



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND THE
CITY OF FORT MYERS
COMPREHENSIVE PLAN AMENDMENTS IN COMPLIANCE
DOCKET NO. 03-1-NOI-3603-(A)-(I)

The Department gives notice of its intent to find the Amendments to the Comprehensive Plan for the City of Fort Myers adopted by Ordinance No. 3119 on May 19, 2003, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

The adopted City of Fort Myers Comprehensive Plan Amendments and the Department's Objections, Recommendations and Comments Report, (if any), are available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the City of Fort Myers City Hall, Planning Department, 2nd Floor, 2200 Second Street, Fort Myers, Florida 33901.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the Amendments to the City of Fort Myers Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice, and must include all of the information and contents described in Uniform Rule 28-106.201, F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, and a copy mailed or delivered to the local government. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Sections 120.569 and 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

If a petition is filed, other affected persons may petition for leave to intervene in the proceeding. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. A petition for leave to intervene shall be filed at the Division of Administrative Hearings, Department of Management Services, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing under Sections 120.569 and 120.57, F.S., or to participate in the administrative hearing.

After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing that request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.

-s-Charles Gauthier, AICP

Chief, Bureau of Local Planning

Department of Community Affairs

Division of Community Planning

2555 Shumard Oak Boulevard

Tallahassee, Florida 32399-2100



LEE COUNTY
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

(941) 479-8309

Writer's Direct Dial Number: _____

Bob Janes
District One

January 23, 2003

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Ray Eubank, Administrator
Florida Department of Community Affairs
Division of Community Planning
Bureau of Local Planning
2555 Shumard Oak Boulevard
Tallahassee, FL. 32399-2100

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yaeger
County Attorney

Re: Amendments to the Lee Plan
Adoption Submission Package (DCA No. 02-2) for the 2001/2002 Regular Comprehensive
Plan Amendment Cycle

Diana M. Parker
County Hearing
Examiner

Dear Mr. Eubank:

In accordance with the provisions of F.S. Chapter 163.3184 and of 9J-11.011, this submission package constitutes the adopted 2001/2002 Regular Comprehensive Plan Amendment Cycle to the Lee Plan (DCA No. 01-1), known locally as CPA 2001-09, CPA 2001-10, CPA 2001-11, CPA 2001-12, CPA 2001-15, CPA 2001-18, CPA 2001-22, CPA 2001-23, CPA 2001-24, CPA 2001-27, CPA 2001-28, CPA 2001-31, CPA 2001-32, CPA 2001-33, and CPA 2001-35. The adoption hearing for these plan amendments was held at 9:30 am on January 9, 2003.


Included with this package, per 9J-11.011(5), are three copies of the adopted amendments, supporting data and analysis, and the following seven adopting ordinances: Ordinance No. 03-01, Ordinance No. 03-02, Ordinance No. 03-03, Ordinance No. 03-04, Ordinance No. 03-05, Ordinance No. 03-06, and Ordinance No. 03-07. Also included, per F.S. 163.3184(7) and (15), is the required sign in form allowing a courtesy informational statement to interested citizens. By copy of this letter and its attachments I certify that this amendment has been sent to the Regional Planning Council, the Florida Department of Transportation (FDOT), the Department of Environmental Protection, the Florida Department of State, the Florida Fish and Wildlife Conservation Commission, the Department of Agriculture and Consumer Services, Division of Forestry, and the South Florida Water Management District.

The initial staff reports for the proposed amendments were sent to the DCA with a transmittal cover letter dated September 19, 2002. All amendments previously reviewed by the Department in this current cycle of amendments were adopted by the Board of County Commissioners. Changes have occurred in CPA 2001-12, CPA 2001-10, CPA 2001-27, and CPA 2001-28. CPA 2001-12 has been revised since the time of transmittal. The connection between Three Oaks Parkway and Oriole Road has been revised and has been coordinated with the adjacent property owners. One revision to CPA 2001-10 was made in response to comments raised by the Department in the ORC Report. The Board of County Commissioners adopted the amendment with the deletion of Policy 21.9,

regarding the protection of mangroves on Captiva Island. The Board has directed staff to look further into applying such a policy county wide. In amendment CPA 2001-27 a new Objective and Policy have been added to the Community Facilities and Services Element of the Lee Plan regarding the incorporation of green infrastructure into the surface water management systems of proposed developments as well as providing definitions for green infrastructure and flow-way in the Glossary. Since transmittal, staff has met with the public and state agencies on issues raised at the Transmittal hearing. Staff has revised the transmitted language as a result of those meetings. The revisions to the subject amendment were sent to the DCA for review on November 8, 2002 prior to the issuance of the ORC Report and were adopted by the Board. CPA 2001-28 has added a new table reflecting the new 2003/2007 fiscal year to the CIP. The Board of County Commissioners adopted CPA 2001-12, CPA 2001-10, CPA 2001-27, and CPA 2001-28 with the noted changes.

If you have any questions, or if I can be of any assistance in this matter, please feel free to call me at the above telephone number.

Sincerely,
DEPT. OF COMMUNITY DEVELOPMENT
Division of Planning



Paul O'Connor, AICP
Director

All documents and reports attendant to this adoption are also being sent, by copy of this cover, to:

David Burr
Interim Director
Southwest Florida Regional Planning Council

Mike Rippe, District Director
FDOT District One

Executive Director
South Florida Water Management District

Plan Review Section
Department of Environmental Protection

Florida Department of State

Florida Fish and Wildlife Conservation Commission

The Department of Agriculture and Consumer Services, Division of Forestry

Charlie Green
Clerk of Circuit Court
Lee County, Florida

STATE OF FLORIDA

COUNTY OF LEE

I Charlie Green, Clerk of Circuit Court, Lee County, Florida, and ex-Officio Clerk of the Board of County Commissioners, Lee County, Florida, do hereby Certify that the above and foregoing, is a true and correct copy of Ordinance No. 03-04, adopted by the Board of Lee County Commissioners, at their meeting held on the 9th day of January, 2003.

Given under my hand and seal, at Fort Myers, Florida, this 15th day of January, 2003.

CHARLIE GREEN,
Clerk of Circuit Court
Lee County, Florida

By *Michèle B Cooper*
Deputy Clerk



FLORIDA COUNTY ORDINANCE DATA RETRIEVAL SYSTEM
CODRS CODING FORM

COUNTY: Lee

COUNTY ORDINANCE #: 03-02

(e.g., 93-001)

PRIMARY KEYFIELD

DESCRIPTOR: Comprehensive Planning

SECONDARY KEYFIELD

DESCRIPTOR: Land Use Planning

OTHER KEYFIELD

DESCRIPTOR: Planning

ORDINANCE DESCRIPTION: 2001/2002 Lee Plan Amendment

(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, as amended 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 COUNTY ORDINANCE DATA RETRIEVAL SYSTEM
CODRS CODING FORM

COUNTY: Lee

COUNTY ORDINANCE #: 03-04
(e.g., 93-001)

PRIMARY KEYFIELD
DESCRIPTOR: Comprehensive Planning

SECONDARY KEYFIELD
DESCRIPTOR: Land Use Planning

OTHER KEYFIELD
DESCRIPTOR: Planning

ORDINANCE DESCRIPTION: 2001/2002 Lee Plan Amendment
(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, as amended AMENDMENT #2: _____

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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: _____

LEE COUNTY ORDINANCE NO. 03-04
(Consent Ordinance)

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE LAND USE PLAN, COMMONLY KNOWN AS THE "LEE PLAN" ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENTS APPROVED ON THE CONSENT AGENDA DURING THE COUNTY'S 2001/2002 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO ADOPTED TEXT AND MAPS; PURPOSE AND SHORT TITLE; LEGAL EFFECT; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, the Lee County Comprehensive Plan (hereinafter referred to as the "Lee Plan") Policy 2.4.1 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; and,

WHEREAS, the Lee County Board of County Commissioners, 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 public hearings pursuant to Chapter 163, Part II, Florida Statutes, and the Lee County Administrative Code on March 25, April 22, July 22, and August 26, 2002; and,

WHEREAS, the Board of County Commissioners, pursuant to Florida Statutes and the Lee County Administrative Code held a public hearing for the transmittal of the proposed amendments on September 4 and 5, 2002. At those hearings the Board approved a motion to send, and did later send, the proposed amendment to the Florida Department of Community Affairs ("DCA") for review and comment; and,

WHEREAS, at the transmittal hearings on September 4 and 5, 2002, the Board

announced its intention to hold a public hearing after the receipt of DCA's written comments commonly referred to as the "ORC Report." DCA issued their ORC report on November 22, 2002; and,

WHEREAS, the Board moved to adopt the proposed amendments to the Lee Plan set forth herein during its statutorily prescribed public hearing for the plan amendments on January 9, 2003.

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 a series of public hearings to consider proposed amendments to the Lee Plan. The purpose of this ordinance is to adopt the certain amendments to the Lee Plan discussed at those meetings and approved by a majority of the Board. The short title and proper reference for the Lee County Comprehensive Land Use Plan, as amended, will continued to be the "Lee Plan." **This ordinance may be referred to as the "2001/2002 Regular Comprehensive Plan Amendment Cycle Consent Ordinance."**

SECTION TWO: ADOPTION OF LEE COUNTY'S 2000/2001 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE (Consent Agenda Items)

The Lee County Board of County Commissioners amends the existing Lee Plan, adopted by Ordinance Number 89-02, as amended, by adopting amendments, as revised by the Board of County Commissioners on January 9, 2003, known as: CPA2001-11, CPA2001-15, CPA2001-22, CPA2001-23, CPA2001-24, CPA2001-31, CPA2001-32, CPA2001-33, and CPA2001-35. The aforementioned amendments amend the text of the

Lee Plan including the Future Land Use Map series, the Transportation Map series, and the tables of the Lee Plan. A brief summary of the content of those amendments is set forth below:

CPA 2001-11

Amend the Future Land Use Element, Policy 1.2.2, the Airport Commerce descriptor policy, to broaden the allowable uses and to establish relationships and criteria for those uses.

