

September 24, 2023

Lee County Local Planning Agency

Mr. Raymond Blacksmith

Mr. Dustin Gardner

Mr. Keith Dean

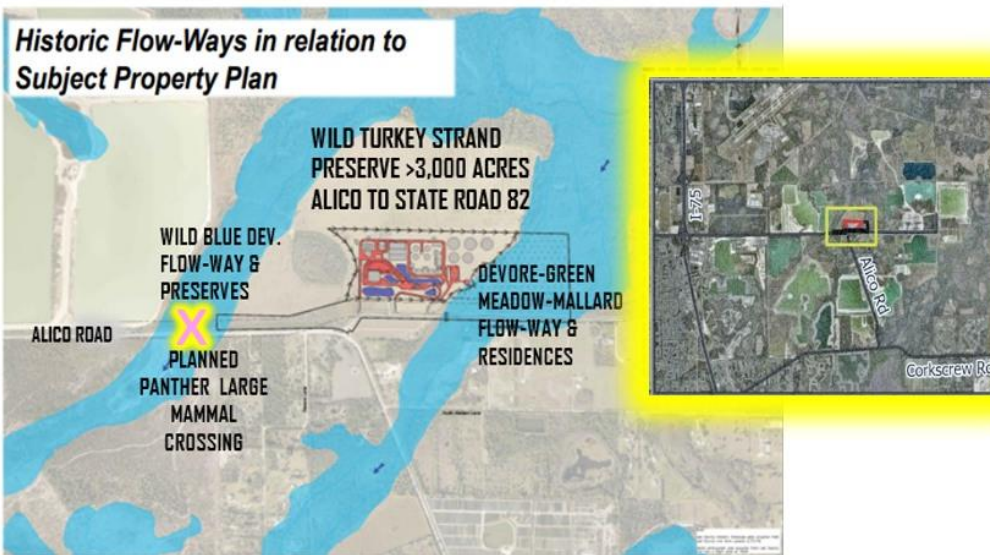
Ms. Dawn Russell

Mr. Don Schrottenboer (Vice Chair)

Mr. Stan Stouder (Chair)

Mr. Henry Zuba

RE: CPA2023-00003: Southeast Advanced Water Reclamation Facility



Dear Local Planning Agency Appointees:

Before you is a request to *“Amend the Future Land Use Map designation for 35.65 acres from the Density Reduction/Ground Water Resource future land use category to the Public Facilities future land use category. The subject property is located on Green Meadow Road approximately 0.2 miles east of the intersection with Alico Road.”* For some members of the LPA Committee, this proposed amendment is familiar. On July 23, 2018, the Local Planning Agency met regarding the Land Use change for +31 acres of Wild Turkey Strand Conservation Lands that preceded the current proposed amendment. The lands proposed adjoin the +31 acres of Wild Turkey Strand and through omission were not brought forth as required for Land Use change consideration before advancing the companion zoning action.

In the 2018 LPA meeting minutes **C. CPA2018-00007 Public Facilities and Conservation Lands** following the PowerPoint presentation by Ms. Sharon Jenkins-Owen:

“Mr. Thibaut [LPA Appointee] asked if there was a specific intent for what Parcel A [swapped Wild Turkey Strand Conservation Lands] would be used for. Ms. Jenkins-Owen stated it was open for future utilities.

At one point, there were discussions about a wastewater treatment plant but there might be other public facilities that could be placed on that property.

Mr. Church [LPA Appointee] asked for confirmation that Parcel A is not appropriate to be in the DRGR because it is a degraded site. Mr. Dunn noted that Parcel A is not in the DRGR or wetlands. It is in Conservation Lands, which limits what can be done on that property.” Parcel A was inaccurately identified as not being in the DRGR and the adjoining parcel, now brought forth, also proposed for public facilities was omitted **ENTIRELY** from Land Use change consideration in 2018. Mr. Dunn [Lee County Planner] through omission, failed to disclose and represent Land Use for lands proposed for change and bring forth the current parcel as required before zoning action. Further, in direct response to the LPA Appointee questioning the rationale that Wild Turkey Stand Lands should be excluded from the DRGR, it was asserted a portion of Wild Turkey Strand under county management, was not “fit” for inclusion in the DRGR [Density Reduction Groundwater Resource], a geographical delineation that includes many subset conservation lands.

