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October 7, 2010

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Mike McDaniel,  
Chief, Office of Comprehensive Planning  
Florida Department of Community Affairs  
Division of Community Planning  
2555 Shumard Oak Boulevard  
Tallahassee, FL. 32399-2100

Re: Lee County Comprehensive Plan Amendment 10-1  
DOAH case; Docket No. 10-1-NOI-3601  
CPA2008-06 Lee Plan Amendments for Southeast Lee County (DR/GR area)  
Lee County Response to Department of Community Affairs' comments

Dear Mr. McDaniel:

Thank you for the telephone conference on October 5<sup>th</sup> in which you clarified the Department of Community Affairs (DCA) staff comments regarding Lee County's proposed remedial actions for CPA2008-06. The County has considered these comments and provided revised language as contained in "Exhibit B" and the response document attached to this letter. These changes are in yellow highlighted text for ease of review.

The County trusts that this response addresses all of the State's concerns. In the event that you have any questions, please do not hesitate to call me.

Sincerely,  
**DEPT. OF COMMUNITY DEVELOPMENT**  
**Division of Planning**

Matthew A. Noble, AICP  
Principal Planner

cc: *Scott Rogers, Principal Planner, DCA*  
*Brenda Wimmingham, Regional Planning Administrator, DCA*  
*Paul O'Connor, Director, Lee County Planning Division*  
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*Susan Henderson, Lee County Assistant County Attorney*  
*Mary Gibbs, Director, Lee County Department of Community Development*

## EXHIBIT B

**OBJECTIVE 33.3: RESIDENTIAL AND MIXED-USE DEVELOPMENT.** Designate on a Future Land Use Map overlay existing rural residential areas that should be protected from adverse impacts of mining and specific locations for concentrating existing development rights on large tracts.

**POLICY 33.3.1:** Existing acreage subdivisions are shown on Map 17. These subdivisions should be protected from adverse external impacts such as natural resource extraction.

**POLICY 33.3.2:** Unsubdivided land is too valuable to be consumed by inefficient land-use patterns. Although additional acreage or ranchette subdivisions may be needed in the future, the preferred pattern for using existing residential development rights from large tracts is to concentrate them as compact internally connected Mixed-Use Communities along existing roads and away from Future Limerock Mining areas. Map 17 identifies future locations for Mixed-Use Communities where development rights can be concentrated from major DR/GR tracts into traditional neighborhood developments (see glossary).

1. Mixed-Use Communities must be concentrated from contiguous property owned under single ownership or control, ~~and, are~~ Allowable residential development without the benefit of TDR credits is limited to the existing allowable dwelling units from residential density based upon the upland and wetland acreage of the entire contiguous DR/GR tract. The only net increases in dwelling units development potential will be through the creation of incentives as specified in the LDC for permanent protection of indigenous native uplands on the contiguous tract (up to one extra dwelling unit allowed for each five acres of preserved or restored indigenous native uplands) and through the acquisition of TDRs credits from TDR sending areas as provided in Policies 33.3.3 and 33.3.4.
  - a. When expanded with transferred development rights, the maximum gross density is 5 dwelling units per acre of total land designated as a Mixed-Use Community as shown on Map 17.
  - b. The maximum basic intensity of non-residential development is 75 square feet; per by-right (clustered) dwelling unit.
  - c. ~~The maximum intensity of non-residential development is up to 800 square feet per TDR credit.~~ The additional intensity that can be created using TDR credits may not exceed 300,000 square feet of non-residential floor area in any Mixed-Use Community.
  - d. These limits on dwelling units and non-residential floor area do not apply to any land in a Mixed-Use Community that is designated Central Urban rather than DR/GR. Numerical limits for Central Urban land are as provided elsewhere in the Lee Plan.
2. Contiguous property under the same ownership may be developed as part of a Mixed-Use Community provided the property under contiguous ownership does not extend more than 400 feet beyond the perimeter of the Mixed-Use Community as designated on Map 17.