CPA 2001-15

Amend the Future Land Use Map series, Map 1, by updating the Conservation Lands land use categories.

CPA 2001-22

Amend the Future Land Use Map Series, Map 12, the Water Dependent Overlay (WDO) Zones, by evaluating and updating the status of the overlay areas and the Goals, Objectives, and Policies that pertain to the WDO.

CPA 2001-23

Evaluate and amend the Future Land Use Map series, Map 20, the Agricultural Overlay and Goal 9, Agricultural Land Uses, and its subsequent objectives and policies.

CPA 2001-24

Update Table 2(b), Recommended Operational Improvements on Constrained Roads.

CPA 2001-31

Amend Policy 80.1.7 of the Conservation and Coastal Management Element by updating the policy to reflect a new percentage for replacement values and revising the target date when development regulations will require implementation of this policy.

CPA 2001-32

Amend the Intergovernmental Coordination Element and the Community Facilities Element to bring the elements into compliance with the provisions of F.S. Chapter 163.3177

CPA 2001-33

Amend the Build Back Policy of the Procedures and Administration Element by replacing references to the term "cost" with the term "value."

CPA 2001-35

Review all elements of the Lee Plan, and replace, where applicable, references to the Lee County Regional Water Supply Authority with Lee County Utilities or the Division of Natural Resources in conjunction with the County taking over the responsibilities of the Water Supply Authority.

The corresponding Staff Reports and Analysis, along with all attachments for these amendments are adopted as "Support Documentation" for the Lee Plan.

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: 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 FIVE: 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 of County Commissioners that this ordinance would have been adopted had the unconstitutional provisions not been included therein.

SECTION SIX: 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 or her designee, without need of public hearing, by filing a corrected or recodified copy with the Clerk of the Circuit Court.

SECTION SEVEN: EFFECTIVE DATE

The plan amendments adopted herein are not effective until a final order is issued by the DCA or Administrative Commission finding the amendment in compliance with Section 163.3184, Florida Statutes, whichever occurs earlier. 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. A copy of such resolution will be sent to the DCA, Bureau of Local Planning, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

THE FOREGOING ORDINANCE was offered by Commissioner Albion, who moved its adoption. The motion was seconded by Commissioner Janes, and, when put to a vote, the vote was as follows:

Robert P. Janes	Aye
Douglas St. Cerny	Aye
Ray Judah	Aye
Andrew Coy	Aye
John Albion	Aye

DONE AND ADOPTED this 9th day of January 2003.

ATTEST:
CHARLIE GREEN, CLERK

LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: Michelle S. Cooper
Deputy Clerk

BY: Ray Judah
Chairman

DATE: 1/9/03

Approved as to form by:

Donna Marie Collins
Donna Marie Collins
County Attorney's Office



FLORIDA COUNTY ORDINANCE DATA RETRIEVAL SYSTEM
CODRS CODING FORM

COUNTY: Lee

COUNTY ORDINANCE #: 03-06

(e.g., 93-001)

PRIMARY KEYFIELD

DESCRIPTOR: Comprehensive Planning

SECONDARY KEYFIELD

DESCRIPTOR: Land Use Planning

OTHER KEYFIELD

DESCRIPTOR: Surface Water

ORDINANCE DESCRIPTION: 2001/2002 Lee Plan Amendment

(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, as amended 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: _____

LEE COUNTY ORDINANCE NO. 03-06
(Flow-ways)
(CPA2001-27)

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 CPA2001-27 (PERTAINING TO THE ADDITION OF A NEW OBJECTIVE AND POLICY UNDER GOAL 40 REGARDING THE INCORPORATION OF GREEN INFRASTRUCTURE INTO THE SURFACE WATER MANAGEMENT SYSTEMS OF PROPOSED DEVELOPMENTS AND TO THE ADDITION OF TWO DEFINITIONS TO THE GLOSSARY FOR "GREEN INFRASTRUCTURE" AND "FLOW-WAY") APPROVED DURING THE COUNTY'S 2001/2002 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO ADOPTED TEXT; PURPOSE AND SHORT TITLE; LEGAL EFFECT OF "THE LEE PLAN"; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, the Lee County Comprehensive Plan ("Lee Plan") Policy 2.4.1 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 private individuals to participate in the plan amendment public hearing process; and,

WHEREAS, the Lee County Local Planning Agency ("LPA") held public hearings pursuant to Florida Statutes and the Lee County Administrative Code on July 22, 2002; and,

WHEREAS, the Board held a public hearing for the transmittal of the proposed amendment on September 4, 2002. At that hearing, the Board approved a motion to send, and did later send, proposed amendment CPA2001-27 pertaining to the Community Facilities and Services Element and the addition of a new Objective and Policy under Goal

40 and pertaining to an amendment to the Glossary to include definitions for "green infrastructure" and "flow-way" to the Florida Department of Community Affairs ("DCA") for review and comment; and,

WHEREAS, at the September 4, 2002 meeting, the Board announced its intention to hold a public hearing after the receipt of DCA's written comments commonly referred to as the "ORC Report. DCA issued their ORC Report on November 22, 2002; and,

WHEREAS, at a public hearing on January 9, 2003, the Board moved to adopt the proposed amendment to the Lee Plan adopting the access management plans and maps more particularly 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 the 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 "2001/2002 Regular Comprehensive Plan Amendment Cycle CPA2001-27 Flow-ways Ordinance. "**

SECTION TWO: ADOPTION OF LEE COUNTY'S 2000/2001 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE

The Lee County Board of County Commissioners hereby amends the existing Lee

Plan, adopted by Ordinance Number 89-02, as amended, by adopting amendments, as revised by the Board of County Commissioners on January 9, 2003, known as CPA2001-27. CPA2001-27 amends the Plan to modify the Community Facilities and Services Element by adding a new Objective and Policy under Goal 40 pertaining to coordinated Surface Water Management and Land Use Planning on a watershed basis. The new Objective and Policy requires the incorporation of green infrastructure into the surface water management system of proposed development. In addition, CPA2001-27 amends the Glossary of the Plan to provide definitions for green infrastructure and flow-way.

The corresponding Staff Reports and Analysis, along with all attachments for this amendment are adopted as "Support Documentation" for the Lee Plan.

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: 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 FIVE: 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 SIX: 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 or her designee, without need of public hearing, by filing a corrected or recodified copy with the Clerk of the Circuit Court.

SECTION SEVEN: EFFECTIVE DATE

The plan amendments adopted herein are not effective until a final order is issued by the DCA or Administrative Commission finding the amendment in compliance with Section 163.3184, Florida Statutes, whichever occurs earlier. 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. A copy of such resolution will be sent to the DCA, Bureau of Local Planning, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

THE FOREGOING ORDINANCE was offered by Commissioner Albion, who moved its adoption. The motion was seconded by Commissioner Janes, and, when put to a vote, the vote was as follows:

Robert P. Janes	Aye
Douglas St. Cerny	Aye
Ray Judah	Aye
Andrew Coy	Aye
John Albion	Aye

DONE AND ADOPTED this 9th day of January 2003.

ATTEST:
CHARLIE GREEN, CLERK

LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: Michelle S Cooper
Deputy Clerk

BY: Ray Judah
Chairman

DATE: 1/9/03

Approved as to form by:

Donna Marie Collins
Donna Marie Collins
County Attorney's Office



Charlie Green
Clerk of Circuit Court
Lee County, Florida

STATE OF FLORIDA

COUNTY OF LEE

I Charlie Green, Clerk of Circuit Court, Lee County, Florida, and ex-Officio Clerk of the Board of County Commissioners, Lee County, Florida, do hereby Certify that the above and foregoing, is a true and correct copy of Ordinance No. 03-06, adopted by the Board of Lee County Commissioners, at their meeting held on the 9th day of January, 2003.

Given under my hand and seal, at Fort Myers, Florida, this 15th day of January, 2003.

CHARLIE GREEN,
Clerk of Circuit Court
Lee County, Florida

By Michelle S. Cooper
Deputy Clerk



**CPA2001-27
BoCC SPONSORED
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

BoCC Adoption Document

*Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(239) 479-8585*

January 17, 2003

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2001-00027**

Text Amendment

Map Amendment

This Document Contains the Following Reviews:	
<input checked="" type="checkbox"/>	Staff Review
<input checked="" type="checkbox"/>	Local Planning Agency Review and Recommendation
<input checked="" type="checkbox"/>	Board of County Commissioners Hearing for Transmittal
<input checked="" type="checkbox"/>	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
<input checked="" type="checkbox"/>	Board of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: July 8, 2002

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

2. REQUEST:

Amend Community Facilities and Services Element, Goal 40: Coordinated Surface Water Management and Land Use Planning on a Watershed Basis to add a new Objective and Policy regarding incorporation of green infrastructure into the surface water management systems of proposed developments, and provide definitions for green infrastructure and flow-way in the Glossary.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:

1. RECOMMENDATION: Planning staff recommends that Lee Plan Goal 40 be amended to add an Objective and that the Glossary be amended to add definitions for GREEN INFRASTRUCTURE and FLOW-WAY as follows:

DEFINITION: Green Infrastructure: Surface water management structures that are “soft” structures such as preserved/restored flow-ways, created flow-ways, lakes with littoral plantings, swales planted with native grasses, filtration marshes, preserved/restored wetlands, created wetlands, or other similar design features.

Flow-way: An area of lower elevation that conveys water or has the potential to convey water. The flow-way may contain uplands, wetlands or a combination thereof. A flow-way may be natural or man-made.

A natural flow-way is an area of lower topographic relief where stormwater moves within variable dimensions instead of a well defined channel. The area of flow in this case has enough general confinement to exhibit stormwater flow characteristics and is evidenced by, but not limited to, drift lines, rack lines, sediment deposits, soils and root scour, and absence of litter or groundcover. A natural flow-way can be a series of lower elevation areas that connect isolated wetlands that interconnect when water levels raise high enough to form a continuous flow path.