The current Land Use change seeks to join a contiguous parcel to the +31 acres of Wild Turkey Strand Conservation 2020 lands originally mischaracterized and “taken” in 2018 through land swap and subsequent CPA amendment. Unlike 2018, the staff description does portray this parcel as DRGR Lands, “Density Reduction/Ground Water Resource future land use category [change] to the Public Facilities future land use category”---- proposed for and under consideration for sewage containment and treatment. Again, deceptively through omission, **NO** CPA amendment that includes the current 35.65 acres was brought forth in 2018 as required. The messaging of Lee County has been a presumption of “inevitability”, achieved through omission and mischaracterization of Wild Turkey Strand land conservation value---a dismissal of public concerns and the remand issued in the associated 2019 zoning case.

Wild Turkey Strand Conservation Lands adjoining the current proposal were acquired by formal nomination protocol, evaluated by qualifying criteria and so designated. The 35.65 acres currently brought forward for Land Use change supplements Parcel A (+31 acres), the subject of the egregious and flawed 2018 CPA amendment. Parcel A was swapped at the behest of Ray Blacksmith, a current LPA appointee [October 12, 2017, Conservation Land Acquisition and Stewardship Advisory Committee, Meeting Minutes], developer of The Place and other Corkscrew developments---directly benefitting from this proposed facility siting. The zoning hearing that followed the 2018 CPA rightly ended in remand, due to environmental concerns, controversy and public outcry.

As detailed on pgs. 23-24 of the **Florida Ethics Law Handbook, 2023 Edition**---Public Officers, including appointed public officers, must abstain from voting conflicts and are subject to additional participation requirements before they [appointed public officer(s)] engage in measure giving rise to the voting conflict. Section 112.3143(4), F.S. prohibits participation “in any matter which would inure to their own special private gain or loss”, “economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal”. Section 112.3143(4)(c), F.S., defines “participate” to mean “any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer’s direction.” They [appointed public officer(s)] must disclose the nature of the voting conflict **before** making any attempt to discuss or otherwise influence the decision. Any undisclosed voting conflict by an officer must be disclosed by memorandum, provided to other members of the agency and read publicly at the next scheduled meeting, Section 112.3143(4)(b), F.S. See CEO 23-3, Member of City

Council Voting on Septic to Sewer Conversion Project, Commission of Ethics Opinions:

[https://sb.flleg.gov/nxt/gateway.dll?f=templates&fn=default.htm\\$vid=html:coe](https://sb.flleg.gov/nxt/gateway.dll?f=templates&fn=default.htm$vid=html:coe). Any waiver sought for an Advisory Body Member requires full disclosure prior to the waiver, with two-thirds affirmative vote by the appointing board as detailed on pg. 17., **Florida Ethics Law Handbook, 2023 Edition**. Any voting conflict(s) must be disclosed per statutory requirement.

This 35.65 acres currently under consideration for Land Use change, adjoins +31 acres of nominated and acquired Wild Turkey Strand Conservation Lands. These combined lands adjoin remaining Conservation 2020 Lands to the west and are integral to the combined ecological function of Wild Turkey Strand as a wildlife corridor and hydrological flow-way for seasonally variable flooding, characteristic of “strands”. The 35.65 acres brought forth for Land Use change adjoins lands **contiguous** to flow-ways and to lands acquired through formal conservation nomination and evaluation, including a future large mammal panther crossing in Primary Panther habitat. Residential areas off Green Meadow, Mallard, Devore, Alico and the Wild Blue Development are all positioned to the southwest of Wild Turkey Strand, with southwest flow being the primary direction of mass-scale documented water movement.

