LEE COUNTY BOARD OF COUNTY COMMISSIONERS

ZONING
and
COMPREHENSIVE PLAN AMENDMENT HEARING
AGENDA

Wednesday, August 21, 2024
9:30AM

CPA2022-00012	Corkscrew Commercial CPA Map
DCI2023-00034 Z-24-020	Alva Trading Post, CPD
DCI2023-00050 Z-24-018	Diplomat House a/k/a Diplomat North RPD Amendment
DCI2023-00023 Z-24-019	Bay Harbour Marina Village

NOTICE OF PROPOSED AMENDMENT TO THE LEE COUNTY COMPREHENSIVE LAND USE PLAN (TRANSMITTAL HEARING)

The Lee County Board of County Commissioners will hold a public hearing to consider proposed amendments to the Lee County Comprehensive Land Use Plan (Lee Plan) on Wednesday, August 21, 2024. The hearing will commence at 9:30 a.m., or as soon thereafter as can be heard, in the Board Chambers, 2120 Main Street in Downtown Fort Myers. At the hearing, the Board will consider the proposed amendments for transmittal to the Florida Department of Economic Opportunity:

> Small Brothers Corkscrew Commercial - Amend the Lee County Utilities Future Sewer Service Areas Map (Map 4-B) to include the ±11.4-acre (Property size was reduced from 12.1 acres to 11.4 acres by a Stipulated Order of Taking. See Final Judgement - INSTRUMENT #202300027300) subject property.

This transmittal hearing is the first step in a two-step public hearing process to amend the Lee Plan. A second hearing will follow the Department of Economic Opportunity's review of the application.

Documentation for the Proposed Comprehensive Plan Amendment is available at https://www.leegov.com/dcd/planning/cpa or at the Department of Community Development located at 1500 Monroe Street, Fort Myers, Florida. This meeting is open to the public. Interested parties may appear at the meeting and be heard with respect to the proposed plan amendment. A verbatim record of the proceeding will be necessary to appeal a decision made at this hearing.

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

Lee County will not discriminate against individuals on the basis of race, color, national origin, sex, age, disability, religion, income or family status. To request language interpretation, document translation or an ADA-qualified reasonable modification at no charge to the requestor, contact Raphaela Morais-Peroba, (239) 533-8782, Florida Relay Service 711, at least five business days in advance. El Condado de Lee brindará servicios de traducción sin cargo a personas con el idioma limitado del inglés.

NOTICE OF PUBLIC HEARING

The Lee County Board of County Commissioners will hold a public hearing at 9:30 am on Wednesday, August 21, 2024 in the Board Chambers at 2120 Main St., Ft. Myers, FL, to review the written recommendations made by the Hearing Examiner and make a final decision on the case(s) below. (Lee County **L**and **D**evelopment **C**ode is abbreviated below as **LDC.**)

DCI2023-00034 / Alva Trading Post, CPD

Request to rezone ±1.92-acres from Agricultural (AG-2) and Commercial (C-1A) to Commercial Planned Development (CPD) to allow a maximum of 7,000 square feet of intensity for commercial, retail, and light manufacturing uses.

Located At 21450 Palm Beach Blvd., Northeast Planning Community, Lee County, FL.

DCI2023-00050 / Diplomat House a/k/a Diplomat North RPD Amendment

Request to amend 38.13± acres of the Diplomat North RPD/CPD from the Z-11-002/ADD2019-00085 approvals to replace 238 dwelling units (or 138 dwelling units and 400 assisted living facility units) and 50,000 SF of commercial with a maximum height of 50 feet; to allow 360 multi-family dwelling units with amenities with a maximum height of 60 feet within the Mixed Use Overlay.

Located At Approximately 500 feet west of the northwest corner of Diplomat Parkway and US 41, North Fort Myers Planning Community, Lee County, FL.

DCI2023-00023 / Bay Harbour Marina Village

Request to amend Resolution Z-16-010A, Bay Harbour Marina Village Mixed Use Planned Development, to revise the Master Concept Plan and Development Regulations, and amend the schedule of uses to add Hotel/Motel use to the "Mixed Use Building" Tract and Multiple-family use to the "Townhomes" Tract of the site.

Located At 1195 Main Street, Iona/McGregor Planning Community, Lee County, FL.

Copies of the Hearing Examiner's recommendation may be obtained or the file reviewed at the Zoning Section, 1500 Monroe St., Ft. Myers, FL. Telephone 239-533-8585 for additional information.

If you did not appear before the Hearing Examiner or otherwise become a participant for that case in which you wish to testify, the law does not permit you to address the Board of County Commissioners.

Statements before the Board of County Commissioners regarding the zoning case will be strictly limited to testimony presented to the Hearing Examiner, testimony concerning the correctness of the findings of fact or conclusions of law contained in the record, or to allege the discovery of new, relevant information which was not available at the time of the hearing before the Hearing Examiner.

Any document that a participant of record intends to submit must have been submitted as part of the record in the hearing before the Hearing Examiner or the document is relevant new evidence

that was not known or could not have been reasonably discovered by the participant at the time of the hearing before the Hearing Examiner. All other documents will not be accepted by the Board. To ensure compliance with these regulations, copies of documents not submitted as part of the record before the Hearing Examiner must be provided to the Applicant and County Staff (JPrincing@leegov.com) not less than 2 days before the date of the zoning hearing.

If a participant decides to appeal a decision made by the Board of County Commissioners with respect to any matter considered at this hearing, a verbatim record of the proceeding will be necessary to appeal a decision made at this hearing.

In accordance with the Americans with Disabilities Act, Lee County will not discriminate against qualified individuals with disabilities in its services, programs, or activities. To request an auxiliary aid or service for effective communication or a reasonable modification to participate, contact Raphaela Morais-Peroba, (239) 533-8782, ADArequests@leegov.com or Florida Relay Service 711. Accommodation will be provided at no cost to the requestor. Requests should be made at least five business days in advance.

CPA2022-00012

Corkscrew Commercial Map Amendment

SUMMARY SHEET
CPA2022-00012 – CORKSCREW COMMERCIAL MAP AMENDMENT
TRANSMITTAL HEARING

REQUEST:
Amend the Lee County Utilities Future Sewer Service Areas Map (Lee Plan Map 4-B) to include the ±11.4-acre subject property.

LPA PUBLIC HEARING:
The LPA discussed the proposed amendments and various merits of the case, including the compatibility with the surrounding area, timing of utilities availability, and prior Comprehensive Plan Amendments concerning the subject property.

LPA PUBLIC INPUT:
There were no public comments concerning the proposed amendment.

LPA MOTION:
A motion was made to recommend that the Board of County Commissioners (BoCC) ***transmit*** CPA2022-00012. The motion passed 5 to 0.

RAYMOND BLACKSMITH	**AYE**
DUSTIN GARDNER	**AYE**
DAWN RUSSELL	**ABSENT**
JENNIFER SAPEN	**AYE**
DON SCHROTENBOER	**AYE**
STAN STOUDER	**AYE**
HENRY ZUBA	**ABSENT**

STAFF RECOMMENDATION:
Staff recommends that the BoCC ***transmit*** the proposed amendment as provided in Attachment 1.

STAFF REPORT FOR CORKSCREW COMMERCIAL: CPA2022-00012

Map Amendment to the Lee Plan

Recommendation:
Transmit

Applicant:
Small Brothers, LLC

Representative:
Margaret Emblidge, AICP
LJA Engineering, Inc.

Property Location:
15230 Corkscrew Road, Estero

Property Size:
± 11.4 Acres[i]

Planning District:
Southeast Lee County
District 18

Commissioner District:
District #3

Hearing Dates:
LPA: 07/22/24
BoCC #1: 08/21/24
BoCC #2: TBD

Attachments:
1: Proposed Amendments

REQUEST

Amend the Lee County Utilities Future Sewer Service Areas Map (Map 4-B) to include the ±11.4-acre[i] subject property.

SUMMARY

The requested amendment will include the subject property in Lee Plan Map 4-B, Lee County Utilities Future Sewer Service Areas Map. The property is already included in the Lee County Utilities Future Water Service Areas Map (Map 4-A). No other map or text amendments are proposed.

PROJECT LOCATION

The subject property is located on Corkscrew Road, approximately 100 feet west of the intersection of Alico Road and Corkscrew Road.

Figure 1: Location Map

RECOMMENDATION

Staff recommends that the Board of County Commissioners (BoCC) ***transmit*** the requested amendment based on the analysis and findings provided in this staff report.

PART 1
STAFF DISCUSSION AND ANALYSIS

SUBJECT PROPERTY/BACKGROUND

The subject property is currently shown within the Wetlands future land use category on the Future Land Use Map. This category is characterized by very low-density development with limited uses allowed. An informal analysis provided by the applicant's environmental consulting firm, W. Dex Bender & Associates, Inc., indicates the wetlands on the property account for less than what is currently shown on the future land use map. A formal Jurisdictional Wetland Determination or Environmental Resource Permit will need to be provided by the appropriate State Agency, the portions of the property found to be outside of the jurisdictional wetlands will be designated as Density Reduction/Groundwater Resource (DR/GR). This practice is consistent with Lee Plan **Policy 124.1.3** regarding how wetlands are depicted on the Future Land Use Map, and **Chapter XIII, Administration**.

The subject property was originally zoned Agriculture (AG). The BoCC approved a privately initiated rezoning request to rezone the property to Commercial (CC) in 1982 through Resolution Number ZAB-82-337. The rezone occurred prior to the implementation of the 1984 Lee Plan.

Owners of the subject property previously applied for a similar map amendment via CPA2019-00011. That amendment proposed including the subject property within the Lee County Utilities Future Water and Future Sewer Service Areas maps, then designated as Lee Plan Maps 6 and 7. The utilities map amendments were requested with a companion text amendment in CPA2019-00009 that would have allowed limited commercial uses on the subject property. The BoCC voted in 2020 to transmit the amendments to the State Reviewing Agencies; however, the property owner withdrew the proposed amendments prior to an adoption hearing.

In 2021, the BoCC adopted CPA2021-00001, a County-initiated comprehensive plan amendment that updated the Lee Plan's planning horizon to the year 2045. CPA2021-00001 extended the Lee County Utilities Future Water Service Areas map in Southeast Lee County, adding the subject property to the map. Map 4-A (then called Map 6) was amended to include areas already served or able to be served due to existing or proposed water main improvements. CPA2021-00001 did not amend the Lee County Utilities Future Sewer Service Areas map.

The applicant submitted the subject amendment in 2022 to add the subject property to Lee Plan Map 4-B, as well as a text amendment similar to CPA2019-00009, which would have allowed limited commercial uses on the subject property. The associated text amendment, CPA2022-00013, was withdrawn by the applicant in January 2024.

The applicant also submitted DCI2022-00021, a request to rezone the subject property from CC to Commercial Planned Development (CPD). The last submittal for the CPD request was in October of 2022. Due to the withdrawal of the companion text amendment, the CPD request remains inconsistent with the Lee Plan with or without the proposed amendment to Map 4-B.

SURROUNDING PROPERTIES

The subject property is located on Corkscrew Road, adjacent to the eastern property line of the Corkscrew Shores subdivision. Map 4-B extends to the western boundary of the subject property and resumes along Corkscrew Road, approximately 1.6 miles east of the subject property, to provide sewer service to The Place, a residential subdivision.

The properties east and south of the subject property are lands within the Conservation Lands (Uplands and Wetlands) future land use category, owned by Lee County and South Florida Water Management District, respectively. The property north of the subject parcel, across Corkscrew Road, is an active mining operation. Corkscrew Shores, as previously mentioned, is located west of the property. Additional detail is provided in Table 1.

TABLE 1: SURROUNDING PROPERTIES INFORMATION

	Future Land Use	Zoning	Existing Use
North	Wetlands & DR/GR	IPD approved for ±178 acres of mining and excavation	Mining Operation
East	Conservation Lands Wetland & Conservation Lands Upland	AG-2	Conservation
South	Conservation Lands Wetland	MH-1	Conservation
West	DR/GR & Wetlands	RPD platted with approximately 643 dwelling units[ii]	Single-Family

DISCUSSION AND ANALYSIS – MAP 4-B: LEE COUNTY UTILITIES FUTURE SEWER SERVICE AREAS MAP

The subject property is within the Wetlands future land use category as depicted on the future land use map, Lee Plan Map 1-A; however, based on application materials it is expected that approximately 52 percent of the property will be designated as uplands once a formal wetland delineation is provided by the appropriate state agency. As previously mentioned, based on Policy 124.1.3 the upland areas will be redesignated to the DR/GR future land use category. Development in the Wetlands and DR/GR future land use categories must be consistent with the following:

> ***POLICY 1.5.1****: Permitted land uses in Wetlands consist of very low density residential uses and recreational uses that will not adversely affect the ecological functions of wetlands. All development in wetlands must be consistent with Goal 124. The maximum density is one dwelling unit per twenty acres (1 du/20 acre) except as otherwise provided in Table 1(a) and Chapter XIII.*
>
> ***POLICY 1.4.5****: The Density Reduction/Groundwater Resource (DR/GR) future land use category includes upland areas that provide substantial recharge to aquifers most suitable for future wellfield development. These areas also are the most favorable locations for physical withdrawal of water from those aquifers. Only minimal public facilities exist or are programmed.*
>
> *1. New land uses in these areas that require rezoning or a development order must demonstrate compatibility with maintaining surface and groundwater levels at their historic levels utilizing hydrologic modeling, the incorporation of increased storage capacity, and inclusion of green infrastructure. The modeling must also show that no adverse impacts will result to properties located upstream, downstream, as well as adjacent to the site. Offsite mitigation may be utilized, and may be required, to demonstrate this compatibility. Evidence as to historic levels must be submitted as part of the rezoning application and updated, if necessary, as part of the mining development order application.*

2. *Permitted land uses include agriculture, natural resource extraction and related facilities, conservation uses, public and private recreation facilities, and residential uses at a maximum standard density of one dwelling unit per ten acres (1 du/10 acres). See Objectives 33.2 and 33.3 for potential density adjustments resulting from concentration or transfer of development rights.*

3. *Private Recreational Facilities may be permitted in accordance with the site locational requirements and design standards, as further defined in Goal 13. No Private Recreational Facilities may occur within the DR/GR land use category without a rezoning to an appropriate Planned Development zoning category, and compliance with the Private Recreation Facilities performance standards, contained in Goal 13.*

The requested amendment does not change the subject property's Future Land Use Category and, therefore, does not change the intensity, density, or uses allowed under the Lee Plan. Any future changes to the boundary of the Wetlands future land use category must be consistent with **Policy 124.1.3** and **Chapter XIII**. Any development within the Wetlands future land use category must be consistent with **Policy 124.1.1** and **Policy 124.1.2**, which provide for very limited uses within state-determined wetlands.

When future development of the site is proposed, the developer will need to provide hydrologic models that demonstrate the preservation of historic groundwater levels on site. This model will also need to demonstrate that no adverse impacts will occur to properties upstream, downstream, or adjacent to the site, consistent with **Policy 1.4.5**. The hydrologic model used by the applicant must be deemed appropriate by Lee County Department of Natural Resources, consistent with **Policy 33.1.7**.

The applicant held a publicly advertised meeting within the boundaries of the Southeast Lee County Community Planning Area on February 15, 2024, consistent with **Objective 17.3**. The meeting was held at 13660 Bonita Beach Road Southeast and was advertised in the Fort Myers News Press more than 10 days before the meeting date. No members of the public were present at the meeting.

The proposed amendment facilitates Lee Plan **Goal 56**, which seeks to provide sanitary sewer service throughout Lee County. **Policy 56.1.1** states that Lee County Utilities will provide service as required by demand in areas illustrated on Map 4-B. Lee County Utilities currently has appropriate capacity to serve the subject property, consistent with Policy 56.1.1, **Policy 56.1.2**, and **Policy 95.1.3**.

Pursuant to **Policy 56.1.7**, the proposed amendment will allow for the use of public sewage in lieu of septic systems in any potential future development of the subject property. This is consistent with **Objective 33.1**, which promotes the protection of groundwater within Southeast Lee County. The subject property is within the 1-year, 5-year, and 10-year Wellfield Protection Zone travel times, as depicted on Lee Plan Map 4-C. Due to the sensitivity of the groundwater resources in this area, future development should be encouraged to use public sanitary sewers in lieu of septic systems.

Based on the analysis above, adding the subject property to the Lee County Utilities Future Sewer Service Areas map is appropriate and consistent with the Lee Plan.

SERVICE AVAILABILITY

The proposed amendment to the Lee County Utilities Future Sewer Service Areas map would have minimal impacts on the availability of public services. Potable water, solid waste, police, fire, and emergency medical services are available to serve any future development of the subject property. Level of service,

impact fees, and any improvements needed to serve the subject property will be determined at the time future development plans are determined.

The subject property is within Lee County Utilities' future potable water service areas, as identified on Lee Plan Map 4-A. Lee County Utilities provided a letter on August 29, 2022, stating that adequate potable water and sanitary sewer services are available to the subject property. Potable water service will be provided through the Pinewood Water Treatment Plant, and sanitary sewer service will be provided by Three Oaks Water Reclamation Facility. There are no reuse mains within the vicinity of the project.

The subject property is located on the south side of Corkscrew Road, at the southwest corner of the intersection between Alico Road and Corkscrew Road. Corkscrew Road is a county-maintained arterial road. The proposed amendment does not impact the allowable uses under the Lee Plan on the subject property, therefore roadway conditions stay the same with and without the proposed amendment.

CONCLUSIONS

The proposed amendment, which adds the subject property to Lee Plan Map 4-B, facilitates Lee County in providing sanitary sewer service throughout the County.

Staff has reviewed the proposed amendments and provides the following conclusions.

- The use of sanitary sewer service on site is consistent with surrounding properties.
- The request does not impact the ability of other County offices to provide public services.
- The Board of County Commissioners previously transmitted an amendment that would have included the subject property on Map 4-B.
- The subject property is within Lee County's 1-year, 5-year, and 10-year Wellfield Protection Zones
- The proposed amendment is consistent with the applicable Lee Plan Goals, Objectives, and Policies, as discussed in this report.

For the reasons discussed in this staff report, staff recommends that the Board of County Commissioners ***transmit*** the proposed amendments as provided in Attachment 1.

PART 2

LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION

DATE OF PUBLIC HEARING: July 22, 2024

A. LOCAL PLANNING AGENCY REVIEW

The applicant's representatives provided a presentation addressing the requested amendments, subject property, surrounding uses, and consistency with the Lee Plan.

Following this, staff made a presentation addressing the requested amendments, subject property, and consistency with the Lee Plan and staff recommendation.

Members of the LPA asked about previous Comprehensive Plan Amendments that applied to the subject property and the reasoning behind not including the subject property on Map 4-B when the property was added to Map 4-A.

There were no public comments on the proposed amendment.

B. LOCAL PLANNING AGENCY RECOMMENDATION

A motion was made to recommend that the Board of County Commissioners (BoCC) ***transmit*** CPA2022-00012. The motion passed 5 to 0.

RAYMOND BLACKSMITH	**AYE**
DUSTIN GARDNER	**AYE**
DAWN RUSSELL	**ABSENT**
JENNIFER SAPEN	**AYE**
DON SCHROTENBOER	**AYE**
STAN STOUDER	**AYE**
HENRY ZUBA	**ABSENT**

C. STAFF RECOMMENDATION

Staff recommends that the BoCC ***transmit*** the proposed amendment as provided in Attachment 1.

[i] The subject property was reduced from 12.1 acres to 11.4 acres by a Stipulated Order of Taking. See Final Judgement - INSTRUMENT #202300027300.

[ii] INSTRUMENT #2014000052328, Lee County Clerk of Circuit Court; INSTRUMENT #2015000105110, Lee County Clerk of Circuit Court; INSTRUMENT #2015000198603, Lee County Clerk of Circuit Court

ATTACHMENT 1

- **Future Sewer Service Areas**

CPA2022-00012

Future Sewer Service Areas

Lee County
Southwest Florida

Proposed Future Sewer Service Areas

Future Sewer Service Areas

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Map Generated: July 2024

APPLICATION FOR A COMPREHENSIVE PLAN AMENDMENT - MAP

Project Name: Small Brothers Corkscrew Commercial CPA

Project Description: Amend Map 4-B to add 11.38 acres to the Lee County Utilities Future Wastewater Service Area

Map(s) to Be Amended: Map 4-B Lee County Utilities Future Wastewater Service Area

State Review Process: ☐ Small-Scale Review ☐ State Coordinated Review ■ Expedited State Review

1. **Name of Applicant:** Small Brothers, LLC
   Address: 12810 Tamiami Trail N, Suite 200
   City, State, Zip: Naples, FL 34110
   Phone Number: (239) 352-5151 E-mail: Bruce Lampitt / blampitt@smallbrothers.com

2. **Name of Contact:** Agnoli, Barber & Brundage, Inc. / Margaret Emblidge, AICP
   Address: 7400 Trail Boulevard, Suite 200
   City, State, Zip: Naples, FL 34108
   Phone Number: (239) 597-3111 E-mail: emblidge@abbinc.com

3. **Owner(s) of Record:** Small Brothers, LLC
   Address: 12810 Tamiami Trail N, Suite 200
   City, State, Zip: Naples, FL 34110
   Phone Number: (239) 352-5151 E-mail: Bruce Lampitt / blampitt@amallbrothers.com

4. **Property Location:**
   1. Site Address: 15230 Corkscrew Road, Estero FL (Property 1)
   2. STRAP(s): 22-46-26-00-00001.0010

RECEIVED
JUL 09 2024
COMMUNITY DEVELOPMENT

5. **Property Information:**
   Total Acreage of Property: 11.38 Total Acreage Included in Request: 11.38
   Total Uplands: 6.11 acres Total Wetlands: 5.27 acres Current Zoning: CC Commercial
   Current Future Land Use Category(ies): DR/Wetlands
   Area in Each Future Land Use Category: DR/GR 6.11 acres, Wetlands 5.27 acres
   Existing Land Use: Vacant

6. **Calculation of maximum allowable development under current Lee Plan:**
   Residential Units/Density: 1 Commercial Intensity: N/A Industrial Intensity: N/A

7. **Calculation of maximum allowable development with proposed amendments:**
   Residential Units/Density: 1 Commercial Intensity: N/A Industrial Intensity: N/A

Public Facilities Impacts

NOTE: The applicant must calculate public facilities impacts based on the maximum development.

1. **Traffic Circulation Analysis**: The analysis is intended to determine the effect of the land use change on the Financially Feasible Highway Plan Map 3A (20-year plus horizon) and on the Capital Improvements Element (5-year horizon). Toward that end, an applicant must submit a Traffic Impact Statement (TIS) consistent with Lee County Administrative Code (AC)13-17.

    a. Proposals affecting less than 10 acres, where development parameters are contained within the Traffic Analysis Zone (TAZ) or zones planned population and employment, or where there is no change in allowable density/ intensity, may be eligible for a TIS requirement waiver as outlined in the Lee County TIS Guidelines and AC-13-17. Identification of allowable density/intensity in order to determine socio-economic data for affected TAZ(s) must be coordinated with Lee County Planning staff. Otherwise a calculation of trip generation is required consistent with AC-13-17 and the Lee County TIS Guidelines to determine required components of analysis for:

        i. Total peak hour trip generation less than 50 total trip ends – trip generation.

        ii. Total peak hour trip generation from 50 to 300 total trip ends – trip generation, trip distribution and trip assignment (manual or Florida Standard Urban Transportation Modeling Structure (FSUTMS) analysis consistent with AC-13-17 and TIS Guidelines), short-term (5 year) and long-range (to current Lee Plan horizon year) segment LOS analysis of the nearest or abutting arterial and major collector segment(s) identified in the Transportation Inventory based on the trip generation and roadway segment LOS analysis criteria in AC-13-17. A methodology meeting is recommended prior to submittal of the application to discuss use of FSUTMS, any changes to analysis requirements, or a combined CPA and Zoning TIS short term analysis.

        iii. Total peak hour trip generation is over 300 total trip ends - trip generation, mode split, trip distribution and trip assignment (manual or FSUTMS analysis consistent with AC-13-17 and TIS Guidelines), short-term (five-year) and long-range (to current Lee Plan horizon year) segment LOS analysis of arterial and collector segments listed in the Transportation Inventory. LOS analysis will include any portion of roadway segments within an area three miles offset from the boundary of the application legal description metes and bounds survey. LOS analysis will also include any additional segments in the study area based on the roadway segment LOS analysis criteria in AC-13-17. A methodology meeting is required prior to submittal of the application.

    b. Map amendment - greater than 10 acres -Allowable density/intensity will be determined by Lee County Planning staff.

2. **Provide an existing and future conditions analysis for the following (see Policy 95.1.3):**
    a. Sanitary Sewer
    b. Potable Water
    c. Surface Water/Drainage Basins
    d. Parks, Recreation, and Open Space
    e. Public Schools

Analysis for each of the above should include (but is not limited to) the following (see the Lee County Concurrency Management Report):

a. Franchise Area, Basin, or District in which the property is located
b. Current LOS, and LOS standard of facilities serving the site
c. Projected 2030 LOS under existing designation
d. Projected 2030 LOS under proposed designation
e. Existing infrastructure, if any, in the immediate area with the potential to serve the subject property
f. Improvements/expansions currently programmed in 5 year CIP, 6-10 year CIP, and long range improvements
g. Provide a letter of service availability from the appropriate utility for sanitary sewer and potable water

In addition to the above analysis, provide the following for potable water:

a. Determine the availability of water supply within the franchise area using the current water use allocation (Consumptive Use Permit) based on the annual average daily withdrawal rate.
b. Include the current demand and the projected demand under the existing designation, and the projected demand under the proposed designation.
c. Include the availability of treatment facilities and transmission lines for reclaimed water for irrigation.
d. Include any other water conservation measures that will be applied to the site (see Goal 54).

3. Provide a letter from the appropriate agency determining the adequacy/provision of existing/proposed support facilities, including:

a. Fire protection with adequate response times
b. Emergency medical service (EMS) provisions
c. Law enforcement
d. Solid Waste
e. Mass Transit
f. Schools

In reference to above, the applicant must supply the responding agency with the information from application items 5, 6, and 7 for their evaluation. This application must include the applicant's correspondence/request to the responding agency.

Environmental Impacts

Provide an overall analysis of the character of the subject property and surrounding properties, and assess the site's suitability for the proposed change based upon the following:

1. A map of the Plant Communities as defined by the Florida Land Use Cover and Classification system (FLUCCS).
2. A map and description of the soils found on the property (identify the source of the information).
3. A topographic map depicting the property boundaries and 100-year flood prone areas indicated (as identified by FEMA).
4. A map delineating the property boundaries on the most recent Flood Insurance Rate Map.
5. A map delineating wetlands, aquifer recharge areas, and rare & unique uplands.
6. A table of plant communities by FLUCCS with the potential to contain species (plant and animal) listed by federal, state or local agencies as endangered, threatened or species of special concern. The table must include the listed species by FLUCCS and the species status (same as FLUCCS map).

Impacts on Historic Resources

List all historic resources (including structure, districts, and/or archaeologically sensitive areas) and provide an analysis of the proposed change's impact on these resources. The following should be included with the analysis:

1. A map of any historic districts and/or sites listed on the Florida Master Site File which are located on the subject property or adjacent properties.
2. A map showing the subject property location on the archaeological sensitivity map for Lee County.

Internal Consistency with the Lee Plan

1. Discuss how the proposal affects established Lee County population projections, Lee Plan Table 1(b) and the total population capacity of the Lee Plan Future Land Use Map.
2. List all goals and objectives of the Lee Plan that are affected by the proposed amendment or that affect the subject property. This analysis should include an evaluation of all relevant policies under each goal and objective.
3. Describe how the proposal affects adjacent local governments and their comprehensive plans.

State Policy Plan and Regional Policy Plan

List State Policy Plan and Regional Policy Plan goals, strategies and actions, and policies which are relevant to this plan amendment.

Justify the proposed amendment based upon sound planning principles

Support all conclusions made in this justification with adequate data and analysis.

Planning Communities/Community Plan Area Requirements

If located within a planning community/community plan area, provide a meeting summary document of the required public informational session [Lee Plan Goal 17].

Sketch and Legal Description

The certified legal description(s) and certified sketch of the description for the property subject to the requested change. A metes and bounds legal description must be submitted specifically describing the entire perimeter boundary of the property with accurate bearings and distances for every line. The sketch must be tied to the state plane coordinate system for the Florida West Zone (North America Datum of 1983/1990 Adjustment) with two coordinates, one coordinate being the point of beginning and the other an opposing corner. If the subject property contains wetlands or the proposed amendment includes more than one land use category a metes and bounds legal description, as described above, must be submitted in addition to the perimeter boundary of the property for each wetland or future land use category.

SUBMITTAL REQUIREMENTS

Clearly label all submittal documents with the exhibit name indicated below.

For each map submitted, the applicant will be required to submit a 24"x36" version and 8.5"x11" reduced map for inclusion in public hearing packets.

MINIMUM SUBMITTAL ITEMS (3 Copies)

☐	Completed Application (Exhibit – M1)
☐	Disclosure of Interest (Exhibit – M2)
☐	Surrounding Property Owners List, Mailing Labels, and Map For All Parcels Within 500 Feet of the Subject Property (Exhibit – M3)
☐	Existing Future Land Use Map (Exhibit – M4)
☐	Map and Description of Existing Land Uses (Not Designations) of the Subject Property and Surrounding Properties (Exhibit – M5)
☐	Map and Description of Existing Zoning of the Subject Property and Surrounding Properties (Exhibit – M6)
☐	Signed/Sealed Legal Description and Sketch of the Description for Each FLUC Proposed (Exhibit – M7)
☐	Copy of the Deed(s) of the Subject Property (Exhibit – M8)
☐	Aerial Map Showing the Subject Property and Surrounding Properties (Exhibit – M9)
☐	Authorization Letter From the Property Owner(s) Authorizing the Applicant to Represent the Owner (Exhibit – M10)
☐	Proposed Amendments (Exhibit – M11)
☐	Lee Plan Analysis (Exhibit – M12)
☐	Environmental Impacts Analysis (Exhibit – M13)
☐	Historic Resources Impact Analysis (Exhibit – M14)
☐	Public Facilities Impacts Analysis (Exhibit – M15)
☐	Traffic Circulation Analysis (Exhibit – M16)
☐	Existing and Future Conditions Analysis - Sanitary Sewer, Potable Water, Surface Water/Drainage Basins, Parks and Rec, Open Space, Public Schools (Exhibit – M17)
☐	Letter of Determination For the Adequacy/Provision of Existing/Proposed Support Facilities - Fire Protection, Emergency Medical Service, Law Enforcement, Solid Waste, Mass Transit, Schools (Exhibit – M18)
☐	State Policy Plan and Regional Policy Plan (Exhibit – M19)
☐	Justification of Proposed Amendment (Exhibit – M20)
☐	Planning Communities/Community Plan Area Requirements (Exhibit – M21)

APPLICANT – PLEASE NOTE:

Changes to Table 1(b) that relate directly to and are adopted simultaneously with a future land use map amendment may be considered as part of this application for a map amendment.

Once staff has determined the application is sufficient for review, 15 complete copies will be required to be submitted to staff. These copies will be used for Local Planning Agency hearings, Board of County Commissioners hearings, and State Reviewing Agencies. Staff will notify the applicant prior to each hearing or mail out to obtain the required copies.

If you have any questions regarding this application, please contact the Planning Section at (239) 533-8585.

AFFIDAVIT

I, Jon Small, certify that I am the owner or authorized representative of the property described herein, and that all answers to the questions in this application and any sketches, data, or other supplementary matter attached to and made a part of this application, are honest and true to the best of my knowledge and belief. I also authorize the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made through this application.

Signature of Applicant

10/17/23
Date

Jon Small
Printed Name of Applicant

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization on 17 (date) by Jon Small (name of person providing oath or affirmation), who is personally known to me or who has produced personally known (type of identification) as identification.

Signature of Notary Public

JESSENIA HERNANDEZ
MY COMMISSION # HH 305150
EXPIRES: December 25, 2026
Typed, printed or stamped

DISCLOSURE OF INTEREST
AFFIDAVIT

BEFORE ME this day appeared J SM, who, being first duly sworn and deposed says:

1. That I am the record owner, or a legal representative of the record owner, of the property that is located at 15230 CORKSCREW RD. and is the subject of an Application for zoning action (hereinafter the "Property").

2. That I am familiar with the legal ownership of the Property and have full knowledge of the names of all individuals that have an ownership interest in the Property or a legal entity owning an interest in the Property.

[OPTIONAL PROVISION IF APPLICANT IS CONTRACT PURCHASER: In addition, I am familiar with the individuals that have an ownership interest in the legal entity that is under contract to purchase the Property.]

3. That, unless otherwise specified in paragraph 6 below, no Lee County Employee, County Commissioner, or Hearing Examiner has an Ownership Interest in the Property or any legal entity (Corporation, Company, Partnership, Limited Partnership, Trust, etc.) that has an Ownership Interest in the Property or that has contracted to purchase the Property.

4. That the disclosure identified herein does not include any beneficial Ownership Interest that a Lee County Employee, County Commissioner, or Hearing Examiner may have in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, whose interest is for sale to the general public.

5. That, if the Ownership Interest in the Property changes and results in this affidavit no longer being accurate, the undersigned will file a supplemental Affidavit that identifies the name of any Lee County Employee, County Commissioner, or Hearing Examiner that subsequently acquires an interest in the Property.

6. Disclosure of Interest held by a Lee County Employee, County Commissioner, or Hearing Examiner.

Name and Address	Percentage of Ownership

Under penalty of perjury, I declare that I have read the foregoing and the facts alleged are true to the best of my knowledge and belief.

Property Owner

JON SMALL
Print Name

************NOTE: NOTARY PUBLIC IS NOT REQUIRED FOR ADMINISTRATIVE APPROVALS************
ALL OTHER APPLICATION TYPES MUST BE NOTARIZED

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of [X] physical presence or [ ] online notarization, on 9.15.2023 (date) by JON SMALL (name of person providing oath or affirmation), who is personally known to me or who has produced personally known (type of identification) as identification.

STAMP/SEAL

JENNIFFER WALLACE
MY COMMISSION # HH 228180
EXPIRES: May 31, 2026

Signature of Notary Public

STRAP	Folio	Owner Name	Site Address	Last Trans. Date	Last Trans. Amt	Just Value	Taxable Value
21-46-26-00-00001.0000	10351653	ALICO ROAD LLC	14751 CORKSCREW RD, ESTERO	12-2021	$ 10	$ 2,246,760	$ 2,246,760
22-46-26-00-00001.0000	10351662	ALICO ROAD LLC	16700 ALICO RD, FORT MYERS	12-2021	$ 10	$ 932,400	$ 932,400
22-46-26-00-00001.0010	10351663	SMALL BROTHERS LLC	15230 CORKSCREW RD, ESTERO	6-2007	$ 575,000	$ 168,500	$ 104,390
22-46-26-00-00001.0020	10351664	LEE COUNTY	16101 ALICO RD, FORT MYERS	8-1981	$ 100	$ 32,007,816	$ 0

ALICO ROAD LLC
5465 PINE RIDGE RD
)RT MYERS, FL 33908

ALICO ROAD LLC
5465 PINE RIDGE RD
)RT MYERS, FL 33908

[ALL BROTHERS LLC
8620 TYLER BLVD
MENTOR, OH 44060

LEE COUNTY
PO BOX 398
)RT MYERS, FL 33902

LEE COUNTY
PO BOX 398
)RT MYERS, FL 33902

:EW SHORES MASTER ASSN
)RKSCREW WOODS PKWY
ESTERO, FL 33928

DACOSTA JUNE
)17 SHADYWOOD CT
ESTERO, FL 33928

ANNING MICHAEL P
)34 SHADYWOOD CT
ESTERO, FL 33928

:NDERSON JACK V &
)30 SHADYWOOD CT
ESTERO, FL 33928

HAUSER JON C TR
945 FOXKIRK DR
.OOKFIELD, WI 53045

)UMANS LAURA L &
)22 SHADYWOOD CT
ESTERO, FL 33928

'ER RICHARD & QUEILA
)18 SHADYWOOD CT
ESTERO, FL 33928

[GROSS MATTHEW JOHN &
)14 SHADYWOOD CT
ESTERO, FL 33928

:EW SHORES MASTER ASSN
)RKSCREW WOODS PKWY
ESTERO, FL 33928

:EW SHORES MASTER ASSN
)RKSCREW WOODS PKWY
ESTERO, FL 33928

A THIERRY JACQUES &
4056 FENWOOD CT
ESTERO, FL 33928

TZ DUANE & LUANNE
4036 FENWOOD CT
ESTERO, FL 33928

ıformation Unavailable

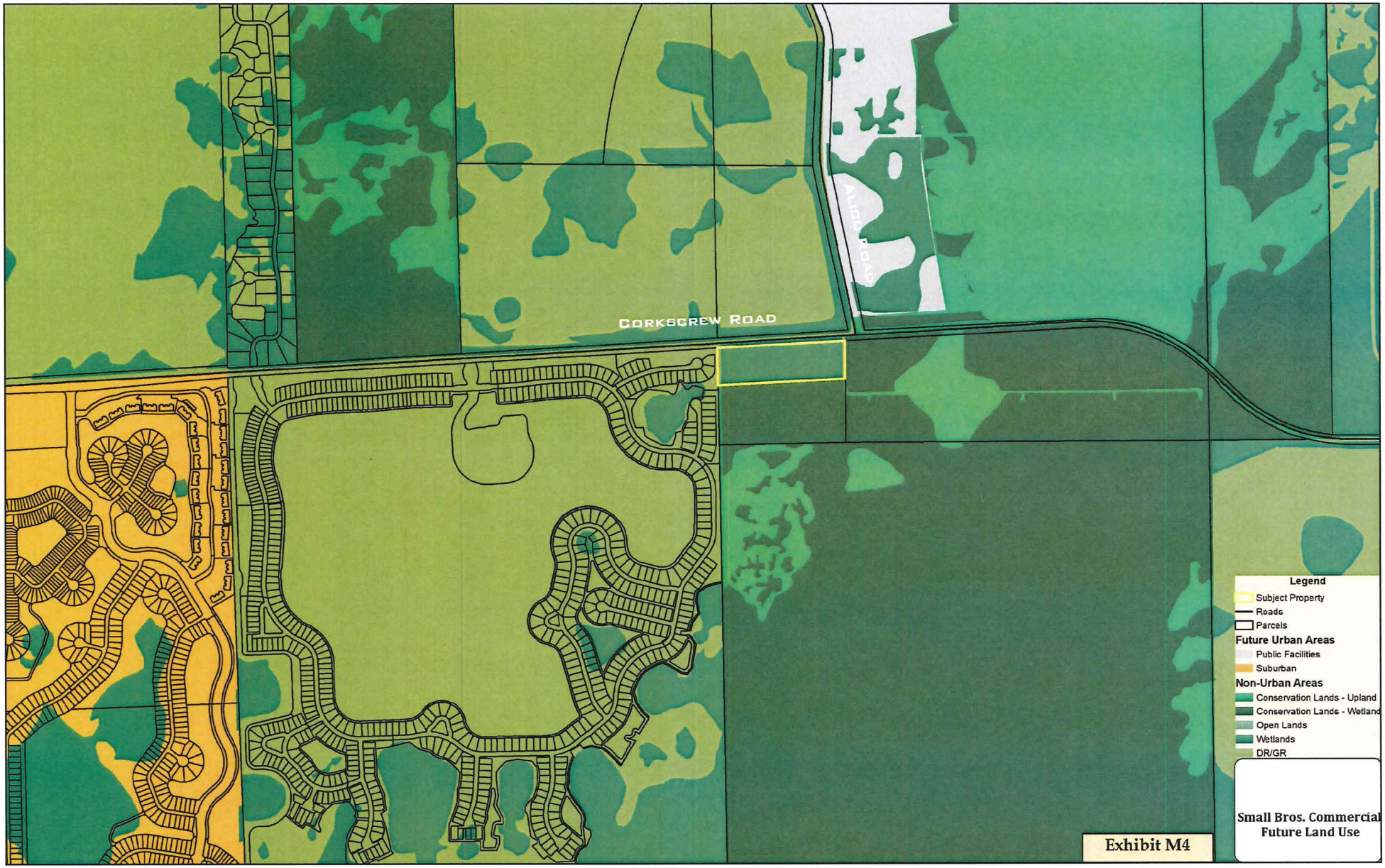
ΗOLAKIA RAHILA &
4052 FENWOOD CT
ESTERO, FL 33928

S BECKY K & BRADLEY F
4040 FENWOOD CT
ESTERO, FL 33928

IDOLLAR ROBERT W &
4048 FENWOOD CT
ESTERO, FL 33928

ER SCOTT M & NANCY L
4044 FENWOOD CT
ESTERO, FL 33928

EW SHORES MASTER ASSN
ORKSCREW WOODS PKWY
ESTERO, FL 33928

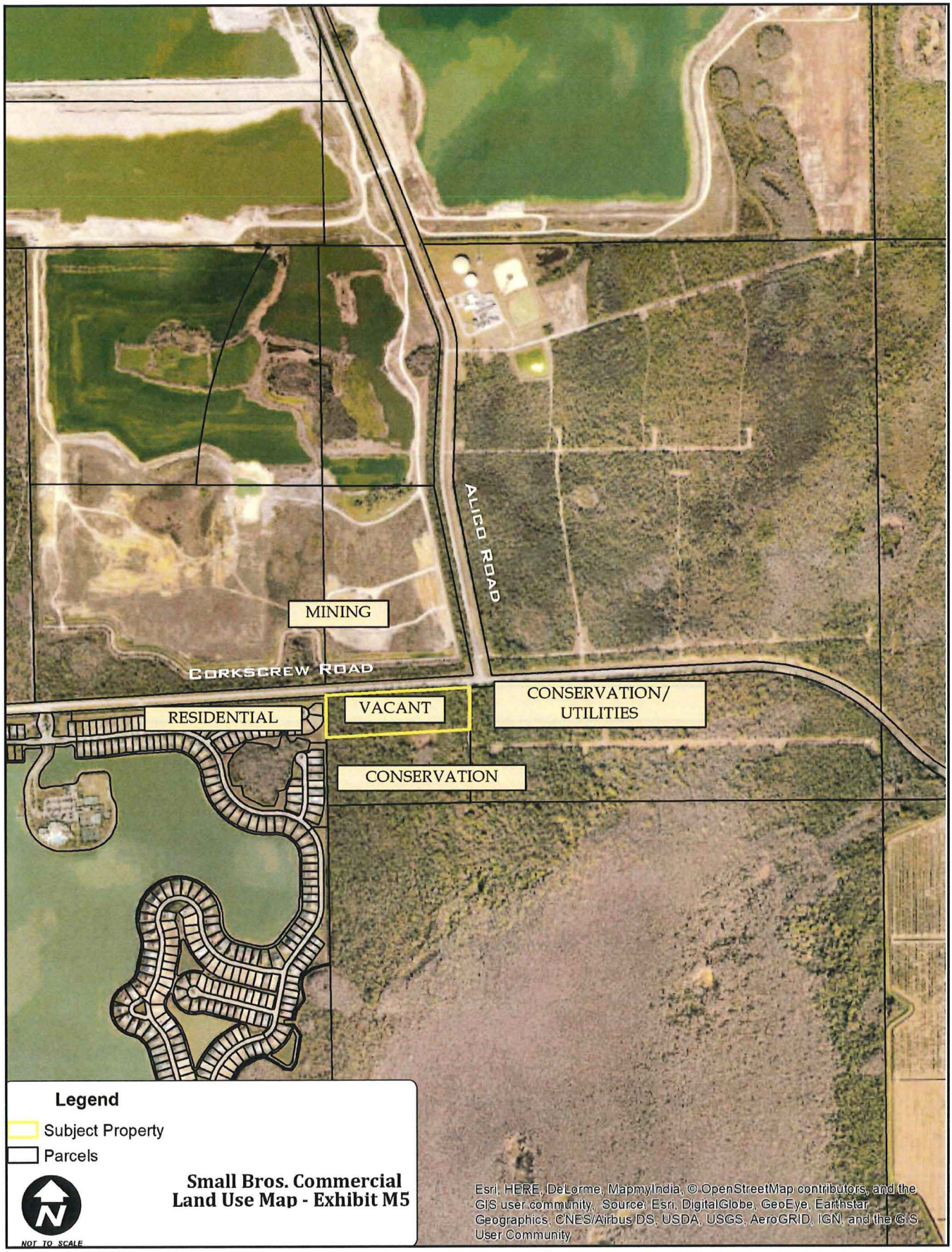


AGNOLI BARBER & BRUNDAGE, INC.
Professional Engineers, Planners, Surveyors & Landscape Architects

Corkscrew
Future Land Use Map

Exhibit: M4

ABB PN: 22-0024



AGNOLI BARBER & BRUNDAGE, INC.
Professional Engineers, Planners, Surveyors & Landscape Architects

Corkscrew
Existing Land Use Map

Exhibit: M5

ABB PN: 22-0024

AGNOLI BARBER & BRUNDAGE, INC.
Professional Engineers, Planners, Surveyors & Landscape Architects
Certificate of Authorization Numbers: EB 3664 • LB 3664 • LC26000620

7400 Trail Blvd., Suite 200
Naples, FL 34108
PH: (239) 597-3111
www.ABBINC.com

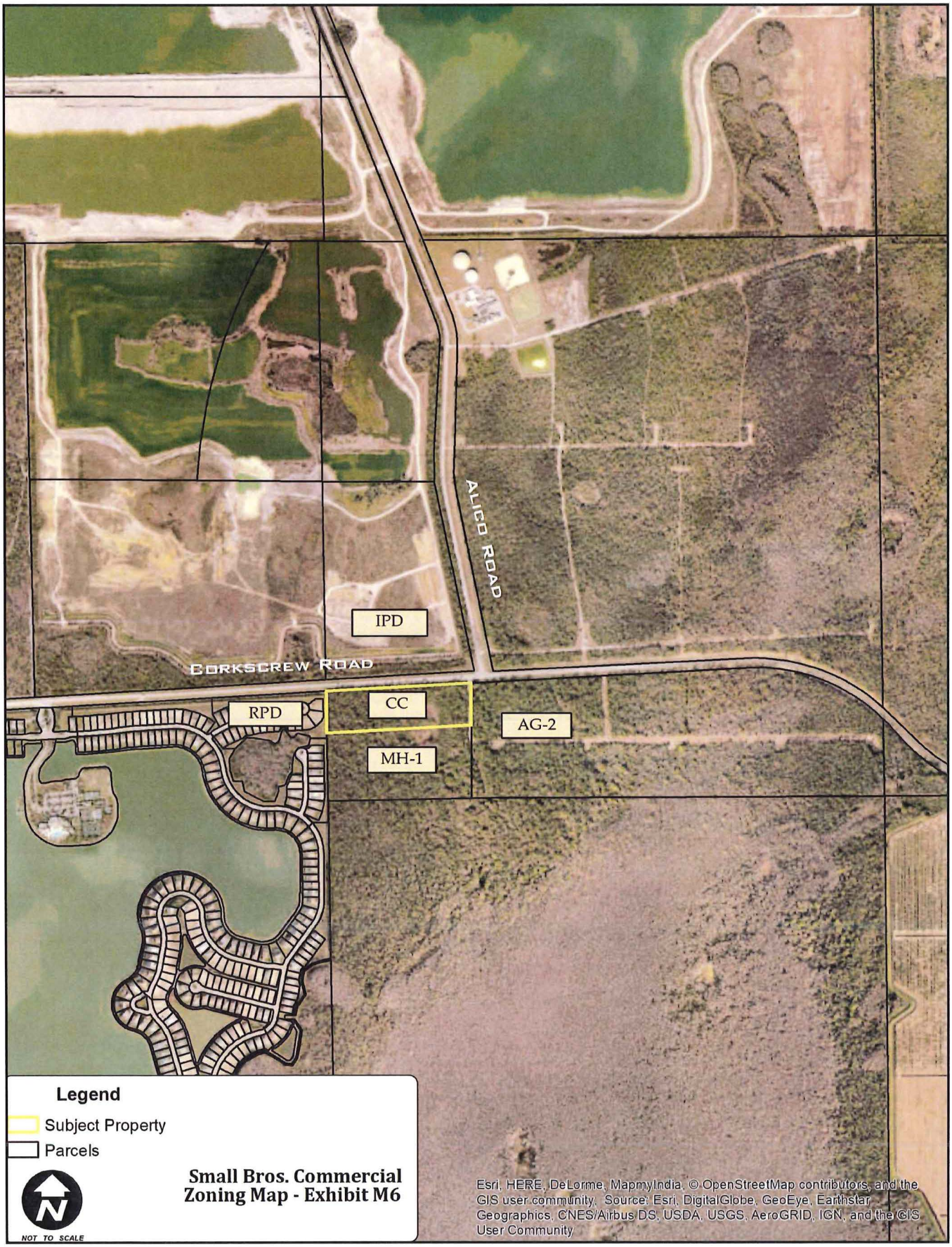
Exhibit M6

Map and Description of Existing Zoning of the Subject Property and Surrounding Properties

Small Brothers, LLC

Corkscrew Commercial

The attached aerial shows the location of the subject property and the surrounding uses. The property directly to the west is the Corkscrew Shores community, which consists of 800 residential units. Adjacent to the property to the north is the Southwest Florida Rock IPD, an active mining operation. To the south and east of the subject property vacant land owned and managed by the Lee County and are zoned A-2 and MH-1.

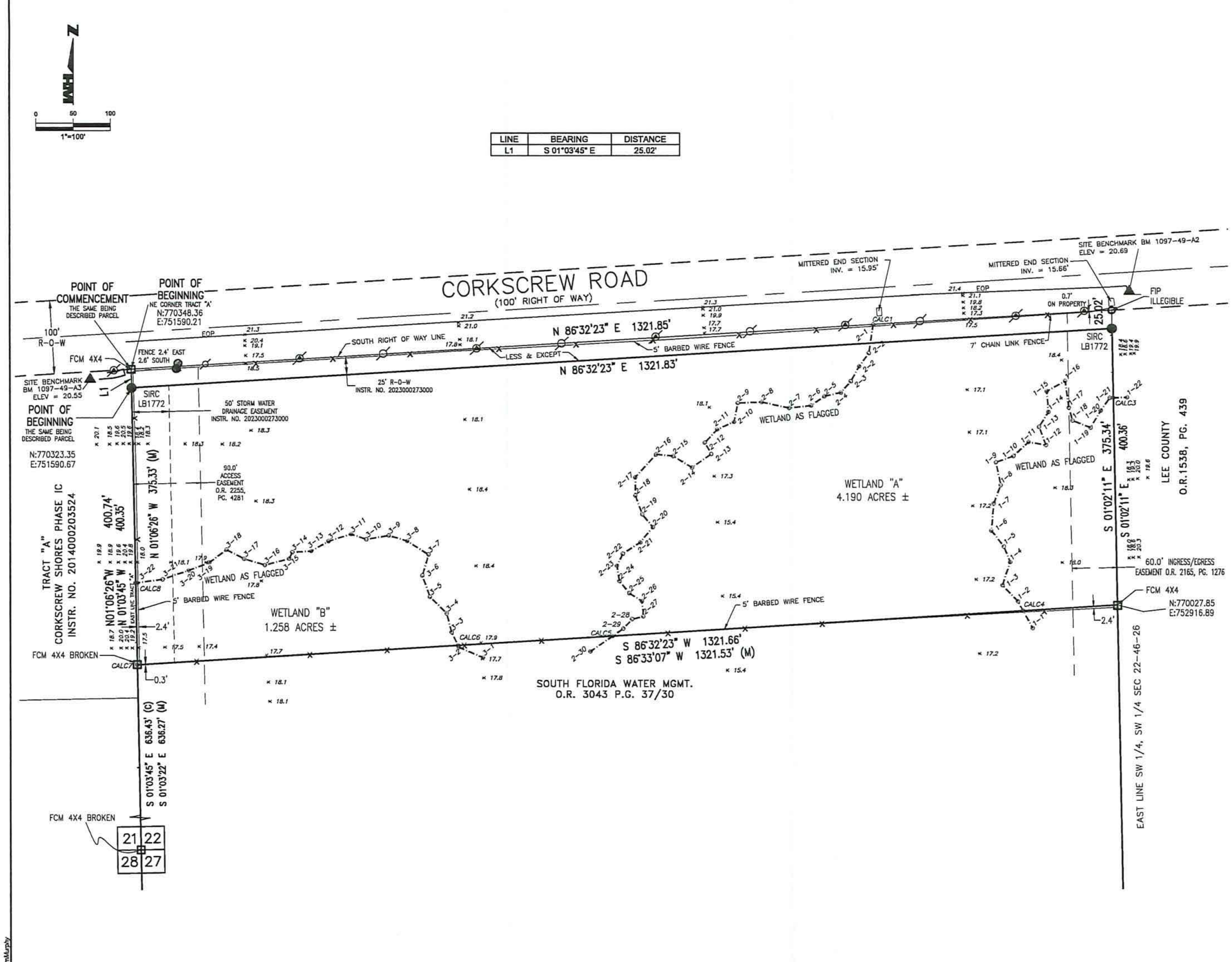


AGNOLI BARBER & BRUNDAGE, INC.
Professional Engineers, Planners, Surveyors & Landscape Architects

Corkscrew
Existing Zoning Map

Exhibit: M6

ABB PN: 22-0024



LINE	BEARING	DISTANCE
L1	S 01°03'45" E	25.02'

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22 TOWNSHIP 26 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF TRACT "A", CORKSCREW SHORES PHASE IC, ACCORDING TO THE PLAT THEREOF AS RECORDED AS INSTRUMENT NUMBER 2014000203524 OF THE PUBLIC RECORDS OF LEE COUNTY FLORIDA, THE SAME BEING A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF CORKSCREW ROAD, A 100 FOOT WIDE PUBLIC RIGHT-OF-WAY, THENCE RUN N86°32'23"E ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID CORKSCREW ROAD, FOR A DISTANCE OF 1321.85 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 46 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, THE SAME BEING A POINT ON THE WEST LINE OF THOSE LANDS DESCRIBED IN O.R. BOOK 1538, PG. 439 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN S01°02'11"E ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 22 AND THE EAST LINE OF THOSE LANDS DESCRIBED IN O.R. BOOK 1538, PG. 439, FOR A DISTANCE OF 400.36 FEET TO A POINT LYING 400 FEET SOUTH OF AS MEASURED AT RIGHT ANGLES TO THE SOUTH RIGHT-OF-WAY LINE OF SAID CORKSCREW ROAD; THENCE RUN S86°32'23"W PARALLEL WITH AND 400 FEET SOUTH OF SAID SOUTH RIGHT-OF-WAY OF CORKSCREW ROAD, FOR A DISTANCE OF 1321.66 FEET TO A POINT ON THE EAST LINE OF SAID TRACT "A"; THENCE RUN N01°03'45"W ALONG THE EAST LINE OF SAID TRACT "A" FOR A DISTANCE OF 400.35 FEET, TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE NORTH 25' OF THE PARCEL DESCRIBED.

SAME AS BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF TRACT "A", CORKSCREW SHORES PHASE IC, ACCORDING TO THE PLAT THEREOF AS RECORDED AS INSTRUMENT NUMBER 2014000203524 OF THE PUBLIC RECORDS OF LEE COUNTY FLORIDA, THE SAME BEING A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF CORKSCREW ROAD, A 100 FOOT WIDE PUBLIC RIGHT-OF-WAY, THENCE RUN S01°03'45"E FOR A DISTANCE OF 25.02 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE RUN N86°32'23"E FOR A DISTANCE OF 1321.83 FEET; THENCE RUN S01°02'11"E FOR A DISTANCE OF 375.34 FEET; THENCE RUN S86°32'23"W FOR A DISTANCE OF 1321.66 FEET; THENCE RUN N01°03'45"W FOR A DISTANCE OF 375.33 FEET, TO THE POINT OF BEGINNING.

NOTES:

PROPERTY AREA: 11.4 ACRES, MORE OR LESS.

THIS PROPERTY WAS VACANT AT THE TIME OF SURVEY.

JURISDICTIONAL WETLAND FLAGGING BY W. DEX BENDER & ASSSOCIATES, INC. WERE LOCATED ON 2/22/19 AS SHOWN HEREON.

BEARINGS SHOWN HEREON REFER TO THE EAST LINE OF TRACT "A", CORKSCREW SHORES PHASE IC, ACCORDING TO THE PLAT THEREOF AS RECORDED AS INSTRUMENT NUMBER 2014000203524 OF THE PUBLIC RECORDS OF LEE COUNTY FLORIDA AS BEING N 01°03'45" W.

STATE PLANE COORDINATES SHOWN HEREON REFER TO FLORIDA STATE PLANE WEST ZONE N.A.D. 83, 1999 ADJUSTMENT.

ABSTRACT OF TITLE HAS NOT BEEN REVIEWED BY SURVEYOR.

ELEVATIONS REFER TO THE NORTH AMERICAN VERTICAL DATUM OF 1988.

SITE BENCHMARKS:

- BM 1097-49-A2, SET MAGNETIC NAIL AND DISC, LB 1772 IN DRIVEWAY OUTSIDE OF NORTHEAST OF PROPERTY, EL = 20.69
- BM 1097-49-A3, SET MAGNETIC NAIL AND DISC, LB 1772 IN SIDEWALK OUTSIDE OF NORTHWEST PROPERTY CORNER, EL = 20.55

THIS PROPERTY WAS SURVEYED UNDER MY DIRECTION ON 1/30/2024

THIS SURVEY IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

CERTIFIED TO: SMALL BROTHERS, LLC

HOLE MONTES, INC.
CERTIFICATE OF AUTHORIZATION NUMBER LB 1772

BY ______________________ LS5628
THOMAS M. MURPHY STATE OF FLORIDA

THOMAS M. MURPHY License Number 5628 STATE OF FLORIDA Professional Surveyor and Mapper

SEE SHEET 2 FOR POINT COORDINATE LIST

LEGEND

These standard symbols will be found in the drawing.

- SET IRON ROD & CAP LB1772
- SET NAIL & DISK LB1772
- FOUND CONCRETE MONUMENT
- FOUND IRON PIN
- CONCRETE POLE
- WOOD POLE
- WATER SAMPLE POINT
- SPOT ELEVATION (FEET)

(C) = CALCULATED
CONC. = CONCRETE
FCM = FOUND CONRETE MONUMENT
FIP = FOUND IRON PIN UNLESS OTHERWISE STATED
SIPC = SET IRON PIN & CAP LB1772
" = INCH
(M) = MEASURED
(P) = PLAT
DE = DRAINGE EASEMENT
UE = UTILITY EASEMENT
EOP= EDGE OF PAVEMENT
PNS= PIN NOT SET

LETTER	REVISIONS	DATE	REV BY
D	UPDATE SURVEY	2/28/24	JNH
C	UPDATE SURVEY	1/25/24	JNH
B	UPDATE SURVEY	10/22	BEN
A	ADDED ACCESS EASEMENTS	9/22	BEN

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

PARTY CHIEF: PS - 1186/51 | DATE: 1/30/2024
DRAWN BY: BEN/AMR/JNH | DATE: 2/28/2024
SHEET 1 OF SHEET 2
SEC-TWN-RGE 22-46-26

HOLEMONTES a Bowman company

6200 Whiskey Creek Dr.
Ft. Myers, FL. 33919
Phone: (239) 985-1200
Florida Certificate of Authorization No.1772

SMALL BROS.
CORKSCREW ROAD
BOUNDARY SURVEY

DRAWING NO. H-825-5
PROJECT NO. 340730
REFERENCE NO. 340730 BNDY R1.dwg

Charlie Green, Lee County Clerk of Circuit Court, Deed Doc. D $4025.00 Rec. Fee $10.00 Deputy Clerk WMILLER

EXHIBIT NO

Return to: 11608-07-00796
North American Title Company
7051 Cypress Terrace, Suite 201
Ft. Myers, Florida 33907

This Instrument Prepared By:

North American Title Company
7051 Cypress Terrace, Suite 201
Ft. Myers, Florida 33907
Property Appraisers Parcel Identification (Folio) Number: 22-46-26-00-00001.0010

WARRANTY DEED

This Warranty Deed made this 27th day of June, 2007 by ESTERO BAY BAPTIST CHURCH INC hereinafter called the grantor(s), to Small Brothers, LLC, whose post office address is c/o Cleveland Construction Inc, 8620 Tyler Blvd., Mentor, Ohio, 44060, hereinafter called the grantee:

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That the grantor(s), for and in consideration of the sum of $10.00 (ten) and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee all that certain land situate in Lee County, State of Florida, viz:

The Northerly 400 feet of that part of the Southwest 1/4 of the Southwest 1/4 of Section 22, Township 46 South, Range 26 East, lying South of Corkscrew Road, Lee County, Florida.

SUBJECT TO: covenants, conditions, restrictions, reservations, limitations, easements and agreements of record, if any; taxes and assessments for the year 2006 and subsequent years; and to all applicable zoning ordinances and/or restrictions and prohibitions imposed by governmental authorities, if any.

TOGETHER, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

First Witness Signature

Adam Palmer
Witness Printed Signature

Marie Schaible
Second Witness Signature

Marie Schaible
Witness Printed Signature

Third Witness Signature

Witness Printed Signature

Kathleen A. O'Hearn
Fourth Witness Signature

KATHLEEN A. O'HEARN
Witness Printed Signature

Signature

ESTERO BAY BAPTIST CHURCH INC
Printed Signature

PO Box 947
Street Address

Estero, Fl 33928
City, State and Zip Code

Signature

Printed Signature

Street Address

City, State and Zip Code

STATE OF: Florida
COUNTY OF: Lee

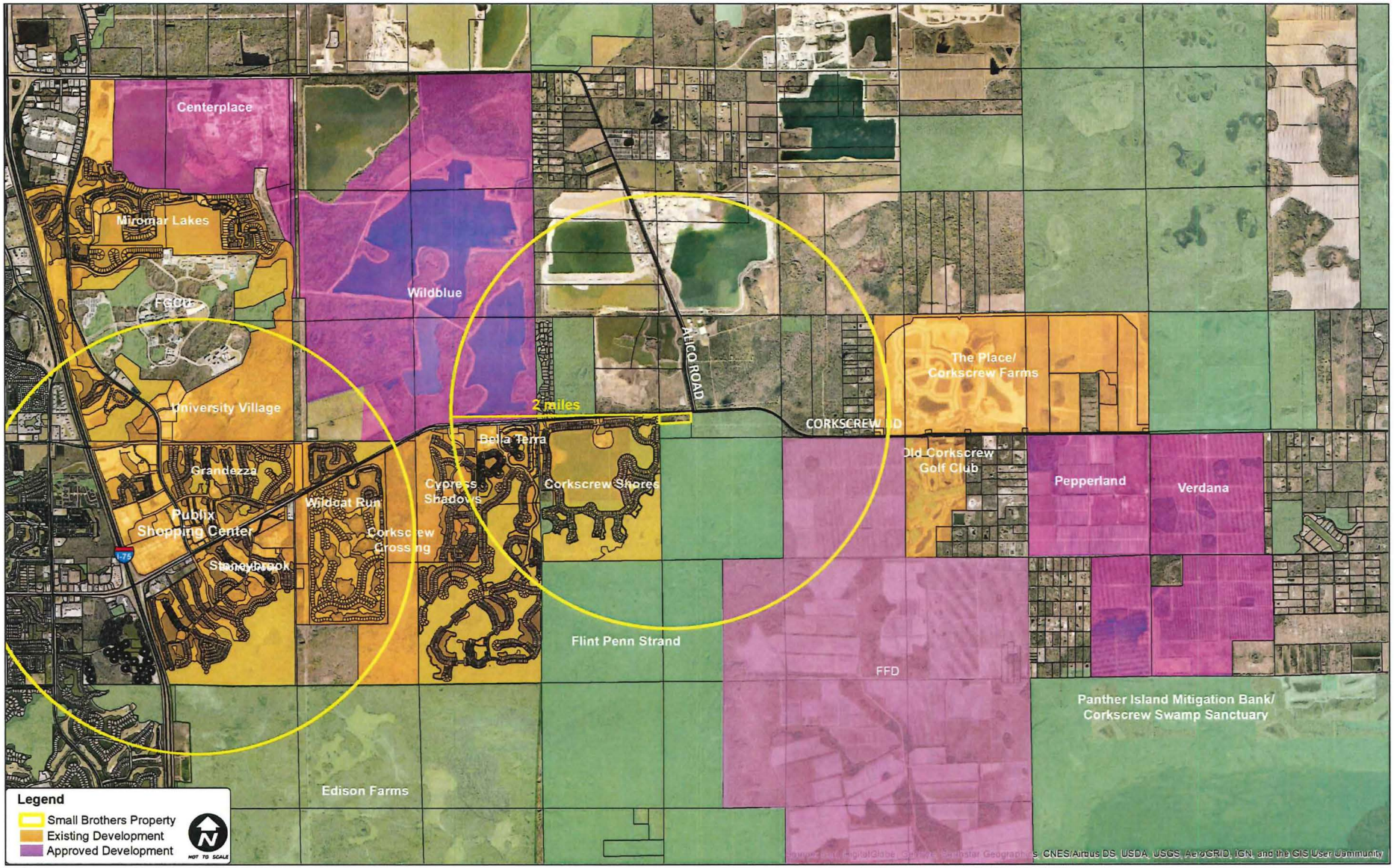
The foregoing instrument was acknowledged before me this 27th day of June, 2007 by ESTERO BAY BAPTIST CHURCH INC hereinafter called the grantor(s), who produced a Dr. Lic as identification.

My Commission Expires:

KATHLEEN A. O'HEARN
MY COMMISSION # DD 516139
EXPIRES: June 19, 2008
Bonded Thru Budget Notary Services

Kathleen A. O'Hearn
Notary Signature Notary Public, State and County Aforesaid

Printed Notary Signature



AGNOLI BARBER & BRUNDAGE, INC.

Corkscrew
Regional Aerial Map

Exhibit: M9

ABB PN: 22-0024

AGNOLI BARBER & BRUNDAGE, INC.
Professional Engineers, Planners, Surveyors & Landscape Architects
Certificate of Authorization Numbers: EB 3664 • LB 3664 • LC26000620

7400 Trail Blvd., Suite 200
Naples, FL 34108
PH: (239) 597-3111
www.ABBINC.com

Exhibit M10

Affidavit of Authorization

Small Brothers, LLC

Corkscrew Commercial

AFFIDAVIT OF AUTHORIZATION

APPLICATION IS SIGNED BY INDIVIDUAL OWNER, APPLICANT, CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, JON SMALL (name), as OWNER (owner/title) of SMALL BROTHERS (company/property), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the County in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Notes:

- *If the applicant is a corporation, then it is usually executed by the corp. pres. or v. pres.*
- *If the applicant is a Limited Liability Company (L.L.C.) or Limited Company (L.C.)., then the documents should typically be signed by the Company's "Managing Member."*
- *If the applicant is a partnership, then typically a partner can sign on behalf of the partnership.*
- *If the applicant is a limited partnership, then the general partner must sign and be identified as the "general partner" of the named partnership.*
- *If the applicant is a trustee, then they must include their title of "trustee."*
- *In each instance, first determine the applicant's status, e.g., individual, corporate, trust, partnership, estate, etc., and then use the appropriate format for that ownership.*

Under penalties of perjury, I declare that I have read the foregoing Affidavit of Authorization and that the facts stated in it are true.

