

**DEPARTMENT OF COMMUNITY AFFAIRS**  
**OBJECTIONS, RECOMMENDATIONS AND COMMENTS**  
**FOR**  
**LEE COUNTY**  
**AMENDMENT 10-1**

January 15, 2009  
Division of Community Planning  
Bureau of Local Planning

This report is prepared pursuant to Rule 9J-11.010, F.A.C.

**OBJECTIONS, RECOMMENDATIONS AND COMMENTS  
FOR  
LEE COUNTY  
AMENDMENT 10-1**

**I. CONSISTENCY WITH CHAPTER 163, PART II, F.S., AND RULE 9J-5, F.A.C.**

The proposed Amendment 10-1 consists of seventeen amendments to the Comprehensive Plan.

**A. Amendment CPA2008-06 (Implementing DR/GR Study):** The proposed amendment pertains to 82,560 acres commonly known as the Density Reduction/Groundwater Resource (DR/GR) area located in the southeastern portion of Lee County, east of Interstate-75, south of State Road 82, south and east of the Southwest Florida International Airport, and extending all the way to the county lines of Collier and Hendry Counties. The Department raises the following objections and comments to the proposed amendments:

1. **Objection (Transfer of Development Rights):** This objection applies to the proposed amendments to Future Land Use Element Policies 1.4.5, 1.7.13, 9.1.6, 16.2.6, 16.2.7, 16.3.9, 30.1.3, 30.3.3, 30.3.4, and 30.3.5; FLUM Series Map 17; and Table 1(a) Summary of Residential Densities. The proposed amendments establish the opportunity to transfer development rights from within the DR/GR area to specified areas located within the DR/GR area and areas located outside of the DR/GR area. The proposed amendments for the transfer of development rights (TDR) program do not establish meaningful and predictable guidelines and standards for the transfer rate (the rate at which development units are transferred), the rate at which nonresidential development credits are created and transferred, requirements to appropriately restrict the development potential on the sending parcels in relation to the development rights which are transferred, and the maximum gross density and intensity of development in the receiving area. The proposed amendment to Table 1(a) allows an increase in allowable dwelling units that can be transferred to a cumulative total of 9,000 dwelling units; however, the amendment is not supported by data and analysis supporting the land use need for an additional 9,000 dwelling units to serve as an effective incentive to transfer development rights from DR/GR lands into the Mixed-Use Communities.

Rules 9J-5.005(2), (5) and (6); 9J-5.006(1) and (2); and 9J-5.006(3)(b) and (c), Florida Administrative Code (F.A.C.); and Section 163.3177(6)(a), Florida Statutes (F.S.).

**Recommendation:** Revise the plan policies to establish meaningful and predictable guidelines/standards for the TDR program in order to guide the more specific land development regulations. The guidelines/standards need to address the transfer rate (the rate at which development units are transferred), the rate at which nonresidential development credits are

created and transferred, requirements to appropriately restrict the development potential on the sending parcels in relation to the development rights which are transferred, and the maximum gross density and intensity of development in the receiving area. Revise the data and analysis to demonstrate the appropriateness of an additional 9,000 dwelling units for the TDR program to be feasible.

2. Objection (Residential Overlay): The proposed amendment to Lee Plan Map 17 (Rural Residential Overlay) and Future Land Use Element Objective 30.3 and Policies 1.4.5(2)(a), 1.7.13, 30.3.2, 30.3.3, and 30.3.4 establish three residential overlays (Existing Acreage Subdivision; Mixed-Use Community; and Rural Community) and an overlay for Rural Golf Course Community all within the DR/GR area. These amendments do not establish meaningful and predictable guidelines and standards to ensure: (1) the appropriate mix of land uses within the Mixed-Use Community and Rural Community; (2) appropriate density and intensity of land use; and (3) appropriate urban form of development occurs as recommended by the supporting data and analysis studies addressing the overlay areas. These proposed amendments are not supported by quantitative data and analysis demonstrating the 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 proposed Mixed-Use Community designation (referred to as Western Corkscrew Road location) along the western boundary of the DR/GR area near Corkscrew Road and the Rural Community designations on the proposed locations on Map 17 are not supported by data and analysis demonstrating that the proposed locations and land uses are consistent with maintaining the rural character of the area. The proposed Mixed-Use Community designation (Western Corkscrew Road location) and the Rural Community designations on the proposed locations on Map 17 are not environmentally suitable in order to protect natural resources (wetlands, wildlife habitat, wildlife, panther movement, and hydrological resources). The Mixed-Use Community designation (Western Corkscrew Road location) and the proposed Rural Community designations on the proposed locations on Map 17 are not supported by data and analysis demonstrating that the locations of the proposed designations are environmentally suitable for the proposed land use types and densities and intensities of land use that would be allowed by the Mixed-Use Community and Rural Community designations.

