

CARLTON FIELDS

MEMORANDUM

To: Collier Board of County Commissioners

From: Darrin F. Taylor, AICP
Nancy G. Linnan

Date: March 1, 2010

Re: Analysis of Data Analysis requirements to support RLSA Review Committee recommended comprehensive plan amendments

Carlton Fields was retained by Collier County on November 19, 2009 to determine what data and analysis would be needed to support the proposed comprehensive plan amendments previously presented to the Board of County Commissioners (Board) for enhancements to the Collier County Rural Land Stewardship Area (RLSA). This memorandum includes our recommendations including the process used to derive these recommendations.

BACKGROUND

In 2002 Collier County adopted amendments to its comprehensive plan to establish the Rural Land Stewardship area (RLSA) on approximately 195,000 acres in eastern Collier County. The RLSA is a strategy created to protect the natural resources within this portion of the County while incentivizing compact rural mixed use development patterns. This voluntary program establishes a value for protected resources through a credit system. Credits, once assigned or transferred, allow for more intense development than what current baseline development amounts permit, but concentrates that growth rather than encouraging a sprawling development pattern as permitted on the current future land use map (FLUM). Obtaining credits is the only way for a land owner to increase the development potential on property within the RLSA.

Collier County's program was the first of its kind in Florida and was heralded by the State and many planning organizations when it was established. Its implementation included a requirement to evaluate the program after 5 years to determine its success and to recommend changes.

RLSA Review Committee

The RLSA Review Committee was established in 2007 to evaluate the program. The Committee, composed of various County stakeholders, including landowners, community activists, planners and environmental groups, held 23 public meetings and, under its charge, conducted a comprehensive analysis of the program. The result was a significant number of proposed

comprehensive plan amendments to address issues raised in their review. These amendments and supporting documentation were submitted for review and comment before the Collier County Planning Commission (CCPC), Environmental Advisory Council (EAC) and the Board of County Commissioners. The County Commission ultimately determined the following:

- 1) To accept the report;
- 2) For the amendment to proceed in a special amendment cycle at the expense of the private sector;
- 3) For the RLSA review committee to be dissolved; and
- 4) To hire an outside consultant to determine what data and analysis requirements are needed to support the amendments and to report back to the Commission.

The purpose of this memo is to address Commission Action #4, and is a report on the data and analysis requirements to support the RLSA amendments. No formal amendments have been filed or considered for transmittal to the DCA at this time.

Carlton Fields received copies of the amendments recommended by the RLSA committee. After reviewing these amendments, they were compared against the data and analysis requirements within s.163, F.S. and Rule 9J-5, F.A.C. A summary of the plan amendments recommended by the RLSA review committee are included below.

Summary of Proposed Amendments

The Committee recommended comprehensive changes to the current RLSA provisions in the comprehensive plan. These amendments include the following:

- Modifying the calculation of credits as follows:
 - Addition of 89,000 credits for the protection of agricultural lands
 - Addition of an estimated 23,000 credits for establishing panther corridor connections
 - Reduction of an estimated 16,000 credits by implementing tiered restoration of lands
 - A recalibration of required credits for an acre of Stewardship Receiving Area (SRA) land from 8 credits to 10 credits per acre for future SRAs
- The combination of increases and decreases described above results in the addition of approximately 89,000 credits available to the RLSA and the addition of approximately 1,688 acres to the maximum footprint of the SRA according to the RLSA review committee's Phase II analysis and estimates

- The capping of SRA acres at 45,000 acres
- The deletion of policy language to ensure the program does not result in the premature conversion of agricultural lands
- The deletion of Hamlets as a land use and the expansion of the maximum size of Towns and Villages

DATA AND ANALYSIS REQUIREMENTS

The state's planning requirements for supporting data and analysis for comprehensive plan amendments are found in s.163.3177 and Rule 9J-5. The DCA analyzes all plan amendments against these requirements. They include general standards that apply to all amendments (both text and map amendments) and specific requirements that may or may not be relevant for a particular plan amendment. The basic data and analysis requirements that impact all amendments are specified in Rule 9J-5.005(2), F.A.C. Below is a brief description of these requirements, focusing on the more relevant requirements for this analysis:

General Requirements

- 1) All amendments and any support documents must be based upon relevant and appropriate data analysis.
- 2) Data utilized must be collected and applied in a professionally acceptable manner.
- 3) Data must be taken from professionally accepted existing sources. Original data collection can also be used but the data must be gathered and applied in a professionally accepted manner.
- 4) Data relied upon must be the best available data. If a more recent analysis or study is available, then that analysis must be considered.
- 5) For population projections, the plan must be based on resident and seasonal population estimates and projections. If the projections utilize the state accepted sources (BEBR), then the mid range must be used unless approved by the DCA. If an estimate is prepared by the local government, then the population projections, estimates and methodologies must be approved by the DCA in advance.

