

#### LEE COUNTY BOARD OF COUNTY COMMISSIONERS

#### ZONING HEARING AGENDA

Wednesday, February 5, 2025 9:30AM

DCI2023-00015

Z-24-022

Pine Island Road CPD

DCI2024-00027

Z-24-035

Cypress Manor RPD

DCI2022-00067

Z-24-024

Cary+Duke+Povia RPD

#### NOTICE OF PUBLIC HEARING

The Lee County Board of County Commissioners will hold a public hearing at 9:30 am on Wednesday, February 5, 2025 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 Land Development Code is abbreviated below as LDC.)

#### DCI2023-00015 / Pine Island Road CPD

Request to rezone 9.7± acres from Agricultural (AG-2) and Commercial (C-1 and C-1A) to Commercial Planned Development (CPD) to allow a maximum of 121,800 square feet of commercial uses including a convenience food and beverage store with sixteen fueling positions.

Located At SW corner of Pine Island Road and Cleveland Avenue, North Fort Myers Planning Community, Lee County, FL

#### DCI2024-00027 / Cypress Manor RPD

Request to rezone 28.03± acres from Agricultural (AG 2) to Residential Planned Development (RPD) to allow a 168 multi family or townhouse unit development.

Located At 18831 State Road 82., Lehigh Acres Planning Community, Lee County, FL.

#### DCI2022-00067 / Cary+Duke+Povia RPD

Request to rezone 788± acres from Agricultural (AG-2) to Residential Planned Development (RPD) to allow for a maximum of 1,099 dwelling units, private on-site recreational uses, and supporting infrastructure. The maximum building height is 35 feet. The site will connect to centralized water and sewer services.

Located At 13230 N River Rd., and 14406 Duke Hwy., Northeast Lee County 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 (ttoussaint@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, <a href="mailto:ADArequests@leegov.com">ADArequests@leegov.com</a> 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.

# Comprehensive Plan Amendment and Zoning Hearing Agenda

#### Wednesday, February 5, 2025

#### List of Hearing Attendees by Case

Case Number	Name	Party	
DCI2023-00015 Pine Island Road CPD (Remand Hearing)	Alexis Crespo	Applicant	
	RVi Planning + Landscape Architecture	7 (ррпоатт	
	Brett Nevaril	Applicant	
	Infinity Engineering		
	Diogo Rodrigues	Applicant	
	Infinity Engineering		
	Barrett Stejskal	Applicant	
	BearPaws Environmental Consulting Ted Treesh		
		Applicant	
	TR Transportation Consultants, Inc. Chris Lascano		
	Phoenix and Associates	Applicant	
	Sarah Decker	Public Participant	
	Jason Harper	Public Participant	
	Dan DeLisi, AICP	A result a cont	
	DeLisi, Inc.	Applicant	
	Drew Fitzgerald, PE	Applicant	
	RESPEC Company	Applicant	
DCI2024-00027	Yury Bykau, PE	Applicant	
Cypress Manor RPD	TR Transportation Consultants, Inc.	Арріїсані	
	Francesca Passidomo, Esq.	Applicant	
	Coleman Yovanovich & Koester, PA		
	Barrett Stejskal	Applicant	
	BearPaws Environmental Consulting		
	Derek Felder	Public Participant	
	Alexis Crespo	Applicant	
	RVi Planning + Landscape Architecture		
	Jem Frantz	Applicant	
	RVi Planning + Landscape Architecture		
DC12022 00067	Will Hellman	Applicant	
DCI2022-00067 Cary + Duke + Povia RPD	RVi Planning + Landscape Architecture		
	Sabrina McCabe RVi Planning + Landscape Architecture	Applicant	
	Brandon Frey		
	JR Evans Engineering, Inc.	Applicant	
	Yury Bykau	Applicant	
	TRTransportation Consultants, Inc.	Applicant	

# Comprehensive Plan Amendment and Zoning Hearing Agenda

#### Wednesday, February 5, 2025

#### List of Hearing Attendees by Case

Case Number	Name	Party
	Ted Treesh	Applicant
	TR Transportation Consultants, Inc.	Арріїсані
	Shane Johnson	Applicant
	Passarella & Associates, Inc.	
	Kirk Martin	Applicant
	Water Science	Арріїсані
	Neale Montgomery, Esq.	Applicant
	Pavese Law Firm	Арріісані
	Pat Neal	Applicant
	Neal Communities	Арріїсані
	Susan Allen	Public Participant
	Kathy Arnold	Public Participant
	Ralph Bond	Public Participant
	Linda Borchering	Public Participant
DC12022 00007	Steven Brodkin	Public Participant
DCI2022-00067	Monica Busbee	Public Participant
Cary + Duke + Povia RPD	Keith Cary	Public Participant
(cont.)	Terri Chadwell	Public Participant
	Amanda Cochran	Public Participant
	Darius Cochran	Public Participant
	Freida Lauer Cochran	Public Participant
	Jimmie Cochran	Public Participant
	Keith Durling	Public Participant
	Glen Dyess	Public Participant
	Denise Eberle	Public Participant
	Dave Edwards	Public Participant
	Marsha Ellis	Public Participant
	William Fields	Public Participant
	Cheryl Fischer	Public Participant
	Grant Fichter	Public Participant
	Roxanne Gause	Public Participant
	Elly Hagen	Public Participant
	James Kennedy	Public Participant
	Alan Klingensmith	Public Participant
	Donalyn Moon	Public Participant
	Tom Mulling II	Public Participant
	Terry Paska	Public Participant
	Codty Pierce	Public Participant

# Comprehensive Plan Amendment and Zoning Hearing Agenda

#### Wednesday, February 5, 2025

#### List of Hearing Attendees by Case

Case Number	Name	Party
DCI2022-00067 Cary + Duke + Povia RPD (cont.)	Linda Redfern	Public Participant
	William Redfern	Public Participant
	Katrina Sakolar	Public Participant
	Katherine Sanderford	Public Participant
	Jack Snider	Public Participant
	Holly Schwartz	Public Participant
	Don Tate	Public Participant
	Andy Tilton	Public Participant

# DCI2023-00015 PINE ISLAND ROAD CPD

## Staff Summary

CASE NUMBER & NAME: DCI2023-00015 / Pine Island Road CPD

REQUEST: Request to rezone 9.7± acres from Agricultural (AG-2) and

Commercial (C-1 and C-1A) to Commercial Planned

Development (CPD) to allow a maximum of 121,800 square feet of commercial uses including a convenience food and beverage

store with sixteen fueling positions.

RESOLUTION NUMBER: Z-24-022

LOCATION: SW corner of Pine Island Road and Cleveland Avenue, North

Fort Myers Planning Community, Lee County, FL

OWNER: 41 Pine RRV, LLC

APPLICANT: Phoenix Associates of Florida, Inc.

AGENT: Josephine Medina, AICP

RVI Planning and Landscape Architecture 28100 Bonita Grande Drive, Suite 305

Bonita Springs, FL 34135

**HEARING EXAMINER** 

RECOMMENDATION:

Approve, subject to conditions and deviations set forth in Exhibit

В.

PARTICIPANTS (2): 1. Sarah Decker

2. Jason Harper

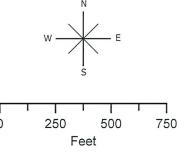


# DCI2023-00015

Aerial









#### MEMORANDUM FROM THE OFFICE OF THE LEE COUNTY HEARING EXAMINER

DATE:

**December 20, 2024** 

TO:

**Board of County Commissioners** FROM:

Donna Marie Collins

Chief Hearing Examine

RE:

PINE ISLAND ROAD CPD REMAND

DCI2023-00015

The Hearing Examiner conducted a hearing on the Pine Island Road CPD and rendered a recommendation to the Board on September 25, 2024. Staff and Applicant requested a remand prior to the final Board hearing following discovery of a discrepancy in the publication notice.

Staff subsequently readvertised the case to address the discrepancy in the publication notice. The remand hearing was brief, as there was no change in the development parameters under consideration. No members of the public attended the hearing.

The Hearing Examiner's recommendation remains unchanged.

The Zoning Section of the Department of Community Development will schedule a final hearing before the Board in the coming weeks.

Staff Exhibit 1: Affidavit of Publication

Michael Jacob, Deputy County Attorney CC:

Joseph Adams, Assistant County Attorney

Warren Baucom, Director Economic Development

Anthony Rodriguez, AICP, Manager Zoning Section

Elizabeth Workman, Principal Planner

Phil Gillogly, Surface Water Manager, Division of Nat. Resources

Jamie Princing, Administrative Specialist, Dept. of Community Development

Applicant's representatives

Other Interested Parties

Last Revised: 07/27/2016



# GANNETT

PO Box 631244 Cincinnati, OH 45263-1244

#### AFFIDAVIT OF PUBLICATION

Tracy Toussaint Lcbc-Dept Of Comm Development-D 1500 MONROE ST Fort Myers FL 33901

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 Public Notices, was published on the publicly accessible website of Lee County, Florida, or in a newspaper by print in the issues of, on:

12/05/2024

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 12/05/2024

Legal Clerk

Notary, State of WI, County of Brown

My commission expires

**Publication Cost:** 

\$265.64

Tax Amount:

\$0.00

Payment Cost:

\$265.64

Order No:

10800677

# of Copies:

Customer No:

1124450

PO #:

#900697

#### THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

NICOLE JACOBS Notary Public State of Wisconsin

NOTICE OF PUBLIC HEARING
The Hearing Examiner of Lee
County will hold public hearings on
Thursday, December 19, 2024, In the
Hearing Examiner Meeting Room,
1500 Monroe St., Fl. Myers, FL. An
interested individual may appear in
person, through counsel, or an
authorized agent and provide testimony, legal argument or other
evidence at the hearing.
If you do 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.
Any document that a participant of
record Intends to submit to the
Board of County Commissioners.
Any document that a participant of
record Intends to submit to the
Board of County Commissioners.
Any document that a participant of
record Intends to submit to the
Board of County Commissioners.
Any document that a participant of
record Intends to submit to the
Board of County Commissioners
Any document that a participant of
record Intends to submit to the
Board of the record in the
hearing before the Hearing Examiner. If the document Is not submitted and is not 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, then the document may not be
submitted to the Board.
After the Hearing Examiner, has
made a written recommendation,
the case will be scheduled for a
public hearing before the Board of
County Commissioners who will
review the recommendation and
make a final decision.
Copies of staff report(s) are available two weeks prior to the hearing.
The file can be reviewed at the
Zoning Section, 1500 Monroe St.,
Fort Myers, FL. Call 239 533 8585 for
additional information.
Lee County will not discriminate
against individuals with disabilities.
To request an accommendation,
capies of staff report(s) are availadditional information.
Lee County Land Development
(Appl. 2000 orn. Request for rezone 28.03±
contends and County Land Development
(Appl. 2000 orn. Request

Page 1 of 1

### Summary of Hearing Examiner Recommendation

## PINE ISLAND ROAD CPD

The request seeks to develop the southwest corner of the US 41 and Pine Island Road intersection with a range of intense commercial uses and a storage facility.

The Master Concept Plan and conditions of approval ensure protection of nearby residents. This is accomplished through site design that orients intense uses toward arterial roadways, enhances right of way buffers along Herron Road, and imposes limitations on hours of operation.

Detailed recommendation follows

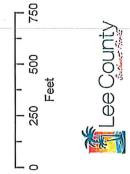
Haring Haring Haring Appraiser, Lee County Property Appraiser, Lee County GIS

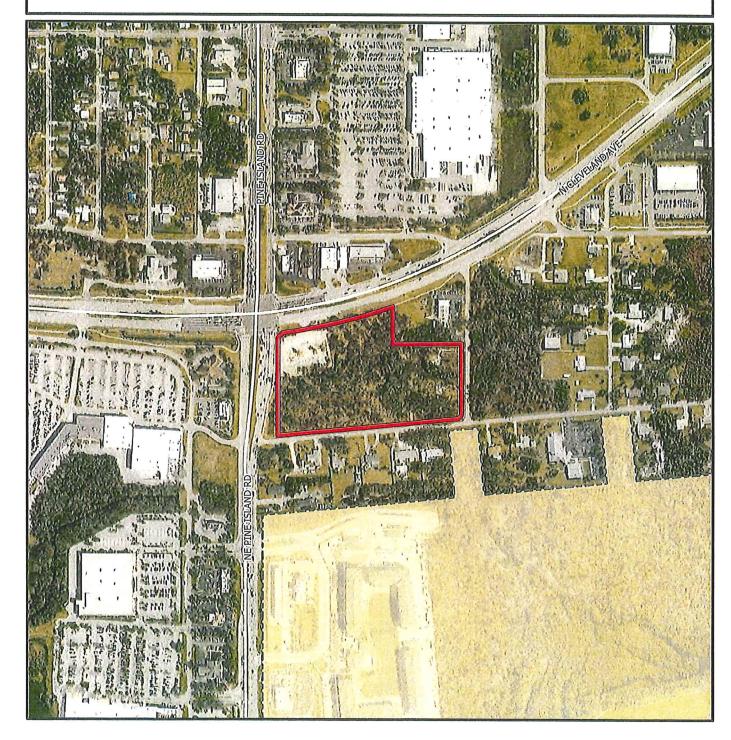
Aerial

Subject Property

الله City Limits

z \_\_\_\_\_\_





DCI2023-00015

Mixed Use Overlay

Subject Property

Mixed Use Overlay

جَامِيٍّ City Limits



#### OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

#### HEARING EXAMINER RECOMMENDATION

**REZONING:** 

DCI2023-00015

Regarding:

PINE ISLAND ROAD CPD

Location:

Southwest corner of US 41 and Pine Island Road

North Fort Myers Planning Community

(District 4)

Hearing Date:

August 14, 2024

Record Closed: September 23, 2024

#### I. Request

Rezone 9.7 acres from Commercial (C-1 and C-1A) and Agricultural (AG-2) to Commercial Planned Development (CPD), to allow 121,800 square feet of commercial uses with maximum heights of 45 feet. The request seeks alternative development scenarios as follows:

#### Option A:

- Up to 100,000 sq. ft. mini or public warehouse,
- 4,000 sq. ft. carwash,
- 2,500 sq. ft. auto repair services,
- 5,000 sq. ft. fast food restaurant,
- 7,800 sq. ft. commercial retail uses.

#### Option B:

- Up to 100,000 sq. ft. mini or public warehouse,
- 4,000 sq. ft. carwash,
- 2,500 sq. ft. auto repair services,
- 7,500 sq. ft. convenience food and beverage store with 16 fuel pumps.

The property legal description is set forth in Exhibit A.

#### II. Hearing Examiner Recommendation

Approve, subject to conditions and deviations set forth 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. In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on an application to rezone property in North Fort Myers to the CPD district. 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.2

#### Request

Applicant requests to rezone 9.7 acres from C-1 and C-1A and AG-2 to CPD. The proposed CPD includes two potential development scenarios:

#### Option A:

- Up to 100,000 sq. ft. mini or public warehouse,
- 4,000 sq. ft. carwash,
- 2,500 sq. ft. auto repair services,
- 5,000 sq. ft. fast food restaurant,
- 7,800 sq. ft. commercial retail uses.

#### Option B:

- Up to 100,000 sq. ft. mini or public warehouse,
- 4,000 sq. ft. carwash,
- 2,500 sq. ft. auto repair services,
- 7,500 sq. ft. convenience food and beverage store with 16 fuel pumps.

The request includes two deviations from LDC standards. Maximum building heights will be 45 feet.

The Master Concept Plan (MCP) clusters buildings internal to the site and provides enhanced buffering along Herron Road. Both development options feature driveways on US 41, Pine Island Road, and Herron Road. The Herron Road

<sup>1</sup> LDC §34-145(d)(4) a.

<sup>&</sup>lt;sup>2</sup> Hearing Examiner codified conditions and deviations from prior approvals.

Access drive is located 125 feet from Pine Island Road to minimize impacts to the neighborhood.

#### **Character of Area**

The property is in the North Fort Myers Planning District and subject to a community plan. The site is located at the intersection of US 41/North Cleveland Avenue and Pine Island Road.

US 41/North Cleveland Avenue is a "Commercial Corridor" under the North Fort Myers Community Plan.<sup>3</sup> The corridor is developed with large retail centers and midsize commercial businesses. Multifamily development is underway north of Merchant's Crossing.<sup>4</sup> There is an auto repair business on the corner of Pineapple Lane and US 41/North Cleveland Avenue. Herron Road is developed with single family homes and a church.

#### History

The 9.7 acre site is comprised of 11 separate parcels. Three parcels abutting US 41/North Cleveland Avenue are zoned C-1. These parcels lie within the Mixed Use Overlay. One parcel along Pine Island Road is zoned C-1A and the remaining seven parcels are zoned for agriculture.<sup>5</sup>

The commercially zoned parcels were formerly developed with a car wash. Three of the seven agriculturally zoned parcels hosted three single family dwellings. All improvements have been removed and the property is now vacant.

#### Lee Plan

Planned developments must be consistent with the Lee Plan.<sup>6</sup>

The Lee Plan designates the property within the Intensive Development and Sub-Outlying Suburban future land use categories.

The Intensive Development Future Land Use category is the most intense under the Lee Plan. Intensive Development areas are located along major arterial roads with access to a wide array of services.<sup>7</sup> These areas are considered suited for intense development.<sup>8</sup>

<sup>&</sup>lt;sup>3</sup> LDC §§33-1537, 33-1566(a).

<sup>&</sup>lt;sup>4</sup> Commercial uses in the immediate area include regional shopping centers, convenience stores with fuel pumps, and pharmacies.

<sup>&</sup>lt;sup>5</sup> Staff Report page 2.

<sup>6</sup> LDC §34-411(a).

<sup>&</sup>lt;sup>7</sup> The property is in an area of the County characterized by intense development patterns.

<sup>&</sup>lt;sup>8</sup> See Lee Plan Table 1(b).

Sub-Outlying Suburban lands feature low density residential land uses. These areas generally do not have the infrastructure needed to support intense development. This Sub-Outlying Suburban category are typically found in areas where intense development is not anticipated or where there is a desire to retain a low-density community character. The Sub-Outlying Suburban classification of a portion of the site appears to be a vestige from development patterns predating the urbanization of the US 41 and Pine Island Road corridors. Properties along Herron Road are sandwiched between the City of Cape Coral and the intense development along Pine Island Road and US 41.

The juxtaposition of the two diametrically different land use categories requires careful attention to site design and buffering.

The property's current zoning designation is C-1, C-1A, and AG-2. The purpose of the C-1 and C-1A districts is to regulate continuance of commercial and select residential land uses.<sup>10</sup> The purpose of agricultural districts is to provide for agricultural operations with ancillary residential use.<sup>11</sup> The Lee Plan discourages new agricultural uses in future urban areas with public services and infrastructure available to serve development.<sup>12</sup> The requested planned development district authorizes development of land uses better suited to property in an urban area.<sup>13</sup>

Development in North Fort Myers is subject to a Community Plan adopted as part of the Lee Plan as well as specific use and site design criteria in the LDC.<sup>14</sup> The Community Plan emphasizes protecting North Fort Myers' character, economic vitality, and quality of life.<sup>15</sup> The proposed CPD will serve residents in surrounding areas and the traveling public.

The Economic Element of the Lee Plan encourages expansion of the County's economic base. <sup>16</sup> The proposed mix of land uses contributes to a positive business climate creating additional employment opportunities. <sup>17</sup>

A portion of the site is located within a Mixed Use Overlay.<sup>18</sup> The Mixed Use Overlay is desirable for mixed use development due to its proximity to public transit, shopping, and employment centers.

<sup>&</sup>lt;sup>9</sup> Lee Plan Policy 1.1.11.

<sup>10</sup> LDC §34-841.

<sup>&</sup>lt;sup>11</sup> LDC §34-651.

<sup>&</sup>lt;sup>12</sup> Lee Plan Goal 9, Objective 9.2.

<sup>&</sup>lt;sup>13</sup> Lee Plan Goal 6, Objective 9.2, Policies 6.1.4, 6.1.7, 9.2.1.

<sup>&</sup>lt;sup>14</sup> Lee Plan Goal 30 adopted by Lee County Ordinance No. 09-11 on February 25, 2009. Community specific LDC regulations adopted by Lee County Ordinance No. 12-01 on January 10, 2012.

<sup>&</sup>lt;sup>15</sup> See Lee Plan Goal 30.

<sup>&</sup>lt;sup>16</sup> Lee Plan Goal 158 Objective 158.2.

<sup>&</sup>lt;sup>17</sup> Lee Plan Goal 158, Objective 158.3.

<sup>&</sup>lt;sup>18</sup> Lee Plan Map 1-C: Mixed Use Overlay.

Lee Tran routes 140 and 595 travel along US 41 and Pine Island Road with transit stops proximate to the project.<sup>19</sup> There are sidewalks and shared use paths on Pine Island Road and US 41.<sup>20</sup>

#### Compatibility

Compatibility between land uses exists when land uses do not unduly impact one another. Planned development zoning is a useful tool when integrating new development with surrounding land uses.<sup>21</sup> The planned development zoning district allows flexibility in site design to address potential incompatibilities with residential development on Herron Road.

The property's location at the intersection of two heavily traveled arterial roadways makes the site suitable for intense land uses.<sup>22</sup> The Mixed Use Overlay designation on a portion of the site encourages compact urban development forms.<sup>23</sup> The property qualifies as "infill" contributing to contiguous development patterns.<sup>24</sup>

Zoning the property to a commercial district will permit development of uses designed to serve nearby residential land uses and traveling public.<sup>25</sup> The proposed CPD is consistent with development patterns along the US41/North Cleveland Avenue commercial corridor.<sup>26</sup> The site will serve as a transition between the US41 corridor and less intense uses to the west. The Herron Road right of way separates residential land uses from proposed commercial uses and more intense development and traffic along US 41.<sup>27</sup>

The North Fort Myers Community Plan encourages streetscape and landscape improvements along North Cleveland Avenue.<sup>28</sup> While property in a Mixed Use Overlay generally benefits from scaled back open space and landscape requirements,<sup>29</sup> the LDC imposes enhanced landscape requirements for some uses regardless of location.<sup>30</sup> These enhanced standards will apply to convenience stores with fuel pumps as well as fast food restaurants.

<sup>&</sup>lt;sup>19</sup> Lee Plan Policy 39.1.3.

<sup>&</sup>lt;sup>20</sup> Lee Plan Policies 39.6.4, 43.1.1, Lee Plan Map 3-D: Lee County Walkways & Bikeways.

<sup>&</sup>lt;sup>21</sup> LDC §34-612(2).

<sup>&</sup>lt;sup>22</sup> LDC §34-413

<sup>&</sup>lt;sup>23</sup> Lee Plan Map 1-C, Goal 11, Objectives 2.1, 2.2, 11.1, Policies 2.2.1, 2.2.2, 6.1.4; LDC §34-413.

<sup>&</sup>lt;sup>24</sup> Lee Plan Goal 6, Objective 2.2, Policy 6.1.7.

<sup>&</sup>lt;sup>25</sup> Lee Plan Goal 30.

<sup>&</sup>lt;sup>26</sup> Lee Plan Policies 1.1.2, 6.1.7, 11.2.5.

<sup>&</sup>lt;sup>27</sup> The sub-outlying Suburban future land use designation on Herron Road is a vestige of prior development patterns. The site borders an enclave of single family development bounded by the City of Cape Coral and the Intensive Development category.

<sup>28</sup> Lee Plan Policy 30.3.1.

<sup>&</sup>lt;sup>29</sup> LDC §10-425.

<sup>&</sup>lt;sup>30</sup> LDC §§10-424, 10-425; see also LDC §10-425.

Lighting—on—the—property—is—regulated—by—LDC—outdoor—lighting—standards.<sup>31</sup> Developer must comply with illumination restrictions, shielding and orientation of lighting fixtures. In addition, as a commercial structure, the warehouse facility will be subject to LDC design standards for commercial buildings.<sup>32</sup>

The MCP and recommended conditions will shield residents of Herron Road from project impacts. Conditions include placement of the carwash and dumpsters internal to the project, relocation of Herron Road driveway access to within 125 feet of Pine Island Road, enhanced buffering along Herron Road, and limitations on carwash hours of operation. Recommended conditions and site design reflected in the MCP ensures limited impact to area residents.

There was no testimony on the record as to whether the warehouse facility will be monitored by security cameras, or if there are plans to provide onsite security personnel.<sup>33</sup> Notwithstanding proximity to residences, no restrictions were proposed on hours of operation The Hearing Examiner recommends hours of operation for warehouse uses from 6 am to 10 pm daily. If applicant intends to operate 24 hours a day, the Hearing Examiner recommends a condition requiring onsite security personnel between the hours of 10 pm and 6 am.

#### **LDC**

Rezoning requests must comply with County regulations or seek deviations.

Once rezoned, permitted uses must be consistent with the design standards for the North Fort Myers Commercial Corridor.<sup>34</sup> Commercial projects in North Fort Myers are required to provide publicly accessible open space.<sup>35</sup> Future buildings must comply with North Fort Myers Urban Design Guidelines for commercial land uses.<sup>36</sup> The Community Plan also encourages streetscape and landscape improvements along US 41/North Cleveland Avenue.<sup>37</sup> Site development must comply with these regulations or seek variances.

A "deviation" is a departure from a land development regulation. A pplicants must demonstrate deviations enhance the planned development and will not cause a

<sup>32</sup> The purpose of the commercial building design standards is to maintain and complement the street scape by requiring buildings to be designed with architectural features and patterns that provide visual interest consistent with the community's identity and local character. LDC §10-620 *et seq*.

<sup>31</sup> LDC §34-625.

<sup>&</sup>lt;sup>33</sup> Requested uses did not include a caretaker's residence.

<sup>&</sup>lt;sup>34</sup> North Fort Myers is subject to a community plan set forth in Lee Plan Goal 30 as well as supplemental development regulations in LDC §33-1531 *et seq.*, including standards governing architecture, signs, landscaping, and site design. LDC §§33-1571, 33-1596. Land uses must be consistent with the commercial corridor use regulations.

<sup>35</sup> LDC §33-1572.

<sup>36</sup> LDC §33-1575 et seq.

<sup>&</sup>lt;sup>37</sup> Lee Plan Policy 30.3.1.

<sup>&</sup>lt;sup>38</sup> LDC §34-2.

detriment to the public.<sup>39</sup> The CPD includes two deviations; one relating to parking and the other to internal road buffering.<sup>40</sup> Applicant submitted a parking study of seven warehouse facilities in Lee County and Fort Myers demonstrating parking demand is lower than LDC standards. County staff accepted the study in support of the requested parking deviation.

Staff recommended approval of both deviations, and the Hearing Examiner agrees with this recommendation. 41

The North Fort Myers Community Planning & Design Review Panel reviewed the request prior to hearing and expressed no objection to the proposed zoning.<sup>42</sup> The property will be subject to further community review at the development order stage.<sup>43</sup>

Development will be subject to road, fire, and emergency medical services impact fees.<sup>44</sup>

#### **Environmental/Natural Resources**

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

A portion of the site has been cleared and does not contain wetlands.<sup>45</sup> The species survey revealed no evidence of protected species.<sup>46</sup> The MCP depicts 2.56 acres of open space, 1.0 acre of which will be comprised of an upland indigenous preserve. Project open space includes wet and dry detention areas and landscape buffers.

Developer must install enhanced plantings along Herron Road.<sup>47</sup> The 30 foot wide Type F buffer will include ten trees every 100 linear feet with a double staggered hedgerow. The hedgerow must be 48 inches high at installation and maintained at 60 inches to ensure a lush landscape buffer along the Herron Road right of way. The buffer will ameliorate potential impacts to residents on Herron Road.

40 LDC §§34-2013(b)(3), 34-2020(b).

<sup>&</sup>lt;sup>39</sup> LDC §34-373(a)(9).

<sup>&</sup>lt;sup>41</sup> 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).

<sup>&</sup>lt;sup>42</sup> Advertised meeting held on February 6, 2024, before the North Fort Myers Community Planning Panel. LDC §33-1532(a). See Staff Report Attachment F.

<sup>&</sup>lt;sup>43</sup> LDC §33-1532.

<sup>&</sup>lt;sup>44</sup> Lee Plan Policies 38.1.1, 38.1.5; LDC Chapter 2.

<sup>&</sup>lt;sup>45</sup> Staff Report Attachment F: Testimony of Barrett Stejskal, BearPaws Environmental Consulting.

<sup>&</sup>lt;sup>46</sup> ld.

<sup>&</sup>lt;sup>47</sup> See Condition 6.

Buffers and landscaping within open space areas must follow Xeriscape principles and consist of native landscape to conserve water.<sup>48</sup>

The Hearing Examiner finds the proposed CPD will not harm environmentally critical/sensitive areas or natural resources.<sup>49</sup> The plan of development includes removal of exotic vegetation.

#### **Transportation**

Access must be sufficient to support development intensity and expected impacts must be addressed by existing county regulations.

The property is bounded on four sides by roadways: Pine Island Road, US 41, Herron Road, and Pineapple Lane. US 41/North Cleveland Ave and Pine Island Road are state maintained arterial roadways.<sup>50</sup> As such, Florida Department of Transportation has permit authority over driveway access and location. Herron Road and Pineapple Lane are County maintained local roads.

Three access drives will serve the site: A right in only access from Pine Island Road, a right-in/right-out access to US 41, and a full access from Herron Road.<sup>51</sup> The Herron Road access drive is located 125 feet from Pine Island Road to limit project related traffic in the adjacent residential neighborhood.<sup>52</sup>

The Traffic Impact Statement (TIS) calculated project impacts on the county road network.<sup>53</sup> The TIS reflects the convenience store/gas station use attracts a significant amount of traffic from vehicles already traveling adjoining roadways.<sup>54</sup> This "pass by" traffic reduces impacts to the road network.

The TIS concludes most roadways will not be significantly impacted by the project at buildout. The exception is <u>Pine Island Road west of US 41</u>, which will operate <u>below adopted levels of service at buildout</u>. <sup>55</sup> However, the condition exists in 2027 with *and without* the proposed development. <sup>56</sup> The County does not require special mitigation to address existing transportation deficiencies. As a result, project traffic

<sup>50</sup> Lee County Administrative Code 11-1.

<sup>&</sup>lt;sup>48</sup> Lee Plan Objective 126.2, Policy 126.2.1, LDC §10-421.

<sup>&</sup>lt;sup>49</sup> Lee Plan 125.1.2.

<sup>&</sup>lt;sup>51</sup> MCP. The MCP depicts no access to Pineapple Lane.

<sup>&</sup>lt;sup>52</sup> The developer must upgrade Herron Road to the project access to meet County road standards.

<sup>&</sup>lt;sup>53</sup> TIS attached to Applicant's 48 hour memorandum prepared by TR Transportation Consultants, Inc. revised February 16, 2024.

<sup>&</sup>lt;sup>54</sup> *Id.* Consistent with FDOT studies in Florida, pass-by rates for gas station use is 77%. Proposed retail uses will also experience pass-by trip reductions. Significant impact is defined as the project trips impacting a roadway link greater than 140% of the adopted Level of Service "C" service volumes.

<sup>&</sup>lt;sup>55</sup> TIS attached to Applicant's 48 hour memorandum prepared by TR Transportation Consultants, Inc. revised February 16, 2024. Significant impact is defined as the project trips impacting a roadway link greater than 140% of the adopted Level of Service "C" service volumes.

<sup>&</sup>lt;sup>56</sup> The County will not require special mitigation to address level of service issues when there are existing transportation deficiencies not caused by a project.

generated by the proposed rezoning does not warrant roadway capacity improvements.<sup>57</sup>

Further analysis of transportation impacts, including site-related turn lane improvements, will occur during development order permitting.<sup>58</sup>

#### **Transit**

Lee Tran Route 140 runs along US 41.<sup>59</sup> Project design must comply with LDC requirements to facilitate transit access.<sup>60</sup>

#### **Greenways Master Plan**

The property is on the Pine-Island Hendry Trail, which runs along Pine Island Road.<sup>61</sup>

#### **Public Services**

Public services include facilities, capital improvements, and infrastructure necessary to support development at urban levels of intensity.<sup>62</sup> The Lee Plan requires evaluation of available public services during the rezoning process.<sup>63</sup>

Public services and infrastructure are in place to serve the property.<sup>64</sup> The site is surrounded by paved roadways. There is public water and sanitary sewer

<sup>&</sup>lt;sup>57</sup> TIS attached to Applicant's 48 hour memorandum prepared by TR Transportation Consultants, Inc. revised February 16, 2024.

<sup>&</sup>lt;sup>58</sup> Site related road improvements include capital improvements and right-of-way dedications for direct access to the development. Direct access improvements may include: (1) site access and roads;

<sup>(2)</sup> Median cuts; (3) Turn and deceleration/acceleration lanes; (4) Traffic control measures; (5) Access/frontage roads providing frontage for newly created lots; (6) Roads or intersection improvements whose primary purpose is to provide access to the development; (7) Improvements to bicycle and pedestrian facilities along parcel frontage of public streets; (8) Improvements to transit facilities within one-quarter mile of parcel frontage measured along principal perimeter streets.

LDC §§10-1, 10-7(b), 10-286, 10-288, 10-441.

<sup>&</sup>lt;sup>59</sup> Lee Plan Map 3-C: 2045 Financially Feasible Transit Network. An improved transit stop is located on US 41 along the site frontage. *See* Lee Plan Policies 43.1.1, 158.3.1.

<sup>&</sup>lt;sup>60</sup> LDC §10-442(b) requires projects proposing 30,000 square feet or greater commercial floor area must provide a paved walkway to the nearest bus stop and install a bicycle storage rack, signage, and a landing pad within the road right of way or dedicated easement.

<sup>61</sup> Lee Plan Map 4-E Greenways Master Plan.

<sup>&</sup>lt;sup>62</sup> Public services include public water and sewer, paved streets, parks, and recreation facilities, urban levels of police, fire and emergency services, surface water management, schools, employment, industrial and commercial centers, institutional, public, or administrative facilities, and community facilities.
<sup>63</sup> Lee Plan Policy 2.2.1.

<sup>&</sup>lt;sup>64</sup> Lee Plan Glossary definition of Public Services, Goal 4, Policies 1.1.2, 2.2.1, Standards 4.1.1, 4.1.2.

infrastructure to serve the property.<sup>65</sup> Fire, EMS, and law enforcement services are available from nearby stations.<sup>66</sup>

The property has access to two major arterials: Pine Island Road and US 41. Pine Island Road offers connections to I-75, Del Prado Boulevard, and Business US 41. Lee Tran services the US 41 and Pine Island Road corridors.<sup>67</sup> Applicant may be required to provide convenient access to the nearest bus stop.<sup>68</sup> A shared use path for cyclists and pedestrians is located on Pine Island Road and US 41.<sup>69</sup>

#### **Conditions**

The County must administer the zoning process so proposed land uses minimize adverse impacts on adjacent property and protect County resources.<sup>70</sup> Conditions must be plausibly related to the project's anticipated impacts, and pertinent to mitigating impacts to the public.<sup>71</sup>

The CPD is subject to conditions addressing impacts reasonably anticipated from development. Notable conditions include restoration of indigenous upland vegetation, restrictions on hours of operation, and signs to discourage truck traffic on Herron Road.

The Hearing Examiner has the authority to recommend additional conditions in the context of a proposed planned development.<sup>74</sup> In furtherance of this authority, the Hearing Examiner recommends conditions to ensure compatibility with nearby residents on Herron Road. These conditions include limiting the hours of operation of the carwash and warehouse facility.

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

<sup>&</sup>lt;sup>65</sup> Lee County Utilities and FGUA have public water and sanitary sewer infrastructure in proximity to the property. Lee Plan Standards 4.1.1, 4.1.2; Staff Report.

<sup>&</sup>lt;sup>66</sup> North Fort Myers Fire Control & Rescue Service District has stations on Barrett Road and Trail Dairy Circle. Lee County EMS Medic 7 and Lee County Sheriff North District Office are located on Pondella Road.

<sup>&</sup>lt;sup>67</sup> Lee Plan Objective 11.2, Policy 30.3.3; Lee Tran Route 140.

<sup>&</sup>lt;sup>68</sup> Developer must ensure access to public transportation if available. Lee Plan Objective 11.2, Policy 30.3.3, Map 3-C, LDC §33-1574 identifies design techniques that facilitate public access to transit.

<sup>&</sup>lt;sup>69</sup> Lee Plan Map 3-D: Lee County Walkways & Bikeways.

<sup>&</sup>lt;sup>70</sup> 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).

<sup>&</sup>lt;sup>71</sup> LDC §34-932(b).

<sup>&</sup>lt;sup>72</sup> LDC §§34-83(b)(4) a.3, 34-377(a)(2)c; Lee Plan Objective 77.3, Policies 5.1.5, 6.1.4, 77.3.1, 135.9.6.

<sup>&</sup>lt;sup>73</sup> The Hearing Examiner further restricted the carwash hours of operation in deference to resident's concerns regarding noise.

<sup>&</sup>lt;sup>74</sup> LDC 34-145(d)(1)c. and (d)(6)a.

#### Public

Two members of the public attended the hearing who were residents of Herron Road. They expressed concerns regarding the intrusion of commercial traffic into their residential neighborhood and attendant noise. Hearing Examiner's prehearing site visit brought the public's concerns into sharp focus.<sup>75</sup>

In response to resident concerns, Applicant revised the MCP relocating the Herron Road driveway closer to Pine Island Road. The revised MCP repositions intense uses proximate to US 41 and Pine Island Road. Applicant volunteered conditions limiting the hours of operation of the car wash and requiring the placement of signs discouraging commercial trucks from using Herron Road as a means of ingress or egress from the site. The Hearing Examiner further limited carwash hours of operation. In addition, the Hearing Examiner imposed limits warehouse hours of operation.<sup>76</sup>

#### Conclusion

The Hearing Examiner recommends approval of the requested Pine Island Road CPD, subject to conditions in Exhibit B.

The Hearing Examiner finds the Pine Island Road CPD meets LDC criteria and, as conditioned, is compatible with surrounding development.<sup>77</sup>

#### IV. Findings and Conclusions

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

- A. The requested CPD is consistent with the Lee Plan. Lee Plan Goals 2, 4, 6, 11, 30, 60, 61, 77, 95, 125, 158, 159; Objectives 2.1, 4.1, 6.1, 11.1, 11.2, 30.2, 77.2, 77.3, 126.2, and Policies 1.1.2, 1.1.11, 1.6.5, 2.2.1, 6.1.1, 6.1.3, 6.1.4, 6.1.5, 6.1.6, 6.1.7, 30.2.5, 39.1.3, 135.9.6, Lee Plan Maps 1-A, 1-B, 1-C, 2-A, 3-C, 3-D, 4-A, 4-B, 4-E, Table 1(b).
- B. As conditioned, the Pine Island Road CPD:
  - 1. Is consistent with the LDC 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, 6, 30, Objectives 2.1, 2.2, 11.2, and Policies 1.1.2,

<sup>&</sup>lt;sup>75</sup> The Hearing Examiner makes a site visit on each case. Lee County Administrative Code 2-6 §3.1.

<sup>&</sup>lt;sup>76</sup> Mini-warehouse and public warehouse uses.

<sup>77</sup> Lee Plan Policy 6.1.4.

- .1.1.11, .5.1.5, ..6.1.4, .11.2.1, 30.3.1, 39.1.3, 135.9.5, 135.9.6; LDC §§34-411, 34-413.
- 3. Provides sufficient road access to support proposed development intensity. Lee Plan Objective 39.1, Policies 6.1.4, 6.1.5, 30.3.3, 38.1.1, 39.1.1, 39.2.2.
- 4. Expected impacts on transportation facilities will be addressed by County regulations and conditions of approval. Lee Plan Objective 39.1, Policies 6.1.5, 38.1.1, 38.1.5, 39.1.3, 39.2.1; LDC §§2-261 et seq., 34-411(d) and (e).
- 5. Will not adversely affect environmentally sensitive areas or natural resources. Lee Plan Goals 60, 77, 125, Objectives 77.3, 126.2, Policies 6.1.6, 60.1.1, 61.3.6, 77.3.1, 77.3.3, 125.1.2, 125.1.3, 126.2.1, and Standard 4.1.4; and
- 6. Public services and infrastructure will be available to serve the development. Goals 2, 4, 6, 11, 95, Objectives 2.1, 2.2, 4.1, 6.1,158.3, Policies 2.2.1, 4.1.1, 4.1.2, 6.1.4, 11.2.1, 39.2.1, 65.2.1, 158.3.1, 160.1.1, Standards 4.1.1, 4.1.2.
- C. The proposed uses are appropriate at the location. Lee Plan Goals 2, 6, 11, 30; Objectives 2.1, 2.2, 11.2, Policies 2.1.1, 2.1.2, 6.1.7, 6.1.8, 11.2.5, 39.1.3, 135.9.6, Lee Plan Table 1(b)
- 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 30, 125, Objectives 77.2, 77.3, 126.2, Policies 5.1.5, 6.1.4, 30.3.1, 53.1.5, 56.1.4, 77.3.1, 126.2.1, 135.9.6: 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).
- F. Will be served by urban services and infrastructure. Lee Plan Goal 2, Objectives 2.1, 2.2, Policy 2.2.1, 4.1.1, 4.1.2.

Date of Recommendation: September 25, 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



Professional Engineers, Planners & Land Surveyors

# DESCRIPTION OF

A TRACT OR PARCEL OF LAND LYING IN SECTION 3, TOWNSHIP 44 SOUTH, RANGE 24 EAST LEE COUNTY, FLORIDA

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTION 3, TOWNSHIP 44 SOUTH, RANGE 24 EAST, BEING A PORTION OF LOT 8, LITTLE GROVES UNIT "B", AS RECORDED IN PLAT BOOK 9, PAGE 11, ALL OF LOT 4, MARIANA PARK ADDITION NO. 1, AS RECORDED IN PLAT BOOK 10, PAGE 36, ALL OF LOTS 8, 9, 10, 11, 12, AND PORTIONS OF LOTS 13 AND 14, MARIANA PARK 3<sup>RD</sup> ADDITION, AS RECORDED IN PLAT BOOK 12, PAGE 61, ALL OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL 102, AS DESCRIBED IN OFFICIAL RECORDS BOOK 2614, PAGES 3177 THROUGH 3197, OF SAID PUBLIC RECORDS; THENCE S 89°54'05" E ALONG THE SOUTH LINE OF SAID PARCEL AND THE SOUTH RIGHT-OF-WAY LINE OF NE PINE ISLAND ROAD (STATE ROAD 78 - WIDTH VARIES) FOR 472.90 FEET; THENCE S 44°54'04" E ALONG SAID SOUTH LINE AND SAID RIGHT-OF-WAY LINE FOR 33,81 FEET TO AN INTERSECTION WITH THE WEST RIGHT-OF-WAY LINE OF N. CLEVELAND AVENUE (U.S. 41 / STATE ROAD 45 - 200 FEE WIDE) AND THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2,964.79 FEET, TO WHICH POINT A RADIAL LINE BEARS S 81°47'47" W; THENCE SOUTHERLY ALONG SAID WEST RIGHT-OF-WAY LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 10°40'37" FOR 552.48 FEET TO AN INTERSECTION WITH THE NORTH LINE OF SAID MARIANA PARK ADDITION NO. 1; THENCE N 89°56'16" W ALONG SAID NORTH LINE FOR 181.44 FEET TO AN INTERSECTION WITH THE WEST LINE OF LOT 3 OF SAID MARIANA PARK ADDITION NO. 1; THENCE S 00°17'45" E ALONG SAID WEST LINE FOR 343.97 FEET TO AN INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF PINEAPPLE LANE (50 FEET WIDE); THENCE N 89°56'16" W ALONG SAID NORTH RIGHT-OF-WAY LINE FOR 339.37 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET; THENCE NORTHWESTERLY ALONG SAID NORTH RIGHT-OF-WAY LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 84°37'20" FOR 36,92 FEET TO AN INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF HERRON ROAD (50 FEET WIDE); THENCE N 05°18'56" W ALONG SAID EAST RIGHT-OF-WAY LINE FOR 885.63 FEET TO THE POINT OF BEGINNING.

SUBJECT PARCEL CONTAINS: 9.71 ACRES, MORE OR LESS.

BEARINGS AND DISTANCES ARE BASED ON THE "STATE PLANE COORDINATE SYSTEM" FLORIDA ZONE WEST NAD 83/2011 (CORS), WHEREIN THE SOUTH RIGHT-OF-WAY LINE OF N.E. PINE ISLAND ROAD (STATE ROAD 78) BEARS S 89°54'05" E. THE SCALE FACTOR IS 0.999942347.

