

CPA 2004-16

**GREATER PINE ISLAND COMPROMISE
BoCC SPONSORED
SPECIAL AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

**Publically Initiated Application
and Lee County Staff Analysis**

**BoCC Public Hearing Document
for the
October 12th Adoption Hearing**

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August 19, 2005

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA 2004-16**

Text Amendment

Map Amendment

✓	This Document Contains the Following Reviews:
✓	Staff Review
✓	Local Planning Agency Review and Recommendation
✓	Board of County Commissioners Hearing for Transmittal
✓	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
	Board of County Commissioners Hearing for Adoption

ORIGINAL STAFF REPORT PREPARATION DATE: May 18, 2005

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT/REPRESENTATIVE:

Lee County Board of County Commissioners, represented by the Lee County Division of Planning.

2. REQUEST:

Amend the Lee Plan as follows:

- A. Amend the Future Land Use Map series for specified parcels of land (total of approximately 157 acres) located in Section 31, Township 43 South, Range 22 East to change the Future Land Use classification shown on Map 1 from "Coastal Rural" to "Outlying Suburban." The property is generally located in the Bokeelia area south of Barrancas Avenue and north of Pinehurst Road;
- B. Amend the Pine Island Vision Statement and Goal 14 to recognize the value of preserving agricultural activities on the island;
- C. Amend the Future Land Use Element Policy 1.4.7, the Coastal Rural Policy, to allow the retention of active or passive agriculture in lieu of habitat restoration to regain density;
- D. Amend the current percentages of preserved or restored uplands in Policy 1.4.7;

- E. Amend the Lee Plan to add a policy that further defines the restoration standards referred to in Policy 1.4.7;
- F. Amend Housing Element Policy 100.2.3 to incorporate a reference to the Coastal Rural future land use category;
- G. Amend the Pine Island Vision Statement, Goal 14, Table 1(a) footnote 4, the Definition of Density in the Glossary, and any other Plan provisions to create a new transfer of development rights program for Pine Island; Amend the definition of Density to allow mixed use projects to retain some or all of their residential density that is typically lost to commercial acreage, if Pine Island TDRs are utilized to regain density; Amend the Mixed Use definition in the Glossary to better define mixed use projects;
- H. Evaluate creating a concurrency exception area for a portion of Pine Island Center; and,
- I. Evaluate establishing additional Urban Infill areas on the mainland portion of the County to be receiving areas for Pine Island TDRs. Evaluate increasing allowable bonus densities in specific locations based on a point system that incorporates several criteria.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** Planning staff recommends that the Board of County Commissioners transmit the proposed Lee Plan amendment to the Florida Department of Community Affairs for their review.

Recommended Map Change:

Amend the Future Land Use Map series for specified parcels of land (total of approximately 157 acres) located in Section 31, Township 43 South, Range 22 East to change the Future Land Use classification shown on Map 1 from "Coastal Rural" to "Outlying Suburban." The property is generally located in the Bokeelia area south of Barrancas Avenue and north of Pinehurst Road.

Recommended Text Changes:

VISION STATEMENT:

Pine Island - This community includes Greater Pine Island as described under Goal 14 along with surrounding smaller islands and some unincorporated enclaves near Cape Coral. Its future, as seen by Pine Islanders, will be a matter of maintaining an equilibrium between modest growth, ~~on the one hand~~ and a fragile ecology, ~~on the other~~ and a viable and productive agricultural community. Pine Island will continue to be a haven between urban sprawl approaching from the mainland and the wealth of the outer islands; a quiet place of family businesses, school children, farmers, and retirees enjoying the bounties of nature; a place devoid of high-rises, strip malls, and gated communities. Traffic constraints caused by the narrow road link to the mainland will limit future development, allowing the islands to evacuate from storms and protecting natural lands from unsustainable development. Wildlife and native vegetation will be protected; loss of wildlife habitat will be reversed; sidewalks and bike paths will connect neighborhoods for young and old alike. Architectural standards for commercial buildings will

encourage “Old Florida” styles, and historic buildings will be treasured. Pine Island will continue to be a place where people, ~~and~~ nature and agriculture exist in harmony, a place not very different from what it is today, an island as state-of-mind as much as a physical entity, its best features preserved and enhanced. Pine Islanders are historically vigilant about protecting their community and will work to ensure that their plans are carried out.

FUTURE LAND USE ELEMENT:

POLICY 1.4.7: The Coastal Rural areas will remain rural except for portions of properties where residential lots are permitted in exchange for permanent preservation or restoration of native upland habitats or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, on the remainder of the property. The standard maximum density is one dwelling unit per ten acres (1DU/10 acres). Maximum densities may increase as higher percentages of native habitat are permanently preserved or restored on the uplands portions of the site, or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, in accordance with the chart below. Permitted land uses include agriculture, fill-dirt extraction, conservation uses, and residential uses up to the following densities:

<u>Percentage of the on site uplands that are preserved or restored native habitats or continued in agricultural use on existing farmland</u>	<u>Maximum density if undeveloped land will be permanently preserved or restored as native habitats</u>	<u>Maximum density if undeveloped land will be continued in agricultural use on existing farmland</u>
0%	1 DU/ 10 acres	<u>1 DU/ 10 acres</u>
5%	1 DU/ 9 acres	
10%	1 DU/ 8 acres	<u>1 DU/ 9 acres</u>
15%	1 DU/ 7 acres	
20%	1 DU/ 6 acres	<u>1 DU/ 8 acres</u>
30%	1 DU/ 5 acres	<u>1 DU/ 7 acres</u>
40%	1 DU/ 4 acres	<u>1 DU/ 6 acres</u>
50%	1 DU/ 3 acres	<u>1 DU/ 5 acres</u>
60%	1 DU/ 2 acres	<u>1 DU/ 3 acres</u>
70%	1 /DU/ 1 acre	<u>1 DU/ 2 acres</u>

Existing farmland is depicted on Map 21. Areas for buffers, lakes, and utilities may consist of up to 10% of the upland preserve areas.

GOAL 14: GREATER PINE ISLAND. To manage future growth on and around Greater Pine Island so as to maintain the island’s unique natural resources, ~~and~~ character and its viable and productive agricultural community and to insure that island residents and visitors have a reasonable opportunity to evacuate when a hurricane strike is imminent. For the purposes of this plan, the boundaries of Greater Pine Island are indicated on the Future Land Use Map.

POLICY 14.2.5: Lee County will investigate the merits of creating a concurrency exception area for a portion of Pine Island Center. The concurrency exception area will promote the expansion of public transportation to and from the Greater Pine Island area.

OBJECTIVE 14.6: Agricultural Uses. To promote and preserve the rural character of Pine Island, Lee County will strive to foster a viable and productive agricultural community on the island.

POLICY 14.6.1: Lee County will maintain a map (Map 21) of all existing farmland on Pine Island.

POLICY 14.6.2: Lee County, by 2009, will evaluate creating a Purchase of Development Rights Program with the objective of preserving Pine Island agricultural uses.

POLICY 14.6.3: By 2007 Lee County will amend the Lee County Land Development Code to establish a Pine Island Transfer of Development Rights (TDR) program to supplement the existing wetland TDR program. The program will be open to properties depicted on Map 21 as well as other Pine Island lands deemed acceptable by the Board of County Commissioners.

HOUSING ELEMENT:

POLICY 100.2.3: Housing for farm workers, as defined by ss 420.503 Florida Statutes, may be permitted in the Rural, Coastal Rural, Open Lands, and Density Reduction/ Groundwater Resource land use categories without respect to the density limitations that apply to conventional residential districts. The density of such housing is limited to 50 occupants per acre of actual housing area and will be reviewed on a case-by-case basis during the planned development or Special Exception zoning process. The applicant must demonstrate that impacts of the farm worker housing will be mitigated.

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. Within the Caloosahatchee Shores community in the areas identified by Policy 21.4.2 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 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 were created from Greater Pine Island Coastal Rural or Greater Pine Island Urban Categories.

MIXED USE BUILDING - Mixed Use Building means a building that contains at least two different land uses (i.e. commercial and residential, R & D and residential, office and residential, commercial and civic use open to the public) that are related.

MIXED USE - The development, in a compact urban form, of land or building or structure with two or more different but compatible uses, such as but not limited to: residential, office, industrial and technological, retail, commercial, public, entertainment, or recreation. True mixed use developments primarily consist of mixed use buildings as defined by this Glossary.

