

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA**

**CONSERVANCY OF SOUTHWEST
FLORIDA, INC.,**

PLAINTIFF,

v.

**COLLIER COUNTY, FLORIDA, and
COLLIER ENTERPRISES MANAGEMENT,
INC.,**

DEFENDANTS.

Case No. 11-2020-CA-000780-0001-XX

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW Plaintiff, the Conservancy of Southwest Florida, Inc. (the “Conservancy” or “Plaintiff”) which, pursuant to § 163.3215, Fla. Stat., files this Complaint for Declaratory and Injunctive Relief against Defendant Collier County, Florida (the “County” or “Defendant”), and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff challenges Collier County’s development order rendered on February 7, 2020, which approved the development of Rivergrass Village (the “Rivergrass Village Development Order”). In issuing the Rivergrass Village Development Order, the Collier County Board of County Commissioners disregarded the near-unanimous recommendation of the Collier County Planning Commission. As four out of five of the Planning Commissioners determined, the Rivergrass Village Development Order is plainly inconsistent with the Collier County Growth Management Plan (the “GMP”).

2. The Collier County GMP includes a program known as the Rural Lands Stewardship Area (“RLSA”) program. The RLSA consists of nearly 200,000 acres in Eastern Collier County and is home to the Florida panther and 16 other species included on federal and state endangered and threatened species lists. The RLSA program requires the County to discourage urban sprawl; to prevent the premature conversion of agricultural lands to non-agricultural uses; to protect natural resources; to direct incompatible uses away from environmentally sensitive lands, including wetlands and upland habitats; and to use innovative and creative approaches to development that provide for the cost-efficient delivery of public facilities and services for all land located within the RLSA boundaries.

3. The RLSA program distinguishes properties within the RLSA that must be preserved (known as Stewardship Sending Areas, or “SSAs”) from properties within the RLSA that are supposed to be suitable for development (known as Stewardship Receiving Areas, or “SRAs”). The Rivergrass Village Development Order improperly designates the proposed Rivergrass Village as an SRA (the “Rivergrass Village SRA” or “Rivergrass Village”).

4. The Rivergrass Village Development Order falls far short of the GMP’s requirements. If construction of Rivergrass Village is allowed to proceed as contemplated in the Development Order, the project will be dangerous for pedestrians, increase traffic congestion, harm wildlife, destroy species habitat, unduly burden taxpayers, result in sprawl, and otherwise fail to abide by the GMP’s design provisions governing land use, density, and intensity.

5. Plaintiff brings this action pursuant to § 163.3215, Fla. Stat., seeking a declaration that the Rivergrass Village Development Order is inconsistent with the Collier County GMP and injunctive relief enjoining the County from authorizing the land uses, densities, and intensities allowed by the development order.

PARTIES

6. Plaintiff, the Conservancy of Southwest Florida, Inc., is a Florida not-for-profit corporation. The Conservancy’s mission is “to protect and sustain the natural environment of Southwest Florida through science and research, policy and advocacy, wildlife rehabilitation, and environmental education focused on the preservation of [Florida’s] natural treasures—[its] water, [its] land and [its] wildlife.”¹

7. Founded more than 55 years ago, the Conservancy has over 4,500 dues-paying members on whose behalf it advocates for the preservation of the southwest Florida region’s water, land, and wildlife.

8. The Conservancy is dedicated to promoting “smart growth.” The Conservancy believes that “[a]n exploding population in Southwest Florida has resulted in unprecedented increases in development,” which “will have major consequences on our wildlife, our water and our quality of life.” The Conservancy “endorse[s] the use of strong planning tools and comprehensive plans so development is handled in a responsible, sustainable manner.”²

9. A key component of the Conservancy’s mission is ensuring the proper implementation of Florida’s growth management and land development laws, including the Collier County GMP and the RLSA.

10. In furtherance of this mission, the Conservancy has embarked on a specific and focused course for over 20 years to protect and preserve the lands and wildlife in and around the

¹ Amended and Restated By-Laws of Conservancy of Southwest Florida, Inc. (adopted December 10, 2019).

² CONSERVANCY OF SOUTHWEST FLORIDA, INC., <https://www.conservancy.org/our-work/policy/smart-growth>

RLSA of eastern Collier County. The Conservancy's Policy and Advocacy Department helps steward smart growth in and around the RLSA with a goal of keeping natural open spaces for all to enjoy, advising on transportation planning and land use decisions, and helping to preserve environmentally sensitive lands.

11. As one of the core objectives of its policy work, the Conservancy has been actively involved in monitoring and ensuring the faithful implementation of the RLSA program ever since the RLSA's inception in 2002. In fact, the Conservancy served on the Rural Lands Oversight Committee, which was created in 1999 by the Collier County Board of County Commissioners to oversee the creation of the RLSA. Since then, the Conservancy has taken part in a majority of the reviews and restudies of the RLSA program. The Conservancy's ongoing goal in its RLSA policy work is to improve awareness and understanding among elected officials, agency staff, stakeholders and the public about the RLSA, individual SRAs, and the financial and environmental costs associated with the existing RLSA overlay.

12. The Conservancy has invested considerable resources and time to further its interests in protecting and preserving the land, water, and wildlife of the RLSA and eastern Collier County. For example, it has devoted tens of thousands of staff hours towards educating the public about the RLSA through presentations to civic groups and homeowners associations, participating in numerous RLSA-focused workshops, and drafting or otherwise supporting various technical analyses and public education materials, all available through the Conservancy's public website. The Conservancy has also provided comments at a majority of public hearings relating to the RLSA.

13. The Conservancy also has a long and well-documented commitment to the protection and rehabilitation of native wildlife and the preservation of wildlife habitat in eastern

Collier County. It has invested substantial effort and funds to ensure the region's wildlife and their habitat are protected.

14. The Conservancy funds and operates the only wildlife hospital in Collier County—the von Arx Wildlife Hospital (the “Hospital”). The Hospital, which operates 365 days a year, treats injured wildlife from the entire southwest Florida region, including from the RLSA. The Hospital has six full-time staff members, including a full-time veterinarian as well as numerous interns and volunteers. The Hospital maintains both state and federal permits required for the treatment and rehabilitation of species native to southwest Florida, including species native to the RLSA. Over 3,800 animals are treated per year, including reptiles, mammals, and birds.

15. The von Arx Wildlife Hospital is the only source of medical care for native wildlife in the region, including for any animals that will be injured by increased human activity in and around the proposed Rivergrass Village development. The influx of population resulting from developments similar to Rivergrass Village have resulted, and continue to result, in wildlife injury from vehicular traffic, pet predation, non-native disease transmission, encounters with power lines, and other infrastructure and habitat loss and fragmentation. The Hospital maintains a post-rehabilitation release rate of approximately 45%.

16. The addition of a new sprawling residential development in Rivergrass Village will introduce into the area up to 2,250 single-family residential dwelling units, up to 250 multi-family residential dwelling units, up to 100,000 square feet of retail/office uses, and 25,000 square feet of civic, governmental, and institutional uses. The additional infrastructure, traffic, population and pets accompanying the Rivergrass Village is expected to increase the rate of wildlife injury and mortality in the surrounding area. This, in turn, will increase the demands for the services provided by the Hospital.

17. Indeed, increases in traffic have been shown to be the leading mortality source for certain species native to southwest Florida and the primary cause of wildlife population declines and habitat fragmentation among certain populations.

18. The rise in admissions to the von Arx Wildlife Hospital resulting from the development of Rivergrass Village will require the Conservancy to expend more resources to ensure eastern Collier County's native wildlife receive adequate medical care. The increase in animals will require the Hospital to provide additional food, shelter, medication, and staff hours to appropriately treat wildlife injuries, malnutrition, and illnesses. The demand on Hospital resources will be compounded by the increased level of effort and expense required to retrieve injured animals and release rehabilitated animals in the more remote areas surrounding the planned Rivergrass Village. Indeed, due to an uptick in animal injuries as a result of the nearby Ave Maria development, the Hospital has already needed to conduct education and volunteer solicitation efforts specifically aimed at the Ave Maria community.

19. The Conservancy has also demonstrated a commitment to educating the public regarding the abundant wildlife and the importance of preserving wildlife habitat in the RLSA and surrounding areas. The Conservancy's Dalton Discovery Center includes exhibits about the types of wildlife and habitat in southwest Florida, including in the RLSA, and is visited by over 20,000 people each year.