A man-made naturalized flow-way is a constructed wetland system (typically a marsh) used for nutrient uptake, stormwater treatment, and/or stormwater conveyance.

A man-made hard structure flow-way is a physical connection between stormwater basins (e.g. canal, culvert, pipeline, or combinations thereof).

OBJECTIVE 40.5: INCORPORATION OF GREEN INFRASTRUCTURE INTO THE SURFACE WATER MANAGEMENT SYSTEM. The long-term benefits of incorporating green infrastructure as part of the surface water management system include improved water quality, improved air quality, improved water recharge/infiltration, water storage, wildlife habitat, recreational opportunities, and visual relief within the urban environment.

POLICY 40.5.1: The county encourages new developments to design their surface water management systems to incorporate best management practices including, but not limited to, filtration marshes, grassed swales planted with native vegetation, retention lakes with enlarged littoral zones, preserved or restored wetlands, and meandering flow-ways.

POLICY 40.5.2: The county encourages new developments to design their surface water management system to incorporate existing wetland systems.

POLICY 40.5.3: The county encourages the preservation of existing flow-ways and the restoration of historic flow-ways.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- Benefits of incorporating green infrastructure into the surface water management system include improving water quality, improving air quality, improving water recharge/infiltration, water storage, wildlife habitat, recreational opportunities, and visual relief within the urban environment.

- Surface water management systems can be designed to establish the control elevation at a level to insure the correct hydroperiod for incorporation of existing wetlands.
- Both public and private entities are designing surface water management systems that incorporate existing and created native habitats as a means to increase water storage and quality while reducing cost.
- Green infrastructure can preserve and enhance the natural features and processes of a site.
- Green infrastructure can maximize post-development economic and environmental benefits.
- Green infrastructure, if designed properly, can be less maintenance intensive than conventional stormwater conveyance systems.
- Good surface water management designs improve the effectiveness of natural systems, rather than negate, replace or ignore them.
- U.S. Fish and Wildlife Service suggest that areas with a high proportion of isolated wetland acres may need to take special steps to protect these important resources.
- Land use regulations should be designed to allow and encourage the use of the growing list of best management practices for surface water management.

C. BACKGROUND INFORMATION

Incorporating green infrastructure in the surface water management design provides ecological and aesthetic benefits. The vegetation will uptake nutrients improving water quality and processing carbon dioxide into oxygen improving air quality. These areas provide water storage and water recharge/infiltration. The habitat provides foraging, roosting and nesting opportunities for wetland dependent wildlife. Lee County listed species that may benefit from the green infrastructure include roseate spoonbill, little blue heron, reddish egret, snowy egret, tricolor heron, wood stork, limpkin, Big Cypress fox squirrel, snail kite, American alligator, gopher frog, Everglades mink, Florida sandhill crane, Florida black bear, and Florida panther. Additionally, these areas will provide visual relief within the urban environment, as well as, passive recreational opportunities.

Urban surface water management system design should be a multipurpose, multimeans effort for achieving water quality enhancement, groundwater recharge, recreation, wildlife habitat, wetlands creation, protection of landmarks, control of erosion and sediment deposition, and creation of open spaces. Development sites should be carefully mapped to locate existing natural features so the design can take into consideration the functions within the natural drainage system. The incorporation of “natural” engineering techniques or green infrastructure can preserve and enhance the natural features and processes of a site while maximizing post-development economic and environmental benefits. Good surface water management designs improve the effectiveness of natural systems, rather than negate, replace or ignore them. [Design and Construction of Urban Stormwater Management Systems, The Urban Water Resources Research Council of the American Society of Civil Engineers and the Water Environment Federation, 1992]

Native plant communities can be incorporated into the surface water management system. The use of existing wetlands within the system design may be achieved by establishing the control elevation at a level that insures the hydroperiod is maintained or improved. The engineering of the surface water management system can provide basins with different control elevations to incorporate a wetland in one portion of the site, while creating a different control elevation in portions that do not utilize the existing wetland system.

“Design of wetland stormwater discharge systems is based primarily on knowledge of the hydrologic limits of various wetland plant communities and the requirements of Chapter 2-25 FAC. Pre-development hydroperiod and maximum flooding depth can be determined by an ecologist familiar with the tolerance limits of Florida wetland plant communities. Sizing of the wetland area, weirs, berms, and pretreatment systems must be based on an analysis of stormwater flows.”[Knight, R.L., L. Schwartz & E. Livingston. 1999. *Use of Wetlands for Stormwater and Wastewater Treatment*]

Planning staff have noticed a trend in proposed developments requesting deviations from the indigenous open space requirement to impact isolated wetland systems during the planned development zoning process. The applicants state that the South Florida Water Management District (SFWMD) requires secondary impact mitigation for wetlands incorporated into surface water management systems, and that any wetland under 3 acres in size may be impacted through the SFWMD permitting process. Additionally, the justifications state that the county does not have regulatory authority over wetland systems. The county does not review and permit wetland impacts. However, the county does have indigenous open space requirements per the Land Development Code (LDC) Section 10-415(b). Also, planned development site design is required to not unnecessarily alter or impact natural features of the site per LDC Section 34-9411(g). Incorporation of wetland plant communities should be considered in the development site and surface water management system designs.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

Green infrastructure “could well be the next frontier in environmental stewardship” as noted in the August 2000 issue of Planning (p. 14). Both public and private entities are designing surface water management systems that incorporate existing and created native habitats as a means to increase water storage and quality while reducing cost. This type of design is being applied to large watersheds through public infrastructure such as the South Florida Water Management District’s redesign of the Dade County canal system, and within private developments such as the PECO Energy Company in Pennsylvania (Planning, August 2000, p.14-17). Land use regulations should be designed to allow and encourage the use of the growing list of best management practices for surface water management.

The U.S. Fish and Wildlife Service released a report on June 11, 2002 entitled “Geographically Isolated Wetlands: A Preliminary Assessment of Their Characteristics and Status in Selected “Areas of the United States” which indicates isolated wetlands are both exceptionally important and exceptionally vulnerable to destruction. Isolated wetlands are defined as those with no apparent surface water connection to perennial rivers and streams, estuaries, or the ocean. These wetlands perform a number of functions including water storage and gradual release, protection against flooding, filtering of sediment and pollution from runoff, habitat for wildlife, and resources for recreation. The report

suggests that areas with a high proportion of isolated wetland acres may need to take special steps to protect these important resources.

The Audubon International Signature Program for golf courses require an environmental assessment of the property prior to designing the golf course. This analysis is done as the first step in the design in order to maximize the retention of natural features, and determine the best surface water management plan. Features of such courses often include preservation of flow-ways, creation of flow-ways, and filtration marshes. This type of design planning would be of benefit to other development sites by fitting the project to the existing conditions of the site.

B. CONCLUSIONS

Lee County continues to grow with approximately 10,000 to 14,000 new residents a year between 1997 and 2001. This steady growth adds pressure to the existing natural systems and water supply. Incorporating green infrastructure and flow-ways into surface water management design will help protect the groundwater and surface water in Lee County. Also, green infrastructure furthers Lee County's efforts in achieving EPA's non-degradation water quality criteria for stormwater discharges to designated Outstanding Florida Waterways and compliance with future total maximum daily loads established for impaired water-bodies. Best Management Practices (BMPs) required under current surface water permitting have variable removal efficiencies for specific pollutants. Green infrastructure, such as filter marshes, have demonstrated significant nutrient reduction capabilities. The Federal government will soon be addressing maximum daily loads of discharge and levels of nutrients within the discharge. Green infrastructure will maximize the onsite retention time, nutrient uptake, nutrient settling, and groundwater recharge thereby reducing the degradation of natural rivers, Estero Bay Aquatic Preserve, and the Gulf of Mexico. The incorporation of green infrastructure and flow-ways into surface water management systems will help development in Lee County to be within the maximum daily loads allowed by Federal regulations.

C. STAFF RECOMMENDATION

Planning staff recommends that the Board of County Commissioners transmit the proposed amendment.

PART III - LOCAL PLANNING AGENCY REVIEW AND RECOMMENDATION

DATE OF PUBLIC HEARING: July 22, 2002

A. LOCAL PLANNING AGENCY REVIEW

One LPA member asked staff why the language only “encourages” instead of stating “must” within policies 40.5.1, 40.5.2, and 40.5.3. The concern was that the language was not strict enough. Staff replied that the Lee Plan sets policy and guidance for development design. Whereas the Land Development Code (LDC) establishes requirements for the permitting of projects.

Public input was then taken. Several developer representatives agreed with the concept of the proposed amendment. However, they expressed a few concerns. First, they requested the proposal be set aside until a workshop could be held with the development community. Another concern was what LDC requirements would result if this amendment is adopted. They also believed these issues are already covered by other agencies. One local land use attorney believed that there was ample language already in the Lee Plan for staff to proceed with drafting LDC standards and requirements for the incorporation of green infrastructure, flow-ways and isolated wetlands. These speakers did agree that a flow-way definition is needed in the Lee Plan, but were concerned with the proposed definition. No suggestions were made on how to revise the flow-way definition. Additionally, the developer representatives raised the issue that the language as proposed encourages the incorporation of both natural and man-made flow-ways into the design of a project. They felt that man-made flow-ways should not be included. One local engineer was also concerned that the use of green infrastructure would increase maintenance costs compared to surface water management systems using hard structures. No analysis was provided to demonstrate the increased cost or maintenance.

There was concern from one member of the LPA that the proposed language may be detrimental to upcoming State and/or Federal regulations with regard to the water quality of Lee County’s natural waterways. Staff indicated that the policies would help not hinder future water quality standards.

Another LPA member indicated that he was in support of the concept but felt the proposal was premature.

Some members of the LPA stated the proposed amendment is a good first step towards addressing green infrastructure and protecting flow-ways which is important in southwest Florida. They also indicated there are additional areas the County should address such as improving old infrastructure, updating old developments, and providing incentives to preserve flow-ways on all properties.