LEE PLAN TABLE 1(A), FOOTNOTE 4:

4. ~~No land will be rezoned on Pine Island, excluding the Matlacha, Bokeelia, and St. James City areas currently classified as Future Urban Areas, to a zoning district which permits a density higher than 3 dwelling units per gross acre. Land currently zoned in a zoning district which permits a residential density in excess of 3 dwelling units per gross acre will be allowed a density higher than 3 du/acre provided that all other applicable regulations are met, and provided further that no density will be allowed above that which is permitted for the land use category in which the property is located, or which is permitted by the zoning which was in effect for said property as of November 25, 1986, whichever is lower. Within the Future Urban Areas of Pine Island Center, rezonings that will allow in excess of 3 dwelling units per gross acre must “purchase” the density above 3 dwelling units per gross acre utilizing TDRs that were created from Greater Pine Island Costal Rural or Greater Pine Island Urban Categories.~~

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The Hanson Report assigned a loss of \$9,000,000 in market value for the 157 acre “Bokeelia property.”
- The subject 157 acre “Bokeelia property” is located outside of the Coastal High Hazard Area. The amendment does not increase density in the Coastal High Hazard Area.
- The proposed amendment of the 157 acre “Bokeelia property” restores it to its previous density and intensity of use.
- The State of Florida, in F.S. Chapter 163.3162, recognizes the importance of agricultural production. The state finds that agriculture is a major contributor to the economy of the state and that agricultural lands constitute unique and irreplaceable resources of statewide importance.
- The recognition of agriculture and the desire to preserve agricultural uses is a common topic in local comprehensive and general plans.
- Agricultural uses are an important part of the Pine Island landscape. Agricultural uses go hand in hand with the largely rural nature of the island.

- The unique micro-climate of Pine Island supports commercial production of subtropical fruits, ornamental palms, and vegetables. The goal of retaining agricultural uses on Pine Island “fits” with the character of the island as well as the constrained access to the island.
- Amending the Lee Plan with an intent to preserve agricultural uses and to allow the retention of active or passive agriculture in lieu of habitat restoration to regain density helps to address island character issues as well as limiting Bert Harris liability as stated in the Hanson Report.
- Policy 100.2.3 allows bona fide farmworker housing in the non-urban areas of the county in excess of their density limits. The Pine Island amendment placed all of the Rural lands on Pine Island into the new Coastal Rural land use category. No reference to amending Policy 100.2.3 was included in the Pine Island amendments. This was an oversight, and the policy should be corrected by adding the reference to Coastal Rural.
- Establishing a Pine Island TDR program will provide another option for land owners on Pine Island to gain value from their land and still preserve habitat and agricultural uses. Transferring development rights from Pine Island will have the affect of lowering potential future hurricane evacuation times and help address the constrained access dilemma of Pine Island.
- Establishing a Pine Island TDR program may help limit Bert Harris liability.

C. BACKGROUND INFORMATION

Lee County has a long history of encouraging local communities to take an active role in shaping a vision for their community. In the late 1980's the Greater Pine Island community conducted a planning study of their area of the county. This planning effort resulted in the adoption, in 1989, of a goal and subsequent objectives and policies specific to the Greater Pine Island area. A similar planning effort, to update the now decade-old study, was begun in 1999. This planning effort, the 2001 Greater Pine Island Community Plan Update (Update), proposed several amendments to the Pine Island portion of the Lee Plan. The required public hearings were held and the amendments were adopted by the Board of County Commissioners on January 9, 2003. The amendments were reviewed and approved by the Florida Department of Community Affairs (DCA). On March 7, 2003, the DCA issued a Notice of Intent to find the amendments in compliance with the applicable statutes and rule.

In accordance with state statutory requirements, there was a 21 day window in which an affected person could file a petition for a hearing, essentially challenging the DCA determination of compliance. Such a petition was filed on March 28, 2003. The State of Florida Division of Administrative Hearings assigned the hearing Case # 03-1275 GM. Following this original petition, several parties petitioned to intervene on both sides of the issues. Because the DCA had found that the amendments were in compliance, the Administrative Law Judge was required to use the fairly debatable standard when determining compliance. This puts the petitioner and their interveners at a disadvantage as they would need to prove with a preponderance of the evidence that the plan amendments are not in compliance. Regardless of the legal standard, both Planning and Legal staff were confident that Lee County would prevail on most if not all issues raised at the hearing.

One of the more complex issues in the Pine Island amendments is the Coastal Rural future land use category. Coastal Rural is a new category that was placed on property that had previously been designated in the Rural future land use category. Coastal Rural was also applied to some 157 acres of property that had previously been designated in the Outlying Suburban category. The proposed new category reduced the allowable density from 1 dwelling unit per acre on the Rural lands and 3 dwelling units per acre on the Outlying Suburban lands to 1 dwelling unit per 10 acres. The Coastal Rural category, however, had provisions that would allow a return to 1 dwelling unit per acre if 70% of a property's native lands were preserved or if 70% of improved farmland was restored to native habitat. Several of the petition interveners owned land that was affected by this new future land use category. They objected to their properties being placed in the category, which they felt was a taking of their current development potential.

While not necessarily an integral part of the challenge to the Pine Island amendments, the Coastal Rural category was seen as a potential liability to the County under the provisions of the Bert J. Harris, Jr., Private Property Rights Protection Act. In order to better inform the Board of County Commissioners (Board), the County Attorney's Office, with Board support, commissioned an appraiser to conduct an evaluation of the economic impacts (if any) that might occur to the Pine Island market if the Pine Island amendments were in effect and implemented. The study was completed on August 4, 2004. The study, known as the Hanson Report, indicated that the only provisions of the Pine Island amendments that would cause an economic impact were those of the Coastal Rural future land use category. The Hanson Report provided that the Coastal Rural land use category would adversely affect passive agriculture, active agriculture, and those lands that were originally designated in the Outlying Suburban future land use category. The total loss in market value to these lands was estimated by the Hanson Report to be \$60,000,000.

With this information in hand, the County Attorney's Office scheduled this issue as a Board agenda item. There were various courses of action for the Board to consider. The Board chose to instruct Community Development staff to meet with the parties to evaluate the issues and to try to reach a compromise or settlement. During the month of October staff held several meetings and had numerous phone conversations with the parties involved in the Administrative Hearing. On November 4, 2004 the petitioner, along with the interveners on that side of the case, sent a letter to the County Attorney's Office. The letter indicated that they believed that a settlement prior to the November 29, 2004 hearing was unlikely. The letter also stated their intent to withdraw the petition challenging the Pine Island amendments on November 16, 2004.

The petition was in fact withdrawn by the petitioner and the Administrative Hearing was canceled. The Pine Island amendments, as adopted on January 9, 2003, went into full force and effect. Staff believed that there were certain issues that should still be addressed. The Board concurred and at their November 26, 2004 Regular Meeting they voted to initiate a Special Amendment cycle to address some of the concerns raised by the petitioner and interveners.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

COASTAL RURAL FUTURE LAND USE MAP AMENDMENTS - THE BOKEELIA PROPERTY:

The Pine Island amendments resulted in the adoption of a new future land use category and two separate future land use map (FLUM) amendments. Objective 1.4 “Non-Urban Areas” was amended by establishing a new “Coastal Rural” future land use category. The first future land use map amendment reclassified all “Rural” designated land to “Coastal Rural.” The second amended the Future Land Use Map series to reclassify from “Outlying Suburban” to “Coastal Rural” 157 acres of agricultural land between Bokeelia and September Estates. The 2002 staff report that evaluated the proposed Pine Island amendments included the following discussion concerning this second FLUM amendment:

Figure 2, of the Update report shows the 157 acres located in northern Pine Island south of Bokeelia. Current allowable density on that land is three dwelling units per acre. The proposed land use change would lower allowable densities to a maximum of one dwelling unit per acre, if native vegetation on 70% of the site is preserved or restored. That action may lower personal property values and could have Bert Harris Act implications. The Plan Update document provides the following discussion concerning this property:

“The third exception, south of Bokeelia, is the most incongruous. This entire acreage is now in intense agricultural use, with much of it cleared during the past decade (see Figure 2). Apparently it had been considered as a potential expansion of the Bokeelia urban area. Since that time, the landowners have clearly indicated a preference for agriculture and have made no efforts to develop any of the land residentially. Thus these 157 acres should be reclassified to whatever designation is ultimately assigned to the rural lands to their east and west.”

