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February 23, 2026

VIA HAND DELIVERY ONLY

Local Planning Agency ("LPA")
Lee County, Florida
Administration East Building
2201 Second Street, Room 118
Fort Myers, FL 33901

Re: Request for Affected Person Status in Case No. CPA2025-00003 for Pugliese Multi-Family and to Recommend the County Commission Not Transmit the Proposed Future Land Use Map Amendment

Dear LPA Members:

Our Firm represents The Forest Property Owners' Association, Inc. ("Forest POA") with respect to the above referenced application for a small-scale amendment to Lee Plan Map 1-A (Future Land Use Map) to change the future land use map designation from Suburban to Urban Community on ±13.2 acres identified by STRAP Nos. 01-46-24-00-00004.2000 and .2020, which abuts the Forest POA's common area green space (further identified by STRAP No. 01-46-24-00-00001.00CE) and roads (Timberlakes Drive and Forest Boulevard further identified by STRAP No. 01-46-24-00-00002.00CE).

1. Request for Affected Person Status

Florida law recognizes community associations' standing to sue and defend on behalf of themselves and their members in matters affecting their interests, including land use and zoning disputes. As an initial matter, we write to request recognition of the Forest POA as an affected person in all hearings before the LPA and Board of County Commissioners (the "BOCC") in the above-referenced case.

Affected Person Status. Section 163.3184, Florida Statutes (2025), articulates the manner in which the State of Florida protects affected persons in the comprehensive plan amendment adoption process, such as this case. Paragraph (1)(a) provides this definition in pertinent part:

"Affected person" includes the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the

local government whose plan is the subject of the review; owners of real property abutting real property that is the subject of a proposed change to a future land use map; and adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction. Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment. (Emphasis added).

The Forest POA, which submit oral and/or written objections with respect to this application, is an affected person because it owns, operates, and controls real property within the 500-foot radius for notice purposes. In particular, the Forest POA owns and operates common area green space and roads for the benefit of its members (790), which directly abut the real property that is the subject of this proposed change to the future land use map. In addition, 97 individual members of the Forest POA also independently own real property, and two (2) subassociations of the Forest POA (Dove Hollow Condominium Association, Inc. and Dove's Nest Condominium Association, Inc.) independently operate common element property on behalf of their respective condominium unit owners, within the notice radius for this application. The proposed amendment, if adopted, would allow for significant incompatible density (contemplated to not only be developed on uplands but also on ±4.26 acres of wetlands in the vulnerable Coastal High Hazard Area ("CHHA") in violation of Lee Plan Policy 101.3.2) in immediate proximity to the Forest POA and its members that will generate traffic and overburden hurricane evacuation routes at a level far in excess of what has been endured historically and endured currently, among other things. Accordingly, the Forest POA and its members will be subject to potential injuries beyond that which would be inflicted upon the general public. These facts strongly support recognition of the requested status.

2. Procedural Due Process Not Provided as to LPA Hearing on February 23, 2026

Lee County Administrative Code AC-13-6, establishing procedures for amendments to the Lee Plan, including notice requirements and provisions for public participation during the amendment process, requires the applicant to post a sign supplied by the Lee County Department of Community Development at least fifteen (15) calendar days before the LPA hearing under Section D.2.b. Further, the sign, to indicate the action requested by the applicant, the date of the LPA hearing, and the County-assigned case number, must remain in place until after the final Board of County Commissioners adoption hearing on the amendment. A site visit was performed on February 18, 2026, and February 20, 2026, and there was no posted sign for this case on the subject properties.

3. **Request that LPA Recommend the Board of County Commissioners Not Transmit the Proposed Future Land Use Map Amendment**

The Forest POA and its members oppose the proposed future land use map amendment with good justification. *Enclosed* is a copy of an Expert Witness Report in Opposition to CPA2025-00003 prepared by Daryl Max Forgey, AICP, d/b/a Forgey Planning LLC, who has been retained by the Forest POA as its expert planner in this case, along with his resume. For the numerous reasons detailed herein and in the *enclosed*, and as will be further detailed in the forthcoming additional oral and written objections to the LPA and the Board of County Commissioners, this future land use map amendment should not be transmitted. In the alternative, the proposed amendment should be continued to a future LPA hearing date when complete and reliable supporting information is produced by the applicant and evaluated by County staff in response to the issues identified and the signage is properly posted on the subject properties as required by Lee County Administrative Code AC-13-6.D.2.b.

Finally, because this is a legislative action, the Forest POA, its members, and their neighbors look forward to meeting with the individual County Commissioners in advance of the eventual Board of County Commissioners hearing to further express their concerns.

Thank you.

