

EXECUTIVE SUMMARY

Recommendation to approve Proposed Evaluation and Appraisal Report-Based Amendments to the Collier County Growth Management Plan, Ordinance 89-05, as Amended, for transmittal to the Florida Department of Economic Opportunity (DEO) for review and Objections, Recommendations and Comments (ORC) response. [Transmittal Hearing]

OBJECTIVE: For the Board of County Commissioners to review the proposed Evaluation and Appraisal Report-Based Growth Management Plan amendments and consider approving them for Transmittal to the Florida Department of Economic Opportunity and other agencies for their preliminary review for compliance with Florida Statutes.

CONSIDERATIONS: Chapter 163, Part II, *Florida Statutes*, also known as the “Community Planning Act” (prev., the “Local Government Comprehensive Planning Act”), requires all local governments within the State of Florida to maintain comprehensive planning programs based upon an adopted local government comprehensive plan. As part of this process, the local government must monitor changing conditions and must use this information to guide periodic amendments to the local comprehensive plan a/k/a growth management plan (GMP).

The periodic amendment process, which occurs once every seven years, as described in Section 163.3191, *F.S.*, as amended in 2011 (by section 20 of Florida HB 7207, also known as chapter 2011-139, Laws of Florida (2011)) is a two-phase process. It begins with the preparation, by the local government, of an Evaluation & Appraisal Report (EAR). The EAR evaluates the performance of the various Elements of the local government comprehensive plan since the previous EAR-based amendment process. It assesses the successes and failures of the various Goals, Objectives, Policies, and programs included within the local comprehensive plan, and it provides recommendations for necessary changes. Additionally, the EAR is the primary means by which the local plan can respond to changes in federal, state or regional planning requirements. The recommendations contained in the EAR become the basis of proposed amendments to the local government comprehensive plan, the second phase in the amendment process.

Collier County’s first EAR was adopted by the Board of County Commissioners on July 16, 1996. The subsequent EAR-based amendments were adopted on October 18, 1997. The second EAR, which reviewed the performance of Collier County’s Growth Management Plan (GMP) from October 1997 to July 2003, was adopted on July 27, 2004. The third EAR, which reviewed the performance of the GMP from July 2004 through 2010, was adopted by the BCC on January 31, 2011. The then Florida Department of Community Affairs (DCA), which had oversight for comprehensive plans, amendments, and EARs for local governments, found the 2011 EAR sufficient on April 12, 2011.

The amendments that are the subject of this Executive Summary are limited in scope primarily to those recommended in the EAR.

Though not necessarily recommended by specific reference in the EAR, general updating and word-smithing (“housecleaning”) amendments are allowed as part of this amendment process; these include the wholesale removal of references to Rule 9J-5 of Florida Administrative Code (*F.A.C.*) and properly referencing applicable sections of Chapter 163 of Florida Statute made necessary by the State’s adoption of Florida HB 7207, also known as chapter 2011-139, Laws of Florida (2011), updating

ordinance designation numbers, revising/correcting government agency names, reformatting, etc. [Sidenote: with the adoption of HB 7207, the “R” in the “EAR” process now stands for “Review” rather than “Report”.]

Within each [Exhibit “A”] Element provided in the binder, Goals and Objectives may appear, whether or not they are recommended for change. Where a Goal or Objective itself *is* recommended for change, it is accompanied by a [bracketed notation] indicating the *nature of such change* and its *present page location in the Element* for reference. Goals and Objectives also appear within each [Exhibit “A”] Element simply to provide context where changes have been directed to subsequent policies, but not to the Goals or Objectives themselves. As noted, additional detail related to the proposed modifications may be found in the adopted EAR Assessment and Recommendations report included for each Element in this binder.

A notable difference of the presently proposed EAR-based amendments from the amendments recommended within the EAR is found in the Golden Gate Area Master Plan (GGAMP). During the EAR transmittal and adoption hearings, a number of initially-recommended changes were withdrawn from consideration, with the suggestion that they be deferred until taken up again under a comprehensive re-study of the GGAMP. These withdrawn changes will remain unaddressed in the short term, until the BCC directs staff to initiate the re-study. It should be noted that at the January 25, 2011 BCC public hearing, the BCC directed staff to delay the re-study and reconsider the question at a later date.

Another difference is found in the Immokalee Area Master Plan (IAMP). The IAMP necessitates a map change to reflect the revised boundaries of the Lake Trafford/Camp Keais Strand System. Interim measures are being applied to this area until the Immokalee Area Master Plan is updated – by way of a separate GMP amendment.

