CPA2004-05
PINE ISLAND POLICY 14.2.2
PRIVATELY INITIATED AMENDMENT TO THE

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

Privately Initiated Application
and Lee County Staff Analysis

Non-Transmittal Document

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

June 7, 2005

LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2004-00005

☑ **Text Amendment** ☐ **Map Amendment**

This Document Contains the Following Reviews:	
✓	**Staff Review**
✓	**Local Planning Agency Review and Recommendation**
✓	**Board of County Commissioners Hearing for Transmittal**
	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
	Board of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: March 18, 2005

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT/REPRESENTATIVE:

a. APPLICANT
Pine Island Agriculture & Landowners' Association, Inc.
7321 Howard Road
Bokeelia, FL 33922

b. REPRESENTATIVE
Matthew D. Uhle, Esq.
Knott, Consoer, Evelini, Hart & Swett, P.A.
1625 Hendry Street, Suite 301
Ft. Myers, FL, 33901

2. REQUEST:

Amend Policy 14.2.2 to revise the traffic service volume calculations by utilizing new FDOT HIGHPLAN 1.0 software, change the method of calculating service volumes from *peak hour, annual average, two-way trips* to *peak season, peak hour, peak direction* conditions, and change the method of calculating the level of service threshold from level of service *D* to level of service *E*.

PROPOSED TRANSMITTAL LANGUAGE FOR POLICY14.2.2

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

- When traffic on Pine Island Road reaches ~~810~~ 768 peak season, peak hour, ~~annual average two-way~~ peak direction trips, the regulations will restrict further rezonings which would increase traffic on Pine Island Road through Matlacha. These regulations shall provide reasonable exceptions for minor rezonings on infill properties surrounded by development at similar intensities and those with inconsequential or positive effects on peak traffic flows through Matlacha, and may give preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island.

- When traffic on Pine Island Road reaches ~~910~~ 864 peak season, peak hour, ~~annual average two-way~~ peak direction trips, the regulations will provide restrictions on the further issuance of residential development orders (pursuant to chapter 10 of the Land Development Code) or other measures to maintain the adopted level of service, until improvements can be made in accordance with this plan. The effect of these restrictions on residential densities must not be more severe than restricting densities to one-third of the maximum density otherwise allowed on that property.

The ~~810~~ 768 and ~~910~~ 864 thresholds were based on 80% and 90% of level-of-service ~~"D"~~ "E" peak season, peak hour, peak direction capacity calculated using the latest FDOT software (March, 2002) ~~1965 Highway Capacity Manual, as documented in the 2001 Greater Pine Island Community Plan Update~~. These development regulations may provide exceptions for legitimate ongoing developments to protect previously approved densities for final phases that have a Chapter 177 plat or site-plan approval under Ordinance 86-36.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:

1. RECOMMENDATION:

Staff recommends that Policy 14.2.2 should not be amended as requested at this time.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The 810/910 trip count language first appeared in the 1990 Lee Plan as Policy 16.2.2. That Policy, later designated as Policy 14.2.2, was amended by the Board of County Commissioners on January 9, 2003.

- The January 9, 2003 amendment to Policy 14.2.2 did not change the 810/910 peak hour, annual average, two way trip numbers that trigger restrictions to further rezonings and to the issuance of residential development orders on Pine Island.

- At the September 5, 2002 transmittal hearing for CPA 2001-18 (Pine Island) the Board of County Commissioners considered the same language for Policy 14.2.2 that is contained in this request. That language was recommended by Lee County Department of Transportation.

- Department of Transportation staff advised the Board of County Commissioners at the September 5, 2002 transmittal hearing that using a different level of service threshold for Pine Island than was used in the rest of Lee County was a policy decision.

- The Board of County Commissioners then made a policy decision to keep the 810/910 thresholds in place in Policy 14.2.2, treating them as absolute numbers and not recalculating them based on a newer methodology.

C. BACKGROUND INFORMATION

Several years after the adoption of the Lee Plan in 1984 the Greater Pine Island Civic Association (GPICA) hired a planning consultant and developed a community plan for greater Pine Island. This plan was incorporated by Lee County as Goal 16 of the 1989 Lee Plan. Some changes were made in 1990 as a result of litigation between the Department of Community Affairs, including the setting of the 810 and 910 trip thresholds on Pine Island Road to trigger additional growth controls. Those thresholds were incorporated into the Lee Plan to place restrictions on additional density on Pine Island in an effort to: 1. Facilitate hurricane evacuation and; 2. Recognize the existence of thousands of vacant platted lots and the additional traffic that would be generated when those lots develop.

A number of amendments to Goal 16 were proposed several years later by the GPICA, and Lee County evaluated all of Goal 16 as part of its first "evaluation and appraisal report" on the 1989 Lee Plan. As a result of those efforts, some modifications were made in 1994 to the policies under Goal 16, including the reassignment of all Greater Pine Island objectives and policies to Goal 14.

The Greater Pine Island Community Plan Update (GPICPU) began in 1999 and was completed in September, 2001. Goal 14 of the Lee Plan was amended again in January, 2003. That amendment was a direct result of the GPICPU. The January 2003 amendment included changes to Policy 14.2.2, but did not change the 810 / 910 trip thresholds.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

At the September 5, 2002 transmittal hearing the Board of County Commissioners discussed the same language that is proposed for this amendment. That language was recommended by Lee County Department of Transportation. The Board decided that they would continue to use the 810/910 peak hour, annual average two way trip calculations for Pine Island, which is a different methodology than is used for the rest of Lee County.

The current language for Policy 14.2.2 was adopted by the Board of County Commissioners on January 9, 2003. Changes made in January, 2003 to Policy 14.2.2 are listed below in strike-through/underline format.

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

- *When traffic on Pine Island Road ~~between Burnt Store Road and Stringfellow Boulevard~~ reaches 810 peak hour, annual average two-way trips, the regulations will ~~provide restrictions on~~restrict further rezonings which would increase traffic on Pine Island Road through Matlacha. These regulations will provide reasonable exceptions for minor rezonings on infill properties surrounded by development at similar intensities and those with inconsequential or positive effects on peak traffic flows through Matlacha, and may give preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island.*

- *When traffic on Pine Island R~~r~~oad ~~between Burnt Store Road and Stringfellow boulevard~~ reaches 910 peak hour, annual average two-way trips, the regulations will provide restrictions on ~~will restrict~~ the further issuance of residential development orders (pursuant to chapter 10 of the Land Development Code ~~the Development Standards Ordinance~~), or other measures to maintain the adopted level of service, until improvements can be made in accdordance with this plan. The effect of these restrictions on residential densities must not be more severe than restricting densities to one-third of the maximum density otherwise allowed on that property.*

The 810 and 910 thresholds were based on 80% and 90% of level-of-service "D" capacity calculated using the 1965 Highway Capacity Manual, as documented in the 2001 Greater Pine Island Community Plan Update. These development regulations may provide exceptions for legitimate ongoing developments to protect previously approved densities for final phases that have a Chapter 177 plat or site-plan approval under Ordinance 86-36.

Two important changes were made to Policy 14.2.2 in January, 2003 that ease some of the restrictions that were formerly in place. Prior to the January, 2003 amendment, the Lee Plan contained no limitation on the restrictions on rezonings that would increase traffic on Pine Island Road. There was also no limitation on the restrictions that could be imposed on the issuance of residential development orders when the 910 trip count number is reached. The January, 2003 amendment requires the regulations to provide some exceptions for rezonings when the 810 trip count number is reached (that number has been exceeded every year since 1999). The amendment also limits the restriction on the issuance of residential development orders to no less than one third of the maximum density otherwise allowed on that property when the 910 trip count number is reached.

Staff acknowledges that the use of the absolute numbers 810/910 and the methodology for calculating trip counts on Pine Island is a policy decision that was made by the Board of County Commissioners at the September 5, 2002 transmittal hearing and that was solidified at the January 9, 2003 adoption hearing. Staff also recognizes that the language that was adopted for Policy 14.2.2 provides for some limitations on the restrictions that would be imposed once the 810/910 trip count numbers were reached. Those limitations on restrictions were included in the amendment as a recognition that the 810 trip count number had been exceeded and that the 910 trip count number was fast approaching.

Staff recommends that no changes to Policy 14.2.2 should be made at this time.

PART III - LOCAL PLANNING AGENCY REVIEW AND RECOMMENDATION

DATE OF PUBLIC HEARING: March 28, 2005

A. LOCAL PLANNING AGENCY REVIEW

Following a presentation by Planning staff the LPA had several questions for DOT staff regarding traffic on Pine Island Road and the 810/910 rule.

The applicants representative reviewed the policy aspects to the proposal, the history of 810/910, how it has evolved over time, how the 810/910 rule relates to particular policy concerns, and how it does/does not currently accomplish them.

The LPA opened the meeting up for public comment. Over thirty residents of Pine Island commented on the proposed amendment. The majority of comments to the LPA were in support of the 810/910 rule remaining unchanged and in opposition to the proposed amendment. A few comments were received in support of the proposed amendment.

Those opposed to the amendment generally commented that traffic on Pine Island Road was a major concern and that the 810/910 rule had been put in place to help control the amount of additional traffic on Pine Island Road that would be caused by more development approvals.

Those in favor of the amendment were generally concerned about property rights and their ability to develop their property. One resident speaking in favor of the amendment expressed concern that traffic was being counted on Pine Island differently than it was being counted in the rest of Lee County.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** The LPA recommended 3-1 that the Board of County Commissioners not transmit this amendment.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The LPA accepted the findings of fact as advanced by staff.

C. VOTE:

NOEL ANDRESS	**AYE**
MATT BIXLER	**ABSENT**
DEREK BURR	**AYE**
RONALD INGE	**NAY**
RAYMOND SCHUMANN, ESQ.	**AYE**
CARLETON RYFFEL	**ABSENT**
VACANT	

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

DATE OF TRANSMITTAL HEARING: June 1, 2005

A. BOARD REVIEW: Following a presentation by staff, the Board opened the meeting to public comment. The applicant's representative reviewed the policy aspects to the proposal, the history of 810/910, how it has evolved over time, how the 810/910 rule relates to particular policy concerns, and how it does/does not currently accomplish them.

Seven members of the public spoke in opposition to the amendment. They were in favor of Policy 14.2.2 remaining unchanged at this time. Reasons given were that the January 2003 amendment gave additional density over what was allowed when Policy 14.2.2 went into effect in 1990. They also were concerned about increased traffic on Pine Island and how that would effect evacuation times.

A motion was made and seconded to not transmit the amendment. The motion carried 5–0.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION: Motion to not transmit the amendment carried 5-0.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The Board accepted the findings of fact as advanced by staff.

C. VOTE:

JOHN ALBION	**AYE**
TAMMY HALL	**AYE**
BOB JANES	**AYE**
RAY JUDAH	**AYE**
DOUG ST. CERNY	**AYE**

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

DATE OF ORC REPORT: _____

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS

B. STAFF RESPONSE

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

DATE OF ADOPTION HEARING: _____

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

	_____
JOHN ALBION	_____
TAMMY HALL	_____
BOB JANES	_____
RAY JUDAH	_____
DOUG ST. CERNY	_____

CPA2004-05
PINE ISLAND POLICY 14.2.2
PRIVATELY INITIATED AMENDMENT TO THE

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

Privately Initiated Application
and Lee County Staff Analysis

BoCC Public Hearing Document
for the
June 1, 2005 Transmittal Hearing

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

May 18, 2005

LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2004-00005

☑ **Text Amendment** ☐ **Map Amendment**

This Document Contains the Following Reviews:	
✓	**Staff Review**
✓	**Local Planning Agency Review and Recommendation**
	Board of County Commissioners Hearing for Transmittal
	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
	Board of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: March 18, 2005

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT/REPRESENTATIVE:

a. APPLICANT
Pine Island Agriculture & Landowners' Association, Inc.
7321 Howard Road
Bokeelia, FL 33922

b. REPRESENTATIVE
Matthew D. Uhle, Esq.
Knott, Consoer, Evelini, Hart & Swett, P.A.
1625 Hendry Street, Suite 301
Ft. Myers, FL, 33901

2. REQUEST:

Amend Policy 14.2.2 to revise the traffic service volume calculations by utilizing new FDOT HIGHPLAN 1.0 software, change the method of calculating service volumes from *peak hour, annual average, two-way trips* to *peak season, peak hour, peak direction* conditions, and change the method of calculating the level of service threshold from level of service *D* to level of service *E*.

PROPOSED TRANSMITTAL LANGUAGE FOR POLICY14.2.2

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

- When traffic on Pine Island Road reaches ~~810~~ 768 peak season, peak hour, ~~annual average two-way~~ peak direction trips, the regulations will restrict further rezonings which would increase traffic on Pine Island Road through Matlacha. These regulations shall provide reasonable exceptions for minor rezonings on infill properties surrounded by development at similar intensities and those with inconsequential or positive effects on peak traffic flows through Matlacha, and may give preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island.

- When traffic on Pine Island Road reaches ~~910~~ 864 peak season, peak hour, ~~annual average two-way~~ peak direction trips, the regulations will provide restrictions on the further issuance of residential development orders (pursuant to chapter 10 of the Land Development Code) or other measures to maintain the adopted level of service, until improvements can be made in accordance with this plan. The effect of these restrictions on residential densities must not be more severe than restricting densities to one-third of the maximum density otherwise allowed on that property.

The ~~810~~ 768 and ~~910~~ 864 thresholds were based on 80% and 90% of level-of-service ~~"D"~~ "E" peak season, peak hour, peak direction capacity calculated using the latest FDOT software (March, 2002) ~~1965 Highway Capacity Manual, as documented in the 2001 Greater Pine Island Community Plan Update~~. These development regulations may provide exceptions for legitimate ongoing developments to protect previously approved densities for final phases that have a Chapter 177 plat or site-plan approval under Ordinance 86-36.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:

1. RECOMMENDATION:

Staff recommends that Policy 14.2.2 should not be amended as requested at this time.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The 810/910 trip count language first appeared in the 1990 Lee Plan as Policy 16.2.2. That Policy, later designated as Policy 14.2.2, was amended by the Board of County Commissioners on January 9, 2003.

- The January 9, 2003 amendment to Policy 14.2.2 did not change the 810/910 peak hour, annual average, two way trip numbers that trigger restrictions to further rezonings and to the issuance of residential development orders on Pine Island.

- At the September 5, 2002 transmittal hearing for CPA 2001-18 (Pine Island) the Board of County Commissioners considered the same language for Policy 14.2.2 that is contained in this request. That language was recommended by Lee County Department of Transportation.

- Department of Transportation staff advised the Board of County Commissioners at the September 5, 2002 transmittal hearing that using a different level of service threshold for Pine Island than was used in the rest of Lee County was a policy decision.

- The Board of County Commissioners then made a policy decision to keep the 810/910 thresholds in place in Policy 14.2.2, treating them as absolute numbers and not recalculating them based on a newer methodology.

C. BACKGROUND INFORMATION

Several years after the adoption of the Lee Plan in 1984 the Greater Pine Island Civic Association (GPICA) hired a planning consultant and developed a community plan for greater Pine Island. This plan was incorporated by Lee County as Goal 16 of the 1989 Lee Plan. Some changes were made in 1990 as a result of litigation between the Department of Community Affairs, including the setting of the 810 and 910 trip thresholds on Pine Island Road to trigger additional growth controls. Those thresholds were incorporated into the Lee Plan to place restrictions on additional density on Pine Island in an effort to: 1. Facilitate hurricane evacuation and; 2. Recognize the existence of thousands of vacant platted lots and the additional traffic that would be generated when those lots develop.

A number of amendments to Goal 16 were proposed several years later by the GPICA, and Lee County evaluated all of Goal 16 as part of its first "evaluation and appraisal report" on the 1989 Lee Plan. As a result of those efforts, some modifications were made in 1994 to the policies under Goal 16, including the reassignment of all Greater Pine Island objectives and policies to Goal 14.

The Greater Pine Island Community Plan Update (GPICPU) began in 1999 and was completed in September, 2001. Goal 14 of the Lee Plan was amended again in January, 2003. That amendment was a direct result of the GPICPU. The January 2003 amendment included changes to Policy 14.2.2, but did not change the 810 / 910 trip thresholds.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

At the September 5, 2002 transmittal hearing the Board of County Commissioners discussed the same language that is proposed for this amendment. That language was recommended by Lee County Department of Transportation. The Board decided that they would continue to use the 810/910 peak hour, annual average two way trip calculations for Pine Island, which is a different methodology than is used for the rest of Lee County.

The current language for Policy 14.2.2 was adopted by the Board of County Commissioners on January 9, 2003. Changes made in January, 2003 to Policy 14.2.2 are listed below in strike-through/underline format.

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

- *When traffic on Pine Island Road ~~between Burnt Store Road and Stringfellow Boulevard~~ reaches 810 peak hour, annual average two-way trips, the regulations will ~~provide restrictions on~~restrict further rezonings which would increase traffic on Pine Island Road through Matlacha. These regulations will provide reasonable exceptions for minor rezonings on infill properties surrounded by development at similar intensities and those with inconsequential or positive effects on peak traffic flows through Matlacha, and may give preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island.*

- *When traffic on Pine Island R~~r~~oad ~~between Burnt Store Road and Stringfellow boulevard~~ reaches 910 peak hour, annual average two-way trips, the regulations will provide restrictions on ~~will restrict~~ the further issuance of residential development orders (pursuant to chapter 10 of the Land Development Code ~~the Development Standards Ordinance~~), or other measures to maintain the adopted level of service, until improvements can be made in accdordance with this plan. The effect of these restrictions on residential densities must not be more severe than restricting densities to one-third of the maximum density otherwise allowed on that property.*

The 810 and 910 thresholds were based on 80% and 90% of level-of-service "D" capacity calculated using the 1965 Highway Capacity Manual, as documented in the 2001 Greater Pine Island Community Plan Update. These development regulations may provide exceptions for legitimate ongoing developments to protect previously approved densities for final phases that have a Chapter 177 plat or site-plan approval under Ordinance 86-36.

Two important changes were made to Policy 14.2.2 in January, 2003 that ease some of the restrictions that were formerly in place. Prior to the January, 2003 amendment, the Lee Plan contained no limitation on the restrictions on rezonings that would increase traffic on Pine Island Road. There was also no limitation on the restrictions that could be imposed on the issuance of residential development orders when the 910 trip count number is reached. The January, 2003 amendment requires the regulations to provide some exceptions for rezonings when the 810 trip count number is reached (that number has been exceeded every year since 1999). The amendment also limits the restriction on the issuance of residential development orders to no less than one third of the maximum density otherwise allowed on that property when the 910 trip count number is reached.

Staff acknowledges that the use of the absolute numbers 810/910 and the methodology for calculating trip counts on Pine Island is a policy decision that was made by the Board of County Commissioners at the September 5, 2002 transmittal hearing and that was solidified at the January 9, 2003 adoption hearing. Staff also recognizes that the language that was adopted for Policy 14.2.2 provides for some limitations on the restrictions that would be imposed once the 810/910 trip count numbers were reached. Those limitations on restrictions were included in the amendment as a recognition that the 810 trip count number had been exceeded and that the 910 trip count number was fast approaching.

Staff recommends that no changes to Policy 14.2.2 should be made at this time.

PART III - LOCAL PLANNING AGENCY REVIEW AND RECOMMENDATION

DATE OF PUBLIC HEARING: March 28, 2005

A. LOCAL PLANNING AGENCY REVIEW

Following a presentation by Planning staff the LPA had several questions for DOT staff regarding traffic on Pine Island Road and the 810/910 rule.

The applicants representative reviewed the policy aspects to the proposal, the history of 810/910, how it has evolved over time, how the 810/910 rule relates to particular policy concerns, and how it does/does not currently accomplish them.

The LPA opened the meeting up for public comment. Over thirty residents of Pine Island commented on the proposed amendment. The majority of comments to the LPA were in support of the 810/910 rule remaining unchanged and in opposition to the proposed amendment. A few comments were received in support of the proposed amendment.

Those opposed to the amendment generally commented that traffic on Pine Island Road was a major concern and that the 810/910 rule had been put in place to help control the amount of additional traffic on Pine Island Road that would be caused by more development approvals.

Those in favor of the amendment were generally concerned about property rights and their ability to develop their property. One resident speaking in favor of the amendment expressed concern that traffic was being counted on Pine Island differently than it was being counted in the rest of Lee County.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** The LPA recommended 3-1 that the Board of County Commissioners not transmit this amendment.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The LPA accepted the findings of fact as advanced by staff.

C. **VOTE:**

NOEL ANDRESS	**AYE**
MATT BIXLER	**ABSENT**
DEREK BURR	**AYE**
RONALD INGE	**NAY**
RAYMOND SCHUMANN, ESQ.	**AYE**
CARLETON RYFFEL	**ABSENT**
VACANT	

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

DATE OF TRANSMITTAL HEARING: June 1, 2005

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

	_____
JOHN ALBION	_____
TAMMY HALL	_____
BOB JANES	_____
RAY JUDAH	_____
DOUG ST. CERNY	_____

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

DATE OF ORC REPORT: _____

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS

B. STAFF RESPONSE

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

DATE OF ADOPTION HEARING: _____

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

	_____
JOHN ALBION	_____
TAMMY HALL	_____
BOB JANES	_____
RAY JUDAH	_____
DOUG ST. CERNY	_____

CPA2004-05
PINE ISLAND POLICY 14.2.2
PRIVATELY INITIATED AMENDMENT TO THE

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

Privately Initiated Application
and Lee County Staff Analysis

LPA Public Hearing Document
for the
March 28, 2005 Public Hearing

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

March 18, 2005

LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2004-00005

☑ **Text Amendment** ☐ **Map Amendment**

This Document Contains the Following Reviews:	
✓	**Staff Review**
	Local Planning Agency Review and Recommendation
	Board of County Commissioners Hearing for Transmittal
	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
	Board of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: March 18, 2005

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT/REPRESENTATIVE:

a. APPLICANT
Pine Island Agriculture & Landowners' Association, Inc.
7321 Howard Road
Bokeelia, FL 33922

b. REPRESENTATIVE
Matthew D. Uhle, Esq.
Knott, Consoer, Evelini, Hart & Swett, P.A.
1625 Hendry Street, Suite 301
Ft. Myers, FL, 33901

2. REQUEST:

Amend Policy 14.2.2 to revise the traffic service volume calculations by utilizing new FDOT HIGHPLAN 1.0 software, change the method of calculating service volumes from *peak hour, annual average, two-way trips* to *peak season, peak hour, peak direction* conditions, and change the method of calculating the level of service threshold from level of service *D* to level of service *E*.

PROPOSED TRANSMITTAL LANGUAGE FOR POLICY14.2.2

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

- When traffic on Pine Island Road reaches ~~810~~ 768 peak season, peak hour, ~~annual average two-way~~ peak direction trips, the regulations will restrict further rezonings which would increase traffic on Pine Island Road through Matlacha. These regulations shall provide reasonable exceptions for minor rezonings on infill properties surrounded by development at similar intensities and those with inconsequential or positive effects on peak traffic flows through Matlacha, and may give preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island.

- When traffic on Pine Island Road reaches ~~910~~ 864 peak season, peak hour, ~~annual average two-way~~ peak direction trips, the regulations will provide restrictions on the further issuance of residential development orders (pursuant to chapter 10 of the Land Development Code) or other measures to maintain the adopted level of service, until improvements can be made in accordance with this plan. The effect of these restrictions on residential densities must not be more severe than restricting densities to one-third of the maximum density otherwise allowed on that property.

The ~~810~~ 768 and ~~910~~ 864 thresholds were based on 80% and 90% of level-of-service ~~"D"~~ "E" peak season, peak hour, peak direction capacity calculated using the latest FDOT software (March, 2002) ~~1965 Highway Capacity Manual, as documented in the 2001 Greater Pine Island Community Plan Update~~. These development regulations may provide exceptions for legitimate ongoing developments to protect previously approved densities for final phases that have a Chapter 177 plat or site-plan approval under Ordinance 86-36.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:

1. RECOMMENDATION:

Staff recommends that Policy 14.2.2 should not be amended as requested at this time.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The 810/910 trip count language first appeared in the 1990 Lee Plan as Policy 16.2.2. That Policy, later designated as Policy 14.2.2, was amended by the Board of County Commissioners on January 9, 2003.

- The January 9, 2003 amendment to Policy 14.2.2 did not change the 810/910 peak hour, annual average, two way trip numbers that trigger restrictions to further rezonings and to the issuance of residential development orders on Pine Island.

- At the September 5, 2002 transmittal hearing for CPA 2001-18 (Pine Island) the Board of County Commissioners considered the same language for Policy 14.2.2 that is contained in this request. That language was recommended by Lee County Department of Transportation.

- Department of Transportation staff advised the Board of County Commissioners at the September 5, 2002 transmittal hearing that using a different level of service threshold for Pine Island than was used in the rest of Lee County was a policy decision.

- The Board of County Commissioners then made a policy decision to keep the 810/910 thresholds in place in Policy 14.2.2, treating them as absolute numbers and not recalculating them based on a newer methodology.

C. BACKGROUND INFORMATION

Several years after the adoption of the Lee Plan in 1984 the Greater Pine Island Civic Association (GPICA) hired a planning consultant and developed a community plan for greater Pine Island. This plan was incorporated by Lee County as Goal 16 of the 1989 Lee Plan. Some changes were made in 1990 as a result of litigation between the Department of Community Affairs, including the setting of the 810 and 910 trip thresholds on Pine Island Road to trigger additional growth controls. Those thresholds were incorporated into the Lee Plan to place restrictions on additional density on Pine Island in an effort to: 1. Facilitate hurricane evacuation and; 2. Recognize the existence of thousands of vacant platted lots and the additional traffic that would be generated when those lots develop.

A number of amendments to Goal 16 were proposed several years later by the GPICA, and Lee County evaluated all of Goal 16 as part of its first "evaluation and appraisal report" on the 1989 Lee Plan. As a result of those efforts, some modifications were made in 1994 to the policies under Goal 16, including the reassignment of all Greater Pine Island objectives and policies to Goal 14.

The Greater Pine Island Community Plan Update (GPICPU) began in 1999 and was completed in September, 2001. Goal 14 of the Lee Plan was amended again in January, 2003. That amendment was a direct result of the GPICPU. The January 2003 amendment included changes to Policy 14.2.2, but did not change the 810 / 910 trip thresholds.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

At the September 5, 2002 transmittal hearing the Board of County Commissioners discussed the same language that is proposed for this amendment. That language was recommended by Lee County Department of Transportation. The Board decided that they would continue to use the 810/910 peak hour, annual average two way trip calculations for Pine Island, which is a different methodology than is used for the rest of Lee County.

The current language for Policy 14.2.2 was adopted by the Board of County Commissioners on January 9, 2003. Changes made in January, 2003 to Policy 14.2.2 are listed below in strike-through/underline format.

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

- *When traffic on Pine Island Road ~~between Burnt Store Road and Stringfellow Boulevard~~ reaches 810 peak hour, annual average two-way trips, the regulations will ~~provide restrictions on~~restrict further rezonings which would increase traffic on Pine Island Road through Matlacha. These regulations will provide reasonable exceptions for minor rezonings on infill properties surrounded by development at similar intensities and those with inconsequential or positive effects on peak traffic flows through Matlacha, and may give preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island.*

- *When traffic on Pine Island ~~R~~road ~~between Burnt Store Road and Stringfellow boulevard~~ reaches 910 peak hour, annual average two-way trips, the regulations will provide restrictions on ~~will restrict~~ the further issuance of residential development orders (pursuant to chapter 10 of the Land Development Code ~~the Development Standards Ordinance~~), or other measures to maintain the adopted level of service, until improvements can be made in accdordance with this plan. The effect of these restrictions on residential densities must not be more severe than restricting densities to one-third of the maximum density otherwise allowed on that property.*

The 810 and 910 thresholds were based on 80% and 90% of level-of-service "D" capacity calculated using the 1965 Highway Capacity Manual, as documented in the 2001 Greater Pine Island Community Plan Update. These development regulations may provide exceptions for legitimate ongoing developments to protect previously approved densities for final phases that have a Chapter 177 plat or site-plan approval under Ordinance 86-36.

Two important changes were made to Policy 14.2.2 in January, 2003 that ease some of the restrictions that were formerly in place. Prior to the January, 2003 amendment, the Lee Plan contained no limitation on the restrictions on rezonings that would increase traffic on Pine Island Road. There was also no limitation on the restrictions that could be imposed on the issuance of residential development orders when the 910 trip count number is reached. The January, 2003 amendment requires the regulations to provide some exceptions for rezonings when the 810 trip count number is reached (that number has been exceeded every year since 1999). The amendment also limits the restriction on the issuance of residential development orders to no less than one third of the maximum density otherwise allowed on that property when the 910 trip count number is reached.

Staff acknowledges that the use of the absolute numbers 810/910 and the methodology for calculating trip counts on Pine Island is a policy decision that was made by the Board of County Commissioners at the September 5, 2002 transmittal hearing and that was solidified at the January 9, 2003 adoption hearing. Staff also recognizes that the language that was adopted for Policy 14.2.2 provides for some limitations on the restrictions that would be imposed once the 810/910 trip count numbers were reached. Those limitations on restrictions were included in the amendment as a recognition that the 810 trip count number had been exceeded and that the 910 trip count number was fast approaching.

Staff recommends that no changes to Policy 14.2.2 should be made at this time.

PART III - LOCAL PLANNING AGENCY REVIEW AND RECOMMENDATION

DATE OF PUBLIC HEARING: March 28, 2005

A. LOCAL PLANNING AGENCY REVIEW

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

NOEL ANDRESS	_____
MATT BIXLER	_____
DEREK BURR	_____
RONALD INGE	_____
RAYMOND SCHUMANN, ESQ.	_____
CARLETON RYFFEL	_____
VACANT	_____

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

DATE OF TRANSMITTAL HEARING: _____

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

	_____
JOHN ALBION	_____
TAMMY HALL	_____
BOB JANES	_____
RAY JUDAH	_____
DOUG ST. CERNY	_____

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

DATE OF ORC REPORT: _____

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS

B. STAFF RESPONSE

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

DATE OF ADOPTION HEARING: _____

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

	_____
JOHN ALBION	_____
TAMMY HALL	_____
BOB JANES	_____
RAY JUDAH	_____
DOUG ST. CERNY	_____

RECEIVED
FEB 27 2004
AMKW
PERMIT COUNTER

34-44-22

LEE COUNTY
SOUTHWEST FLORIDA

Lee County Board of County Commissioners
Department of Community Development
Division of Planning
Post Office Box 398
Fort Myers, FL 33902-0398
Telephone: (239) 479-8585
FAX: (239) 479-8519

APPLICATION FOR A COMPREHENSIVE PLAN AMENDMENT

(To be completed at time of intake)

DATE REC'D 2-27-04 REC'D BY: AMKW

APPLICATION FEE $2500.00 TIDEMARK NO: CPA2004-00005

THE FOLLOWING VERIFIED:
Zoning ☐ Commissioner District ☐ 1
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: 15

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.

2/26/04 Matthew R. Uhle
DATE SIGNATURE OF OWNER OR AUTHORIZED REPRESENTATIVE

I. APPLICANT/AGENT/OWNER INFORMATION

PINE ISLAND AGRICULTURE & LANDOWNERS' ASSOCIATION, INC.
APPLICANT

7321 Howard Road
ADDRESS

Bokeelia | FL | 33922
CITY | STATE | ZIP

239/283-9282 | 239-283-0050
TELEPHONE NUMBER | FAX NUMBER

Matthew D. Uhle, Esq., Knott, Consoer, Ebelini, Hart & Swett, P.A.
AGENT*

1625 Hendry Street, Suite 301
ADDRESS

Fort Myers | FL | 33901
CITY | STATE | ZIP

334-2722 | 334-1446
TELEPHONE NUMBER | FAX NUMBER

N/A (Text Amendment)
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)

[X] Text Amendment

[ ] Future Land Use Map Series Amendment (Maps 1 thru 20)
List Number(s) of Map(s) to be amended

_____

B. SUMMARY OF REQUEST (Brief explanation):

Technical correction to 810 and 910 trip threshold in Policy 14.2.2 based on data and analysis provided by LCDOT in 2002

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

A. Property Location:

1. Site Address: N/A (Text amendment pertains to all of Greater Pine Island)
2. STRAP(s): N/A (all of Greater Pine Island)

B. Property Information

Total Acreage of Property: N/A

Total Acreage included in Request: N/A

Area of each Existing Future Land Use Category: N/A

Total Uplands: N/A

Total Wetlands: N/A

Current Zoning: N/A

Current Future Land Use Designation: N/A

Existing Land Use: N/A

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:

N/A

E. Potential development of the subject property:

1. Calculation of maximum allowable development under existing FLUM:

Residential Units/Density: N/A

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. See attached.

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. N/A

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. N/A

4. Map and describe existing zoning of the subject property and surrounding properties. N/A

5. The legal description(s) for the property subject to the requested change. N/A

6. A copy of the deed(s) for the property subject to the requested change. N/A

7. An aerial map showing the subject property and surrounding properties. N/A

8. If applicant is not the owner, a letter from the owner of the property authorizing the applicant to represent the owner. N/A

B. Public Facilities Impacts N/A (Text Amendment)
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 N/A (Text Amendment)

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 N/A (Text Amendment)
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 See attached.

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) N/A

   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 N/A

   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. N/A

4. Requests moving lands from Density Reduction/Groundwater Resource must fully address Policy 2.4.3 of the Lee Plan Future Land Use Element. N/A

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. Please see the attached 4/16/02 memo from Dave Loveland to Jim Mudd for a justification of the amendment.

Item 1: Fee Schedule

Map Amendment Flat Fee	$2,000.00 each
Map Amendment > 20 Acres	$2,000.00 and $20.00 per 10 acres up to a maximum of $2,255.00
Small Scale Amendment (10 acres or less)	$1,500.00 each
Text Amendment Flat Fee	$2,500.00 each

AFFIDAVIT

I, Matthew D. Uhle, 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.

Matthew D. Uhle — Feb. 26, 2004

Signature of ~~owner or~~ owner-authorized agent — Date

Matthew D. Uhle

Typed or printed name

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was certified and subscribed before me this 26th day of Feb. 2004 by Matthew D. Uhle, who is personally known to me ~~or who has produced~~ as identification.

(SEAL)

ZSUZSANNA WEIGEL
MY COMMISSION # DD 261359
EXPIRES: October 23, 2007
Bonded Thru Notary Public Underwriters

Signature of notary public

ZSUZSANNA WEIGEL

Printed name of notary public

IV.A.1. PROPOSED TEXT CHANGE

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

- When traffic on Pine Island Road reaches ~~810~~ 768 peak season, peak hour, ~~annual average two-way~~peak direction trips, the regulations shall restrict further rezonings which would increase traffic on Pine Island Road through Matlacha. These regulations shall provide reasonable exceptions for minor rezonings on infill properties surrounded by development at similar intensities and those with inconsequential or positive effects on peak traffic flows through Matlacha, and may give preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island.
- When traffic on Pine Island Road reaches ~~910~~ 864 peak season, peak hour, ~~annual average two-way~~peak direction trips, the regulations will provide restrictions on the further issuance of residential development orders (pursuant to Chapter 10 of the Land Development Code) or other measures to maintain the adopted level of service, until improvements can be made in accordance with the plan. The effect of these restrictions must not be more severe than restricting densities to one-third of the maximum density otherwise allowed on that property.

The ~~810~~ 768 and ~~910~~ 864 thresholds were based on 80% and 90% of level-of-service ~~"D"~~ "E" peak season, peak hour, peak direction capacity calculated using the latest FDOT software (March, 2002) ~~1965 Highway Capacity Manual, as documented in the 2001 Greater Pine Island Community Plan Update~~. These development regulations may provide exceptions for legitimate ongoing developments to protect previously approved densities for final phases that have a Chapter 177 play site-plan approval under Ordinance 86-36.

E. INTERNAL CONSISTENCY WITH THE LEE PLAN

1. The proposal does not affect the Lee Plan population projections, Table 1(b), or the capacity of the FLUM, as the 810 and 910 trip thresholds have never been included in those computations.

2. The proposed technical revision is consistent with the following Lee Plan objectives and policies:

   a. Policy 22.1.1: County-wide methods of establishing levels of service.

   b. Policy 22.1.4: Use of 2000 Highway Capacity Manual.

3. The technical adjustment to Policy 14.2.2 will probably increase traffic slightly within the City of Cape Coral. The precise amount of the increase cannot be determined at this time, as the implications of exceeding the trip threshold are not established in the Lee Plan, but are left to the implementing regulations.

4. This is a technical adjustment of the trip threshold that is designed to make Policy 14.2.2 consistent with the methodology set out in Policy 22.1.1 and 22.1.4. As such, there are no state or regional plan goals or policies which are relevant to the request.

LEE COUNTY
SOUTHWEST FLORIDA

DEPARTMENT OF TRANSPORTATION

Memo

To: Jim Mudd, Principal Planner

From: David Loveland, Manager, Transportation Planning

Date: April 16, 2002

Subject: **LCDOT FINAL COMMENTS ON GREATER PINE ISLAND COMMUNITY PLAN UPDATE**

The consultant for the Greater Pine Island Community Plan Update in his letter of February 27, 2002 has done an excellent job addressing our comments of November 26, 2001, and we agree with most of his proposed language changes. However, in response to our request that the 810/910 development limitation standards be updated, since they are based on roadway capacity calculations done twelve or more years ago, the consultant declined. He indicated that he agreed with the need for the update, but cited a lack of essential input data for the Matlacha area as a basis for not doing the calculation. That same argument, along with a comparison to the most recent capacity calculations on Estero Boulevard which suggested that the new calculations wouldn't be much different, was included in Appendix A of the update. The consultant said in his February 27th letter, "We would be pleased if Lee County were to undertake this analysis at its most sophisticated level; it was simply beyond the budget of the community planning process and not essential for supporting a policy that has already been in force for a dozen years."

Staff disagrees with the premise that the recalculation is not essential, and feels the legal defensibility of the standard would be better served by calculating a new capacity based on the most up-to-date methods, even if some of the inputs for the calculation have to be estimated and even if the results are not much different. These calculations serve as a regulatory standard to limit development, and development denials based on such standards have the possibility of being challenged in court. Lee County would be hard-pressed to defend the reliance on twelve-year-old calculations when there have been significant changes in the calculation methodologies and the input data. We do not feel the calculation is as difficult as suggested by the consultant, and have undertaken it ourselves in the interest of protecting the County.

The most recent software for calculating service volumes (capacities) was released by the Florida Department of Transportation in March, and is called HIGHPLAN 1.0. Staff calculated the capacity for the entire section of Pine Island Road from Stringfellow Road

to Burnt Store Road using the new software. The software has a number of input variables, some of which we have site-specific information for and some of which rely on FDOT defaults. Because of the length of the segment we are dealing with (5.4) miles, there is some variation in the variables that required some averaging. For example, there are four different posted speeds within the segment, ranging from 30 mph to 55 mph. In examining the lengths of the different speed zones, staff developed a weighted average of 45 mph as an input to the software. There are also two different Area Types within the 5.4 mile segment; part would be considered Rural Undeveloped (about 61%) and part Rural Developed (about 39%). Staff calculated capacities under both scenarios and averaged them together using a weighted average system. The assumed input variables under each scenario are as follows:

INPUT VARIABLES

Area type:	Rural Undeveloped	Rural Developed	Field Data
Class:	4	3	Default
Posted Speed:	45	45	Field Data (Avg.)
Free Flow Speed:	50	50	Default
Pass Lane Spacing:	N/A	N/A	
# Thru Lanes:	2	2	Field Data
Terrain:	Level	Level	Field Data
Median:	No	No	Field Data
Left Turn Lanes:	No	No	Field Data
% No Passing Zone:	60	60	Field Data
AADT:	10900	10900	2001 Report
K-Factor:	.103	.103	2001 Report
D-Factor:	.58	.58	2001 Report
Peak Hour Factor:	.88	.895	Default
% Heavy Vehicle:	5	4	Default
Base Capacity:	1700	1700	Default
Local Adj. Factor:	.9	.92	Default
Adjusted Capacity:	1139	1180	Default

The calculation of the averaged service volumes relates to the staff determination that 61% of the segment fell into the Rural Undeveloped category and 39% was Rural Developed. Staff took the service volumes calculated under each scenario, applied the percentage of the overall segment, and added them together to get an estimated service volume. The results are below.

