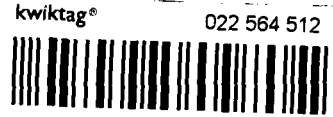


**2004/2005 REGULAR LEE PLAN AMENDMENTS
ADOPTION HEARING**

**COMMISSION CHAMBERS, 2120 MAIN STREET
OCTOBER 12, 2005
9:30 A.M.**



AGENDA

1. CALL TO ORDER; CERTIFICATION OF AFFIDAVIT OF PUBLICATION

2. CONSENT AGENDA

- **Public Comment on Consent Agenda**
- **Consent Items to be Pulled for Discussion by the Board**
- **Motion on the Balance of Items**
- **Consideration of Items Pulled for Discussion**

A. CPA2004-02 – Estero Outdoor Display

Amend the Future Land Use Element, Policy 19.2.5., to allow outdoor display in excess of one acre at the intersection of I-75 and Corkscrew Road.

Sponsor: Argonaut Holdings, Inc.

B. CPA2004-08 – Oak Creek

Amend the Future Land Use Map series for a 27.25± -acre portion of land located in Section 17, Township 43 South, Range 25 East, to change the classification shown on Map 1 from "Rural" to "Suburban." Amend the Future Land Use Map series for a 17.81±-acre portion of land located in Section 19, Township 43 South, Range 25 East, to change the classification shown on Map 1 from "Suburban" to "Rural."

Sponsor: S.W. Florida Land 411, LLC

C. CPA2004-09 – Captiva

Amend Goal 13 of the Lee Plan specific to the Captiva community to incorporate the recommendations of the Captiva Island Community Planning effort. Amend Goal 84: Wetlands to add a new Policy 84.1.4.

Sponsor: Board of County Commissioners

D. CPA2004-12 - Boca Grande

Amend the Future Land Use Element to incorporate the recommendations of the Boca Grande Community Planning effort, establishing a new Vision Statement and a new Goal, including Objectives and Policies specific to Boca Grande.

Sponsor: Board of County Commissioners

E. CPA2004-14 – Coastal High Hazard Area

Amend the Conservation and Coastal Management Element, Policy 105.1.4., to consider limiting the future population exposed to coastal flooding while considering applications for rezoning in the Coastal High Hazard Area.

Sponsor: Board of County Commissioners

F. CPA2004-15 - Fort Myers Shores Table 1b Update

Revise the Lee Plan Land Use Allocation Table (Table 1b) for the Fort Myers Shores Planning Community to address the establishment of the Outlying Suburban future land use category within the Planning Community.

Sponsor: Board of County Commissioners

G. Adopt the following Ordinance, which adopts the Consent Agenda items:

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE LAND USE PLAN, COMMONLY KNOWN AS THE “LEE PLAN” ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENTS APPROVED ON THE CONSENT AGENDA DURING THE COUNTY’S 2004/2005 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO ADOPTED TEXT, MAPS AND TABLES; PURPOSE AND SHORT TITLE; LEGAL EFFECT; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER’S ERRORS, AND AN EFFECTIVE DATE.

3. ADMINISTRATIVE AGENDA

A. CPA2004-13 - I-75 and S.R. 80 Interchange

Amend the future land use designations of Map 1, the Future Land Use Map, for the Interstate 75 and State Road 80 Interchange to balance existing and future land use designations in this area.

Sponsor: Board of County Commissioners

B. Adopt the following Ordinance, which adopts CPA2004-13:

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 CPA2004-13 (PERTAINING TO I-75 AND S.R. 80 INTERCHANGE) APPROVED DURING THE COUNTY'S 2004/2005 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO THE FUTURE LAND USE MAP; PURPOSE AND SHORT TITLE; LEGAL EFFECT OF "THE LEE PLAN"; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

C. CPA2004-16 – Pine Island Compromise

The compromise proposes to amend the Lee Plan as follows:

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 from "Coastal Rural" to "Outlying Suburban." The property is generally located in the Bokeelia area south of Barrancas Avenue and north of Pinehurst Road.

Amend the Pine Island Vision Statement and Goal 14 to recognize the value of preserving agricultural activities on the island;

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;

Amend the current percentages of preserved or restored uplands in Policy 1.4.7;

Add a policy that further defines the restoration standards referred to in Policy 1.4.7;

Amend Housing Element Policy 135.2.3. to incorporate a reference to the Coastal Rural future land use category;

Amend the Pine Island Vision Statement, Goal 14, Table 1(a) footnote 4, the Definition of Density in the Glossary, and 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 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 redefine mixed use projects;

Evaluate creating a concurrency exception area for a portion of Pine Island Center; and,

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.

Sponsor: Board of County Commissioners

D. Adopt the following Ordinance which adopts 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.

4. ADJOURN

These meetings are open to the public and all interested parties are encouraged to attend. Interested parties may appear and be heard with respect to all proposed actions. Pursuant to Florida Statutes Section 163.3184(7), persons participating in the Comprehensive Plan Amendment process, who provide their name and address on the record, will receive a courtesy informational statement from the Department of Community Affairs prior to the publication of the Notice of Intent to find a plan amendment in compliance.

If a person decides to appeal any decision made by the board, agency or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Further information may be obtained by contacting the Lee County Division of Planning at 479-8585.

In accordance with the Americans with Disabilities Act, reasonable accommodations will be made upon request. If you are in need of a reasonable accommodation, please contact Janet Miller at 479-8583.

LEE COUNTY ORDINANCE NO. 05-____
(Consent Ordinance)

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE LAND USE PLAN, COMMONLY KNOWN AS THE "LEE PLAN" ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENTS APPROVED ON THE CONSENT AGENDA DURING THE COUNTY'S 2004/2005 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO ADOPTED TEXT, MAPS AND TABLES; PURPOSE AND SHORT TITLE; LEGAL EFFECT; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, the Lee County Comprehensive Plan (hereinafter referred to as the "Lee Plan") Policy 2.4.1 and Chapter XIII, provides for adoption of amendments to the Plan in compliance with State statutes and in accordance with administrative procedures adopted by the Board of County Commissioners; and,

WHEREAS, the Lee County Board of County Commissioners, in accordance with Section 163.3181, Florida Statutes, and Lee County Administrative Code AC-13-6 provide an opportunity for the public to participate in the plan amendment public hearing process; and,

WHEREAS, the Lee County Local Planning Agency ("LPA") held public hearings pursuant to Chapter 163, Part II, Florida Statutes, and the Lee County Administrative Code on January 24, 2005, March 28, 2005, April 25, 2005, and May 23, 2005; and,

WHEREAS, the Board of County Commissioners, pursuant to Florida Statutes and the Lee County Administrative Code held a public hearing for the transmittal of the proposed amendments on June 1, 2005. At that hearing, the Board approved a motion to send, and did later send, the proposed amendment to the Florida Department of Community Affairs ("DCA") for review and comment; and,

WHEREAS, at the transmittal hearing on June 1, 2005, 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, the Board moved to adopt the proposed amendments to the Lee Plan set forth herein during its statutorily prescribed public hearing for the plan amendments on October 12, 2005.