J SM
Signature

9-15-22
Date

**************NOTE: NOTARY PUBLIC IS NOT REQUIRED FOR ADMINISTRATIVE APPROVALS**************
ALL OTHER APPLICATION TYPES MUST BE NOTARIZED

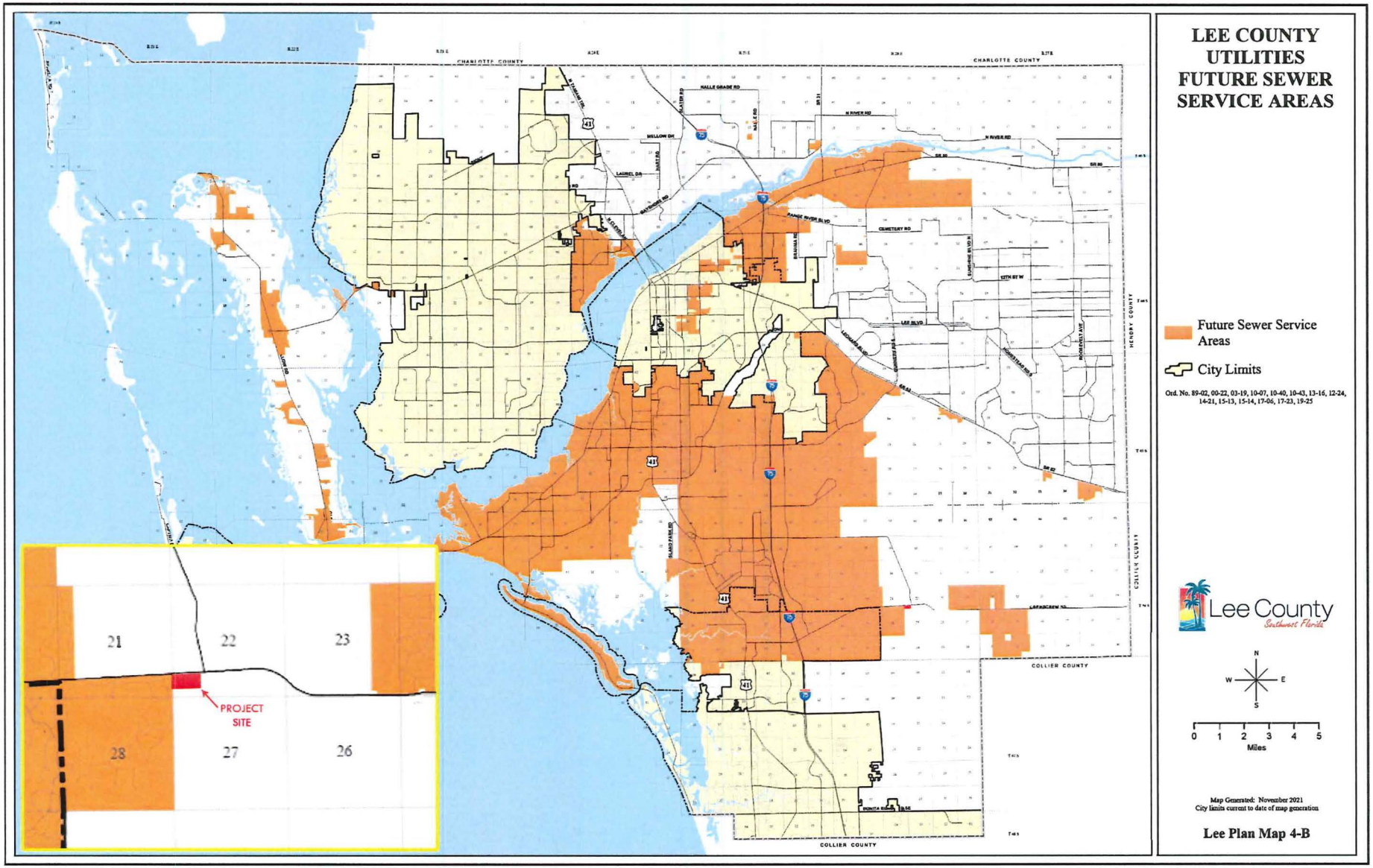
STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 15 day of September, 20 22, by Jon Small (name of person providing oath or affirmation), who is personally known to me or who has produced Personally Known (type of identification) as identification.

STAMP/SEAL

JENNIFFER WALLACE
MY COMMISSION # HH 228180
EXPIRES: May 31, 2026

Signature of Notary Public



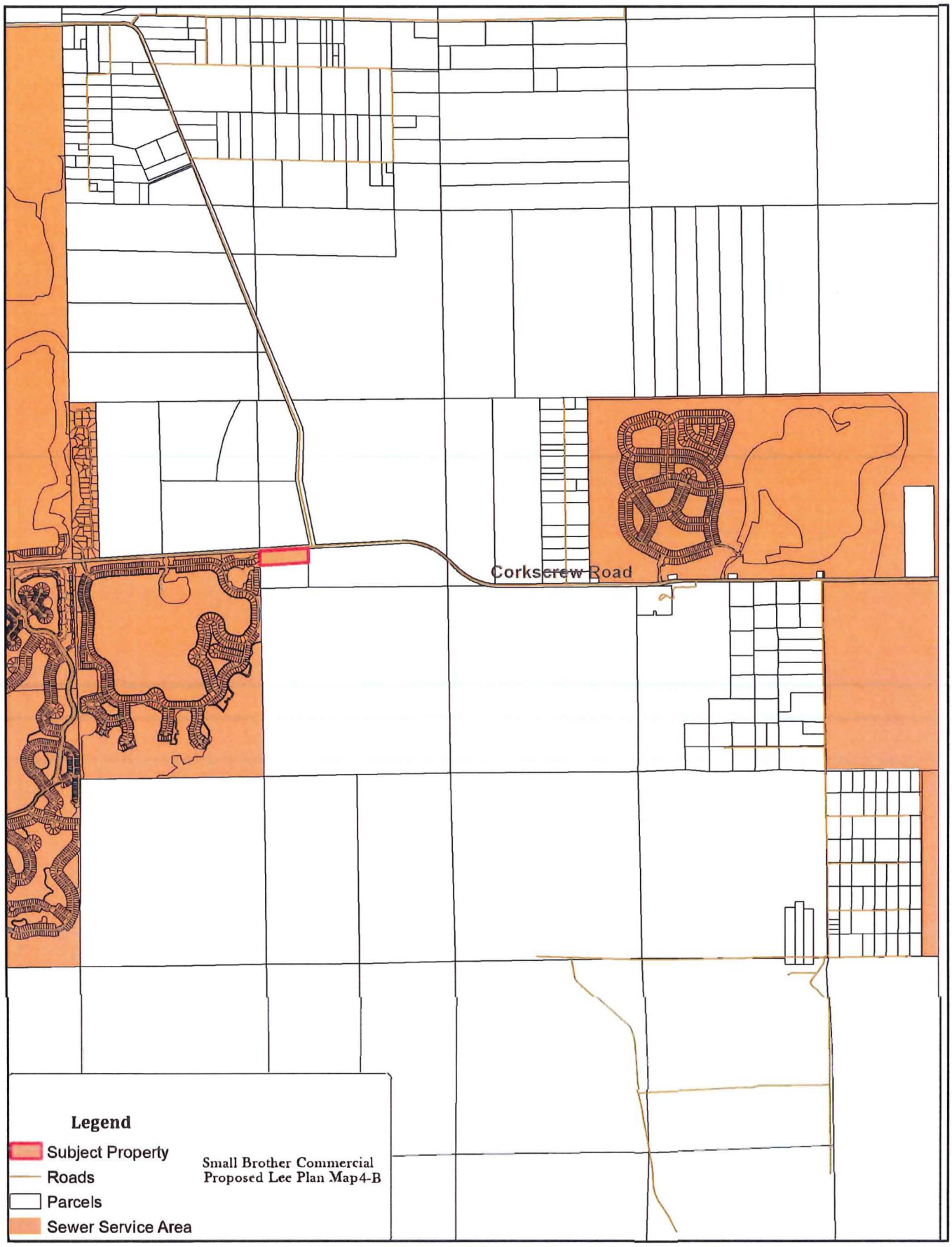
AGNOLI BARBER & BRUNDAGE, INC.

Corkscrew

Existing Lee County Utilities Future Sewer Service Areas Map

Exhibit: M11

ABB PN: 22-0024



AGNOLI BARBER & BRUNDAGE, INC.
Professional Engineers, Planners, Surveyors & Landscape Architects

Corkscrew
Proposed Sewer Service Area

Exhibit: M11

ABB PN: 22-0024

LEE PLAN ANALYSIS

Background

The subject property is located along Corkscrew Road directly east of Corkscrew Shores and west of Flint Penn Strand. The Future Utility service area extends to the property contiguous to the west and multiple properties to the east. Both water and sewer lines extend past the subject property with capacity to serve future development. The property is in the Density Reduction/Groundwater Resource land use category in the Southeast Lee County Planning Community.

Although the subject property is within the DR/GR land use category, it is zoned Community Commercial by specific Board action and has carried that designation since 1982. ZAB-82-337 was approved by the Board of County Commissioners designating the subject property as CC (Community Commercial) and MH-1 (Mobile Home). The MH-1 property to the south is currently owned by Lee County. A site plan was incorporated into the zoning resolution by reference showing residential lots to the south of the commercial development along Corkscrew Road, even though it is a standard zoning district.

In 1989 Lee County amended the future land use category on the subject property from Rural to Density Reduction/Groundwater Resources. The land use category was changed as part of a settlement with the State Department of Community Affairs to reduce overall residential Density on the Future Land Use map through the year 2010, the horizon year of the Lee Plan at that time. The County did not undertake any analysis to determine the impact of the change on commercially zoned or previously platted property. After over two decades, the County started moving forward with increased residential development in the DR/GR with the approval of Corkscrew Shores, and utility lines have now been extended to and past this property to serve development to both the west and east.

Compliance with the Lee Plan

The proposed map amendment is being submitted to add the subject property to Map 4B for future sewer service areas is consistent with Lee Plan **Standards in Policy 4.1.2**. Map A, Future Water Service Area Map was previously amended to include the subject property. The existing Future Water and Sewer Service Area Maps have been amended on a piecemeal basis through privately initiated Lee Plan amendments that have extended the future water and sewer service areas past this property to the east. The subject property represents a gap in the service area with sewer service immediately contiguous to the property to the west, and service provided to properties in close proximity to the east. Existing potable water and sewer lines run along Corkscrew Road in front of the property.

LEE PLAN CONSISTENCY

The proposed Map Amendment will allow for sewer service for the subject property located at the intersection of Corkscrew Road and Alico Road. An analysis of how the proposed map amendment is consistent with the applicable Lee Plan policies follows:

POLICY 1.4.5: The Density Reduction /Groundwater Resource (DR/GR) land use category includes upland areas that provide substantial recharge to aquifers most suitable for future wellfield development. These areas also are the most favorable locations for physical withdrawal of water from those aquifers. Only minimal public facilities exist or are programmed.

1. New land uses in these areas that require rezoning or a development order must demonstrate compatibility with maintaining surface and groundwater levels at their historic levels utilizing hydrologic modeling, the incorporation of increased storage capacity, and inclusion of green infrastructure. The modeling must also show that no adverse impacts will result to properties located upstream, downstream, as well as adjacent to the site. Offsite mitigation may be utilized, and may be required, to demonstrate this compatibility. Evidence as to historic levels must be submitted as part of the rezoning application and updated, if necessary, as part of the mining development order application.

2. Permitted land uses include agriculture, natural resource extraction and related facilities, conservation uses, public and private recreation facilities, and residential uses at a maximum standard density of one dwelling unit per ten acres (1 du/10 acres). See Objectives 33.2 and 33.3 for potential density adjustments resulting from concentration or transfer of development rights.

Adding this property to the 4B Wastewater Map instead of utilizing septic tanks or onsite Package Plant will ensure that any development on this property will not impact the aquifers. This request is not based on a zoning or development order. A detailed assessment will be provided at the appropriate time.

OJECTIVE 2.1: DEVELOPMENT LOCATION. Contiguous and compact growth patterns will be promoted through the rezoning process to contain urban sprawl, minimize energy costs, conserve land, water, and natural resources, minimize the cost of services, prevent development patterns where large tracts of land are by-passed in favor of development more distant from services and existing communities.

This proposed amendment is in a location where Map 4B has previously been amended to accommodate large-scale mixed use and residential development that has been approved or exists directly to the west and in close proximity to the north and east. As previously stated the wastewater lines are already in place along the frontage of the property. Any future development that would occur would be required to hook up to the service. The proposed map amendment would be consistent with the contiguous and compact growth pattern occurring along Corkscrew Road.

POLICY 2.1.1.: Most residential, commercial, industrial, and public development is expected to occur within the designated Future Urban Areas on the Future Land Use Map through the assignment of very low densities to the non-urban categories.

The subject property is located in an area that is evolving as it is developed under an overlay designation that allows for increased densities and intensities based on strict criteria. For example, the residential development immediately to the west, consisting of small lot residential units around a large lake, extended urban infrastructure and is designated on Maps 4A and 4B for water and sewer service. Other similar developments to the north and east all have extended

urban services to the area, including the utilities, EMS services and road infrastructure. That said, urban services are already available or will be available to the subject property through the associated map amendment.

POLICY 2.3.1: All proposed changes to the Future Land Use Map in critical areas for future potable water supply (Lehigh Acres as described in Policy 54.1.9 and all land in the DR/GR land use category) will be subject to a special review by the staff of Lee County. This review will analyze the proposed land uses to determine the short-term and long-term availability of irrigation and domestic water sources and will assess whether the proposed land uses would cause any significant impact on present or future water resources. If the Board of County Commissioners wishes to approve any such changes to the Future Land Use Map, it must make a formal finding that no significant impacts on present or future water resources will result from the change.

The requested amendment is to Map 4B to incorporate the subject property into the Lee County Utilities Sanitary Sewer Service area. The letter of availability provided by Lee County Utilities Department states that sanitary sewer service and will be provided by Three Oak's Water Reclamation facility and potable water will be provided by Lee County Utilities. Policy 2.3.1 applies to potable water supply which is not the subject of this amendment however knowing the services are available is important for future planning.

STANDARD 4.1.2: SEWER.

1. *Any new residential development that exceeds 2.5 dwelling units per gross acre, and any new single commercial or industrial development that generates more than 5,000 gallons of sewage per day, must connect to a sanitary sewer system.*

2. *If the proposed development exceeds the thresholds listed above and lies within the boundaries of a sewer utility's certificated or franchised service area, or Lee County Utilities' future sanitary sewer service area (see Map 4-B), and that utility has sufficient capacity to provide minimum service to the development, then the development must connect to that sewer utility if there is existing infrastructure adequate to accept the effluents of the development within l/4 mile from any part of the development.*

3. *If there is not sufficient capacity nor adequate infrastructure within l/4 mile of the development, the developer must provide proof in the form of a clearly stated rejection of service.*

4. *If a new development is located in a certificated or franchised service area, or Lee County Utilities' future sanitary sewer service area (see Map 4-B), and the utility cannot provide the service, or cannot provide the service except at a clearly unreasonable cost to the developer, the developer may establish on a temporary basis a self-provided sanitary sewer facility for the development, to be abated when the utility extends service to the site. The developer may also petition the appropriate regulatory agency to contract the service area of the utility in order that another utility may be invited to provide the service.*

5. *If a development lies outside any service area as described above, the developer may:*
   - *request that the service area of Lee County Utilities or an adjacent sewer u tility be expanded to incorporate the property;*

- *establish a self-provided sanitary sewer system for the development;*
- *develop at an intensity that does not require sanitary sewer service; or*
- *if no more than 5000 gallons of effluent per day per parcel is produced, an individual sewage disposal system per Fla. Admin. Code R. 64E-6 may be utilized, contingent on approval by all relevant authorities.*

6. *Lee County Utilities may provide sanitary sewer service to properties not located within the future sewer service area when such sanitary sewer service is found to benefit public health, safety, and welfare, including protection of Lee County's natural resources.*

The property owner is requesting this map amendment to ensure any development will benefit public health, safety, and welfare, including protection of Lee County's natural resources. In addition, the property is immediately adjacent to the service area as Shown on Map 4B meeting criteria #2. And criteria #5 supports this request to incorporate the property into the service area. Based on the above criteria there are sufficient directives in Standard 4.1.2 to approve this requested Amendment to Map 4B for the subject property.

GOAL 33: SOUTHEAST LEE COUNTY. Protect Southeast Lee County's natural resources through public and private acquisition and restoration efforts. Development incentives will be utilized as a mechanism to preserve, enhance, and protect natural resources, such as regional flow-ways and natural habitat corridors in the development of privately owned land. Allowable land uses will include conservation, agriculture, public facilities, low density or clustered residential, natural resource extraction operations, and private recreation facilities; allowable land uses must be compatible with protecting Southeast Lee County's environment.

The proposed amendment fits within Goal 33. This map amendment would allow for wastewater services from Lee County Utilities which will protect the environment by avoiding the use of septic systems or wastewater package plants.

OBJECTIVE 33.1: WATER, HABITAT, AND OTHER NATURAL RESOURCES. Designate on a Future Land Use Map overlay the land in Southeast Lee County that is most critical toward restoring historic surface and groundwater levels and for improving the protection of other natural resources such as wetlands and wildlife habitat.

The subject property is not designated in any Tier for Priority Restoration. In accordance with Lee Plan Map 1, Page 4, the subject property is not a priority. However, this map amendment would further the intent of Objective 33.1.

POLICY 33.1.7: Impacts of proposed land disturbances on surface and groundwater resources will be analyzed using integrated surface and groundwater models that utilize site-specific data to assess potential adverse impacts on water resources and natural systems within Southeast Lee County. Lee County Division of Natural Resources will determine if the appropriate model or models are being utilized and assess the design and outputs of the modeling to ensure protection of Lee County's natural resources. (Ord. No. 10-19, 19-13)

It is understood that the surface and groundwater resources will be analyzed at time of any development order. This assessment is not applicable to the requested amendment.

GOALS 125 (Water Quality) and 126 (Water Resources) address requirements specific to water

resource management and potential water use associated with a project. Goal 125 requires facilities "To ensure that water quality is maintained or improved for the protection of the environment and people of Lee County." Objective 125.1 requires facilities under Comprehensive Plan Amendment to "Maintain high water quality, meeting or exceeding state and federal water quality standards." Goal 126 requires developments to "conserve, manage, and protect the natural hydrologic system of Lee County to insure continued water resource availability. (Amended by Ordinance No. 94-30)." Objective 126.1 requires facilities to "Ensure water supplies of sufficient quantity and quality to meet the present and projected demands of all consumers and the environment, based on the capacity of the natural systems."

As previously stated, this request is to amend Map 4B Wastewater Services and does not affect the water quality and water resources. Any future development on this property will provide data and analyses to ensure the water quality and water resources are addressed according to Goals 125 and 126.

15230 Corkscrew Road Parcel

Protected Species Assessment

Section 22, Township 46 South, Range 26 East
Lee County, Florida

February 2023

Prepared for:

Small Brothers, LLC
12810 Tamiami Trail N., Suite 200
Naples, FL 34110

Prepared by:

DexBender
4470 Camino Real Way Suite 101
Fort Myers, FL 33966
(239) 334-3680

Introduction

The 12.14± acre project is located within a portion of Section 22, Township 46 South, Range 26 East, Lee County, Florida. The parcel is bordered to the north by Corkscrew Road, to the west by single family homes within the Corkscrew Shores community, and to the south and east by county owned land.

Site Conditions

The parcel consists of wetland and upland communities with varying densities of exotics. A herbaceous marsh is located along the southeast portion of the site.

Vegetation

The predominant upland and wetland vegetation associations were mapped in the field on 2022 digital color 1" = 100' scale aerial photography. The property boundary was provided by Hole Montes. Inc. and inserted into digital aerial. Six vegetation associations were identified using the Florida Land Use, Cover and Forms Classification System (FLUCCS). Figure 1 depicts the approximate location and configuration of these vegetation associations. The acreage is summarized by FLUCCS code on Table 1. A brief description of each FLUCCS code is provided below.

Table 1. Acreage summary by FLUCCS

FLUCCS CODE	DESCRIPTION	ACREAGE
411E1	Pine Flatwoods invaded by Exotics (10-25%)	3.83
411E2	Pine Flatwoods invaded by Exotics (26-50%)	1.30
414E2	Pine - Mesic Oak invaded by Exotics (26-50%)	1.53
428HE3	Hydric Cabbage Palm invaded by Exotics (51-75%)	1.05
619	Exotic Wetland Hardwoods	2.80
641E4	Freshwater Marshes invaded by Exotics (76-90%)	1.60
	TOTAL	12.14

FLUCCS 411E1, Pine Flatwoods invaded by Exotics (10-25%)

This upland community consists of a canopy of slash pine (*Pinus elliottii*) with scattered melaleuca (*Melaleuca quinquenervia*) and laurel oak (*Quercus laurifolia*). The understory is comprised of cabbage palm (*Sabal palmetto*), wax myrtle (*Myrica cerifera*), saltbush (*Baccharis halimifolia*), and scattered dahoon holly (*Ilex cassine*). Brazilian pepper (*Schinus terebinthifolius*) is present to varying extents within this community. Ground cover is dominated by saw palmetto (*Serenoa repens*). Additional ground cover species include grape vine (*Vitis* sp.),

SECTION: 22
TOWNSHIP: 46 S
RANGE: 26 E

0 50 100
SCALE FEET

FLUCCS	Description	Acreage
411E1	Pine Flatwoods Invaded by Exotics (10-25%)	3.86 ac.
411E2	Pine Flatwoods Invaded by Exotics (26-50%)	1.30 ac.
414E2	Pine - Mesic Oak Invaded by Exotics (26-50%)	1.53 ac.
428HE3	Hydric Cabbage Palm Invaded by Exotics (51-75%)	1.05 ac.
619	Exotic Wetland Hardwoods	2.80 ac.
641E4	Freshwater Marshes Invaded by Exotics (76-90%)	1.60 ac.
	Total	12.14 ac.

Notes:
1. Property boundary and surveyed wetland line provided by Hole Montes, Inc.
2. Mapping based on photointerpretation of 2022 aerial photography and ground truthing in February 2023.
3. Delineation of jurisdictional wetlands reviewed and approved by SFWMD.

PERMIT USE ONLY, NOT FOR CONSTRUCTION

February 20, 2023 10:42:18 a.m.
Drawing: SMALLB1PLAN.DWG

Figure 1. Protected Species Assessment Map | **15230 Corkscrew Road Parcel**

DEXBENDER
ENVIRONMENTAL CONSULTING
FORT MYERS 239-334-3680

gallberry (*Ilex glabra*), Virginia creeper (*Parthenocissus quinquefolia*), and beauty berry (*Callicarpa americana*).

FLUCCS Code 414E2 Pine - Mesic Oak invaded by exotics (26-50%)
This upland community, located in the northwestern portion of the property, consists of a canopy of slash pine and laurel oak, with an understory comprised of cabbage palm, Brazilian pepper, wax myrtle, and myrsine (*Rapanea punctata*). Ground cover species include saw palmetto, greenbrier (*Smilax* sp.), and scattered grape vine.

FLUCCS Code 428HE3 - Hydric Cabbage Palm invaded by Exotics (51-75%)
The southwestern portion of the property was likely cleared in the past and is comprised of a canopy of cabbage palm, laurel oak, and Brazilian pepper. The midstory is open and ground cover is comprised primarily of leaf duff.

FLUCCS Code 619 - Exotic Wetland Hardwoods
This FLUCCS code describes the areas along the edge of the freshwater marsh and extends into the northeast portion of the parcel. The canopy and subcanopy of this community is dominated by Brazilian pepper with scattered slash pine, melaleuca, red maple (*Acer rubrum*), and cabbage palm. Other vegetative species present include saltbush, myrsine, and wax myrtle.

FLUCCS Code 641E4 - Freshwater Marshes invaded by Exotics (76-90%)
The canopy and subcanoy in this area consists of scattered willow (*Salix caroliniana*). Ground cover is dominated by a thick growth of primrose willow (*Ludwigia peruviana*), para grass (*Urochloa mutica*), fireflag (*Thalia geniculata*), arrowhead (*Sagittaria* sp.), and climbing cassia (*Senna pendula*). Other ground cover species present include foxtail grass (*Setaria* sp.), old world climbing fern (*Lygodium microphyllum*), water lily (*Nymphaea odorata*), and coinwort (*Centella asiatica*).

Survey Method

Each habitat type was surveyed for the occurrence of listed species likely to occur in the specific habitat types. The survey was conducted using meandering pedestrian belt transects. This survey methodology is based on the Lee County administratively approved Meandering Transect Methodology. Observations of the freshwater marsh were taken from areas surrounding the marsh. The approximate locations of all direct sighting or signs (such as tracks, nests, and droppings) of a listed species were denoted on the aerial photography. The 1" = 100' scale aerial Protected Species Assessment Map (Figure 1) depicts the approximate location of the survey transects and the results of the survey. The listed species survey was conducted during the mid-morning hours of February 17, 2023. During the survey, the weather was warm breezy.

Species listed as endangered, threatened, or species of special concern by the Florida FWC or the FWS that could potentially occur on the subject parcel according to the Lee County Protected Species Ordinance are listed in Table 2. This list from the Lee County Protected Species Ordinance is general in nature, does not necessarily reflect existing conditions, and is provided for general informational purposes only.

Prior to conducting the protected species survey, a review of the FWC listed species occurrence database was conducted to determine the known occurrence of listed species in the project area. The database does not indicate the presence of any known State or Federally listed species either on or immediately adjacent to the project area.

Table 2. Listed Species That Could Potentially Occur On-site

FLUCCS CODE	Percent Survey Coverage	Species Name	Present	Absent
411E1 411E2	80	Gopher Frog (*Rana areolata*) Eastern Indigo Snake (*Drymarchon corais couperi*) Gopher Tortoise (*Gopherus polyphemus*) Red-cockaded Woodpecker (*Picoides borealis*) Southeastern American Kestrel (*Falco sparverius paulus*) Big Cypress Fox Squirrel (*Sciurus niger avicennia*) Florida Black Bear (*Ursus americanus floridanus*) Florida Panther (*Felis concolor coryi*) Beautiful Pawpaw (*Deeringothamnus pulchellus*) Fakahatchee Burmannia (*Burmannia flava*) Florida Coontie (*Zamia floridana*) Satinleaf (*Chrysophyllum olivaeforme*)		√ √ √ √ √ √ √ √ √ √ √ √
414E2	80	Gopher Frog (*Rana areolata*) Eastern Indigo Snake (*Drymarchon corais couperi*) Florida Black Bear (*Ursus americanus floridanus*) Florida Panther (*Felis concolor coryi*)		√ √ √ √
428HE3	80	Eastern Indigo Snake (*Drymarchon corais couperi*) Audubon's Crested Caracara (*Polyborus plancus audubonii*) Florida Black Bear (*Ursus americanus floridanus*) Florida Panther (*Felis concolor coryi*) Simpson's Stopper (*Myrcianthes frangrans* var. *simpsonii*)		√ √ √ √ √
619	80	None		

641E4	80	American Alligator (*Alligator mississippiensis*) Florida Sandhill Crane (*Grus canadensis pratensis*) Limpkin (*Aramus guarauna*) Little Blue Heron (*Egretta caerulea*) Reddish Egret (*Egretta rufescens*) Snail Kite (*Rostrhamus sociabilis*) Snowy Egret (*Egretta thula*) Tricolored Heron (*Egretta tricolor*) Wood Stork (*Mycteria americana*) Everglades Mink (*Mustela vison evergladensis*)		√ √ √ √ √ √ √ √ √ √

Results

No species listed by the FWC and/or FWS as threatened, endangered, or species of special concern were observed during the protected species survey. Widely scattered pine tree snags with potential bonneted bat cavities were observed. There is potential for periodic opportunistic foraging by both listed and non-listed species of wading birds within the freshwater marsh on the property but is unlikely due to the thick growth of undesirable vegetative species. In addition to the site inspection, a search of the FWC species database revealed no known protected species within or immediately adjacent to the project limits.

HISTORIC RESOURCES IMPACTS ANALYSIS

Exhibit M14

The subject property contains no known historic resources as evidenced in the attached letter from the Division of Historic Resources. The attached archaeological sensitivity map shows that a portion of the property is in Sensitivity Zone 2.

This record search is for informational purposes only and does NOT constitute a project review. This search only identifies resources recorded at the Florida Master Site File and does NOT provide project approval from the Division of Historical Resources. Contact the Compliance and Review Section of the Division of Historical Resources at 850-245-6333 for project review information.

July 10, 2018

Florida Master Site File

Daniel DeLisi, AICP
(239) 913-7159
dan@delisi-inc.com
DELISI

In response to your inquiry of July 10, 2018, the Florida Master Site File lists no archeological sites and no other cultural resources located at the designated area of Lee County, Florida

T46S R26E Section 22 as submitted with search request.

When interpreting the results of this search, please consider the following information:

- **This search area may contain *unrecorded* archaeological sites, historical structures or other resources even if previously surveyed for cultural resources.**
- **Federal, state and local laws require formal environmental review for most projects. This search DOES NOT constitute such a review. If your project falls under these laws, you should contact the Compliance and Review Section of the Division of Historical Resources at 850-245-6333.**

Please do not hesitate to contact us if you have any questions regarding the results of this search.

Sincerely,

Eman M. Vovsi

Eman M. Vovsi, Ph.D.
Data Base Analyst
Florida Master Site File
Eman.Vovsi@DOS.MyFlorida.com

AGNOLI BARBER & BRUNDAGE, INC.
Professional Engineers, Planners, Surveyors & Landscape Architects

Corkscrew
Archeological Sensitivity Map

Exhibit: M14

ABB PN: 22-0024

Public Facilities Impact Analysis

The proposed amendment to Sewer Service Area Map 4-B would expand the service area to the subject property. There are adequate potable water, sanitary sewers, solid waste, police, and fire/ EMS, and transportation facilities to serve the subject property. There are no impact to parks, recreation, open space or public schools. Commercial development does not generate demand for those services.

Transportation Circulation Analysis:

The subject property is located at the southwest corner of Corkscrew Road and Alico Road. Alico Road is a major collector roadway and Corkscrew Road is an arterial facility, both are maintained by the County. Corkscrew Road from Ben Hill Griffin Parkway to Alico Road will be widened from 2-lane to 4-lane within 5 years.

Lee Plan amendments require a short range (5 years) and long range (20+ years) level of service (LOS) analysis. The 5 year and the long range 2040 LOS analysis indicates that in the three mile study area all the roadway segments are anticipated to operate at or better than the adopted LOS standard in year 2024 and year 2040. Based on the submitted data and analysis, there are no required modifications to the adopted Lee County 2040 Cost Feasible Plan network as result of this request.

Existing and Future Conditions

Utilities: Potable water is available from the Pinewood Water Treatment Plant and wastewater service would be provided by the Three Oaks Water Reclamation Facility.

Solid Waste: The subject property has access to solid waste services. Solid waste collection services will be provided by Lee County using the Lee County Resource Recovery Facility and the Lee-Hendry Regional Landfill.

Fire: Estero Fire Rescue indicated they are capable of providing fire protection.

EMS: The subject property has access to EMS services by Lee County Emergency Medical Services.

Police: The Lee County Sheriff will provide law enforcement services primarily from the Lehigh Acres and Bonita Springs substations. The future development of the subject property will not affect the ability of the Lee County Sheriff's Office to provide core services at this time.

Environmental Impacts

Attached is an environmental assessment conducted by Dex Bender and Associates. The subject property consists of both upland and wetland areas with varying degree of exotic infestation. No endangered or threatened species were found on site. Development of the subject property will need to comply with all applicable land development code requirements pertaining to indigenous vegetation preservation and open space. The

proposed text amendment requires a significantly greater level of on-site indigenous preservation through strict limitations on wetland impacts. Given the size and location of the subject property at the intersection of two arterial roads and adjacent to a residential community to the west the development will not have a significant adverse impact on environmental resources, but instead are designing the text amendment to have an overall positive impact.

Existing and Future Conditions Analysis M17

Levels of Service Water and Wastewater

Demand Projections

The subject property is within the Lee County Utilities (LCU) potable water franchise area as depicted on Lee Plan Map 4-A and 4-B. The existing property is zoned Community Commercial (CC) and located in the Density Reduction/Groundwater Recharge land use category. With the proposed amendment, a total of 66,400 S.F. of commercial retail and office will be allowed.
Table 1 below provides a summary of projected utility demands in gallons-per-day (GPD) for the development based on Lee County Utilities (LCU) design standards and Chapter 64E-6 of the Florida Statutes and using demand assumptions commonly accepted for planning purposes.
Table 1. Estimated Utility Demands at Build-out:

Development Type	Cumulative Units	Unit Demand	Total Demand (GPD)
Proposed Commercial	66,400 SF	0.15/SF	9,960
		Total	9,960

Under the proposed land use designation with the projected development parameters, the estimated utility demand for the property will be 9,960 GPD.

Wastewater Level of Service
For wastewater service, the property is adjacent to Lee County Utilities' wastewater franchise area that serves Corkscrew Shores to the west of the property. The County's wastewater franchise area will be amended to include the subject property as well.

Lee County Utilities maintains an existing wastewater forcemain along the subject property's frontage with Corkscrew Road. The forcemain will be utilized to provide for a connection to LCU's wastewater system for service.

LCU's Three Oaks Regional Wastewater Treatment Plant is the closest facility available to serve the property and serves other developments west of the subject property along Corkscrew Road. According to the 2021 Lee County Concurrency Report, the Three Oaks facility is permitted with a capacity of 6.0 million gallons per day (MGD) and is projected to expand capacity to 8.0 MGD in 2024. Therefore, there is sufficient capacity within the existing plant to serve the 9,960 GPD increase in demand to LCU's system from this project at build-out.

Potable Water Level of Service

For potable water service, the project is intending to connect to LCU's water distribution system provided along Corkscrew Road. As described above, the property is also adjacent to LCU's water franchise area that serves Corkscrew Shores to the west.

Lee County Utilities maintains an existing water distribution main within the Corkscrew Road right-of-way along the subject property's frontage. Service to the property will be provided by connecting to the water main and extending mains into the property for service. According to the 2021 Lee County Concurrency Report, LCU's interconnected water distribution system is permitted to serve 50.9 MGD and is projected to operate at *32.6* MGD for 2025. Therefore, there is sufficient capacity within the existing plant to serve the 9,960 GPD increase in demand to LCU's system from this project at build-out.

Surface Water Level of Service Analysis:

Existing Conditions:

The existing site is approximately 11.38 acres located south of Corkscrew Road, southwest of the intersection of Corkscrew Road and Alico Road. The drainage pattern for the site is generally from the north of the property to the south. The site topography is generally at elevation 19.0' NAVD to the north and nearly 18.0' NAVD to the south. Within the wetlands located on the property, elevations vary from 15.5' NAVD to 17.0' NAVD. The site does not have significant offsite flows to accommodate, as Corkscrew Road is effectively a berm to the north, and residential development is to the west. There are existing Corkscrew Road swales to the north, and a conveyance swale for Corkscrew Road to the west. The east property is undeveloped other than an access road adjacent to the east property line for access to a well field, and to the south are SFWMD district owned lands including wetlands and a proposed pond.

Proposed Water Management System:

Surface water management of the site shall comply with Lee County and SFWMD stormwater quality and quantity requirements. The stormwater system will consist of interconnected dry detention stormwater areas and swales, and subsurface storage if necessary to meet total volumetric requirements. The system will be privately owned and maintained. The site will discharge to the onsite wetland preserve, which is connected to the south off site. The historical flow for the culvert crossing located in the Corkscrew Road right-of-way will be maintained and the culvert extended to the on-site wetland preserve. The stormwater system will be designed to limit discharge rates from the development to a 25-year, 3-day storm peak discharge rate of 25 csm (cubic feet per square mile), or as amended by agencies. The control elevation for the water management facilities shall be consistent with the seasonal water table elevations of the existing wetland located on the property. Drainage from the site will be routed from the dry detention pond and control structure to the onsite wetlands where it will then discharge to Flint Pen Strand which drains to the Imperial River.

Parks, Recreation and Open Space

Regional Parks

The Lee County Public Facilities Level of Service and Concurrency Report 2021 indicates a total of 7,064 acres of existing regional parks operated by county, local, state, and federal governments within Lee County. The capacity required to meet The Lee Plan Policy 95.1.3 non-regulatory level of-service standard of 6 acres per 1,000 total seasonal county population is equal to: 886,000 [seasonal county population] X (6 acres/1,000 population) = 5,316 acres

The Bureau of Economic and Business Research (BEBR) Projections of Florida Population by County, 2020-2045, with Estimates for 2019 provided a high projected population of 997,000 for Lee County in 2030. This would require 5,982 acres to meet the level of service standard. There is more than adequate existing Regional Park acreage in Lee County to meet the needs of the project.

Community Parks

The Lee County Public Facilities Level of Service and Concurrency Report 2021 indicates a total of 743.1 acres of existing community parks operated by Lee County or jointly operated with The School District of Lee County within Lee County. The capacity required to meet the Lee Plan Policy 95.1.3 non-regulatory level of-service standard of 0.8 acres per 1,000 total permanent county population is equal to: 368,415 [permanent unincorporated county population] X (0.8 ac/1,000 population) = 295 ac

The existing inventory of community parks within Lee County meets the community park level- of-service standard in the County for the year 2020 and will continue to do so at least through the next five years. The level of service standard increased from 285 acres in 2019 to 295 acres in 2021 which represents here is more than adequate existing Community Park acreage in Lee County to meet the needs of the project.

Public Schools

The subject property is within the South Zone, sub-zone S-2. Lee Plan Policy 95.1.3 provides that Public Schools Facilities LOS standards for Elementary Schools, Middle Schools, High Schools and Special Purpose Facilities is based upon Permanent Florida Inventory School Houses (FISH) capacity and is 100% as adjusted by the School Board annually to account for measurable programmatic changes.

According to the Lee County Public Facilities Level of Service and Concurrency Report 2021, the South Zone showed an available capacity of 893 elementary school seats, 368 middle school seats, and 612 high school seats. The letter of review and recommendation received from the School District of Lee County indicated that capacity is an issue within the Concurrency Service Area (CSA) at the elementary school level, however capacity is available in the adjacent CSA.

Lee County
Southwest Florida

BOARD OF COUNTY COMMISSIONERS

August 29, 2022 Via E-Mail

Margaret Emblidge, AICP
Agnoli, Barber & Brundage, Inc.
7400 Trail Blvd., Suite 200
Naples, FL 34108

RE: **Potable Water and Wastewater Availability**
Small Brothers Commercial, 15230 Corkscrew Road
STRAP # 22-46-26-00-00001.0010

Dear Ms. Emblidge:

The subject property is located within Lee County Utilities Future Service Area as depicted on Map 4A, but not Map 4B, of the Lee County Comprehensive Land Use Plan. Potable Water and sanitary Sewer lines are in operation adjacent to the property mentioned above. However, in order to provide service to the subject parcels, developer funded Comprehensive Plan Amendment and system enhancements such as line extensions will be required.

Your firm has indicated that this project will consist of 4 commercial units with an estimated flow demand of approximately 10,800 gallons per day. Lee County Utilities presently has sufficient capacity to provide potable water and sanitary sewer service as estimated above.

Availability of potable water and sanitary sewer service is contingent upon final acceptance of the infrastructure to be constructed by the developer. Upon completion and final acceptance of this project, potable water service will be provided through our Pinewood Water Treatment Plant.

Sanitary sewer service will be provided by Three Oaks Water Reclamation Facility. The Lee County Utilities' Design Manual requires the project engineer to perform hydraulic computations to determine what impact this project will have on our existing system.

There are no reuse mains in the vicinity of this parcel.

Prior to beginning design work on this project, please meet with LCU Staff to determine the best point of connection and discuss requirements for construction.

This letter should not be construed as a commitment to serve, but only as to the availability of service. Lee County Utilities will commit to serve only upon receipt of all appropriate connection fees, a signed request for service and/or an executed service agreement, and the

P O. Box 398, Fort Myers, Florida 33902-0398 (239) 533-2111
lee-county.com

approval of all State and local regulatory agencies.

Further, this letter of availability of potable water and sanitary sewer service is to be utilized for Comprehensive Plan Amendment only. Individual letters of availability will be required for the purpose of obtaining building permits.

Sincerely,

LEE COUNTY UTILITIES

Mary McCormic
Technician Senior
239-533-8532
UTILITIES ENGINEERING

Lee County
Southwest Florida

Board of County Commissioners

July 21, 2022

S. Annette Keeney
Agnoli, Barber & Brundage, Inc.
7400 Trail Boulevard, # 200
Naples, FL 34108

Re: Letter of Service Availability – 15230 Corkscrew Road

Ms. Keeney,

I am in receipt of your letter requesting a Letter of Service Availability for a parcel along Corkscrew Road. The property consists of 12.6 acres identified by STRAP 22-46-26-00-00001.0010.

Lee County Emergency Medical Services is the primary EMS transport agency responsible for coverage at the address you have provided. Because we currently serve this area and have a sufficient response data sample, we evaluated response times in this vicinity to simulate the anticipated demand and response.

The primary ambulance for this location is Medic 21, located 5.8 miles west; there is another location within 8 miles. These locations are projected to be able to meet existing service standards, as required in County Ordinance 08-16, and no additional impacts are anticipated at this time.

It is our opinion that the service availability for the proposed development of this property is adequate at this time. Should the plans change, especially the density, a new analysis of this impact would be required.

Sincerely,

Benjamin Abes
Director, Public Safety

P.O. Box 398, Fort Myers, Florida 33902-0398 | (239) 533-2111 | leegov.com

Lee County
Southwest Florida

Board of County Commissioners

July 21, 2022

Agnoli, Barber & Brundage, Inc.
Attn: Ms. Keeney, Planner
7400 Trail Boulevard, # 200
Naples, FL 34108

RE: Letter of Availability Lee County Solid Waste Small Brothers, LLC - STRAP 22.-46-26-00-00001.001.0

Dear Ms. S Annette Keeney:

The Lee County Solid Waste Division is capable of providing solid waste collection service for a future Community Commercial District planned for 15230 Corkscrew Road though the franchised hauling contractors. Disposal of the solid waste from this development will be accomplished at the Lee County Resource Recovery Facility and the Lee-Hendry Regional Landfill. Plans have been made, allowing for growth, to maintain long-term disposal capacity at these facilities.

Please review Lee County Land Development Code, Chapter 10, Section 261, with requirements for on-site space for placement and servicing of solid waste containers. Please note that the property owner will be responsible for all future applicable solid waste assessments and fees.

If you have any questions, please call me at (239) 533-8007.

Sincerely,

Justin Lighthall

Justin Lighthall
Manager, Public Utilities
Lee County Solid Waste Department

P.O. Box 398, Fort Myers, Florida 33902-0398 | (239) 533-2111 | leegov.com

Estero Fire Rescue
21500 Three Oaks Parkway
Estero, Florida 33928
(239) 390.8000
(239) 390.8020 (Fax)
www.esterofire.org

August 15, 2022

Margaret Emblidge, AICP
Agnoli, Barber & Brundage, Inc.
7400 Trail Blvd., Suite 200
Naples, Florida 34108

Re: Strap # 22-46-26-00-00001-0010

Ms. Emblidge,

This correspondence shall serve as a Letter of Service Availability for the above listed property. Estero Fire Rescue serves this property for fire suppression and non-transport advanced life support emergency medical services.

This property is located less than five road miles from Estero Fire Rescue Station 44 which is located at 21300 Fire House Lane. Once hydrants are installed, the property will enjoy an ISO rating of Class 2.

Should you require any additional information please feel free to contact me at 239-390-8000.

Respectfully,

Phillip Green
Fire Marshal

"DEDICATED AND DRIVEN FOR THOSE WE SERVE"

Carmine Marceno
Sheriff

State of Florida
County of Lee

"Proud to Serve"

August 15, 2022

Margaret Emblidge, AICP
Agnoli, Barber & Brundage, Inc.
7400 Trail Boulevard, Suite 200
Naples, FL 34108

Ms. Emblidge,

The proposed comprehensive plan amendment to rezone eight acres for commercial development at STRAP 22-46-26-00-00001.0010 along Corkscrew Road does not affect the ability of the Lee County Sheriff's Office to provide core services at this time. We have no objections to up to 80,000 square feet of commercial development on the site, nor do we object to the property connecting to central water and sewer.

Law enforcement services will be provided from our substations in Lehigh Acres and Bonita Springs. At the time of application for new development orders or building permits, the applicant shall provide a Crime Prevention Through Environmental Design (CPTED) report done by the applicant and given to the Lee County Sheriff's Office for review and comments. Please contact Crime Prevention Practitioner Beth Schell at (239) 477-1677 with any questions regarding the CPTED study.

Respectfully,

Stan Nelson

Stan Nelson
Director, Planning and Research

AGNOLI BARBER & BRUNDAGE, INC.
Professional Engineers, Planners, Surveyors & Landscape Architects
Certificate of Authorization Numbers: EB 3664 • LB 3664 • LC26000620

7400 Trail Blvd., Suite 200
Naples, FL 34108
PH: (239) 597-3111
www.ABBINC.com

Exhibit M19

State/Regional Policy Plan Analysis

There are no State or Regional Policy Plan goals
or policies that are relevant to the proposed amendment.

Small Brothers, LLC

Corkscrew Commercial

Justification of the Proposed Map Amendment

The following data and analysis are for the amendment to Comprehensive Plan Map 4B to add the subject property to the Lee County Utilities Future Sewer Service Areas Map. To accommodate future development to occur on the property, the existing water and sewer lines that run directly past the property would fulfill an important land planning goal. Connecting to available service rather than accommodating a package facility or large septic system is preferable both environmentally and from a cost efficiency of service.

Lee County Utilities Assessment

Even though there is no specific development proposed at this time, the applicant provided a potential development scenario for assessment to the Lee County Utilities Department to determine availability of potable water and wastewater. Lee County Utilities Department provided a Potable Water and Wastewater Availability comment letter dated August 29, 2022, which supports the appropriateness of approving the proposed Map 4B Amendment. The applicant agrees with the requirements stated. The following is a verbatim quote of that letter Dated August 29, 2022.

"The subject property is located within Lee County Utilities Future Service Area as depicted on Map 4A, but not Map 4B, of the Lee County Comprehensive Land Use Plan. Potable Water and sanitary Sewer lines are in operation adjacent to the property mentioned above. However, in order to provide service to the subject parcel, developer funded Comprehensive Plan Amendment and system enhancements such as line extensions will be required.

Your firm has indicated that this project will consist of 4 commercial units with an estimated flow demand of approximately 10,800 gallons per day. Lee County Utilities presently has sufficient capacity to provide potable water and sanitary sewer service as estimated above.

Availability of potable water and sanitary sewer service is contingent upon final acceptance of the infrastructure to be constructed by the developer. Upon completion and final acceptance of this project, potable water service will be provided through our Pinewood Water Treatment Plant.

Sanitary sewer service will be provided by Three Oaks Water Reclamation Facility. The Lee County Utilities' Design Manual requires the project engineer to perform hydraulic computations to determine what impact this project will have on our existing system.

There are no reuse mains in the vicinity of this parcel.

Prior to beginning design work on this project, please meet with LCU Staff to determine the best point of connection and discuss requirements for construction.

This letter should not be construed as a commitment to serve, but only as to the availability of service. Lee County Utilities will commit to serve only upon receipt of all appropriate connection fees, a signed request for service and/or an executed service agreement, and the approval of all State and local regulatory agencies.

Further, this letter of availability of potable water and sanitary sewer service is to be utilized for Comprehensive Plan Amendment only. Individual letters of availability will be required for the purpose of obtaining building permits."

Location and Surrounding Development

The subject property is located at the southwest corner of Corkscrew and Alico Roads. The surrounding development includes Corkscrew Shores on the west, Southwest Florida Rock IPD, an active mining operation, to the north. To the south and east of the subject property is land owned and managed by the Lee County. Lee County Wastewater and Water Plant is to the northeast, and the FFD mixed use project is less than a mile east of the subject property. To the south is a planned stormwater system for the widening of Corkscrew Road. The surrounding development is depicted on the enclosed Regional Map.

Subject Property History

The subject property was rezoned to Community Commercial (CC) in 1982 and received a variance (Zoning Resolution ZAB-82-337) to allow a private sewer treatment plant on the western side of the property in association with the proposed development of a mobile home park on the property to the south (SP-82-337). The mobile home community was never constructed and is now owned by Lee County and is partially planned for a stormwater area for the widening of Corkscrew Road.

In 1989, Lee County amended the future land use category on the subject property from Rural to Density Reduction/Groundwater Resources. The land use category was changed as part of a settlement with the State Department of Community Affairs to reduce overall residential Density on the Future Land Use map through the year 2010, the horizon year of the Lee Plan at that time. The County did not undertake any analysis to determine the impact of the change on commercially zoned or previously platted property. After over two decades, the County started moving forward with increased residential and commercial development in the DR/GR. Corkscrew Shores had a previously approved plat that permitted residential development, and it is located adjacent to the property on the west. Corkscrew Shores obtained approval of an amendment to the comprehensive plan and zoning that recognized the pre-existing approvals and allowed the reconfiguration of the existing residential density. The commercially zoned properties were not accounted for when the County made these changes, negatively impacting their development rights.

As stated, there have been large scale mixed-use developments that have been developed or are planned along Corkscrew Road. Some of these are WildBlue, Bella Terra, Verdana Village, The Place, Old Corkscrew Golf Club, and FFD Land Co. The Lee County Utilities Service Area maps depict these projects on map 4B already. It would only seem logical to add the subject property.

AGNOLI
BARBER &
BRUNDAGE, INC.

Professional Engineers, Planners & Land Surveyors

7400 Trail Boulevard, Suite 200, Naples, FL 34108 Phone (239) 597-3111 Fax: (239) 566-2203

MEMORANDUM

Date: February 16, 2024
Subject: CPA2022-00012 Corkscrew Public Information Meeting

Pursuant to Lee Plan Policy 17.3.4 a Public Information Meeting was held on February 15, 2024, at 5:30pm. The meeting was held at the Sanctury RV Clubhouse located at 13660 Bonita Beach Road, SE, Bonita Springs, FL 34135. As required, this location lies within the Southeast Lee County Community Planning Area.

The meeting was advertised in the Fort Myers News Press on February 1, 2024 (see attached ad affidavit).

Attendees: Bruce Lampitt, Small Brothers, LLC
Margaret Emblidge, ABB, Inc.
Elise Wilcox, ABB, Inc.

There were no attendees from the public.

Margaret Emblidge walked through the presentation and due to no attendees from the public the meeting ended at 5:55pm.

LocaliQ
Florida
GANNETT

PO Box 631244 Cincinnati, OH 45263-1244

PROOF OF PUBLICATION

Margaret Emblidge
Holly L Bacon
Agnoli, Barber and Brundage, Inc.
7400 Trail BLVD
Suite 200
Naples FL 34108-2855

STATE OF WISCONSIN, COUNTY OF BROWN

Before the undersigned authority personally appeared, who on oath says that he or she is the Legal Advertising Representative of the News-Press, a daily newspaper published at Fort Myers in Lee County, Florida; that the attached copy of advertisement, being a Legal Ad in the matter of Govt Public Notices, was published on the publicly accessible website of Lee County, Florida, or in a newspaper by print in the issues of, on:

02/01/2024

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.
Subscribed and sworn to before me, by the legal clerk, who is personally known to me, on 02/01/2024

Amy Lohott
Legal Clerk

Keegan Moran
Notary, State of WI, County of Brown

2.14.28
My commision expires

Publication Cost:	$120.30	
Order No:	9790861	# of Copies:
Customer No:	1126990	1
PO #:	2-15-24 PIM	

THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

KEEGAN MORAN
Notary Public
State of Wisconsin

NOTICE OF PUBLIC INFORMATION MEETING

DATE: Thursday, February 15, 2023
TIME: 5:30 PM
ADDRESS: Sanctuary RV Resort, 13660 Bonita Beach Road, SE, Bonita Springs, FL 34135

In accordance with the Southeast Lee County Community Plan Requirements of the Lee County Land Development Code and Lee Plan, the Applicant, Small Brothers, LLC, will be presenting information to the public on the following request:

The request is to include the subject property in the Lee County Future Sewer Service Area Map (Map 4B). The subject property is comprised of 12.9 +/- acres located at the south-west corner of Corkscrew Road and Alico Road.

The purpose of the meeting is to educate community members and nearby landowners about the proposed map amendment and to address any questions.

For questions, please contact:
Margaret Emblidge, AICP
Agnoli, Barber & Brundage, Inc.
7400 Trail Blvd., Suite 200,
Naples, FL 34108
(239) 597-3111 or
emblidge@abbinc.com

9790861 2/1/24

Small Brothers, LLC
Real Estate Development

- **CORKSCREW CPA 22-000012**
- **ADMENDMENT TO THE LEE COUNTY**

  SEWER SERVICE AREA MAP 4B

AGNOLI BARBER & BRUNDAGE, INC.
Professional Engineers, Planners, Surveyors & Landscape Architects
7400 Trail Blvd., Suite 200 • Naples, FL 34108
PH: (239) 597-3111 • FAX: (239) 566-2203

PROPERTY LOCATION

- SOUTHWEST CORNER OF CORKSCREW ROAD AND ALICO ROAD
- ADJACENT TO THE CORKSCREW SHORES
- SOUTHEAST OF WILD BLUE
- WEST OF OLD CORKSCREW GOLF CLUB
- WEST OF VERDANA

ZONING MAP

PROPERTY HISTORY

RESOLUTION NUMBER ZAB-82-337

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF

OF LEE COUNTY, FLORIDA

WHEREAS, Highlands Trust, has properly filed an application for a) a change in zoning from AG to CC and MH-1 Districts; b) special exception in the MH-1 District for on site signs (Sec. 607.E); and c) variance to permit sewage treatment plant within the front 50% of lot (Sec. 500.1.B. 1.c) on a piece of property located at NW quadrant of Alico Road and Corkscrew Road intersection, described more particularly as;

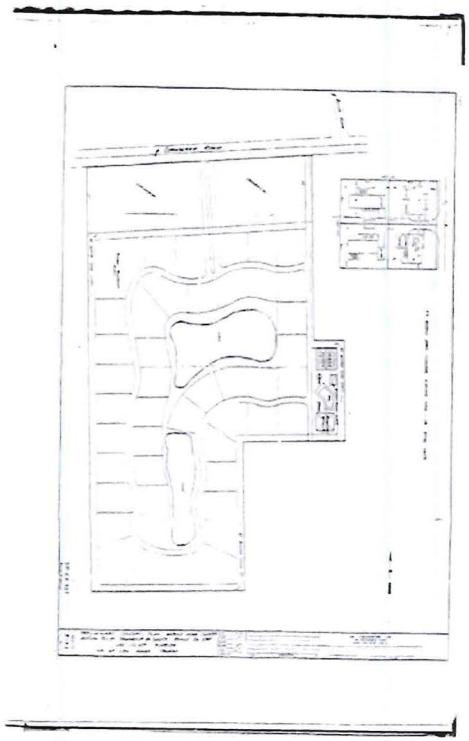
Sec. 22, 27, Twp. 46S, Rge. 26E, Lee County Florida.
Description - MH-1
Commencing at the Northwest corner of Section 27, Township 46 South, Range 26 East, said point being the point of beginning, and proceeding easterly 1,500 feet along the Northern boundary of said section; thence run southerly 90° 0' a distance of 600 feet; thence run westerly 90° 0' a distance of 600 feet; thence run Southerly 90° 0' a distance of 900 feet; thence run westerly 90° 0' a distance of 900 feet to the western boundary of said section; thence run northerly along the western boundary of said section a distance of 1,500 feet to the point of beginning.

AND that part of the southwest 1/4 of the southwest 1/4 of section 22, Township 46 South, Range 26 East, lying south of Corkscrew Road.
LESS: the northerly 400 feet thereof.
Subject to easements, restrictions & reservations of record.

Description - CC
The northerly 400 feet of the following described parcel:
That part of the southwest 1/4 of the southwest 1/4 of Section 22, Township 46 South, Range 26 East, lying south of Corkscrew Road.
Subject to easements, restrictions, & reservations of record.
Size of Property: CC District 12.1 acres and MH-1 District 59.9 acres for a total of 72 acres.

WHEREAS, Kenneth A. Jones, Trustee, the owner of the subject parcel has given proper authorization to Kenneth A.

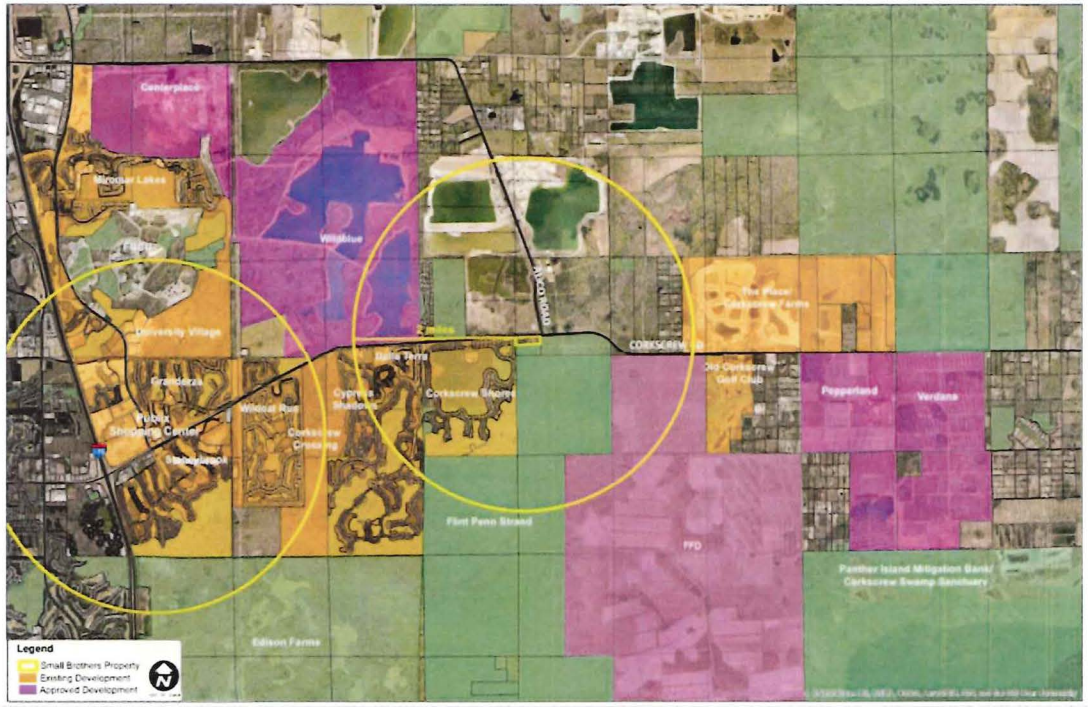
Page 1 of 3



- **ZAB-82-337 DESIGNATED PROPERTY TO CC COMERCIAL USES WITH MOBILE HOME TO THE SOUTH**

FUTURE LAND USE MAP

REGIONAL CONTEXT



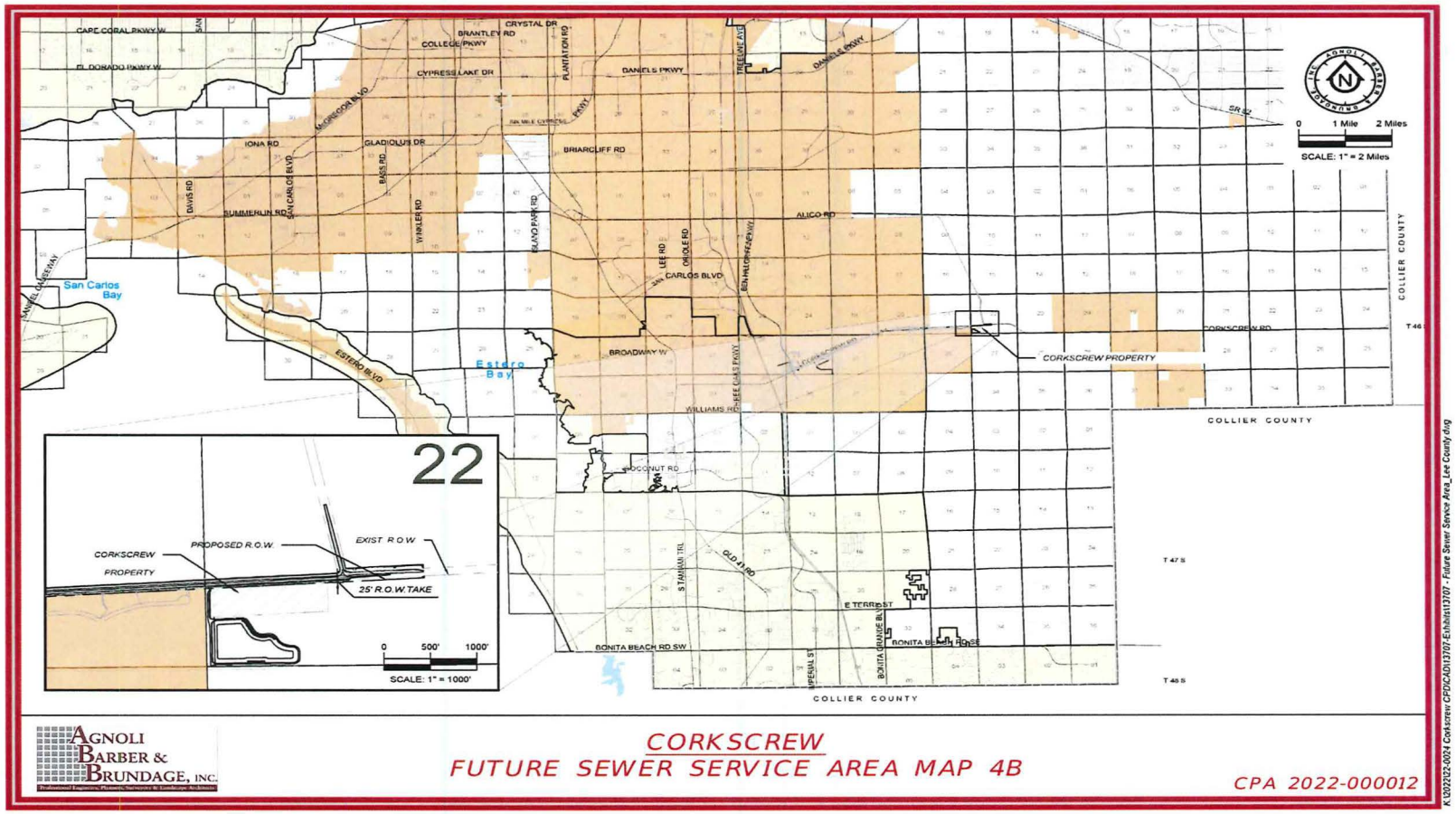
Corkscrew
Regional Aerial Map

Exhibit: M9

Existing and Approved Projects

- Corkscrew Shores
- FFD Mixed Use Planned Development
- Wild Blue Residential
- Bella Terra Residential
- The Place at Corkscrew
- Verdana Village
- Pepper Place
- Kingston Mixed Use Development

LEE COUNTY UTILITIES
SEWER SERVICE AREAS
MAP 4B



AGNOLI BARBER & BRUNDAGE, INC.
Professional Engineers, Planners, Surveyors & Landscape Architects

CORKSCREW
FUTURE SEWER SERVICE AREA MAP 4B

CPA 2022-000012

K:\2022\22-0024 Corkscrew CPD\CAD\13707-Exhibits\13707 - Future Sewer Service Area_Lee County.dwg

PUBLIC FACILITIES

Lee County
Southwest Florida

BOARD OF COUNTY COMMISSIONERS

Kevin Ruane
District One

Cecil L. Pendergrass
District Two

Raymond Sandelli
District Three

Brian Hamman
District Four

Michael Greenwell
District Five

Roger Desjarlais
County Manager

Richard Wm. Wesch
County Attorney

Donna Marie Collins
County Chief
Hearing Examiner

August 29, 2022 Via E-Mail

Margaret Embldge, AICP
Agnoli, Barber & Brundage, Inc.
7400 Trail Blvd., Suite 200
Naples, FL 34108

RE: **Potable Water and Wastewater Availability**
Small Brothers Commercial, 15230 Corkscrew Road
STRAP # 22-46-26-00-00001.0010

Dear Ms. Embldge:

The subject property is located within Lee County Utilities Future Service Area as depicted on Map 4A, but not Map 4B, of the Lee County Comprehensive Land Use Plan. Potable Water and sanitary Sewer lines are in operation adjacent to the property mentioned above. However, in order to provide service to the subject parcels, developer funded Comprehensive Plan Amendment and system enhancements such as line extensions will be required.

Your firm has indicated that this project will consist of 4 commercial units with an estimated flow demand of approximately 10,800 gallons per day. Lee County Utilities presently has sufficient capacity to provide potable water and sanitary sewer service as estimated above.

Availability of potable water and sanitary sewer service is contingent upon final acceptance of the infrastructure to be constructed by the developer. Upon completion and final acceptance of this project, potable water service will be provided through our Pinewood Water Treatment Plant.

Sanitary sewer service will be provided by Three Oaks Water Reclamation Facility. The Lee County Utilities' Design Manual requires the project engineer to perform hydraulic computations to determine what impact this project will have on our existing system.

There are no reuse mains in the vicinity of this parcel.

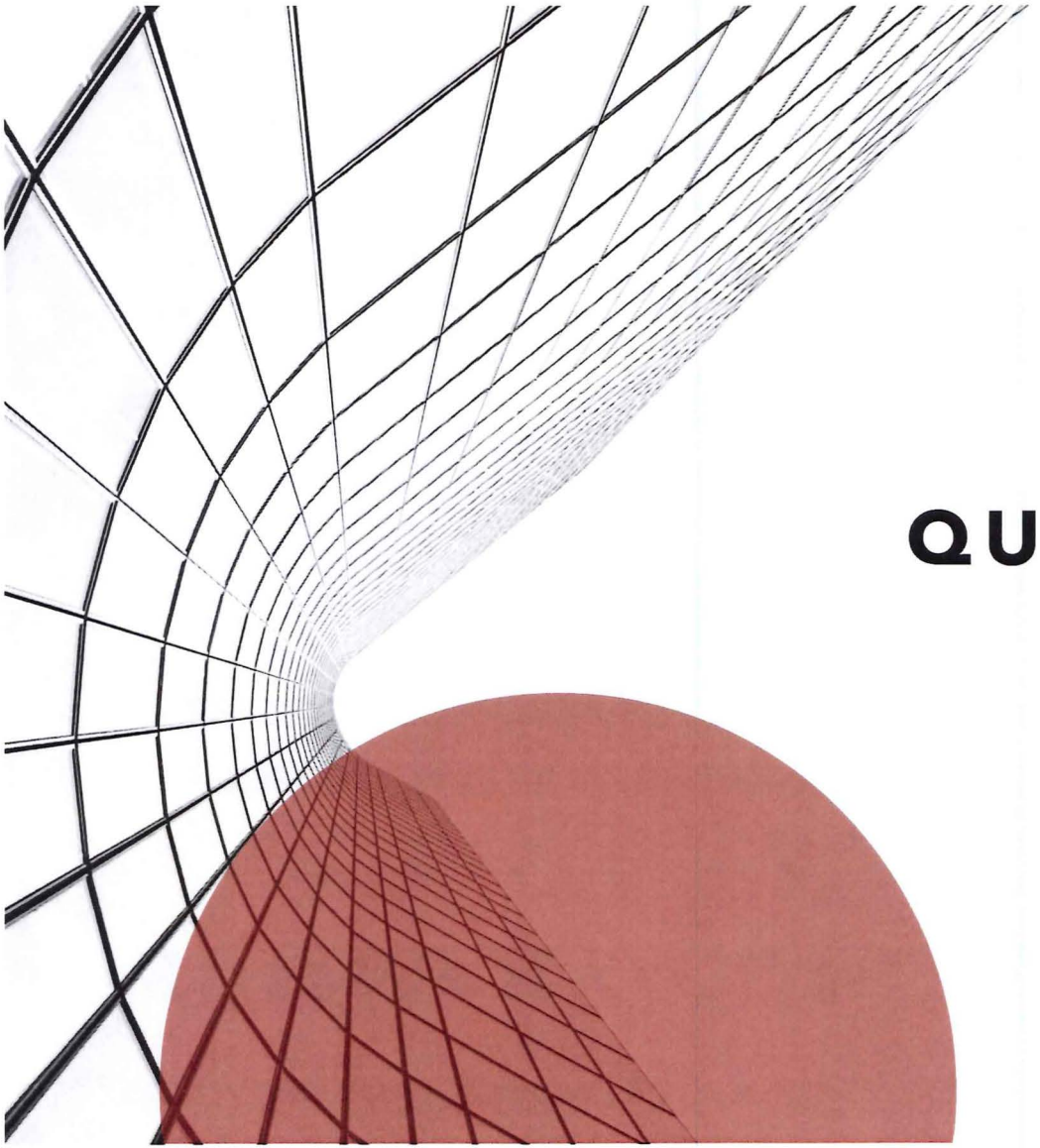
Prior to beginning design work on this project, please meet with LCU Staff to determine the best point of connection and discuss requirements for construction.