SERVICE VOLUME CALCULATIONS
PEAK SEASON, PEAK HOUR, PEAK DIRECTION

LOS	Rural Undeveloped	Rural Developed	Wtd. Average
A	0	90	35
B	90	240	150
C	280	490	360
D	490	690	560
E	940	990	960

These calculations include a peak season, peak hour factor (K-factor) and a peak direction factor (D-factor) as inputs, so they represent *peak season, peak hour, peak direction* conditions. The current policy language refers to *peak hour, annual average, two-way* trips. Staff had asked the consultant to reconcile the old annual average, two-way standard with the more modern peak season, peak direction standard used throughout the rest of the Lee Plan and consistent with current professional practice, but the consultant did not address that issue. There is also an inconsistency with the regulatory level of service standard applied on County roads, which is "E", and the reliance in this case on a percentage of the level of service "D" capacity. The analysis in Appendix A indicates that the use of level of service "D" was purposeful, but staff feels it would be better to be consistent throughout the plan on the use of the level of service standard relied on for regulatory purposes. Therefore, staff proposes to modify the standard in Policy 14.2.2 to establish the development thresholds at 80% and 90% of the *peak season, peak hour, peak direction* conditions at the level of service "E" capacity. Relying on the new peak season, peak hour, peak direction level of service "E" capacity calculated above (960), the 80% threshold would be 768 trips and the 90% threshold would be 864. As a point of reference, the latest Lee County Concurrency Management Report indicates that the current peak season, peak hour, peak direction volume on this segment of Pine Island Road is 627. We recommend the following changes to the policy language as proffered in the community plan:

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

- When traffic on Pine Island Road reaches ~~810~~ 768 peak season, peak hour, ~~annual average two-way~~ peak direction trips, the regulations shall restrict further rezonings which would increase traffic on Pine Island Road through Matlacha. These regulations shall provide reasonable exceptions for minor rezonings on infill properties surrounded by development at similar intensities and those with inconsequential or positive effects on peak traffic flows through Matlacha, and may give preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island.
- When traffic on Pine Island Road reaches ~~910~~ 864 peak season, peak hour, ~~annual average two-way~~ peak direction trips, the regulations shall restrict the further issuance of residential development orders to one-third the maximum density otherwise allowed on that property.

The ~~810~~ 768 and ~~910~~ 864 thresholds were based on 80% and 90% of level-of-service ~~"D"~~ "E" peak season, peak hour, peak direction capacity calculated using the latest FDOT software (March, 2002) ~~1965 Highway Capacity Manual, as documented in the 2001 Greater Pine Island Community Plan Update~~. These development regulations may provide exceptions for legitimate ongoing developments to protect previously approved densities for final phases that have a Chapter 177 plat or site-plan approval under Ordinance 86-36.

Thank you for this opportunity to comment on the Greater Pine Island Community Plan Update. Please contact me if you have any questions.

DML/mlb

cc: Bill Spikowski
Greater Pine Island Civic Association
Donna Loibl, President, Matlacha Civic Association
Administrative File

LEE COUNTY
SOUTHWEST FLORIDA

DEPARTMENT OF TRANSPORTATION

Memo

To: Mary Gibbs, Community Development Director

From: David Loveland, Manager, Transportation Planning

Date: July 30, 2004

Subject: **CONVERSION OF 2003 TRAFFIC COUNTY ON PINE ISLAND ROAD TO ANNUAL AVERAGE PEAK HOUR TWO-WAY CONDITION**

I am writing to clarify the unofficial estimate of traffic on Pine Island Road, based on the conversion of the annual average daily traffic (AADT) count from Lee County DOT's 2003 Traffic Count report. As you know, the comprehensive plan establishes some thresholds regarding how rezonings and development orders on Pine Island should be reviewed, which are 810 and 910 *annual average*, peak hour, *two-way* trips. That is a unique and unusual measure of conditions, since we use *peak season,* peak hour, *peak direction* trips for the statement of conditions on all other County roads.

Typically my staff provides the conversion to annual average, peak hour two-way trips for the western end of Pine Island Road, and to peak season, peak hour, peak direction trips for all other roads to your staff sometime after the Traffic Count is published, and your staff uses those numbers, with the addition of traffic from projects with approved building permits, to estimate existing conditions for the annual concurrency management report. Based on the 2003 Traffic Count report as published in February, 2004, the AADT for Pine Island Road at Matlacha Pass (Permanent Count Station #3) is 11,500 trips (this is a rounded number). The AADT represents an annual average condition in both directions for a typical day, with that average calculated from the counts for every day of the year at the permanent count station. Since the AADT already represents annual average, two way conditions, it simply has to be converted from a daily condition to a peak hour condition to get to the measure used for the 810/910 standard. Since we use the p.m. peak hour for all other road measurement standards (instead of the a.m. peak hour), my staff simply applied the p.m. peak hour factor published in report for Permanent Count Station #3 of 8% (also a rounded number). This resulted in an estimate of 920 annual average, peak hour, two-way trips, over the 910 threshold.

However, after further review and internal discussion, it was noted that the 8% peak-to-daily ratio was as a percent of *weekday* traffic, exclusive of weekend conditions. As noted above, the AADT comes from traffic counted 7 days a week, 365 days a year. To be more technically appropriate, the peak-to-daily ratio should be based on a full-week condition. DOT's Traffic Section reviewed the permanent count station information and pulled the full-week p.m. peak hour information, resulting in a 7.8% peak-to-daily ratio instead of 8%. They also provided us the non-rounded AADT number of 11,543. Applying the more appropriate peak-to-daily ratio to

the non-rounded AADT number, we get an estimate of annual average, peak hour, two-way trips on the western end of Pine Island Road of 900, under the 910 threshold. Nevertheless, considering the amount of variability in measuring traffic, the threshold has essentially been reached in all practicality. It may also be more clearly reached in the concurrency report, with traffic added from approved building permits.

A table that shows the annual average, peak hour, two-way calculation is attached. Because Policy 14.2.2 of the Lee Plan refers to maintaining the adopted level of service standard once the 910 threshold is officially reached, and Policy 14.2.1 states that the adopted level of service standard is "D" on an annual average, peak hour basis and "E" on a peak season, peak hour basis, as measured using the 1985 Highway Capacity Manual method, the table also includes conversions to peak season, peak hour conditions. We've also included two-way and peak direction estimates for both conditions, since Policy 14.2.1 doesn't specify which of those is part of the standard. Included in the table is a volume-to-capacity (V/C) calculation as well; a V/C ratio exceeding 1.00 would indicate that the standard is being exceeded.

We would note that the reference to the 1985 Highway Capacity Manual method is outdated, since that manual is no longer published, and the FDOT software we use to calculate capacities has been updated to reflect the newer 2000 Highway Capacity Manual methods. Therefore we have also included a table showing the same conversions and V/C ratio calculations but using the newer capacity calculations. It would be our recommendation that Policy 14.2.1 be updated to instead refer to the 2000 Highway Capacity Manual and the 2002 Florida Department of Transportation Quality Level of Service Handbook.

Please let me know if you need additional information.

cc: Tim Jones, Chief Assistant County Attorney
Donna Marie Collins, Assistant County Attorney
Pete Eckenrode, Development Services Director
Paul O'Connor, Planning Director
Mike Carroll, Concurrency Manager
Scott Gilbertson, DOT Director
Steve Jansen, DOT Traffic Section

LEE COUNTY

Fee History

Case #: CPA2004-00005

Case #:	**CPA2004-00005**
Property Owner	**PETERSON TRUST ETAL**
Property Address	**0 ACCESS UNDETERMINED**
Contractor	
License Number	
Fax Number	

Description	Revenue Account Number	Fees	Paid	Date Paid	Due
Text Amendment Flat Fee	LB5150715500.322000.9018	2,500.00	2,500.00	2/27/2004	0.00
		Total Fees: $2,500.00	**Paid:** $2,500.00	**TOTAL REMAINING DUE:**	**$0.00**

James Mudd - FW: CPA 2004-05 Pine Island Policy 14.2.2

From: "Gary A. Davis" <gadavis@enviroattorney.com>
To: <noblema@leegov.com>
Date: 3/28/2005 8:12 AM
Subject: FW: CPA 2004-05 Pine Island Policy 14.2.2

-----Original Message-----
From: Gary A. Davis [mailto:gadavis@enviroattorney.com]
Sent: Monday, March 28, 2005 8:10 AM
To: 'OCONNOPS@leegov.com'
Subject: CPA 2004-05 Pine Island Policy 14.2.2

Dear Paul,

Please provide this email to the LPA for their March 28, 2005, meeting where the above-referenced item will be heard and place it in the administrative record.

I am now a resident of St. James City and want to state my opposition to the proposed amendment to the Pine Island Plan. I support staff's position that the amendment should not be adopted. As was pointed out, the recent amendments to the Pine Island Plan mitigate the effects of the 810/910 Rule. Furthermore, the Board of County Commissioners clearly intends that the method of measuring traffic and compliance with the 810/910 Rule be based on peak hour, annual average, two-way trips.

A recent letter from William Spikowski, AICP, included a memorandum from transportation planner Mohsen Salehi. In the memorandum, Mr. Salehi discusses problems with the FDOT software used by the County to calculate levels of service for County roads, including Pine Island Road. Certainly, an amendment should not be approved that explicitly relies on this software and contains certain traffic count thresholds derived from this software until the issues with the software are resolved.

Pine Island traffic is already a problem. The County should not take any actions that would put significantly more cars on Pine Island Road.

Thanks you for your consideration.

Gary A. Davis
2248 Date Street
St. James City, FL 33956
239-283-3222

SPIKOWSKI PLANNING ASSOCIATES

1617 Hendry Street, Suite 416
Fort Myers, Florida 33901-2947

telephone: (239) 334-8866
fax: (239) 334-8878

e-mail: bill@spikowski.com
web site: www.spikowski.com

March 17, 2005

Mary Gibbs, Director
Lee County Department of Community Development
P.O. Box 398
Fort Myers, Florida 33902-0398

RE: GREATER PINE ISLAND'S "910 RULE"

Dear Mary:

Lee County is now implementing the "910 Rule" in Lee Plan Policy 14.2.2 and we understand there are differing opinions as to how this rule should be implemented.

We do not agree with one opinion, which is that no practical effects will be felt by applicants for residential orders until the levels of service described in Policy 14.2.1 have been reached (as opposed to those described within Policy 14.2.2). However, in order to understand the effects of such an interpretation, we have conducted some research that you will find to be critical, because there was a technical flaw in the software that FDOT had supplied to Lee County for converting the level-of-service grades into actual traffic counts. Please review the attached memorandum for further details.

Once this software flaw is corrected, it appears that there will be no need to determine which of the differing opinions about the "910 Rule" should prevail inasmuch as the practical effects are about the same. I would like to sit down with you and other county staff members to discuss this matter after you have reviewed the attached material. (The software "patch" can be obtained from Mohsen Salehi or directly from Professor Scott S. Washburn at the University of Florida.)

Sincerely,

William M. Spikowski AICP

cc: David Loveland, Lee County DOT
Scott S. Washburn, University of Florida

Salehi Consulting Services/4786 Harbour Cay Blvd
Ft. Myers, Florida 33919
Tel: (239) 994-1320/Fax: (239) 433-1092
MnSalehiAICP@aol.com

Memo

To: Bill Spikowski

From: Mohsen Salehi

Date: March 4, 2005

Subject: **Lee Plan Policy 14.2.1 & HCM 2000 Based FDOT HighPlan Software**

Lee County has formally acknowledged that traffic counts on Pine Island Road exceed the 910 threshold established in Lee Plan Policy 14.2.2, with the latest published figures indicating a count of 937.[1]

However, some county staffers have expressed the opinion that the "910 Rule" will have little practical effect on the issuance of further residential development orders because they read Policy 14.2.1[2] as controlling over Policy 14.2.2.[3] Policy 14.2.1 refers to levels of service

---

[1] Concurrency Management: Inventory and Projections, 2003/2004–2004/2005, page 6

[2] *"POLICY 14.2.1: The minimum acceptable level-of-service standard for Pine Island Road between Burnt Store Road and Stringfellow Boulevard is hereby established as LOS "D" on an annual average peak hour basis and LOS "E" on a peak season, peak hour basis. This standard shall be measured at the county's permanent count station on Little Pine Island and using the methodology described in the 1985 Highway Capacity Manual, Special Report 209."*

[3] *"POLICY 14.2.2: In order to recognize and give priority to the property rights previously granted by Lee County for about 6,675 additional dwelling units, the county will keep in force effective development regulations which address growth on Pine Island and which implement measures to gradually limit future development approvals. These regulations will reduce certain types of approvals at established thresholds prior to the capacity of Pine Island Road being reached, measured as follows at the permanent count station on Little Pine Island at the western edge of Matlacha:*

- *When traffic on Pine Island Road reaches 810 peak hour, annual average two-way trips, the regulations will restrict further rezonings which would increase traffic on Pine Island Road through Matlacha. These regulations shall provide reasonable exceptions for minor rezonings on infill properties surrounded by development at similar intensities and those with inconsequential or positive effects on peak traffic flows through Matlacha, and may give*

that are expressed differently than Policy 14.2.2: "LOS "D" on an annual average peak hour basis and LOS "E" on peak season, peak hour basis." Lee DOT is also recommending that these levels of service be evaluated using the newer 2000 Highway Capacity Manual (2000 HCM) methodology, as opposed to the 1985 HCM that is cited in Policy 14.2.1.

You asked to me to research the meaning of the levels of service in Policy 14.2.1 in case this interpretation of the "910 Rule" becomes official county policy. In addition, you asked what would be the implications of changing Policy 14.2.1 to refer to the 2000 HCM instead of the 1985 HCM, because Lee County DOT is proposing to make such a change in an upcoming amendment to Policy 14.2.1.

One would expect these assignments to be quite simple, but that has not turned out to be the case.

In a July 30,2004, Memo to Lee DOT indicated the levels of service in Policy 14.2.1 to result in a figure of 1130 (using 1985HCM) and 1300 (using 2000 HCM) for determining annual average peak hour two-way (copy attached). I contacted Lili Wu of Lee DOT to find out how these figures had been generated. He provided me a printout showing the 1300 value (based on 2000 HCM software provided by Florida DOT, HighPlan version 1.0); no printout for 1985 HCM showing the 1130 value was available. It is my understanding that Lee DOT runs the software once to determine the resulting values, then prints out the results and uses the printed values in their subsequent work for concurrency and other purposes.

I then obtained this same HighPlan software from the FDOT web site and ran it to verify and understand the Lee DOT results. The version of the software I downloaded was newer than the one used by Lee County (version 1.2 vs. version 1.0). Since both versions were based on the same formulas, the results should have been the same, but they were not. Most strikingly, this model produces a different result after the input values were "saved," indicating a technical flaw or bug in the model itself.

I brought this problem to FDOT and subsequently their consultant Prof. Washburn's attention. He acknowledged that "there was definitely an issue with the functioning of the analysis type....". He further sent me a "patch" (i.e., an application file, highplan.exe, to fix the problem that I had brought to his attention). He also mentioned: "I am not sure we will be doing an official update on the FDOT website as I have been working on a separate version that will likely replace this version in the near future." I "patched" the software only to encounter other minor problems that are as yet unresolved, but which should little practical effect.

Transportation professionals would not knowingly use a model that produces incorrect results. Unfortunately these models are somewhat like black boxes, so the "correct" result is sometimes not immediately apparent.

---

preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island.

- *When traffic on Pine Island Road reaches 910 peak hour, annual average two-way trips, the regulations shall provide restrictions on the further issuance of residential development orders (pursuant to chapter 10 of the Land Development Code), or other measures to maintain the adopted level of service, until improvements can be made in accordance with this plan. The effect of these restrictions on residential densities must not be more severe than restricting densities to one-third of the maximum density otherwise allowed on that property.*

The 810 and 910 thresholds were based on 80% and 90% of level-of-service "D" capacity calculated using the 1965 Highway Capacity Manual, as documented in the 2001 Greater Pine Island Community Plan Update. These development regulations may provide exceptions for legitimate ongoing developments to protect previously approved densities for final phases that have a Chapter 177 plat or site-plan approval under Ordinance 86-36."

Based on my analysis and my e-mail exchanges with Professor Washburn, I believe the correct value for interpreting Policy 14.2.1 is 940[4] (or 950[5]) for LOS "D" on an annual average, peak hour basis. With or without the "patch" supplied by Prof. Washburn, Lee DOT staff are more than likely to arrive at results similar to my results using the latest version available (1.2) on the FDOT website. Marginal differences are to be expected if yet-to-be-published 2004 Traffic Count Report data is utilized, even with adjustments made for converting weekday to weekly (i.e., full –week) peak flow.

Assuming my analysis is correct, the values generated for Policy 14.2.1 are quite close to the 910 figure in Policy 14.2.2 and even closer to the 937 actual traffic count as report in the latest concurrency report. As a result, it may end up making little or no practical difference how the county (or the courts) ends up interpreting the relationship between Policies 14.2.1 and 14.2.2.

Also, since we cannot identify any working software for the 1985 HCM, it should make no practical difference whether Policy 14.2.1 is amended to refer to the 2000 HCM or not. There should be no issues with using the 2000 HCM to compute values as long as the errors in the earlier versions of the FDOT software, as acknowledged by FDOT consultant Prof. Washburn, are taken into account.

Please let me know if further explanation or clarification is needed.

---

[4] *Using Lee County DOT values for K factor and D factor*

[5] *Using FDOT default values for AADT, K factor, and D factor as recommended on page 114 of the FDOT 2002 Quality/Level of Service Handbook*

MANAGEMENT & PLANNING COMMITTEE
AGENDA REQUEST FORM
COMMISSION DISTRICT #CW

INITIATED BY: **Mary Gibbs**
Director, Community Development

REQUESTED BY **County Commission**

TITLE OF ITEM FOR THE AGENDA
Pine Island Concurrency Issue

1. DESCRIPTION AND OBJECTIVE OF THE ISSUE

At the BOCC meeting of 7/27/04, the Board requested this item be scheduled at the August 2nd M & P meeting. The issue relates to concurrency for Greater Pine Island. See attached background sheet as well as the attached memo from the County Attorney's office and the memo from the Department of Transportation.

2. PROPOSED POLICY, PROCEDURE OR PLAN OF ACTION

Greater Pine Island has a separate concurrency management requirement. The main issue is when that requirement is to be enforced: immediately when the DOT Traffic Count Report is completed, or when the County's Concurrency Management report is adopted by the Board. See the attached legal memorandum from the County Attorney's Office for further information. Three options are provided below to address the issue.

3. OPTIONS (List Advantages/Disadvantages of Each Option Listed)

1. Update the 2004 Concurrency Management report in November. (Status quo option)
2. Update the Concurrency Management report as soon as possible.
3. Update the transportation section only of the Concurrency Management report as soon as possible.

4. FINANCIAL IMPACTS/FUNDING SOURCE

Depends on option chosen.

5. STAFF RECOMMENDATIONS, AND JUSTIFICATION FOR RECOMMENDATIONS

Option 2.

6. MANDATED? Y **N** BY WHAT AUTHORITY?

DEPARTMENT DIRECTOR SIGNATURE	COUNTY ADMINISTRATOR SIGNATURE	MEETING DATE	TIME REQUIRED
		8/2/04	15 Mins.

GREATER PINE ISLAND CONCURRENCY ISSUE

The County's Comprehensive Plan contains a special concurrency requirement for Greater Pine Island when certain traffic thresholds on Pine Island Road are reached. These are contained in Policies 14.2.1 and 14.2.2. The policies are reproduced below:

> ***POLICY 14.2.1:*** *The minimum acceptable level-of-service standard for Pine Island Road between Burnt Store Road and Stringfellow Boulevard is hereby established as LOS "D" on an annual average peak hour basis and LOS "E" on a peak season, peak hour basis. This standard will be measured at the county's permanent count station on Little Pine Island and using the methodology described in the 1985 Highway Capacity Manual, Special Report 209.*
>
> ***POLICY 14.2.2:*** *In order to recognize and give priority to the property rights previously granted by Lee County for about 6,800 additional dwelling units, the county will consider for adoption development regulations which address growth on Pine Island and which implement measures to gradually limit future development approvals. The effect of these regulations would be to appropriately reduce certain types of approvals at established thresholds prior to the adopted level-of-service standard being reached, as follows:*
>
> - *When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 810 peak hour, annual average two-way trips, the regulations will provide restrictions on further rezonings which would increase traffic on Pine Island Road.*
> - *When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 910 peak hour, annual average two-way trips, the regulations will provide restrictions on the further issuance of residential development orders (pursuant to the Development Standards Ordinance), or other measures to maintain the adopted level of service, until improvements can be made in accordance with this plan. (Amended by Ordinance No. 00-22)*

These policies are implemented in the Land Development Code (LDC) under Section 2-48 which reads:

> ***Sec. 2-48. Greater Pine Island concurrency.***
>
> *Concurrency compliance for property located in Greater Pine Island, as identified on the future land use map, will be determined in accordance with the level of service and restrictions set forth in Lee Plan policies 14.2.1 and 14.2.2 to the extent the policies provide additional restrictions that supplement other provisions of this article. These policies require the following:*
>
> *(1) The minimum acceptable level of service standard for Pine Island Road between Burnt Store Road and Stringfellow Boulevard is level of service D on an annual average peak-hour basis and level of service E on a peak-season peak-hour basis using methodologies from the 1985 Highway Capacity Manual Special Report 209. This standard will be measured at the county's permanent count station on Little Pine Island.*
>
> *(2) When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 810 peak-hour annual average two-way trips, rezonings that increase traffic on Pine Island Road may not be granted. When traffic on Pine Island*

Road between Burnt Store Road and Stringfellow Boulevard reaches 910 peak-hour annual average two-way trips, residential development orders (pursuant to chapter 10) will not be granted unless measures to maintain the adopted level of service can be included as a condition of the development order.

The Lee Plan, in Policy 22.3.2, requires the County "to annually identify roadway conditions and available capacity as part of its concurrency management report." LDC Section 2-50 further implements this provision, requiring the County to "publish and update, at least once each year" a Concurrency Management report. The LDC goes on to state that the "inventory must be reviewed and approved by the Board of County Commissioners."

The 2003 Concurrency Management report utilized the 2002 Traffic Count Report to determine the peak hour, annual average two-way trips on Pine Island Road. This concurrency report indicated that the peak hour, annual average two-way trips were at 896 trips.

The County Department of Transportation issued its 2003 Traffic Count Report in February of 2003. This report indicates average daily traffic of 11,500 trips on Pine Island Road (count station 3, west of Matlacha Pass). This daily count is then converted to peak hour, annual average two-way trips. Please refer to the attached memorandum from Dave Loveland regarding this conversion The 2004 Concurrency Management report will utilize this revised trip count in its transportation section. Typically, updates to the Concurrency Management report are presented to the Board for their adoption in November.

Two issues have recently arisen regarding these policies. The first issue is when are the provisions of Policy 14.2.2 to be enforced, when the traffic counts are completed or when the Concurrency Management report is formally adopted by the Board. In accordance with the LDC the Concurrency Management report is considered enforceable when it is annually adopted by the Board.

The second issue concerns the effect of traffic reaching or exceeding the 910 trip count threshold. As stated in Policy 14.2.2 the "regulations will provide restrictions on the further issuance of residential development orders...or other measures to maintain the adopted level of service." The adopted level of service is established by Policy 14.2.1. That policy in part provides that the minimum level of service is "established as LOS "D" on an annual average peak hour basis and LOS "E" on a peak season, peak hour basis." LDC Section 2-48(2) provides that "residential development orders...will not be granted unless measures to maintain the adopted level of service can be included as a condition of the development order." In other words, the 910 threshold is a trigger that requires residential development order applications to be reviewed to assure that the project's impacts don't exceed the two tiered level of service standards identified by Policy 14.2.1. Residential development order applications, received after the 910 threshold is exceeded in an adopted Concurrency management report, will be required to analyze the project's impacts to the level-of-service for Pine Island Road. Development orders that are issued will be conditioned to assure that the two tiered level of service standards are not exceeded.

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: July 30, 2004

TO: Board of County Commissioners **FROM:** Timothy Jones
Chief Assistant County Attorney

RE: Pine Island Concurrency

The purpose of this memorandum is to provide legal analysis to assist the Board in its discussion of this subject at the Management and Planning Committee Meeting on Monday, August 2, 2004. We expect the following legal issues to be central to the discussion of Pine Island Concurrency:

1. *Are the provisions of Policy 14.2.2. of the Lee Plan self implementing?*

   The answer to this question is "no." The language of the Lee Plan policy clearly contemplates, and requires, that regulations will be adopted to implement the policy itself. These regulations have, in fact, been adopted and are codified in Section 2-48 of the Land Development Code (LDC).

2. *Does the 910 rule, as stated in the Lee Plan and as implemented in the LDC, prohibit the approval of any new development order for residential development on Pine Island?*

   The answer to this question is "no." The Lee Plan and the LDC clearly contemplate that the 910 rule is a threshold or "warning light" that causes the County to use heightened scrutiny of development order applications for new development on Pine Island. The 910 number itself represents 90 percent of the adopted level of service capacity for trips on Pine Island Road at the time the rule was adopted. Therefore, additional development may be approved that results in more than 910 trips on Pine Island Road.

3. *May the County use new information that is not part of the 2003 approved concurrency report to enforce concurrency limitations before the Board reviews and approves the 2004 annual concurrency report?*

   The answer to this question is "no." The Lee Plan, through Objective 22.3 and the policies thereunder, as well as the LDC, through the provisions of Chapter 2, provide for the adoption of a concurrency report. This report is an inventory of available capacity of public facilities

Re: Pine Island Concurrency

and it must be reviewed and approved by the Board of County Commissioners at least annually. Only after this approval is the County staff authorized to apply the findings of the report in the concurrency review of applications for development permits. If the County attempts to use new information before it is incorporated in a properly approved annual concurrency report the County will be acting without proper legal authority and will be subject to potential liability.

4. *Can the County change the regulations to provide that the 910 threshold number of trips is instead a maximum allowable number of trips, thus stopping all development above that number?*

The answer to this question is "yes." However, if the County does make this change, it will create significant liability for the County under the Bert Harris Act.

5. *Does the designation of a small segment of Pine Island Road as "constrained" affect or change the requirement that the concurrency report be approved before new information is used to enforce concurrency limitations on Pine Island?*

The answer to this question is "no." The required concurrency report also determines the available capacity of constrained road segments. New information regarding capacity on constrained road segments may not properly be used to enforce concurrency limitations until the report is approved by the Board.

We believe that the above analysis addresses the central legal issues in this discussion. Please do not hesitate to contact me if you have any questions or if you desire additional legal analysis.

TJ/amp

Distribution: Robert P. Janes, Commissioner, District #1
Douglas St. Cerny, Commissioner, District #2
Ray Judah, Commissioner, District #3
Andrew Coy, Commissioner, District #4
John Albion, Chairman, Commissioner, District #5

cc: Bob Gray, Deputy County Attorney
Mary Gibbs, Director, Department of Community Development
Donna Marie Collins, Assistant County Attorney

From: Lindsey Sampson
To: Noble, Matthew
Date: 3/24/04 6:53PM
Subject: Re: 2004 Lee Plan Private Amendments - Summaries...

Matt,

I don't have any objections to the requested amendments that are summarized below.

Lindsey

Lindsey J. Sampson
Lee County Solid Waste Division
sampsolj@leegov.com
Ph. 239-338-3302
Fax 239-461-5871

>>> Matthew Noble 03/23/04 07:50AM >>>
Good morning all,

Here is a brief summary for the Plan amendments that I email late yesterday:

1. CPA 2004-01 - Small Scale Amendment (from General Commercial Interchange to Central Urban)- Leeward Yacht Club L.L.C., Leeward Yacht Club Mixed Use Planned Development (Hansen's Marina property @ S.R. 80 & I-75).

(EAR ROUND OF AMENDMENTS PRIVATE REQUESTS:)
2. CPA 2004-02 - Text Amendment, Sue Murphy, AICP, Estero, allow outdoor storage over one acre within a portion of the General Interchange land use category at Corkscrew & I-75.

3. CPA 2004-03 - Text and FLUM Amendment, Weeks Landing L.L.C., Michele Pessin, Manager, Creation of the "Public Marine Mixed Use" category and application to Weeks Fish Camp property (23 acres).

4. CPA 2004-04 - FLUM Amendment, William Fitzgerald, Trustee, Amend from Outlying Suburban to Urban Community (54 acres) from Rural to Outlying Suburban (55 acres), located near Daniels Parkway & I-75 .

5. CPA 2004-05 - Text Amendment, Pine Island, Pine Island Agriculture & Landowners' Association, Inc., Amend Policy 14.2.2.

6. CPA 2004-06 - FLUM and Text Amendment, Florida Citrus Corporation, North East Lee County (Alva), Creation of the Rural Village land use category, Amend from Rural and Open Lands to the new Rural Village category for a 3,713 acre property.

7. CPA 2004-07 - Text Amendment, Watermen Development Group Corp., Buckingham, Amend Policy 17.1.3 to "allow lots to be clustered as part of an Agricultural Planned Development."

8. CPA 2004-08 - FLUM Amendment, Advance Homes, Inc., Mill Creek Florida Properties No. 3, L.L.C., Richard D. Fernandez, SW Florida Land 411 L.L.C., Development known as Oak Creek, Amend Rural to Suburban (10 acres), and Suburban to Rural (10 acres), North Fort Myers (near Raymond Lumber)

9. CPA 2004-09 - Text Amendment, Captiva Community Panel, Captiva, Proposing six additional policies.

10. CPA 2004-10 - FLUM Amendment, Hawks Haven Investment, L.L.C., East Lee County (off S.R. 80),

Amend approximately 1,623 acres of Rural and 79 acres of Suburban to Outlying Suburban with a density limit of 2 units per acre and Public Facilities (20 acres).

Matthew A. Noble, Principal Planner
Lee County Department of Community Development
Division of Planning
Email: noblema@bocc.co.lee.fl.us
(239) 479-8548
(941) 479-8319 FAX

February 5, 2005

Mary Gibbs, Director, Lee County Community Development
Paul O'Connor, Lee County Planning Director
Robert Gray, Lee County Deputy County Attorney

Dear Ms Gibbs, Mr. O'Connor, and Mr. Gray:

The enclosed Letter to the Editor of the Pine Island Eagle was printed in their February 2, 2005 edition, and I would like your comments about the issues raised; the County's plans to restrict growth on Pine Island to meet the intent (vision) set forth in the revised Lee Plan; and how the County will enforce such restrictions.

I would appreciate a public response, either through an article in the Eagle or, preferably, in an open forum on Pine Island.

While the Lee Plan appears straightforward there are evidently other statutes, ordinances, acts, and interpretations that can/do impact the implementation of the Plan. To the uninitiated it's a daunting task to try to discover all of these interactions, and then to fully understand their impact.

While I'm not looking for the administrative detail of the permitting, development order, and re-zoning processes, I would like a good understanding of the County's plans to enforce restricted growth on Pine Island including, but not limited to, the following specific questions:

1. Is the previous 810/910-traffic count threshold now 1,130. If so, why did it change? Will it change again?
   a. If the 1,130 level is the new threshold will that number have to be actually achieved, and be documented in a Concurrency Report, prior to any restrictions, or does the County use a formula that forecasts how new development orders/permits will effect the future traffic count levels, thus requiring restrictions once a projected 1,130 count is achieved?
   b. If the 810/910 number is still in effect what restrictions per Policy 14.2.2 have been put in place since the Concurrency Report indicates that the two-way trip number is now 937, thus exceeding the 910 threshold?
2. If 1.a is correct:
   a. what is the planned allowable number of residential units that can be approved before restrictions are placed on all future development?
   b. how does the County "keep count" of the units for a D.O. that may have been denied yet will probably be reapplied for once the particular denial issue has been corrected?

February 5, 2005

3. What other density control, infrastructure and/or zoning factors does the County use to restrict growth on Pine Island?
   a. It appears to me that the "traffic count" is not the best "gatekeeper" for slowing Pine Island residential growth.
   b. The Planning Community of Pine Island Population Projections for the year 2020 are 11,020 permanent and 16,041 functional (13% and 26% increase over 2003). How are these increases considered in today's D.O. approval cycle? Pro-rated growth over 15 years?
   c. Is the 16,041 a maximum population for Pine Island that will still meet the vision of the Lee Plan. If so, does the D.O. approval cycle maintain a cumulative count of Pine Island residential units (built or planned) that equate to that number?
   d. Are the "Residential Use by Future Land Use Categories" acreage counts locked in? How are these numbers used in the D.O. approval cycle?
4. What is the definition of "restrictions" as used in the Lee Plan?
5. How do the current capacities of Pine Island Road and Stringfellow Road contribute to the County's decisions to enforce building restrictions that protect nature, wildlife and the "best features" of Pine Island?
6. How are the 6,500+ lots currently residential-zoned being protected? (If built, these units alone could exceed the 2020 projections.)
7. What is the true impact of the Coastal Rural designation on future growth? Will farmers be able to residentially develop their land unrestrained by the Coastal Rural designation, or are the Policy 1.4.7 Maximum Density criteria enforceable?

The bottom line --

There seems to be good reasons for Pine Islanders to be concerned about the control of future growth. Reasons that could cause a belief that any future residential development should be restricted now. Not only for public safety, but for the preservation of natural things and a co-existing quality of public life.

What is the County doing to make sure that Pine Island remains "a place not very different from what it is today, an island as state-of-mind as much as a physical entity, its best features preserved and enhanced"?

Thanks in advance for your time and efforts in responding to this letter.

Sincerely yours,

Ron Lueth
8283 Main Street
Bokeelia FL 33922
239-283-1847
ita408@comcast.net

cc: Commissioner Bob Janes

Ron Lueth

From: "Ron Lueth" <ita408@comcast.net>
To: "Pine Island Eagle" <pineisland@flguide.com>
Sent: Thursday, January 27, 2005 3:32 PM
Subject: Letter to the Editor--Residential Growth Plans

Letter to the Editor

Pine Island Eagle

I too am disturbed about the vision of a Walgreen's in the Center. But, what worries me just as much is, "What do the Walgreen's planners know about the future residential growth of Pine Island? How has Walgreen's determined that the future Pine Island population will be able to support two major drug stores? It's a big investment for them, and I doubt they made it without a thorough understanding of Pine Island's expected population levels.

Goal 14 of the Lee Plan (Greater Pine Island) has been recently changed. The 910-peak hour, annual average two-way trip count (as measured at the permanent count station on Little Pine Island), appears to remain as the threshold for development restrictions, and the latest actual "count" is 937 (9/03 thru 8/04 -- Sept'04 Concurrency Report). Consequently, "...the regulations will provide restrictions on the further issuance of residential development orders..." (14.2.2 of the Lee Plan).

Apparently, however, a new "threshold number" of 1,130 annual average two-way trips, is being used, although that number is not stated in the revised Goal 14. So, I'm not sure what guidance the county development staffers are using to enforce the required development restrictions. Nor do I know the County definition of "restrictions" as used in the Lee Plan.

The previous 810/910 limits were, presumably, to slow residential growth, and give "priority" to the 6,800 (now 6,675) property rights previously granted by Lee County for additional dwelling units. Apparently that buffer no longer exists.

Unfortunately, I don't know the planning ratio between new residential units and the traffic counts (how many new units does it take to cause the traffic count to increase by 1), but when the traffic count reaches 1,130 is ALL residential development to be stopped? What about any balance of the 6,675 property rights previously granted by the County?

It may be a foot race between new developers, current owners of yet to be built-out lots, and the palm growers to see who can get their project approved/permits issued before the 1,130 limit is reached. Or, assuming that Walgreen's projection of their financial success is correct, will the 1,130 be adjusted upwards.

To close, here are a few of the new "visions" for Pine Island that appear in the latest revision to the Lee Plan:

"...maintain an equilibrium between modest growth on one hand and fragile ecology on the other." "Wildlife and native vegetation will be protected; loss of wildlife habitat will be reversed;..." "Pine Island will continue to be a place where people and nature exist in harmony, a place not very different from what it is today, and island as state-of-mind as much as a physical entity..."

A pretty vision – one I hope we'll continue to enjoy.

Write your Commissioner and Development officials and express your thoughts.

Because "a little Knowledge can be dangerous", I invite the Community Development officials to respond to these concerns through the Eagle, or in an advertised community meeting sponsored, perhaps, by the

GPICA. Tell all Pine Islander's how the County plans to ensure the Pine Island vision as expressed in the Lee Plan.

Ron Lueth

Bokeelia, Florida

I'll drop off a signed copy of the above letter. 8283 Main Street, 283-1847

Thanks,

Ron

FAX

COUNTY OF LEE SUPERVISOR OF ELECTIONS

Constitutional Complex
2480 Thompson Street
Fort Myers, Florida

Date 1-20-05

Number of pages including cover sheet 2

TO:

Jim

Phone

Fax Phone 479-8319

CC:

FROM: **Jo Ann Beaumont**

ELECTIONS, LEE COUNTY,FLORIDA
P O BOX 2545
FORT MYERS, FL. 33902-2545

Phone 239 339-6313

Fax Phone 339-6310

REMARKS: ☐ Urgent ☒ For your review ☐ Reply ASAP ☐ Please Comment

Re:
Elaine McLaughlin

FORM 1 STATEMENT OF FINANCIAL INTERESTS 2002

LAST NAME — FIRST NAME — MIDDLE NAME:
Mclaughlin Elaine M.

MAILING ADDRESS:
5400 Ann Arbor Drive

Bokeelia

CITY: Bokeelia ZIP: 33922 COUNTY: Lee

NAME OF REPORTING PERSON'S AGENCY:
Dept of Community Devel.

CHECK ONE OF THE FOLLOWING (see "Who Must File" on page 3):

☐ LOCAL OFFICER ☐ STATE OFFICER
☐ CANDIDATE ☐ SPECIFIED STATE EMPLOYEE

LIST OFFICE OR POSITION HELD OR SOUGHT:
Member - Pine Island Community Planning

DISCLOSURE PERIOD:
THIS STATEMENT REFLECTS YOUR FINANCIAL INTERESTS FOR THE PRECEDING TAX YEAR, WHETHER BASED ON A CALENDAR YEAR OR ON A FISCAL YEAR. PLEASE STATE BELOW WHETHER THIS STATEMENT IS FOR THE PRECEDING TAX YEAR ENDING EITHER (check one):

☑ DECEMBER 31, 2000 OR ☑ SPECIFY TAX YEAR IF OTHER THAN THE CALENDAR YEAR: 2002

MANNER OF CALCULATING REPORTABLE INTERESTS:
PRIOR TO 2001, THE THRESHOLDS FOR REPORTING FINANCIAL INTERESTS WERE COMPARATIVE, USUALLY BASED ON PERCENTAGE VALUES. BEGINNING IN 2001, THE LEGISLATURE HAS ALLOWED FILERS THE OPTION OF USING REPORTING THRESHOLDS THAT ARE ABSOLUTE DOLLAR VALUES, WHICH REQUIRES FEWER CALCULATIONS (see instructions for further details). PLEASE STATE BELOW WHETHER THIS STATEMENT REFLECTS EITHER (check one):

☑ COMPARATIVE (PERCENTAGE) THRESHOLDS (old method) OR ☐ DOLLAR VALUE THRESHOLDS (new method)

PART A -- PRIMARY SOURCES OF INCOME [Major sources of income to the reporting person]

NAME OF SOURCE OF INCOME	SOURCE'S ADDRESS	DESCRIPTION OF THE SOURCE'S PRINCIPAL BUSINESS ACTIVITY
Consulting Business	Various Clients - None Lee County	Cities, Counties - USA
Investments	Edward Jones - Bonita Springs	Stocks, Bonds, Funds.

PART B -- SECONDARY SOURCES OF INCOME [Major customers, clients, and other sources of income to businesses owned by the reporting person]

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSINESS'S INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE

PART C -- REAL PROPERTY [Land, buildings owned by the reporting person]

5900 Ann Arbor Drive, Bokeelia FL 33922
52 Logan Lane, Murphy, NC 28906

FILING INSTRUCTIONS for when and where to file this form are located at the bottom of page 2.

INSTRUCTIONS on who must file this form and how to fill it out begin on page 3 of this packet.

OTHER FORMS you may need to file are described on page 6.

PART D — INTANGIBLE PERSONAL PROPERTY [Stocks, bonds, certificates of deposit, etc.] TYPE OF INTANGIBLE	BUSINESS ENTITY TO WHICH THE PROPERTY RELATES
Mutual Funds	Edward Jones Investments
Stocks	Bonita Springs
Annuities	

PART E — LIABILITIES [Major debts] NAME OF CREDITOR	ADDRESS OF CREDITOR
Suntrust Mortgage	
"	

PART F — INTERESTS IN SPECIFIED BUSINESSES [Ownership or positions in certain types of businesses]

	BUSINESS ENTITY # 1	BUSINESS ENTITY # 2	BUSINESS ENTITY # 3
NAME OF BUSINESS ENTITY	McLaughlin Tourism Mgmt		
ADDRESS OF BUSINESS ENTITY	5408 Ann Arbor Dr Bokeelia	33922	
PRINCIPAL BUSINESS ACTIVITY	Consulting Service		
POSITION HELD WITH ENTITY	CEO		
IF I OWN MORE THAN A 5% INTEREST IN THE BUSINESS	100 %		
NATURE OF MY OWNERSHIP INTEREST	Sole Proprietor		

IF ANY OF PARTS A THROUGH F ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE ☐

SIGNATURE: [signature] DATE SIGNED: 2/5/03

FILING INSTRUCTIONS:

WHAT TO FILE:

After completing all parts of this form, including signing and dating it, send back only the first sheet (pages 1 and 2) for filing.

NOTE: MULTIPLE FILING UNNECESSARY:

Generally, a person who has filed Form 1 for a calendar or fiscal year is not required to file a second Form 1 for the same year. However, a candidate who previously filed Form 1 because of another public position must at least file a copy of his or her original Form 1 when qualifying.