Staff was asked to address the concern that the proposed language is redundant with other agencies regulations. Staff stated that the proposed Lee Plan language sets policy. The amendment directs staff and the development community to evaluate the incorporation of flow-ways and green infrastructure into site design. This notifies everyone that the County does want to review these issues and is not deferring to another agency. The language is not regulatory. The Lee Plan addresses the planning stage of development.

The majority of the LPA members stated the importance of including such language in the Lee Plan to demonstrate to State and Federal agencies how Lee County is addressing water conveyance and water quality. They also indicated that the language was soft in that it encourages, rather than requiring, the incorporation of green infrastructure, flow-ways and isolated wetlands into surface water management design.

The LPA directed staff to compile a flow-way map and to involve the development community in any LDC language that would result from this amendment. LPA members stated that incentives should be given when flow-ways are preserved or restored. One LPA member expressed that flow-way protection and restoration is so important that Conservation 2020 should purchase lands containing flow-ways.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** The LPA recommended transmittal of the proposed language by the Board of County Commissioners.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The LPA recommended the transmittal of CPA2001-00027 due to the consistency with other Lee Plan language. Members stated the importance of including such language in the Lee Plan to demonstrate to State and Federal agencies that Lee County will be taking an active role in implementing water quality issues that are forthcoming including Total Maximum Daily Loads (TMDL).

C. VOTE:

NOEL ANDRESS	Yes
MATT BIXLER	Yes
SUSAN BROOKMAN	Yes
RONALD INGE	No
GORDON REIGLEMAN	Yes
ROBERT SHELDON	No
GREG STUART	Absent

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: September 4, 2002

A. BOARD REVIEW: The Board of County Commissioners took public input regarding the proposal. The development community reiterated their concerns presented to the LPA and detailed under the LPA Review section above. One member of the public spoke in favor of the proposal stating the amendment supports smart growth, enhanced water storage, and better water management systems as Lee County's population continues to grow. He concluded that the proposal is important to the environment and economy of Lee County.

The Board of County Commissioners then discussed the proposal. One board member was concerned with the prematurity of the proposal. Other members responded that they did not understand why there was such opposition, and that this amendment is sorely needed. The Board directed staff to work on mapping flow-ways and modeling techniques. Additionally, the staff was given direction to present a progress report to the Board in January 2003.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. **BOARD ACTION:** The Board approved transmittal to DCA for their review.
2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board concurred with staff and the LPA's findings.

C. VOTE:

JOHN ALBION	<u>Yes</u>
ANDREW COY	<u>Absent</u>
BOB JANES	<u>Yes</u>
RAY JUDAH	<u>Yes</u>
DOUG ST. CERNY	<u>Yes</u>

**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: November 22, 2002

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS

DCA had no objections or recommendations to the revised language resulting from a number of meetings.

DCA did comment that Council staff believes that additional green infrastructure can be preserved and that the amendment provides the type of interrelated surface water management/green infrastructure activity that is consistent with and promoted by the Strategic Regional Policy Plan, July 4, 2002.

B. STAFF RECOMMENDATION

County staff held a series of meetings to address concerns raised at the BOCC transmittal hearing. The first meeting took place on September 30, 2002, with the development community and South Florida Water Management District (SFWMD) staff. County staff explained in depth the reasoning behind and intended purpose of the proposed amendment. The development community reiterated many of the same concerns that were raised at the BOCC transmittal hearing. Additionally, it was determined that revisions as a matter of clarification to the proposed language would bring a comfort level to the development community. The group also requested that staff meet with SFWMD and the Florida Department of Environmental Protection (DEP) staff to find out if these State agencies had any objections or recommendations.

County staff met with SFWMD and DEP staff on October 2, 2002. During this meeting county staff explained the proposed amendment and what would be achieved by this amendment. SFWMD and DEP staff agreed with the concept and made recommendations to language revisions to help clarify the amendment and better achieve the objectives. County staff compiled the revised language and sent it to SFWMD and DEP staff for comments. SFWMD and DEP staff supported the revised language (Attachment 1). Additionally, SFWMD staff stated that "it is exciting to be collaborating with the county on these issues."

The revised language resulting from the September 30 and October 2, 2002, meetings was forwarded to interested parties to review and comment. The revised language was forwarded to interested parties on October 14, 2002, with a follow up e-mail on October 25, 2002. A meeting was held on October 29, 2002, with the development community, environmental groups, and State agencies. There was a long discussion which resulted in county staff requesting any recommended language changes be submitted by November 6, 2002, to be compiled for discussion.

The last discussion meeting was held November 12, 2002. Many of the issues appear to be resolved by the revised language, and county staff's commitment to hold similar meetings during the compilation of any subsequent Land Development Code amendments.

DCA staff requested a clarification on how the flow-way definition was compiled, and a history of the meetings subsequent to the BOCC transmittal hearing. County staff forwarded the requested information including the following: The flow-way definition was evolved from the Florida Division

of Forestry definition for Wetland Flow-way, the EPA document for the Indian River Lagoon Restoration Feasibility Study, the South Florida Water Management District's flow-way definition included in "Object-Oriented Routing Model Overview," and consultation with Roland Ottolini, Director Lee County Natural Resources.

A concern raised by the development community was the lack of supporting data and analysis for the proposed amendment. DCA staff indicated that the submitted analysis with the follow up information regarding how the flow-way definition was derived is adequate data and analysis to support the proposal.

County staff recommend the BOCC adopt the revised language as follows:

DEFINITION: Green Infrastructure: Surface water management ~~structures~~ systems that are "soft" ~~structures~~ features such as preserved/restored flow-ways, created flow-ways, lakes with littoral plantings, swales planted with native grasses, filtration marshes, preserved/restored wetlands, created wetlands, or other similar design features.

Flow-way: ~~An~~ A defined area of lower elevation that historically or currently conveys surface water during typical seasonal weather patterns. or has the potential to convey water. The flow-way may contain uplands, wetlands, defined natural or artificial channels, or a combination thereof. A flow-way may be natural or man-made.

A natural flow-way is an area of lower topographic relief where ~~stormwater~~ surface water moves within variable dimensions ~~instead of~~ or a well defined channel. The area of flow in this case has enough general confinement to exhibit ~~stormwater~~ surface water flow characteristics and is ~~evidenced by, but not limited to,~~ determined through reasonable scientific judgment utilizing information such as soils maps, aerial photography, topographic maps, USGS maps, drift lines, rack lines, sediment deposits, soils and root scour, and absence of litter or groundcover, and field verifications. A natural flow-way can be a series of lower elevation upland areas that ~~connect~~ allow otherwise isolated wetlands that to interconnect when surface water levels raise rise high enough during typical high water seasonal level to form a continuous flow path. Natural flow-ways typically include but are not limited to rivers, creeks, streams, sloughs, interconnected wetlands, and associated flood plain.

A man-made naturalized flow-way is a constructed wetland surface water management system (typically a marsh) consisting of soft features used for nutrient uptake, stormwater surface water treatment, and/or stormwater surface water conveyance. Man-made naturalized flow-ways typically include but are not limited to filter marshes, created wetlands, swales planted with native vegetation, created streams/creeks, created pond or lake systems interconnected through native vegetation areas, or combinations thereof.

A man-made ~~hard structure~~ structural flow-way is a physical connection between surface water management stormwater basins (e.g. canal, culvert, pipeline, or combinations thereof). Man-made structural flow-ways typically include but are not limited to culverts, ditches, canals, pipelines, mowed grass swales, rip-rap swales, or combinations thereof. This will not include roadways, fire breaks, or similar man-made structures.

OBJECTIVE 40.5: INCORPORATION OF GREEN INFRASTRUCTURE INTO THE SURFACE WATER MANAGEMENT SYSTEM. The long-term benefits of incorporating green infrastructure as part of the surface water management system include improved water quality, improved air quality, improved water recharge/infiltration, water storage, wildlife habitat, recreational opportunities, and visual relief within the urban environment.

POLICY 40.5.1: The County encourages new developments to design their surface water management systems to incorporate best management practices including, but not limited to, filtration marshes, grassed swales planted with native vegetation, retention lakes with enlarged littoral zones, preserved or restored wetlands, and meandering flow-ways.

POLICY 40.5.2: The County encourages new developments to design their surface water management system to incorporate existing wetland systems.

POLICY 40.5.3: The County encourages the preservation of existing natural flow-ways and the restoration of historic natural flow-ways.

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: January 9, 2003

A. BOARD REVIEW: County staff presented the revised language that was discussed with the DCA, as well as, two additional policies all of which were the result of a series of meetings with the public and state agencies. These meetings took place after the transmittal hearing. County staff summarized the meetings and indicated that there was still some opposition to the amendment being adopted without specific Land Development Code language. Staff noted the importance of adopting a flow-way definition, as the Lee Plan does not currently contain a definition and flow-ways are referred to in a number of areas within the comprehensive plan and land development code.

Public input was taken. Members of the development community stated their discomfort level with the amendment, and would like to defer adoption or implementation of the amendment until Land Development Code language is adopted. The development community agrees with the protection of flow-ways, but is concerned with how the amendment will be applied. Their concerns included:

- how to insure technical/scientific review to determine flow-ways;
- what encourage means;
- broadness of the definition;
- elimination of upland from the definition;
- belief that County staff is working separately from the state agencies and not concurring with these agencies over the delineation of flow ways.

There were members of the community who spoke in support of the amendment. These participants stated that the amendment is important for Smart Growth and sustainable development in Lee County. Their concern is with water quality, flooding, and protection of existing natural flow-ways.

County staff urged the Board to adopt the amendment, and provide direction to staff regarding application of the objective and policies. Staff noted that technical/scientific review is done to determine flow-ways, and that technical/scientific staff from the county, SFWMD and DEP drafted the final definition.