This letter should not be construed as a commitment to serve, but only as to the availability of service. Lee County Utilities will commit to serve only upon receipt of all appropriate connection fees, a signed request for service and/or an executed service agreement, and the

P.O. Box 398, Fort Myers, Florida 33902-0398 (239) 533-2111
lee-county.com
AN EQUAL OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER

SUMMARY/CONCLUSION

- **PROPOSED MAP 4B AMENDMENT FITS WITHIN THE OVERALL CONTEXT OF THE LEE PLAN FRAMWORK FOR THE PROVISION OF PUBLIC FACILITIES.**



QUESTIONS?

DCI2023-00034 ALVA TRADING POST, CPD

Staff Summary

CASE NUMBER & NAME:	DCI2023-00034 / Alva Trading Post, CPD
REQUEST:	Request to rezone ±1.92-acres from Agricultural (AG-2) and Commercial (C-1A) to Commercial Planned Development (CPD) to allow a maximum of 7,000 square feet of intensity for commercial, retail, and light manufacturing uses.
RESOLUTION NUMBER:	Z-24-020
LOCATION:	21450 Palm Beach Blvd., Northeast Planning Community, Lee County, FL.
OWNER:	Hendry Lee Properties, LLC
APPLICANT:	Quattrone & Associates, Inc.
AGENT:	Rock Aboujaoude Hendry Lee Properties, LLC 240 S. Bridge Street Labelle, FL 33935
HEARING EXAMINER RECOMMENDATION:	Approve, subject to conditions and deviations in Exhibit B.
PARTICIPANTS (0):	None

DCI2023-00034

Aerial

Subject Property

N
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S

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Feet

Lee County
Southwest Florida

Summary of Hearing Examiner Recommendation

ALVA TRADING POST CPD

The request for planned development zoning enables redevelopment of a commercial building property at the intersection of State Road 80 and Styles Road in Alva. The building has existed at that location several decades housing a variety of commercial uses.

The proposed planned development authorizes a variety of retail, office and business service uses. However, Applicant's representatives testified that the existing structure will be redeveloped to operate as a micro-brewery with a bar and cocktail lounge. Service of alcohol will be provided indoors and in designated outdoor seating areas.

Detailed recommendation follows

DCI2023-00034

Future Land Use

- Subject Property
- Urban Community
- Public Facilities
- Rural
- Wetlands

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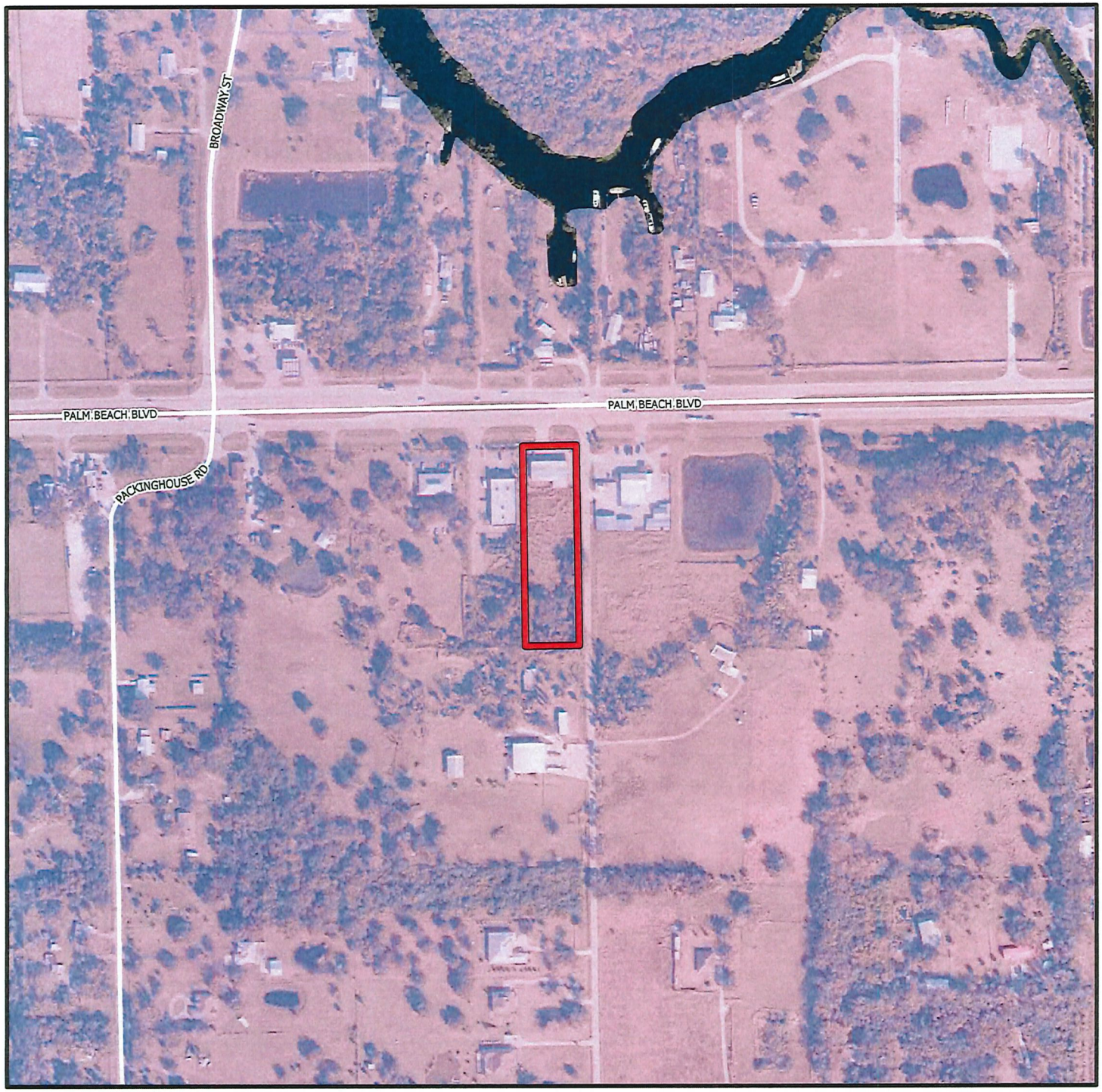
Lee County
Southwest Florida



DCI2023-00034

Mixed Use Overlay

Subject Property

Mixed Use Overlay

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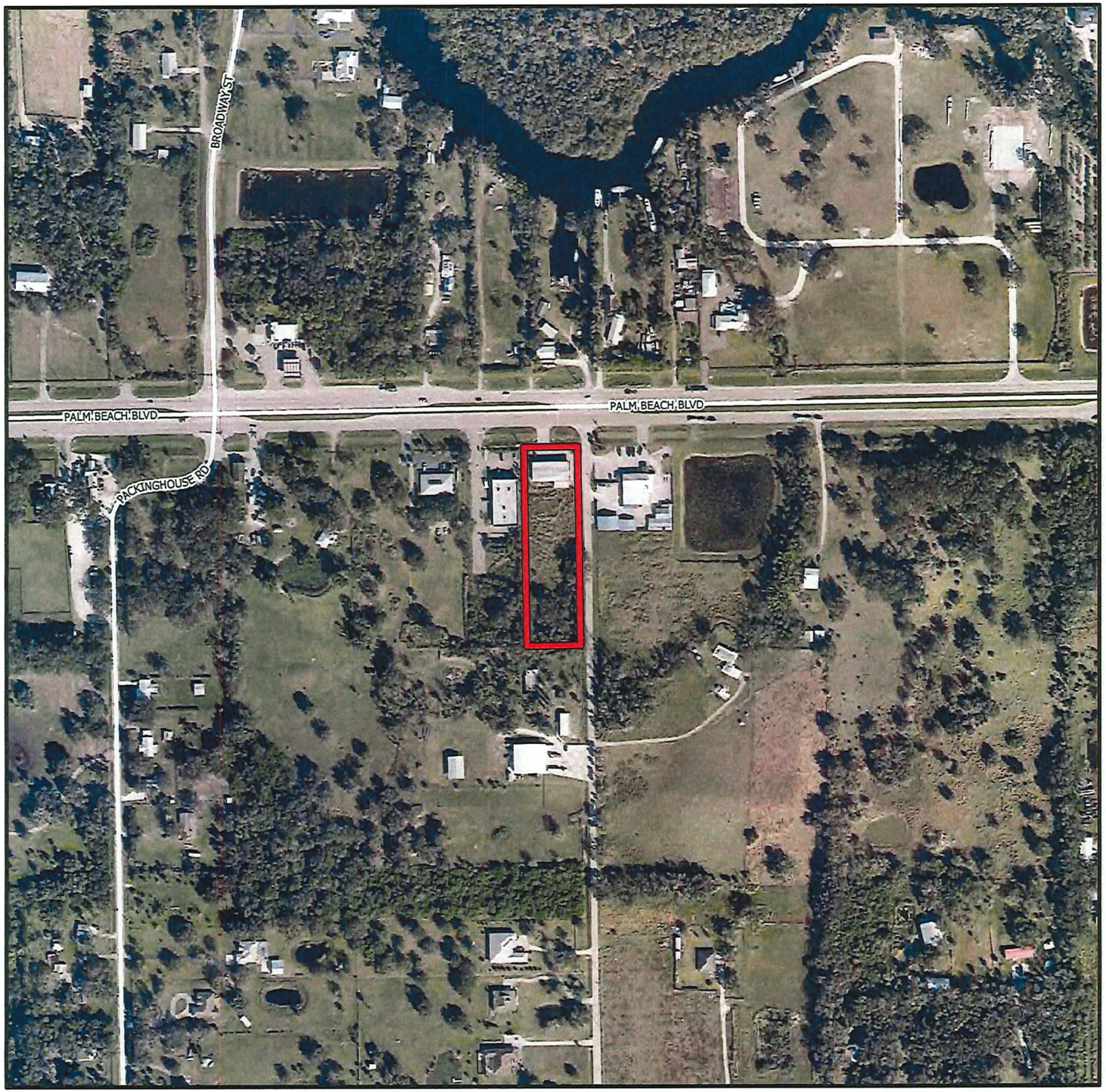
Lee County
Southwest Florida



DCI2023-00034

Aerial

Subject Property

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Feet

Lee County
Southwest Florida

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2023-00034

Regarding: **ALVA TRADING POST CPD**

Location: 21450 Palm Beach Boulevard
Northeast Lee County and Alva Planning Community
(District 5)

Hearing Date: July 10, 2024
Record Closed: July 19, 2024

I. Request

Rezone 1.92± acres from Commercial (C-1A) and Agricultural (AG-2) to Commercial Planned Development (CPD) to allow 7,000 square feet of commercial and limited manufacturing uses to facilitate a retail brewery and retail, office, and business service uses.

Property legal description is set forth in Exhibit A.

II. Hearing Examiner Recommendation

Approve, subject to conditions and deviations in Exhibit B.

III. Discussion

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners (Board) on applications to rezone property to the planned development zoning district.[1] In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on an application to rezone 1.92 acres in the Alva Planning Community. Staff recommended approval with conditions.

In preparing a recommendation to the Board, the Hearing Examiner must apply the County's Comprehensive Plan (Lee Plan), Land Development Code (LDC), and other County regulations to facts adduced at hearing. The record must contain substantial competent evidence to support the recommendation.

The Hearing Examiner recommends approval with conditions. Discussion follows below.

---

[1] LDC §34-145(d)(4) a.

Request

The request seeks to rezone approximately 1.92 acres from Commercial (C-1A) and Agricultural (AG-2) to Commercial Planned Development (CPD) to permit 7,000 square feet of commercial and limited manufacturing uses.

The property is located at 21450 Palm Beach Boulevard, at the intersection of Palm Beach Boulevard and Styles Road in the Northeast Lee County and Alva Community Plan Areas.

History

The property is comprised of 0.5 acres designated C-1A with frontage on State Road 80 (SR 80) and 1.42 acres zoned for agriculture.

The Board approved the C-1A zoning in 1972.[2] This portion of the site is developed with a one-story, 5,760 square-foot multi-use commercial building, last utilized as a convenience store and real estate office. The remaining 1.42 acres are undeveloped.

Lee Plan

Planned Developments must be consistent with the Lee Plan.[3]

The property is designated Urban Community and within the Mixed Use Overlay.[4] The Urban Community is characterized residential, commercial, public, and limited light industrial land uses. The Lee Plan encourages mixed use development in the Urban Community.[5] The site is located within the Alva Mixed Use Overlay.[6] The requested planned development includes both commercial and light industrial uses consistent with Lee Plan directives.

Compatibility

The County evaluates compatibility during the zoning process.[7] Compatibility exists when land uses exist in proximity, and no one use unduly negatively impacts another.[8] Planned development zoning is useful when integrating new development with surrounding land uses.[9] The planned development zoning

[2] Resolution Z-72-115A approved December 1972.
[3] LDC §34-491.
[4] Lee Plan Policy 1.1.4, Lee Plan Map 1-C: Mixed Use Overlay. The property is also within the Alva rural village area.
[5] Lee Plan Policy 1.1.4.
[6] Lee Plan Policy 28.1.1.
[7] LDC 34-145(d)(4).
[8] Florida Statutes s. 163.3164(9).
[9] LDC 34-612(2).

district allows flexibility in site design to address potential incompatibilities with neighboring development.[10]

The property is one of few commercial developments along SR 80 in Alva. Surrounding development includes a convenience store with fuel pumps and restaurant, a fire station,[11] a storage shed dealership, professional offices, an auto upholstery/auto repair and service business, and a Dollar General retail market.[12]

Appropriate intensity is determined on a case-by-case basis in accordance with Lee Plan policies and nature of surrounding land uses.[13] The proposed development parameters include an array of commercial and light industrial uses. Maximum building height is 35 feet. Applicant's representative testified in addition to the planned restaurant and micro-brewery, the owner may seek Administrative Approval to operate up to two food trucks on the premises.

The restaurant, brewery, and potential food trucks will foster a positive business climate providing jobs and expanding the County's tourism industry.[14]

LDC

Development must comply with the LDC or seek deviations. A "deviation" is a departure from a land development regulation.[15]

LDC architectural requirements for commercial development require building facades to include architectural relief features.[16] Applicant and Staff assert the existing building design is part of historic Alva in its current condition, having been at that location for decades.[17]

---

[10] *Id.*

[11] The abutting property to the south is Alva Fire Station No.121. The fire station is zoned for single family residential development but designated Public Facilities by the Lee Plan Future Land Use Map. The property received a Special Exception for a fire station in 1980. Resolution Z-80-219.

[12] Property immediately surrounding the property is designated Urban Community and Mixed Use Overlay. Across Styles Road to the east is commercially zoned property operating as an auto upholstery/auto repair and service business. Abutting property to the west is zoned Neighborhood Commercial (CN-2) and developed with a Dollar General Store on a parcel similar in size and dimensions to the subject property.

[13] LDC §34-413.

[14] Lee Plan Goals 158, 159, 161, Policy 161.1.3.

[15] LDC §34-2.

[16] LDC 10-610; See also Lee Plan Policy 28.2.4, which encourages adoption of architectural standards within the Alva Community Plan area that features architectural and design themes consistent with Alva's historic Architectural styles. Although the Community has not adopted LDC regulations to guide development in Alva, the building has been on the site for decades and could be considered consistent with Alva's historic architectural style for that reason.

[17] *See* Deviation 5 from LDC § 10-610.

Development in the Alva Planning Community is subject to the Alva Community Plan.[18] The Lee Plan anticipates adoption of LDC regulations to further guide site development in the community, none have been adopted to date.

The CPD application includes six deviations. Applicants must demonstrate deviations enhance the planned development and will not cause a detriment to the public.[19] Staff recommended approval of the deviations. The Hearing Examiner agrees with this recommendation. [20]

Environmental/Natural Resources

Rezoning requests must not adversely affect environmentally critical/sensitive areas or natural resources.

The C-1A portion of the site is improved with a building, small parking area, and a septic drain field on the south side of the building. The AG-2 portion of the site is cleared except for a natural waterway and wetland area along the south and southeast property lines. The MCP proposes no impacts to the waterway or associated wetlands.

Applicant's protected species survey disclosed no evidence of listed species.[21]

The Lee Plan encourages preservation of Heritage trees when possible.[22] The Northeast Lee County and Alva Community Plans require protection of the native vegetation and resources.[23] The Alva Plan encourages preservation and enhancement of native plant communities and tree canopies.[24]

Two Live Oak trees abutting Styles Road meet the definition of Heritage Trees.[25] Their canopy sprawls over 15 to 20 feet in width.[26] The MCP reflects preservation of indigenous habitat associated with the onsite wetlands, establishing a natural waterway buffer and meets open space requirements.[27]

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[18] Lee Plan Goal 28 and supplemental development regulations in LDC §33-1400 *et seq*. Future development permits, including development orders, must comply with community standards.
[19] LDC §34-373(a)(9).
[20] The Hearing Examiner may recommend approval, approval with modifications or denial of deviations based on findings that a deviation (1) enhances the planned development and, (2) preserves/promotes public health, safety, and welfare. LDC §34-377(a)(4).
[21] Staff Report Attachment G: Environmental Staff Report, Exhibit A: Environmental Assessment & Species Survey Report dated July 2023, updated October 2023 prepared by Bearpaws Environmental Consulting.
[22] Lee Plan Objective 28.5, Policies 28.5.1, 28.6.2.
[23] Lee Plan Goals 27, 28.
[24] Lee Plan Policy 28.2.6.
[25] Heritage Trees are defined in the LDC as native trees with a diameter at breast height of over 20 inches. LDC § 10-416(a)(4).
[26] Staff Report Attachment G: Environmental Staff Report.
[27] Lee Plan Goal 77, Objectives 77.2, 77.3, Policy 77.3.5; LDC 10-425. The LDC requires small projects less than 10 acres in size to devote 10% of the land area to open space.

The Hearing Examiner finds the requested CPD will not harm environmentally critical/sensitive areas or natural resources.[28]

Transportation

Requests to rezone property must provide access sufficient to support the proposed development intensity and address expected impacts to transportation facilities through existing County regulations and conditions of approval.

The property is located at the intersection of SR 80 and Styles Road.[29] SR 80 is an arterial roadway maintained by the State of Florida. Styles Road is a County maintained local road. The MCP depicts project access drives to Styles Road.

The Traffic Impact Statement (TIS) prepared by Applicant concluded the project will generate less than 100 trips during peak travel hours.[30] The TIS concludes the project will not negatively impact area roadways at buildout.[31]

Road impact fees will adequately address project impacts to the County network. Further analysis of transportation impacts, including site related turn lane improvements, will occur during development order permitting.

Public Services and Infrastructure

Public services include facilities, capital improvements, and infrastructure necessary to support development.[32] The Lee Plan requires an evaluation of public services during the rezoning process.[33]

Infrastructure and services are available to the property, including paved roads, law enforcement, fire, and emergency medical services.[34] There is a short segment of sidewalk on SR 80 west of the site. The property owner will be required to extend the sidewalk across the site's frontage accordance with LDC 10-256.[35]

There is no transit service to the area at this time. The Alva Fire and Rescue District has a station on abutting property to the south. Lee County Sheriff provides law enforcement services from an office in Lehigh. There is no potable water and

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[28] Lee Plan Objective 27.3.
[29] SR 80 is a State maintained arterial. Lee County Administrative Code AC 11-1.
[30] Staff Report Attachment H: Traffic Impact Statement for Alva Trading Post prepared by Quattrone & Associates, Inc. dated March 2024. *See also* Staff Report Attachment I: LCDOT Staff Memo prepared by Brittany Banker, DOT Plan Reviewer dated June 3, 2024.
[31] *Id.*
[32] Public services and infrastructure available to serve the project will include public water and sewer, paved streets, parks and recreation facilities, libraries, police, fire and emergency services, urban surface water management, and schools. Lee Plan Objective 4.1, Standards 4.1.1, 4.1.2, 4.1.4.
[33] Lee Plan Policy 2.2.1.
[34] Lee Plan Goal 95, Objectives 2.1, 2.2, Policies 2.2.1, 6.1.1, 6.1.4.
[35] See also Lee Plan Objective 28.4, Policy 28.4.1.

sanitary sewer service in the area, so the site will be served by onsite well and septic.

Development will be subject to road, fire, and emergency medical services impact fees.[36]

Conditions

The County must administer the zoning process so proposed land uses minimize adverse impacts on adjacent property and protect County resources.[37] Conditions must plausibly relate to anticipated impacts from the project, and be pertinent to mitigating those impacts.[38]

The CPD is subject to 8 conditions addressing impacts reasonably anticipated from development.[39] Notable conditions address Heritage trees and potential administrative approval of an ancillary Food Truck Park.

Hearing Examiner revised conditions/deviations for clarity, compliance with state law and to remove LDC references applicable to development by Condition 1.

Public

No members of the public spoke at hearing. Applicant conducted advertised neighborhood meetings before Alva Inc. and North Olga Community Planning Panel.[40]

Conclusion

The Hearing Examiner recommends approval of The Alva Trading Post CPD, subject to conditions in Exhibit B.

The Hearing Examiner finds the CPD meets LDC criteria and, as conditioned, is compatible with surrounding development.[41]

IV. Findings and Conclusions

Based on the testimony and exhibits presented in the record, the Hearing Examiner finds:

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[36] LDC Chapter 2, Article VI.
[37] LDC §§34-145(d)(4) a.2.(b), 34-377(a)(3), 34-411, and 34-932(c).
[38] LDC §34-932(b).
[39] LDC §§34-83(b)(4) a.3, 34-377(a)(2)c; Lee Plan Objective 77.3, Policy 6.1.4.
[40] Staff Report Attachment J: Public Information Session Summaries. Meeting held before Alva, Inc. on November 14, 2023, at the Alva Community Center. Meeting held before the North Olga Community Planning Panel, Inc. on January 18, 2023, at the Bayshore Fire Department Station on Nalle Road.
[41] Lee Plan Policy 6.1.4.

A. The requested Alva Trading Post CPD is consistent with the Lee Plan. Lee Plan Goals 2, 4, 6, 11, 27, 28, 77, 95, 158, 161, Objectives 2.1, 2.2, 4.1, 6.1, 11.1, 11.2, 27.3, 28.1, 77.2, 77.3, 126.2, 158.2, 160.1, 161.1, and Policies 1.1.4, 2.1.1, 2.1.2, 2.2.1, 6.1.1, 6.1.4, 6.1.5, 6.1.6, 6.1.7, 11.1.2, 11.2.1, 27.1.8, 28.1.1, 77.3.5, 158.2.1, 161.1.3, 161.4.3, Lee Plan Table 1(b), Maps 1-A, 1-B, 1-C, 2-A; LDC §34-491.

B. As conditioned, the CPD:

1. Is consistent with the LDC or qualifies for deviations. LDC Chapters 2, 10, and 34.

2. Is compatible with existing or planned uses in the surrounding area. Lee Plan Objectives 2.1, 2.2, 11.1, 11.2, and Policies 1.1.4, 6.1.4, 6.1.7, 11.1.1, 11.2.1; LDC §§34-411, 34-413.

3. Provides sufficient road access to support proposed development intensity. Lee Plan Policy 6.1.5.

4. Expected impacts on transportation facilities will be addressed by County regulations and conditions of approval. Lee Plan Policies 6.1.5, 39.2.1; LDC §§2-261 *et seq.*, 34-411.

5. Will not adversely affect environmentally sensitive areas or natural resources. Lee Plan Goals 27, 28, 60, 61, 77, Objectives 27.3, 28.5, 60.4, 77.2, 77.3, 126.2, Policies 6.1.6, 28.2.6, 60.4.1, 60.4.2, 77.3.5, 126.2.1, Standard 4.1.4; and

6. Public services and infrastructure will be available to serve the development. Goals 2, 4, 6, 27, 28, 95, Objectives 2.1, 2.2, 4.1, Policies 2.2.1, 6.1.1.

C. The proposed uses are appropriate at the location. Lee Plan Goals 2, 4, 6, 11, 27, 28, 161; Objectives 2.1, 2.2, 28.3.5, 11.1, 11.2, 161.1, Policies 1.1.4, 2.1.1, 2.1.2, 6.1.7, 11.2.1, 158.2.1, 161.1.3.

D. The County regulations and recommended conditions provide sufficient safeguards to protect the public interest and relate to impacts expected from the proposed development. Lee Plan Objectives 77.2, 126.2, Policies 6.1.4, 6.1.6; LDC §§34-377(a)(3), 34-411 and 34-932(c).

E. Deviations recommended for approval enhance the planned development and preserve public health, safety, and welfare. LDC §§34-373(a)(9), 34-377(a)(4).

Date of Recommendation: July 23, 2024.

Donna Marie Collins
Chief Hearing Examiner

Lee County Hearing Examiner
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398

Exhibits to Hearing Examiner's Recommendation

Exhibit A Legal Description and Vicinity Map
Exhibit B Recommended Conditions and Deviations
Exhibit C Exhibits Presented at Hearing
Exhibit D Hearing Participants
Exhibit E Information

Exhibit A

LEGAL DESCRIPTION AND VICINITY MAP

Exhibit A

BBLS
SURVEYORS, INC.
9001 HIGHLAND WOODS
BOULEVARD, SUITE 6
BONITA SPRINGS, FLORIDA, 34135
TELEPHONE: (239) 597-1315
FAX: (239) 597-5207

LEGAL DESCRIPTION
21450 PALM BEACH BOULEVARD

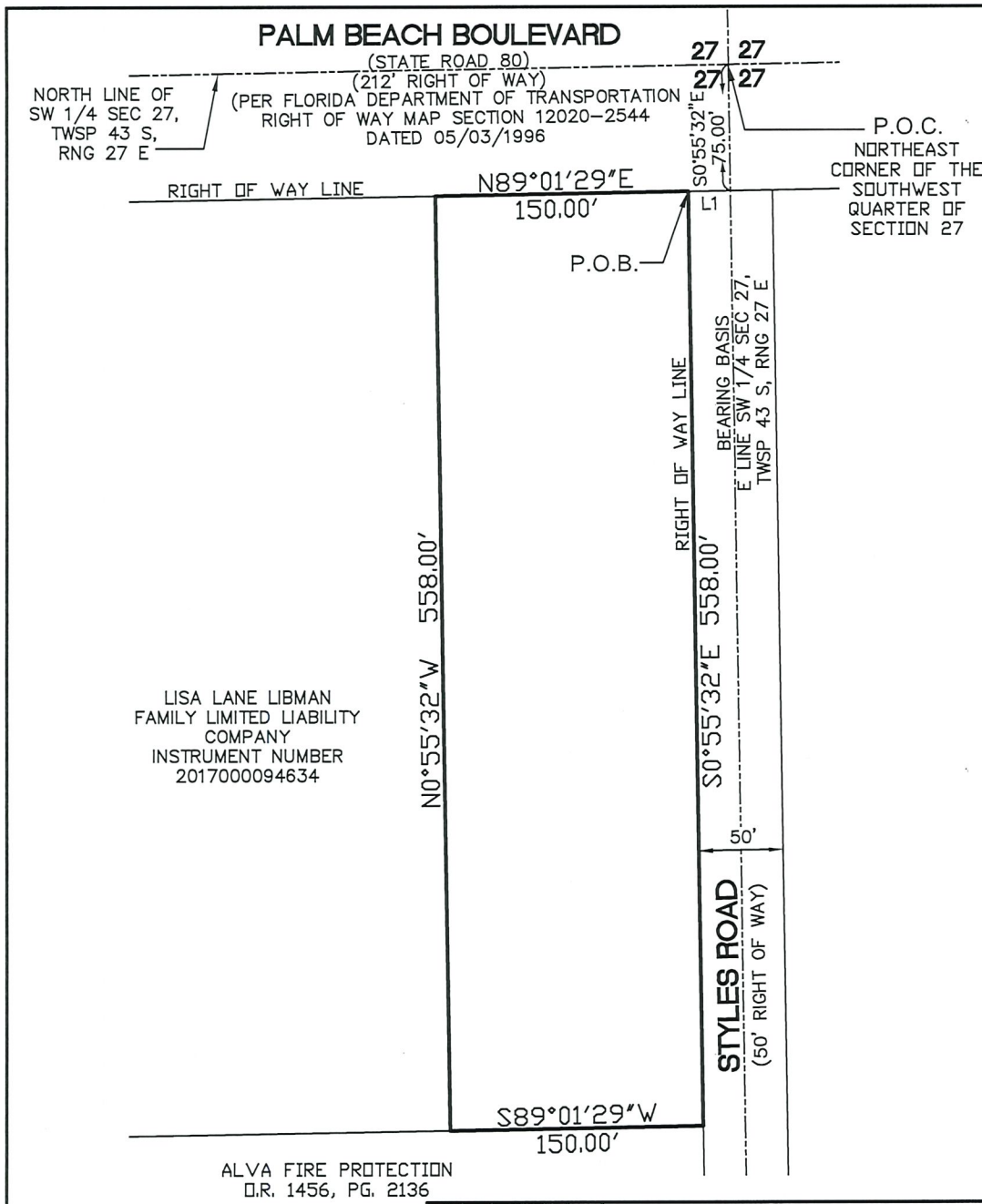
A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 43 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

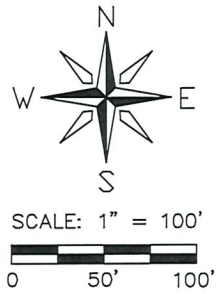
COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 43 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA; THENCE RUN S0°55'32"E, ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER, FOR A DISTANCE OF 75.00 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD 80 (A 225 FOOT WIDE RIGHT OF WAY); THENCE LEAVING SAID EAST LINE, RUN S89°01'29"W, ALONG SAID SOUTHERLY RIGHT OF WAY LINE, FOR A DISTANCE 25.00 FEET TO THE WESTERLY RIGHT OF WAY LINE OF STYLES ROAD (A 50 FOOT WIDE RIGHT OF WAY) AND THE **POINT OF BEGINNING** OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE RUN S0°55'32"E, ALONG SAID WESTERLY RIGHT OF WAY LINE, FOR A DISTANCE OF 558.00 FEET; THENCE RUN S89°01'29"W, FOR A DISTANCE OF 150.00 FEET; THENCE RUN N0°55'32"W, FOR A DISTANCE OF 558.00 FEET TO SAID SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD 80; THENCE RUN N89°01'29"E, ALONG SAID SOUTHERLY RIGHT OF WAY LINE, FOR A DISTANCE OF 150.00 FEET TO THE **POINT OF BEGINNING**.

PARCEL CONTAINS 1.921 ACRES, MORE OR LESS.

BEARINGS SHOWN HEREON REFER TO THE EAST LINE OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 43 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA, HAVING A BEARING OF S0°55'32"E.

THIS PROPERTY IS SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.





REVIEWED
DCI2023-00034
Rick Burris, Principal Planner
Lee County DCD/Planning
4/24/2024

LINE TABLE

LINE	BEARING	DISTANCE
L1	S89°01'29"W	25.00'

NOTES:

1.) BEARINGS SHOWN HEREON REFER TO THE EAST LINE OF THE SOUTHWEST QUARTER OF SECTION 27, TOWNSHIP 43 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA, HAVING A BEARING OF S0°55'32"E.

2.) THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS AND RESTRICTIONS OF RECORD.

3.) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.

LEGEND

P.O.C.	POINT OF COMMENCEMENT
P.O.B.	POINT OF BEGINNING
SEC.	SECTION
TWSP.	TOWNSHIP
RNG.	RANGE
O.R.	OFFICIAL RECORDS
PG.	PAGE

\\10.0.0.10\DATA\PROJECTS\2023\23.32 21450 PALM BEACH BLVD\LEGAL AND SKETCH 08 03 2023\23.32 L&S.DWG

SHEET 3 OF 3

THIS IS NOT A SURVEY

DATE: 08/03/2023
FIELD BOOK: SEE FILE
PAGE:
DRAWN BY: MAC
APPROVED: SEB
FILE: SEE DAYSTAMP
SCALE: 1" = 100'

SKETCH TO ACCOMPANY LEGAL DESCRIPTION

A PORTION OF SECTION 27, TOWNSHIP 43 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA

BBLS SURVEYORS , INC.
9001 HIGHLAND WOODS BLVD.,
SUITE 6, BONITA SPRINGS,
FLORIDA, 34135
(239) 597-1315

Stephen Berry

Digitally signed by Stephen Berry
DN: c=US, ou=LS 5296, o=BBLS Surveyors, inc., cn=Stephen Berry, email=sberry@bblsinc.net
Date: 2023.08.04 14:32:54 -04'00'

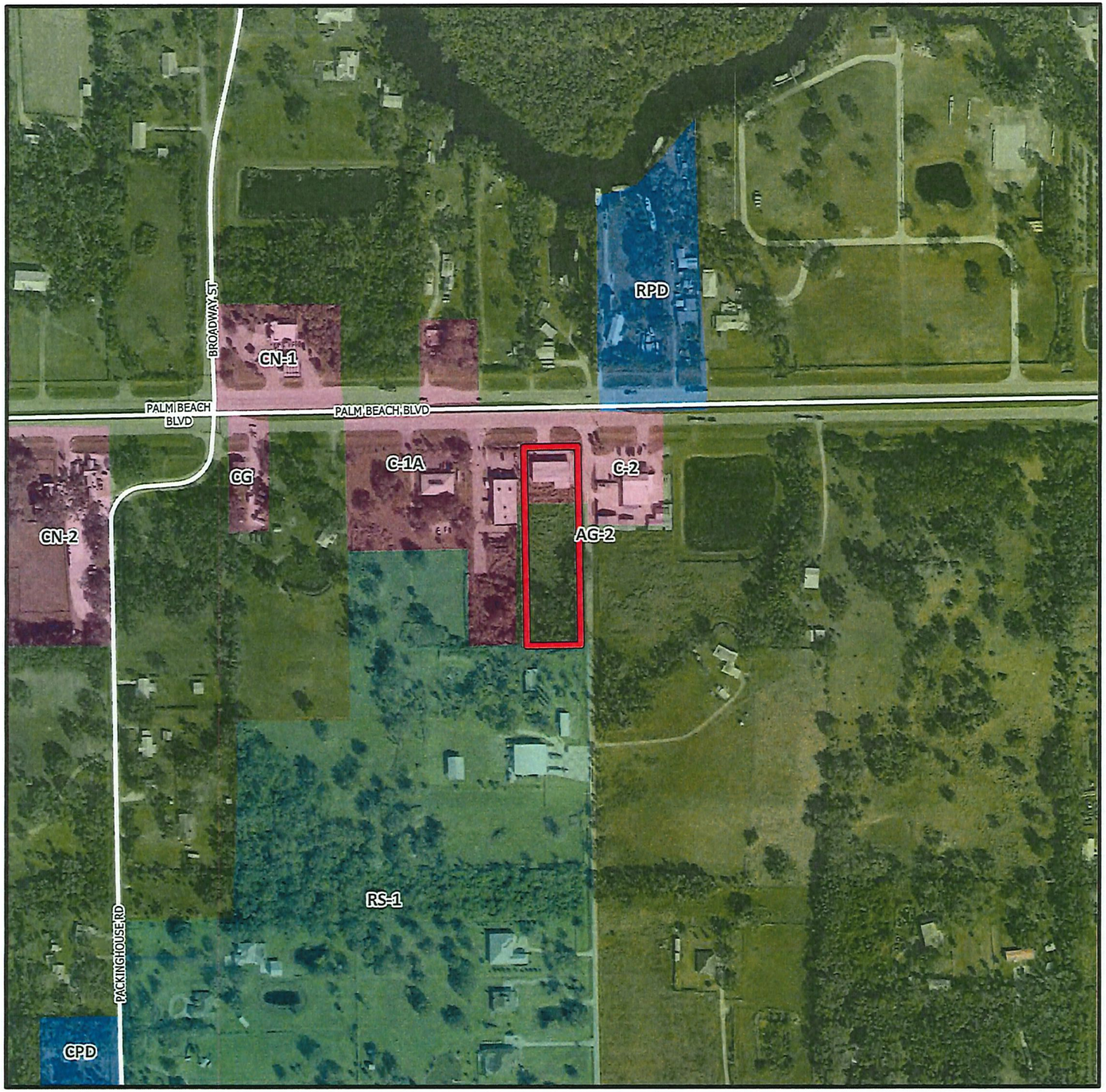
08/03/23

STEPHEN E. BERRY, STATE OF FLORIDA, (L.S. #5296)
BBLS SURVEYORS INC., (L.B. #8033)
PROOFED BY MAC SEB

STEPHEN E. BERRY License Number 5296 STATE OF FLORIDA Professional Surveyor and Mapper

SEE ATTACHED SKETCH – (SHEET 2 OF 2)

REVIEWED
DCI2023-00034
Rick Burris, Principal Planner
Lee County DCD/Planning
4/24/2024



DCI2023-00034

Zoning

Subject Property

N
W E
S

0 200 400 600 800
Feet

Lee County
Southwest Florida

Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS

As revised by the Hearing Examiner

CONDITIONS

1. Master Concept Plan and Development Parameters

a. Master Concept Plan (MCP). Development must be substantially consistent with the MCP entitled "Alva Trading Post" dated July 11, 2024 (Exhibit B1).

b. Compliance with Lee Plan and Land Development Code (LDC). Development must comply with the Lee Plan and LDC at the time of permitting, except as granted by deviation in this resolution. Requests to amend the MCP, development parameters, or conditions of approval require further review and approval.

c. Approved Development Parameters. Development is limited to a maximum of 7,000 square feet of commercial floor area, which includes outdoor seating areas, further subject to Condition 7.

2. Schedule of Uses and Property Development Regulations

a. Schedule of Uses

Accessory uses and structures
Administrative offices
ATM (Automatic Teller Machine)
Auto parts store
Banks and financial establishments, All Groups
Bar or cocktail lounge
Boats:
    Boat part store
    Boat repair and service
Building material sales
Business services, All Groups
Carwash
Cleaning and maintenance services
Clothing stores, general
Clubs:
    Commercial
    Fraternal
    Membership organization
Consumption on premises
Drug store, pharmacy

Entrance gates and gatehouses
Emergency operations center
EMS, fire, or sheriff's station
Essential services
Essential service facilities, Group I
Excavation:
    Water retention
Farm equipment, sales, storage, rental or service
Feed or fertilizer mixing and sales
Fences, Walls
Food stores, All Groups
Food truck park (subject to Condition 6)
Gift and souvenir shop
Hardware store
Hobby, toy, and game shops
Insurance companies
Laundromat
Laundry or dry cleaning, Group I
Lawn and garden supply store
Manufacturing of:
    Food and kindred products, Group II (subject to Condition 5)
Medical Office
Non-store retailers, All Groups
Parking lot:
    Accessory
Personal services, Groups I, II, III & IV (Excluding Steam/Turkish baths, Escort services, Palm readers, Fortunetellers or Card readers)
Pet shop
Pharmacy
Place of worship
Plant nursery
Post office
Recreational facilities, commercial, Groups I & IV
Restaurants, All Groups (excluding Fast food restaurant, coffee/donut shop and further limited to a maximum of 6,000 square feet, including outdoor seating)
Retail and wholesale ancillary to an approved use
Signs
Social services, Group I
Specialty retail shops, All Groups
Storage, indoor
Studios
Temporary uses
Used merchandise stores, Group I
Variety store

Warehouse:
Hybrid
Mini
Public
Wholesale establishments, Groups I & II

b. Property Development Regulations

Minimum Lot Area and Dimensions

Lot Area:	10,000
Lot Width:	100 feet
Lot Depth:	100 feet

Minimum Building Setbacks and Maximum Building Heights:

Street, State Road 80:	20 feet
Street, Styles Road:	10 feet
Side:	5 feet
Rear:	100 feet
Maximum building height:	35 feet
Maximum lot coverage	40 percent
Minimum building separation	20 feet

3. Open Space

Development order plans must depict a minimum of 10 percent open space.

4. Heritage Trees

Development order plans must depict preservation of two heritage Live Oak trees along Styles Road. The development order plans must depict protection barricades around the full dripline of the Live Oaks. Vehicle use within the full dripline is prohibited.

5. Food and Kindred Product Manufacturing

a. Food and kindred manufacturing is limited to brewing of alcoholic and nonalcoholic beverages, clearly incidental and subordinate to a permitted principal use.

b. Floor area dedicated to manufacturing must be subordinate to the permitted principal use (i.e. commercial recreation/restaurant/bar etc.).

c. Beverages must be primarily for on-premises consumption and may include incidental retail package sales.

d. Manufacturing is subject to limitations in the LDC.

6. Food Truck Park

Food Truck Park may be approved using the Administrative Amendment process subject to the following:

a. Application submittals must include a conceptual site plan, with a maximum of two food vending carts/conveyance spaces, meeting minimum required details for special exception site plans.

b. Patron parking in the street rights-of-way is prohibited.

c. Food vending carts/conveyances may not occupy required parking spaces or street rights-of-way.

d. Food vending carts/conveyances may not occupy storm water management, buffer, or wetland preserve areas including the 25-foot wetland preserve setback on the MCP.

e. The Administrative Amendment application must include a project narrative describing the intended operation, hours of operation, and other information determined necessary by the Director.

f. The Administrative Amendment application and development order plans must illustrate the combined floor area to be utilized by stationary food-dispensing trucks and trailers to determine transportation impacts.

g. For purposes of trip generation estimates, the combined floor area of all stationary food-dispensing trucks and trailers and combined designated outdoor seating areas will be considered for a fast-food restaurant use. Stationary food-dispensing trucks/trailers for the purpose of this condition are defined as food trucks and trailers remaining on site overnight. Food-dispensing truck/trailer floor area is defined as the maximum outside enclosed area of the vehicle/trailer. Permitted restaurant gross floor area includes restaurant outdoor seating areas.

7. Transportation Impacts

Development intensity is limited to total combined trips generated by a 1,000-SF variety store and 6,000-SF fast casual restaurant use estimated by the Institute of Transportation Engineers Trip Generation Manual current at time of local development order."

8. State and Federal Permits

Generally. County development permits do not create rights to obtain permits from state or federal agencies and do not create liability on the part of the County if applicant fails to obtain requisite approvals or fulfill obligations imposed by state/federal agencies or if applicant undertakes actions resulting in a violation of state or federal law. Applicant must obtain applicable state/federal permits prior to commencing development.

State Wetland Permits. Developer may not commence construction on development impacting wetlands until issuance of required state permits. Development activity must comply with state wetland permits and applicable local development permits.

If the State does not approve wetland impacts or if State wetland permits are not consistent with proposed wetland impacts reflected in County development permits, then Developer must amend County development permit approvals to be consistent with state wetland permits and applicable Lee Plan and LDC regulations regarding development within wetlands.

DEVIATIONS

1. Site Design Standards for Commercial Development. Deviation 1 seeks relief from LDC §10-610(e) and §34-2015(2)f which require adjacent commercial uses to provide parking lot interconnections for automobile, bicycle, and pedestrian traffic, to allow no interconnection with abutting commercial property to the west.

   Hearing Examiner Recommendation: Approved, subject to the following conditions:

   a. Approval limited to address existing parking area adjacent to S. R. 80. If the site is redesigned, the deviation must be revaluated by the County under LDC §10-104(b).

   b. The project must connect to the existing pedestrian facility on S. R. 80 unless FDOT provides written confirmation of denial of pedestrian facilities within the right-of-way.

2. Open Space and Landscape Requirements in the Mixed Use Overlay. Deviation 2 seeks relief from LDC §10-425(f)(1), which requires a five-foot-wide right-of-way buffer for commercial projects in the Mixed Use Overlay, to allow no right-of-way buffer along S. R. 80.

Hearing Examiner Recommendation: Approved, subject to the condition that the deviation is limited to the existing parking and building configuration adjacent to S. R. 80.

3. Parking Lots – Minimum Aisle Width. Deviation 3 seeks relief from LDC §34-2016(3), which requires a 24-foot-wide two-way drive aisle when associated with 90-degree parking, to allow a 22-foot-wide two-way drive aisle in the parking area along S. R. 80.

   Hearing Examiner Recommendation: Approved, subject to the condition that the deviation is limited to addressing existing parking and building configuration adjacent to S. R. 80.

4. Connection Separation. Deviation 4 seeks relief from LDC §10-285(b), which requires 100 feet of connection separation measured from the edge of pavement of S. R. 80 to the vehicular access points on Styles Road, to allow 80 feet of separation between S. R. 80 and the existing northern access.

   Hearing Examiner Recommendation: Approved, subject to the following condition:

   Approval is limited to access the existing parking area adjacent to S. R. 80. If the site is redesigned, the deviation must be revaluated by the County under LDC §10-104(b).

5. Design Standards for Commercial Buildings. Deviation 5 seeks relief from LDC §10-620, which requires architectural features, patterns, and textures for commercial buildings, including primary facades and roof treatments, to memorialize the existing building design.

   Hearing Examiner Recommendation: Approved, subject to the following conditions:

   a. Development order plans must include building architectural plans that are consistent with the proposed Architectural Plans attached as Exhibit B2.

   b. Approval is limited to the existing building. In the event the building is rebuilt or substantially improved as determined by the Manager of Development Services, the deviation is null and void unless subsequently approved by amendment.

6. Sale or Service for On-Premises Consumption of Alcohol. Deviation 6 seeks relief from LDC §34-1264(b)(1)a, which prohibits the sale or service of alcoholic beverages for consumption on premises within 500 feet of a dwelling unit under separate ownership, to allow consumption on premises in conjunction with a restaurant or bar/cocktail lounge to be located within 235 feet of residential dwelling units under separate ownership.

Hearing Examiner Recommendation: Approved, subject to the following conditions:

a. Alcoholic beverage sale or service is limited to the areas designated on the MCP within the following hours: 10:00 AM to 2:00 AM Tuesday through Saturday, and 10:00 AM to Midnight Sunday and Monday.

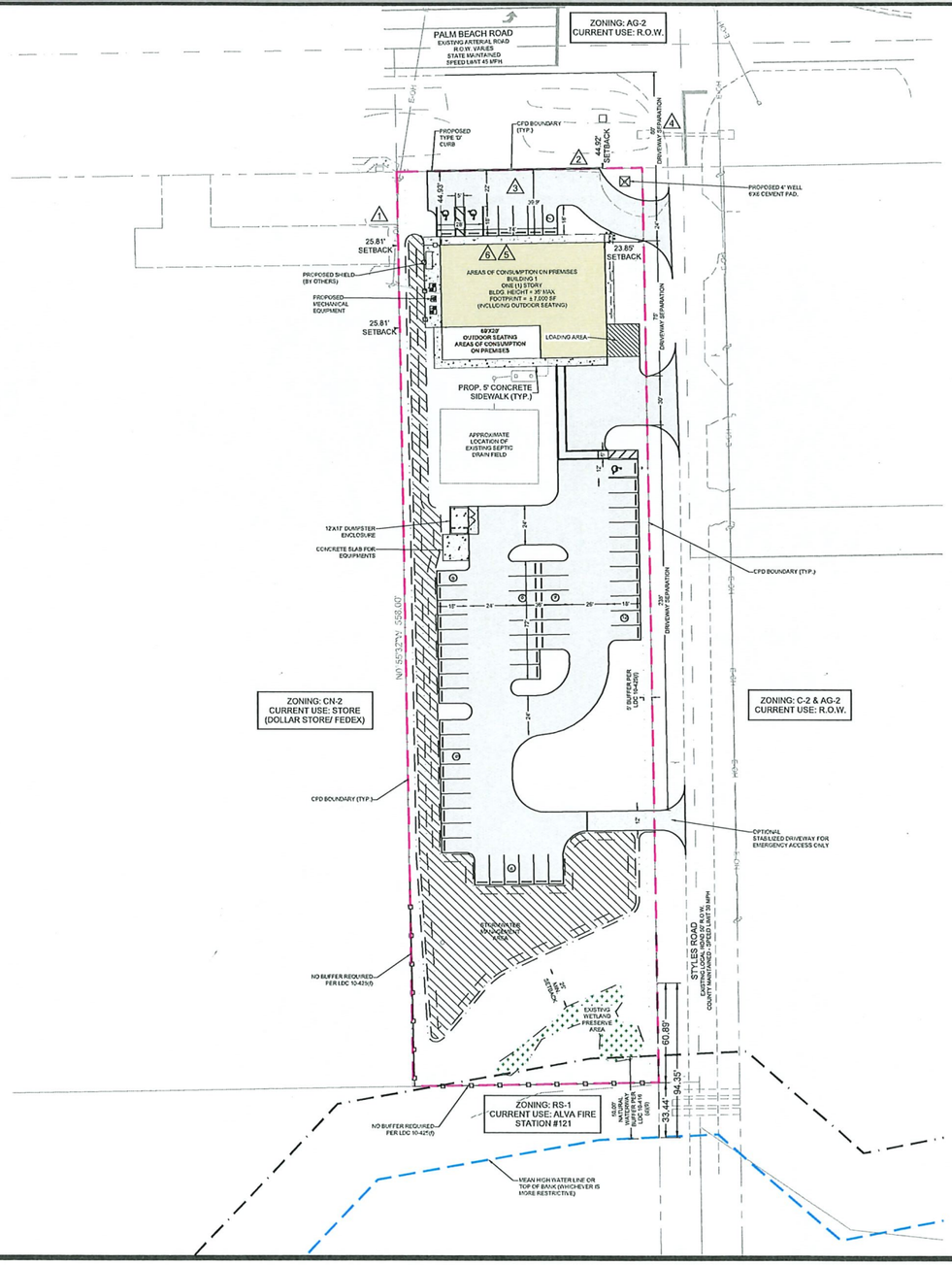
b. Outdoor live entertainment is limited to between 10:00 AM to 9:00 PM

Exhibits to Conditions:
B1 Master Concept Plan for Alva Trading Post dated July 11, 2024
B2 Architectural Plans

Additional info dated 07-12-2024

ALVA TRADING POST

LOCATED IN SECTION 27, TOWNSHIP 43-S, RANGE 27-E, LEE COUNTY, FLORIDA



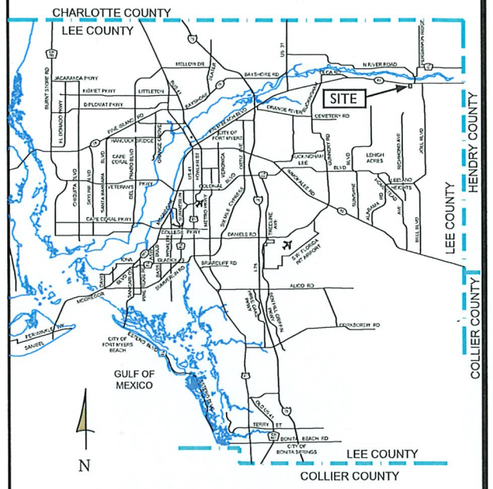
N

0' 40' 80'

PLAN VIEW SCALE

MASTER CONCEPT PLAN

REVISED 7/11/2024



LOCATION MAP
(NOT TO SCALE)

PROJECT SUMMARY:

ZONING/REZONING
C-1A + AG-2 CPD

STRAP #'s
27-43-27-00-00055.0000

PROJECT ACREAGE
1.92 ACRES (83,700 SF)

PROJECT INTENSITY
BUILDING HEIGHT 35'
MAXIMUM FLOOR AREA 7,000 SF.

OPEN SPACE
MINIMUM 10% = 0.19 ACRES (8,276 SF)

PARKING CALCULATIONS TABLE 34-2020 (b)
MINIMUM 94 PARKING SPACES
(INCLUDING 3 HANDICAP)

MIXED USE OVERLAY TABLE 34-2020
REDUCES PARKING REQUIREMENT BY 40%
56 PARKING SPACES REQUIRED
57 PARKING SPACES PROVIDED

⚠ DEVIATIONS

Quattrone & Associates, Inc.
Engineers, Planners & Development Consultants

EXHIBIT B-1

P:\2023 Projects\230512 ALVA BREWERY - ROCK\01-CADD FILES\03-QAI CADD - CONCEPTS\2024-05-06 MCP\230512-MCP-client layout

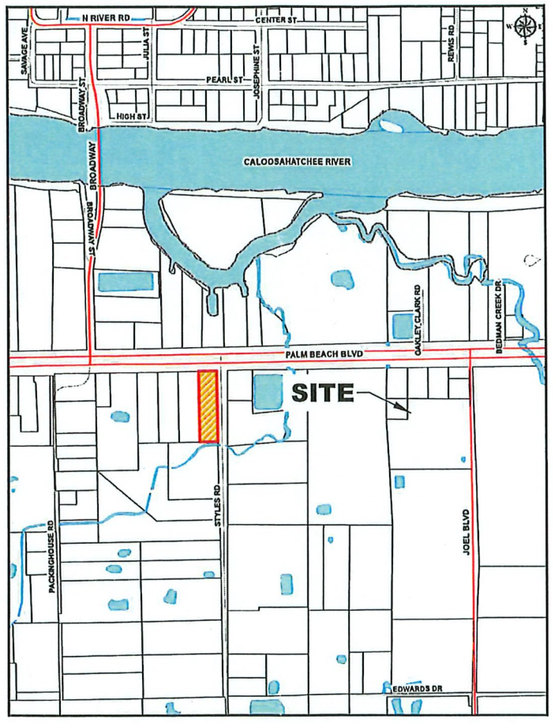
EXHIBIT B2

PROPOSED ROOF ADDITION

FOR

Hendry-Lee Properties, LLC.
21450 Palm Beach Blvd.
Alva, FL 33920

SITE AERIAL



LOCATION MAP

SHEET LIST	
1	COVER SHEET
2	SITE PLAN
3	ELEVATIONS
4	ELEVATIONS

- SEE ELECTRICAL SITE PLAN BY ATP ENGINEERING

ROCK ABOUJAOUDE CERTIFICATE No. 50297 STATE OF FLORIDA PROFESSIONAL ENGINEER

This item has been digitally signed and sealed by Rock Aboujaoude, P.E. on the date adjacent to the seal.

Digitally signed by Rock A Aboujaoude
Date: 2024.03.21 14:02:22 -04'00'

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ROCK ENTERPRISES, INC.
ENGINEERING CONSULTANTS
240 S. BRIDGE STREET
LABELLE, FL 33935
(863) 612-0011

DATE	REVISIONS	BY

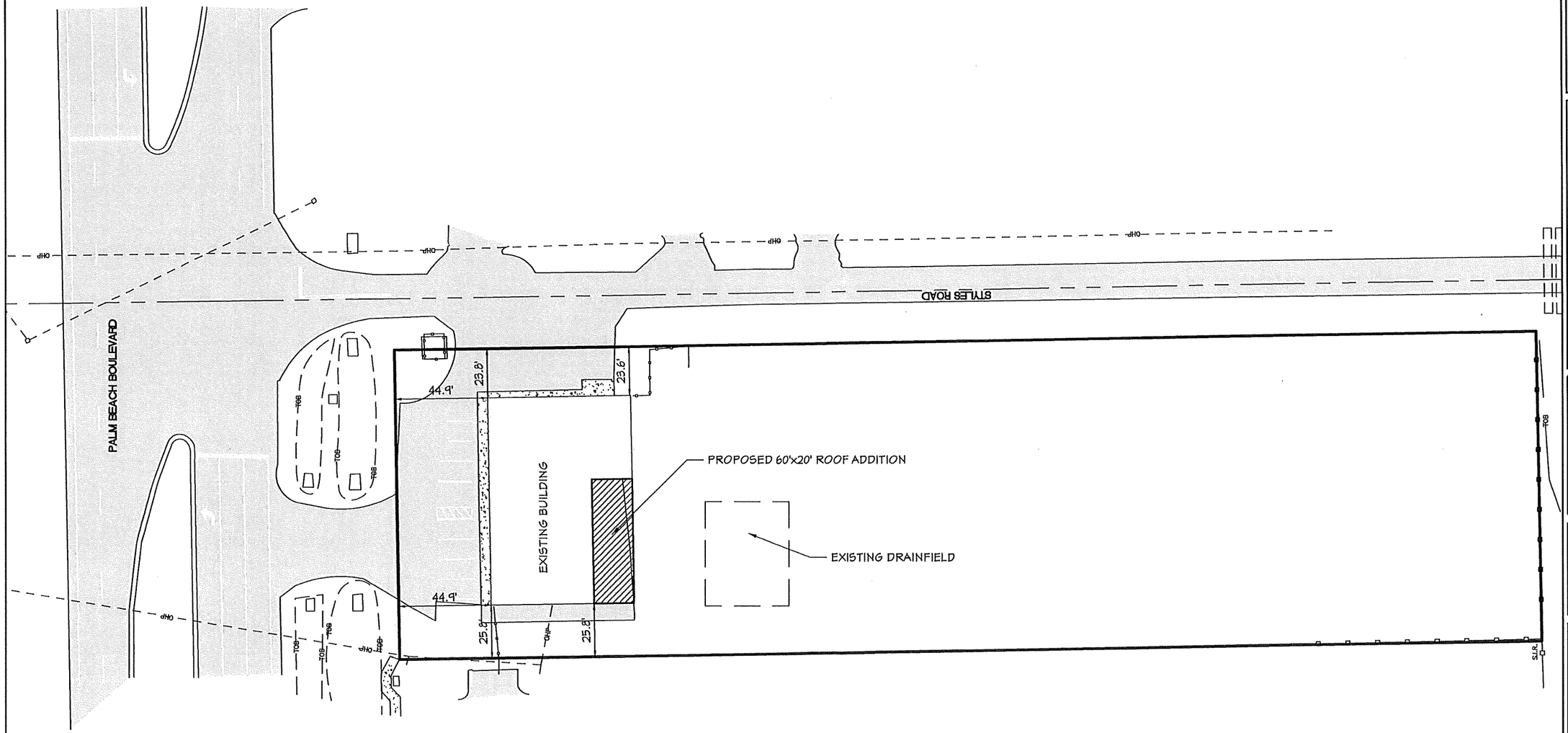
Rock Aboujaoude, PE #50297

job# :
designed: RAA
drawn: AB
checked: RAA
date: 3/21/24
scale: N.T.S.

COVER SHEET

HENDRY LEE PROPERTIES, LLC
21450 PALM BEACH BLVD
ALVA, FL 33920
LEE COUNTY

NOTE: SITE PLAN BASED ON SURVEY BY BBLS SURVEYORS, INC DATED 11-01-23.



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Rock Aboujaoude, PE #50297

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designed:	RAA
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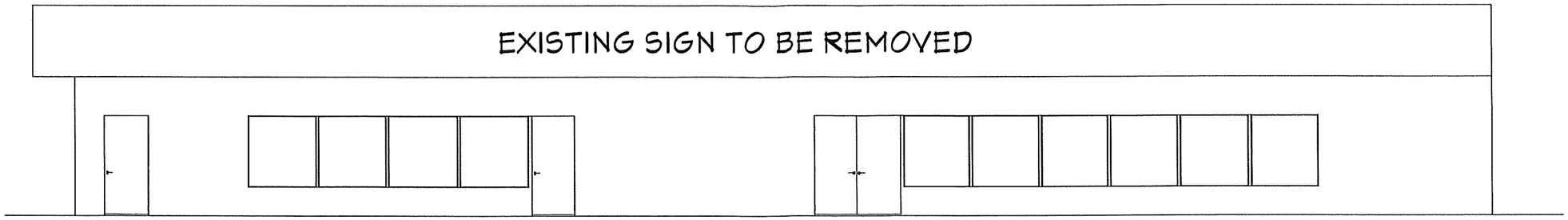
scale:	1/8"=1'

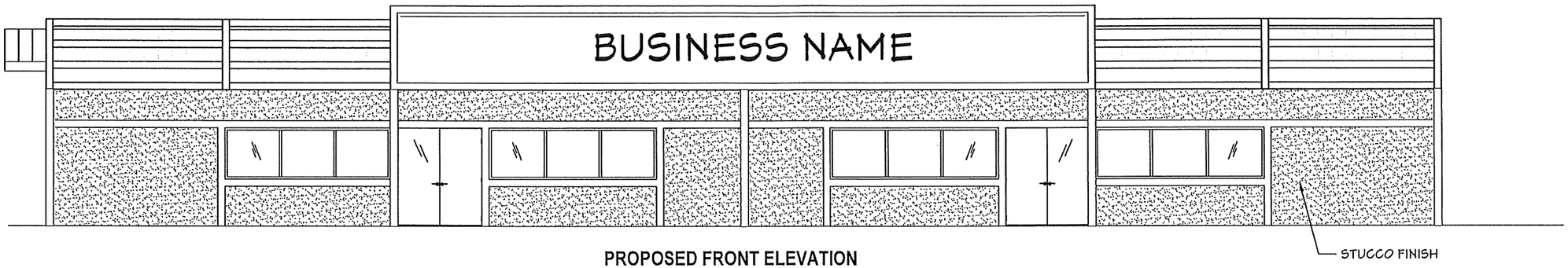
SITE PLAN

HENDRY LEE PROPERTIES, LLC

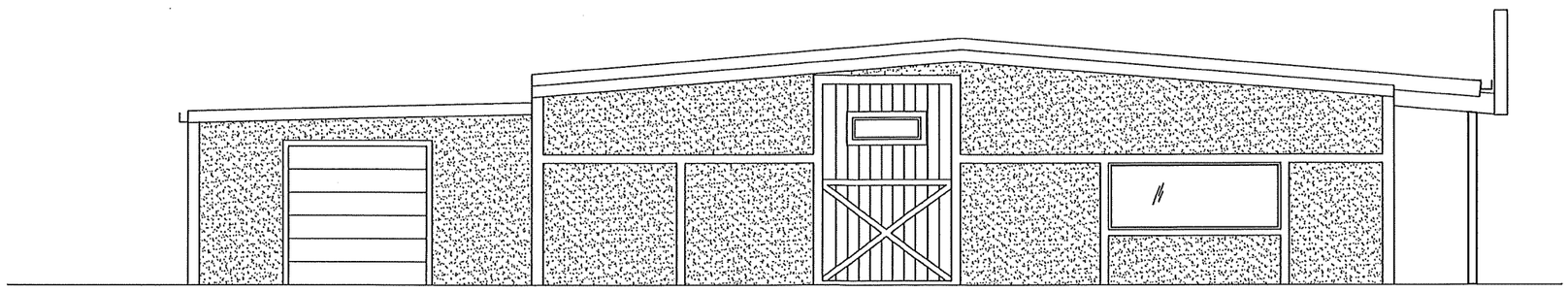
21450 PALM BEACH BLVD
ALVA, FL 33920
LEE COUNTY



EXISTING FRONT ELEVATION



PROPOSED FRONT ELEVATION



LEFT ELEVATION

ROCK ENTERPRISES, INC.
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Rock Aboujaoude, PE #50297

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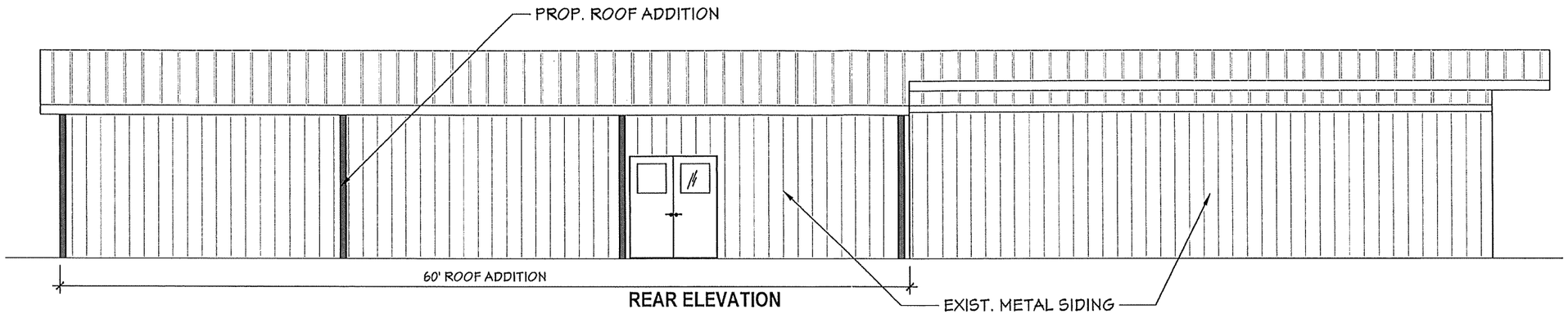
scale: 1/8"=1'

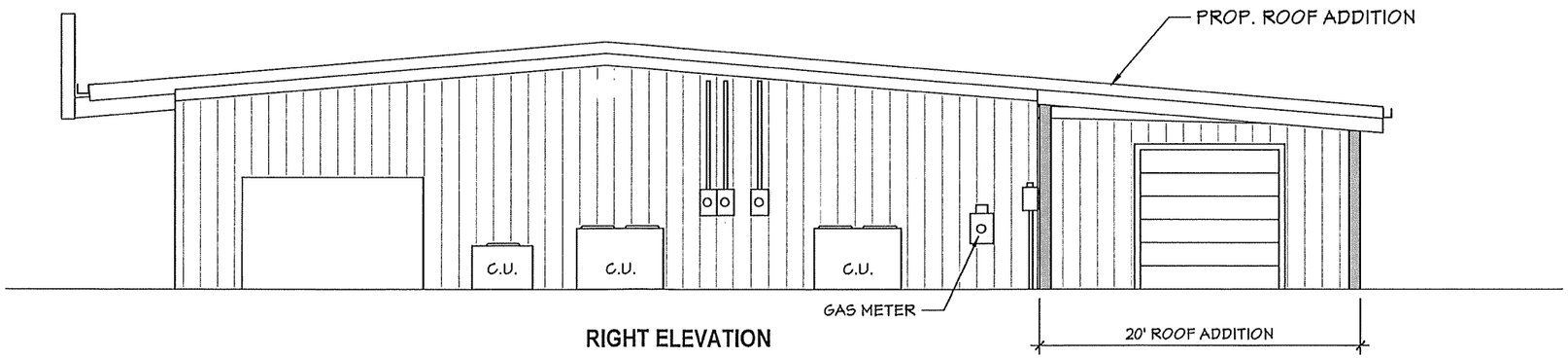
ELEVATIONS

HENDRY LEE PROPERTIES, LLC

21450 PALM BEACH BLVD
ALVA, FL 33920
LEE COUNTY



REAR ELEVATION



RIGHT ELEVATION

ROCK ENTERPRISES, INC.
ENGINEERING CONSULTANTS
240 S. BRIDGE STREET
LABELLE, FL 33935
(863) 612-0011

DATE	REVISIONS	BY

Rock Aboujaoude, PE #50297

job# :	
designed:	RAA
drawn:	AB
checked:	RAA
date:	3/21/24
scale:	N.T.S.

