

Bonita Beach Road RPD

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COMMUNITY DEVELOPMENT

Application for Comprehensive Plan Amendment

Prepared for:
Beach Road Development Company, LLC
3461 Bonita Bay Boulevard
Bonita Springs, FL 34134-4395

Prepared by:
Vanasse & Daylor, LLP
12730 New Brittany Blvd.
Ste. 600
Fort Myers, FL 33907

Submitted:
February 22, 2001

2001-00001

**APPLICATION FOR A
COMPREHENSIVE PLAN AMENDMENT**

(To be completed at time of intake)

DATE REC'D: _____ REC'D BY: _____
APPLICATION FEE: _____ TIDEMARK NO: _____

THE FOLLOWING VERIFIED:

Zoning ☐ Commissioner District ☐
Designation on FLUM ☐

(To be completed by Planning Staff)

Plan Amendment Cycle: ☐ Normal ☐ Small Scale ☐ DRI ☐ Emergency

Request No: _____

APPLICANT PLEASE NOTE:

Answer all questions completely and accurately. Please print or type responses. If additional space is needed, number and attach additional sheets. The total number of sheets in your application is: _____

Submit 6 copies of the complete application and amendment support documentation, including maps, to the Lee County Division of Planning. Additional copies may be required for Local Planning Agency, Board of County Commissioners hearings and the Department of Community Affairs' packages.

I, the undersigned owner or authorized representative, hereby submit this application and the attached amendment support documentation. The information and documents provided are complete and accurate to the best of my knowledge.

2/21/01
DATE


SIGNATURE OF OWNER OR AUTHORIZED REPRESENTATIVE

I. APPLICANT/AGENT/OWNER INFORMATION

Beach Road Development Company, LLC
APPLICANT

3451 Bonita Bay Blvd., Suite 202
ADDRESS

Bonita Springs FL 34134-4395
CITY STATE ZIP

(941) 495-1000 (941) 498-1193
TELEPHONE NUMBER FAX NUMBER

See attached list
AGENT*

ADDRESS

CITY STATE ZIP

TELEPHONE NUMBER FAX NUMBER

See attached list
OWNER(s) OF RECORD

ADDRESS

CITY STATE ZIP

TELEPHONE NUMBER FAX NUMBER

Name, address and qualification of additional planners, architects, engineers, environmental consultants, and other professionals providing information contained in this application.

* This will be the person contacted for all business relative to the application.

II. REQUESTED CHANGE (Please see Item 1 for Fee Schedule)

A. TYPE: (Check appropriate type)

☒ Text Amendment

☐ Future Land Use Map Series Amendment
(Maps 1 thru 19)
List Number(s) of Map(s) to be amended

B. SUMMARY OF REQUEST (Brief explanation):

The applicant is requesting an amendment to the 2020
overlay Residential Acre Allocation Table to provide sufficient
allocations to accomodate the proposed residential component of
the Bonita Beach Road RPD.

III. PROPERTY SIZE AND LOCATION OF AFFECTED PROPERTY
(for amendments affecting development potential of property)

A. Property Location:

1. Site Address: 16350 Bonita Beach Road SE
2. STRAP(s): 1-48-26-00-00001.0000, 2-48-26-00-00001.0000,
2-48-26-00-00001.1000

B. Property Information

Total Acreage of Property: 1,298.23

Total Acreage included in Request: 1,298.23

Area of each Existing Future Land Use Category: Rural 1,298.23

Total Uplands: 1,151.23

Total Wetlands: 147

Current Zoning: AG-2

Current Future Land Use Designation: Rural

Existing Land Use: Agriculture, Vacant

- C. State if the subject property is located in one of the following areas and if so how does the proposed change effect the area:

Lehigh Acres Commercial Overlay: N/A

Airport Noise Zone 2 or 3: N/A

Acquisition Area: N/A

Joint Planning Agreement Area (adjoining other jurisdictional lands): N/A

Community Redevelopment Area: N/A

- D. Proposed change for the Subject Property:

2020 Overlay

- E. Potential development of the subject property:

1. Calculation of maximum allowable development under existing FLUM:

Residential Units/Density 1 du/acre

Commercial intensity N/A

Industrial intensity N/A

2. Calculation of maximum allowable development under proposed FLUM:

Residential Units/Density N/A

Commercial intensity N/A

Industrial intensity N/A

IV. AMENDMENT SUPPORT DOCUMENTATION

At a minimum, the application shall include the following support data and analysis. These items are based on comprehensive plan amendment submittal requirements of the State of Florida, Department of Community Affairs, and policies contained in the Lee County Comprehensive Plan. Support documentation provided by the applicant will be used by staff as a basis for evaluating this request. To assist in the preparation of amendment packets, the applicant is encouraged to provide all data and analysis electronically. (Please contact the Division of Planning for currently accepted formats)

A. General Information and Maps

NOTE: For each map submitted, the applicant will be required to provide a reduced map (8.5" x 11") for inclusion in public hearing packets.

The following pertains to all proposed amendments that will affect the development potential of properties (unless otherwise specified).

1. Provide any proposed text changes.
2. Provide a Future Land Use Map showing the boundaries of the subject property, surrounding street network, surrounding designated future land uses, and natural resources.
3. Map and describe existing land uses (not designations) of the subject property and surrounding properties. Description should discuss consistency of current uses with the proposed changes.
4. Map and describe existing zoning of the subject property and surrounding properties.
5. The legal description(s) for the property subject to the requested change.
6. A copy of the deed(s) for the property subject to the requested change.
7. An aerial map showing the subject property and surrounding properties.
8. If applicant is not the owner, a letter from the owner of the property authorizing the applicant to represent the owner.

B. Public Facilities Impacts

NOTE: The applicant must calculate public facilities impacts based on a maximum development scenario (see Part II.H.).

1. Traffic Circulation Analysis

The analysis is intended to determine the effect of the land use change on the Financially Feasible Transportation Plan/Map 3A (20-year horizon) and on the Capital Improvements Element (5-year horizon). Toward that end, an applicant must submit the following information:

Long Range – 20-year Horizon:

- a. Working with Planning Division staff, identify the traffic analysis zone (TAZ) or zones that the subject property is in and the socio-economic data forecasts for that zone or zones;

- b. Determine whether the requested change requires a modification to the socio-economic data forecasts for the host zone or zones. The land uses for the proposed change should be expressed in the same format as the socio-economic forecasts (number of units by type/number of employees by type/etc.);
- c. If no modification of the forecasts is required, then no further analysis for the long range horizon is necessary. If modification is required, make the change and provide to Planning Division staff, for forwarding to DOT staff. DOT staff will rerun the FSUTMS model on the current adopted Financially Feasible Plan network and determine whether network modifications are necessary, based on a review of projected roadway conditions within a 3-mile radius of the site;
- d. If no modifications to the network are required, then no further analysis for the long range horizon is necessary. If modifications are necessary, DOT staff will determine the scope and cost of those modifications and the effect on the financial feasibility of the plan;
- e. An inability to accommodate the necessary modifications within the financially feasible limits of the plan will be a basis for denial of the requested land use change;
- f. If the proposal is based on a specific development plan, then the site plan should indicate how facilities from the current adopted Financially Feasible Plan and/or the Official Trafficways Map will be accommodated.

Short Range – 5-year CIP horizon:

- a. Besides the 20-year analysis, for those plan amendment proposals that include a specific and immediated development plan, identify the existing roadways serving the site and within a 3-mile radius (indicate laneage, functional classification, current LOS, and LOS standard);
 - b. Identify the major road improvements within the 3-mile study area funded through the construction phase in adopted CIP's (County or Cities) and the State's adopted Five-Year Work Program;
- Projected 2020 LOS under proposed designation (calculate anticipated number of trips and distribution on roadway network, and identify resulting changes to the projected LOS);
- c. For the five-year horizon, identify the projected roadway conditions (volumes and levels of service) on the roads within the 3-mile study area with the programmed improvements in place, with and without the proposed development project. A methodology meeting with DOT staff prior to submittal is required to reach agreement on the projection methodology;
 - d. Identify the additional improvements needed on the network beyond those programmed in the five-year horizon due to the development proposal.

2. Provide an existing and future conditions analysis for:

- a. Sanitary Sewer
- b. Potable Water
- c. Surface Water/Drainage Basins
- d. Parks, Recreation, and Open Space.

Analysis should include (but is not limited to) the following:

- Franchise Area, Basin, or District in which the property is located;
- Current LOS, and LOS standard of facilities serving the site;
- Projected 2020 LOS under existing designation;
- Projected 2020 LOS under proposed designation;
- Improvements/expansions currently programmed in 5 year CIP, 6-10 year CIP, and long range improvements; and
- Anticipated revisions to the Community Facilities and Services Element and/or Capital Improvements Element (state if these revisions are included in this amendment).

3. Provide a letter from the appropriate agency determining the adequacy/provision of existing/proposed support facilities, including:

- a. Fire protection with adequate response times;
- b. Emergency medical service (EMS) provisions;
- c. Law enforcement;
- c. Solid Waste;
- d. Mass Transit; and
- e. Schools.

In reference to above, the applicant should supply the responding agency with the information from Section's II and III for their evaluation. This application should include the applicant's correspondence to the responding agency.

C. Environmental Impacts

Provide an overall analysis of the character of the subject property and surrounding properties, and assess the site's suitability for the proposed use upon the following:

1. A map of the Plant Communities as defined by the Florida Land Use Cover and Classification system (FLUCCS).
2. A map and description of the soils found on the property (identify the source of the information).
3. A topographic map with property boundaries and 100-year flood prone areas

indicated (as identified by FEMA).

4. A map delineating wetlands, aquifer recharge areas, and rare & unique uplands.
5. A table of plant communities by FLUCCS with the potential to contain species (plant and animal) listed by federal, state or local agencies as endangered, threatened or species of special concern. The table must include the listed species by FLUCCS and the species status (same as FLUCCS map).

D. Impacts on Historic Resources

List all historic resources (including structure, districts, and/or archeologically sensitive areas) and provide an analysis of the proposed change's impact on these resources. The following should be included with the analysis:

1. A map of any historic districts and/or sites, listed on the Florida Master Site File, which are located on the subject property or adjacent properties.
2. A map showing the subject property location on the archeological sensitivity map for Lee County.

E. Internal Consistency with the Lee Plan

1. Discuss how the proposal affects established Lee County population projections, Table 1(b) (Planning Community Year 2020 Allocations), and the total population capacity of the Lee Plan Future Land Use Map.
2. List all goals and objectives of the Lee Plan that are affected by the proposed amendment. This analysis should include an evaluation of all relevant policies under each goal and objective.
3. Describe how the proposal affects adjacent local governments and their comprehensive plans.
4. List State Policy Plan and Regional Policy Plan goals and policies which are relevant to this plan amendment.

F. Additional Requirements for Specific Future Land Use Amendments

1. Requests involving Industrial and/or categories targeted by the Lee Plan as employment centers (to or from)
 - a. State whether the site is accessible to arterial roadways, rail lines, and cargo airport terminals,
 - b. Provide data and analysis required by Policy 2.4.4,

- c. The affect of the proposed change on county's industrial employment goal specifically policy 7.1.4.
2. Requests moving lands from a Non-Urban Area to a Future Urban Area
 - a. Demonstrate why the proposed change does not constitute Urban Sprawl. Indicators of sprawl may include, but are not limited to: low-intensity, low-density, or single-use development; 'leap-frog' type development; radial, strip, isolated or ribbon pattern type development; a failure to protect or conserve natural resources or agricultural land; limited accessibility; the loss of large amounts of functional open space; and the installation of costly and duplicative infrastructure when opportunities for infill and redevelopment exist.
 3. Requests involving lands in critical areas for future water supply must be evaluated based on policy 2.4.2.
 4. Requests moving lands from Density Reduction/Groundwater Resource must fully address Policy 2.4.3 of the Lee Plan Future Land Use Element.
- G. Justify the proposed amendment based upon sound planning principles. Be sure to support all conclusions made in this justification with adequate data and analysis.

Item 1: Fee Schedule

| | |
|--------------------------|---|
| Map Amendment Flat Fee | \$500.00 each |
| Map Amendment > 20 Acres | \$500.00 and \$20.00 per 10 acres up to a maximum of \$2,255.00 |
| Text Amendment Flat Fee | \$1,250.00 each |

AFFIDAVIT

I, Mitchel Hutchcraft, certify that I am the owner or authorized representative of the property described herein, and that all answers to the questions in this application, and any sketches, data, or other supplementary matter attached to and made a part of this application, are honest and true to the best of my knowledge and belief. I also authorize the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made through this application.

Signature of owner or owner-authorized agent

Date

Typed or printed name

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was certified and subscribed before me this _____ day of _____ 19____,
by _____, who is personally known to me or who has produced
_____ as identification.

(SEAL)

Signature of notary public

Printed name of notary public

2020 Overlay Text Amendment Amendment Support Documentation

For East Bonita Beach Road property

Increasing the Available Residential Allocations Sufficient to Accommodate the Proposed Development

IV. AMENDMENT SUPPORT DOCUMENTATION:

A. General Information and Maps:

A.1. Provide any proposed text changes:

The applicant is requesting an amendment to the 2020 Overlay to increase the number of available residential acres, as reflected on Table 1(b.). A copy of the proposed Table is presented below.

Revised Table 1 (b.): 2020 Residential Allocations – Bonita Springs Planning Community

| Residential Use by Future Land Use Category | Acreage | | |
|---|--------------------------|--------------|--------------|
| | Allocation for Year 2020 | Existing | Available |
| Central Urban | 239 | 147 | 92 |
| Urban Community | 3,922 | 3,481 | 441 |
| Suburban | 530 | 324 | 206 |
| Outlying Suburban | 1,806 | 659 | 1,147 |
| Industrial Development | 15 | 21 | -6 |
| General Interchange | 29 | 37 | -8 |
| Rural | 1,037 | 638 | 399 |
| Wetlands | 30 | 52 | -22 |
| Total Residential | 7,608 | 5,359 | 2,263 |

Source: <http://www.lee.fl.us/dcd/ComprehensivePlanning/PlanningCommunities/pconita.htm>

See Section G of the Amendment Support Documentation for a detailed analysis of the proposed revisions to Table 1(b.)

A.2. Future Land Use Map:

While no amendment to the FLUM, densities or permitted uses are being requested, a copy of the Future Land Use Map showing the boundaries of the subject property, surrounding street network, surrounding future land use map designations, and natural resources is attached as Exhibit A.2.

A.3 Existing Land Use Map:

A map depicting the existing land uses on a recent aerial is attached as Exhibit A.3. The proposed 2020 Overlay amendment will not change the permitted land uses or maximum densities or intensities. The Amendment is being requested to accommodate

a proposed Residential Planned Development. The consistency of the proposed Planned Development with the adjacent uses are discussed in detail in the Planned Development Application, which has been submitted concurrent with this application.

Consistency:

The existing land use of the subject property is vacant, with approximately 74% of the subject property being used for agricultural activities – primarily truck farming. Both the subject property and adjacent properties are currently zoned as agricultural, but the property to the west of the subject property is currently being evaluated for approval as an RPD/CPD. The properties to the north contain scattered low density residential, and the property to the east and south are undeveloped and in government control.

The proposed development program will result in a mixture of residential types, significant recreational areas, open space and some community facilities uses, including some limited, ancillary commercial uses. The project may provide a variety of non-golf amenities, including a comprehensive trail system, tennis area, recreation center and other community facilities.

All of the uses within the project have been sensitively located to ensure compatibility with adjacent neighbors, as has been extensively detailed in the Bonita Beach Road DRI ADA application. This is particularly true along the southern and eastern project boundaries, where buffers have been provided in compliance with the Final Order and Lee Plan Policy 1.4.1. Further, a preserve area is being retained along the southern property line to provide even greater compatibility with the natural areas to the south of the subject property. All uses, densities and intensities are consistent with the existing comprehensive plan and surrounding uses. A copy of the Final Order is attached to further document compliance.

Because the proposed use is consistent with the existing Rural land use category, and no modifications are being requested in the FLUM, land uses or maximum permitted densities, there is not a consistency issue associated with this request.




















Exhibit A.2

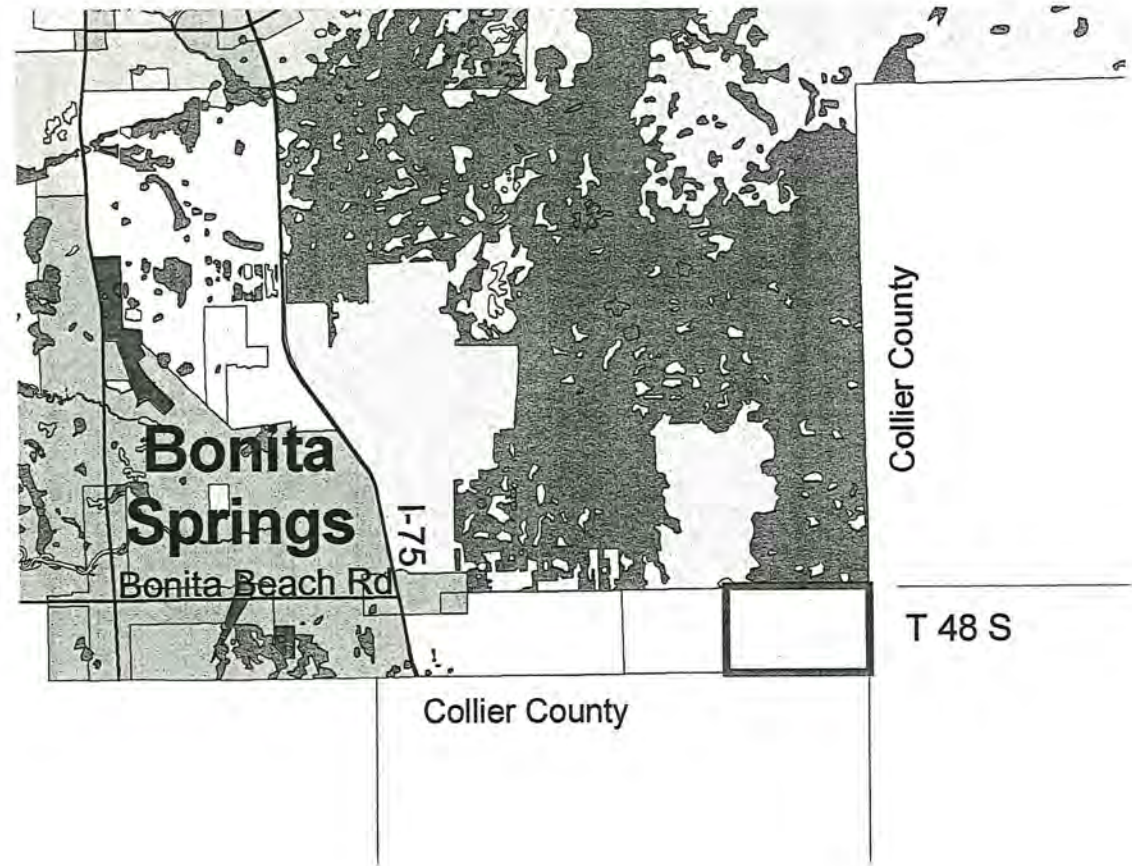
Lee County, Florida

Future Land Use Map

LEGEND

FUTURE LAND USE CATEGORIES

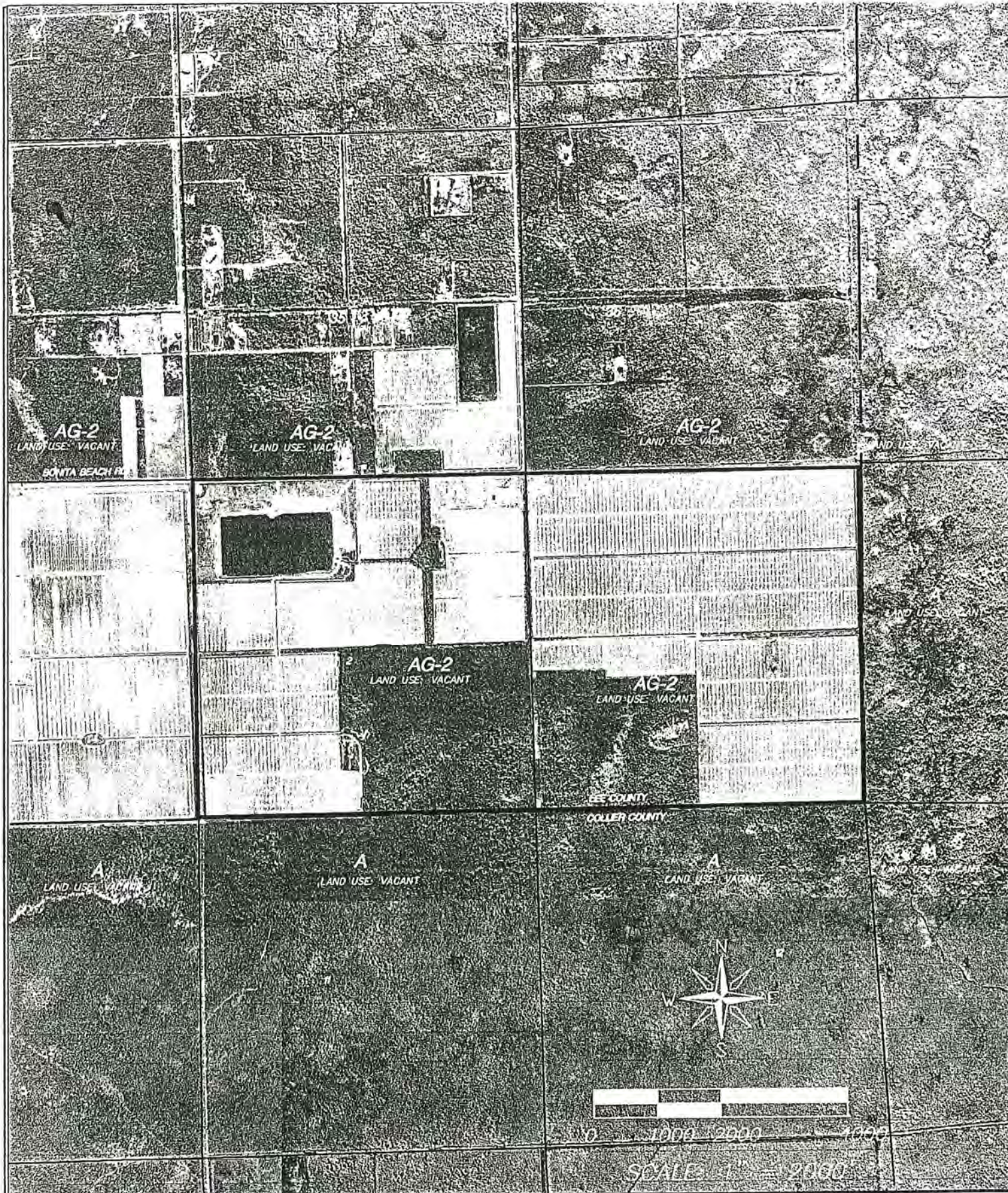
-  INTENSIVE DEVELOPMENT
-  CENTRAL URBAN
-  URBAN COMMUNITY
-  SUBURBAN
-  OUTLYING SUBURBAN
-  INDUSTRIAL DEVELOPMENT
-  PUBLIC FACILITIES
-  UNIVERSITY COMMUNITY
-  INDUSTRIAL/INTERCHANGE AREAS
-  UNIVERSITY VILLAGE
-  NEW COMMUNITY
-  AIRPORT COMMERCE
-  AIRPORT
-  RURAL
-  RURAL COMMUNITY PRESERVE
-  OUTER ISLANDS
-  OPEN LANDS
-  DRGR
-  WETLANDS



Vanasse & Daylor, LLP

February 2001

Data Source: Lee County GIS & Lee County Future Land Use Map
 Note: This map is for planning purposes only, based on available data at time of mapping. It is the end users responsibility to verify the data.



A.4. Existing Zoning:

A map depicting the existing zoning of the subject property and surrounding properties is attached as Exhibit A.3. A summary of the adjacent zoning is presented below:

| Zoning: | | Land Use: |
|---------|---------------------|--|
| North: | AG-2 | Future Bonita Beach Road Extension, Vacant Land |
| South: | A (Agriculture) | CREW Preserve, Collier County |
| East: | A (Agriculture) | CREW Preserve, Collier County |
| West: | AG-2 (RPD Proposed) | Agricultural (proposed Golf Course Community) |

A.5. Legal Description:

ALL OF SECTIONS 1 AND 2 TOWNSHIP 48 SOUTH RANGE 26 EAST LEE COUNTY FLORIDA;

CONTAINING 1298.2 ACRES OF LAND MORE OR LESS; SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD;

A.6. Deeds:

The developers of the subject property are contract purchasers. Copies of the ownership information on the applicable parcels have been provided in the appendix.

A.7. Aerial Map

An aerial map is integrated into Exhibit A.3, which also depicts the current zoning and existing land uses.

A.8. Authorization:

Authorizations forms are attached.

B. Public Facilities Impacts:

B.1. Traffic Circulation Analysis:

A detailed traffic impact statement has been submitted as part of the East Bonita Beach Road Residential Planned Development application and the DRI TIS. Prior to the use of any of the amended 2020 Overlay Allocations, the project will have to demonstrate that the project is consistent with the Lee Plan, as well as demonstrating Traffic concurrency. The project must be consistent with the transportation concurrency regulations at both the zoning and development order review phases.

B.2 Project Infrastructure:

a. Sanitary Sewer Analysis:

Water and Sewer service is being provided through cooperation between Bonita Springs Utilities and the applicant. This effort will be coordinated through the projects Community Development District, or other appropriate entity, in compliance with the Privately Funded Infrastructure Overlay designation on this property. A letter of willingness to provide service has been obtained from BSU.

Because the amendment does not result in an increase in land use density or intensity, and because there are coordinated activities sufficient to ensure adequate infrastructure to accommodate the proposed Bonita Beach Road RPD, no additional documentation is necessary to accommodate this amendment. Similarly, this amendment will not require any revisions to the sanitary sewer sub-element or CIE.

b. Potable Water Analysis:

No improvements in the system will be required that require amendments to the potable water sub-element or CIE will be required.

c. Drainage/Surface Water Management Analysis:

The proposed surface water management system is designed to mimic the function of the natural system. This is achieved by the integration of littoral zones, provision of flow ways designed in conjunction with the water management district, the integration of natural features into the surface water management plan. This is particularly evident in the southern portion of the site where the water management system will ultimately connect with the existing wetland system as part of the projects outfall.

The proposed project will require approval from SFWMD and also compliance with Lee County's Level of Service Policy 70.1.3 for storm water management facilities. This amendment will not require any revisions to the surface water management sub-element or to the CIE.

d. Parks/Recreation/Open Space Analysis:

The project will comply with Lee Plan standards (particularly Policy 1.4.1(a)(2)), and no changes to the Lee Plan or FLUM are being requested that would change that commitment. To that end, a minimum of 40% of the property shall be allocated to Open Space. This may include natural areas, buffers, lakes, parks, golf courses, nature trails, retention areas, conservation areas, scenic resources, green belts, wetlands and other similar areas. By applying the required 40% open space requirement to the 1,298 gross acres, a minimum of 519.2 acres must be in open space. Of the required 519.2 acres, golf course fairways shall account for no more than 50% (259.6 acres) of the required open space. The project is proposing to provide well in excess of 519.2 acres of open space. Based on this calculation, the proposed project is consistent with this provision.

The proposed amendment will not increase the permitted density over what is currently allowed. Further, the proposed project's internal recreational amenities will more than off-set any recreational demand created by this project. For this reason, the project will comply with the required "Desired" Level of Service Standard. Therefore, no amendments to the Parks and Open Space or CIE element are required.

B.3. Letters of Willingness to Provide Service:

a. Fire Protection with Adequate Response Times:

The subject property is located in the Bonita Springs Fire District, and is within 6 miles of the existing fire station. A new fire station is currently being proposed closer to the site along Bonita Grand Road that will improve service to this area. A letter from the Bonita Springs Fire District has been requested.

b. Emergency Medical Service:

The subject property is located in the Bonita Springs Fire District, and is located within approximately six miles from the nearest EMS Station. A letter from Lee County's EMS Program Manager is attached in Appendix B3.

c. Law Enforcement:

The subject property is located in Unincorporated Lee County where the Lee County Sheriff's Office provides law enforcement. A letter of willingness to provide service has been requested.

d. Solid Waste:

Lee County began operation of the Waste-to-Energy Facility on August 24, 1994. All combustible waste is sent to this facility. The remaining residue is transported to the Gulf Coast Landfill on State Road 82.

The Gulf Coast Landfill will continue to receive construction and demolition material for the next 3–4 years, after which time, the Lee/Hendry Disposal Facility will be available for use in the year 2002.

The capacity of the waste to energy plant and landfills exceed the standard of 7.0 pounds per capita established by the Lee Plan.

e. Mass Transit

There is currently no mass transit service in this area.

f. Schools:

The proposed development is anticipated to be a high-end residential development, which typically generates minimal demand on school resources. Further, the anticipated product type is expected to range from a low of \$350,000 - \$1,000,000 and higher. Because of the increase in property values and the low generation of school demand, it is anticipated that the project will have a positive net impact on the school system.

C. Environmental Impacts:

C.1. FLUCCS Mapping:

The subject property is predominated by agriculture or impacted FLUCCS categories, with minimal wetland areas. A copy of the FLUCCS Mapping prepared by Passarella and Associates is attached as Appendix C.1. A detailed environmental evaluation will be submitted as part of the Bonita Beach Road Residential Planned Development.

C.2. Soils:

The proposed amendment will not have any adverse impact on the Soils of the subject property, nor will it allow development of greater intensity or density than is already approved.

If necessary, site-specific information, such as soils, has been provided during the Beach Road Residential Planned Development Application and DRI submittal process.

C.3. Topographic Map:

Map C.3. contains information prepared by Agnoli, Barber and Brundage. This exhibit depicts the general topography for the subject property and surrounding areas. This information is preliminary in nature, but identifies that the subject property is outside of the 100-year flood plain and Category 3 Storm Surge Zones.

C.4. Wetlands, aquifer recharge areas, and rare and unique uplands.

The proposed amendment will not result in any changes to the Lee Plan that would allow new, unanticipated impacts. The proposed development plan and Master Concept Plan will be submitted as part of the proposed Beach Road Residential Planned Development.

