2. Including street graphic standards that address size, location, style, and lighting.

(Added by Ordinance No. 11-21)

POLICY 26.2.5: By 2014, Alva will work with Lee County to establish standards in the land development code that promote economic opportunities, including ecotourism, commercial agriculture, and associated businesses that contribute to Alva's rural character. (Added by Ordinance No. 11-21)

POLICY 26.2.6: By 2014, Alva will work with Lee County to establish design standards in the land development code that:

1. Foster a unique landscape theme for the rights-of-way for North River Road and other county-maintained roads.
2. Address connectivity and separation among differing uses.
3. Preserve native plant communities, including subtropical and tropical hardwood hammock, scrub, and wetlands, to enhance the existing native vegetation and tree canopy.
4. Encourage the removal of exotic species.

(Added by Ordinance No. 11-21)

POLICY 26.2.7: By 2014, Alva will work with Lee County to establish planning policies and development standards in the land development code that promote Alva's commercial agriculture including programs that address:

1. Farm to market demands on the area's roadway infrastructure.
2. Storage of commercial agricultural equipment at a private residence of an individual employed or engaged in an agricultural operation as a permitted use in residential zoning districts in Alva.
3. Maintaining land in commercial agriculture through programs such as farmland trusts and easements.
4. Location of associated packaging, processing, warehousing, and other value-added activities.

(Added by Ordinance No. 11-21)

POLICY 26.2.8: Promote Alva's historic character by utilizing the land development code to:

1. Consider formal local designation of additional historic buildings and districts.
2. Identify potential national or state registered history buildings and districts.
3. Evaluate the effects of county regulations on designated historic districts.
4. Modify regulations, as necessary, to protect both the interests of the historic structures owners and Alva. (Added by Ordinance No. 11-21)

POLICY 26.2.9: By 2014, Alva will work with Lee County to develop and promote innovative rural planning tools, such as purchase and transfer of development rights, to:

1. Maintain commercial agriculture.
2. Conserve and restore agricultural lands, open lands, native vegetated uplands and wetlands.
3. Sustain the rural character of Alva.

(Added by Ordinance No. 11-21)

OBJECTIVE 26.3: RURAL VILLAGE FRAMEWORK. Through cooperative efforts among Alva and Lee County, establish the appropriate regulatory and incentive framework to implement Alva's vision for a mixed-use rural village center in the area depicted on Map 1, page 6 of 8. (Added by Ordinance No. 11-21)

POLICY 26.3.1: Alva will work with Lee County to evaluate and amend the Compact Communities Code, Land Development Code Chapter 32, to establish standards for a mixed-use rural village center that provides for walkable residential areas, appropriately located commercial and professional services, and public resources that meet the area's needs consistent with the Alva vision and guiding statements. Through this code, Alva will describe the form, function, street layout, streetscape, and public spaces of the historic core and sub-areas 1 through 4 (including Charleston Park) of the rural village. (Added by Ordinance No. 11-21)

POLICY 26.3.2: Alva will work with Lee County to consider designating the rural village and areas therein as historic districts. (Added by Ordinance No. 11-21)

POLICY 26.3.3: By 2014, Alva will work with Lee County to establish a maximum height standard in the land development code for the historic core, as depicted on Map 1, Page 6a of 8, that supports the Alva Methodist Church and the Alva School buildings position as dominant features and landmarks of the rural village. (Added by Ordinance No. 11-21)

POLICY 26.3.4: By 2014, Alva will work with Lee County Parks and Recreation Department to explore the feasibility and potential funding for developing and implementing a site improvement plan for the existing boat launch area and facilities on Pearl Street and the Alva Heritage Park on Palm Beach Boulevard and the right-of-way for High Street. (Added by Ordinance No. 11-21)

POLICY 26.3.5: To prevent strip development along Palm Beach Boulevard, the majority of acreage available for commercial development will be located within the rural village, particularly the village center (sub areas 2 and 3). By 2014, Alva will work with Lee County to amend the land development code to accomplish this policy. (Added by Ordinance No. 11-21)

POLICY 26.3.6: Any new development on parcels within the rural village area currently zoned commercial will be evaluated for consistency with the design and use standards of the rural village through the development review process in order to contribute to the overall design concept and be compatible with the village character and adjacent neighborhoods. (Added by Ordinance No. 11-21)

OBJECTIVE 26.4: CONNECTIVITY. Provide appropriate and reasonable access and linkages throughout Alva, while supporting the area's rural character. (Added by Ordinance No. 11-21)

POLICY 26.4.1: Alva will work with Lee County to utilize the Compact Communities Code, Land Development Code Chapter 32, to establish a walkable mixed-use rural village center that provides for the needs of pedestrians, cyclists, equestrian riders, and drivers. Through this code, Alva will describe the form, function, layout, streetscape, and public spaces of roadways and pathways within the historic core

and sub-areas 1 through 4 (including Charleston Park) of the rural village. (Added by Ordinance No. 11-21)

POLICY 26.4.2: By 2014, Alva will work with Lee County to provide for multiple connections to the existing transportation network by establishing land development practices and regulations through which new streets and roads—particularly those in residential areas or rural centers—will be required to interconnect with adjacent land uses. Additionally, the regulations will prohibit entry gates and perimeter walls around residential development. (Added by Ordinance No. 11-21)

POLICY 26.4.3: During all phases of transportation planning and review, Alva will work with Lee County to address roadway transportation needs in a manner that ensures the rural character of the area including:

1. Evaluating the capacity and level of service standards for rural roads.
2. Monitoring traffic levels in coordination with Hendry County.
3. Designating North River Road and other qualifying roads as county scenic roads and obtaining Florida Scenic Highway designation from the State.
4. Farm-to-market functions of rural roadways including North River Road and Palm Beach Boulevard.

(Added by Ordinance No. 11-21)

POLICY 26.4.4: By 2014, Alva will work with Lee County to evaluate funding opportunities and feasibility of creating a multipurpose path to run the entire length of North River Road through Alva. (Added by Ordinance No. 11-21)

OBJECTIVE 26.5: NATURAL RESOURCES AND ENVIRONMENTAL SYSTEMS. Enhance, preserve, protect, and restore the physical integrity, ecological standards, and natural beauty of Alva. (Added by Ordinance No. 11-21)

POLICY 26.5.1: By 2014, Alva will work with Lee County to establish planning policies and development standards that:

1. Promote developments that protect the integrity, stability, and beauty of the natural environment.
2. Maintain wildlife habitat and habitat travel corridors.
3. Require new development and redevelopment to be designed and operated to conserve critical habitats of protected, endangered, and threatened species, and species of special concern.
4. Increase development setbacks from natural areas and surface waters.
5. Establish requirements for natural buffers from parcel lines to development areas.
6. Prohibit developments that would harm protected, endangered, and threatened species or species of special concern.
7. Enhance connectivity to maintain uninterrupted wildlife corridors among, between, and within parcels.
8. Develop surface water management system design standards that incorporate natural flowway corridors, cypress heads, natural lakes, and restore impacted natural surface waters.
9. Evaluate the feasibility and opportunities for an overall surface water management plan.

