



LEE COUNTY BOARD OF COUNTY COMMISSIONERS

ZONING  
and  
COMPREHENSIVE PLAN AMENDMENT HEARING  
AGENDA

Wednesday, December 18, 2019

9:30AM

REZ2019-00005  
Z-19-028

BEACHES GATEWAY VILLAGE

CPA2018-10008

OLD CORKSCREW COMMERCIAL - ADOPTION

CPA2019-00001

IMPACTED WETLANDS - ADOPTION

**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, December 18, 2019. 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:

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/GR. 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.

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.

Copies of this Notice and the proposed ordinance are available for inspection or copying during regular business hours at the Minutes Office of the Clerk of Courts of Lee County, located in the Courthouse Administration Building, 2115 Second 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 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.

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](mailto:ADArequests@leegov.com), at least five business days in advance.

**CPA2019-00001**

**IMPACTED  
WETLANDS**

# Summary Sheet

## Impacted Wetlands, CPA2019-01

**Purpose:** 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.

**Transmittal Hearing:** Twenty-six members from the public addressed the Board concerning the proposed amendments. Thirteen members from the public spoke in favor of the amendments and thirteen members spoke against transmitting them. Many members from the public encouraged the Board to consider potential incentives for preserving wetlands.

**The Board passed a motion 3 to 0 to transmit CPA2019-01 as recommended by staff and the LPA and directed staff to identify incentives that would encourage the preservation of wetlands.**

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

**State Reviewing Agency Objections, Recommendations, and Comments:** Lee County received responses from the following review agencies addressing the transmitted amendment:

- Florida Department of Agriculture and Consumer Services,
- Florida Department of Economic Opportunity (DEO),
- Florida Department of Environmental Protection (DEP),
- Florida Fish and Wildlife Conservation Commission (FWC), and
- South Florida Water Management District (SFWMD).

There were **no objections or comments** concerning the proposed amendments.

**Incentives:** Staff consulted with land owners, land use planners, civil engineers, environmental educators, environmental advocates, environmental consultants, land use attorneys, and commercial realtors to identify incentives that would help to encourage the preservation of wetlands.

From the options identified, the only incentive that could be reasonably implemented is enhancing the Wetlands Transfer of Development Rights (TDR) program. The updated Wetlands TDR program will incentivize property owners to sever their development rights off of wetlands and transfer them to upland developments located in future urban areas. To implement this incentive, additional Lee Plan amendments are recommended to be adopted (see Attachment 1) and direction is needed to amend the Land Development Code.

**Recommendation:** Staff recommends that the Board **adopt** the amendments to the Lee Plan as provided in Attachment 1 and **direct staff to amend the Land Development Code** needed in order to fully implement the updated Wetlands TDR program.

**LEE COUNTY ORDINANCE NO. \_\_\_\_\_**

Wetland Impacts  
(CPA2019-00001)

**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 AMENDMENT PERTAINING TO THE WETLAND IMPACTS (CPA2019-00001) 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”) 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 25, 2019; and,

WHEREAS, a public hearing before the Lee County Board of County Commissioners was advertised to be held on March 20, 2019. On March 20, 2019, the Board of County Commissioners deferred CPA2019-00001 Transmittal Hearing to the April 17, 2019 Zoning Hearing. On April 2, 2019, Staff presented the item to the Board during a public meeting requesting CPA2019-00001 Transmittal Hearing be deferred to the May 22, 2019 Zoning Hearing; and,

WHEREAS, the Board held a public hearing for the transmittal of the proposed amendment on May 22, 2019. At that hearing, the Board approved a motion to send, and did later send, proposed amendment pertaining to Wetland Impacts (CPA2019-00001) to the reviewing agencies set forth in Section 163.3184(1)(c), F.S. for review and comment; and,

WHEREAS, at the May 22, 2019 meeting, the Board announced its intention to hold a public hearing after the receipt of the reviewing agencies’ written comments; and,

WHEREAS, on December 18, 2019 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 "Wetland Impacts Ordinance (CPA2019-00001)."**

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, which amends Lee Plan text to clarify uses allowed in the Wetlands future land use category on property where impacts are authorized by a State agency, known as Wetland Impacts (CPA2019-00001).

