

STATE OF FLORIDA  
OFFICE OF THE GOVERNOR

IN RE: CABINET AIDES MEETING

CABINET AIDES: KRISTIN OLSON, CHAIR  
AMANDA CAREY  
ROB JOHNSON  
ERIN SUMPTER  
KENT PEREZ  
ROBERT TORNILLO  
STEPHANIE LEEDS  
JESSICA FIELD  
BROOKE MCKNIGHT  
KIMBERLY RESPIE

DATE: SEPTEMBER 28, 2016

TIME: 9:01 a.m. - 10:38 a.m.

LOCATION: CABINET MEETING ROOM  
LOWER LEVEL, THE CAPITOL  
TALLAHASSEE, FLORIDA

REPORTED BY: YVONNE LaFLAMME, FPR  
COURT REPORTER

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## I N D E X   P A G E

3

4    PAGE NO.

DEPARTMENT OF REVENUE

5

By Debbie Longman

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6

BOARD OF TRUSTEES

By Renee Lewis

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ADMIN COMMISSION

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By Peter Penrod

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1                               \*\*\*\*\*       \*\*\*\*\*       \*\*\*\*\*

2               MS. OLSON: Good morning. Today is  
3               September 28th, and this is the Cabinet Aides  
4               meeting for October 4th.

5               We have put a new agenda online, and if you  
6               guys haven't seen it, we just rearranged a little  
7               bit: Department of Revenue, then Trustees, and  
8               then we're going to do Ad Com last and finish with  
9               that. In addition to that, we have several  
10              resolutions, so...

11              \*\*\*\*\*

12              DEPARTMENT OF REVENUE

13              \*\*\*\*\*

14              MS. OLSON: First up, we have Department of  
15              Revenue.

16              MS. LONGMAN: Good morning. Debbie Longman  
17              Department of Revenue. The Department of Revenue  
18              will have one item on the October 4th Cabinet  
19              agenda.

20              Item Number 1, the Department requests  
21              permission to file notices of proposed rule to  
22              amend rules relating to general tax administration.  
23              The proposed amendments revise language and forms  
24              to reflect statutory changes enacted by the 2016  
25              Legislature, update annual tax rates, and clarify

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1 forms to readability. A rule workshop was  
2 scheduled for September 21st, if requested. No  
3 requests were received and no workshop was held.  
4 No written comments were also received by the  
5 Department.

6 I'm just going to highlight a few of the law  
7 changes resulting in some of these forms being  
8 revised. Most of the law changes relate to  
9 Chapter 2016-220; for example, Rule 12A 1.0115  
10 Veterans' Organizations, Sale of Food and  
11 Beverages. This rule is being amended to  
12 incorporate a new tax exemption that permits  
13 qualified Veterans' organizations to sell food and  
14 drinks exempt from sales tax to their members.

15 We are also revising a sales tax rule,  
16 Rule 12A 1.087; post-harvest machinery and  
17 equipment. This rule is amended to add guidance on  
18 the new sales tax exemption for post-harvest  
19 machinery and equipment. That allows for the  
20 exempt sale of this machinery and equipment to  
21 qualified businesses.

22 Rule 12B-5.300, aviation fuel for air  
23 carriers, is being amended to incorporate revisions  
24 made to the fuel tax exemption that permits certain  
25 air carriers to purchase aviation fuel exempt from

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1       the tax if they meet specified requirements. And  
2       the last one from this particular chapter law I'm  
3       going to highlight is Rule Chapter 12C, is  
4       corporate income tax. We're making a number of  
5       rule changes to rules in that particular chapter to  
6       modify how adjusted federal income is defined and  
7       calculated for the purposes of Florida corporate  
8       income tax; to conform the timing of filing of  
9       returns, making payments, and filing declarations  
10      to the revised federal dates, and also to remove  
11      obsolete provisions.

12           Additionally, Chapter 2016-59 modified  
13      provisions relating represented to secondhand  
14      dealers, and as such, the sales tax rule dealing  
15      with this, 12A-17.003, had to be amended and  
16      changed to reflect the language and also the forums  
17      to incorporate the new automated kiosk option.

18           Lastly, the majority of this are our annual  
19      forms updates. In total, 25 forms are being  
20      revised, including our annual updating of the  
21      communications tax return to reflect to local CST  
22      tax beginning January 2017.

23           Any questions?

24           MS. RESPIE: For the secondhand dealers, I saw  
25      in the back-ups, they went into effect on July 1st.

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1 Do we have any operational kiosks in the state as  
2 of yet?

3 MS. LONGMAN: I believe we do. Let me check on  
4 that and I'll get back with you.

5 MS. RESPIE: Would you also be able to go  
6 through -- if you have it; if not, you can get back  
7 to us -- with the amount for projected, as far as  
8 what you listed on the legislative changes for  
9 Veterans' organizations, is that how much we  
10 anticipated to lose in sales tax?

11 MS. LONGMAN: I believe -- I believe -- for  
12 the first year, it's 1.2 million is what the  
13 revenue estimating conference put on it, and then  
14 ongoing, it is either 1.4 or 1.5 million recurring,  
15 but I will double-check that and send that to all  
16 of you.

17 Any questions? Thank you.

18 \*\*\*\*\*

19 BOARD OF TRUSTEES

20 \*\*\*\*\*

21 MS. OLSON: All right. Next up is the Board  
22 of Trustees.

23 MS. LEWIS: Good morning, everybody. Renee  
24 Lewis, Department of Environmental Protection, and  
25 we have four Board of Trustee agenda items for the

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1           October 4th meeting.

2                   Item 1 is minutes of the August 2nd meeting.

3                   Item Number 2 is an option agreement to  
4           require approximately 11,000 acres from Natural  
5           Bridge Timberlands, LLC. The majority of this  
6           acreage is located in the Upper Saint Marks  
7           corridor of Florida Forever Project in the St. Joe  
8           Timberland Florida Forever Project.

9                   This property known as Warren Spring Woods  
10          would serve as a major corridor connector to  
11          St. Marks River Preserve State Park, Fan Loop  
12          Preserve, Auscilla Wildlife Management Area, and  
13          Natural Bridge Battlefield Historic State Park. It  
14          would also include approximately 10 springs,  
15          protect water resources within this project and the  
16          surrounding area, and it would be the largest fee  
17          simple acquisition that this sitting Board of  
18          Trustees would hopefully approve, and it would also  
19          provide resource space outdoor recreational  
20          activities, such as canoeing, kayaking, hiking,  
21          fishing and wildlife viewing.

22                   The Trustees' purchase price is \$16.1 million,  
23          and the property would be co-managed by FWC and  
24          DEP's Division of Rec and Parks.

25                   And if there's no questions, then we have one

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1 speaker, George Wilson, with the Tall Timber Board,  
2 would like to make a few comments.

3 MR. WILSON: Good morning. I'm George Wilson,  
4 and I'm pleased to be here today to thank you very  
5 much for considering and hopefully voting next  
6 week; your bosses will vote for this remarkable  
7 place. The board and staff of Tall Timbers are  
8 very supporting in fitting the strategic plans for  
9 all of the coastal rivers. It is a very, very,  
10 important place.

11 When this project was designed, in 1999, you  
12 could walk on St. Joe land from Tallahassee to  
13 St. Marks Refuge almost all the way to the town of  
14 St. Marks and never leave the property. You look  
15 and see what's happened, so what you have is, if  
16 you're buying an intregal part that was kept  
17 together by either that company or the company  
18 you're buying from, which is America's largest  
19 agricultural landowner, so it -- it is you know,  
20 remarkable that you-all would come together after  
21 all of these years to save this very special place.  
22 It has beautiful sand hills; some of the largest  
23 cypress you'll see off of any major river; a great  
24 springs assortment.

25 As a matter of fact, it was one of Mr. Ball's

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1 collection of springs; his spring collection that  
2 you have pretty much adopted most all of his  
3 places. All of the major springs, Wakulla Springs;  
4 spring after spring -- Wacissa River Springs --  
5 they have all come into public ownership, and  
6 that's another nice legacy of some of these forest  
7 ownerships that y'all have inherited and done a  
8 really good job managing.

9       Anyways, you're getting a good price.  
10 Compared to properties nearby, it's similar in size  
11 that were bought 16 years ago, and you're paying a  
12 lot less for properties that had less  
13 develop-ability, less everything. So you're  
14 getting a great deal, so that's another point in  
15 your favor, and I hope at the end of the day in a  
16 year or two, you might be eligible for  
17 reimbursement perhaps from the Gulf Environmental  
18 Benefit Fund that (inaudible) or the other  
19 agencies.

20       I know that DEP and the Commission are working  
21 very closely together to putting targets together  
22 and swim planning. This would be a target under  
23 anybody's coastal look; a tidewater river that is  
24 very important to not only the St. Marks River, but  
25 it's very important to Apalachee Bay and the Gulf

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1 of Mexico's health, so it includes great sand hills  
2 for groundwater recharge. And just the whole  
3 collection, I hope you get to come out and visit it  
4 on a cool day. There's less bugs, but you'll  
5 really enjoy seeing some of the special sites, and  
6 maybe even kayak paddle when the new leaves are  
7 changing or in the spring when the new leaves are  
8 coloring in.

9 But thank you, again, this is a really special  
10 place for Northwest Florida, and you couldn't have  
11 picked a nicer place, so thank you very much.

12 MS. LEWIS: All right. Moving to Item  
13 Number 3 is the presentation of the 4th quarter  
14 performance measures and the Secretary's annual  
15 leadership assessment. And overall for the four  
16 quarters for the objective performance measure  
17 average is 4.6. Again, Measures Number 7 and  
18 Measure Number 10 were the two that the agency  
19 achieved a 4, and we are working for those lessees  
20 to bring them back into compliance.

