LEE COUNTY ORDINANCE NO. 10-43

[Compliance with Settlement Agreement for
DOAH Case No. 10-2988GM]
(CPA2008-06)

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE PLAN, COMMONLY KNOWN AS THE "LEE PLAN," ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, TO ADOPT THE AMENDMENT PROPOSED UNDER CPA2008-06 (PERTAINING TO TRANSFER OF DEVELOPMENT RIGHTS, RESOURCE EXTRACTION IN THE DENSITY REDUCTION/GROUNDWATER RESOURCE (DR/GR) AREA AND GOLF COURSE DEVELOPMENT IN DR/GR) APPROVED DURING THE COUNTY'S 2008/2009 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE AND AS PART OF THE 2010 STIPULATED SETTLEMENT AGREEMENT WITH THE DEPARTMENT OF COMMUNITY AFFAIRS; PROVIDING FOR PURPOSE, INTENT AND SHORT TITLE; AMENDMENTS TO ADOPTED TEXT, MAPS AND TABLES; LEGAL EFFECT OF "THE LEE PLAN"; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, the Lee County Comprehensive Plan ("Lee Plan") Policy 2.4.1. and Chapter XIII, provides for adoption of amendments to the Plan in compliance with State statutes and in accordance with administrative procedures adopted by the Board of County Commissioners ("Board"); and,

WHEREAS, the Board, in accordance with §163.3181, Florida Statutes, and Lee County Administrative Code 13-6 provided an opportunity for the public to participate in the plan amendment public hearing process; and,

WHEREAS, the Lee County Local Planning Agency ("LPA") held a public hearing concerning the proposed amendment in accordance with Florida Statutes and the Lee County Administrative Code on June 3, 2009, June 22, 2009, and July 27, 2009; and,

WHEREAS, the Board held a public hearing for the transmittal of the proposed amendment on September 24, 2009 and October 28, 2009. At that hearing, the Board approved a motion to send, and did later send, proposed amendment CPA2008-06 pertaining to Planning for the DR/GR to the Department of Community Affairs ("DCA") for review and comment; and,

WHEREAS, at the October 29, 2009 meeting, the Board announced its intention to hold a public hearing after the receipt of DCA's written comments commonly referred to as the "ORC Report." DCA issued their ORC report on January 15, 2010; and,

WHEREAS, on March 3, 2010, the Board held a public hearing and adopted Comprehensive Plan Amendment 10-1 pertaining to the Southeast DR/GR area through Lee County Ordinance Numbers 10-19, 10-20 and 10-21; and,

WHEREAS, DCA issued a Statement of Intent on May 11, 2010, published May 12, 2010, contending that certain provisions of Amendment 10-1 were not "in compliance" with Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes; and,

WHEREAS, pursuant to §163.3184(10), Florida Statutes, DCA initiated formal administrative proceedings before the State of Florida, Division of Administrative Hearings (DOAH Case NO. 10-2998GM) challenging certain provisions in Amendment 10-1; and,

WHEREAS, Lee County disputes DCA's allegations regarding Comprehensive Plan Amendment 10-1 as contained in the Statement of Intent; and,

WHEREAS, a number of parties requested and were granted intervenor status in the administrative proceeding, including Florida Wildlife Federation, Collier County Audubon Society, Conservancy of Southwest Florida, Inc., Estero Council of Community Leaders, Inc., Old Corkscrew Plantation, Inc., Nick Batos, Alico Land Development, Inc., Cemex Construction Materials Florida, LLC., Old Corkscrew Plantation V, LLC., and Troyer Brothers Florida, Inc.; and,

WHEREAS, wishing to avoid the expense, delay and uncertainty of lengthy litigation, Lee County and DCA successfully worked to resolve the proceeding through a Stipulated Settlement Agreement, which was joined by the following intervenors 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.; and

WHEREAS, on October 26, 2010, the Board approved the Stipulated Settlement Agreement, attached as Exhibit I, during a duly noticed public hearing in accordance with Florida Statutes §163.3184(16); and,

WHEREAS, the terms of the Stipulated Settlement Agreement require the County to take remedial action consisting of formal adoption of a comprehensive plan amendment consistent with the text changes identified in the Settlement Agreement; and,

WHEREAS, the Board of County Commissioner finds it appropriate to adopt the remedial amendments set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, THAT:

SECTION ONE: PURPOSE, INTENT AND EFFECT

The Board of County Commissioners of Lee County, Florida, in compliance with Chapter 163, Part II, Florida Statutes, Lee County Administrative Code 13-6, and the Stipulated Settlement Agreement attached as Exhibit I, conducted public hearings to review proposed remedial amendments to the Lee Plan.

The provisions of Lee County Ordinances 10-19, 10-20 and 10-21 [also known and referred to as Comprehensive Plan Amendment 10-1, CPA2008-06], not otherwise amended by adoption of this ordinance remain unchanged.

SECTION TWO: ADOPTION OF CPA 2008-06 (PLAN AMENDMENT 10-1) AND REMEDIAL AMENDMENTS

The Lee County Board of County Commissioners amends the existing Lee Plan, adopted by Ordinance Number 89-02, as amended, by adopting an amendment, as revised by the Board on March 3, 2010, known as CPA2008-06 and further revised and amended as agreed in the 2010 Stipulated Settlement Agreement resolving the Southeast Lee County DR/GR Amendment litigation: DCA *et. al* v. Lee County, Case No. DOAH 10-2988GM.

The corresponding Staff Reports and Analysis, along with all attachments for Comprehensive Plan Amendment 10-1 and the 2010 Stipulated Settlement Agreement are adopted as "Support Documentation" for the Lee Plan.

The Lee County Comprehensive Plan is hereby amended as follows with strike through identifying deleted text and underlining identifying added text.

Editorial note: The base document used to reflect the identified amendments is the corresponding text, maps and tables as adopted by the Board of County Commissioners on March 3, 2010 (Lee County Comprehensive Plan Amendment 10-1), and set forth in Lee County Ordinances 10-19, 10-20 and 10-21. Strike through identifies deleted text and underlining identifies added text.

> **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 TDR~~s~~ 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~~2. 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.

~~6~~7. 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.

SECTION THREE: MAP AMENDMENTS

The Lee County Comprehensive Plan Future Land Use Map Series is amended as indicated below. Exhibits depicting the areas amended are attached.

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.

SECTION FOUR: 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.

SECTION FIVE: LEGAL EFFECT OF THE "LEE PLAN"

No public or private development will be permitted except in conformity with the Lee Plan. All land development regulations and land development orders must be consistent with the Lee Plan as amended.

SECTION SIX: GEOGRAPHIC APPLICABILITY

The Lee Plan is applicable throughout the unincorporated area of Lee County, Florida, except in those unincorporated areas included in joint or interlocal agreements with other local governments that specifically provide otherwise.

SECTION SEVEN: SEVERABILITY

The provisions of this ordinance are severable and it is the intention of the Board of County Commissioners of Lee County, Florida, to confer the whole or any part of the powers herein provided. If any of the provisions of this ordinance are held unconstitutional by a court

of competent jurisdiction, the decision of that court will not affect or impair the remaining provisions of this ordinance. It is hereby declared to be the legislative intent of the Board that this ordinance would have been adopted had the unconstitutional provisions not been included therein.

