

LEE COUNTY ORDINANCE NO. 22-25
Owl Creek
(CPA2020-00004 & CPA2020-00005)

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE PLAN, COMMONLY KNOWN AS THE "LEE PLAN," ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENT PERTAINING TO THE OWL CREEK MAP AND TEXT AMENDMENTS (CPA2020-00004 & CPA2020-00005) APPROVED DURING A PUBLIC HEARING; PROVIDING FOR PURPOSE, INTENT, AND SHORT TITLE; AMENDMENTS TO ADOPTED MAP AND TEXT; LEGAL EFFECT OF "THE LEE PLAN"; PERTAINING TO MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, the Lee County Comprehensive Plan ("Lee Plan") and Chapter XIII, provides for adoption of amendments to the Plan in compliance with State statutes and in accordance with administrative procedures adopted by the Board of County Commissioners ("Board"); and,

WHEREAS, the Board, in accordance with Section 163.3181, Florida Statutes, and Lee County Administrative Code AC-13-6 provide an opportunity for the public to participate in the plan amendment public hearing process; and,

WHEREAS, the Lee County Local Planning Agency ("LPA") held a public hearing on the proposed amendment in accordance with Florida Statutes and the Lee County Administrative Code on February 28, 2022; and,

WHEREAS, the Board held a public hearing for the transmittal of the proposed amendment on April 20, 2022. At that hearing, the Board approved a motion to send, and did later send, proposed amendment pertaining to Owl Creek Map and Text Amendments (CPA2020-00004 & CPA2020-00005) to the reviewing agencies set forth in Section 163.3184(1)(c), F.S. for review and comment; and,

WHEREAS, at the April 20, 2022 meeting, the Board announced its intention to hold a public hearing after the receipt of the reviewing agencies' written comments; and,

WHEREAS, on August 17, 2022, the Board held a public hearing, and prior to commencing the case presentation, at the request of the applicant, the Board continued the hearing until September 7, 2022. On September 7, 2022, the Board held a public hearing and adopted the proposed amendment to the Lee Plan set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, THAT:

SECTION ONE: PURPOSE, INTENT AND SHORT TITLE

The Board of County Commissioners of Lee County, Florida, in compliance with Chapter 163, Part II, Florida Statutes, and with Lee County Administrative Code AC-13-6, conducted public hearings to review proposed amendments to the Lee Plan. The purpose of this ordinance is to adopt map and text amendments to the Lee Plan discussed at those meetings and approved by a majority of the Board of County Commissioners. The short title and proper reference for the Lee County Comprehensive Land Use Plan, as hereby amended, will continue to be the "Lee Plan." **This amending ordinance may be referred to as the "Owl Creek Map and Text Amendments Ordinance (CPA2020-00004 & CPA2020-00005)."**

SECTION TWO: ADOPTION OF COMPREHENSIVE PLAN AMENDMENT

The Lee County Board of County Commissioners amends the existing Lee Plan, adopted by Ordinance Number 89-02, as amended, by adopting an amendment, which amends Lee County Utilities Future Water Service Areas (Lee Plan Map 4A) to add property to the Lee County Utilities Future Water Service Area. The text amendments will:

- Add a new policy, Policy 29.2.4, to the Lee Plan that provides incentives for preservation or restoration of Rare and Unique Upland Habitats in developments that are located in the North Olga Community Plan area, clustered, and approved through the planned development process.
- Amend Lee Plan Policy 124.1.1 and Table I(a), Note 8 to allow for the capture of density from preserved wetlands when adjacent to the Rural future land use category.

The Comprehensive Plan amendment is known as Owl Creek Map and Text Amendments Ordinance (CPA2020-00004 & CPA2020-00005).

The corresponding Staff Reports and Analysis, along with all attachments and application submittals for this amendment are adopted as "Support Documentation" for the Lee Plan. Proposed amendments adopted by this Ordinance are attached as Exhibit A.

SECTION THREE: LEGAL EFFECT OF THE "LEE PLAN"

No public or private development will be permitted except in conformity with the Lee Plan. All land development regulations and land development orders must be consistent with the Lee Plan as amended.

SECTION FOUR: MODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION FIVE: GEOGRAPHIC APPLICABILITY

The Lee Plan is applicable throughout the unincorporated area of Lee County, Florida, except in those unincorporated areas included in joint or interlocal agreements with other local governments that specifically provide otherwise.