WHERE TO FILE:

If you were mailed the form by the Commission on Ethics or a County Supervisor of Elections for your annual disclosure filing, return the form to that location.

Local officers file with the Supervisor of Elections of the county in which you permanently reside. (If you do not permanently reside in Florida, file with the Supervisor of the county where your agency has its headquarters.)

State officers or ***specified state employees*** file with the Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317-5709.

Candidates file this form together with your qualifying papers.

To determine what category your position falls under, see the "Who Must File" Instructions on page 3.

WHEN TO FILE:

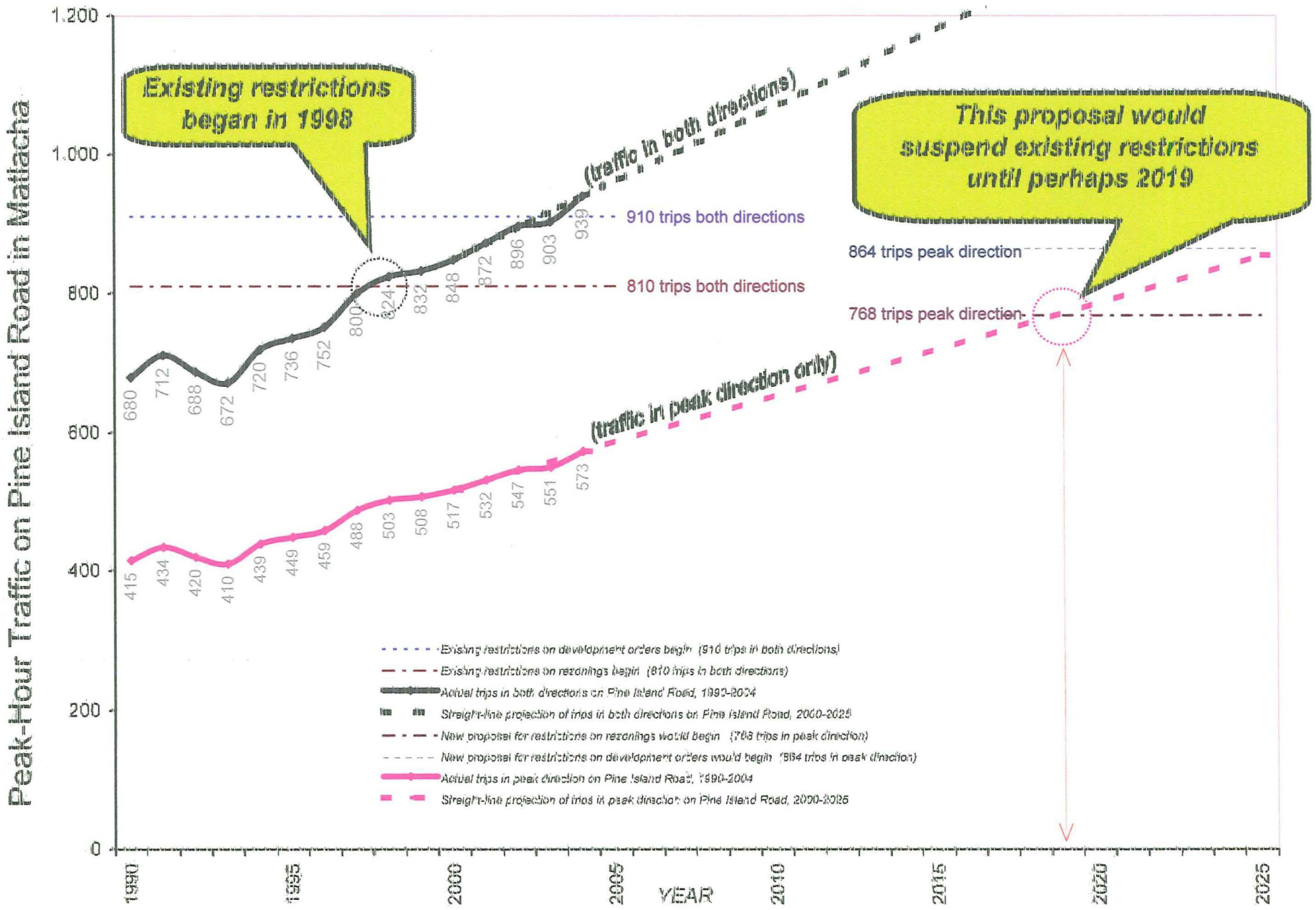
Initially, each local officer, state officer, and specified state employee must file ***within 30 days*** of the date of his or her appointment or of the beginning of employment. Appointees who must be confirmed by the Senate must file prior to confirmation, even if that is less than 30 days from the date of their appointment.

Candidates for publicly-elected local office must file at the same time they file their qualifying papers.

Thereafter, local officers, state officers, and specified state employees are required to file by July 1st following each calendar year in which they hold their positions.

Finally, at the end of office or employment each local officer, state officer, and specified state employee is required to file a final disclosure form (Form 1F) within 60 days of leaving office or employment.

Effect of Pine Island Agriculture and Landowners' Assoc. Proposal To Delay Existing Restrictions on Greater Pine Island



LEE COUNTY

County Administration Office

BOARD OF COUNTY COMMISSIONERS

FAX

Mary Ellen
Paul O'Connor

From:

Donald D. Stilwell ☐
County Manager

William H. Hammond ☐
Deputy County Manager

Holly Schwartz ☐
Assistant County Manager

WAYNE DALTRY ☑

To:

Name: _____
Dept/Location: _____

Fax Number: _____
Number of pages including cover: _____

Date: _____
Direct Dial: (239) 335-2221

Fax Telephone (239) 335-2262

Comments/Other Instructions:

Pour Vous

HANSON REAL ESTATE ADVISORS, INC.

Real Estate Valuation and Counseling

21 September 2004

Wayne Daltry
Director
Smart Growth Department
County Administration Office
County of Lee
Fort Myers, FL 33902-0398

Re: Response to Questions Regarding HREA
Appraisal Consulting Report No. 03-10-01
Project: Greater Pine Island Community Plan Update.
County: Lee County, Florida.

Dear Mr. Daltry:

I am in receipt of your 02 September 2004 email correspondence (two pages) as well as your 03 September 2004 facsimile correspondence (two pages including cover) wherein you have presented several questions and identified several issues relating to the project identified above.

To avoid confusion, I have identified your question in italics without bold print. My response is presented in bold print without italics. The following summary, overview and responses are presented:

1. 02 September 2004 Email: The following issues and/or questions were contained in your 02 September 2004 email correspondence:

   - *"However, the critical point is the assumption (Special Assumption on Page 14) can be paraphrased to say that farmland or farmers keep "water rights" if they stop farming. This is not so. If they want to become developers, SFWMD and County practice is that a number of water storage and water quality issues must be resolved. Given the requirements for roadways, buffering and so forth that are part of the County land regulations, a complete overhaul of the agricultural oriented water system is common and required.*

     My analysis and conclusions do not presume that farmers retain their water rights. The critical points to my findings are that:

     - **Active agricultural properties (e.g., ornamental tropical palm farms, tropical fruit orchards, etc.) do not typically have any native upland habitat to set aside in order to sustain currently permitted density levels under the "Rural" future land use designation.**

     - **Within market contextual ranges, density creates value.**

- **The costs to create native upland habitat at these properties is unique and peculiar due to their surface water management systems (e.g., reservoirs, canals, ditches, swales, control structures, irrigation systems, and throw-off pumps, etc. and is estimated to exceed the current market value of the "Rural" (1du/acre) designated lands).**

- **Consequently, the GPICPU does not provide a financially feasible alternative (e.g., clustering, native upland habitat preservation or restoration) to active agricultural properties to sustain allowable residential density and property values.**

- *"County staff is prepared to provide many examples of this being the case. County staff is also ready to help look for "1 unit per acre" comparables in any variety of development options to assist you in the re-examination of this critical issue."*

  - **County staff <u>does not</u> need to provide any examples. I am aware that alternative uses, other than agriculture (e.g., residential) would be subject to a different set of development standards, as well as jurisdictional agencies.**

  - **Thank you for offering County staff to help look for "1 unit per acre" comparables to assist me in the re-examination of this issue. I know you mean well, but I think it would be in Lee County's best interest if Hanson Real Estate Advisors, Inc. did its own research. My professional certification requirements would require me to identify Lee County staff as having provided significant real property appraisal or appraisal consulting assistance to me. As a litigant in a suit relating to issues associated with the GPICPU, I don't recommend you do this.**

- *"Sadly, Sanibel—which may serve as a place to check—is still digging out from Charley, but we would be glad to assist in looking at that Island Community for comparables also. Sanibel has a fairly strong set of requirements for landscaping, and may provide further examples more comparable to the Pine Island plan as a "cost of doing business."*

  - **Again, I am sure you mean well, but in my opinion, County staff should not be involved in the research, development and selection of data for application in this market study, for reasons discussed above.**

  - **In my opinion, Sanibel is not a market area that should be used to test the results of my review of the GPICPU. First and foremost, Sanibel is separated from mainland Lee County by a toll bridge, market participants are more affluent and real estate prices are much higher than those observed on Pine Island. Sanibel is not Pine Island.**

  - **Finally, there is sufficient data on Pine Island to statistically support the analyses. This is important because this market area is already affected by**

the pendency of the GPICPU, the 810/910 Rule, the constrained road link, and the Matlacha historic district. To remove these price factors from the data base when it is unnecessary is likely to result in a misleading conclusion.

- *"The cost of doing business" then is probably our summary statement for this salient point. To what degree did the cost of preparing (for example) a "normal" one unit/acre development meeting Lee County Code change should the Pine Island Plan go into effect. Then, does experience show that the cost was met by improved sales price in the market place because of the preserve setting?*

  - **Markets are price determining mechanisms. And, value is often defined as the present value of all expected future benefits. The land transactions which were considered were all located within the geographic boundaries of the GPICPU and are subject to the goals, policies and objectives of this community plan. It is my belief, the market has already priced in the "cost of doing business," as well as the "use risk" associated with the GPICPU.**

  - **On page 39 of my report, I summarized my interview with a Pine Island residential subdivision developer who indicated that land development costs ranged from $18,000 to $20,000 per lot, and that the reduced density would affect the feasibility of residential development.**

    Another real estate professional, indicated that residential subdivisions are more efficient if the lots are 90 feet to 100 feet wide, as opposed to 1.0 acre lots. It was noted that this is already being done on Pine Island at Demery Reserve.

  - **In real estate markets, investors seek the greatest return of and on their activated capital. If clustering produced the highest return on capital (assuming equal risk among product groups), then this type of development would be more prevalent on Pine Island and in other markets as well. The GPICPU does not "create markets," it simply defines objective criteria in which those who service markets may develop their real estate assets.**

- *"However, the critical assumption that farmland conversion to urban has no restoration costs outside of the Pine Island Plan proposal is the one Lee County needs resolved quickly."*

2. 03 September 2004 Fax ("Follow Up Questions For Pine Island Report"): The following issues and/or questions were raised in your 03 September 2004 fax correspondence identified above:

   - *"The report assumes that the 910 threshold of Policy 14.2.2 has been met. The current Land Development Code regulations state that "residential development orders (pursuant to Chapter 10) will not be granted unless measures to maintain the adopted level of service can be included as a condition of the development order."*

Under these regulations what measures to maintain the adopted level of service have been assumed that will allow any of the existing farm properties to obtain residential development orders?"

No assumptions were made regarding necessary measures to maintain the adopted level of service. However, it was recognized that the GPICPU would provide a "density recapture model" for those property owners, including farmers, who would preserve or create native upland habitat.

- *If no measures to maintain the adopted level of service are assumed, no residential development orders can be issued under today's regulations. Policy 14.2.2, however, has been revised to limit the current restrictions on residential development orders. The policy states that the "effect of these restrictions on residential densities must not be more severe than restricting densities to one-third of the density otherwise allowed on the property." This modification significantly modifies the current prohibition on residential development orders allowing developing orders to be issued at one-third maximum allowable density. This policy modification, therefore, gives development rights that are currently not available. How is this or can this be recognized in the appraisal?*

  First and foremost, the impact of these changes to Policy 14.2.2 has already been recognized in the appraisal because the appraiser consultant has relied upon Pine Island land sales subject to this policy modification. Thus, the market has already "priced-in" the impact of the modifications of Policy 14.2.2.

  Secondly, the statement that this policy "gives development rights that are currently not available," is a partial truth. Only undeveloped properties with adequate native upland habitat will receive development rights under the amended policy without capital expenditures. Farmland, however, which has been cleared and improved with an engineered and permitted surface water management system usually does not have native upland habitat which may be conserved in order to recapture allowable residential density. These properties must "create" native upland habitat at a significant capital cost.

- **Special Assumptions:** Passive agriculture properties (855 acres) identified herein are assumed to have no native upland habitat. Passive agriculture consists of such uses as silva culture and grazing. These properties usually contain a reduced but significant canopy.

  Restoration of the farmland to its original topography and hydrological conditions would require a significant modification to the SFWMD permit, as well as major earthwork to remove the existing system of ditches and dikes.

  Extensive modifications to any agricultural water management permit will be required of any conversion from farmland to residential development. The real

question is what is the difference in residential development costs comparing existing practices versus the "density recapture" option.

Of the three paragraphs above, I believe that paragraph number three is of greatest importance. Interviews with residential developers on Pine Island indicate that land development costs typically range from $18k to $20k per lot. Clustered development should cost slightly less due to a reduction in the quantity of internal roadways, water and sewer lines, landscaping, irrigation and lower common area maintenance fees.

It should be noted, that "clustered development" is most prevalent and successful throughout Lee County in master planned, multi-phased, gated, amenitized communities. These developments typically are characterized by a master homeowner's association and a smaller association for a particular pod. As noted security is necessary and amenities typically include golf courses, tennis courts, swimming pools, etc. Furthermore, the end user is typically a second home owner and is looking for a low maintenance environment and product. Capital for this type of residential development is often obtained through the "community development district" process.

- *Additional Questions: The Density Reduction/Ground Water Resource lands are, for the most part, far removed from any infrastructure, including the county's arterial and collector road system. In addition, the agricultural operations in the DR/GR areas are often very different from the agricultural operations on Pine Island. What is the justification to use these DR/GR transactions as comparables?*

  These sales were used because they have a maximum allowable residential density of 1 du/10 acre. This density (1du/10 acres) is consistent with the maximum allowable density permitted by the GPICPU for properties without native upland habitat. Several of these sales are located along Corkscrew Road where infrastructure is not dissimilar to Pine Island. Land uses in this market area include golf courses, limestone extraction, agricultural uses (e.g. citrus groves) etc.

- *On page 51, the report states that the "sliding scale does not address farmland preservation." The proposed regulations, in section 24-655 (d)(1)b.2 and 3 allow that "native habitat" my include up to 5% in lakes and 10% in commercial or non-commercial agriculture. Doesn't this reduce the assumed impacts?*

  On page 5 of material presented in Addendum L of the HREA report, there is a footnote in the Engelhardt Hammer & Associates report which identifies proposed language in the Land Development Code ("LDC") that would allow up to 10% of the preserved or restored area to consist of commercial or non-commercial agricultural land. Yes, I believe this would reduce some of the forecasted impacts, so long as the quantities of land credited under this portion

of the LDC reach an economy of scale sufficient to encourage market participants to utilize this credit.

- *The report assumes that all active and passive agricultural lands are affected by the Coastal Rural designation. Excluding the lands converting from Outlying Suburban to Coastal Rural, planning records indicate that there are 27 acres of passive and 40 acres of active agriculture land in urban designations. These lands are not affected by the Coastal Rural designation. How does this affect the total value?*

  If these lands were excluded from the analysis, because they are in an urban designated area, then it is probable the final opinion would decrease accordingly.

Hopefully, the responses contained herein are sufficient and helpful in answering the questions which have been raised regarding the analyses, findings, and conclusions of the Hanson Real Estate Advisors, Inc. Appraisal Consulting Assignment Number 03-10-01. If you have any further questions, or if I may be of further assistance, please contact me at your earliest convenience.

Yours truly,

Woodward S. Hanson, MAI, CRE, CCIM
FL. St. Cert. Gen. REA RZ1003

CC: Timothy Jones, Esq.

THOMAS W. REESE
ATTORNEY AT LAW
2951 61ST AVENUE SOUTH
ST. PETERSBURG, FLORIDA 33712
(727) 867-8228
FAX (727) 867-2259
E-MAIL TWREESEESQ@AOL.COM

RALF BROOKES ATTORNEY
1217 E. CAPE CORAL PARKWAY #107
CAPE CORAL, FLORIDA
PHONE 910-5464 FAX 541-2774
RALF@RALFBROOKESATTORNEY.COM

August 30, 2004

Responsible Growth Management Coalition, Inc.
c/o Mrs. Eleanor Boyd
11880 Homestead Lane
Ft. Myers, FL 33906-6610

Re: Legal Opinion Concerning the August 4, 2004 Hanson Real Estate Advisors, Inc. Report to Lee County

Dear Mrs. Boyd:

The Responsible Growth Management Coalition, Inc. (RGMC) has asked us to research and render a legal opinion on the August 4, 2004 real property appraisal consulting report prepared by Hanson Real Estate Advisors, Inc. (Hanson Report) to Lee County. Specifically, RGMC asked us to review the Pine Island real property value assumptions make by the Hanson Report, and whether the Hanson Report properly addressed the "Bert Harris, Jr. Private Property Rights Protection Act" (the Bert Harris Act"), Section 70.001 et seq., Fla. Stat.

After analysis of the Hanson Report and research of these issues, it is our legal opinion that:

a) the Hanson Report made assumptions concerning Pine Island Coastal Rural real property values which are unsupported by available competent substantial evidence and which mislead the Lee County Commission about the future of Pine Island, and

b) the Hanson Report does not support the County Attorney's apparent contention that Bert Harris Act claims against Lee County are likely to succeed.

I. Hanson Report Real Property Value Assumptions

The Hanson Report made the following six (6) erroneous real estate value assumptions.

First, the Hanson Report improperly equates the value of inland DR/GR lands with Coastal Rural lands on Pine Island. Pine Island Coastal Rural lands have greater land value for residential development and agricultural uses than do DR/GR lands. Pine Island's proximity to the aquatic preserves which surround Pine Island provide important and unique recreational uses which makes 10 acres of land on Pine Island more valuable for residential development than 10 acres of land in the DR/GR. Pine Island's warm microclimate supports commercial production of subtropical fruits, ornamental palms, and some vegetables (Hanson Report, Pg. 43 (last para.)). Outside of Homestead, Pine Island is the only area in Florida with a tropical fruit industry. As documented on pages 31 and 43 of the Hanson Report, agricultural use on Pine Island has had, and will continue to have, a large impact on land values on Pine Island, regardless of the Coastal Rural land use designation. The DR/GR lands in Lee County are not comparable with the real property valuation of Pine Island Coastal Rural lands for agricultural uses or for residential development.

Second, SFWMD stormwater management rules require agricultural lands being converted to residential development to design and install a new stormwater system. The Hanson Report ignored this existing design and permitting cost, and erroneously imposed a new and additional design and permitting costs of approximately $20,000 per acre. This additional cost was based upon the erroneous assumption that no such design and permitting costs currently exist when agricultural land is converted to residential. This incorrect additional cost is the major "loss" cited by the Hanson Report; the Hanson Report indicates that all other restoration costs are nominal.

Third, the Hanson Report erroneously failed to consider the long term and permanent effect of the existing pre-1995 810/910 development restrictions of Lee Plan Policy 14.2.2 currently still in effect.[1] These existing restrictions restrict further rezonings which would increase traffic on Pine Island Road when the 810 threshold is reached. When the 910 threshold is reached, the currently in effect Policy14.2.2 restrict the issuance of development orders until improvements can be made in accordance with the Lee Plan which provides that public expenditures for road improvements in the Coastal High Hazard Area (CHHA)[2] are limited to improvements necessary for "existing residents" on Pine Island. (Lee Plan Goal 76 and Objective 76.1).

---

[1] The text of the currently in effect pre-1995 Lee Plan Policy 14.2.2 is attached hereto as Exhibit A.

[2] The Hanson Report erroneously assumes road improvements can be made. Thus, the Hanson Report assigned no effect specific effect of the yet-to-be imposed provisions of the current 810/910 thresholds. As set forth on page 6 below, virtually all Pine Island is within the CHHA as defined by the 1993 Florida Legislature and DCA's 1994 rule. The Lee Plan provides that public expenditures for road improvements in the Coastal High Hazard Area (CHHA) are limited to improvements necessary for "existing residents" on Pine Island, not new residents in new development. (Lee Plan Goal 76 and Objective 76.1).

Fourth, the Hanson Report failed to consider that the Lee Plan amendments loosen up the 810/910 restrictions of Policy 14.2.2.[3] Specifically, when the 810 threshold are exceeded, the amendments provide for a less stringent criteria by expressly providing for "exceptions for minor rezonings on infill properties surrounded by development at similar intensities and those with inconsequential or positive effects on peak traffic flows through Matlacha, and may give preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island." When the 910 thresholds are exceeded, the amendments provide a less stringent criteria that "the regulations will provide restrictions the further issuance of residential development orders...or other measures to maintain the adopted level of service, until improvements can be made in accordance with this plan, and [t]he effect of these restrictions on residential densities must not be more severe than restricting densities to one-third the maximum density otherwise allowed on that property." The amendment further provides that "these development regulations may provide exceptions for legitimate ongoing developments to protect previously approved densities for final phases that have a Chapter 177 plat or site-plan approval under Ordinance 86-36."

The Hanson Report improperly failed to provide credits for these changes to the 810/910 restrictions. Such changes will affect real property values on Pine Island and credits for such changes are necessary for a proper review of the real property values on Pine Island.

Fifth, the Hanson Report erroneously failed to consider the design and environmental benefits of the Lee Plan Pine Island amendment, benefits which enhance the marketability of Pine Island property and increase the market value of such properties.

Sixth, the Hanson Report's survey of realtors is speculation which is inadmissible evidence in any court of law. The opinions speculation and conjecture unsupported by competent substantial evidence. Sections 90.704 and 90.705(2), Fla. Stat.; Petticrew v. Petticrew, 586 So.2d 508, 509 (Fla. 5th DCA 1991) (expert appraisal of property found to be inadmissible due to speculation and conjecture).

In summary, the Hanson Report made six (6) erroneous assumptions concerning Pine Island Coastal Rural real property values which are unsupported by available competent substantial evidence. These erroneous assumptions mislead the Lee County Commission about the future of Pine Island.

---

[3] The full texts of the pre-1995 Lee Plan Policy 14.2.2 and the January 2003 Lee Plan Policy 14.2.2. are attached hereto as Exhibit A.

II. Bert Harris Act Issues

The Bert Harris Act creates a statutory cause of action when

> "a specific action of a local government inordinately burdened an existing use of real property or a vested right to a specific use of real property and the property of that real property is entitled to relief, which **may** include compensation for the actual loss to the **fair market value** of the real property caused by the action of government, as provided in this section." (Section 70.001(2), Fla. Stat. (e.s.)
> Section 70.001(12), Fla. Stat. provides that
>
> "[n]o cause of action exists under this section as to the application of any law enacted **on or before May 11, 1995**, or as to the application of any rule, regulation, or ordinance adopted, or formally noticed for adoption on or before that date. A subsequent amendment to any such law, rule, regulation, or ordinance gives rise to a cause of action under this section only to the extent that the application of the amendatory language imposes an inordinate burden apart from the law, rule regulation, or ordinance being amended." (e.s).

Section 70.001(3)(a), Fla. Stat. states that "the existence of a 'vested right' is to be determined by applying the principles of equitable estoppel or substantive due process under the common law or by applying the statutory law of the state."

Section 70.001(3)(b), Fla. Stat. provides that

> "The term 'existing use' means an actual, present use or activity on the real property, including periods of inactivity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature of type of use or activity or such reasonable foreseeable nonspeculative land uses which are suitable for the real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity of the on the property." (e.s.).

Section 70.001(3)(e), Fla. Stat. defines the phrases "inordinate burden" and "inordinately burdened" as:

> "an action of one or more government entities has directly restricted or limited use of real property such that the owner is permanently unable to obtain the reasonable, investment-backed expectation for the **existing use** of real property or a vested right to a specific use of the real property as a whole, or that the property owner is left with **existing or vested uses** that are unreasonable such that the property owner bears permanently a disproportionate share of the public burden imposed for the good of the public, which in fairness should be borne by the public at large. **The terms "inordinate burden" and "inordinately burdened"**

> **do not include temporary impacts to real property; impacts to real property occasioned by government abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property**; or impacts to real property caused by a governmental entity taken to grant relief to a property owner under this section." (e.s.).

The Hanson Report did not consider the relevant Bert Harris Act factors, namely, what are the current investment backed expectations for:

a. an existing use, or
b. a vested right to a specific use of the property as a whole, or
c. the owner is left with existing uses or vested uses which are unreasonable such that the property owner bears permanent a disproportionate share of the burden imposed for the good of the public. (Section 70.001(2), Fla. Stat.)

First, the proposed conversion of Rural and Outlying Suburban land to Coastal Rural does not destroy any existing uses of Rural and Outlying Suburban lands. The property owners can continue all of their existing uses. (Section 70.001(3)(b), Fla. Stat.). Actual, present uses and activities on the real property can continue. Furthermore, there is no evidence that "nonspeculative land uses...have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity of the on the property." Id.

Second, Section 70.001(3)(a), Fla. Stat. limits "vested right" claims under the Bert Harris Act to common land "equitable estoppel" or "substantive due process" claims. Florida common law provides that vested rights may only be established if the property owner has: (1) in good faith reliance, (2) upon some act or omission of government, (3) made such a substantial change in position or has incurred such extensive obligation and expenses, and (4) that it would make it highly inequitable to interfere with the acquired right. See Hollywood Beach Hotel Co. v. City of Hollywood, 329 So.2d 10 (Fla. 1976). **The mere purchase of land does not create a right to rely upon existing zoning or land use plan designation.** See City of Miami Beach v. 8701 Collins Ave., Inc., 77 So.2d 428 (Fla. 1954). Additionally, a successor in interest has no grandfathered right to assume authorization from prior land use and zoning designations, permits, or the equitable estoppel claims of the prior land owner. (Id.; State v. Oyster Bay Estates v. DER, 384 So.2d 891 (Fla. 1st DCA 1980); Jones v. First Virginia Mortgage & Real Estate Investment Trust, 399 So.2d 1068 (Fla. 2nd DCA 1981) (Vested development rights are not transferable); Franklin County v. Leisure Properties, Ltd., 430 So.2d 475, 480 (Fla. 1st DCA 1983)).

The Hanson Report presented no evidence of any Bert Harris Act "vested right" claim related to the January, 2003 Pine Island amendments to the Lee Plan. The Hanson Report erroneously assumed existing property owners have a legal right to the continuation of the maximum densities of the Lee Plan Rural and Outlying Suburban land use categories without proof of any personal common law "equitable estoppel" or "substantive due process" claims. The Hanson Report ignored the fact **the Bert Harris Act does not make the mere purchase of land grounds for a cause of action due to a local government's change of the existing zoning or land use plan designation of the property.** See City of Miami Beach v. 8701 Collins Ave., Inc., 77 So.2d 428 (Fla. 1954).

Third, while the Hanson Report acknowledges that the 810/910 thresholds of the pre-1995 Lee Plan Policy 14.2.2 for residential development have been exceeded,[4] the Hanson Report did not analyze the impacts enforcement of the pre-1995 810/910 thresholds would have on land value on Pine Island. Because the Lee Plan 810/910 restrictions existed prior to May 11, 1995, enforcement of these existing 810/910 criteria is exempt from Bert Harris Act claims. (Section 70.001(12), Fla. Stat.). The Hanson Report erroneously assumed residential development would continue unabated if the plan amendments had not been adopted. Furthermore, the Hanson Report did not analyze whether Lee County improvements to maintain the adopted level of service on Pine Island Road could be implemented,[5] nor did it analyze the costs of such improvements.

Fourth, the Hanson Report ignored the fact the Lee Plan 2020 Future Land Use Map (FLUM) allocations limit residential development on Pine Island's Rural land to 1,129 acres, and Pine Island Outlying Suburban land to 466 acres. After deducting the acreage already residentially developed, that leaves only 217 acres in Rural lands and 172 acres in Outlying Suburban lands that can be developed residentially prior to 2020.[6] These are Lee Plan restrictions which existed prior to May 11, 1995, exempt from the Bert Harris Act, and were overlooked by the Hanson Report.

Fifth, in 1993 the Florida Legislature amended Section 163.3178(2)(h), Fla. Stat. by requiring comprehensive land use plans to define CHHAs as Category 1 evacuation zones, a new definition of the CHHA which includes significantly more land. In May of 1994, to implement the 1993 legislation change, DCA amended the Chapter 9J-5 definition of CHHA from known or predicted high-hazard areas to the evacuation zone for a Category 1 hurricane. DCA Rule 9J-5.002(8) mandates the Lee County amend the Lee Plan to address the new CHHA definition. (See Village of Key Biscayne v. DCA, 696 So.2d 495 (Fla. 3rd DCA 1997) (plan amendments must comply with Section 163.3177(6), Fla. Stat. criteria regardless of prior DCA actions which found the plan to be in compliance with Section 163.3177(6)).

When Lee County adopted the 1989 Lee Plan which designated large portions of Pine Island as Rural lands and Outlying Suburban lands, the CHHA definition Lee County used the old no longer valid CHHA definition which resulted in significant portions of Pine Island not being mapped as a CHHA. Under the new pre-May 1995 CHHA definition, virtually all Pine Island is within the CHHA. The adoption of the Coastal Rural land use category by Lee County's January 2003 Lee Plan amendment implemented the new pre-1995 Section 163.3178(2)(h) and Rule 9J-5.003(17) CHHA definition. The Lee County implementation the

---

[4] Hanson Report, pg. 50, 2nd para.

[5] Goal 76, Objective 76.1 and underlying policies, restrict public expenditures for new facilities in CHHAs except to protect "existing residents," and prohibit new causeways to any island.

[6] The Lee Plan 2020 allocation lists 4,577 acres of privately owned uplands on Pine Island as vacant or farmed land through the Year 2020

new CHHA definition by creating the Coastal Rural category which directed population density away from the CHHA as required by Rule 9J-5.012(2)(b)(6) and pre-1995 Lee Plan Policy 75.1.4[7] and pre-1995 Lee Plan Goal 76 and the objective and policies thereunder. Lee County's implementation of these pre-Bert Harris mandates exclude the January, 2003 Pine Island amendment from Bert Harris Act claims. The Hanson Report failed to consider or discuss this pre-1995 CHHA issue.[8]

Sixth, the Hanson Report failed to recognize and address the Bert Harris Act provision which defines "inordinate burden" and "inordinately burdened" to exclude "temporary impacts to real property; impacts to real property occasioned by government abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property...". (Section 70.001(3)(e), Fla. Stat.). Given the change in the CHHA definition and Pine Island's susceptibility to a natural disaster hurricane, it would be a rare situation for Lee County's new Coastal Rural land use designation to be anything but a reasonable abatement of the public nuisance presented by excessive residential development of Pine Island exempt from a Bert Harris Act claim.

In summary of the Bert Harris Act issue, the Hanson Report did not properly consider and analyze data concerning possible Bert Harris Act claims due to Lee County's January 2003 Lee Plan amendments which relate to Pine Island.[9] The Hanson Report does not support the County Attorney's apparent contention that Bert Harris Act claims against Lee County are likely to succeed.

---

[7] "Though the Lee Plan amendment process, land use designations of undeveloped areas within coastal high hazard areas will be considered for reduced density categories (or assignment of minimum allowable densities where density ranges are permitted) in order to limit the future population exposed to coastal flooding."

[8] Even if Bert Harris Act was applicable to these amendments, the owner would still have reasonable uses for such CHHA property, and the property would not be bearing an inordinate burden. Development on Pine Island would be restricted from being a common law public nuisance which adversely affected the public health, safety and welfare problem. Section 70.001(3)(e), Fla. Stat.

[9] When an expert appraiser based his opinion on a misconception of the law, the expert opinion should have been excluded. Williams v. State Department of Transportation, 579 So.2d 226, 229 (Fla. 1st DCA 1991).

CONCLUSION

The Hanson Report made assumptions which are unsupported by available data. Because the Hanson Report did not properly address the Bert Harris Act issues, it does not support a Bert Harris Act claim against Lee County concerning its January, 2003 Lee Plan amendment regarding the Greater Pine Island Community Plan (Lee County Ordinance No. 03-03) (CPA2001-18).

Very truly yours,

S/ Ralf Brookes

Ralf Brookes, Esq.

Very truly yours,

S/ Thomas W. Reese

Thomas W. Reese, Esq.

cc: Mike Andoscia, RGMC
Matt Bixler, RGMC
Nora Demers, RGMC
Phil Buchanan, Esq.
Bill Spikowski, AICP

Exhibit A

The January 2003 Lee Plan amendments made the following changes to the pre-1995 Lee Plan Policy 14.2.2.

> "In order to recognize and give priority to property rights previously granted by Lee County for about 6,800 additional dwelling units, the county will consider for adoption development regulations which address growth on Pine Island and which implement measures to gradually limit future development approvals. The effect of these regulations would be to appropriately reduce certain types of approvals at established thresholds prior to the adopted level-of-service standard being reached, as follows:
>
> - When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 810 peak hour, annual average two-way trips, the regulations will provide restrictions on further rezonings which increase traffic on Pine Island Road.
>
> - When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 910 peak hour, annual average two-way trips, the regulations will provide restrictions on the further issuance of residential development orders (pursuant to the Development Standards Ordinance), or other measures to maintain the adopted level of service, until improvements can be made in accordance with this plan."

The January, 2003 Lee Plan amendment to Policy 14.2.2 provides as follows.

> "In order to recognize and give priority to property rights previously granted by Lee County for about 6,675 additional dwelling units, the county shall keep in force effective development regulations which address growth on Pine Island and which implement measures to gradually limit future development approvals. These regulations will reduce certain types of approvals at established thresholds prior to the capacity of Pine Island Road being reached, measured as follows at the permanent count station on Little Pine Island at the western end of Matlacha:
>
> - When traffic on Pine Island Road reaches 810 peak hour, annual average two-way trips, the regulations will restrict further rezonings which increase traffic on Pine Island Road through Matlacha. These restrictions shall provide reasonable exceptions for minor rezonings on infill properties surrounded by development at similar intensities and those with inconsequential or positive effects on peak traffic flows through Matlacha, and may give preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island.
>
> - When traffic on Pine Island Road reaches 910 peak hour, annual average two-way trips, the regulations shall restrict the further issuance of residential development orders (pursuant to chapter 10 of the Land Development Code), or other measures to maintain the adopted level of service, until improvements can be made in accordance with this plan. The effect of these restrictions on residential densities must not be more severe than restricting densities to one-third of the maximum density otherwise allowed on that property.
>
> The 810 and 910 threshold are based on 80% and 90% of the level-of-service "D" capacity calculated using the 1965 Highway Capacity Manual, as documented in the 2001 Greater Pine Island Community Plan Update. These development regulations may provide exceptions for legitimate ongoing developments to protect previously approved densities for final phases that have a Chapter 177 plat or site-plan approval under Ordinance 86-36."

CPA 2004-05

The 810 and 910 trip count numbers were first introduced into the 1990 Lee Plan as recommended by the State Department of Community Affairs and have remained in effect to this date.

The BoCC discussed this very language at the September 5, 2002 transmittal hearing and chose to retain the absolute numbers of 810 and 910. Staff sees no reason to question the Board's policy decision and recommends not making any changes to Policy 14.2.2 at this time.

DOT staff is here to explain and answer any questions that you may have.

~~910~~

927 peak hour, annual average two-way trips.

James Mudd - FW: CPA 2004-05 Pine Island Policy 14.2.2

From: "Gary A. Davis" <gadavis@enviroattorney.com>
To: <noblema@leegov.com>
Date: 3/28/2005 8:12 AM
Subject: FW: CPA 2004-05 Pine Island Policy 14.2.2

-----Original Message-----
From: Gary A. Davis [mailto:gadavis@enviroattorney.com]
Sent: Monday, March 28, 2005 8:10 AM
To: 'OCONNOPS@leegov.com'
Subject: CPA 2004-05 Pine Island Policy 14.2.2

Dear Paul,

Please provide this email to the LPA for their March 28, 2005, meeting where the above-referenced item will be heard and place it in the administrative record.

I am now a resident of St. James City and want to state my opposition to the proposed amendment to the Pine Island Plan. I support staff's position that the amendment should not be adopted. As was pointed out, the recent amendments to the Pine Island Plan mitigate the effects of the 810/910 Rule. Furthermore, the Board of County Commissioners clearly intends that the method of measuring traffic and compliance with the 810/910 Rule be based on peak hour, annual average, two-way trips.

A recent letter from William Spikowski, AICP, included a memorandum from transportation planner Mohsen Salehi. In the memorandum, Mr. Salehi discusses problems with the FDOT software used by the County to calculate levels of service for County roads, including Pine Island Road. Certainly, an amendment should not be approved that explicitly relies on this software and contains certain traffic count thresholds derived from this software until the issues with the software are resolved.

Pine Island traffic is already a problem. The County should not take any actions that would put significantly more cars on Pine Island Road.

Thanks you for your consideration.

Gary A. Davis
2248 Date Street
St. James City, FL 33956
239-283-3222

E. The Director's action in issuing a Concurrency Variance Certificate is not a development order which can be appealed pursuant to Section 163.3125, Florida Statutes.

SECTION THIRTEEN: GREATER PINE ISLAND CONCURRENCY

Concurrency compliance for property located in Greater Pine Island (as identified on the Future Land Use Map) shall be determined in accordance with the level of service and restrictions as set forth in Policy 16.2.1 and Policy 16.2.2 of the Lee Plan, to the extent that these policies provide additional restrictions which supplement other provisions of this ordinance. These policies require as follows:

A. The minimum acceptable level-of-service standard for Pine Island Road between Burnt Store Road and Stringfellow Boulevard is hereby established as LOS "D" on an annual average peak hour basis and LOS "E" on a peak season peak hour basis using methodologies from the 1985 Highway Capacity Manual Special Report 209. This standard shall be measured at the county's permanent count station on Little Pine Island.

B. When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 810 peak hour, annual average two-way trips, rezonings which would increase traffic on Pine Island Road shall not be granted. When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard

reaches 910 peak hour, annual average two-way trips, residential development orders (pursuant to the Development Standards Ordinance) shall not be granted unless other measures to maintain the adopted level of service can be included as a condition of the development order.

SECTION FOURTEEN: REVOCATION OF CONCURRENCY CERTIFICATES

The Director may revoke a Concurrency Certificate for cause where a Certificate has been issued based on substantially inaccurate information supplied by the applicant, or where revocation of the Certificate is essential to the health, safety or welfare of the public.

SECTION FIFTEEN: APPEALS

Except for challenges to development orders controlled by the provisions of Section 163.3215, Florida Statutes, any decision made by the Director in the course of administering this ordinance may be appealed in accordance with those procedures set forth in the Lee County Zoning Ordinance, as it may be amended from time to time, for appeals of administrative decisions. In cases of challenges to development orders controlled by Section 163.3215, Florida Statutes, no suit may be brought and no "verified complaint," as explained in Section 163.3215(4), Florida Statutes, shall be filed or accepted for filing until the development order giving rise to the complaint has become final by virtue of its having been issued by the Director, by virtue of

SPIKOWSKI PLANNING ASSOCIATES

1617 Hendry Street, Suite 416
Fort Myers, Florida 33901-2947

telephone: (239) 334-8866
fax: (239) 334-8878

e-mail: bill@spikowski.com
web site: www.spikowski.com

March 17, 2005

Mary Gibbs, Director
Lee County Department of Community Development
P.O. Box 398
Fort Myers, Florida 33902-0398

RE: GREATER PINE ISLAND'S "910 RULE"

Dear Mary:

Lee County is now implementing the "910 Rule" in Lee Plan Policy 14.2.2 and we understand there are differing opinions as to how this rule should be implemented.

We do not agree with one opinion, which is that no practical effects will be felt by applicants for residential orders until the levels of service described in Policy 14.2.1 have been reached (as opposed to those described within Policy 14.2.2). However, in order to understand the effects of such an interpretation, we have conducted some research that you will find to be critical, because there was a technical flaw in the software that FDOT had supplied to Lee County for converting the level-of-service grades into actual traffic counts. Please review the attached memorandum for further details.

Once this software flaw is corrected, it appears that there will be no need to determine which of the differing opinions about the "910 Rule" should prevail inasmuch as the practical effects are about the same. I would like to sit down with you and other county staff members to discuss this matter after you have reviewed the attached material. (The software "patch" can be obtained from Mohsen Salehi or directly from Professor Scott S. Washburn at the University of Florida.)

