

Don Scott

From: sasas1031@gmail.com
Sent: Tuesday, March 14, 2023 9:40 PM
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Cc:
Subject: SEE ATTACHED: PROTRACTED LITIGATION WILL RESULT UNLESS IT IS DETERMINED THAT THE BERT ALTERNATIVES #1 AND #2 ARE NOT FEASIBLE
Attachments: Abstract of Memorandum .pdf; Final 3-11-23 Memo in Opposition to Rails to Trails Alt 1 and 2.pdf; Exhibit A excerpt - MPO Studies of Alternatives 1 2 and 3.pdf; Exhibit B Friends of BERT Lee County 2022 Trail Map.pdf; Exhibit C Village of Estero Infrastructure projects - bike lanes 12-27-21.pdf

Dear Ladies and Gentleman Voting Members of the Lee County MPO:

I am writing on behalf of The Vines/Estero Country Club Rails-to-Trails Committee. We have prepared the attached Memorandum for you explaining in detail that any proposal that includes taking the proposed multi-use path North of Estero Parkway is not feasible and would constitute a **PRIVATE NUISANCE** and a **PUBLIC NUISANCE** to The Vines/Estero Country Club, Granada Lakes and along with affected parts of San Carlos Park. This **Memorandum provides the legal basis for legal claims**, show the likelihood that **The Vines/Estero Country Club will prevail and a court will enter injunctions and money damages** to all the affected parties. Further, it demonstrates that **the MPO Study is not feasible** as it relates to us North of Estero Parkway because it fails to factor in the expense sure to happen of multiple legal actions, the cost of defense and the very likely fact that a court, as others have done around the country with respect to trails affecting communities like ours, will find in our favor and award money damages. The Study also neglects to include the time it will take for the many lawsuits to conclude.

We have attached a brief Abstract of the Memorandum to give you a synopsis and show you why you should read and consider the whole Memorandum.

The homeowners of The Vines, the members of Estero Country Club, The Vines/Estero Country Club Rails-to-Trails Committee, the hundreds of others, including residents of Granada Lakes and San Carlos Park, implore you to find that these alternatives are not feasible.

Steven Novosad
Homeowner at The Vines
Member of Estero Country Club
19664 Lost Creek Drive

Estero, FL 33967
Phone: (847) 814-9621
Email: sasas1031@gmail.com

DATE: March 14, 2023

TO: LEE COUNTY METROPOLITAN PLANNING ORGANIZATION VOTING MEMBERS

FROM: The Vines and Estero Country Club

RE: *The plan for the multi-use path to literally run right through the middle of The Vines and ECC will irreparably damage and effectively destroy this private gated community of 435 homes and cause diminution in the value of our homes and do significant harm to the members of the country club.*

ABSTRACT OF ATTACHED MEMORANDUM DETAILING NUISANCE CLAIMS

This is intended to provide a summary of the significant matters discussed in the attached Memorandum detailing the legal remedies that The Vines, Estero Country Club (“ECC”), each resident and each member, have available and will pursue if the route of the proposed path goes through The Vines. Alternatives #1 and #2 are not feasible. They will open up those responsible to legal liability for money damages and injunction because any routing through The Vines will be easily established as both public and private nuisances under Florida law. The attached Memorandum explains for you just how this will happen. Below is the short course.

FACTUAL BASIS ESTABLISHING PRIVATE AND PUBLIC NUISANCE

The Vines and ECC are a private gated community and country club. They are very much a “community” as defined under Florida law. This community owns the land running adjacent to the stretch of the SGRR tracks running down its middle. When it was an active railroad, it ran freight typically at night and, as private railroad property, was off limits to the public.

Where the SGRR enters The Vines, it intersects with Vintage Trace Circle. This is the sole connection to the North section consisting of 266 residents, 66% of the population, half of the golf course, the Clubhouse and many community amenities to the outside world. A multi-use path across this road and through the community would effectively, as described in detail in the Memorandum, destroy the safety, security, privacy, environment and sense of community that are the foundations of The Vines and ECC.

Be advised that the causes of action below will allow money damages in addition to injunctive relief in the event that the MPO approves any plan that would even remotely bring such a path north of Estero Parkway. The money damages will be the amount of diminution in value to the homes and club memberships of those to the north. Even a remote possibility that the path will be built will have to be disclosed to any potential property purchaser and potential club members. The losses in value will have to be compensated.

THE CLAIMS

1. PRIVATE NUISANCE. Under Florida common law all The Vines, ECC, the residents and members need to plead and prove is:

A. That the residents and members of The Vines and ECC own and have the right to possess the land adjacent to the multi-use path;

B. That the use that the multi-use path is put to interferes with the enjoyment and use of their property. It doesn't matter if the interference is intentional, negligent or reckless. It can even be an unintended consequence. It need only interfere; and,

C. 3. The interference by the multi-use path is substantial and unreasonable to the private gated community of The Vines, ECC and its homeowners, residents and members.

The evidence to establish each of these elements is readily ascertainable as is detail in the attached Memorandum.

2. PUBLIC NUISANCE. The Florida Statutory basis for this cause of action is detailed in the Memorandum.

This brand of nuisance is one that affects a community. Is The Vines a “community”? Florida law says yes. The private gated community of The Vines and ECC consists of a group or people forming a society living in the same place, under the same laws and regulations, and who have common rights and privileges. It qualifies.

The Florida statute, among other things, states that a “place that tends to annoy the community or injure the health of the community, or becomes manifestly injurious to the moral or manners...” is a public nuisance. (See: Sec. 823.05 of Chapter 823 Public Nuisances). “Anyplace or premises that has been used on more than two occasions within a 6-month period as the site of any of the following violations is declared a nuisance and may be abated or enjoined ... 1. relating to dealing in stolen property ... 2. relating to assault and battery ... 3. relating to burglary ... 4. relating to theft ... 5. relating to robbery by sudden snatching.” *Id.* This is not inclusive. Restricting access to and from the north side especially including to emergency medical, fire and police, sexual assault/indecent exposure, public urination, illegal drug use/sale, trespass, vandalism, loud noise, safety of persons and property. There have been murders on these types of paths.

The path to the South of Estero Parkway does not interfere with any residence or community. Confine the path to the south. North of Estero Parkway, in addition to The Vines there are dozens of private homes in San Carlos Park and the 55+ community of Granada Lakes. These too will be affected will likely generate multiple actionable nuisance claims. The MPO has failed to factor in the expense and duration of multiple lawsuits in its timeline and projection of costs not to mention the likely money damages for all 435 homes in The Vines and the others to the north.

Lastly, the proposed SGRR multi-use path does not really link-up to other multi-use paths.

CONCLUSION

Basic fairness dictates that a multi-use public access trail ought not bisect a lawful private gated community and country club. This would demonstrably ruin its communal nature and soul. Alternatives #1 and #2 are not feasible and would clearly create both public and private nuisance. Please vote against the feasibility of these Alternatives.

On behalf of The Vines, ECC, its residents or members, and it might also be fair to say that Granada Lakes and many of the homeowners of San Carlos Park and Granada Lakes share our concerns and might also be interested in following through with claims in the event that Alternative #1 or #2 are accepted. Please read the Memorandum for details.

Respectfully,

The Vines and its individual homeowners
and
Estero Country Club and its individual members

MEMORANDUM

DATE: March 14, 2023

TO: LEE COUNTY METROPOLITAN PLANNING ORGANIZATION VOTING MEMBERS (“MPO Voters”) and Friends of BERT (“FOBERT”)

FROM: Steve Novosad, homeowner and resident of The Vines and Estero Country Club (“ECC”)

RE: *The plan for the multi-use path to literally run right through the middle of The Vines and ECC will irreparably damage and effectively destroy this private gated community of 435 homes and cause significant harm to the members of the country club.*

THE PROPOSED PLAN TO GO THROUGH THE VINES AND ECC IS NOT FEASIBLE AND WILL RESULT IN NUMEROUS LEGAL ACTIONS FOR BOTH PRIVATE AND PUBLIC NUISANCE SEEKING INJUNCTIONS AND MONEY DAMAGES

There is a proposal by the MPO set for consideration and a vote by the Lee County Metropolitan Planning Organization voting members consisting of the Lee County Commission, the City of Bonita Springs, the City of Cape Coral, the City of Fort Myers, the Town of Fort Myers Beach, the City of Sanibel and the Village of Estero (collectively referred to as the “MPO Voters”) for the transformation of 14 miles of the Seminole Gulf Rail Road (“SGRR”) into a multi-use bike and recreation path (“path”) from Bonita Spring Rd. through the Village of Estero, the private gated community of The Vines and ECC, dozens of private homes in San Carlos Park and Granada Lakes culminating at Alico Road. This proposal is called the Bonita Estero Rail to Trail (“BERT”) path. It is being championed by the MPO and FOBERT. (A copy of MPO’s “Rail-Trail Feasibility Study Briefing Report” dated October 7, 2021, is attached hereto as Exhibit “A”.)

The MPO Voters are being asked to approve the feasibility of Alternative #1 or #2 of the MPO study to the exclusion of Alternative #3. Alternatives #1 and #2 propose the same route that goes through The Vines, ECC and the backyards of dozens of private single-family homes that backup to the long abandoned SGRR tracks through the neighborhoods of San Carlos Park. The path also cuts off the sole road in and out of the 55+ community of Granada Lakes. Notably, none of this is indicated on the original or subsequent MPO maps. (See: Exhibit A at pages 13 and 16.) Alternative #3 would have the path divert from the SGRR and go east along Estero Parkway and then north on Three Oaks Parkway to Alico. (See: Exhibit A at page 16 for a route map.) Importantly, Alternative #3 would not disturb the landowners and community of The Vines, ECC, the residents of San Carlos Park or Granada Lakes from the continued enjoyment of their land. Most importantly, it would avoid any actionable nuisance resulting from the path. Alternative #1 and #2 should be revised to have the path terminate at Estero Parkway.

To be clear, many of the residents of The Vines communities and ECC, generally support the idea of a path. However, The Vines homeowners and members of ECC cannot and will not support Alternatives #1 and #2, or any other, which propose to include, either now or sometime in the future, the

stretch of the SGRR that totally bisects our private gated community, neighborhoods and club. As will be discussed below, the MPO may have strong support from south of Estero Parkway, but the MPO has not presented any evidence that it has the support of the residents north of Estero Parkway. The record, as it stands, does not even show that any attempt was ever even made to inform The Vines, ECC or anyone else north of Estero Parkway of any forthcoming proposals for the path.

