



LEE COUNTY
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

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Writer's Direct Dial Number: (239) 479-8309

Bob Janes
District One

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Tammy Hall
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

David M. Owen
County Attorney

Diana M. Parker
County Hearing Examiner

November 4, 2005

Ray Eubanks, Administrator, Plan Review and Processing
Florida Department of Community Affairs
Division of Community Planning
Bureau of Local Planning
2555 Shumard Oak Boulevard
Tallahassee, FL. 32399-2100

Re: 2004/2005 Regular Amendment Cycle Submission Package

Dear Mr. Eubanks:

This correspondence is being sent in regards to your letter dated October 25, 2005 finding the Lee County 2004/2005 Regular Amendment Cycle Submission Package incomplete. Based on your request for the adopted changes for CPA 2004-16 staff has attached three copies of the adopted future land use map for the subject amendment in order to address the information required by Section 163.3184, F.S. and Rule 9J-11.011, F.A.C.

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 for
Director

CPA 2004-00016

Future Land Use Map (Adopted)



CPA2004-00016

Future Land Use Designations

- Urban Community
- Suburban
- Outlying Suburban
- Public Facilities

- Coastal Rural
- Outer Island
- Conservation Lands - Uplands
- Wetlands
- Conservation Lands - Wetlands

Adopted: October 12, 2005
Generated: October 2005
Source: Lee County DCD/Planning



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MEMORANDUM

FROM
THE DEPARTMENT OF
COMMUNITY DEVELOPMENT
DIVISION OF PLANNING

DATE: October 7, 2005

TO: Board of County Commissioners

FROM:

 For:
Paul O'Connor, Director

RE: Lee County's 2002/2003 Regular Comprehensive Plan Amendment Cycle

Recently, Planning staff provided Board members with the staff reports and backup documentation for the October 12th, 2005 adoption hearing for the 2002/2003 comprehensive plan amendment cycle. The cover memo for that packet was dated October 4, 2005. The cover memo stated that the staff report for CPA 2004-16, the Pine Island Compromise, will be provided to the BoCC under a separate cover as soon as it is finalized this week. Attached is the staff report with backup documentation for the October 12th adoption hearing. In addition, since the time that the adoption hearing packets were sent, Leeward Yacht Club, LLC has provided staff with comments in response to the DCA objections to CPA 2004-13, the I-75 and S.R. 80 Interchange amendment. The comments provided are attached for your information. The materials contained herein should be added to the packet of materials that was provided on October 4, 2005.

If you have any questions regarding the adoption hearing or the materials contained in this packet, do not hesitate to call me at 479-8309.

cc: Donald Stilwell, County Manager
Mary Gibbs, Director, Department of Community Development
Minutes
Lee Cares
Tim Jones, Assistant County Attorney
Donna Marie Collins, Assistant County Attorney
Regina Smith, Director, Economic Development
Dave Loveland, DOT
Diana Parker, County Hearing Examiner
Wayne Daltry, Smart Growth Director

LEE COUNTY ORDINANCE NO. 05-____
(Pine Island Compromise)
(CPA2004-16)

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 CPA2004-16 (PERTAINING TO THE PINE ISLAND COMMUNITY PLAN COMPROMISE) APPROVED DURING THE COUNTY'S 2004/2005 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO ADOPTED TEXT AND MAPS; 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 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 Florida Statutes and the Lee County Administrative Code on May 23, 2005; and,

WHEREAS, the Board held a public hearing for the transmittal of the proposed amendment on June 1, 2005. At that hearing, the Board approved a motion to send, and did later send, proposed amendment CPA2004-16 pertaining to the Pine Island Community Plan Compromise to the Florida Department of Community Affairs ("DCA") for review and comment; and,

WHEREAS, at the June 1, 2005 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 August 19, 2005; and,

WHEREAS, at a public hearing on October 12, 2005, the Board moved to adopt the proposed amendment to the Lee Plan set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, THAT:

SECTION ONE: PURPOSE, INTENT AND SHORT TITLE

The Board of County Commissioners of Lee County, Florida, in compliance with Chapter 163, Part II, Florida Statutes, and with Lee County Administrative Code AC-13-6, conducted public hearings to review proposed amendments to the Lee Plan. The purpose of this ordinance is to adopt 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 "2004/2005 Regular Comprehensive Plan Amendment Cycle CPA2004-16 Pine Island Community Plan Compromise Ordinance."**

SECTION TWO: ADOPTION OF LEE COUNTY'S 2004/2005 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE

The Lee County Board of County Commissioners amends the existing Lee Plan, adopted by Ordinance Number 89-02, as amended, by adopting an amendment, as revised by the Board on October 12, 2005, known as CPA2004-16. CPA2004-16 amends the Plan to incorporate the terms of a compromise into the Policies and Objectives specific to the Pine Island Community.

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 _____, who moved its adoption. The motion was seconded by Commissioner _____, and, when put to a vote, the vote was as follows:

Robert P. Janes

Douglas St. Cerny

Ray Judah

Tammy Hall

John Albion

DONE AND ADOPTED this 12th day of October 2005.

ATTEST:
CHARLIE GREEN, CLERK

LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: _____
Deputy Clerk

BY: _____
Chairman

DATE: _____

Approved as to form by:

Donna Marie Collins
County Attorney's Office

CPA 2004-16

**GREATER PINE ISLAND COMPROMISE
BoCC SPONSORED
SPECIAL AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

**Publically Initiated Application
and Lee County Staff Analysis**

**BoCC Public Hearing Document
for the
October 12th Adoption Hearing**

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

August 19, 2005

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA 2004-16**



Text Amendment



Map Amendment

<input checked="" type="checkbox"/>	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
	Board of County Commissioners Hearing for Adoption

ORIGINAL STAFF REPORT PREPARATION DATE: May 18, 2005

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT/REPRESENTATIVE:

Lee County Board of County Commissioners, represented by the Lee County Division of Planning.

2. REQUEST:

Amend the Lee Plan as follows:

- A. Amend the Future Land Use Map series for specified parcels of land (total of approximately 157 acres) located in Section 31, Township 43 South, Range 22 East to change the Future Land Use classification shown on Map 1 from "Coastal Rural" to "Outlying Suburban." The property is generally located in the Bokeelia area south of Barrancas Avenue and north of Pinehurst Road;
- B. Amend the Pine Island Vision Statement and Goal 14 to recognize the value of preserving agricultural activities on the island;
- C. Amend the Future Land Use Element Policy 1.4.7, the Coastal Rural Policy, to allow the retention of active or passive agriculture in lieu of habitat restoration to regain density;
- D. Amend the current percentages of preserved or restored uplands in Policy 1.4.7;

- E. Amend the Lee Plan to add a policy that further defines the restoration standards referred to in Policy 1.4.7;
- F. Amend Housing Element Policy 100.2.3 to incorporate a reference to the Coastal Rural future land use category;
- G. Amend the Pine Island Vision Statement, Goal 14, Table 1(a) footnote 4, the Definition of Density in the Glossary, and any other Plan provisions to create a new transfer of development rights program for Pine Island; Amend the definition of Density to allow mixed use projects to retain some or all of their residential density that is typically lost to commercial acreage, if Pine Island TDRs are utilized to regain density; Amend the Mixed Use definition in the Glossary to better define mixed use projects;
- H. Evaluate creating a concurrency exception area for a portion of Pine Island Center; and,
- I. Evaluate establishing additional Urban Infill areas on the mainland portion of the County to be receiving areas for Pine Island TDRs. Evaluate increasing allowable bonus densities in specific locations based on a point system that incorporates several criteria.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** Planning staff recommends that the Board of County Commissioners transmit the proposed Lee Plan amendment to the Florida Department of Community Affairs for their review.

Recommended Map Change:

Amend the Future Land Use Map series for specified parcels of land (total of approximately 157 acres) located in Section 31, Township 43 South, Range 22 East to change the Future Land Use classification shown on Map 1 from "Coastal Rural" to "Outlying Suburban." The property is generally located in the Bokeelia area south of Barrancas Avenue and north of Pinehurst Road.

Recommended Text Changes:

VISION STATEMENT:

Pine Island - This community includes Greater Pine Island as described under Goal 14 along with surrounding smaller islands and some unincorporated enclaves near Cape Coral. Its future, as seen by Pine Islanders, will be a matter of maintaining an equilibrium between modest growth, ~~on the one hand~~ and a fragile ecology, ~~on the other~~ and a viable and productive agricultural community. Pine Island will continue to be a haven between urban sprawl approaching from the mainland and the wealth of the outer islands; a quiet place of family businesses, school children, farmers, and retirees enjoying the bounties of nature; a place devoid of high-rises, strip malls, and gated communities. Traffic constraints caused by the narrow road link to the mainland will limit future development, allowing the islands to evacuate from storms and protecting natural lands from unsustainable development. Wildlife and native vegetation will be protected; loss of wildlife habitat will be reversed; sidewalks and bike paths will connect

neighborhoods for young and old alike. Architectural standards for commercial buildings will encourage "Old Florida" styles, and historic buildings will be treasured. Pine Island will continue to be a place where people, and nature and agriculture exist in harmony, a place not very different from what it is today, an island as state-of-mind as much as a physical entity, its best features preserved and enhanced. Pine Islanders are historically vigilant about protecting their community and will work to ensure that their plans are carried out.

FUTURE LAND USE ELEMENT:

POLICY 1.4.7: The Coastal Rural areas will remain rural except for portions of properties where residential lots are permitted in exchange for permanent preservation or restoration of native upland habitats or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, on the remainder of the property. The standard maximum density is one dwelling unit per ten acres (1DU/10 acres). Maximum densities may increase as higher percentages of native habitat are permanently preserved or restored on the uplands portions of the site, or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, in accordance with the chart below. Permitted land uses include agriculture, fill-dirt extraction, conservation uses, and residential uses up to the following densities:

<u>Percentage of the on site uplands that are preserved or restored native habitats or continued in agricultural use on existing farmland</u>	<u>Maximum density if undeveloped land will be permanently preserved or restored as native habitats</u>	<u>Maximum density if undeveloped land will be continued in agricultural use on existing farmland</u>
0%	1 DU/ 10 acres	<u>1 DU/ 10 acres</u>
5%	1 DU/ 9 acres	
10%	1 DU/ 8 acres	<u>1 DU/ 9 acres</u>
15%	1 DU/ 7 acres	
20%	1 DU/ 6 acres	<u>1 DU/ 8 acres</u>
30%	1 DU/ 5 acres	<u>1 DU/ 7 acres</u>
40%	1 DU/ 4 acres	<u>1 DU/ 6 acres</u>
50%	1 DU/ 3 acres	<u>1 DU/ 5 acres</u>
60%	1 DU/ 2 acres	<u>1 DU/ 3 acres</u>
70%	1 /DU/ 1 acre	<u>1 DU/ 2 acres</u>

Existing farmland is depicted on Map 21. Areas for buffers, lakes, and utilities may consist of up to 10% of the upland preserve areas.

GOAL 14: GREATER PINE ISLAND. To manage future growth on and around Greater Pine Island so as to maintain the island's unique natural resources, and character and its viable and productive agricultural community and to insure that island residents and visitors have a reasonable opportunity to evacuate when a hurricane strike is imminent. For the

purposes of this plan, the boundaries of Greater Pine Island are indicated on the Future Land Use Map.

POLICY 14.2.5: Lee County will investigate the merits of creating a concurrency exception area for a portion of Pine Island Center. The concurrency exception area will promote the expansion of public transportation to and from the Greater Pine Island area.

OBJECTIVE 14.6: Agricultural Uses. To promote and preserve the rural character of Pine Island, Lee County will strive to foster a viable and productive agricultural community on the island.

POLICY 14.6.1: Lee County will maintain a map (Map 21) of all existing farmland on Pine Island.

POLICY 14.6.2: Lee County, by 2009, will evaluate creating a Purchase of Development Rights Program with the objective of preserving Pine Island agricultural uses.

POLICY 14.6.3: By 2007 Lee County will amend the Lee County Land Development Code to establish a Pine Island Transfer of Development Rights (TDR) program to supplement the existing wetland TDR program. The program will be open to properties depicted on Map 21 as well as other Pine Island lands deemed acceptable by the Board of County Commissioners.

HOUSING ELEMENT:

POLICY 100.2.3: Housing for farm workers, as defined by ss 420.503 Florida Statutes, may be permitted in the Rural, Coastal Rural, Open Lands, and Density Reduction/ Groundwater Resource land use categories without respect to the density limitations that apply to conventional residential districts. The density of such housing is limited to 50 occupants per acre of actual housing area and will be reviewed on a case-by-case basis during the planned development or Special Exception zoning process. The applicant must demonstrate that impacts of the farm worker housing will be mitigated.

GLOSSARY:

DENSITY - The number of residential dwelling or housing units per gross acre (du/acre). Densities specified in this plan are gross residential densities. For the purpose of calculating gross residential density, the total acreage of a development includes those lands to be used for residential uses, and includes land within the development proposed to be used for streets and street rights of way, utility rights-of-way, public and private parks, recreation and open space, schools, community centers, and facilities such as police, fire and emergency services, sewage and water, drainage, and existing man-made waterbodies contained within the residential development. Lands for commercial, office, industrial uses, natural water bodies, and other non-residential uses must not be included. Within the Caloosahatchee Shores community in the areas identified by Policy 21.4.2 commercial development that includes commercial and residential uses within the same project or the same building do not have to exclude the commercial lands from the density calculation.

For Mixed Use developments located on the mainland areas of the County, the density lost to commercial, office and industrial acreage can be regained through the utilization of TDRs that were created from Greater Pine Island Costal Rural or Greater Pine Island Urban Categories.

MIXED USE BUILDING - Mixed Use Building means a building that contains at least two different land uses (i.e. commercial and residential, R & D and residential, office and residential, commercial and civic use open to the public) that are related.

MIXED USE - The development, in a compact urban form, of land or building or structure with two or more different but compatible uses, such as but not limited to: residential, office, industrial and technological, retail, commercial, public, entertainment, or recreation. True mixed use developments primarily consist of mixed use buildings as defined by this Glossary.

LEE PLAN TABLE 1(A), FOOTNOTE 4:

4. No land will be rezoned on Pine Island, excluding the Matlacha, Bokeelia, and St. James City areas currently classified as Future Urban Areas, to a zoning district which permits a density higher than 3 dwelling units per gross acre. Land currently zoned in a zoning district which permits a residential density in excess of 3 dwelling units per gross acre will be allowed a density higher than 3 du/acre provided that all other applicable regulations are met, and provided further that no density will be allowed above that which is permitted for the land use category in which the property is located, or which is permitted by the zoning which was in effect for said property as of November 25, 1986, whichever is lower. Within the Future Urban Areas of Pine Island Center, rezonings that will allow in excess of 3 dwelling units per gross acre must "purchase" the density above 3 dwelling units per gross acre utilizing TDRs that were created from Greater Pine Island Costal Rural or Greater Pine Island Urban Categories.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The Hanson Report assigned a loss of \$9,000,000 in market value for the 157 acre "Bokeelia property."
- The subject 157 acre "Bokeelia property" is located outside of the Coastal High Hazard Area. The amendment does not increase density in the Coastal High Hazard Area.
- The proposed amendment of the 157 acre "Bokeelia property" restores it to its previous density and intensity of use.
- The State of Florida, in F.S. Chapter 163.3162, recognizes the importance of agricultural production. The state finds that agriculture is a major contributor to the economy of the state and that agricultural lands constitute unique and irreplaceable resources of statewide importance.

- The recognition of agriculture and the desire to preserve agricultural uses is a common topic in local comprehensive and general plans.
- Agricultural uses are an important part of the Pine Island landscape. Agricultural uses go hand in hand with the largely rural nature of the island.
- The unique micro-climate of Pine Island supports commercial production of subtropical fruits, ornamental palms, and vegetables. The goal of retaining agricultural uses on Pine Island "fits" with the character of the island as well as the constrained access to the island.
- Amending the Lee Plan with an intent to preserve agricultural uses and to allow the retention of active or passive agriculture in lieu of habitat restoration to regain density helps to address island character issues as well as limiting Bert Harris liability as stated in the Hanson Report.
- Policy 100.2.3 allows bona fide farmworker housing in the non-urban areas of the county in excess of their density limits. The Pine Island amendment placed all of the Rural lands on Pine Island into the new Coastal Rural land use category. No reference to amending Policy 100.2.3 was included in the Pine Island amendments. This was an oversight, and the policy should be corrected by adding the reference to Coastal Rural.
- Establishing a Pine Island TDR program will provide another option for land owners on Pine Island to gain value from their land and still preserve habitat and agricultural uses. Transferring development rights from Pine Island will have the affect of lowering potential future hurricane evacuation times and help address the constrained access dilemma of Pine Island.
- Establishing a Pine Island TDR program may help limit Bert Harris liability.

C. BACKGROUND INFORMATION

Lee County has a long history of encouraging local communities to take an active role in shaping a vision for their community. In the late 1980's the Greater Pine Island community conducted a planning study of their area of the county. This planning effort resulted in the adoption, in 1989, of a goal and subsequent objectives and policies specific to the Greater Pine Island area. A similar planning effort, to update the now decade-old study, was begun in 1999. This planning effort, the 2001 Greater Pine Island Community Plan Update (Update), proposed several amendments to the Pine Island portion of the Lee Plan. The required public hearings were held and the amendments were adopted by the Board of County Commissioners on January 9, 2003. The amendments were reviewed and approved by the Florida Department of Community Affairs (DCA). On March 7, 2003, the DCA issued a Notice of Intent to find the amendments in compliance with the applicable statutes and rule.

In accordance with state statutory requirements, there was a 21 day window in which an affected person could file a petition for a hearing, essentially challenging the DCA determination of compliance. Such a petition was filed on March 28, 2003. The State of Florida Division of Administrative Hearings assigned

the hearing Case # 03-1275 GM. Following this original petition, several parties petitioned to intervene on both sides of the issues. Because the DCA had found that the amendments were in compliance, the Administrative Law Judge was required to use the fairly debatable standard when determining compliance. This puts the petitioner and their interveners at a disadvantage as they would need to prove with a preponderance of the evidence that the plan amendments are not in compliance. Regardless of the legal standard, both Planning and Legal staff were confident that Lee County would prevail on most if not all issues raised at the hearing.

One of the more complex issues in the Pine Island amendments is the Coastal Rural future land use category. Coastal Rural is a new category that was placed on property that had previously been designated in the Rural future land use category. Coastal Rural was also applied to some 157 acres of property that had previously been designated in the Outlying Suburban category. The proposed new category reduced the allowable density from 1 dwelling unit per acre on the Rural lands and 3 dwelling units per acre on the Outlying Suburban lands to 1 dwelling unit per 10 acres. The Coastal Rural category, however, had provisions that would allow a return to 1 dwelling unit per acre if 70% of a property's native lands were preserved or if 70% of improved farmland was restored to native habitat. Several of the petition interveners owned land that was affected by this new future land use category. They objected to their properties being placed in the category, which they felt was a taking of their current development potential.

While not necessarily an integral part of the challenge to the Pine Island amendments, the Coastal Rural category was seen as a potential liability to the County under the provisions of the Bert J. Harris, Jr., Private Property Rights Protection Act. In order to better inform the Board of County Commissioners (Board), the County Attorney's Office, with Board support, commissioned an appraiser to conduct an evaluation of the economic impacts (if any) that might occur to the Pine Island market if the Pine Island amendments were in effect and implemented. The study was completed on August 4, 2004. The study, known as the Hanson Report, indicated that the only provisions of the Pine Island amendments that would cause an economic impact were those of the Coastal Rural future land use category. The Hanson Report provided that the Coastal Rural land use category would adversely affect passive agriculture, active agriculture, and those lands that were originally designated in the Outlying Suburban future land use category. The total loss in market value to these lands was estimated by the Hanson Report to be \$60,000,000.

With this information in hand, the County Attorney's Office scheduled this issue as a Board agenda item. There were various courses of action for the Board to consider. The Board chose to instruct Community Development staff to meet with the parties to evaluate the issues and to try to reach a compromise or settlement. During the month of October staff held several meetings and had numerous phone conversations with the parties involved in the Administrative Hearing. On November 4, 2004 the petitioner, along with the interveners on that side of the case, sent a letter to the County Attorney's Office. The letter indicated that they believed that a settlement prior to the November 29, 2004 hearing was unlikely. The letter also stated their intent to withdraw the petition challenging the Pine Island amendments on November 16, 2004.

The petition was in fact withdrawn by the petitioner and the Administrative Hearing was canceled. The Pine Island amendments, as adopted on January 9, 2003, went into full force and effect. Staff believed that there were certain issues that should still be addressed. The Board concurred and at their November

26, 2004 Regular Meeting they voted to initiate a Special Amendment cycle to address some of the concerns raised by the petitioner and interveners.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

COASTAL RURAL FUTURE LAND USE MAP AMENDMENTS - THE BOKEELIA PROPERTY:

The Pine Island amendments resulted in the adoption of a new future land use category and two separate future land use map (FLUM) amendments. Objective 1.4 "Non-Urban Areas" was amended by establishing a new "Coastal Rural" future land use category. The first future land use map amendment reclassified all "Rural" designated land to "Coastal Rural." The second amended the Future Land Use Map series to reclassify from "Outlying Suburban" to "Coastal Rural" 157 acres of agricultural land between Bokeelia and September Estates. The 2002 staff report that evaluated the proposed Pine Island amendments included the following discussion concerning this second FLUM amendment:

Figure 2, of the Update report shows the 157 acres located in northern Pine Island south of Bokeelia. Current allowable density on that land is three dwelling units per acre. The proposed land use change would lower allowable densities to a maximum of one dwelling unit per acre, if native vegetation on 70% of the site is preserved or restored. That action may lower personal property values and could have Bert Harris Act implications. The Plan Update document provides the following discussion concerning this property:

"The third exception, south of Bokeelia, is the most incongruous. This entire acreage is now in intense agricultural use, with much of it cleared during the past decade (see Figure 2). Apparently it had been considered as a potential expansion of the Bokeelia urban area. Since that time, the landowners have clearly indicated a preference for agriculture and have made no efforts to develop any of the land residentially. Thus these 157 acres should be reclassified to whatever designation is ultimately assigned to the rural lands to their east and west."

The Hanson Report assigned a loss of \$9,000,000 in market value for this property. This equates to almost one-sixth of the total estimated loss of market value that was attributed to the Plan Update Amendment. This property was the only property that was amended by the Plan Update to a category that would not in some fashion permit the property owner an ability to achieve the original maximum density.

The property also abuts Urban designated lands to the south. These properties are either designated Suburban or Outlying Suburban. The subject property connects these Suburban and Outlying Suburban areas to the Suburban designated Bokeelia area. The previous amendment had the affect of leaving these lands surrounded by the new Coastal Rural land use category. Staff notes that these Suburban and Outlying Suburban lands have previously been subdivided for residential use and have been sold off to individual owners. The current amendment, if approved, would restore the Bokeelia future urban area as it existed in the Lee Plan prior to the Plan Update Amendment. The subject 157 acres is in current agricultural use.

The planning consultant for the Plan Update Amendment believes that there is an alternative to restoring the Outlying Suburban designation on the subject site, that being the Rural land use category. Staff notes that this would still result in a lowering of the maximum standard density from a possible 3 dwelling units

per acre allowable under the Outlying Suburban to a maximum standard density of 1 dwelling unit per acre. Staff believes that establishing the Rural category on the subject site would still potentially result in Bert Harris liability on the County's part.

Planning staff notes that the subject 157 acres is located outside of the Coastal High Hazard Area. This fact can be clearly discerned by comparing the subject site's location with Lee Plan Map 5, the Coastal High Hazard Area. This amendment, therefore, does not increase density in the Coastal High Hazard Area and merely restores the previous density and intensity.

Given the restrictions contained in Policy 14.2.2, staff realizes that the property in question may never be able to achieve the maximum 3 dwelling units per acre. The property could, however, participate in a new TDR program, which is discussed in a later section of this report. The property would have some potential for commercial uses with the Outlying Suburban designation.

Staff Recommendation Concerning the "Bokeelia Property:"

Given the Bert Harris implications with this portion of the Plan Update Amendment, and in the interests of compromise, staff recommends that the property in question be amended back to its original designation of Outlying Suburban.

PRESERVATION OF AGRICULTURAL USES

The State of Florida has recognized the importance of agricultural activities. For example, Florida Statutes include a section, F.S. 163.3162, that relates this importance as a finding of the Legislature. This section is reproduced below:

The Legislature finds that agricultural production is a major contributor to the economy of the state; that agricultural lands constitute unique and irreplaceable resources of statewide importance; that the continuation of agricultural activities preserves the landscape and environmental resources of the state, contributes to the increase of tourism, and furthers the economic self-sufficiency of the people of the state; and that the encouragement, development, and improvement of agriculture will result in a general benefit to the health, safety, and welfare of the people of the state. It is the purpose of this act to protect reasonable agricultural activities conducted on farm lands from duplicative regulation.

The recognition of agriculture and the desire to preserve agricultural uses is a common topic in local comprehensive and general plans. The Lee Plan, in fact, includes such a Goal. This Goal is reproduced below:

GOAL 9: AGRICULTURAL LAND USES. *To protect existing and potential agricultural lands from the encroachment of incompatible land uses and to discourage the introduction or expansion of agricultural uses in the Future Urban Areas.*

The Lee Plan also recognizes that nothing in the Plan will be construed to permanently prohibit the conversion of agricultural uses to other land uses. The Lee Plan also includes an objective, Objective 9.1, and a map, Map 20, that place agriculturally used parcels of more than 100 acres on an agricultural overlay. This map depicts agricultural areas on Pine Island both north and south of the center.

Agricultural uses are an important part of the Pine Island landscape. Agricultural uses go hand in hand with the largely rural nature of the island. Staff also recognizes the unique micro-climate of Pine Island that supports commercial production of subtropical fruits, ornamental palms, and vegetables. The goal of retaining agricultural uses on Pine Island "fits" with the character of the island as well as the constrained access to the island. Amending the Lee Plan with an intent to preserve agricultural uses helps to address island character issues as well as limiting Bert Harris liability as stated in the Hanson Report. The Pine Island Goal and the Coastal Rural category could be amended to add the generally accepted idea that retention of agricultural uses is in the best interest of the community. The retention of agricultural uses could also be incorporated as another option to restoration in the Coastal Rural land use category.

Staff Recommendation Concerning Preservation of Agricultural Uses:

Staff recommends amending the Pine Island Vision Statement and Goal 14 to recognize the value of preserving agricultural activities on the island. Staff recommends that Pine Island Coastal Rural lands in current agricultural production be depicted on a map in the Future Land Use Map series. The purpose in depicting these lands is more fully discussed in the next section of this report. The recommended amendments to the Vision Statement and Goal 14 are shown below:

VISION STATEMENT:

Pine Island - This community includes Greater Pine Island as described under Goal 14 along with surrounding smaller islands and some unincorporated enclaves near Cape Coral. Its future, as seen by Pine Islanders, will be a matter of maintaining an equilibrium between modest growth, ~~on the one hand~~ and a fragile ecology, ~~on the other~~ and a viable and productive agricultural community. Pine Island will continue to be a haven between urban sprawl approaching from the mainland and the wealth of the outer islands; a quiet place of family businesses, school children, farmers, and retirees enjoying the bounties of nature; a place devoid of high-rises, strip malls, and gated communities. Traffic constraints caused by the narrow road link to the mainland will limit future development, allowing the islands to evacuate from storms and protecting natural lands from unsustainable development. Wildlife and native vegetation will be protected; loss of wildlife habitat will be reversed; sidewalks and bike paths will connect neighborhoods for young and old alike. Architectural standards for commercial buildings will encourage "Old Florida" styles, and historic buildings will be treasured. Pine Island will continue to be a place where people, ~~and nature~~ and agriculture exist in harmony, a place not very different from what it is today, an island as state-of-mind as much as a physical entity, its best features preserved and enhanced. Pine Islanders are historically vigilant about protecting their community and will work to ensure that their plans are carried out.

GOAL 14:

GOAL 14: GREATER PINE ISLAND. To manage future growth on and around Greater Pine Island so as to maintain the island's unique natural resources, ~~and character~~ and its viable and productive agricultural community and to insure that island residents and visitors have a reasonable opportunity to evacuate when a hurricane strike is imminent. For the purposes of this plan, the boundaries of Greater Pine Island are indicated on the Future Land Use Map.

Staff also believes that a new Pine Island Objective and subsequent Policy addressing agricultural uses should be incorporated into Goal 14:

OBJECTIVE 14.6: Agricultural Uses. To promote and preserve the rural character of Pine Island, Lee County will strive to foster a viable and productive agricultural community on the island. Lee County will incorporate several land use "tools" such as purchase and transfer of development rights programs into the Lee County Land Development Code to preserve agricultural uses on Pine Island.

POLICY 14.6.1: Lee County will maintain a map (Map 21) of all existing farmland on Pine Island.

AMEND POLICY 1.4.7, THE COASTAL RURAL POLICY, TO ALLOW THE RETENTION OF ACTIVE OR PASSIVE AGRICULTURE IN LIEU OF HABITAT RESTORATION TO REGAIN DENSITY:

As stated previously, one of the more complex issues in the Pine Island amendments is the Coastal Rural future land use category. Coastal Rural is a new category that was placed on property that had previously been designated in the Rural future land use category and the 157 acres of previously designated Outlying Suburban lands. The Coastal Rural category reduced the allowable density from 1 dwelling unit per acre on the Rural lands and 3 dwelling units per acre on the Outlying Suburban lands to 1 dwelling unit per 10 acres. The Coastal Rural category, however, has provisions that includes a return to 1 dwelling unit per acre if 70% of a property's native lands were preserved or if 70% of improved farmland is restored to native habitat. The adopted Coastal Rural category descriptor policy, Policy 1.4.7 is reproduced below:

POLICY 1.4.7: *The Coastal Rural areas will remain rural except for portions of properties where residential lots are permitted in exchange for permanent preservation or restoration of native upland habitats on the remainder of the property. The standard maximum density is one dwelling unit per ten acres (1DU/10 acres). Maximum densities may increase as higher percentages of native habitat are permanently preserved or restored on the uplands portions of the site in accordance with the chart below. Permitted land uses include agriculture, fill-dirt extraction, conservation uses, and residential uses up to the following densities:*

<i>Percentage of the on site uplands that are preserved or restored native habitats</i>	<i>Maximum density</i>
0%	1 DU/ 10 acres
5%	1 DU/ 9 acres
10%	1 DU/ 8 acres
15%	1 DU/ 7 acres
20%	1 DU/ 6 acres
30%	1 DU/ 5 acres
40%	1 DU/ 4 acres
50%	1 DU/ 3 acres

60%	1 DU/ 2 acres
70%	1 /DU/ 1 acre

The Hanson Report concluded that the cost of restoration exceeded the reduction of market value for properties with active agricultural and “the appraiser consultant does not consider the “density recapture model” to be economically feasible for active agricultural properties.” The Report then provided that “the estimated economic impact to active agricultural properties is estimated to be \$41.2 million, or rounded to \$40.0 million.” While these conclusions have been a source of debate in previous public hearings, no definitive documentation has been submitted to refute the appraiser’s report.

The Civic Association, the major supporter for the Plan Update Amendment, did offer the interveners a “Settlement Proposal” that did recognize the importance of agricultural activity to the “desired character of Pine Island.” This proposal was never agreed to by the interveners. The merits of the proposal have never been publicly discussed until now. The proposal had two elements which are reproduced below:

- 1. Modify the Greater Pine Island Community Plan to include preservation of farms as a key factor in the desired character of Pine Island.*
- 2. Modify the “Coastal Rural” clustering standards to permit the use of farm easements as an alternative to upland preservation requirements, setting the maximum densities of clustered developments at levels which continue to primarily reward preservation/restoration of pine flatwoods but also substantially reward preservation of farmland.*

The proposal provided that these concepts would be enacted by amending the Lee Plan’s Vision for Pine Island and Policy 1.4.7.

Staff recognizes that the existing agricultural uses located on Pine Island are one of the principal uses that contributes to the Rural character of Pine Island. Staff in previous sections of this report has recommended that the Vision and goal for Pine Island recognize the importance of agricultural activity as one of the desired character traits of the island. Allowing preservation of agricultural uses in lieu of habitat preservation does help to promote continued agricultural activity on the island and furthers the desired rural character. To assure that development never occurs on any land that has opted to preserve agriculture versus habitat, a legally binding perpetual easement to Lee County should be prepared.

Staff Recommendation Concerning Policy 1.4.7:

To implement the concept of preserving agricultural use in lieu of preserving or restoring habitat, staff recommends the following modification to Policy 1.4.7:

POLICY 1.4.7: The Coastal Rural areas will remain rural except for portions of properties where residential lots are permitted in exchange for permanent preservation or restoration of native upland habitats or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, on the remainder of the property. The standard maximum density is one dwelling unit per ten acres (1DU/10 acres). Maximum densities may increase as higher percentages of native habitat are permanently preserved or restored on the uplands portions of the site, or a commitment, in the form of a perpetual easement, to preserve agricultural activity on

existing farmland, in accordance with the chart below. Permitted land uses include agriculture, fill-dirt extraction, conservation uses, and residential uses up to the following densities:

<u>Percentage of the on site uplands that are preserved or restored native habitats or continued in agricultural use on existing farmland</u>	<u>Maximum density if undeveloped land will be permanently preserved or restored as native habitats</u>	<u>Maximum density if undeveloped land will be continued in agricultural use on existing farmland</u>
0%	1 DU/ 10 acres	<u>1 DU/ 10 acres</u>
5%	1 DU/ 9 acres	
10%	1 DU/ 8 acres	<u>1 DU/ 9 acres</u>
15%	1 DU/ 7 acres	
20%	1 DU/ 6 acres	<u>1 DU/ 8 acres</u>
30%	1 DU/ 5 acres	<u>1 DU/ 7 acres</u>
40%	1 DU/ 4 acres	<u>1 DU/ 6 acres</u>
50%	1 DU/ 3 acres	<u>1 DU/ 5 acres</u>
60%	1 DU/ 2 acres	<u>1 DU/ 3 acres</u>
70%	1 /DU/ 1 acre	<u>1 DU/ 2 acres</u>

Existing farmland is depicted on Map 21. Areas for buffers, lakes, and utilities may consist of up to 10% of the upland preserve areas.

EVALUATE THE CURRENT PERCENTAGES OF PRESERVED OR RESTORED UPLANDS IN POLICY 1.4.7:

Staff was concerned that preserving 70% of a site to regain the one unit per acre density could jeopardies the projects ability to provide the needed on site utilities. The last sentence in the recommended changes to Policy 1.4.7 above partially address this issue. This added flexibility alleviates the concerns staff had with the one zoning case that proposed to cluster its residential density consistent with the current Coastal Rural policy. With this concern addressed the percentages can remain as they are. Should the Board want to lower the percentages as a matter of policy, that can be accomplished with direction to staff at the transmittal public hearing.

FURTHER DEFINE THE RESTORATION STANDARDS REFERRED IN POLICY 1.4.7:

Standards for the restoration of impacted property have been submitted for review by the Greater Pine Island Civic association. These standards were submitted with additional Land Development Code changes to implement the revised Pine Island Lee Plan objectives and policies. Staff review is currently incomplete. This issue may have to be revisited in the future.

FARMWORKER HOUSING:

Staff recommends adding a reference in Policy 100.2.3 to the Coastal Rural future land use category. Policy 100.2.3 allows bona fide farmworker housing in the non-urban areas of the county in excess of their density limits. The Pine Island amendment placed all of the Rural lands on Pine Island into the new Coastal Rural land use category. No reference to amending Policy 100.2.3 was included in the Pine Island amendments. Staff believes this was an oversight, but in any case this farmworker housing issue should be corrected.

Staff Recommendation Concerning Policy 100.2.3:

Staff recommends the following additional language for Policy 100.2.3:

POLICY 100.2.3: Housing for farm workers, as defined by ss 420.503 Florida Statutes, may be permitted in the Rural, Coastal Rural, Open Lands, and Density Reduction/ Groundwater Resource land use categories without respect to the density limitations that apply to conventional residential districts. The density of such housing is limited to 50 occupants per acre of actual housing area and will be reviewed on a case-by-case basis during the planned development or Special Exception zoning process. The applicant must demonstrate that impacts of the farm worker housing will be mitigated. (Amended by Ordinance No. 94-30, 00-22, 03-19)

CREATION OF NEW PURCHASE OF DEVELOPMENT RIGHTS PROGRAM:

The loss of farmland and open space throughout the country has increasingly become an important issue. Land use "tools" have been created to preserve, in some fashion, lands that states and local jurisdictions deem appropriate. Purchase of Development Rights (PDR) programs are an example of one of these land use tools. PDRs have been used successfully in many areas of the nation.

Under a PDR program, a landowner voluntarily sells the rights to certain types of development from a parcel of land to a public agency or other organization interested in resource protection. The concept is similar to TDRs in that PDR programs recognize the concept that a "bundle of rights" are associated with ownership of land. PDR programs recognize that fee simple ownership of real estate allows the owner to sell, lease, or trade any one or more, or all of the bundle of rights to their property, subject to the limitations of the legislative power of the local government. The right to develop a piece of land for residential, commercial, or industrial uses is a right within the bundle. The PDRs involves the sale of that right while leaving all the remaining rights as before. An easement is placed upon the property, thereby assuring that the severed type of development will not occur on that particular property. The landowner is generally compensated for the value of the rights to develop that are removed from the land.

A PDR program can be an effective tool to help maximize a community's conservation efforts. Money for PDR programs can be raised through a variety of means, including bonding initiatives, private grants, and various taxation options. Many communities have found matching dollars from state and federal sources.

Creating a PDR program is a viable option to help farmers achieve the economic benefits accrued from the development potential of the land, while having the ability to keep the land as agricultural. PDR programs provide many benefits from its completely voluntary nature. No landowner is coerced into giving up or selling the land or the development rights. This type of program also provides a permanent

solution with the placement of an agricultural conservation easement on the subject land. Escape clauses can be incorporated into the program if surrounding development or economic conditions have made farming on the land impossible. Another benefit of a PDR program is that it makes it easier for one farmer to pass the farm on to an heir interested in continuing the farming activities. Once the development rights have been separated from the land, the value of the parcel typically declines to its agricultural value. This generally has an enormous effect on reducing the inheritance tax liability.

The primary disadvantage of PDR is the cost involved. In the case of a governmental entity purchasing the PDR, some sort of tax is generally the primary funding source. The topic of instituting new taxes is always controversial.

Staff Recommendation Concerning the Establishment of a PDR Program:

Staff recommends that the Board of County Commissioners evaluate creating a PDR program for agricultural lands within the Coastal Rural areas of Pine Island. Staff believes the evaluation of creating a PDR program should include an evaluation of establishing a dedicated funding source to initially fund the program. Staff recommends that a new policy calling for this evaluation be added with the new proposed Agricultural Uses Objective, Objective 14.6:

POLICY 14.6.2: Lee County, by 2009, will evaluate creating a Purchase of Development Rights Program with the objective of preserving Pine Island agricultural uses.

TRANSFER OF DEVELOPMENT RIGHTS (TDR):

The County has an existing transfer of development rights (TDR) program with the intent of transferring development rights from wetlands to mainland areas with a future land use designation of Intensive Development, Central Urban, or Urban Community. This program is detailed in Chapter 2 of the Lee County LDC. The current program has had limited participation. This fact is discussed further in the next section, TDR Market Stimulation.

The creation of additional TDR options under the Land Development Code can help the County address equity and fairness issues that have been raised as well as helping the County achieve true mixed uses in mainland areas of the County consistent with the Lee Plan's Evaluation and Appraisal Report (EAR).

Staff recommends that the County enact a transfer of development rights program for Greater Pine Island. This program will allow for the creation of TDRs in the Coastal Rural future land use category. One or more Coastal Rural TDRs could be allowed for each acre of Coastal Rural that is protected from commercial and residential development, either with a conservation easement or an agricultural conservation easement. Once created these Coastal Rural development rights become eligible for use both on and off Pine Island. Should the Coastal Rural TDR's remain on Pine Island the maximum density should be one dwelling unit per Coastal Rural TDR. If the Coastal Rural TDR's are subsequently transferred to an appropriate urban category on mainland Lee County, the density should be increased to two dwelling units per Coastal Rural TDR as an incentive. These details can be finalized in the Land Development Code amendment that establishes this TDR program.

In this way, Coastal Rural TDRs could be utilized to increase the allowable density on contiguous or non-contiguous Coastal Rural lands. The standard maximum density of one dwelling unit per ten acres

(1DU/10 acres) could be raised to a maximum of one dwelling unit per two and one-half acres (1DU/2.5 acres). Creation, preservation or restoration of native habitat could be reduced or not required at all.

Staff also recommends establishing a transfer of development rights program for Greater Pine Island that will allow for the creation of transfer of development rights from the areas designated in urban categories. In order to maintain the rural character and to help reduce the buildout population of Pine Island such a TDR program for the urban designated lands could prove useful. These TDRs would utilize the underlying density of the urban future land use category with the property protected from commercial and residential development via a conservation easement. These programs might prove useful once the level of service on Pine Island Road is exceeded and residential Development Orders are limited to one third of the current allowable density, as stated in Policy 14.2.2.

Staff Recommendation Concerning Establishing a Pine Island TDR Program:

One of the main impetus in establishing a program has been as a result of criticisms of the Plan Update Amendment raised by large land owners, much of which is in active agricultural use. Establishing a TDR program will provide another option for these land owners on Pine Island. Moving development rights from Pine Island will have the effect of lowering potential future hurricane evacuation times and help address the constrained access dilemma of Pine Island. As Coastal Rural has been the focus of discussions and possible compromise, staff believes the program should target existing farmland as depicted on Map 21, but be open to all properties on Pine Island. Staff recommends that the following policy be incorporated under proposed Objective 14.6:

POLICY 14.6.3: By 2007 Lee County will amend the Lee County Land Development Code to establish a Pine Island Transfer of Development Rights (TDR) program to supplement the existing wetland TDR program. The program will be open to properties depicted on Map 21 as well as other Pine Island lands deemed acceptable by the Board of County Commissioners.

TDR MARKET STIMULATION:

In order for any TDR program to be successful there must be a market for TDRs. Staff has researched establishment of TDR programs in a variety of local governments, all of which stress the importance of providing a market to make the program successful. The County's current TDR program has seen modest levels of participation. Staff believes several modifications to County regulations are necessary in order to assure a successful TDR program for Pine Island. The necessary changes are discussed below.

In order to stimulate the mainland TDR market, the Lee Plan should be amended to allow true mixed use developments to maintain some or all of their residential density that is lost to the commercial acreage. In accordance with the current Lee Plan definition of Density, lands used for commercial, office, industrial uses, natural water bodies, and other non-residential uses must be removed from the project area prior to the density calculation. Staff recommends modifying the current definition of Density to allow the areas used for commercial and office use to remain in the residential density calculation, if Pine Island TDRs are utilized to make up the difference in density, utilizing the current definition. Staff recommends the following modification to the Density definition in the Glossary:

DENSITY - The number of residential dwelling or housing units per gross acre (du/acre). Densities specified in this plan are gross residential densities. For the purpose of calculating gross residential density, the total acreage of a development includes those lands to be used for residential

uses, and includes land within the development proposed to be used for streets and street rights of way, utility rights-of-way, public and private parks, recreation and open space, schools, community centers, and facilities such as police, fire and emergency services, sewage and water, drainage, and existing man-made waterbodies contained within the residential development. Lands for commercial, office, industrial uses, natural water bodies, and other non-residential uses must not be included. Within the Caloosahatchee Shores community in the areas identified by Policy 21.4.2 commercial development that includes commercial and residential uses within the same project or the same building do not have to exclude the commercial lands from the density calculation. For true mixed use developments located on the mainland areas of the County, the density lost to commercial, office and industrial acreage can be regained through the utilization of TDRs that are either created from the Greater Pine Island Coastal Rural future land use category or previously created TDRs. True mixed use developments must be primarily multi-use structures as defined in this Glossary as a mixed use building.

To define true mixed use developments, staff recommends adding the following definition to the Glossary:

MIXED USE BUILDING - Mixed Use Building means a building that contains at least two different land uses (i.e. commercial and residential, R & D and residential, office and residential, commercial and civic use open to the public) that are related.

Staff also recommends amending the Mixed Use definition in the Glossary of the Lee Plan to better define what a true mixed project is:

MIXED USE - The development, in a compact urban form, of land or building or structure with two or more different but compatible uses, such as but not limited to: residential, office, industrial and technological, retail, commercial, public, entertainment, or recreation. True mixed use developments primarily consist of mixed use buildings as defined by this Glossary.

Staff also recommends revising Table 1(a), footnote 4, which restricts the density in Pine Island Center to 3 dwelling units per acre. This amendment will allow property to regain a density of up to 6 dwelling units per acre in the urban areas of Pine Island Center if Coastal Rural TDRs or Pine Island Urban Category TDRs are utilized.

4. ~~No land will be rezoned on Pine Island, excluding the Matlacha, Bokeelia, and St. James City areas currently classified as Future Urban Areas, to a zoning district which permits a density higher than 3 dwelling units per gross acre. Land currently zoned in a zoning district which permits a residential density in excess of 3 dwelling units per gross acre will be allowed a density higher than 3 du/acre provided that all other applicable regulations are met, and provided further that no density will be allowed above that which is permitted for the land use category in which the property is located, or which is permitted by the zoning which was in effect for said property as of November 25, 1986, whichever is lower. Within the Future Urban Areas of Pine Island Center, rezonings that will allow in excess of 3 dwelling units per gross acre must "acquire" the density above 3 dwelling units per gross acre utilizing TDRs that were created from Greater Pine Island Coastal Rural or Greater Pine Island Urban Categories.~~

Staff is recommending the above mentioned changes to the footnote with the understanding that under the restrictions contained in Policy 14.2.2 and LDC Section 2-48, rezoning property to residential uses alone is not achievable. The November 17, 2004 staff white paper discussed a potential Pine Island compromise and recommended evaluating the creation of a concurrency exception area for a portion of Pine Island Center. Establishing a concurrency exception area would allow additional development appropriate for Pine Island Center, as contemplated by this proposed footnote language.

The Florida growth management statutes have specific requirements that must be met in order to establish a concurrency exception area, including projects that promote public transportation. Lee County has never established such an area. Staff recommends that the Board retain a consultant that has experience with the formation of concurrency exception areas to investigate the merits of increasing public transportation and allowing additional growth in Pine Island Center. The following policy implements this recommendation. The money earmarked for Community Planning activities in the Planning Division budget could be used to finance this and other community planning studies.

POLICY 14.2.5: Lee County will investigate the merits of creating a concurrency exception area for a portion of Pine Island Center. The concurrency exception area will promote the expansion of public transportation to and from the Greater Pine Island area.

CREATION OF URBAN INFILL AREAS:

Staff recommends establishing new Urban Infill Areas on the mainland that will be targeted for higher density mixed use developments. These areas should have an emphasis on urban form and design. Staff anticipates addressing this issue further in the TDR LDC amendment if the Board of County Commissioners is amenable to their creation.

B. CONCLUSIONS:

The proposed amendment does represent a compromise. The affect of the amendment should serve to limit the County's liability under the Bert Harris Act. The amendment does further the Pine Island Vision.

C. STAFF RECOMMENDATION:

Staff recommends that the Board of County Commissioners transmit the proposed plan amendment to the Florida Department of Community Affairs for their review.

PART III - LOCAL PLANNING AGENCY REVIEW AND RECOMMENDATION

DATE OF PUBLIC HEARING: May 23, 2005

A. LOCAL PLANNING AGENCY REVIEW

Planning staff provided a summary concerning the proposed amendment. Staff stated that the amendment proposes to add a new Objective, dealing with Agricultural Uses, and a new map, proposed Map 21, depicting existing farmland on Pine Island. The amendment also proposes establishing an additional County Transfer of Development Rights (TDR) program. In addition, the amendment also proposes to incorporate the concept of agricultural preservation or retention in lieu of preservation or restoration of habitat. Staff also informed the LPA that the amendment also proposes to restore the Outlying Suburban designation to the 157 acre "Bokeelia Property." Staff provided a brief summary of the text changes.

The Civic Association Planning consultant addressed the LPA with several concerns, such as the proposed density that could be achieved with the proposed agricultural preservation or retention option. The consultant expressed concern over the use of escape clauses in agricultural conservation easements. The consultant also stated that the proposed 10% flexibility in Policy 1.4.7 for Lakes, Buffers, or utilities is too much. The consultant also discussed restoration costs and submitted cost estimates from a consultant in that field (Kevin Irwin). The consultant provided that even if the 157 acre "Bokeelia Property" is not in the Coastal High Hazard but has the same exposure as the rest of Pine Island. The consultant recommended that the Rural land use designation be considered for this property.

Several owners of large tracts on Pine Island addressed the LPA. Many mentioned the consultant cost estimate as being unrealistic. Several stated their belief that the proposed amendment did not go far enough in addressing Bert Harris takings. One person spoke in favor of establishing a purchase of development rights program. One person stated that they perceived that nobody wants the input from the landowners. Several stated that they were not included in any discussions prior to the staff report being issued, and the lateness of the report. One questioned why the County was not planning on constructing an additional bridge to Pine Island. Several spoke to their desire for Lee County to repeal the density and clustering provisions of the Coastal Rural designation.

One member of the Civic Association addressed the LPA and stated that the farm easement and TDRs were good ideas. This member also stated he potentially had concerns for a transportation concurrency exception area for Pine Island center. This member also stated that making the change to the farm worker policy was fair and a clean-up item.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** The LPA recommends that the Board of County Commissioners transmit the proposed amendment.
2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** As advanced by staff in the Staff Report.

C. VOTE:

NOEL ANDRESS	AYE
MATT BIXLER	AYE
DEREK BURR	ABSENT
RONALD INGE	NAY
CARLETON RYFFEL	AYE
FRED SCHILFFARTH	ABSENT
RAYMOND SCHUMANN	ABSENT

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

DATE OF TRANSMITTAL HEARING: June 1, 2005

A. BOARD REVIEW:

Planning staff provided a brief overview of the proposed amendment. One member of the Board commented on liking the concept of TDRs but expressed concern in promoting further development on Pine Island by pursuing a transportation concurrency exception area for Pine Island Center. This member questioned providing increased mass transit services when further development is not encouraged. Staff responded that Pine Island Center was already a designated urban area and that the provision of mass transit was one of the criteria in establishing an exception or infill area under Florida Statutes. Staff provided that the private sector may be asked to participate in the costs of providing an increased level of service to the island. Another Board member questioned the flexibility factor for utilities contained in Policy 1.4.7.

A consultant to the Greater Pine Island Civic Association addressed the Board. This consultant stated that he liked much of the staff recommendation but thought the amendment went too far in certain areas. For example the 10% allowance for buffers, lakes, and utilities was too much. The proposed agricultural preservation in lieu of habitat preservation or restoration was also mentioned as too much. The consultant also recommended that the Rural category be considered for the 157 acre "Bokeelia Property." The consultant also supplied a memo from a local ecologist depicting estimated restoration costs.

A representative of the Pine Island Agriculture and Landowners Association addressed the Board. This representative stated that he thought the purpose of this amendment was to bring the people of Pine Island together and to reduce the County's exposure under the Bert Harris Act. The representative stated that the proposed amendment does not reach their objective to restore the density back to 1 dwelling unit per acre. The representative stated that the TDRs were a good idea, but didn't know if it would work, and he noted the promise to do it in 2 years. The representative also stated that the amendment reflected a missed opportunity to address the Policy 14.2.2 further density reduction issue.

Several members of the public addressed the Board with comments for and against the amendment. These comments ranged from the 157 acre property amendment was a mistake, to the County should build a new bridge to Pine Island.

Several owners of existing agricultural operations on Pine Island addressed the Board. Several speakers stated that the Update Amendment took value away from their agricultural lands. Several speakers stated their belief that the restoration costs depicted in the submitted memo are excessively low.

The County Attorney's Office commented that the word "may" should be substituted for the word "will" in the last bullet on page 6 of the staff report. The attorney also provided that the proposed amendment does not eliminate Bert Harris liability on Coastal Rural lands. The attorney also noted that the submitted memo on restoration costs were stated as being based on grazing land which is not typical of Pine Island agriculture. Planning staff noted that the proposed change to Policy 1.4.7 would allow 1 dwelling unit per 2 acres on 30% of the property while still allowing the agricultural uses and associated income on 70% of the property.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. **BOARD ACTION:** The Board voted to transmit the proposed amendment, as recommended by the staff and the local planning agency, to the Florida Department of Community Affairs for their review.
2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the finding of facts, noting the word change in the last bullet of page 6, as advanced by the staff report.

C. VOTE:

JOHN ALBION	<u>AYE</u>
TAMMY HALL	<u>AYE</u>
BOB JANES	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
DOUG ST. CERNY	<u>AYE</u>

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

DATE OF ORC REPORT: August 19, 2005

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS

The Florida Department of Community Affairs Objections, Recommendations and Comments Report provides the following comments and recommendations:

Inadequate Guidelines: *The proposed Policy 14.6.3 states: "By 2007 Lee County will amend the Lee County Land Development Regulation to establish a Pine Island Transfer of Development Rights (TDR) program to supplement the existing wetland TDR program. The program will be open to properties depicted on Map 21 as well as other Pine Island lands deemed acceptable by the Board of County Commissioners."*

The intent of this policy is to promote the transfer of development rights from Pine Island in order to help protect agriculture and the rural character of the island. However, the proposed policy does not establish meaningful and predictable guidelines that would direct the implementation of the program and, as well, guide the formulation of the guidelines and standards to be included in the land development regulations. Although reference is made in the policy to the properties depicted on a Map 21, no map labeled "Map 21" was included. A series of maps are included with the amendment showing various situations on the island; however, no statement is included in the policy to show that the existing agricultural areas shown on those maps are targeted sending areas. In addition, the policy provides an open-ended discretion for other properties on the island "deemed acceptable by the Board of County Commissioners". This provision makes the determination of areas subject to the transfer program unpredictable. Furthermore, no guidelines for the rate of transfer are included. Lastly, the policy neither identifies the areas that would serve as the receiving lands, nor provide a general guide for their selection. Chapter 163.3177(6)(a), F.S.; Rule 9J-5.003(90), 9J-5.005(6), 9J-5.006(3)(c)1., & 7., FAC.

Recommendation: *Please, revise the policy to address all the issues raised in the above objection in order to provide sufficient guidance for the land development regulation and enable an effective and successful implementation of the program. The policy should clearly identify, on a map, the sending areas on the island based on appropriate and relevant data and analysis. Another alternative would be to include a sentence in the proposed Policy 14.6.3 indicating that no actual transfer will occur until more specific guidelines addressing the issues raised above are amended into the plan. Similarly, the receiving areas on the mainland should be clearly identified; alternatively, the county could establish a set of guidelines and criteria that shall be used for selecting the receiving areas. The receiving areas shall not be environmentally sensitive areas or located in the coastal high hazard areas.*

B. STAFF RESPONSE

Staff's original intent was to provide the guidelines within the Lee County Land Development Code (LDC) through an amendment to the Code after the plan amendment was adopted. Staff will address the DCA concerns with additional Lee Plan Policy language. The DCA indicated that proposed Map 21, which

consists of 2 sheets, was not included with the amendment. Staff has verified that the Maps were included in the transmittal package, and that they will be included in the adoption package, if they are adopted.

The DCA comments and recommendation centered around the creation of a TDR program for Pine Island. The comment singled out proposed Policy 14.6.3 by stating that the policy “does not establish meaningful and predictable guidelines that would direct the implementation of the program,” and does not guide “the formulation of the guidelines and standards to be included in the land development regulations.” DCA further states that “no statement is included in the policy to show that the existing agricultural areas shown on those maps are the targeted sending areas.” Staff proposes to address this comment by adding the following underlined language to the transmitted proposed policy:

POLICY 14.6.1: Lee County will maintain a map (Map 21) of all existing farmland on Pine Island. These mapped existing farmlands and Pine Island lands containing indigenous vegetation are the primary targeted sending areas for the creation of transfer of development rights (TDR) on Pine Island.

Staff does not want to preclude other transfers that make sense. Lands with significant or substantial indigenous vegetation should also be eligible to participate in the program and staff included this thought in the above mentioned language. Staff recommends that the amended proposed Policy 14.6.1, as depicted above, be adopted.

