

**MANAGEMENT & PLANNING COMMITTEE
AGENDA REQUEST FORM
COMMISSION DISTRICT #CW**

INITIATED BY: **Mary Gibbs**
Director, Community Development

REQUESTED BY County Commission

TITLE OF ITEM FOR THE AGENDA
Pine Island Concurrency Issue

1. DESCRIPTION AND OBJECTIVE OF THE ISSUE

At the BOCC meeting of 7/27/04, the Board requested this item be scheduled at the August 2nd M & P meeting. The issue relates to concurrency for Greater Pine Island. See attached background sheet as well as the attached memo from the County Attorney's office and the memo from the Department of Transportation.

2. PROPOSED POLICY, PROCEDURE OR PLAN OF ACTION

Greater Pine Island has a separate concurrency management requirement. The main issue is when that requirement is to be enforced: immediately when the DOT Traffic Count Report is completed, or when the County's Concurrency Management report is adopted by the Board. See the attached legal memorandum from the County Attorney's Office for further information. Three options are provided below to address the issue.

3. OPTIONS (List Advantages/Disadvantages of Each Option Listed)

1. Update the 2004 Concurrency Management report in November. (Status quo option)
2. Update the Concurrency Management report as soon as possible.
3. Update the transportation section only of the Concurrency Management report as soon as possible.

4. FINANCIAL IMPACTS/FUNDING SOURCE

Depends on option chosen.

5. STAFF RECOMMENDATIONS, AND JUSTIFICATION FOR RECOMMENDATIONS

Option 2.

6. MANDATED? Y N BY WHAT AUTHORITY?

DEPARTMENT DIRECTOR SIGNATURE	COUNTY ADMINISTRATOR SIGNATURE	MEETING DATE	TIME REQUIRED
		8/2/04	15 Mins.

GREATER PINE ISLAND CONCURRENCY ISSUE

The County's Comprehensive Plan contains a special concurrency requirement for Greater Pine Island when certain traffic thresholds on Pine Island Road are reached. These are contained in Policies 14.2.1 and 14.2.2. The policies are reproduced below:

***POLICY 14.2.1:** The minimum acceptable level-of-service standard for Pine Island Road between Burnt Store Road and Stringfellow Boulevard is hereby established as LOS "D" on an annual average peak hour basis and LOS "E" on a peak season, peak hour basis. This standard will be measured at the county's permanent count station on Little Pine Island and using the methodology described in the 1985 Highway Capacity Manual, Special Report 209.*

***POLICY 14.2.2:** In order to recognize and give priority to the property rights previously granted by Lee County for about 6,800 additional dwelling units, the county will consider for adoption development regulations which address growth on Pine Island and which implement measures to gradually limit future development approvals. The effect of these regulations would be to appropriately reduce certain types of approvals at established thresholds prior to the adopted level-of-service standard being reached, as follows:*

- *When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 810 peak hour, annual average two-way trips, the regulations will provide restrictions on further rezonings which would increase traffic on Pine Island Road.*
- *When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 910 peak hour, annual average two-way trips, the regulations will provide restrictions on the further issuance of residential development orders (pursuant to the Development Standards Ordinance), or other measures to maintain the adopted level of service, until improvements can be made in accordance with this plan. (Amended by Ordinance No. 00-22)*

These policies are implemented in the Land Development Code (LDC) under Section 2-48 which reads:

Sec. 2-48. Greater Pine Island concurrency.

Concurrency compliance for property located in Greater Pine Island, as identified on the future land use map, will be determined in accordance with the level of service and restrictions set forth in Lee Plan policies 14.2.1 and 14.2.2 to the extent the policies provide additional restrictions that supplement other provisions of this article. These policies require the following:

- (1) *The minimum acceptable level of service standard for Pine Island Road between Burnt Store Road and Stringfellow Boulevard is level of service D on an annual average peak-hour basis and level of service E on a peak-season peak-hour basis using methodologies from the 1985 Highway Capacity Manual Special Report 209. This standard will be measured at the county's permanent count station on Little Pine Island.*
- (2) *When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 810 peak-hour annual average two-way trips, rezonings that increase traffic on Pine Island Road may not be granted. When traffic on Pine Island*

Road between Burnt Store Road and Stringfellow Boulevard reaches 910 peak-hour annual average two-way trips, residential development orders (pursuant to chapter 10) will not be granted unless measures to maintain the adopted level of service can be included as a condition of the development order.