C.5. Protected Species:

The proposed amendment will not result in any changes to the Lee Plan that would allow new, unanticipated impacts. The proposed development plan, Master Concept Plan and Protected Species Survey have been submitted as part of the proposed Beach Road Residential Planned Development. The DRI ADA documentation demonstrates that the proposed development will have negligible impacts to wetland habitat, and is preserving all native, non-degraded wetland areas.

D. Impacts on Historic Resources:

In March, the Archaeological and Historical Conservancy (AHC) examined the parcel of land on behalf of Beach Road Development Company, LLC. A total of three targets were identified for shovel-testing. All of these features were slightly elevated live oak/cabbage palm hammock areas. All three were within two hundred feet of a seasonal water source such as a cypress strand/dome. A total of eight 40 cm. by 40 cm. shovel tests were dug at the targets. These test holes were dug to what was believed culturally sterile strata (usually 50-60 cm. depth), or until marly limestone caprock was encountered. All dug soil was screened through ¼ mesh steel screen and the remaining contents examined for archaeological evidences.

Of the three targets, only the first target yielded archeological material. This target was in the northwestern portion of the parcel and was expressed as a linear formation of three moderately large live oaks (*Quercus virginiana*) and numerous cabbage palms (*Sabal palmetto*) very close

to the dike/irrigation ditch of the field to the north. To the south approximately 200 feet from the target is the head of one of three very extensive cypress sloughs. The first shovel test (ST#1) yielded eight to ten fragments of sand-tempered plain ceramics, and faunal bone (snake and turtle) beginning at a depth of 20 cm. and continuing to a depth of at least 40 cm. The archaeological concentration seems to be found at the interface of a gray sand (aeolian) overburden with a tan sand substrate. The material recovered was a moderately heavy concentration for an interior campsite. The site appears to be less than an acre in size but its exact boundaries need to be determined.

As detailed in the attached Archaeological Report, it is anticipated that there may be a site of local significance. The site, is less than an acre in size, and will be included in the preserve areas of the development.

E. Internal Consistency with the Lee Plan:

The proposed amendment is consistent with the following goals, objectives and policies of the Lee Plan, the State Comprehensive Plan, and the Strategic Regional Policy Plan.

The Bonita Beach Road RPD is consistent with the Lee County Comprehensive Plan. In addition, the proposed development will be consistent with all applicable land development regulations required for the construction of the community.

The Lee Plan:

The Lee County Comprehensive Plan provides a geographic framework for growth in the County. The Comprehensive Plan provides strategies to protect the wetland resource systems, coordinate the use of land and public facilities, attain a high quality of urban design, and protect private property rights. The Community's goals are implemented through a framework provided within broad land use categories. These categories are used as a guide to decision-making, to assure that proposed projects meet the fiscal and programmatic needs of the community. They also most directly control the location, type, intensity and timing of new development. Submitted below, is a detailed evaluation of how the proposed development is consistent with the Lee Plan.

• **Policy 1.4.1: Rural Land Use Category**

This property is located in the Rural land use category, and is further covered by a Final Order, which is outlined in Policy 1.4.1. The Rural category can be characterized as a low-density residential area, allowing only minimal commercial uses. The residential densities are limited to one dwelling unit per acre. The proposed low-density golf course community is consistent with this land use category and the density limitations.

However, the Final Order provides additional requirements for Sections 1, 2 and 3 of Township 48, Range 26 East. The proposed development is also consistent with these performance standards, as depicted on Map H, and outlined below:

a. Residential Development:

45% of the gross property may be allocated to residential uses. By applying the permitted 45% to the 1,298 gross acres, a maximum of 584.1 acres may be allocated to residential home site acreage. The proposed master concept plan is consistent with this requirement.

b. Open Space:

A minimum of 40% of the property shall be allocated to Open Space. This may include natural areas, buffers, lakes, parks, golf courses, nature trails, retention areas, conservation areas, scenic resources, green belts, wetlands and other similar areas. By applying the required 40% open space requirement to the 1,298 gross acres, a minimum of 519.2 acres must be in open space. Of the required 519.2 acres, golf course fairways shall account for no more than 50% (259.6 acres) of the required open space. While the proposed development has more than 259.6 acres of golf course, it does meet the required open space of 519.2 acres without including the additional golf course acreage. Based on this calculation, the proposed development plan is consistent with this provision.

c. Non-Residential Development:

A maximum of 15% of the property may include non-residential uses, including vehicular and pedestrian areas, institutional uses, clubhouses and associated facilities, maintenance areas, tennis courts and other similar uses. This provision allows for 194.7 acres to be utilized for various non-residential uses. The proposed development plan is consistent with this provision.

d. Wetlands:

All naturally occurring wetlands, which have not been significantly degraded, shall be designated as preserve areas. The subject property has approximately 147 acres of SFWMD jurisdictional wetlands. These wetlands are being integrated into the project's open space/preservation system. The Master Development Plan (Map H) demonstrates consistency with this provision.

e. Connectivity:

Where feasible, open space shall be designed to provide connections between wetlands, preserve areas, and buffers. As illustrated on the Master Development Plan (Map H), several significant corridors have been provided that connect wetlands, lakes, and preserve areas through the golf course, lakes, flow ways and project buffers. Because of these connections, the project fully complies with this requirement.

f. Open Space Design:

1. The surface water management system mimics the functions of the natural system. This is achieved by the integration of littoral zones, provision of flow ways designed in conjunction with the water management district, the integration of natural features into the surface water management plan. This is particularly evident in the southern portion of the site where the water management system ultimately connects with the existing wetland system as part of the projects outfall.
2. Natural trails, boardwalks golf courses, interpretive facilities and other similar uses have been integrated into the functional open space system.
3. A comprehensive landscape program will be integrated into the development of this project. Demonstration of compliance with this provision will be addressed in the submittal of the landscape plans required for issuance of a Lee County development order. Specifically, this project will comply with the following landscaping requirements:

- 75% of required trees shall be indigenous
- 50% of the required shrubs must be indigenous
- Plant material used for revegetation will conform to the standards for Florida Number 1, or better.
- Exotic species as identified in Policy 1.4.1 will be removed in conjunction with the development of the site.

g. Buffering:

The proposed Master Concept Plan is consistent with the following three buffer zones:

1. **Zone 1** – Which is depicted on the Master Concept Plan – is a minimum of 100 feet wide and runs along the eastern and southern property line. This buffer will consist of native upland forest plant species or wetland forest species, as appropriate.

The uses contained within this zone include water management reservoirs located along the southern boundaries, and passive recreational uses. No new berms or ditches are permitted within this zone.

2. **Zone 2** – also depicted on the Master Concept Plan, extends an additional 50 feet inward from Zone 1. Generators, pumps and other fixed motors, as well as lights, fences, pools and sheds will be prohibited within this zone. Home sites may extend into this zone, provided no structure is located within the zone. Similarly, passive recreational uses and golf courses are allowed within this zone, as is infrastructure, provided it is buried.
3. **Zone 3** – as shown on the Master Concept Plan – is an additional 100-foot wide band consisting of all of the permitted uses in Zones 1 and 2, as well as residential structures. Illumination within zone 3 is limited to directional lighting (away from preserve areas), reduced height light supports, and other light abating technology.

As fully depicted on the Master Development Plan, the proposed development is consistent with these provisions.

h. Infrastructure:

The project is located in a Privately Funded Infrastructure Overlay, and will provide all necessary facilities and services at no expense to the County. The project will be serviced by public water and sewer, and will be coordinated with the planned expansion of these utilities.

i. Lake Design:

The lakes shall be sinuous in configuration, and shall integrate littoral zones with appropriate native landscaping. The landscaping shall include a minimum of four plant species, with at least one plant per linear foot of lake shoreline. As generally depicted on the Master Development Plan, the lakes conform to this design objective. Details related to the landscaping of the littoral zones will be provided in conjunction with the Development Order submittal for the proposed project.

j. Golf Course Standards:

The golf course will integrate best management practices to address potential issues of pesticide and chemical pollution of surface and ground water. These practices shall generally conform to the Goals of the Audubon Cooperative Sanctuary Program, and include the following:

1. Use of slow release fertilizers;
2. Implementation of an Integrated Pest Management program to control various pests. This shall include targeted use of pesticides, and the prohibition of widespread application of broad-spectrum pesticides. Further, application of pesticides within 25' of any CREW, or other adjacent public preserve lands, is prohibited;
3. Coordination of the application of pesticides with the irrigation practices;
4. The utilization of a licensed golf course manager; and
5. Incorporation of best management practices related to the storage, mixing and loading of fertilizer and pesticides.

The proposed project will be developed in conformance with these requirements, and will adopt specific conditions as part of the DRI Development Order.

k. Development or Regional Impact:

The project is being reviewed as a Development of Regional Impact, which is in compliance with the Final Order requirements contained in Policy 1.4.1.

As outlined above, and as illustrated in the supporting documentation, the subject property is in full compliance with the provisions of this Policy, as well as the unique performance standards adopted by the Final Order for Section 1, 2 and 3 of Township 48, Range 26.

• Policy 2.1: Development Location

This proposed development is located in an area that has been identified for low-density development. Currently, all property located south of Bonita Beach Road, between the subject property and I-75, has either been approved, or is being reviewed for development. Based on this, the location of the project is contiguous to other development areas, and is consistent with the Future Land Use category. Moreover, the subject property has been found appropriate for development as a result of a Final Order issued by the Florida Department of Administrative Hearings. For these reasons, the project as proposed, is consistent with Policy 2.1.

• Policy 2.1.3: All development must comply with the 2020 Overlay.

According to the Division of Planning, there is currently insufficient allocation of residential acres to accommodate the entire proposed residential component. While the approval of the DRI ADA would not result in the project being immediately inconsistent with the 2020 Overlay, **the applicant has submitted a privately initiated amendment to the 2020 Overlay concurrent with the DRI review to reflect the increased development activity in this rapidly developing area of Lee County and to provide for reasonable growth within the Planning Community.**

- **Policy 2.2.1: New development must have or provide all required infrastructure.**
All necessary infrastructure will be provided in accordance with the Privately Funded Infrastructure Overlay. The applicant is currently working with Bonita Springs Utilities on making the necessary system improvements to provide sufficient service for the project. Similarly, the necessary road improvements will be provided according to the DRI TIS and DRI Development Order.
- **Goal 3: Privately Funded Infrastructure Overlay.**
The property owner will establish the necessary funding district to ensure provision and maintenance of the required infrastructure. Further, it is acknowledged that issuance of development orders shall be granted only upon a clear showing that the development shall not cause the mandatory levels of service in Policy 70.1.3 to be exceeded.
- **Policy 4.1.1: Requires developments to be well integrated, properly oriented and functionally related.**
The Master Concept Plan demonstrates that the development areas have been sensitively located on the site to minimize impact to wetlands, topography and adjacent uses. Further, significant perimeter buffers have been provided to ensure compatibility with the natural areas to the east and south, while flow ways have been integrated into the design to address regional water management issues.

The design of the project is consistent with the detailed performance standards adopted through the Final Order, and contained in Policy 1.4.1.
- **Goal 5: Residential Land Uses:**
The proposed design, land uses and densities of this project have all been established with the goal of protecting the character and integrity of the proposed and existing communities. This has been accomplished by the integration of open space, buffering, land use placement, and sensitivity to natural features.
- **Policy 5.1.2: Prohibit residential development where physical constraints or hazards exist.**
The proposed development has been sensitively designed to ensure that exposure to physical constraints or hazards are minimized. The Master Development Plan generally reflects the creation of residential pods in smaller "neighborhoods" to ensure that environmentally sensitive areas are preserved, and that adequate drainage is provided. Further, all of the proposed buildings will be constructed at appropriate elevations to minimize the risk of floods or hurricanes.

The development will be serviced by public facilities, and will have access to Bonita Beach Road SE. The project will be designed to minimize the fill requirements, and incorporate natural drainage, thereby reducing the risk of flooding. No harmful adjacent uses, or aircraft noise zones exist such that would have any negative impact on the proposed residential component of this project. No non-residential uses are proposed that would have any adverse impact on adjacent residential uses, or that would resulting in conflicts with physical constraints.
- **Policy 5.1.5: Protect existing and future residential areas from uses that are destructive to the character and integrity of the residential environment:**
The proposed development is compatible with the residential uses proposed on Section 3, located immediately to the west of the subject property. All non-residential/community uses are carefully located to be compatible with adjacent development, or to be inwardly oriented. With the exception of the maintenance area, which will be appropriately buffer, no non-residential uses are located on

the project perimeter. Because of the sensitive location of uses, and the provision of significant areas of open space, the proposed development will not have any negative impact on adjacent residential uses.

- **Goal 6: Commercial Land Uses**

There are no commercial uses being proposed as part of this development.

- **Policy 6.1.6: Commercial LDR's:**

While no commercial uses are being proposed, certain ancillary non-residential uses will be part of the development program. These include a clubhouse, recreational facilities, sales center and pro shop. These uses will be appropriately integrated into the design of the project, and will provide all necessary buffer, as determined at the time of development order.

- **Goal 11: Water, Sewer, Traffic and Environmental Review Standards**

The proposed development is proven to be consistent with Goal 11 through the provision of letters of willingness to provide service from the water and sewer providers, in addition to the provision of a TIS and an environmental assessment that examines the existing conditions, impacts and required mitigation.

Further, it is acknowledged that the subject property is located within a Privately Funded Infrastructure Overlay (Map 1 of the Lee Plan). Inclusion in this Overlay requires that the provision of additional infrastructure be provided by a private association, taxing district, or other similar benefit unit.

- **Objective 41.2: Mimicking the Functions of Natural Systems**

The proposed development has integrated existing natural features into the surface water management system. This is particularly evident in the southern portion of the site, where the water management system is designed to slowly release water into the existing wetland area. Further, the project provides a flow way system of integrated lakes and wetland that will provide a connection through the subject property. This system is being designed in conjunction with input from the SFWMD. Further, all lakes will be designed with landscaped littoral zones to provide further mimicking of the natural system and provide additional wildlife habitat.

- **Goal 52: Park Development Requirements**

This proposed development exceeds the requirements of this Goal through the provision of the golf course, private park and other community open space areas.

- **Goal 77: Resource Protection**

The vast majority of the site has been cleared of all vegetation as a result of the historic agricultural activities. However, the proposed development has demonstrated compliance with this Goal through the submission of the environmental analysis and protected species survey. As a result of this analysis, the proposed development is preserving essentially all of the viable, naturally occurring wetland that still exist on the property. Further, the developer will be undertaking a management program to remove exotics and maintain the site in that condition. The proposed development meets or exceeds all provisions of the Land Development Code as it pertains to the protection of natural resources.

- **Objective 77.3: Wildlife**

The proposed development is providing areas of upland preservation in an around preserved wetlands. These areas are integrated into the perimeter buffer requirements, golf course and flow way features of the project.

Further, the golf course, as a result of compliance with the Audubon International Signature Series standards, will be managed to provide additional habitat for wildlife.

- **Goal 84: Wetlands**

The proposed development is preserving virtually all of the naturally occurring wetlands remaining on site. These wetlands will be integrated into the preserve/open space system, and where feasible, will be connected into the water management system.

In review of these policies, the proposed use is consistent with the intended uses and density, results in a minimal impact, is compatible with adjacent uses, protects the existing environment, and preserves water quality. Therefore, the proposed use is in compliance with the provision of the Lee Plan.

Regional Plan Compliance:

Housing:

The Regional Plan Housing Goals encourages a wide variety of housing types to accommodate all segments of society in both rural and urban areas. The proposed project is adding to the existing wide variety of housing found in the region and is consistent with the Plan.

Economic Development:

The Economic Development Goals encourages public facilities to be properly financed and maintained to keep abreast with growth demands and meet on-going maintenance needs. The proposed project will be built on a roadway that is being privately funded and constructed. This will assist in the provision of adequate infrastructure in the area. In addition, the Economic Development Goals desire the creation of jobs in the region. The development of a golf course provides economic benefits to the community by addressing the additional recreation demands of the residents, is likely to provide ad valorem revenue in excess of demands and assist in the economic output of the region, thereby being consistent with the Plan in this matter. The Economic Development Goal also states that expansion of future residential areas will be balanced by expansion of trade and service areas that serve the populations of those residential areas. The commercial growth in Bonita Springs and North Naples has been significant, and the development of this project can be adequately served by the commercial uses proposed in Section 3, and other commercial uses within the Bonita Planning Community.

Emergency Preparedness:

The Emergency Preparedness Goals of the Plan relate mostly to governmental activities intended to increase public safety and welfare by creating shelters, identifying evacuation plans and increasing public awareness. The project is not located in a FEMA 100 year flood prone area or a Category 1, 2 or 3 SLOSH zone, but to the extent that the project can participate with these programs, the proposed community will be consistent with the Plan.

Natural Resources:

The Natural Resources Goals in the Plan speak to the many and varied natural systems found throughout Southwest Florida. These resources include coastal water body features such as Charlotte Harbor and Estero Bay, wetlands, wildlife and vegetation, water resources, agriculture, air quality and mineral resources. The proposed project is not located on a natural water body and will not impact those resources. However, the project is adjacent to some Regionally Significant natural resources, and will be providing significant buffers and transition areas to ensure protection of those resources. These design objectives will reflect the requirements of the specific Lee Plan provisions for this property, as well as the input of the SFWMD as it relates to flow ways through the site.

The highest quality wetlands on the site will be preserved and enhanced by the removal of exotics and the reestablishment of their historic hydroperiods. They will also be reconnected and integrated in the areas overall wetland systems to the extent possible.

The development site has very little wildlife currently utilizing the remaining forested areas on the property. Most of the site has been disturbed due to historic and ongoing agricultural activities. The project will actually enhance habitat for wildlife within the development due to the vegetation added to the site via the proposed golf course. The removal of exotic species from the existing wetlands will also enhance the wildlife habitat on the property.

The site is not located on a river or designated groundwater recharge area. By converting this property from a historic agricultural use to a carefully designed planned development, it is anticipated that the treatment of surface water quality and quantity will be improved, and significant areas of the property will be revegetated and carefully managed. This is likely to improve overall surface water management, reduce groundwater withdrawals, and improve wildlife habitat.

Agriculture:

The existing agricultural activities on the property will be eliminated by this project. However, the small scale of the property, and other adverse agricultural factors has rendered this site inappropriate for continued agricultural use. This condition is fully documented and accepted in the Final Order issued on this property. Therefore, its removal will not effect the overall regional agricultural production.

Attached are copies of excerpts of the Final Order Transcripts, which fully document the information presented above.

Air Quality:

The ambient air quality of the region will not be specifically impacted by this development. In addition, the project will not impact any mining interest in the area.

Transportation:

The Regional Transportation Goals is intended to provide the residents of Southwest Florida variety of transportation modes including air, water, bus and automobile. Based on the in-depth analysis of the transportation impacts of the project, the proposed community will not substantially impact the regional transportation network.

State Plan:

The proposed development will meet goals and policies contained in the State Comprehensive Plan (Chapter 187, F.S.), including, but not limited to, the goals addressing the following issues: Housing, Water Resources, Natural Systems and Recreational Lands, Land Use, Public Facilities, and Transportation.

Given that the State Plan was not written with the intent to assess individual projects, the discussion that follows responds to the extent possible.

Housing

The State Housing Goal basically describes the housing desires for both public and private housing. A review of the policies for implementation, however, deals only with public sector actions. These policies include: 1) eliminating discrimination, 2) providing undetermined incentives to the private sector in order to increase the housing supply, 3) reducing the use of institutionalized housing, and 4) eliminating unnecessary regulations that increase the cost of housing.

The applicant does not discriminate based on religion, sex, race, handicap, age or any other basis. The applicant supports local governmental activities that encourage the public sector to supply low and moderate-income housing. The applicant supports the concept of eliminating the use of institutions for warehousing people. And the applicant strongly supports the elimination of unnecessary regulations, which add to the cost of housing.

Water Resources

The State policies concerning water resources are aimed primarily toward public sector actions. The Lee County Comprehensive Plan implements the State Plan policies to the extent possible, given the present role of the South Florida Water Management District (SFWMD). The development of this property is compatible with existing and local water supplies. Bonita Springs Utilities will provide potable water for the project. The project is not located near a water supply source utilized by the public.

Based on the location of the proposed development, the development will not dam or channelize any natural riverine system and is not adjacent to any natural body of water. In fact, as a result of this project, the creation of flow ways and other surface water systems can result in improvements over the existing conditions. To this end, the developer is coordinating with the SFWMD to identify opportunities to reduce the historic impacts that have been created by the long-term agricultural use.

Natural Systems and Recreational Lands

The State Plan in Policy (b) 1 and 7 requires the protection and preservation of wetlands. The highest quality wetlands located on the site will be preserved and protect as required by the State Plan policies. (A review of Question 13 provides additional detail concerning this subject).

Policy (b) 13 encourages the creation of State and local recreational opportunities. The Bonita Beach Road RPD development will provide golfing opportunities to the golf clubs members and guest and is therefore consistent with this policy.

Land Use

The State Plan addresses land usage through a variety of policies. Most of these policies focus on desired governmental actions and speak to the development of programs, regulations and implementation systems. The applicant will comply with all duly adopted regulations. The proposed project will be consistent with Policy (b) 3 of the State Plan in that the development of this community will enhance the livability and character of the area through the encouragement of an attractive and functional mix of living and recreational activities.

Public Facilities

Policy (18)(b) 1 requires that the public sector provide incentives to develop land in a way that maximizes the use of public facilities. The Bonita Beach Road RPD project has been designed in a way to efficiently utilize public facilities. The project will be located on and accessed by the future Bonita Beach Road. This roadway will provide access to I-75, US 41 and the proposed CR 951 corridor. The appropriate potable water and wastewater infrastructure will be located in this road's right-of-way.

Transportation

State Plan Policy 20 (b) 1. requires the coordination of the transportation improvements with State, Regional and local plans. The proposed project will be consistent with the transportation provisions of the local plan and the MPO plan adopted by the regional authorities.

F. Additional Requirements for Specific Future Land Use Amendments:

The proposed amendment does not contain any provisions that require additional information under this section.

G. Planning Justification:

See the Attached Planning Narrative.

Exhibit IV-G: Planning Narrative **Bonita Beach Road DRI ADA 2020 Overlay Amendment Planning Community 3**

Introduction:

The subject property, commonly referred to as the East Bonita Beach Road property, is located in Planning Community 3 (Bonita). The project is ideally located in the high growth area of South Lee/Bonita Springs, on approximately 1,298 acres. The project is a short distance from I-75, and in the center of Bonita Springs. Access to the property will be from Bonita Beach Road, approximately 4 miles east of I-75.

The subject site is located in the Rural land use category. The Rural land use category reflects areas that will be predominantly low-density residential or agricultural areas. Further, this category allows for a mix of residential dwelling units, up to a maximum gross density of 1 dwelling unit per acre. Final Order DCA99-GM-012 also addresses the subject property.

Beach Road Development Company, LLC, a subsidiary of the Bonita Bay Group is developing the subject property. An application for a Residential Planned Development has been submitted concurrent with this application to allow a maximum of 1,158 residential units on the subject property. The resulting gross density of the project will be less than .9 dwelling units per acre, which is clearly consistent with the existing land use category, as well as the surrounding residential uses.

In conducting the due diligence for the subject property, it was identified that the 2020 allocations needed to be adjusted to accommodate the proposed development density that was supported by the Final Order. Because this property has clearly been identified for low density residential development, and because the proposed uses are consistent with the Lee Plan densities and intensities, and because the requisite urban infrastructure will be provided in accordance with the Privately Funded Overlay, this application has been prepared to provide the data and analysis necessary to support an amendment to the 2020 Overlay.

Overview of the Proposed Development:

The proposed development is expected to provide a highly desirable community experience in the greater Bonita Springs community. The project will contain a variety of residential products; up to 36 holes of championship golf; a village center that may contain a clubhouse, recreational amenities, cultural opportunities and meeting areas. The following Table details the development program requested in the DRI ADA application for the subject property.

Table 1:

Bonita Beach Road DRI ADA Proposed Development Program:

| | |
|----------------------------|-------------------------------|
| Property Acreage: | +/- 1,298 acres |
| Maximum Residential Units: | 1,158 dwelling units |
| Estimated Maximum Density: | .9 dwelling units per acre |
| Golf Holes: | 18 – 36 Holes |
| Other: | Ancillary Community Amenities |

Current Status of the Property:

The subject property is currently zoned AG-2, and is surrounded by Agriculturally zoned land on all four sides. However, the property to the west has recently submitted an application for review as a CPD/RPD (DCI-2000-00070). The adjacent application requests 5 acres of commercial land uses and up to 644 dwelling units.

A DRI ADA application has been submitted to Lee County for the Beach Road RPD to request approvals to allow development in conformance with the program outlined in Table 1. It is anticipated that this application will be presented to the Hearing Examiner in the late summer of 2001, with final approval from the Board of County Commissioners being considered in early spring 2002.

Background Data:

This study includes a comprehensive review of numerous documents that have been used to support or illustrate the applicant's position that Planning Community 3 has not been allocated sufficient acreage to accommodate the projected growth within this area of Lee County, or to further the Goals, Objectives and Policies of the Lee Plan. These documents include the following:

- Final Order DCA-99-GM-012
- The Beach Road DRI ADA
- Surrounding Zoning Applications (Appendix G.1)
- The Lee Plan's 2020 Overlay and Allocation Tables (Appendix G.2)
- The Lee Plan
- PAM/T 96-13 – Selected Attachments (Appendix G.3)
- Lee County Conservation and Land Acquisition Advisory Committee (CLASAC) (Appendix G.4)
- 1990 Census Data and Population Projections (Appendix G.5)
- ACOE Draft Environmental Impact Study
- Department of Community Affairs Community Planning Memorandums
- Recent 2020 Overlay Amendments

Background Data:

A. Consistency with the Lee Plan Land Use Categories:

As outlined in Section IV-E, the underlying land use category is not being amended. The proposed development scenario is consistent with the anticipated densities and intensities of this area, and the Beach Road Property DRI ADA illustrates how the proposed use is compatible with adjacent uses.

The approval of the 2020 Overlay Amendment will actually further implement the Final Order and the Lee Plan by allowing development to occur in areas designated for development. Further, Bonita Springs Utilities will provide all potable water and sanitary sewer service, under the coordination of the project's Community Development District, or other similar entity.

B. Consistency with 2020 Overlay Concept:

The primary concept of the 2020 Overlay was to "designate future land use patterns to reflect the goals, objectives, and policies of the Lee Plan." This concept was required by the Department of Communities Affairs in the 1989 Settlement Agreement to ensure that the Future Land Use Map reflected the anticipated population, while also ensuring that the overlay also directed growth to those areas that were adequately serviced by infrastructure.

As presented above, the subject property is located in an area designated for development consistent with the patterns seen along Bonita Beach Road, which will be serviced by all requisite infrastructure, and is adjacent to existing or proposed development on the western boundary. More importantly, this project was covered by the Final Order, which found that development at this intensity was "consistent" with the Lee Plan, and further determined that the 2020 Overlay should be re-evaluated in 2001.

Development of this property (as outlined in the DRI ADA application) is clearly consistent with the goals, objectives and policies of the Lee Plan, as well as the Future Land Use Map. However, because the current 2020 Overlay allocations did not anticipate the incorporation of the City of Bonita Springs, and the shift in development to the Beach Road Corridor, the 2020 allocations are insufficient to allow development consistent with the Lee Plan.

This amendment is also consistent with the compliance agreement, which provides a general indication that a 2020 amendment could not be filed prior to the EAR. The EAR has occurred, and staff did not incorporate an adjustment to the 2020 overlay because it was their understanding that DCA wanted the amendment to be an individual amendment. As a result, the applicant is submitting a privately initiated amendment, consistent with Staff's interpretation of the Compliance Agreement, providing the necessary adjustment to the 2020 Overlay to accommodate the approved densities on Sections 1 and 2.

It is also imperative to understand that based on a detailed evaluation presented in PAT 98-08, which was subsequently adopted by DCA, that there are no other large scale properties in the Bonita Springs area that are of sufficient size and comprehensive plan designation to accommodate a golf course development. For this reason, there is a demand for this property to be fully entitled through the 2020 Overlay to avoid the conversion of land from lower Lee Plan classifications.

Based on the compliance with the Lee Plan, Future Land Use Map, lack of large parcels, and the intent of the 2020 Overlay, this amendment should be approved to accommodate the anticipated development within this designated development area.

C. Consistency with Lee Plan Growth Management Provisions:

Goal 2 of the Lee Plan specifically addresses growth management. As outlined in Section IV-E, the proposed development is clearly consistent with the Growth Management provisions of the Lee Plan, as well as accepted community-planning standards. Further, by not increasing the 2020 allocations, significant opportunities for creation of water management flow ways, wildlife corridors and other environmentally beneficial improvements will not be realized. Further, the denial of this

amendment is likely to lead to the property being developed smaller, piecemeal projects in reaction to the limited 2020 allocations. The result of not increasing the 2020 allocations for this Planning Community would be inability to comprehensively address water management goals by providing desired flow ways, and the inability to further the goals, objectives and policies of the Lee Plan due to the piecemeal ownership patterns.

A smarter development approach would be to encourage the master planning of larger tracts in order to preserve natural systems, retain open space, provide mixed use development, provide a variety of housing types, provide recreational opportunities and comprehensively address the provision of and impact to infrastructure. This approach is clearly outlined in Policy 1.4.1 and the Final Order, and the proposed application is being developed consistent with these standards.

PART TWO: Specific Amendments to the 2020 Overlay

A. Existing Allocations:

Based on the August 18, 2000 update of the 2020 Overlay, Planning Community 3 can accommodate less than 399 acres of residential development in the Rural land use category over the next 20 years. It is important to note, that this allocation is insufficient to accommodate The Brooks, which has an expected buildout within the next 5 years. The Developer of the Brooks has formally requested the County to amend this Planning Community's 2020 allocations, as they were required to do as a result of the approval of The Brooks DRI Development Order. A copy of this correspondence is attached. As a result of this current deficit, the 2020 allocation do not provide for any residential development in the Rural land use category within the Bonita Springs Planning Community over the next 19 years. A detailed summary of the current allocations for the entire Planning Community is presented below:

Table 2: 2020 Residential Allocations – Planning Community 3 (8/18/2000)

| Residential Use by Future Land Use Category | Acreage | | |
|---|--------------------------|--------------|--------------|
| | Allocation for Year 2020 | Existing | Available |
| Industrial Development | 15 | 21 | -6 |
| Central Urban | 239 | 147 | 92 |
| Urban Community | 3,922 | 3,481 | 441 |
| Suburban | 530 | 324 | 206 |
| Outlying Suburban | 1,806 | 659 | 1,147 |
| General Interchange | 29 | 37 | -8 |
| Rural | 1,037 | 638 | 399 |
| Wetlands | 30 | 52 | -22 |
| Total Residential | 7,608 | 5,359 | 2,263 |

Source: Lee County Department of Community Development Website.