(Added by Ordinance No. 11-21)

POLICY 26.5.2: Alva will work with Lee County to identify and evaluate land conservation funding opportunities and acquisition priorities to protect vital natural resources, ecosystems, and habitats from the impacts of clear cutting for residential or agricultural purposes. (Added by Ordinance No. 11-21)

POLICY 26.5.3: As a minimum standard, Lee County will require all new development and redevelopment to comply with State of Florida mandated Total Maximum Daily Load (TMDL) requirement for designated water bodies. (Added by Ordinance No. 11-21)

POLICY 26.5.4: New development and redevelopment in or near existing and potential wellfields must:

1. Be designed to minimize the possibility of contaminating groundwater during construction and operation.
2. Comply with the Lee County Wellfield Protection Ordinance.

(Added by Ordinance No. 11-21)

OBJECTIVE 26.6: PUBLIC RESOURCE ACCESS. Increase the opportunity for public access to and enjoyment of the scenic, historic, recreational, and natural resources in Alva. (Added by Ordinance No. 11-21)

POLICY 26.6.1: Alva will work with Lee County to identify opportunities to link public lands, facilities, and recreation areas that minimize disturbance of natural systems and wildlife habitat and incorporate these links into the Greenways Master Plan. (Added by Ordinance No. 11-21)

POLICY 26.6.2: By 2014, Alva will work with Lee County to identify potential public uses for significant historic structures and archaeological sites. (Added by Ordinance No. 11-21)

POLICY 26.6.3: Alva will work with Lee County to identify areas suitable for passive waterdependent/water-related recreational uses and activities, such as canoe and kayak launch areas, boardwalks, jogging paths, fishing platforms, and waterside parks. (Added by Ordinance No. 11-21)

POLICY 26.6.4: Alva will continue to work with Lee County to evaluate appropriate access and use of Conservation 20/20 lands to support kayaking and canoeing, bird watching, hiking, and other passive recreation related to eco-tourism. Recreational opportunities will be balanced with the protection of natural resources and will comply with the Land Stewardship Plan prepared by the Conservation 20/20 Land Program. (Added by Ordinance No. 11-21)

OBJECTIVE 26.7: PUBLIC PARTICIPATION. Lee County will encourage and solicit public input and participation prior to and during the review and adoption of county regulations, land development code provisions, Lee Plan provisions, and zoning approvals. (Added by Ordinance No. 11-21)

POLICY 26.7.1: As a courtesy, Lee County will register individuals, citizen groups, and civic organizations within Alva who desire notification of pending review of land development code amendments and Lee Plan amendments. Upon registration, Lee County will provide registered groups with documentation regarding these pending amendments. This notice is a courtesy only and is not jurisdictional. Accordingly, the county's failure to mail, email, or to timely mail the notice, or failure of a group to receive mailed notice, will not constitute a defect in notice or bar a public hearing from occurring as scheduled. (Added by Ordinance No. 11-21)

POLICY 26.7.2: As a courtesy, Lee County will notify Alva about public hearings, workshops, and hearings for land development decisions in Alva for the purpose of enabling Alva to participate in and pursue the applicability of the guiding statements for Alva's rural character. (Added by Ordinance No. 11-21)

POLICY 26.7.3: Alva will work with Lee County to establish a document clearing house in Alva where copies of selected zoning submittal documents, staff reports, hearing examiner recommendations and resolutions will be provided for public inspection. The county's failure to provide or to timely provide documents to the document clearing house, or failure of the document clearing house to receive documents, will not constitute a defect in notice or bar a public hearing from occurring as scheduled. (Added by Ordinance No. 11-21)

POLICY 26.7.4: The owner or agent for any Planned Development of a requested Lee Plan amendment or zoning action (planned development, conventional rezoning, special exception, or variance requests) within Alva must conduct one public informational session where the agent will provide a general overview of the project for any interested citizens. Lee County encourages zoning staff to participate in such the public workshops information session. This meeting must be conducted before the application can be found sufficient. The applicant is fully responsible for providing the meeting space, providing notice of the meeting in Alva, and providing security measures as needed. Subsequent to this meeting, the applicant must provide County staff with a meeting summary document that contains the following information: the date, time, and location of the meeting; a list of attendees; a summary of the concerns or issues that were raised at the public information session; and a proposal for how the applicant will respond to any issues that were raised. (Added by Ordinance No. 11-21)

POLICY 26.7.5: Alva will work with Lee County to improve its citizens' understanding of natural resources through educational programs on energy conservation, energy efficiency, greenhouse gas emission reductions, solid waste management, hazardous waste, surface water runoff, septic maintenance, water conservation, xeriscaping, green building, cultural resources, history, etc. The site for these programs will be located in Alva. (Added by Ordinance No. 11-21)

POLICY 26.7.6: Alva will work in coordination and partnership with North Olga to implement and achieve the Northeast Lee County vision, goal, objectives, and policies. As part of this effort, Alva will coordinate with North Olga on the review of development efforts that impact the Northeast Lee Planning Community. (Added by Ordinance No. 11-21)

POLICY 26.7.7: Alva will work in coordination and partnership with the other planning communities in the East Lee County area in order to ensure effective collaboration and coordinated planning efforts. (Added by Ordinance No. 11-21)

POLICY 26.7.8: Alva will work with Lee County to coordinate planning efforts with the adjacent counties, and other local, regional, state, and federal agencies to maintain the rural character of Alva. (Added by Ordinance No. 11-21)

3/24/15

Mr. Paul O'Connor
Director Community Development
Lee County Florida

Re: "Overriding Public Necessity" definition

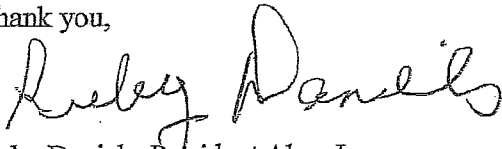
Dear Mr. O'Connor,

The East Lee County Council and its member Community Planning Panels submit the following definition for "Overriding Public Necessity" to be included in the Lee Plan glossary and our Community Plans.

Overriding Public Necessity

An essential need of the residents of the individual Planning Community as a whole, where the interests of the individual Planning Community are regarded as superior to the interests of individuals and businesses, and when there is a conflict between them, the latter must give way. Increases in density to support services and/or infrastructure (e.g. schools, hospitals, fire and rescue service, water and sewer, etc.) do not qualify as an "overriding public necessity". The requirement of overriding public necessity applies to the actual land use amendment being requested, not the need for amenities being offered, and will be considered only for the actual footprint of the intended use.

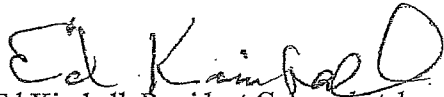
Thank you,



Ruby Daniels: President Alva, Inc.



T.J. Cannamela: President Buckingham Community Association, Inc.