Existing agricultural residences, Wild Blue Development and Conservation Lands receive Wild Turkey Strand flow and provide wildlife habitat and corridor crossing through connectivity. Wild Blue is the premiere Environmentally Enhanced Preservation Community in Southeast Lee County, with over 1,000 residences valued from \$1 million to several million dollars. The Environmentally Enhanced Preservation Community concept was sold to homeowners and density increases were allowed in exchange for hydrological flow-way enhancements and preservation of conservation lands, >60%. Existing agricultural-residential neighbors advocated for Wild Blue preserve lands in 2015 through participation in Community Development actions, including public hearings, to protect the federally endangered Florida panther and ensure compatibility with Conservation, Recreation and Agricultural-Residential uses. Sightings of panthers are frequent and ongoing as documented by game cameras, videos and reported to Florida Wildlife Commission as recently as August 2023, the night before Hurricane Idalia, on Devore Lane contiguous with Wild Blue Preserve, as well as on Mallard this winter.

An amendment to the 2015 Wild Blue development agreement is currently being evaluated under the 2015 Development of Regional Importance standards. The public interests in Wild Blue and neighboring residents on Devore is for the continuation and preservation of the conservation corridor to the north onto Wild Turkey Strand Conservation Lands and to the south across Corkscrew. This proposed land use change of DRGR lands adjoining conservation lands--- which are environmentally critical---jeopardizes connectivity, decreases habitat, creates additional recovery stressors for panthers, is incompatible with the surrounding land uses and adds to hazard for nearby residential areas to the southwest in extreme weather events and sanitary sewage overflows.

Environmental Enhancements and Preservation Community land use principles and land use designations added quantifiable value to home prices that were sold to homeowners in Wild Blue. As such, diminishing the conservation corridor through Land Use change, degrading Wild Turkey Strand ecological function and connectivity, is inconsistent with EEPC and other surrounding land uses-intent, including DRGR and conservation protections. Diminishing the natural function of a strand through this Land Use change to convert nominated, evaluated and acquired conservation lands to the purpose of containing and treating sewage, breaches public trust.

Maintaining this existing conservation connection to handle the enormous, seasonally variable quantities of water moving through Wild Turkey Strand, also supports the documented breeding population of panthers utilizing conservation lands. Further, these lands front Alico Road, are proximate to the University Community and span north >3000 acres to State Road 82. The public has expressed interest in low intensity use on Wild Turkey Strand. There is Greenway potential for legislatively directed trail development--safely away from roadways, in coordination with mining lands and other publicly held lands of Flint Penn south---coordinating already held parks and protected lands in the public interests. Six Mile Cypress Slough is an example of a conservation corridor of comparable scale in an urbanized area that can be looked to as an exemplar, providing public benefit through conservation.

Further, the zoning companion to **CPA2018-00007 Public Facilities and Conservation Lands** was remanded in 2019 after a series of hearings, in response to environmental concerns and public outcry. On September 13, 2023, participants in the 2019 zoning hearings DCI2018-10023 South County Public Facilities were confused by an email notification, tagline "withdrawn" referring to the opposed public facilities. This "red herring" spawned confusion rather than providing clarity as reference was omitted to the current proposal to provide context and any direction to participants was lacking.

The fundamental reasons for and directive of the 2019 remand have not changed and remain unfulfilled. The inappropriateness of the location and adverse impacts remain central. Evaluation, analysis, sessions to address concerns and review of "all alternatives" has not been satisfied. Instead, a message of "presumption" --- of inevitability has been communicated by Lee County in lieu of addressing valid public concerns regarding adverse impacts, increased pollution risks, site suitability and protecting environmental resources--- as directed by remand.

FROM
THE DEPARTMENT OF
COMMUNITY DEVELOPMENT

TO: Donna Marie Collins
Chief Hearing Examiner

DATE: August 13, 2019

FROM: 
Audra Ennis
Zoning Manager

RE: **Joint request to remand DCI2018-10023, South County Public Facilities CFPD (Community Facilities Planned Development)**

Following coordination between the applicant and staff, we jointly request that DCI2018-10023 be remanded to staff for further evaluation and analysis, to include:

- Public outreach **sessions to address concerns** presented by public participants during the hearing,
- **Pursuit of comprehensive plan amendments for the proposed public facility and for the protection of environmental resources (water resources, habitat and species),**
- Evaluation and development of more detailed site plans,
- **And to ensure all alternatives have been fully reviewed and analyzed.**

The case will be reanalyzed and future hearings will be noticed in compliance with the Land Development Code and Administrative Codes.

cc: Applicant
Michael Jacob, Deputy County Attorney
Pamela Keyes, Director, County Utilities
David Loveland, Director, Community Development

The lands proposed for use change are part of a naturally occurring “strand”, a linear swamp forest found on relatively flatlands, following elevation---with high water tables. Strands are home to several federally designated, threatened and endangered species---including the Florida panther. Examples of other nearby strands include Fakahatchee Strand and Corkscrew Swamp.