3. In 2010 an exception was made to the requirement in Policy 1.4.5 that DR/GR land uses must demonstrate compatibility with maintaining surface and groundwater levels at their historic levels. Under this exception, construction may occur on land designated as a Mixed-Use Community on Map 17 provided the impacts to natural resources, including water levels and wetlands, are offset through appropriate mitigation within Southeast Lee County. Appropriate mitigation for water levels will be based upon site-specific data and modeling acceptable to the Division of Natural Resources. Appropriate wetland mitigation may be provided by preservation of high quality indigenous habitat, restoration or reconnection of historic flowways, connectivity to public conservation lands, restoration of historic ecosystems, or other mitigation measures as deemed sufficient by the Division of Environmental Sciences. When possible, it is recommended that wetland mitigation be located within Southeast Lee County. The Land Development Code will be revised to include provisions to implement this policy.
4. To create walkable neighborhoods that reduce automobile usage and minimize the amount of DR/GR land consumed by development, the Land Development Code will specify how each Mixed-Use Community will provide:
  - a. A compact physical form with identifiable centers and edges, with opportunities for shopping and workplaces near residential neighborhoods;
  - b. A highly interconnected street network, to disperse traffic and provide convenient routes for pedestrians and bicyclists;
  - c. High-quality public spaces, with building facades having windows and doors facing tree-lined streets, plazas, squares, or parks;
  - d. Diversity not homogeneity, with a variety of building types, street types, open spaces, and land uses providing for people of all ages and every form of mobility; and
  - e. Resiliency and sustainability, allowing adaptation over time to changing economic conditions and broader transportation options.

**POLICY 16.2.6:** Time share, fractional ownership units (meaning any dwelling unit for which ownership is shared among multiple entities for the primary purpose of creating short-term use or rental units rather than permanent full time residential units), and Bed and Breakfast establishments may be permitted if the property is included on Map 17 as Rural Golf Course Residential Overlay area. These uses must be ancillary to or in conjunction with uses within the Private Recreational Facility, including a Golf Training Center or similar facility and must be located adjacent to, or within 1,000 feet of, the principal use that is being supported. Through the PRFPD process, the applicant must demonstrate that external vehicular trips will be reduced from typical single-family residential units due to the ancillary nature of the use.

**POLICY 16.2.7:** Time share, fractional ownership units, or Bed and Breakfast establishments will only be permitted in a designated Rural Golf Residential Overlay area as specified on Map 17 and may only be constructed through transferring density in accordance with Policy 33.3.2(1). Each TDR credit that is eligible to be transferred to a Mixed-Use Community on Map 17 can be redeemed for one timeshare unit, one fractional ownership unit, or two Bed and Breakfast bedrooms.

**POLICY 33.3.3:** Owners of major DR/GR tracts without the ability to construct a Mixed-Use Community on their own land are encouraged to transfer their residential development rights to appropriate Future Urban Areas (see Objective 1.1), such as specifically the Mixed-Use Overlay, and the Lehigh Acres Specialized Mixed-Use Nodes, and any Lee Plan designation that allows bonus density (see Table 1(a)), or to future Mixed-Use Communities on land so designated on Map 17. These transfers would avoid unnecessary travel for future residents, increase housing diversity and commercial opportunities for nearby Lehigh Acres, protect existing agricultural or natural lands, and allow the conservation of larger contiguous tracts of land.

1. To these this ends, Lee County will establish a program that will allow and encourage the transfer of upland and wetland development rights (TDR) to designated TDR receiving areas, appropriate Future Urban Areas or from one landowner to another who wishes to develop a Mixed-Use Community, wishes to exercise these development rights outside the DR/GR area. This program will also allow limited, or development in accordance with Policy 16.2.6 and 16.2.7.
2. Within the Mixed-Use Communities shown on Map 17, significant commercial and civic uses are required, encouraged. Each Mixed-Use Community adjoining S.R. 82 must be designed to include non-residential uses not only to serve its residents but also to begin offsetting the shortage of non-residential uses in adjoining Lehigh Acres. At a minimum, each community adjoining S.R. 82 must designate at least 10% of its developable land into zones for non-residential uses. Specific requirements for incorporating these uses into Mixed-Use Communities are set forth will be found in the Land Development Code.
3. Mixed-Use Communities must be served by central water and wastewater services. All Mixed-Use Communities were added to the future water and sewer service areas for Lee County Utilities (Lee Plan Maps 6 and 7) in 2010. Development approvals for each community are contingent on availability of adequate capacity at the central plants and on developer-provided upgrades to distribution and collection systems to connect to the existing systems. Lee County Utilities has the plant capacity at this time to serve full build-out of all Mixed-Use Communities. Lee County acknowledges that the Three Oaks wastewater treatment plant does not have sufficient capacity to serve all anticipated growth within its future service area through the year 2030. Lee County commits to expand that facility or build an additional facility to meet wastewater demands. One of these improvements will be included in a future capital improvements program to ensure that sufficient capacity will be available to serve the Mixed-Use Communities and the additional development anticipated through the year 2030.
4. Development approvals for Mixed-Use Communities are contingent on adequate capacity in the public school system (see Goal 67).