The CCPC recommends the interim requirement of applying Policy 6.1.2.b of the CCME to the existing Lake Trafford Camp Keais Strand System. This interim requirement is the RFMUD Neutral Lands native vegetation retention requirement of 60 percent, not to exceed 45 percent preservation of the total site area. The CCPC decision was based on staff’s opinion that the 60 percent vegetation retention requirement is what was intended in Policy 6.2.5 of the CCME and what staff applies today. This route short-circuits an official interpretation of the GMP and avoids any takings claims as the CCPC is not changing the preservation requirement, just clarifying a possible ambiguity.

If County staff or the CCPC desire to increase the retention requirement beyond 60 percent, then it must be done by a GMP amendment and LDC amendment with incentives in order to avoid a Bert Harris or takings claim.

One additional difference of the presently proposed EAR-based amendments from the amendments recommended within the EAR surrounds the County’s Master Mobility Plan (MMP). The proposed MMP and the potential policy and objective recommendations remain under review. All GMP amendments generated by the MMP will be processed in a stand-alone GMP amendment cycle.

These EAR-based GMP amendments, as noted, are affected by the adoption of HB 7207, also known as chapter 2011-139, Laws of Florida (2011), which took place *after* the January 2011 BCC adoption of the EAR, but *prior to* the preparation of these materials. Most notable of these effects will be the

wholesale removal of references to Rule 9J-5 of the Florida Administrative Code (*F.A.C.*) from the Elements and Sub-Elements of the GMP. HB 7207 repealed all of Rule 9J-5 and moved approximately one-quarter of its provisions into [Chapter 163 of] Florida Statutes (*F.S.*), or into other regulations. Remnants of Rule 9J-5 will continue to be used for technical assistance and the County may eventually choose to incorporate certain parts of the defunct Rule into the GMP.

The proposed EAR-based GMP amendments are not affected, however, by the recent adoption of HB 7207, also known as chapter 2011-139, Laws of Florida insofar as the State agencies' amendment review process and timetable. Plan amendments based on an Evaluation and Appraisal Report (EAR) have not been expedited by the new legislation or law, as have some other processes subject to State review and oversight. The proposed EAR-based GMP amendments will continue to follow the traditional review process, including the full review and assessment period given to the Division of Community Planning (DCP) in the Florida Department of Economic Opportunity (DEO) that its predecessor, the Department of Community Affairs, enjoyed.

The adoption of HB 7207 has affected the requirements of the earlier-adopted HB 697, regarding greenhouse gas emissions, and energy efficiency and conservation. While no longer statutorily required, the Objectives and Policies within the EAR for reducing greenhouse gas emissions and conserving energy already proposed for change are retained. Their promotion is essential to encourage energy efficient land use patterns and discourage urban sprawl through transportation and conservation strategies, particularly the reduction in greenhouse gas emissions from the transportation sector. These strategies associated with transportation, land use and conservation are still relevant to the County and should be strongly contemplated to remain.

Two new Objectives and 23 new Policies are proposed in these amendments, as follows: Solid Waste Sub-Element: seven new Policies (2.9, 2.10, 2.11, 2.12, 2.13, 2.14, 3.5); Transportation Element: one new Objective-Policy pairing (Obj. 13, 13.1); Conservation and Coastal Management Element (CCME): two new Policies (3.1.5, 10.1.2.); Housing Element: one new Objective (Obj. 9) and eleven new Policies (1.1, 1.2, 1.3, 1.4, 1.5, 1.7, 9.1, 9.2, 9.3, 9.4, and 9.5), and, Economic Element: two new Policies (3.15, 4.1). Additionally, two new maps are created: Coastal High Hazard Area Map, and Coastal High Hazard Area Comparison Map (the countywide Future Land Use Map already identifies the CHHA – these two maps provide greater detail).

The Collier County BCC adopted its third Evaluation and Appraisal Report (EAR) on January 31, 2011, establishing the basis for these proposed amendments. The only notable deviations from the direction provided by the EAR are the following:

FLUE Item Not Previously Part of EAR-based GMPAs

The [*availability of*] Early Entry TDR Bonus Credits associated with the Transfer of Development Rights (TDR) Severance Application process was last extended until March 27, 2012, the deadline ending at close of business or 5:00 p.m., March 27, 2012. All applications submitted prior to the deadline will be processed per application requirements, as the amendments will not become effective until after final approval of the Adopted 2011 EAR-based GMP amendments – sometime later this fall/winter of 2012. The Rural Fringe Mixed Use District: Sending Lands provision B.1.C.6, of the FLUE is introduced and will be considered for Adoption to extend the Early Entry TDR Bonus to be

available for a period of ten years after the adoption of the LDC amendment implementing this provision, or until September 27, 2015.