DCA comments also provide that Policy 14.6.3 “provides an open-ended discretion for other properties on the island” to participate in the TDR program if “deemed acceptable by the Board of County Commissioners.” DCA further states that “this provision makes the determination of areas subject to the transfer program unpredictable.” Staff respectfully disagrees. Staff sees this flexibility as sound planning given the islands access and hurricane evacuation issues. Staff today can not anticipate exactly which properties will seek to participate. Staff does not believe that there will be an overwhelming number of properties seeking to participate in the program, however, if it were to occur, this would be a positive outcome for an island with Pine Island issues. Reducing density on Pine Island through a TDR program represents sound planning utilizing a sound planning technique. The history of TDRs to date in Lee County is one of sparse use. A limited amount of properties have created transfer of development rights. Proposed Policy 14.6.3 is predictable in that the program is open to any land on Pine Island. Staff recommends that the revised proposed policy be adopted:

POLICY 14.6.3: By 2007 Lee County will amend the Lee County Land Development Code to establish a Pine Island Transfer of Development Rights (TDR) program to supplement the existing wetland TDR program. The program will be encouraged for properties depicted on Map 21 as well as other Pine Island lands as promoting reduced densities in the Coastal High Hazard Area.

The DCA comments also provide that “the policy neither identifies the areas that would serve as the receiving lands, nor provide a general guide for their selection.” Staff responds that mainland Future Urban lands designated by the comprehensive plan as Intensive Development, Central Urban, or Urban Community are appropriate receiving areas. These areas exist and have the ability to obtain the respective bonus densities through established methodologies. General appropriateness in these areas has already been determined. Any specific development proposal will have to seek approval through the appropriate

process in which site specific circumstances such as compatibility will be addressed. To address DCA's concerns staff recommends adding the following policies:

POLICY 14.6.4: The property owners of lands designated Intensive Development, Central Urban, or Urban Community are eligible to receive Pine Island TDRs. The property owners of lands designated Suburban and Outlying Suburban are eligible to receive Pine Island TDRs consistent with the Lee Plan's definition of Density and if approved through the planned development rezoning process. The land development code will maintain several approval processes such as by right, administrative and planned development approval. Developments receiving TDR units will be evaluated for the following criteria: compact site design, innovative open space design, well designed pedestrian/bicycle connections to commercial and employment areas, locations on or a walkable distance to mass transit service, and mixed use buildings. Utilization of in-fill and brownfield sites are encouraged. Land Development Code incentives will be given to projects that incorporate concepts from traditional neighborhood design, transit oriented development, and new urbanism principles.

POLICY 14.6.5: Participation in the Pine Island TDR by right and administrative approval processes for receiving sites requires that the subject property be already conventionally zoned in a zoning district that would permit the proposed development consistent with allowable densities and with the zoning district's lot size, setback, open space and height requirements. The by right process will be limited to adding one additional dwelling unit to a receiving parcel that is one acre or less in size. If the receiving parcel is larger than one acre, TDR units may be used to add one dwelling unit per acre by right. The resulting density may not exceed the maximum total density range for the land use category of the subject site.

POLICY 14.6.6: Adding Pine Island TDR units in excess of one dwelling unit per acre in conventional zoning districts requires administrative approval. The Lee County Department of Community Development director may administratively approve the use of TDR units to increase the density of a proposed development provided that the proposed development is: in compliance with the Lee Plan; zoned for the type and number of dwelling units proposed to be constructed; designed so that the resulting development does not have substantially increased intensities of land uses along its perimeter, unless adjacent to existing or approved development of a similar intensity; in a location where the additional traffic will not be required to travel through areas with significantly lower densities before reaching the nearest collector or arterial road; in a location outside of the Category 1 Storm Surge Zone for a land-falling storm as defined by the October 1991 Hurricane Storm Tide Atlas for Lee County prepared by the Southwest Florida Regional Planning Council; not in a location where existing and committed public facilities are so overwhelmed that a density increase would be contrary to the overall public interest, and; will not decrease required open space, buffering, landscaping and preservation areas or cause adverse impacts on surrounding land uses.

POLICY 14.6.7: The Land Development Code will be amended to specify that Pine Island TDRs may be utilized through the Planned Development approval and amendment rezoning processes for land owners seeking to add additional dwelling units utilizing TDR units. The Code will specify that the application for the rezoning and the request to utilize TDR units may be submitted at the same time for concurrent review.

The DCA comments also state that “no guidelines for the rate of transfer are included” with the amendment. To address this issue staff proposes adding the following policy:

POLICY 14.6.8: The generation rate for Pine Island TDRs will be limited by the Land Development Code to two Transfer of Development Rights per acre for the Coastal Rural land use category, to six Transfer of Development Rights per acre for the Future Urban land use categories, and one Transfer of Development Right per five acres of wetland. The Land Development Code will be amended to establish a creation of development rights process as well as a receiving process.

C. STAFF ADOPTION PUBLIC HEARING RECOMMENDATION:

RECOMMENDATION: Planning staff recommends that the Board of County Commissioners adopt the proposed Lee Plan amendment:

Recommended Map Change:

Amend the Future Land Use Map series for specified parcels of land (total of approximately 157 acres) located in Section 31, Township 43 South, Range 22 East to change the Future Land Use classification shown on Map 1 from “Coastal Rural” to “Outlying Suburban.” The property is generally located in the Bokeelia area south of Barrancas Avenue and north of Pinehurst Road.

Recommended Text Changes:

VISION STATEMENT:

Pine Island - This community includes Greater Pine Island as described under Goal 14 along with surrounding smaller islands and some unincorporated enclaves near Cape Coral. Its future, as seen by Pine Islanders, will be a matter of maintaining an equilibrium between modest growth, ~~on the one hand and a fragile ecology, on the other~~ and a viable and productive agricultural community. Pine Island will continue to be a haven between urban sprawl approaching from the mainland and the wealth of the outer islands; a quiet place of family businesses, school children, farmers, and retirees enjoying the bounties of nature; a place devoid of high-rises, strip malls, and gated communities. Traffic constraints caused by the narrow road link to the mainland will limit future development, allowing the islands to evacuate from storms and protecting natural lands from unsustainable development. Wildlife and native vegetation will be protected; loss of wildlife habitat will be reversed; sidewalks and bike paths will connect neighborhoods for young and old alike. Architectural standards for commercial buildings will encourage “Old Florida” styles, and historic buildings will be treasured. Pine Island will continue to be a place where people, ~~and nature~~ and agriculture exist in harmony, a place not very different from what it is today, an island as state-of-mind as much as a physical entity, its best features preserved and enhanced. Pine Islanders are historically vigilant about protecting their community and will work to ensure that their plans are carried out.

FUTURE LAND USE ELEMENT:

POLICY 1.4.7: The Coastal Rural areas will remain rural except for portions of properties where residential lots are permitted in exchange for permanent preservation or restoration of native upland

habitats or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, on the remainder of the property. The standard maximum density is one dwelling unit per ten acres (1DU/10 acres). Maximum densities may increase as higher percentages of native habitat are permanently preserved or restored on the uplands portions of the site, or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, in accordance with the chart below. Permitted land uses include agriculture, fill-dirt extraction, conservation uses, and residential uses up to the following densities:

<u>Percentage of the on site uplands that are preserved or restored native habitats or continued in agricultural use on existing farmland</u>	<u>Maximum density if undeveloped land will be permanently preserved or restored as native habitats</u>	<u>Maximum density if undeveloped land will be continued in agricultural use on existing farmland</u>
0%	1 DU/ 10 acres	<u>1 DU/ 10 acres</u>
5%	1 DU/ 9 acres	
10%	1 DU/ 8 acres	<u>1 DU/ 9 acres</u>
15%	1 DU/ 7 acres	
20%	1 DU/ 6 acres	<u>1 DU/ 8 acres</u>
30%	1 DU/ 5 acres	<u>1 DU/ 7 acres</u>
40%	1 DU/ 4 acres	<u>1 DU/ 6 acres</u>
50%	1 DU/ 3 acres	<u>1 DU/ 5 acres</u>
60%	1 DU/ 2 acres	<u>1 DU/ 3 acres</u>
70%	1 /DU/ 1 acre	<u>1 DU/ 2 acres</u>

Existing farmland is depicted on Map 21. Areas for buffers, lakes, and utilities may consist of up to 10% of the upland preserve areas.

GOAL 14: GREATER PINE ISLAND. To manage future growth on and around Greater Pine Island so as to maintain the island's unique natural resources, and character and its viable and productive agricultural community and to insure that island residents and visitors have a reasonable opportunity to evacuate when a hurricane strike is imminent. For the purposes of this plan, the boundaries of Greater Pine Island are indicated on the Future Land Use Map.

POLICY 14.2.5: Lee County will investigate the merits of creating a concurrency exception area for a portion of Pine Island Center. The concurrency exception area will promote the expansion of public transportation to and from the Greater Pine Island area.

OBJECTIVE 14.6: Agricultural Uses. To promote and preserve the rural character of Pine Island, Lee County will strive to foster a viable and productive agricultural community on the island. Lee County will incorporate several land use "tools" such as purchase and transfer of

development rights programs into the Lee County Land Development Code to preserve agricultural uses on Pine Island.

POLICY 14.6.1: Lee County will maintain a map (Map 21) of all existing farmland on Pine Island. These mapped existing farmlands and Pine Island lands containing indigenous vegetation are the primary targeted sending areas for the creation of transfer of development rights (TDR) on Pine Island.

POLICY 14.6.2: Lee County, by 2009, will evaluate creating a Purchase of Development Rights Program with the objective of preserving Pine Island agricultural uses.

POLICY 14.6.3: By 2007 Lee County will amend the Lee County Land Development Code to establish a Pine Island Transfer of Development Rights (TDR) program to supplement the existing wetland TDR program. The program will be encouraged for properties depicted on Map 21 as well as other Pine Island lands as promoting reduced densities in the Coastal High Hazard Area.

POLICY 14.6.4: The property owners of lands designated Intensive Development, Central Urban, or Urban Community are eligible to receive Pine Island TDRs. The property owners of lands designated Suburban and Outlying Suburban are eligible to receive Pine Island TDRs consistent with the Lee Plan's definition of Density and if approved through the planned development rezoning process. The land development code will maintain several approval processes such as by right, administrative and planned development approval. Developments receiving TDR units will be evaluated for the following criteria: compact site design, innovative open space design, well designed pedestrian/bicycle connections to commercial and employment areas, locations on or a walkable distance to mass transit service, and mixed use buildings. Utilization of in-fill and brownfield sites are encouraged. Land Development Code incentives will be given to projects that incorporate concepts from traditional neighborhood design, transit oriented development, and new urbanism principles.

POLICY 14.6.5: Participation in the Pine Island TDR by right and administrative approval processes for receiving sites requires that the subject property be already conventionally zoned in a zoning district that would permit the proposed development consistent with allowable densities and with the zoning district's lot size, setback, open space and height requirements. The by right process will be limited to adding one additional dwelling unit to a receiving parcel that is one acre or less in size. If the receiving parcel is larger than one acre, TDR units may be used to add one dwelling unit per acre by right. The resulting density may not exceed the maximum total density range for the land use category of the subject site.

POLICY 14.6.6: Adding Pine Island TDR units in excess of one dwelling unit per acre in conventional zoning districts requires administrative approval. The Lee County Department of Community Development director may administratively approve the use of TDR units to increase the density of a proposed development provided that the proposed development is: in compliance with the Lee Plan; zoned for the type and number of dwelling units proposed to be constructed; designed so that the resulting development does not have substantially increased intensities of land uses along its perimeter, unless adjacent to existing or approved development of a similar intensity; in a location where the additional traffic will not be required to travel through areas with

significantly lower densities before reaching the nearest collector or arterial road; in a location outside of the Category 1 Storm Surge Zone for a land-falling storm as defined by the October 1991 Hurricane Storm Tide Atlas for Lee County prepared by the Southwest Florida Regional Planning Council; not in a location where existing and committed public facilities are so overwhelmed that a density increase would be contrary to the overall public interest, and; will not decrease required open space, buffering, landscaping and preservation areas or cause adverse impacts on surrounding land uses.

POLICY 14.6.7: The Land Development Code will be amended to specify that Pine Island TDRs may be utilized through the Planned Development approval and amendment rezoning processes for land owners seeking to add additional dwelling units utilizing TDR units. The Code will specify that the application for the rezoning and the request to utilize TDR units may be submitted at the same time for concurrent review.

POLICY 14.6.8: The generation rate for Pine Island TDRs will be limited by the Land Development Code to two Transfer of Development Rights per acre for the Coastal Rural land use category, to six Transfer of Development Rights per acre for the Future Urban land use categories, and one Transfer of Development Right per five acres of wetland. The Land Development Code will be amended to establish a creation of development rights process as well as a receiving process.

HOUSING ELEMENT:

POLICY 100.2.3: Housing for farm workers, as defined by ss 420.503 Florida Statutes, may be permitted in the Rural, Coastal Rural, Open Lands, and Density Reduction/ Groundwater Resource land use categories without respect to the density limitations that apply to conventional residential districts. The density of such housing is limited to 50 occupants per acre of actual housing area and will be reviewed on a case-by-case basis during the planned development or Special Exception zoning process. The applicant must demonstrate that impacts of the farm worker housing will be mitigated.

GLOSSARY:

DENSITY - The number of residential dwelling or housing units per gross acre (du/acre). Densities specified in this plan are gross residential densities. For the purpose of calculating gross residential density, the total acreage of a development includes those lands to be used for residential uses, and includes land within the development proposed to be used for streets and street rights of way, utility rights-of-way, public and private parks, recreation and open space, schools, community centers, and facilities such as police, fire and emergency services, sewage and water, drainage, and existing man-made waterbodies contained within the residential development. Lands for commercial, office, industrial uses, natural water bodies, and other non-residential uses must not be included. Within the Caloosahatchee Shores community in the areas identified by Policy 21.4.2 commercial development that includes commercial and residential uses within the same project or the same building do not have to exclude the commercial lands from the density calculation. For true mixed use developments located on the mainland areas of the County, the density lost to commercial, office and industrial acreage can be regained through the utilization of TDRs that are

either created from Greater Pine Island Costal Rural future land use category or previously created TDRs. True mixed use developments must be primarily multi-use structures as defined in this Glossary as a mixed use building.

MIXED USE BUILDING - Mixed Use Building means a building that contains at least two different land uses (i.e. commercial and residential, R & D and residential, office and residential, commercial and civic use open to the public) that are related.

MIXED USE - The development, in a compact urban form, of land or building or structure with two or more different but compatible uses, such as but not limited to: residential, office, industrial and technological, retail, commercial, public, entertainment, or recreation. True mixed use developments primarily consist of mixed use buildings as defined by this Glossary.

LEE PLAN TABLE 1(A), FOOTNOTE 4:

4. No land will be rezoned on Pine Island, excluding the Matlacha, Bokeelia, and St. James City areas currently classified as Future Urban Areas, to a zoning district which permits a density higher than 3 dwelling units per gross acre. Land currently zoned in a zoning district which permits a residential density in excess of 3 dwelling units per gross acre will be allowed a density higher than 3 du/acre provided that all other applicable regulations are met, and provided further that no density will be allowed above that which is permitted for the land use category in which the property is located, or which is permitted by the zoning which was in effect for said property as of November 25, 1986, whichever is lower. Within the Future Urban Areas of Pine Island Center, rezonings that will allow in excess of 3 dwelling units per gross acre must "acquire" the density above 3 dwelling units per gross acre utilizing TDRs that were created from Greater Pine Island Costal Rural or Greater Pine Island Urban Categories.

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

DATE OF ADOPTION HEARING: October 12, 2005

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

JOHN ALBION

TAMMY HALL

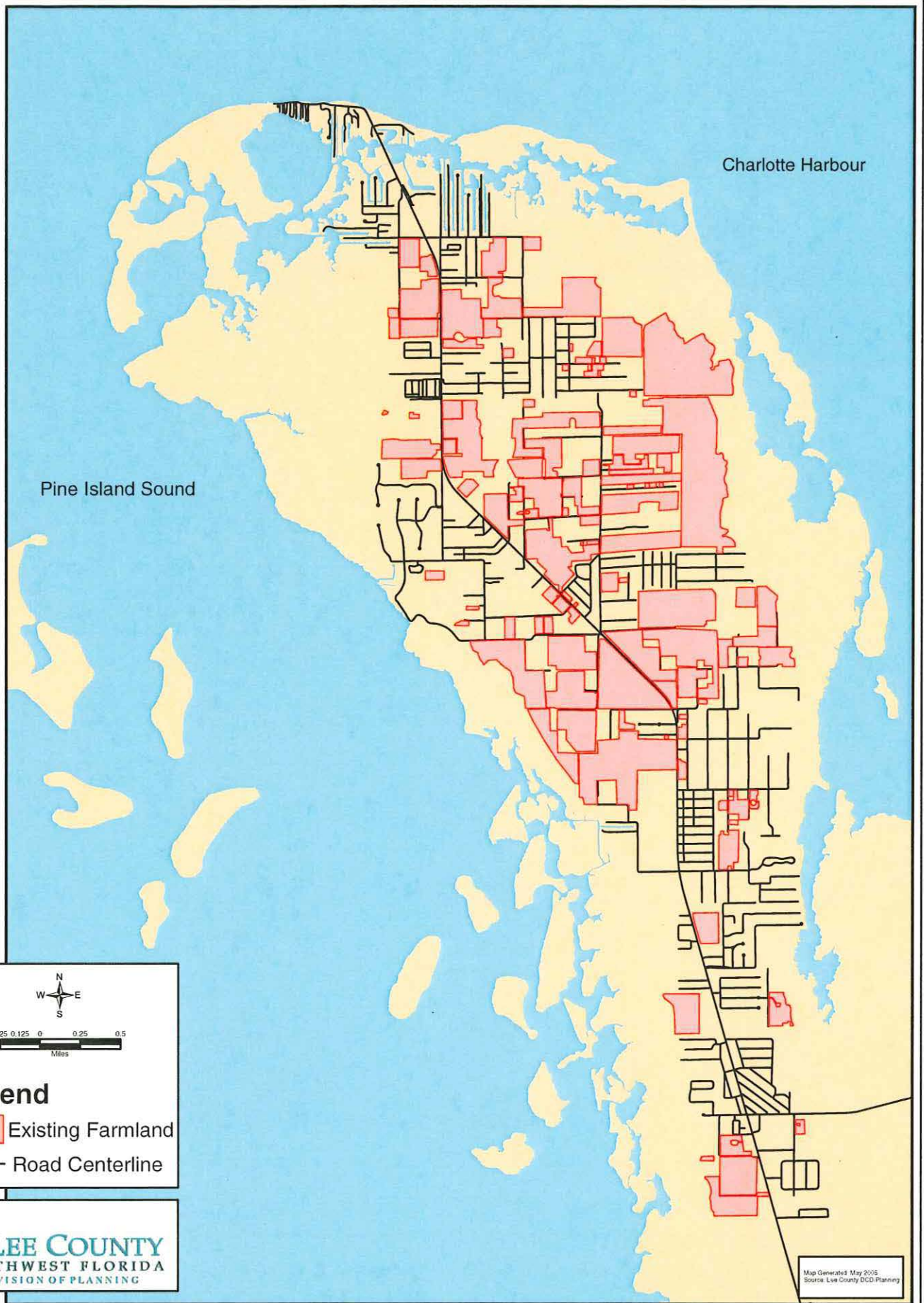
BOB JANES

RAY JUDAH

DOUG ST. CERNY

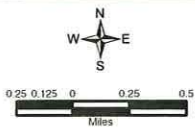
Existing Pine Island Farmland

(Lee Plan Map 21 Page 1 of 2)





Pine Island Sound

Charlotte Harbour



Legend

-  Existing Farmland
-  Road Centerline

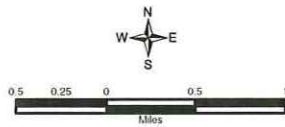


Map Generated: May 2005
Source: Lee County DCD Planning

Existing Pine Island Farmland

(Lee Plan Map 21 Page 2 of 2)

Pine Island Sound

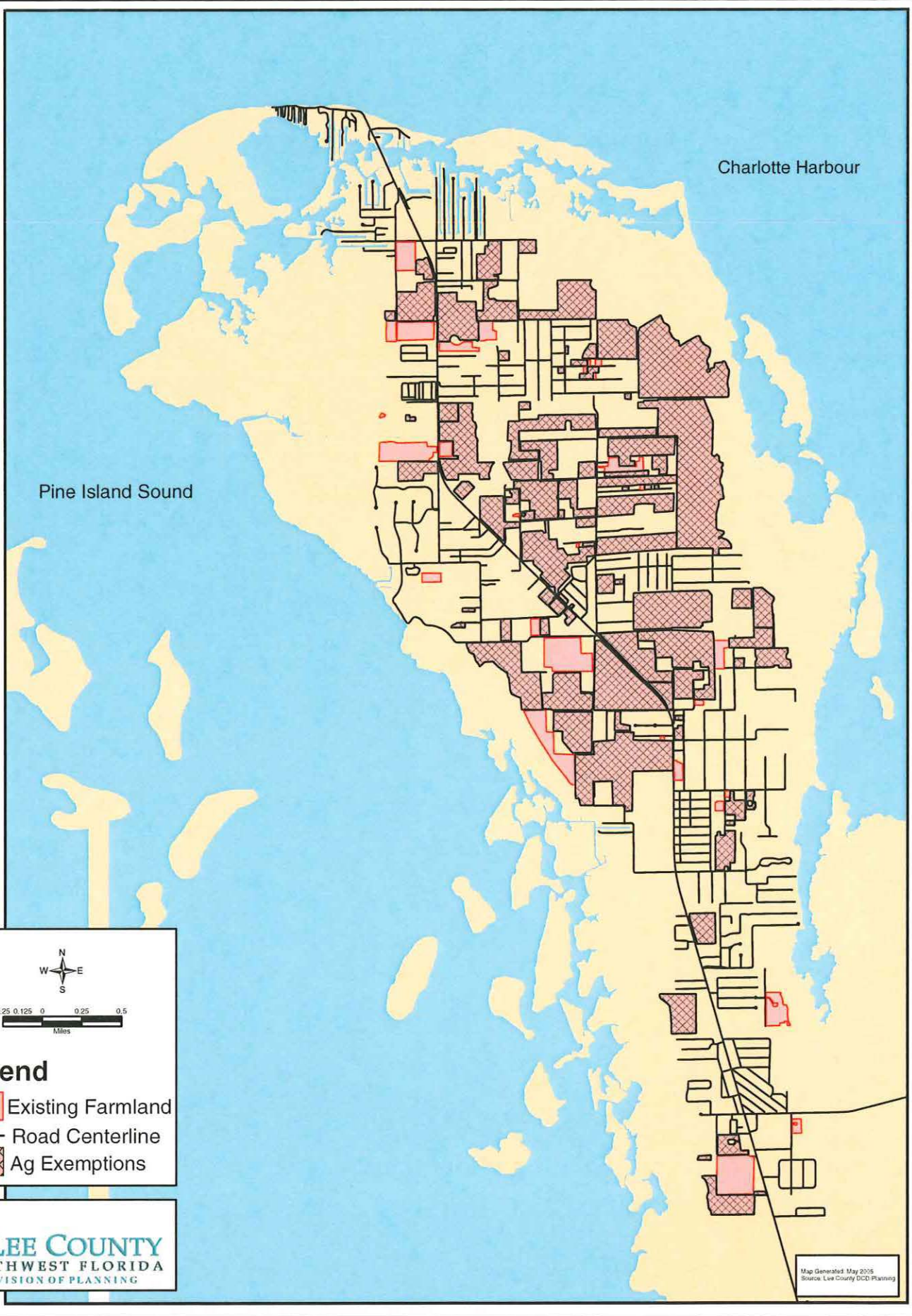


Legend

- Existing Farmland
- Road Centerline



Map Generated: May 2005
Source: Lee County DCD Planning



Pine Island Sound

Charlotte Harbour



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Miles

Legend

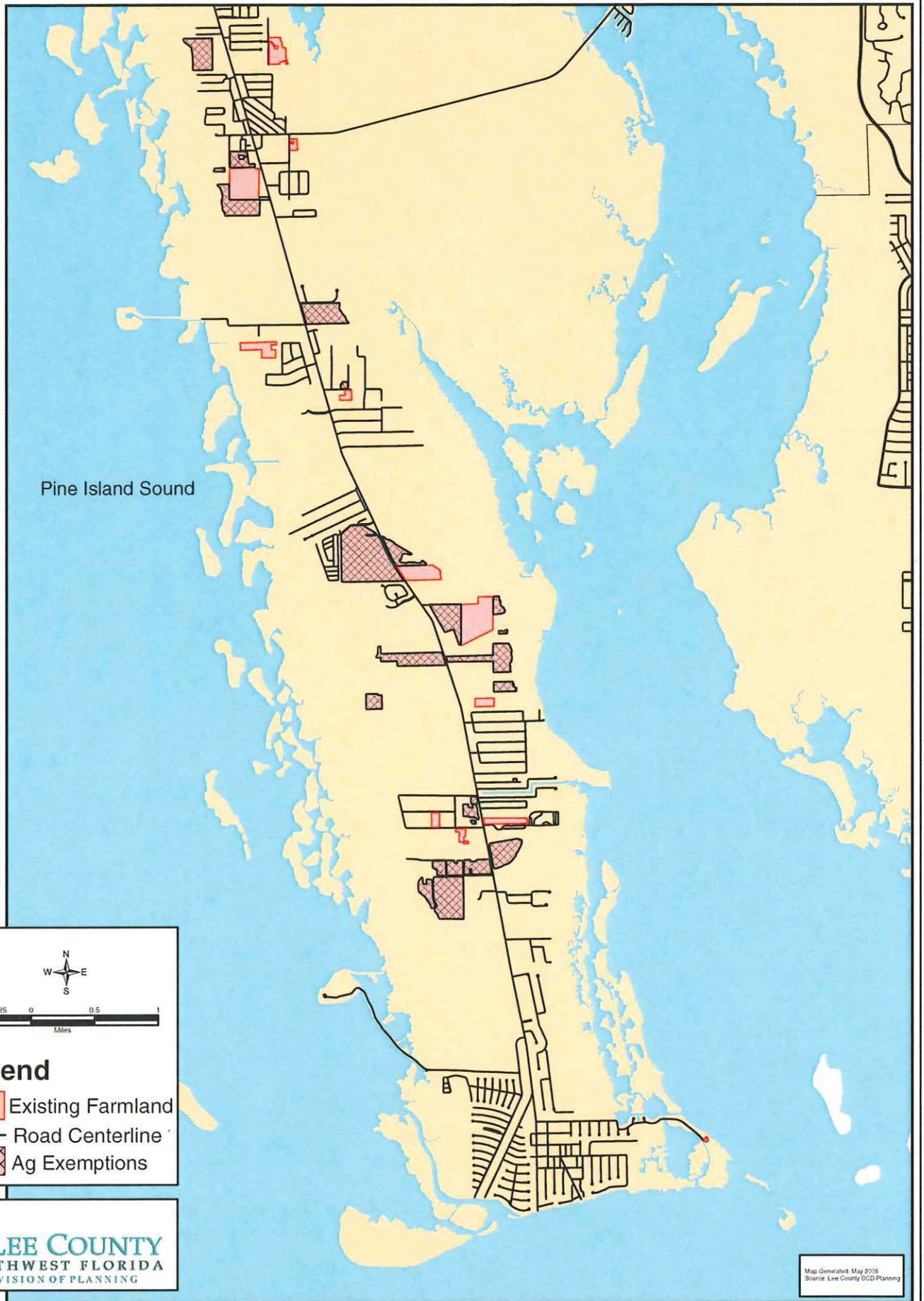
-  Existing Farmland
-  Road Centerline
-  Ag Exemptions



LEE COUNTY
SOUTHWEST FLORIDA
DIVISION OF PLANNING




Map Generated May 2015
Source: Lee County DCD Planning

Existing Pine Island Farmland
Attachment 1 -- Agricultural Exemption (Page 2 of 2)



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Miles

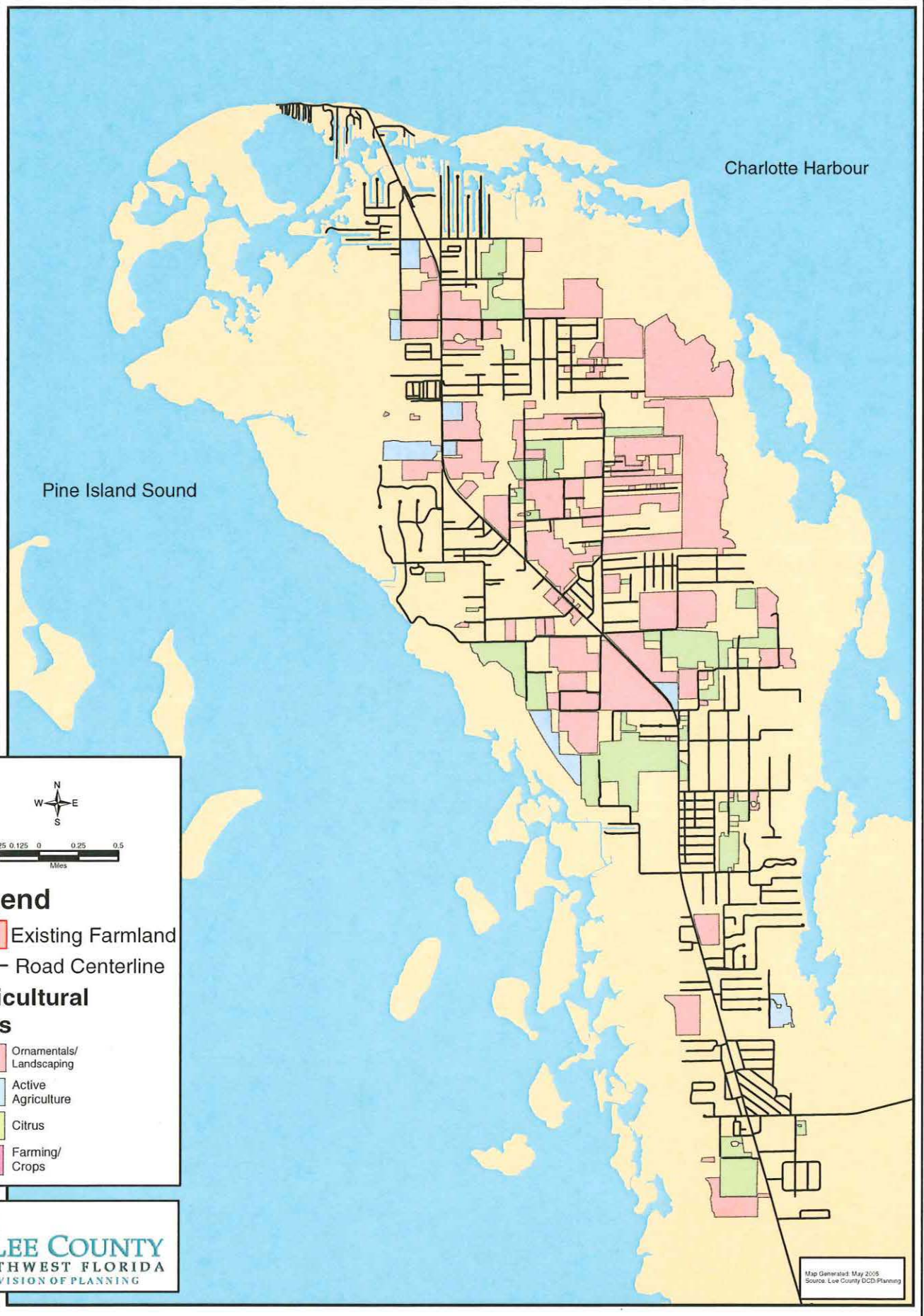
Legend

-  Existing Farmland
-  Road Centerline
-  Ag Exemptions



LEE COUNTY
SOUTHWEST FLORIDA
DIVISION OF PLANNING

Map Generated: May 2005
Source: Lee County OGD Planning



Pine Island Sound

Charlotte Harbour



0.25 0.125 0 0.25 0.5
Miles

Legend

- Existing Farmland
- Road Centerline

Agricultural Uses

- Ornamentals/
Landscaping
- Active
Agriculture
- Citrus
- Farming/
Crops



0.3 0.15 0 0.3 0.6
Miles

Legend

- Existing Farmland
- Road Centerline

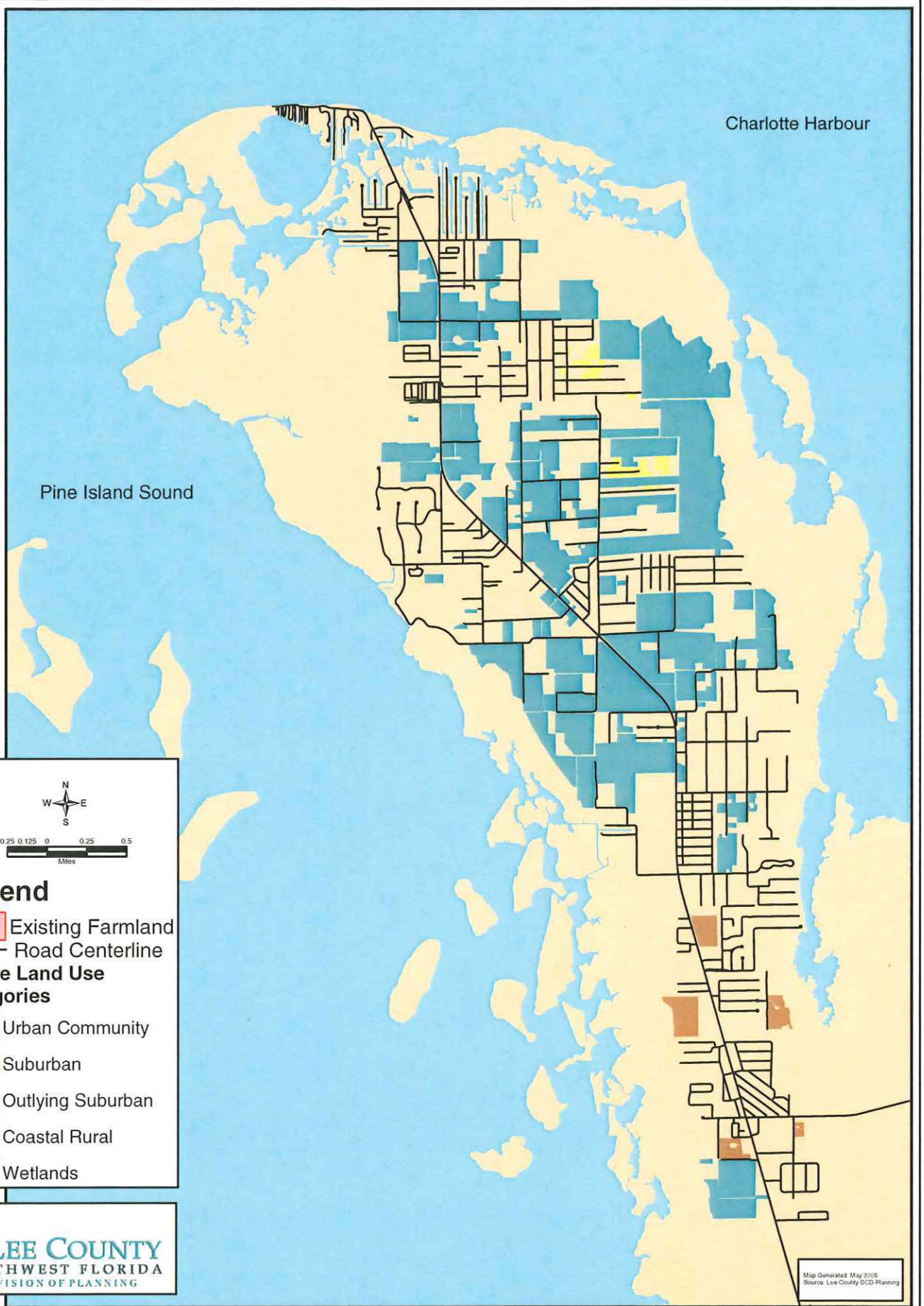
Agricultural Uses

- Ornamentals/
Landscaping
- Active
Agriculture
- Citrus
- Farming/
Crops



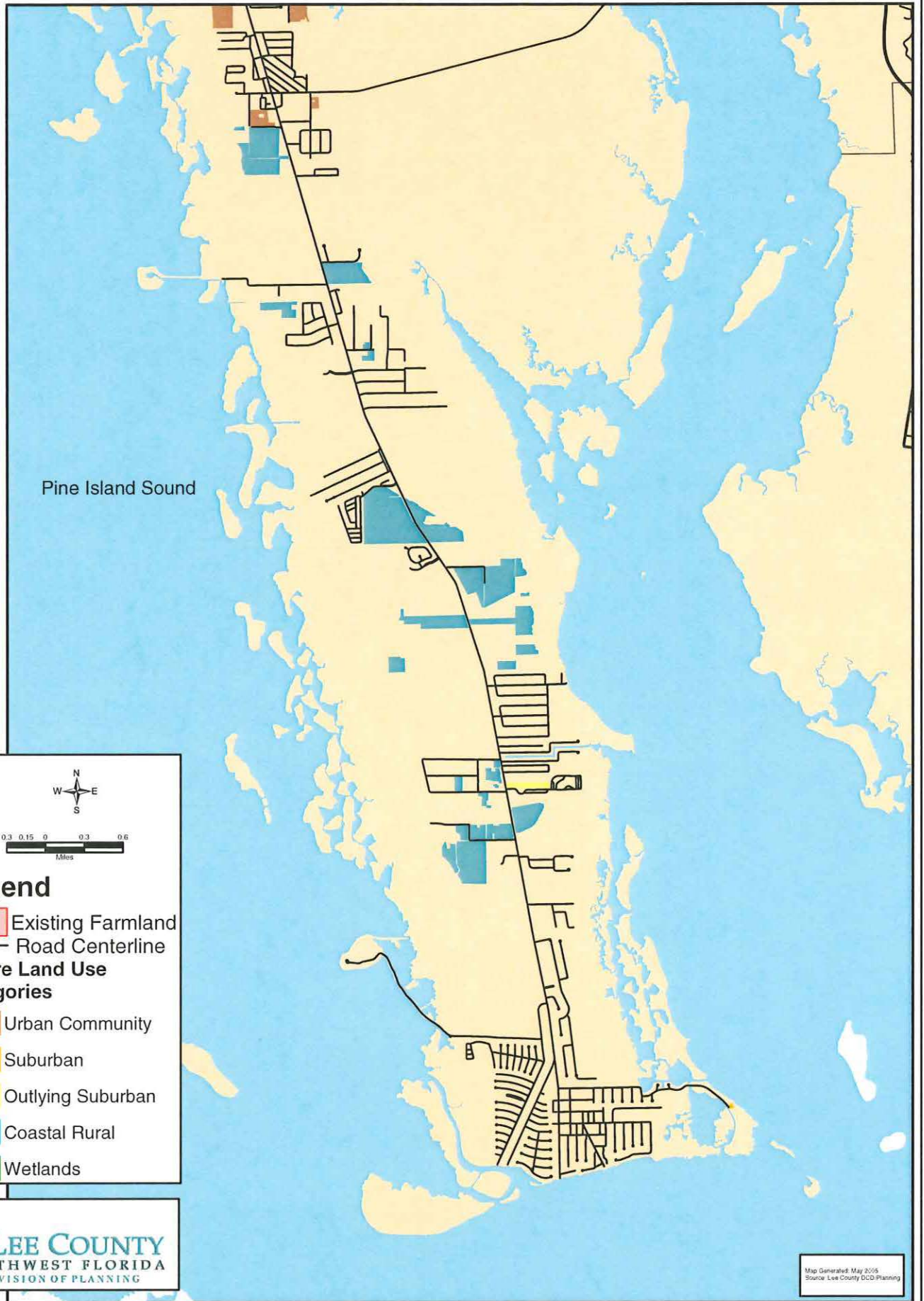
LEE COUNTY
SOUTHWEST FLORIDA
DIVISION OF PLANNING

Map Generated: May 2008
Source: Lee County DCD Planning



Existing Pine Island Farmland

Attachment 3 -- Future Land Use (Page 2 of 2)



0.3 0.15 0 0.3 0.6
Miles

Legend

- Existing Farmland
- Road Centerline

Future Land Use Categories

- Urban Community
- Suburban
- Outlying Suburban
- Coastal Rural
- Wetlands



LEE COUNTY
SOUTHWEST FLORIDA
DIVISION OF PLANNING

Map Generated: May 2005
Source: Lee County OGD Planning

Kevin L. Erwin Consulting Ecologist, Inc.
Ecologists • Biologists • Computer Scientists

May 20, 2005

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MAY 20 2005

COMMUNITY DEVELOPMENT

Mr. Bill Spikowski
1617 Hendry St.
Suite 416
Ft. Myers, FL 33901

Re: General Scope and Cost Estimate for Upland Habitat Restoration Costs for Pine Island Farmland

Dear Mr. Spikowski:

This scope of work and per acre cost estimates covers the work that would be necessary to prepare an upland site being restored to native habitat and for seeding and replanting in accordance with the restoration standards for Pine Island farmland that are proposed for inclusion in Lee County's Land Development Code.

Actual costs may vary depending upon specific site conditions. This restoration activity must be designed and supervised by a well-experienced ecologist who has successfully undertaken similar projects.

The site is assumed to be covered with pasture grasses dominated by Bahia grass (*Paspalum notatum*) and other invasive non-native species, which must be completely removed for effective restoration to occur.

I would estimate the following per acre costs (50 acre minimum). I also recommend adding a 10% contingency to the total to deal with weather, equipment failure, etc.

ACTIVITY	ESTIMATED COST (per acre)
• Plan design	\$100
• Permitting	\$100
• Supervision	\$150
• Monitoring plan	\$50
• Planting plan	\$50
• Brush hog/mowing	\$50
• Disking four times	\$200
• Broadcast herbiciding	\$200
• Spot herbicide treatments	\$210
• Earthwork	\$0 to \$500
• Debris removal	\$0 to \$100
• Direct seeding	\$800
• Planting	\$1,000
• Supplemental planting	\$150
• Monitoring	\$75
Total Estimated Cost	\$3,135 to \$3,735
Total Estimated Cost with 10% Contingency	\$3,450 to \$4,165

Mr. Bill Spikowski
May 20, 2005
Page 2 of 2

RECEIVED
MAY 20 2005

If you have any questions, please call me at (239) 337-1505 x109.

COMMUNITY DEVELOPMENT

Sincerely,

Kevin L. Erwin Consulting Ecologist, Inc.

Scarlett Collier

Kevin L. Erwin, CE PWS
President/Principal Ecologist

fo

KLE/slc

RESPONSE TO ORC
CPA-2004-13

LEE COUNTY
RECEIVED

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COMM. DEV./
PLN. & WKKS. CNTR.

LEEWARD YACHT CLUB, LLC responds to DCA's Objections to CPA2004-13 as follows:

1. **DCA Statement:** "With respect to the proposal to change the land use designation on 41.28 acres of land located in the northeast quadrant from General Commercial Interchange to Urban Community the public facilities analyses for the amendment did not quantify the impact of the proposal on schools. There is a general statement in the staff report that according to the School Board, the amendment will not have any impact on schools; however, it would be appropriate to show how the analysis of the impact on schools was derived in order to substantiate the statement."

Response: The Lee County planning staff recommendation for this amendment was to amend the FLUM in the southeast and southwest quadrants of the interchange to add property to the General Commercial Interchange category, while retaining the status quo on the northeast quadrant. As a result, the staff recommendation reduced the capacity of the FLUM by 362 units, which, from staff's perspective, eliminated the need to provide a detailed school impact analysis.

The objection indicates that the proposed amendment to the northeast quadrant has the potential to add 412 units to the capacity of the FLUM. While this is a completely unrealistic real world scenario (see below), if it is assumed to be true, the net impact of the amendment to the school system is as follows:

412 units - 362 units = 50 units added to FLUM
50 units x .352 students/unit (School Board figure) = 18 students,
which is de minimis, particularly in light of the mitigation requirements in LDC Chapter 2.

2. **DCA Statement:** "Above all, the proposal is inappropriate because the site is not suitable for the proposed designation. The subject site is located within the coastal high hazard area, and according to Map 9, of the Lee Plan, is within the 100-year floodplain that is subject to tidal flooding."

Responses:

- A. SWRPC staff has confirmed that the exact location of the line separating the category 1 and 2 evacuation zones is the 5.3 foot contour line. A graphic showing this line and the elevations throughout the property is attached as Exhibit "A". The map clearly shows that a substantial portion of the northeast

quadrant is not in the CHHA.

- B. Property even more seaward of the CHHA line immediately abutting the subject property is designated Central Urban on the FLUM (Exhibit "B" attached).
- C. There is no history of severe flooding on the property, even during hurricanes. See Exhibit "C" attached.
- D. The subject property immediately abuts two principal evacuation routes, I-75 (north/south) and S.R. 80 (east-west).
- E. Residential development on the site will be subject to evacuation and shelter mitigation requirements in the LDC (Chapter 2, Article XI) and must comply with the Florida Building Code and local floodplain regulations.

3. **DCA Statement:** "This proposal has the potential to allow up to 412 dwelling units in this coastal high hazard area and would consequently expose a substantial population to the dangers of a hurricane and flooding."

Response: The 412 unit figure assumed that the entire parcel will be redeveloped at the maximum total density, including bonuses. As noted above, however, a portion of the property is not located in the CHHA. The 41.2 acre figure also includes roads and a platted single-family residential subdivision, Dos Rios, which clearly will not be obliterated and redeveloped within the 2020 timeframe of the Lee Plan. A more appropriate worst case scenario calculation, therefore, is 11.9 acres (see Exhibit "D" attached) x 10 units/acre, or 119 units, which is less than 30 percent of the figure cited in the Objection.

4. **DCA Statement:** "The proposal is, therefore, inconsistent with the state's requirement that comprehensive plans direct population concentration away from known or predicted coastal high hazard areas, and also inconsistent with the requirement that future land uses be coordinated with appropriate topography, including flood prone areas."

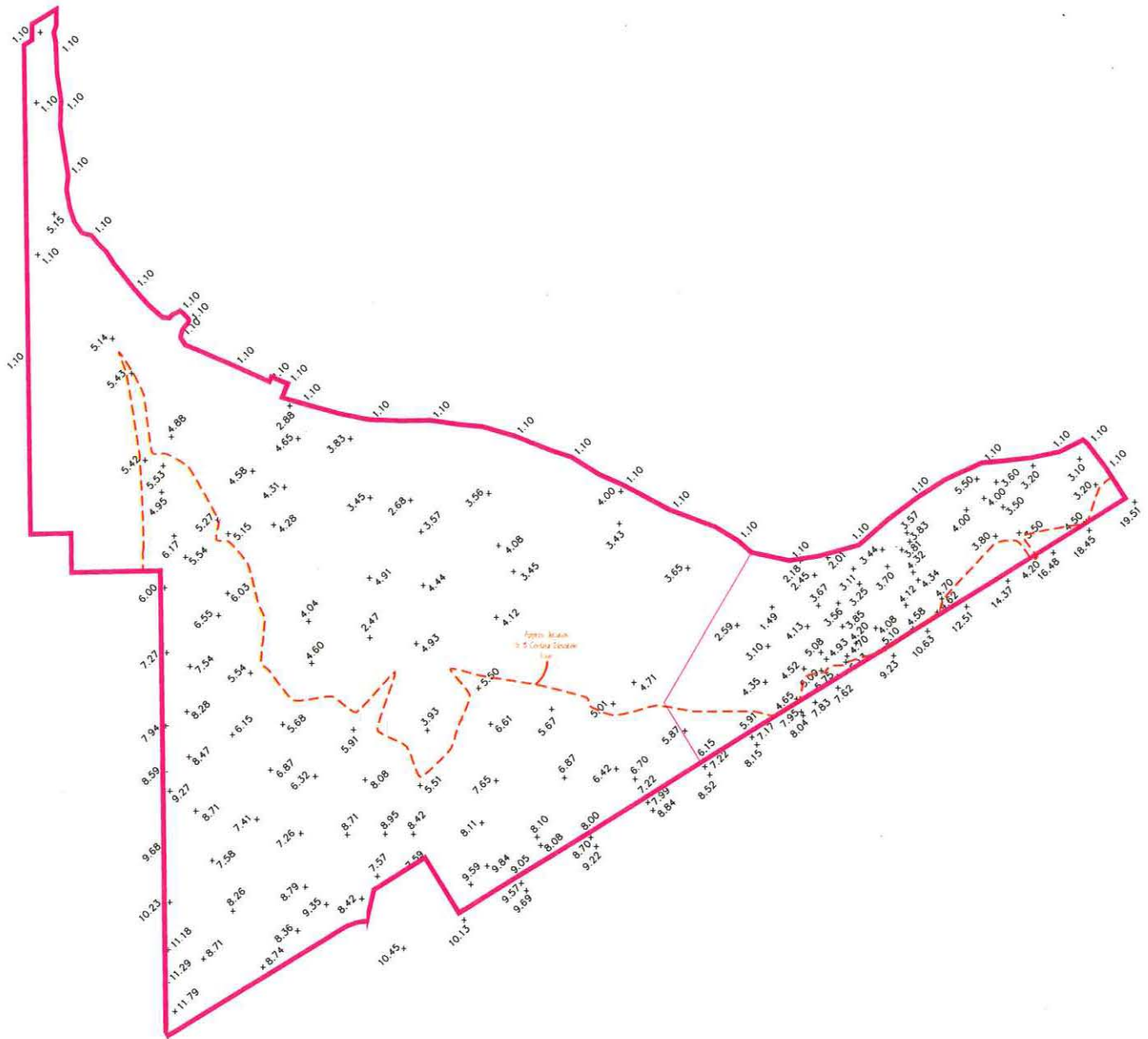
Response: The statutes and rules cited at the end of the Objection (text included as Exhibits "E" and "F") do not contain any absolute prohibition against density increases in the CHHA. The facts and circumstances of this particular case warrant approval of the residential use. The facts include the items listed under #2 above, as well as the following:

- A. The proposed amendment will facilitate a mixed use development which is encouraged by Goal 4 and Objective 21.4 of the Lee Plan;

- B. A residential use on the parcel will be subject to the standard LDC 40 percent general open space and 20 percent indigenous open space requirements, while the standards for commercial uses are 30 and 15 percent, respectively;
 - C. The residential use would be more compatible with the single-family units to the west than a commercial use, which is mandated by the General Commercial Interchange category; and
 - D. The proposed residential use would generate less off-site traffic than the currently-required commercial uses.
5. **DCA Statement:** “Lee Plan Policy 75.1.4 requires that the County limit the future population exposed to coastal flooding by assigning reduced density categories to properties within the coastal high hazard area. Goal 75 of the Lee Plan calls for the protection of human life and developed property from natural disasters, and Objective 75.1, mandates a reduced density for properties located within coastal high hazard areas. The proposed designation of Urban Community for this site is inconsistent with Objective 75.1 and Policy 75.1.4 and would not further Goal 75. The current designation of General Commercial Interchange that does not allow residential uses is clearly appropriate for this site and it is consistent with Policy 75.1.4, as well as with Objective 75.1, and furthers the intent of Goal 75.”

Response: The cited Lee Plan Goals, Objectives and Policies (Exhibit “G” attached; please note that the numbers have changed due to a recodification) clearly do not, on their face, absolutely prohibit density increases in the FLUM. Objective 105.1 (formerly 75.1), for example, only directs the County to “consider” reducing densities in the CHHA. Furthermore, the County has on several occasions, including September 19, permitted bonus density on parcels within the CHHA based on an evaluation of all of the facts of individual cases. There is no logical distinction between bonus density approvals and Lee Plan amendments increasing density in the CHHA.

EXHIBIT "A"



SCALE: 1" = 250'

LEEWARD YACHT CLUB
Topographic / 5.3 Contour Elevation Exhibit

FILE NO.: 2003.061-B

SEPTEMBER, 2005



6200 Whiskey Creek Drive
Fort Myers, FL. 33919
Phone : (239) 985-1200
Florida Certificate of Authorization No.1772
Naples · Fort Myers · Venice · Englewood

EXHIBIT "B"



LEEWARD YACHT CLUB
PROPOSED LEE PLAN FLUM AMENDMENT EXHIBIT

EXHIBIT 1B

PROJECT NO. 2003.061-B

DECEMBER 2005



6202 F Presidential Court
Fort Myers, FL 33919
Phone (239) 985-1200
Florida Certificate of Authorization No 1772
Naples Fort Myers Venice Englewood

EXHIBIT "C"

Analysis of Historical Storm Water Levels at Leeward Yacht Club properties By Pat Riley, P. E.

Historical data was obtained in conversation with Ernest Hansen, owner of Hansen Marine Ways, whose family has managed the Hansen Marine Ways property since 1919. Hansen Marine Ways is part of the Leeward Yacht Club. Additionally the storms of 2004 were experienced on site by the author. The basis of the information is the floor elevation of the 1910 office/shop building which has a floor elevation of approx. 4 feet NGVD. Which is the equivalent of 3.5 feet over normal tide elevation. The family information is based on the flooding height over this floor elevation. The sea wall is 2 feet in NGVD elevation. The top of the railway is approx. 3 feet in elevation.

The elevations of the property run from approx. 3 feet NGVD to 11 feet NGVD at the far southwest corner of the property. High mean water elevation is 1.1 NGVD. Mean tide is 0.04 feet.

The storm events noted are the remembered ones, numerous hurricanes and winter storms have gone thru the site and area, but have not produced notable levels of surge and water levels.

1936- No Name storm This is highest record of water levels at the site, experienced by Mr. Hansen's father. The level was 7 inches over the office floor, which corresponds to a water elevation of 4.6 feet NGVD. It was commented that this level occurred at high tide and the height of storm surge.

1960- Mr Hansen was on site in *Hurricane Donna*... The tide level rose 3.5 feet during the hurricane. The water level did not reach the reference elevation of the office/shop floor on the site. Considerable wind damage occurred to the buildings and docks on site.

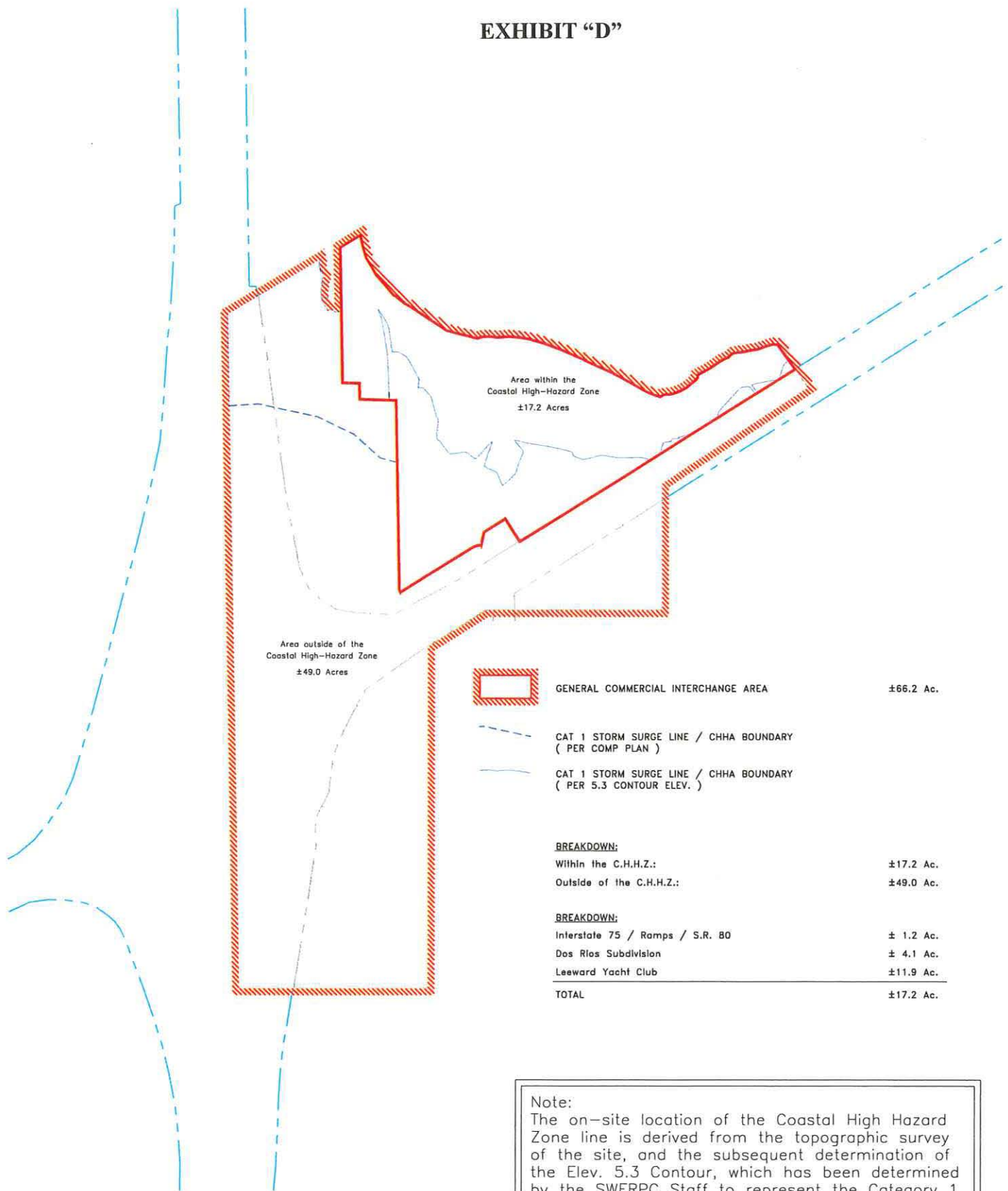
1995- No name Winter Storm, this storm produced record levels of water due to high western quadrant winds over 60 miles for a long period of time. Water levels rose to approx. 3.5 feet over normal tide.