The Hanson Report assigned a loss of \$9,000,000 in market value for this property. This equates to almost one-sixth of the total estimated loss of market value that was attributed to the Plan Update Amendment. This property was the only property that was amended by the Plan Update to a category that would not in some fashion permit the property owner an ability to achieve the original maximum density.

The property also abuts Urban designated lands to the south. These properties are either designated Suburban or Outlying Suburban. The subject property connects these Suburban and Outlying Suburban areas to the Suburban designated Bokeelia area. The previous amendment had the affect of leaving these lands surrounded by the new Coastal Rural land use category. Staff notes that these Suburban and Outlying Suburban lands have previously been subdivided for residential use and have been sold off to individual owners. The current amendment, if approved, would restore the Bokeelia future urban area as it existed in the Lee Plan prior to the Plan Update Amendment. The subject 157 acres is in current agricultural use.

The planning consultant for the Plan Update Amendment believes that there is an alternative to restoring the Outlying Suburban designation on the subject site, that being the Rural land use category. Staff notes that this would still result in a lowering of the maximum standard density from a possible 3 dwelling units per acre allowable under the Outlying Suburban to a maximum standard density of 1 dwelling unit per acre. Staff believes that establishing the Rural category on the subject site would still potentially result in Bert Harris liability on the County’s part.

Planning staff notes that the subject 157 acres is located outside of the Coastal High Hazard Area. This fact can be clearly discerned by comparing the subject site’s location with Lee Plan Map 5, the Coastal High Hazard Area. This amendment, therefore, does not increase density in the Coastal High Hazard Area and merely restores the previous density and intensity.

Given the restrictions contained in Policy 14.2.2, staff realizes that the property in question may never be able to achieve the maximum 3 dwelling units per acre. The property could, however, participate in a new TDR program, which is discussed in a later section of this report. The property would have some potential for commercial uses with the Outlying Suburban designation.

Staff Recommendation Concerning the “Bokeelia Property:”

Given the Bert Harris implications with this portion of the Plan Update Amendment, and in the interests of compromise, staff recommends that the property in question be amended back to its original designation of Outlying Suburban.

PRESERVATION OF AGRICULTURAL USES

The State of Florida has recognized the importance of agricultural activities. For example, Florida Statutes include a section, F.S. 163.3162, that relates this importance as a finding of the Legislature. This section is reproduced below:

The Legislature finds that agricultural production is a major contributor to the economy of the state; that agricultural lands constitute unique and irreplaceable resources of statewide importance; that the continuation of agricultural activities preserves the landscape and environmental resources of the state, contributes to the increase of tourism, and furthers the economic self-sufficiency of the people of the state; and that the encouragement, development, and improvement of agriculture will result in a general benefit to the health, safety, and welfare of the people of the state. It is the purpose of this act to protect reasonable agricultural activities conducted on farm lands from duplicative regulation.

The recognition of agriculture and the desire to preserve agricultural uses is a common topic in local comprehensive and general plans. The Lee Plan, in fact, includes such a Goal. This Goal is reproduced below:

GOAL 9: AGRICULTURAL LAND USES. *To protect existing and potential agricultural lands from the encroachment of incompatible land uses and to discourage the introduction or expansion of agricultural uses in the Future Urban Areas.*

The Lee Plan also recognizes that nothing in the Plan will be construed to permanently prohibit the conversion of agricultural uses to other land uses. The Lee Plan also includes an objective, Objective 9.1, and a map, Map 20, that place agriculturally used parcels of more than 100 acres on an agricultural overlay. This map depicts agricultural areas on Pine Island both north and south of the center.

Agricultural uses are an important part of the Pine Island landscape. Agricultural uses go hand in hand with the largely rural nature of the island. Staff also recognizes the unique micro-climate of Pine Island that supports commercial production of subtropical fruits, ornamental palms, and vegetables. The goal of retaining agricultural uses on Pine Island “fits” with the character of the island as well as the constrained access to the island. Amending the Lee Plan with an intent to preserve agricultural uses helps to address island character issues as well as limiting Bert Harris liability as stated in the Hanson Report. The Pine Island Goal and the Coastal Rural category could be amended to add the generally accepted idea that retention of agricultural uses is in the best interest of the community. The retention of agricultural uses could also be incorporated as another option to restoration in the Coastal Rural land use category.

Staff Recommendation Concerning Preservation of Agricultural Uses:

Staff recommends amending the Pine Island Vision Statement and Goal 14 to recognize the value of preserving agricultural activities on the island. Staff recommends that Pine Island Coastal Rural lands in current agricultural production be depicted on a map in the Future Land Use Map series. The purpose in depicting these lands is more fully discussed in the next section of this report. The recommended amendments to the Vision Statement and Goal 14 are shown below:

VISION STATEMENT:

Pine Island - This community includes Greater Pine Island as described under Goal 14 along with surrounding smaller islands and some unincorporated enclaves near Cape Coral. Its future, as seen by Pine Islanders, will be a matter of maintaining an equilibrium between modest growth, ~~on the one hand~~ and a fragile ecology, ~~on the other~~ and a viable and productive agricultural community. Pine Island will continue to be a haven between urban sprawl approaching from the mainland and the wealth of the outer islands; a quiet place of family businesses, school children, farmers, and retirees enjoying the bounties of nature; a place devoid of high-rises, strip malls, and gated communities. Traffic constraints caused by the narrow road link to the mainland will limit future development, allowing the islands to evacuate from storms and protecting natural lands from unsustainable development. Wildlife and native vegetation will be protected; loss of wildlife habitat will be reversed; sidewalks and bike paths will connect neighborhoods for young and old alike. Architectural standards for commercial buildings will encourage "Old Florida" styles, and historic buildings will be treasured. Pine Island will continue to be a place where people, ~~and~~ nature and agriculture exist in harmony, a place not very different from what it is today, an island as state-of-mind as much as a physical entity, its best features preserved and enhanced. Pine Islanders are historically vigilant about protecting their community and will work to ensure that their plans are carried out.

GOAL 14:

GOAL 14: GREATER PINE ISLAND. To manage future growth on and around Greater Pine Island so as to maintain the island's unique natural resources, ~~and~~ character and its viable and productive agricultural community and to insure that island residents and visitors have a reasonable opportunity to evacuate when a hurricane strike is imminent. For the purposes of this plan, the boundaries of Greater Pine Island are indicated on the Future Land Use Map.

Staff also believes that a new Pine Island Objective and subsequent Policy addressing agricultural uses should be incorporated into Goal 14:

OBJECTIVE 14.6: Agricultural Uses. To promote and preserve the rural character of Pine Island, Lee County will strive to foster a viable and productive agricultural community on the island. Lee County will incorporate several land use "tools" such as purchase and transfer of development rights programs into the Lee County Land Development Code to preserve agricultural uses on Pine Island.

POLICY 14.6.1: Lee County will maintain a map (Map 21) of all existing farmland on Pine Island.

AMEND POLICY 1.4.7, THE COASTAL RURAL POLICY, TO ALLOW THE RETENTION OF ACTIVE OR PASSIVE AGRICULTURE IN LIEU OF HABITAT RESTORATION TO REGAIN DENSITY:

As stated previously, one of the more complex issues in the Pine Island amendments is the Coastal Rural future land use category. Coastal Rural is a new category that was placed on property that had previously been designated in the Rural future land use category and the 157 acres of previously designated Outlying Suburban lands. The Coastal Rural category reduced the allowable density from 1 dwelling unit per acre on the Rural lands and 3 dwelling units per acre on the Outlying Suburban lands to 1 dwelling unit per 10 acres. The Coastal Rural category, however, has provisions that includes a return to 1 dwelling unit per acre if 70% of a property’s native lands were preserved or if 70% of improved farmland is restored to native habitat. The adopted Coastal Rural category descriptor policy, Policy 1.4.7 is reproduced below:

POLICY 1.4.7: *The Coastal Rural areas will remain rural except for portions of properties where residential lots are permitted in exchange for permanent preservation or restoration of native upland habitats on the remainder of the property. The standard maximum density is one dwelling unit per ten acres (1DU/10 acres). Maximum densities may increase as higher percentages of native habitat are permanently preserved or restored on the uplands portions of the site in accordance with the chart below. Permitted land uses include agriculture, fill-dirt extraction, conservation uses, and residential uses up to the following densities:*