IAMP Item Not Previously Part of EAR-based GMPAs

The Lake Trafford/Camp Keais Strand System is presently identified on the Immokalee Area Master Plan (IAMP) Future Land Use Map. This item would amend that Map to accurately depict the boundaries of those wetlands, as identified through staff analysis of more recent data, and to change the name in the map legend to correlate with that listed in the CCME. (Refer to CCME support data and analysis located behind TAB 4 of the Transmittal booklet.)

Amendments Commentary:

A final set of policies contained in the Housing Element and the Conservation and Coastal Management Element (CCME) were presented at the CCPC Transmittal hearing continued to March 1 and 6 with the CCPC, mostly agreeing with staff. The exceptions are CCME Policies 10.1.5 and 10.1.6.

CCME Policies 10.1.5 & 10.1.6 (re: development of marinas and other water-related and water-dependent uses in marine wetlands)

Staff maintains its recommendation to delete Policies 10.1.5 and 10.1.6 from the CCME. They are difficult to implement as there are no specific criteria in the CCME or Land Development Code, and certain terms, such as “destruction of mangroves” and “providing for general public use” are not defined.

As written, the Policies would apply to all water-dependent and water-related uses that propose to destroy marine wetlands, including waterfront residential development.

Marine wetlands are already regulated by State and Federal agencies, including the requirement to mitigate for impacts to mangroves and other marine wetlands to insure no net loss of wetland function; Because of this mitigation requirement, the County staff view is that these wetlands have not been “destroyed”. Therefore the threshold to implement the Policies has not occurred. Further explanation and justification of staff’s recommendation is contained in the “Consolidated Staff Report” to the CCPC, beginning on page 25.

The CCPC recommendation to retain Policies 10.1.5 and 10.1.6 would allow the County to address these issues and develop the specific criteria needed to implement these Policies. The lack of clear direction provided by terms used in the Policies, such as “destruction of mangroves” and “providing for general public use”, are not considered impediments, but provides opportunities for – and places the responsibility on – the developer who would destroy marine wetlands. In this manner, these Policies are thought to augment and compliment any State or Federal regulations at the local level.

FLUE & CCME (re: CHHA boundary revisions and native vegetation retention standards)

The EAR calls for the Coastal High Hazard Area (CHHA) boundary to be revised in accordance with the latest modeling from the Southwest Florida Regional Planning Council. The boundary contracts in

some areas and expands in others, but overall more properties fall within the CHHA. The EAR also provides for the Density Rating System, which is used to determine eligible residential density for most Urban area projects, to be revised to: 1) eliminate the Traffic Congestion Area (TCA) and associated 1 dwelling unit per acre (DU/A) density reduction from the eligible base density of 4 DU/A for properties lying within the TCA; 2) adopt a 1 DU/A reduction factor for properties lying within the CHHA (with one exception, the proposed CHHA lies seaward of the TCA, thus fewer properties would be subject to this density reduction factor); 3) replace reference to the TCA with reference to the CHHA for the Roadway Access and Proximity to Activity Center (density bands) bonuses (result: *more* properties eligible for these bonuses); and, 4) prohibit application of the Conversion of Commercial Zoning and Affordable-Workforce Housing bonuses within the CHHA (result: *fewer* properties eligible for these bonuses).

As noted in number 4 above, fewer properties would be eligible for certain density bonuses, and as noted in number 2 above, there are some properties that would newly become subject to a [CHHA] density reduction factor. The CCPC expressed concerns about loss of property rights for both instances, and recommended the two bonuses remain applicable within the CHHA and that the density reduction factor not be applied to those properties newly subject to it. Also, for those properties that would newly be within the CHHA, they would be subject to the existing CCME Policy 6.1.1 regarding native vegetation retention requirements – which are more stringent within the CHHA for properties developed as residential or mixed use and between 2.5 and <20 acres in size. Based upon concern over impact upon property rights, the CCPC recommended these properties remain subject to the less stringent vegetation retention requirements, and recommended a map be adopted that would identify these properties (the proposed Coastal High Hazard Area Comparison Map).

FISCAL IMPACT: No fiscal impact, other than the costs associated with legal advertisements, results from the Transmittal of these GMP amendments to the Florida Department of Economic Opportunity for their review and comment.

GROWTH MANAGEMENT IMPACT: These GMP amendments have been prepared primarily based upon the 2011 EAR. Transmittal of these amendments to the Florida Department of Economic Opportunity (DEO) and other agencies will trigger their review of these amendments and subsequent preparation and rendering of an Objections, Recommendations and Comment (ORC) Report. This ORC Report will be considered as Collier County holds Adoption hearings on these amendments.