1998- *Hurricane Mitch* and a no-name high wind storm. *Mitch* produced 3 feet of elevation change in the water levels. The no name storm reached the reference level of the office/shop floor of 4 feet.

2004- Of the four major hurricanes in 2004, *Hurricane Charley* was worst. During the height of the storm and high tide, the water level raised to 4.5 feet. Actual measurements were taken in the Manatee World parking lot.

There has been approx. 14 hurricanes that have moved over southwest Florida since 1995. Only *Hurricane Charley* produced any water levels that have been experienced the use of this property. Hansen Marine Ways (Menge Brothers) has been operated at this site continuously since about 1885. No storm event has occurred at this site which so completely destroyed the site, operation was not continued.

EXHIBIT "D"



Note:

The on-site location of the Coastal High Hazard Zone line is derived from the topographic survey of the site, and the subsequent determination of the Elev. 5.3 Contour, which has been determined by the SWFRPC Staff to represent the Category 1 Storm Surge Line.

LEEWARD YACHT CLUB
General Commercial Interchange
with 5.3 Contour Elev. Line (Category 1 Area)

EXHIBIT "E"

Florida Statutes Chapter 163

163.3177 Required and optional elements of comprehensive plan; studies and surveys.--

(6) In addition to the requirements of subsections (1)-(5) and (12), the comprehensive plan shall include the following elements:

(a) A future land use plan element designating proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public buildings and grounds, other public facilities, and other categories of the public and private uses of land. Counties are encouraged to designate rural land stewardship areas, pursuant to the provisions of paragraph (11)(d), as overlays on the future land use map. Each future land use category must be defined in terms of uses included, and must include standards to be followed in the control and distribution of population densities and building and structure intensities. The proposed distribution, location, and extent of the various categories of land use shall be shown on a land use map or map series which shall be supplemented by goals, policies, and measurable objectives. The future land use plan shall be based upon surveys, studies, and data regarding the area, including the amount of land required to accommodate anticipated growth; the projected population of the area; the character of undeveloped land; the availability of water supplies, public facilities, and services; the need for redevelopment, including the renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with the character of the community; the compatibility of uses on lands adjacent to or closely proximate to military installations; and, in rural communities, the need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy. The future land use plan may designate areas for future planned development use involving combinations of types of uses for which special regulations may be necessary to ensure development in accord with the principles and standards of the comprehensive plan and this act. The future land use plan element shall include criteria to be used to achieve the compatibility of adjacent or closely proximate lands with military installations. In addition, for rural communities, the amount of land designated for future planned industrial use shall be based upon surveys and studies that reflect the need for job creation, capital investment, and the necessity to strengthen and diversify the local economies, and shall not be limited solely by the projected population of the rural community. The future land use plan of a county may also designate areas for possible future municipal incorporation. The land use maps or map series shall generally identify and depict historic district boundaries and shall designate historically significant properties meriting protection. For coastal counties, the future land use element must include, without limitation, regulatory incentives and criteria that encourage the preservation of recreational and commercial

working waterfronts as defined in s. 342.07. The future land use element must clearly identify the land use categories in which public schools are an allowable use. When delineating the land use categories in which public schools are an allowable use, a local government shall include in the categories sufficient land proximate to residential development to meet the projected needs for schools in coordination with public school boards and may establish differing criteria for schools of different type or size. Each local government shall include lands contiguous to existing school sites, to the maximum extent possible, within the land use categories in which public schools are an allowable use. The failure by a local government to comply with these school siting requirements will result in the prohibition of the local government's ability to amend the local comprehensive plan, except for plan amendments described in s. 163.3187(1)(b), until the school siting requirements are met. Amendments proposed by a local government for purposes of identifying the land use categories in which public schools are an allowable use are exempt from the limitation on the frequency of plan amendments contained in s. 163.3187. The future land use element shall include criteria that encourage the location of schools proximate to urban residential areas to the extent possible and shall require that the local government seek to collocate public facilities, such as parks, libraries, and community centers, with schools to the extent possible and to encourage the use of elementary schools as focal points for neighborhoods. For schools serving predominantly rural counties, defined as a county with a population of 100,000 or fewer, an agricultural land use category shall be eligible for the location of public school facilities if the local comprehensive plan contains school siting criteria and the location is consistent with such criteria. Local governments required to update or amend their comprehensive plan to include criteria and address compatibility of adjacent or closely proximate lands with existing military installations in their future land use plan element shall transmit the update or amendment to the department by June 30, 2006.

(g) For those units of local government identified in s. 380.24, a coastal management element, appropriately related to the particular requirements of paragraphs (d) and (e) and meeting the requirements of s. 163.3178(2) and (3). The coastal management element shall set forth the policies that shall guide the local government's decisions and program implementation with respect to the following objectives:

7. Limitation of public expenditures that subsidize development in high-hazard coastal areas.
8. Protection of human life against the effects of natural disasters.

EXHIBIT "F"

Florida Administrative Code

9J-5.003 Definitions.

As used in this rule chapter, the terms defined in Section 163.3164, F.S., shall have the meanings provided in that section. In addition, the following definitions are provided to clarify terms used in this rule chapter and not to establish or limit regulatory authority of other agencies or programs; however, local governments may choose alternative definitions which the Department shall review to determine whether such definitions accomplish the intent of both this rule chapter and of Chapter 163, Part II, F.S. The use of definitions in this rule which were adopted by rule amendment shall not have the effect of rendering not in compliance a plan or plan amendment adopted prior to the effective date of the rule amendment, nor of changing definitions of terms used in a plan or plan amendment adopted prior to the effective date of the rule amendment.

(17) "Coastal high hazard areas" (also "high-hazard coastal areas") means the evacuation zone for a Category 1 hurricane as established in the regional hurricane evacuation study applicable to the local government.

9J-5.006 Future Land Use Element.

The purpose of the future land use element is the designation of future land use patterns as reflected in the goals, objectives and policies of the local government comprehensive plan elements. Future land use patterns are depicted on the future land use map or map series within the element.

(2) Land Use Analysis Requirements. The element shall be based upon the following analyses which support the comprehensive plan pursuant to subsection 9J-5.005(2), F.A.C.

(b) An analysis of the character and magnitude of existing vacant or undeveloped land in order to determine its suitability for use, including where available:

1. Gross vacant or undeveloped land area, as indicated in paragraph (1)(b);
2. Soils;
3. Topography;
4. Natural resources; and
5. Historic resources;

(3) Requirements for Future Land Use Goals, Objectives and Policies.

(b) The element shall contain one or more specific objectives for each goal statement which address the requirements of paragraph 163.3177(6)(a), F.S., and which:

1. Coordinate future land uses with the appropriate topography and soil conditions, and the availability of facilities and services;

(c) The element shall contain one or more policies for each objective which address implementation activities for the:

1. Regulation of land use categories included on the future land use map or map series; subdivisions; signage; and areas subject to seasonal or periodic flooding;

(4) Future Land Use Map.

(b) The following natural resources or conditions shall be shown on the future land use map or map series:

6. Coastal high hazard areas.

9J-5.012 Coastal Management.

The purpose of this element is to plan for and where appropriate restrict development activities where such activities would damage or destroy coastal resources, and protect human life and limit public expenditures in areas that are subject to destruction by natural disaster.

(3) Requirements for Coastal Management Goals, Objectives, and Policies.

(b) The element shall contain one or more specific objectives for each goal statement which address the requirements of paragraph 163.3177(6)(g) and Section 163.3178, F.S., and which:

5. Limit public expenditures that subsidize development permitted in coastal high-hazard areas subsequent to the element's adoption except for restoration or enhancement of natural resources;

6. Direct population concentrations away from known or predicted coastal high-hazard areas;

(c) The element shall contain one or more policies for each objective and shall identify regulatory or management techniques for:

7. Designating coastal high-hazard areas and limiting development in these areas;

EXHIBIT "G"

GOAL 105: PROTECTION OF LIFE AND PROPERTY IN COASTAL HIGH HAZARD AREAS. To protect human life and developed property from natural disasters. (See also Goal 110.) (Amended by Ordinance No. 94-30)

OBJECTIVE 105.1: DEVELOPMENT IN COASTAL HIGH HAZARD AREAS.

Development seaward of the 1991 Coastal Construction Control Line will require applicable State of Florida approval; new development on barrier islands will be limited to densities that meet required evacuation standards; new development requiring seawalls for protection from coastal erosion will not be permitted; and allowable densities for undeveloped areas within coastal high hazard areas will be considered for reduction. (Amended by Ordinance No. 92-35, 93-25, 94-30, 00-22)

POLICY 105.1.4: Through the Lee Plan amendment process, land use designations of undeveloped areas within coastal high hazard areas will be considered for reduced density categories (or assignment of minimum allowable densities where density ranges are permitted) in order to limit the future population exposed to coastal flooding. (Amended by Ordinance No. 92-35, 94-30, 00-22)

CPA 2004-16

**GREATER PINE ISLAND COMPROMISE
BoCC SPONSORED
SPECIAL AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

**Publically Initiated Application
and Lee County Staff Analysis**

DCA Transmittal Document

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

June 1, 2005

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA 2004-16**



Text Amendment



Map Amendment

<input checked="" type="checkbox"/>	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
	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
	Board of County Commissioners Hearing for Adoption

ORIGINAL STAFF REPORT PREPARATION DATE: May 18, 2005

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT/REPRESENTATIVE:

Lee County Board of County Commissioners, represented by the Lee County Division of Planning.

2. REQUEST:

Amend the Lee Plan as follows:

- A. Amend the Future Land Use Map series for specified parcels of land (total of approximately 157 acres) located in Section 31, Township 43 South, Range 22 East to change the Future Land Use classification shown on Map 1 from "Coastal Rural" to "Outlying Suburban." The property is generally located in the Bokeelia area south of Barrancas Avenue and north of Pinehurst Road;
- B. Amend the Pine Island Vision Statement and Goal 14 to recognize the value of preserving agricultural activities on the island;
- C. Amend the Future Land Use Element Policy 1.4.7, the Coastal Rural Policy, to allow the retention of active or passive agriculture in lieu of habitat restoration to regain density;
- D. Amend the current percentages of preserved or restored uplands in Policy 1.4.7;

- E. Amend the Lee Plan to add a policy that further defines the restoration standards referred to in Policy 1.4.7;
- F. Amend Housing Element Policy 100.2.3 to incorporate a reference to the Coastal Rural future land use category;
- G. Amend the Pine Island Vision Statement, Goal 14, Table 1(a) footnote 4, the Definition of Density in the Glossary, and any other Plan provisions to create a new transfer of development rights program for Pine Island; Amend the definition of Density to allow mixed use projects to retain some or all of their residential density that is typically lost to commercial acreage, if Pine Island TDRs are utilized to regain density; Amend the Mixed Use definition in the Glossary to better define mixed use projects;
- H. Evaluate creating a concurrency exception area for a portion of Pine Island Center; and,
- I. Evaluate establishing additional Urban Infill areas on the mainland portion of the County to be receiving areas for Pine Island TDRs. Evaluate increasing allowable bonus densities in specific locations based on a point system that incorporates several criteria.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** Planning staff recommends that the Board of County Commissioners transmit the proposed Lee Plan amendment to the Florida Department of Community Affairs for their review.

Recommended Map Change:

Amend the Future Land Use Map series for specified parcels of land (total of approximately 157 acres) located in Section 31, Township 43 South, Range 22 East to change the Future Land Use classification shown on Map 1 from "Coastal Rural" to "Outlying Suburban." The property is generally located in the Bokeelia area south of Barrancas Avenue and north of Pinehurst Road

Recommended Text Changes:

VISION STATEMENT:

Pine Island - This community includes Greater Pine Island as described under Goal 14 along with surrounding smaller islands and some unincorporated enclaves near Cape Coral. Its future, as seen by Pine Islanders, will be a matter of maintaining an equilibrium between modest growth, ~~on the one hand~~ and a fragile ecology, ~~on the other~~ and a viable and productive agricultural community. Pine Island will continue to be a haven between urban sprawl approaching from the mainland and the wealth of the outer islands; a quiet place of family businesses, school children, farmers, and retirees enjoying the bounties of nature; a place devoid of high-rises, strip malls, and gated communities. Traffic constraints caused by the narrow road link to the mainland will limit future development, allowing the islands to evacuate from storms and protecting natural lands from unsustainable development. Wildlife and native vegetation will be protected; loss of wildlife habitat will be reversed; sidewalks and bike paths will connect

neighborhoods for young and old alike. Architectural standards for commercial buildings will encourage "Old Florida" styles, and historic buildings will be treasured. Pine Island will continue to be a place where people, and nature and agriculture exist in harmony, a place not very different from what it is today, an island as state-of-mind as much as a physical entity, its best features preserved and enhanced. Pine Islanders are historically vigilant about protecting their community and will work to ensure that their plans are carried out.

FUTURE LAND USE ELEMENT:

POLICY 1.4.7: The Coastal Rural areas will remain rural except for portions of properties where residential lots are permitted in exchange for permanent preservation or restoration of native upland habitats or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, on the remainder of the property. The standard maximum density is one dwelling unit per ten acres (1DU/10 acres). Maximum densities may increase as higher percentages of native habitat are permanently preserved or restored on the uplands portions of the site, or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, in accordance with the chart below. Permitted land uses include agriculture, fill-dirt extraction, conservation uses, and residential uses up to the following densities:

<u>Percentage of the on site uplands that are preserved or restored native habitats or continued in agricultural use on existing farmland</u>	<u>Maximum density if undeveloped land will be permanently preserved or restored as native habitats</u>	<u>Maximum density if undeveloped land will be continued in agricultural use on existing farmland</u>
0%	1 DU/ 10 acres	<u>1 DU/ 10 acres</u>
5%	1 DU/ 9 acres	
10%	1 DU/ 8 acres	<u>1 DU/ 9 acres</u>
15%	1 DU/ 7 acres	
20%	1 DU/ 6 acres	<u>1 DU/ 8 acres</u>
30%	1 DU/ 5 acres	<u>1 DU/ 7 acres</u>
40%	1 DU/ 4 acres	<u>1 DU/ 6 acres</u>
50%	1 DU/ 3 acres	<u>1 DU/ 5 acres</u>
60%	1 DU/ 2 acres	<u>1 DU/ 3 acres</u>
70%	1 /DU/ 1 acre	<u>1 DU/ 2 acres</u>

Existing farmland is depicted on Map 21. Areas for buffers, lakes, and utilities may consist of up to 10% of the upland preserve areas.

GOAL 14: GREATER PINE ISLAND. To manage future growth on and around Greater Pine Island so as to maintain the island's unique natural resources, and character and its viable and productive agricultural community and to insure that island residents and visitors have a reasonable opportunity to evacuate when a hurricane strike is imminent. For the

purposes of this plan, the boundaries of Greater Pine Island are indicated on the Future Land Use Map.

POLICY 14.2.5: Lee County will investigate the merits of creating a concurrency exception area for a portion of Pine Island Center. The concurrency exception area will promote the expansion of public transportation to and from the Greater Pine Island area.

OBJECTIVE 14.6: Agricultural Uses. To promote and preserve the rural character of Pine Island, Lee County will strive to foster a viable and productive agricultural community on the island.

POLICY 14.6.1: Lee County will maintain a map (Map 21) of all existing farmland on Pine Island.

POLICY 14.6.2: Lee County, by 2009, will evaluate creating a Purchase of Development Rights Program with the objective of preserving Pine Island agricultural uses.

POLICY 14.6.3: By 2007 Lee County will amend the Lee County Land Development Code to establish a Pine Island Transfer of Development Rights (TDR) program to supplement the existing wetland TDR program. The program will be open to properties depicted on Map 21 as well as other Pine Island lands deemed acceptable by the Board of County Commissioners.

HOUSING ELEMENT:

POLICY 100.2.3: Housing for farm workers, as defined by ss 420.503 Florida Statutes, may be permitted in the Rural, Coastal Rural, Open Lands, and Density Reduction/ Groundwater Resource land use categories without respect to the density limitations that apply to conventional residential districts. The density of such housing is limited to 50 occupants per acre of actual housing area and will be reviewed on a case-by-case basis during the planned development or Special Exception zoning process. The applicant must demonstrate that impacts of the farm worker housing will be mitigated.

GLOSSARY:

DENSITY - The number of residential dwelling or housing units per gross acre (du/acre). Densities specified in this plan are gross residential densities. For the purpose of calculating gross residential density, the total acreage of a development includes those lands to be used for residential uses, and includes land within the development proposed to be used for streets and street rights of way, utility rights-of-way, public and private parks, recreation and open space, schools, community centers, and facilities such as police, fire and emergency services, sewage and water, drainage, and existing man-made waterbodies contained within the residential development. Lands for commercial, office, industrial uses, natural water bodies, and other non-residential uses must not be included. Within the Caloosahatchee Shores community in the areas identified by Policy 21.4.2 commercial development that includes commercial and residential uses within the same project or the same building do not have to exclude the commercial lands from the density calculation.

For Mixed Use developments located on the mainland areas of the County, the density lost to commercial, office and industrial acreage can be regained through the utilization of TDRs that were created from Greater Pine Island Costal Rural or Greater Pine Island Urban Categories.

MIXED USE BUILDING - Mixed Use Building means a building that contains at least two different land uses (i.e. commercial and residential, R & D and residential, office and residential, commercial and civic use open to the public) that are related.

MIXED USE - The development, in a compact urban form, of land or building or structure with two or more different but compatible uses, such as but not limited to: residential, office, industrial and technological, retail, commercial, public, entertainment, or recreation. True mixed use developments primarily consist of mixed use buildings as defined by this Glossary.

LEE PLAN TABLE 1(A), FOOTNOTE 4:

4. ~~No land will be rezoned on Pine Island, excluding the Matlacha, Bokeelia, and St. James City areas currently classified as Future Urban Areas, to a zoning district which permits a density higher than 3 dwelling units per gross acre. Land currently zoned in a zoning district which permits a residential density in excess of 3 dwelling units per gross acre will be allowed a density higher than 3 du/acre provided that all other applicable regulations are met, and provided further that no density will be allowed above that which is permitted for the land use category in which the property is located, or which is permitted by the zoning which was in effect for said property as of November 25, 1986, whichever is lower. Within the Future Urban Areas of Pine Island Center, rezonings that will allow in excess of 3 dwelling units per gross acre must "purchase" the density above 3 dwelling units per gross acre utilizing TDRs that were created from Greater Pine Island Costal Rural or Greater Pine Island Urban Categories.~~

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The Hanson Report assigned a loss of \$9,000,000 in market value for the 157 acre "Bokeelia property."
- The subject 157 acre "Bokeelia property" is located outside of the Coastal High Hazard Area. The amendment does not increase density in the Coastal High Hazard Area.
- The proposed amendment of the 157 acre "Bokeelia property" restores it to its previous density and intensity of use.
- The State of Florida, in F.S. Chapter 163.3162, recognizes the importance of agricultural production. The state finds that agriculture is a major contributor to the economy of the state and that agricultural lands constitute unique and irreplaceable resources of statewide importance.

- The recognition of agriculture and the desire to preserve agricultural uses is a common topic in local comprehensive and general plans.
- Agricultural uses are an important part of the Pine Island landscape. Agricultural uses go hand in hand with the largely rural nature of the island.
- The unique micro-climate of Pine Island supports commercial production of subtropical fruits, ornamental palms, and vegetables. The goal of retaining agricultural uses on Pine Island "fits" with the character of the island as well as the constrained access to the island.
- Amending the Lee Plan with an intent to preserve agricultural uses and to allow the retention of active or passive agriculture in lieu of habitat restoration to regain density helps to address island character issues as well as limiting Bert Harris liability as stated in the Hanson Report.
- Policy 100.2.3 allows bona fide farmworker housing in the non-urban areas of the county in excess of their density limits. The Pine Island amendment placed all of the Rural lands on Pine Island into the new Coastal Rural land use category. No reference to amending Policy 100.2.3 was included in the Pine Island amendments. This was an oversight, and the policy should be corrected by adding the reference to Coastal Rural.
- Establishing a Pine Island TDR program will provide another option for land owners on Pine Island to gain value from their land and still preserve habitat and agricultural uses. Transferring development rights from Pine Island will have the affect of lowering potential future hurricane evacuation times and help address the constrained access dilemma of Pine Island.
- Establishing a Pine Island TDR program may help limit Bert Harris liability.

C. BACKGROUND INFORMATION

Lee County has a long history of encouraging local communities to take an active role in shaping a vision for their community. In the late 1980's the Greater Pine Island community conducted a planning study of their area of the county. This planning effort resulted in the adoption, in 1989, of a goal and subsequent objectives and policies specific to the Greater Pine Island area. A similar planning effort, to update the now decade-old study, was begun in 1999. This planning effort, the 2001 Greater Pine Island Community Plan Update (Update), proposed several amendments to the Pine Island portion of the Lee Plan. The required public hearings were held and the amendments were adopted by the Board of County Commissioners on January 9, 2003. The amendments were reviewed and approved by the Florida Department of Community Affairs (DCA). On March 7, 2003, the DCA issued a Notice of Intent to find the amendments in compliance with the applicable statutes and rule.

In accordance with state statutory requirements, there was a 21 day window in which an affected person could file a petition for a hearing, essentially challenging the DCA determination of compliance. Such a petition was filed on March 28, 2003. The State of Florida Division of Administrative Hearings assigned

the hearing Case # 03-1275 GM. Following this original petition, several parties petitioned to intervene on both sides of the issues. Because the DCA had found that the amendments were in compliance, the Administrative Law Judge was required to use the fairly debatable standard when determining compliance. This puts the petitioner and their interveners at a disadvantage as they would need to prove with a preponderance of the evidence that the plan amendments are not in compliance. Regardless of the legal standard, both Planning and Legal staff were confident that Lee County would prevail on most if not all issues raised at the hearing.

One of the more complex issues in the Pine Island amendments is the Coastal Rural future land use category. Coastal Rural is a new category that was placed on property that had previously been designated in the Rural future land use category. Coastal Rural was also applied to some 157 acres of property that had previously been designated in the Outlying Suburban category. The proposed new category reduced the allowable density from 1 dwelling unit per acre on the Rural lands and 3 dwelling units per acre on the Outlying Suburban lands to 1 dwelling unit per 10 acres. The Coastal Rural category, however, had provisions that would allow a return to 1 dwelling unit per acre if 70% of a property's native lands were preserved or if 70% of improved farmland was restored to native habitat. Several of the petition interveners owned land that was affected by this new future land use category. They objected to their properties being placed in the category, which they felt was a taking of their current development potential.

While not necessarily an integral part of the challenge to the Pine Island amendments, the Coastal Rural category was seen as a potential liability to the County under the provisions of the Bert J. Harris, Jr., Private Property Rights Protection Act. In order to better inform the Board of County Commissioners (Board), the County Attorney's Office, with Board support, commissioned an appraiser to conduct an evaluation of the economic impacts (if any) that might occur to the Pine Island market if the Pine Island amendments were in effect and implemented. The study was completed on August 4, 2004. The study, known as the Hanson Report, indicated that the only provisions of the Pine Island amendments that would cause an economic impact were those of the Coastal Rural future land use category. The Hanson Report provided that the Coastal Rural land use category would adversely affect passive agriculture, active agriculture, and those lands that were originally designated in the Outlying Suburban future land use category. The total loss in market value to these lands was estimated by the Hanson Report to be \$60,000,000.

With this information in hand, the County Attorney's Office scheduled this issue as a Board agenda item. There were various courses of action for the Board to consider. The Board chose to instruct Community Development staff to meet with the parties to evaluate the issues and to try to reach a compromise or settlement. During the month of October staff held several meetings and had numerous phone conversations with the parties involved in the Administrative Hearing. On November 4, 2004 the petitioner, along with the interveners on that side of the case, sent a letter to the County Attorney's Office. The letter indicated that they believed that a settlement prior to the November 29, 2004 hearing was unlikely. The letter also stated their intent to withdraw the petition challenging the Pine Island amendments on November 16, 2004.

The petition was in fact withdrawn by the petitioner and the Administrative Hearing was canceled. The Pine Island amendments, as adopted on January 9, 2003, went into full force and effect. Staff believed that there were certain issues that should still be addressed. The Board concurred and at their November

26, 2004 Regular Meeting they voted to initiate a Special Amendment cycle to address some of the concerns raised by the petitioner and interveners.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

COASTAL RURAL FUTURE LAND USE MAP AMENDMENTS - THE BOKEELIA PROPERTY:

The Pine Island amendments resulted in the adoption of a new future land use category and two separate future land use map (FLUM) amendments. Objective 1.4 "Non-Urban Areas" was amended by establishing a new "Coastal Rural" future land use category. The first future land use map amendment reclassified all "Rural" designated land to "Coastal Rural." The second amended the Future Land Use Map series to reclassify from "Outlying Suburban" to "Coastal Rural" 157 acres of agricultural land between Bokeelia and September Estates. The 2002 staff report that evaluated the proposed Pine Island amendments included the following discussion concerning this second FLUM amendment:

Figure 2, of the Update report shows the 157 acres located in northern Pine Island south of Bokeelia. Current allowable density on that land is three dwelling units per acre. The proposed land use change would lower allowable densities to a maximum of one dwelling unit per acre, if native vegetation on 70% of the site is preserved or restored. That action may lower personal property values and could have Bert Harris Act implications. The Plan Update document provides the following discussion concerning this property:

"The third exception, south of Bokeelia, is the most incongruous. This entire acreage is now in intense agricultural use, with much of it cleared during the past decade (see Figure 2). Apparently it had been considered as a potential expansion of the Bokeelia urban area. Since that time, the landowners have clearly indicated a preference for agriculture and have made no efforts to develop any of the land residentially. Thus these 157 acres should be reclassified to whatever designation is ultimately assigned to the rural lands to their east and west."

The Hanson Report assigned a loss of \$9,000,000 in market value for this property. This equates to almost one-sixth of the total estimated loss of market value that was attributed to the Plan Update Amendment. This property was the only property that was amended by the Plan Update to a category that would not in some fashion permit the property owner an ability to achieve the original maximum density.

The property also abuts Urban designated lands to the south. These properties are either designated Suburban or Outlying Suburban. The subject property connects these Suburban and Outlying Suburban areas to the Suburban designated Bokeelia area. The previous amendment had the affect of leaving these lands surrounded by the new Coastal Rural land use category. Staff notes that these Suburban and Outlying Suburban lands have previously been subdivided for residential use and have been sold off to individual owners. The current amendment, if approved, would restore the Bokeelia future urban area as it existed in the Lee Plan prior to the Plan Update Amendment. The subject 157 acres is in current agricultural use.

The planning consultant for the Plan Update Amendment believes that there is an alternative to restoring the Outlying Suburban designation on the subject site, that being the Rural land use category. Staff notes that this would still result in a lowering of the maximum standard density from a possible 3 dwelling units

per acre allowable under the Outlying Suburban to a maximum standard density of 1 dwelling unit per acre. Staff believes that establishing the Rural category on the subject site would still potentially result in Bert Harris liability on the County's part.

Planning staff notes that the subject 157 acres is located outside of the Coastal High Hazard Area. This fact can be clearly discerned by comparing the subject site's location with Lee Plan Map 5, the Coastal High Hazard Area. This amendment, therefore, does not increase density in the Coastal High Hazard Area and merely restores the previous density and intensity.

Given the restrictions contained in Policy 14.2.2, staff realizes that the property in question may never be able to achieve the maximum 3 dwelling units per acre. The property could, however, participate in a new TDR program, which is discussed in a later section of this report. The property would have some potential for commercial uses with the Outlying Suburban designation.

Staff Recommendation Concerning the "Bokeelia Property:"

Given the Bert Harris implications with this portion of the Plan Update Amendment, and in the interests of compromise, staff recommends that the property in question be amended back to its original designation of Outlying Suburban.

PRESERVATION OF AGRICULTURAL USES

The State of Florida has recognized the importance of agricultural activities. For example, Florida Statutes include a section, F.S. 163.3162, that relates this importance as a finding of the Legislature. This section is reproduced below:

The Legislature finds that agricultural production is a major contributor to the economy of the state; that agricultural lands constitute unique and irreplaceable resources of statewide importance; that the continuation of agricultural activities preserves the landscape and environmental resources of the state, contributes to the increase of tourism, and furthers the economic self-sufficiency of the people of the state; and that the encouragement, development, and improvement of agriculture will result in a general benefit to the health, safety, and welfare of the people of the state. It is the purpose of this act to protect reasonable agricultural activities conducted on farm lands from duplicative regulation.

The recognition of agriculture and the desire to preserve agricultural uses is a common topic in local comprehensive and general plans. The Lee Plan, in fact, includes such a Goal. This Goal is reproduced below:

GOAL 9: AGRICULTURAL LAND USES. *To protect existing and potential agricultural lands from the encroachment of incompatible land uses and to discourage the introduction or expansion of agricultural uses in the Future Urban Areas.*

The Lee Plan also recognizes that nothing in the Plan will be construed to permanently prohibit the conversion of agricultural uses to other land uses. The Lee Plan also includes an objective, Objective 9.1, and a map, Map 20, that place agriculturally used parcels of more than 100 acres on an agricultural overlay. This map depicts agricultural areas on Pine Island both north and south of the center.

Agricultural uses are an important part of the Pine Island landscape. Agricultural uses go hand in hand with the largely rural nature of the island. Staff also recognizes the unique micro-climate of Pine Island that supports commercial production of subtropical fruits, ornamental palms, and vegetables. The goal of retaining agricultural uses on Pine Island "fits" with the character of the island as well as the constrained access to the island. Amending the Lee Plan with an intent to preserve agricultural uses helps to address island character issues as well as limiting Bert Harris liability as stated in the Hanson Report. The Pine Island Goal and the Coastal Rural category could be amended to add the generally accepted idea that retention of agricultural uses is in the best interest of the community. The retention of agricultural uses could also be incorporated as another option to restoration in the Coastal Rural land use category.

Staff Recommendation Concerning Preservation of Agricultural Uses:

Staff recommends amending the Pine Island Vision Statement and Goal 14 to recognize the value of preserving agricultural activities on the island. Staff recommends that Pine Island Coastal Rural lands in current agricultural production be depicted on a map in the Future Land Use Map series. The purpose in depicting these lands is more fully discussed in the next section of this report. The recommended amendments to the Vision Statement and Goal 14 are shown below:

VISION STATEMENT:

Pine Island - This community includes Greater Pine Island as described under Goal 14 along with surrounding smaller islands and some unincorporated enclaves near Cape Coral. Its future, as seen by Pine Islanders, will be a matter of maintaining an equilibrium between modest growth, ~~on the one hand~~ and a fragile ecology, ~~on the other~~ and a viable and productive agricultural community. Pine Island will continue to be a haven between urban sprawl approaching from the mainland and the wealth of the outer islands; a quiet place of family businesses, school children, farmers, and retirees enjoying the bounties of nature; a place devoid of high-rises, strip malls, and gated communities. Traffic constraints caused by the narrow road link to the mainland will limit future development, allowing the islands to evacuate from storms and protecting natural lands from unsustainable development. Wildlife and native vegetation will be protected; loss of wildlife habitat will be reversed; sidewalks and bike paths will connect neighborhoods for young and old alike. Architectural standards for commercial buildings will encourage "Old Florida" styles, and historic buildings will be treasured. Pine Island will continue to be a place where people, ~~and~~ nature and agriculture exist in harmony, a place not very different from what it is today, an island as state-of-mind as much as a physical entity, its best features preserved and enhanced. Pine Islanders are historically vigilant about protecting their community and will work to ensure that their plans are carried out.

GOAL 14:

GOAL 14: GREATER PINE ISLAND. To manage future growth on and around Greater Pine Island so as to maintain the island's unique natural resources, ~~and character~~ and its viable and productive agricultural community and to insure that island residents and visitors have a reasonable opportunity to evacuate when a hurricane strike is imminent. For the purposes of this plan, the boundaries of Greater Pine Island are indicated on the Future Land Use Map.

Staff also believes that a new Pine Island Objective and subsequent Policy addressing agricultural uses should be incorporated into Goal 14:

OBJECTIVE 14.6: Agricultural Uses. To promote and preserve the rural character of Pine Island, Lee County will strive to foster a viable and productive agricultural community on the island. Lee County will incorporate several land use “tools” such as purchase and transfer of development rights programs into the Lee County Land Development Code to preserve agricultural uses on Pine Island.

POLICY 14.6.1: Lee County will maintain a map (Map 21) of all existing farmland on Pine Island.

AMEND POLICY 1.4.7, THE COASTAL RURAL POLICY, TO ALLOW THE RETENTION OF ACTIVE OR PASSIVE AGRICULTURE IN LIEU OF HABITAT RESTORATION TO REGAIN DENSITY:

As stated previously, one of the more complex issues in the Pine Island amendments is the Coastal Rural future land use category. Coastal Rural is a new category that was placed on property that had previously been designated in the Rural future land use category and the 157 acres of previously designated Outlying Suburban lands. The Coastal Rural category reduced the allowable density from 1 dwelling unit per acre on the Rural lands and 3 dwelling units per acre on the Outlying Suburban lands to 1 dwelling unit per 10 acres. The Coastal Rural category, however, has provisions that includes a return to 1 dwelling unit per acre if 70% of a property’s native lands were preserved or if 70% of improved farmland is restored to native habitat. The adopted Coastal Rural category descriptor policy, Policy 1.4.7 is reproduced below:

POLICY 1.4.7: The Coastal Rural areas will remain rural except for portions of properties where residential lots are permitted in exchange for permanent preservation or restoration of native upland habitats on the remainder of the property. The standard maximum density is one dwelling unit per ten acres (1DU/10 acres). Maximum densities may increase as higher percentages of native habitat are permanently preserved or restored on the uplands portions of the site in accordance with the chart below. Permitted land uses include agriculture, fill-dirt extraction, conservation uses, and residential uses up to the following densities:

<i>Percentage of the on site uplands that are preserved or restored native habitats</i>	<i>Maximum density</i>
0%	1 DU/ 10 acres
5%	1 DU/ 9 acres
10%	1 DU/ 8 acres
15%	1 DU/ 7 acres
20%	1 DU/ 6 acres
30%	1 DU/ 5 acres
40%	1 DU/ 4 acres
50%	1 DU/ 3 acres

60%	1 DU/ 2 acres
70%	1 /DU/ 1 acre

The Hanson Report concluded that the cost of restoration exceeded the reduction of market value for properties with active agricultural and “the appraiser consultant does not consider the “density recapture model” to be economically feasible for active agricultural properties.” The Report then provided that “the estimated economic impact to active agricultural properties is estimated to be \$41.2 million, or rounded to \$40.0 million.” While these conclusions have been a source of debate in previous public hearings, no definitive documentation has been submitted to refute the appraiser’s report.

The Civic Association, the major supporter for the Plan Update Amendment, did offer the interveners a “Settlement Proposal” that did recognize the importance of agricultural activity to the “desired character of Pine Island.” This proposal was never agreed to by the interveners. The merits of the proposal have never been publicly discussed until now. The proposal had two elements which are reproduced below:

- 1. Modify the Greater Pine Island Community Plan to include preservation of farms as a key factor in the desired character of Pine Island.*
- 2. Modify the “Coastal Rural” clustering standards to permit the use of farm easements as an alternative to upland preservation requirements, setting the maximum densities of clustered developments at levels which continue to primarily reward preservation/restoration of pine flatwoods but also substantially reward preservation of farmland.*

The proposal provided that these concepts would be enacted by amending the Lee Plan’s Vision for Pine Island and Policy 1.4.7.

Staff recognizes that the existing agricultural uses located on Pine Island are one of the principal uses that contributes to the Rural character of Pine Island. Staff in previous sections of this report has recommended that the Vision and goal for Pine Island recognize the importance of agricultural activity as one of the desired character traits of the island. Allowing preservation of agricultural uses in lieu of habitat preservation does help to promote continued agricultural activity on the island and furthers the desired rural character. To assure that development never occurs on any land that has opted to preserve agriculture versus habitat, a legally binding perpetual easement to Lee County should be prepared.

Staff Recommendation Concerning Policy 1.4.7:

To implement the concept of preserving agricultural use in lieu of preserving or restoring habitat, staff recommends the following modification to Policy 1.4.7:

POLICY 1.4.7: The Coastal Rural areas will remain rural except for portions of properties where residential lots are permitted in exchange for permanent preservation or restoration of native upland habitats or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, on the remainder of the property. The standard maximum density is one dwelling unit per ten acres (1DU/10 acres). Maximum densities may increase as higher percentages of native habitat are permanently preserved or restored on the uplands portions of the site, or a commitment, in the form of a perpetual easement, to preserve agricultural activity on

existing farmland, in accordance with the chart below. Permitted land uses include agriculture, fill-dirt extraction, conservation uses, and residential uses up to the following densities:

<u>Percentage of the on site uplands that are preserved or restored native habitats or continued in agricultural use on existing farmland</u>	<u>Maximum density if undeveloped land will be permanently preserved or restored as native habitats</u>	<u>Maximum density if undeveloped land will be continued in agricultural use on existing farmland</u>
0%	1 DU/ 10 acres	<u>1 DU/ 10 acres</u>
5%	1 DU/ 9 acres	
10%	1 DU/ 8 acres	<u>1 DU/ 9 acres</u>
15%	1 DU/ 7 acres	
20%	1 DU/ 6 acres	<u>1 DU/ 8 acres</u>
30%	1 DU/ 5 acres	<u>1 DU/ 7 acres</u>
40%	1 DU/ 4 acres	<u>1 DU/ 6 acres</u>
50%	1 DU/ 3 acres	<u>1 DU/ 5 acres</u>
60%	1 DU/ 2 acres	<u>1 DU/ 3 acres</u>
70%	1 /DU/ 1 acre	<u>1 DU/ 2 acres</u>

Existing farmland is depicted on Map 21. Areas for buffers, lakes, and utilities may consist of up to 10% of the upland preserve areas.

EVALUATE THE CURRENT PERCENTAGES OF PRESERVED OR RESTORED UPLANDS IN POLICY 1.4.7:

Staff was concerned that preserving 70% of a site to regain the one unit per acre density could jeopardize the project's ability to provide the needed on-site utilities. The last sentence in the recommended changes to Policy 1.4.7 above partially addresses this issue. This added flexibility alleviates the concerns staff had with the one zoning case that proposed to cluster its residential density consistent with the current Coastal Rural policy. With this concern addressed, the percentages can remain as they are. Should the Board want to lower the percentages as a matter of policy, that can be accomplished with direction to staff at the transmittal public hearing.

FURTHER DEFINE THE RESTORATION STANDARDS REFERRED IN POLICY 1.4.7:

Standards for the restoration of impacted property have been submitted for review by the Greater Pine Island Civic Association. These standards were submitted with additional Land Development Code changes to implement the revised Pine Island Lee Plan objectives and policies. Staff review is currently incomplete. This issue may have to be revisited in the future.

FARMWORKER HOUSING:

Staff recommends adding a reference in Policy 100.2.3 to the Coastal Rural future land use category. Policy 100.2.3 allows bona fide farmworker housing in the non-urban areas of the county in excess of their density limits. The Pine Island amendment placed all of the Rural lands on Pine Island into the new Coastal Rural land use category. No reference to amending Policy 100.2.3 was included in the Pine Island amendments. Staff believes this was an oversight, but in any case this farmworker housing issue should be corrected.

Staff Recommendation Concerning Policy 100.2.3:

Staff recommends the following additional language for Policy 100.2.3:

POLICY 100.2.3: Housing for farm workers, as defined by ss 420.503 Florida Statutes, may be permitted in the Rural, Coastal Rural, Open Lands, and Density Reduction/ Groundwater Resource land use categories without respect to the density limitations that apply to conventional residential districts. The density of such housing is limited to 50 occupants per acre of actual housing area and will be reviewed on a case-by-case basis during the planned development or Special Exception zoning process. The applicant must demonstrate that impacts of the farm worker housing will be mitigated. (Amended by Ordinance No. 94-30, 00-22, 03-19)

CREATION OF NEW PURCHASE OF DEVELOPMENT RIGHTS PROGRAM:

The loss of farmland and open space throughout the country has increasingly become an important issue. Land use "tools" have been created to preserve, in some fashion, lands that states and local jurisdictions deem appropriate. Purchase of Development Rights (PDR) programs are an example of one of these land use tools. PDRs have been used successfully in many areas of the nation.

Under a PDR program, a landowner voluntarily sells the rights to certain types of development from a parcel of land to a public agency or other organization interested in resource protection. The concept is similar to TDRs in that PDR programs recognize the concept that a "bundle of rights" are associated with ownership of land. PDR programs recognize that fee simple ownership of real estate allows the owner to sell, lease, or trade any one or more, or all of the bundle of rights to their property, subject to the limitations of the legislative power of the local government. The right to develop a piece of land for residential, commercial, or industrial uses is a right within the bundle. The PDRs involves the sale of that right while leaving all the remaining rights as before. An easement is placed upon the property, thereby assuring that the severed type of development will not occur on that particular property. The landowner is generally compensated for the value of the rights to develop that are removed from the land.

A PDR program can be an effective tool to help maximize a community's conservation efforts. Money for PDR programs can be raised through a variety of means, including bonding initiatives, private grants, and various taxation options. Many communities have found matching dollars from state and federal sources.

Creating a PDR program is a viable option to help farmers achieve the economic benefits accrued from the development potential of the land, while having the ability to keep the land as agricultural. PDR programs provide many benefits from its completely voluntary nature. No landowner is coerced into giving up or selling the land or the development rights. This type of program also provides a permanent

solution with the placement of an agricultural conservation easement on the subject land. Escape clauses can be incorporated into the program if surrounding development or economic conditions have made farming on the land impossible. Another benefit of a PDR program is that it makes it easier for one farmer to pass the farm on to an heir interested in continuing the farming activities. Once the development rights have been separated from the land, the value of the parcel typically declines to its agricultural value. This generally has an enormous effect on reducing the inheritance tax liability.

The primary disadvantage of PDR is the cost involved. In the case of a governmental entity purchasing the PDR, some sort of tax is generally the primary funding source. The topic of instituting new taxes is always controversial.

Staff Recommendation Concerning the Establishment of a PDR Program:

Staff recommends that the Board of County Commissioners evaluate creating a PDR program for agricultural lands within the Coastal Rural areas of Pine Island. Staff believes the evaluation of creating a PDR program should include an evaluation of establishing a dedicated funding source to initially fund the program. Staff recommends that a new policy calling for this evaluation be added with the new proposed Agricultural Uses Objective, Objective 14.6:

POLICY 14.6.2: Lee County, by 2009, will evaluate creating a Purchase of Development Rights Program with the objective of preserving Pine Island agricultural uses.

TRANSFER OF DEVELOPMENT RIGHTS (TDR):

The County has an existing transfer of development rights (TDR) program with the intent of transferring development rights from wetlands to mainland areas with a future land use designation of Intensive Development, Central Urban, or Urban Community. This program is detailed in Chapter 2 of the Lee County LDC. The current program has had limited participation. This fact is discussed further in the next section, TDR Market Stimulation.

The creation of additional TDR options under the Land Development Code can help the County address equity and fairness issues that have been raised as well as helping the County achieve true mixed uses in mainland areas of the County consistent with the Lee Plan's Evaluation and Appraisal Report (EAR).

Staff recommends that the County enact a transfer of development rights program for Greater Pine Island. This program will allow for the creation of TDRs in the Coastal Rural future land use category. One or more Coastal Rural TDRs could be allowed for each acre of Coastal Rural that is protected from commercial and residential development, either with a conservation easement or an agricultural conservation easement. Once created these Coastal Rural development rights become eligible for use both on and off Pine Island. Should the Coastal Rural TDR's remain on Pine Island the maximum density should be one dwelling unit per Coastal Rural TDR. If the Coastal Rural TDR's are subsequently transferred to an appropriate urban category on mainland Lee County, the density should be increased to two dwelling units per Coastal Rural TDR as an incentive. These details can be finalized in the Land Development Code amendment that establishes this TDR program.

In this way, Coastal Rural TDRs could be utilized to increase the allowable density on contiguous or non-contiguous Coastal Rural lands. The standard maximum density of one dwelling unit per ten acres

(1DU/10 acres) could be raised to a maximum of one dwelling unit per two and one-half acres (1DU/2.5 acres). Creation, preservation or restoration of native habitat could be reduced or not required at all.

Staff also recommends establishing a transfer of development rights program for Greater Pine Island that will allow for the creation of transfer of development rights from the areas designated in urban categories. In order to maintain the rural character and to help reduce the buildout population of Pine Island such a TDR program for the urban designated lands could prove useful. These TDRs would utilize the underlying density of the urban future land use category with the property protected from commercial and residential development via a conservation easement. These programs might prove useful once the level of service on Pine Island Road is exceeded and residential Development Orders are limited to one third of the current allowable density, as stated in Policy 14.2.2.

Staff Recommendation Concerning Establishing a Pine Island TDR Program:

One of the main impetus in establishing a program has been as a result of criticisms of the Plan Update Amendment raised by large land owners, much of which is in active agricultural use. Establishing a TDR program will provide another option for these land owners on Pine Island. Moving development rights from Pine Island will have the effect of lowering potential future hurricane evacuation times and help address the constrained access dilemma of Pine Island. As Coastal Rural has been the focus of discussions and possible compromise, staff believes the program should target existing farmland as depicted on Map 21, but be open to all properties on Pine Island. Staff recommends that the following policy be incorporated under proposed Objective 14.6:

POLICY 14.6.3: By 2007 Lee County will amend the Lee County Land Development Code to establish a Pine Island Transfer of Development Rights (TDR) program to supplement the existing wetland TDR program. The program will be open to properties depicted on Map 21 as well as other Pine Island lands deemed acceptable by the Board of County Commissioners.

TDR MARKET STIMULATION:

In order for any TDR program to be successful there must be a market for TDRs. Staff has researched establishment of TDR programs in a variety of local governments, all of which stress the importance of providing a market to make the program successful. The County's current TDR program has seen modest levels of participation. Staff believes several modifications to County regulations are necessary in order to assure a successful TDR program for Pine Island. The necessary changes are discussed below.

In order to stimulate the mainland TDR market, the Lee Plan should be amended to allow true mixed use developments to maintain some or all of their residential density that is lost to the commercial acreage. In accordance with the current Lee Plan definition of Density, lands used for commercial, office, industrial uses, natural water bodies, and other non-residential uses must be removed from the project area prior to the density calculation. Staff recommends modifying the current definition of Density to allow the areas used for commercial and office use to remain in the residential density calculation, if Pine Island TDRs are utilized to make up the difference in density, utilizing the current definition. Staff recommends the following modification to the Density definition in the Glossary:

DENSITY - The number of residential dwelling or housing units per gross acre (du/acre). Densities specified in this plan are gross residential densities. For the purpose of calculating gross residential density, the total acreage of a development includes those lands to be used for residential

uses, and includes land within the development proposed to be used for streets and street rights of way, utility rights-of-way, public and private parks, recreation and open space, schools, community centers, and facilities such as police, fire and emergency services, sewage and water, drainage, and existing man-made waterbodies contained within the residential development. Lands for commercial, office, industrial uses, natural water bodies, and other non-residential uses must not be included. Within the Caloosahatchee Shores community in the areas identified by Policy 21.4.2 commercial development that includes commercial and residential uses within the same project or the same building do not have to exclude the commercial lands from the density calculation. For true mixed use developments located on the mainland areas of the County, the density lost to commercial, office and industrial acreage can be regained through the utilization of TDRs that are either created from the Greater Pine Island Coastal Rural future land use category or previously created TDRs. True mixed use developments must be primarily multi-use structures as defined in this Glossary as a mixed use building.

To define true mixed use developments, staff recommends adding the following definition to the Glossary:

MIXED USE BUILDING - Mixed Use Building means a building that contains at least two different land uses (i.e. commercial and residential, R & D and residential, office and residential, commercial and civic use open to the public) that are related.

Staff also recommends amending the Mixed Use definition in the Glossary of the Lee Plan to better define what a true mixed project is:

MIXED USE - The development, in a compact urban form, of land or building or structure with two or more different but compatible uses, such as but not limited to: residential, office, industrial and technological, retail, commercial, public, entertainment, or recreation. True mixed use developments primarily consist of mixed use buildings as defined by this Glossary.

Staff also recommends revising Table 1(a), footnote 4, which restricts the density in Pine Island Center to 3 dwelling units per acre. This amendment will allow property to regain a density of up to 6 dwelling units per acre in the urban areas of Pine Island Center if Coastal Rural TDRs or Pine Island Urban Category TDRs are utilized.

4. ~~No land will be rezoned on Pine Island, excluding the Matlacha, Bokerelia, and St. James City areas currently classified as Future Urban Areas, to a zoning district which permits a density higher than 3 dwelling units per gross acre. Land currently zoned in a zoning district which permits a residential density in excess of 3 dwelling units per gross acre will be allowed a density higher than 3 du/acre provided that all other applicable regulations are met, and provided further that no density will be allowed above that which is permitted for the land use category in which the property is located, or which is permitted by the zoning which was in effect for said property as of November 25, 1986, whichever is lower. Within the Future Urban Areas of Pine Island Center, rezonings that will allow in excess of 3 dwelling units per gross acre must "acquire" the density above 3 dwelling units per gross acre utilizing TDRs that were created from Greater Pine Island Coastal Rural or Greater Pine Island Urban Categories.~~

Staff is recommending the above mentioned changes to the footnote with the understanding that under the restrictions contained in Policy 14.2.2 and LDC Section 2-48, rezoning property to residential uses alone is not achievable. The November 17, 2004 staff white paper discussed a potential Pine Island compromise and recommended evaluating the creation of a concurrency exception area for a portion of Pine Island Center. Establishing a concurrency exception area would allow additional development appropriate for Pine Island Center, as contemplated by this proposed footnote language.

The Florida growth management statutes have specific requirements that must be met in order to establish a concurrency exception area, including projects that promote public transportation. Lee County has never established such an area. Staff recommends that the Board retain a consultant that has experience with the formation of concurrency exception areas to investigate the merits of increasing public transportation and allowing additional growth in Pine Island Center. The following policy implements this recommendation. The money earmarked for Community Planning activities in the Planning Division budget could be used to finance this and other community planning studies.

POLICY 14.2.5: Lee County will investigate the merits of creating a concurrency exception area for a portion of Pine Island Center. The concurrency exception area will promote the expansion of public transportation to and from the Greater Pine Island area.

CREATION OF URBAN INFILL AREAS:

Staff recommends establishing new Urban Infill Areas on the mainland that will be targeted for higher density mixed use developments. These areas should have an emphasis on urban form and design. Staff anticipates addressing this issue further in the TDR LDC amendment if the Board of County Commissioners is amenable to their creation.

B. CONCLUSIONS:

The proposed amendment does represent a compromise. The affect of the amendment should serve to limit the County's liability under the Bert Harris Act. The amendment does further the Pine Island Vision.

C. STAFF RECOMMENDATION:

Staff recommends that the Board of County Commissioners transmit the proposed plan amendment to the Florida Department of Community Affairs for their review.

PART III - LOCAL PLANNING AGENCY REVIEW AND RECOMMENDATION

DATE OF PUBLIC HEARING: May 23, 2005

A. LOCAL PLANNING AGENCY REVIEW

Planning staff provided a summary concerning the proposed amendment. Staff stated that the amendment proposes to add a new Objective, dealing with Agricultural Uses, and a new map, proposed Map 21, depicting existing farmland on Pine Island. The amendment also proposes establishing an additional County Transfer of Development Rights (TDR) program. In addition, the amendment also proposes to incorporate the concept of agricultural preservation or retention in lieu of preservation or restoration of habitat. Staff also informed the LPA that the amendment also proposes to restore the Outlying Suburban designation to the 157 acre "Bokeelia Property." Staff provided a brief summary of the recommended text changes.

The Civic Association Planning consultant addressed the LPA with several concerns, such as the proposed density that could be achieved with the proposed agricultural preservation or retention option. The consultant expressed concern over the use of escape clauses in agricultural conservation easements. The consultant also stated that the proposed 10% flexibility in Policy 1.4.7 for Lakes, Buffers, or utilities is too much. The consultant also discussed restoration costs and submitted cost estimates from a consultant in that field (Kevin Irwin). The consultant provided that even if the 157 acre "Bokeelia property" is not in the Coastal High Hazard but has the same exposure as the rest of Pine Island. The consultant recommended that the Rural land use designation be considered for this property.

Several owners of large tracts on Pine Island addressed the LPA. Many mentioned the consultant cost estimate as being unrealistic. Several stated their belief that the proposed amendment did not go far enough in addressing Bert Harris takings. One person spoke in favor of establishing a purchase of development rights program. One person stated that they perceived that nobody wants the input from the landowners. Several stated that they were not included in any discussions prior to the staff report being issued, and the lateness of the report. One questioned why the County was not planning on constructing an additional bridge to Pine Island. Several spoke to their desire for Lee County to repeal the density and clustering provisions of the Coastal Rural designation.

One member of the Civic Association addressed the LPA and stated that the farm easement and TDRs were good ideas. This member also stated he potentially had concerns for a transportation concurrency exception area for Pine Island center. This member also stated that making the change to the farm worker policy was fair and a clean-up item.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** The LPA recommends that the Board of county Commissioners transmit the proposed amendment.
2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** As advanced by staff in the Staff Report.

C. VOTE:

NOEL ANDRESS	<u>AYE</u>
MATT BIXLER	<u>AYE</u>
DEREK BURR	<u>ABSENT</u>
RONALD INGE	<u>NAY</u>
CARLETON RYFFEL	<u>AYE</u>
FRED SCHILFFARTH	<u>ABSENT</u>
RAYMOND SCHUMANN	<u>ABSENT</u>

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

DATE OF TRANSMITTAL HEARING: June 1, 2005

A. BOARD REVIEW:

Planning staff provided a brief overview of the proposed amendment. One member of the Board commented on liking the concept of TDRs but expressed concern in promoting further development on Pine Island by pursuing a transportation concurrency exception area for Pine Island Center. This member questioned providing increased mass transit services when further development is not encouraged. Staff responded that Pine Island Center was already a designated urban area and that the provision of mass transit was one of the criteria in establishing an exception or infill area under Florida Statutes. Staff provided that the private sector may be asked to participate in the costs of providing an increased level of service to the island. Another Board member questioned the flexibility factor for utilities contained in Policy 1.4.7.