Many other areas of the DRGR to the east do not have the same confluence of factors. There are obvious limitations to what can be accommodated on this proposed site due to topography, dynamic hydrology, proximity to mining operations, private and public water supply wells, existing conditions and surrounding land uses. There are far better alternative choices for sewage facilities with less risks.

More appropriate alternative sites have consistent surrounding water tables levels presenting less slope due to elevation change and are farther away from water bodies, including lakes. These locations would better **contain** and treat sewage without risking nearby residences receiving flow. Resilience guidance advises **NOT** locating public utility infrastructure in flood prone areas.

Careful consideration and site evaluation identifying a more suitable location would add to and build community resilience capacity during hurricanes and extreme precipitation events, rather than creating an additional liability. DRGR topography further east is characterized by “isolated wetlands” where water pools, rather than highly-seasonal flow-ways resulting from elevation changes in areas of existing high water table.

The proposed site at Wild Turkey Strand is also closer to the coast, known to flood into residential areas due to topography, is hydrologically connected with seasonally variable flow for tens of miles southwest and ultimately, drastically increases contamination risks of large mining and stormwater lakes by sewage pollution.

Putting sewage facilities at the proposed location is inconsistent with surrounding land use, including EEP land use principles and intent, with adverse impacts for Wild Blue as well as long-standing Green Meadow, Mallard, Alico and Devore Lane residents.

Contamination would be impossible to remediate in the event of a catastrophic failure and could trigger eutrophication or dredging. All pollution of **ANY** quantity affecting water bodies mandates reporting. Increased risks to the greater Estero basin and Flint Penn from sewage pollution could be avoided through considered, alternative site selection **FOR THE PURPOSE** of identifying appropriate compatible topography and a suitable location. Waste facility site selection should not be led by developer interests. Commandeering lands already publicly held for conservation, though unsuitable for infrastructure, creates harm by denying public benefit that is dependent on existing conditions.