Sincerely,

William M. Spikowski AICP

cc: David Loveland, Lee County DOT
Scott S. Washburn, University of Florida

Salehi Consulting Services/4786 Harbour Cay Blvd
Ft. Myers, Florida 33919
Tel: (239) 994-1320/Fax: (239) 433-1092
MnSalehiAICP@aol.com

Memo

To: Bill Spikowski

From: Mohsen Salehi

Date: March 4, 2005

Subject: **Lee Plan Policy 14.2.1 & HCM 2000 Based FDOT HighPlan Software**

Lee County has formally acknowledged that traffic counts on Pine Island Road exceed the 910 threshold established in Lee Plan Policy 14.2.2, with the latest published figures indicating a count of 937.[1]

However, some county staffers have expressed the opinion that the "910 Rule" will have little practical effect on the issuance of further residential development orders because they read Policy 14.2.1[2] as controlling over Policy 14.2.2.[3] Policy 14.2.1 refers to levels of service

---

[1] *Concurrency Management: Inventory and Projections, 2003/2004–2004/2005, page 6*

[2] *"POLICY 14.2.1: The minimum acceptable level-of-service standard for Pine Island Road between Burnt Store Road and Stringfellow Boulevard is hereby established as LOS "D" on an annual average peak hour basis and LOS "E" on a peak season, peak hour basis. This standard shall be measured at the county's permanent count station on Little Pine Island and using the methodology described in the 1985 Highway Capacity Manual, Special Report 209."*

[3] *"POLICY 14.2.2: In order to recognize and give priority to the property rights previously granted by Lee County for about 6,675 additional dwelling units, the county will keep in force effective development regulations which address growth on Pine Island and which implement measures to gradually limit future development approvals. These regulations will reduce certain types of approvals at established thresholds prior to the capacity of Pine Island Road being reached, measured as follows at the permanent count station on Little Pine Island at the western edge of Matlacha:*

- *When traffic on Pine Island Road reaches 810 peak hour, annual average two-way trips, the regulations will restrict further rezonings which would increase traffic on Pine Island Road through Matlacha. These regulations shall provide reasonable exceptions for minor rezonings on infill properties surrounded by development at similar intensities and those with inconsequential or positive effects on peak traffic flows through Matlacha, and may give*

that are expressed differently than Policy 14.2.2: "LOS "D" on an annual average peak hour basis and LOS "E" on peak season, peak hour basis." Lee DOT is also recommending that these levels of service be evaluated using the newer 2000 Highway Capacity Manual (2000 HCM) methodology, as opposed to the 1985 HCM that is cited in Policy 14.2.1.

You asked to me to research the meaning of the levels of service in Policy 14.2.1 in case this interpretation of the "910 Rule" becomes official county policy. In addition, you asked what would be the implications of changing Policy 14.2.1 to refer to the 2000 HCM instead of the 1985 HCM, because Lee County DOT is proposing to make such a change in an upcoming amendment to Policy 14.2.1.

One would expect these assignments to be quite simple, but that has not turned out to be the case.

In a July 30,2004, Memo to Lee DOT indicated the levels of service in Policy 14.2.1 to result in a figure of 1130 (using 1985HCM) and 1300 (using 2000 HCM) for determining annual average peak hour two-way (copy attached). I contacted Lili Wu of Lee DOT to find out how these figures had been generated. He provided me a printout showing the 1300 value (based on 2000 HCM software provided by Florida DOT, HighPlan version 1.0); no printout for 1985 HCM showing the 1130 value was available. It is my understanding that Lee DOT runs the software once to determine the resulting values, then prints out the results and uses the printed values in their subsequent work for concurrency and other purposes.

I then obtained this same HighPlan software from the FDOT web site and ran it to verify and understand the Lee DOT results. The version of the software I downloaded was newer than the one used by Lee County (version 1.2 vs. version 1.0). Since both versions were based on the same formulas, the results should have been the same, but they were not. Most strikingly, this model produces a different result after the input values were "saved," indicating a technical flaw or bug in the model itself.

I brought this problem to FDOT and subsequently their consultant Prof. Washburn's attention. He acknowledged that "there was definitely an issue with the functioning of the analysis type....". He further sent me a "patch" (i.e., an application file, highplan.exe, to fix the problem that I had brought to his attention). He also mentioned: "I am not sure we will be doing an official update on the FDOT website as I have been working on a separate version that will likely replace this version in the near future." I "patched" the software only to encounter other minor problems that are as yet unresolved, but which should little practical effect.

Transportation professionals would not knowingly use a model that produces incorrect results. Unfortunately these models are somewhat like black boxes, so the "correct" result is sometimes not immediately apparent.

---

preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island.

- *When traffic on Pine Island Road reaches 910 peak hour, annual average two-way trips, the regulations shall provide restrictions on the further issuance of residential development orders (pursuant to chapter 10 of the Land Development Code), or other measures to maintain the adopted level of service, until improvements can be made in accordance with this plan. The effect of these restrictions on residential densities must not be more severe than restricting densities to one-third of the maximum density otherwise allowed on that property.*

The 810 and 910 thresholds were based on 80% and 90% of level-of-service "D" capacity calculated using the 1965 Highway Capacity Manual, as documented in the 2001 Greater Pine Island Community Plan Update. These development regulations may provide exceptions for legitimate ongoing developments to protect previously approved densities for final phases that have a Chapter 177 plat or site-plan approval under Ordinance 86-36."

Based on my analysis and my e-mail exchanges with Professor Washburn, I believe the correct value for interpreting Policy 14.2.1 is 940[4] (or 950[5]) for LOS "D" on an annual average, peak hour basis. With or without the "patch" supplied by Prof. Washburn, Lee DOT staff are more than likely to arrive at results similar to my results using the latest version available (1.2) on the FDOT website. Marginal differences are to be expected if yet-to-be-published 2004 Traffic Count Report data is utilized, even with adjustments made for converting weekday to weekly (i.e., full –week) peak flow.

Assuming my analysis is correct, the values generated for Policy 14.2.1 are quite close to the 910 figure in Policy 14.2.2 and even closer to the 937 actual traffic count as report in the latest concurrency report. As a result, it may end up making little or no practical difference how the county (or the courts) ends up interpreting the relationship between Policies 14.2.1 and 14.2.2.

Also, since we cannot identify any working software for the 1985 HCM, it should make no practical difference whether Policy 14.2.1 is amended to refer to the 2000 HCM or not. There should be no issues with using the 2000 HCM to compute values as long as the errors in the earlier versions of the FDOT software, as acknowledged by FDOT consultant Prof. Washburn, are taken into account.

Please let me know if further explanation or clarification is needed.

---

[4] *Using Lee County DOT values for K factor and D factor*

[5] *Using FDOT default values for AADT, K factor, and D factor as recommended on page 114 of the FDOT 2002 Quality/Level of Service Handbook*

1/12/05 ✓ Sent

Distribution List:

Mary Gibbs, Director, Community Development
Rick Roberts, Chief Code Enforcement Officer, Code Enforcement
Mary Zettel, Code Enforcement Officer, Code Enforcement
Tim Jones, Assistant County Attorney, County Attorney's Office
Mike Carroll, Manager of Development Review, Development Services
Pete Eckenrode, Director, Development Services
Dave Loveland, Manager of Transportation Planning, D.O.T.
Gerald Campbell, Chief of Planning, Emergency Management
Rick Joyce, Director, Environmental Sciences
Kim Trebatoski, Principal Planner, Environmental Sciences
Bob Stewart, Lee County Building Official
Chief David P. Bradley, Matlacha-Pine Island Fire District
Roland Ottolini, Division Director, Natural Resources
Paul O'Connor, Director, Planning
Matt Noble, Principal Planner, Planning
John Wilson, Director, Public Safety
Chris Hansen, Deputy Director, Public Safety
Michael Bridges, Deputy Director, Public Safety
Jim Lavender, Director, Public Works
Rick Diaz, Director, Utilities
Pam Houck, Director, Zoning
Nettie Richardson, Principal Planner, Zoning
Wayne Daltry, Director, Smart Growth

LEE COUNTY
SOUTHWEST FLORIDA

BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: (239) 479-8180

January 11, 2005

Public Service/Review Agencies
See Distribution List

RE: Pine Island Land Development Code Revisions

Planning Division staff requests your agency's help in reviewing the above referenced draft Land Development Code revisions for the Pine Island community. The draft revisions would further implement Goal 14 of the Lee Plan, Greater Pine Island.

Please review the enclosed draft Land Development Code revisions for the Pine Island community and provide written comments no later than January 28, 2005.

Sincerely,

Dept. Of Community Development
Division of Planning

Jim Mudd, AICP
Principal Planner

IMPLEMENTING POLICIES 1.4.7 & 14.1.8

NEW LEE PLAN POLICY 1.4.7:

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

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

NEW LEE PLAN POLICY 14.1.8:

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

SUMMARY OF CODE CHANGES NEEDED TO IMPLEMENT THESE POLICIES:

a. Modify 34-2 – CORRECT THE DEFINITION OF GREATER PINE ISLAND IN 34-2
b. Modify Tables 34-654, 34-695 and 34-715 – PROVIDE NEW FOOTNOTES TO THESE TABLES REGARDING NEW MINIMUM LOT SIZES IN "COASTAL RURAL"
c. Create 34-655 – CREATE A NEW SECTION TO DEFINE THE EFFECT OF THE "COASTAL RURAL" DESIGNATION ON LAND DEVELOPMENT
d. Modify 34-1495(c) – PROVIDE CROSS-REFERENCES AND MAINTAIN CONSISTENCY WITH OTHER CODE CHANGES

e. Modify 34-3273 – ADD LANGUAGE THAT ALLOWS CONSTRUCTION OF ONE HOME IN "COASTAL RURAL" ON EACH LOT THAT WAS CREATED PRIOR TO THIS PLAN (WITHOUT SPECIAL RULES FOR PRESERVATION OR RESTORATION)

COMPOSITE CODE CHANGES TO IMPLEMENT THESE POLICIES:

CHAPTER 34
Zoning
ARTICLE I, IN GENERAL

Sec. 34-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

...

Greater Pine Island means all of Pine Island, Little Pine Island, West Island, Porpoise Point Island and other small adjacent islands, more particularly described as follows: Sections 25, 26, 35 and 36, Township 43 South, Range 21 East; also Sections 28, 29, 30, 31, 32, ~~and~~ 33 and 34, Township 43 South, Range 22 East; also Sections 1, 12, 24 and 25, Township 44 South, Range 21 East; also, all of Township 44 South, Range 22 East, less Sections 1, 2, 11, 12~~, 13,~~ and 24, and less those portions of Section 13 lying in the City of Cape Coral; ~~and certain portions of Section 24, lying northeast or toward the mainland from Porpoise Point Island;~~ also, those portions of Section 18 of Township 44 South, Range 23 East lying outside the City of Cape Coral; also, all of Township 45 South, Range 22 East, except those portions of Sections 12, 13 and 24, lying on the mainland; also, Sections 1, 2, 3, 4, 5, 9, 10, 11 and 12, Township 46 South, Range 22 East; also Sections 6 and 7, Township 46 South, Range 23 East.

...

[no other changes to section 34-2]

CHAPTER 34
Zoning
ARTICLE VI, DISTRICT REGULATIONS
Division 2, Agricultural Districts

Sec. 34-651. Purpose and intent.

The purpose of the agricultural districts is to provide areas for the establishment or continuation of agricultural operations, with residential uses being permitted only as ancillary to agricultural uses, and to accommodate those individuals who understand and desire to live in an agricultural environment.

Sec. 34-652. Applicability of use and property development regulations.

No land, body of water or structure may be used or permitted to be used and no structure may hereafter be erected, constructed, moved, altered or maintained in the AG districts for any purpose other than as provided in section 34-653, pertaining to use regulations for agricultural districts, and section 34-654, pertaining to property development regulations for agricultural districts, except as may be specifically provided for in article VIII (nonconformities) of this chapter, or in section 34-620.

Sec. 34-653. Use regulations table.

Use regulations for agricultural districts are as follows:

TABLE 34-653. USE REGULATIONS FOR AGRICULTURAL DISTRICTS

[no changes required]

Sec. 34-654. Property development regulations table.

Property development regulations for agricultural districts are as follows:

TABLE 34-654. PROPERTY DEVELOPMENT REGULATIONS FOR AGRICULTURAL DISTRICTS

	Special Notes or Regulations	AG-1	AG-2	AG-3
Minimum lot dimensions and area:	Note (1)			
Minimum lot area:	Notes (2) and (6)			
Interior lot	34-2221, 34-2222	4.7 acres	39,500 sq. ft.	20,000 sq. ft.
Corner lot	34-2221, 34-2222	4.4 acres	33,600 sq. ft.	20,000 sq. ft.
Minimum lot width (feet)		300	100	100
Minimum lot depth (feet)		300	130	130
Minimum setbacks:				
Street (feet)	Notes (3) and (4), 34-2191 et seq., 34-1261 et seq.	Variable according to the functional classification of the street or road (see section 34-2192), but in no case less than 50 feet in the AG-1 district.		
Side yard (feet)		25	15	15
Rear yard (feet)	34-2191 et seq.	25	25	25
Water body (feet):	34-2191 et seq.			
Gulf of Mexico		50	50	50
Other		25	25	25
Special regulations:				
Animals, reptiles, marine life	34-1291 et seq.			
Consumption on premises	34-1261 et seq.			
Docks, seawalls, etc.	34-1863 et seq.	Refer to the sections specified for exceptions to the minimum setback requirements listed in this table.		
Essential services	34-1611 et seq.			
Essential service facilities (34-622(c)(13))	34-1611 et seq., 34-2142			
Fences, walls, gatehouses, etc.	34-1741 et seq.			
Nonroofed accessory structures	34-2194(c)			
Railroad right-of-way	34-2195			
Maximum height (feet)	34-2171 et seq.	35	35	35
	Note: Bonita Beach, Captiva, Estero and San Carlos Islands, Gasparilla Island conservation district, Greater Pine Island and areas within the airport hazard zone have special limitations (see section 34-2175).			
Maximum lot coverage (percent of total lot area)		25%	25% (5)	25%

Notes:

(1) Certain projects in agricultural districts may fall within the density reduction/groundwater resource areas of the Lee Plan. In such areas, additional density and use restrictions are applicable. Permitted land uses in density reduction/groundwater resource areas include agriculture, mineral or limerock extraction, conservation uses, and residential uses at a maximum density of one dwelling unit per ten 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 wetlands.

(2) Any lot created in the Rural Community Preserve land use category (as delineated by policy 17.1.3 of the Lee Plan) after July 9, 1991, must have a minimum area of 43,560 square feet excluding all street rights-of-way.

(3) Modifications to required setbacks for collector or arterial streets, or for solar or wind energy purposes, are permitted only by variance. See section 34-2191 et seq.

(4) Special street setback provisions apply to portions of Colonial Boulevard and Daniels Road. Refer to section 34-2192(b)(3) and (4).

(5) For nonconforming lots, as defined in section 34-3271, the maximum lot coverage will be 40 percent.

(6) All lots in the Coastal Rural land use category in Greater Pine Island (as delineated by policies 1.4.7 and 14.1.8 of the Lee Plan) that are created after *[effective date of plan update]* must comply with the additional regulations in section 34-655. Lots created before *[effective date of plan update]* do not need to comply with the additional regulations in section 34-655 (see section 34-3273(a)(3)).

Sec. 34-655. Greater Pine Island.

(a) ***Purpose and intent.*** In 2003 Lee County reclassified most rural lands in Greater Pine Island to a new Coastal Rural designation on the Future Land Use Map. This designation provides landowners with flexibility while accomplishing the following public purposes:

(1) To provide a clearer separation between rural and urban uses on Greater Pine Island;

(2) To discourage the unnecessary destruction of native upland habitats; and

(3) To avoid placing more dwelling units on Pine Island that can be served by the limited road capacity to the mainland.

(b) ***Conversion from rural land uses.*** The Coastal Rural areas will remain rural except for portions of properties where residential lots are permitted in exchange for permanent preservation or restoration of native upland habitats on the remainder of the property. The standard maximum density established by the Lee Plan is one dwelling unit per ten acres (1 DU/10 acres). Maximum densities may increase as higher percentages of native habitat are permanently preserved or restored on the uplands portions of the site in accordance with Table 34-655.

(c) ***Interpreting Table 34-655.*** For purposes of interpreting Table 34-655, the following standards apply:

(1) Table 34-655 contains two columns of adjusted maximum densities:

a. The first density column, titled "If < 910 trips in Matlacha," indicates the adjusted maximum densities that correspond to various levels of uplands preservation or restoration during the time period *before* the restrictions in section 2-4(3) of this code take effect.

b. The second density column, titled "If > 910 trips in Matlacha," indicates the adjusted maximum densities that correspond to various levels of uplands preservation or restoration for the time period *after* the restrictions in section 2-4(3) of this code have taken effect. *[NOTE: four alternatives are shown in this draft for this second density column]*

TABLE 34-655.
ADJUSTED MAXIMUM DENSITY

Percentage of the on-site uplands that are preserved or restored native habitats	Adjusted Maximum Density				
	If < 910 trips in Matlacha:	If > 910 trips in Matlacha:			
		Alternative A:	*Alternative B:*	*Alternative C:*	*Alternative D:*
0% to 4.99%	1 DU/10 acres	*1 DU/ 30 acres*	*1 DU/ 24 acres*	*1 DU/ 17 acres*	*1 DU/10 acres*
5% to 9.99%	1 DU/ 9 acres	*1 DU/ 27 acres*	*1 DU/ 21 acres*	*1 DU/ 15 acres*	*1 DU/ 9 acres*
10% to 14.99%	1 DU/ 8 acres	*1 DU/ 24 acres*	*1 DU/ 18 acres*	*1 DU/ 13 acres*	*1 DU/ 8 acres*
15% to 19.99%	1 DU/ 7 acres	*1 DU/ 21 acres*	*1 DU/ 16 acres*	*1 DU/ 12 acres*	*1 DU/ 7 acres*
20% to 29.99%	1 DU/ 6 acres	*1 DU/ 18 acres*	*1 DU/ 14 acres*	*1 DU/ 10 acres*	*1 DU/ 6 acres*
30% to 39.99%	1 DU/ 5 acres	*1 DU/ 15 acres*	*1 DU/ 11 acres*	*1 DU/ 8 acres*	*1 DU/ 5 acres*
40% to 49.99%	1 DU/ 4 acres	*1 DU/ 12 acres*	*1 DU/ 9 acres*	*1 DU/ 7 acres*	*1 DU/ 4 acres*
50% to 59.99%	1 DU/ 3 acres	*1 DU/ 9 acres*	*1 DU/ 7 acres*	*1 DU/ 5 acres*	*1 DU/ 3.5 acres*
60% to 69.99%	1 DU/ 2 acres	*1 DU/ 6 acres*	*1 DU/ 5 acres*	*1 DU/ 4 acres*	*1 DU/ 3.0 acres*
70% or more	1 DU/ 1 acre	*1 DU/ 3 acres*	*1 DU/ 2.8 acres*	*1 DU/ 2.7 acres*	*1 DU/ 2.5 acres*

(2) The left column in Table 34-655 describes the percentage of on-site uplands that must be permanently preserved or restored as native habitats in order to increase the standard maximum density on the entire property.

a. Land uses are restricted in permanently preserved native habitat in accordance with subsection (d) below, and in restored native habitat in accordance with subsection (e) below.

b. New roads and surface water management systems, including retention/detention lakes, berms, and ditches, may be not be placed in the preserved or restored portion of the on-site uplands except as provided by subsection (d) below.

c. All percentages in the left column in Table 34-655 are based on the acreage of uplands that are designated "Coastal Rural."

1. Lands that are designated "Wetlands" rather than "Coastal Rural" on the Future Land Use Map are not counted either in the base acreage or in the preserved or restored acreage. However, the additional dwelling units that the Lee Plan allows for lands designated "Wetlands" (1 DU/20 acres) may be added to the number of dwelling units allowed for uplands by Table 34-655, provided that the conservation easement described in subsection (d) includes those wetlands.

2. Lands that are designated "Coastal Rural" but which are determined by permitting agencies to be wetlands are counted in the base acreage and may be counted as permanently preserved native habitat or restored native habitat provided that all requirements of this section are met.

(3) Two or more contiguous or noncontiguous "Coastal Rural" parcels may be combined into a single development application for purposes of computing the actual maximum density allowed on those properties. This provision would allow preserved or restored acreage on one parcel to increase the density on another parcel that is included in the same development application. However, the resulting density on any single parcel or on any contiguous parcels may not exceed one dwelling unit per acre (1 DU/1 acre).

(4) A proposed development on land that is zoned AG-2 and is designated Coastal Rural by the Lee Plan is not required to rezone the property provided that the proposed development complies with all regulations in this code, including all of section 34-655. The determination of actual maximum densities and the compliance of the application and its supporting documentation with this section may be confirmed during the development order process described in ch. 10.

(5) A proposed development that would deviate from this code, except for administrative deviations in accordance with section 10-104, must seek approval through the "planned development" rezoning process prior to obtaining a development order pursuant to ch. 10.

a. Deviations or variances can never be granted to increase the densities in Table 34-655.

b. Example of deviations that can be considered during the "planned development" process include:

1. Permitted uses and property development regulations other than those provided in subsection (f) of this section;

2. Alternative methods of committing to preservation or restoration of native habitat;

3. Substitution of permanent reforestation that doesn't meet all of the requirements of this section for "permanently preserved native habitats" or "restored native habitats."

4. Infrastructure more suited to country living, such as narrower streets, alternative paving materials, stormwater management systems that promote infiltration of runoff, etc.

(d) ***Permanently preserved native habitats.*** For the purposes of this section, "permanently preserved native habitat" means uplands that the landowner guarantees will be preserved as native habitat that will remain permanently as open space, in exchange for increasing the standard maximum residential density on the entire property, with all residential units placed on other uplands. A development proposal under this section must be accompanied by plans and supporting documentation that demonstrate compliance with the following requirements:

(1) **Land uses in preserved habitat.** No portion of the native habitats that are counted as preserved for the purposes of Table 34-655 may overlap individual lots or parcels on which development is permitted.

a. Portions of these native habitats may be used as buffer strips and wooded portions of golf courses provided those areas have a minimum dimension of 25 feet and are protected by the same conservation easement as the remainder of the native habitat.

b. Permanently preserved native habitat may contain up to the following percentages:

1. Facilities for passive recreation such as hiking trails, bridle paths, boardwalks, or fishing piers, up to 2% of the preserved or restored area.
2. Lakes, up to 5% of the preserved or restored area.
3. Commercial or non-commercial agriculture, up to 10% of the preserved or restored area.

(2) **Hydrologic restoration.** Interruptions of original water flows must be corrected to ensure proper hydrologic conditions for the long-term survival of the permanently preserved native habitat. For instance, ditches or berms that interfere with natural surface and ground water flows must be eliminated (unless mitigation is possible, for instance by placing multiple culverts through berms to restore sheet flows).

(3) **Removal of invasive exotic plants.** The following highly invasive exotic plants must be removed from the area being preserved. Methods to remove and control invasive exotic plants must be included on the development order plans. For purposes of this subsection, invasive exotic plants to be removed include:

a. Melaleuca (*Melaleuca quinquenervia*)
b. Brazilian pepper (*Schinus terebinthifolius)*
c. Australian pine (*Casuarina* spp.)
d. All other Category I invasive exotic species listed by the Florida Exotic Pest Plant Council.

(4) **Conservation easement.** The guarantee of preservation must include a perpetual conservation easement granted to a governmental body or agency or to a qualified charitable corporation or trust whose purposes include protecting natural, scenic, or open space values of real property.

a. This conservation easement must be a right or interest in real property which is appropriate to retaining the land in predominantly its natural forested condition as suitable habitat for native vegetation and wildlife in accordance with this section and which prohibits or limits the activities described in F.S. § 704.06, as such provisions now exist or as may be amended.
b. The agency or entity accepting the easement must have its principal place of business or a permanent branch office in Charlotte, Lee, or Collier County.
c. This agency or entity must explicitly consent to enforce the easement's obligations in perpetuity.
d. The guarantee of preservation may take a different form if it provides equivalent protection and is approved by Lee County through a deviation in a planned development rezoning.

(5) **Management plan.** The guarantee of preservation must also include a fully funded long-term management plan that will accomplish the following goals for the area being preserved:

a. The open space must be maintained in perpetuity against the reestablishment

of invasive exotic plants and must be kept free of refuse, debris, and pests.

b. The open space must be managed to maintain a mosaic of plant and habitat diversity typical of the ecological community being preserved. A reference source describing the native habitats found in Greater Pine Island is available in chapter 3 of the Multi-Species Recovery Plan for South Florida, published by the U.S. Fish & Wildlife Service.

c. The management plan shall describe acceptable forest management practices such as prescribed burning, selective thinning, and replanting. If the management plan does not include prescribed burning to mimic the historic fire regime, the plan must propose an alternative method for selectively thinning flammable understory plants.

(6) **Ownership of preserved habitats.** The underlying ownership of these permanently preserved native habitats may be transferred to a homeowners' or condominium association or may be retained by the original landowner or another private party.

a. If the ownership of this land and the management commitments are to be transferred to a homeowners' or condominium association, this transfer must be accomplished through a covenant that runs with the land in the form of, but not limited to, a homeowners' or condominium association or such other legal mechanisms as will guarantee that the permanently preserved native habitats will be managed in accordance with these regulations. Legal documents that provide for the continued management will be accepted only after they are reviewed and approved by the county attorney's office as complying with this section.

b. Alternatively, a landowner who wishes to retain ownership of this land or convey it to a different party must present evidence of a permanent funding source to carry out the management responsibilities, which may include bonds or trust funds sufficient to pay for the ongoing management in accordance with these regulations. Legal documents that provide for the continued management will be accepted only after they are reviewed and approved by the county attorney's office as complying with this section.

(e) ***Restored native habitats.*** For the purposes of this section, "restored native habitat" means uplands that the landowner commits to restoring and permanently preserving as open space in exchange for increasing the standard maximum residential density on the entire property, with all residential units placed on other uplands. The restoration goal is to initiate the re-creation of native habitats that had been typical of Greater Pine Island and to establish conditions suitable to their long-term maturation and regeneration. Restored native habitats must meet all of the requirements of section 34-655(d), plus the following requirements:

(1) **Hydrologic restoration.** In addition to the correction of interruptions of original water flows as described in subsection (d)(2) above, the site's hydrologic regime must be appropriate for the ecological community being restored. A reference source describing the native habitats found in Greater Pine Island and their natural hydrologic conditions is available in chapter 3 of the Multi-Species Recovery Plan for South Florida, published by the U.S. Fish & Wildlife Service.

(2) **Reintroduction of native trees.** Native trees must be planted and must be of species typical of the native habitat being recreated, as set forth in the Multi-Species Recovery Plan. For example, the dominant tree species in mesic pine flatwoods, the most common native upland habitat on Pine Island, will be longleaf and slash pines.

a. Site preparation must include removal of non-native vegetation that will compete with newly planted trees.

b. Trees must be planted in clusters or random patterns rather than rows.

Bare-root or containerized seedlings may be planted using standard forestry techniques. The target density of trees is between 50 and 200 trees per acre, depending on species and the type of habitat being recreated.

c. Fertilization may be required at time of planting to ensure survival of seedlings. Weed control is required for at least two years after planting.

(3) **Reintroduction of native midstory shrubs and understory plants.** In addition to the introduction of native pine trees as mentioned in subsection (2) above, midstory and understory species shall be planted.

a. These species shall include at least five of the following:
   1. wiregrass (*Aristida stricta var. beyrichiana*),
   2. tarflower (*Bejaria racemosa*),
   3. wax myrtle (*Myrica cerifera*),
   4. fetterbush (*Lyonia lucida*),
   5. rusty lyonia (*Lyonia ferruginea*),
   6. gallberry (*Ilex glabra*),
   7. saw palmetto (*Serenoa repens*), or
   8. cabbage palm (*Sabal palmetto*).

b. Additional native species may be substituted for the species listed above with the consent of the Florida Department of Environmental Protection, the Southwest Florida Water Management District the Florida Fish and Wildlife Conservation Commission, or Lee County.

c. No single species should comprise more than 25% of the total number of plants installed.

d. At least 50% of the acreage being restored must be planted with midstory and understory plants.
   1. Plants should be placed in groupings or clusters throughout the area to be restored at an average spacing of 3 feet.
   2. Plants to be used should consist of containerized plants or tubelings of not less than 4½ inches in depth.

e. Site preparation may be necessary to adequately prepare the site for planting. Site preparation may include such activities as roller chopping, bush hogging, prescribed burning, herbiciding, or other recognized vegetation management activities.

(4) **Criteria for success of restoration.** Plantings of native trees and midstory and understory plants shall be monitored annually to assure a minimum 80% survival of the required number of each species planted.

a. Monitoring shall be performed for a minimum of three years after initial planting.
   1. Monitoring shall be done by a qualified biologist, ecologist, forester, or natural areas manager.
   2. Monitoring shall consist of transects or fixed area plots placed in a uniform grid pattern throughout the restoration site.
   3. Enough plots or transects shall be placed to achieve an accuracy level of +/- 10% at an 80% confidence interval.

b. If the survival falls below 80% for a particular species, that species or another species permitted above shall be replanted to achieve at least the 80% threshold.

c. Annual monitoring reports shall be submitted to the director. After reviewing a monitoring report for the third or later year for methodology and accuracy, the director is authorized to issue a finding that the restoration has been successfully completed and that no further monitoring reports are required, or that restoration has been partially completed and that monitoring reports are required only for the incomplete portion of the restoration.

(5) **Financial guarantees.** If a landowner wishes to begin development prior to successful completion of the restoration, completion must be assured in the same manner that off-site improvements or on-site subdivision improvements may be guaranteed pursuant to section 10-154 of this code.

(f) ***Flatwoods restoration bank.*** As an additional alternative to restoring native habitats on-site or on contiguous or non-contiguous parcels combined into a single development application, Lee County may adopt an administrative code that sets forth the requirements for a third party to preserve or restore degraded upland habitats on large parcels on Pine Island. Credits for this restoration work could be sold to other landowners in Greater Pine Island who wish to increase their allowable density in accordance with Table 34-655.

(1) The restored land must meet all of the conditions for restored native habitats in subsection (e) in addition to the requirements of the administrative code.

(2) The administrative code will determine the assignment of restoration credits in a manner that is proportional to the ecological value of the restoration. Credits can sold once the restoration has proven successful according to criteria set forth in the code

(3) Lee County will not be involved in any way in establishing the financial value of restoration credits.

(g) ***Development standards.*** If a landowner chooses to increase the standard maximum density of "Coastal Rural" land as provided by this section, the following standards will govern the portion of the property that may be developed.

(1) **General standards:** All requirements of this code remain in effect except as modified through the "planned development" rezoning process or as otherwise provided in this section.

(2) **Permitted uses and property development regulations:**

a. Individual lots that exceed all size and dimensional requirements for lots in an AG-2 zoning district are governed by all regulations for the AG-2 district, including permitted uses and property development regulations.

b. Individual lots that do not meet all size and dimensional requirements for lots in an AG-2 zoning district are governed by all regulations for the RS-1 zoning district, including permitted uses and property development regulations.

c. The portion of the site being preserved will be governed by the standards in this section.

(3) **Local street standards:**

a. Section 10-296(d) of this code provides standards for new local streets that vary based on residential density levels. For development orders that subdivide residential lots from "Coastal Rural" land, these local street standards will be interpreted as follows:

1. "Category C" streets must be provided for residential lots that are smaller than 2.5 acres.

2. "Category D" streets may be provided in lieu of Category C streets for residential lots that are larger than 2.5 acres.

b. Right-of-way and lane widths for local streets may be narrower than the standards set forth in section 10-296 for Category C and Category D streets provided the widths are selected in accordance with the criteria in *Traditional Neighborhood Development Street Design Guidelines* or *Neighborhood Street Design Guidelines* (or successor recommended practices) published by the Institute of Transportation Engineers.

c. Local streets defined by section 10-296 as Category C streets may have a wearing surface of porous (pervious) asphalt or concrete, in lieu of the other surface options provided in chapter 10. Porous paving can increase the infiltration of stormwater and reduce the need for separate stormwater infrastructure.

d. Dead-end streets are generally not permitted but may be unavoidable due to adjoining wetlands, canals, or preserved areas. When the director deems a dead-end street to be unavoidable, the dead end must be provided with a cul-de-sac or other termination that is designed in accordance with these same criteria.

(4) **Locational standards:** The following approach and guidelines must be used to determine the best locations for area on the site to be preserved and to be developed:

a. Begin by identifying potential areas to remain as open space: healthy, diverse, or unusual vegetation (such as mature pine trees, oak hammocks, or dense saw palmetto); listed species habitat; historic/archaeological sites; unusual landforms; wet or transitional areas; etc.

b. Then identify potential areas for homesites: locations near existing developed areas or adjoining existing streets (or logical street extensions); areas with fewer natural resource values; areas that can be served with minimal extensions of infrastructure; areas that would provide views of preserved open spaces; etc.

Secs. 34-6565--34-670. Reserved.

CHAPTER 34
Zoning
ARTICLE VI, DISTRICT REGULATIONS
Division 3, Residential Districts

Sec. 34-695. Property development regulations table.

Property development regulations for one- and two-family residential districts are as follows:

TABLE 34-695. PROPERTY DEVELOPMENT REGULATIONS FOR ONE- AND TWO-FAMILY RESIDENTIAL DISTRICTS

	Special Notes or Regulations	RSC-1	RSC-2	RSA	RS-1	[all other districts remain unchanged]
Minimum lot area and dimensions:	34-2221, 34-2222, 34-2142					
Single-family detached:	Note 5					
Lot area (square feet)		4,000	43,560	6,500	7,500	
Lot width (feet)		40	100	65	75	
Lot depth (feet)		75	200	75	100	
Duplex: *[no changes required]*						
Two-family attached: *[no changes required]*						
Minimum setbacks: *[no changes required]*						
Special regulations: *[no changes required]*						
Maximum height (feet) *[no changes required]*						
Maximum lot coverage (percent of total lot area) *[no changes required]*						

Notes:

(1) Modifications to required setbacks for collector or arterial streets, or for solar or wind energy purposes, are permitted by variance only. See section 34-2191 et seq.

(2) Special street setbacks apply to portions of Colonial Boulevard and Daniels Road. Refer to section 34-2192(b).

(3) Accessory buildings and uses can be located closer to the front of the property than the main building, but must comply with all other setback requirements for accessory building uses.

(4) No side yard setback required from common side lot line for two-family attached.

(5) All lots in the Coastal Rural land use category in Greater Pine Island (as delineated by policies 1.4.7 and 14.1.8 of the Lee Plan) that are created after *[effective date of plan update]* must comply with the additional regulations in section 34-655. Lots created before *[effective date of plan update]* do not need to comply with the additional regulations in section 34-655 (see section 34-3273(a)(3)).

Sec. 34-715. Property development regulations table.

Property development regulations for multiple-family residential districts are as follows:

TABLE 34-715. PROPERTY DEVELOPMENT REGULATIONS FOR MULTIPLE-FAMILY RESIDENTIAL DISTRICTS

	Special Notes or Regulations	RM-2	RM-3	RM-6	RM-8	RM-10
Minimum lot area and dimensions: Single-family detached: *[no other changes required]* Duplex, two-family, townhouse: *[no other changes required]* Multiple-family: *[no other changes required]* Nonresidential uses: *[no changes required]*	34-1493, 34-1494, 34-2221, 34-2222, 34-2142 Note 7 Note 7 34-713 Note 7	*[no changes required]*	*[no changes required]*	*[no changes required]*	*[no changes required]*	*[no changes required]*
Minimum setbacks: *[no changes required]*						
Special regulations: *[no changes required]*						
Maximum height (feet) *[no changes required]*						
Maximum lot coverage (percent of total lot area) *[no changes required]*						

Notes:

(1) Minimum lot size is 6,500 square feet. However, the maximum permitted density shall not exceed the density permitted for the land use category in which the property is located.

(2) Minimum lot size is 7,500 square feet. However, the maximum permitted density shall not exceed the density permitted for the land use category in which the property is located.

(3) 14,000 square feet for the first two dwelling units plus 6,500 square feet for each additional dwelling unit in the same building.

(4) Modifications to required setbacks for arterial or collector streets, or for solar or wind energy purposes, are permitted only by variance. See section 34-2191 et seq.

(5) Special street setbacks apply to portions of Colonial Boulevard and Daniels Road. Refer to section 34-2192(b).

(6) No side setback is required from common lot line for two-family attached or townhouse.

(7) All lots in the Coastal Rural land use category in Greater Pine Island (as delineated by policies 1.4.7 and 14.1.8 of the Lee Plan) that are created after *[effective date of plan update]* must comply with the additional regulations in section 34-655. Lots created before *[effective date of plan update]* do not need to comply with the additional regulations in section 34-655 (see section 34-3273(a)(3)).

CHAPTER 34
Zoning
ARTICLE VII, SUPPLEMENTARY DISTRICT REGULATIONS
Division 12, Density
Subdivision II, Residential Development

Sec. 34-1495. Density limitations for specific areas.

Except as may be specifically permitted by the Lee Plan, maximum densities are hereby limited as follows:

(1) **Captiva Island.** Maximum density permitted on Captiva Island is three dwelling units per gross residential acre.

(2) **Gasparilla Island.** Maximum density permitted on Gasparilla Island is three dwelling units per gross residential acre. Refer to Laws of Fla. ch. 83-385 for a description of affected properties.

(3) **Greater Pine Island**, as identified on the future land use map and described in section 34-2 of this code.

a. For the Matlacha, Bokeelia and St. James City areas~~;~~ which are currently classified in the Lee Plan as Urban Community, Suburban, or Outlying Suburban, ~~future urban areas,~~ maximum density permitted shall be as set forth for the zoning district in which located, or that which is permitted for the land use category in which located, or as further restricted in accordance with the traffic restrictions described in section 2-48, whichever is lower.

b. For all other areas:

1. No land, except as provided in subsection (3)a of this section, shall be rezoned to any zoning district permitting more than three dwelling units per gross acre or as further restricted by:

i the land use category in which the property is located, or

ii in accordance with the traffic restrictions described in section 2-48.

2. Land currently zoned for more than three dwelling units per gross acre shall be allowed a density in excess of three dwelling units per gross acre provided that all other applicable regulations are met, and provided further that no density shall be allowed above that which is permitted for the land use category in which the property is located, or which is permitted by the zoning which was in effect for the property as of November 25, 1986, or as further restricted in accordance with the traffic restrictions described in section 2-48, whichever is lower.

c. With regard to Matlacha, Bokeelia, St. James City and all other areas, due to the constraints on future development posed by the limited road connections to the mainland area of the county, bonus densities of any kind are not permitted in Greater Pine Island.

1. This prohibition includes housing density bonuses, off-site transfers from environmentally critical areas, and transfers from on-site wetlands at rates above the standard density rates for environmentally critical areas.

2. However, this prohibition does not affect any special transfer allowances provided for Coastal Rural areas in section 34-655.

CHAPTER 34
Zoning
ARTICLE VIII, NONCONFORMITIES
Division 4, Nonconforming Lots

Sec. 34-3271. Nonconforming lot defined.

For purposes of this division, the term "nonconforming or substandard lot" means a lot of which the area, dimension or location was lawful prior to the adoption of the ordinance from which this chapter is derived, or the adoption of a revision or amendment of this chapter, and which fails by reason of such adoption, revision or amendment to conform to the requirements for the zoning district in which the lot is located.

Sec. 34-3272. Lot of record defined; general development standards.

For the purposes of this division only, a lot of record is a lot which conformed to the minimum lot size for the use permitted for that lot in its zoning district at such time that the lot was created, but which lot fails to conform to the minimum lot size requirements which are established by this chapter.

(1) For the purpose of this division, a lot is created on such date that one of the following conditions occur:
   a. The date that a deed for the lot is lawfully recorded in the public records of the county;
   b. The date that a subdivision plat has been lawfully recorded in the public records of the county, if the lot is a part of the subdivision;
   c. The date that a site plan for a development was approved by the Board of County Commissioners pursuant to resolution, as long as the development subsequently recorded a subdivision plat that has been approved by the Board of County Commissioners in the public records of the county, if the lot is a part of the subdivision; or
   d. In the case of mobile home or recreational vehicle parks... *[no changes required]*

(2) The remaining lot after condemnation shall be deemed a lot of record in accordance with section 34-3206.

(3) Lots of record may be developed subject to the following provisions:
   a. All other regulations of this chapter must be met.
   b. No division of any parcel may be permitted which creates a lot with width, depth or area below the minimum requirements stated in this chapter, provided that abutting lots of record may be combined and redivided to create larger dimension lots as long as such recombination includes all parts of all lots, existing allowable density is not increased, and all setback requirements are met.
   c. For mobile home or recreational vehicle lots of record, the following will also apply: *[no changes required]*

(4) The burden of proof that the lot is legally nonconforming, and lawfully existed at the specified date, shall be with the owner.

Sec. 34-3273. Construction of single-family residence.

(a) A single-family residence may be constructed on a nonconforming lot of record that:

(1) Does not comply with the density requirements of the Lee Plan, provided the owner receives a favorable single-family residence determination (also known as "minimum use determination") in accordance with the Lee Plan. Such nonconforming lots are exempt from the minimum lot area and minimum lot dimension requirements of this chapter, and it will not be necessary to obtain a variance from those requirements.