The use of encourage is found elsewhere in the Lee Plan, such as under preservation of native plant communities. The application of encourage ranges from granting a planned development zoning requiring the preservation of unique, critical areas to granting credits for large, contiguous upland preserves. Therefore, encourage will include a range of options to be determined through the Land Development Code language.

Staff noted that the definition is not as broad as the original draft, and does include examples. Flow-ways cannot be defined by a specific width or plant community, therefore the "broadness" of the definition is a result of the myriad of natural flow-ways that exist. Staff believe the definition is adequate as written, and that the inclusion of upland was agreed upon by the County, SFWMD, and DEP staff all of whom are technical/scientific individuals who deal with the protection of flow-ways.

The accusation that County staff is working separately from the state agencies was rebutted, in that staff regularly attend SFMWD interagency meetings and confer with SFWMD staff regarding flow-ways. There has not been disagreement over the location of a flow-way, however, each agency may have different regulations as to how the flow-way must be addressed.

One Commissioner asked if vegetation and hydrology should be included in the determination of a flow-way. Staff responded that inclusion of these items in the flow-way definition would be appropriate. The Assistant County Attorney recommended the following revision to the flow-way definition in response:

The area of flow in this case has enough general confinement to exhibit surface water flow characteristics and is determined through reasonable scientific judgment utilizing ~~information such as all available information including without limitation a review of all the following:~~ vegetation, hydrology, soils maps, aerial photography, topographic maps, USGS maps, drift lines, rack lines, sediment deposits, soils and root scour, absence of litter or groundcover, and field verifications.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. **BOARD ACTION:** The Board of County Commissioners voted to adopt the amendment with a minor revision to the flow-way definition as follows:

DEFINITION: Green Infrastructure: Surface water management systems that are “soft” features such as preserved/restored flow-ways, created flow-ways, lakes with littoral plantings, swales planted with native grasses, filtration marshes, preserved/restored wetlands, created wetlands, or other similar design features.

Flow-way: A defined area that conveys surface water during typical seasonal weather patterns. The flow-way may contain uplands, wetlands, defined natural or artificial channels, or a combination thereof. A flow-way may be natural or man-made.

A natural flow-way is an area of lower topographic relief where surface water moves within variable dimensions or a well defined channel. The area of flow in this case has enough general confinement to exhibit surface water flow characteristics and is determined through reasonable scientific judgment utilizing all available information including without limitation a review of all the following: vegetation, hydrology, soils maps, aerial photography, topographic maps, USGS maps, drift lines, rack lines, sediment deposits, soils and root scour, absence of litter or groundcover, and field verifications. A natural flow-way can be a series of lower elevation upland areas that allow otherwise isolated wetlands to interconnect when surface water levels rise high enough during typical high water seasonal level to form a continuous flow path. Natural flow-ways typically include but are not limited to rivers, creeks, streams, sloughs, interconnected wetlands, and associated flood plain.

A man-made naturalized flow-way is a constructed surface water management system consisting of soft features used for nutrient uptake, surface water treatment, and/or surface water conveyance. Man-made naturalized flow-ways typically include but are not limited to filter marshes, created

wetlands, swales planted with native vegetation, created streams/creeks, created pond or lake systems interconnected through native vegetation areas, or combinations thereof.

A man-made structural flow-way is a physical connection between surface water management basins. Man-made structural flow-ways typically include but are not limited to culverts, ditches, canals, pipelines, mowed grass swales, rip-rap swales, or combinations thereof. This will not include roadways, fire breaks, or similar man-made structures.

OBJECTIVE 40.5: INCORPORATION OF GREEN INFRASTRUCTURE INTO THE SURFACE WATER MANAGEMENT SYSTEM. The long-term benefits of incorporating green infrastructure as part of the surface water management system include improved water quality, improved air quality, improved water recharge/infiltration, water storage, wildlife habitat, recreational opportunities, and visual relief within the urban environment.

POLICY 40.5.1: The County encourages new developments to design their surface water management systems to incorporate best management practices including, but not limited to, filtration marshes, grassed swales planted with native vegetation, retention/detention lakes with enlarged littoral zones, preserved or restored wetlands, and meandering flow-ways.

POLICY 40.5.2: The County encourages new developments to design their surface water management system to incorporate existing wetland systems.

POLICY 40.5.3: The County encourages the preservation of existing natural flow-ways and the restoration of historic natural flow-ways.

POLICY 40.5.4: The County will continue to identify and map flow-ways as part of the Lee County Surface Water Management Plan. The Plan provides a general depiction of watersheds and their trunk and major tributaries and has been expanded to some degree in the DRGR area. As new information is assembled, the Plan will be updated for public use. Due to its magnitude and need for site specific information, not all flow-ways will be shown.

POLICY 40.5.5: The County will continue to coordinate the review of flow-ways with the other regulatory agencies and assist in the development of incentives and /or credits for implementation of regional surface water management systems that address flood protection, water quality/ environmental enhancement and water conservation.

C. VOTE:

JOHN ALBION

AYE

ANDREW COY

AYE

BOB JANES

AYE

RAY JUDAH

AYE

DOUG ST. CERNY

AYE

ATTACHMENT - 1

SFWMD & DEP Correspondence

Attachment - 2

Other Correspondence Received

ATTACHMENT - 1
SFWMD & DEP Correspondence

From: Carol Wehle <cwehle@sfwmd.gov>
To: "Kim Trebatoski" <TREBATKM@leegov.com>, <lucy.blair@dep.state.fl.us>, <rick.cantrell@dep.state.fl.us>, <ECKENRPJ.LEEPO02.LEEDOM1@leegov.com>, <JOYCERK.LEEPO02.LEEDOM1@leegov.com>, <MILLERJM.LEEPO02.LEEDOM1@leegov.com>, <NOBLEMA.LEEPO02.LEEDOM1@leegov.com>, <OCONNOPS.LEEPO02.LEEDOM1@leegov.com>, <OTTOLIRE.LEEPO02.LEEDOM1@leegov.com>, <TREBATKM.LEEPO02.LEEDOM1@leegov.com>, <cpalmer@sfwmd.gov>, <kjohnson@sfwmd.gov>, <rthomps@sfwmd.gov>
Date: 10/3/02 10:11AM
Subject: RE: Flow-way Amendment Language

Thank you so much for all your work. It is exciting to be collaborating with the county on these issues. I have asked Carla Palmer to coordinate all the District's comments so that you have one point of contact. Let me know if you need anything else. Carol

-----Original Message-----

From: Kim Trebatoski [mailto:TREBATKM@leegov.com]
Sent: Wednesday, October 02, 2002 4:36 PM
To: lucy.blair@dep.state.fl.us; rick.cantrell@dep.state.fl.us; ECKENRPJ.LEEPO02.LEEDOM1@leegov.com; JOYCERK.LEEPO02.LEEDOM1@leegov.com; MILLERJM.LEEPO02.LEEDOM1@leegov.com; NOBLEMA.LEEPO02.LEEDOM1@leegov.com; OCONNOPS.LEEPO02.LEEDOM1@leegov.com; OTTOLIRE.LEEPO02.LEEDOM1@leegov.com; TREBATKM.LEEPO02.LEEDOM1@leegov.com; cpalmer@sfwmd.gov; cwehle@sfwmd.gov; kjohnson@sfwmd.gov; rthomps@sfwmd.gov
Subject: Flow-way Amendment Language

Thank you for meeting today. It was very helpful. Please review attached changes to the proposed Lee Plan Amendment regarding flow-ways and green infrastructure. There is a redlined version, and an easier to read revised language version.

Please send any comments, so I can compile the input.

Kim Trebatoski
Principal Environmental Planner
DCD - Planning/Environmental Sciences
trebatkm@leegov.com
239-479-8183
FAX 239-479-8319

CC: "Carla Palmer" <cpalmer@sfwmd.gov>

From: "Palmer, Carla" <cpalmer@sfwmd.gov>
To: <TREBATKM@leegov.com>
Date: 10/14/02 8:01AM
Subject: Re: Lee Plan Flow-way Language

Kim. We are happy with the wording we discussed at our last meeting. I like what Rick Cantrell wrote and we have nothing further to add at this time. Thanks for all the energy you have put into this. Carla

Sent from my BlackBerry Wireless Handheld

SFWMD Wireless Email Solutions

From: "Cantrell, Richard" <Richard.Cantrell@dep.state.fl.us>
To: "Kim Trebatoski" <TREBATKM@leegov.com>
Date: 10/25/02 11:20AM
Subject: RE: Lee Plan Flow-way Amendment Meeting

Kim: My concern is that we do not inadvertently include lawns and other developed property which during rainfall events my transport water and that afterwards show rack lines or other listed evidence. My concerns could be addressed under "reasonable scientific judgment" but the suggested clause could provide "intent comfort". I agree that you want to stay away from an engineering event threshold. That is not the intend of my suggestion.

Thanks, Rick

-----Original Message-----

From: Kim Trebatoski [mailto:TREBATKM@leegov.com]
Sent: Friday, October 25, 2002 10:59 AM
To: Cantrell, Richard
Subject: RE: Lee Plan Flow-way Amendment Meeting

Rick - Please explain what you mean by "for sustained periods beyond discreet rainfall events". Roland and I were discussing your recommendation, and each had a different take on the meaning. Also, we were trying to avoid attaching the definition to a certain rainfall event such as 5-year flood elevation.

Kim Trebatoski
Principal Environmental Planner
DCD - Planning/Environmental Sciences
trebatkm@leegov.com
239-479-8183
FAX 239-479-8319

>>> "Cantrell, Richard" <Richard.Cantrell@dep.state.fl.us> 10/25/02 10:21AM
>>>

Kim: I have added one suggestion to the overall Flow-way definition (shown as BOLD). The meeting conflicts with a staff meeting but we will try to attend.