Rules 9J-5.005(2), (5) and (6); 9J-5.006(1) and (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); 163.3177(6)(a), (c), (d), and (j), F.S.

Recommendation: Remove the Mixed-Use Community designation at the “Western Corkscrew Road location” and remove the Rural Communities from the proposed designations from Map 17. Use the TDR program to transfer development from properties along Corkscrew Road and the Edison Farms tract to more appropriate locations in the Mixed-Use Communities along State Road 82. Revise the text amendments to establish meaningful and predictable guidelines and standards to ensure: (1) the appropriate mix of land uses within the Mixed-Use

Community and Rural Community; (2) appropriate density and intensity of land use; and (3) appropriate urban form of development occurs as recommended by the supporting data and analysis studies addressing the overlay areas. Support the amendments with data and analysis demonstrating the coordination of the resulting maximum development potential of the land uses with the 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.

3. Objection (Limerock Mining): The proposed Map 14 (Future Limerock Mining Overlay) contains a self-amending provision which states that “Area may be added to Future Mining Overlay (Map 14) in portions of Sections 28, 31, 32, and 33, T45S, R27E, if the Board of County Commissioners adopts a potential settlement of litigation with Florida Rock Industries, Inc.” This provision potentially allows additions to the area designated as Future Limerock Mining overlay to occur without undergoing the plan amendment process pursuant to Chapter 163, Part II, F.S. This provision does not ensure that any additions of area designated as Future Limerock Mining overlay are designated through the plan amendment process.

Sections 163.3177(6)(a); 163.3184; 163.3187; and 163.3189, F.S.

Recommendation: Revise Map 14 to delete the self-amending provision.

4. Objection (Surface Water and Groundwater): The proposed amendment to Future Land Use Element Policy 30.1.3 states that “*An exception was made to the requirement in Policy 1.4.5 that all DR/GR land uses must be compatible with maintaining surface and groundwater levels at their historic levels. Under this exception, land in Future Limerock Mining areas may be rezoned for mining when impacts to natural resources including water levels and wetlands are offset through appropriate mitigation within Southeast Lee County.*” The proposed amendment to Policy 30.1.3 does not establish meaningful and predictable guidelines/standards defining “appropriate mitigation” in order to implement the policy in a meaningful and predictable manner to ensure that impacts are offset. Similarly, the proposed amendment to Future Land Use Element Policy 30.3.3 states that “*In 2009 an exception was made to the requirement in Policy 1.4.5 that all DR/GR land uses must be compatible with maintaining surface and groundwater levels at their historic levels. Under this exception, construction may occur on land so designated on Map 17 provided the impacts to natural resources including water levels and wetlands are offset through appropriate mitigation within Southeast Lee County.*” The proposed amendment to Policy 30.3.3 does not establish meaningful and predictable guidelines and standards defining “appropriate mitigation” in order to implement the policy in a meaningful and predictable manner to ensure that impacts are offset. Finally, the proposed amendment to Conservation and Coastal Management Element Policy 114.1.1 (development in wetlands) states that “*In Future Limerock Mining areas only (see Map 14), impacts to wetlands resulting from mining will be allowed by Lee County when those impacts are offset through appropriate mitigation within Southeast Lee County (see also Policy 30.1.3).*” The proposed amendment to Policy 114.1.1 does not establish meaningful and predictable guidelines and standards defining “appropriate mitigation” in order to implement the policy in a meaningful and predictable manner to ensure that impacts are offset.

Rules 9J-5.005(2), (5), and (6); 9J-5.006(1) and (2); 9J-5.006(3)(b)1., and 4.; 9J-5.006(3)(c); 9J-5.011(1); 9J-5.013(1); 9J-5.013(2)(b) and (c); 9J-5.013(3)(a) and (b), F.A.C.; and Sections 163.3177(6)(a), (c), and (d), F.S.

Recommendation: Revise the proposed plan policies to establish to establish meaningful and predictable guidelines/standards defining “appropriate mitigation” in order to implement the policy in a meaningful and predictable manner to ensure that impacts are offset.