<i>Percentage of the on site uplands that are preserved or restored native habitats</i>	<i>Maximum density</i>
<i>0%</i>	<i>1 DU/ 10 acres</i>
<i>5%</i>	<i>1 DU/ 9 acres</i>
<i>10%</i>	<i>1 DU/ 8 acres</i>
<i>15%</i>	<i>1 DU/ 7 acres</i>
<i>20%</i>	<i>1 DU/ 6 acres</i>
<i>30%</i>	<i>1 DU/ 5 acres</i>
<i>40%</i>	<i>1 DU/ 4 acres</i>
<i>50%</i>	<i>1 DU/ 3 acres</i>
<i>60%</i>	<i>1 DU/ 2 acres</i>
<i>70%</i>	<i>1 /DU/ 1 acre</i>

The Hanson Report concluded that the cost of restoration exceeded the reduction of market value for properties with active agricultural and “the appraiser consultant does not consider the “density recapture model” to be economically feasible for active agricultural properties.” The Report then provided that “the estimated economic impact to active agricultural properties is estimated to be \$41.2 million, or rounded to \$40.0 million.” While these conclusions have been a source of debate in previous public hearings, no definitive documentation has been submitted to refute the appraiser’s report.

The Civic Association, the major supporter for the Plan Update Amendment, did offer the interveners a “Settlement Proposal” that did recognize the importance of agricultural activity to the “desired character

of Pine Island.” This proposal was never agreed to by the interveners. The merits of the proposal have never been publicly discussed until now. The proposal had two elements which are reproduced below:

1. *Modify the Greater Pine Island Community Plan to include preservation of farms as a key factor in the desired character of Pine Island.*
2. *Modify the “Coastal Rural” clustering standards to permit the use of farm easements as an alternative to upland preservation requirements, setting the maximum densities of clustered developments at levels which continue to primarily reward preservation/restoration of pine flatwoods but also substantially reward preservation of farmland.*

The proposal provided that these concepts would be enacted by amending the Lee Plan’s Vision for Pine Island and Policy 1.4.7.

Staff recognizes that the existing agricultural uses located on Pine Island are one of the principal uses that contributes to the Rural character of Pine Island. Staff in previous sections of this report has recommended that the Vision and goal for Pine Island recognize the importance of agricultural activity as one of the desired character traits of the island. Allowing preservation of agricultural uses in lieu of habitat preservation does help to promote continued agricultural activity on the island and furthers the desired rural character. To assure that development never occurs on any land that has opted to preserve agriculture versus habitat, a legally binding perpetual easement to Lee County should be prepared.

Staff Recommendation Concerning Policy 1.4.7:

To implement the concept of preserving agricultural use in lieu of preserving or restoring habitat, staff recommends the following modification to Policy 1.4.7:

POLICY 1.4.7: The Coastal Rural areas will remain rural except for portions of properties where residential lots are permitted in exchange for permanent preservation or restoration of native upland habitats or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, on the remainder of the property. The standard maximum density is one dwelling unit per ten acres (1DU/10 acres). Maximum densities may increase as higher percentages of native habitat are permanently preserved or restored on the uplands portions of the site, or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, in accordance with the chart below. Permitted land uses include agriculture, fill-dirt extraction, conservation uses, and residential uses up to the following densities:

<u>Percentage of the on site uplands that are preserved or restored native habitats or continued in agricultural use on existing farmland</u>	<u>Maximum density if undeveloped land will be permanently preserved or restored as native habitats</u>	<u>Maximum density if undeveloped land will be continued in agricultural use on existing farmland</u>
0%	1 DU/ 10 acres	<u>1 DU/ 10 acres</u>
5%	1 DU/ 9 acres	
10%	1 DU/ 8 acres	<u>1 DU/ 9 acres</u>

15%	1 DU/ 7 acres	
20%	1 DU/ 6 acres	<u>1 DU/ 8 acres</u>
30%	1 DU/ 5 acres	<u>1 DU/ 7 acres</u>
40%	1 DU/ 4 acres	<u>1 DU/ 6 acres</u>
50%	1 DU/ 3 acres	<u>1 DU/ 5 acres</u>
60%	1 DU/ 2 acres	<u>1 DU/ 3 acres</u>
70%	1 /DU/ 1 acre	<u>1 DU/ 2 acres</u>

Existing farmland is depicted on Map 21. Areas for buffers, lakes, and utilities may consist of up to 10% of the upland preserve areas.

EVALUATE THE CURRENT PERCENTAGES OF PRESERVED OR RESTORED UPLANDS IN POLICY 1.4.7:

Staff was concerned that preserving 70% of a site to regain the one unit per acre density could jeopardize the project's ability to provide the needed on-site utilities. The last sentence in the recommended changes to Policy 1.4.7 above partially address this issue. This added flexibility alleviates the concerns staff had with the one zoning case that proposed to cluster its residential density consistent with the current Coastal Rural policy. With this concern addressed, the percentages can remain as they are. Should the Board want to lower the percentages as a matter of policy, that can be accomplished with direction to staff at the transmittal public hearing.

FURTHER DEFINE THE RESTORATION STANDARDS REFERRED IN POLICY 1.4.7:

Standards for the restoration of impacted property have been submitted for review by the Greater Pine Island Civic Association. These standards were submitted with additional Land Development Code changes to implement the revised Pine Island Lee Plan objectives and policies. Staff review is currently incomplete. This issue may have to be revisited in the future.

FARMWORKER HOUSING:

Staff recommends adding a reference in Policy 100.2.3 to the Coastal Rural future land use category. Policy 100.2.3 allows bona fide farmworker housing in the non-urban areas of the county in excess of their density limits. The Pine Island amendment placed all of the Rural lands on Pine Island into the new Coastal Rural land use category. No reference to amending Policy 100.2.3 was included in the Pine Island amendments. Staff believes this was an oversight, but in any case this farmworker housing issue should be corrected.

Staff Recommendation Concerning Policy 100.2.3:

Staff recommends the following additional language for Policy 100.2.3:

POLICY 100.2.3: Housing for farm workers, as defined by ss 420.503 Florida Statutes, may be permitted in the Rural, Coastal Rural, Open Lands, and Density Reduction/ Groundwater Resource land use categories without respect to the density limitations that apply to conventional residential districts. The density of such housing is limited to 50 occupants per acre of actual housing area and will be reviewed on a case-by-case basis during the planned development or Special Exception

zoning process. The applicant must demonstrate that impacts of the farm worker housing will be mitigated. (Amended by Ordinance No. 94-30, 00-22, 03-19)

CREATION OF NEW PURCHASE OF DEVELOPMENT RIGHTS PROGRAM:

The loss of farmland and open space throughout the country has increasingly become an important issue. Land use “tools” have been created to preserve, in some fashion, lands that states and local jurisdictions deem appropriate. Purchase of Development Rights (PDR) programs are an example of one of these land use tools. PDRs have been used successfully in many areas of the nation.

Under a PDR program, a landowner voluntarily sells the rights to certain types of development from a parcel of land to a public agency or other organization interested in resource protection. The concept is similar to TDRs in that PDR programs recognize the concept that a “bundle of rights” are associated with ownership of land. PDR programs recognize that fee simple ownership of real estate allows the owner to sell, lease, or trade any one or more, or all of the bundle of rights to their property, subject to the limitations of the legislative power of the local government. The right to develop a piece of land for residential, commercial, or industrial uses is a right within the bundle. The PDRs involves the sale of that right while leaving all the remaining rights as before. An easement is placed upon the property, thereby assuring that the severed type of development will not occur on that particular property. The landowner is generally compensated for the value of the rights to develop that are removed from the land.

A PDR program can be an effective tool to help maximize a community’s conservation efforts. Money for PDR programs can be raised through a variety of means, including bonding initiatives, private grants, and various taxation options. Many communities have found matching dollars from state and federal sources.

Creating a PDR program is a viable option to help farmers achieve the economic benefits accrued from the development potential of the land, while having the ability to keep the land as agricultural. PDR programs provide many benefits from its completely voluntary nature. No landowner is coerced into giving up or selling the land or the development rights. This type of program also provides a permanent solution with the placement of an agricultural conservation easement on the subject land. Escape clauses can be incorporated into the program if surrounding development or economic conditions have made farming on the land impossible. Another benefit of a PDR program is that it makes it easier for one farmer to pass the farm on to an heir interested in continuing the farming activities. Once the development rights have been separated from the land, the value of the parcel typically declines to its agricultural value. This generally has an enormous effect on reducing the inheritance tax liability.