A consultant to the Greater Pine Island Civic Association addressed the Board. This consultant stated that he liked much of the staff recommendation but thought the amendment went to far in certain areas. For example the 10% allowance for buffers, lakes, and utilities was too much. The proposed agricultural preservation in lieu of habitat preservation or restoration was also mentioned as too much. The consultant also recommended that the Rural category be considered for the 157 acre "Bokeelia Property." The consultant also supplied a memo from a local ecologist depicting estimated restoration costs.

A representative of the Pine Island Agriculture and Landowners Association addressed the Board. This representative stated that he thought the purpose of this amendment was to bring the people of Pine Island together and to reduce the County's exposure under the Bert Harris Act. The representative stated that the proposed amendment does not reach their objective to restore the density back to 1 dwelling unit per acre. The representative stated that TDRs were a good idea, but didn't know if it would work, and he noted the promise to do it in 2 years. The representative also stated that the amendment reflected a missed opportunity to address the Policy 14.2.2 further density reduction issue.

Several members of the public addressed the Board with comments for and against the amendment. These comments ranged from the 157 acre property amendment was a mistake, to the County should build a new bridge to Pine Island.

Several owners of existing agricultural operations on Pine Island addressed the Board. Several speakers stated that the Update Amendment took value away from their agricultural lands. Several speakers stated their belief that the restoration costs depicted in the submitted memo are excessively low.

The County Attorney's Office commented that the word "may" should be substituted for the word "will" in the last bullet on page 6 of the staff report. The attorney also provided that the proposed amendment does not eliminate Bert Harris liability on Coastal Rural lands. The attorney also noted that the submitted memo on restoration costs were stated as being based on grazing land which is not typical of Pine Island agriculture. Planning staff noted that the proposed change to Policy 1.4.7 would allow 1 dwelling unit per 2 acres on 30% of the property while still allowing the agricultural uses and associated income on 70% of the property.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. **BOARD ACTION:** The Board voted to transmit the proposed amendment, as recommended by the staff and local planning agency, to the Florida Department of Community Affairs for their review.
2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the finding of facts, noting the word change in the last bullet of page 6, as advanced by the staff report.

C. VOTE:

JOHN ALBION	<u>AYE</u>
TAMMY HALL	<u>AYE</u>
BOB JANES	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
DOUG ST. CERNY	<u>AYE</u>

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

DATE OF ORC REPORT:

- A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS**
- B. STAFF RESPONSE**
- C. STAFF RECOMMENDATION**

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

DATE OF ADOPTION HEARING:

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

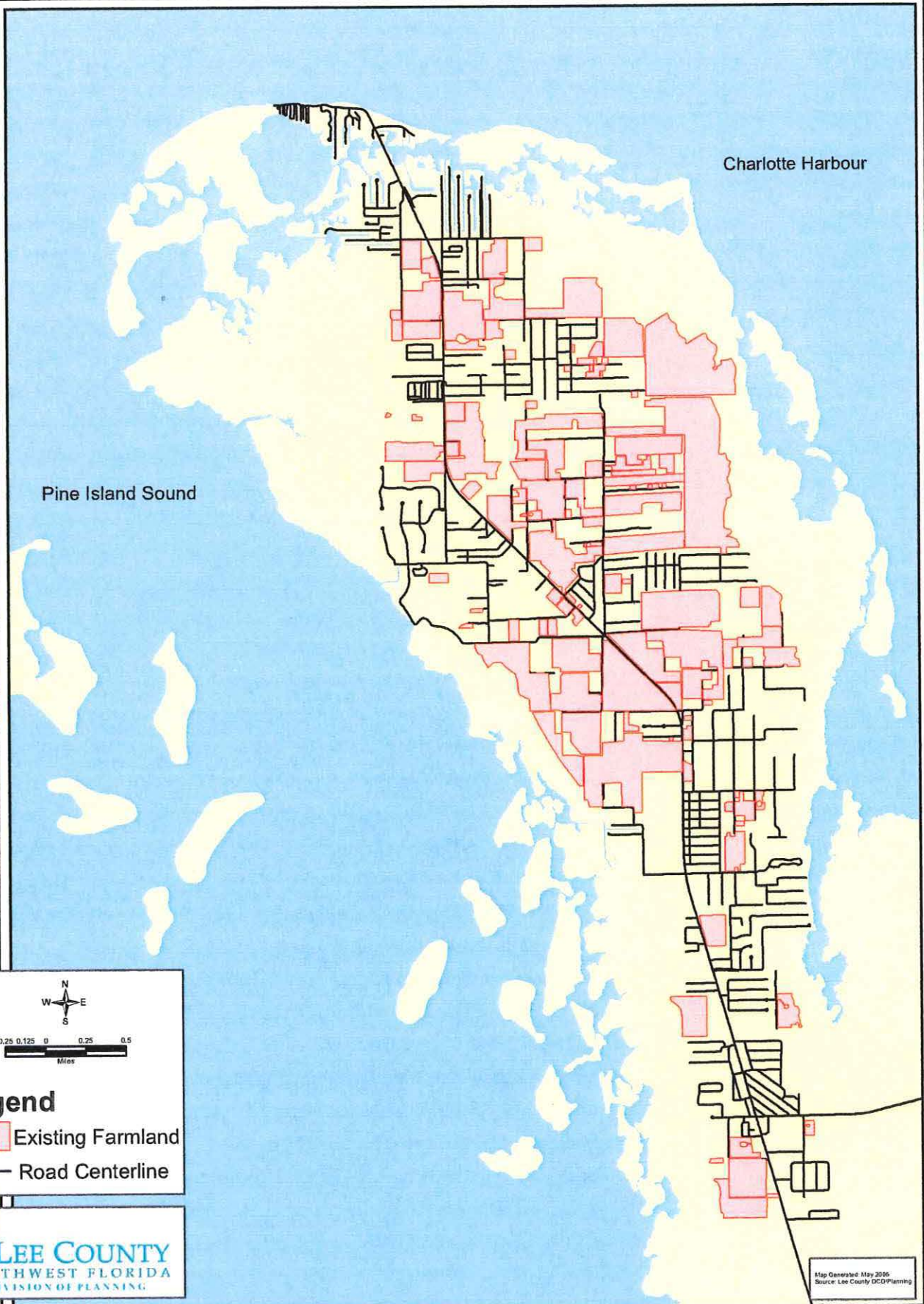
JOHN ALBION

TAMMY HALL

BOB JANES

RAY JUDAH

DOUG ST. CERNY



0.25 0.125 0 0.25 0.5
Miles

Legend

- Existing Farmland
- Road Centerline

 **LEE COUNTY**
SOUTHWEST FLORIDA
DIVISION OF PLANNING

Map Generated May 2006
Source: Lee County DCD/Planning

Existing Pine Island Farmland

(See Plan Map 21 Page 2 of 21)

0.5 0.25 0 0.5 1
Miles

Legend

- Existing Farmland
- Road Centerline



Pine Island Sound

Map Generated May 2005
Source: Lee County DCD/Planning

Map showing Pine Island Sound and Charlotte Harbour. The map displays land parcels, some of which are designated as Existing Farmland (pink) and others as Ag Exemptions (cross-hatched). Road centerlines are shown as black lines. A legend, scale bar, and north arrow are included.

Legend

- Existing Farmland
- Road Centerline
- Ag Exemptions

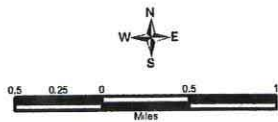
Map Generated May 2005
Source: Lee County DCD/Planning

LEE COUNTY
SOUTHWEST FLORIDA
DIVISION OF PLANNING

Existing Pine Island Farmland

Attachment 1 -- Agricultural Exemption (Page 2 of 2)

Pine Island Sound

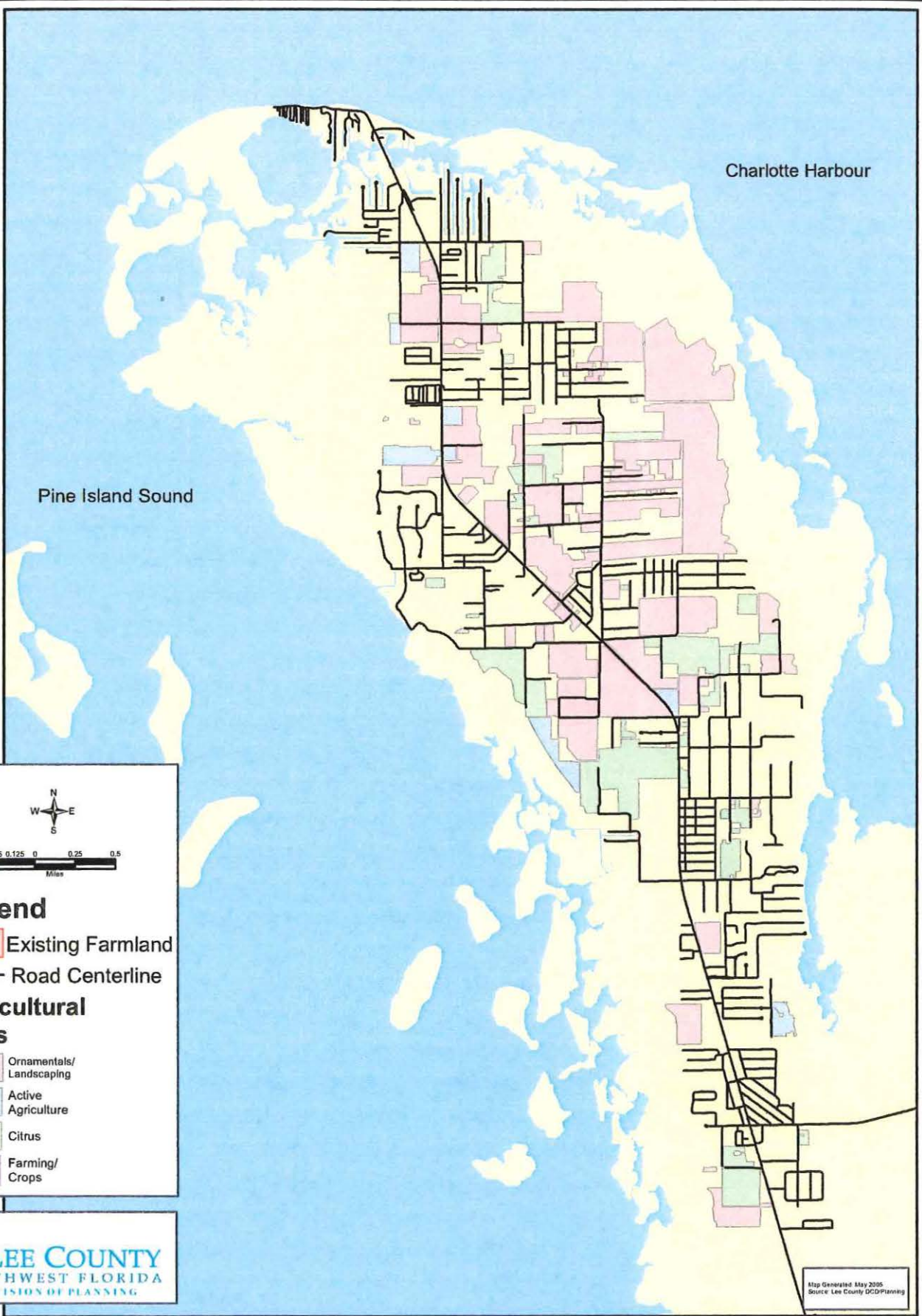


Legend

- Existing Farmland
- Road Centerline
- Ag Exemptions



Map Generated May 2005
Source: Lee County DCD/Planning



Legend

Existing Farmland

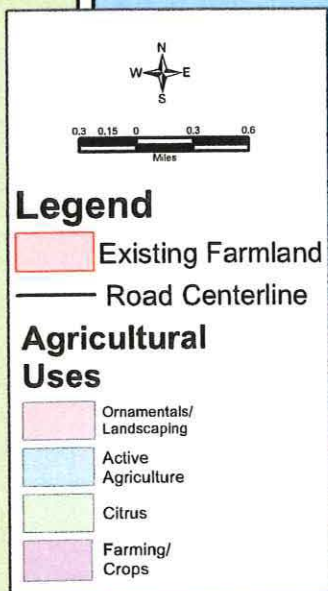
Road Centerline










Agricultural Uses

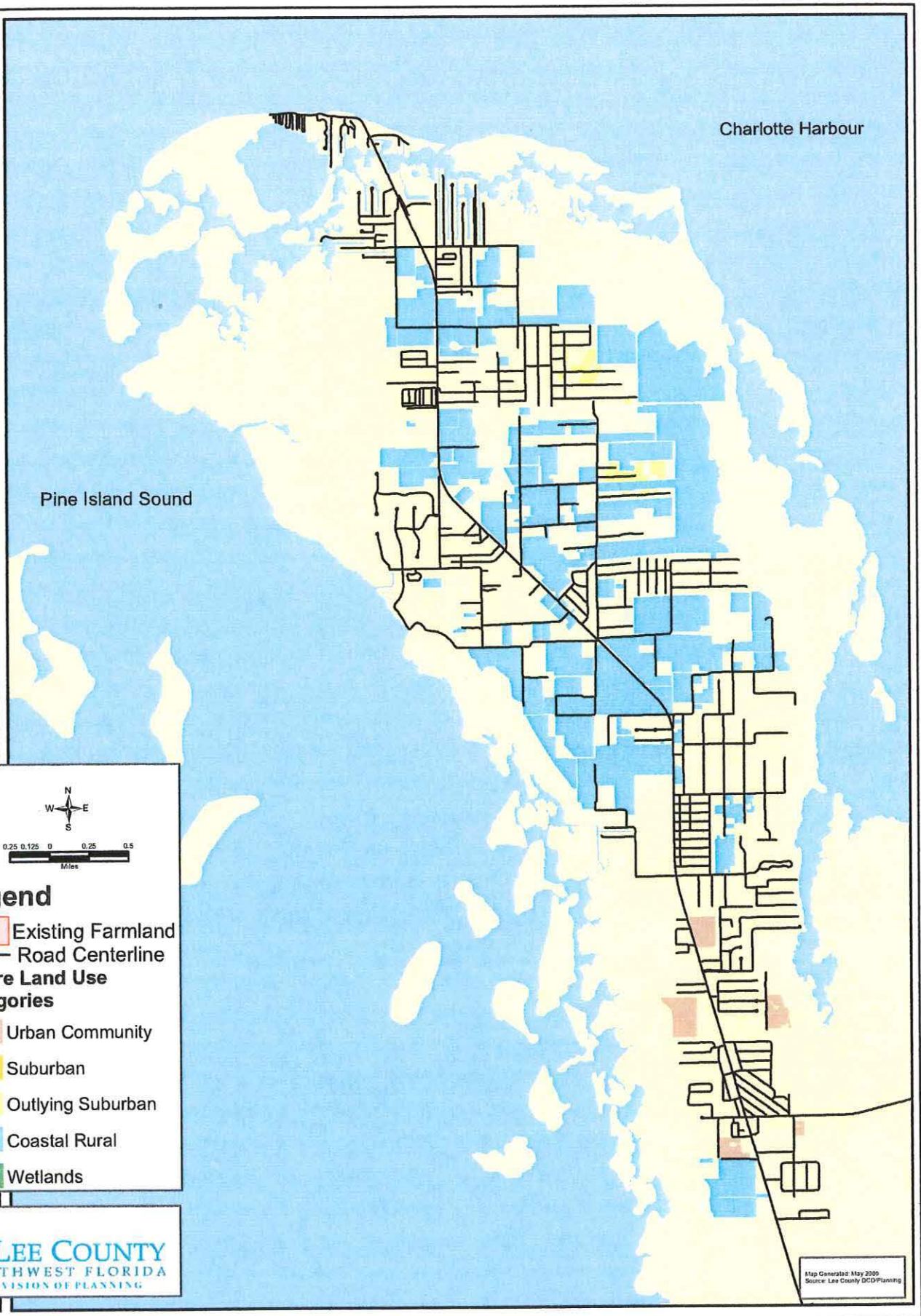
- Ornamentals/Landscaping
- Active Agriculture
- Citrus
- Farming/Crops



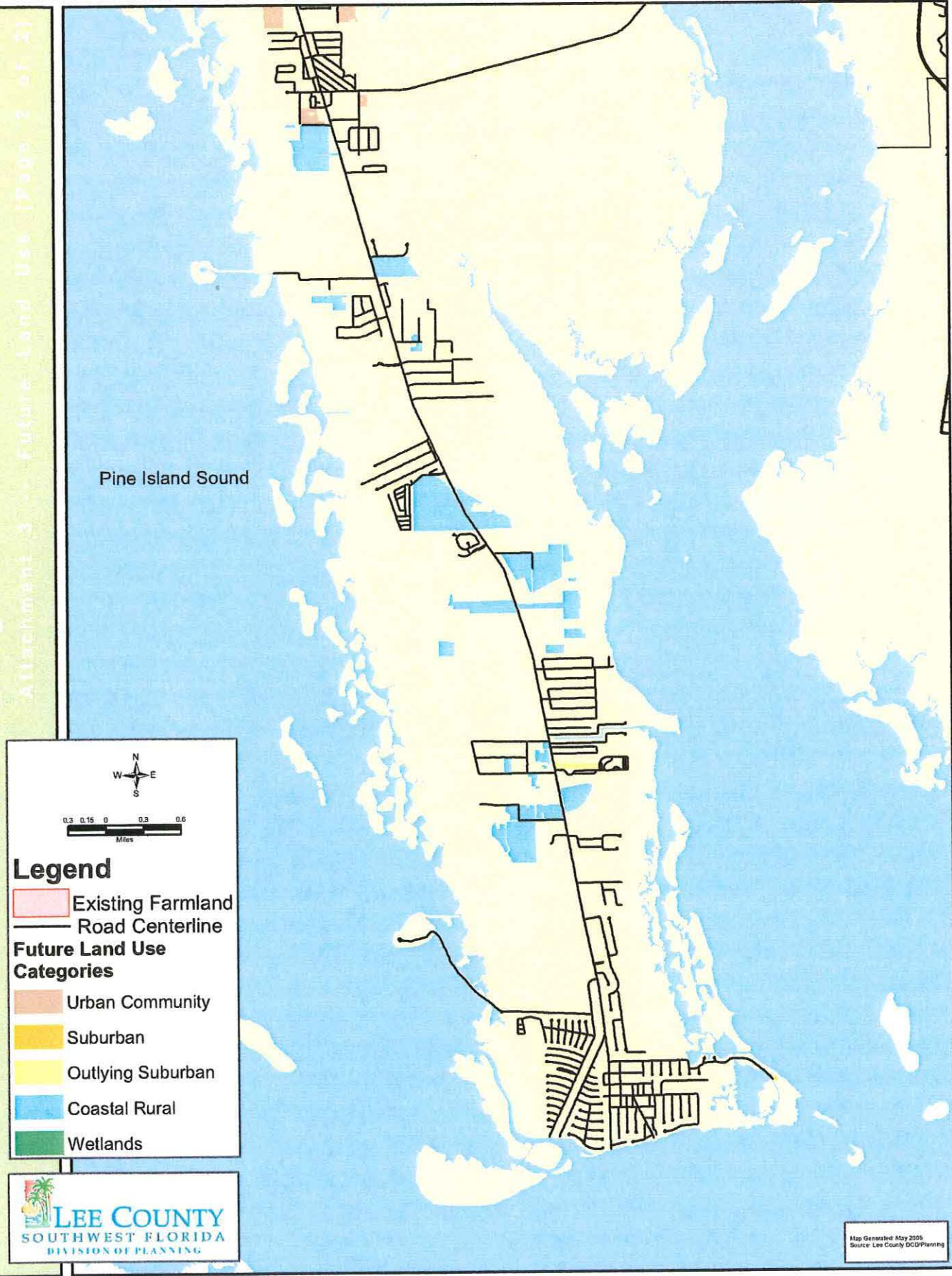
Map Generated May 2005
Source: Lee County DCD/Planning





Legend
 Existing Farmland
 Road Centerline
Future Land Use Categories
 Urban Community
 Suburban
 Outlying Suburban
 Coastal Rural
 Wetlands



Map Generated May 2009
Source: Lee County DCD/Planning



Kevin L. Erwin Consulting Ecologist, Inc.
Ecologists • Biologists • Computer Scientists

May 20, 2005

RECEIVED
MAY 20 2005

Mr. Bill Spikowski
1617 Hendry St.
Suite 416
Ft. Myers, FL 33901

COMMUNITY DEVELOPMENT

Re: General Scope and Cost Estimate for Upland Habitat Restoration Costs for Pine Island Farmland

Dear Mr. Spikowski:

This scope of work and per acre cost estimates covers the work that would be necessary to prepare an upland site being restored to native habitat and for seeding and replanting in accordance with the restoration standards for Pine Island farmland that are proposed for inclusion in Lee County's Land Development Code.

Actual costs may vary depending upon specific site conditions. This restoration activity must be designed and supervised by a well-experienced ecologist who has successfully undertaken similar projects.

The site is assumed to be covered with pasture grasses dominated by Bahia grass (*Paspalum notatum*) and other invasive non-native species, which must be completely removed for effective restoration to occur.

I would estimate the following per acre costs (50 acre minimum). I also recommend adding a 10% contingency to the total to deal with weather, equipment failure, etc.

ACTIVITY	ESTIMATED COST (per acre)
• Plan design	\$100
• Permitting	\$100
• Supervision	\$150
• Monitoring plan	\$50
• Planting plan	\$50
• Brush hog/mowing	\$50
• Disking four times	\$200
• Broadcast herbiciding	\$200
• Spot herbicide treatments	\$210
• Earthwork	\$0 to \$500
• Debris removal	\$0 to \$100
• Direct seeding	\$800
• Planting	\$1,000
• Supplemental planting	\$150
• Monitoring	\$75
Total Estimated Cost	\$3,135 to \$3,735
Total Estimated Cost with 10% Contingency	\$3,450 to \$4,165

Mr. Bill Spikowski
May 20, 2005
Page 2 of 2

RECEIVED
MAY 20 2005

If you have any questions, please call me at (239) 337-1505 x109.

COMMUNITY DEVELOPMENT

Sincerely,

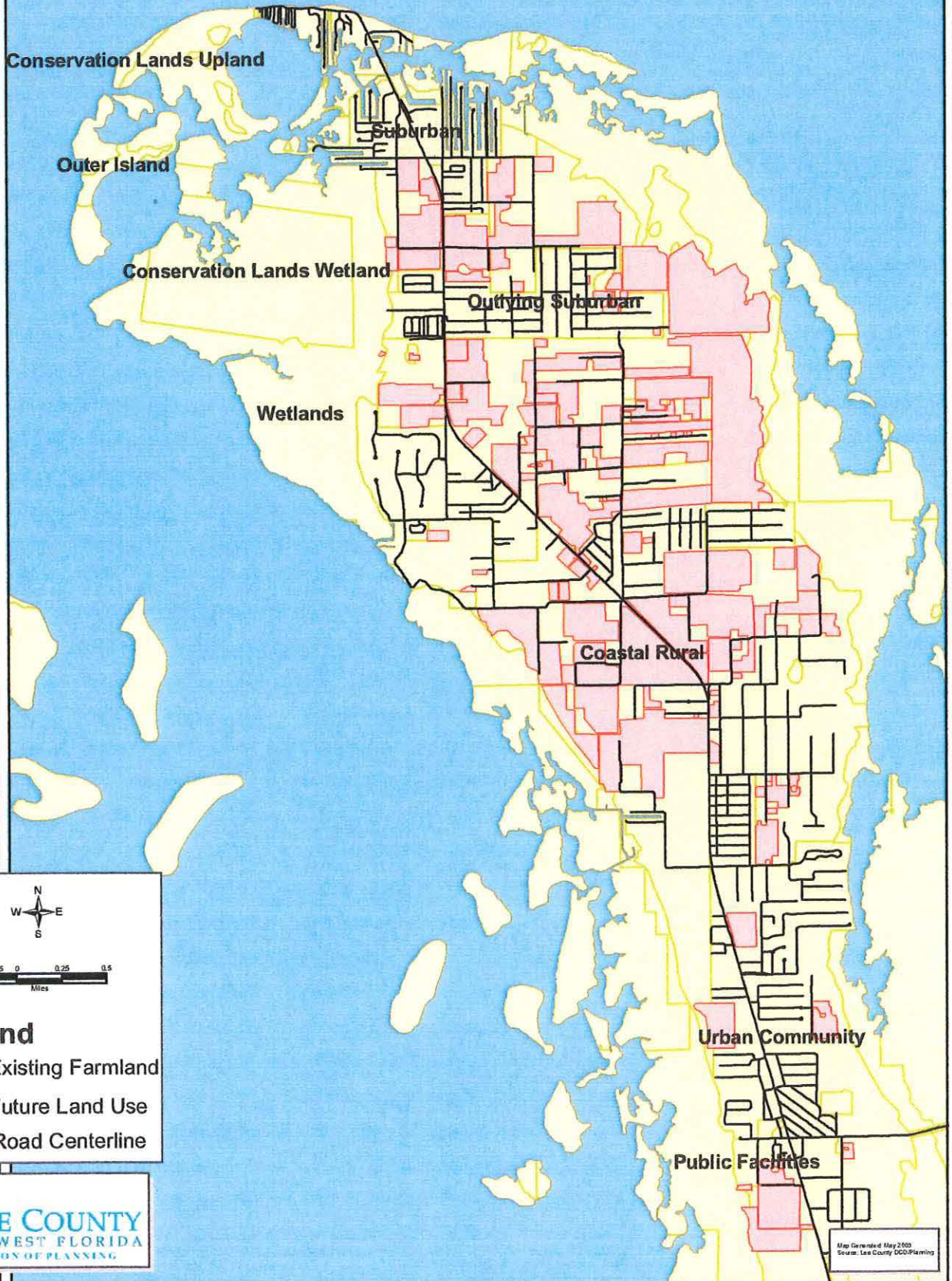
Kevin L. Erwin Consulting Ecologist, Inc.

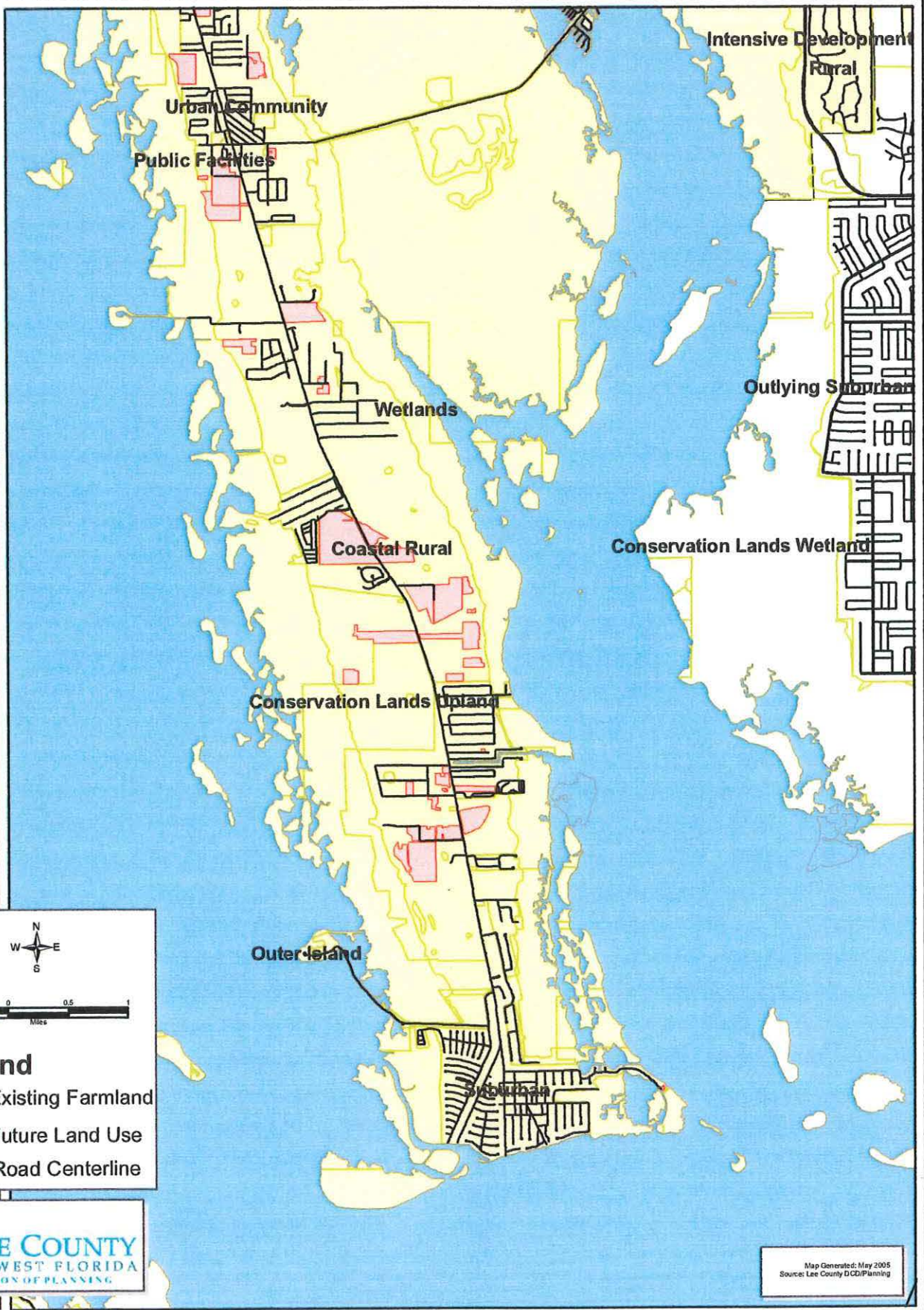
Scarlett Collier

Kevin L. Erwin, CE PWS
President/Principal Ecologist

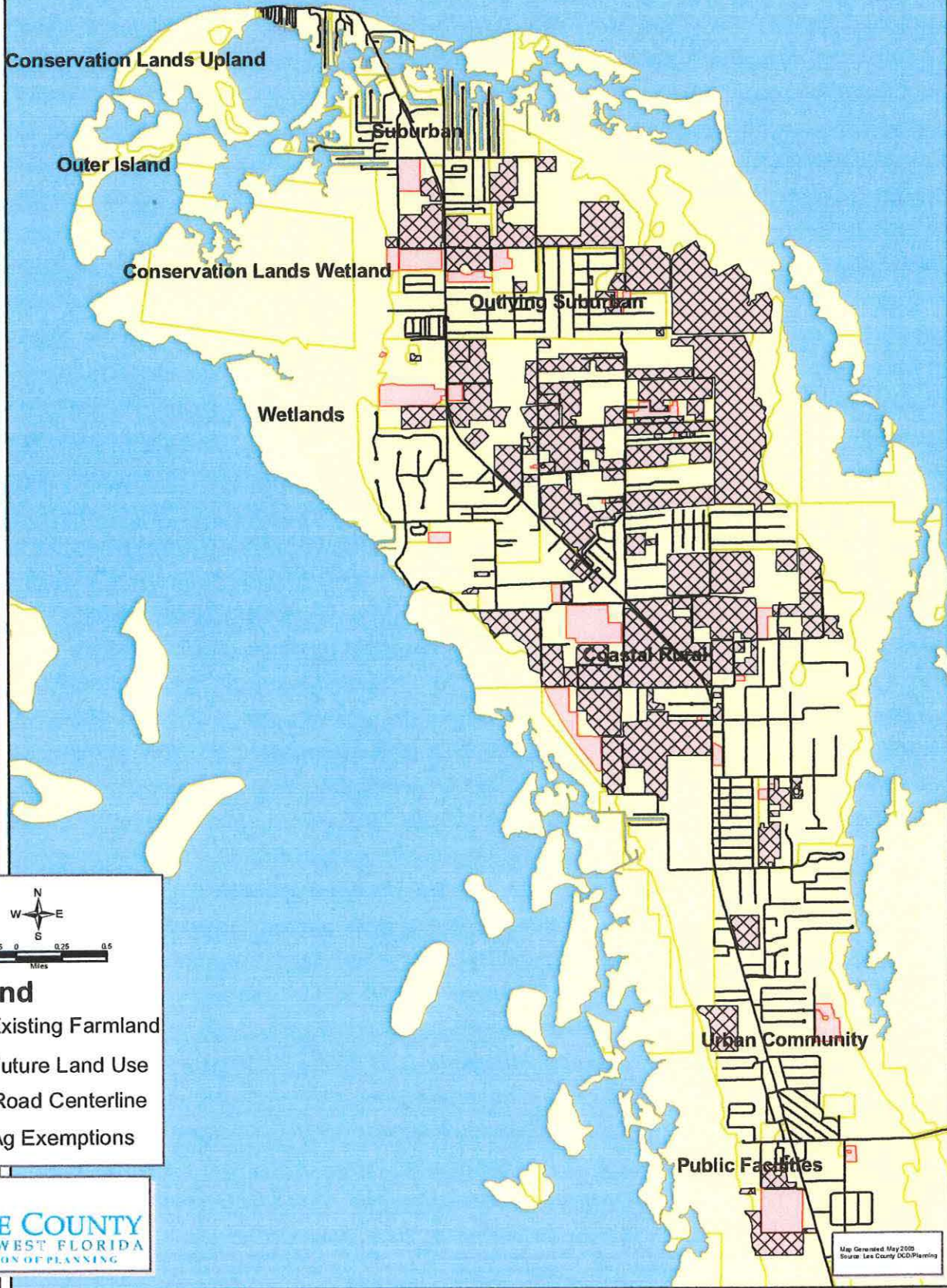
[Signature]

KLE/slc





Existing Pine Island Farmland
Attachment 1 -- Agricultural Exemptions



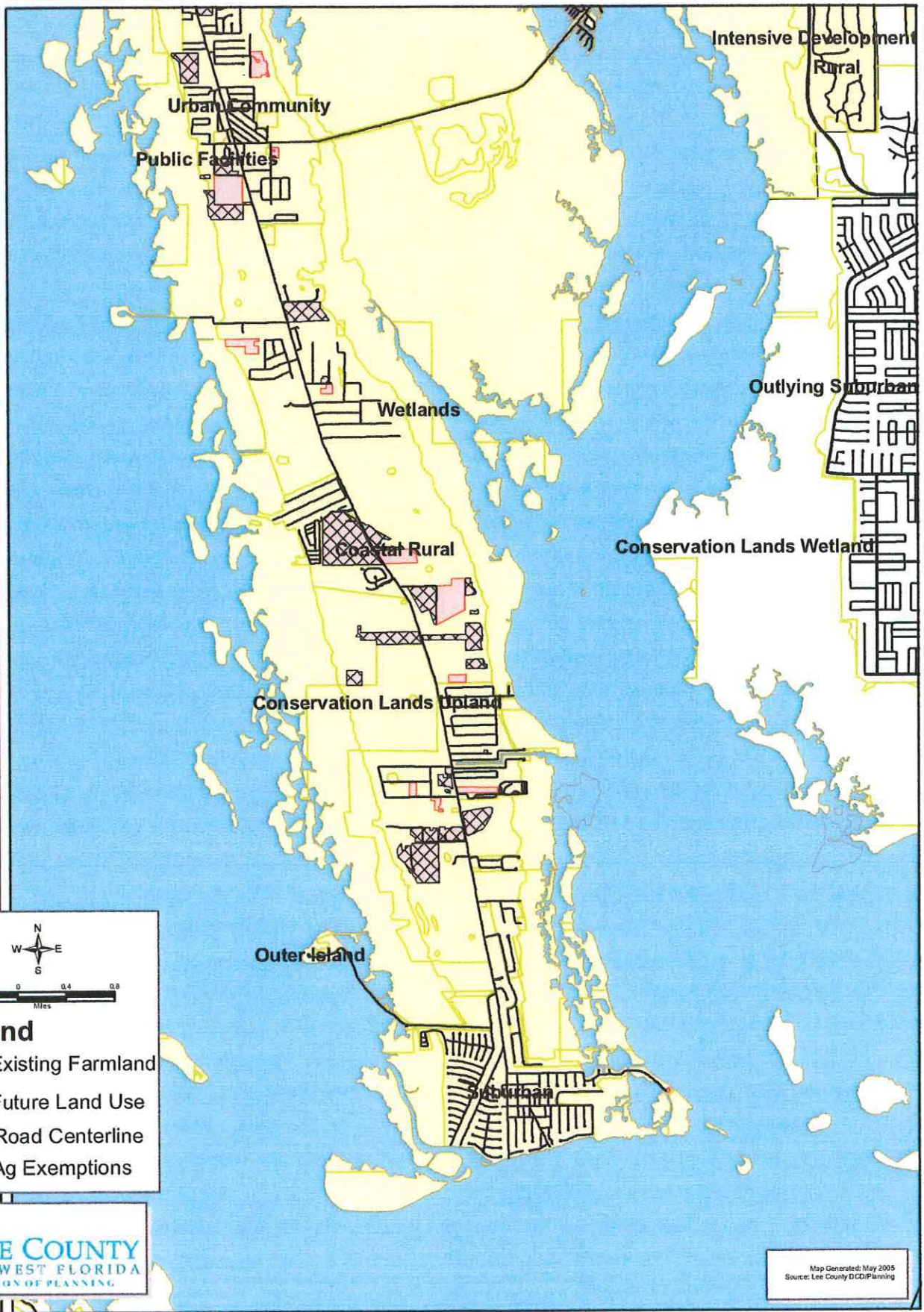
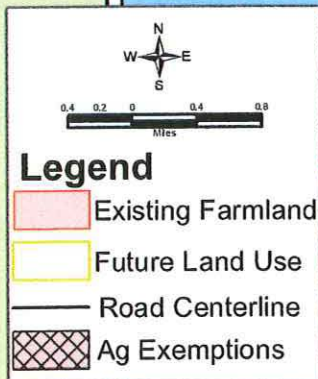
Legend

- Existing Farmland
- Future Land Use
- Road Centerline
- Ag Exemptions

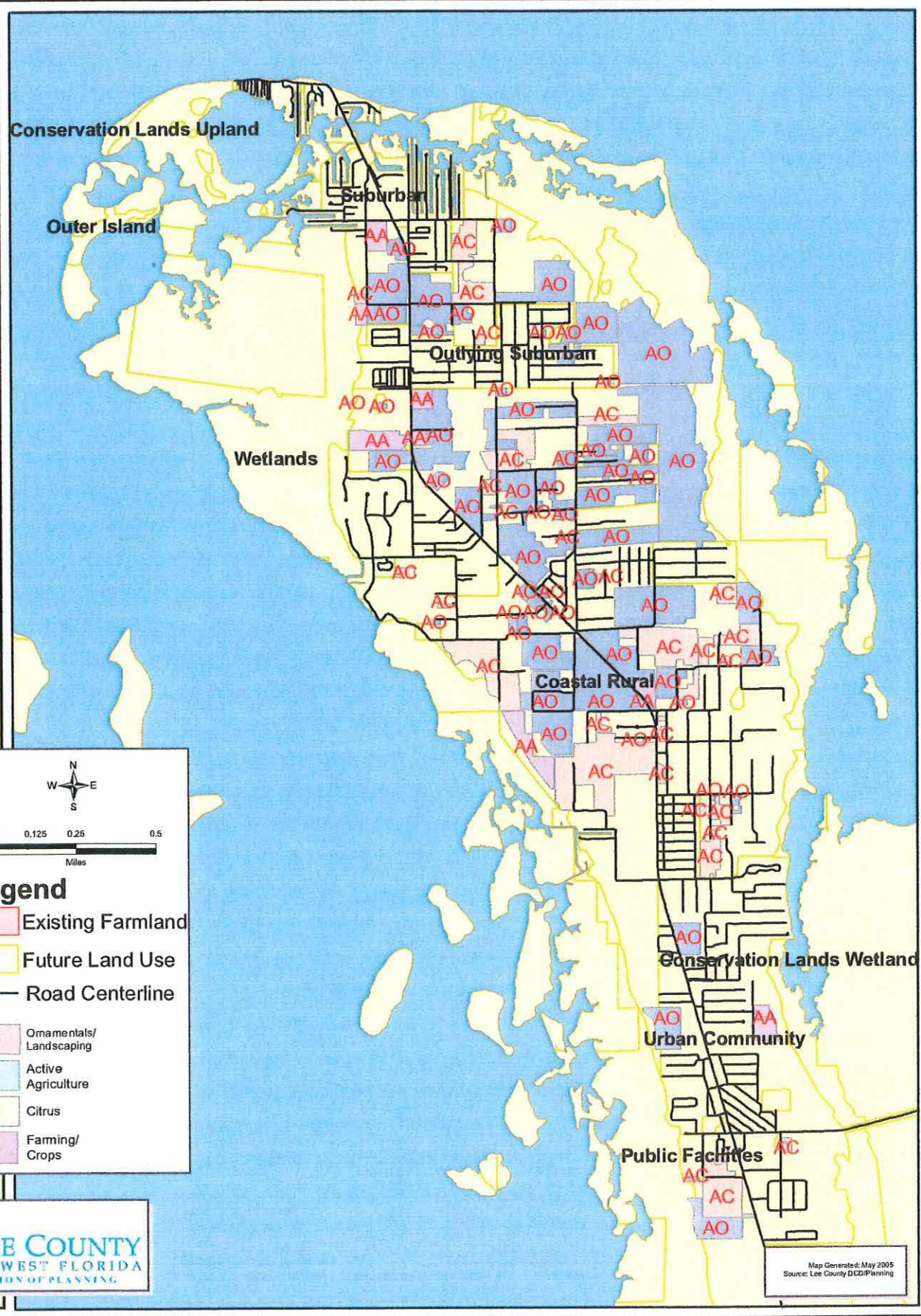











Map Generated May 2005
Source: Lee County AGOP/Planning

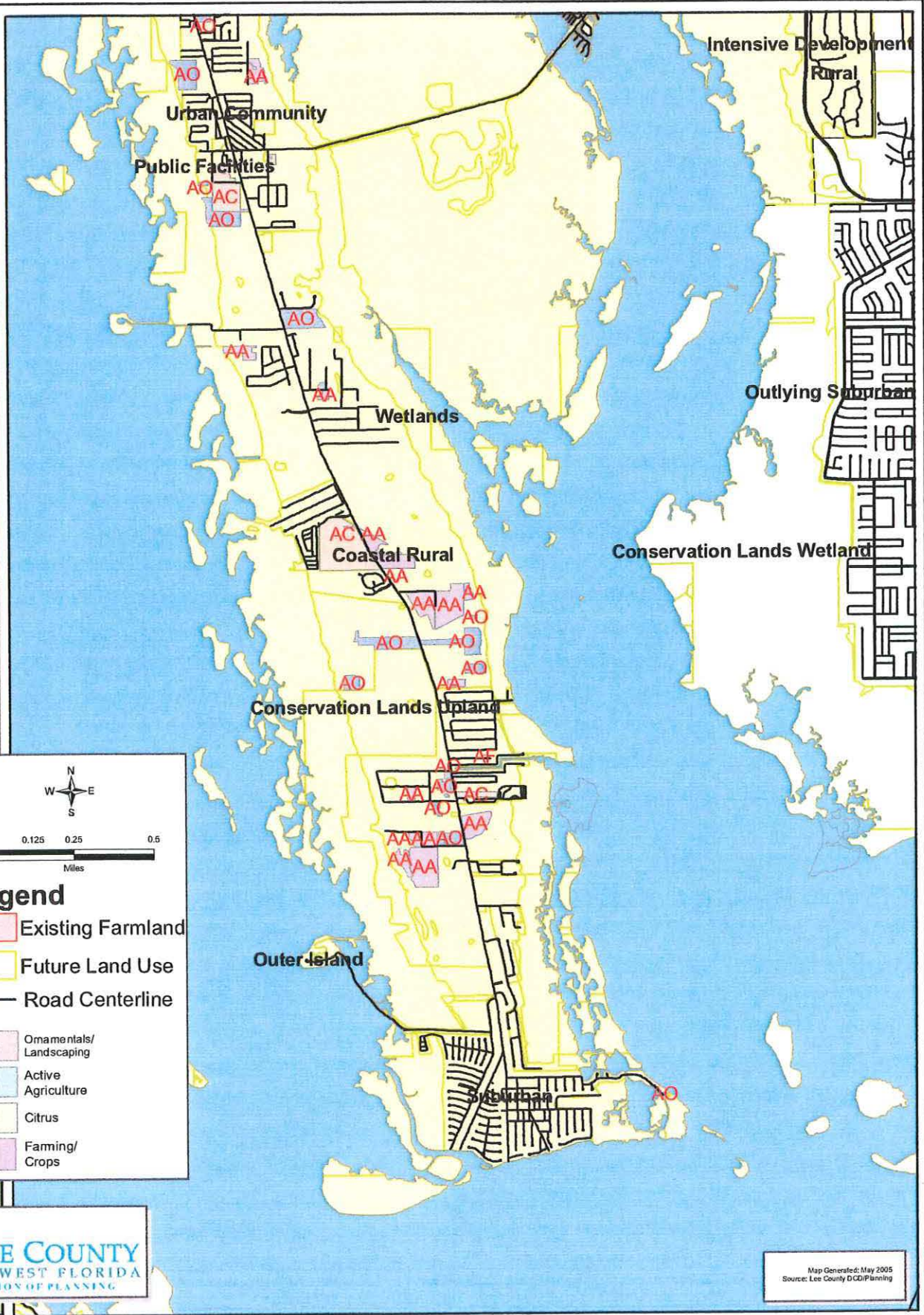
Existing Pine Island Farmland
Attachment 2 -- Agricultural Exemptions



Map Generated: May 2005
Source: Lee County DCD/Planning





Legend
 Existing Farmland
 Future Land Use
 Road Centerline
 AO Ornamentals/Landscaping
 AA Active Agriculture
 AC Citrus
 AF Farming/Crops



CPA 2004-16

**GREATER PINE ISLAND COMPROMISE
BoCC SPONSORED
SPECIAL AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

**Publically Initiated Application
and Lee County Staff Analysis**

**BoCC Public Hearing Document
for the
June 1st, 2005 Public Hearing**

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

May 27, 2005

PART III - LOCAL PLANNING AGENCY REVIEW AND RECOMMENDATION

DATE OF PUBLIC HEARING: May 23, 2005

A. LOCAL PLANNING AGENCY REVIEW

Planning staff provided a summary concerning the proposed amendment. Staff stated that the amendment proposes to add a new Objective, dealing with Agricultural Uses, and a new map, proposed Map 21, depicting existing farmland on Pine Island. The amendment also proposes establishing an additional County Transfer of Development Rights (TDR) program. In addition, the amendment also proposes to incorporate the concept of agricultural preservation or retention in lieu of preservation or restoration of habitat. Staff also informed the LPA that the amendment also proposes to restore the Outlying Suburban designation to the 157 acre "Bokeelia Property." Staff provided a brief summary of the recommended text changes.

The Civic Association Planning consultant addressed the LPA with several concerns, such as the proposed density that could be achieved with the proposed agricultural preservation or retention option. The consultant expressed concern over the use of escape clauses in agricultural conservation easements. The consultant also stated that the proposed 10% flexibility in Policy 1.4.7 for Lakes, Buffers, or utilities is too much. The consultant also discussed restoration costs and submitted cost estimates from a consultant in that field (Kevin Irwin). The consultant provided that even if the 157 acre "Bokeelia property" is not in the Coastal High Hazard but has the same exposure as the rest of Pine Island. The consultant recommended that the Rural land use designation be considered for this property.

Several owners of large tracts on Pine Island addressed the LPA. Many mentioned the consultant cost estimate as being unrealistic. Several stated their belief that the proposed amendment did not go far enough in addressing Bert Harris takings. One person spoke in favor of establishing a purchase of development rights program. One person stated that they perceived that nobody wants the input from the landowners. Several stated that they were not included in any discussions prior to the staff report being issued, and the lateness of the report. One questioned why the County was not planning on constructing an additional bridge to Pine Island. Several spoke to their desire for Lee County to repeal the density and clustering provisions of the Coastal Rural designation.

One member of the Civic Association addressed the LPA and stated that the farm easement and TDRs were good ideas. This member also stated he potentially had concerns for a transportation concurrency exception area for Pine Island center. This member also stated that making the change to the farm worker policy was fair and a clean-up item.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** The LPA recommends that the Board of county Commissioners transmit the proposed amendment.
2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** As advanced by staff in the Staff Report.

C. VOTE:

NOEL ANDRESS	<u>AYE</u>
MATT BIXLER	<u>AYE</u>
DEREK BURR	<u>ABSENT</u>
RONALD INGE	<u>NAY</u>
CARLETON RYFFEL	<u>AYE</u>
FRED SCHILFFARTH	<u>ABSENT</u>
RAYMOND SCHUMANN	<u>ABSENT</u>

Kevin L. Erwin Consulting Ecologist, Inc.
Ecologists • Biologists • Computer Scientists

May 20, 2005

RECEIVED
MAY 20 2005

Mr. Bill Spikowski
1617 Hendry St.
Suite 416
Ft. Myers, FL 33901

COMMUNITY DEVELOPMENT

Re: General Scope and Cost Estimate for Upland Habitat Restoration Costs for Pine Island Farmland

Dear Mr. Spikowski:

This scope of work and per acre cost estimates covers the work that would be necessary to prepare an upland site being restored to native habitat and for seeding and replanting in accordance with the restoration standards for Pine Island farmland that are proposed for inclusion in Lee County's Land Development Code.

Actual costs may vary depending upon specific site conditions. This restoration activity must be designed and supervised by a well-experienced ecologist who has successfully undertaken similar projects.

The site is assumed to be covered with pasture grasses dominated by Bahia grass (*Paspalum notatum*) and other invasive non-native species, which must be completely removed for effective restoration to occur.

I would estimate the following per acre costs (50 acre minimum). I also recommend adding a 10% contingency to the total to deal with weather, equipment failure, etc.

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• Debris removal	\$0 to \$100
• Direct seeding	\$800
• Planting	\$1,000
• Supplemental planting	\$150
• Monitoring	\$75
Total Estimated Cost	\$3,135 to \$3,735
Total Estimated Cost with 10% Contingency	\$3,450 to \$4,165

Mr. Bill Spikowski
May 20, 2005
Page 2 of 2

RECEIVED
MAY 20 2005

If you have any questions, please call me at (239) 337-1505 x109.

COMMUNITY DEVELOPMENT

Sincerely,

Kevin L. Erwin Consulting Ecologist, Inc.

Scarlett Collier

Kevin L. Erwin, CE PWS
President/Principal Ecologist

for

KLE/slc

CPA 2004-16

**GREATER PINE ISLAND COMPROMISE
BoCC SPONSORED
SPECIAL AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

**Publically Initiated Application
and Lee County Staff Analysis**

**LPA Public Hearing Document
for the
May 23rd, 2005 Public Hearing**

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

May 18, 2005

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA 2004-16**

☒

Text Amendment

☒

Map Amendment

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

ORIGINAL STAFF REPORT PREPARATION DATE: May 18, 2005

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT/REPRESENTATIVE:

Lee County Board of County Commissioners, represented by the Lee County Division of Planning.

2. REQUEST:

Amend the Lee Plan as follows:

- A. Amend the Future Land Use Map series for specified parcels of land (total of approximately 157 acres) located in Section 31, Township 43 South, Range 22 East to change the Future Land Use classification shown on Map 1 from "Coastal Rural" to "Outlying Suburban." The property is generally located in the Bokeelia area south of Barrancas Avenue and north of Pinehurst Road;
- B. Amend the Pine Island Vision Statement and Goal 14 to recognize the value of preserving agricultural activities on the island;
- C. Amend the Future Land Use Element Policy 1.4.7, the Coastal Rural Policy, to allow the retention of active or passive agriculture in lieu of habitat restoration to regain density;
- D. Amend the current percentages of preserved or restored uplands in Policy 1.4.7;

- E. Amend the Lee Plan to add a policy that further defines the restoration standards referred to in Policy 1.4.7;
- F. Amend Housing Element Policy 100.2.3 to incorporate a reference to the Coastal Rural future land use category;
- G. Amend the Pine Island Vision Statement, Goal 14, Table 1(a) footnote 4, the Definition of Density in the Glossary, and any other Plan provisions to create a new transfer of development rights program for Pine Island; Amend the definition of Density to allow mixed use projects to retain some or all of their residential density that is typically lost to commercial acreage, if Pine Island TDRs are utilized to regain density; Amend the Mixed Use definition in the Glossary to better define mixed use projects;
- H. Evaluate creating a concurrency exception area for a portion of Pine Island Center; and,
- I. Evaluate establishing additional Urban Infill areas on the mainland portion of the County to be receiving areas for Pine Island TDRs. Evaluate increasing allowable bonus densities in specific locations based on a point system that incorporates several criteria.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** Planning staff recommends that the Board of County Commissioners transmit the proposed Lee Plan amendment to the Florida Department of Community Affairs for their review.

Recommended Text Changes:

VISION STATEMENT:

Pine Island - This community includes Greater Pine Island as described under Goal 14 along with surrounding smaller islands and some unincorporated enclaves near Cape Coral. Its future, as seen by Pine Islanders, will be a matter of maintaining an equilibrium between modest growth, ~~on the one hand~~ and a fragile ecology, ~~on the other~~ and a viable and productive agricultural community. Pine Island will continue to be a haven between urban sprawl approaching from the mainland and the wealth of the outer islands; a quiet place of family businesses, school children, farmers, and retirees enjoying the bounties of nature; a place devoid of high-rises, strip malls, and gated communities. Traffic constraints caused by the narrow road link to the mainland will limit future development, allowing the islands to evacuate from storms and protecting natural lands from unsustainable development. Wildlife and native vegetation will be protected; loss of wildlife habitat will be reversed; sidewalks and bike paths will connect neighborhoods for young and old alike. Architectural standards for commercial buildings will encourage "Old Florida" styles, and historic buildings will be treasured. Pine Island will continue to be a place where people, ~~and nature~~ and agriculture exist in harmony, a place not very different from what it is today, an island as state-of-mind as much as a physical entity, its best features preserved and enhanced. Pine Islanders are historically vigilant about protecting their community and will work to ensure that their plans are carried out.

FUTURE LAND USE ELEMENT:

POLICY 1.4.7: The Coastal Rural areas will remain rural except for portions of properties where residential lots are permitted in exchange for permanent preservation or restoration of native upland habitats or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, on the remainder of the property. The standard maximum density is one dwelling unit per ten acres (1DU/10 acres). Maximum densities may increase as higher percentages of native habitat are permanently preserved or restored on the uplands portions of the site, or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, in accordance with the chart below. Permitted land uses include agriculture, fill-dirt extraction, conservation uses, and residential uses up to the following densities:

<u>Percentage of the on site uplands that are preserved or restored native habitats or continued in agricultural use on existing farmland</u>	<u>Maximum density if undeveloped land will be permanently preserved or restored as native habitats</u>	<u>Maximum density if undeveloped land will be continued in agricultural use on existing farmland</u>
0%	1 DU/ 10 acres	<u>1 DU/ 10 acres</u>
5%	1 DU/ 9 acres	
10%	1 DU/ 8 acres	<u>1 DU/ 9 acres</u>
15%	1 DU/ 7 acres	
20%	1 DU/ 6 acres	<u>1 DU/ 8 acres</u>
30%	1 DU/ 5 acres	<u>1 DU/ 7 acres</u>
40%	1 DU/ 4 acres	<u>1 DU/ 6 acres</u>
50%	1 DU/ 3 acres	<u>1 DU/ 5 acres</u>
60%	1 DU/ 2 acres	<u>1 DU/ 3 acres</u>
70%	1 /DU/ 1 acre	<u>1 DU/ 2 acres</u>

Existing farmland is depicted on Map 21. Areas for buffers, lakes, and utilities may consist of up to 10% of the upland preserve areas.

GOAL 14: GREATER PINE ISLAND. To manage future growth on and around Greater Pine Island so as to maintain the island's unique natural resources, and character and its viable and productive agricultural community and to insure that island residents and visitors have a reasonable opportunity to evacuate when a hurricane strike is imminent. For the purposes of this plan, the boundaries of Greater Pine Island are indicated on the Future Land Use Map.

POLICY 14.2.5: Lee County will investigate the merits of creating a concurrency exception area for a portion of Pine Island Center. The concurrency exception area will promote the expansion of public transportation to and from the Greater Pine Island area.