5. 4: The state has designated SR 82 as an “emerging component” of Florida’s Strategic Intermodal System, a designation that establishes the levels of service Lee County must adopt for SR 82. Lee County will seek to include the Mixed-Use Communities and appropriate adjacent urban areas in a multimodal transportation district to mitigate regulatory barriers these levels of service would impose on Lee County’s ability to accomplish Objective 33.3 and its policies, the effects of SR 82’s status as an emerging component of Florida’s Strategic Intermodal System. As an alternative, Lee County may pursue a comparable mechanism, such as a transportation concurrency exception area, transportation concurrency management area, transportation concurrency backlog area/plan, long-term concurrency management system, or FDOT level-of-service variance, that would achieve similar results. Lee County’s planning will include the following steps:
- a. Actively seek advice, technical assistance, and support from Florida DOT and DCA beginning in 2010 while formulating the scope of a technical evaluation of a potential multimodal transportation district that includes the four Mixed-Use Communities adjoining S.R. 82 and appropriate adjacent urban areas.
  - b. Conduct the necessary technical studies in 2011 to determine the potential for substantial trip diversions from Lehigh Acres residents, the viability of transit service to these Mixed-Use Communities and appropriate adjacent urban areas, and the practicality of the maintaining the adopted level-of-service standards on S.R. 82.
  - c. Adopt a Lee Plan amendment establishing a multimodal transportation district (or comparable mechanism) no later than 2012.
6. Lee County will complete these three steps by 2016. Until step 5.c. is adopted, TDR credits may not be redeemed in the Mixed-Use Communities located along S.R. 82. No redemption of TDR credits that will increase dwelling units or non-residential floor area will be permitted, if these increases would cause the adopted levels of service for S.R. 82 to be exceeded (see Goal 37). This restriction applies unless a Mix-Use Community addresses its transportation impacts through the DRI process consistent with F.S. 163.3180(12).
- a. This temporary restriction does not prohibit landowners from concentrating development rights from contiguous DR/GR property under common ownership or control.
  - b. Lee County encourages the creation of TDR credits from Southeast DR/GR lands and the transfer of those credits to all other designated receiving areas, including:
    - (1) Other Mixed-Use Communities;
    - (2) Rural Golf Course Communities;
    - (3) Future Urban Areas (see Objective 1.1);
    - (4) Mixed-Use Overlay;
    - (5) Lehigh Acres Specialized Mixed-Use Nodes;
    - (6) Lee Plan designations that allow bonus density (see Table 1(a));  
and,
    - (7) Incorporated municipalities that have formally agreed to accept TDR credits.