The primary disadvantage of PDR is the cost involved. In the case of a governmental entity purchasing the PDR, some sort of tax is generally the primary funding source. The topic of instituting new taxes is always controversial.

Staff Recommendation Concerning the Establishment of a PDR Program:

Staff recommends that the Board of County Commissioners evaluate creating a PDR program for agricultural lands within the Coastal Rural areas of Pine Island. Staff believes the evaluation of creating a PDR program should include an evaluation of establishing a dedicated funding source to initially fund the program. Staff recommends that a new policy calling for this evaluation be added with the new proposed Agricultural Uses Objective, Objective 14.6:

POLICY 14.6.2: Lee County, by 2009, will evaluate creating a Purchase of Development Rights Program with the objective of preserving Pine Island agricultural uses.

TRANSFER OF DEVELOPMENT RIGHTS (TDR):

The County has an existing transfer of development rights (TDR) program with the intent of transferring development rights from wetlands to mainland areas with a future land use designation of Intensive Development, Central Urban, or Urban Community. This program is detailed in Chapter 2 of the Lee County LDC. The current program has had limited participation. This fact is discussed further in the next section, TDR Market Stimulation.

The creation of additional TDR options under the Land Development Code can help the County address equity and fairness issues that have been raised as well as helping the County achieve true mixed uses in mainland areas of the County consistent with the Lee Plan's Evaluation and Appraisal Report (EAR).

Staff recommends that the County enact a transfer of development rights program for Greater Pine Island. This program will allow for the creation of TDRs in the Coastal Rural future land use category. One or more Coastal Rural TDRs could be allowed for each acre of Coastal Rural that is protected from commercial and residential development, either with a conservation easement or an agricultural conservation easement. Once created these Coastal Rural development rights become eligible for use both on and off Pine Island. Should the Coastal Rural TDR's remain on Pine Island the maximum density should be one dwelling unit per Coastal Rural TDR. If the Coastal Rural TDR's are subsequently transferred to an appropriate urban category on mainland Lee County, the density should be increased to two dwelling units per Coastal Rural TDR as an incentive. These details can be finalized in the Land Development Code amendment that establishes this TDR program.

In this way, Coastal Rural TDRs could be utilized to increase the allowable density on contiguous or non-contiguous Coastal Rural lands. The standard maximum density of one dwelling unit per ten acres (1DU/10 acres) could be raised to a maximum of one dwelling unit per two and one-half acres (1DU/2.5 acres). Creation, preservation or restoration of native habitat could be reduced or not required at all.

Staff also recommends establishing a transfer of development rights program for Greater Pine Island that will allow for the creation of transfer of development rights from the areas designated in urban categories. In order to maintain the rural character and to help reduce the buildout population of Pine Island such a TDR program for the urban designated lands could prove useful. These TDRs would utilize the underlying density of the urban future land use category with the property protected from commercial and residential development via a conservation easement. These programs might prove useful once the level of service on Pine Island Road is exceeded and residential Development Orders are limited to one third of the current allowable density, as stated in Policy 14.2.2.

Staff Recommendation Concerning Establishing a Pine Island TDR Program:

One of the main impetus in establishing a program has been as a result of criticisms of the Plan Update Amendment raised by large land owners, much of which is in active agricultural use. Establishing a TDR program will provide another option for these land owners on Pine Island. Moving development rights from Pine Island will have the effect of lowering potential future hurricane evacuation times and help address the constrained access dilemma of Pine Island. As Coastal Rural has been the focus of discussions and possible compromise, staff believes the program should target existing farmland as depicted on Map

21, but be open to all properties on Pine Island. Staff recommends that the following policy be incorporated under proposed Objective 14.6:

POLICY 14.6.3: By 2007 Lee County will amend the Lee County Land Development Code to establish a Pine Island Transfer of Development Rights (TDR) program to supplement the existing wetland TDR program. The program will be open to properties depicted on Map 21 as well as other Pine Island lands deemed acceptable by the Board of County Commissioners.

TDR MARKET STIMULATION:

In order for any TDR program to be successful there must be a market for TDRs. Staff has researched establishment of TDR programs in a variety of local governments, all of which stress the importance of providing a market to make the program successful. The County's current TDR program has seen modest levels of participation. Staff believes several modifications to County regulations are necessary in order to assure a successful TDR program for Pine Island. The necessary changes are discussed below.

In order to stimulate the mainland TDR market, the Lee Plan should be amended to allow true mixed use developments to maintain some or all of their residential density that is lost to the commercial acreage. In accordance with the current Lee Plan definition of Density, lands used for commercial, office, industrial uses, natural water bodies, and other non-residential uses must be removed from the project area prior to the density calculation. Staff recommends modifying the current definition of Density to allow the areas used for commercial and office use to remain in the residential density calculation, if Pine Island TDRs are utilized to make up the difference in density, utilizing the current definition. Staff recommends the following modification to the Density definition in the 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. Within the Caloosahatchee Shores community in the areas identified by Policy 21.4.2 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 the 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.

To define true mixed use developments, staff recommends adding the following definition to the Glossary:

MIXED USE BUILDING - Mixed Use Building means a building that contains at least two different land uses (i.e. commercial and residential, R & D and residential, office and residential, commercial and civic use open to the public) that are related.

Staff also recommends amending the Mixed Use definition in the Glossary of the Lee Plan to better define what a true mixed project is:

MIXED USE - The development, in a compact urban form, of land or building or structure with two or more different but compatible uses, such as but not limited to: residential, office, industrial and technological, retail, commercial, public, entertainment, or recreation. True mixed use developments primarily consist of mixed use buildings as defined by this Glossary.

Staff also recommends revising Table 1(a), footnote 4, which restricts the density in Pine Island Center to 3 dwelling units per acre. This amendment will allow property to regain a density of up to 6 dwelling units per acre in the urban areas of Pine Island Center if Coastal Rural TDRs or Pine Island Urban Category TDRs are utilized.

4. ~~No land will be rezoned on Pine Island, excluding the Matlacha, Bokeelia, and St. James City areas currently classified as Future Urban Areas, to a zoning district which permits a density higher than 3 dwelling units per gross acre. Land currently zoned in a zoning district which permits a residential density in excess of 3 dwelling units per gross acre will be allowed a density higher than 3 du/acre provided that all other applicable regulations are met, and provided further that no density will be allowed above that which is permitted for the land use category in which the property is located, or which is permitted by the zoning which was in effect for said property as of November 25, 1986, whichever is lower. Within the Future Urban Areas of Pine Island Center, rezonings that will allow in excess of 3 dwelling units per gross acre must “acquire” the density above 3 dwelling units per gross acre utilizing TDRs that were created from Greater Pine Island Costal Rural or Greater Pine Island Urban Categories.~~

Staff is recommending the above mentioned changes to the footnote with the understanding that under the restrictions contained in Policy 14.2.2 and LDC Section 2-48, rezoning property to residential uses alone is not achievable. The November 17, 2004 staff white paper discussed a potential Pine Island compromise and recommended evaluating the creation of a concurrency exception area for a portion of Pine Island Center. Establishing a concurrency exception area would allow additional development appropriate for Pine Island Center, as contemplated by this proposed footnote language.

The Florida growth management statutes have specific requirements that must be met in order to establish a concurrency exception area, including projects that promote public transportation. Lee County has never established such an area. Staff recommends that the Board retain a consultant that has experience with the formation of concurrency exception areas to investigate the merits of increasing public transportation and allowing additional growth in Pine Island Center. The following policy implements this recommendation. The money earmarked for Community Planning activities in the Planning Division budget could be used to finance this and other community planning studies.

POLICY 14.2.5: Lee County will investigate the merits of creating a concurrency exception area for a portion of Pine Island Center. The concurrency exception area will promote the expansion of public transportation to and from the Greater Pine Island area.

CREATION OF URBAN INFILL AREAS:

Staff recommends establishing new Urban Infill Areas on the mainland that will be targeted for higher density mixed use developments. These areas should have an emphasis on urban form and design. Staff anticipates addressing this issue further in the TDR LDC amendment if the Board of County Commissioners is amenable to their creation.