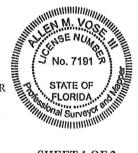
ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.

DESCRIPTION PREPARED: 05-30-2023.

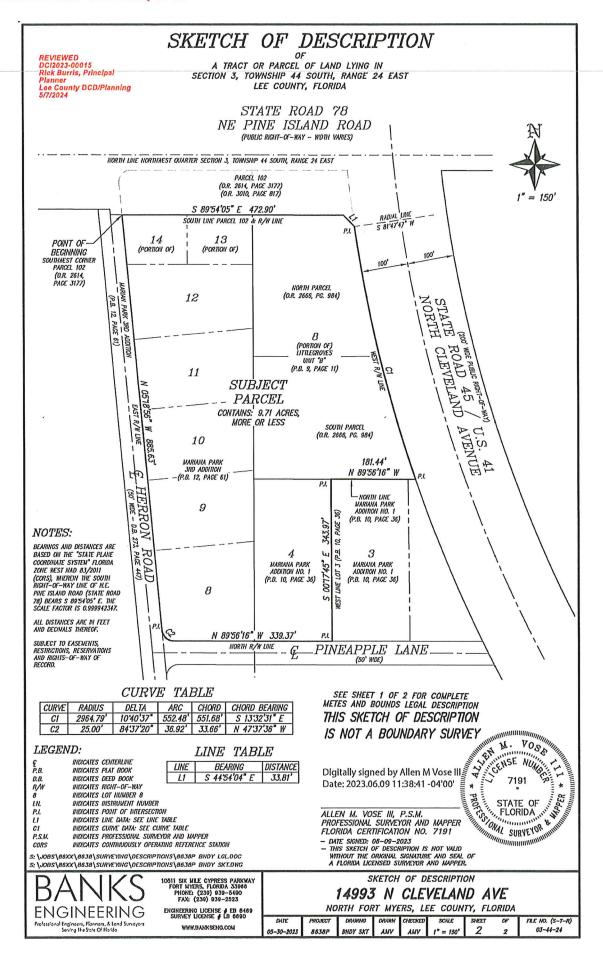
Digitally signed by Allen M Vose III Date: 2023.06.09 11:38:23 -04'00'

ALLEN M. VOSE III, P.S.M.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATION NO. 7191
DATE SIGNED 06-09-2023
S:\Jobs\863x\8638\Surveying\Descriptions\8638P BNDY LGL.doc
S:\Jobs\86xx\8638\Surveying\Descriptions\8638P BNDY SKT.dwg



REVIEWED DCI2023-00015 Rick Burris, Principal Planner Lee County DCD/Planning 5/7/2024

## SHEET 1 OF 2 • SERVING THE STATE OF FLORIDA •



Zoning

Subject Property

جيَّةٍ City Limits

Feet



#### Exhibit B

#### RECOMMENDED CONDITIONS AND DEVIATIONS

As revised by the Hearing Examiner

#### **CONDITIONS**

1. <u>Master Concept Plan (MCP)</u>. Development must be consistent with four-page MCP dated September 23, 2024, entitled "Pine Island Road CPD", prepared by Phoenix Associates of Florida, Inc. except as modified by the conditions below. (Exhibit B1)

<u>Lee Plan and Land Development Code (LDC)</u>. Development must comply with the Lee Plan and LDC, except where deviations are approved herein. Amendments to the MCP, conditions, or deviations require further review and approval.

<u>Approved Development Parameters</u>. The property is approved to develop up to 121,800 square feet of commercial land uses as follows:

#### Option A:

- Up to 100,000 sq. ft. mini-warehouse/public warehouse,
- 4,000 sq. ft. carwash,
- 2,500 sq. ft. auto repair services,
- 5,000 sq. ft. fast food restaurant
- 7,800 sq. ft. commercial retail uses

#### Option B:

- Up to 100,000 sq. ft. mini-warehouse/public warehouse,
- 4,000 sq. ft. carwash,
- 2,500 sq. ft. auto repair services.
- 7,500 convenience food and beverage store with 16 fuel pumps.
- 2. Schedule of Permitted Uses and Property Development Regulations.
  - a. Permitted Uses

Accessory uses, buildings, and structures

ATM (Automated Teller Machine)

Auto parts store (with installation services)

Automobile Repair and Service: Groups I, II

Automobile Service Station

Bank & Financial Establishments: Groups I, II

Car Wash

Clothing Store, General

Convenience Food and Beverage Store (limited to a maximum of 16 fuel pumps)

Drive-through facility for any permitted use

Essential Service Facilities: Group I

**Excavation: Water Retention** 

Food Stores: Group I

Hardware Store

Hobby, Toy, and Game Shops Laundry or Dry Cleaning: Group I Lawn and Garden Supply Store Paint, Glass, and Wallpaper

Parking Lot (accessory)

Personal Services: Groups I-IV (Excludes bail bonding, escort services, fortune tellers, palm readers or card readers, massage parlors, and tattoo parlors)

Pet Shop

Rental and Leasing Establishments: Groups I, II

Repair Shops: Groups I, II Restaurant, Fast Food

Self-Service Fuel Pumps, in conjunction with a Convenience Food and Beverage Store

Signs

Specialty Retail Shops: Groups I, II, & III

Temporary Uses

Used Merchandise Stores: Groups I (except pawn shops), II, III

Variety Store

Warehouse: Public

Mini Warehouse

#### b. <u>Site Development Regulations</u>

Development Criteria	Commercial
Setbacks	
Perimeter	25 feet
Side Yard	15 feet
Rear	20 feet
Preserve	30 feet
Maximum Building Height	45 feet
Overall Minimum Lot Area and	
Dimensions	
Area	25,000 sq. feet
Width	150 feet
Depth	150 feet
Maximum Building Coverage	40 percent

3. Open Space

Development order plans must depict a total of 2.56 acres open space.

4. <u>Indigenous Open Space</u>

Development order plans must depict 1.00 acres of indigenous preserve area to include 135 percent credit (1.35 acres of indigenous open space with credits). Plans must substantially comply with the MCP.

5. Indigenous Restoration and Buffers

The first development order application must include an indigenous restoration plan. Restoration plants used to meet right-of-way buffer requirements must comply with LDC §10-416(d). Supplemental buffer landscaping must comply with LDC §10-420. An above ground temporary irrigation system must be specified on the development order plans.

- 6. <u>Enhanced Buffer on Herron Road</u>. Development order plans must depict an LDC "Type F" buffer along the eastern edge of Herron Road, north and south of the onsite native preserve.
- 7, Warehouse Hours of Operation. Warehouse operations are limited to the hours of 7:00 am to 10:00 pm daily. If the property owner intends to operate warehouse uses 24 hours a day, there must be security personnel onsite between the hours of 10:00 pm and 7:00 am.

#### 8. Buffers Around Warehouse Uses

- a. Development order submittals for mini or public warehouse must reflect an enhanced 15-foot-wide buffer along the internal accessway abutting the mini or public warehouse with landscape vegetation meeting LDC §34-1353(e)(1) specifications. Tree and shrub species must be consistent along the internal accessway to create a unified landscape plan.
- b. Development order submittals for mini or public warehouses must include landscape plans depicting a five-foot-wide buffer along the southeast property line abutting Community Commercial zoned property.

#### 9. Site Access

Access to US 41 and SR 78 depicted on the MCP is conceptual and subject to modification based upon final approval from Florida Department of Transportation.

- 10. <u>Commercial Trucks Prohibited on Herron Road</u>. Development order plans must depict the posting location of signs prohibiting trucks from using Herron Road for ingress to or egress from the site.
- 11. <u>Dumpsters.</u> Dumpsters are prohibited within 100 feet of the Herron Road right-of-way.

12. <u>Carwash Hours of Operation</u>. Carwash may be operated between the hours of 8:00 a.m. and 7:00 p.m., seven days a week.

#### 13. 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. Required Parking Spaces. Deviation 1 seeks relief from LDC §34-2020(b), which requires non-residential uses, particularly mini or public warehouse, to provide a minimum of one space per 25 storage units to allow for a minimum of one space per 50 storage units, with a minimum of five spaces.

Hearing Examiner Recommendation: Approved.

2. <u>Buffers</u>. Deviation 2 seeks relief from LDC 34-1353(e), which requires convenience food and beverage stores, automobile service stations, fast food restaurants, and car washes to provide 15 foot wide right-of-way buffer if abutting an internal accessway to a commercial development to allow for a 10 foot wide buffer where those uses adjacent to internal rights-of-way in the locations depicted on the MCP.

<u>Hearing Examiner Recommendation</u>: Approved.

#### Exhibits to Conditions:

B1 Master Concept Plan entitled "Pine Island Road CPD", prepared by Phoenix Associates of Florida, Inc. dated September 23, 2024.

#### **Exhibit C**

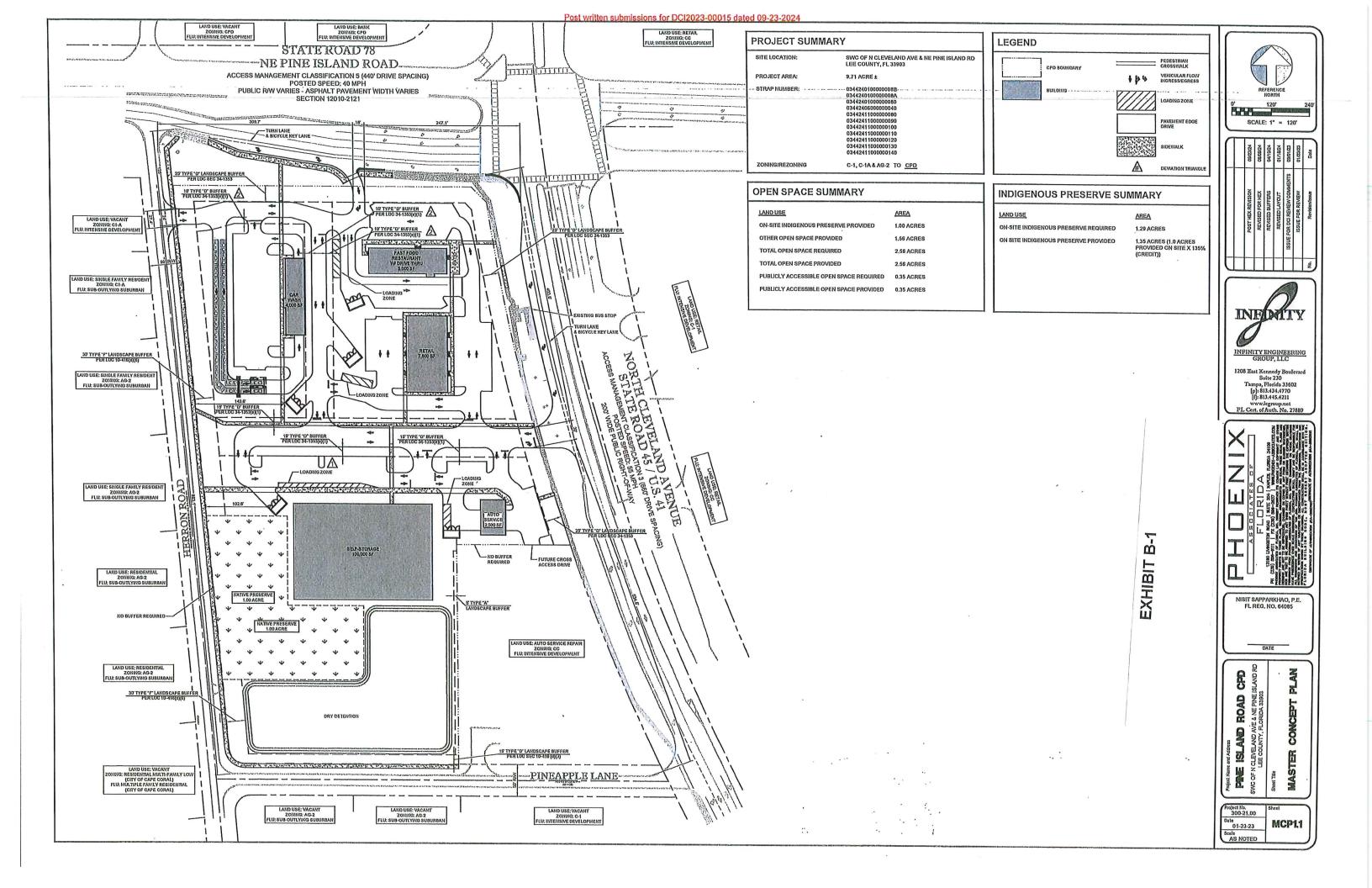
#### **EXHIBITS PRESENTED AT HEARING**

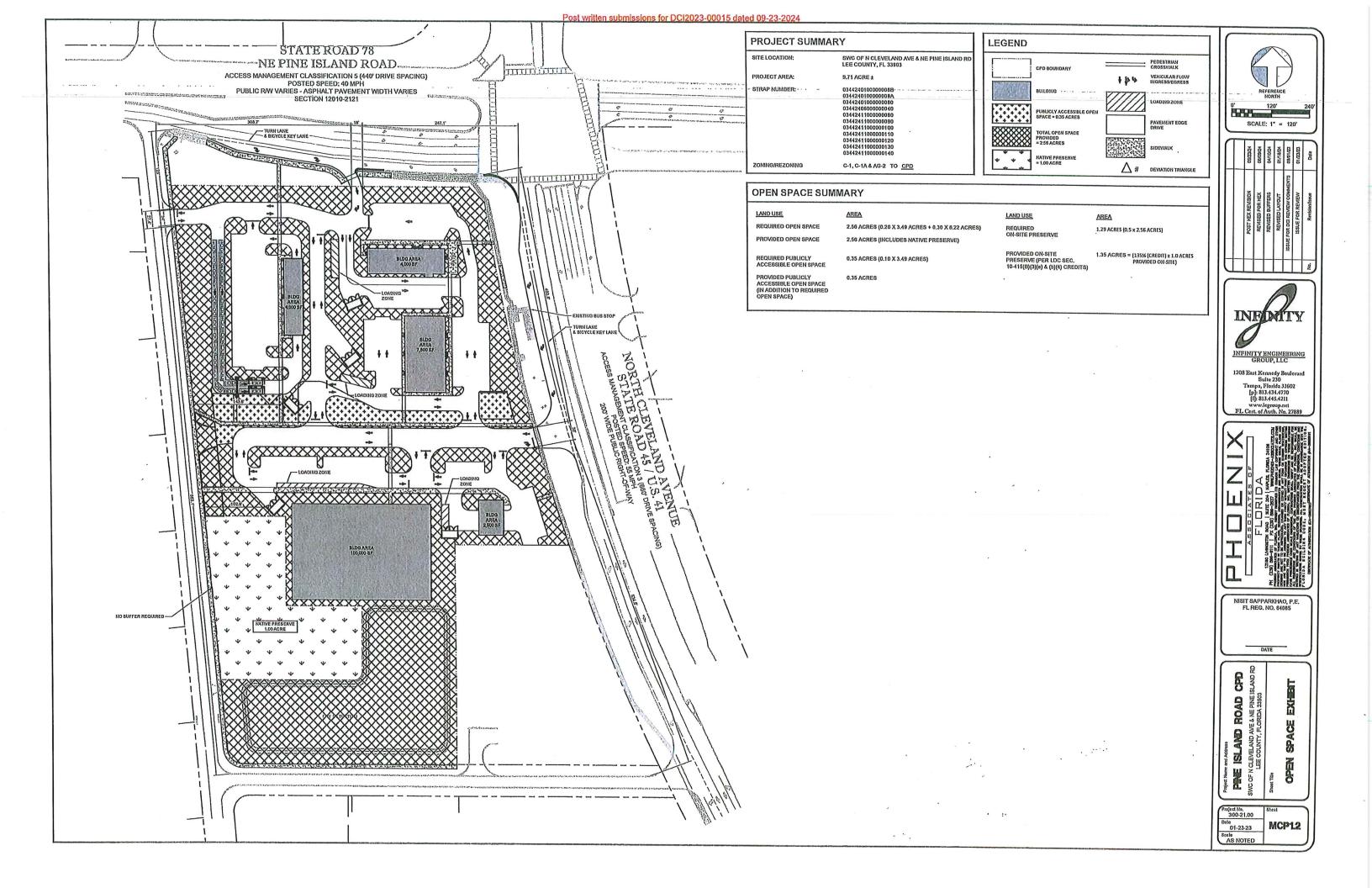
#### **STAFF EXHIBITS**

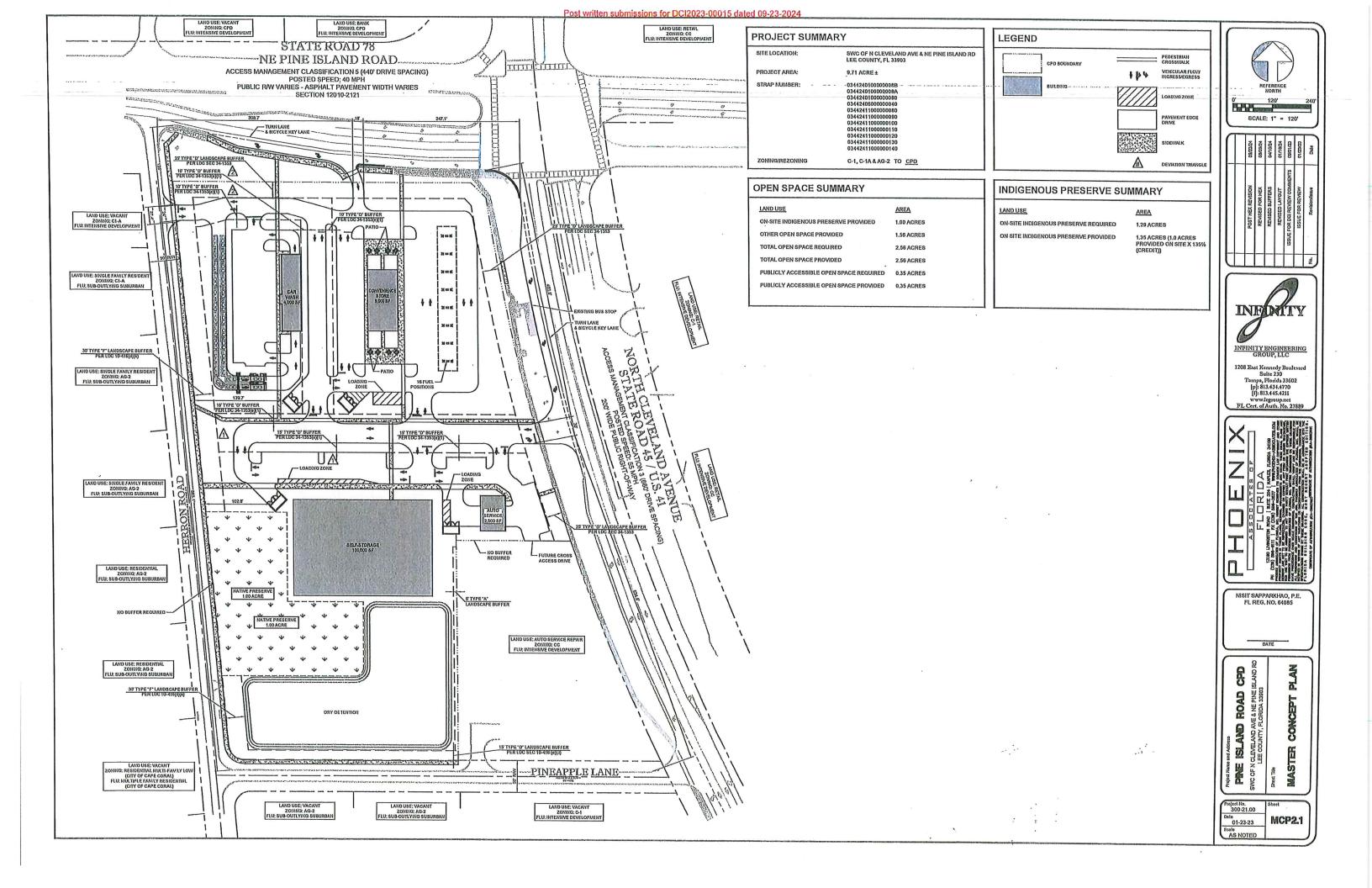
- 1. DCD Staff Report with attachments for DCI: Prepared by Elizabeth Workman, Principal Planner, date received July 30, 2024 (multiple pages 8.5"x11" & 11"x14") [black & white, color]
- 2. *Affidavit of Publication:* Advertisement for zoning case DCI2023-00015 Pine Island Road CPD, date of hearing August 14, 2024 (1 page 8.5"x11")
- 3. *PowerPoint Presentation:* Prepared by Lee County Staff for DCI2023-00015 Pine Island Road CPD, dated August 14, 2024 (multiple pages 8.5"x11")[color]

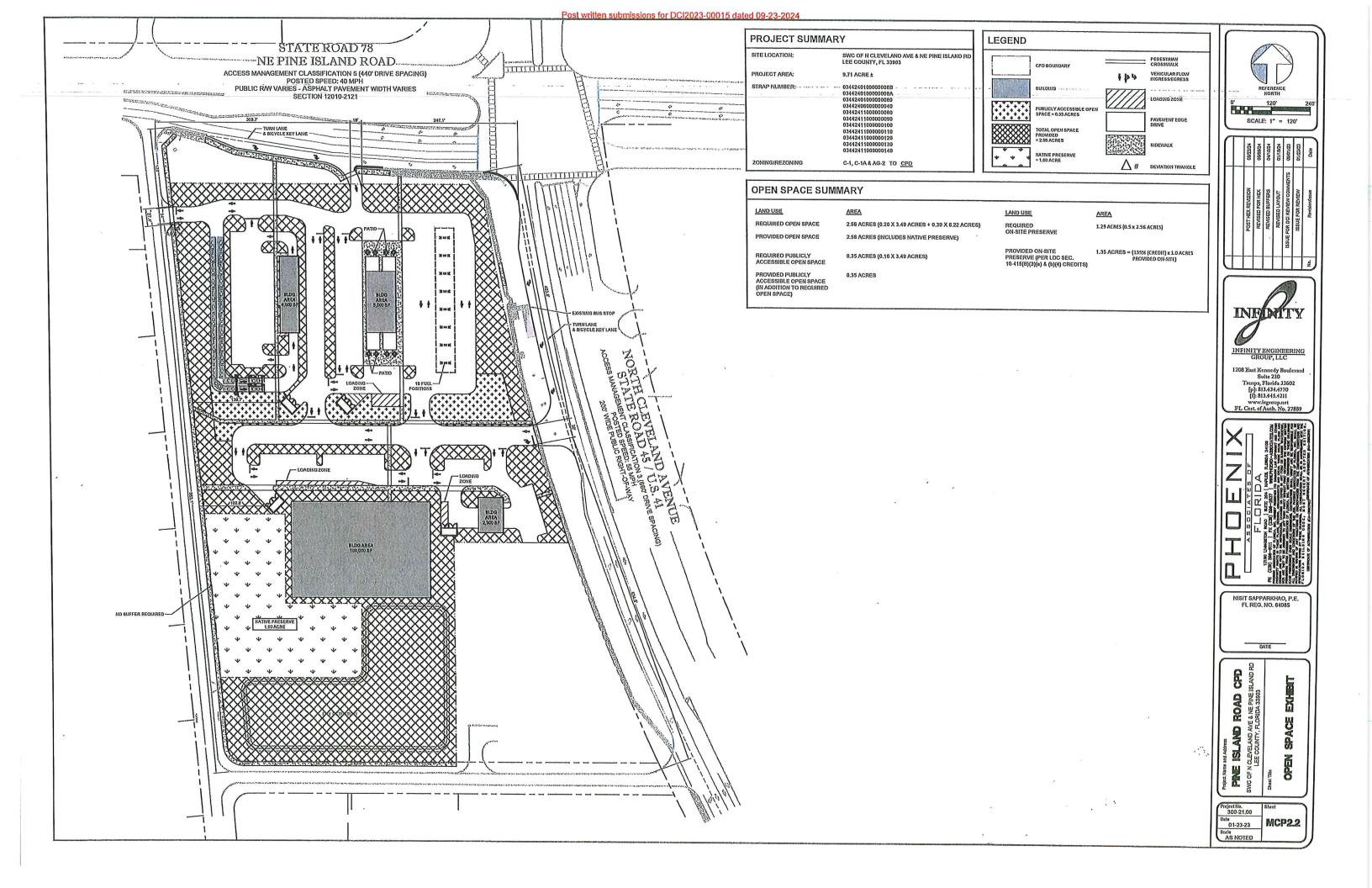
#### **APPLICANT EXHIBITS**

- a. 48-Hour Notice: Email from Alexis Crespo with RVI Planning and Landscaping Architecture, to Maria Perez. C. Lasano, Josephine Medina, Brett Nevaril, Barrett Stejskal, Ted Treesh, Elizabeth Workman, and Diogo Rodrigues, with copies to 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 Sunday, August 11, 2024, 11:53 AM (multiple pages 8.5"x11" & 11"x17")
- 1. PowerPoint Presentation: Prepared by RVI Planning and Landscaping Architecture for DCl2023-00015 Pine Island Road CPD, dated August 14, 2024 (multiple pages 8.5"x11")[color]
- 2. Written Submissions: Email from Alexis Crespo with RVI Planning and Landscaping and Architecture, to Maria Perez, C. Lascano, Brett Nevaril, Diogo Rodrigues, Ted Treesh, Barrett Stejskal, and Elizabeth Workman, with copies to Rebecca Sweigert, Tracy Toussaint, Jamie Princing, Elizabeth Workman, Audra Ennis, Nicholas DeFilippo, Ohdet Kleinmann, Abby Henderson, Lee Werst, Marcus Baucom, and Jennifer Rodriguez, dated Monday, September 23, 2024, 5:09 PM (multiple pages 8.5"x11" and 11"x17"){post hearing submittal}









# Exhibit D

# **HEARING PARTICIPANTS**

# County Staff:

1. Elizabeth Workman

# Applicant Representatives:

- 1. Alexis Crespo
- 2. Brett Nevaril
- 3. Barrett Stejkal
- 4. Ted Treesh

# Public Participants:

- 1. Sarah Decker
- 2. Jason Harper

#### 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.

#### Pine Island Road Commercial Planned Development (DCI2023-00015)

#### Attachment E - Conditions and Deviations

# Section A. - Conditions

1. The development of this project must be consistent with two-page Master Concept Plan (MCP) dated April 17, 2023 and entitled "Pine Island Road CPD", prepared by Phoenix Associates of Florida attached as staff report Attachment D, except as modified by the conditions below. This development must comply with all requirements of the Lee County LDC at the time of local development order, except as may be granted by deviation as part of this planned development. If changes to the MCP, or conditions, or deviations are subsequently pursued, appropriate approvals will be necessary.

This project is limited a maximum of 121,800 square feet of commercial uses, including the following two scenarios for the use-specific intensities:

- a maximum 10,000 square foot mini-warehouse,
- 4,000 square foot carwash,
- 2,500 square foot auto repair services,
- 7,500 square foot convenience food and beverage store with 16 fuel pumps, OR
- 5,000 square foot fast food restaurant,
- 7,800 square foot commercial retail uses
- 2. The following limits apply to the project and uses:

#### a. Schedule of Uses

Accessory uses, buildings, and structures

ATM (Automated Teller Machine)

Auto parts store (with installation services)

Automobile Repair and Service: Groups I & II

Automobile Service Station

Bank & Financial Establishments: Group I & II

Car Wash

Clothing Store, General

Convenience Food and Beverage Store (limited to a maximum of 16 fuel pumps)

Drive-through facility for any permitted use

Essential Service Facilities: Group I

Excavation: Water Retention

Food Stores: Group I

Hardware Store

Hobby, Toy, and Game Shops Laundry or Dry Cleaning: Group I Lawn and Garden Supply Store

Paint, Glass, and Wallpaper

Parking Lot (accessory)

Personal Services: Groups I-IV (Excludes bail bonding, escort services, fortune tellers,

palm readers or card readers, massage parlors, and tattoo parlors)

Pet Shop

Rental and Leasing Establishments: Group I & II

Repair Shops: Group I & II
Restaurant, Fast Food

Self-Service Fuel Pumps, in conjunction with a Convenience Food and Beverage Store

Signs

Specialty Retail Shops: Groups I, II, & III

Temporary Uses

Used Merchandise Stores: Groups I (except pawn shops), II, & III

Variety Store

Warehouse: Mini Warehouse

#### b. Site Development Regulations

Development Criteria	Commercial
Setbacks	
Perimeter	25 feet
Side Yard	15 feet
Rear	20 feet
Preserve	30 feet
Maximum Building Height	45 feet
Overall Minimum Lot Area and	
Dimensions	
Area	25,000 square feet
Width	150 feet
Depth	150 feet
Maximum Building Coverage	40 percent

# 5. Open Space

Prior to the issuance of the first development order, the development order plans must depict a total of 2.56 acres of open space.

## 6. Indigenous Open Space

Prior to the issuance of the first development order, the development order plans must depict 1.00 acres of indigenous preserve area to include 135 percent credit (1.35 acres of indigenous open space with credits). Plans must be in substantial compliance with the Master Concept Plan dated April 3, 2023, attached hereto as Attachment D.

#### 7. Indigenous Restoration and Buffers

Prior to the issuance of the first development order, an indigenous restoration plan must be submitted. The restoration plants being used to meet the rights-of-way buffer requirements must comply with LDC Section 10-416(d). Any supplemental buffer landscaping proposed must comply

with LDC Section 10-420 and an above ground temporary irrigation system must be specified on the development order plans.

#### 9. Mini Warehouse Buffers

- a. Prior to the issuance of a development order for the mini warehouse, the applicant must provide an enhanced 15-foot-wide buffer along the internal accessway abutting the mini-warehouse with landscape vegetation meeting LDC Section 34-1353(e)(1) specifications. The proposed tree and shrubs species must be consistent along the internal accessway to create a unified landscape plan.
- b. Prior to the issuance of a development order for the mini warehouse, the landscape plans must depict a five-foot-wide buffer along the southeast property line abutting the Community Commercial zoned property.
- The access locations on US 41 and SR 78 shown on the Master Concept Plan are conceptual in nature and subject to modification based upon final approval from the Florida Department of Transportation (FDOT).

#### Section B. - Deviations

1. **Deviation (1)** seeks relief from Lee County Land Development Code (LDC) Section 34-2013(b)(3), which allows a maximum 35-foot-wide parking lot entrance width at the property line, to allow for a maximum of 56-foot parking lot entrance at the property line along Herron Road.

This deviation is APPROVED.

2. **Deviation (2)** seeks relief from Lee County Land Development Code (LDC) Section 34-2020(b), which requires non-residential uses, particularly mini-warehouse, to provide a minimum of one space per 25 storage units, with a minimum of five spaces, to allow for a minimum of one space per 50 storage units, with a minimum of five spaces.

This deviation is APPROVED.

3. **Deviation (3)** Recommended to be withdrawn.

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

Case Number: DCI2023-00015

**Case Name: Pine Island Road Commercial Planned Development** 

Area Subject to Request: +/- 9.7 Acres

**Case Type: Minor Planned Development Rezone** 

Sufficiency Date: May 13, 2024 Hearing Date: August 14, 2024

BoCC Remand to HEX: November 6, 2024 Remand Hearing Date: December 19, 2024

#### **REQUEST:**

RVi Planning + Landscape Architecture has filed an application to rezone approximately 9.7 acres from Commercial (C-1 and C-1A), and Agricultural (AG-2) to Commercial Planned Development (CPD).

This project is limited a maximum of 121,800 square feet of commercial uses with a maximum height of 45 feet, including the following two scenarios for the use-specific intensities:

- a maximum 10,000 square foot mini-warehouse,
- 4,000 square foot carwash,
- 2,500 square foot auto repair services,
- 7,500 square foot convenience food and beverage store with 16 fuel pumps, OR
- 5,000 square foot fast food restaurant,
- 7,800 square foot commercial retail uses

The subject property is located at the southwest corner of North Cleveland Avenue and Pine Island Road in the North Fort Myers Community Plan area. The 4.6 acres of the 9.7-acre property is located within the Sub-Outlying Suburban future land use category and the remaining acreage is within the Intensive Development future land use category according to the Lee Plan Map 1-A. Approximately 3.5 acres of the subject property is in the Mixed-Use Overlay per Lee Plan Map 1-C. The applicant held a public information meeting in compliance with Land Development Code Section 33-1532 (see Attachment F). A legal description and boundary survey of the subject property are included as Attachment B of the staff report.

#### **SUMMARY:**

Staff recommends **APPROVAL** of the applicant's request, as conditioned, to rezone approximately 9.7-acres to Commercial Planned Development to allow the following maximum intensities, which comprise a total of 121,800-square-feet of commercial uses, which includes a maximum 10,000 square foot mini-warehouse, 4,000 square foot carwash, 2,500 square foot auto repair service station, 7,500 square foot convenience food and beverage store with 16 fuel pumps, or 5,000 square foot fast food restaurant and 7,800 square foot commercial retail uses. The maximum height is 45 feet (Attachment E & F). The applicant has

requested three deviations from LDC Section 34-2013(b)(3), 34-2020(b), and 33-1581(b). Staff is recommending approval Deviations #1 and #2. Deviation #3 must be withdrawn.

#### **OUTSTANDING ISSUE:**

There are two outstanding issues identified by staff. Staff recommends the applicant withdraw Deviation #3 because the buffer being provided is an enhanced buffer. The Mixed Use Overlay buffer requirements per LDC Section 10-425 require a five-foot-wide right-of-way buffer, which supersedes LDC Section 33-1581(b), which requires a 20-foot-wide right-of-way buffer. The MCP and the Deviation and Justification documents must be revised to eliminate Deviation #3. The second issue is the Surface Water Management Plan states that the preserve will be incorporated into the stormwater management system as the final attenuation area prior to discharging offsite. The proposed preserve is an upland mixed hardwood, and the applicant is restoring the preserve with upland species. Utilizing the preserve to accommodate the stormwater management will destroy the existing native upland vegetation and the proposed upland restoration. These documents must be revised as part of the 48-hour letter.

#### **HISTORY OF PARCEL:**

The subject property consists of 11 parcels with three parcels zoned Commercial (C-1) that abut North Cleveland Avenue, one parcel along the northwest zoned Commercial (C-1A), and the remaining seven parcels zoned Agricultural (AG-2). The parcels located along the northern property line were previously developed with a car wash with access to Pine Island Road and North Cleveland Avenue. The car wash was demolished in 2022 (DEM2022-00684). Two parcels zoned Agricultural (AG-2) are located at the southeast corner of the subject property and were previously developed with single-family dwelling units which were demolished in 2007 (DEM2007-00203 & DEM2007-00342). The remaining eight parcels have never been developed. The proposed project is within the North Fort Myers Community Plan area, specifically in the Commercial Corridor. The three parcels zoned Commercial (C-1) that abut North Cleveland Avenue are in the Mixed Use Overlay per Lee Plan Map 1-C. The Mixed Use Overlay design standards allow for reductions in parking requirements per LDC Section 34-2020(c) and landscaping requirements per LDC Section 10-425. Certain uses specified in LDC Section 10-424 must comply with the supplementary district regulations in Chapter 34 and are prohibited from designing a site to the Mixed Use Overlay buffer and open space requirements. The applicant is proposing two uses (convenience food and beverage store and fast food restaurants) that are specified in LDC Section 10-424 which have certain buffer requirements per LDC Section 34-1352(e)(1).

#### **CHARACTER OF THE AREA:**

The subject parcel is located in an area that has existing and planned uses. The parcel abutting the subject property along the southeast corner is zoned Community Commercial (CC) and is an automobile repair business. The subject property abuts rights-of-way along all four sides of its perimeter. The north and east property lines abut State-maintained arterial roadways (NE Pine Island Road and North Cleveland Avenue) and the west and south property lines abut County-maintained local roadways (Herron Road and Pineapple Road) The properties further north and east are heavily developed with commercial uses creating the commercial corridor at the intersection of NE Pine Island Road and North Cleveland Avenue. The properties west and south of the subject property are zoned Agricultural (AG-2) with a mix of single-family

dwelling units, vacant land, and religious facilities. Most of the parcels that abut the arterial roadways are developed with commercial uses. Property immediately surrounding the subject property is depicted in Attachment C of this report and can be characterized as follows:

#### North

The subject property abuts NE Pine Island Road, a State-maintained arterial road. Further north of the subject property is Merchants Crossing Shopping Center, zoned Commercial Planned Development (CPD) and developed with a mix of retail, restaurants, medical clinics, and multi-family residential dwelling units. This area is within the Intensive Development and Central Urban Future Land Use Categories and the Mixed Use Overlay.

#### East

The subject property abuts North Cleveland Avenue, a State-maintained arterial road. Further east of the subject property is a shopping center, zoned CPD and Commercial (C-1) and developed with a mix of retail including Walmart, a bank, and restaurants. This area is within the Intensive Development Future Land Use Category and the Mixed Use Overlay.

#### Northeast

Palmona Park, a single-family subdivision is located to the northeast of the intersection of Pine Island Road and North Cleveland Avenue. Palmona Park consists of ½ to ½ acre lots zoned Residential (RS-1), Mobile Home (MH-1) and Two-Family Conservation (TFC-2). This area is within the Central Urban Future Land Use Category.

#### South

The subject property abuts Pineapple Lane, a County-maintained local road. Further south of the subject property is property zoned Commercial Neighborhood (CN-2), which is vacant, and Agricultural (AG-2) which is vacant, and developed with existing single-family residential uses. This area is within the Intensive Development and Sub-Outlying Suburban Future Land Use Categories and is partially in the Mixed Use Overlay.

#### **West**

The subject property abuts Herron Road, a County-maintained local road. Further west of the subject property is property zoned Commercial (C-1A) that consists of vacant land, single-family residential dwelling units, and duplex dwelling units. The land further west is within the City of Cape Coral and is developed with multi-family dwelling units and commercial outparcels abutting NE Pine Island Road. Judd Creek Preserve, a conservation area within the City of Cape Coral, connects to Hancock Creek Preserve, a County-maintained preservation area to the south. This area is within the Sub-Outlying Suburban and Intensive Development Future Land Use Categories.

#### **AVAILABILTY 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:

<u>Public water and sewer:</u> The subject property is within the Future Water and Sanitary Sewer Service Areas per **Lee Plan Map 4-A and 4-B**. The applicant has provided a letter of availability for potable water from Lee County Utilities and sanitary sewer from Florida Governmental Utility Authority. Potable water and wastewater utility lines are available in proximity to the subject property, with sufficient capacity available for the proposed development intensity; however, developer funded system enhancements such as line extensions may be required (see Attachment G).

<u>Public transit and pedestrian facilities:</u> An existing shared-use path and sidewalk are located along NE Pine Island Road and North Cleveland Avenue according to **Lee Plan Map 3-D**. LeeTran has two bus lines that serve North Cleveland Avenue and NE Pine Island Road. Route 140 primarily serves North Cleveland Avenue and Route 595 serves North Cleveland Avenue and NE Pine Island Road.

<u>Police, fire, and emergency services</u>: EMS – Medic 7 and a Sherriff's office are located less than two miles to the southeast at 121 Pondella Road. North Fort Myers Fire Department Station 2 is located less than one mile to the southwest at 1280 Barrett Road.

#### PROPERTY DEVELOPMENT REGULATIONS & OFF-STREET PARKING:

The applicant proposes property development regulations that include maximum heights, minimum setbacks, and maximum lot coverage (Attachment F). Staff finds the proposed property development regulations appropriate to facilitate development in accordance with the MCP.

#### **DEVIATIONS:**

The applicant has requested three deviations. Deviation #1 is being requested from **LDC Section 34-2013(3)**, which allows a maximum 35-foot-wide parking lot entrance at the property line, to allow for a maximum 56-foot parking lot entrance at the Herron Road property line. This request is necessary to ensure the turning movements for larger vehicles accessing the gas station and mini-warehouse have sufficient turning area without negatively affecting the surrounding property owners. Staff is recommending **APPROVAL of Deviation #1**.

Deviation #2 is being requested from **LDC Section 34-2020(b)**, required parking spaces for non-residential uses, which requires warehouse, mini warehouse to provide a minimum of one space per 25 storage units, with a minimum of five spaces, to allow for a minimum of one space per 50 storage units, with a minimum of five spaces. The applicant is proposing 500 storage units and per LDC Section 34-2020(b) the site would require 20 parking spaces. The applicant is proposing five parking spaces and designated loading and unloading zones in addition to the five parking spaces. TR Transportation Consultants, Inc. has analyzed the mini-warehouse trip and parking generation and has determined that the five parking spaces plus the designated loading and unloading zones will be sufficient to serve the mini-warehouse use. In addition, the parking demand study completed for Arborwood Village, DCI2023-00024, established the parking demands

for mini-warehouse and the subject request is consistent with the parking demand study. Development Services and Department of Transportation staff have reviewed Deviation #2 and recommend **APPROVAL**.

Deviation #3 is being requested from LDC Section 33-1581(b), which requires a 20-foot-wide Type-D buffer along internal accessways, to allow a 15-foot-wide Type-D buffer. The applicant states in the request that the buffer landscaping vegetation will meet the code per LDC Section 33-1581(b), which requires five trees per 100 linear feet and a double hedge. Lee Plan Policy 30.2.5 requires deviations from landscaping, architecture, and site design to comply with the variance criteria per LDC Section 34-145(b)(3). Staff recommends that this deviation be withdrawn because the applicant is providing enhanced internal accessway right-of-way buffers abutting the retail and mini-warehouse uses, which require a five-foot-wide right-of-way buffer per LDC Section 10-424. The project is in the Mixed Use Overlay, which allows a fivefoot-wide buffer width for right-of-way buffers. Uses such as gas stations, convenience food and beverage stores, open storage, rental and leasing establishments, or fast-food restaurants must comply with the supplementary district requirements in Chapter 34. The applicant is proposing uses that must comply with LDC Sections 10-424 and 34-1353(e). The internal accessways abutting the proposed gas station and convenience food and beverage uses must comply with LDC Section 34-1353(e)(1), which requires a 15foot-wide buffer with five trees per 100 linear feet and a double hedge. The applicant is required to provide a five-foot-wide buffer abutting all uses along the remainder of the internal accessway per LDC Section 10-425. In accordance with LDC Section 33-1533, the mixed use buffer requirements supersede the North Fort Myers Community Plan Area Commercial Corridor right-of-way buffer requirements, which require a 20-foot-wide right-of-way buffer per **LDC Section 33-1581(b)**. Deviation #3 is not required, and the applicant is providing an enhanced right-of-way buffer abutting the mini-warehouse that creates a 15-foot-wide separation from the parking and loading zone areas and is consistent with the abutting right-of-way buffers within the planned development, thereby creating a cohesive development scheme. Staff recommends a condition to ensure that the enhanced 15-foot-wide buffer is provided as part of the mini-warehouse use as depicted on the Master Concept Plan. The condition includes a requirement that the landscape vegetation must consist of similar species as the other commercial tracts within the planned development.

#### **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;
- 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 planned development rezoning request with analysis against the applicable criteria (see Attachment F). The following provides staff's analysis of the request, as measured against the established criteria.

#### **REVIEW CRITERIA ANALYSIS:**

The subject property is in the Intensive Development and Sub-Outlying Suburban future land use categories. Approximately 5.1 acres of the subject property is located along NE Pine Island Road and North Cleveland Avenue within the Intensive Development future land use category. **Lee Plan Policy 1.1.2** describes this future land use category as land along major arterial roads with access to public services to support high intensities. Mix use developments are encouraged in this category due to the accessibility of public services. The applicant is proposing a fast-food restaurant, car wash and retail and automotive repair and service station within the Intensive Development future land uses category. The proposed project has access to two arterial roads and access to public services to support t-he intensity of development. Staff finds the request, as conditioned, to be **CONSISTENT with Lee Plan Policy 1.1.2**.

The remainder of the project is in the Sub-Outlying Suburban future land category. The applicant is proposing a mini-warehouse use within this future land use category. Lee Plan Policy 1.1.11 is characterizes the Sub-Outlying Suburban future land use category as low density residential areas. The infrastructure required to support high density is not planned or in place. The applicant is proposing a commercial development with high intensity uses and no density abutting the two arterial roads and the less intense mini-warehouse abutting two local roads to minimize impacts to the adjacent residential uses to the west and south. The applicant is maintaining existing access points to NE Pine Island Road and North Cleveland Avenue, which can support the trips generated by the proposed uses. Staff finds the request, as conditioned, to be CONSISTENT with Lee Plan Policy 1.1.11.