The nuisances created by Alternatives #1 and #2 will be both public and private, will be extreme, expensive and dire to those of us to the north.

The path would constitute a “Nuisance” to The Vines, ECC and, possibly, San Carlos Park and Granada Lakes Residents

While the entities involved in acquiring the SGRR property would be entitled to put its property to a “reasonable use”, a “reasonable use” is not any use and must take into account how that use affects its neighbors. The acquiring entities cannot use their property in such a way that interferes with the rights of adjoining landowners to continue to enjoy their property. If such interference occurs, a nuisance may exist. 38 Fla. Jur. 2d *Nuisances* § 1 (2022); *State ex rel. Pettengill v. Copelan*, 466 So.2d 1133, 1135 (Fla. 1st DCA 1985). The SGRR and its successors had a reasonable use as a railroad. A rail freight line that did not stop, let passengers on and off or otherwise bother The Vines or ECC while operational. The rail line has not been operational since 2008.

There are two major forms of nuisance --- public and private. 38 Fla. Jur. 2d *Nuisances* § 5 (2022). A **private nuisance** affects only private rights in property and harms only a limited number of individuals; whereas, a **public nuisance** causes damage to public rights, public order, or the general public. 38 Fla. Jur. 2d *Nuisances* § 6 (2022). Nuisances can exist in a variety of circumstances, ranging from operation of an illegal activity on the property, to noise pollution, to the erection of a fence, or the opposite in this case, effectively removing a gate that secures a community. Both public and private nuisance claims can involve criminal actions or civil lawsuits, which can be used to obtain money damages and/or injunctions against the offending landowners. 38 Fla. Jur. 2d *Nuisances* § 85 (2022), 38 Fla. Jur. 2d *Nuisances* § 95 (2022).

INJUNCTIONS AND DAMAGES FOR EACH NUISANCE

In the event that the MPO Voters approve Alternatives #1 or #2, the immediate effect will be that everyone in The Vines who wants to sell their home will have to disclose that there could be a public multi-use path running down the middle. Every one looking to be a member will also have to be told of the possibility. Now tell me who would want to buy a home here or pay for a membership here where there could be a public path in the future? What would become of our property values? Our membership values? Our ability to survive? You all know the answer. This loss of value for the 435 homeowners and members will each have to be determined individually. Now throw in those affected in San Carlos Park and Granada Lakes. It doesn't look like this has been factored into the cost of Alternative #1 or #2 and might even make Alternative #3 more cost effective.

Many lawsuits will be filed by The Vines, individual property owners, the ECC and its individual members and likely the San Carlos Park homeowners and Granada Lakes HOA and homeowners seeking injunctive relief and money damages. The initial remedy will be that the court will enter an order granting a preliminary injunction enjoining the MPO or others involved in this project from bringing anything into The Vines. This will later become a permanent injunction. Then come the

money damage evaluations. There will be dozens, possibly hundreds, of lawsuits if the MPO Voters approve and find either Alternative #1 or #2 without specific exclusion of The Vines and ECC feasible. t

THE PATH WILL BE A “PRIVATE NUISANCE” AS TO EACH AND EVERY PROPERTY OWNER OF THE VINES AND TO EACH MEMBER OF ECC.

Under tort law, The Vines, each property owner and each ECC member will be entitled to bring a lawsuit that will prove that the path is an actionable private nuisance subject to injunction and/or money damages. There are only three elements necessary to prove a private nuisance. The known facts, circumstances and common-sense, together the likelihood of unintended negative consequences, dictate that we will prevail.

1. That the residents and members of The Vines and ECC own and have the right to possess the land adjacent to the trail;

There can be no dispute that the residents and members of The Vines community and ECC own and have the right to possess their land that is situated directly on each side of the proposed trail. Homeowners in The Vines and members of ECC have monetary ownership rights at stake in their homes, facilities and in all of the common areas.

2. That the use that the path is put to interferes with the residents and members enjoyment and use of the property. It doesn't matter if the interference is intentional, negligent, reckless or even unintended ---- it need only interfere.

The residents of The Vines and ECC members have the right to continue to have proper, safe and secure ingress and egress to and from their land situated on each side of the SGRR tracks. The north side residents, members, guests and those using the many available amenities of the Clubhouse, together with vendors, landscapers, delivery vehicles, trades and visitors presently have no other ingress or egress without using Vintage Trace Circle to cross the tracks. As a matter of fact, 66% of all residents of The Vines reside on the north half. Obviously, this crossing is used hundreds of times a day The MPO would have its path open and available to the public without restriction all day and night. The vehicle crossing will also be dangerous for those using the path. Currently, there is no cross traffic on Vintage Trace Circle.

The path will destroy the security established when The Vines and ECC were originally created nearly 40 years ago. The path will be an “attractive nuisance” that will draw all kinds of people – not just families having a nice time together or just the leisurely and courteous bicycle riders of FOBERT. Again, it doesn't matter if the interference is intentional, negligent, reckless or unintended. All that matters is that the path will create a nuisance for which its proponents will be legally responsible.

3. The interference by path is substantial nuisance and it is unreasonable to force it upon our private gated community.

The interference caused by the path would be substantial and unreasonable to any private gated community. We are certain that the MPO Voters who are residents and/or members of private gated communities and clubs know and understand our position perfectly. If a path like this was to go through theirs, they would be fighting too. It seems that it would be hypocritical for them to vote in favor of Alternative #1, #2 or any route that could go through The Vines and ECC knowing full well what is at stake.

To open up unfettered, unmonitored and unaccountable access to the many thousands of projected path users will destroy The Vines and ECC. Actually, it will be catastrophic. It will strip the value of our homes as it will no longer be private and secure. This is why no one has found any other instance in the United States where an open to the public multi-use recreational path, bike trail, hiking trail, running path or anything remotely like the MPO's path has been forced upon a private gated community.

The residents of The Vines community and members of ECC have always had, since their inception, and still have their right continue to use and enjoy their property. The tracks have been abandoned since 2008. Before then, the railroad had only a few trains a week, typically at night, did not stop and no passengers got on or off. The trains had little to no effect on The Vines. The railroad was and still is private property. It is illegal to trespass on the railroad land. This has provided a legal basis to keep unauthorized people out. Looking at the MPO proposal through the eyes of The Vines community and even the eyes of an uninvolved reasonable person, there is simply no doubt that putting an open to the general public trail through The Vines will significantly interfere with their right of enjoyment and certainly, the value of their property.

Lee and Collier Counties, including The Village of Estero, have grown to become quite urban and are getting more so with every development. The Village of Estero has projected rapid growth for the foreseeable future. The MPO and others have touted that they fully expect many thousands of people to access and use the path. People will travel from miles around to use the path. With so many using the path, there will be incidents of crime. It is well known and documented that there have been many criminal acts on similar paths including sexual assault/indecent exposure, public urination, illegal drug use and sales, trespass to and burglary of adjoining private property, theft, muggings and more. There have even been murders on these types of paths.

Any restriction of access to and from the north side of The Vines could prevent or delay the arrival of emergency medical, fire and police necessary for the safety and protection of our residents and property.

Historically, there has been little incentive for people to try to gain entrance to The Vines via the tracks. If they did, they were trespassing. Opening a 12-foot-wide path and inviting thousands and thousands of people, both local and from afar through our community, will carry with it crime and other negative unintended consequences.

The Vines would have to hire 24/7/365 private security to police the trail at substantial cost. The MPO indicated that it will likely be each jurisdiction that the path goes through that will be obligated to take on this role along with its expense. Trespassers and other wrongdoers, both on and off the path, will have to be caught, detained and prosecuted. This will, undoubtedly, be a frequent occurrence. Will the Village of Estero post police at each access point to The Vines?

Another unanswered question is: who will bear legal responsibility and accept liability for collisions, accidents, injuries, crimes, damage to property and other harms that result from the existence of the path? Will any entity agree in writing to hold harmless, defend and indemnify The Vines, its residents and the ECC and its members? Will they add us to their liability insurance policies as "additional named insureds"? So, in addition to destroying our community, trashing our property values and forcing us to be "Path Police", you would also expose us to defend lawsuits sure to be brought by path users who we would not otherwise have encountered.