20. In addition, the Conservancy's Board of Directors has attended multiple tours of the RLSA and other lands for which Conservancy funds are allocated to protect.

21. As part of its overall commitment to protect and preserve wildlife habitat, the Conservancy has also acquired land for conservation purposes in eastern Collier County. The

Conservancy owns five parcels of land within the RLSA, all of which are within five miles of the approved site for Rivergrass Village.

22. The Conservancy has more than 3,490 members who reside in Collier County. A substantial number of these members regularly use resources and infrastructure in the area that will be impacted by Rivergrass Village. Rivergrass Village will increase the number of people in the area and, accordingly, increase the demands on the public services, roads, and infrastructure on which the Conservancy and its members rely.

23. The Traffic Impacts statement conducted in connection with the Rivergrass Village application found that “most of the analyzed roadway segments are significantly impacted by the project.” More specifically, the statement found there will be increased traffic to at least the following roads, which the Conservancy and its members frequently use: Oil Well Road, Everglades Boulevard, Wilson Boulevard, Randall Boulevard, Vanderbilt Beach Road, Golden Gate Blvd, Immokalee Road, Collier Boulevard, and Logan Boulevard. This influx of traffic caused by Rivergrass Village will further congest these roads, lead to greater numbers of incidents involving animal injuries and mortalities, and impact the Conservancy’s members’ commutes and ability to quickly access daily goods and services. Sprawling development, like that of Rivergrass Village, and the resulting influx of people and vehicles, will threaten the pristine and natural character of these areas. This will diminish Conservancy members’ enjoyment of these natural areas and negatively affect their interest in the natural areas and rural character that the RLSA and GMP seek to protect.

24. As a result of the County’s approval of Rivergrass Village, the Conservancy and its members will suffer adverse effects to interests protected or furthered by the RLSA and the GMP, including, but not limited to, their interest in compact and environmentally compatible land uses

within the RLSA, their interest in preserving and protecting wildlife and habitat, their interests in preserving the rural and natural character of the RLSA and surrounding areas, and their interest in promoting smart growth and preventing urban sprawl.

25. As recounted above, Plaintiff is an aggrieved or adversely affected party under § 163.3215(2), Fla. Stat. The Conservancy, as an organization, and its members will suffer adverse effects to the aforementioned interests protected or furthered by the County's GMP. Their interests exceed in degree the general interest in community good shared by all persons in the County. Plaintiff has the requisite standing to bring this suit on behalf of itself and its members.

26. Defendant Collier County is a subdivision of the State of Florida, created and authorized pursuant to the laws and Constitution of the State of Florida.

27. Pursuant to Chapter 163, Part II, Florida Statutes, the *Community Planning Act* (the "Community Planning Act"), the County is statutorily required to adopt and implement a local comprehensive plan and to ensure that all development orders approved by the County are consistent with such plan.

28. In accordance with the Community Planning Act, Collier County adopted the GMP, and all development orders issued by the County must be consistent with the GMP.

JURISDICTION AND VENUE

29. This Complaint for Declaratory and Injunctive Relief is filed pursuant to § 163.3215, Fla. Stat., which authorizes actions for injunctive and other relief to prevent the issuance of development orders that are inconsistent with local government comprehensive plans.

30. The real property at issue is the Rivergrass Village SRA. The Rivergrass Village SRA comprises 997.53 acres, located both north and south of Oil Well Road and just east of Desoto Boulevard in eastern Collier County.

31. Plaintiff filed its original Complaint for Declaratory and Injunctive Relief against Collier County, Florida on March 9, 2020 (the “Original Complaint”). Pursuant to §163.3215(3), Fla. Stat., the Original Complaint was filed within 30 days of the County’s rendition of its final action on the Rivergrass Village Development Order, which occurred on February 7, 2020.

32. The Florida Circuit Courts have jurisdiction over the subject matter of this action pursuant to Florida Constitution, Article V, Section 20 and §§ 163.3215(5), 26.012(3), and 26.012(2)(a), Fla. Stat.

33. Venue in this action lies in Collier County because the challenged action was taken by the Collier County Board of County Commissioners (the “Board” or “BCC”) and occurred within Collier County, and the proposed Rivergrass Village SRA is located in Collier County. *See* § 163.3215(5), Fla. Stat.

34. This Court has jurisdiction to enter declaratory and injunctive relief pursuant to Chapter 86, Florida Statutes and Fla. R. Civ. P. Rule 1.610.

35. On March 30, 2020, Collier Enterprises Management, Inc. (“Collier Enterprises”) filed a voluntary Motion to Intervene as a Party Defendant. On May 11, 2020, the Court granted Collier Enterprises’ Motion to Intervene and ordered that “Collier [Enterprises] shall be added to this case as a party Defendant.”

36. Pursuant to the Court’s May 11, 2020 Order, Collier Enterprises is identified in this First Amended Complaint as an intervening party Defendant aligned with Collier County, the original Defendant against whom this cause of action was brought pursuant to § 163.3215 (3), Fla. Stat. The Conservancy has not asserted a claim against Collier Enterprises.

FACTUAL BACKGROUND

The Community Planning Act

37. The Community Planning Act requires each local government in Florida to prepare and adopt a local comprehensive plan that, *inter alia*, protects Florida’s valuable natural resources—including by governing future land use. § 163.3161 *et seq.*, Fla. Stat.

38. Once a local government adopts a comprehensive plan, all development orders issued by that local government must be consistent with the comprehensive plan and elements thereof. §§ 163.3161(5) and 163.3194(1)(a), Fla. Stat.

39. The Community Planning Act defines “development order” as “any order granting, denying, or granting with conditions an application for a development permit.” § 163.3164(15), Fla. Stat.

40. The Community Planning Act defines “development permit” as “any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.” § 163.3164(16), Fla. Stat.

41. Sections 163.3215(1) and (3), Fla. Stat., provide that “[a]ny aggrieved or adversely affected party” may bring a civil action for injunctive or other relief against any local government to prevent the local government “from taking any action, on a development order, as defined in s. 163.3164, which materially alters the use or density or intensity of use” of land on a tract of property in a manner which is not consistent with the local comprehensive plan.

The Collier County GMP and the Origins of the RLSA Program

42. In November 1997, Collier County amended its GMP, removing multiple natural resource protections.

43. On December 24, 1997, the Florida Department of Community Affairs (“DCA”)³ petitioned for a formal administrative hearing, arguing that the County’s amendments to the GMP were not “in compliance” with the Community Planning Act’s goals of protecting and preserving natural resources. *See* § 163.3184(1)(b), Fla. Stat.

44. A hearing was held before a Florida administrative law judge, and the judge agreed that the County’s 1997 amendments to the GMP were non-compliant with the Community Planning Act because the amendments were not sufficiently protective of the environment.

45. This challenge to the County’s GMP amendments was subsequently elevated to the Governor of Florida and his Cabinet.

46. On June 22, 1999, the Governor and Cabinet (sitting as the Administration Commission) entered Final Order No. AC-99-002 (the “Final Order”), finding that the County’s GMP, as amended, lacked regulatory protection for environmentally sensitive lands and failed to adequately discourage urban sprawl.

47. The Final Order directed the County to conduct a rural and agricultural assessment and incorporate elements into its GMP that (i) direct incompatible uses away from wetlands and upland habitats in order to protect animal and plant species listed as threatened or endangered; (ii) assess the growth potential of the County while protecting environmentally sensitive areas and avoiding urban sprawl; and (iii) use innovative and creative approaches to development that

³ DCA has since been dissolved and its functions and authority transferred to the newly-created Florida Department of Economic Opportunity.

provide for the cost-efficient delivery of public facilities and services. Final Order No. AC-99-002 at 11–12.

48. To comply with the requirements outlined in the Final Order, the County developed and incorporated the RLSA program into its GMP in 2002. *See* BCC Ordinance No. 2002-54.

49. The RLSA program created a special zoning district (the “RLSA Overlay”) within Collier County. The RLSA Overlay is designed to “guide concentrated population growth and intensive land development away from areas of great sensitivity and toward areas more tolerant to development.” GMP Future Land Use Element § I.C. Development within the RLSA Overlay must therefore be carefully planned and controlled.

50. The County’s RLSA program requirements are codified and implemented through the RLSA Overlay Policies in the Future Land Use Element of the GMP.