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

SECTION ONE: PURPOSE, INTENT AND SHORT TITLE

The Board of County Commissioners of Lee County, Florida, in compliance with Chapter 163, Part II, Florida Statutes, and with Lee County Administrative Code AC-13-6, conducted a series of public hearings to consider proposed amendments to the Lee Plan. The purpose of this ordinance is to adopt the certain amendments to the Lee Plan discussed at those meetings and approved by a majority of the Board. The short title and proper reference for the Lee County Comprehensive Land Use Plan, as amended, will continued to be the "Lee Plan." **This ordinance may be referred to as the "2004/2005 Regular Comprehensive Plan Amendment Cycle Consent Ordinance."**

SECTION TWO: ADOPTION OF LEE COUNTY'S 2004/2005 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE (Consent Agenda Items)

The Lee County Board of County Commissioners amends the existing Lee Plan, adopted by Ordinance Number 89-02, as amended, by adopting amendments, as revised by the Board of County Commissioners on October 12, 2005, known as: CPA2004-02, CPA2004-08, CPA2004-09, CPA2004-12, CPA2004-14, and CPA2004-15. The aforementioned amendments amend the text of the Lee Plan including the Future Land

Use Map series and the Lee Plan Land Use Allocation Table (Table 1b). A brief summary of the content of those amendments is set forth below:

CPA2004-02 (Estero Outdoor Display)

Amend Lee Plan Policy 19.2.5. of the Future Land Use Element to allow outdoor display in excess of one acre at the intersection of I-75 and Corkscrew Road. Sponsor: Argonaut Holdings, Inc.

CPA2004-08 (Oak Creek)

Amend the Future Land Use Map Series for a 27.25±-acre portion of land located in Section 17, Township 43 South, Range 25 East, to change the classification shown on Map 1, the Future Land Use Map, from "Rural" to "Suburban." Amend the Future Land Use Map Series for a 17.81±-acre portion of land located in Section 19, Township 43 South, Range 25 East, to change the classification shown on Map 1, the Future Land Use Map, from "Suburban" to "Rural." Sponsor: S.W. Florida Land 411, LLC.

CPA2004-09 (Captiva)

Amend Goal 13 of the Lee Plan pertaining to the Captiva Community to incorporate recommendations of the Captiva Island Community Planning effort. Amend Goal 84: Wetlands to add a new policy 84.1.4. Sponsor: BOCC.

CPA2004-12 (Boca Grande)

Amend the Future Land Use Element of the Lee Plan to incorporate recommendations of the Boca Grande Community Planning effort. Establish a new Vision Statement and a new Goal, including Objectives and Policies specific to Boca Grande. Sponsor: BOCC.

CPA2004-14 (Coastal High Hazard Area Density)

Amend the Lee Plan's Conservation and Coastal Management Element Policy 75.1.4. to consider limiting the future population exposed to coastal flooding while considering applications for rezoning in the Coastal High Hazard Area. Sponsor: BOCC

CPA2004-15 (Fort Myers Shore Table 1b Update)

Text amendment to revise the Lee Plan Land Use Allocation Table (Table 1b) for the Fort Myers Shores Planning Community to address the establishment of the Outlying Suburban Future Land Use Category within the planning community. Sponsor: BOCC

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

SECTION THREE: LEGAL EFFECT OF THE "LEE PLAN"

No public or private development will be permitted except in conformity with the Lee Plan. All land development regulations and land development orders must be consistent with the Lee Plan as amended.

SECTION FOUR: GEOGRAPHIC APPLICABILITY

The Lee Plan is applicable throughout the unincorporated area of Lee County, Florida, except in those unincorporated areas included in joint or interlocal agreements with other local governments that specifically provide otherwise.

SECTION FIVE: SEVERABILITY

The provisions of this ordinance are severable and it is the intention of the Board of County Commissioners of Lee County, Florida, to confer the whole or any part of the powers herein provided. If any of the provisions of this ordinance are held unconstitutional by a court of competent jurisdiction, the decision of that court will not affect or impair the remaining provisions of this ordinance. It is hereby declared to be the legislative intent of the Board of County Commissioners that this ordinance would have been adopted had the unconstitutional provisions not been included therein.

SECTION SIX: INCLUSION IN CODE, CODIFICATION, SCRIVENERS' ERROR

It is the intention of the Board of County Commissioners that the provisions of this ordinance will become and be made a part of the Lee County Code. Sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or other appropriate word or phrase in order to accomplish this intention; and regardless of whether inclusion in the code is accomplished, sections of this ordinance may be renumbered or relettered. The correction of typographical errors that do not affect the intent, may be authorized by the County Manager, or his or her designee, without need of public hearing, by filing a corrected or recodified copy with the Clerk of the Circuit Court.

SECTION SEVEN: EFFECTIVE DATE

The plan amendments adopted herein are not effective until a final order is issued by the DCA or Administrative Commission finding the amendment in compliance with Section 163.3184, Florida Statutes, whichever occurs earlier. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before the amendment has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made

effective by adoption of a resolution affirming its effective status. A copy of such resolution will be sent to the DCA, Bureau of Local Planning, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

THE FOREGOING ORDINANCE was offered by Commissioner _____, 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

| | |
|---|---|
| ✓ | This Document Contains the Following Reviews: |
| ✓ | 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 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> |
|---|------------------------|
| <i>0%</i> | <i>1 DU/ 10 acres</i> |
| <i>5%</i> | <i>1 DU/ 9 acres</i> |
| <i>10%</i> | <i>1 DU/ 8 acres</i> |
| <i>15%</i> | <i>1 DU/ 7 acres</i> |
| <i>20%</i> | <i>1 DU/ 6 acres</i> |
| <i>30%</i> | <i>1 DU/ 5 acres</i> |
| <i>40%</i> | <i>1 DU/ 4 acres</i> |
| <i>50%</i> | <i>1 DU/ 3 acres</i> |

| | |
|-----|---------------|
| 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> </u> AYE |
| TAMMY HALL | <u> </u> AYE |
| BOB JANES | <u> </u> AYE |
| RAY JUDAH | <u> </u> AYE |
| DOUG ST. CERNY | <u> </u> AYE |