Ed Kimball: President Caloosahatchee Shores Planning Committee and the ELCC

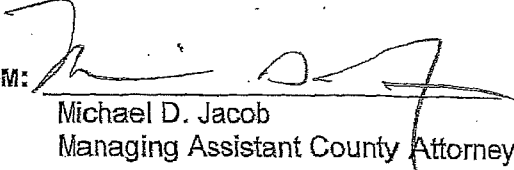


Steven Brodtkin: President Concerned Citizens of Bayshore Community

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: January 12, 2017

To: Dave Loveland
Director of Community
Development

FROM: 
Michael D. Jacob
Managing Assistant County Attorney

RE: **CPA2014-00008**
Overriding Public Necessity

On October 7, 2014, the County Attorney's office requested the Board authorize County Staff to amend the Lee Plan to address procedural issues and provide clarification of the overriding public necessity requirement found within several policies. These issues arose during the River Hall proceedings. At that time, the County Attorney's office recommended the Board amend the Lee Plan to provide a definition of "overriding public necessity" and associated text amendments to clarify the application of the overriding public necessity requirement within the Lee Plan. Specifically, the Blue Sheet provided for amendments to the Glossary, Objective 17.1 (Buckingham Community), Objective 20.1 (Bayshore Community), Policy 21.1.5 (Caloosahatchee Shores Community), and Policy 26.2.2 (Alva Community). Following Board authorization, the above referenced Lee Plan case was created.

As you are aware, after approval of the River Hall Plan Amendment and Rezoning applications, certain residents challenged the Board's decision under Chapters 120 and 163, Fla. Stat. The residents incorrectly argued, among other things, that the Board was required to make a finding of overriding public necessity ("OPN") and that the Board's decision in the River Hall case was inconsistent with the Comp Plan for failing to find an OPN.

Subsequent to the October 7, 2014 BoCC hearing and throughout the proceedings initiated by the River Hall opponents, legal concerns were brought to light concerning the OPN provisions that extend beyond just defining the term. Existing OPN provisions create potential legal challenges to its application based on substantive and due process claims that are not isolated to just the River Hall case. In fact, the same legal challenges could also be raised if the OPN requirement is applied under Objective 17.1, Objective 20.1, or Policy 26.2.2.

The primary legal concern is the lack of clear standards or criteria for applying OPN. A County regulation may be found facially invalid under the void-for-vagueness

RE: CPA2014-00008 (Overriding Public Necessity)

doctrine if "the language of the statute [or ordinance] [does not] provide a definite warning of what conduct is required or prohibited, measured by common understanding and practice." Kuvin v. City of Coral Gables, 62 So. 3d 625, 639-40 (Fla. 3d DCA 2010) (citing Jones v. Williams Pawn & Gun, Inc., 800 So.2d 267, 270 (Fla. 4th DCA 2001)). The vagueness doctrine is designed to "assure compliance with the due process clause of the United States Constitution." See Se. Fisheries Ass'n, Inc. v. Dep't of Nat. Res., 453 So. 2d 1351, 1353 (Fla. 1984). Unconstitutionally vague regulations may lead to arbitrary and discriminatory enforcement. Id. An ordinance that is found constitutionally vague is void and unenforceable.

Currently, the OPN requirements in Objective 17.1, Objective 20.1, Policy 21.1.5, and Policy 26.2.2 do not provide adequate notice of the criteria a property owner must satisfy to permit approval of a future land use map amendment. The Board's future application and interpretation of the OPN requirement will be left solely to the discretion of each Board based on the facts present in each case. Such a circumstance "invites arbitrary and selective enforcement" that may serve as a deprivation of the rights protected by the due process clause of the Florida and United States Constitutions. See Kuvin at 639.

The failure of a property owner to accurately guess the criteria that must be met to satisfy the OPN requirement will lead to the inability of the property owner to acquire the same development rights that similarly situated property owners within the County may acquire. The Board's decision to deny an application in such a case could create legal challenges stemming from the County's failure to provide criteria for its application as well as challenges due to arbitrary and capricious enforcement.¹ If unsuccessful, the OPN requirements may be rendered void and unenforceable. Still further, the Board's decision to approve an application after making a finding of OPN could likely still be challenged under Chapters 120 and 163, Fla. Stat., by opponents and gadfly litigants based on their own definitions and subjective criteria for applying the OPN requirement. As proof of that potential, I draw your attention to the Transcripts of the October 25, 2016 Administration Commission hearing. Attorney General Bondi asked opposing counsel:

Q: "So if we find that the correct standard is that the County must determine if there is an overriding public necessity, you will be disputing that back at the County level?"

¹ In legal challenges based on unconstitutionally vague provisions, the Courts hold that when there is doubt about the vagueness of a statute "the doubt should be resolved 'in favor of the citizen and against the state.'" See Brown v. State, 629 So. 2d 841, 843 (Fla. 1994) (citing State v. Wershow, 343 So.2d 605, 607-608 (Fla.1977)). Even if it is argued that the OPN requirements are not vague, if there is potential doubt as to vagueness, the case would be ruled in favor of the property owner and invalidate the provision.

RE: CPA2014-00008 (Overriding Public Necessity)

A: "Yes. In fact, we had made presentations, taken common dictionary definitions of "overriding," "public," and "necessity" and stating that it did not meet those...."

(Transcripts, Administration Commission Hearing, p 148, 16-24). In short, any decision the Board makes regarding the application of the existing OPN provisions may lead to costly and lengthy legal challenges stemming from unknown criteria.

In addition to the potential vagueness claim, there are procedural due process concerns with the OPN requirements. As written, if the OPN provisions apply, the Lee Plan requires the applicant to demonstrate the existence of an OPN. The very character of the hearing inherently required to demonstrate that the project meets the OPN requirement creates the potential due process issue.

In *Bd. of County Com'rs of Brevard County v. Snyder*, 627 So. 2d 469 (Fla. 1993), the Florida Supreme Court distinguished the types of proceedings that are deemed legislative or quasi judicial. The *Snyder* Court stated "*it is the character of the hearing that determines whether or not board action is legislative or quasi-judicial.*" *Bd. of County Com'rs of Brevard County v. Snyder*, 627 So. 2d 469, 474 (Fla. 1993)(citing *Coral Reef Nurseries, Inc. v. Babcock Co.*, 410 So.2d 648 (Fla. 3d DCA1982)). If the action "*results in the formulation of a general rule of policy*" it is legislative. If the action concerns the "*application of a general rule of policy*" then it is judicial. *Id.* at 474. Stated another way, "*a judicial or quasi-judicial act determines the rules of law applicable, and the rights affected by them, in relation to past transactions.*" *Id.* The Court further went on to state that certain rezoning actions that "*have an impact on a limited number of persons or property owners, on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing, and where the decision can be functionally viewed as policy application, rather than policy setting, are in the nature of ... quasi-judicial action....*" *Id.*

It is well settled that normal Comprehensive Plan amendments are legislative in nature and therefore subject to different legal standards and procedural requirements. However, simply labeling a decision as legislative because it is part of a Comprehensive Plan amendment is not sufficient to avoid the potential legal issues. As the *Snyder* Court indicated, it is the character of the proceeding and not just the label we place on it that determines whether the case is legislative or quasi judicial.

As we saw in *River Hall*, the OPN provisions create a bifurcated process wherein the Board must first conduct a hearing to determine whether a project meets the currently undisclosed OPN criteria. The Board's OPN decision is contingent upon the application of a general rule (i.e. OPN-although those criteria are not yet prescribed) to the facts presented to the Board during a hearing. Furthermore, the determination regarding compliance with OPN has "*an impact on a limited number of persons or property owners, on identifiable parties and interests*" and will only apply to a particular

RE: CPA2014-00008 (Overriding Public Necessity)

property and set of facts. The Board's determination of whether an applicant has demonstrated compliance with the OPN requirement "*can be functionally viewed as policy application*" and not policy creation. Consequently, the unintended consequence of creating these OPN policies and objectives was the apparent creation of a quasi judicial determination within a historically legislative realm. This result triggers a number of due process concerns.