The proposed development complies with **Objectives 2.1 and 2.2** for development location and timing due to the development being an infill project where a convenience food and beverage with fuel pumps was previously permitted. The site is in an area that has access to potable water and sewer and access to

existing sidewalks along NE Pine Island Road and North Cleveland Avenue. LeeTran has two bus routes along both arterial roads and the proposed project is near fire and EMS stations, and other services to demonstrate compliance with Lee Plan Objectives 2.1 and 2.2 and Policy 2.2.1 and Standards 4.1.1 and 4.1.2.

GOAL 6 of the Lee Plan and subsequent Policies 6.1.3, 6.1.4, 6.1.5, 6.1.6, 6.1.7, and 6.1.11 permit orderly and well-planned commercial development at appropriate locations within the County. The applicant is proposing to redevelop the corner of NE Pine Island Road and North Cleveland Avenue to a commercial multi-use development to serve the residents of North Fort Myers Community Plan area. The property was previously developed as a convenience food and beverage store with gas pumps and a car wash along the north property line. The south portions of the property are occupied by single-family residential dwelling units that were demolished. The applicant is providing the required buffers and open space per LDC Section 34-1353(e)(1) and an enhanced internal access right-of-way buffer abutting the mini-warehouse to be consistent with the landscape theme. The applicant has provided a Master Concept Plan that depicts the preservation/restoration area and stormwater management lake within the south portion of the site. This design in this area of the Master Concept Plan provides additional screening and setbacks for the proposed mini-warehouse, and automobile repair and service station uses to protect the single-family residential uses along Herron Road and Pineapple Road. The applicant has focused the more intense uses along the two arterial roads utilizing the existing access points to NE Pine Island Road and North Cleveland Avenue. Because of the site design and compliance with buffering and open space, staff finds the request, as conditioned, to be CONSISTENT with Lee Plan Goal 6 and Policies 6.1.3, 6.1.4, 6.1.5, 6.1.6, 6.1.7, and 6.1.11.

The proposed project is located in the Mixed Use Overlay according to Lee Plan Map 1-C. Policies 11.2.1 and 11.2.2 focus on the location and design of projects within the Mixed Use Overlay as it pertains to pedestrian, transit, and automobile connectivity. The applicant has provided an interconnection to the property to the southeast that is currently an automobile repair and service station use. The applicant will be required at time of development order to provide pedestrian connections to the LeeTran bus stops and sidewalks to demonstrate walkability within the development to the offsite connections. Staff finds the request, as conditioned, to be CONSISTENT with Lee Plan Policies 11.2.1 and 11.2.2.

As mentioned above, the proposed project is in the North Fort Myers Community Plan area, which requires a public information meeting per **Lee Plan Policy 17.3.5**. The applicant advertised and held a public information meeting at the North Fort Myers Recreation Center on February 6, 2024. The applicant has provided the meeting summary, list of attendees, and affidavit of publication per **LDC Section 33-1532** (Attachment F).

The proposed project is in the Commercial Corridor of the North Fort Myers Community Plan area, specifically designated as Neighborhood Center per Lee Plan Policy 30.2.4. The Neighborhood Center requires public open space and pedestrian connections to public transit and uses. The applicant is depicting an interconnection to the commercial property at the southeast corner of the subject property. The applicant will be required to provide a sidewalk and sidewalk connections to the pedestrian facilities to LeeTran bus stops and existing and proposed sidewalks. The applicant is proposing public open space as depicted on sheet two of the Master Concept Plan to meet Lee Plan Policy 30.2.6. As mentioned, the parcels were

previously developed with a convenience food and beverage store with fuel pumps and single-family dwelling units. The structures have been demolished and the applicant is proposing the planned development to redevelop the site to meet the current Lee Plan and Land Development Code requirements or seek deviations meeting **Lee Plan Policy 30.2.7**. Staff finds the proposed project, as conditioned, to be consistent with the **Lee Policies 30.2.4**, **30.2.6**, **and 30.2.7**.

Lee Plan Objectives 60.4 and Policies 60.4.1, 60.4.2, 60.4.3, and 61.4.4 all speak to the design of the stormwater management system, utilization of green infrastructure to filter pollutants, and preservation of existing natural flow-ways. The applicant submitted a Surface Water Management Plan (Attachment F). The applicant has indicated in the Surface Water Management Plan that the existing surface water flows to the south and east to a culvert along Herron Road that outfalls to Judd Creek. The proposed stormwater management system will be designed to provide onsite conveyance through a piping system that will convey water to the wet detention that will discharge to the preservation area and outfall to the offsite culvert that leads to Judd Creek. The applicant will be required to provide a planted littoral shelf along the wet detention lake banks. The applicant must revise the Surface Water Management Plan to not utilize the restored indigenous preserve area because this area is an upland mix hardwood per the environmental report that is proposed to be restored with upland restoration vegetation (Attachment F). Staff finds the request, as conditioned, to be consistent with Lee Plan Objective 60.4 and Policies 60.4.1, 60.4.2, 60.4.3, and 61.4.4.

# Land Development Code Compliance

Staff finds the proposed planned development rezoning request, 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.
- 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 deviated 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.

Compliance with LDC Section 34-145(d)(4)

Staff makes the following findings with respect to this request:

#### a) Complies with Lee Plan.

The proposed rezoning, as conditioned, is consistent with the Lee Plan as demonstrated in the analysis in this staff report.

#### b) Meets this Code and other applicable County regulations or qualifies for deviations.

The applicant will be required to obtain a development order for the proposed project that must comply with the Land Development Code and Lee Plan. The deviations that are requested are needed to

maintain the existing design with respect to access. The deviations, if the request is approved, will maintain the accesses along the arterial roads and allow a wider access drive to accommodate the type of vehicles entering the development without disrupting the surrounding uses. The request for reduction in the parking requirements for the warehouse, mini warehouse use will provide a more compact development with loading and unloading zones that fit the development scheme.

#### c) Compatibility with existing and planned uses in the surrounding area.

The proposed development is in the Commercial Corridor, specifically the Neighborhood Commercial area, within the North Fort Myers Community Plan area, which intends for intense commercial development abutting the arterial roadway network to serve surrounding uses. The applicant has designed the Master Concept Plan to depict intense development accessing the arterial roads and less intense commercial uses with access to the local road. The buffers meet or exceed the Land Development Code to provide screening and visual relief from the proposed maximum building height of 45 feet.

#### d) Sufficiency of Access and Transportation Impacts.

The proposed development has existing accesses to NE Pine Island Road and North Cleveland Avenue, both of which are State-maintained arterial roads. The applicant is requesting Deviation #1 to allow a 56-foot-wide parking lot entrance from Herron Road instead of the maximum 35 feet permitted by **LDC Section 34-2013(b)(3)** to accommodate large vehicles. Per the Traffic Impact Statement, the access is sufficient to support the proposed development (see Attachments F & H).

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

The applicant has provided a Traffic Impact Statement that analyzes the proposed trips within the surrounding roadway network with trips assigned based upon the routes drivers are anticipated to utilize to access the proposed development. The TIS studies the roadway links with or without the proposed additional trips to ensure that there are no significant impacts to the level of service. The study indicates that the roadways have sufficient capacity available to accommodate the new trips. It is anticipated that the existing turn lanes along NE Pine Island Road and North Cleveland Avenue will need to be extended; however, those improvements will be evaluated at time of development order (see Attachment F & H).

#### f) No adverse impacts to environmentally critical or sensitive areas and natural resources.

The request will have no impacts to environmentally sensitive or critical areas. The applicant has provided a Florida Land Use Cover and Classification System (FLUCCS) map depicting the habitat types on the site (see Attachment F). The applicant indicates that the site is disturbed where the existing homesteads and commercial uses were previously located. The FLUCCS map depicts the

remaining land as upland mixed hardwoods. The soils map and staff inspections indicate that the southwest corner is more of a hydric mixed hardwood. The applicant is preserving 1.00 acre of upland mixed hardwoods which will be restored per the Preserve Management Plan (see Attachment F). The Surface Water Management Plan indicates that the preserve will be utilized for surface water management. The Preserve Management Plan includes upland plant species being proposed for restoration. The preserve has existing upland species. The applicant will need to design the surface water management so that that preserve is not included in the stormwater management plan to ensure survivability of existing and proposed upland restoration. Per the Protected Species Survey, there were no protected species on the site (see Attachment F).

# g) 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 request. 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.

#### h) 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 each requested 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 Commercial Planned Development rezone is consistent with the Intensive Development and Sub-Outlying Suburban future land use designations and the applicable goals, objectives, and policies of the Lee Plan. The request, as conditioned, is appropriate in the context of its surroundings. Staff recommends **APPROVAL** of the request to rezone the property from Commercial (C-1 and C-1A), and Agricultural (AG-2) to Commercial Planned Development (CPD) to allow the following:

A maximum of 121,800 square feet of commercial uses, including the following two scenarios for the use-specific intensities:

• a maximum 10,000 square foot mini-warehouse,

- 4,000 square foot carwash,
- 2,500 square foot auto repair services,
- 7,500 square foot convenience food and beverage store with 16 fuel pumps, OR
- 5,000 square foot fast food restaurant,
- 7,800 square foot commercial retail uses

The maximum proposed height is 45 feet (see Attachment E).

#### **ATTACHMENTS:**

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

Schedule of Uses & Property Development Regulations

North Fort Myers Community Meeting Summary

Surface Water Management Narrative

**Deviation Request and Justification** 

Applicant's Protected Species Survey

Applicant's Preserve Management Plan

Applicant's Transportation Impact Statement

- G. Utility Availability Letters
- H. Department of Transportation Staff Memorandum

# DCI2024-00027 CYPRESS MANOR RPD

# **Staff Summary**

CASE NUMBER & NAME: DCI2024-00027 / Cypress Manor RPD

REQUEST: Request to rezone 28.03± acres from Agricultural (AG 2) to

Residential Planned Development (RPD) to allow a 168 multi

family or townhouse unit development.

RESOLUTION NUMBER: Z-24-035

LOCATION: 18831 State Road 82, Lehigh Acres Planning Community, Lee

County, FL.

OWNER: Susan Owens

APPLICANT: Comterra Development

AGENT: Daniel DeLisi, AICP

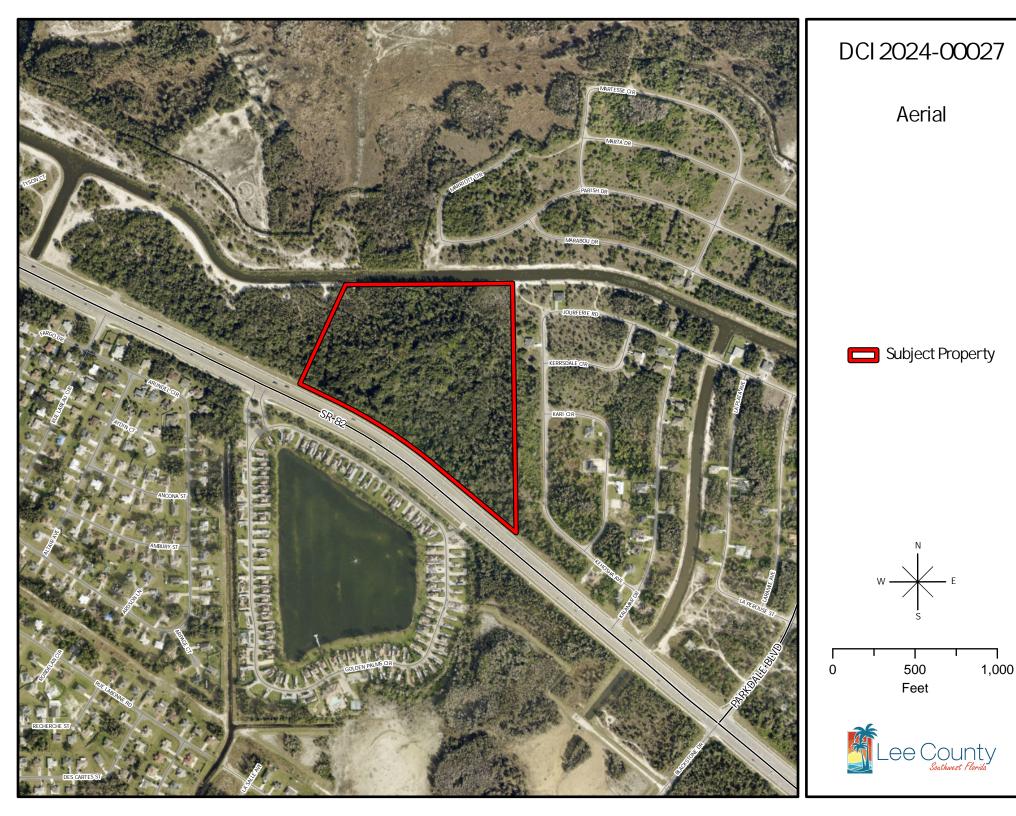
DeLisi, Inc. 520 27<sup>th</sup> Street

West Palm Beach, FL 33407

HEARING EXAMINER Approval, subject to the conditions and deviations set forth in

RECOMMENDATION: Exhibit B.

PARTICIPANTS (1): 1. Derek Felder



# Summary of Hearing Examiner Recommendation

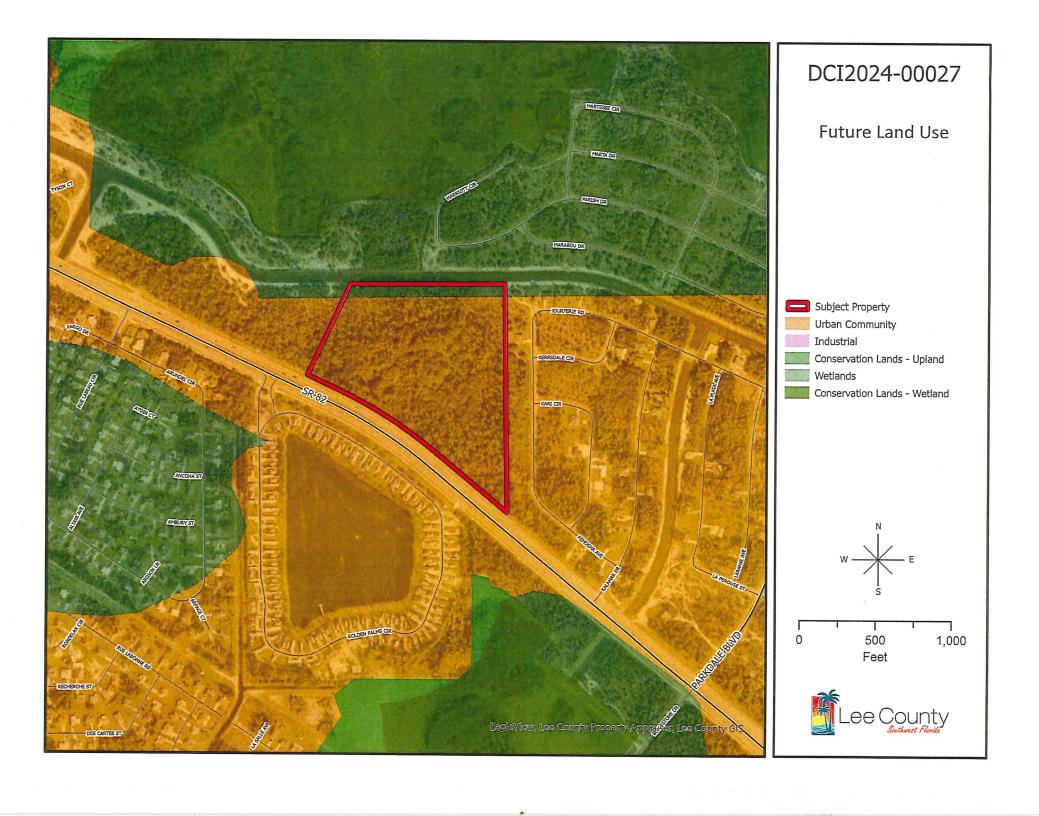
# **CYPRESS MANOR RPD**

The proposed multifamily development presents an opportunity to diversify housing options in Lehigh Acres.

The Hearing Examiner recommends approval subject to additional conditions. These conditions are necessary to protect health, safety, and welfare of project residents and abutting property owners. Specifically:

- 1. Dedicated area outside road right-of-way for students to wait for, load, and unload from school buses.
- 2. Sidewalks on at least one side of project roadways to ensure safe pedestrian/bicycle access to school bus stop and open space.
- 3. Fence along excavations less than 50 feet from private property under separate ownership.

Detailed recommendation follows

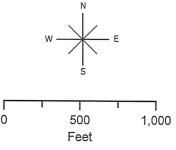




DCI2024-00027

Aerial

Subject Property





# OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA HEARING EXAMINER RECOMMENDATION

**REZONING:** DCI2024-00027

Regarding: CYPRESS MANOR RPD

**Location:** State Road 82 between Grant and Parkdale Boulevards

Lehigh Acres Planning Community

(District 5)

Hearing Date: December 20, 2024

# I. Request

Rezone 28.03 acres from Agricultural (AG-2) to Residential Planned Development (RPD) to allow construction of up to 168 multi-family or townhouse units.

Property legal description set forth in Exhibit A.

# II. <u>Hearing Examiner Recommendation</u>

Approval, subject to the conditions and deviations set forth 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. In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on an application to rezone property in Lehigh Acres to the RPD district. 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.

Discussion supporting the <u>Hearing Examiner's recommendation of approval</u> with conditions follows below.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> LDC §34-145(d)(4) a.

<sup>&</sup>lt;sup>2</sup> Hearing Examiner codified conditions and deviations from prior approvals, eliminating those no longer applicable.

## History

The property is vacant and zoned for agriculture (AG-2). It is one of few properties in Lehigh that is not platted into single family homesites.

Applicant seeks to rezone 28.03 acres from AG-2 to RPD to accommodate up to 168 multi-family units. The request includes six deviations from the LDC.

The Master Concept Plan (MCP) reflects 18 residential buildings, pool/clubhouse amenity, stormwater ponds, and a 9+ acre preserve.<sup>3</sup> Maximum building heights will be 45 feet.<sup>4</sup>

#### Lee Plan

The Lee Plan regulates land development activity.<sup>5</sup> The 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.<sup>6</sup>

The property's future land use designation is <u>Urban Community and Wetlands</u>. The Urban Community is characterized by a mixture of intense commercial and residential uses. <u>Land uses permissible in the Urban Community include residential, commercial public, quasi-public, and limited light industrial</u>. Standard density ranges from one to six units per acre. Maximum total density is typically ten units per acre but may be as high as 15 units per acre using Greater Pine Island Transfer of Development Units.<sup>7</sup> <u>The request seeks a density of six units per acre</u>.

Wetlands may develop with very low-density residential and recreation uses that do not impact the ecological function of the wetlands.<sup>8</sup> The MCP designates onsite wetlands as preserve.

Development in Lehigh Acres is subject to a Community Plan that promotes a vibrant community with a variety of land uses.<sup>9</sup>

The current zoning designation is AG-2. The purpose of AG-2 districts is to support agricultural operations with ancillary residential uses. <sup>10</sup> The Lee Plan discourages

<sup>&</sup>lt;sup>3</sup> Lee Plan Policy 5.1.6.

<sup>&</sup>lt;sup>4</sup> Multifamily residential structures will be 45 feet in height. The clubhouse will be limited to 30 feet in height.

<sup>&</sup>lt;sup>5</sup> LDC §34-491.

<sup>&</sup>lt;sup>6</sup> Lee Plan Policy 2.1.2; LDC §§34-411(a), 34-491.

<sup>&</sup>lt;sup>7</sup> Lee Plan Policy 1.1.4.

<sup>&</sup>lt;sup>8</sup> Lee Plan Policy 1.5.1; Wetlands must be consistent with Lee Plan Goal 124.

<sup>&</sup>lt;sup>9</sup> Lee Plan Goals 17, 25, 158.

<sup>&</sup>lt;sup>10</sup> LDC §34-651.

new agricultural uses in future urban areas.<sup>11</sup> <u>The requested RPD zoning district</u> authorizes land uses better suited in a future urban area.<sup>12</sup>

The Lee Plan Economic Element directs the County to strive for a diversified economy and a variety of housing types to support the workforce. The proposed RPD is comprised of multifamily or townhouse units consistent with these directives. The proposed RPD is comprised of multifamily or townhouse units consistent with these directives.

# Compatibility

The County evaluates compatibility during zoning.<sup>15</sup> Compatibility exists when land uses exist in proximity and no one use unduly negatively impacts another.<sup>16</sup> Planned development zoning is useful when integrating new development with surrounding land uses.<sup>17</sup> The planned development zoning district allows flexible site design addressing potential incompatibilities with neighboring development.<sup>18</sup>

Bullfrog Canal abuts the site to the north. Savanna Lakes Mixed Use Planned Development lies further north and west.<sup>19</sup> Conventionally zoned platted lots developing with scattered single family homesites lie to the east. Across State Road 82 (SR 82) is a Recreational Vehicle Planned Development.<sup>20</sup> The proposed multifamily project promotes contiguous and compact development.<sup>21</sup>

<u>Suitable intensity is determined on a case-by-case basis consistent with the Lee Plan and surrounding land uses.</u><sup>22</sup> Proposed development include dwelling units with maximum building heights of 45 feet for multifamily and 35 feet for townhouses.<sup>23</sup> The request offers an alternative to conventional single family dwellings.

The Hearing Examiner notes that the School Board anticipates the residential component will generate 58 school aged children.<sup>24</sup> Lee Plan directives require

<sup>&</sup>lt;sup>11</sup> Lee Plan Goal 9, Objective 9.2.

<sup>&</sup>lt;sup>12</sup> Lee Plan Goal 5, Objective 9.2, Policies 5.1.1, 5.1.5 5.1.7, 9.2.1.

<sup>&</sup>lt;sup>13</sup> Lee Plan Goal 158, Objective 160.1, Policies 158.2.1, 160.1.3.

<sup>&</sup>lt;sup>14</sup> Lee Plan Goal 25, Objective 160.1, Policies 158.2.1, 160.1.3.

<sup>&</sup>lt;sup>15</sup> LDC §34-145(d)(4).

<sup>&</sup>lt;sup>16</sup> Florida Statutes s. 163.3164(9); Lee Plan Policy 135.9.6.

<sup>&</sup>lt;sup>17</sup> Lee Plan Policies 135.9.5, 135.9.6, LDC §34-612(2).

<sup>&</sup>lt;sup>18</sup> Id. See Lee Plan Policy 5.1.1.

<sup>&</sup>lt;sup>19</sup> Property abutting the site on the west is vacant agriculturally zoned property. Savanna Lakes MPD lies north and west of the intervening AG-2 property abutting the site.

<sup>&</sup>lt;sup>20</sup> Surrounding properties are zoned RS-1, MPD and RVPD. Properties zoned for commercial uses are a short distance east of the site.

<sup>&</sup>lt;sup>21</sup> Lee Plan Objective 2.1. The proposed RPD constitutes infill development.

<sup>&</sup>lt;sup>22</sup> LDC §34-413.

<sup>&</sup>lt;sup>23</sup> The Lehigh Community planning regulations limit building height outside Lehigh's Specialized Mixed-Use Nodes to a maximum of three stories or 45 feet unless greater heights are approved by deviation. LDC §33-1417. The request does not request a deviation from height limitation.

<sup>&</sup>lt;sup>24</sup> Staff 48 Hour Memo dated December 17, 2024: Memo from Jacqueline Heredia, District Planning Specialist

new residential developments to provide adequate pedestrian and bicycle access for school children.<sup>25</sup> Designing the project to accommodate safe school bus access is prudent, given the likelihood the project will include families with school aged children.<sup>26</sup> The Hearing Examiner recommends a condition to ensure project design accommodates safe pedestrian and bicycle access to school buses, including a dedicated waiting area outside the road right of way. Conditioning project design at the outset will reduce the likelihood of future design conflicts.

#### **LDC**

Development must comply with the LDC or request deviations. A "deviation" is a departure from a land development regulation.<sup>27</sup>

<u>The request includes six deviations</u>. Applicants must demonstrate deviations enhance the project and will not cause a detriment to the public.<sup>28</sup> Requested deviations seek relief from street design, lake setbacks, ingress/egress, indigenous vegetation requirements, and parking. <u>Staff recommended approval of the deviations</u>. The Hearing Examiner agrees with this recommendation, placing conditions on requested deviations to protect the health, safety, and welfare of <u>future residents and adjacent property owners.</u><sup>29</sup>

The Lehigh Acres Community Plan requires zoning applicants to conduct a public hearing within the community prior to the Hearing Examiner hearing.<sup>30</sup> Applicant held the required meeting.<sup>31</sup> Future development orders will also be subject to community review.<sup>32</sup>

The MCP uses creative site design to preserve environmentally sensitive property and protect neighboring residential land uses with open space, stormwater

<sup>&</sup>lt;sup>25</sup> Lee Plan Goal 25, Policy 67.3.7

<sup>&</sup>lt;sup>26</sup> Developing the site to provide safe access to school buses is consistent with the Transportation and Community Facilities and Services elements of the Lee Plan. See Lee Plan Policies 39.3.2, 67.3.7, 68.3.7. <sup>27</sup> LDC §34-2.

<sup>28</sup> LDC §34-373(a)(9).

<sup>&</sup>lt;sup>29</sup> 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). In this instance, the Hearing Examiner conditions approval of the request for 25 foot excavation setback from private property under separate ownership on the installation of a Type B buffer and six foot fence along the length of the excavation abutting single family platted lots to the east. In addition, the Hearing Examiner conditions approval of off street parking on inclusion of sidewalks along one site of internal roadways, to facilitate pedestrian and bicycle access to school bus stop and open space areas within the project. Goal 25 ("safe and secure" neighborhoods), Policies 5.1.7, 67.3.7

<sup>&</sup>lt;sup>30</sup> Lee Plan Goal 25; LDC §33-1400 *et seq.* Future development permits, including development orders, must comply with community adopted standards in the LDC. LDC §33-1401(a)(2).

<sup>&</sup>lt;sup>31</sup> Staff Report Attachment H: Public Informational Meeting Summary. Meeting held at Lehigh Acres Municipal Services Improvement District Offices on August 22, 2023. LDC §33-1401(b).

<sup>&</sup>lt;sup>32</sup> The LDC requires development order and building permit applications to comply with the Lehigh Acres Planning Community regulations. LDC §§33-1400(d), 33-1401(a)(1).

management areas, and landscaping.<sup>33</sup> Site design protects the integrity of nearby residential land uses by focusing development along the SR 82 road frontage.<sup>34</sup>

Development will be subject to road, park, school, fire, and emergency medical service impact fees.<sup>35</sup>

# **Transportation**

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

The Traffic Impact Statement concludes the project will not negatively impact area roadways at buildout in 2029.<sup>36</sup> The County's transportation planner concurred with this assessment.<sup>37</sup>

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.<sup>38</sup>

## **Environmental/Natural Resources**

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

The site is vacant with 8.65 acres of wetlands.<sup>39</sup> Uplands on the site consist of exotic infested pine flatwoods with mixed upland hardwoods. Onsite wetlands consist of exotic infested mixed wetland hardwoods, with willow and cypress trees. The LDC requires large developments with indigenous native vegetation to preserve onsite indigenous native vegetation, when possible, to meet code open space requirements.<sup>40</sup> MCP depicts a 9.25 acre preserve consisting of existing and restored wetlands.<sup>41</sup>

<sup>&</sup>lt;sup>33</sup> Staff Report Attachment G: MCP. See Lee Plan Policy 135.9.8, Buffers comply with LDC §§10-425, 33-1405(c), and 34-411(h).

<sup>&</sup>lt;sup>34</sup> Lee Plan Goal 77, Objectives 77.1, 77.3, Policies 5.1.5, 77.3.1, LDC §34-411(i). Proposed buffers are code compliant.

<sup>&</sup>lt;sup>35</sup> LDC Chapter 2, Article VI. Lee Plan Policy 38.1.1.

<sup>&</sup>lt;sup>36</sup> Staff Report Attachment O: Traffic Impact Statement for SR82 29 Acres prepared by TR Transportation Consultants, Inc. dated June 24, 2024.

<sup>&</sup>lt;sup>37</sup> Staff Report Attachment P: LCDCD Staff Memo prepared by Brittany Banker, Plan Reviewer dated November 18, 2024.

<sup>38</sup> Lee Plan Objective 39.1

<sup>&</sup>lt;sup>39</sup> The plan of development proposes no wetland impacts. Lee Plan Goal 124, Objective 25.10, Policies 25.10.1, 25.10.2. Lee Plan Policy 124.2.1 permits density from preserved wetlands to be transferred consistent with the ranges authorized by the abutting Urban Community future land use category.

<sup>&</sup>lt;sup>40</sup> Lee Plan Objective 77.3, Policies 77.3.1, 77.3.5, LDC §10-415(b)(1).

<sup>&</sup>lt;sup>41</sup> Staff Report Attachment M: Cypress Manor Preserve Management Plan prepared by BearPaws Environmental Consulting dated August 2024.

Applicant prepared a Preserve Management Plan to improve and maintain the condition of onsite uplands/wetlands. Wet and dry detention areas will provide water quantity, quality, and attenuation of storm water flow. If necessary, perimeter swales will collect and convey runoff from adjacent property that drains onto the site. The MCP incorporates the onsite wetland into the storm water management system, which will provide additional water treatment prior to outfall into Bullfrog Canal.

Applicant's protected species survey disclosed no evidence of protected species.<sup>46</sup> Staff's site inspection disclosed several Heritage Trees on the property, prompting a condition to comply with governing LDC provisions regarding Heritage Tree protection/replacement.<sup>47</sup>

Development order submittals ensure buffers and landscaped areas follow Xeriscape principles.<sup>48</sup> Irrigation water will be sourced from onsite lakes.<sup>49</sup>

The Hearing Examiner finds the requested amendments to the RPD will not harm environmentally critical/sensitive areas or natural resources.<sup>50</sup>

## **Public Services and Infrastructure**

Public services include facilities, capital improvements, and infrastructure necessary to support development.<sup>51</sup> The Lee Plan requires an evaluation of public services during the zoning process.<sup>52</sup>

<u>Public services and infrastructure are available to serve the site</u>.<sup>53</sup> The project will have access to the County road network via SR 82. Florida Governmental Utility Authority (FGUA) will provide potable water and sanitary sewer service.<sup>54</sup> Lehigh Acres Fire District is available for fire protection and emergency medical services

<sup>&</sup>lt;sup>42</sup> Lee Plan Goal 77, Objectives 77.1, 77.3, Policy 5.1.6.

<sup>&</sup>lt;sup>43</sup> Lee Plan Policies 25.10.4, 61.3.11, 125.1.2, 125.1.3.

<sup>&</sup>lt;sup>44</sup> Lee Plan Policies 61.3.6. 61.3.10, Staff Report Attachment M.

<sup>&</sup>lt;sup>45</sup> Lee Plan Policies 60.1.1, 60.4.1, 60.4.2, 61.3.10, 126.1.4.

<sup>&</sup>lt;sup>46</sup> Staff Report Attachment K: Cypress Manor Environmental Assessment & Cursory Species Survey Report prepared by Bearpaws Environmental Consulting dated May 2024, June 2024, and updated August 2024. <sup>47</sup> LDC §34-411(g)

<sup>&</sup>lt;sup>48</sup> Lee Plan Objective 126.2, Policy 126.2.1. Required landscape buffers must consist of native landscape materials to conserve water. In addition, the Lehigh Community Planning regulations require use of cold tolerant species. LDC §33-1405(a).

<sup>&</sup>lt;sup>49</sup> Lee Plan Policy 61.1.6.

<sup>&</sup>lt;sup>50</sup> Lee Plan Policy 125.1.2.

<sup>&</sup>lt;sup>51</sup> 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.

<sup>&</sup>lt;sup>52</sup> Lee Plan Policy 2.2.1.

<sup>&</sup>lt;sup>53</sup> Lee Plan Objective 2.2.

<sup>&</sup>lt;sup>54</sup> Lee Plan Goal 95, Objectives 2.2, 4.1, Policies 2.2.1, 25.9.2, 5.1.3, Standards 4.1.1, 4.1.2.

from Station 105 on Thomas Sherwin Ave S. Lee County Sheriff provides law enforcement services from the East District offices on Homestead Road. There are elementary, middle, and high schools within a few miles of the site.<sup>55</sup> Employment and shopping opportunities are available in Lehigh and along the SR 82 and Colonial Boulevard corridors.

SR 82 is improved with a shared use path and is part of the Captiva-Lee-Hendry-Collier Trail.<sup>56</sup>

## Conditions

The County must administer the zoning process so proposed land uses minimize adverse impacts on adjacent property and protect County resources.<sup>57</sup> Conditions must be plausibly related to the project's anticipated impacts, and pertinent to mitigating impacts to the public.<sup>58</sup>

Hearing Examiner has the authority to recommend additional conditions in the context of a proposed planned development.<sup>59</sup> In furtherance of this authority, the Hearing Examiner recommends conditions to ensure project design protects the health, safety, and welfare of future residents and adjacent property owners. Recommended conditions are as follows:

- 1. Dedicated area outside road right-of-way for students to wait for, load and unload from school buses,
- Sidewalks on one side of project roadways to ensure safe pedestrian/bicycle access to school bus stop and open space areas,<sup>60</sup>
- 3. Fence along excavations less than 50 feet from private property under separate ownership.<sup>61</sup>

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

<sup>&</sup>lt;sup>55</sup> Staff Report Attachment D: Applicant Narrative. Dan DeLisi, AICP testified the Lee County School District owns property within the Savanna Lakes MPD and may construct an elementary and middle school on the property in the future.

<sup>&</sup>lt;sup>56</sup> The road corridor is also part of the Captiva-Hendry-Collier Trail. Lee Plan Maps 3-D, 4-E.

<sup>&</sup>lt;sup>57</sup> 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).

<sup>58</sup> LDC §34-932(b).

<sup>&</sup>lt;sup>59</sup> LDC §34-145(d)(1)c. and (d)(6)a.

<sup>&</sup>lt;sup>60</sup> Lee Plan Goal 25, Policies 5.1.7, 67.3.7, LDC §34-411(I). Note that Policy 5.1.7 states open space areas within residential developments must be easily accessible via pedestrian and bicycle pathways. Townhouses and other types of multi-family residential development must have directly accessible common open space. *Cf.* Lee Plan Policies 43.1.1., 43.1.2, 43.3.3.

<sup>61</sup> LDC §34-411(m)

#### **Public**

One member of the public spoke at hearing. Concerns centered on safety for school children, sidewalks and buffers.

# Conclusion

The Hearing Examiner recommends approval of the requested amendments to the RPD, subject to conditions in Exhibit B.

The Hearing Examiner finds the proposed Cypress Manor RPD meets LDC criteria and, as conditioned, is compatible with surrounding development.

# IV. Findings and Conclusions

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

- A. The requested RPD is consistent with the Lee Plan. Lee Plan Goals 2, 4, 5, 25, 77, 95, 158, Objectives 1.5, 2.1, 2.2, 4.1, 5.1, 17.1, 17.2, 25.10, 39.1, 77.1, 126.2, and Policies 1.1.4, 2.1.1, 2.1.2, 2.1.3, 2.2.1, 2.2.2, 5.1.2, 5.1.3, 5.1.5, 25.10.1, 39.1.3, 60.1.1, 135.9.6, 158.2.1, 160.1.3, Lee Plan Maps 1-A, 1-B, 2-A, 2-B, 3-D, Tables 1(a), 1(b).
- B. As conditioned, the RPD:
  - 1. Is consistent with the LDC 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 Objectives 2.1, 2.2, and Policies 1.1.4, 5.1.3, 5.1.5, 5.1.6, 135.9.5, 135.9.6; LDC §§34-411, 34-413.
  - 3. Provides sufficient road access to support proposed development intensity. Lee Plan Objective 25.8,
  - 4. Expected impacts on transportation facilities will be addressed by County regulations and conditions of approval. Lee Plan Objectives 39.1, Policies 38.1.1, 39.1.3, 39.2.1; LDC §§2-261 et seq., 34-411.
  - 5. Will not adversely affect environmentally sensitive areas or natural resources. Lee Plan Goals 60, 61, 77, Objectives 25.10, 61.2, 77.1, 77.3, 126.2, Policies 25.10.1, 25.10.2, 25.10.4, 60.1.1, 60.4.1, 60.4.2, 61.3.6, 61.3.10, 61.3.11, 125.1.2, 125.1.3, 126.1.4, 126.2.1, Standard 4.1.4; and

- 6. Public services and infrastructure will be available to serve the development. Goals 2, 4, 5, 25, 95, Objectives 2.1, 2.2, 4.1, Policies 2.2.1, 25.9.2, 39.1.3, Standards 4.1.1, 4.1.2.
- C. The proposed uses are appropriate at the location. Lee Plan Goals 2, 4, 5, 25; Objectives 2.1, 2.2, Policies 1.1.4, 2.1.1, 2.1.2, 5.1.2, 5.1.3, 5.1.6, 25.9.2,135.9.5, 135.9.6, 158.2.1, 160.1.3.
- 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 77.1, 126.2, Policies 5.1.5, 53.1.5, 56.1.4, 135.9.5, 135.9.6: 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).

Recommendation Date: December 20, 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

## K.E. TRASK, P.A.

## LAND SURVEYORS

A PARCEL LYING IN
SECTION 19 & 20, TOWNSHIP 45 SOUTH, RANGE 27 EAST,
LEE COUNTY, FLORIDA.

(18831 STATE ROAD 82)

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTIONS 19 & 20, TOWNSHIP 45 SOUTH, RANGE 27 EAST, BEING A PART OF THE PARCEL AS DESCRIBED IN OFFICIAL RECORDS BOOK 2084, PAGE 2516, LEE COUNTY PUBLIC RECORDS, AND BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 19; THENCE N.88°59'51"E. ALONG THE NORTH LINE OF SAID SECTION 20 FOR 227.25 FEET; THENCE S.00°49'35"E. ALONG THE WEST LINE OF MIRROR LAKES SUBDIVISION, UNIT NO. 47 & 48, AS SHOWN IN PLAT BOOK 27, PAGE 129, SAID PUBLIC RECORDS FOR 1516.43 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF STATE ROAD 82 AS SHOWN IN FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAPS FOR STATE ROAD 82, ROADWAY NO. 12070-000; THENCE N.50°07'55"W. ALONG SAID RIGHT OF WAY LINE FOR 636.52 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 2964.79 FEET, A CHORD BEARING N.57°14'39"W. AND LENGTH OF 734.16 FEET; THENCE ALONG SAID CURVE, AND SAID RIGHT OF WAY LINE, THROUGH A CENTRAL ANGLE OF 14°13'28" FOR AN ARC LENGTH OF 736.05 FEET; THENCE N.64°21'23"W. ALONG SAID RIGHT OF WAY LINE FOR 231.01 FEET; THENCE LEAVING SAID RIGHT OF WAY LINE, N.24°44'54"E., ALONG THE BOUNDARY OF THE PARCEL AS DESCRIBED IN OFFICIAL RECORDS INSTRUMENT 2021000203900, SAID PUBLIC RECORDS, FOR 663.34 FEET TO THE NORTH LINE OF SAID SECTION 19; THENCE N.89°39'40"E. ALONG SAID SECTION LINE FOR 787.45 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 1221175.60 SQUARE FEET OR 28.03 ACRES, MORE OR LESS.

BEARINGS ARE PLANE COORDINATE FLORIDA WEST ZONE, NORTH AMERICAN DATUM OF 1983/1990, THE NORTH LINE OF SECTION 19 AS BEARING N.89°39'40"E.

COORDINATES AS SHOWN ARE STATE PLANE COORDINATES, FLORIDA WEST ZONE, NORTH AMERICAN DATUM OF 1983.

K.E. TRASK, P.A. FLORIDA LICENSED BUSINESS LB8450

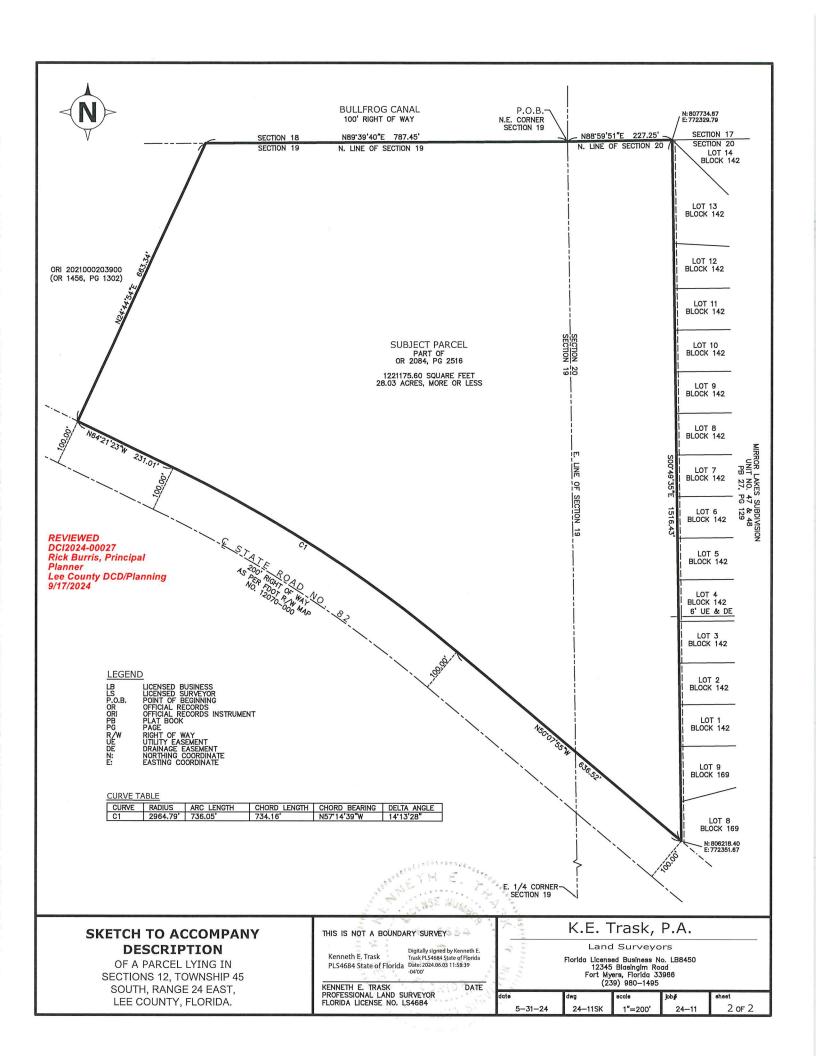
MAY 31, 2024

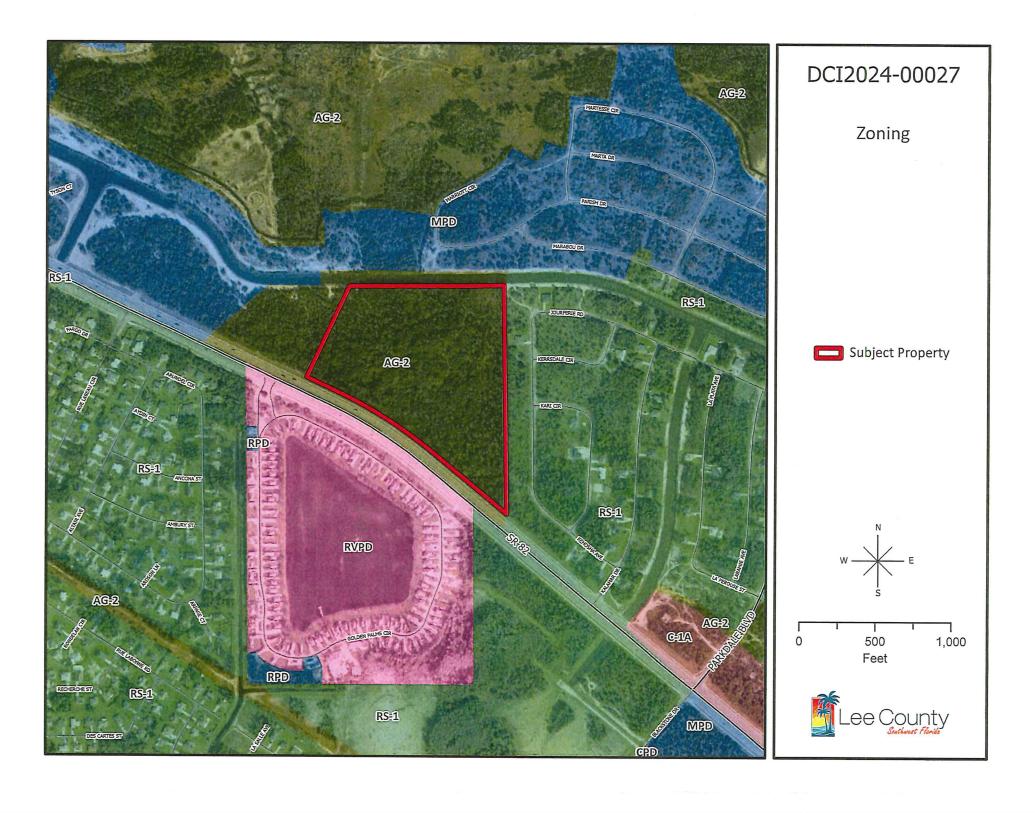
Kenneth E. Trask Digitally signed by Kenneth E. Trask PLS4684 State of Florida Date: 2024.06.03 11:59.03 -0400'

KENNETH E. TRASK
PROFESSIONAL LAND SURVEYOR
FLORIDA LICENSE LS4684

REVIEWED DCI2024-00027 Rick Burris, Principal Planner Lee County DCD/Planning 9/17/2024

SHEET 1 OF 2





### Exhibit B

## RECOMMENDED CONDITIONS AND DEVIATIONS

## CONDITIONS

1. <u>Master Concept Plan/Approved Development Parameters</u>

<u>Master Concept Plan (MCP)</u>. Development must be consistent with the one-page MCP entitled "Cypress Manor RPD Master Concept Plan" dated October 1, 2024, except where modified by conditions below. (MCP: Exhibit B1)

<u>Lee Plan and Land Development Code (LDC)</u>. Development permits must comply with the Lee Plan and LDC, unless departure from the LDC is approved by deviation herein. Changes to the MCP and conditions/deviations require further development approvals.