**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

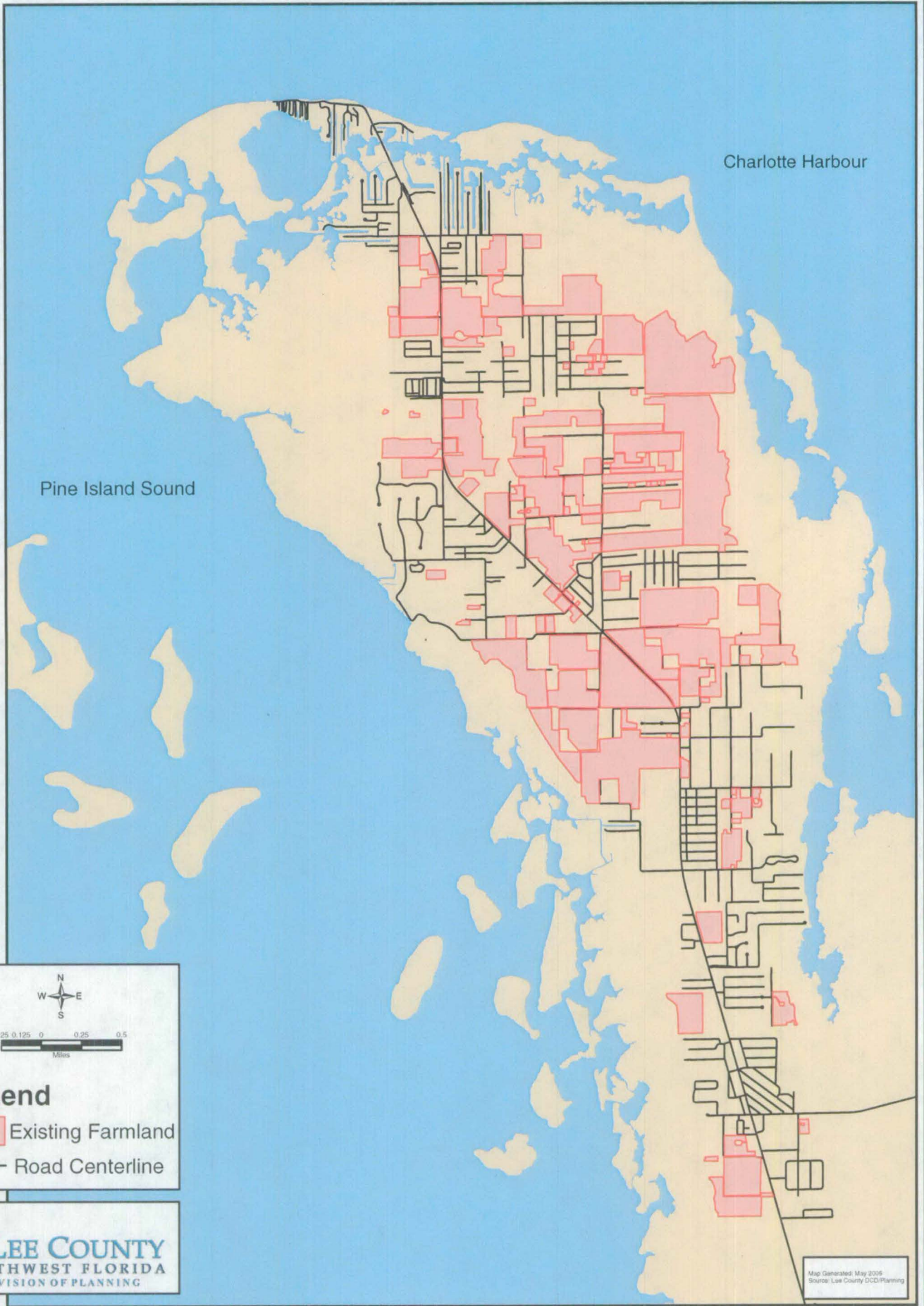
TAMMY HALL

BOB JANES

RAY JUDAH

DOUG ST. CERNY

Existing Pine Island Farmland
(Lee Plan Map 21 Page 1 of 2)