The Lee Plan, in Policy 22.3.2, requires the County “to annually identify roadway conditions and available capacity as part of its concurrency management report.” LDC Section 2-50 further implements this provision, requiring the County to “publish and update, at least once each year” a Concurrency Management report. The LDC goes on to state that the “inventory must be reviewed and approved by the Board of County Commissioners.”

The 2003 Concurrency Management report utilized the 2002 Traffic Count Report to determine the peak hour, annual average two-way trips on Pine Island Road. This concurrency report indicated that the peak hour, annual average two-way trips were at 896 trips.

The County Department of Transportation issued its 2003 Traffic Count Report in February of 2003. This report indicates average daily traffic of 11,500 trips on Pine Island Road (count station 3, west of Matlacha Pass). This daily count is then converted to peak hour, annual average two-way trips. Please refer to the attached memorandum from Dave Loveland regarding this conversion. The 2004 Concurrency Management report will utilize this revised trip count in its transportation section. Typically, updates to the Concurrency Management report are presented to the Board for their adoption in November.

Two issues have recently arisen regarding these policies. The first issue is when are the provisions of Policy 14.2.2 to be enforced, when the traffic counts are completed or when the Concurrency Management report is formally adopted by the Board. In accordance with the LDC the Concurrency Management report is considered enforceable when it is annually adopted by the Board.

The second issue concerns the effect of traffic reaching or exceeding the 910 trip count threshold. As stated in Policy 14.2.2 the “regulations will provide restrictions on the further issuance of residential development orders...or other measures to maintain the adopted level of service.” The adopted level of service is established by Policy 14.2.1. That policy in part provides that the minimum level of service is “established as LOS "D" on an annual average peak hour basis and LOS "E" on a peak season, peak hour basis.” LDC Section 2-48(2) provides that “residential development orders...will not be granted unless measures to maintain the adopted level of service can be included as a condition of the development order.” In other words, the 910 threshold is a trigger that requires residential development order applications to be reviewed to assure that the project’s impacts don’t exceed the two tiered level of service standards identified by Policy 14.2.1. Residential development order applications, received after the 910 threshold is exceeded in an adopted Concurrency management report, will be required to analyze the project’s impacts to the level-of-service for Pine Island Road. Development orders that are issued will be conditioned to assure that the two tiered level of service standards are not exceeded.

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: July 30, 2004

To: Board of County Commissioners

FROM:



Timothy Jones
Chief Assistant County Attorney

RE: Pine Island Concurrency

The purpose of this memorandum is to provide legal analysis to assist the Board in its discussion of this subject at the Management and Planning Committee Meeting on Monday, August 2, 2004. We expect the following legal issues to be central to the discussion of Pine Island Concurrency:

1. *Are the provisions of Policy 14.2.2. of the Lee Plan self implementing?*

The answer to this question is "no." The language of the Lee Plan policy clearly contemplates, and requires, that regulations will be adopted to implement the policy itself. These regulations have, in fact, been adopted and are codified in Section 2-48 of the Land Development Code (LDC).

2. *Does the 910 rule, as stated in the Lee Plan and as implemented in the LDC, prohibit the approval of any new development order for residential development on Pine Island?*

The answer to this question is "no." The Lee Plan and the LDC clearly contemplate that the 910 rule is a threshold or "warning light" that causes the County to use heightened scrutiny of development order applications for new development on Pine Island. The 910 number itself represents 90 percent of the adopted level of service capacity for trips on Pine Island Road at the time the rule was adopted. Therefore, additional development may be approved that results in more than 910 trips on Pine Island Road.