51. RLSA program requirements are further codified and implemented through Collier County’s Land Development Code (“LDC”), in the section titled Rural Lands Stewardship Area Zoning Overlay District Standards and Procedures (the “LDC Stewardship District”). *See* LDC § 4.08.00.

52. The RLSA Overlay encompasses 195,000 acres of farm fields, pastures, uplands, wetlands, and public conservation lands in Collier County.

53. The RLSA Overlay is one of the most biologically rich and ecologically important regions in the state of Florida.⁴

⁴ Fla. Nat. Areas Inventory, CLIP: Critical Lands and Waters Identification Project—Version 4.0 User Tutorial (Sept. 2016), http://www.fnai.org/pdf/CLIP_v4_user_tutorial.pdf.

54. The RLSA Overlay contains abundant natural resources, including: habitats for 17 species that are listed on state and federal endangered and threatened species lists, and 2 species that are currently under review for inclusion on the federal list of endangered and threatened species; significant wetland flow-way systems; and tens of thousands acres of agricultural lands.

55. The RLSA program is an incentive-based land use overlay system that distinguishes areas where future development exceeding the baseline zoning can be proposed, known as SRAs, from areas that the program determined at the time of its adoption in 2002 were environmentally sensitive and should have development directed away from them, known as SSAs.

56. Through the RLSA program, landowners may petition to have their properties designated as SSAs; when properties are designated as SSAs, the landowners earn credits that allow them to petition to have their other properties designated as SRAs. Alternatively, a landowner can sell his credits to another landowner who wishes to develop an SRA.

57. A petition to develop a particular SRA must demonstrate that the proposed SRA complies with applicable policies of the RLSA program, is designed to direct incompatible land uses away from wetlands and essential habitat areas, and is designed to discourage sprawl. BCC, RLSA Adoption—Executive Summary, at 4 (Oct. 22, 2002).

58. The RLSA itself mandates that the proposed SRA must also “compl[y] with all applicable policies of the . . . LDC Stewardship District.” RLSA Overlay Policy 4.5; *see also* RLSA Overlay Policy 4.3. The LDC Stewardship District policies are codified at LDC §§ 4.08.00 through 4.08.08. An SRA that fails to demonstrate compliance with any of these LDC Stewardship District policies is inconsistent with RLSA Overlay Policy 4.5 and therefore inconsistent with the GMP.

59. The Collier County Planning Commission (the “Planning Commission”) is responsible for reviewing landowners’ SRA petitions and submitting a recommendation to approve or deny proposed SRAs to the BCC. The BCC ultimately approves or denies a proposed SRA.

60. Collier Enterprises, the developer of Rivergrass Village, previously petitioned to designate approximately 5,250 acres of its property as an SSA (“SSA 15”). The BCC granted the petition and Collier Enterprises received credits from SSA 15 allowing it to either petition to designate its other property as an SRA or seek to sell its credits.

61. Collier Enterprises used approximately one-fifth of these credits to petition to designate the proposed Rivergrass Village area as an SRA. Once completed, the Rivergrass Village SRA will comprise approximately 1,000 acres of developed land.

62. Collier Enterprises, and/or those speaking on behalf of Collier Enterprises, have represented that Collier Enterprises set aside 5,000 acres of land for conservation in exchange for a 1,000-acre development at Rivergrass Village. This is a misrepresentation. Collier Enterprises has sufficient credits to develop *four* additional villages, each with approximately the same footprint as Rivergrass Village. Alternatively, Collier Enterprises could sell these credits to other developers to do the same.

RLSA Goals and Policies

63. Reflecting the mandates of the Administration Commission’s Final Order, the goals of the RLSA program are to (1) “protect[] agricultural activities,” and “prevent[] the premature conversion of agricultural land to non-agricultural uses,” (2) “direct[] incompatible uses away from wetlands and upland habitat,” and (3) “enabl[e] the conversion of rural land to other uses in appropriate locations, discourag[e] urban sprawl, and encourag[e] development that implements creative land use planning techniques.”

64. The County has adopted several mandatory policies to implement this goal. These policies are divided into five groups: Group 1 policies describe the structure and organization of the RLSA Overlay; Group 2 policies relate to agriculture; Group 3 policies relate to natural resource protection; Group 4 policies relate to the conversion of land to other uses and economic diversification; and Group 5 policies are regulatory mandates which ensure land that is not voluntarily included in the Overlay shall nonetheless meet minimum requirements pertaining to natural resource protection.

65. A key element of the RLSA policies is to promote compact, self-sufficient development that prevents urban sprawl and avoids destruction of endangered species habitat. *See, e.g.,* RLSA Overlay Policy 1.2, which declares that the RLSA Overlay “protects natural resources and retains viable agriculture by ***promoting compact rural mixed-use development as an alternative to low-density single use development***, and provides a system of compensation to private property owners for the elimination of certain land uses in order to protect natural resources and viable agriculture in exchange for transferable credits that can be used to entitle such compact development” (emphasis added).

66. Group 3 policies “protect water quality and quantity and maintain the natural water regime, as well as listed animal and plant species and their habitats ***by directing incompatible uses away from wetlands and upland habitat***” (emphasis added).

67. Group 4 policies, which govern the creation of SRAs, “enable conversion of rural lands to other uses in appropriate locations, ***while discouraging urban sprawl***, and encouraging development that utilizes creative land use planning techniques” (emphasis added).

68. Since its inception, one of the RLSA program’s primary objectives has been to encourage environmentally sustainable development by directing land use, density, and

intensification in ways that minimize impacts to wildlife and other species habitat. Indeed, the central goal of the RLSA Overlay is “to address the long-term needs of residents and property owners” by, among other things, “directing incompatible uses away from wetlands and upland habitat.” RLSA Overlay Policy Goal, incorporating language from Final Order AC-99-002.⁵ The language of the RLSA program mirrors the Florida Governor’s 1999 Final Order, from which the RLSA originated, mandating that Collier County create a plan that would “protect listed animal and plant species and their habitats.” Final Order No. AC-99-002.

69. The RLSA program allows for four forms of SRAs within the Overlay: Towns, Villages, Hamlets, and Compact Rural Development. RLSA Overlay Policy 4.6 requires that all four forms of SRAs be “based upon innovative planning and development strategies referenced in Section 163.3168(2), Florida Statutes.” These planning strategies include designing urban villages “that allow the conversion of rural and agricultural lands to other uses while protecting environmentally sensitive areas, maintaining the economic viability of agricultural and other predominantly rural land uses, and providing for the cost-efficient delivery of public facilities and services. Such development strategies are recognized as methods of discouraging urban sprawl.”

Id.

⁵ See also BCC, RLSA Adoption—Executive Summary, at 4 (Oct. 22, 2002) (“the primary focus of the strategy is an incentive-based program designed to direct incompatible land uses away from wetlands and listed species habitats”); GMP Future Land Use Element § I.B (“strategy for the protection of natural resources . . . in the . . . Rural Lands Stewardship Area by employing various regulations and incentives to direct incompatible land uses away from such natural resources”); RLSA Overlay Group 3 Policies (“protect . . . listed animal and plant species and their habitats by directing incompatible uses away from wetlands and upland habitat”); Overlay Policy 4.6 (SRA developments must “allow the conversion of rural and agricultural lands to other uses while protecting environmentally sensitive areas.”); GMP Future Land Use Element, Objective 5 (“Implement land use policies that promote sound planning, protect environmentally sensitive lands and habitat for listed species”).

70. RLSA Overlay Policy 4.5 also requires SRAs to comply with all policies and requirements set forth in the LDC Stewardship District, § 4.08.00 *et seq.* See also RLSA Overlay Policy 4.3.

71. Collier County’s attorney has acknowledged that an applicant for a new village development must prove that the proposed development is consistent with the goals, objectives, and policies of the GMP. See BCC, Executive Summary of Hearing, January 28, 2020.

The Rivergrass Village Development Order

72. Resolution No. 20-24 is “[a] Resolution of the Collier County Board of County Commissioners Designating 997.53 acres within the Rural Lands Stewardship Area Zoning Overlay District as a Stewardship Receiving Area, to be known as the Rivergrass Village Stewardship Receiving Area.”⁶ As a result of the development order, the subject property may now be used as a Stewardship Receiving Area—a use that was not allowed on the property prior to the development order.