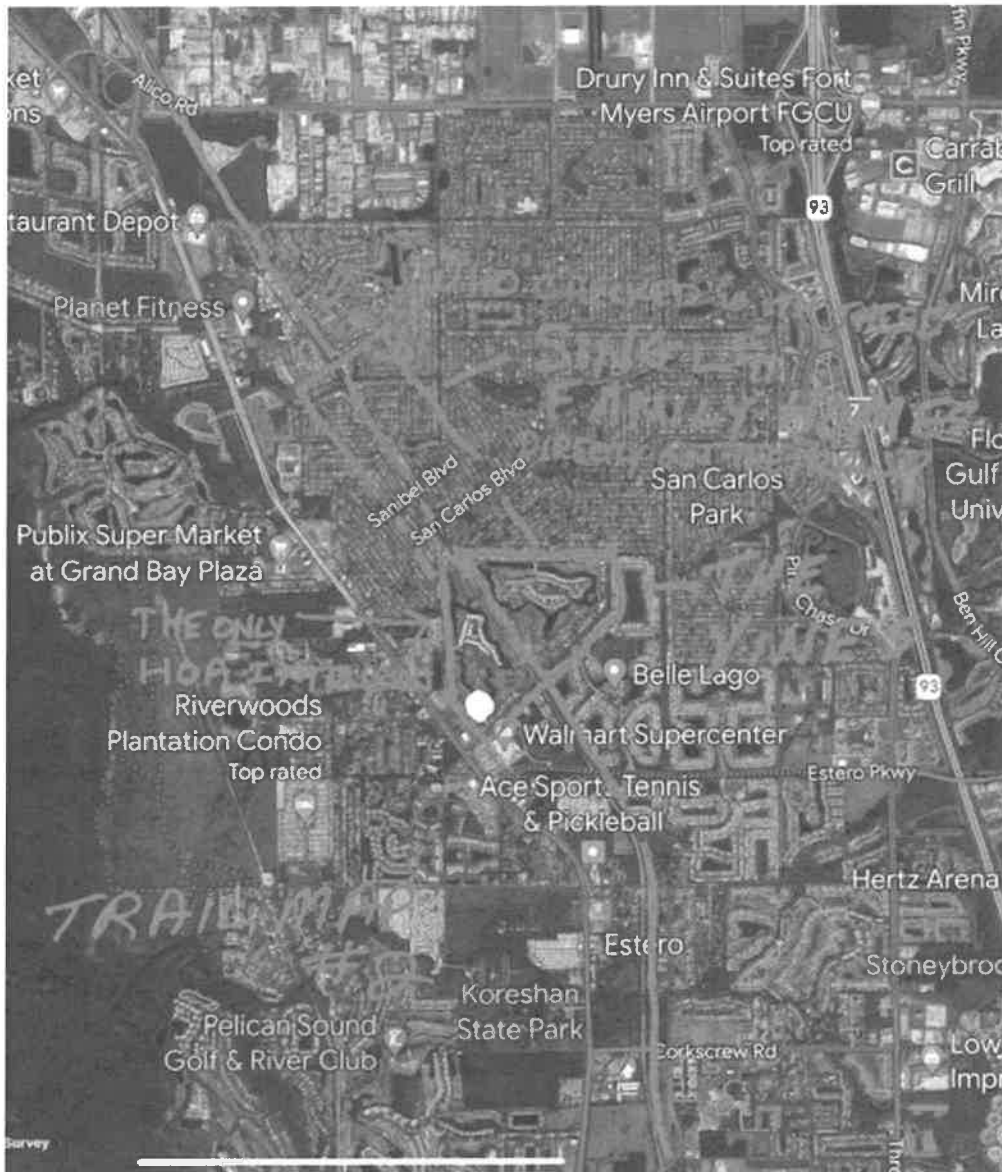
The proposed path is to be a family friendly multi-use linear park. There are plenty of shorter, more family friendly parks, trails and paths in the area. (See, generally, Exhibit “B” FOBERTS “Lee County 2022 Trail Map”.) It is readily apparent that the main draw for this trail is to attract groups of long-distance bike riders. What happens when it is discovered by the “speed bike” groups? We’re all familiar with them. They travel in large groups often going as fast as cars. Then come the skate boarders and roller bladers. Perhaps, an unintended consequence will be that this path will be used to by-pass the horrible traffic on Tamiami Trail by those with motor cycles, electric powered bikes, electric scooters and skate boards and who knows whatever else technology might bring. Even if these conveyances are restricted, how would the restrictions be enforced? All of these matters will be particularly exacerbated in The Vines especially among the 266 residents and those using the facilities north of the tracks...

Sadly, the path proponents have not given any indication that they have given much, if any, care, thought or consideration as to how their plan would impact The Vines, ECC, San Carlos Park and Granada Lakes. In addition to those noted above, there will certainly be an environmental impact to our wetlands, water shed and drainage. The failure of the proponents to consider or even conduct an environmental study is sure to give rise to all kinds of future negative “unintended consequences”.



The MPO and Friends of BERT crow about their claim that 16 HOA’s have submitted written support for the path and that a number of residents of Bonita Springs are also in support. According, to the MPO and FOBERT, businesses near the path are also supposedly wildly in favor because the path “will bring in lots of tourism dollars”. The proposed route of the path from Bonita Spring Road to Corkscrew Road, as “Trail Map #1” above shows, there are no HOAs, businesses or even private homes impacted by the path. Why not support the path --- since “it’s not in our yard”. This map shows that the

proposed trail has no direct access to any community or HOA. Much of the adjoining land is fallow or industrial. There is simply no negative effect of any kind to those shown on Map #1.



Now, look at Trail Map #2 above showing the part of the route from Corkscrew to Alico. Just past Estero Parkway, the proposed path, for the first time, directly significantly and negatively impacts private property. Curiously, The Vines and ECC do not appear anywhere in the MPO's studies, reports, slide shows or even their maps. Why is that? Could it be that they just don't care so long as they get Alternative #1? Were they hoping we wouldn't notice and they could slide this through? It's strange that they can show Belle Lago and Ace Sports Tennis & Pickleball but not us.

But wait, there's more! Just past The Vines are dozens of private homes in San Carlos Park whose backyards include the proposed path. Families on Matanzas, Holly Road, Iris Road, Gary Road

and others, although not private gated communities, will also be immensely affected. As will those in the 55+ community of Granada Lakes. It is unclear what efforts, if any, have been made to solicit input about the path from them. It was relatively easy for the MPO to contact 16 HOAs and a few unaffected businesses to get approval. What were their efforts to inform these dozens of affected property owners?

Even FOBERT can't show that they have any support north of Estero Parkway. Friends of BERT are very proud of their booth at Bonita Springs Fest (as well they should). However, wouldn't it be something if they set up their booth in San Carlos Park or Granada Lakes? Do that and then tell us about all the support there is for the path.

These are easily demonstrated facts that will legally establish private nuisance before a court. Injunctions and money damages are very likely to be awarded.

THE PROPOSED ALTERNATIVES #1 AND #2 WILL ALSO CONSTITUTE A PUBLIC NUISANCE UNDER FLORIDA STATUTES

A nuisance can be public or private or both. Here, both are applicable to path. Private nuisance, discussed above, is historically based upon the common law tort of trespass. Public nuisance, in this instance, is established by Florida statute. Civil Practice and Procedure, Title VI, Chapter 60, Injunctions at par. 60.05 provides:

60.05 Abatement of nuisances.—

(1) When any nuisance as defined in s. 823.05 exists, the Attorney General, state attorney, city attorney, county attorney, sheriff, or any citizen of the county may sue in the name of the state on his or her relation to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists.

Florida Statue Section 823.05 (Chapter 823 Public Nuisances) provides:

823.05 Places and groups engaged in certain activities declared a nuisance; abatement and enjoinder. —

(1) A person who erects, establishes, continues, maintains, owns, or leases any of the following is deemed to be maintaining a nuisance, and the building, erection, place, tent, or booth, and the furniture, fixtures, and contents of such structure, are declared a nuisance, and all such places or persons shall be abated or enjoined as provided in ss. 60.05 and 60.06:

(a) A building, booth, tent, or **place that tends to annoy the community or injure the health of the community, or becomes manifestly injurious to the morals or manners of the people as provided in s. 823.01.** [Emphasis added.]

* * *

(4)(a) Any place or premises that has been used on more than two occasions within a 6-month period as the site of any of the following violations is declared a nuisance and may be abated or enjoined as provided in ss. 60.05 and 60.06:

1. Section 812.019, relating to dealing in stolen property.
2. Section 784.011, s. 784.021, s. 784.03, or s. 784.045, relating to assault and battery.
3. Section 810.02, relating to burglary.
4. Section 812.014, relating to theft.
5. Section 812.131, relating to robbery by sudden snatching.

* * *

823.01 Nuisances; penalty.—All nuisances that tend to annoy the community, injure the health of the citizens in general, or corrupt the public morals are misdemeanors of the second degree, punishable as provided in s. 775.083, except that a violation of s. 823.10 is a felony of the third degree. [Emphasis added.]

To restate the obvious, the negative effect the path will have on The Vines and ECC community will be immense. No other community will have to suffer the same or even similar impact to the nearly 40 years of peaceful, secure and safe way of life enjoyed by its residents and members.

A Public Nuisance Must Affect a Community – What is a Community?

A community “**is a society of people living in the same place, under the same laws and regulations, and who have common rights and privileges.** [Emphasis added.]” *In re Huss*, 126 N.Y. 537 (27 N.E. 784). The Vines is the only private gated community in the country where it has been suggested that a large open to the public multi-use linear 12-foot-wide path and park traverse through it. The same is true about the ECC private golf course. The MPO is suggesting that you approve exactly that which would bring along with it; the destruction of The Vines and ECC just so the MPO and FOBERT can have a 14 mile instead of a 12 ½ mile “Rails to Trails”.

The Vines Is A Community Within The Meaning Of The Statute.

The Vines is a private, restricted access gated community. This community consists of six neighborhoods totaling 435 homes. These neighborhoods are:

1. Vintage Trace,
2. Silver Oaks,
3. Lost Creek,
4. Grand Palm,
5. Southwind and,
6. Fairway Bend.

Within The Vines is ECC. A private, members only club with an 18-hole golf course. The residents of The Vines and ECC share and enjoy many common amenities including: a private community clubhouse with a fine dining restaurant, a casual dining restaurant and bar with a spacious outdoor patio

overlooking bocce ball, pickle ball and tennis courts, group activities, clubs and, of course, golf. In addition, The Vines is certified as a Cooperative Wildlife Sanctuary by Audubon International

All owners of property within The Vines community share ownership equity in The Vines and ECC common areas with all the rights and privileges that go with ownership and membership. Each resident of The Vines community is governed and bound by common community rules, regulations and by-laws. An elected Board of Directors sets policy and rules for all to abide.

The long-abandoned tracks of the Seminole Gulf Railroad (“SGRR”) run smack dab down the middle of The Vines splitting the homes and golf course. The Vines Clubhouse, practice facility, parking lots, bocce, pickle ball and tennis courts abut the SGRR tracks to the north as do 266 residents (66%). There are frequent outdoor events in the area outside the Clubhouse. Fairways, toilets, drinking water and homes run parallel to the tracks on each side. The Vines has the right to cross the SGRR tracks on Vintage Trace Circle near the Clubhouse and also on two cart paths.