21 Any questions?

22 Okay. Our last item is Item Number 4, and  
23 Mr. Kal Knickerbocker with the Department of  
24 Agriculture and Consumer Services, Division of  
25 Aquaculture will present it.

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1 Thank you.

2 MR. KNICKERBACKER: Thank you and good  
3 morning.

4 This is Item Number 4 for the Trustees  
5 consideration. It's water column lease  
6 modification request. Phil Cubbage has requested a  
7 water column modification to his existing 2.11-acre  
8 bottom lease in the Matanzas River in St. Johns  
9 County. Mr. Cubbage plans to use an off-bottom  
10 rack system and floating system. Both of these  
11 systems are proposed gear or covered under the  
12 existing Army Corps Engineer permit called HSA-99.

13 The Agency notice was sent to the Fish and  
14 Wildlife Commission and Department of Environmental  
15 Protection Florida's coastal office for review. We  
16 received no comments. We also did a public notice  
17 and received no comments there from local area.  
18 The leaseholder will have a special condition in  
19 his lease to acquire a Private Aids Navigation  
20 permit from the United States Coast Guard to  
21 install associated lighting, signage to eight  
22 boaters and navigation.

23 We are recommending approval on this, and I  
24 would be happy to answer any questions. All right.

25 Thank you very much.

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1 MS. LEWIS: Thank you. That concludes the  
2 Board of Trustees' agenda.

3 \*\*\*\*\*

4 ADMINISTRATION COMMISSION

5 \*\*\*\*\*

6 MS. OLSON: Last up, we have the  
7 Administration Commission agenda. Good morning,  
8 Peter.

9 MR. PENROD: Good morning. We have two items  
10 on the Administration Commission agenda.

11 Item 1 is approval of the minutes from the  
12 August 2nd, 2016, meeting.

13 Any questions?

14 Item 2 is consideration of a recommended order  
15 and proceeding of Roger Thornberry and Georgette  
16 Lundquist, Steve Rokin, Ruby Daniels, Rosalee  
17 Prestari, James Greedman (phonetic), versus Lee  
18 County, RH Ventures.

19 This agenda item is a challenge to a Lee  
20 County Comprehensive Plan Amendment adopted by  
21 ordinance 15-10. The Plan Amendment in question  
22 changes the land use designation of 585.6 acres of  
23 land from the rural land use category to  
24 sub-outlying suburban.

25 On December 1, 2015, after noticing the

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1 hearing, Administrative Law Judge entered a  
2 recommended order determining that the plan  
3 amendment 15-10 was out of compliance with Chapter  
4 163 Florida Statute.

5 The purpose of this item today is for the  
6 Commission to consider the recommended order, party  
7 acceptances and relevant law for the final action.

8 As mentioned, the party in this case are Roger  
9 Thornberry and several other in the property. The  
10 respondent is Lee County, and the intervenors are  
11 RH Venture 2, LLC, RH Venture 3, LLC, and  
12 Greenpoint Communities, LLC.

13 The way we'll handle this item is I'll run  
14 through the recommended order outlining the  
15 petitioner's, the background, the findings of fact,  
16 conclusions of law; I'll step away, I'll let the  
17 parties come up and give their presentations and  
18 come back and we can discuss the final action.

19 So the background for this case is on June 3m  
20 2015, the Lee Board of County Commissioners adopted  
21 a comprehensive plan amendment Lee County  
22 Comprehensive Plan. The plan amendment changed  
23 land use designation of 585 acres of land from  
24 rural to sub-outlying suburban.

25 On July 1st, 2015, Petitioners filed a

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1 petition with the Division of Administrative  
2 Hearings, challenged the plan amendment, pursuant  
3 to Chapters 163.184 Florida Statute.

4 On December 21, 2015, the administrative law  
5 judge issued a recommended order finding the plan  
6 amendment in compliance.

7 After issuance of the recommended order, both  
8 Respondent and Intervenor timely filed exceptions  
9 to the recommended order. The Petitioner submitted  
10 an untimely response to these exceptions.

11 I'll now summarize Petitioner's challenge to  
12 the plan amendment. Petitioners allege 15-10 is  
13 inconsistent with the Lee County Policy 21.1.5  
14 which provides, and I quote, One important aspect  
15 of the Caloosahatchee Shores community's claim is  
16 to retain its rural character and rural land use  
17 where it currently exists. Therefore, no land use  
18 map amendments to remaining rural land use  
19 category will be permitted after May 15, 2002,  
20 unless a finding of overriding public necessity is  
21 made by three members of the Board of County  
22 Commissioners, end quote.

23 Petitioners contend that since the plan  
24 amendment is an amendment to the rural lands  
25 category, the County is required to make a finding

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1 of overriding public necessity prior to changing  
2 the land use designation from rural to sub-outlying  
3 suburban.

4 Petitioners conclude since the County failed  
5 to make this finding, the plan is internally  
6 inconsistent and in violation of Section 163.31772  
7 Florida Statutes, which requires that a  
8 comprehensive plan be internally consistent.

9 As such, the Petitioners argue the plan  
10 amendment is not in compliance with Chapter 163.

11 I will now turn to the administrative law  
12 judge's finding of facts, and we begin with the  
13 standard of review.

14 Before I do that, are there any questions  
15 about the background of the Petitioner's argument?

16 The standard of review for findings of fact in  
17 a recommended order is set forth in  
18 Section 120.5710 Florida Statutes, which provides,  
19 "The Commission may not reject or modify the  
20 Administrative Law Judge's findings of fact, unless  
21 the Commission first determines from review of the  
22 entire record and states with any particularity in  
23 the order that findings of fact were not based on  
24 competent, substantial evidence, or that the  
25 proceedings in which the findings were based did

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1 not comply with the essential elements of law.

2 "Therefore the findings of fact can only be  
3 rejected or modified if they are not based on  
4 competent substantial evidence or the proceedings  
5 did not comply with the essential elements of the  
6 law.

7 I will now provide an overview of the  
8 administrative law judge's material findings of  
9 fact. The administrative law judge found that the  
10 subject property is located in the Caloosahatchee  
11 Shores within an existing 1978 acre mixed use gulf  
12 community known as River Hall.

13 The administrative law judge further found  
14 that the subject property was listed in the rural  
15 lands use category.

16 She then determined that policy 21.1.5 directs  
17 the Board of County Commissioners to make a finding  
18 of overriding public necessity as a prerequisite to  
19 removing rural lands from the rural land use  
20 category.

21 Next, the administrative law judge determined  
22 the plan amendment 15-10 removes lands from the  
23 rural land use category and changes the future land  
24 use designation of the subject property from rural  
25 to sub-outlying suburban.

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1           Finally, the administrative law judge found  
2           that the Board of County Commissioners did not make  
3           a finding of overriding public necessity when it  
4           adopted plan amendment 15-10.

5           I will now turn to the administrative law  
6           judge's conclusions of law. Before doing that, are  
7           there any questions about the findings of fact?

8           The standard of review for conclusions of law  
9           is set forth in section 128.50 Florida Statutes and  
10          provides, "The Commission in its final order may  
11          reject or modify the conclusions of law over which  
12          it has substantive jurisdiction. When rejecting or  
13          modifying such conclusions of law, the Commission  
14          must state in particularity its reasons for  
15          rejecting or modifying such conclusions, and must  
16          make a finding that it's substituted conclusions of  
17          law as or more reasonable than that which was  
18          rejected or modified.

19          Rejection or modification of conclusions of  
20          law may not form the basis for rejection or  
21          modification of findings of fact. Therefore, the  
22          conclusions of law can be modified or rejected only  
23          if the Commission states with particularity the  
24          reasons for modifying or rejecting the conclusion,  
25          and the Commission makes a finding that its

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1 substituted conclusion is as or more reasonable  
2 than the one that was replaced.

3 I will now go over the conclusions of law.  
4 First is standing. To have standing, to challenge  
5 or support a plan amendment, a person must be an  
6 affected person as defined in section 163.3184  
7 Florida Statutes. Administrative law judge  
8 concluded that all parties in this proceeding have  
9 standing.

10 Next, "in compliance" means consistent with  
11 the requirements of the relevant sections of  
12 Chapter 163 Florida Statutes. With the appropriate  
13 strategical regional policy plan, and with the  
14 principals for guiding designated areas of critical  
15 state concern, and part three of Chapter 169  
16 Florida Statutes were applicable.

17 The fairly debatable standard applies any  
18 challenge filed by an effective person. Under the  
19 fairly debatable standard, Petitioner bears the  
20 high burden of proving beyond fair debate that the  
21 challenge amendment is not in compliance. This  
22 means if reasonable persons could differ as to its  
23 propriety, a plan amendment must be upheld.

24 Next, the administrative law judge ruled on  
25 the application of policy 21.1.5 to Amendment

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1 15-10. The administrative law judge concluded that  
2 the language in 21.1.5 has no doubtful meaning and  
3 the clear directive of the policy is to make a  
4 finding of overriding public necessity as a  
5 condition precedent when changing the future land  
6 use of lands designated rural and Caloosahatchee  
7 Shores community.

8 The administrative law judge further concluded  
9 that the Petitioners proved beyond fair debate that  
10 the plan amendment is inconsistent with policy  
11 21.1.5 since the Board of County Commissioners  
12 failed to make a finding of overriding public  
13 necessity. The administrative law judge finally  
14 concluded that the plan amendment is not in  
15 compliance with Chapter 163 because the subject  
16 amendment is internally inconsistent with policy  
17 21.1.5 and this violates Section 163.3177  
18 subsection 2, Florida Statutes.