B. CONCLUSIONS:

The proposed amendment does represent a compromise. The affect of the amendment should serve to limit the County's liability under the Bert Harris Act. The amendment does further the Pine Island Vision.

C. STAFF RECOMMENDATION:

Staff recommends that the Board of County Commissioners transmit the proposed plan amendment to the Florida Department of Community Affairs for their review.

PART III - LOCAL PLANNING AGENCY REVIEW AND RECOMMENDATION

DATE OF PUBLIC HEARING: May 23, 2005

A. LOCAL PLANNING AGENCY REVIEW

Planning staff provided a summary concerning the proposed amendment. Staff stated that the amendment proposes to add a new Objective, dealing with Agricultural Uses, and a new map, proposed Map 21, depicting existing farmland on Pine Island. The amendment also proposes establishing an additional County Transfer of Development Rights (TDR) program. In addition, the amendment also proposes to incorporate the concept of agricultural preservation or retention in lieu of preservation or restoration of habitat. Staff also informed the LPA that the amendment also proposes to restore the Outlying Suburban designation to the 157 acre "Bokeelia Property." Staff provided a brief summary of the text changes.

The Civic Association Planning consultant addressed the LPA with several concerns, such as the proposed density that could be achieved with the proposed agricultural preservation or retention option. The consultant expressed concern over the use of escape clauses in agricultural conservation easements. The consultant also stated that the proposed 10% flexibility in Policy 1.4.7 for Lakes, Buffers, or utilities is too much. The consultant also discussed restoration costs and submitted cost estimates from a consultant in that field (Kevin Irwin). The consultant provided that even if the 157 acre "Bokeelia Property" is not in the Coastal High Hazard but has the same exposure as the rest of Pine Island. The consultant recommended that the Rural land use designation be considered for this property.

Several owners of large tracts on Pine Island addressed the LPA. Many mentioned the consultant cost estimate as being unrealistic. Several stated their belief that the proposed amendment did not go far enough in addressing Bert Harris takings. One person spoke in favor of establishing a purchase of development rights program. One person stated that they perceived that nobody wants the input from the landowners. Several stated that they were not included in any discussions prior to the staff report being issued, and the lateness of the report. One questioned why the County was not planning on constructing an additional bridge to Pine Island. Several spoke to their desire for Lee County to repeal the density and clustering provisions of the Coastal Rural designation.

One member of the Civic Association addressed the LPA and stated that the farm easement and TDRs were good ideas. This member also stated he potentially had concerns for a transportation concurrency exception area for Pine Island center. This member also stated that making the change to the farm worker policy was fair and a clean-up item.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

- 1. RECOMMENDATION:** The LPA recommends that the Board of County Commissioners transmit the proposed amendment.
- 2. BASIS AND RECOMMENDED FINDINGS OF FACT:** As advanced by staff in the Staff Report.

C. VOTE:

NOEL ANDRESS	<u>AYE</u>
MATT BIXLER	<u>AYE</u>
DEREK BURR	<u>ABSENT</u>
RONALD INGE	<u>NAY</u>
CARLETON RYFFEL	<u>AYE</u>
FRED SCHILFFARTH	<u>ABSENT</u>
RAYMOND SCHUMANN	<u>ABSENT</u>

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: June 1, 2005

A. BOARD REVIEW:

Planning staff provided a brief overview of the proposed amendment. One member of the Board commented on liking the concept of TDRs but expressed concern in promoting further development on Pine Island by pursuing a transportation concurrency exception area for Pine Island Center. This member questioned providing increased mass transit services when further development is not encouraged. Staff responded that Pine Island Center was already a designated urban area and that the provision of mass transit was one of the criteria in establishing an exception or infill area under Florida Statutes. Staff provided that the private sector may be asked to participate in the costs of providing an increased level of service to the island. Another Board member questioned the flexibility factor for utilities contained in Policy 1.4.7.

A consultant to the Greater Pine Island Civic Association addressed the Board. This consultant stated that he liked much of the staff recommendation but thought the amendment went too far in certain areas. For example the 10% allowance for buffers, lakes, and utilities was too much. The proposed agricultural preservation in lieu of habitat preservation or restoration was also mentioned as too much. The consultant also recommended that the Rural category be considered for the 157 acre "Bokeelia Property." The consultant also supplied a memo from a local ecologist depicting estimated restoration costs.

A representative of the Pine Island Agriculture and Landowners Association addressed the Board. This representative stated that he thought the purpose of this amendment was to bring the people of Pine Island together and to reduce the County's exposure under the Bert Harris Act. The representative stated that the proposed amendment does not reach their objective to restore the density back to 1 dwelling unit per acre. The representative stated that the TDRs were a good idea, but didn't know if it would work, and he noted the promise to do it in 2 years. The representative also stated that the amendment reflected a missed opportunity to address the Policy 14.2.2 further density reduction issue.

Several members of the public addressed the Board with comments for and against the amendment. These comments ranged from the 157 acre property amendment was a mistake, to the County should build a new bridge to Pine Island.

Several owners of existing agricultural operations on Pine Island addressed the Board. Several speakers stated that the Update Amendment took value away from their agricultural lands. Several speakers stated their belief that the restoration costs depicted in the submitted memo are excessively low.

The County Attorney's Office commented that the word "may" should be substituted for the word "will" in the last bullet on page 6 of the staff report. The attorney also provided that the proposed amendment does not eliminate Bert Harris liability on Coastal Rural lands. The attorney also noted that the submitted memo on restoration costs were stated as being based on grazing land which is not typical of Pine Island agriculture. Planning staff noted that the proposed change to Policy 1.4.7 would allow 1 dwelling unit per 2 acres on 30% of the property while still allowing the agricultural uses and associated income on 70% of the property.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. **BOARD ACTION:** The Board voted to transmit the proposed amendment, as recommended by the staff and the local planning agency, to the Florida Department of Community Affairs for their review.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the finding of facts, noting the word change in the last bullet of page 6, as advanced by the staff report.

C. VOTE:

JOHN ALBION	<hr/> AYE <hr/>
TAMMY HALL	<hr/> AYE <hr/>
BOB JANES	<hr/> AYE <hr/>
RAY JUDAH	<hr/> AYE <hr/>
DOUG ST. CERNY	<hr/> AYE <hr/>

**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: August 19, 2005

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS

The Florida Department of Community Affairs Objections, Recommendations and Comments Report provides the following comments and recommendations:

Inadequate Guidelines: *The proposed Policy 14.6.3 states: "By 2007 Lee County will amend the Lee County Land Development Regulation to establish a Pine Island Transfer of Development Rights (TDR) program to supplement the existing wetland TDR program. The program will be open to properties depicted on Map 21 as well as other Pine Island lands deemed acceptable by the Board of County Commissioners."*

The intent of this policy is to promote the transfer of development rights from Pine Island in order to help protect agriculture and the rural character of the island. However, the proposed policy does not establish meaningful and predictable guidelines that would direct the implementation of the program and, as well, guide the formulation of the guidelines and standards to be included in the land development regulations. Although reference is made in the policy to the properties depicted on a Map 21, no map labeled "Map 21" was included. A series of maps are included with the amendment showing various situations on the island; however, no statement is included in the policy to show that the existing agricultural areas shown on those maps are targeted sending areas. In addition, the policy provides an open-ended discretion for other properties on the island "deemed acceptable by the Board of County Commissioners". This provision makes the determination of areas subject to the transfer program unpredictable. Furthermore, no guidelines for the rate of transfer are included. Lastly, the policy neither identifies the areas that would serve as the receiving lands, nor provide a general guide for their selection. Chapter 163.3177(6)(a), F.S.; Rule 9J-5.003(90), 9J-5.005(6), 9J-5.006(3)(c)1., & 7., FAC.

Recommendation: *Please, revise the policy to address all the issues raised in the above objection in order to provide sufficient guidance for the land development regulation and enable an effective and successful implementation of the program. The policy should clearly identify, on a map, the sending areas on the island based on appropriate and relevant data and analysis. Another alternative would be to include a sentence in the proposed Policy 14.6.3 indicating that no actual transfer will occur until more specific guidelines addressing the issues raised above are amended into the plan. Similarly, the receiving areas on the mainland should be clearly identified; alternatively, the county could establish a set of guidelines and criteria that shall be used for selecting the receiving areas. The receiving areas shall not be environmentally sensitive areas or located in the coastal high hazard areas.*

B. STAFF RESPONSE

Staff's original intent was to provide the guidelines within the Lee County Land Development Code (LDC) through an amendment to the Code after the plan amendment was adopted. Staff will address the DCA concerns with additional Lee Plan Policy language. The DCA indicated that proposed Map 21, which consists of 2 sheets, was not included with the amendment. Staff has verified that the Maps were

included in the transmittal package, and that they will be included in the adoption package, if they are adopted.