<u>Development Parameters</u>. The 28.03 acre site may develop with up to 168 multifamily/townhouse dwelling units.

## 2. Uses and Site Development Regulations

a. Schedule of Uses

Accessory Uses and Structures

Administrative Office

Clubs, Private

Community Gardens

Dwelling Unit, Townhouse, Multiple-Family Building

**Entrance Gates and Gatehouses** 

**Essential Services** 

Essential Service Facilities: Group I

Excavation, Water Retention

Fences and Walls

Food and Beverage Service, limited

Models, Display Center

Parking lot, Accessory

Recreation Facilities, private on-site

Residential Accessory Uses

Temporary Uses

## b. Site Development Regulations

Development Regulations			
	Multi-Family	Townhouse	Clubhouse
Development Criteria			
Right of Way Setback	20-feet	20-feet	25-feet
Minimum Setback from Perimeter Boundaries	25-feet	25-feet	25-feet
Minimum Separation between Buildings	10-feet Min.*	10-feet	N/A
Maximum Building Height	45-feet	35 feet	30-feet
Side Yard Setback	10	5/0	N/A
Side Setback abutting road	20	20	N/A
Rear Yard Setback (principle and accessory)	15-feet	15-feet	N/A
Waterbody Setback (To Edge of Water/Control Elev.)	20-feet	20-feet	20-feet
Lot Area and Dimensions			
Area	28.03 acres	1,600 sq. ft.	
Width	N/A	20'	
Depth	N/A	80'	
Maximum building Coverage	60%	75%	

<sup>\*</sup>Minimum of half the distance of the building height

## 3. Environmental Conditions

- a. Development order plans must demonstrate compliance with LDC §10-416(a)(4).
- b. Development Order plans must depict 12.05 acres of general open space, including 9.25 acres of indigenous preserve consistent with the MCP.
- c. Developer must comply with the Cypress Manor Preserve Management Plan to maintain the condition of onsite uplands/wetlands. (Management Plan attached as Exhibit B2)

## 4. Pedestrian/Bicycle Access to School Bus

Development Order plans must accommodate safe pedestrian and bicycle access to school bus stops. The site plan must depict locations for school buses to stop, load, and unload students. Plans must also include a dedicated area for students to wait for the school bus. These waiting areas must be outside road rights-of-way and coordinated with the Lee County School District.

- 5. State and Federal Permits
  - a. <u>Generally</u>. 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 Developer fails to obtain requisite approvals or fulfill obligations imposed by state/federal agencies or undertakes actions resulting in a violation of state or federal law. Developer must obtain applicable state/federal permits prior to commencing development.
  - b. <u>State Wetland Permits</u>. 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 § regulations regarding development within wetlands.

## **DEVIATIONS**

1. <u>Street Design and Construction Standards</u>. Deviation 1 seeks relief from LDC §10-296(k)(1), which requires dead-end streets to be constructed with a circular turnaround for vehicles, to allow no circular turnaround in three locations where there is less than 150 feet of roadway from the nearest intersection. The deviation complies with National Fire Protection Association Fire Code §18.2.3.5.4, which requires approved turning provisions for dead-end roads greater than 150 feet.

Hearing Examiner Recommendation: Approved, limited to three locations depicted on the MCP.

2. <u>Excavation Setback Standards</u>. Deviation 2 seeks relief from LDC §10-329(d)(1)a.2 that prohibits excavation within 50 feet of existing/proposed right-of-way lines or easement for collector and arterial streets, to allow a minimum setback of 25 feet from State Road 82.

Hearing Examiner Recommendation: Approved, limited to locations depicted on the MCP.

3. <u>Excavation Setback Standards</u>. Deviation 3 seeks relief from LDC §10-329(d)(1)a.3 that prohibits excavation within 50 feet of a private property line under separate ownership, to allow a minimum setback of 25 feet along the eastern property line.

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

- a. Deviation is limited to location depicted on the MCP,
- b. Developer must install a fence alongside the length of the excavation abutting single family platted lots.
- 4. Required Street Access. Deviation 4 seeks relief from LDC §34-291(3) that requires two means of ingress or egress to residential subdivisions greater than 5 acres, to allow one means of ingress/egress for the project with a secondary "emergency vehicle access only" on State Road 82.

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

- a. Developer must provide an EVAC gate entry system (NFPA 1-18.2.2.2) at the western emergency access labeled "Gated Emergency Vehicle Access 20 feet minimum width". If the gate will be secured with a chain and padlock, the chain must be of an adequate length for the fire district staff to cut the chain to gain entry when necessary.
- b. Prior to County approval of the first development order, Developer must record a notice to future property owners in the public records, allowing construction of the access to the development. The recorded notice must articulate the emergency access plan and provide information on where a resident may obtain a copy of the plan from the developer or its successor.
- 5. Open Space. Deviation 5 seeks relief from LDC §10-415(b) that requires large developments with existing indigenous native vegetation communities to provide 50 percent of required open space by preserving onsite native vegetation communities, to allow indigenous preservation requirements to be met through a combination of preservation of on-site indigenous areas and restoration of areas not currently meeting the definition of indigenous vegetation.

Hearing Examiner Recommendation: Approved, subject to Condition 3.

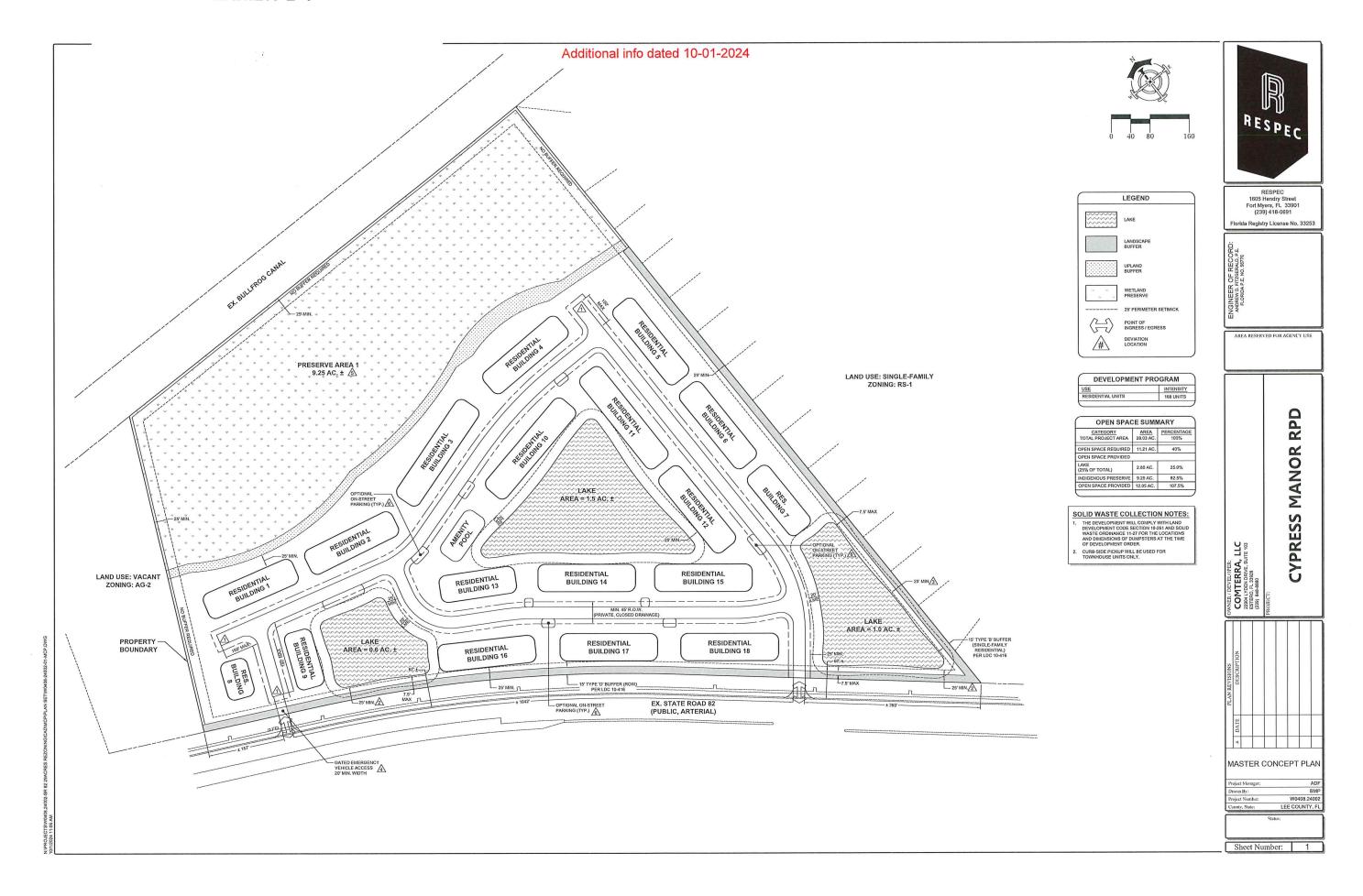
6. Parking Space Location and Design. Deviation 6 seeks relief from LDC §10-2015(2)c that requires individual parking spaces to be accessible from a parking aisle intended to provide access to the space, to allow optional on-street parking accessible from the internal roadway network, and to allow stacking of vehicles where each dwelling unit has an appurtenant garage or driveway.

Hearing Examiner Recommendation: Approved subject to the condition developer installs a sidewalk along one side of all project roads.

## Exhibits to Conditions:

B1 MCP entitled, "Cypress Manor RPD Master Concept Plan" dated October 1, 2024.

B2 Cypress Manor Preserve Management Plan dated August 2024 prepared by BearPaws Environmental Consulting.



## **EXHIBIT B2**

## **CYPRESS MANOR**

## PRESERVE MANAGEMENT PLAN

Lee County STRAP #'s: 19-45-27-00-00001.002 & 19-45-27-00-00001.0030

August 2024

## Prepared For:

Respec c/o: Drew Fitzgerald 1605 Hendry Street Fort Myers, FL 33901 Phone: (239) 418-0691

Email: andrew.fitzgerald@respec.com

Prepared By:



BearPaws Environmental Consulting 1599 Covington Circle East Phone: (239) 340-0678

Email: BearPaws.Env.Consulting@GMail.com

#### INTRODUCTION

The 28.04± acre Cypress Manor project site is contained within Section 19, Township 45S, and Range 27E, of Lee County, Florida. More specifically, the site is located immediately north of SR 82, east of Grant Boulevard, west of Kehosha Avenue, in Lehigh Acres, Florida. Please see the attached Project Location Map (Exhibit A).

### PROPERTY DESCRIPTION

The upland portions of the project are composed of exotic-infested pine flatwoods with mixed upland hardwoods. The wetlands identified on-site contain exotic-infested mixed wetland hardwoods, with willow, and cypress wetlands. Portions of the preserved and restored wetlands are being utilized for upland density calculations. The proposed preserve area totals 9.25± acres, of which 8.65± acres is wetlands being preserved in their entirety. There are no proposed wetland impacts occurring to any of the on-site wetlands. The on-site wetlands are being counted towards the total allowable residential density for the property, at 6 units per acre instead of 1 unit per 20 acres.

Per the Lee County, Land Development Code (LDC), Section 10-415(b)(1), large developments, with existing indigenous native vegetation, must provide open space requirements through the on-site preservation of existing indigenous native vegetation. The goal of this preserve management plan is to improve the condition of the uplands and provide a natural preserve area for the flora and fauna on the property. The on-site preserve area provides habitat for nesting and create foraging areas for all kinds of wildlife species.

### MITIGATION & MAINTENANCE PLAN

The purpose of this plan is to ensure that preserves are maintained exotic free in perpetuity and nuisance plants are controlled to healthy levels thru a scheduled maintenance program. The list of exotic and nuisance plant species are defined under the Lee County, Land Development Code (LDC), Section 10-420(h). This program is incorporated into a two-phase process: the initial exotic removal and the subsequent annual maintenance. The exotic and nuisance plant removal and maintenance program will ensure the viability, value, and aesthetics of the preserve. The exotic plant removal and maintenance program will be implemented by and the responsibility of the owner or their successor. Exotic and nuisance plants often dominate native plants, which in return reduces habitat values, consequently, negatively impact aesthetic values. Exotic and nuisance plants will be killed in a manner consistent with the LDC, Section 10-415(b)(4), following current approved exotic and nuisance plant removal practices and will occur in spring and/or fall.

All small exotic saplings and exotic shrubs are to be treated in place. All large exotic trees, with greater than 4-inch DBH, will be cut at stump height and removed from the preserve area; the remaining stumps will be treated in place. Any trees too large to be practically cut will be treated standing in place, upon the Lee County Environmental Staff approval. Any herbicides applied will be required to be EPA approved and conducted with a tracer dye. All exotic vegetation removed from the preserve area will be to be taken off- site and disposed of; there will be no exotics stockpiled within the preserve area. Any staging areas for the removal of exotic debris will be placed outside of the preserve and the exact location will be determined by the contractor.

The County requires all Category I and II species to be removed from preserves and not exceed a level of 5 percent, per LDC Sec. 10-420(h). Native nuisance coverage will be expected to be maintained as necessary. Exotic and nuisance plants will be killed in a manner consistent with current approved removal practices; all removal practices will be conducted according to current standards and applied by a licensed herbicide applicator. The established preserve maintenance program will be conducted in perpetuity.

The on-site preserve area provides habitat for nesting and create foraging areas for all kinds of wildlife species. On-site enhancement activities will be conducted concurrently with the on-site construction activities. These enhancement activities will include the hand removal of exotic and nuisance vegetation from the upland preserve area. The exotics to be eradicated include, but are not limited to, melaleuca (Melaleuca quinquenervia), earleaf acacia (Acacia auriculiformis), and Brazilian pepper (Schinus terebinthifoloius). This program is incorporated into a two phase process; the initial exotic removal and the subsequent annual maintenance.

### **DEBRIS REMOVAL**

Debris and garbage in the preserve area will be removed as needed within the preserve area. No large debris is currently located within the preserve area. Any garbage found will be removed from the preserve and disposed of in the proper receptacles.

### MITIGATION SUCCESS CRITERIA

Monitoring of the preserve area shall be conducted for a minimum of five years with annual reports submitted to the County. If native upland species does not achieve an 80% native coverage within the initial two years of the monitoring, native species shall be planted in accordance with the maintenance program. At end of the monitoring program the entire preserve area shall contain 80% coverage of desirable native species.

All mitigation areas will consist of no more than five percent cover by exotic and/or nuisance species at all times. Exotic and nuisance vegetation species are identified as those exotic species listed as CAT I and CAT II by the Florida Invasive Species Council (FISC). The preserve areas will be managed such that exotic/nuisance plant species do not dominate any one section of areas within the preserves. This is also applicable to native vegetation to ensure diversity within the upland habitats. Perpetual maintenance of the preserve areas is recommended to ensure coverage by native desirable vegetation is maintained as specified in the permit.

#### MONITORING

## Sampling Methodology

The proposed monitoring of the preserve area will begin concurrently with construction and will consist of baseline, time-zero, and annual monitoring of vegetation, and wildlife. The baseline monitoring report will document conditions in the project site as they currently exist. The time-zero report will document the conditions immediately following completion of mitigation activities. The annual reports will document the extent of success of the project and, if needed, identify specific actions to be taken to improve the conditions within the project area. Sampling transects and methodology for the baseline, time-zero, and annual reports will utilize identical methods of data collection from identical sampling stations. The location of the proposed sampling stations will be taken along the edge of the preserve areas, immediately adjacent to the upland buffer area. The Master Concept Plan, showing the indigenous preserve areas, is included as Exhibit B.

## Wildlife Monitoring

Regular observations of wildlife will be made during the monitoring event by qualified ecologists. Observations will consist of recording evidence and signs of wildlife (i.e., direct sightings, vocalizations, burrows, nests, tracks, droppings, etc.).

## Photographic Documentation

Permanent fixed-point photograph stations will be established in the preserve area providing physical documentation of the condition and appearance of an area, as well as any changes taking place within it. Monitoring photographs will accompany vegetation data in each report. Locations of photograph stations will remain the same throughout the duration of the monitoring program.

#### MONITORING REPORTS

Concurrently with construction, the permittee will submit annual monitoring reports to the County documenting the success of the mitigation program and general condition of the preserve area. Within 60 days of permit issuance or modification, the baseline monitoring for the preserve area will be submitted to the County. The time-zero monitoring report will be submitted within 60 days of completion of enhancement activities. Annual monitoring reports will include the following information:

- Brief description of mitigation and maintenance work performed since the previous report along with a discussion of any modifications to the mitigation or maintenance program.
- Brief description of anticipated mitigation and maintenance work to be conducted over the next year.
- Results of vegetation monitoring conducted in the preserve area.
- A list of observed wildlife species.
- Monitoring photographs taken at photograph stations within the preserve area.

### MAINTENANCE AND LONG-TERM MANAGEMENT

Following the completion of the initial exotic removal effort upon the commencement of construction, annual inspections of the mitigation area will occur for the first five (5) years. During these inspections, the mitigation area will be traversed by a qualified ecologist. Locations of nuisance and/or exotic species will be identified for immediate treatment with an appropriate herbicide. Any additional potential problems will also be noted and corrective actions taken. Once exotic/nuisance species levels have been reduced to acceptable limits (i.e., less than five percent cover), inspections of the preserve area will be conducted annually.

Maintenance will be conducted in perpetuity to ensure that the preserve area are free of exotic vegetation (as currently defined by the FISC) immediately following maintenance and that exotic and nuisance species will constitute no more than five percent of total combined cover. A mitigation and monitoring work schedule will be prepared, submitted, and approved by the County, prior to issuance of the vegetation removal permit.

Exhibit A

Project Location Map

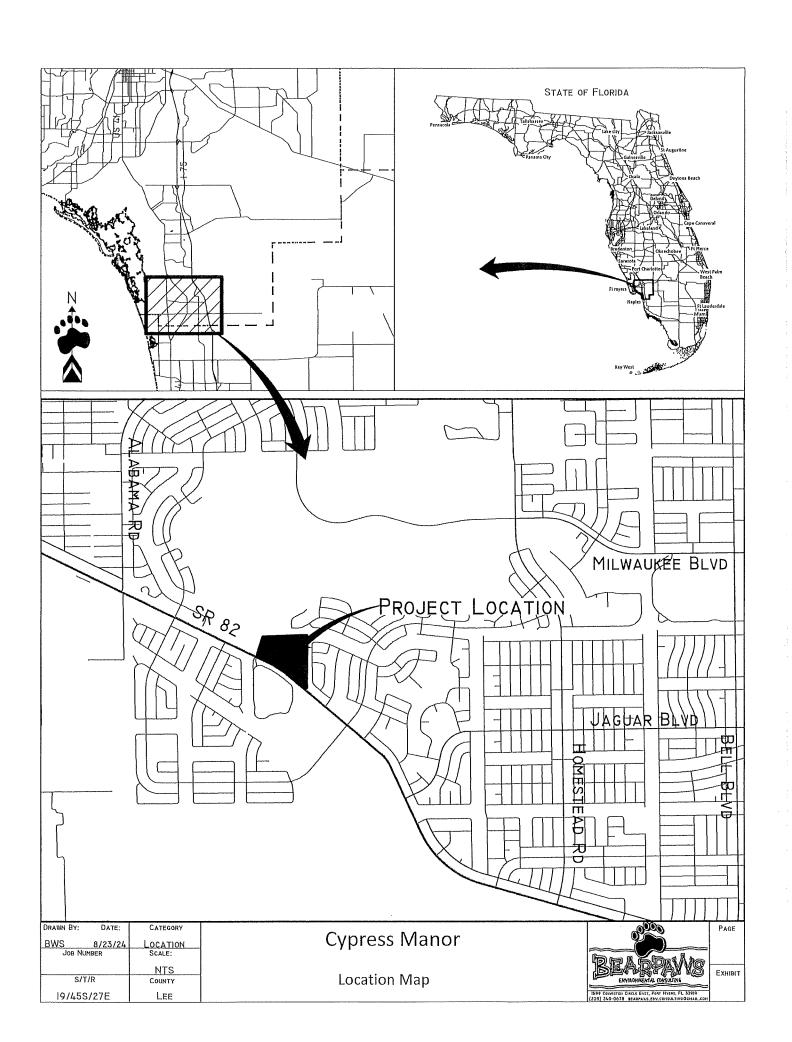
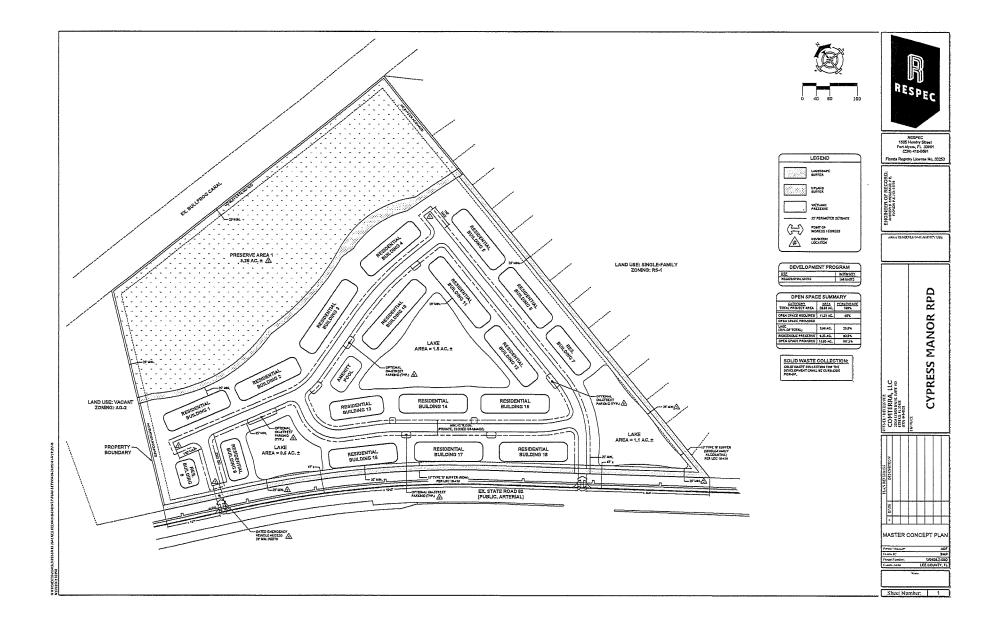


Exhibit B

Master Concept Plan



## **Exhibit C**

### **EXHIBITS PRESENTED AT HEARING**

## **STAFF EXHIBITS**

- a. 48-HourNotice: Email from MarySue Groth to Maria Perez and Trinh Linch, dated Tuesday, December 17, 2024, 10:42 AM (multiple pages 8.5"x11"
- 1. DCD Staff Report with attachments for DCI: Prepared by MarySue Groth, Senior Planner, date received December 4, 2024 (multiple pages 8.5"x11" & 11"x14") [black & white, color]
- 2. Affidavit of Publication: For Zoning Case DCI2024-00027, Cypress Manor RPD (1 page 8.5"x11")
- 3. *PowerPoint Presentation:* Prepared by Lee County Staff for DCl2024-00027 Cypress Manor RPD, dated December 19, 2024 (multiple pages 8.5"x11")[color]
- 4. *Résumé:* For William Alexander Lange (2 double sided pages 8.5"x11")

## **APPLICANT EXHIBITS**

- a. 48-Hour Notice: Email from Linh Trinh to Donna Marie Collins, with copies to Francesca Passidomo, Daniel DeLisi, MarySue Groth, Joseph Adams, Esq., Maria Perez, dated Monday, December 16, 2024, 9:56 AM (multiple pages 8.5"x11" and 1 page 11"x17")
- 1. *PowerPoint Presentation:* Prepared for DCI2024-00027 Cypress Manor RPD, dated December 19, 2024 (multiple pages 8.5"x11")[color]
- 2. Revised Condition 3(a): (1page 8.5"x11")

## **Exhibit D**

## **HEARING PARTICIPANTS**

## County Staff:

1. MarySue Groth, Senior Planner

## Applicant Representatives:

- 1. Yury Bykau, PE
- 2. Dan DeLisi, AICP
- 3. Drew Fitzgerald, PE
- 4. Francesca Passidomo, Esq.
- 5. Barrett Stejskal

## Public Participants:

1. Derek Felder

## **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.

## **ATTACHMENT I**

## Cypress Manor Residential Planned Development - DCI2024-00027

### **CONDITIONS AND DEVIATIONS**

## A. CONDITIONS-

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

## 1. Master Concept Plan/Development Parameters

MCP. Development must be consistent with the one-page MCP entitled "Cypress Manor RPD Master Concept Plan" dated October 1, 2024, except as modified by the conditions below.

<u>Land Development Code and Lee Plan</u>. Development must comply with the LDC and Lee Plan at time of development order approval, except as may be granted by deviation herein. Subsequent changes will require additional approvals.

<u>Development Parameters</u>. The development is limited to 28.03 acres, with a maximum intensity of 168 multi-family and townhouse dwelling units.

## 2. Uses and Site Development Regulations

## a. Schedule of Uses

Accessory Uses and Structures

Administrative Office

Clubs, Private

**Community Gardens** 

Dwelling Unit, Townhouse, multiple family building

**Entrance Gates and Gatehouses** 

Essential services

Essential service facilities: Group I

Excavation, Water Retention

Fences and Walls

Food and Beverage Service, limited

Models, Display Center

Parking lot, Accessory

Recreation facilities, private on-site

Residential accessory uses

Temporary uses in compliance with LDC Section 34-3041

## b. Site Development Regulations

Maximum Building Height:

45 feet multi-family, 30 feet Clubhouse

Maximum Lot Coverage:

40 percent

Minimum Open Space:

12.05 acres (see Condition 3)

Minimum Setbacks:

Perimeter

25 feet

## 3. Environmental Conditions

- a. Prior to the issuance of a Development Order or Tree Removal Permit, every effort shall be made to preserve native heritage tress on site. If a heritage tree must be removed from a site, then a replacement native canopy tree with a minimum 20-foot height must be planted within an appropriate planting area.
- b. Prior to the issuance of the first Development Order, the Development Order plans must depict 12.05 total acres of general open space, with 9.25 acres of indigenous preserve as shown on the one-page Master Concept Plan entitled "Cypress Manor RPD Master Concept Plan" dated October 1, 2024

### **DEVIATIONS**

1. <u>Deviation 1</u> seeks relief from LDC Section 10-296(k)(1), which requires dead-end streets to be constructed with a circular turnaround for vehicles, to allow no circular turnaround in three (3) locations depicted on the Master Concept Plan (Attachment G), where there is less than 150 feet of roadway from the nearest intersection. The deviation request complies with Section 18.2.3.5.4 of the National Fire Protection Association (NFPA) fire code, which requires approved turning provisions for dead-end roads greater than 150 feet.

This deviation is approved, limited to the locations depicted on the Master Concept Plan.

2. <u>Deviation 2</u> seeks relief from LDC Section 10-329(d)(1)a.2, which requires that no excavation be allowed within 50 feet of any existing or proposed right-of-way line or easement for a collector or arterial street, to allow a minimum setback of 25 feet from State Road 82.

This deviation is approved, limited to the locations depicted on the Master Concept Plan.

3. <u>Deviation 3</u> seeks relief from LDC Section 10-329(d)(1)a.3, which requires that no excavation be allowed within 50 feet of any private property line under separate ownership, to allow a minimum setback of 25 feet along the eastern property line.

This deviation is approved, limited to the locations depicted on the Master Concept Plan.

4. <u>Deviation 4</u> seeks relief from LDC Section 34-291(3), which requires two (2) means of ingress or egress to any residential subdivision greater than 5 acres, to allow for one means of ingress or egress for the development with a secondary emergency vehicle access only on State Road 82.

Staff recommends approval of the deviation subject to the following conditions:

- (1) The western emergency access labeled "Gated Emergency Vehicle Access 20 feet minimum width" gate shall be provided with an EVAC gate entry system (NFPA 1-18.2.2.2). Where the gate is to be secured with a chain and padlock, the chain shall be of an adequate length for the fire district staff to cut the chain to gain entry where required.
- (2) Prior to local development order approval, a notice to all future property owners must be recorded by the developer in the public records, allowing construction of the access to the

development. The notice must articulate the emergency access plan and provide information as to where a copy of this plan may be obtained from the developer or developer's successor.

5. <u>Deviation 5</u> seeks relief from LDC Section 10-415(b), which requires large developments with existing indigenous native vegetation communities to provide 50 percent of their open space percentage requirement through the onsite preservation of existing native vegetation communities, to allow for the indigenous preservation to be met through the combination of preservation of on-site indigenous area and the restoration of areas that do not currently meet the definition of indigenous vegetation.

Staff recommends approval of the deviation, subject to Condition 3.

6. <u>Deviation 6</u> seeks relief from LDC Section 10-2015(2)c, which requires individual parking spaces to be accessible from a parking aisle intended to provide access to the space, to allow optional on-street parking that will be accessible from the internal roadway network, and to allow the stacking of vehicles (one behind the other) within a multi-family development where each dwelling unit has a garage or driveway appurtenant to it.

Staff recommends approval of the deviation.

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

CASE NUMBER: DCI2024-00027

**TYPE OF CASE: Residential Planned Development** 

**CASE NAME: Cypress Manor RPD** 

TOTAL ACREAGE AFFECTED BY REQUEST: 28.03+/- acres

**SUFFICIENCY DATE: October 28, 2024** 

**HEARING EXAMINER DATE: December 19, 2024** 

#### **REQUEST:**

DeLisi, Inc. has filed an application to rezone approximately 28.03+/- acres from Agricultural (AG-2) to Residential Planned Development (RPD), to allow a residential community with 168 multi-family units, amenity area and preserve. The project is designed to concentrate the development activity outside of the wetlands located on the northwestern area of the site, with development closer to the major roadway corridor of State Road 82. Buildings will be located around onsite water management lakes and along wetland/upland preserves within the property.

The subject property is located along State Road 82 between Grant Boulevard and Parkdale Boulevard in the Lehigh Acres Planning Community, within the Urban Community and Wetlands Future Land Use Categories as established by the Lee County Comprehensive Plan (Lee Plan). The sketch and legal description for the property may be found as Attachment B.

The applicant has requested six (6) deviations from Land Development Code (LDC) requirements related to circular turnarounds, excavation, ingress/egress, indigenous open space, and parking (Attachment F).

#### **SUMMARY:**

Staff recommends **APPROVAL** of the applicant's request and deviations with Conditions found in Attachment I.

### **EXISTING CONDITIONS:**

The subject property is an undeveloped parcel currently zoned Agricultural (AG-2) abutting the Bullfrog Canal to the north, and the Savanna Lakes Mixed Use Planned Development (MPD) to the north and west. East of the subject property is residential development conventionally zoned Residential (RS-1). State Road 82 abuts the subject property to the south, and the Golden Palms Motorcoach Estates Recreational Vehicle Planned Development (RVPD) is located on the opposite side of State Road 82.

#### ANALYSIS:

LDC Section 34-145 establishes the review criteria for requests for rezone to a planned development. Before recommending approval, 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 request statement addressing the analysis of the decision-making criteria (Attachment D). The following sections provide staff's analysis of the request, as measured by the review criteria.

### a. Lee Plan Compliance

The parcel is located in the Urban Community and the Wetlands Future Land Use Categories, and the Lehigh Acres Community Plan area, as established by the Lee County Comprehensive Plan (Lee Plan). The Urban Community Future Land Use is defined as "areas characterized by a mixture of relatively intense commercial and residential uses. The residential development in these areas will be at slightly lower densities than other future urban categories described in this plan." Pursuant to Policy 1.1.4, the proposed multi-family use is appropriate given its location, limited size, and the proposed density. The applicant is requesting up to 168 dwelling units, just under six units per acre, consistent with the density range of the Urban Community Future Land Use Category. The northern portion of the subject property abutting Bullfrog Canal resides in the Wetlands Future Land Use Category. The applicant has stated the approximately 8.65 acres of wetland area will be preserved and restored, and the development will acquire the proper permitting with South Florida Water Management District (SFWMD), consistent with the Objective 1.5 of the Lee Plan. Staff finds the request, as conditioned, consistent with Policy 1.1.4, and Objective 1.5 of the Lee Plan.

**Objective 2.1** of the Lee Plan promotes contiguous and compact growth to contain urban sprawl. The proposed rezone will allow infill development that promotes compact growth patterns, with existing development and platted lots surrounding the subject property. **Objective 2.2** and **Policy 2.2.1** discuss new growth in future urban areas in proximity to available road networks and where adequate public facilities exist or are assured. The subject property is located in a future urban area, and the proposed rezone to allow a residential community is consistent with the density range in the Urban Community Future Land Use Category. Staff finds the request consistent with **Objective 2.1**, **Objective 2.2**, and **Policy 2.2.1** of the Lee Plan.

The applicant has provided a Letter of Availability from the Florida Governmental Utility Authority (FGUA) stating potable water and sanitary sewer lines are in operation adjacent to the property, and that sufficient capacity exists to provide service based on the estimated flow demand provided at time of submittal. The proposed development will connect to central water and sanitary sewer service, fulfilling requirements of **Standards 4.1.1 and 4.1.2** of the Lee Plan (See Attachment Q). The applicant also submitted a Protected Species Survey and FLUCCS for the property (Attachment K), and the MCP was designed to avoid impacts to the existing wetlands on the property. Environmental staff identified several large oaks meeting the definition of heritage trees pursuant to LDC Section 10-416 on the subject property which were not identified in the provided environmental report, and staff recommends a condition that prior to Development Order or Vegetation Removal Permit, every effort shall be made to preserve native heritage trees on site. If a heritage tree must be removed from the site, then a replacement native canopy tree with a minimum 20-foot height must be planted within an appropriate planting area (see Attachment I), fulfilling **Standard 4.1.4** of the Lee Plan. Staff finds the request is consistent with **Standards 4.1.1**, **4.1.2**, and **4.1.4** of the Lee Plan.

Goal 5 of Lee Plan seeks to accommodate the projected population of Lee County in the year 2045 in appropriate locations as guided by the Future Land Use Map. The proposed RPD for the construction of a multi-family community provides a greater mix of unit types and adds a range of housing types in the Lehigh Acres Planning Area. The proposed development meets the Development of County Impact (DCI) thresholds, therefore the request to rezone to RPD fulfills the requirements of **Policy 5.1.1.** Pursuant to Policy 5.1.2, the subject property is located in an urbanized area with development on all sides and is not located in an area prone to flooding, storm surge, or other hazards. Policy 5.1.3 directs high-density residential development to be located near employment, shopping, schools and existing infrastructure. The proposed multi-family development is within close proximity to future shopping and employment centers, various retail uses along State Road 82 and Homestead Road, and near existing schools. Fulfilling the goals of Policy 5.1.5, the proposed multi-family units abuts Residential (RS-1) properties to the east, and the Savannah Lakes RPD to the north and west beyond Bullfrog Canal, protecting the existing area from encroachment of destructive uses to the residential environment. The applicant has proposed additional setbacks and required buffers, and the development provides adequate park and open space features, including an amenity and water management lakes, while also preserving the wetlands on the northeastern portion of the property, fulfilling the requirements of Policy 5.1.6. Staff finds the request consistent with Lee Plan Goal 5, and Policies 5.1.1, 5.1.2, 5.1.3, 5.1.5, and 5.1.6 of the Lee Plan.

The applicant held a public information meeting pursuant to the requirements of LDC Section 33-1401 for the request and provided staff with minutes from the meeting (Attachment H). The meeting was held at the Lehigh Acres Architectural, Planning & Zoning Review Board's (LAAPZRB) monthly meeting on August 22, 2023, fulfilling the requirements of Lee Plan **Objective 17.3, and Policies 17.3.3 and 17.3.4**. Staff finds the request is consistent with **Objective 17.3, and Policies 17.3.3, and 17.3.4**.

**Goal 25** (the Lehigh Acres Community Plan) ensures that continued development and redevelopment converts the largely single use, antiquated pre-platted area into a vibrant residential and commercial community. As previously discussed, the subject property resides in the Urban Community Future Land Use Category, which encourages a mixture of intense commercial development and residential uses, and the proposed RPD is compatible with this goal. The proposed development includes approximately 9.25 acres of preserve area, fulfilling **Objective 25.10 and Policy 25.10.1 by** protecting and enhancing the physical integrity, ecological values, and natural beauty of the Lehigh Acres community, while encouraging the on-site preservation of indigenous plants and listed species habitats. The applicant provided a

Protected Species Survey (Attachment K) identifying approximately 8.65 acres of wetlands included in the proposed preserve area, pursuant to **Policy 25.10.2**. The Staff finds the request, as conditioned, is consistent with **Goal 25, Objective 25.10, and Policies 25.10.1 and 25.10.2** of the Lee Plan.

The applicant stated the water management system will be designed with a control elevation consistent with the seasonal high-water table for the existing wetland being preserved onsite, pursuant to **Policy 60.1.1**. **Policy 60.4.1** encourages new development to design surface water management systems with Best Management Practices, and **Policy 60.4.2** encourages incorporating existing wetland systems. The proposed water management system has been constructed with sinuous lake banks to mimic natural lakes and include littoral plantings at the project's outfall to enhance water quality prior to discharge through the control structure. An on-site lake has been designed to discharge to the existing wetland preserve, providing additional water quality treatment prior to discharge into Bullfrog Canal. Staff finds the request consistent with **Policies 60.1.1**, **60.4.1**, **and 60.4.2** of the Lee Plan.

The applicant has stated that irrigation for the proposed development will be from onsite lakes, and no potable water will be used, as no reuse water is available to the site, fulfilling **Policy 61.1.6.** Staff finds the request consistent with **Policy 61.1.6.** 

As previously stated, the subject property includes approximately 8.65 acres of wetland area, all of which will be preserved and restored, consistent with **Goal 124**. An Environmental Resource Permit (ERP) will be required through the SFWMD permitting process prior to commencement of construction. In accordance with the Lee Plan **Policy 124.2.1**., density may be transferred from the preserved wetlands at the rate of the abutting future land use category, Urban Community. Staff finds the request consistent with **Goal 124**, and **Policy 124.2.1** of the Lee Plan.

**Policy 126.1.4** states that development designs must provide for maintaining or improving surface water flows, groundwater levels, and lake levels at or above existing conditions. As previously stated, the site is designed to protect and preserve the existing wetlands and incorporate these areas into the surface water management system to enhance water quality prior to discharge into Bullfrog Canal. Staff finds the request consistent with **Policy 126.1.4** of the Lee Plan.

## b. Meets this Code and other applicable County regulations or qualifies for deviations;

The applicant has acknowledged that at the time of development, Land Development Code and other applicable county regulations will be required and considered. The applicant has requested and justified the following six (6) deviations for the request (Attachment F):

<u>Deviation 1</u> seeks relief from LDC Section 10-296(k)(1), which requires dead-end streets to be constructed with a circular turnaround for vehicles, to allow no circular turnaround in three (3) locations depicted on the Master Concept Plan (Attachment G), where there is less than 150 feet of roadway from the nearest intersection. The deviation request complies with Section 18.2.3.5.4 of the National Fire Protection Association (NFPA) fire code, which requires approved turning provisions for dead-end roads greater than 150 feet. The applicant provided examples of similarly approved deviation requests from Resolutions Z-16-024, Z-15-019, and Z-21-024 that had no known negative impacts to the public health, safety, and welfare.

Staff recommends **approval** of the deviation.

<u>Deviation 2</u> seeks relief from LDC Section 10-329(d)(1)a.2, which requires that no excavation be allowed within 50 feet of any existing or proposed right-of-way line or easement for a collector or arterial street, to allow a minimum setback of 25 feet from State Road 82. The request is to allow for two proposed water management lakes to be excavated within 25 feet of the State Road 82 right-of-way, constructed with raised curbs to prevent vehicles from leaving the roadway. The edge of the roadway is located approximately 42 feet from the subject property line. The applicant proposes a Type D landscape buffer and raised perimeter berm along the right-of-way line to provide additional barriers.

Staff recommends approval of the deviation.

<u>Deviation 3</u> seeks relief from LDC Section 10-329(d)(1)a.3, which requires that no excavation be allowed within 50 feet of any private property line under separate ownership, to allow a minimum setback of 25 feet along the eastern property line. A proposed raised perimeter berm and Type B landscape buffer will be provided where the lake abuts the property line adjacent to a vacant single-family lot along the eastern property line, providing adequate physical barriers between the lake and the future residential use.

Staff recommends approval of the deviation.

<u>Deviation 4</u> seeks relief from LDC Section 34-291(3), which requires two (2) means of ingress or egress to any residential subdivision greater than 5 acres, to allow for one means of ingress or egress for the development with a secondary emergency vehicle access only on State Road 82. The subject property's roadway frontage lies along State Road 82, a controlled access roadway maintained by the Florida Department of Transportation (FDOT). Based on the Controlled Access Management Plan (CAMP) for State Road 82, one access point is designated for the property at the proposed entrance to the development, with no secondary means of ingress or egress. A secondary gated access has been approved with conditions from the Lehigh Acres Fire Control and Rescue District (Attachment J) and the Lee County Department of Public Safety (Attachment J).

Staff recommends **approval** of the deviation subject to the following conditions from Lehigh Acres Fire Control and Rescue District, and Lee County Department of Transportation:

- 1. The western emergency access labeled "Gated Emergency Vehicle Access 20 feet minimum width" gate shall be provided with an EVAC gate entry system (NFPA 1-18.2.2.2). Where the gate is to be secured with a chain and padlock, the chain shall be of an adequate length for the fire district staff to cut the chain to gain entry where required (see Attachment J).
- 2. Prior to local development order approval, a notice to all future property owners must be recorded by the developer in the public records, allowing construction of the access to the development. The notice must articulate the emergency access plan and provide information as to where a copy of this plan may be obtained from the developer or developer's successor.

<u>Deviation 5</u> seeks relief from LDC Section 10-415(b), which requires large developments with existing indigenous native vegetation communities to provide 50 percent of their open space percentage requirement through the onsite preservation of existing native vegetation communities, to allow for the indigenous preservation to be met through the combination of preservation of on-site indigenous area and the restoration of areas that do not currently meet the definition of indigenous vegetation. The

subject property consists of a mixture of disturbed pine flatwoods, pines, oaks, and cabbage palms, mixed hardwoods, and wetlands, but contains little native, undisturbed communities. The indigenous preservation requirement is proposed to be met through the restoration of the on-site wetland areas in combination with the enhancement and restoration of the upland abutting the wetland areas. The applicant justification notes that locating the preserve on the northern portion of the site where the existing wetlands could accommodate the water management system before discharging into Bullfrog Canal has a greater environmental value than preserving other disturbed indigenous upland areas on the site.