Pine Island Sound

Charlotte Harbour



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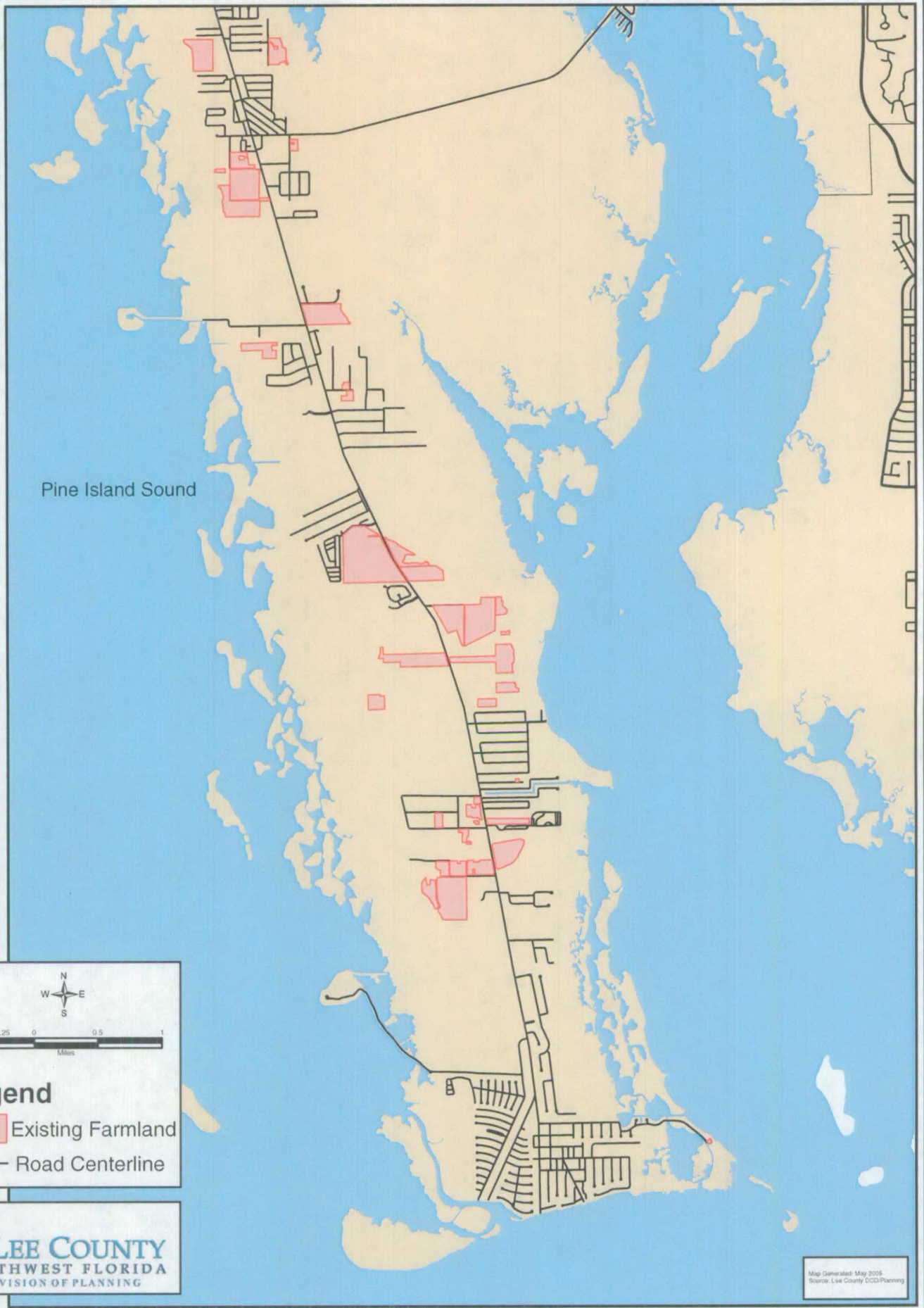
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-  Existing Farmland
-  Road Centerline

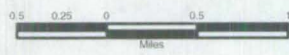


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Source: Lee County DCD/Planning



Existing Pine Island Farmland
(Lee Plan Map 21 Page 2 of 2)



Pine Island Sound



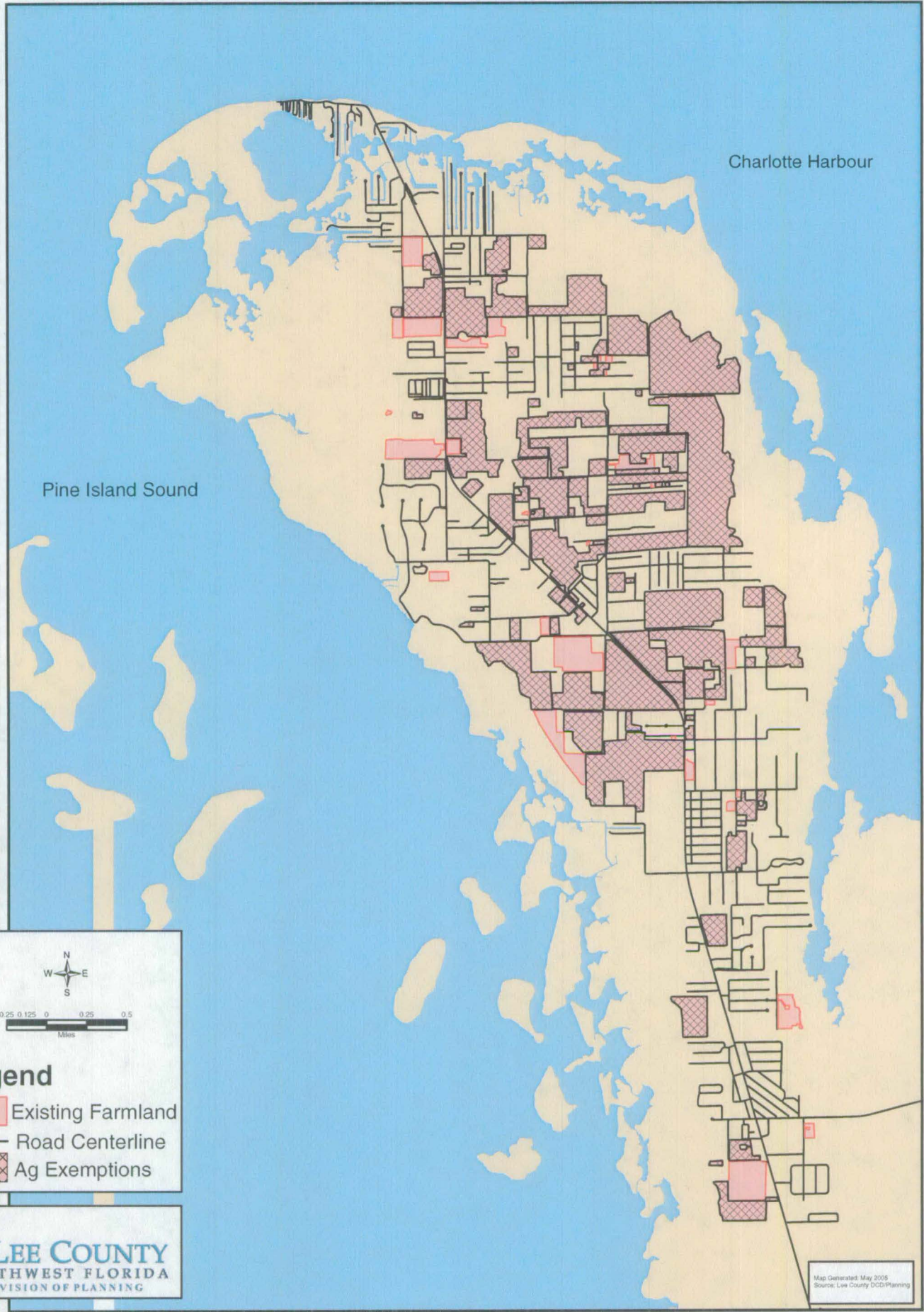
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-  Existing Farmland
-  Road Centerline



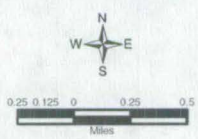
Map Generated: May 2005
Source: Lee County DCD-Planning