73. Resolution No. 20-24 is a development order within the meaning of the Community Planning Act. § 163.3164(15), Fla. Stat.; see also LDC § 1.08.02 (the term “development order” includes “[a]ny order, permit, determination, or action granting, denying, or granting with conditions an application for [a] . . . stewardship receiving area (SRA)”).

74. The Rivergrass Village Development Order will allow development of 2,500 residential dwelling units, up to 100,000 square feet of commercial area in the Rivergrass Village center, at least 25,000 square feet dedicated to civic, governmental, and institutional uses, and an 18-hole golf course. As a result of the development order, those uses, at those densities and

⁶ See <https://apps.collierclerk.com/BMR/DocView.aspx?dbid=0&id=234658&page=1&cr=1>.

intensities, may now be constructed on the property; they were not allowed on the property prior to the issuance of the development order.

75. The property to be developed as Rivergrass Village is located “south of 45th Avenue NE and north of 26th Avenue NE, all east of DeSoto Boulevard in Sections 10, 14, 15, 22, 23, and 27, Township 48 South, Range 28 East, Collier County, Florida.” Resolution No. 20-24.

PROCEDURAL HISTORY

76. Collier Enterprises first submitted its development plan for Rivergrass Village for the County’s review in January 2019.

77. At a public hearing on November 7, 2019, the Collier County Planning Commission recommended *denial* of Collier Enterprises’ petition to designate the proposed Rivergrass Village area as a SRA. The Planning Commission overwhelmingly recommended against Rivergrass Village by a vote of 4 to 1.

78. The majority of Planning Commissioners determined that the proposed Rivergrass Village was fundamentally incompatible with multiple requirements of the GMP.

79. The Planning Commission’s list of reasons for recommending denial included, but was not limited to, (i) Rivergrass Village’s failure to move from greater urban density to lesser, more rural density; (ii) its lack of vehicular connectivity (including the presence of 18 to 20 cul-de-sacs); (iii) its poor accessibility; (iv) its failure to be walkable; (v) its failure to be innovative; (vi) its insufficient housing diversity; (vii) its lack of affordable housing; and (viii) the developer’s failure to provide the required documentation demonstrating the Village’s fiscal neutrality.

80. At a subsequent hearing on January 28, 2020, the BCC disregarded the Planning Commission’s recommendation and approved Resolution No. 20-24, designating the proposed Rivergrass Village area as a SRA. The Board approved the Resolution by a vote of 3 to 2.

81. The Resolution was filed and thus rendered by the Collier County Clerk on February 7, 2020.

**RIVERGRASS VILLAGE IS INCONSISTENT WITH
COLLIER COUNTY’S GROWTH MANAGEMENT PLAN**

82. Rivergrass Village does not conform to the fundamental village design characteristics required by the RLSA Overlay Policies and the LDC; it fails to provide a diversity of housing options as mandated in the GMP; and it fails to provide for future fiscal neutrality and is therefore an unacceptable drain on public tax dollars.

83. As a result of these fundamental design flaws, the Rivergrass SRA will allow for land uses, densities, and intensities that impede rather than further the goals of the RLSA.

Rivergrass Village Fails to Include Fundamental Design Characteristics Required by the GMP

84. The RLSA Overlay was adopted, *inter alia*, to discourage urban sprawl. The RLSA Overlay primarily achieves this objective by requiring that all SRA development be compact and accessible, have interconnected street and sidewalk systems that encourage pedestrian and bicycle circulation, include mixed-use development along a density gradient, and incorporate innovative urban planning strategies.

85. In their December 2019 Staff Report, Collier County staff (the “Comprehensive Planning Staff”) determined that:

The Rivergrass Village SRA does not fully meet the minimum intent of the policies in the RLSA [Overlay] pertaining to innovative design, compactness, housing diversity, walkability, mix of uses, use density/intensity continuum or gradient, interconnectedness, etc. In staff’s view, this SRA is, with some exceptions, a suburban development plan typical of that in the coastal urban area placed in the RLSA and is *contrary to what is intended in the RLSA.*

(emphasis added).

86. The Comprehensive Planning Staff published an updated Staff Report on January 22, 2020, and this statement remained unchanged.

87. Indeed, the design of Rivergrass Village exemplifies the problems with urban sprawl.

88. The design for Rivergrass Village includes development that is spread out along major roads with few interconnecting streets, numerous cul-de-sacs, a disproportionate number of single-family dwelling units, a layout that encourages automobile-dependency, and long distances to neighborhood services that discourage walking and biking.

89. The impacts of this flawed design approach are highlighted by the Traffic Impact Statement for Rivergrass Village which found that “most of the analyzed roadway segments are significantly impacted by the project.” The Project will add further significant impacts to certain sections of Collier County roadways that are already projected to exceed the existing level of service by 2030 without the additional Rivergrass Village impacts. For example, Rivergrass Village will increase traffic on at least the following road segments, all of which have capacity that is projected to exceed the minimum Level of Service Standard: on Immokalee Road from Collier Boulevard to Logan Boulevard by a further 8.3%; on Immokalee Road from Logan Boulevard to I-75 by a further 4.5%; on Randall Boulevard from DeSoto Boulevard to Everglades Boulevard by a further 6.7%; and on Vanderbilt Beach Road from Logan Boulevard to Livingston Boulevard by a further 1.6%. Without approval of specific mitigation stipulations, these traffic impacts render approval of the Rivergrass Village SRA designation inconsistent with the County’s GMP Transportation Element Policy 5.1.

90. Rivergrass Village is not interconnected or walkable, it fails to include a diversity of housing on a continuum from greater urban density to lesser rural density as mandated by the RLSA, and lacks any innovative planning strategies.

Rivergrass Village Is Not Interconnected, Accessible, or Walkable

91. The County’s GMP and LDC require new villages to be interconnected, walkable, pedestrian-friendly, and cyclist-friendly, as set forth in the following provisions:

GMP RLSA Overlay Policy 4.7.2, which states that “[v]illages shall be designed to encourage pedestrian and bicycle circulation by including an interconnected sidewalk and pathway system serving all residential neighborhoods.”

GMP Future Land Use Element Policy 7.4, which states that “[t]he County shall encourage new developments to provide walkable communities with a blend of densities, common open spaces, civic facilities and a range of housing prices and types.”

LDC § 4.08.07.J.3.a.ii (“Village Design Criteria—General Criteria”), which states that “[v]illages shall be designed in a compact, pedestrian-friendly form.”

LDC § 4.08.07.J.3.b.i. (“Village Design Criteria—Transportation Network”), which states that “[t]he transportation network shall provide for a high level of mobility for all residents through a design that respects the pedestrian and accommodates the automobile” (incorporating LDC § 4.08.07.J.2.b.i by reference).

LDC § 4.08.07.J.3.b (“Village Design Criteria—Transportation Network”), which states that “[t]he transportation network shall be designed in an interconnected system of streets, sidewalks, and pathways” (incorporating LDC § 4.08.07.J.2.b by reference).

LDC § 4.08.07.J.1 Table B (“Village—Typical Characteristics”), which requires villages to include “[i]nterconnected sidewalk and pathway system[s].”

LDC § 4.08.07.J.3.a.iii (“Village Design Criteria—General Criteria”), which requires a village to “[c]reate an interconnected street system designed to disperse and reduce the length of automobile trips.”

LDC § 4.08.07.C.2 (“Forms of SRA Developments”), which states that “[v]illages are comprised of residential neighborhoods and shall include a mixed-use village center to serve as the focal point for the community’s support services and facilities. Villages shall be designed to encourage pedestrian and bicycle circulation by including an interconnected sidewalk and pathway system serving all residential neighborhoods.”

92. Rivergrass Village’s design violates each of the above provisions. In addition, the Rivergrass Village SRA’s incompatibility with each of these LDC requirements renders it inconsistent with RLSA Overlay Policies 4.3 and 4.5.

93. As just one example, the Rivergrass Village Master Plan shows that the Village will be bisected by Oil Well Road, a major freight distribution route with a speed limit of 55 miles per hour. The segment of Oil Well Road that will divide Rivergrass Village is planned for expansion from two lanes to six lanes.

94. Oil Well Road is one of only a few freight distribution routes within Collier County. Over 800 trucks per day traverse Oil Well Road, carrying petroleum, coal, mining materials, agricultural products, and other goods.