SECTION EIGHT: INCLUSION IN CODE, CODIFICATION, SCRIVENERS' ERROR

It is the intention of the Board of County Commissioners that the provisions of this ordinance will become and be made a part of the Lee County Comprehensive Plan. Sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or other appropriate word or phrase in order to accomplish this intention; and regardless of whether inclusion in the code is accomplished, sections of this ordinance may be renumbered or relettered. The correction of typographical errors that do not affect the intent, may be authorized by the County Manager, or his or her designee, without need of public hearing, by filing a corrected or recodified copy with the Clerk of the Circuit Court.

SECTION NINE: EFFECTIVE DATE

The plan amendments adopted herein are not effective until a final order is issued by the DCA or Administrative Commission finding the amendment in compliance with Section 163.3184(9), Florida Statutes, or until the Administrative Commission issues a final order determining the adopted amendment to be in compliance in accordance with 163.3184(10), Florida Statutes, whichever occurs earlier. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before the amendment has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status. A copy of such resolution will be sent to the DCA, Bureau of Local Planning, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

If the Administrative Commission relinquishes jurisdiction of portions of plan amendment 10-1, as modified herein, to DCA, and DCA issues a final order finding those portions in compliance with s. 163.3184(10), then the portions of the plan amendment found in compliance will become effective notwithstanding the ongoing challenge to the remainder of the plan amendment.

Commissioner Manning made a motion to adopt the foregoing ordinance, seconded by Commissioners Mann. The vote was as follows:

John Manning	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DONE AND ADOPTED this 1st day of November, 2010

ATTEST:
CHARLIE GREEN, CLERK

BY: _____
Deputy Clerk

LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: _____
Tammara Hall, Chairwoman

SEAL

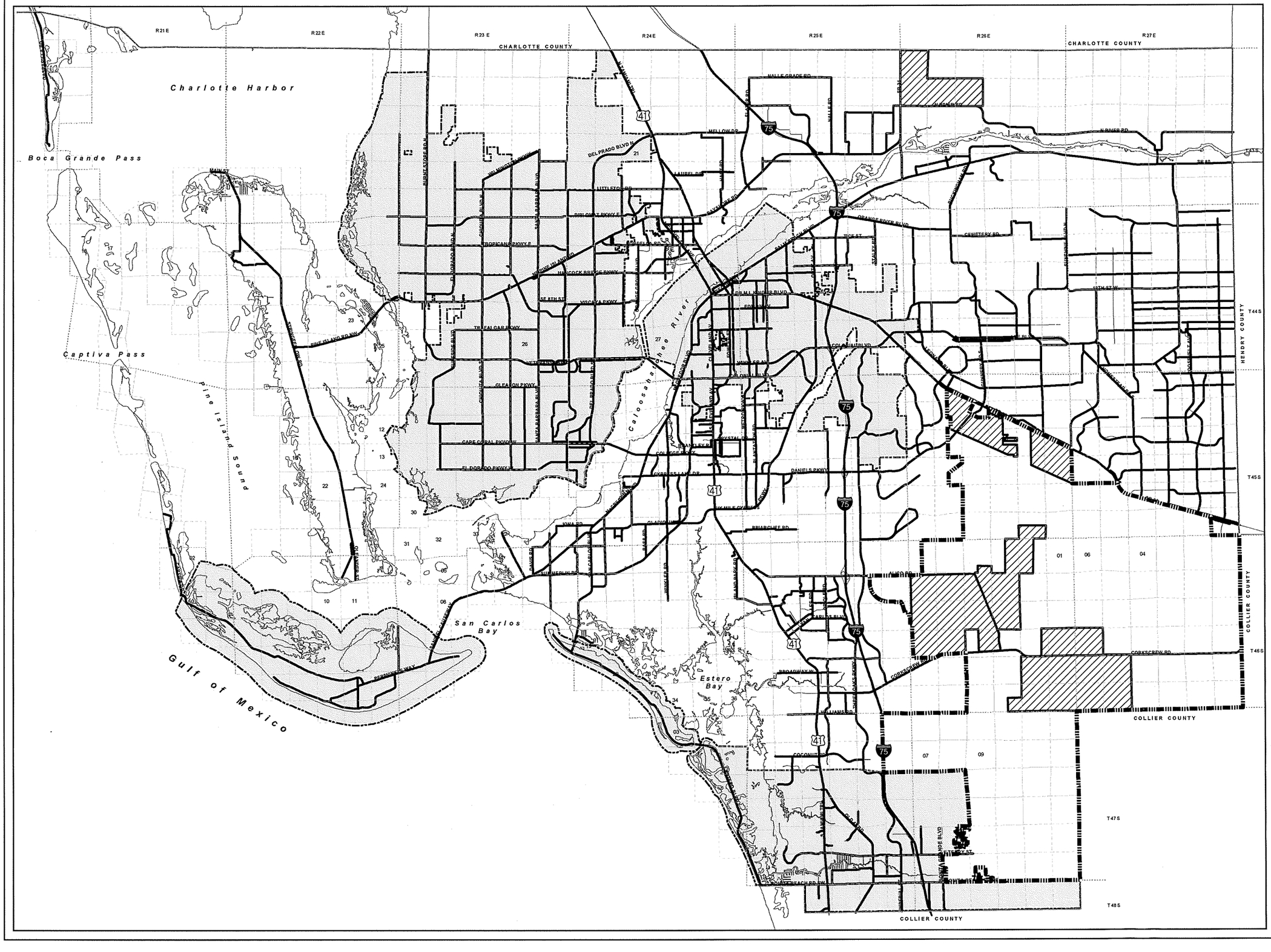
Approved as to form by:

_____
Dawn E. Perry-Lehnert
County Attorney's Office

EXHIBITS:

Exhibit A:	Map 4
Exhibit B:	Map 6
Exhibit C:	Map 7
Exhibit D:	Map 14
Exhibit E:	Map 17
Exhibit F:	Map 20
Exhibit G:	Map 25
Exhibit H:	Table 1(b)
Exhibit I:	2010 Stipulated Settlement Agreement, Case No. DOAH 10-2988GM and all attachments.

PRIVATE RECREATIONAL FACILITIES OVERLAY MAP



LEGEND

- County Line
- City Limits
- Section Lines
- Major Roads
- Minor Roads
- DR/GR perimeter
- Private Recreational Facilites