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






Pine Island Sound

Charlotte Harbour



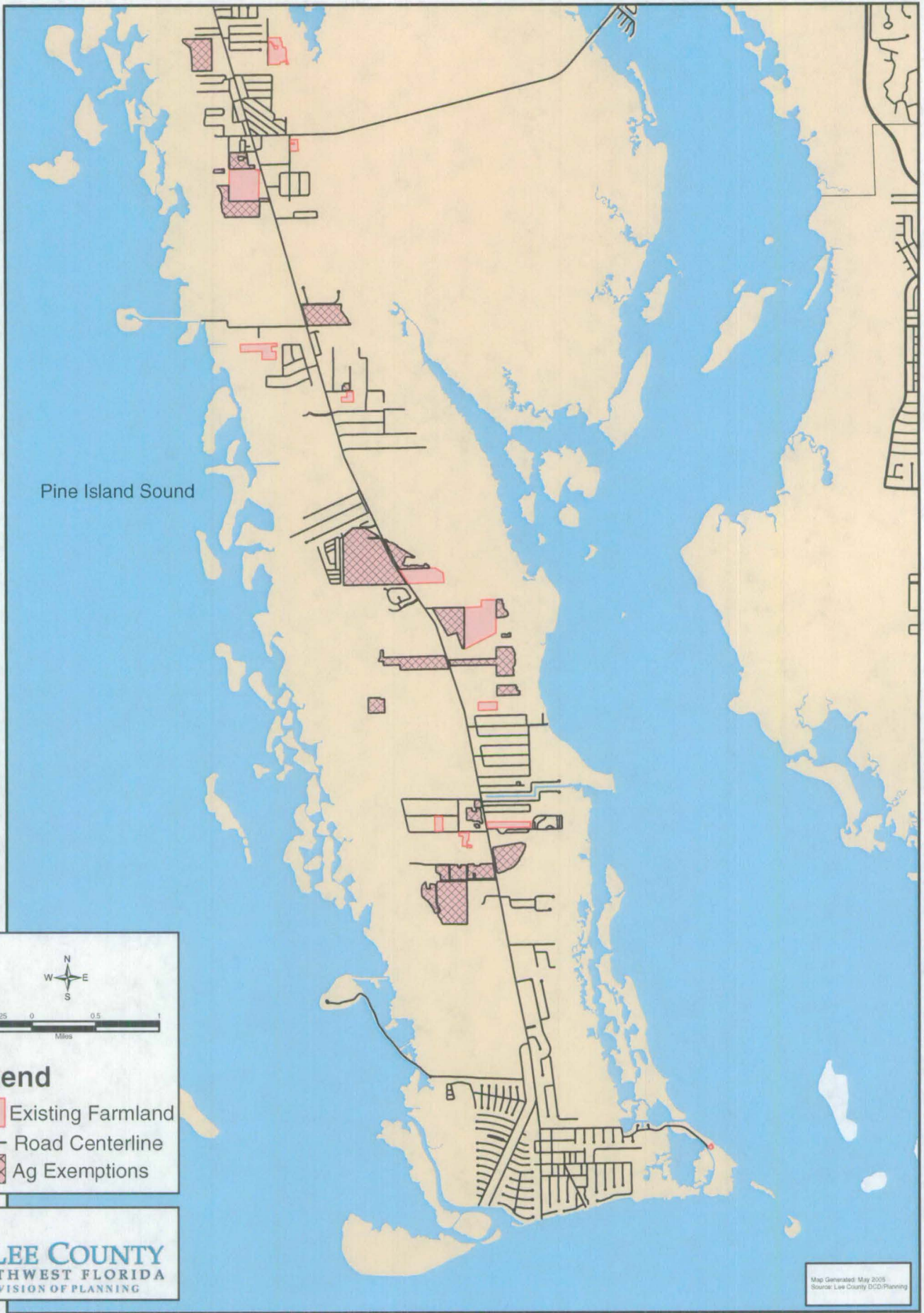
Legend

-  Existing Farmland
-  Road Centerline
-  Ag Exemptions



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




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



Pine Island Sound

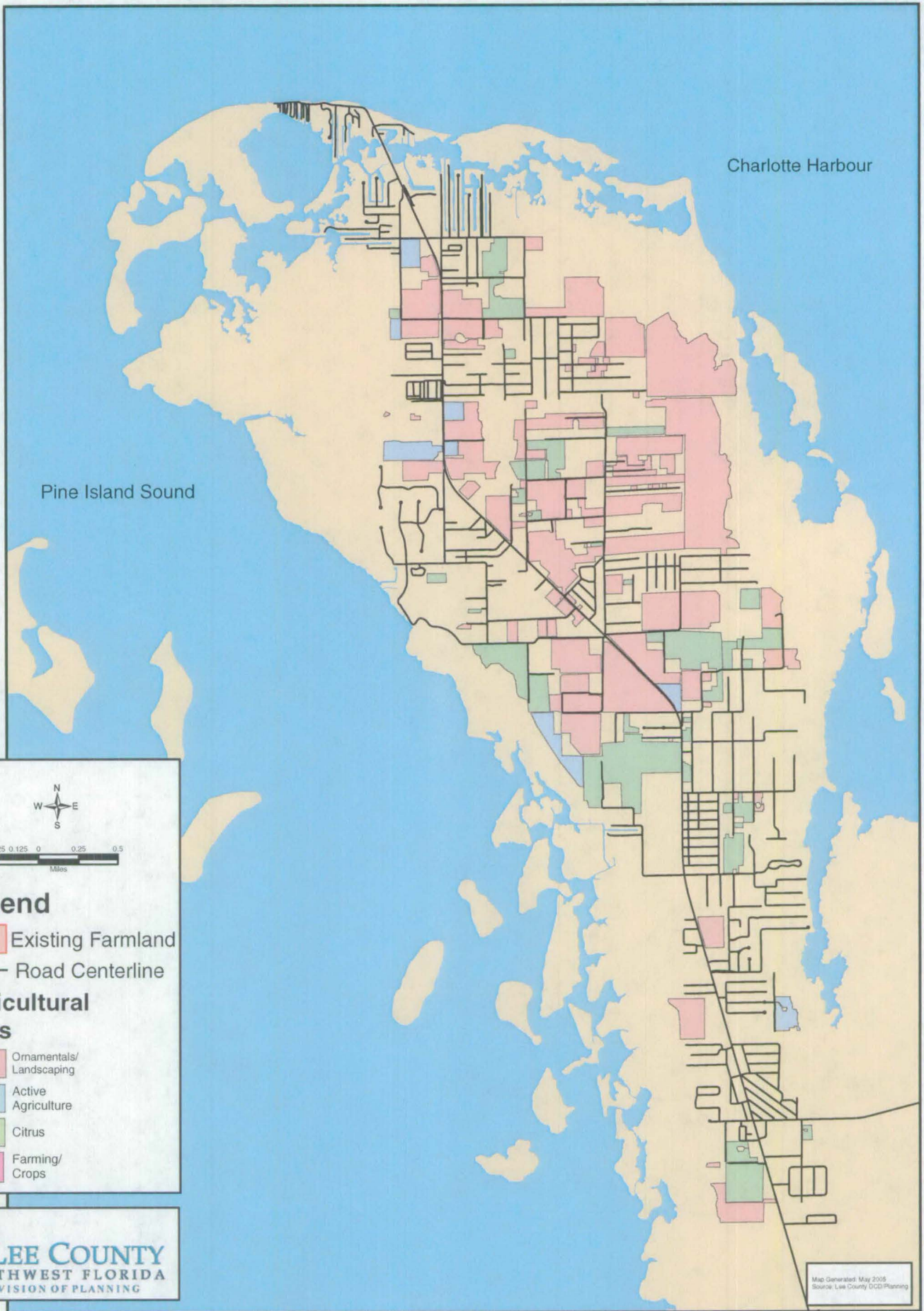


Legend

-  Existing Farmland
-  Road Centerline
-  Ag Exemptions

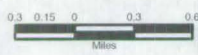


Map Generated: May 2008
Source: Lee County DCD/Planning



Existing Pine Island Farmland

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



Legend

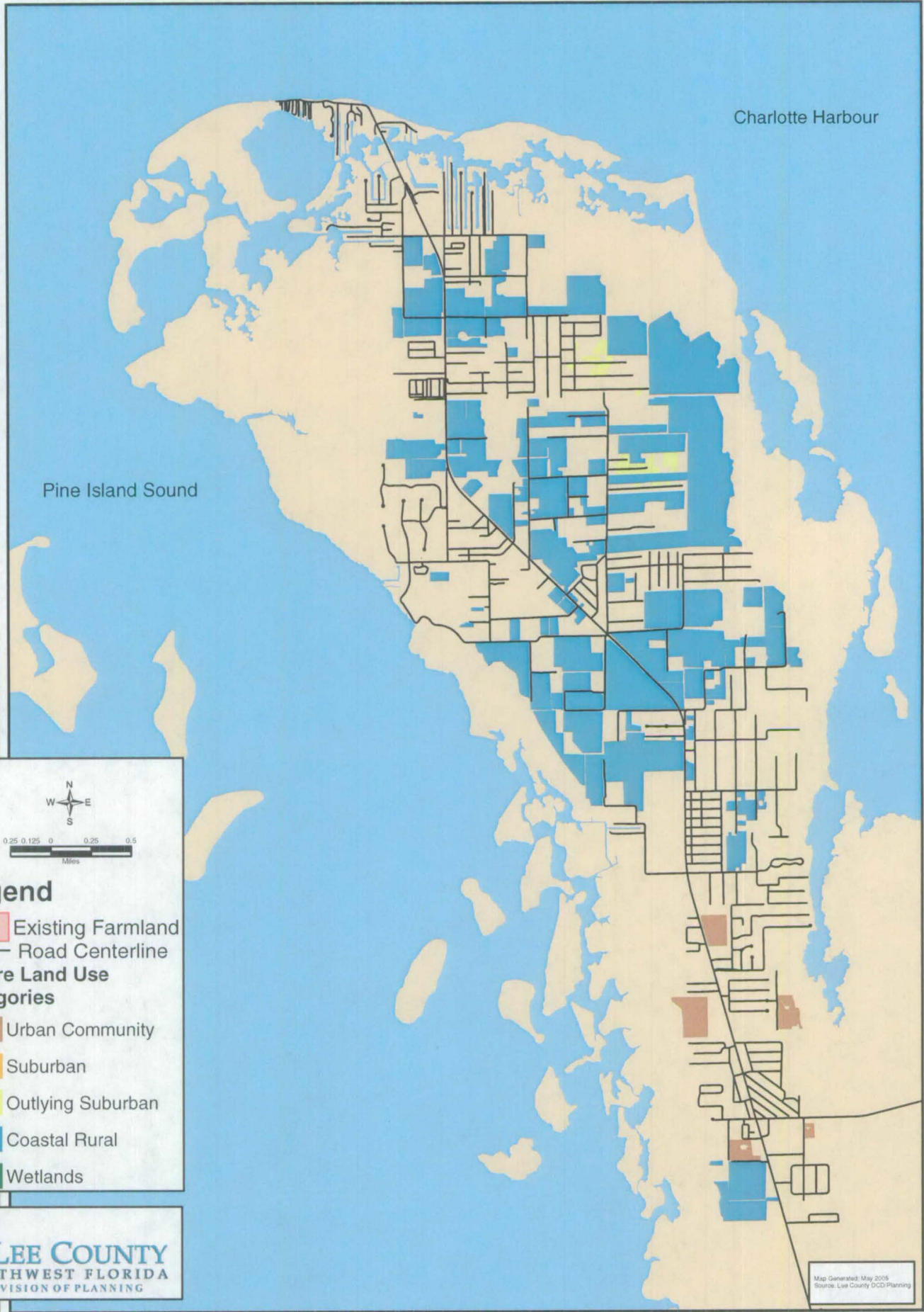
- Existing Farmland
- Road Centerline

Agricultural Uses

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

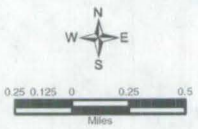