Very truly yours,



Katie O. Berkey, AICP
For the Firm

KOB/oms
Enclosures (as stated)

cc: Board of Directors
Max Forgey, AICP
Lindsey Karczewski, Planner, Lee County Community Development
Brandon Dunn, Planning Manager, Lee County Community Development
Janet Miller, Administrative Specialist, Lee County Community Development
Amanda Swindle, Esquire, Assistant County Attorney, Lee County Attorney's Office
Richard B. Akin, Esquire, Counsel for Applicant

DARYL MAX FORGEY, AICP
LAND USE PLANNER & EXPERT WITNESS
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In Alliance with LAND SMART LLC
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239.560.5864

February 23, 2026

Local Planning Agency (“LPA”)
Lee County, Florida
Administration East Building
2201 Second Street, Room 118
Fort Myers, FL 33901

SUBJECT: EXPERT WITNESS REPORT IN OPPOSITION TO CPA2025-00003, AN APPLICATION BY LAND AMERICA, LLC FOR A SMALL-SCALE AMENDMENT TO LEE PLAN MAP 1-A (FUTURE LAND USE MAP) TO CHANGE THE FUTURE LAND USE MAP DESIGNATION FROM SUBURBAN TO URBAN COMMUNITY ON APPROXIMATELY 13.2 ACRES LOCATED WEST OF SOUTH TAMiami TRAIL (US 41) NEAR TIMBERLAKES DRIVE AND FOREST BOULEVARD, STRAP NOS. 01-46-24-00-00004.2000 and .2020, ADJACENT TO THE FOREST PROPERTY OWNERS’ ASSOCIATION, INC. COMMON AREAS AND ROADWAYS

Dear Local Planning Agency Members:

1. PURPOSE OF REPORT AND QUALIFICATIONS OF EXPERT

Purpose of this report. This report is offered by Max Forgey, AICP, on behalf of the FOREST PROPERTY OWNERS’ ASSOCIATION, INC. ("Forest POA") and its members who will be adversely affected by the proposed amendment if adopted and implemented. The subject properties are directly adjacent to Forest POA common area roads (Timberlakes Drive and Forest Boulevard further identified by STRAP No. 01-46-24-00-00002.00CE) and common area green space (further identified by STRAP No. 01-46-24-00-00001.00CE).

This report sets forth the principal planning reasons that the proposed amendment should be denied or, at minimum, be continued pending production of complete and reliable supporting information from the applicant. This report is intended to supplement anticipated public testimony and written submissions of affected persons.

Qualifications and professional experience. The undersigned is a certified land use planner and expert witness with a Master of Public Affairs (MPA) degree with a concentration in Urban and Regional Planning from the O’Neill School of Public and Environmental Affairs at Indiana University Bloomington; and has been a member in good standing of the American Institute of

Certified Planners (AICP) since 1993. A copy of the resume of Daryl Max Forgey, detailing his professional qualifications and career experiences, is appended as Exhibit A.

2. LEGISLATIVE NATURE OF CASE

Case No. CPA2025-00003 is legislative in nature. Comprehensive plans in Florida must be amended by legislative procedures. W. Thomas Hawkins, in his treatise *Land Use Law in Florida* (Routledge, 2021), posits that:

“Legislative actions create a general rule or policy which will be applicable to an open class of individuals, interests, or situations.” [pg. 51]

and cites examples of legislative actions, including comprehensive plan adoption and amendments, adoption of land development code, and rezoning of many properties. This application for a Future Land Use Map amendment falls into that category.

The proposed action is legislative in nature because it would amend the Lee Plan Future Land Use Map designation on approximately 13.2 acres (STRAP Nos. 01-46-24-00-00004.2000 and .2020) from **Suburban** to **Urban Community**, imposing a material change in the scale and intensity platform available for the subject properties. The Comprehensive Plan enshrines the County’s vision of its future, one which provides guidance to property owners, local government agencies, and infrastructure and service providers, among others. A local government has every good reason to maintain its comprehensive plan and land development regulations in their existing state unless and until a better use reveals itself through the amendment process. The desires of one individual property owner for personal enrichment or aggrandizement should not justify replacing the property owner’s already ample existing entitlements.

Judicial standard of review. Hawkins summarizes the judicial standard of review as follows:

“Courts review legislative decisions using the fairly debatable standard. This standard has two parts. First, laws must bear a substantial relation to a legitimate police power purpose. Second, the connection between that rule and its purported purpose may not be clearly arbitrary and unreasonable.” [pg. 51]

In this case, there is no reason to doubt that the County’s existing long-standing Future Land Use Map designation bears a substantial relation to legitimate police power purposes, and there is no reason to assume that denying an amendment to increase the entitlement platform could be considered arbitrary or unreasonable.

Finally, there is a bright-line rule articulated in *Martin County v. Yusem*, 690 So. 2d 1288 (Fla. 1997), by which comprehensive plan amendments are legislative and subject to the “fairly debatable” standard of land use decision-making. The Board of County Commissioners, as the County’s governing body, has no obligation to transmit or adopt this amendment to the Lee Plan, and should deny it outright. The undersigned concludes that the existing land use designation on

the subject properties allow many reasonable uses at a compatible intensity or density to the applicant and significant alternative development potential under the Live Local Act.

3. SUMMARY OF THE REQUEST AND SITE CONTEXT

The applicant, Land America, LLC, requests an amendment to Lee Plan Map 1-A (Future Land Use Map, or FLUM) to change the designation from Suburban to **Urban Community**.

Property identification. STRAP Nos. 01-46-24-00-00004.2000 and .2020 consisting of approximately 13.2 acres.

Location and adjacency. The property is located on the west side of South Tamiami Trail (US 41) near Timberlakes Drive and Forest Boulevard, approximately 0.1 mile north of the intersection of South Tamiami Trail and Timberlakes Drive. The parcel is adjacent to Forest POA common area roads and green space.