19 As such, the administrative law judge  
20 recommends that the Commission issue a final order  
21 finding plan amendment 15-10 out of compliance.  
22 That concludes the conclusions of law.

23 Are there any questions?

24 I will now turn to the party exceptions.  
25 Before discussing the exceptions, I will provide

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1 the standard of review for party exceptions which  
2 is found in 120.571K Florida statutes, and it  
3 provides:

4 "The final order shall include an explicit  
5 ruling on each exception but an agency need not  
6 rule on an exception that does not clearly identify  
7 the disputed portion of the recommended order by  
8 page number or paragraph, it does not identify, and  
9 it does not include the appropriate and specific  
10 citations to the record.

11 The parties will present their exceptions and  
12 other arguments on the recommended order. Before  
13 the parties present, I want to remind the  
14 individuals presenting that the Commission may only  
15 evidence that was part of the record below. The  
16 Commission cannot and will not consider any  
17 evidence that was not made part of the record;  
18 therefore, the presenters should limit their  
19 comment to the evidence in the record and avoid  
20 discussing any issues outside of the record.

21 With that said, the Respondent presents first,  
22 and after that will be the Intervenor and then the  
23 Petitioners will present third. After they  
24 present, I'll return and we can discuss the final  
25 action.

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1           MR. WESCH: Good morning. My name is Richard  
2           Wesch and I'm the County Attorney for Lee County,  
3           Florida. We're here this morning as outlined for  
4           you in the matter styled Thornberry versus Lee  
5           County and Green Point Communities.

6           All references to documents that I will make  
7           this morning are those contained in the record  
8           below and are properly before you for your  
9           consideration.

10          If I could ask you to please turn to Tab 1 in  
11          the materials. We outlined this morning Tab 1 is a  
12          map of the River Hall subdivision outlined in red.  
13          We believe this map is significant and important  
14          for several reasons. One, it shows the entire plan  
15          of development of the River Hall subdivision. I  
16          would direct your attention specifically to what  
17          I'll refer to as the two brown areas just to the  
18          south of the -- just to the north of the red line  
19          that out lines the river. Those are the areas in  
20          question, and they're significant because I think  
21          it points up the fact that it was always intended  
22          by the parties, as well as Lee County, that these  
23          lands were going to be developed at some point in  
24          the future as part of the overhaul River Hall  
25          development.

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1           These lands were never set aside for open  
2           space. They do not represent abandoned golf  
3           courses. They represent areas that were part of  
4           the uniform plan in development and are served by  
5           central infrastructure: Water, sewer, roads,  
6           electricity and drainage; part of the overall  
7           master plan of development.

8           Also within the subdivision, there is an  
9           elementary school, golf course, clubhouse, and an  
10          amenity center. A future fire center is planned as  
11          the development goes forward. I think it's key to  
12          keep in mind that both the recreational amenities  
13          that I just outlined, as well as the  
14          infrastructure, because the evidence of clear  
15          intent that these properties were always intended  
16          to be developed at a future date.

17          Should these properties go forward, the  
18          maximum density increase for the overall  
19          subdivision would be increased from 2,695 lots, so  
20          we're not talking about a major increase in the  
21          overall developability of the overall subdivision.

22          As pointed out, the Lee County Board of County  
23          Commissioners found the plan to be in compliance  
24          and adopted it June 3rd, 2015.

25          If I could also ask you to turn to Tab 2 in

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1       the materials that we pointed out to you this  
2       morning. Tab 2 is the actual verbatim of the  
3       policy in question. This is policy 21.1.5, and I  
4       read, "One important aspect of the Caloosahatchee  
5       Shores Community Plan goal is to retain its rural  
6       character and rural land use, and we believe and  
7       the Board believe this is key where it currently  
8       exists. Therefore, no land use map amendments that  
9       remaining rural lands category will be permitted  
10      after May 15, 2009, unless a finding of over riding  
11      public necessity is made by three members of the  
12      Board of County Commissioners.

13             There was great debate and discussion in Lee  
14      County over the applicability of this policy as  
15      this application was going forward, so out of an  
16      abundance of caution, the Board of County  
17      Commissioners conducted two public hearings lasting  
18      close to three hours, during which they took  
19      evidence, testimony and public input as to the  
20      applicability of this policy and whether it should  
21      be applied to this development.

22             At the end of that three-hour public hearing  
23      process over two separate days, the Board of County  
24      Commissioners determined that these lands, the  
25      brown lands if you will under the map we provided

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1 to you under Tab 1, are not and were not rural in  
2 character and use as required by policy 21.1.5.  
3 Therefore, they chose not to apply the overriding  
4 public necessity component of the plan.

5 As an aside, I would note that overriding  
6 public necessity is not defined in the plan at all,  
7 so we would be left to try and determine what  
8 actually that means, but I think the could for the  
9 Commission will be the fact that because these  
10 lands were not rural in character and use, the  
11 balance of that policy did not apply.

12 MR. PEREZ: Yes, sir. Good morning. I'm  
13 sorry, but how do you spell your last name?

14 MR. WESCH: W-E-S-C-H.

15 MR. PEREZ: E-S-C-H. And I looked at the  
16 recommended order and I didn't see you on there. I  
17 must have missed it.

18 So tell me, at the time they spent the  
19 determinations and focusing on the nature of the  
20 property, why didn't the Board consider just going  
21 ahead and spending the same time and energy to make  
22 the public necessity determination?

23 MR. WESCH: Several reasons. One, this was an  
24 applicant initiated application. But two, I think  
25 more importantly that the fact of overriding public

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1 necessity is not defined in their comp plan.

2 MR. PEREZ: It's their comp plan.

3 MR. WESCH: In order to proceed forward, they  
4 would have had to arrive at that definition. And  
5 we have those discussions --

6 MR. PEREZ: But neither is the character of  
7 rural character.

8 MR. WESCH: Absolutely, and that's why we  
9 would ask the Board to defer to its role of common  
10 sense application as to what rural character  
11 exists, because here's the other problem that we  
12 faced. Because it is in the comprehensive plan or  
13 a definition would have to be added to the  
14 comprehensive plan, that's a separate process.  
15 That is basically an ordinance amendment process to  
16 amend the comprehensive plan to add that  
17 definition.

18 MR. PEREZ: Would that have been more taxing  
19 to the Commission; they would have had to take that  
20 step first, you're saying, before dealing with  
21 overriding necessity?

22 MR. WESCH: Yes, sir. Yes, sir. That term  
23 would have had to have been defined by ordinance  
24 through a separate public hearing process and then  
25 added into the comprehensive process.

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1           MR. PEREZ: Is that something you think they  
2           should have defined previously and they just  
3           didn't?

4           MR. WESCH: I think previous boards had  
5           difficulty trying to wrap their arms around it and  
6           that was a large part of the reason why it was not  
7           defined previously.

8           MR. PEREZ: Okay.

9           Thank you, Madam Chair.

10          MR. WESCH: Thank you.

11          The next issue that we would like to address  
12          is the question of the standard of review for the  
13          board's action.

14          As your counsel outlined, under  
15          Section 163.3184 (5)(c1), the Board's  
16          interpretation of its policy is entitled to be  
17          supported if its finding is fairly debatable. The  
18          question then becomes what does "fairly debatable"  
19          mean, and courts have defined it in various ways.

20          If I could, I'd just take a moment to outline  
21          out of the Martin County Yusen (phonetic) case, the  
22          court said, "The fairly debatable standard of  
23          review is a highly differential standard, requiring  
24          approval of a planning decision if reasonable  
25          persons can differ as to its propriety.

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1           "Stated another way, a decision to be made may  
2           be fairly debatable when for any reason it is open  
3           to dispute or controversy on the grounds that it  
4           makes sense."

5           Our argument before the Commission is that the  
6           Administrative Law Judge did not afford this level  
7           of review and deference to the Board's action  
8           below, but rather, substituted her own judgment for  
9           that of the Board and did so through a tortured and  
10          somewhat disectful application of policy 21.1.5.

11          So the matter before the Commission will be  
12          two fold: One, to determine the proper standard of  
13          review; and two, whether that standard of review  
14          was appropriately applied. We do not believe it  
15          was.

16          We believe that the Board's determination that  
17          the lands in question were not rural in character  
18          and use is a fairly debatable determination made  
19          after three hours of public hearing, input and  
20          testimony and that the Administrative Law Judge  
21          committed reversible error by substituting her own  
22          judgment for that of the Board of County  
23          Commissioners.

24          The Administrative Law Judge also committed  
25          error by dissecting that portion of the Lee County

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1 comprehensive plan. We believe that policy has to  
2 be read in total and that's what the Board of  
3 County Commissioners did. They read that policy to  
4 apply overriding public necessity to lands that  
5 were rural in character and rural in use as of the  
6 date that policy was adopted.

7 To further support that argument, I would  
8 request that you turn to Tab 3 of the materials  
9 that we provided.

10 Tab 3 is a copy of the actual application from  
11 that amendment that went to the Board of County  
12 Commissioners. Noticeably, and I would direct your  
13 attention to the second map in that tab, the  
14 cross-hatched area represents the River Hall  
15 community. Well, this map was not adopted into the  
16 Lee County comprehensive plan. It was part of the  
17 application that went forward to the then Board of  
18 County Commissioners. We believe this map clearly  
19 evidences the legislative intent that the River  
20 Hall subdivision was not rural in character, not  
21 rural in use, and not meant to be subjected to  
22 policy 21.1.5.

23 So on those basis, we would respectfully  
24 respect the Commission not adopt the recommended  
25 order, but enter an order finding that the Lee

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1 County Comprehensive Plan Amendment at issue is in  
2 compliance with the Lee County Comprehensive plan,  
3 and I thank you for your time.

