



*Protecting Southwest Florida's unique natural environment and quality of life ... now and forever.*

July 24, 2020

Lee County Local Planning Agency  
Mr. Raymond Blacksmith  
Mr. Dustin Gardner  
Mr. James Ink  
Ms. Alicia Olivo  
Mr. Don Schrotenboer  
Mr. Stan Stouder  
Mr. Henry Zuba

*Sent via email*

RE: Small Brothers Commercial CPA2019-00009

Dear Lee County LPA:

We ask that your recommendation be to not transmit the Small Brothers Commercial comprehensive plan amendment to the Florida state agencies for review. Continuing to expand uses in the Density Reduction Groundwater Resource (DRGR) area without revisiting the vision and purpose of the DRGR remains a concern for the Conservancy. We ask, once again, that Lee County refrains from making changes piecemeal to the Lee Plan and the DRGR and instead commit to upholding the remaining environmentally designed goals, objectives and policies of the DRGR. Individual amendments, such as Small Brothers Commercial, chip away at the underpinning reason to have comprehensive plans and comprehensive planning.

In order to protect the health and safety of our employees, the Conservancy is unable to send staff member to participate in this meeting due to the COVID 19 pandemic. As the pandemic shows no signs of abating, we request that virtual way to attend – by phone or conferencing computer application – be allowed and encouraged for Lee County. We suggest Lee County looks to its neighbor Collier County as an example of how to accommodate the public during this pandemic.

### **Background**

The applicant is positing that a designation of Commercial in 1982 confers commercial rights on this property today. While there is some language stating there is commercial “need”, the request hinges on the 1982 granting of commercial zoning to this portion of the parcel. The commercial designation in 1982 was part of a mobile home park.



Conservancy of Southwest Florida has been awarded Charity Navigator's prestigious 3-Star top rating for good governance, sound fiscal management and commitment to accountability and transparency. Charity Navigator is America's largest and most respected independent evaluator of charities.

A recommendation granting Commercial zoning in 1982 does not translate into rights for commercial 38 years later. In fact, both state law and the Lee County Land Development Code (LDC) state that when there is a conflict between a zoning designation and the comprehensive plan that the comprehensive plan designation is controlling. This means that it would be more appropriate to develop the parcel under DRGR regulations rather than use a 38 year old zoning designation as a reason to change the comprehensive plan.<sup>1</sup>

To say things have changed since 1982 would be an understatement. Things have changed since this application was submitted in 2019. There is no longer a Pepperland development, and two nearby properties have been approved for commercial development at 100,000 square feet (sf) each. This changes the need calculus dramatically.

We also must highlight this amendment's potential to impact listed species, as this was not sufficiently addressed by the applicant, who dismisses the importance of the habitat in and around this parcel for the Corkscrew Regional Ecosystem Watershed and the Florida Panther.

### **The Commercial granted was intended to be Accessory Commercial**

Our evaluation of aeriels and the zoning ordinance have led to us to conclude that the commercial approved was not intended to be a commercial center to serve the area. There was no area to serve in 1982. The only reason – and people – who would have availed themselves of this commercial area would have been residents of the mobile home park. As the mobile home park was never developed, it is impossible to know the actual intent for the scope and type of commercial. It is fair and accurate to say, however, that stand alone commercial would have almost certainly failed at this location in 1982 because there was no customer base and extremely few rooftops to attract any commercial clients.

Any right to accessory commercial is extinguished when the primary use – in this case the mobile home park – is extinguished. The mobile home was never built. The land sits vacant and wild. There is no underlying right to commercial and we ask that you do not rely on a 1982 zoning ordinance to determine whether this is an appropriate place for up to 60,000 sf of commercial in 2020. It is not.

We are providing two historical aeriels for you to consider as you. One is from 1972 and one is from 1998. We could find no other readily available aeriels, but these tell the story. There was no development in this area in 1972 and very, very little in 1998. This supports our conclusion that this approval was always intended to be accessory commercial to a mobile home park and not a commercial center for the region.