LEE COUNTY
SOUTHWEST FLORIDA
DIVISION OF PLANNING

N
W E
S

1 0.5 0 1 2 3 4
Miles

Map Generated: October 2010
City Limits current to date of map generation

Lee Plan Map 4

EXHIBIT A

LEE COUNTY UTILITIES FUTURE WATER SERVICE ARES

Legend

- City Limits
- Future Water Service Areas

LEE COUNTY
SOUTHWEST FLORIDA
DIVISION OF PLANNING

N
W E
S

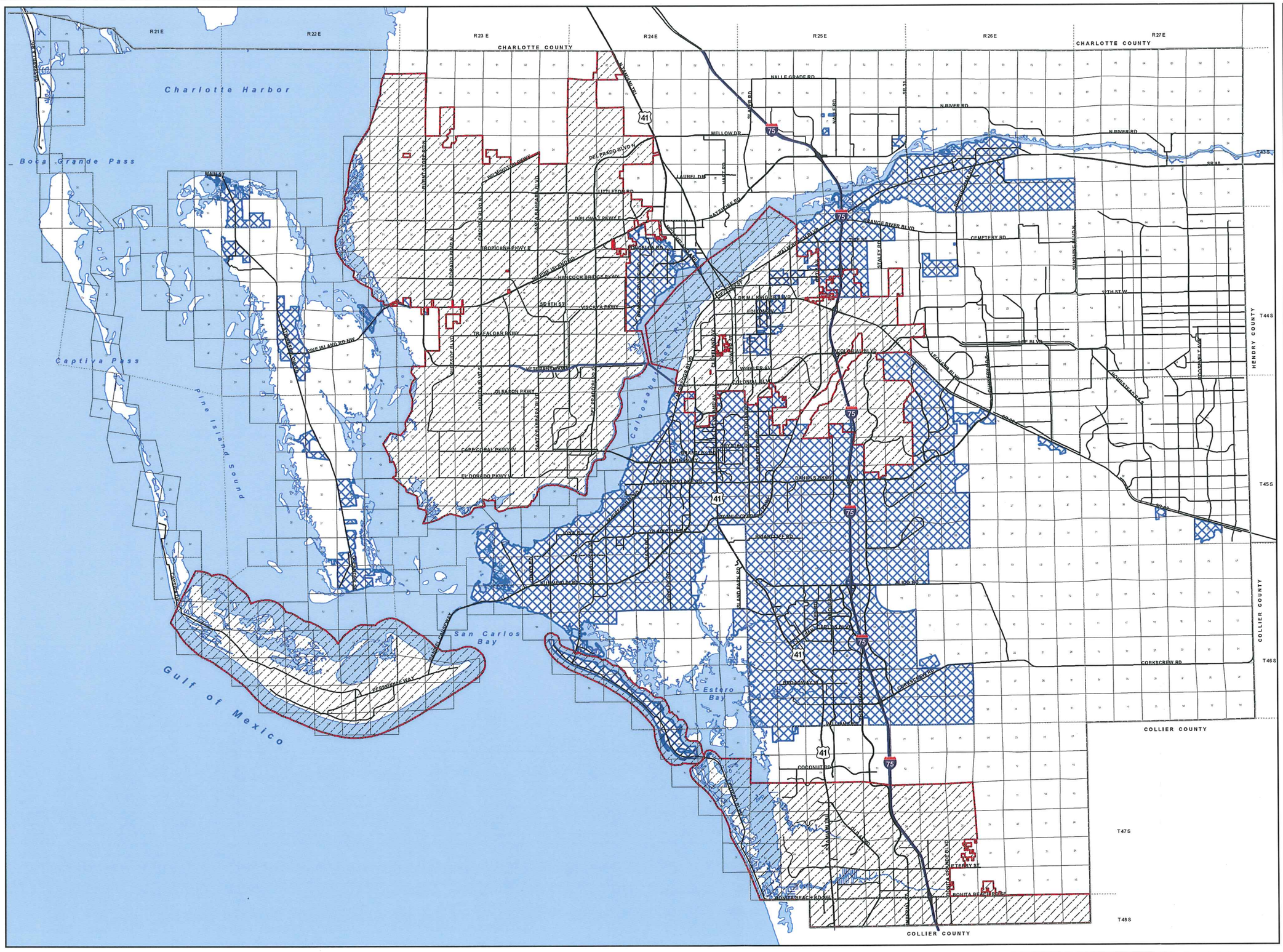
1 0.5 0 1 2 3 4
Miles

Map Generated: October 2010
City Limits current to date of map generation

Amended by Ordinance Nos. 00-22, 03-19, 10-06
Adopted March 3, 2010
Effective Date June 2, 2010

Lee Plan Map 6
EXHIBIT B

LEE COUNTY UTILITIES FUTURE SEWER SERVICE ARES



Legend

- City Limits
- Future Sewer Service Areas

LEE COUNTY
SOUTHWEST FLORIDA
DIVISION OF PLANNING

N W E S

1 0.5 0 1 2 3 4
Miles

Map Generated: October 2010
City Limits current to date of map generation

Amended by Ordinance Nos. 00-22, 03-19, 10-07
Adopted March 3, 2010
Effective Date June 2, 2010

Lee Plan Map 7
EXHIBIT C

FUTURE LIMEROCK MINING OVERLAY

Legend

- Southeast Lee County
- Future Limerock Mining
- County Line
- MajorRoads
- City Limits

LEE COUNTY
SOUTHWEST FLORIDA
DIVISION OF PLANNING

N
W E
S

1 0 1 2 3 4
Miles

Map Generated: October 2010
City Limits current to date of map generation.

Lee Plan Map 14

EXHIBIT D

SOUTHEAST DR/GR RESIDENTIAL OVERLAY

Legend

- Southeast Lee County
- Existing Acreage Subd.
- Mixed-Use Community
- Rural Golf Course Community
- County Line
- Section Lines
- Major Roads
- Minor Roads
- City Limits