For comparison, Table 3 has been provided to illustrate the consumption of residential acreage in Planning Community 3, since the Overlay program was modified by PAM/T 96-13. As clearly depicted by this table, there have been minimal changes in the allocated acreage over the last two years, but many of the categories were already under allocated, or are rapidly approaching under allocation. This is particularly true of the Rural category that is required to support The Brooks, as well as other platted lots and development parcels on Beach Road.

Table 3: 2020 Residential Allocations – Planning Community 3 (6/14/1998)

| Residential Use by Future Land Use Category | Acreage | | |
|---|--------------------------|--------------|--------------|
| | Allocation for Year 2020 | Existing | Available |
| Industrial Development | 15 | 15 | 0 |
| Central Urban | 239 | 97 | 143 |
| Urban Community | 3,923 | 2,481 | 1,442 |
| Suburban | 530 | 215 | 315 |
| Outlying Suburban | 1,806 | 512 | 1,294 |
| General Interchange | 30 | 30 | 0 |
| Rural | 1037 | 376 | 661 |
| Wetlands | 30 | 30 | 0 |
| Total Residential | 7,611 | 3,756 | 3,855 |

Source: PAM/T 96-13 – Support Documentation

While a comparison of these Tables supports an increase in the amount of residential allocations, it is even more important to evaluate them against recent development applications and activity that have occurred within Planning Community 3. Presented below are some of the more recent applications.

| Project: | Submittal/ HEX Date: | Acres: | Units: | Net Density: | 2020 Ac. |
|---------------------------|-------------------------|------------------|--------------|------------------|--------------|
| Corkscrew Growers RPD: | 10/5/2000 | 649 +/- | 644 | .9 Du/Ac | 260 |
| Bonita Beach Road DRI ADA | 2/15/2001 | 1,298 | 1,158 | .9 Du/Ac | 370 |
| The Brooks: | N/A | 2,532+/- | 5,200* | 2.05 Du/Ac | 590 |
| Totals: | | 3,181 +/- | 4,718 | 1.3 Du/Ac | 1,220 |

These applications clearly demonstrate that since the 2020 allocations were evaluated for modification through PAM/T 98-13, growth has shifted to this portion of the county, and that there is barely enough allocations to accommodate development in the Brooks, not to mention the vested lots in San Carlos Estates, and Sections 1, 2 and 3, which are covered by the Final Order. The activity in these areas is due, in part, to the fact that the property has minimal environmental limitations, the availability of public services, lack of available land, and changing market forces that are demanding additional residential areas in the Bonita Community.

It is also important to note that the Lee Plan's Vision Statement indicates that the subject property was included in the Bonita Springs Planning Community because its characteristics were more in line with the Bonita Planning Community than the Southeast Lee County Planning Community. Further, the Vision statement acknowledged that the Bonita Planning Community is "one of the fastest growing communities in Lee County and is expected to nearly double in population between 1996 and 2020." The Vision Statement continues, "the pressure to incorporate Bonita Springs will continue and will likely succeed during the life of this plan." While that statement is an accurate statement, it occurred in the year 2000, well before the termination of the life of the Lee Plan (2020). Lee County even acknowledged that if the city were to incorporate, the Planning Community should be amended. To date, this adjustment to reflect the newly incorporated City of Bonita Springs in the Planning Community Map has not occurred.

B. Proposed Allocations:

In order to more effectively accommodate the anticipated residential component of the Bonita Beach Road DRI ADA property (which is located wholly within Planning Community 3), the following allocations are proposed:

Table 4: 2020 Residential Allocations – Planning Community 3 (2/15/2001)

| Residential Use by Future Land Use Category | Acreage | | |
|---|--------------------------|--------------|--------------|
| | Allocation for Year 2020 | Existing | Available |
| Industrial Development | 15 | 21 | -6 |
| Central Urban | 239 | 147 | 92 |
| Urban Community | 3,922 | 3,481 | 441 |
| Suburban | 530 | 324 | 206 |
| Outlying Suburban | 1,806 | 659 | 1,147 |
| General Interchange | 29 | 37 | -8 |
| Rural | 1,537 | 638 | 899 |
| Wetlands | 30 | 52 | -22 |
| Total Residential | 8,108 | 5,359 | 2,763 |

Source: Vanasse & Daylor.

Based on preliminary development plans, approximately 370 acres of residential are planned for the Bonita Beach Road DRI ADA property. This acreage has been reflected in the Development chart on Page 24, and accommodated in the allocations in Table 4, above. However, it is important to note that there are other significant projects that have been proposed in the Rural land use category in Planning Community 3, and the adjustments reflected in Table 4 provide some accommodation for those residential acres as well. Because of this significant projected growth, and the growth in the Bonita Beach Road Corridor, additional residential allocations are justified within this Planning Community.

C. Justifications:

The following pages outline alternative justifications and potential sources for the increase in the residential allocations for Planning Community 3. These justifications accommodate the desired amendment while still maintaining the population accommodation thresholds, which are the basis of the 2020 overlay.

1. Unutilized CLASAC Allocations:

Lee County Ordinance No. 96-12 created the Lee County Conservation Land Acquisition and Stewardship Advisory Committee (CLASAC). The purpose of the CLASAC program is to acquire, preserve and restore environmentally critical or sensitive lands within the County. As of 8/8/2000, Lee County has acquired almost 500 acres, and most recently negotiated the acquisition of an additional 1,600 acres (See Appendix G-4).

One of the main criteria in the evaluation of these parcels is development pressure. Projects that are located in urban land use categories have intensive zoning, or development orders are given higher consideration for acquisition. Once acquired, the County has never adjusted the 2020 Allocations to redistribute 2020 acreage from the acquisition parcels to more appropriate

locations. This process is significant in light of several acquired or pursued properties, as outlined below.

While many of the potential dwelling units are estimated for each parcel, and not all of the units may be immediately deductible from the 2020 Overlay Allocation table, there is clearly a source of additional allocations resulting from the continued acquisition through the CLASAC program. For example, Parcel 108 is an approved Planned Development (River Run - #Z-93-052), which is approved for 1,598 dwelling units. These units are in a slightly more intensive land use category than the Bonita Beach Road DRI ADA project, but are in a more environmentally sensitive area. If you were to simply convert these units to Planning Community 3, additional acreage would be available without adjusting the capacity of the Future Land Use Map.

Table 5: CLASAC/2020 Land Acquisition Programs

| Property I.D. | Acres | STRAP | Land Use | Planning Community | Potential Units |
|----------------|-----------------|---------------|--------------------------------|--------------------|-----------------|
| 4 | 39 | 30-43-27 | Central Urban | 4 | 115 |
| 55 | 157 | 4-44-22 | Wetlands | 16 | 0 |
| 57 | 132.29 | 32-43-27 | Rural | 4 | 4 |
| 58 | 39 | 7-43-23 | | | |
| 62 | 175 | | DRGR | 18 | 1.75 |
| 66 | 82.93 | 12-46-24 | Suburban | 13 | 497 |
| 69 | 39.51 | 30-45-25 | Out. Suburban | 11 | 120 |
| 73 | 66.55 | 8-44-26 | Rural Comm. | 20 | 66 |
| 75 | 38 | 17-43-23 | Open Lands | 6 | 3 |
| 77 | 55.45 | 32-45-24 | Urban Comm. Wetlands | 12 | 120 |
| 78 | 75.26 | 29-45-24 | Urban Comm. Wetlands | 15 | 300 |
| 79 | 8.7 | 20 & 21-43-26 | Rural | 1 | 8 |
| 81 | 47.58 | 32-43-27 | Wetlands | 3 | 2 |
| 82 | 52.4 | 29 & 32-43-25 | Suburban Wetlands | 19 | 120 |
| 91 | 5.2 | 13-43-22 | Outlying Sub. | 6 | 15 |
| 92 | 80 | 22-45-22 | Wetlands | 16 | 4 |
| 93 | 233.68 | 21-46-27 | DRGR | 18 | 23 |
| 95 | 5 | 13-43-22 | Outlying Sub. | 6 | 10 |
| 96 | 10.42 | 13-43-22 | Outlying Sub. | 6 | 20 |
| 99 | 15.67 | 13-43-22 | Outlying Sub. | 6 | 30 |
| 102 | 83.02 | 8-43-23 | Open Land | 5 | 8 |
| 107 | 66.01 | 5-43-23 | Open Land | 5 | 6 |
| 108 | 1,115 | Numerous | Outlying Sub. Suburban Wetland | 19 & 1 | 1598 |
| Totals: | 2,622.67 | | | | 2951.75 |

Source: County Lands, with estimates by Vanasse & Daylor

- Step 1:** 1,598 units * 2.50 pph (persons per household in North Fort Myers – PAM/T 96-13, Attachment 9) = 3,995 people accommodated
- Step 2:** 3,995 people / 2.29 pph (PPH in Bonita Springs – PAM/T 96-13, Attachment 9) = 1,744 units in Bonita
- Step 3:** 1,744 units / 2.43 du/ac (Historic DU/AC in Rural land use category in Planning Community 3 – PAM/T 96-13, Attachment 4) = 718 acres of Rural allocations in the 2020 Overlay.

Based on these calculations, an additional 718 acres of 2020 residential allocations could be made available to the Rural Land Use Category of Planning Community 3, without making any modifications to the countywide population accommodation.

2. Permitted 25% Allocation Buffer

As a result of reducing the population projections from the BEBR high-range to the BEBR mid-range (see Appendix G.5 – BEBR Population Projections), Lee County applied a 25% "buffer" to the difference between the current population and the projected population. This "buffer" concept is based on accepted community planning literature, and was accepted by DCA in reviewing PAM/T 96-13 (Appendix G.3). However, since adoption of the latest 2020 Amendment, DCA has issued technical memorandums indicating that the 25% buffer may be applied to population overall, not just the projected growth. Because DCA has allowed for a greater portion of the population to be used for the buffering calculation, but Lee County based their buffer on a significantly smaller component, the 2020 Overlay should be adjusted to reflect a 25% buffer based on the total population, not just the incremental growth.

As indicated in PAM/T 96-13, the 1996 Population was estimated at 394,244, while the projected 2020 Population was 602,000. Utilizing these figures, Lee County incorporated a 25% buffer on the 207,756-person difference, equating to an additional 51,939 people. However, if a 2% buffer (in addition to the 15% that was added to accommodate changes in Planning Community 4 – for a total of 17% - well below the accepted 25% buffer) were applied to the updated BEBR mid-range projections, an additional buffer of 12,040 people could be provided. This approach would provide for additional flexibility in the planning of the Bonita Beach Road corridor, and have a negligible effect on the total countywide population accommodation. This approach would also continue to accommodate the unique "vested community" status of Lehigh Acres, and accommodate the proposed development activities in other growing parts of the county.

For instance, if the difference between the buffer provided by PAM/T 96-13, the 15% buffer requested in CPA2000-02, and the additional 2% buffer for the entire population were applied to the county's Planning Communities Map, at an average of 2.29 people per unit, there would be enough allocations to accommodate the anticipated growth in both Planning Communities 3 and 4, as well as shortages in other faster growing Planning Communities. This is outlined below:

- Step 1:** 50,401 people (102,340 – 51,939) / 20 Planning Communities = 2,520 people
- Step 2:** 2,520 people / 2.29 pph (for Bonita Springs) = 1,100 dwelling units
- Step 3:** 1,100 dwelling units / 3 units per net residential acre (anticipated rate for residential development in Planning Community 3 for Rural) = 366.6 Acres in the Rural land use category in Planning Community 3.

It is important to note that this calculation is extremely conservative, in that it only applied a 17% buffer to the overall population, rather than the accepted 25%, and it distributed the allocations evenly to the 20 Planning Communities. In reality, a number of the Planning Communities currently have adequate allocations, and do not require additional acreage.

3. Under Estimation of County Growth

PAM/T 96-13 details that the population projections used as the underpinning of the 2020 Overlay were based on BEBR mid-range projections for the year 2020. As outlined in this report, those projections showed a population of 602,000 by the year 2020. Since these projections were done, BEBR has updated its projections, and now shows a 2020 population of 605,900 (See Appendix G.5). This results in an unallocated population of 3,900.

Because the growth in Lee County is primarily in the unincorporated areas, and because Planning Community 3 is under allocated, the following analysis investigates the potential impact this variation would have on the 2020 allocations if a portion of it were applied to Planning Community 3.

- Step 1:** Apply Flexibility Factor of 125%
 $3,900 * 1.25 = 4,875$ people
- Step 2:** Calculate Dwelling Units:
 $4,875$ people / 2.17 people per household (PAM/T 96-13 – Attachment 9)
 2,246 dwelling units
- Step 3:** Allocate to Various Planning Communities
 50% to Planning Community 3 (due to significant under allocation)
 $.5 * 2,246$ dwelling units = 1,123 dwelling units available to Plan. Com. 3
- Step 4:** Calculate Acreage within Rural Land Use Category
 $1,123$ du / 2.43 du/ac (PAM/T 96-13 – Attachment 4)
 462 Acres of Rural Allocation

The result of this analysis demonstrates that simply by adjusting the 2020 Allocations to reflect the increase in the BEBR mid-range projections, between 462 and 693 acres (75% of available dwelling units) could be allocated to the Rural land use category of Planning Community 3.

4. Final Order:

Final Order DCA99-GM-012 finds that development at 1 dwelling unit per acre is consistent with the Lee Plan, supported by data and analysis, and appropriate on the subject property. It further finds that environmental improvements resulting from the conversion of the agricultural fields would offset and override the potential impacts of low-density residential development. The administrative law judge and DCA also found that development as permitted by Policy 1.4.1 and the Final Order does not "constitute urban sprawl", and is in fact, consistent with good growth management practices.

The Administrative Law Judge acknowledged that the 2010 Overlay was adopted to ensure that development is not premature, and is implemented consistent with available infrastructure. As indicated herein, the infrastructure has been committed, and will be in place coincident with the development of this project. Therefore, the 2010 (now 2020) Overlay, can reasonably be amended to allow for this growth.

The Final Order included as "Findings of Fact" that the growth rate of the Bonita Springs area approaches double the growth rate of Lee County in general. It also stated that residents of the Bonita Springs area have a well defined sense of community, and that the Lee County Comprehensive Plan predicts that Bonita Springs will incorporate by 2010. Finding of Fact 7 continues that, "As much as 75% of the recent residential development in the Bonita Springs area consists of second homes for seasonal residents.... these residents contribute more in tax revenues than they consume in the cost of government services."

Finding of Fact 24 provides that "the subject property is well situated for the extension of potable water and sanitary sewer services along Bonita Beach Road. The Property is located near treatment facilities to the west."

Finally, the Final Order found that the development of the subject property at one dwelling unit per acre (1 du/ac) was consistent with all provisions of the Lee Plan, including Objectives 2.1 and 2.2.

Based on these findings, and the available capacity outlined above, an amendment to the 2020 Overlay allocations for the Rural land use category in Planning Community 3 is justified.

5. Re-evaluation of The Brooks

The Brooks was approved in 1997, and amended in 1999. This project is a 2,532-acre mixed-use development, approved for 5,392 dwelling units, and 45 acres of commercial uses. The current land use designation on the property is Rural, however, the density was approved at approximately 2.2 dwelling units per acre through the Planned Development District Option (PDDO). The land use category of the property to the north and west is primarily urban in nature, and is fully serviced by existing infrastructure.

In short, the existing Brooks development is more closely aligned with the Outlying Suburban land use category than the Rural land use category. This is important in light of the current 2020 allocation, presented in Table 4, above. This table demonstrates that there are over 1,100 acres of 2020 allocations available in the Bonita Planning Community for the Outlying Suburban land use category. If the Brooks were redesignated to Outlying Suburban to more accurately represent the actual density and intensity of the development, and additional 500 acres (2020 acres required of the Rural allocations to accommodate the remainder of the Brooks

development) could be made available to Sections 1 and 2. More importantly, this adjustment would provide adequate allocations to accommodate the proposed development in Sections 1 and 2, as well as the currently approved developments in the Outlying Suburban. This adjustment is further simplified because the developers of The Brooks are the same as the developer of Sections 1 and 2.

6. Artificial limitation on low density development

The regulatory component of the 2020 Overlay is the allocation of acreage. As a result, Lee County tracks Development Orders to monitor acreage from the 2020 Allocation Table. Actual deductions are made upon issuance of a building permit. While this approach was designed to facilitate tracking, it is not the most accurate measure of impact.

Under the current approach, the 2020 Overlay converts population projections to anticipated numbers of units. Based on the projected unit counts, the County generates acreages based on anticipated densities within Future Land Use Categories and Planning Community districts. While this process is documented in PAM/T 96-13, it is extremely complicated, and virtually impossible for a layperson to actually evaluate. Beyond being complicated, this approach discourages low-density residential developments, whereas higher density residential developments with greater impacts are encouraged. For Example:

Bonita Beach Road DRI ADA Scenario:

Assume the property has 1,000 net residential acres. According to Lee County, residential development in the Rural land use category within Planning Community 3 typically occurs at a density of 2.43 units per acre. Based on that ratio, a total of 2,430 dwelling units should be anticipated.

However, if that same 1,000 net residential acres requests only 1,158 dwelling units in order to maintain the character of the community, from a 2020 Overlay perspective the draw on residential allocations is the same, even though the actual impact on infrastructure is less than half.

Another way to look at it is that the Rural land use category in Planning Community 3 has an "available" allocation of 399 residential acres (however, that "available" acreage is required to accommodate The Brooks – an approved DRI). Based on the County's unit per acre projection (2.43 du/net acre), that 399 acres would normally accommodate 969 dwelling units. However, a development containing 399 dwelling units at a net density of .75 units per acre (requiring 532 net acres) would be prohibited, even though the impact on infrastructure is less than half.

The reality of this scenario is that even though the proposed density is well within the permitted density range for the Land Use Category, appropriate buffers and preservation areas are accommodated, and all requisite infrastructure is available, the 2020 Overlay precludes this use. The alternative is for development to be pushed to coastal areas, or other Planning Communities where the infrastructure is not in place.

7. Modifications due to Bonita Incorporation

Given the recent incorporation of Bonita Springs, it is mandatory that Lee County re-evaluate its 2020 Overlay program. One of the primary directives of the new Town Council is to provide greater limitations on new development. This trend is likely to significantly reduce the need for

the residential acreage that was previously allocated to the Bonita Springs Planning Community, but push it just beyond the City boundaries. Because this Bonita Springs has not completed its Comprehensive Plan, it is difficult to specifically identify what modifications will be required to the 2020 Overlay. However, any additional acreage should be considered for allocation in the under-allocated communities such as the Bonita Planning Community.

D. Reservation of Allocation:

Currently, the 2020 Overlay is allocated on a first come, first serve basis, with the actual "draw" being taken at the time of building permit. This approach allows for more flexibility in the distribution of 2020 acreages, but provide no assurances for larger projects that have a longer-term build-out.

For example, a large-scale project could obtain approvals for 1,158 dwelling units. At the time of zoning approval, there are sufficient 2020 acres to accommodate the project, but the project has a 9-year build out. At year 3, two smaller projects (each having 400 dwelling units and 3 year build out) obtain approvals and begin developing. By the time the first project reaches its seventh year, all of the entitlements are gone, leaving it under allocated until additional acres can be placed into the Planning Community.

As part of this amendment, it is requested that allocations be reserved, on a project-by-project basis. This is particularly true, given that the proposed project is a Development of Regional Impact, with a DRI Development Order tying the project to a given time frame. These allocations must be tied to a development schedule to ensure that the project doesn't get drawn out, tying up the 2020 allocations so other timely projects can't proceed. A second approach would be for the County to accept the responsibility to automatically update the 2020 allocations for larger projects, in accordance with the development timetable established during zoning or Development Order Approval. This approach would give developers of larger projects a higher level of certainty, while not unfairly limiting smaller projects.

E. Summary:

Based on the information presented in this application, as well as the support documentation, there is more than sufficient data and analysis to support an amendment to the 2020 Overlay, Table 1(b), to provide sufficient residential allocations to accommodate the proposed Bonita Beach Road DRI ADA development.

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

RESPONSIBLE GROWTH MANAGEMENT
COALITION, INC.,

RECEIVED FEB 23 1999

Petitioner,

vs.

DOAH Case No. 92-6155GM

DEPARTMENT OF COMMUNITY AFFAIRS
and LEE COUNTY,

Respondents,

and

NATIONSBANK TRUST COMPANY,
Trustee; NT GARGIULO, INC.;
J. KENT MANLEY; and CORKSCREW
GROWERS, INC.,

Intervenors.

FINAL ORDER

An Administrative Law Judge (hereinafter "ALJ") of the Division of Administration Hearings (hereinafter "DOAH") has entered a Recommended Order in this proceeding. A copy of the Recommended Order is attached to this Final Order as Exhibit A.

BACKGROUND

This is a proceeding to determine whether comprehensive plan amendments Nos. 91-14 and 97-17 (hereinafter "the Plan Amendments") adopted by Lee County (hereinafter "the County") are in compliance with the Local Government Comprehensive Planning and Land

Development Regulation Act, Chapter 163, Part II, Florida Statutes (1997) (hereinafter the "Growth Management Act" or the "Act").

The procedural history of this case is described in pages 2 through 8 of the Recommended Order. To summarize, the County adopted comprehensive plan amendments which were found not "in compliance" by the Department. Many of the disputed issues were settled by the County and the Department in a Compliance Agreement as authorized by Subsection 163.3184(16), Fla. Stat. As contemplated by the Compliance Agreement, the County adopted remedial plan amendment 97-17.

Responsible Growth Management Coalition, Inc., (hereinafter "RGMC") filed an Amended Petition realigning the parties and challenging the Plan Amendments (amendment Nos. 91-14 and 97-17). The ALJ conducted a final hearing on April 14 through 16, 1998, and issued a Recommended Order. The Judge made detailed findings of fact and conclusions of law in his Recommended Order and recommended the entry of a final order finding the Plan Amendments to be not "in compliance." The parties filed numerous pleadings regarding the Recommended Order, including Exceptions filed by the Department and RGMC, and a Request for Judicial Notice filed by the County.

THE ROLE OF THE DEPARTMENT

Representatives of the Department appeared at the hearing to support the determination that the Plan Amendments in question are "in compliance." The Department and the County were co-respondents before the ALJ, with the Department presenting evidence and filing a Proposed Recommended Order in support of the Plan Amendments.

Once the ALJ issued the Recommended Order, the Department assumed dual roles in this matter. First, the attorneys and staff who advocated the Department's position of "in compliance" throughout the proceedings reviewed the Recommended Order and filed Exceptions to the Recommended Order. Secondly, the Secretary and staff of the Department who took no part in the proceedings have reviewed the Recommended Order in light of the record, the Exceptions, and the other pleadings filed by the parties. Based upon that review, the Secretary of the Department must either: submit the Recommended Order finding the Plan Amendments not "in compliance" to the Administration Commission for issuance of a Final Order, pursuant to Subsection 163.3184(9)(b), Florida Statutes; or reverse the Recommended Order by issuing a Final Order finding the Plan Amendments "in compliance."

After a careful consideration of the Recommended Order, the record, Exceptions, Responses to Exception, the Request for Judicial Notice and the responses thereto, the Department has determined that the Plan Amendments are "in compliance."

STANDARD OF REVIEW OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

Some of the Exceptions request changes to findings of fact in the Recommended Order. Subsection 120.57(1)(l), Florida Statutes (Supp. 1998), states in part that,

The agency may not reject or modify the findings of fact unless the agency first determines from a review of the complete record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence....

As the First District Court of Appeal stated in Heifitz v. Department of Business Regulation, 475 So.2d 1277 (Fla. 1st DCA 1985),

It is the hearing officer's function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based upon competent substantial evidence. State Beverage Department v. Eral. Inc., 115 So.2d 566 (Fla. 3rd DCA 1959). If, as often the case, the evidence presented supports two inconsistent findings, it is the hearing officer's role to decide the issue one way or the other. The agency may not reject the hearing officer's finding unless there is no competent substantial evidence from which the finding could not be reasonably inferred. The agency is not authorized to weigh the evidence presented, judge the credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion. Heifitz, at 1281.

The Department must also comply with the portion of Subsection 120.57(1)(l), Florida Statutes (Supp. 1998), which states that,

Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.

Although an agency has only limited authority to reject an ALJ's findings of fact, an agency is free to change conclusions of law. Subsection 120.57(1)(l), Florida Statutes (Supp. 1998); Seiss v. Department of Health and Rehabilitative Services, 468 So.2d 478 (Fla. 2nd DCA 1985); Reedy Creek Improvement District v. Department of Environmental Regulation, (486 So.2d (Fla. 1st DCA 1986); Jacob v. School Board of Lee County, 519 So.2d 1002 (Fla. 2nd DCA 1988); Bustillo v. Department of Professional Regulation, 561 So.2d 610 (Fla. 3rd DCA 1990).

The Department may reject the Recommended Order's conclusions of law "without limitation."

Alles v. Department of Professional Regulation, 423 So.2d 624, 626 (Fla.5th DCA 1982).

The hearing officer's legal conclusions, as opposed to factual determinations, come to the agency with no equivalent presumption of correctness. Instead, the final decision as to the applicable law rests with the agency, subject, of course, to judicial review. Manasota 88, Inc. v. Tremor, 545 So.2d 439, 441 (Fla. 2nd DCA 1989).

The label assigned to a statement is not dispositive as to whether that statement is a conclusion of law or finding of fact. Sapp v. Florida State Board of Nursing, 384 So.2d 254 (Fla. 2nd DCA 1980); Leapley v. Board of Regents, 423 So.2d 431 (Fla. 1st DCA 1982); Heifitz v. Department of Business Regulation, 475 So.2d 1277 (Fla. 1st DCA 1985); Kinney v. Department of State, 501 So.2d 129 (Fla. 5th DCA 1987). Conclusions of law, even though stated in the findings of fact portion of the Recommended Order, can thus be considered under the same standard as any other conclusion of law.

THE PLAN AMENDMENTS

Amendment 91-14 is a Future Land Use Map (FLUM) amendment to change the land use designation of approximately 1,920 acres from Density Reduction/Groundwater Resource ("DR/GR") to Rural. DR/GR permits a density of 1 dwelling unit per 10 acres and the Rural land use designation allows a density of one dwelling unit per acre; and in certain circumstances, six dwelling units per acre. Finding of Fact 48. The subject property consists of three separate parcels: Sections 1, 2, and 3 of Township 48 South, Range 26 East, Lee County. Finding of Fact 12. Collectively, all Intervenor owners own the subject property.

Amendment 97-17, amending Policy 1.4.1 of the Lee County Comprehensive Plan, applies to all three sections of the subject property, and adds certain provisions to the Rural designation, but only as it applies to the subject property.

RULINGS ON EXCEPTIONS TO FINDINGS OF FACT

DCA Exceptions One and Eleven and RGMC Exception Fourteen

The Department contends that Finding of Fact 7 improperly infers that "residents who do not reside in the [Bonita Springs] area during the hotter part of the year," but who occupy "expensive homes served by private utilities," contribute "more tax dollars than they consume in the cost of government services." The Department and RGMC contend that the ALJ draws a similar improper inference, in Finding of Fact 123, regarding "excessive revenues" that would be generated by the development of the subject property.

There is no basis in the record supporting the above inferences. The record is silent as to projected costs for roadway improvements, stormwater facilities, emergency services and public schools utilized by these residents.

DCA Exceptions One and Eleven and RGMC Exception Fourteen are GRANTED in paragraphs 1.A. and 1.G. of the Order below.

DCA Exception Two and RGMC Exception Five

The Department contends that Finding of Fact 10 contains a typographical error. The competent, substantial evidence in the record indicates that the road between U.S. Route 41 and Old U.S. Route 41 is Bonita Beach Road, not Bonita Bridge Road.

RGMC contends that Bonita Springs is not an incorporated city and that it does not have a central business district, contrary to Finding of Fact 10. There is no competent substantial evidence showing that Bonita Springs is an incorporated city, or that it has a central business district.

DCA Exception Two is GRANTED, but is rendered moot, because RGMC Exception Five is also granted by Paragraph 1.B. of the Order below.

DCA Exception Three

The Department contends that Finding of Fact 25 and Finding of Fact 131 incorrectly state that a slough is located in Sections 1 and 2 of the subject property. The Department contends that the slough is really located in Sections 2 and 3 of the subject property.

Testimony at Tr. 88-89 states, "...the two easterly sections were more than half wetland before they were cleared for agricultural purposes. ..." The two easterly sections of the subject property are Sections 1 and 2. Testimony at Tr. 135 states, "... the easterly sections ... had been a major wetland flow way. ..." Testimony at Tr. 257 also points to the fact that the historic natural flow way was across Sections 1 and 2 of the subject property.

Competent and substantial evidence supports the ALJ's Findings of Fact 25 and 131 that the slough is located in the two eastern most sections of the subject property, Sections 1 and 2.

DCA Exception Three is DENIED.

RGMC Exception Six

RGMC claims that Finding of Fact 30 which states in part that, "As a result of ... intensive agricultural activity, the habitat value of the three sections borders on nonexistent," is not supported by competent substantial evidence.

Although RGMC can point to other findings of fact which are not totally consistent with Finding of Fact 30, the Intervenors can point to the testimony of several witnesses which support

the finding of fact. Two witnesses in particular addressed the issues raised in this exception. Mr.

David A. Maehr testified in part,

Q. How would you characterize the habitat on this site with regard to its value or utility to large animals?

A. With the exception of the remnant patches of forest that exist on the south side of the property, I would say that it's basically useless for large mammals. (Tr. at 486)

* * *

Q. Now, from a habitat picture, how would you characterize the habitat on these three sections of land? . . .

A. I'll reiterate that for large mammals it's basically no habitat at all. The wildlife . . . has been primarily birds, species that are typically associated with very open and simple landscapes and habitats. . . . (Tr. at 493)

Mr. Maehr went on to state that the majority of the birds seen on the subject property are there mainly on a temporary basis. (Tr. at 496).