3. *May the County use new information that is not part of the 2003 approved concurrency report to enforce concurrency limitations before the Board reviews and approves the 2004 annual concurrency report?*

The answer to this question is "no." The Lee Plan, through Objective 22.3 and the policies thereunder, as well as the LDC, through the provisions of Chapter 2, provide for the adoption of a concurrency report. This report is an inventory of available capacity of public facilities

Re: Pine Island Concurrency

and it must be reviewed and approved by the Board of County Commissioners at least annually. Only after this approval is the County staff authorized to apply the findings of the report in the concurrency review of applications for development permits. If the County attempts to use new information before it is incorporated in a properly approved annual concurrency report the County will be acting without proper legal authority and will be subject to potential liability.

4. *Can the County change the regulations to provide that the 910 threshold number of trips is instead a maximum allowable number of trips, thus stopping all development above that number?*

The answer to this question is "yes." However, if the County does make this change, it will create significant liability for the County under the Bert Harris Act.

5. *Does the designation of a small segment of Pine Island Road as "constrained" affect or change the requirement that the concurrency report be approved before new information is used to enforce concurrency limitations on Pine Island?*

The answer to this question is "no." The required concurrency report also determines the available capacity of constrained road segments. New information regarding capacity on constrained road segments may not properly be used to enforce concurrency limitations until the report is approved by the Board.

We believe that the above analysis addresses the central legal issues in this discussion. Please do not hesitate to contact me if you have any questions or if you desire additional legal analysis.

TJ/amp

Distribution: Robert P. Janes, Commissioner, District #1
Douglas St. Cerny, Commissioner, District #2
Ray Judah, Commissioner, District #3
Andrew Coy, Commissioner, District #4
John Albion, Chairman, Commissioner, District #5

cc: Bob Gray, Deputy County Attorney
Mary Gibbs, Director, Department of Community Development
Donna Marie Collins, Assistant County Attorney

Memo

To: Mary Gibbs, Community Development Director

From: David Loveland, Manager, Transportation Planning

Date: July 30, 2004

Subject: **CONVERSION OF 2003 TRAFFIC COUNTY ON PINE ISLAND ROAD TO ANNUAL AVERAGE PEAK HOUR TWO-WAY CONDITION**

I am writing to clarify the unofficial estimate of traffic on Pine Island Road, based on the conversion of the annual average daily traffic (AADT) count from Lee County DOT's 2003 Traffic Count report. As you know, the comprehensive plan establishes some thresholds regarding how rezonings and development orders on Pine Island should be reviewed, which are 810 and 910 *annual average*, peak hour, *two-way* trips. That is a unique and unusual measure of conditions, since we use *peak season*, peak hour, *peak direction* trips for the statement of conditions on all other County roads.

Typically my staff provides the conversion to annual average, peak hour two-way trips for the western end of Pine Island Road, and to peak season, peak hour, peak direction trips for all other roads to your staff sometime after the Traffic Count is published, and your staff uses those numbers, with the addition of traffic from projects with approved building permits, to estimate existing conditions for the annual concurrency management report. Based on the 2003 Traffic Count report as published in February, 2004, the AADT for Pine Island Road at Matlacha Pass (Permanent Count Station #3) is 11,500 trips (this is a rounded number). The AADT represents an annual average condition in both directions for a typical day, with that average calculated from the counts for every day of the year at the permanent count station. Since the AADT already represents annual average, two way conditions, it simply has to be converted from a daily condition to a peak hour condition to get to the measure used for the 810/910 standard. Since we use the p.m. peak hour for all other road measurement standards (instead of the a.m. peak hour), my staff simply applied the p.m. peak hour factor published in report for Permanent Count Station #3 of 8% (also a rounded number). This resulted in an estimate of 920 annual average, peak hour, two-way trips, over the 910 threshold.