LEE COUNTY
SOUTHWEST FLORIDA
DIVISION OF PLANNING

N W E S

1 0.5 0 1 2 3 4
Miles

Map Generated: October 2010
City Limits current to date of map generation

Lee Plan Map 17

EXHIBIT E

CONTIGUOUS AGRICULTURAL PARCELS OVER 100 ACRES IN NON-URBAN FUTURE LAND USE CATEGORIES

LEGEND

- City Limits
- Section Lines
- Major Roads
- Minor Roads
- Southeast Lee County

Agricultural Overlay

- Agricultural Areas
- Non-Urban Area

LEE COUNTY
SOUTHWEST FLORIDA
DIVISION OF PLANNING

N
W E
S

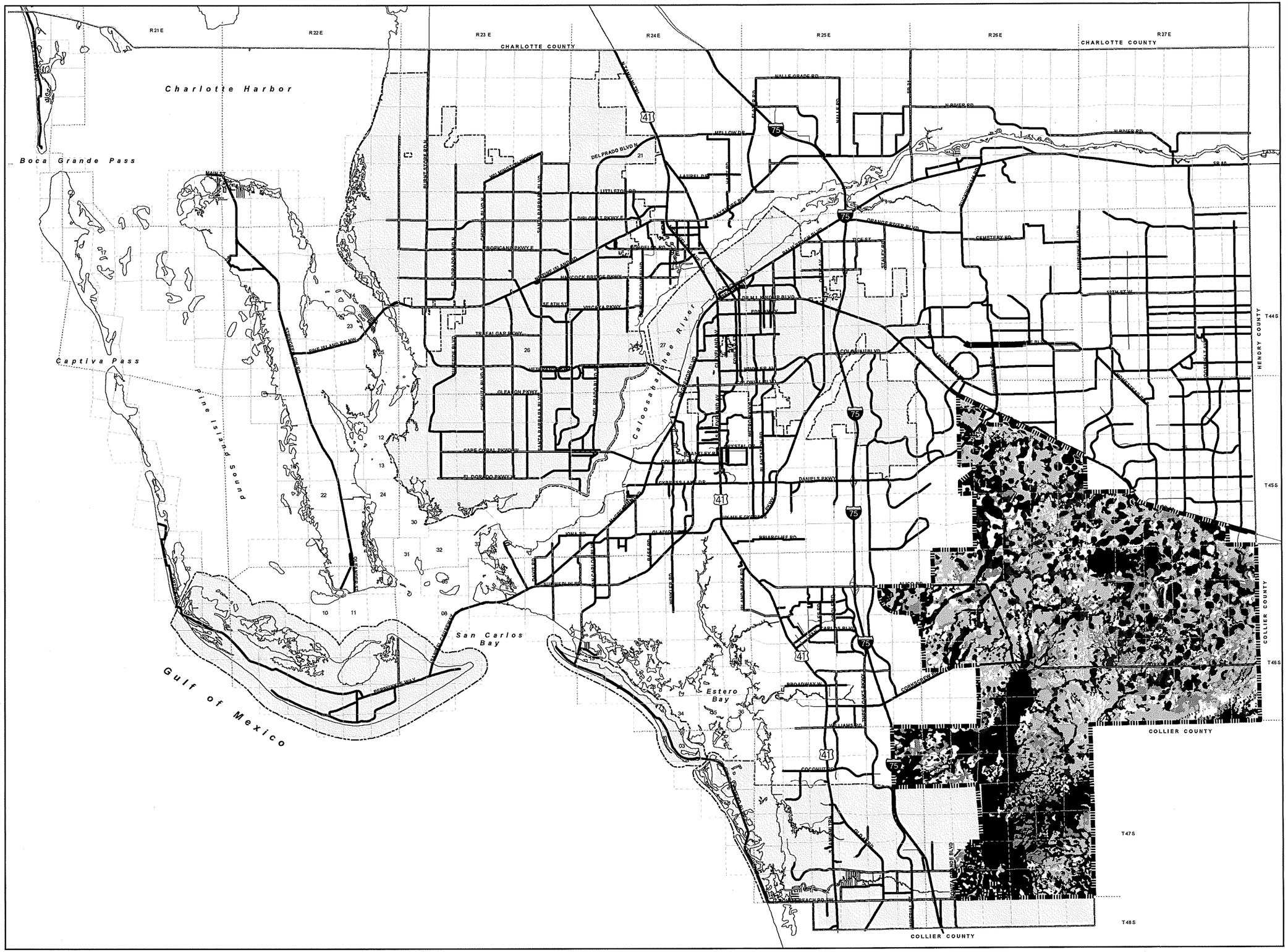
1 0.5 0 1 2 3 4
Miles

Map Generated: October 2010
City Limits current to date of map generation.

Lee Plan Map 20

EXHIBIT F

Historic Surface and Groundwater Levels



LEGEND

- County Line
- City Limits
- Section Lines
- Major Roads
- Minor Roads
- Southeast Lee County

Historic wet season water depths

- -.50' to 0.25' for 1 - 2 Months
- 0.25' to 0.75' for 1 - 3 Months
- 0.75' to 1.50' for 4 - 7 Months
- 1.50' to 2.50' for 7 - 9 Months

LEE COUNTY
SOUTHWEST FLORIDA
DIVISION OF PLANNING

N W E S

1 0.5 0 1 2 3 4
Miles

Map Generated: October 2010
City Limits current to date of map generation

Lee Plan Map 25

EXHIBIT G

PROPOSED
TABLE 1(b)
Year 2030 Allocations

DR/GR - CPA2008-06

	Future Land Use Classification	Lee County Totals Existing	Lee County Totals Proposed	Alva	Boca Grande	Bonita Springs	Fort Myers Shores	Burnt Store	Cape Coral	Captiva	Fort Myers	Fort Myers Beach	Gateway/ Airport
Residential By Future Land Use Category	Intensive Development	~~1,367~~	1,367	0	0	0	20	0	27	0	250	0	0
	Central Urban	~~14,787~~	14,787	0	0	0	225	0	0	0	230	0	0
	Urban Community	~~18,425~~	18,425	520	485	0	637	0	0	0	0	0	0
	Suburban	~~16,623~~	16,623	0	0	0	1,810	0	0	0	85	0	0
	Outlying Suburban	~~4,105~~	4,105	30	0	0	40	20	2	500	0	0	0
	Sub-Outlying Suburban	~~1,548~~	1,548	0	0	0	367	0	0	0	0	0	0
	Industrial Development	~~79~~	79	0	0	0	0	0	0	0	39	0	20
	Public Facilities	~~1~~	1	0	0	0	0	0	0	1	0	0	0
	University Community	~~850~~	850	0	0	0	0	0	0	0	0	0	0
	Destination Resort Mixed Use Water Dependent	~~8~~	8	0	0	0	0	0	0	0	0	0	0
	Burnt Store Marina Village	~~4~~	4	0	0	0	0	4	0	0	0	0	0
	Industrial Interchange	~~0~~	0	0	0	0	0	0	0	0	0	0	0
	General Interchange	~~42~~	42	0	0	0	0	0	0	0	0	0	0
	General/Commercial Interchange	~~0~~	0	0	0	0	0	0	0	0	0	0	0
	Industrial/Commercial Interchange	~~0~~	0	0	0	0	0	0	0	0	0	0	0
	University Village Interchange	~~0~~	0	0	0	0	0	0	0	0	0	0	0
	New Community	~~900~~	900	0	0	0	0	0	0	0	0	0	900
	Airport	~~0~~	0	0	0	0	0	0	0	0	0	0	0
	Tradeport	~~9~~	9	0	0	0	0	0	0	0	0	0	9
	Rural	~~8,313~~	8,313	1,948	0	0	1,400	636	0	0	0	0	0
	Rural Community Preserve	~~3,100~~	3,100	0	0	0	0	0	0	0	0	0	0
	Coastal Rural	~~1,300~~	1,300	0	0	0	0	0	0	0	0	0	0
	Outer Islands	~~202~~	202	5	0	0	1	0	0	150	0	0	0
	Open Lands	~~2,805~~	2,805	250	0	0	0	590	0	0	0	0	0
	Density Reduction/Groundwater Resourse	~~6,905~~	6,905	711	0	0	0	0	0	0	0	0	94
	Conservation Lands Uplands	~~0~~	0	0	0	0	0	0	0	0	0	0	0
	Wetlands	~~0~~	0	0	0	0	0	0	0	0	0	0	0
	Conservation Lands Wetlands	~~0~~	0	0	0	0	0	0	0	0	0	0	0
Total Residential		~~81,373~~	81,373	3,464	485	0	4,500	1,250	29	651	604	0	1,023
Commercial		~~12,763~~	12,793	57	52	0	400	50	17	125	150	0	1,100
Industrial **		~~13,801~~	13,801	26	3	0	400	5	26	0	300	0	3,100
Non Regulatory Allocations													
Public		~~81,853~~	81,853	7,100	421	0	2,000	7,000	20	1,961	350	0	7,500
Active Agriculture		~~17,776~~	17,776	5,100	0	0	550	150	0	0	0	0	0
Passive Agriculture		~~45,859~~	45,859	13,549	0	0	2,500	109	0	0	0	0	1,491
Conservation (wetlands)		~~81,948~~	81,948	2,214	611	0	1,142	3,236	133	1,603	748	0	2,809
Vacant		~~21,802~~	21,772	1,953	0	0	226	931	34	0	45	0	300
Total		~~357,175~~	357,175	33,463	1,572	0	11,718	12,731	259	4,340	2,197	0	17,323
Population Distribution*		~~495,000~~	495,000	5,090	1,531	0	30,861	3,270	225	530	5,744	0	11,582