4 MS. FIELD: Can I ask a quick question?  
5 (Inaudible.)

6 MR. WESCH: In your materials this morning.

7 MS. FIELD: Yeah, when was it considered.

8 MR. WESCH: That was part of the application  
9 in '07 when that matter actually went to the Board  
10 of County Commissioners for the adoption of 21.1.5.  
11 It's part of that application of materials.

12 MS. FIELD: Can you explain why it wasn't?

13 MR. WESCH: It was part of the data analysis  
14 that supported that comprehensive plan amendment  
15 and it was not a map for inclusion into the  
16 comprehensive plan itself.

17 MS. FIELD: So just a follow-up to that,  
18 policy 21.1.5, it would not have apply to this red  
19 hatched portion; can you say what it would apply  
20 to?

21 MR. WESCH: The remaining rural lands in that  
22 general geographic area of Lee County; most notably  
23 to that cross-hatched area outlined in that blue  
24 that you see, as well as any other lands that were  
25 rural in actual use and character at the time that

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1 policy was adopted.

2 MS. FIELD: And I assume those would be in a  
3 rural lands category?

4 MR. WESCH: Yes, ma'am.

5 MS. FIELD: Is there a map for that, that's in  
6 the comprehensive plan?

7 MR. WESCH: Yes, there is.

8 MS. FIELD: Is that part of the record?

9 MR. WESCH: Yes, it is.

10 Anything further? Thank you for your time and  
11 consideration.

12 MR. PEREZ: I'm sorry. Mr. Wesch, while  
13 you're there, help me on the timeline. So, you  
14 mentioned that there was a clear intent to develop  
15 this property all along. Is there any -- first  
16 question -- was there anything in the record that  
17 shows me that?

18 MR. WESCH: Let me hit that briefly and then  
19 the Intervenor's counsel will take that up in  
20 greater detail. Please keep in mind at the time  
21 this application went forward in the River Hall  
22 subdivision was originally contemplated, the DRI  
23 laws in the state of Florida for in full force and  
24 effect; meaning, there was certain density limits  
25 that were imposed to trigger the DRI reviews. I

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1 believe it was a conscious decision on the part of  
2 the then-developer to limit the density to 1,999;  
3 one below tripping the DRI threshold. But, we also  
4 believe that given the fact that all of the  
5 infrastructure was constructed to support these  
6 areas is clear evidence of the intent they would be  
7 part of the future development.

8 MR. PEREZ: Is there testimony to that area in  
9 the record?

10 MR. WESCH: Yes.

11 MR. PEREZ: So on the timeline, then, 21.1.5  
12 comes after all of that?

13 MR. WESCH: Comes after...

14 MR. PEREZ: In terms of when that policy was  
15 set and adopted; that's subsequent to -- was it  
16 after the infrastructure was laid in place by the  
17 developer?

18 MR. WESCH: Yes, it was. Yes.

19 MR. PEREZ: Okay. That's all I have.

20 MR. WESCH: Thank you.

21 MS. LEEDS: Actually, sir I have a question,  
22 too. I don't think I've had enough coffee yet.

23 As it relates to this map, you're saying what  
24 area does 21.1.5 not apply to?

25 MR. WESCH: It does not apply to the red

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1 cross-hatched area, which is the River Hall  
2 Community.

3 MS. LEEDS: So the entire River Hall Community  
4 that's on the big map is this?

5 MR. WESCH: Yes, ma'am.

6 MS. LEEDS: Okay. Thanks.

7 MR. WESCH: Thank you.

8 MS. OLSON: Thank you.

9 MR. SCHROPP: Thank you. Good morning, and  
10 for your record, my name is Russell Schropp. I am  
11 with the Henderson Franklin Law Firm in Fort Myers,  
12 and I'm here today representing the Intervenors in  
13 this case, which is Green Point Communities, and  
14 the two RH Venture entities.

15 Just, if I could, before I begin my  
16 presentation, just to follow-up on the answers that  
17 Mr. Wesch gave to the last two questions.

18 With regard to testimony in the record, with  
19 regard to the intent to develop the lands that are  
20 subject in this plan amendment; yes, the project  
21 actually got started development in 2005 and there  
22 was always an intent, and that testimony is on the  
23 record, to develop into those areas that are  
24 subject to this plan amendment. In fact, those  
25 areas are included in a community development

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1 district, and that is reflected in the record; that  
2 was intended to serve development of those areas.  
3 So yes, there is that testimony in the record, and  
4 that came from my client.

5 With regard, just for clarification with  
6 regard to, I think was Ms. Leeds' question, with  
7 regard to the area of River Hall, there is a small  
8 area of River Hall that is not in the cross-hatched  
9 area, that extends up to what is State Road 80,  
10 which is the main road that runs through this part  
11 of Lee County.

12 That area was not cross-hatched. While we did  
13 not prepare the map, I can tell you I think the  
14 reason that was, was part of that area that extends  
15 up to State Road 80 is actually not in the rural  
16 classification. It's in the suburban land use  
17 classification so it already has a higher  
18 classification, and the other part that was  
19 adjacent to it, while it wasn't rural, it's  
20 dominated by the existing elementary school, fire  
21 station, and proposed commercial uses which would  
22 not impact the residential. So just to clarify  
23 those answers if I could.

24 With that, following up on the County's  
25 presentation this morning, I would like to address

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1 the exceptions that were filed separately by both  
2 the County and which the Intervenor in this matter.  
3 The County filed seven exceptions to the  
4 recommended order; the Intervenor filed eight  
5 exceptions, but all of which are contesting various  
6 conclusions of law that the Administrative Law  
7 Judge made in the Recommended Order, although some  
8 of those conclusions of law are mislabeled as  
9 findings of fact.

10 While the parties filed separate exceptions,  
11 basically the parties assert the same general  
12 errors were made by the Administrative Law Judge,  
13 and the exceptions fall generally into three  
14 categories.

15 The first category is that we believe the  
16 recommended order wrongly gives affect to only one  
17 part of the policy at issue, policy 21.1.5. As  
18 Mr. Wesch indicated, policy 21.1.5 consists of two  
19 sentences. The RO, the Recommended Order,  
20 essentially dismisses the first sentence of the  
21 policy, calling it "precatory and of no regulatory  
22 significance." But the first sentence of that  
23 policy is actually the sentence that gives meaning  
24 to the policy, that provides the intent to the  
25 policy, and that is to protect areas that exhibit

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1 rural character and rural land use in their  
2 existing state.

3 The ALJ attached only significance to the  
4 second sentence of the policy, and by doing so,  
5 completely disregarded the intent of the policy.  
6 In contrast, the interpretation that the County  
7 took and that we have are arguing here today is  
8 that the interpretation that will give affect and  
9 meaning to both sentences of this policy so that  
10 they can be read together.

11 From a legal perspective, there is a  
12 longstanding rule of statutory construction, that  
13 if you can do so, you need to give reading and  
14 meaning to the entire provision at issue, if it is  
15 at all possible, rather than to render a portion of  
16 it meaningless. The County's interpretation does  
17 that. The Administrative Law Judge's does not.

18 This argument in particular applies to the  
19 exceptions that were filed, Number 1, 4, and 5, in  
20 both the Intervenor's' and County's filing of  
21 exceptions.

22 The second category of exceptions that have  
23 been filed by the County and the Intervenor's is  
24 that the Administrative Law Judge's Recommended  
25 Order improperly disregards or ignores the

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1 legislative history of policy of 21.1.5. This  
2 history includes the actual map that the County  
3 Attorney presented to you before me, and that  
4 discusses the lands that were intended to be  
5 covered by 21.1.5, and as Mr. Wesch, indicated they  
6 are essentially the blue shaded lands to the north  
7 of River Hall. But the evidence also of  
8 legislative history also included testimony from my  
9 client regarding representations that were made by  
10 the Caloosahatchee Shores Community Planning Panel  
11 as to the intent of the policy itself and those,  
12 the communities planning panel was the entity that  
13 actually submitted the complication to create  
14 policy 21.1.5, and they indicated to my client that  
15 the lands were not intended, the policy was not  
16 intended to include the River Hall lands.

17 What is perplexing about the Recommended Order  
18 from a legal perspective, is that the  
19 Administrative Law Judge at hearing actually  
20 indicated the testimony regarding the legislative  
21 history of policy 21.1.5 would be relevant to both  
22 sides' argument, but having made this determination  
23 that legislative history was in fact important.  
24 The Administrative Law Judge then went on to  
25 completely disregard what is essentially

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1 uncontested evidence with regard to the  
2 administrative history of 21.1.5.

3 Clearly -- well, in our opinion, clearly there  
4 was an error in the conclusions of law with regard  
5 to disregarding the entire legislative history of  
6 the policy, and that provides the basis for  
7 exceptions 2 and 3 filed by the Intervenor and by  
8 the County.

9 The third category of exceptions by both the  
10 County and Intervenor assert is the failure of the  
11 Administrative Law Judge to give adequate deference  
12 or any deference at all to the County's  
13 interpretation of its own policy. This is the  
14 fairly debatable standard that is provided under  
15 Chapter 163.

16 Earlier, the County Attorney describes both  
17 its interpretation, the County's interpretation of  
18 the policy, and the process that the County went  
19 through to arrive at that interpretation. Both  
20 the interpretation and the process used, were  
21 reasonable under the circumstances, and under the  
22 fairly debatable standard of Chapter 163, the  
23 County's interpretation is and should be entitled  
24 to great deference if reasonable persons could  
25 differ over the interpretation.

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1           It is a highly defferential standard. The ALJ  
2           failed to observe or give any weight whatsoever to  
3           the County's interpretation, and it provides a  
4           basis for Exceptions 6, 7, and 8 filed by the  
5           County and the Intervenors in this matter.