Rick

-----Original Message-----

From: Kim Trebatoski [mailto:TREBATKM@leegov.com]
Sent: Friday, October 25, 2002 8:47 AM
To: Amico@abbinc.com; Beeverjw@aol.com; rawessel@att.net;
kmarquis@audubonintl.org; smarshall@bankseng.com; CarlB@barraco.net;
Kimf@bonitabaygroup.com; mitchh@bonitabaygroup.com;
mattb@conservancy.org; Stafford, Heather; Cantrell, Richard;
ivincent@dexbender.com; flpneples@earthlink.net;
charles.basinait@henlaw.com; NedDewhirst@hmeng.com; BNH@johnsoneng.com;
dww@johnsoneng.com; Matthew Noble; Roland Ottolini; Wayne Daltry;
kenp@passarella.net; stevehartsell@paveselaw.com; jcassani@peganet.com;
cpalmer@sfwmd.gov; lbeever@swfrpc.org; keyda@ushome.com;
sconnell@worthingtoncommunities.com

Cc: Pete Eckenrode; Rick Joyce; Paul O'Connor; Pam Houck
Subject: Lee Plan Flow-way Amendment Meeting

The second flow-way amendment discussion meeting will be held Tuesday, October 29, 2002 at 11am-noon in Conf. Room 2-C of the Lee County Public Works & Community Development Building.

The revisions to the amendment language as a result of meetings with SFWMD & DEP staff, as well as, input received are attached including a red-lined document and a "cleaned up" version. The revised language is clarification language. The intent of the amendment transmitted to DCA has not been changed.

This meeting is an open discussion. Please forward this message to any interested parties.

Kim Trebatoski
Principal Environmental Planner
DCD - Planning/Environmental Sciences
trebatkm@leegov.com
239-479-8183
FAX 239-479-8319

DEFINITION: Green Infrastructure: Surface water management structures systems that are “soft” structures features such as preserved/restored flow-ways, created flow-ways, lakes with littoral plantings, swales planted with native grasses, filtration marshes, preserved/restored wetlands, created wetlands, or other similar design features.

Flow-way: An A defined area of lower elevation that historically or currently conveys surface water for sustained periods beyond discreet rainfall events during typical seasonal weather patterns. or has the potential to convey water. The flow-way may contain uplands, wetlands, defined natural or artificial channels, or a combination thereof. A flow-way may be natural or man-made.

A natural flow-way is an area of lower topographic relief where stormwater surface water moves within variable dimensions instead of or a well defined channel. The area of flow in this case has enough general confinement to exhibit stormwater surface water flow characteristics and is evidenced by, but not limited to, determined through reasonable scientific judgment utilizing information such as soils maps, aerial photography, topographic maps, USGS maps, drift lines, rack lines, sediment deposits, soils and root scour, and absence of litter or groundcover, and field verifications. A natural flow-way can be a series of lower elevation upland areas that connect allow otherwise isolated wetlands that to interconnect when surface water levels raise rise high enough during typical high water seasonal level to form a continuous flow path. Natural flow-ways typically include but are not limited to rivers, creeks, streams, sloughs, interconnected wetlands, and associated floodplain.

A man-made naturalized flow-way is a constructed wetland surface water management system (typically a marsh) consisting of soft features used for nutrient uptake, stormwater surface water treatment, and/or stormwater surface water conveyance. Man-made naturalized flow-ways typically include but are not limited to filter marshes, created wetlands, swales planted with native vegetation, created streams/creeks, created pond or lake systems interconnected through native vegetation areas, or combinations thereof.

A man-made hard-structure structural flow-way is a physical connection between surface water management stormwater basins (e.g. canal, culvert, pipeline, or combinations thereof). Man-made structural flow-ways typically include but are not limited to culverts, ditches, canals, pipelines, mowed grass swales, rip-rap swales, or combinations thereof. This will not include roadways, fire breaks, or similar man-made structures.

OBJECTIVE 40.5: INCORPORATION OF GREEN INFRASTRUCTURE INTO THE SURFACE WATER MANAGEMENT SYSTEM. The long-term benefits of incorporating green infrastructure as part of the surface water management system include improved water quality, improved air quality, improved water recharge/infiltration, water storage, wildlife habitat, recreational opportunities, and visual relief within the urban environment.

POLICY 40.5.1: The County encourages new developments to design their surface water management systems to incorporate best management practices including, but not limited to, filtration marshes, grassed swales planted with native vegetation, retention lakes with enlarged littoral zones, preserved or restored wetlands, and meandering flow-ways.

POLICY 40.5.2: The County encourages new developments to design their surface water management system to incorporate existing wetland systems.

POLICY 40.5.3: The County encourages the preservation of existing natural flow-ways and the restoration of historic natural flow-ways.

Attachment - 2

Other Correspondence Received

From: Roland Ottolini
To: Dist5, Albion
Date: 10/7/02 3:02PM
Subject: flow-ways meetings

Chris,
got your message. we met w/ several consultants (engineering, environmental, and legal) on Monday ,
Sept 30 at Carl Baracco's office. my understanding Mitch was unable to attend. we drafted some minor
revisions to the Plan amendment. also met w/ DEP and SFWMD on Wednesday, Oct 2 and added a few
more revisions. will have a follow-up meeting at Carl Baracco's, Tuesday, Oct 29 at noon. anyone who
wants to attend should confirm w/ Carl's office.
roland

CC: Daltry, Wayne; Lavender, James; Noble, Matthew; Trebatoski, Kim

From: "Ned Dewhirst" <NedDewhirst@hmeng.com>
To: <TREBATKM@leegov.com>
Date: 10/9/02 4:39PM

Kim: Per our phone discussion, the following are my comments re the flow-way issue. I hope these are not repetitive to your other mtgs/discussions:

1. 2nd paragraph: I like "An area..." rather than "A defined area .." since a lot of times these flow-way areas are not well-defined.
2. 2nd paragraph: historically or currently conveys stormwater.
3. Under the 2nd paragraph: "A natural flow-way is an area of lower topographic relief where stormwater flows within variable dimensions and/or a well defined channel. (Say the case of a creek area with broad banks)
4. Under the 2nd paragraph: " A man-made naturalized flow-way is a constructed wetland/conveyance system used for nutrient uptake, stormwater treatment, and/or stormwater conveyance. This system can be a wetland marsh or forested area in combination with a conveyance or deep water feature." (At The Brooks is where this combination was used to restore a natural flow-way; I know you don't want mostly a lake with a small littoral area but from a conveyance/hydraulic standpoint you need some water volume area also)
5. Below the above sentence, I would delete the definition of man-made hard structure flow-way. First, you do not reference this type flow-way in your objectives/policies. Secondly, this type does not necessarily have to be between stormwater basins. It could be between two lakes within the same basin or as an outfall from the SWM system. I just don't see the purpose for defining. It is sort of a stretch, even for us engineers, to call a pipe a flow-way.
6. Policy 40.5.3: The county encourages the preservation of existing natural flow-ways, the restoration of historic natural flow-ways, and the construction of man-made naturalized flow-ways (where applicable). (You defined man-made naturalized flow-ways but not made any reference in your Objectives/Policies.
7. I would suggest a reference to an incentive for the flow-ways by way of crediting indigenous requirements for both kinds of flow-ways (natural/man-made). Then include the details of the credits within the LDC. In the past, we have had to request deviations for such things during rezonings.

Ned Dewhirst , P.E.
Senior V.P. / Principal

**HOLE MONTES
ENGINEERS PLANNERS SURVEYORS**

From: Lynda Riley
To: Trebatoski, Kim
Date: 10/14/02 11:24AM
Subject: Re: Flow-way & Green Infrastructure Lee Plan Amendment

The revisions look good to me. Thanks for keeping me in the loop.

>>> Kim Trebatoski 10/14/02 08:18AM >>>

Please see attached revisions to the transmitted Lee Plan Amendment CPA2001-27 regarding flow-ways and green infrastructure. These revisions are a result of meeting held with the development community, and a meeting held with SFWMD and DEP staff. The revisions are clarification language so people better understand the objectives of the amendment.

I have attached a red-line strike thru / underline version so you can see the changes over time, and a "cleaned-up" version which is easier to read. Please forward any comments to me by October 23, so I can compile them for discussion at the October 29th meeting.

Kim Trebatoski
Principal Environmental Planner
DCD - Planning/Environmental Sciences
trebatkm@leegov.com
239-479-8183
FAX 239-479-8319

From: Kraig Marquis <kmarquis@audubonintl.org>
To: "Kim Trebatoski" <TREBATKM@leegov.com>
Date: 10/15/02 11:11AM
Subject: Re: Flow-way & Green Infrastructure Lee Plan Amendment

Kim,
The revised doc looks good. I didn't have any changes.
Take care,
Kraig

At 08:18 AM 10/14/2002 -0400, you wrote:

>Please see attached revisions to the transmitted Lee Plan Amendment
>CPA2001-27 regarding flow-ways and green infrastructure. These revisions
>are a result of meeting held with the development community, and a meeting
>held with SFWMD and DEP staff. The revisions are clarification language
>so people better understand the objectives of the amendment.

>
>I have attached a red-line strike thru / underline version so you can see
>the changes over time, and a "cleaned-up" version which is easier to
>read. Please forward any comments to me by October 23, so I can compile
>them for discussion at the October 29th meeting.

>
>Kim Trebatoski
>Principal Environmental Planner
>DCD - Planning/Environmental Sciences
>trebatkm@leegov.com
>239-479-8183
>FAX 239-479-8319

>
>

From: "Kim Fikoski" <Kimf@BonitaBayGroup.com>
To: "Kim Trebatoski" <TREBATKM@leegov.com>
Date: 10/16/02 4:20PM
Subject: RE: Flow-way & Green Infrastructure Lee Plan Amendment

Can you email me the entire CPA 2001-27 so I better understand the objectives of the ammendment. As far as defintions go, my only comment is that grass swales are a common and effective BMP and planting them with natives is preferable but not necessary for it to be an excellent BMP (40.5.1).