5. Objection (Natural Resource Strategies): The proposed amendment to Objective 30.2 and its implementing policies (Policies 30.2.1 through 30.2.7) do not establish meaningful and predictable guidelines and standards and do not adequately describe how programs and activities are to be implemented to protect water, habitat, and other natural resources. The proposed policies include language that is tentative, conditional, and aspirational (e.g., should be; can; would be; would provide; will consider; may also occur; can be carried out; would include; should consider; should be analyzed) and do not adequately describe how programs, activities, and land development regulations will be initiated, modified, or continued to achieve the stated objective and establish meaningful and predictable guidelines and standards.

Rules 9J-5.005(6); 9J-5.006(3)(b) and (c); 9J-5.011(2); 9J-5.013(2)(b) and (c); 9J-5.013(3), F.A.C.; and Sections 163.3177(6)(a, c, and d); 163.3177(2), F.S.

Recommendation: Revise the policies to establish meaningful and predictable guidelines and standards that adequately describe how programs and activities are to be implemented to protect water, habitat, and other natural resources as intended by Objective 30.2.

6. Objection (Limerock Mining): The proposed Policy 30.1.4(1) limits the amount of limerock mining acreage to the amount established in Table 1(b); however the proposed Policy 30.1.4(2) allows the amount of limerock mining acreage to exceed the amount established in Table 1(b). Therefore, the proposed amendments to Policies 30.1.4(1 and 2) are internally inconsistent and do not establish meaningful and predictable guidelines and standards regarding limits on the amount of limerock mining acreage.

Rules 9J-5.005(2), (5), and (6); 9J-5.006(3)(c), F.A.C.; and Section 163.3177(6)(a), F.S.

Recommendation: Revise the proposed amendments to ensure that the acreage amounts established in Table 1(b) control.

7. Objection (Private Recreational Facilities): The proposed amendments to Policies 16.2.6, 16.2.7, and 16.3.9 allow “Fractional Ownership/Time-share Units” and “Bed and Breakfast Establishments” in the DR/GR area if the property for such use is included on Map 17 as a Rural Golf Course Community Residential Overlay. These uses must be ancillary to or in conjunction with uses within the Private Recreational Facilities Overlay Map 4. These uses may only be constructed through transferring density in accordance with Policy 30.3.2(1). For fractional ownership/time-share units, the maximum allowable units will be calculated based on 1 dwelling unit per 10 acres for the entire area of the Private Recreational Facility. For bed and breakfast establishments, the maximum number of establishments will be limited to one per 18 holes of

golf, and bedrooms within a bed and breakfast establishment will be limited to a maximum of 7 per unit, with a maximum of two adult occupants per bedroom. The proposed amendment to Map 17 (Rural Residential Overlay map) proposes to designate a Rural Golf Course Community Residential Overlay on a small area in Section 25, Range 26E, Township 46S, and this proposed area is located within a larger area that is currently designated as Private Recreational Facilities Overlay on Map 4 (Private Recreational Facilities Overlay Map). The currently adopted Comprehensive Plan extinguishes the residential density on Private Recreational Facilities property in the DR/GR area once the property is zoned as Private Recreational Facilities. Overlay Map 4 currently designates 5 large areas where private recreational facilities and fractional ownership/time-share units and bed and breakfast establishments could be allowed in the future. The proposed amendments to Policies 16.2.6, 16.2.7 and 16.3.9 and Map 17 would result in additional urban development within the DR/GR area, and this additional urban development would be located in areas that are not environmentally suitable in order to protect natural resources (wetlands, wildlife habitat, wildlife, panther movement, and hydrological resources) and would be inconsistent with maintaining the rural character of the area. The proposed amendments are not supported by data and analysis demonstrating that the locations of the proposed designations are environmentally suitable for the proposed land use types and densities and intensities of land use that would be allowed by the amendments and demonstrating the planning of public facilities that would be needed to support such land uses. The proposed amendments to Policies 16.2.6, 16.2.7, and 16.3.9 do not establish meaningful and predictable guidelines and standards to ensure that the Fractional Ownership/Time-share Units are for transient use only.

Rules 9J-5.005(2), (5), and (6); 9J-5.006(1), (2), and (3)(b) and (c); 9J-5.011(1) and (2); and 9J-5.013(1), (2), and (3), F.A.C.; and Sections 163.3177(2), (8), and (10); and 163.3177(6)(a), (c), and (d), F.S.

Recommendation: Do not adopt the amendments.