The DCA comments and recommendation centered around the creation of a TDR program for Pine Island. The comment singled out proposed Policy 14.6.3 by stating that the policy “does not establish meaningful and predictable guidelines that would direct the implementation of the program,” and does not guide “the formulation of the guidelines and standards to be included in the land development regulations.” DCA further states that “no statement is included in the policy to show that the existing agricultural areas shown on those maps are the targeted sending areas.” Staff proposes to address this comment by adding the following underlined language to the transmitted proposed policy:

POLICY 14.6.1: Lee County will maintain a map (Map 21) of all existing farmland on Pine Island. These mapped existing farmlands and Pine Island lands containing indigenous vegetation are the primary targeted sending areas for the creation of transfer of development rights (TDR) on Pine Island.

Staff does not want to preclude other transfers that make sense. Lands with significant or substantial indigenous vegetation should also be eligible to participate in the program and staff included this thought in the above mentioned language. Staff recommends that the amended proposed Policy 14.6.1, as depicted above, be adopted.

DCA comments also provide that Policy 14.6.3 “provides an open-ended discretion for other properties on the island” to participate in the TDR program if “deemed acceptable by the Board of County Commissioners.” DCA further states that “this provision makes the determination of areas subject to the transfer program unpredictable.” Staff respectfully disagrees. Staff sees this flexibility as sound planning given the islands access and hurricane evacuation issues. Staff today can not anticipate exactly which properties will seek to participate. Staff does not believe that there will be an overwhelming number of properties seeking to participate in the program, however, if it were to occur, this would be a positive outcome for an island with Pine Island issues. Reducing density on Pine Island through a TDR program represents sound planning utilizing a sound planning technique. The history of TDRs to date in Lee County is one of sparse use. A limited amount of properties have created transfer of development rights. Proposed Policy 14.6.3 is predictable in that the program is open to any land on Pine Island. Staff recommends that the revised proposed policy be adopted:

POLICY 14.6.3: By 2007 Lee County will amend the Lee County Land Development Code to establish a Pine Island Transfer of Development Rights (TDR) program to supplement the existing wetland TDR program. The program will be encouraged for properties depicted on Map 21 as well as other Pine Island lands as promoting reduced densities in the Coastal High Hazard Area.

The DCA comments also provide that “the policy neither identifies the areas that would serve as the receiving lands, nor provide a general guide for their selection.” Staff responds that mainland Future Urban lands designated by the comprehensive plan as Intensive Development, Central Urban, or Urban Community are appropriate receiving areas. These areas exist and have the ability to obtain the respective bonus densities through established methodologies. General appropriateness in these areas has already been determined. Any specific development proposal will have to seek approval through the appropriate process in which site specific circumstances such as compatibility will be addressed. To address DCA’s concerns staff recommends adding the following policies:

POLICY 14.6.4: The property owners of lands designated Intensive Development, Central Urban, or Urban Community are eligible to receive Pine Island TDRs. The property owners of lands designated Suburban and Outlying Suburban are eligible to receive Pine Island TDRs consistent with the Lee Plan’s definition of Density and if approved through the planned development rezoning process. The land development code will maintain several approval processes such as by right, administrative and planned development approval. Developments receiving TDR units will be evaluated for the following criteria: compact site design, innovative open space design, well designed pedestrian/bicycle connections to commercial and employment areas, locations on or a walkable distance to mass transit service, and mixed use buildings. Utilization of in-fill and brownfield sites are encouraged. Land Development Code incentives will be given to projects that incorporate concepts from traditional neighborhood design, transit oriented development, and new urbanism principles.

POLICY 14.6.5: Participation in the Pine Island TDR by right and administrative approval processes for receiving sites requires that the subject property be already conventionally zoned in a zoning district that would permit the proposed development consistent with allowable densities and with the zoning district’s lot size, setback, open space and height requirements. The by right process will be limited to adding one additional dwelling unit to a receiving parcel that is one acre or less in size. If the receiving parcel is larger than one acre, TDR units may be used to add one dwelling unit per acre by right. The resulting density may not exceed the maximum total density range for the land use category of the subject site.

POLICY 14.6.6: Adding Pine Island TDR units in excess of one dwelling unit per acre in conventional zoning districts requires administrative approval. The Lee County Department of Community Development director may administratively approve the use of TDR units to increase the density of a proposed development provided that the proposed development is: in compliance with the Lee Plan; zoned for the type and number of dwelling units proposed to be constructed; designed so that the resulting development does not have substantially increased intensities of land uses along its perimeter, unless adjacent to existing or approved development of a similar intensity; in a location where the additional traffic will not be required to travel through areas with significantly lower densities before reaching the nearest collector or arterial road; in a location outside of the Category 1 Storm Surge Zone for a land-falling storm as defined by the October 1991 Hurricane Storm Tide Atlas for Lee County prepared by the Southwest Florida Regional Planning Council; not in a location where existing and committed public facilities are so overwhelmed that a density increase would be contrary to the overall public interest, and; will not decrease required open space, buffering, landscaping and preservation areas or cause adverse impacts on surrounding land uses.

POLICY 14.6.7: The Land Development Code will be amended to specify that Pine Island TDRs may be utilized through the Planned Development approval and amendment rezoning processes for land owners seeking to add additional dwelling units utilizing TDR units. The Code will specify that the application for the rezoning and the request to utilize TDR units may be submitted at the same time for concurrent review.

The DCA comments also state that “no guidelines for the rate of transfer are included” with the amendment. To address this issue staff proposes adding the following policy:

POLICY 14.6.8: The generation rate for Pine Island TDRs will be limited by the Land Development Code to two Transfer of Development Rights per acre for the Coastal Rural land use category, to six Transfer of Development Rights per acre for the Future Urban land use categories, and one Transfer of Development Right per five acres of wetland. The Land Development Code will be amended to establish a creation of development rights process as well as a receiving process.

C. STAFF ADOPTION PUBLIC HEARING RECOMMENDATION:

RECOMMENDATION: Planning staff recommends that the Board of County Commissioners adopt the proposed Lee Plan amendment:

Recommended Map Change:

Amend the Future Land Use Map series for specified parcels of land (total of approximately 157 acres) located in Section 31, Township 43 South, Range 22 East to change the Future Land Use classification shown on Map 1 from “Coastal Rural” to “Outlying Suburban.” The property is generally located in the Bokeelia area south of Barrancas Avenue and north of Pinehurst Road.

Recommended Text Changes:

VISION STATEMENT:

Pine Island - This community includes Greater Pine Island as described under Goal 14 along with surrounding smaller islands and some unincorporated enclaves near Cape Coral. Its future, as seen by Pine Islanders, will be a matter of maintaining an equilibrium between modest growth, ~~on the one hand~~ and a fragile ecology, ~~on the other~~ and a viable and productive agricultural community. Pine Island will continue to be a haven between urban sprawl approaching from the mainland and the wealth of the outer islands; a quiet place of family businesses, school children, farmers, and retirees enjoying the bounties of nature; a place devoid of high-rises, strip malls, and gated communities. Traffic constraints caused by the narrow road link to the mainland will limit future development, allowing the islands to evacuate from storms and protecting natural lands from unsustainable development. Wildlife and native vegetation will be protected; loss of wildlife habitat will be reversed; sidewalks and bike paths will connect neighborhoods for young and old alike. Architectural standards for commercial buildings will encourage “Old Florida” styles, and historic buildings will be treasured. Pine Island will continue to be a place where people, ~~and~~ nature and agriculture exist in harmony, a place not very different from what it is today, an island as state-of-mind as much as a physical entity, its best features preserved and enhanced. Pine Islanders are historically vigilant about protecting their community and will work to ensure that their plans are carried out.