LEGAL CONSIDERATIONS: These EAR-based GMP amendments have been prepared in accordance with the requirements and procedures contained in Chapter 163, Florida Statutes. Per Collier County Resolution No. 97-431, a simple majority vote of the Board is necessary for approval at the Transmittal hearing of a Growth Management Plan amendment. [HFAC]

EAC RECOMMENDATION: The Environmental Advisory Council reviewed these GMP amendments on December 7, 2011. Their recommendations have been incorporated into the amendments as they appear in the Exhibit “A”s for the Conservation & Coastal Management Element, Natural Groundwater Aquifer Recharge Sub-Element, and, Drainage Sub-Element (Stormwater Management). Also, the EAC forwarded five recommendations outside the scope of the EAR recommendations, as follows:

1. Drainage Sub-Element, Policy 3.1: Provide alternative direction in or after Policy 1.3 for identifying properties [such as Pepper Ranch and the Caracara property] where Conservation Collier or other comparable public entity could apply, or bank, wetland mitigation and panther habitat mitigation credits for County projects; this would be accomplished with revising 1.3 or with a new Policy stating, “Municipal entities may use Conservation Collier lands, such as but not limited to, Pepper Ranch, Caracara Prairie and other properties as acquired, for wetland and wildlife mitigation”.
2. Drainage Sub-Element: Provide direction in or after Policy 6.3 for reducing discharge rates to pre-development levels, as found in the Watershed Management Plan, as a return to compliance. A new Goal after Policy 6.3 may be needed to introduce a new subsequent Policy.
3. Conservation & Coastal Management Element, Policy 4.1.3: Revise Policy to require the “determination” of actual, as opposed to permitted, agricultural pumpage; and, add the phrase “if and when available”. Policy to read as follows, “The County in coordination with the South Florida Water management District shall work with the agricultural community to devise a method for determining actual agricultural pumpage, when and if available.”
4. Conservation & Coastal Management Element, Objective 7.1 and/or Policy 7.1.2: Consideration should be given to assuming more of the responsibilities for listing endangered and protected species and issuing “take” permits, rather than deferring to the U.S. Fish and Wildlife Service and Florida Fish and Wildlife Conservation Commission; this would be accomplished with revising Objective 7.1. and/or Policy 7.1.2 to add no. 4 that may read, “Within a year the County shall reassess taking control of the process of take permits for listed species, currently done by the U.S. Fish and Wildlife Service and Florida Fish and Wildlife Conservation Commission.”
5. Conservation & Coastal Management Element: Add a new policy or revise an existing policy to address low impact development (LID) practices and policies; this would be accomplished with the following text, “Within two years from the adoption of this policy, the County shall publish a Low Impact Development (LID) Manual, and enact LID land development code regulation to reduce stormwater runoff from all private and public developments and redevelopments.”

It is at the discretion of the BCC whether or not to initiate these GMP amendments as part of a regular amendment cycle.

CCPC RECOMMENDATION: The Collier County Planning Commission held their required public hearing January 26, February 16, March 1 and March 6, 2012. The CCPC voted 5-0 to forward the EAR-based Growth Management Plan amendments to the Board of County Commissioners with a recommendation to approve as presented in the Exhibit “A” for each element or sub-element and transmit to the Florida Department of Economic Opportunity.

Speakers: There were two speakers (on 1/26), who expressed their concerns over certain aspects of the recommended EAR-based amendments, while being generally in support. These speakers addressed items in the CCME (marinas and marine wetlands), FLUE (CHHA boundary revisions and native vegetation preservation standards) and Housing Element (affordable housing). There were three

speakers (on 3/6), who explained their preferences for staff recommended versions of certain amendments, particularly in the Housing Element and the CCME.

STAFF RECOMMENDATION: That the Board of County Commissioners approve these EAR-based GMP amendments for Transmittal to the Florida Department of Economic Opportunity and other agencies as recommended by the CCPC, and provide direction upon the deletion or retention of Policies 10.1.5 & 10.1.6 of the CCME.

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PLEASE NOTE: *Due to the substantial quantity of materials comprising this Transmittal Hearing binder, only the essential documents, such as the Executive Summary and transmitting Resolution, are being provided within the SIRE system. All materials are being provided in hard copy format a full two weeks prior to the scheduled Transmittal Hearing date. For documents being distributed by both SIRE and in binders directly from Comprehensive Planning staff, the materials provided through SIRE are the same versions as those materials provided in hard copy format and do not differ.*

Attachments:

1) Cover memo from the Comprehensive Planning Manager to the BCC; 2) Consolidated Transmittal Staff Report to CCPC; 3) GMP Elements with Staff & CCPC Recommendations, including Support Documents as provided to the CCPC; 4) Florida Department of Community Affairs EAR sufficiency letter; 5) Collier County 2011 Evaluation and Appraisal Report (EAR); 6) BCC Transmittal Legal Advertisement; 7) CCPC Transmittal Legal Advertisement and Affidavit; 8) Transmittal Resolution; 9) Exhibit “A” texts & maps;

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