Land Use Analysis requirements

In addition to the general data and analysis requirements just mentioned, there are land use analysis requirements that must be included when any changes are being made to the future land use map. The analysis must demonstrate the proposed change is supported by the following:

- 1) Public Facility Analysis – An analysis ensuring that adequate public facilities will be available to serve any proposed development in the first 5 years and facilities are planned to be in place to address long term impacts over the planning timeframe. This analysis

should be completed for all public facilities including transportation, water, sewer, water supply, public schools, parks and recreation.

- 2) Suitability Analysis – An analysis to ensure that areas proposed for development are suitable for the development proposed. This typically includes an analysis of whether environmental resources are present and will be impacted by the proposed change.
- 3) Needs Analysis – An analysis to demonstrate that there is a need for additional development (at maximum buildout on the County's FLUM) in the planning timeframe based upon a comparison of the land uses currently allocated on the future land use map and the population projections anticipated during the planning timeframe.
- 4) Urban Sprawl Analysis – An analysis to demonstrate that the proposed development does not result in a sprawling land use pattern. Rule 9J-5 includes 13 indicators of urban sprawl and requires an evaluation of land uses, conditions and development controls to determine whether the amendment is anticipated to result in urban sprawl.
- 5) Chapter 2008-91, Laws of Florida (HB 697) – With the adoption of HB 697, the DCA has been applying the principles contained in the bill in its review of land use amendments. This includes a consideration of the impacts of the amendment on energy. Strategies recommended include minimizing automobile usage (vehicle miles traveled), maintaining a balance between jobs and housing to shorten length of automobile trips, discouraging urban sprawl and decreasing green house gas emissions.

REVIEW OF PROPOSED AMENDMENTS COMPARED TO DATA AND ANALYSIS REQUIREMENTS

Carlton Fields reviewed the amendments prepared by the RLSA Review Committee. As part of our review, we met with staff from Collier County, DCA and Al Reynolds of Wilson Miller in order to better understand the program and the work of the Committee. Our review has resulted in five general recommendations and other more specific recommendations in the body of the document. These recommendations are explained in more detail below.

Issue #1 – Identify the purpose and need for each amendment as determined by the RLSA committee

Impacted Policies: All policies

All of the proposed amendments are based upon the significant work conducted by the RLSA review committee including the numerous hours of public testimony, support material and technical reports. However, in the materials presented for our review, the relationship is not clear between the Committee review and the proposed amendment. This is mostly due to the amount of material that has been generated to date. While the information is available, in some cases it is difficult to determine why the change is proposed. For this reason, it is recommended that a concise explanation is inserted for each revision that includes an explanation of the problem that was identified by the review committee during its review and the reason this particular

amendment language was selected as a solution. This format would clearly and concisely present the supporting analysis for each change proposed and should include a cross reference to the supporting documentation where more information can be found.

Recommendation: Format report to provide a concise explanation for each change including the problem raised by the RLSA committee and the reason for the amendment language selected.

Issue #2 – Use Best Available Data to support proposed amendments

Impacted Policies: All policies

For all data used to support this proposed amendment the studies must be the most up-to-date version available at the time the amendment is adopted by the Commission. Any relevant analysis that has been conducted since the Report was finalized should also be used as supporting documentation. For example, the Phase I Report was based upon general assumptions on the demand for panther crossings. Since that time, we have been advised a more recent study has been completed. This latter study should be considered as part of the supporting documentation for this plan amendment unless the County determines that it is not the most up-to-date information or is not relevant. Other examples could include any new transportation or population studies that may have been or will be created by the time the Board of County Commissioners adopts the amendments.

Recommendation: Use the best available data to support the proposed amendments.

Issue #3 – Include a Comprehensive Land Use Analysis to support any changes to increase the amount of credits in the program and to increase the size of the SRA.

Impacted Policies: Policies 2.2 and 3.11

The proposed amendment provides for increases in the credits generated for the protection of panther connection corridors and the protection of agricultural lands from urban conversion. However, the tiering of restoration efforts and expiring of early entry credits results in a decrease in credits generated. The combination of these changes to the credit system results in an additional 89,000 credits to the overall program which would presumably result in additional urban development in the RLSA boundary. Any SRA acreage increase would also result in a reduction in baseline development.

S.163.3177(6)(a), F.S. and Rule 9J-5.006(2), F.A.C. require that all changes to the future land use map must be supported by a comprehensive land use analysis that considers the suitability of the land for development, the need for the change and the ability of the local government to provide urban services (transportation, water, sewer, parks and recreation and schools). The amendment must also be supported by an analysis demonstrating whether the land use change would encourage or discourage the proliferation of urban sprawl. This analysis must be based upon the maximum development potential permitted under the future land use map. This

theoretical maximum development potential almost always can never actually be reached on the ground due to many factors including infrastructure requirements, market demands, environmental features and other on-site constraints but is still required to be provided.