-----Original Message-----

From: Kim Trebatoski [mailto:TREBATKM@leegov.com]
Sent: Monday, October 14, 2002 8:19 AM
To: Beeverjw@aol.com; rawessel@att.net; kmarquis@audubonintl.org; smarshall@bankseng.com; CarlB@barraco.net; Kim Fikoski; Mitch Hutchcraft; mattb@conservancy.org; heather.stafford@dep.state.fl.us; ivincent@dexbender.com; flpnacles@earthlink.net; NedDewhirst@hmeng.com; BNH@johnsoneng.com; dwv@johnsoneng.com; NOBLEMA.LEEPO02.LEEDOM1@leegov.com; RILEYLT.LEEPO02.LEEDOM1@leegov.com; stevehartsell@paveselaw.com; jcassani@peganet.com; cpalmer@sfwmd.gov; dburr@swfrpc.org; lbeever@swfrpc.org; keyda@ushome.com; EdGriffith@wvicommunities.com; sconnell@worthingtoncommunities.com
Cc: OCONNOPS.LEEPO02.LEEDOM1@leegov.com; OTTOLIRE.LEEPO02.LEEDOM1@leegov.com
Subject: Flow-way & Green Infrastructure Lee Plan Amendment

Please see attached revisions to the transmitted Lee Plan Amendment CPA2001-27 regarding flow-ways and green infrastructure. These revisions are a result of meeting held with the development community, and a meeting held with SFWMD and DEP staff. The revisions are clarification language so people better understand the objectives of the amendment.

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Kim Trebatoski
Principal Environmental Planner
DCD - Planning/Environmental Sciences
trebatkm@leegov.com
239-479-8183
FAX 239-479-8319

From: "Matt Bixler" <mattb@conservancy.org>
To: "Kim Trebatoski" <TREBATKM@leegov.com>
Date: 10/21/02 10:29AM
Subject: RE: Flow-way & Green Infrastructure Lee Plan Amendment

Hello Kim,

The Conservancy is supportive of the current Amendment. We would like to attend the meeting on the 29th in support of the document. Please let me know when and where the meeting will be held.

Also, on a different topic. I saw a public notice in the News Press regarding amendments to the FGCU Plan. The notice said a copy of the amendments is in the Planning Office. What are these amendments regarding? Is it land use or structure of the University?

Thanks,
Matt

-----Original Message-----

From: Kim Trebatoski [mailto:TREBATKM@leegov.com]
Sent: Monday, October 14, 2002 8:19 AM
To: Beeverjw@aol.com; rawessel@att.net; kmarquis@audubonintl.org; smarshall@bankseng.com; CarlB@barraco.net; Kimf@bonitabaygroup.com; mitchh@bonitabaygroup.com; mattb@conservancy.org; heather.stafford@dep.state.fl.us; ivincent@dexbender.com; flpnacles@earthlink.net; NedDewhirst@hmeng.com; BNH@johnsoneng.com; dw@johnsoneng.com; NOBLEMA.LEEPO02.LEEDOM1@leegov.com; RILEYLT.LEEPO02.LEEDOM1@leegov.com; stevehartsell@paveselaw.com; jcassani@peganet.com; cpalmer@sfwmd.gov; dburr@swfrpc.org; lbeever@swfrpc.org; keyda@ushome.com; EdGriffith@wci-communities.com; sconnell@worthingtoncommunities.com
Cc: OCONNOPS.LEEPO02.LEEDOM1@leegov.com; OTTOLIRE.LEEPO02.LEEDOM1@leegov.com
Subject: Flow-way & Green Infrastructure Lee Plan Amendment

Please see attached revisions to the transmitted Lee Plan Amendment CPA2001-27 regarding flow-ways and green infrastructure. These revisions are a result of meeting held with the development community, and a meeting held with SFWMD and DEP staff. The revisions are clarification language so people better understand the objectives of the amendment.

I have attached a red-line strike thru / underline version so you can see the changes over time, and a "cleaned-up" version which is easier to read. Please forward any comments to me by October 23, so I can compile them for discussion at the October 29th meeting.

Kim Trebatoski
Principal Environmental Planner
DCD - Planning/Environmental Sciences
trebatkm@leegov.com
239-479-8183
FAX 239-479-8319

From: "Stafford, Heather" <Heather.Stafford@dep.state.fl.us>
To: "Paul O'Connor" <OCONNOPS@leegov.com>
Date: 10/23/02 8:48PM
Subject: RE: Greenways Comp Plan Amendment - CPA 2001-27

Please pass on my support of Lee County Comprehensive Plan Amendment - CPA 2001-27 as written. If Lee County is able to encourage developers within the Estero Bay watershed to incorporate these changes to their surface water management systems, the Estero Bay Aquatic Preserve and all residents and visitors in Lee County would benefit.

Heather Stafford, Manager
Estero Bay Aquatic & State Buffer Preserves

-----Original Message-----

From: Paul O'Connor [mailto:OCONNOPS@leegov.com]
Sent: Tuesday, October 01, 2002 4:15 PM
To: beeverjw@aol.com; rawessel@aol.com; mattb@conservancy.org; Stafford, Heather; sbrookperson@earthlink.net; COLLINS@LCFGW.LCFPO01; Timothy Jones; Roland Ottolini; Brad Vance; Wayne Daltry; jcassani@peganet.com; dburr@swfrc.org; lbeever@swfrc.org
Cc: ROSENP@LCFGW.LCFPO01; Ann Polito
Subject: Greenways Comp Plan Amendment - CPA 2001-27

Attached please find an outline that Scott Gilbertson receive from David Graham. The outline calls for the derailing of the so called Greenways Lee Plan Amendment and the establishment of a committee to investigate incentives for flowway preservation.

Also attached is a PDF of the proposed amendment.

Please review these materials and respond as you see fit.

Paul O'Connor, AICP
Director of Planning
Lee County Department of Community Development
1500 Monroe Street
Fort Myers, FL 33901
e mail oconnops@leegov.com
Phone (239) 479-8309; FAX (239) 479-8319

CC: "Lytton, Gary" <Gary.Lytton@dep.state.fl.us>

102 OFFICERS:

PRESIDENT
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Associates, Haverfield, Dalton,
Johnson & Jensen, L.L.P.
P.O. Drawer 1507
Fort Myers, Florida 33902-1507

VICE PRESIDENT
Gary Johnson
Florida Bank
21 Daniels Parkway
Fort Myers, Florida 33912

MEASURER
The Slot
ALTA Association of Greater
Fort Myers and the Beach, Inc.
40 Winkler Avenue
Fort Myers, Florida 33916

SECRETARY
Donald E. Brooks
Brooks & Freund, LLC
31 Metro Plantation Road
Fort Myers, Florida 33912-1260

COUNCIL OF GOVERNORS:

Donald A. Hendry
Michael Maxwell & Associates Inc.
50 First Street
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Robert Roberts
Trust Bank
751 New Brittany Boulevard
Fort Myers, Florida 33907-3694

Wesley P. Schropp
Anderson, Franklin, Starnes & Holt
P.O. Box 280
Fort Myers, Florida 33902-0280

George A. Stephan, M.A.I.
Stephan & Associates
9 Courtney Drive, Suite 9
Fort Myers, Florida 33901-9029

Richard J. Stouder, CCIM
Richard Ellis
51 McGregor Boulevard, Suite 1-101
Fort Myers, Florida 33919-4467

Richard E. Thibaut
Thibaut Solutions
100 College Parkway, Suite 160
Fort Myers, Florida 33919-0000

Robert Wunderlich
Wunderlich Title Insurance, Inc.
100 Colonial Boulevard, Suite 101
Fort Myers, Florida 33907

IMMEDIATE PAST PRESIDENT

Robert L. Hayden
Hayden Rock Industries
41 Alico Road
Fort Myers, Florida 33913

LEE COUNTY
RECEIVED

02 OCT 25 PM 4: 28

October 22, 2002
COMM. DEPT.
PUB. WRKS. CNTR.
SECOND FLOOR

10/28/02 Copy to: P.O.
Kint
R. J. T.
M. H. D.

Mr. Charles Gauthier, Bureau Chief
Department of Community Affairs
Bureau of Local Planning
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399

RE: Lee County Comprehensive Plan Amendment
CPA 2001-27 Flow Way and Green Infrastructure

Dear Mr. Gauthier:

The County recently transmitted the above styled plan amendment to the Department for your review and analysis. On behalf of the Real Estate Investment Society (REIS), and its members, I want to express concerns regarding the amendment. The first concern I want to express is a concern regarding the process. It is herein submitted that the County did not comply with Section 163.3181, F.S. I, as the president of REIS, and several other members, heard that the County was working on what was commonly referred to as the "flow-way amendment." I, and others, were repeatedly advised that it wasn't ready yet, it was still in draft form, and they were still working on the language internally. The language was finally made available to the public less than a week prior to the time the matter was scheduled before the Local Planning Agency. The concerned public did not have sufficient time to review, evaluate and address the proposed amendment. Section 163.3181, F.S. submits that, "It is the intent of the Legislature that the public participate in the comprehensive planning process to the fullest extent possible." When this concern was raised at the transmittal hearing there were indications that the public shouldn't be surprised because the staff had been working on the issue for almost a year. This is probably true, however, the interested public had no access to the drafts during that time frame. The participation in the planning process on this amendment was not effective, broad dissemination did not occur and was not possible due to the very, very short time frame. The flow-way issue is of such importance that public workshops should have been held. The amendments were not available until three working days prior to the LPA hearing.

REIS has concerns about the substance of the amendment. The definition is overly broad, and a landowner reading the definition would not have a clear understanding of whether his land was affected and how his land



Real Estate Investment Society

P.O. Drawer 1507 • Fort Myers, Florida 33902-1507
www.reis-swfl.org

Mr. Charles Gauthier

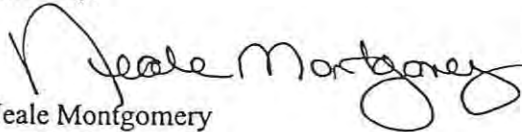
October 22, 2002

Page 2

was affected. No data and analysis in support of the amendment was provided to the public, and to date I am not certain that any data and analysis was undertaken. The language does not contain measurable standards. As written the County could determine that a flow-way exists if water flowed once during the past fifty years between two isolated wetlands. It is clear that the County definition includes more than wetlands, but what is unclear is the extent of the upland areas that can be considered "flow-ways."