We are also providing the current Future Land Use map from Lee County showing that this property is designated as Wetland. The staff report and applicant claim that this property is designated as both DRGR and Wetland, however, using the shapefile provided by Lee County for online mapping in the ArcGIS platform shows the property as Wetland. While Lee County does allow for the destruction of wetlands with state permit to become non-residential property, this designation provides data that this

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<sup>1</sup> Florida Statute 163.3194 which requires all development must be consistent with the local comprehensive plan; LDC 34-491 which provides where there is a conflict between the Lee Plan and any regulation in the LDC, the Lee Plan prevails per Lee Staff Report, dated July 17, 2020, page 4 of 9

property is not suitable for intense development such as a strip mall. Permissible doesn't mean appropriate.

### Lee County Historic Aerials



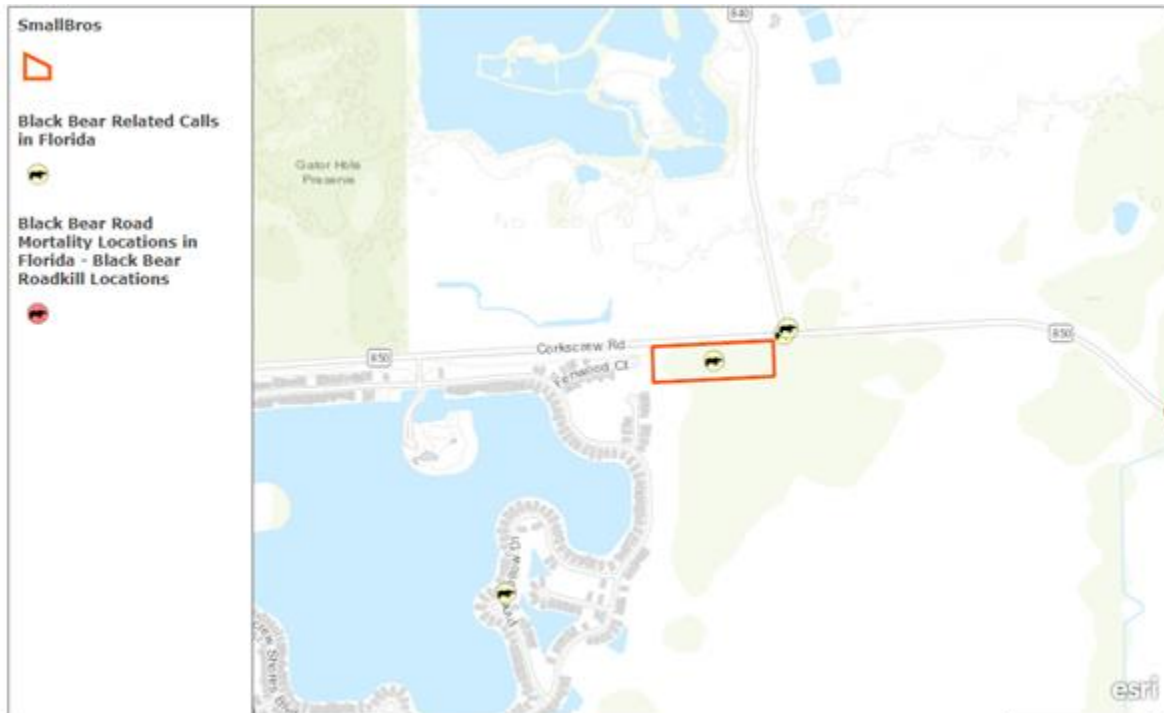
### Lee County Historic Aerials

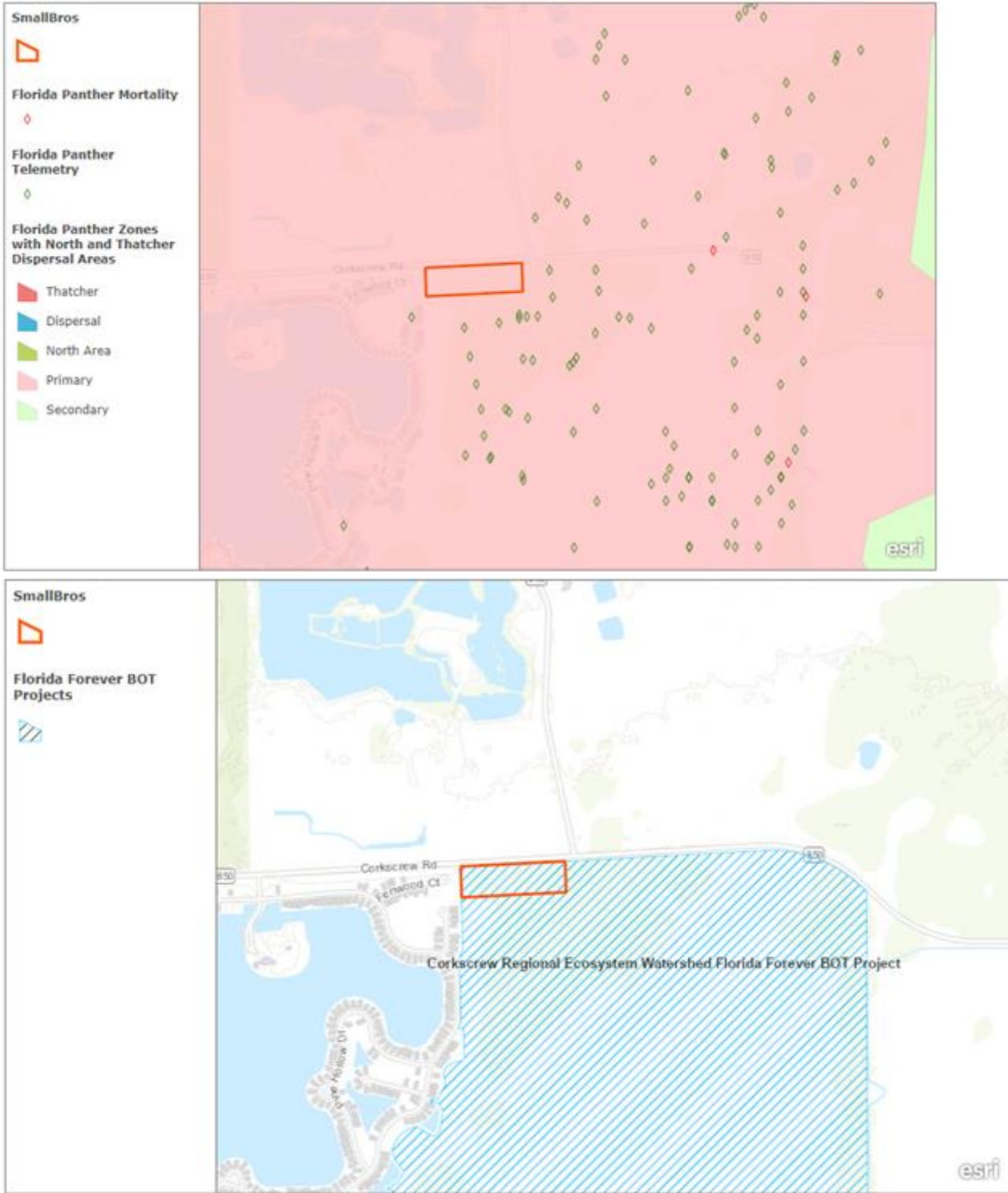




**Staff Report Fails to address wildlife and environmental issues**

The staff report fails to address any listed species issues with this property. This is confusing significant oversight as this property is primary Florida Panther habitat and has a call from 2018 with a sighting of a Florida Black Bear. It is also in the Florida bonneted bat consultation area.