OBJECTIVE 14.6: Agricultural Uses. To promote and preserve the rural character of Pine Island, Lee County will strive to foster a viable and productive agricultural community on the island.

POLICY 14.6.1: Lee County will maintain a map (Map 21) of all existing farmland on Pine Island.

POLICY 14.6.2: Lee County, by 2009, will evaluate creating a Purchase of Development Rights Program with the objective of preserving Pine Island agricultural uses.

POLICY 14.6.3: By 2007 Lee County will amend the Lee County Land Development Code to establish a Pine Island Transfer of Development Rights (TDR) program to supplement the existing wetland TDR program. The program will be open to properties depicted on Map 21 as well as other Pine Island lands deemed acceptable by the Board of County Commissioners.

HOUSING ELEMENT:

POLICY 100.2.3: Housing for farm workers, as defined by ss 420.503 Florida Statutes, may be permitted in the Rural, Coastal Rural, Open Lands, and Density Reduction/ Groundwater Resource land use categories without respect to the density limitations that apply to conventional residential districts. The density of such housing is limited to 50 occupants per acre of actual housing area and will be reviewed on a case-by-case basis during the planned development or Special Exception zoning process. The applicant must demonstrate that impacts of the farm worker housing will be mitigated.

GLOSSARY:

DENSITY - The number of residential dwelling or housing units per gross acre (du/acre). Densities specified in this plan are gross residential densities. For the purpose of calculating gross residential density, the total acreage of a development includes those lands to be used for residential uses, and includes land within the development proposed to be used for streets and street rights of way, utility rights-of-way, public and private parks, recreation and open space, schools, community centers, and facilities such as police, fire and emergency services, sewage and water, drainage, and existing man-made waterbodies contained within the residential development. Lands for commercial, office, industrial uses, natural water bodies, and other non-residential uses must not be included. Within the Caloosahatchee Shores community in the areas identified by Policy 21.4.2 commercial development that includes commercial and residential uses within the same project or the same building do not have to exclude the commercial lands from the density calculation. For Mixed Use developments located on the mainland areas of the County, the density lost to commercial, office and industrial acreage can be regained through the utilization of TDRs that were created from Greater Pine Island Coastal Rural or Greater Pine Island Urban Categories.

MIXED USE BUILDING - Mixed Use Building means a building that contains at least two different land uses (i.e. commercial and residential, R & D and residential, office and residential, commercial and civic use open to the public) that are related.

MIXED USE - The development, in a compact urban form, of land or building or structure with two or more different but compatible uses, such as but not limited to: residential, office, industrial and technological, retail, commercial, public, entertainment, or recreation. True mixed use developments primarily consist of mixed use buildings as defined by this Glossary.

LEE PLAN TABLE 1(A), FOOTNOTE 4:

4. ~~No land will be rezoned on Pine Island, excluding the Matlacha, Bokeelia, and St. James City areas currently classified as Future Urban Areas, to a zoning district which permits a density higher than 3 dwelling units per gross acre. Land currently zoned in a zoning district which permits a residential density in excess of 3 dwelling units per gross acre will be allowed a density higher than 3 du/acre provided that all other applicable regulations are met, and provided further that no density will be allowed above that which is permitted for the land use category in which the property is located, or which is permitted by the zoning which was in effect for said property as of November 25, 1986, whichever is lower. Within the Future Urban Areas of Pine Island Center, rezonings that will allow in excess of 3 dwelling units per gross acre must “purchase” the density above 3 dwelling units per gross acre utilizing TDRs that were created from Greater Pine Island Costal Rural or Greater Pine Island Urban Categories.~~

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The Hanson Report assigned a loss of \$9,000,000 in market value for the 157 acre “Bokeelia property.”
- The subject 157 acre “Bokeelia property” is located outside of the Coastal High Hazard Area. The amendment does not increase density in the Coastal High Hazard Area.
- The proposed amendment of the 157 acre “Bokeelia property” restores it to its previous density and intensity of use.
- The State of Florida, in F.S. Chapter 163.3162, recognizes the importance of agricultural production. The state finds that agriculture is a major contributor to the economy of the state and that agricultural lands constitute unique and irreplaceable resources of statewide importance.
- The recognition of agriculture and the desire to preserve agricultural uses is a common topic in local comprehensive and general plans.

- Agricultural uses are an important part of the Pine Island landscape. Agricultural uses go hand in hand with the largely rural nature of the island.
- The unique micro-climate of Pine Island supports commercial production of subtropical fruits, ornamental palms, and vegetables. The goal of retaining agricultural uses on Pine Island "fits" with the character of the island as well as the constrained access to the island.
- Amending the Lee Plan with an intent to preserve agricultural uses and to allow the retention of active or passive agriculture in lieu of habitat restoration to regain density helps to address island character issues as well as limiting Bert Harris liability as stated in the Hanson Report.
- Policy 100.2.3 allows bona fide farmworker housing in the non-urban areas of the county in excess of their density limits. The Pine Island amendment placed all of the Rural lands on Pine Island into the new Coastal Rural land use category. No reference to amending Policy 100.2.3 was included in the Pine Island amendments. This was an oversight, and the policy should be corrected by adding the reference to Coastal Rural.
- Establishing a Pine Island TDR program will provide another option for land owners on Pine Island to gain value from their land and still preserve habitat and agricultural uses. Transferring development rights from Pine Island will have the affect of lowering potential future hurricane evacuation times and help address the constrained access dilemma of Pine Island.
- Establishing a Pine Island TDR program will help limit Bert Harris liability.

C. BACKGROUND INFORMATION

Lee County has a long history of encouraging local communities to take an active role in shaping a vision for their community. In the late 1980's the Greater Pine Island community conducted a planning study of their area of the county. This planning effort resulted in the adoption, in 1989, of a goal and subsequent objectives and policies specific to the Greater Pine Island area. A similar planning effort, to update the now decade-old study, was begun in 1999. This planning effort, the 2001 Greater Pine Island Community Plan Update (Update), proposed several amendments to the Pine Island portion of the Lee Plan. The required public hearings were held and the amendments were adopted by the Board of County Commissioners on January 9, 2003. The amendments were reviewed and approved by the Florida Department of Community Affairs (DCA). On March 7, 2003, the DCA issued a Notice of Intent to find the amendments in compliance with the applicable statutes and rule.

In accordance with state statutory requirements, there was a 21 day window in which an affected person could file a petition for a hearing, essentially challenging the DCA determination of compliance. Such a petition was filed on March 28, 2003. The State of Florida Division of Administrative Hearings assigned the hearing Case # 03-1275 GM. Following this original petition, several parties petitioned to intervene on both sides of the issues. Because the DCA had found that the amendments were in compliance, the Administrative Law Judge was required to use the fairly debatable standard when determining compliance.

This puts the petitioner and their interveners at a disadvantage as they would need to prove with a preponderance of the evidence that the plan amendments are not in compliance. Regardless of the legal standard, both Planning and Legal staff were confident that Lee County would prevail on most if not all issues raised at the hearing.

One of the more complex issues in the Pine Island amendments is the Coastal Rural future land use category. Coastal Rural is a new category that was placed on property that had previously been designated in the Rural future land use category. Coastal Rural was also applied to some 157 acres of property that had previously been designated in the Outlying Suburban category. The proposed new category reduced the allowable density from 1 dwelling unit per acre on the Rural lands and 3 dwelling units per acre on the Outlying Suburban lands to 1 dwelling unit per 10 acres. The Coastal Rural category, however, had provisions that would allow a return to 1 dwelling unit per acre if 70% of a property's native lands were preserved or if 70% of improved farmland was restored to native habitat. Several of the petition interveners owned land that was affected by this new future land use category. They objected to their properties being placed in the category, which they felt was a taking of their current development potential.

While not necessarily an integral part of the challenge to the Pine Island amendments, the Coastal Rural category was seen as a potential liability to the County under the provisions of the Bert J. Harris, Jr., Private Property Rights Protection Act. In order to better inform the Board of County Commissioners (Board), the County Attorney's Office, with Board support, commissioned an appraiser to conduct an evaluation of the economic impacts (if any) that might occur to the Pine Island market if the Pine Island amendments were in effect and implemented. The study was completed on August 4, 2004. The study, known as the Hanson Report, indicated that the only provisions of the Pine Island amendments that would cause an economic impact were those of the Coastal Rural future land use category. The Hanson Report provided that the Coastal Rural land use category would adversely affect passive agriculture, active agriculture, and those lands that were originally designated in the Outlying Suburban future land use category. The total loss in market value to these lands was estimated by the Hanson Report to be \$60,000,000.

With this information in hand, the County Attorney's Office scheduled this issue as a Board agenda item. There were various courses of action for the Board to consider. The Board chose to instruct Community Development staff to meet with the parties to evaluate the issues and to try to reach a compromise or settlement. During the month of October staff held several meetings and had numerous phone conversations with the parties involved in the Administrative Hearing. On November 4, 2004 the petitioner, along with the interveners on that side of the case, sent a letter to the County Attorney's Office. The letter indicated that they believed that a settlement prior to the November 29, 2004 hearing was unlikely. The letter also stated their intent to withdraw the petition challenging the Pine Island amendments on November 16, 2004.

The petition was in fact withdrawn by the petitioner and the Administrative Hearing was canceled. The Pine Island amendments, as adopted on January 9, 2003, went into full force and effect. Staff believed that there were certain issues that should still be addressed. The Board concurred and at their November 26, 2004 Regular Meeting they voted to initiate a Special Amendment cycle to address some of the concerns raised by the petitioner and interveners.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

COASTAL RURAL FUTURE LAND USE MAP AMENDMENTS - THE BOKEELIA PROPERTY:

The Pine Island amendments resulted in the adoption of a new future land use category and two separate future land use map (FLUM) amendments. Objective 1.4 "Non-Urban Areas" was amended by establishing a new "Coastal Rural" future land use category. The first future land use map amendment reclassified all "Rural" designated land to "Coastal Rural." The second amended the Future Land Use Map series to reclassify from "Outlying Suburban" to "Coastal Rural" 157 acres of agricultural land between Bokeelia and September Estates. The 2002 staff report that evaluated the proposed Pine Island amendments included the following discussion concerning this second FLUM amendment:

Figure 2, of the Update report shows the 157 acres located in northern Pine Island south of Bokeelia. Current allowable density on that land is three dwelling units per acre. The proposed land use change would lower allowable densities to a maximum of one dwelling unit per acre, if native vegetation on 70% of the site is preserved or restored. That action may lower personal property values and could have Bert Harris Act implications. The Plan Update document provides the following discussion concerning this property:

"The third exception, south of Bokeelia, is the most incongruous. This entire acreage is now in intense agricultural use, with much of it cleared during the past decade (see Figure 2). Apparently it had been considered as a potential expansion of the Bokeelia urban area. Since that time, the landowners have clearly indicated a preference for agriculture and have made no efforts to develop any of the land residentially. Thus these 157 acres should be reclassified to whatever designation is ultimately assigned to the rural lands to their east and west."

The Hanson Report assigned a loss of \$9,000,000 in market value for this property. This equates to almost one-sixth of the total estimated loss of market value that was attributed to the Plan Update Amendment. This property was the only property that was amended by the Plan Update to a category that would not in some fashion permit the property owner an ability to achieve the original maximum density.

The property also abuts Urban designated lands to the south. These properties are either designated Suburban or Outlying Suburban. The subject property connects these Suburban and Outlying Suburban areas to the Suburban designated Bokeelia area. The previous amendment had the affect of leaving these lands surrounded by the new Coastal Rural land use category. Staff notes that these Suburban and Outlying Suburban lands have previously been subdivided for residential use and have been sold off to individual owners. The current amendment, if approved, would restore the Bokeelia future urban area as it existed in the Lee Plan prior to the Plan Update Amendment. The subject 157 acres is in current agricultural use.

The planning consultant for the Plan Update Amendment believes that there is an alternative to restoring the Outlying Suburban designation on the subject site, that being the Rural land use category. Staff notes that this would still result in a lowering of the maximum standard density from a possible 3 dwelling units per acre allowable under the Outlying Suburban to a maximum standard density of 1 dwelling unit per acre. Staff believes that establishing the Rural category on the subject site would still potentially result in Bert Harris liability on the County's part.

Planning staff notes that the subject 157 acres is located outside of the Coastal High Hazard Area. This fact can be clearly discerned by comparing the subject site's location with Lee Plan Map 5, the Coastal High Hazard Area. This amendment, therefore, does not increase density in the Coastal High Hazard Area and merely restores the previous density and intensity.

Given the restrictions contained in Policy 14.2.2, staff realizes that the property in question may never be able to achieve the maximum 3 dwelling units per acre. The property could, however, participate in a new TDR program, which is discussed in a later section of this report. The property would have some potential for commercial uses with the Outlying Suburban designation.

Staff Recommendation Concerning the "Bokeelia Property:"

Given the Bert Harris implications with this portion of the Plan Update Amendment, and in the interests of compromise, staff recommends that the property in question be amended back to its original designation of Outlying Suburban.

PRESERVATION OF AGRICULTURAL USES

The State of Florida has recognized the importance of agricultural activities. For example, Florida Statutes include a section, F.S. 163.3162, that relates this importance as a finding of the Legislature. This section is reproduced below:

The Legislature finds that agricultural production is a major contributor to the economy of the state; that agricultural lands constitute unique and irreplaceable resources of statewide importance; that the continuation of agricultural activities preserves the landscape and environmental resources of the state, contributes to the increase of tourism, and furthers the economic self-sufficiency of the people of the state; and that the encouragement, development, and improvement of agriculture will result in a general benefit to the health, safety, and welfare of the people of the state. It is the purpose of this act to protect reasonable agricultural activities conducted on farm lands from duplicative regulation.

The recognition of agriculture and the desire to preserve agricultural uses is a common topic in local comprehensive and general plans. The Lee Plan, in fact, includes such a Goal. This Goal is reproduced below:

GOAL 9: AGRICULTURAL LAND USES. *To protect existing and potential agricultural lands from the encroachment of incompatible land uses and to discourage the introduction or expansion of agricultural uses in the Future Urban Areas.*

The Lee Plan also recognizes that nothing in the Plan will be construed to permanently prohibit the conversion of agricultural uses to other land uses. The Lee Plan also includes an objective, Objective 9.1, and a map, Map 20, that place agriculturally used parcels of more than 100 acres on an agricultural overlay. This map depicts agricultural areas on Pine Island both north and south of the center.

Agricultural uses are an important part of the Pine Island landscape. Agricultural uses go hand in hand with the largely rural nature of the island. Staff also recognizes the unique micro-climate of Pine Island that supports commercial production of subtropical fruits, ornamental palms, and vegetables. The goal of retaining agricultural uses on Pine Island "fits" with the character of the island as well as the constrained

access to the island. Amending the Lee Plan with an intent to preserve agricultural uses helps to address island character issues as well as limiting Bert Harris liability as stated in the Hanson Report. The Pine Island Goal and the Coastal Rural category could be amended to add the generally accepted idea that retention of agricultural uses is in the best interest of the community. The retention of agricultural uses could also be incorporated as another option to restoration in the Coastal Rural land use category.

Staff Recommendation Concerning Preservation of Agricultural Uses:

Staff recommends amending the Pine Island Vision Statement and Goal 14 to recognize the value of preserving agricultural activities on the island. Staff recommends that Pine Island Coastal Rural lands in current agricultural production be depicted on a map in the Future Land Use Map series. The purpose in depicting these lands is more fully discussed in the next section of this report. The recommended amendments to the Vision Statement and Goal 14 are shown below:

VISION STATEMENT:

Pine Island - This community includes Greater Pine Island as described under Goal 14 along with surrounding smaller islands and some unincorporated enclaves near Cape Coral. Its future, as seen by Pine Islanders, will be a matter of maintaining an equilibrium between modest growth, ~~on the one hand~~ and a fragile ecology, ~~on the other~~ and a viable and productive agricultural community. Pine Island will continue to be a haven between urban sprawl approaching from the mainland and the wealth of the outer islands; a quiet place of family businesses, school children, farmers, and retirees enjoying the bounties of nature; a place devoid of high-rises, strip malls, and gated communities. Traffic constraints caused by the narrow road link to the mainland will limit future development, allowing the islands to evacuate from storms and protecting natural lands from unsustainable development. Wildlife and native vegetation will be protected; loss of wildlife habitat will be reversed; sidewalks and bike paths will connect neighborhoods for young and old alike. Architectural standards for commercial buildings will encourage "Old Florida" styles, and historic buildings will be treasured. Pine Island will continue to be a place where people, ~~and~~ nature and agriculture exist in harmony, a place not very different from what it is today, an island as state-of-mind as much as a physical entity, its best features preserved and enhanced. Pine Islanders are historically vigilant about protecting their community and will work to ensure that their plans are carried out.

GOAL 14:

GOAL 14: GREATER PINE ISLAND. To manage future growth on and around Greater Pine Island so as to maintain the island's unique natural resources, ~~and character~~ and its viable and productive agricultural community and to insure that island residents and visitors have a reasonable opportunity to evacuate when a hurricane strike is imminent. For the purposes of this plan, the boundaries of Greater Pine Island are indicated on the Future Land Use Map.

Staff also believes that a new Pine Island Objective and subsequent Policy addressing agricultural uses should be incorporated into Goal 14:

OBJECTIVE 14.6: Agricultural Uses. To promote and preserve the rural character of Pine Island, Lee County will strive to foster a viable and productive agricultural community on the

island. Lee County will incorporate several land use “tools” such as purchase and transfer of development rights programs into the Lee County Land Development Code to preserve agricultural uses on Pine Island.

POLICY 14.6.1: Lee County will maintain a map (Map 21) of all existing farmland on Pine Island.

AMEND POLICY 1.4.7, THE COASTAL RURAL POLICY, TO ALLOW THE RETENTION OF ACTIVE OR PASSIVE AGRICULTURE IN LIEU OF HABITAT RESTORATION TO REGAIN DENSITY:

As stated previously, one of the more complex issues in the Pine Island amendments is the Coastal Rural future land use category. Coastal Rural is a new category that was placed on property that had previously been designated in the Rural future land use category and the 157 acres of previously designated Outlying Suburban lands. The Coastal Rural category reduced the allowable density from 1 dwelling unit per acre on the Rural lands and 3 dwelling units per acre on the Outlying Suburban lands to 1 dwelling unit per 10 acres. The Coastal Rural category, however, has provisions that includes a return to 1 dwelling unit per acre if 70% of a property’s native lands were preserved or if 70% of improved farmland is restored to native habitat. The adopted Coastal Rural category descriptor policy, Policy 1.4.7 is reproduced below:

POLICY 1.4.7: *The Coastal Rural areas will remain rural except for portions of properties where residential lots are permitted in exchange for permanent preservation or restoration of native upland habitats on the remainder of the property. The standard maximum density is one dwelling unit per ten acres (1DU/10 acres). Maximum densities may increase as higher percentages of native habitat are permanently preserved or restored on the uplands portions of the site in accordance with the chart below. Permitted land uses include agriculture, fill-dirt extraction, conservation uses, and residential uses up to the following densities:*

<i>Percentage of the on site uplands that are preserved or restored native habitats</i>	<i>Maximum density</i>
0%	1 DU/ 10 acres
5%	1 DU/ 9 acres
10%	1 DU/ 8 acres
15%	1 DU/ 7 acres
20%	1 DU/ 6 acres
30%	1 DU/ 5 acres
40%	1 DU/ 4 acres
50%	1 DU/ 3 acres
60%	1 DU/ 2 acres
70%	1 /DU/ 1 acre

The Hanson Report concluded that the cost of restoration exceeded the reduction of market value for properties with active agricultural and “the appraiser consultant does not consider the “density recapture

model” to be economically feasible for active agricultural properties.” The Report then provided that “the estimated economic impact to active agricultural properties is estimated to be \$41.2 million, or rounded to \$40.0 million.” While these conclusions have been a source of debate in previous public hearings, no definitive documentation has been submitted to refute the appraiser’s report.

The Civic Association, the major supporter for the Plan Update Amendment, did offer the interveners a “Settlement Proposal” that did recognize the importance of agricultural activity to the “desired character of Pine Island.” This proposal was never agreed to by the interveners. The merits of the proposal have never been publicly discussed until now. The proposal had two elements which are reproduced below:

- 1. Modify the Greater Pine Island Community Plan to include preservation of farms as a key factor in the desired character of Pine Island.*
- 2. Modify the “Coastal Rural” clustering standards to permit the use of farm easements as an alternative to upland preservation requirements, setting the maximum densities of clustered developments at levels which continue to primarily reward preservation/restoration of pine flatwoods but also substantially reward preservation of farmland.*

The proposal provided that these concepts would be enacted by amending the Lee Plan’s Vision for Pine Island and Policy 1.4.7.

Staff recognizes that the existing agricultural uses located on Pine Island are one of the principal uses that contributes to the Rural character of Pine Island. Staff in previous sections of this report has recommended that the Vision and goal for Pine Island recognize the importance of agricultural activity as one of the desired character traits of the island. Allowing preservation of agricultural uses in lieu of habitat preservation does help to promote continued agricultural activity on the island and furthers the desired rural character. To assure that development never occurs on any land that has opted to preserve agriculture versus habitat, a legally binding perpetual easement to Lee County should be prepared.

Staff Recommendation Concerning Policy 1.4.7:

To implement the concept of preserving agricultural use in lieu of preserving or restoring habitat, staff recommends the following modification to Policy 1.4.7:

POLICY 1.4.7: The Coastal Rural areas will remain rural except for portions of properties where residential lots are permitted in exchange for permanent preservation or restoration of native upland habitats or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, on the remainder of the property. The standard maximum density is one dwelling unit per ten acres (1DU/10 acres). Maximum densities may increase as higher percentages of native habitat are permanently preserved or restored on the uplands portions of the site, or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, in accordance with the chart below. Permitted land uses include agriculture, fill-dirt extraction, conservation uses, and residential uses up to the following densities:

<u>Percentage of the on site uplands that are preserved or restored native habitats or continued in agricultural use on existing farmland</u>	<u>Maximum density if undeveloped land will be permanently preserved or restored as native habitats</u>	<u>Maximum density if undeveloped land will be continued in agricultural use on existing farmland</u>
0%	1 DU/ 10 acres	<u>1 DU/ 10 acres</u>
5%	1 DU/ 9 acres	
10%	1 DU/ 8 acres	<u>1 DU/ 9 acres</u>
15%	1 DU/ 7 acres	
20%	1 DU/ 6 acres	<u>1 DU/ 8 acres</u>
30%	1 DU/ 5 acres	<u>1 DU/ 7 acres</u>
40%	1 DU/ 4 acres	<u>1 DU/ 6 acres</u>
50%	1 DU/ 3 acres	<u>1 DU/ 5 acres</u>
60%	1 DU/ 2 acres	<u>1 DU/ 3 acres</u>
70%	1 /DU/ 1 acre	<u>1 DU/ 2 acres</u>

Existing farmland is depicted on Map 21. Areas for buffers, lakes, and utilities may consist of up to 10% of the upland preserve areas.

EVALUATE THE CURRENT PERCENTAGES OF PRESERVED OR RESTORED UPLANDS IN POLICY 1.4.7:

Staff was concerned that preserving 70% of a site to regain the one unit per acre density could jeopardize the project's ability to provide the needed on-site utilities. The last sentence in the recommended changes to Policy 1.4.7 above partially addresses this issue. This added flexibility alleviates the concerns staff had with the one zoning case that proposed to cluster its residential density consistent with the current Coastal Rural policy. With this concern addressed, the percentages can remain as they are. Should the Board want to lower the percentages as a matter of policy, that can be accomplished with direction to staff at the transmittal public hearing.

FURTHER DEFINE THE RESTORATION STANDARDS REFERRED IN POLICY 1.4.7:

Standards for the restoration of impacted property have been submitted for review by the Greater Pine Island Civic Association. These standards were submitted with additional Land Development Code changes to implement the revised Pine Island Lee Plan objectives and policies. Staff review is currently incomplete. This issue may have to be revisited in the future.

FARMWORKER HOUSING:

Staff recommends adding a reference in Policy 100.2.3 to the Coastal Rural future land use category. Policy 100.2.3 allows bona fide farmworker housing in the non-urban areas of the county in excess of their density limits. The Pine Island amendment placed all of the Rural lands on Pine Island into the new Coastal Rural land use category. No reference to amending Policy 100.2.3 was included in the Pine Island

amendments. Staff believes this was an oversight, but in any case this farmworker housing issue should be corrected.

Staff Recommendation Concerning Policy 100.2.3:

Staff recommends the following additional language for Policy 100.2.3:

POLICY 100.2.3: Housing for farm workers, as defined by ss 420.503 Florida Statutes, may be permitted in the Rural, Coastal Rural, Open Lands, and Density Reduction/ Groundwater Resource land use categories without respect to the density limitations that apply to conventional residential districts. The density of such housing is limited to 50 occupants per acre of actual housing area and will be reviewed on a case-by-case basis during the planned development or Special Exception zoning process. The applicant must demonstrate that impacts of the farm worker housing will be mitigated. (Amended by Ordinance No. 94-30, 00-22, 03-19)

CREATION OF NEW PURCHASE OF DEVELOPMENT RIGHTS PROGRAM:

The loss of farmland and open space throughout the country has increasingly become an important issue. Land use “tools” have been created to preserve, in some fashion, lands that states and local jurisdictions deem appropriate. Purchase of Development Rights (PDR) programs are an example of one of these land use tools. PDRs have been used successfully in many areas of the nation.

Under a PDR program, a landowner voluntarily sells the rights to certain types of development from a parcel of land to a public agency or other organization interested in resource protection. The concept is similar to TDRs in that PDR programs recognize the concept that a “bundle of rights” are associated with ownership of land. PDR programs recognize that fee simple ownership of real estate allows the owner to sell, lease, or trade any one or more, or all of the bundle of rights to their property, subject to the limitations of the legislative power of the local government. The right to develop a piece of land for residential, commercial, or industrial uses is a right within the bundle. The PDRs involves the sale of that right while leaving all the remaining rights as before. An easement is placed upon the property, thereby assuring that the severed type of development will not occur on that particular property. The landowner is generally compensated for the value of the rights to develop that are removed from the land.

A PDR program can be an effective tool to help maximize a community’s conservation efforts. Money for PDR programs can be raised through a variety of means, including bonding initiatives, private grants, and various taxation options. Many communities have found matching dollars from state and federal sources.

Creating a PDR program is a viable option to help farmers achieve the economic benefits accrued from the development potential of the land, while having the ability to keep the land as agricultural. PDR programs provide many benefits from its completely voluntary nature. No landowner is coerced into giving up or selling the land or the development rights. This type of program also provides a permanent solution with the placement of an agricultural conservation easement on the subject land. Escape clauses can be incorporated into the program if surrounding development or economic conditions have made farming on the land impossible. Another benefit of a PDR program is that it makes it easier for one farmer to pass the farm on to an heir interested in continuing the farming activities. Once the development rights

have been separated from the land, the value of the parcel typically declines to its agricultural value. This generally has an enormous effect on reducing the inheritance tax liability.

The primary disadvantage of PDR is the cost involved. In the case of a governmental entity purchasing the PDR, some sort of tax is generally the primary funding source. The topic of instituting new taxes is always controversial.

Staff Recommendation Concerning the Establishment of a PDR Program:

Staff recommends that the Board of County Commissioners evaluate creating a PDR program for agricultural lands within the Coastal Rural areas of Pine Island. Staff believes the evaluation of creating a PDR program should include an evaluation of establishing a dedicated funding source to initially fund the program. Staff recommends that a new policy calling for this evaluation be added with the new proposed Agricultural Uses Objective, Objective 14.6:

POLICY 14.6.2: Lee County, by 2009, will evaluate creating a Purchase of Development Rights Program with the objective of preserving Pine Island agricultural uses.

TRANSFER OF DEVELOPMENT RIGHTS (TDR):

The County has an existing transfer of development rights (TDR) program with the intent of transferring development rights from wetlands to mainland areas with a future land use designation of Intensive Development, Central Urban, or Urban Community. This program is detailed in Chapter 2 of the Lee County LDC. The current program has had limited participation. This fact is discussed further in the next section, TDR Market Stimulation.

The creation of additional TDR options under the Land Development Code can help the County address equity and fairness issues that have been raised as well as helping the County achieve true mixed uses in mainland areas of the County consistent with the Lee Plan's Evaluation and Appraisal Report (EAR).

Staff recommends that the County enact a transfer of development rights program for Greater Pine Island. This program will allow for the creation of TDRs in the Coastal Rural future land use category. One or more Coastal Rural TDRs could be allowed for each acre of Coastal Rural that is protected from commercial and residential development, either with a conservation easement or an agricultural conservation easement. Once created these Coastal Rural development rights become eligible for use both on and off Pine Island. Should the Coastal Rural TDR's remain on Pine Island the maximum density should be one dwelling unit per Coastal Rural TDR. If the Coastal Rural TDR's are subsequently transferred to an appropriate urban category on mainland Lee County, the density should be increased to two dwelling units per Coastal Rural TDR as an incentive. These details can be finalized in the Land Development Code amendment that establishes this TDR program.

In this way, Coastal Rural TDRs could be utilized to increase the allowable density on contiguous or non-contiguous Coastal Rural lands. The standard maximum density of one dwelling unit per ten acres (1DU/10 acres) could be raised to a maximum of one dwelling unit per two and one-half acres (1DU/2.5 acres). Creation, preservation or restoration of native habitat could be reduced or not required at all.

Staff also recommends establishing a transfer of development rights program for Greater Pine Island that will allow for the creation of transfer of development rights from the areas designated in urban categories.

In order to maintain the rural character and to help reduce the buildout population of Pine Island such a TDR program for the urban designated lands could prove useful. These TDRs would utilize the underlying density of the urban future land use category with the property protected from commercial and residential development via a conservation easement. These programs might prove useful once the level of service on Pine Island Road is exceeded and residential Development Orders are limited to one third of the current allowable density, as stated in Policy 14.2.2.

Staff Recommendation Concerning Establishing a Pine Island TDR Program:

One of the main impetus in establishing a program has been as a result of criticisms of the Plan Update Amendment raised by large land owners, much of which is in active agricultural use. Establishing a TDR program will provide another option for these land owners on Pine Island. Moving development rights from Pine Island will have the effect of lowering potential future hurricane evacuation times and help address the constrained access dilemma of Pine Island. As Coastal Rural has been the focus of discussions and possible compromise, staff believes the program should target existing farmland as depicted on Map 21, but be open to all properties on Pine Island. Staff recommends that the following policy be incorporated under proposed Objective 14.6:

POLICY 14.6.3: By 2007 Lee County will amend the Lee County Land Development Code to establish a Pine Island Transfer of Development Rights (TDR) program to supplement the existing wetland TDR program. The program will be open to properties depicted on Map 21 as well as other Pine Island lands deemed acceptable by the Board of County Commissioners.

TDR MARKET STIMULATION:

In order for any TDR program to be successful there must be a market for TDRs. Staff has researched establishment of TDR programs in a variety of local governments, all of which stress the importance of providing a market to make the program successful. The County's current TDR program has seen modest levels of participation. Staff believes several modifications to County regulations are necessary in order to assure a successful TDR program for Pine Island. The necessary changes are discussed below.

In order to stimulate the mainland TDR market, the Lee Plan should be amended to allow true mixed use developments to maintain some or all of their residential density that is lost to the commercial acreage. In accordance with the current Lee Plan definition of Density, lands used for commercial, office, industrial uses, natural water bodies, and other non-residential uses must be removed from the project area prior to the density calculation. Staff recommends modifying the current definition of Density to allow the areas used for commercial and office use to remain in the residential density calculation, if Pine Island TDRs are utilized to make up the difference in density, utilizing the current definition. Staff recommends the following modification to the Density definition in the Glossary:

DENSITY - The number of residential dwelling or housing units per gross acre (du/acre). Densities specified in this plan are gross residential densities. For the purpose of calculating gross residential density, the total acreage of a development includes those lands to be used for residential uses, and includes land within the development proposed to be used for streets and street rights of way, utility rights-of-way, public and private parks, recreation and open space, schools, community centers, and facilities such as police, fire and emergency services, sewage and water, drainage, and existing man-made waterbodies contained within the residential development. Lands for commercial, office, industrial uses, natural water bodies, and other non-residential uses must not

be included. Within the Caloosahatchee Shores community in the areas identified by Policy 21.4.2 commercial development that includes commercial and residential uses within the same project or the same building do not have to exclude the commercial lands from the density calculation. For true mixed use developments located on the mainland areas of the County, the density lost to commercial, office and industrial acreage can be regained through the utilization of TDRs that are either created from the Greater Pine Island Coastal Rural future land use category or previously created TDRs. True mixed use developments must be primarily multi-use structures as defined in this Glossary as a mixed use building.

To define true mixed use developments, staff recommends adding the following definition to the Glossary:

MIXED USE BUILDING - Mixed Use Building means a building that contains at least two different land uses (i.e. commercial and residential, R & D and residential, office and residential, commercial and civic use open to the public) that are related.

Staff also recommends amending the Mixed Use definition in the Glossary of the Lee Plan to better define what a true mixed project is:

MIXED USE - The development, in a compact urban form, of land or building or structure with two or more different but compatible uses, such as but not limited to: residential, office, industrial and technological, retail, commercial, public, entertainment, or recreation. True mixed use developments primarily consist of mixed use buildings as defined by this Glossary.

Staff also recommends revising Table 1(a), footnote 4, which restricts the density in Pine Island Center to 3 dwelling units per acre. This amendment will allow property to regain a density of up to 6 dwelling units per acre in the urban areas of Pine Island Center if Coastal Rural TDRs or Pine Island Urban Category TDRs are utilized.

4. ~~No land will be rezoned on Pine Island, excluding the Matlacha, Bokeelia, and St. James City areas currently classified as Future Urban Areas, to a zoning district which permits a density higher than 3 dwelling units per gross acre. Land currently zoned in a zoning district which permits a residential density in excess of 3 dwelling units per gross acre will be allowed a density higher than 3 du/acre provided that all other applicable regulations are met, and provided further that no density will be allowed above that which is permitted for the land use category in which the property is located, or which is permitted by the zoning which was in effect for said property as of November 25, 1986, whichever is lower. Within the Future Urban Areas of Pine Island Center, rezonings that will allow in excess of 3 dwelling units per gross acre must "acquire" the density above 3 dwelling units per gross acre utilizing TDRs that were created from Greater Pine Island Coastal Rural or Greater Pine Island Urban Categories.~~

Staff is recommending the above mentioned changes to the footnote with the understanding that under the restrictions contained in Policy 14.2.2 and LDC Section 2-48, rezoning property to residential uses alone is not achievable. The November 17, 2004 staff white paper discussed a potential Pine Island compromise and recommended evaluating the creation of a concurrency exception area for a portion of Pine Island

Center. Establishing a concurrency exception area would allow additional development appropriate for Pine Island Center, as contemplated by this proposed footnote language.

The Florida growth management statutes have specific requirements that must be met in order to establish a concurrency exception area, including projects that promote public transportation. Lee County has never established such an area. Staff recommends that the Board retain a consultant that has experience with the formation of concurrency exception areas to investigate the merits of increasing public transportation and allowing additional growth in Pine Island Center. The following policy implements this recommendation. The money earmarked for Community Planning activities in the Planning Division budget could be used to finance this and other community planning studies.

POLICY 14.2.5: Lee County will investigate the merits of creating a concurrency exception area for a portion of Pine Island Center. The concurrency exception area will promote the expansion of public transportation to and from the Greater Pine Island area.

CREATION OF URBAN INFILL AREAS:

Staff recommends establishing new Urban Infill Areas on the mainland that will be targeted for higher density mixed use developments. These areas should have an emphasis on urban form and design. Staff anticipates addressing this issue further in the TDR LDC amendment if the Board of County Commissioners is amenable to their creation.

B. CONCLUSIONS:

The proposed amendment does represent a compromise. The affect of the amendment should serve to limit the County's liability under the Bert Harris Act. The amendment does further the Pine Island Vision.

C. STAFF RECOMMENDATION:

Staff recommends that the Board of County Commissioners transmit the proposed plan amendment to the Florida Department of Community Affairs for their review.

**PART III - LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: May 23, 2005

A. LOCAL PLANNING AGENCY REVIEW

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

D. VOTE:

NOEL ANDRESS

MATT BIXLER

DEREK BURR

RONALD INGE

CARLETON RYFFEL

FRED SCHILFFARTH

RAYMOND SCHUMANN

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

DATE OF TRANSMITTAL HEARING: June 1, 2005

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

JOHN ALBION

TAMMY HALL

BOB JANES

RAY JUDAH

DOUG ST. CERNY

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

DATE OF ORC REPORT:

- A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS**
- B. STAFF RESPONSE**
- C. STAFF RECOMMENDATION**

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

DATE OF ADOPTION HEARING:

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

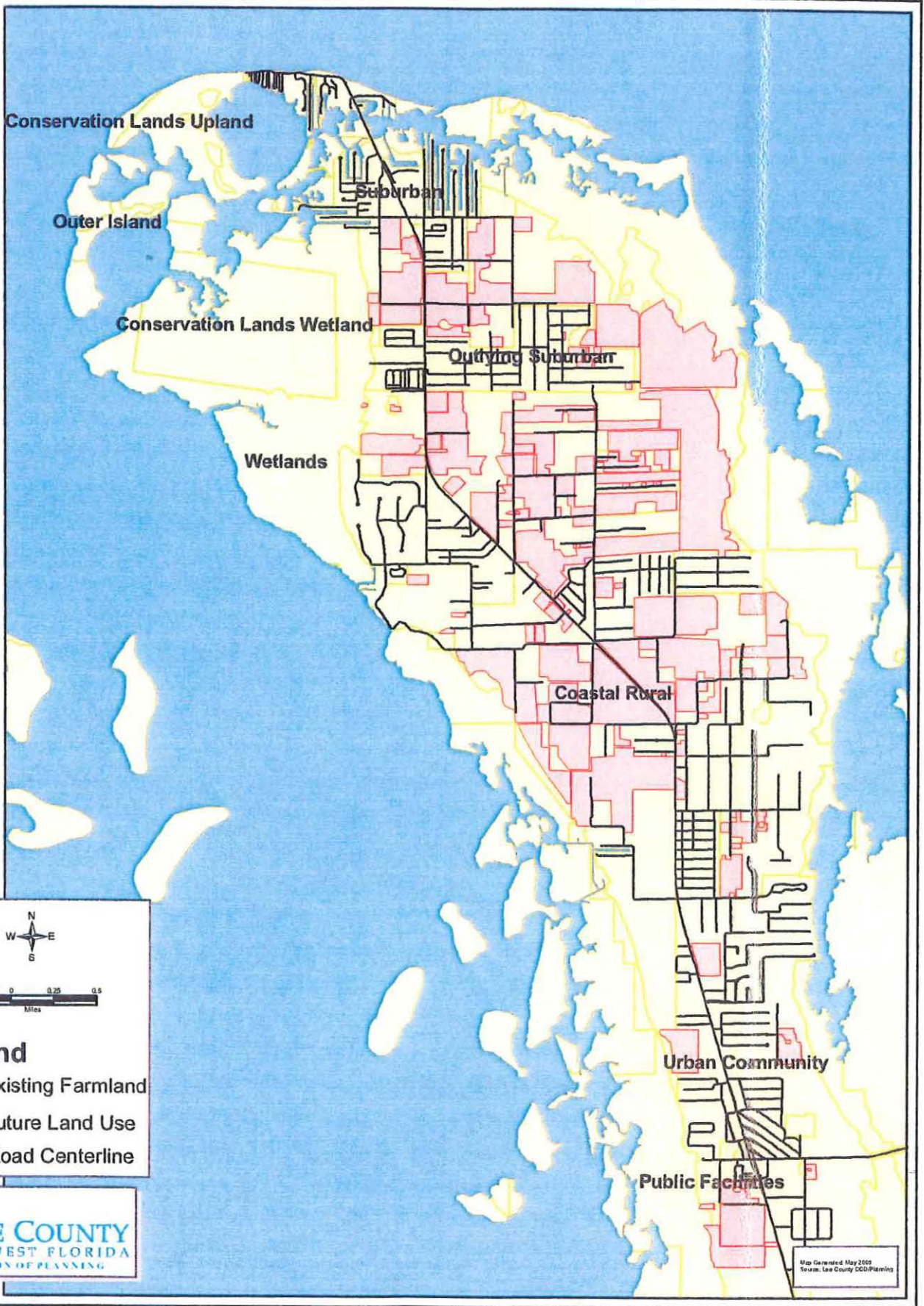
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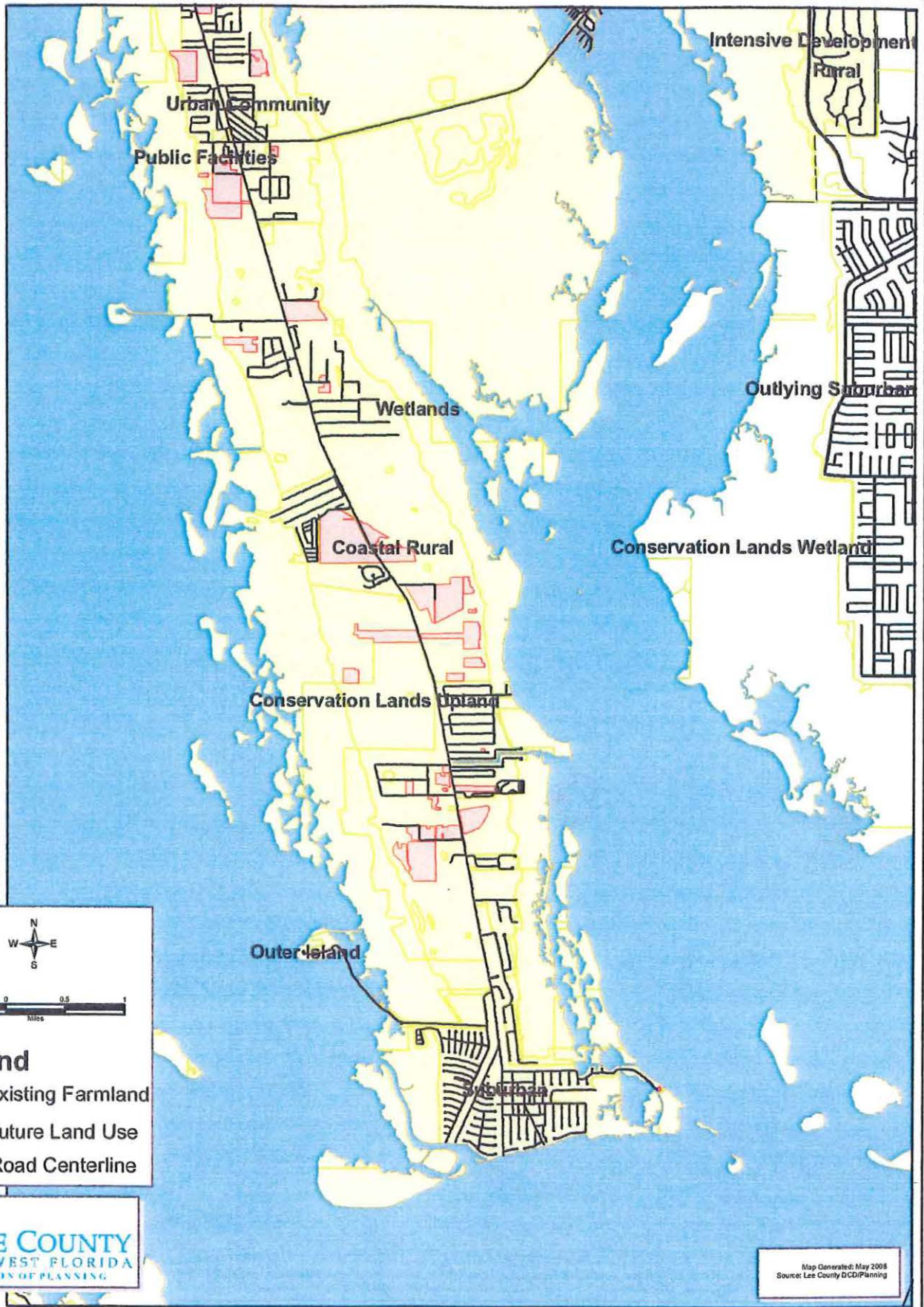
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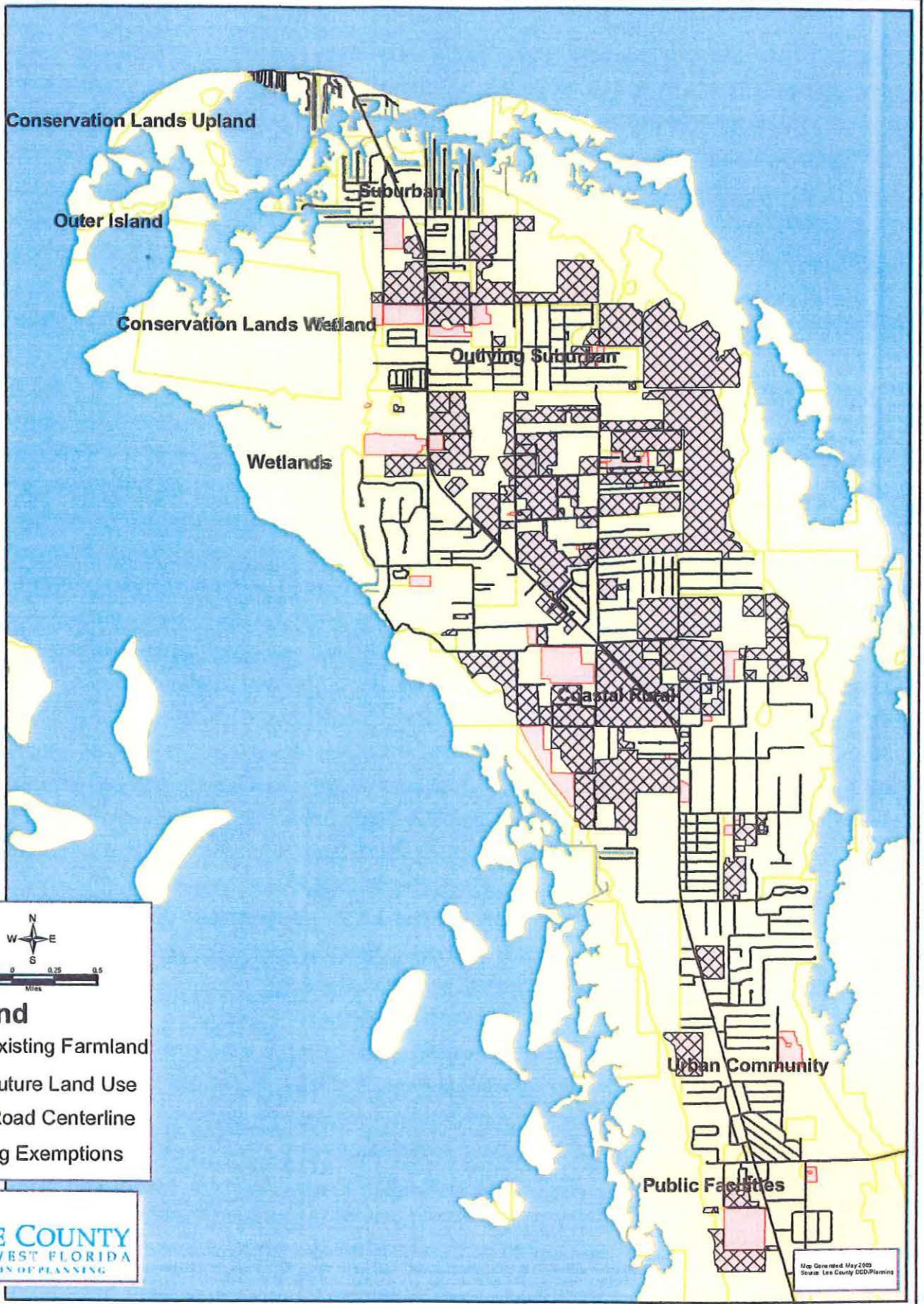


Legend

- Existing Farmland
- Future Land Use
- Road Centerline







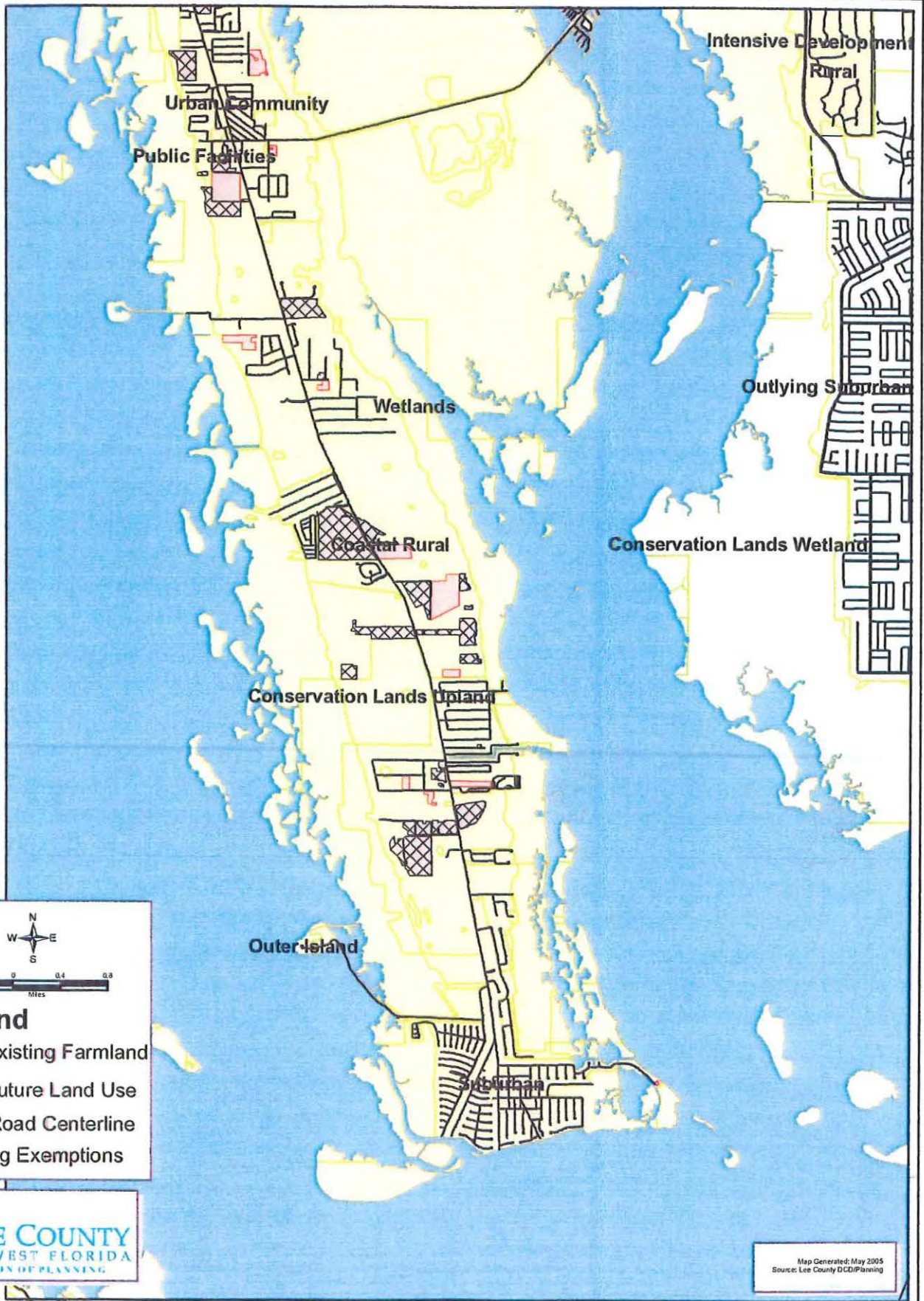
Existing Pine Island Farmland

Attachment 2 - Agricultural Exemptions

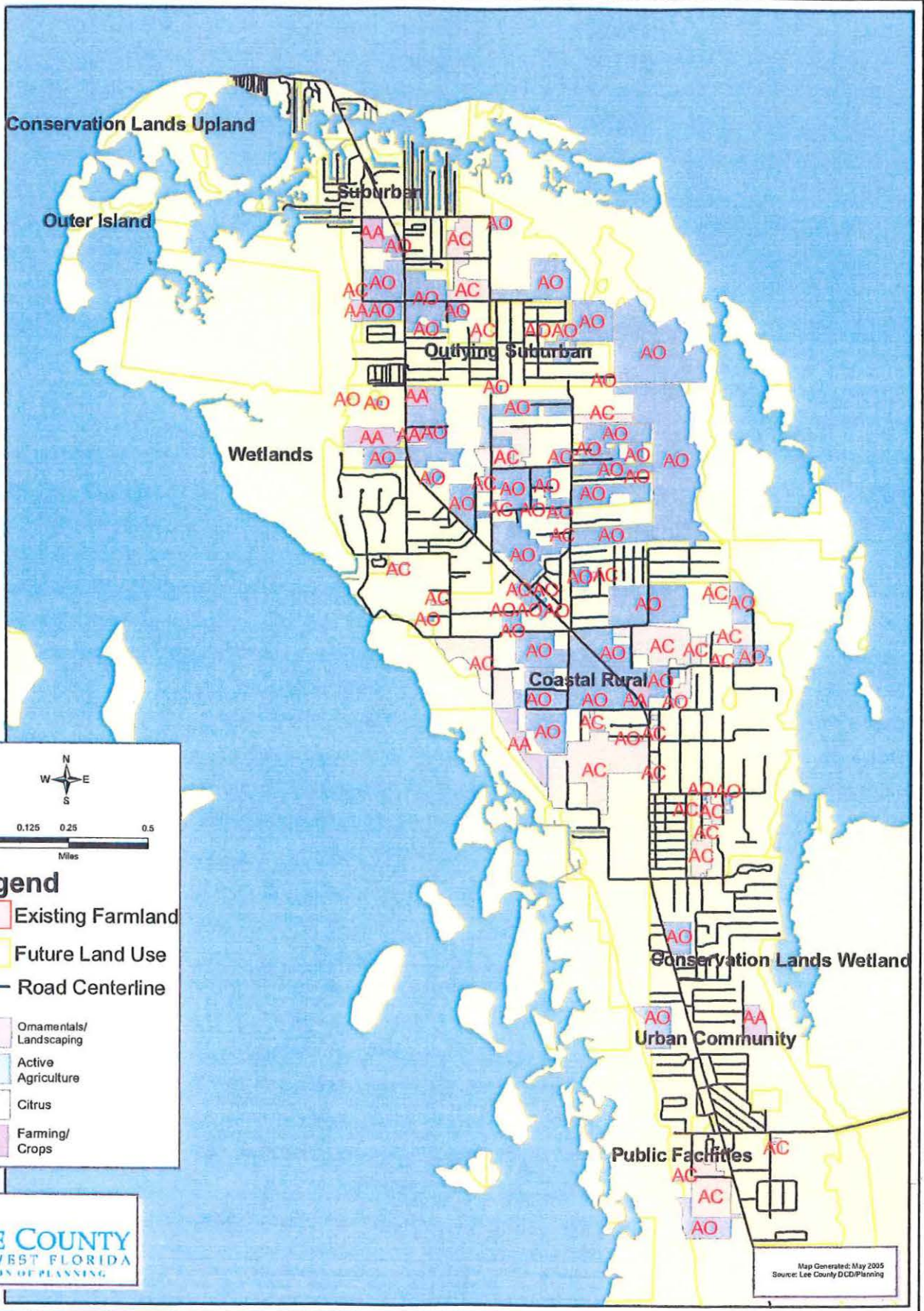
Miles

Legend

- Existing Farmland
- Future Land Use
- Road Centerline
- Ag Exemptions



Map Generated: May 2005
Source: Lee County DCD/Planning





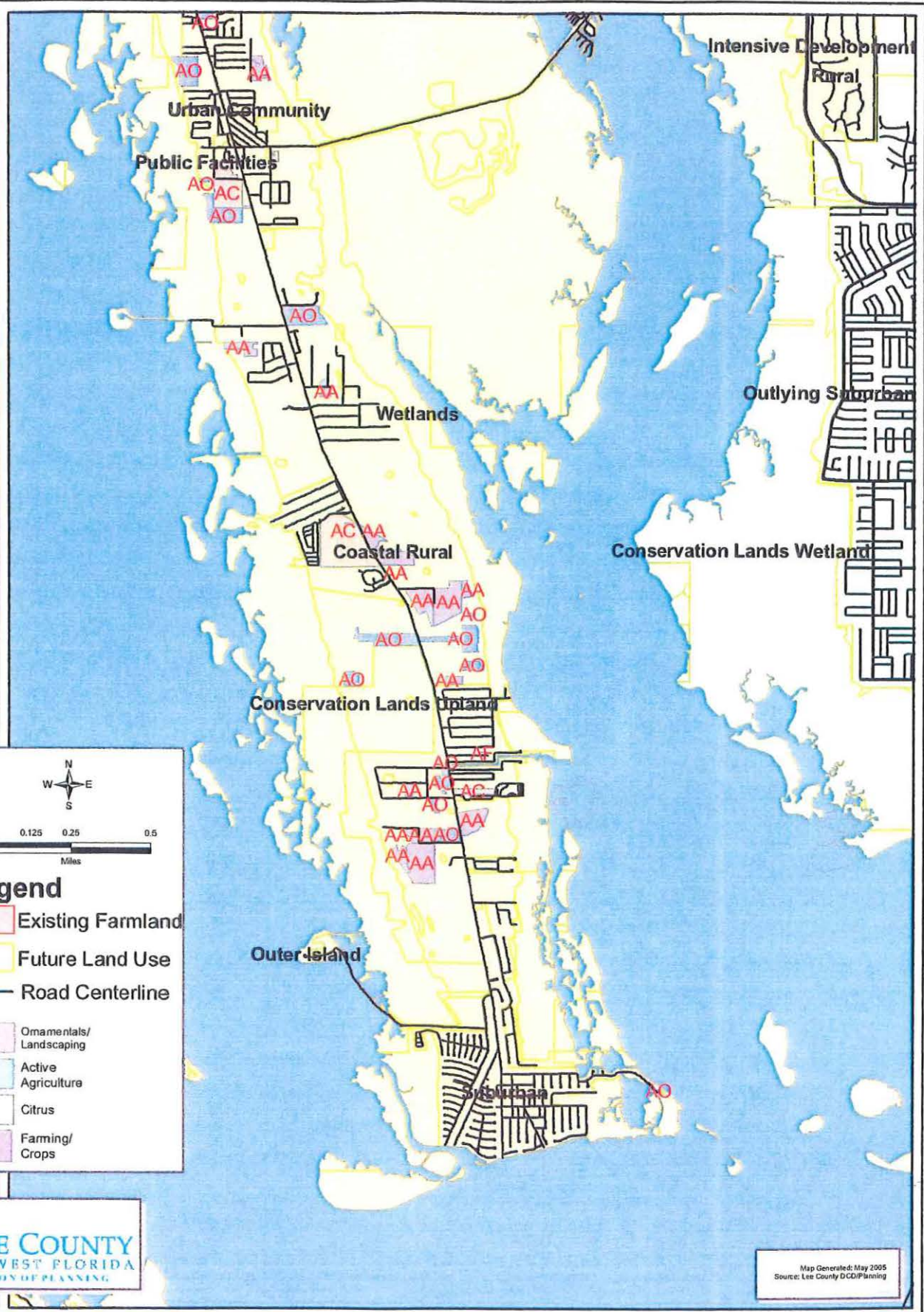


Miles

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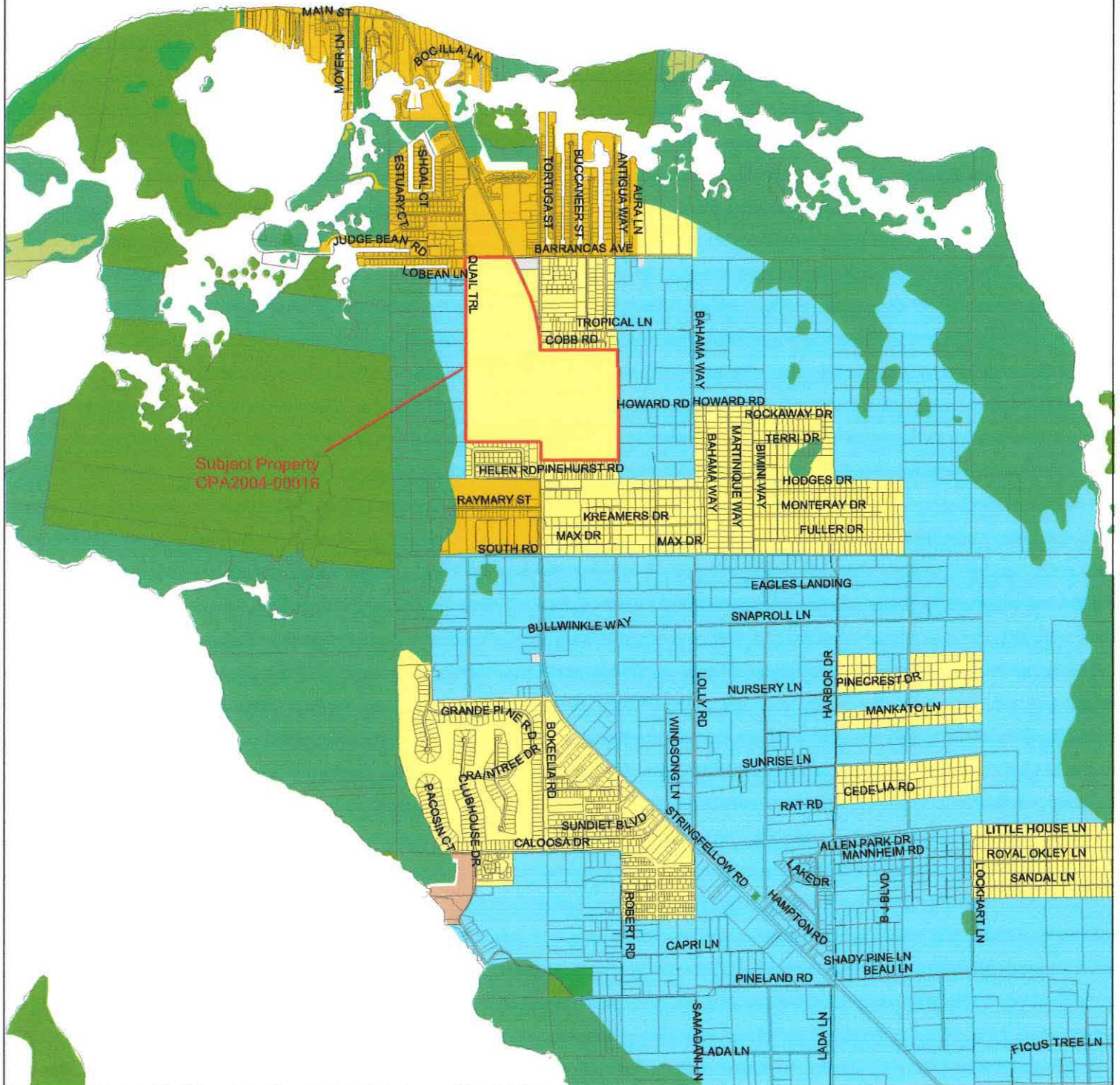
- Existing Farmland
- Future Land Use
- Road Centerline

