

May 29, 2019

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
CPA2019-00001, Impacted Wetlands

Dear Mr. Eubanks:

In accordance with the provisions of F.S. Chapter 163, please find attached the proposed Comprehensive Plan Amendment, known locally as CPA2019-00001 (Impacted Wetlands). The proposed amendment is being submitted through the expedited state review process as described in Chapter 163.3184. The amendment is as follows:

CPA2019-00001, Impacted Wetlands:

- *Goal 124 will be amended to recognize the non-residential uses allowed on impacted wetlands.*
- *Chapter XIII will be amended to clarify the future land use category designation of upland property found to be improperly designated as Wetlands through an administrative interpretation and confirmed by a wetlands jurisdictional determination.*

The Local Planning Agency held a public hearing for the plan amendment on February 25, 2019. The Board of County Commissioners voted to transmit the amendment on May 22, 2019. The proposed amendments are not applicable to an area of critical state concern. The Board of County Commissioners stated their intent to hold an adoption hearing following the receipt of the review agencies' comments.

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

Mr. Brandon Dunn, Principal Planner
Lee County Planning Section
P.O. Box 398
Fort Myers, Florida 33902-0398
(239) 533-8585
Email: bdunn@leegov.com

Included with this package are one paper copy and two CD ROM copies, in PDF format, of the proposed amendment and supporting data and analysis. By copy of this letter and its attachments, I certify that this 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 an electronic format to:

Comprehensive Plan Review
Department of Agriculture and Consumer Services

Mark Weigly
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, AICP, Senior Planner, Intergovernmental Coordination Section
South Florida Water Management District

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

Attn:

**LCBC-DEPT OF COMM DEVELOPMENT-
1500 MONROE ST
FORT MYERS, FL 33902**

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 22, 2019. 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:

CPA2019-00001 Wetland Impacts: Amend the Lee Plan to clarify uses allowed in the Wetlands future land use category on property where impacts are authorized by a State agency.

CPA2018-10008 Old Corkscrew Commercial: Amend Lee Plan Goal 13 to add neighborhood Commercial development as an allowed use for consideration within the Private Recreation Facilities Planned Development zoning district in the DR/GP Amend Lee Plan Map 6: Lee County Utilities Future Water Service Areas, and Map 7: Lee county Utilities Future Sewer Service Areas by adding approximately 18.4 acres of Property, located about 2 miles east of the Corkscrew Road and Alico Road Intersection, to the Future Water and Sewer Service Areas.

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.

Documentation for the Proposed Comprehensive Plan Amendment is available at <https://www.leegov.com/dcd/planning/cpa> or at the Department of Community Development located at 1500 Monroe Street, Fort Myers, Florida. 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.

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

Lee County will not discriminate against individuals with disabilities. To request an accommodation, contact Joan LaGuardia, (239) 533-2314, Florida Relay Service 711, or ADArequests@leegov.com, at least five business days in advance. AD# 3553728 May 10, 2019

STATE OF FLORIDA COUNTY OF LEE:

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

Legal Notices

In the Twentieth Judicial Circuit Court was published in said newspaper in the issues of:

05/10/19

Affiant further says that the said News-Press is a paper of general circulation daily in Lee County and published at Fort Myers, in said Lee County, Florida, and that the said newspaper has heretofore been continuously published in said Lee County, Florida each day and has been entered as periodicals matter at the post office in Fort Myers, in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has never paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and Subscribed before me this 10th of May 2019, by Diana Figueroa who is personally known to me.



Affiant



Notary



**STAFF REPORT FOR
CPA2019-00001: Impacted Wetlands**

County Initiated Text Amendments to the Lee Plan



BoCC Direction:

- 11/17/15

Amended Elements:

- Conservation and Coastal Management
- Chapter XIII

Attachments:

Text Amendments

Hearing Dates:

LPA: 2/25/2019

BoCC: 3/20/2019

(Deferred)

BoCC: 4/17/2019

(Deferred)

BoCC: 5/22/2019

REQUEST

Amend the Lee Plan to clarify uses allowed in the Wetlands future land use category on property where impacts are authorized by a State agency.