6           In this regard, the case that is before you  
7           today, is remarkably similar to a case that was  
8           decided by the Administration Commission just last  
9           year, in 2015, that was actually affirmed on appeal  
10          by the 2nd District Court of Appeals, and that case  
11          was Perolla (phonetic) versus Manatee County case.

12          In that case, as here, the county made an  
13          interpretation of a policy or policies within its  
14          plan. That interpretation was challenged. The ALJ  
15          in that case failed to give the county's  
16          interpretation and necessary deference required by  
17          the fairly debatable standard. The Administration  
18          Commission rejected the Administrative Law Judge's  
19          on that matter and differed to the county's  
20          interpretation of its own comprehensive plan. And  
21          again, in that case, the 2nd DCA affirmed the  
22          decision of the Administration Commission. Quite  
23          frankly, I think it would be hard to find a more  
24          controlling precedent for the present case than the  
25          case that was just cited last year by the

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1 Administration Commission in the Manatee County  
2 case.

3 The last point I'll make, respectfully, is  
4 that I think the Administration Commission should  
5 respect the process that the county went through in  
6 order to make this interpretation. The county's  
7 interpretation in this matter was not some ad hoc  
8 interpretation that was made after the fact  
9 justified the plan amendment or on the spur of the  
10 moment on the transmittal or adoption hearing.  
11 This was an interpretation that was made after the  
12 process that the county described, three-hour  
13 public hearings devoted to this issue, and it  
14 occurred a full eight months prior to the adoption  
15 of the River Hall Plan Amendment.

16 So the interpretation was made in a very  
17 logical manner, a very forthright manner, after due  
18 public hearings, at which not only did I testify,  
19 my experts testified, the county staff and county  
20 attorneys testified, but the Petitioner's attorney  
21 as well as several of the Petitioners testified at  
22 this hearing as well.

23 Much the same evidence that was present to the  
24 county at these hearings was then re-presented to  
25 the Administrative Law Judge during the one-day

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1 trial on this matter. But rather than defer to the  
2 County's interpretation that was made after their  
3 public hearings, the Administrative Law Judge  
4 simply substituted her judgment for that of the  
5 county commission in this matter.

6 If ever there was a case where the evidence  
7 and the interpretation were subject to fair debate,  
8 I would respectfully submit this is the case and  
9 that provides the basis for granting the exceptions  
10 that have been filed by the Intervenor and the  
11 County in this matter.

12 If there's any questions, I would be happy to  
13 try and address them.

14 MR. PEREZ: Thank you, Madam Chair. Just one  
15 more quick question just to understand the  
16 timeline.

17 So, what I'm trying to figure out is, if the  
18 county chose to go that direction, is that their  
19 belief at the time to save time on reaching the  
20 same goal, or could it have been a shorter process  
21 to go back and amend 21.1.5, clean it up, and do it  
22 the right way?

23 MR. SCHROPP: Let me address that, and the  
24 county's perspective from the county's attorneys, I  
25 think, is accurate. From my perspective, as the

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1        representative of the plan amendment, I was the one  
2        that basically inquired of the County and said,  
3        "Hey, to me, this policy does not apply because the  
4        River Hall lands do not exhibit rural character or  
5        rural land use. What's your interpretation?" The  
6        county attorney and county staff said, "Let's take  
7        it to the board and get their interpretation before  
8        we proceed further with the plan amendment." As I  
9        said earlier, this is a full eight months before  
10       the adoption. So they went forward with that and  
11       tried to -- they came to the interpretation that  
12       they did come to. Had they not come to that  
13       interpretation and said, "No, the policy applies  
14       and you need to show overriding public necessity,"  
15       my next question to them would be, how do you  
16       define overriding public necessity. As the county  
17       attorney indicated, it's not defined in the plan.

18                MR. PEREZ: It's defined as three votes of the  
19       members of the Board of County Commissioners.

20                MR. SCHROPP: As is most of what I do in Lee  
21       County is defined by three votes.

22                MR. PEREZ: That's what this body does.

23                MR. SCHROPP: But yes, for us as the  
24       applicant, it's imperative -- it would be  
25       imperative to know that because then we would have

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1 to demonstrate in in our plan amendment materials  
2 or application materials --

3 MR. PEREZ: Sure.

4 MR. SCHROPP: -- and demonstrate an analysis  
5 of what public necessity is; how we meet it. But  
6 if it's not defined, the county would have to take  
7 a step back and say, "This is how we define it."

8 MR. PEREZ: I was just curious if you, on  
9 behalf of your client, assumed that was the quicker  
10 path to achieve --

11 MR. SCHROPP: Yes. And that's the long  
12 answer. The answer to your question is yes,  
13 assuming that my interpretation was correct  
14 initially as the county determined it was.

15 MR. PEREZ: Is that path less expensive for  
16 the county?

17 MR. SCHROPP: I couldn't answer that.

18 MR. PEREZ: I don't know if the county  
19 attorney -- would it have cost the county more time  
20 and money to do it the other way?

21 MR. WESCH: Difficult obviously to answer that  
22 question with any certainty, but I would suggest to  
23 you that one of the difficulties the county did  
24 undertake was an analysis of trying to apply an  
25 undefined policy and the liabilities that might

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1 create for the county in a different forum where  
2 people wear black robes.

3 When the judge looks over and says, "Well,  
4 Mr. Wesch, what was that standard you expected the  
5 applicant to meet?" And I say, "Well, it was three  
6 votes of a Commission."

7 "Well, what was that based on?"

8 MR. PEREZ: Sure.

9 MR. WESCH: -- their actions cannot be  
10 arbitrary and capricious.

11 MR. PEREZ: Sure. And we face that on every  
12 exercise they engage.

13 MR. SCHROPP: May I add just one thing? In  
14 terms of time and expense, as we're going through  
15 this process, we don't know if it's going to be  
16 challenged at the back end.

17 MR. PEREZ: Sure.

18 RIGHT1: And so, for us, that was the quickest  
19 way to get through the process of actual -- and  
20 least expensive of getting through the process of  
21 the actual plan amendment; the fact that the  
22 challenge came later, we had no way of predicting.

23 MR. PEREZ: Sure.

24 MR. SCHROPP: Thank you.

25 MS. LEEDS: Just one more real quick question.

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1       The 585 acres that we're talking about can still be  
2       developed at one unit per acre, correct?

3           MR. SCHROPP: The actual -- as I think the  
4       county attorney indicated, but it's clearly in the  
5       record, there are actually 1903 units already  
6       platted in the 1904 -- a little over 1900 units  
7       platted the existing developed units of River Hall,  
8       of plus 300 have homes on them. So the area that's  
9       to the south, or the areas that are subject to the  
10      plan amendment could only be developed with minimal  
11      residential uses, not even one acre.

12           MS. LEEDS: It would be less than one?

13           MR. SCHROPP: Yes.

14           MS. LEEDS: Okay. Thank you.

15           MS. FIELD: I have a question while you're  
16      there.

17           MR. SCHROPP: Yes, ma'am.

18           MS. FIELD: Map question.

19           MR. SCHROPP: Not my strength but I'll try.

20           MS. FIELD: On this, the 585 acres, I think  
21      you said the 585 acres -- or the county attorney  
22      says that's the brown portion; is that correct?

23           MR. SCHROPP: Yes. It shows as brown because  
24      it's basically been --

25           MS. FIELD: Undeveloped?

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1 MR. SCHROPP: Uh-huh.

2 MS. FIELD: So I assume the rest of that is  
3 sub-outlying suburban?

4 MR. SCHROPP: The rest of it has been  
5 developed in the rural land use classification at  
6 one unit an acre. When you look at gross density,  
7 it comes up as one unit an acre.

8 MS. FIELD: So the rest of this is at the  
9 rural land use designation; this brown area would  
10 be a higher density?

11 MR. SCHROPP: Yes. It would be sub-outlying  
12 suburban, which is two units to the acre. That was  
13 the plan amendment that was requested. And when  
14 you blend the densities together, with the lands  
15 remaining in rural, with the lands that would go to  
16 sub-outlying suburban, you come to an overall  
17 allocation dwelling units of about 2,695 units,  
18 when you blend the densities together and then  
19 allocate them across the undeveloped portions of  
20 River Hall.

21 MS. FIELD: So my follow-up to that would be,  
22 the other map with the red hatching, according to  
23 the county, this map would show that could also be  
24 reclassify to sub-outlying suburban because it does  
25 not apply; policy 21.1.5 does not apply to the rest

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1 of it either?

2 MR. SCHROPP: Yes. I think what it fairly  
3 represents if that policy 21.1.5 and the  
4 requirement to show overriding public necessity for  
5 a plan amendment does not apply to the  
6 cross-hatched area, the red cross-hatched areas.

7 MS. FIELD: Do you believe -- maybe I should  
8 ask the county. Do you believe you-all are clear  
9 on the policy and what it applies to? If you say  
10 what's rural here and what's not, what you can  
11 change your map for, do you feel you're clear  
12 moving forward?

13 MR. WESCH: Part of the difficulty we have  
14 with the comprehensive plan as it currently exists  
15 is it's one of those items that it's easier to  
16 define what it's not than what it is. So in terms  
17 of rural character and rural use, it's easier to  
18 define River Hall and these areas as not being  
19 rural in character and rural in use, rather than  
20 having a site-specific example of what would fit  
21 within that policy. I would full-well suggest that  
22 this would be one of the areas we're going to be  
23 taking a look at through our next ear-based  
24 comprehensive plan update.

25 MS. FIELD: So even though something is in the

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1 rural category, which the rest of this would be,  
2 right?