There are no procedures set out in the Lee Plan for providing evidence and demonstrating compliance with OPN. There are no requirements for the quality of the evidence that must be demonstrated, i.e., whether competent substantial evidence is required. Testimony is not under oath. Expert witnesses are not qualified or accepted to present opinions during their testimony. The applicant is not afforded an opportunity to cross examine witnesses. In fact, currently, there are no procedures that would even require disclosure of the facts supporting the Board's decision regarding OPN.

In a quasi judicial proceeding, to survive challenge, the Board's decision must be supported by competent substantial evidence; the Board must observe the essential requirements of the law; and, the Board must afford the applicant with due process. Florida law is clear on the due process that must be afforded an applicant in a quasi judicial hearing. The applicant "*must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts.*" See Carillon Cmty. Residential v. Seminole County, 45 So. 3d 7, 10 (Fla. 5th DCA 2010)(citing Kupke v. Orange County, 838 So.2d 598, 599 (Fla. 5th DCA 2003) (citing Lee County v. Sunbelt Equities, II, Ltd. Partnership, 619 So.2d 996 (Fla. 2d DCA 1993))). Application of the OPN provision under the existing Lee Plan will not afford the applicant these essential due process requirements.

Finally, as a practical matter, creating a single definition within the Glossary or set of criteria that are to be applied to four distinct areas has its problems. For example, what qualifies as an overriding public necessity in Alva may not be an overriding public necessity in Bayshore. Consequently, the criteria for approval of a Plan amendment in Alva could differ from the criteria in Bayshore, even though the term is defined the same. In a practical sense, trying to define OPN and develop criteria that apply throughout the four communities is problematic if not impossible.

Based on the foregoing, our Office does not recommend moving forward with transmittal or adoption of the previously recommended draft language concerning OPN. More importantly, we are recommending to Staff and the Board that CPA2014-00008 be revised to strike the OPN requirements from Objective 17.1 (Buckingham Community), Objective 20.1 (Bayshore Community), Policy 21.1.5 (Caloosahatchee Shores

Dave Loveland
January 12, 2017
Page 5

RE: CPA2014-00008 (Overriding Public Necessity)

Community), and Policy 26.2.2 (Alva Community).² Striking the OPN requirement from the Lee Plan will in no way preclude the Board from reviewing the compatibility and consistency of future cases in these four communities. Existing Lee Plan policies are in place and are adequate to provide the protections that these policies and objectives were apparently designed to address without providing an unnecessary lightning rod for litigation and unduly creating legal liability for the County. If you would like further information or would like to discuss this matter further, please do not hesitate to let me know.

Email Only:

Roger Desjarlais, County Manager
Doug Meurer, Assistant County Manager
Dave Loveland, Director of Community Development
Mikki Rozdolski, Planning Manager
Richard Wesch, County Attorney

² Policy 41.2.2 also includes a similar term, "overriding public interest." This policy should also be reviewed for similar revision.

**AGENCY
COMMENTS
FOR
CPA2014-00008**

Rick Scott
GOVERNOR



Cissy Proctor
EXECUTIVE DIRECTOR

March 31, 2017

RECEIVED
APR 05 2017

Ms. Mikki Rozdolski, Planning Manager
Lee County Department of Community Development
Planning Section
Post Office Box 398
Fort Myers, Florida 33902-0398

COMMUNITY DEVELOPMENT

Dear Ms. Rozdolski:

Thank you for submitting Lee County's proposed comprehensive plan amendments submitted for our review pursuant to the Expedited State Review process. The reference number for this amendment package is **Lee County 17-2ESR**.

The proposed submission package will be reviewed pursuant to Section 163.3184(3), Florida Statutes. Once the review is underway, you may be asked to provide additional supporting documentation by the review team to ensure a thorough review. You will receive the Department's Comment Letter no later than **April 29, 2017**.

If you have any questions please contact Anita Franklin, Plan Processor at (850) 717-8486 or Brenda Winningham, Regional Planning Administrator, whom will be overseeing the review of the amendments, at (850) 717-8516.

Sincerely,

D. Ray Eubanks, Administrator
Plan Review and Processing

DRE

Rick Scott
GOVERNOR



Cissy Proctor
EXECUTIVE DIRECTOR

MEMORANDUM

TO Suzanne Ray, DEP
Deena Woodward, DOS
Tracy Suber, DOE
Terry Manning, South Florida WMD
Chesna/Catala FDOT1
Margaret Wuerstle, Southwest Florida RPC
Wendy Evans, AG
Scott Sanders, FWC

DATE: March 31, 2017

SUBJECT: EXPEDITED STATE REVIEW PROCESS

COMMENTS FOR PROPOSED COMPREHENSIVE PLAN AMENDMENT

LOCAL GOVERNMENT/ STATE LAND PLANNING AGENCY AMENDMENT #:

Lee County 17-2ESR

STATE LAND PLANNING AGENCY CONTACT PERSON/PHONE NUMBER:

Brenda Winningham/850-717-8516

The referenced proposed comprehensive plan amendment is being reviewed pursuant the Expedited State Review Process according to the provisions of Section 163.3184(3), Florida Statutes. Please review the proposed documents for consistency with applicable provisions of Chapter 163, Florida Statutes.

Please note that your comments must be sent directly to and received by the above referenced local government within 30 days of receipt of the proposed amendment package. A copy of any comments shall be sent directly to the local government and ALSO to the Department of Economic Opportunity to the attention of Ray Eubanks, Administrator, Plan Review and Processing at the Department E-mail address: DCPexternalagencycomments@deo.myflorida.com

Please use the above referenced State Land Planning Agency AMENDMENT NUMBER on all correspondence related to this amendment.

Note: Review Agencies - The local government has indicated that they have mailed the proposed amendment *directly to your agency*. See attached transmittal letter. *Be sure to contact the local government if you have not received the amendment*. Also, letter to the local government from State Land Planning Agency acknowledging receipt of amendment is attached.

Florida Department of Economic Opportunity | Caldwell Building | 107 E. Madison Street | Tallahassee, FL 32399
850.245.7105 | www.floridajobs.org
www.twitter.com/FLDEO | www.facebook.com/FLDEO

An equal opportunity employer/program. Auxiliary aids and service are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TTD equipment via the Florida Relay Service at 711.



March 28, 2017

John 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
March 22, 2017 Transmittal Hearing

Dear Mr. Eubanks:

In accordance with the provisions of F.S. Chapter 163, please find attached the proposed Comprehensive Plan Amendments, known locally as CPA2014-00008 (Overriding Public Necessity) and CPA2016-00011 (Centerplace). The proposed amendments are being submitted through the expedited state review process as described in Chapter 163.3184. The amendments are as follow:

CPA2014-00008, Overriding Public Necessity: Amend the Lee Plan to remove the overriding public necessity requirement found in Objective 17.1, Objective 20.1, Policy 21.1.5, and Policy 26.2.2 with regards to the Buckingham, Caloosahatchee Shores, Alva, and Bayshore community plans.