The corresponding Staff Reports and Analysis, along with all attachments and application submittals 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 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 Manning \_\_\_\_\_  
Cecil Pendergrass \_\_\_\_\_  
Raymond Sandelli \_\_\_\_\_  
Brian Hamman \_\_\_\_\_  
Frank Mann \_\_\_\_\_

DONE AND ADOPTED this 18<sup>th</sup> day of December 2019.

ATTEST:  
LINDA DOGGETT, CLERK

LEE COUNTY BOARD OF  
COUNTY COMMISSIONERS

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
Brian Hamman, Chair

DATE: \_\_\_\_\_

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

\_\_\_\_\_  
County Attorney's Office

Exhibit A: Adopted revisions to Lee Plan Text (Adopted by BOCC December 18, 2019)



## EXHIBIT A

**Note: Text depicted with underscore represents additions to the Lee Plan.  
Strike-through text represents deletions from the Lee Plan.**

II. Future Land Use

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POLICY 33.4.2: The Southeast Lee County TDR program will have the following characteristics:

- 1. Creation of Transferable Development Units (TDUs).
    - a. Up to one (1) TDU may be created per five ~~twenty~~ ~~(520)~~ acres of preserved or indigenous wetlands.
  - 2. Receiving area density and intensity equivalents of Southeast Lee County TDUs.
    - ~~f. Wetland TDUs may not be used to increase commercial intensity.~~
- (Ordinance 17-13)

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VII. Conservation and Coastal Management

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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, least intense, 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, 18-28)

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**OBJECTIVE 124.2: WETLANDS TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAM.** To incorporate purchase and transfer of development rights programs for the protection and preservation of wetlands into the Land Development Code.

**POLICY 124.2.1:** The programs may create incentives for property owners of wetlands to transfer development rights associated with the Wetlands future land use category to eligible upland receiving lands or Lee County.

**POLICY 124.2.2:** The Wetlands TDR program will have the following characteristics:

1. Creation of Wetlands Transferable Development Units (TDUs).
  - a. Up to one (1) TDU may be created per five (5) acres of wetlands.
  - b. Up to two (2) TDUs may be created from a single-family lot or parcel designated as wetlands that holds an affirmative Minimum Use Determination pursuant to Chapter XIII.
  - c. TDUs allowed by 1.a. or 1.b. above, and created from wetlands located within the Coastal High Hazard Area (CHHA) may be doubled.
2. Receiving area density and intensity equivalents of Wetlands TDUs.
  - a. In the Intensive Development, Central Urban, Urban Community, or General Interchange future land use categories, one (1) Wetlands TDU may be redeemed for up to two (2) dwelling units.
  - b. Lee County may establish non-residential incentives for the use of Wetlands TDUs within Future Urban Areas of the unincorporated Lee County.
3. The Land Development Code may include regulations that permit the county to evaluate the effectiveness of the Wetlands TDR program and make changes that may further condition or restrict the use of Wetlands TDUs.

**POLICY 124.2.3** The county will administer the TDR program and develop a forum to disseminate program information and records. The forum may include a TDR program website that provides general program information, rules and guidelines; TDU administrative determination application; county-approved form of conservation easement; certified TDU database with ownership information; and, TDU clearinghouse for individuals that request to be included within the TDU clearinghouse program.

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## **XII. Glossary**

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**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)

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**XIII. Administration**

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**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, least intense, contiguous upland future land use category.

**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:**

- 1 - Text Amendments
- 2 – Incentive Amendments

**Hearing Dates:**

LPA: 2/25/2019

**BoCC:**

3/20/2019 – Deferral

4/17/2019 – Deferral

5/22/2019 – Transmittal

12/18/2019 – Adoption

**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 **adopt** the proposed text amendments provided in Attachment 1 based on the analysis and findings in this staff report and **direct** staff to amend the Land Development Code, as provided in Attachment 2, to implement the proposed wetlands preservation incentives.

**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:**

<b>RAYMOND BLACKSMITH</b>	<b>AYE</b>
<b>RHONDA BREWER</b>	<b>AYE</b>
<b>JAMES INK</b>	<b>AYE</b>
<b>DON SCHROTENBOER</b>	<b>AYE</b>
<b>KRISTINE SMALE</b>	<b>AYE</b>
<b>STAN STOUER</b>	<b>AYE</b>
<b>HENRY ZUBA</b>	<b>AYE</b>

**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:**

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

**PART 6**  
**STATE REVIEWING AGENCIES'**  
**OBJECTIONS, RECOMMENDATIONS, AND COMMENTS**

Comments from the State Reviewing Agencies were due to Lee County by July 3, 2019.