SECTION SIX: SEVERABILITY

The provisions of this ordinance are severable and it is the intention of the Board of County Commissioners of Lee County, Florida, to confer the whole or any part of the powers herein provided. If any of the provisions of this ordinance are held unconstitutional by a court of competent jurisdiction, the decision of that court will not affect or impair the remaining provisions of this ordinance. It is hereby declared to be the legislative intent of the Board that this ordinance would have been adopted had the unconstitutional provisions not been included therein.

SECTION SEVEN: INCLUSION IN CODE, CODIFICATION, SCRIVENERS' ERROR

It is the intention of the Board of County Commissioners that the provisions of this ordinance will become and be made a part of the Lee County Code. Sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or other appropriate word or phrase in order to accomplish this intention; and regardless of whether inclusion in the code is accomplished, sections of this ordinance may be renumbered or relettered. The correction of typographical errors that do not affect the intent, may be authorized by the County Manager, or his designee, without need of public hearing, by filing a corrected or recodified copy with the Clerk of the Circuit Court.

SECTION EIGHT: EFFECTIVE DATE

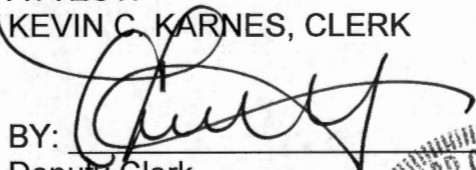
The plan amendments adopted herein are not effective until 31 days after the State Land Planning Agency notifies the County that the plan amendment package is complete. If timely challenged, an amendment does not become effective until the State Land Planning Agency or the Administrative Commission enters a final order determining the adopted amendment to be in compliance. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before the amendment has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status.

THE FOREGOING ORDINANCE was offered by Commissioner Hamman, who moved its adoption. The motion was seconded by Commissioner Ruane. The vote was as follows:

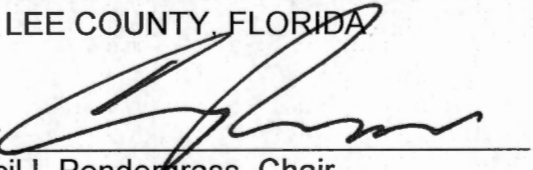
Kevin Ruane	Aye
Cecil L Pendergrass	Aye
Raymond Sandelli	Abstain
Brian Hamman	Aye
Mike Greenwell	Aye

DONE AND ADOPTED this 7th day of September 2022.

ATTEST:
KEVIN C. KARNES, CLERK

BY: 
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: 
Cecil L Pendergrass, Chair



DATE: 9-8-22

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

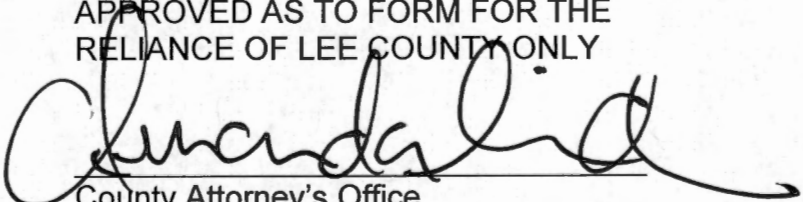

County Attorney's Office

Exhibit A: Adopted revisions to Map 4-A and text (Adopted by BOCC September 7, 2022)

EXHIBIT A

Note: Text depicted with underscore represents additions to the Lee Plan.
Strike-through text represents deletions from the Lee Plan.

PROPOSED TEXT AMENDMENTS

FUTURE LAND USE ELEMENT

POLICY 1.4.1: The Rural future land use category are areas that are to remain predominantly rural – that is, low density residential, agricultural uses, and minimal non-residential land uses that are needed to serve the rural community. Natural resource extraction may be permitted in accordance with Policy 10.1.4. These areas are not to be programmed to receive urban-type capital improvements, and they can anticipate a continued level of public services below that of the urban areas. Maximum density in the Rural area future land use category is one dwelling unit per acre (1 du/acre). See Policy 29.2.4 for a potential density incentive resulting from preservation and/or restoration of Rare and Unique Upland Habitat.