CPA2016-00011, Centerplace: Amend Lee Plan Policy 1.1.9, Goal 18, and Table 1(a) to remove site specific requirements for Area 9 of the University Community. Also amend Lee Plan Map 1, Page 2 to identify the subject property in the correct community planning area.

The Local Planning Agency held a public hearing for these plan amendments on February 27, 2017. The Board of County Commissioners voted to transmit the amendments on March 22, 2017. 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 amendments is as follows:

Mr. Brandon Dunn, Principal Planner
Lee County Planning Section
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.leegov.com>
AN EQUAL OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER

RECEIVED

Div. of Community Planning and Growth

MAR 30 2017

Div. of Community Development
Dept. Economic Opportunity

(239) 533-8585
Fax (239) 485-8319
Email: bdunn@leegov.com

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

Sincerely,



Mikki Rozdolski, Planning Manager
Department of Community Development
Planning Section

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

Plan Review
Department of Environmental Protection

Deena Woodward
Florida Department of State

Scott Sanders
Florida Fish and Wildlife Conservation Commission

Sarah Catala
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

Rick Scott
GOVERNOR



Cissy Proctor
EXECUTIVE DIRECTOR

April 21, 2017

The Honorable John Manning, Chairman
Lee County Board of County Commissioners
Post Office Box 398
Fort Myers, Florida 33902-0398

Dear Chairman Manning:

The Department of Economic Opportunity has completed its review of the proposed comprehensive plan amendment for Lee County (Amendment No. 17-2ESR), which was received on March 30, 2017. 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's authorized scope of review that will be adversely impacted by the amendment if adopted.

We are, however, providing a technical assistance comment consistent with Section 163.3168(3), F.S. The technical assistance comments will not form the basis of a challenge. They are offered as suggestions which can strengthen the County's comprehensive plan in order to foster a vibrant, healthy community.

Technical Assistance Comment (land use intensity standard): The proposed amendment to Future Land Use Element Policy 1.1.9 (University Community future land use category) deletes the provision stating that the overall average intensity of nonresidential development within the University Village (a sub-category of University Community) will be limited to 10,000 square feet of building per non-residential acre allowed pursuant to Map 16 and Table 1(b). This deletion removes the land use intensity standard from the University Village sub-category of the University Community future land use category. The Department recommends that the County retain a land use intensity standard in Policy 1.1.9 applicable to non-residential land use of the University Village sub-category pursuant to the requirements of Section 163.3177(6)(a), Florida Statutes.

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

Florida Department of Economic Opportunity | Caldwell Building | 107 E. Madison Street | Tallahassee, FL 32399
850.245.7105 | www.floridajobs.org
www.twitter.com/FLDEO | www.facebook.com/FLDEO


An equal opportunity employer/program. Auxiliary aids and service are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TTD equipment via the Florida Relay Service at 711.

agencies provide comments, we recommend the County consider appropriate changes to the amendment based on those comments. If unresolved, such reviewing agency 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 within 180 days of your receipt of agency comments, the amendment shall be deemed withdrawn unless extended by agreement with notice to the Department and any affected party that provided comment on the amendment. For your assistance, we have enclosed the procedures for adoption and transmittal of the comprehensive plan amendment.

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

Sincerely,



James D. Stansbury, Chief
Bureau of Community Planning and Growth

JDS/sr

Enclosure: Procedures for Adoption

cc: David Loveland, Director, Lee County Department of Community Development
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.

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

April 11, 2017

VIA EMAIL (bdunn@leegov.com)

Lee County Planning Section
Mr. Brandon Dunn
P. O. Box 398
Fort Myers, Florida 33902-0398

Re: DACS Docket # -- 20170329-898
Lee County CPA2014-00008 and CPA2016-00011
Submission dated March 28, 2017

Dear Mr. Dunn:

The Florida Department of Agriculture and Consumer Services (the "Department") received the above-referenced proposed comprehensive plan amendment on March 29, 2017 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 850-410-2280.

Sincerely,

A handwritten signature in blue ink that reads "Stormie Knight".

Stormie Knight
Sr. Management Analyst I
Office of Policy and Budget

cc: Florida Department of Economic Opportunity
(SLPA #: Lee County 17-2 ESR)

Jenkins-Owen, Sharon

Subject: FW: Lee County 17-2ESR (CPA2014-08 and CPA2016-11)
Attachments: CenterPlace_18640_031014.pdf

From: Hight, Jason [<mailto:Jason.Hight@MyFWC.com>]
Sent: Thursday, April 13, 2017 9:27 PM
To: Dunn, Brandon; DCPexternalagencycomments@deo.myflorida.com
Cc: Keltner, James; Wallace, Traci; Chabre, Jane
Subject: Lee County 17-2ESR (CPA2014-08 and CPA2016-11)

Dear Mr. Dunn:

Florida Fish and Wildlife Conservation Commission (FWC) staff have reviewed the amendments referenced above. We previously provided comments and recommendations through a related commenting process for the project referenced in CPA 2016-11 (see attached). Our previous comments and recommendations for fish and wildlife resources and any potential impacts from this project remain the same. We have no comments or recommendations for the other item in this amendment package.

If you need any further assistance, please do not hesitate to contact Jane Chabre either by phone at (850) 410-5367 or by email at FWCConservationPlanningServices@MyFWC.com. If you have specific technical questions, please contact Jim Keltner at (239) 332-6972 x9209 or by email at James.Keltner@MyFWC.com.

Thank you,

Jason Hight
Biological Administrator II
Office of Conservation Planning Services
Division of Habitat and Species Conservation
620 S. Meridian Street, MS 5B5
Tallahassee, FL 32399-1600
(850) 228-2055

Lee County 17-2ESR_32797

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.

Jenkins-Owen, Sharon

Subject: RE: Lee County 17-2ESR Proposed

From: Plan_Review [<mailto:Plan.Review@dep.state.fl.us>]

Sent: Tuesday, April 18, 2017 10:00 AM

To: Dunn, Brandon; DCPexternalagencycomments

Cc: Plan_Review

Subject: Lee County 17-2ESR Proposed

To: Brandon Dunn, Principal Planner

Re: Lee County 17-2ESR – Expedited Review of Proposed Comprehensive Plan Amendment

***Please note the new contact information below.**

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.

Feel free to contact me at Suzanne.e.ray@dep.state.fl.us or (850) 717-9037 for assistance or additional information. Please send all amendments, both proposed and adopted, to plan.review@dep.state.fl.us or

Florida Department of Environmental Protection
Office of Intergovernmental Programs, Plan Review
2600 Blair Stone Rd. MS 47
Tallahassee, Florida 32399-2400



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.

Jenkins-Owen, Sharon

Subject: RE: Lee County, DEO #17-2ESR Comments on Proposed Comprehensive Plan Amendment Package

From: Oblaczynski, Deborah [<mailto:doblaczy@sfwmd.gov>]

Sent: Thursday, April 20, 2017 8:53 AM

To: Rozdolski, Mikki

Cc: Dunn, Brandon; Ray Eubanks (DCPexternalagencycomments@deo.myflorida.com); Brenda Winningham (brenda.winningham@deo.myflorida.com); ext-Wuerstle, Margaret (swfrpc.org)

Subject: Lee County, DEO #17-2ESR Comments on Proposed Comprehensive Plan Amendment Package

Dear Ms. Rozdolski:

The South Florida Water Management District (District) has completed its review of the proposed amendment package from Lee County (County). The amendment package includes two Comprehensive Plan amendments addressing Community Plans and the University Community land use designation. The proposed changes do not appear to adversely impact the water resources in this area; therefore, the District has no comments on the proposed amendment package.