Staff recommends **approval** of the deviation with the following conditions:

- Prior to the issuance of a Development Order or Tree Removal Permit, every effort shall be made
  to preserve native heritage tress on site. If a heritage tree must be removed from a site, then a
  replacement native canopy tree with a minimum 20-foot height must be planted within an
  appropriate planting area.
- Prior to the issuance of the first Development Order, the Development Order plans must depict 12.05 total acres of general open space, with 9.25 acres of indigenous preserve as shown on the one-page Master Concept Plan entitled "Cypress Manor RPD Master Concept Plan" dated October 1, 2024

<u>Deviation 6</u> seeks relief from LDC Section 10-2015(2)c, which requires individual parking spaces to be accessible from a parking aisle intended to provide access to the space, to allow optional on-street parking that will be accessible from the internal roadway network. The proposed multi-family RPD would include individual garages and driveways. The use requires additional guest parking in these types of developments, and on-street parking has been used on similar projects to provide additional required parking spaces for the residents and amenities. In addition, LDC Section 34-2015(2) does not provide for stacking of vehicles (one behind the other) within a multi-family development, other than townhouses where each dwelling unit has a garage or driveway appurtenant to it; therefore, staff recommends additional relief to allow the stacking of vehicles (one behind the other) within the multifamily driveways.

Staff recommends **approval** of the deviation.

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

The property is located in an area predominantly platted for single family residential development, and the surrounding properties are zoned for residential uses, making the RPD request compatible with the surrounding area.

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

The subject property is located along State Road 82, an arterial roadway in Lehigh Acres, with approximately 1/3 mile of frontage. The applicant has proposed two access points, with the eastern access located to align with the median opening on State Road 82, and a second western access point for emergency vehicle access, which sufficiently accommodates the proposed development.

# e. <u>The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;</u>

The applicant's Traffic Impact Statement (Attachment O) indicates no roadway segments will be significantly impacted as a result of the proposed development, and in comparing the functional classification of the 168-unit proposed multifamily development to the calculated 2029 traffic volumes, it was determined that all analyzed roadways are projected to operate at or above the minimum adopted Level of Service in 2029 both with and without the proposed development. As a result, roadway capacity improvements are not anticipated to be required as a result of the requested RPD. The applicant indicated turn lanes and other site-related improvements will be further analyzed at the time of local development order. Additionally, Lee County DOT provided transportation-related impact analysis demonstrating that the development will create no additional impacts (Attachment P).

## f. Will not adversely affect environmentally critical or sensitive areas and natural resources:

The applicant provided the required Protected Species Survey, FLUCCS Map, Soils Map, Rare and Unique Habitat Map, Topographic Map, and Existing Historic Flow Ways Map, and the proposed development will not adversely affect any environmentally critical or sensitive areas. As previously stated, the proposed development is designed to protect and restore the existing wetland areas and will meet the County's indigenous preservation requirements.

County environmental staff provided a report (Attachment L) analyzing the request, and made the following findings:

### Open Space

The project meets the large development definition (Land Development Code Section 10-1). LDC Section 10-415(a) requires the applicant to provide 40 percent open space for a large residential development. The total open space required by code is 11.21 acres and the applicant is providing 12.05 acres of open space on the MCP. An open space summary is reflected on the MCP.

Staff recommends the following open space condition:

Prior to the issuance of the first Development Order, the Development Order plans must depict 12.05 total acres of general open space, with 9.25 acres of indigenous preserve as shown on the one-page Master Concept Plan entitled "Cypress Manor RPD Master Concept Plan" dated October 1, 2024.

## **Indigenous Open Space Preservation**

The Land Development Code requires that large developments with existing native vegetation provide 50 percent of their required open space percentage through the onsite preservation of existing native vegetation communities pursuant to LDC Section 10-415(b). The subject property is greater than ten acres in size and is considered a large development per LDC Sections 10-1 and 10-415(b).

An indigenous preserve management plan was provided by the applicant. The goal of the plan is to ensure that preserve is maintained exotic free in perpetuity through a scheduled maintenance program. The management plan will be done in a two-phase process: the initial mechanical removal and then the sustained maintenance; in perpetuity annual inspections will occur, even after success has been reached.

The plantings consist of 291 trees, in a minimum of 5-gallon containers, at 4-6 feet in height, on 20-foot centers. It will also include 808 shrubs, in a minimum of 3-gallon containers, 2-3 feet in height, on 12-foot centers. It will also include 1,818 herbaceous groundcover plants, in a minimum of 1-gallon containers, 1-2 feet in height, on 8-foot centers. Further specifics in the plan can be found in Exhibit A of Attachment M.

Staff recommends the following indigenous open space condition to ensure the required indigenous open space is provided:

Prior to the issuance of the first development order, the development order plans must depict 12.05 total acres of general open space, with 9.25 acres of indigenous preserve as shown on the Master Concept Plan named Cypress Manor RPD.

#### Buffers

The property directly abutting the west boundary is zoned AG-2, and the properties on the east boundary are zoned RS-1. To the north is Bullfrog Canal, a Lehigh Acres Municipal Services Improvement District (LAMSID) maintained canal, and to the south the boundary meets State Road 82. The required buffers are as follows:

- North The north property line abuts Bullfrog Canal (LAMSID). Pursuant to LDC Section 10-416(d), the applicant is not required to provide a buffer. The applicant is in compliance with the north buffer requirement.
- South The south property line abuts State Road 82. Pursuant to LDC Section 10-416(d), a Type-D buffer is required along the right-of-way, and is reflected on the MCP.
- West The west property line abuts an AG-2 zoned property, and the applicant is not required to provide a buffer.
- East The east property line abuts RS-1 zoned lots. Pursuant to LDC Section 10-416(d), the MCP shows the required 15-foot Type B buffer.
- g. <u>Will be served by urban services, defined in the Lee Plan, if located in a Future Urban area category.</u>

The parcel is located in an urban area where public services already exist to meet the demands of future development. The following services are available to accommodate the request:

### Utilities

The applicant provided a Letter of Availability from FGUA (Attachment Q) confirming potable water and sanitary sewer lines are in operation adjacent to the property, and that sufficient capacity exists to provide service based on the estimated flow demand provided at time of submittal. The proposed development will connect to central water and sanitary sewer service.

## Fire and EMS

Lehigh Acres Fire District, Station #105, located at 636 Thomas Sherwin Avenue is approximately 4 miles east of the subject property.

## Sheriff

Lee County Sheriff's East District is located at 1299 Homestead Road approximately 3.67 miles away.

### Solid Waste

The property is serviced by Waste Pro.

#### **Public Transit**

The nearest Lee Tran Bus Stop is stop number 2627, Route 515, at Palm Boulevard and Alabama Road, approximately 3.50 miles away.

#### **Public Schools**

The property is within the Lee County School District East Zone, District Area 5.

## Findings and Conclusion:

Staff has reviewed the request and finds:

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

The proposed RPD is consistent with the Urban Community Future Land Use Category and is located along a major roadway corridor among other residential uses. This proposed use represents and opportunity to diversify housing options in the Lehigh Acres Planning Community and is in close proximity to existing urban services and employment centers.

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

The recommended conditions provide sufficient safeguards to the public interest and relate to the impact the request will have on the surrounding land uses.

- c) That each requested deviation:
  - 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 requested six (6) deviations from Land Development Code (LDC) requirements (Attachment F).

Staff recommends approval of all deviations with Conditions set forth in Attachment I, finding that the deviations meet the criteria for approval.

#### **CONCLUSION**

The requested rezone to Residential Planned Development (RPD) to allow a residential community with 168 dwelling units in the Lehigh Acres Community is consistent with the Lee Plan and Land Development Code, as conditioned. The proposed rezone is consistent with the surrounding residential development

within the Urban Community and Wetlands Future Land Use Categories as established by Lee Plan. Staff has concluded that the request, as conditioned, will not result in negative impacts to urban services, infrastructure, or surrounding property. The subject property is sufficiently served by urban services. The request will not impact any wetland preserves or flood hazard areas; or adversely affect environmentally critical or sensitive areas and natural resources. The request is appropriate for the location and establishes sufficient safeguards to the public interest. Each requested deviation enhances the achievement of the objectives of the planned development and preserves and promotes the general intent of the LDC to protect the public health, safety, and welfare. Therefore, staff recommends **APPROVAL** of the applicant's request, as conditioned in Attachment I.

### **ATTACHMENTS**

Attachment A – Lee County Expert Witness Information

Attachment B – Legal Description

Attachment C – Case Maps

Attachment D - Applicant's Narrative

Attachment E – Applicant's Schedule of Uses and Site Development Regulations

Attachment F – Applicant's Deviations and Justifications

Attachment G – Master Concept Plan

Attachment H - Public Information Meeting Summary

Attachment I – Conditions and Deviations

Attachment J - Letters of No Objection, Lehigh Acres Fire Control and Rescue District and Lee County Public Safety (Deviation 4)

Attachment K – Environmental Protected Species Survey and FLUCCS

Attachment L - Environmental Staff Report

Attachment M – Preserve Management Plan

Attachment N - Surface Water Management Plan

Attachment O - Traffic Impact Statement

Attachment P – Transportation-Related Analysis

Attachment Q – Letter of Availability

# DCI2022-00067 CARY+DUKE+POVIA RPD

### Staff Summary

CASE NUMBER & NAME: DCI2022-00067 / Cary + Duke + Povia RPD

REQUEST: Request to rezone 788± acres from Agricultural (AG-2) to

Residential Planned Development (RPD) to allow for a maximum of 1,099 dwelling units, private on-site recreational uses, and supporting infrastructure. The maximum building height is 35 feet. The site will connect to centralized water and sewer services.

RESOLUTION NUMBER: Z-24-024

LOCATION: 13230 N River Rd., and 14406 Duke Hwy., Northeast Lee County

Planning Community, Lee County, FL.

OWNER: G. Keith Cary, Mary Ellen Povia, & Raymond and Kathy Harney

APPLICANT: Neal Communities off Southwest Florida Inc.

AGENT: Jem Frantz

RVi Planning and Landscape Architecture

28100 Bonita Grande Dr., Suite 305

Bonita Springs, FL 34135

HEARING EXAMINER

RECOMMENDATION:

Approval, subject to the conditions and deviations set forth in

Exhibit B.

PARTICIPANTS (36): 1. Susan Allen

2. Kathy Arnold

3. Ralph Bond

4. Linda Borchering

5. Steven Brodkin

6. Monica Busbee

7. Keith Cary

8. Terri Chadwell

9. Amanda Cochran

10. Darius Cochran

11. Freida Lauer Cochran

12. Jimmie Cochran

13. Keith Durling

14. Glen Dyess

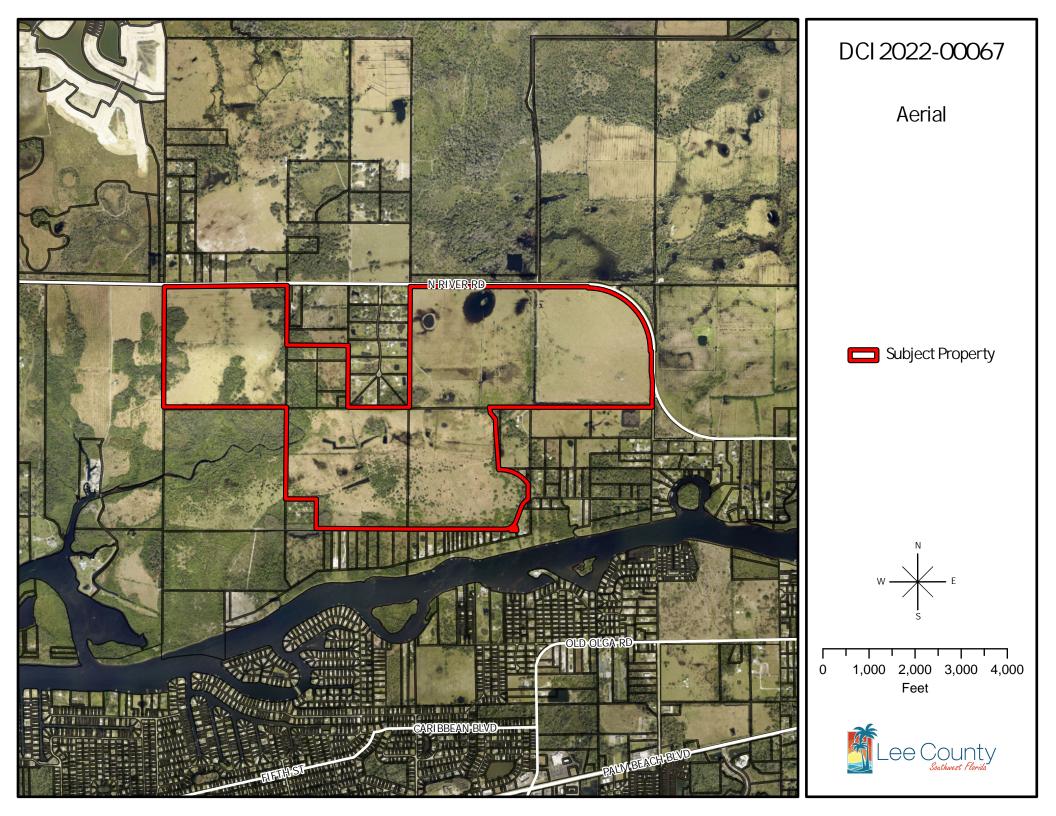
15. Denise Eberle

16. Dave Edwards

17. Marsha Ellis

18. William Fields

- 19. Cheryl Fischer
- 20. Grant Fichter
- 21. Roxanne Gause
- 22. Elly Hagen
- 23. James Kennedy 24. Alan Klingensmith
- 25. Donalyn Moon
- 26. Tom Mulling II
- 27. Terry Paska
- 28. Codty Piece 29. Linda Redfern
- 30. William Redfern
- 31. Katrina Salokar
- 32. Katherine Sanderford
- 33. Jack Snider
- 34. Holly Schwartz
- 35. Don Tate
- 36. Andy Tilton



# M E M O R A N D U M FROM THE OFFICE OF THE LEE COUNTY HEARING EXAMINER

DATE:

January 30, 2025

TO:

**Board of County Commissioners** 

FROM:

Amanda L. Rivera

RE:

DCI2022-00067 - CARY+DUKE+POVIA RPD

**Modification to Hearing Examiner Recommendation** 

The Hearing Examiner revised the Recommendation to address Staff's Request for Clarification dated January 29, 2025. Modifications are limited to:

- Replacement of the word "Road" with "Drive" referring to North Olga Drive on page 7; and
- Replacement of the term "no opacity" with "full opacity" on page 12.

Please replace the Recommendation text with the attachment listed below. <u>All other</u> exhibits remain unchanged.

#### Attachment:

1. Revised Hearing Examiner Recommendation dated January 30, 2025

Copies Provided to: Michael Jacob, Deputy County Attorney

Joseph Adams, Assistant County Attorney

Anthony Rodriguez, Zoning Manager

Tracy Toussaint, Community Development Applicant/Applicant's Representative(s)

Hearing Participants

#### MEMORANDUM

## FROM THE DEPARTMENT OF COMMMUNITY DEVELOPMENT

TO: Amanda L. Rivera

DATE:

January 29, 2025

**Deputy Hearing Examiner** 

FROM:

Anthony R. Rodriguez, AICP, CPM

Zoning Manager

RE:

**Request for Clarification** 

Cary + Duke + Povia RPD

DCI2022-00067

Staff and the applicant have reviewed the recommendation for the above-referenced application and request the following clarifications from your office:

HEX Recommendation, page 7:

- o The last bullet point refers to North Olga Road with respect to project traffic; however, North Olga Drive abuts a portion of the eastern boundary of the property subject to this request, and it appears this statement was meant to reference North Olga Drive.
- HEX Recommendation, page 12:
  - The first sentence on page 12 refers to "proposed buffers with no opacity and substantial setbacks preserve the rural aesthetic along North River Road." It appears this should read "100 percent opacity" in lieu of "no opacity."

Please contact me if you have any questions.

Respectfully Submitted,

Anthony Rodriguez, AICP, CPM Zoning Manager

cc: Dirk Danley, Jr., AICP Joe Adams \_\_\_ Alexis Crespo, AICP Jem Frantz, AICP

#### Summary of Hearing Examiner Recommendation

### CARY+DUKE+POVIA RPD

Applicant seeks approval of a residential community on North River Road. The site is south of Babcock Ranch MPD and adjacent to Owl Creek RPD. Proposed density is comprised of 771 base units and 328 additional units awarded for creation of Rare and Unique Upland Habitat. The resulting unit count is 1,099 units at 1.39 units per acre.

Site design locates three development pods on 788± acres, mitigating off-site impacts by:

- > clustering development to dedicate over 60% of project acreage to open space;
- > locating two-family housing internal to the development;
- > enhancing buffers along the perimeter to preserve rural vistas;
- > planting dense vegetation to achieve complete opacity along Duke Highway; and
- > placing 420± acres under conservation easement.

Improvements to environmental conditions, site hydrology, and water quality include:

- > creation of 300.01 acres, restoration of 2.68 acres, and preservation of 26.03 acres of Rare and Unique Upland Habitat;
- > extension of sanitary sewer and potable water service;
- > implementation of an engineered water management system; and
- > centralized irrigation control.

The environmental benefits would not be available if the property were developed with homes reliant on wells and septic tanks under existing zoning. The Lee Plan rewards projects in the Rural land use category with additional density to encourage site design that achieves these environmental benefits. As conditioned, the additional 0.39 units per acre will have a *de minimis* effect on public services and infrastructure.

In all, 36 Participants spoke at hearing, largely in opposition to the request. Opponents expressed concerns primarily related to compatibility, traffic, and loss of rural character. Applicant conducted community outreach prior to hearing to address concerns and presented several modifications on Rebuttal in response to issues raised during hearing.

The Hearing Examiner accepted testimony over three days and reviewed extensive evidence in the record before rendering this Recommendation. After careful review of the record, the Hearing Examiner finds Applicant provided competent substantial evidence to support the request as conditioned.

Detailed recommendation follows

#### OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

#### HEARING EXAMINER RECOMMENDATION

**REZONING:** DC12022-00067

Regarding: CARY+DUKE+POVIA RPD

**Location:** 13230 North River Road

Northeast Lee County Planning Community

(District 5)

Hearing Dates: September 4, 2024

September 6, 2024

September 20, 2024

Record Closed: September 24, 2024

#### I. Request

Rezone 788.96± acres from Agricultural (AG-2) to Residential Planned Development (RPD) to allow a clustered residential community containing up to 1,099 dwelling units with single-family/two-family attached dwellings and amenities. Maximum building height is 35 feet.

The property legal description is set forth in Exhibit A.

#### II. Hearing Examiner Recommendation

Approval, subject to the conditions and deviations set forth 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 a planned development zoning district.<sup>1</sup> In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on an application to rezone 788.96± acres ("the property") to RPD.

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

-

<sup>&</sup>lt;sup>1</sup> LDC §34-145(d)(2)a.

Discussion supporting the <u>Hearing Examiner's recommendation of approval</u> follows below.

#### Request Synopsis/Zoning History

Applicant seeks approval to convert 788.96± acres of agricultural land to a residential planned community south of North River Road. The property is in the Northeast Lee County and North Olga Planning Communities, just south of Babcock Ranch and east of S.R. 31.

The site is mostly cleared for agricultural use with no history of prior zoning action.

The requested development plan includes three residential pods surrounded by expansive preserve/open space. Trout Creek bifurcates the western pod from the bulk of the RPD, isolating that development area with a single access to North River Road.<sup>2</sup> The eastern pods share two access points on North River Road. Accesses will be gated and setback 100 feet from the road. There is no access on Duke Highway or North Olga Drive.<sup>3</sup> The Master Concept Plan ("MCP") identifies two school bus loading areas outside the North River Road right-of-way.<sup>4</sup>

<u>Site design clusters development with significant setbacks along the project perimeter, featuring buffers ranging from 160 to 800 feet.</u><sup>5</sup> Proposed residences are limited to single-family or two-family attached dwellings. The requested 35-foot height is standard for residential uses in the LDC, and identical to building heights on adjoining lands.<sup>6</sup>

The proposed 1,099 units are achieved through Rare and Unique Upland Habitat incentives established in the Lee Plan. Base density permits 771 units. Applicant requests an additional 328 units by preserving 26.03 acres, restoring 2.68 acres, and creating 300.01 acres of indigenous Rare and Unique upland habitat. Applicant will place 420 acres under conservation easement, ensuring perpetual maintenance of environmentally sensitive areas.

<sup>&</sup>lt;sup>2</sup> While the western pod is geographically isolated, residents will have full access to RPD amenities regardless of which pod they reside. Crespo Testimony (Transcript pg. 105).

<sup>&</sup>lt;sup>3</sup> Applicant's expert planner testified early iterations of the site plan included an egress-only onto Duke Highway, but Applicant eliminated the Duke Highway access in response to opposition by residents. Crespo Testimony (Transcript pg. 20).

<sup>&</sup>lt;sup>4</sup> The MCP does not depict a school bus stop at the eastern access in recognition of School District spacing requirements. Frey Testimony (Transcript pg. 531-32).

<sup>&</sup>lt;sup>5</sup> There is a single anomalous pinch point of 60 feet in the southwestern corner, adjacent to vacant agricultural lands. See MCP.

<sup>&</sup>lt;sup>6</sup> See generally LDC §34-654, §34-695, and Owl Creek RPD. Maximum height is 35 feet in AG-2 and RS-1 districts by right.

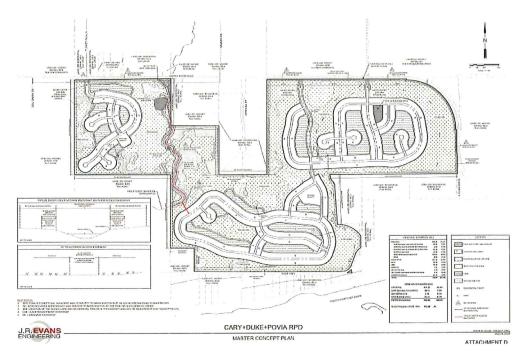
<sup>&</sup>lt;sup>7</sup> Lee Plan Policy 123.2.17.

<sup>&</sup>lt;sup>8</sup> See Staff Report (Attachment H & N).

<sup>&</sup>lt;sup>9</sup> See Staff Report (Attachment N). Resulting density is 1.39 units per acre.

<u>The project will connect to potable water and sanitary sewer service</u>. The Board adopted the Lee Plan amendment extending utility services to the site March 20, 2024.<sup>10</sup>

<u>Staff recommended approval, finding the proposed RPD satisfies LDC and Lee</u> Plan review criteria.



#### **Character of Surrounding Area**

The property is in the Northeast Lee County and North Olga Planning Communities (cumulatively, the "Community").<sup>11</sup> The Community aims to preserve a rural character, prioritizing open space and native vegetation.

North River Road serves as the primary means of access through the Community. It is a county maintained two-lane arterial road running from S.R. 31 to the Hendry County line. The viewshed along the road is primarily agricultural lands, with single-family homes visible at a distance. Staff estimates homes proximate to the site are set back roughly 300 feet from the road.<sup>12</sup>

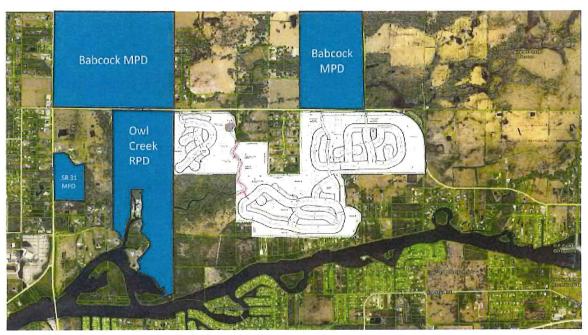
Lands to the east are engaged in agricultural pursuits. North River Road abuts to the north with the Babcock Mixed Use Planned Development ("MPD") across the road. Properties to the south host riverfront single-family homes along Duke Highway.

<sup>12</sup> See Staff Report (pg. 1).

<sup>&</sup>lt;sup>10</sup> See Staff Report (pg. 3, Attachment M). The Board adopted CPA2022-00019 by Ordinance 24-06. Id.

<sup>&</sup>lt;sup>11</sup> Northeast Lee County is located east of S.R. 31 and north of the Caloosahatchee River.

In 2022, the Board rezoned the adjacent 343± acres to the Owl Creek RPD.<sup>13</sup> <u>Owl Creek RPD permits 380 units in a clustered development of single- and two-family attached homes at 35 feet in height.<sup>14</sup></u>





#### **Zoning Review Criteria**

Before recommending approval for rezoning to the Board, the Hearing Examiner must find the request:

- A. Complies with the Lee Plan;
- B. Meets the LDC and other applicable County regulations, or qualifies for deviations;
- C. Is compatible with existing and planned uses in the surrounding area;
- D. Provides 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;

<sup>&</sup>lt;sup>13</sup> Z-22-022.

<sup>&</sup>lt;sup>14</sup> *Id*.

- 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.<sup>15</sup>

If the request involves planned development zoning, such as RPD, the Hearing Examiner must also find:

- H. The proposed use is appropriate at the proposed location;
- I. Recommended conditions provide sufficient safeguards to the public interest and reasonably relate to the impacts on the public's interest expected from the proposed development; and
- J. Each requested deviation (1) enhances the achievement of the objectives of the planned development, and (2) protects public health, safety, and welfare.<sup>16</sup>

#### **Lee Plan Consistency**

<u>Planned developments must be consistent with the Lee Plan and minimize</u> negative effects of proposed uses on neighboring properties.<sup>17</sup>

The Lee Plan Future Land Use Map designates the property in the <u>Rural</u> and <u>Wetlands</u> future land use categories.<sup>18</sup>

<u>Rural</u> areas are suited for low density residential, agricultural, and minimal non-residential land uses.<sup>19</sup> Maximum density is one dwelling unit per acre, with density incentives available from preserving/restoring/creating Rare and Unique Upland Habitat.<sup>20</sup> The Rural land use category does not impose minimum lot sizes.<sup>21</sup>

<u>Wetlands</u> consist of low density residential and recreational uses that do not adversely affect ecological wetland function.<sup>22</sup> Maximum permitted density is one unit per 20 acres, though developers may transfer density from wetland areas to contiguous uplands under common ownership.<sup>23</sup>

<sup>&</sup>lt;sup>15</sup> See LDC §34-145(d)(4)(a)(1). The property is in a Rural land use category.

<sup>&</sup>lt;sup>16</sup> See LDC §34-145(d)(4)(a)(2).

<sup>&</sup>lt;sup>17</sup> Lee Plan Policy 2.1.2; LDC §34-411(a), (c), and (i).

<sup>&</sup>lt;sup>18</sup> Lee Plan Map 1-A, Policy 1.4.1, 1.5.1.

<sup>&</sup>lt;sup>19</sup> Lee Plan Policy 1.4.1.

<sup>20</sup> See Id.

<sup>&</sup>lt;sup>21</sup> Compare with: Lee Plan Policy 1.4.3 (Rural Community Preserves – minimum lot size requirements).

<sup>&</sup>lt;sup>22</sup> Lee Plan Policy 1.5.1.

<sup>&</sup>lt;sup>23</sup> Lee Plan Policies 1.5.1, 124.1.1.

The property is subject to a host of site-specific Lee Plan directives given its location in the Northeast Lee County and North Olga Planning Communities. These Communities prioritize a rural lifestyle with open vistas and environmental preservation.<sup>24</sup>

The Lee Plan is replete with policies designed to balance the Community's historic rural character and emerging growth patterns. Efforts to achieve this balance and honor the rural character include:

- ➤ Defining "rural character" by characteristics that convey a sense of rural lifestyle such as large lots *or* clustered development;<sup>25</sup>
- ➤ Maintaining scenic qualities of North River Road; <sup>26</sup>
- Preserving open space;
- > Conserving large areas of open lands;<sup>27</sup>
- > Ample views of wooded areas;<sup>28</sup> and
- ➤ Protecting environmentally sensitive lands while providing regulatory flexibility.<sup>29</sup>

The Community Plans encourage clustered development to conserve large areas of open lands. <sup>30</sup> Clustered development concentrates buildings/uses to reduce the project footprint. <sup>31</sup> This technique allows the project's perimeter to be used for open space, buffering, recreation, water management, and protection of environmentally sensitive areas. <sup>32</sup> The RPD clusters development in three pods, reserving 61% of project acreage as open space. <sup>33</sup>

Applicant demonstrated the proposed site design achieves Lee Plan objectives by:

- ➤ Enhancing buffers along North River Road and Duke Highway utilizing native plant material;
- ➤ Screening development near Duke Highway with 100% vegetative opacity;<sup>34</sup>
- ➤ Devoting 61% of the acreage to open space (483.6 acres);<sup>35</sup>

<sup>33</sup> Alternatively, the record indicates that 788 single-family homes reliant on septic tanks could be developed on the property. The Lee Plan discourages septic tank use when sanitary sewer service is available. Lee Plan Goal 56, Objective 56.2, Policies 56.2.1, 135.9.7; See *also* Staff Ex. 5.

<sup>&</sup>lt;sup>24</sup> Lee Plan Goals 27, 29, Objectives 27.1, 27.2,29.1, Policies 27.1.1, 27.1.2, 27.4.1, 29.1.1, 29.2.1.

<sup>&</sup>lt;sup>25</sup> Lee Plan Objectives 27.1, 29.2, Policies 27.1.1, 27.1.2, 29.2.1.

<sup>&</sup>lt;sup>26</sup> Lee Plan Objective 27.1, 27.3, 29.1, Policies 27.4.1, 29.1.1, 29.1.3.

<sup>&</sup>lt;sup>27</sup> Lee Plan Objective 27.3, Policies 27.1.1, 27.1.2, 29.1.1.

<sup>&</sup>lt;sup>28</sup> Lee Plan Objective 27.1.

<sup>&</sup>lt;sup>29</sup> Lee Plan Objectives 27.1, 27.2, 27.3.

<sup>&</sup>lt;sup>30</sup> Lee Plan Objective 27.1, 27.2, Policies 27.1.1, 27.1.2, 27.4.1, 29.1.1, 29.2.1.

<sup>31</sup> Lee Plan Glossary.

<sup>32</sup> Id

<sup>&</sup>lt;sup>34</sup> Crespo and Hellman Testimony (Transcript pg. 96-116); Applicant Ex. 1 (slide 100-03). Applicant provided detailed lines of sight and illustrative renderings of the buffer at time of planting and after five years. See Conditions 3, 11. Applicant's planning expert is Alexis Crespo, AICP, RVi Planning & Landscape Architecture, Inc.

<sup>35</sup> See MCP (Land Use Summary table).

- Maintaining rural vistas along the perimeter, with 300- to 800-foot setbacks on North River Road and 170 feet on Duke Highway;<sup>36</sup>
- Locating the nearest residence 405 feet from the North River Road right-ofway;<sup>37</sup>
- Restoring lands impacted by decades of agricultural activity to improve species' habitat;
- ➤ Preserving 420 acres under conservation easement to ensure perpetual protection of environmentally sensitive lands;<sup>38</sup>
- > Providing two amenity campuses including community gardens;<sup>39</sup>
- Connecting residents to sanitary sewer system rather than reliance on septic tanks;<sup>40</sup> and
- ➤ Directing project traffic to North River Road, with no access to Duke Highway or North Olga Drive.<sup>41</sup>

Applicant's landscape expert provided line of sight exhibits to illustrate visual impact on the traveling public.<sup>42</sup> The northwestern pod offers the narrowest setback along North River Road yet still provides 405 feet of separation from the nearest residence.<sup>43</sup> Existing conditions in this location feature impacted pastureland without vegetation. Applicant proposes restoration plantings introducing 14-foot-high native canopy trees within the first 25 feet of the project boundary.<sup>44</sup>

Restoration plantings were curated based on native plant communities to maintain and enhance rural character, add aesthetic value over present conditions, and create wildlife habitat.<sup>45</sup>

<sup>37</sup> Hellman Testimony (Transcript pg. 39).

<sup>&</sup>lt;sup>36</sup> See Applicant Ex. 1 (slide 22).

<sup>&</sup>lt;sup>38</sup> See Condition 8; Crespo Testimony (Transcript pg. 35).

<sup>&</sup>lt;sup>39</sup> Lee Plan Policies 29.2.3, 29.5.1; Crespo Testimony (Transcript pg. 23-24).

<sup>&</sup>lt;sup>40</sup> Lee Plan Goal 56, Objective 56.2, Policies 56.2.1, 135.9.7; See also Staff Ex. 5.

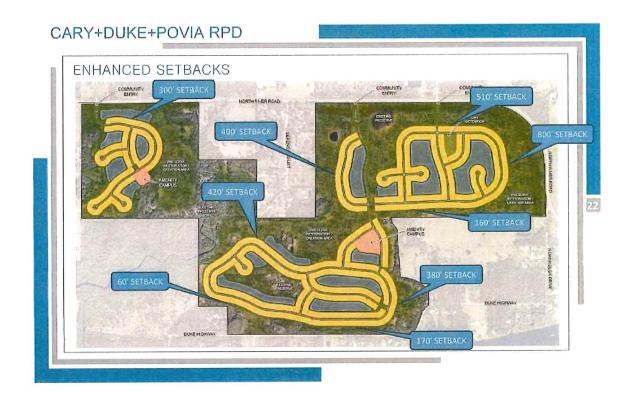
<sup>&</sup>lt;sup>41</sup> Alternatively, individual lots could be developed under current AG-2 zoning that would generate additional traffic on Duke Highway and North Olga Drive.

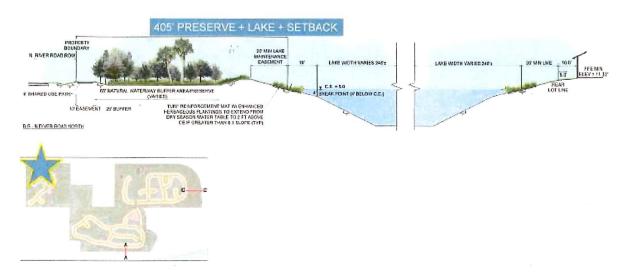
<sup>&</sup>lt;sup>42</sup> Hellman Testimony (Transcript pg. 38-41, 96-99); Applicant Ex. A: 48-Hour Letter Expert Witness List, dated Aug. 30, 2024; Applicant Ex. 1 (slides 26-31); Applicant Ex. 4-5. Line of sight exhibits reflect the perspective of a six-foot-tall person standing at the property boundary. Lee Plan Policy 27.4.1.

<sup>&</sup>lt;sup>43</sup> Hellman Testimony (Transcript pg. 39-40).

<sup>44</sup> Id.

<sup>&</sup>lt;sup>45</sup> Applicant Ex. 1 (slide 32); Hellman Testimony (Transcript pg. 41).





#### **Additional Units**

<u>"Incentive" density is distinguishable from "bonus" density</u>, although the terms were used interchangeably throughout the record. The request does not seek bonus units. Rather, Applicant seeks additional units through Lee Plan incentives

<sup>&</sup>lt;sup>46</sup> Bonus density is governed by Chapter 2 of the LDC and relates to Affordable Housing and Transfer of Development Rights ("TDR") Programs. See LDC Ch. 2, Div. 2, §§2-146 et. seq.

designed to create/preserve/restore Rare and Unique Uplands.<sup>47</sup> Applicant must prove the project qualifies for additional units through extensive measures *before* additional units are awarded.<sup>48</sup> The record demonstrates Applicant's proposed measures improve environmental features/function of the property over present conditions.<sup>49</sup>

#### Rare and Unique Upland Habitat

<u>The Lee Plan incentivizes preservation, enhancement, and restoration of indigenous Rare and Unique upland habitat within the Rural land use category.</u> The Plan awards one dwelling unit for each acre of created/ enhanced/restored habitat satisfying enumerated criteria.

Applicant demonstrated compliance with the criteria as follows:

- 1. Development must be at least 10 acres and developed as a unified planned development.
  - o The requested RPD comprises 788± acres.
- 2. Development must have direct access to an arterial road.
  - The MCP depicts three access points to North River Road, a countymaintained arterial.<sup>51</sup>
- 3. Development must provide connection to public water and sewer services.
  - The property lies within the County water/wastewater service areas. Developer must extend lines to serve the project. A condition of approval ensures Applicant constructs the infrastructure necessary to support the requested density.<sup>52</sup>
- 4. Development is clustered to maintain large, contiguous tracts of open space and protect environmentally sensitive areas. To comply with this criterion, a minimum of 60% open space is required, of which 50% must be indigenous preserve.
  - o The RPD reserves 61% of its land area for open space.
- 5. Creation, preservation, or restoration of indigenous Rare and Unique upland habitats must meet four technical criteria relating to open space dimension, soil composition, ecological restoration plans, and conservation easement recordation.

<sup>&</sup>lt;sup>47</sup> See Lee Plan Policies 1.4.1, 123.2.17.

<sup>&</sup>lt;sup>48</sup> The Lee Plan imposes quantitative *and* qualitative metrics to development proposals in the Rural category.

<sup>&</sup>lt;sup>49</sup> See Staff Report (Attachment N); Johnson Testimony (Transcript pg. 49-67, 458-75).

<sup>&</sup>lt;sup>50</sup> Lee Plan Policy 123.2.17.

<sup>&</sup>lt;sup>51</sup> Lee Plan Map 3-B; Staff Report (pg. 1).

<sup>&</sup>lt;sup>52</sup> See Lee Co. Ord. 24-06 (adopting CPA2022-00019); Condition 4.

 County Environmental Staff provided detailed analysis of the request for each of the four criteria. Conditions of approval ensure compliance before the county grants additional density.<sup>53</sup>

#### Compatibility

The Hearing Examiner must evaluate zoning requests for compatibility with surrounding land uses and community character.<sup>54</sup> Rezoning requests are determined on a case-by-case basis considering the uses permitted by the Lee Plan and the nature of the surrounding area.<sup>55</sup>

The LDC defines *compatible* as the state wherein two land uses/zoning districts exhibit either: (1) a positive relationship based on fit, similarity, or reciprocity of characteristics; or (2) a neutral relationship based on a relative lack of conflict or a failure to communicate negative/harmful influences on one another.<sup>56</sup>

Members of the public found the proposed lot sizes to be incompatible with historic development patterns.<sup>57</sup> However, the Community Plan does not impose minimum lot sizes and the Lee Plan incentivizes clustered development patterns to preserve open space in the Rural category.<sup>58</sup>

The Lee Plan protects existing residential areas from encroachment of *uses* deemed destructive to the character of the residential environment.<sup>59</sup> <u>The LDC</u> does not require new development to be identical to existing uses.<sup>60</sup> <u>Neither the</u> Lee Plan nor the LDC require density of adjacent properties to match.<sup>61</sup>

<sup>&</sup>lt;sup>53</sup> See Staff Report (pg. 4, Attachment G & N); Conditions 6, 8-10. Applicant's expert ecologist testified as to the project meeting criteria 4-5. Johnson Testimony (Transcript pg. 49-67, 458-74). See also Crespo Testimony (Transcript pg. 111-13); Danley Testimony (Transcript pg. 121-22).

<sup>&</sup>lt;sup>54</sup> FLA. STAT. §163.3164(9) (2024). The County evaluates compatibility during the zoning process. LDC §34-145(d), §34-411(c); The Lee Plan provides guideposts to measure compatibility, particularly adjacent to established residential development. See Lee Plan Policies 5.1.5, 135.9.5, 135.9.6.

<sup>55</sup> LDC §34-413.

<sup>&</sup>lt;sup>56</sup> LDC §34-2.

<sup>&</sup>lt;sup>57</sup> Public Testimony (Transcript pg. 142-458).

<sup>&</sup>lt;sup>58</sup> Applicant provided substantial evidence and testimony demonstrating consistency with Lee Plan Policy 29.2.2. Crespo Testimony (Transcript pg. 89-101); Applicant Ex. 1 (slide 91-101). Danley Testimony (Transcript pg. 125-26). The Community Plans permit clustered development and recognize well-planned subdivisions may be woven into the fabric of the Community without detriment. Lee Plan Objectives 27.1, 29.2, Policies 27.1.1, 27.1.2, 29.2.1.

<sup>&</sup>lt;sup>59</sup> Lee Plan Policy 5.1.5, 135.9.5.

<sup>60</sup> The plain language of the LDC does not define "compatible" to mean "identical." Id.

<sup>&</sup>lt;sup>61</sup> Residential land uses are inherently compatible with other residential land uses. Lee Plan Policy 5.1.5. A plain reading reveals this policy aims to protect residents from potentially harmful "uses," such as commercial or industrial projects infringing on residential communities. In this case, proposed single- and two-family residential uses are facially consistent with this policy.

Applicant seeks to rezone the property to a planned development district.<sup>62</sup> Planned development zoning is appropriate because it offers flexibility in project design while still implementing the goals, objectives, and policies of the Lee Plan.<sup>63</sup>

Conditions of approval integrate the project with surrounding uses through screening/buffering, open space, and landscape design. <sup>64</sup> These design elements achieve compatibility with surrounding development patterns.

#### Continuation of Approved Development Patterns

There are similar planned developments near the site. 65 The Board approved Babcock MPD across North River Road to develop up to 1,630 dwelling units and 1,170,000 square feet of non-residential uses including 600 hotel rooms. 66 Babcock MPD reserves large open spaces and preserves environmentally sensitive lands by clustering development within the site. Owl Creek RPD abuts to the west and permits 380 units also implementing clustered development. Both projects were designed to exercise similar density incentives as the request.

The Lee Plan encourages a diverse mix of housing options.<sup>67</sup> The RPD furthers emerging development patterns that include single-family homes on acreage and subdivisions on smaller lots.<sup>68</sup>

By clustering development on smaller lots, the RPD is able to devote over 60% of the site to open space. Large tracts of native vegetation surround development areas, buffering adjacent land uses.<sup>69</sup>

A hallmark of maintaining compatibility in the Community is to maintain existing patterns of setbacks from North River Road. To Setbacks and landscaping with canopy trees preserve rural vistas. The RPD employs this design feature, exceeding roadside landscaping approved in the Owl Creek and Babcock PDs. To

63 Lee Plan Glossary; LDC §34-612(2), §34-935. Babcock property is in the New Community future land use category.

<sup>62</sup> LDC §34-931(b), §34-932.

<sup>&</sup>lt;sup>64</sup> LDC §34-612(2). Another purpose is to further Lee Plan goals while providing flexibility in development design.

<sup>&</sup>lt;sup>65</sup> The adjacency and proximity of planned developments assuages spot zoning concerns expressed during public comment.

<sup>&</sup>lt;sup>66</sup> See Staff Report (Attachment K, Z-17-026 approved February 7, 2018). Lee Plan Objective 29.9, Policies 29.9.1, 29.9.2

<sup>&</sup>lt;sup>67</sup> Lee Plan Policy 5.1.5; Danley Testimony (Transcript pg. 129); Staff Ex. 3 (slide 18).

<sup>&</sup>lt;sup>68</sup> The Board must evaluate compatibility with surrounding land uses and community character. Lee Plan Objective 2.1 and Policy 2.2.2. There are single-family subdivisions on smaller lots in proximity to the site. Most notably, Owl Creek RPD and Babcock Ranch MPD.

<sup>&</sup>lt;sup>69</sup> Lee Plan Goal 77, Objectives 77.1, 77.3, Policies 5.1.5, 29.2.2, 77.3.1, 77.3.4.

<sup>&</sup>lt;sup>70</sup> Lee Plan Policy 27.4.1.

<sup>71</sup> Lee Plan Goals 27, 29, 77, Objectives 29.1, 29.2, Policies 29.1.1, 29.1.3; See also LDC §33-1673.

<sup>&</sup>lt;sup>72</sup> See Staff Report (Attachments K-L).

Proposed buffers with full opacity and substantial setbacks preserve the rural aesthetic along North River Road.

The Hearing Examiner finds the proposed RPD complies with Lee Plan directives to protect the rural character of the Community because the Plan encourages clustered development to preserve open space.<sup>73</sup>

#### Environmental/Natural Resources<sup>74</sup>

Planned development design should reflect creative use of open space.<sup>75</sup> Developers must protect and preserve natural site features.<sup>76</sup> Rezoning requests may not adversely affect environmentally critical/sensitive areas or natural resources.

In its natural state, the property hosted two tributaries with flow-ways to the Caloosahatchee River and a sizeable marsh. The site has historically been used for agricultural pursuits, mostly logging and cattle grazing. Significant ditching necessary to support agricultural operations caused Otter Creek to cease function as a tributary or connect to Trout Creek. Spoil material from Caloosahatchee River dredging deposited on the site in the 1960s-70s eradicated the marsh. Cattle demands led to several ponds peppered around the property. Experts agree the site is no longer pristine environmental land as a result of these actions.