* Population for Unincorporated Area of Lee County
** See Policy 33.1.4

EXHIBIT H

PROPOSED
TABLE 1(b)
Year 2030 Allocations

DR/GR - CPA2008-06

	Future Land Use Classification	Daniels Parkway	Iona/ McGregor	San Carlos	Sanibel	South Fort Myers	Pine Island	Lehigh Acres	Southeast Lee County		North Fort Myers	Buckingham	Estero	Bayshore
									Existing	Proposed				
Residential By Future Land Use Category	Intensive Development	0	0	0	0	660	3	42	~~0~~	0	365	0	0	0
	Central Urban	0	375	17	0	3,140	0	8,200	~~0~~	0	2,600	0	0	0
	Urban Community	0	850	1,000	0	860	500	13,013	~~0~~	0	0	110	450	0
	Suburban	0	2,488	1,975	0	1,200	675	0	~~0~~	0	6,690	0	1,700	0
	Outlying Suburban	1,700	377	0	0	0	600	0	~~0~~	0	382	0	454	0
	Sub-Outlying Suburban	0	0	25	0	0	0	0	~~0~~	0	140	66	0	950
	Industrial Development	0	5	5	0	10	0	0	~~0~~	0	0	0	0	0
	Public Facilities	0	0	0	0	0	0	0	~~0~~	0	0	0	0	0
	University Community	0	0	850	0	0	0	0	~~0~~	0	0	0	0	0
	Destination Resort Mixed Use Water Dependent	0	8	0	0	0	0	0	~~0~~	0	0	0	0	0
	Burnt Store Marina Village	0	0	0	0	0	0	0	~~0~~	0	0	0	0	0
	Industrial Interchange	0	0	0	0	0	0	0	~~0~~	0	0	0	0	0
	General Interchange	2	0	0	0	0	0	0	~~15~~	15	7	0	6	12
	General/Commercial Interchange	0	0	0	0	0	0	0	~~0~~	0	0	0	0	0
	Industrial/Commercial Interchange	0	0	0	0	0	0	0	~~0~~	0	0	0	0	0
	University Village Interchange	0	0	0	0	0	0	0	~~0~~	0	0	0	0	0
	New Community	0	0	0	0	0	0	0	~~0~~	0	0	0	0	0
	Airport	0	0	0	0	0	0	0	~~0~~	0	0	0	0	0
	Tradeport	0	0	0	0	0	0	0	~~0~~	0	0	0	0	0
	Rural	1,500	0	90	0	0	190	14	~~0~~	0	500	50	635	1,350
	Rural Community Preserve	0	0	0	0	0	0	0	~~0~~	0	0	3,100	0	0
	Coastal Rural	0	0	0	0	0	1,300	0	~~0~~	0	0	0	0	0
	Outer Islands	0	1	0	0	0	45	0	~~0~~	0	0	0	0	0
	Open Lands	120	0	0	0	0	0	0	~~0~~	0	45	0	0	1,800
	Density Reduction/Groundwater Resourse	0	0	0	0	0	0	0	~~4,000~~	4,000	0	0	0	2,100
	Conservation Lands Uplands	0	0	0	0	0	0	0	~~0~~	0	0	0	0	0
	Wetlands	0	0	0	0	0	0	0	~~0~~	0	0	0	0	0
	Conservation Lands Wetlands	0	0	0	0	0	0	0	~~0~~	0	0	0	0	0
Total Residential		3,322	4,104	3,962	0	5,870	3,313	21,269	~~4,015~~	4,015	10,729	3,326	3,245	6,212
Commercial		440	1,100	1,944	0	2,100	226	1,420	~~38~~	68	1,687	18	1,700	139
Industrial **		10	320	450	0	900	64	300	~~7,246~~	7,246	554	5	87	5
Non Regulatory Allocations														
Public		2,416	3,550	2,660	0	3,500	2,100	15,289	~~12,000~~	12,000	4,000	1,486	7,000	1,500
Active Agriculture		20	0	0	0	0	2,400	0	~~7,920~~	7,920	200	411	125	900
Passive Agriculture		20	0	0	0	0	815	0	~~18,000~~	18,000	1,556	3,619	200	4,000
Conservation (wetlands)		1,719	9,306	2,798	0	188	14,767	1,541	~~34,530~~	31,530	1,317	336	5,068	882
Vacant		20	975	244	0	309	3,781	8,085	~~500~~	470	2,060	1,000	809	530
Total		7,967	19,355	12,058	0	12,867	27,466	47,904	~~81,249~~	81,249	22,103	10,201	18,234	14,168
Population Distribution*		16,488	34,538	36,963	0	58,363	13,265	164,699	~~1,270~~	1,270	70,659	6,117	25,395	8,410

* Population for Unincorporated Area of Lee County
** See Policy 33.1.4

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY AFFAIRS,

Petitioner,

and

CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC, CONSERVANCY OF SOUTHWEST FLORIDA, INC., ESTERO COUNCIL OF COMMUNITY LEADERS, INC., NICK BATOS, FLORIDA WILDLIFE FEDERATION, COLLIER COUNTY AUDUBON SOCIETY, OLD CORKSCREW PLANTATION LLC, OLD CORKSCREW PLANTATION V, LLC, OLD CORKSCREW PLANTATION, INC., and TROYER BROTHERS FLORIDA, INC.,

Intervenors,

vs. **DOAH Case No. 10-2988GM**

LEE COUNTY,

Respondent,

and

ALICO LAND DEVELOPMENT, INC.,

Intervenor.
_____/

STIPULATED SETTLEMENT AGREEMENT

THIS STIPULATED SETTLEMENT AGREEMENT is entered into by and between the State of Florida, Department of Community Affairs, Lee County, Florida Wildlife Federation, Collier County Audubon Society, Conservancy of Southwest Florida, Inc., Estero Council of Community Leaders, Inc., Nick Batos, Old Corkscrew Golf Club, LLC / formerly Old

EXHIBIT I

Corkscrew Plantation, Inc., and Alico Land Development, Inc., as a complete and final settlement of all claims raised between those parties in the above-styled proceeding.

RECITALS

WHEREAS, the State of Florida, Department of Community Affairs (DCA or Department), is the state land planning agency and has the authority to administer and enforce the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes; and

WHEREAS, Lee County (Local Government) is a local government with the duty to adopt comprehensive plan amendments that are "in compliance;" and

WHEREAS, the Local Government adopted Comprehensive Plan Amendment 10-1 (Plan Amendment) by Ordinance Numbers 10-19, 10-20, and 10-21 on March 3, 2010; and

WHEREAS, the Plan Amendment proposes to change the Vision Statement, Future Land Use Element, Groundwater Recharge Sub-element of the Community Facilities and Services Element, Conservation and Coastal Management Element; Glossary, Future Land Use Map Series, and Lee Plan Table 1(a) and Table 1(b) for an area referred to in the Lee County comprehensive plan as the Density Reduction/Groundwater Resource (DR/GR) area located in the southeastern portion of Lee County; and

WHEREAS, the Department issued its Statement of Intent on May 11, 2010, and published its Notice of Intent regarding the Amendment on May 12, 2010; and

WHEREAS, as set forth in the Statement of Intent, the Department contends that the Amendment is not "in compliance" as outlined in Exhibit A attached hereto and incorporated herein; and

WHEREAS, pursuant to Section 163.3184(10), Florida Statutes, DCA has initiated the above-styled formal administrative proceeding challenging the Amendment; and

WHEREAS, the Local Government disputes the allegations of the Statement of Intent regarding the Amendment; and

WHEREAS, Florida Wildlife Federation, Collier County Audubon Society, Conservancy of Southwest Florida, Inc., Estero Council of Community Leaders, Inc., and Nick Batos were granted intervenor status by an order entered on June 23, 2010; and

WHEREAS, Old Corkscrew Plantation, Inc., now Old Corkscrew Golf Club, LLC, was granted intervenor status by an order entered on July 2, 2010; and

WHEREAS, Alico Land Development, Inc., was granted intervenor status by an order entered on August 8, 2010; and