**B. Amendment CPA2008-07 (Lehigh Acres Community Plan):** The purpose of the amendment is to implement the *Lehigh Acres Comprehensive Planning Study (March 2009)* by revising text and maps of the Future Land Use Element (FLUE), Parks/Recreation/Open Space Element, and development allocation Table 1(b). The Lee County Comprehensive Plan utilizes a similar approach (establish a vision statement, goal, objectives/policies, and maps to implement a community planning study) for most of the other planning communities. The Department raises the following objections and comments to the proposed amendments:

8. Objection (Mixed Use Nodes): Proposed FLUE Policy 32.2.2 requires that development in the “specialized mixed-use nodes” must include a design that integrates a mixture of at least two or more varied uses, such as retail, office, residential, or public. Although the proposed policy requires a “mixture,” Policy 32.2.2 does not establish meaningful and predictable guidelines and standards to define the quantitative composition of the mixture with regard to each land use in a manner that ensures that the resulting mixed-use nodes will achieve their function. The proposed amendment to create new Lee Plan Map 1 (Specialized Mixed Use Nodes) designates three types of mixed-use nodes: “Downtown” in the downtown area; “Community” nodes for 3 locations;

and “Neighborhood” nodes at 6 locations. Because Policy 32.2.2 does not establish meaningful and predictable guidelines and standards for the mixed-use nodes, the proposed amendment to create new Lee Plan Map 1 (Specialized Mixed Use Nodes) lacks these guidelines/standards to implement the map. Therefore, the Department objects to the proposed FLUE Policy 32.2.2. The Department recommends that the mixture require at least some minimum amount (percentage) of nonresidential use in order to ensure that the nonresidential use is not simply an inconsequential token amount that does not achieve the function of the mixed-use node.

Rules 9J-5.005(6); and 9J-5.006(3)(c)1., 5., and 7.; 9J-5.006(4)(c), F.A.C.; and Section 163.3177(6)(a), F.S.

Recommendation: Revise Policy 32.2.2 to establish a meaningful and predictable guidelines/standards to define the quantitative composition of the mixture with regard to each land use in a manner that ensures that the resulting mixed-use nodes will achieve their function.

9. Objection (Commercial Overlay): Proposed Objective 32.7 (renumbered from Objective 1.8) establishes Commercial Overlay Zones as shown on Map 1, page 7 of 8 of the Lee Plan. The proposed amendment exhibits characteristics of strip commercial sprawl along State Road 82, and the amendment is not supported by data and analysis demonstrating that the amendment discourages the proliferation of urban sprawl consistent with the requirements of Rule 9J-5.006(5), F.A.C.

Rules 9J-5.005(2); 9J-5.006(1) and (2); 9J-5.006(3)(b)8; 9J-5.006(5), F.A.C.; and Sections 163.3177(6)(a); 163.3177(8) and (10), F.S.

Recommendation: Support the amendment with data and analysis demonstrating that the Commercial Overlay Zones discourage the proliferation of urban sprawl consistent with the requirements of Rule 9J-5.006(5), F.A.C. Revise the FLUM, if necessary, to be supported by and consistent with the data and analysis.

10. Objection (Transportation; and Intensity Standards): The County proposes four FLUM amendments to change the land uses within Lehigh Acres as shown in the table below:

<b>Parcel Area</b>	<b>Acres</b>	<b>Currently Adopted FLUM</b>	<b>Proposed FLUM</b>
1	158	Central Urban	Intensive Development
2	42	Central Urban	Industrial Development
3	6	Central Urban	Industrial Development
4	41	Urban Community	Industrial Development

The proposed FLUM amendment for Parcel Area 1 (158 acres) is located in the Downtown Lehigh Acres area. Parcel Area 2 (42 acres) is located immediately south of the existing “Industrial Development” area near Leonard Boulevard. Parcel Area 3 (6 acres) includes a strip of lots immediately north of the existing “Industrial Development” area located along Leonard

Boulevard, and these lots have already been developed with light industrial uses. Parcel Area 4 (41 acres) is located south of SR 82.