Although the site has been impacted by agriculture, it contains pockets of natural resources worthy of preservation. 80 The ecologist estimates 9% of the property contains indigenous vegetation, consisting of isolated wetlands and rare/unique uplands with Live Oak and Cabbage Palm hammocks.81

The plan of development preserves/restores wetlands and creates 420.2± acres of Rare and Unique uplands. 82 Development impacts to wetlands will be limited to 18.85 acres. 83 Proposed restoration activities will re-establish the site's

<sup>&</sup>lt;sup>73</sup> Lee Plan Goals 27, 29, Policies 2.2.1, 5.1.5, 27.1.1, 27.1.2, 29.1.1, 29.2.1.

<sup>&</sup>lt;sup>74</sup> Shane Johnson, Senior Ecologist, Passarella & Associates, Inc. provided detailed testimony on the historical, present, and proposed environmental condition of the property. Johnson Testimony (Transcript pg. 49-67, 458-74); Applicant Ex. 1 (slides 40-53).

<sup>&</sup>lt;sup>75</sup> LDC §34-411(h).

<sup>76</sup> LDC §34-411(g).

<sup>&</sup>lt;sup>77</sup> Id. at 49-50.

<sup>&</sup>lt;sup>78</sup> *Id.* at 50.

<sup>&</sup>lt;sup>79</sup> Johnson Testimony (Transcript pg. 52); Staff Report (Attachment N: Environmental Staff Report). Mr. Johnson estimates 91% of the land is disturbed nonindigenous areas. Transcript at pg. 53.

<sup>80</sup> Lee Plan Policy 77.3.3.

<sup>&</sup>lt;sup>81</sup>Johnson Testimony (Transcript pg. 53-54, 58).

<sup>82</sup> Lee Plan Policy 77.3.1.

<sup>&</sup>lt;sup>83</sup> See Condition 9. Hearing testimony reflects impacted wetlands are very low quality. Johnson Testimony (Transcript pg. 467-68). Mr. Danley further noted that site design avoids development in Coastal High Hazard Areas, consistent with Lee Plan Goal 101 and attendant policies. Transcript pg. 123-24, 128; Staff. Ex. 3 (slide 13).

<u>environmental integrity</u>.<sup>84</sup> The MCP devotes 61% of the property to open space, 50% of which is native/indigenous vegetation.<sup>85</sup> Conditions of approval require Applicant to provide conservation easements over areas used to achieve density incentives.<sup>86</sup>

The MCP preserves two sites of archeological significance within open space/preserve areas.<sup>87</sup>

Applicant's protected species surveys identified several listed animal and plant species. 88 Development must abide by a detailed Protected Species Management and Human-Wildlife Coexistence Plan imposing protective measures, signage, and educational programs. 89 Restored lands provide on-site interconnections for wildlife movement. 90

Applicant's civil engineer detailed pre- and post-development drainage conveyances. 91 Stormwater management design avoids disruption to upstream or downstream residents. 92 Restored flow-ways/wetlands improve the function of conveyances, allowing offsite flows to pass through, re-establishing historical drainage patterns. 93 Onsite wet and dry detention together with preserves treat/filter storm water flows prior to discharging off-site. 94 Proposed conditions require a unified maintenance entity subject to regulatory oversight to ensure perpetual operation of the stormwater management system. 95

<sup>&</sup>lt;sup>84</sup> Conditions of approval require development order plans to reflect 420.2 acres of restoration/preservation in detail. Condition 6; Lee Plan Objective 29.7, Policies 29.7.2, 123.2.9.

<sup>85</sup> Crespo Testimony (Transcript pg. 22); Lee Plan Goal 77.

<sup>&</sup>lt;sup>86</sup> Lee Plan Objectives 27.3, 29.7, Policy 29.7.2; Conditions 3, 8-9. The County or other public agency will have third party enforcement rights over conservation easements.

<sup>87</sup> Lee Plan Policy 143.2.2.

<sup>&</sup>lt;sup>88</sup> See Staff Report (Attachment N, Ex. A: Protected Species Survey prepared by Passarella & Associates, Inc., revised May 2023).

<sup>&</sup>lt;sup>89</sup> Lee Plan Policies 123.3.3, 123.8.1, 123.10.2; See Staff Report (Attachment N, Ex. B: Protected Species Management and Human-Wildlife Coexistence Plan prepared by Passarella & Associates, Inc., revised April 2024).

<sup>&</sup>lt;sup>90</sup> Lee Plan Policy 27.4.3. Mr. Johnson clarified on rebuttal that the property is bounded by North River Road and the Caloosahatchee River, so there are no existing wildlife corridors to preserve. Further, the vast majority of the site is not habitable for animal species, though the creation of rare/unique uplands will provide greater habitat. Johnson Testimony (Transcript pg. 458-74).

<sup>&</sup>lt;sup>91</sup> Applicant's civil engineering expert is Brandon Frey, P.E., J.R. Evans Engineering, P.A. Frey Testimony (Transcript pg. 67-80, 509-19); Applicant Ex. 1 (slides 57-58).

<sup>92</sup> Frey Testimony (Transcript pg. 77-78, 512-15); Lee Plan Policy 61.2.1.

<sup>93</sup> Frey Testimony (Transcript pg. 70-71, 75-80, 512-14). See generally Lee Plan Goals 59, 60, 61, Policies 59.1.6, 60.4.1, 60.4.3, 60.4.5, 61.2.4, 61.3.3, 61.3.6, 61.3.8, 61.3.12, 77.3.4.

<sup>&</sup>lt;sup>94</sup> Frey & Martin Testimony (Transcript pg. 69-71, 80-88, 509-19); Lee Plan Goals 60, 61, 125, Objectives 60.4, 61.2, Policies 60.4.1, 60.4.5, 61.3.11, 125.1.1, 125.1.2.

<sup>&</sup>lt;sup>95</sup> Applicant must obtain permits from the South Florida Water Management District as well as Lee County. A unified entity such as a HOA or CDD will have perpetual maintenance responsibilities over the water management system. There are various mechanisms in place through development approvals to ensure perpetual maintenance.

The introduction of sanitary sewer and centralized water service, together with the restoration of flow-ways/open space areas, will improve water quality and nutrient uptake on the site. 96 Recommended conditions require a Surface Water and Groundwater Quality Monitoring Plan to ensure water levels/quality stay within permissible ranges. 97

<u>Proposed lake system design must meet County, State, and Federal standards for water retention, flood management, and water quality.</u>

98 The system directs surface waters to preserve areas to provide multiple levels of treatment and water quality storage before discharging off-site.

99

Expert testimony confirms there will be a significant reduction in groundwater use over current agricultural operations. Projections indicate reductions of 50-95% of water usage and nutrient loading. These reductions in water use will greatly benefit a community reliant on wells.<sup>100</sup> The proposed centralized irrigation system further protects groundwater from indiscriminate watering by residents.<sup>101</sup>

Applicant established the request improves site hydrology and protects water quality by: introducing sanitary sewer, implementing an engineered water management system, discontinuing livestock grazing, and centralizing irrigation.

Benefits of the proposed RPD over current conventional AG-2 zoning include:

➤ Eliminating nearly 800 homes reliant on private well and septic systems; 102

<sup>100</sup> Testimony confirmed sanitary sewer system reduces nitrogen by 89% over septic tanks with overall reduced nutrient loading of 50% to 95%. *Id.* at 83-84; Applicant Ex. 1 (slide 66-67). Mr. Martin estimates reduced water usage of 50%. *See Id.* 

<sup>&</sup>lt;sup>96</sup> Applicant Ex. 1 (slides 62-68); Lee Plan Goal 125, Policies 125.1.1, 125.1.2. The project Hydrologist is Kirk Martin, P.G., Water Science Associates. Martin Testimony (Transcript pg. 82-84, 474-87).

<sup>&</sup>lt;sup>97</sup> See Condition 13; Applicant Ex. 1 (slide 63). Seven monitoring stations will be sampled biannually with reporting requirements to regulatory agencies.

<sup>&</sup>lt;sup>98</sup> Martin Testimony (Transcript pg. 81).

<sup>99</sup> Id.

<sup>&</sup>lt;sup>101</sup> Mr. Martin detailed benefits of a centralized sewer connection over septic tanks, including increased buffering, more preserve area, greater wildlife habitat, improved floodplain management, increased stormwater storage and treatment. Transcript at 83. Mr. Martin provided extensive testimony on the project's reduced irrigation system and demands. Irrigation will be limited to approximately 12 percent of the property and will be sourced entirely on-site. *Id.* at 84-86, 476-77. Mr. Martin further testified modeling reported to South Florida Water Management District confirmed less than 0.1 feet of drawdown at the property boundary, concluding the project's irrigation system presents no off-site impacts. *Id.* at 484. Lee Plan Policy 61.1.6

The site is 788± acres but the record reflects 771.07 acres may be developed. See Staff Report (Attachment H). The Rural land use classification permits residential development at a base density of one unit per acre and Wetlands permit one unit per 20 acres. Lee Plan Policies 1.4.1, 1.5.1. If the property were subdivided into one-acre lots under the existing agricultural zoning designation, there would be no dedicated water management plan to address sheet flow from the north or to improve water quality of surface water runoff. Septic tanks would serve the dwelling units, but there could be no requirement for upgraded/enhanced septic systems. Finally, there would be no requirement for buffers or preservation of native vegetation. Applicant presented a rendering to illustrate what one-acre lots might produce on the site. Applicant Ex. 5 (slide R7).

- Protecting nearby Wellfield Protection areas;
- > Improving flood plain management, increasing water storage, and reducing runoff;
- Providing 483.6 acres of open space and 420.2 acres of preserves, or 61% and 50% of the total RPD area, respectively;103
- Preserving 26.03 acres, restoring 2.68 acres, and creating 300.01 acres of indigenous Rare and Unique Upland Habitat;
- > Removing exotic vegetation;
- Conserving 51.46 acres of Wetlands;
- > Implementing a Protected Species Management and Plan:
- > Imposing a centralized irrigation system to limit water withdrawals;
- > Connecting to sanitary sewer system to reduce nutrient loading by 50-95% over septic tanks; 104
- > Centralizing potable water service to reduce water usage by 50% over private wells: 105
- > Establishing Surface Water and Groundwater Monitoring Plans; and
- > Protecting Trout Creek and Otter Creek floodplains.

The Hearing Examiner finds the proposed RPD will not harm environmentally critical/sensitive areas or natural resources. 106

#### **Transportation**

Planned developments must have access to roads with sufficient capacity to support proposed intensity. 107 Existing regulations or conditions of approval must address expected impacts on transportation facilities. 108

The MCP depicts three access points on North River Road. North River Road is a County maintained two-lane arterial road. 109 S.R. 31, a State maintained two-lane arterial road, intersects North River Road to the west.

The Florida Department of Transportation ("FDOT") governs S.R. 31 and is overseeing improvements to widen the roadway to four lanes and improve the North River Road/S.R. 31 intersection. 110 Improvements are underway and slated

<sup>&</sup>lt;sup>103</sup> Preserve acreage is included in open space calculations. The MCP reflects 483.6 acres of open space, of which 420.2 acres are preserved. Site design yields 40% development and 60% open space. Half of the open space will be vegetated.

<sup>&</sup>lt;sup>104</sup> Applicant Ex. 1 (slide 66).

<sup>&</sup>lt;sup>105</sup> *Id.* at 67.

<sup>&</sup>lt;sup>106</sup> Lee Plan 125.1.2; LDC §34-145(d)(4).

<sup>&</sup>lt;sup>107</sup> LDC §34-145(d)(4)(a)(1)(d); §34-411(d)(1).

<sup>&</sup>lt;sup>108</sup> LDC §34-145(d)(4)(a)(1)(e); §34-411(d)(2).

<sup>&</sup>lt;sup>109</sup> Lee Plan Map 3-B.

<sup>110</sup> Babcock Ranch Community Independent Special District manages the design/build project for improvements to S.R. 31 from S.R. 78 to Babcock Ranch. Treesh Testimony (Transcript pg. 44-45); Applicant Ex.1 (slide 37); Staff Report (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024).

for completion in 2026.<sup>111</sup> Initial design expands S.R. 31 to four lanes, but the project can accommodate six lanes in the future.<sup>112</sup> Improvements are also programmed for S.R. 31 south of S.R. 78/Bayshore Road to S.R. 80/Palm Beach Boulevard.<sup>113</sup>

Applicant's transportation experts prepared a Traffic Impact Statement ("TIS") consistent with County requirements. The TIS concluded project traffic will not significantly impact surrounding roadways. A "significant impact" is found when a proposed rezoning generates traffic that reduces Level of Service ("LOS") volumes of affected roads by at least 10%. The TIS concluded project traffic will not significantly impact surrounding roadways.

FDOT programmed improvements along the S.R. 78 and S.R. 31 corridors will increase carrying capacity to accommodate anticipated growth. Testimony confirmed road improvements should be completed prior to project build-out. The TIS concludes no County road improvements are necessary to accommodate the projected trip generation. The RPD will mitigate transportation impacts with road impact fees.

While there are no plans to widen North River Road, several factors are expected to improve road conditions. 121 FDOT is improving the North River Road/S.R. 31

<sup>111</sup> See Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023); Bykau Testimony (Transcript pg. 496-497); Staff Ex. 4.

<sup>112</sup> See Id.; See Staff Report (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024).

- <sup>113</sup> Treesh & Bykau Testimony (Transcript pg. 44-49, 497-498). Residents questioned the timing and status of this project during public testimony. The Parties addressed the matter on rebuttal to confirm FDOT has completed the PD&E study and funded the project with an estimated commencement date of 2029. Applicant Ex. 5 (e-mail from Patrick Bateman, P.E., FDOT Project Manager, dated 9/4/24); Staff Ex. 4 (e-mail from Jillian Scholler, P.E., LDOT Deputy Director); Treesh & Bykau Testimony (Transcript pg. 44-49, 496-506).
- <sup>114</sup> Lee Co. Admin. Code 13-17; LDC §34-371, §34-373(a)(7). Applicant's transportation experts are Ted Treesh, PTP and Yury Bykau, P.E. with TR Transportation Consultants, Inc.
- <sup>115</sup> See Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023), (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024).
- <sup>116</sup> Staff Report (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024, citing Lee Co. Admin. Code 13-17). The definition measures reductions from LOS C. The road segment of S.R. 31 south of S.R. 78 was projected to operate at a LOS F with the project, but transportation experts for the Parties concluded FDOT improvements address the projected capacity deficiency. See Staff Report (Attachments P & Q); Treesh & Bykau Testimony (Transcript pg. 44, 48-49, 496-507).
- <sup>117</sup> Treesh, Bykau, and Danley Testimony; Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023), (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024).
- <sup>118</sup> Bykau Testimony (Transcript pg. 497-500).
- <sup>119</sup> See Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023).
- <sup>120</sup> Lee Plan Policies 38.1.1, 38.1.5, LDC §§2-261 *et. seq. See* Staff Report (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024). Applicant estimates the project will generate \$10.3 million in road impact fees. See Applicant Ex. 5; Bykau Testimony (Transcript pg. 503-04).
- <sup>121</sup> The record contains references to North River Road designation as a "constrained road." A constrained road refers to roadway segments that cannot/will not be widened. North River Road is not designated as a constrained road in the Lee Plan but is shown as such in the 2045 MPO Plan and adopted by reference in Lee Plan Policy 36.1.1. Bykau and Danley Testimony (Transcript pg. 500-03, 563).

intersection to facilitate traffic circulation. Site-related improvements required by the Owl Creek and Babcock PDs may also improve conditions on North River Road.

In sum, Applicant demonstrated the RPD has sufficient access to an arterial roadway proximate to a State arterial road undergoing significant improvements. Transportation studies concluded project traffic will not significantly impact surrounding roadways. Applicant must provide further traffic analysis and address site-related improvements during development order review. 124

#### **Public/Urban Services**

Public/urban services are the facilities, capital improvements, and infrastructure necessary to support development.<sup>125</sup> The Lee Plan requires an evaluation of available urban services during the rezoning process.<sup>126</sup>

Despite the property's non-urban designation, it will have access to public services and infrastructure. The project will connect to Lee County Utilities' potable water supply, eliminating the need for individual wells. The RPD will also connect to FGUA sanitary sewer services. Sanitary sewer service eliminates the possibility of septic tank discharges affecting groundwater and the Caloosahatchee River. 129

Fire and emergency services will be provided by Bayshore Fire Protection and Rescue Service District. The Babcock Development Agreement requires conveyance of a parcel for a fire/EMS station on Shirley Lane. This future station is within two miles of the site. Applicant asserts EMS services will be operational at the station before residents occupy the RPD. The graphic below depicts the location of the station relative to the property.

\_\_

<sup>&</sup>lt;sup>122</sup> Current design plans indicate FDOT selected a Restricted Crossing U-turn ("RCUT") design for this intersection. RCUT intersections route traffic to right-turns with designated median openings for travelers seeking to go left. Treesh Testimony (Transcript pg. 45-46); Applicant Ex. 1 (slide 37).

<sup>&</sup>lt;sup>123</sup> See Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023).

<sup>&</sup>lt;sup>124</sup> Lee Plan Objective 39.1 and Policy 39.1.1, LDC §10-287. Site related improvements such as turn lane installations will be determined at the development order stage based upon specific development parameters.

<sup>&</sup>lt;sup>125</sup> Lee Plan Glossary: Public services include public water/sewer, paved streets/roads, public transit, parks/recreation facilities, urban levels of police, fire, and emergency services, urban surface water management, schools, employment, industrial, and commercial centers, institutional, public, or administrative facilities, community facilities such as senior citizens centers, libraries, and community centers.

<sup>&</sup>lt;sup>126</sup> Lee Plan Policy 2.2.1.

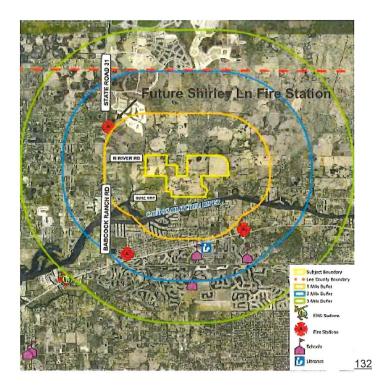
<sup>&</sup>lt;sup>127</sup> Danley Testimony (Transcript pg. 122-23); Staff Ex. 3 (slide 10, 12).

<sup>&</sup>lt;sup>128</sup> Applicant will fund extension of a water main to serve the property. The water line extension will accommodate fire hydrants along its length, improving fire safety within the North Olga planning community. Developer will also fund extension of sanitary sewer service to the property.

<sup>&</sup>lt;sup>129</sup> Martin Testimony (Transcript pg. 82-84, 474-87); Applicant Ex. 1 (slide 64-65).

<sup>&</sup>lt;sup>130</sup> Crespo Testimony (Transcript pg. 19, 106, 552-54).

<sup>131</sup> Id. at 19, 552-53.



Notably, <u>Applicant proposes to nearly double the number of fire hydrants</u> in the area, <u>dramatically improving public safety</u> by providing a reliable water source for fire suppression.<sup>133</sup>

The Lee County Sheriff provides law enforcement services to the area from its North District offices.

The Lee Plan designates North River Road as a future bike/pedestrian facility. 134 <u>Applicant must install an eight-foot shared use path</u> consistent with the Community Plan. 135 The path constitutes approximately two miles along the RPD's North River Road frontage. 136

Development will be subject to road, park, school, fire, and EMS impact fees. 137

<sup>&</sup>lt;sup>132</sup> Applicant Ex. 1 (slide 13).

<sup>&</sup>lt;sup>133</sup> Frey Testimony (Transcript pg. 73-74); Applicant Ex. 1 (slide 60). Testimony reflects there are currently only four hydrants in this area; Applicant proposes seven hydrants.

<sup>134</sup> Lee Plan Map 3-D.

<sup>&</sup>lt;sup>135</sup> Crespo & Frey Testimony (Transcript pg. 22, 73); Applicant Ex. 1 (slide 59); LDC §10-256; See also Lee Plan Policies 27.4.1, 27.4.2, 27.4.4.

<sup>136</sup> *Id.* at 73.

<sup>&</sup>lt;sup>137</sup> LDC §§2-261 et seq., §§2-301 et seq., §§2-341 et seq., §§2-381 et seq. §§2-400 et. seq.

#### LDC

Rezoning applications must meet the LDC and other County regulations or qualify for deviations. Applicant must also comply with the North Olga Planning Community's adopted supplemental regulations. These regulations include community review of zoning and development order applications, architectural and design standards, enhanced landscaping, tree preservation, and restricted signage. Applicant seeks five deviations from the LDC.

#### Deviations

<u>The proposed RPD includes five deviation requests</u>. <sup>141</sup> "Deviations" are departures from the land development regulations. <sup>142</sup>

The Hearing Examiner's standard of review for deviations requires a finding that the deviation:

- 1. Enhances objectives of the planned development; and
- 2. Protects public health, safety, and welfare. 143

The requested deviations pertain to access,<sup>144</sup> roadway plantings,<sup>145</sup> lake bank slopes,<sup>146</sup> equipment pad setbacks,<sup>147</sup> and drainage easement width.<sup>148</sup> Most deviations are sought to limit the development footprint and avoid crossing Trout Creek.<sup>149</sup> Applicant offered testimony and evidence in support of the requested

<sup>138</sup> LDC §34-145(d)(4)a.1(b).

<sup>139</sup> See generally LDC ch. 10, ch. 34, and §§33-1661 et. seq. Lee Plan Policy 29.1.3.

<sup>&</sup>lt;sup>140</sup> LDC §§33-1661 et seq.

<sup>&</sup>lt;sup>141</sup> Applicant Ex. 1 (slides 15-19).

<sup>&</sup>lt;sup>142</sup> LDC §34-2.

<sup>143</sup> LDC §34-377(a)(4).

<sup>&</sup>lt;sup>144</sup> Deviation 1 seeks relief from the LDC §10-291(3) requirement for multiple access points to permit the development pod west of Trout Creek a single access. Justification for this deviation includes eliminating crossing the creek and allowing for greater area for preservation of environmentally and archaeologically sensitive lands. See Applicant Ex. 1 (slide 15).

<sup>&</sup>lt;sup>145</sup> Deviation 2 seeks relief from the LDC §33-1673 buffer requirements to permit Applicant to implement native restoration work along North River Road. The spirit of the LDC continues to be met through enhanced plantings, preserving the intent of the buffer with native trees to preserve the visual experience along the roadway for the traveling public. See Applicant Ex. 1 (slide 16). This request requires Applicant to meet LDC chapter 34 variance criteria, which was provided in the record. See Staff Report, Transcript pg. 534-36, Lee Plan Policies 27.4.1, 29.1.4.

<sup>&</sup>lt;sup>146</sup> Deviation 3 seeks relief from LDC §10-329(d)(4) lake bank slope requirements to reduce the development footprint by allowing a 4:1 slope. Turf reinforcement mats and enhanced herbaceous plantings mitigate erosion potential. See Applicant Ex. 1 (slide 17).

<sup>&</sup>lt;sup>147</sup> Deviation 4 allows equipment pad encroachments into side yards. This deviation is routinely granted and an LDC amendment is expected to codify this standard County-wide. See Crespo and Danley Testimony (Transcript pg. 27, 143); Applicant Ex. 1 (slide 18).

<sup>&</sup>lt;sup>148</sup> Deviation 5 reduces the maintenance easement width along the western development pod to permit greater land area for preservation and restoration activities. Applicant Ex. 1 (slide 19); Crespo Testimony (Transcript pg. 28-29).

<sup>&</sup>lt;sup>149</sup> Crespo Testimony (Transcript pg. 24-29); Applicant Ex. 1 (slides 15-19).

deviations based on the standard of review set forth in the LDC. 150 Staff found all deviations met LDC criteria for approval.

The Hearing Examiner agrees with staff's recommendations and finds, as conditioned, the requested deviations enhance the RPD and protect public health, safety, and welfare. 151

#### **Public Participation**

Applicants seeking rezoning in Northeast Lee County must conduct public information sessions in Alva and North Olga. 152 Applicant held multiple community meetings in satisfaction of Lee Plan and LDC requirements. 153

At hearing, the Hearing Examiner accepted testimony and evidence from the public consistent with the LDC. 154 Over a two-day period, 36 Participants offered testimony and numerous exhibits. 155

Although some speakers were in support, most participants were unified in opposition to the request. Concerns primarily related to increased traffic, environmental impacts, and loss of rural character.

Expert testimony on the record confirms project traffic maintains acceptable levels of service, proposed restoration/preservation measures improve environmental conditions, and significant benefits inure from utilizing sanitary sewer rather than hundreds of homes reliant on well/septic systems.

Inconsistency with rural character was a recurrent theme. However, both Staff and the Applicant demonstrated the request complies with adopted Community Plans that envision clustered development to maximize open spaces. The RPD achieves this vision by preserving 61% of its acreage and limiting development to three pods. Moreover, the Board approved the Owl Creek and Babcock projects with similar development designs, confirming consistency with emerging development patterns. The Lee Plan's grant of density in exchange for restoring/preserving/ creating environmentally sensitive lands is an expression of the Board's legislative intent to expand development options in North Olga.

<sup>155</sup> Public Testimony (Transcript pg. 142-260, 265-457).

<sup>150</sup> LDC §34-145(d)(4)a.2(c), §34-377(a)(4); See also LDC §33-1665.

<sup>&</sup>lt;sup>151</sup> LDC §34-373(a)(9), §34-377(a)(4).

<sup>&</sup>lt;sup>152</sup> See Lee Plan Policies 17.3.5, 27.1.6, 27.1.8; LDC §33-1663.

<sup>&</sup>lt;sup>153</sup> Lee Plan Policies 17.3.5, 27.1.8: LDC §33-1663; Crespo Testimony. Applicant presented the application to the North Olga and Alva communities on the following dates: North Olga Community Planning Panel -January 26, 2023 and June 20, 2023, and in Alva on March 14, 2023. Staff Report (Attachment J). It is noteworthy that applications for local development orders are also subject to community review in the North Olga Planning Community pursuant to LDC §33-1663(a)(1). Danley Testimony (Transcript pg. 138); Staff Ex. 3 (slide 20).

<sup>154</sup> LDC §34-231(c); Lee Co. Admin. Code 2-6 §2.3. Hearing participants were afforded notice of the proceedings and an opportunity to be heard. See Staff Ex. 2.

Applicant presented several modifications to the proposed development plan in response to residents' concerns, including:

- > Limiting the location of two-family attached homes;
- > Increasing minimum lot sizes;
- ➤ Establishing a 170-foot setback and 250-foot setback on Duke Highway and North River Road, respectively;
- > Adding school bus stops; and
- ➤ Imposing lighting restrictions to address DarkSky concerns. 156

In addition, many concerns will be addressed during development order permitting and by the recommended conditions of approval.<sup>157</sup>

If the Board approves the request, the RPD will be subject to additional community meetings during development order review.<sup>158</sup>

#### **Conditions**

The County must administer the zoning process so that proposed land uses acceptably minimize adverse impacts to adjacent residential properties and protect County water resources. Conditions must plausibly relate to the project's anticipated impacts and be pertinent to mitigating impacts on public health, safety, and welfare. Accordingly, the proposed RPD will be subject to conditions of approval designed to address the impacts reasonably anticipated from the development. 161

Proposed conditions of approval govern enhanced buffers, site development parameters, permitted uses, open space compliance, and indigenous preservation.<sup>162</sup>

The School Board anticipates the project will generate 326 school aged children. On remand, Applicant agreed to a condition of approval to provide two school bus stops at the RPD's westernmost access points. As designed, the bus stops will be entirely within the confines of the development and outside the North River Road

<sup>&</sup>lt;sup>156</sup> Applicant Ex. 3-5; Rebuttal Testimony (Transcript pg. 458-569).

<sup>&</sup>lt;sup>157</sup> The LDC and proposed conditions of approval require the developer to submit protected species surveys and prepare management plans for wildlife habitat. (Conditions 3, 7, 10, 12,) Conditions of approval impose detailed monitoring of surface and groundwater impacts. (Condition 13).

<sup>&</sup>lt;sup>158</sup> LDC §33-1663(a)(1).

<sup>&</sup>lt;sup>159</sup> Lee Plan Policies 5.1.5, 29.1.1, 29.2.2, 29.2.3, 135.9.5, 135.9.6; LDC §34-145(d)(4)a.2.(b), §34-377(a)(3), §34-411, and §34-932(c).

<sup>160</sup> LDC §34-932(b).

<sup>&</sup>lt;sup>161</sup> LDC §34-83(a)(4)a.3, §34-377(a)(3); Lee Plan Goals 59, 61, 77, Policies 5.1.5, 27.4.2, 60.1.1, 61.3.11. <sup>162</sup> The Parties revised conditions prior to the final day of hearing. Applicant Ex. 3. Staff agreed to remove the proposed transportation tracking condition after deeming it unnecessary and potentially redundant.

Danley Testimony (Transcript pg. 139-40).

163 See Applicant Ex. 6: Post-Hearing Written Submissions, (dated Sept. 20, 2024).

right-of-way.<sup>164</sup> Designing the project to accommodate safe school bus access is prudent since the project will generate a significant number of students.<sup>165</sup>

The Hearing Examiner recommends revisions to the proposed wording of conditions and deviation to improve clarity.

#### Conclusion

Upon careful consideration and examination of the record, the Hearing Examiner finds the request meets LDC review criteria and, as conditioned, is compatible with surrounding development. Applicant provided competent substantial evidence in support of the rezoning request.

The Hearing Examiner recommends approval of the requested RPD, subject to the conditions set forth in Exhibit B.

#### IV. Findings and Conclusions

Based on record testimony and evidence, the Hearing Examiner makes the following findings and conclusions. *As conditioned*, the proposed RPD:

- A. Complies with the Lee Plan. Lee Plan Goals 2, 4, 5, 27, 29, 56, 59, 60, 61, 77, 101, 124, 125, 135; Objectives 1.5, 2.1, 2.2, 4.1, 5.1, 27.1, 27.2, 27.3, 27.4, 27.5, 29.1, 29.2, 29.4, 29.6, 29.7, 56.2, 77.1, 77.3, 135.1; Policies 1.4.1, 1.5.1, 2.1.2, 2.2.1, 5.1.2, 5.1.5, 5.1.6, 27.1.1, 27.1.2, 27.1.6, 27.1.8, 27.3.1, 27.4.1, 27.4.2, 29.1.1, 29.1.3, 29.1.4, 29.2.1, 29.2.2, 29.2.3, 29.2.4, 29.3.4, 29.4.3, 29.5.1, 29.7.2, 39.3.2, 60.4.1, 61.2.1, 67.3.7, 68.3.7, 77.3.1, 77.3.4, 101.1.1, 101.3.2, 123.2.7, 124.1.1, 125.1.1, 125.1.2, 135.1.9, 135.9.5, 135.9.6, Standards 4.1.1, 4.1.2, 4.1.4; Lee Plan Maps 1-A, 1-B, 2-A,3-B, 4-A, 5-A, and Table 1(a).
- B. Meets the LDC and other County regulations or qualifies for deviations. LDC §§33-1661 *et seq.*, §34-145(d), §34-341, §34-378, §34-411, §34-413, § 34-491, §34-612(2), §34-373(a)(9), §34-932, §34-936.
- C. Is compatible with existing and planned uses in the surrounding area. Lee Plan Objectives 2.1, 2.2, 27.1, 27.3, 29.1, 29.2, 29.4, Policies 5.1.5, 29.1.1, 29.1.3, 29.2.1, 29.2.2, 135.9.5, 135.9.6; LDC §34-411, §34-413.
- D. Provides access sufficient to support proposed development intensity. Expected impacts to transportation facilities will be addressed by the conditions of approval and County regulations. Lee Plan Objectives 27.4,

<sup>&</sup>lt;sup>164</sup> See Condition 18; Applicant Ex. 3: Second 48-Hour Letter dated Sept. 17, 2024; Revised MCP stamped Sept. 17, 2024.

<sup>&</sup>lt;sup>165</sup> Developing the site to provide safe access to school buses is consistent with the Lee Plan. See Lee Plan Policies 39.3.2, 67.3.7, 68.3.7.

- 29.4, 39.1, Policies 27.4.1, 27.4.2, 29.4.3, 38.1.1, 38.1.5, 39.1.1; LDC §2-261 et seq., §10-287, §34-411(d)-(e).
- E. Will not adversely affect environmentally critical/sensitive areas and natural resources. Lee Plan Goals 59, 60, 61, 77, 101, 123, 125, Objectives 27.3, 29.6, 29.7, 60.4, 60.5, 61.2, 61.3, 77.1, 77.3, 123.1, 123.2, 124.1, 126.2, Policies 1.5.1, 27.4.3, 27.7.2, 29.2.1, 29.7.2, 29.1.3, 59.1.6, 60.1.1, 60.4.1, 60.4.2, 60.4.3, 60.4.5, 61.2.4, 61.3.3, 61.3.6, 61.3.8, 61.3.11, 61.3.12, 101.1.1, 101.3.2, 123.2.4, 123.2.6, 123.2.8, 123.2.9, 123.2.11, 123.2.13, 123.2.15, 123.2.17, 123.3.1, 123.3.3, 125.1.1, 125.1.2, 125.1.3, 126.2.1, 143.2.2, Standard 4.1.4; and LDC §34-411(h).
- F. Public services and infrastructure will serve the RPD, notwithstanding its Rural designation. Lee Plan Glossary, Lee Plan Goals 2, 4, 56, Objectives 2.1, 2.2, 4.1, 56.2, Policy 1.4.1, 27.4.2, 29.4.3, 53.1.8, 53.1.9, 56.2.1, 61.1.6, 135.9.7, Standards 4.1.1, 4.1.2; LDC §34-411(d).
- G. The proposed use is appropriate at the proposed location. Lee Plan Goals 2, 5, 27, 29; Objective 29.1, 29.2, Policies 1.4.1, 2.1.1, 2.2.2, 5.1.2, 5.1.5, 27.1.1, 29.1.1, 29.1.3, 29.2.1, 29.2.2, 124.1.1, 135.1.9.
- H. Recommended conditions and County regulations provide sufficient safeguards to protect the public interest and are reasonably related to expected impacts. Lee Plan Policies: 5.1.5, 5.1.6, 27.4.1, 27.4.2, 29.1.1, 29.1.3, 29.2.2, 61.3.3, 61.3.8, 123.2.9, 135.9.6; LDC §34-377(a)(3), §34-411, §34-932.
- I. Requested deviations, as conditioned:
  - 1. Enhance objectives of the planned development, and
  - 2. Protect public health, safety and welfare. Lee Plan Policy 29.1.4, LDC §34-373(a)(9), §34-377(a)(4).

Date of Recommendation: January 30, 2025.

Amanda L. Rivera

**Deputy 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 B

### RECOMMENDED CONDITIONS AND DEVIATIONS As revised by the Hearing Examiner

#### CONDITIONS

#### 1. Master Concept Plan (MCP) and Development Parameters

- a. <u>MCP</u>. Development must be consistent with the four-page MCP entitled "Cary + Duke + Povia RPD," prepared by J.R. Evans Engineering, Inc., date stamped September 17, 2024 (Exhibit B1) except as modified by conditions below.
- b. <u>Lee Plan and Land Development Code (LDC)</u>. Development must comply with the Lee Plan and LDC at the time of local development order, except where deviations have been granted herein. Subsequent changes to the MCP may require further development approvals.
- c. <u>Development Parameters</u>. Development is limited to 1,099 dwelling units, amenity areas, and accessory uses.

#### 2. Schedule of Uses and Development Regulations

a. Schedule of Uses

Accessory Uses and Structures

Administrative Offices

Clubs, private

Community Gardens, within the optional amenity areas only

Dwelling Unit -

Single-Family

Two-Family Attached (Limited to the R Tract)

Entrance Gate and Gatehouse

**Essential Services** 

Essential Service Facilities, Group I only

Excavation, Water Retention

Excess Spoil Removal (20,000 cubic yards or more)

Fences, Walls

Home care facility

Home occupation

Models: Display center, display group, model home

Parking Lot: Accessory

Real Estate Sales Office

Recreational Facilities: Personal, Private-on-site

Residential accessory uses

#### Signs

Temporary Uses, temporary construction trailers and equipment storage sheds

Temporary amenity structures

#### b. <u>Site Development Regulations</u>

	Single-Family Detached	Two-Family Attached	Clubhouse
Minimum Lot Size	4,800 sq ft	4,200 sq ft	N/A
Minimum Lot Width	40 feet	35 feet	N/A
Minimum Lot Depth	120 feet	120 feet	N/A
Maximum Lot Coverage	60 percent	65 percent	50 percent
Maximum Building Height	35 feet	35 feet	35 feet
Minimum Building Separation	10 feet	10 feet	10 feet
	Setbac	ks	
Street (Interior Private Roads)	20 feet / 10 feet <sup>1</sup>	20 feet / 10 feet <sup>1</sup>	20 feet
Street (Public Roads)	50 feet	50 feet	50 feet
Side	5 feet <sup>5</sup>	5 feet <sup>5</sup> / 0 feet <sup>2</sup>	10 feet <sup>5</sup>
Rear (Principal)	10 feet	10 feet	10 feet
Rear (Accessory)	5 feet <sup>3</sup>	5 feet <sup>3</sup>	5 feet <sup>3</sup>
PD Perimeter	50 feet	50 feet	50 feet
Waterbody	20 feet	20 feet	20 feet
Preserve	20 feet <sup>4</sup>	20 feet <sup>4</sup>	20 feet <sup>4</sup>

#### Notes:

- 1) 20 feet for front loaded garages, 10 feet for side loaded garages, and secondary street setbacks on corner lots.
- 2) No side setback is required from common lot line for two-family attached.
- 3) 5 feet (0 feet where lot abuts lake maintenance easement).
- 4) 30 feet for indigenous plant communities subject to fire.
- 5) Equipment pads may encroach up to 4.5 feet into a side setback (see Deviation 4).
- Dwelling units must be setback a minimum of 170 feet from Duke Highway and 250 feet from North River Road.

#### 3. Rural Compatibility

- a. Prior to development order approval, Developer must demonstrate that entrances features will provide design elements described in LDC §33-1669 through §33-1672.
- b. The RPD must include an enhanced native buffer consistent with the MCP. The buffer must be a minimum 25 feet in width and within the 170-foot minimum setback to fill in gaps in the existing native vegetation and restoration areas to form a continuous, 100% opaque vegetative screen within 5 years of growth.
  - i. The enhanced buffer must meet the following minimum planting per 100 linear feet by 25 foot width: six (6) native canopy trees, seven (7) native understory trees, three (3) Cabbage Palms, and twenty one (21) native shrubs.
  - ii. Planting density may be achieved with a combination of existing and proposed enhanced native vegetation so long as trees are horizontally spaced no more than 15 feet on center and Cabbage Palms and shrubs are clustered in groups of three (3).
  - iii. Enhanced buffer plantings must include minimum 10 foot tall, 2 inch caliper native canopy trees, minimum 10 foot clear trunk Cabbage Palms, minimum 10 foot tall native understory trees, and minimum four (4) foot tall shrubs.
  - iv. Enhanced native vegetation species must be consistent with and in addition to the approved Indigenous Preserve Management and Restoration Plan Supplemental Plantings List Revised May 2024 (Exhibit B2) within this buffer. Restoration plantings will not contribute to the buffer plant material requirements set forth in this condition.
  - v. Exotic vegetation within the 25-foot buffer must be hand removed to minimize disturbance to existing native vegetation.
  - vi. Developer must obtain a Certificate of Compliance on the enhanced buffer installation prior to development order approval authorizing residential lots within 300 feet of the 25-foot-wide enhanced buffer depicted on the MCP.

#### 4. Utility Connection

Development order plans must demonstrate connection to public utilities for water and wastewater services to support all phases of development.

#### 5. Public Safety

Development order submittals must demonstrate that public safety service is available to serve each phase under review as evidenced by a letter of No Objection from the Lee County Public Safety Office.

#### 6. Open Space

Development order plans must depict a total of 420.20 acres of indigenous open space in substantial compliance with the MCP consistent with the following:

- a. Rare and Unique Upland Preservation: 26.03 acres;
- b. Rare and Unique Upland Restoration: 2.68 acres;
- c. Rare and Unique Created: 300.01 acres;
- d. Upland Restoration: 7.38 acres;
- e. Upland Preservation: 23.98 acres;
- f. Wetland Preservation: 17.51 acres;
- g. Wetland Restoration: 33.95 acres; and
- h. Surface Waters: 8.66 acres.

#### 7. Protected Species

Developer must submit pre-construction species monitoring reports, where applicable, with each vegetation removal permit application to ensure no protected species are within the clearing limits.

#### 8. Conservation Easement Recording

Conservation easements must be recorded over areas used to achieve the density incentive. Conservation easements must be dedicated to the appropriate maintenance entity and provide Lee County or other public agency, acceptable to Lee County, with third party enforcement rights. Conservation Easements must be recorded within 5 years following approval of the first development order.

#### 9. Wetland Impacts

The first development order application must include a copy of the mitigation receipt of payment or mitigation plans for the 18.85 acres of wetland impacts.

#### 10. Indigenous Habitat Restoration/ Management Plan

- a. Development Order plans must be in substantial compliance with the Indigenous Preserve Management and Restoration Plan (Exhibit B2).
- b. The first development order plans must include a schedule for the indigenous preservation, restoration, and created preserve areas to be completed within at least five consecutive years.

- c. The first development order plans must include cross sections depicting the hydrological restoration, upland grading, and the type of habitat being restored/created to ensure survivability. The plans must include details of soil amendments in the restoration and creation areas, if applicable.
- d. The first development order plans must include a map depicting where mechanical and hand-removal methods of exotic vegetation removal will be located.
- e. The first development order plans must include a monitoring schedule to ensure all preserve enhancement, restoration, and creation is completed and demonstrates 80 percent survivability within five consecutive years. Monitoring will be required until 80 percent survivability is achieved.
- f. The vegetation removal permit application must include survey point maps depicting the preservation and restoration areas and mechanical clearing limits.

#### 11. Northern Buffer Planting Material

The first development order plans must depict a 25-foot-wide buffer within the restoration area along North River Road that includes 14-foot-high native canopy trees, spaced approximately 25 feet on center to comply with LDC §33-1673.

#### 12. Natural Waterbody Buffer

The first development order application that includes Trout Creek must include landscape plans that provide a natural waterway buffer plan in compliance with the Indigenous Preserve Management and Restoration Plan (Exhibit B2). The vegetation must meet the plant specifications of LDC §10-420. The natural waterway buffer must depict a ten-foot-wide Trout Creek maintenance easement with a 20-foot-wide Trout Creek maintenance access as depicted consistent with the MCP.

#### 13. Surface and Ground Water Monitoring

Prior to local development order approval for any phase of work, Developer must provide the attached Water Quality Monitoring Plan (Exhibit B3) with the following modifications:

a. Developer must identify the groundwater withdrawal locations used to resupply the irrigation withdrawal lakes in the Water Quality Monitoring Plan:

- b. Developer must complete baseline monitoring events prior to commencement of construction and provide a baseline report to the County Division of Natural Resources:
- c. Surface water quality, groundwater quality, and groundwater level monitoring locations must be finalized and identified in the Water Quality Monitoring Plan. Surface water quality monitoring sites must be located at each proposed outfall. Groundwater level monitoring locations must be located to ensure surrounding residential uses are not adversely affected by Sandstone Aquifer withdrawal;
- Developer must provide water quality and groundwater level monitoring d. data to the Division of Natural Resources annually for a minimum of five (5) years. Annual monitoring reports must include a comparison of State plots surface water quality standards, of parameters, recommendations. After five years of meeting/exceeding State water quality monitoring standards, Developer may amend water quality monitoring and reporting after written request, review, and approval by the Division of Natural Resources. Results must be reported as an Electric Data Deliverable (EDD), in a format approved by the Division of Natural Resources; and
- e. A contingency plan to be implemented upon discovery of an exceedance of State Water Quality Standards. This plan must include notification to impacted residents, Lee County Division of Natural Resources, and applicable authorities.

# 14. Stormwater Reporting

Development order submittals for each phase must provide a Stormwater Report with models and calculations demonstrating that offsite flow conveyance capacity will be maintained during and following construction of the development.