**A. OBJECTIONS, RECOMMENDATIONS AND COMMENTS:**

Lee County received responses from the following review agencies addressing the transmitted amendment:

- Florida Department of Economic Opportunity (DEO)
- Florida Fish and Wildlife Conservation Commission (FWC)
- Florida Department of Environmental Protection (DEP)
- Florida Department of Agriculture & Consumer Services
- South Florida Water Management District (SFWMD)

There were no objections concerning the proposed amendments.

**B. RECOMMENDED CHANGES BASED ON BOCC DIRECTION AT TRANSMITTAL:**

At the transmittal hearing, the Board provided direction for staff to identify incentives that would encourage the preservation of wetlands and to bring the incentives to the Board for consideration at the adoption hearing.

To help brainstorm possible incentives, staff sought input from a group of stakeholders with various interests related to these amendments and preservation of wetlands. The stakeholders, which included land owners, land use planners, civil engineers, environmental educators, environmental advocates, environmental consultants, land use attorneys, and commercial realtors were convened for a roundtable to discuss and potentially identify implementable incentives that encourage the preservation of wetlands by developers. During the roundtable conversation, possible incentives were identified and the intricacies of implementing them were discussed.

Approximately fifteen potential ideas were discussed at this meeting. Most of these ideas can be grouped into: (1) providing design flexibility in order to potentially lessen impacts to wetlands; (2) adding development and design requirements to potentially discourage impacts to wetlands; (3) purchasing wetlands through the Conservation 20/20 program; or (4) creating transferable value from preserved wetlands areas to be used for increasing density and intensity on eligible upland properties.

- (1) **Design Flexibility:** An incentive would be to allow design flexibility in order to accommodate the preservation of wetlands within the development. Design flexibility ideas that were discussed included increased height, reduced setbacks, buffers, parking

and open space, steeper lake slopes, deeper ponds, and variable intersections/driveway connections. Included with this incentive would be an expedited review process and an assigned ombudsman.

Implementation of this incentive would require negotiations on a case-by-case basis between a property owner and staff to agree upon the type and amount of design flexibility appropriate for the amount of wetlands being preserved. Although an expedited review would be preferred, it would be impractical; the property-specific nature of this type of review would make it impossible to establish a single set of standards necessary to implement an expedited program.

- (2) **Additional Design Requirements:** Although not incentives, additional development and design requirements to discourage or off-set wetlands impacts were discussed. Ideas included requiring designs that would mitigate loss of wetland function, enhance water quality, incorporate green roofs, or reduce carbon footprints. Another idea was to create a water quality bank.

The Board specifically directed staff to identify incentives for preservation of wetlands, whereas, the ideas discussed are disincentives. The additional requirements would hinder development in wetlands, but would not prevent or compensate its impacts. Additionally, implementation of some of these ideas would be duplicative of the wetland permitting functions carried out by the Florida Department of Environmental Protection and the South Florida Water Management District.

- (3) **Purchase of Wetlands:** Monetary incentives discussed involved using Lee County's Conservation 20/20 program to purchase wetlands or to share in the cost of preserving wetlands on private property. Lee County's Conservation 20/20 program is currently used to purchase strategic wetlands, which will continue. Using the program to pay for the preservation of wetlands on private property, which could off-set the property owner's required mitigation or restoration costs, would be contrary to the purpose of Conservation 20/20 program funds.

- (4) **Enhancing the Wetlands Transfer of Development Rights (TDR) program:** Lee County currently has three TDR programs with existing implementation processes established. These include the *Greater Pine Island, Southeast Lee County, and Wetlands TDR programs*. Wetlands TDUs currently receive the least incentive for receiving parcels and are therefore less valuable for the owner of sending parcels. Enhancing Lee County's Wetland TDR program is the most viable option to incentivize the preservation of wetlands.

From the options identified and feasibility of implementation, Staff recommends utilizing the Wetlands TDR program and increasing the value of Wetlands Transferable Development Units (TDUs) to incentivize preservation of wetlands. Amendments to the current TDR program are proposed in Attachment 1, and discussed below.