ELEVATIONS

HENDRY LEE PROPERTIES, LLC

21450 PALM BEACH BLVD
ALVA, FL 33920
LEE COUNTY

SHEET 4 OF 4

Exhibit C

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments:* Prepared by Adam Mendez, Senior Planner, date received June 25, 2024 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]

2. *Affidavit of Publication:* For Zoning Case DCI2023-00034, Alva Trading Post CPD (1 page – 8.5"x11")

3. *Mixed Use Overlay Map:* Prepared by Lee County, Lee Plan Map 1, Page 6 of 7, Special Treatment Areas (1 page – 11"x1")[color]

4. *PowerPoint Presentation:* Prepare by Lee County Staff for DCI2023-00034, Alva Community (multiple pages – 8.5"x11")[color]

5. *Written Submissions:* Email from Adam Mendez to Maria Perez, with copies to Jamie Princing, Rock Aboujaoude, Al Quatrone, P.E. Paul Torocco, P.E., David Rolls, Sharon Hrabak, and Gabriela Rodriguez, dated Monday, July 15, 2024, 12:16 PM (multiple pages – 8.5"x11"){post hearing submittal}

APPLICANT EXHIBITS

a. *48-Hour Notice:* Email from Sharon Hrabak to Maria Perez, Al Quattrone, Rock Aboujaoude, Adam Mendez, Rebecca Sweigert, Tracy Toussaint, Jamie Princing, Elizabeth Workman, Audra Ennis, Nicholas DeFilippo, Ohdet Kleinmann, Abby Henderson, Lee Werst, Warren Baucom, Mikki Rozdolski, Anthony Rodriguez, Dirk Danley, Jr., Phil Gillogly, Marcus Evans, and Jennifer Rodriguez, dated Tuesday, July 9, 2024, 7:07 AM (4 pages – 8.5"x11")

1. *Résumé:* For Paul M. Torocco, P.E., Senior Engineer with Quattrone & Associates, Inc. (1 page – 8.5"x11")

2. *PowerPoint Presentation:* Prepare by Quattrone & Associates, Inc., for Alva Trading Post Commercial Planned Development Rezoning, DCI2023-00034, Lee County Hearing Examiner Public Hearing, dated Wednesday, July 10, 2024 (multiple pages – 8.5"x11")[color]

Exhibit D

HEARING PARTICIPANTS

County Staff:

Adam Mendez, Senior Planner, Department of Community Development

Applicant Representatives:

Paul Torocco, P.E.

Exhibit E

INFORMATION

UNAUTHORIZED COMMUNICATIONS

The LDC prohibits communications with the Hearing Examiner or her staff on the substance of pending zoning actions. There are limited exceptions for written communications requested by the Hearing Examiner, or where the Hearing Examiner seeks advice from a disinterested expert.

HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS

A. The Hearing Examiner will provide a copy of this recommendation to the Board of County Commissioners.

B. The Board will hold a final hearing to consider the Recommendation and record made before the Hearing Examiner. The Department of Community Development will notify hearing participants of the final hearing date. Only Parties and participants may address the Board at the final hearing. Presentation by participants are limited to the substance of testimony presented to the Hearing Examiner, testimony concerning the correctness of Findings of Fact or Conclusions of Law contained in the Recommendation, or allegations of relevant new evidence not known or that could not have been reasonably discovered by the speaker at the time of the Hearing Examiner hearing.

C. Participants may not submit documents to the Board of County Commissioners unless they were marked as Exhibits by the Hearing Examiner. Documents must have the Exhibit number assigned at hearing.

COPIES OF TESTIMONY AND TRANSCRIPTS

A. Every hearing is recorded. Recordings are public records that become part of the case file maintained by the Department of Community Development. The case file and recordings are available for public examination Monday through Friday between 8:00 a.m. and 4:30 p.m.

B. A verbatim transcript may also be available for purchase from the court reporting service.

Conditions

All references to uses are as defined or listed in the Lee County Land Development Code (LDC).

(1) Master Concept Plan and Development Parameters

a. Master Concept Plan. Development of the subject property must be substantially consistent with the Master Concept Plan Entitled "Alva Trading Post" dated 05/06/2024, attached hereto as Attachment D.
Staff Note: Applicant advised to prepare revised MCP to address:
- The natural waterway buffer and heritage trees preservation
- designating the use of a bar or cocktail lounge with associated areas for consumption on premises,
- Clarify building footprint note on MCP to state "**± 7,000 SF Including Outdoor Seating.**"
- MCP date reference to be updated accordingly.

b. Development Parameters. Development is limited to a maximum of 7,000 square feet of commercial floor area, which includes outdoor seating areas, and is subject to Condition #7.

c. Compliance with Lee Plan and LDC. Development must comply with all the requirements of the LDC at the time of local development order approval, except as may be granted by deviation as part of this planned development. Subsequent amendments to the Master Concept Plan or its auxiliary documentation attached thereto are subject to the planned development amendment process established by the Land Development Code.

(2) Schedule of Uses and Property Development Regulations

a. Schedule of Uses

Accessory uses and structures
Administrative offices
ATM (Automatic Teller Machine)
Auto parts store
Banks and financial establishments, All Groups
Bar or cocktail lounge
Boats:
    Boat part store
    Boat repair and service
Building material sales
Business services, All Groups
Carwash
Cleaning and maintenance services

Clothing stores, general
Clubs:
    Commercial
    Fraternal
    Membership organization
Consumption on premises
Drug store, pharmacy
Entrance gates and gatehouses
Emergency operations center
EMS, fire or sheriff's station
Essential services
Essential service facilities, Group I
Excavation:
    Water retention
Farm equipment, sales, storage, rental or service
Feed or fertilizer mixing and sales
Fences, Walls
Food stores, All Groups
Food truck park (subject to Condition #6)
Gift and souvenir shop
Hardware store
Hobby, toy and game shops
Insurance companies
Laundromat
Laundry or dry cleaning, Group I
Lawn and garden supply store
Manufacturing of:
    Food and kindred products, Group II (subject to Condition #5)
Medical Office
Nonstore retailers, All Groups
Parking lot:
    Accessory
Personal services, Groups I, II, III & IV (Excluding Steam or Turkish baths, Escort services, Palm readers, Fortunetellers or Card readers)
Pet shop
Pharmacy
Place of worship
Plant nursery
Post office
Recreational facilities, commercial, Groups I and IV
Restaurants, All Groups (excluding Fast food restaurant, coffee/donut shop and limited to 6,000 square feet maximum, including outdoor seating)
Retail and wholesale ancillary to an approved use
Signs
Social services, Group I
Specialty retail shops, All Groups
Storage, indoor
Studios
Temporary uses
Used merchandise stores , Group I
Variety store

Warehouse
Hybrid
Mini
Public
Wholesale establishments, Groups I & II

b. Property Development Regulations

Minimum Lot Area and Dimensions

Lot Area:	10,000
Lot Width:	100 feet
Lot Depth:	100 feet

Minimum Building Setbacks and Maximum Building Heights:

Street, State Road 80:	20 feet
Street, Styles Road:	10 feet
Side:	5 feet
Rear:	100 feet
Maximum building height:	35 feet
Maximum lot coverage	40 percent
Minimum building separation	20 feet

(3) Open Space

Prior to local development order approval, the project must depict a minimum of 10 percent of open space in substantial compliance with the MCP.

(4) Heritage Trees

The development order plans must depict preservation of the two heritage Live Oak trees located along Styles Road. The plans must depict protection barricades around the full dripline of the Live Oaks and vehicle use within the full dripline is prohibited.
Staff Note: Applicant advised to prepare revised MCP to address natural waterway buffer and location of both heritage trees with corresponding vehicle use area and emergency access modifications.

(5) Food and Kindred Product Manufacturing

a. Food and kindred manufacturing is limited to brewing of alcoholic and nonalcoholic beverages and must be clearly incidental and subordinate to a permitted principal use.

b. The floor area dedicated to manufacturing must be subordinate to the remaining commercial uses (i.e. commercial recreation/restaurant/bar etc.).

c. The beverages must primarily be for on-premises consumption and may include incidental retail package sales.

d. The manufacturing is subject to limitations in LDC Section 34-938.

(6) Food Truck Park

The use of a Food Truck Park may be approved through the administrative amendment and development order process. The application submittals must include a conceptual site plan meeting minimum required details for special exception site plans in the LDC. The application must include a project narrative setting forth the intended operation and any other information determined necessary by the Director.

To determine transportation impacts, the combined floor area of stationary food-dispensing trucks and trailers will be clearly described on the administrative amendment and local development order site plans. For purposes of trip generation estimates, the combined floor area of all stationary food-dispensing trucks and trailers, and combined designated outdoor seating areas will be considered for a fast food restaurant use. Stationary food-dispensing trucks and trailers with respect to this condition are defined as food trucks and trailers remaining overnight on the site. Food-dispensing truck and trailer floor area with respect to this condition is defined as the maximum outside enclosed area of the vehicle or trailer. Permitted restaurant gross floor area includes restaurant outdoor seating areas.

(7) Transportation Impacts

Development intensity is limited to total combined trips generated by a 1,000-SF variety store and 6,000-SF fast casual restaurant use as estimated by the Institute of Transportation Engineers (ITE) Trip Generation Manual current at time of local development order."

Deviations

Deviation #1:

Seeks relief from LDC §10-610(e), §34-2015(2)f. which requires adjacent commercial uses to provide parking lot interconnections for automobile, bicycle, and pedestrian traffic, to allow no interconnection with the abutting commercial property to the west. Staff recommends **APPROVAL** of this deviation subject to the following conditions:

a. Approval is limited to address the existing parking area adjacent to State Road 80. In the event the site is redesigned, the deviation must be revaluated in accordance with LDC Section 10-104(b) and is subject to review and approval by Lee County.

b. The project must connect to the existing abutting pedestrian facility on State Road 80 unless FDOT provides written confirmation of denial of the facilities within a state right-of-way.

Deviation #2:

Seeks relief from LDC §10-425(f)(1), which requires a five-foot-wide right-of-way buffer for commercial projects in the Mixed Use Overlay, to allow no required right-of-way buffer along State Road 80. Staff recommends **APPROVAL** of this deviation subject to the condition that the deviation is limited to addressing the existing parking and proposed building configuration adjacent to State Road 80.

Deviation #3:

Seeks relief from LDC §34-2016(3), which requires a 24-foot-wide two-way drive aisle when associated with 90-degree parking, to allow a 22-foot-wide two-way drive aisle in the parking area along State Road 80. Staff recommends **APPROVAL** of this deviation subject to the condition that the deviation is limited to addressing the existing parking and proposed building configuration adjacent to State Road 80.

Deviation #4:

Seeks relief from LDC §10-285(b), which requires 100 feet of connection separation as measured from the edge of pavement of State Road 80 to the vehicular access points on Styles Road, to allow 80 feet of connection separation between State Road 80 and the project's existing northern access point Staff recommends **APPROVAL** of this deviation subject to the following condition:

a. Approval is limited to address the existing parking area adjacent to State Road 80. In the event the site is redesigned, the deviation must be revaluated in accordance with LDC Section 10-104(b) and is subject to review and approval by Lee County.

Deviation #5:

Seeks relief from LDC §10-620, which requires architectural features, patterns and textures for commercial buildings, including primary facades and roof treatments, to memorialize the buildings existing design as the minimum standard. Staff recommends **APPROVAL** of this deviation subject to the following conditions:

a. At time of local development order approval, the building architectural plans must be, at a minimum, consistent with the proposed Architectural Plans attached hereto as Attachment H.

b. Approval is limited to the existing building. In the event the building is rebuilt or substantially improved as determined by the Manager of Development Services, the deviation is null and void unless subsequently approved by amendment.

Deviation #6:

Seeks relief from LDC §34-1264(b)(1)a, which prohibits the sale or service of alcoholic beverages for consumption on premises when within 500 feet of a dwelling unit under separate ownership, to allow consumption on premises in conjunction with a restaurant or bar/cocktail lounge to be located within 235 feet of residential dwelling units under separate ownership.

Staff recommends **APPROVAL** of this deviation subject to the following consumption on premises conditions:

a. The sale or service of alcoholic beverages is limited to the areas designated on the MCP with the following hours: 10:00AM to 2:00AM Tuesday through Saturday, and 10:00AM to 12:00PM Sunday and Monday.

b. Outdoor live entertainment is limited to between 10:00AM to 9:00PM

Lee County, Florida
DEPARTMENT OF COMMUNITY DEVELOPMENT
ZONING SECTION
STAFF REPORT

Case Number: DCI2023-00034
Case Name: Alva Trading Post
Area to be Rezoned: +/- 1.92 Acres
Case Type: Minor Planned Development Rezoning
Sufficiency Date: May 6, 2024
Hearing Date: July 10, 2024

REQUEST:

Quattrone & Associates, Inc., has filed an application to rezone approximately 1.92 acres from Commercial (C-1A) and Agricultural (AG-2) to Commercial Planned Development (CPD) to permit a total of 7,000 square feet of commercial and limited manufacturing uses to facilitate a retail brewery and other retail, office, and business service uses.

The subject property is located at the intersection of Palm Beach Boulevard and Styles Road. The property is located in the Northeast Lee County and Alva Community Plan Areas, Commissioner District #5. The property's address is 21450 Palm Beach Boulevard. A legal description and boundary survey of the subject property are attached as Attachment B of this report.

SUMMARY:

Staff recommends **APPROVAL**, with the conditions and deviation found in Attachment E of this report. The request aims to revitalize a longstanding commercial building with increased parking capacity and is consistent with applicable criteria contained herein.

HISTORY OF PARCEL:

The subject property is a 1.92-acre corner lot that is comprised of half an acre Commercial (C-1A) zoning fronting State Road 80 (SR 80) originating in 1972 with Resolution Z-72-115A.[1] The property is currently developed with a one-story, 5,760 square-foot multi-use commercial building, last utilized as a convenience store with separate real estate offices. The southern three-fourths of the subject property is zoned Agricultural (AG-2) and is undeveloped.

CHARACTER OF THE AREA:

The subject property is one of few existing commercial developments between the SR 80 intersections at Broadway Street to the west and Joel Boulevard to the east. Surrounding development includes a convenience store with fuel pumps and restaurant near Broadway Street, a storage shed dealership, a professional office, and an auto upholstery/auto repair and service business. These minor commercial

[1] See Attachment M, Resolution Z-72-115A.

uses largely serve the surrounding Alva community and State Road 80 highway traffic. Property immediately surrounding the subject property is located in the Urban Community Future Land Use category and Mixed Use Overlay, as designated by the Lee County Comprehensive Plan (Lee Plan) and depicted in Attachment C of this report. Immediate surrounding lands are characterized as follows:

North

Lands to the north of the subject property, across Palm Beach Boulevard, are zoned Agricultural (AG-2) and Residential Planned Development (RPD). Current use includes single-family residential and vacant land.

South

To the south of the subject property is the Alva Fire Station (#121) in the Public Facilities Future Land Use category. The property is zoned Residential Single-Family (RS-1) and received a Special Exception for a fire station in 1980 (Resolution Z-80-219).

East

Land east of the subject property (across Styles Road) is zoned Commercial (C-2) and is developed with a commercial building and accessory buildings supporting an auto upholstery/auto repair and service business.

West

Land to the west of the subject property is a similarly dimensioned commercial lot zoned Neighborhood Commercial (CN-2). In 2016, Resolution Z-16-001 conventionally rezoned the property from its original zoning configuration of Commercial (C-1A) along its frontage and Residential Single-Family (RS-1) acreage in the rear (see Attachment M). The property was subsequently developed with a variety store (Dollar General retail market).

Availability of Urban Services

Public Services are defined by the Lee Plan as "*the requisite services, facilities, capital improvements, and infrastructure necessary to support growth and development at levels of urban density and intensity*." The level of urban services currently serving the subject property are as follows:

Public water and sewer: The applicant's narrative identifies the subject property is outside of the Lee County Future Water and Sewer Service Areas (Lee Plan Maps 4-A and 4-B). Water and sewer utilities are currently unavailable; therefore, the development will rely on onsite sewage treatment and disposal systems and a potable water well system.

Paved streets and roads: The subject property has frontage on State Road 80, a state-maintained major arterial road, and Styles Road, a county-maintained local road.

Public transit and pedestrian facilities: A short segment of sidewalk is located in the SR 80 right-of-way to the west. Development of the subject property will require the extension of this facility in accordance with LDC Section 10-256. Transit service is currently unavailable to the subject property.

Police, fire, and emergency services: Alva Fire & Rescue Trail Fire is located on the southern abutting property, which includes EMS services. The Lee County Sherriff's Office in Lehigh Acres is located approximately 10 miles from the subject property at 1301 Homestead Road North.

Public Schools: The request does not propose dwelling units and will not affect school concurrency.

ANALYSIS:

The request seeks to increase the depth of commercial zoning on the subject property similarly to that accomplished on the abutting property to the west in 2016 (see Attachment M). The Master Concept Plan (MCP) furnishes the existing development with additional parking facilities south of the building. Use of the existing ±5,760 square feet of floor area is currently limited due to the current supply of off-street parking along State Road 80. Additional off-street parking expands commercial opportunity in an area designated for commercial activity in the Alva Community Plan area.

Schedule of Uses and Property Development Regulations

The applicant proposes property development regulations that staff finds appropriate and typical of commercial development (see Attachment F). Staff does recommend a rear setback commensurate with the ecological preservation in the southern portion of the property (±100 feet from the rear lot line). Staff identifies proposed uses which require clarification. Some of which are not recommended as part of this approval:

A ***Package Store***[2] on the subject property cannot meet the LDC separation requirements from the nearest property lines containing a dwelling unit under separate ownership[3]; therefore, a deviation from LDC Section 34-1263 is required facilitate the use. If applicant's intent is to solely permit incidental package sales of alcoholic beverages as an accessory use to the primary use of a brewery, that use is classified appropriately as *accessory uses* and may occur without reliance on the package store, as defined.

A **Bar or Cocktail Lounge** is listed on the applicant's schedule of uses and the project narrative and floor area exhibit identify the use specifically as a brewery. Staff recommends the applicant annotate the building on the MCP as "Optional Bar/Brewery" to obviate additional zoning action to establish the use pursuant to LDC Section 34-1264(a)(3) as the existing building is located within 500 feet of a residence under separate ownership.

The applicant's schedule of uses includes ***Recreation Facilities, Commercial Group III***, which includes outdoor commercial recreation facilities such as water parks, golf driving ranges, outdoor cultural facilities

[2] Package store means a place where alcoholic beverages are dispensed or sold in factory sealed containers for consumption off the premises. [LDC Section 34-2

[3] 21541 Palm Beach Boulevard and adjacent property contain residences and are within 500 feet of the subject property.

and other similar outdoor activities not grouped elsewhere. The project narrative and Master Concept Plan do not contemplate this principal use of land in any capacity. If the applicant does not have an immediate outdoor recreation use design in mind, the use may be sought via subsequent approval with minimum necessary Master Concept Plan information. If the applicant's intent is to permit temporary outdoor activities, such as typical lawn games (i.e. cornhole) in conjunction with the restaurant/brewery or food trucks, the use is again permissible as an accessory use when clearly incidental and subordinate to a primary use. Temporary use or Special event permits may be obtained for larger events that exceed the scope of an accessory use.

The manufacturing component of a brewery is reliant on the LDC use classification **Food and Kindred Product Manufacturing, Group II**, which is not listed in the Commercial Planned Development (CPD) zoning district per LDC Table 34-934.

Provided below is an LDC codified exception to uses listed in Table 34-934, further outlined in LDC Section 34-938:

"Industrial uses not listed in section 34-934 as permitted uses in the commercial planned development (CPD) zoning district may be permitted by the Board of County Commissioners as part of an approved CPD provided the floor area of the unlisted uses does not exceed 50,000 square feet of floor area or the aggregate floor area of the other uses on the approved schedule of uses, whichever is less."

Staff recommends **including the unlisted use of Food and Kindred Product Manufacturing, Group II** to the proposed schedule of uses, with a corresponding condition that ensures the floor area specifications listed in the above regulation are met. It should be noted that Manufacturing of Food and Kindred Products, **Group III**, and Manufacturing of Novelties, Jewelry, Toys and Signs and other industrial uses are in the applicant's proposed schedule of uses and are not recommended based on analysis of Lee Plan Policy 28.1.4 on Page 8 of this report.

The applicant's schedule of uses includes "**Food Trucks**." The schedule of uses and maximum intensity were intentionally selected to produce an estimate of less than 100 peak hour trips to avoid the required Intersection Level of Service Analysis. The applicant's Zoning Traffic Study, Project Narrative and Master Concept Plan do not contemplate the principal use of food trucks (or a "food truck park") in any capacity. Staff recommends a condition requiring a separate administrative amendment for the use of a "Food Truck Park" to ensure the intensity of the use does not exceed the maximum intensity supported by the current application. If it is the applicant's intent to facilitate the temporary use of food trucks in accordance with LDC Section 34-3052, the use would instead be classified as a temporary use, which is customarily approved in the use framework of planned developments and in most conventional commercial districts.

The remainder of retail, office, restaurant, and business service uses that are considered appropriate by staff, as limited to 7,000 square feet, of which a maximum of 6,000 square feet may be restaurant floor area based on the applicant's Zoning Traffic Study (see Attachment H). The applicant should amend the MCP to clarify the building footprint figure from 7,000 square feet to "**± 7,000 SF Including Outdoor Seating**". The existing ±5,800 square foot building with the proposed 60' x 20' outdoor seating area comprises the 7,000 square feet of intensity proposed in this request.

Proposed Deviations

A deviation must enhance the achievement of the objectives of the planned development and preserve and promote the general intent of the LDC to protect the public health, safety and welfare. The applicant proposes a schedule containing five deviations from the LDC with a corresponding justification (see Attachment F).

Deviation #1:

Seeks relief from LDC §10-610(e), §34-2015(2)f. which requires adjacent commercial uses to provide parking lot interconnections for automobile, bicycle, and pedestrian traffic, to allow no interconnection with the abutting commercial property to the west.

The applicant's justification states the existing building impedes utilization of the cross-access easement on the abutting property. Staff recommends **APPROVAL** of this deviation subject to the following conditions:

- Approval is limited to address the existing parking area adjacent to State Road 80. In the event the site is redesigned, the deviation must be revaluated in accordance with LDC Section 10-104(b) and is subject to review and approval by Lee County.

- The project must connect to the existing abutting pedestrian facility on State Road 80 unless FDOT provides written confirmation of denial of the facilities within a state right-of-way.

Deviation #2:

Seeks relief from LDC §10-425(f)(1), which requires a five-foot-wide right-of-way buffer for commercial projects in the Mixed Use Overlay, to allow no required right-of-way buffer along State Road 80.

The applicant's justification states this development seeks to preserve functionality of the existing parking area, which would not accommodate the buffer, as also reflected in Deviation #3 below. Staff recommends **APPROVAL** of this deviation subject to the condition that the deviation is limited to addressing the existing parking area and proposed building configuration adjacent to State Road 80.

Deviation #3:

Seeks relief from LDC §34-2016(3), which requires a 24-foot-wide two-way drive aisle when associated with 90-degree parking, to allow a 22-foot-wide two-way drive aisle in the parking area along State Road 80.

The applicant's justification states the existing parking lot does not meet the LDC standard and is constrained by the State Road 80 right-of-way. Staff recommends **APPROVAL** of this deviation subject to the condition that the deviation is limited to addressing the existing parking and building configuration adjacent to State Road 80.

Deviation #4:

Seeks relief from LDC §10-285(b), which requires 100 feet of connection separation as measured from the edge of pavement of State Road 80 to the vehicular access points on Styles Road, to allow 80 feet of connection separation between State Road 80 and the project's existing northern access point.

The applicant's justification states the existing building prevents internal circulation to the northern parking lot and the request will eliminate an existing access point on State Road 80. Staff recommends **APPROVAL** of this deviation subject to the following condition:

- Approval is limited to address the existing parking area adjacent to State Road 80. In the event the site is redesigned, the deviation must be revaluated in accordance with LDC Section 10-104(b) and is subject to review and approval by Lee County.

Deviation #5:

Seeks relief from LDC §10-620, which requires architectural features, patterns and textures for commercial buildings, including primary facades and roof treatments, to memorialize the buildings existing design as the minimum standard.

The applicant's justification states modernizing the existing building's roof and primary facades consistent with the LDC will create a financial burden on the owner. Staff recommends **APPROVAL** of this deviation subject to the following conditions:

- At time of local development order approval, the building architectural plans must be, at a minimum, consistent with the proposed Architectural Plans attached hereto as Attachment K.

- Approval is limited to the existing building. In the event the building is rebuilt or substantially improved as determined by the Manager of Development Services, the deviation is null and void unless subsequently approved by amendment.

Deviation #6:

Seeks relief from LDC §34-1264(b)(1)a, which prohibits the sale or service of alcoholic beverages for consumption on premises when within **500 feet** of a dwelling unit under separate ownership, to allow consumption on premises in conjunction with a restaurant or bar/cocktail lounge to be located within **235 feet** of residential dwelling units under separate ownership.

Staff recommends **APPROVAL** of this deviation subject to the following consumption on premises conditions:

- Limited to the areas designated on the MCP.

- The sale or service of alcoholic beverages is limited to following hours: 10:00AM to 2:00AM Tuesday through Saturday, and 10:00AM to 12:00PM Sunday and Monday.

- Outdoor live entertainment is limited to between 10:00AM to 9:00PM

Review Criteria

LDC Section 34-145 establishes the review criteria for rezoning requests. Before recommending approval of a rezoning request, the Hearing Examiner must find the request:

a) Complies with the Lee Plan;

b) Meets the Land Development Code and other applicable County regulations or qualifies for deviations;

c) Is compatible with existing and planned uses in the surrounding area;

d) Will provide access sufficient to support the proposed development intensity;

e) The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;

f) Will not adversely affect environmentally critical or sensitive areas and natural resources; and

g) Will be served by urban services, defined in the Lee Plan, if located in a Future Urban Area category.

For Planned Development rezoning requests, the Hearing Examiner must also find:

a) The proposed use or mix of uses is appropriate at the proposed location;

b) The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development; and

c) That each requested deviation:

    1) Enhances the achievement of the objectives of the planned development; and

    2) Preserves and promotes the general intent of this Code to protect the public health, safety and welfare.

The applicant has provided a narrative that addresses the proposed rezoning with analysis of the applicable criteria (see Attachment F). The following provides staff's analysis of the request, as measured by the established criteria.

Compliance with the Lee Plan

The subject property is located in the **Urban Community** Future Land Use category and **Northeast Lee County** and **Alva** Community Plan areas. **Policy 1.1.4** of the Lee Plan characterizes the Urban Community area as "a *mixture of relatively intense commercial and residential uses…. predominant land uses in this category will be residential, commercial, public and quasi-public, and limited light industrial with future development encouraged to be mixed use, as described in Objective 11.1, where appropriate".* The applicant seeks commercial uses forecasted in the Urban Community category. Therefore, staff finds the request **CONSISTENT with Policy 1.1.4**.

Lee Plan Objective 2.1 and Policy 2.1.1 promote contiguous and compact growth patterns within designated future urban areas to contain urban sprawl, minimize energy costs, conserve land, water, and natural resources, and minimize the cost of services. **Lee Plan Objective 2.2 and Policy 2.2.1** seek to direct new growth to portions of future urban areas where adequate public facilities and services exist, where compact and contiguous development patterns can be created, and where compatibility with surrounding land uses is assured. The subject property is located within a designated future urban area that is adequately served by existing road and utility infrastructure**.** Development of the subject property constitutes redevelopment within an established commercial area in the Alva community consistent with this objective and policy. The property will be served by an onsite sewage disposal and treatment facility and potable water well within the parameters afforded by **Lee Plan Standards 4.1.1 and 4.1.2.** The subject property will be provided with police, fire protection and emergency services. Staff finds that the request is **CONSISTENT with Objectives 2.1 and 2.2, Policies 2.1.1, and 2.2.1, and Standards 4.1.1 and 4.1.2 of the Lee Plan.**

Policy 5.1.5 requires protection of existing residential land uses from land uses destructive to the character and integrity of the residential environment. The nearest residential land use is across the ±200-foot-wide State Road 80 divided four-lane highway. This area has long been characterized by the commercial development on the subject property and adjacent commercial area on State Road 80. The request will incorporate largely indoor use of an existing building and expand parking areas behind the building where the subject property abuts an existing fire station. The request, as conditioned, will be **CONSISTENT** will with **Policy 5.1.5**.

Goal 6 promotes orderly and well-planned commercial development at appropriate locations in the county. **Policy 6.1.1** requires development approvals for commercial land uses to be consistent with various policies, including traffic and access impacts, screening and buffering, adequacy of urban services, compatibility with surrounding land uses, proximity to other similar centers and environmental considerations. **Policy 6.1.4** states that "*commercial development will be approved only when compatible with adjacent existing and proposed land uses and with existing and programmed public services and facilities*." As detailed in this report, the request is compatible with surrounding land uses, and urban services are largely available to serve the proposed development. **Policies 6.1.5 through 6.1.11** address traffic, buffering, architecture and open space, prohibiting premature scattered development, school safety, commercial entitlements, redevelopment

incentives and revitalization directives. As further expanded in the criteria analysis below, Staff finds that the request is **CONSISTENT** with **Goal 6.**

Policy 27.1.8 requires the owner or agent of a rezoning request within the Northeast Lee County Community Plan area to conduct two public information meetings, in accordance with **Policies 17.3.3** and **17.3.4** One meeting must be held within the Alva Community Plan area boundary and the other in the North Olga Community Plan area boundary. The applicant has held the required public session in both required communities and before the North Olga planning community panel held within the neighboring Bayshore Community Plan area (see Attachment J).

Goal 28 serves to support and enhance the unique rural, historic, agricultural character and natural environment and resources of the Alva Community Plan area, including the rural village and surrounding area. **Policy 28.1.1** provides a directive to "Evaluate and identify appropriate commercial areas with a focus on the rural village area." Lee Plan Map 1-C, the Mixed Use Overlay has historically included an inset geographically defining the Alva Rural Village boundaries. The current Lee Plan codification has omitted this inset, likely in error. For the purpose of analysis of this policy the property has been historically located in Subarea 3 of the Alva Rural Village, which supports the proposed commercial activity proposed herein.

Policy 28.1.4 states that **"**New industrial activities or changes of land use that allow future industrial activities, not directly associated with Alva's commercial agriculture, are prohibited in Alva."

The applicant has expressed the immediate intended use of the proposed planned development is a brewery, which may be best classified as bar if it does not contain a restaurant. The Land Development Code provides a one-size-fits-all classifications for the manufacturing of malt beverages, wines, brandy, distilled and rectified blended liquors, Food and kindred product manufacturing, Group II. This open-ended classification covers a range from a major national brewing company, such as Anheuser-Busch Companies, to a small-scale local brewery that serves the majority of the brewed products on-site in the form of a taproom or brew pub operation not currently recognized by the LDC. LDC amendments are currently pending, which would recognize the use of tap rooms and brew pubs consistent with operation proposed by this request and negate the necessity to rely on the food and kindred product classification. Conditions can be reasonably attached to the use classification to ensure the production does not reach a scale to be considered an "industrial activity" in the spirit of this policy. **LDC Section 34-938** minimizes the certain unlisted uses by default within CPD Districts with the following requirements:

1. If producing a tangible product, the use or activity must stand at or near the end of the manufacturing process, accounting only for the last steps of preparation or assembly of components or preprocessed materials.

2. All operations must be conducted within a fully enclosed building.

3. The use may not emit dust, smoke, odor or other air or water pollutant, glare, sound or other vibration that can be perceived outside the boundaries of the development tract or industrial use area.

4. The use may not receive, process, or create hazardous materials in sufficient quantity to constitute a danger to persons, property or activities outside the boundaries of the development parcel or industrial use area.

5. Open storage of raw materials, waste products or finished goods awaiting shipment is prohibited.

6. the floor area of the unlisted uses does not exceed 50,000 square feet of floor area or the aggregate floor area of the other uses on the approved schedule of uses, whichever is less.

The recommended Commercial Planned Development also limits total floor area to 7,000 square feet, of which the brewing area will comprise a fraction of (see Conceptual Brewery Floor Plan in Attachment F). Although not expressly stated in the applicant's narrative, brewing relies on an agricultural product and the use has a potential of supporting Alva's commercial agricultural character. The use, as conditioned, is intended to facilitate a commercial activity; therefore, staff finds the request, as conditioned, **CONSISTENT** with **Policy 28.1.4**.

Policy 28.2.6 is recognized in the staff recommendation to preserve large heritage trees along the projects eastern boundary, as further discussed in the environmental discussion on Page 10 of this report.

Policy 28.3.5 aims to prevent strip development along Palm Beach Boulevard, by establishing that the majority of acreage available for commercial development will be located within the rural village, particularly the village center (sub areas 2 and 3). The subject property has historically been located in the Rural Village Sub Area 3 and is Consistent with **Policy 28.3.5 and Goal 28 of the Lee Plan**.

Land Development Code Compliance

Staff finds the proposed planned development rezoning, as conditioned, to be in compliance with the LDC, including regulations which pertain to:

- Use and corresponding supplemental regulations, such as parking;
- LDC Chapter 10 Development Standards; and
- Details required on the MCP and compliance with Division 9 of Article VI, Chapter 34, Planned Development Districts.

All relevant County regulations, which are not specifically departed from as part of this planned development request, will apply, such as LDC, Code of Ordinances and Administrative Code provisions. If future deviations are proposed, each will be evaluated within the parameters of the established LDC review criteria.

Compatibility with Existing and Planned Uses in the Surrounding Area

As noted in analysis of Policy 5.1.5, staff finds that the project, as conditioned, compatible with existing residential land uses in proximity and staff also finds the project to be compatible with nonresidential existing and planned uses, such as the abutting fire station and adjacent commercial uses on State Road 80.

Sufficiency of Access and Transportation Impacts

The applicant is proposing access solely on Styles Road and removing the exiting access point on State Road 80. The applicant has provided a Zoning Traffic Study (ZTS) in accordance with Lee County Administrative Code AC-13-17, which includes trip generation expected by the project (see Attachment H). Lee County Department of Transportation has issued a memorandum concerning the project's transportation impacts (see Attachment I). In summary, the surrounding road system will operate at an acceptable Level of Service (LOS) with the project. Further evaluation of the traffic impacts will take place at time of local development order approval in compliance with county regulations.

Environmentally Critical or Sensitive Areas and Natural Resources

The Environmental Staff Report is also attached as Attachment G of this report and identifies two recommendations to ensure consistency with the Lee Plan and LDC.

1. ***The development order plans must depict preservation of the two heritage Live Oak trees located along Styles Road. The plans must depict protection barricades around the full dripline of the Live Oaks and vehicle use within the full dripline is prohibited.***

   This condition may modify parking areas and the optional stabilized driveway for emergency access depicted on the MCP and incentivize strategically locating parking islands to preserve the dripline of the heritage live oak trees for consistency with Lee Plan Policy 28.2.6.

   Staff is amendable to consideration of a deviation from LDC Section 10-416(c)(2), which establishes a maximum average of 10 uninterrupted parking spaces, to allow for more than 10 in order to provide parking lot design flexibility to preserve the drip line of these heritage trees and maximize off-street parking (see photograph as Attachment L).

2. ***The Master Concept must be revised to depict the 50-foot-wide buffer measured from mean high water or top of bank, whichever is further landward and provide a cross section depicting the 50-foot width and maintenance easement.***

   The appropriate revisions to MCP are necessary to support staff's finding that the proposed development will not impact environmentally critical or sensitive areas and natural resources.

Will be served by urban services, defined in the Lee Plan, if located in a Future Urban area category

As noted and defined above, the subject property is located within a future urban area. The subject property has adequate access to urban services to accommodate the development proposed by the requested rezoning. Future improvements required by the LDC at time of local development order approval will further improve urban services and pedestrian facilities surrounding the subject property.

Supplemental Planned Development Criteria

Staff finds the request to be consistent with the following additional criteria:

a) The proposed use or mix of uses is appropriate at the proposed location;

b) The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development; and

c) That the deviation, as conditioned:

    1) Enhances the achievement of the objectives of the planned development; and

    2) Preserves and promotes the general intent of this Code to protect the public health, safety, and welfare.

CONCLUSION:

Based upon an analysis of the application and the standards for approval of planned development rezonings, staff finds the request to be consistent with the established review criteria. The rezoning is consistent with the Urban Community Future Land Use category, Northeast Lee County and Alva Community Plans and other applicable goals, objectives, and policies of the Lee Plan.

Staff recommends **APPROVAL** of the request to rezone the subject property from AG-2 and C-1A to **CPD** with the conditions attached as Attachment E of this report.

ATTACHEMENTS:

A. Expert Witness Information
B. Legal Description and Boundary Survey
C. Aerial, Future Land Use, Mixed-Use Overlay and Current Zoning Maps
D. Master Concept Plan
E. Development Regulations, Conditions and Deviations
F. Applicant's:
   Project Narrative

Conceptual Brewery Floor Plan
Property Development Regulations
Schedule of Uses
Schedule of Deviations
Stormwater Narrative

G. Environmental Staff Report
H. Applicant's Zoning Traffic Study
I. Department of Transportation Memorandum
J. Public Information Session Summaries
K. Architectural Plans
L. Styles Road Heritage Trees Photograph
M. Resolutions:
Z-72-115(A)
Z-16-001

DCI2023-00050 DIPLOMAT HOUSE A/K/A DIPLOMAT NORTH RPD AMENDMENT

Staff Summary

CASE NUMBER & NAME:	DCI2023-00050 / Diplomat House a/k/a Diplomat North RPD Amendment
REQUEST:	Request to amend 38.13± acres of the Diplomat North RPD/CPD from the Z-11-002/ADD2019-00085 approvals to replace 238 dwelling units (or 138 dwelling units and 400 assisted living facility units) and 50,000 SF of commercial with a maximum height of 50 feet; to allow 360 multi-family dwelling units with amenities with a maximum height of 60 feet within the Mixed Use Overlay.
RESOLUTION NUMBER:	Z-24-018
LOCATION:	Approximately 500 feet west of the northwest corner of Diplomat Parkway and US 41, North Fort Myers Planning Community, Lee County, FL.
OWNER:	Habitat Diplomat North LLC
APPLICANT:	Diplomat Fort Myers, LLC
AGENT:	Stacy Ellis Hewitt, AICP Banks Engineering 10511 Six Mile Cypress Pkwy. Fort Myers, FL 33966
HEARING EXAMINER RECOMMENDATION:	Approve, subject to conditions and deviations in Exhibit C.
PARTICIPANTS (2):	1. Brandon George 2. Ryan Vatalaro

DCI2023-00050

Aerial

Subject Property

City Limits

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W
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S

0 250 500 750 1,000
Feet

Lee County
Southwest Florida

MEMORANDUM
FROM THE
DEPARTMENT OF COMMUNITY DEVELOPMENT
ZONING SECTION

DATE: August 15, 2024

TO: Ms. Donna Marie Collins
Hearing Examiner

FROM: Dirk Danley, Jr, AICP
Planner, Principal

SUBJECT: Diplomat House AKA Diplomat North RPD – DCI2023-00050 Clarification Memo

Dear Ms. Collins:

In review of the recommendation for the Diplomat House AKA Diplomat North RPD amendment, the applicant and staff noticed that Deviation 7 may need to be amended to clarify its applicability to the townhouse project approved on the residential tract south of Diplomat Parkway. Staff submits the following language for consideration:

7. *Curbside garbage collection for townhouse units and reduction in collection area for multi- family units. Deviation 7 (townhouse previously contained in AD2007-00169) seeks relief from LDC Section 10-261 requirement that all new multiple-family residential developments to provide sufficient space for the placement of garbage containers or receptacles, to allow reduction in required multi-family container space of 216 SF (120+96) for first 25 multi-family units plus 8 SF for each additional unit; to allow space for the compactor and a minimum of 144 square feet for recyclable materials collection area for the North RPD for MCP Page 2 of 3 and to allow for curbside garbage pickup a the proposed townhouse units for MCP Page 1 of 3. (amendment to previously approved deviation)*

Thank you in advance for your input.

MEMORANDUM
FROM
THE OFFICE OF THE
LEE COUNTY HEARING EXAMINER

DATE: **August 16, 2024**

TO: **Stacy Hewitt, Applicant's Representative**
Dirk Danley, Jr., Staff

FROM: **Donna Marie Collins**
Chief Hearing Examiner

RE: **DCI2023-00050 DIPLOMAT HOUSE AKA DIPLOMAT NORTH RPD AMENDMENT**
Clarification to Hearing Examiner Recommendation

The Hearing Examiner approves the attached request to modify Deviation 7.

Copies Provided to: Board of County Commissioners (BOCC)
Michael Jacob, Esq., Deputy County Attorney
Joseph Adams, Esq., Assistant County Attorney
Anthony Rodriguez, AICP, MPA, Manager
Applicant's Representatives
Jamie Princing, Community Development
Hearing Participants

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FROM THE
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ZONING SECTION

DATE: August 15, 2024

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Planner, Principal

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Thank you in advance for your input.

Summary of Hearing Examiner Recommendation

DIPLOMAT RPD/CPD AMENDMENT
DIPLOMAT HOUSE

The site is located at the intersection of Diplomat Parkway and US 41 with access to an array of public services and infrastructure including transit. The area is uniquely suitable for dense/intense development. Accordingly, the request is appropriate and will further economic objectives to provide varied housing options for a diverse workforce.

The Hearing Examiner recommends the final resolution approving the amendment include the original legal description of the RPD/CPD to avoid confusion.[1]

Detailed recommendation follows

[1] The application provided a "new" legal description of the North RPD that includes acreage of CPD parcels 1 and 2. The putative reason was to enable the North RPD to derive density from the land area from CPD parcels 1 and 2 for the purposes of density. The result in an incongruity in project acreage. It is not necessary for Applicant to supply a new legal description to benefit from Lee Plan and LDC provisions that permit density to be derived from commercial portions of a project in the Mixed Use Overlay. The resulting incongruity in acreage for the overall RPD/CPD is confusing and potentially misleading if the zoning map change later depicts CPD parcels 1 and 2 as part of the RPD.

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2023-00050

Regarding: **AMENDMENT TO DIPLOMAT PROTPERTY RPD/CPD (Diplomat House)**

Location: Diplomat Parkway East
0.3 miles west of the intersection with North Cleveland Avenue (US 41)
North Fort Myers Planning Community
(District 4)

Hearing Date: June 26, 2024
Record Closed: July 18, 2024

I. Request

Amend the Diplomat Property RPD/CPD to revise development parameters on a 35.18 acre tract within the project **from** 238 dwelling units (or 138 dwelling units and 400 assisted living facility units) and 50,000 square feet of commercial square footage with maximum heights of 50 feet, **to** 360 multi-family dwelling units with maximum heights of 60 feet. There are no changes proposed to the remainder of the planned development.

The RPD/CPD legal description is set forth in Exhibit A.[2]

II. Hearing Examiner Recommendation

Approve, subject to conditions and deviations set forth in Exhibit C.

III. Discussion

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners (Board) on applications to rezone property to the planned

[2] The application provided a "new" legal description of the North RPD that includes acreage of CPD parcels 1 and 2. The putative reason was to enable the North RPD to derive density from the land area from CPD parcels 1 and 2 for the purposes of density. The result in an incongruity in project acreage. It is not necessary for Applicant to supply a new legal description to benefit from Lee Plan and LDC provisions that permit density to be derived from commercial portions of a project in the Mixed Use Overlay. The resulting incongruity in acreage for the overall RPD/CPD is confusing and potentially misleading if the zoning map change later depicts CPD parcels 1 and 2 as part of the RPD.

development zoning district.[3] In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on an application to amend the zoning approvals of the 65.13 acre Diplomat Property RPD/CPD. The request specifically pertains to a 35.18 acre portion of the planned development located north of Diplomat Parkway.

Staff recommended approval with conditions.

In preparing a recommendation to the Board, the Hearing Examiner must apply the Lee County Comprehensive Plan (Lee Plan), Land Development Code (LDC), and other County regulations to facts adduced at hearing. The record must contain substantial competent evidence to support the recommendation.

Discussion supporting the Hearing Examiner's recommendation of approval with conditions follows below.

Request

The request amends the zoning approvals of the 65.13 acre Diplomat Property RPD/CPD to authorize development of up to 360 multi-family dwelling units on a 35.18 acre tract north of Diplomat Parkway. Applicant anticipates project buildout in 2027.[4] The remaining tracts within the Diplomat RPD/CPD retain existing parcel designations and development entitlements.

The Master Concept Plan (MCP) proposed for the 35.18 acre site depicts a large lake on the east half and several 60 foot high buildings clustered on the west half. A small indigenous preserve lies within a FEMA floodway along the west boundary. The MCP depicts one primary access and a secondary emergency access aligning with an access across Diplomat Parkway,

If approved, the RPD/CPD will include ten deviations from the LDC.[5]

Building heights in the amended RPD/CPD will not exceed 60 feet.[6] Heights for approved commercial uses remain unchanged by the request.

Staff recommended approval of the request subject to conditions.

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[3] LDC §34-145(d)(4) a.

[4] The transportation analysis assumes buildout in 2027, *See* Staff Report Attachments H and I.

[5] Eight deviations were approved in prior zoning actions. The subject request includes two additional deviations to accommodate the desired site plan.

[6] These height limitations are consistent with height regulations in the Central Urban future land use category. LDC §§34-935(f)(1).

History

The Board first approved the 65.13 acre Diplomat Property RPD/CPD located both north and south of Diplomat Parkway in 2006.[7] This resolution authorized 357 dwellings, 120 hotel rooms, and 200,000 square feet of commercial floor area, of which 100,000 square feet may be retail. Retail uses limited to parcel 4 south of Diplomat Parkway, and 120 hotel rooms. Maximum approved building heights were 50 feet for commercial land uses and 35 feet for residential land uses. The zoning approval allowed required indigenous preservation to be located on property south of Diplomat Parkway.

The property owner amended the zoning approvals the following year in 2007.[8] The amendment revised the property development regulations for approved Townhouse uses and approved a deviation from LDC §10-261(a).[9]

The Board adopted the North Fort Myers Community Plan in 2009.[10]

Several years later in 2011, the Board amended the development parameters and MCP on the 35.18 tract north of Diplomat Parkway to permit development of up to a 400 bed Assisted Living Facility, 138 standard dwelling units, and a 5.43 acre "optional CPD" permitted to develop up to 50,000 square feet of medical office space.[11] Changes to the MCP included lake reconfiguration, modifications to the west buffer, and building placement. Maximum approved building height was 50 feet.

The Board adopted LDC regulations specific to the North Fort Myers Planning Community in 2012.[12]

The property owner amended the zoning approvals administratively three times thereafter.[13] One administrative amendment sought to clarify the developer had the option to develop the north 35.18 acre RPD with RPD uses or an Assisted Living Facility with or without the 5.43 acre "optional CPD" parcel.[14] The second administrative amendment sought to clarify the tract south of Diplomat Parkway could be developed consistent with the 2008 MCP or consistent with an alternate MCP dated October 28, 2019. The third administrative amendment pertained to

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[7] Resolution Z-06-004 adopted December 21, 2006. The resolution rezoned the property from Agriculture to RPD/CPD.
[8] ADD-2007-00169 approved February 1, 2008.
[9] The newly approved deviation provided relief from minimum area standards for placement of garbage containers to allow curbside pickup at townhouse units.
[10] Lee Plan Goal 30 adopted by Lee County Ordinance No. 09-11 on February 25, 2009.
[11] Z-11-002 approved March 21, 2011.
[12] Lee County Ordinance No. 12-01 on January 10, 2012.
[13] ADD 2019-00085, ADD 2019-00181, and ADD 2020-00034.
[14] ADD 2019-00085 approved August 16, 2019.

CPD parcels 3 and 4.[15] This amendment amended the schedule of uses and established a conversion ratio for commercial intensity to residential density.[16]

Following those approvals, Diplomat RPD/CPD may now develop:

1. 238 dwellings (or 138 dwellings and 400 assisted living facility units) and 50,000 square feet of commercial square footage north of Diplomat Parkway,

2. 105 dwelling units (with an additional 21 units of market rate housing) on the residential tract south of Diplomat Parkway, and

3. a maximum of 200,000 square feet of commercial development on the remaining commercial tracts north and south of Diplomat Parkway.

There is an existing development order on the 35.18 acre RPD north of Diplomat Parkway. The developer must revise or withdraw the development order following approval of this amendment. There are also active development orders within the RPD/CPD unaffected by the subject request.[17]

In 2017, the Board expanded the boundaries of the North Fort Myers Mixed Use Overlay to include the property.[18]

In recognition of the site's inclusion within the Mixed Use Overlay, the property owner seeks an amendment to replace previously approved residential and "optional commercial" development entitlements on 35.18 acres north of Diplomat Parkway with up to 360 multifamily dwelling units at a maximum building height of 60 feet.[19]

If approved, the development parameters for the 65.13 acre Diplomat RPD/CPD will be as follows:

1. **360 dwellings units on the 35.18 acre tract north of Diplomat Parkway,**

2. **105 dwelling units (with an additional 21 units of market rate housing) south of Diplomat Parkway, and**

3. **Up to 200,000 square feet of commercial land uses on the remaining commercial tracts located north and south of Diplomat Parkway.**

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[15] ADD 2020-00034 approved June 22, 2020.
[16] *Id.*
[17] There are active South Florida Water Management District permits north and south of Diplomat Parkway.
[18] Lee County Ordinance No. 17-20, adopted November 22, 2017.
[19] Specifically, the request replaces prior approvals to develop 238 dwelling units (or 138 dwelling units and 400 assisted living facility units) and 50,000 square feet of commercial square footage with maximum height of 50 feet.

Character of Area

The property is located at the confluence of two intense land use designations: Central Urban and Mixed Use Overlay. These areas typically feature higher densities and mixed use development due to the availability of public services and infrastructure.[20] The site is surrounded by properties with development entitlements consistent with development patterns encouraged in the Mixed Use Overlay.

Lee Plan

The Lee Plan regulates land development activity in the County.[21] The Plan's Future Land Use Map divides the County into future urban, nonurban, and environmentally sensitive areas. All development must be consistent with the Lee Plan including the Future Land Use Map.[22]

The property is designated Central Urban on the Future Land Use Map.[23] Central Urban areas have access to a broad array of public services and infrastructure.[24] A wide range of land uses are permissible in the Central Urban category.[25] Standard density ranges from four to 10 units per acre. Maximum total density is typically 15 units per acre but may be as high as 20 units per acre with Greater Pine Island Transfer of Development Units.[26]

The request to amend development approvals on the north 35.18 tract derives its density by including land area from two commercial parcels north of Diplomat Parkway located on either side of the entrance to the tract.[27] The resulting unit count is 360 multi-family dwelling units.

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[20] Lee Plan Objectives 2.12, 2.2, 11.2, Policies 1.1.3, 5.1.6, 11.2.1, 11.2.5, 11.2.6, 11.2.7. Properties northeast, east, and south of the site are designated Central Urban and within the Mixed Use Overlay as well.

[21] LDC §34-491.

[22] Lee Plan Policy 2.1.2; LDC §§34-411(a), 34-491: Rezonings must be consistent with Lee Plan goals, objectives, and policies. Potential conflicts between the Lee Plan and the LDC must be resolved in favor of the Lee Plan.

[23] Lee Plan Map 1.

[24] Lee Plan Policy 1.1.3.

[25] Residential, commercial, public, and quasi-public and limited light industrial land uses are permissible in Central Urban. *Id.* The 35.18 acre site is part of a mixed use RPD/CPD. The Lee Plan encourages mixed use development in the Central Urban category. Lee Plan Objective 11.1, Policies 1.1.3, 11.1.1, 11.1.2.

[26] Lee Plan Policy 1.1.3. Utilizing acreage from the commercial parcels north of Diplomat Parkway, the site may develop with 381 standard dwelling units, plus 191 bonus density units, plus another 191 units derived from Greater Pine Island Transfer Development Units for a total unit count of 763. The application seeks 360 units, within the standard density range for Central Urban.

[27] Deriving density from commercial land areas within a single RPD/CPD is permissible in the Mixed Use Overlay pursuant to Lee Plan Policy 11.2.7. The MCP designates the two commercial tracts north of Diplomat Parkway as "Future Commercial Development Parcel 1 and 2." This results in an additional 2.95 acres for the purposes of calculating density.

Development activity in North Fort Myers is subject to a Community Plan and specific use and site design criteria.[28] The North Fort Myers Community Plan emphasizes protecting community character, economic vitality, and quality of life.[29] Existing planned developments may voluntarily comply with the North Fort Myers Plan.[30] The proposed modification to the 35.18 parcel will trigger compliance with LDC provisions applicable to the North Fort Myers Planning Community. This may result in minor modifications to the proposed site plan that can be approved administratively.[31]

The Economic Element of the Lee Plan encourages expansion of the County's economic base.[32] The proposed mix of land uses contributes to a positive business climate by creating housing options.[33] The proposed multi-family dwellings expand housing options and will support a diverse workforce.[34]

Compatibility

One purpose of "planned development" zoning is to integrate new development with surrounding land uses, providing consistency and visual harmony.[35]

The Lee Plan encourages compact and contiguous development patterns in areas with services and infrastructure to support new development.[36]

The site is part of the Mixed Use Overlay, where the Lee Plan encourages an integrated mix of uses.[37] Property in the Mixed Use Overlay is desirable for mixed use development due to proximity to public transit, shopping, and employment centers.[38] The RPD/CPD as a whole provides opportunities for mixed use development.[39]

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[28] LDC §33-1534. The Board adopted the North Fort Myers Community Plan in 2009. Lee Plan Goal 30 adopted by Lee County Ordinance No. 09-11 on February 25, 2009. The Board subsequently adopted community specific LDC regulations adopted by Lee County Ordinance No. 12-01 on January 10, 2012. *See also* Lee Plan Map 2-A, LDC §33-1531 *et seq.*

[29] Lee Plan Goal 30.

[30] Lee Plan Goal 30 and site development regulations set forth in LDC §33-1531 et seq., notably design standards governing architecture, lighting, and site design.

[31] LDC §33-1534.

[32] Lee Plan Goals 158, 161, Objective 158.2.

[33] Lee Plan Goals158, 159, 160, Objective 158.3, Policies 135.1.9, 160.1.3.

[34] Lee Plan Policies 135.1.9, 160.1.1, 160.1.2, 161.1.3.

[35] Another purpose is to provide flexibility in development design. LDC §34-612(2).

[36] Lee Plan Objectives 2.1, 2.2, Policies 2.2.1, 5.1.3.

[37] Lee Plan Map 1-C: Mixed Use Overlay. The Mixed Use Overlay allows urban forms of development, which encourages maximizing land area on the site. Lee Plan Policy 11.2.5.

[38] Lee Plan Objectives 11.1 , 11.2, 158.3, Policies 11.2.1, 39.1.3, 39.2.1, 159.2.3, *See* Lee Plan Goal 30, Objective 30.1, Policy 30.1.3, 30.1.4.

[39] Lee Plan Goal 30; Staff Report Attachment W: Environmental Staff Report. *See* LDC 34-145(d)(4)a.2.a)

The site is located on a major transportation corridor and proximate to properties with approved building heights of 60 feet.[40] Development approvals in the area include intense commercial and residential land uses. Higher residential densities are appropriate due to broad access to public services and infrastructure.[41] The proposed plan of development is compatible with existing and approved development near the intersection of Diplomat Parkway and US 41.[42]

Although not required by code, the proposed MCP and recommended conditions provide an enhanced vegetative buffer along portions of the west and north property lines. Specifically, the site plan sets back from the FEMA floodway and designates the area for removal of exotics and ongoing maintenance of indigenous vegetation. In contrast, the existing MCP depicts development in proximity to the canal separating the site from the adjacent mobile home community.

Along the shared boundary with the Serendipity community, recommended conditions require an enhanced 30 foot wide buffer along the north property line consisting of 10 trees every 100 linear feet and a double staggered hedge row 48 inches in height at installation and maintained at 60 inches high up to the lake.[43] The property line north of the lake will feature a buffer 15 feet in width with five trees per 100 linear feet and a double hedge row maintained to form a 36 inch high continuous visual screen within one year of planting.

The Hearing Examiner concludes these measures provide an effective transition between projects of differing intensity.[44]

LDC

Development must comply with County land development regulations or seek deviations. A "deviation" is a departure from a land development regulation.[45] Applicants must demonstrate deviations enhance the planned development and will not cause detriment to the public.[46]

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[40] The MIVO Fort Myers RPD abutting the property authorizes building heights up to 60 feet. *See* Z-23-003 approved April 5, 2023. The property has been approved for relatively intense development since 2006. The proposed increase in density constitutes infill development. Lee Plan Objectives 2.1, 2.2, Policies 1.1.3, 2.2.1, 2.2.2, 6.1.1, 6.1.7, 39.1.3, *See* Lee Plan Glossary definition - infill.

[41] A broad range of infrastructure and services are available to the property, including potable water, sanitary sewer, transit, medical facilities, education, law enforcement, fire, and emergency medical services. Lee Tran Route 595 serves the area. Lee Plan Goal 11, Objectives 2.1, 2.2, 4.1, 11.1, Policies 1.1.3, 2.2.1, 2.2.2, 6.1.4, 39.1.3, 54.1.10, 54.1.11, 61.1.6, 126.1.2, Standards 4.1.1, 4.1.2, 4.1.3; LDC §34-413.

[42] LDC §34-413.

[43] The buffer is "enhanced" because the LDC requires only a Type B buffer between multifamily and single family residential land uses. LDC §10-416(d).

[44] LDC §34-411.

[45] LDC §34-2.

[46] LDC §34-373(a)(9).

The request seeks two additional deviations from the LDC. Existing deviations pertain to intersection separation, dead end street configuration, open space, indigenous native vegetation/trees, setbacks, site access and square footage assigned to waste collection/recycling, buffers, and landscape standards.

Applicant offered testimony and evidence in support of two new deviations concerning backout parking for dwellings and building separation.[47]

Staff recommended approval of the new deviations and revisions to existing deviations. The Hearing Examiner agrees with staff's recommendation, finding all deviations meet LDC approval criteria.[48]

Development of the site must comply with the LDC regulations applicable within the North Fort Myers Community Planning Community.[49] Applicant hosted a public meeting on the request prior to hearing.[50] The property will be subject to further community review at the development order stage.[51]

The project will be subject to road, park, fire, EMS, and school impact fees.[52]

Environmental/Natural Resources

Requests to rezone property must not adversely affect environmentally critical/sensitive areas or natural resources.

The property is vacant and covered with dense vegetation of pine forest and palmetto prairies.[53] There is a large burrow pit on the east side of the site.

The MCP preserves the existing FEMA Floodway on the west boundary.[54] Conditions of approval require the developer to preserve the natural vegetation within the floodway. Prior zoning approvals allow preservation areas on the south side of Diplomat Parkway to serve the entire RPD/CPD.

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[47] LDC §§34-2013(a), 34-935(e)(4).
[48] The Hearing Examiner may recommend approval, approval with modifications or denial of requested deviations based upon findings that a deviation (1) enhances the planned development and, (2) preserves/promotes public health, safety, and welfare. LDC §34-377(a)(4).
[49] LDC §33-1531 *et seq*.
[50] Advertised meeting held on March 27,2024, at the North Fort Myers Recreation Center. LDC §33-1532(a). *See* Staff Report Attachment Q.
[51] LDC §33-1532.
[52] LDC Chapter 2.
[53] The upland vegetation does not meet the Lee Plan definition of rare and unique uplands. *See* Protected Species Assessment, prepared for Diplomat Fort Myers, LLC by Atwell updated December 2023. (Applicant 48 Hour Submittal).
[54] Lee Plan Standard 4.1.4; LDC §34-411(g).

Applicant's protected species assessment concludes there is no evidence of species listed by FWS or FWC on the property.[55]

Buffers and landscaped areas must follow Xeriscape principles and consist of native landscape to conserve water.[56]

The Hearing Examiner finds the proposed amendments to the Diplomat RPD/CPD will not harm environmentally critical/sensitive areas or natural resources.[57]

Transportation

The MCP must depict sufficient road access to support proposed development intensity and expected impacts on transportation facilities must be addressed by County regulations and conditions of approval.

The RPD/CPD fronts on Diplomat Parkway, an arterial roadway maintained by the City of Cape Coral. The MCP depicts access to Diplomat Parkway from each tract via a single driveway.[58]

Applicant's Traffic Impact Statement and staff's analysis conclude the proposed amendment will not cause roads to operate below adopted levels of service at project buildout.[59]

Lee Tran Route 595 operates along Diplomat Parkway East.[60] The developer will be required to address transit stop improvements during development order permitting.[61]

Site-related turn lane improvements will be evaluated at the time of development order permitting.

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[55] Specifically, no evidence of scat, tracks, or nesting. Further, in addition to the site inspection, a search of the FWC species database disclosed no known protected species in the immediate area. Protected Species Assessment, prepared for Diplomat Fort Myers, LLC by Atwell updated December 2023. (Applicant 48 Hour Submittal).

[56] Lee Plan Objective 126.2, Policy 126.2.1.

[57] Lee Plan 125.1.2.

[58] The RPD/CPD has an approved deviation from LDC access standards to allow a single driveway to serve the development tracts north and south of Diplomat Parkway.

[59] Staff Report Attachments H, I: Traffic Impact Statement for Diplomat North Rezoning revised March 5, 202 prepare by TR Transportation Consultants, Inc. and Memo from Md Rakibul Alam, Principal Transportation Planner dated May 25, 2024.

[60] Connections to transit routes 590 and 140 is within a half mile of the project. Applicant Hearing Exhibit 1: PowerPoint Presentation.

[61] Lee Plan 30.1.4, 39.1.3, 43.1.1. LDC §§10-442, 33-1574.

Public Services and Infrastructure

Public services are services, facilities, capital improvements, and infrastructure necessary to support development.[62] The Lee Plan requires an evaluation of public services during the rezoning process.[63]

The property fronts on Diplomat Parkway a four lane divided arterial roadway maintained by the City of Cape Coral. There are existing on road bike lane improvements. Developer must comply with LDC requirements regarding future improvements to accommodate bike/pedestrian access from the site.[64]

The property has access to public services and infrastructure.[65] Lee County Utilities and FGUA have public water and sanitary sewer infrastructure available to serve the property.[66] Fire, EMS, and law enforcement have stations in proximity to the site.[67] Lee Tran serves the area.

Residents will have access to schools, parks, hospital/medical facilities, shopping, and employment centers within reasonable distances.[68]

Development will be subject to impact fees for road, park, fire, school, and emergency medical services.[69]

Conditions

The County must administer the zoning process so proposed land uses minimize adverse impacts on adjacent property and protect County's resources.[70] Conditions must be plausibly related to the project's anticipated impacts, and pertinent to mitigating impacts to the public.[71] The RPD/CPD will be subject to conditions of approval designed to address impacts reasonably anticipated from

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[62] Public services and infrastructure available to serve the project will include public water and sewer paved streets, parks and recreation facilities, libraries, police, fire and emergency services, urban surface water management, and schools.
[63] Lee Plan Goal 95 and Policy 2.2.1.
[64] LDC §10-256.
[65] Lee Plan Glossary definition of Public Services, Goal 4, Policies 1.1.5, 2.2.1, 5.1.3, Standards 4.1.1, 4.1.2.
[66] Lee Plan Standards 4.1.1, 4.1.2; Staff Report Attachment G: Applicant Narrative.
[67] Lee Plan Objectives 2.1, 2.2, Policy 2.1.1, North Fort Myers Fire Control & Rescue Service District Station #s 1 & 2 and Lee County Medic #s 7 & 31 are within four miles of the property. Lee County Sheriff North District Office is 2.7 miles from the property on Pondella Road. Staff Report Attachment G: Applicant Narrative.
[68] Lee Plan Goals 66, 95, Objective 95.1. There are two elementary, one middle and one high school within 3.4 miles of the property. There are five park/recreation facilities within 3.5 miles: Judd Community Park, North Fort Myers Recreation Center, Mary Moody Park, and North Fort Myers Community Pool. Shopping and employment centers lie along US 41 and the City of Cape Coral. Lee Memorial Health has hospitals in Cape Coral and US 41.
[69] LDC Chapter 2, Article VI.
[70] Lee Plan Policies 5.1.5, 135.9.6; LDC §§34-145(d)(4) a.2.(b), 34-377(a)(3), 34-411, and 34-932(c).
[71] LDC §34-932(b).

development.[72] Notable conditions require an indigenous preservation management plan, gopher tortoise protection, and potential contribution toward intersection improvements at US 41.

The Hearing Examiner revised wording of conditions/deviations to improve clarity. Prior conditions restating LDC requirements have been deleted.

Public

Two members of the public attended the hearing representing the Serendipity mobile home community to the north. The speakers requested clarification on stormwater management, buffers, and security enhancements. Applicant's representatives provided additional testimony to clarify stormwater management and buffer composition.

Conclusion

The Hearing Examiner recommends approval and finds the requested amendments to the 35.18 acre portion of the Diplomat RPD/CPD meets LDC criteria and, as conditioned, is compatible with surrounding development.[73] The recommended conditions and deviations represent a codification of all development approvals affecting the 65.13 acre RPD/CPD.

The Hearing Examiner revised conditions of approval for clarity, compliance with state law and to remove references to the LDC applicable to development by Condition 1.

IV. Findings and Conclusions

Based on the testimony and exhibits presented in the record, the Hearing Examiner finds:

A. The requested amendments to the Diplomat RPD/CPD are consistent with the Lee Plan. Lee Plan Goals 2, 4, 5, 6, 11, 30, 60, 61, 77, 95, 123, 124, 125, 126, 135, 151, 158, 159, 160; Objectives 2.1, 2.2, 4.1, 5.1, 6.1, 11.1, 11.2, 30.1, 60.4, 61.2, 77.1, 77.2, 77.3, 122.2, 123.1, 123.2, 123.3, 123.4, 123.6, 123.8, 124.1, 126.2, 135.1, 161.1, 161.3, and Policies 1.1.3, 1.6.5, 2.1.1, 2.1.2, 2.2.1, 5.1.1, 5.1.2, 5.1.3, 5.1.5, 5.1.6, 5.1.7, 11.2.2, 11.2.5, 11.2.7, 30.1.3, 135.1.9, 135.9.6, 160.1.3, Lee Plan Maps 1-A, 1-B, 1-C, Table 1(a).

[72] LDC §§34-83(b)(4) a.3, 34-377(a)(2)c; Lee Plan Objectives 77.3, Policies 5.1.5, 6.1.4, 77.3.1.
[73] Lee Plan Policy 6.1.4.

B. As conditioned, the proposed amendments:

1. Is consistent with the Land Development Code or qualifies for deviations. LDC Chapters 2, 10, 33, and 34.

2. Is compatible with existing or planned uses in the surrounding area. Lee Plan Goals 2, 11, Objectives 2.1, 2.2, 11.2, 161.1, 161.3, and Policies 1.1.3, 2.1.1, 5.1.5, 6.1.4, 30.1.3, 135.9.5, 135.9.6, 160.1.3, 161.2.2, 161.3.1; LDC §§34-411, 34-413.

3. Provides sufficient road access to support proposed development intensity. Lee Plan Objective 161.4, Policies 161.1.2, 161.4.3.

4. Expected impacts on transportation facilities will be addressed by County regulations and conditions of approval. Lee Plan Objective 39.1, Policies 30.3.3, 38.1.1, 38.1.5, 39.1.1, 39.1.3, 39.2.1, 43.1.1; LDC §§2-261 *et seq.*, 34-411(d) and (e).

5. Will not adversely affect environmentally sensitive areas or natural resources. Lee Plan Goals 59, 60, 61, 77, 123, 125, 126, Objectives 60.4, 61.2, 77.1, 77.3, 122.2, 123.6, 124.1, 125.1, 126.2, Policies 6.1.6, 59.1.5, 60.1.2, 60.4.1, 60.4.2, 60.4.3, 61.1.6, 61.3.3, 61.3.6, 61.3.9, 61.3.11, 77.3.1, 77.3.3, 123.1.5, 123.2.3, 123.2.10, 125.1.1, 125.1.2, 125.1.3, 125.1.4, 126.1.1, 126.1.2, 126.1.4, 126.2.1, and Standard 4.1.4.

6. Public services and infrastructure will be available to serve the development. Goals 2, 4, 5, 56, 95, Objectives 2.1, 2.2, 4.1, 65.2, Policies 1.1.1, 1.1.3, 2.1.1, 2.2.1, 30.3.3, 54.1.10, 54.1.11, 55.1.1, 56.1.4, 57.1.5, 61.1.6, 160.1.1, 160.1.2, 160.1.3, 161.1.2, Standards 4.1.1, 4.1.2.