POLICY 29.2.4: As an incentive to preserve, enhance, and restore indigenous Rare and Unique upland habitats on land within the Rural future land use category, one (1) additional dwelling unit may be created for each one (1) acre of created, preserved and/or restored indigenous Rare and Unique upland habitats if approved and developed as a unified planned development that meets all the following criteria:

1. Development is clustered so as to maintain large, contiguous tracts of open space and protect environmentally sensitive areas. To comply with this criteria, a minimum of 60% open space is required, of which 50% must be indigenous preserve. The indigenous preserve may consist of preserved existing indigenous wetlands and/or uplands and/or created or restored wetlands, flowways, or Rare and Unique upland habitats. Management and monitoring of the indigenous preserve must be in compliance with the indigenous management plan required by the LDC. Monitoring timelines will be extended as needed to assure success criteria established in the indigenous management plan is achieved for at least five consecutive years.
2. Creation, preservation, and/or restoration of indigenous Rare and Unique upland habitats, as defined, must meet the following:
 - a. The area of the Rare and Unique upland habitats must comply with the minimum dimensions required for indigenous open space areas set forth in the LDC.
 - b. The land where creation and/or restoration of indigenous Rare and Unique upland habitats will occur must contain the soil(s) needed to support the establishment and success of the indigenous Rare and Unique upland habitats.
 - c. Habitats impacted by logging, drainage, and/or exotic infestation may not count towards the density incentive unless restored to standards established in an approved site specific ecological restoration plan. The ecological restoration plan must include, at a minimum, a replanting plan, habitat restoration plan, success criteria, and long-term monitoring and maintenance criteria.
 - d. A Conservation Easement, to be dedicated to the appropriate maintenance entity that provides Lee County or some other public agency, acceptable to Lee County, with third party enforcement rights must be recorded for areas used towards the density incentive. All

EXHIBIT A

Conservation Easements required as part of the planned development must be recorded within 5 years from first development order approval.

CONSERVATION & COASTAL MANAGEMENT ELEMENT

POLICY 124.1.1: Ensure that development in wetlands is limited to very low density residential uses and uses of a recreational, open space, or conservation nature that are compatible with wetland functions. The maximum density in the Wetlands category is one unit per 20 acres, except that one single family residence will be permitted on lots meeting the standards in Chapter XIII, ~~and except that owners~~ Owners of wetlands adjacent to Intensive Development, General Interchange, Central Urban, Urban Community, Suburban, New Community, Outlying Suburban, ~~and Sub-Outlying Suburban, areas~~ and Rural future land use categories may transfer ~~densities~~ dwelling units from preserved freshwater wetlands to developable contiguous uplands under common ownership at the same underlying density as permitted for those uplands (see Table 1(a)).

GLOSSARY

RARE AND UNIQUE UPLAND HABITATS (RU) – High-quality native upland habitats categorized as "mature" due to the absence of severe impacts caused by logging, drainage, and exotic infestation, as identified by the Lee County Coastal Study (Godschalk and Associates, 1988). These habitat types include those classified as: sand scrub (320); coastal scrub (322); pine flatwoods (411) ~~which can be categorized as "mature" due to the absence of severe impacts caused by logging, drainage, and exotic infestation;~~ slash pine/midstory oak (412); tropical hardwood (426); live oak hammock (427); and, cabbage palm hammock (428). The numbered references are to the Florida Land Use Cover and Forms Classification System (FLUCFCS) Level III (Florida Department of Transportation, 1985).

TABLE 1(A)


⁸ Higher densities may be allowed under the following circumstances where wetlands are preserved on the subject site:


- (a) If the dwelling units are relocated off-site through the TDR program provided in LDC, Chapter 2; or

Dwelling units may be relocated to developable contiguous uplands designated Intensive Development, General Interchange, Central Urban, Urban Community, Suburban, Outlying Suburban, Sub-Outlying Suburban, Rural, and New Community from preserved freshwater wetlands at the same underlying density as permitted for those uplands (see Policy 124.1.1). Impacted wetlands will be calculated at the standard Wetlands density of 1 du/20 acres. Planned Developments or Development Orders approved prior to October 20, 2010 are permitted the density approved prior to the adoption of CPA2008-18.