3 MR. WESCH: Yes.

4 MS. FIELD: You're saying it's not rural in  
5 character?

6 MR. WESCH: Or use. And that is evidenced by  
7 the fact that it was always contemplated to be  
8 overall River Hall development. The infrastructure  
9 was laid in place to support that use. They are  
10 disturbed lands. The amenities were put in place  
11 to support those lands. It was never intended to  
12 be open space. It was never intended to be  
13 recreational space. It was always contemplated to  
14 be residential in an area that would be consistent  
15 with the overall density of the River Hall  
16 subdivision.

17 MS. FIELD: So rural use part could be what  
18 it's contemplating to be, if there's a plan for  
19 that property even, if it looks rural as of today  
20 or May, 2009?

21 MR. WESCH: We believe the difficulty here was  
22 an examination as to how the ground sits or sat as  
23 of the date of that comprehensive plan amendment  
24 policy going forward.

25 So, had the brown areas in question on the map

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1 not been previously disturbed and were in some type  
2 of green space allocation, some type of open space  
3 allocation under the master development plan, then  
4 possibly and probably they would be considered to  
5 be rural in use and character. Those are not the  
6 facts that the Board had in front of it and those  
7 are not the facts of this case.

8 MS. FIELD: Thank you.

9 MR. WESCH: Thank you.

10 MS. LEEDS: Okay, I have a quick question.  
11 You said the infrastructure was in place for River  
12 Hall in 2005?

13 MR. WESCH: Not in 2005. It was platted in  
14 2005 and developed throughout, but it is in place  
15 now and it's stubbed out to these areas.

16 MS. LEEDS: So 21.1.5 was put in place in  
17 2009?

18 MR. WESCH: That's when the application, yes,  
19 ma'am.

20 MS. LEEDS: So if this should not apply to  
21 River Hall, why didn't the Board of County  
22 Commissioners exempt River Hall?

23 MR. WESCH: We believe that's shown under  
24 Tab 3 map. It was clearly our intent to not apply  
25 the policy to River Hall subdivision. We didn't,

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1       under 21.1.5, go through and conduct an analysis as  
2       to each parcel of land within the county that it  
3       would apply to, but we believe the record indicates  
4       as best evidence of the Tab 3 map that it is  
5       clearly the intent of the board to not apply it to  
6       River Hall.

7               MS. LEEDS:   How many other developments would  
8       that apply to besides River Hall?

9               MR. WESCH:   None.

10              MS. LEEDS:   How many other developments are  
11       there or neighborhood, residential developments are  
12       in the Caloosahatchee Shores besides River Hall?  
13       How many other neighborhoods are we talking about?

14              MR. WESCH:   I would have to follow up with you  
15       on that type of information.

16              MS. LEEDS:   Thank you.

17              MR. PEREZ:   Can I ask a question on that,  
18       Mr. Wesch, while you're here?  One of the things I  
19       was scratching my head on was I don't know if there  
20       was focus on this or maybe the county dealt with it  
21       when they were discussing it on your level, before  
22       it all got challenged.  But the beginning of that  
23       second sentence that you don't want us to focus on  
24       says that "no land use maps amendments to the  
25       remaining rural lands category," that's where it

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1 kind of gets confusing, I think.

2 So should the focus be on rural character and  
3 rural land use, or should it be presumption of the  
4 intent of the county not to touch anything in the  
5 remaining land use category; looks like that  
6 acreage was sitting in that category at the time.

7 MR. WESCH: Again, we believe that the policy  
8 has to be construed in its entirety, and that lands  
9 that were rural in character and use and in the  
10 land use classification, as of the adopted date of  
11 that plan, 21.1.5 would apply to.

12 MR. PEREZ: Except for that it doesn't say  
13 lands. It just says that's the goal is to retain  
14 this character. It doesn't specify in property  
15 like you say, because you guys could have easily  
16 have exempted, I would imagine, or you could have  
17 focused on anything in the category and removed it  
18 if you wanted to, especially if you knew it was  
19 ready for development.

20 MR. WESCH: And again, it's difficult to  
21 speculate what was in the minds of people at the  
22 time. We are taking a look at the totality of  
23 circumstances, and we believe the best evidence of  
24 the Board's intent at that time is that map and the  
25 application itself, as well as testimony in the

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1 record of people that participated in the public  
2 hearing process as to when that policy was being  
3 developed. And that testimony was specific that  
4 River Hall was not to be included.

5 MR. PEREZ: Okay, well that's helpful.

6 MR. WESCH: Thank you.

7 MR. BROOKS: Good morning. Ralph Brooks and  
8 I'm the attorney for the petitioners.

9 May I approach with the future land use map,  
10 the actual map of the Caloosahatchee Shores  
11 planning area? Thanks.

12 Thank you for taking so much time today to  
13 consider something that involves Lee County, and  
14 even a smaller portion of Lee County, the  
15 Caloosahatchee Shores planning area. I know you  
16 have issues of statewide importance to do,  
17 including acquisition of that wonderful parcel I  
18 heard about this morning while I was here.

19 I would like to start by simplifying this case  
20 for you all and then get into the questions that  
21 you asked. First of all, it's important to read  
22 that policy, and read it for what it says, because  
23 it says what it means and it means what it says.  
24 It says, quote, One important aspect of the  
25 Caloosahatchee Shores Community Plan goal is to

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1 retain its rural character and rural land use where  
2 it currently exists. Therefore, no land use map  
3 amendments to the remaining rural lands category  
4 will be permitted after May 15, 2009, unless a  
5 finding of overriding public necessity is made by  
6 three members of the Board of County Commissioners.

7 So the first sentence talks about what their  
8 aspiration is. The Administrative Law Judge called  
9 it precatory. It's kind of an introduction, talks  
10 about intent, and it's kind of more general and  
11 uses words like "rural character" and "rural land  
12 use." Rural character is not defined.

13 The second sentence sets up what's required in  
14 a comprehensive plan; that's meaningful and  
15 predictable standards to guide the future  
16 development of lands. The meaningful and  
17 predictable standard is not rural in character and  
18 rural in use. The meaningful predictable standard  
19 is to look at the map I just handed out.

20 Does that map show this property in the rural  
21 land use category? If it does, it says, "No land  
22 use to the remaining rural lands category will be  
23 permitted, unless there's a finding of overriding  
24 public necessity." And I left out "after May 15,  
25 2009," because we're well after that.

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1           The three members of the Board of County  
2           Commissioners. I know you deal with many counties.  
3           The County Commission in Lee County has five  
4           members. Why does it say three? It's just a  
5           simple majority; it's not a super majority. It's  
6           just insuring everyone be there to make this  
7           important decision; that if it was less than a full  
8           board, and it was 2 to 1, that wouldn't count; it  
9           would have to be 3 out of the 5.

10           It's pretty clear to planners and people  
11           working in planning what rural lands category  
12           means. It's the future land use map. You look at  
13           the adopted map, which I have handed out.

14           There's a map that was shown that was  
15           introduced as part of an application to adopt this  
16           policy, but that map was never adopted. It was  
17           never actually even discussed at the LPA and Board  
18           of County Commission based on the review of the  
19           tapes by the expert, Julian Thomas, who testified  
20           for the Petitioners.

21           As pointed out in your questions, they very  
22           easily could have adopted that map to go along with  
23           21.1.5. They also could have very easily exempted  
24           River Hall with words in the text of the policy  
25           except developments that have been approved prior

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1 to May 15, if they wanted to.

2 Now, a couple of things happened with this  
3 particular subject plan amendment that you have in  
4 front of you. This was just a map amendment as  
5 adopted, but as submitted originally, it contained  
6 some text amendments and those changed over time,  
7 and there was even a patrol to exempt River Hall,  
8 expressly, by adding a third sentence to the text.  
9 That was dropped and not done.

10 "Does it cost more money," was one of the  
11 questions. A map amendment costs \$2,000 in Lee  
12 County. A map amendment that involves something  
13 over 20 acres costs an additional \$2,000, and a  
14 text amendment that changes the words of the  
15 policies, goals and objectives, that costs \$2,500.  
16 So it would have cost an additional \$2,500 to do  
17 perhaps a text amendment, but Lee County knows what  
18 to do as the Administrative Law Judge stated in her  
19 recommended order; if they want to exempt some  
20 property, they know what to do. They didn't do it  
21 in this case.

22 The courts, the Administrative Law Judge and  
23 the Administration Commission isn't free to add  
24 words that aren't there. As Oliver Wendell Holmes  
25 says, the statute says what it means and means what

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1       it says. That's exactly what is happening here.  
2       Of one important aspect is to retain the rural  
3       character of rural lands where they currently  
4       exist; "therefore --" and now comes the meaning of  
5       predictable standard -- "no land use maps to the  
6       remaining rural lands category be permitted after  
7       May 15, 2009, unless a finding of overriding public  
8       necessity is made by three members of the Board of  
9       County Commissioners." There was no such finding  
10      of overriding public necessity.

11             Your questions were probably correct. If  
12      three members of the Board of County Commissioners  
13      made an overriding public necessity, then the  
14      public necessity has been declared by the Board of  
15      County Commissioners. That never happened in this  
16      case.

17             In hindsight, has this cost a lot of time and  
18      money? Yes, it has. Could it have been done more  
19      easily? Perhaps so. One thing to remember though,  
20      is Caloosahatchee area plan was developed by a  
21      Community Planning Panel, developed by the people  
22      that live within Caloosahatchee Shores and  
23      presented to the East Lee County counsel.

24             It went up through the local planning agency,  
25      the planning commission, and to the board of county

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1 commissioners. This policy was adopted. As you  
2 know, as a result of the Community Planning Act in  
3 2011, Lee County is no longer limited to two plan  
4 amendments a year. They can do as many as they  
5 want. They can do a text amendment at any time.  
6 It's relatively simple to do a text amendment,  
7 compared to what it used to be, prior to 2011. The  
8 process has been streamlined. Plan amendments are  
9 much easier to get adopted now than they were in  
10 the past.