The updated Wetlands TDR program will incentivize property owners to transfer their density (TDUs) off wetlands to developments located in future urban areas of the County. As proposed in Attachment 1, the following incentives are proposed for the Wetland TDR program:

- Up to 1 TDU may be created for every 5 acres of wetlands – this is 4 times the density of the Wetlands future land use category.
- The number of TDUs would be doubled if the sending area is within the Coastal High Hazard Area.
- Each TDU could be used on an eligible receiving parcel for:
  - Two additional dwelling units,
  - To administratively add up to 10,000 square feet (per TDU) of commercial retail and office space on an existing planned development, or
  - To reduce open space and onsite native preservation requirements by 5,000 square feet.

The updated TDR program will add a residential multiplier when transferring to eligible receiving lands and a separate multiplier for TDRs created from lands within the Coastal High Hazard Area. In addition to the residential incentives, staff is proposing to add non-residential incentives similar to those provided in the Greater Pine Island TDR program.

Lee County has recently updated and simplified the process to create and use TDUs in the Bonus Density Program. In certain cases, Bonus Density can be approved by right or through an administrative process which can expedite approval time and provide certainty for developers proposing to use Bonus Density.

**C. STAFF RECOMMENDATION:**

Staff recommends that the Board of County Commissioners **adopt** the amendments provided in Attachment 1 and **direct staff to amend the Land Development Code** in order to implement the updated Wetlands TDR program.

**II. Future Land Use**

\*\*\*\*\*

**POLICY 33.4.2:** The Southeast Lee County TDR program will have the following characteristics:

- 1. Creation of Transferable Development Units (TDUs).
    - a. Up to one (1) TDU may be created per five ~~twenty~~ ~~(520)~~ acres of preserved or indigenous wetlands.
  - 2. Receiving area density and intensity equivalents of Southeast Lee County TDUs.
    - ~~f. Wetland TDUs may not be used to increase commercial intensity.~~
- (Ordinance 17-13)

\*\*\*\*\*

**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, least intense, 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, 18-28)

\*\*\*\*\*

**OBJECTIVE 124.2: WETLANDS TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAM.** To incorporate purchase and transfer of development rights programs for the protection and preservation of wetlands into the Land Development Code.

**POLICY 124.2.1:** The programs may create incentives for property owners of wetlands to transfer development rights associated with the Wetlands future land use category to eligible upland receiving lands or Lee County.

**POLICY 124.2.2:** The Wetlands TDR program will have the following characteristics:

1. Creation of Wetlands Transferable Development Units (TDUs).
  - a. Up to one (1) TDU may be created per five (5) acres of wetlands.
  - b. Up to two (2) TDUs may be created from a single-family lot or parcel designated as wetlands that holds an affirmative Minimum Use Determination pursuant to Chapter XIII.
  - c. TDUs allowed by 1.a. or 1.b. above, and created from wetlands located within the Coastal High Hazard Area (CHHA) may be doubled.
2. Receiving area density and intensity equivalents of Wetlands TDUs.
  - a. In the Intensive Development, Central Urban, Urban Community, or General Interchange future land use categories, one (1) Wetlands TDU may be redeemed for up to two (2) dwelling units.
  - b. Lee County may establish non-residential incentives for the use of Wetlands TDUs within Future Urban Areas of the unincorporated Lee County.
3. The Land Development Code may include regulations that permit the county to evaluate the effectiveness of the Wetlands TDR program and make changes that may further condition or restrict the use of Wetlands TDUs.

**POLICY 124.2.3** The county will administer the TDR program and develop a forum to disseminate program information and records. The forum may include a TDR program website that provides general program information, rules and guidelines; TDU administrative determination application; county-approved form of conservation easement; certified TDU database with ownership information; and, TDU clearinghouse for individuals that request to be included within the TDU clearinghouse program.

\*\*\*\*\*

## **XII. Glossary**

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**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, least intense, contiguous upland future land use category.



\*\*\*\*\*  
**LAND DEVELOPMENT CODE AMENDMENTS**  
 \*\*\*\*\*

**CHAPTER 2 – ADMINISTRATION**

**ARTICLE IV. - BONUS DENSITY**

**DIVISION 1. GENERALLY**

**Sec. 2-143. - Definitions.**

(a) The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Greater Pine Island TDU* means a transfer of development unit generated from sending lands within the Greater Pine Island ~~Planning~~ Community Plan area, and which may include wetlands, unimproved uplands, and/or improved uplands in accordance with these provisions.