AO	Ornamentals/ Landscaping
AA	Active Agriculture
AC	Citrus
AF	Farming/ Crops



CPA2004-00016

Future Land Use Map (Proposed)



CPA2004-00016

Future Land Use Designations

- Urban Community
- Suburban
- Outlying Suburban

Public Facilities

Coastal Rural

Outer Island

Conservation Lands - Uplands

Wetlands

Conservation Lands - Wetlands

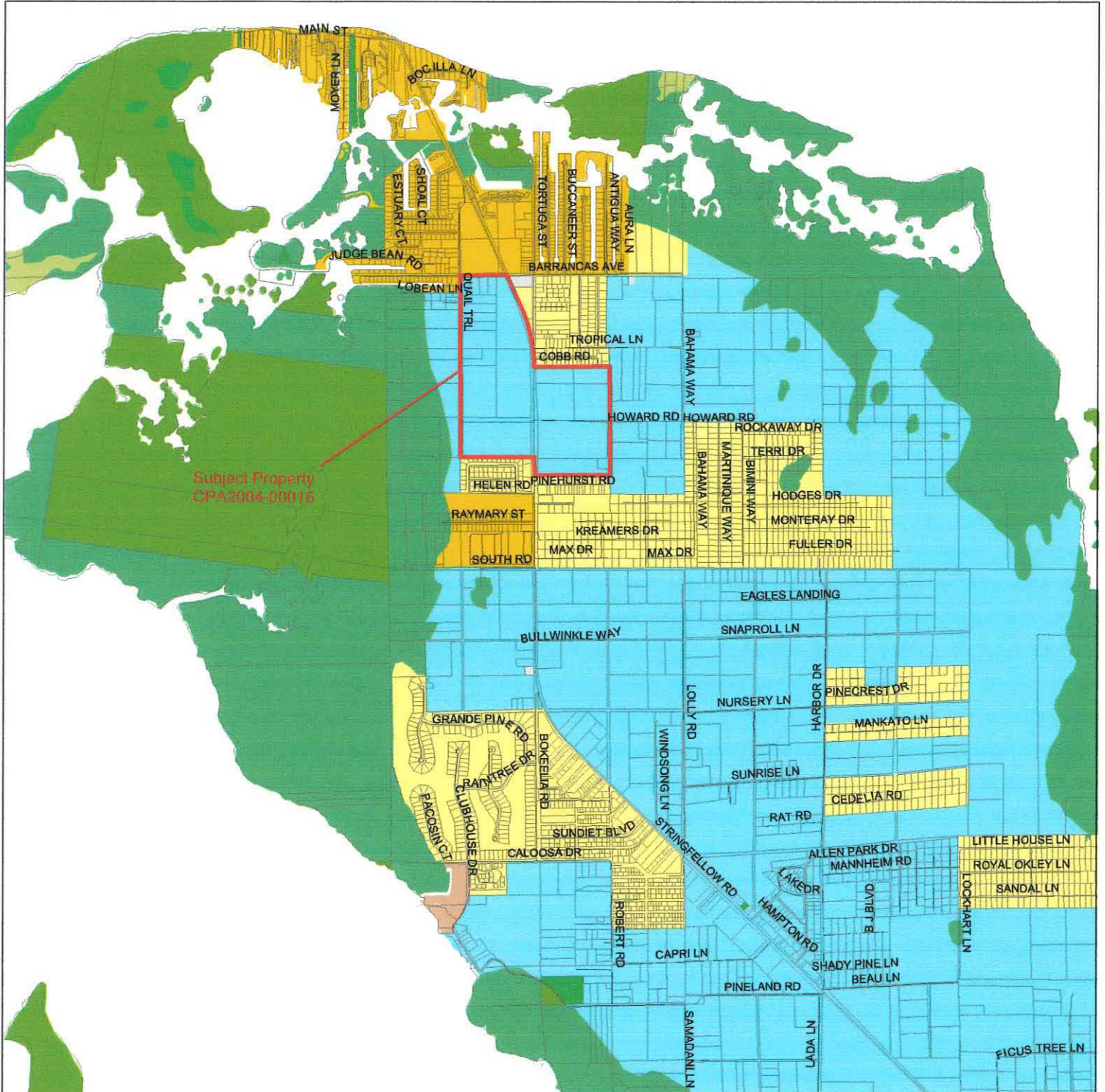


0 200 400 600 800 1,000 1,200 1,400 1,600 1,800 2,000



CPA2004-00016

Future Land Use Map (Adopted)



CPA2004-00016

Future Land Use Designations

- Urban Community
- Suburban
- Outlying Suburban

Public Facilities

Coastal Rural

Outer Island

Conservation Lands - Uplands

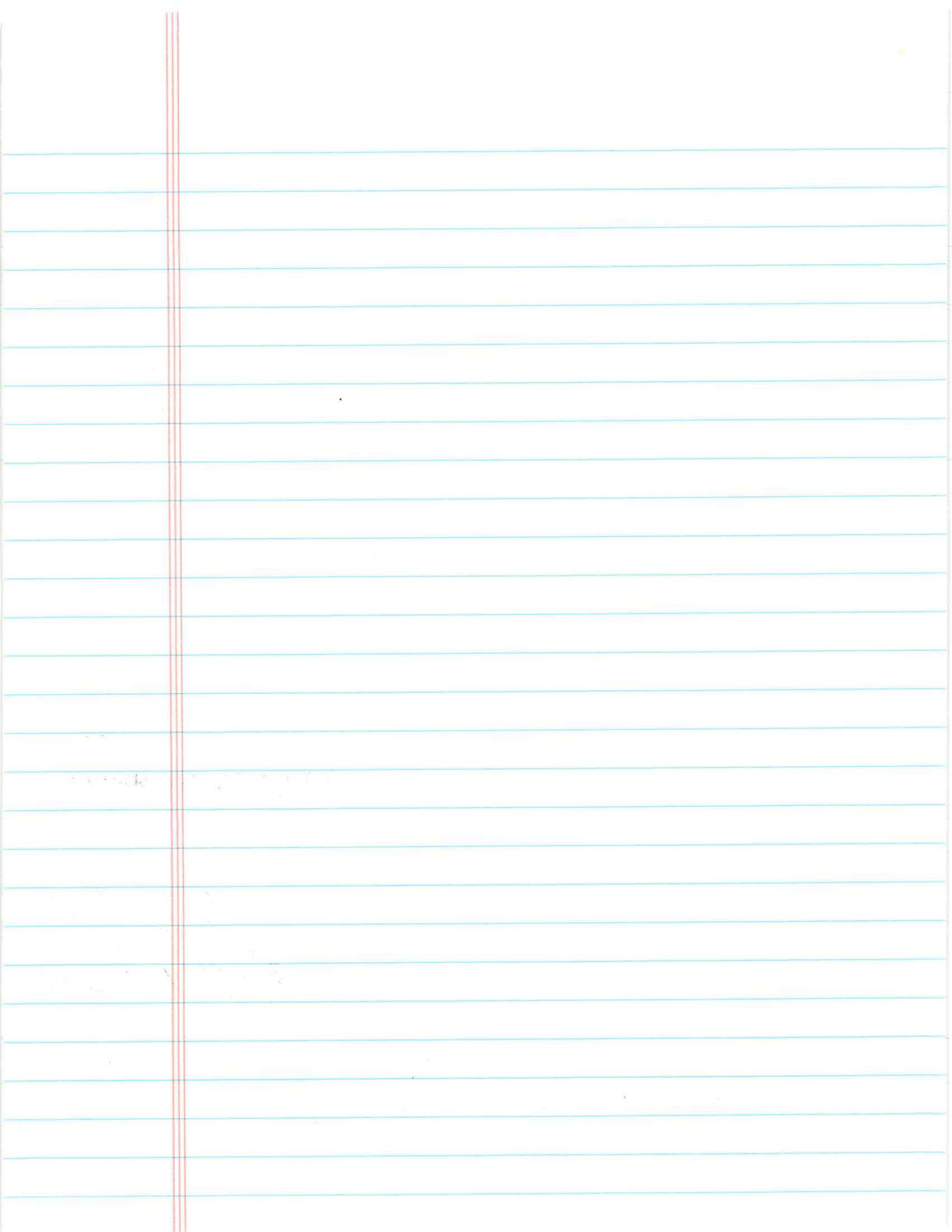
Wetlands

Conservation Lands - Wetlands



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GREATER PINE ISLAND COMMUNITY PLAN UPDATE

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GREATER PINE ISLAND COMMUNITY PLAN UPDATE

This document presents a community plan update for Greater Pine Island. Background material on current conditions is followed by specific proposals to amend Lee County plans and regulations that affect Greater Pine Island.

A quick summary of this plan is available by reviewing the shaded boxes throughout this document. One of Greater Pine Island's major planning issues is summarized in each box, followed by one or more recommended responses.

This entire plan update has been sponsored as a community service by the Greater Pine Island Civic Association, with professional assistance by Spikowski Planning Associates, aided by Mohsen Salehi Consulting Services, both of Fort Myers. Generous financial assistance was provided by the Lee County Board of Commissioners, the Florida Department of Community Affairs, and the Elizabeth Ordway Dunn Foundation with assistance from the Florida Wildlife Federation. Updates on the progress of this plan are published in the Pine Island Eagle and are also available at <http://www.spikowski.com/pineisland.htm> and <http://www.PineIslandNews.com>

Written comments can be forwarded to the Greater Pine Island Civic Association at P.O. Box 478, St. James City, FL 33956.

This plan update was formally submitted to Lee County on September 28, 2001. Formal public hearings will be held in Fort Myers. Notices are published in advance in the News-Press.

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INTRODUCTION TO THIS PLAN UPDATE

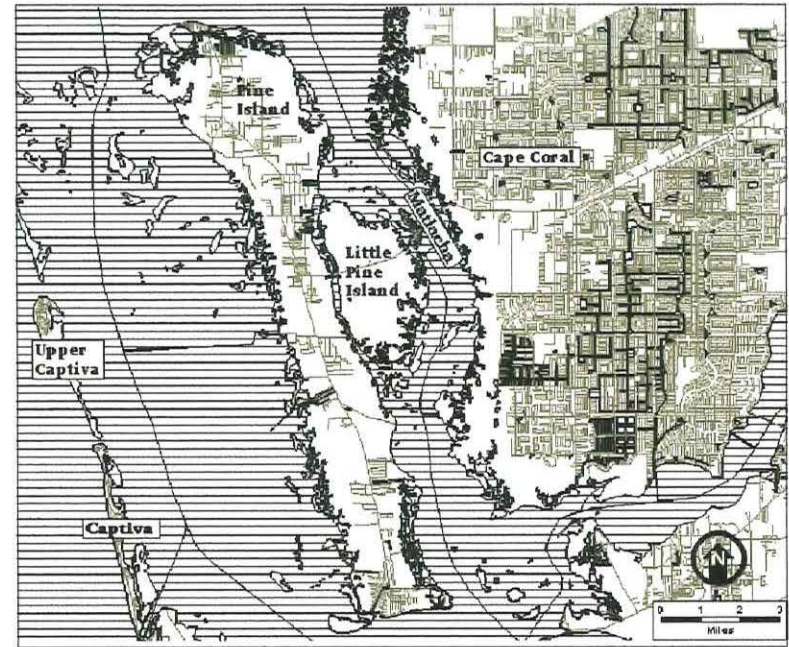
Pine Island, Little Pine Island, and Matlacha share many characteristics and are collectively called Greater Pine Island, or simply Pine Island. These islands are located west of Cape Coral and mainland Lee County but inside the string of barrier islands along Florida's west coast.

While geographically separate, Greater Pine Island is part of unincorporated Lee County and is governed by its board of county commissioners. Although without legal self-determination, local residents have always been vocal about public affairs, especially planning and zoning. An informal coalition of Pine Island residents formulated the original "future land use map" for Pine Island that was adopted by Lee County into its 1984 comprehensive plan (the original Lee Plan). Five years later, a community plan prepared by the Greater Pine Island Civic Association was the basis for a complete section of the Lee Plan (now under Goal 14) dedicated to the future of Pine Island.

The opening statement of the community plan explained its purpose:

GOAL 14: *To manage future growth on and around Greater Pine Island so as to maintain the island's unique natural resources and character and to insure that island residents and visitors have a reasonable opportunity to evacuate when a hurricane strike is imminent.*

Over ten years have passed since Goal 14 and its supporting policies and maps were adopted. Many of those policies are still pertinent; a few have not been implemented fully. However, due to the passing of time, new factors have arisen that require an overall re-examination of the plan. The explosion of agricultural activity on the northern half of Pine Island was not anticipated.



Residential growth has slowed somewhat from the 1980s. And traffic on Pine Island's only link to the mainland has increased, reaching target levels that were set in the 1989 plan to indicate the imminent overloading of the road system.

This current plan update begins with a general description of Greater Pine Island and its past and present residents, referred to in this plan simply as Pine Islanders. Major planning issues are then discussed in detail: hurricane evacuation, traffic, town and country boundaries, community character issues, and the environment. Each planning issue ends with a policy conclusion and specific recommendations for changes to the Lee Plan and the land development code.

Pine Island – the Place and the People

Pine Island is physically separated from the rest of Lee County. Situated within the estuary formed by Charlotte Harbor, Pine Island Sound, and San Carlos Bay, Pine Island differs in geography from the mainland to the east and the barrier islands to the west, though sharing some of the characteristics of each. It is a 10,000- to 12,000-year-old accretion island of some 33,620 acres, over a third of it mangrove forest and the remainder upland (originally slash pine and palmetto, now mostly cleared for agriculture or developed).

Pine Island's ecosystem is unique. Its mangrove shoreline and seagrasses just offshore play a vital role in the cycle of all aquatic life, supporting fishing interests both commercial and recreational. These plants are important elements in the well-being of the entire estuary, serving as its filtration system, aquatic nursery, and feeding ground. Seagrasses in Charlotte Harbor have declined by 29% over the last 40 years; much of the decline was caused by dredging and maintenance of the intracoastal waterway.

Within recent years large areas of pine forest have been cleared for agriculture. Currently over 3,600 acres are in agricultural use, with 36% in rangeland, 35% in nurseries, 21% in groves, and 5% in vegetables. The moderating influence of surrounding waters on the climate creates ideal growing conditions for certain tropical fruits such as mangoes, carambola, and lychees (99% of Lee County's tropical fruit acreage is on Pine Island). Ornamental palms of several varieties are now being widely grown on Pine Island. The tradeoff is this: every acre of land cleared for agriculture is an acre lost to its natural inhabitants. Furthermore, the extent of damage from fertilizers, herbicides, and pesticides draining into the estuary is not known. Efforts to monitor these conditions are both modest and underfunded.

Pristine areas remaining on the island provide a haven for an abundance of wildlife, much of it endangered and threatened — bald eagle, wood stork, osprey, ibis, heron, egret, pelican, manatee, alligator, gopher tortoise, eastern indigo snake, and beautiful pawpaw, to name a few.

Pine Island's history sets it apart. Archaeological finds in Pineland confirm the existence of one of the most important sites of the Calusa Indians, dating back more than 1,500 years. Digs and educational tours at the Randell Research Center are ongoing, as well as efforts by the non-profit Calusa Land Trust to purchase the remaining portions of a cross-island canal constructed by the Calusa Indians. The Pineland site is on the National Register of Historic Places.

Later settlers, appearing on the scene late in the 19th century and early in the 20th, contributed their own colorful chapter to the history of the island, eking out a hardscrabble subsistence fishing and farming. By the early 20th century, citrus and mango groves were planted near Pineland and Bokeelia. Many descendants of these pioneering families still live on the island.

Pine Island differs from other communities in Lee County in the needs, interests, and aspirations of its people. Its population is diverse, made up of old commercial fishing families, a large population of retirees from the north, and younger working families with children attending school, with families finding employment both on and off the island.

Each group harbors its own priorities and ambitions, yet they share common traits. They are independent-minded and they all chose to come to this place looking for privacy, a laid-back lifestyle, a setting of slash pine and open skies and blue water — qualities there for all to enjoy, whether by fishing the waters, or biking through the neighborhood, or simply returning from a hard day at the office or jobsite and crossing the bridge at Matlacha to find a refuge from heavy traffic and urban sprawl.

Peace and tranquility brought them to Pine Island, and that is what they value most.

Life on Pine Island mixes country living with the wonders of being surrounded by water, a fragile combination in coastal Florida. Without attention, the treasures of this unique place may be obliterated.

Looking east from the bridges at Matlacha, Pine Islanders see a vast expanse of sameness, a development form that suits the needs of others but that seems alien and a threat to Pine Islanders' vision of their own future.

Pine Island has two traffic problems resulting from the near-impossibility of widening Pine Island Road through Matlacha without destroying its historic district. This road is nearing its capacity for meeting the daily travel needs of Pine Islanders and visitors, and it is barely adequate for evacuating low-lying areas in case of tropical storms and hurricanes.



Matlacha historic district, bisected by Pine Island Road

Photo courtesy of Mohsen Salehi and Bill Dubin

"Places like Matlacha are rare in this state, not just for its historical interest, but because the locals thrive by protecting the place. They like where they live and don't want to change it. Tourists respond by coming just to hang out on the bridges yakking with fisherfolk, then staying to buy local crafts and eat the fish they've seen caught. They come because they want to feel part of a real place, a place that doesn't put on mouse ears to pull them in."

— Florida writer Herb Hiller

The main mechanism currently protecting Pine Island from overdevelopment that would worsen the existing congestion and evacuation hazard has been Policy 14.2.2, found in the Lee Plan as follows:

POLICY 14.2.2: *In order to recognize and give priority to the property rights previously granted by Lee County for about 6,800 additional dwelling units, the county shall consider for adoption development regulations which address growth on Pine Island and which implement measures to gradually limit future development approvals. The effect of these regulations would be to appropriately reduce certain types of approvals at established thresholds prior to the adopted level-of-service standard being reached, as follows:*

- *When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 810 peak hour, annual average two-way trips, the regulations shall provide restrictions on further rezonings which would increase traffic on Pine Island Road.*
- *When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 910 peak hour, annual average two-way trips, the regulations shall provide restrictions on the further issuance of residential development orders (pursuant to the Development Standards Ordinance), or other measures to maintain the adopted level of service, until improvements can be made in accordance with this plan.*

Ten years after this policy was adopted, here are the critical facts:

- Of the “6,800 additional dwelling units” cited in Policy 14.2.2, about 6,675 still can be built at any time (without requiring any further rezonings or subdivision approvals).
- Official Lee County traffic counts for the year 2000 show that the 810-trip threshold has now been exceeded for the third consecutive year.
- There are no practical or economically feasible plans to widen Pine Island Road through Matlacha or provide a second road to Pine Island.

Given these facts, it is clear that further increases in traffic are inevitable as property rights previously granted are exercised. The question is: how many *more* development rights will Lee County grant on top of those already in existence?

The conflict between these two realities—impending population growth on the island on the one hand and traffic exceeding limits established by the Lee Plan on the other—is the dilemma faced by island residents and by Lee County in the coming years. The proposals in this plan update represent the best efforts of Pine Islanders to deal with this conflict and to manage growth responsibly in the coming decades.

Growth is inevitable. Pine Islanders recognize that as a fact of life, but they seek a kind of responsible growth that preserves and enhances the best features of Greater Pine Island.

Existing Private Property Rights

In a 1989 study about Greater Pine Island, Lee County tabulated the number of existing dwelling units and the number of additional dwelling units that have already been approved but not yet built.¹ Most of the “approved” units are reflected in older subdivision plats where the lots have already been sold off to individual owners; a small number of the “approved” units were in development orders issued by Lee County that may or may not be developed. That inventory showed 4,256 existing dwelling units and 6,663 “additional units” not yet constructed. (Unlike the U.S. Census, that inventory counted mobile homes and fixed recreational vehicles such as those in Cherry Estates as dwelling units.)

As part of this plan update, additional data sources were examined that might verify, contradict, or update those figures. One data source is the Lee County Coastal Study, which counted the number of dwelling units that existed in 1985 based on the official tax rolls. Another is a complete new inventory of existing and approved dwelling units conducted for this plan update, the complete results of which are found in Appendix C. Table 1 below summarizes those new data sources and presents a revised estimate of 6,675 additional dwelling units yet to be built, based on existing approvals. These “build-out” totals do not include development rights for unplatted vacant land or agricultural land.

This estimate of the number of additional dwelling units yet to be built is very close to Lee County’s 1989 estimate. It is true that some, possibly many, of these dwelling units will never be built, due to limited demand, or vacant lots being held as open space by adjoining owners, or unforeseen permitting problems. Yet the magnitude of the development rights already granted is

¹ *Commercial Study: Pine Island*, Lee County Department of Community Development, July 1989.

overwhelming to Greater Pine Island, given the factors that will be discussed in the following sections of this report.

TABLE 1
Dwelling Unit Totals for 1985, 2000, and Build-out

Pine Island, By Sector	Dwelling Units		(15-year increase)	Dwelling Units	
	1985	2000		Build-out	(additional)
Bokeelia	393	914	521	1,735	821
Pineland	128	322	194	2,022	1,700
Pine Island Center	485	873	388	2,269	1,396
Matlacha	632	695	63	1,029	334
Flamingo Bay	717	869	152	1,330	461
Tropical Homesites	117	259	142	713	454
St. James City	1,182	1,705	523	3,213	1,508
TOTALS:	3,654	5,637	1,983	12,311	6,674

SOURCES:

1985 dwelling units: Lee County Coastal Study, pages 3 through 13 of Volume II, Godschalk & Associates, 1988.

2000 and build-out dwelling units: See full data in Appendix C.

Sector boundaries: See map in Appendix C.

TRANSPORTATION ISSUES

Hurricane Evacuation

Pine Islanders will have a very difficult time evacuating if the island is struck by hurricanes of certain types.

Updated evacuation estimates were recently provided for Pine Island by the Southwest Florida Regional Planning Council (SWFRPC). In the event of a Category 2 hurricane coming from the most hazardous direction in the month of November, over 20 hours could be required for an evacuation.²

This evacuation time is unacceptably high even at today's population levels. Hurricane forecasters are not confident that they can provide this much warning that a hurricane is likely to strike a specific area. Also, this evacuation time already exceeds the regional³ and county⁴ standards for evacuation times.

These problems are not isolated to Pine Islanders alone. First, any evacuation of Pine Island would include residents of Upper Captiva and Useppa. Second, although Matlacha and its two-

² This time period includes 12 hours to get all evacuating vehicles through the most restrictive segment of the evacuation route (called the "clearance time") and to a shelter or to the county line, plus 8 hours ("pre-landfall hazard time") to account for the time before the hurricane strikes when the evacuation must cease due to gale force winds or tidal waters flooding the evacuation route. This time period could be reduced slightly if westbound traffic is temporarily banned from Pine Island Road, which may be ordered during the latter part of an evacuation if traffic is backing up on Pine Island.

³ "Projected evacuation times will be regularly reduced from 1995 levels, and by 2010, evacuation times will not exceed 18 hours in any part of the region." [Goal III-5, Strategic Regional Policy Plan, SWFRPC, 1995]

⁴ "By 1995, evacuation times will be restored to 1987 levels using the 1987 Southwest Florida Regional Hurricane Plan Update as guidance; and by 2010, the clearance time portion of evacuation time will not exceed 18 hours." [Objective 79.1, Lee County Comprehensive Plan]

lane drawbridge will create a bottleneck for vehicles exiting the island, a potentially more dangerous bottleneck exists on the mainland to the east of the bridge.

The SWFRPC study presumes that “a successful road network exists to take people to a safer place on higher ground.” Unfortunately for Pine Islanders, this network includes Burnt Store Road (subject to flooding in heavy rains that often accompany hurricanes), the Del Prado Extension, and Pine Island Road.

At the present time Pine Island Road is only two lanes all the way to Santa Barbara in Cape Coral. A heavy influx of evacuees from low-lying areas of western Cape Coral can be expected to also end up on Pine Island Road, slowing traffic flow. Burnt Store Road is being extended to the south now and Pine Island Road will be widened to four lanes between Chiquita and Santa Barbara in about four years, but no other improvements are planned through at least the year 2020.

Lee County roads are not the only barrier to successful evacuation; there is a serious shortage of places for evacuees to stay. Consider the potential consequences of a Category 3 storm (as Donna was, in 1960), arriving in November from the southwest, making landfall not at Fort Myers Beach but at Boca Grande. Under this unlucky scenario, 14 designated shelters out of 34 would be unusable, and extensive stretches of the evacuation routes would be under water, according to Lee County Emergency Management maps. Under those conditions, Pine Island evacuees would be at the tail end of a queue made up of evacuees from much of Cape Coral and North Fort Myers, joined by many others from coastal areas as far south as Naples, all heading north on U.S. 41 and I-75, both of which are subject to flooding even in some tropical storms. There is serious potential for the resulting gridlock to trap tens of thousands of residents directly in harm's way.

Based on these factors and the inability to provide additional roads to Pine Island (as discussed later in this report), Lee County would be justified in immediately limiting any further development on Pine Island. However, in recognition of the private property rights already granted, as discussed in the previous section, this plan recommends a series of measures that, taken together, will avoid the creation of substantial additional property rights that would exacerbate today's serious hurricane evacuation problem.

SETTING THE COURSE

Even with *no* additional development, Pine Island exceeds regional standards for the time needed to evacuate when a hurricane approaches. Planned road improvements through Cape Coral may reduce evacuation times slightly. But as Cape Coral grows to its planned population of 350,000 people, evacuation problems will continue to increase. Lee County should pursue any measures that can improve evacuation times. Unnecessary rezonings and other development approvals that would exacerbate this situation must be avoided.

GETTING THERE

1. Modify comprehensive plan Policy 14.2.3 as follows:
POLICY 14.2.3: In addition to the enforcing the restrictions in the Policy 14.2.2, the county shall take whatever additional actions are feasible to increase the capacity of Pine Island Road. The following measures shall be evaluated:
 - The construction of left-turn lanes at intersections with local roads in Matlacha, or a continuous third lane.
 - Improvements to Burnt Store Road and Pine Island Road to the east of Burnt Store that will prevent premature closure of those roads during an evacuation, closures which now limit the number of Greater Pine Island and Cape Coral residents able to evacuate.
2. Modify comprehensive plan policy 14.2.2 as proposed later in this report.

Road Constraints

Access to Pine Island was strictly by boat until 1926 when the causeway carrying Pine Island Road was built through the mangrove islands that became Matlacha. With road access, modern development became practical.

For many decades, this two-lane road was sufficient to meet all demands placed upon it. Although there have been occasional discussions about a second bridge to Pine Island, the hurdles facing such a plan have always been insurmountable.

Appendix A of this plan contains a complete discussion of transportation constraints affecting Pine Island. The remainder of this section is excerpted from Appendix A.

Constraints on access to Pine Island

As the years progressed, traffic on Pine Island Road has continually increased. By general county standards, the current congestion would warrant plans to widen it to four lanes.

However, in 1989 Lee County formally designated Pine Island Road through Matlacha as “constrained,” meaning that the road cannot (or should not) be widened for the preservation of the scenic, historic, environmental and aesthetic character of the community. Since that time, Lee County has also designated the heart of Matlacha as a historic district, further protecting it from road widening that would damage its character.

The decision not to widen a constrained road can obviously increase congestion. Because counties are required by state law to set maximum levels of congestion on every road, a very high level had to be set for all constrained roads. This normally causes only minor problems, because other parallel roads can handle much of the overflow traffic.

On Pine Island Road the traffic levels theoretically allowed on constrained roads could have had alarming consequences because it would legally indicate that there was road capacity to develop vast tracts of vacant Pine Island land. To avoid this problem, the county chose to modify a 1988 proposal from the Greater Pine Island Civic Association to gradually limit development on Pine Island as Pine Island Road began to approach its capacity. The proposal would have prohibited rezoning most additional land for development when 80% of road capacity was used up, and prohibited approvals of new subdivisions, even on land already zoned, when 90% was used up. This proposal ultimately was adopted as Policy 14.2.2, which restricts rezonings when traffic on Pine Island Road reaches 810 trips per hour and restricts other approvals at 910 trips (see full text of Policy 14.2.2 on page 3).

Since 1990, traffic on Pine Island Road in Matlacha has increased by about 22%. Figure 1 shows the averages for each year, with a visual comparison to the 810 and 910 thresholds. The 810 threshold was surpassed in 1998, 1999, and 2000.

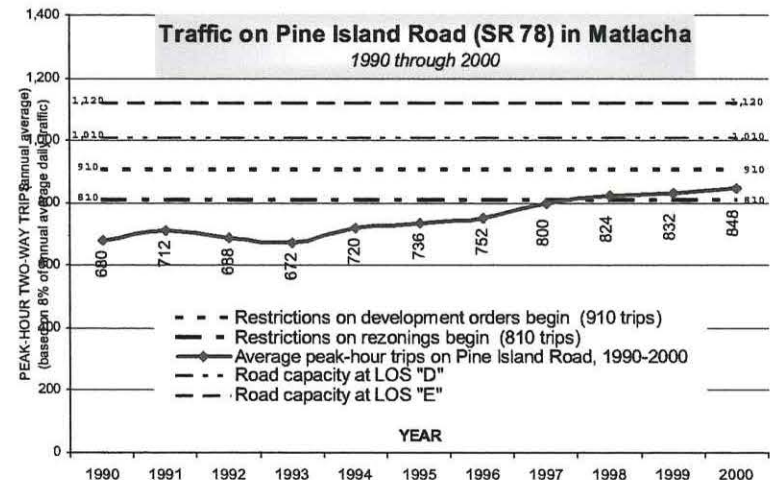


Figure 1, Traffic on Pine Island Road in Matlacha, 1990 through 2000

These significant traffic increases occurred during a decade where there was relatively little new subdivision or condominium development on Pine Island. Population increases resulted mostly from the construction of new homes on pre-existing vacant lots.

Physical alternatives that could improve access

Appendix A examines road improvements that might be able to improve road access to Pine Island. These improvements could have a variety of physical impacts, primarily in Matlacha if the existing right-of-way were reconfigured or widened. The impacts would be primarily environmental if an entirely new access road were built.

Widening Pine Island Road

The critical segments of Pine Island Road have only 66 feet of right-of-way (approximately the distance between utility poles). The existing pavement, including the paved shoulders, is about 32 feet wide. Without widening it could be rebuilt and reconfigured to three lanes of almost 11 feet each, and the unpaved shoulders could be paved to serve as breakdown lanes or sidewalks. The third travel lane could serve either as a two-way left turn lane or as a reversible lane for use in the busier direction.

Adding a third lane would cause a number of problems, however. Pedestrians trying to cross Pine Island Road would have to walk a greater distance, making the crossing less safe, and they would lose the use of the paved shoulder, which now functions as an informal sidewalk. The character of Matlacha would lose some of its village atmosphere and pedestrian orientation, replaced with a more highway-oriented character, plus businesses and homes would lose some of their parking.

The road could also be widened and converted into an urban street with curbs, for instance with four 11-foot lanes, 2-foot concrete curbs and gutters, and 9-foot raised sidewalks.

This configuration would significantly increase the traffic-carrying capacity of Pine Island Road. However, it would require extensive earthwork and metal railings, similar to the recently rebuilt San Carlos Boulevard as it approaches Fort Myers Beach. Sidewalks would extend to the very edge of the right-of-way, putting them directly adjacent to many buildings whose fronts are on the right-of-way line. It would also eliminate all parking from the right-of-way, a major disadvantage that would seriously damage, if not eliminate, the viability of many small businesses. And unless the bridges were widened as well, either approach would still face the bottleneck of having a three-lane or four-lane road narrow into two-lane bridges. The normal engineering solution of widening the road through Matlacha to four travel lanes cannot be considered as a viable or practical option because it would seriously harm Matlacha's village atmosphere and pedestrian orientation.

Widening the right-of-way is also not a solution. Shallow lots often back up to the waters of Matlacha Pass and many of the existing buildings directly adjoin the existing right-of-way. Thus, widening the right-of-way would involve altering or demolishing many buildings in Matlacha. Lee County's 1990 designation of Matlacha as a historic district would not legally prevent the county from altering historic buildings, but it indicates the historic value of many of Matlacha's buildings in addition to its unique village character.

New bridge bypassing Matlacha

The capacity of Pine Island Road could also be increased by building a new bridge immediately to the south of Matlacha. It could provide uninterrupted two-way traffic, or one-way traffic with the existing Pine Island Road serving traffic in the other direction.

Two-way traffic is generally more convenient to the public. One-way traffic allows more cars to use the same amount of roadway, but is generally regarded as being harmful to businesses

along the route. Either scenario would create serious intersection impacts at each end, and could cause additional travel to connect motorists with their actual destinations.

Pine Island Road is a county road west of Burnt Store Road (as are both bridges). Any improvements would be constructed and paid for by Lee County. As major bridges are generally beyond the ability of the county to pay for with current revenue sources, they are built with the proceeds from selling bonds, which are then paid back over time (usually with tolls).

Based on recent costs for bridge building, a new bridge should be expected to cost at least \$50 million and perhaps \$100 million (see cost comparisons in Appendix A).

State and federal permits are required for all new bridges, and are difficult to obtain, especially for a new bridge through the Matlacha Pass Aquatic Preserve. At least at present, building a new bridge around Matlacha is not a feasible option.

Entirely new bridge and entrance road

Another alternative involving a new bridge would be to extend Cape Coral Parkway westerly across Matlacha Pass, ending about halfway between St. James City and Pine Island Center near the Masters Landing power line. A continuous bridge would be needed to avoid interference with tidal flows.

This alignment would extend into the Cape Coral city limits, adding an extra layer of regulatory issues. The new bridge would add traffic onto Cape Coral Parkway, which is planned to be widened to six lanes but cannot be widened further.

This option, like the Matlacha bypass option, is currently cost-prohibitive and could have major environmental impacts on Matlacha Pass. Neither new-bridge option can be considered to be feasible.

Transportation policy alternatives

Beginning in 1998, the 810-trip threshold in Policy 14.2.2 has been exceeded each year. Once they became aware of this fact, the Lee County Commission voted to reexamine this policy.

No technical factors or changes since 1989 have been discovered in the course of this planning process that would justify abandoning the 810 or 910 thresholds in this policy. However, there is an opportunity at this time to determine the best way to fully implement this policy in the fairest possible way.

In 1991 Lee County amended its land development code using language almost verbatim from Policy 14.2.2. This is a problem because it is not self-evident which kinds of rezonings will “increase traffic on Pine Island Road.” A better approach would be to have clearer regulations to implement Policy 14.2.2.

For instance, some types of rezonings would have minor or even positive effects on traffic flow in Matlacha. A convenience store in St. James City would serve only local residents and those passing by and would attract *no* new trips through Matlacha. A larger grocery store in St. James City would attract shoppers from a larger area, perhaps including some who currently drive to Matlacha or Cape Coral to shop for groceries, possibly *decreasing* traffic on Pine Island Road. However, a large new hotel or marina on the same property could have a different effect.

Thus an important distinction could be made in implementing Policy 14.2.2 between those land uses that primarily serve residents or visitors who are already on Pine Island, and land uses that primarily attract additional people across Pine Island Road. For instance, the following commercial uses would primarily serve residents and visitors: grocery, hardware, and convenience stores; hair salons; and service stations.

This distinction would be clouded somewhat by other factors, particularly the size and location of commercial uses. Some

small commercial uses might be exempted from this policy. Other alternatives would be to:

- allow minor rezonings below a certain size if they are proposed on “infill” properties between existing development at similar intensities (rather than expanding or intensifying already-developed areas);
- allow rezonings whose characteristics are such that traffic during the busiest peak hours would not be increased;
- give preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island.

In summary, none of the available options for adding significant road capacity to Pine Island are practical. Building four lanes through Matlacha would seriously damage Matlacha’s village atmosphere and pedestrian orientation. Either new-bridge option would have serious environmental impacts and there are no funds for such expensive undertakings. The increased traffic capacity of either bridge would most likely lead to approval of more development on Pine Island, negating the initial positive impacts on traffic flow and hurricane evacuation.

SETTING THE COURSE

Lee County made a sound decision in 1989 to slow development on Pine Island as the capacity of Pine Island Road through Matlacha is reached. This system should be maintained because no practical method of increasing road capacity has been identified. The specific regulations that govern this slowing should be clarified so that small-scale infill development isn’t prohibited. However, additional larger-scale development rights should not be granted where there is no ability to provide basic services such as minimal evacuation capabilities.

GETTING THERE

Modify comprehensive plan Policy 14.2.2 as follows:

POLICY 14.2.2: In order to recognize and give priority to the property rights previously granted by Lee County for about 6,675 ~~6,800~~ additional dwelling units, the county shall keep in force effective ~~consider for adoption~~ development regulations which address growth on Pine Island and which implement measures to gradually limit future development approvals. ~~The effect of~~ These regulations shall ~~would be to~~ appropriately reduce certain types of approvals at established thresholds prior to the capacity of Pine Island Road adopted level-of-service standard being reached, measured as follows at the permanent count station on Little Pine Island at the western edge of Matlacha:

- When traffic on Pine Island Road ~~between Burnt Store Road and Stringfellow Boulevard~~ reaches 810 peak hour, annual average two-way trips, the regulations shall ~~provide restrictions on further rezonings which would increase traffic on Pine Island Road through Matlacha.~~ These regulations shall provide reasonable exceptions for minor rezonings on infill properties surrounded by development at similar intensities and those with inconsequential or positive effects on peak traffic flows through Matlacha, and may give preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island.
- When traffic on Pine Island Road ~~between Burnt Store Road and Stringfellow Boulevard~~ reaches 910 peak hour, annual average two-way trips, the regulations shall ~~provide restrictions on the further issuance of residential development orders to one-third the maximum density otherwise allowed on that property. (pursuant to the Development Standards Ordinance); or other measures to maintain the adopted level of service, until improvements can be made in accordance with this plan.~~

These development regulations may provide exceptions for legitimate ongoing developments to protect previously approved densities for final phases that have a Chapter 177 plat or site-plan approval under Ordinance 86-36.

POPULATION AND LAND USE

Town and Country on Pine Island

The essential character of Pine Island has always been the contrasts among its physical environments. Surrounded by harbors and bays of unparalleled beauty, Pine Islanders live in a series of low-key settlements or “villages” that are separated by rural land. With dense mangrove forests creating barriers between most land and the water, the seven residential villages have formed in the locations with best access to the water (Bokeelia, Pineland, Matlacha, Flamingo Bay, Tropical Homesites/Manatee Bay, and St. James City). Only Pine Island Center is away from the water, in favor of the only crossroads location on Pine Island. Between these villages there has always been the sharp contrast of rural lands, dominated by slash pine/palmetto habitats and some farming operations.

Pine Island has almost no beaches, few city services, and limited employment and shopping — yet it remains a highly desirable



Pine Island Center, looking north

Photo courtesy of Mohsen Salehi and Bill Dubin

and moderate-cost alternative to the formless “new communities” that have obliterated the natural landscape throughout coastal Florida.

The current Pine Island community plan maintains the distinct villages by limiting their expansion through boundaries on a future land use map. Only a single ten-acre amendment has been approved to that map since 1989. Because the boundaries themselves have not been reexamined during that period, that effort was undertaken as part of this plan update, as described below.

Town (village) boundaries

The freestanding villages on Pine Island have been given one of three “future urban area” designations, with densities and total acreages summarized in Table 2.

TABLE 2

“Future Urban” designations on future land use map	Residential density range (DU = dwelling unit)	Actual acres in Greater Pine Island
Urban Community	1 to 6 DU/acre	1350 acres
Suburban	1 to 6 DU/acre	1427 acres
Outlying Suburban	1 to 3 DU/acre	1557 acres

“Urban Community” areas can have considerable concentrations of commercial uses, and thus were assigned to Pine Island Center and Matlacha, the commercial centers for all of Greater Pine Island.

“Suburban” areas are allowed similar densities for residential development, but with fewer commercial uses. This designation has been assigned to most of Bokeelia and St. James City, and smaller areas around the Pink Citrus, Flamingo Bay, and Pine-wood Cover mobile home parks.

“Outlying Suburban” areas are allowed half the density of “Suburban” areas, but with comparably limited commercial uses. This designation was generally assigned to all other settlements on Pine Island.

All the future urban designations were drawn tightly around existing settlements. The exceptions are about 52 acres just north of Galt Island Avenue (northwest of St. James City); 95 acres centered around the Pine Island Village subdivision south of Flamingo Bay; and 157 acres south of Bokeelia and north of September Estates. The first two exceptions apparently had been made due to imminent development activity on those parcels, and both were reasonably logical extensions of existing settlements. However, little activity has taken place on either parcel, with extensive natural vegetation remaining.

The third exception, south of Bokeelia, is the most incongruous. This entire acreage is now in intense agricultural use, with much of it cleared during the past decade (see Figure 2). Apparently it had been considered as a potential expansion of the Bokeelia urban area. Since that time, the landowners have clearly indicated a preference for agriculture and have made no efforts to develop any of the land residentially. Thus these 157 acres should be reclassified to whatever designation is ultimately assigned to the rural lands to their east and west.

Other apparent anomalies are several large clusters of rural land that have been assigned the “Outlying Suburban” designation east and northeast of Pineland. Close examination shows that these areas have been subdivided into lots averaging one-half acre, and have been almost entirely sold off to individual purchasers. The largest area, just east of Stringfellow Road, is known as the Kreamer’s Avocado subdivision. The relatively few homes that have been built there enjoy a pleasant rural setting. However, any substantial increase in homebuilding will overtax the incomplete network of unpaved roads and reduce the rural atmosphere. At such time, residents could band together and

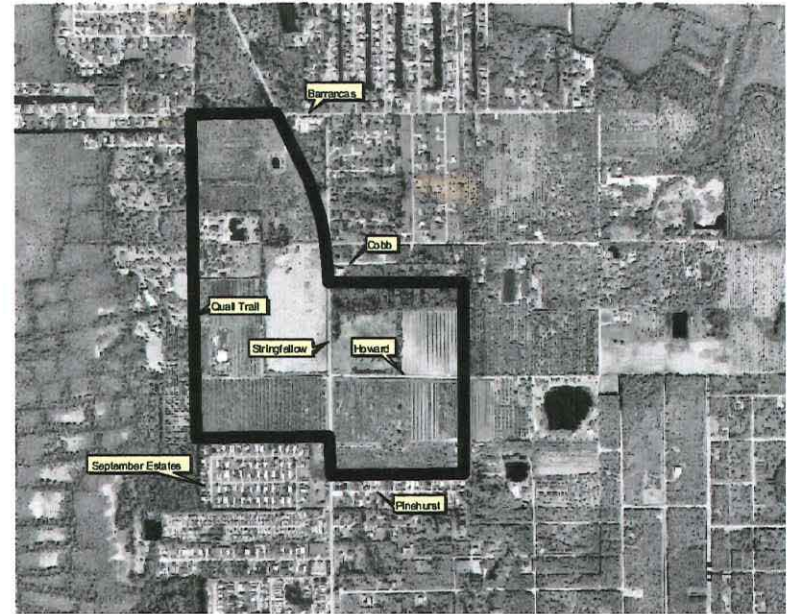
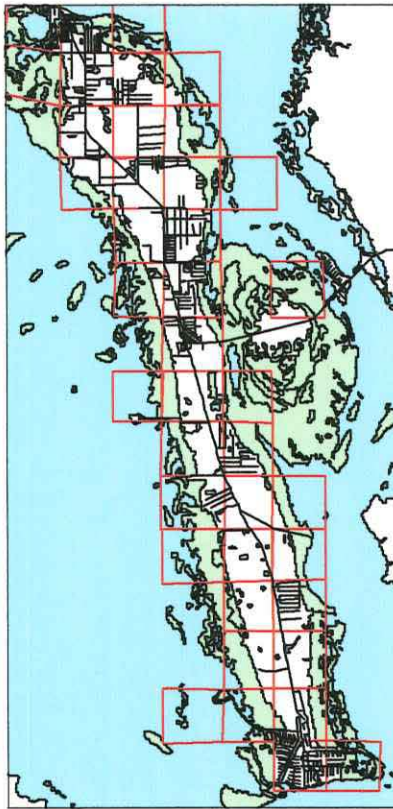


Figure 2

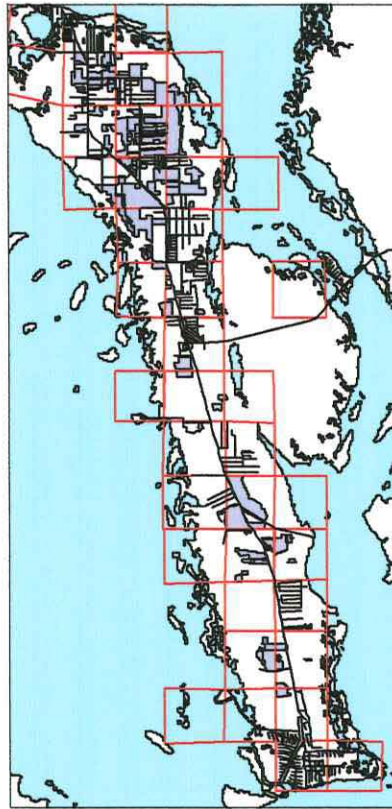
pave the roads and install a modest drainage system through a special taxing district. The seeming anomaly of the “Outlying Suburban” designation, however, is appropriate for the existing pattern of small subdivided lots.

The future of rural Pine Island

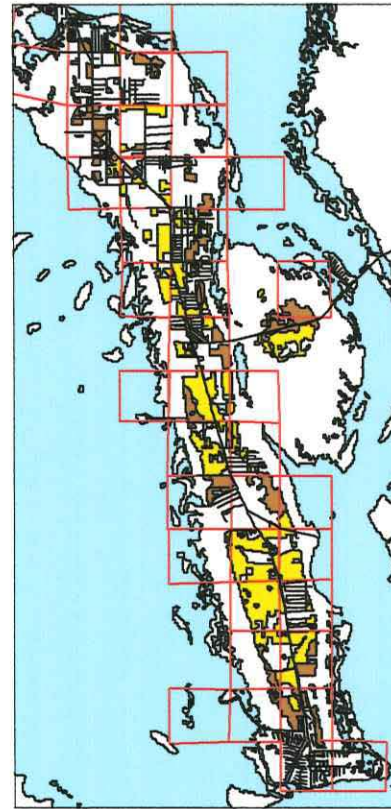
Outside the village boundaries, all high ground has been designated in the “Rural” category, where residential development is now limited to one dwelling unit per acre (1 DU/acre). Over the past 15 years, much “Rural” land between the villages has been converted to farmland, especially on the north half of the island, a trend that is continuing even today. This conversion has destroyed a quarter of the remaining pine-and-palmetto habitat over a 15-year period (see Table 3), a period in which farming has become the most popular and economic use of rural land on Pine Island.



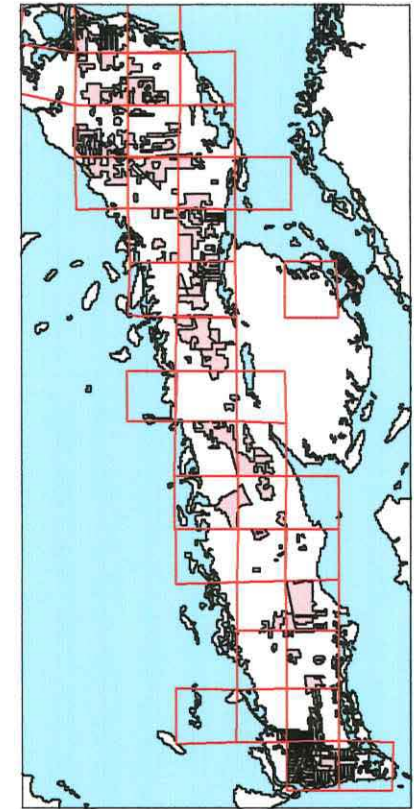
Wetlands, 13,088 acres, 52% of land



Agriculture, 2,763 acres, 22½% of uplands



Forests, 4,853 acres, 39½% of uplands
(pine flatwoods, lighter color, 22½%;
exotic infested, darker color, 17%)



Urban, 4,676 acres, 38% of uplands

SOURCE: Based on GIS data for 1996 provided
by the South Florida Water Management District.