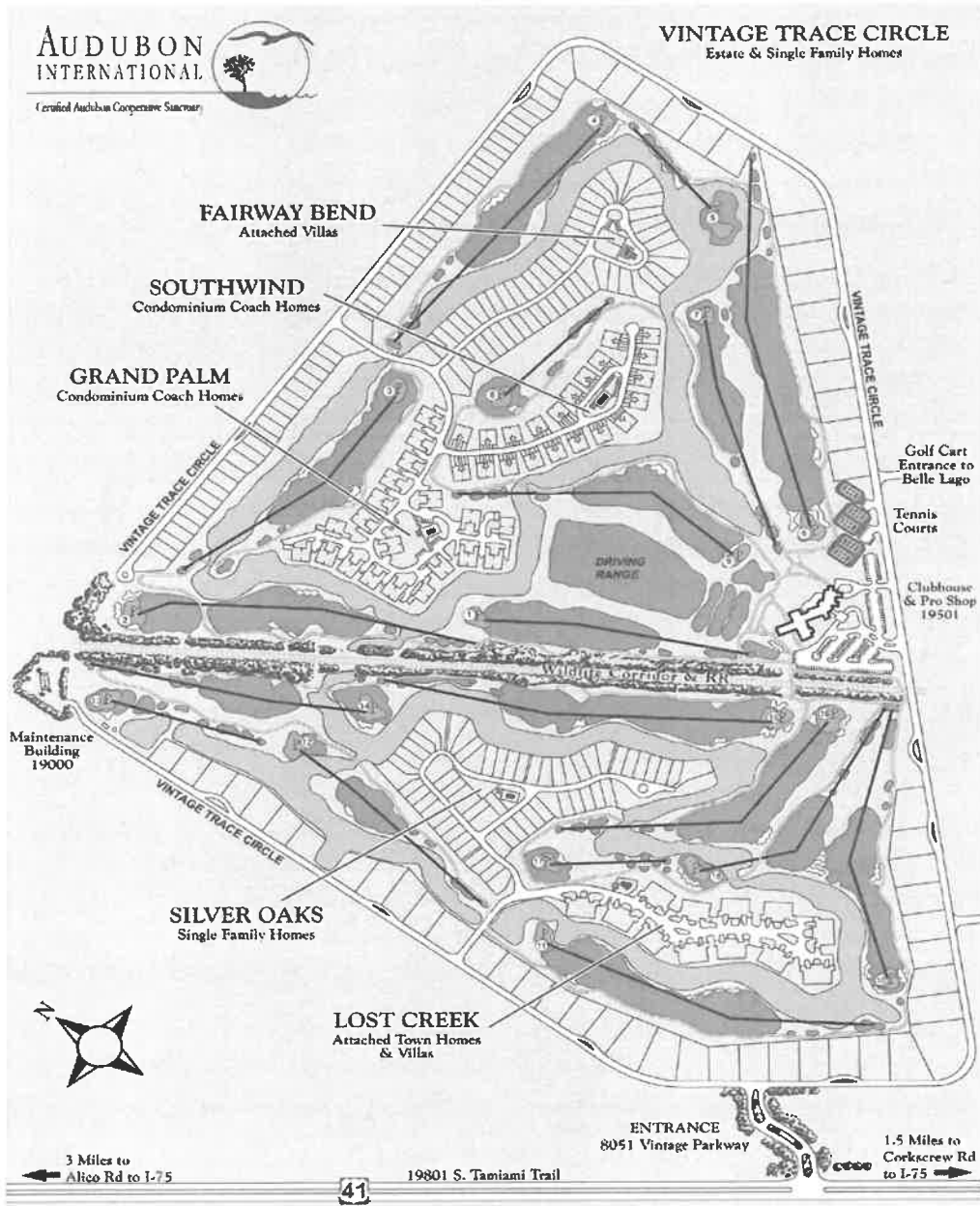
Many of the neighborhoods of The Vines and ECC came into existence in the mid-1980s. During this time the SGRR or its successor was still in operation. The impact on The Vines during this time was, at best, minimal. There would be a train come through from time to time but there was a train schedule so that a train’s appearance could be predicted and anticipated. Few trains came through and most were at night. Also, there are crossing signals for the SGRR tracks on Vintage Trace Circle and cart paths where they cross the tracks. The trains just passed through and did not stop. No one got on or off.

Later, in approximately 2008, the SGRR line through The Vines became inactive and has so remained. The tracks, for all intents and purposes, were abandoned. This is obvious for the entire 14-mile section of tracks. Anyone can drive past the inactive crossing gates on Estero Parkway and other crossing roads and see that a train has not passed that way for many years. Still, the tracks were for the sole use of the railroad. They were and are still private property. Anyone on these tracks without the authority of the Railroad or The Vines, at its designated access points, were and are trespassers subject to prosecution.

Since its beginning, The Vines, as a private gated community and country club, has had quiet enjoyment of its full property adjoining each side of the SGRR right of way.

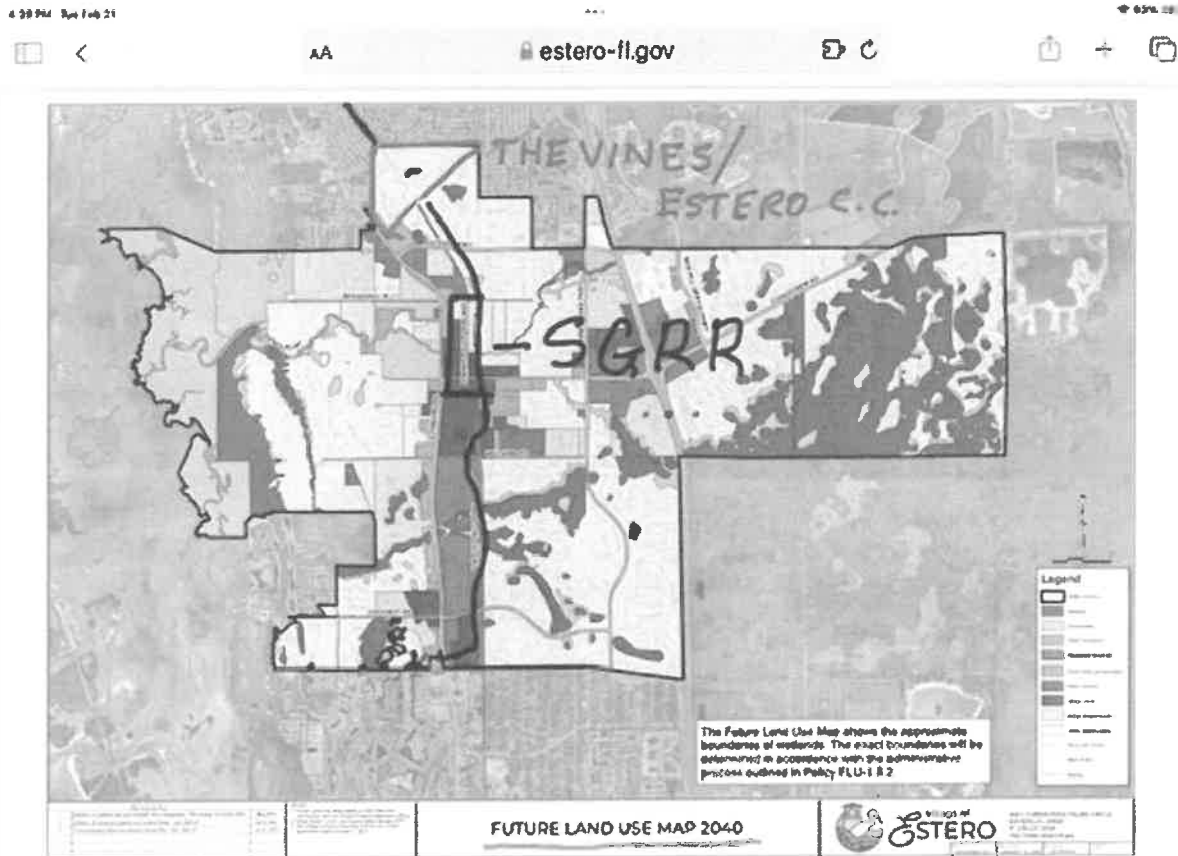
The inactive rail line was never intended to be anything other than private railroad property. Certainly, The Vines and its residents are entitled to continue to have quiet enjoyment of their privacy and security.

Below is a map of The Vines and ECC. This shows how the SGRR bisects The Vines, its neighborhoods and golf course. It is readily apparent how allowing a public access path, of the kind envisioned by the MPO, will, essentially, destroy its uniqueness, privacy, security, sense of community and property values.



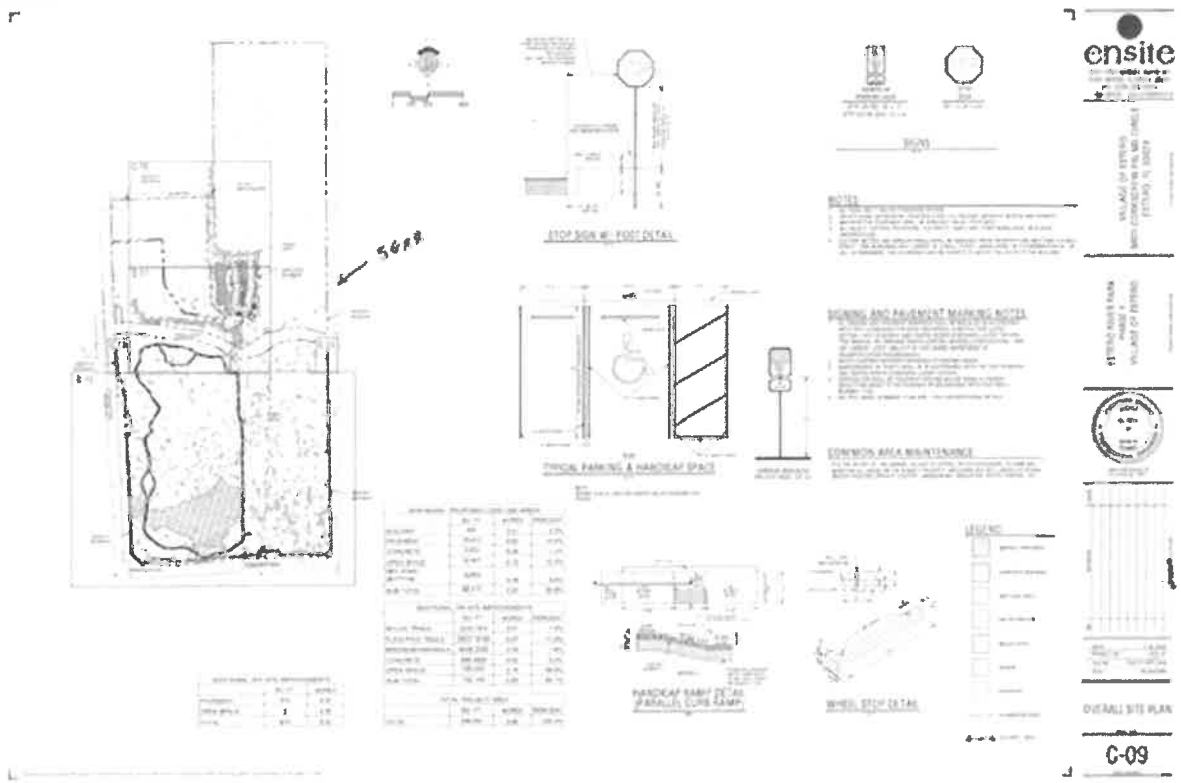
No one ever thought that the SGRR tracks through The Vines would ever be used for an entirely different purpose.