**POLICY 33.3.4:** The new TDR program will have the following characteristics:

1. This program will be in addition to the existing wetland TDR program described in Article IV of Chapter 2 of the Land Development Code.
- ~~2. The maximum number of DR/GR TDR credits that may be established may not exceed 9,000 credits.~~
- ~~2.~~ 3. The preferred receiving locations for the transfer of TDRs are within appropriate designated Future Urban Areas due to their proximity to public infrastructure and urban amenities (see Objective 1.1), specifically such as the Mixed-Use Overlay, and the Lehigh Acres Specialized Mixed Use Nodes, and the future urban land use categories that allow bonus density (see Table 1(a)). The only acceptable sites in the DR/GR area permitted to receive for accepting transferred development rights are Mixed-Use Communities or Rural Golf Course Communities as shown on Map 17.
- ~~4. The transfer rate may include a multiplier that reflects the natural or restoration value of the tract from which development rights are transferred.~~
- ~~5. Transfer rates may include a multiplier when units are transferred to Future Urban Areas that are proximate to public infrastructure and urban amenities.~~
3. TDR credits will be available from sending areas as follows:
  - a. One TDR credit may be created for each allowable dwelling unit attributable to sending parcels within the Southeast DR/GR area. As an incentive for permanently protecting indigenous native uplands, one extra dwelling unit will be allowed for each five acres of preserved or restored indigenous native uplands.
  - b. As an additional incentive for protecting certain priority restoration lands (see Policy 33.2.3.2), each TDR credit created pursuant to the preceding subsection will qualify for up to two additional TDR credits if the credits are created from land in Tiers 1, 2, 3, or the southern two miles of Tiers 5, 6, or 7, as shown on the DR/GR Priority Restoration overlay.
4. The maximum number of TDR credits that can be created from Southeast DR/GR lands is 9,000.
5. No more than 2,000 dwelling units can be placed on receiving parcels within the Southeast DR/GR Mixed-Use Communities through the TDR credit program.
6. TDR credits may be redeemed in designated TDR receiving areas as follows:
  - a. In Mixed-Use Communities in DR/GR areas, each TDR credit may be redeemed for a maximum of one dwelling unit plus a maximum of 800 square feet of non-residential floor area.
  - b. In Rural Golf Course Communities, see Policy 16.2.7.
  - c. In the Future Urban Areas described in paragraph 2. above, each TDR credit may be redeemed for a maximum of two dwelling units. In these Future Urban Areas, the redemption of TDR credits cannot allow densities to exceed the maximum bonus density specified in Table 1(a). TDR credits may not be redeemed for non-residential floor area in these Future Urban Areas.
  - d. Redemption of TDR credits within incorporated municipalities may be allowed where interlocal agreements set forth the specific terms of any allowable transfers and where the redemption allows development that is consistent with the municipality's comprehensive plan. As in the County's Future Urban Areas, each TDR credit may be redeemed for a maximum of two dwelling units.
- ~~7.~~ 6. When severing development rights from a tract of land in anticipation of transfer to another tract, a landowner must execute a perpetual conservation

easement on the tract that acknowledges the severance of development rights and explicitly states one of the following options:

- a. Continued agricultural uses will be permitted;
- b. Conservation uses only;
- c. Conservation use and restoration of the property; or
- d. Some combination of the above options.

## XII. GLOSSARY

DENSITY - The number of residential dwelling or housing units per gross acre (du/acre). Densities specified in this plan are gross residential densities. For the purpose of calculating gross residential density, the total acreage of a development includes those lands to be used for residential uses, and includes land within the development proposed to be used for streets and street rights of way, utility rights-of-way, public and private parks, recreation and open space, schools, community centers, and facilities such as police, fire and emergency services, sewage and water, drainage, and existing man-made waterbodies contained within the residential development. Lands for commercial, office, industrial uses, natural water bodies, and other non-residential uses must not be included, except within areas identified on the Mixed Use Overlay Map (Future Land Use Map Series Map 1 page 6 of 6) that have elected to use the process described in Objective 4.2 and except within areas identified as Rural or Mixed-Use Communities as identified on Map 17 where development rights are concentrated or transferred using the process described under Objective 33.3. Within the Captiva community in the areas identified by Policy 13.2.1, commercial development that includes commercial and residential uses within the same project or the same building do not have to exclude the commercial lands from the density calculation. For true mixed use developments located on the mainland areas of the County, the density lost to commercial, office and industrial acreage can be regained through the utilization of TDRs that are either created from Greater Pine Island Coastal Rural future land use category or previously created TDRs. True mixed use developments must be primarily multi-use structures as defined in this Glossary as a mixed use building. If development is proposed in accordance with Policy 2.12.3, residential densities are calculated using the total land area included in the mixed use portion of the development.

### **TABLE 1(b)**

*Amend Table 1(b) to increase the number of commercial acres that can be developed in Southeast Lee County by the year 2030 from 38 acres to 68 acres.*

### **MAPS 4, 14, 17, 20, and 25**

*Delete the Alico Road Extension from Lee Plan Maps 4, 14, 17, 20, and 25.*

### **MAPS 6 and 7**

*Add all five Mixed-Use Communities to Lee Plan Maps 6 and 7.*

## 1. Credits and Bonuses From TDR Sending Areas

### DCA's inconsistency provisions:

The amendments establish a Transfer of Development Rights (TDR) program to transfer development rights from sending lands in the DR/GR area. Although amendment Policy 33.3.4 states that the maximum number of DR/GR TDR credits that may be established may not exceed 9,000 credits, Policy 33.3.4 does not establish meaningful and predictable guidelines and standards to apply and implement the TDR program on individual properties (individual sending areas) addressing:

- (1) a TDR transfer credit generation rate to guide the generation of TDR credits from the TDR sending area; and
- (2) the numerical value of the TDR multipliers that may apply to the TDR sending area and receiving area.

