

LEE COUNTY ORDINANCE NO. 19-26

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 Pendergrass, who moved its adoption. The motion was seconded by Commissioner Manning. The vote was as follows:

John Manning	Aye
Cecil Pendergrass	Aye
Raymond Sandelli	Aye
Brian Hamman	Aye
Frank Mann	Nay

DONE AND ADOPTED this 18th day of December 2019.

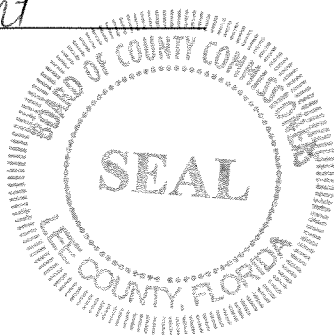
ATTEST:
LINDA DOGGETT, CLERK

LEE COUNTY BOARD OF
COUNTY COMMISSIONERS

LEE COUNTY CLERK OF COURTS

BY: Missy Flint
Deputy Clerk

BY: Brian Hamman
Brian Hamman, Chair



DATE: 12/18/19

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

W. O. F.
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

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

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.

FLORIDA COUNTY ORDINANCE DATA RETRIEVAL SYSTEM
CODRS CODING FORM

COUNTY: Lee

COUNTY ORDINANCE #: 19-26
(e.g., 93-001)

PRIMARY KEYFIELD

DESCRIPTOR: Comprehensive Planning

SECONDARY KEYFIELD

DESCRIPTOR: Planning

OTHER KEYFIELD

DESCRIPTOR: Land Use Planning

ORDINANCE DESCRIPTION: Impacted Wetlands
(25 Characters Maximum Including Spaces)

ORDINANCES AMENDED: (List below the ordinances that are amended by this legislation. If more than two, list the most recent two.)

AMENDMENT #1: 89-02 AMENDMENT #2: _____

ORDINANCES REPEALED: (List below the ordinances that are repealed by this legislation.)

REPEAL #1: _____ ; REPEAL #3: _____
REPEAL #2: _____ ; REPEAL #4: _____

(Others Repealed: List All That Apply): _____

(FOR OFFICE USE ONLY): COUNTY CODE NUMBER: _____

KEYFIELD 1 CODE: _____ KEYFIELD 2 CODE: _____

KEYFIELD 3 CODE: _____



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

December 18, 2019

Honorable Linda Doggett
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attn: Missy Flint

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Ordinance No. 19-26, which was filed in this office on December 18, 2019.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb