

**LEE COUNTY  
DIVISION OF PLANNING**

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**STAFF ANALYSIS AND RECOMMENDATION**

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**PROPOSED LEE PLAN AMENDMENTS  
FOR SOUTHEAST LEE COUNTY**

**Planning for the Density Reduction /  
Groundwater Resource Area (DR/GR)**

By: Dover, Kohl & Partners

Dated  
May 2009

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**COMPREHENSIVE PLAN AMENDMENT  
CPA 2008-06 Remedial Amendments**

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**Adoption Document**

November 1, 2010  
Board of County Commissioners Adoption Public Hearing

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**LEE COUNTY  
DIVISION OF PLANNING  
STAFF ANALYSIS AND RECOMMENDATIONS FOR  
COMPREHENSIVE PLAN AMENDMENT  
CPA 2008-06 Remedial Amendments**



**Text Amendment**



**Map Amendment**

✓	<b>This Document Contains the Following Reviews:</b>
✓	<b>Staff Review</b>
✓	<b>Board of County Commissioners Hearing for Adoption</b>

STAFF REPORT PREPARATION DATE: October 25, 2010

**PART I - BACKGROUND**

**A. SUMMARY OF APPLICATION**

**1. APPLICANT/REPRESENTATIVE:**

Lee County Board of County Commissioners/Lee County Division of Planning.

**2. REQUEST:**

Adopt a Lee Plan amendment that implements the terms of the Stipulated Settlement Agreement with the Florida Department of Community Affairs regarding the Division of Administrative Hearings, DOAH case No. 10-2988 GM.

**Original Request:**

Amend the Vision Statements for Planning Communities #10 (Gateway/Airport) and #18 (Southeast Lee County) so that these statements accurately reflect all of the following amendments to the Lee Plan. Amend the Future Land Use Element to incorporate the recommendations of the 2008 report entitled *Prospects for Southeast Lee County: Planning for the Density Reduction/Groundwater Resource Area*, including major revisions under Goal 10 (Natural Resource Extraction) and a new Goal 30 with policies applying primarily to Southeast Lee County, including Objective 30.1 (Limerock Mining), Objective 30.2 (Other Natural Resources), and Objective 30.3 (Residential Development). Amend the Groundwater Recharge sub-element of the Community Facilities and Services Element to modify Policy 63.1.2 on development applications near wellfields. Amend the Glossary to add definitions of aggregate, limerock, and public recreation facilities. Add a footnote to Table 1(a) of the Future Land Use Map Series (Summary of Residential Densities) to authorize potential density bonuses for transferring development rights from Southeast Lee County to "Mixed-Use Communities" along SR 82 or to land designated on the "Mixed Use" overlay. Amend Table 1(b) of the Future Land Use Map Series (the acreage allocation table) in Planning Community #18 only so that industrial acreage reflects the acreage of limerock mining pits needed to meet local and regional demand. Amend Map 1 of the Future

Land Use Map Series to adjust the boundaries of the “Public Facilities” designation for the Corkscrew water treatment plant. Amend Map 1 of the Future Land Use Map Series to adjust the boundaries of the “Wetlands” and “Conservation Lands” (both uplands and wetlands) designations. Amend Page 2 of Map 1 of the Future Land Use Map Series to add a boundary and text for Southeast Lee County. Amend Page 4 of Map 1 of the Future Land Use Map Series to update the public acquisition overlay in Planning Community #18 only. Amend Map 4 of the Future Land Use Map Series to eliminate public lands and completed mining pits from the “Private Recreational Facilities” overlay. Amend Map 14 of the Future Land Use Map Series to designate a “Future Limerock Mining” overlay. Add a new Map 17 to the Future Land Use Map Series to designate new “Rural Residential” overlays in Planning Community #18 only. Amend Map 20 of the Future Land Use Map Series, the “Agricultural” overlay, to correctly reflect the current extent of contiguous agricultural parcels in Planning Community #18 only. Add a new Map 24 to the Future Land Use Map Series, the “Historic Surface and Groundwater Levels” overlay (Planning Community #18 only). Add a new Map 25 to the Future Land Use Map Series, the “Priority Restoration” overlay, to suggest potential acquisition patterns in Planning Community #18 only.

### 3. **BACKGROUND DISCUSSION:**

On March 3<sup>rd</sup>, 2010, the Lee County Board of County Commissioners adopted several amendments to the Lee Plan pertaining to the Density Reduction/Groundwater Resource (DR/GR) future land use category located in Southeast Lee County (CPA2008-06). On May 11, 2010, the Florida Department of Community Affairs (DCA) issued a letter concerning the March 3<sup>rd</sup> adoption hearing that contained both a Notice of Intent (NOI) and a Statement of Intent (SOI) concerning the adopted DR/GR amendments. The NOI gave notice that the DCA finds CPA2008-06, as adopted by Ordinances 10-19, 10-20, and 10-21, not in compliance with Part II of Chapter 163, Florida Statutes. The SOI provided the specific inconsistencies that DCA had identified and recommended seven remedial actions the County should undertake to address these inconsistencies. The SOI focused on the proposed Transfer of Development Rights (TDR) program and the establishment of Mixed-Use Communities as receiving areas. A formal Administrative Hearing was initiated by the DCA with the State of Florida Division of Administrative Hearings (DOAH). Several parties sought permission and were granted intervenor status in the proceeding.

Following negotiations over the summer and fall, on October 5<sup>th</sup>, 2010 Lee County staff and DCA staff agreed to a set of Lee Plan remedial amendments that address the “Recommended Remedial Actions” of the SOI. These proposed amendments were later presented by DCA staff to the DCA Secretary who has indicated his agreement with the proposed amendments.

A “Stipulated Settlement Agreement” has been generated by the DCA staff and was agreed to by the Board of County Commissioners on October 26, 2010. The Florida Wildlife Federation, Collier County Audubon Society, Conservancy of Southwest Florida, Inc., Estero Council of Community Leaders, Inc., Old Corkscrew Plantation, Inc., Nick Batos, and Alico Land Development, Inc. also agreed to the settlement. Cemex Construction Materials Florida, LLC., Old Corkscrew Plantation V, LLC., and Troyer Brothers Florida, Inc. have not agreed to the settlement.

## **PART II - STAFF ANALYSIS AND RECOMMENDATIONS**

## **A. STAFF DISCUSSION**

### **1. INTRODUCTION**

The County staff, working in conjunction with one of the consultants, generated a document responding to the issues raised by the DCA. See Attachment #1. This document is organized to correspond with the seven “Recommended Remedial Actions” as stated in the SOI. The response document along with the corresponding proposed Lee Plan remedial amendment language was modified several times as discussions progressed between Lee County staff and the DCA staff.

The first “Recommended Remedial Action” is to revise the plan policies to establish meaningful and predictable guidelines and standards for the transfer of development rights 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. Staff recommends that modifications to Policies 33.3.2, 33.3.3, and 33.3.4 be made to address this issue. Proposed modifications to Policy 33.3.2.1 clarify the TDR multipliers. Proposed modifications to Policy 33.3.4 clarify the TDR generation rates and how many of these units can actually be developed within the DR/GR.

The second “Recommended Remedial Action” recommends revising 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 area (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. Staff recommends modifications to Policies 33.3.2, 16.2.7, and 33.3.4 to address this concern.

The third “Recommended Remedial Action” is to revise the plan policies to establish meaningful and predictable guidelines and standards defining the location of the TDR receiving areas outside of the DR/GR area. Staff recommends modifications to Policies 33.3.3 and 33.3.4 to address this issue. The proposed modifications specify those Future Urban Areas that allow bonus density, such as the Lehigh Acres Specialized Mixed-Use Nodes, as well as incorporated municipalities that have formally agreed to accept TDR credits.

The fourth remedial action is to 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 and for the TDR receiving areas outside of the DR/GR area. Staff recommends modifications to Policies 33.3.2 and 33.3.4. The proposed modification to Policy 33.3.2.(1)(c) sets an intensity limit using TDR credits of 300,000 square feet of nonresidential floor area in any Mixed-Use Community.

The fifth remedial action is to revise the plan policies 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 residential uses. Staff recommends modifications to

Policies 33.3.2 and 33.3.3. At a minimum, each Mixed-Use Community adjoining S.R. 82 must designate at least 10% of its developable land into zones for nonresidential uses.

The sixth remedial action is to revise the Future Transportation Map(s) Series to include the Alico Road Extension. No funding has been identified for the Alico Road Extension and the Extension is not included on Map 3A, Lee County 2030 Financially Feasible Highway Plan. Consequently, the proper approach to resolve this inconsistency is to simply delete the Alico Road Extension from Lee Plan Maps 4, 14, 17, 20, and 25.

The seventh remedial action is to 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. 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 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. Staff recommends revisions to Policy 33.3.3 to address these issues. Lee County staff has provided additional data and analysis concerning expected potable water, sanitary sewer, and public school impacts associated with development of the Mixed-Use Communities. Lee County Utilities and the School District of Lee County currently have the capacity to meet the anticipated service needs with the exception of sanitary sewer. The proposed modifications acknowledge the deficiency and commits Lee County to address this deficiency in the future.

Planning staff has worked through all of the DCA identified issues and believes that the adoption of this remedial amendment will result in a finding of compliance for CPA2008-06. Staff has worked with the County Attorney's Office to prepare the adoption ordinance for this proposed remedial amendment (see Attachment #2).

## 2. **PROPOSED TEXT AMENDMENTS**

Consistent with the Stipulated Settlement Agreement, staff recommends that the following modifications be adopted by the Board of County Commissioners. The changes are shown in strikethrough and underline based upon the language adopted by the Board in March.

**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.

**OBJECTIVE 33.3: RESIDENTIAL AND MIXED-USE DEVELOPMENT.** Designate on a Future Land Use Map overlay existing ~~rural residential areas~~ acreage subdivision 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 residential density based upon dwelling units from the upland and wetland acreage of the entire contiguous DR/GR tract. The only net increases in ~~development potential dwelling units~~ 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 additional intensity of non-residential development is up to 800 square feet per 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 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 this~~ these 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 areas.~~ This program will also allow limited 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 ~~encouraged~~ required. 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 ~~will be found~~ are set forth 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 S.R. 82 as an “emerging component” of Florida’s Strategic Intermodal System, a designation that establishes the levels of service Lee County must adopt for S.R. 82. Lee County will seek to include the Mixed-Use Communities and appropriate adjacent urban areas in a multimodal transportation district to mitigate the effects of SR 82’s status as an emerging component of Florida’s Strategic Intermodal System. regulatory barriers these levels of service would impose on Lee County’s ability to accomplish Objective 33.3 and its policies. 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 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 to determine the potential for substantial trip diversion from Lehigh Acres residents, the viability of transit service to these Mixed-Use Communities and appropriate adjacent urban areas, and the practicality of 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).
  
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 level of service for S.R. 82 to be exceeded (see Goal 37). This restriction applies unless a Mixed-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 Area (see Objective 1.1);
- (4) Mixed-Use Overlay;
- (5) Lehigh Acres Specialized Mixed-Use Nodes;
- (6) Lee Plan designation 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.~~
3. The preferred receiving locations for the transfer of TDRs are within appropriate designated Future Urban Areas such as due to their proximity to public infrastructure and urban amenities (see Objective 1.1), specifically 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 for accepting permitted to receive 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 the 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.
67. 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.

### **3. PROPOSED MAP AMENDMENTS**

Staff, consistent with the Stipulated Settlement Agreement, recommends that the Lee County Comprehensive Plan Future Land Use Map Series be amended as indicated below. Exhibits depicting the areas amended are attached to the proposed ordinance.

- a. Map 4: Deleted reference to the proposed Alico Road Extension.
- b. Map 6: Add depictions of all five Mixed Use Communities.
- c. Map 7: Add depictions of all five Mixed Use Communities.
- d. Map 14: Deleted reference to the proposed Alico Road Extension.
- e. Map 17: Deleted reference to the proposed Alico Road Extension.
- f. Map 20: Deleted reference to the proposed Alico Road Extension.
- g. Map 25: Deleted reference to the proposed Alico Road Extension.

### **4. PROPOSED LEE PLAN TABLE AMENDMENTS**

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. Table 1(b) as amended is attached to the proposed ordinance.

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

DATE OF ADOPTION HEARING: November 1, 2010

**A. BOARD REVIEW:** Planning staff provided a brief summary of the proposed amendment and stated that the amendment was consistent with the Settlement agreement that the Board had recently adopted. A local land use attorney, representing the Old Corkscrew Golf Club asked the Board to include additional language in the ordinance that would allow unchallenged portions of the ordinance to become effective. In response to a Board question, the Assistant County Attorney verified no harm would be done to the intent of the ordinance by the requested inclusion. A second representative of Old Corkscrew Golf Club also stressed the importance of the proposed language to the success of the golf course operations. Another local land use attorney spoke on behalf of FFD Land Company, Inc. and expressed his clients opposition to this amendment as well as the previously adopted amendment. A third local land use attorney spoke in favor of the proposed amendment on behalf of the Conservancy of Southwest Florida, Inc., the Estero Council of Community Leaders, and Estero resident Nick Batos.

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

- 1. BOARD ACTION:** The Board of County Commissioners voted to adopt the proposed amendment.
- 2. BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the findings of fact as advanced by staff.

**C. VOTE:**

**BRIAN BIGELOW**

\_\_\_\_\_  
**AYE**

**TAMMARA HALL**

\_\_\_\_\_  
**AYE**

**RAY JUDAH**

\_\_\_\_\_  
**AYE**

**FRANK MANN**

\_\_\_\_\_  
**AYE**

**JOHN MANNING**

\_\_\_\_\_  
**AYE**