95. Freight distribution routes are dangerous roads. Four of the County’s six highest crash corridors are located along freight distribution routes.

96. Rivergrass Village’s high-intensity commercial and retail center will be concentrated immediately south of Oil Well Road.

97. Rivergrass Village inhabitants who reside north of Oil Well Road will therefore be forced to cross a six-lane, high-speed freight distribution highway to get to the Village center.

98. The County has long held that it is inappropriate to construct a development center along Oil Well Road. As the Collier County Manager's Office stated in a letter dated November 1, 2018 (discussing a previous development proposal, which was more expansive than Rivergrass but included the Rivergrass Village boundary within its footprint):

The County has consistently expressed a concern about the way you have designed the [proposed development] to overlay onto the County's major east-west future arterials (Oil Well Road & Randall Boulevard) . . . Oil Well Road and Randall Boulevard are intended to be major transportation corridors serving multiple population centers and the movement of freight and goods for longer distance travel needs . . . The SRA Town Core and Town Centers are meant to be pedestrian friendly at a "human scale" . . . [the developers] should modify their design to eliminate the high intensity commercial/retail and pedestrian "Human Scale" level of interaction along the chosen freight and goods arterial.

99. In the same letter, the Collier County Manager's Office noted that "[s]tatistically, the majority of bicycle or pedestrian fatalities or severe injury crashes occur on high speed, high volume roadways, especially where multiple conflict points are present."

100. Discussing the Rivergrass Village SRA specifically, the Comprehensive Planning Staff stated:

Using Oil Well as an internal access road between your only commercial area and most of your residential areas/units is not acceptable. Better interconnection must be provided, or your internal capture needs to be greatly reduced. This is also a safety concern due to high potential short trip use conflicts on a major arterial-freight roadway. This item is not sufficient.⁷

⁷ Letter from Collier Cty. to Robert J. Mulhere, Hole Montes, Inc. & Richard D. Yovanovich, Coleman, Yovanovich and Koester, P.A., re: Stewardship Receiving Area Determination of Completeness, Rivergrass Village SRA (Mar. 8, 2019).

101. In other words, instead of being pedestrian- and bicycle-friendly, Rivergrass Village, as designed, will be dangerous for pedestrians and cyclists.

102. As another example, the design for Rivergrass Village includes 18 to 20 cul-de-sacs (i.e., dead ends). There is only one direct connection to the Village center from all neighborhoods within the Rivergrass Village. In fact, there are twice as many points of connection to the Rivergrass Village center from the major streets outside the Village than from inside the Village; this means that cars traveling on major roads past the Rivergrass Village will be able to access the Village center more easily than the Village's residents.

103. The Rivergrass Village project spans over two and half miles, yet offers only one connection between the neighborhoods north and south of Oil Well Road.

104. These design characteristics do not “encourage pedestrian and bicycle circulation,” LDC § 4.08.07.C.2, nor do they incorporate the interconnectivity and walkability mandated by the GMP and the LDC.

105. In a letter dated March 25, 2019, the Comprehensive Planning Staff found that “[t]he single interconnection proposed for the Village Center to the residential areas is not acceptable.”

106. As Commissioner Edwin (“Ned”) Fryer further explained at a Planning Commission hearing on November 7, 2019:

[T]hose dead-ends and that potential six-lane highway running through this so-called village, together, in my judgment, it is completely antithetical to what my understanding, after hours and hours of reading of what led up to the RLSA, what was intended by the planners, by your colleagues, by the Board of County Commissioners, and by our predecessors.

107. Mark Strain, Chairman of the Planning Commission, similarly emphasized Rivergrass Village's inconsistencies with the RLSA during the same hearing:

The village center [is] not being centralized because it's split by Oil Well Road. I mean, it's center but it's split by a six-lane freight road . . . [t]hat will . . . probably end up with two separate gated communities. That's no different than all the PUDs [Planned Unit Developments] we have in the urban area. . . . It was supposed to be the new town concept, more of the Ave Maria style for what they came through and were asked to be, [i.e.] [w]alkable communities.

108. At the same hearing, Karl Fry, another Planning Commissioner, noted the design's complete failure to accommodate pedestrians and bicyclists:

Bike and pedestrian friendly to me means you [are] walk[ing] and you're really not at risk of being hit by a car, you're not at risk of being hit by other types of activities. . . . [S]eparated bike path[s] or walking trail[s] [are] bike and pedestrian friendly. I don't see why there couldn't be some accommodations for that in one thousand acres where there's a trail around the perimeter or through the center of it that is not competing with automotive traffic to get where you want to go. So I don't see that as bike and pedestrian friendly.

109. Commissioner Ned Fryer further emphasized Rivergrass Village's inconsistency with the RLSA program, stating:

First and foremost is the total lack of connectivity within the proposed village resulting from the absence of any innovative solutions to the Oil Well Road problem. Such solutions could have included an overpass, an underpass, deployment of two retail and commercial centers instead of just one, a complete relocation of the village to other lands among the vast holdings of this applicant, and probably others. A related manifestation of this problem in the proposal is that it creates about 15 cul-de-sacs—or what are actually dead ends—across which neither automobile, nor bicyclist nor pedestrian may travel. Another related manifestation is that the proposed retail and commercial center has been designed not with the village residents in mind, but instead to capture as much bypassing auto traffic as possible. There are twice as many points of ingress and egress to the center from the major streets outside the village than there are from inside it.

110. In a review comment letter dated July 8, 2019, Collier County's Transportation Planning Review Staff noted the SRA's lack of interconnections, stating: "Please show additional

interconnections with your proposed Village Center and your residential developments. A single access internal is not adequate.”⁸

111. In its review of Rivergrass Village’s mobility plan, the Transportation Planning Review Staff also observed the Rivergrass Village SRA’s deviation from the requirements of the RLSA:

SRA’s are required as part of the transportation network . . . shall provide a high level of mobility for all residents through a design that respects the pedestrian and accommodates the automobile . . . [and] shall be designed in an interconnection system of streets, sidewalks, and pathways. It is not clear how a standardized series of roads, sidewalks, and the single proposed CAT bus stop meets this high level of mobility.⁹

112. Collier County Staff acknowledged the design’s failure to “fully meet the minimum intent of the policies in the RLSA O[verlay].”¹⁰

113. In its initial submission to the County, Collier Enterprises sought 19 deviations from SRA development standards in its Master Plan for Rivergrass Village.

114. In a September 19, 2019, memorandum from the Collier County Growth Management Department, Zoning Division, to the Planning Commission, County zoning staff stated that many of the requested deviations “do not conform to fundamental Village design

⁸ Letter from Collier Cty. to Robert J. Mulhere, Hole Montes, Inc. & Richard D. Yovanovich, Coleman, Yovanovich and Koester, P.A., re: Stewardship Receiving Area Determination of Completeness Rivergrass Village SRA (July 8, 2019).

⁹ *Id.* (internal quotations omitted).

¹⁰ Staff Report (December 10, 2019).

characteristics required by the LDC, and are not consistent with the intent of the RLSA provisions in the LDC Stewardship District.”¹¹

115. In the same memorandum, the zoning staff found that the “Village Center is disconnected from the northern half of the SRA Village by Oil Well Road resulting in a less walkable community,” and that the result is a “suburban-style development similar to many of the Planned Unit Developments (PUDs) located in the Urban Area of Collier County.”¹²

116. Despite the findings by Collier County Staff, the BCC approved the Rivergrass Village Master Plan, including 16 deviations requested therein.

117. As just one example, the Rivergrass Village Master Plan includes a deviation allowing for cul-de-sacs up to 1,200 feet in length. LDC § 6.06.01.J requires cul-de-sacs to be a maximum of 1,000 feet. Furthermore, the Florida Department of Transportation (“FDOT”) recommends that block lengths should not exceed 600 feet in order to be considered easy walking environments.¹³

118. Rather than promoting accessibility and walkability, lengthy cul-de-sacs impede the flow of traffic and discourage pedestrian foot traffic.

119. The Rivergrass Village Master Plan—including at least 16 deviations from LDC requirements—is plainly inconsistent with RLSA mandates.

¹¹ Memorandum from Collier Cty. Growth Mgmt. Dep’t, Zoning Div., to Collier Cty. Planning Comm’n, re: Rivergrass Village SRA (Sept. 10, 2019) at 7. Ultimately, Collier Enterprises revised its Master Plan to include 16 deviations; but this change did not alter Master Plan’s general design, which still lacks the requisite interconnectivity.