11 Does this prevent development of the land and  
12 cause a taking in any way? No, it does not. They  
13 can still develop this land at one unit per acre.  
14 In fact, in 1999 and 2005, there were rezoning  
15 applications for the River Hall plan development  
16 that went forward. There's three communities in  
17 River Hall, all of different densities and uses.  
18 There's a multifamily. There's a single family.

19 Overall, they look at a total density number  
20 of units and in those rezonings, they say, but on  
21 the rural lands area, no rural land area must, can  
22 exceed one unit per acre, so they certainly can fit  
23 in the additional 696 units that have been platted  
24 already on this subject property.

25 MR. PEREZ: Can I ask a question on that,

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1           Madam Chair? I was confused on that.

2                   I think Stephanie or somebody brought it up.  
3           So as it currently sits, prior to the adoption of  
4           the ordinance, they were at one unit per acre?

5                   MR. BROOK: On which ordinance are you talking  
6           about?

7                   MR. PEREZ: The changing of the classification  
8           to suburban.

9                   MR. BROOK: Yes. Rural is one unit per acre  
10          and sub-outlying suburban is two units per acre.  
11          So they go from 1 to 2, but they can still build at  
12          one right now and in the future, so this doesn't  
13          prevent use of the property or take the existing  
14          property rights. They can also blend those numbers  
15          together, because there's some additional land use  
16          category within --

17                   MR. PEREZ: The acreage that's sitting in  
18          River Hall was developed on a one-unit-per-acre  
19          basis?

20                   MR. BROOK: Well, some of it was suburban,  
21          actually, and that was one per six units, so what  
22          they did is blend the six units and the one unit to  
23          get an overall matter of units, and then as  
24          explained, they wanted to stay below what was then  
25          the DRI threshold, so they --

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1           MR. PEREZ: So prior to development, some of  
2           it was already sitting there as suburban?

3           MR. BROOKS: Not sub-outlying suburban, but  
4           actually suburban. Sub-outlying suburban is two  
5           and suburban is six, so they have a higher percent  
6           per acre. They can blend them together to cluster.  
7           Even when you're building at one unit per acre, it  
8           doesn't mean one-acre lots. You can still cluster  
9           that and put golf courses, recreational facilities,  
10          open space.

11          MR. PEREZ: So what's the difference now? If  
12          they could go with the 586, they could do 697  
13          versus 1500 or?

14          MR. BROOK: I'll let Russell address that.  
15          And I haven't checked his numbers, but he said they  
16          could probably get 2695 overall with the plan  
17          amendment. Without the plan amendment, I don't  
18          know how many you could get in there. It would be  
19          less than that; perhaps they could still build on  
20          it.

21          MR. BROOK: No higher. It's a maximum  
22          allowable density of one unit per acre. It can be  
23          clustered and it can be moved around.

24          MR. PEREZ: Do you know, Mr. Schropp, what  
25          that would be if it was before the plan?

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1           MR. SCHROPP: Can you please restate the  
2 question?

3           MR. PEREZ: Before the comprehensive plan was  
4 amended to change the land use, what was developer  
5 allowed to put there under the way it's set  
6 previously, the number of units?

7           MR. SCHROPP: Under the existing zoning, which  
8 was approved under the plan, it was amended  
9 recently. The zoning limited development of that  
10 site to 1,999. The reason for that zone was  
11 approved in 2005.

12          MR. PEREZ: That was all of River Hall?

13          MR. SCHROPP: That was all of River Hall.

14          MR. PEREZ: What would be the difference in  
15 the 586 acres before and after?

16          MR. SCHROPP: In the 586, there were 1578 of  
17 rural within River Hall, I believe. 586 would be  
18 amended to sub-outlying suburban. So, essentially  
19 on that 585 or 586 acres would result in the  
20 density being increased from one unit an acre to  
21 two units an acre.

22          Now, the overall density of River Hall, some  
23 of which was suburban as Mr. Brooks indicated, some  
24 of which was rural and some of which would now be  
25 sub-outlying suburban, when you blend all of that

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1 density together and allocate it across the  
2 project, you could come out with a total of  
3 2,695 units.

4 MR. PEREZ: But he stopped just under 2,000,  
5 which left a 695-plus some in change, if he had  
6 gone forward with it at that point in time?

7 MR. SCHROPP: Correct.

8 MR. PEREZ: So now you'll go from probably a  
9 695 to what would you go to under the land use  
10 category?

11 MR. SCHROPP: That's what we would get to is  
12 an additional 696 units.

13 MR. PEREZ: I don't see why they couldn't --  
14 that's, you had to change the category to get to  
15 that? You couldn't still apply the blending?

16 MR. SCHROPP: Yes, because the interpretation  
17 of the County, and I believe it's actually the  
18 written policy is that if you are in the rural land  
19 use classification, you did do one unit an acre,  
20 period, and you can't blend to increase the density  
21 of --

22 MR. PEREZ: If they had gone at the same time  
23 you could have gotten it? If they had developed the  
24 other 586 at the same time? But then you would  
25 have triggered the DRI.

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1           MR. SCHROPP: Exactly.

2           And that was the original developer on the  
3 project was to hold until the DRI threshold as it  
4 eventually did, before DRIs became the thing of the  
5 past.

6           MR. PEREZ: So this let's you accomplish what  
7 you could have accomplished back then --

8           MR. SCHROPP: Yes.

9           MR. PEREZ: -- absent the DRI.

10          MR. SCHROPP: Absent the DRI threshold and  
11 have the threshold go up.

12          MR. PEREZ: Understood.

13          MR. BROOK: Now, without this plan amendment,  
14 it's 585 in this land, so you get to up to 585  
15 units and one per acre. It may require some  
16 additional rezoning.

17          Planned land use category set the maximum  
18 allowable densities and rezonings can be more  
19 restrictive than that, and then the applicant of  
20 course can ask for something less if they're  
21 worried about DRIs.

22          So, as rural, they are allowed to develop.  
23 They can cluster the units from rural off onto  
24 another part of the parcel. Now, they did not  
25 amend 21.1.5 tax. Even though they talked about

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1           it, they have that same language.

2           The Administrative Law Judge's order in  
3           paragraphs 19 and 20 set findings of facts based on  
4           what are the facts that are in policy 21.1.5; what  
5           does the language say. She also says what were the  
6           arguments of the experts, and she said those expert  
7           opinions down under the findings of fact section.  
8           She found that this interpretation is not  
9           persuasive because it doesn't give meaning to the  
10          meaningful predictable standard in the second  
11          sentence, which says you can't take it out of the  
12          rural lands category unless you have overriding  
13          public necessity. And that's something that the  
14          Board of County Commissioners of Lee County can do  
15          at any time, or, of course, they can go back and  
16          amend this plan policy again if they would like.  
17          Or, they could exempt River Hall out from the  
18          policy plan, either by text or by map, and they  
19          consider in text they did not do it.

20          MR. PEREZ: Was that in the record below they  
21          had considered a text?

22          MR. BROOK: I believe we had the application  
23          in and we can get the exhibit numbers from the  
24          recommended order. Do you have access to all of  
25          the exhibits?

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1           MR. PEREZ: I think so. We'll check with our  
2 lawyer and see with Peter.

3           MR. BROOK: So, the bulk of what the  
4 Administrative Law Judge decided in response to  
5 these exceptions. Now the exceptions were filed  
6 within 15 days, and we filed our response to the  
7 exceptions within 15 days on December 31st. It was  
8 Christmas; between Christmas and New Year's.

9           It turns out, unbeknownst to myself and my  
10 office, the exceptions are 15 days but the response  
11 is only 10 days, which is unusual, but still,  
12 there's no prejudice. This was filed  
13 December 31st. Here we are, it's September 28th.  
14 The Cabinet meeting will be October 4th. There's  
15 certainly no prejudice to look at these. They've  
16 been around for 10 months.

17           Proposed final orders have been submitted by  
18 both sides, so I don't see the point in rejecting  
19 the response to the exceptions. In fact, previous  
20 Cabinets have allowed untimely responses. This was  
21 again only five days late. It was the same time  
22 that the exceptions for submitted.

23           Regardless, the proposed final order I have  
24 made specificity and with particularity on each  
25 exception, rejecting those exceptions, and you can

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1 look at those. I don't believe if you reject an  
2 exception that you need to stay with particularity  
3 while you're denying it, but if you would like to  
4 you certainly can. Those have been submitted to  
5 staff by both sides.

6 I don't want to take up a whole lot of your  
7 time. If there are any questions that you have, I  
8 think that the Attorney General is used to looking  
9 at AGO opinions and interpreting statutes. There's  
10 cases that say plan policies are interpreted the  
11 same way as the statute, and if it's a plain, clear  
12 and expressed meaning, that's what you apply.

13 And that the courts are not allowed to insert  
14 words that aren't there. Certainly, the County  
15 Commission could go out and insert, if they would  
16 like, if they want to put "if" in front of the  
17 first sentence and then "in" front of the second  
18 sentence, they know how to do that. That's a simple  
19 text amendment.

20 The plain meaning of the statute is the  
21 starting point for statutory interpretation. Here  
22 they talk about the rural lands category. There  
23 was some discussion about, because rural isn't  
24 capitalized, they didn't mean the rural lands use  
25 map, which was not raised in the hearing.

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1           In Exhibit 5 is the staff report that actually  
2           adopted 21.1.5 and staff describes it, they  
3           capitalize the letter "R" for rural. I think it  
4           makes -- we all know what they're talking about  
5           when they say "rural lands category"; that's the  
6           future land use map and it's clearly shown and it  
7           was stipulated by all parties that this subject  
8           property is rural on the rural land use category  
9           under future land use map that was adopted, that is  
10          in effect and that is controlling.