(2) Does comply with the density requirements of the Lee Plan, as long as the lot:
   a. Was lawfully created prior to June 1962 and the following conditions are met:
      1. Lots existing in the AG-2 or AG-3 zoning district require a minimum width of 75 feet, a minimum depth of 100 feet and a lot area not less than 7,500 square feet.

2. Lots existing in any other zoning district which permits the construction of a single-family residence require a minimum of 40 feet in width and 75 feet in depth, and a lot area not less than 4,000 square feet.

b. Is part of a plat approved by the Board of County Commissioners and lawfully recorded in the public records of the county after June 1962.

(3) In Greater Pine Island only, in addition to the options in subsections (a)(1) and (2), one single-family residence may be constructed on a nonconforming lot of record in the Lee Plan's "Coastal Rural" land use category (as delineated by policies 1.4.7 and 14.1.8 of the Lee Plan), provided that:

a. The lot was created before *[effective date of plan update]*; and

b. The lot would have qualified for a single-family residence determination (minimum use determination) in accordance with the Lee Plan prior to that date.

(b) The use of a nonconforming lot of record for a residential use other than a single-family dwelling unit is prohibited except in compliance with the lot width, lot depth, lot area, and density requirements for the zoning district.

(c) Neither a guest house nor servants' quarters is permitted on a single lot of record less than 7,500 square feet in area, or which is occupied by a dwelling unit or units other than one single-family residence.

(d) Minimum setbacks for structures permitted under subsections (1) or (2) above, are as follows:

(1) Street setbacks must be in accordance with section 34-2192.

(2) Side setbacks must be ten percent of lot width, or five feet, whichever is greater.

(3) Rear setbacks must be one-fourth of the lot depth but do not need to be greater than 20 feet.

Sec. 34-3274. Placement of mobile home or recreational vehicle on lot. *[no changes required]*

Sec. 34-3275. Commercial or industrial use. *[no changes required]*

IMPLEMENTING POLICY 14.1.5

RECENT CHANGES TO LEE PLAN POLICY 14.1.5:

POLICY 14.1.5: New development, including "planned development" rezoning approvals, ~~and~~ new subdivisions, and agriculture, that adjoin~~ing~~ state-designated aquatic preserves and associated wetlands and natural tributaries ~~shall provide~~ must preserve or create a 50-foot-wide native vegetated buffer area between the development and the waterbody or associated wetlands. This requirement will not apply to existing subdivided lots. For agriculture, this requirement:

- will be implemented through the notice-of-clearing process in chapter 14 of the land development code;
- will include a requirement to use this area as a riparian forest buffer with an adjoining filter strip wherever farmland abuts wetlands; and
- if native vegetation does not currently exist, native tree cover will be established within three years of issuance of the notice of clearing.

SUMMARY OF CODE CHANGES NEEDED TO IMPLEMENT POLICY 14.1.5:

a. "New development, including "planned development" rezoning approvals, new subdivisions, and agriculture, that adjoin state-designated aquatic preserves and associated wetlands and natural tributaries must preserve or create a 50-foot-wide native vegetated buffer area between the development and the waterbody or associated wetlands." – MODIFY 1-2, 10-416, and 34-935.

b. "For agriculture, this requirement...will be implemented through the notice-of-clearing process in chapter 14 of the land development code..." – ADD NEW PROVISIONS TO 14-374, 14-377, and 14-312.

c. "For agriculture, ...will include a requirement to use this area as a riparian forest buffer with an adjoining filter strip wherever farmland abuts wetlands..." – ADD NEW PROVISIONS TO 14-377 and 14-312.

d. "For agriculture, ...if native vegetation does not currently exist, native tree cover will be established within three years of issuance of the notice of clearing. – ADD NEW PROVISIONS TO 14-377 and 14-312.

COMPOSITE CODE CHANGES TO IMPLEMENT POLICY 14.1.5:

CHAPTER 1
General Provisions

Sec. 1-2. Rules of construction and definitions.

(a) In the construction of this Land Development Code, and of all ordinances, the rules and definitions set out in this section shall be observed, unless inconsistent with the manifest intent of the Board of County Commissioners. The rules of construction and definitions in this section do not apply to any section of this Land Development Code that contains any express provisions excluding their application, or where the subject matter or context of such section may be repugnant thereto.

(b) Generally. *[no changes required]*

(c) The following words, terms and phrases, when used in this Land Development Code, will have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

...

State-designated aquatic preserves and associated wetlands and natural tributaries means:

(1) The following aquatic preserves as designated by the state of Florida:
  a. Gasparilla Sound-Charlotte Harbor Aquatic Preserve, and
  b. Matlacha Pass Aquatic Preserve, and
  c. Pine Island Sound Aquatic Preserve; plus

(2) All wetlands, as defined in article IV of chapter 14 of this code, that adjoin any portion of these aquatic preserves; plus

(3) All bays, lagoons, creeks, and other waterways that adjoin any portion of these aquatic preserves, but excluding man-made canals.

For the purpose of this definition, any portion of a wetland or natural tributary lying farther than ½ mile from the nearest point in an aquatic preserve will not be deemed to be an associated wetland or natural tributary.

...

[no other changes to section 1-2]

CHAPTER 10
Development Standards
ARTICLE III, DESIGN STANDARDS AND REQUIREMENTS
Division 6, Open Space, Buffering and Landscaping

Sec. 10-416. Landscape standards.

(a) ***General.*** *[no changes required]*

(b) ***Building perimeter plantings.*** *[no changes required]*

(c) ***Landscaping of parking and vehicle use areas.*** *[no changes required]*

(d) ***Buffering adjacent property.***

(1) – (8) *[no changes required]*

(9) Development abutting natural waterway. Except where a stricter standard applies for ~~the~~ Greater Pine Island ~~Area~~ (as defined in Goal 14 of the Lee Plan and as described in section 34-2 of this code), there must be a 25-foot wide vegetative buffer landward from the mean high water line of all nonseawalled natural waterways. Where ~~a~~ proposed new development, including planned development rezoning approvals and new ~~or~~ subdivisions, is located in ~~the~~ Greater Pine Island ~~Area~~ abutting state-designated aquatic preserves and associated wetlands and natural tributaries, as defined in chapter 1 of this code, the width of the required buffer will be 50 feet landward from the water body and wetlands and the applicant must preserve or plant indigenous native vegetation throughout this buffer; however, these special requirements do not apply to portions of marinas that provide direct water access, or to land that has already been lawfully subdivided into building sites.

Existing vegetation within the buffer area must be retained. The removal or control of exotic pest plants must not involve the use of heavy mechanical equipment such as bulldozers, front end loaders, or

hydraulic excavators, unless approved at the time of development order.

(10) – (11) *[no changes required]*

CHAPTER 14
Environment and Natural Resources
ARTICLE V, TREE PROTECTION

Sec. 14-374. Definitions.

(a) The following words, terms and phrases, and their derivations, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. When not inconsistent with the context, words in the present tense include the future and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

...

Greater Pine Island means the area that is affected by Lee Plan Goal 14 as depicted on the Future Land Use Map and as described in section 34-2 of this code.

...

[no other changes to section 14-374]

Sec. 14-377. Exemptions from article.

(a) This article does not apply to the following:

(1) Removal of trees on the following lands as specified in this subsection:

a. This article shall not apply to the removal of trees, other than trees worthy of preservation, on lands classified as agricultural land for ad valorem taxation purposes pursuant to F.S. § 193.461(3)(b). Trees, other than trees worthy of preservation, may be removed from agriculturally zoned lands only after the owner or his agent procures a notice of clearing from the administrator (see section 14-412(i) for procedures and for special requirements that apply to proposed agricultural activities in Greater Pine Island). However, if an application to rezone the subject lands is filed within three years from the date when the most recent notice of clearing was issued, and the rezoning is granted, the applicable minimum open space requirements of chapter 10 shall be satisfied in the following manner: *[no changes required]*

b. Land used for bonafide agricultural purposes that meets the criteria of or has been designated as wetlands.

c. If the property is located in the critical areas for surface water management, and is not used for bona fide agricultural purposes, indigenous vegetation shall not be cleared in areas that serve as listed species occupied habitat as defined in chapter 10, article III, division 8. The following shall apply: *[no changes required]*

d. If the property is located in the critical areas for surface water management, indigenous vegetation shall not be cleared within 25 feet of the mean high-water line or ordinary high-water line, whichever is applicable, of any natural waterway listed in appendix F. Indigenous vegetation may be cleared selectively to allow the placement of docks, pipes, pumps and other similar structures pursuant to applicable county ordinances.

(2) The removal of trees on public rights-of-way conducted by or on behalf of a federal, state, county, municipal or other governmental agency in pursuance of its lawful activities or functions in the construction or improvement of public rights-of-way or in the performance of its official duties.

(3) The removal of a protected tree that is dead or which has been destroyed or damaged by natural causes beyond saving or which is a hazard as the result of an act of God and constitutes an immediate peril to life and property.

(4) The removal of trees by duly constituted communication, water, sewer or electrical utility companies or federal, state or county agency, engineer or surveyor, working under a contract with such federal, state or county agency or when

such tree removal is done as a governmental function of such agency.

(5) The removal of trees by duly constituted communication, water, sewer or electrical utility companies in or adjacent to a public easement or right-of-way, provided such removal is limited to those areas necessary for maintenance of existing lines or facilities or for construction of new lines or facilities in furtherance of providing utility service to its customers, and provided further that such removal is conducted so as to avoid any unnecessary damage or removal of trees.

(6) The removal of trees protected by this article, other than a tree worthy of preservation, by a state-licensed land surveyor in the performance of his duties. The removal of trees protected by this article in a manner which requires clearing a swath of greater than three feet in width shall require approval of the administrator prior to such a removal and clearance.

(7) The removal of protected trees on a lot zoned for single-family residential use or being used lawfully as a single-family residence or mobile home where the residence or proposed residence is located on a lot no greater than five acres in area. However, this exemption does not apply on the coastal islands listed in subsection (c) below.

(8) The removal of protected trees, other than a tree worthy of preservation, on the premises of a licensed plant or tree nursery or tree farm where such trees are intended for sale in the ordinary course of the licensee's business.

(b) Any final development order or other final approval issued by the county which was granted after January 27, 1983, but before the effective date of the ordinance from which this article is derived may, at the discretion of the administrator, be exempted from compliance with this article, to the extent that the restrictions imposed by this article conflict with the approvals given in the final development order or other final approval, in which case the final development order or other final approval shall supersede this article as to those areas in conflict.

(c) The exemptions ~~herein~~ for single-family residential use in subsection (a)(7) above do not apply to land located on the following coastal islands: Gasparilla Island, Cayo Costa Island, North Captiva Island, Captive Island, Buck Key, Greater Pine Island, Lover's Key Group of Islands, Black Island, Big Hickory Island, and Little Hickory Island (Bonita Beach).

(1) The tree permit will be incorporated into the building permit for the site. Review of the tree removal will follow the criteria listed in sections 14-411 and 14-412. For clearing prior to building permit issuance, as a separate tree permit application must be submitted for review and compliance with sections 14-411 and 14-412. No tree permit is required for the annual removal of five trees or less from any single-family residential lot that contains an existing single-family dwelling unit.

(2) As part of the tree permit site inspections, department of community development staff will also review understory or subcanopy plants and protected species for retention or relocation within the site.

(3) For Greater Pine Island only, a tree removal permit will be required only on parcels or lots zoned or used for residential purposes that are two acres in size or greater.

Sec. 14-412. Issuance of permit.

(a) ***Submission of application.*** Application for a permit to remove any protected tree defined in this article shall be submitted to the administrator, in writing, on a form provided by the administrator, accompanied by a written statement indicating the reasons for removal.

(b) ***Authority of administrator.*** The administrator shall have the authority to issue the permit and to inspect all work performed under any permit issued under this article.

(c) ***Required information.*** All applications to remove any protected tree defined in this article shall be on forms provided by the administrator. Where an application has been submitted to the administrator for the removal of more than five trees, no tree removal permit shall be issued by the administrator until a site plan for the lot or parcel has been reviewed and approved by the administrator, which shall include the following minimum information:

(1) The shape and dimensions of the lot or parcel, together with the existing and proposed locations of the structures and improvements, if any.
(2) A tree location map for the lot or parcel, in a form acceptable to the administrator. For the removal of five trees or less, an on-site examination by the administrator's designee shall be made in lieu of the tree location map requirement.
(3) Any proposed grade changes that might adversely affect or endanger any trees on the lot or parcel, together with specifications reflecting how the trees can be safely maintained.
(4) Any proposed tree replacement plan.

(d) ***Criteria for granting.*** The administrator shall approve a permit for issuance for the removal of any protected tree if the administrator finds one or more of the following conditions is present:
(1) Trees which pose a safety hazard to pedestrian or vehicular traffic or threaten to cause disruption to public utility services.
(2) Trees which pose a safety hazard to existing buildings or structures.
(3) Trees which prevent reasonable access to a lot or parcel so long as the proposed access point complies with all other county regulations.
(4) Diseased trees which are a hazard to people, buildings or other improvements on a lot or parcel or to other trees.
(5) Trees so weakened by age, storm, fire or other injury as to, in the opinion of the administrator, jeopardize the life and limb of persons or cause a hazard to property.
(6) Trees which prevent the lawful development of a lot or parcel or the physical use thereof.
(7) The administrator may require that a tree protected by this article be relocated on the same lot or parcel in lieu of removal.

(e) ***Submission of site plan when building permit not required.*** Where a building permit issuance is not required because no structures are to be constructed and no other development of the lot is to occur, any person seeking to remove a tree protected under this article shall first file a site plan with the administrator meeting the requirements of subsection (c) of this section prior to receiving a tree removal permit from the administrator.

(f) ***Inspection of site.*** The administrator may conduct an on-site inspection to determine if any proposed tree removal conforms to the requirements of this article and what effect, if any, removal of the trees will have upon the natural resources, as identified in the Lee Plan, of the affected area prior to the granting or denying of the application. A permit fee will be required for the removal or relocation of any tree protected under the provisions of this article and shall be paid at the time of issuance of the permit. The fees established will be set in accordance with the county administrative code and paid to the administrator. Such fees are hereby declared to be necessary for the purpose of processing the application and making the necessary inspection for the administration and enforcement of this article.

(g) ***Approval or denial.*** Based upon the information contained in the application and after investigation of the application, the administrator shall approve or deny the application, and, if approved, the administrator is the party so designated by the Board of County Commissioners to issue the permit for a period not to exceed one year and to collect the permit fee.

(h) ***Conditions.*** The administrator may attach conditions to the permit relating to the method of identifying, designating and protecting those trees which are not to be removed in accordance with subsection (g) of this section. A violation of these conditions shall automatically invalidate the permit. Special conditions which may be attached to the permit may include a requirement for successful replacement of trees permitted to be removed with trees of the same size, compatible species and same number.

(i) ***Notice of clearing.*** Upon receipt of all necessary documents, the administrator may issue a notice of clearing in lieu of an individual tree removal permit. A notice of clearing will be the preferred method of confirming that proposed agricultural activities conform with the exemption criteria in section 14-377(a). Notices of clearing for agricultural purposes in Greater Pine Island must comply with the following additional requirements in accordance with Policy 14.1.5 of the Lee Plan:
(1) Agricultural land that adjoins state-designated aquatic preserves and associated wetlands and natural tributaries,

as defined in chapter 1 of this code, must preserve or create a 50-foot-wide native vegetated conservation buffer area between all agricultural lands and the natural waterbody and associated wetlands.

(2) The purpose of this conservation buffer is to capture or slow the movement of sediments, fertilizers, pesticides, pathogens, and heavy metals that may be concentrated in stormwater runoff and to allow for increased biodiversity and improved wildlife habitat.

(3) Stormwater runoff that is discharged through this conservation buffer must be routed through an indirect discharge such as an overflow or spreader swale or similar conveyance of a sufficient dimensions to reduce discharge velocities to historic rates or rates less than two feet per second.

(4) This conservation buffer area must be maintained as a forested buffer but may contain a grassed filter strip of up to 15 feet wide. A maintenance plan must be provided to control invasion of exotic vegetation. If native vegetation does not currently exist in the remainder of the buffer, native tree cover must be established within three years of issuance of the notice of clearing.

a. For purposes of this subsection, native tree cover means the planting and subsequent maintenance of longleaf pine, slash pine, and/or native oak trees at average spacings typical of indigenous pine flatwoods on Pine Island.

b. These trees must be Florida No. 1 or better grade, no less than four feet in height at time of planting, and with a guaranteed 80 percent survivability for a period of five years.

(5) Additional recommended design criteria are available in "Conservation Practice Standards" from the National Resources Conservation Service:

i. Standard 391 (Riparian Forest Buffer).

b. Standard 393 (Filter Strip).

(6) These conservation buffer regulations will not be construed in a manner that violates the Agricultural Lands and Practices Act, F.S. § 163.3162, or the Florida Right-to-Farm Act, F.S. § 823.14.

CHAPTER 34
Zoning
ARTICLE VI, DISTRICT REGULATIONS
Division 9, Planned Development Districts

Sec. 34-935. Property development regulations.

The provisions of this section do not apply to PRFPDs. Property development regulations for PRFPDs are set forth in section 34-941.

(a) ***Minimum area for planned developments.*** *[no changes required]*

(b) ***Minimum setbacks of structures and buildings from development perimeter boundaries.*** *[no changes required]*

(c) ***Uses permitted within required perimeter setback.*** *[no changes required]*

(d) ***Planned developments ~~on~~ in Greater Pine Island.*** Where the proposed planned development is ~~within~~ ~~the~~ Greater Pine Island ~~area~~ and adjoins state-designated aquatic preserves ~~or~~ and associated wetlands and natural tributaries, as defined in chapter 1 of this code, a 50-foot-wide native vegetated buffer area must be provided between any structure or building and the water body and wetlands. ~~the mean high-water line of the water body shall be provided.~~ Indigenous native plants within this buffer must be maintained or planted.

(1) These requirements do not apply to:

a. Portions of marinas that provide direct water access, or

b. Land that has already been subdivided into building sites.

(2) No deviation from ~~this~~ these requirements shall be permitted except under extreme circumstances in which the requirements would have the effect of prohibiting all reasonable use of the property.

(e) ***Minimum lot size, dimensions and setbacks.*** *[no changes required]*

(f) ***Height of buildings.*** *[no changes required]*

(g) ***Open space.*** *[no changes required]*

IMPLEMENTING POLICY 14.2.2

RECENT CHANGES TO LEE PLAN POLICY 14.2.2:

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

- When traffic on Pine Island Road ~~between Burnt Store Road and Stringfellow Boulevard~~ reaches 810 peak hour, annual average two-way trips, the regulations will ~~provide~~ restrict~~ions on~~ further rezonings which would increase traffic on Pine Island Road through Matlacha. These regulations shall provide reasonable exceptions for minor rezonings on infill properties surrounded by development at similar intensities and those with inconsequential or positive effects on peak traffic flows through Matlacha, and may give preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island.

- When traffic on Pine Island Road ~~between Burnt Store Road and Stringfellow Boulevard~~ reaches 910 peak hour, annual average two-way trips, the regulations will provide restrictions on the further issuance of residential development orders (pursuant to chapter 10 of the Land Development Code ~~the Development Standards Ordinance~~), or other measures to maintain the adopted level of service, until improvements can be made in accordance with this plan. The effect of these restrictions on residential densities must not be more severe than restricting densities to one-third of the maximum density otherwise allowed on that property.

The 810 and 910 thresholds were based on 80% and 90% of level-of-service "D" capacity calculated using the 1965 Highway Capacity Manual, as documented in the 2001 Greater Pine Island Community Plan Update. These development regulations may provide exceptions for legitimate ongoing developments to protect previously approved densities for final phases that have a Chapter 177 plat or site-plan approval under Ordinance 86-36.

SUMMARY OF CODE CHANGES NEEDED TO IMPLEMENT POLICY 14.2.2:

a. "When traffic on Pine Island Road reaches 810 peak hour, annual average two-way trips, the regulations will restrict further rezonings which would increase traffic on Pine Island Road through Matlacha. These regulations shall provide reasonable exceptions for minor rezonings on infill properties surrounded by development at similar intensities and those with inconsequential or positive effects on peak traffic flows through Matlacha, and may give preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island." – MODIFY CONCURRENCY REGULATIONS IN 2-48 AND 2-50

b. "The effect of these restrictions on residential densities must not be more severe than restricting densities to one-third of the maximum density otherwise allowed on that property." – MODIFY CONCURRENCY REGULATIONS IN 2-48(3)
c. "These development regulations may provide exceptions for legitimate ongoing developments to protect previously approved densities for final phases that have a Chapter 177 plat or site-plan approval under Ordinance 86-36." – ADD NEW LANGUAGE TO CONCURRENCY REGULATIONS IN 2-48(6)

COMPOSITE CODE CHANGES TO IMPLEMENT POLICY 14.2.2:

CHAPTER 2
Administration
ARTICLE II, CONCURRENCY MANAGEMENT SYSTEM

Sec. 2-48. Greater Pine Island concurrency.

Concurrency compliance for property located in Greater Pine Island, as identified on the future land use map and described in section 34-2 of this code, will be determined in accordance with the level of service and restrictions set forth in Lee Plan policies 14.2.1 and 14.2.2 to the extent the policies provide additional restrictions that supplement other provisions of this article. These policies require the following:

(1) The minimum acceptable level of service standard for Pine Island Road between Burnt Store Road and Stringfellow Boulevard is level of service D on an annual average peak-hour basis and level of service E on a peak-season peak-hour basis using methodologies from the 1985 Highway Capacity Manual Special Report 209. This standard will be measured at the county's permanent count station on Little Pine Island at the western edge of Matlacha and will apply to all of Greater Pine Island.

(2) In addition, when traffic on Pine Island Road at the western edge of Matlacha ~~between Burnt Store Road and Stringfellow Boulevard~~ reaches 810 peak-hour annual average two-way trips, rezonings in Greater Pine Island that increase traffic on Pine Island Road may not be granted. Three types of exceptions to this rule may be considered during the rezoning process:

a. Minor rezonings on infill properties surrounded by development at similar densities or intensities. A minor rezoning under this exception may not rezone more than 5 acres of land or have a net effect of allowing more than 15 additional dwelling units.
b. Rezonings that would have inconsequential effects on traffic flows at the western edge of Matlacha during peak periods in the peak (busier) direction, or would have positive effects by reducing trips during those peak flow periods.
c. Rezonings to accommodate small enterprises that promote the natural features or cultural heritage of Greater Pine Island.

(3) When traffic on Pine Island Road at the western edge of Matlacha ~~between Burnt Store Road and Stringfellow Boulevard~~ reaches 910 peak-hour annual average two-way trips, residential development orders (pursuant to chapter 10) will not be granted for land in Greater Pine Island unless measures to maintain the adopted level of service at the western edge of Matlacha can be included as a condition of the development order. As an alternative to maintaining the adopted level of service, the following options are available to landowners:

a. Except in the Lee Plan's Coastal Rural land use category, a reduction in residential density on the property for which a development order is sought to one-third of the maximum density

otherwise allowed by the Lee Plan and this code.

b. In the Lee Plan's Coastal Rural land use category, a reduction in residential density on the property for which a development order is sought to the levels in the third column of Table 34-655 (see section 34-655 of this code).

(4) The standards in subsections (2) and (3) of this section will be interpreted and applied as follows:

a. Traffic counts will be taken from the county's permanent count station on Little Pine Island at the western edge of Matlacha.

b. For purposes of the regulations in this section, the 810-trip and the 910-trip thresholds will be considered to be exceeded upon approval by the board of county commissioners of the annual concurrency management inventory of available capacity of public facilities in accordance with section 2-50 of this chapter.

1. This inventory must contain an analysis of the previous year's traffic count data as reported in the Department of Transportation's annual Traffic Count Report.
2. This analysis will determine if the reported number of Annual Average Daily Trips (AADT) multiplied by the percentage for the busiest peak flow (AM or PM) exceeds 810 or 910 respectively.
3. If this analysis concludes that one or both of these thresholds were exceeded during the previous year, the corresponding restrictions for all of Greater Pine Island that are described in subsections (2) and (3) will take effect immediately upon approval of the inventory and will remain in effect until approval of the following year's inventory.

c. Landowners may be in the process of obtaining residential development orders at the time that a formal determination is made that the 910-trip threshold has been exceeded. For such properties, the 180-day period for resubmittal of supplemental or corrected application documents (see section 10-110(b)) shall not be shortened by this determination. However, no further 180-day periods may be granted.

1. Additional development rights may not be appended to a request for a development order during this period.
2. This allowance does not extend to tracts of land in large phased projects that are proposed for future development but for which a development order has not been sought in the current application.

(5) Expiring development orders in Greater Pine Island cannot be extended or renewed unless they are modified to conform with the regulations in effect at the time the extension or renewal is granted.

(6) The restrictions in subsections (2) and (3) will not be interpreted to affect ongoing developments whose final phases are already platted in accordance with F.S. ch. 177, provided that no new lots are added and that the number of allowable dwelling units is not increased. These restrictions also will not be interpreted to affect expansions to existing recreational vehicle parks to serve additional transient RVs if such expansions were explicitly approved by Lee County under Ordinance No. 86-36 (see section 34-3272(1)d.) and the land is properly zoned for this purpose.

Sec. 2-50. Concurrency management information system.

(a) The director will compile, publish and update, at least once each year, beginning no later than October 1, 1990, an inventory of the maximum, utilized and available capacity of public facilities for which minimum regulatory levels of service are prescribed in the Lee Plan. This inventory must also contain a projection of future demand on the facilities due to anticipated growth and additions to capacity based upon construction in progress or under contract. This inventory must also contain the Greater Pine Island analysis as described in section 2-48(4). The inventory must be reviewed and approved by the Board of County

Commissioners and, upon approval, will establish the availability and capacity of each facility to accommodate impacts from further development. This inventory will bind the county to the estimates of available capacity described in the inventory. Once approved by the board, these estimates will empower the director to issue concurrency certificates for development permits requested where the estimates reasonably demonstrate sufficient infrastructure capacity will be available to serve all developments reasonably expected to occur during the period of time approved by the board.

(b) The director will maintain a current cumulative list of all development orders issued by the county. The list will include the date of issuance of each development order.

(c) The director will maintain a list of all certificates issued pursuant to this article, or a copy of each certificate in chronological order by date of issuance in lieu of a list. These records may be removed to storage once the most recent certificate on the list is six months old.

IMPLEMENTING POLICY 14.3.5

NEW LEE PLAN POLICY 14.3.5:

POLICY 14.3.5: The county will amend its land development code to provide specific regulations for neighborhood connectivity and walls and gates on Greater Pine Island if an acceptable proposal is submitted by the Greater Pine Island community. These regulations would require interconnections between adjoining neighborhoods wherever feasible and would no longer allow perimeter walls around larger developments.

SUMMARY OF CODE CHANGES NEEDED TO IMPLEMENT POLICY 14.3.5:

a. "These regulations would require interconnections between adjoining neighborhoods wherever feasible...." ADD NEW PROVISIONS TO 10-294(b), 34-411(d) & (r), AND 34-1748(1)(e).
b. "These regulations would ... no longer allow perimeter walls around larger developments." DELETE GREATER PINE ISLAND FROM 34-1743(c)

COMPOSITE CODE CHANGES TO IMPLEMENT POLICY 14.3.5:

CHAPTER 10
Development Standards
ARTICLE III, DESIGN STANDARDS AND REQUIREMENTS
Division 2, Transportation, Roadways, Streets and Bridges

Sec. 10-294. Continuation of existing street pattern.

(a) The proposed street layout shall be coordinated with the street system of the surrounding area. Streets in a proposed development shall be connected to streets in the adjacent area where required by the director of development review to provide for proper traffic circulation.

(b) For all new development on Greater Pine Island, the proposed street layout must be fully integrated into the street system of the surrounding area. These requirements apply equally to public and private streets.

(1) Streets in a proposed development must be connected to existing streets in the adjacent area, and to likely extensions of existing streets, unless physical barriers such as canals or wetlands preclude such connections.

(2) Gates or guardhouses may not be used to block the movement of cars except as provided in section 34-1748(1)e. However, traffic calming measures acceptable to the director of transportation may be employed to slow vehicles and to deter excessive cut-through traffic.

(3) "Greater Pine Island" means the area that is affected by Lee Plan Goal 14 as depicted on the Future Land Use Map and as described in section 34-2 of this code.

CHAPTER 34
Zoning
ARTICLE IV, PLANNED DEVELOPMENTS
Division 3, Design Standards

Sec. 34-411. General standards.

(a) All planned developments shall be consistent with the provisions of the Lee Plan.

(b) All planned developments, unless otherwise excepted, shall be designed and constructed in accordance with the provisions of all applicable county development regulations in force at that time.

(c) The tract or parcel proposed for development under this article must be located so as to minimize the negative effects of the resulting land uses on surrounding properties and the public interest generally, and must be of such size, configuration and dimension as to adequately accommodate the proposed structures, all required open space, including private recreational facilities and parkland, bikeways, pedestrian ways, buffers, parking, access, on-site utilities, including wet or dry runoff retention, and reservations of environmentally sensitive land or water.

(1) In large residential or commercial planned developments, the site planner is encouraged to create subunits, neighborhoods or internal communities which promote pedestrian and cyclist activity and community interaction.

(d) The tract or parcel shall have access to existing or proposed roads:

(1) In accordance with chapter 10 and as specified in the Lee Plan traffic circulation element or the official trafficways map of the county;

(2) That have either sufficient existing capacity or the potential for expanded capacity to accommodate both the traffic generated by the proposed land use and that traffic expected from the background (through traffic plus that generated by surrounding land uses) at a level of service D or better on an annual average basis and level of service E or better during the peak season, except where higher levels of service on specific roads have been established in the Lee Plan; and

(3) That provide ingress and egress without requiring site-related industrial traffic to move through predominantly residential areas.

(4) Planned developments on Greater Pine Island must also connect to existing streets in the adjacent area and to likely extensions of existing streets, as provided in section 10-294(b). "Greater Pine Island" means the area that is affected by Lee Plan Goal 14 as depicted on the Future Land Use Map and as described in section 34-2 of this code.

(e) – (q) *[no changes required]*

(r) Planned developments on Greater Pine Island must meet all of the special standards contained in this code and in the Lee Plan for Greater Pine Island. "Greater Pine Island" means the area that is affected by Lee Plan Goal 14 as depicted on the Future Land Use Map and as described in section 34-2 of this code.

CHAPTER 34
Zoning
ARTICLE VII, SUPPLEMENTARY DISTRICT REGULATIONS
Division 17, Fences, Walls, Gates and Gatehouses

Sec. 34-1743. Residential project walls.

(a) Definition: For purposes of this section, a residential project fence means a wall or fence erected around a residential subdivision (but not individual lots) or development of ten or more dwelling units.

(b) A residential project fence or wall:

(1) May be a maximum height of eight feet around the perimeter of the project upon a finding by the development services director that the fence does not interfere with vehicle visibility requirements (see section 34-3131) at traffic access points.

(2) May include architectural features such as columns, cupolas, fountains, parapets, etc.,

at a height not to exceed twice the fence or wall height provided they are compatible with the project and abutting properties.

(3) Must be landscaped on the exterior side (between the wall and the abutting property or street right-of-way) with a minimum of five trees per 100 lineal feet and shrub hedges.
   a. Hedges must be planted and maintained so as to form a 36-inch high continuous visual screen within 1 year after time of planting.
   b. Trees adjacent to a right of way must be appropriately sized in mature form so that conflicts with overhead utilities, lighting and signs are avoided. The clustering of trees and use of palms adjacent to the right of way will add design flexibility and reduce conflicts.

(4) Must be constructed to ensure that historic water flow patterns are accommodated and all stormwater from the site is directed to on-site detention/retention areas in accordance with the SFWMD requirements.

(5) May not be permitted until proper documents have been recorded providing for the maintenance of the project fence and landscaping.

(c) Residential project fences or walls are not permitted on Greater Pine Island. "Greater Pine Island" means the area that is affected by Lee Plan Goal 14 as depicted on the Future Land Use Map and as described in section 34-2 of this code.

Sec. 34-1748. Entrance gates and gatehouses.

The following regulations apply to entrance gates or gatehouses that control access to three or more dwelling units or recreational vehicles, or any commercial, industrial or recreational facility:

(1) An entrance gate or gatehouse that will control access to property 24 hours a day may be permitted provided that:
   a. It is not located on a publicly dedicated street or street right-of-way; and
   b.
      1. Appropriate evidence of consent from all property owners who have the right to use the subject road or from a property owner's association with sufficient authority is submitted; and
      2. If it is to be located within a planned development, it must be an approved use in the schedule of uses; and
   c. The gate or gatehouse is located*:
      1. A minimum of 100 feet back from the intersecting street right-of-way or easement; or
      2. The gate or gatehouse is designed in such a manner that a minimum of five vehicles or one vehicle per dwelling unit, whichever is less, can pull safely off the intersecting public or private street while waiting to enter; or
      3. The development provides right turn and left turn auxiliary lanes on the intersecting street at the project entrance. The design of the auxiliary lanes must be approved by the development services director.

      * Where, in the opinion of the director of development services, traffic volumes on the intersecting street are so low that interference with through traffic will be practically non-existent, the director may waive or modify the locational requirements set forth in (1)c. above. If the intersecting street is county-maintained, then the Director of Lee County Department of Transportation must concur. The decision to

waive or to modify the locational requirements is discretionary and may not be appealed.

d. The development provides right turn and left turn auxiliary lanes on the intersecting street at the project entrance. The design of the auxiliary lanes must be approved by the development services director.

e. For Greater Pine Island only, an entrance gate or gatehouse can be used to control access only to a single block. Entrance gates or gatehouses cannot interfere with movement of cars between neighborhoods (see section 10-294(b).

1. "Greater Pine Island" means the area that is affected by Lee Plan Goal 14 as depicted on the Future Land Use Map and as described in section 34-2 of this code.

2. For purposes of this subsection, a "single block" means the length of any street from a dead-end or cul-de-sec to the first intersecting street and which provides access to no more than 25 existing or potential dwelling units.

(2) Access for emergency vehicles must be provided.

a. Any security gate or similar device that is not manned 24 hours per day must be equipped with an override mechanism acceptable to the local emergency services agencies or an override switch installed in a glass-covered box for the use of emergency vehicles.

b. If an emergency necessitates the breaking of an entrance gate, the cost of repairing the gate and the emergency vehicle if applicable, will be the responsibility of the owner or operator of the gate.

(3) Extension of fences or walls to an entrance gate or gatehouse. A fence or wall may be extended into the required setback where it abuts an entrance gate or gatehouse, provided vehicle visibility requirements (see section 34-3131) are met.

(4) Entrance gates that are installed solely for security purposes for non-residential uses, and that will remain open during normal working hours, are not subject to the location requirements set forth in (1)c. above and are not required to be equipped with an override mechanism acceptable to the local emergency services agencies or an override switch installed in a glass-covered box for the use of emergency vehicles. However, if an emergency necessitates the breaking of an entrance gate, the cost of repairing the gate and the emergency vehicle if applicable, will be the responsibility of the owner or operator of the gate.

IMPLEMENTING POLICY 14.3.3

RECENT CHANGES TO LEE PLAN POLICY 14.3.3:

POLICY 14.3.3: The county's Land Development Code ~~zoning regulations~~ will continue to state that no building or structure on Greater Pine Island will be erected or altered so that the peak of the roof exceeds thirty-eight (38) feet above the average grade of the lot in question, or forty-five (45) feet above mean sea level, whichever is the lower. No deviations from these height restrictions may be granted through the planned development process. These height restrictions will not be measured from minimum flood elevations nor will increases in building height be allowed in exchange for increased setbacks. Industrial buildings must also comply with these height restrictions.

SUMMARY OF CODE CHANGES NEEDED TO IMPLEMENT POLICY 14.3.3:

a. "No deviations from these height restrictions may be granted through the planned development process." – ADD THIS PROVISION TO 34-2175(5)
b. "These height restrictions will not be measured from minimum flood elevations..." DELETE GREATER PINE ISLAND FROM 34-2171(1)
c. "...nor will increases in building height be allowed in exchange for increased setbacks." ADD PROVISIONS TO 34-2174 & 34-2175(5) THAT EXEMPT GREATER PINE ISLAND FROM THESE INCREASES IN BUILDING HEIGHT
d. "Industrial buildings must also comply with these height restrictions." DELETE THE EXEMPTION FOR INDUSTRIAL BUILDINGS FROM 34-2175(5)
e. ADD GREATER PINE ISLAND TO OTHER ISLANDS LISTED IN 34-1444(B)(3) FOR PURPOSES OF REGULATING TOWER HEIGHTS

COMPOSITE CODE CHANGES TO IMPLEMENT POLICY 14.3.3:

CHAPTER 34
Zoning
ARTICLE VII, SUPPLEMENTARY DISTRICT REGULATIONS
Division 11, Wireless Communication Facilities

Sec. 34-1444. Permissible wireless facility locations.

(a) Except as provided below, a wireless communications facility may be permitted only in accordance with Table 34-1447 and the provisions of this chapter. Regardless of the process required, the applicant must comply with all submittal, procedural and substantive provisions of this chapter. Variances or deviations from the requirements of this division may be granted only in accordance with the requirements of section 34-1453 for a variance.

(b) Exceptions:
(1) Broadcast antenna-supporting structures in excess of 250 feet will only be allowed within an agricultural zoning district by variance in accordance with the requirements of section 34-1453. Broadcast studios are not allowed in the agricultural zoning district and must comply with all other applicable zoning and development regulations.
(2) All antennas proposed to be mounted on existing buildings or structures must apply for administrative review as set forth in section 34-1445(b).
(3) On the barrier islands, Greater Pine Island, and within the outer island future land use

areas, the overall height of wireless communications facilities must not exceed 35 feet or the height limitation set forth in section 34-2175, whichever is less. ~~The provisions set forth in section 34-2174 are applicable only to~~ For stealth wireless communication facilities only, these height limitations may be increased by one foot for each one-half foot that every required street, side, and rear setback is increased.

(4) Wireless communications facilities are prohibited in the Density Reduction - Groundwater Resource (DR/GR) Future Land Use areas, wetlands, environmentally critical zoning districts and areas readily visible from the University Window Overlay, except for:
   a. Stealth wireless communication facilities;
   b. Surface-mounted and flush-mounted antennas; and
   c. Collocations.

The design of any facility proposed in these areas must be reviewed in accordance with the provisions of section 34-1445 and section 34-1447.

CHAPTER 34
Zoning
ARTICLE VII, SUPPLEMENTARY DISTRICT REGULATIONS
Division 30, Property Development Regulations

Subdivision II. Height

Sec. 34-2171. Measurement.

(a) Except as provided in this subdivision, the height of a building or structure is measured as the vertical distance from grade* to the highest point of the roof surface of a flat or Bermuda roof, to the deck line of a mansard roof, and to the mean height level between eaves and ridge of gable, hip and gambrel roofs, and to the highest point of any other structure (excluding fences and walls).

* For purposes of this subdivision, grade is the average elevation of the street or streets abutting the property measured along the centerline of the streets, at the points of intersection of the streets with the side lot lines (as extended) and the midpoint of the lot frontage.

(1) In areas within the Coastal Building Zone and other flood prone areas (as defined in Chapter 6 Articles III and IV of the LDC), height of a building is the vertical distance from the minimum required flood elevation to the highest point of the roof surface of a flat or Bermuda roof, to the deck line of a mansard roof, to the mean height level between eaves and ridge of gable, hip and gambrel roofs. However, this substitution of "minimum required flood elevation" for "average grade" does not apply to Captiva Island, Gasparilla Island, or Greater Pine Island (sections 34-2175(2), (4), and (5) respectively).

(2) Fences, walls, and buffers are measured in accordance with section 34-1744 and section 10-416.

Sec. 34-2172. Reserved.

NOTE: The provisions of sections 34-2173 and 34-2174 do not apply to satellite earth stations and amateur radio antennas (section 34-1175) or wireless communication facilities (section 34-1441, et seq.), except for stealth facilities.

Sec. 34-2173. Exception to height limitations for certain structural elements.

(a) The following structural appurtenances may exceed the height limitations stipulated in the applicable districts for authorized uses, without increasing setbacks as required in section 34-2174:

(1) Purely ornamental structural appurtenances such as church spires, belfries, cupolas, domes, ornamental towers, flagpoles or monuments.

(2) Appurtenances necessary to mechanical or structural functions such as chimneys and smokestacks, water tanks, elevator and stairwell enclosures, ventilators, and bulkheads; AM and FM radio and television masts, aerials, and antennas; fire and hose towers, utility transmission and distribution structures, cooling towers, aircraft control towers or navigation aids, forest fire observation towers, and barns, silos, windmills or other farm structures when located on farms.

   For satellite earth stations and amateur radio antennas - refer to section 34-1175.

For wireless communication facilities, refer to section 34-1441 et seq.

(b) The permitted exceptions to the height limitations may be authorized only when the following conditions can be satisfied:

(1) The portion of the building or structure permitted as an exception to a height limitation may not be used for human occupancy or for commercial purposes.

(2) Structural exceptions to height limitations may only be erected to the minimum height necessary to accomplish the purpose it is intended to serve, and no higher.

(3) If the roof area of the structural elements permitted to exceed the height limitations equals 20 percent or more of the total roof area, they will be considered as integral parts of the whole structure, and therefore not eligible to exceed the height limitations.