WHEREAS, the parties wish to avoid the expense, delay, and uncertainty of lengthy litigation and to resolve this proceeding under the terms set forth herein, and agree it is in their respective mutual best interests to do so;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinbelow set forth, and in consideration of the benefits to accrue to each of the parties, the receipt and sufficiency of which are hereby acknowledged, the parties hereby represent and agree as follows:

GENERAL PROVISIONS

1. Definitions. As used in this agreement, the following words and phrases shall have the following meanings:

a. Act: The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes.

b. Agreement: This stipulated settlement agreement.

c. Comprehensive Plan Amendment or Plan Amendment: Comprehensive plan amendment 10-1 adopted by the Local Government on March 3, 2010, as Ordinance Numbers 10-19, 10-20, and 10-21.

d. DOAH: The Florida Division of Administrative Hearings.

e. In compliance or into compliance: The meaning set forth in Section 163.3184(1)(b), Florida Statutes.

f. Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the plan amendment not in compliance.

g. Petition: The petition for administrative hearing and relief filed by the Department in this case.

h. Remedial Action: A remedial plan amendment, submission of support document or other action described in the statement of intent or this agreement as an action which must be completed to bring the plan amendment into compliance.

i. Remedial Plan Amendment: An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, and which the local government must adopt to complete all remedial actions. Remedial plan amendments adopted pursuant to this Agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this Agreement or be otherwise acceptable to the Department.

j. Statement of Intent: The statement of intent to find the Plan Amendment not in compliance issued by the Department in this case.

k. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the Plan Amendment or Remedial Plan Amendment.

2. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the Plan Amendment is in compliance.

3. Negotiation of Agreement. The Department issued its Notice and Statement of Intent to find the Plan Amendment not in compliance, and filed the Petition in this case to that effect. Subsequent to the filing of the Petition the parties conferred and agreed to resolve the issues in the Petition, Notice and Statement of Intent through this Agreement. It is the intent of this Agreement to resolve fully all issues between the parties in this proceeding.

4. Dismissal. If the Local Government completes the Remedial Actions required by this Agreement, the Department will issue a cumulative Notice of Intent addressing both the Remedial Plan Amendment and the initial Plan Amendment subject to these proceedings. The Department will file the cumulative Notice of Intent with the DOAH. The Department will also file a request to relinquish jurisdiction to the Department for dismissal of this proceeding or for realignment of the parties, as appropriate under Section 163.3184(16)(f), Florida Statutes.

5. Description of Provisions not in Compliance and Remedial Actions; Legal Effect of Agreement. Exhibit A to this Agreement is a copy of the Statement of Intent, which identifies the provisions not in compliance. Exhibit B contains Remedial Actions needed for compliance. Exhibits A and B are incorporated in this Agreement by this reference. This Agreement constitutes a stipulation that if the Remedial Actions are accomplished, the Plan Amendment will be in compliance.

6 Remedial Actions to be Considered for Adoption. The Local Government agrees to consider for adoption by formal action of its governing body all Remedial Actions described in Exhibit B no later than the time period provided for in this Agreement.

7 Adoption or Approval of Remedial Plan Amendments. Within 60 days after execution of this Agreement by the parties, the Local Government shall consider for adoption all Remedial Actions or Plan Amendments and amendments to the Support Documents. This may be done at a single adoption hearing. Within 10 working days after adoption of the Remedial Plan Amendment, the Local Government shall transmit 3 copies of the amendment to the Department as provided in Rule 9J-11.011(5), Florida Administrative Code. The Local Government also shall submit one copy to the regional planning agency and to any other unit of local or state government that has filed a written request with the governing body for a copy of the Remedial Plan Amendment and a copy to any party granted intervenor status in this proceeding. The Remedial Plan Amendment shall be transmitted to the Department along with a letter which describes the remedial action adopted for each part of the plan amended, including references to specific portions and pages.

8. Acknowledgment. All parties to this Agreement acknowledge that the "based upon" provisions in Section 163.3184(8), Florida Statutes, do not apply to the Remedial Plan Amendment.

9. Review of Remedial Plan Amendments and Notice of Intent. Within 30 days after receipt of the adopted Remedial Plan Amendments and Support Documents, the Department shall issue a Notice of Intent pursuant to Section 163.3184, Florida Statutes, for the adopted amendments in accordance with this Agreement.

a. In Compliance: If the adopted Remedial Actions satisfy this Agreement, the Department shall issue a cumulative Notice of Intent addressing both the Plan Amendment and the Remedial Plan Amendment as being in compliance. The Department shall file this cumulative notice with DOAH and shall move to realign the parties or to have this proceeding dismissed, as may be appropriate.

b. Not in Compliance: If the Remedial Actions do not satisfy this Agreement, the Department shall issue a Notice of Intent to find the Plan Amendment not in compliance and shall forward the notice to DOAH for consolidation with the pending proceeding.

10. Effect of Amendment. Adoption of any Remedial Plan Amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), Florida Statutes.

11. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this Agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the Plan Amendment. The acceptance of proposals for purposes of this Agreement is part of a negotiated agreement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

12. Approval by Governing Body. This Agreement has been approved by the Local Government's governing body at a public hearing advertised at least 10 days prior to the hearing in a newspaper of general circulation in the manner prescribed for advertisements in Section 163.3184(16)(c), Florida Statutes. This Agreement has been executed by the appropriate officer as provided in the Local Government's charter or other regulations.

13. Changes in Law. Nothing in this Agreement shall be construed to relieve either party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence and shall be deemed incorporated in this Agreement by reference.

14. Other Persons Unaffected. Nothing in this Agreement shall be deemed to affect the rights of any person not a party to this Agreement. This Agreement is not intended to benefit any third party.

15. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees, incurred in connection with the above-captioned case and this Agreement.

16. Effective Date. This Agreement shall become effective immediately upon execution by the Department and the Local Government.

17. Filing and Continuance. This Agreement shall be filed with DOAH by the Department after execution by the parties. Upon the filing of this Agreement, the administrative proceeding in this matter shall be stayed by the Administrative Law Judge in accordance with Section 163.3184(16)(b), Florida Statutes.

18. Retention of Right to Final Hearing. Each party hereby retains the right to have a final hearing in this proceeding in the event of a breach of this Agreement, and nothing in this Agreement shall be deemed a waiver of such right. Any party to this Agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this Agreement is not proceeding in good faith to take that action.

19. Construction of Agreement. All parties to this Agreement are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Agreement, the

parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.

20. Entire Agreement. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.

21. Governmental Discretion Unaffected. This Agreement is not intended to bind the Local Government in the exercise of governmental discretion which is exercisable in accordance with law only upon the giving of appropriate public notice and required public hearings.

22. Multiple Originals. This Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

23. Captions. The captions inserted in this Agreement are for the purpose of convenience only and shall not be utilized to construe or interpret any provision of this Agreement.

In witness whereof, the parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

DEPARTMENT OF COMMUNITY AFFAIRS

By: _____
Charles Gauthier, AICP, Director
Division of Community Planning

10/27/10
Date

Approved as to form and legality:

_____
Lynette Norr
Assistant General Counsel

10-27-10
Date

ATTEST:
CHARLIE GREEN, CLERK

By: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
for Tammara Hall, Chair

Approved as to Form:

_____
County Attorney

SEAL

FLORIDA WILDLIFE FEDERATION

Approved as to form and legality:

By: Nancy Anne Payton
Nancy Anne Payton

Thomas Reese
Thomas Reese, Esquire

10-12-2010
Date

10/16/10
Date

COLLIER COUNTY AUDUBON SOCIETY

Approved as to form and legality:

By: Bradley Cornell
Bradley Cornell

Thomas Reese
Thomas Reese, Esquire

10/13/10
Date

10/16/10
Date

CONSERVANCY OF SOUTHWEST FLORIDA, INC.