The District offers technical assistance to the County 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 the adopted amendments to the District. Please contact me if you need assistance or additional information.

Sincerely,

Deb Oblaczynski
Policy & Planning Analyst
Water Supply Implementation Unit
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, FL 33406
(561) 682-2544 or doblaczy@sfwmd.gov

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.



Florida Department of Transportation

RICK SCOTT
GOVERNOR

10041 Daniels Parkway
Fort Myers, FL 33913

RACHEL D. CONE
INTERIM SECRETARY

April 21, 2017

Brandon Dunn, Principal Planner
Lee County Planning Section
P.O. Box 398
Fort Myers, Florida 33902-0398

RE: Lee County 17-2ESR Proposed Comprehensive Plan Amendment (Expedited State Review Process) – FDOT Technical Assistance Comments

Dear Mr. Dunn:

The Florida Department of Transportation (FDOT), District One, has reviewed the Lee County 17-2ESR Proposed Comprehensive Plan Map Amendment (CPA). The CPA proposal package was transmitted under the Expedited State Review process by the Lee County Board of County Commissioners in accordance with the requirements of Florida Statutes Chapter 163. FDOT offers the following technical assistance comments.

The Lee County 17-2ESR CPA, includes two separate amendments, including the following:

- CPA2014-00008, Overriding Public Necessity (OPN): Amend the Lee Plan to remove the OPN requirement found in Objective 17.1, Objective 20.1, Policy 21.1.5 and Policy 26.2.2 with regards to the Buckingham, Caloosahatchee Shores, Alva and Bayshore community plans.

Per the staff report, the OPN language is being removed to correct ambiguity in the Comprehensive Plan, as community-specific provisions that address the unique community character of each are included in the current Goals for each community (Goal 17: Buckingham, Goal 20: Bayshore Community, Goal 21 Caloosahatchee Shores, and Goal 26: Alva).

- CPA2016-00011, Centerplace: Amend Lee Plan Policy 1.1.9, Goal 18, and Table 1(a) to remove site specific requirements for Area 9 of the University Community Future Land Use (FLU) category; an 886-acre site, north of Florida Gulf Coast University (FGCU). CPA2016-00011 also amends Lee Plan Map 1, Page 2 to identify the subject property in the correct community planning area

Per the staff report, the intent of this amendment is to remove the Compact Community Planned Development regulation to allow the applicant to design the mixed-used development on the property in a manner that supports the university.

FDOT Technical Assistance Comments, CPA2014-00008, OPN:

The proposed text change removing the OPN language does not impact densities or intensities of development. Therefore, FDOT offers no comments on CPA2014-00008.

FDOT Technical Assistance Comments, CPA2016-00011, Centerplace:

The proposed changes are regarding how development can be planned on the proposed Area 9 site, and does not change densities or intensities of development for the University Common FLU category. In addition, the proposed changes to Policy 18.1.16 reduces the maximum development allowed for lands within Area 9 of the University Common FLU category. Therefore, FDOT offers no comments on CPA2016-00011.

Thank you for providing FDOT with the opportunity to review and comment on the proposed amendment. If you have any questions or need to discuss these comments further, please contact me at (239) 225-1981 or sarah.catala@dot.state.fl.us.

Sincerely,



Sarah Catala
SIS/Growth Management Coordinator
FDOT District One

CC: Mr. Ray Eubanks, Florida Department of Economic Opportunity

1400 Colonial Blvd., Suite 1
Fort Myers, FL 33907



P: 239.938.1813 | F: 239.938.1817
www.swfrpc.org

April 26, 2017

Ms. Mikki Rozdolski
Planning Manager
Department of Community Development
P.O. Box 398
Fort Myers, Florida 33902-0398

RECEIVED
APR 28 2017

COMMUNITY DEVELOPMENT

Re: Lee County CPA2014-00008 & CPA2016-00011 / DEO 17-2ESR

Dear Ms. Rozdolski:

The staff of the Southwest Florida Regional Planning Council has reviewed the proposed amendment (DEO 17-2ESR) to the Lee County Comprehensive Plan. The review was performed according to the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act.

The Council will review the proposed amendment and the staff recommendations at its May 18, 2017 meeting. Council staff is recommending that the request be found not regionally significant. Council staff is also recommending that the proposed changes are consistent with the SRPP and do not produce extra-jurisdictional impacts that are inconsistent with the Comprehensive Plans of other local governments.

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

Sincerely,

Southwest Florida Regional Planning Council

Margaret Wuerstle, AICP
Executive Director

MW/DEC
Attachment

Cc: Mr. Eubanks, Administrator, Plan Review and Processing, Department of Economic Development

1400 Colonial Blvd., Suite 1
Fort Myers, FL 33907



P: 239.938.1813 | F: 239.938.1817
www.swftrpc.org

April 26, 2017

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

Re: Lee County CPA2014-00008 & CPA2016-00011 / DEO 17-2ESR

Dear Mr. Eubanks:

The staff of the Southwest Florida Regional Planning Council has reviewed the proposed amendment (DEO 17-2ESR) to the Lee County Comprehensive Plan. The review was performed according to the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act.

The Council will review the proposed amendment and the staff recommendations at its May 18, 2017 meeting. Council staff is recommending that the request be found not regionally significant. Council staff is also recommending that the proposed changes are consistent with the SRPP and do not produce extra-jurisdictional impacts that are inconsistent with the Comprehensive Plans of other local governments.

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

Sincerely,
Southwest Florida Regional Planning Council

A handwritten signature in blue ink that reads "Margaret Wuerstle".

Margaret Wuerstle, AICP
Executive Director

MW/DEC
Attachment

Cc: Ms. Rozdolski, Lee County



LOCAL GOVERNMENT COMPREHENSIVE PLAN AMENDMENTS LEE COUNTY

The Council staff has reviewed the proposed evaluation and appraisal based amendments to the Lee County Comprehensive Plan (DEO 17-2ESR). These amendments were developed under the Local Government Comprehensive Planning and Land Development Regulation Act. A synopsis of the requirements of the Act and Council responsibilities is provided as Attachment I. Comments are provided in Attachment II. Site location maps can be reviewed in Attachment III.