C. The proposed uses are appropriate at the location. Lee Plan Goals 2, 5, 6, 135, 158, 159; Objectives 2.1, 2.2, 11.2, 56.2, 135.1, Policies 2.1.1, 2.1.2, 5.1.3, 11.2.1, 30.1.4, 39.1.3, 39.2.1, 135.1.9, 135.9.6, 160.1.3, Lee Plan Tables 1(a).

D. The County regulations and recommended conditions provide sufficient safeguards to protect the public interest and relate to impacts expected from the proposed development. Lee Plan Goals 56, 123, 124, 125, Objectives 77.3, 123.6, 126.2, Policies 5.1.5, 53.1.5, 54.1.10, 54.1.11, 56.1.4, 61.3.8, 77.3.1, 126.2.1, 135.9.5, 135.9.6: LDC §§34-145(d)(4)a.2.b), 34-377(a)(3), 34-936, 34-411 and 34-932(c).

E. Deviations recommended for approval enhance the planned development and preserve public health, safety, and welfare. LDC §§34-373(a)(9), 34-377(a)(4).

Recommendation date: July 18, 2024.

Donna Marie Collins
Chief Hearing Examiner

Lee County Hearing Examiner
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398

Exhibits to Hearing Examiner's Recommendation

Exhibit A Legal Description of RPD/CPD and Vicinity Map
Exhibit B Recommended Conditions and Deviations Strike Through/Underlined Version(Codified)
Exhibit C Recommended Conditions and Deviations Clean Version(Codified)
Exhibit D Exhibits Presented at Hearing
Exhibit E Hearing Participants
Exhibit F Information

Case: DCI2023-00050

Exhibit A

LEGAL DESCRIPTION AND VICINITY MAP
65.13 Acre RPD/CPD

DCI 2010-00015

Banks Engineering
Professional Engineers, Planners & Land Surveyors
2515 Northbrooke Plaza Drive - Suite 200
Naples, Florida 34119
(239) 597-2061
Fax (239) 597-3082

DESCRIPTION
OF A
PARCEL OF LAND
LYING IN
SECTION 34, TOWNSHIP 43 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA
(CPD ZONING DESCRIPTION)

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTION 34, TOWNSHIP 43 SOUTH, RANGE 24 EAST AND BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

NORTH CPD ZONNING PARCEL
COMMENCING AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF U.S. 41 (STATE ROAD 45) (200 FEET WIDE) AND THE SOUTHERLY RIGHT-OF-WAY LINE OF LITTLETON ROAD (50 FEET WIDE); THENCE 94.14 FEET ALONG SAID WESTERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 5829.58 FEET AND SUBTENDED BY A CHORD HAVING A LENGTH OF 94.14 FEET AND BEARING S.03°47'10"W. TO A POINT OF TANGENCY; THENCE S.03°25'50"W. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 2338.37 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUE S.03°25'50"W. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 199.95 FEET TO **POINT "A"** AND TO AN INTERSECTION WITH THE NORTHERLY RIGHT-OF-WAY LINE OF DIPLOMAT PARKWAY (100 FEET WIDE); THENCE N.86°35'21"W. ALONG SAID NORTHERLY RIGHT-OF-WAY LINE FOR 12.52 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 2150.00 FEET; THENCE WESTERLY ALONG SAID CURVE AND ALONG SAID NORTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 3°32'51" FOR 133.12 FEET; THENCE S.89°51'48"W. ALONG SAID NORTHERLY RIGHT-OF-WAY LINE FOR 1484.79 FEET TO **POINT "B"**; THENCE N.00°08'12"W. FOR 250.00 FEET; THENCE N.89°51'48"E. FOR 1145.24 FEET; THENCE S.03°25'50"W. FOR 53.49 FEET; THENCE S.89°54'50"E. FOR 500.85 FEET TO THE **POINT OF BEGINNING.**

PARCEL CONTAINS 8.78 ACRES, MORE OR LESS.

TOGETHER WITH: ADDITIONAL NORTH CPD ZONNING PARCEL
COMMENCING AT SAID POINT "B" ; THENCE S.89°51'48"W. ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF DIPLOMAT PARKWAY (100 FEET WIDE) FOR 80.00 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUE S.89°51'48"W. ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 253.42 FEET; THENCE N.28°32'51"W. FOR 6.70 FEET; THENCE N.00°20'36"W. FOR 244.12 FEET; THENCE N.89°51'48"E. FOR 257.48 FEET; THENCE S.00°08'12"E. FOR 250.00 FEET TO THE **POINT OF BEGINNING**.

PARCEL CONTAINS 1.48 ACRES, MORE OR LESS.

TOGETHER WITH: SOUTH CPD ZONNING PARCEL
COMMENCING AT SAID POINT "A"; THENCE S.03°25'50"W. ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF U.S. 41 (STATE ROAD 45) (200 FEET WIDE) FOR 100.00 FEET TO THE **POINT OF BEGINNING**;

Fort Myers Office
10511 Six Mile Cypress Pkwy, Suite #101
Fort Myers, Florida 33966
(239) 939-5490
Fax (239) 939-2523

Sarasota Office
1144 Tallevast Road Suite #115
Sarasota, Florida 34243
(941) 360-1618
Fax (941) 360-6918

Port Charlotte Office
12653 SW CR 769 Suite B
Lake Suzy, Florida 34269
(941) 625-1165
Fax (941) 625-1149

EXHIBIT "A"
(Page 1 of 6)

APPLICANT EXHIBIT# 3
DCI2023-00050

DCI 2010-00015

THENCE CONTINUE S.03°25'50"W. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 429.00 FEET TO THE NORTHEAST CORNER OF A PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2113 AT PAGE 1590 OF SAID PUBLIC RECORDS, ALSO BEING THE NORTHEAST CORNER OF MERCHANTS CROSSING, A SUBDIVISION RECORDED IN PLAT BOOK 52 AT PAGES 37 THROUGH 47 OF SAID PUBLIC RECORDS; THENCE N.86°34'10"W. ALONG THE NORTH LINE OF SAID PARCEL AND SAID SUBDIVISION FOR 72.00 FEET TO THE SOUTHEAST CORNER OF A PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2833 AT PAGE 4156 OF SAID PUBLIC RECORDS; THENCE N.03°25'50"E. ALONG THE EASTERLY LINE OF SAID PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2833 AT PAGE 4156 FOR 65.00 FEET; THENCE N.86°33'36"W. ALONG THE NORTHERLY LINE OF SAID PARCEL FOR 39.68 FEET; THENCE S.03°26'24"W. ALONG THE WESTERLY LINE OF SAID PARCEL FOR 8.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 17.00 FEET; THENCE SOUTHWESTERLY ALONG SAID PARCEL AND SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'01" FOR 26.70 FEET; THENCE N.86°33'36"W. ALONG THE NORTHERLY LINE OF SAID PARCEL FOR 487.82 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 80.00 FEET; THENCE NORTHWESTERLY ALONG SAID PARCEL AND SAID CURVE THROUGH A CENTRAL ANGLE OF 86°25'24" FOR 120.67 FEET; THENCE N.00°08'12"W. ALONG THE EASTERLY LINE OF SAID PARCEL FOR 274.66 FEET TO **POINT "C"** AND TO AN INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF DIPLOMAT PARKWAY (100 FEET WIDE) AS DESCRIBED IN OFFICIAL RECORDS BOOK 2833 AT PAGE 4156 OF SAID PUBLIC RECORDS; THENCE N.89°51'48"E. ALONG SAID SOUTHERLY RIGHT-OF-WAY FOR 575.20 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2050.00 FEET; THENCE EASTERLY ALONG SAID RIGHT-OF-WAY AND SAID CURVE THROUGH A CENTRAL ANGLE OF 3°32'51" FOR 126.93 FEET; THENCE S.86°35'21"E. ALONG SAID RIGHT-OF-WAY FOR 12.49 FEET TO THE **POINT OF BEGINNING.**

PARCEL CONTAINS 6.00 ACRES, MORE OR LESS.

TOGETHER WITH: ADDITIONAL SOUTH CPD ZONNING PARCEL
COMMENCING AT SAID POINT "C"; THENCE S.89°51'48"W. ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF DIPLOMAT PARKWAY (100 FEET WIDE) FOR 40.00 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUE S.89°51'48"W. ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 383.07 FEET; THENCE S.00°08'12"E. FOR 186.04 FEET; THENCE N.59°04'35"E. FOR 185.65 FEET; THENCE S.76°11'27"E. FOR 125.61 FEET; THENCE S.41°41'10"E. FOR 153.30 FEET TO AN INTERSECTION WITH THE WESTERLY LINE OF THE AFORESAID PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2833 AT PAGE 4156 OF SAID PUBLIC RECORDS; THENCE N.00°08'12"W. ALONG THE WESTERLY LINE FOR 236.02 FEET TO THE **POINT OF BEGINNING.**

APR 27 2011

PARCEL CONTAINS 1.22 ACRES.

NET AREA AS DESCRIBED CONTAINS 17.48 ACRES, MORE OR LESS.

COMMUNITY DEVELOPMENT

BEARINGS ARE BASED ON THE WESTERLY RIGHT-OF-WAY OF U.S. 41 (STATE ROAD 45) AS BEARING S.03°25'50"W.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.

DESCRIPTION PREPARED NOVEMBER 2, 2006.

RICHARD M. RITZ
REGISTERED LAND SURVEYOR
FLORIDA CERTIFICATION NO. 4007

Applicant's Legal Checked
by 11/08/06 CSJ

EXHIBIT "A"
(Page 2 of 6)

DCI 2010-00015

SKETCH TO ACCOMPANY DESCRIPTION

OF A
PARCEL OF LAND
LYING IN
SECTION 34, TOWNSHIP 43 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

COORDINATE TABLE

POINT	NORTHING	EASTING
NE#1	[illegible]	[illegible]
NE#2	[illegible]	[illegible]
NE#3	856228.53	688316.53
NE#4	856231.52	687602.01
NE#5	856231.43	687562.01
NE#6	856230.51	687178.84
NE#7	856329.16	686612.19
NE#8	856578.55	686354.11

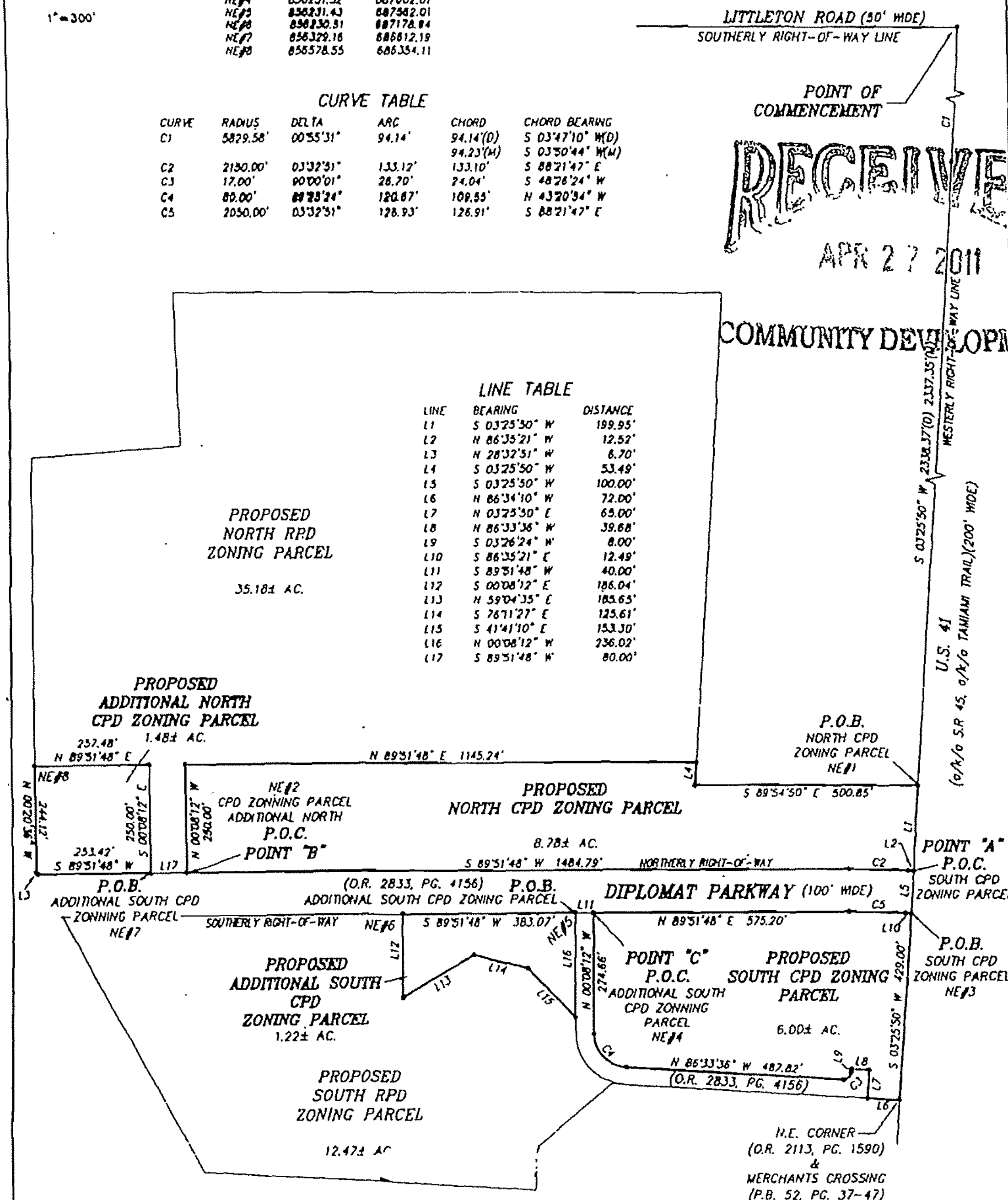
CURVE TABLE

CURVE	RADIUS	DELTA	ARC	CHORD	CHORD BEARING
C1	5829.58'	00°55'31"	94.14'	94.14'(D) 94.23'(M)	S 03°47'10" W(D) S 03°50'44" W(M)
C2	2150.00'	03°32'31"	133.12'	133.10'	S 88°21'47" E
C3	17.00'	90°00'01"	26.70'	24.04'	S 48°26'24" W
C4	80.00'	[illegible]°25'24"	120.67'	109.55'	N 43°20'34" W
C5	2050.00'	03°32'31"	126.93'	126.91'	S 88°21'47" E

RECEIVED
APR 27 2011
COMMUNITY DEVELOPMENT

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 03°25'50" W	199.95'
L2	N 86°35'21" W	12.52'
L3	N 28°32'51" W	6.70'
L4	S 03°25'50" W	53.49'
L5	S 03°25'50" W	100.00'
L6	N 86°34'10" W	72.00'
L7	N 03°25'50" E	65.00'
L8	N 86°33'36" W	39.68'
L9	S 03°26'24" W	8.00'
L10	S 86°35'21" E	12.49'
L11	S 89°51'48" W	40.00'
L12	S 00°08'12" E	186.04'
L13	N 59°04'35" E	185.65'
L14	S 76°11'27" E	125.61'
L15	S 41°41'10" E	153.30'
L16	N 00°08'12" W	236.02'
L17	S 89°51'48" W	80.00'



THIS IS NOT A SURVEY

NOTES:
1. SEE ACCOMPANYING SHEETS FOR COMPLETE METES AND BOUNDS DESCRIPTION.
2. STATE PLANE COORDINATES (FLORIDA ZONE WEST) SHOWN HEREON ARE BASED ON NAD83 AND ARE FOR GIS PURPOSES ONLY.
3. BEARINGS ARE BASED ON THE WESTERLY RIGHT-OF-WAY OF U.S. 41 AS S.03°25'50"W.

SKETCH
CSJ 11/6/08

RICHARD M. RITZ
REGISTERED LAND SURVEYOR
FLORIDA CERTIFICATION NO. 4009

— THIS SKETCH IS NOT VALID UNLESS IT BEARS THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA PROFESSIONAL SURVEYOR AND MAPPER.

— PREPARED NOVEMBER 2, 2006.

LEGEND:

P.O.C.	INDICATES POINT OF COMMENCEMENT
P.O.B.	INDICATES POINT OF BEGINNING
O.R.	INDICATES OFFICIAL RECORDS BOOK OF LEE COUNTY
PG.	INDICATES PAGE NUMBER
P.B.	INDICATES PLAT BOOK
C1	INDICATES CURVE 1 OF THE CURVE TABLE
L1	INDICATES LINE 1 OF THE LINE TABLE
NE#1	INDICATES COORDINATE #1 OF THE COORDINATE TABLE

PREPARED BY:
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FLORIDA SURVEYING BUSINESS CERTIFICATION NO. 6690

SHEET 3 OF 3

S:\Jobs\20xx\2028\SURVEY\Descriptions\Zoning\2028_ZONING_CPD_REV_SK.dwg, 11/2/2006 4:24:53 PM, David Biehschmidt

BEGINNING; THENCE CONTINUE N.86°34'10"W. ALONG SAID NORTHERLY LINE FOR 33.50 FEET TO THE NORTHWEST CORNER OF SAID PARCEL; THENCE S.48°25'48"W. ALONG THE WESTERLY LINE OF SAID PARCEL AND SAID SUBDIVISION FOR 212.13 FEET; THENCE S.03°25'50"W. ALONG THE WESTERLY LINE OF SAID PARCEL AND SAID SUBDIVISION FOR 100.00 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL AND TO THE SOUTH LINE OF A PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2389 AT PAGE 1936 OF SAID PUBLIC RECORDS; THENCE N.86°34'10"W. ALONG THE SOUTH LINE OF SAID PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2389 AT PAGE 1936 AND THE NORTHERLY LINE OF SAID SUBDIVISION FOR 747.11 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF A DRAINAGE EASEMENT (50 FEET WIDE) DESCRIBED IN DEED BOOK 237 AT PAGES 564 AND 565 OF SAID PUBLIC RECORDS; THENCE N.28°32'51"W. ALONG THE NORTHEASTERLY LINE OF SAID DRAINAGE EASEMENT FOR 666.39 FEET TO AN INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF DIPLOMAT PARKWAY (100 FEET WIDE) AS DESCRIBED IN OFFICIAL RECORDS BOOK 2833 AT PAGE 4156 OF SAID PUBLIC RECORDS; THENCE N.89°51'48"E. ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 765.84 FEET; THENCE S.00°08'12"E. FOR 186.04 FEET; THENCE N.59°04'35"E. FOR 185.65 FEET; THENCE S.76°11'27"E. FOR 125.61 FEET; THENCE S.41°41'10"E. FOR 153.30 FEET TO AN INTERSECTION WITH THE WESTERLY LINE OF A PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2833 AT PAGE 4156 OF SAID PUBLIC RECORDS; THENCE S.00°08'12"E. ALONG THE WESTERLY LINE OF SAID PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2833 AT PAGE 4156 FOR 38.64 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 120.00 FEET; THENCE SOUTHEASTERLY ALONG SAID WESTERLY LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 86°25'24" FOR 181.00 FEET TO THE **POINT OF BEGINNING.**

PARCEL CONTAINS 12.47 ACRES, MORE OR LESS.

DCI 2010-00015

NET ACREAGE IS 47.65 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE WESTERLY RIGHT-OF-WAY OF U.S. 41 (STATE ROAD 45) AS BEARING S.03°25'50"W.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.

DESCRIPTION PREPARED NOVEMBER 2, 2006.

Richard M. Ritz

RICHARD M. RITZ
REGISTERED LAND SURVEYOR
FLORIDA CERTIFICATION NO. 4009

Applicant's Legal Checked
by CSJ 11/6/06

DCI 2010-00015

Banks Engineering
Professional Engineers, Planners & Land Surveyors
2515 Northbrooke Plaza Drive-Suite 200
Naples, Florida 34119
(239) 597-2061
Fax (239) 597-3082

DESCRIPTION
OF A
PARCEL OF LAND
LYING IN
SECTION 34, TOWNSHIP 43 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA
(RPD ZONING DESCRIPTION)

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTION 34, TOWNSHIP 43 SOUTH, RANGE 24 EAST AND BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

NORTH RPD PARCEL:
COMMENCING AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF U.S. 41 (STATE ROAD 45) (200 FEET WIDE) AND THE SOUTHERLY RIGHT-OF-WAY LINE OF LITTLETON ROAD (50 FEET WIDE) THENCE 94.14 FEET ALONG SAID WESTERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 5829.58 FEET AND SUBTENDED BY A CHORD HAVING A LENGTH OF 94.14 FEET AND BEARING S.03°47'10"W. TO A POINT OF TANGENCY; THENCE S.03°25'50"W. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 2338.37 FEET; THENCE N.89°54'50"W. FOR 500.85 FEET; THENCE N.03°25'50"E. FOR 53.49 FEET TO THE **POINT OF BEGINNING**; THENCE S.89°51'48"W. FOR 1145.24 FEET; THENCE S.00°08'12"E. FOR 250.00 FEET TO AN INTERSECTION WITH THE NORTHERLY RIGHT-OF-WAY LINE OF DIPLOMAT PARKWAY (100 FEET WIDE) AS DESCRIBED IN OFFICIAL RECORDS BOOK 2833 AT PAGE 4156 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S.89°51'48"W. ALONG SAID NORTHERLY RIGHT-OF-WAY LINE FOR 80.00 FEET; THENCE N.00°08'12"W. FOR 250.00 FEET; THENCE S.89°51'48"W. FOR 257.48 FEET; THENCE N.00°20'36"W. FOR 703.76 FEET; THENCE N.85°23'00"E. FOR 335.22 FEET; THENCE N.02°25'15"W. FOR 346.19 FEET; THENCE S.89°54'50"E. FOR 1231.65 FEET; THENCE S.03°25'50"W. FOR 1073.15 FEET TO THE **POINT OF BEGINNING**.

PARCEL CONTAINS 35.18 ACRES, MORE OR LESS.

AND;
SOUTH RPD PARCEL:
COMMENCING AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY OF U.S. 41 (STATE ROAD 45) (200 FEET WIDE) AND THE SOUTHERLY RIGHT-OF-WAY OF LITTLETON ROAD (50 FEET WIDE) THENCE 94.14 FEET ALONG THE WESTERLY RIGHT-OF-WAY AND ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 5829.58 FEET AND SUBTENDED BY A CHORD HAVING A LENGTH OF 94.14 FEET AND BEARING S.03°47'10"W. TO A POINT OF TANGENCY; THENCE S.03°25'50"W. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 2338.37 FEET TO THE SOUTHEASTERLY CORNER OF A PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 1972 AT PAGE 335 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE CONTINUE S.03°25'50"W. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 728.95 FEET TO THE NORTHEAST CORNER OF A PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2113 AT PAGE 1590 OF SAID PUBLIC RECORDS, ALSO BEING THE NORTHEAST CORNER OF MERCHANTS CROSSING, A SUBDIVISION RECORDED IN PLAT BOOK 52 AT PAGES 37 THROUGH 47 OF SAID PUBLIC RECORDS; THENCE N.86°34'10"W. ALONG THE NORTH LINE OF SAID PARCEL AND SAID SUBDIVISION FOR 616.50 FEET TO THE **POINT OF**

Fort Myers Office
10511 Six Mile Cypress Pkwy, Suite #101
Fort Myers, Florida 33966
(239) 939-5490
Fax (239) 939-2523

Sarasota Office
1144 Tallevast Road Suite #115
Sarasota, Florida 34243
(941) 360-1618
Fax (941) 360-6918

Port Charlotte Office
12653 SW CR 769 Suite B
Lake Suzy, Florida 34269
(941) 625-1165
Fax (941) 625-1149

SKETCH TO ACCOMPANY DESCRIPTION

OF A
PARCEL OF LAND
LYING IN
SECTION 34, TOWNSHIP 43 SOUTH, RANGE 24 EAST
LEE COUNTY, FLORIDA

1"=300'

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 03°25'50" W	100.00'
L2	N 86°34'10" W	33.50'
L3	S 48°25'48" W	212.13'
L4	S 00°08'12" E	38.64'
L5	S 00°08'12" E	186.04'
L6	N 59°04'35" E	185.65'
L7	S 76°11'27" E	125.61'
L8	S 41°41'10" E	153.30'
L9	S 89°51'48" W	80.00'

CURVE TABLE

CURVE	RADIUS	DELTA	ARC	CHORD	CHORD BEARING
C1	5829.58'	00°55'31"	94.14'	94.14'(D) 94.23'(M)	S 03°47'10" W(D) S 03°50'44" W(M)
C2	120.00'	86°25'24"	181.00'	164.33'	N 43°20'54" W

LITTLETON ROAD (50' WIDE)
SOUTHERLY RIGHT-OF-WAY LINE

POINT OF COMMENCEMENT

COORDINATE TABLE

POINT	NORTHING	EASTING
NE#1	856582.06	687836.83
NE#2	857282.30	686349.89
NE#3	855857.18	687675.48
NE#4	855643.31	686731.58

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APR 27 2011
COMMUNITY DEVELOPMENT

S 89°54'50" E 1231.65'
N 00°25'15" W 346.19'
NE#2 N 85°23'00" E 335.22'
N 00°20'36" W 701.76'
PROPOSED NORTH RPD ZONING PARCEL
35.18± AC
S 03°25'50" W 1023.15'
N 03°25'50" E
S 03°25'50" W 2336.37(D) 2337.35(M)
WESTERLY RIGHT-OF-WAY LINE
U.S. 41
(O/K/a S.R. 45, o/k/a TAMIAMI TRAIL)(200' WIDE)
(O.R. 1972, PG. 335)
PROPOSED ADDITIONAL NORTH CPD ZONING PARCEL
1.48± AC.
POINT OF BEGINNING NORTH RPD PARCEL NE#1
S 89°51'48" W 257.48'
S 89°51'48" W 1145.24'
53.49'
N 89°34'50" W 500.85'
PROPOSED NORTH CPD ZONING PARCEL
8.78± AC
N 00°08'12" W 250.00'
S 00°08'12" E 250.00'
L9
NORTHERLY RIGHT-OF-WAY
(O.R. 2833, PG. 4156)
PROPOSED ADDITIONAL SOUTH CPD ZONING PARCEL
1.22± AC.
DIPLOMAT PARKWAY
100'
SOUTHERLY RIGHT-OF-WAY
N 89°51'48" E 765.84'
S 03°25'50" W 728.95'
L7
L6
L8
C2
L4
PROPOSED SOUTH CPD ZONING PARCEL
6.00± AC.
N 28°12'39" W 686.39'
50' DRAINAGE EASEMENT O.R. 2137, PG. 564 & 565)
PROPOSED SOUTH RPD ZONING PARCEL
12.47± AC.
(O.R. 2833, PG. 4156)
N 86°34'10" W 616.50'
L2
L3
L1
POINT OF BEGINNING SOUTH RPD PARCEL NE#3
N.E. CORNER (O.R. 2113, PG. 1590) & MERCHANTS CROSSING (P.B. 52, PG. 37-47)
N 86°34'10" W 747.11'
NE#4

NOTES:
1. SEE ACCOMPANYING SHEETS FOR COMPLETE METES AND BOUNDS DESCRIPTION.
2. STATE PLANE COORDINATES (FLORIDA ZONE WEST) SHOWN HEREON ARE BASED ON NAD83 AND ARE FOR GIS PURPOSES ONLY.
3. BEARINGS ARE BASED ON THE WESTERLY RIGHT-OF-WAY OF U.S. 41 AS S.03°25'50"W.

LEGEND:
O.R. INDICATES OFFICIAL RECORDS BOOK OF LEE COUNTY
PG. INDICATES PAGE NUMBER
C1 INDICATES CURVE 1 OF THE CURVE TABLE
L1 INDICATES LINE 1 OF THE LINE TABLE
NE#1 INDICATES COORDINATE #1 OF THE COORDINATE TABLE
P.B. INDICATES PLAT BOOK
O.B. INDICATES DEED BOOK
(D) INDICATES DEED
(M) INDICATES MEASURED

THIS IS NOT A SURVEY

Richard M. Ritz

RICHARD M. RITZ
REGISTERED LAND SURVEYOR
FLORIDA CERTIFICATION NO. 4609

THIS SKETCH IS NOT VALID UNLESS IT BEARS THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA PROFESSIONAL SURVEYOR AND MAPPER.

PREPARED NOVEMBER 2, 2006.

PREPARED BY:

Banks Engineering
ENGINEERING, SURVEYING & LAND PLANNING
8510 NORTHBROOKE PLAZA DRIVE - SUITE 800
NAPLES, FLORIDA 34119
(239) 597-8061
FLORIDA SURVEYING BUSINESS CERTIFICATION NO. 6890

SHEET 3 OF 3

S:\Jobs\2bord2028\SURVEY\Descriptions\Zoning\2028_ZONING_RPD_REV_SK.dwg, 11/2/2006 4:25:50 PM, David Biehschmidt

Case: DCI2023-00050

Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS (Codified)
Strike Through/Underlined Version

(As revised by the Hearing Examiner)

CONDITIONS

1. **Master Concept Plan (MCP)**. Development must be substantially consistent with the MCP (Exhibit B-1) as follows:

   MCP Page 1 of 3 entitled "Master Concept Plan, Diplomat Parcel, Lee County, Florida," dated 08-27-2007, last revised June 25, 2024;

   MCP Page 2 of 3 entitled "Alternate Diplomat North RPD Master Concept Plan, Diplomat House" last revised June 25, 2024;

   MCP Page 3 of 3 entitled "Alternate Diplomat South RPD MCP, Diplomat Parcel" dated 10/28/2019, last revised June 25, 2024, consistent with the conditions herein.

Lee Plan and Land Development Code (LDC). Development must comply with the Lee Plan and LDC except where deviations have been approved in this resolution. Changes to the MCP or conditions require further approvals.

Approved Development Parameters.

North RPD: The 35.18 acre North RPD is comprised of the former 29.75 acre North RPD and the former 5.43 Acre "Optional CPD" parcel north of Diplomat Parkway. This 35.18 acre parcel may develop up to 360 dwelling units utilizing density derived from the 35.18 RPD and 2.95 acres derived from CPD parcels 1 and 2. (Standard Density utilizing 35.18 acre RPD and commercial parcels 1 (1.48 Acres) and 2 (1.47 acres).

South RPD: The 13.19 acre RPD parcel south of Diplomat Parkway may develop up to 105 dwelling units. An additional 21 units may be constructed if marketed at a price affordable to moderate income households at the time of building permit application. The additional 21 units may only be sold to buyers who qualify as a Moderate Income Household at time of purchase. Moderate Income Household means 120 percent of the yearly median income based on yearly income levels developed for the SHIP Program by the Housing Section of the Lee County Division of Planning. (Approved density on the South RPD equates to eight dwelling units per acre, with a potential additional 1.6 units per acre subject to affordability requirements outlined herein.)

CPD Parcels 1 - 4. Maximum Total Commercial Floor Area: 200,000 square feet of commercial uses. North RPD utilizes acreage from CPD Parcels 1 and 2 residential density with no impact to commercial intensity due to Mixed Use Overlay. Commercial Parcels 3 and 4 may convert commercial intensity to residential density up to 116 dwelling units consistent with the conversion matrix in Condition 14 to allow up to 8 dwelling units per acre on 14.53 acres.

Codification of Prior Approvals. This resolution represents a codification of prior approvals.

2. **Permitted Uses and Property Development Regulations**.

a. **Schedule of Uses**

CPD – Parcels 1, 2, 3 & 4

Administrative Office
Animals: Clinic, Kennel, Control Center (including Humane Society) - indoors, no outdoor runs.
Automatic Teller Machine
Auto Parts Store - No installation service.
Auto Repair and Service, Group I
Bait and Tackle Shop
Banks and Financial Establishments, Group I and II
Boat Part Stores
Building Material Sales (indoor only, no outdoor display)
Business Services, Group I and II (no impound yards or armored car services) Cleaning and Maintenance Services
Clothing Stores, General
Communication facilities, wireless
A wireless communication facility may be administratively approved, provided it is co-located on a building and the height of the tower does not exceed 50 feet from existing grade.
Community Garden
Consumption on Premises – Indoor, limited to Group III restaurants.
Outdoor Consumption on Premises requires special exception approval
Contractors and Builders, Group I, II
Cultural Facilities
Day Care, Adult, Child
Department Store
Drive-through facility for any permitted use. No fast food drive-through.
Drugstore, Pharmacy (limited to 1 on Parcel 3 or 4)
Dwelling units, multifamily (Limited to Parcels 3, 4) *See* Conditions 1, 14, 15
Entrance Gate and Gatehouse
Emergency Operations Center
EMS, Fire or Sheriff's Station

Essential Services
Essential Service Facilities, Group I
Excavation, Water Retention - removal of excavated material from site prohibited.
Fences and Walls.
Flea Market, Indoor Only
Food and Beverage Services, Limited
Food Stores, Groups I, II
Funeral Home or Mortuary, with or without cremation
Gasoline Dispensing System, Special
Hardware Store
Health Care Facility, Groups I, II, and III
Hotel/Motel - Limited to 120 rooms.
Household and Office Furnishings - indoor only, no outdoor display
Insurance Companies
Lawn and Garden Supply Stores - indoor only, no outdoor display
Library
Medical Office
Model Home, Model Display Center, Model Unit (Limited to Parcels 3 and 4)
Non-store Retailer, All Groups
Paint, Glass and Wallpaper - (indoor only, no outdoor display)
Parking Lot, Accessory, Commercial, Garage, Public Parking, Temporary
Personal Services, Groups I, II, III, IV.
Excluding Laundromats, Laundry Agents, Massage Establishments, Massage Parlors, Steam or Turkish Baths, Dating Services, Escort Services, Palm Readers, Fortune Tellers, Card Readers, Tattoo Parlors.
Pet Services, Pet Shops - Indoor only, no outdoor display. No outdoor runs.
Place of Worship
Plant Nursery
Post Office
Printing and Publishing
Processing and Warehousing
Real Estate Sales
Limited to rental/sales within multifamily development permitted on Parcel 3 and 4
Real Estate Sales Office
Religious Facilities
Rental or Leasing Establishments, Group II only - excluding tools and equipment primarily for home use. Indoor only. No outdoor display.
Repair Shop, Groups I, II, III
Research and Development Laboratories, Groups I, II, III and IV
Residential accessory uses (Limited to Parcels 3 and 4)
Restaurants, Groups I, II, III, and IV

Restaurant, Fast Food, within a multi-occupancy building only. No stand-alone or drive-through
Schools, Commercial and Non-Commercial
Signs
Social Services Group I only
Specialty Retail, Groups I, II, III and IV
Storage, Indoor Only
Studios
Supermarkets
Temporary Uses
Used Merchandise, Groups I and II, Indoor only. No outdoor display.
Variety Store

North RPD (35.18 acres north of Diplomat Parkway)

Hearing Examiner Note: *The 35.18 acres includes the former 5.48 acre "Optional CPD" parcel.*

Accessory Uses and Structures
Administrative Office
Clubs, Private - As shown on the approved MCP. (Recreation Areas)
Community Garden
Dwelling Units, subject to Condition 1
Multifamily,
Townhomes
Entrance Gates and Gatehouse
Essential Services
Essential Service Facilities, Group I only
Excavation, Water Retention, removal of excavated material from site prohibited.
Fences and Walls.
Home Occupation
Home Care Facility
Model Home, Model Display Center, Model Unit - See Condition 3 (Model home and RE)
Parking Lot, Accessory
Real Estate Sales - limited to sale of lots/homes/units within the development.
Model home and club locations only. *See* Condition 3
Recreational Facilities - Private, on-site. Limited to locations shown on MCP
Religious Facilities
Residential Accessory Uses
Signs
Temporary Uses
Temporary Real Estate Sales Office

South RPD (13.19 acres south of Diplomat Parkway)

Accessory Uses and Structures
Administrative Office
Clubs, Private - As shown on the MCP.
Community Garden
Dwelling Units_– limited to a maximum of 105 dwelling units (or up to 126 dwelling units pursuant to Condition 1)
- Single-family
- Duplex
- Two-family attached
- Multiple-family
- Townhomes

Entrance Gates and Gatehouse
Essential Services
Essential Service Facilities, Group I
Excavation, Water Retention - not to include the removal of excavated material from the site.
Fences and Walls.
Home Occupation, No outside help.
Home Care Facility
Model Home, Model Display Center, Model Unit - See Condition 3
Parking Lot, Accessory
Real Estate Sales - limited to sales of lots, homes or units within the development. Model home and club locations only. see Condition 3
Recreational Facilities - Private, on-site. Shown on MCP
Residential Accessory Uses
Signs
Temporary Uses
Temporary Real Estate Sales Office

b. **Site Development Regulations**

CPD Parcels 1, 2, 3 & 4

Minimum Lot Areas and Dimensions

Lot Size:	10,000 square feet
Lot Width:	100 feet
Lot Depth:	100 feet

Minimum Setbacks

Street:	25 feet (public)
	20 feet (private)
Side:	10 feet
Rear:	20 feet
Water body:	25 feet

Accessory Uses: Per LDC.

Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet

Minimum Building Separation: 20 feet, buildings exceeding 35 feet in height must maintain additional building separation per LDC.

Maximum Building Height: 50 feet/ 3 stories
35 feet/ 2 stories – adjacent to west boundary

Maximum Lot Coverage: 60 percent

RPD North

Townhome

Minimum Lot Size and Dimensions
Lot Size: 0 square feet
Lot Width: 16 feet
Lot Depth: 0 feet

Minimum Setbacks
Street: 0 feet (public)
0 feet (private)
Side: 0 feet
Rear: 0 feet
Waterbody: 25 feet

All Accessory Uses: 0 feet

Setbacks from Preserves
All Structures: Per LDC.

Minimum Perimeter Setbacks: 15 feet

Minimum Building Separation: 20 feet

Maximum Building Height: 35 feet

Maximum Lot Coverage: No Maximum

Multiple-Family

Minimum Lot Size and Dimensions
Lot Size: 0 square feet
Lot Width: 25 feet
Lot Depth: 0 feet

Minimum Setbacks
Street: 0 feet (public)
0 feet (private)
Side: 0 feet
Rear: 0 feet
Waterbody: 25 feet

All Accessory Uses: 0 feet

Setbacks from Preserves
(All Structures) Per LDC.

Minimum Perimeter Setbacks 15 feet

Minimum Building Separation : 20 feet

Maximum Building Height 60 feet

Maximum Lot Coverage No Maximum

Recreational Area/Clubhouse

Minimum Lot Size and Dimensions
Lot Size: 0 square feet
Lot Width: 25 feet
Lot Depth: 0 feet

Minimum Setbacks
Street: 0 feet (public)
0 feet (private)
Side: 0 feet
Rear: 0 feet
Waterbody: 25 feet

All Accessory Uses: 0 feet

Setbacks from Preserves
All Structures: Per LDC.

Minimum Perimeter Setbacks: 15 feet

Minimum Building Separation: 10 feet

Maximum Building Height: 35 feet

Maximum Lot Coverage: No Maximum

South RPD

Single Family

Minimum Lot Areas and Dimensions
Lot Size: 7,500 square feet
Lot Width: 75 feet
Lot Depth: 100 feet

Minimum Setbacks
Street: 25 feet (public)
20 feet (private)
Side: 5 feet
Rear: 30 feet on lots containing enhanced buffer
20 feet other lots
Water body: 25 feet

Accessory Uses: Per LDC.

Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet
30 feet on lots containing enhanced buffer

Minimum Building Separation: 10 feet
Maximum Building Height: 35 feet
Maximum Lot Coverage: 45 percent

Duplex, Two-Family Attached

Minimum Lot Areas and Dimensions
Lot Size: 7,500 square feet
Lot Width: 75 feet (37.5 feet per unit)
Lot Depth: 100 feet

Minimum Setbacks
Street: 25 feet (public)
20 feet (private)

Side: 5 feet (0 feet for common wall unit)
Rear: 30 feet on lots containing enhanced buffer
20 feet other lots
Water body: 25 feet

All Accessory Uses: Per LDC.

Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet
30 feet on lots containing enhanced buffer

Minimum Building Separation: 10 feet
Maximum Building Height: 35 feet
Maximum Lot Coverage: 45 percent

Townhouse

Minimum Lot Areas and Dimensions
Lot Size: 1,600 square feet
Lot Width: 16 feet
Lot Depth: 100 feet

Minimum Setbacks
Street: 25 feet (public)
20 feet (private)
Side: 10 feet
0 feet (for a common wall unit)
Rear: 30 feet on lots containing enhanced buffer.
20 feet on other lots
Water body: 25 feet

All Accessory Uses: Per LDC.

Setbacks from Preserves (All structures) 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet
30 feet on lots containing enhanced buffer

Minimum Building Separation: 20 feet
Maximum Building Height: 35 feet
Maximum Lot Coverage: 65 percent

Multiple-Family

Minimum Lot Areas and Dimensions

Lot Size: 10,000 square feet
Lot Width: 100 feet
Lot Depth: 100 feet

Minimum Setbacks
Street: 25 feet (public)
20 feet (private)
Side: 10 feet
Rear: 30 feet on lots containing enhanced buffer.
20 feet on other lots
Water body: 25 feet

All Accessory Uses: Per LDC.
Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet
30 feet on lots containing enhanced buffer

Minimum Building Separation: 20 feet
Maximum Building Height: 35 feet
Maximum Lot Coverage: 45 percent

Recreational Area/Facilities

Minimum Lot Areas and Dimensions
Lot Size: 9,000 square feet
Lot Width: 50 feet
Lot Depth: 120 feet

Minimum Setbacks (see Deviation 5)
Street: 25 feet (public)
20 feet (private)
Side: 10 feet
Rear: 20 feet
Water body: 25 feet

Accessory Uses: Per LDC.
Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet

Minimum Building Separation: 10 feet
Maximum Building Height: 35 feet/ 2 stories
Maximum Lot Coverage: 45 percent

~~3. CONCURRENCY~~

~~Approval of this rezoning does not constitute a finding that the proposed project meets the concurrency requirements set forth in LDC Chapter 2 and the Lee Plan. The developer is required to demonstrate compliance with all concurrency requirements prior to issuance of a local development order.~~

Hearing Examiner Note: *Restatement of LDC applicable by virtue of Condition 1. Recommend deletion.*

~~4.~~3 MODEL HOME AND REAL ESTATE SALES

Model units/homes and real estate sales are permitted in compliance with the following conditions:

a. Each model must be a unique example. Multiple examples of the same unit are not permitted.

b. Model sites must be designated on the development order plans.

c. Prior to construction, the lots hosting model homes must be shown on a preliminary plat (not the final). The preliminary plat must be filed concurrently with the development order application. The model homes must comply with the property development regulations in Condition 2.

d. Dry models are prohibited.

e. The number of model homes/model units will be limited to 10 within the development at one time.

~~f.~~ DELETED

~~g.~~f. Real Estate sales in RPDs

i. Limited to the sale of lots/units within the development.
ii. Limited to within model homes or clubhouse.

iii. Hours of operation for models and real estate sales are limited to Monday through Sunday 8:00 a.m. to 8:00 p.m.

iv. Model homes and real estate sales will be valid for the duration permitted in the LDC.

~~5. NO AGRICULTURAL USES APPROVED~~

~~Agricultural uses are prohibited.~~

Hearing Examiner Note: *list of permitted uses in Condition 2 does not include agriculture. Recommend deletion.*

~~6.~~ **DELETED**

~~7.~~4. **REQUIRED NATIVE VEGETATION**

Required buffers must utilize 100 percent native vegetation.

~~8. ADDITIONAL BUILDING SETBACK REQUIRED~~

~~Buildings exceeding 35 feet in height must maintain additional building setback as regulated by LDC §34-2174(a).~~

Hearing Examiner Note: *Restatement of LDC applicable pursuant to Condition 1. Recommend deletion.*

~~9. TRAFFIC~~

~~Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.~~

Hearing Examiner Note: *Restatement of LDC applicable pursuant to Condition 1. Recommend deletion.*

~~10. LEE PLAN~~

~~Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b), as well as all other Lee Plan provisions.~~

Hearing Examiner Note: Restatement of LDC applicable pursuant to Condition 1. Recommend deletion.

~~11.~~5. **INTERSECTION IMPROVEMENTS**

Developer must contribute its proportionate share of the costs of intersection improvements at the time a traffic control device is warranted at the intersection of US 41 and Diplomat Parkway if requested by Florida Department of Transportation or City of Cape Coral.

~~12.~~6. WIRELESS COMMUNICATION FACILITIES

a. Freestanding wireless communication facilities (towers, including stealth type) must be approved via amendment to this planned development.

b. Wireless Communication Facilities (including wall-mounted and roof-mounted antennas) may be approved in accordance with LDC limited to commercial parcels.

~~13. ACCESORY USES~~

~~Accessory uses must be located on the same tract, parcel or outparcel where a principal use is located. Accessory uses must be incidental and subordinate to the principal use of the tract, parcel or outparcel.~~

Hearing Examiner Note: *Restatement of LDC applicable pursuant to Condition 1. Recommend deletion.*

~~14.~~7. OPEN SPACE

Development order landscape plans must demonstrate each parcel provides open space consistent with the MCP open space table.

~~15.~~8. ENVIRONMENTAL

If the Florida Fish and Wildlife Conservation Commission (FWC) allows relocation of tortoises within on-site indigenous preserves:

a. Development order submittals must include a detailed indigenous preservation management plan including methods of maintaining the western 3.0 acres of the preserve as gopher tortoise habitat. This plan will be subject to staff review and approval.

b. Development order landscape plans must include a permanent gopher tortoise fence along Diplomat Parkway where the three-acre gopher tortoise preserve abuts the road. In addition, landscape plans must depict a double staggered native hedge a minimum 3-gallon container size, 24-inch height at planting, and maintained at a minimum 36-inch height, on the roadside of the fence.

c. Development order landscape plans must depict a double staggered native hedge minimum three-gallon container size, 24-inch height at planting, maintained at a minimum 36-inch height along the interface of the indigenous preserve with the residential tract.

d. Developer must remove invasive exotic vegetation by hand within the indigenous preserve prior to issuance of a Vegetation Removal Permit.

~~16.~~9. **COMMERCIAL PARCELS NORTH OF DIPLOMAT PARKWAY**

Commercial buildings located within Parcels 1, 2 and the westernmost 2.3 acres of Parcel 3 are limited to a maximum of 10,000 square feet per building and may not exceed two stories/35 feet in height. Building locations must be staggered between the front and rear of the commercial parcels to provide a campus-like setting. Development order submittals must include a parking plan devised to keep the amount of parking spaces along Diplomat Parkway to a minimum. Parking areas and commercial buildings must be buffered from Diplomat Parkway by a minimum two-foot-high berm with 10 trees and a staggered 36-inch-high hedge per 100 linear feet.

Commercial buildings on Commercial Parcels 1, 2 and 3 must be of similar architectural design and coloring as residential buildings, to identify them as a unified project. Residential and commercial project identification signs must be of similar architectural design and coloring.

~~17.~~ **NOT UTILIZED**

~~18. SOLID WASTE/RECYCLING~~

~~Prior to local development order approval for vertical development, the Developer must provide facilities in compliance with LDC §10-261 and Lee County Solid Waste Ordinance #08-10 for the pick up/disposal of solid waste and recyclables. The minimum area required for and specific locations of these facilities will be reviewed at the time of local development order application (Also see Deviation 7).~~

Hearing Examiner Note: *LDC controls except as to Deviation 7. Recommend deletion.*

~~19. PRIOR ZONING~~

~~The terms and conditions of Zoning Resolution Nos. Z-06-004 and Z-11-002 and Administrative Amendments ADD2007-00169, ADD2019-00085, ADD2019-00181 and ADD2020-00034 are superseded by this zoning action and are rendered null and void by this approval.~~

Hearing Examiner Note: *Addressed in Condition 1.*

~~20.~~10. **INDIGENOUS PRESERVATION/HERITAGE TREES (NORTH RPD PARCEL)**

a. Development order submittals must include tree survey depicting location, diameter at breast height, and species of heritage trees within the development area.

b. Development order landscape plans must depict heritage trees within the development footprint determined to be of good health per a certified arborist. Those trees must be incorporated into the internal open space (i.e., perimeter planting, enlarged landscape areas, etc.), or must be replaced with a 20-foot like species to a suitable open space area where final site design constraints (i.e., fill requirements, entrance roads, etc.) do not allow preservation.

~~21.~~11. PROTECTED SPECIES

a. Prior to development order approval, the Applicant must first seek approval for on-site preservation of the gopher tortoises through avoidance or relocation before pursuing off-site relocation options. All communication with FWC verifying on-site avoidance or relocation attempts were made must be provided to DES Staff.

b. Development order submittals must include a copy of the FWC gopher tortoise relocation permit prior to excavation and moving gopher tortoises. Applicant must seek approval of an on-site relocation before pursuing off-site relocation options. Gopher tortoises and commensal species found during burrow excavation must be moved to preserves with suitable gopher tortoise habitat as approved by the FWC and DES Staff.

~~22.~~ DELETED

~~23.~~12. BUFFERS (North RPD)

a. Development order plans must demonstrate preservation of native vegetation within the flood way.

b. Developer must install an LDC "Type F" buffer along the north property line west of the lake, consistent with the MCP. Specifically, the buffer must be 30 feet in width and include 10 native canopy trees per 100 linear feet, and a double hedge row planted at 48" in height at time of planting.

~~24.~~13. NATIVE PLANTINGS REQUIRED (North RPD)

Required buffer plantings, general trees, and internal canopy trees must be 100 percent native species.

~~25.~~14. LAND USE CONVERSION MATRIX

CPD Parcels 3 and 4 may convert unused commercial intensity to multifamily dwelling units consistent with Land Use Conversion Matrix below:

	Multifamily Residential LUC 220 (0.56 Trips/DU)	Commercial Retail (Shopping Center) LUC 820 (3.81 Trips/1,000 sq. ft.)
Multifamily Residential LUC 220 (0.56 Trips/DU)	Same	147 sq ft./1 DU
Commercial Retail (Shopping Center) LUC 820 (3.81 Trips/1,000 sq. ft.)	6.80 DU/1,000 sq. ft.	Same

~~**26.** A maximum of 116 multifamily dwelling units (8 dwelling units per acre) may be constructed on CPD Parcels 3 and 4 in accordance with the Land Use Conversion Matrix in Condition 25.~~

Hearing Examiner Note: *This Condition restates Condition 1. Recommend deletion.*

~~27.~~15. DENSITY REPORT

Development order submittals for multifamily residential development on CPD Parcels 3 and 4 must include a report itemizing:

a. Density (expressed in number of dwelling units) and, if applicable, the intensity (expressed in the square feet of floor area) of each use proposed by the development order application.

b. Cumulative total density and intensity permitted on CPD Parcels 1, 2, 3, and 4 approved by prior development order approvals.

c. Remaining density and intensity available for future development on CPD Parcels 1, 2, 3, and 4 for each classification in Condition 15(a).

16. **STATE AND FEDERAL PERMITS**

County development permits do not create rights to obtain permits from state or federal agencies and do not create liability on the part of the County if applicant fails to obtain requisite approvals or fulfill obligations imposed by state/federal agencies or if applicant undertakes actions resulting in a violation of state or federal law. Applicant must obtain applicable state/federal permits prior to commencing development.

DEVIATIONS

1. Intersection Separation. Deviation 1 seeks relief from the LDC §10-285(a) requirement to provide a minimum access connection separation of 660 feet on an arterial road to permit an access separation of 364 feet between the project's proposed main access and the proposed exit-only access for the residential portion of the southern parcel. This deviation is approved.

2. One dead-end street permitted. Deviation 2 seeks relief from the LDC §10-296(k)(1) requirement that dead-end streets be closed at one end by a circular turn-around, to allow one dead-end street shown on the South RPD MCP. This deviation is approved.

3. Open Space. Deviation 3 seeks relief from the LDC §10-415(b)(1)(a) requirement that large developments with indigenous vegetation communities to provide 50 percent of their open space percentage requirements through on-site preservation of existing native vegetative communities, to permit 0.45 acres of right of way to be vacated, enhanced and preserved to count toward the preservation requirement.

   This deviation is approved, subject to the following condition:

   Prior to local development order approval for Commercial Parcel 4, the existing roadway easement depicted within the indigenous preserve must be vacated.

   This deviation applies to the South RPD and CPD.

4. Installation of storm water management system. Deviation 4 seeks relief from the LDC §10-415(b)(1)a. requirement that large developments with existing indigenous native vegetation communities provide 50 percent of their open space requirement through on-site preservation of indigenous native vegetation, to allow portions of the preservation area to be disturbed and restored in order to install a storm water management system. This deviation is approved, subject to the following conditions:

   1. Prior to local development order, the development orders plans must delineate the general location of the surface water management outfall through the indigenous preserve to the canal. The outfall must be designed as an open system that can be planted with native vegetation.

   2. Prior to issuance of a Vegetation Removal Permit, the location of the surface water management outfall through the indigenous preserve must be field staked, to avoid impacting any large native trees or gopher tortoise burrows, for the Division of Environmental Sciences Staff review and approval.

   This deviation applies to the South RPD and CPD.

5. Separation from residential uses. Deviation 5 seeks relief from the LDC §34-2474(b)(6) requirement that recreation halls and ancillary facilities and private clubs be located at least 40 feet from any residential dwelling unit, to allow a 20-foot minimum separation for any recreation building from a residential dwelling unit. This deviation is approved, subject to the following condition:

Development of a recreational facility and clubhouse must be generally consistent with the location shown on the approved MCP.

Deviation applies to the recreation area shown on the North RPD.

6a. Required Street Access - Single Ingress.- Deviation 6a seeks relief from the LDC §10-291(3) requirement that residential developments more than five acres in size provide two or more means of ingress into the development, to allow a single ingress/egress to the RPD north of Diplomat Parkway. This deviation is approved, subject to the following conditions:

1. Access to the RPD north of Diplomat Parkway must be generally consistent with the MCP; and

2. The MCP and local development order must depict a minimum 70-foot-wide divided entrance to the North RPD that includes a median with two lanes on each side of the median for ingress and egress; and

3. Development order submittals must include written documentation from the North Fort Myers Fire District confirming the access provides adequate access for emergency vehicles. Development order submittals must also include plans for the secondary/emergency access referenced below.

4. Prior to build-out of the RPD north of Diplomat Parkway, developer must install a secondary/emergency access from the North RPD to commercial Parcel 3, consistent with the MCP. The emergency access gate must comply with applicable regulations including required equipment for an emergency override mechanism. If an emergency necessitates breaking an entrance gate, the cost of repairing the gate and the emergency vehicle (if applicable) will be the responsibility of the owner/operator of the gate.

6b. Ingress Egress. Deviation 6b seeks relief from the LDC §10-291(3) requirement that residential developments more than five acres in size provide two or more means of ingress into the development, to allow a single ingress/egress to the South RPD. This deviation is approved, subject to the following conditions.

1. Access to the South RPD must be generally consistent with the MCP; and

2. Emergency access gates must comply with applicable regulations with respect to required equipment for an emergency override mechanism at the time of installation. If an emergency necessitates breaking an entrance

gate, the cost of repairing the gate and the emergency vehicle (if applicable) will be the responsibility of the owner/operator of the gate; and

3. Development order submittals must include written documentation from the North Fort Myers Fire District confirming the access provides adequate access for emergency vehicles.

7. Curbside garbage collection for townhouse units and reduction in collection area for multi- family units. Deviation 7 (townhouse previously contained in ADD2007-000169 and subsequent approvals) seeks relief from the LDC §10-261 requirement that all new multiple- family residential developments to provide sufficient space for the placement of garbage containers or receptacles, to allow reduction in required multi-family container space of 216 SF (120 + 96) for first 25 multi-family units plus 8 SF for each additional unit; to allow space for the compactor and a minimum 144 square feet for recyclable materials collection area for the North RPD. (amendment to previously approved deviation)

Hearing Examiner Recommendation: Approved.

8. Certain internal buffers not required – North RPD. Deviation 8 seeks relief from LDC §10-425(f)(1) requirement for five-foot wide buffer along rights-of-way planted with five trees per 100 linear feet, to allow no buffer within the North RPD internal rights-of-way. This deviation is approved.

9. Backout parking within internal right-of-way – North RPD. Deviation 9 seeks relief from LDC 34-2013(a)(2), which requires parking that backs out into rights-of-way in residential developments must be limited to development amenities not for dwelling units or commercial uses, to allow back out parking spaces for dwelling units and guests limited to the location shown on Page 2 of 3 of the MCP.

Hearing Examiner Recommendation: Approved.

10. Minimum Building Separation – North RPD. Deviation 10 seeks relief from LDC §34-935(e)(4), which requires a minimum building separation of one-half the sum of the building heights, or 20 feet, whichever is greater; to allow a minimum building separation of 20 feet.

Hearing Examiner Recommendation: Approved.

Exhibit to Conditions
B1 Master Concept Plan

Exhibit C

RECOMMENDED CONDITIONS AND DEVIATIONS (Codified)

Clean Version

(As revised by the Hearing Examiner)

CONDITIONS

1. **Master Concept Plan (MCP)**. Development must be substantially consistent with the MCP (Exhibit B-1) as follows:

   MCP Page 1 of 3 entitled "Master Concept Plan, Diplomat Parcel, Lee County, Florida," dated 08-27-2007, last revised June 25, 2024;

   MCP Page 2 of 3 entitled "Alternate Diplomat North RPD Master Concept Plan, Diplomat House" last revised June 25, 2024;

   MCP Page 3 of 3 entitled "Alternate Diplomat South RPD MCP, Diplomat Parcel" dated 10/28/2019, last revised June 25, 2024, consistent with the conditions herein.

Lee Plan and Land Development Code (LDC). Development must comply with the Lee Plan and LDC except where deviations have been approved in this resolution. Changes to the MCP or conditions require further approvals.

Approved Development Parameters.

North RPD: The 35.18 acre North RPD is comprised of the former 29.75 acre North RPD and the former 5.43 Acre "Optional CPD" parcel north of Diplomat Parkway. This 35.18 acre parcel may develop up to 360 dwelling units utilizing density derived from the 35.18 RPD and 2.95 acres derived from CPD parcels 1 and 2. (Standard Density utilizing 35.18 acre RPD and commercial parcels 1 (1.48 Acres) and 2 (1.47 acres).

South RPD: The 13.19 acre RPD parcel south of Diplomat Parkway may develop up to 105 dwelling units. An additional 21 units may be constructed if marketed at a price affordable to moderate income households at the time of building permit application. The additional 21 units may only be sold to buyers who qualify as a Moderate Income Household at time of purchase. Moderate Income Household means 120 percent of the yearly median income based on yearly income levels developed for the SHIP Program by the Housing Section of the Lee County Division of Planning. (Approved density on the South RPD equates to eight dwelling units

per acre, with a potential additional 1.6 units per acre subject to affordability requirements outlined herein.)

CPD Parcels 1 - 4. Maximum Total Commercial Floor Area: 200,000 square feet of commercial uses. North RPD utilizes acreage from CPD Parcels 1 and 2 residential density with no impact to commercial intensity due to Mixed Use Overlay. Commercial Parcels 3 and 4 may convert commercial intensity to residential density up to 116 dwelling units consistent with the conversion matrix in Condition 14 to allow up to 8 dwelling units per acre on 14.53 acres.

Codification of Prior Approvals. This resolution represents a codification of prior approvals.

2. Permitted Uses and Property Development Regulations.

a. Schedule of Uses

CPD – Parcels 1, 2, 3 & 4

Administrative Office
Animals: Clinic, Kennel, Control Center (including Humane Society) - indoors, no outdoor runs.
Automatic Teller Machine
Auto Parts Store - No installation service.
Auto Repair and Service, Group I
Bait and Tackle Shop
Banks and Financial Establishments, Group I and II
Boat Part Stores
Building Material Sales (indoor only, no outdoor display)
Business Services, Group I and II (no impound yards or armored car services) Cleaning and Maintenance Services
Clothing Stores, General
Communication facilities, wireless
A wireless communication facility may be administratively approved, provided it is co-located on a building and the height of the tower does not exceed 50 feet from existing grade.
Community Garden
Consumption on Premises – Indoor, limited to Group III restaurants.
Outdoor Consumption on Premises requires special exception approval
Contractors and Builders, Group I, II
Cultural Facilities
Day Care, Adult, Child
Department Store
Drive-through facility for any permitted use. No fast food drive-through.
Drugstore, Pharmacy (limited to 1 on Parcel 3 or 4)
Dwelling units, multifamily (Limited to Parcels 3, 4) *See* Conditions 1, 14, 15

Entrance Gate and Gatehouse
Emergency Operations Center
EMS, Fire or Sheriff's Station
Essential Services
Essential Service Facilities, Group I
Excavation, Water Retention - removal of excavated material from the site prohibited.
Fences and Walls.
Flea Market, Indoor Only
Food and Beverage Services, Limited
Food Stores, Groups I, II
Funeral Home or Mortuary, with or without cremation
Gasoline Dispensing System, Special
Hardware Store
Health Care Facility, Groups I, II, and III
Hotel/Motel - Limited to 120 rooms.
Household and Office Furnishings - indoor only, no outdoor display
Insurance Companies
Lawn and Garden Supply Stores - indoor only, no outdoor display
Library
Medical Office
Model Home, Model Display Center, Model Unit (Limited to Parcels 3 and 4)
Non-store Retailer, All Groups
Paint, Glass and Wallpaper - (indoor only, no outdoor display)
Parking Lot, Accessory, Commercial, Garage, Public Parking, Temporary
Personal Services, Groups I, II, III, IV.
    Excluding Laundromats, Laundry Agents, Massage Establishments, Massage Parlors, Steam or Turkish Baths, Dating Services, Escort Services, Palm Readers, Fortune Tellers, Card Readers, Tattoo Parlors.
Pet Services, Pet Shops - Indoor only, no outdoor display. No outdoor runs.
Place of Worship
Plant Nursery
Post Office
Printing and Publishing
Processing and Warehousing
Real Estate Sales
    Limited to rental/sales of units within multifamily development permitted on Parcel 3 and 4
Real Estate Sales Office
Religious Facilities
Rental or Leasing Establishments, Group II only - excluding tools and equipment primarily for home use. Indoor only. No outdoor display.
Repair Shop, Groups I, II, III
Research and Development Laboratories, Groups I, II, III and IV

Residential accessory uses (Limited to Parcels 3 and 4)
Restaurants, Groups I, II, III, and IV
Restaurant, Fast Food, within a multi-occupancy building only. No stand-alone or drive-through
Schools, Commercial and Non-Commercial
Signs
Social Services Group I only
Specialty Retail, Groups I, II, III and IV
Storage, Indoor Only
Studios
Supermarkets
Temporary Uses
Used Merchandise, Groups I and II, Indoor only. No outdoor display.
Variety Store

North RPD (35.18 acres north of Diplomat Parkway)

Accessory Uses and Structures
Administrative Office
Clubs, Private - As shown on the approved MCP. (Recreation Areas)
Community Garden
Dwelling Units, subject to Condition 1
    Multifamily,
    Townhomes
Entrance Gates and Gatehouse
Essential Services
Essential Service Facilities, Group I only
Excavation, Water Retention, removal of excavated material from the site prohibited.
Fences and Walls.
Home Occupation
Home Care Facility
Model Home, Model Display Center, Model Unit - *See* Condition 3
Parking Lot, Accessory
Real Estate Sales - limited to sale of lots/homes/units within the development.
Model home and club locations only. *See* Condition 3
Recreational Facilities - Private, on-site. Limited to locations shown on MCP
Religious Facilities
Residential Accessory Uses
Signs
Temporary Uses
Temporary Real Estate Sales Office

South RPD (13.19 acres south of Diplomat Parkway)

Accessory Uses and Structures
Administrative Office
Clubs, Private - As shown on the MCP.
Community Garden
Dwelling Units – limited to a maximum of 105 dwelling units (or up to 126 dwelling units pursuant to Condition 1)
- Single-family
- Duplex
- Two-family attached
- Multiple-family
- Townhomes

Entrance Gates and Gatehouse
Essential Services
Essential Service Facilities, Group I
Excavation, Water Retention - not to include the removal of excavated material from the site.
Fences and Walls.
Home Occupation, No outside help.
Home Care Facility
Model Home, Model Display Center, Model Unit - *See* Condition 3
Parking Lot, Accessory
Real Estate Sales - limited to sales of lots, homes or units within the development. Model home and club locations only. *See* Condition 3
Recreational Facilities - Private, on-site. Shown on MCP
Residential Accessory Uses
Signs
Temporary Uses
Temporary Real Estate Sales Office

b. Site Development Regulations

CPD Parcels 1, 2, 3 & 4

Minimum Lot Areas and Dimensions

Lot Size:	10,000 square feet
Lot Width:	100 feet
Lot Depth:	100 feet

Minimum Setbacks

Street:	25 feet (public)
	20 feet (private)
Side:	10 feet
Rear:	20 feet
Water body:	25 feet

Accessory Uses: Per LDC.

Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet

Minimum Building Separation: 20 feet, buildings exceeding 35 feet in height must maintain additional building separation per LDC.

Maximum Building Height: 50 feet/ 3 stories
35 feet/ 2 stories – adjacent to west boundary

Maximum Lot Coverage: 60 percent

North RPD

Townhome

Minimum Lot Size and Dimensions
Lot Size: 0 square feet
Lot Width: 16 feet
Lot Depth: 0 feet

Minimum Setbacks
Street: 0 feet (public)
0 feet (private)
Side: 0 feet
Rear: 0 feet
Waterbody: 25 feet

All Accessory Uses: 0 feet

Setbacks from Preserves
All Structures: Per LDC.

Minimum Perimeter Setbacks: 15 feet

Minimum Building Separation: 20 feet

Maximum Building Height: 35 feet

Maximum Lot Coverage: No Maximum

Multiple-Family

Minimum Lot Size and Dimensions
Lot Size: 0 square feet
Lot Width: 25 feet
Lot Depth: 0 feet

Minimum Setbacks
Street: 0 feet (public)
0 feet (private)
Side: 0 feet
Rear: 0 feet
Waterbody: 25 feet

All Accessory Uses: 0 feet

Setbacks from Preserves
(All Structures) Per LDC.

Minimum Perimeter Setbacks 15 feet

Minimum Building Separation : 20 feet

Maximum Building Height 60 feet

Maximum Lot Coverage No Maximum

Recreational Area/Clubhouse

Minimum Lot Size and Dimensions
Lot Size: 0 square feet
Lot Width: 25 feet
Lot Depth: 0 feet

Minimum Setbacks
Street: 0 feet (public)
0 feet (private)
Side: 0 feet
Rear: 0 feet
Waterbody: 25 feet

All Accessory Uses: 0 feet

Setbacks from Preserves
All Structures: Per LDC.

Minimum Perimeter Setbacks: 15 feet

Minimum Building Separation: 10 feet

Maximum Building Height: 35 feet

Maximum Lot Coverage: No Maximum

South RPD

Single Family

Minimum Lot Areas and Dimensions
Lot Size: 7,500 square feet
Lot Width: 75 feet
Lot Depth: 100 feet

Minimum Setbacks
Street: 25 feet (public)
20 feet (private)
Side: 5 feet
Rear: 30 feet on lots containing enhanced buffer
20 feet other lots
Water body: 25 feet

Accessory Uses: Per LDC.

Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet
30 feet on lots containing enhanced buffer

Minimum Building Separation: 10 feet
Maximum Building Height: 35 feet
Maximum Lot Coverage: 45 percent

Duplex, Two-Family Attached

Minimum Lot Areas and Dimensions
Lot Size: 7,500 square feet
Lot Width: 75 feet (37.5 feet per unit)
Lot Depth: 100 feet

Minimum Setbacks
Street: 25 feet (public)
20 feet (private)

Side: 5 feet (0 feet for common wall unit)
Rear: 30 feet on lots containing enhanced buffer
20 feet other lots
Water body: 25 feet

All Accessory Uses: Per LDC.

Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet
30 feet on lots containing enhanced buffer

Minimum Building Separation: 10 feet
Maximum Building Height: 35 feet
Maximum Lot Coverage: 45 percent

Townhouse

Minimum Lot Areas and Dimensions
Lot Size: 1,600 square feet
Lot Width: 16 feet
Lot Depth: 100 feet

Minimum Setbacks
Street: 25 feet (public)
20 feet (private)
Side: 10 feet
0 feet (for a common wall unit)
Rear: 30 feet on lots containing enhanced buffer.
20 feet on other lots
Water body: 25 feet

All Accessory Uses: Per LDC.

Setbacks from Preserves (All structures) 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet
30 feet on lots containing an enhanced buffer

Minimum Building Separation: 20 feet
Maximum Building Height: 35 feet
Maximum Lot Coverage: 65 percent

Multiple-Family

Minimum Lot Areas and Dimensions
Lot Size: 10,000 square feet
Lot Width: 100 feet
Lot Depth: 100 feet

Minimum Setbacks
Street: 25 feet (public)
20 feet (private)
Side: 10 feet
Rear: 30 feet on lots containing enhanced buffer.
20 feet on other lots
Water body: 25 feet

All Accessory Uses: Per LDC.
Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet
30 feet on lots containing enhanced buffer

Minimum Building Separation: 20 feet
Maximum Building Height: 35 feet
Maximum Lot Coverage: 45 percent

Recreational Area/Facilities

Minimum Lot Areas and Dimensions
Lot Size: 9,000 square feet
Lot Width: 50 feet
Lot Depth: 120 feet

Minimum Setbacks (see Deviation 5)
Street: 25 feet (public)
20 feet (private)
Side: 10 feet
Rear: 20 feet
Water body: 25 feet

Accessory Uses: Per LDC.
Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet

Minimum Building Separation:	10 feet
Maximum Building Height:	35 feet/ 2 stories
Maximum Lot Coverage:	45 percent

3. MODEL HOME AND REAL ESTATE SALES

Model units/homes and real estate sales are permitted in compliance with the following conditions:

a. Each model must be a unique example. Multiple examples of the same unit are not permitted.

b. Model sites must be designated on the development order plans.

c. Prior to construction, the lots hosting model homes must be shown on a preliminary plat (not the final). The preliminary plat must be filed concurrently with the development order application. The model homes must comply with the property development regulations in Condition 2.

d. Dry models are prohibited.

e. The number of model homes/model units will be limited to 10 within the development at one time.

f. Real Estate sales within the RPD

i. are limited to the sale of lots/units within the development.
ii. are limited to within model homes or clubhouse.

iii. Hours of operation for models and real estate sales within the RPD are limited to Monday through Sunday 8:00 a.m. to 8:00 p.m.

iv. Model homes and real estate sales within the RPD will be valid for the duration permitted in the LDC.

4. REQUIRED NATIVE VEGETATION

Required buffers must utilize 100 percent native vegetation.

5. INTERSECTION IMPROVEMENTS

The developer must contribute its proportionate share of the costs of intersection improvements at the time a traffic control device is warranted at the intersection of US 41 and Diplomat Parkway if requested by Florida Department of Transportation or City of Cape Coral.

6. WIRELESS COMMUNICATION FACILITIES

a. Freestanding wireless communication facilities (towers, including stealth type) must be approved via amendment to this planned development.

b. Wireless Communication Facilities (including wall-mounted and roof-mounted antennas) may be approved in accordance with LDC limited to commercial parcels.

7. OPEN SPACE

Development order landscape plans must demonstrate each parcel provides open space consistent with the MCP open space table.

8. ENVIRONMENTAL

If the Florida Fish and Wildlife Conservation Commission (FWC) allows relocation of tortoises within on-site indigenous preserves:

a. Development order submittals must include a detailed indigenous preservation management plan including methods of maintaining the western 3.0 acres of the preserve as gopher tortoise habitat. This plan will be subject to staff review and approval.

b. Development order landscape plans must include a permanent gopher tortoise fence along Diplomat Parkway where the three-acre gopher tortoise preserve abuts the road. In addition, landscape plans must depict a double staggered native hedge a minimum 3-gallon container size, 24-inch height at planting, and maintained at a minimum 36-inch height, on the roadside of the fence.

c. Development order landscape plans must depict a double staggered native hedge minimum three-gallon container size, 24-inch height at planting, maintained at a minimum 36-inch height along the interface of the indigenous preserve with the residential tract.

d. Developer must remove invasive exotic vegetation by hand within the indigenous preserve prior to issuance of a Vegetation Removal Permit.

9. COMMERCIAL PARCELS NORTH OF DIPLOMAT PARKWAY

Commercial buildings located within Parcels 1, 2 and the westernmost 2.3 acres of Parcel 3 are limited to a maximum of 10,000 square feet per building and may not exceed two stories/35 feet in height. Building locations must be staggered between the front and rear of the commercial parcels to provide a campus-like setting. Development order submittals must include a parking plan devised to

keep the amount of parking spaces along Diplomat Parkway to a minimum. Parking areas and commercial buildings must be buffered from Diplomat Parkway by a minimum two-foot-high berm with 10 trees and a staggered 36-inch-high hedge per 100 linear feet.

Commercial buildings on Commercial Parcels 1, 2 and 3 must be of similar architectural design and coloring as residential buildings, to identify them as a unified project. Residential and commercial project identification signs must be of similar architectural design and coloring.

10. INDIGENOUS PRESERVATION/HERITAGE TREES (NORTH RPD PARCEL)

a. Development order submittals must include tree survey depicting location, diameter at breast height, and species of heritage trees within the development area.

b. Development order landscape plans must depict heritage trees within the development footprint determined to be of good health per a certified arborist. Those trees must be incorporated into the internal open space (i.e., perimeter planting, enlarged landscape areas, etc.), or must be replaced with a 20-foot like species to a suitable open space area where final site design constraints (i.e., fill requirements, entrance roads, etc.) do not allow preservation.

11. PROTECTED SPECIES

a. Prior to development order approval, the Applicant must first seek approval for on-site preservation of the gopher tortoises through avoidance or relocation before pursuing off-site relocation options. All communication with FWC verifying on-site avoidance or relocation attempts were made must be provided to DES Staff.

b. Development order submittals must include a copy of the FWC gopher tortoise relocation permit prior to excavation and moving gopher tortoises. Applicant must seek approval of an on-site relocation before pursuing off-site relocation options. Gopher tortoises and commensal species found during burrow excavation must be moved to preserves with suitable gopher tortoise habitat as approved by the FWC and DES Staff.

12. BUFFERS (North RPD)

a. Development order plans must demonstrate preservation of native vegetation within the flood way.

b. Developer must install an LDC "Type F" buffer along the north property line west of the lake, consistent with the MCP. Specifically, the buffer must be

30 feet in width and include 10 native canopy trees per 100 linear feet, and a double hedge row planted at 48" in height at time of planting.

13. NATIVE PLANTINGS REQUIRED (NORTH RPD)

Required buffer plantings, general trees, and internal canopy trees must be 100 percent native species.

14. LAND USE CONVERSION MATRIX

CPD Parcels 3 and 4 may convert unused commercial intensity to multifamily dwelling units consistent with Land Use Conversion Matrix below:

	Multifamily Residential LUC 220 (0.56 Trips/DU)	Commercial Retail (Shopping Center) LUC 820 (3.81 Trips/1,000 sq. ft.)
Multifamily Residential LUC 220 (0.56 Trips/DU)	Same	147 sq ft./1 DU
Commercial Retail (Shopping Center) LUC 820 (3.81 Trips/1,000 sq. ft.)	6.80 DU/1,000 sq. ft.	Same

15. DENSITY REPORT

Development order submittals for multifamily residential development on CPD Parcels 3 and 4 must include a report itemizing:

a. Density (expressed in number of dwelling units) and, if applicable, the intensity (expressed in the square feet of floor area) of each use proposed by the development order application.

b. Cumulative total density and intensity permitted on CPD Parcels 1, 2, 3, and 4 approved by prior development order approvals.

c. Remaining density and intensity available for future development on CPD Parcels 1, 2, 3, and 4 for each classification in Condition 15(a).

16. STATE AND FEDERAL PERMITS

County development permits do not create rights to obtain permits from state or federal agencies and do not create liability on the part of the County if applicant fails to obtain requisite approvals or fulfill obligations imposed by state/federal agencies or if applicant undertakes actions resulting in a violation of state or federal law. Applicant must obtain applicable state/federal permits prior to commencing development.

DEVIATIONS

1. Intersection Separation. Deviation 1 seeks relief from the LDC §10-285(a) requirement to provide a minimum access connection separation of 660 feet on an arterial road to permit an access separation of 364 feet between the project's proposed main access and the proposed exit-only access for the residential portion of the southern parcel. This deviation is approved.

2. One dead-end street permitted. Deviation 2 seeks relief from the LDC §10-296(k)(1) requirement that dead-end streets be closed at one end by a circular turn-around, to allow one dead-end street shown on the South RPD MCP. This deviation is approved.

3. Open Space. Deviation 3 seeks relief from the LDC §10-415(b)(1)(a) requirement that large developments with indigenous vegetation communities to provide 50 percent of their open space percentage requirements through on-site preservation of existing native vegetative communities, to permit 0.45 acres of right of way to be vacated, enhanced and preserved to count toward the preservation requirement.

   This deviation is approved, subject to the following condition:

   Prior to local development order approval for Commercial Parcel 4, the existing roadway easement depicted within the indigenous preserve must be vacated.

   This deviation applies to the South RPD and CPD.

4. Installation of storm water management system. Deviation 4 seeks relief from the LDC §10-415(b)(1)a. requirement that large developments with existing indigenous native vegetation communities provide 50 percent of their open space requirement through on-site preservation of indigenous native vegetation, to allow portions of the preservation area to be disturbed and restored in order to install a storm water management system. This deviation is approved, subject to the following conditions:

   1. Prior to local development order, the development orders plans must delineate the general location of the surface water management outfall

through the indigenous preserve to the canal. The outfall must be designed as an open system that can be planted with native vegetation.

2. Prior to issuance of a Vegetation Removal Permit, the location of the surface water management outfall through the indigenous preserve must be field staked, to avoid impacting any large native trees or gopher tortoise burrows, for the Division of Environmental Sciences Staff review and approval.

This deviation applies to the South RPD and CPD.

5. Separation from residential uses. Deviation 5 seeks relief from the LDC §34-2474(b)(6) requirement that recreation halls and ancillary facilities and private clubs be located at least 40 feet from any residential dwelling unit, to allow a 20-foot minimum separation for any recreation building from a residential dwelling unit. This deviation is approved, subject to the following condition:

Development of a recreational facility and clubhouse must be generally consistent with the location shown on the approved MCP.

Deviation applies to the recreation area shown on the North RPD.

6a. Required Street Access - Single Ingress.- Deviation 6a seeks relief from the LDC §10-291(3) requirement that residential developments more than five acres in size provide two or more means of ingress into the development, to allow a single ingress/egress to the RPD north of Diplomat Parkway. This deviation is approved, subject to the following conditions:

1. Access to the RPD north of Diplomat Parkway must be generally consistent with the MCP; and

2. The MCP and local development order must depict a minimum 70-foot-wide divided entrance to the North RPD that includes a median with two lanes on each side of the median for ingress and egress; and

3. Development order submittals must include written documentation from the North Fort Myers Fire District confirming the access provides adequate access for emergency vehicles. Development order submittals must also include plans for the secondary/emergency access referenced below.

4. Prior to build-out of the RPD north of Diplomat Parkway, developer must install a secondary/emergency access from the North RPD to commercial Parcel 3, consistent with the MCP. The emergency access gate must comply with applicable regulations including required equipment for an emergency override mechanism. If an emergency necessitates breaking an entrance gate, the cost of repairing the gate and the emergency vehicle (if applicable) will be the responsibility of the owner/operator of the gate.

6b. Ingress Egress. Deviation 6b seeks relief from the LDC §10-291(3) requirement that residential developments more than five acres in size provide two or more means of ingress into the development, to allow a single ingress/egress to the South RPD. This deviation is approved, subject to the following conditions.

1. Access to the South RPD must be generally consistent with the MCP; and

2. Emergency access gates must comply with applicable regulations with respect to required equipment for an emergency override mechanism at the time of installation. If an emergency necessitates breaking an entrance gate, the cost of repairing the gate and the emergency vehicle (if applicable) will be the responsibility of the owner/operator of the gate; and

3. Development order submittals must include written documentation from the North Fort Myers Fire District confirming the access provides adequate access for emergency vehicles.

7. Curbside garbage collection for townhouse units and reduction in collection area for multi- family units. Deviation 7 (townhouse previously contained in ADD2007-000169 and subsequent approvals) seeks relief from the LDC §10-261 requirement that all new multiple- family residential developments to provide sufficient space for the placement of garbage containers or receptacles, to allow reduction in required multi-family container space of 216 SF (120 + 96) for first 25 multi-family units plus 8 SF for each additional unit; to allow space for the compactor and a minimum 144 square feet for recyclable materials collection area for the North RPD. (amendment to previously approved deviation)

Hearing Examiner Recommendation: Approved.

8. Certain internal buffers not required – North RPD. Deviation 8 seeks relief from LDC §10-425(f)(1) requirement for five-foot wide buffer along rights-of-way planted with five trees per 100 linear feet, to allow no buffer within the North RPD internal rights-of-way. This deviation is approved.

9. Backout parking within internal right-of-way – North RPD. Deviation 9 seeks relief from LDC 34-2013(a)(2), which requires parking that backs out into rights-of-way in residential developments must be limited to development amenities not for dwelling units or commercial uses, to allow back out parking spaces for dwelling units and guests limited to the location shown on Page 2 of 3 of the MCP.

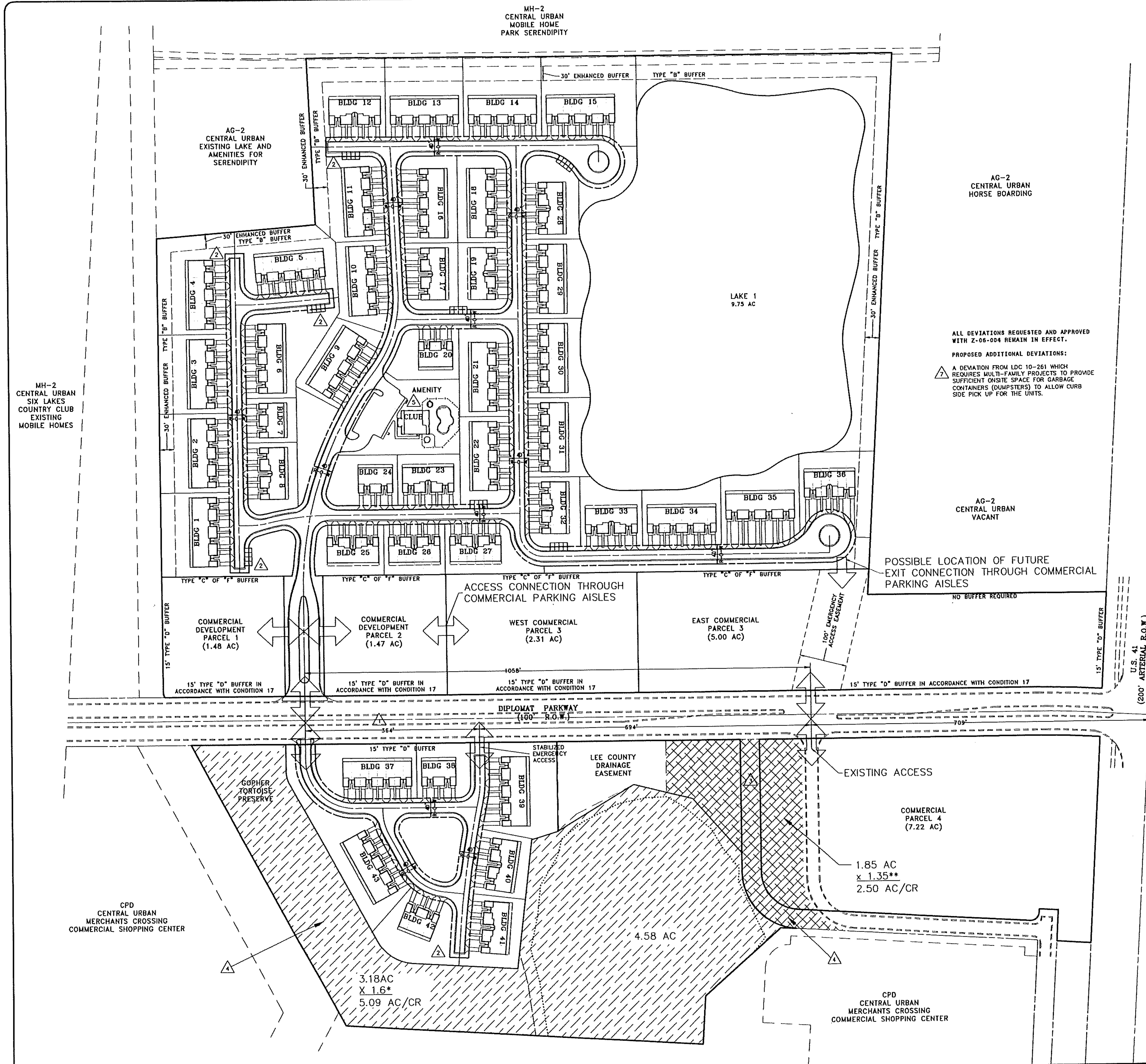
Hearing Examiner Recommendation: Approved.

10. Minimum Building Separation – North RPD. Deviation 10 seeks relief from LDC §34-935(e)(4), which requires a minimum building separation of one-half the sum of the building heights, or 20 feet, whichever is greater; to allow a minimum building separation of 20 feet.

Case: DCI2023-00050

Hearing Examiner Recommendation: Approved.

Exhibit to Conditions
B1 Master Concept Plan



GRAPHIC SCALE 1" = 100

= RESIDENTIAL INDIGENOUS

= COMMERCIAL INDIGENOUS

= DEVIATION PLEASE REFER TO SCHEDULE OF DEVIATIONS AND JUSTIFICATIONS

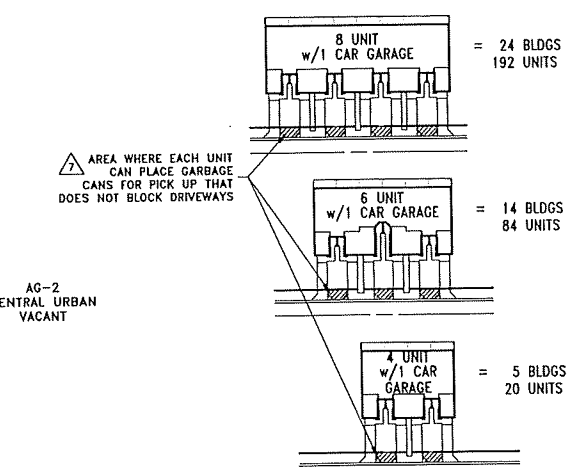
OPEN SPACE CALCULATIONS (30% FOR COMMERCIAL/40% COMMON OPEN SPACE FOR RESIDENTIAL)				
BOLD ITALIC TEXT DEPICTS REVISIONS FROM DOS2007-00217 OPEN SPACE TABLE				
NORTH RPD & 5.43 ACRE NORTH CPD AMENDED TO UTILIZE MIXED USE OVERLAY				
TRACT	AREA	INDIGENOUS REQUIRED	OTHER OPEN SPACE REQUIRED	INDIGENOUS PROVIDED
COMMERCIAL 1	1.47 AC	0.22 AC 15%	0.22 AC(2)	0.22 AC(1)
COMMERCIAL 2	*1.48 AC*	0.22 AC 15%	0.22 AC(2)	0.22 AC(1)
COMMERCIAL 3	7.31 AC	1.10 AC 15%	1.10 AC(2)	1.10 AC(1)
COMMERCIAL 4	7.22 AC	1.08 AC 15%	1.08 AC(2)	1.08 AC(1)
RESIDENTIAL NORTH	*35.18 AC*	*3.52 AC 10%*	*3.52 AC(2)*	*7.01 AC(1)(4) + 0.61 AC(3)*
RESIDENTIAL SOUTH	12.47 AC	2.49 AC 20%	2.49 AC(2)	2.54 AC(1)
TOTALS	*65.13 AC*	*8.63 AC*	*8.63 AC(2)*	*12.17 AC(1) + 0.61 AC(3)*

12.78 AC TOTAL WITH CREDITS

(1) INDIGENOUS OPEN SPACE AREA IS PROVIDED ON SOUTHERN PORTION OF DEVELOPMENT AND IS TO PROVIDE TOTAL REQUIRED INDIGENOUS OPEN SPACE FOR ALL TRACTS.
(2) OTHER (NON-INDIGENOUS) OPEN SPACE SHALL BE PROVIDED ON THE RESPECTIVE TRACT AND SHALL BE IDENTIFIED AT THE TIME OF DEVELOPMENT ORDER PERMITTING.
(3) NORTH RPD & 5.43 ACRE NORTH CPD PROVIDING 0.55± AC INDIGENOUS WITHIN FLOODWAY ONSITE WITH 110% CREDIT FOR MINIMUM 1/2 ACRE/50' WIDTH = 0.61 ACRE CREDIT.
(4) 2.92 ACRE CREDIT PHASED PORTION BEFORE CERTIFICATION OF COMPLETION OF D.O. FOR NORTH RPD & 5.43 ACRE NORTH CPD 2.92 AC/135% CREDIT = MINIMUM 2.16 AC *135% CREDIT FOR MINIMUM 1 AC/75' WIDTH AND ADJACENT TO OFFSITE PRESERVE.*

INDIGENOUS NOTES:
*150% CREDIT FOR MINIMUM 3 ACRES AND 100' WIDTH PER LDC SECTION 10-415(b)(2)a.
**125% CREDIT FOR MINIMUM 1 ACRE AND 75' WIDTH PER LDC SECTION 10-415(b)(2)a. AND ADDITIONAL 10% CREDIT FOR PRESERVATION ADJACENT TO ROADWAY PER LDC SECTION 10-415(b)(2)b.
***110% CREDIT FOR CONNECTION TO OFFSITE ENVIRONMENTAL CONSERVATION OR PRESERVE AREAS PER LDC SECTION 10-415(b)(2)b.

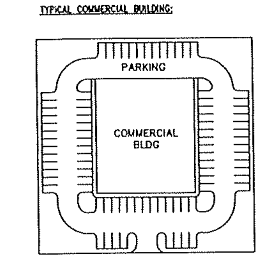
TYPICAL RESIDENTIAL BUILDING LEGEND:



= 296 UNITS

AG-2
CENTRAL URBAN
VACANT

TYPICAL COMMERCIAL BUILDING:



MASTER CONCEPT PLAN
DIPOLMAT PARCEL
LEE COUNTY, FLORIDA

DATE	PROJECT	DRAWING	DESIGN	DRAWN	CHECKED	SCALE	SHEET	OF	FILE NO. (S-T-R)
08-27-2007	2028	MCP	CMD	CMD	DRU	1"=100'	1	3	34-43-24

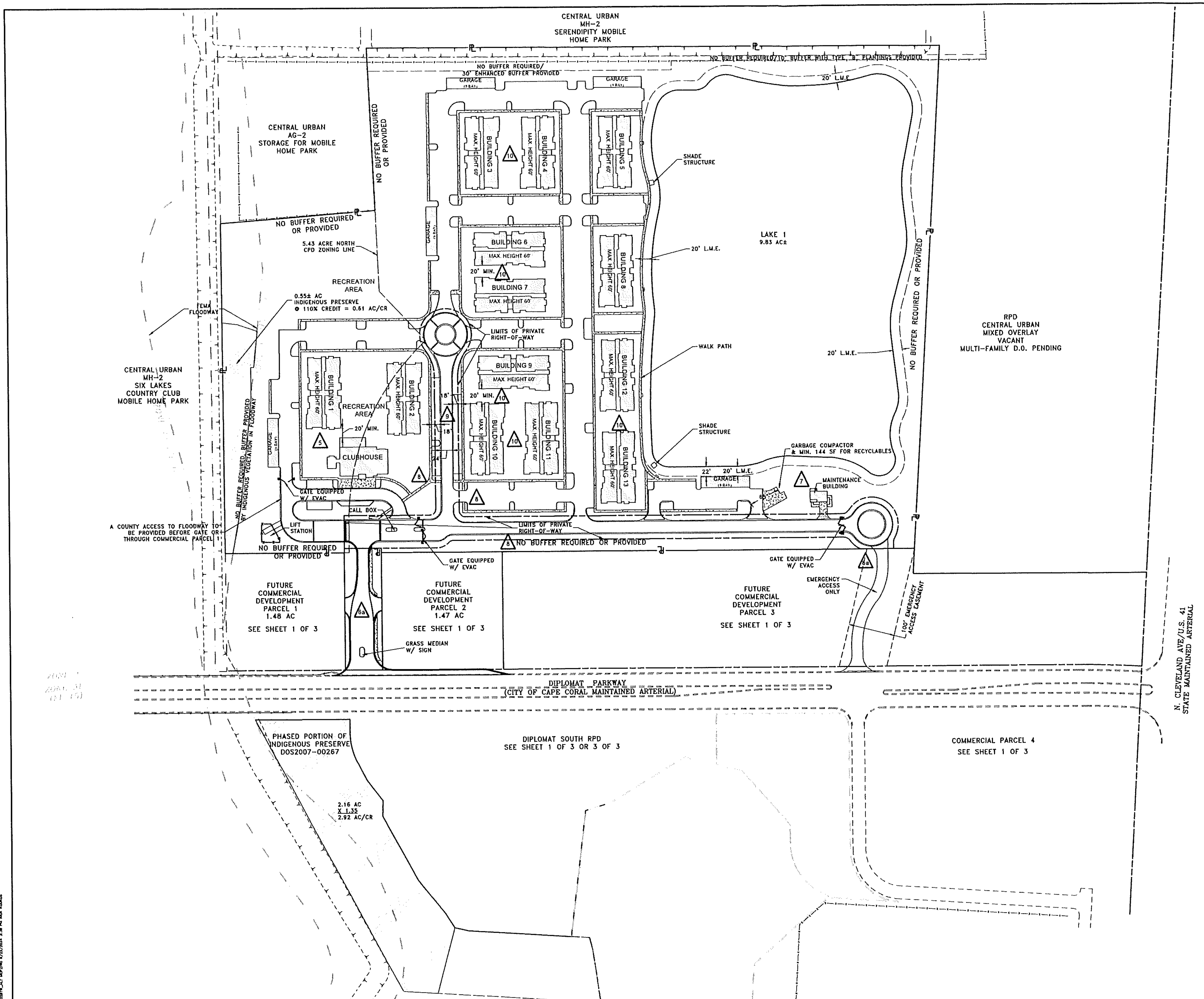
Banks Engineering
Professional Engineers, Planners & Land Surveyors
FORT MYERS ◆ NAPLES ◆ SARASOTA
2515 NORTHBROOKE PLAZA DRIVE, SUITE 200
NAPLES, FLORIDA 34119
PHONE: (239) 597-2061 FAX: (239) 597-3082
ENGINEERING LICENSE # EB 6469
SURVEY LICENSE # LB 6690

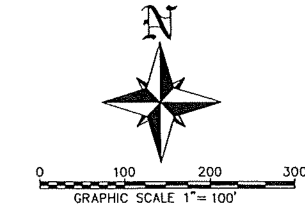
NO	DATE	REVISION DESCRIPTION	BY
8	8-25-2024	CLARIFY INDIGENOUS OPEN SPACE	NFK
7	8-19-2024	48-HOUR NOTICE	SDJ
6	03-12-2024	UPDATED OPEN SPACE TABLE	NFK
5	01-30-08	REVISED SIDE STREET PARKING TO 4 SPACES, REMOVED DEVIATION 8	MJK
4	10-11-2007	ADDED CUL-DE-SACS, GUEST PARKING, REVISED LAKE	MJK
3	09-05-2007	REVISE MASTER CONCEPT PLAN PER NEW SITE DESIGN	CMD
2	11-02-2006	ZONING RESOLUTION	SCH
1	01-25-2006	ADD ACCESS AND OPEN SPACE TABLE	SCH

PREPARED FOR:
N.B.D. DEVELOPMENT, INC.
301 YAMATO ROAD, SUITE 3191
BOCA RATON, FLORIDA 33431
PH: (561) 994-8572
FAX: (561) 394-7136

2028 DIPLOMAT PARCEL

EXHIBIT B-1





NORTH RPD & 5.43 ACRE NORTH CPD OPEN SPACE:

OPEN SPACE REQUIRED: 20% (35.18 AC X 0.2 = 7.04 AC)

- 50% OF REQUIRED OPEN SPACE MUST BE INDIGENOUS OPEN SPACE: (3.52 AC)
- 0.55± AC INDIGENOUS PROVIDED WITHIN FLOODWAY ONSITE WITH 110% CREDIT FOR MINIMUM 1/2 ACRE/50' WIDTH = 0.61 ACRE CREDIT. 3.52-0.61 = 2.91 AC REQUIRED TO BE MET ON SOUTH PARCEL.
- INDIGENOUS OPEN SPACE PROVIDED ON SOUTH RPD FOR RESIDENTIAL NORTH PER DOS2007-00267: (7.03 AC), (UPDATED TO 7.01 AC PER BELOW)
- 2.92 ACRE/CREDIT PHASED PORTION OF UPLAND INDIGENOUS PRESERVE ON SOUTH RPD PARCEL TO BE PROVIDED BEFORE CERTIFICATION OF COMPLETION OF D.O. FOR NORTH RPD & 5.43 ACRE NORTH CPD. 2.92 AC/135% CREDIT* = MINIMUM 2.16 AC *135% CREDIT FOR MINIMUM 1 AC/75' WIDTH AND ADJACENT TO OFFSITE PRESERVE.
- REGULAR OPEN SPACE REQUIRED ON SITE: (3.52 AC)
- PROVIDED REGULAR OPEN SPACE ON SITE: MINIMUM 3.52 AC

OVERALL RPD/CPD OPEN SPACE CALCULATIONS:

OPEN SPACE CALCULATIONS (30% FOR COMMERCIAL/40% COMMON OPEN SPACE FOR RESIDENTIAL)

BOLD ITALIC TEXT DEPICTS REVISIONS FROM DOS2007-00267 OPEN SPACE TABLE

NORTH RPD & 5.43 ACRE NORTH CPD AMENDED TO UTILIZE MIXED USE OVERLAY

TRACT	AREA	INDIGENOUS REQUIRED	OTHER OPEN SPACE REQUIRED	INDIGENOUS PROVIDED
COMMERCIAL 1	1.47 AC	0.22 AC 15%	0.22 AC(2)	0.22 AC(1)
COMMERCIAL 2	1.44 AC	0.22 AC 15%	0.22 AC(2)	0.22 AC(1)
COMMERCIAL 3	7.31 AC	1.10 AC 15%	1.10 AC(2)	1.10 AC(1)
COMMERCIAL 4	7.22 AC	1.08 AC 15%	1.08 AC(2)	1.08 AC(1)
RESIDENTIAL NORTH	35.18 AC	3.52 AC 10%	3.52 AC(2)	7.01 AC(1)(4) + 0.61 AC(3)
RESIDENTIAL SOUTH	12.47 AC	2.49 AC 20%	2.49 AC(2)	2.54 AC(1)
TOTALS	65.13 AC	8.63 AC	8.63 AC(2)	12.17 AC(1) + 0.61 AC(3)

12.78 AC TOTAL WITH CREDITS

(1) INDIGENOUS OPEN SPACE AREA IS PROVIDED ON SOUTHERN PORTION OF DEVELOPMENT AND IS TO PROVIDE TOTAL REQUIRED INDIGENOUS OPEN SPACE FOR ALL TRACTS.

(2) OTHER (NON-INDIGENOUS) OPEN SPACE SHALL BE PROVIDED ON THE RESPECTIVE TRACT AND SHALL BE IDENTIFIED AT THE TIME OF DEVELOPMENT ORDER PERMITTING.

(3) NORTH RPD & 5.43 ACRE NORTH CPD PROVIDING 0.55± AC INDIGENOUS WITHIN FLOODWAY ONSITE WITH 110% CREDIT FOR MINIMUM 1/2 ACRE/50' WIDTH = 0.61 ACRE CREDIT.

(4) 2.92 ACRE CREDIT PHASED PORTION BEFORE CERTIFICATION OF COMPLETION OF D.O. FOR NORTH RPD & 5.43 ACRE NORTH CPD. 2.92 AC/135% CREDIT* = MINIMUM 2.16 AC *135% CREDIT FOR MINIMUM 1 AC/75' WIDTH AND ADJACENT TO OFFSITE PRESERVE.

INDIGENOUS NOTES:

*150% CREDIT FOR MINIMUM 3 ACRES AND 100' WIDTH PER LDC SECTION 10-415(b)(2)a.

**125% CREDIT FOR MINIMUM 1 ACRE AND 75' WIDTH PER LDC SECTION 10-415(b)(2)a. AND ADDITIONAL 10% CREDIT FOR PRESERVATION ADJACENT TO ROADWAY PER LDC SECTION 10-415(b)(2)b.

***110% CREDIT FOR CONNECTION TO OFFSITE ENVIRONMENTAL CONSERVATION OR PRESERVE AREAS PER LDC SECTION 10-415(b)(2)b.

LEGEND:

DEVIATIONS:

- 5 — TO ALLOW MINIMUM 20' SEPARATION BETWEEN RECREATION BUILDING AND DWELLING UNIT
- 6a — TO ALLOW ONE ACCESS AND EMERGENCY ONLY ACCESS
- 7 — TO ALLOW REDUCED MINIMUM COLLECTION CONTAINER AREA FOR RECYCLABLE MATERIALS DUE TO COMPACTOR
- 8 — TO ALLOW NO INTERNAL R.O.W. BUFFER
- 9 — TO ALLOW BACKOUT PARKING INTO R.O.W.
- 10 — TO ALLOW MINIMUM BUILDING SEPARATION OF 20'

[box] INDIGENOUS PRESERVATION

NO.	DATE	REVISION DESCRIPTION	BY
3	6/25/2024	CLARIFY INDIGENOUS OPEN SPACE	NFK
2	6/19/2024	48-HOUR NOTICE	SDJ
1	3/12/2024	FIRST SUFFICIENCY	NFK

BANKS ENGINEERING
Professional Engineers, Planners, & Land Surveyors
Serving The State Of Florida
10511 SIX MILE CYPRESS PARKWAY
FORT MYERS, FLORIDA 33966
PHONE: (239) 939-5490 FAX: (239) 939-2523
ENGINEERING LICENSE # EB 6469
SURVEY LICENSE # LB 6690
WWW.BANKSENG.COM

ALTERNATE DIPLOMAT NORTH RPD MASTER CONCEPT PLAN

DIPLOMAT HOUSE

LEE COUNTY, FLORIDA

DATE	PROJECT	DRAWING	DESIGN	DRAWN	CHECKED	SCALE	SHEET
12/7/2023	202BTW	ALT_MCP	NFK	NFK	SWM	1"=100'	2 OF 3

OPEN SPACE CALCULATIONS (30% FOR COMMERCIAL/40% COMMON OPEN SPACE FOR RESIDENTIAL)				
BOLD ITALIC TEXT DEPICTS REVISIONS FROM DOS2007-00217 OPEN SPACE TABLE				
NORTH RPD & 5.43 ACRE NORTH CPD AMENDED TO UTILIZE MIXED USE OVERLAY				
TRACT	AREA	INDIGENOUS REQUIRED	OTHER OPEN SPACE REQUIRED	INDIGENOUS PROVIDED
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RESIDENTIAL SOUTH	12.47 AC	2.49 AC 20%	2.49 AC(2)	2.54 AC(1)
TOTALS	***65.13 AC***	***8.63 AC***	***8.63 AC(2)***	***12.17 AC(1) + 0.61 AC(3)***

(1) INDIGENOUS OPEN SPACE AREA IS PROVIDED ON SOUTHERN PORTION OF DEVELOPMENT AND IS TO PROVIDE TOTAL REQUIRED INDIGENOUS OPEN SPACE FOR ALL TRACTS. ***12.78 AC TOTAL WITH CREDITS***

(2) OTHER (NON-INDIGENOUS) OPEN SPACE SHALL BE PROVIDED ON THE RESPECTIVE TRACT AND SHALL BE IDENTIFIED AT THE TIME OF DEVELOPMENT ORDER PERMITTING.

(3) NORTH RPD & 5.43 ACRE NORTH CPD PROVIDING 0.55± AC INDIGENOUS WITHIN FLOODWAY ONSITE WITH 110% CREDIT FOR MINIMUM 1/2 ACRE/50' WIDTH = 0.61 ACRE CREDIT.

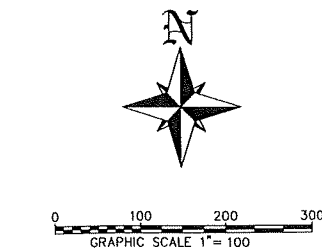
(4) 2.92 ACRE CREDIT PHASED PORTION BEFORE CERTIFICATION OF COMPLETION OF D.O. FOR NORTH RPD & 5.43 ACRE NORTH CPD. 2.92 AC/135% CREDIT* = MINIMUM 2.16 AC *135% CREDIT FOR MINIMUM 1 AC/75' WIDTH AND ADJACENT TO OFFSITE PRESERVE

INDIGENOUS NOTES:

*150% CREDIT FOR MINIMUM 3 ACRES AND 100' WIDTH PER LDC SECTION 10-415(b)(2)a.

**125% CREDIT FOR MINIMUM 1 ACRE AND 75' WIDTH PER LDC SECTION 10-415(b)(2)a. AND ADDITIONAL 10% CREDIT FOR PRESERVATION ADJACENT TO ROADWAY PER LDC SECTION 10-415(b)(2)b.

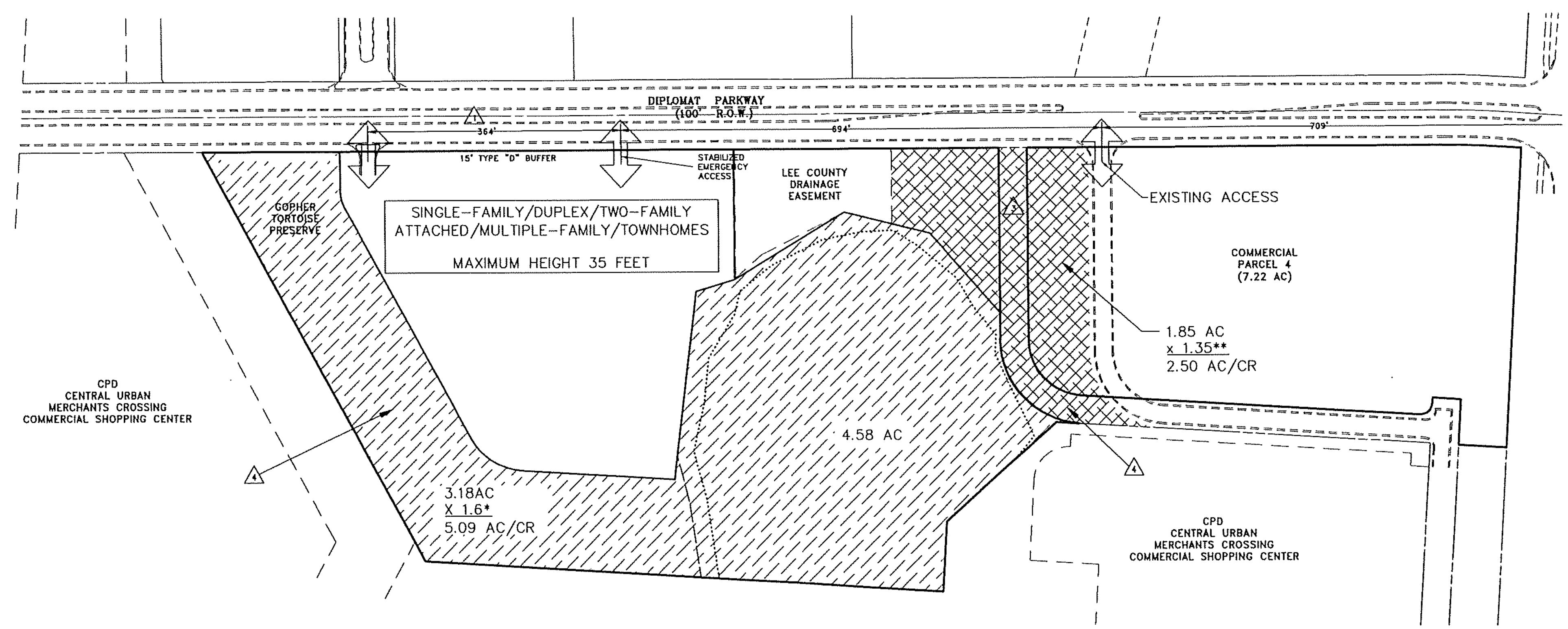
***110% CREDIT FOR CONNECTION TO OFFSITE ENVIRONMENTAL CONSERVATION OR PRESERVE AREAS PER LDC SECTION 10-415(b)(2)b.



= RESIDENTIAL INDIGENOUS

= COMMERCIAL INDIGENOUS

= DEVIATION
PLEASE REFER TO SCHEDULE OF DEVIATIONS AND JUSTIFICATIONS



NO	DATE	REVISION DESCRIPTION	BY
3	8-25-2024	CLARIFY INDIGENOUS OPEN SPACE	NFK
2	8-19-2024	48-HOUR NOTICE	SDJ
1	03-12-2024	UPDATED OPEN SPACE TABLE	NFK

PREPARED FOR:

LEE COUNTY HOUSING AUTHORITY
14170 WARNER CIRCLE
NORTH FORT MYERS, FL 33903

Banks Engineering
Professional Engineers, Planners & Land Surveyors
FORT MYERS ◆ NAPLES ◆ SARASOTA
2515 NORTHBROOKE PLAZA DRIVE, SUITE 200
NAPLES, FLORIDA 34119
PHONE: (239) 597-2061 FAX: (239) 597-3082
ENGINEERING LICENSE # EB 6469
SURVEY LICENSE # LB 6690

ALTERNATE DIPLOMAT SOUTH RPD MCP
DIPOLMAT PARCEL
LEE COUNTY, FLORIDA

DATE	PROJECT	DRAWING	DESIGN	DRAWN	CHECKED	SCALE	SHEET	OF	FILE NO. (S-T-R)
10/28/2019	2028	MCP	SEH	SDJ	SWM	1"=100'	3	3	34-43-24

2028 DIPLOMAT PARCEL

Exhibit D

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments:* Prepared by Dirk Danley, Jr., Principal Planner, date received June 12, 2024 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]

2. *PowerPoint Presentation:* Prepared by Lee County Staff for Diplomat House RPD/CPD – Amendment, dated June 25, 2024 (multiple pages – 8.5"x11")[color]

APPLICANT EXHIBITS

a. *48-Hour Notice:* Email from Stacy Hewitt to Hearing Examiner, with copies to Dirk Danley, Jr., Maria Perez, Tina Boone, Lauren Schaefer, Erica Temerario, Joseph Adams, Esq., Amanda Swindle, Esq., and Michael Jacob, Esq., dated Friday, June 21, 2024, 3:46 PM (multiple pages – 8.5"x11")

1. *PowerPoint Presentation:* Prepared for Diplomat House RPD f/k/a Diplomat North RPD Amendment, DCI2023-00050, Applicant Presentation, Lee County Hearing Examiner Public Hearing, June 26, 2024 (multiple pages – 8.5"x11")[color]

2. *Applicant's Additional Information:* Reference DCI2023-00050 – Diplomat House a/k/a Diplomat North RPD Amendment (multiple pages – 8.5"x11", 11"x17", and 24"x36")

3. *Legal Description:* (multiple pages – 8.5"x11")

4. *Clarification Requested by Hearing Examiner:* Email from Stacy Hewitt to Hearing Examiner, with copies to Dirk Danley, Jr., and Maria Perez, dated Thursday, July 18, 2024, 9:13 AM (4 pages – 8.5"x11")

Case: DCI2023-00050

Exhibit E

HEARING PARTICIPANTS

County Staff:

1. Dirk Danley, Jr.
2. Elizabeth Workman

Applicant Representatives:

1. Christian Casey
2. Stacy Hewitt
3. Sam Marshall
4. Ted Treesh

Public Participants:

1. Brandon George
2. Ryan Vatalaro

Exhibit F

INFORMATION

UNAUTHORIZED COMMUNICATIONS

The LDC prohibits communications with the Hearing Examiner or her staff on the substance of pending zoning actions. There are limited exceptions for written communications requested by the Hearing Examiner, or where the Hearing Examiner seeks advice from a disinterested expert.

HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS

A. The Hearing Examiner will provide a copy of this recommendation to the Board of County Commissioners.

B. The Board will hold a final hearing to consider the Recommendation and record made before the Hearing Examiner. The Department of Community Development will notify hearing participants of the final hearing date. Only Parties and participants may address the Board at the final hearing. Presentation by participants are limited to the substance of testimony presented to the Hearing Examiner, testimony concerning the correctness of Findings of Fact or Conclusions of Law contained in the Recommendation, or allegations of relevant new evidence not known or that could not have been reasonably discovered by the speaker at the time of the Hearing Examiner hearing.

C. Participants may not submit documents to the Board of County Commissioners unless they were marked as Exhibits by the Hearing Examiner. Documents must have the Exhibit number assigned at hearing.

COPIES OF TESTIMONY AND TRANSCRIPTS

A. Every hearing is recorded. Recordings are public records that become part of the case file maintained by the Department of Community Development. The case file and recordings are available for public examination Monday through Friday between 8:00 a.m. and 4:30 p.m.

B. A verbatim transcript may also be available for purchase from the court reporting service.

ATTACHMENT C

DIPLOMAT HOUSE f/k/a DIPLOMAT NORTH RPD AMENDMENT SCHEDULE OF USES, PROPERTY DEVELOPMENT REGULATIONS & CONDITIONS

1. Development ~~north of Diplomat Parkway East~~ [1] must be substantially consistent with the ~~1-3~~ three-page Master Concept Plan (MCP) entitled:

   Page 1 of 3: "ALTERNATE DIPLOMAT NORTH RPD MASTER CONCEPT PLAN, DIPLOMAT HOUSE" last revised 3/12/2024; ~~DIPLOMAT PROPERTY RPD/CPD (NORTH PARCEL)," dated last revised 4-22-21 and date stamped "Received APR 27 2011 Community Development" AND~~ OR

   ~~The 1 page~~ Page 2 of 3 of the Master Concept Plan entitled "Master Concept Plan, DIPLOMAT PARCEL, Lee County, Florida," dated 08-27-2007, last revised ~~01-23-2008~~ 03/12/2024; OR

   Page 3 of 3: ~~and date stamped "Received JAN 30 2008 Permit Counter," Development south of Diplomat Parkway East must be substantially consistent with the 1 page MCP entitled "Master Concept Plan, DIPLOMAT PARCEL, Lee County, Florida," dated 08-27-2007, last revised 03/12/2007, last revised 03/12/2025 01-23-2008 and date stamped "Received JAN 30, 2008 Permit Counter," OR the 1 page Page 3 of 3 of the~~ MCP entitled "ALTERNATE DIPLOMAT SOUTH RPD MCP, DIPLOMAT PARCEL" dated 10/28/2019, last revised 03/12/2024, except as modified by the conditions below.

~~Note: the portion of the project on the north side of Diplomat Parkway includes Commercial Development Parcels 1, 2 and 3 (West 3 and East 3). It also includes a 29.75-acre~~ 35.2-acre ~~site that may be developed either as an RPD with RPD uses or and and/or an ALF/CCF, with or without a commercial component on the westerly portion of that site identified as the 5.43 acre North CPD Parcel.~~

This development must comply with all requirements of the LDC at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the MCP are subsequently pursued, appropriate approvals will be necessary.

Maximum number of dwelling units (North RPD/CPD Parcel): ~~138~~ 360 dwelling units (Standard Density utilizing North RPD/CPD (38.13 acres), Commercial Parcel 1 (1.48 Acres) and Commercial Parcel 2(1.47 acres) ~~plus a maximum of 400 beds for assisted living facilities/continuing care facilities. Dwelling units may be converted per Table "B" of the approved MCP.~~

Maximum Number of Dwelling Units (South RPD parcel): 105 dwelling units. An additional 21 units may be constructed if they are marketed at a price point that is affordable to moderate income households at the time of building permit application. Further, the additional 21 units

may only be sold to buyers who qualify as a moderate income household at time of purchase. Moderate income household means 120 percent of the yearly median income based on yearly income levels developed for the SHIP Program by the Housing Section of the Lee County Division of Planning.

Eight (8.0) dwelling units per acre maximum, for the 13.19 acres of RPD South of Diplomat Parkway. An additional 1.6 units per acre may be constructed subject to the affordability requirements above.

~~Maximum Commercial Floor Area (North CPD Parcel): 50,000 square feet of medical office. Medical Office may be converted per Table "B" of the approved MCP.~~

Maximum Total Commercial Floor Area (CPD Parcels 1, 2, 3, and 4): 200,000 square feet of commercial uses. ~~A maximum of 100,000 s/f of which may be retail.~~ North RPD Parcel utilizes CPD Parcels 1 and 2 acreage for residential density with no impact to approved commercial intensity for these parcels due to the planned development's location within the Mixed Use Overlay.

~~Retail development is limited to Parcel 4 (which meets Commercial Site Location Standards). Retail development is not permitted on Commercial Parcels 1, 2 or 3 (which do not meet Site Location Standards).~~

2. The following limits apply to the project and uses:

   a SCHEDULE OF USES

   RPD- South of Diplomat Parkway

   Accessory Uses and Structures
   Administrative Office
   Clubs, Private - as shown on the approved MCP
   Community Garden
   Dwelling Units
      Single-family
      Duplex
      Two-family attached
      Multiple-family
      Townhomes – limited to a maximum of 105 dwelling units (or up to 126 dwelling units pursuant to Condition 1)
   Entrance Gates and Gatehouse
   Essential Services
   Essential Service Facilities, Group I only
   Excavation, Water Retention - not to include the removal of excavated material from the site. ~~No blasting.~~

Fences and Walls
Home Occupation, No outside help Home
Care Facility
Model Home, Model Display Center, Model Unit - ALSO SEE MODEL HOME/REAL ESTATE SALES CONDITIONS
Parking Lot, Accessory
Real Estate Sales - limited to sales of lots, homes or units within the development. Model home and club locations only. ALSO SEE MODEL HOME/REAL ESTATE SALES CONDITIONS.
Recreational Facilities - Private, On-site only. LIMITED TO THOSE SHOWN ON THE APPROVED MCP.
Residential Accessory Uses
Signs
Temporary Uses

CPD - ~~Parcels 1, 2, 3 & 4 -~~ North and South of Diplomat Parkway

Administrative Office
Animals: Clinic, Kennel, Control Center (including Humane Society) - indoors, no outdoor runs
Automatic Teller Machine
Auto Parts Store - No installation service Auto
Repair and Service, Group I only Bait and
Tackle Shop
Banks and Financial Establishments, Groups I and II Boat
Part Stores
Building Material Sales (indoor only, no outdoor display)
Business Services, Groups I and II (no impound yards or armored car services)
Cleaning and Maintenance Services
Clothing Stores, General
Communication facilities, wireless (in accordance with LDC Chapter 34, Division 11) A wireless communication facility may be administratively approved, provided it is co-located on a building and the height of the tower does not exceed 50 feet from existing grade
Community Garden (Note: This use may not be utilized until such time as the LDC is amended to permit this use in a CPD.)
Consumption on Premises - Indoors. In conjunction with Group III restaurants only. Outdoor Consumption on Premises will require special exception approval (public hearing)
Contractors and Builders, Groups I and II ~~(but not Group III)~~
Cultural Facilities
Day Care, Adult, Child
Department Store
Drive-through facility for any permitted use. No fast-food drive-through
Drugstore, Pharmacy (limited to 1 on Parcel 3 or 4)

Dwelling units, multiple-family (Limited to North of Diplomat Parkway) See Conditions 25, 26 & 27
Entrance Gate and Gatehouse
Emergency Operations Center EMS,
Fire or Sheriff's Station Essential
Services
Essential Service Facilities, Group I only
Excavation, Water Retention - not to include the removal of excavated material from the site.
Fences and Walls
Flea Market, Indoor Only
Food and Beverage Services, Limited
Food Stores, Groups I and II
Funeral Home or Mortuary, with or without cremation
Gasoline Dispensing System, Special
Hardware Store
Health Care Facility, Groups I, II and III ~~(but not Group IV).~~
Hobby, Toy and Game Store
Hotel/Motel - Limited to 120 rooms maximum.
Household and Office Furnishings - (indoor only, no outdoor display)
Insurance Companies
Lawn and Garden Supply Stores - (indoor only, no outdoor display)
Library
Medical Office
Model Home, Model Display Center, Model Unit (Limited to Parcels 3 and 4)
Non-store Retailer, All Groups
Paint, Glass and Wallpaper - (indoor only, no outdoor display)
Parking Lot, Accessory, Commercial, Garage, Public Parking, Temporary Personal
Services, Groups I, II, III and IV. Excluding Laundromats,
Laundry Agents, Massage Establishments, Massage Parlors, Steam or Turkish Baths, Dating Services, Escort Services, Palm Readers, Fortune Tellers, Card Readers, Tattoo Parlors
Pet Services, Pet Shops - Indoor only, no outdoor display. No outdoor runs
Place of Worship
Plant Nursery Post
Office
Printing and Publishing Processing and Warehousing
Real Estate Sales, Limited to rental/sales of units within multiple-family development
Real Estate Sales Office
Religious Facilities
Rental or Leasing Establishments, Group II only (and excluding tools and equipment primarily for home use). Indoor only. No outdoor display.
Repair Shop, Groups I, II and III
Research and Development Laboratories, Groups I, II, III and IV
Residential accessory uses
Restaurants, Groups I, II, III and IV

Restaurant, Fast Food, No stand-alone or drive-through – within a multiple-occupancy building only.
Schools, Commercial and Non-Commercial
Signs ~~in Accordance with LDC Chapter 30~~
Social Services Group I only
Specialty Retail, Groups I, II, III and IV
Storage, Indoor Only
Studios Supermarkets
Temporary Uses
Used Merchandise, Groups I and II, Indoor only. No outdoor display.
Variety Store

RPD - North of Diplomat Parkway

Accessory Uses and Structures
Administrative Office
~~Assisted Living Facilities - (pursuant to Condition 1)~~
Clubs, Private - as shown on the approved MCP (Recreation Areas)
Community Garden
~~Continuing Care Facilities~~
Dwelling Units~~, single-family, duplex, two-family attached,~~
Multi-family
Townhomes - (pursuant to Condition 1)
Entrance Gates and Gatehouse
Essential Services
Essential Service Facilities, Group I only
Excavation, Water Retention - not to include the removal of excavated material from the site. ~~No blasting.~~
Fences and Walls.
Home Occupation, No outside help
Home Care Facility
Model Home, Model Display Center, Model Unit - ALSO SEE MODEL HOME/REAL ESTATE SALES CONDITIONS.
Parking Lot, Accessory.
Real Estate Sales - limited to sales of lots, homes or units within the development. Model home and club locations only. ALSO SEE MODEL HOME/REAL ESTATE SALES CONDITIONS.
Recreational Facilities - Private, On-site only. LIMITED TO THOSE SHOWN ON THE APPROVED MCP.
Religious Facilities
Residential Accessory Uses
Signs~~, in compliance with LDC Chapter 30~~
Temporary Uses
Temporary Real Estate Sales Office

~~CPD - 5.43-Acre Parcel north of Diplomat Parkway~~

~~Administrative Office~~
~~Animals: Clinic, Kennel, Control Center (including Humane Society) - indoors, no outdoor runs~~
~~Automatic Teller Machine~~
~~Banks and Financial Establishments, Groups I and II~~
~~Business Services, Groups I and II (no impound yards or armored car services)~~
~~Cleaning and Maintenance Services~~
~~Communication facilities, wireless (in accordance with LDC Chapter 34, Division 11) A wireless communication facility may be administratively approved, provided it is co-located on a building and the height of the tower does not exceed 50 feet from existing grade.~~
~~Community Garden (Note: This use may not be utilized until such time as the LDC is amended to permit this use in a CPD.)~~
~~Cultural Facilities~~
~~Entrance Gate and Gatehouse~~
~~Emergency Operations Center~~
~~EMS, Fire or Sheriff's Station~~
~~Essential Services~~
~~Essential Service Facilities, Group I only~~
~~Excavation, Water Retention - not to include the removal of excavated material from the site. No blasting.~~
~~Fences and Walls.~~
~~Health Care Facility, Groups I, II and III (no Group IV)~~
~~Insurance Companies~~
~~Medical Office~~
~~Parking Lot, Accessory~~
~~Personal Services, Groups I and II~~
~~Pharmacy - accessory to medical office use only~~
~~Real Estate Sales Office~~
~~Religious Facilities~~
~~Research and Development Laboratories, Groups I, II, III and IV~~
~~Schools, Commercial and Non-Commercial~~
~~Signs in Accordance with LDC Chapter 30~~
~~Social Services Group I only~~
~~Temporary Uses~~

b SITE DEVELOPMENT REGULATIONS

RPD - South of Diplomat Parkway

SINGLE-FAMILY:

Minimum Lot Size and Dimensions

Lot Size	7,500 square feet
Lot Width	75 feet
Lot Depth	100 feet

Minimum Setbacks

Street	25 feet (public)
	20 feet (private)
Side	5 feet
Rear	30 feet on all sides containing the enhanced buffer
	20 feet on all other lots
Waterbody	25 feet
All Accessory Uses	Per the LDC
Setbacks from Preserves (All Structures)	25 feet, per the LDC.
Minimum Perimeter Setbacks	25 feet
	30 feet on all lots containing an enhanced buffer
Minimum Building Separation	10 feet
Maximum Building Height	35 feet~~/3 stories~~
Maximum Lot Coverage	45 percent

DUPLEX, TWO-FAMILY ATTACHED, TOWNHOUSE:

Minimum Lot Size and Dimensions

Lot Size	7,500 square feet
Lot Width	75 feet
Lot Depth	100 feet

Minimum Setbacks

Street	25 feet (public)
	20 feet (private)
Side	5 feet (zero feet for common wall unit)
Rear	30 feet on all sides containing the enhanced buffer
	20 feet on all other lots
Waterbody	25 feet
All Accessory Uses	Per the LDC
Setbacks from Preserves (All Structures)	25 feet, per the LDC.
Minimum Perimeter Setbacks	25 feet
	30 feet on all lots containing an enhanced buffer
Minimum Building Separation	10 feet
Maximum Building Height	35 feet~~/3 stories~~
Maximum Lot Coverage	45 percent

MULTIPLE-FAMILY:

Minimum Lot Size and Dimensions	
Lot Size	10,000 square feet
Lot Width	100 feet
Lot Depth	100 feet
Minimum Setbacks	
Street	25 feet (public) 20 feet (private)
Side	10 feet
Rear	30 feet on all sides containing the enhanced buffer 20 feet on all other lots
Waterbody	25 feet
All Accessory Uses	Per the LDC
Setbacks from Preserves (All Structures)	25 feet, per the LDC
Minimum Perimeter Setbacks	25 feet 30 feet on all lots containing an enhanced buffer
Minimum Building Separation	10 feet
Maximum Building Height	35 feet~~/2 stories~~
Maximum Lot Coverage	45 percent

RECREATIONAL AREA/FACILITIES:

Minimum Lot Size and Dimensions	
Lot Size	9,000 square feet
Lot Width	50 feet
Lot Depth	120 feet
Minimum Setbacks	(See Deviation 5)
Street	25 feet (public) 20 feet (private)
Side	10 feet
Rear	20 feet
Waterbody	25 feet
All Accessory Uses	Per the LDC
Setbacks from Preserves (All Structures)	25 feet, per the LDC.
Minimum Perimeter Setbacks	25 feet
Minimum Building Separation	10 feet
Maximum Building Height	35 feet/2 stories
Maximum Lot Coverage	45 percent

Commercial Development North and South of Diplomat Parkway

Minimum Lot Size and Dimensions

Lot Size	10,000 square feet
Lot Width	100 feet
Lot Depth	100 feet

Minimum Setbacks

Street	25 feet (public) 20 feet (private)
Side	10 feet
Rear	20 feet
Waterbody	25 feet
All Accessory Uses	Per the LDC
Setbacks from Preserves (All Structures)	25 feet, per the LDC.
Minimum Perimeter Setbacks	25 feet
Minimum Building Separation	20 feet, but buildings exceeding 35 feet in height must maintain additional building separation as regulated by LDC Section 34-2174
Maximum Building Height	50 feet/ 3 stories 35 feet/2 stories – adjacent to west boundary
Maximum Lot Coverage	60 percent

RPD - NORTH OF DIPLOMAT PARKWAY:

~~ASSISTED LIVING:~~

~~Minimum Lot Areas and Dimensions~~

~~Lot Size: 10,000 square feet~~
~~Lot Width: 100 feet~~
~~Lot Depth: 100 feet~~

~~Minimum Setbacks~~

~~Street 25 feet (public)/20 feet (private)~~
~~Side 10 feet~~
~~20 feet on all other lots~~

~~Water body 25 feet~~
~~All Accessory Uses: Per the LDC.~~
~~Setbacks from Preserves (All structures): 25 feet, per the LDC.~~
~~Minimum Perimeter Setbacks: 25 feet~~
~~30 feet on all lots containing and enhanced buffer~~

Minimum Building Separation: ½ building height, but not less than 15 feet

Maximum Building Height: 45 feet
Maximum Lot Coverage: 45 percent

SINGLE-FAMILY:

Minimum Lot Areas and Dimensions
- Lot Size: 7,200 square feet
- Lot Width: 60 feet
- Lot Depth: 100 feet

Minimum Setbacks
- Street: 25 feet (public)/20 feet (private)
- Side: 5 feet
  20 feet on all other lots

- Water body: 25 feet

- All Accessory Uses: Per the LDC.

- Setbacks from Preserves (All structures): 25 feet, per the LDC.

Minimum Perimeter Setbacks: 25 feet
30 feet on all lots containing an enhanced buffer

Minimum Building Separation: 10 feet

Maximum Building Height: 35 feet
Maximum Lot Coverage: 45 percent

DUPLEX:

Minimum Lot Areas and Dimensions
- Lot Size: 7,000 square feet
- Lot Width: 70 feet
- Lot Depth: 100 feet

Minimum Setbacks
- Street: 25 feet (public)
  20 feet (private)
- Side: 5 feet
  20 feet on all other lots

- Water body: 25 feet

~~All Accessory Uses: Per the LDC.~~

~~Setbacks from Preserves (All structures): 25 feet, per the LDC.~~

~~Minimum Perimeter Setbacks: 25 feet~~
~~30 feet on all lots containing an enhanced buffer~~

~~Minimum Building Separation: 10 feet.~~

~~Maximum Building Height: 35 feet~~
~~Maximum Lot Coverage: 45 percent~~

TOWNHOME:

Minimum Lot Size and Dimensions

Lot Size	~~1,600~~ square feet
Lot Width	16 feet
Lot Depth	~~100~~ feet

Minimum Setbacks

Street	25 feet (public) 20 feet (private)
Side	10 feet 0 feet (for a common wall)
Rear	~~30~~ feet ~~on all sides containing the enhanced buffer~~ 20 feet on all other lots
Waterbody	25 feet
All Accessory Uses	~~Per the LDC~~ 0 feet
Setbacks from Preserves (All Structures)	~~25 feet~~, per the LDC.
Minimum Perimeter Setbacks	15 feet
Minimum Building Separation	20 feet
Maximum Building Height	35 feet
Maximum Lot Coverage	~~55 percent~~ No Maximum

MULTIPLE-FAMILY:

Minimum Lot Size and Dimensions

Lot Size	~~10,000~~ square feet
Lot Width	~~100~~25 feet
Lot Depth	~~100~~ feet

Minimum Setbacks

Street	~~25~~0 feet (public)
	~~2~~0 feet (private)
Side	~~1~~0 feet
	0 feet (for a common wall)
Rear	~~3~~0 feet ~~on all sides containing the enhanced buffer~~
	~~20 feet on all other lots~~
Waterbody	25 feet
All Accessory Uses	~~Per the LDC~~ 0 feet

Setbacks from Preserves (All Structures)	~~25 feet~~, per the LDC.
Minimum Perimeter Setbacks	~~2~~15 feet
Minimum Building Separation	20 feet
Maximum Building Height	~~5~~60 feet
Maximum Lot Coverage	~~55 percent~~ No Maximum

RECREATION AREA/CLUBHOUSE:

Minimum Lot Size and Dimensions

Lot Size	~~9,00~~0 square feet
Lot Width	~~100~~25 feet
Lot Depth	~~1~~00 feet

Minimum Setbacks

Street	~~25~~0 feet (public)
	~~2~~0 feet (private)
Side	~~1~~0 feet
	0 feet (for a common wall)
Rear	~~3~~0 feet ~~on all sides containing the enhanced buffer~~
	~~20 feet on all other lots~~
Waterbody	25 feet
All Accessory Uses	~~Per the LDC~~ 0 feet
Setbacks from Preserves (All Structures)	~~25 feet~~, per the LDC.
Minimum Perimeter Setbacks	~~2~~15 feet
Minimum Building Separation	20 feet
Maximum Building Height	~~5~~60 feet
Maximum Lot Coverage	~~45 percent~~ No Maximum

~~CPD - 5.43-acre North CPD Parcel:~~

~~Minimum Lot Areas and Dimensions~~

~~Lot Size: 10,000 square feet~~
~~Lot Width: 100 feet~~
~~Lot Depth: 100 feet~~

~~Minimum Setbacks~~

~~Street 25 feet (public)~~
~~20 feet (private)~~
~~Side 10 feet~~
~~Rear 20 feet~~
~~20 feet on all other lots~~

~~Water body 25 feet~~

~~All Accessory Uses: Per the LDC~~

~~Setbacks from Preserves (All structures): 25 feet, per the LDC~~

~~Minimum Perimeter Setbacks: 25 feet~~

~~Minimum Building Separation: ½ building height not less than 15 feet~~

~~Building Height: 35 feet~~
~~Maximum Lot Coverage: 60 percent~~

3. CONCURRENCY

Approval of this rezoning does not constitute a finding that the proposed project meets the concurrency requirements set forth in LDC Chapter 2 and the Lee Plan. The developer is required to demonstrate compliance with all concurrency requirements prior to issuance of a local development order.

4. MODEL HOME AND REAL ESTATE SALES

Model units and homes (and real estate sales) are permitted in compliance with the following conditions:

a. Each model must be a unique example. Multiple examples of the same unit are not permitted.
b. All model sites must be designated on the development order plans.
c. Prior to model home construction, the lots upon which model homes will be constructed must be shown on a preliminary plat (not the final). The preliminary plat must be filed concurrently with the local development order application. The model homes must comply with the setbacks set forth in the property development regulations for this project.
d. Dry models are prohibited.
e. The number of model homes or model units will be limited to no more than 10 within the

development at one time.

f. ~~Any model homes or units must be developed within the areas identified as "models" on the approved MCP.~~ Deleted.
g. Real estate sales within the RPD are limited to the sale of lots or units within the development only. Real Estate sales are a permitted use within the CPD.
h. Real estate sales within the RPD are limited to within model homes or clubhouse only.
i. Hours of operation for both models and real estate sales (within the RPD) are limited to Monday through Sunday 8:00 a.m. to 8:00 p.m.
j. Model homes and real estate sales within the RPD will be valid for a period of up to five years from the date of issuance of a certificate of occupancy of a model home per LDC §34-1954(d)(1).

5. NO AGRICULTURAL USES APPROVED

No agricultural uses are permitted on site.

~~6. BLASTING~~

~~No development blasting is permitted as part of this project unless approved at a subsequent public hearing as an amendment to the planned development.~~

7. NATIVE VEGETATION REQUIRED IN THE ENTIRE RPD AND CPD

All required buffers must utilize 100 percent all native vegetation.