By: _____
Andrew S. McElwaine
President & CEO
10-12-10
Date

Approved as to form and legality:

_____
Ralf Brookes, Esquire

_____
Date

ESTERO COUNCIL OF COMMUNITY LEADERS, INC.

Approved as to form and legality:

By: _____

_____
Ralf Brookes, Esquire

_____
Date

_____
Date

NICK BATOS

Approved as to form and legality:

By: _____

_____
Ralf Brookes, Esquire

_____
Date

_____
Date

CONSERVANCY OF SOUTHWEST FLORIDA, INC.

Approved as to form and legality:

By: _____

_____
Ralf Brookes, Esquire

_____
Date

_____
Date

ESTERO COUNCIL OF COMMUNITY LEADERS, INC.

Approved as to form and legality:

By: Donald F. Eslick

Ralf Brookes, Esquire

10/11/2010
Date

10/13/10
Date

NICK BATOS

Approved as to form and legality:

By: _____

_____
Ralf Brookes, Esquire

_____
Date

_____
Date

CONSERVANCY OF SOUTHWEST FLORIDA, INC.

Approved as to form and legality:

By: _____

_____
Date

_____
Ralf Brookes, Esquire

10/12/2010
Date

ESTERO COUNCIL OF COMMUNITY LEADERS, INC.

Approved as to form and legality:

By: _____
Don Eslick, President

_____
Date

_____
Ralf Brookes, Esquire

10/12/2010
Date

NICK BATOS

Approved as to form and legality:

By: _____
Nick Batos, an individual

10/12/2010
Date

_____
Ralf Brookes, Esquire

10/12/2010
Date

OLD CORKSCREW GOLF CLUB, LLC,
formerly OLD CORKSCREW PLANTATION, INC.

Approved as to form and legality:

By: Old Corkscrew G.C. LLC

Kenneth Oertel, Esquire

10/27/10
Date

10/27/10
Date

ALICO LAND DEVELOPMENT, INC.

By: _____

10.27.2010
Date

Approved as to form and legality:

for Charles Basinait, Esquire

10-27-2010
Date

EXHIBIT A

PAUL

STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

RECEIVED
MAY 13 2010
COMMUNITY DEVELOPMENT

May 11, 2010

The Honorable Tammara Hall, Chairwoman
Lee County Board of County Commissioners
Post Office Box 398
Fort Myers, Florida 33902-0398

Dear Chairman Judah:

The Department has completed its review of the Comprehensive Plan Amendments for Lee County, as adopted on March 3, 2010, (DCA No. 10-1), and has determined that the plan amendments adopted by Ordinance Numbers 10-03 through 10-18 meet the requirements of Chapter 163, Part II, Florida Statutes (F.S.), for compliance, and that the plan amendments adopted by Ordinance Numbers 10-19, 10-20, and 10-21 do not meet these requirements. The Department is issuing a Notice of Intent to find the Comprehensive Plan Amendments adopted by Ordinance Numbers 10-19, 10-20, and 10-21 "Not In Compliance" and the Comprehensive Plan Amendments adopted by Ordinance Numbers 10-03 through 10-18 "In Compliance," as previously noted. The Notice of Intent has been sent to the *Fort Myers News Press* for publication on May 12, 2010. The Department is also issuing the attached Statement of Intent regarding the Amendments adopted by Ordinance Numbers 10-19, 10-20, and 10-21 found not in compliance.

Please note that a copy of the adopted Lee County Comprehensive Plan Amendments, the Statement of Intent, and the Notice of Intent must be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Lee County Planning Division, 1500 Monroe Street, 2nd Floor, Ft. Myers, Florida 33901. Please be advised that Section 163.3184(8)(c)2, F.S., requires a local government that has an internet site to post a copy of the Department's Notice of Intent on the site within 5 days after receipt of the mailed copy of the Department's Notice of Intent.

In addition, the Statement of Intent and Notice of Intent will be forwarded along with a petition to the Division of Administrative Hearings for the scheduling of an administrative hearing pursuant to Section 120.57, F.S. We are interested in meeting with you and your staff at your convenience for the purpose of developing an acceptable solution to this not in compliance finding. The issues raised in the attached Statement of Intent pertain to Amendment CPA2008-06 for the Density Reduction/Groundwater Resource area.

2555 SHUMARD OAK BOULEVARD ♦ TALLAHASSEE, FL 32399-2100
850-488-8466 (p) ♦ 850-921-0781 (f) ♦ Website: www.dca.state.fl.us
♦ COMMUNITY PLANNING 850-488-2356 (p) 850-488-3309 (f) ♦ FLORIDA COMMUNITIES TRUST 850-922-2207 (p) 850-921-1747 (f) ♦
♦ HOUSING AND COMMUNITY DEVELOPMENT 850-488-7956 (p) 850-922-5623 (f) ♦

If you have any questions, please contact Brenda Winningham, Regional Planning Administrator, at (850) 922-1800, or Lynette Norr, Assistant General Counsel, at (850) 488-0410.

Sincerely,

Mike McDaniel, Chief
Office of Comprehensive Planning

MM/sr

Enclosures: Notice of Intent
Statement of Intent

cc: Mr. Ken Heatherington, Executive Director, Southwest Florida RPC
Mr. Paul O'Conner, Director, Lee County Division of Planning

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: LEE COUNTY COMPREHENSIVE PLAN AMENDMENTS 10-1 (CPA2008-06); AMENDING THE VISION STATEMENT; FUTURE LAND USE ELEMENT; GROUNDWATER RECHARGE SUB-ELEMENT OF THE COMMUNITY FACILITIES AND SERVICES ELEMENT; CONSERVATION AND COASTAL MANAGEMENT ELEMENT; GLOSSARY; FUTURE LAND USE MAP SERIES; LEE PLAN TABLES 1(A) AND 1(B)	Docket No. 10-1-NOI-3601

STATEMENT OF INTENT TO FIND A PORTION OF
COMPREHENSIVE PLAN AMENDMENTS
NOT IN COMPLIANCE

The Florida Department of Community Affairs, pursuant to Section 163.3184(10), Florida Statutes, and Rule 9J-11.012(6), Florida Administrative Code (F.A.C.), hereby issues this Statement of Intent to find those portions of Comprehensive Plan Amendment 10-1 ("Amendments") adopted by Lee County in Ordinance Nos. 10-19, 10-20, and 10-21 on March 3, 2010, Not In Compliance. The Department finds that the above cited portion of the Amendments are not "in compliance," as that term is defined in Section 163.3184(1)(b), Florida Statutes (F.S.), for the following reasons:

I. AMENDMENT CPA2008-06 (Ordinance Nos. 10-19, 10-20, and 10-21)

A. Inconsistent provisions. The inconsistent provisions of the Amendments under this subject heading are as follows:

The amendments (Amendment CPA2008-06) adopted by Lee County amend the Vision Statement; Future Land Use Element; Groundwater Recharge Sub-element of the Community

Facilities and Services Element; Conservation and Coastal Management Element; Glossary; Future Land Use Map Series; and Lee Plan Table 1(a) and Table 1(b). The amendments pertain to an area referred to in the Lee County Comprehensive Plan as the Density Reduction/Groundwater Resource (DR/GR) area located in the southeastern portion of Lee County.