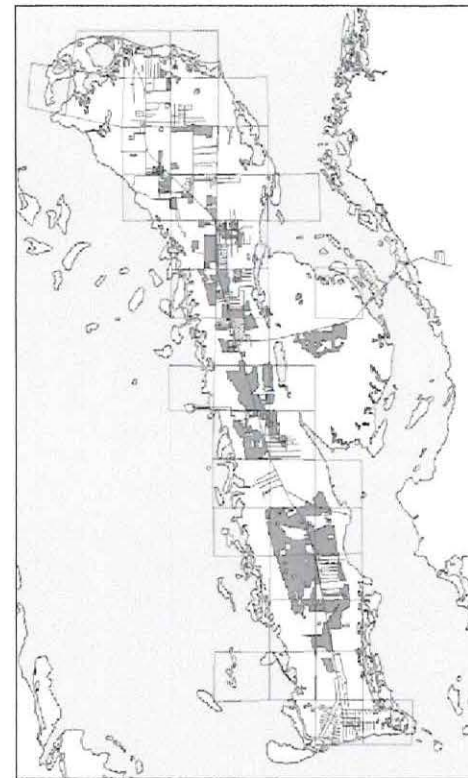
TABLE 3
Removal of Pine Flatwoods on Pine Island
1981 – 1996

Pine Island Comm- unity, By Sector	Upland Acres	Acres of Pine Flatwoods		15-Year Decrease of Pine Flatwoods	Agricul- tural Acres, 1996
		1981	1996		
Bokeelia	1,612	144	40	(104)	464
Pineland	2,672	373	230	(143)	1,336
Pine Island Center	2,690	859	743	(116)	365
Matlacha	224	0	0	0	0
Flamingo Bay	2,451	1,360	1,044	(316)	444
Tropical Homesites	792	581	400	(181)	12
St. James City	1,630	420	300	(120)	142
TOTALS:	12,071	3,737	2,757	(980)	2,763

SOURCES: Data based on interpretation of aerial photographs.
For sector boundaries, see map in Appendix C.
1981: Lee County Coastal Study, Appendix IV-III, Godschalk & Assoc., 1988.
1996 and upland totals: Based on GIS data provided by the South Florida Water Management District.

This increase in farmland is sometimes seen as preferable to more residential subdivisions, which cannot be supported by Pine Island's limited road connections to the mainland. However, farmland can be converted to residential land very easily; the current comprehensive plan actually seems to encourage this by allowing residential development on one-acre lots without rezoning, even on active farmland. Planning professionals generally agree that one-acre lots are too small to maintain the countryside and too large to create villages; yet that is the predominant residential density allowed on Pine Island today.

During this plan update process, Pine Islanders carefully considered alternative growth-management techniques to replace the 1 DU/acre "Rural" category on Pine Island. While considering



Remaining pine flatwoods, 1996

these alternatives, the public was made aware of the current regulatory climate: regulations that are so strict as to essentially "take away" *all* rights to private property rights are illegal, and such "takings" must be fully compensated to the landowner, an enormously expensive undertaking.

In addition, in 1995 the Florida legislature passed the Bert J. Harris, Jr. Private Property Rights Protection Act. This act established a new standard for preventing overly strict regulations on land — any regulation that is determined to

place an "inordinate burden" on a landowner may now require compensation, even though it isn't a "taking" of all property rights. This act does not mean that land-use regulations cannot be made stricter, even if they lower the market value of land; but as a practical matter it will mean closer scrutiny of strict regulations, especially their potential to "inordinately burden" landowners *even if* the court decides that a particular regulation is valid and in the overall public interest.

Whether a new regulation places an "inordinate burden" on a landowner will be determined by the courts on a case-by-case

basis. It is clear that the *amount* the market value of land may be lowered after a regulation is imposed will be a very important factor in this decision.

On Pine Island today, there is little market demand for residential development at densities of 1 DU/acre. A single new subdivision has been created at this density (Island Acres just south of the water treatment plant), and it has experienced relatively slow sales even though its lots surround an attractive lake. The actual real estate market for large tracts of Pine Island land has three major types of buyers:

- Intensive agriculture users, who are planting tropical fruits, ornamental palms, and some vegetables;
- Land speculators, who often anticipate selling at a profit to a developer who would build dwelling units around a golf course; and
- Public agencies, the new players in this market, at present primarily Lee County's "Conservation 2020" program which buys and preserves natural habitats.

These three types of buyers will establish the market value for large tracts on Pine Island in the absence of substantial demand for one-acre homesites.

Appendix B of this report evaluates five different growth-management techniques for rural land on Pine Island:

- Conservation land purchases
- Larger lots in rural areas
- Cluster development
- Transferable development rights
- Rate-of-growth control

Any of these techniques, or either of the two hybrid techniques also discussed in Appendix B, could become part of the Greater Pine Island community plan update and the Lee Plan's future land use map, and would be implemented through subsequent changes to other county regulations. (Existing lots would pre-

sumably be "grandfathered in" even if they are now vacant.)

The option recommended as the best for Greater Pine Island at this stage of its evolution is a hybrid described in Appendix B as "conservation clustering with incentives" (#7). It combines the best features of conservation land purchases (#1), larger lots in rural areas (#2), and cluster development (#3).

Land that is now designated "Rural" would be placed in a new "Coastal Rural" category. This conversion would respond well to the three main problems identified for Pine Island's rural areas:

- the absence of any meaningful effort to protect even the best remaining native habitats from agricultural clearing;
- the potential for residential development at 1 DU/acre that would result in neither "town" nor "country" conditions; and
- the potential for adding even more dwelling units that cannot be sustained by the limited road connections to the mainland.

This option combines regulations with incentives and uses a sliding scale of density to encourage (though not require) conservation of undisturbed habitats.

Property owners who save 70% of native habitats would be allowed to keep all of the dwelling units allowed to them today, but instead of placing each house on a 1-acre lot, these homes could be placed on the remaining 30% of the land. This would allocate 0.3 acres per lot (although actual lot sizes would be somewhat smaller to account for land needed for streets and stormwater detention lakes).

Property owners who choose *not* to save any native habitats would be limited to 1 DU per 10 acres. This would allow agricultural or country-estate homes on 10-acre lots.

A sliding scale would allow property owners to choose any point within the extremes just described, as shown in Table 4.

TABLE 4

Assume % of native land saved or restored	Would then be assigned this gross density:	RESULTS ON 100 ACRES WOULD BE:			
		# of DUs	acres used per lot	total acres preserved	total acres used
0%	1 DU per 10 acres	10	10.0 acres	0	100
5%	1 DU per 9 acres	11	8.6 acres	5	95
10%	1 DU per 8 acres	13	7.2 acres	10	90
15%	1 DU per 7 acres	14	6.0 acres	15	85
20%	1 DU per 6 acres	17	4.8 acres	20	80
30%	1 DU per 5 acres	20	3.5 acres	30	70
40%	1 DU per 4 acres	25	2.4 acres	40	60
50%	1 DU per 3 acres	33	1.5 acres	50	50
60%	1 DU per 2 acres	50	0.8 acres	60	40
70%	1 DU per 1 acre	100	0.3 acres	70	30

It may seem counterintuitive to allow higher densities on natural habitats than on disturbed lands, but this provides landowners with a strong incentive *not* to clear native habitats. (The same incentive would be granted to restored land as to preserved land, using the same sliding scale.)

This approach diminishes the potential for residential development on agricultural land while rewarding landowners who protect (or restore) their land's natural habitats. Actual development on native parcels would disturb far less land than would occur today by either allowing today's number of dwelling units to be placed on smaller lots, or by reducing the number of lots that are allowable. Public purchases of entire tracts for preservation would be encouraged, but if purchase offers aren't attractive enough to interest property owners, this new plan would encourage more preservation than current regulations.

SETTING THE COURSE

The culture of community-making demonstrated by Pine Island's pioneers should be continued by enhancing its seven freestanding communities and keeping them from sprawling into rural areas. Pine Island's rural areas should be placed into a new Coastal Rural category on the future land use map. This category would have a sliding density scale that would reward landowners who preserve native upland habitats. However, it would not prevent them from pursuing agriculture or creating standard ten-acre homesites if they choose. Without major habitat preservation, smaller homesites would not be allowed in Coastal Rural areas. (Existing legal lots in rural areas would not be affected.)

GETTING THERE

1. Adopt a new comprehensive plan policy as follows:
POLICY 14.1.8: The county shall reclassify all uplands on Pine Island previously designated as Rural to a new Coastal Rural designation on the Future Land Use Map. The purposes of this redesignation are to provide a clearer separation between rural and urban uses on Pine Island, to discourage the unnecessary destruction of native upland habitats, and to avoid placing more dwelling units on Pine Island than can be served by the limited road capacity to the mainland. The Coastal Rural designation is designed to provide landowners with maximum flexibility while accomplishing these public purposes.

(continued)

GETTING THERE *(continued)*

2. Adopt a new comprehensive plan policy establishing a new non-urban designation on the county's Future Land Use Map, as follows:

POLICY 1.4.7: The Coastal Rural areas are uplands on Pine Island that were redesignated in accordance with Policy 14.1.8. These lands are to remain rural except for portions of individual properties whose owners choose to permanently preserve or restore native upland habitats and in return are permitted to use a portion of their properties for smaller residential lots. The standard maximum density in the Coastal Rural area is one dwelling unit per ten acres (1 DU/10 acres). Maximum densities increase as various percentages of native uplands are permanently preserved or restored. Permitted land uses include agriculture, fill-dirt extraction, conservation uses, and residential uses up to the following densities:

<i>Percentage of native habitats preserved or restored</i>	<i>Maximum density</i>
0%	1 DU / 10 acres
5%	1 DU / 9 acres
10%	1 DU / 8 acres
15%	1 DU / 7 acres
20%	1 DU / 6 acres
30%	1 DU / 5 acres
40%	1 DU / 4 acres
50%	1 DU / 3 acres
60%	1 DU / 2 acres
70%	1 DU / 1 acre

(continued)

GETTING THERE *(continued)*

3. Amend the future land use map to reclassify all land on Pine Island now designated as "Rural" into the new "Coastal Rural" category.
4. Amend the future land use map to reclassify from "Outlying Suburban" to "Coastal Rural" 157 acres of agricultural land between Bokeelia and September Estates in 31-43-22, bounded by Quail Trail on the west, Barrancas Street on the north, Stringfellow on the east, Unit A of Rapid #1 subdivision (Cobb Road) on the north, the quarter section line of Section 31 on the east, and Pinehurst Acres and September Estates on the south.
5. Amend the land development code to provide detailed regulations to implement new Policies 1.4.7 and 14.1.8, including modifications to the AG-2 zoning district in accordance with these policies.

Population Summary

Initial data is beginning to be released by the U.S. Census Bureau from the 2000 census; a brief summary is provided here.

Greater Pine Island's population for many years has been much older than Lee County or the state of Florida as a whole, reflecting the continuing influx of retirees to the area. There are now 9,306 permanent residents of Greater Pine Island; the chart below illustrates the age breakdown of these permanent residents.

Of the 9,306 permanent residents, 98.3% percent are white and 3.7% are Hispanic.

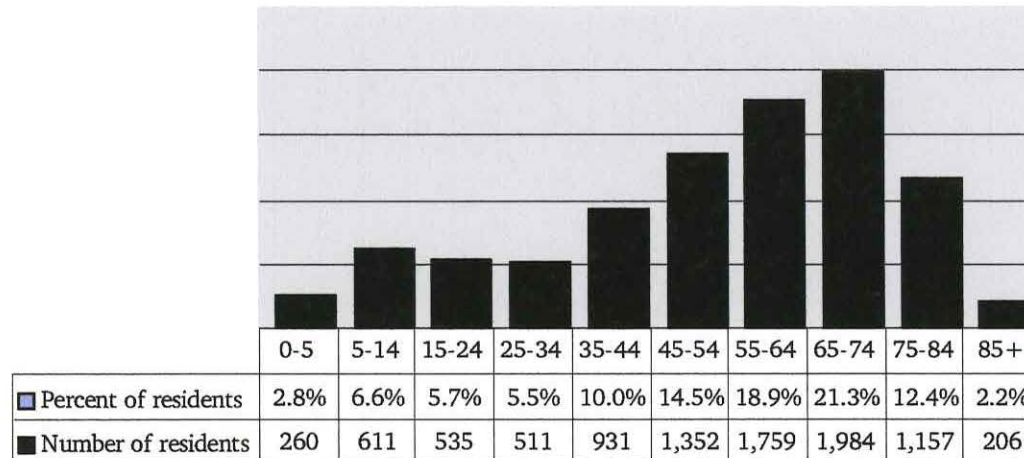
These 9,306 permanent residents live in 4,575 dwelling units. There are 1,766 additional dwelling units that were either used by seasonal residents or were vacant when the census was conducted on April 1, 2000. Compared to other islands in Lee County, Greater Pine Island has a much higher percentage of its dwelling units occupied by permanent residents. (The census does not include any meaningful data on seasonal residents.)

Of the 4,575 occupied dwelling units, 85.7% are occupied by their owners and the remaining 14.3% are rented out to others.

Additional data on the population and housing characteristics of Greater Pine Island is expected in the fall of 2001.

Age of Permanent Residents of Greater Pine Island

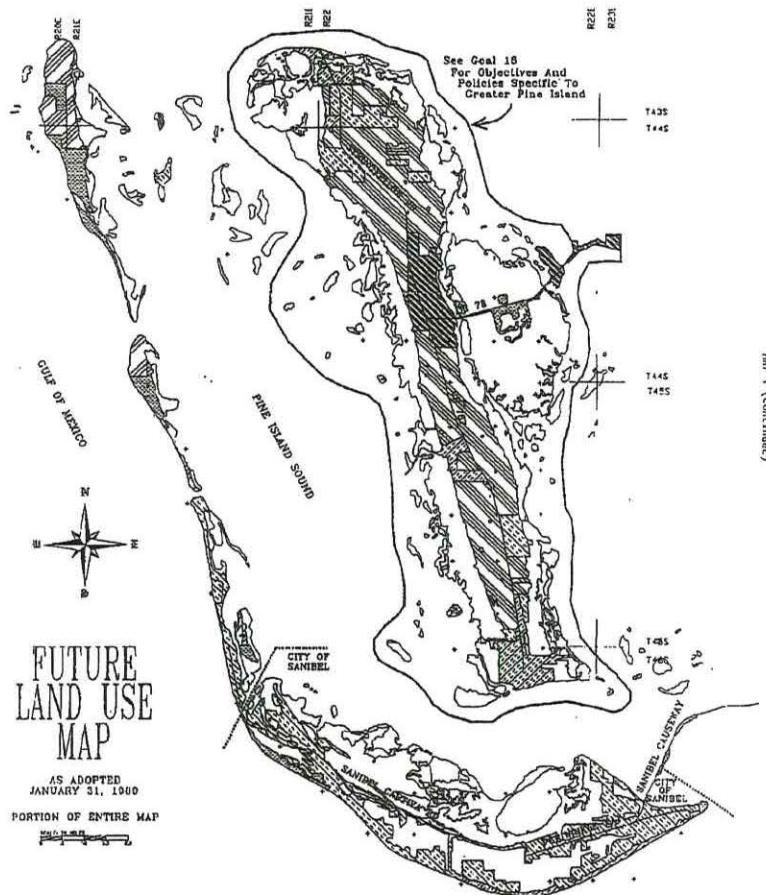
Year 2000, by Age Ranges



Greater Pine Island's Boundary

This plan has described Greater Pine Island as Pine Island, Little Pine Island, and Matlacha. A more precise boundary is needed for legal purposes.

The map below shows the original boundary adopted by Lee County in 1989 for the Greater Pine Island community plan.



Other Pine Island boundaries have been adopted for different purposes. Map 16 of the Lee Plan divides the entire county into twenty "planning communities" for administrative and accounting purposes; that Pine Island boundary includes some enclaves of unincorporated land between Matlacha Isles and the city limits of Cape Coral, including the Royal Tee Country Club. This is similar, though not identical, to the boundaries of the Matlacha/Pine Island Fire District and the Greater Pine Island Water Association, both of which however exclude Cabbage Key and Useppa and treat other small islands differently.

The original community plan boundary from 1989 also excludes Cabbage Key and Useppa, plus all of the unincorporated land east of Matlacha Isles. During the course of this plan update, only the areas within the original boundary were analyzed carefully. Thus the plan update, when adopted, should apply only to the original area. The Lee Plan should prominently display this boundary on the future land use map and/or a separate map depicting Greater Pine Island and all other areas that are subject to community plans.

GETTING THERE

Modify the future land use map to clearly reflect the 1989 boundary for Greater Pine Island, which includes Pine Island, Little Pine Island, and Matlacha eastward through Matlacha Isles.



Tropical Island Wear & Moretti's, Matlacha



Waterfront Restaurant, St. James City



Crossed Palms Gallery, Bokeelia

COMMUNITY CHARACTER

Design of Commercial Buildings

Businesses are an essential part of any community's character. They provide useful services and their buildings are usually located on major roads where they are regularly viewed by residents and visitors.

Pine Island has many commercial buildings that are strictly utilitarian, and others that are simply unsightly. However, there are also many wonderful examples of commercial buildings that help maintain the rural and small-town ambience of Pine Island. Some are old, some completely renovated, and some entirely new, but they usually are designed in the "Old Florida" or vernacular style and can serve as desirable examples for future commercial buildings on Pine Island. Photographs of some of those buildings are included here.

In late 1998, Lee County for the first time adopted design standards for commercial buildings. These standards are fairly minimal and do not govern the style of buildings, nor the placement of buildings on the site. However, they can be adapted to

incorporate either or both for commercial buildings on Pine Island.

The following list identifies general characteristics of the best commercial buildings on Pine Island, and compares them with some common trends elsewhere:

- Existing buildings are often converted to commercial use, rather than demolished and replaced.
- The buildings are relatively small; some could be mistaken for a large residence.
- There is little or no parking between the building and the street; parking lots tend to be on the side, or behind the building.
- Mature trees are considered assets on commercial sites, rather than obstacles to be removed.
- Glass is plentiful on the fronts of buildings; blank walls are rare even on the sides or the rear.
- Galvanized sheet metal is the most common roof material.
- Building styles are traditional, usually "Old Florida" style, but with many creative details — they are never identical formula buildings that might appear anywhere.



Pine Island Prof. Center, Pine Island Center



Pine Island Realty, Pine Island Center



Island Exchange, Pine Island Center

For the most part Greater Pine Island has avoided lookalike franchise architecture where repetitive building types function as giant billboards.

The city of Sanibel has tried a novel approach at controlling lookalike architecture by banning what they have defined as “formula restaurants.” Their definition includes any restaurant that meets two of these three criteria: any fast-food restaurant; uses the same name as others in a chain or group; and uses exterior designs or employee uniforms that are standardized.

The Sanibel rule affects only restaurants, not any other commercial establishments. Also, many chains are willing to modify their standard designs or to build customized buildings, if clearly required by local law. By adopting specific commercial design standards for Pine Island, greater control can be obtained over out-of-character buildings without involving county government with issues of competition, corporate structure, or similarity to other businesses. These issues are outside the county’s normal scope of review anyway.

SETTING THE COURSE

Lee County’s new architectural standards are a major step forward but should be supplemented with specific standards for Pine Island. These standards should favor rehabilitation over demolition; small rather than large buildings; custom designs instead of standardized franchise buildings; preservation of mature trees; parking to the side and rear; large windows and no blank walls; and metal roofs and other features of traditional “Old Florida” styles.

GETTING THERE

1. Adopt a new comprehensive plan policy as follows:
POLICY 14.4.3: The county shall expand the commercial design standards in its land development code to provide specific architectural and site design standards for Greater Pine Island. These standards will favor rehabilitation over demolition; require smaller rather than larger buildings; avoid standardized franchise buildings; preserve mature trees wherever possible; place most parking to the side and rear; require large windows and forbid most blank walls; and encourage metal roofs and other features of traditional “Old Florida” styles.
2. Modify the county’s land development code to implement new Policy 14.4.3 by incorporating measurable commercial design standards for new buildings and major renovations on Greater Pine Island.



Century 21 – Sunbelt #1 Realty, Matlacha



SouthTrust Bank, Pine Island Center

Bike Paths

After many years of effort by determined Pine Islanders, an extensive bike path is now in place along Stringfellow Road. The first asphalt segment was built from Barrancas Avenue to Main Street in Bokeelia in the 1980s. A much longer concrete segment was completed recently from the Monroe Canal in St. James City all the way to Pine Island Road. This project was built by Lee County and Florida DOT with a combination of local and federal funds and with easements donated by landowners.

These paths serve both pedestrians and bicyclists along stretches of Stringfellow Road where high speeds and deep swales had made walking or bicycling nearly impossible. These paths serve recreational users and also provide critical links between Pine Island's communities. These connections are increasingly important due to the influx of migrant workers whose bicycles are often their sole means of transportation, yet they must travel on a road that was designed only for high-speed traffic.

There are no bike paths or sidewalks at the northern or southern tips of Pine Island. Paved shoulders are used by pedestrians and bicyclists from Monroe Canal south through the commercial district of St. James City. Further to the south, and again in Bokeelia, the narrow pavement is shared by cars, trucks, pedestrians, and bicyclists. This situation has been acceptable for many years due to low traffic speeds; however, traffic levels during recent winter seasons are making this practice unsafe.

From Pine Island Road north to Barrancas Avenue, it is still extremely difficult and dangerous for pedestrians or bicyclists to move along Stringfellow Road. This is the most important "missing link" in the system, and is next in Lee County's plans for improvements. Construction is underway on another 1.5-mile segment from the Grab Bag store to just north of Pink Citrus. In March 2001, the commission approved another 1.8-mile segment from Pine Island Road to Marina Drive, with

construction expected in 2002.

Both segments had been delayed because some property owners have not been willing to donate easements along their property. Because the right-of-way is so narrow, construction of this path requires these easements or expensive reconstruction of the drainage system to move the swales or to route stormwater through underground pipes. The same problem on the remaining segments has greatly hindered efforts to extend the bike path further.

Much of the southern portion of the path was built along a wider right-of-way, avoiding some of these difficulties. Still, there were many conflicts with drainage swales and power poles, some of which were resolved with expensive railings and concrete walls. Some parts of the bike path were routed around every power pole rather than moving the row of poles because of cost concerns expressed by the power company.

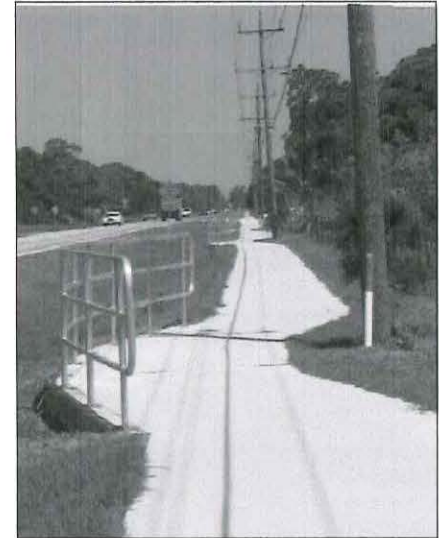
The final stages of the bike path will be even more difficult to construct, yet it should be considered an important public amenity whose looks and functionality are of equal concern.

To complete this path, it might even be necessary to purchase a few missing easements, or go to the expense of underground drainage or moving power poles. It may even require off-site drainage improvements where swales must be covered to accommodate the path. These costs might delay the project further, but its long-term completion and excellence should remain a critical goal for all Pine Islanders.

Landscaping in strategic locations could soften some of the utilitarian look of existing portions of the path, and curbs can be installed where the path unavoidably adjoins the roadway. In the future, additional paths might be designated along parallel streets to improve the usefulness and variety of the bike path.



Better design could avoid needless jogs



The result of moving the path rather than moving the poles

SETTING THE COURSE

Lee County is to be congratulated for its success in building a bike path along major portions of Stringfellow Road. Completing this path across the entire length of Pine Island should continue to be a very high priority of all Pine Islanders.

GETTING THERE

Adopt a new comprehensive plan policy as follows:

POLICY 14.2.4: The county shall make every effort to continue extending the bicycle path to run the entire length of Stringfellow Road. Wherever possible, this path should be designed as a major public amenity, not as an afterthought. Where needed to provide a high-quality bicycle path, power poles and swales should be relocated to avoid unnecessary jogs in the bike path.

Fences and Walls

Fences and walls serve many purposes; depending on their design and placement, they can be a character-enhancing part of a community or a divider of neighbors and neighborhoods.

Short fences or walls (less than 3 or 4 feet tall) are typically used in front yards to demarcate the fully public space in the right-of-way from semi-private front yards. These spaces together make up the public realm – the common visual space that forms much of a community's character.

Unlike fences in the public realm, back yards and rear portions of side yards can have taller fences or walls, typically 6 feet tall, to provide almost total privacy.

Pine Island has managed to avoid the modern trend of new neighborhoods with a single main entrance blocked by a security gate, and with a perimeter wall that blocks all other access, even for those traveling on foot. Most neighborhoods on Pine Island have more than one street connection (although

water bodies and wetlands sometimes make a single entrance unavoidable). Even Alden Pines, Pine Island's only golf course community, has a street that runs all the way through, integrating it fully with the surrounding neighborhoods. The new Island Acres subdivision, however, follows the modern trend and has a single gated entrance and a perimeter wall.

Lee County's development regulations restrict fences or walls to 4 feet high in front yards and 6 feet high behind and along the sides of houses, in the traditional manner. Yet these same regulations allow a 8-foot-high "backyard-style" wall to surround an entire neighborhood, even along public streets. County regulations also permit subdivisions with private streets to be gated with very few restrictions, even where they will interfere with normal circulation patterns.

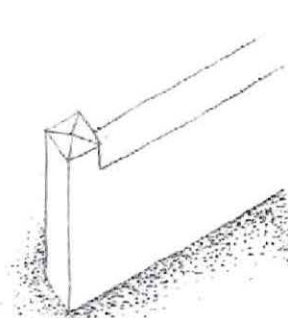
Although Pine Island is unlikely to see many entirely new subdivisions, it is reasonable for those that are approved to be built in the traditional manner, with a interconnected street network and without perimeter walls or gates.



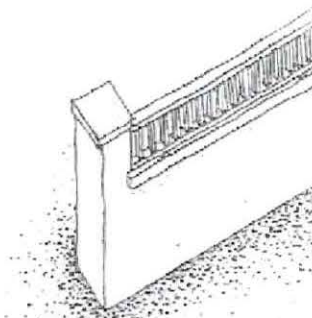
High wall surrounding Island Acres subdivision, south of P.I. Center



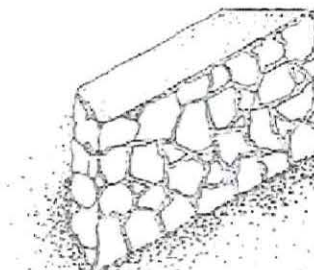
Typical Pine Island roadside south of Pine Island Center



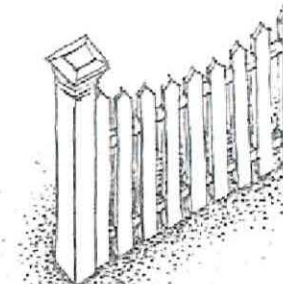
Concrete with stucco



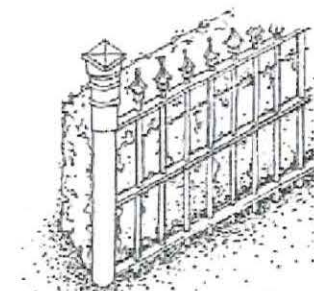
Concrete, stucco & wood



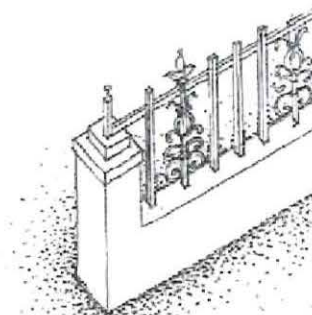
Rock or Stone



Wood



Wrought/Cast Iron and Hedge



Concrete & Cast Iron

Low fence and wall styles that are desirable along streets

SETTING THE COURSE

Isolated gated communities and walled compounds are not consistent with the traditional neighborhood character of Pine Island. Any new neighborhoods should be connected to their surroundings at several points rather than being isolated. Perimeter fences, walls, and gates, if allowed at all, should be limited to individual blocks or small portions of neighborhoods.

GETTING THERE

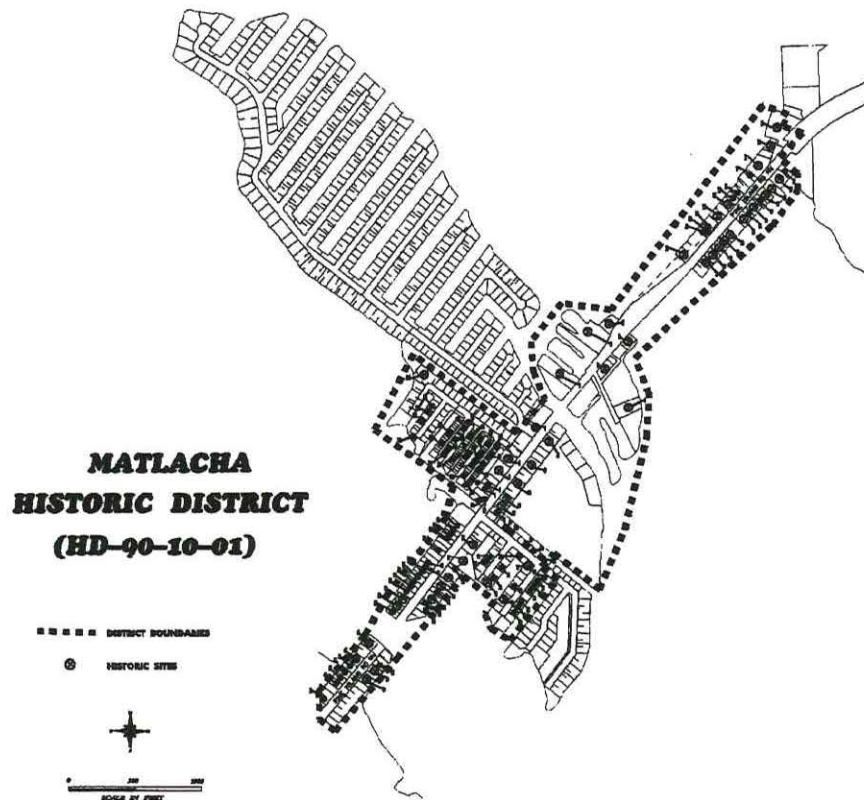
A. Adopt a new comprehensive plan policy as follows:

POLICY 14.3.5: The county shall amend its land development code to provide specific regulations for neighborhood connectivity and walls and gates on Greater Pine Island. These regulations would require interconnections between adjoining neighborhoods wherever feasible and would no longer allow perimeter walls around larger developments.

B. Modify the county's land development code to implement new Policy 14.3.5 by defining the new neighborhood connection requirements and revising the fence and wall regulations for Greater Pine Island.

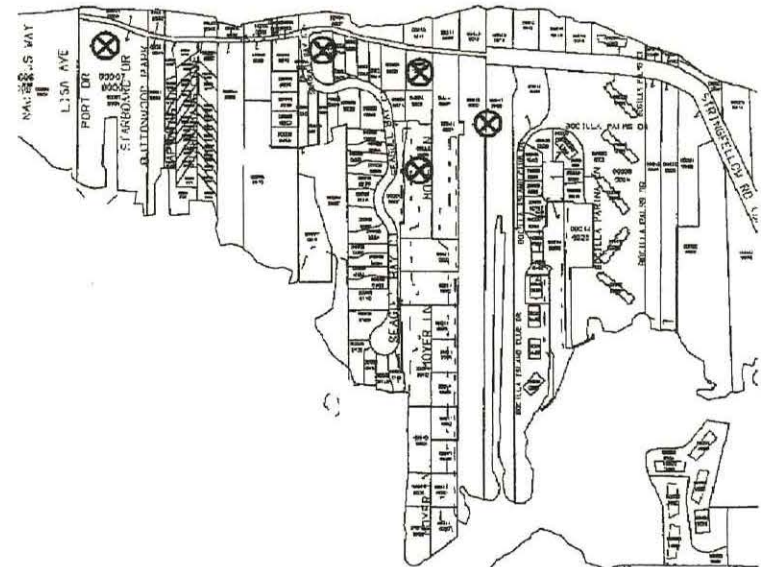
Historic Buildings

Lee County has formally designated two historic districts on Greater Pine Island. The largest district includes about 45 buildings in Matlacha, most of which are located directly on Pine Island Road. A small district has also been designated in Bokeelia that includes five properties with historic buildings. The maps below indicate these historic buildings and the Matlacha district boundary.



Designated historic district in Matlacha

Potentially historic buildings on Greater Pine Island were originally identified in a historic survey conducted by Lee County in 1986. This survey identified 67 buildings of historic interest on Pine Island, generally those over 50 years old. Concentrations of these buildings were identified in Matlacha (30 buildings), Bokeelia (12 buildings), Pineland (7 buildings), and St. James City (18 buildings).



Designated historic buildings in Bokeelia

All 67 buildings have been added to the Florida Master Site File, a statewide inventory that is maintained by the Florida Department of State. This file is just a database; listing does not imply any particular level of significance, or eligibility for the National Register of Historic Places or formal designation by Lee County.

Formal local historic designations are made in the unincorporated area by the Lee County Historic Preservation Board. Local designations qualify property owners for special incentives for upgrading their property, and require a review before improvements are made to assess their impacts on the historic value of the building.

While Lee County's 1986 historic survey was thorough, some buildings were undoubtedly missed or improperly identified, while others have been destroyed or extensively modified. As time passes, other buildings become eligible for listing as they become fifty years old. The state provides grants to have these surveys updated, although such requests require 50% matching funds and must compete with other worthy requests from across the state. An update of the Pine Island survey would provide the basis for formally designating historic buildings in St. James City and Pineland, and possibly more buildings in Bokeelia. It may also identify buildings or districts that have become eligible for the National Register of Historic Places.

The official designation of more of Pine Island's historic buildings would bring greater attention to their significance, building pride in maintaining them while enhancing the surrounding community. Owners of historic buildings often find the incentives that come with designation to be critical in being able to improve their properties, which modern codes often consider to be obsolete rather than in need of special consideration.

SETTING THE COURSE

The historic districts in Matlacha and Bokeelia have successfully protected the strong sense of place in both communities. Lee County should expand this program to include individual sites and concentrations of historic buildings in St. James City and Pineland.

GETTING THERE

Adopt a new comprehensive plan policy as follows:

POLICY 14.5.4: The county shall update its historic sites survey of Greater Pine Island if an update is determined to be needed. The county shall consider formal local designation of additional historic buildings, especially in St. James City, Pineland, and Bokeelia, and shall identify potential buildings or districts for the National Register of Historic Places.

Cap on Building Heights

At the urging of Pine Islanders, the Lee County Commission in 1977 declared Greater Pine Island as unique in scenic beauty and geography and adopted the first meaningful limitation on building heights. No buildings taller than 38 feet above ground could be built on Greater Pine Island, other than an unexplained exception for industrial buildings.⁵

This height limit has been fiercely protected since that time because the lack of mid-rise or high-rise buildings is a strong character-defining element for a Florida coastal island. (Figure 3 shows a 1973 proposal—never built—for an out-of-scale condominium just north of St. James City.)

As extra protection, this height limit was added into the Pine Island section of Lee County's comprehensive plan, initially in 1989 just by committing to retain the existing code provisions, then in 1994 with the following more specific language:

POLICY 14.3.3: *The county's zoning regulations shall continue to state that no building or structure on Greater Pine Island shall be erected or altered so that the peak of the roof exceeds thirty-eight (38) feet above the average grade of the lot in question, or forty-five (45) feet above mean sea level, whichever is the lower.*

Despite this clear language, there is continuing concern among Pine Islanders that the building height cap might be misinter-

⁵ Lee County Ordinance 77-15, amended by 78-19, and 80-20; later codified into Lee County's land development code at section 34-2175: "Height limitations for special areas. The following areas have special maximum height limitations as listed in this section: ... (5) *Greater Pine Island*. No building or structure shall be erected or altered so that the peak of the roof exceeds 38 feet above the average grade of the lot in question or 45 feet above mean sea level, whichever is lower. The term "building or structure," as used in this subsection, shall not include a building or structure used for an industrial purpose."



Pine Island Highrise

Pine Island's first highrise condominium project is St. Jude Estates, on a parcel lying between Stringfellow Boulevard and Loop John Silver Canal just north of St. James City at St. Jude Harbor. The 244 apartments will be in an L-shaped

18-story structure. Also proposed is a two story building facing the highway for convenience-type stores and shops. Earlier this month permits for \$4.1 million worth of construction were issued by the Lee County Building Department. Developer of the proposed project is Joseph A. Leone Jr., of Lawrence, Mass. The St. Jude Estates project is expected to cost about \$10 million.

Figure 3

preted, overlooked, or evaded through variances.

This cap might be misinterpreted because it measures building height from *ground level* and *sea level*, while in the rest of coastal Lee County, building heights are measured from the minimum flood level (the height above which all new homes must be elevated, which varies across the island from 8 feet to 11 feet above sea level).

This cap might also be overlooked by a new permit reviewer or by one not familiar with this one clause in an extremely long land development code. Another possibility is that one of the exceptions that Lee County allows to other height regulations might be incorrectly applied to Pine Island; or variances might be granted to this regulation without a showing of "exceptional

or extraordinary conditions,” which are legally required for variances.

Policy 14.3.3 now simply describes the Pine Island height regulations and forbids its repeal from the county’s land development code. Stronger approaches can be considered to guarantee the continued success of this cap.

One stronger approach is to place the height restriction directly into Policy 14.3.3 (instead of by reference to the zoning regulations). If this change were made, it would become impossible for variances ever to be granted, because no variance can legally be granted to any comprehensive plan requirement. This is appealing, given the prevailing fear of careless granting of variances; however, it is fraught with danger because there may be some unusual situation where a variance *should* be granted. In that case, the only alternative will be to permanently change the rule, rather than allowing an exception in that single instance.

A better approach is to modify the current wording of Policy 14.3.3 to specifically disallow certain incorrect interpretations on building heights. For instance, the policy could forbid any “deviations” from this height restriction (deviations can now be granted *without* the showing of exceptional or extraordinary conditions, as is required for a variance). The policy could also explicitly forbid the substitution of flood elevations as the starting point for measuring height [see LDC § 34-2171], and could forbid increases in building heights in exchange for increased setbacks, an acceptable practice elsewhere in Lee County [see LDC § 34-2174].

These new prohibitions, plus the elimination of the exception for industrial buildings, would cement Greater Pine Island’s historic height regulations while still allowing the possibility of a variance in extreme circumstances.

SETTING THE COURSE

Building heights on Greater Pine Island have been carefully restricted since 1977. These restrictions have protected the community’s character and must be maintained. Potential loopholes should immediately be closed.

GETTING THERE

1. Modify comprehensive plan Policy 14.3.3 as follows:
POLICY 14.3.3: The land development code ~~county’s zoning regulations~~ shall continue to state that no building or structure on Greater Pine Island shall be erected or altered so that the peak of the roof exceeds thirty-eight (38) feet above the average grade of the lot in question, or forty-five (45) feet above mean sea level, whichever is the lower. ~~No deviations from these height restrictions may be granted through the planned development process. These height restrictions shall not be measured from minimum flood elevations nor shall increases in building height be allowed in exchange for increased setbacks. Industrial buildings must also comply with these height restrictions.~~
2. Amend the land development code to specifically include the new restrictions added to Policy 14.3.3.

Business Signs

Signs on Pine Island are controlled by general Lee County regulations. At present, only Captiva has separate regulations. For many years the county's regulations were extremely lenient, resulting in some oversized signs that remain standing today.

For new signs, the current regulations encourage signs to be freestanding, either mounted on poles or placed directly on the ground. Large pole and ground signs, however, are more appropriate for suburban strips where commercial buildings are set far back from the road.

Where most motorists drive the roads regularly, as on Pine Island, business signs need not be as large as they would be on a major highway like US 41. When buildings are nearer the road, as promoted by this plan, a better location for signs is directly on the wall of the building. Thus, regulations for business signs on Pine Island could be improved as follows:

- The regulations could limit pole and ground signs to sizes smaller than are needed on major highways.
- The regulations could encourage signs to be wall-mounted or to project out from a building, for instance on awnings, and to be made up of individual letters, rather than using internally lit plastic box signs that are out of character on Pine Island.
- Wall signs are now forbidden when buildings are within 15 feet of a right-of-way (common in Matlacha), yet walls are the most appropriate location for signs there.

In contrast to business identification signs, current regulations classify billboards as "off-premises" signs. New billboards are not allowed on Greater Pine Island. This is important because billboards are needless advertising that blights the scenic beauty of Greater Pine Island. However, some older billboards have been used on Pine Island as "directional signs" that direct travel-



External lighting

Sign is centered above the main entrance at the top of the facade

Sign painted directly on the facade above the main entrance

External lighting discreetly located above the awning



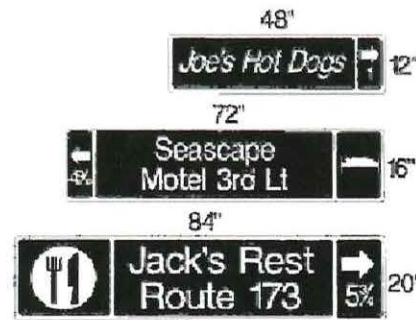
Internally lit box signs of plastic and/or metal are designed for commercial strips

ers to businesses that aren't visible.

Lee County regulations currently allow new directional signs only for residential subdivisions and for nonprofit groups, but never for businesses. Pine Island has only a single north-south road. Businesses such as marinas and groves that are located on other streets are not allowed to have a small sign on String-fellow showing motorists where to turn.

The state of Maine has developed a program for this situation that could be a model for Pine Island and other locations where some businesses are otherwise "invisible." Businesses can purchase a small roadside sign using a common format that the

state then installs at safe locations in the right-of-way just before motorists must turn. The illustration to the right shows Maine's standard sign sizes. Municipalities can also contract with the state to use a distinctive theme for their community.



A similar program tailored to Pine Island's needs and perhaps having a common artistic character could help the public locate individual businesses while continuing the prohibition on billboards.

SETTING THE COURSE

Lee County's sign regulations should be supplemented with specific standards that match the rural character of Greater Pine Island. These rules would encourage smaller signs on businesses, discourage signs typically found on commercial strips such as U.S. 41, allow small directional signs for businesses not visible from Stringfellow Road, and continue to ban billboards.

GETTING THERE

- Adopt a new comprehensive plan policy as follows:
POLICY 14.4.4: The county shall expand its current sign regulations to include specific standards for Greater Pine Island. These standards will reduce the size of ground-mounted signs, discourage or disallow internally lit box signs, allow wall signs on buildings near the right-of-way, and allow small directional signs on Stringfellow Road for businesses not visible from the road.
- Modify the county's land development code to implement new Policy 14.4.4 by incorporating new sign standards for Greater Pine Island.

County-initiated Rezoning

Property being developed must comply with its current zoning district *and* with the Lee Plan. In some cases, a property's zoning district has become obsolete due to changes in the Lee Plan. For instance, property that may have been zoned for a subdivision decades ago can no longer be developed at all because it is a protected mangrove forest.

More commonly, land with zoning that seemingly allows either commercial and residential uses cannot be developed commercially, or as intensely, due to specific policies in the Lee Plan. A 1989 Lee County study identified over 600 acres of land on Greater Pine Island whose zoning allows at least some commercial uses, whereas the Lee Plan will only allow the development of only a fraction of that amount.

Despite the legal requirements for compliance with both zoning and the Lee Plan, investors sometimes purchase land based only on its zoning. Lee County should methodically eliminate zoning that no longer reflects uses that are permissible on land. This is a difficult undertaking that has been largely put off since the adoption of the original Lee Plan in 1984.

SETTING THE COURSE

Lee County should methodically eliminate zoning classifications that will create false development expectations for potential investors.

GETTING THERE

- Adopt a new comprehensive plan policy as follows:
POLICY 14.4.5: The county shall establish a prioritized schedule for a five-year effort to rezone land to zoning districts that properly reflect its development potential under the Lee Plan.
- Begin the process of rezoning improperly zoned land on Greater Pine Island.

Pine Island – a Vision for 2020

Beginning in 1999, Lee County's comprehensive plan has included a brief "vision statement" for each of twenty segments of unincorporated Lee County. The Pine Island segment is worded as follows:

Pine Island – This community includes the major islands of Pine Island, Little Pine Island, and Matlacha, the surrounding smaller islands, and the previously mentioned enclaves in the City of Cape Coral. This community has an overall identity of Pine Island; however, there are four sub community centers within the overall community. The four areas within the Pine Island Community are: Bokeelia at the northern tip, St. James City at the southern tip of the island, and Matlacha which is a small island between the mainland and Pine Island. The Pine Island community is similar to the other island communities in that the residents leave the islands to satisfy many of their commercial needs. However, unlike the other island communities, Pine Island does not have a substantial amount of tourist oriented commercial. Since the Pine Island community does not contain the gulf front beaches the other island communities have, this is not expected to change during the life of the plan. This community will add a small amount of new commercial by 2020 to meet the daily needs of residents; however, Pine Island community residents will still satisfy most of their commercial needs outside of their community. The population of this community will also grow from 8,400 permanent residents in 1996 to approximately 9,700 residents in 2020 and a total seasonal population of nearly 15,000. Pine Island is also different from the other island communities in that it has a much higher percentage of non-seasonal residents.

This language focuses on commercial development and expected growth almost to the exclusion of any meaningful vision of Pine Island's future.

The Lee County plan would be better served by replacing the current language with a succinct summary of the vision that Pine Islanders have articulated through this plan update.

SETTING THE COURSE

Pine Islanders have articulated their own vision for the future of Greater Pine Island through this comprehensive plan update; a summary of this vision should be placed in the opening chapter of Lee County's comprehensive plan.

GETTING THERE

In the "Vision for 2020" section of the Lee Plan, replace the current language for the Pine Island planning community with the following description (summarized from this plan update): **Pine Island – This community includes Greater Pine Island as described under Goal 14 along with surrounding smaller islands and some unincorporated enclaves near Cape Coral. Its future, as seen by Pine Islanders, will be a matter of maintaining an equilibrium between modest growth on the one hand and a fragile ecology on the other. Pine Island will continue to be a haven between urban sprawl approaching from the mainland and the wealth of the outer islands; a quiet place of family businesses, school children, and retirees enjoying the bounties of nature; a place devoid of high-rises, strip malls, and gated communities. Traffic constraints caused by the narrow road link to the mainland will limit future development, allowing the islands to evacuate from storms and protecting natural lands from unsustainable development. Wildlife and native vegetation will be protected; loss of wildlife habitat will be reversed; sidewalks and bike paths will connect neighborhoods for young and old alike. Architectural standards for commercial buildings will encourage "Old Florida" styles, and historic buildings will be treasured. Pine Island will continue to be a place where people and nature exist in harmony, a place not very different from what it is today, an island as state-of-mind as much as a physical entity, its best features preserved and enhanced. Pine Islanders are historically vigilant about protecting their community and will work to ensure that their plans are carried out.**

Municipal Incorporation

Florida law allows individual communities to “incorporate” to form their own city. New cities remain under the control of county governments for many functions but can independently provide certain services, including planning and zoning. (Cities can also choose to call themselves towns or villages.)

Since 1995, both Fort Myers Beach and Bonita Springs have incorporated. The large tax bases in those communities have been able to support city governments without additional taxes. However, in communities without such high property values, a city government would require higher property taxes.

The legislature has erected various hurdles to discourage a proliferation of new cities:⁶

- A population density of 1.5 persons per acre is normally required, as well as a total permanent population of 5,000.
- There must be 2 miles or “an extraordinary natural boundary” between the new city and an existing city.
- A formal feasibility study must demonstrate the fiscal capacity of the proposed city. In order to qualify for important state revenue-sharing, the new city must impose at least 3.0 mills of property taxation,⁷ whereas Lee County now charges only 1.2 mills for municipal services. (Fort Myers Beach and Bonita Springs have gotten around this requirement by convincing the legislature to count the property taxes now being imposed by their independent fire districts as part of this 3.0 mills.)
- A special act of the legislature is required even when all of these requirements have been met, followed by a referendum of voters in the affected area.

City governments tend to become expensive, not just because some duplication of services is inevitable, but because an effective

city government will tackle problems that citizens wouldn’t entrust to more distant levels of government. However, “minimum cities” are becoming a trend; instead of employing large staffs, they contract with outside service providers and allow county government to provide many traditional services.

If Greater Pine Island were to incorporate as a city, it would likely leave the water association and fire department as independent entities. Law enforcement, operation of the sewer plant, emergency management, building permits, and zoning enforcement could be contracted back to Lee County. However, planning and zoning decisions would almost certainly be made by the new government, and additional services could be provided as needs arise.

Municipal incorporation isn’t inherently good or bad. Pine Islanders should assume that taxes would have to be raised to support a city government (a revenue analysis could assess the likely costs), and this fact would make it somewhat difficult for a referendum to succeed. Other costs to be considered are the divisiveness of most incorporation efforts (Captiva’s experience in the past year is cautionary), and the potential costs of hurricane recovery plus litigation to defend land-use decisions.

On the positive side, Pine Islanders face many distinctive issues that the current Lee County government finds to be outside its “core mission” — issues which Pine Islanders would gladly involve themselves, given the proper forum. Greater Pine Island has a strong history of civic activism and a core of retired citizens who could devote a great deal of attention to municipal matters.

Thus discussion of incorporation can be expected on a regular basis. If Lee County is responsive to Pine Island issues, incorporation may never appeal to enough citizens to justify the costs. However, incorporation always remains an alternative to governance by the county commission.

⁶ Chapter 165, *Florida Statutes*

⁷ Section 218.23, *Florida Statutes*

THE ENVIRONMENT

Protecting the Aquatic Preserves from Runoff

The current Pine Island plan requires a buffer area between new developments and aquatic preserves:

POLICY 14.1.5: *New "planned development" rezoning approvals and new subdivisions adjoining state-designated aquatic preserves and associated natural tributaries shall provide a 50-foot-wide vegetated buffer area between the development and the waterbody.*

Buffer areas of this type save a strip of native vegetation along the transitional zone between water (or wetlands) and uplands. With proper design, this strip can prevent erosion and trap sediments and other pollutants running off the land, in addition to its original functions.⁸

Such buffers are especially valuable on Pine Island because the island is surrounded by aquatic preserves. These preserves were designated by the state in the 1970s for their "exceptional biological, aesthetic, and scientific value" and are "set aside

⁸ "Lands immediately adjacent to an upland or wetland are transition zones between wetlands and uplands. They are zones that are wetland at times and upland at times, exhibiting characteristics of each and vegetated by species that are found in each. They are important to both the wetland and the upland as seed reservoirs, as habitat for aquatic and wetland-dependent wildlife species, as refuges to wildlife species during high-water events, and as buffers to the extreme environmental conditions that result from sharp vegetated edges. When development activities occur in transition zones, wetland-dependent wildlife species that are frequent users of these areas are excluded, silt laden surface waters are generated and cannot be filtered, and groundwater may be diverted or drained." M.T. Brown and J. Orell, *Tomoka River and Spruce Creek Riparian Habitat Protection Zone*, p. 4 (St. Johns River Water Management District, 1995).

forever...for the benefit of future generations."⁹

A major management goal for aquatic preserves is to encourage uses of adjacent uplands that protect and enhance the resources in the aquatic preserves.

Policy 14.1.5 has been incorporated by Lee County into its land development code.¹⁰ However, as currently worded, it has proven ineffective because it does not apply to agriculture, the predominant new land use on Pine Island over the past decade.



⁹ Section 258.36, *Florida Statutes*

¹⁰ This policy has been implemented through Lee County's land development code as shown in these excerpts:

Sec. 34-935(d) Where the proposed planned development is within the Greater Pine Island area and adjoins state-designated aquatic preserves or associated natural tributaries, a 50-foot-wide vegetated buffer area between any structure or building and the mean high-water line of the water body shall be provided. No deviation from this requirement shall be permitted except under extreme circumstances in which the requirement would have the effect of prohibiting all reasonable use of the property.

Sec. 10-414(f) Except where a stricter standard applies for the Greater Pine Island Area (defined in chapter 34 of the land development code), there must be a 25-foot wide buffer landward from the mean high water line of all nonseawalled natural waterways. Where a proposed planned development or subdivision is located in the Greater Pine Island Area adjoining state-designated aquatic preserves and associated natural tributaries, the width of the required buffer will be 50 feet. . . . Existing vegetation within the buffer area must be retained except for the removal or control of exotic plants.

Normally a new setback or buffer requirement is easy to adopt and administer. In this case it would be more difficult because Lee County has chosen to exempt agriculture from nearly all of the requirements that apply to developers.

One exception is that Lee County requires new agriculture operations to obtain a “notice of clearing” from the county before clearing any land. A change could be made to the requirements for a “notice of clearing” to require the retention of at least the 50-foot-wide native buffer that is required for all other land uses and to encourage it to be used with a filter strip to cleanse stormwater runoff before it reaches the mangrove wetlands and tidal waters.

The U.S. Department of Agriculture is strongly promoting riparian forest buffers¹¹ of at least 50 feet and filter strips¹² of at least 20 additional feet around farm fields through their National Conservation Buffer Initiative. The USDA calls them “common-sense conservation” and promotes these buffers as an important supplement to conventional stormwater retention strategies, to serve as a second line of defense in protecting natural resources from avoidable side-effects of agriculture.¹³ The USDA even helps pay for riparian buffers on private property through its Conservation Reserve Program.

¹¹ Riparian Forest Buffer (Natural Conservation Service Conservation Practice Standard 391), available from <ftp://ftp.ftw.nrcs.usda.gov/pub/nhcp/pdf/391.pdf>

¹² Filter Strip (Natural Conservation Service Conservation Practice Standard 393), available from <ftp://ftp.ftw.nrcs.usda.gov/pub/nhcp/pdf/393.pdf>

¹³ For details on the National Conservation Buffer Initiative, consult USDA's Natural resources Conservation Service at <http://www.nhq.nrcs.usda.gov/CCS/Buffers.html>

SETTING THE COURSE

Wholesale land clearing up to the edge of the mangrove forest is now allowed for agriculture. All other new development must maintain a 50-foot native buffer strip between cleared land and natural water bodies. New rules should require agriculture to maintain at least the same 50-foot separation and use it to filter stormwater runoff.

GETTING THERE

Modify comprehensive plan Policy 14.1.5 as follows:

POLICY 14.1.5: All new development, including New "planned development" rezoning approvals, and new subdivisions, and agriculture, that adjoining state-designated aquatic preserves and associated wetlands and natural tributaries shall preserve or create provide a 50-foot-wide native vegetated buffer area between the development and the waterbody; or associated wetlands. This requirement shall not apply to existing subdivided lots. For agriculture, this requirement:

- shall be implemented through the notice-of-clearing process in chapter 14 of the land development code;
- shall include a requirement to use this area as a riparian forest buffer with an adjoining filter strip wherever farmland abuts wetlands; and
- if native vegetation does not currently exist, native tree cover shall be established within three years of issuance of the notice of clearing.

Septic Tanks Along Canals

Water quality in Pine Island's canals and bays can be degraded by many factors, some of which cannot be controlled easily (such as polluted water coming down the Caloosahatchee).

Other factors can be corrected if the public is aware of the problem and is willing to pay to solve it. An example of the latter is bacterial or viral pollution caused by improperly installed or malfunctioning septic tank drainfields. Contaminated canal water can pose health risks from exposure while swimming or boating or from eating contaminated seafood.

Used under proper conditions, septic tanks are a cost-effective method of sewage disposal for individual households. Ideal conditions include porous soils, large lots, the absence of nearby shallow wells or water bodies, and proper maintenance.

However, under some conditions septic tanks function poorly. During normal operation, excess wastewater is routed from each septic tank to an underground drainfield, which is a series of pipes that spread the water over a porous layer of gravel and then into the ground. Because septic tanks alone provide very limited treatment, proper soil conditions are essential so that movement through the soil can provide another level of treatment to capture viruses and other pathogens before wastewater comes in contact with humans or natural systems.¹⁴

Riskier conditions for septic tanks include a high water table, small lot, nearby well or waterway, installation too low in the ground, and lack of maintenance. When not installed or functioning properly, septic tank drainfields can provide a direct path for the pollutants in domestic wastewater to reach the

canals and then the bays.

Pine Island's 66 miles of canal banks are potential routes for pollution to enter sensitive waters. Because most of these canals are deep and dead-ended, they are not easily cleansed by tidal flow. Also, daily tidal fluctuations can raise and lower groundwater levels near canals, creating a pumping effect that can speed the flow of pollutants from the soil into canals.

In the 1980s Lee County installed central sewer service throughout Fort Myers Beach and Matlacha after too many poorly functioning septic tanks along canals caused pollution levels to reach dangerous levels. No agencies currently have a regular program to monitor canals for signs of degradation due to older or malfunctioning septic systems.