As far as habitat for the Florida panther, the subject property has not been designated "critical habitat." (Tr. at 498). Even though Petitioner emphasizes the fact that the property has been designated a Priority 2 habitat area for the panther, it should be noted that the Priority 2 designation refers to lands of low quality native habitat that may contain more developed areas including buffer zones, with the land owner's preference dictating the use of the property. (Testimony of Mr. William D. Key, Jr., Tr. at 448) Also, there has been only one questionable sighting of a panther on the subject property, which occurred approximately ten years ago. (Tr. at 502)

With regard to the site being viable habitat for various animal species, Mr. Key testified in part that,

[D]ue to the nature of the activity on the site, it's pretty much a year-round activity by the growing of tomatoes, the constant tilling, herbiciding it, adding pesticides, fertilizers and I would say that the habitat on those three sections is not real good. (Tr. at 431)

Mr. Key, an expert in Ecology, also testified that with the extensive use of buffer zones in the development of the subject property, the site would have a more regular hydroperiod, thus creating a positive impact on the habitat of the subject property.

RGMC Exception Six is DENIED.

RGMC Exception Seven

RGMC claims that Finding of Fact 45 should be held legally irrelevant because, "... there is no competent substantial evidence that any regulatory agency is proposing such a restoration project [of the land around the dredged Caloosahatchee River]." Finding of Fact 45 merely states that Professor Maehr has suggested that, "... quality habitat could be tripled by restoring a landscape linkage across the dredged Caloosahatchee River." The ALJ made no finding as to any regulatory agency adopting such a restoration project. In any event, the Department cannot reject a finding of fact based upon a rejection or modification of a conclusion of law, as RGMC requests. Section 120.57(1)1., Fla. Stat. (Supp. 1998).

RGMC Exception Seven is DENIED.

RGMC Exceptions Two and Eleven

RGMC contends that there is no competent, substantial evidence to support the portion of Finding of Fact 107 that states, "it is reasonably likely that Mr. Depew's analysis correctly assumes that the Plan was in balance at the start of this five year period (August 1992 to August 1997)." RGMC objects to Finding of Fact 108 for similar reasons. RGMC states that the County's FLUM (Map 1) is overallocated, and not "in balance."

The ALJ agreed with RGMC, and stated that FLUM (Map 1) is overallocated. Findings of Fact 82 through 84. However, the ALJ recognized that the FLUM (Map 1) allocation is limited by the 2010 Overlay, which is also part of the FLUM series. Findings of Fact 52 through 66. When the 2010 Overlay is considered in conjunction with the County's FLUM (Map 1), the plan is not overallocated.

RGMC Exceptions Two and Eleven are DENIED.

RGMC Exception Three

RGMC contends that Findings of Fact 89-94 are not supported by competent substantial evidence, but provides no basis to support the contention. Instead, RGMC contends that the ALJ should acknowledge other immediate effects of the Plan Amendments, and has requested that the Department remand this to the ALJ for further fact finding.

RGMC Exception Three is DENIED.

RGMC Exception Twelve

RGMC claims that Findings of Fact 112-121 and 124-127 should be deemed irrelevant because both DR/GR (the designation before adoption of the Plan Amendments) and Rural (the designation adopted by the Plan Amendments) allow intense agricultural uses. These findings of fact deal with the net environmental benefits of the change in land use on the subject property from agricultural to low density residential. Even if the Department accepted RGMC's legal objection to these findings of fact, rejection of the ALJ's legal view of these facts cannot form the basis for rejecting the findings of fact. Section 120.57(1)(I), Fla. Stat. (Supp. 1998).

Also, these findings are supported by policies in the County's plan. For example, Policy 1.4.1 of the County's plan provides for natural vegetation restoration, natural-like stormwater management and buffer zones when the subject property is developed. (Jt. Exhibit 7).

RGMC Exception Twelve is DENIED.

DCA Exceptions Eight, Twelve and Thirteen

The Department contends that Findings of Fact 112, 116, 117, 133, 134 and 137 are not supported by competent substantial evidence. The ALJ found that the Plan Amendments are "in compliance" at a density of one unit per acre, but that the Plan Amendments are not "in compliance." at a density of 6:1. The Department contends that no evidence was offered by any party concerning the implications of the increased density of 6:1. RGMC concurs in its Response to Exceptions that all of the testimony addressed development of the subject property at a density of 1:1.

Since this Final Order grants the Request for Judicial Notice, infra, and ultimately concludes that the ALJ's findings concerning the detrimental effects of the 6:1 density formerly allowed under the PDDO have been mooted by the deletion of the PDDO from the Lee County comprehensive plan, these Exceptions are moot.

In any event, the fact that the residential density of 6:1 was available for the subject property under the Lee County comprehensive plan was in the record, since the Plan itself was accepted into evidence. While the ALJ may have been zealous in considering an aspect of the comprehensive plan which was not raised by the parties, the Department does not agree that the ALJ was barred from making any findings of fact concerning the detrimental effects of residential density of 6:1, merely because the testimony offered by the parties discussed only a density of one unit per acre.

DCA Exceptions Eight, Twelve and Thirteen are DENIED.

DCA Exception Nine

The Department contends, and RGMC agrees, that in Finding of Fact 115 the ALJ misconstrued the remedial Plan Amendments and miscalculated the open space requirements. For example, the Zone 1 open space should not be included in the open space calculations for areas to be developed for residential homesites.

Since Finding of Fact 115 is not crucial to the outcome of this case, the Department will not attempt a more accurate calculation of the precise acreages which will be preserved.

DCA Exception Nine is GRANTED by Paragraph 1.F. of the Order below.

DCA Exception Fourteen

The Department contends that Conclusion of Law 155 contains a typographical error. RGMC agrees with this exception, and the citation in the Recommended Order is clearly a typographical error.

DCA Exception Fourteen is GRANTED by Paragraph 1.H. of the Order below.

RGMC Exception Ten

RGMC raises an objection to Finding of Fact 101, which appears to be an observation on the quality of the case presented by the parties rather than a true finding of fact or conclusion of law. There is no basis for the Department to modify or reject Finding of Fact 101.

RGMC Exception Ten is DENIED.

RGMC Exception Fifteen

RGMC claims that there is no competent substantial evidence to support Findings of Fact 129 and 130, both of which deal with the consistency of the plan amendments with Objective 2.2 of the County's plan.

OBJECTIVE 2.2: DEVELOPMENT TIMING. Direct new growth to those portions of the Future Urban Areas where adequate public facilities exist or are assured and where compact and contiguous development patterns can be created. Development orders and permits (as defined in F.S. 163.3164(7)) shall be granted only when consistent with the provisions of Sections 163.3202(2)(g) and 163.3180, Florida Statutes and the County's Concurrency Management Ordinance. (Jt. Exhibit 1)

In his Recommended Order, the ALJ stated, in part, that:

129. Petitioner has failed to prove to the exclusion of fair debate that the Plan Amendments are inconsistent with Objective 2.2 Here, developer-provided

public facilities are assured, and the development is contiguous to development to the west.

130. Although there is some question as to the compactness of the development of the subject property following the plan amendments, Petitioner did not prove to the exclusion of fair debate that, after clustering, some compactness would not follow.

The ALJ essentially found that RGMC failed to provide competent substantial evidence to prove the allegations made in RGMC's First Amended Petition.

RGMC Exception Fifteen is DENIED.

RULINGS ON EXCEPTIONS TO CONCLUSIONS OF LAW

RGMC Exception One

RGMC claims that the ALJ erred in outlining the issues of this case in Finding of Fact 23.

Finding of Fact 23 states, in part:

23. ... This case involves the suitability of replacing not only this relatively low density [of no more than 1:10], but also existing intensive agricultural uses, as described below, with densities of 1:1 and 6:1 on the subject property, which extends as a peninsula to the east into preservation land, although the land use status of the land beyond one mile south in Collier County is somewhat uncertain. The subject property is subject to considerable development pressure due to its status as the largest remaining parcel that is available for residential development east of Interstate 75 in the Bonita Springs area.

RGMC claims that the issues outlined in the Recommended Order are in error for three reasons. First, the correct issue is the effect of the land use change from DR/GR to Rural. Second, the case should not involve the issue of the replacement of existing intensive agricultural uses, because these uses are permitted under both DR/GR and Rural. Third, the County's plan in

August, 1997, did not permit any residential development on the subject property under the Rural land use designation.

It is not error for the ALJ to summarize the points in contention which he feels are most relevant to the case. The ALJ is not required to recite every permutation of the facts and the legal issues in the Recommended Order. The Department accepts the ALJ's summary of the issues as expressed in Finding of Fact 23.

RGMC Exception One is DENIED.

RGMC Exception Eight

RGMC objects to Findings of Fact 52, 66, 90 and 92 concerning the planning horizon of FLUM (Map 1); claiming that the ALJ repeatedly mentions a planning time frame of over 60 years, extending to the year 2060. In support of this exception, RGMC cites to a number of areas in the record wherein a planning time frame of approximately 26 years, extending to the year 2020, is mentioned. To some extent, RGMC's objection is addressed in the rulings on exceptions below.

However, it appears that the ALJ is referring to the "year 2060" in the context of recognizing that the FLUM (Map1) is extremely overallocated; and that the balanced allocation of the Plan is accomplished by the restrictions of the 2010 Overlay.

RGMC Exception Eight is DENIED.

DCA Exception Four

The Department asserts that the portion of Finding of Fact 52 which states that, "... the FLUM depicts the built-out condition of Lee County, which is projected to occur around 2060,"

misconstrues the basic tenets of the County Future Land Use Map. The County has adopted a map series including both the FLUM and a 2010 Overlay. The 2010 Overlay, "... limits the development potential of the base future land-use map." (Tr. at 701). See also, Sheridan v. Lee County & Department of Community Affairs, 16 FALR 654 (Fla. Admin. Comm. 194), and Department of Community Affairs and Responsible Growth Management Coalition v. Lee County, 18 FALR 4040 (Fla. Admin. Comm. 1996).

DCA Exception Four is GRANTED by Paragraph 1.C. of the Order below.

RGMC Exception Nine

RGMC claims that Finding of Fact 61 is not supported by competent substantial evidence. Finding of Fact 61 states, in part:

61. Contrary to Petitioner's contentions, Policy 2.2.2 does not permit Lee County to override the 2010 Overlay. Nothing in this policy or the Plan suggests that zoning will override Plan designations. In general, zoning must conform to Plan provisions, so the more restrictive densities calculated under the Plan's four-step process control over more generous densities that may be allowed under the County's land development regulations.

Although RGMC has phrased its objection in terms of an exception to a finding of fact, it is clear that RGMC disagrees with the ALJ's legal conclusion concerning the effect of Policy 2.2.2 of the Lee County Comprehensive Plan. RGMC argues that Policy 2.2.2 allows the Board of County Commissioners to "authorize rezonings in excess of the acreage limitations of the 2010 Overlay." Policy 2.2.2 states in part,

POLICY 2.2.2: Map 1 of the Future Land Use Map series indicates the uses and density ranges that will ultimately be permitted on a given parcel. However, it is not a guarantee that such densities or uses are immediately appropriate, as the map provides for the county's growth over the coming 26 years. During the rezoning process the Board of

County Commissioners will balance the overall standards and policies of this plan with three additional factors:

... whether a given proposal would result in unreasonable development expectations which may not be achievable because of acreage limitations on the "Year 2010 Overlay."

The Department accepts the ALJ's conclusion of law that Policy 2.2.2 does not authorize the Board of County Commissioners to override the 2010 Overlay.

RGMC Exception Nine is DENIED.

DCA Exceptions Five and Six

The Department contends that Findings of Fact 90 and 92 incorrectly conclude that in the year 2060, "the newly permitted land use will be allowed." The base FLUM is restricted by the 2010 Overlay, and therefore the newly permitted land uses can only be developed if the 2010 Overlay is amended or replaced. Tr. at 702. Rule 9J-5, Fla. Admin. Code, the evaluation and appraisal report process in Chapter 163, Florida Statutes, and testimony at the hearing demonstrate that the 2010 Overlay will be either amended or replaced before the Overlay becomes obsolete.

DCA Exceptions Five and Six are GRANTED by Paragraphs 1.D. and 1.E. of the Order below.

DCA Exception Seven

The Department contends that the ALJ improperly applied the "no net gain method" of analysis of residential need to perpetuate overallocation in Findings of Fact 102, 107, 108 and 111. The Department states that the "no net gain method" should be used,

where you have a well-allocated plan, and that allocation is . . . diminished below an appropriate level by a land purchase of some sort and that it would be appropriate if consistent with all the standards, to reestablish that allocation elsewhere in the jurisdiction. (Tr. at 689-690)

The Department is correct that the "no net gain method" should not be used if the comprehensive plan is overallocated. However, it appears that the ALJ's analysis did not apply the "no net gain method" to an overallocated comprehensive plan. The ALJ stated in Finding of Fact 107 that:

107. Mr. Depew assumed that, in August 1992, the Plan was in balance in terms of designated residential capacity versus projected population. As noted above, final orders in 1994 and 1996 required amendments to place the Plan in balance in terms of residential allocations. Although not entirely free from doubt . . . , it is reasonably likely that Mr. Depew's analysis correctly assumes that the Plan was in balance at the start of this five year period.

DCA Exception Seven is DENIED.

DCA Exception Ten

The Department contends that Findings of Fact 118, 119, 120 and 121 are erroneous because they characterize the final order in Department of Community Affairs and Responsible Growth Management Coalition v. Lee County, 18 FALR 4040 (Admin. Comm. 1996), and Lee County Comprehensive Plan Policy 2.4.3 as "data and analysis." The final order is precedent, and the plan Policy may be used to judge internal consistency or some other measure of compliance, but the Department cannot agree in this order with the ALJ that these are data and analysis. However, the Department has no basis to reject these findings of fact. Section 120.57(1)(i), Florida Statutes (Supp. 1998).

DCA Exception Ten is DENIED.

RGMC Exception Thirteen

RGMC objects to Findings of Fact 122 through 127, claiming that neither the ALJ nor the Department applied the urban sprawl rules found in Rule 9J-5, Fla. Admin. Code, in reviewing the Plan Amendments. RGMC claims that the ALJ found the rules to be inapplicable. However, Findings of Fact 122-125 include an analysis of the Plan Amendments under the urban sprawl rule in Rule 9J-5, Fla. Admin. Code.

Further, from testimony in the record, it is clear that the Department presented an urban sprawl analysis of the Plan Amendments at the final hearing. The Department's witness, Mr. Charles Gauthier, testified regarding the Plan Amendments and their relation to urban sprawl. (Tr. at 691-712). Mr. Gauthier's testimony culminated as follows:

Q. Given the absence of any identified potential adverse impacts, do you have an opinion as to whether Amendments 91-14 and 91-17 fail to discourage urban sprawl?

A. I think this one was a very hard decision, and I think it falls into the category of a debatable decision with substantial arguments, and my conclusion ultimately is this does not constitute sprawl. (Tr. at 712)

RGMC Exception Thirteen is DENIED.

RGMC Exception Sixteen and DCA Exception Fifteen

RGMC contends that Conclusion of Law 156, which states the ALJ's ultimate conclusion that the plan amendments are "in compliance" if limited to a density of 1:1, should be rejected "because of the errors set forth above" in RGMC's Exceptions. The Department contends that Conclusion of Law 157, which states the ALJ's ultimate conclusion that the plan amendments

are not "in compliance" if the density is 6:1 under the PDDO, should be rejected "for all of the reasons set forth above" in the Department's Exceptions.

For the reasons set forth above in this Final Order, RGMC Exception Sixteen and DCA Exception Fifteen are DENIED.

RGMC Exceptions Four and Seventeen

RGMC claims that the ALJ exceeded his authority by recommending that the County's plan could come into compliance by amending the comprehensive plan to prohibit, "any density increase for the subject property over the 1:1 density allowed under rural without regard to the Planned Development District." Although RGMC cites Department of Community Affairs, Hiss and Manasota-88 v. Sarasota County, 15 FALR 830 (Admin. Comm. 1993), for the proposition that ALJs may not recommend remedial actions, that legal principle is not expressed in that final order. To the contrary, the Hearing Officer (now called an Administrative Law Judge) in Hiss did recommend remedial actions (15 FALR at 882) and the Administration Commission stated that the Hearing Officer committed no error in doing so (15 FALR at 833). The Administration Commission merely stated that Hearing Officers do not have a duty to specify remedial actions, not that Hearing Officers are forbidden from making such recommendations. 15 FALR at 833.

RGMC Exceptions Four and Seventeen are DENIED.

RULING ON THE COUNTY'S REQUEST FOR
JUDICIAL NOTICE OF PLAN AMENDMENT

The County's Request for Judicial Notice will be treated as a request for official recognition, as authorized by §120.57(1)(f), Fla. Stat.

One of the issues mentioned repeatedly in the ALJ's Recommended Order is the increased density allowed under the County's Planned Development District Option (hereinafter "PDDO"). The PDDO provisions state in part,

OBJECTIVE 1.8: PLANNED DEVELOPMENT DISTRICT OPTION.
Provide an option to landowners outside the Future Urban Areas to increase allowable densities for development that will be totally independent of county-subsidized facilities and services.

POLICY 1.8.1: PURPOSE. The Planned Development District Option is presented as a mechanism for adding flexibility to this plan; it provides a means for increased residential density and ancillary development to take place in certain land use areas outside the Future Urban Areas. . . . (Emphasis Added)

The PDDO allows for an increased residential density on the subject property of six units per acre (6:1). It is undisputed that no testimony was given at the hearing concerning development of the subject property under the PDDO at a density of 6:1. The ALJ, however, based some of his conclusions of law on the possibility that the subject property might be developed at 6:1 under the PDDO, rather than at the 1:1 density assigned by the Rural land use designation. The ALJ ultimately concluded that,

156. For the reasons noted above, the Plan Amendments, if limited to 1:1, are in compliance with the criteria of supporting data and analysis, discouraging urban sprawl, internal consistency, and consistency with the State Plan.

157. For the reasons noted above, the Plan Amendments, if extended to 6:1, are not in compliance with the criteria of supporting data and analysis, internal consistency, and consistency with the State Plan because Petitioner proved to the exclusion of fair debate that the Plan Amendments are inconsistent with the criteria of supporting data and analysis in terms of residential need and other matters, internally inconsistent with Objectives 77.3 and 77.4 and Policy 77.2.10, and inconsistent with Sections 187.201(10)(b)3. and (16)(a) of the State Plan, when considered as a whole.

Subsequent to issuance of the Recommended Order, the County requested that the Department take official recognition of a recently adopted plan amendment (hereinafter "Request"). As part of its Evaluation and Appraisal Report Addendum Amendments (hereinafter "the EAR-based Amendments"), the County deleted Objective 1.8 and all attendant policies from its Comprehensive Plan. The EAR-based Amendments were not challenged, and became final and effective on August 21, 1998 - several months after the conclusion of the final hearing. Thus, the possibility that the subject property might be developed at the increased residential density of 6:1 under the PDDO has been eliminated. The County asks the Department to take official recognition of the ordinances approving the amendments that eliminate the PDDO.

RGMC opposes the County's Request on several grounds. First, RGMC claims that the Request should be denied because the amendment eliminating the PDDO was not part of the evidentiary record. Second, RGMC asserts that to take official recognition of the amendment, the Department would in essence be making a supplemental finding of fact, which is not within its jurisdiction. Third, RGMC contends that the Department should not take official recognition of a remedial amendment. Fourth, RGMC claims that the new amendment constitutes "new data" and thus should not now be considered by the Department. Finally, RGMC claims that since it was not allowed to provide testimony regarding the County's June, 1998, amendments at the hearing, then the Department should not consider the County's new amendment.

The present language of the Lee County Comprehensive Plan is not "data." The Department herein cannot agree that taking official recognition of the elimination of the PDDO is

equivalent to a supplemental finding of fact. The sole purpose of the Request is to avoid directing the County to take remedial action that it already has taken.

RGMC asks the Department to ignore the obvious. The ALJ concluded that the Plan Amendments, if limited to the 1:1 density ordinarily available in the Rural land use designation, would be "in compliance." The ALJ further concluded that the Plan Amendments are not "in compliance" because of the 6:1 density available under the PDDO; and recommended a remedial amendment to prohibit development at any density over 1:1. The County has since adopted a new amendment which eliminates the PDDO policy from its plan. Thus, the ALJ's recommended remedial action already has been implemented by the County, and the density on the subject property accordingly is limited to 1:1..

The request for official recognition is GRANTED.

ORDER

Upon review and consideration of the entire record of the proceeding, it is hereby ordered that:

1. The findings of fact and conclusions of law in the Recommended Order are adopted,

except:

- A. The last sentence of Finding of Fact 7 is rejected, and replaced with:

Lee County and Intervenor contend that these residents contribute more in tax dollars than they consume in the cost of government services. The record lacks a basis for a definitive finding or inference on this point.

- B. Finding of Fact 10 is rejected.

- C. The last sentence of Finding of Fact 52 is modified to read:

However, the FLUM is substantially overallocated and contains sufficient land designated for residential use to accommodate the projected population of Lee County through 2060.

- D. Finding of Fact 90 is modified to read:

Where, as here, the land use permitted by the FLUM is prohibited by the 2010 Overlay, it is necessary to analyze the FLUM amendment from two perspectives: the present, at which time no new land uses are permitted, and upon amendment or replacement of the 2010 Overlay, by which action the newly permitted land use may be allowed.

- E. Finding of Fact 92 is modified to read:

However, the FLUM amendment ultimately expands upon the potential lands uses for the subject property; upon amendment or replacement of the 2010 Overlay, the Plan Amendments permit a density of 1:1 as Rural and 6:1 as a Planned Development District Option within Rural.

- F. Finding of Fact 115 is rejected.

- G. Finding of Fact 123 is modified to read:

123. On the other hand, the Plan Amendments would introduce residential uses that would not require public expenditures for those public facilities that are capable of being provided by developers. To the contrary, the Plan Amendments might result in development that would generate excess revenues with which Lee County could attempt to offset the ongoing costs of historic urban sprawl in areas such as Lehigh Acres. And, given the fact that the effect of the 2010 Overlay limits this consideration of the FLUM amendment to buildout, there is no question of premature development or an absence of phasing.

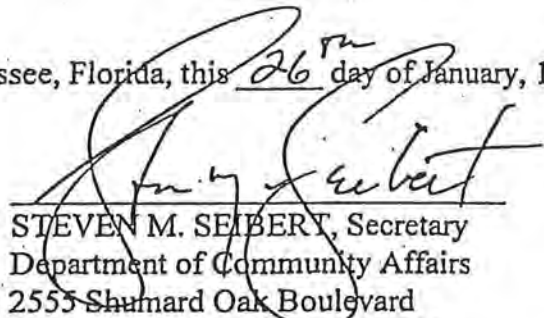
- H. The reference in Conclusion of Law 155 to Section 163.3199, Florida Statutes, is changed to Section 163.3191, Florida Statutes.

2. The Department of Community Affairs accepts the Recommendation of the ALJ that the Plan Amendments are "in compliance" if a remedial amendment is adopted, "which prohibits any density increase for the subject property over the 1:1 density allowed under Rural without regard to the Planned Development District."

3. Since the County already has implemented the remedial action recommended by the ALJ, it is unnecessary to find the Plan Amendments not "in compliance."

4. Therefore, the Department issues this final order finding the Plan Amendments "in compliance."

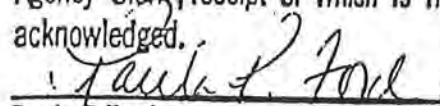
DONE AND ORDERED in Tallahassee, Florida, this 26th day of January, 1999.


STEVEN M. SEIBERT, Secretary
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

ANY PARTY TO THIS ORDER HAS THE RIGHT TO SEEK JUDICIAL REVIEW OF THE ORDER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, BY THE FILING OF A NOTICE OF APPEAL PURSUANT TO RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE WITH THE AGENCY CLERK, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100, AND BY FILING A COPY OF THE NOTICE OF APPEAL, ACCOMPANIED BY THE APPLICABLE FILING FEES, WITH THE APPROPRIATE DISTRICT COURT OF APPEAL. NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE DAY THIS ORDER IS FILED WITH THE AGENCY CLERK.

FILING AND ACKNOWLEDGEMENT

FILED, on this date, with the designated Agency Clerk, receipt of which is hereby acknowledged.


Paula P. Ford
Agency Clerk

1/29/99
Date

copies furnished to:

The Honorable Robert E. Meale
Administrative Law Judge
Division of Administrative Hearings

Teresa Tinker
Kenneth G. Oertel, Esq.
Neale Montgomery, Esq.
Timothy Jones, Esq.
Thomas W. Reese, Esq.
Shaw P. Stiller, Esq.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RESPONSIBLE GROWTH MANAGEMENT
COALITION, INC.,

Petitioner,

vs.

DEPARTMENT OF COMMUNITY AFFAIRS
and LEE COUNTY,

Respondents,

and

NATIONSBANK TRUST COMPANY,
Trustee; NT GARGIULO, INC.;
J. KENT MANLEY; and CORKSCREW
GROWERS, INC.,

Intervenors.

Case No. 92-6155GM

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division
of Administrative Hearings, conducted the final hearing in
Fort Myers, Florida, on April 14-16, 1998.

APPEARANCES

For Petitioner: Thomas W. Reese
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For Respondent Department of Community Affairs:

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For Respondent Lee County:

Timothy Jones
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Lee County Attorney's Office
Post Office Box 398
Fort Myers, Florida 33902

For Intervenor Nationsbank Trust Company; NT Gargiulo, Inc.; J. Kent Manley, Trustee; and Corkscrew Growers, Inc.:

Kenneth G. Oertel
Oertel Hoffman
Post Office Box 1110
Tallahassee, Florida 32302-1110

STATEMENT OF THE ISSUE

The issue is whether Lee County comprehensive plan Amendments 91-14 and 97-17 are not in compliance with Section 163.3184(1)(b), Florida Statutes, for the reasons set forth in the First Amended Petition.

PRELIMINARY STATEMENT

By Petition of the Department of Community Affairs dated September 30, 1992, the Department of Community Affairs alleged that the plan amendments adopted by Lee County in Ordinance Number 92-35 were not in compliance for a variety of reasons.

By Motion for Leave to Intervene as Petitioner-in-Intervention dated October 16, 1992, Responsible Growth Management Coalition, Inc. challenged the amendments challenged by the Department of Community Affairs, on the same grounds as those asserted by the Department of Community Affairs, and challenged several other amendments, which it designated as Amendments 91-05, 91-12, 91-14, 91-21, 91-26,

and 91-36. The motion states specific grounds for challenging each of these amendments.

By Petition to Intervene dated November 2, 1992, Intervenor requested leave to intervene to defend the challenged amendments.

By Motion for Leave to Intervene as Petitioner-in-Intervention filed November 2, 1992, Tesone Land Company requested leave to intervene to challenge certain amendments.

In the ensuing four years, other parties appeared and disappeared from the pleadings, and related growth-management litigation proceeded. By Stipulation dated July 22, 1993, the parties agreed to stay the proceedings for up to 17 months while Lee County prepared its evaluation and appraisal report.

By Stipulation dated October 19, 1994, the parties, agreed that all issues regarding Amendments 91-05, 91-12, 91-20, 91-21, 91-24, and 91-36 were resolved in a separate growth-management case, and they asked the hearing officer to dismiss all challenges to these amendments. The Stipulation states that the only remaining issues involve Amendments 91-14 and 91-26. By Order entered October 24, 1994, the hearing officer accepted the Stipulation.

The hearing officer reset the hearing for early 1995, but, at the request of Intervenor, he later cancelled the hearing and abated the case to allow the parties more time to try to settle the remaining issues.

By Compliance Agreement dated May 22, 1997, Intervenor, Lee County, and the Department of Community Affairs, but not

Petitioner, settled the remaining issues. Lee County later adopted additional plan amendments in Amendment 97-17, as required by the settlement agreement.

By Motion for Leave to File Amended Petition with Realigned Style of Case dated October 30, 1997, Petitioner requested leave, pursuant to Section 163.3184(16)(f)(1), Florida Statutes, to file an amended petition to realign the parties and frame the remaining issues. The administrative law judge granted the motion.

The First Amended Petition alleges that the subject property consists of three parcels owned by Intervenor.

The First Amended Petition asserts that the land to the north of Intervenor's property is in Lee County, and the South Florida Water Management District proposes to purchase this land for preservation purposes. The First Amended Petition alleges that this land consists of forested wetlands designated as Density Reduction/Groundwater Resource with a maximum density of one unit per ten acres, which Lee County raised, in 1994, to one unit per five acres.

The First Amended Petition asserts that the land to the east of Intervenor's property is in Collier County, and the South Florida Water Management District proposes to purchase this land for preservation purposes. To the east of this land, allegedly, is the western boundary of the Corkscrew Swamp Sanctuary. The First Amended Petition alleges that the Collier County comprehensive plan designates the square-mile parcel between the Intervenor's property and the Corkscrew

Swamp Sanctuary as Agricultural/Rural with an overlay of Areas of Environmental Concern due to presence of wetlands, wet prairies, and low pinelands. The First Amended Petition alleges that the Collier County plan allows a maximum density on the square-mile parcel of one unit per five acres..

The First Amended Petition alleges that the land to the south of Intervenor's property is in Collier County, and the South Florida Water Management District proposes to purchase this land for preservation purposes. Collier County's plan allegedly designates this area as Agricultural/Resource with an overlay of Areas of Environmental Concern due to the presence of wetlands.

The First Amended Petition alleges that the land to the west of Intervenor's property is in Lee County. The First Amended Petition alleges that a one-mile wide strip of land to the west is designated as Outlying Suburban with a maximum density of three units per acre.

The First Amended Petition alleges that the three sections owned by Intervenor provide prime habitat for the Florida panther and, while flooded for agricultural purposes, feeding habitat for different bird species.

The First Amended Petition alleges that Lee County raised the density for the three sections on August 7, 1992, from 190 units to 1900 units, but restrictions contained in the 2010 Overlay prevent the construction of residences until 2010. The First Amended Petition alleges that, after 2010, the Lee

County plan grossly over-allocates density for the subject property.