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

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

A summary of the results of the review follows:

<u>Proposed</u> <u>Amendment</u>	<u>Factors of Regional Significance</u>				<u>Consistent</u>
	<u>Location</u>	<u>Magnitude</u>	<u>Character</u>		
DEO 17-2ESR	No	No	No	(1) Not regionally significant (2) Consistent with SRPP	

RECOMMENDED ACTION:

Approve staff comments. Authorize staff to forward comments to the Department of Economic Opportunity and Lee County

COMMUNITY PLANNING ACT

Local Government Comprehensive Plans

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

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

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

All local governments in Southwest Florida have adopted revised plans:

Charlotte County, Punta Gorda

Collier County, Everglades City, Marco Island, Naples

Glades County, Moore Haven

Hendry County, Clewiston, LaBelle

Lee County, Bonita Springs, Cape Coral, Fort Myers, Fort Myers Beach, Sanibel

Sarasota County, Longboat Key, North Port, Sarasota, Venice

COMPREHENSIVE PLAN AMENDMENTS

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

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

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

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

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

Regional Planning Council Review

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

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

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

LEE COUNTY COMPREHENSIVE PLAN AMENDMENT (DEO 17-2ESR)

Summary of Proposed Amendment

Lee County DEO 17-2ESR consists of two amendments:

CPA2014-00008, Overriding Public Necessity: Amend the Lee Plan to remove the overriding public necessity requirement found in Objective 17.1, Objective 20.1, Policy 21.1.5, and Policy 26.2.2 with regards to the Buckingham, Caloosahatchee Shores, Alva, and Bayshore community plans.

The OPN (Overriding Public Necessity) provisions create potential legal challenges to its application based on substantive and due process claims. Deleting OPN from the Lee Plan in no way precludes the Board from reviewing the compatibility and consistency of future cases in these four communities. Existing Lee Plan policies are in place and are adequate to provide protection of rural character against the encroachment of inconsistent and incompatible land uses in the Buckingham, Caloosahatchee Shores, Alva, and Bayshore communities. The OPN requirements in Objectives 17.1 and 20.1 and Policies 21.1.5 and 26.2.2 do not provide adequate notice of the criteria a property owner must satisfy to permit approval of a future land use amendment. There is a lack of clear standards or criteria for providing evidence and demonstrating compliance with OPN.

CPA2016-00011, Centerplace: Amend Lee Plan Policy 1.1.9, Goal 18, and Table 1(a) to remove site specific requirements for Area 9 of the University Community. Also amend Lee Plan Map 1, Page 2 to identify the subject property in the correct community planning area.

The requested amendments will allow residential and commercial development of the property provided in the companion rezoning case. The proposed amendments do not increase allowable density or intensity of the property. The requests will decrease the amount of available office, retail, and research and development square footage for this property. Also, zoning level detail regarding the future development specific to the subject property included in the Comprehensive Plan will be removed. The subject property is 886 +/- acres located south of Alico Road, beginning roughly ¼ mile east of Ben-Hill Griffin Parkway. The property is currently vacant and highly disturbed from previous mining activities.

Consistent with Policy 18.1.16, the recommended amendments will allow development of the Centerplace property that enhances and supports the University. A multi-modal connection will be provided from the subject property to Florida Gulf Coast University. The Master Concept Plan for the concurrent planned development rezoning demonstrates that multi-family residential available for university housing has been located immediately adjacent to the multi-modal connection facilitating student and resident mobility and eliminating trips on the County's roadway network. The ±40-acre parcel donated to FGCU is for expansion of their academic campus, located immediately adjacent to Centerplace, and provides opportunities for interconnectivity and walkability between FGCU and Centerplace. The commercial, office, research and development facilities, recreational amenities, and variety of residential types proposed on Centerplace will support the increased need for housing, retail, service, leisure, and employment anticipated for the continued growth of FGCU.

Regional Impacts

Council staff has reviewed the requested changes and finds that the requested Comprehensive Plan amendments do not directly produce any significant regional impacts that would be inconsistent with the Comprehensive Plan of any other local government within the region.

Extra-Jurisdictional Impacts

Council staff has reviewed the requested changes and finds that the requested Comprehensive Plan amendments do not directly produce any significant extra-jurisdictional impacts that would be inconsistent with the Comprehensive Plan of any other local government within the region.

Conclusion

No adverse effects on regional resources or facilities and no extra-jurisdictional impacts have been identified. Staff finds that this project is not regionally significant.

Recommended Action

Approve staff comments. Authorize staff to forward comments to the Department of Economic Opportunity and Lee County.

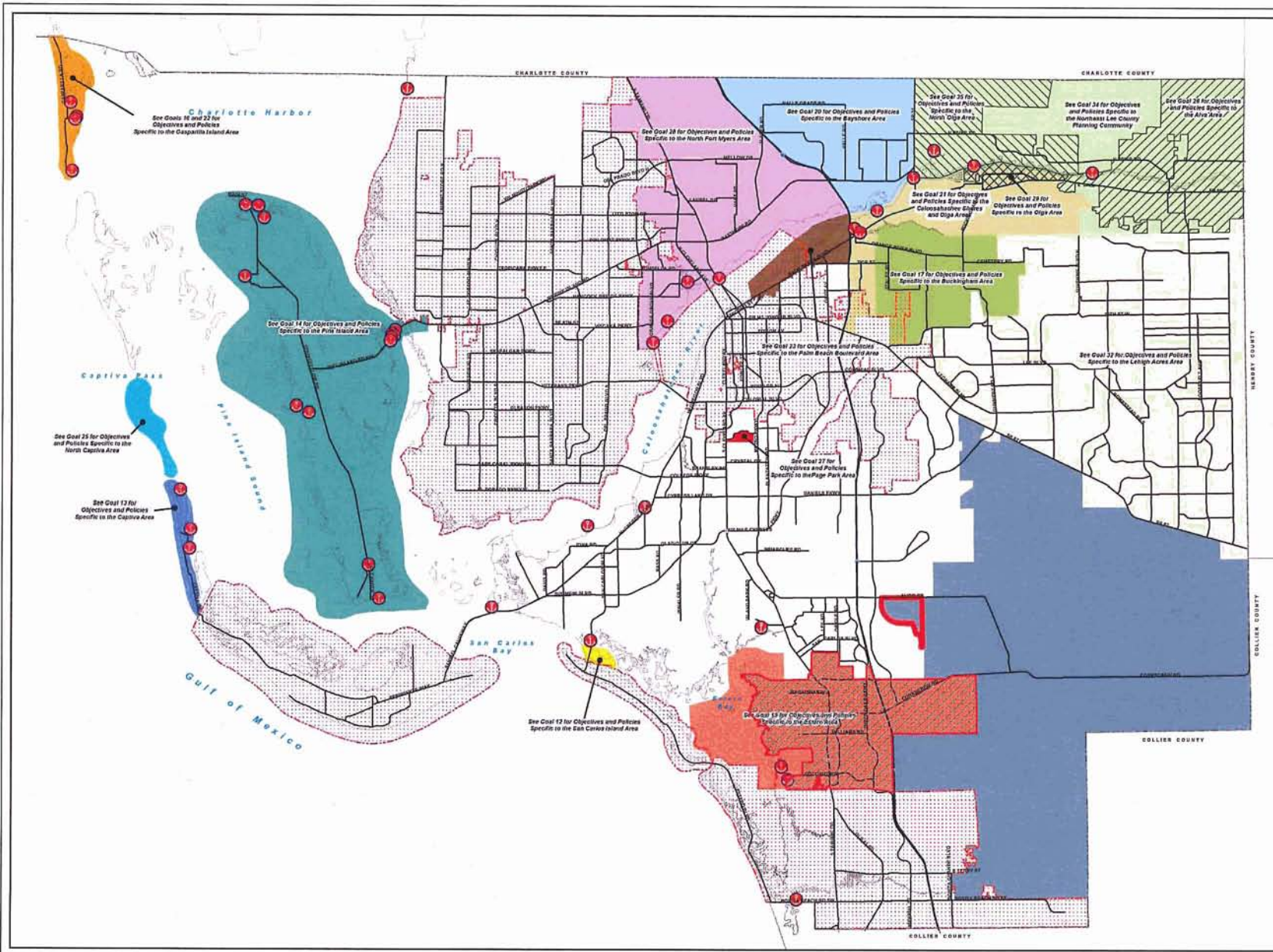
MAPS

Lee County

DEO 17-2ESR

Growth Management Plan

Comprehensive Plan Amendment



SPECIAL TREATMENT AREAS

Community Planning Areas

- Bayshore
- Boca Grande
- Buckingham
- Caloosahatchee Shores
- Clia
- Captiva
- Estero
- Greater Pine Island
- Lehigh Acres
- North Captiva
- North Fort Myers
- Northeast Lee County
- Alva
- North Clia
- Page Park
- San Carlos Island
- Southeast Lee County
- Palm Beach Boulevard
- City Limits