The tracks have always been private property. The Vines had and has legal rights to cross these tracks at designated points and also had and has the legal ability to pursue any trespassers. This was always a point of security and safety to the residents and members of The Vines and ECC. This has been long recognized by The Village of Estero. Below is a map published by the Village showing its expectations for development as far into the future as the year 2040.



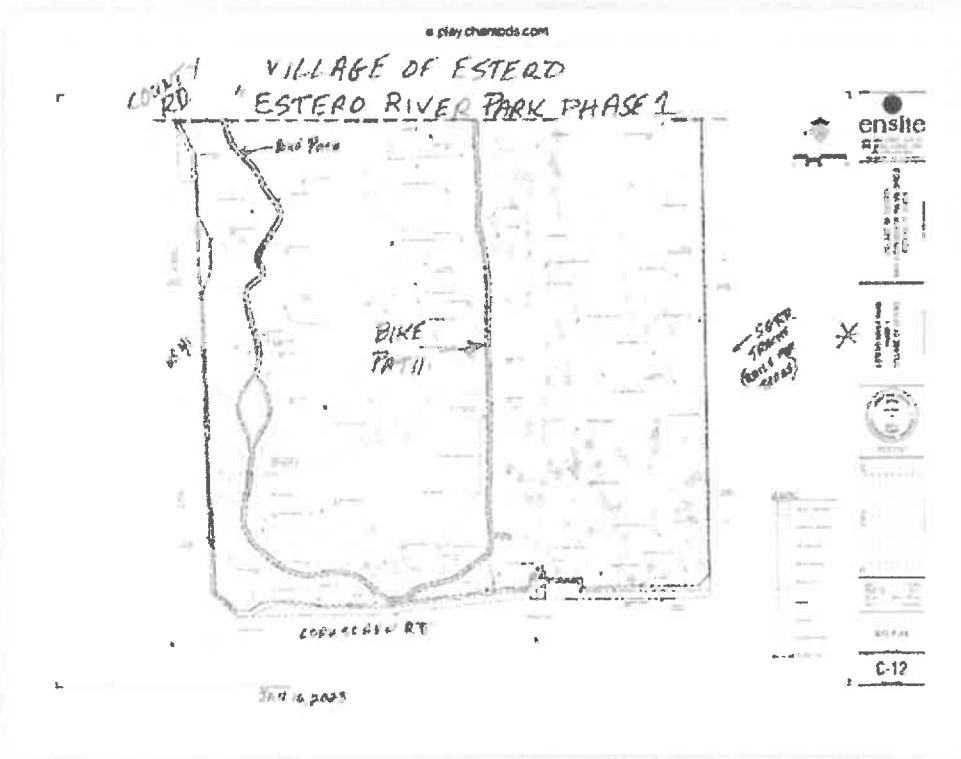
This map shows that, even as of 2040, the Village of Estero never expected or intended that the SGRR tracks through The Vines become public land. The residents and future residents of The Vines were and are entitled to rely to their detriment on these declared plans in the expectation that their community, lifestyle, safety, security and property values would not be unreasonably infringed upon through any actions by the Village of Estero.

The Village of Estero has also been improving its bike and pedestrian paths along main roads including Estero Parkway. A copy of the “Village of Estero Infrastructure Projects Planned for 2022” is attached hereto as Exhibit “C”. Most recently, the Village of Estero has been planning its “Estero River Park”. Engineering drawings have been submitted for this project as recently as January 16, 2023. The Estero River Park starts from Corkscrew Rd. to the south, Tamiami to the west, Country Rd. to the north and, yes, the SGRR to the east. Ironically The Village of Estero plans to build multi use paths throughout its River Park but there is nothing suggesting any plan to incorporate the MPO path that would run immediately adjacent to the Park’s eastern boundary. This would certainly be a family friendly alternative to the proposed MPO path. Below are January 16, 2023 engineering drawings for Phase 1 of the Estero River Park.



4:54 PM Wed Feb 27

9:54 AM



The Village of Estero's planning shows it has no interest in having the path be part of its park system. Obviously, the Village of Estero would like to avoid having any ongoing responsibility for the trail's operation, maintenance, safety or security and costs. Presumably, neither do the counties and municipalities represented by the MPO Voters, the MPO or FOBERT. There is no indication that any of these matters have been given any significant consideration in the feasibility of running the trail through The Vines.

WHAT'S WRONG WITH THE PRESENT PUBLIC BIKE PATHS?

A major issue appears to be that the present bike paths along roads such as Tamiami Trail and Three Oaks Parkway are not safe enough for the bike riders. MPO and Friends of BERT seem to be of the position that putting the bike path through our community will provide safety. Safety for whom? Not The Vines community. None of these entities have come up with or suggested any kind of plan or solution that would alleviate the sure to come private and public nuisances to The Vines. Likely because they can't. Perhaps those biking the trail could simply walk their bikes on the provided sidewalks on Tamiami Trail and Three Oaks Parkway at times they would prefer to not ride in the bike lanes. Like portaging a canoe around rapids. This would truly be just a minor inconvenience to bike riders and no inconvenience at all to walkers or runners. IF these bike paths are so unsafe and unreasonably dangerous, the question is: why are they allowed to exist? Why aren't they removed. Better yet, why aren't they made safe? Why not spend the money improving these.

CONCLUSION

Basic fairness dictates that path ought not bisect and ruin the nature and soul of this private, secure gated community. Alternatives #1 and #2 are not feasible and would clearly create both public and private nuisance. Any plan that allows the path into The Vines or ECC, even remotely, will result in numerous lawsuits which can be avoided by voting against the feasibility of these Alternatives

Respectfully,

The Vines and its residents
Estero Country Club and its members

EXHIBIT A
EXCERPT OF MPO'S STUDIES OF
ALTERNATIVES 1, 2 and 3

ALTERNATIVE #1: RAIL-TO-TRAIL

QUICK FACTS:

Planning Level Construction Costs:

\$4-6 Million per mile

Right-of-way:

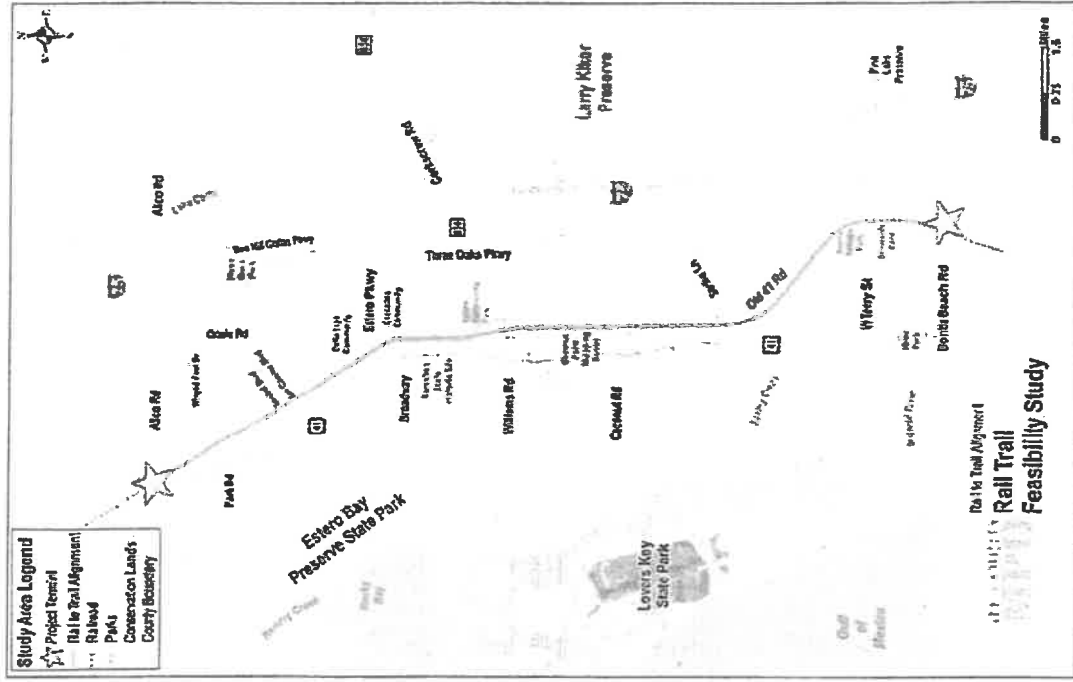
Requires agreement with railroad for fee simple purchase

Road-Trail Crossings:



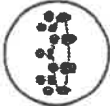

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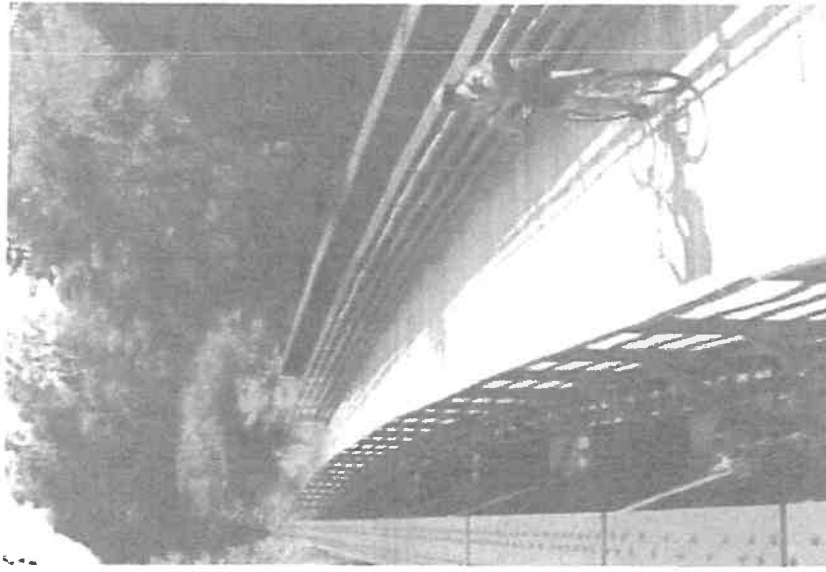
Utility Providers:

Florida Power & Light, TECO Gas, Lee County Utility, Bonita Springs Utility (predominantly at road crossings)



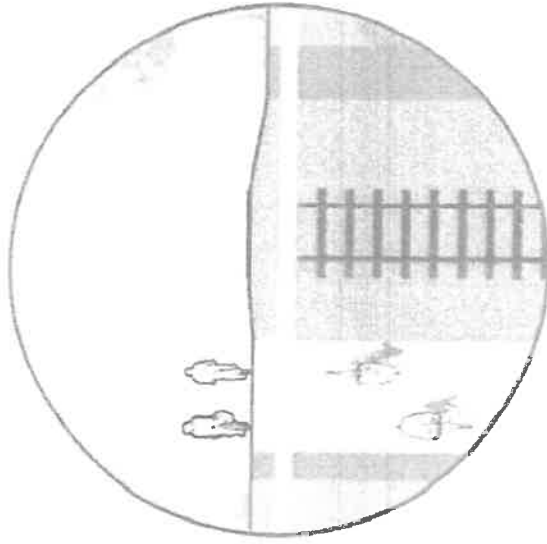
ALTERNATIVE #1: RAIL-TO-TRAIL OPPORTUNITIES AND CHALLENGES

	OPPORTUNITIES	CHALLENGES
 <p>CONNECTIVITY</p>	<ul style="list-style-type: none"> This alignment creates connections to local businesses, parks, schools, and other civic spaces 	
 <p>PROJECT READINESS</p>	<ul style="list-style-type: none"> Existing bridges may be used 	<ul style="list-style-type: none"> May require utility relocation and retrofit existing bridges. Will require agreement with railroad for fee simple purchase of right-of-way
 <p>SERVICE</p>	<ul style="list-style-type: none"> Provides equal access opportunities to residents from both the east and west side of the corridor 	
 <p>USER EXPERIENCE</p>	<ul style="list-style-type: none"> Creates more of a linear park opportunity and is a low-stress facility completely separate from the roadway 	<ul style="list-style-type: none"> Estero Parkway, Corkscrew Road, and Coconut Road are potential locations for overpass crossings



West Fork Trail in West Virginia

ALTERNATIVE #2: RAIL-WITH-TRAIL



A Rail-with-Trail alignment is parallel to the rail line. The path would be built within the railroad right-of-way on one side of the rail line. This allows the rail to continue to be operational.



A Rail-with-Trail in Charlotte, NC

ALTERNATIVE #2: RAIL-WITH-TRAIL

QUICK FACTS:

Planning Level Construction Costs:

\$7-10 Million per mile

Right-of-way:

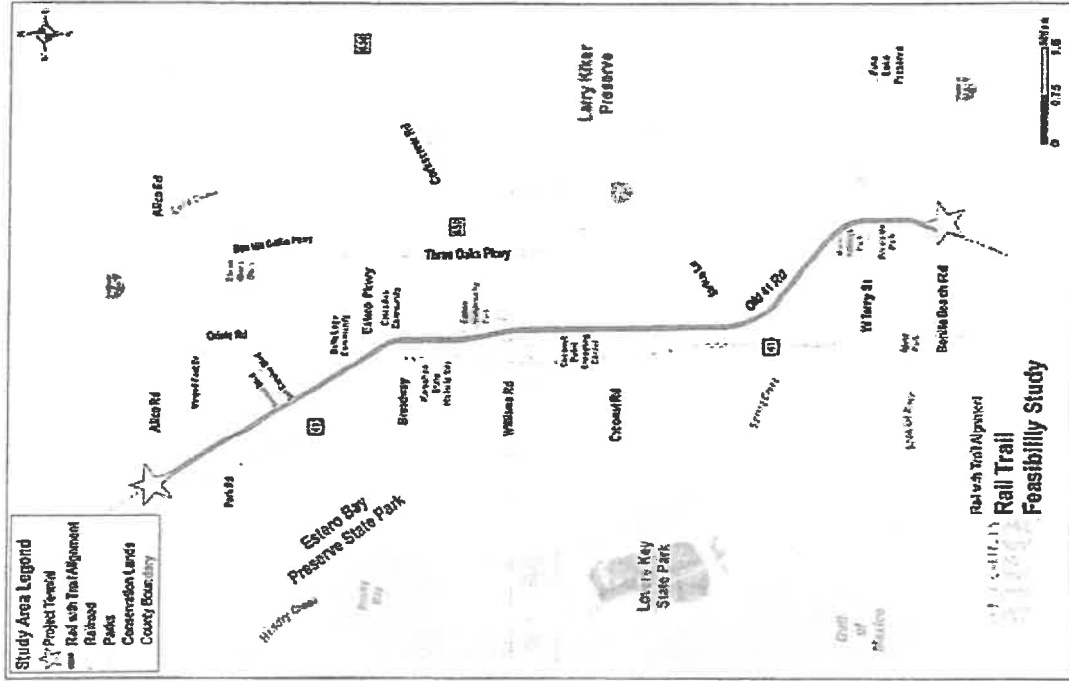
Requires agreement with railroad for fee simple purchase or lease for partial corridor (With lease option, alternative #2 capital improvements will not be eligible for SUN Trail funding)

Road-Trail Crossings:



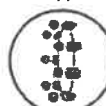

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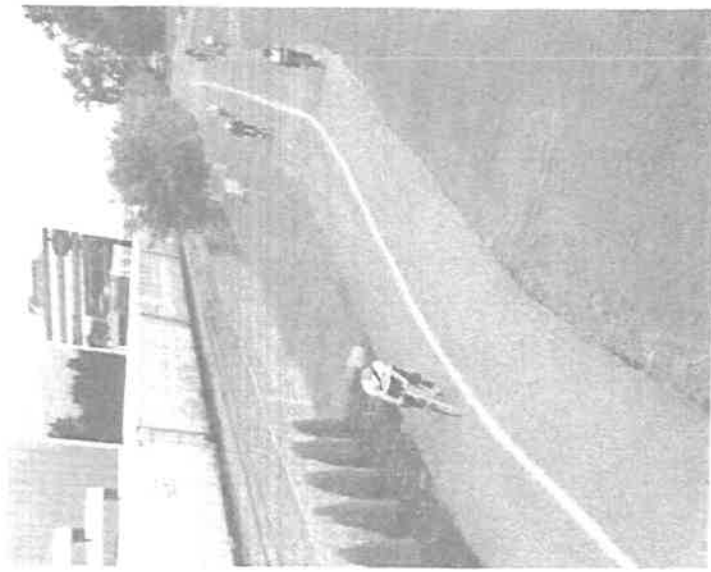
Utility Providers:

Florida Power & Light, TECO Gas, Lee County Utility, Bonita Springs Utility (predominantly at road crossings)



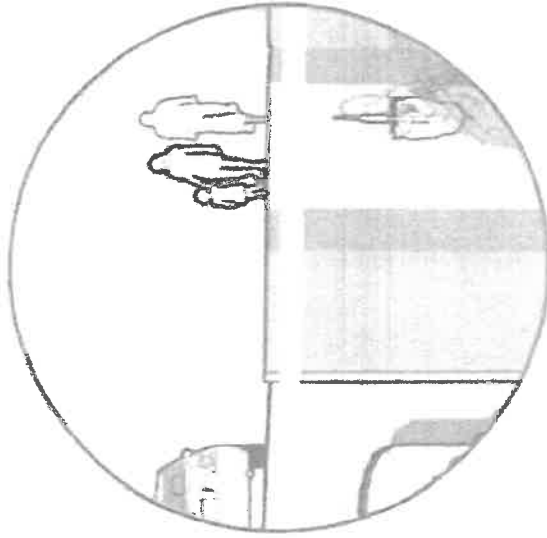
ALTERNATIVE #2: RAIL-WITH-TRAIL OPPORTUNITIES AND CHALLENGES

	OPPORTUNITIES	CHALLENGES
 <p>CONNECTIVITY</p>	_____	<ul style="list-style-type: none"> This alignment will require selecting either the east or west side of the rail, which could limit connectivity for secondary access points
 <p>PROJECT READINESS</p>	_____	<ul style="list-style-type: none"> May require utility relocation, new bridges, and modification to stormwater features. Estero Parkway, Corkscrew Road, and Coconut Road are potential locations. Will require agreement with railroad for lease agreement for 30' right-of-way
 <p>SERVICE</p>	_____	<ul style="list-style-type: none"> Since the rail exists, it is not as accessible from all directions
 <p>USER EXPERIENCE</p>	<ul style="list-style-type: none"> This alignment is a low-stress facility completely separate from the roadway 	



A rail-with-trail in Cambridge, MA

ALTERNATIVE #3: TRAIL ALIGNMENT ADJACENT TO ROAD



A trail alignment that runs parallel to the roadway and is typically within the road right-of-way. Also referred to as a sidepath, these types of trails require ample space between the road and path for people to comfortably and safely use it.