Sec. 34-2174. Additional permitted height when increased setbacks provided.

(a) Subject to conditions set forth in section 34-2175, any building or structure may be permitted to exceed the height limitations specified by the zoning district regulations in which the property is located provided every required street, side, and rear setback is increased by one-half foot for every one foot by which the building or structure exceeds the specified height limitation.

(b) In zoning districts that do not specify a maximum height limitation, the increase to setbacks stated in this section will apply to all buildings or structures exceeding 35 feet in height.

(c) The additional height in exchange for increased setbacks that is permitted by this section may not be used on Upper Captiva Island, Captiva Island, Gasparilla Island, Greater Pine Island, and all other islands (sections 34-2175(1), (2), (4), (5), and (6) respectively).

Sec. 34-2175. Height limitations for special areas.

The following areas have special maximum height limitations applicable to all conventional and planned development districts:

(1) ***Upper Captiva Island.*** The height of a structure may not exceed 35 feet above grade (base flood elevation). The provisions of section 34-2174(a) do not apply to Upper Captiva Island. No variance or deviation from the 35-foot height restriction may be granted.

In addition to compliance with all applicable building codes (including Fire and Life Safety codes), any building with two or more stories or levels must provide an exterior stairway from the uppermost levels (including "widow's walks" or observation decks) to the ground OR a one-hour fire rated interior means of egress from the uppermost levels (including "widow's walks" or observation decks) to the ground.

(2) ***Captiva Island.*** No building or structure may be erected or altered so that the peak of the roof exceeds 35 feet above the average grade of the lot in question or 42 feet above mean sea level, whichever is lower. The provisions of section 34-2174(a) do not apply to Captiva Island. No variance or deviation from this height restriction may be granted.

(3) ***San Carlos Island.*** The height of a structure may not exceed 35 feet above grade, except as provided for in section 34-2174. If seaward of the coastal construction control line, elevations may exceed the 35-foot limitation by three feet for nonconforming lots of record.

(4) ***Gasparilla Island conservation district.*** No building or other structure may be erected or altered so that the peak of the roof is more than 38 feet above the average grade of the lot or parcel on which the building or structure is located, or is more than 42 feet above mean sea level, whichever is lower.

(5) ***Greater Pine Island.*** No building or structure may be erected or altered so that the peak of the roof exceeds 38 feet above the average grade of the lot in question or 45 feet above mean sea level, whichever is lower. ~~The term "building or structure," as used in this subsection, does not include a~~

~~building or structure used for an industrial purpose.~~

a. "Greater Pine Island" means the area that is affected by Lee Plan Goal 14 as depicted on the Future Land Use Map and as described in section 34-2 of this code.
b. The provisions of section 34-2174(a) do not apply to Greater Pine Island.
c. Structures without roofs will be measured to the highest point on the structure.
d. No deviations from these height restrictions may be granted through the planned development process.
e. Any variances from these height restrictions require all of the findings in section 34-145(3) plus these additional findings:
    1. The variance must be fully consistent with the Lee Plan, including its specific provisions for Greater Pine Island.
    2. The relief granted by the variance must be the minimum required to offset the specific exceptional or extraordinary conditions or circumstances that are inherent to the property in question. The only exception is where the relief is required to maintain or improve the health, safety, or welfare of the general public (not just the health, safety, or welfare of the owners, customers, occupants, or residents of the property in question).

(6) ***All other islands.*** The height of a structure may not exceed 35 feet above grade (base flood elevation). Except as provided in subsections 34-2175 (3)~~, (4), and (5),~~ the provisions of section 34-2174(a) do not apply to islands. No variance or deviation from the 35-foot height restriction may be granted.

(7) ***Airport hazard zone.*** Height limitations for the airport hazard zone are set forth in article VI, division 10, subdivision III, of this chapter.

Secs. 34-2176--34-2190. Reserved.

IMPLEMENTING POLICY 14.4.3

NEW LEE PLAN POLICY 14.4.3:

POLICY 14.4.3: The county will expand the commercial design standards in its land development code to provide specific architectural and site design standards for Greater Pine Island if an acceptable proposal is submitted by the Greater Pine Island community. These standards would promote but not mandate rehabilitation over demolition; require smaller rather than larger buildings; avoid standardized franchise buildings; preserve mature trees wherever possible; place most parking to the side and rear; require large windows and forbid most blank walls; and encourage metal roofs and other features of traditional "Old Florida" styles. The new commercial design standards will reflect the different characteristics of Bokeelia, Pineland, Matlacha, and St. James City.

SUMMARY OF CODE CHANGES NEEDED TO IMPLEMENT POLICY 14.4.3:

a. "The county will expand the commercial design standards in its land development code to provide specific architectural and site design standards for Greater Pine Island..." – ADD THESE PROVISIONS TO 10-621

COMPOSITE CODE CHANGES TO IMPLEMENT POLICY 14.4.3:

CHAPTER 10
Development Standards
ARTICLE IV, DESIGN STANDARDS AND GUIDELINES FOR COMMERCIAL BUILDINGS AND DEVELOPMENTS

Sec. 10-601. Definitions.

The following words, terms or phrases, when used in this article only, will have the following meanings ascribed to them:

Arcade means a roof, similar to an overhang or canopy but where the outer edge is supported by a line of pillars or columns.

Awning means a cover of lightweight material such as canvas, plastic, or aluminum, extending over a single doorway or window, providing protection from the elements.

Canopy, attached means a permanent structural cover affixed to and extending from the wall of a building, protecting a doorway or walkway from the elements.

Canopy, detached means a freestanding structure which covers a walkway or service area.

Facade means the exterior faces of a building.

Facade, primary means any facade of a building facing an abutting street. On a corner lot, each wall facing an abutting street is considered a primary facade. If a building is angled to an abutting street, both walls roughly facing the street are primary facades.

Overhang means the structural projection of an upper story or roof beyond the story immediately below.

Parapet means the part of an exterior wall that extends above the roof.

Portico means an architectural entry feature structurally supported by columns or arches and protecting a doorway or walkway from the elements.

Shopping center means a multiple-occupancy building or complex wherein the predominant tenants are retail businesses and offices.

Wall, front means the wall closest to, and running roughly parallel to, the front lot line. On a corner lot, there are two front walls.

Sec. 10-620. Design standards and guidelines for commercial buildings.

(a) ***Purpose and intent.*** The purpose and intent of these provisions is to maintain and complement the street scape by requiring that buildings be designed with architectural features and patterns that provide visual interest consistent with the community's identity and local character while reducing the mass/scale and uniform monolithic appearance of large unadorned walls. (See Illustration 4 below.) Due to inherent problems in the CRA overlay district, compliance with the CRA overlay district design guidelines may substitute for the criteria set forth in this section.

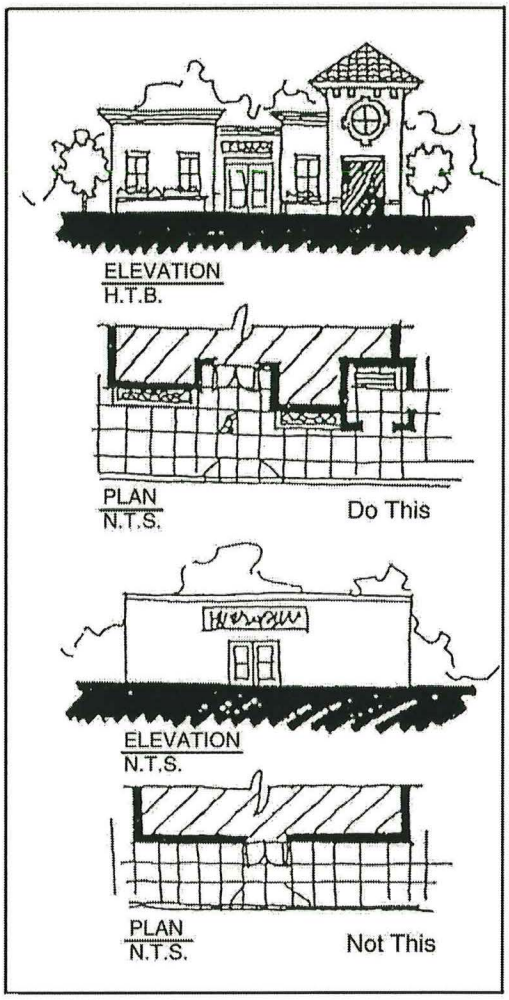


ILLUSTRATION # 4

(b) ***Building/view orientation standards.*** Buildings must be oriented to maximize pedestrian access, use and view of any adjacent navigable water bodies.

(c) ***Facades.***

(1) *Wall height transition.* New buildings that are more than twice the height of any existing building within 300 feet must be designed to provide a transition between buildings of lower height. (See Illustration 5 below.)

(2) *Architectural design.*

a. All primary facades of a building must be designed with consistent architectural style, detail and trim features.

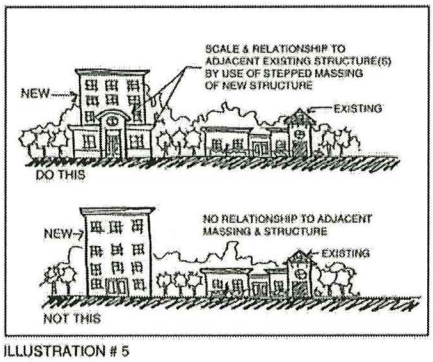


ILLUSTRATION # 5

b. Buildings must provide a minimum of three of the following building design treatments integrated with the massing and style of the buildings. (See Illustrations 6 and 7 below.) If awnings, canopies and overhangs are used they must conform to a unified plan of compatible colors, shapes and materials.
   1. Awnings or attached canopies;
   2. Overhangs;
   3. Porticos;
   4. Arcades, minimum of eight feet clear in width;
   5. Peaked roof forms;
   6. Display windows along a minimum of 50 percent of front walls and any other wall alongside a pedestrian walkway;
   7. Clock or bell towers; or
   8. Any other treatment which the development services director finds meets the intent of this section:

   and on large projects one of the following site design elements: or
   1. Integration of specialty pavers, or stamped concrete along the building's walkway. Said treatment must constitute a minimum of 60 percent of walkway area;
   2. Fountains, reflection ponds or other water elements, a minimum of 150 square feet in area for every 300 lineal feet of primary facade length; or
   3. Any alternative treatment or combination of the above elements that the development services director finds meets the intent of this section.

(3) *Corner lots.* In addition to the above, corner lots at an intersection of two or more arterial or collector roads must be designed with additional architectural embellishments, such as corner towers, or other such design features, to emphasize their location as gateways and transition points within the community.

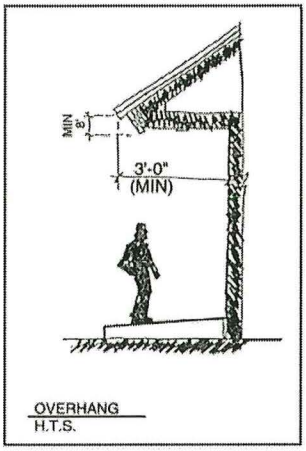


ILLUSTRATION #6

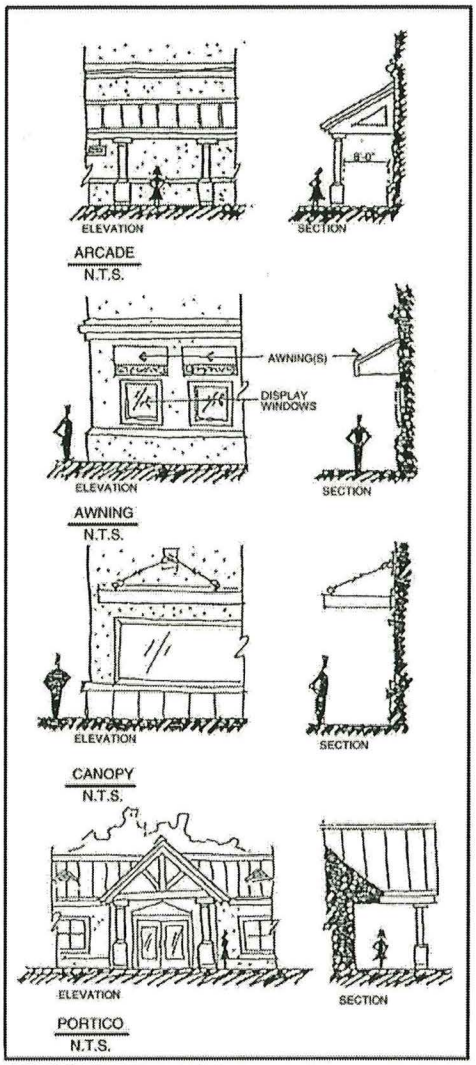


ILLUSTRATION # 7

(d) ***Roof treatments.***

(1) *Purpose and intent.* Variations in roof lines must be used to add interest to, and reduce the massing of buildings. Roof features and materials must be in scale with the building's mass and complement the character of adjoining and/or adjacent buildings and neighborhoods. The following standards identify appropriate roof treatments and features.

(2) *Roof edge and parapet treatment.* The roof edge and/or parapet must have a vertical change from the dominant roof condition, in two locations. At least one such change must be located on a primary facade. (See Illustration 8 below.)

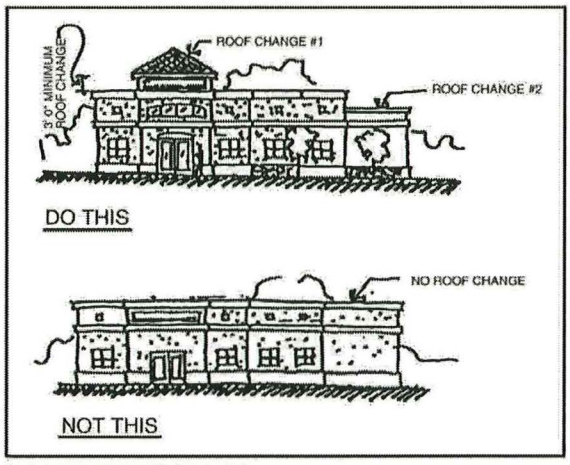


ILLUSTRATION #8

(3) Roofs must be designed to also meet at least two of the following requirements:
   a. Parapets used to conceal roof top equipment and flat roofs;
   b. Three or more roof slope planes per primary facade. (See Illustration 9 below);
   c. Sloping roofs, which do not exceed the average height of the supporting walls, must have an average slope equal to or greater than 4V:12H but not greater than 12V:12H;
   d. Additional vertical roof changes with a minimum change in elevation of two feet (flat roofs must have a minimum of two changes): or

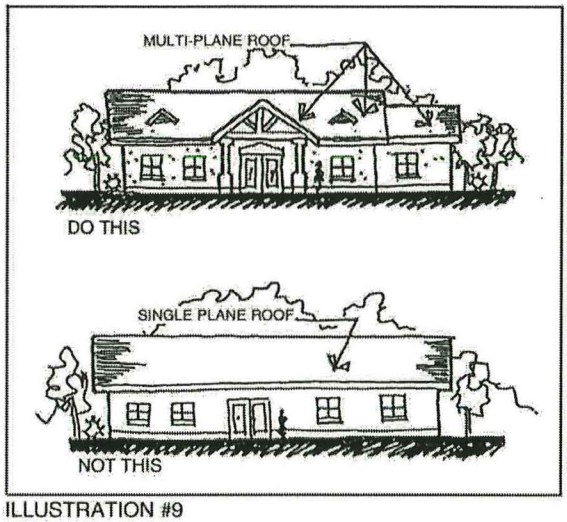


ILLUSTRATION #9

   e. Three-dimensional cornice treatment which must be a minimum of ten inches in height with a minimum of three reliefs.

(4) *Prohibited roof types and materials.* The following types of materials are prohibited:
   a. Roofs utilizing less than or equal to a 2V:12H pitch unless utilizing full parapet coverage or mansard; and
   b. Mansard roofs except roofs with a minimum vertical distance of eight feet and an angle between 45 and 70 degrees from horizontal.

(e) ***Detail features.*** The design elements in the following standards must be integral parts of the building's exterior facade and must be integrated into the overall architectural style. These elements may not consist solely of applied graphics, or paint.

(1) *Blank wall areas.* Building walls and facades, must avoid large blank wall areas by including at least three of the design elements listed below, in a repeating pattern. At least one of the design elements must repeat horizontally.
   a. Texture change;
   b. Material change;
   c. Architectural features such as bandings, bays, reveals, offsets, or projecting ribs. (See Illustration 10 below);

d. Building setbacks or projections; or,
e. Pattern change.

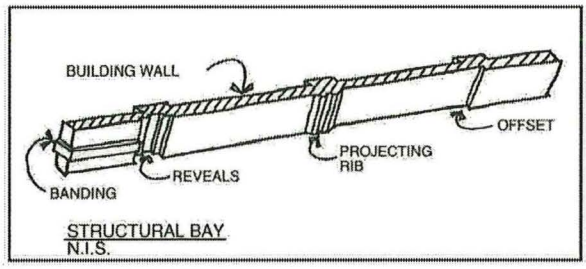


ILLUSTRATION #10

(2) *Materials.* Exterior building materials contribute significantly to the visual impact of a building on the community. They must be well-designed and integrated into a comprehensive design style for the project.
   a. The following exterior building materials can not be used on more than 50 percent of the building facade area:
      1. Plastic or vinyl siding except to establish the "old Florida" look;
      2. Corrugated or reflective metal panels;
      3. Tile (prohibition does not apply to roofs);
      4. Smooth, scored or rib faced concrete block;
      5. Any translucent material, other than glass; or
      6. Any combination of the above.
   b. Building trim and accent areas, consistent with the overall building, are limited to ten percent of the affected wall area, with a maximum trim width of 24 inches.

Sec. 10-621. Greater Pine Island.

(a) ***Applicability.*** This section provides additional design standards and guidelines for commercial buildings in Greater Pine Island. Greater Pine Island is identified on the future land use map and is described in section 34-2 of this code. These additional standards and guidelines are applicable to all new development and to renovations and redevelopment as provided in section 10-602, except as modified by this section. Where the standards or guidelines in this section conflict with other standards of this article, this section shall control.

(b) ***Purpose and intent.*** The standards in this section implement Lee Plan Policy 14.4.3 by expanding on the commercial design standards for unincorporated Lee County. These additional standards for Greater Pine Island encourage rehabilitation of existing buildings; require smaller rather than larger buildings; avoid standardized franchise buildings; preserve mature trees wherever possible; place most parking to the side and rear; require large windows and forbid most blank walls; and encourage metal roofs and other features of vernacular commercial buildings.

(c) ***Rehabilitation of existing buildings.*** The standards and guidelines in this article apply to additions and renovations to, or redevelopment of, an existing building where the cumulative increase in total floor building area exceeds 75% of the square footage of the existing building being enlarged or renovated, instead of when exceeding 50% of the square footage as required by section 10-602(b) for the remainder of unincorporated Lee County.

(d) ***Building size and character.*** New commercial buildings are limited to 10,000 square feet of floor area each unless a larger size is approved by variance or by deviation in a commercial planned development. Any larger buildings approved by variance or deviation must be designed to minimize the appearance of a single large box or a standard franchise design.

(e) ***Windows.*** The following rules apply to windows on all primary facades (as defined in section 10-601).
   (1) Transparent windows must be installed along a minimum of 30 percent of each primary facade.
      a. All window glass, whether integrally tinted or with film applied, must transmit at least 50% of visible daylight.
      b. Private interior spaces such as offices may use operable interior blinds for privacy.
   (2) New window openings must be rectangular and oriented vertically, except for transom windows over doors.
   (3) The bottoms of all new window openings must be no higher than 30 inches above the finish floor elevation.

(4) New windows must contain visible sills and lintels on the exterior of the wall.
(5) New windows must have their glazing set back at least 3 inches from the surface plane of the wall, or set back at least 2 inches when wood frame construction is used.

(f) ***Metal roofs.*** Sloping roofs must use metal for all finished surfaces; however, this requirement shall not apply to buildings that have been designated as historic pursuant to ch. 22 of this code.

(g) ***Mature trees.*** The development services director may grant deviations from the technical standards in this chapter to accommodate the preservation of existing mature trees on a development site.
(1) To qualify for a deviation, the tree being preserved must be at least six inches in diameter at breast height and must not be an invasive exotic tree as defined by section 10-420.
(2) The deviation requested must not compromise the public health, safety or welfare in the opinion of the development services director.

(h) ***Parking lots.*** Except in the Matlacha historic district and except for marinas anywhere in Greater Pine Island, no more than a single row of parking spaces may be located between the primary facade of a building and the front lot line. In addition, at least one half of all parking spaces provided on a site must be located further from the front lot line than the plane of a primary facade that is closest to the front lot line.

Secs. 10-6221—10-629. Reserved.

IMPLEMENTING POLICY 14.4.4

NEW LEE PLAN POLICY 14.4.4:

POLICY 14.4.4: The county will expand its current sign regulations to include specific standards for Greater Pine Island if an acceptable proposal is submitted by the Greater Pine Island community. These standards would reduce the size of ground-mounted signs, discourage or disallow internally lit box signs, allow wall signs on buildings near the right-of-way, and allow small directional signs on Stringfellow Road for businesses not visible from the road.

SUMMARY OF CODE CHANGES NEEDED TO IMPLEMENT POLICY 14.4.4:

a. "These standards would reduce the size of ground-mounted signs..." – MODIFY 30-153(3)a.8
b. "... discourage or disallow internally lit box signs..." – MODIFY 30-153(3)d
c. "... allow wall signs on buildings near the right-of-way..." – MODIFY 30-153(2)a.4 & 30-153(3)e
d. "... and allow small directional signs on Stringfellow Road for businesses not visible from the road." – ADD PROVISIONS FOR DIRECTIONAL SIGNS TO 30-181(c) & TO ORDINANCE 88-11; REPLACE EXISTING BILLBOARDS BEING USED AS DIRECTIONAL SIGNS BY ADDING 30-55(b)(5) & 30-183(13).

COMPOSITE CODE CHANGES TO IMPLEMENT POLICY 14.4.4:

CHAPTER 30
Signs
ARTICLE I, IN GENERAL

Sec. 30-2. Definitions and rules of construction.

(a) In case of any difference of meaning or implication between the text of this chapter and any other law or regulation, this chapter shall control.

(b) The following words, terms and phrases, when used in this chapter, have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Greater Pine Island means the area that is affected by Lee Plan Goal 14 as depicted on the Future Land Use Map and as described in section 34-2 of this code.

[no other changes to section 30-2]

CHAPTER 30
Signs
ARTICLE II, ADMINISTRATION AND ENFORCEMENT

Sec. 30-55. Nonconforming signs.

(a) ***Status.*** Every sign, as of the effective date of the ordinance from which this chapter is derived, which is a permitted legally existing sign shall be deemed a legal nonconforming sign. A permitted sign means a sign that was constructed or is in place with a valid permit from the county. All nonconforming signs shall be subject to the provisions of this section. All existing signs which are not legal nonconforming signs must comply with the terms of this chapter.

(1) A nonconforming sign may not be enlarged or altered in a way which increases its nonconformity.
(2) Nothing in this section shall relieve the owner or user of a legal nonconforming

sign or owner of the property on which the legal nonconforming sign is located from the provisions of this chapter regarding safety, maintenance and repair of signs. Any repair or refurbishing of a sign that exceeds 25 percent of the value of the sign in its preexisting state shall be considered as an act of placing a new sign and not an act of customary maintenance. It shall be the responsibility of the permittee to provide the division of community development with adequate proof of the cost of such work in the form of an itemized statement of the direct repair cost, whenever such information is requested by the division.

(3) If any nonconforming sign is destroyed to an extent of 50 percent or more of its assessed value at the time of destruction, the sign shall not be replaced or repaired, in part or in full, except upon full compliance with this chapter.

(4) A replacement billboard structure may be rebuilt in its present location provided that the structure is in compliance with the following conditions:

a. Pursuant to the application for replacement, two legal nonconforming billboard structures shall be removed in exchange for the right to reconstruct one replacement billboard structure.

b. One of the structures which is to be removed must be located on the same site as the replacement billboard structure. If only one structure is located on the site of the replacement sign, another nonconforming billboard structure must be removed from another location within the unincorporated area of the county.

c. The replacement billboard structure must meet all current county height, size and setback requirements.

d. The land use category in which the replacement sign is to be erected shall be the less restrictive of the two land use categories where the two removed nonconforming billboard structures were located. If the land use category is the same for both nonconforming billboard structures, the replacement structure may be located at either site. For purposes of this section, the following hierarchy of land use categories should be used to determine the least restrictive land use categories, with the most appropriate categories listed in descending order:

1. Intensive development, industrial development, airport commerce and interchange areas;
2. Central urban and urban community;
3. Suburban and outlying suburban;
4. Rural, outer islands and density reduction/groundwater resources; and
5. Environmentally critical areas (resource protection area and transitional zones).

e. Upon approval of the application for replacement and completion of the conditions specified in this subsection, the replacement billboard structure shall be deemed in conformance with this chapter.

f. No replacement billboard structure may be located in the locations designated in section 30-183(1)b.

(b) ***Loss of legal nonconformity.***

(1) A legal nonconforming sign shall become an illegal sign which must comply with this chapter if:

a. More than 50 percent of the sign is removed or unassembled for a period of more than six months.

b. The sign is altered or relocated in any manner which increases its nonconformity or causes it to be less in compliance with the provisions of this chapter. A change in copy of a sign listed as a prohibited sign by this chapter is presumed to be an alteration which increases nonconformity; such a copy change on a prohibited sign is prohibited. To establish that the nonconformity is not increased by replacing copy on a sign, other than on a changeable copy sign (where it is presumed that changing copy cannot increase nonconformity) or a prohibited sign (where a change of copy is never allowed), a sealed statement from a state-certified engineer certifying that the sign meets the structural integrity required by the current applicable building code shall

be submitted to the building official in those instances when engineering documents are required for original placement of such a sign. All signs for which a change of copy is permitted shall be made to conform with the requirements of this chapter by April 1, 1993, or any such sign shall lose its legal nonconforming status and shall be removed.

c. Repair or refurbishing exceeds 25 percent of the value of the sign in its preexisting state.

d. The sign is replaced, except as provided in subsection (a)(4) of this section.

(2) When a sign face remains blank, which is defined as void of advertising matter, for a period of 12 months it loses its nonconforming status and must be treated as a sign which must comply with all the requirements of this chapter. Signs displaying an "available for lease" message or similar message and partially obliterated signs which do not identify a particular product, service or facility are considered to be blank signs.

(3) A nonconforming sign that has lost its legal nonconforming status shall be immediately brought into compliance with this chapter, or the sign shall be removed.

(4) The existence of an illegal sign or a legal nonconforming sign does not constitute a hardship warranting the issuance of a variance from the provisions of this chapter.

(5) Certain nonconforming off-site directional signs and billboards in Greater Pine Island lost their nonconforming status upon adoption of section 30-183(c). These signs became illegal signs at that time and must be removed within 12 months after adoption of section 30-183(c).

a. Qualifying businesses that have used nonconforming billboards as off-site directional signs may replace these billboards with new off-site directional signs located in the right-of-way in accordance with section 30-183(c).

b. All other billboards must be removed within 12 months after adoption of section 30-183(c) unless their owners can demonstrate that the billboard has been in continual compliance with the requirements of this code for nonconforming signs (see section 30-183(b)(1)–(b)(4).

CHAPTER 30
Signs
ARTICLE IV, RESTRICTIONS BASED ON LOCATION

Sec. 30-153. Permanent signs in commercial and industrial areas.

In order to provide fair, equal and adequate exposure to the public, and to prevent a single property owner from visually dominating neighboring properties with signs, all nonresidential uses are limited to a total permissible sign area in accordance with the provisions of this section.

(1) **Calculation of total permissible area.** Except as specifically provided in section 30-6(1)w, total permitted sign area for any nonresidential use shall be calculated at the ratio of 20 square feet of sign area for every ten linear feet, or major fraction thereof, of frontage on a street which affords vehicle access to the property, subject to the following limitations:

a. *Single frontage.*

1. For uses with 50 feet or less frontage, maximum permitted sign area shall be 100 square feet.
2. For uses with over 50 feet but less than 100 feet of frontage, maximum permitted sign area shall be 150 square feet.
3. For uses with from 100 to 330 feet of frontage, maximum permitted sign area shall be 300 square feet.
4. For uses with over 330 feet of frontage, maximum permitted sign area shall be 400 square feet.

b. *Multiple frontage.*

1. *Corner lots.* Uses located on corner lots may utilize up to the maximum sign area allowed for each frontage providing vehicle access. No transfers of allowable area may be made from one frontage to another. See subsection (2)a of this section for exceptions.

2. *Parallel street frontage.* Uses with frontage on two streets which do not form a corner lot shall be allowed sign area credit for the second street as follows:
   i Both streets collector or better. When both streets serve as collectors or better and public access is available from both streets, each street frontage shall be computed as provided in subsection (1)a of this section. However, no transfers of allowable area may be made from one frontage to the other. (Example: a use located on a through lot between old and new U.S. 41.)
   ii *One street collector or better and one street local.* When a use fronts on two streets, one of which is classified as a local street, the following limitations shall apply:
      (a) If the property across the local street is residential or institutional, or if the primary use on either side of the local street within that block is residential, the sign area allowance on the local street shall be limited to 25 square feet, regardless of frontage. (Example: property front has primary access to U.S. 41 but also borders a local street behind the property.)
      (b) If the property across the local street is commercial or industrial, and the street provides vehicular access to the subject property, sign area allowance shall be the same as provided in subsection (1)a of this section. No transfer of allowable area may be made from one street to the other. (Example: a business establishment located in a commercial or industrial area.)
   iii *Both streets local.* When a use borders on two local streets, full sign area credit shall be allowed for the street that provides the primary vehicle access. The second street shall be limited to a sign area of 25 square feet. No transfers of allowable sign area shall be made from one street to the other. (Example: a permitted establishment in a primarily residential area.)
   iv *Frontage roads.* Where a business fronts upon a collector or better street but is separated by a frontage road, the allowable sign area shall be treated as though the frontage road was not there.

(2) **Nonresidential subdivisions and multiple-occupancy complexes with more than five establishments.**
   a. ***Identification sign.*** A nonresidential subdivision or a multiple-occupancy complex of more than five establishments shall be permitted one ground-mounted identification sign along any street which provides access to the property as follows:
      1. One square foot of sign area per face shall be permitted for every one linear foot of frontage, provided that:
         i No sign shall exceed 200 square feet in area per sign face.
         ii Only one identification sign shall be permitted along any street frontage of less than 330 linear feet. A second identification sign may be permitted if the frontage along any one street exceeds 330 linear feet, provided that the total combined sign area of both signs does not exceed 300 square feet.
         iii On corner lots, the developer may either place one identification sign on both streets providing access as stipulated in subsections (2)a.1.i and ii of this section,

or he may place one sign in the corner with a total sign area based upon the total frontage of both streets provided the maximum sign area shall not exceed 300 square feet per face.

iv Where a nonresidential subdivision has more than one entrance from the same street, one additional identification sign not exceeding16 square feet in area, not illuminated, and displaying the name of the development only may be permitted at each additional entrance.

2. The maximum height of any identification sign shall be 24 feet.
3. Except as provided in subsection (2)a.1.iv of this section, the identification sign may be illuminated with a steady light, but the sign shall not be animated.
4. Identification signs shall be set back a minimum of 15 feet from any street right-of-way or easement, and ten feet from any other property line.
   i This requirement will not be construed to forbid a wall sign that meets the size limitations of this section from being placed on the front wall of a building that is lawfully closer than 15 feet to a front property line.
   ii In no case shall an identification sign be permitted between a collector or arterial street and a frontage road.

b. ***Directory signs.*** Nonresidential subdivisions and multiple-occupancy complexes of more than five establishments shall be permitted to place a directory sign on the same structure as the project identification sign, subject to the following limitations:
   1. Each directory sign must be of the same background and lettering and color scheme.
   2. Theaters may advertise on permitted identification signs provided the theater's copy area does not exceed 25 percent of the total permissible sign area.
   3. The maximum size of sign area for all directory and ground identification signs shall not exceed the size and height limitations as written in subsection (2)a of this section. It shall be the responsibility of the developer to assure adequate space on the directory and identification sign for each tenant. Failure to provide space shall not be grounds for any occupant to request or obtain a variance from the provisions of this section.

c. ***Individual occupants within multiple-occupancy complex.*** Individual offices, institutions, business or industrial establishments located within a multiple-occupancy complex shall not be permitted individual ground-mounted identification signs, but may display wall-mounted, marquee or under-canopy signs as follows:
   1. *Wall signs.*
      i Wall signs are permitted on any wall facing a collector or arterial street or parking lot provided that the total sign area of the wall sign and any attached marquee or canopy sign does not exceed ten percent of the wall area.
      ii Where the wall abuts residentially zoned property or a delivery vehicle accessway, wall signs shall be limited to a maximum size of 24 square feet in area.
   2. *Marquee signs.* Marquee signs are permitted only on marquees or canopies otherwise lawfully permitted or in existence. Marquee signs shall not extend horizontally beyond the edges of the canopy or marquee to which they are attached or from which they are suspended.

3. *Under-canopy signs.* Signs attached to the underside of a canopy shall have a copy area no greater than four square feet, with a maximum letter height of six inches, subject to a minimum clearance height of eight feet from the sidewalk, and shall be mounted as nearly as possible at a right angle to the building face, and must be rigidly attached.
4. *Sign content.* No sign permitted by this subsection (2)c shall contain any advertising message concerning any business, goods, products, services or facilities which are not manufactured, produced, sold, provided or located on the premises upon which the sign is erected or maintained.

d. ***Interior directional signs.*** Directional signs interior to a multiple-occupancy complex of five or more establishments or to a nonresidential subdivision may be permitted subject to the following:
1. Interior directional signs shall not exceed ten feet in height and 32 square feet in total sign area;
2. Individual tenant panels not exceeding four square feet in area may be affixed to the interior directional sign structure provided that the total sign area does not exceed 32 square feet;
3. Signs shall be located in a manner which will not adversely obstruct safe visibility between moving vehicles or vehicles and pedestrians;
4. Signs shall not be visible from outside the complex premises.

(3) **Individual office, institution, business or industrial establishments, and multiple-occupancy complexes with five or less establishments.** The following regulations shall apply for any office, institution, business or industrial establishment which is not located within a multiple-occupancy complex and to all multiple-occupancy complexes containing five or less establishments:

a. Every individual office, business or industrial establishment, and a multiple-occupancy complex of five or less establishments, shall be allowed one ground-mounted sign.
1. If the establishment has 50 feet or less frontage on a public right-of-way, the maximum sign area shall be 32 square feet, and the sign shall be located no closer than five feet to any side property line.
2. If the establishment has over 50 feet and up to 100 feet of frontage on a public right-of-way, the maximum permitted sign area shall be 64 square feet, provided that no ground-mounted sign shall be closer than five feet to any side property line.*
3. If the establishment has over 100 feet and up to 300 feet of frontage on a public right-of-way, the maximum permitted sign area shall be 72 square feet, and the sign shall be set back a minimum of ten feet from any side property line.*
4. Establishments having over 300 feet of frontage on a public right-of-way shall be permitted up to 96 square feet of sign area, and the sign shall be set back a minimum of ten feet from any side property line.*
5. Establishments having frontage on more than one public right-of-way may be allowed one additional ground-mounted sign on the secondary frontage of not more than 24 square feet in area.
6. On corner lots, the occupant may be allowed one single ground-mounted sign rather than two separate ground-mounted signs (one per street frontage) provided the total sign area of the ground-mounted sign does not exceed 1 1/2 times the maximum size permitted on any one street frontage.
7. In multiple-occupancy complexes of five or less occupants, ground sign area not identifying the

complex should be divided equally among the occupants.

8. *Establishments in subsections (3)a.2–3–4 above that are located in Greater Pine Island and wish to place a ground-mounted sign are limited to a maximum sign area of 48 square feet (see section 30-91) and a maximum height and width of 12 feet (see section 30-92).

b. Maximum height of a ground-mounted identification sign shall be 20 feet.

c. Identification signs may be illuminated, but shall not be animated.

d. Wall-mounted, marquee or canopy signs may be displayed provided the total sign area of such signs plus any permitted ground-mounted identification sign does not exceed the total permitted sign area for the property based upon the calculations set forth in subsection (1) of this section, provided that not more than ten percent of any wall area may be used for signage. For Greater Pine Island only, internally illuminated box signs mounted on or projecting from a building are limited to a maximum sign area of 12 square feet per establishment.

e. Identification signs shall be set back a minimum of 15 feet from any right-of-way or easement.

1. This requirement will not be construed to forbid a wall sign that meets the size limitations of this section from being placed on the front wall of a building that is lawfully closer than 15 feet to a front property line.

2. In no case shall an identification sign be permitted between a collector or arterial street and a frontage road.

(4) **Hospitals or other emergency medical facilities.** *[no changes required]*

(5) **Electronic changing message centers.** *[no changes required]*

Sec. 30-181. Off-site directional signs.

(a) ***Residential developments.***

(1) **Location; size.** Off-site, nonilluminating directional signs for subdivisions or residential projects shall be permitted along arterial and collector streets within 500 feet of the nearest intersection involving a turning movement to locate the development, subject to the following:
   a. For a development proposing a single sign to serve the traveling public from two directions, the sign shall not be closer than 50 feet from the intersection and shall not exceed 64 feet in area.
   b. For a development proposing two signs, one on each side of the intersection, the sign shall be a minimum of 100 feet from the intersection and shall not exceed 32 square feet in area.

(2) **Number of signs; separation.** No subdivision or residential development shall be permitted more than two off-site directional signs, and no off-site directional sign shall be located closer than 100 feet to any other off-site directional sign.

(3) **Setback.** Off-site directional signs shall be set back a minimum of 15 feet from any street right-of-way.

(4) **Height.** No off-site directional sign shall exceed a height of eight feet.

(5) **Copy area.** Off-site directional sign copy message shall be limited to the name of the development and directions to the development entrance. No advertising shall be permitted.

(b) ***Semipublic bodies.*** Off-site directional signs for semipublic bodies will be allowed subject to approval of the director or his designee, provided that:

(1) **Number of signs.** No semipublic body shall be allowed more than two off-site directional signs. Signs serving two or more semipublic bodies and located at the same intersection shall use the same support structure as necessary.

(2) **Location.** Signs shall be located along arterial and collector streets at the nearest intersection involving a turning movement to locate the organization.

(3) **Height.** No off-site directional sign shall exceed a height of eight feet.

(4) **Size; content.** Sign area shall be limited to four square feet, and signs shall contain only the name and logo of the semipublic body and a pointing arrow indicating the turn toward the organization.

(5) **Design generally.** Off-site directional signs shall be of a construction and design approved by the director.

(6) **Location in right-of-way.** Off-site directional signs may be allowed in the right-of-way with approval of the county engineer, based upon local and state highway safety standards, and shall be subject to future removal by the county.

(c) ***Greater Pine Island only.*** The Lee County Department of Transportation will fabricate, install, and maintain off-site directional signs in the right-of-way of Stringfellow Road and Pine Island Road in Greater Pine Island for qualifying businesses and organizations, as provided in Lee County's Commercial Use of Rights-of-Way Ordinance, Ordinance No. 88-11, as may be amended from time to time. Off-site directional signs that do not qualify for subsections (a), (b), or (c) of this section are not permitted.

Sec. 30-183. Billboards.

Billboards are permitted along I-75; and Alico Road, west of I-75; and Metro Parkway, from Daniels Parkway to Ben C. Pratt/Six Mile Cypress Parkway; and any arterial street within the county subject to the following limitations:

(1) **Location.**

a. Except as otherwise provided in this section, billboards are permitted in any zoning district provided the area is shown on the county comprehensive plan as intensive development, industrial development, interchange areas or airport commerce. Arterial streets must be designated on the existing functional classification map, as in effect on March 20, 1991.

b. No billboard will be permitted along:

1. Ben C. Pratt/Six Mile Cypress Parkway.
2. Summerlin Road.
3. McGregor Boulevard.
4. Daniels Parkway/Cypress Lake Drive corridor from McGregor Boulevard to SR 82, which includes Cypress Lake Drive, Daniels Parkway, the proposed Daniels Parkway extension, Fuel Farm Road, portions of Chamberlin Parkway and any other roads which are not stated in this subsection but are located within such corridor.
5. Colonial Boulevard east of I-75.
6. Alico Road east of I-75.
7. Koreshan Boulevard.
8. Corkscrew Road.
9. Treeline Avenue Corridor from Daniels Parkway to Bonita Beach Road. This prohibition includes Ben Hill Griffin Boulevard and any other roads which are not stated in this subsection but are located within this corridor. This prohibition specifically contemplates the future renaming of Treeline Avenue.
10. Pine Ridge Road.
11. South Pointe Boulevard

(2) **Separation.** Minimum distance separation will be as follows:

a. Within industrial/business and intensive business areas, 2,000 feet from any other billboard on the same side of the street.

b. Within interchange areas, 1,320 feet from any other billboard on the same side of the street.

c. Within airport commerce areas, 2,000 feet from any other billboard on the same side of the street.

No billboard may be located closer than 100 feet to any intersection with another arterial road.