Map Generated: May 2008
Source: Lee County OCD/Planning










Pine Island Sound

Charlotte Harbour



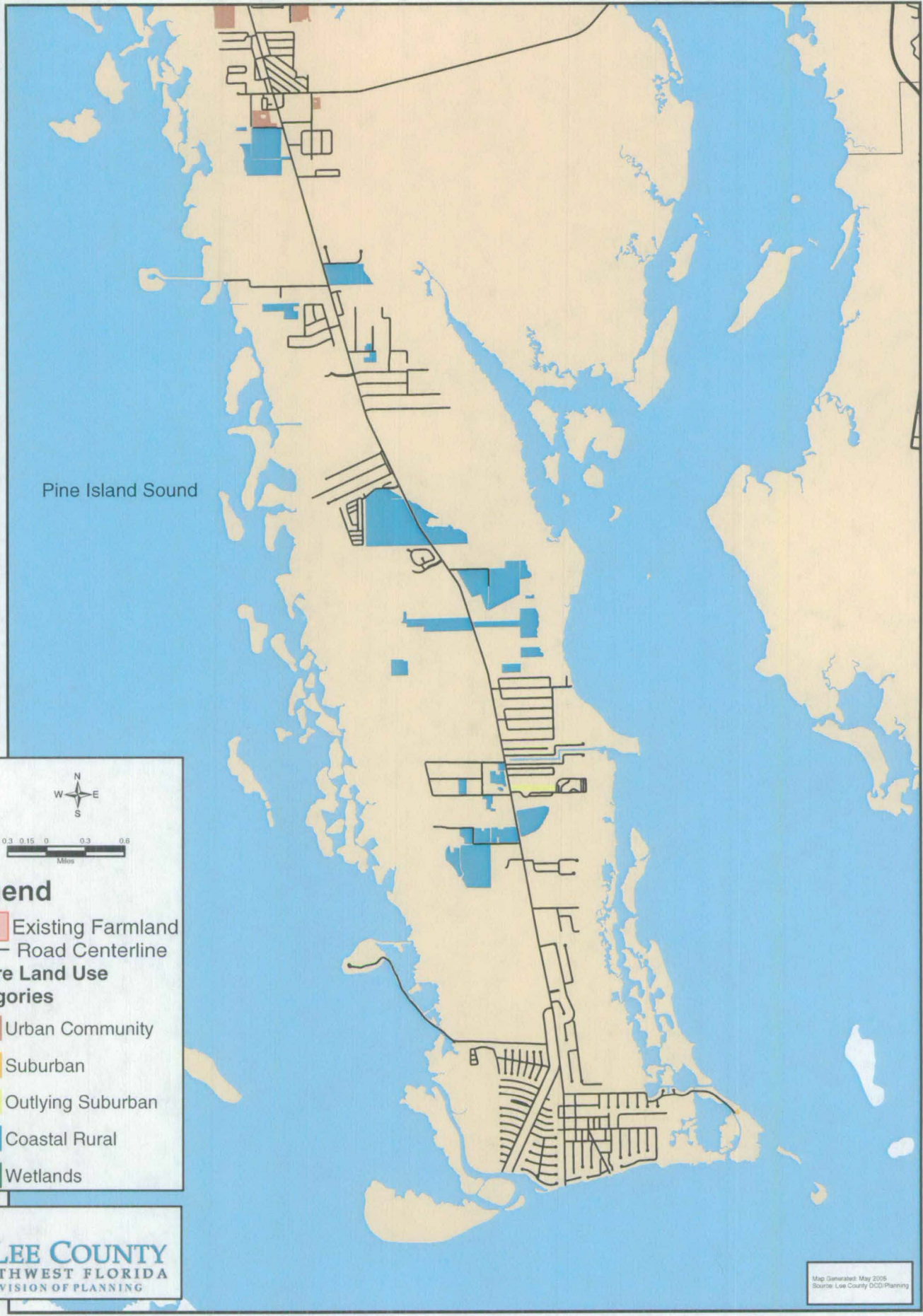
Legend

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



Map Generated: May 2006
Source: Lee County OGD/Planning

Existing Pine Island Farmland
Attachment 3 -- Future Land Use (Page 2 of 2)



Legend

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



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

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

May 20, 2005

RECEIVED
 MAY 20, 2005
 COMMUNITY DEVELOPMENT

Mr. Bill Spikowski
 1001 Alden Dr. SE
 Suite 206
 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 (*Braspalum 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 |
| • Bush 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 | \$450 |
