

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY
AFFAIRS,

Petitioners,

and

FLORIDA WILDLIFE FEDERATION
and COLLIER COUNTY AUDUBON
SOCIETY

Petitioners-in-Intervention

v.

DOAH Case No. 07-2317GM

COLLIER COUNTY

Respondent

and

BUCKLEY ENTERPRISES, HIDEOUT
GOLF CLUB, LTD, JOHN L. COWAN
and JANE ANN COWAN, TRUSTEES,

Respondents-in-Intervention.

_____ /

SECOND PARTIAL STIPULATED SETTLEMENT AGREEMENT

THIS STIPULATED SETTLEMENT AGREEMENT is entered into by and between the State of Florida, Department of Community Affairs; Petitioners-in-Intervention Florida Wildlife Federation and Collier County Audubon Society; Respondent Collier County; Respondents-in-Intervention Buckley Enterprises, Hideout Golf Club, LTD, and John L. Cowan and Jane Ann Cowan, Trustees, as a complete and final settlement of all claims related to Ordinance No. 07-18 raised in the above-styled proceeding.

OFFICE OF THE
COUNTY ATTORNEY
2008 OCT 22 PM 10:03

RECITALS

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

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

WHEREAS, the Local Government adopted Comprehensive Plan Amendment 07-1ER (Plan Amendment) by Ordinance Nos. 07-18 on January 25, 2007; and

WHEREAS, the Plan Amendment proposes changes to the Future Land Use Map and the Future Land Use Element as it pertains to Section 24; and

WHEREAS, the Department issued its Statement of Intent on May 1, 2007, and published its Notice of Intent regarding the Amendment on May 2, 2007; and

WHEREAS, as set forth in the Statement of Intent, the Department contends that the Amendment is not “in compliance” for failure to protect certain natural resources; and

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

WHEREAS, the Florida Wildlife Federation and the Collier County Audubon Society were granted petitioners-in-intervention status on June 4, 2007; and

WHEREAS, Buckley Enterprises, Hideout Golf Club, Ltd, and John L. Cowan and Jane Ann Cowan, Trustees were granted respondents-in-intervention status on July 24, 2007; and

WHEREAS, the Local Government and the respondents-in-intervention dispute the allegations of the Statement of Intent regarding the Amendment; and

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

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

GENERAL PROVISIONS

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

- a. Act: The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes.
- b. Agreement: This stipulated settlement agreement.
- c. Comprehensive Plan Amendment or Plan Amendment: Comprehensive plan amendment 07-1ER adopted by the Local Government on January 25, 2007, as Ordinance No. 07-18.
- d. DOAH: The Florida Division of Administrative Hearings.
- e. In compliance or into compliance: The meaning set forth in Section 163.3184(1)(b), Florida Statutes.
- f. Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the plan amendment not in compliance.
- g. Petition: The petition for administrative hearing and relief filed by the Department in this case.
- h. Remedial Action: A remedial plan amendment, submission of support document or other action described in the statement of intent or this agreement as an action which must be completed to bring the plan amendment into compliance.
- i. Remedial Plan Amendment: An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, and which the local government must adopt to complete all remedial actions. Remedial plan amendments adopted pursuant to this Agreement must, in the opinion of the Department, be consistent with

and substantially similar in concept and content to the ones identified in this Agreement or be otherwise acceptable to the Department.

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

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

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

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

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

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

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

7 Adoption or Approval of Remedial Plan Amendments. Within 60 days after execution of this Agreement by the parties, the Local Government shall consider for adoption all Remedial Actions or Plan Amendments and amendments to the Support Documents. This may be done at a single adoption hearing. Within 10 working days after adoption of the Remedial Plan Amendment, the Local Government shall transmit 3 copies of the amendment to the Department as provided in Rule 9J-11.0131(3), Florida Administrative Code. The Local Government also shall submit one copy to the regional planning agency and to any other unit of local or state government that has filed a written request with the governing body for a copy of the Remedial Plan Amendment and a copy to any party granted intervenor status in this proceeding. The Remedial Plan Amendment shall be transmitted to the Department along with a letter which describes the remedial action adopted for each part of the plan amended, including references to specific portions and pages.

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

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

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

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

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

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

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

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

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

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

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

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

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

19. Construction of Agreement. All parties to this Agreement are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Agreement, the parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.

