



Protecting Southwest Florida's unique natural environment and quality of life ... now and forever.

December 16, 2019

Sent Via Email

Brian Hamman
John Manning
Cecil Pendergrass
Frank Mann
Ray Sandelli
Lee County Board of County Commissioners
2120 Main St.
Fort Myers, FL 33901

RE: CPA 2019-0001 Impacted Wetlands Adoption

Lee County Commissioners:

On behalf of the Conservancy of Southwest Florida and our over 7,000 supporting families, we are submitting comments opposing Comprehensive Plan Amendment 2019-00001 which allows for non-residential impacts on wetlands. We ask that you not adopt this amendment because it will open up wetlands to non-residential development in a manner currently prohibited by the Lee Plan.

In May, at the time of transmittal, staff was directed to work with stakeholders to come up with alternatives that would not incentivize impacting wetlands. Unfortunately, the originally submitted language that opens up wetlands to rampant unchecked development is still part of this adoption. The Transfer of Development Rights (TDR) program presented by staff is not sufficient to protect wetlands from encroachment and development. As such, we cannot support or recommend adoption of this amendment as it will cause irreparable harm to Lee County.

Importance of Wetlands

Wetlands are among the most productive ecosystems in the world, and play an integral role in the ecology of watersheds.¹ Wetlands are vital to the health of the environment as they filter and remove pollutants. Additionally, wetlands can help prevent flooding by temporarily storing and then slowly releasing water from storms including large storm events such as hurricanes.

¹ <https://www.epa.gov/wetlands/how-do-wetlands-function-and-why-are-they-valuable>



Conservancy of Southwest Florida has been awarded Charity Navigator's prestigious 4-Star top rating for good governance, sound fiscal management and commitment to accountability and transparency. Charity Navigator is America's largest and most respected independent evaluator of charities.

As we learned from Hurricane Irma, and know from many other storms, much of the damage and impacts are caused by floods and storm surge.² The benefits from wetlands in reducing flood damages depends both on their physical capacity to reduce flood extents and the value of the assets they protect. Coastal wetlands can be part of “natural and nature-based” solutions, minimizing the impacts of disasters by buffering coastal communities from storms and erosion and absorbing flood waters.³

Geographically isolated wetlands are vital fish and wildlife habitats that are also important to the community.⁴ These isolated wetlands are often vulnerable because they are surrounded by uplands, and adjacent land uses can encroach on the wetland. It has been found that isolated wetlands actually play an outsized role in providing clean water even though they often lack the regulatory protections of other wetlands.⁵ These benefits include sediment and carbon retention, nutrient transformation, and water quality improvement.⁶ Geographically isolated wetlands are rarely functionally isolated.

Amendment CPA 19-00001

While the overall intent of the Lee Plan currently provides meaningful local control over land use in—and therefore protection of—wetlands, this amendment goes in the opposite direction by providing an incentive to impact wetlands. This incentive is provided by new proposed language allowing wetland areas to be treated at the same intensity level as adjacent uplands when a state permit is issued. This policy will most certainly have the effect of encouraging impacts to wetlands, and this language has not been changed or altered since transmittal.

While the state agencies issue permits, it is important to remember that the state agencies are not responsible for local land use planning, which is the sole responsibility of Lee County government. There is a difference between permitting and planning: it is your responsibility to plan, it is their responsibility to permit. Planning involves retaining home rule to guide land use.

² Using an extensive database of property exposure, the regional study shows that wetlands avoided \$625 Million in direct flood damages during Hurricane Sandy from “The Value of Coastal Wetlands for Flood Damage Reduction in the Northeastern USA” by Narayan, S. et al, Scientific Reports, 2017, available at <https://www.nature.com/articles/s41598-017-09269-z#Abs1>. This article also states that “Observations of coastal water levels during Hurricanes Katrina (2005) and Wilma (2005) show that intact mangrove wetlands reduced surge heights by up to 9.4 cm/km inland”.

³ Sutton-Grier, A.E. & Sandifer, P.A. Wetlands (2018). <https://doi.org/10.1007/s13157-018-1039-0>

⁴ <https://www.fws.gov/wetlands/Documents/Geographically-Isolated-Wetlands-A-Preliminary-Assessment-of-Their-Characteristics-and-Status-in-Selected-Areas-of-the-United-States-Fact-Sheet.pdf>

⁵ J. M. Marton, I. F. Creed, D. B. Lewis, C. R. Lane, N. B. Basu, M. J. Cohen, C. B. Craft. Geographically Isolated Wetlands are Important Biogeochemical Reactors on the Landscape. *BioScience*, 2015; DOI: [10.1093/biosci/biv009](https://doi.org/10.1093/biosci/biv009)

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While we appreciate that staff has created a general framework for a transfer of development rights program for wetlands, that program is optional, not required. The program in the comprehensive plan is also focused on residential development, and doesn't include any incentives to protect wetlands with regard to non-residential development. This means that the developer does not have to participate and can destroy wetlands without local input. If a TDR program is adopted, in order to be effective, that TDR program must be mandatory. An optional program will not be effective in protecting wetlands or encouraging appropriate development that protects and preserves wetlands.