SUMMARY

The purpose of these amendments is to recognize uses allowed in the Wetlands future land use category when an authorized State agency (South Florida Water Management District or Florida Department of Environmental Protection) permits impacts to wetlands on properties with adjacent upland approved for non-residential development. State agencies have the authority to permit impacts to wetlands. These areas are recognized by the state as "impacted wetlands." State permitting laws are intended to ensure that all permitted impacts to wetlands are adequately offset through mitigation.

Lee County has the authority to determine the most appropriate use of land, including impacted wetlands. The Lee Plan acknowledges impacted wetlands for residential uses, allowing density to be calculated at a standard density of one dwelling unit per 20 acres; however, there are no provisions regarding non-residential uses. Lee County has traditionally issued Development Permits for non-residential uses on impacted wetlands when those uses are permitted on adjacent uplands. The proposed amendments, as summarized below, will legitimize this practice:

- Goal 124 will be amended to recognize the non-residential uses allowed on impacted wetlands.
- Chapter XIII will be amended to clarify the future land use category designation of upland property found to be improperly designated as Wetlands through an administrative interpretation and confirmed by a wetlands jurisdictional determination.

RECOMMENDATION

Staff recommends that the Board of County Commissioners *transmit* the proposed text amendments provided in Attachment 1 based on the analysis and findings in this staff report.

PART 1
BACKGROUND INFORMATION

On November 17, 2015, the Board of County Commissioners (BoCC) provided direction for staff to identify amendments to the Lee Plan to align with the BoCC's strategic planning initiatives, streamline, eliminate potential liabilities, reduce redundancy/conflict within and between Lee Plan goals, and relocate regulatory provisions to the Land Development Code. Based on this direction, staff identified the proposed amendments as being necessary for providing clear, concise, and meaningful provisions that can be consistently applied and interpreted.

PART 2
STAFF DISCUSSION AND ANALYSIS

All wetlands, as determined by the state, are assigned to the Wetlands future land use category even if not identified on the Future Land Use Map (FLUM). Wetlands are defined in the Glossary of the Lee Plan as:

WETLANDS - Areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil. ~~Wetland boundaries will be determined by using the methodology in FAC Chapter 17-340 as ratified and amended in F.S. 373.4211.~~

The proposed amendment identified above will not change how Wetlands are defined. The sentence that is proposed to be deleted identifies a process, which is not appropriate for a definition. This sentence will remain within Lee Plan Objective 1.5 and is proposed to be added for administrative interpretations in Chapter XIII.

Wetlands Boundaries

The boundary of the Wetlands future land use category is delineated based on wetlands jurisdictional determinations issued by an appropriate state agency. In instances where property is designated Wetlands on the FLUM and is found to be upland through a state determination, an administrative interpretation may be sought to change the property's future land use category. The availability of an administrative interpretation is provided in Chapter XIII of the Lee Plan:

An applicant of a development permit whose property rights are directly affected by the Lee Plan have the right to an administrative interpretation of the Plan as to its application to their property. Administrative interpretations are intended to expedite and reduce disputes over interpretations of the Lee Plan, resolve map or boundary disputes, avoid unnecessary litigation, ensure consistency in Plan interpretation, and provide predictability in interpreting the Plan.

Applicants seeking an administrative interpretation must submit an application demonstrating compliance with the standards below. Procedures for obtaining an administrative interpretation are provided in Lee County Administrative Code 13-2.

A jurisdictional determination approved by South Florida Water Management District or Florida Department of Environmental Protection must be submitted prior to issuance of an interpretation of a Wetlands future land use designation. If it is determined a property is not wetlands, the Wetlands future land use category is no longer the appropriate designation; the Lee Plan, however, does not specify which future land use category to re-designate the property. In past practice, by issuance of an administrative interpretation, the FLUM of the property is changed to the most appropriate, contiguous upland category. To recognize and codify this on-going practice, the following amendments to Chapter XIII, b. are proposed:

1. Subject Matter of Administrative Interpretations

- b. Whether a parcel has been properly designated as within the Wetlands future land use category. Wetlands future land use boundaries will be determined by using the methodology in FAC Chapter 17-340 as ratified and amended in F.S. 373.4211. A Jurisdictional Determination approved by SFWMD or Florida DEP must be submitted prior to the issuance of such an interpretation.