The staff report does not mention or address any of the following objectives and policies, specifically Policy 123.11.4.

OBJECTIVE 123.3: WILDLIFE. Maintain and enhance the fish and wildlife diversity and distribution within Lee County for the benefit of a balanced ecological system. (Ordinance No. 94-30, 18-28)

POLICY 123.3.2: Participate in the development of a regional plan to identify and protect areas utilized by wildlife, including panthers and bears, so as to promote the continued viability and diversity of regional species. (Ordinance No. 92-48, 18-28)

OBJECTIVE 123.11: FLORIDA PANTHER. Develop strategies to protect the Florida panther. (Ordinance No. 92-48, 00-22, 18-28)

POLICY 123.11.2: Encourage state land acquisition programs to include and restore known panther corridors of habitats beneficial to the Florida panther. (Ordinance No. 94-30, 00-22, 18-28)

POLICY 123.11.4: Protect and expand upon the Corkscrew Regional Ecosystem Watershed Greenway, a regionally significant greenway with priority panther habitat, through continued participation in public land acquisition and restoration programs, and incentive programs to preserve and restore habitats. (Ordinance No. 98-09, 18-28)

This property is within the Corkscrew Regional Ecosystem Watershed Florida Forever Board of Trustees Project. To approve commercial development within this project area appears to be contrary to Policy 123.11.4. While we understand and respect private property rights, we also understand the dire need for conservation and protection of land for the endangered Florida Panther.