The First Amended Petition notes that the Department of Community Affairs entered into a Compliance Agreement allowing a density of one unit per acre if Lee County amended the plan to impose certain restrictions--primarily open space and buffer requirements--on the development of land within the three sections in dispute.

The First Amended Petition alleges that the amendments adopted pursuant to the Compliance Agreement did not resolve the issues initially raised by the Department of Community Affairs: lack of data and analysis supporting the need for additional residential capacity, lack of data and analysis concerning the suitability of the land for residential development, urban sprawl, lack of data and analysis concerning clustered development on Section 3 (the westernmost of the three sections), and adverse impacts on wildlife habitat.

Addressing Amendments 91-14 and 97-17, the First Amended Petition alleges specifically:

1. The amendments are not supported by data and analysis, in violation of Sections 163.3177(8) and 163.3177(10)(e), Florida Statutes, and Rules 9J-5.005(2) and 9J-5.006(2)(c), Florida Administrative Code.
2. The amendments fail to discourage urban sprawl, in violation of Rule 9J-5.006(5), Florida Administrative Code.
3. The amendments are not supported by data and analysis concerning the suitability of land for residential

development, in violation of Rule 9J-5.006(2)(b), Florida Administrative Code.

4. The amendments are internally inconsistent with Lee County plan Objectives 2.1, 2.2, 77.3, 77.4, and 77.11, and Policies 5.1.2, 77.2.10, and 77.4.4.

5. The amendments are inconsistent with State Plan provisions at Sections 187.201(10)(a), (b)(3), and (b)(7); 187.201(12)(b)(1) and (b)(6); 187.201(16)(a); 187.201(20)(b)(12); and 187.201(22)(b)(3).

The First Amended Petition concludes with requests that the Administrative Law Judge apply the preponderance-of-the-evidence standard of proof to find that the challenged plan amendments are not in compliance.

By Response to Motion to Amend Petition dated November 7, 1997, Intervenor requested an order determining that the First Amended Petition seeks to raise time-barred claims and invites the application of a standard of proof in derogation of the provisions of Sections 163.3184(9).

By Order entered April 9, 1998, the administrative law judge ruled that the Petitioner's claims were not untimely, but that the proper standard of proof is evidence to the exclusion of fair debate, not a preponderance of the evidence.

At the hearing, Petitioner called four witnesses and offered into evidence nine exhibits. Lee County called no witnesses and offered into evidence no exhibits. The Department of Community Affairs called one witness and offered into evidence one exhibit. Intervenor called eight witnesses and offered into evidence 18 exhibits. The parties jointly

offered into evidence six exhibits, and the administrative law judge admitted into evidence one additional exhibit, which is the Collier County comprehensive plan. All exhibits were admitted.

Each of the parties filed a proposed recommended order, except Lee County adopted Intervenor's proposed recommended order. The court reporter filed the transcript on June 15, 1998.

FINDINGS OF FACT

I. Background

1. Petitioner is a not-for-profit Florida corporation with members residing and owning property in Lee County. Petitioner conducts business operations and educational programs in Lee County as part of its customary activities. Petitioner timely submitted objections to both amendments that are the subject of this case.

2. Lee County is located in Southwest Florida. It borders the Gulf of Mexico on the west, Charlotte County on the north, Hendry and Collier counties on the east, and Collier County on the south. Fort Myers is the principal city of Lee County.

3. Lee County contains three municipalities besides Fort Myers: Cape Coral, Sanibel, and Fort Myers Beach. The Caloosahatchee River, which serves as the western portion of the waterway connecting the Atlantic Ocean and the Gulf of Mexico, runs through the northern portion of Lee County.

4. Cape Coral occupies the land to the north and west of the lower reaches of the river, and Fort Myers occupies the land to the south and east of the river a short distance upstream from Cape Coral. Sanibel is situated on the eastern part of a barrier island lying immediately opposite the mouth of the river. Fort Myers Beach is located on another barrier island a short distance southeast of the mouth of the Caloosahatchee River. This barrier island is seaward of the Estero Bay State Preserve and, farther south, the northern half of Estero Bay.

5. The Caloosahatchee River and all of the municipalities are in the northern and central parts of Lee County. The subject property is in the Bonita Springs area, which is in the southernmost part of Lee County. Located in the southeast corner of Lee County, the subject property abuts Collier County, on its south and east side, along half of the property's eight-mile perimeter.

6. The growth rate of the Bonita Springs area approaches double the growth rate of Lee County in general. Residents of the Bonita Springs area have a well-defined sense of community, and the Lee County comprehensive plan (Plan) predicts that Bonita Springs will incorporate by 2010.

7. As much as 75 percent of the recent residential development in the Bonita Springs area consists of second homes for seasonal residents who do not reside in the area during the hotter part of the year. This development consists largely of expensive-to-moderately expensive homes served by

private utilities. Many of these residents are retired or employed elsewhere; many of them are "empty-nesters." Although the record lacks a basis for definitive factual finding on this point, Lee County and Intervenor have reason to contend that these residents contribute more in tax revenues than they consume in the cost of government services.

8. Two north-south roads are prominent in Lee County: U.S. Route 41, which parallels the coast and runs through Fort Myers, and Interstate 75, which parallels U.S. Route 41 to the east. Most of the major east-west roads in Lee County, including State Road 82, are north of the Bonita Springs area. The major east-west road in the Bonita Springs area is Bonita Beach Road, which runs from the beach at the southern end of Estero Bay east across U.S. Route 41, Old U.S. Route 41 (which is only six miles long and runs between U.S. Route 41 and Interstate 75), and Interstate 75.

9. At Bonita Beach Road, the distance between U.S. Route 41 and Interstate 75 is 3.25 miles. Bonita Beach Road is paved to a point one mile west of the northwest corner of the subject property. At this point, the road continues, unpaved, along the north boundary of the subject property to a point at or near its northeast corner, where the unpaved road ends.

10. The area along Bonita Bridge Road between U.S. Route 41 and Old U.S. Route 41 constitutes the central business district for the Bonita Springs area. This district features commercial and residential uses.

11. Limited commercial uses exist at the intersection of Bonita Beach Road and Interstate 75. These include a Publix food store at the southeast corner of this intersection, which is planned to receive additional commercial development.

12. The subject property consists of three separate parcels: Sections 1, 2, and 3 of Township 48 South, Range 26 East, Lee County. Section 1 is the easternmost of these parcels. Different persons own Sections 1 and 3. The owner of Section 1 owns half of Section 2; a third person or group of persons owns the other half of Section 2. Cumulatively, however, Intervenorors represent all of the owners of the three sections, and Intervenorors timely submitted comments to both amendments that are the subject of this case.

13. The three sections form a rectangle measuring three miles east-west by one mile north-south. Land to the north and east is generally undeveloped, and land uses in these areas are generally preservation, although there is some agricultural and minor residential to the north. Land uses to the west are urban or urbanizing.

14. Land uses to the south are preservation for one mile. Farther south, land uses are urbanizing, although the land uses for some of these parcels are or likely will be subject to litigation. Some of these parcels bear Collier County designations of Agricultural with overlays of Areas of Environmental Concern, and some of these parcels are subject to long-standing development approvals.

15. As amended through October 1997, the Collier County Future Land Use Map designates the land surrounding the subject property to the south and east as Agricultural/Rural Mixed Use District. The land immediately south of Section 3 bears this designation without any overlay. The land south of Sections 1 and 2 and the land east of Section 1 bear this designation, but with an overlay of Areas of Environmental Concern. Also, approximately one section of land opposite the northeast corner and one section of land opposite the southeast corner of Section 1 are designated Conservation with an overlay of Areas of Environmental Concern. The northeast corner of the Collier County urban boundary lies opposite the southwest corner of Section 3.

16. Collier County Future Land Use Designation Description Section II describes the Agricultural/Rural—Mixed Use District designation as limited to a gross density of 1:5. (All densities in this recommended order are expressed in a ratio with the number of dwelling units preceding the number of acres; thus, this density in this case is one dwelling unit per five acres. All densities are expressed as maximum allowable densities.)

17. To the northeast of the subject property, approximately 17 square miles of Collier County comprise the Corkscrew Swamp Sanctuary. Starting about one mile north of the subject property, the Flint Pen Strand portion of the Corkscrew Regional Ecosystem Watershed (CREW) occupies over 20 square miles of Lee County in an area south of Corkscrew Road

and east of Interstate 75. Existing agricultural uses extend easterly from Interstate 75 to the west border of the Corkscrew Swamp Sanctuary in Collier County; these agricultural lands separate this CREW area from the subject property.

18. There are some urbanized uses in the vicinity of Corkscrew Road. The major development is the recently constructed Florida Gulf Coast University, which is about ten miles north of the subject property and just east of Interstate 75. About three miles north of the new university is the Southwest Florida Regional Airport, which is also just east of Interstate 75. A couple of miles north of the airport is the westernmost extent of Lehigh Acres.

19. Far from built out, Lehigh Acres is a massive, predominantly residential development in unincorporated Lee County comprising over 90 square miles. Lehigh Acres' density designations could accommodate the entire population growth for Lee County through 2020. These designations are driven by land use approvals or at least plattings that predate the comprehensive planning required by Chapter 163, Part II, Florida Statutes.

20. The land immediately north of the subject property contains scattered trailers used for hunting or residential purposes. The Plan designates this land as Wetlands and Density Reduction/Groundwater Resource, which bear respective densities of 1:20 and 1:10. Although this land is largely

undeveloped, its fragmented ownership impedes its assembly for residential, preservation, or other purposes.

21. In contrast to the land uses predominating to the north, east, and immediate south, the land uses to the west are urbanized and urbanizing. The west boundary of the subject property is 8.5 miles from the Gulf of Mexico.

22. Several Developments of Regional Impact (DRI) or other large-scale developments occupy or will occupy the 2.5 miles separating the western boundary of the subject property from Interstate 75. Two DRIs have been approved at 3:1 to 4:1, but have not been constructed yet. The developer of one of these projects is required to donate the land for a fire station, which will probably be within one-half mile of the subject property. The Plan designates the land immediately to the west of the subject property as Outlying Suburban with a density of 3:1, although this land is presently devoted to tomato farming.

23. Urbanized uses with vested densities of up to 4:1 thus extend to the west boundary of the subject property, which, prior to the subject plan amendments, had a density of no more than 1:10. This case involves the suitability of replacing not only this relatively low density, but also existing intensive agricultural uses, as described below, with densities of 1:1 and 6:1 on the subject property, which extends as a peninsula to the east into preservation land, although the land use status of the land beyond one mile south in Collier County is somewhat uncertain. The subject property

is subject to considerable development pressure due to its status as the largest remaining parcel that is available for residential development east of Interstate 75 in the Bonita Springs area.

24. In general, the subject property is well situated for the extension of potable water and sanitary sewer services along Bonita Beach Road. The property is located near treatment facilities to the west.

25. The subject property itself remained largely undisturbed until the 1970s when each section was cleared for agricultural purposes. Prior to their development, the three sections were forested wetlands with interspersed uplands. A major slough crossed Sections 1 and 2, receiving water from what is now the Corkscrew Swamp Sanctuary to the northeast and passing it to the southwest into the Cocohatchee River and eventually Wiggins Pass.

26. Following agricultural development of the three sections, the only remaining wetlands consist of about 275 acres straddling the southern portions of Sections 1 and 2. Agricultural development included the construction of dikes running the perimeter of the subject property. These dikes range from five to seven feet high and twenty-five to thirty feet wide. A 41-acre retention pond occupies the northwest corner of Section 2.

27. The three sections have been used for the production of tomatoes for at least the last ten years. The owners of

the parcels have the necessary environmental resource permits for the present agricultural operations.

28. Tomato farming on the subject property is a highly intensive agricultural activity that involves the addition of fertilizer and pesticides and alteration of historic surface water flows and groundwater levels. To grow tomatoes on the subject property, the farmer digs ditches about 75 feet apart in the freshly turned sandy soil, adds fertilizer, and applies long sheets of plastic. To sterilize the soil, the farmer pumps methyl bromide under the plastic. From mid-August to mid-January, the farmer plants the tomatoes about two feet apart in long rows; harvesting takes place from mid-November through April. Years of farming have reduced the historic organic contents of the soils on the subject property.

29. During the planting, which includes part of the wet season, the farmer must maintain a constant water table a few inches from the root zone. During the wet months, the farmer maintains the distance between the water table and the root zone by pumping groundwater into the ditches, which lead to drainage outfalls off the property. Three of the present drainage outfalls from the subject property are designed and permitted to release a total of three million gallons per hour of runoff from the subject property. Over 10 wells on the subject property penetrate mostly the water table aquifer, which in Lee County is anywhere from ground surface to 40 feet below ground, but also the Lower Tamiami Aquifer, which in Lee County is between 65 to 150 feet below ground.

30. As a result of this intensive agricultural activity, the habitat value of the three sections borders on nonexistent. Wading birds may take advantage of the land during the several weeks between early May and mid-July that the land may lie flooded, but, at most, the altered land serves as incidental habitat. Nothing in the record supports the inference that, when flooded, the land serves as critical habitat for wading birds. Nor is the altered land of much use to migratory birds, which do not return to the area until September.

31. Important sources of data and analysis include a report of the Florida Game and Fresh Water Fish Commission entitled, Closing the Gaps in Florida's Wildlife Habitat Conservation System (1994) (Closing the Gaps) and a publication of the U.S. Fish and Wildlife Service, National Park Service, Florida Game and Fresh Water Fish Commission, and Department of Environment Protection entitled, Florida Panther: Habitat Protection Plan—South Florida Population (November 1993) (Panther Habitat Protection Plan).

32. Closing the Gaps identifies Southwest Florida as "the most important region in Florida" for "maintaining several wide-ranging species that make up an important component of wildlife diversity in Florida" Closing the Gaps, p. 173. For this report, Southwest Florida comprises Sarasota, Charlotte, Lee, Collier, Hardee, and Glades counties. However, the subject property hosts only 3-4 "focal species," although the subject property is surrounded

to the north, east, and south by land hosting more than 7 "focal species."

33. Closing the Gaps breaks down Southwest Florida into several areas. The area containing the subject property is "one of the more important wildlife areas remaining in Florida." Closing the Gaps, p. 174.

34. Closing the Gaps identifies "Strategic Habitat Conservation Areas" as lands "needed to meet minimum conservation goals" for, among other things, 30 species of wildlife "inadequately protected by the current system of conservation lands." Closing the Gaps, p. 1. The report adds: "These lands are essential to providing some of [the] state's rarest animals, plants, and natural communities with the land base necessary to sustain populations into the future." Preserving all of these Strategic Habitat Conservation Areas would add 4.82 million acres to the 6.95 million acres already preserved in Florida.

35. Closing the Gaps recognizes that public entities lack the funds to purchase all of the Strategic Habitat Conservation Areas. Noting that some of these lands are in nonintensive agricultural uses, such as silviculture and native rangeland, the report notes that governmental entities should encourage private landowners to assist in habitat preservation through sound wildlife management practices, tax incentives, conservation easements, and cooperative agreements.

36. Closing the Gaps identifies the subject property as occupying a strategic habitat area for the American swallow-tailed kite, Florida black bear (only the easternmost extent of the subject property), the Florida panther (only the easternmost extent of the subject property), and possibly the limpkin (if any part of the subject property, only its northeasternmost extent).

37. The Panther Habitat Protection Plan recognizes that "[h]ardwood hammocks and pine flatwoods" are "the most preferred of all panther habitats." Panther Habitat Protection Plan, page 6. According to the Panther Habitat Protection Plan, there are 30-50 adult panthers in the South Florida population, and a self-sustaining population requires at least 50 adults.

38. According to the Panther Habitat Protection Plan, Lee County is one of four Florida counties—the others being Collier, Dade, and Hendry—hosting a documented, reproducing panther population. The privately held lands in the northern half of the panther's South Florida range provide the most suitable habitat in terms of forests and soil alkalinity. The plan also stresses the importance of privately held land to the survival of the Florida panther; only four panthers range exclusively on publicly owned land, and 14 panther spend more than half of their time on privately owned land.

39. The Panther Habitat Protection Plan suggests that South Florida may be nearing its carrying capacity for panthers, so that further habitat loss means further panther

loss. The Panther Habitat Protection Plan cites urban and agricultural development as two major threats to panther habitat.

40. As for row crops, the Panther Habitat Protection Plan states:

Land cleared for row crops generally lacks adequate cover to support panther use. However, panthers will use forested strands . . . running through open fields, and have been documented crossing vegetable fields under cover of darkness. . . . Land put into vegetable production may not impact panther survival if designed properly as part of a habitat mosaic.

Panther Habitat Protection Plan, page 18.

41. The Panther Habitat Protection Plan offers little in the way of details as to the proper scaling of an agricultural mosaic. For citrus, the report suggests a "mosaic rather than uninterrupted miles of grove monocultures." Panther Habitat Protection Plan, page 17.

42. The Panther Habitat Protection Plan identifies suitable Florida panther habitat. Priority 1 habitat is "lands most frequently used by the panther and/or lands of high quality native habitat" Panther Habitat Protection Plan, p. 34. Priority 2 habitat is "lands less frequently used by the panther and/or lands of lower quality native habitat interspersed with intensive agriculture . . . , " which "serve as buffer zones to urban development and other forms of undesirable encroachment" Id.

43. The Panther Habitat Protection Plan identifies the subject property as Priority 2 habitat. Id. The plan

identifies the land north, south, and east of the subject property as Priority 1 habitat. The subject property occupies the westernmost extent of the largest contiguous panther habitat, which runs east through a corridor to the largest block of habitat, which is in central Hardee County southwest of Lake Okeechobee. The same corridor also connects a large block of Priority 1 habitat farther south in central Collier County.

44. In a draft article, "The Florida Panther in Modern Mythology," Professor David S. Maehr notes that the quality of Florida panther habitat in South Florida declines from the northwest to the southeast. Agreeing that an important feature of panther habitat is forest cover, Professor Maehr reports that Florida panthers avoid unforested landscapes such as the Everglades. Professor Maehr reasons that ongoing efforts to restore the historic hydroperiod in the southern part of the panther's range in South Florida may reduce the attractiveness of this grassland-dominated ecosystem as panther habitat.

45. Professor Maehr recognizes that the Florida panther needs more habitat, but suggests that the amount of good quality habitat could be tripled by restoring a landscape linkage across the dredged Caloosahatchee River. This dredged barrier, which has existed for about 100 years, is a substantial, although probably not absolute, barrier to panther dispersal to prime panther habitat to the north.

46. Closing the Gaps, the Panther Habitat Protection Plan, and other evidence in the record present a clear picture of the subject property in terms of its habitat value. Prior to its conversion to intensive agricultural uses, the subject property provided excellent habitat for a variety of species, probably including the panther. Upon conversion of the land to intensive agriculture, its natural habitat value has been almost entirely eliminated, despite its proximity to undisturbed areas to the north, south, and east.

47. The subject property is not presently within an area of relatively high recharge to any aquifer. The subject property is the site of artificial discharge when agricultural operations demand reduction in the level of the water table. The subject property is not the site of any recharge when agricultural operations allow the subject property to remain flooded. Although agricultural operations drive the discharge/recharge characteristics of the subject property much of the time, the record does not permit a finding that, if the agricultural operations ceased, the area would be characterized as an area of relatively high natural aquifer recharge.

II. Challenged Plan Amendments

48. Lee County adopted Plan Amendment 91-14 on August 7, 1992. This amendment changed the designation of the subject property on the Future Land Use Map (FLUM) from Density Reduction/Groundwater Resource to Rural, which allows a

consistent with the following conditions, but need not implement them until application is made for a development order that would authorize physical, on-the-ground development on the Property.

a. The Property, or any part of it, shall only be developed as a Planned Development, as defined by Chapter XIV of the Lee County Comprehensive Plan at page XIV-6. Should development occur in a series of increments by different developers, each development must receive planned development approval. Residential development shall be clustered in order to maximize opportunities to provide open spaces and natural areas. A maximum of five acres of the p[ro]perty shall be reserved for commercial uses of the type which serve neighborhood needs. Commercial development may be aggregated on any portion of the Property. Clustering shall be achieved by requiring homesites to be platted or designed in contiguous groups, adjacent to open spaces. Clustering of residential development shall also be achieved by limiting the areas on the Property available for residential homesites in the following fashion.

(1). Residential development. Single and/or multiple family homesite acreage may account for no more than 45% of the gross area of the Property. Homesite acreage includes the entire site for all single family houses, multi-family dwellings, and any other residential structure, including the house or building pad, the yard, and any driveway, parking areas, landscaped areas, and the like upon the homesite.

(2). Open spaces. These areas shall include preserved natural areas, buffers, lakes, parks, golf courses, nature trails, retention areas, conservation areas, scenic resources, green belts, wetlands and associated areas and shall account for a minimum of 40% of the Property. Golf course fairways shall account for no more than fifty percent (50%) of the open space of the subject property.

(3). Non-residential Development. These areas shall include vehicular and pedestrian ways, commercial and

PD Required

CLUSTER RES.

5 Ac of Com.

Limit Residential Area

45% Gross Area
= 285 Ac / Section

40% O/S - Includes

Golf / Lakes Etc.

Golf can only account for

50% of Open Space

(124 Ac / Section)

density of 1:1 and, under the circumstances described below, 6:1. This amendment is referred to as the FLUM Amendment.

49. In October 1992, DCA issued a Notice of Intent to Find Plan Amendment 91-14 not in compliance due to the impact of the redesignation on natural resources--especially the panther and bear and their habitat--and the effect of the redesignation in encouraging urban sprawl.

50. In May 1997, after the present litigation commenced, Lee County, DCA, and Intervenor entered into a Compliance Agreement. As a result of this agreement, on August 26, 1997, Lee County adopted Plan Amendment 97-17, which applies to the three Sections. This amendment adds numerous provisions to the Rural designation, but only with respect to the subject property. With the amendments underlined, Policy 1.4.1 now provides:

The Rural areas are to remain predominantly rural--that is, low density residential, agricultural uses, and minimal non-residential land uses that are needed to serve the rural community. These areas are not to be programmed to receive urban-type capital improvements, and they can anticipate a continued level of public services below that of the urban areas. Maximum density in the Rural area is one dwelling unit per acre (1 du/acre), except as may be permitted under the Planned Development District Option.

The property consisting of Sections 1, 2, and 3, Township 48 South, Range 26 East shall be developed only in accordance with the following standards:

1. The Property may be developed only in accordance with the following conditions. Pre-development activities such as rezonings, zoning permits, certifications, special exceptions, and variances must be

institutional areas, club houses and associated facilities, utility buildings, maintenance areas, tennis courts and associated non-residential uses and shall be a maximum of 15% of the Property.

b. All natural occurring wetlands, which have not been significantly degraded, shall be designated as preserve areas and shall be subject to a conservation easement similar to that set forth in Section 704.66, Florida Statutes. Limited uses in preserve areas such as nature trails, bike paths, cart paths, boardwalks and the like shall be allowed when permitted by appropriate State and Federal agencies. The use of wetland areas for water management, to the extent allowed by law, shall not be precluded. Wetland areas being used as water management areas on the Property may be relocated if (1) all approvals are obtained from appropriate State and Federal agencies and (2) where the affected wetland functions are replaced on the Property.

Existing Wetlands
To Be Preserved

c. Where feasible, open space areas will be designed so as to provide connections between wetlands, preserve areas, and buffers on the Property. The design of these open space areas shall seek to provide areas which will be integrated with on-site and adjacent preserve properties so as to enhance habitat for small mammals and wading birds. Golf courses, when constructed and maintained in compliance with this paragraph shall be considered to be functional open space to the extent set forth above.

d. The design of the functional open space area shall incorporate the following design features:

(1). A surface water management system that mimics the functions of the natural system, in accordance with Objection [sic] 39.2 of the Lee Plan;

(2). For those areas that drain to the Imperial River Basin, a surface water management system that is consistent with the Kehl Canal/Imperial River basin study prepared for the SFWMD [South Florida Water Management District], and adopted by the BOCC pursuant to Policy 38.3.2 of the Lee Plan;

(3). Uses including, but not limited to, picnic areas, trails, benches, boardwalks, golf courses, water management systems, biking/jogging/equestrian trails[,] vita courses, bird viewing blinds/tower and interpretative facilities shall be permitted within functional open areas;

(4). The open space areas shall be replanted with vegetation after construction. Seventy five percent of the total number of required trees used in buffers, and landscaping must be indigenous, and fifty percent of the shrubs must be indigenous;

(5). Plant material used for revegetation must conform to the standards for Florida Number 1, or better as given in Grades and Standards for Nursery Plants 1973, and Grades and Standards for Nursery Plants, Part II, Florida Department of Agriculture and Consumer Services Tallahassee;

(6). Australian pine, cajuput, Brazilian pepper, downy rose myrtle, Cuban laurel, melaleuca, bishopwood, castor bean, common papaya, common snakeplant, day jessamine, hunters robe, queensland umbrella tree, trailing wedelia may not be used as part of the revegetation of the p[sic]roperty after development. Any such plants that exist on the site at the time of the issuance of a development order shall be removed; and

(7). The vegetation that surrounds, or is within the open space areas should have the capacity to provide habitat for a diversity of wildlife.

(e) Development shall provide a buffer to protect adjacent natural areas from the impacts of development. The purpose of the buffer is to protect adjacent natural resources from the activities and impacts of development on the Property.

(1). All development shall incorporate buffers, as follows, in three zones:

Zone 1 will be a minimum of 100 feet wide and will extend completely along all portions of the eastern and southern boundary of the property. These are the areas of the Property which are adjacent to the Collier County Line. The buffer will consist of selected native upland

Buffers!

100' FROM EES

VEGETATION BY
NATIVE

forest plant species such as south Florida slash pine, live oak, laurel oak, and saw palmetto. Selected species will be tolerant of drought conditions, and will not require fertilizers and pesticides to promote growth and survival. Exotic plant species will be controlled by the periodic application of herbicides and mechanical removal. Wetland forest species will be used in situations where wetland functions remain on the property and where soil and moisture conditions are suitable.

Zone 1 will incorporate the existing water management reservoirs which are located along the southern boundaries of Sections 1 and 2. These reservoirs will not require additional buffering. There will be no structures erected in Zone 1, however, passive recreation such as hiking, birdwatching, and nature-study will be permitted. Construction of lakes in Zone 1 shall be allowed. Existing berms and ditches shall be allowed to remain in Zone 1.

Zone 2 will be adjacent to Zone 1 and will encompass an area that is at least 50 feet wide. This area will be free of lights and other structures such as fences, pools, and sheds. The permanent placement of generators, pumps, and other fixed motors will be prohibited. Homesites may extend into Zone 2, but no portion of the residence itself may extend into this zone. If residential lots are incorporated into this zone, those portions of "yard" acreage will be planted and maintained in a fashion similar to that proposed for Buffer Zone 1. Passive recreation such as hiking, jogging, biking, and walking will be allowed along designated trails and boardwalk system. Golf courses and lakes may extend into this zone, but may not incorporate lights or structures other than drainage structures and cart paths. All golf course acreage in Zone 2 will be free of lights and structures, and the use of golf carts will be permitted. If water, sewer, or electrical lines are placed in Zone 2 they shall be buried.

Zone 3 will be parallel [to] Zone 2 and will consist of residences and other infrastructure development in a 100-foot wide band. Exterior lighting in this zone

ADD. 50' B.F.X

may not project toward adjacent preserve land. Measures such as directional lighting, reduced-height light supports, and other light abatement technology will be used.

The buffer zones shall not preclude governmental entities from constructing public roadways that are currently depicted on Lee County 2020 Traffic Circulation Plan Map through these zones, as long as other State and Federal permits are obtained.

f. The Property must be served with all necessary facilities and services at no expense to the County (including central water and sewer). Uniform Community Development Districts and any special taxing districts may be utilized to achieve this standard. The Property is presently within the Lee County Privately Funded Infrastructure Overlay (PFIO). This Overlay requires that all development within these areas pay for the construction and extension of public services to all properties that seek to develop to a different land use. Should at the time when the Property begins to develop, the PFIO no longer applies to this area, all development will still be required to pay for its infrastructure costs. All development must comply with the Lee County Concurrency Management Plan. The owners of the property and their successors in interest shall not withdraw from or opt out of the PFIO.

LOCATED IN
PFIO??

g. Development must be on central water and sewer or the extension of such and other utilities must be planned to coincide with the development of the Property. Bonita Beach Road improvements must have been extended w/elst to the planned development, or its extension must be committed to occur in pace with the planned development.

MUST USE
CENTRAL UTILITIES

h. The shorelines of any stormwater management lakes shall be sinuous in configuration, and shall be sloped or bermed. The littoral zones around the ponds shall be planted with native wetland herbaceous plants, and trees or shrubs can be included within the herbaceous plants. At least four species shall be planted. The minimum required number of plants shall be one plant per linear foot of lake

shoreline as measured at the control elevation water level. The littoral shelf should provide a feeding area for water dependent avian species.

i. The owners will employ management strategies in and around any golf course to address the potential for pesticide/chemical pollution of the groundwater and surface water receiving areas. The owners will comply with the goals of the Audubon Cooperative Sanctuary Program for Golf Courses. The management practices will include:

AUDUBON
GOLF COURSE

(1). The use of slow release fertilizer and/or carefully managed fertilizer applications which are timed to ensure maximum root uptake and minimal surface water runoff or leaching to the groundwater.

(2). The practice of intergraded pest management when seeking to control various pests, such as weeds, insects, and nematodes. The application of pesticides will involve only the purposeful and minimal application of pesticides, aimed only at identified targeted species. The regular widespread application of broad spectrum pesticides is not acceptable. The management program will minimize, to the extent possible, the use of pesticides, and will include the use of USDA-SCS Soil Pesticide Interaction Guide to select pesticides for uses that have a minimum potential for leaching or loss due to runoff depending on the site specific soil conditions. Applications of pesticides within 25 feet of any CREW, or other adjacent public preserve lands, is prohibited.

(3). The coordination of the application of pesticides with the irrigation practices (the timing and application rates of irrigation water) to reduce runoff and the leaching of any applied pesticides and nutrients;

(4). The utilization of a golf course manager who is licensed by the State to use restricted pesticides and who will perform the required management functions. The golf course manager will be responsible for ensuring that the golf course fertilizers are selected and applied to minimize fertilizer runoff into the surface water and the leaching of

those same fertilizers into the groundwater; and

(5). The storage, mixing and loading of fertilizer and pesticides will be designed to prevent/minimize the pollution of the natural environment.

j. In order to minimize the adverse impacts that construction may have on wildlife, natural environmental values, and water quality, the developer shall institute appropriate measures such as full compaction of any fill material placed around newly installed structures.

k. Any future individual development on the Property will be subject to Development of Regional Impact (DRI) review once it reaches the 80% threshold, i.e., at 800 units such development will be presumed to be a DRI. If two or more individual projects shall be developed on the Property, this 80% threshold shall be applicable to each, and not applied in a cumulative fashion unless subject to the aggregation criteria in Rule 9J-2, Fla. Admin. Code.

800 Units
is a
DRI

51. Policy 1.4.5 defines Density Reduction/Groundwater Resource as:

areas includ[ing] upland areas that provide substantial recharge to aquifers most suitable for future wellfield development. These areas also are the most favorable locations for physical withdrawal of water from those aquifers. Only minimal public facilities exist or are programmed. Land uses in these areas must be compatible with maintaining surface and groundwater levels at their historic levels. Permitted land uses include agriculture, mineral or limerock extraction and related facilities, conservation uses, publicly owned gun range facilities, and residential uses at a maximum density of one dwelling unit per ten acres (1 du/10 acres). Individual residential parcels may contain up to two acres of Wetlands without losing the right to have a dwelling unit, provided that no alterations are made to those wetland areas.

III. Relevant Plan Provisions

52. The Plan contains a typical color FLUM, which identifies future land uses graphically. However, the FLUM depicts the built-out condition of Lee County, which is projected to occur around 2060.

53. The Plan establishes a shorter planning timeframe through the device known as the "Year 2010 Overlay" (2010 Overlay), which consists of two parts. The first part of the 2010 Overlay is Map 16 of the Plan, which divides the County into 115 planning subdistricts.

54. The second part of the 2010 Overlay is Map 17 of the Plan. Map 17 contains a subpart for each of the 115 subdistricts. Each of subpart contains three items: a small map showing the location of the subdistrict, a bar graph showing acreage allocations within the subdistrict, and a pie chart showing the subdistrict's acreage allocations by specific land use within the subdistrict's total residential acreage allocation.

55. The subject property is in Subdistrict 814. The bar graph allocates the following acreages to Subdistrict 814: total residential--672.8; commercial--58.37; industrial--0; parks and public--0; active agriculture--2277.19; conservation--6251.17; passive agriculture--2286; and vacant--1109.01. The pie chart breaks down the total residential acreage as follows: Outlying Suburban--489.45; Density Reduction/Groundwater Resource--168.04; and Urban Community--15.31.

56. In other subdistricts, the pie chart includes an acreage allocation for land that is designated as Rural, although the record does not reveal if all subdistricts containing Rural received an allocation of some Rural acreage. If so, Subdistrict 814 would be the first such subdistrict to receive no allocation of Rural acreage. Intervenors have contended at hearing and in their proposed recommended order that they are not presently entitled, under the 2010 Overlay, to develop the land to the 1:1 density allowable under the Rural designation or the 6:1 designation allowable under the Planned Development District option.

57. Policy 1.1.1 establishes the role of the 2010 Overlay with respect to the FLUM:

The Future Land Use Map contained in this element is hereby adopted as the pattern for future development and substantial redevelopment within the unincorporated portion of Lee County. Maps 16 and 17 are an integral part of the Future Land Use Map series (see Policies 1.7.6 and 2.2.2). They depict the extent of development through the year 2010. No final development orders or extensions to final development orders will be issued or approved by Lee County which would allow the acreage totals for any land use category on these maps to be exceeded. . . . Residential densities are described in the following policies and summarized in Table 1. . . .

58. Policy 1.7.6 states:

The Year 2010 Overlay (see Maps 16 and 17 and Policies 1.1.1 and 2.2.2) depicts the proposed distribution, extent, and location of generalized land uses for the year 2010. Acreage totals are provided for land in each subdistrict in unincorporated Lee County. No final development orders or extensions to final

development orders will be issued or approved by Lee County which would allow the acreage totals for any land use category on these maps to be exceeded. This policy shall be implemented as follows: . . .

1. For each 2010 Overlay subdistrict, the County shall maintain or generate, as needed, records showing final development orders, building permits and certificates of occupancy issued within the last twelve (12) months. No later than September 30, 1994, the County shall have generated a baseline of existing developed acreage in each 2010 Overlay subdistrict. The baseline shall be periodically updated at least once every twelve (12) months for each 2010 Overlay subdistrict. The first comprehensive update shall occur on or before September 30, 1995.

2. Project reviews for final development orders shall include a review of the predicted amount of existing Overlay capacity that will be consumed by the development to be permitted at buildout. Subsequent to the effective date of this provision, no final development order, or extension of a final development order, shall be issued or approved if the project acreage is greater than the acreage remaining in the updated 2010 Overlay subdistrict. (Maps 16 and 17) regardless of other project approvals in that overlay subdistrict.

3. No later than the regularly scheduled date for submission of the Lee Plan Evaluation and Appraisal Report, and every five years thereafter, the County shall conduct a comprehensive evaluation of the 2010 Overlay system, including but not limited to, the appropriateness of land use distribution in the Overlay, problems with administrative implementations, if any, and areas where the overlay system might be improved.

59. Policy 2.2.2 states: .

Map 1 of the Future Land Use Map series indicates the uses which will ultimately be permitted on a given parcel. However, it is not a guarantee that such densities or uses are immediately appropriate, as the map for the county's growth over the

coming 26 years. During the rezoning process the Board of County Commissioners will balance the overall standards and policies of this plan with three additional factors:

- * whether a given proposal would further burden already overwhelmed existing or committed public facilities such that the approval should be delayed until the facilities can be constructed; and
- * whether a given proposal is for land so far from existing development or adequate public facilities that approval should be delayed in an effort to encourage compact and efficient growth patterns; and
- * whether a given proposal would result in unreasonable development expectations which may not be achievable because of acreage limitations on the "Year 2010 Overlay" (see Policy 1.7.6 and Maps 16 and 17).

60. Lee County's novel approach to designating future land uses necessitates a four-step process to determine the density presently permitted, subject to concurrency, under the Plan for a specific parcel. First, the FLUM assigns the parcel a future land use category. Second, the 2010 Overlay assigns acreage limitations by land use category for each subdistrict within the County. Third, a source outside of the Plan, through a process partially described within the Plan, inventories existing and approved land uses, by future land use category, within each subdistrict so as to permit the calculation of the acreage, by future land use category, remaining within each subdistrict for development. Fourth, the Plan assigns a density or intensity to each future land use category.

61. Contrary to Petitioner's contentions, Policy 2.2.2 does not permit Lee County to override the 2010 Overlay.

Nothing in this policy or the Plan suggests that zoning will override Plan designations. In general, zoning must conform to Plan provisions, so the more restrictive densities calculated under the Plan's four-step process control over more generous densities that may be allowed under the County's land development regulations.

62. Policy 1.1.1 clearly states that the County may not issue final development orders resulting in development that would exceed the acreages permitted by the 2010 Overlay. This policy adds, again unambiguously, that residential densities are controlled by the Plan policies, as summarized on Table 1.

63. Table 1 lists the maximum density for Rural as 1:1. However, this future land use category allows a developer to use a Planned Development District in order to increase density, pursuant to the provisions of Objective 1.8.

64. Table 1 refers to the Plan's Glossary for a definition of "density." The Plan defines "density" as:

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 waterbodies which are entirely contained within the residential development. Lands for commercial, office, and industrial uses, natural, navigable water bodies, and

other non-residential uses shall not be included.

65. Objective 1.8 authorizes increased densities for "development that will be totally independent of county-subsidized facilities and services." Policies under this objective require financial self-sufficiency and prohibit harmful environmental impacts. Nothing in Objective 1.8 or its policies suggests that Planned Development Districts override the 2010 Overlay. Policy 1.8.2 provides that the use of a Planned Development District may increase the density to that allowed for Urban Communities, without density bonuses. According to Table 1, the maximum density would thus be 6:1.

66. Policy 2.2.2 misstates the planning timeframe of the FLUM when it states that Map 1 distributes the growth over the next 26 years; as already noted, Map 1 distributes growth over the next 60 years. However, this misstatement is immaterial. Policy 2.2.2, which is under an objective titled, "Development Timing," provides only that the County Commission, in dealing with rezoning, will balance the Plan provisions with three other factors, and the third factor strongly implies that the restrictions of the 2010 Overlay control over any greater densities contemplated by rezoning.

67. Other Plan provisions cited by Petitioner are Objectives 2.1, 2.2, 77.3, 77.4, and 77.11, and Policies 5.1.2, 77.2.10, and 77.4.4.

68. Objective 2.1 is:

Contiguous and compact growth patterns shall be promoted through the rezoning process to contain urban sprawl, minimize

energy costs, conserve land, water, and natural resources, minimize the cost of services, [and] prevent development patterns where large tracts of land are by-passed in favor of development more distant from services and existing communities.

69. Objective 2.2 is: "Direct new growth to those portions of the Future Urban Areas where adequate public facilities exist or are assured and where compact and contiguous development patterns can be created. . . ."

70. Policy 5.1.2 is:

Prohibit residential development where physical constraints or hazards exist, or require the density and design to be adjusted accordingly. Such constraints or hazards include but are not limited to flood, storm, or hurricane hazards; unstable soil or geologic conditions; environmental limitations; aircraft noise; or other characteristics that may endanger the residential community.

71. Policy 77.2.10 is: "Development adjacent to aquatic and other nature preserves, wildlife refuges, and recreation areas shall protect the natural character and public benefit of these areas including, but not limited to, scenic values for the benefit of future generations."

72. Objective 77.3 is: "Maintain and enhance the fish and wildlife diversity and distribution within Lee County for the benefit of a balanced ecological system."

73. Objective 77.4 is: "Lee County will continue to protect habitats of endangered and threatened species and species of special concern in order to maintain or enhance existing population numbers and distributions of listed species."

74. Policy 77.4.4 is:

Restrict the use of protected plant and wildlife species habitat to that which is compatible with the requirements of endangered and threatened species and species of special concern. New developments shall protect remnants of viable habitats when listed vegetative and wildlife species inhabit a tract slated for development, except where equivalent mitigation is provided.

75. Objective 77.11 is: "County staff shall develop measures to protect the Florida panther and black bear through greenbelt and acquisition strategies."

IV. Relevant Provisions of the State Comprehensive Plan

76. Petitioner also cites the following provisions of the State Comprehensive Plan, Section 187.201 et seq., Florida Statutes: Sections 187.201(10)(a), (b)3., and (b)7.; 187.201(12)(b)1. and (b)6.; 187.201(16)(a); 187.201(20)(b)12.; and 187.201(22)(b)3.

77. The relevant portions of Section 187.201(10) state:

(a) Florida shall protect and acquire unique natural habitats and ecological systems, such as wetlands, tropical hardwood hammocks, palm hammocks, and virgin longleaf pine forests, and restore degraded natural systems to a functional condition.

(b)3. Prohibit the destruction of endangered species and protect their habitats.

(b)7. Protect and restore the ecological functions of wetlands systems to ensure their long-term environmental, economic, and recreational value.

78. The relevant portions of Section 187.201(12) provide:

(b)1. Continue to reduce per capita energy consumption.

(b)6. Increase the efficient use of energy in design and operation of buildings, public utility systems, and other infrastructure and related equipment.

79. Section 187.201(16) (a) states:

In recognition of the importance of preserving the natural resources and enhancing the quality of life of the state, development shall be directed to those areas which have in place, or have agreements to provide, the land and water resources, fiscal abilities, and service capacity to accommodate growth in an environmentally acceptable manner.

80. Section 187.201(20) (b)12. provides:

Avoid transportation improvements which encourage or subsidize increased development in coastal high-hazard areas or in identified environmentally sensitive areas such as wetlands, floodways, or productive marine areas.

81. Section 187.201(22) (b)3. states:

Maintain, as one of the state's primary economic assets, the environment, including clean air and water, beaches, forests, historic landmarks, and agricultural and natural resources.

V. Miscellaneous

82. Since the inception of comprehensive planning under current Chapter 163, Part II, Florida Statutes, Lee County has twice unsuccessfully litigated whether its FLUM is in compliance.

83. In the first case, Sheridan v. Lee County and Department of Community Affairs, 16 FALR 654 (Fla. Admin. Cmn. 1994), the Administration Commission determined that the FLUM, which graphically portrayed land uses through buildout, or 2060, was not in compliance. Consequently, Lee County adopted the 2010 Overlay and adopted the Density Reduction/Groundwater Resource designation to reduce densities and protect groundwater resources.

84. In the second case, Department of Community Affairs and Responsible Growth Management Coalition, Inc. v. Lee County, 18 FALR 4040 (Fl. Admin. Cmn. 1996) (Responsible Growth Management Coalition), the Administration Commission determined, by final order entered July 25, 1996, that Lee County's repeal of the 2010 Overlay left the FLUM not in compliance. Consequently, Lee County readopted the 2010 Overlay.

85. In Responsible Growth Management Coalition, the Administration Commission considered the redesignation from Density Reduction/Groundwater Resource to Airport Commerce of a 1400-acre parcel known as the "Alico property." The Administration Commission expressly conditioned its approval of this redesignation on the adoption of a Plan amendment "to include a policy or policies to discourage further land use map amendments in the southeast portion of the county." In response to this recommendation, Lee County adopted Policy 2.4.3.

86. Policy 2.4.3 states in relevant part:

Future Land Use Map amendments to the existing [Density Reduction/Groundwater Resource] areas south of SR 82 east of I-75 . . . which increase the allowable density or intensity of land use will be discouraged by the county. It is Lee County's policy not to approve further urban designations there for the same reasons that supported its 1990 decision to establish [the Density Reduction/Groundwater Resource] category.

. . .

87. In the Compliance Agreement that settled DCA's original claims concerning the FLUM amendment, DCA, Lee County, and Intervenor's agreed to additional language to be added to Policy 1.4.1 in return for DCA dropping its challenge to the FLUM amendment.

88. The three most material differences between the language from the Compliance Agreement and the addition to Policy 1.4.1 are stated in this paragraph. First, the addition to Policy 1.4.1 fails to incorporate after the last sentence of Policy 1.4.1.1.e the following language from the Compliance Agreement: "Additionally, when the Property is developed, deed restrictions will be placed on all residences which will require pets to be leashed or contained within enclosures." Second, the addition to Policy 1.4.1 fails to incorporate the requirement of installing an 80 percent opaque screen, upon request of a CREW manager. Third, the addition to Policy 1.4.1 fails to incorporate the assurance of Intervenor's that they will not initiate an amendment to the 2010 Overlay until the next Evaluation and Appraisal Report is

due, which is projected to be 2001. However, these differences are not material to this case.

VI. Ultimate Findings of Fact

A. Two Preliminary Issues

89. This case presents two preliminary issues. The first issue requires the determination of the effect of the Plan Amendments when the new land use is prohibited by the 2010 Overlay.

90. Where, as here, the land use permitted by the FLUM is prohibited by the 2010 Overlay, it is necessary to analyze the FLUM amendment from two perspectives: the present, at which time no new land uses are permitted, and 2060, by which time the newly permitted land use will be allowed.

91. Because the 2010 Overlay does not allocate any residential acreage to Rural in Subdistrict 814, the immediate impact of the Plan Amendments is to restrict, not liberalize, land uses for the subject property, as Intervenor's point out in their proposed recommended order. Designated Density Reduction/Groundwater Resource, the subject property could take advantage of the allocation of 168.04 acres of residential acreage allocation in Map 17-814, assuming that this acreage, which represents only 1/12th of the area of the subject property, has not already been used in Subdistrict 814. The Density Reduction/Groundwater Resource designation also permitted mining, again assuming that one of the land use categories shown in Map 17-814 actually permits mining and, if so, that the acreage allocation had not already been

exhausted. These residential and industrial uses are no longer immediately available under Rural in Subdistrict 814.

92. However, the FLUM amendment ultimately expands upon the potential land uses for the subject property: no later than 2060 (or buildout), the Plan Amendments permit a density of 1:1 as Rural and 6:1 as a Planned Development District within Rural.

93. Analysis of a deferred change in future land use, such as is typical in the case of Future Urban Area designations, requires separate analyses of the effect of the deferred change to the FLUM when it is first proposed and the effect of the change to the FLUM when it is implemented, such as through a change in the 2010 Overlay or its successor. (For reasons stated in the conclusions of law, the preceding statement assumes that the deferred effect cannot take place automatically so as to preclude review by DCA and a plan-amendment challenge at least by DCA.)

94. The analysis of the deferred effect of a FLUM amendment cannot be as detailed as the ultimate analysis, which can take into consideration numerous factors not in existence at the time of the initial analysis. Similarly, Lee County will need to analyze considerably more data and analysis when it amends the 2010 Overlay, or its successor, to implement the Plan Amendments. Likewise, DCA and, if necessary, the Administration Commission will need to perform a more detailed analysis to determine if the future Plan amendment implementing the present Plan Amendments is

supported by the available data and analysis. Examining these issues now, necessarily in more summary fashion, does not preclude or restrict more detailed examination of these issues later when Lee County amends the Plan to implements the Plan Amendments.

95. The second preliminary issue establishes the point of comparison to be used when considering the immediate and ultimate effects of the Plan Amendments. Implicit in Petitioner's contentions concerning, for example, supporting data and analysis is that the comparison should be to the pristine condition of the subject property prior to its conversion to intensive agricultural uses. However, on these facts, the proper point of comparison is to the land in its present condition, not in some earlier, relatively undisturbed condition.

96. This is an issue of some importance because of the exemption of agricultural uses from the definition of "development" in Chapter 163, Part II, Florida Statutes. Where a local government does not voluntarily attempt to include agricultural development within the definition of development in its plan, this definitional exclusion arguably permits the agricultural development or agricultural redevelopment of any land anywhere and anytime without subjecting the development proposal to compliance review under Chapter 163, Part II, Florida Statutes.

97. Having converted land to intensive agricultural uses, arguably in a land use change that is exempt from review

under Chapter 163, Part II, Florida Statutes, a developer might then seek a redesignation to a more dense or intense use than would have been otherwise possible without the intervening intensive agricultural use.

98. Different facts than those present in this case may require a comparison to the pre-agricultural use of a particular site. For instance, the facts may reveal, directly or indirectly, that a conversion to an interim agricultural use was for the sole purpose of obtaining an in-compliance determination on the ultimate conversion of the land to residential or commercial use. Indirect evidence of such a sham might consist of a short duration of actual agricultural operations, absence of permits required to maintain intensive agricultural operations, absence of relevant agricultural experience at the operational level, refusal to make typical investments in agricultural operations of the type claimed, or failure to reach profitability.

99. However, there is no question in the present case that the intensive agricultural uses were legitimate and cannot be disregarded as a sham. The land was devoted to intensive agricultural for over 20 years, and the landowners had sufficient permits to alter the surface water and groundwater regimes sufficiently to suit their agricultural needs. One of the Intervenor grows tomatoes in North Florida and operated a packing house for tomatoes in the Bonita Springs area until post-NAFTA Mexican competition forced its closure due to unprofitability.

B. Supporting Data and Analysis

100. No party has raised a question whether the immediate effect of the Plan Amendments--which is a reduction in density--is supported by data and analysis.

101. The parties instead litigated the question whether the Plan Amendments, once ultimately implemented by a change in the 2010 Overlay or its successor, satisfy the criteria of supporting data and analysis.

102. The first issue of supporting data and analysis concerns whether Lee County needs the additional residential units. The record does not establish or even suggest any changes in population projections, so the issue requires consideration of net changes in designated residential capacity at buildout.

103. Intervenor's land use planning expert, David Depew, calculated that the FLUM amendment would result in a net increase of 1480 dwelling units on the subject property. Mr. Depew calculated the units by starting with a total acreage of 1920 acres. Actually, Sections 1 and 2 are each 650 acres, and Section 3 is 649 acres. However, this recommended order will follow the convention of 640-acre sections.

104. Mr. Depew calculated that the 275 acres of Wetlands would receive a density of 1:20 under the Plan, and the remaining 1645 acres of Density Reduction/Groundwater Resource would receive a density of 1:10. Thus, the Wetlands would support 14 units, and the Density Reduction/Groundwater Resource would support 165 units, for a total of 179 units.

105. Mr. Depew next calculated the units allowed under 1:1. Again assigning the Wetlands 14 units, he determined that the remaining 1645 acres of Rural would receive a density of 1:1, or 1645 units. The total would thus be 1659 units. The net increase, after reduction for the units previously allowed before the Plan Amendments, would be 1480 dwelling units.

106. Mr. Depew explained that this net increase of 1480 dwelling units is more than offset by the loss of 3638 dwelling units throughout Lee County from August 1992, when Lee County adopted the FLUM amendment, through August 1997, when Lee County adopted the addition to Policy 1.4.1.

107. Mr. Depew assumed that, in August 1992, the Plan was in balance in terms of designated residential capacity versus projected population. As noted above, final orders in 1994 and 1996 required amendments to place the Plan in balance in terms of residential allocations. Although not entirely free from doubt, it appears that the components of the 3638 units lost during this time were not reductions attributable to Plan amendments necessitated by these final orders, so it is reasonably likely that Mr. Depew's analysis correctly assumes that the Plan was in balance at the start of this five year period.

108. Mr. Depew's testimony shows that the 1:1 density eventually to be allowed by Rural does not represent a net increase in dwelling units. This testimony is credited, and therefore, in terms of residential need, the data and analysis

support the Plan Amendments to the extent of the change to 1:1.

109. Mr. Depew did not address a density of 6:1 under the Planned Development District option. The 1:1 density is a tenfold increase on the 1:10 density allowed prior to the FLUM amendment. The 6:1 density is an increase of 60 times over the 1:10 density previously allowed. Again calculating the density separately for Wetlands, the total units at 6:1 reaches 9884, or an increase of 9705 units over the 179 units allowed prior to the Plan Amendments.

110. Using a figure of two persons per dwelling unit, which is slightly less than the figure used by Lee County, the populations would be roughly 358 persons under the 1:10 and 1:20 in effect before the Plan Amendments, 3318 persons under 1:1 and 1:20, and 19,768 persons under 6:1 and 1:20. Thus, the change to 1:1 adds only 2960 persons, but the change from 1:1 to 6:1 adds another 16,450 persons over the 2960 persons added by the 1:1.

111. Petitioner has shown to the exclusion of fair debate that the data and analysis, in terms of residential need, do not support an increase to 6:1. This failure is of such a magnitude that the data and analysis, in their entirety, do not support the increase to 6:1.

112. Without regard to residential need, the data and analysis support a conversion of the subject property from its present intensive agricultural use to residential use, but again only to a density of 1:1. Petitioner has shown to the

exclusion of fair debate that the data and analysis, even without regard to residential need, do not support a density of 6:1.

113. The data and analysis support the conversion of intensive agricultural uses to 1:1 density because the conversion would necessitate improvements in open-space stormwater management, eliminate disruptions of the water table aquifer, and restore some natural habitat. The record does not permit a comparison of the differences in the amounts or types of fertilizers and pesticides that would accompany intensive agricultural and residential uses.

114. The additions to Policy 1.4.1 require a restoration of natural-like stormwater management system for the open areas and the restoration of natural vegetation in the open areas, including the outermost buffer, that are not golf courses or roads.

115. The quantitative measure of these revegetation and stormwater requirements is relatively easy to calculate. Policy 1.4.1 requires that no less than 40 percent of the acreage be open area. This represents 768 acres. Policy 1.4.1 prohibits the use of more than half of this open space in golf courses, so the net acreage is 384. The existing wetlands constitute 275 acres, so the net after this reduction is 109 acres. The first buffer, which must be substantially revegetated, represents 48.5 acres (one mile times three miles times 100 feet). The second buffer, for which there are no revegetation requirements, is 50 feet wide and thus less than

half the area of the first buffer. If the second buffer is 24 acres, then the remaining open space is about 37 acres, which is almost equal to the size of the retention pond on the northwest corner of Section 2. Although the revegetation and stormwater improvements most directly involve only the open space, the cessation of agricultural groundwater pumping and elimination of a sterile monoculture of row crops also represent important environmental gains.

116. However, to the exclusion of fair debate, these environmental gains, which offset a density of 1:1, do not compensate for a density of 6:1 for two reasons, in terms of supporting data and analysis exclusive of residential need.

117. First, the above-described population increase from 1:1 to 6:1 intensifies the effects of a decidedly urban land use surrounded on three sides by largely preservation uses and crucial habitat for, among other species, the Florida panther. In terms of public facilities, such a density increase means increases in vehicular traffic and transportation facilities, impervious area and drainage facilities, and usage of active and passive recreational areas and open spaces.

118. Second, the increase from 1:1 to 6:1 is unsupported by another important source of data and analysis: the Responsible Growth Management Coalition final order. In this final order, the Administration Commission conditioned its approval of an unrelated change in the FLUM upon Lee County's undertaking to amend its Plan "to discourage further land use amendments in the southeast portion of the county."

119. In response, Lee County adopted Policy 2.4.3, which has been quoted above. Although Petitioner did not cite Policy 2.4.3 as a basis for internal inconsistency, its presence in the Plan, coupled with its source in the final order of the Administration Commission, provide additional data and analysis, against which to analyze the Plan Amendments.

120. The final order broadly discourages any change in the FLUM in this part of Lee County; Policy 2.4.3 discourages changes that increase density or intensity of land use. The Plan Amendments lack support even when analyzed against the more generous standard of Policy 2.4.3. While any increase in density or intensity might have been sufficient for a finding of an internal inconsistency, the substantial increase in density to 6:1 with the resulting increase in intensity outweighs the offsetting environmental benefits and deprives the Plan Amendments of supporting data and analysis in this regard, as well.

121. Petitioner has shown to the exclusion of fair debate that the 6:1 density is not supported by the data and analysis, without regard to residential need. Petitioner has thus shown to the exclusion of fair debate that the 6:1 density is not supported by the data and analysis, in their totality.

B. Failure to Discourage Urban Sprawl

122. The Plan Amendments do not readily lend themselves to urban-sprawl analysis. On the one hand, the Plan

Amendments would introduce residential uses in a large rural area devoted to agricultural use. The residential uses would consist of nearly no commercial uses and would hardly represent a functional mixture of uses, although there is some question concerning the profile of uses that, for the types of residents targeted by this proposed development, would represent a viable mixture so as to reduce vehicular trips and present an opportunity for the formation of a viable community.

123. On the other hand, the Plan Amendments would introduce residential uses that would not require public expenditures for those public facilities that are capable of being provided by developers. To the contrary, the Plan Amendments might result in development that would generate excess revenues with which Lee County could attempt to offset the ongoing costs of historic urban sprawl in areas such as Lehigh Acres. And, given the fact that the effect of the 2010 Overlay limits this consideration of the FLUM amendment to buildout, there is no question of premature development or an absence of phasing.

124. In some respects, the urban-sprawl template yields contradictory results when applied to the 6:1 density. Compared to 1:1 density, 6:1 density would provide a clearer separation of urban and rural uses and the concentration of greater population on a smaller area of land. On the other hand, the 6:1 density is suggestive of urban sprawl in its designation of more density than is needed, failure to achieve

net protection of natural resources (after balancing the environmental protections of Policy 1.4.1 against the environmental harm caused by the existing intensive agricultural uses), and exacerbation of the absence of a traditional, functional mix of uses on a site of a sufficient size to accommodate such uses.

125. In the final analysis, on the facts of this case, the question is not so much whether the 6:1 density represents urban sprawl, but whether it is a suitable land use in terms of supporting data and analysis. The inapplicability of an urban-sprawl analysis, as to the 6:1 density, is perhaps best illustrated by the fact that, in this case, a more efficient use of land does not mean the preservation of the existing agricultural use or the establishment of a denser use or a more diverse range of uses.

126. The net environmental benefits that accompany the 1:1 density preclude a showing to the exclusion of fair debate that the Plan Amendments, if limited to 1:1, are inconsistent with the criterion of discouraging urban sprawl.

127. The absence of net environmental benefits, coupled with the excessive density designation, that accompany the Plan Amendments, if extended to 6:1, preclude a resolution of the urban-sprawl issue on the same basis as that used for the Plan Amendments, if limited to 1:1. However, given the evident inapplicability of urban-sprawl issues to the Plan Amendments, even if extended to 6:1, Petitioner has failed to show to the exclusion of fair debate that the Plan Amendments,

if extended to 6:1, are inconsistent with the criterion of discouraging urban sprawl.

C. Internal Inconsistency

128. Petitioner has failed to prove to the exclusion of fair debate that the Plan Amendments are inconsistent with Objective 2.1, which represents only a commitment concerning the rezoning process.

129. Petitioner has failed to prove to the exclusion of fair debate that the Plan Amendments are inconsistent with Objective 2.2, which requires guiding growth to Future Urban Areas where adequate public facilities exist or are assured and where compact and contiguous development patterns are possible. Here, developer-provided public facilities are assured, and the development is contiguous to development to the west.

130. Although there is some question as to the compactness of the development of the subject property following the Plan Amendments, Petitioner did not prove to the exclusion of fair debate that, after clustering, some compactness would not follow. To the contrary, 6:1 development would permit considerable compactness, although, as previously discussed in connection with urban sprawl, compactness at this site is not a suitable objective because it is not supported by the data and analysis.

131. Petitioner has failed to prove to the exclusion of fair debate that the Plan Amendments are inconsistent with Policy 5.1.2, which prohibits residential development within

hazardous areas. Petitioner argues that this amendment would allow residential development within a floodprone area.

Historically, Sections 1 and 2 occupied a slough, but, after the subject property was diked, this hazard was considerably reduced. The record does not permit a finding of the extent of storm event necessary to inundate the subject property, so it is impossible to find that residential development within protected by the existing berm would present such a hazard as to be inconsistent with Policy 5.1.2.

132. Petitioner has failed to prove to the exclusion of fair debate that the Plan Amendments, if limited to 1:1, are inconsistent with Policy 77.2.10, which requires that development adjacent to nature preserves and wildlife refuges protect the natural character and public benefit of the areas, including their scenic value.

133. However, Petitioner has proved to the exclusion of fair debate that the Plan Amendments, if extended to 6:1, are inconsistent with Policy 77.2.10. Evidence establishing the sufficiency of buffers capable of absorbing most of the impacts of 1659 dwelling units clustered within an area of three square miles does not establish the sufficiency of the same buffers in absorbing the impacts of 9884 dwelling units clustered over the same area.