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

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


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

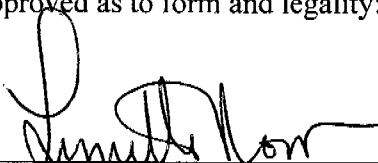
23. Captions. The captions inserted in this Agreement are for the purpose of convenience only and shall not be utilized to construe or interpret any provision of this Agreement.

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

DEPARTMENT OF COMMUNITY AFFAIRS

Approved as to form and legality:

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


Lynette Norr
Assistant General Counsel

10/18/10
Date

10-18-10
Date

COLLIER COUNTY

ATTEST:
DWIGHT E. BROCK, Clerk

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

by: [Signature]
Attest as to Chairman's
signature
10-7-2010
Date

[Signature]
FRED W. COYLE, CHAIRMAN
9/28/10
Date

Approved as to form and legality:

[Signature]
Steven T. Williams
Assistant County Attorney
9/29/10
Date

FLORIDA WILDLIFE FEDERATION

Approved as to form and legality:

By: *Nancy Anne Payton*
Nancy Anne Payton

Thomas W Reese
Thomas Reese, Esquire

09/20/2010
Date

9/23/10
Date

COLLIER COUNTY AUDUBON SOCIETY

Approved as to form and legality:

By: *Bradley Cornell*
Bradley Cornell

Thomas W Reese
Thomas Reese, Esquire

9/21/10
Date

9/23/10
Date

BUCKLEY ENTERPRISES

Approved as to form and legality:

By: *Tom Buckley*

Richard Yovanovich
Richard Yovanovich, Esquire

9-30-10
Date

10/1/10
Date

HIDEOUT GOLF CLUB, LTD

Approved as to form and legality:

By: *Richard Yovanovich*

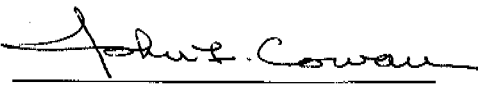
Richard Yovanovich
Richard Yovanovich, Esquire

10/1/10
Date

10/1/10
Date

JOHN L. COWAN and JANE ANN COWAN, TRUSTEES

Approved as to form and legality:

By: 

John L. Cowan



Michael A. Durant, Esquire

10/7/10
Date

10/8/10
Date

EXHIBIT A**STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS**

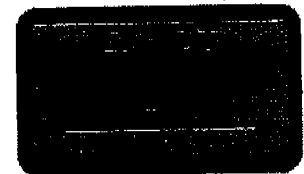
IN RE: COLLIER COUNTY COMPREHENSIVE PLAN AMENDMENT 07-1ER AMENDING FUTURE LAND USE ELEMENT MAP AND TEXT, THE CAPITAL IMPROVEMENTS ELEMENT.	Docket No. 07-ER-NOI-1101-(A)-(N)
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**STATEMENT OF INTENT TO FIND
COMPREHENSIVE PLAN AMENDMENTS
NOT IN COMPLIANCE**

The Florida Department of Community Affairs (Department), pursuant to Rule 9J-11.012(6), *Florida Administrative Code*, hereby issues this Statement of Intent to find the Collier County Comprehensive Plan Future Land Use Map series relating to Section 24 in North Belle Meade and the associated text amendments to the Future Land Use Element adopted by Ordinance Number 07-18, on January 25, 2007 not "in compliance", and also finds the Capital Improvements Element, adopted by Ordinance Number 07-07, on January 25, 2007, not "in compliance" based upon the Objections, Recommendations and Comments Report issued by the Department on July 28, 2006, which is hereby incorporated by reference. The Department finds that the Amendments are not "in compliance" as defined in Section 163.3184(1)(b), *Florida Statutes*, because they are not consistent with Chapter 163, Part II, *Florida Statutes*, the State Comprehensive Plan (Chapter 187, Florida Statutes), and Rule 9J-5, *Florida Administrative Code*, for the following reasons:

**I. CONSISTENCY WITH CHAPTER 163 FLORIDA STATUTES, AND RULE 9J-5,
FLORIDA ADMINISTRATIVE CODE**

A. INCONSISTENT PROVISIONS



1. Ordinance No. 07-18; Future Land Use Element and Map Series Amendment: The inconsistent provisions of the Future Land Use Element and Map series pertain to changes to North Belle Meade Overlay as follows:

Natural Resource Protection: The Future Land Use Map as it pertains to Section 24, and the text changes on page 45 of the strike through and underline version of the plan as it pertains to Section 24 are not in compliance because:

1. It is internally inconsistent with the provisions of B1.d, on page 44 of the strikethrough and underline version, pertaining to Red Cockaded Woodpeckers (RCW) because the best available data indicate that Section 24 contains RCW habitat and therefore should be designated as Sending Lands consistent with the definition of Sending Lands in the County's comprehensive plan. According to the Comprehensive plan Sending Lands "are those lands that have the highest degree of environmental value and sensitivity and generally include significant wetlands, uplands, and habitat for listed species".
2. The Future Land Use Map as it pertains to the Section 24 is also inconsistent with Rule 9J-5.013(2)(b)4 which requires the County to conserve, appropriately use and protect wildlife habitat. This is because the best available data indicate that RCW habitat is present on Section 24 and as such the property should be designated as Sending Lands.
3. Furthermore, these amendments are not "in compliance" because they fail to respond appropriately to the best available data regarding environmental characteristics of Section 24. Rule 9J-5.005(2)(a) FAC, requires the comprehensive plan, as well as plan amendments to be based upon relevant and appropriate data and analyses.

[Chapter 163.3177(6)(a), (d), & (8), Florida Statutes (F.S.); 9J-5.005(2) and (5), 9J-5.006(3)(b)4., (3)(c)1., & 6.; 9J-5.013(2)(b)3., & 4., & (2)(c)5., 6., & 9., Florida Administrative Code (FAC)].

2. **Ordinance #: 07-07; Capital Improvements Element Changes:** The inconsistent provisions of the Amendment under this subject heading are as follows:

1. The Schedule of Capital Improvements covers four years instead of five years as required. This is inconsistent with the requirement that local governments adopt and maintain as part of their comprehensive plan a Five-Year Schedule of Capital Improvements.
2. The funding sources for the identified improvements are not stated per year of improvement. Instead, it is stated for all the projects listed on the schedule for each type of capital facility. For example, in the case of roads, revenues will come from gas tax, impact fees, bond, carry forward, grants, developer contribution (i.e., Ave Maria), general fund, and transfers. As a result, it is not possible to determine if the project is funded by committed or planned sources in order to demonstrate the financial feasibility of the schedule. State law requires that projects be funded with committed sources of funds for years 1 through 3, and with committed and or planned sources in the 4th and 5th years.
3. The projected revenues for each of the identified sources are not provided; as a result, it is not possible to demonstrate and determine the financial feasibility of the schedule, i.e., to determine that the County will indeed generate the funds from those sources to pay for the improvements.

[Chapter 163.3164(32), 163.3177(2) & (3)(a), 163.3177(6)(a), (c), (8), & (10)(e), F.S., and 9J-5.005(2)(a), (c), & (e), 9J-5.006(2)(a), 9J-5.011(1)(b), (1)(f), (2)(b)1. & 2., & (2)(c)1., and 9J-5.016(1), (2), (3)(b)1, 3, 4, 5, (3)(c)6, & 8, and (4), and 9J-5.019(4)(c)1., F.A.C.]

B. Recommended remedial actions: The above inconsistencies may be remedied by taking the following actions:

1. Ordinance No. 07-18; Future Land Use Element and Map Series Amendment:

Revise the North Belle Meade Future Land Use Overlay Map to change the land use designation for Section 24 from Neutral Lands to Sending Lands in order to be consistent with the Sending Lands provisions of the Plan, as well as with amended Section of the plan pertaining to Red-Cockaded Woodpeckers (RCW), (page 44) of the revised Future Land Use Element (strikethrough and underline version). At the same time, the County should delete the additional requirements and limitations imposed on development in Section 24 (page 45) of the revised Future Land Use Element (strikethrough and underline version) and treat the Section 24 Sending Land the same way as other Sending Lands in North Belle Meade.

2. Ordinance No. 07-07; Capital Improvements Element Changes:

1. Revise the Five –Year Schedule of Capital Improvements to cover five years as required.
2. Indicate the funding sources for each improvement included on the schedule for every year listed for that improvement. If the funds are coming from multiple sources, indicate the percentage of the funds for that project that will come from each stated funding source. If a project is to be funded by State, County, or private contributions, the schedule should indicate that, and in addition show the percentage that will come from each contributor. For private contributions, the agreement between the county and the private contributor that guarantees the funds should be referenced in the schedule and included as an attachment. For the first three years the funds must come from committed

sources while for the remaining two years it could come from committed and or planned funding sources. You could use abbreviations to denote the funding sources and provide, as a footnote, the meaning of each abbreviation.