*Southeast Lee County TDU* means a transfer of development unit generated from sending lands within the Southeast Lee County Community Plan area, and which may include wetlands, unimproved uplands, and/or improved uplands in accordance with these provisions.

*Wetland TDU* means a transferable development unit generated from sending lands designated as wetlands which are preserved or restored, outside of the Greater Pine Island or Southeast Lee County Community Plan areas ~~Planning Community~~, in accordance with this article.

**DIVISION 2. - BONUS DENSITY PROGRAM**

**Sec. 2-147. - Procedure to approve bonus density.**

(a) *Remains unchanged.*

(b) *Bonus density approval types.*

*(1) – (4) Remain unchanged.*

*(5) Greater Pine Island and Wetlands TDU.* The Director may administratively approve the use of Greater Pine Island and Wetland TDUs to increase the density and intensity of existing planned developments in accordance with the following:

*Remainder of section is unchanged.*

DIVISION 3. - CREATION OF TRANSFERABLE DEVELOPMENT UNITS

**Sec. 2-148. - Establishment of transfer of development rights program.**

(a) – (b) *Remain unchanged.*

(c) The sending parcel may only be used consistent with its conservation easement or written governing instrument. The governing instrument must expressly identify the following:

1. The restriction of property use, including the maximum number of residential units and the non-residential uses permitted under subsection (d) that can be developed on the subject property upon severance of the TDUs; and

~~2. The governing instrument must identify the non-residential uses permitted under subsection (d) and property maintenance and management activities, including removal and control of invasive exotic plants as identified in section 10-420, that will be conducted after the severance of the TDUs. transfer of development rights. Wetland impacts, including impacts associated with permitted non-residential uses, property maintenance, and management activities, are prohibited in perpetuity.~~

(d) TDUs may be created from upland areas with assurances of continued agricultural uses through agricultural easements or other recorded instrument. The uses that may occur upon severance of the TDUs, if specifically listed in the governing instrument and proper approvals are obtained, are provided in Table 2-148(d). ~~The governing instrument must indicate that all non-agricultural development rights have been permanently severed by the land owner for transfer to other land and specifically list any activities from Table 2-148(d) that may occur on property if proper approvals are obtained.~~

*TABLE 2-148(d) remains unchanged.*

(e) Wetland impacts on the sending parcel, including impacts associated with permitted non-residential uses, property maintenance, and management activities, are prohibited in perpetuity.

**Sec. 2-149. - Computation of Wetland TDUs.**

(a) Units of measure of Wetland TDUs, which are generated from wetlands outside of the Greater Pine Island or Southeast Lee County Community Plan areas ~~Planning Communities~~ are hereby established at one TDU per five acres of wetlands. The County will not recognize TDUs smaller than one-tenth unit. The following table sets forth equivalent TDUs for various acreages or portions of an acre:

**TABLE 1. FRACTIONAL TRANSFER OF WETLAND TDUs**

Land Area (Acres)	0 to 0.4	0.5 to 0.9	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0
TDU	0	0.1	0.2	0.4	0.6	0.8	1.0	1.2	1.4	1.6	1.8	2.0

- (b) A single-family lot or parcel designated as wetlands that holds an affirmative determination of the single-family residence provision pursuant to chapter XIII of the Lee Plan, may be permitted to sever two TDUs in lieu of development.
- (c) TDUs created pursuant to (a) or (b) above, may be doubled if the wetlands are within the Coastal High Hazard Area (CHHA) (Lee Plan Map 5).
- (d) Under no circumstances will natural bodies of water be included in the calculation for TDUs.

**Sec. 2-150. - Density and intensity equivalents of Wetland TDUs.**

~~One Wetland TDU is equal to one residential dwelling unit when transferred to eligible receiving lands.~~