# 15. <u>Irrigation Requirements</u>

Development order plans for each phase must demonstrate irrigation will be provided via a master-controlled central irrigation system. The master-controlled system must be designed to comply with the Water Conservation Ordinance #24-01, as amended. The Property Owner Association documents, including Declarations and Covenants (submitted prior to Development Order approval and recorded prior to issuance of Certificate of Compliance), must prohibit the installation of single-family use wells for potable or irrigation water.

# 16. Agricultural Uses

a. <u>Termination of Agricultural Use.</u> Bona fide agricultural uses (cattle grazing) in existence when the application for this project was filed, may continue in

- accordance with the Agricultural Use Affidavit filed with the zoning application until a local development order is approved for the area that contains these uses.
- b. Additional Clearing Prohibited. Clearing or injury of native trees or other native vegetation, including understory, in agricultural areas is prohibited except when done pursuant to a vegetation removal permit. Existing areas of bona fide agricultural use that include existing grass pasture(s) may be mowed but may not be cleared or expanded. This prohibition of clearing/expansion is not intended to preclude County approved requests for removal of invasive exotic vegetation. Violations of this condition will require restoration in accordance with LDC §10-423.
- c. <u>Proof of Termination</u>. Prior to development order issuance, Developer must provide written proof, subject to approval by the Lee County Attorney's Office, of the following:
  - i. <u>Affidavit.</u> Termination of agricultural use on any portion of the property included in the development order application/approval. Proof must include a sworn affidavit from the person or entity holding title to the subject property that specifically provides:
    - 1. The date agricultural uses ceased.
    - 2. The legal description of the property subject to the development order approval.
    - 3. An affirmative statement that Developer, its successors or assigns acknowledges and agrees that all agricultural uses are illegal and prohibited on the property and that the owner covenants with the County that they will not allow any such uses on the property unless and until the property is rezoned to permit such uses.
    - 4. That the affidavit constitutes a covenant between Developer, its successors or assigns, and the County that is binding on the Developer, its successors or assigns. The covenant must be properly recorded in the public records of the County at the expense of the applicant, its successors or assigns.
- d. <u>Termination of Tax Exemption</u>. Termination of the agricultural tax exemption for any portion of the property included in the development order application/approval. Proof as to the termination must include a copy of the request to terminate the tax exemption submitted to the Property Appraiser.

# 17. School Bus Stop

Developer must provide a school bus pull-off at the project entrances as shown on the MCP to ensure buses can stop entirely outside of the North River Road rightof-way. The location and design of the bus stop is subject to approval by the Lee County School District.

# 18. Lighting

Developer and future property owners must ensure lighting from developed areas does not directly illuminate indigenous preserve or restoration areas by shielding fixtures as necessary and minimizing up-lighting. Developer must include these lighting standards in the Indigenous Management Plan, deed restrictions, and development order plans.

# 19. Development Permits

County development permits do not create rights to obtain permits from state/federal agencies. Further, County development permits 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 undertake actions in violation of state/federal law. Applicant must obtain applicable state/federal permits prior to commencing development.

# **DEVIATIONS**

1. <u>Access.</u> Deviation (1) seeks relief from LDC §10-291(3) which requires residential developments more than five acres to provide more than one means of ingress and egress for the development, to allow one access point to the development area west of Trout Creek only.

HEX Recommendation: Approve

2. North River Road Plantings. Deviation (2) seeks relief from LDC §33-1673, which requires new developments with frontage on North River Road to provide a 25-foot-wide right-of-way buffer, planted with native canopy trees, such as Live Oaks and Laurel Oaks, with a minimum height of 14 feet and spaced 25 feet on center to allow for creation, restoration and preservation of "Rare and Unique" uplands and wetland vegetation along the North River Road frontage where proposed preserve areas abut the right-of-way.

HEX Recommendation: Approve, subject to the following condition:

Development order landscape plans abutting North River Road must meet the Indigenous Preserve Management and Restoration Plan (Exhibit B2). Landscape/restoration plants must meet the native tree specifications per LDC §33-1673 and native shrubs specifications for a Type-F buffer per LDC §10-416(d).

3. <u>Lake Bank Slopes</u>. Deviation (3) from LDC §10-329(d)(4), which requires lake banks to be sloped at a 6:1 ratio from the top of bank to a water depth of two feet below the dry season water table, to allow for a minimum ratio of 4:1 slope.

# HEX Recommendation: Approve

4. <u>Equipment Pads</u>. Deviation (4) seeks relief from LDC §34-2191(5), which allows encroachments into required setbacks for equipment pads of up to 3 feet into a side, rear or waterbody setback, to allow for equipment pads encroachments of up to 4.5 feet into side setbacks.

# HEX Recommendation: Approve

5. <u>Drainage Easement</u>. Deviation (5) seeks relief from LDC §10-328(a), which requires a 20-foot-wide easement on one side of a watercourse/drainageway/ canal/IDD easement/lake/pond/stream, and a 20-foot-wide easement on both sides for canals, lakes, or flow-ways greater than 50 feet wide for maintenance purposes, to allow a 10-foot-wide easement on one side of Trout Creek.

# HEX Recommendation: Approve, subject to the following condition:

A drainage and access easement consistent with the MCP must be submitted for approval prior to development order issuance. The easement must permit Lee County the right, but not the obligation, to maintain Trout Creek and must be dedicated to Lee County prior to issuance of a Certificate of Compliance for the first development order.

# Exhibits to Conditions:

- B1 "Cary+Duke+Povia RPD" four-page MCP (stamped September 17, 2024)
- B2 Indigenous Habitat Management Plan (revised May 2024)
- B3 Water Quality Monitoring Plan (revised May 2024)

#### Exhibit C

#### **EXHIBITS PRESENTED AT HEARING**

#### **STAFF EXHIBITS**

- 1. DCD Staff Report with attachments for DCI: Prepared by Dirk Danley, Jr., Principal Planner, date received August 21, 2024 (multiple pages 8.5"x11" & 11"x14") [black & white, color]
- 2. Affidavit of Publication: For Zoning Case DCI2022-00067, Cary+Duke+Povia RPD (1 page 8.5"x11")
- 3. PowerPoint Presentation: Prepared by Lee County Staff for Zoning case DCI2022-00067, Cary+Duke+Povia RPD, dated September 4, 2024 (multiple pages 8.5"x11")[color]
- 4. *Email:* From Jillian Scholler, PE, Deputy Director of Department of Transportation, to Dirk Danley, Jr., with Community Development, dated Thursday, September 5, 2024, 3:02 PM (2 pages 8.5"x11')
- 5. *Memorandum:* From Nathan Beals, PMP, to Dirk Danley, Jr, AICP, dated September 19, 2024 (1 page 8.5"x11")

# **APPLICANT EXHIBITS**

- a. 48-Hour Notice: Email from Jem Frantz with RVI Planning and Landscape Architecture, to Maria Perez, Steven Hartsell, Shane Johnson, Brandon Frey, and Yury Bykau, with copies to 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 Friday, August 30, 2024, 9:23 AM (multiple pages 8.5"x11")
- 1. PowerPoint Presentation: Prepared for Zoning case DCl2022-00067, Cary+Duke+Povia RPD, dated September 4, 2024 (multiple pages 8.5"x11")[color]
- 2. Allapattah Community's Assn, Inc. of Florida v. City of Miami: 379 So.2d 387 (1980) (multiple pages 8.5"x11")
- 3. 48-Hour Notice for September 20, 2024 Hearing: Email from Alexis Crespo with RVI Planning and Landscaping, to Maria Perez, with copies to Dirk Danley, Jr., Elizabeth Workman, Patric Neal, Jack Weber, C. Thrushman, Will Hellman, Jem Frantz, Sabrina McCabe, Shane Johnson, Kirk Martin, Neale Montgomery, Esq.,

- Ted Treesh, Yury Bykau, Joseph Adams, Esq., Etc., dated Tuesday, September 17, 2024, 12:41 PM (multiple pages 8.5"x11" and 11"x17")
- 4. *Updated Line of Sight:* Prepared by RVI Planning and Landscaping for Cary+Duke+Povia RPD, dated September 18, 2024 (1 page 11"x17")[color]
- 5. PowerPoint Presentation: Prepared for Zoning case DCl2022-00067, Cary+Duke+Povia RPD, dated September 20, 2024 (multiple pages 8.5"x11")[color]
- 6. Written Submissions: Email from Alexis Crespo with RVI Planning and Landscaping, to Maria Perez, with copies to Neale Montgomery, Esq., Dirk Danley, Jr., and Elizabeth Workman, dated Friday, September 20, 2024, 12:05 PM (3 page 8.5"x11")

# **OTHER EXHIBITS**

# Steven Brodkin

1. *Presentation:* (3 pages – 8.5"x11")

# Marsha Ellis

1. PowerPoint Presentation: Prepared by for Zoning case DCI2022-00067, Cary+Duke+Povia RPD, dated September 4, 2024 and September 6, 2024 (multiple pages – 8.5"x11")

#### Elly Hagen

- 1. *Documents:* (multiple pages 8.5"x11")
- 2. Letter: From Richard Durling (4 pages 8.5"x11")

# **James Kennedy**

1. Presentation and PowerPoint Presentation: (multiple pages – 8.5"x11")

# **Donalyn Moon**

1. *Document:* (multiple pages – 8.5"x11")

#### Katrina Salokar

1. Roar Newspapers: (multiple newspapers)

# **Holly Swartz**

1. *Documents:* (multiple pages – 8.5"x11")

# **Exhibit D**

# **HEARING PARTICIPANTS**

# County Staff:

- 1. Dirk Danley, Jr.
- 2. Elizabeth Workman

# Applicant Representatives:

- 1. Yury Bykau
- 2. Alexis Crespo
- 3. Brandon Frey
- 4. Will Hellman
- 5. Shane Johnson
- 6. Kirk Martin
- 7. Neale Montgomery, Esq.
- 8. Pat Neal
- 9. Ted Treesh

# Public Participants:

- 1. Susan Allen
- 2. Kathy Arnold
- 3. Ralph Bond
- 4. Linda Borchering
- 5. Steven Brodkin
- 6. Monica Busbee
- 7. Keith Cary

# DCI2022-00067

- 8. Terri Chadwell
- 9. Amanda Cochran
- 10. Darius Cochran
- 11. Freida Lauer Cochran
- 12. Jimmie Cochran
- 13. Keith Durling
- 14. Glen Dyess
- 15. Denise Eberle
- 16. Dave Edwards
- 17. Marsha Ellis
- 18. William Fields
- 19. Cheryl Fischer
- 20. Grant Fichter
- 21. Roxanne Gause
- 22. Elly Hagen
- 23. James Kennedy
- 24. Alan Klingensmith
- 25. Donalyn Moon
- 26. Tom Mulling II
- 27. Terry Paska
- 28. Codty Piece
- 29. Linda Redfern
- 30. William Redfern

# DCI2022-00067

- 31. Katrina Salokar
- 32. Katherine Sanderford
- 33. Jack Snider
- 34. Holly Schwartz
- 35. Don Tate
- 36. Andy Tilton

#### 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.

# Summary of Hearing Examiner Recommendation

# CARY+DUKE+POVIA RPD

Applicant seeks approval of a residential community on North River Road. The site is south of Babcock Ranch MPD and adjacent to Owl Creek RPD. Proposed density is comprised of 771 base units and 328 additional units awarded for creation of Rare and Unique Upland Habitat. The resulting unit count is 1,099 units at 1.39 units per acre.

Site design locates three development pods on 788± acres, mitigating off-site impacts by:

- > clustering development to dedicate over 60% of project acreage to open space;
- > locating two-family housing internal to the development;
- > enhancing buffers along the perimeter to preserve rural vistas;
- > planting dense vegetation to achieve complete opacity along Duke Highway; and
- > placing 420± acres under conservation easement.

Improvements to environmental conditions, site hydrology, and water quality include:

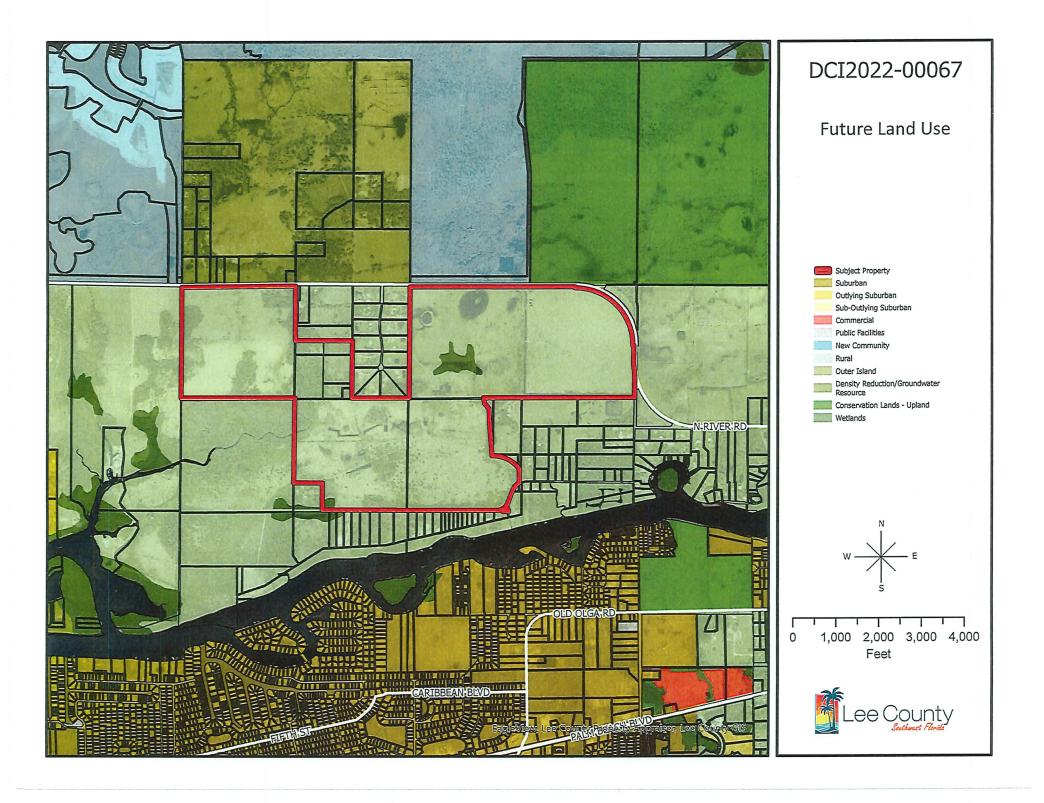
- > creation of 300.01 acres, restoration of 2.68 acres, and preservation of 26.03 acres of Rare and Unique Upland Habitat;
- > extension of sanitary sewer and potable water service;
- > implementation of an engineered water management system; and
- > centralized irrigation control.

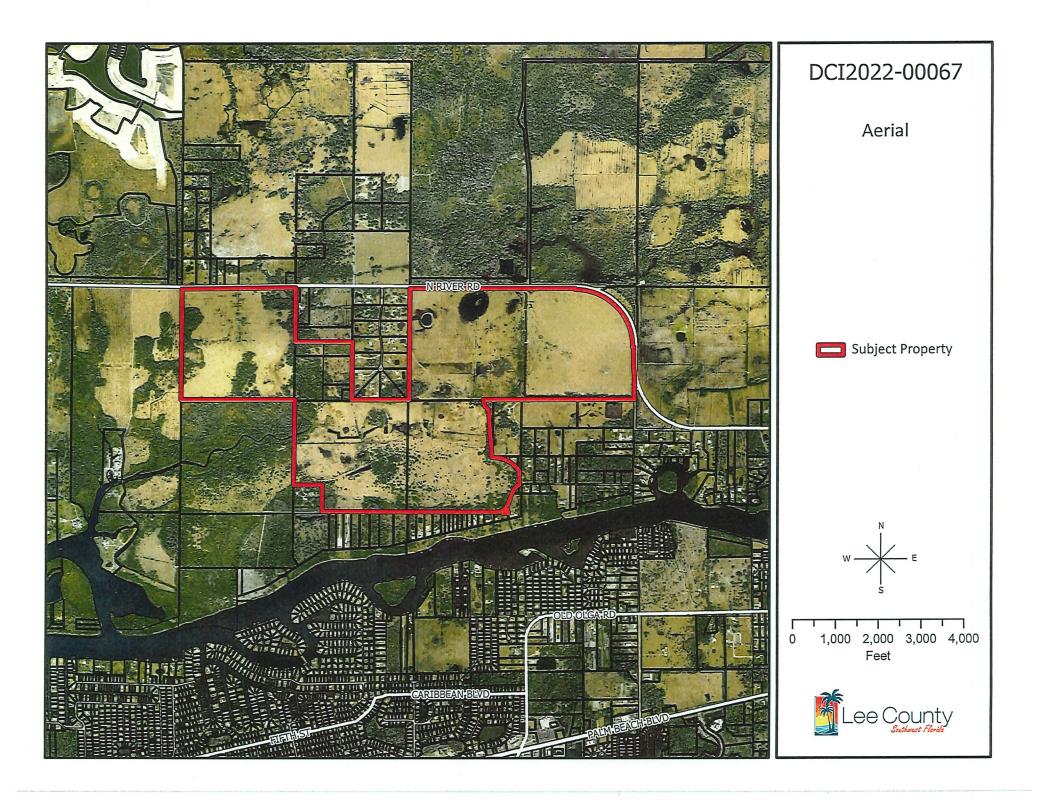
The environmental benefits would not be available if the property were developed with homes reliant on wells and septic tanks under existing zoning. The Lee Plan rewards projects in the Rural land use category with additional density to encourage site design that achieves these environmental benefits. As conditioned, the additional 0.39 units per acre will have a *de minimis* effect on public services and infrastructure.

In all, 36 Participants spoke at hearing, largely in opposition to the request. Opponents expressed concerns primarily related to compatibility, traffic, and loss of rural character. Applicant conducted community outreach prior to hearing to address concerns and presented several modifications on Rebuttal in response to issues raised during hearing.

The Hearing Examiner accepted testimony over three days and reviewed extensive evidence in the record before rendering this Recommendation. After careful review of the record, the Hearing Examiner finds Applicant provided competent substantial evidence to support the request as conditioned.

Detailed recommendation follows





# OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA HEARING EXAMINER RECOMMENDATION

REZONING:

DCI2022-00067

Regarding:

**CARY+DUKE+POVIA RPD** 

Location:

13230 North River Road

Northeast Lee County Planning Community

(District 5)

**Hearing Dates:** 

September 4, 2024

September 6, 2024 September 20, 2024

Record Closed:

September 24, 2024

# I. Request

Rezone 788.96± acres from Agricultural (AG-2) to Residential Planned Development (RPD) to allow a clustered residential community containing up to 1,099 dwelling units with single-family/two-family attached dwellings and amenities. Maximum building height is 35 feet.

The property legal description is set forth in Exhibit A.

# II. Hearing Examiner Recommendation

Approval, subject to the conditions and deviations set forth 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 a planned development zoning district.<sup>1</sup> In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on an application to rezone 788.96± acres ("the property") to RPD.

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

\_

<sup>&</sup>lt;sup>1</sup> LDC §34-145(d)(2)a.

Discussion supporting the <u>Hearing Examiner's recommendation of approval</u> follows below.

# Request Synopsis/Zoning History

Applicant seeks approval to convert 788.96± acres of agricultural land to a residential planned community south of North River Road. The property is in the Northeast Lee County and North Olga Planning Communities, just south of Babcock Ranch and east of S.R. 31.

The site is mostly cleared for agricultural use with no history of prior zoning action.

The requested development plan includes three residential pods surrounded by expansive preserve/open space. Trout Creek bifurcates the western pod from the bulk of the RPD, isolating that development area with a single access to North River Road.<sup>2</sup> The eastern pods share two access points on North River Road. Accesses will be gated and setback 100 feet from the road. There is no access on Duke Highway or North Olga Drive.<sup>3</sup> The Master Concept Plan ("MCP") identifies two school bus loading areas outside the North River Road right-of-way.<sup>4</sup>

<u>Site design clusters development with significant setbacks along the project perimeter, featuring buffers ranging from 160 to 800 feet.</u> Proposed residences are limited to single-family or two-family attached dwellings. The requested 35-foot height is standard for residential uses in the LDC, and identical to building heights on adjoining lands. 6

The proposed 1,099 units are achieved through Rare and Unique Upland Habitat incentives established in the Lee Plan. Base density permits 771 units. Applicant requests an additional 328 units by preserving 26.03 acres, restoring 2.68 acres, and creating 300.01 acres of indigenous Rare and Unique upland habitat. Applicant will place 420 acres under conservation easement, ensuring perpetual maintenance of environmentally sensitive areas.

<sup>8</sup> See Staff Report (Attachment H & N).

<sup>&</sup>lt;sup>2</sup> While the western pod is geographically isolated, residents will have full access to RPD amenities regardless of which pod they reside. Crespo Testimony (Transcript pg. 105).

<sup>&</sup>lt;sup>3</sup> Applicant's expert planner testified early iterations of the site plan included an egress-only onto Duke Highway, but Applicant eliminated the Duke Highway access in response to opposition by residents. Crespo Testimony (Transcript pg. 20).

<sup>&</sup>lt;sup>4</sup> The MCP does not depict a school bus stop at the eastern access in recognition of School District spacing requirements. Frey Testimony (Transcript pg. 531-32).

<sup>&</sup>lt;sup>5</sup> There is a single anomalous pinch point of 60 feet in the southwestern corner, adjacent to vacant agricultural lands. See MCP.

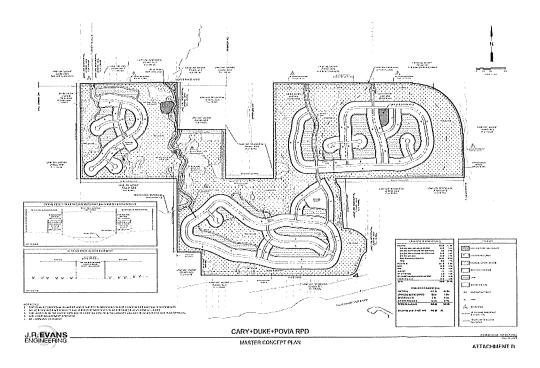
<sup>&</sup>lt;sup>6</sup> See generally LDC §34-654, §34-695, and Owl Creek RPD. Maximum height is 35 feet in AG-2 and RS-1 districts by right.

<sup>&</sup>lt;sup>7</sup> Lee Plan Policy 123.2.17.

<sup>&</sup>lt;sup>9</sup> See Staff Report (Attachment N). Resulting density is 1.39 units per acre.

The project will connect to potable water and sanitary sewer service. The Board adopted the Lee Plan amendment extending utility services to the site March 20, 2024.<sup>10</sup>

<u>Staff recommended approval, finding the proposed RPD satisfies LDC and Lee</u> Plan review criteria.



# **Character of Surrounding Area**

The property is in the Northeast Lee County and North Olga Planning Communities (cumulatively, the "Community").<sup>11</sup> The Community aims to preserve a rural character, prioritizing open space and native vegetation.

North River Road serves as the primary means of access through the Community. It is a county maintained two-lane arterial road running from S.R. 31 to the Hendry County line. The viewshed along the road is primarily agricultural lands, with single-family homes visible at a distance. Staff estimates homes proximate to the site are set back roughly 300 feet from the road.<sup>12</sup>

Lands to the east are engaged in agricultural pursuits. North River Road abuts to the north with the Babcock Mixed Use Planned Development ("MPD") across the road. Properties to the south host riverfront single-family homes along Duke Highway.

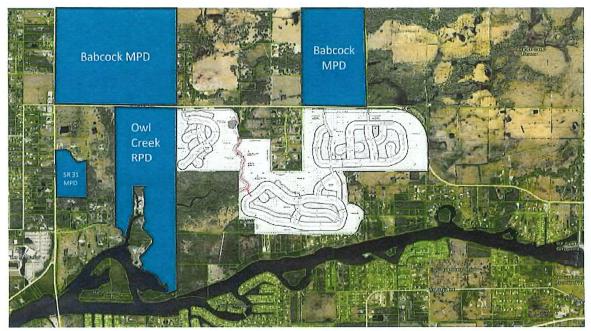
\_\_\_

<sup>&</sup>lt;sup>10</sup> See Staff Report (pg. 3, Attachment M). The Board adopted CPA2022-00019 by Ordinance 24-06. Id.

<sup>&</sup>lt;sup>11</sup> Northeast Lee County is located east of S.R. 31 and north of the Caloosahatchee River.

<sup>&</sup>lt;sup>12</sup> See Staff Report (pg. 1).

In 2022, the Board rezoned the adjacent 343± acres to the Owl Creek RPD.<sup>13</sup> Owl Creek RPD permits 380 units in a clustered development of single- and two-family attached homes at 35 feet in height.<sup>14</sup>





# **Zoning Review Criteria**

Before recommending approval for rezoning to the Board, the Hearing Examiner must find the request:

- A. Complies with the Lee Plan;
- B. Meets the LDC and other applicable County regulations, or qualifies for deviations;
- C. Is compatible with existing and planned uses in the surrounding area;
- D. Provides 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;

<sup>&</sup>lt;sup>13</sup> Z-22-022.

<sup>14</sup> Id.

- 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. 15

If the request involves planned development zoning, such as RPD, the Hearing Examiner must also find:

- H. The proposed use is appropriate at the proposed location;
- I. Recommended conditions provide sufficient safeguards to the public interest and reasonably relate to the impacts on the public's interest expected from the proposed development; and
- J. Each requested deviation (1) enhances the achievement of the objectives of the planned development, and (2) protects public health, safety, and welfare. 16

# Lee Plan Consistency

<u>Planned developments must be consistent with the Lee Plan and minimize</u> negative effects of proposed uses on neighboring properties.<sup>17</sup>

The Lee Plan Future Land Use Map designates the property in the <u>Rural</u> and Wetlands future land use categories.<sup>18</sup>

<u>Rural</u> areas are suited for low density residential, agricultural, and minimal non-residential land uses.<sup>19</sup> Maximum density is one dwelling unit per acre, with density incentives available from preserving/restoring/creating Rare and Unique Upland Habitat.<sup>20</sup> The Rural land use category does not impose minimum lot sizes.<sup>21</sup>

<u>Wetlands</u> consist of low density residential and recreational uses that do not adversely affect ecological wetland function.<sup>22</sup> Maximum permitted density is one unit per 20 acres, though developers may transfer density from wetland areas to contiguous uplands under common ownership.<sup>23</sup>

<sup>&</sup>lt;sup>15</sup> See LDC §34-145(d)(4)(a)(1). The property is in a Rural land use category.

<sup>&</sup>lt;sup>16</sup> See LDC §34-145(d)(4)(a)(2).

<sup>&</sup>lt;sup>17</sup> Lee Plan Policy 2.1.2; LDC §34-411(a), (c), and (i).

<sup>&</sup>lt;sup>18</sup> Lee Plan Map 1-A, Policy 1.4.1, 1.5.1.

<sup>&</sup>lt;sup>19</sup> Lee Plan Policy 1.4.1.

<sup>&</sup>lt;sup>20</sup> See Id.

<sup>&</sup>lt;sup>21</sup> Compare with: Lee Plan Policy 1.4.3 (Rural Community Preserves – minimum lot size requirements).

<sup>&</sup>lt;sup>22</sup> Lee Plan Policy 1.5.1.

<sup>&</sup>lt;sup>23</sup> Lee Plan Policies 1.5.1, 124.1.1.

The property is subject to a host of site-specific Lee Plan directives given its location in the Northeast Lee County and North Olga Planning Communities. These Communities prioritize a rural lifestyle with open vistas and environmental preservation.<sup>24</sup>

The Lee Plan is replete with policies designed to balance the Community's historic rural character and emerging growth patterns. Efforts to achieve this balance and honor the rural character include:

- ➤ Defining "rural character" by characteristics that convey a sense of rural lifestyle such as large lots *or* clustered development;<sup>25</sup>
- Maintaining scenic qualities of North River Road; 26
- Preserving open space;
- Conserving large areas of open lands;<sup>27</sup>
- > Ample views of wooded areas;<sup>28</sup> and
- Protecting environmentally sensitive lands while providing regulatory flexibility.<sup>29</sup>

The Community Plans encourage clustered development to conserve large areas of open lands. <sup>30</sup> Clustered development concentrates buildings/uses to reduce the project footprint. <sup>31</sup> This technique allows the project's perimeter to be used for open space, buffering, recreation, water management, and protection of environmentally sensitive areas. <sup>32</sup> The RPD clusters development in three pods, reserving 61% of project acreage as open space. <sup>33</sup>

Applicant demonstrated the proposed site design achieves Lee Plan objectives by:

- ➤ Enhancing buffers along North River Road and Duke Highway utilizing native plant material;
- Screening development near Duke Highway with 100% vegetative opacity;<sup>34</sup>
- ➤ Devoting 61% of the acreage to open space (483.6 acres);<sup>35</sup>

<sup>33</sup> Alternatively, the record indicates that 788 single-family homes reliant on septic tanks could be developed on the property. The Lee Plan discourages septic tank use when sanitary sewer service is available. Lee Plan Goal 56, Objective 56.2, Policies 56.2.1, 135.9.7; *See also* Staff Ex. 5.

<sup>&</sup>lt;sup>24</sup> Lee Plan Goals 27, 29, Objectives 27.1, 27.2,29.1, Policies 27.1.1, 27.1.2, 27.4.1, 29.1.1, 29.2.1.

<sup>&</sup>lt;sup>25</sup> Lee Plan Objectives 27.1, 29.2, Policies 27.1.1, 27.1.2, 29.2.1.

<sup>&</sup>lt;sup>26</sup> Lee Plan Objective 27.1, 27.3, 29.1, Policies 27.4.1, 29.1.1, 29.1.3.

<sup>&</sup>lt;sup>27</sup> Lee Plan Objective 27.3, Policies 27.1.1, 27.1.2, 29.1.1.

<sup>&</sup>lt;sup>28</sup> Lee Plan Objective 27.1.

<sup>&</sup>lt;sup>29</sup> Lee Plan Objectives 27.1, 27.2, 27.3.

<sup>&</sup>lt;sup>30</sup> Lee Plan Objective 27.1, 27.2, Policies 27.1.1, 27.1.2, 27.4.1, 29.1.1, 29.2.1.

<sup>&</sup>lt;sup>31</sup> Lee Plan Glossary.

<sup>32</sup> Id

<sup>&</sup>lt;sup>34</sup> Crespo and Hellman Testimony (Transcript pg. 96-116); Applicant Ex. 1 (slide 100-03). Applicant provided detailed lines of sight and illustrative renderings of the buffer at time of planting and after five years. See Conditions 3, 11. Applicant's planning expert is Alexis Crespo, AICP, RVi Planning & Landscape Architecture, Inc.

<sup>&</sup>lt;sup>35</sup> See MCP (Land Use Summary table).

- > Maintaining rural vistas along the perimeter, with 300- to 800-foot setbacks on North River Road and 170 feet on Duke Highway: 36
- > Locating the nearest residence 405 feet from the North River Road right-ofwav:37
- > Restoring lands impacted by decades of agricultural activity to improve species' habitat:
- Preserving 420 acres under conservation easement to ensure perpetual protection of environmentally sensitive lands;<sup>38</sup>
- Providing two amenity campuses including community gardens;<sup>39</sup>
- > Connecting residents to sanitary sewer system rather than reliance on septic tanks;40 and
- > Directing project traffic to North River Road, with no access to Duke Highway or North Olga Road.41

Applicant's landscape expert provided line of sight exhibits to illustrate visual impact on the traveling public.<sup>42</sup> The northwestern pod offers the narrowest setback along North River Road yet still provides 405 feet of separation from the nearest residence.43 Existing conditions in this location feature impacted pastureland without vegetation. Applicant proposes restoration plantings introducing 14-foot-high native canopy trees within the first 25 feet of the project boundary.44

Restoration plantings were curated based on native plant communities to maintain and enhance rural character, add aesthetic value over present conditions, and create wildlife habitat.45

<sup>&</sup>lt;sup>36</sup> See Applicant Ex. 1 (slide 22).

<sup>&</sup>lt;sup>37</sup> Hellman Testimony (Transcript pg. 39).

<sup>&</sup>lt;sup>38</sup> See Condition 8; Crespo Testimony (Transcript pg. 35).

<sup>&</sup>lt;sup>39</sup> Lee Plan Policies 29.2.3, 29.5.1; Crespo Testimony (Transcript pg. 23-24).

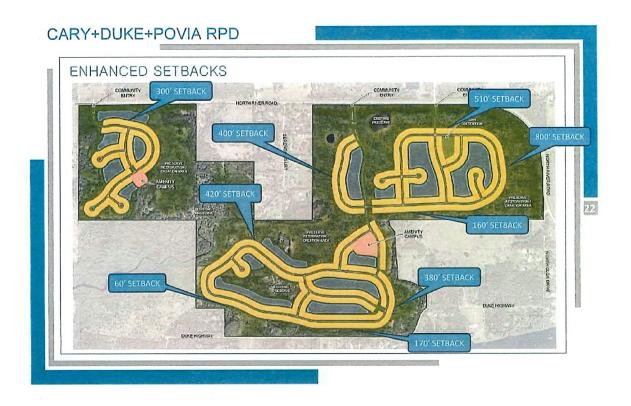
<sup>&</sup>lt;sup>40</sup> Lee Plan Goal 56, Objective 56.2, Policies 56.2.1, 135.9.7; See also Staff Ex. 5.

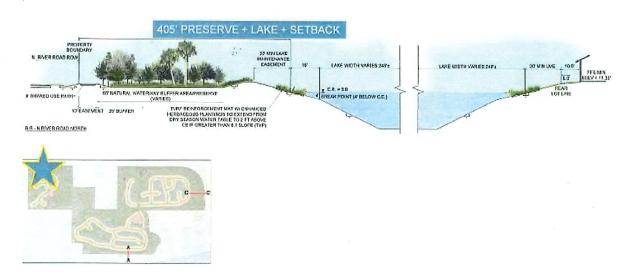
<sup>&</sup>lt;sup>41</sup> Alternatively, individual lots could be developed under current AG-2 zoning that would generate additional traffic on Duke Highway and North Olga Drive.

<sup>&</sup>lt;sup>42</sup> Hellman Testimony (Transcript pg. 38-41, 96-99); Applicant Ex. A: 48-Hour Letter Expert Witness List, dated Aug. 30, 2024; Applicant Ex. 1 (slides 26-31); Applicant Ex. 4-5. Line of sight exhibits reflect the perspective of a six-foot-tall person standing at the property boundary. Lee Plan Policy 27.4.1.

<sup>&</sup>lt;sup>43</sup> Hellman Testimony (Transcript pg. 39-40).

<sup>&</sup>lt;sup>45</sup> Applicant Ex. 1 (slide 32); Hellman Testimony (Transcript pg. 41).





# **Additional Units**

<u>"Incentive" density is distinguishable from "bonus" density</u>, although the terms were used interchangeably throughout the record. The request does not seek bonus units. Rather, Applicant seeks additional units through Lee Plan incentives

<sup>&</sup>lt;sup>46</sup> Bonus density is governed by Chapter 2 of the LDC and relates to Affordable Housing and Transfer of Development Rights ("TDR") Programs. See LDC Ch. 2, Div. 2, §§2-146 et. seq.

designed to create/preserve/restore Rare and Unique Uplands.<sup>47</sup> Applicant must prove the project qualifies for additional units through extensive measures *before* additional units are awarded.<sup>48</sup> The record demonstrates Applicant's proposed measures improve environmental features/function of the property over present conditions.<sup>49</sup>

# Rare and Unique Upland Habitat

The Lee Plan incentivizes preservation, enhancement, and restoration of indigenous Rare and Unique upland habitat within the Rural land use category. The Plan awards one dwelling unit for each acre of created/ enhanced/restored habitat satisfying enumerated criteria.

Applicant demonstrated compliance with the criteria as follows:

- 1. Development must be at least 10 acres and developed as a unified planned development.
  - The requested RPD comprises 788± acres.
- 2. Development must have direct access to an arterial road.
  - The MCP depicts three access points to North River Road, a countymaintained arterial.<sup>51</sup>
- 3. Development must provide connection to public water and sewer services.
  - The property lies within the County water/wastewater service areas. Developer must extend lines to serve the project. A condition of approval ensures Applicant constructs the infrastructure necessary to support the requested density.<sup>52</sup>
- 4. Development is clustered to maintain large, contiguous tracts of open space and protect environmentally sensitive areas. To comply with this criterion, a minimum of 60% open space is required, of which 50% must be indigenous preserve.
  - o The RPD reserves 61% of its land area for open space.
- 5. Creation, preservation, or restoration of indigenous Rare and Unique upland habitats must meet four technical criteria relating to open space dimension, soil composition, ecological restoration plans, and conservation easement recordation.

<sup>51</sup> Lee Plan Map 3-B; Staff Report (pg. 1).

<sup>&</sup>lt;sup>47</sup> See Lee Plan Policies 1.4.1, 123.2.17.

<sup>&</sup>lt;sup>48</sup> The Lee Plan imposes quantitative *and* qualitative metrics to development proposals in the Rural category.

<sup>&</sup>lt;sup>49</sup> See Staff Report (Attachment N); Johnson Testimony (Transcript pg. 49-67, 458-75).

<sup>&</sup>lt;sup>50</sup> Lee Plan Policy 123.2.17.

<sup>&</sup>lt;sup>52</sup> See Lee Co. Ord. 24-06 (adopting CPA2022-00019); Condition 4.

 County Environmental Staff provided detailed analysis of the request for each of the four criteria. Conditions of approval ensure compliance before the county grants additional density.<sup>53</sup>

# Compatibility

The Hearing Examiner must evaluate zoning requests for compatibility with surrounding land uses and community character.<sup>54</sup> Rezoning requests are determined on a case-by-case basis considering the uses permitted by the Lee Plan and the nature of the surrounding area.<sup>55</sup>

The LDC defines *compatible* as the state wherein two land uses/zoning districts exhibit either: (1) a positive relationship based on fit, similarity, or reciprocity of characteristics; or (2) a neutral relationship based on a relative lack of conflict or a failure to communicate negative/harmful influences on one another.<sup>56</sup>

Members of the public found the proposed lot sizes to be incompatible with historic development patterns.<sup>57</sup> However, the Community Plan does not impose minimum lot sizes and the Lee Plan incentivizes clustered development patterns to preserve open space in the Rural category.<sup>58</sup>

The Lee Plan protects existing residential areas from encroachment of *uses* deemed destructive to the character of the residential environment.<sup>59</sup> <u>The LDC</u> does not require new development to be identical to existing uses.<sup>60</sup> Neither the Lee Plan nor the LDC require density of adjacent properties to match.<sup>61</sup>

<sup>&</sup>lt;sup>53</sup> See Staff Report (pg. 4, Attachment G & N); Conditions 6, 8-10. Applicant's expert ecologist testified as to the project meeting criteria 4-5. Johnson Testimony (Transcript pg. 49-67, 458-74). See also Crespo Testimony (Transcript pg. 111-13); Danley Testimony (Transcript pg. 121-22).

<sup>&</sup>lt;sup>54</sup> FLA. STAT. §163.3164(9) (2024). The County evaluates compatibility during the zoning process. LDC §34-145(d), §34-411(c); The Lee Plan provides guideposts to measure compatibility, particularly adjacent to established residential development. See Lee Plan Policies 5.1.5, 135.9.5, 135.9.6.

<sup>55</sup> LDC §34-413.

<sup>&</sup>lt;sup>56</sup> LDC §34-2.

<sup>&</sup>lt;sup>57</sup> Public Testimony (Transcript pg. 142-458).

<sup>&</sup>lt;sup>58</sup> Applicant provided substantial evidence and testimony demonstrating consistency with Lee Plan Policy 29.2.2. Crespo Testimony (Transcript pg. 89-101); Applicant Ex. 1 (slide 91-101). Danley Testimony (Transcript pg. 125-26). The Community Plans permit clustered development and recognize well-planned subdivisions may be woven into the fabric of the Community without detriment. Lee Plan Objectives 27.1, 29.2, Policies 27.1.1, 27.1.2, 29.2.1.

<sup>&</sup>lt;sup>59</sup> Lee Plan Policy 5.1.5, 135.9.5.

<sup>&</sup>lt;sup>60</sup> The plain language of the LDC does not define "compatible" to mean "identical." Id.

<sup>&</sup>lt;sup>61</sup> Residential land uses are inherently compatible with other residential land uses. Lee Plan Policy 5.1.5. A plain reading reveals this policy aims to protect residents from potentially harmful "uses," such as commercial or industrial projects infringing on residential communities. In this case, proposed single- and two-family residential uses are facially consistent with this policy.

Applicant seeks to rezone the property to a planned development district.<sup>62</sup> Planned development zoning is appropriate because it offers flexibility in project design while still implementing the goals, objectives, and policies of the Lee Plan.<sup>63</sup>

Conditions of approval integrate the project with surrounding uses through screening/buffering, open space, and landscape design.<sup>64</sup> These design elements achieve compatibility with surrounding development patterns.

# Continuation of Approved Development Patterns

There are similar planned developments near the site. 65 The Board approved Babcock MPD across North River Road to develop up to 1,630 dwelling units and 1,170,000 square feet of non-residential uses including 600 hotel rooms. 66 Babcock MPD reserves large open spaces and preserves environmentally sensitive lands by clustering development within the site. Owl Creek RPD abuts to the west and permits 380 units also implementing clustered development. Both projects were designed to exercise similar density incentives as the request.

The Lee Plan encourages a diverse mix of housing options.<sup>67</sup> The RPD furthers emerging development patterns that include single-family homes on acreage and subdivisions on smaller lots.<sup>68</sup>

By clustering development on smaller lots, the RPD is able to devote over 60% of the site to open space. Large tracts of native vegetation surround development areas, buffering adjacent land uses.<sup>69</sup>

A hallmark of maintaining compatibility in the Community is to maintain existing patterns of setbacks from North River Road. To Setbacks and landscaping with canopy trees preserve rural vistas. The RPD employs this design feature, exceeding roadside landscaping approved in the Owl Creek and Babcock PDs. To

63 Lee Plan Glossary; LDC §34-612(2), §34-935. Babcock property is in the New Community future land use category.

<sup>62</sup> LDC §34-931(b), §34-932.

<sup>&</sup>lt;sup>64</sup> LDC §34-612(2). Another purpose is to further Lee Plan goals while providing flexibility in development design.

<sup>&</sup>lt;sup>65</sup> The adjacency and proximity of planned developments assuages spot zoning concerns expressed during public comment.

<sup>&</sup>lt;sup>66</sup> See Staff Report (Attachment K, Z-17-026 approved February 7, 2018). Lee Plan Objective 29.9, Policies 29.9.1, 29.9.2.

<sup>&</sup>lt;sup>67</sup> Lee Plan Policy 5.1.5; Danley Testimony (Transcript pg. 129); Staff Ex. 3 (slide 18).

<sup>&</sup>lt;sup>68</sup> The Board must evaluate compatibility with surrounding land uses and community character. Lee Plan Objective 2.1 and Policy 2.2.2. There are single-family subdivisions on smaller lots in proximity to the site. Most notably, Owl Creek RPD and Babcock Ranch MPD.

<sup>69</sup> Lee Plan Goal 77, Objectives 77.1, 77.3, Policies 5.1.5, 29.2.2, 77.3.1, 77.3.4.

<sup>70</sup> Lee Plan Policy 27.4.1.

<sup>&</sup>lt;sup>71</sup> Lee Plan Goals 27, 29, 77, Objectives 29.1, 29.2, Policies 29.1.1, 29.1.3; See also LDC §33-1673.

<sup>&</sup>lt;sup>72</sup> See Staff Report (Attachments K-L).

Proposed buffers with no opacity and substantial setbacks preserve the rural aesthetic along North River Road.

The Hearing Examiner finds the proposed RPD complies with Lee Plan directives to protect the rural character of the Community because the Plan encourages clustered development to preserve open space.<sup>73</sup>

# Environmental/Natural Resources74

Planned development design should reflect creative use of open space.<sup>75</sup> Developers must protect and preserve natural site features.<sup>76</sup> Rezoning requests may not adversely affect environmentally critical/sensitive areas or natural resources.

In its natural state, the property hosted two tributaries with flow-ways to the Caloosahatchee River and a sizeable marsh. The site has historically been used for agricultural pursuits, mostly logging and cattle grazing. Significant ditching necessary to support agricultural operations caused Otter Creek to cease function as a tributary or connect to Trout Creek. Spoil material from Caloosahatchee River dredging deposited on the site in the 1960s-70s eradicated the marsh. Cattle demands led to several ponds peppered around the property. Experts agree the site is no longer pristine environmental land as a result of these actions.