Adopted by Ord. 89-02, 1/31/1989
 Amended by Ordinance Nos.
 02-02, 03-01, 03-02, 03-04, 03-21, 07-09, 08-05,
 09-07, 09-08, 09-09, 09-10, 09-11, 10-16, 11-14,
 11-21, 11-24

Water Dependent Overlay
 See Maps 2 and 12 for Details

Adopted by Ord. 89-02, 1/31/1989
 Amended by Ordinance Nos.
 91-19, 92-35, 00-22, 02-03, 08-05

CPA2016-00011 CENTERPLACE

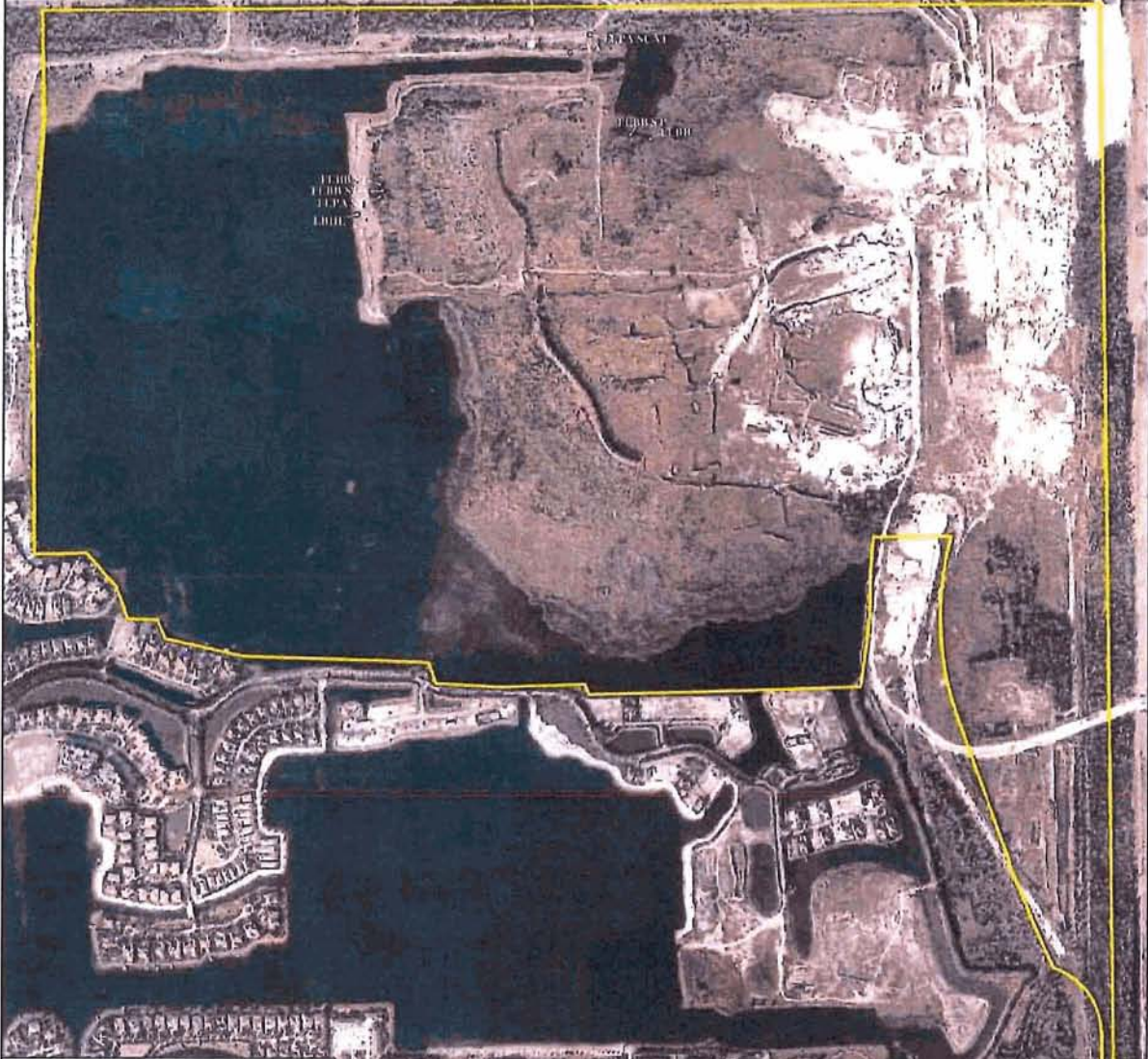
Remove from
 Southeast Lee County



Map Generated: February 2017
 City Limits current to date of map generation



SCALE: 1" = 500'



91

LEGEND

AA AMERICAN ALLIGATOR

FLBB FLORIDA BLACK BEAR

FLBB ST FLORIDA BLACK BEAR SCRATCH TREE

FLPA ST FLORIDA PANTHER SCRATCH TREE

FLPA SCAT FLORIDA PANTHER SCAT

LBHE LITTLE BLUE HERON

NOTES:

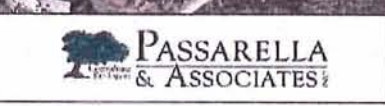
AERIAL PHOTOGRAPHS WERE ACQUIRED THROUGH THE LEE COUNTY PROPERTY APPRAISER'S OFFICE WITH A FLIGHT DATE OF FEBRUARY 2013.

PROPERTY BOUNDARY PER BARRACO & ASSOCIATES DRAWING No. 23115A09-0r15.dwg DATED DECEMBER 16, 2015.

AERIAL PHOTOGRAPHS ACQUIRED THROUGH THE LEE COUNTY PROPERTY APPRAISER'S OFFICE WITH A FLIGHT DATE OF FEBRUARY 2013.

DRAWN BY	DATE
P.F./F.L.	6/26/12
REVISIONS BY	DATE
M.B.	6/26/12
ISSUED BY	DATE
H.H.	12/18/13

13620 Metropolis Avenue
Suite 200
Fort Myers, Florida 33912
Phone (239) 274-0067
Fax (239) 274-0069



CENTERPLACE
AERIAL WITH PROTECTED SPECIES
LOCATIONS

DRAWING NO. **HALD2037**
SHEET NO. **FIGURE 1**