However, after further review and internal discussion, it was noted that the 8% peak-to-daily ratio was as a percent of *weekday* traffic, exclusive of weekend conditions. As noted above, the AADT comes from traffic counted 7 days a week, 365 days a year. To be more technically appropriate, the peak-to-daily ratio should be based on a full-week condition. DOT's Traffic Section reviewed the permanent count station information and pulled the full-week p.m. peak hour information, resulting in a 7.8% peak-to-daily ratio instead of 8%. They also provided us the non-rounded AADT number of 11,543. Applying the more appropriate peak-to-daily ratio to

the non-rounded AADT number, we get an estimate of annual average, peak hour, two-way trips on the western end of Pine Island Road of 900, under the 910 threshold. Nevertheless, considering the amount of variability in measuring traffic, the threshold has essentially been reached in all practicality. It may also be more clearly reached in the concurrency report, with traffic added from approved building permits.

A table that shows the annual average, peak hour, two-way calculation is attached. Because Policy 14.2.2 of the Lee Plan refers to maintaining the adopted level of service standard once the 910 threshold is officially reached, and Policy 14.2.1 states that the adopted level of service standard is “D” on an annual average, peak hour basis and “E” on a peak season, peak hour basis, as measured using the 1985 Highway Capacity Manual method, the table also includes conversions to peak season, peak hour conditions. We’ve also included two-way and peak direction estimates for both conditions, since Policy 14.2.1 doesn’t specify which of those is part of the standard. Included in the table is a volume-to-capacity (V/C) calculation as well; a V/C ratio exceeding 1.00 would indicate that the standard is being exceeded.

We would note that the reference to the 1985 Highway Capacity Manual method is outdated, since that manual is no longer published, and the FDOT software we use to calculate capacities has been updated to reflect the newer 2000 Highway Capacity Manual methods. Therefore we have also included a table showing the same conversions and V/C ratio calculations but using the newer capacity calculations. It would be our recommendation that Policy 14.2.1 be updated to instead refer to the 2000 Highway Capacity Manual and the 2002 Florida Department of Transportation Quality Level of Service Handbook.

Please let me know if you need additional information.

cc: Tim Jones, Chief Assistant County Attorney
Donna Marie Collins, Assistant County Attorney
Pete Eckenrode, Development Services Director
Paul O’Connor, Planning Director
Mike Carroll, Concurrency Manager
Scott Gilbertson, DOT Director
Steve Jansen, DOT Traffic Section

**CONVERSION OF 2003 AADT FOR PERMANENT COUNT STATION #3
(PINE ISLAND ROAD @ MATALCHA PASS)**

		CONVERTED COUNT	CAPACTY BASED ON 1985 HCM METHODOLOGY CAPACITY @ LOS		V/C RATIO
Annual Average Peak Hour Two-Way (basis for 810/910 rule)					
2003 AADT x Full-Week Peak Hour Factor =	11543 x 7.8% =	900	1130	D	0.80
Annual Average Peak Hour Peak Direction					
2003 AADT x Full-Week Peak Hour Factor x Annualized Directional Split =	11543 x 7.8% x 55.5% =	500	680	D	0.73
Peak Season Peak Hour Two-Way					
2003 AADT x 100th Highest Hour (K-100) Factor =	11543 x 9.5% =	1097	2140	E	0.51
Peak Season Peak Hour Peak Direction					
2003 AADT x 100th Highest Hour (K-100) Factor x Seasonal Directional Split =	11543 x 9.5% x 56% =	614	1290	E	0.48

		CONVERTED COUNT	CAPACTY BASED ON 2000 HCM METHODOLOGY CAPACITY @ LOS		V/C RATIO
Annual Average Peak Hour Two-Way (basis for 810/910 rule)					
2003 AADT x Full-Week Peak Hour Factor =	11543 x 7.8% =	900	1300	D	0.69
Annual Average Peak Hour Peak Direction					
2003 AADT x Full-Week Peak Hour Factor x Annualized Directional Split =	11543 x 7.8% x 55.5% =	500	750	D	0.67
Peak Season Peak Hour Two-Way					
2003 AADT x 100th Highest Hour (K-100) Factor =	11543 x 9.5% =	1097	1620	E	0.68
Peak Season Peak Hour Peak Direction					
2003 AADT x 100th Highest Hour (K-100) Factor x Seasonal Directional Split =	11543 x 9.5% x 56% =	614	940	E	0.65