(3) **Size.** No billboard may be less than 72 square feet in area per face or more than 400 square feet in size. Embellishments may not extend more than four feet from the top edge or more than two feet from any one side edge. On Alico Road, west of I-75, billboards may not exceed 380 square feet in size.

(4) **Height.** Billboards may not exceed a height of 20 feet when placed at the sign setback line set forth in subsection (5) of this section, except that, for every two feet the sign is placed back from the required setback line, the height of the sign may be increased by one foot, to a maximum height of 30 feet.

(5) **Setbacks.** All billboards must be set back a minimum of ten feet from any property line and any building as measured between the closest point of the sign to the property line or building.

(6) **Roof signs.** Billboards are prohibited on any roof portion of any building.

(7) **Copy area.** The billboard advertisement shall cover the entire copy area of the billboard.

(8) **Maximum number of signs per structure.** Each billboard structure shall be limited to a single sign, which may be single- or double-faced, but side-by-side or vertically stacked (double-tier) signs shall be prohibited.

(9) **Illumination**. Billboards may be illuminated provided that, if external lighting such as floodlights, thin-line or gooseneck reflectors are used, the light source shall be directed onto the face of the sign and shall be effectively shielded so as to prevent beams or rays of light from being directed into any portion of the street right-of-way.

(10) **Revolving signs.** Billboards may be a revolving sign as defined in this chapter,

but shall not consist of animation or flashing devices.

(11) **Variances and deviations.** No variances or deviations from subsections (1) or (6) through (10) may be granted.

(12) **Landscaping for billboards on Alico Road, west of I-75.** *[no changes required]*

(13) **Billboards in Greater Pine Island.** Some billboards remained in place in Greater Pine Island despite the longstanding prohibition against billboards and other off-site advertising and directional signs. These signs may have been nonconforming signs or they may have been illegal signs. Within 12 months after adoption of section 30-181(c) into this chapter, all remaining billboards must be brought into compliance by one of the following means:

a. Some billboards may be replaced with off-site directional signs installed in rights-of-way by Lee County Department of Transportation pursuant to section 30-181(c).

b. Some billboards may continue to qualify for nonconforming status and can remain in place, subject to the restrictions in section 30-153(b)(1)–(b)(4).

c. All billboards in Greater Pine Island that cannot demonstrate continual compliance w ith this chapter's nonconforming standards are illegal and must be removed (see section 30-153(b)(5)).

AMEND LEE COUNTY'S "COMMERCIAL USE OF RIGHTS-OF-WAY ORDINANCE," ORDINANCE 88-11 AS AMENDED, AS FOLLOWS:

SECTION 5: EXCEPTIONS

The commercial use of the right of any road, street, or highway with the county road system is expressly prohibited, except that the commercial uses listed below may occur in the public rights-of-way, but only in compliance with the requirements and conditions set forth herein:

A. County permitted or Sponsored Special Events *[no changes proposed]*

B. Newspaper Vending Racks or Machines *[no changes proposed]*

C. Bus Benches *[no changes proposed]*

D. Utilities *[no changes proposed]*

E. Commercial Loading or Unloading *[no changes proposed]*

F. Mobile Food Vendors *[no changes proposed]*

G. Directional Signs (Greater Pine Island only)

The Lee County Department of Transportation will fabricate, install, and maintain off-site directional signs in the right-of-way of Stringfellow Road and Pine Island Road in Greater Pine Island for qualifying businesses and organizations.

1. "Greater Pine Island" means the area that is affected by Lee Plan Goal 14 as depicted on the Future Land Use Map and as described in section 34-2 of the Lee County Land Development Code.
2. "Qualifying businesses and organizations" means one of the following types of for-profit, non-profit, or governmental entities currently operating in Greater Pine Island on a parcel of land that does not have road frontage on CR 767 (also known as Stringfellow Road, Oleander Street, and Main Street) or on CR 78 (also known as Pine Island Road):
   a. Motels/hotels/bed-and-breakfast inns
   b. Restaurants
   c. Retail sales and personal services
   d. Marinas
   e. Farms or nurseries regularly offering retail sales
   f. Transient RV parks
   g. Educational, cultural, and religious institutions
   h. Governmental agencies
   i. Other tourist-oriented businesses
   j. "Qualifying businesses and organizations" will not include residential or mobile home communities and will not include any entities that are not regularly open to the public.
3. Qualifying businesses and organizations may apply for a single off-site directional sign to be fabricated, installed, and maintained by the Lee County Department of Transportation in the right-of-way of Stringfellow Road or Pine Island Road.
   a. Each directional sign will be placed just ahead of the nearest street that intersects with Stringfellow Road or Pine Island Road.
   b. The exact location and placement of each sign will be determined by the DOT in accordance with established clear zone standards and based on additional operational and safety factors for each sign location. If no acceptable location can be found for a requested sign, the application fee will be refunded.
   c. Directional signs for up to three businesses may be placed on each pair of sign supports. If additional signs are needed, an additional set of sign supports will be installed if sufficient space is available.
   d. Each directional sign will contain only the name of the qualifying business or organization, a directional arrow, and optionally the appropriate international symbol (such as lodging, food, marina, camping, library, etc.). Lee County DOT will determine the size of the sign and the font size and type for its lettering, and after consultation with the applicant may shorten the name to ensure legibility to motorists.
   e. Applications must be made on forms provided by DOT and must be accompanied by the application fee as specified in the External Fees and Charges Manual (Administrative Code 3-10). An additional fee must be paid annually for the anticipated average cost to maintain and mow around each sign.

LEE COUNTY
SOUTHWEST FLORIDA

DEPARTMENT OF TRANSPORTATION

Memo

To: Mary Gibbs, Community Development Director

From: David Loveland, Manager, Transportation Planning

Date: July 30, 2004

Subject: **CONVERSION OF 2003 TRAFFIC COUNTY ON PINE ISLAND ROAD TO ANNUAL AVERAGE PEAK HOUR TWO-WAY CONDITION**

I am writing to clarify the unofficial estimate of traffic on Pine Island Road, based on the conversion of the annual average daily traffic (AADT) count from Lee County DOT's 2003 Traffic Count report. As you know, the comprehensive plan establishes some thresholds regarding how rezonings and development orders on Pine Island should be reviewed, which are 810 and 910 *annual average*, peak hour, *two-way* trips. That is a unique and unusual measure of conditions, since we use *peak season,* peak hour, *peak direction* trips for the statement of conditions on all other County roads.

Typically my staff provides the conversion to annual average, peak hour two-way trips for the western end of Pine Island Road, and to peak season, peak hour, peak direction trips for all other roads to your staff sometime after the Traffic Count is published, and your staff uses those numbers, with the addition of traffic from projects with approved building permits, to estimate existing conditions for the annual concurrency management report. Based on the 2003 Traffic Count report as published in February, 2004, the AADT for Pine Island Road at Matlacha Pass (Permanent Count Station #3) is 11,500 trips (this is a rounded number). The AADT represents an annual average condition in both directions for a typical day, with that average calculated from the counts for every day of the year at the permanent count station. Since the AADT already represents annual average, two way conditions, it simply has to be converted from a daily condition to a peak hour condition to get to the measure used for the 810/910 standard. Since we use the p.m. peak hour for all other road measurement standards (instead of the a.m. peak hour), my staff simply applied the p.m. peak hour factor published in report for Permanent Count Station #3 of 8% (also a rounded number). This resulted in an estimate of 920 annual average, peak hour, two-way trips, over the 910 threshold.

However, after further review and internal discussion, it was noted that the 8% peak-to-daily ratio was as a percent of *weekday* traffic, exclusive of weekend conditions. As noted above, the AADT comes from traffic counted 7 days a week, 365 days a year. To be more technically appropriate, the peak-to-daily ratio should be based on a full-week condition. DOT's Traffic Section reviewed the permanent count station information and pulled the full-week p.m. peak hour information, resulting in a 7.8% peak-to-daily ratio instead of 8%. They also provided us the non-rounded AADT number of 11,543. Applying the more appropriate peak-to-daily ratio to

the non-rounded AADT number, we get an estimate of annual average, peak hour, two-way trips on the western end of Pine Island Road of 900, under the 910 threshold. Nevertheless, considering the amount of variability in measuring traffic, the threshold has essentially been reached in all practicality. It may also be more clearly reached in the concurrency report, with traffic added from approved building permits.

A table that shows the annual average, peak hour, two-way calculation is attached. Because Policy 14.2.2 of the Lee Plan refers to maintaining the adopted level of service standard once the 910 threshold is officially reached, and Policy 14.2.1 states that the adopted level of service standard is "D" on an annual average, peak hour basis and "E" on a peak season, peak hour basis, as measured using the 1985 Highway Capacity Manual method, the table also includes conversions to peak season, peak hour conditions. We've also included two-way and peak direction estimates for both conditions, since Policy 14.2.1 doesn't specify which of those is part of the standard. Included in the table is a volume-to-capacity (V/C) calculation as well; a V/C ratio exceeding 1.00 would indicate that the standard is being exceeded.

We would note that the reference to the 1985 Highway Capacity Manual method is outdated, since that manual is no longer published, and the FDOT software we use to calculate capacities has been updated to reflect the newer 2000 Highway Capacity Manual methods. Therefore we have also included a table showing the same conversions and V/C ratio calculations but using the newer capacity calculations. It would be our recommendation that Policy 14.2.1 be updated to instead refer to the 2000 Highway Capacity Manual and the 2002 Florida Department of Transportation Quality Level of Service Handbook.

Please let me know if you need additional information.

cc: Tim Jones, Chief Assistant County Attorney
Donna Marie Collins, Assistant County Attorney
Pete Eckenrode, Development Services Director
Paul O'Connor, Planning Director
Mike Carroll, Concurrency Manager
Scott Gilbertson, DOT Director
Steve Jansen, DOT Traffic Section

CONVERSION OF 2003 AADT FOR PERMANENT COUNT STATION #3
(PINE ISLAND ROAD @ MATALCHA PASS)

		CONVERTED COUNT	CAPACTY BASED ON **1985** HCM METHODOLOGY CAPACITY	@ LOS	V/C RATIO
Annual Average Peak Hour Two-Way (basis for 810/910 rule)					
2003 AADT x Full-Week Peak Hour Factor =	11543 x 7.8% =	900	1130	D	0.80
Annual Average Peak Hour Peak Direction					
2003 AADT x Full-Week Peak Hour Factor x Annualized Directional Split =	11543 x 7.8% x 55.5% =	500	680	D	0.73
Peak Season Peak Hour Two-Way					
2003 AADT x 100th Highest Hour (K-100) Factor =	11543 x 9.5% =	1097	2140	E	0.51
Peak Season Peak Hour Peak Direction					
2003 AADT x 100th Highest Hour (K-100) Factor x Seasonal Directional Split =	11543 x 9.5% x 56% =	614	1290	E	0.48

		CONVERTED COUNT	CAPACTY BASED ON **2000** HCM METHODOLOGY CAPACITY	@ LOS	V/C RATIO
Annual Average Peak Hour Two-Way (basis for 810/910 rule)					
2003 AADT x Full-Week Peak Hour Factor =	11543 x 7.8% =	900	1300	D	0.69
Annual Average Peak Hour Peak Direction					
2003 AADT x Full-Week Peak Hour Factor x Annualized Directional Split =	11543 x 7.8% x 55.5% =	500	750	D	0.67
Peak Season Peak Hour Two-Way					
2003 AADT x 100th Highest Hour (K-100) Factor =	11543 x 9.5% =	1097	1620	E	0.68
Peak Season Peak Hour Peak Direction					
2003 AADT x 100th Highest Hour (K-100) Factor x Seasonal Directional Split =	11543 x 9.5% x 56% =	614	940	E	0.65

LCDOT 7/29/04

LEE COUNTY ORDINANCE NO. 07-19

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE (LDC) TO AMEND CHAPTERS 2, 6, 10, 14, 30, 33 AND 34; AND

AMENDING CHAPTER 2 (ADMINISTRATION); AMENDING GREATER PINE ISLAND CONCURRENCY (§2-48); AND CONCURRENCY MANAGEMENT INFORMATION SYSTEM (§2-50); AND

AMENDING CHAPTER 10 (DEVELOPMENT STANDARDS); ESTABLISHING GENERAL REQUIREMENTS APPLICABLE TO GREATER PINE ISLAND PLANNING COMMUNITY (§10-7); LANDSCAPE STANDARDS (§10-416); AND

AMENDING CHAPTER 14 (ENVIRONMENTAL AND NATURAL RESOURCES); ESTABLISHING APPLICABILITY OF CHAPTER 14 TO PLANNING COMMUNITIES (§14-1); AMENDING DEFINITIONS TO ADD "GREATER PINE ISLAND" (§14-374); EXEMPTIONS FROM TREE PROTECTIONS PROVISIONS (§14-377); AND

AMENDING CHAPTER 30 (SIGNS); AMENDING DEFINITIONS AND RULES OF CONSTRUCTION TO ADD "GREATER PINE ISLAND" (§30-2); ESTABLISHING APPLICABILITY OF CHAPTER 30 TO PLANNING COMMUNITIES (§30-56); AND

AMENDING CHAPTER 33 TO CREATE A NEW ARTICLE III APPLICABLE TO THE GREATER PINE ISLAND PLANNING COMMUNITY; PROVIDING FOR PURPOSE AND INTENT (§33-1001); APPLICABILITY AND COMMUNITY BOUNDARY (§33-1002); DEFINITIONS (§33-1003); GREATER PINE ISLAND CONCURRENCY AND TRAFFIC-BASED GROWTH LIMITATIONS (§33-1011); ESTABLISHING AGRICULTURAL NOTICE OF CLEARING PROVISIONS (§33-1031); PROVIDING FOR NONCONFORMING OFF-SITE DIRECTIONAL SIGNS AND BILLBOARDS (§33-1041); WALL MOUNTED IDENTIFICATION SIGNS (§33-1042); GROUND-MOUNTED IDENTIFICATION SIGNS (§33-1043); INTERNALLY ILLUMINATED BOX SIGNS (§33-1044); OFF-SITE DIRECTIONAL SIGNS (§33-1045); ESTABLISHING COASTAL RURAL DEVELOPMENT REGULATIONS PROVIDING FOR PURPOSE AND INTENT (§33-1051);

RESIDENTIAL DENSITY LIMITATIONS (§33-1052); DEVELOPMENT STANDARDS (§33-1053); PERMANENTLY PRESERVED NATIVE HABITAT (§33-1054); RESTORED NATIVE HABITAT (§33-1055); CONTINUED AGRICULTURAL USE ON EXISTING FARMLAND (§33-1056); LOTS OF RECORD IN "COASTAL RURAL" (§33-1057); ESTABLISHING DESIGN STANDARDS APPLICABLE TO PROPOSED STREET LAYOUT (§33-1081); DEVELOPMENT ABUTTING AN AQUATIC PRESERVE (§33-1082); COMMERCIAL BUILDING DESIGN STANDARDS (§33-1083); ESTABLISHING DESIGN STANDARDS PROVIDING FOR MAXIMUM HEIGHT OF WIRELESS COMMUNICATION FACILITIES (§33-1084); DENSITY LIMITATIONS (§33-1085); RESIDENTIAL PROJECT FENCES AND WALLS (§33-1086); ENTRANCE GATES (§33-1087); MAXIMUM HEIGHT OF BUILDINGS AND STRUCTURES (§33-1088); AND

AMENDING CHAPTER 34 (ZONING); AMENDING DEFINITIONS SPECIFICALLY "GREATER PINE ISLAND" (§34-2); CREATING COMPLIANCE WITH SPECIFIC PLANNING COMMUNITY REGULATIONS TO INCLUDE GREATER PINE ISLAND (§34-6); AMENDING GENERAL SUBMITTAL REQUIREMENTS FOR APPLICATIONS REQUIRING PUBLIC HEARING (§34-202); AGRICULTURAL DISTRICTS PROPERTY DEVELOPMENT REGULATIONS (§34-654); RESIDENTIAL DISTRICTS PROPERTY DEVELOPMENT REGULATIONS (§34-695); MULTIPLE-FAMILY PROPERTY DEVELOPMENT REGULATIONS (§34-715); PLANNED DEVELOPMENT DISTRICTS PROPERTY DEVELOPMENT REGULATIONS (§34-935); AMENDING PERMISSIBLE WIRELESS FACILITY LOCATIONS (§34-1444); DENSITY LIMITATIONS FOR SPECIFIC AREAS (§34-1495); ADDITIONAL PERMITTED HEIGHT WHEN INCREASED SETBACK PROVIDED (§34-2174); HEIGHT LIMITATIONS FOR SPECIAL AREAS (§34-2175); AND

AMENDING APPENDIX I (PLANNING COMMUNITIES) TO INCLUDE A MAP (MAP 5) AND LEGAL DESCRIPTION OF THE GREATER PINE ISLAND PLANNING COMMUNITY; AND PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes Section 125.01(1)(h) authorizes counties to establish, coordinate, and enforce zoning regulations necessary for the protection of the public; and

WHEREAS, the Board of County Commissioners adopted the Lee County Land Development Code (LDC), which contains regulations applicable to the development of land in Lee County; and

WHEREAS, the Board of County Commissioners amended the Greater Pine Island Community Plan, codified under Goal 14 of the Lee Plan, effective December 21, 2004, and made further amendments effective January 9, 2006; and

WHEREAS, these plan amendments included policies that should be implemented through amendments to the Lee County Land Development Code; and

WHEREAS, the Board of County Commissioners, through the creation of LDC Chapter 33, has begun to centralize LDC provisions that are applicable only to certain planning communities within the county; and

WHEREAS, a new Article III of LDC Chapter 33 will allow the Greater Pine Island planning community regulations to be centralized within the Land Development Code; and

WHEREAS, certain existing regulations applicable only to Greater Pine Island are currently found in LDC Chapters 2, 10, 14, 30 and 34 will be more readily understood and uniformly applied if relocated to the new Article III of LDC Chapter 33; and

WHEREAS, the Land Development Code Advisory Committee reviewed the proposed amendments to the Code and made recommendations as indicated; and

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code; and

WHEREAS, the Local Planning Agency reviewed the proposed amendments on April 23, 2007, and found them consistent with the Lee Plan, as indicated.

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

SECTION ONE: AMENDMENT TO LDC CHAPTER 2

Lee County Land Development Code Chapter 2 is hereby amended as follows, with deleted text identified with strike through and additional text identified with underlining.

CHAPTER 2

ADMINISTRATION

ARTICLE II. CONCURRENCY MANAGEMENT SYSTEM

Sec. 2-48. Greater Pine Island concurrency.

~~Concurrency compliance for property located in Greater Pine Island, as identified on the future land use map, will be determined in accordance with the level of service and restrictions set forth in Lee Plan policies 14.2.1 and 14.2.2 to the extent the policies provide additional restrictions that supplement other provisions of this article. These policies require the following:~~

~~(1) The minimum acceptable level of service standard for Pine Island Road between Burnt Store Road and Stringfellow Boulevard is level of service D on an annual average peak-hour basis and level of service E on a peak-season peak-hour basis using methodologies from the 1985 Highway Capacity Manual Special Report 209. This standard will be measured at the county's permanent count station on Little Pine Island.~~

~~(2) When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 810 peak-hour annual average two-way trips, rezonings that increase traffic on Pine Island Road may not be granted. When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 910 peak-hour annual average two-way trips, residential development orders (pursuant to chapter 10) will not be granted unless measures to maintain the adopted level of service can be included as a condition of the development order. The effect of this restriction on residential density must not be more severe than restricting density to one-third the maximum density otherwise allowed on that property.~~

<u>See special standards for Greater Pine Island in section 33-1011</u>

Sec. 2-50. Concurrency management information system.

(a) The director will compile, publish and update, at least once each year, beginning no later than October 1, 1990, an inventory of the maximum, utilized and available capacity of public facilities for which minimum regulatory levels of service are prescribed in the Lee Plan. This inventory must also contain a projection of future demand on the facilities due to anticipated growth and additions to capacity based upon construction in progress or under contract. <u>This inventory must also contain the Greater Pine Island analysis as described in section 33-1011(d).</u> The inventory must be reviewed and approved by the Board of County Commissioners and, upon approval, will establish the availability and capacity of each facility to accommodate impacts from further development. This inventory will bind the county to the estimates of available capacity described in the inventory. Once approved by the board, these estimates will empower the director to issue concurrency certificates for development permits requested where the estimates reasonably demonstrate sufficient infrastructure capacity will be available to serve all developments reasonably expected to occur during the period of time approved by the board.

(b) The director will maintain a current cumulative list of all development orders issued by the county. The list will include the date of issuance of each development order.

(c) The director will maintain a list of all certificates issued pursuant to this article, or a copy of each certificate in chronological order by date of issuance in lieu of a list. These records may be removed to storage once the most recent certificate on the list is six months old.

SECTION TWO: AMENDMENT TO LDC CHAPTER 10

Lee County Land Development Code Chapter 10 is hereby amended as follows, with deleted text identified with strike through and additional text identified with underlining.

CHAPTER 10

DEVELOPMENT STANDARDS

ARTICLE I. IN GENERAL

Sec. 10-7. General requirements.

(a) through (c) *No change.*

(d) *Planning community regulations.* Development order applications and approvals for projects located within the following planning communities must also comply with the regulations set forth in chapter 33 pertaining to the specific planning community.

(1) Estero Planning Community

(2) Greater Pine Island

(e) through (h) *No change.*

ARTICLE III. DESIGN STANDARDS AND REQUIREMENTS

DIVISION 6. OPEN SPACE, BUFFERING AND LANDSCAPING

Sec. 10-416. Landscape standards.

(a) through (c) *No change.*

(d) *Buffering adjacent property.*

(1) through (8) *No change.*

(9) *Development abutting natural waterway.* Except where chapter 33 provides a stricter standard ~~applies~~ for ~~the~~ Greater Pine Island ~~Area~~ (as defined in Goal 14 of the Lee Plan and in section 33-1002), there must be a 25-foot wide vegetative buffer landward from the mean high

water line of all nonseawalled natural waterways. ~~Where a proposed planned development or subdivision, is located in the Greater Pine Island Area abutting state-designated aquatic preserves and associated natural tributaries, the width of the required buffer will be 50 feet.~~

Existing vegetation within the buffer area must be retained. The removal or control of exotic pest plants must not involve the use of heavy mechanical equipment such as bulldozers, front end loaders, or hydraulic excavators, unless approved at the time of development order.

(10) through (11) *No change.*

SECTION THREE: AMENDMENT TO LDC CHAPTER 14

Lee County Land Development Code Chapter 14 is hereby amended as follows, with deleted text identified with strike through and additional text identified with underlining.

CHAPTER 14

ENVIRONMENT AND NATURAL RESOURCES

ARTICLE I. IN GENERAL

Sec. 14-1. Planning community regulations.

Activities in the following communities must also comply with the regulations set forth in chapter 33 pertaining to the specific community.

(a) Estero Planning Community

(b) Greater Pine Island

ARTICLE V. TREE PROTECTION

Sec. 14-374. Definitions.

(a) The following words, terms and phrases, and their derivations, when used in this article, ~~shall~~ have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Greater Pine Island means the area that is affected by Lee Plan Goal 14 as depicted on the Future Land Use Map and as described in section 33-1002.

No changes to balance of section

Sec. 14-377. Exemptions from article.

(a) This article does not apply to the following:

(1) Removal of trees on the following lands as specified in this subsection:

a. This article ~~shall~~ does not apply to the removal of trees, other than trees worthy of preservation, on lands classified as agricultural land for ad valorem taxation purposes pursuant to F.S. § 193.461(3)(b), except as provided for proposed agricultural activities in Greater Pine Island in section 33-1031. Trees, other than trees worthy of preservation, may be removed from agriculturally zoned lands only after the owner or his agent procures a notice of clearing from the administrator. However, if an application to rezone the subject lands is filed within three years from the date when the most recent notice of clearing was issued, and the rezoning is granted, the applicable minimum open space requirements of chapter 10 ~~shall~~ may be satisfied in the following manner:

1. through 3. *No change.*

b. through d. *No change.*

(2) through (6) *No change.*

(7) The removal of protected trees on a lot zoned for single-family residential use or being used lawfully as a single-family residence or mobile home where the residence or proposed residence is located on a lot no greater than five acres in area. However, this exemption does not apply on the coastal islands listed in subsection (c) below.

(8) *No change.*

(b) *No change.*

(c) The exemptions ~~herein~~ for single-family residential use in subsection (a)(7) above do not apply to land located on the following coastal islands: Gasparilla Island, Cayo Costa Island, North Captiva Island, Captive Island, Buck Key, Greater Pine Island, Lover's Key Group of Islands, Black Island, Big Hickory Island, and Little Hickory Island (Bonita Beach).

(1) and (2) *No change.*

(3) For Greater Pine Island only, a tree removal permit will be required only on parcels or lots zoned or used for residential purposes that are two acres in size or greater.

SECTION FOUR: AMENDMENT TO LDC CHAPTER 30

Lee County Land Development Code Chapter 30 is hereby amended as follows, with deleted text identified with strike through and additional text identified with underlining.

CHAPTER 30

SIGNS

ARTICLE I. IN GENERAL

Sec. 30-2. Definitions and rules of construction.

(a) In case of any difference of meaning or implication between the text of this chapter and any other law or regulation, this chapter ~~shall~~ controls.

(b) The following words, terms and phrases, when used in this chapter, have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Greater Pine Island means the area that is affected by Lee Plan Goal 14 as depicted on the Future Land Use Map and described in section 33-1002.

No changes to balance of section.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

Sec. 30-56. Planning community regulations.

Applications and permit approvals for signs and sign structures associated with projects located in the following planning communities must also comply with the regulations set forth in chapter 33 pertaining to the specific planning community.

(a) Estero Planning Community

(b) Greater Pine Island

SECTION FIVE: AMENDMENT TO LDC CHAPTER 33, ADDING ARTICLE III

The Lee County Land Development Code is hereby amended to create a new Article III of Chapter 33 as follows.

CHAPTER 33

PLANNING COMMUNITY REGULATIONS

ARTICLE III. GREATER PINE ISLAND

DIVISION 1. IN GENERAL

Sec. 33-1001. Purpose and intent.

The purpose of this article is to establish standards for the Greater Pine Island Planning Community, which includes Pine Island, Matlacha, and several surrounding islands and certain unincorporated enclaves west of Cape Coral (see Appendix I, Map 5). These standards are intended to carry out Lee Plan Goal 14 and related objectives and policies in order to accomplish the vision for the future of Greater Pine Island. The purpose of these standards is to maintain an equilibrium between modest growth, a fragile ecology, and a viable and productive agricultural community. These standards reflect an effort to manage future growth based on the remaining traffic capacity available on the existing narrow road link to the mainland while retaining a reasonable opportunity for hurricane evacuation.

Sec. 33-1002. Applicability and community boundary.

The standards in this article apply to all development within the Greater Pine Island Planning Community as depicted in the Lee County Comprehensive Plan on Future Land Use Map 1, Page 2 and Planning Communities Map 16. A copy of the Greater Pine Island portion of the planning communities map is reproduced in Appendix I as Map 5. A legal description of the Greater Pine Island Planning Community, which encompasses all of Pine Island, Little Pine Island, West Island, Porpoise Point Island, and other small adjacent islands is also set forth in Appendix I.

Sec. 33-1003. Definitions.

The following definitions are in addition to those set forth in other chapters of this code and are applicable to the provision set forth in this article only. If, when construing the specific provisions contained in this article, these definitions conflict with definitions found elsewhere in this code, then the definition set forth below will control. Otherwise the definition contained elsewhere in this code will control.

Continued agricultural use on existing farmland means existing farmland identified on Lee Plan Map 21 that will be committed, through a recorded perpetual easement, to continued agricultural activity and use in exchange for County approval allowing residential density above the standard maximum residential density. The approved density is based on the acreage attributable to the entire property under consideration and requires that all residential units must be placed on other uplands within the boundary of the subject property.

Permanently preserved native habitat means native upland habitat that the landowner guarantees, through a recorded perpetual easement, to preserve or restore as permanent native habitat/open space in exchange for County approval allowing residential density above the standard maximum residential density. The approved density is based on the acreage attributable to the entire property under consideration and requires that all residential units must be placed on other uplands within the boundary of the subject property.

Restored native habitat means uplands that the landowner commits, through a recorded perpetual easement, to restoring and permanently preserving as open space in exchange for County approval allowing residential density above the standard maximum residential density. The approved density is based on the acreage attributable to the entire property under consideration and requires that all residential units must be placed on other uplands within the boundary of the subject property.

State-designated aquatic preserves and associated wetlands and natural tributaries means:

(a) The following aquatic preserves as designated by the State of Florida:

(1) Gasparilla Sound-Charlotte Harbor Aquatic Preserve, and
(2) Matlacha Pass Aquatic Preserve, and
(3) Pine Island Sound Aquatic Preserve;

(b) All wetlands, as defined in chapter 14, article IV, that adjoin any portion of these aquatic preserves; and

(c) All natural tributaries, including bays, lagoons, and creeks that adjoin any portion of these aquatic preserves, but excluding man-made canals.

(d) For purposes of this definition, any portion of a wetland or natural tributary lying farther than ½ mile from the nearest edge of an aquatic preserve will not be deemed to be an associated wetland or natural tributary.

DIVISION 2. TRANSPORTATION CONCURRENCY

Sec. 33-1011. Greater Pine Island concurrency and traffic-based growth limitations.

Concurrency compliance and traffic-based growth limitations for property located in Greater Pine Island, as identified on the future land use map and described in section 33-1002, will be determined in accordance with the level of service and restrictions set forth in Lee Plan policies 14.2.1 and 14.2.2 to the extent the policies provide additional restrictions that supplement other provisions of this code. These policies require the following:

(a) The minimum acceptable level of service standard for Pine Island Road between Burnt Store Road and Stringfellow Boulevard is level of service D on an annual average peak-hour basis and level of service E on a peak-season peak-hour basis using methodologies from the 1985 Highway Capacity Manual Special Report 209. This standard will be measured at the county's permanent count station #3 on Little Pine Island at the western edge of Matlacha and will apply to all of Greater Pine Island.

(b) In addition, when traffic on Pine Island Road at the western edge of Matlacha reaches 810 peak-hour annual average two-way trips, rezonings in Greater Pine Island that increase traffic on Pine Island Road may not be granted. During the rezoning process only, three types of exceptions to this rule may be considered:

(1) Minor rezonings on infill properties surrounded by development at similar densities or intensities. A minor rezoning under this exception may not rezone more than 5 acres of land or have a net effect of allowing more than 15 additional dwelling units.

(2) Rezonings that would have insignificant or trivial effects on traffic flows at the western edge of Matlacha during peak periods in the peak (busier) direction, or would have positive effects by reducing trips during those peak flow periods.

(3) Rezonings to accommodate small enterprises that promote the natural features or cultural heritage of Greater Pine Island. Small enterprises are those that operate with five or fewer full-time employees.

(c) When traffic on Pine Island Road at the western edge of Matlacha reaches 910 peak-hour annual average two-way trips, residential development orders for properties not designated "Coastal Rural" will be limited to one-third of the maximum density otherwise allowed on that property by the Lee Plan and this code. Density for property designated "Coastal Rural" will be in accordance with Table 33-1052.

(d) The standards in subsections (b) and (c) of this section will be interpreted and applied as follows:

(1) Traffic counts will be taken from the county's permanent count station #3 on Little Pine Island at the western edge of Matlacha.

(2) For purposes of the regulations in this section, the 810-trip and the 910-trip thresholds will be considered to be exceeded upon approval by the Board of County Commissioners of the annual concurrency management inventory of available capacity of public facilities in accordance with section 2-50.

(3) Development order applications submitted prior to March 14, 2006 will be processed as though the 910 density threshold has not been exceeded. For these applications, the 180-day period for resubmittal of supplemental or corrected application documents (see section 10-110(b)) will not be shortened by the determination in Lee County Resolution 06-03-24 that the 910 threshold has been exceeded. These residential development orders must be diligently pursued and obtained by May 31, 2008 or the application must be modified to comply with the rules that apply after the 910-trip threshold has been exceeded. Provided, however:

a. Additional development rights may not be appended to a request for a development order during this period.

b. This allowance does not extend to tracts of land in large phased projects that are proposed for future development but for which a development order has not been sought in the current application.

(e) Expiring development orders in Greater Pine Island cannot be extended or renewed unless they are modified to conform with the regulations in effect at the time of extension or renewal.

(f) The restrictions in subsections (b) and (c) will not be interpreted to affect ongoing developments whose final phases are already platted in accordance with F.S. ch. 177, provided that no new lots are added and that the number of allowable dwelling units is not increased. These restrictions also will not be interpreted to affect expansions to existing recreational vehicle parks to serve additional transient RVs if such expansions were explicitly approved by Lee County under Ordinance No. 86-36 (see section 34-3272(1)d.) and the land is properly zoned for this purpose.

DIVISION 3. AGRICULTURAL CLEARING

Sec. 33-1031. Agricultural notice of clearing on Greater Pine Island.

Notices of clearing for agricultural purposes in Greater Pine Island must comply with the following additional requirements in accordance with Policy 14.1.5 of the Lee Plan:

(a) Agriculturally zoned land that is pursuing a new agricultural use through the Agricultural Notice of Clearing process that adjoins state-designated aquatic preserves and associated wetlands and natural tributaries (see section 33-1003) must preserve or create a 50-foot-wide native vegetated conservation buffer area between all agricultural lands and the natural waterbody and associated wetlands.

(b) The purpose of this conservation buffer is to capture or slow the movement of sediments, fertilizers, pesticides, pathogens, and heavy metals that may be concentrated in stormwater runoff and to allow for increased biodiversity and improved wildlife habitat.

(c) Existing native vegetation within the 50-foot buffer must be preserved. If existing native vegetation is removed, it must be replaced using the restoration standards in section 14-384.

(d) Non-native vegetation must be removed from the 50-foot buffer utilizing hand removal methods. A specific mechanical removal method may also be approved in writing by the division of Environmental Sciences staff.

(e) Planting of native vegetation indigenous to Pine Island is allowed within the 50-foot buffer. If no native vegetation exists within the buffer, then 3-gallon South Florida slash pine, longleaf pine or native oaks trees must be planted on 20-foot centers within 3 years of the recording of the Agricultural Notice of Clearing and with a guarantee 80% survivability for a period of 5 years.

(f) No other grading, excavating, or filing is allowed within the 50-foot buffer.

(g) These conservation buffer regulations will not be construed in a manner that violates the Agricultural Lands and Practices Act, F.S. § 163.3162, or the Florida Right-to-Farm Act, F.S. § 823.14.

(h) The Agricultural Notice of Clearing recorded in the official records of Lee County must include a description of the 50-foot wide buffer that is sufficient to allow a reasonable person to know the location, extent and boundary of the buffer area to be preserved.

DIVISION 4. SIGNS

Sec. 33-1042. Wall-mounted identification signs.

A wall-mounted identification sign may be placed on the front wall of a building that is closer than 15 feet to the front property line provided the building was lawfully constructed and the sign otherwise meets the requirements of section 30-153.

Sec. 33-1043. Ground-mounted identification signs.

Commercial and industrial establishments wishing to place a ground-mounted identification sign pursuant to section 30-153(3)a.2, 3 and 4 are limited to a maximum sign area of 48 square feet and a maximum height and width of 12 feet (as measured in accordance with sections 30-91and 30-92).

Sec. 33-1044. Internally illuminated box signs.

Internally illuminated box signs are limited to a maximum sign area of 12 square feet per establishment. Signs consisting of individual letters or symbols that have their own internal illumination are not subject to this special size limitation. For purposes of this section, an internally illuminated box sign means a sign comprised of translucent surfaces electrically illuminated from within that is mounted against, or projects from, a building.

Sec. 33-1045. Tourist-oriented directional signs.

The Lee County Department of Transportation may fabricate, install, and maintain (if the owner pays for signs that meet FDOT and MUTCD standards, along with the costs of mowing and maintenance) tourist-oriented directional signs in the right-of-way of Stringfellow Road and Pine Island Road in Greater Pine Island for qualifying businesses and organizations if appropriate amendments are made to Lee County's Commercial Use of Rights-of-Way Ordinance, Ordinance No. 88-11, as may be amended from time to time. Tourist-oriented directional signs that are not approved in accordance with the provisions of Ordinance 88-11 may not be installed in public rights-of-way by any party.

DIVISION 5. COASTAL RURAL DEVELOPMENT REGULATIONS

Sec. 33-1051. Purpose and intent.

Lee County has reclassified all formerly "Rural" lands in Greater Pine Island to a new "Coastal Rural" designation on the Future Land Use Map. This designation provides landowners with flexibility while accomplishing the following public purposes:

(a) To provide a clearer separation between rural and urban uses in Greater Pine Island;

(b) To discourage the unnecessary destruction of native upland habitat;

(c) To encourage continued agricultural use on existing farmland; and

(d) To avoid placing more dwelling units on Pine Island than can be served by the limited road capacity to the mainland.

Sec. 33-1052. Residential density limitations.

(a) *Standard and adjusted densities.* The "Coastal Rural" areas will remain rural except for portions of properties where smaller residential lots are permitted in exchange for permanent commitments to preservation or restoration of native upland habitat or to continued agricultural use of existing farmland.

(1) The standard maximum density established by Policy 1.4.7 of the Lee Plan is one dwelling unit per ten acres (1 DU/10 acres); however, see sections 33-1057 and 34-3273 regarding nonconforming lots.

(2) Maximum densities may increase in accordance with Table 33-1052 as higher percentages of upland portions of a site are permanently committed in one of the following ways:

a. Land uses are restricted in native habitat that is permanently preserved on upland portions of a site.

b. Land uses are restricted in native habitat that is restored and then permanently preserved on upland portions of a site.

c. Existing farmland that is identified on Map 21 of the Lee Plan and is limited in the future to agricultural uses.

Table 33-1052. ADJUSTED MAXIMUM DENSITIES FOR PRESERVED/ RESTORED HABITAT AND FOR CONTINUED AGRICULTURAL USE

Percentage of the on-site uplands that are: -preserved or restored native habitat; -or- -for continued agricultural use on existing farmland	**Adjusted Maximum Densities***	
	If undeveloped land will be permanently preserved or restored as native habitat:	If undeveloped land will be continued in agricultural use on existing farmland:
0% to 4.99%	1 DU/ 17 acres	1 DU/ 17 acres
5% to 9.99%	1 DU/ 15 acres	1 DU/ 15 acres
10% to 14.99%	1 DU/ 13 acres	1 DU/ 15 acres
15% to 19.99%	1 DU/ 12 acres	1 DU/ 15 acres
20% to 29.99%	1 DU/ 10 acres	1 DU/ 13 acres
30% to 39.99%	1 DU/ 8 acres	1 DU/ 12 acres
40% to 49.99%	1 DU/ 7 acres	1 DU/ 10 acres
50% to 59.99%	1 DU/ 5 acres	1 DU/ 8 acres
60% to 69.99%	1 DU/ 4 acres	1 DU/ 5 acres
70% or more	1DU/ 2.7 acres	1 DU/ 4 acres

* Lee County Resolution 06-03-24 determined that the 910 traffic counts for Pine Island Road have been exceeded. Accordingly, the density stated above is the maximum density permitted in the Coastal Rural land use category for purposes of section 33-1052.

(b) Two or more contiguous or noncontiguous "Coastal Rural" parcels may be combined into a single development application for purposes of computing the actual maximum density allowed on those properties. This provision would allow acreage on one parcel that is preserved or restored as native habitat, or existing farmland that is committed to continued agricultural use, to increase the density on another parcel that is included in the same development application.

(c) Rezoning is not required for a proposed residential development on land zoned AG-2 and designated "Coastal Rural" by the Lee Plan provided that the proposed development will comply with all regulations in this code, including all of this article.

(1) The determination of actual maximum densities and the compliance of the application and its supporting documentation with this section may be confirmed by issuance of a development order using the process described in ch. 10, modified as follows:

a. Additional application requirements will be established by the director. At a minimum, these requirements will include:

1. A mandatory pre-application meeting.

2. Narrative description of the process used to determine the best areas on the site to remain undeveloped (see section 33-1053(d)).

3. For applications proposing narrower streets in conformance with section 33-1053, proposed cross-sections of right-of-way and lane widths, supported by a sealed statement from a professional engineer.

4. For applications proposing permanent preservation of native habitat:

i. Map clearly delineating native habitat to be preserved, with precise acreage computations of habitat being preserved including the extent of other allowable land uses within preserved habitats (section 33-1054(a)).
ii. Description of interruptions of original water flows and intended corrections (section 33-1054(b)).
iii. Plan for removing and controlling invasive exotic plants (section 33-1054(c)).
iv. Draft of the proposed conservation easement including identification of proposed grantees; for grantees other than Lee County, include a statement from the grantee that it will consent to accept and enforce the easement's obligations in perpetuity (section 33-1054(d)).
v. Long-term management plan for the preserved habitat (section 33-1054(e)).
vi. Identification of proposed ownership of preserved habitat and the means that will be used to provide future management of the area in perpetuity.