134. For the same reasons, Petitioner has not proved to the exclusion of fair debate that the Plan Amendments, if limited to 1:1, are inconsistent with Objective 77.3, which requires the maintenance and enhancement of wildlife diversity

for the benefit of a balanced ecological system, and Objective 77.4, which requires the protection of the habitats of listed species, but has proved to the exclusion of fair debate that the Plan Amendments, if extended to 6:1, are inconsistent with Objectives 77.3 and 77.4.

135. Petitioner has not proved to the exclusion of fair debate that the Plan Amendments are inconsistent with Policy 77.4.4, which restricts the use of protected habitat. The only possible protected habitat on the subject property is the wetlands, and they would remain undeveloped. Otherwise, the intensive agricultural operations have substantially eliminated the natural habitat function of the property.

D. Inconsistency with the State Plan

136. Petitioner has not proved to the exclusion of fair debate that the Plan Amendments, if limited to 1:1, are inconsistent with any of the provisions of the State Plan, given the environmental tradeoffs in replacing the intensive agricultural uses with 1:1 clustered, buffered residential development.

137. Petitioner has proved to the exclusion of fair debate that the Plan Amendments, if extended to 6:1, are inconsistent with the following provisions of the State Plan, even after the State Plan is considered as a whole: Section 187.201(10)(b)3., which requires the protection of the habitats of endangered species, and Section 187.201(16)(a), which requires the direction of growth into areas with the

service capacity, including roads, parks, and drainage, to accommodate growth in an environmentally sensitive manner.

CONCLUSIONS OF LAW

138. The Division of Administrative Hearings has jurisdiction over the subject matter. Sections 120.57(1) and 163.3184(9) and (16), Florida Statutes. (All references to Sections are to Florida Statutes. All references to Rules are to the Florida Administrative Code.)

139. Section 163.3184(16)(f)1 governs the present case in which DCA commenced a proceeding challenging the FLUM amendment, entered into a Compliance Agreement settling the case, and then found the remedial amendments to Policy 1.4.1 to be in compliance. Upon Petitioner's renewed challenge to the FLUM amendment and new challenge to the additions to Policy 1.4.1, Section 163.3184(16)(f)1 directs the administrative law judge to realign the parties and proceed under Section 163.3184(9).

140. Section 163.3184(9)(a) authorizes an "affected person" to challenge a plan or plan amendment that DCA has determined to be in compliance. This section requires that such a person prove to the exclusion of fair debate that the challenged plan provision is not in compliance.

141. Section 163.3184(1)(a) states that an

[a]ffected person includes the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review; and adjoining local governments that can demonstrate that the plan or plan amendment will produce

substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction. Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

142. Petitioner and Intervenor are affected persons, as defined by Section 163.3184(1)(a).

143. Section 163.3184(1)(b) defines "in compliance" as:

consistent with the requirements of ss. 163.3177, 163.3178, and 163.3191, with the state comprehensive plan, with the appropriate strategic regional policy plan, and with chapter 9J-5, Florida Administrative Code, where such rule is not inconsistent with chapter 163, part II.

144. Section 163.3177(10)(a) provides:

The Legislature finds that in order for the department to review local comprehensive plans, it is necessary to define the term "consistency." Therefore, for the purpose of determining whether local comprehensive plans are consistent with the state comprehensive plan and the appropriate regional policy plan, a local plan shall be consistent with such plans if the local plan is "compatible with" and "furthers" such plans. The term "compatible with" means that the local plan is not in conflict with the state comprehensive plan or appropriate regional policy plan. The term "furthers" means to take action in the direction of realizing goals or policies of the state or regional plan. For the purposes of determining consistency of the local plan with the state comprehensive plan or the appropriate regional policy plan, the state or regional plan shall be construed

as a whole and no specific goal and policy shall be construed or applied in isolation from the other goals and policies in the plans.

145. Section 163.3177(11) adds, in relevant part:

(a) The Legislature recognizes the need for innovative planning and development strategies which will address the anticipated demands of continued urbanization of Florida's coastal and other environmentally sensitive areas, and which will accommodate the development of less populated regions of the state which seek economic development and which have suitable land and water resources to accommodate growth in an environmentally acceptable manner. The Legislature further recognizes the substantial advantages of innovative approaches to development which may better serve to protect environmentally sensitive areas, maintain the economic viability of agricultural and other predominantly rural land uses, and provide for the cost-efficient delivery of public facilities and services.

(b) It is the intent of the Legislature that the local government comprehensive plans and plan amendments adopted pursuant to the provisions of this part provide for a planning process which allows for land use efficiencies within existing urban areas and which also allows for the conversion of rural lands to other uses, where appropriate and consistent with the other provisions of this part and the affected local comprehensive plans, through the application of innovative and flexible planning and development strategies and creative land use planning techniques, which may include, but not be limited to, urban villages, new towns, satellite communities, area-based allocations, clustering and open space provisions, mixed-use development, and sector planning.

146. Section 163.3177(8) provides in part:

All elements of the comprehensive plan, whether mandatory or optional, shall be based upon data appropriate to the element involved. . . .

147. Section 163.3177(10)(e) states in part:

It is the Legislature's intent that support data or summaries thereof shall not be subject to the compliance review process, but the Legislature intends that goals and policies be clearly based on appropriate data. . . .

148. Rule 9J-5.005(2)(a) provides in part:

All goals, objectives, policies, standards, findings and conclusions within the comprehensive plan and its support documents, and within plan amendments and their support documents, shall be based upon relevant and appropriate data and the analyses applicable to each element. To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue. . . .

149. Rule 9J-5.006(2)(b) and (c) provides that the future land use element shall be based on the following analyses:

(2)(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;

(c) An analysis of the amount of land needed to accommodate the projected population, including:

1. The categories of land use and their densities or intensities of use,
2. The estimated gross acreage needed by category, and
3. A description of the methodology used[.]

150. Rule 9J-5.006(3)(b)8 requires that the future land use element contain an objective to "discourage the proliferation of urban sprawl."

151. Rule 9J-5.003(140) defines "urban sprawl" as follows:

'Urban sprawl' means urban development or uses which are located in predominantly rural areas, or rural areas interspersed with generally low-intensity or low-density urban uses, and which are characterized by one or more of the following conditions: (a) The premature or poorly planned conversion of rural land to other uses; (b) The creation of areas of urban development or uses which are not functionally related to land uses which predominate the adjacent area; or (c) The creation of areas of urban development or uses which fail to maximize the use of existing public facilities or the use of areas within which public services are currently provided. Urban sprawl is typically manifested in one or more of the following land use or development patterns: Leapfrog or scattered development; ribbon or strip commercial or other development; or large expanses of predominantly low-intensity, low-density, or single-use development.

152. Rule 9J-5.006(5) elaborates upon the concept of urban sprawl in the review of plans and plan amendments for discouraging the proliferation of urban sprawl:

(a) Purpose. The purpose of this subsection is to give guidance to local governments and other interested parties about how to make sure that plans and plan amendments are consistent with relevant provisions of the state comprehensive

plan, regional policy plans, Chapter 163, Part II, F.S., and the remainder of this chapter regarding discouraging urban sprawl, including provisions concerning the efficiency of land use, the efficient provision of public facilities and services, the separation of urban and rural land uses, and the protection of agriculture and natural resources.

(b) Determination. The determination of whether a plan or plan amendment discourages the proliferation of urban sprawl shall be based upon the standards contained in this subsection.

(c) In general. The discouragement of urban sprawl accomplishes many related planning objectives. The purpose of this subsection is to provide a general methodology for examining whether or not a plan or plan amendment discourages the proliferation of urban sprawl. This subsection is organized into twelve paragraphs, Paragraphs (5)(a) through (5)(l). Nothing in this paragraph (5) shall be interpreted to require that a local government submit information beyond the information required by other provisions of this chapter.

(d) Use of indicators. Paragraph (5)(g) describes those aspects or attributes of a plan or plan amendment which, when present, indicate that the plan or plan amendment may fail to discourage urban sprawl. For purposes of reviewing the plan for discouragement of urban sprawl, an evaluation shall be made whether any of these indicators is present in a plan or plan amendment. If an indicator is present, the extent, amount or frequency of that indicator shall be considered. The presence and potential effects of multiple indicators shall be considered to determine whether they collectively reflect a failure to discourage urban sprawl.

(e) Methodology for determining indicators. Paragraphs (5)(h) through (5)(j) describe the three major components of a methodology to determine the presence of urban sprawl indicators. Paragraph (5)(h) describes how land use aspects of a plan shall be analyzed. The land use element, including both the future land use map and associated

objectives and policies, represents the focal point of the local government's planning effort. Paragraph (5)(i) describes the unique features and characteristics of each jurisdiction which provide the context of the analysis and which are needed to evaluate the extent, amount or frequency of an indicator and the significance of an indicator for a specific jurisdiction. Paragraph (5)(j) recognizes that land use plans generally may be significantly affected by other development policies in a plan which may serve to mitigate the presence of urban sprawl indicators based on the land use plan alone. Paragraph (5)(j) describes development controls which may be used by a local government to mitigate the presence of urban sprawl.

(f) Analysis components.

Subsection (5)(k) describes how the analysis components described in Subsections (5)(h) through (5)(j) are combined in a systematic way to determine the presence of urban sprawl indicators.

(g) Primary indicators. The primary indicators that a plan or plan amendment does not discourage the proliferation of urban sprawl are listed below. The evaluation of the presence of these indicators shall consist of an analysis of the plan or plan amendment within the context of features and characteristics unique to each locality in order to determine whether the plan or plan amendment:

1. Promotes, allows or designates for development substantial areas of the jurisdiction to develop as low-intensity, low-density, or single-use development or uses in excess of demonstrated need.

2. Promotes, allows or designates significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while leaping over undeveloped lands which are available and suitable for development.

3. Promotes, allows or designates urban development in radial, strip, isolated or ribbon patterns generally emanating from existing urban developments.

4. As a result of premature or poorly planned conversion of rural land to other

uses, fails adequately to protect and conserve natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, natural groundwater aquifer recharge areas, lakes, rivers, shorelines, beaches, bays, estuarine systems, and other significant natural systems.

5. Fails adequately to protect adjacent agricultural areas and activities, including silviculture, and including active agricultural and silvicultural activities as well as passive agricultural activities and dormant, unique and prime farmlands and soils.

6. Fails to maximize use of existing public facilities and services.

7. Fails to maximize use of future public facilities and services.

8. Allows for land use patterns or timing which disproportionately increase the cost in time, money and energy, of providing and maintaining facilities and services, including roads, potable water, sanitary sewer, stormwater management, law enforcement, education, health care, fire and emergency response, and general government.

9. Fails to provide a clear separation between rural and urban uses.

10. Discourages or inhibits infill development or the redevelopment of existing neighborhoods and communities.

11. Fails to encourage an attractive and functional mix of uses.

12. Results in poor accessibility among linked or related land uses.

13. Results in the loss of significant amounts of functional open space.

(h) Evaluation of land uses. The comprehensive plan must be reviewed in its entirety to make the determinations in (5)(g) above. Plan amendments must be reviewed individually and for their impact on the remainder of the plan. However, in either case, a land use analysis will be the focus of the review and constitute the primary factor for making the determinations. Land use types cumulatively (within the entire jurisdiction and areas less than the entire jurisdiction, and in proximate areas outside the jurisdiction) will be

evaluated based on density, intensity, distribution and functional relationship, including an analysis of the distribution of urban and rural land uses. Each land use type will be evaluated based on:

1. Extent.
2. Location.
3. Distribution.
4. Density.
5. Intensity.
6. Compatibility.
7. Suitability.
8. Functional relationship.
9. Land use combinations.
10. Demonstrated need over the planning period.

(i) Local conditions. Each of the land use factors in (5) (h) above will be evaluated within the context of features and characteristics unique to each locality. These include:

1. Size of developable area.
2. Projected growth rate (including population, commerce, industry, and agriculture).
3. Projected growth amounts (acres per land use category).
4. Facility availability (existing and committed).
5. Existing pattern of development (built and vested), including an analysis of the extent to which the existing pattern of development reflects urban sprawl.
6. Projected growth trends over the planning period, including the change in the overall density or intensity of urban development throughout the jurisdiction.
7. Costs of facilities and services, such as per capita cost over the planning period in terms of resources and energy.
8. Extra-jurisdictional and regional growth characteristics.
9. Transportation networks and use characteristics (existing and committed).
10. Geography, topography and various natural features of the jurisdiction.

(j) Development controls.
Development controls in the comprehensive

plan may affect the determinations in (5)(g) above. The following development controls, to the extent they are included in the comprehensive plan, will be evaluated to determine how they discourage urban sprawl:

1. Open space requirements.
2. Development clustering requirements.
3. Other planning strategies, including the establishment of minimum development density and intensity, affecting the pattern and character of development.
4. Phasing of urban land use types, densities, intensities, extent, locations, and distribution over time, as measured through the permitted changes in land use within each urban land use category in the plan, and the timing and location of those changes.
5. Land use locational criteria related to the existing development pattern, natural resources and facilities and services.
6. Infrastructure extension controls, and infrastructure maximization requirements and incentives.
7. Allocation of the costs of future development based on the benefits received.
8. The extent to which new development pays for itself.
9. Transfer of development rights.
10. Purchase of development rights.
11. Planned unit development requirements.
12. Traditional neighborhood developments.
13. Land use functional relationship linkages and mixed land uses.
14. Jobs-to-housing balance requirements.
15. Policies specifying the circumstances under which future amendments could designate new lands for the urbanizing area.
16. Provision for new towns, rural villages or rural activity centers.
17. Effective functional buffering requirements.

18. Restriction on expansion of urban areas.

19. Planning strategies and incentives which promote the continuation of productive agricultural areas and the protection of environmentally sensitive lands.

20. Urban service areas.

21. Urban growth boundaries.

22. Access management controls.

(k) Evaluation of factors. Each of the land use types and land use combinations analyzed in Paragraph (5)(h) above will be evaluated within the context of the features and characteristics of the locality, individually and together (as appropriate), as listed in Paragraph (5)(i). If a local government has in place a comprehensive plan found in compliance, the Department shall not find a plan amendment to be not in compliance on the issue of discouraging urban sprawl solely because of preexisting indicators if the amendment does not exacerbate existing indicators of urban sprawl within the jurisdiction.

(l) Innovative and flexible planning and development strategies. Notwithstanding and as a means of addressing any provisions contained in rules 9J-5.006(3)(b)8., 9J-5.011(2)(b)3., 9J-5.003(140) and this subsection, the Department encourages innovative and flexible planning and development strategies and creative land use planning techniques in local plans. Planning strategies and techniques such as urban villages, new towns, satellite communities, area-based allocations, clustering and open space provisions, mixed-use development and sector planning that allow the conversion of rural and agricultural lands to other uses while protecting environmentally sensitive areas, maintaining the economic viability of agricultural and other predominantly rural land uses, and providing for the cost-efficient delivery of public facilities and services, will be recognized as methods of discouraging urban sprawl and will be determined consistent with the provisions of the state comprehensive plan, regional policy plans, Chapter 163, Part II, and this

chapter regarding discouraging the proliferation of urban sprawl.

153. As a preliminary issue, Lee County cannot repeal or allow to expire the 2010 Overlay without subjecting this action or inaction to review under Chapter 163, Part II, Florida Statutes.

154. Section 163.3191 describes the process by which local governments submit evaluation and appraisal reports and accompanying amendments. In relevant part, this section states:

(1) The planning program shall be a continuous and ongoing process. The local planning agency shall prepare periodic reports on the comprehensive plan, which shall be sent to the governing body and to the state land planning agency at least once every 5 years after the adoption of the comprehensive plan. Reports may be transmitted at lesser intervals as may be required or upon request of the governing body. It is the intent of this act that adopted comprehensive plans be periodically updated as provided by this section through the evaluation and appraisal report. The evaluation and appraisal report process shall be the principal process for updating local comprehensive plans to reflect changes in state policy on planning and growth management.

(2) The report shall present an assessment and evaluation of the success or failure of the comprehensive plan, or element or portion thereof, and shall contain appropriate statements (using words, maps, illustrations, or other forms) related to:

(a) The major problems of development, physical deterioration, and the location of land uses and the social and economic effects of such uses in the area.

(b) The condition of each element in the comprehensive plan at the time of adoption and at date of report.

(c) The comprehensive plan objectives as compared with actual results at date of report.

(d) The extent to which unanticipated and unforeseen problems and opportunities occurred between date of adoption and date of report.

(e) The effect on the comprehensive plan of changes to: the state comprehensive plan, the requirements of this part, the minimum criteria contained in chapter 9J-5, Florida Administrative Code, and the appropriate strategic regional policy plan.

(f) The identification of any actions that are taken or need to be taken to address the planning issues identified in the report.

(g) Proposed or anticipated plan amendments necessary to address or implement the identified changes.

(h) A description of the public participation process used by the local government in preparing the report.

(3) The report shall also suggest changes needed to update the comprehensive plan, or elements or portions thereof, including reformulated objectives, policies, and standards. Local governments are encouraged to use the report process to develop a local vision that could serve as one basis for revision of the local comprehensive plan consistent with the requirements of this act.

(4) The governing body shall adopt, or adopt with changes, the report or portions thereof within 90 days after receiving it from the local planning agency. The governing body shall amend its comprehensive plan based on the recommendations contained in the adopted evaluation and appraisal report, pursuant to the procedures in ss. 163.3184, 163.3187, and 163.3189. Amendments to the plan and the adoption of the report may be simultaneous. When amendments to the plan do not occur simultaneously with the adoption of the evaluation and appraisal report, the report shall contain a schedule for adoption of

proposed amendments within 1 year after the report is adopted, except that the state land planning agency may grant a 6-month extension for adoption of such plan amendments if the request is justified by good and sufficient cause as determined by the agency. The report shall be transmitted to the state land planning agency, with the related amendments when the amendments are transmitted pursuant to s. 163.3184.

(5) The first periodic report for each local government shall be prepared not later than 7 years after the adoption of the comprehensive plan. Every other periodic report shall be prepared not more than an additional 5 years thereafter.

(6)(a) The report shall include findings and recommendations with respect to the requirements of subsections (2) and (3).

(b) If the plan amendments to implement recommendations in the evaluation and appraisal report are submitted subsequent to submittal of the report, the amendments must be consistent with the findings and recommendations of the report.

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(8) The state land planning agency is authorized to adopt by rule a phased schedule for submittal of reports. A local government may transmit its report in advance of the submittal date set by rule if it gives the agency and the public adequate notice as prescribed by rule. If a local government has submitted its report in advance of the established submittal date, the local government shall submit on its due date an addendum to address relevant changes in the state comprehensive plan, this part, the minimum requirements in chapter 9J-5, Florida Administrative Code, and the appropriate strategic regional policy plan made subsequent to submittal of the report. The schedule for completion and transmittal of plan amendments to implement the intergovernmental coordination element of s. 163.3177(6)(h)1., 2., and 3. shall not be dependent upon nor established by the rule authorized by this subsection.

(9) The state land planning agency shall conduct a sufficiency review of each report to determine whether it has been submitted in a timely fashion and contains the prescribed components. The agency shall complete the sufficiency determination within 60 days of receipt of the report. The agency shall not conduct a compliance review.

(10) The state land planning agency may delegate the review of reports to the appropriate regional planning council. When the review has been delegated to a regional planning council, any local government in the region may elect to have its report reviewed by the council rather than the agency. The agency shall adopt rules for uniform and adequate review of reports and shall retain oversight for any delegation of review to a regional planning council. Any plan amendment recommended by the report shall be reviewed by the agency pursuant to s. 163.3184 and be adopted by the local government pursuant to s. 163.3189.

(11) The Administration Commission may impose the sanctions provided by s. 163.3184(11) against any local government that fails to implement its report through timely and sufficient amendments to its local plan except for reasons of excusable delay. Sanctions shall be prospective only and begin after a final order has been issued by the Administration Commission and a reasonable period of time has been allowed for the local government to comply with an adverse determination by the Administration Commission through adoption of plan amendments that are in compliance. The state land planning agency may initiate, and an affected person may intervene in, such a proceeding by filing a petition with the Division of Administrative Hearings, which shall appoint an administrative law judge and conduct a hearing pursuant to ss. 120.569 and 120.57(1) and submit a recommended order to the Administration Commission. The commission may implement this subsection by rule.

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155. Section 163.3199 thus provides a means by which DCA may initiate a proceeding for a failure to reenact the 2010 Overlay, or another device to accomplish the same purpose, and the consequence of an adverse resolution would result in the same sanctions as are implemented for an uncorrected determination of noncompliance. The only difference if Lee County fails to act is that an affected person could not initiate a proceeding, but would have to intervene in a proceeding initiated DCA.

156. For the reasons noted above, the Plan Amendments, if limited to 1:1, are in compliance with the criteria of supporting data and analysis, discouraging urban sprawl, internal consistency, and consistency with the State Plan.

157. For the reasons noted above, the Plan Amendments, if extended to 6:1, are not in compliance with the criteria of supporting data and analysis, internal consistency, and consistency with the State Plan because Petitioner proved to the exclusion of fair debate that the Plan Amendments are inconsistent with the criteria of supporting data and analysis in terms of residential need and other matters, internally inconsistent with Objectives 77.3 and 77.4 and Policy 77.2.10, and inconsistent with Sections 187.201(10)(b)3. and (16)(a) of the State Plan, when considered as a whole.

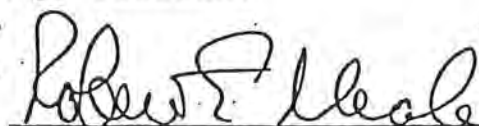
RECOMMENDATION

It is

RECOMMENDED that the Department of Community Affairs submit the recommended order to the Administration Commission

for a final order that the Plan Amendments are not in compliance without a remedial amendment that, continuing to require that the development of the subject property proceed only under the Planned Development District option, prohibits any density increase for the subject property over the 1:1 density allowed under Rural without regard to the Planned Development District.

DONE AND ENTERED this 19 day of October, 1998, in Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 19 day of October, 1998.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order must be filed with the agency that will issue the final order in this case.

LETTER OF AUTHORIZATION

TO LEE COUNTY COMMUNITY DEVELOPMENT

The undersigned do hereby swear or affirm that they are the fee simple title holders and owners of record of property commonly known as 01-48-26-00-0001.000 and legally described in exhibit A attached hereto. and 02-48-26-00-0001.000

The property described herein is the subject of an application for zoning or development. We hereby designate _____ as the legal representative of the property and as such, this individual is authorized to legally bind all owners of the property in the course of seeking the necessary approvals to develop. This authority includes but is not limited to the hiring and authorizing of agents to assist in the preparation of applications, plans, surveys, and studies necessary to obtain zoning and development approval on the site. This representative will remain the only entity to authorize development activity on the property until such time as a new or amended authorization is delivered to Lee County.

Owner* (signature)

Printed Name

J. Kent Manley
Owner* (signature)
J. KENT MANLEY
Printed Name

Owner* (signature)

Printed Name

Owner* (signature)

Printed Name

STATE OF FLORIDA
COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me this 1st day of Feb, 2001, by

J. Kent Manley, who is personally known to me or who has produced _____ as identification.



Robert Rogers
MY COMMISSION # CC912116 EXPIRES
March 19, 2004
BONDED THRU TROY FAIN INSURANCE, INC.

[Signature]
Notary Public
(SEAL)

LETTER OF AUTHORIZATION

TO LEE COUNTY COMMUNITY DEVELOPMENT

The undersigned do hereby swear or affirm that they are the fee simple title holders and owners of record of property commonly known as 02-48-26-00-00001.1000 and legally described in exhibit A attached hereto.

The property described herein is the subject of an application for zoning or development. We hereby designate John M. Gleeson and Pearl Beach Dev. Co. LLC as the legal representative of the property and as such, this individual is authorized to legally bind all owners of the property in the course of seeking the necessary approvals to develop. This authority includes but is not limited to the hiring and authorizing of agents to assist in the preparation of applications, plans, surveys, and studies necessary to obtain zoning and development approval on the site. This representative will remain the only entity to authorize development activity on the property until such time as a new or amended authorization is delivered to Lee County.

Michael Procacci
Owner* (signature)
Michael Procacci, Trust.
Printed Name

Owner* (signature)

Printed Name

Owner* (signature)

Printed Name

Owner* (signature)

Printed Name

STATE OF FLORIDA
COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me this 15th day of Feb., 2001, by

Michael Procacci, who is personally known to me or who has produced

as identification.



Robert Rogers
MY COMMISSION # CC912116 EXPIRES
March 19, 2004
BONDED THRU TROY FAIN INSURANCE, INC.

[Signature]

Notary Public
(SEAL)

LETTER OF AUTHORIZATION

TO LEE COUNTY COMMUNITY DEVELOPMENT

The undersigned do hereby swear or affirm that they are the fee simple title holders and owners of record of property commonly known as 02-48-26-00-000.1000 and legally described in exhibit A attached hereto.

The property described herein is the subject of an application for zoning or development. We hereby designate John M. Gleeson and ~~Barbara D. Gleeson~~ as the legal representative of the property and as such, this individual is authorized to legally bind all owners of the property in the course of seeking the necessary approvals to develop. This authority includes but is not limited to the hiring and authorizing of agents to assist in the preparation of applications, plans, surveys, and studies necessary to obtain zoning and development approval on the site. This representative will remain the only entity to authorize development activity on the property until such time as a new or amended authorization is delivered to Lee County.

Owner* (signature)

Printed Name

Owner* (signature)

Printed Name

x Dewey Sanguino
Owner* (signature)

Printed Name

Owner* (signature)

Printed Name

STATE OF FLORIDA
COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me this 15th day of Feb., 2001, by

Dewey Sanguino, who is personally known to me or who has produced

_____ as identification.



Robert Rogers
MY COMMISSION # CC912116 EXPIRES
March 19, 2004
BONDED THRU TROY FAIR INSURANCE, INC.

[Signature]

Notary Public
(SEAL)

**EXHIBIT I-B-4
COVENANT OF UNIFIED CONTROL**

The undersigned do hereby swear or affirm that they are the fee simple title holders and owners of record of property commonly known as 16350 Bonita Beach Rd SE and
(street address)
legally described in exhibit A attached hereto.

The property described herein is the subject of an application for planned development zoning. We hereby designate John M. Gleeson and Beach Road Dev. Co. LLC as the legal representative of the property and as such, this individual is authorized to legally bind all owners of the property in the course of seeking the necessary approvals to develop. This authority includes but is not limited to the hiring and authorization of agents to assist in the preparation of applications, plans, surveys, and studies necessary to obtain zoning and development approval on the site. This representative will remain the only entity to authorize development activity on the property until such time as a new or amended covenant of unified control is delivered to Lee County.

The undersigned recognize the following and will be guided accordingly in the pursuit of development of the project:

1. The property will be developed and used in conformity with the approved master concept plan including all conditions placed on the development and all commitments agreed to by the applicant in connection with the planned development rezoning.
2. The legal representative identified herein is responsible for compliance with all terms, conditions, safeguards, and stipulations made at the time of approval of the master concept plan, even if the property is subsequently sold in whole or in part, unless and until a new or amended covenant of unified control is delivered to and recorded by Lee County.
3. A departure from the provisions of the approved plans or a failure to comply with any requirements, conditions, or safeguards provided for in the planned development process will constitute a violation of the Land Development Code.
4. All terms and conditions of the planned development approval will be incorporated into covenants and restrictions which run with the land so as to provide notice to subsequent owners that all development activity within the planned development must be consistent with those terms and conditions.
5. So long as this covenant is in force, Lee County can, upon the discovery of noncompliance with the terms, safeguards, and conditions of the planned development, seek equitable relief as necessary to compel compliance. The County will not issue permits, certificates, or licenses to occupy or use any part of the planned development and the County may stop ongoing construction activity until the project is brought into compliance with all terms, conditions and safeguards of the planned development.

J. Kent Manley
Owner
J. KENT MANLEY
Printed Name

STATE OF FLORIDA)
COUNTY OF LEE)

Sworn to (or affirmed) and subscribed before me this 15th day of Feb, 2001
by J. Kent Manley who is personally known to me or has produced
_____ as identification.



Robert Rogers
MY COMMISSION # CC912116 EXPIRES
March 19, 2004
BONDED THRU TROY FAIR INSURANCE, INC.

[Signature]
Notary Public

(Name typed, printed or stamped)
(Serial Number, if any)

**EXHIBIT I-B-4
COVENANT OF UNIFIED CONTROL**

The undersigned do hereby swear or affirm that they are the fee simple title holders and owners of record of property commonly known as 16350 Bonita Beach Rd SE and
(street address)
legally described in exhibit A attached hereto.

The property described herein is the subject of an application for planned development zoning. We hereby designate John M. Gleeson and Beach Road Dev. Co. LLC as the legal representative of the property and as such, this individual is authorized to legally bind all owners of the property in the course of seeking the necessary approvals to develop. This authority includes but is not limited to the hiring and authorization of agents to assist in the preparation of applications, plans, surveys, and studies necessary to obtain zoning and development approval on the site. This representative will remain the only entity to authorize development activity on the property until such time as a new or amended covenant of unified control is delivered to Lee County.

The undersigned recognize the following and will be guided accordingly in the pursuit of development of the project:

1. The property will be developed and used in conformity with the approved master concept plan including all conditions placed on the development and all commitments agreed to by the applicant in connection with the planned development rezoning.
2. The legal representative identified herein is responsible for compliance with all terms, conditions, safeguards, and stipulations made at the time of approval of the master concept plan, even if the property is subsequently sold in whole or in part, unless and until a new or amended covenant of unified control is delivered to and recorded by Lee County.
3. A departure from the provisions of the approved plans or a failure to comply with any requirements, conditions, or safeguards provided for in the planned development process will constitute a violation of the Land Development Code.
4. All terms and conditions of the planned development approval will be incorporated into covenants and restrictions which run with the land so as to provide notice to subsequent owners that all development activity within the planned development must be consistent with those terms and conditions.
5. So long as this covenant is in force, Lee County can, upon the discovery of noncompliance with the terms, safeguards, and conditions of the planned development, seek equitable relief as necessary to compel compliance. The County will not issue permits, certificates, or licenses to occupy or use any part of the planned development and the County may stop ongoing construction activity until the project is brought into compliance with all terms, conditions and safeguards of the planned development.