Figure 1. 500-foot notification radius with subject properties identified.

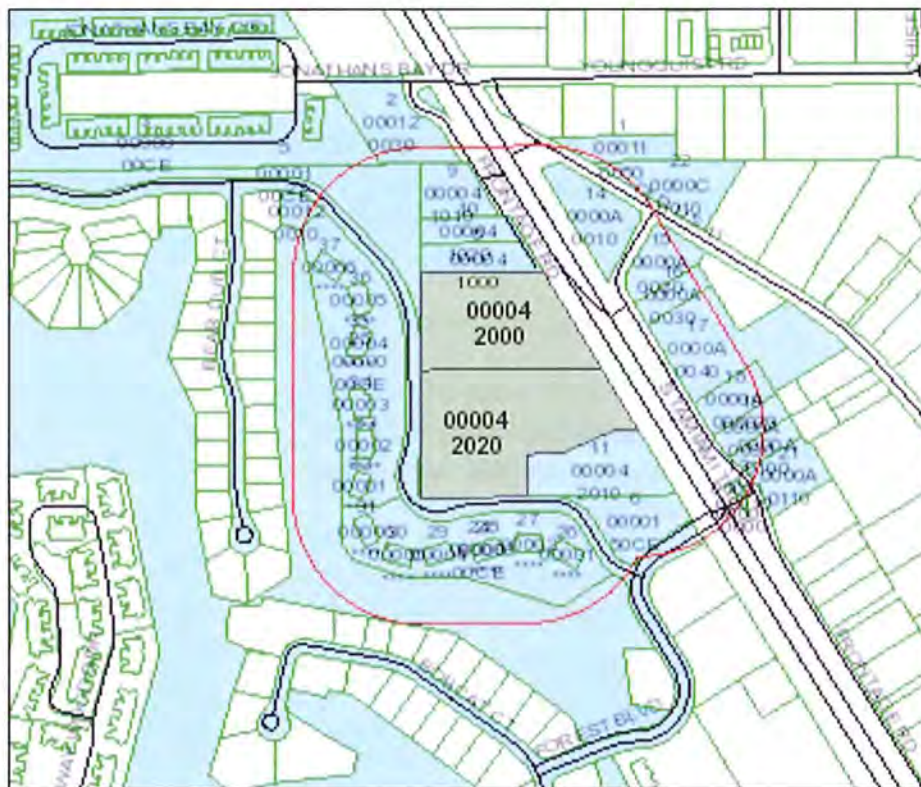


Figure 2. Lee County Property Appraiser aerial further depicting the proximity between the Forest POA common area roads and open space, Forest POA members, Forest POA subassociations, and interconnected Forest Country Club



Zoning / Live Local context as represented in project materials. Project communications indicate the site is zoned C-1, and it has been represented that C-1 qualifies for Live Local Act administrative approval and density provisions. Lee County's published Live Local Act guidance lists C-1 as an eligible zoning district, subject to statutory exclusions for airport-related areas and working waterfronts, and further ties Live Local density in unincorporated Lee County to Future Land Use Category groupings (Future Urban vs Future Suburban/Non-Urban). The interaction between the Live Local Act and the requested FLUM category change is, therefore, a central planning issue in this case.

4. PROCEDURAL POSTURE AND HEARING INFORMATION

LPA hearing. The Local Planning Agency hearing is scheduled for February 23, 2026. However, Lee County Administrative Code AC-13-6, establishing procedures for amendments to the Lee Plan, including notice requirements and provisions for public participation during the amendment process, requires the applicant to post a sign supplied by the Lee County Department of Community Development at least fifteen (15) calendar days before the LPA hearing under Section D.2.b. Further, the sign, to indicate the action requested by the applicant, the date of the LPA hearing, and the County-assigned case number, must remain in place until after the final Board of County Commissioners adoption hearing on the application. A site visit was performed on February 18, 2026, and February 20, 2026, and there was no posted sign for this case on the subject properties. *See* site photographs taken on February 20, 2026, at approximately 3:00 PM below.

BCC hearings. The BCC hearing dates follow the LPA recommendation.



Looking North along the Subject Properties' Frontage



Approximately at Center of Subject Properties' Frontage



Looking South along the Subject Properties' Frontage

5. KEY PLANNING ISSUES PRESENTED BY THIS APPLICATION

5.1 LPA should consider the entitlement outcome when a FLUM amendment is followed by a Live Local Act implementation.

A FLUM category change is not merely a description of a single development concept. It establishes a new entitlement framework that runs with the land. Forest POA's principal concern is that the applicant has adjusted significant assumptions during the process, and that approval of the Suburban to Urban Community change may allow a materially larger density and intensity outcome administratively over time than what is being portrayed as the near-term request.

The concern goes well beyond the immediate impact of the applicant's request, and should also consider the irreversible impact which might result from a subsequent quasi-judicial change sought by a future owner.

The Live Local Act magnifies this concern because qualifying projects must be administratively approved, and are not subject to discretionary actions by the Board, if the project meets applicable land development regulations for multi-family development and is otherwise consistent with the comprehensive plan, except for provisions establishing allowable densities, floor area ratios, height, and land use.