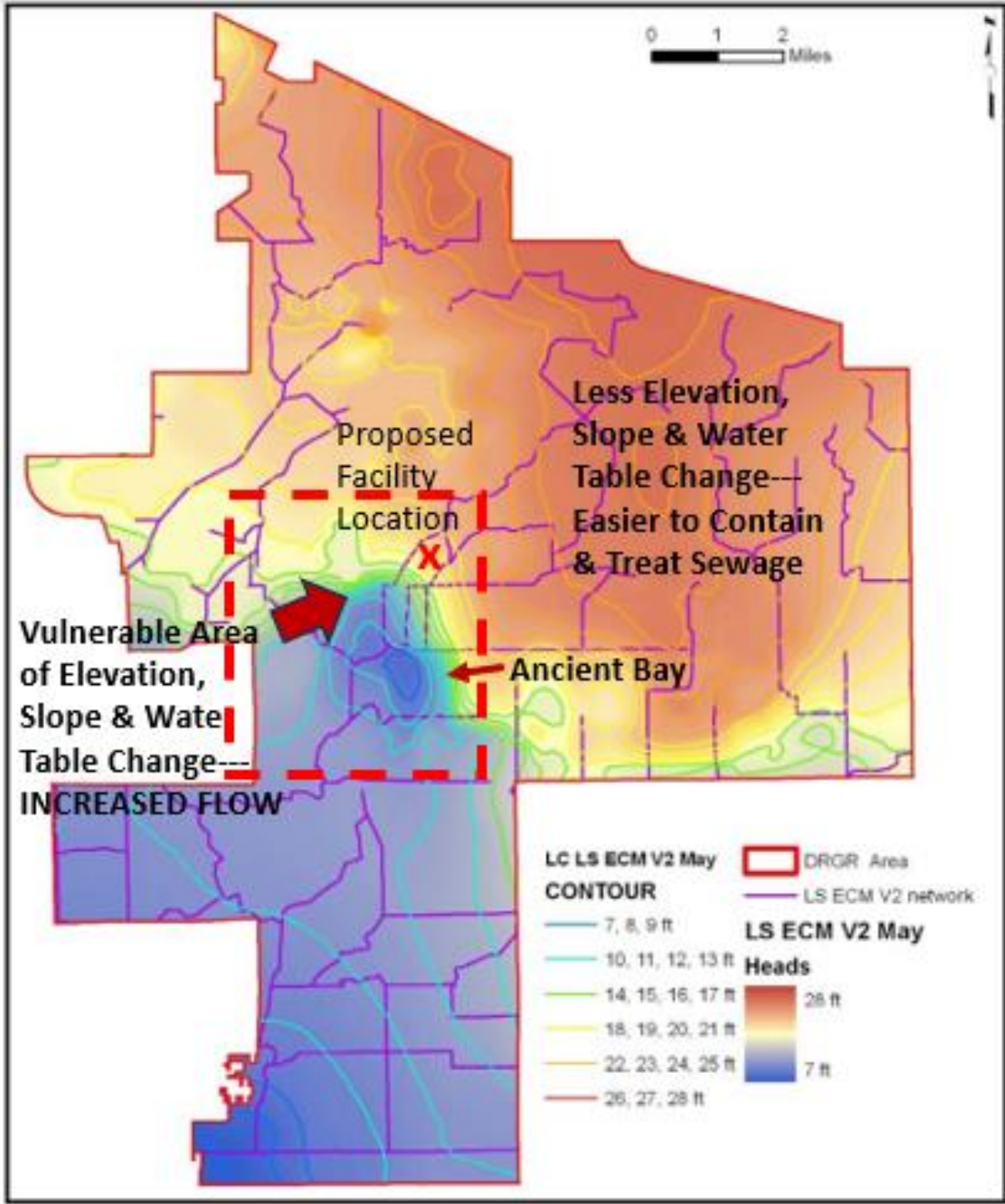


Figure 28. Average water table level map for the DR/GR Area

Comprehensive Hydrological Study of the Lee County Southeastern Density Reduction / Groundwater Resource (DR/GR) Area, p. 78