Dewey Garguilo
owner

Printed Name

STATE OF FLORIDA)
COUNTY OF LEE)

Sworn to (or affirmed) and subscribed before me this 15th day of Feb., 2001

by Dewey Garguilo who is personally known to me or has produced
_____ as identification.

[Signature]
Notary Public



Robert Rogers
MY COMMISSION # CC912116 EXPIRES
March 19, 2004
BONDED THRU TROY FAIR INSURANCE, INC.

(Name typed, printed or stamped)
(Serial Number, if any)

**EXHIBIT I-B-4
COVENANT OF UNIFIED CONTROL**

The undersigned do hereby swear or affirm that they are the fee simple title holders and owners of record of property commonly known as 16350 Bonita Beach RD. SE and
(street address)
legally described in exhibit A attached hereto.

The property described herein is the subject of an application for planned development zoning. We hereby designate John M. Gleeson and Beach Road Development Co. LLC as the legal representative of the property and as such, this individual is authorized to legally bind all owners of the property in the course of seeking the necessary approvals to develop. This authority includes but is not limited to the hiring and authorization of agents to assist in the preparation of applications, plans, surveys, and studies necessary to obtain zoning and development approval on the site. This representative will remain the only entity to authorize development activity on the property until such time as a new or amended covenant of unified control is delivered to Lee County.

The undersigned recognize the following and will be guided accordingly in the pursuit of development of the project:

1. The property will be developed and used in conformity with the approved master concept plan including all conditions placed on the development and all commitments agreed to by the applicant in connection with the planned development rezoning.
2. The legal representative identified herein is responsible for compliance with all terms, conditions, safeguards, and stipulations made at the time of approval of the master concept plan, even if the property is subsequently sold in whole or in part, unless and until a new or amended covenant of unified control is delivered to and recorded by Lee County.
3. A departure from the provisions of the approved plans or a failure to comply with any requirements, conditions, or safeguards provided for in the planned development process will constitute a violation of the Land Development Code.
4. All terms and conditions of the planned development approval will be incorporated into covenants and restrictions which run with the land so as to provide notice to subsequent owners that all development activity within the planned development must be consistent with those terms and conditions.
5. So long as this covenant is in force, Lee County can, upon the discovery of noncompliance with the terms, safeguards, and conditions of the planned development, seek equitable relief as necessary to compel compliance. The County will not issue permits, certificates, or licenses to occupy or use any part of the planned development and the County may stop ongoing construction activity until the project is brought into compliance with all terms, conditions and safeguards of the planned development.

X Michael Procacci
Owner

Printed Name

STATE OF FLORIDA)
COUNTY OF LEE)

Sworn to (or affirmed) and subscribed before me this 15th day of Feb., 2001
by Michael Procacci who is personally known to me or has produced

as identification:

KIF
Notary Public

(Name typed, printed or stamped)
(Serial Number, if any)



Robert Rogers
MY COMMISSION # CC912116 EXPIRES
March 19, 2004
BONDED THRU TROY FAIN INSURANCE, INC.

PART V

AFFIDAVIT

I, Michael Procacci certify that I am the owner or authorized representative of the property described herein, and that all answers to the questions in this application and any sketches, data or other supplementary matter attached to and made a part of this application, are honest and true to the best of my knowledge and belief. I also authorize the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application.

Michael Procacci
Signature of Owner or Owner-authorized Agent

Date 2/15/01

Michael Procacci
Typed or printed name and title

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was certified and subscribed before me this 15th day of Feb. 2001, by Michael Procacci, who is personally known to me or who has produced _____ as identification.

[Signature]
Signature of notary public

(SEAL)

Printed name of notary public

PART V

AFFIDAVIT

I, J. Kent Manley certify that I am the owner or authorized representative of the property described herein, and that all answers to the questions in this application and any sketches, data or other supplementary matter attached to and made a part of this application, are honest and true to the best of my knowledge and belief. I also authorize the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application.

J. Kent Manley
Signature of Owner or Owner-authorized Agent

Date 2/1/01

J. Kent Manley
Typed or printed name and title

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was certified and subscribed before me this 1 day of Feb. 2001, by J. Kent Manley, who is personally known to me ~~or who~~, has produced _____ as identification.

(SEAL)



Robert Rogers
MY COMMISSION # CC912116 EXPIRES
March 19, 2004
BONDED THRU TROY FAIN INSURANCE, INC.

Signature of notary public

Printed name of notary public

PART V

AFFIDAVIT

I, Dewey Garguilo certify that I am the owner or authorized representative of the property described herein, and that all answers to the questions in this application and any sketches, data or other supplementary matter attached to and made a part of this application, are honest and true to the best of my knowledge and belief. I also authorize the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application.

x Dewey Garguilo
Signature of Owner or Owner-authorized Agent

Date 2/15/01

Dewey Garguilo
Typed or printed name and title

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was certified and subscribed before me this 15th day of Feb
2001, by Dewey Garguilo, who is personally known to me or who
has produced _____ as identification.

(SEAL)



Robert Rogers
MY COMMISSION # CC912116 EXPIRES
March 19, 2004
BONDED THRU TROY FAIN INSURANCE, INC.

[Signature]
Signature of notary public

Printed name of notary public

EXHIBIT I-F

DISCLOSURE OF INTEREST FORM FOR:

STRAP NO. Sec. 1 CASE NO. 01-48-26-00-00001.000

1. If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

| Name and Address | Percentage of Ownership |
|------------------|-------------------------|
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2. If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

| Name, Address, and Office | Percentage of Stock |
|---------------------------|---------------------|
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3. If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

| Name and Address | Percentage of Interest |
|------------------|------------------------|
| J. Kent Manley | 48% |
| Ronald Rose | 2% |
| Dewey Gargiolo | 6.2475% |
| Lisa Gargiolo | 2.0825% |
| John R. Gargiolo | 8.3300% |
| Jeffrey Gargiolo | 8.3400% |
| Joseph Procacci | 12.50% |
| Michael Procacci | 12.50% |

4. If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

| Name and Address | Percentage of Ownership |
|------------------|-------------------------|
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(over)

5. If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

| Name, Address, & Office(If applicable) | Percentage of Stock |
|--|---------------------|
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Date of Contract: _____

6. If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

| Name and Address | |
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For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final public hearing, a supplemental disclosure of interest shall be filed.

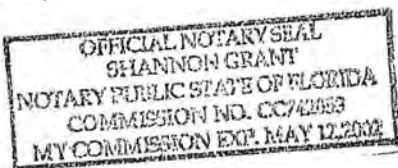
The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

Signature: J. Kent Manley
(Applicant)
J. Kent Manley, Trustee
(Printed or typed name of applicant)

STATE OF FLORIDA
COUNTY OF ~~EEE~~ Collier

The foregoing instrument was acknowledged before me this 20 day of February, 2001, by J. Kent Manley who is personally known to me or who has produced _____ as identification.

(SEAL)



Shannon Grant
Signature of Notary Public
Shannon Grant
Printed Name of Notary Public

EXHIBIT I-F

DISCLOSURE OF INTEREST FORM FOR:

STRAP NO. Section 2 W $\frac{1}{2}$ CASE NO. _____
02-48-26-00-00001.500

1. If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

| Name and Address | Percentage of Ownership |
|------------------|-------------------------|
| J. Kent Manley | 100 % |
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2. If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

| Name, Address, and Office | Percentage of Stock |
|---------------------------|---------------------|
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3. If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

| Name and Address | Percentage of Interest |
|------------------|------------------------|
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4. If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

| Name and Address | Percentage of Ownership |
|------------------|-------------------------|
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(over)

5. If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

| Name, Address, & Office(If applicable) | Percentage of Stock |
|--|---------------------|
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Date of Contract: _____

6. If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

| Name and Address | |
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For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final public hearing, a supplemental disclosure of interest shall be filed.

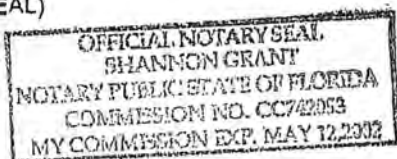
The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

Signature: *J. Kent Manley*
(Applicant)
J. Kent Manley
(Printed or typed name of applicant)

STATE OF FLORIDA
COUNTY OF ~~LEE~~ Collier

The foregoing instrument was acknowledged before me this 20 day of February, 2001, by J. Kent Manley, who is personally known to me or who has produced _____ as identification.

(SEAL)



Shannon Grant
Signature of Notary Public
Shannon Grant
Printed Name of Notary Public

EXHIBIT I-F

DISCLOSURE OF INTEREST FORM FOR:

STRAP NO. Section 2 E 1/2 CASE NO. 02-48-26-00-0001.000

1. If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

| Name and Address | Percentage of Ownership |
|------------------|-------------------------|
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2. If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

| Name, Address, and Office | Percentage of Stock |
|---------------------------|---------------------|
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3. If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

| | |
|------------------------------|------------------------|
| Procacci Bros. Sales Corp. | 8.218 % |
| Name and Address | Percentage of Interest |
| Dewey Gargiolo | 24.672 % |
| Jeffrey Gargiolo | 2.260 % |
| John R. Gargiolo | 2.250 % |
| Lisa Gargiolo | 2.250 % |
| Joseph Procacci | 30.175 % |
| Pro Ventures Partnership LTD | 22.141 % |
| Michael Procacci Jr. | 2.478 % |
| Annette Procacci | 2.678 % |
| Maria Procacci | 2.678 % |

4. If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

| Name and Address | Percentage of Ownership |
|------------------|-------------------------|
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(over)

5. If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

| Name, Address, & Office(If applicable) | Percentage of Stock |
|--|---------------------|
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Date of Contract: _____

6. If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

| Name and Address | |
|------------------|--|
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For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final public hearing, a supplemental disclosure of interest shall be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

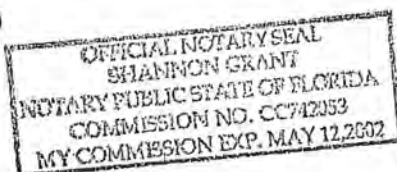
Signature: Dewey Gargiulo
(Applicant)

Dewey Gargiulo & Michael Procacci, CO-Trustees
(Printed or typed name of applicant)

STATE OF FLORIDA
COUNTY OF ~~LEE~~ Collier

The foregoing instrument was acknowledged before me this 20 day of February, 2001, by Dewey Gargiulo who is personally known to me or who has produced _____ as identification.

(SEAL)



Shannon Grant
Signature of Notary Public

Shannon Grant
Printed Name of Notary Public



LEE COUNTY
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Bob Janes
District One

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yaeger
County Attorney

Diana M. Parker
County Hearing
Examiner

February 6, 2001

Mitch Hutchcraft, RLA, AICP
Vanasse & Daylor, LLP
12730 New Brittany Boulevard, Suite 600
Fort Myers, Florida 33907

Re: Development of Regional Impact for Bonita Beach Road Project

Dear Mr. Hutchcraft:

Thank you for faxing me a copy of your January 30 letter regarding the above mentioned. An original copy of this letter is coming via US MAIL, however, it was faxed to help you meet your deadline.

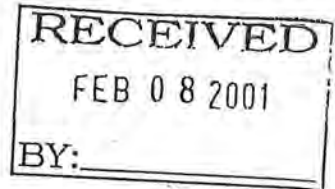
The Bonita Beach Road Project is within the Lee County EMS service area. Furthermore, if future budgetary projections for additional resources are approved, Lee County EMS will continue to provide pre-hospital emergency care and ambulance transportation services to this area.

If I can be of any further assistance, please call me at the above referenced number.

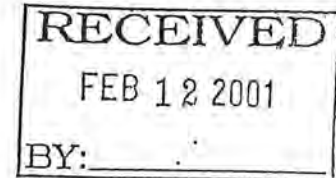
Sincerely,

DIVISION OF PUBLIC SAFETY

H.C. "Chris" Hansen
EMS Program Manager



Writer's Direct Dial Number: 941-335-1604



H:\Impact\Hutchcraft DRI letter Bonita Beach RD.201



Superior Waste Services of Florida, Inc.
17101 Pine Ridge Road SW
Fort Myers Beach, FL 33931
(941) 334-1224
FAX (941) 334-1224

February 02, 2001

Mr. Mitch Hutchcraft
12730 New Brittany Boulevard
Suite 600
Fort Myers, Florida 33907



RE: Servicability of Proposed Bonita Beach Road Project

Dear Mr. Hutchcraft,

This letter is to confirm that the proposed Bonita Beach Road project, defined as Sections 1 and 2 of Township 48, Range 26 does indeed lie within the service area that Superior Waste Services of Florida does currently service.

Superior can not only provide residential services to the proposed development once completed, but can also service any needs that you or any subcontractors may have during the construction phase of the development.

In the event you have any further questions or concerns please do not hesitate to contact me.

Sincerely,

Mark A. Wright
Operations Manager
Superior Waste Services of FL, Inc.

PROVIDING "SUPERIOR" WASTE SERVICES



Bonita Springs Utilities, Inc.

February 6, 2001

Lee County Division of Concurrency Management
Post Office Box 398
1820 Hendry Street
Fort Myers, Florida 33901

Re: Sections 1 & 2, Township 48S, Range 26E,
Bonita Springs, Lee County, Florida

Dear Sir or Madam:

Please be advised that the Developer has requested potable water, sewer and reuse service for the project referenced above. The Developer is required to install all off-site and on-site waterline and/or sewer line extensions necessary to provide service to the project in accordance with Bonita Springs Utilities, Inc. specifications.

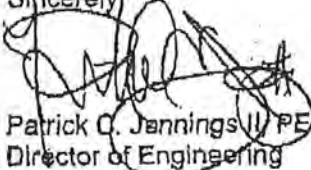
The projects engineer, Agnoli, Barber & Brundage, estimates the usage to be 600,000 gallons per day. Bonita Springs Utilities, Inc. will have the capacity to provide the above estimated gallonage from its 9 million gallon per day water treatment plant in October 2001, when plant expansion construction is completed. The Water Reclamation Facility will have the capacity to treat the above estimated gallonage from its 7 million gallon per day treatment plant in February, 2002, when plant expansion construction is completed..

Reuse water is not available at this time.

The static water pressure at the point the developers' waterline extension will connect currently exceeds 20 psi.

This letter should not be construed as a commitment or guarantee to serve, but only as to the availability of potable water, sewer and reuse at this time. Bonita Springs Utilities, Inc. may commit to reserve plant capacity if available, at such time as the utility company and developer enter into a Developers Agreement and approval is obtained from all appropriate state and local regulatory agencies.

Sincerely,



Patrick C. Jennings II, PE
Director of Engineering

PJ/mar

cc: Agnoli, Barber & Brundage

P.O. Box 2368, Bonita Springs, FL 34133 (941) 992-0711 Toll Free (800) 583-1496 Web Site Address: WWW.BONITAUTILITY.COM

*Office of the Sheriff
Rodney Shoap*



*County of Lee
State of Florida*

Mr. Mitch Hutchcraft, RLA, AICP
Vanasse & Daylor, LLP
12730 New Brittany Blvd., Suite 600
Ft Myers, FL 33907

Re.: Development of Regional Impact for Bonita Beach Road Project

Sir:

The Bonita Beach Road Project is within the service area for the Lee County Sheriff's Office. If future budgetary projections for resources are approved, the Sheriff's Office will be able to continue to provide service to this area.

If additional information is required, please contact my office at 477-1041.

Respectfully,

Major David M. Bonsall 2/14/01

Major David M. Bonsall
Commander: Operations

C:\Sheriff\Bonita Project.doc



Major David M. Bonsall
14750 Six Mile Cypress Parkway Fort Myers, Florida 33912-4406
Tel. 941-477-1041 Dbonsall@sherifflee.fl.org



THE SCHOOL DISTRICT OF LEE COUNTY

2055 CENTRAL AVENUE • FORT MYERS, FLORIDA 33901-3988 • (941) 334-1102

RECEIVED

FEB 12 2001

BY: _____

KATHERINE BOREN
CHAIRMAN • DISTRICT 4

TERRI K. WAMPLER
VICE CHAIRMAN • DISTRICT 1

JEANNE S. DOZIER
DISTRICT 2

JANE E. KUCKEL, PH.D.
DISTRICT 3

LISA POCKRUS
DISTRICT 5

BRUCE HARTER, PH.D.
SUPERINTENDENT

KEITH B. MARTIN
BOARD ATTORNEY

February 9, 2001

Mr. Mitch Hutchcraft, AICP
Executive Vice President
Vanasse & Daylor, LLP
12730 New Brittany Boulevard, Suite 600
Fort Myers, FL 33907

Re: Development of Regional Impact for Bonita Beach Road Project

Dear Mr. Hutchcraft:

This letter is in response to your request as to whether a proposed golf course community to be located in Sections 1 and 2 of Township 48, Range 25 is within the Lee County School District service area. This is within the District's South Choice Zone, and is within the District's service area. The proposal is to accommodate 1,158 residential units. These units could generate approximately 359 public school students, based on an estimated student generation rate of .31 per single family dwelling unit, and up to 15 new classrooms.

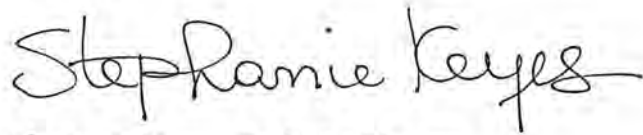
The schools in this South region that would serve this development are operating at or above permanent student capacity levels. Those schools that exceed permanent student capacity levels are operating through the use of portable classroom buildings or will require new permanent classrooms to be built. The growth generated by this development will require either the addition of permanent student and auxiliary space or the placement of portable buildings, as well as additional staff and increased District resources. Clearly, the fiscal impacts are significant and the applicant will need to mitigate the increased demands the development will place upon the Lee County School District.

In addition, this development is in an outlying, rural, area of Lee County that is presently not served by any existing schools. The Lee County School District would be desirous of entering into a discussion on the availability of a school site within this project or in the

proximity of this project to assist in offsetting any impacts this development will create to the District and the community as a whole.

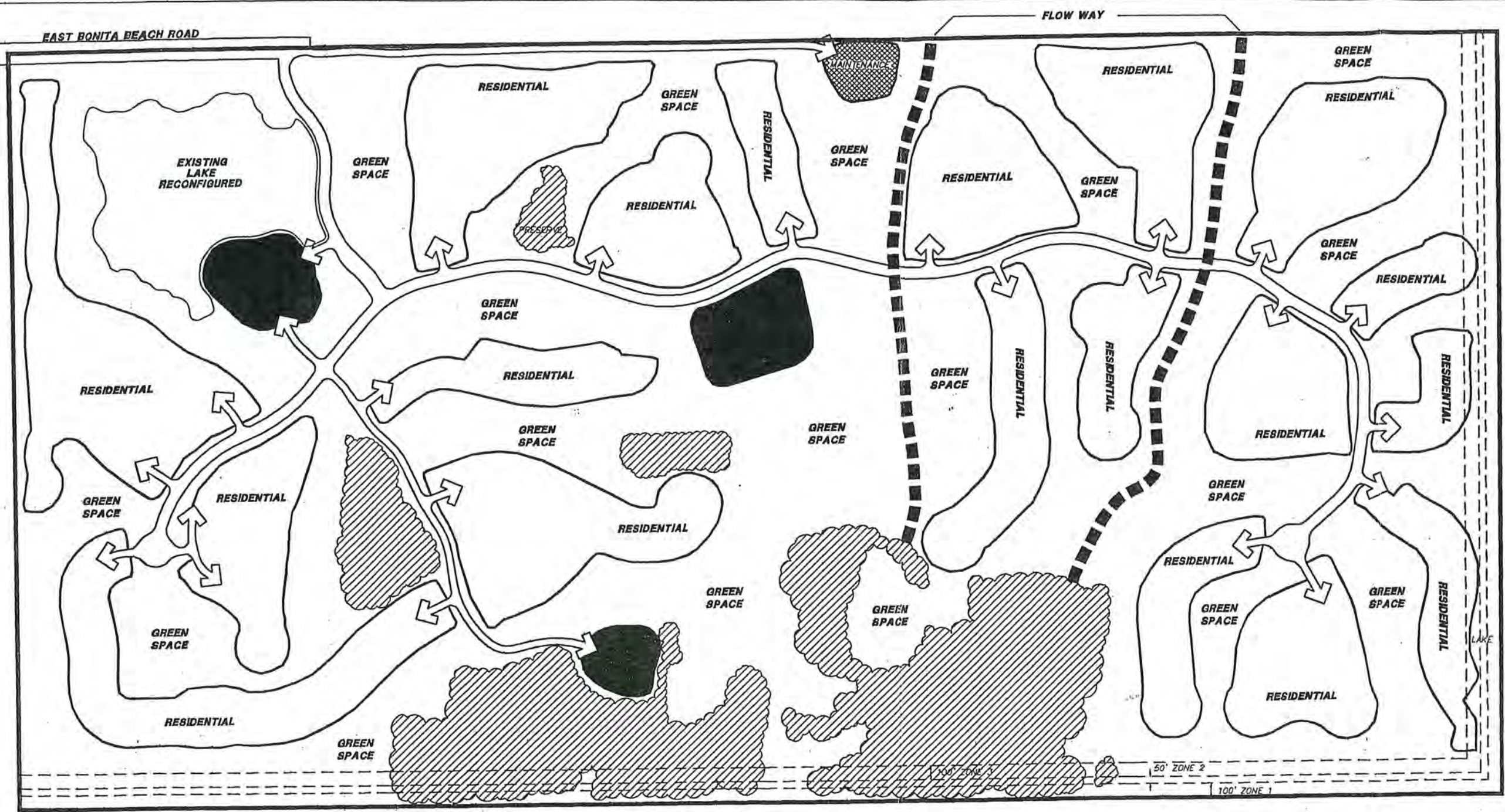
If you have any further questions or comments, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Keyes". The signature is written in a cursive, flowing style.

Stephanie Keyes, Facilities Planner
Construction Services

cc: Tyler F. Patak, NCARB, Director
Dr. Gay Thompson, Executive Director, Support Services
file



DEVELOPMENT SUMMARY:

RESIDENTIAL:
 Single Family: 827 +/- Units
 Multi-Family: 331 +/- Units

RECREATIONAL:
 Golf Course: 18 - 36 Holes
 Clubhouse: 11 Acres
 Park: 10 Acres

NON RECREATION OPEN SPACE:
 Wetlands/Indigenous: 129 Acres +/-
 Flow Ways: 25 Acres +/-
 Existing Lakes: 42.2 Acres
 Proposed Lakes: 223 Acres +/-
 Perimeter Buffers: 54.5 Acres
 Other Open Space: 131 Acres +/-
TOTAL OPEN SPACE: 604.8 Acres +/-

COMMUNITY USES:
 Village Green: 10 Acres +/-
 Maintenance Area: 4.5 Acres +/-

PREPARED BY
THE TEAM OF:

BONITA BAY GROUP
 MARGARET EMBLIDGE
 3461 BONITA BAY BLVD
 SUITE 104
 BONITA SPRINGS, FL 34134

AGNOLI, BARBER & BRUNDAGE
 RICK BARBER-PRESIDENT
 DOMINICK AMICO
 7400 TAMiami TRAIL, NORTH
 SUITE 200
 NAPLES, FL 34108

VANASSE & DAYLOR LLP, Inc.
 MITCHEL A. HUTCHCRAFT
 12730 NEW BRITANNY BLVD
 SUITE 600
 FORT MYERS, FL 33907

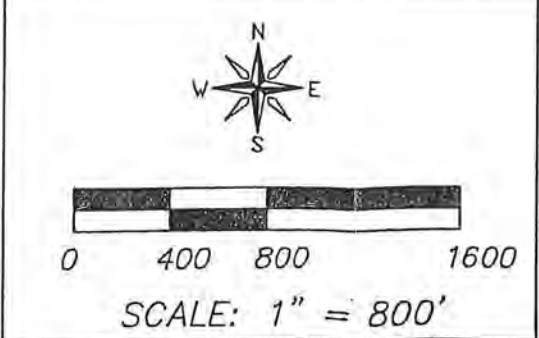
CDM/MISSIMER INTERNATIONAL
 KIRK MARTIN
 8140 COLLEGE PKWY
 SUITE 202
 FORT MYERS, FL 33919

PAVESE LAW FIRM
 NEALE MONTGOMERY
 1833 HENDRY ST
 FORT MYERS, FL 33901

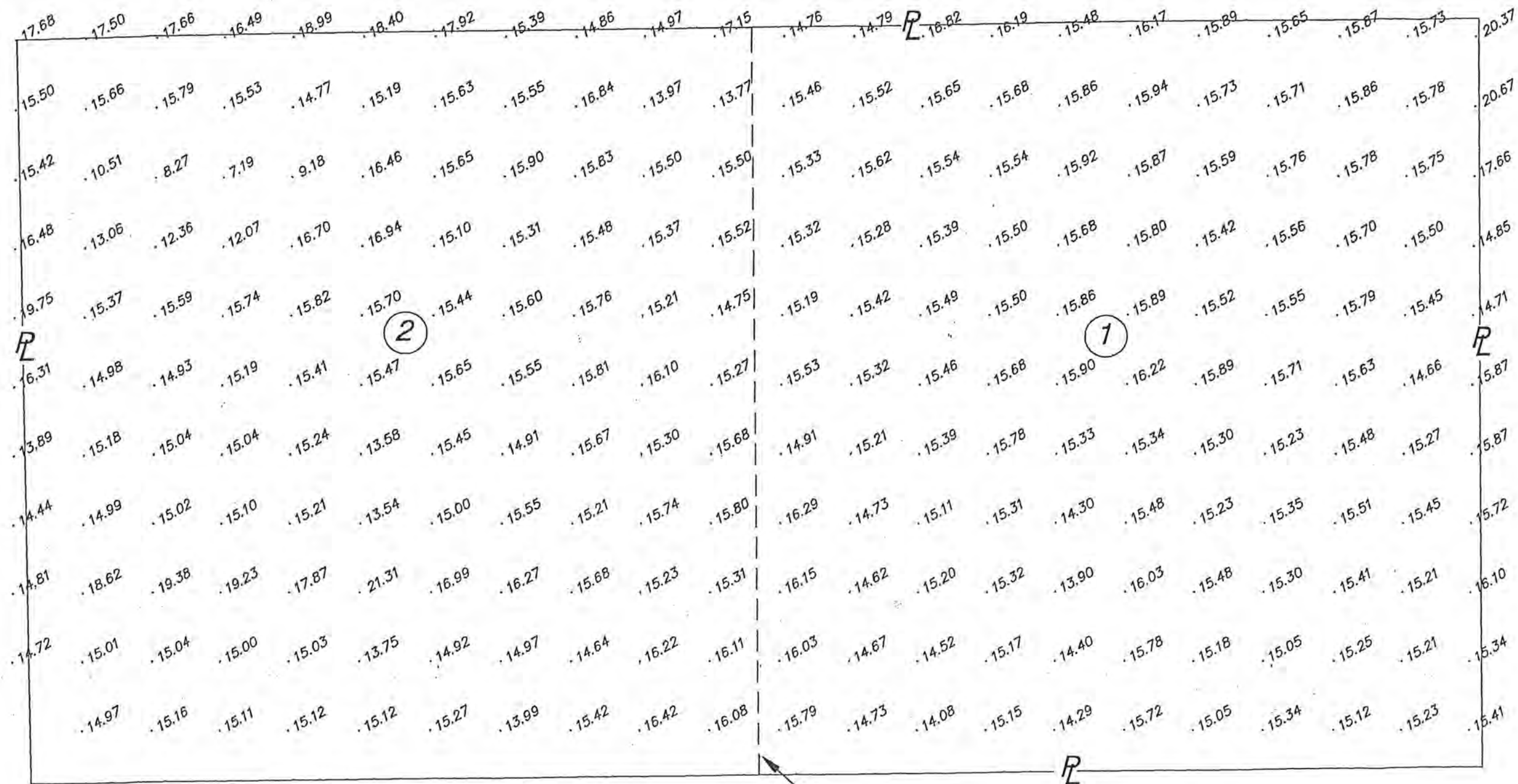
DAVID PLUMMER & ASSOCIATES
 MARK GILLIS
 1531 HENDRY ST
 FORT MYERS, FL 33901

PASSARELLA & ASSOCIATES
 KEN PASSARELLA
 4575 VIA ROYALE
 SUITE 104
 FORT MYERS, FL 33919

ARCHEOLOGICAL AND HISTORIC CONSERVANCY, Inc.
 ROBERT S. CARR, M.S.



MAP "H"
MASTER DEVELOPMENT PLAN
 BONITA BEACH ROAD
 BEACH ROAD DEVELOPMENT CO.
 1/29/01



SECTION LINE

NOTE:

EXISTING TOPOGRAPHY SHOWN BASED ON N.G.V.D. 1929.

PROVIDED BY SOUTHERN RESOURCE MAPPING AERIAL PHOTOGRAPHY.

PREPARED BY
THE TEAM OF:

BONITA BAY GROUP
MARGARET EMBLIDGE
3461 BONITA BAY BLVD
SUITE 104
BONITA SPRINGS, FL 34134

AGNOLI, BARBER & BRUNDAGE
RICK BARBER
DOMINICK AMICO
7400 TAMiami TRAIL, NORTH
SUITE 200
NAPLES, FL 34108

VANASSE & DAYLOR LLP, Inc.
MITCHEL A. HUTCHCRAFT
12730 NEW BRITTANY BLVD
SUITE 600
FORT MYERS, FL 33907

CDM/MISSIMER INTERNATIONAL
KIRK MARTIN
8140 COLLEGE PKWY
SUITE 202
FORT MYERS, FL 33919

PAVESE LAW FIRM
NEALE MONTGOMERY
1833 HENDRY ST
FORT MYERS, FL 33901

**DAVID PLUMMER &
ASSOCIATES**
MARK GILLIS
1531 HENDRY ST
FORT MYERS, FL 33901

PASSARELLA & ASSOCIATES
KEN PASSARELLA
4575 VIA ROYALE
SUITE 104
FORT MYERS, FL 33919

**ARCHEOLOGICAL AND HISTORIC
CONSERVANCY, Inc.**
ROBERT S. CARR, M.S.



SCALE: 1" = 800'

APPENDIX C-3 EXISTING TOPOGRAPHY MAP

BONITA BEACH ROAD
BEACH ROAD DEVELOPMENT CO.

1/29/01