2. Standards for Administrative Interpretations

- f. Interpretations that find a property improperly designated in the Wetlands future land use category, will assign the property to the most appropriate, contiguous upland future land use category.

Impacted Wetlands

Chapter 373, F.S. gives the Florida Department of Environmental Protection and the water management districts the responsibility of regulating the state's wetlands through the environmental resource permit (ERP) program. Through the ERP program, impacts to wetlands may be permitted subject to mitigation. Upon issuance of an ERP, a property owner may impact the wetlands by filling it, ultimately removing its ecological function as a wetland, making it an "impacted wetland."

Permitted Uses in Wetlands

Permitted land uses in the Wetlands future land use category are limited to very low density residential (one dwelling unit per twenty acres) and recreational uses that will not adversely affect the ecological function of wetlands (Lee Plan Policy 1.5.1).

Dwelling units may be relocated to developable contiguous uplands designated Intensive Development, General Interchange, Central Urban, Urban Community, Suburban, Outlying Suburban, Sub-Outlying Suburban, and New Community from preserved freshwater wetlands at the same underlying density as permitted for those uplands (Lee Plan Policy 124.1.1 and Table 1(a)). Impacted wetlands are calculated at the standard Wetlands density.

Impacted wetlands are addressed in the Lee Plan for purposes of calculating residential density, but not for purposes of non-residential uses. However, when issuing development permits, impacted wetlands (permitted through the ERP program) have been allowed the same uses as the adjacent uplands. The proposed amendments recognize this historic practice:

POLICY 124.1.2: The county's wetlands protection regulations will be consistent with the following:

2. ~~No development in wetlands regulated by the State of Florida will be permitted by Lee County without the appropriate state agency permit or authorization. No development in wetlands regulated by the State of Florida may be commenced without the appropriate state agency permit or authorization. Development Orders and Development Permits authorizing development within wetlands or lands located within the Wetlands future land use category may be issued subject to a condition that construction may not commence until issuance of the required state permits.~~
7. ~~The density on wetlands that have been impacted, or will be impacted, in accordance with a state agency permit will be calculated at a density of 1 dwelling unit per 20 acres. Non-residential uses on wetlands that have been impacted, or will be impacted, in accordance with a state agency permit must be consistent with the non-residential uses permitted in the immediately adjacent upland future land use category. Wetland density will be determined by the jurisdictional wetland line. Impacted wetlands may not be calculated at the underlying upland density rate. Density calculations for impacted wetlands must be at 1 dwelling unit per 20 acres.~~

PART 3 CONCLUSIONS

Amending Policies 124.1.2 (2) and (7) of the Lee Plan will provide clear direction on the uses which are permissible in impacted wetlands. Amending Chapter XIII to include a statement recognizing the improperly designated wetlands as the most appropriate, contiguous upland category will better define the process for Land Use Map Boundary Adjustment applications. Applicants will still be required to obtain a permit from the State of Florida for any wetlands impacts. The clarifying language results in consistent application of the Lee Plan and continues to acknowledge the State as the permitting authority of impacted wetlands.

Staff recommends that the Board of County Commissioners *transmit* the proposed amendments as provided in Attachment 1.

**PART 4
LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: February 25, 2019

A. LOCAL PLANNING AGENCY REVIEW:

Staff provided a brief overview of the proposed text amendments providing for additional uses within the Wetlands future land use category when impacts are permitted and mitigated through an appropriate state agency such as the South Florida Water Management District or the Florida Department of Environmental Protection. Three members of the public addressed the LPA concerning this case. One member of the public believed that the amendments should be further reviewed to identify any potential conflicts, and two members recognized the issue the amendments will fix and expressed support for transmittal.

Members of the LPA asked questions about the process to permit impacts to wetlands. Staff responded that wetland impacts are permitted through state agencies, but uses are determined by the county.

B. LOCAL PLANNING AGENCY RECOMMENDATION:

A motion was made to find the request consistent with the Lee Plan; encourage staff to further review the Lee Plan to identify any potential conflicts; and, to recommend that the Board of County Commissioners transmit CPA2019-00001. The motion passed 7 to 0.