A trail adjacent to the roadway in New York City

ALTERNATIVE #3: TRAIL ALIGNMENT ADJACENT TO ROAD

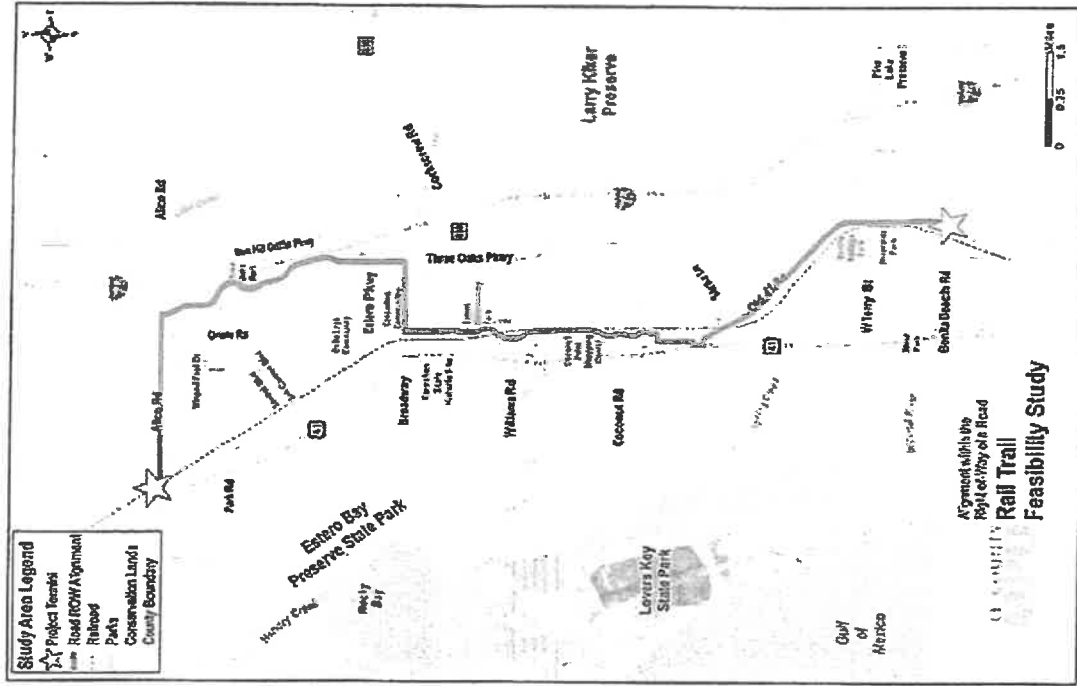
QUICK FACTS:

Planning Level Construction Costs:
\$13-18 Million per mile



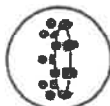

Right-of-way:
The alignment cannot be built entirely within existing roadway
ROW and will require acquisition of property

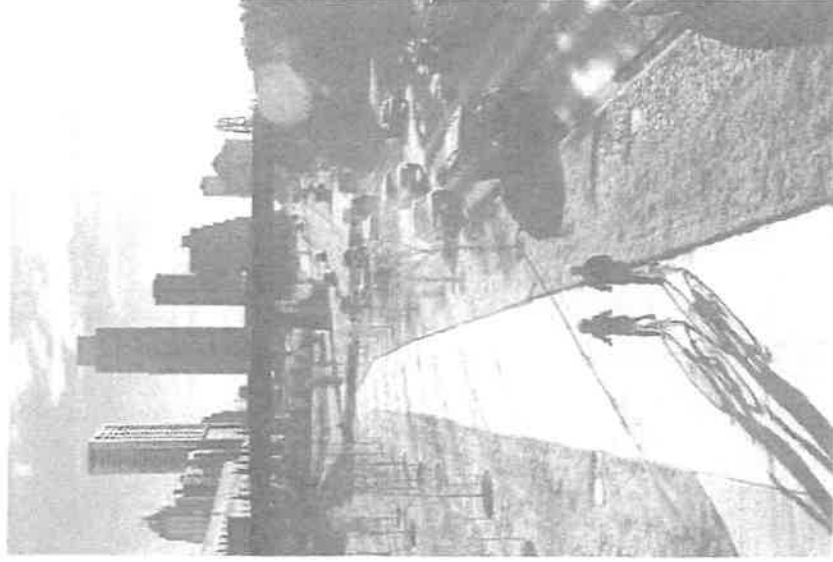
Road-Trail Crossings:
96 (includes roadway/ driveway crossings)

Utility Providers:
Florida Power & Light, TECO Gas, Lee County Utility, Bonita
Springs Utility throughout the corridor



ALTERNATIVE #3: TRAIL ALIGNMENT ADJACENT TO ROAD OPPORTUNITIES AND CHALLENGES

	OPPORTUNITIES	CHALLENGES
 <p>CONNECTIVITY</p>	<hr/>	<ul style="list-style-type: none"> This alignment has less connectivity at the north part of the project because it is further from 41 and closer to I-75
 <p>PROJECT READINESS</p>	<ul style="list-style-type: none"> Parts of the corridor are ready for construction 	<ul style="list-style-type: none"> This alignment will require additional purchase of ROW installation of new bicycle and pedestrian bridges, and upgrades to 96 crossings. Estero Parkway, Corkscrew Road, and Coconut Road are potential locations.
 <p>SERVICE</p>	<hr/>	<ul style="list-style-type: none"> Does not provide as much accessibility
 <p>USER EXPERIENCE</p>	<hr/>	<ul style="list-style-type: none"> This alignment is a high stress facility along a high-volume multi-lane road, with many driveway and roadway crossings (Alico Rd)



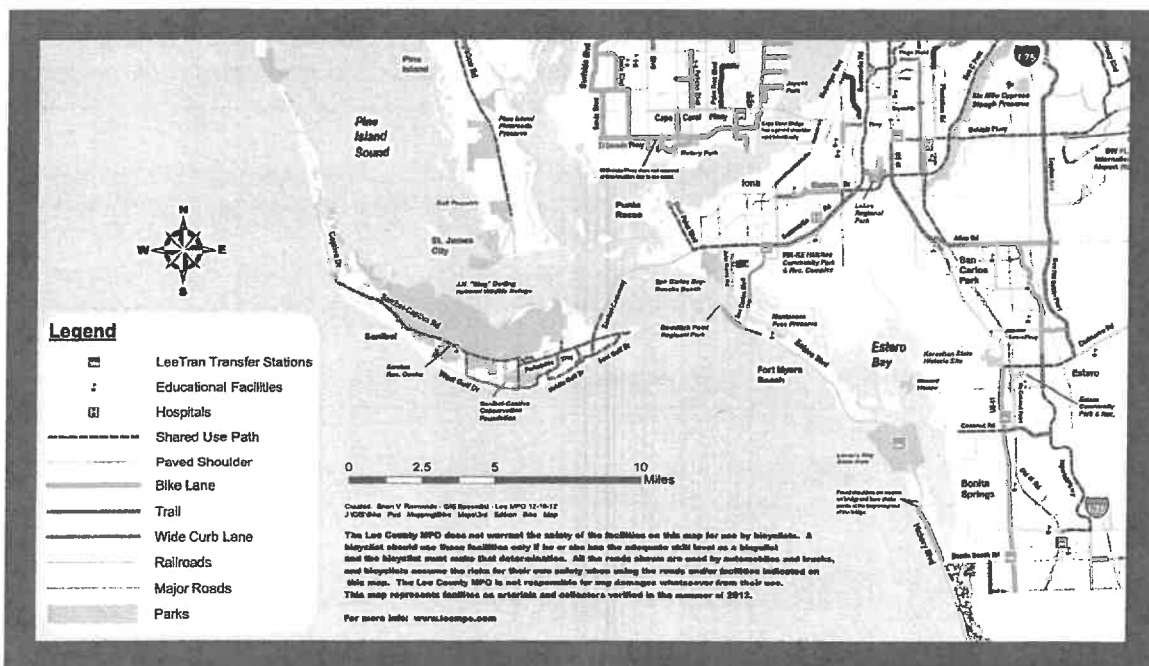
A trail adjacent to the road in Austin, TX

EXHIBIT B
FRIENDS OF BERT
LEE COUNTY 2020 TRAIL MAP



Lee County 2022 Trail Map

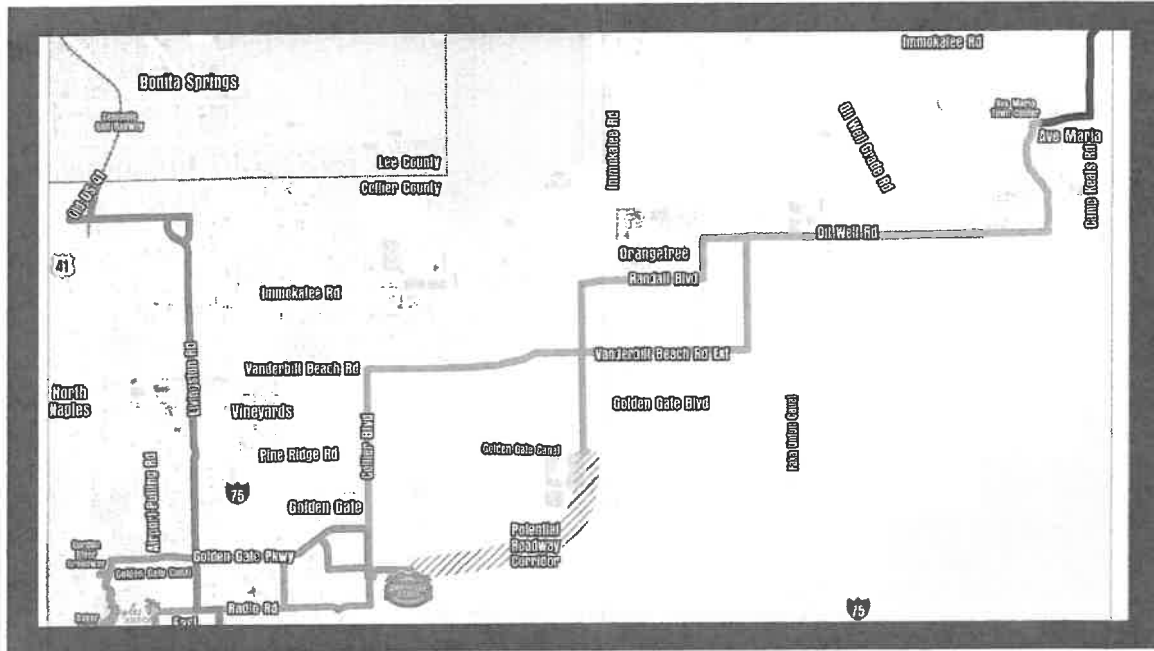
The first map shows Lee County current bike and multi-use trails. Here, BERT is represented as the rail line from the county border to the south and Alico Road to the north.