- 3. Provide data and analysis projecting the revenues and expenditures of the County for each of the sources that will be used to fund the capital improvements listed on the schedule and covering the duration of the schedule. The projections should include a brief historical perspective of the County's ability to raise money from each source and based on that provide a projection of funds for the future. The analysis should show that there are sufficient funds, after the expenditures are removed, to pay for the capital improvements listed on the schedule.

II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

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


- 1. **Natural Systems and Recreation Lands Goal (9)(a), Policy(b)1., 3., 4.,** regarding the protection of wildlife and wildlife habitats, with respect to Ordinance No. 07-18; and
- 2. **Land Use Goal (15)(a), Policy(b)2.,** regarding the development of a system of incentives and disincentives which encourages a separation of urban and rural land uses while protecting, among other things, wildlife habitats, with respect to Ordinance No. 07-18; and
- 3. **Public Facilities Goal (17)(a), Policies (b)6. & 9,** regarding the provision of public facilities, with respect to Ordinance No. 07-07.

B. Recommended remedial action. These inconsistencies may be remedied by revising the Amendment as described earlier in this statement of intent.

CONCLUSIONS

1. The Amendment is not consistent with the State Comprehensive Plan.
2. The Amendment is not consistent with Chapter 9J-5, *Florida Administrative Code*.
3. The Amendment is not consistent with the requirements of Chapter 163, Part II, *Florida Statutes*.
4. The Amendment is not "in compliance," as defined in Section 163.3184(1)(b) *Florida Statutes*.
5. In order to bring the Comprehensive Plan amendment into compliance, the County may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 1st day of May 2007, at Tallahassee, Florida.



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

EXHIBIT B

FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS et al. v. COLLIER COUNTY et al.

**DOAH CASE NUMBER 07-2317GM
DCA Docket Number 07-ER-NOI-1101-(A)-(N)**

This proposal will settle the issues cited in the Department's Statement of Intent to find the Collier County Comprehensive Plan amendment adopted by Ordinance 07-18 Not in Compliance.

The terms below apply to Section 24, Township 49 South, Range 26 East, located in the North Belle Meade Overlay of Collier County (Section 24).

1. Sending Lands non-residential uses as they exist at the time of the adoption of this agreement, in Section II.B.1.C) of the Future Land Use Element of the comprehensive plan, are allowed, except as otherwise provided in this Agreement for certain properties. Some or all Neutral Lands non-residential uses are allowed on certain properties as provided for later in this Agreement.
2. Residential uses are allowed. The development density shall be one (1) residential dwelling unit per lot of record or legal non-conforming lot of record as it exists on the date of adoption of this Agreement if no clustering takes place.
3. For any clustered development, the maximum density shall be one (1) residential dwelling unit per five (5) acres, or 0.2 residential dwelling units per acre. The minimum gross acreage for clustering a single residential development shall be 64 acres.
4. For any clustered development, the lot size shall not exceed an average of one acre, exclusive of areas to be dedicated, conveyed or set aside for right-of-way

purposes. Depending on the recommendations of the Red-cockaded Woodpecker (RCW) Habitat Management Plan required in paragraph 12 for clustered development, the lot size may be required to be less.

5. Interim, private water and sewer facilities shall be allowed to serve clustered developments until such time as County central water and sewer service becomes available.
6. For any clustered development, a minimum of eighty percent (80%) of the native vegetation shall be preserved in a manner which is consistent with the Conservation and Coastal Management Element, Policy 6.1.2e.-g., as it exists on the date of the adoption of this agreement.
7. For any development that is not clustered, ninety percent (90%) of the slash pine trees shall be preserved, and a greater amount may be preserved at the discretion of the property owner, unless the RCW Habitat Management Plan recommends a lesser amount.
8. Any clustered residential development requires participation in a RCW Habitat Management Plan and the requirements set forth in Paragraph 12 of this Agreement. Any non-residential development consistent with Neutral Lands non-residential uses, as authorized later in this Agreement for certain properties, requires participation in a RCW Habitat Management Plan and the requirements set forth in Paragraph 12 of this Agreement.
9. Specific additional development standards and use limitations/allowances for the Hideout Parcels in Section 24:

- a. Hideout will be authorized to cluster and construct 37 residential dwelling units on its parcels, in a single cluster, within the areas colored green on the attached map of Section 24. These dwelling unit figures are based upon total Hideout ownership in Section 24 (approximately 187 acres).
- b. Clustered residential development by Hideout shall take place only in the parcels colored green on the attached map, and shall be located in an area of the property determined by the RCW Habitat Management Plan to be most appropriate for development. For the location of the clustered development, the RCW Habitat Management Plan shall consider areas already developed and highly impacted, as well as areas contiguous to areas in the southeast part of Section 24 that are already developed and highly impacted.
- c. No development shall take place on the two Hideout parcels adjacent to the existing Hideout Golf Course (identified by striping pattern on the attached map of Section 24).
- d. All other cluster provisions and requirements for Neutral Lands shall be applicable to the three green Hideout parcels (identified on the attached map of Section 24) set aside for development purposes. These cluster provisions and requirements are set out in the Rural Fringe Comprehensive Plan Amendments adopted June 19, 2002, by Ordinance number 2002-32, and incorporated into the comprehensive plan, and subsequently adopted into the Collier County Land Development Code, Ordinance No. 04-41, as amended.

- e. The three Hideout parcels colored green (identified on the attached map of Section 24) are limited to residential uses and associated accessory uses, essential services, and parks, open space, and recreational uses, as well as necessary infrastructure to serve such development – all as provided for in the Rural Fringe Mixed Use District Neutral Lands of the Future Land Use Element in the Comprehensive Plan, and as stated in paragraph 12.f.(4)(b) of this Agreement.
- f. For the three Hideout parcels colored green and the two striped Hideout parcels (as depicted on the attached map of Section 24), which total approximately 81 acres, the native vegetation requirement in accordance with paragraph 6. of this agreement shall be approximately 65 acres.
- g. Hideout's approximately 65 acres of native vegetation shall be conveyed to Conservation Collier, a Home Owners Association, or other like entity, for the purposes of conservation and preservation. The conveyance shall be in the form of a conservation easement (CE), or other instrument acceptable to the entity.
 - (1) The entity in whose favor the CE is granted shall be obligated to implement and maintain the RCW Habitat Management Plan that will be developed for this area in association with the Safe Harbor Agreement as described below.
 - (2) Such entity shall provide financial assurances to Collier County, in the form of a bond, letter of credit, or equivalent, of its ability to

implement and permanently maintain this RCW Habitat Management Plan.

- h. As set forth in paragraph 8., for any clustered residential development and for any non-residential development, Hideout will participate in the Habitat Management Plan and all other requirements of Paragraph 12 of this Agreement.
- i. For any future redevelopment of the seven Hideout parcels colored yellow (identified on the attached map of Section 24) to change the use from golf course, these parcels are allowed to develop with any of the non-residential uses provided for in the Rural Fringe Mixed Use District Neutral Lands of the Future Land Use Element in the Comprehensive Plan, and are subject to all requirements and limitations of Neutral Lands.

10. Specific additional development standards and use limitations for the Cowan parcels in Section 24:

- a. In accordance with paragraph 2 of this Agreement, on Cowan's parcels totaling 97.7 acres, Cowan is entitled to develop one (1) residential dwelling unit on each of his six (6) lots of record as they exist on the date of adoption of this settlement agreement if no clustering takes place.
- b. For clustered development, in accordance with paragraph 3 of this Agreement, the maximum density shall be one (1) residential dwelling unit per five (5) acres, or 0.2 residential dwelling units per acre, not to exceed 19 residential dwelling units on the Cowan property.