FUTURE LAND USE ELEMENT:

POLICY 1.4.7: The Coastal Rural areas will remain rural except for portions of properties where residential lots are permitted in exchange for permanent preservation or restoration of native upland habitats or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland, on the remainder of the property. The standard maximum density is one dwelling unit per ten acres (1DU/10 acres). Maximum densities may increase as higher

percentages of native habitat are permanently preserved or restored on the uplands portions of the site, or a commitment, in the form of a perpetual easement, to preserve agricultural activity on existing farmland. in accordance with the chart below. Permitted land uses include agriculture, fill-dirt extraction, conservation uses, and residential uses up to the following densities:

<u>Percentage of the on site uplands that are preserved or restored native habitats or continued in agricultural use on existing farmland</u>	<u>Maximum density if undeveloped land will be permanently preserved or restored as native habitats</u>	<u>Maximum density if undeveloped land will be continued in agricultural use on existing farmland</u>
0%	1 DU/ 10 acres	<u>1 DU/ 10 acres</u>
5%	1 DU/ 9 acres	
10%	1 DU/ 8 acres	<u>1 DU/ 9 acres</u>
15%	1 DU/ 7 acres	
20%	1 DU/ 6 acres	<u>1 DU/ 8 acres</u>
30%	1 DU/ 5 acres	<u>1 DU/ 7 acres</u>
40%	1 DU/ 4 acres	<u>1 DU/ 6 acres</u>
50%	1 DU/ 3 acres	<u>1 DU/ 5 acres</u>
60%	1 DU/ 2 acres	<u>1 DU/ 3 acres</u>
70%	1 /DU/ 1 acre	<u>1 DU/ 2 acres</u>

Existing farmland is depicted on Map 21. Areas for buffers, lakes, and utilities may consist of up to 10% of the upland preserve areas.

GOAL 14: GREATER PINE ISLAND. To manage future growth on and around Greater Pine Island so as to maintain the island’s unique natural resources, and character and its viable and productive agricultural community and to insure that island residents and visitors have a reasonable opportunity to evacuate when a hurricane strike is imminent. For the purposes of this plan, the boundaries of Greater Pine Island are indicated on the Future Land Use Map.

POLICY 14.2.5: Lee County will investigate the merits of creating a concurrency exception area for a portion of Pine Island Center. The concurrency exception area will promote the expansion of public transportation to and from the Greater Pine Island area.

OBJECTIVE 14.6: Agricultural Uses. To promote and preserve the rural character of Pine Island, Lee County will strive to foster a viable and productive agricultural community on the island. Lee County will incorporate several land use “tools” such as purchase and transfer of development rights programs into the Lee County Land Development Code to preserve agricultural uses on Pine Island.

POLICY 14.6.1: Lee County will maintain a map (Map 21) of all existing farmland on Pine Island. These mapped existing farmlands and Pine Island lands containing indigenous vegetation

are the primary targeted sending areas for the creation of transfer of development rights (TDR) on Pine Island.

POLICY 14.6.2: Lee County, by 2009, will evaluate creating a Purchase of Development Rights Program with the objective of preserving Pine Island agricultural uses.

POLICY 14.6.3: By 2007 Lee County will amend the Lee County Land Development Code to establish a Pine Island Transfer of Development Rights (TDR) program to supplement the existing wetland TDR program. The program will be encouraged for properties depicted on Map 21 as well as other Pine Island lands as promoting reduced densities in the Coastal High Hazard Area.

POLICY 14.6.4: The property owners of lands designated Intensive Development, Central Urban, or Urban Community are eligible to receive Pine Island TDRs. The property owners of lands designated Suburban and Outlying Suburban are eligible to receive Pine Island TDRs consistent with the Lee Plan's definition of Density and if approved through the planned development rezoning process. The land development code will maintain several approval processes such as by right, administrative and planned development approval. Developments receiving TDR units will be evaluated for the following criteria: compact site design, innovative open space design, well designed pedestrian/bicycle connections to commercial and employment areas, locations on or a walkable distance to mass transit service, and mixed use buildings. Utilization of in-fill and brownfield sites are encouraged. Land Development Code incentives will be given to projects that incorporate concepts from traditional neighborhood design, transit oriented development, and new urbanism principles.

POLICY 14.6.5: Participation in the Pine Island TDR by right and administrative approval processes for receiving sites requires that the subject property be already conventionally zoned in a zoning district that would permit the proposed development consistent with allowable densities and with the zoning district's lot size, setback, open space and height requirements. The by right process will be limited to adding one additional dwelling unit to a receiving parcel that is one acre or less in size. If the receiving parcel is larger than one acre, TDR units may be used to add one dwelling unit per acre by right. The resulting density may not exceed the maximum total density range for the land use category of the subject site.

POLICY 14.6.6: Adding Pine Island TDR units in excess of one dwelling unit per acre in conventional zoning districts requires administrative approval. The Lee County Department of Community Development director may administratively approve the use of TDR units to increase the density of a proposed development provided that the proposed development is: in compliance with the Lee Plan; zoned for the type and number of dwelling units proposed to be constructed; designed so that the resulting development does not have substantially increased intensities of land uses along its perimeter, unless adjacent to existing or approved development of a similar intensity; in a location where the additional traffic will not be required to travel through areas with significantly lower densities before reaching the nearest collector or arterial road; in a location outside of the Category 1 Storm Surge Zone for a land-falling storm as defined by the October 1991 Hurricane Storm Tide Atlas for Lee County prepared by the Southwest Florida Regional Planning Council; not in a location where existing and committed public facilities are so overwhelmed that a density increase would be contrary to the overall public interest, and; will not

decrease required open space, buffering, landscaping and preservation areas or cause adverse impacts on surrounding land uses.

POLICY 14.6.7: The Land Development Code will be amended to specify that Pine Island TDRs may be utilized through the Planned Development approval and amendment rezoning processes for land owners seeking to add additional dwelling units utilizing TDR units. The Code will specify that the application for the rezoning and the request to utilize TDR units may be submitted at the same time for concurrent review.

POLICY 14.6.8: The generation rate for Pine Island TDRs will be limited by the Land Development Code to two Transfer of Development Rights per acre for the Coastal Rural land use category, to six Transfer of Development Rights per acre for the Future Urban land use categories, and one Transfer of Development Right per five acres of wetland. The Land Development Code will be amended to establish a creation of development rights process as well as a receiving process.

HOUSING ELEMENT:

POLICY 100.2.3: Housing for farm workers, as defined by ss 420.503 Florida Statutes, may be permitted in the Rural, Coastal Rural, Open Lands, and Density Reduction/ Groundwater Resource land use categories without respect to the density limitations that apply to conventional residential districts. The density of such housing is limited to 50 occupants per acre of actual housing area and will be reviewed on a case-by-case basis during the planned development or Special Exception zoning process. The applicant must demonstrate that impacts of the farm worker housing will be mitigated.

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. Within the Caloosahatchee Shores community in the areas identified by Policy 21.4.2 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.

MIXED USE BUILDING - Mixed Use Building means a building that contains at least two different land uses (i.e. commercial and residential, R & D and residential, office and residential, commercial and civic use open to the public) that are related.

MIXED USE - The development, in a compact urban form, of land or building or structure with two or more different but compatible uses, such as but not limited to: residential, office, industrial and technological, retail, commercial, public, entertainment, or recreation. True mixed use developments primarily consist of mixed use buildings as defined by this Glossary.

LEE PLAN TABLE 1(A), FOOTNOTE 4:

4. ~~No land will be rezoned on Pine Island, excluding the Matlacha, Bokeelia, and St. James City areas currently classified as Future Urban Areas, to a zoning district which permits a density higher than 3 dwelling units per gross acre. Land currently zoned in a zoning district which permits a residential density in excess of 3 dwelling units per gross acre will be allowed a density higher than 3 du/acre provided that all other applicable regulations are met, and provided further that no density will be allowed above that which is permitted for the land use category in which the property is located, or which is permitted by the zoning which was in effect for said property as of November 25, 1986, whichever is lower. Within the Future Urban Areas of Pine Island Center, rezonings that will allow in excess of 3 dwelling units per gross acre must “acquire” the density above 3 dwelling units per gross acre utilizing TDRs that were created from Greater Pine Island Costal Rural or Greater Pine Island Urban Categories.~~

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

DATE OF ADOPTION HEARING: October 12, 2005

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

JOHN ALBION

TAMMY HALL

BOB JANES

RAY JUDAH

DOUG ST. CERNY
