May 1, 2007

The Honorable Jim Coletta, Chairman
Collier County Board of County Commissioners
3301 East Tamiami Trail
Naples, Florida 34112

Dear Chairman Coletta:

The Department of Community Affairs (Department) has completed its review of the Comprehensive Plan Amendment for Collier County (DCA No. 07-1ER) and determined that Ordinance Nos. 07-08 through 07-17, and 07-19 through 07-22, adopted on January 25, 2007, meet the requirements of Chapter 163, Part II, Florida Statutes (F.S.), for compliance, and Ordinance Nos. 07-07 and 07-18, adopted on January 25, 2007, do not meet the requirements for compliance, as defined in Subsection 163.3184(1)(b), F.S. The Department is issuing a Notice of Intent to find the portion of the plan amendment adopted by Ordinance Nos. 07-08 through 07-17, and 07-19 through 07-22, in compliance, and a Statement of Intent and Notice of Intent to find the portion adopted by Ordinance Nos. 07-07 and 07-18, not in compliance. The Notice of Intent has been sent to the Naples Daily News for publication on May 2, 2007.

The Department's notice of intent to find the portion of the plan amendment adopted by Ordinance Nos. 07-08 through 07-17, and 07-19 through 07-22 in compliance shall be deemed to be a final order if no timely petition challenging the amendments is filed. Any affected person may file a petition with the agency within 21 days after the publication of the notice of intent pursuant to Section 163.3184(9), F.S. No development orders, or permits for a development, dependent on the amendment may be issued or commence before the plan amendment takes effect.

Regarding the portion of the amendment found not in compliance, the Notice, and Statement of Intent will be forwarded to the Division of Administrative Hearings of the Department of Management Services for the Scheduling of an administrative hearing pursuant to Section 120.57, Florida Statutes. This is a routine step required by Section 163.3184(10), Florida Statutes, and it does not preclude our ability to resolve compliance issues prior to the hearing.
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Please, be advised that Section 163.3184(8)(c)2, Florida Statutes, requires a local government that has an internet site to post a copy of the Department’s Notice of Intent on the site within 5 days after receipt of the mailed copy of the agency’s notice of intent. Please, also note that a copy of the Adopted, Collier Comprehensive Plan Amendment, and the Notice of Intent must be available for public inspection Monday through Friday, except for legal holidays, during normal business hours at the Collier County Comprehensive Planning Section, 2800 North Horseshoe Drive, Naples, Florida 34104, and the County Clerk’s Office, 4th Floor, Administration Building, County Government Center, East Naples, Florida.

If an affected person challenges this in compliance determination, you will have the option of mediation pursuant to Subsection 163.3189(3)(a), F.S. If you choose to attempt to resolve this matter through mediation, you must file the request for mediation with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation will not affect the right of any party to an administrative hearing.

If you have any questions, please contact Bernard Piawah, Principal Planner, at (850) 922-1810.

Sincerely,

Mike McDaniel
Chief, Comprehensive Planning

Enclosure: Notice of Intent and Statement of Intent

cc: Mr. Joseph Schmitt, Collier County Community Development Director
Mr. Randy Cohen, Planning Director
Mr. David Burr, Executive Director, Southwest Florida Regional Planning Council
 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)  

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.
2. **Ordinance #: 07-97; 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 163.3177(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)].
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 5th 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
STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND COLLIER COUNTY
COMPREHENSIVE PLAN AMENDMENTS ADOPTED BY
ORDINANCE NOS. 07-07 AND 07-18 NOT IN COMPLIANCE
AND THE COMPREHENSIVE PLAN AMENDMENTS ADOPTED BY
ORDINANCE NOS. 07-08 THROUGH 07-17 AND 07-19 THROUGH 07-22
IN COMPLIANCE
DOCKET NO. 07-IER-N01-1101-(A)-(N)

The Department gives notice of its intent to find the Amendments to the Comprehensive Plan for
Collier County adopted by Ordinance Nos. 07-07 and 07-18, on January 25, 2007, NOT IN COMPLIANCE,
and Amendments adopted by Ordinance Nos. 07-08 through 07-17 and 07-19 through 07-22,
on January 25, 2007, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

The adopted Collier County Comprehensive Plan Amendments, the Department's Objectives, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendments Not in Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Collier County Comprehensive Planning Section, 2800 N. Horseshoe Drive, Suite 400, Naples, Florida 34104 and County Clerk's Office, 4th Floor, W. Horner Tammer Building (Building F) Administration Building, Collier County Government Center, East Naples, Florida.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the Amendments to the Collier County Comprehensive Plan are in Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice, a copy must be mailed or delivered to the local government and must include all of the information and contents described in Uniform Rule 28-106.201, F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2535 Shannon Oak Boulevard, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Sections 120.569 and 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

This Notice of Intent and the Statement of Intent for those amendments found Not in Compliance will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an Administrative Hearing pursuant to Sections 120.569 and 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objectives, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administrative Commission.

Affected persons may petition to intervene in either proceeding referenced above. A petition for intervention must be filed at least twenty (20) days before the initial hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. Pursuant to Section 163.3184(10), F.S., no new issues may be alleged as a reason to find a plan amendment not in compliance in a petition to intervene filed more than twenty-one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty-one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3050, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Sections 120.569 and 120.57, F.S., or to participate in the administrative hearing.

After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing a request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.