- c. If Cowan chooses clustered development, Cowan, or his assigns, will participate in an RCW Habitat Management Plan and the requirements outlined in Paragraph 12 of this Agreement, and shall expend a sum of money to promptly implement the RCW Habitat Management Plan for Cowan's parcels totaling 97.7 acres. This initial amount ("Initial Management Amount") shall be no greater than \$30,000.00. Once the RCW Habitat Management Plan is implemented, Cowan, or his assigns, agrees to fund the Initial Management Amount plus five percent (5%) per year, which shall accrue annually, as an inflation adjustment.
- d. Up to two (2) clustered developments shall be permitted on Cowan's 97.7 acres. The cluster(s) shall be located in an area(s) of the property determined by the best available data, including the RCW Habitat Management Plan, to be most appropriate for development.
- e. Development within the Cowan southernmost approximately 16-acre parcel (Lot 35, Naples Farm Sites, Inc., identified on the attached map of Section 24, the "Lot 35 Parcel") next to the existing Hideout Golf Course (the seven parcels colored yellow on the attached map of Section 24) shall consist of road access and up to three clustered dwelling units. These dwelling units shall be part of the total number of clustered dwelling units assigned to the Cowan property. Accordingly, if three dwelling units are developed in the Lot 35 Parcel, then three dwelling units shall be subtracted from the total number of dwelling units, and Cowan may develop the remainder of units in a single cluster elsewhere on Section 24

Cowan property as set forth above. The lot sizes of the Lot 35 Parcel clustered dwelling units shall not exceed an average of one acre per lot, exclusive of areas to be dedicated, conveyed or set aside for right-of-way purposes.

- f. If clustering occurs, all other cluster provisions and requirements for Neutral Lands shall be applicable to the Cowan parcels set aside for development purposes. These cluster provisions and requirements are set out in the Rural Fringe Comprehensive Plan Amendments adopted June 19, 2002, by Ordinance number 2002-32, and incorporated into the comprehensive plan, and subsequently adopted into the Collier County Land Development Code, Ordinance No. 04-41, as amended.
- g. The Cowan parcels are limited to residential uses and associated accessory uses, essential services, and parks, open space, and recreational uses, as well as necessary infrastructure to serve such development – all as provided for in the Rural Fringe Mixed Use District Neutral Lands of the Future Land Use Element in the Comprehensive Plan, and as stated in paragraph 12.f.(4)(b) of this Agreement.
- h. If clustering occurs, Cowan's approximately 78 acres of native vegetation shall be conveyed or granted by a conservation easement (CE) or deed (as determined by Cowan or his assignee) to Conservation Collier, a Home Owners Association, or other like entity, its successors and assigns, a non-exclusive easement, license, and privilege to enter upon, maintain, preserve and conserve such property and wildlife.

- (1) The entity in whose favor the CE is granted shall be obligated to implement and maintain the RCW Habitat Management Plan that will be developed for this area referenced in paragraph 10c above and in association with the Safe Harbor Agreement as described below.
- (2) Such entity shall provide financial assurances to Collier County, in the form of a bond, letter of credit, or equivalent, of its ability to implement and permanently maintain this RCW Habitat Management Plan.
 - i. As set forth in paragraph 8., for any clustered residential development and for non-residential development, Cowan will participate in the Habitat Management Plan and all other requirements of Paragraph 12 of this Agreement.

11. Specific additional development standards and use allowances for the Buckley parcels in Section 24:

- a. In accordance with paragraph 2 of this Exhibit B, on Buckley's parcels totaling approximately 81 acres, Buckley is entitled to develop one (1) residential dwelling unit on each of his six (6) lots of record as they exist on the date of adoption of this settlement agreement if no clustering takes place.
- b. For clustered development, in accordance with paragraph 3 of this Exhibit B, the maximum density shall be one (1) residential dwelling unit per five

(5) acres, or 0.2 residential dwelling units per acre, not to exceed 16 residential dwelling units.

- c. If Buckley chooses to cluster development, Buckley will participate in an RCW Habitat Management Plan and the requirements set forth in Paragraph 12 of this Agreement and agree to expend a sum of money to promptly implement the RCW Habitat Management Plan. This amount shall be \$30,000.00 plus five (5) percent per year as an inflation adjustment. Once the RCW Habitat Management Plan is implemented, Buckley agrees to fully fund the ongoing maintenance costs.
- d. Only one clustered development shall be allowed on Buckley's approximately 81 acres, and that cluster shall be located in an area of the property determined by the best available data, including the RCW Habitat Management Plan, to be most appropriate for development. For the location of the clustered development, the RCW Habitat Management Plan shall consider areas already developed and highly impacted, as well as areas contiguous to areas in the eastern portion of Section 24 that are already developed and highly impacted.
- e. If clustering occurs, all other cluster provisions and requirements for Neutral Lands shall be applicable to the Buckley parcels set aside for development purposes. These cluster criteria are set out in the Rural Fringe Comprehensive Plan Amendments adopted June 19, 2002, by Ordinance number 2002-32, and incorporated into the comprehensive

plan, and subsequently adopted into the Collier County Land Development Code, Ordinance No. 04-41, as amended.