Lee County Trails: BERT connects at Alico Road

Paradise Coast Trail

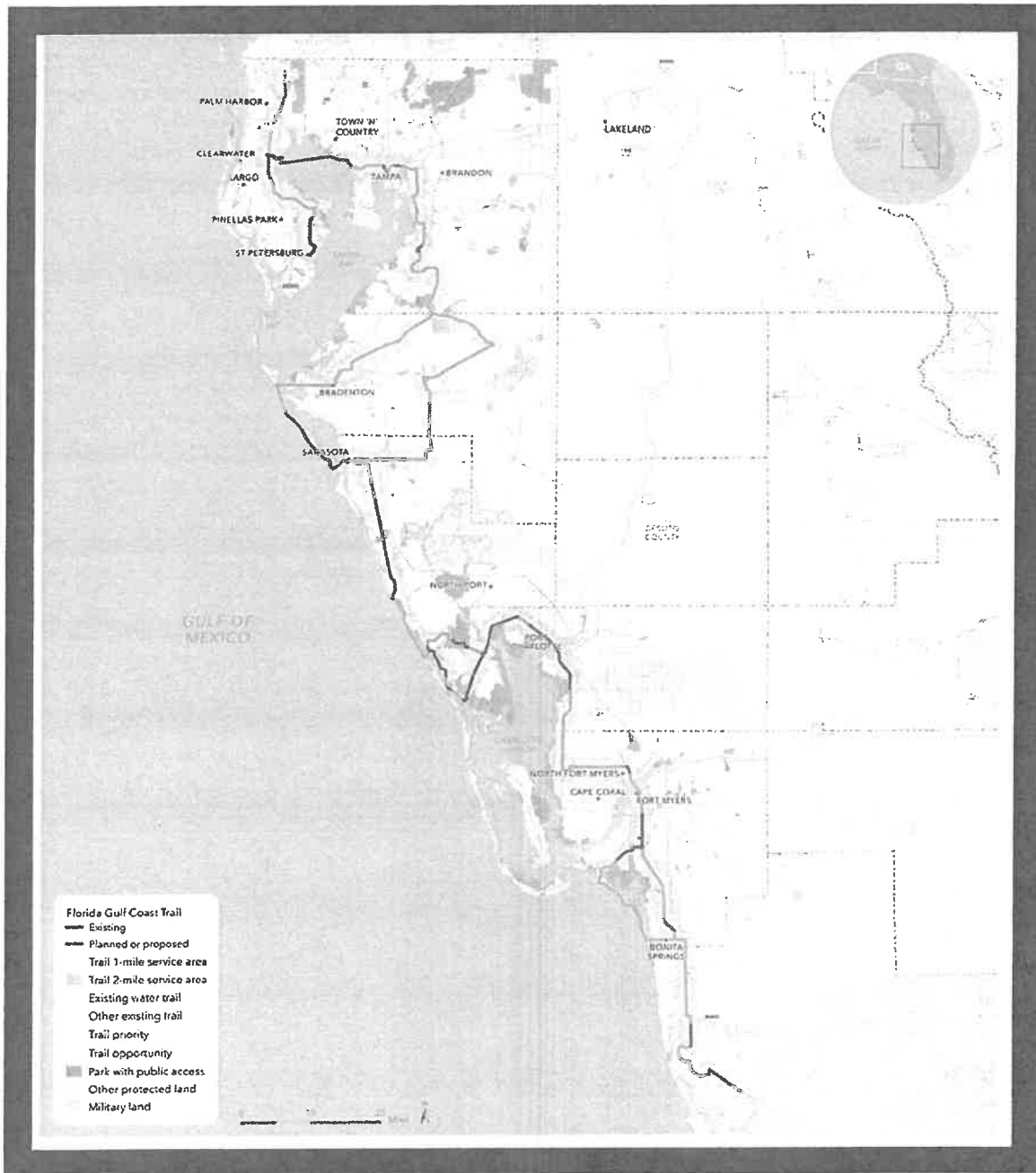
Collier County is a few years ahead of Lee County in its proposed trail network: Paradise Coast Trail. This map shows the connection at the Lee/Collier county line to BERT. It's represented as Seminole Gulf Rail. BERT will connect to 70 miles of multi-use trails to the south.



Collier County current and proposed trails with connector to BERT

Florida Gulf Coast Trail

The most ambitious of projects connects trail networks from Tampa to Naples: Florida Gulf Coast Trail. BERT is represented here as well! Trust for Public Lands is spearheading this project and it's important Bonita Estero Rail Trail is included. This project will bring access to the Gulf Coast parks and attractions, as well as an economic boost and jobs.



Florida Gulf Coast Trail from Tampa to Naples includes BERT





Friends of the
Bonita Estero
Rail Trail
friendsofbert@bonitaesterorailtrail.com



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EXHIBIT C
VILLAGE OF ESTERO INFRASTRUCTURE
PROJECTS PLANNED FOR 2022

Village Connection – Infrastructure Projects Planned for 2022

December 27, 2021



Estero residents can expect to see a number of improvements in 2022 which will aid traffic flow, provide greater opportunity and safety for bicyclists and pedestrians, and enhance the beauty of the Village of Estero. Planning also continues for trails to be built on the “Estero on the River” property.

Estero on the River

In 2019, the Village acquired 67.5 acres at the northeast corner of U.S. 41 and Corkscrew Road along the Estero River. Since that time, seven dilapidated structures on the site were removed for safety. An extensive tree study was conducted which demonstrated the site contains many native trees including oaks, sabal palms and pine trees. A portion of the site is also home to gopher tortoises.

Designing a trail system is the first step to opening this natural area for public enjoyment. Phase 1 will include construction of a loop trail (orange trail on map), just under one mile in length, which is likely to be completed sometime in summer 2022. Future phases would add additional trails (yellow) and boardwalks over the wetlands (red).

The long-term vision is to connect this land to Koreshan State Park to provide up to 330 acres of continuous green space for residents to enjoy for generations to come.



New bicycle-pedestrian pathway on Estero Parkway

Road Improvements

River Ranch Road – Design and permitting for roadway, drainage and pedestrian improvements

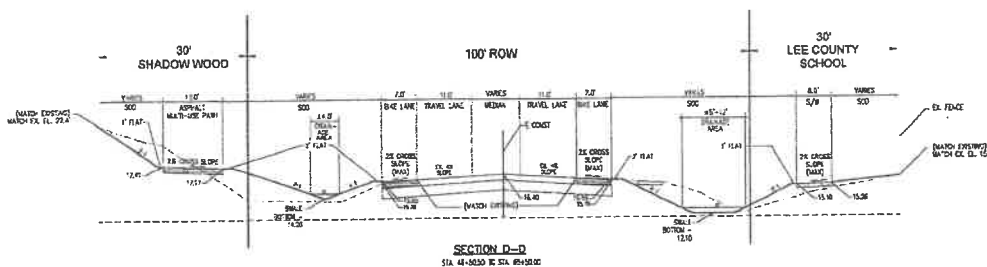
Williams Road and Atlantic Gulf Drive – Design and permitting for intersection improvements on Williams Road west of U.S. 41. These improvements will fix existing unsafe conditions and improve traffic flow. Construction is expected in early 2023.

Sandy Lane and Broadway East — Planning and concept design for bike and pedestrian improvements

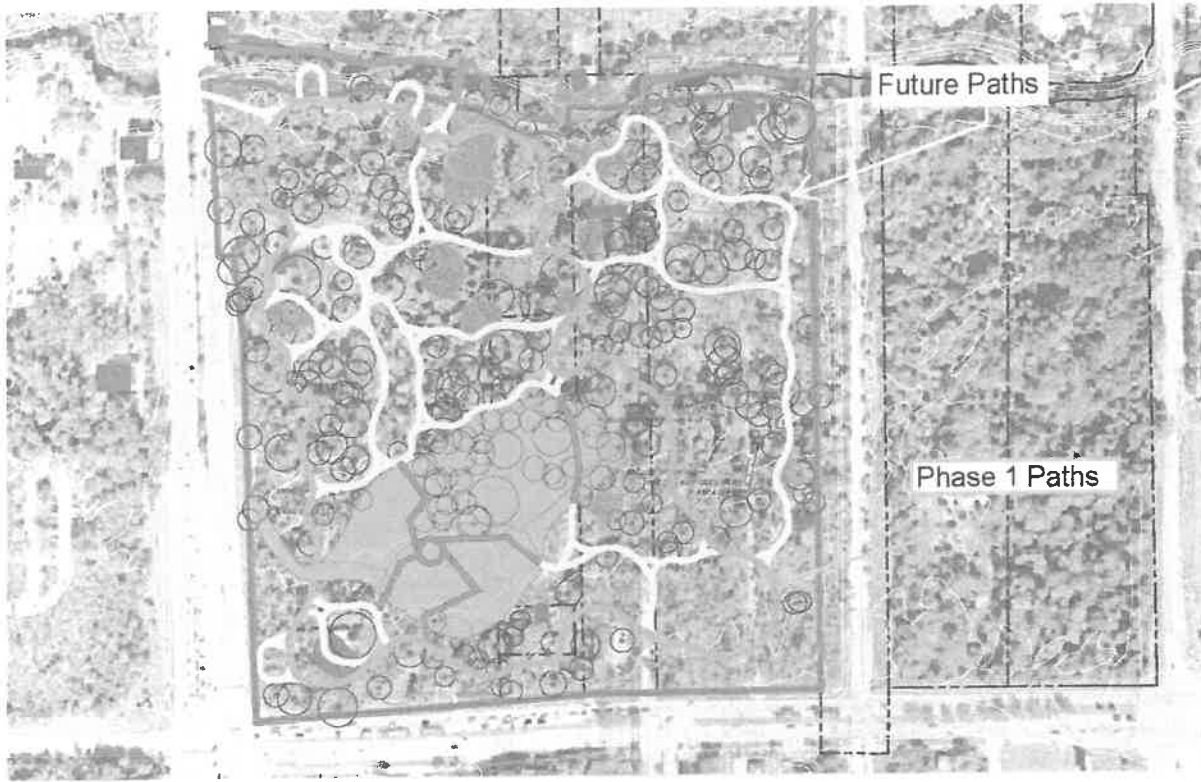
Williams Road — Construction plans and permitting for bike and pedestrian improvements

Corkscrew Road – Completing construction plans for pathways, landscaping and street lighting in the second quarter of 2022

Ben Hill Griffin Parkway landscaping – In late 2021, Village Council approved a landscaping concept plan. The Village’s consultant will continue working on the design, and construction is scheduled to start this summer.



Williams Rd bike-ped plan



Estero on the River concept plan for trails

Utility Extension

To help improve the health of the Estero River, three separate utility extension projects will be ongoing in 2022.

Package Waste Water Treatment Plants (Cypress Bend, Estero Bay Village and Sunny Groves)

Broadway West

Broadway East

To receive the latest information about Village projects and community activities, go to the Village website and subscribe at estero-fl.gov.

Posted in [Village Connection](#)