TDR programs are most successful in closed systems when applicants are required to participate in the program in order to obtain a permit. We recommend requiring preservation of wetlands under an easement in exchange for specific non-residential benefits. We also strongly recommend that the only way an applicant can utilize Policy 124.1.2.7 is in conjunction with a TDR wetlands program.

Lee Plan Goal 1 is "to maintain and enforce a Future Land Use Map ... in order to protect natural and man-made resources." The proposed amendments do not protect wetlands, but rather unintentionally provides an incentive to impact wetlands. There are policies and programs in Lee County which could be applied and expanded that would allow for site plan flexibility through conservation, protection or incorporation of existing wetland systems into the site design.

In addition, the term "impacted wetlands" is not defined by the Lee Plan. It is also not a term utilized commonly in planning. It is important to recognize as stated herein that all wetlands have value, and geographically isolated wetlands provide important benefits for water quality, water quantity, storm surge and flooding impacts. In addition, this amendment makes all wetlands vulnerable to non-residential impacts, even those that are 100% pristine.

We remind you that any development project that needs to seek additional approvals from Lee County prior to development is not developing as of right. Asking for additional development rights always involves uncertainty and risk. Lee County should not be assuming that risk at the detriment of wetlands protection.

Attorney Richard Grosso submitted a letter to this Board on behalf of Captains for Clean Water, Inc. regarding the transmittal of this amendment in May 2019. In that letter, Mr. Grosso states that long standing "historic practice" is not controlling when applying comprehensive plans and

that courts have time and time again ruled that counties “must comply with the actual terms of a comprehensive plan – not the county’s interpretation of the plan of prior practice.”⁷

In 2008, Lee County noted that there were two incentives to filling wetlands: density and use.⁸ In 2010, Lee County adopted regulations which recognized the importance of wetlands, but also allowed for flexibility in standards to compensate for limited residential use in the wetlands land use category. Now is not the time for Lee County to simply open up wetlands to non-residential uses if a state permit is issued, but to instead formulate policies that allow flexible design standards for non-residential use on adjacent uplands. This will provide policies comparable to the existing residential wetlands policies.

Lee County is able to retain its existing wetlands land use policy while putting into place new policies that allow flexibility in site design on uplands that allows owners to protect, preserve, or incorporate wetlands into their site design. This is a chance to retain existing good policy while improving flexibility for smarter better site design.

We remind the Board that the uses allowed in Wetlands are not changing and are limited to very low density residential and recreational uses that will not adversely affect the ecological function of wetlands pursuant to Lee Plan Policy 1.5.1. This means that what staff is asking of you – which is to allow non-residential uses in Wetlands – is inconsistent with the existing Lee Plan. Administratively allowing non-residential uses in FLUM designated Wetlands is contrary to Florida Statutes, the Lee Plan, and good planning practices.

There is and should be a difference with how upland incorrectly designated as wetlands are treated, and impacts to actual wetlands. This amendment does not differentiate between the two and treats uplands and impacted the same. They are not the same, and this is not appropriate.

Conclusion

We appreciate the time and effort staff has put into this proposal and inclusion in the wetlands roundtable meeting. However, this proposed modified amendment still takes Lee County in the entirely wrong direction. There is no reason given as to why it is necessary, prudent, or wise to assign non-residential floor area to impacted wetlands. Lee County does not lack non-residential floor area, and we believe that the parcels most suitable for non-residential development are not parcels where wetlands will be impacted.

⁷ Letter from Richard Grosso to Lee County Board of County Commissioners dated May 20, 2019, page 1

⁸ Staff Report for CPA2008-18, page 4 of 19, dated October 20, 2010

Wetlands are important to maintaining the health of a watershed by providing flood control, aquifer recharge, and filtration of pollutants. Wetland impacts adversely affect native species, disrupt flood control patterns, degrade water quality, increase salt water intrusion, and decrease aquifer recharge. The Lee Plan protects wetlands; this amendment is poised to incentivize destruction of wetlands.

It is imperative for the public safety and welfare in terms of water quality that the destruction of wetlands is not incentivized. The best way to protect wetlands is to clarify or create incentives for preservation, restoration, and hydrological reconnection.

Even though the impact of each individual permit may not be large, the cumulative impacts of the proposed policy changes are devastating. We also note that while Lee County held one roundtable discussion to address this issue with stakeholder, that one meeting is not enough to truly research, understand, and reach conclusion or consensus on the best ways to move forward to address this issue.

Thank you for your time and consideration of our issues and concerns. If you have any questions or need additional information, please feel free to contact me at 239-262-0304 x 252 or juliannet@conservancy.org.

Sincerely,



Julianne Thomas
Senior Environmental Planning Specialist

cc: Brandon Dunn, Principal Planner, Lee County
Rebecca Sweigert, Principal Planner, Lee County
Michael Jacob, Deputy County Attorney, Lee County
Janet Miller, Community Development Administrative Specialist, Lee County