8. ADDITIONAL BUILDING ~~SEPARATION~~ SETBACK REQUIRED

Buildings exceeding 35 feet in height must maintain additional building setback ~~separation~~ as regulated by LDC §34-2174(a).

9. TRAFFIC

Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.

10. LEE PLAN

Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b), ~~be reviewed for, and found consistentwith, the retail commercial standards for site area, including range of gross floor area, location,tenant mix and general function,~~ as well as all other Lee Plan provisions.

11. INTERSECTION IMPROVEMENTS

The developer must contribute its proportionate share of the costs of intersection improvements at the time a traffic control device is warranted at the intersection of US 41 and Diplomat ~~Road~~Parkway if requested by Florida Department of Transportation or City of Cape Coral.

12. WIRELESS COMMUNICATION FACILITIES

a Freestanding wireless communication facilities (towers, including stealth type) are not permitted. Approval of freestanding wireless communication facilities will require an amendment to the planned development (public hearing).

b Wireless Communication Facilities (including wall-mounted and roof-mounted antennas) may be approved in accordance with LDC §34-1441, et. seq. (Commercial parcels only).

13. ACCESSORY USES

Accessory uses must be located on the same tract, parcel or outparcel where a principal use is located. Accessory uses must be incidental and subordinate to the principal use of the tract, parcel or outparcel.

14. OPEN SPACE

Prior to local development order approval, the landscape plans must demonstrate that each ~~commercial~~ parcel is providing a minimum of the open space requirement consistent with the open space table provided on the MCP. ~~30 percent open space, and a minimum of 40 percent common open space is provided within the residential tract.~~

15. ENVIRONMENTAL

Prior to local development order approval, if the Florida Fish and Wildlife Conservation Commission (FWC) allows the relocation of tortoises within on-site indigenous preserves:

a The developer must submit a detailed indigenous preservation management plan for the Lee County Division of Environmental Sciences (DES) Staff review and approval that includes methods of maintaining the western 3.0 acres of the preserve as gopher tortoise habitat; and

b The landscape plans must include a permanent gopher tortoise fence along Diplomat Parkway where the three-acre gopher tortoise preserve abuts this roadway and a double staggered native hedge (minimum three-gallon container size; 24-inch height at planting; maintained at a minimum 36-inch height) planted on the roadside of the fence; and

c The landscape plans must delineate a double staggered native hedge (minimum three- gallon container size; 24-inch height at planting; maintained at a minimum 36-inch height) planted along the interface of the indigenous preserve with the residential tract.

d Prior to issuance of a Vegetation Removal Permit, all invasive exotic vegetation and manmade debris must be hand removed from the indigenous preserve.

16. COMMERCIAL PARCELS NORTH OF DIPLOMAT PARKWAY

Commercial buildings located within Parcels 1, 2 and the westernmost 2.3 acres of Parcel 3 are limited to a maximum of 10,000 square feet per building and must not exceed two stories/35 feet in height. The building locations must alternate (be staggered) between the front and rear of the commercial parcels to provide a more campus-like setting. A parking plan must be devised to keep the amount of parking spaces along Diplomat Parkway to an absolute minimum. These parking areas and commercial buildings must be buffered, from Diplomat Parkway, by, at a minimum, a two-foot-high berm with 10 trees and a staggered 36-inch-high hedge per 100 linear feet. ~~Applicant is strongly encouraged to utilize the commercial site locational criteria established for the Estero community.~~

The commercial buildings on Commercial Parcels 1, 2, and 3 must be of the same or similar architectural design and coloring as the residential buildings, to identify them as a unified project. All project identification signs (commercial and residential) must also be of the same or similar architectural design and coloring.

17. NOT UTILIZED

18. SOLID WASTE/RECYCLING

Prior to local development order approval for vertical development, the Developer must provide facilities in compliance with LDC §10-261 and Lee County Solid Waste Ordinance #08-10 for the pick up/disposal of solid waste and recyclables. The minimum area required for and specific locations of these facilities will be reviewed at the time of local development order application (Also see Deviation 7).

19. PRIOR ZONING

The terms and conditions of ~~the original~~ Zoning Resolution Nos. Z-06-004 and Z-11-002 and Administrative Amendments ADD2007-00169, ADD2019-00085, ADD2019-00181 and ADD2020- 00034 are superseded by this zoning action and are rendered null and void by this approval. ~~T he terms and conditions herein apply to the entire planned development previously covered by Zoning Resolution No. Z-06-004.~~

20. INDIGENOUS PRESERVATION/HERITAGE TREES (~~NORTH CPD PARCEL AND~~ NORTH RPD PARCEL)
    a. Prior to local development order approval, a tree survey must be submitted depicting the location, diameter at breast height, and species of all heritage trees within the development area.
    b. Prior to local development order approval, landscape plans must depict heritage trees, located within the development footprint, that are determined to be of good health as per

a certified arborist. Those trees must be incorporated into the internal open space (i.e., perimeter planting, enlarged landscape areas, etc), or must be replaced with a 20- foot like species to a suitable open space area· where final site design constraints (i.e., fill requirements, entrance roads, etc) do not allow preservation.

21. PROTECTED SPECIES
    a Prior to development order approval, the Applicant must first seek approval for on-site preservation of the gopher tortoises through avoidance or relocation before pursuing off-site relocation options. All communication with FWC verifying on-site avoidance or relocation attempts were made must be provided to DES Staff.
    b A copy of the appropriate gopher tortoise relocation permit issued by the FWC must be submitted to the DES Staff prior to excavation and moving of any gopher tortoises. The Applicant must first seek approval for an on-site relocation before pursuing off-site relocation options. Any gopher tortoises and commensal species found during burrow excavation must be moved to preserves containing suitable gopher tortoise habitat as approved by the FWC and DES Staff.

22. DELETED ~~OPEN SPACE (NORTH CPD PARCEL AND NORTH RPD PARCEL)~~

    ~~Prior to local development order approval, the development order plans must delineate a minimum of 1.63 acres of open space for the CPD and 11.9 acres of open space for the RPD~~.

23. BUFFERS (~~NORTH CPD PARCEL AND~~ NORTH RPD PARCEL)
    a Prior to local development order approval, the development plans must demonstrate the preservation of native vegetation within the flood way. ~~T his vegetation may be utilized to m eet the required type "F" buffer plantings. Upon removal of exotics from this area if it is found that the existing vegetation does not satisfy the buffer planting requirements, additional plants must be provided. These plants must be designed to mimic the natural~~ a ~~rea through the use of similar species and random planting throughout the area.~~
    b An enhanced type “F” buffer must be <u>provided along the north property line west of the lake</u>, as shown on the MCP. This buffer must be 30 feet in width and include 10 native canopy trees per 100 linear feet, and a double hedge row planted at 48” in height at time of planting.

24. NATIVE PLANTINGS REQUIRED (~~NORTH CPD PARCEL AND~~ NORTH RPD PARCEL)

    All required buffer plantings, general trees, and internal canopy trees must be 100 percent native species.

25. <u>(Condition 3 from ADD2020-00034) CPD Parcels 3 and 4 may convert unused commercial intensity to multifamily dwelling units in accordance with the following Land Use Conversion Matrix:</u>

	Multifamily Residential LUC 220 (0.56 Trips/DU)	Commercial Retail (Shopping Center) LUC 820 (3.81 Trips/1,000 sq. ft.)
Multifamily Residential LUC 220 (0.56 Trips/DU)	Same	147 sq ft./1 DU
Commercial Retail (Shopping Center) LUC 820 (3.81 Trips/1,000 sq. ft.)	6.80 DU/1,000 sq. ft.	Same

26. (Condition 4 from ADD2020-00034) A maximum of 116 multifamily dwelling units (8 dwelling units per acre) may be constructed on CPD Parcels 3 and 4 in accordance with the Land Use Conversion Matrix in Condition ~~3~~25.

27. With any local development order application proposing multifamily residential development on CPD Parcels 3 and 4, the applicant must submit a report itemizing:
    a. The density (expressed in number of dwelling units) and, if applicable, the intensity (expressed in the square feet of floor area) of each use proposed by the local development order application.
    b. The cumulative total density and intensity permitted on CPD Parcels 1, 2, 3, and 4 by prior local development order approvals.
    c. The remaining density and intensity available for future development on CPD Parcels 1, 2, 3, and 4 for each individual classification in Condition ~~5~~27(a).

SECTION C. DEVIATIONS:

(Deviations 1 through 8 were previously approved and remain applicable to the RPD/CPD and are recited below with minor language clarifications. Deviations 7 and 8 are proposed to be revised and Deviations 9 and 10 are new.)

1. **Intersection Separation** - Deviation 1 (previously contained in Resolution Z- 06-004 and A ~~DD2007- 00169~~subsequent approvals) seeks relief from the LDC §10-285(a) requirement to provide a minimum access connection separation of 660 feet on an arterial road to permit an access separation of 364 feet between the project's proposed main access and the proposed exit-only access for the residential portion of the southern parcel. This deviation is APPROVED.

2. **One dead-end street permitted** - Deviation 2 (previously contained in Resolution Z-06-004 and ~~ADD2007-00169~~subsequent approvals) seeks relief from the LDC §10-296(k)(1) requirement that dead-end streets be closed at one end by a circular turn-around, to allow one dead-end street as shown on the approved MCP on the southern RPD. This deviation is APPROVED.

3. Calculation for Open Space - Deviation 3 (previously contained in Resolution Z-06-004 and ~~ADD2007-00169~~subsequent approvals) seeks relief from the LDC §10-415(b)(1)(a) requirement that large developments with indigenous vegetation communities to provide 50 percent of their open space percentage requirements through on-site preservation of existing native vegetative communities, to permit 0.45 acres of right of way to be vacated, enhanced and preserved to count toward the preservation requirement. This deviation is APPROVED, SUBJECT TO the following condition:

   Prior to local development order approval for Commercial Parcel 4, the existing roadway easement depicted within the indigenous preserve must be vacated.

   This deviation applies to the southern RPD and CPD.

4. Installation of storm water management system - Deviation 4 (previously contained in Resolution Z-06-004 and ~~ADD2007-00169~~ subsequent approvals) seeks relief from the LDC §10-415(b)(1)a. requirement that large developments with existing indigenous native vegetation communities provide 50 percent of their open space requirement through on-site preservation of indigenous native vegetation, to allow portions of the preservation area to be disturbed and restored in order to install a storm water management system. This deviation is APPROVED, SUBJECT TO the following conditions:
   a. Prior to local development order, the development order plans must delineate the general location of the surface water management outfall through the indigenous preserve to the canal. The outfall must be designed as an open system that can be planted with native vegetation.
   b. Prior to issuance of a Vegetation Removal Permit, the location of the surface water management outfall through the indigenous preserve must be field staked to avoid impacting any large native trees or gopher tortoise burrows for the Division of Environmental Sciences Staff review and approval.

   This deviation applies to the southern RPD and CPD.

5. Separation from residential uses - Deviation 5 (previously contained in Resolution Z-06-004 and~~ A DD2007-00169~~subsequent approvals) seeks relief from the LDC §34-2474(b)(6) requirement that recreation halls and ancillary facilities and private clubs be located at least 40 feet from any residential dwelling unit, to allow a 20-foot minimum separation for any recreation building from a residential dwelling unit. This deviation is APPROVED, SUBJECT TO the following condition:

   Development of a recreational facility and clubhouse must be generally consistent with the location shown on the approved MCP.

   This deviation applies to the recreation area shown on the RPD to the north.

6a. Single ingress into the development - Deviation 6a (previously contained in Resolution Z-06-004 and ~~A DD2007-00169~~ subsequent approvals) seeks relief from the LDC §10-291(3) requirement (when practical) that residential developments of more than five acres in size provide two or more means of ingress into the development, to allow the residential portion to the north of Diplomat Parkway to be constructed with a single ingress/egress connection onto Diplomat Parkway. This deviation is APPROVED, SUBJECT TO the following conditions:

a. Access to the residential component north of Diplomat Parkway must be generally consistent with the approved MCP; and
b. The approved MCP and local development order must depict a minimum 70-foot-wide divided entrance on the north side of Diplomat Parkway that includes a median with two lanes on both sides of the median for ingress and egress; and
c. Prior to issuance of a development order, the developer must provide written documentation from the North Fort Myers Fire District indicating that these access points are acceptable and provide adequate access for emergency vehicles. The development order must also include the plans for the secondary/emergency access required in the following paragraph.
d. Prior to build-out of the north residential development, Applicant must install a secondary/emergency access from the residential tract to commercial Parcel 3, as shown on the MCP. Any emergency access gate must comply with all applicable regulations with respect to required equipment for an emergency override mechanism at the time of installation. Additionally, if an emergency necessitates the breaking of an entrance gate, the cost of repairing the gate and the emergency vehicle (if applicable) will be the responsibility of the owner or operator of the gate.

6b. Deviation 6b (previously contained in Resolution Z-06-004 and subsequent approvals) seeks relief from the LDC §10-291(3) requirement (when practical) that residential developments of more than five acres in size provide two or more means of ingress into the development, to allow the residential portion to the south of Diplomat Parkway to be constructed with a single ingress/egress connection onto Diplomat Parkway. This deviation is APPROVED, SUBJECT TO the following conditions.

a. Access to the residential component south of Diplomat Parkway must be generally consistent with the approved MCP; and
b. Any emergency access gate must comply with all applicable regulations with respect to required equipment for an emergency override mechanism at the time of installation. Additionally, if an emergency necessitates the breaking of an entrance gate, the cost of repairing the gate and the emergency vehicle (if applicable) will be the responsibility of the owner or the operator of the gate; and
c. Prior to issuance of a development order, the developer must provide written documentation from the North Fort Myers Fire District indicating that these access points are acceptable and provide adequate access for emergency vehicles.

7. Curbside garbage collection for townhouse units and reduction in collection area for multi-family units - Deviation 7 (townhouse previously contained in ADD2007-000169 and subsequent approvals) seeks relief from the LDC §10-261 requirement that all new multiple-family residential developments to provide sufficient space for the placement of garbage containers or receptacles, to allow for curbside garbage pickup at the proposed townhouse units that are planned within the project. This deviation is APPROVED.

Request is to amend this deviation to allow reduction in required multi-family container space of 216 SF (120 + 96) for first 25 multi-family units plus 8 SF for each additional unit; to allow space for the compactor and a minimum 144 square feet for recyclable materials collection area for the North RPD.

8. **Certain internal buffers not required** - Deviation 8 [previously contained in Z-11-002 and subsequent approvals from LDC §10-416(d)(3)] seeks relief from the LDC §~~10-416(d)(3)~~ 10-425(f)(1) requirement ~~that a Type C/F~~ for five-foot wide buffer along rights-of-way planted with five trees per 100 linear feet ~~between the proposed RPD/CPD uses internal to the development~~, to allow no buffer b~~etween the RPD/CPD uses where the commercial uses are separated from the residential uses~~ within the North RPD project to internal rights-of-way ~~by a private road~~. This deviation is APPROVED.

   Request to amend this deviation to allow no buffers to internal rights-of-way for the North RPD.

9. **Backout parking within internal right-of-way** – New Deviation 9 seeks relief from LDC Section 34-2013(a)(2) requirement that parking that backs out into rights-of-way in residential developments must be for amenities to the development such as parks and recreational facilities and not for dwelling units or commercial uses; to allow backout parking spaces for dwelling units and guests limited to the location shown on the MCP.

   This Deviation is APPROVED.

10. **Minimum Building Separation –** New Deviation 10 seeks relief from LDC §34-935(e)(4) requirement to provide a minimum building separation of one-half the sum of the building heights, or 20 feet, whichever is greater; to allow a minimum building separation of 20 feet.

    This Deviation is APPROVED.

Lee County, Florida
DEPARTMENT OF COMMUNITY DEVELOPMENT
ZONING SECTION
STAFF REPORT

CASE NUMBER: DCI2023-00050
CASE NAME: DIPLOMAT HOUSE F/K/A DIPLOMAT RPD AMENDMENT
TYPE OF CASE: MAJOR PLANNED DEVELOPMENT AMENDMENT
HEARING EXAMINER DATE: JUNE 26, 2024
SUFFICIENCY DATE: MAY 14, 2024

REQUEST:

An application has been submitted by Stacy Ellis Hewitt, AICP of Atwell, LLC on behalf of Diplomat Fort Myers, LLC for an amendment to the Diplomat North RPD/CPD (Resolution Z-11-002, as amended) to replace the previously approved entitlement of 238 dwelling units (or 138 dwelling units and 400 assisted living facility units) and 50,000 square feet of commercial square footage with a maximum height of 50 feet, with a maximum entitlement of 360 multi-family dwelling units with amenities with a maximum height of 60 feet within the Mixed Use Overlay.

The subject property is located on the north side of Diplomat Parkway East, approximately 0.3 miles west of the intersection with North Cleveland Avenue (US 41), Lee County, FL. (District #4). The STRAP Number for the property is 34-43-24-00-00001.3030 and a Legal Description can be found in Attachment R.

SUMMARY:

Staff recommends APPROVAL of the applicant's request, with the Conditions found in Attachment C. These conditions carry forward the conditions and deviations of prior approvals except as noted in this report. There are two additional deviations from required building separation and backout parking limitations within internal rights-of-way. Staff recommends approval of these deviations, with conditions.

HISTORY OF PARCEL:

The subject property is part of the 65-acre Diplomat Property RPD/CPD, which exists on both sides of Diplomat Parkway. This planned development was approved by Resolution Z-06-004 to allow a maximum of400,000 square feet of commercial intensity, including a maximum of 100,000 square feet of retail uses, and up to 120 hotel rooms. It should be noted that a condition was approved to allow the required indigenous preservation to be located on the property south of Diplomat Parkway.

ADD2007-00169 then amended the planned development to revise the property development regulations for townhouses and approved a deviation to allow the use of garbage toters instead of a dumpster.

Resolution Z-11-002 then amended the planned development to allow a maximum of 400 assisted living facility beds and 138 dwelling units. This approval also established a northern Commercial Planned Development (CPD) boundary within the larger planned development, which allowed for a

maximum development intensity of 50,000 square feet of commercial uses (Attachment J). This approval was subsequently amended by the following zoning actions:

- ADD2019-00085 approved a clarification to Condition 1 of Resolution Z-11-002 to allow the residential development without the approved commercial component pursuant to the approved development plan of ADD2007-00169 (Attachment K).
- ADD2019-00181 approved an alternate Master Concept Plan to show a development plan for single-family, duplex, and two-family attached townhomes with a maximum height of 35 feet on property south of Diplomat Parkway (Attachment L).
- ADD2020-00034 approved removal of references to site location standards and amended the schedule of uses to allow a conversion ratio for commercial intensity to be converted to residential density for up to 116 dwelling units (Attachment M).

The applicant previously sought this development plan through a conventional rezoning, variance, and administrative relief process, but ultimately withdrew that request and pursued the request through this application.

CHARACTER OF THE AREA:

The subject property is located to the west of North Cleveland Avenue, a State-maintained Arterial Road, and north of Diplomat Parkway East, a City-maintained Road. The subject property is part of an overall Residential Planned Development/Commercial Planned Development (RPD/CPD) that exists on the north and south sides of Diplomat Parkway East. The surrounding development pattern is heavily settled within the North Fort Myers Community Plan Area and includes a mix of commercial and residential uses. The subject property is also located in the Mixed-Use Overlay as described in Lee Plan Objective 11.2. The following zoning districts and land use categories surround the subject property:

North

Property to the north is zoned Mobile Home Residential District (MH-2) and is in the Central Urban future land use category. This is developed with a mobile home park named Serendipity Mobile Home Village.

West:

Property to the west is zoned Mobile Home Residential District (MH-2) and is in the Central Urban future land use category. This land is developed with a mobile home subdivision named Six Lakes Country Club Mobile Home Park.

South:

Properties to the south are within the same planned development and are currently vacant. These properties are in the Central Urban future land use category and the Mixed-Use Overlay and are zoned Residential Planned Development (RPD) and Commercial Planned Development (CPD).

East:

Property to the east is zoned Residential Planned Development (RPD) approved by Resolution Z-23-003 (Attachment N). This resolution rezoned property from Commercial (C-1A) and Commercial Planned Development (CPD) to Residential Planned Development (RPD) to allow up to 285 multiple-family dwelling units. This property is currently being reviewed for a development order (DOS2022-00141) but is currently undeveloped.

ANALYSIS

This request is to amend a 38.13± acre northern tract of the Diplomat North RPD/CPD approved by Resolution Z-11-002, as amended to replace 238 dwelling units (or 138 dwelling units and 400 assisted living facility units) and 50,000 SF of commercial with a maximum height of 50 feet; with a maximum of 360 multi-family dwelling units with amenities with a maximum height of 60 feet. The 38.13-acre parcel has approximately 29.75 acres designated as Residential Planned Development (RPD) and 5.43 acres as Commercial Planned Development (CPD). The applicant seeks to derive density from an additional two commercial tracts (designated as Future Commercial Development Parcel 1 and 2 on the Master Concept Plan) which adds an additional 2.95 acres to the density calculation. Upon completion of development of the north commercial tract with residential uses, there will be four remaining commercial tracts within the development.

If approved, the maximum development parameters for this planned development will be 360 dwelling units for the northern residential tract, 105 dwelling units (with an additional 21 units of market-rate housing) for the southern residential tract, and a maximum of 200,000 square feet of commercial intensity on the remaining commercial tracts.

Planned Development Amendment:

Section 34-612 of the Lee County Land Development Code describes the intent of the utilization of the Planned Development zoning district. The purpose of planned development zoning is to further implement the goals, objectives, and policies of the Lee Plan, while providing some degree of flexibility in the planning and design of proposed developments.

LDC Section 34-145(d) establishes the review criteria for all rezoning requests. Before recommending approval of a rezoning request, the Hearing Examiner must find the request:

a) Complies with the Lee Plan;
b) Meets the Land Development Code and other applicable County regulations or qualifies for deviations;
c) Is compatible with existing and planned uses in the surrounding area;
d) Will provide access sufficient to support the proposed development intensity;
e) The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;
f) Will not adversely affect environmentally critical or sensitive areas and natural resources; and
g) Will be served by urban services, defined in the Lee Plan, if located in a Future Urban Area category.

For Planned Development rezoning requests, the Hearing Examiner must also find:

a) The proposed use or mix of uses is appropriate at the proposed location;

b) The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development; and
c) That each requested deviation:
    1) Enhances the achievement of the objectives of the planned development; and
    2) Preserves and promotes the general intent of this Code to protect the public health, safety and welfare.

Section 34-380(a) of the Lee County Land Development Code states that amendments to the Master Concept Plan or its attendant documentation may be requested at any time during the useful life of the Planned Development.

Master Concept Plan:

The applicant has provided a three-page Master Concept Plan which incorporates previous zoning amendments into the approved master concept plan and provides two development alternatives for the north residential tract (Attachment D). The plan also depicts designated preserve areas, deviation locations, access points and development tracts.

Development Pattern Considerations:

Much of the subject property is in the Central Urban future land use category as described in Lee Policy 1.1.3, which describes these areas as the 'urban core' of the county. Areas designated as Central Urban allow for standard densities from four dwelling units per acre to ten units per acre as well as a mix of commercial, public and semi-public, and limited light industrial land uses. The request proposes residential development that maximizes the proposed density while continuing to consider many commercial uses. Staff finds the proposed request consistent with Lee Plan Policy 1.1.3.

Objectives 2.1 and 2.2 of the Lee Plan intend to direct new growth to future urban areas in compact and contiguous growth patterns where adequate public facilities exist. The subject property is located near an arterial corridor where urban services exist. The applicant has provided letters of water and wastewater availability (Attachment O) as well as a Traffic Impact Statement (Attachment H) to demonstrate that the surrounding roadway system can support the proposed uses. Staff finds the rezoning request, as conditioned, consistent with Objective 2.1, Objective 2.2, and Policy 2.2.1.

Policy 5.1.2 prohibits residential development where natural physical constraints or hazards exist, including hurricane and flood hazards, soil or geologic conditions, environmental limitations, or aircraft noise. The subject property is not located in a Coastal High Hazard Area but a small portion on the west side of the development is in floodway. the subject property is located in Flood Insurance Rate Map (FIRM) Zone AE-EL15.1. Regardless of the lack of physical constraints evident on the subject property, the applicant will be required to meet the requirements of Chapter 2, Article XI of the Land Development Code regarding hurricane preparedness and mitigation at the time of application for a local development order. This includes the determination of necessary hurricane sheltering, and mitigation of impacts to state evacuation times for residential development. Staff finds the request, as conditioned, consistent with Policy 5.1.2.

Policy 5.1.5 of the Lee Plan intends to protect the existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of existing and planned residential uses

to the north, east, and west. Within the planned development itself, residential and non-residential uses are proposed to be located in separate tracts, which will continue to provide a mix of commercial and residential uses within the development in a way that is compatible with both internal and neighboring residential uses. Staff finds the request, as conditioned, consistent with Policy 5.1.5.

Policy 6.1.1 of the Lee Plan requires that applications with proposed commercial uses to reviewed for traffic and access impacts, incorporate landscaping and detailed site planning, screening, and buffering, ensure availability of services and facilities, minimize impacts on adjacent uses, be located in proximity to other similar centers, and properly mitigate environmental impacts. The applicant has provided the requisite information for a review of these factors. Staff finds the planned development rezoning request consistent with Policy 6.1.1.

Policy 6.1.4 of the Lee Plan requires that commercial uses be approved only when compatible with adjacent existing and proposed land uses as well as existing and programmed services and facilities. There are sufficient programmed services and facilities to accommodate the proposed development as later described in this report and commercial uses are sufficiently conditioned to be compatible with surrounding residential uses. Staff finds this request consistent with Policy 6.1.4.

Policy 6.1.6 of the Lee Plan requires commercial development to provide adequate and appropriate landscaping, open space, and buffering. The applicant has demonstrated compliance with the landscaping, open space, and buffering requirements of the LDC. Staff finds the request, as conditioned, consistent with Policy 6.1.6.

Policy 6.1.7 of the Lee Plan prohibits commercial developments from locating in a way that opens new areas to premature, scattered, or strip development. The subject property is located in an area that is heavily settled within the North Fort Myers Community Plan Area. Prior zoning approvals included entitlements for commercial uses, and the subject request will continue to do so. This amendment does not open the area to new premature development. Staff finds this planned development rezoning request consistent with Policy 6.1.7.

Goal 11 of the Lee Plan establishes Objectives and Policies to encourage mixed-use development to diversify land use types, facilitate a variety of housing types, and increase connectivity between housing, employment, and retail uses, while reducing vehicle trip lengths and providing greater access to alternative means of transportation. Objective 11.1 allows and encourages mixed use development within future land use categories and at appropriate locations where sufficient infrastructure exists to support the development. The request proposes a mix of uses within a cohesive development that will create new employment opportunities and provide for residential uses where there is sufficient infrastructure for existing and future development. Staff finds this planned development rezoning request consistent with Objective 11.1.

Goal 125 of the Lee Plan establishes objectives and policies to ensure that water quality is maintained or improved for the environment and people of Lee County. Objective 125.1 states that development must maintain high water quality, meeting or exceeding state and federal water quality standards. Policies 125.1.2 and 125.1.3 require new development to not degrade surface and groundwater quality and require the design of drainage systems that minimize nutrient loading and pollution. Staff finds the request, as conditioned, consistent with Goal 125, Objective 125.1, and Policies 125.1.2 and 125.1.3.

Goal 135 of the Lee Plan addresses the necessity to meet housing needs as Lee County grows in population. Policy 135.1.9 states that the county will ensure a mix of residential housing types on a

county-wide basis through the planned development process. This request proposes up to 360 multiple-family dwelling, which assists in meeting the housing needs of the county. Staff finds the request consistent with Goal 135 and Policy 135.1.9.

Goal 158 of the Lee Plan establishes the County's intent to provide a diversified and stable economy by providing a positive business climate and employment opportunities for the residents of Lee County. The request proposes a mix of commercial and residential uses that would facilitate employment in the area that is nearby to compatible non-residential uses consistent with the intent of his Goal. Staff finds the request consistent with Goal 158.

Transportation Considerations:

The applicant has provided a traffic study relative to the proposed planned development amendment (Attachment H). Lee County DOT staff provided an analysis of the traffic study and notes that the request does not significantly impact the surrounding roadway system (Attachment I).

Bicycle and Pedestrian Facilities:

The subject property fronts on Diplomat Parkway East, which is designated as a future bike/pedestrian way on Lee Plan Map 3-D. Currently there are Bicycle facilities on Diplomat Parkway East, but no pedestrian facilities are developed. At the time of development order approval, all new development must comply with the requirements of Chapter 10 of the Land Development Code.

Transit Facilities:

LeeTran Route 595 operates along Diplomat Parkway East. At the time of development order approval, the applicant will be required to comply with the requirements of Chapter 10 of the Land Development Code regarding transit stop improvements.

Urban Services:

The subject property is serviced by the North Fort Myers Fire Station and EMS Station, located approximately 2.6 miles from the property, and a Sheriff's station located approximately 2.7 miles from the property. The proposed development is currently supported by a host of urban services; therefore, the request is consistent with Lee Plan Standards 4.1.1, 4.1.2, and Policy 6.1.1.

Deviation Requests:

The applicant has submitted a revised Schedule of Deviations, carrying forward deviations from previous approvals (Attachment F). The applicant proposes to amend Deviations 7 and 8 to update the language to reflect the subject request; the applicant also seeks approval of two additional deviations. Deviations 7 and 8, as amended in strikethrough/underline format, and the two new deviations are as follows:

7. Curbside garbage collection for townhouse units and reduction in collection area for multi-family units - Deviation 7 (previously approved by ADD2007-00169 and subsequent approvals) seeks relief from the LDC §10-261 requirement that all new multiple-family residential developments to provide sufficient space for the placement of garbage containers or receptacles, to allow for curbside garbage pickup at the proposed townhouse units that are planned within the project and to allow a reduction in required multi-family container space

of 216 SF (120 + 96) for first 25 multi-family units plus 8 SF for each additional unit, to allow space for a compactor and a minimum area of 144 square feet for the storage of recyclable materials within the North RPD.

This request is to amend this deviation to allow a reduction in required multi-family container space of 216 SF (120 + 96) for first 25 multi-family units plus 8 SF for each additional unit; to allow space for a compactor and a minimum of 144 square feet for a recyclable materials collection area for the North RPD.

Staff recommends continues to recommend **approval** of this deviation.

8. **Certain internal buffers not required** - Deviation 8 [previously approved by Resolution Z-11-002 and subsequent approvals from LDC §10-416(d)(3)] seeks relief from the LDC §10-416(d)(3) 10-425(f)(1)a requirement ~~that a Type C/F~~ for a five-foot wide buffer along rights-of-way planted with five trees per 100 linear feet ~~between the proposed RPD/CPD uses internal to the development~~, to allow no buffer ~~between the RPD/CPD uses where the commercial uses are separated from the residential uses~~ within the North RPD project ~~to~~ along internal rights-of-way ~~by a private road~~.

This request is to amend this deviation to allow no buffers to along internal rights-of-way for the North RPD. Staff continues to recommend **approval** of this deviation.

9. **Backout parking within internal right-of-way** –Deviation 9 seeks relief from the LDC §34-2013(a)(2) requirement that back-out parking into rights-of-way in residential developments must be for amenities to the development such as parks and recreational facilities and not for dwelling units or commercial uses, to allow backout parking spaces for dwelling units and guests limited to the locations shown on the MCP.

The applicant notes that this deviation is to address a specific area interior to the gated portion of the residential development. Staff recommends **approval** of this deviation.

10. **Minimum Building Separation** –Deviation 10 seeks relief from the LDC §34-935(e)(4) requirement to provide a minimum building separation of one-half the sum of the building heights between two buildings, or 20 feet, whichever is greater, to allow a minimum building separation of 20 feet.

Staff recommends **approval** of this deviation.

CONCLUSION:

Based on the analysis provided above, staff offers the following review of the decision-making criteria for the planned development amendment request. Staff finds that the proposed request:

a) Complies with the Lee Plan;

Based on the analysis above, staff finds that the request is consistent with the Lee Plan. The proposed use and intensity is compatible with existing and proposed uses and meets or exceeds the objectives and policies herein.

b) Meets this Code and other applicable County regulations or qualifies for deviations;

The applicant seeks modifications to two previously approved deviations and two additional deviations, and staff recommends approval of these deviations. The applicant held the public information session within the North Fort Myers Community Plan area in accordance with LDC Section 33-1532 and provided the requisite public information session summary in accordance with this section (Attachment Q).

c) Is compatible with existing and planned uses in the surrounding area;

The mix of uses considered within the development has been previously deemed compatible with the surrounding uses and will continue to do so. The request, as conditioned, is consistent with surrounding existing and planned uses.

d) Will provide access sufficient to support the proposed development intensity;

Access is proposed on Diplomat Parkway, a City-maintained arterial roadway. Staff finds that there will be sufficient access to support the request.

e) The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;

Staff has reviewed the transportation impacts of the development and has concluded that the request does not significantly impact the roadway network in the area.

f) Will not adversely affect environmentally critical or sensitive areas and natural resources;

Staff has reviewed the potential environmental impacts and has determined that the request, as conditioned, meets the requirements of the Land Development Code and Lee Plan and sufficiently protects existing environmentally critical areas and natural resources.

g) Will be served by urban services, defined in the Lee Plan, if located in a Future Urban area category.

Additionally, staff has concluded:

a) The proposed use or mix of uses is appropriate at the proposed location;

The proposed mix of uses is appropriate at the location.

b) The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development; and

Staff finds the proposed conditions appropriate for approval and sufficiently address the public's interest expected from the proposed development.

c) That each requested deviation enhances the achievement of the objectives of the planned development and reserves and promotes the general intent of the Land Development Code to protect the public health, safety and welfare:

Staff recommends approval of the two requested deviations, and staff finds that each deviation request, as conditioned, serves to protect public health, safety, and welfare.

Staff, therefore, recommends approval of this amendment to the Diplomat North RPD/CPD, as conditioned in Attachment C.

ATTACHMENTS:

A. Expert Witness List
B. Aerial, Current Zoning, and Future Land Use Maps
C. Conditions and Deviations
D. Master Concept Plan
E. Applicant's Proposed Conditions
F. Applicant's Schedule of Deviations and Justifications
G. Applicant's Request Narrative and Lee Plan Consistency
H. Traffic Impact Statement
I. Lee County Infrastructure Planning Staff Memorandum
J. Resolution Z-11-002
K. ADD2019-00085
L. ADD2019-00181
M. ADD2020-00034
N. Resolution Z-23-003
O. Water/Sewer Availability Letters
P. Waiver of Submittal Requirements
Q. Public Information Session Summary
R. Legal Description, Sketch and Boundary Survey

DCI2023-00023
BAY HARBOUR MARINA VILLAGE

Staff Summary

CASE NUMBER & NAME:	DCI2023-00023 / Bay Harbour Marina Village
REQUEST:	Request to amend Resolution Z-16-010A, Bay Harbour Marina Village Mixed Use Planned Development, to revise the Master Concept Plan and Development Regulations, and amend the schedule of uses to add Hotel/Motel use to the "Mixed Use Building" Tract and Multiple-family use to the "Townhomes" Tract of the site.
RESOLUTION NUMBER:	Z-24-019
LOCATION:	1195 Main Street, Iona/McGregor Planning Community, Lee County, FL.
OWNER:	Bay Harbour Marina Village, LLC
APPLICANT:	Bay Harbour Marina Village
AGENT:	James Ink, P.E. Ink Engineering, Inc. 2055 West First Street Fort Myers, FL 33901
HEARING EXAMINER RECOMMENDATION:	Approve, subject to conditions and deviations in Exhibit B.
PARTICIPANTS (6):	1. Lorri Abate 2. Henry Blakely 3. Debra Macer 4. Stacy Macer 5. Joanne Semmer 6. Nicholas J. White

DCI2023-00023

Aerial

Subject Property

City Limits

N

W E

S

0 300 600 900

Feet

Lee County
Southwest Florida

Summary of Hearing Examiner Recommendation

BAY HARBOUR MARINA VILLAGE MPD Amendment

The Board found the MPD district consistent with the Lee Plan in 2020.[1] Accordingly, the Hearing Examiner limited her analysis of Lee Plan consistency to the proposed changes.

The requested amendment requests the option to replace 55 dwelling units in the Mixed Use Building with 240 hotel rooms, increase height of boat storage building by five feet, replace townhouse units with multifamily units, and authorize consumption of alcoholic beverages at the rooftop pool, on the roof deck amenity, and at the ground level children's play area.

The Hearing Examiner recommends approval, not including the request to sell/serve/consume alcoholic beverages in the children's play area.

Detailed recommendation follows

[1] Zoning Resolution Z-16-010A adopted June 17, 2020.

DCI2023-00023

Future Land Use

- Subject Property
- Central Urban
- Urban Community
- Suburban
- Industrial
- Public Facilities
- Destination Resort Mixed Use Water Dependent
- Wetlands
- Conservation Lands - Wetland
- City Limits

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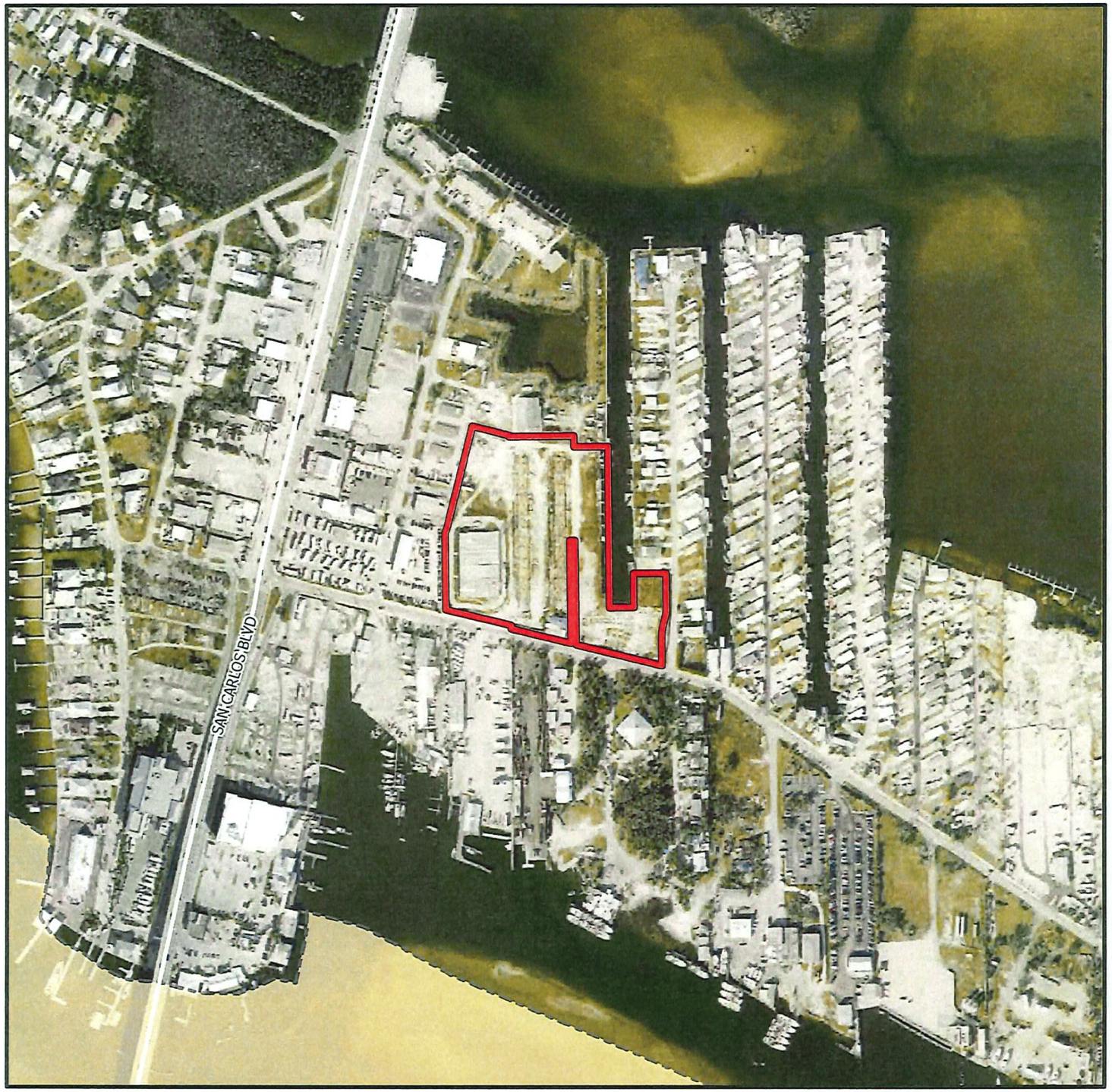
0 300 600 900
Feet

Lee County
Southwest Florida



DCI2023-00023

Aerial

Subject Property

City Limits

N

W E

S

0 300 600 900

Feet

Lee County

Southwest Florida

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

Rezoning: DCI2023-00023

Regarding: **BAY HARBOUR MARINA VILLAGE MPD**

Location: 1195, 1185, 1145, and 1135 Main Street, and
19230, 19210, and 19170 Seaside Drive
Iona/McGregor Planning Community

(District 3)

Hearing Date: June 27, 2024

I. Request

Amend the Bay Harbour Marina Village Mixed Use Planned Development, to revise the Master Concept Plan, Schedule of Uses, and Property Development Regulations to add Hotel/Motel to the "Mixed Use Building" Tract and multiple-family dwelling units to the Schedule of Uses on the "Townhomes" Tract.

The property legal description is set forth in Exhibit A.

II. Hearing Examiner Recommendation

Approve, subject to the conditions and deviations in Exhibit B.

III. Discussion

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners (Board) on applications to rezone property to the planned development zoning district.[2] In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on an application to amend the zoning approvals of the Bay Harbour Marina Village Mixed Use Planned Development (MPD). Staff recommended approval with conditions.

In preparing a recommendation to the Board, the Hearing Examiner must apply the County's Comprehensive Plan (Lee Plan), Land Development Code (LDC), and other County regulations to facts adduced at hearing. The record must contain

[2] LDC §34-145(d)(4) a.

substantial competent evidence to support the recommendation to the Board and conditions must rationally relate to potential impacts of the requested change.[3]

Discussion supporting the Hearing Examiner's recommendation of approval follows.[4]

Synopsis of Request

Applicant seeks to amend the 7.47 acre Bay Harbour Marina Village MPD zoning approvals to accomplish the following:

- Amend Schedule of Permitted Uses to:
  - add Dwelling Unit, Multiple Family Building to the Townhouse tract, rename tract "Townhouse/MF", and limit number of units to 20.
  - add Hotel/Motel use to the Mixed Use Building, noting the building may include either 55 dwellings or 240 hotel rooms.
  - authorize consumption of alcoholic beverages on rooftop around pool, deck amenity, and at ground level children's play area.
- Amend the Master Concept Plan (MCP) to:
  - depict expanded deck areas eligible for consumption on premises.
  - reflect intended design of the Townhouse/MF tract.
  - denote increased height of boat storage building from 70 to 75 feet.[5]
  - reflect minor changes for Mixed Use Building layout including building access, and sidewalks.
  - designate an existing building originally proposed for removal as harbormaster/ship store.
  - designate ground level play area for children eligible for consumption on premises.

The Department of Community Development staff recommended approval of the request finding the proposed amendments to the MPD satisfy LDC review criteria and the Lee Plan. Staff did not support Applicant's request to serve/consume alcoholic beverages in the ground level children's play area.

Discussion supporting approval of the request, subject to conditions follows below.[6]

[3] LDC §34-145(d).
[4] Hearing Examiner codified conditions and deviations from prior approvals, eliminating those no longer applicable.
[5] Necessary to accommodate parapet wall and FEMA related flood changes.
[6] Hearing Examiner does not recommend approval of consumption on premises in ground level amenity area.

History

The Board rezoned the 7.47 acre site MPD in 2020 authorizing development of up to 75 dwelling units, a marina with 286 dry slips and 29 wet slips, boat launching facility, 30,000 square feet commercial retail/office space, and 20,000 square feet civic space with maximum building heights of 100 feet. The building features a tiered architectural design.[7]

The site is currently under construction pursuant to an active development order.[8]

The Board found the MPD district consistent with the Lee Plan and LDC by virtue of its 2020 approval of the project.[9] Accordingly, the Hearing Examiner must limit her analysis to the proposed changes. The requested amendment requests the option to replace 55 dwelling units in the Mixed Use Building with 240 hotel rooms, increase height of boat storage building by five feet, replace townhouse units with multifamily units, and authorize consumption of alcoholic beverages at the rooftop pool, on the roof deck amenity, and also at the ground level children's play area.

Lee Plan Consistency

Planned developments must be consistent with the Lee Plan and minimize negative effects on neighboring land uses.[10]

The property is designated Central Urban, a future land use designation that features an array of land uses due to access to a wide range of public services and infrastructure.[11]

Development in coastal areas is subject to additional requirements under the Conservation and Coastal Management Element of the Lee Plan.[12] The property is within the Hurricane Category 1 Storm Surge/Tide area and Evacuation Zone A.[13] As such, the project is subject to County land development regulations designed to reduce vulnerability from natural disasters such as hurricanes and flooding.[14]

The proposal to convert townhouse dwellings to a multifamily structure over parking will have no net impact on hurricane evacuation times. The first habitable floor of multifamily units must be above base flood, similar to the previously approved townhouse use. The proposal to replace 55 approved dwellings to

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[7] The building steps back away from Main Street reducing building heights closest to the road. The effect is to attenuate mass along the road frontage. Testimony of James Ink, PE.
[8] James Ink. PE testified current construction activity relates to the marina use.
[9] Zoning Resolution Z-16-010A adopted June 17, 2020.
[10] LDC §34-411.
[11] Lee Plan Policy 1.1.3.
[12] Lee Plan Objective 2.6. *See* Goals 72, 73, 101.
[13] Florida Statutes 163.3178(2)(h), Lee Plan Map 5-A.
[14] Lee Plan Goal 72, Objective 72.2; LDC 2-481 *et seq.*

hotel/motel use may reduce risk to future residents. Applicant testified hotel guests are unlikely to remain in the wake of a pending hurricane.

The remaining changes do not impact the project's hurricane vulnerability.

Compatibility

Compatibility with surrounding development remains relevant when adding new uses to an approved planned development. It is appropriate to consider whether hotel rooms, multifamily dwellings, and ground level consumption on premises are compatible with surrounding land uses.

The requested addition of hotel to the list of permitted uses is consistent with the County's vision that tourism play a significant role in the County's economy.[15] Expanding waterfront lodging options promotes Lee Plan directives to expand the leisure tourism industry.[16] A hotel will also provide employment opportunities for residents.[17]

Expansion of rooftop areas available for consumption on premises has the potential to impact surrounding land uses, particularly when accompanied by outdoor entertainment with amplified sound. However, previously approved conditions limit hours of outdoor seating to 10:00 AM until 10:00 PM, Sunday through Thursday, and 8:00 AM to 10:00 PM Friday and Saturday.[18] Outdoor amplified sound is prohibited after 10:00 PM.[19]

The Hearing Examiner finds the request to expand the scope of the COP to include the ground level children's play area incompatible with surrounding land uses.[20]

The proposed five foot height increase to the boat storage building to 75 feet remains within the project's 100 foot height limitation. Further, the plan to incorporate additional tiers to the mixed use building will ameliorate visual impact of the structure from Main Street.

Conditions and LDC provisions regulate buffers, lighting, hours of operation, amplified sound, and architecture. Planned signalization of the Main Street and San Carlos Boulevard intersection will improve safety of residents and patrons of

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[15] Lee Plan Vision Statement, bullet four.
[16] Lee Plan Goals 159, 161, Objective 161.1, Policies 161.3.1.
[17] Lee Plan Objectives 158.2, 160.2.
[18] See Condition 5, and condition placed on Deviation 10.
[19] See Condition 6.
[20] Expansion of the COP to include the ground level children's play area was not supported by staff, who concluded consumption of alcoholic beverages was incompatible with an area designed for use by children. Testimony of Chahram Badamtchian, AICP. The Hearing Examiner agrees with this assessment and also finds the use incompatible with the civic area, which is designed to serve as park facility open to the public.

businesses in the area.[21] The Hearing Examiner concludes the request is compatible with surrounding land uses.

LDC Compliance

Development must comply with the LDC or seek deviations. A "deviation" is a departure from a land development regulation.[22] Applicants must demonstrate deviations enhance the planned development and will not cause a detriment to the public.[23] The MPD has nine previously approved deviations.

Development of the hotel and multifamily dwellings will be subject to impact fees at the time of site development.[24]

Transportation

Planned developments must have access to roads with sufficient capacity to support development.[25]

The project has direct access to Main Street. Residents and guests may access the San Carlos Boulevard corridor via Main Street or turn north on Buttonwood Drive to enter the corridor at a signalized intersection.

Expert testimony demonstrated hotel and multifamily uses will not have a detrimental impact on the surrounding road system.[26] The transportation analysis concluded the proposed changes increase project trip generation by only 26 trips during peak hours. Transportation experts testified area roadways will operate within acceptable levels of service at build out in 2027.[27]

The area may experience construction related disruptions commencing this summer. However, once complete, the planned signalization of the Main Street and San Carlos Boulevard intersection will improve safety for the traveling public.

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[21] *See* Conditions 3, 5 (hours of operation on rooftop), 6 (amplified sound), 8 (buffers),12 (traffic), 17 (site design), 19 (architecture), 20 (perimeter plantings).
[22] LDC §34-2.
[23] LDC §34-373(a)(9).
[24] LDC Chapter 2, Article VI, Divisions 2 and 5.
[25] LDC §§34-145(d)(4), 34-411.
[26] Hotel units would replace 55 of the 75 dwellings approved on the property. Testimony of Yuri Bykau, P.E. Staff Report Attachments E, F: Memo from MD Rakibul Alam, Senior Transportation Planner dated May 25, 2024, and Traffic Impact Statement for Bay Harbour Marina Village MPD prepared by TR Transportation Consultants Inc. dated March 7, 2024.
[27] There was extended discourse on the record on potential traffic-related impacts from day-pass users of the hotel facilities. The Hearing Examiner finds impacts from potential day passes were accounted for in: (1) the Board's approval commercial recreation uses on the property and the Traffic Impact Statement, which evaluated the transportation impacts of a resort hotel. Day passes are customary components of resort hotels.

Site-related improvements will be evaluated at the time of development order permitting.

Environmental and Natural Resources

Planned developments must be designed to protect/preserve a site's natural features.[28]

The proposed amendments to the MPD do not change the project's impacts to the environment.

Public Services

The Lee Plan requires an evaluation of public services and infrastructure during the zoning process.[29] Public services and infrastructure include services, facilities, and capital improvements necessary to support development.[30]

The proposed amendments to the MPD do not alter the Board's previous finding there are adequate public services and infrastructure to serve the project.

Public Participation

Members of the public attended the Hearing Examiner hearing. Chief among their concerns were traffic, noise, and the consumption of alcohol within the ground level play area.

Conditions

The County must administer the zoning process so that proposed land uses acceptably minimize adverse impacts to adjacent property. Conditions must plausibly relate to impacts anticipated from development and mitigate impacts to public health, safety, and welfare.[31]

The MPD is subject to 21 conditions to ensure compatibility with surrounding land uses.[32]

The Hearing Examiner revised some conditions to improve clarity.[33] The wording is designed to facilitate understanding, implementation, and compliance.

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[28] LDC §§34-145(d)(4), 34-411.
[29] Lee Plan Policy 2.2.1.
[30] Lee Plan Glossary.
[31] LDC §34-932.
[32] There are 21 conditions as well as conditions placed on deviations.
[33] LDC §34-932.

IV. Findings and Conclusions

Based on the testimony and exhibits presented in the record of this Request, the Hearing Examiner makes the following findings and conclusions:

A. The proposed amendments to the MPD:

1. Comply with the Lee Plan. Lee Plan Goals 2, 4, 5, 6, 11, 32, 37, 60, 61, 62, 63, 72, 73, 77, 95, 101, 123, 158, 159, 160, 161, Objectives 1.5, 2.1, 2.2, 4.1, 5.1, 6.1, 8.1, 32.1, 32.2, 72.2, 101.2, 123.4, 128.4, 128.5, 158.1, 158.2, 160.2, 161.1, 161.4, Policies 1.1.3, 1.4.5, 2.1.2, 2.2.1, 4.1.1, 5.1.1, 5.1.5, 6.1.1, 6.1.3, 6.1.4, 6.1.5, 6.1.6, 11.1.2, 32.1.1, 32.1.2, 32.2.1, 32.2.4, 101.3.5, 125.1.2, 135.1.9, 160.1.3, 161.1.2, 161.3.1, 161.3.2, 161.4.3; Maps 1-A & B, 4-A & B.

2. Meet the LDC and other County regulations or qualify for deviations. LDC Chapters 2, 10, 34.

3. Are compatible with existing and planned uses in the area. Lee Plan Policies 2.1.2, 2.2.1, 5.1.5, 6.1.3, 6.1.4, 6.1.7, 135.9.5;

4. Provide access sufficient to support the proposed development intensity and impacts on transportation facilities will be addressed by County regulations or conditions of approval. LDC §34-411(d), (e).

5. Will not adversely affect environmentally critical areas and natural resources. Lee Plan Goals 60, 61, 77, Objectives 77.1, 77.2, 123.4, 126.2; Policies 6.1.6, 125.1.2, 126.2.1, Lee Plan Standard 4.1.4.

6. Will be served by public services and infrastructure. Lee Plan Goals 2, 4, 95, Objectives 2.1, 2.2, 53.1, 56.1, Policies 2.2.1, 6.1.4, 161.1.2, Lee Plan Standards 4.1.1, 4.1.2, Lee Plan Maps 4-A, 4-B.

B. The proposed mix of uses is appropriate. Lee Plan Goals 2, 5, 6, 11, 159, 161, Objective 101.2, 158.2, 160.2, 161.1, Policies 5.1.5, 6.1.1, 6.1.2, 6.1.4, 6.1.7, 101.3.2, 161.3.1.

C. The conditions provide sufficient safeguards to protect the public interest and reasonably relate to impacts expected from the development. LDC §34-932.

D. As conditioned, the deviations:

1. Enhance the planned development, and

2. Preserve and promote public health, safety, and welfare.

Recommendation Date: July 18, 2024.

Donna Marie Collins
Chief Hearing Examiner

Lee County Hearing Examiner
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398

Exhibits to Hearing Examiner's Recommendation

Exhibit A Legal Description and Vicinity Map
Exhibit B Recommended Conditions and Deviations
Exhibit C Exhibits Presented at Hearing
Exhibit D Hearing Participants
Exhibit E Information

Exhibit A

LEGAL DESCRIPTION AND VICINITY MAP

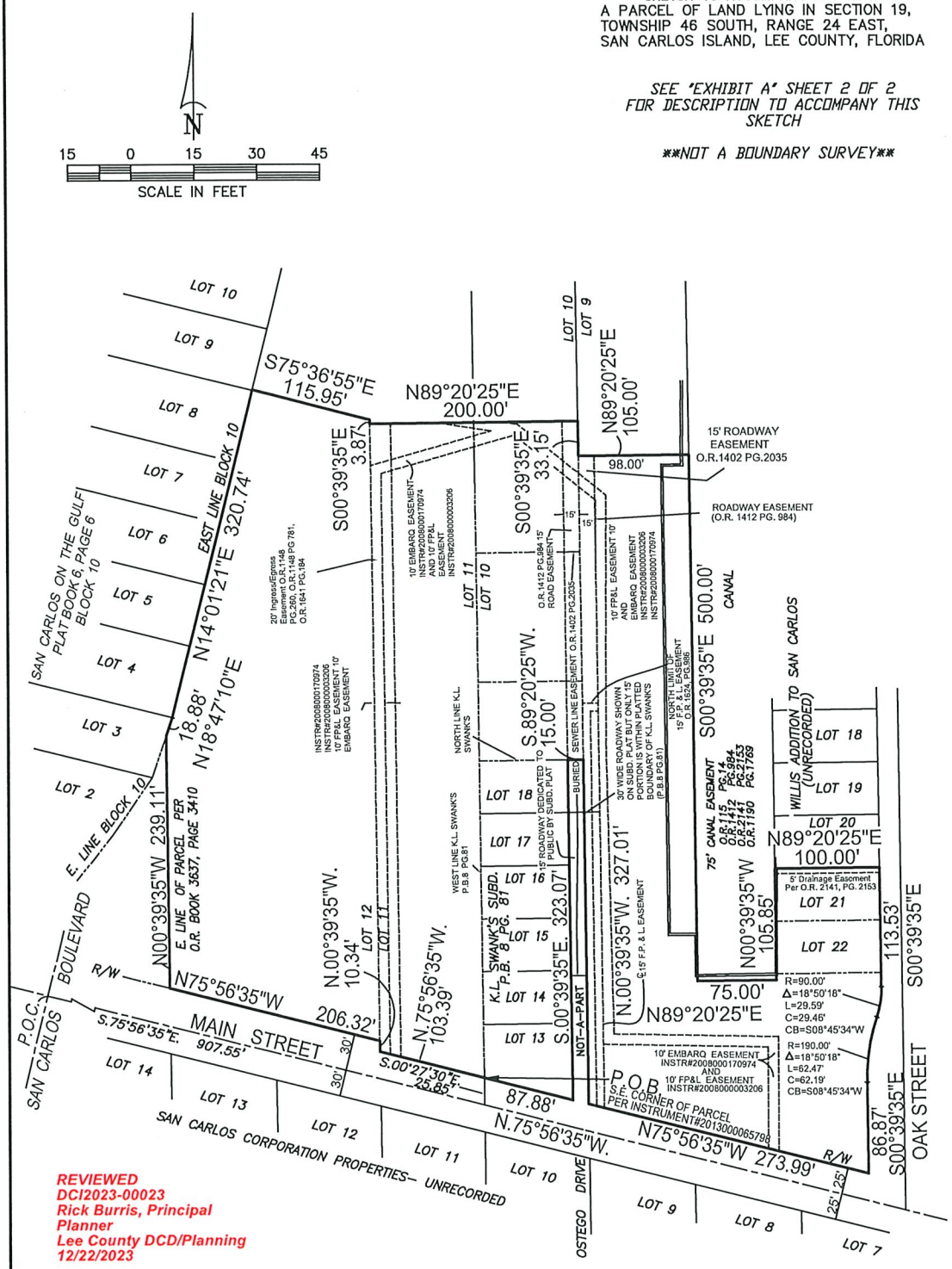
DCI2023-00023 Lee County ePlan

Exhibit A

SKETCH TO ACCOMPANY DESCRIPTION:
A PARCEL OF LAND LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, SAN CARLOS ISLAND, LEE COUNTY, FLORIDA

SEE "EXHIBIT A" SHEET 2 OF 2 FOR DESCRIPTION TO ACCOMPANY THIS SKETCH

NOT A BOUNDARY SURVEY



REVIEWED
DCI2023-00023
Rick Burris, Principal Planner
Lee County DCD/Planning
12/22/2023

SKETCH NOTES:

1. *BASIS OF BEARING SHOWN HEREON TAKEN FROM THE NORTH LINE OF MAINS STREET AS BEING "ASSUMED" AS N.75°56'35"W.*
2. *FIELD NOTES IN 2020 FILE.*
3. *UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.*
4. *THIS MAP/PLAT IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.*
5. *ALL BEARINGS AND DISTANCES ARE PLAT AND MEASURED, UNLESS OTHERWISE SHOWN.*
6. *THIS SKETCH IS INTENDED TO BE VIEWED AS AN 8 ½ x 14", 120 SCALE DRAWING.*

LEGEND:

P.U.E.	PUBLIC UTILITY EASEMENT
D.E.	DRAINAGE EASEMENT
(1)	CURVE NUMBER
R/W	RIGHT–OF–WAY
℄	CENTERLINE
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
O.R.	OFFICIAL RECORDS

BAY HARBOR

PHILLIP M. MOULD
8180 GULL LANE
FORT MYERS, FLORIDA 33967
(239)–645–1348

DESCRIPTION TO ACCOMPANY SKETCH :
A PARCEL OF LAND LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, SAN CARLOS ISLAND, LEE COUNTY, FLORIDA

NOT A BOUNDARY SURVEY

"EXHIBIT A"

DESCRIPTION:
A PARCEL OF LAND LYING IN SECTION 19, TOWNSHIP 46 SOUTH, RANGE 24 EAST, SAN CARLOS ISLAND, LEE COUNTY, FLORIDA, PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF SAN CARLOS BOULEVARD 100 FEET WIDE AND THE CENTERLINE OF MAIN STREET 50 FEET WIDE RUN S75°56'35"E ALONG THE CENTERLINE OF MAIN STREET FOR 907.55 FEET; THENCE RUN N00°39'35"W FOR 25.85 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF MAIN STREET BEING THE SOUTHEAST CORNER OF THAT CERTAIN PARCEL AS RECORDED IN INSTRUMENT NUMBER 2013000065798, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, TO THE POINT OF BEGINNING.

THENCE RUN N75°56'35"W ALONG SAID NORTHEASTERLY LINE OF MAIN STREET FOR 103.39 FEET; THENCE RUN N00°39'35"W FOR 10.34 FEET TO A POINT ALONG THE SAID NORTHEASTERLY LINE OF MAIN STREET; THENCE RUN N75°56'35"W ALONG THE SAID NORTHEASTERLY LINE OF MAIN STREET FOR 206.32 FEET; ; THENCE RUN N00°39'35"W ALONG THE EASTERLY LINE OF A PARCEL DESCRIBED IN OFFICIAL RECORD BOOK 3637 AT PAGE 3410 FOR 239.11 FEET TO AN INTERSECTION WITH THE SOUTHEASTERLY LINE OF BLOCK 10, SAN CARLOS ON THE GULF, AS RECORDED IN PLAT BOOK 6 AT PAGE 6 OF SAID PUBLIC RECORDS; THENCE RUN N18°47'10"E ALONG THE SOUTHEASTERLY LINE OF SAID BLOCK 10 FOR 18.88 FEET; THENCE RUN N14°01'21"E ALONG SAID SOUTHEASTERLY LINE FOR 320.74 FEET; THENCE RUN S75°36'55"E FOR 115.95 FEET ; THENCE RUN S00°39'35"E FOR 3.87 FEET; THENCE RUN N89°20'25"E 8 FOR 200.00 FEET TO AN INTERSECTION WITH THE WEST LINE OF LANDS DESCRIBED IN OFFICIAL RECORD BOOK 3283 AT PAGE 3540 OF SAID PUBLIC RECORDS; THENCE RUN S00°39'35"E ALONG SAID WEST LINE FOR 33.15 FEET; THENCE RUN N89°20'25"E 105.00 FEET ; THENCE RUN S00°39'35"E FOR 500.00 FEET; THENCE RUN N89°20'25"E FOR 75.00 FEET; THENCE RUN N00°39'35"W FOR 5.85 FEET TO THE SOUTHWEST CORNER OF LOT 22, WILLIS UNRECORDED ADDITION TO SAN CARLOS; THENCE CONTINUE N00°39'35"W FOR 100.00 FEET, BEING THE NORTHWEST CORNER OF LOT 21, WILLIS UNRECORDED ADDITION TO SAN CARLOS; THENCE RUN N89°20'25"E FOR 100.00 FEET TO AN INTERSECTION WITH THE WESTERLY LINE OF OAK STREET; THENCE RUN S00°39'35"E ALONG THE WEST LINE OF OAK STREET FOR 113.53 FEET TO A POINT OF CURVATURE; THENCE RUN SOUTHERLY AND SOUTHWESTERLY ALONG THE ARC OF A CURVE TO THE RIGHT OF RADIUS 90.00 FEET, CHORD BEARING S08°45'34"W, CHORD 29.46 FEET, DELTA 18°50'18", FOR 29.59 FEET TO A POINT OF REVERSE CURVATURE; THENCE RUN SOUTHWESTERLY AND SOUTHERLY ALONG THE ARC OF A CURVE TO THE LEFT OF RADIUS 190.00 FEET, CHORD BEARING S08°45'34"W, CHORD 62.19 FEET, DELTA 18°50'18", FOR 62.47 FEET TO A POINT OF TANGENCY; THENCE RUN S00°39'35"E ALONG THE WEST LINE OF SAID OAK STREET FOR 86.87 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF MAIN STREET; THENCE RUN N75°56'35"W ALONG SAID NORTHEASTERLY LINE FOR 273.99 FEET TO THE EAST LINE OF K.L. SWANK'S SUBDIVISION AS RECORDED IN PLAT BOOK 8, PAGE 81 OF SAID PUBLIC RECORDS, SAID LINE BEING THE EAST LINE OF TRACT 10 OF THE UNRECORDED PLAT OF PROPERTY OF SAN CARLOS CORPORATION; THENCE RUN N00°39'35"W ALONG THE EAST LINE OF SAID SUBDIVISION AND THE EAST LINE OF SAID TRACT 10 FOR 327.01 FEET TO THE NORTH LINE OF SAID K.L. SWANK'S SUBDIVISION; THENCE RUN S89°20'25"W ALONG THE NORTH LINE OF SAID SUBDIVISION FOR 15.00 FEET TO THE NORTHEAST CORNER OF LOT 18 OF SAID SUBDIVISION; THENCE S00°39'35"E ALONG THE WEST LINE OF OSTEGO DRIVE ACCORDING TO THE PLAT OF SAID K.L. SWANK'S SUBDIVISION FOR 323.07 FEET TO THE NORTHEASTERLY LINE OF SAID MAIN STREET; THENCE N75°56'35"W ALONG SAID NORTHEASTERLY LINE OF MAIN STREET FOR 87.88 FEET; THENCE RUN N.00°39'35"W. FOR 327.01 FEET; THENCE RUN S.89°20'25"W. FOR 15.00 FEET; THENCE RUN S.00°39'35"E. FOR 323.07 FEET TO A POINT ALONG THE AFORESAID NORTHEASTERLY LINE OF MAIN STREET; THENCE RUN N.755635"W. ALONG SAID NORTHEASTERLY LINE, FOR 87.88 FEET, TO THE POINT OF BEGINNING.

TO THE POINT OF BEGINNING.

CONTAINING: 325,271.79 7.47 ACRES, MORE OR LESS.

REVIEWED
DCI2023-00023
Rick Burris, Principal Planner
Lee County DCD/Planning
12/22/2023

BAY HARBOR

PHILLIP M. MOULD
8180 GULL LANE
FORT MYERS, FLORIDA 33967
(239)–645–1348

PHILLIP M. MOULD
PROFESSIONAL SURVEYOR AND MAPPER
LS6515 – STATE OF FLORIDA
11/05/2020

DCI2023-00023

Zoning

Subject Property

City Limits

N

W E

S

0 300 600 900

Feet

Lee County

Southwest Florida

Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS

CONDITIONS

1. Master Concept Plan (MCP). Development must be consistent with the 4-page MCP entitled "Bay Harbour Marina Village," dated May 28, 2024, as modified by the conditions below. (MCP is Exhibit B-1)

   Lee Plan and Land Development Code (LDC). Development permits must comply with the Lee Plan and LDC, except where deviations have been approved herein. Changes to the adopted MCP, conditions or deviations are subject to further development approvals.

   Approved Development Parameters. The MPD may include up to 75 residential dwelling units or 20 dwelling units and a 240-room hotel, a marina with 286 dry boat slips, and up to 29 wet slips, a boat launching facility, 30,000 square feet of commercial retail/office and mini-storage, a parking garage and 20,000 square feet of civic space. Maximum approved building height is 100 feet.

   Codified Resolution. The conditions and deviations herein represent a codification of all development approvals.