### DCA's recommended remedial actions:

Revise the plan policies to establish meaningful and predictable guidelines and standards for the transfer of development rights (TDR) program addressing:

- (1) a TDR transfer credit generation rate to guide the generation of TDR credits from the TDR sending area; and
- (2) the numerical value of the TDR multipliers that may apply to the TDR sending areas and receiving area

### Lee County's conceptual solution:

These Lee Plan amendments introduced the term "TDR Credit," which is defined and quantified in the new land development code but was not adequately explained in the Lee Plan amendment. This recommended remedial action requests a base TDR credit generation rate (which is simply one credit per allowable dwelling unit) and numerical multipliers (which are increases that are specified as incentives for certain activities). Policy 33.3.4 can be rewritten to consolidate those details in one location. Policies 33.3.2 should be clarified to indicate that certain of these incentives are available without formal TDR transfers between separate parties.

### Lee County's precise solution:

See redraft of Policies 33.3.2.1, 33.3.3.1, and 33.3.4.2-5.



## 2. Transfer Rates to TDR Receiving Areas

### DCA's inconsistency provisions:

Amendment Policies 33.3.3 and 33.3.4 do not establish meaningful and predictable guidelines and standards for a TDR transfer rate defining:

- (1) the relationship between a TDR credit and dwelling units of the receiving areas (within and outside of the DR/GR area);
- (2) the relationship between a TDR credit and Fractional Ownership/Timeshare Units and Bed and Breakfast Establishments of the receiving areas within the DR/GR area; and
- (3) the relationship between a TDR credit and nonresidential development of receiving areas outside of the DR/GR area.

Because the transfer rate from a TDR credit to a dwelling unit (and also to "Fractional Ownership/Time-share Units and Bed and Breakfast Establishments") has not been established by the plan policies, the maximum number of dwelling units (and also "Fractional Ownership/Time-share Units and Bed and Breakfast Establishments") that may result from the TDR program (transfers can be made inside and outside the DR/GR area) cannot be determined and has not been demonstrated to be based on a need. Within the DR/GR area, the total number of potential dwelling units is limited by the maximum density standards (5 dwelling units per acre) for the Mixed-Use Communities where the TDR credits can be utilized. But, the transfers to areas outside the DR/GR area could produce an undetermined number of dwelling units because the transfer rate (the number of TDR credits per dwelling unit) has not been established. The amendment is not supported by data and analysis, based upon TDR transfer rates (the rate at which a TDR credit creates a dwelling unit) established in the plan policies, identifying the potential number of dwelling units resulting from the TDR program and demonstrating a need for the dwelling units.

### DCA's recommended remedial actions:

Support the amendments with relevant and appropriate data and analysis, based upon TDR transfer rates (the rate at which a TDR credit creates a dwelling unit) established in the plan policies, identifying the potential number of dwelling units resulting from the TDR program and demonstrating a need for the dwelling units.

Revise the plan policies to establish meaningful and predictable guidelines and standards for a TDR transfer rate defining:

- (1) the relationship between a TDR credit and dwelling units of the receiving areas (within and outside of the DR/GR area);
- (2) the relationship between a TDR credit and Fractional Ownership/Timeshare Units and Bed and Breakfast Establishments of the receiving areas within the DR/GR area; and
- (3) the relationship between a TDR credit and nonresidential development of receiving areas outside of the DR/GR area.

### Lee County's conceptual solution:

The solution to the previous item was a clearer use of the term "TDR Credit," specifically how TDR credits are *generated*. This item requests clarification of how TDR credits are *redeemed* in TDR receiving areas. This recommended remedial action requests details as to any incentives that might be provided when TDR credits are redeemed under three specific scenarios; Policy 33.3.4 can be rewritten to provide that information immediately after that policy's details about TDR credit generation rates and incentives.

### Lee County's precise solution:

See redraft of Policies 33.3.2.1, 16.2.7, and 33.3.4.5.