| • Monitoring | \$75 |
| Total Estimated Cost | \$3,175 to \$4,175 |
| Total Estimated Cost with 10% Contingency | \$3,493 to \$4,593 |

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

LEE COUNTY
RECEIVED

05 OCT -4 PM 4: 19

COMM. DEV./
PUB. WRKS. CNTR.

RESPONSE TO ORC
CPA-2004-13

LEEWARD YACHT CLUB, LLC responds to DCA's Objections to CPA 2004-13 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."

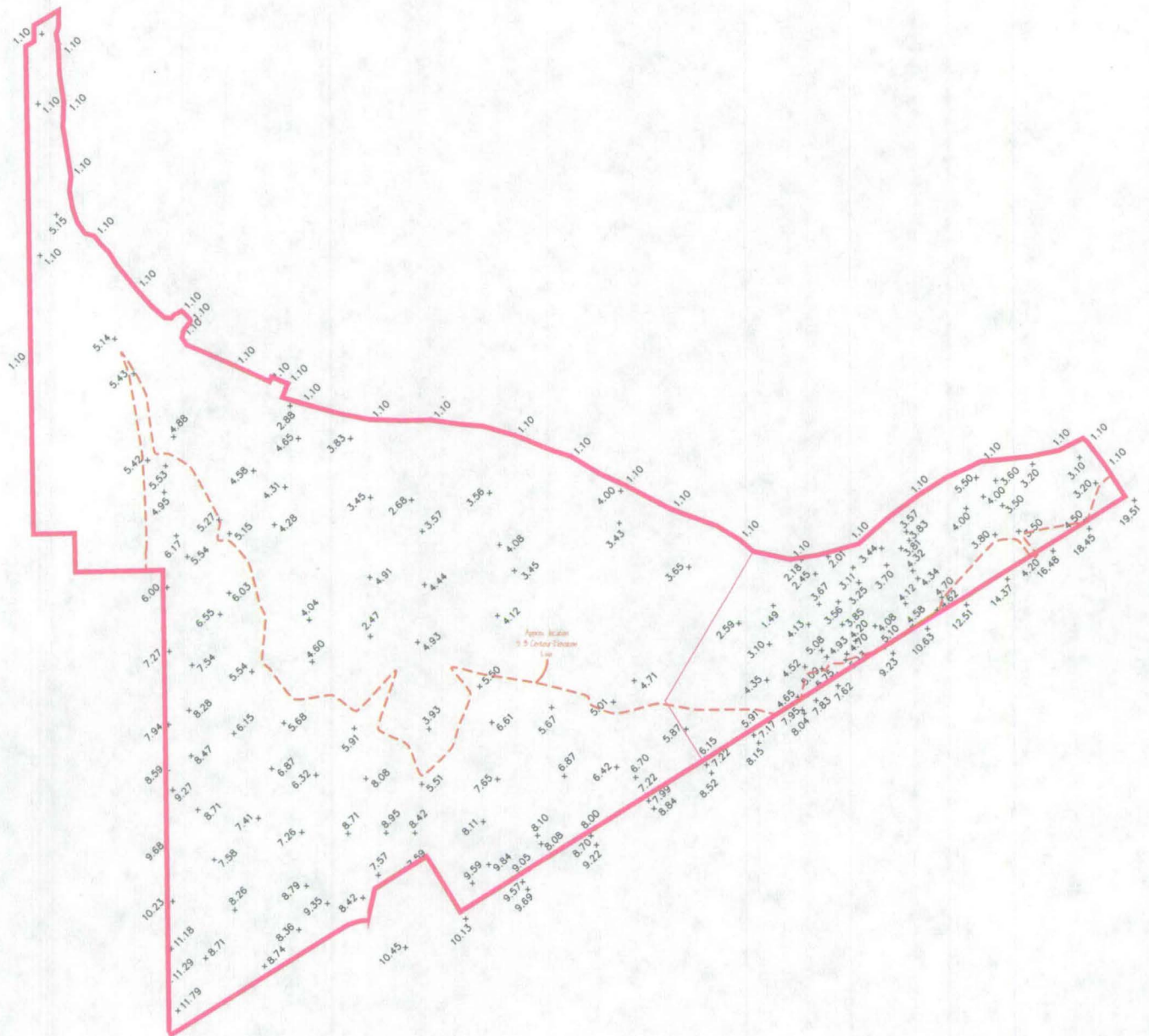
Response: The statutes and rules cited at the end of the Objection (text included as Exhibits "E" and "F") do not contain any absolute prohibition against density increases in the CHHA. The facts and circumstances of this particular case warrant approval of the residential use. The facts include the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