5.2 Compatibility with existing neighborhoods and Forest POA.

"Compatibility" is defined by Florida's Community Planning Act as: "'Compatibility' means a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition." [Ch. 162.3164(9)]

The subject properties directly abut Forest POA common area roads—Timberlakes Drive and Forest Boulevard—and common area green space. The existing Suburban designation on the subject properties and neighboring properties has been a feature of the Lee Plan since the 1980s. The Suburban designation allows six (6) dwelling units with the possibility of 10 units with an affordable housing bonus. These are generally compatible in density and form (single-family) with existing Lee Plan allowances and were well understood by the Forest POA's members when they purchased their residences (both single-family homes and condominium units). The applicant's proposed amendment allows for uses that are incompatible in form and density with the surrounding, existing residential development. Other compatibility impacts, including scale, intensity, buffering, transitions, access patterns, and operational impacts, should be central planning considerations for this map amendment. These impacts will be amplified by the testimony of neighboring property owners.

5.3 Transportation and access context on South Tamiami Trail (US 41).

US 41 is a constrained regional corridor. Transportation and access impacts, including safety and operational issues, must be addressed in a way that is realistic and consistent with existing roadway function and access limitations.

5.4 Coastal High Hazard Area (CHHA) and hurricane evacuation / mitigation policy constraints.

The subject properties lie within the Coastal High Hazard Area (CHHA) in an area that experienced significant flooding during Hurricanes Irma, Ian, Debby, Helene, and Milton. The Lee Plan expressly provides that development in coastal areas is subject to additional requirements in the Conservation and Coastal Management Element, including Goal 101 (Coastal Areas). Policy 101.3.2 further states that development in the CHHA is to be restricted to uplands except as needed for public facilities.

If this site lies within CHHA as represented, then the requested Lee Plan amendment would trigger heightened scrutiny for density increases within an already vulnerable area. For example, Lee Plan Policy 101.1.4 requires that comprehensive plan amendments which increase density within the CHHA meet specific evacuation-time/sheltering criteria, or provide mitigation as determined by the County's Department of Public Safety. In addition, future residents of affordable housing in the CHHA may face severe, disproportionate barriers to safe and timely hurricane evacuation due to limited financial resources for alternative lodging and fuel (or a lack of transportation altogether), as well as the risk of losing employment income. These populations, that can include the elderly, are often the "last to leave and last to return," needing tailored emergency, transportation, and shelter assistance, and should not be placed in the vulnerable CHHA. These issues must be treated as policy consistency matters and supported by competent, substantial evidence.

5.5 Wetlands and functional site constraints.

The applicant asserts that there are ±4.26 acres of wetlands on the site, characterized as poor quality, with intent to pursue SFWMD permitting and mitigation prior to development order approval. Forest POA is concerned about the functional constraints and risks associated with utility and drainage or easement systems serving the area and the applicant's proposal to build on both uplands and wetlands in the CHHA in violation of Lee Plan Policy 101.3.2 ("Restrict development in the [CHHA] to uplands except as needed for the provision of public facilities"). These include powerline corridors and storm-event performance. The question is whether the subject properties can be developed subject to the contemplated future land use designation change without impairing the existing easements and the systems that protect surrounding properties.

5.6 The practical effect of the requested FLUM change.

When comparing the existing maximum Suburban density outcome (185 units) versus Urban Community with proposed Live Local Act density outcomes (290 units), it is clear that the proposed amendment will result in a dramatic, incompatible increase.

These figures illustrate an important practical point—even where the applicant is otherwise eligible for Live Local Act administrative approval due to existing zoning, the requested FLUM change may expand the County’s maximum Live Local density determination from a Future Suburban maximum (14 units per acre) to a Future Urban maximum (22 units per acre), based on Lee County’s published Live Local implementation policy. On a 13.2-acre site, that difference could result in approximately 105 additional dwelling units, a rough, order-of-magnitude illustration that does not account for wetlands, right-of-way dedications, stormwater, or other site constraints, and one which does not take into account the capital costs of the additional infrastructure demand in the CHHA.

5.7 Live Local Act framework and Lee County implementation policies that are germane to this decision.

5.7.1 State statutory framework (Fla. Stat. § 125.01055(7)).

The Live Local Act is codified in relevant part in Section 125.01055(7), Florida Statutes. Several provisions are germane to the LPA’s consideration of this map amendment:

a. Required allowance in commercial and similar zoning. The statute requires counties to authorize multifamily and mixed-use residential as allowable uses in areas zoned commercial, industrial, or mixed use, and qualifying portions of planned developments, provided at least 40 percent of units are rental units affordable for at least 30 years.

b. No comprehensive plan amendment is required for the Live Local Act administrative entitlement platform. Notwithstanding other laws, the statute provides that a county may not require a proposed Live Local Act multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, transfer of density/development units, DRI amendment, or comprehensive plan amendment for the building height, zoning, and densities authorized under the statute. By approving a FLUM amendment on the subject properties, the Board of County Commissioners would swing the door wide open to an irreversible 40 percent jump in entitlement density which could not be regulated by the historically available regulatory tools used by local governments to fine-tune their permitting on sites.