### 3. Location of TDR Receiving Areas Outside DR/GR

#### **DCA's inconsistency provisions:**

Amendment Policies 33.3.3 and 33.3.4(3) contemplate the transfer of development rights to areas outside of the DR/GR area. Policy 33.3.3 allows the transfer of development rights “to appropriate Future Urban Areas, such as the Mixed Use Overlay and the Lehigh Acres Specialized Mixed-Use Nodes.” Policy 33.3.4(3) states that “The preferred receiving locations for the transfer of TDRs are within appropriate Future Urban Areas such as the Mixed Use Overlay and the Lehigh Acres Specialized Mixed Use Nodes.” However, the language “appropriate Future Urban Areas” does not clearly define the location of TDR receiving areas outside of the DR/GR area. Therefore, Policies 33.3.3 and 33.3.4(3) do not establish meaningful and predictable guidelines and standards defining the location of the TDR receiving areas outside of the DR/GR area.

#### **DCA's recommended remedial actions:**

Revise the amendments to establish meaningful and predictable guidelines and standards defining the location of the TDR receiving areas outside of the DR/GR area.

#### **Lee County's conceptual solution:**

This alleged inconsistency stems from the term “appropriate future urban areas” in Policies 33.3.3 and 33.3.4. This can be clarified in two ways:

- Clarify that “future urban area” has a very specific meaning in the Lee Plan (cite Objective 1.1).
- Change the vague qualifier, “such as...” into definitive language (e.g., “specifically”).

#### **Lee County's precise solution:**

See redraft of Policies 33.3.3 and 33.3.4.2 & 6.

## 4. Intensity of Uses Resulting From TDRs

### DCA's inconsistency provisions:

For Mixed-Use Communities within the DR/GR area, Amendment Policy 33.3.2 states the following for density and intensity standards:

- (1) residential density is limited to the existing allowable density based on the upland and wetland acreage;
- (1)(a) when expanded with transferred development rights, the maximum gross density is 5 dwelling units per acre of total land designated as a Mixed-Use Community on Map 17; and
- (1)(b)&(c) the maximum intensity of non-residential development is 75 square feet, per by right clustered dwelling unit; and
  - the maximum intensity of non-residential development is 800 square feet per TDR credit.

However, Policy 33.3.2(1)(c) does not establish a limit on the amount of TDR credits associated with the non-residential development intensity of 800 square feet per TDR credit that can be transferred into the Mixed-Use Communities. Therefore, Policy 33.3.2(1)(c) does not establish meaningful and predictable guidelines and standards for the maximum intensity of nonresidential uses based on the transfer of development rights to the Mixed-Use Communities.

- The amendment does not establish meaningful and predictable guidelines and standards for the maximum intensities of nonresidential uses, based on the transfer of TDR credits, for the TDR receiving areas outside of the DR/GR area.
- The amendment does not establish meaningful and predictable guidelines and standards for the maximum densities of residential uses, based on the transfer of TDR credits, for the TDR receiving areas outside of the DR/GR area.

### DCA's recommended remedial actions:

- Revise Policy 33.3.2(1)(c) to establish meaningful and predictable guidelines and standards for the maximum intensity of nonresidential uses based on the transfer of development rights to the Mixed-Use Communities.
- Revise the amendments to establish meaningful and predictable guidelines and standards for the maximum densities and intensities of uses, based on the transfer of TDR credits, for the TDR receiving areas outside of the DR/GR area.

### Lee County's conceptual solution:

These are two related but essentially different issues, each requiring a different solution:

- DCA is requesting details about the total amount of non-residential uses in the Mixed-Use Communities that could result from the TDR program. The plan amendment can be modified to include a cap on square footage of non-residential uses in each Mixed-Use Community, computed from the designs for each community in the supporting documents for the Lee Plan amendments.
- DCA is also requesting details about the maximum residential density and non-residential intensity OUTSIDE the DR/GR that could result from the TDR program. The plan amendment can be modified to be clearer on this question by stating that the upper limits in the Lee Plan will still apply even when TDRs are redeemed (these upper limits are shown in Table 1(a) of the Lee Plan under the terminology "bonus density").

### Lee County's precise solution:

See redraft of Policies 33.3.2.1.c and 33.3.4.6.