The proposed FLUM amendment to Parcel Area 1 is not supported with data and analysis (based on the maximum development potential of the proposed land uses) addressing the potential impacts to transportation facilities for the short-term and long-term planning timeframes, the impacts upon the adopted level of service standards for the transportation facilities, and the coordination of any transportation facilities improvements that are needed to maintain the adopted level of service standards with the Capital Improvements Element (including the Five-Year Schedule of Capital Improvements and plan policies for long-term transportation strategies) and Transportation Element (including the Future Transportation Map). The proposed FLUM amendments to Parcel Area 2, 3, and 4 designate the Industrial Development future land use category to the subject parcel areas; however, the Lee County Comprehensive Plan does not establish an intensity of use standard for the Industrial Development future land use category. Therefore, the proposed amendment does not guide the intensity of industrial land use on the subject Parcel Areas 2, 3, and 4. The proposed FLUM amendment to Parcel Area 1 designates 158 acres as Intensive Development, which allows office use and light industrial use; however, the Lee County Comprehensive Plan does not establish an intensity of use standard to guide the office use or light industrial use that are allowed in the Intensive Development future land use category. Therefore, the proposed amendment to Parcel Area 1 does not guide the intensity of office use and light industrial use on the subject Parcel Area 1.

Rules 9J-5.005(2) and (5); 9J-5.006(1), (2), (3)(b), and (3)(c)7; 9J-5.006(4); 9J-5.016(1), (2), and (4); 9J-5.019(2), (3), and (4), F.A.C.; and Sections 163.3177(6)(a), (b), and (j); and 163.3177(2), (3), (8), and (10), F.S.

Recommendation: Support the amendment to Parcel Area 1 with data and analysis addressing the potential impacts to transportation facilities for the short-term and long-term planning timeframes, the impacts upon the adopted level of service standards for the transportation facilities, and the coordination of any transportation facilities improvements that are needed to maintain the adopted level of service standards with the Capital Improvements Element and Transportation Element, including amendments to the Five-Year Schedule of Capital Improvements, Future Transportation Map, and plan policies addressing long-term strategies for road improvements. Revise the Comprehensive Plan to establish an intensity of use standard for the Industrial Development future land use category. Revise the Comprehensive Plan to establish an intensity of use standard to guide the office use and light industrial use that are allowed in the Intensive Development future land use category.

11. Comment: Proposed Policy 32.11.1 states that “*Lee County will encourage on-site preservation of indigenous plant communities and listed species habitat. Any required mitigation will be of similar habitat, and provided whenever possible, within one mile of the Lehigh Acres Planning Community boundary.*” The Department recommends this policy be strengthened by identifying the circumstances under which the County will require on-site preservation of indigenous plant communities and listed species habitat.

12. Comment: Proposed Policy 32.11.2 states that “*Lee County will work with various agencies to identify existing wetlands that are worth saving or restoring within the Lehigh Acres Planning Community.*” The Lee County Comprehensive Plan establishes wetland protection requirements in other objectives/policies that are generally applicable throughout the County. The proposed Policy 32.11.2 is unclear as to the relationship of Policy 32.11.2 with the other wetland protection requirements and as to the applicability within the Lehigh Acres Planning Community of the wetland protection requirements established elsewhere in the Lee County Comprehensive Plan. The Department recommends that Policy 32.11.2 be revised to clarify that the wetland protection requirements of the Lee County Comprehensive Plan (with reference to specific plan objectives/policies) apply to the Lehigh Acres Planning Community area.

## **II. CONSISTENCY WITH STATE COMPREHENSIVE PLAN**

Objection: The proposed Comprehensive Plan amendments related to the objections raised above are not consistent with and do not further the following provisions of the State Comprehensive Plan (Chapter 187, Florida Statutes) for the reasons noted in the objections raised above in Section I:

- (a) Goal 7.a (Water Resources); Policies 7.b.1, 7.b.2, 7.b.5, 7.b.8, 7.b.9, and 7.b.10 (the amendments related to Objections 2, 4, 5, and 7);
- (b) Goal 9.a (Natural Systems and Recreational Lands); Policies 9.b.1, 9.b.3, 9.b.7 (the amendments related to Objections 2, 4, 5, and 7);
- (c) Goal 15.a (Land Use); Policies 15.b.1, 15.b.2, 15.b.3, and 15.b.6; (the amendments related to Objections 1, 2, 4, 5, 7, 8, 9, and 10);
- (d) Goal 17.a (Public Facilities); Policy 17.b.7; (the amendments related to Objection 2);
- (e) Goal 19.a (Transportation); Policies 19.b.3, 19.b.9, and 19.b.13; (the amendments related to Objections 2 and 10); and
- (f) Goal 25.a (Plan Implementation); Policy 25.b.7; (the amendments related to Objections 1 through 10).

Recommendation: Revise the plan amendments as recommended for the objections raised above.