In 1988, state rules allowed Lee County to insist that drainfields for new homes be elevated at least 24 inches above saturated soils, sometimes requiring above-ground mounds. These newer systems are much more likely to function properly without polluting nearby waterbodies. However, it is often impractical or even impossible for older homes to upgrade to the new standard.

Decisions to upgrade wastewater disposal systems are often caused by outside factors. This is what happened to the temporary sewage plant that Lee County had installed in the early 1980s on state-owned land on Little Pine Island to replace the septic tanks in Matlacha. This plant itself had become a source of pollution and the state insisted that it be removed. Instead of connecting Matlacha's sewers to the advanced treatment plan in Cape Coral for conversion into irrigation water, Lee County decided to build a new sewage treatment plant on Pine Island.

The decision to build a new regional sewer plant on Pine Island was probably ill-advised, given local soil conditions and flooding risks and the excess capacity available at the Cape Coral plant.

¹⁴ "Human viruses in the coastal waters of Florida," *Coastlines*, issue 10.6, December 2000, available at <http://www.epa.gov/owow/estuaries/coastlines/dec00/humanviruses.html>

However, there are some benefits to Pine Islanders. Many of Pine Island's small freestanding sewer plants can now be easily connected to the new plant, and if septic tanks in sensitive areas are causing pollution, they can be connected also.

The most likely areas for septic tank damage would be populated areas with older septic systems on small lots abutting saltwater canals. These conditions may exist in parts of St. James City, Bokeelia, and Flamingo Bay. A coordinated effort should be mounted to determine whether existing drainfields in those areas are polluting Pine Island's canals.

Simple tests of canal water for fecal coliform bacteria is not sufficient because bacteria levels can be high for other reasons as well. More sophisticated methods are now available for determining whether septic tanks are actually polluting the water. These include dyes and viral tracers that can be flushed into septic tanks to detect whether wastewater is moving slowly enough through the ground to provide a reasonable level of treatment. Two recent studies of this nature in Citrus County and the Florida Keys have found contamination of waterways caused by septic tanks.^{15, 16} Similar studies have also been conducted in New Port Richey and Sarasota.

If such tests demonstrate that serious problems exist, the county could establish an inspection program to identify and require replacement of failing or older septic systems, or could require

upgrading when a home is sold. Other actions could include providing full sewer service for those neighborhoods, or a hybrid which might keep the septic tanks but route the effluent into sewers instead of on-site drainfields.

Central sewer service is fairly expensive to install and involves regular monthly charges for operation. However, septic-tank replacement is also expensive and disruptive to yards, especially when mounded drainfields are required. If there is clear evidence that septic tanks are causing pollution, Pine Islanders would support reasonable alternatives because clean and bountiful waters are an expected part of Pine Island life.

SETTING THE COURSE

Water quality in the canals and bays is very important to Pine Islanders. Lee County should initiate a program to determine whether older or failing septic tanks along canals are polluting the water, and if so, the county should analyze steps to solve the problem, including extending central sewer service if warranted.

GETTING THERE

Modify comprehensive plan Policy 14.1.7 as follows:

POLICY 14.1.7: ~~The county shall continue to investigate the need for central sewer service for Bokeelia, St. James City, and Pine Island Center. This shall include, for any area having a strong need for such service, an analysis of available facility sites, alternative types of service, and financial feasibility.~~ Lee County shall design a program within one year to assess the condition of septic tank drainfields along saltwater canals in St. James City, Bokeelia, and Flamingo Bay. This program would analyze whether current soil conditions or the density, age, or condition of drainfields are likely to be degrading tidal water in the canals. If serious degradation is taking place, Lee County shall assess the feasibility of various corrective measures.

¹⁵ "Bacteriological and pathogenic water quality assessment of the upper reaches of the Chassahowitzka Watershed" by Michael R. Callahan, Joan B. Rose, Ph.D., and John H. Paul, Ph.D. 2001, prepared for the Utility Division of the Citrus County Department of Public Works.

¹⁶ "Viral tracer studies indicate contamination of marine waters by sewage disposal practices in Key Largo, Florida" by Paul, J.H., Rose, J.B., Brown, J., Shinn, E.A., Miller, S., and Farrah, S.R., in *Applied and Environmental Microbiology*, 1995, vol. 61, No. 6, p. 2230-2234; available at <http://aem.asm.org/cgi/reprint/61/6/2230.pdf>

Jet-skis and Air Boats

It is no surprise that conflicts often arise over the use of local waterways in a boating community like Pine Island. County government has a limited role in resolving these conflicts, with most authority being retained by the state and federal government.

Counties do exercise some authority over boating. For instance, power boats can be restricted from interfering with popular bathing beaches, and certain boating activities can be regulated under land-use authority (such as the rental of boats). These activities can affect or be affected by shoreline land uses, thus giving counties a clear role in balancing competing uses.

In public meetings on Pine Island, there are two frequent complaints about the effects of boating on land use that might be addressed at the county level. One is the increased popularity of jet-skis (a trade name for what has become known generically as personal watercraft) and the other is the noise from air boats.

Personal watercraft use an inboard engine to drive a water jet pump that propels the boat by exhausting a large stream of water. Personal watercraft are noisy because they are built and marketed as high-speed “thrill craft” that are very powerful and maneuverable. The operators of personal watercraft ride them while standing, kneeling, or sitting on them, rather than sitting inside them like conventional boats. For all of these reasons, accident rates for personal watercraft are very high.

Lee County now regulates mainly the *rental* of personal watercraft; state law controls their *operation*. New county regulations over the operation of personal watercraft would now be very difficult due to a new state law that effectively bans local regulation of personal watercraft. While this state law remains in effect, local governments must ignore even legitimate distinc-

tions between personal watercraft and other boats.¹⁷

Lee County’s current regulations keep personal watercraft rentals away from the bays and sounds by limiting rental locations to the barrier islands.¹⁸ However, those renting personal watercraft, or owning them, can operate them in the aquatic preserves around Pine Island. Unless state law is changed, counties have no authority to adopt restrictions.

Air boats can traverse very shallow water because of their unconventional system of propulsion: their engines spin an *above-water* propeller. Thus there are two sources of noise. First in the engine itself, which is often run without a muffler. But most of the noise comes from the propeller, which at high speeds greatly amplifies the engine noise. Air boats are very noisy and affect waterfront landowners and some wildlife, especially birds. State limitations on air boat noise are rarely enforced.

Local efforts to control air boat noise could involve local enforcement of state noise limits, or a ban on nighttime use, or a ban against operations outside marked channels (or within a fixed distance of the shoreline, except near boat ramps). In 1999 Fort Myers Beach banned all air boats in the portions of Estero Bay within the town because of noise and wildlife impacts.

Problems caused by air boats occur throughout Lee County’s waters. Rather than addressing air boat problems just around Pine Island, Lee County should consider countywide regulatory measures that would preclude the greatest problems caused by careless use of air boats without adding to the patchwork of boating regulations that are already difficult to enforce.

¹⁷ “Any ordinance or local law which has been adopted pursuant to this section or to any other state law may not discriminate against personal watercraft as defined in s. 327.02.” (Chapter 2000-362, section 20)

¹⁸ Lee County Ordinance No. 95-13, section 9

APPENDIX A: TRANSPORTATION DATA AND ANALYSIS

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Access to Pine Island was strictly by boat until 1926 when the causeway carrying Pine Island Road was built through the mangrove islands that became Matlacha. With road access, modern development became practical.

For many decades, this two-lane road was sufficient to meet all demands placed upon it. Although there have been occasional discussions about a second bridge to Pine Island, the hurdles facing such a plan have always been insurmountable.

Constraints on access to Pine Island

As the years progressed, traffic on Pine Island Road has continually increased. By general county standards, the current congestion would warrant plans to widen this road to four lanes, and funds to do so would be found by juggling Lee County's capital improvements budget. In fact, this widening would be necessi-

tated by Lee County's concurrency standards, which require that all development and building permits be stopped once traffic on a road exceeds the road's full capacity, a congestion level known as "Level of Service E" (LOS "E").

However, Lee County has formally designated certain roads that cannot (or should not) be widened as "constrained." According to Lee Plan Objective 22.2: "Reduced peak hour levels of service will be accepted on those constrained roads as a trade-off for the preservation of the scenic, historic, environmental and aesthetic character of the community." The Matlacha section of Pine Island Road has been designated as "constrained" since 1989.¹⁹ Since that time, Lee County has also designated the heart of Matlacha as a historic district, further protecting the community from road widening that would damage its character (see map of historic district on page 26).

The 810/910 rule in Lee Plan Policy 14.2.2

Origin of Policy 14.2.2

In 1989, Lee County was negotiating with the state over details of its new comprehensive plan, including the concept of constrained roads. Much of the controversy centered around another constrained (but much more heavily congested) road, Estero Boulevard at Fort Myers Beach. Community sentiment there strongly favored enduring the road congestion rather than widening Estero to four lanes, in part because the congestion was limited to the winter season when there was no hurricane evacuation threat. To reflect that sentiment, Lee County decided to sanction very extreme levels of congestion on constrained roads.²⁰

¹⁹ Pine Island Road from Shoreview Drive west to Little Pine Island, according to Lee Plan Table 2(a)

²⁰ Specifically, 85% more traffic than the roads were designed to handle would (at least theoretically) be allowed.

For most of Lee County's islands, a "constrained" designation on their access road caused few or no problems. At Fort Myers Beach, nearly all land was already developed, and the existing traffic congestion was accepted as the price of a prosperous tourist economy. Bonita Beach, Captiva, and Boca Grande were nearly at build-out and under strict growth controls, so loosening the road standards would not increase traffic congestion. Sanibel, as its own city, would not be affected at all.

Only on Pine Island could the "constrained" designation have had alarming consequences. On Pine Island, vast tracts of land were still undeveloped; and the seasonal population extremes, while significant, weren't as great as the other island communities, leaving a larger percentage of Pine Island's population subject to summertime evacuations.

To avoid these effects on Pine Island, Lee County needed to supplement the constrained designation to keep it from allowing more development than the road system could handle. The county chose to modify a 1988 proposal from the Greater Pine Island Civic Association which was designed to gradually limit development on Pine Island as Pine Island Road began to approach its capacity. The proposal would have prohibited rezoning most additional land for development when 80% of road capacity was used up, and prohibited approvals of new subdivisions, even on land already zoned, when 90% was used up.²¹

Those percentages were based on the road's capacity at LOS "D," which at the time was defined as representing:

"...high-density, but stable, flow. Speed and freedom to maneuver are severely restricted, and the driver or pedestrian experiences a generally poor level of comfort and convenience."

²¹ *Pine Island Land Use Study – Issues and Recommendations*, prepared by Carron Day for and with the assistance of the Greater Pine Island Civic Association, January 1988.

*Small increases in traffic flow will generally cause operational problems at this level."*²²

Under the conditions existing on Pine Island Road, LOS "D" was defined by Lee County as occurring when 1,010 vehicles per hour used the road during the busiest hours in the winter.

To make sure that these limits wouldn't be ignored when they were reached, the state land planning agency insisted that the Lee Plan convert those percentages to specific vehicle counts at the nearest permanent traffic count station, which is located on Little Pine Island at the western edge of Matlacha. Thus, 80% was converted to 810 vehicles per peak hour, and 90% was converted to 910 vehicles.²³ These levels were then adopted into law as Lee Plan Policy 16.2.2 (later renumbered to 14.2.2).

Physical changes to Pine Island Road since 1989

During 1991 and 1992, Lee County reconstructed Pine Island Road from Burnt Store Road to Stringfellow Road. The county elevated flood-prone segments and widened the travel lanes to twelve feet. Within Matlacha, French drains were installed and the pavement was extended beyond the travel lanes in some places for parking. Outside Matlacha, the shoulders were widened to eight feet (four feet of which was paved) and the drainage ditches were improved.

These improvements had already been designed by late 1989 and a consultant to Lee County had analyzed whether they would increase the traffic-handling capacity (known as the

²² *Support Documentation for the Traffic Circulation Element*, for revisions adopted January 31, 1989, prepared the Lee County Division of Planning and Department of Transportation and Engineering, pages III-5, III-6, and III-10.

²³ *Proposed 1990 Revisions to the Lee Plan, Volume 1, Traffic Circulation Element*, prepared by David Plummer and Associates, September 1990, pages III-4 and B-6.

“service volume”) of Pine Island Road. If they would have actually increased the road’s capacity, the 810 and 910 figures might have been increased accordingly. The consultant concluded that they would not increase capacity:

“The reconstruction currently underway on Pine Island Road west of Burnt Store Road will raise the elevation of the roadway and widen the lanes to standard widths. Neither of these improvement will, according to the 1985 Highway Capacity Manual, affect the service volumes.”²⁴

Current traffic conditions on Pine Island Road

Since 1990, traffic on Pine Island Road in Matlacha has increased by about 22%. Figure A-1 shows the average counts for each year, with a visual comparison to the 810 and 910

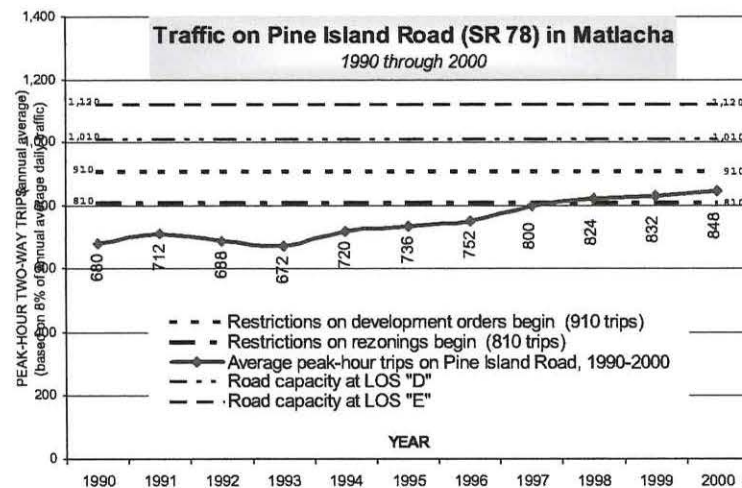


Figure A-1, Traffic on Pine Island Road in Matlacha, 1990 through 2000

²⁴ Proposed 1990 Revisions to the Lee Plan, Volume 1, Traffic Circulation Element, prepared by David Plummer and Associates, September 1990, page B-4.

thresholds in Policy 14.2.2. The 810 threshold was surpassed in 1998, 1999, and 2000.

These significant traffic increases occurred during a decade where there was relatively little new subdivision or condominium development on Pine Island. Population increases resulted mostly from the construction of new homes on pre-existing vacant lots. Other traffic increases may have resulted from difficult-to-quantify changes in tourism or commuting patterns.

The largest traffic flows through Matlacha are eastbound during the morning rush hours and westbound during the afternoon rush hours, as shown in Figure A-2. Afternoon peaks are slightly higher than morning peaks. This pattern is similar year around, with the peaks more pronounced during the less busy months.

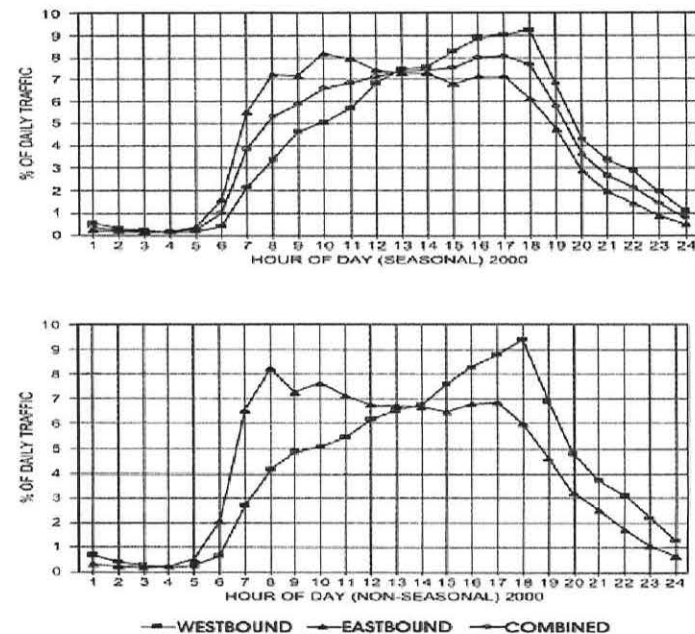


Figure A-2, Directional flow and hourly variations in Matlacha, 2000T

Traffic flow through Matlacha is affected by several other factors. The drawbridge is opened an average of two or three times each day to accommodate boaters, blocking traffic in both directions. School buses make about 30 trips each day, with about half occurring during peak traffic periods each day. Because there are no medians on Pine Island Road, traffic must stop both directions when school buses are loading. Public transit is very sparse at present and has inconsequential effects on traffic flow.

Changes since 1989 in methods of analyzing capacity

In 1990 Lee County began using a different method for determining the capacity of roads, using the 1985 *Highway Capacity Manual* instead of the earlier 1965 *Highway Capacity Manual*.²⁵ Lee County decided to base the 810/910/1010 figures for Pine Island Road on the earlier method for determining capacity, to keep future technical changes in analytical methods from changing their policy decision on how to manage growth on Pine Island.

The earlier method was based primarily on physical characteristics of the road, such as the number of lanes, the width of the lanes, and lateral clearance from obstructions such as parked cars or pedestrians. Pine Island Road west of Burnt Store was designated as a major collector road in a "type 5" rural area.

The remainder of the Lee Plan used the newer method, which determined capacity on arterial roads about equally by the number of lanes and by the length of delays caused by intersections. For most urban roads, delays caused by the red cycle of traffic signals are a major limitation on the number of vehicles that can traverse those roads; thus the number and timing of

traffic signals becomes a major factor in determining road capacity. The newer method also assumes that left turn bays are provided at intersections and are adequate to prevent a following vehicle from having to slow down or stop.

Under the newer method, there is no straightforward reduction in capacity for a road with typical collector-road characteristics; the reductions must be computed through a sophisticated traffic analysis. The new method, without adjustments, may even understate the capacity of Pine Island Road as it crosses Little Pine Island. However, it is primarily within Matlacha itself that the bottlenecks occur. Within Matlacha there are no traffic signals, no major crossing streets, and no left-turn bays, yet there are multiple intersecting streets and driveways. With all of these factors, the new method, unless adjusted for those factors, would not provide a reasonable measurement of traffic capacity.

In order for the new method to accurately forecast the capacity of Pine Island Road, it must be carefully adjusted to factor back in the various obstructions to free-flowing traffic through Matlacha (no left-turn bays or passing lanes; reduced speed limit; cars backing into the road from parking spaces; frequent driveways; presence of pedestrians; etc.). These adjustments require more data than is currently available, for example the free flow speed, peak-hour characteristics of traffic flow, and the adjusted saturated flow rate.

In the absence of this data, it is instructive to compare the capacity of Pine Island Road using the older methodology with the capacity of Estero Boulevard at Fort Myers Beach²⁶, as

²⁵ Since that time, further modifications have been made in a 1994 *Highway Capacity Manual* and a 1997 *Highway Capacity Manual Update*, all published by the Transportation Research Board.

²⁶ Estero Boulevard is the same width and has many of the same constraints as Pine Island Road through Matlacha; due to very heavy demand, its traffic flow completely breaks down most days from late January into April, with traffic flowing in a stop-and-go pattern between about 10:00 AM and 6:00 PM. A summary of this data is provided in the Fort Myers Beach Comprehensive Plan, pages 7-B-15 through 7-B-20.

computed by the Lee County department of transportation, as shown in Table A-1. The latest and most thorough study, completed in 1997, suggests that Estero Boulevard's capacity using the new method is only about 10% larger than the comparable capacity for Pine Island Road using the old method.

TABLE A-1

**OLD CAPACITY METHODOLOGY
(used for Pine Island Road in the 1989 Lee Plan)**

LEVEL OF SERVICE	Peak-hour trips (both directions)	COMMENTS:
LOS "E"	1,120	LOS "E": full capacity; traffic flow breaks down with small increases in traffic
LOS "D"	1,010	LOS "D": high-density but stable flow
90% of "D"	910	(development order restrictions begin)
80% of "D"	810	(rezoning restrictions begin)

**NEWER LEE DOT CAPACITY METHODOLOGIES
(for Estero Boulevard)**

LOS "E"	1,780	full capacity of uninterrupted and undivided two-lane road near the coast (1995 Lee DOT study)
LOS "E"	1,424	full capacity of Estero Boulevard south of Donora, based on 20% reduction (1995 Lee DOT study)
LOS "E"	1,316	full capacity of Estero Boulevard between Donora and Crescent, based on 30% reduction (1995 Lee DOT study)
LOS "E"	1,240	full capacity of Estero Boulevard (1997 Lee DOT study based on new data)

Physical alternatives to improve access to Pine Island

Four different types of access improvements to Pine Island are described in the following sections, followed by preliminary comments on the impacts of each.

Access improvements could have a variety of physical impacts. These impacts would primarily occur in Matlacha if the existing 66-foot right-of-way were to be reconfigured or widened; they would be primarily environmental if an entirely new access road were created.

Within the existing right-of-way

Two possible reconfigurations have been identified that could fit within the existing 66-foot right-of-way (approximately the distance between the existing utility poles):

1. **CONVERT TO THREE LANES:** The existing pavement, including the paved shoulders, is about 32 feet wide. It could be rebuilt and reconfigured to three lanes of almost 11 feet each, and the unpaved shoulders could be paved to serve as breakdown lanes or walkways. The third travel lane could serve either as a two-way left turn lane or as a reversible lane for traffic in the busier direction.
2. **CONVERT TO FOUR LANES:** The road could also be reconfigured into an urban street with curbs and gutters. The existing right-of-way could accommodate up to four 11-foot lanes, two 2-foot concrete curbs and gutters, and two 9-foot raised sidewalks. This configuration would require extensive earthwork and metal railings, similar to the recently rebuilt San Carlos Boulevard as it approaches Fort Myers Beach.

Unless the bridges were widened as well, either approach would still face the bottleneck of having a three-lane or four-lane road narrow into two-lane bridges (similar to the Sanibel Causeway

which has two-lane bridges connecting to four-lane roads).

The three-lane approach would change the look and feel of Pine Island Road less than the four-lane approach. If the third lane were used for left turns, those turns would cause less interference with traffic flow (which will become increasingly important as congestion increases).

A third lane could also be reversible, used for travel in the direction of highest traffic flow. The center lane would be designated for one-way travel during certain hours of the day, and in the opposite direction during other hours. The outer lanes provide normal flow at all times.

There are various problems with reversible lanes, such as operational problems at each end of the reversible lane; enforcement difficulties; increased safety hazards; and unsightliness of the traffic signals and/or barriers that would be required.

It seems unlikely that a reversible lane would have enough benefits in Matlacha to offset the operational difficulties. The greatest benefit to a third lane would be for left turns during daily use, and for an additional lane off Pine Island during an evacuation.

Adding a third lane would cause a number of problems, however, including:

- Pedestrians trying to cross Pine Island Road would have to walk a greater distance, making the crossing less safe;
- The character of Matlacha would lose some of its village atmosphere and pedestrian orientation, replaced with a more highway-oriented character;
- Pedestrians would lose the use of the current paved shoulder, which functions as an informal sidewalk; and
- Businesses and homes would lose some of their park-

ing area because the travel lanes would now be using the previous paved shoulders outside the French drains.

The second reconfiguration, into four travel lanes, would significantly increase the traffic-carrying capacity of Pine Island Road, without any of the complexities of changing the directional pattern of the center lane every day.

Pedestrian safety would be improved by replacing today's informal drainage and sidewalk pattern with raised sidewalks. However, these sidewalks would now extend to the very edge of the right-of-way, putting them directly adjacent to many buildings whose fronts are on the right-of-way line. In business areas, this is appropriate for both the stores and the pedestrians, but in residential areas it would be very awkward for the residents (as well as the pedestrians).

The four-lane configuration would preclude any left-turn bays and would eliminate all parking from the right-of-way. The loss of parking would be a major disadvantage and would seriously damage, if not eliminate, the viability of many small businesses. Undoubtedly, the physical construction of a four-lane configuration would seriously damage Matlacha's village atmosphere and pedestrian orientation.

The increases in traffic capacity that four lanes would provide would be detrimental to the character of Matlacha but would have mixed impacts on the remainder of Greater Pine Island. If the increased capacity just led to approval of more development on Pine Island, the damage to Matlacha would have been for naught. If the increased capacity were provided *without* allowing an additional increment of development on Pine Island, traffic congestion on Pine Island Road would be reduced, although it would reappear as existing subdivision lots are built upon and the new road capacity begins to be used up.

With a wider right-of-way

Some of the negative factors of a four-lane configuration could be offset by purchasing additional right-of-way, for instance to be used for a planting strips with trees that could separate the sidewalk from the travel lanes or from building fronts. However, the existing land-use pattern has very shallow lots that often back up to the waters of Matlacha Pass. Also, many of the existing buildings directly adjoin the existing right-of-way, so widening the right-of-way would involve altering or demolishing many buildings in Matlacha. A 1982 estimate suggested that if the right-of-way were expanded from 66 to 90 feet, as many as 75 businesses and homes in Matlacha would have to be altered or removed.²⁷

In 1990, Lee County designated the central portion of Matlacha as a historic district. This designation would not legally prevent Lee County from altering or demolishing historic buildings, but it indicates the historic value of many of Matlacha's buildings in addition to its unique village character.

Given these constraints, it is apparent that Lee County's 1989 decision to classify Pine Island Road as "constrained" (and therefore not subject to widening) was correct. It is possible that the benefits of a third lane through Matlacha might outweigh the disadvantages, and if so this improvement could be constructed. But building *four* travel lanes through Matlacha, either within the existing or a widened right-of-way, should not be considered to be a viable or practical option.

²⁷ *Pine Island at the Crossroads*, by William M. Spikowski, 1982, p. 3.

New bridge bypassing Matlacha

The capacity of Pine Island Road could also be increased by building a new bridge *around* Matlacha. A possible route would begin at about Shoreview Drive, run just south of Matlacha, and reenter Pine Island Road on Little Pine Island just west of the Sandy Hook restaurant, a distance of just over 1½ miles.

A Matlacha bypass bridge could provide uninterrupted two-way traffic to and from Pine Island, or could provide one-way traffic, with the existing Pine Island Road serving traffic in the other direction. Two-way traffic is generally more convenient to the public. One-way traffic allows more cars to use the same amount of roadway, but is generally regarded as being harmful to businesses along the route. Either scenario would create serious intersection impacts at each end, and could cause additional travel to connect motorists with their actual destinations.

Either scenario would also require widening Pine Island Road beyond the ends of the bridge in order to take full advantage of the bridge's new capacity. This would be especially important between the eastern terminus and Burnt Store Road.

Pine Island Road is a county road west of Burnt Store Road (as are both bridges). Any improvements would be constructed and paid for by Lee County. Because major bridges are beyond the ability of the county to afford with current revenue sources, they are built with the proceeds from selling bonds, which are then paid back over time (usually with tolls, although they can also be repaid through special taxes or assessments).

One recent and one planned bridge can illustrate the magnitude of how expensive new bridges are to construct.

A new bridge was completed in 1999 over eastern Pensacola Bay. This bridge is about 3.5 miles long and cost \$54 million to build; it was funded through a \$95 million bond issue. (At present, only half of the expected users are paying the \$2 toll,

and the bridge's owner, the Santa Rosa Bridge Authority, is unable to repay its bonds, which run for another 30 years.)

For the last two years Lee County has been considering rebuilding the Sanibel Causeway and its three bridges. Replacing the main bridge alone is estimated by the county to cost \$45 million for a higher and wider drawbridge or \$77 million for an even higher fixed bridge.

State and federal permits are required for all new bridges, and are difficult to obtain, especially for a new bridge through the Matlacha Pass Aquatic Preserve.

A Matlacha bypass bridge would have serious environmental impacts and there is no realistic source of funds to build it. Its increased traffic capacity might lead to approval of more development on Pine Island, negating its positive impacts on traffic flow and hurricane evacuation. If the increased capacity were provided *without* allowing an additional increment of development on Pine Island, traffic congestion on Pine Island Road would be reduced substantially.

At least at present, building a new bridge around Matlacha is not a feasible option.

Entirely new bridge and entrance road

Another alternative involving a new bridge would be to extend Cape Coral Parkway westerly across Matlacha Pass, ending about halfway between St. James City and Pine Island Center near the Masters Landing power line. This alignment would cross about two miles of wetlands and one mile of open water. A continuous bridge would be needed to avoid interference with tidal water flows in the wetlands and Matlacha Pass.

At present there is a narrow earthen dam through the mangroves that support an access road for maintaining the power line. If this fill were allowed to remain in place, it may be able

to support a two-lane access road for the new bridge, thus reducing the cost of this alternative.

This alignment would extend into the Cape Coral city limits, adding an extra layer of regulatory issues. The new bridge would add traffic onto Cape Coral Parkway, which is planned to be widened to six lanes but cannot be widened further. This alignment would function well for traffic between St. James City, Cape Coral, and south Lee County.

This option, like the Matlacha bypass option, is currently cost-prohibitive and could have major environmental impacts on Matlacha Pass. Neither new-bridge option can be considered viable at this time.

Transportation policy alternatives

Since the 1989 update of the Greater Pine Island portion of the Lee Plan, a number of changes have been made to Pine Island transportation policies. Policy 16.2.3 committed Lee County to improving Pine Island Road by 1993 in four specific ways (all of which were completed before this policy was eliminated):

- Elevate the flood-prone segments.
- Widen the traffic lanes to twelve feet.
- Widen and improve the shoulders.
- Improve the intersection at Stringfellow Blvd.

Policy 16.2.4 committed Lee County to taking whatever additional actions were feasible to increase the capacity of Pine Island Road, specifically calling for the following measures to be evaluated:

- The construction of a bicycle lane which could serve as an emergency vehicle lane during an evacuation, thus freeing both traffic lanes for the evacuating population.
- The construction of two more lanes around Matlacha.
- The construction of left-turn lanes at intersections with local roads in Matlacha, or a continuous third lane.

Parts of Policy 16.2.4 were repealed in 1994 because the county concluded that: "The first two items would be prohibitively expensive. The existing pavement already accommodates emergency vehicles and two lanes of traffic." The final item was retained in the policy because it had not been fully evaluated at that time (and apparently not since). Policy 16.2.2, later renumbered 14.2.2 and discussed at length earlier in this report, was retained unchanged because: "The extraordinary treatment of Pine Island Road in these policies is justified by the absence of other hurricane evacuation routes for Pine Island, Matlacha, and a large portion of Cape Coral."²⁸

Beginning in 1998, the 810-trip threshold in Policy 14.2.2 has been exceeded each year. Once county officials became aware of this fact, they initiated an amendment to the Lee Plan to reevaluate Policy 14.2.2 "to reflect current road conditions." The processing of that amendment has been delayed pending completion of this community plan update.

There are two fundamental questions that must be answered at this time regarding Policy 14.2.2:

#1: Have any factors changed sufficiently since 1989 to warrant adjustments to the 810/910 thresholds in Policy 14.2.2?

One relevant factor would be existing or planned improvements to the capacity of Pine Island Road. As discussed earlier, important improvements were made in 1991-92 including elevating flood-prone segments of the road, but those improvements did not increase the capacity of the road during everyday conditions.

Another relevant factor would be if better traffic data were now available, especially if such data would allow a more sophisticated analysis of existing or future congestion. A permanent traffic counter has been in place on Little Pine Island at the western edge of Matlacha for over ten years, collecting traffic data 24 hours a day all year; no changes have been made to this counter. As to methods of interpreting this data, a more sophisticated method for analyzing the capacity of a road has become commonplace since 1989, but its basic assumptions are less relevant for Pine Island Road through Matlacha than the previous method, and no entity has attempted to collect enough specialized traffic data to properly apply it in Matlacha. It has been suggested that the new methodology might indicate that Pine Island Road has a significantly greater capacity than indicated by the previous methodology, but the most recent Lee DOT work suggests only 10% higher capacity even on Estero Boulevard when using the new methodology.

Regardless of the ultimate determination of the full capacity of Pine Island Road, Policy 14.2.2 was clearly contemplated to begin slowing development approvals on Pine Island at pre-determined points in time, that is, when traffic reached 80% and 90% of what was determined to constitute *dense but stable flow* (known as LOS "D"). Those points were not set to occur at 80% and 90% of *full capacity* of the road (LOS "E"), but at a slightly earlier time, in a clearly stated effort to "recognize and give priority to the property rights previously granted by Lee County for about 6,800 additional dwelling units...." No technical factors or changes since 1989 have been discovered in the course of this planning process that would justify abandoning the 810/910 thresholds in Policy 14.2.2.

²⁸ EAR [evaluation and appraisal report] for Future Land Use, May 1994, section III, pages III-16 and III-17.

#2: Are any other changes to Policy 14.2.2 warranted?

Once the 810 threshold has been reached, Policy 14.2.2 calls for adoption of development regulations that provide “restrictions on further rezonings which would increase traffic on Pine Island Road.” When 910 has been exceeded, regulations are to “provide restrictions on the further issuance of residential development orders....”

To implement this policy, in 1991 Lee County amended its land development code using the following language:

§2-48(2) When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 810 peak-hour annual average two-way trips, rezonings that increase traffic on Pine Island Road may not be granted. When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 910 peak-hour annual average two-way trips, residential development orders (pursuant to chapter 10) will not be granted unless measures to maintain the adopted level of service can be included as a condition of the development order.

The wording in this section was taken almost verbatim from Policy 14.2.2. This has become problematic because it is not self-evident which kinds of rezonings will “increase traffic on Pine Island Road.” The county’s usual method for enforcing traffic regulations is to require a traffic study from a development applicant and then to make a decision based on that study, rather than on an independent evaluation of the facts. This approach delegates this important analysis to the private party having the biggest stake in its outcome and is not likely to result in sufficient objectivity.

A better approach would be for the regulations that implement Policy 14.2.2 to be more self-explanatory (while still allowing an applicant to provide data if they think they qualify for an exception). For instance, it should be clear

that some types of rezonings would have inconsequential or even positive effects on traffic on Pine Island Road. A convenience store in St. James City would serve only local residents and those passing by, and would attract no new trips onto Pine Island Road. A larger grocery store in St. James City would attract shoppers from a larger area, perhaps including some who currently drive to Matlacha or Cape Coral to shop for groceries, possibly *decreasing* traffic on Pine Island Road. However, a new hotel or marina on the same St. James City property could have a different effect. A large new hotel or marina would undoubtedly serve some residents of St. James City and Pine Island Center, like a grocery store, but it would also attract users from throughout Lee County and beyond who would drive across Pine Island Road to spend a few nights or to launch a boat.

Thus an important distinction could be made in implementing Policy 14.2.2 between those land uses that primarily serve residents or visitors who are already on Pine Island, and land uses that primarily attract additional people across Pine Island Road. For instance, the following commercial uses would primarily serve residents and visitors: grocery, hardware, and convenience stores; hair salons; and service stations.

This distinction would be clouded somewhat by other factors, particularly the size and location of commercial uses. For instance, a 20-seat restaurant on a St. James City canal or a small inn are desirable Pine Island businesses that would be unlikely to draw substantial traffic across Pine Island Road. However, a 150-seat restaurant with a panoramic view (or a chain hotel) with a large advertising budget may well draw customers primarily from off Pine Island. To reduce this problem, some small commercial uses might be exempted from this policy even if they are of a type that primarily attracts additional vehicular trips. Other

APPENDIX B: RURAL LAND-USE ALTERNATIVES

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This appendix contains an evaluation of five growth management techniques for Pine Island plus two hybrid techniques. Any of these techniques could become part of the new comprehensive plan and its future land use map and would be implemented through subsequent changes to other county regulations. (Existing lots would presumably be “grandfathered in” even if they are now vacant.)

1. Conservation land purchases

Local citizens have a strong interest in preserving portions of the native landscape. In 1996, Lee County voters initiated the Conservation 2020 program and funded it with a half-mill property tax for seven years. In the past year Lee County has begun negotiating the purchase of several large Pine Island tracts for preservation under this program. The state of Florida also has a major land acquisition program; in fact they were equal partners with Lee County in purchasing a 103-acre preserve near St. James City in 1993 that provides a nesting habitat for bald eagles. The federal government is also increasing its role in environmental land acquisitions in southwest Florida.

Through their combined efforts, these programs could purchase major portions of Pine Island’s upland habitats over the next ten years. At present, about 2,800 acres of undeveloped native upland habitat remains, excluding that found on fragmented subdivision parcels. Almost all of this habitat is located in Pine Island’s “Rural” areas. Removing any or all of these tracts from the private land market would make their treatment under the comprehensive plan moot. This update to the comprehensive plan could help these agencies identify the most valuable native lands remaining on Pine Island and demonstrate a consensus of Pine Islanders that such purchases would be welcomed.

The positive features of this approach would be taking advantage of existing governmental priorities on habitat preservation and, as a fortunate byproduct, helping maintain the character of the rural portions of Pine Island and precluding residential development. Extensive research on the physical characteristics of large tracts has been carried out recently by the non-profit Calusa Land Trust; their data could be used to help guide this effort. The effects on large landowners would be minimal because these acquisitions have historically been voluntary transactions with willing sellers.

Some negative features of this approach are the reliance on outside agencies that might decide to spend their acquisition funds outside Pine Island, or that might not complete their Pine Island purchases until such time as many natural habitats have been cleared for farming or have become overrun by invasive exotic vegetation.

2. Larger lots in rural areas

An obvious alternative to the current “Rural” category on Pine Island is to simply lower the allowable density for residential development, to either 1 DU/20 acres (or /10 or /5 acres). There is ample local precedent for density reductions; in 1990, Lee County created a new “Density Reduction – Groundwater Resource” category, where density is limited to 1 DU/10 acres,

alternatives would be to allow minor rezonings below a certain size if they are proposed on “infill” properties between existing development at similar intensities (rather than expanding or intensifying already-developed areas), or if their characteristics are such that traffic during the busiest peak hours would not be increased.

In summary, none of the available options for adding significant road capacity to Pine Island are practical. Building four travel lanes through Matlacha, either within the existing or a widened right-of-way, would seriously damage Matlacha’s village atmosphere and pedestrian orientation. Either new-bridge option would have serious environmental impacts and in any case there are no funds for such expensive undertakings. The increased traffic capacity of either bridge would most likely lead to approval of more development on Pine Island, negating the initial positive impacts on traffic flow and hurricane evacuation.

and has applied it to about 74 square miles of land, mostly east of I-75 and south of SR 82 but also some land along the Charlotte County line near SR 31. Most of the remaining land within two miles of the Charlotte County line have been reduced to a density of 1 DU/5 acres.

In those cases the density reductions were made by the county to resolve a legal challenge by the state land planning agency against Lee County's comprehensive plan. Although much of the motive for the reduction was to prevent further urban sprawl, in those cases the lands were selected based on proximity to shallow underground water sources that can be contaminated by urban development. Land values did not plummet after the reduction, as many landowners had claimed they would. Values were maintained because there were other viable purchasers for this land, including fill-dirt and limerock mines; the citrus and tomato industries; government purchases of wildlife habitat and environmentally sensitive lands; and land speculators who anticipate fewer restrictions at some point in the future.

Although there are no comparable groundwater resource issues on Pine Island, there is an obvious public purpose to reducing densities that cannot be supported by adequate infrastructure (in Pine Island's case, limited road access to the mainland). This distinction could be reflected by naming this new land-use category "Coastal Rural."

Positive features of this density-reduction approach are its simplicity and the local experience with this obvious method of controlling urban development where it does not belong. This approach furthers the important planning objective of clearly separating urban and rural uses, as called for in the state comprehensive plan and the state's rules governing local comprehensive plans. This approach could result in subdividing rural land into, say, five-acre homesites, which would avoid agricultural clear-cutting (although it would still result in considerable clearing of native pines and palmettos for yard space).

A significant negative feature is that it would not interfere with further habitat destruction that occurs when undisturbed lands are converted completely to agriculture. Also, it might be seen as overly harsh by large landowners, who also might characterize it as an unfair attempt to lower their land values to benefit future conservation purchasers of large tracts.

3. Cluster development

Under current regulations, "Rural" lands are limited to 1 DU/acre, but there is no prohibition on requesting a rezoning that would allow the same number of dwelling units arranged differently, for instance with houses "clustered" on smaller lots surrounding a golf course. Such arrangements are voluntary on the part of the landowner and subject to approval through the formal rezoning process.

Clustering as currently practiced rarely preserves significant native habitats. In fact it is an inducement to develop the predominant Florida real estate form of the last two decades, country club communities surrounding golf courses, a development form that hardly matches the stated purpose of the "Rural" category.

The concept of clustering could, however, be modified to suit Pine Island conditions. For instance, clustering could be mandatory rather than voluntary, with fixed percentages of native habitats being retained within new developments. On very large tracts, houses might still be allowed around golf courses or fill-dirt lakes if the percentage of native habitat that must be retained was fairly low, such as 30%. Higher percentages, such as 70%, would preclude recreational facilities such as golf courses that consume large amounts of land, and thus could preserve more of the natural landscape.

The best feature of a modified clustering approach could be preservation of native habitats without outright purchase. Lee County's considerable experience with clustered development

and its flexible zoning categories can be used to accomplish this goal. Clustering is unlikely to trigger any claims under the Bert Harris Act, and would be prized by Pine Islanders (present and future) who place a high value on proximity to natural preserves.

Some negative features are that many tracts, especially those that have been farmed, have no native habitat remaining. Although habitat can be restored, restoration is more costly than preserving existing habitats. Also, protected habitats may end up being fragmented, which reduces their value to wildlife (compared to preservation purchases of entire large tracts).

4. Transferable development rights

The rights to develop a parcel of land can be permanently severed from that parcel and transferred to another parcel. This concept is called transferable development rights (TDR).

Lee County has had a TDR program for fifteen years. Wetlands are allowed only 1 DU/20 acres, but wetland owners who agree *never* to develop not only can transfer those development rights, but they actually get to multiply their density by a factor of four; they are allowed to sell the wetland development rights at a ratio of 1 DU/5 acres of wetlands. The development rights can be used at certain other locations in Lee County. The market value of these development rights is set by the private market; Lee County is not involved in the actual sale, only in approving the "receiving" locations, which are planned urban areas on the mainland.

Lee County's first TDRs were created on Pine Island in the late 1980s. The undeveloped wetlands in the St. Jude Harbor subdivision were converted by the landowners into 436 TDR units. (In that single instance, the number of TDRs wasn't based on acreage, but rather on the number of lots that the landowner had been trying to sell from that property.) However, to date the landowners have only been able to sell about a fourth of

these TDRs, at an average price of around \$3,000 each.

TDR programs tend to be popular with the public and with elected officials because of their inherent sense of fairness, and the seeming ability to avoid creating winners and losers in the land-use planning process. They are less popular with landowners, who often fear they will be unable to sell them. The reason is that TDRs are valuable to buyers only when development rights are a scarce commodity, typically when local governments have strict regulations on development. Lee County's regulations have never been very strict; consequently, TDRs have had only very limited success locally. (Some governments offer to buy and stockpile TDRs at some fixed price to create a minimum value for TDRs.)

A new TDR program for Pine Island would need to identify receiving locations other than those currently in use; otherwise the new TDRs would further flood the same market as the current TDR program and therefore be unsaleable or saleable only at relatively low prices. TDRs would be quite valuable if they could be used to allow greater development on the barrier islands, but all of Lee County's islands suffer the same transportation constraints as Pine Island. TDRs would also be valuable in the areas where Lee County has restricted density levels to 1 DU/10 acres, but again those restrictions were placed for a purpose and it would be difficult to justify swapping unwanted development rights to another unsuitable location.

5. Rate-of-growth control

Some communities establish a cap on the number of residential building permits that can be issued in each quarter or each year. A similar cap on commercial permits could be established so that commercial development does not outpace residential growth.

A side benefit of this approach in some communities is to allow a comparison of the quality of development applications and

approve only those that best comply with community standards. On Pine Island, objective criteria could be established to measure the cumulative impact on Pine Island's environment, on hurricane evacuation plans, on availability of utilities and supporting infrastructure, and on overall conformance with the goals of the comprehensive plan. Permits could be issued at the end of each quarter to the highest scoring applicants until the quota for that quarter, perhaps 25 dwelling units, has been met.

Rate-of-growth ordinances are usually established during periods of runaway growth to allow the government time to provide the needed roads and utilities.

The city of Sanibel adopted a rate-of-growth ordinance in the late 1970s. It was imposed through a citizen referendum during a period of very high growth shortly after the city's incorporation, with a limitation on building permits of 180 dwelling units per year. Every four months, all permit applications were compared, and up to 60 were issued. Preference was given to below-market-rate housing, single-family homes, and smaller condominium buildings. A "grading" scheme was used to reward quality development proposals, although this had only mixed results. The Sanibel ordinance was repealed when permit requests fell below the cap for several years in a row.

On a practical level, a positive feature of this approach for Pine Island is that it isn't really essential right now. Growth rates have been relatively slow during the past decade, so an annual cap that is suitable for the long term would probably be painless in the beginning, allowing refinement of the criteria before they result in rejection of applications.

Negative features are that this approach might be more difficult to defend in the absence of a runaway growth crisis and in the absence of specific infrastructure shortfalls that Lee County is in the process of correcting. Rate-of-growth ordinances are usually controversial and difficult to administer, and cause delays in the

processing of even routine building permits. They tend to spur speculative building and can discourage individual lot owners who wish to build a home for themselves. Perhaps the biggest negative is that, in the absence of the other approaches suggested above, an annual growth cap would lead Pine Island to the same place as the current system, with the arrival time merely delayed.

6. Dual-classification with clustering

These five techniques need not be applied in isolation. In fact, two hybrid solutions offer more promise than any single technique. The first hybrid, dual-classification with clustering, would create two new categories for the existing "Rural" lands:

- Disturbed lands, which have been farmed or otherwise cleared of native vegetation, or which have advanced infestation of exotic trees. On these lands, agriculture would be allowed and encouraged. Residential densities would be lowered to 1 DU/10 acres. Given the strong local evidence that lands suitable for agriculture are worth more than their development value, Bert Harris Act claims would be unlikely to succeed. A later increase in residential density could be provided for, if cleared lands were restored to native habitats through planting of native pines and palmettos; on tracts with hundreds of acres, such habitat restoration might be combined with a golf course, all built on previously disturbed lands.
- Undisturbed upland habitats, such as native slash pine and palmetto habitats. Agriculture and golf courses would be prohibited here. Residential density might stay at present levels, but new regulations would require development areas to be clustered to protect a high percentage, perhaps 70%, of natural upland habitats. Future conservation purchases would also be focused on these lands.

The positive features of this first hybrid approach are that it would encourage continued agricultural use on disturbed lands while diminishing the potential for residential development on those lands in the future. It would prohibit the destruction of undisturbed habitats where they still exist, while offsetting any resulting diminution of land value by maintaining current density levels there. Any actual development on undisturbed habitats would disturb far less land than would occur today by allowing today's number of dwelling units to be placed on smaller lots. Public purchases of entire tracts for preservation would still be highly desirable and encouraged, but if those purchases do not take place, this alternate plan would ensure far more preservation than current regulations.

Some negative features are the complexity of the classification process and the need to establish two new land-use categories in the comprehensive plan instead of one (or none). It will seem counterintuitive to many to allow higher densities on natural habitats than on disturbed lands (although this serves as an incentive *not* to clear native habitats). This approach might be seen as overly harsh by owners of large disturbed tracts whose expectations are for urban development rather than agriculture.

7. Conservation clustering with incentives

The second hybrid technique, conservation clustering with incentives, is similar to the first but would require only one new category for existing "Rural" lands. The new category would attempt to maintain most of the benefits of the first hybrid, but in this case using a sliding scale of density rewards to encourage (rather than *require*) conservation of undisturbed habitats.

For instance, a tract with undisturbed native habitats might maintain today's density of 1 DU/acre density if 70% of the undisturbed uplands were preserved. Those dwelling units would be placed on the remaining 30% of the land, which would be possible by using lots that are smaller than today's

one-acre standard. (Table B-1 shows that the resulting developed area, including its streets and stormwater detention areas, would use about 0.3 acres per lot, similar to many existing single-family neighborhoods on Pine Island.) If *less than 70%* of the uplands were preserved, the allowable density would decrease, as shown in the table. If no undisturbed uplands were preserved, the residential density would drop to 1 DU/10 acres.

TABLE B-1

Assume % of native land saved or restored	Would then be assigned this gross density:	RESULTS ON 100 ACRES WOULD BE:			
		# of DUs	acres used per lot	total acres preserved	total acres used
0%	1 DU per 10 acres	10	10.0 acres	0	100
5%	1 DU per 9 acres	11	8.6 acres	5	95
10%	1 DU per 8 acres	13	7.2 acres	10	90
15%	1 DU per 7 acres	14	6.0 acres	15	85
20%	1 DU per 6 acres	17	4.8 acres	20	80
30%	1 DU per 5 acres	20	3.5 acres	30	70
40%	1 DU per 4 acres	25	2.4 acres	40	60
50%	1 DU per 3 acres	33	1.5 acres	50	50
60%	1 DU per 2 acres	50	0.8 acres	60	40
70%	1 DU per 1 acre	100	0.3 acres	70	30

Table B-2 shows another variation which would require preservation of 85% of native lands in order to maintain today's density of 1 DU/acre. Under this scenario, the resulting developed areas would be limited to the remaining 15% of the land, whose developed area, including its streets and stormwater detention areas, would use about 0.15 acres per dwelling unit. At this density, the dwelling units might be in the form of townhouses or garden apartments.

TABLE B-2

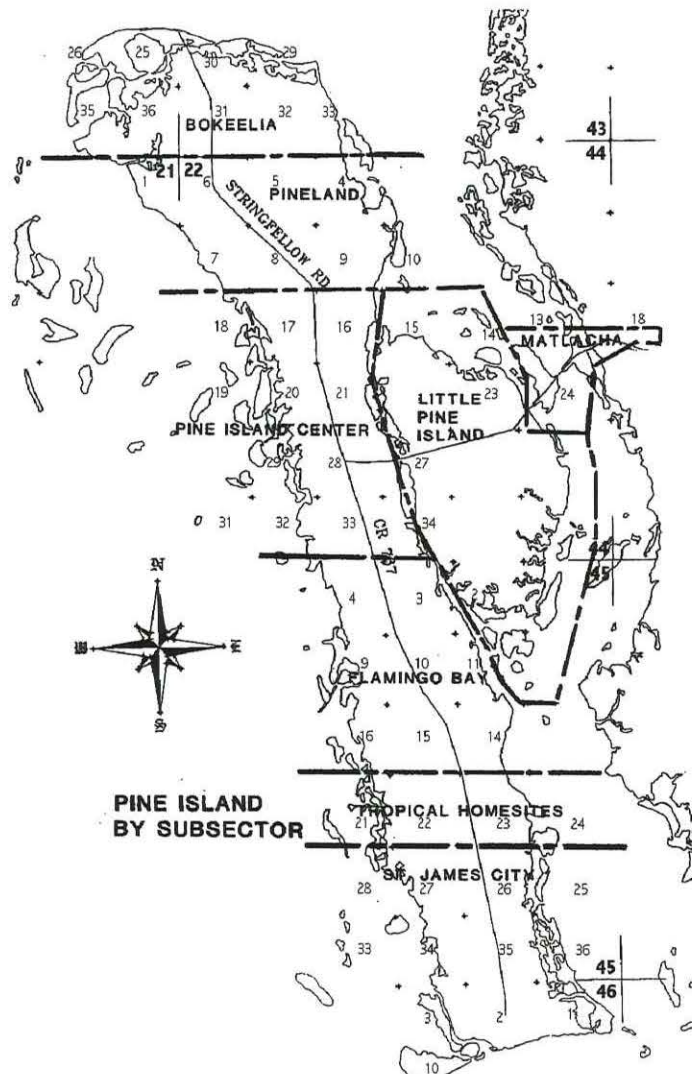
Assume % of native land saved or restored	Would then be assigned this gross density:	RESULTS ON 100 ACRES WOULD BE:			
		# of DUs	acres used per lot	total acres preserved	total acres used
0%	1 DU per 10 acres	10	10.00 acres	0	100
5%	1 DU per 9 acres	11	8.55 acres	5	95
15%	1 DU per 8 acres	13	6.80 acres	15	85
25%	1 DU per 7 acres	14	5.25 acres	25	75
35%	1 DU per 6 acres	17	3.90 acres	35	65
45%	1 DU per 5 acres	20	2.75 acres	45	55
55%	1 DU per 4 acres	25	1.80 acres	55	45
65%	1 DU per 3 acres	33	1.05 acres	65	35
75%	1 DU per 2 acres	50	0.50 acres	75	25
85%	1 DU per 1 acre	100	0.15 acres	85	15

This technique would also allow credits for restoration of native habitats on previously disturbed lands. The same benefits would be granted to restored land as to preserved land, using the same sliding scale.

The positive features of conservation clustering with incentives are that it diminishes the potential for residential development on agricultural land, while rewarding landowners who protect (or restore) their land's natural habitats. As with the first hybrid, actual development on undisturbed habitats would disturb far less land than would occur today by either allowing today's number of dwelling units to be placed on smaller lots, or by reducing the number of lots that are allowable. Public purchases of entire tracts for preservation would still be desirable, but regardless, this plan would encourage more preservation than current regulations.

As with the dual-classification hybrid, it will seem counter-intuitive to many to allow higher densities on natural habitats than on disturbed lands (although this serves as an incentive *not* to clear native habitats). This approach might be seen as overly harsh by owners of large disturbed tracts whose expectations are for urban development rather than agriculture. Also, since clearing of native habitats would not be prohibited, if landowners don't find the density rewards to be sufficiently valuable, the result might be the loss of remaining undisturbed lands on Pine Island.

APPENDIX C: EXISTING AND APPROVED LOTS



Section	Town ship	Range	Existing Dwelling Units	Total Platted Lots	Additional Units
Bokeelia sector:					
26	43	21	0	2	2
25	43	21	158	163	5
30	43	22	459	607	148
29	43	22	0	2	2
35	43	21	2	4	2
36	43	21	6	20	14
31	43	22	252	526	274
32	43	22	37	407	370
33	43	22	0	4	4
Bokeelia subtotals:			914	1,735	821
Pineland sector:					
1	44	21	0	4	4
6	44	22	167	665	498
5	44	22	23	313	290
4	44	22	0	8	8
7	44	22	62	312	250
8	44	22	42	475	433
9	44	22	27	244	217
10	44	22	1	1	0
Pineland subtotals:			322	2,022	1,700
Pine Island Center sector:					
18	44	22	0	0	0
17	44	22	35	138	103
16	44	22	180	502	322
15	44	22	0	0	0
19	44	22	0	0	0
20	44	22	2	23	21
21	44	22	363	838	475
29	44	22	0	10	10
28	44	22	288	686	398
27	44	22	0	6	6
31	44	22	0	0	0
32	44	22	2	2	0
33	44	22	3	42	39
34	44	22	0	22	22
P.I. Center subtotals:			873	2,269	1,396

Matlacha sector:

14	44	22	66	67	1
13	44	22	41	77	36
18	44	23	109	151	42
23	44	22	24	40	16
24	44	22	455	694	239
Matlacha subtotals:			695	1,029	334

Flamingo Bay sector:

4	45	22	31	245	214
3	45	22	82	219	137
2	45	22	0	2	2
9	45	22	240	240	0
10	45	22	490	492	2
11	45	22	0	11	11
16	45	22	0	5	5
15	45	22	26	92	66
14	45	22	0	24	24
Flamingo Bay subtotals:			869	1,330	461

Tropical Homesites sector:

21	45	22	0	0	0
22	45	22	26	68	42
23	45	22	233	645	412
24	45	22	0	0	0
Tropical Homesites subtotals:			259	713	454

St. James City sector:

28	45	22	0	0	0
27	45	22	1	5	4
26	45	22	12	58	46
25	45	22	0	0	0
33	45	22	1	1	0
34	45	22	11	111	100
35	45	22	323	859	536
36	45	22	0	0	0
3	46	22	0	3	3
2	46	22	1,163	1,877	714
1	46	22	194	299	105

Section	Town ship	Range	Existing Dwelling Units	Total Platted Lots	Additional Units
10	46	22	0	0	0
St. James City subtotals:			1,705	3,213	1,508
Greater Pine Island totals:			5,637	12,311	6,674