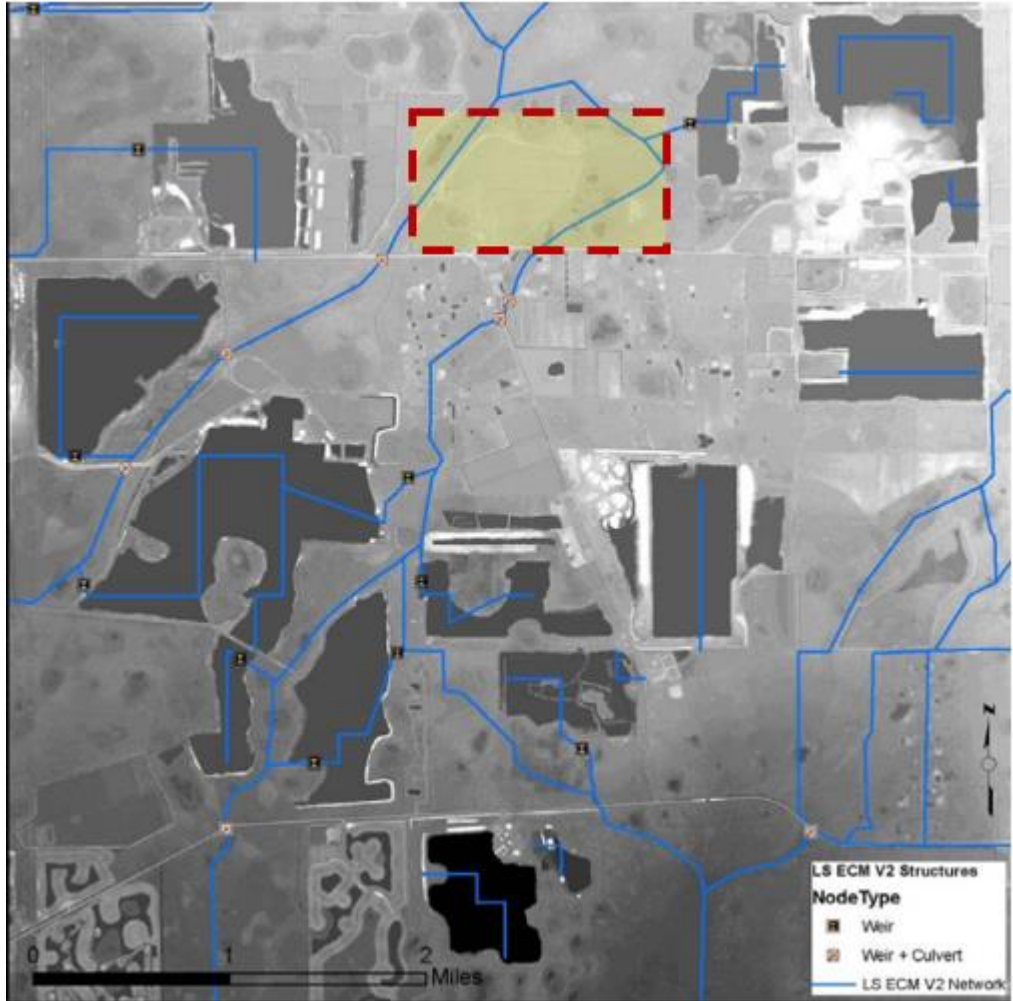


Figure 27. Drainage system around mining pits with a grayscale shaded relief map of LIDAR topographic data in the background. Note: Lighter areas in the topographic map represent higher elevations, darker represent lower lying areas.

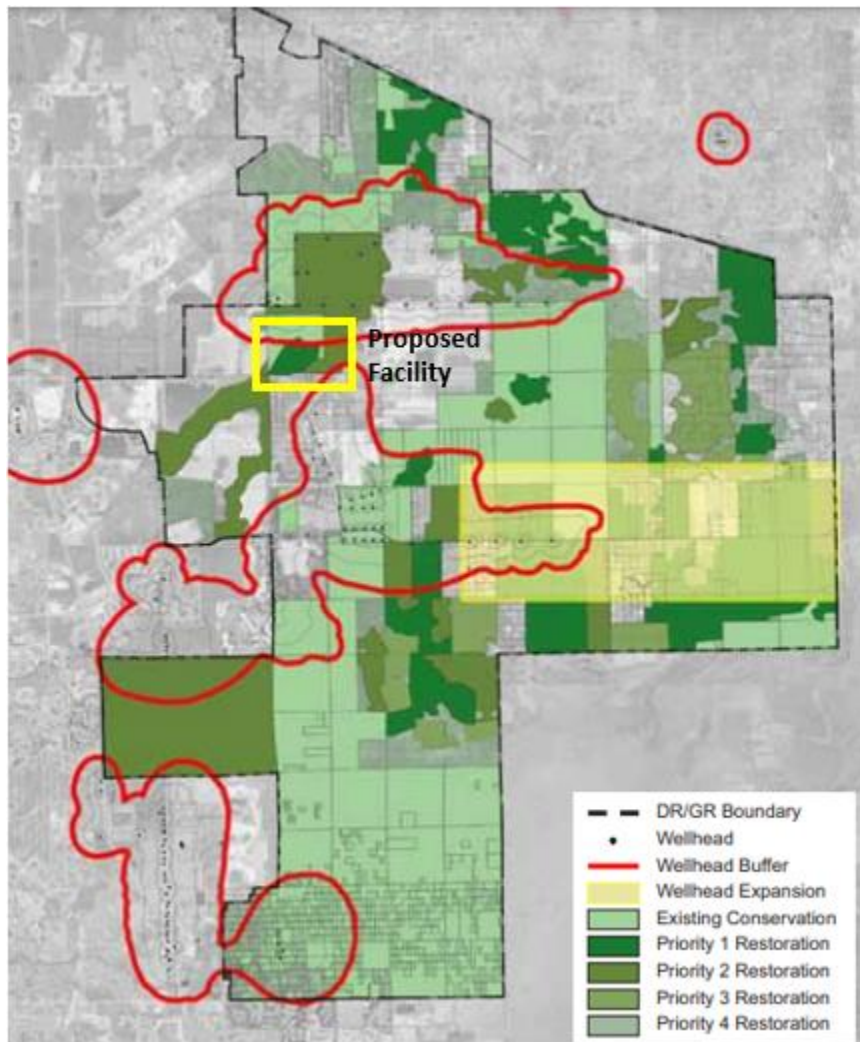
Comprehensive Hydrological Study of the Lee County Southeastern Density Reduction / Groundwater Resource (DR/GR) Area, p. 70