VOTE:

RAYMOND BLACKSMITH	AYE
RHONDA BREWER	AYE
JAMES INK	AYE
DON SCHROTENBOER	AYE
KRISTINE SMALE	AYE
STAN STOUER	AYE
HENRY ZUBA	AYE

C. STAFF RESPONSE TO LOCAL PLANNING AGENCY MOTION:

Staff reviewed the Lee Plan to identify any potential conflicts, as recommended by the LPA. Staff notes that a cross reference is already included in Policy 1.5.1 that directs the reader to Goal 124 for development within Wetlands. Therefore, no additional revisions are required. Policy 1.5.1 is provided below for reference:

POLICY 1.5.1: Permitted land uses in Wetlands consist of very low density residential uses and recreational uses that will not adversely affect the ecological functions of wetlands. All development in Wetlands must be consistent with Goal 124 of this plan. The maximum density is one dwelling unit per twenty acres (1 du/20 acre) except as otherwise provided in Table 1(a) and Chapter XIII of this plan. (Ordinance No. 94-30)

PART 5
BOARD OF COUNTY COMMISSIONERS
TRANSMITTAL HEARING FOR PROPOSED AMENDMENT

DATE OF PUBLIC HEARING: May 22, 2019

A. BOARD REVIEW:

Staff provided a brief presentation for the proposed amendments which covered the purpose of the amendments, the wetland permitting process in Florida including what Lee County does versus what state agencies do, consistency with the Lee Plan, and the LPA and staff recommendations.

Twenty-six members of the public addressed the Board of County Commissioners concerning the proposed amendments. Thirteen members from the public spoke in favor of transmitting the amendments and thirteen members spoke against transmitting the amendments. Many members of the public encouraged the Board of County Commissioners to direct staff to identify potential incentives that would encourage the preservation of wetlands to be considered at time of adoption.

B. BOARD ACTION:

A motion was made to transmit CPA2019-00001 as recommended by staff and to direct staff to identify amendments that would encourage the preservation of wetlands. The motion was passed 3 to 0.

VOTE:

BRIAN HAMMAN	AYE
FRANK MANN	ABSENT
JOHN MANNING	AYE
CECIL L. PENDERGRASS	AYE
VACANT	N/A

VII. Conservation and Coastal Management

POLICY 124.1.2: The county’s wetlands protection regulations will be consistent with the following:

- 2. ~~No development in wetlands regulated by the State of Florida will be permitted by Lee County without the appropriate state agency permit or authorization. No development in wetlands regulated by the State of Florida may be commenced without the appropriate state agency permit or authorization. Development Orders and Development Permits authorizing development within wetlands or lands located within the Wetlands future land use category may be issued subject to a condition that construction may not commence until issuance of the required state permits.~~

- 7. The density on wetlands that have been impacted, or will be impacted, in accordance with a state agency permit will be calculated at a density of 1 dwelling unit per 20 acres. Non-residential uses on wetlands that have been impacted, or will be impacted, in accordance with a state agency permit must be consistent with the non-residential uses permitted in the immediately adjacent upland future land use category. Wetland density will be determined by the jurisdictional wetland line. Impacted wetlands may not be calculated at the underlying upland density rate. Density calculations for impacted wetlands must be at 1 dwelling unit per 20 acres. (Ordinance No. 94-30, 00-22, 07-12, 10-20, 10-39)

XII. Glossary

WETLANDS - Areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil. ~~Wetland boundaries will be determined by using the methodology in FAC Chapter 17-340 as ratified and amended in F.S. 373.4211.~~ (Ordinance No. 94-30, 00-22)

XIII. Administration

1. Subject Matter of Administrative Interpretations

Administrative interpretations are limited to:

- b. Whether a parcel has been properly designated as within the Wetlands future land use category. Wetlands future land use boundaries will be determined by using the methodology in FAC Chapter 17-340 as ratified and amended in F.S. 373.4211. A Jurisdictional Determination approved by SFWMD or Florida DEP must be submitted prior to the issuance of such an interpretation.

2. Standards for Administrative Interpretations

- f. Interpretations that find a property improperly designated in the Wetlands future land use category, will assign the property to the most appropriate, contiguous upland future land use category.