2. Permitted Uses and Site Development Regulations

   a. Schedule of Permitted Uses

   TOWNHOMES/MF (East of Bay Harbour Circle)
   Dwelling units:
   - Townhouse
   - Multiple Family

   Essential Services
   Essential Services Facilities: Group I
   Excavation: Water Retention
   Models Units (Limited to 4)
   Residential accessory uses

   MARINA AND EAST COMMERCIAL LINER BUILDING
   Bait and Tackle Shop
   Banks and Financial Establishments: Group I
   Boats:
   - Part Store
   - Rental
   - Sales

   Essential Services

Essential Service Facilities: Group I
Excavation: Water Retention
Fences, Walls
Food Stores: Group I
Gift and Souvenir Shop
Marina
Marina Accessory Uses, limited to marine supplies and fuel
Parking Lot: Accessory
Specialty Retail Shops: Groups I & II
Transportation Services: Group I-A

COMMERCIAL LINER BUILDING
Convenience Food and Beverage Store (limited to one)
Consumption on Premises (limited to two for this building)
Drugstore, Pharmacy
Essential Services
Essential Service Facilities: Group I
Excavation: Water Retention
Gift and Souvenir Shop
Hardware Store
Insurance Agencies
Package Store
Personal Services: Groups I & II
Real Estate Sales Office
Restaurants: Groups I, II & III, including outdoor seating
Specialty Retail Shops: Groups I & II

MIXED USE BUILDING
Accessory Uses and Structures
Administrative Offices
ATM
Banks and Financial Establishments1 Group I
Boats:
- Parts store
- Rental
- Sales
- Storage, Dry

Business Services: Group I
Caretaker's Residence
Clothing: Store, General
Clubs:
- Commercial
- Fraternal, membership organization
- Private

Communication Facility, Wireless, Antenna Supporting Structure or Roof Mounted Antenna, Towers Prohibited

Consumption on Premises, limited to the area depicted on the MCP shown hatch lines which are at minimum elevation of 65 feet above ground. Ground level consumption of alcoholic beverages not permitted.
Drugstore, Pharmacy
Dwelling units:
Multiple-family maximum 55 units with no hotel rooms
Entrance Gates and Gatehouse
Essential Services
Essential Service Facilities: Group I
Excavation: Water Retention
Fences, Walls
Food Stores: Group I
Gift and Souvenir Shop
Hardware Store
Hotel/Motel maximum 240 rooms in lieu of 55 multiple-family units
Insurance Agencies
Medical Office
Models:
Units
Parking Lot:
Accessory
Commercial
Personal Services: Groups I & II
Real Estate Sales Office
Recreational Facilities, Commercial: Groups I & III
Residential Accessory Uses
Restaurants: Groups I, II & III, including outdoor seating
Signs
Specialty Retail Shops: Groups I & II
Storage: Indoor
Temporary Uses
Warehouse: Mini-Warehouse

CIVIC SPACE
Recreational Facilities, Commercial: Group III, Swimming Pools, Tennis Courts, and similar activities not grouped elsewhere. No sale, service or consumption of premises permitted in Civic Space Area.

b. Site Development Regulations

MIXED USE BUILDING & COMMERCIAL LINER BUILDINGS:

Minimum Lot Area:	15,000 S.F.
Minimum Lot Width:	100 feet
Minimum Lot Depth:	75 feet

Minimum Setbacks:	
Street:	57.5 feet
Side Yard:	50 feet
Rear Yard:	50 feet
Waterbody:	125 feet
Maximum Building Height:	
Liner Buildings:	30 feet
Mixed Use Building:	100 feet*(Subject to Condition 3)
Maximum Lot Coverage:	45%
TOWNHOMES/MF	
Minimum Lot Area:	1,200 S.F.
Minimum Lot Width:	24 feet
Minimum Lot Depth:	50 feet
Minimum Setbacks:	
Street:	5 feet 0 feet for private overhang of building
Side Yard:	20 feet waterfront and 10 feet non-waterfront
Rear Yard (South side):	20 feet
Waterbody:	0 feet
Maximum Building Height:	49 feet
MINIMUM OPEN SPACE	
Townhomes & Multiple-family:	40%
Commercial:	30%

3. Mixed Use Building. The Mixed-Use Building shall provide tiered, step back architecture consistent with the Building Sections Exhibit of the MCP. The Southern facade facing Main Street must include 4 tiers before reaching maximum height of 100 feet. From 57.5 feet to 75 feet from the Main Street Right-of-Way, building height is limited to 30 feet, from 75 feet to 95 feet from the Main Steet Right-of-Way, building height is limited to 70 feet, and from 95 feet over the balance of the residential portion of the mixed use building the maximum height is 100 feet.

4. Marina. The marina use is an integral part of the development design and must be part of the overall development order plans submitted for approval. The project shall not be developed without marina and dry storage uses substantially in compliance with the approved MCP. The project. as part of the required marina management plan, will include provisions that address the forklift operation, including but not limited to, OSHA training, compliance and certification for operators, safety/operational requirements, training for marina personnel, and intersection management features.

5. Hours of Operation. Commercial operations, except for the Marina and Dry Storage uses, are limited to operating hours of 6:00 AM until 10:00 PM, Sunday through Thursday, and 6:00 AM to Midnight on Friday and Saturday. Outdoor Seating is limited to 10:00 AM until 10:00 PM, Sunday through Thursday, and 8:00 AM to 10:00 PM Friday and Saturday. The Marina and Dry Storage uses are limited to operating hours of 6:00 AM until 30 minutes after sunset, Monday through Sunday.

6. Amplified Sound. No outdoor amplified sound is allowed after 10 PM nightly.

7. Environmental Conditions
   a. Covered wet slips are not permitted.
   b. Live-aboard not permitted.
   c. Prior to approval of a dock and shoreline permit, the applicant must submit a modified Florida Department of Environmental Protection (DEP) Environmental Resource Permit (ERP) approving the proposed changes to the existing dock configuration.
   d. Development order plans must depict open space in substantial compliance with the approved MCPs and Demonstrate:

      i. A minimum of 2.61 acres of Open Space must be provided for this development. Approximately 20,000 square feet of the Open Space must be dedicated to a publicly accessible Civic Area.

      ii. Should the Townhomes/MF be developed as a separate tract, local development order must demonstrate a minimum of 10 percent Open Space.

8. Buffers/Landscaping:
   a. Prior to local development order approval, the landscape plans must include the following:

      i. Plantings along the canal shall be required between the walkway/floating dock and parking area, depicted as Special Waterfront buffer, to minimize the visual impact of the development. Planting shall consist of native shrubs a minimum of 48 inches in height at time of planting to be maintained at a minimum 60 inches along 50 percent of the west bank canal frontage, in addition a minimum of one palm tree per 20 feet shall be installed at a minimum height of 20 feet clear trunk (c.t.) at the time of planting.

      ii. Type A buffers where the property boundary abuts commercial zoned (C-2) property.

   b. All required landscaping will be Florida Friendly, native landscape materials.

9. Hurricane Conditions-Residential
Prior to any redevelopment of the site, including any single development pod, an agreement must be executed between the County and the property owners to mitigate the project's hurricane sheltering and evacuation impacts. The agreement will include either provisions to construct on site shelter to withstand Category 5 hurricane force winds and storm surge to accommodate residents, or a fee in lieu pursuant to the Lee County requirements. The decision as to which type of mitigation to provide will be at the sole discretion of Lee County.

Should the on-site shelter be required by the Lee County Department of Public Safety, the on-site shelter(s) and all required equipment and supplies for these facilities must comply with the following standards:

i. Elevation to the anticipated storm surge from a land falling Category 5 storm. In no case the elevation shall be less than 25.7 NAVD.

ii. Construction to withstand winds of 200 mph in accordance with the Florida Building Code.

iii. Construction with minimum exterior glass with all glazed openings provided with impact protection in accordance with the Florida Building Code.

iv. Equipped with emergency power and potable water supplies to last up to five days.

v. Protected with adequate ventilation, sanitary facilities, and first aid medical equipment.

vi. Developer/operator must conduct annual training of the on-site shelter managers. The training is to be conducted by the Red Cross and approved by Lee County Emergency Management.

10. Plan for Post Storm Recovery and Evacuation. Developer/operator must submit a post storm recovery plan including post storm evacuation plan for review and approval by Lee County Emergency Management.

11. Hurricane Related Educational Materials. The property manager or homeowners' association or property owners' association must provide evacuation and storm safety educational materials on a not less than annual basis.

12. Traffic Conditions
a. The applicant must provide fee title to the County for any additional roadway right-of-way (R/W) located on the applicant's property which may be required by the County during the development order process for turn lanes associated with the project. This R/W dedication will be for site-related improvements and will be subject to no impact fee credit.

b. As part of the first development order, Main Street eastward from San Carlos Boulevard to the easternmost project limits must be designed and constructed/improved as depicted on the MCP. This roadway improvement will be subject to any deviations determined appropriate by the Community Development Director during the development order process. This roadway improvement must include bicycle and pedestrian facilities to promote alternative modes of transportation by site users.

c. A Type "F" curb and gutter must be designed and constructed on Main Street along the project frontage.

13. Right of Way Vacation
No development order for this site shall be approved, unless and until a right-of-way vacation request to vacate Ostego Drive (AKA Seaside Drive) is applied for and approved by the Board of County Commissioners, or the developer demonstrates at the time of the development order that the MCP can be developed without the need for additional setbacks from the existing public right-of-way.

14. Utilities
The utility lines for potable water and sanitary sewer must be installed on the site and this development must be connected to those services as part of any development activity on this site. The applicant will be financially responsible for the upsizing and improvement of the lines, as may be necessary to provide water and sewer services to this site.

15. Boat Storage. Outdoor storage of boats and trailers is prohibited.

16. Boat Sales. Boat sales will be permitted only for boats stored in the dry boat storage facility or moored in a wet slip. Outdoor display of boats for sale is prohibited.

17. Site Design Elements. The Bay Harbour development must be designed with all of the following design elements:

a. Traffic Calming. Traffic calming measures within internal roadways, including but not limited to speed bumps or tables, raised pedestrian crossings, street trees and pedestrian- friendly landscaping; street furniture; or the use of pavers and contrasting materials within the roadways. Traffic calming measures shall not promote additional noise from truck traffic utilizing Ostego Drive, AKA Bay Harbour Circle.

b. Sidewalks. A sidewalk/path network, not less than 5 foot in width, with external (i.e. outside of the proposed buildings) pedestrian connections for connecting the residential uses to the commercial uses and the public rights of way must be provided.

fails to obtain requisite approvals or fulfill obligations imposed by state/federal agencies or if applicant undertakes actions resulting in a violation of state or federal law. Applicant must obtain applicable state/federal permits prior to commencing development.

DEVIATIONS

1. Connection Separation
   A deviation from the LDC §10-285, which requires a connection separation of 330 feet on Collector roads to allow the existing conditions to remain. There are at least 6 driveways across the street, which are very close to the existing entrances to this development. There are also two driveways on the same side of the roads that are 120 and 173 feet from the existing driveways of the subject site. It is not possible to design the access point or points in a way that would not require a deviation from the connection separation. The applicant has demonstrated that the deviation would enhance the achievement of the objectives of the planned development and will not cause a detriment to public interests. This deviation is APPROVED.

2. Right-of-way width
   A deviation from the LDC §10-296, which requires a 40-foot right of way/easement width for two-way traffic with closed drainage to allow a 30-foot right of way/easement width for Ostego Drive, AKA Bay Harbour Circle. The proposed configuration of the low speed accessway, containing a sidewalk in a 30' wide right of way/easement, will provide the appropriate structural cross section and closed drainage. This deviation is APPROVED.

3. Withdrawn

4. Right-of-way Buffer
   A deviation from the LDC §10-416(d)(3), which requires a Type "D" buffer adjacent to a right-of-way to allow no buffer. The existing right-of-way is only 15 foot in width. The applicant is proposing a 30-foot-wide access easement adjacent to the right of-way. There is no adequate space and place to provide this landscaping. This deviation is APPROVED.

5. Buffer trees and shrubs
   A deviation from the LDC §10-416(d)(4), which requires a Type "B" buffer to be 15 feet in width, a double staggered hedge row and 5 trees per 100 linear feet to allow a varying buffer width between 10 to 13 feet, native shrubs a minimum of 48 inches in height at the time of planting to be maintained at a minimum of 60 inches along 50 percent of the west bank canal frontage, and one palm tree per 30 feet installed at minimum height of 20 feet clear trunk at the time of planting. A special waterbody buffer along the existing walkway and docks was approved for this site as part of the approved Special Exception for the Compass Rose Marina. The proposed

c. Civic Space. The approximately 20,000 square feet Civic Space must include a pedestrian plaza to be provided adjacent to the waterfront with not less than 4,000 square feet of area. In addition, not less than 5 canopy shade trees must be a part of the plaza, and appropriate benches and aesthetic elements shall be provided. If the stormwater management system is located adjacent to the pedestrian plaza, it must be integrated into the plaza design utilizing green infrastructure practices which may include but are not limited to low impact development, LEED, and/or Florida Green Building Coalition standards.

d. Bicycle Racks. Bicycle racks must be provided throughout the development.

e. Main Street Frontage. Along the Main Street frontage, the developer will provide:

i. An Easement for a Lee Tran stop, sufficient to include a pull off location, pedestrian shelter and pedestrian interconnection to multi-use building, including parking garage, will be provided prior to the issuance of the first development order;
ii. A 6-foot-wide sidewalk; and
iii. An on-street, 4-foot-wide Bike Lane.

f. Stormwater Management Adjacent to Main Street. Stormwater Management located adjacent to Main Street must utilize green infrastructure practices to promote natural features such as but not limited to low impact development, LEED and/or Florida Green Building Coalition standards.

g. Public Access to Water. At a minimum, one public access easement must be provided to waterfront (Canal).

18. Tall Structures Permit
The Developer will obtain a Tall Structures Permit from the Lee County Port Authority prior to the local development order for the Mixed-Use Building.

19. Unified Architectural Theme
The development must incorporate a unified architectural theme for all signage and buildings internal to the property.

20. Building Perimeter Plantings
Required Building Perimeter Plantings shall be located along the south and east facades of the Mixed-Use Building.

21. State and Federal Permits
County development permits do not create rights to obtain permits from state or federal agencies and do not create liability on the part of the County if applicant

buffer will provide visual relief of the proposed townhomes from the view across the canal. This deviation is APPROVED.

6. Withdrawn

7. Building height
A deviation from the LDC §34-2175(a)(3), which limits the height to 35 feet on San Carlos Island, to allow a 100-foot building height for the Mixed-Use Building and 49 feet for the townhomes. The proposed Future Land Use designation of the site allows for up to 135 feet building height. There are other projects already approved with this type of building height in the vicinity of the subject property. The design of the Mixed-Use Building reduces the visual impact of the proposed height. This deviation is APPROVED.

8. Perimeter Setback
Deviation from LDC §34-935(b)(1)e which requires a perimeter setback ½ the height of the building or structure to permit a setback of 7 feet for the Mixed-Use Building, as depicted on the site plan, from the right-of-way of Ostego Drive, AKA Bay Harbour Circle. This deviation will facilitate the development of a fully compliant mixed-use project, preservation of open space, and consistency with prior approvals for infill redevelopment. Approval of this deviation will also allow a 'wedding cake' approach for building construction to better remove the taller structures from the easterly and westerly boundary and provide a transition for location of the residential density on the subject property. This deviation is APPROVED.

9. Waterbody Setback
Deviation from LDC §34-2194(b)(2) which requires a waterbody setback of 25 feet for other bodies of water (sea-walled waterway) to allow a setback of 13.5 feet for the townhomes. The proposed design locates the Townhomes adjacent to the canal along the eastern property line. These townhomes, which will be limited in height to 49 feet, will act as a physical transition between the homes located to the east of the canal and the taller Mixed-Use Building. LDC §34-1294(c) allows deviation from the setback in planned developments, where the waterway, when navigable, does not provide through navigation. This deviation is APPROVED.

10. Consumption on Premises
Deviation from LDC §34-1264(a)(1)g.1., which requires outdoor seating to be more than 500 feet from a religious facility, school (noncommercial), day care center (Child), park or dwelling unit under separate ownership to permit the outdoor seating to be 200 feet from a school and park and 220 feet from a dwelling unit under separate ownership. This deviation is requested to permit the service and outdoor consumption of alcohol within the liner building and the Mixed-Use Building. The consumption will not be visible from the adjacent park or residential dwelling units. Furthermore, the service and operation of the uses will be limited to the Commercial Hours of Operation and amplified music listed in Conditions 5 and

6. Sale, service, and consumption of alcoholic beverages is not permitted at ground level play area. This deviation is APPROVED.

11. Withdrawn

12. Withdrawn

13. Right-Of-Way Width (Main Street)
A deviation from the LDC §10-296(b), which requires a 100-foot right of way/easement width for an urban minor collector road two-way traffic with closed drainage, to allow the existing 50 feet and 60 feet right-of-way/easement width and typical cross sections B and F as depicted on Page 2 of the MCP. Main Street is an existing public road with a 50-foot right-of-way that transitions to 60-foot somewhere in the middle of this property's frontage on it. The width of the right-of-way in non-conforming as the LDC requires a minimum of 100-foot width for a minor collector right of way. As part of this development, the applicant is committing to the following:

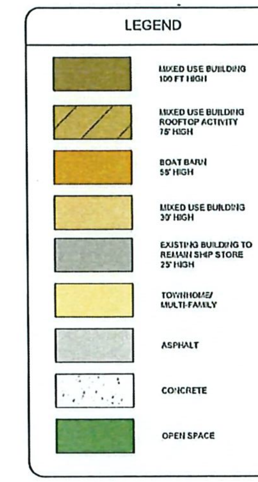
a. The applicant agrees to dedicate a 10-foot-wide right-of-way along Main Street to widen the Main Street right-of-way to 60 feet along the entire frontage of the property on Main Street.
b. Main Street must be improved in compliance with the Cross-Section "B" depicted on page 2 of the MCP.

This deviation is APPROVED.

Exhibit to Conditions
B1 Master Concept Plan for Bay Harbour Marina Village, dated on May 28, 2024.

Additional info dated 05-28-2024

USE	AREA(SF)	USE AREA % OF TOTAL AREA	% OF USE AS RATIO OF PROJECT AREA (AC)	OPEN SPACE REQ. BY USE	OPEN SPACE REQ. (AC)	OPEN SPACE PROVIDED
RESIDENTIAL	219,960	40%	2.97	40%	1.19	
COMMERCIAL	20,000	4%	0.27	30%	0.08	
RESTAURANT	10,000	2%	0.14	30%	0.04	
MARINA	60,800	11%	0.82	20%	0.16	
STORAGE/PARK	242,300	44%	3.27	20%	0.65	
TOTAL	**553,060**	**100%**	**7.47**		**2.13 AC**	**2.61 AC**



NOTES:

REQUEST: REZONING MODIFICATION FROM MPD TO MPD TO ADD HOTEL SCHEDULE OF USE AND MF USE IN TOWNHOUSE PARCEL. ALL OTHER CONDITIONS AND DEVIATIONS OF Z-16-010A REMAIN.

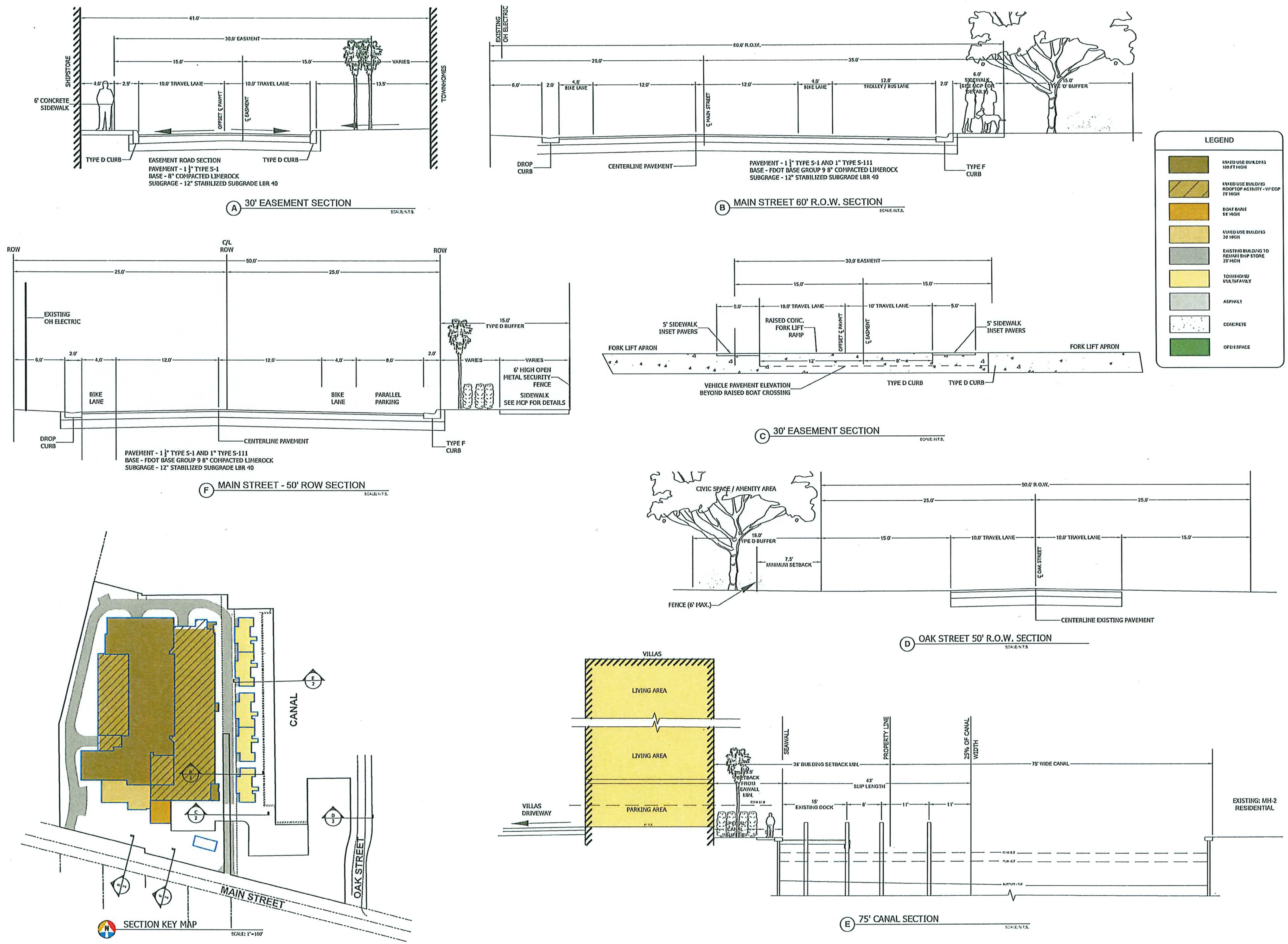
75 DWELLING UNITS OR 240 HOTEL AND 20 DWELLING UNITS, COMBINATION IS PERMITTED
30,000 SF RETAIL
286 DRY SLIPS
29 WET SLIPS

FUTURE LAND USE: CENTRAL URBAN
UTILITIES PROVIDED BY LEE COUNTY UTILITIES
LEE TRAN ROUTE 400 & 490

DEVIATIONS

1. DEVIATION FROM CONNECTION SEPARATION
2. DEVIATION FROM ROW WIDTH
3. WITHDRAWN
4. DEVIATION FROM BUFFER REQUIREMENTS
5. DEVIATION FROM BUFFER REQUIREMENTS (TREES & SHRUBS)
6. WITHDRAWN
7. DEVIATION FROM BUILDING HEIGHT
8. DEVIATION FROM PERIMETER SETBACK
9. DEVIATION FROM WATER BODY SETBACK
10. DEVIATION FROM CONSUMPTION OF PERMISES
11. WITHDRAWN
12. WITHDRAWN
13. DEVIATION FROM MINIMUM ROW

Additional info dated 05-28-2024



BAY HARBOUR MARINA VILLAGE - PD ADMENDMENT #1 - SUBMITTAL

CROSS SECTIONS

BAY HARBOUR MARINA VILLAGE

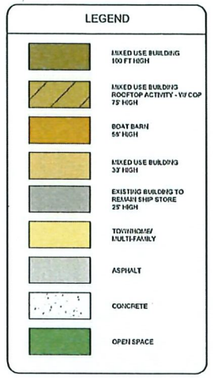
for: BAY HARBOUR MARINA VILLAGE, LLC

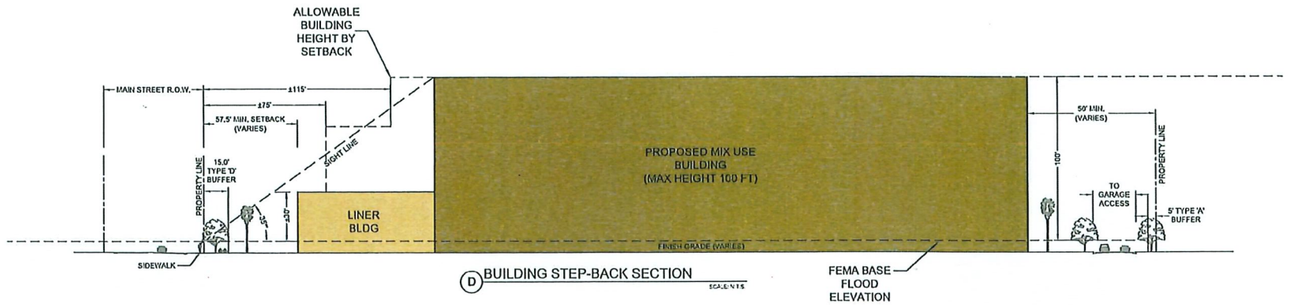
1195 MAIN STREET, FT MYERS BEACH, FL 33931

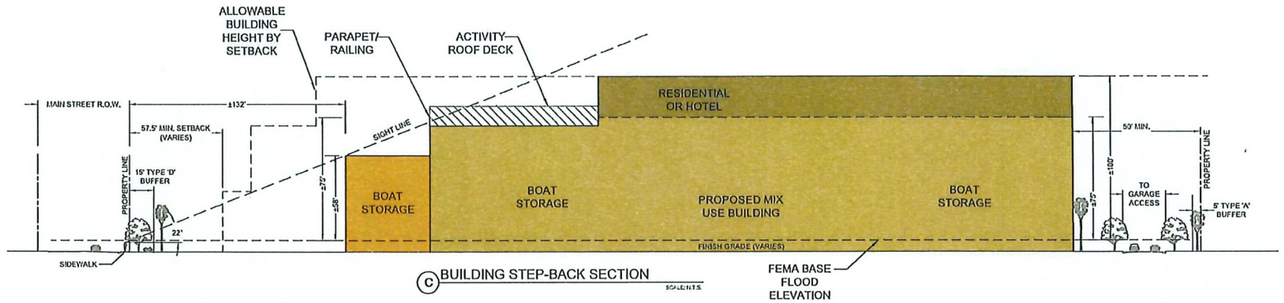
INK ENGINEERING INC.
CONSULTING ENGINEERS • PLANNING
2055 WEST FIRST STREET
FORT MYERS, FL 33901
JINK@INKENGINEERINGINC.NET

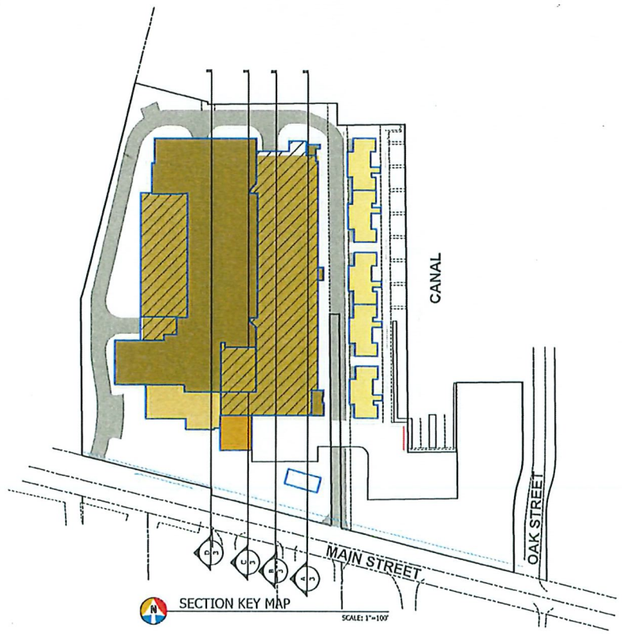
PROJECT NO.	22043
PROJECT MANAGER	James Ink P.E.
DRAWN BY	BWM
DATE	05.2023
SCALE	1"= 30'
SHEET NO.	2 OF 4

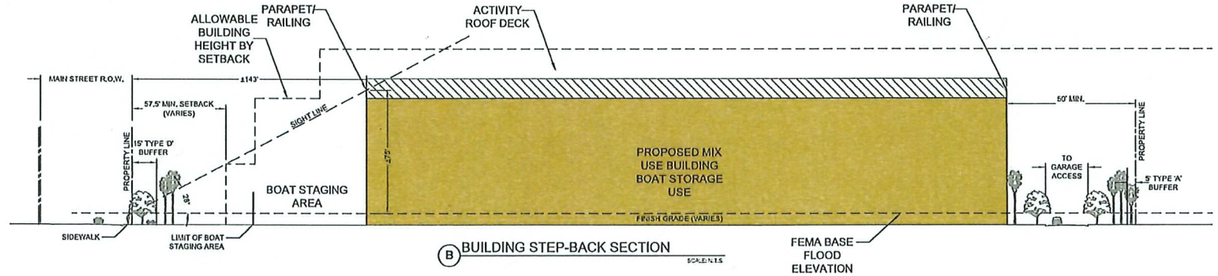
Additional info dated 05-28-2024

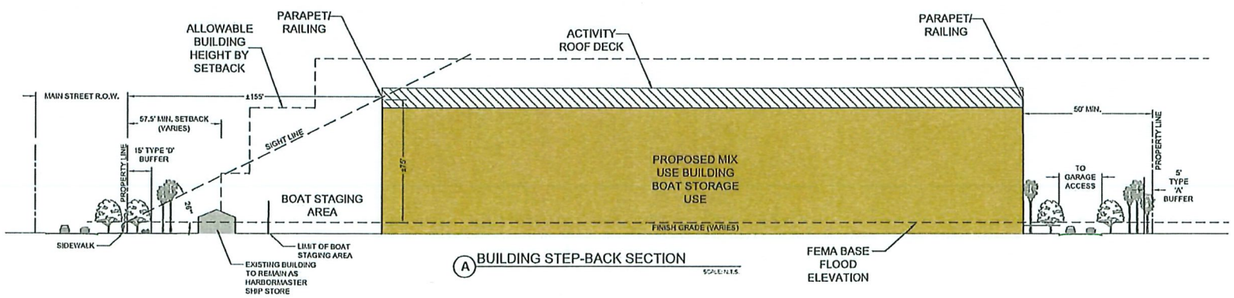








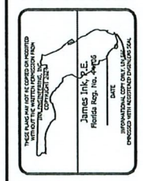




NO.	DATE	DESCRIPTION	BY
1	12/4/23	REVISION PER LEE PLAN	JW

BUILDING SECTIONS (1)

BAY HARBOUR MARINA VILLAGE
for: BAY HARBOUR MARINA VILLAGE, LLC
1195 MAIN STREET, FT MYERS BEACH, FL 33931

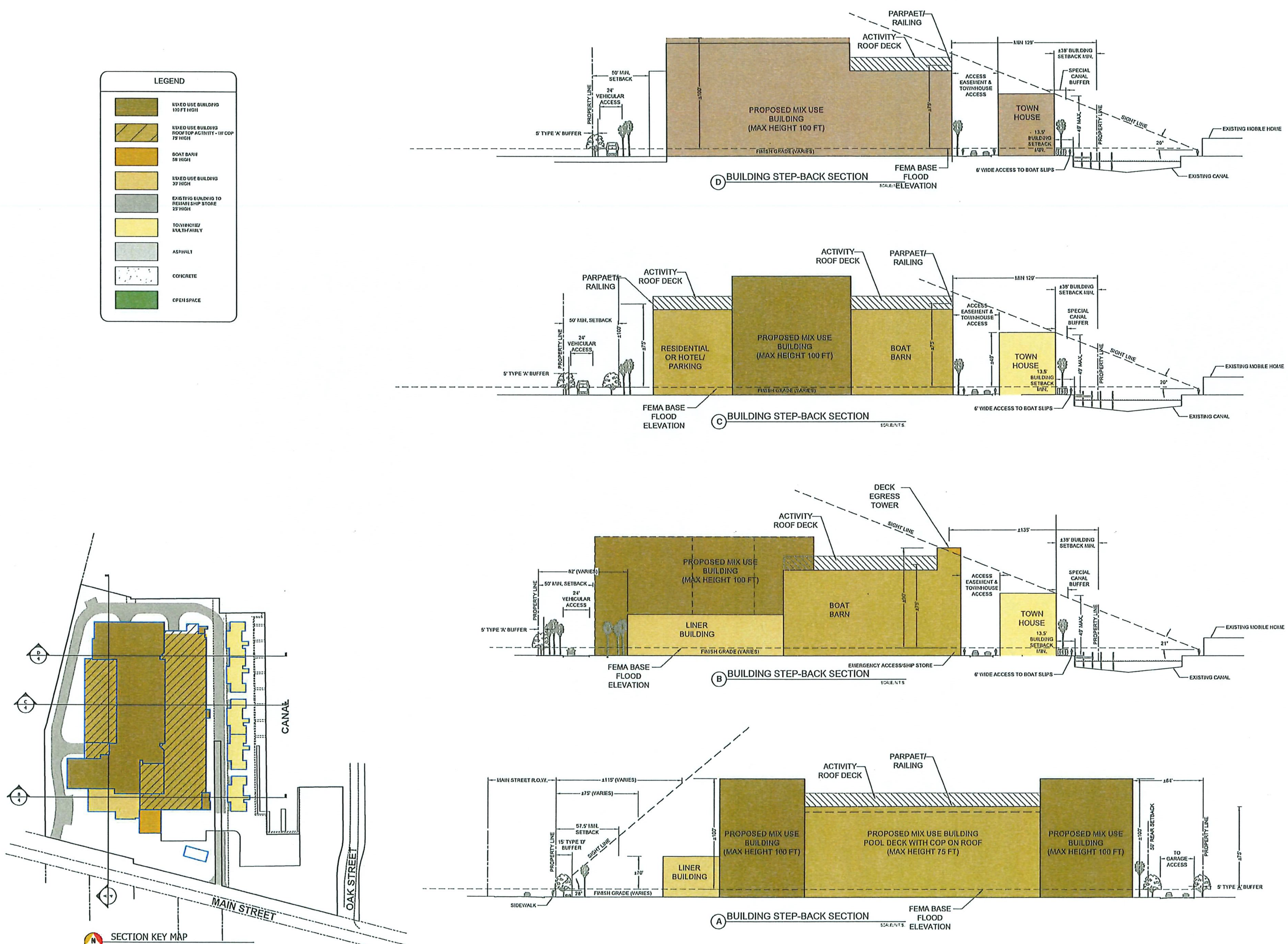


INK ENGINEERING INC.
CONSULTING ENGINEERS • PLANNING
2055 WEST FIRST STREET
FORT MYERS, FL 33901
JINK@INKENGINEERINGINC.NET

PROJECT NO.	22043
PROJECT MANAGER	James Ink P.E.
DRAWN BY	BWM
DATE	05.2023
SCALE	1"= 30'
SHEET NO. OF 9	3

BAY HARBOUR MARINA VILLAGE - PD AMENDMENT #1 - SUBMITTAL

Additional info dated 05-28-2024



BAY HARBOUR MARINA VILLAGE - PD ADMENDMENT #1 - SUBMITTAL

NO.	DATE	REVISION
1	12/4/23	

BUILDING SECTIONS (2)

BAY HARBOUR MARINA VILLAGE
for: BAY HARBOUR MARINA VILLAGE, LLC
1195 MAIN STREET, FT MYERS BEACH, FL 33931

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James Ink, P.E.
Florida Reg. No. 44406
DATE
INFORMATIONAL COPY ONLY, UNLESS EMBOSSED WITH REGISTERED ENGINEERS SEAL

INK ENGINEERING INC.
CONSULTING ENGINEERS • PLANNING
2055 WEST FIRST STREET
FORT MYERS, FL 33901
JINK@INKENGINEERINGINC.NET

PROJECT NO.	22043
PROJECT MANAGER	James Ink P.E.
DRAWN BY	BWM
DATE	05.2023
SCALE	1"= 40'
SHEET NO.	4 OF 4

Exhibit E

INFORMATION

UNAUTHORIZED COMMUNICATIONS

The LDC prohibits communications with the Hearing Examiner or her staff on the substance of pending zoning actions. There are limited exceptions for written communications requested by the Hearing Examiner, or where the Hearing Examiner seeks advice from a disinterested expert.

HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS

A. The Hearing Examiner will provide a copy of this recommendation to the Board of County Commissioners.

B. The Board will hold a final hearing to consider the Recommendation and record made before the Hearing Examiner. The Department of Community Development will notify hearing participants of the final hearing date. Only Parties and participants may address the Board at the final hearing. Presentation by participants are limited to the substance of testimony presented to the Hearing Examiner, testimony concerning the correctness of Findings of Fact or Conclusions of Law contained in the Recommendation, or allegations of relevant new evidence not known or that could not have been reasonably discovered by the speaker at the time of the Hearing Examiner hearing.

C. Participants may not submit documents to the Board of County Commissioners unless they were marked as Exhibits by the Hearing Examiner. Documents must have the Exhibit number assigned at hearing.

COPIES OF TESTIMONY AND TRANSCRIPTS

A. Every hearing is recorded. Recordings are public records that become part of the case file maintained by the Department of Community Development. The case file and recordings are available for public examination Monday through Friday between 8:00 a.m. and 4:30 p.m.

B. A verbatim transcript may also be available for purchase from the court reporting service.

Exhibit D

HEARING PARTICIPANTS

County Staff:

1. Chahram Badamtchian, Senior Planner
2. Marcus Evans, P.E.

Applicant Representatives:

1. Yury Bykau, P.E.
2. James Ink, P.E.

Public Participants:

3. Lorri Abate
4. Henry Blakely
5. Debra Macer
6. Stacy Macer
7. Joanne Semmer
8. Nicholas J. White

Exhibit C

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments:* Prepared by Chahram Badamtchian, Senior Planner, date received June 12, 2024 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]

APPLICANT EXHIBITS

a. *48-Hour Notice:* Email from James Ink, P.E. to Maria Perez, Chahram Badamtchian, Rebecca Sweigert, Tracy Toussaint, Jamie Princing, Elizabeth Workman, Auda Ennis, Nicholas DeFilippo, Ohdet Kleinmann, Abby Henderson, Lee West, Warren Baucom, Mikki Rozdolski, Anthony Rodriguez, Dirk Danley, Jr., Phil Gillogly, Marcus Evans, and Jennifer Rodriguez, dated Tuesday, June 25, 2024, 10:59 AM (3 pages – 8.5"x11" and 1 page – 11"x17")

1. *PowerPoint Presentation:* Prepared by Ink Engineering, Inc., for DCI2023-00023, Zoning Modification Request for Bay Harbour Marina Village MPD, Z-16-010A (multiple pages – 8.5"x11")[color]

OTHER EXHIBITS

Joanne Semmer

1. *Aerial Photograph:* (1 page – 8.5"x11")[color]

2. *Resolution:* No. 78-3-16 (2 pages – 8.5"x11")

3. *Application Summary:* Number CPL2023-03995, Code Enforcement Complaint, Fence no Permit/Dewatering with a Pipe Blocking Road, submitted 11/03, 2023, Owner Bay Harbour Marina Village LLC (2 pages – 8.5"x11")

4. *Subdivision Plat:* K L Swanks Subdivision (1 page – 8.5"x11")

ATTACHMENT C

Conditions and Deviations for DCI2023-00023, Bay Harbour Marina Village MPD

A. Conditions:

1. Master Concept Plan/Development Parameters

The development of this project must be consistent with the 4-page Master Concept Plan entitled "Bay Harbour Marina Village," dated on May 28, 2024, except as modified by the conditions below. This development must comply with all requirements of the Lee County LDC at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursed, appropriate approvals will be necessary.

This project will allow a maximum of 75 residential dwelling units or 20 dwelling units and a 240-room hotel, a marina with 286 dry boat slips, and a maximum of 29 wet slips, a boat launching facility, 30,000 square feet of commercial retail/office and mini-storage, and a parking garage and 20,000 square feet of civic space with a maximum building height of 100 feet.

2. Uses and Site Development Regulations

The following Limits apply to the project and uses:

a. Schedule of Uses

TOWNHOMES/MF (East of Bay Harbour Circle)

Dwelling units:
- Townhouse
- Multiple Family

Essential Services
Essential Services Facilities: Group I
Excavation: Water Retention
Models
- Units (Limited to 4)

Residential accessory uses

MARINA AND EAST COMMERCIAL LINER BUILDING

Bait and Tackle Shop
Banks and Financial Establishments: Group I
Boats:
- Part Store
- Rental
- Sales

Essential Services
Essential Service Facilities: Group I

Excavation: Water Retention
Fences, Walls
Food Stores: Group I
Gift and Souvenir Shop
Marina
Marina Accessory Uses, limited to marine supplies and fuel
Parking Lot:
    Accessory
Specialty Retail Shops: Group I & II
Transportation Services: Group I-A

COMMERCIAL LINER BUILDING

Convenience Food and Beverage Store (limited to one)
Consumption on Premises (limited to two for this building)
Drugstore, Pharmacy
Essential Services
Essential Service Facilities: Group I
Excavation: Water Retention
Gift and Souvenir Shop
Hardware Store
Insurance Agencies
Package Store
Personal Services: Groups I & II
Real Estate Sales Office
Restaurants: Groups I, II & Ill, including outdoor seating
Specialty Retail Shops: Groups I & II

MIXED USE BUILDING

Accessory Uses and Structures
Administrative Offices
ATM
Banks and Financial Establishments1 Group I
Boats:
    Parts store
    Rental
    Sales
    Storage, Dry
Business Services: Group I
Caretaker's Residence
Clothing: Store, General
Clubs:
    Commercial
    Fraternal, membership organization
    Private
Communication Facility, Wireless, Antenna Supporting Structure or Roof Mounted Antenna, Towers Prohibited
Consumption on Premises, limited to the area depicted on the MCP shown hatch lines which are at minimum elevation of 65 feet above ground.

Drugstore, Pharmacy
Dwelling units:
Multiple-family maximum 55 units with no hotel rooms
Entrance Gates and Gatehouse
Essential Services
Essential Service Facilities: Group I
Excavation: Water Retention
Fences, Walls
Food Stores: Group I
Gift and Souvenir Shop
Hardware Store
Hotel/Motel maximum 240 rooms in lieu of 55 multiple-family units
Insurance Agencies
Medical Office
Models:
Units
Parking Lot:
Accessory
Commercial
Personal Services: Groups I & II
Real Estate Sales Office
Recreational Facilities, Commercial: Groups I & Ill
Residential Accessory Uses
Restaurants: Groups I, II & Ill, including outdoor seating
Signs
Specialty Retail Shops: Groups I & II
Storage: Indoor
Temporary Uses
Warehouse: Mini-Warehouse

CIVIC SPACE

Recreational Facilities, Commercial: Group III, Swimming Pools,
Tennis Courts, and similar activities not grouped elsewhere

b. Site Development Regulations

MIXED USE BUILDING & COMMERCIAL LINER BUILDINGS:

Minimum Lot Area:	15,000 S.F.
Minimum Lot Width:	100 feet
Minimum Lot Depth:	75 feet

Minimum Setbacks:

Street:	57.5 feet
Side Yard:	50 feet
Rear Yard:	50 feet
Waterbody:	125 feet

Maximum Building Height:

Liner Buildings:	30 feet

Mixed Use Building:	100 feet*(Subject to Condition 3)
Maximum Lot Coverage:	45%

TOWNHOMES/MF

Minimum Lot Area:	1,200 S.F.
Minimum Lot Width:	24 feet
Minimum Lot Depth:	50 feet
Minimum Setbacks:	
Street:	5 feet 0 feet for private overhang of building
Side Yard:	20 feet waterfront and 10 feet non-waterfront
Rear Yard (South side):	20 feet
Waterbody:	0 feet
Maximum Building Height:	49 feet

MINIMUM OPEN SPACE

Townhomes & Multiple-family:	40%
Commercial:	30%

3. The Mixed-Use Building shall provide tiered, step back architecture consistent with the Building Sections Exhibit of the Master Concept Plan. The Southern facade facing Main Street must include 4 tiers before reaching maximum height of 100 feet. From 57.5 feet to 75 feet from the Main Street Right-of-Way, building height is limited to 30 feet, from 75 feet to 95 feet from the Main Steet Right-of-Way, building height is limited to 70 feet, and from 95 feet over the balance of the residential portion of the mixed use building the maximum height is 100 feet.

4. The marina use is an integral part of the development design and must be Part of the overall development order plans submitted for approval. The project shall not be developed without marina and dry storage uses substantially in compliance with the approved Master Concept Plan. The project. as part of the required marina management plan, will include provisions that address the forklift operation, including but not limited to, OSHA training, compliance and certification for operators, safety/operational requirements, training for marina personnel, and intersection management features.

5. Hours of Operation: Commercial operations, except for the Marina and Dry Storage uses, are limited to operating hours of 6:00 AM until 10:00 PM, Sunday through Thursday, and 6:00 AM to Midnight on Friday and Saturday. Outdoor Seating is limited to 10:00 AM until 10:00 PM, Sunday through Thursday, and 8:00 AM to 10:00 PM Friday and Saturday. The Marina and Dry Storage uses are limited to operating hours of 6:00 AM until 30 minutes after sunset, Monday through Sunday.

6. No outdoor amplified sound is allowed after 10 PM nightly.

7. **Environmental Conditions**

a. Covered wet slips are not permitted.

b. Live-aboards are not permitted.

c. Prior to approval of a dock and shoreline permit, the applicant must submit a modified Florida Department of Environmental Protection (DEP) environmental Resource Permit (ERP) approving the proposed changes to the existing dock configuration.

d. Development order plans must depict open space in substantial compliance with the approved Master Concept Plans and Demonstrate:

i. A minimum of 2.61 acres of Open Space must be provided for this development. Approximately 20,000 square feet of the Open Space must be dedicated to a publicly accessible Civic Area.

ii. Should the Townhomes/MF be developed as a separate tract, local development order must demonstrate a minimum of 10 percent Open Space.

8: Buffers/Landscaping:

a) Prior to local development order approval, the landscape plans must include the following:

I. Plantings along the canal shall be required between the walkway/floating dock and parking area, depicted as Special Waterfront buffer, to minimize the visual impact of the development. Planting shall consist of native shrubs a minimum of 48 inches in height at time of planting to be maintained at a minimum 60 inches along 50 percent of the west bank canal frontage, in addition a minimum of one palm tree per 20 feet shall be installed at a minimum height of 20 feet clear trunk (c.t.) at the time of planting.

II. Type A buffers where the property boundary abuts commercial zoned (C-2) property.

b) All required landscaping will be Florida Friendly, native landscape materials.

9. Hurricane Conditions-Residential

Prior to any redevelopment of the site, including any single development pod, an agreement must be executed between the County and the property owners to mitigate the project's hurricane sheltering and evacuation impacts. The agreement will include either provisions to construct on site shelter to withstand Category 5 hurricane force winds and storm surge to accommodate residents, or a fee in lieu pursuant to the Lee County requirements. The decision as to which type of mitigation to provide will be at the sole discretion of Lee County.

Should the on-site shelter be required by the Lee County Department of Public Safety, the on-site shelter(s) and all required equipment and supplies for these facilities must comply with the following standards:

i. Elevation to the anticipated storm surge from a land falling Category 5 storm. In no case the elevation shall be less than 25.7 NAVD.

ii. Construction to withstand winds of 200 mph in accordance with the Florida Building Code.

iii. Construction with minimum exterior glass with all glazed openings provided with impact protection in accordance with the Florida Building Code.

iv. Equipped with emergency power and potable water supplies to last up to five days.

v. Protected with adequate ventilation, sanitary facilities, and first aid medical equipment.

vi. Developer/operator must conduct annual training of the on-site shelter managers. The training is to be conducted by the Red Cross and approved by Lee County Emergency Management.

10. Developer/operator must submit a post storm recovery plan including post storm evacuation plan for review and approval by Lee County Emergency Management.

11. The property manager or homeowners' association or property owners' association must provide evacuation and storm safety educational materials on a not less than annual basis.

12. Traffic Conditions

a. The applicant must provide fee title to the County for any additional roadway right-of-way (R/W) located on the applicant's property which may be required by the County during the development order process for turn lanes associated with the project. This R/W dedication will be for site-related improvements and will be subject to no impact fee credit.

b. As part of the first local development order, Main Street eastward from San Carlos Boulevard to the easternmost project limits must be designed and constructed/improved as depicted on the MCP. This roadway improvement will be subject to any deviations determined appropriate by the Community Development Director during the development order process. This roadway improvement must also include the addition of bicycle and pedestrian facilities to promote the use of alternative modes of transportation by site users.

c. A Type "F" curb and gutter must be designed and constructed on Main Street along the project frontage.

13. Right of way vacation

No development order for this site shall be approved, unless and until a right-of-way vacation request to vacate Ostego Drive (AKA Seaside Drive) is applied for and approved by the Board of County Commissioners, or the developer demonstrates at the time of the development order that the MCP can be developed without the need for additional setbacks from the existing public right-of-way.e

14. Utilities
The utility lines for potable water and sanitary sewer must be installed on the site and this development must be connected to those services as part of any development activity on this site. The applicant will be financially responsible for the upsizing and improvement of the lines, as may be necessary to provide water and sewer services to this site.

15. No outdoor storage of boats and trailers is permitted.

16. Boat sales will be permitted only for boats stored in the dry boat storage facility or moored in a wet slip. There will be no outdoor display of boats being sold.

17. The Bay Harbour development must be designed with all of the following design elements:

a. Traffic calming measures within internal roadways, including but not limited to speed bumps or tables, raised pedestrian crossings, street trees and pedestrian-friendly landscaping; street furniture; or the use of pavers and contrasting materials within the roadways. Traffic calming measures shall not promote additional noise from truck traffic utilizing Ostego Drive, AKA Bay Harbour Circle.

b. A sidewalk/path network, not less than 5 foot in width, with external (i.e. outside of the proposed buildings) pedestrian connections for connecting the residential uses to the commercial uses and the public rights of way must be provided.

c. The approximately 20,000 square feet Civic Space must include a pedestrian plaza to be provided adjacent to the waterfront with not less than 4,000 square feet of area. In addition, not less than 5 canopy shade trees must be a part of the plaza, and appropriate benches and aesthetic elements shall be provided. If the stormwater management system is located adjacent to the pedestrian plaza, it must be integrated into the plaza design utilizing green infrastructure practices which may include but are not limited to low impact development, LEED, and/or Florida Green Building Coalition standards.

d. Bicycle racks must be provided throughout the development.

e. Along the Main Street frontage, the developer will provide:

I. An Easement for a Lee Tran stop, sufficient to include a pull off location, pedestrian shelter and pedestrian interconnection to multi-use building, including parking garage, will be provided prior to the issuance to the first development order; and
II. A 6-foot-wide sidewalk; and
III. An on-street, 4-foot-wide Bike Lane.

f. Stormwater Management located adjacent to Main Street must utilize green infrastructure practices to promote natural features such as but not limited to low impact development, LEED and/or Florida Green Building Coalition standards.

g. At a minimum, one public access easement must be provided to waterfront (Canal).

18. Tall Structures Permit
The Developer will obtain a Tall Structures Permit from the Lee County Port Authority prior to the local development order for the Mixed-Use Building.

19. Unified Architectural Theme
The development must incorporate a unified architectural theme for all signage and buildings internal to the property.

20. Building Perimeter Plantings
Required Building Perimeter Plantings shall be located along the south and east facades of the Mixed-Use Building.

B. **Deviations:** The applicant had originally applied for 13 deviations. Four of which were withdrawn and nine were approved. The applicant is not proposing any new deviations with this amendment.

1. Connection Separation
A deviation from the LDC §10-285, which requires a connection separation of 330 feet on Collector roads to allow the existing conditions to remain. There are at least 6 driveways across the street, which are very close to the existing entrances to this development. There are also two driveways on the same side of the roads that are 120 and 173 feet from the existing driveways of the subject site. It is not possible to design the access point or points in a way that would not require a deviation from the connection separation. The applicant has demonstrated that the deviation would enhance the achievement of the objectives of the planned development and will not cause a detriment to public interests. This deviation is APPROVED.

2. Right-of-way width
A deviation from the LDC §10-296, which requires a 40-foot right of way/easement width for two-way traffic with closed drainage to allow a 30-foot right of way/easement width for Ostego Drive, AKA Bay Harbour Circle. The proposed configuration of the low speed accessway, containing a sidewalk in a 30' wide right of way/easement, will provide the appropriate structural cross section and closed drainage. This deviation is APPROVED.

3. WITHDRAWN

4. Right-of-way Buffer
A deviation from the LDC §10-416(d)(3), which requires a Type "D" buffer adjacent to a right-of-way to allow no buffer. The existing right-of-way is only 15 foot in width. The applicant is proposing a 30-foot-wide access easement adjacent to the right of-way. There is no adequate space and place to provide this landscaping. This deviation is APPROVED.

5. Buffer trees and shrubs
A deviation from the LDC §10-416(d)(4), which requires a Type "B" buffer to be 15 feet in width, a double staggered hedge row and 5 trees per 100 linear feet to allow a varying buffer width between 10 to 13 feet, native shrubs a minimum of 48 inches in height at the time of planting to be maintained at a minimum of 60 inches along 50

percent of the west bank canal frontage, and one palm tree per 30 feet installed at minimum height of 20 feet clear trunk at the time of planting. A special waterbody buffer along the existing walkway and docks was approved for this site as part of the approved Special Exception for the Compass Rose Marina. The proposed buffer will provide visual relief of the proposed townhomes from the view across the canal. This deviation is APPROVED.

6. WITHDRAWN

7. Building height
   A deviation from the LDC §34-2175(a)(3), which limits the height to 35 feet on San Carlos Island, to allow a 100-foot building height for the Mixed-Use Building and 49 feet for the townhomes. The proposed Future Land Use designation of the site allows for up to 135 feet building height. There are other projects already approved with this type of building height in the vicinity of the subject property. The design of the Mixed-Use Building reduces the visual impact of the proposed height. This deviation is APPROVED.

8. Perimeter Setback
   Deviation from LDC §34-935(b)(1)e which requires a perimeter setback ½ the height of the building or structure to permit a setback of 7 feet for the Mixed-Use Building, as depicted on the site plan, from the right-of-way of Ostego Drive, AKA Bay Harbour Circle. This deviation will facilitate the development of a fully compliant mixed-use project, preservation of open space, and consistency with prior approvals for infill redevelopment. Approval of this deviation will also allow a 'wedding cake' approach for building construction to better remove the taller structures from the easterly and westerly boundary and provide a transition for location of the residential density on the subject property. This deviation is APPROVED.

9. Waterbody Setback
   Deviation from LDC §34-2194(b)(2) which requires a waterbody setback of 25 feet for other bodies of water (sea-walled waterway) to allow a setback of 13.5 feet for the townhomes. The proposed design locates the Townhomes adjacent to the canal along the eastern property line. These townhomes, which will be limited in height to 49 feet, will act as a physical transition between the homes located to the east of the canal and the taller Mixed-Use Building. LDC §34-1294(c) allows deviation from the setback in planned developments, where the waterway, when navigable, does not provide through navigation. This deviation is APPROVED.

10. Consumption on Premises
    Deviation from LDC §34-1264(a)(1)g.1., which requires outdoor seating to be more than 500 feet from a religious facility, school (noncommercial), day care center (Child), park or dwelling unit under separate ownership to permit the outdoor seating to be 200 feet from a school and park and 220 feet from a dwelling unit under separate ownership. This deviation is requested to permit the service and outdoor consumption of alcohol within the liner building and the Mixed-Use Building. The consumption will not be visible from the adjacent park or residential dwelling units. Furthermore, the service and operation of the uses will be limited to the Commercial

Hours of Operation and amplified music listed in Conditions 5 and 6. This deviation is APPROVED.

11. WITHDRAWN

12. WITHDRAWN

13. Right-Of-Way Width (Main Street)
    A deviation from the LDC §10-296(b), which requires a 100-foot right-of way/easement width for a urban minor collector road two-way traffic with closed drainage, to allow the existing 50 feet and 60 feet right-of-way/easement width and typical cross sections B and F as depicted on Page 2 of the Master Concept Plan. Main Street is an existing public road with a 50-foot right-of-way that transitions to 60-foot somewhere in the middle of this property's frontage on it. The width of the right-of-way in non-conforming as the LDC requires a minimum of 100-foot width for a minor collector right-of way. As part of this development, the applicant is committing to the following:

    a. The applicant agrees to dedicate a 10-foot-wide right-of-way along Main Street to widen the Main Street right-of-way to 60 feet along the entire frontage of the property on Main Street.

    b. Main Street must be improved in compliance with the Cross-Section "B" depicted on page 2 of the Master Concept Plan.

    This deviation is APPROVED.

LEE COUNTY, FLORIDA
DEPARTMENT OF COMMUNITY DEVELOPMENT
ZONING DIVISION
STAFF REPORT

TYPE OF CASE: PLANNED DEVELOPMENT
CASE NUMBER: DCI2023-00023
HEARING EXAMINER DATE: June 27, 2024
SUFFICIENCY DATE: April 15, 2024

APPLICATION SUMMARY

Applicant: James Ink P.E. from Ink Engineering, Inc. in reference to Bay Harbour Marina Village MPD.

Requests: Request to amend Resolution Z-16-010A, Bay Harbour Marina Village Mixed Use Planned Development, to revise the Master Concept Plan and Development Regulations, and amend the schedule of uses to add Hotel/Motel to the Schedule of Uses for the "Mixed Use Building" Tract and Dwelling Units, Multiple-family building to the Schedule of Uses for the "Townhomes" Tract of the site.

Location: The subject property is located at 1195, 1185, 1145, and 1135 Main Street, and 19230, 19210, and 19170 Seaside Drive, Iona/McGregor Planning Community, Lee County, FL. (District #3). A legal description of the subject property is attached as Attachment “K”.

BACKGROUND:

This request to rezone this 7.47± acre parcel was originally heard by the Hearing Examiner on April 28, 29, May 25 and June 17, 2016, and was forwarded to the Board of County Commissioners with a recommendation, dated October 07, 2016, that the Board either deny the request or remand the project back to staff and the Hearing Examiner. The Board of County Commissioners heard this case on November 16, 2016, and remanded the case back to staff and the Hearing Examiner for further consideration.

The Hearing Examiner heard the amended request on August 15, 16 and September 10, 2018, and recommended denial. The Board of County Commissioners heard the case on October 23, 2019, and denied the request consistent with the Hearing Examiner’s recommendation.

The property owners subsequently filed a request under Section 70.51 of the Florida Statutes (known as the Florida Land Use and Environmental Dispute Resolution Act). The Special Magistrate held a hearing on May 11, 2020, and after some modifications to the request, Master Concept Plan and Conditions, the Magistrate issued a stipulated settlement, which was presented it to the Board of County Commissioners on June 17, 2020. The Board of County Commissioners approved the rezoning consistent with the stipulated settlement.

As a result of the Special Magistrate proceeding, the property was rezoned from Light Industrial (IL), Marine Industrial (IM), Commercial (C-2) and Mobile Home Residential (MH-2) to Mixed Use Planned Development (MPD) allowing for up to 75 dwelling units, a marina with 286 dry slips and 29 wet slips, a boat launching facility, 30,000 square feet of commercial retail/office space, and 20,000 square feet of civic space with a maximum building height of 100 feet, with tiered step-downs.

The applicant is requesting to amend the Schedule of Uses and the Master Concept Plan approved by Resolution Z-16-010A. The applicant is requesting the following changes to the approved Resolution:

1- Add Dwelling Unit, Multiple Family Building to the Townhomes Tract of the site and rename the Tract as “Townhomes/MF”.
2- Add Hotel/Motel use to the schedule of uses for the Mixed-Use Building with a note stating: 55 dwelling units or a 240-room hotel.
3- Amend the Master Concept Plan to depict more areas as roof deck areas allowing Consumption on Premises.
4- Revise the Townhomes/MF Tract on the Master Concept Plan to show the actual design.
5- Increase the boat storage building height from 70 to 75 feet on the Master Concept Plan to accommodate parapet wall and FEMA flood changes.
6- Include minor changes to the site layout, including keeping an existing building and converting it to harbor master/ship store use.

ANALYSIS:

This is a request to amend the existing approved MPD to allow the flexibility of developing the site with hotel rooms in lieu of residential uses in the mixed-use building. This will allow the developer the flexibility of building 55 multiple family dwelling in the mixed-use building or 240 hotel rooms. The applicant is also requesting the flexibility of building 20 residential units approved for Townhome Tract as townhomes or multiple family units. The remaining four requests are mostly housekeeping amendments and will have very little to no impact on the development and its surroundings.

In 2015, the applicant filed for a small-scale amendment to the Future Land Use Map (CPA2015-00005) to change the Future Land Use designation of the property from Industrial Development and Suburban to Central Urban. In 2017 the applicant requested a small-scale amendment to the Future Land Use Map (CPA2017-00005) to change the Future Land Use designation of the site to “Destination Resort Mixed Use Water Dependent”. However, ultimately CPA2017-00005 was rescinded and the Future Land Use designation was changed to Central Urban via Ordinance NO.20-07 (Attachment “I”).

The Future Land Use designation of the site is Central Urban. Uses permitted on the site are in full compliance with the requirements of the future land use designation. During the original rezoning process, it was determined that the project qualifies as a Mixed-Use Development, as defined by Goal 11 and Policy 11.1.2 of the Lee Plan, and the residential density was calculated from the entire project area.

The original rezoning request included 38 Bonus Density units; however, they were not included in the final approval of this project.

Surrounding Zoning and Land Use

The subject property is adjacent to several properties to the west and to the north, all developed with warehousing and heavy commercial/industrial type uses. Those properties are zoned Commercial (C-2), Light Industrial (IL), and Marine Industrial (IM). To the east, this property abuts a canal and a mobile home park zoned MH-2. To the south, it fronts on Main Street, there are several properties developed with commercial uses and zoned Commercial Marine (CM),

residential uses, zoned Residential Multiple Family (RM-2), marine type industrial uses (shrimping), zoned Industrial Planned Development (IPD) and a small County Park, zoned Community Facilities Planned Development (CFPD) that also contains the AMI Kids Southwest Florida, a treatment program for at risk children.

Lee Plan

The Future Land Use designations of the property is "Central Urban".

The area is mostly developed with industrial and commercial uses, and mobile home parks. The approved density of 9.6 dwelling units is within the density range of this Future Land Use designation. Other proposed uses such as hotel, commercial, and marina are also permitted in this land use category. The request is consistent with Policy 1.1.3 of the Lee Plan.

The proposed development promotes contiguous and compact growth patterns, containing urban sprawl and minimizing the costs of services. Adequate public services exist. Sewer and water are available to the site. The property has access to Main Street, which is classified as a Collector Road. The Fort Myers Beach Trolley (Route 490) starts at the corner of San Carlos Blvd and Summerlin Rd, goes south on San Carlos Blvd to Fort Myers Beach and continues to Lovers Key State Park. The subject property is within 500 feet of San Carlos Blvd. Fire protection is provided by the Fort Myers Beach Fire Control District, located at 17891 San Carlos Blvd (Station #32), 1.9 miles from the subject property. This fire station also contains an EMS substation. The nearest Sheriff's station is located at 15650 Pine Ridge Road, within five miles of the subject property. And the Lakes Regional Library, at 15290 Bass Road, is within six miles of the proposed project. Fort Myers Beach Elementary School, Lexington Middle School, and Cypress Lake High School are the closest public schools to this site. Therefore, the request is consistent with Objectives 2.1, 2.1.1 and 2.2 of the Lee Plan.

This project meets the thresholds for a planned development and was rezoned to MPD. This is a mixed-use development, which will contain residential, hotel, commercial, and marine oriented uses. The area is developed with industrial, and water-oriented commercial and industrial type uses as well as residential uses in the form of mobile home parks. Further to the east on Main Street, there is an approved development (Ebtide) similar in nature, density/intensity and height to this proposed development.

The subject property is near employment centers such as the surrounding commercial and industrial developments. This mixed-use project, when developed, will also be an employment center, as well as, a residential development. This project is within the coastal high hazard area and in order to mitigate the impact of flood, storm and hurricane, the applicant is required to either provide onsite shelter or pay a fee to the County at the discretion of Department of Public Safety. Staff finds the proposed development consistent with Objective 5.1 and Policies 5.1.1, 5.1.3, 5.1.5 and 5.1.7 of the Lee Plan.

The site will contain residential, commercial, and light industrial uses in an integrated manner. The site will have various uses that complement each other and provide a true mixed-use environment. Staff finds this development consistent with Goal 11 and Objective 11.1 of the Lee Plan.

Neighborhood Compatibility

The neighborhood is currently consisting of mobile home parks and industrial and commercial uses. Proposed uses for this development include commercial and residential uses, which are present in the area; however, the type of structures and their height are different than what

currently exists in the area. The approved Ebtide Mixed Use Planned Development to the east will contain building heights well in excess of what is proposed for this development. The area was developed in the 1950s and 1960s and is ripe for redevelopment. Due to its proximity to water, the area is better suited for tourism related businesses. This project may be the catalyst the area needs for redevelopment.

Environmental Issues

The proposed changes to the approved Planned Development will have no impact on the site's environmental conditions.

The proposed project must provide a minimum of 2.23 acres of open space. Open space is provided through the submerged lands within the property boundary, dry detention, property perimeter buffers, building perimeter planting areas.

Transportation

The development, as approved, will generate a total of 230 trips in the PM peak hour (133 entering/97 exiting) and 152 trips in the AM peak hour (62 entering/90 exiting). This correlates to 3,294 daily (two-way) trips. The proposed Hotel use, in lieu of 55 residential units, will add six additional trips in the weekday AM peak hour and seven additional trips in the weekday PM peak hour.

San Carlos Boulevard, adjacent to the site, currently operate at LOS "F" south of Main Street and at LOS "C" north of Main Street. Once the project build-out traffic was added to this roadway, San Carlos Boulevard was estimated to operate at LOS "F" south of Main Street and at LOS "C" north of Main Street.

The Florida Department of Transportation is beginning a roadway improvement project along San Carlos Boulevard that will signalize the intersection of Martin Street and San Carlos Boulevard.

Deviations

This project was approved with 9 deviations and no changes to those deviations are proposed with this amendment.

Findings and conclusion:

Based upon an analysis of the application and the standards for approval of planned development rezonings, staff makes the following findings:

a) Complies with the Lee Plan, specifically Goal 11, Objectives 2.1, 2.2, 5.1, and 11.1, Policies 1.1.3, 2.1.1. 5.1.1, 5.1.3, 5.1.5. and 5,1.7.

b) Meets the requirements of the Land Development Code and other applicable County regulations or qualifies for deviations;

c) Is compatible with existing and planned uses in the surrounding area;

d) Will provide access sufficient to support the proposed development intensity and the expected impacts on existing or planned transportation facilities will be mitigated through existing County regulations or conditions of approval;

e) Will not adversely affect environmentally critical or sensitive areas and natural resources;

f) Will be served by urban services, defined in the Lee Plan;

g) The approved and proposed mix of uses is appropriate at the proposed location;

h) The approved conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development;

i) The Previously approved deviations pursuant to section 34-373(a)(9), as conditioned:

1) enhance the planned development; and

2) preserve and promote the general intent of the LDC to protect the public health, safety and welfare.

ATTACHMENTS:

A. Expert Witness Information
B. Maps: surrounding zoning, future land use and aerial photograph
C. Conditions and Deviations
D. Master Concept Plan
E. Memorandum from Department of Transportation
F. TIS
G. Resolution Z-16-010A
H. RFR2019-00002
I. Ordinance NO. 20-07
J. Application and Applicant’s Narrative
K. Legal Description

cc: Applicant
County Attorney
Zoning File