c. Density, FAR, and height floors. The statute prevents a county from restricting density below the highest "currently allowed" (or allowed on July 1, 2023, whichever is less restrictive) density on any unincorporated land in the county where residential development is allowed, with specific exclusions for bonus/variance/special exception density. Similar provisions establish a floor for floor area ratio (150% of the highest) and for height (highest within 1 mile or three stories, whichever is higher), with certain exceptions and contextual height limitations where a project is adjacent on two or more sides to qualifying single-family neighborhoods. For purposes of the single-family adjacency height limitation, the statute defines "adjacent" in a manner that excludes properties separated by a public road.

d. *Administrative approval and limits on later discretion.* The statute requires administrative approval (without further action by the Board or other reviewing bodies) where the development meets the County's land development regulations for multifamily development in areas zoned for such use and is otherwise consistent with the comprehensive plan, except for provisions establishing allowable densities, floor area ratios, height, and land use. The statute also requires counties to maintain on their website a policy containing procedures and expectations for administrative approval.

5.7.2 Lee County published Live Local Act implementation policy.

Lee County has published a Live Local implementation policy / procedures webpage that sets out several locally specific determinations and expectations relevant to CPA2025-00003, including:

a. *Eligible zoning districts include C-1.* Lee County's published policy lists C-1 among eligible zoning districts, along with other commercial, industrial, and mixed-use districts and qualifying portions of planned developments.

b. *Excluded areas.* Lee County notes that Live Local does not apply to working waterfronts and certain areas around airports (as defined by Florida Statutes), and it provides maps depicting these exclusion areas in unincorporated Lee County.

c. *Density calculation and FLUM category groupings.* Lee County states that the "highest standard density allowed by right" is 14 units per acre; and further that Lee County is allowing Future Urban Areas to be eligible for up to 22 units per acre, while Future Suburban and Future Non-Urban Areas are eligible for a maximum standard density of 14 units per acre. The published table places the Urban Community FLUM category in the Future Urban grouping with a 22 unit maximum.

d. *Development standards applied to Live Local projects.* Lee County states that Live Local Act projects must follow the setbacks and other zoning requirements for multifamily development in the RM-2 zoning district, and may use Mixed Use Overlay standards where applicable. Lee County also addresses parking reductions and confirms that some statutory or local parking reductions must be evaluated.

e. *Development Order (DO) process and Land Use Restriction Agreement (LURA).* Lee County states that Live Local projects follow the County's Development Order process and adds requirements including: a mandatory pre-application meeting where the applicant must address statute consistency, site design, financial capacity to sustain affordability, and qualified program-management resources; a written narrative addressing statute consistency, including unit count, height, and use mix; and a draft LURA reviewed by the County Attorney, with a fully executed and recorded LURA required prior to DO approval.

5.7.3 Significant implications for this comprehensive plan amendment decision.

The Live Local Act and Lee County's implementing policy make the following implications clear for the Board's legislative decision on CPA2025-00003:

a. *This is not merely a request for a specific site plan.* A FLUM change to Urban Community can expand the maximum Live Local Act density platform under Lee County's policy from 14 units per acre to 22 units per acre. That is an entitlement shift of County-wide consequence, not merely a short-term development proposal.

b. *Live Local Act administrative approval reduces later discretionary control by the County's governing body.* If the applicant (or a future owner) pursues a Live Local Act project consistent with the statute and County development regulations, the Board should anticipate that later review will be administrative and technical rather than discretionary. In particular, statutory height provisions (including how "adjacent" is defined for single-family contexts) may affect the County's ability to require meaningful height transitions. For that reason, it is especially important that the Local Planning Agency and the Board of County Commissioners evaluate as a matter of policy the appropriateness of expanding the entitlement platform in a CHHA location directly abutting established neighborhoods and community facilities, given the possible unintended irreversible consequences of that proximity.

c. *The Board is not obligated to expand the Live Local Act density platform by amending the Lee Plan.* Live Local Act may provide a pathway for multi-family development in eligible commercial zoning without a comprehensive plan amendment for densities authorized under state law; the applicant has not demonstrated that a map amendment is needed to allow reasonable use of the subject properties.

d. *Plan policies still matter for hazards and infrastructure.* Even for Live Local Act projects, Lee County's policy confirms that projects must adhere to all other limitations and requirements in the Lee Plan and the Land Development Code for multi-family projects in areas zoned for such use. Therefore, CHHA-related policies, evacuation, wetlands, stormwater, access, and compatibility issues remain germane and must be supported by competent evidence before expanding entitlements.

6. FINDINGS

6.1 Legislative nature of the proposed amendment to the Lee Plan. CPA2025-00003 is a legislative small-scale comprehensive plan map amendment request to change Lee Plan Map 1-A from Suburban to Urban Community on approximately 13.2 acres (STRAP Nos. 01-46-24-00-00004.2000 and .2020) west of US 41 near Timberlakes Drive and Forest Boulevard, directly adjacent to Forest POA common areas and roadways.

6.2 The proposed amendment would establish a long-term entitlement on the property and a permanent impact on neighboring land uses. Because the request is a FLUM category change and not a site plan approval or rezoning petition, the Board must evaluate the long-term entitlement framework created by the amendment and the reasonably foreseeable range of development outcomes that could follow approval.