Public facility infrastructure is an investment of public capital funds. As such this absolutely needed public investment in wastewater facilities should be protected, as appropriate. This should begin through serious, scientifically grounded site selection. Placement of facilities at this location is counter to recommendations of Dover- Kohl *Prospects for Southeast Lee County*, which rightly identified these Wild Turkey Strand lands as Priority 1 restoration with known flow-ways and critical natural function.

Risk and adverse impacts are acute and enhanced for nearby residents and all of Lee County if this facility is placed at the proposed location. Some long-standing residents purchased property in the 1980's and utilize shallow wells for home use [30' depth]. The consideration of surrounding and DRGR land use constraints and Wild Turkey Conservation Lands have historically preserved quality of life and use of natural resources for Lee County residents. This proposed Land Use change increases risks to private well users **and** jeopardizes public water supply, is not compatible with surrounding use, lessens quality of life and diminishes ecological function. In compliance with §403.077, F.S., and the public interest, the Department of Environmental

Protection makes available any Notices of Pollution received-wide state. Within the past 30 days, in addition to multiple notifications of sanitary sewage overflows [SSO] spilling thousands of gallons of sewage, there have been two injection well incidents. The litmus for approval of this request is “no adverse impacts” to existing residents. Approval of this Land Use change exposes Lee County taxpayers to enhanced risks due to known, adverse impacts for nearby residents, as well as the endangering public water supply wells----within the mandated Area of Concern for required review.

<https://prodenv.dep.state.fl.us/DepPNP/reports/viewIncidentDetails?page=1>



Enhanced Wellhead Buffers

Prospects for Southeast Lee County, Dover Kohl p. 4.16

POLICY 1.4.5: The Density Reduction/Groundwater Resource (DR/GR) future land use category includes upland areas that provide substantial recharge to aquifers most suitable for future wellfield development. These areas also are the most favorable locations for physical withdrawal of water from those aquifers. **Only minimal public facilities exist or are programmed.**

1. New land uses in these areas that require rezoning or a development order must demonstrate compatibility with maintaining surface and groundwater levels at their historic levels utilizing hydrologic modeling, the incorporation of increased storage capacity, and inclusion of green infrastructure. The modeling must also show that **no adverse impacts will result to properties located upstream, downstream, as well as adjacent to the site.**

Approval of this Land Use change is inconsistent with surrounding land uses---including Environmental Enhancement Preservation intent, overlay, conservation, private and public water supply wells and active mining. A land use change to ultimately put sewage on this site is ill-advised, unsuitable for the investment of capital funds for public facility infrastructure at a flood prone location that initially came under county ownership through conservation acquisition. Minimizing the importance of this site for hydrologic and wildlife connectivity is disingenuous and deceptive through egregious omission, with known conflict of interests and co-mingling of county assets. Land Use inconsistencies and increased liability and exposure of public investment funds would result. This project has been remanded for valid reasons and the directives of the remand not fulfilled, supplanted by presumption of "inevitability" and obfuscated by rule changes.

Due to the scale and connectivity inherent to the natural function of the Wild Turkey Strand, the associated increased flooding and pollution hazard for property owners, including water supplies for private well owners and public water supply, damages to ecological function, resources and inconsistencies---this Land Use change for proposed facilities—**INCREASES** risk liability and exposure for County taxpayers. Harm would be attributable to this government action, including ill-advised investment of public capital improvement funds in an unsuitable location. Protect the public interests, investments, complete due diligence and responsibly **REDUCE**, not increase risks and exposures through scientifically grounded alternative site selection. In the public interests, deny this request.

Sincerely,

Marsha Ellis
Inner Loop Working Group
Responsible Growth Management Coalition
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