For the public facilities analysis, the impact of the amendment must be determined for two planning periods. The first period is the first five years to determine if there are adequate facilities in place to serve the amendment. This period must be supported by an analysis demonstrating the financial feasibility of the amendment pursuant to S.163.3177. The second period includes the remainder of the planning timeframe where the local government must show how it intends to provide the services needed beyond the first five years. This period does not require a demonstration of financial feasibility.

The analysis must also be based on the difference between the amount of development permitted on the future land use map today versus the proposed change. For example, if the property under consideration is currently designated for 1 unit per acre and the proposed change is to increase to 4 units per acre, then the analysis must demonstrate the need and ability to service the additional 3 units per acre.

RLSA Analysis and Assumptions

Below is the framework for a land use analysis based on the assumptions made in the Committee's Phase I report and is based on the maximum potential increase of SRA lands. This example analysis does not consider all factors that could change these assumptions such as:

- The impact of the recalibration of SRA acreage on the program from 8 credits to 10 credits per acre for future SRAs
- The Phase I report was based upon the credit potential generated based on historical use of the program and may not reflect the maximum potential credit generation under the program
- The current program does not have a cap on potential SRA acreage

All of these factors could modify the amount of credits available under the program today or the potential change in credits generated under the amendment. The supporting analysis for this plan amendment will need to make clear assumptions on all of these issues as well as provide supporting data and analysis for each assumption made.

Based on the assumptions in the RLSA review committee's Phase I Report, there could be an increase of 1,688 acres within the SRA as identified in Table 1 below.

Table 1: Impact of Proposed Amendment on Collier County Future Land Use Map*	
Potential Credits Available Under Proposed Program	404,000 credits
Potential Credits Available Under Current Program	315,000 credits
Additional Credits Available	89,000 credits
Maximum increase of SRA lands due to proposed cap of 45,000 acres	1,688 acres

- Table 1 is based upon assumptions made in Section III of Phase I Report from the RLSA committee. Report assumed that current program could result in SRA footprint of 43,312 acres

This increase of SRA acres, if all developed under the Town land use category which permits a maximum of 4 dwelling units per acre, could result in an additional 6,752 dwelling units. This analysis is summarized in Table 2 below.

Table 2: Potential Maximum Residential Unit Increase in SRA	
Maximum SRA Acre Increase due to Proposed Change	1,688 acres
Maximum Residential Units permitted in RLSA (4 du/acre)	6,752 units

The 6,752 units is a theoretical maximum increase in the residential development potential for the SRA. However, this does not consider all of the land uses required under the comprehensive plan for the Town land use. The comprehensive plan requires a mixed use development pattern meaning the other uses needed to create a Town such as the shopping, employment, civic, institutional and recreational uses must also be provided. Thus, to determine the development potential of the Town, it must be clarified how much residential and non-residential is allowed at the maximum development potential for each acre of land. This must be included in the supporting analysis. To provide the required supporting analysis, the County will need to make assumptions based on how the program has been implemented to date to determine the maximum development potential of the SRA lands.

Off-Set of Residential Units

In order to create the additional 1,688 acres of SRA land there must be a reduction or off-set of residential development potential on the County's Future Land Use Map. Under Section III of the Phase I Report, it is assumed that under the current program 43,700 acres of lands remain available for development under the baseline residential density of 1 unit per five acres. Thus, if the maximum development potential of these lands are totaled then these lands would permit 8,740 units on the Future Land Use Map today.

Under the proposed changes to the program including the addition of agricultural credits, the program at 100% voluntary participation would eliminate the 43,700 acres of baseline development. Thus, 8,740 units of baseline development would be eliminated on the Future Land Use Map.

Comparing the maximum development potential of baseline development at 8,740 units to the maximum residential development potential of the SRA at 6,752 units, the proposed change could result in a decrease of 1,988 units on the County's Future Land Use Map. Additionally, the remaining 6,752 units within the SRA would be clustered in a compact development pattern. This calculation is summarized in Table 3 below.

Maximum SRA Acre Increase due to Proposed Change	1,688 acres
Maximum Residential Units permitted in SRA (4 du/acre)	6,752 units
Maximum Baseline Development Acre Decrease due to Proposed Change	43,700 acres
Maximum Baseline Residential Unit Decrease	8,740 units
Net Residential Unit Change to RLSA/County Future Land Use Map	- 1,988 units

General Assumptions Used in Phase I Report

All the calculations in this memorandum are based upon the assumptions in the Phase I Report. The current adopted program has no caps in place and the calculations were based upon assumptions under how the program has been operated to date. If it can be justified in the analysis that the current program could reasonably result in more SRA acreage than the assumed 43,312 acres, then the impact of this amendment would be even less. If it can reasonably be demonstrated that the current program could create 45,000 acres of SRA then there may arguably be no impact from the establishment of panther corridor and agriculture protection credits.

