



STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

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

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

May 11, 2010



COMMUNITY DEVELOPMENT

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.

2655 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) ♦

The Honorable Tammara Hall, Chairwoman
May 11, 2010
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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
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.

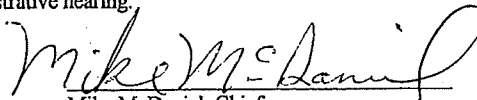
The adopted Lee County Comprehensive Plan Amendments, the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendment Not In Compliance will be available for public inspection Monday through Friday, except for 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

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

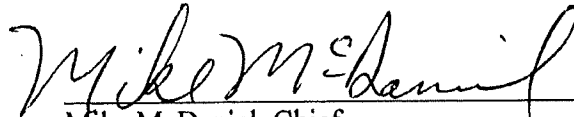
A. Inconsistent provisions. The Amendments are inconsistent with the State Comprehensive Plan goals and policies set forth in Section 187.201, Florida Statutes, including the following provisions:

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