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.

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.

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.

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) and (1)(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.

Therefore, the amendments are not consistent with the following requirements: Rules 9J-5.005(2) and (6); 9J-5.006(2)(c); 9J-5.006(3)(b)10; 9J-5.006(3)(c)1; and 9J-5.006(3)(c)7, F.A.C.; and Sections 163.3177(6)(a); and 163.3177(8) and (10)e, F.S.

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.

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.

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.

Therefore, the amendments are not consistent with the following requirements: Rules 9J-5.005(2), (5) and (6); 9J-5.006(2); 9J-5.006(3)(b)1., and 10.; 9J-5.006(3)(c)1., (3)(c)3., (3)(c)5., and (3)(c)7.; 9J-5.006(4)(c); 9J-5.011(1) and (2); 9J-5.013(1), (2), and (3); 9J-5.016(1), (2), (3), and (4); 9J-5.019(2), (3), (4), and (5); 9J-5.025(1), (2), (3), and (4), F.A.C.; and Sections 163.3177(2), (3), (4), (8), (10), and (12)(c), (d), (e), (f), (g), and (h); 163.3177(6)(a), (c), (d), and (j), F.S.

B. Recommended Remedial Actions.

1. 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

2. 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.

3. 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.

4. 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.

5. 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.

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

7. 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 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.

II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. The Amendments are inconsistent with the State Comprehensive Plan goals and policies set forth in Section 187.201, Florida Statutes, including the following provisions:

1. Water Resources. The Amendments are inconsistent with the Goal set forth in Section 187.201(7)(a), F.S., and the Policy set forth in Sections 187.201(7)(b)5., F.S.

2. Land Use. The Amendments are inconsistent with the Goal set forth in Section 187.201(15)(a), F.S., and the Policies set forth in Sections 187.201(15)(b)1., 3., and 6., F.S.

3. Urban and Downtown Revitalization. The Amendments are inconsistent with the Goal set forth in Section 187.201(16)(a), F.S., and the Policy set forth in Section 187.201(16)(b)8, F.S.

4. Public Facilities. The Amendments are inconsistent with the Goal set forth in Section 187.201(17)(a), F.S.

5. Transportation. The Amendments are inconsistent with the Goal set forth in Section 187.201(19)(a), F.S., and the Policies set forth in Sections 187.201(19)(b)3., 9., and 13., F.S.

6. Plan Implementation. The Amendments are inconsistent with the Goal set forth in Section 187.201(25)(a), F.S., and the Policies set forth in Section 187.201(25)(b)7.

B. Recommended remedial action. These inconsistencies may be remedied by revising the Amendments as described above in Section I.

CONCLUSIONS

1. The Amendments identified above are not consistent with the State Comprehensive Plan;

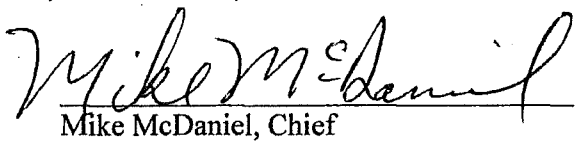
2. The Amendments identified above are not consistent with Chapter 9J-5, F.A.C.;

3. The Amendments identified above are not consistent with the requirements of Chapter 163, Part II, F.S.;

4. The Amendments identified above are not "in compliance," as defined in Section 163.3184(1)(b) F.S.; and,

5. In order to bring the Amendments into compliance, the County may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 11th day of May 2010, at Tallahassee, Florida.



Mike McDaniel, Chief
Office of Comprehensive Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND LEE COUNTY
COMPREHENSIVE PLAN AMENDMENT CPA2008-06 ADOPTED
BY ORDINANCE NOS. 10-19, 10-20 AND 10-21 NOT IN COMPLIANCE
AND THE COMPREHENSIVE PLAN AMENDMENTS ADOPTED BY
ORDINANCE NOS. 10-03 THROUGH 10-18 IN COMPLIANCE
DOCKET NO. 10-1-NOI-3601-(A)-(N)

The Department gives notice of its intent to find Amendment CPA2008-06 to the Comprehensive Plan for Lee County, adopted by Ordinance Nos. 10-19, 10-20 and 10-21 on March 3, 2010, NOT IN COMPLIANCE, and Amendments adopted by Ordinance Nos. 10-03 through 10-18, on March 3, 2010, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

The adopted Lee County Comprehensive Plan Amendments, the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendment Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Lee County Planning Division, 1500 Monroe Street, 2nd Floor, Fort Myers, Florida 33901.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the Amendments to the Lee County Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice, a copy must be mailed or delivered to the local government and must include all of the information and contents described in Uniform Rule 28-106.201, F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Sections 120.569 and 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

This Notice of Intent and the Statement of Intent for the amendment found Not In Compliance will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an Administrative Hearing pursuant to Sections 120.569 and 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in either proceeding referenced above. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. Pursuant to Section 163.3184(10), F.S., no new issues may be alleged as a reason to find a plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Sections 120.569 and 120.57, F.S., or to participate in the administrative hearing.

After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing that request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.

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

EXHIBIT B

DEPARTMENT OF COMMUNITY AFFAIRS
v.
LEE COUNTY

DOAH CASE NUMBER 10-2988GM
DCA DOCKET NUMBER 10-1-NOI-3601-(A)-(N)

Adoption of the remedial amendments as proposed by this agreement will settle the remainder of the issues cited in the Department's Notice and Statement of Intent to find the Lee County comprehensive plan amendment 10-1 Not in Compliance. The amendment at issue was adopted by Ordinance Nos. 10-19, 10-20, and 10-21 on March 3, 2010. The Amendment changed the Vision Statement, the Future Land Use Element, the Groundwater Recharge Sub-Element of the Community Facilities and Services Element, the Conservation and Coastal Management Element, the Glossary, the Future Land Use Map Series, and Lee Plan Table 1(a) and Table 1(b).

The County has agreed to consider for adoption the remedial amendments set forth below, which indicate agreed upon changes to the 10-1 amendment in a strike-through and underlined format.

EXHIBIT B

DEPARTMENT OF COMMUNITY AFFAIRS
v.
LEE COUNTY

DOAH Case Number 10-2988GM
DCA Docket Number 10-1-NOI-2601-(A)-(N)

Editorial note: The base document used to create this Exhibit is the corresponding text as adopted by the Board of County Commissioners on March 3, 2010 (Lee County Comprehensive Plan Amendment 10-1), as set forth in Lee County Ordinances 10-19, 10-20 and 10-21. Strike through identifies deleted text and underlining identifies additional text.

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 TDR~~s~~ 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~~2. 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.

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.

STATE OF FLORIDA

COUNTY OF LEE

I, Charlie Green, Clerk of Circuit Court, Lee County, Florida, and ex-Officio Clerk of the Board of County Commissioners, Lee County, Florida, do hereby Certify that the above and foregoing, is a true and correct copy of Ordinance No. 10-43, adopted by the Board of Lee County Commissioners, at their meeting held on the 1st day of November 2010, and same is filed in the Clerk's Office.

Given under my hand and seal, at Fort Myers, Florida, this 2nd day of November, 2010.

CHARLIE GREEN,
Clerk of Circuit Court
Lee County, Florida

By: Kathleen A. Motz
Kathleen A. Motz, Deputy Clerk