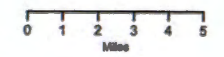
LEE COUNTY UTILITIES FUTURE WATER SERVICE AREAS

Existing

 Future Water Service Areas

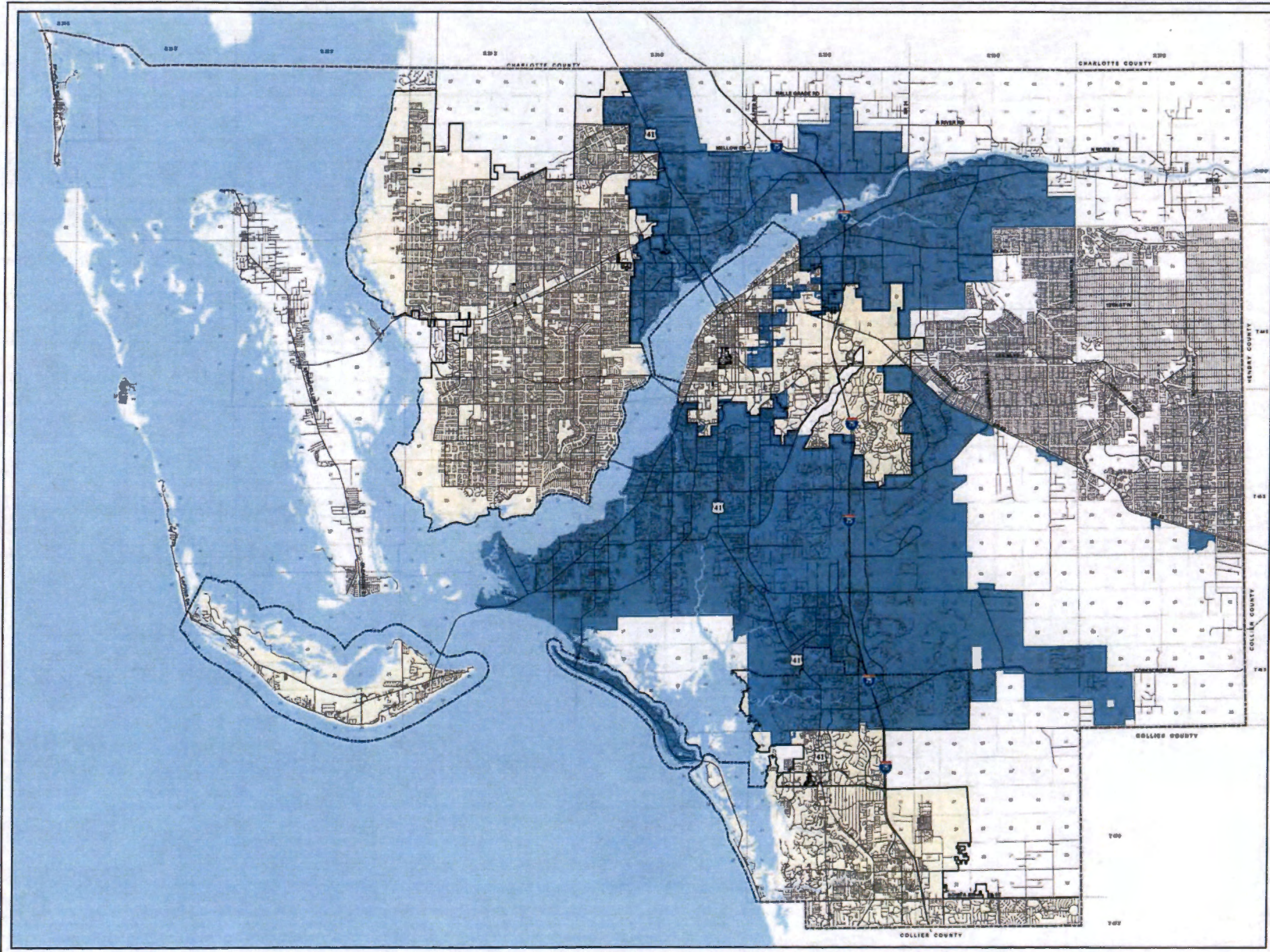
 City Limits

Ord. No. 89-02, 05-22, 03-19, 10-06, 10-40, 10-43, 12-24, 13-16, 14-01, 15-13, 15-14, 17-06, 17-23, 19-10, 19-23, 21-09