- (a) The residential ratio for Wetlands TDUs is one Wetlands TDU will be equal to two dwelling units when transferred to upland areas within the Intensive Development, Central Urban, Urban Community, or General Interchange future land use categories.
- (b) The non-residential ratios for Wetland TDUs are as follows:
  - (1) One Wetland TDU equals 10,000 square feet of commercial retail and office space, which may be used to administratively increase allowable commercial intensity on an existing planned development consistent with section 34-380.
  - (2) The use of Wetland TDUs to increase commercial intensity is permitted within future urban areas as defined by the Lee Plan.
- (c) Wetland TDUs may be utilized to reduce open space and onsite native preservation requirements set forth in chapter 10 in accordance with the following ratios. Applications for the use of TDUs to decrease open space must meet the applicable approval requirements identified in Administrative Code 13-5.
  - (1) One Wetland TDU equals a 5,000 square foot reduction to the minimum open space and onsite native preservation requirements for residential, commercial, industrial and mixed-use projects. TDUs may not be used to reduce required landscape buffers, building perimeter plantings, stormwater management, or any other design requirement set forth in chapter 10.
    - a. A maximum reduction of 50 percent is permitted for development within the Mixed Use Overlay.
    - b. A maximum reduction of 35 percent is permitted for development within future urban areas, as defined in the Lee Plan, and which are not located within the Mixed Use Overlay.

- c. A maximum reduction of 20 percent is permitted for development within future suburban and non-urban areas, as defined in the Lee Plan.

**Sec. 2-152. - Density and intensity equivalents of Greater Pine Island TDUs.**

- (a) *Remains unchanged.*
- (b) The non-residential ratios for Greater Pine Island TDUs are as follows:
- (1) – (2) *remain unchanged.*
- ~~(3) — Wetland TDUs may not be used to increase commercial intensity.~~
- (c) Greater Pine Island TDUs may be utilized to reduce open space and onsite native preservation requirements set forth in chapter 10 in accordance with the following ratios. Applications for the use of TDUs to decrease open space must meet the applicable approval requirements identified in Administrative Code 13-5.
- (1) One Greater Pine Island TDU equals a 5,000 square foot reduction to the minimum open space and onsite native preservation requirements for residential, commercial, industrial and mixed-use projects. TDUs may not be used to reduce required landscape buffers, building perimeter plantings, stormwater management, or any other design requirement set forth in chapter 10.
- a. *remains unchanged.*
- b. A maximum reduction of 35 percent is permitted for development within future urban areas, as defined in the Lee Plan ~~future land use categories~~, and which are not located within the Mixed Use Overlay.
- c. A maximum reduction of 20 percent is permitted for development within future suburban and non-urban areas, as defined in the Lee Plan. ~~land use categories.~~
- ~~(2) — Wetland TDUs may not be used to reduce open space and onsite native preservation requirements.~~

**Sec. 2-153. - Computation of Southeast Lee County TDUs.**

- (a) One TDU may be established per 520 acres of wetlands ~~encumbered by a conservation easement restrictive covenant, or other instrument that severs the development rights from the parcel(s).~~
- (b) ~~Density reduction/groundwater resource (DR/GR):~~ TDU credits may be established from land designated in the Density Reduction/Groundwater Resource future land use category ~~for DR/GR lands~~ as follows:

*Remainder of section is unchanged.*

**Sec. 2-154. - Density and intensity equivalents of Southeast Lee County TDUs.**

*(a) – (c) remain unchanged.*

~~(d) — Wetland TDUs may not be used to increase commercial intensity.~~

**AGENCY  
COMMENTS**

**CPA2019-00001**

**IMPACTED  
WETLANDS**

**Ron DeSantis**  
GOVERNOR



**Ken Lawson**  
EXECUTIVE DIRECTOR

**RECEIVED**  
JUN 06 2019  
COMMUNITY DEVELOPMENT

June 3, 2019

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

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 19-05ESR**.

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 **July 3, 2019**.

If you have any questions please contact Anita Franklin, Senior Plan Processor at (850) 717-8486 or Barbara Powell, Regional Planning Administrator, whom will be overseeing the review of the amendments, at (850) 717-8504.

Sincerely,

D. Ray Eubanks, Administrator  
Plan Review and Processing

DRE/af

Florida Department of Economic Opportunity | Caldwell Building | 107 E. Madison Street | Tallahassee, FL 32399  
850.245.7105 | [www.FloridaJobs.org](http://www.FloridaJobs.org)  
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**Ron DeSantis**  
GOVERNOR



**Ken Lawson**  
EXECUTIVE DIRECTOR

**MEMORANDUM**

**TO:** Florida Department of Environmental Protection  
Florida Department of Education  
Florida Department of State  
Florida Department of Transportation District 1  
Southwest Florida Regional Planning Council  
South Florida Water Management  
Florida Fish and Wildlife Conservation Commission  
Florida Department of Agriculture and Consumer Services