The comparison between the amount of SRA acreage that can be generated under the existing program as compared to the amended program and the difference in residential and non-residential development potential will heavily determine what analysis will be needed to support the change. Historically, the DCA has determined that an amendment is based upon the increment of change proposed in the amendment. If the amendment results in no increase in impact, then the DCA has determined that no needs or public facility analysis is required.

Additional SRA Acres Not Known

One challenge in conducting the comprehensive land use analysis is that the exact location of the additional SRA acres is not depicted. Under the program, all open lands are potential SRA acres. The County must provide some supporting analysis demonstrating where development would most likely occur in order to determine the ability to provide services.

Need

If the County determines this amendment results in an increase in development potential in the RLSA, then the amendment must be supported with an analysis demonstrating that there is a need for the amount of additional development proposed within the planning timeframe which is 2025. This analysis would include consideration of the development pressures in the area, the availability of land approved for development on the Future Land Use Map to address the demand. The DCA typically requires the analysis be Countywide unless the comprehensive plan includes an analysis of the need for development based upon smaller sectors within the local government. This type of analysis has received strict scrutiny from the DCA over the past two to three years especially with the lack of development occurring within the State and the amount of development already approved.

Recommendation: Amend the report to include a comprehensive land use analysis which includes an analysis on the suitability of land for development, need, availability of public facilities and urban sprawl based upon the additional SRA lands created through this amendment.

Issue #4 – Provide supporting data and analysis to demonstrate program will not result in a premature conversion of agricultural lands

Impacted Policy: Goal, Group 2 Summary and Policy 2.1

The amendment proposes to delete provisions that seek to restrict the premature conversion of agricultural lands. Rule 9J-5.006(5)(g)4., F.A.C establishes the premature conversion of agriculture as an indicator of urban sprawl. Thus, the deletion of this provision will result in strict scrutiny from the DCA and does not remove the Rule requirement to prohibit premature conversion.

If the amendment is needed, then an analysis should be included demonstrating why the amendment will not result in a premature conversion of agriculture. This would include an explanation of the timing of proposed development, of why the development is needed within the planning timeframe and is thus not premature but rather a timely conversion of agricultural land needed to meet the planning needs of the County through 2025.

Recommendation: Include an analysis that demonstrates that the amendment will not result in the premature conversion of agricultural lands.

Issue #5 – Provide data and analysis to demonstrate consistency with Energy Bill requirements (HB 697)

Impacted Policy 4.6

Policy 4.6 addresses the innovative planning goals of the RLSA program and is being amended to add mobility planning to address the short term and long term needs of the RLSA area to encourage other modes of transportation than the automobile. As part of this policy the requirements contained in Chapter 2008-91, Laws of Florida (HB 697) should be included and an analysis of how these issues would be addressed such as by reducing vehicle miles traveled, decreasing green house gas emissions or encouraging a jobs to housing balance

Recommendation: Include supporting data and analysis to demonstrate consistency with HB 697 requirements.

SUMMARY OF MEETING WITH DEPARTMENT OF COMMUNITY AFFAIRS (DCA)

As part of drafting this memo, staff from Carlton Fields and the County met with Mike McDaniel, Bureau Chief of Local Planning, and Brenda Winningham and Scott Rogers with DCA to discuss what data and analysis would be needed to support this amendment. The DCA provided the following general direction:

1. The amendment should result in the placement of panther corridor crossings in the most appropriate locations to meet the goals intended.
2. The amendment should demonstrate that agricultural lands will be protected in the long term. The program should have the least impact on the viability of agriculture, minimize incompatibilities, and discourage the carving up or bifurcation of viable agricultural lands.
3. The amendment must be supported by an analysis demonstrating there is a need for additional SRA lands.
4. The supporting analysis needs to demonstrate that these revisions make it much more likely for the program to achieve its goals and not dilute the value of the program as it exists today.

CONCLUSION

Based upon our review, we have identified a series of recommendations that are needed to support the proposed amendments. Some of these recommendations will simply require the reformatting of the information available today and a better summary of the work of the Committee about why recommendations were made. Other recommendations will require more analysis considering the implications of changes and demonstrating how those changes will

impact the RLSA program. For the comprehensive land use analysis, staff will need to make some assumptions on the amount of SRA lands that can be generated under the current program and the expected impact of the proposed changes. The analysis will need to consider all of the anticipated impacts of any proposed increase on the future land use map especially the need for additional development and the ability to provide services by the County.

Finally, the DCA has already stated concerns with the County's RLSA program. The County in its development of supporting data and analysis should consider those concerns and attempt to provide answers in terms of how the amendments strengthen the program and improve upon its shortcomings.

cc: Leo Ochs, County Manager
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