Map Generated: November 2021
City limits current to date of map generation

Lee Plan Map 4-A



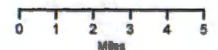
LEE COUNTY UTILITIES FUTURE WATER SERVICE AREAS

Proposed

 Future Water Service Areas

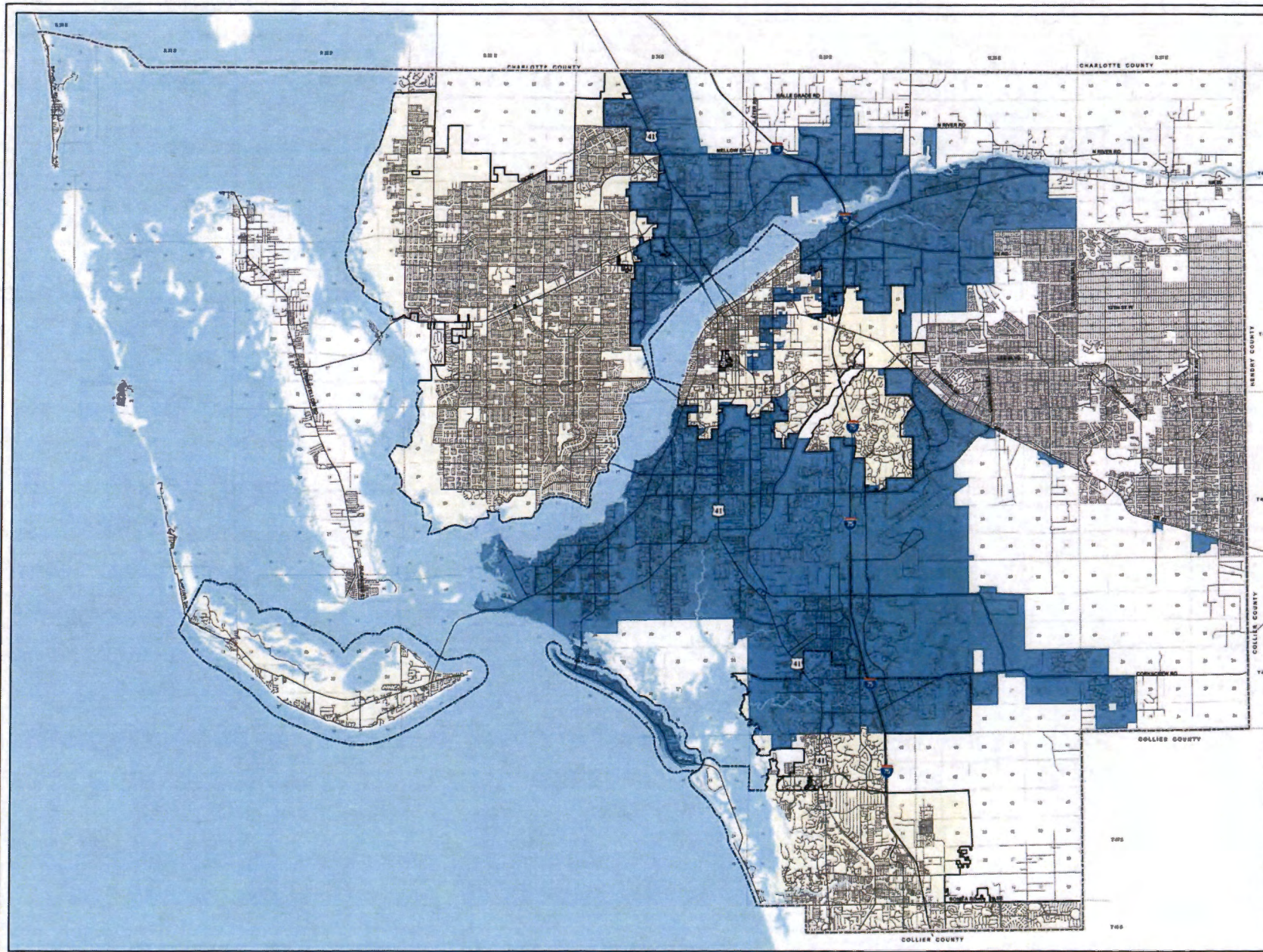
 City Limits

Ord. No. 89-02, 00-22, 03-19, 10-06, 10-40, 10-43, 12-24, 13-16, 14-21, 15-13, 15-14, 17-06, 17-23, 19-10, 19-25, 21-09



Map Generated: February 2022
City limits current to date of map generation

Lee Plan Map 4-A





FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

September 9, 2022

Honorable Kevin Karnes
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attn: Chris Jagodzinski

Dear Kevin Karnes:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Lee County Ordinance No. 22-25, which was filed in this office on September 9, 2022.

Sincerely,

Anya Owens
Program Administrator

ACO/wlh

RECEIVED

By Chris Jagodzinski at 8:41 am, Sep 09, 2022