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 F.L.U.M. AMENDMENT EXHIBIT
 EXHIBIT 1B

PROJECT NO. 2003.051 - B

DECEMBER, 2003



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 three buildings and docks on site.

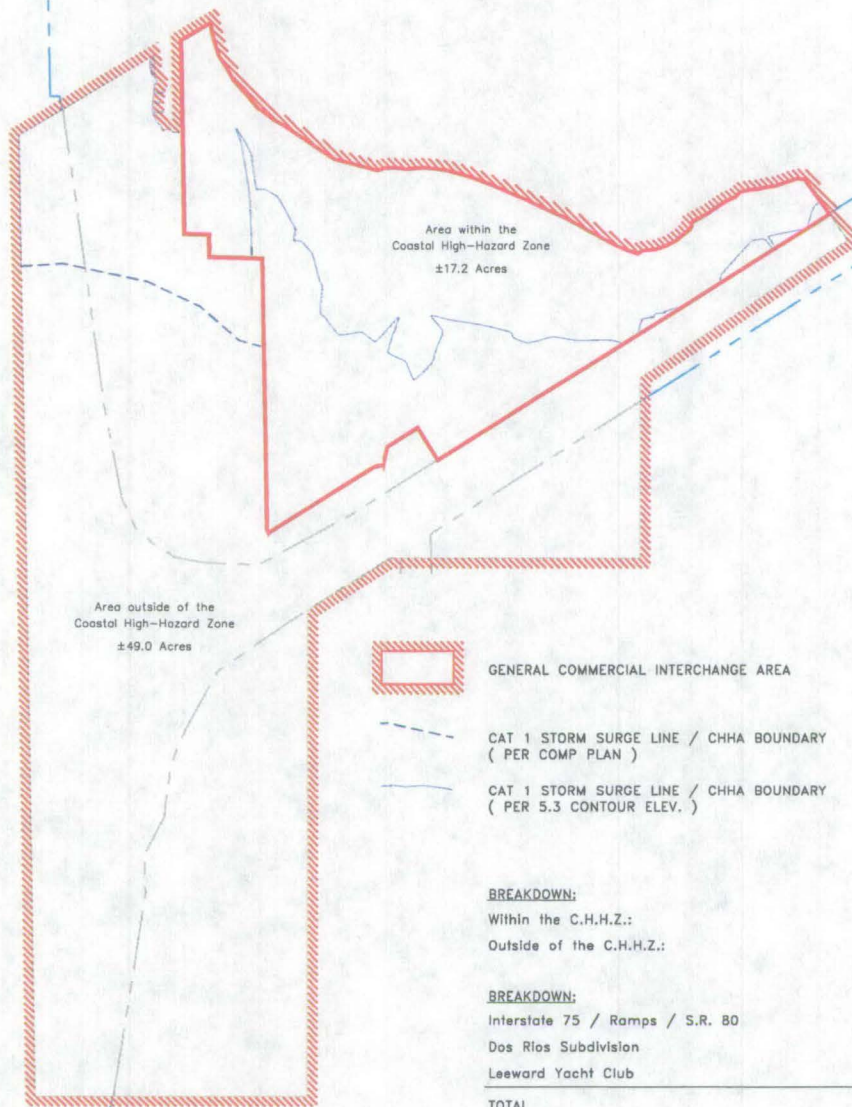
1995- No name Winter Storm, this storm produce record levels of water due to high western quadrant winds over 60 miles for a long period of time. Water levels rose to approx. 3.5 feet over normal tide.




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 reach 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* produce 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"



| | | |
|---|---|------------------|
|  | GENERAL COMMERCIAL INTERCHANGE AREA | ±66.2 Ac. |
|  | CAT 1 STORM SURGE LINE / CHHA BOUNDARY (PER COMP PLAN) | |
|  | CAT 1 STORM SURGE LINE / CHHA BOUNDARY (PER 5.3 CONTOUR ELEV.) | |
| BREAKDOWN: | | |
| | Within the C.H.H.Z.: | ±17.2 Ac. |
| | Outside of the C.H.H.Z.: | ±49.0 Ac. |
| BREAKDOWN: | | |
| | Interstate 75 / Ramps / S.R. 80 | ± 1.2 Ac. |
| | Dos Rios Subdivision | ± 4.1 Ac. |
| | Leeward Yacht Club | ±11.9 Ac. |
| | TOTAL | ±17.2 Ac. |

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)



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