While there may not be Florida Panther telemetry directly on this property, only a small proportion of panthers are collared and telemetry points are a representation of where panthers roam. These telemetry points should not be viewed as a limiting factor and development on this parcel should not be supported just because no telemetry point has been recorded on these specific 12 acres. As such, experts have modeled panther habitat to provide another resource in addition to telemetry points to help indicate what lands are important to panthers. It is important and must be recognized that this is primary panther habitat, habitat that the best available science states is required for the survival and recovery of the endangered Florida panther. Additionally, this parcel appears to be adjacent to the fencing associated with an existing panther crossing further east on Corkscrew Road. The crossing is associated with a large panther corridor that facilitates movement between large parcels of panther habitat within the DRGR. The impacts of this development on use of the panther corridor should be considered, and if this change is approved, examined closely.

The staff report and applicant also fail to mention the Florida Bonneted Bat. Protection of the Florida Bonneted Bat falls under Objective 123.3. Florida bonneted bats are different from most other Florida bat species because they are reproductively active through most of the year, and their large size makes them capable of foraging long distances from their roost<sup>2</sup>. Consequently, this species is vulnerable to disturbances around the roost during a greater portion of the year and considerations about foraging habitat extend further than the localized roost. Note that the protected species assessment dated August

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<sup>2</sup> Ober, H. 2016. Annual report to USFWS for calendar year 2016. Permit number TE23583B-1. University of Florida, Department of Wildlife Ecology and Conservation, North Florida Research and Education Center. Quincy, Florida.

2017 states “[w]idely scattered pine tree snags with potential bonneted bat cavities were observed.” The United States Fish and Wildlife Service provided the included Figure 1 showing the consultation area in 2019.<sup>3</sup>



Figure 1. Florida Bonneted Bat Consultation Area. Hatched area (Figure 2) identifies the urban development boundary in Miami-Dade and Broward County. Applicants with projects in this area should contact the Service for specific guidance addressing this area and individual consultation. The Consultation Key should not be used for projects in this area.

<sup>3</sup> [https://www.fws.gov/verobeach/ProgrammaticPDFs/20191022\\_letter\\_ServicetoCorps\\_FBB-ProgrammaticKey.pdf](https://www.fws.gov/verobeach/ProgrammaticPDFs/20191022_letter_ServicetoCorps_FBB-ProgrammaticKey.pdf)

We are living in challenging times that have changed how people view and conduct commercial business. We don't know how much on the ground commercial development is going to be needed, required, or able to be supported in this area. We do know that many existing businesses, on property already cleared, are struggling to stay afloat. We also know that people who choose to live in this part of Lee County should know and have researched how far it is to their commercial needs. People can decide whether the 240,000 sf of already approved non-residential needs will meet their needs or not.

The costs of destroying this habitat and these wetlands is not warranted by the request – non-residential square footage that may never be built and cannot be shown to be needed.

### **Conclusion**

This is not the first time we have raised objections to commercial development in the DRGR. The 300,000 sf “limit” staff refers to in their staff report for commercial development is not based on data. No one – not us, not the applicant, and not staff – knows the true amount of commercial needs for the area, how non-residential uses are being impacted by COVID-19, and how COVID-19 will change the relationship between how people utilize non-residential services and impacts on long term non-residential needs.

We know that 240,000 sf of non-residential uses have already been approved for this area. None of these are built. There is no need, and no way to know what, if any, non-residential needs will exist when that 240,000 sf of non-residential is built.

The LDC is clear that when there is a conflict between zoning and the Lee Plan, the designation in the Lee Plan is the one to enforce. While it is unclear whether the property is a mix of DRGR and Wetland or entirely Wetland, it is clear that Commercial is not an appropriate designation.

We also know that the Lee Plan requires consideration of the Florida panther, the Florida black bear, and the Corkscrew Regional Ecosystem Watershed system. Staff has failed to do that, so that responsibility falls to you.

Do not recommend the Board of County Commissioners to transmit an unneeded comprehensive plan amendment. Recommend that the Board undertake the hard work of actually planning for the DRGR and determining what the vision and goals of the DRGR are. This is a chance for Lee County to show that all policies and objectives in the Lee Plan hold equal value including those policies and objectives that protect wetlands and habitat.

Sincerely,



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cc:

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