## 5. Meaningful Non-Residential Uses in Mixed-Use Communities

### DCA's inconsistency provisions:

The amendments to Future Land Use Element Objective 33.3, Policies 1.4.5(2)(a), 1.7.14, 33.3.2, 33.3.3, 33.3.4, and 33.3.5 do not establish meaningful and predictable guidelines and standards for the mix of land uses (residential, commercial, and civic uses) allowed within the "Mixed-Use Community" in order to ensure that an appropriate amount of non-residential uses will be developed in association with the residential uses. The policies allow residential use, commercial use, and civic use within the Mixed-Use Community. Policy 33.3.3 states that *"Within the Mixed-Use Community, significant commercial and civic uses are encouraged. Specific requirements for incorporating these uses into Mixed-Use Communities will be found in the Land Development Code."* Policy 33.3.5 states that *"The Land Development Code will be amended within one year to specify procedures for concentrating existing development rights on large tracts, for transferring development rights between landowners, for seeking approval of additional acreage subdivisions, and for incorporating commercial and civic uses into Mixed Use Communities as designated on Map 17."* The deferral to the land development code does not establish meaningful and predictable guidelines and standards in the comprehensive plan.

### DCA's recommended remedial actions:

Revise the amendments to establish meaningful and predictable guidelines and standards for the mix of land uses (residential, commercial, and civic uses) allowed within the "Mixed-Use Community" in order to ensure that a meaningful amount of non-residential uses will be developed in association with the residential uses.

### Lee County's conceptual solution:

Many TND developers build their residential areas before the commercial component (and some do the opposite); it would be counterproductive to propose some ratio between residential and nonresidential that must be met every month or every year while development progresses.

A better solution would ensure that meaningful amounts of non-residential uses are provided during the original approvals for each Mixed-Use Community. The plan can also provide explicit guidelines as to the nature of these communities (in addition to the glossary definition of "traditional neighborhood development" as referenced in Policy 33.3.2).

A measurable standard can be provided through "transect zone" assignments that are an essential part of the approval process (as detailed in the land development code). Two transect zones are oriented to intense commercial development, the "Center" and "Core" transect zones. An easy-to-track approach would be to specify a minimum percentage of those two zones (such as 10%) in each of the four Mixed-Use Communities along SR 82. (There is no reason for this requirement to apply to the Western Corkscrew community, given the very large commercial developments nearby.)

### Lee County's precise solution:

See redraft of Policies 33.3.2.1.d & .4 and 33.3.3.2.

To accommodate the additional non-residential uses in Mixed-Use Communities, amend Table 1(b) to increase the number of commercial acres that can be developed in Southeast Lee County by the year 2030 from 38 acres to 68 acres.

## 6. Alico Road Extension Maps

### **DCA's inconsistency provisions:**

The amendments to Lee Plan Maps 4, 14, 17, 20, and 25 show the Alico Road Extension from Alico Road to State Road 82. The Alico Road Extension is not shown on the County Comprehensive Plan Future Transportation Map(s) series; and therefore, Lee Plan Maps 4, 14, 17, 20, and 25 are internally inconsistent with the Future Transportation Maps(s) series regarding the Alico Road Extension.

### **DCA's recommended remedial actions:**

Revise the Future Transportation Map(s) Series to include the Alico Road Extension.

### **Lee County's conceptual solution:**

Without any funding source for the Alico Road Extension, Lee County cannot legally follow DCA's recommended remedial action to add the Alico Road Extension to the Future Transportation Map. However, the alleged inconsistency can be resolved by simply deleting the display of the Alico Extension wherever it appears; it had been shown on various Lee Plan maps only for informational purposes.

### **Lee County's precise solution:**

Delete the Alico Road Extension from Lee Plan Maps 4, 14, 17, 20, and 25.

## 7. Public Facilities Planning

### DCA's inconsistency provisions:

The Mixed-Use Community designations on the Map 17 amendment are not supported by relevant and appropriate data and analysis demonstrating coordination of the resulting maximum development potential of the land uses with the short-term and long-term planning and provision of public facilities (central potable water, central sanitary sewer, adequate water supply, roads, and schools) in order to achieve and maintain the adopted level of service standards for public facilities. The amendment is not supported by relevant and appropriate data and analysis for the short-term and long-term planning timeframes based on the maximum development potential of the land uses for the Mixed-Use Communities addressing:

- (1) identifying the amount of demand for water, sanitary sewer, roads, and schools generated by the Mixed-Use Communities;
- (2) the impact of the demand upon the operating level of service and adopted level of service standards of public facilities, and the need for public facilities improvements (scope and timing) in order to maintain the adopted level of service of public facilities; and
- (3) coordination of the public facility improvements with the Capital Improvements Element, Transportation Element, Community Facilities and Services Element, and Public School Facilities Element.