6.3 Live Local Act imposes specific pre-emptions over the governing body's land use regulatory authority. Florida's Live Local Act (Fla. Stat. § 125.01055(7)) creates an administrative approval pathway for qualifying multifamily rental housing in commercial zoning districts and provides that counties may not require a comprehensive plan amendment for the building height, zoning, and densities authorized under that statute.

6.4 The maximum density on the subject properties is established in Lee County's implementation policy. Lee County's published Live Local Act implementation policy lists C-1 as an eligible zoning district and states that Live Local Act density in unincorporated Lee County is evaluated based on Future Urban versus Future Suburban/Non-Urban groupings. Under that policy, Urban Community is treated as a Future Urban category eligible for up to 22 units per acre, while Suburban is treated as a Future Suburban category eligible for a maximum standard density of 14 units per acre. This is a significant and irreversible increase in allowable density on the subject properties.

6.5 The amendment, if granted, would impose a drastic increase in allowable density on the subject properties. As a practical entitlement matter, approval of the requested map change from Suburban to Urban Community would expand the maximum Live Local density platform under Lee County's stated policy from 14 units per acre to 22 units per acre, materially increasing the reasonably foreseeable unit count range that could be pursued on the 13.2-acre site over time.

6.6 Approval of the proposed amendment would impact the Forest neighborhoods and their residents. The site's adjacency to Forest POA neighborhoods and facilities makes compatibility a central issue. Any amendment that increases the intensity platform must be evaluated for its ability to maintain compatibility with established residential uses and community infrastructure, including buffering, scale transitions, access patterns, and operational impacts.

6.7 Transportation impacts to existing residents will be increased. Transportation and access constraints on US 41 must be evaluated against realistic access, safety, and operational conditions before increasing the entitlement platform.

6.8 CHHA impacts should be evaluated before approval is granted. If the site is within the Coastal High Hazard Area as represented in project communications, then Lee Plan coastal hazard policies apply, including Policy 101.3.2 (restricting CHHA development to uplands except for public facilities) and Policy 101.1.4 (establishing criteria for comprehensive plan amendments that increase density in CHHA). These policies, together with wetlands and drainage/easement

realities, must be addressed with competent evidence before the Board can conclude the site is suitable for the increased intensity platform implied by the requested map change.

7. CONCLUSION AND RECOMMENDATION

For the reasons stated above, and given on the legislative nature of this request, the Live Local Act implications and the entitlement outcome risk presented, it is the expert opinion of the undersigned that CPA2025-00003 should be denied. In the alternative, if the Board determines the record is incomplete on the issues identified, then the matter should be continued until complete and reliable supporting information is produced by the applicant and evaluated by County staff and the LPA members and signage is properly posted on the subject properties as required by Lee County Administrative Code AC-13-6.D.2.b to notify the public of such a future LPA meeting on this application.

Respectfully,


Max Forgey, AICP
Land Use Planner & Expert Witness
Forgey Planning LLC
max@forgeyplanning.com
239.560.5864

Attachment A

DARYL MAX FORGEY AICP
LAND USE CONSULTANT & EXPERT WITNESS
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Cape Coral FL 33904
max@forgeyplanning.com
239.560.5864

Max Forgey is an experienced land use planner with more than three decades of professional experience and success in administration of local government comprehensive planning strategies, land development and regulatory controls, governmental relations, and public policy communications. Clients include governmental organizations and private property owners. He is the sole proprietor of FORGEY PLANNING LLC, a planning consultancy which provides expert witness services in land use cases and is allied with LAND SMART LLC, a Florida-based consortium of land use professionals which provides a broad range of professional assistance to public and private sector clients.

His professional knowledge encompasses creating and developing community and small-area plans, urban design and architectural standards, land development entitlements, project management, and expert witness testimony. Max has worked on more than 35 cases across 25 Florida counties and municipalities, appearing before local planning agencies, city and county elected bodies, hearing examiners, administrative law judges, and circuit court proceedings.

Max also actively participates in and leads speaking engagements at professional development conferences and symposia through the Promised Lands section of the American Planning Association Florida chapter, with the American Institute of Certified Planners, the Florida Planning and Zoning Association, and other organizations.

Qualifications

- LAND SMART LLC, Managing Member of a Cape Coral, Florida-based consortium
- FORGEY PLANNING LLC. Owner of an urban planning and land-use consulting practice.
- Master of Public Affairs (MPA) in Urban and Regional Planning, Indiana University.
- Member American Institute of Certified Planners (AICP).
- Member Florida Planning and Zoning Association (FPZA).
- Qualified as an expert witness in Lee County Hearing Examiner proceedings.
- Former Planning and Community Development Director in Charlotte County.
- Former Planning Commissioner (LPA), City of Cape Coral, Florida.
- Contract planner for the Town of Kenneth City.

Accomplishments

- Lead author of Kenneth City Evaluation and Appraisal Report (EAR) which was found in compliance with Florida's planning laws by the Florida Department of Commerce on April 7, 2025.
- Established FORGEY PLANNING, an urban planning and land use consulting practice.
- Developed a template for auditing the effectiveness of existing local governments comprehensive plans and zoning code for internal consistency of plan policy framework.
- Authored "The Platted Lands Challenge" report for the six-county area of Southwest Florida offering policy guidance for platted, scattered-lot properties.
- Development of implementation strategies which employ automation to create linked mixed media tools for restructuring and updating local government planning and zoning regulations.