¹² *Id.* at 26.

¹³ State of Fla. Dep’t of Transp. Office of Roadway Design, “Traditional Neighborhood Development Handbook,” at 13 (2011).

120. The failure of Rivergrass Village to be interconnected, accessible, and walkable is a material alteration of the use, density, and/or intensity of use of the subject property in a manner that is inconsistent with the GMP.

Rivergrass Village Lacks Housing Diversity

121. The GMP requires new villages within the RLSA Overlay to include a “[d]iversity of single family and multi-family housing types, styles, [and] lot sizes.” LDC § 4.08.07J.1.a, Table B (Village Characteristics).

122. Collier County’s current ratio of housing types is approximately 50% single-family homes to 45% multi-family homes.¹⁴

123. By contrast, 90% of the housing units in Rivergrass Village will be single-family homes.

124. The 90% single-family home design of Rivergrass Village falls far short of the RLSA’s requirement to include a diversity of housing types in all new village developments.

125. At a Planning Commission hearing on October 17, 2019, Commissioner Ned Fryer stated that “with 90 percent of single-family detached housing and 10 percent of multifamily, that falls, in my judgment, woefully short of diversity.”

126. At a subsequent Planning Commission hearing on November 7, 2019, Commissioner Karl Fry agreed that “in order to build the case that [this project] meets that criteria, there should be more definition about . . . what the mix of diverse housing types might be in there.”

¹⁴ Memorandum from Collier Cty. Growth Mgmt. Dep’t, Zoning Div., re: Future Land Use Element Consistency Review of Proposed Stewardship Receiving Area (Nov. 19, 2019) at 2–3. The remaining 5% accounts for other home types, such as mobile homes.

127. The failure of Rivergrass Village to provide diverse housing types is a material alteration of the use, density, and/or intensity of the subject property in a manner which is not consistent with the GMP.

Rivergrass Village Lacks Gradient of Density and Intensity of Use

128. Not only are villages within the RLSA required to include a diverse mix of housing types, those housing types must be designed on a progressive rural-to-urban continuum, where high-density housing and intense commercial use are concentrated at the village's center and gradually move to the lowest density housing at the village's residential edges.

129. RLSA Overlay Policy 4.11 specifically provides that “[t]he perimeter of each SRA shall be designed to provide a transition from higher density and intensity uses within the SRA to lower density and intensity uses on adjoining property. The edges of SRAs shall be well defined and designed to be compatible with the character of adjoining property. Techniques such as, but not limited to setbacks, landscape buffers, and recreation/open space placement may be used for this purpose.”

130. LDC § 4.08.07.J.3.a.v, which implements RLSA Overlay Policy 4.11, requires that villages “[b]e developed in a progressive rural to urban continuum with the greatest density, intensity and diversity occurring within the village center, to the least density, intensity and diversity occurring within the Neighborhood Edge.”

131. The Rivergrass Village Master Plan provides little to no density continuum.

132. The Rivergrass SRA therefore violates RLSA Overlay Policy 4.11.

133. In addition, the Rivergrass SRA's incompatibility with LDC § 4.08.07.J.3.a.v renders it inconsistent with RLSA Overlay Policies 4.3 and 4.5.

134. In its recommendation to deny approval of the Rivergrass Village SRA, the Collier County Planning Commission listed as its first reason for denial the Village’s “[f]ailure to move from greater, urban density to lesser, more rural density.”

135. Collier Enterprises itself acknowledged that Rivergrass Village’s Master Plan failed to meet the RLSA’s density continuum requirements when it sought a deviation from LDC § 4.08.07.J.3.a.v.

136. Collier Enterprises explained its reason for this lack of a density continuum as follows:

The Village Center is located in the middle of the development along Oil Well Road. Locating the Village Center at the intersection of Oil Well Road is the only location that makes sense to ensure a viable market condition for these uses. Easy access for nearby residents from the surrounding neighborhood and for pass-by traffic on Oil Well Road is critical.

137. This explanation is inadequate because it does not explain why Collier Enterprises could not provide a continuum of densities concentrated around the Village Center.

138. In addition, Collier Enterprises’ argument that Rivergrass Village must be located on Oil Well Road to ensure marketability is not consistent with RLSA Overlay Policy 4.2, which states: “[T]he Overlay requires SRAs to be compact, mixed-use and self-sufficient in the provision of services, facilities and infrastructure, [and] *traditional locational standards normally applied to determine development suitability are not relevant or applicable to SRAs*” (emphasis added).

139. The Community Planning Act requires strict compliance with comprehensive plans; developments that, for whatever reason, cannot meet the comprehensive plan’s standards shall not be approved. §§ 163.3194(1)–(3), Fla. Stat.

140. Marketability is therefore not a valid excuse for placing Rivergrass Village’s center along a six-lane road and failing to provide a density continuum concentrated at the center.

141. Collier County Staff recommended denial of the deviation, finding that “the deviation results in a project that does not serve the daily needs and community-wide needs as the distance to goods and services are too great given the location of the Village Center.”¹⁵

142. During the Planning Commission’s October 17, 2019, public hearing, Collier Enterprises stated it would be withdrawing the deviation because it believed the “[Rivergrass Village] design is compliant.” However, Collier Enterprises has made no changes to the location of the Rivergrass Village center and has not increased the gradient of densities surrounding the Village center.

143. Given that almost all of its residences will be single-family homes, Rivergrass Village fails to provide a continuum of densities. As the Planning Commission noted in its December 10, 2019 Staff Report to the BCC, the Rivergrass Village SRA “does not fully meet the minimum intent of the policies in the RLSA [Overlay] pertaining to . . . use density/intensity continuum or gradient.”

144. The failure of Rivergrass Village to provide a density continuum is a material alteration of the use, density, and/or intensity of the subject property in a manner which is not consistent with the GMP.

Rivergrass Village Fails to Incorporate Innovative Planning Strategies

145. The RLSA program demands that SRA characteristics “be based upon innovative planning and development strategies,” RLSA Overlay Policy 4.6, including planning tools that

¹⁵ Memorandum from Collier Cty. Growth Mgmt. Dep’t, Zoning Div., to Collier Cty. Planning Comm’n, re: Rivergrass Village SRA, at 27 (Sept. 19, 2019).

promote “mixed-use, high-density development in urban areas” “while protecting environmentally sensitive areas,” §§ 163.3168(1)–(3), Fla. Stat.

146. As designed, Rivergrass Village is merely another gated community filled with single-family homes—indistinguishable from countless other gated communities outside of the RLSA Overlay, and precisely the opposite of the “vibrant urban communities” called for in the RLSA.

147. In other words, the design of Rivergrass Village lacks creative development techniques or innovative planning strategies.

148. At a Planning Commission hearing on November 7, 2019, Commissioner Ned Fryer specifically called out that the RLSA program “calls for the use of innovative planning and development strategies and creative land-use planning techniques,” but that the Rivergrass Village proposal “is nothing more than a garden-variety urban or suburban PUD [Planned Use Development].”

149. At the same hearing, Commissioner Karl Fry added that “I’m not able to see a lot of creativity in this plan. To me this plan looks as if it’s a gated PUD [Planned Use Development]—actually 2 gated PUDs—that are very similar to what would be in the western part outside of the RLSA that [has] simply been moved east and added a little bit of commercial.”

150. Rivergrass Village’s total lack of innovation is plainly contrary to the goals and mandates of the RLSA program.

151. Allowing construction of Rivergrass Village to proceed would convert valuable RLSA lands into rambling developments that are indistinguishable from the urban sprawl present outside of the RLSA Overlay.

152. The failure of Rivergrass Village to incorporate innovative planning strategies is a material alteration of the use, density, and/or intensity of the subject property in a manner which is not consistent with the GMP.

Rivergrass Village Lacks Affordable Housing Options

153. The Housing Element of the Collier County GMP requires the County to “[p]rovide new affordable housing units in order to meet the current and future housing needs of legal residents with very-low, low, moderate and affordable workforce incomes.” GMP Housing Element, Objective 1.

154. The Housing Element further directs the County to “[i]ncrease the number of affordable housing units . . . with the assistance of for-profit . . . providers.” GMP Housing Element, Objective 2.