The public facilities improvements that would be needed to support the Mixed-Use Community designations on Map 17 are not coordinated with the elements of the Lee County Comprehensive Plan. The amendment does not coordinate land use planning with the planning and provision of public facilities for the short-term and long-term planning timeframes. The plan policies require that the Mixed-Use Community be developed with central water and sewer, and the TDR program could intensify the development beyond the clustering of existing density. The amendment designates Mixed-Use Communities adjacent to State Road 82, which according to the analysis submitted with the adopted amendment currently operates in a manner that does not meet the adopted level of service standards from Colonial Boulevard to the Hendry County boundary.

### DCA's recommended remedial actions:

Support the amendments for the Mixed-Use Community (MUC) designations on the Map 17 amendment with relevant and appropriate data and analysis demonstrating coordination of the resulting maximum development potential of the land uses of the MUC with the short-term and long-term planning and provision of public facilities (central potable water, central sanitary sewer, adequate water supply, roads, and schools) in order to achieve and maintain the adopted level of service standards for public facilities. The analysis should address:

- (1) identifying the amount of demand for water, sanitary sewer, roads, and schools generated by the Mixed-Use Communities;
- (2) the impact of the demand upon the operating level of service and adopted level of service of public facilities, and the need for public facilities improvements (scope and timing) in order to maintain the adopted level of service of public facilities; and
- (3) coordination of the public facility improvements with the Capital Improvements Element, Transportation Element, Community Facilities and Services Element, and Public School Facilities Element.

Revise the appropriate elements of the Lee County Comprehensive Plan to address the public facilities improvements and other planning actions (e.g., revision to service area maps) that are needed to support the Mixed Use Communities.

### **Lee County's conceptual solution:**

During several conversations, DCA officials have asked about potential concurrency issues on SR 82 and Lee County's preferred solution, which is a multimodal transportation district. As is customary, DCA officials asked for a clear plan of action with measurable milestones. This can be provided by adding policy language to the Lee Plan. (NOTE: it is definitely not correct that SR 82 currently operates below the adopted levels of service to the Hendry County line; construction to correct one failing link near I-75 is underway at this time.)

Other public facility issues were cited in this objection even though it has already been ascertained that existing elements of the Lee Plan can accommodate the extra increment of development that would be enabled by this plan amendment. Public school needs are governed by the recent adoption of Goal 67 into the education sub-element of the Lee Plan. A July 21 letter from the Lee County School District ~~is being forwarded to DCA; the letter~~ indicates that there is already sufficient capacity in existing Lee County schools for all students expected from the Mixed-Use Communities through their build-out, even using the most conservative methodology for estimating student generation. The recent water and wastewater analysis by Lee County Utilities has been expanded to include non-residential demands ~~and is being resubmitted to DCA for their review~~. Lee Plan Maps 6 and 7 which show future water and wastewater service should be amended at this time to add all five Mixed-Use Communities. Three subsections of Policy 33.3.3 should be amendment at this time to more clearly address public facility demands.

The need for the Mixed-Use Communities does not arise from any shortage of developable land in the unincorporated area; rather, the addition of a small amount of newly developable land in the five Mixed-Use Communities (less than 1,200 gross acres in total, with about 300 acres in developable blocks) will help resolve several much greater needs, particularly the need to protect farmland and environmentally sensitive lands at increasing distances from existing services and amenities. The DR/GR area is about 82,560 acres; the gross acreage of newly developable land is only 1.5% percent of the DR/GR area, in service of protecting vastly more land in its undeveloped state. These factors have been discussed in detail in the support documents for these amendments (particularly in *Prospects for Southeast Lee County*, *Transferable Development Rights in Southeast Lee County*, and *Natural Resource Strategies for Southeast Lee County*).

### **Lee County's precise solution:**

See redraft of Policies 33.3.3.3-~~65~~.

Add all five Mixed-Use Communities to Lee Plan Maps 6 and 7.