Certification

AICP (American Institute of Certified Planners) Certification #051,330 Florida Chapter, APA Member in good standing since 1993. A national professional certification maintained by the American Planning Association. AICPs must first meet educational standards and then pass an examination covering all aspects of professional planning practice, and are expected to maintain their membership through a self-directed program of study that is monitored by the national organization, which includes regular training in law and ethics.

Professional Experience

Forgey Planning

Cape Coral, FL

Owner. 2008-present. A solo planning practice concentrating comprehensive planning work for Lee and Sarasota Counties, the City of North Port, and the Captiva Community Panel. Developed a template for auditing the effectiveness of existing local governments comprehensive plans which has been applied in Sarasota County. An expert witness since 2013, working on more than 40 cases in 25 Florida counties and municipalities, appearing before planning commissions, city councils, county commissions, hearing examiners, administrative law judges, and circuit court. Qualified as an expert witness in Lee County Hearing Examiner proceedings.

Zoning Technologies

Cape Coral, FL

President. 2011-2017. A start-up subsection 'S' corporation that specialized in restructuring and updating local government comprehensive plans and developing implementation strategies which employ automation to create linked tools (e.g. application forms, automated worksheets, case reports, and adopting resolutions). The Zoning Technologies expert system prototype products were marketed statewide and were demonstrated at the American Planning Association (APA) national conference in Atlanta in 2014.

Osceola County, Florida

Kissimmee, FL

Planning Coordinator. 2005-2008. Authored key elements of the Osceola County Comprehensive Plan and most of the County's 2008 Evaluation and Appraisal Report.

Clay County, Florida

Green Cove Springs, FL

Senior Planner. 2003-2005. Authored the county's Interlocal Service Delivery Agreement Report (ISDAR) mandated by the Florida legislature, identifying all service overlaps between and among all local governments within Clay County.

Lake County, Florida

Tavares, FL

Planning Director. 2001-2003. Staff liaison to the Environmental Lands Management Advisory Committee, a citizen organization created by the Board of County Commissioners to study the creation of an environmental land program. Recommended policies were ratified in November 2002, when Lake County voters approved a one-third mil assessment for the acquisition of environmental lands.

Southwest Florida Regional Planning Council

Fort Myers, FL

Planner. 1997-1998. Reviewed local government plan amendments throughout the six-county area and authored "The Platted Lands Challenge" report.

Charlotte County, Florida

Port Charlotte, FL

Community Development Director 1995-1997; Planning Director 1990-1995. Early in my tenure, Gulf Development Corporation (GDC), the County's largest land subdivider, declared bankruptcy, shifting responsibility for completion of roads, bridges, drainage works, and utilities, to the public sector and forcing a host of development decisions upon the local government and public agencies. I had three memorable achievements during these seven years:

- Managed the research, preparation, and adoption of the County's Evaluation and Appraisal Report (EAR) and Comprehensive Plan. Aggressively negotiated with the Florida Department of Community Affairs (DCA) to remove the Plan's not-in-compliance finding.
- Led the staff team that rewrote the Charlotte County Comprehensive Plan and was the point person in the successful four-year effort to negotiate a stipulated settlement agreement between the Board of County Commissioners and the Florida Department of Community Affairs to find Charlotte County's Comprehensive Plan in compliance with Florida's Growth Management Act.
- Advocated against the rezoning of 42 parks (illustrated as such on GDC sales maps and the County's Future Land Use Maps) to residential uses. The Company's receivers eventually relented on their policy position and donated 41 parcels to the people of Charlotte County.

City of Cape Coral

Cape Coral, FL

Deputy Planning Director. 1985-1990. Authored and supervised preparation of key elements of the 1988 Comprehensive Plan (the City's first plan under the 1985 Growth Management Act) and the City's 1989 Land Development Code.

Education

Indiana University

Bloomington, IN

Master of Public Affairs (MPA) from the O'Neill School of Public and Environmental Affairs, 1982. Concentration in Urban and Regional Planning. The O'Neill School ranks #2 of 269 public administration graduate programs in US public administration graduate programs in the 2025-26 U.S. News & World Report "Best Graduate School" report.