It is herein submitted that the Department in its Official Recommendations and Comments should require a clear and concise definition, adequate public participation, data and analysis, and clear standards which would put a reasonable man on notice of the impact the amendment would have on his property. I appreciate your consideration of this matter.

Sincerely,



Neale Montgomery
President
Real Estate Investment Society

NM:tlb

cc: Roger Wilburn
Bernard Piawah
Mary Gibbs
Larry Johnson
Jake Slot
Donald Brooks
Gerald Hendry
Perry Roberts
Russell Schropp
Bruce Stephan
Stan Stouder
Randy Thibaut
Susan Wunderlich
Fred Burson
Bill Burdette
Tracy Hayden
Charles Basinait

REISFLOW.WPD

From: Wayne Daltry
To: Trebatoski, Kim
Date: 10/29/02 2:23PM
Subject: Re: Lee Plan Flow-way Amendment Meeting

Hellow Kim

You held up to the abuse (no, wait, wrong word, errr challenge, yeah that is it, CHALLENGE) quite well today. You have my admiration.

Here were my concepts set up as "policies" which fit either in Sec 40.5 or some where else (or no where else). Into the Barrel!

40.5.4. By (x date) the County will have established a schedule by which each basin of the County will be reviewed for mapping the flowways necessary for surface water management. The mapping wil depict which flowways are man made strucural, man made naturalized, or natural flowways. Each flowway identified will have either an identified series of management objectives for flow, quality, storage, recharge, or green infrastructure, or a schedule by which these objectives will be established. The mapping may be undertaken in part or in whole as part of the County Mitigation Plan development program.

40.5.5 By (x date) the County will have amended its LDRs to implement Sections 40.5.1-4. Such amendments will include the regulatory components necessary to implement flow requirements, and the appropriate mix of regulations and incentives to implement the quality, storage, recharge and green infrastructure objectives.

40.5.6 The County will explore with the permitting agencies the feasibility of pursuing delegation of part or all delegatable authority for stormwater and flowway management once the mapping and LDR process is completed.

Wayne E. Daltry
Director, Smart Growth Department
wdaltry@leegov.com
239-335-2840
239-335-2262 (fax)

CC: Noble, Matthew; O'Connor, Paul; Ottolini, Roland

From: Kim Trebatoski
To: Vincent, Ian
Date: 10/29/02 4:49PM
Subject: Re: a couple of questions

The county will rely on SFWMD & DEP jurisdictionals for wetland determination.

Having criteria to determine a flow-way rating would sure help. This is one area that we can be discussing and formulating through the land development code revisions to address the policies.

Thank you for continuing participation!

Kim Trebatoski
Principal Environmental Planner
DCD - Planning/Environmental Sciences
trebatkm@leegov.com
239-479-8183
FAX 239-479-8319

>>> "Ian Vincent" <ivincent@dexbender.com> 10/29/02 04:16PM >>>
Again, thanks for taking the time to listen to everybody's ranting. I hope that you don't feel like you're being ganged up on, it's just that we are all trying to foresee how we will be able to address the issue in due diligence. I do have a couple of questions that came to me after I had some time to digest the meeting (as well as my lunch).

1. policy 40.5.2 states that Staff encourages incorporating existing wetland systems. I am curious if Staff is planning to rely on SFWMD for the JD or if the County is going to have their own wetland criteria.

2. Both you and Roland spoke about the flow way issue saying that "critical" flow-ways must be preserved and the less critical would be given less scrutiny. Who will be making the determination as to which flow ways are critical? Do you think it would be feasible for us to work on some kind of quantifiable system for evaluating flow-way function. Something similar to WRAP, but actually scientifically sound?

These are just questions, I'm sure you'll be getting your share and then some over the next few days. You mentioned that you are looking for constructive suggestions. I would be glad to assist in any way that I can.

Ian M. Vincent
W. Dexter Bender & Associates

----- Original Message -----

From: "Kim Trebatoski" <TREBATKM@leegov.com>
To: <bauer606@aol.com>; <rawessel@att.net>; <smarshall@bankseng.com>; <CarlB@barraco.net>; <mitchh@bonitabaygroup.com>; <GaryD@conservancy.org>; <mattb@conservancy.org>; <Richard.Cantrell@dep.state.fl.us>; <ivincent@dexbender.com>; <stevebrookman@earthlink.com>; <sbrookperson@earthlink.net>; <NedDewhirst@holemontes.com>; <dvw@johnsoneng.com>; "Matthew Noble" <NOBLEMA.LEEPO02.LEEDOM1@leegov.com>; "Roland Ottolini" <OTTOLIRE.LEEPO02.LEEDOM1@leegov.com>; "Wayne Daltry" <WDALTRY.LEEPO01.LEEDOM1@leegov.com>; <Raymond.Pavelka@marinerproperties.com>; <stevehartsell@paveselaw.com>; <jcassani@peganet.com>; <cpalmer@sfwmd.gov>; <IBarnett@VANDAY.com>;

<mbracci@VANDAY.com>

Sent: Tuesday, October 29, 2002 4:01 PM

Subject: Next Meeting

Thank you for participating in the discussions regarding the proposed Lee Plan amendment (CPA2001-27) dealing with flow-ways and green infrastructure.

A final meeting will be held Tues, Nov 12 at 11am at the county Public Works/Community Development building in Conference Room 2C. The purpose of this meeting will be to discuss the addition of policies regarding mapping, incentives, measurable standards, and exploring the possibility of agencies delegating some authority to the county.

Please forward any recommended policy language to me by Wed. Nov. 6th. I will compile the recommendations and send a working copy out by Fri. Nov. 8th for discussion on Nov. 12th.

Kim Trebatoski
Principal Environmental Planner
DCD - Planning/Environmental Sciences
trebatkm@leegov.com
239-479-8183
FAX 239-479-8319

FLORIDA ROCK INDUSTRIES INC Mining, Ready Mix Concrete, and Construction Products

Reply to Division Office: 14341 Alico Road, Fort Myers, FL 33913 / (239) 267-1803 ext. 40 / FAX (239) 267-2887



*Photo.
cc: Kim
mick
mt*

November 5, 2002

Mr. Charles Gauthier, Bureau Chief
Department of Community Affairs
Bureau of Local Planning
2555 Shumard Oak Blvd.
Tallahassee, FL 32399

Via Email, Copy to Follow in Mail

Re: Lee County Comp. Plan Amendment
CPA 2001-27 Flow Way and Green Infrastructure

Dear Mr. Gauthier:

Lee County transmitted the referenced plan amendment to the Department of Community Affairs (DCA) for your review and analysis. Based on the lack of public review and input, and that no data and analysis has been provided in support of this amendment, I object to this Plan Amendment.

I respectfully request that DCA require in its Official Recommendations and Comments adequate public participation and supporting data and analysis.

Thank you for your consideration.

Sincerely,

Tracy L. Hayden
Environmental Manager - South Florida

cc: Roger Wilburn
Bernard Piawah
Mary Gibbs

LEE COUNTY
RECEIVED
02 NOV - 7 PM 2:43
COMM. DEV. /
SUB. WRKS. CNTR.
SECOND FLOOR

NOV 08 2002

Vanasse
Daylor



MEMORANDUM

Environmental Sciences

Urban Planning

Landscape Architecture

Civil Engineering

Traffic Engineering

Environmental Science

FL 366

To: Kim Trebatoski; Sr. Environmental Planner, Lee County
From: Ilene Barnett; Director, Environmental Sciences
Date: November 6, 2002
Re: Proposed Lee Plan Flow-way Amendments

RECEIVED

NOV 08 2002

Environmental Sciences

Thank you for the opportunity to comment on the proposed language for the Lee County Proposed Flow-way Amendment. Below, I have included my recommended revisions for your consideration:

With regards to the definition, this should be coordinated with the South Florida Water Management District's definition and criteria for flow ways. Include parameters such as width, length, capacity and importance of the flow way based on the definition.

OBJECTIVE 40.5: INCORPORATION OF GREEN INFRASTRUCTURE INTO THE SURFACE WATER MANAGEMENT SYSTEM. The long-term benefits of incorporating green infrastructure as part of the surface water management system include improved water quality, improved air quality, improved water recharge/infiltration, water storage, wildlife habitat, recreational opportunities, and visual relief within the urban environment.

POLICY 40.5.1: The County encourages new developments, through a system of appropriate incentives, to design their surface water management systems to incorporate best management practices including, but not limited to, filtration marshes, grassed swales planted with native vegetation, retention lakes with enlarged littoral zones, preserved or restored wetlands, and meandering flow-ways. This policy is not intended to promulgate additional regulatory criteria for new development.

POLICY 40.5.2: The County encourages new developments, through a system of appropriate incentives, to design their surface water management system to incorporate existing wetland systems. This policy is not intended to promulgate additional regulatory criteria for new development.

POLICY 40.5.3: The County encourages the preservation of existing natural flow-ways and the restoration of historic natural flow-ways, through a system of appropriate incentives. This policy is not intended to promulgate additional regulatory criteria for new development.

POLICY 40.5.4: The County will implement a County-wide water quality and flowway improvement and protection plan, including data collection and analysis; prioritizations and goals; monitoring methods; etc. Plan will provide for such potential activities as retrofitting of existing infrastructure and acquisition and restoration of undeveloped lands where practicable and non-intrusive to private property. Funding for this plan and its implementation shall be

12730 New Brittany Boulevard, Suite 600, Fort Myers, Florida 33907 T 239.437.4601 F 239.437.4636 w vanday.com