**DATE:** June 3, 2019

**SUBJECT:** COMMENTS FOR PROPOSED EXPEDITED STATE REVIEW PLAN AMENDMENT

**LOCAL GOVERNMENT/ STATE LAND PLANNING AGENCY AMENDMENT #: LEE CO 19-05ESR**

**STATE LAND PLANNING AGENCY CONTACT PERSON/PHONE NUMBER: Barbara Powell/(850)717-8504**

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 to the State Land Planning Agency to the attention of Ray Eubanks, Administrator, Plan Review and Processing at the Department E-mail address: [DCPexternalagencycomments@deo.myflorida.com](mailto: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](http://www.FloridaJobs.org)  
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May 29, 2019

John Manning  
District One

Cecil L. Pendergrass  
District Two

Larry Kiker  
District Three

Brian Hamman  
District Four

Frank Mann  
District Five

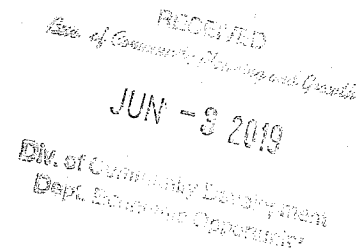
Roger Desjarlais  
County Manager

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](mailto: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

**Ron DeSantis**  
GOVERNOR



**Ken Lawson**  
EXECUTIVE DIRECTOR

June 27, 2019

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

Dear Chairman Kiker:

The Department of Economic Opportunity ("Department") has reviewed the proposed comprehensive plan amendment for Lee County (Amendment No. 19-05ESR) received on June 3, 2019. The review was completed under the expedited state review process. We have no comment on the proposed amendment.

The County should act by choosing to adopt, adopt with changes, or not adopt the proposed amendment. For your assistance, we have enclosed the procedures for adoption and transmittal of the comprehensive plan amendment. In addition, the County is reminded that:

- Section 163.3184(3)(b), F.S., authorizes other reviewing agencies to provide comments directly to the County. **If the County receives reviewing agency comments and they are not resolved, these comments could form the basis for a challenge to the amendment after adoption.**
- **The second public hearing**, which shall be a hearing on whether to adopt one or more comprehensive plan amendments, **must be held within 180 days** of your receipt of agency comments or 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 pursuant to Section 163.3184(3)(c)1., F.S.
- **The adopted amendment must be rendered to the Department.** Under Section 163.3184(3)(c)2. and 4., F.S., the **amendment effective date** is 31 days after the Department notifies the County that the amendment package is complete or, if challenged, until it is found to be in compliance by the Department or the Administration Commission.

Florida Department of Economic Opportunity | Caldwell Building | 107 E. Madison Street | Tallahassee, FL 32399  
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The Honorable Larry Kiker, Chairman

June 27, 2019

Page 2 of 2

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

Sincerely,



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

JDS/sr

Enclosure(s): 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 State Land Planning Agency 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:

\_\_\_\_\_ State Land Planning Agency 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 state land planning agency notifies the local government that the plan amendment package is complete. If the amendment is timely challenged, this amendment shall become effective on the date the state land planning agency or the Administration Commission enters a final order determining this adopted amendment to be in compliance."

\_\_\_\_\_ List of additional changes made in the adopted amendment that the State Land Planning Agency 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 State Land Planning Agency in response to the comment letter from the State Land Planning Agency.

**Miller, Janet**

---

**From:** Dunn, Brandon  
**Sent:** Thursday, July 11, 2019 2:50 PM  
**To:** Miller, Janet  
**Subject:** Fwd: [EXTERNAL] Lee County 19-5ESR (Lee County CPA2019-00001)

Brandon Dunn

Sent from my iPad

Begin forwarded message:

**From:** "Hight, Jason" <[Jason.Hight@MyFWC.com](mailto:Jason.Hight@MyFWC.com)>  
**Date:** June 10, 2019 at 9:45:36 AM EDT  
**To:** "[bdunn@leegov.com](mailto:bdunn@leegov.com)" <[bdunn@leegov.com](mailto:bdunn@leegov.com)>, "[DCPexternalagencycomments@deo.myflorida.com](mailto:DCPexternalagencycomments@deo.myflorida.com)" <[DCPexternalagencycomments@deo.myflorida.com](mailto:DCPexternalagencycomments@deo.myflorida.com)>  
**Cc:** "Wagman, Jason" <[Jason.Wagman@MyFWC.com](mailto:Jason.Wagman@MyFWC.com)>, "Wallace, Traci" <[traci.wallace@MyFWC.com](mailto:traci.wallace@MyFWC.com)>  
**Subject:** [EXTERNAL] Lee County 19-5ESR (Lee County CPA2019-00001)

Mr. Dunn:

Florida Fish and Wildlife Conservation Commission (FWC) staff has reviewed the proposed comprehensive plan amendment in accordance with Chapter 163.3184(3), Florida Statutes. We have no comments, recommendations, or objections related to listed species and their habitat or other fish and wildlife resources to offer on this amendment.