Important Cases, Continuing Education, Writing & Teaching

- Co-presented *"Legislative and Quasi-judicial: What Every Planner Needs to Know"* with Ralf Brookes at American Planning Association Florida Chapter conference in Daytona Beach on September 18, 2025.
- Co-presented a panel *"Sometimes a Word is Worth a Thousand Pictures: Communication Skills for Planners"* with Casey Dendor, AICP, and Doug Kelly, AICP, at FPZA conference in Charlotte Harbor, June 5, 2024.
- Program chair for APA Florida/ FPZA *"The Perfect Storm Eight Months Out: A Symposium for Professional Planners, Design Professionals, Plan Commissioners & Regular People"* at Charlotte County Event & Conference Center Punta Gorda May 12, 2023.
- Presenting a panel *"Incorporation, Annexation, and Disincorporation"* with Jim Studiale, AICP, and Luke Lirot, Esq. at APA Florida state conference on Orlando September 7, 2022.
- Co-presented a panel *"Legislative and Quasi-judicial: What Every Planner Needs to Know"* with Attorney Andrew Dickman, AICP, at annual conference of Florida Planning and Zoning Association on Captiva Island June 3, 2022.
- Program Chair for *"The Swamp Peddlers"*, an APA Florida/ Florida Planning & Zoning Association symposium conducted on August 6, 2021 in Punta Gorda. Keynote speaker Jason Vuic and other presenters explored the legacy of land sales scams in Southwest Florida on the twentieth anniversary of the General Development Corporation bankruptcy.
- Designed and co-presented *"Land Use 101"*, a seminar for planning commissioners, elected officials, and new planners, hosted by the City of Cape Coral on June 16 and July 14, 2021 with co-presenters Vince Cautero, AICP, the City's Community Development Director, and Attorney Ralf Brookes.
- Expert witness for client West Villagers for Responsible Government (WV4RG), a citizen organization which challenged the annexation of the 8730-acre non-contiguous West Villages subdivisions into the City of North Port. The City Commission rejected the Villagers' challenge by a unanimous vote, but following appeal presented by attorney Luke Lirot, the Twelfth District

overtaken the City's order denying petition for contraction in *West Villagers for Responsible Government v. City of North Port*.

- Moderated a panel for law credit at the September 9, 2020 Zoom-facilitated American Planning Association's Florida state conference. Co-presenters were attorneys Karen Consalo, Thomas Hawkins, and Andrew Dickman. "*The Rules are Very Different Here: How to Reform Florida's Land Use Decision-making Process*" surveyed the inconsistencies among local governments' handling of land use decision-making and proposed a new Environmental Land Management Study (ELMS) to improve those processes.
- Attended and participated in American Planning Association Florida chapter's 18th annual *Public Policy Workshop* at Florida State University, Tallahassee February 2020.
- Drafted update of Town of *Fort Myers Beach Sign Ordinance* to reflect SCOTUS *Reed v. Gilbert* opinion for Weiler Engineering Fall 2019-Winter 2020.
- Program chair for "*Planners in Peril: Law, Legislation, and Ethics for Design Professionals*," an APA Florida Promised Lands section symposium December 6, 2019 at Bonita Springs City Hall.
- Program chair for "*How High is the Water, Ma?: Rising Sea Level on the Florida Gulf Coast and what we can do about it*," sponsored by Friends of Boca Grande Community Center, March 22, 2019 at the Boca Grande Community Center Auditorium.
- Member, *Faith Presbyterian Affordable Housing Board*, a not-for-profit corporation which aspires to offer quality housing for low- and moderate-income persons in Cape Coral. Appointed 2018; appointment ended December 2020.
- Received 2018 American Planning Association Florida Chapter, Promised Lands section's first-ever *Wayne Daltry Award for Planning Programs* for developing professional education symposia.
- Prepared *policy audit of Town of Fort Myers Beach Comprehensive Plan* for Weiler Engineering, Summer 2018.
- Program chair for American Planning Association symposium "*Warped Tour '18: Land Use Law for Planners*" March 23, 2018 in Punta Gorda.
- Attended and participated in the hurricane-shortened APA Florida chapter annual conference in Daytona Beach September 4-6, 2017. Led panel with Greg Beliveau, AICP and Jane West Esq. entitled "*How to Build a Better Client*."

- Program chair for Captiva Community Panel/ Florida APA symposium *"Now in My Back Yard: Rising Sea Level on Florida's Gulf Coast and what can be done about it"* January 13, 2017 at South Seas Resort on Captiva Island.
- Co-authored article with Karen Consalo, Esq. *"Best Practices for Local Government Land Use Decision-making"* in Summer 2016 edition of *Florida Planning*.
- Speaker at American Planning Association Florida Chapter Annual Conference in Tampa, September 9, 2016. *"A Pre-tirement Guide for Perplexed Planners: Making the Transition to Solo Practitioner."*
- Attended and participated in CLE International's annual *Land Use Law symposium* in Tampa, August 18-19, 2016, and August 6-7, 2015.
- Speaker at University of Central Florida 2016 Public Administration Research Conference April 8, 2016. Topic: *"What's the Big Idea: New Software that Aids Land Use Decisions."*
- Attended and participated in *APA Florida chapter annual conference* in Hollywood, Florida September 10-13, 2015.
- Coordinator and presenter for daylong FAPA-sponsored symposium *"Everything You Ever Wanted to Know about Florida Land Use"* in Cape Coral May 16, 2014.

Jurisdictions - Expert Witness Work

Bonita Springs	Miramar
Bradenton	Monroe Co (AL)
Cape Coral (5)	North Port
Charlotte County (2)	Orange County
Collier County (2)	Ormond Beach
DeSoto County	Pasco County (2)
Fort Myers Beach (2)	Palm Beach County (AL)
Hardee County	Polk County (C court)
Hendry County (C Court)	Punta Gorda (2)
Hernando County	St. Johns County (4)
Highlands County	Sarasota County
Hillsborough County (3)	Sumter County
Hillsboro Beach	Suwannee County
Lantana	Venice
Lee County (8)	