155. The Future Land Use Element of the GMP similarly notes that “[a]n emerging issue in Collier County is the availability of adequate and affordable housing for low and moderate-income populations,” and therefore “encourages the creation of affordable housing.” GMP Future Land Use Element § I.C, Provision of Adequate and Affordable Housing.

156. Land Development Code § 4.08.07.J.3.a.iv requires villages to “[o]ffer ***a range of housing types and price levels to accommodate diverse ages and incomes***” (emphasis added).

157. Rivergrass Village does not provide any such range of housing price levels because almost all of its housing units are single-family homes geared towards higher-income homebuyers.

158. The Rivergrass Village SRA therefore violates the Housing Element of the Collier County GMP.

159. In addition, the Rivergrass Village SRA’s incompatibility with LDC § 4.08.07.J.3.a.iv renders it inconsistent with RLSA Overlay Policies 4.3 and 4.5.

160. The economic assessment of Rivergrass Village states that “the average assessed value for Rivergrass single-family homes is \$370,000 which is 41% higher than the County’s median value.”

161. Approximately 90% of the housing units in Rivergrass Village are single-family homes.

162. In their updated January 22, 2020 report, the Comprehensive Planning Staff noted that “[t]hrough multiple submissions and reviews, staff has continued to recommend that a Housing Needs Analysis be performed to estimate affordable housing demand, and to create a plan to address the supply of affordable housing units for the Rivergrass Village SRA.”

163. The Comprehensive Planning Staff went on to state that despite these repeated recommendations, “[t]he applicant has not undertaken such an analysis.”

164. The Comprehensive Planning Staff therefore concluded that “[h]ousing staff has reviewed [the Rivergrass Village proposal] and has found that the proposed SRA does not address housing affordability.”

165. The Planning Commission specifically called for Collier Enterprises to make a “commitment to provide some amount of affordable housing.”

166. Collier Enterprises has not made any commitment to provide affordable housing in Rivergrass Village.

167. The County approved the Rivergrass Village Master Plan despite the fact that it includes only a minimal range of housing prices (and that the entire price range is above the median house price for Collier County) and therefore does not accommodate diverse incomes.

168. The failure of Rivergrass Village to provide affordable housing options is a material alteration of the use, density, and/or intensity of the subject property in a manner which is not consistent with the GMP.

Rivergrass Village Is Not Fiscally Neutral and Is a Drain on Taxpayer Dollars

169. The RLSA program requires that SRAs “be planned and designed to be fiscally neutral or positive to Collier County.” RLSA Overlay Policy 4.18.

170. Therefore, “[e]ach SRA must demonstrate that its development, as a whole, will be fiscally neutral or positive to the Collier County tax base.” LDC § 4.08.07.L.1.

171. An SRA applicant must demonstrate fiscal neutrality by conducting an economic assessment that considers the new SRA development’s infrastructure needs—including, at a minimum, the costs of providing the development with transportation, potable water, wastewater, irrigation water, stormwater management, solid waste, parks, law enforcement, emergency medical services, firefighting services, and schools. LDC § 4.08.07.L; *see also* RLSA Overlay Policy 4.18.

172. In order to demonstrate fiscal neutrality, a proposed SRA’s economic assessment must show that the income generated by the SRA development (e.g., through ad valorem property tax revenue) will fund all public services provided to the development and its residents.

173. The RLSA program mandate is clear: growth must pay for growth, and the County cannot force its taxpaying residents to bear the infrastructure costs for new developments within the RLSA.

174. Collier Enterprises submitted an economic assessment of Rivergrass Village (the “Economic Assessment”) prepared by its consultant, Development Planning and Financial Group, Inc. (“DPFG”).

175. DPFG estimates that Rivergrass Village will become fiscally neutral in 2032, which is the Village's "buildout" year (i.e., the year that all of the new properties within the Village will have been built and sold or leased).

176. More specifically, DPFG estimates that as of the 2032 buildout year, the annual ad valorem tax revenue generated by the Rivergrass Village properties will cover the costs of providing infrastructure to the Village.

177. Collier Enterprises will pay some impact fees to the County but is only required to pay such impact fees upon completing construction of a property and receiving a certificate of occupancy. Meanwhile, the County is required to establish infrastructure for Rivergrass Village *before* any new properties can be built.

178. In other words, the County must pay for infrastructure regardless of whether Collier Enterprises is obligated to pay anything.

179. Until the Rivergrass Village reaches fiscal neutrality, the County is responsible for funding the Village's infrastructure needs, using taxpayer dollars.

180. As Commissioner Ned Fryer noted at the Planning Commission hearing on October 17, 2019, the year 2032 is "a long ways away. . . . [a]nd so between now, 2019 and [2032], there is potential for, perhaps, every single year in between to be a loser year for the taxpayer, and I don't find that's reasonable."

181. Furthermore, DPFG's Economic Assessment significantly underestimates the costs of providing infrastructure to Rivergrass Village.

182. DPFG's Economic Assessment assumes that the average number of persons per housing unit in Rivergrass Village will be approximately 1.71 people.

183. Many of DPFG’s other calculations—including its calculations of the costs of providing infrastructure to Rivergrass Village—rely on the assumption that Rivergrass Village will house approximately 1.71 people per housing unit.

184. Yet DPFG has not provided its methodology for calculating the average number of persons per housing unit; there is therefore no way to verify whether DPFG has significantly underestimated the projected population of Rivergrass Village.

185. Indeed, at the October 17, 2019 hearing, Planning Commissioner Ned Fryer told DPFG that “I think that you undercounted the number of residents of this area. I think you came in at around 4,900. And the way I look at it it’s more like 6,000.”

186. If the ultimate population of Rivergrass Village is greater than accounted for in DPFG’s Economic Assessment, then Rivergrass Village’s infrastructure needs will be far more expensive than contemplated in the Assessment.

187. As Planning Commission Chairman Mark Strain emphasized on October 17, 2019, “we’re deficient on our road revenue, because we’re understating population. We’re understating everything even in our impact fees. That folds through this whole document [the Economic Assessment].”

188. As another example, DPFG’s Economic Assessment significantly underestimates the number of school-aged children that will reside in Rivergrass Village and require public education services.

189. DPFG estimates that single-family homes in Rivergrass Village will generate three times as many school-aged children as multi-family homes; but in other Florida counties with similar school districts, single-family homes generate *four* times as many school-aged children as multi-family homes.

190. In Collier County public schools, the average annual education expenditure for fiscal year 2018–2019 was \$13,822 per student.¹⁶

191. DPFPG therefore significantly underestimates the cost of providing public education to the children of Rivergrass Village.

192. DPFPG’s Economic Assessment also significantly underestimates the cost of providing emergency medical services (“EMS”) to Rivergrass Village.

193. As Commissioner Ned Fryer further noted on October 17, 2019—

I don’t believe the case has been made for economic neutrality. First of all, I have some familiarity with EMS in the county, and I don’t believe that was adequately addressed . . . it seems to me that the calculations were inadequate [for] how many additional potential customers of EMS or patients there would be. I think it would be more than has been projected and, as a result of that, I think the percentage of contribution by Rivergrass should be larger. Right now it’s been stated that Rivergrass is fiscally neutral for EMS. EMS runs at a loss every year. Impact fees and fees charged to patients are insufficient to support the 25 ambulances, plus or minus, that are on the street every day and, therefore, the County has to . . . make up the difference out of General Funds [i.e., taxpayer dollars]. And so when you’re losing money, you can’t make it up in volume. I think that’s just a fundamental principle.

194. In apparent acknowledgement of the Economic Assessment’s deficiencies, DPFPG expressly disclaims any responsibility for its Assessment.

195. DPFPG states in the Economic Assessment that “[n]o responsibility is assumed for inaccuracies in reporting by the client, the client’s agent and representatives, or any other data source used in preparing or presenting this study.”

¹⁶ Collier Cty. Public Schools, Annual Financial Report Expenditures Per Unweighted Full-Time Equivalent (UFTE), Fiscal Year 2018–2019, <https://www.collierschools.com/cms/lib/FL01903251/Centricity/domain/86/budget%20dept%20main%20page/TotalExpendituresPerFTE.pdf>.

196. DPFPG goes on to concede that “no warranty or representation is made by DPFPG that any of the projected values or results contained in this study will actually be achieved.”

197. DPFPG also states that the Economic Assessment should not be used for any purpose “where it may be relied upon to any degree by any person other than [Collier Enterprises].”