If you need any further assistance, please do not hesitate to contact our office by email at [FWCConservationPlanningServices@MyFWC.com](mailto:FWCConservationPlanningServices@MyFWC.com). If you have specific technical questions, please contact Jason Wagman at (941) 377-3722 ext. 6540 or by email at [Jason.Wagman@MyFWC.com](mailto:Jason.Wagman@MyFWC.com).

Sincerely,

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

## Miller, Janet

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**From:** Dunn, Brandon  
**Sent:** Friday, June 28, 2019 8:13 AM  
**To:** Miller, Janet  
**Cc:** Rozdolski, Mikki  
**Subject:** FW: Lee County, DEO #19-5ESR Comments on Proposed Comprehensive Plan Amendment Package

Please see correspondence from SFWMD below.

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**From:** Oblaczynski, Deborah [<mailto:doblaczy@sfwmd.gov>]  
**Sent:** Friday, June 28, 2019 8:01 AM  
**To:** Rozdolski, Mikki  
**Cc:** Dunn, Brandon; Ray Eubanks ([DCPexternalagencycomments@deo.myflorida.com](mailto:DCPexternalagencycomments@deo.myflorida.com)); Barbara Powell ([barbara.powell@deo.myflorida.com](mailto:barbara.powell@deo.myflorida.com)); ext-Wuerstle, Margaret (swfrpc.org)  
**Subject:** Lee County, DEO #19-5ESR 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 text amendment clarifies uses allowed in the Wetlands Future Land Use Category where impacts are authorized by a State Agency. The proposed changes do not appear to adversely impact the water resources within the South Florida Water Management District; therefore, the District has no comments on the proposed amendment package.

The District offers its 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 email: [doblaczy@sfwmd.gov](mailto:doblaczy@sfwmd.gov)

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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.



**Miller, Janet**

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**From:** Dunn, Brandon  
**Sent:** Friday, June 28, 2019 4:29 PM  
**To:** Rozdolski, Mikki; Miller, Janet  
**Subject:** FW: Lee County 19-5ESR Proposed

for Impacted Wetlands

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**From:** Plan\_Review [<mailto:Plan.Review@dep.state.fl.us>]  
**Sent:** Friday, June 28, 2019 4:20 PM  
**To:** Dunn, Brandon; [DCPexternalagencycomments@deo.myflorida.com](mailto:DCPexternalagencycomments@deo.myflorida.com)  
**Cc:** Plan\_Review  
**Subject:** Lee County 19-5ESR Proposed

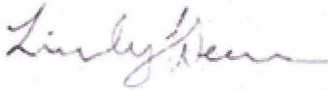
To: Mr. Brandon Dunn, Principal Planner

Re: Lee County 19-5ESR – Expedited State Review of Proposed Comprehensive Plan Amendment

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.

Please submit all future amendments by email to [Plan.Review@FloridaDEP.gov](mailto:Plan.Review@FloridaDEP.gov). If your submittal is too large to send via email or if you need other assistance, contact Lindsay Weaver at (850) 717-9037.



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**FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**  
**COMMISSIONER NICOLE "NIKKI" FRIED**

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July 3, 2019

VIA EMAIL (bdunn@leegov.com)

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

Re: DACS Docket # -- 20190604-81  
Lee County CPA2019-00001  
Submission dated June 3, 2019

Dear Mr. Dunn:

The Florida Department of Agriculture and Consumer Services (the "Department") received the above-referenced proposed comprehensive plan amendment on June 4, 2019, 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 850-410-2282.

Sincerely,

Gail Lolley  
Sr. Management Analyst II  
Office of Policy and Budget

cc: Florida Department of Economic Opportunity  
(SLPA #: Lee County 19-05ESR)