11          So the statute that is, particularly the  
12          second sentence is clear. It's unambiguous, and  
13          those words must be given affect as they are  
14          written. If Lee County wants to change those  
15          words, they certainly know how to do that.

16          Thank you very much. Do you have any  
17          questions that I haven't addressed or would like to  
18          address further?

19          MR. PEREZ: I just have one more question, but  
20          I'm not sure who it should go to. I'm trying to  
21          get a better understanding of the Caloosahatchee  
22          Shores Planning Area; is that designation that just  
23          exists in the future land use map?

24          MR. BROOK: Yes. The map that I handed out  
25          shows you Caloosahatchee Shores Planning Area.

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1       That's part of another subarea. It's a subarea of  
2       the Fort Myers Shores Planning Area, which is a  
3       subcategory of Lee Plan. So Lee Plan breaks  
4       various areas that are unincorporated into various  
5       planning areas so they can plan with the  
6       communities through processes, through local  
7       communities planning panels, to come up with  
8       specific plans for those specific areas. Those are  
9       incorporated in the plan, the Lee Plan, under this  
10      case, goal 21, under the objectives and policies  
11      under "object," under the Lee Plan, and is all  
12      about the Caloosahatchee Shores Planning Area.  
13      Again, that's a subset of Fort Myers Shores which  
14      is a bigger area and has more general terms.

15             But these are the specific policies, goals and  
16      objectives that apply to the Caloosahatchee Shores  
17      Planning Area. And it's the southern boundary or  
18      southern edge there of the Caloosahatchee River,  
19      which you're all familiar with from the water  
20      crisis that we're having the water quality and  
21      things in the Caloosahatchee River. So it's a very  
22      important and scenic part of the Caloosahatchee  
23      because it runs from I75 east up to -- it's the  
24      more rural area of Lee County's Caloosahatchee  
25      Shores area there and extends even further east and

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1 becomes even more rural in those areas. But those  
2 areas are not part of the Caloosahatchee Shores  
3 Planning Area.

4 Thank you.

5 MS. FIELD: Question for the County or Peter:  
6 I know part two of the public hearing that was in  
7 October of 2015 said that the vote was to submit it  
8 to land planning agency for review. I guess  
9 that's DEO.

10 MR. WESCH: Yes, ma'am.

11 MS. FIELD: What's the role of their review?  
12 Is that also a requirement of 163?

13 MR. PENROD: They have to submit to it DEO and  
14 DEO can review it, make comments through the  
15 process, and ultimately, if DEO disagrees with it,  
16 they can challenge it pursuant to ineffective  
17 party.

18 MS. FIELD: So similar to DCA's ruling,  
19 specifically, they still have file challenges. Did  
20 they review the entire package?

21 MR. PENROD: It's my understanding they would  
22 have done that.

23 MR. WESCH: Yes, and did not object.

24 MR. BROOK: If I may answer that with one  
25 nuance. It's my understanding that DEO's review

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1           under their own policies no longer includes review  
2           for internal consistency with other Lee County  
3           goals, objectives and policies. So they review for  
4           things other than internal consistency, but we  
5           would have to check with DEO to make sure that's  
6           still the case, but I believe it is.

7           MS. FIELD: Peter, do you know the answer?

8           MR. PENROD: I do not. I can look.

9           MR. PEREZ: I think there are some differences  
10          once DCA went away.

11          MS. FIELD: They're specifically looking for  
12          certain --

13          MR. PEREZ: Yeah. It's not like it used to be  
14          is the saying.

15          MR. WESCH: Madam Chair, may I request two  
16          minutes of rebuttal? I promise and I'll hold it to  
17          two minutes. Just a couple of quick salient  
18          points.

19          First, why wasn't River Hall exempted out?  
20          Because if you go through the record, there's ample  
21          evidence in the record and the testimony of the  
22          people that appeared that it was never intended  
23          that River Hall was going to be bound by this  
24          provision. So at the time, there was not a need to  
25          exempt out because there was the common

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1 understanding that was the plan.

2 It was argued that it the Administrative Law  
3 Judge did not find the County's argument to be  
4 persuasive. That's fine and dandy, but that's not  
5 the legal test. The legal test is what we outlined  
6 for you earlier, and that is the fairly debatable  
7 standard that the ALJ should have applied; that  
8 goes to the heart of the argument. She misapplied  
9 the law in this case.

10 And as far as where the property lies in  
11 proximity to the Caloosahatchee River, I would also  
12 point you back to the map is the northern boundary  
13 of a little community known as Lee High Acres,  
14 which is a highly developed residential subdivision  
15 at 3 to 4 units per acre.

16 Thank you.

17 MR. PEREZ: Thank you.

18 MR. PENROD: Before we move forward, are there  
19 any other questions you would like for me to  
20 address?

21 For ruling on this action, I see two options  
22 in this case, and I do not at this time have a  
23 recommendation. The reason I do not have a  
24 recommendation is I see this as an extremely close  
25 call, and I feel that ruling in either option would

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1           be in the Commission's discretion.

2           One option is to adopt the recommended order  
3           as written finding that the plan is out of  
4           compliance and specify remedial action. To do  
5           this, the Commission must deny all exemptions filed  
6           by Respondent and Intervenor because they require  
7           (inaudible) reclassification, findings of fact or  
8           conclusions of law that are not as or more  
9           reasonable than that of the Administrative Law  
10          Judge.

11          The Commission will also strike the  
12          petitioner's response as untimely.

13          (Inaudible) find the plan amendment is not in  
14          compliance with Chapter 163, because the plan  
15          amendment and policy are internally inconsistent in  
16          violation of 163.3177. If the Commission rules  
17          this way, it must also specify remedial action to  
18          bring the plan amendment back into compliance, and  
19          this could include rescinding the development order  
20          and revising them in such a way that's consistent  
21          with the comprehensive plan.

22          Are there any questions?

23          MR. PEREZ: I have a question. Would they  
24          have to rescind the development order to do a  
25          textual amendment, or could they do the textual

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1 amendment straight out?

2 MR. PENROD: I would defer to the counties  
3 because I'm not sure what their -- presumably, they  
4 could just amend the development order to make it  
5 consistent, but I don't know for certain.

6 MR. JACOB: Michael Jacob. Assistant County  
7 Attorney of Land Use. The answer is yes. We could  
8 simply just provide a textual amendment to address  
9 the map issue that we've been discussing today.

10 MR. PEREZ: Thank you.

11 MR. PENROD: The other option in this case  
12 would be to modify the recommended order in favor  
13 of the Respondents and Intervenors and find that  
14 the county's interpretation of policy 21.1.5 is  
15 fairly debatable, and as such, the plan amendment  
16 is not out of plans 163 Florida Statutes.

17 To do this, Commission will grant at the very  
18 minimum respondent's exceptions, 3, 4, 7 and 8, and  
19 in part finding the meaning in (inaudible)  
20 contained 15-10 fairly debatable, as well as  
21 respondent's exception 9 as (inaudible) that it is  
22 internally inconsistent, and thus not in compliance  
23 with Chapter 163.

24 The Commission will also grant Intervenors'  
25 exceptions 3 through 6, finding that the meaning of

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1 the language contained in policy 15-10 is fairly  
2 debatable as well as Intervenors' exception 7,  
3 finding the Petitioners failed to prove by fair  
4 debate plan was internally inconsistent with the  
5 policy, as well as Intervenors' Exception 8,  
6 petitioners failed to show the plan amendment is  
7 not in compliance with Chapter 163.

8 The Commission will deny all other excetions  
9 filed by respondent and Intervenors and strike  
10 Petitioners response as untimely.

11 The effectiveness option finds the plan  
12 amendment in compliance with Chapter 163 because  
13 the meaning of the language contained in policy  
14 21.1.5 is fairly debatable. There will be no  
15 requirement to specify remedial actions in this  
16 case. Are there any questions about this option?

17 MR. PEREZ: Question on that, Peter: If that  
18 option is the approach that the board was looking  
19 at, certainly the board, couldn't they also go  
20 ahead and accept the Petitioner's exceptions, if  
21 you will, and rule on them, deny them or whatever  
22 and however they would apply it? Wouldn't that  
23 still be available to them?

24 MR. PENROD: I'm sorry, I don't understand.  
25 Could you rephrase the question?

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1           MR. PEREZ: The exceptions that were untimely  
2           filed by the Petitioners.

3           MR. PENROD: Their responses?

4           MR. PEREZ: Yes, their responses obviously the  
5           board could in that same approach accept those and  
6           just --

7           MR. PENROD: I don't believe we can accept  
8           them. They were, on their face, untimely. There's  
9           no untimely exceptions --

10          MR. PEREZ: Okay. There would be some  
11          extenuating circumstances, but this appears to be  
12          just a simple oversight. I just wasn't sure if  
13          there was an option to go ahead and bring them into  
14          the fold and it would still flush out the same way.

15          Thanks.

16          MR. PENROD: Are there any questions? Is  
17          there any other public comment?

18          That concludes this agenda item.

19          MS. OLSON: That concludes today's meeting.

20          (Hearing concluded at 10:28 a.m.)

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## 1 CERTIFICATE

2

3 STATE OF FLORIDA )  
COUNTY OF LEON )

4

5 I, YVONNE LaFLAMME, FPR, certify that I was  
6 authorized to and did stenographically report the  
7 foregoing proceedings and that the transcript is a true  
and complete record of my stenographic notes.

7

DATED this 9th day of October, 2016.

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11 \_\_\_\_\_  
YVONNE LAFLAMME  
12 Court Reporter

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