f. If Buckley chooses to cluster residential development, the native vegetation requirement in accordance with paragraph 5. of this agreement is approximately 65 acres.

g. If Buckley chooses to cluster residential development, approximately 65 acres of native vegetation shall be conveyed to Conservation Collier, a Home Owners Association, or other like entity, for the purposes of conservation and preservation. The conveyance shall be in the form of a conservation easement (CE), or other instrument acceptable to the entity.

(1) The entity in whose favor the CE is granted shall be obligated to implement and maintain the RCW Habitat Management Plan that will be developed for this area in association with the Safe Harbor Agreement as described below.

(2) Such entity shall provide financial assurances to Collier County, in the form of a bond, letter of credit, or equivalent, of its ability to implement and permanently maintain this RCW Habitat Management Plan.

h. Notwithstanding the provisions of paragraph 11.a.-g. above, the Buckley parcels are not restricted to residential use, but rather are allowed to develop with any of the uses provided for in the Rural Fringe Mixed Use District Neutral Lands of the Future Land Use Element in the Comprehensive Plan.

i. The following conditions apply if Buckley chooses to develop any of the non-residential uses provided for in the Rural Fringe Mixed Use District Neutral Lands of the Future Land Use Element:

- (1) Rural Fringe Mixed Use District Neutral Land uses, with the exception of facilities for the collection, transfer, processing and reduction of solid waste and the exception of earth mining, may be developed if Buckley participates in a RCW Habitat Management Plan and agrees to expend a sum of money to promptly implement the associated RCW Habitat Management Plan. This amount shall be \$30,000.00 plus five (5) percent per year as an inflation adjustment. Once the RCW Habitat Management Plan is implemented, Buckley agrees to fully fund the ongoing maintenance costs.
- (2) Non-residential Rural Fringe Mixed Use District Neutral Land uses shall be located in an area of the property determined by the best available data, including the RCW Habitat Management Plan studies, to be most appropriate for non-residential development.
- (3) For Non-residential Rural Fringe Mixed Use District Neutral Land uses in Section 24, native vegetation shall be preserved in a manner which is consistent with the Habitat Management Plan and the County's Conservation and Coastal Management Element, Policy 6.1.2e.-g., as it exists on the date of the adoption of this agreement.

12. Safe Harbor Agreement

- a. Hideout (and Cowan or Buckley at such time either Cowan or Buckley chooses to cluster residential density) shall apply for and pursue a Safe Harbor Agreement with associated RCW Habitat Management Plan with the U.S. Fish and Wildlife Service for the approximately 81 acres (Cowan 97.7 acres and Buckley 81 acres) of land they own in Section 24 that are described in paragraph 9.f.
- b. If approved, the RCW Habitat Management Plan will require such management techniques as the mechanical or manual thinning of trees and understory, and the removal of combustible materials to levels which would permit a "controlled burn" that would not destroy, but would maintain, the presence of a sufficient amount of slash pine trees for RCW foraging and cavity tree nests.
- c. Hideout (and Cowan or Buckley at such time either Cowan or Buckley chooses to cluster residential density) agrees to pay all legal and permitting fees related to their effort to obtain approval of the Safe Harbor Agreement. Additionally, if successful in obtaining a Safe Harbor Agreement, Hideout (and Cowan or Buckley at such time either Cowan or Buckley chooses to cluster residential density) agrees to expend a sum of money to promptly implement the associated RCW Habitat Management Plan. This amount shall be \$30,000.00 plus five (5) percent per year as an inflation adjustment. Once the RCW Habitat Management Plan is implemented, Hideout (and Cowan or Buckley at such time either Cowan

or Buckley chooses to cluster residential density) agrees to fully fund the ongoing maintenance costs.