5. For applications proposing restoration of native habitat in conformance with section 33-1055, include all the requirements for permanent preservation of native habitat, plus:

   i. Analysis of the suitability of the site's hydrologic regime for the ecological community being restored (section 33-1055(a)).
   ii. Plan for reintroduction of native trees (section 33-1055(b)).
   iii. Plan for reintroduction of native midstory shrubs and understory plants (section 33-1055(c)).
   iv. Plan for monitoring the success of restoration (section 33-1055(d)).
   v. Proposed financial guarantees if the landowner wishes to begin development prior to successful completion of the restoration (section 33-1055(e)).

6. For applications proposing continued agricultural use on existing farmland in conformance with section 33-1056:

   i. Plan for removing and controlling invasive exotic plants (section 33-1056(b)).

   ii. Draft of the proposed conservation easement including identification of proposed grantees; for grantees other than Lee County, include a statement from the grantee that it will consent to accept and enforce the easement's obligations in perpetuity (section 33-1056(c)).

b. An additional application fee will be established by the director to cover review costs for these complex applications. This fee may not exceed the fee for a planned development rezoning application.

c. The normal timeframe for review of residential development orders will be extended as needed to allow thorough yet timely review of all applications submitted in accordance with this article.

(2) A proposed development that would deviate from this code, except for administrative deviations in accordance with section 10-104, must seek approval through the planned development rezoning process prior to obtaining a development order pursuant to ch. 10.

a. Deviations or variances can never be granted to increase the densities in Table 33-1052.

b. Example of deviations that can be considered during the planned development process include:

1. Permitted uses and property development regulations other than those provided in section 33-1053.

2. Reforestation methods that do not meet all of the technical requirements of this section for "permanently preserved native habitat" or "restored native habitat" but which will achieve the same ends.

3. Infrastructure more suited to country living, such as narrower streets, alternative paving materials, stormwater management systems that promote infiltration of runoff, etc.

c. The special application requirements in section 33-1052(c)(1)a. must supplement this code's requirements for planned development applications.

Sec. 33-1053. Development standards.

If a landowner chooses to increase the standard maximum density of "Coastal Rural" land as provided by this division, development standards will apply as follows:

(a) *General standards.* All requirements of this code remain in effect except as modified through the planned development rezoning process or as otherwise provided in this article.

(b) *Property development regulations and permitted uses.*

(1) For individual lots that are created on "Coastal Rural" land based on increases above the standard maximum density of one dwelling unit per ten acres:

a. Lots that are 39,500 square feet or larger in area must meet all property development regulations that apply to the AG-2 zoning district including lot width and depth, setbacks, special regulations, building height, and lot coverage. Use regulations for these lots will be the same as for lots in the AG-2 zoning district.

b. Lots that are smaller than 39,500 square feet must meet all property development regulations that apply to the RS-1 zoning district including lot width and depth, setbacks, special

regulations, building height, and lot coverage. Use regulations for these lots will be the same as for lots in the RS-1 zoning district.

(2) Native habitat that is being preserved or restored in order to qualify for increases above the standard maximum density will be governed by section 33-1054 instead of the regular AG-2 regulations.

(3) Existing farmland that is being committed to continued agricultural uses in order to qualify for increases above the standard maximum density will be governed by section 33-1056 in addition to the regular AG-2 regulations.

(c) *Local street standards.*

(1) Section 10-296(d) provides standards for new local streets that vary based on residential density levels. For development orders that subdivide residential lots from "Coastal Rural" land, these local street standards will be interpreted as follows:

a. "Category C" streets must be provided for residential lots that are 2.5 acres or smaller.

b. "Category D" streets may be provided in lieu of Category C streets for residential lots that are larger than 2.5 acres.

(2) Right-of-way and lane widths for privately maintained local streets may be narrower than the standards set forth in section 10-296 for Category C and Category D streets provided the widths are selected in accordance with the criteria in *Traditional Neighborhood Development Street Design Guidelines* or *Neighborhood Street Design Guidelines* (or successor recommended practices) published by the Institute of Transportation Engineers, or in accordance with *Guidelines for Geometric Design of Very Low-Volume Local Roads (ADT<400)* published by AASHTO.

(3) Privately maintained local streets defined by section 10-296 as Category C streets may have a wearing surface of porous (pervious) asphalt or concrete, in lieu of the other surface options provided in chapter 10. Porous paving can increase the infiltration of stormwater and reduce the need for separate stormwater infrastructure.

(4) Dead-end streets are generally not permitted but may be unavoidable due to adjoining wetlands, canals, or preserved areas. When the director deems a dead-end street to be unavoidable, the dead-end

must be provided with a cul-de-sac or other termination that is designed in accordance with county standards as specified in section 10-296 or the alternate standards set forth in section 33-1053(3)b.

(d) *Locational standards.* The following approach and guidelines must be used to determine the best areas on the site to remain undeveloped and to be developed.

(1) Begin by identifying potential areas to remain undeveloped.

a. For native habitat being preserved or restored: healthy, diverse, or unusual native vegetation (such as mature pine trees, oak hammocks, or dense saw palmetto); listed species habitat; historic/archaeological sites; unusual landforms; wet or transitional areas; etc.

b. For existing farmland being committed to continued agricultural use: existing surface water management infrastructure; availability of irrigation water; large contiguous acreage relative to potential conflicts with adjoining non-agricultural land uses; etc.

(2) Then identify potential areas for homesites: locations near existing developed areas or adjoining existing streets (or logical street extensions); areas with fewer natural resource values; areas that can be served with minimal extensions of infrastructure; areas that would provide views of preserved open spaces; etc.

Sec. 33-1054. Permanently preserved native habitat.

A development proposal that requests an increase to the standard maximum residential density for committing to "permanently preserved native habitat," as that phrase is defined in section 33-1003, must be accompanied by plans and supporting documentation that demonstrate compliance with the following requirements.

(a) *Land uses in preserved habitat.* Native habitat that is counted as preserved for the purposes of Table 33-1052 cannot be part of any individual lots or parcels on which development is permitted.

(1) Portions of these native habitats may be used as buffer strips and wooded portions of golf courses provided those areas have a minimum dimension of 40 feet and are protected by the same conservation easement as the remainder of the native habitat.

(2) Land that is subdivided by roads cannot qualify as permanently preserved native habitat, but up to the following percentages of other land uses may be permitted:

a. Facilities for passive recreation such as hiking trails, bridle paths, boardwalks, or fishing piers, up to 2% of the preserved area.

b. Buffers, lakes, and utilities, up to 10% of the preserved area.

c. Commercial or non-commercial agriculture, up to 10% of the preserved area.

(b) *Hydrologic restoration.* Interruptions of original water flows must be corrected to ensure proper hydrologic conditions for the long-term survival of the permanently preserved native habitat. For instance, ditches or berms that interfere with natural surface and ground water flows must be eliminated (unless mitigation is possible, for instance by placing multiple culverts through berms to restore sheet flows). This requirement may not be construed to require hydrologic changes that would adversely affect the public health, safety or welfare or the property of others.

(c) *Removal of invasive exotic plants.* Invasive exotic plants must be removed from the area being preserved. Methods to remove and control invasive exotic plants must be included on the development order plans. For purposes of this subsection, invasive exotic plants mean the same plants as described in section 10-420.

(d) *Conservation easement.* The guarantee of preservation must include a perpetual conservation easement granted to a governmental body or agency or to a qualified charitable corporation or trust whose purposes include protecting natural, scenic, or open space values of real property.

(1) This conservation easement must be a right or interest in real property that is appropriate to retaining the land in predominantly its natural forested condition as suitable habitat for native vegetation and wildlife in accordance with this section; and, which prohibits or limits the activities described in F.S. § 704.06, as such provisions now exist or as may be amended.

(2) This conservation easement must acknowledge that all residential and commercial development rights have been transferred away from the portion of the property subject to the conservation easement.

(3) The agency or entity accepting the easement must be acceptable to Lee County. Lee County will accept the conservation easement in the event no suitable entity is willing to accept the easement.

(4) This agency or entity must explicitly consent to enforce the easement's obligations in perpetuity. This requirement does not apply

to a secondary or tertiary back-up grantee that is empowered, but not obligated, to enforce the terms of the easement.

(5) Unless Lee County is the entity accepting the easement and consenting to enforce its obligations in perpetuity, Lee County must be named in the easement as a back-up grantee that is empowered, but not obligated, to enforce the terms of the easement.

(6) If no entity suitable to Lee County will accept such conservation easement, Lee County will accept the easement.

(e) *Management plan*. The guarantee of preservation must also include a long-term management plan that will accomplish the following goals for the area being preserved:

(1) The preserved habitat must be kept free of refuse, debris, and pests and must be maintained in perpetuity against the reestablishment of invasive exotic plants. The management plan must describe how invasive exotic plants will be prevented from being reestablished within the preserved habitat.

(2) The preserved habitat must be managed to maintain a mosaic of plant and habitat diversity typical of the ecological community being preserved. A reference source describing the native habitats found in Greater Pine Island is available in chapter 3 of the Multi-Species Recovery Plan for South Florida, published by the U.S. Fish & Wildlife Service.

(3) The management plan must describe acceptable forest management practices such as prescribed burning, selective thinning, and replanting. If the management plan does not include prescribed burning to mimic the historic fire regime, the plan must propose an alternative method for selectively thinning flammable understory plants.

(4) The management plan must specify how the preserved habitat will be demarcated through fencing or other means to clearly identify preserved habitat without unnecessary blockage of recreational usage or wildlife movement.

(5) The management plan must also comply with the standards set forth in section 10-415(b)(4).

(f) *Ownership of preserved habitat*. The underlying ownership of these permanently preserved native habitats may be retained by the original landowner, transferred to a homeowners or condominium association or transferred to another entity acceptable to the County.

(1) If the ownership of this land and the management commitments are to be transferred to a homeowners or condominium association, this transfer must be accomplished through a covenant that runs with the land that is binding on the homeowners or condominium association and their members (and not changeable by them), or such other legal mechanisms as will guarantee that the permanently preserved native habitats will be managed in accordance with these regulations. The association must provide proof that they have the financial ability to carry out the long term management responsibility. Legal documents that provide for the continued management will be accepted only after they are reviewed and approved by the county attorney's office as complying with this section.

(2) Alternatively, a landowner who wishes to retain ownership of this land or convey it to a different party must present evidence of financial ability to carry out the management responsibilities. Evidence of financial ability may consist of, but is not limited to, trust funds, bonds, surety documents, dedicated bank funds or another income stream acceptable to the County that will be used to discharge the management responsibility. The landowner may also provide evidence of the transfer and acceptance of the management responsibility to a governmental entity or other appropriate management entity (e.g. tax-exempt charitable entity) approved by the County that has the requisite financial ability to carry out the management responsibility. Legal documents that provide for the continued management will be accepted only after they are reviewed and approved by the county attorney's office as complying with this section.

Sec. 33-1055. Restored native habitat.

A development proposal may request an increase to the standard maximum residential density for committing to "restored native habitat," as that phrase is defined in section 33-1003. The restoration goal is to initiate the re-creation of native habitats that had been typical of Greater Pine Island and to establish conditions suitable to their long-term maturation, regeneration, and sustainability. Restored native habitat must meet all of the requirements of section 33-1054, plus the following requirements.

(a) *Hydrologic restoration.* In addition to the correction of modified water flows and quality as described in section 33-1054(b), the site's hydrologic regime must be appropriate for the ecological community being restored. A reference source describing the native habitats found in Greater Pine Island and their natural hydrologic conditions is available in chapter 3 of the Multi-Species Recovery Plan for South Florida, published by the U.S. Fish & Wildlife Service. This requirement will not be construed to require any hydrologic changes that would adversely affect the public health, safety, or welfare or the property of others.

(b) *Reintroduction of native trees.* Native trees must be planted and must be of species typical of the native habitat being restored, as set forth in the Multi-Species Recovery Plan. For example, the dominant tree species in mesic pine flatwoods, the most common native upland habitat on Pine Island, will be longleaf and South Florida slash pines; the dominant tree species in mesic temperate hammocks will be live oaks and cabbage palms.

(1) Site preparation must include removal of non-native vegetation that will compete with newly planted trees.

(2) Trees must be planted in clusters or random patterns rather than rows. Bare-root or containerized seedlings (seedling cone container size) may be planted using standard forestry techniques. A minimum of 300 trees per acre must be planted with a minium of 250 trees surviving at 5 years, and, an overall minimum of 200 trees maintained in perpetuity.

(3) Fertilization and watering-in are required at time of planting to ensure survival of seedlings, with spot irrigation beyond planting. Exotic and problematic plant monitoring and control is required for at least five years after planting.

(c) *Reintroduction of native midstory shrubs and understory plants.* In addition to the introduction of native pine trees as mentioned in subsection (b) above, midstory and understory species must be planted.

(1) These species must include at least five of the following:

a. wiregrass (*Aristida stricta var. beyrichiana*),

b. tarflower (*Bejaria racemosa*),

c. wax myrtle (*Myrica cerifera*),

d. fetterbush (*Lyonia lucida*),

e. rusty lyonia (*Lyonia ferruginea*),

f. gallberry (*Ilex glabra*),

g. saw palmetto (*Serenoa repens*), or

h. cabbage palm (*Sabal palmetto*).

(2) Additional native species may be substituted for the species listed above with the consent of Lee County.

(3) No single species may comprise more than 25% of the total number of plants installed.

(4) All of the acreage being restored must be planted with acceptable midstory and understory plants.

a. Plants must be placed in groupings or clusters throughout the area to be restored at an average spacing of 10 foot centers for midstory plant and 5 foot centers for understory plants.

b. Plants to be used must consist of containerized plants or tubelings. Direct seeding may also be a viable alternative to planting with the approval of Lee County.

(5) Site preparation may be necessary to adequately prepare the site for planting. Site preparation may include such activities as re-contouring, disking, roller chopping, bush hogging, prescribed burning, herbiciding, or other recognized vegetation management activities.

(d) *Criteria for success of restoration.* Plantings of native trees and midstory and understory plants must be monitored annually to assure a minimum density of 100 trees per acre and 80% survival of midstory and understory species (with no supplemental plantings for two years following the third year after the initial planting).

(1) Monitoring must be performed for a minimum of five years after initial planting. Monitoring must be done by a qualified biologist, ecologist, forester, or natural areas manager subject to approval by Lee County.

(2) Annual monitoring reports must be submitted to the director. After reviewing a monitoring report for the fifth or later year for methodology and accuracy, the director is authorized to issue a finding that the restoration has been successfully completed and that no further monitoring reports are required, or that restoration has been partially completed and that monitoring reports are required only for the incomplete portion of the restoration.

(e) *Financial guarantees.* If a landowner wishes to begin development prior to successful completion of the restoration, completion must be assured in the same manner that off-site improvements or on-site subdivision improvements may be guaranteed pursuant to section 10-154 of this code.

(f) *Flatwoods restoration bank.* As an additional alternative to restoring native habitat on-site or on contiguous or non-contiguous parcels combined into a single development application, Lee County may adopt an administrative

code that sets forth the requirements for a third party to preserve or restore degraded upland habitats on large parcels on Pine Island. Credits for this restoration work could be sold to other landowners in Greater Pine Island who wish to increase their allowable density in accordance with Table 33-1052.

(1) The restored land must meet all of the conditions for restored native habitat in this section in addition to the requirements of the administrative code.

(2) The administrative code will determine the assignment of restoration credits in a manner that is proportional to the ecological value of the restoration using a functional assessment method acceptable to Lee County. Credits can be sold once the restoration has proven successful according to criteria set forth in the code.

(3) Lee County will not be involved in any way in establishing the financial value of restoration credits.

Sec. 33-1056. Continued agricultural use on existing farmland.

A development proposal that requests an increase to the standard maximum residential density for committing to "continued agricultural use on existing farmland," as that phrase is defined in section 33-1003, must be accompanied by plans and supporting documentation that demonstrate compliance with the following requirements.

(a) *Land uses.* Existing farmland that is committed to continued agricultural uses under this section is limited to those uses allowable under the applicable agricultural zoning category assigned to the land, plus the following additional restrictions:

(1) Residential and commercial development is not permitted because those development rights have already been transferred by the landowner to other property.

(2) The conservation easement applicable to the property may contain further restrictions on land uses.

(b) *Removal of invasive exotic plants.* Invasive exotic plants must be removed. Methods to remove and control invasive exotic plants must be included on the development order plans. The farmland must be maintained in perpetuity against the reestablishment of invasive exotic plants and must be kept free of refuse, debris, and pests. For purposes of this subsection, invasive exotic plants mean the same plants as described in section 10-420.

(c) *Conservation easement.* To qualify for an increase to the standard maximum residential density on the entire property, the portion of the site

being committed to continued agricultural use must be placed under a perpetual conservation easement that meets the requirements of section 33-1054(d), except that instead of committing to retain the land in predominantly its natural forested condition as suitable habitat for native vegetation and wildlife, the perpetual conservation easement must commit to conserve the land as open space that is available for farming by the landowner or lessees of the landowner. The easement must also define the latitude for construction, modification, or demolition of structures necessary for farm operations without approval by the easement holder.

Sec. 33-1057. Lots of record in "Coastal Rural."

One single-family residence may be constructed on a lot of record in the Lee Plan's "Coastal Rural" land use category (as delineated by policies 1.4.7 and 14.1.8 of the Lee Plan), provided that the lot was lawfully created on or before the effective date of the ordinance adopting this provision.

DIVISION 6. DESIGN STANDARDS

Sec. 33-1081. Proposed street layout.

All new streets in the Greater Pine Island Planning Community must be fully integrated into the county maintained street system of the surrounding area. These requirements apply equally to new county maintained and privately maintained streets.

(a) New streets in a proposed development must be connected to existing county maintained streets in the adjacent area, and to likely extensions of existing county maintained streets, unless physical barriers such as canals or wetlands preclude connections. Primary access to a proposed development may not use an existing privately maintained street unless that street is upgraded to a county maintained street as specified in section 10-296 at the developer's expense.

(b) Gates or guardhouses may not be used to block the movement of cars except as provided in sections 33-1087 or 34-1748(4). However, traffic calming measures may be employed in accordance with Lee County administrative codes to slow vehicles or deter excessive cut-through traffic.

Sec. 33-1082. Development abutting an aquatic preserve.

(a) *Buffer.* Land abutting state designated aquatic preserves and associated wetlands and natural tributaries must preserve or create a 50 foot wide native vegetative buffer area between the development and the water body or associated wetlands.

(b) *Applicability.* This requirement applies to new development, including "planned development" rezoning approvals, new subdivisions and agriculture.

(c) *Exemptions.* This section does not apply to:

(1) existing subdivided lots created prior to the adoption of this provision (revise to include date Board adopts this ordinance); or

(2) portions of marinas that provide direct water access.

(d) *Implementation.* The requirement to provide the 50 foot buffer will be imposed on new development during the rezoning, development order approval and building permit issuance process. The buffer requirement will be imposed on agriculture through the notice-of-clearing process set forth in chapter 14 and section 33-1031.

(e) *Agriculture requirements.*

(1) If farmland abuts wetlands, the 50 foot buffer area must be maintained as a riparian forest buffer with an adjoining filter strip. An example of acceptable design criteria has been developed by the National Resources Conservation Service and published in the "Conservation Practice Standards", specifically Standard 391 (Riparian Forest Buffer) and Standard 393 (Filter Strip).

(2) If native vegetation does not exist on the agricultural property, then native tree cover must be established within three years of the issuance of the notice of clearing.

Sec. 33-1083. Commercial building design standards.

(a) *Applicability.* This section provides additional design standards and guidelines for commercial buildings in Greater Pine Island. These additional standards and guidelines are applicable to all new development and to renovations and redevelopment as provided in section 10-602, except as modified by this section. Where the standards or guidelines in this section conflict with other standards of this code, this section will control.

(b) *Purpose and intent.* The standards in this section implement Lee Plan Policy 14.4.3 by expanding the commercial design standards in chapter 10, article IV.

(c) *Building size and character.* New commercial buildings are limited to 10,000 square feet of floor area per building unless a larger size is approved by variance or by deviation in a commercial planned development. Any larger buildings approved by variance or deviation must be designed to minimize the appearance of a single large box or a standard franchise design.

(d) *Windows.* The following rules apply to windows on all primary facades (as defined in section 10-601).

(1) Transparent windows must be installed along a minimum of 30 percent of each primary facade.

a. All window glass, whether integrally tinted or with film applied, must transmit at least 50% of visible daylight.

b. Private interior spaces such as offices may use operable interior blinds for privacy.

(2) New window openings must be rectangular and oriented vertically, except for transom windows over doors.

(3) The bottoms of all new window openings must be no higher than 30 inches above the finished floor elevation.

(4) New windows must contain visible sills and lintels on the exterior of the wall.

(5) New windows must have their glazing set back at least 3 inches from the surface plane of the wall, or set back at least 2 inches when wood frame construction is used.

(e) *Metal roofs.* Sloping roofs must use metal for all finished surfaces; however, this requirement does not apply to buildings that have been designated as historic pursuant to ch. 22.

(f) *Mature trees.* The development services director may grant deviations from the technical standards in section 10-104 to accommodate the preservation of existing mature trees on a development site.

(1) To qualify for a deviation, the tree being preserved must be at least six inches in diameter at a height of 4½ feet and must not be an invasive exotic plant as defined by section 10-420.

(2) The deviation requested must not compromise the public health, safety, or welfare as determined by the development services director.

(g) *Parking lots.* Except in the Matlacha historic district and except for marinas anywhere in Greater Pine Island, no more than a single row of parking spaces may be located between the primary facade of a building and the front lot line. In addition, at least one half of all parking spaces provided on a site must be located further from the front lot line than the plane of a primary facade that is closest to the front lot line.

Sec. 33-1084. Maximum height of wireless communication facilities.

The overall height of wireless communications facilities must not exceed the height limitations set forth in section 33-1088. For stealth wireless communication facilities only, these height limitations may be increased by one foot for each one-half foot that every required street, side, and rear setback is increased.

Sec. 33-1085. Density limitations.

(a) Table 1(a) of the Lee Plan contains special density restrictions for Greater Pine Island that would affect rezonings that would allow in excess of 3 dwelling units per gross acre.

(b) Those portions of Greater Pine Island that are classified in the Lee Plan as "Coastal Rural" have special density restrictions as set forth in section 33-1051 et seq.

(c) Residential densities in Greater Pine Island may be further restricted in accordance with concurrency and traffic-based growth limitations in section 33-1011.

(d) Housing density bonuses are not permitted in Greater Pine Island (see section 34-1511).

(e) Transfers from on-site wetlands at rates above the standard density rates for wetlands are not permitted in the Greater Pine Island Planning Community.

(f) Land in Greater Pine Island may not receive TDR units in accordance with article IV of chapter 2 (see section 2-148), but density transfers within Greater Pine Island may be permitted in accordance with 33-1052(b) and through a new Greater Pine Island TDR program contemplated by the policies under Lee Plan Objective 14.6.

Sec. 33-1086. Residential project fences and walls.

New residential project fences or walls are not permitted in Greater Pine Island (see section 34-1743). This restriction does not affect buffer walls that may be required by section 10-416.

Sec. 33-1087. Entrance gates.

Entrance gates or gatehouses cannot interfere with movement of cars between neighborhoods (see also section 33-1081).

(a) Entrance gates or gatehouses can be used to control access only to a single block and may not be located on a publicly dedicated street or street right-of-way.

(1) For purposes of this subsection, a "single block" means the length of any street or accessway from its end or cul-de-sec to the first intersecting street and which provides access to 5 or fewer existing or potential dwelling units.

(2) An entrance gate to a single block must be designed in such a manner that at least one vehicle can pull safely off the intersecting street while waiting to enter.

(3) These regulations supersede conflicting regulations governing entrance gates and gatehouses in section 34-1748(1).

(b) Entrance gates for non-residential uses only that will remain open during normal working hours are permitted in accordance with section 34-1748(4).

(c) Fencing around individual lots and agricultural properties is governed by general county regulations and is not affected by this section.

Sec. 33-1088. Maximum height of buildings and structures.

No building or structure may be erected or altered so that the peak of the roof exceeds 38 feet above the average grade of the lot in question or 45 feet above mean sea level, whichever is lower.

(a) The provisions of section 34-2171(a)(1) that allow the substitution of "minimum required flood elevation" for "average grade of the lot in question" do not apply to Greater Pine Island.

(b) The provisions of section 34-2174(a) that allow taller buildings in exchange for increased setbacks do not apply to Greater Pine Island.

(c) Structures without roofs will be measured to the highest point on the structure.

(d) No deviations from these height restrictions may be granted through the planned development process.

(e) Any variances from these height restrictions require all of the findings in section 34-145(b)(3), with the sole exception being where the relief is required to maintain or improve the health, safety, or welfare of the general public (not just the health, safety, or welfare of the owners, customers, occupants, or residents of the property in question).

SECTION SEVEN: AMENDMENT TO LDC CHAPTER 34

Lee County Land Development Code Chapter 34 is hereby amended as follows, with deleted text identified with strike through and additional text identified with underlining.

Chapter 34

ZONING

ARTICLE I. IN GENERAL

Sec. 34-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Greater Pine Island means ~~all of Pine Island, Little Pine Island, West Island, Porpoise Point Island and other small adjacent islands, more particularly described as follows: Sections 25, 26, 35 and 36, Township 43 South, Range 21 East; also Sections 28, 29, 30, 31, 32, and 33, Township 43 South, Range 22 East; also Section 1Township 44 South, Range 21 East; also, all of Township 44 South, Range 22 East, less Sections 1, 2, 11 12, 13, and certain portions of Section 24, lying northeast or toward the mainland from ; also, all of Township 45 South, Range 22 East, except those portions of Sections 12, 13 and 24, lying on the mainland; also, Sections 1, 2, 3, 9, 10, 11 and 12, Township 46 South, Range 22 East; also Section 6, Township 46 South, Range 23 East.~~ the area that is affected by Lee Plan Goal 14 as depicted on the Future Land Use Map and as described in section 33-1002.

No other changes to section.

Sec. 34-6. Compliance with specific planning community requirements.

If the subject property is located in one of the following communities, the owner/applicant will be required to demonstrate compliance with the requirements applicable to the specific community as outlined in chapter 33.

(1) Estero Planning Community

(2) Greater Pine Island

ARTICLE II. ADMINISTRATION

DIVISION 6. APPLICATION AND PROCEDURES FOR CHANGES, PERMITS, INTERPRETATIONS AND APPROVALS

Sec. 34-202. General submittal requirements for applications requiring public hearing.

(a) *All applications.* Every request for actions requiring a public hearing under this chapter must include the following. However, upon written request, on a form prepared by the county, the director may modify the submittal requirements contained in this section where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request for a waiver or modification must be submitted to the director prior to submitting the application. A copy of the request and the director's written response must accompany the application and will become a part of the permanent file.

(1) through (9) *No change.*

(10) *Compliance with specific requirements.* If the subject property is located in one of the following planning communities, the owner/applicant will be required to demonstrate compliance with the requirements applicable to the specific community as outlined in chapter 33.

a. Estero Planning Community

b. Greater Pine Island

(b) *No change.*

ARTICLE VI. DISTRICT REGULATIONS

DIVISION 2. AGRICULTURAL DISTRICTS

Sec. 34-654. Property development regulations table.

Property development regulations for agricultural districts are as follows:

TABLE 34-654. PROPERTY DEVELOPMENT REGULATIONS FOR AGRICULTURAL DISTRICTS

	Special Notes or Regulations	AG-1	AG-2	AG-3
Minimum lot dimensions and area:	Note (1)			
Minimum lot area:	Notes (2) and (6)			
Interior lot	34-2221, 34-2222	4.7 acres	39,500 sq. ft.	20,000 sq. ft.
Corner lot	34-2221, 34-2222	4.4 acres	33,600 sq. ft.	20,000 sq. ft.
Minimum lot width (feet)		300	100	100
Minimum lot depth (feet)		300	130	130

No changes to balance of table.

Notes:

(1) through (5) *No change.*

(6) All lots in the "Coastal Rural" land use category in Greater Pine Island (as delineated by policies 1.4.7 and 14.1.8 of the Lee Plan) that are created after May 29, 2007 must comply with the additional regulations in section 33-1052. Lots created before that date are not required to comply with the additional regulations in section 33-1052.

DIVISION 3. RESIDENTIAL DISTRICTS

Sec. 34-695. Property development regulations table.

Property development regulations for one- and two-family residential districts are as follows:

TABLE 34-695. PROPERTY DEVELOPMENT REGULATIONS
FOR ONE- AND TWO-FAMILY RESIDENTIAL DISTRICTS

	Special Notes or Regulations	RSC-1	RSC-2	RSA	RS-1
Minimum Lot area and dimensions:	34-2221, 34,2222, 34-2142				
Single family–detached:	Note (5)				
Lot area (square feet)		4,000	43,560	6,500	7,500
Lot width (feet)		40	100	65	75
Lot depth (feet)		75	200	75	100

No changes to balance of table.

Notes:

(1) through (4) *No change.*

(5) All lots in the "Coastal Rural" land use category in Greater Pine Island (as delineated by policies 1.4.7 and 14.1.8 of the Lee Plan) that are created after May 29, 2007 must comply with the additional regulations in section 33-1052. Lots created before that date are not required to comply with the additional regulations in section 33-1052.

Sec. 34-715. Property development regulations table.

Property development regulations for multiple-family residential districts are as follows:

TABLE 34-715. PROPERTY DEVELOPMENT REGULATIONS
FOR MULTIPLE-FAMILY RESIDENTIAL DISTRICTS

	Special Notes or Regulations
Minimum lot area and dimensions:	34-1493, 34-1494, 34-2221, 34-2222, 34-2142
Single-family detached: Minimum lot size (square feet) Lot area per unit (square feet) Lot width (feet) Lot depth (feet	Note (7)
Duplex, two-family, townhouse: Minimum lot size (square feet) Lot area per unit (square feet) Lot width (feet) Lot depth (feet	Note (7) 34-713
Multiple-family: Minimum lot size (square feet) Lot area per unit (square feet) Lot width (feet) Lot depth (feet	Note (7)
Nonresidential uses: Minimum lot size (square feet) Lot area per unit (square feet) Lot width (feet) Lot depth (feet	

No changes to balance of table.

Notes:

(1) through (6) *No change.*

(7) All lots in the "Coastal Rural" land use category in Greater Pine Island (as delineated by policies 1.4.7 and 14.1.8 of the Lee Plan) that are created after May 29, 2007 must comply with the additional regulations in section 33-1052. Lots created before that date are not required to comply with the additional regulations in section 33-1052.

ARTICLE VI. DISTRICT REGULATIONS

DIVISION 9. PLANNED DEVELOPMENT DISTRICTS

Sec. 34-935. Property development regulations.

The provisions of this section do not apply to PRFPDs. Property development regulations for PRFPDs are set forth in section 34-941.

(a) through (c) *No change.*

~~(d) *Planned developments on Pine Island.* Where the proposed planned development is within the Greater Pine Island area and adjoins state-designated aquatic preserves or associated natural tributaries a 50-foot-wide vegetated buffer area between any structure or building and the mean high-water line of the water body shall be provided. No deviation from requirement shall be permitted except under extreme circumstances in which the requirement would have the effect of prohibiting all reasonable use of the property.~~

(e) through (g) *No change.*

ARTICLE VII. SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 11. WIRELESS COMMUNICATION FACILITIES

Sec. 34-1444. Permissible wireless facility locations.

(a) *No change.*

(b) *Exceptions*:

(1) and (2) *No change.*

(3) On the barrier islands, Greater Pine Island (see section 33-1084), and within the outer island future land use areas, the overall height of wireless communications facilities must not exceed 35 feet or the height limitation set forth in section 34-2175, whichever is less. The provisions set forth in section 34-2174 are applicable only to stealth wireless communication facilities.

(4) *No change.*

ARTICLE VII. SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 12. DENSITY

Subdivision II. Residential Development

Sec. 34-1495. Density limitations for specific areas.

Except as may be specifically permitted by the Lee Plan, maximum densities are hereby limited as follows:

(1) and (2) *No change.*

(3) *Greater Pine Island.* See density limitations for Greater Pine Island in section 33-1085.

~~a. For the Matlacha, Bokeelia and St. James City areas, currently classified in the Lee Plan as future urban areas, maximum density permitted shall be as set forth for the zoning district in which located, or that which is permitted for the land use category in which located, whichever is lower.~~

~~b. For all other areas:~~

~~1. No land, except as provided in subsection (3)a of this section, shall be rezoned to any zoning district permitting more than three dwelling units per gross acre.~~

~~2. Land currently zoned for more than three dwelling units per gross acre shall be allowed a density in excess of three dwelling units per gross acre provided that all other applicable regulations are met, and provided further that no density shall be allowed above that which is permitted for the land use category in which the property is located, or which is permitted by the zoning which was in effect for the property as of November 25, 1986, whichever is lower.~~

~~c. With regard to Matlacha, Bokeelia, St. James City and all other areas, due to the constraints on future development posed by the limited road connections to the mainland area of the county, bonus densities of any kind are not permitted in Greater Pine Island. This prohibition includes housing density bonuses, off-site transfers from environmentally critical areas, and transfers from on-site wetlands at rates above the standard density rates for environmentally critical areas.~~

ARTICLE VII. SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 30. PROPERTY DEVELOPMENT REGULATIONS

Subdivision II. Height

Sec. 34-2174. Additional permitted height when increased setbacks provided.

(a) and (b) *No change.*

(c) The height increases described in section 34-2174(a) and (b) may not be used in Greater Pine Island.

Sec. 34-2175. Height limitations for special areas.

The following areas have special maximum height limitations applicable to all conventional and planned development districts:

(a) *Special areas.*

(1) through (4) *No change.*

(5) *Greater Pine Island.* ~~No building or structure may be erected or altered so that the peak of the roof exceeds 38 feet above the average grade of the lot in question or 45 feet above mean sea level, whichever is lower. The term "building or structure," as used in this subsection, does not include a building or structure used for an industrial purpose.~~ See section 33-1088.

(6) and (7) *No change.*

(b) *Lee Plan land use categories.* *No change.*

SECTION EIGHT: AMENDMENT TO LDC APPENDIX I

Lee County Land Development Code Appendix I is hereby amended to add Map 5 titled Greater Pine Island Planning Community and a legal description of the Greater Pine Island Planning Community attached as Exhibit A to this ordinance.

SECTION NINE: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION TEN: SEVERABILITY

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION ELEVEN: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

SECTION TWELVE: EFFECTIVE DATE

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. The provisions of this ordinance will apply to all projects or applications subject to the LDC unless the application for such project is complete and found sufficient before the effective date hereof.

Commissioner Hall made a motion to adopt the foregoing resolution, seconded by Commissioner Janes. The vote was as follows:

ROBERT P. JANES	Aye
BRIAN BIGELOW	Aye
RAY JUDAH	Absent
TAMMARA HALL	Aye
FRANK MANN	Aye

DULY PASSED AND ADOPTED THIS 29th day of May, 2007.

ATTEST:
CHARLIE GREEN, CLERK

By: Marcia Wilson
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Robert P. Janes, Chair

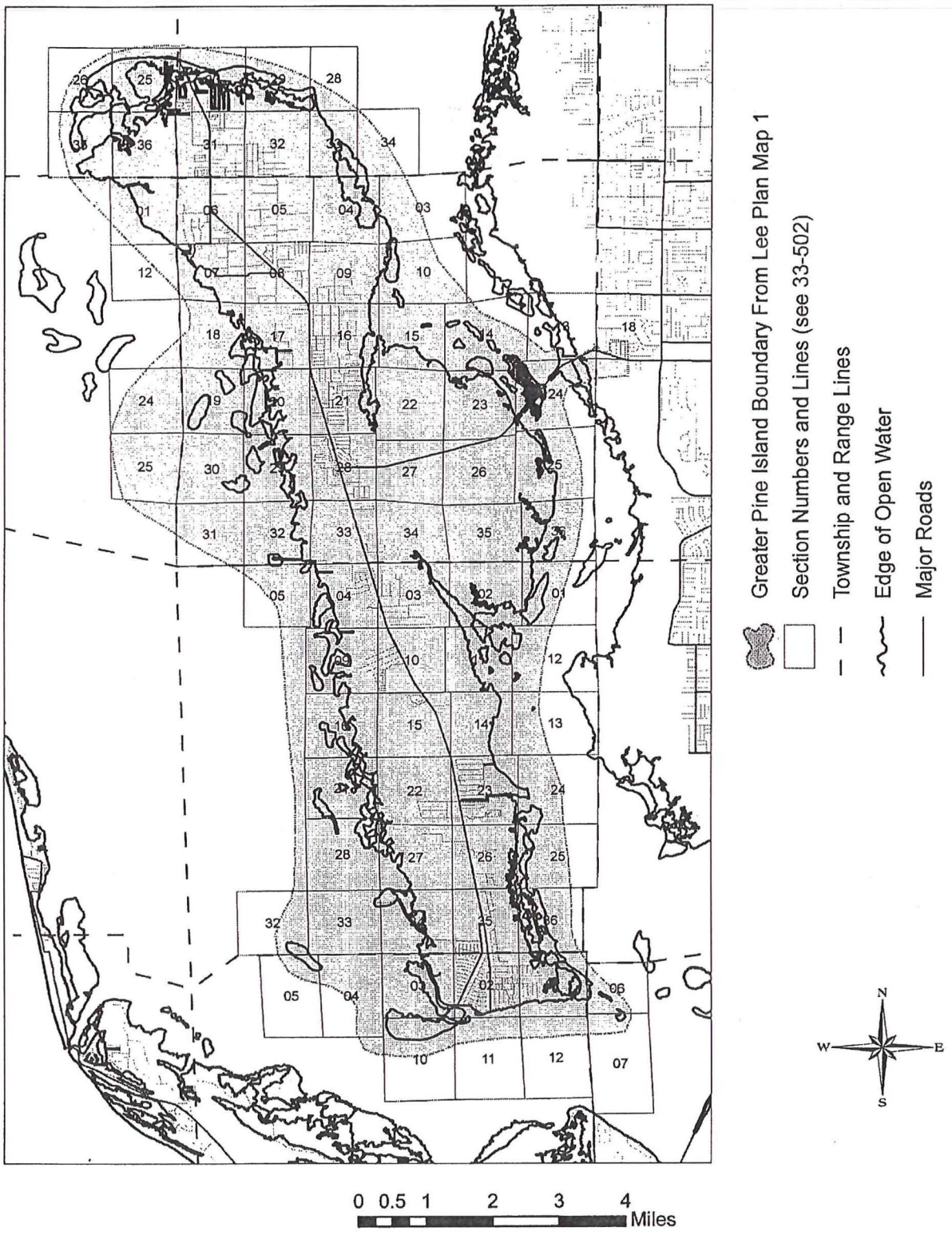
SEAL
BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

APPROVED AS TO FORM:

By: _____
Dawn E. Perry-Lehnert
Office of County Attorney

ATTACHMENT:
Exhibit A: Greater Pine Island Planning Community (Map 5) and legal description

S:\LU\ORDINANC\Adopted\07-19 GPI Chapter 33 adoption - DPL



Map 5 - Greater Pine Island Community Plan

GREATER PINE ISLAND
LEGAL DESCRIPTION
TO ACCOMPANY MAP 5

Greater Pine Island means all of Pine Island, Little Pine Island, West Island, Porpoise Point Island and other small adjacent islands, more particularly described as follows: Sections 25, 26, 35 and 36, Township 43 South, Range 21 East; also Sections 28, 29, 30, 31, 32, 33 and 34, Township 43 South, Range 22 East; also Sections 1, 12, 24 and 25, Township 44 South, Range 21 East; also, all of Township 44 South, Range 22 East, less Sections 1, 2, 11, and 12, and less those portions of Section 13 lying in the City of Cape Coral; also, those portions of Section 18 of Township 44 South, Range 23 East lying outside the City of Cape Coral; also, all of Township 45 South, Range 22 East, less Sections 6, 7, 8, 17, 18, 19, 20, 29, 30 and 31, and less those portions of Sections 12, 13 and 24, lying on the mainland; also, Sections 1, 2, 3, 4, 5, 10, 11 and 12, Township 46 South, Range 22 East; also Sections 6 and 7, Township 46 South, Range 23 East.

FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

KURT S. BROWNING
Secretary of State

June 7, 2007

Honorable Charlie Green
Clerk of Court
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attn: Marcia Wilson, Deputy Clerk

Dear Mr. Green:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated May 31, 2007 and certified copy of Lee County Ordinance No. 07-19, which was filed in this office on June 4, 2007.

Sincerely,

Liz Cloud

Liz Cloud
Program Administrator

LC/lbh

DIRECTOR'S OFFICE
R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
850.245.6600 • FAX: 850.245.6735 • TDD: 850.922.4085 • **http://dlis.dos.state.fl.us**

COMMUNITY DEVELOPMENT
850.245.6600 • FAX: 850.245.6643

STATE LIBRARY OF FLORIDA
850.245.6600 • FAX: 850.245.6744

STATE ARCHIVES OF FLORIDA
850.245.6700 • FAX: 850.488.4894

LEGISLATIVE LIBRARY SERVICE
850.488.2812 • FAX: 850.488.9879

RECORDS MANAGEMENT SERVICES
850.245.6750 • FAX: 850.245.6795

ADMINISTRATIVE CODE AND WEEKLY
850.245.6270 • FAX: 850.245.6282