198. DPFPG notes that the Economic Assessment “is qualified in its entirety by, and should be considered in light of, these limitations.”

199. The County retained its own consultant, Jacobs Engineering Group Inc. (“Jacobs”), to conduct a peer review of DPFPG’s Economic Assessment (the “Peer Review”).

200. Jacobs did not develop or perform its own independent model of fiscal neutrality.

201. In preparing its Peer Review, Jacobs assumed that information provided by the County and third parties was accurate, complete, reliable, and current. Jacobs did not independently verify the information.

202. Jacobs expressly disclaims the findings in its Peer Review, stating that it “does not warrant or guarantee the conclusions set forth [in the Peer Review] or in the DPFPG Report or its fiscal impact model, which are dependent and/or based upon data, information, or statements supplied by the County or third parties.”

203. Jacobs furthermore qualifies the validity of the fiscal neutrality analysis in both DPFPG’s Economic Assessment and Jacob’s Peer Review, stating that “fiscal impact modeling . . . is a snapshot in time, and therefore known variables . . . are assumed constant. As such, substantial changes to these variables could render the analysis obsolete.”

204. Jacobs additionally notes that “[t]he cost of future financing is not included in the [fiscal neutrality] analysis. This factor can add substantially to the overall costs of infrastructure

development and thereby could negatively affect any findings of positive or neutral fiscal impacts.”

205. Jacobs furthermore failed to review key details that could significantly impact Rivergrass Village’s cost to Collier County.

206. As just one example, Jacobs noted that—

[T]here are nuances in the fiscal neutrality determination for water and wastewater. For example, if existing pipe sizes are inadequate and need to be replaced, the extent of such rework could render the development *fiscally deficient*. However, *Jacobs’ review is not intended to analyze to that level of detail*.

(emphasis added).

207. In short, Jacobs entirely failed to verify that Rivergrass Village will ever become fiscally neutral.

208. DPFG prepared a spreadsheet showing the results of its analysis for the Economic Assessment; however, DPFG has only produced a “locked” version of this spreadsheet, which means the spreadsheet only shows the final outputs of DPFG’s analysis and does not show any of the underlying formulas that DPFG used to calculate those outputs.

209. Planning Commission members repeatedly asked DPFG to produce an “unlocked” version of DPFG’s spreadsheet showing the underlying formulas used to generate the outputs of DPFG’s analysis, but DPFG refused to produce an unlocked version to the Planning Commission, to Jacobs, or to the County.

210. In a Planning Commission hearing on October 3, 2019, Chairman Mark Strain stated that “[i]n previous applications that we received where we had a fiscal analysis, we received the sheets that told us how the cells were generated; formulas. I didn’t get any of that. . . . It was hard for me to understand how you got to your numbers.”

211. In a subsequent hearing on October 17, 2019, Chairman Strain reiterated “I need an unlocked version of your spreadsheet to understand [DPFG’s calculations] . . . I want to see the unlocked version, so I can run it, sit back and figure out how it works, and I don’t know why I can’t do that.”

212. Chairman Strain then asked DPF’s representative directly: “Will you give me the code to unlock your spreadsheet or not?” To which DPF’s representative replied, “No.”

213. At the next Planning Commission hearing on November 7, 2019, Chairman Strain expressed that “[w]ithout that document [an unlocked version of the spreadsheet], I certainly have *no faith in the analysis for fiscal neutrality*, and I certainly don’t know how the consultants we hired [Jacobs], if they didn’t have that document, could have done the same thing. So that’s a big issue with me, and it’s one that I’m very concerned over” (emphasis added).

214. Without the unlocked spreadsheet, Jacobs was unable to test the methodology behind any of DPF’s calculations supporting its finding that the Rivergrass Development project will be fiscally neutral for Collier County.

215. In acknowledgement of these glaring deficiencies with DPF’s fiscal neutrality analysis, Commissioner Ned Fryer stated in his comments to the Rivergrass Village proposal on November 7, 2019, that he had “no high level of confidence when or even if the [Rivergrass Village] project will become fiscally neutral.”

216. Indeed, Collier Enterprises has failed to demonstrate that the Rivergrass Village project will ever be fiscally neutral.

217. The County has likewise failed to verify that Rivergrass Village will become fiscally neutral.

218. Since the County never reviewed an unlocked version of DPFPG's analysis spreadsheet, the County was unable to review and verify the calculations underlying DPFPG's analysis. The County therefore could not confirm that Rivergrass Village will be fiscally neutral.

219. The County's failure to review and verify DPFPG's calculations violates RLSA Overlay Policy 4.18, which require a demonstration that all new SRAs will be fiscally neutral to the Collier County tax base.

220. In addition, the Rivergrass SRA's incompatibility with LDC § 4.08.07.L renders it inconsistent RLSA Overlay Policies 4.3 and 4.5.

221. Since Rivergrass Village has failed to demonstrate that it will ever be fiscally neutral, the County and its taxpayers must assume all of the financial risk for meeting the Village's long-term infrastructure needs.

222. The County should have refused to designate Rivergrass Village as an SRA because Rivergrass Village will be an impermissible drain on taxpayer dollars.

223. The failure of Rivergrass Village to demonstrate fiscal neutrality is a material alteration of the use, density, and/or intensity of the subject property in a manner which is not consistent with the GMP.

COUNT I

DECLARATORY AND INJUNCTIVE RELIEF PURSUANT TO § 163.3215 *et seq.*, FLORIDA STATUTES

224. Plaintiff realleges and incorporates the allegations in paragraphs 1–223 above.

225. The parties to this action are the Conservancy and Collier County.

226. This is an action for a declaratory judgment and for permanent injunctive relief under § 163.3215 *et seq.*, Fla. Stat.

227. Resolution 20-24 is a development order under § 163.3164 *et seq.*, Fla. Stat.

228. The Conservancy is entitled to declaratory and injunctive relief to invalidate the development order as a matter of law because the development order is inconsistent with the local government comprehensive plan and thus violates state law. § 163.3215, Fla. Stat.

COUNT II

**DEMAND FOR SUMMARY PROCEDURE
PURSUANT TO 51.011, FLORIDA STATUTES**

229. Plaintiff realleges and incorporates the allegations in paragraphs 1–228 above.

230. Pursuant to § 163.3215(8)(a), “[i]n any proceeding under [163.3215(3)], either party is entitled to the summary procedure provided in s[ection] 51.011, [Fla. Stat.], and the court shall advance the cause on the calendar.”

231. The Conservancy has stated a cause of action pursuant to § 163.3215(3), Fla. Stat.

232. The Conservancy is therefore entitled to the summary procedure provided in § 51.011, Fla. Stat., including an answer from the defendant (including all defenses of law or fact) to be filed within five (5) days after service of process and an expedited trial.

WHEREFORE, for all the reasons above, Plaintiff asks that the Court:

- A. For the soonest date that the Court, the Conservancy, and the County are available, schedule a hearing for the purpose of establishing a timeline for discovery and trial pursuant to § 51.011, Fla. Stat.;
- B. Declare that the Development Order is invalid and inconsistent with the Collier County Growth Management Plan;
- C. Declare that the Development Order is invalid and inconsistent with §§ 163.3194 and 163.3215, Fla. Stat.;

- D. Permanently enjoin the Defendant, Collier County, from implementing the Rivergrass Village Development Order by any means, including the issuance of any further, additional or subsequent development order(s) or permits related to or based upon said development order;
- E. Award costs of this action to Plaintiff; and,
- F. Grant Plaintiff such other and further relief as the Court may deem just, proper, and necessary.

Dated: June 5, 2020

*Counsel for Conservancy of Southwest
Florida, Inc.*

By: /s/ Jason Ross

Jason Ross, FL Bar No.: 59466
Brian D. Israel, *Admitted Pro Hac Vice*
Ethan Shenkman, *Admitted Pro Hac Vice*
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
Phone: (202) 942-5000
Fax: (202) 942-5999
Jason.Ross@arnoldporter.com
Brian.Israel@arnoldporter.com
Ethan.Shenkman@arnoldporter.com

Of Counsel

Lauren C. Daniel
(Pro Hac Vice Forthcoming)
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., NW
Washington, DC 20001
Phone: (202) 942-5000
Fax: (202) 942-5999
Lauren.Daniel@arnoldporter.com