- d. The Safe Harbor Agreement and associated RCW Habitat Management Plan must provide that Hideout (and Cowan or Buckley at such time either Cowan or Buckley chooses to cluster residential density) can develop 37 residential dwelling units (Cowan 19 units and Buckley 16 units) in the areas colored green (Cowan blue, and Buckley uncolored) as set forth on the attached map. The RCW Habitat Management Plan must also delineate the maximum area that may be cleared, in accordance with the applicable provisions of the Growth Management Plan, within the green areas (Cowan blue, Buckley uncolored) set forth on the attached map. The Safe Harbor Agreement must allow 20% of Hideout's approximately 81 acres (approximately 16 acres) (Cowan 19.54 acres and Buckley approximately 16 acres) to be cleared when development occurs.
- e. The County, Department of Community Affairs (DCA), Florida Wildlife Federation (FWF), and Collier County Audubon Society (CCAS) acknowledge that once the RCW Habitat Management Plan is implemented, the County shall defer to the federal and state agencies as to protection of other state and federal listed species that may be present on the approximate 81 acres of land owned by Hideout (97.7 acres owned by Cowan and approximately 81 acres owned by Buckley) and described in paragraph 9.f. Hideout (and Cowan or Buckley at such time either Cowan or Buckley chooses to cluster residential density) agrees to comply with

all federal and state listed species criteria for development within the areas that will be allowed to be cleared pursuant to the Safe Harbor Agreement.

f. The County, DCA, FWF, and CCAS agree to not comment to any of the state and federal permitting agencies during the permitting process for the Hideout (and for Cowan or Buckley at such time either Cowan or Buckley chooses to cluster residential density) parcels so long as the following takes place:

- (1) The projects are clustered; and
- (2) The Safe Harbor Agreement with associated RCW Habitat Management Plan is approved and being implemented; and
- (3) The referenced CE or fee simple title is granted to the appropriate entity for management of the RCW habitat; and
- (4) Permit applications are consistent with this Stipulated Settlement Agreement and all provisions of the Collier County comprehensive plan, except they are not subject to:
 - (a) the Conservation and Coastal Management Element, Objective 2.1 and subsequent policies; Goal 6 and subsequent objectives and policies, excluding policies 6.1.2e.-g., 6.1.4, 6.1.5, and 6.1.7; and, Goal 7 and subsequent objectives and policies; and,
 - (b) the Future Land Use Element, Rural Fringe Mixed Use District, Neutral Lands, paragraph 2.2 ÷ Clustering, subparagraph d), minimum project size; Paragraph 3. Allowable Uses, subparagraphs 3.a), d) through h), j) through

p), r) and s) [these excepted uses are prohibited]; paragraph 5. Density Blending [this provision is not available for these parcels].

g. The FWF and CCAS further agree to use their best efforts to persuade the National Wildlife Federation and Audubon Society of Florida to refrain from commenting to any state or federal permitting agencies during the permitting process for the Hideout developments (and Cowan or Buckley developments at such time either Cowan or Buckley chooses to cluster residential density) so long as the following takes place:

(1) See Subparagraphs 12.f. (1) through (4) immediately above.

h. Should Hideout (and Cowan or Buckley at such time either Cowan or Buckley chooses to cluster residential density) be unable to secure an acceptable Safe Harbor Agreement with associated RCW Habitat Management Plan, or should the cost of implementing the RCW Habitat Management Plan exceed the sum of \$30,000.00 plus the inflation factor set forth herein and no additional funding can be obtained, then Hideout (and Cowan or Buckley at such time either Cowan or Buckley chooses to cluster residential density) shall be deemed to have satisfied their Safe Harbor Agreement and associated RCW Management Plan obligations pursuant to this Agreement with the contribution of \$30,000.00 toward management of the RCW habitat. In such an event, the remaining provisions and requirements relating to density, clustering, preservation and any other applicable development standards of this Stipulated

Settlement Agreement, and the Collier County GMP, except as excepted in paragraph 12.f.(4) of this Agreement, remain effective and applicable to the Hideout (and Cowan or Buckley at such time either Cowan or Buckley chooses to cluster residential density) parcels in Section 24.

The Collier County Comprehensive Plan will be amended as necessary to recognize and implement this Stipulated Settlement Agreement. This amendment will be initiated by Collier County at Collier County's expense, except that public notice expenses will be paid on a proportionate share basis by Collier County and the intervener property owners entering into this agreement.

NAPLES FARM SITES, INC.
SECTION 24, TOWNSHIP 49 SOUTH, RANGE 26 EAST