Although the site has been impacted by agriculture, it contains pockets of natural resources worthy of preservation. 80 The ecologist estimates 9% of the property contains indigenous vegetation, consisting of isolated wetlands and rare/unique uplands with Live Oak and Cabbage Palm hammocks.81

The plan of development preserves/restores wetlands and creates 420.2± acres of Rare and Unique uplands.<sup>82</sup> Development impacts to wetlands will be limited to 18.85 acres.<sup>83</sup> Proposed restoration activities will re-establish the site's

<sup>&</sup>lt;sup>73</sup> Lee Plan Goals 27, 29, Policies 2.2.1, 5.1.5, 27.1.1, 27.1.2, 29.1.1, 29.2.1.

<sup>&</sup>lt;sup>74</sup> Shane Johnson, Senior Ecologist, Passarella & Associates, Inc. provided detailed testimony on the historical, present, and proposed environmental condition of the property. Johnson Testimony (Transcript pg. 49-67, 458-74); Applicant Ex. 1 (slides 40-53).

<sup>75</sup> LDC §34-411(h).

<sup>&</sup>lt;sup>76</sup> LDC §34-411(g).

<sup>&</sup>lt;sup>77</sup> Id. at 49-50.

<sup>&</sup>lt;sup>78</sup> *Id.* at 50.

<sup>&</sup>lt;sup>79</sup> Johnson Testimony (Transcript pg. 52); Staff Report (Attachment N: Environmental Staff Report). Mr. Johnson estimates 91% of the land is disturbed nonindigenous areas. Transcript at pg. 53.

<sup>80</sup> Lee Plan Policy 77.3.3.

<sup>&</sup>lt;sup>81</sup>Johnson Testimony (Transcript pg. 53-54, 58).

<sup>82</sup> Lee Plan Policy 77.3.1.

<sup>&</sup>lt;sup>83</sup> See Condition 9. Hearing testimony reflects impacted wetlands are very low quality. Johnson Testimony (Transcript pg. 467-68). Mr. Danley further noted that site design avoids development in Coastal High Hazard Areas, consistent with Lee Plan Goal 101 and attendant policies. Transcript pg. 123-24, 128; Staff. Ex. 3 (slide 13).

environmental integrity. 84 The MCP devotes 61% of the property to open space, 50% of which is native/indigenous vegetation. 85 Conditions of approval require Applicant to provide conservation easements over areas used to achieve density incentives. 86

The MCP preserves two sites of archeological significance within open space/preserve areas.<sup>87</sup>

Applicant's protected species surveys identified several listed animal and plant species. 88 Development must abide by a detailed Protected Species Management and Human-Wildlife Coexistence Plan imposing protective measures, signage, and educational programs. 89 Restored lands provide on-site interconnections for wildlife movement. 90

Applicant's civil engineer detailed pre- and post-development drainage conveyances. Stormwater management design avoids disruption to upstream or downstream residents. Restored flow-ways/wetlands improve the function of conveyances, allowing offsite flows to pass through, re-establishing historical drainage patterns. Onsite wet and dry detention together with preserves treat/filter storm water flows prior to discharging off-site. Proposed conditions require a unified maintenance entity subject to regulatory oversight to ensure perpetual operation of the stormwater management system.

<sup>&</sup>lt;sup>84</sup> Conditions of approval require development order plans to reflect 420.2 acres of restoration/preservation in detail. Condition 6; Lee Plan Objective 29.7, Policies 29.7.2, 123.2.9.

<sup>85</sup> Crespo Testimony (Transcript pg. 22); Lee Plan Goal 77.

<sup>&</sup>lt;sup>86</sup> Lee Plan Objectives 27.3, 29.7, Policy 29.7.2; Conditions 3, 8-9. The County or other public agency will have third party enforcement rights over conservation easements.

87 Lee Plan Policy 143.2.2.

<sup>&</sup>lt;sup>88</sup> See Staff Report (Attachment N, Ex. A: Protected Species Survey prepared by Passarella & Associates, Inc., revised May 2023).

<sup>&</sup>lt;sup>89</sup> Lee Plan Policies 123.3.3, 123.8.1, 123.10.2; See Staff Report (Attachment N, Ex. B: Protected Species Management and Human-Wildlife Coexistence Plan prepared by Passarella & Associates, Inc., revised April 2024).

<sup>&</sup>lt;sup>90</sup> Lee Plan Policy 27.4.3. Mr. Johnson clarified on rebuttal that the property is bounded by North River Road and the Caloosahatchee River, so there are no existing wildlife corridors to preserve. Further, the vast majority of the site is not habitable for animal species, though the creation of rare/unique uplands will provide greater habitat. Johnson Testimony (Transcript pg. 458-74).

<sup>&</sup>lt;sup>91</sup> Applicant's civil engineering expert is Brandon Frey, P.E., J.R. Evans Engineering, P.A. Frey Testimony (Transcript pg. 67-80, 509-19); Applicant Ex. 1 (slides 57-58).

<sup>92</sup> Frey Testimony (Transcript pg. 77-78, 512-15); Lee Plan Policy 61.2.1.

<sup>93</sup> Frey Testimony (Transcript pg. 70-71, 75-80, 512-14). *See generally* Lee Plan Goals 59, 60, 61, Policies 59.1.6, 60.4.1, 60.4.3, 60.4.5, 61.2.4, 61.3.3, 61.3.6, 61.3.8, 61.3.12, 77.3.4.

<sup>&</sup>lt;sup>94</sup> Frey & Martin Testimony (Transcript pg. 69-71, 80-88, 509-19); Lee Plan Goals 60, 61, 125, Objectives 60.4, 61.2, Policies 60.4.1, 60.4.5, 61.3.11, 125.1.1, 125.1.2.

<sup>&</sup>lt;sup>95</sup> Applicant must obtain permits from the South Florida Water Management District as well as Lee County. A unified entity such as a HOA or CDD will have perpetual maintenance responsibilities over the water management system. There are various mechanisms in place through development approvals to ensure perpetual maintenance.

The introduction of sanitary sewer and centralized water service, together with the restoration of flow-ways/open space areas, will improve water quality and nutrient uptake on the site. 96 Recommended conditions require a Surface Water and Groundwater Quality Monitoring Plan to ensure water levels/quality stay within permissible ranges.97

Proposed lake system design must meet County, State, and Federal standards for water retention, flood management, and water quality.98 The system directs surface waters to preserve areas to provide multiple levels of treatment and water quality storage before discharging off-site.99

Expert testimony confirms there will be a significant reduction in groundwater use over current agricultural operations. Projections indicate reductions of 50-95% of water usage and nutrient loading. These reductions in water use will greatly benefit a community reliant on wells. 100 The proposed centralized irrigation system further protects groundwater from indiscriminate watering by residents. 101

Applicant established the request improves site hydrology and protects water quality by: introducing sanitary sewer, implementing an engineered water management system, discontinuing livestock grazing, and centralizing irrigation.

Benefits of the proposed RPD over current conventional AG-2 zoning include:

➤ Eliminating nearly 800 homes reliant on private well and septic systems;<sup>102</sup>

<sup>&</sup>lt;sup>96</sup> Applicant Ex. 1 (slides 62-68); Lee Plan Goal 125, Policies 125.1.1, 125.1.2. The project Hydrologist is Kirk Martin, P.G., Water Science Associates, Martin Testimony (Transcript pg. 82-84, 474-87).

<sup>&</sup>lt;sup>97</sup> See Condition 13; Applicant Ex. 1 (slide 63). Seven monitoring stations will be sampled biannually with reporting requirements to regulatory agencies.

<sup>98</sup> Martin Testimony (Transcript pg. 81).

<sup>100</sup> Testimony confirmed sanitary sewer system reduces nitrogen by 89% over septic tanks with overall reduced nutrient loading of 50% to 95%. Id. at 83-84; Applicant Ex. 1 (slide 66-67). Mr. Martin estimates reduced water usage of 50%. See Id.

<sup>101</sup> Mr. Martin detailed benefits of a centralized sewer connection over septic tanks, including increased buffering, more preserve area, greater wildlife habitat, improved floodplain management, increased stormwater storage and treatment. Transcript at 83. Mr. Martin provided extensive testimony on the project's reduced irrigation system and demands. Irrigation will be limited to approximately 12 percent of the property and will be sourced entirely on-site. Id. at 84-86, 476-77. Mr. Martin further testified modeling reported to South Florida Water Management District confirmed less than 0.1 feet of drawdown at the property boundary, concluding the project's irrigation system presents no off-site impacts. Id. at 484. Lee Plan Policy 61.1.6

<sup>102</sup> The site is 788± acres but the record reflects 771.07 acres may be developed. See Staff Report (Attachment H). The Rural land use classification permits residential development at a base density of one unit per acre and Wetlands permit one unit per 20 acres. Lee Plan Policies 1.4.1, 1.5.1. If the property were subdivided into one-acre lots under the existing agricultural zoning designation, there would be no dedicated water management plan to address sheet flow from the north or to improve water quality of surface water runoff. Septic tanks would serve the dwelling units, but there could be no requirement for upgraded/enhanced septic systems. Finally, there would be no requirement for buffers or preservation of native vegetation. Applicant presented a rendering to illustrate what one-acre lots might produce on the site. Applicant Ex. 5 (slide R7).

- Protecting nearby Wellfield Protection areas;
- > Improving flood plain management, increasing water storage, and reducing runoff:
- ➢ Providing 483.6 acres of open space and 420.2 acres of preserves, or 61% and 50% of the total RPD area, respectively;<sup>103</sup>
- ➤ Preserving 26.03 acres, restoring 2.68 acres, and creating 300.01 acres of indigenous Rare and Unique Upland Habitat;
- > Removing exotic vegetation;
- Conserving 51.46 acres of Wetlands;
- Implementing a Protected Species Management and Plan;
- Imposing a centralized irrigation system to limit water withdrawals;
- Connecting to sanitary sewer system to reduce nutrient loading by 50-95% over septic tanks:
- ➤ Centralizing potable water service to reduce water usage by 50% over private wells; 105
- > Establishing Surface Water and Groundwater Monitoring Plans; and
- Protecting Trout Creek and Otter Creek floodplains.

The Hearing Examiner finds the proposed RPD will not harm environmentally critical/sensitive areas or natural resources. 106

# **Transportation**

Planned developments must have access to roads with sufficient capacity to support proposed intensity.<sup>107</sup> Existing regulations or conditions of approval must address expected impacts on transportation facilities.<sup>108</sup>

The MCP depicts three access points on North River Road. North River Road is a County maintained two-lane arterial road. 109 S.R. 31, a State maintained two-lane arterial road, intersects North River Road to the west.

The Florida Department of Transportation ("FDOT") governs S.R. 31 and is overseeing improvements to widen the roadway to four lanes and improve the North River Road/S.R. 31 intersection. 110 Improvements are underway and slated

\_\_

<sup>&</sup>lt;sup>103</sup> Preserve acreage is included in open space calculations. The MCP reflects 483.6 acres of open space, of which 420.2 acres are preserved. Site design yields 40% development and 60% open space. Half of the open space will be vegetated.

<sup>104</sup> Applicant Ex. 1 (slide 66).

<sup>&</sup>lt;sup>105</sup> *Id.* at 67.

<sup>&</sup>lt;sup>106</sup> Lee Plan 125.1.2; LDC §34-145(d)(4).

<sup>&</sup>lt;sup>107</sup> LDC §34-145(d)(4)(a)(1)(d); §34-411(d)(1).

<sup>108</sup> LDC §34-145(d)(4)(a)(1)(e); §34-411(d)(2).

<sup>109</sup> Lee Plan Map 3-B.

<sup>&</sup>lt;sup>110</sup> Babcock Ranch Community Independent Special District manages the design/build project for improvements to S.R. 31 from S.R. 78 to Babcock Ranch. Treesh Testimony (Transcript pg. 44-45); Applicant Ex.1 (slide 37); Staff Report (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024).

for completion in 2026.<sup>111</sup> Initial design expands S.R. 31 to four lanes, but the project can accommodate six lanes in the future.<sup>112</sup> Improvements are also programmed for S.R. 31 south of S.R. 78/Bayshore Road to S.R. 80/Palm Beach Boulevard.<sup>113</sup>

Applicant's transportation experts prepared a Traffic Impact Statement ("TIS") consistent with County requirements. The TIS concluded project traffic will not significantly impact surrounding roadways. A "significant impact" is found when a proposed rezoning generates traffic that reduces Level of Service ("LOS") volumes of affected roads by at least 10%. The TIS concluded project traffic will not significantly impact surrounding roadways. The TIS concluded project traffic will not significantly impact surrounding roadways. The TIS concluded project traffic will not significantly impact surrounding roadways. The TIS concluded project traffic will not significantly impact surrounding roadways. The TIS concluded project traffic will not significantly impact surrounding roadways.

FDOT programmed improvements along the S.R. 78 and S.R. 31 corridors will increase carrying capacity to accommodate anticipated growth. Testimony confirmed road improvements should be completed prior to project build-out. The TIS concludes no County road improvements are necessary to accommodate the projected trip generation. The RPD will mitigate transportation impacts with road impact fees.

While there are no plans to widen North River Road, several factors are expected to improve road conditions. 121 FDOT is improving the North River Road/S.R. 31

<sup>&</sup>lt;sup>111</sup> See Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023); Bykau Testimony (Transcript pg. 496-497); Staff Ex. 4.

<sup>&</sup>lt;sup>112</sup> See Id.; See Staff Report (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024).

<sup>&</sup>lt;sup>113</sup> Treesh & Bykau Testimony (Transcript pg. 44-49, 497-498). Residents questioned the timing and status of this project during public testimony. The Parties addressed the matter on rebuttal to confirm FDOT has completed the PD&E study and funded the project with an estimated commencement date of 2029. Applicant Ex. 5 (e-mail from Patrick Bateman, P.E., FDOT Project Manager, dated 9/4/24); Staff Ex. 4 (e-mail from Jillian Scholler, P.E., LDOT Deputy Director); Treesh & Bykau Testimony (Transcript pg. 44-49, 496-506).

<sup>&</sup>lt;sup>114</sup> Lee Co. Admin. Code 13-17; LDC §34-371, §34-373(a)(7). Applicant's transportation experts are Ted Treesh, PTP and Yury Bykau, P.E. with TR Transportation Consultants, Inc.

<sup>&</sup>lt;sup>115</sup> See Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023), (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024).

<sup>&</sup>lt;sup>116</sup> Staff Report (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024, citing Lee Co. Admin. Code 13-17). The definition measures reductions from LOS C. The road segment of S.R. 31 south of S.R. 78 was projected to operate at a LOS F with the project, but transportation experts for the Parties concluded FDOT improvements address the projected capacity deficiency. See Staff Report (Attachments P & Q); Treesh & Bykau Testimony (Transcript pg. 44, 48-49, 496-507).

<sup>&</sup>lt;sup>117</sup> Treesh, Bykau, and Danley Testimony; Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023), (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024).

<sup>&</sup>lt;sup>118</sup> Bykau Testimony (Transcript pg. 497-500).

<sup>&</sup>lt;sup>119</sup> See Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023).

<sup>&</sup>lt;sup>120</sup> Lee Plan Policies 38.1.1, 38.1.5, LDC §§2-261 *et. seq. See* Staff Report (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024). Applicant estimates the project will generate \$10.3 million in road impact fees. See Applicant Ex. 5; Bykau Testimony (Transcript pg. 503-04).

<sup>&</sup>lt;sup>121</sup> The record contains references to North River Road designation as a "constrained road." A constrained road refers to roadway segments that cannot/will not be widened. North River Road is not designated as a constrained road in the Lee Plan but is shown as such in the 2045 MPO Plan and adopted by reference in Lee Plan Policy 36.1.1. Bykau and Danley Testimony (Transcript pg. 500-03, 563).

intersection to facilitate traffic circulation. Site-related improvements required by the Owl Creek and Babcock PDs may also improve conditions on North River Road.

In sum, Applicant demonstrated the RPD has sufficient access to an arterial roadway proximate to a State arterial road undergoing significant improvements. Transportation studies concluded project traffic will not significantly impact surrounding roadways. Applicant must provide further traffic analysis and address site-related improvements during development order review. 124

# Public/Urban Services

Public/urban services are the facilities, capital improvements, and infrastructure necessary to support development. The Lee Plan requires an evaluation of available urban services during the rezoning process.

Despite the property's non-urban designation, it will have access to public services and infrastructure. The project will connect to Lee County Utilities' potable water supply, eliminating the need for individual wells. The RPD will also connect to FGUA sanitary sewer services. Sanitary sewer service eliminates the possibility of septic tank discharges affecting groundwater and the Caloosahatchee River. 129

Fire and emergency services will be provided by Bayshore Fire Protection and Rescue Service District. The Babcock Development Agreement requires conveyance of a parcel for a fire/EMS station on Shirley Lane. This future station is within two miles of the site. 130 Applicant asserts EMS services will be operational at the station before residents occupy the RPD. 131 The graphic below depicts the location of the station relative to the property.

<sup>127</sup> Danley Testimony (Transcript pg. 122-23); Staff Ex. 3 (slide 10, 12).

\_

<sup>&</sup>lt;sup>122</sup> Current design plans indicate FDOT selected a Restricted Crossing U-turn ("RCUT") design for this intersection. RCUT intersections route traffic to right-turns with designated median openings for travelers seeking to go left. Treesh Testimony (Transcript pg. 45-46); Applicant Ex. 1 (slide 37).

<sup>&</sup>lt;sup>123</sup> See Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023).

<sup>&</sup>lt;sup>124</sup> Lee Plan Objective 39.1 and Policy 39.1.1, LDC §10-287. Site related improvements such as turn lane installations will be determined at the development order stage based upon specific development parameters.

<sup>&</sup>lt;sup>125</sup> Lee Plan Glossary: Public services include public water/sewer, paved streets/roads, public transit, parks/recreation facilities, urban levels of police, fire, and emergency services, urban surface water management, schools, employment, industrial, and commercial centers, institutional, public, or administrative facilities, community facilities such as senior citizens centers, libraries, and community centers.

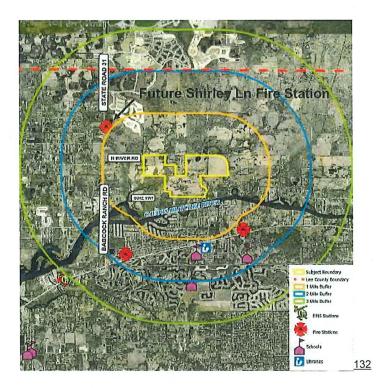
<sup>&</sup>lt;sup>126</sup> Lee Plan Policy 2.2.1.

<sup>&</sup>lt;sup>128</sup> Applicant will fund extension of a water main to serve the property. The water line extension will accommodate fire hydrants along its length, improving fire safety within the North Olga planning community. Developer will also fund extension of sanitary sewer service to the property.

<sup>&</sup>lt;sup>129</sup> Martin Testimony (Transcript pg. 82-84, 474-87); Applicant Ex. 1 (slide 64-65).

<sup>&</sup>lt;sup>130</sup> Crespo Testimony (Transcript pg. 19, 106, 552-54).

<sup>131</sup> Id. at 19, 552-53.



Notably, <u>Applicant proposes to nearly double the number of fire hydrants</u> in the area, <u>dramatically improving public safety</u> by providing a reliable water source for fire suppression.<sup>133</sup>

The Lee County Sheriff provides law enforcement services to the area from its North District offices.

The Lee Plan designates North River Road as a future bike/pedestrian facility. 134 <u>Applicant must install an eight-foot shared use path</u> consistent with the Community Plan. 135 The path constitutes approximately two miles along the RPD's North River Road frontage. 136

Development will be subject to road, park, school, fire, and EMS impact fees. 137

<sup>132</sup> Applicant Ex. 1 (slide 13).

<sup>&</sup>lt;sup>133</sup> Frey Testimony (Transcript pg. 73-74); Applicant Ex. 1 (slide 60). Testimony reflects there are currently only four hydrants in this area; Applicant proposes seven hydrants.

<sup>&</sup>lt;sup>134</sup> Lee Plan Map 3-D.

<sup>&</sup>lt;sup>135</sup> Crespo & Frey Testimony (Transcript pg. 22, 73); Applicant Ex. 1 (slide 59); LDC §10-256; See also Lee Plan Policies 27.4.1, 27.4.2, 27.4.4.

<sup>&</sup>lt;sup>136</sup> *Id.* at 73. <sup>137</sup> LDC §§2-261 *et seg.*, §§2-301 *et seg.*, §§2-341 *et seg.*, §§2-381 *et seg.* §§2-400 *et. seg.* 

# LDC

Rezoning applications must meet the LDC and other County regulations or qualify for deviations. Applicant must also comply with the North Olga Planning Community's adopted supplemental regulations. These regulations include community review of zoning and development order applications, architectural and design standards, enhanced landscaping, tree preservation, and restricted signage. Applicant seeks five deviations from the LDC.

#### Deviations

<u>The proposed RPD includes five deviation requests</u>. 141 "Deviations" are departures from the land development regulations. 142

The Hearing Examiner's standard of review for deviations requires a finding that the deviation:

- 1. Enhances objectives of the planned development; and
- 2. Protects public health, safety, and welfare. 143

The requested deviations pertain to access,<sup>144</sup> roadway plantings,<sup>145</sup> lake bank slopes,<sup>146</sup> equipment pad setbacks,<sup>147</sup> and drainage easement width.<sup>148</sup> Most deviations are sought to limit the development footprint and avoid crossing Trout Creek.<sup>149</sup> Applicant offered testimony and evidence in support of the requested

<sup>&</sup>lt;sup>138</sup> LDC §34-145(d)(4)a.1(b).

<sup>&</sup>lt;sup>139</sup> See generally LDC ch. 10, ch. 34, and §§33-1661 et. seq. Lee Plan Policy 29.1.3.

<sup>&</sup>lt;sup>140</sup> LDC §§33-1661 et seq.

<sup>&</sup>lt;sup>141</sup> Applicant Ex. 1 (slides 15-19).

<sup>&</sup>lt;sup>142</sup> LDC §34-2.

<sup>&</sup>lt;sup>143</sup> LDC §34-377(a)(4).

<sup>&</sup>lt;sup>144</sup> Deviation 1 seeks relief from the LDC §10-291(3) requirement for multiple access points to permit the development pod west of Trout Creek a single access. Justification for this deviation includes eliminating crossing the creek and allowing for greater area for preservation of environmentally and archaeologically sensitive lands. See Applicant Ex. 1 (slide 15).

<sup>&</sup>lt;sup>145</sup> Deviation 2 seeks relief from the LDC §33-1673 buffer requirements to permit Applicant to implement native restoration work along North River Road. The spirit of the LDC continues to be met through enhanced plantings, preserving the intent of the buffer with native trees to preserve the visual experience along the roadway for the traveling public. See Applicant Ex. 1 (slide 16). This request requires Applicant to meet LDC chapter 34 variance criteria, which was provided in the record. See Staff Report, Transcript pg. 534-36, Lee Plan Policies 27.4.1, 29.1.4.

Deviation 3 seeks relief from LDC §10-329(d)(4) lake bank slope requirements to reduce the development footprint by allowing a 4:1 slope. Turf reinforcement mats and enhanced herbaceous plantings mitigate erosion potential. See Applicant Ex. 1 (slide 17).

Deviation 4 allows equipment pad encroachments into side yards. This deviation is routinely granted and LDC amendment is expected to codify this standard County-wide. See Crespo and Danley Testimony (Transcript pg. 27, 143); Applicant Ex. 1 (slide 18).

<sup>&</sup>lt;sup>148</sup> Deviation 5 reduces the maintenance easement width along the western development pod to permit greater land area for preservation and restoration activities. Applicant Ex. 1 (slide 19); Crespo Testimony (Transcript pg. 28-29).

<sup>&</sup>lt;sup>149</sup> Crespo Testimony (Transcript pg. 24-29); Applicant Ex. 1 (slides 15-19).

deviations based on the standard of review set forth in the LDC. 150 Staff found all deviations met LDC criteria for approval.

The Hearing Examiner agrees with staff's recommendations and finds, as conditioned, the requested deviations enhance the RPD and protect public health, safety, and welfare. 151

# **Public Participation**

Applicants seeking rezoning in Northeast Lee County must conduct public information sessions in Alva and North Olga. 152 Applicant held multiple community meetings in satisfaction of Lee Plan and LDC requirements. 153

At hearing, the Hearing Examiner accepted testimony and evidence from the public consistent with the LDC. 154 Over a two-day period, 36 Participants offered testimony and numerous exhibits. 155

Although some speakers were in support, most participants were unified in opposition to the request. Concerns primarily related to increased traffic, environmental impacts, and loss of rural character.

Expert testimony on the record confirms project traffic maintains acceptable levels of service, proposed restoration/preservation measures improve environmental conditions, and significant benefits inure from utilizing sanitary sewer rather than hundreds of homes reliant on well/septic systems.

Inconsistency with rural character was a recurrent theme. However, both Staff and the Applicant demonstrated the request complies with adopted Community Plans that envision clustered development to maximize open spaces. The RPD achieves this vision by preserving 61% of its acreage and limiting development to three pods. Moreover, the Board approved the Owl Creek and Babcock projects with similar development designs, confirming consistency with emerging development patterns. The Lee Plan's grant of density in exchange for restoring/preserving/ creating environmentally sensitive lands is an expression of the Board's legislative intent to expand development options in North Olga.

<sup>155</sup> Public Testimony (Transcript pg. 142-260, 265-457).

<sup>&</sup>lt;sup>150</sup> LDC §34-145(d)(4)a.2(c), §34-377(a)(4); See also LDC §33-1665.

<sup>&</sup>lt;sup>151</sup> LDC §34-373(a)(9), §34-377(a)(4).

<sup>&</sup>lt;sup>152</sup> See Lee Plan Policies 17.3.5, 27.1.6, 27.1.8; LDC §33-1663.

<sup>&</sup>lt;sup>153</sup> Lee Plan Policies 17.3.5, 27.1.8: LDC §33-1663; Crespo Testimony. Applicant presented the application to the North Olga and Alva communities on the following dates: North Olga Community Planning Panel -January 26, 2023 and June 20, 2023, and in Alva on March 14, 2023. Staff Report (Attachment J). It is noteworthy that applications for local development orders are also subject to community review in the North Olga Planning Community pursuant to LDC §33-1663(a)(1). Danley Testimony (Transcript pg. 138); Staff Ex. 3 (slide 20).

<sup>154</sup> LDC §34-231(c); Lee Co. Admin. Code 2-6 §2.3. Hearing participants were afforded notice of the proceedings and an opportunity to be heard. See Staff Ex. 2.

Applicant presented several modifications to the proposed development plan in response to residents' concerns, including:

- Limiting the location of two-family attached homes;
- > Increasing minimum lot sizes;
- ➤ Establishing a 170-foot setback and 250-foot setback on Duke Highway and North River Road, respectively;
- > Adding school bus stops; and
- > Imposing lighting restrictions to address DarkSky concerns. 156

In addition, many concerns will be addressed during development order permitting and by the recommended conditions of approval.<sup>157</sup>

If the Board approves the request, the RPD will be subject to additional community meetings during development order review.<sup>158</sup>

# **Conditions**

The County must administer the zoning process so that proposed land uses acceptably minimize adverse impacts to adjacent residential properties and protect County water resources.<sup>159</sup> Conditions must plausibly relate to the project's anticipated impacts and be pertinent to mitigating impacts on public health, safety, and welfare.<sup>160</sup> Accordingly, the proposed RPD will be subject to conditions of approval designed to address the impacts reasonably anticipated from the development.<sup>161</sup>

Proposed conditions of approval govern enhanced buffers, site development parameters, permitted uses, open space compliance, and indigenous preservation.<sup>162</sup>

The School Board anticipates the project will generate 326 school aged children. On remand, Applicant agreed to a condition of approval to provide two school bus stops at the RPD's westernmost access points. As designed, the bus stops will be entirely within the confines of the development and outside the North River Road

<sup>161</sup> LDC §34-83(a)(4)a.3, §34-377(a)(3); Lee Plan Goals 59, 61, 77, Policies 5.1.5, 27.4.2, 60.1.1, 61.3.11.

<sup>&</sup>lt;sup>156</sup> Applicant Ex. 3-5; Rebuttal Testimony (Transcript pg. 458-569).

<sup>&</sup>lt;sup>157</sup> The LDC and proposed conditions of approval require the developer to submit protected species surveys and prepare management plans for wildlife habitat. (Conditions 3, 7, 10, 12,) Conditions of approval impose detailed monitoring of surface and groundwater impacts. (Condition 13).

<sup>158</sup> LDC §33-1663(a)(1).

<sup>&</sup>lt;sup>159</sup> Lee Plan Policies 5.1.5, 29.1.1, 29.2.2, 29.2.3, 135.9.5, 135.9.6; LDC §34-145(d)(4)a.2.(b), §34-377(a)(3), §34-411, and §34-932(c).

<sup>160</sup> LDC §34-932(b).

<sup>&</sup>lt;sup>162</sup> The Parties revised conditions prior to the final day of hearing. Applicant Ex. 3. Staff agreed to remove the proposed transportation tracking condition after deeming it unnecessary and potentially redundant. Danley Testimony (Transcript pg. 139-40).

<sup>&</sup>lt;sup>163</sup> See Applicant Ex. 6: Post-Hearing Written Submissions, (dated Sept. 20, 2024).

right-of-way.<sup>164</sup> Designing the project to accommodate safe school bus access is prudent since the project will generate a significant number of students.<sup>165</sup>

The Hearing Examiner recommends revisions to the proposed wording of conditions and deviation to improve clarity.

# Conclusion

Upon careful consideration and examination of the record, the Hearing Examiner finds the request meets LDC review criteria and, as conditioned, is compatible with surrounding development. Applicant provided competent substantial evidence in support of the rezoning request.

The Hearing Examiner recommends approval of the requested RPD, subject to the conditions set forth in Exhibit B.

# IV. Findings and Conclusions

Based on record testimony and evidence, the Hearing Examiner makes the following findings and conclusions. *As conditioned*, the proposed RPD:

- A. Complies with the Lee Plan. Lee Plan Goals 2, 4, 5, 27, 29, 56, 59, 60, 61, 77, 101, 124, 125, 135; Objectives 1.5, 2.1, 2.2, 4.1, 5.1, 27.1, 27.2, 27.3, 27.4, 27.5, 29.1, 29.2, 29.4, 29.6, 29.7, 56.2, 77.1, 77.3, 135.1; Policies 1.4.1, 1.5.1, 2.1.2, 2.2.1, 5.1.2, 5.1.5, 5.1.6, 27.1.1, 27.1.2, 27.1.6, 27.1.8, 27.3.1, 27.4.1, 27.4.2, 29.1.1, 29.1.3, 29.1.4, 29.2.1, 29.2.2, 29.2.3, 29.2.4, 29.3.4, 29.4.3, 29.5.1, 29.7.2, 39.3.2, 60.4.1, 61.2.1, 67.3.7, 68.3.7, 77.3.1, 77.3.4, 101.1.1, 101.3.2, 123.2.7, 124.1.1, 125.1.1, 125.1.2, 135.1.9, 135.9.5, 135.9.6, Standards 4.1.1, 4.1.2, 4.1.4; Lee Plan Maps 1-A, 1-B, 2-A,3-B, 4-A, 5-A, and Table 1(a).
- B. Meets the LDC and other County regulations or qualifies for deviations. LDC §§33-1661 *et seq.*, §34-145(d), §34-341, §34-378, §34-411, §34-413, § 34-491, §34-612(2), §34-373(a)(9), §34-932, §34-936.
- C. Is compatible with existing and planned uses in the surrounding area. Lee Plan Objectives 2.1, 2.2, 27.1, 27.3, 29.1, 29.2, 29.4, Policies 5.1.5, 29.1.1, 29.1.3, 29.2.1, 29.2.2, 135.9.5, 135.9.6; LDC §34-411, §34-413.
- D. Provides access sufficient to support proposed development intensity. Expected impacts to transportation facilities will be addressed by the conditions of approval and County regulations. Lee Plan Objectives 27.4,

<sup>165</sup> Developing the site to provide safe access to school buses is consistent with the Lee Plan. See Lee Plan Policies 39.3.2, 67.3.7, 68.3.7.

<sup>&</sup>lt;sup>164</sup> See Condition 18; Applicant Ex. 3: Second 48-Hour Letter dated Sept. 17, 2024; Revised MCP stamped Sept. 17, 2024.

- 29.4, 39.1, Policies 27.4.1, 27.4.2, 29.4.3, 38.1.1, 38.1.5, 39.1.1; LDC §2-261 et seq., §10-287, §34-411(d)-(e).
- E. Will not adversely affect environmentally critical/sensitive areas and natural resources. Lee Plan Goals 59, 60, 61, 77, 101, 123, 125, Objectives 27.3, 29.6, 29.7, 60.4, 60.5, 61.2, 61.3, 77.1, 77.3, 123.1, 123.2, 124.1, 126.2, Policies 1.5.1, 27.4.3, 27.7.2, 29.2.1, 29.7.2, 29.1.3, 59.1.6, 60.1.1, 60.4.1, 60.4.2, 60.4.3, 60.4.5, 61.2.4, 61.3.3, 61.3.6, 61.3.8, 61.3.11, 61.3.12, 101.1.1, 101.3.2, 123.2.4, 123.2.6, 123.2.8, 123.2.9, 123.2.11, 123.2.13, 123.2.15, 123.2.17, 123.3.1, 123.3.3, 125.1.1, 125.1.2, 125.1.3, 126.2.1, 143.2.2, Standard 4.1.4; and LDC §34-411(h).
- F. Public services and infrastructure will serve the RPD, notwithstanding its Rural designation. Lee Plan Glossary, Lee Plan Goals 2, 4, 56, Objectives 2.1, 2.2, 4.1, 56.2, Policy 1.4.1, 27.4.2, 29.4.3, 53.1.8, 53.1.9, 56.2.1, 61.1.6, 135.9.7, Standards 4.1.1, 4.1.2; LDC §34-411(d).
- G. The proposed use is appropriate at the proposed location. Lee Plan Goals 2, 5, 27, 29; Objective 29.1, 29.2, Policies 1.4.1, 2.1.1, 2.2.2, 5.1.2, 5.1.5, 27.1.1, 29.1.1, 29.1.3, 29.2.1, 29.2.2, 124.1.1, 135.1.9.
- H. Recommended conditions and County regulations provide sufficient safeguards to protect the public interest and are reasonably related to expected impacts. Lee Plan Policies: 5.1.5, 5.1.6, 27.4.1, 27.4.2, 29.1.1, 29.1.3, 29.2.2, 61.3.3, 61.3.8, 123.2.9, 135.9.6; LDC §34-377(a)(3), §34-411, §34-932.
- I. Requested deviations, as conditioned:
  - 1. Enhance objectives of the planned development, and
  - 2. Protect public health, safety and welfare. Lee Plan Policy 29.1.4, LDC §34-373(a)(9), §34-377(a)(4).

Date of Recommendation: January 10, 2025.

Amánda L. Rivera

Deputy 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**

# RHODES & RHODES LAND SURVEYING, INC.

98100 BONITA GRANDEI DELVEL #107 NAPTEIS, FLORIDA 34155 PEONEI (200) 405-8108 FAX (200) 405-8163

#### PARCEL 1

BEING A PORTION OF SECTION 16 AND 17, TOWNSHIP 43 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCING AT THE NORTHWEST CORNER OF SECTION 16, TOWNSHIP 43 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA; THENCE SOUTH 00°23'30" WEST, ALONG THE WESTERLY SECTION LINE OF SAID SECTION 16 A DISTANCE OF 50.00 FEET TO THE SOUTHERN RIGHT OF WAY LINE OF STATE ROAD NO. 78 (N. RIVER ROAD), ACCORDING THE STATE OF FLORIDA STATE ROAD DEPARTMENT RIGHT OF WAY MAP RECORDED IN SECTION 12560-2604 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA. AND TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED; THENCE ALONG THE SAID SOUTHERLY RIGHT OF WAY OF STATE ROAD NO. 78 THE FOLLOWING 11 COURSES, COURSE (1) SOUTH 89°54'13" EAST, 3,853,85 FEET; COURSE (2) SOUTH 00°05'41" WEST, 25.00 FEET TO A POINT ON A NON-TANGENTIAL CURVE; COURSE (3) SOUTHEASTERLY, 2,144.24 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1,357.40 FEET, THROUGH A CENTRAL ANGLE OF 90°30'30" AND BEING SUBTENDED BY A CHORD THAT BEARS SOUTH 44°39'04" EAST, 1,928.15 FEET; COURSE (4) SOUTH 89°23'49" EAST, 25.00 FEET; COURSE (5) SOUTH 00°36'11" WEST, 451.22 FEET TO A POINT OF CURVATURE; COURSE (6) SOUTHERLY, 291.78 FEET ALONG THE ARC OF A CIRCULAR CURVE. CONCAVE EASTERLY, HAVING A RADIUS OF 1,482.40 FEET, THROUGH A CENTRAL ANGLE OF 11°16'39" AND BEING SUBTENDED BY A CHORD THAT BEARS SOUTH 05°02'09" EAST, 291.31 FEET; COURSE (7) SOUTH 00°30'35" WEST, 269.95 FEET; COURSE (8) NORTH 89°29'25" WEST, 6.10 FEET; COURSE (9) SOUTH 00°31'50" WEST, 163.49 FEET; COURSE (10) SOUTH 89°29'25" EAST, 6.16 FEET; COURSE (11) SOUTH 00°30'35" WEST, 40.31 FEET THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 16; THENCE SOUTH 89°58'44" WEST ALONG THE SAID SOUTH LINE OF SAID SECTION 16, A DISTANCE OF 3,534.32 FEET; THENCE SOUTH 11°37'59" EAST, A DISTANCE OF 129.40 FEET; THENCE SOUTH 38°55'40" EAST, A DISTANCE OF 171.91 FEET; THENCE SOUTH 01°24'18" EAST, A DISTANCE OF 210.70 FEET; THENCE SOUTH 04°12'34" EAST, A DISTANCE OF 885.91 FEET TO A POINT ON A NON-TANGENTIAL CURVE; THENCE SOUTHEASTERLY, 741.98 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 735.02 FEET, THROUGH A CENTRAL ANGLE OF 57°50'17" AND BEING SUBTENDED BY A CHORD THAT BEARS SOUTH 63°49'32" EAST, 710.87 FEET; THENCE SOUTH 00°18'05" WEST, A DISTANCE OF 324.92 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF DUKE HIGHWAY, RIGHT OF WAY MAP DUKE HIGHWAY ACCORDING TO THE PLAT OR MAP RECORDED IN MAP BOOK 2, PAGES 1 THROUGH 9 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND TO A POINT ON A NON-TANGENTIAL CURVE; THENCE ALONG THE SAID NORTHERLY RIGHT OF WAY LINE OF DUKE HIGHWAY THE FOLLOWING 5 COURSES. COURSE (1) SOUTHWESTERLY, 241.09 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 370.00 FEET, THROUGH A CENTRAL ANGLE OF 37°20'01" AND BEING SUBTENDED BY A CHORD THAT BEARS SOUTH 39°14'38" WEST, 236.85 FEET; COURSE (2) SOUTH 20°31'56" WEST, 313.99 FEET TO A POINT ON A NON-TANGENTIAL CURVE; COURSE (3) SOUTHWESTERLY, 328.15 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 270.00 FEET, THROUGH A CENTRAL ANGLE OF 69°38'12" AND BEING SUBTENDED BY A CHORD THAT BEARS SOUTH 55°16'41" WEST, 308.33 FEET; COURSE (4) NORTH 89°54'59" WEST, 2,080.14 FEET; COURSE (5) NORTH 89°36'26" WEST, 2,006.30 FEET; THENCE NORTH 00°26'05" EAST LEAVING THE SAID NORTHERLY RIGHT OF WAY LINE OF DUKE HIGHWAY, A DISTANCE OF 635.18 FEET; THENCE NORTH 89°44'35" WEST, A DISTANCE OF 668.84 FEET TO A POINT ON THE WESTERLY LINE OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 43 SOUTH, RANGE 26 EAST; THENCE NORTH 00°34'39" EAST ALONG THE SAID WESTERLY LINE OF SECTION 17, A DISTANCE OF 1,995,23 FEET TO THE NORTHWEST CORNER OF SOUTHEAST QUARTER OF SECTION 17 ALSO BEING THE CENTER OF SECTION 17; THENCE NORTH 89°58'05" WEST ALONG THE SOUTHERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 17, A DISTANCE OF 2,666.94 FEET TO THE WEST QUARTER CORNER OF SAID SECTION 17: THENCE NORTH 00°23'17" EAST ALONG THE WESTERLY SECTION OF SAID SECTION 17, A

## RHODES & RHODES LAND SURVEYING. INC.

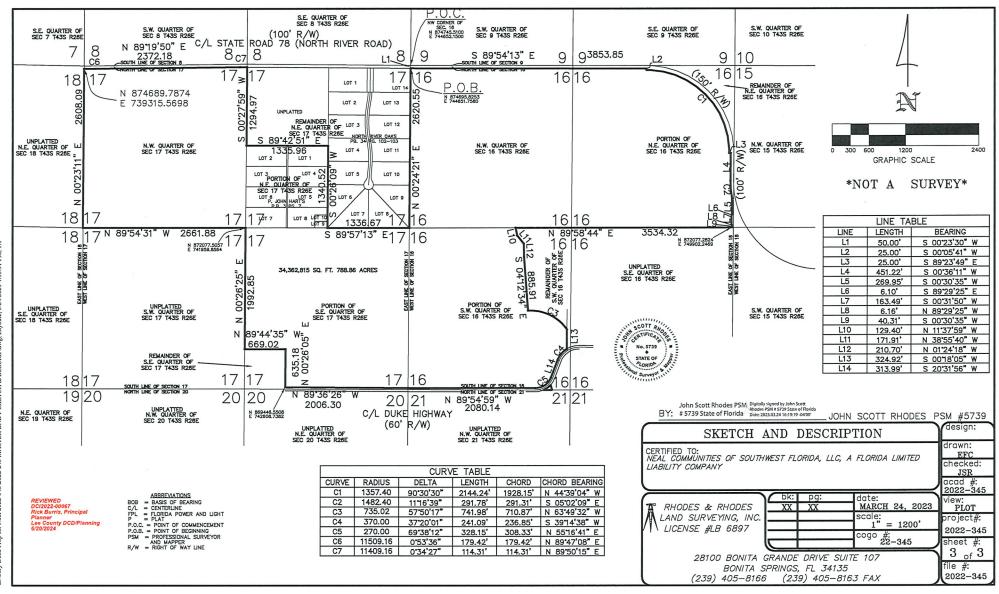
#8100 BONITA GRANDEI DRIVEI #107 NAPTZIS, FLORIDA 34155 PHONEI (909) 405-8106 FAX (909) 405-8163

DISTANCE OF 2,608.51 FEET TO A POINT ON THE SAID SOUTH RIGHT OF WAY LINE OF STATE ROAD 78 AND TO A POINT ON A NON-TANGENTIAL CURVE; THENCE ALONG THE SAID SOUTHERLY RIGHT OF WAY LINE OF SECTION 17 THE FOLLOWING 3 COURSES, COURSE (1) EASTERLY, 179.42 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 11,509.16 FEET, THROUGH A CENTRAL ANGLE OF 00°53'36" AND BEING SUBTENDED BY A CHORD THAT BEARS NORTH 89°47'08" EAST, 179.42 FEET; COURSE (2) NORTH 89°19'50" EAST, 2,372.18 FEET TO A POINT ON A NON-TANGENTIAL CURVE; COURSE (3) EASTERLY, 113.88 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 11,409.16 FEET, THROUGH A CENTRAL ANGLE OF 00°34'19" AND BEING SUBTENDED BY A CHORD THAT BEARS NORTH 89°44'43" EAST, 113.88 FEET TO A POINT ON THE EASTERLY LINE OF NORTHWEST QUARTER OF SAID SECTION 17; THENCE SOUTH 00°26'50" WEST ALONG THE SAID EASTERLY LINE OF THE NORTHWEST QUARTER OF SECTION 17, A DISTANCE OF 1,295.15 FEET TO THE NORTHWEST CORNER OF P. JOHN HART'S, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 3, PAGE 7, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.; THENCE ALONG THE BOUNDARY LINE OF SAID P. JOHN HART'S THE FOLLOWING 2 COURSES, COURSE (1) SOUTH 89°42'51" EAST, 1,336.16 FEET; COURSE (2) SOUTH 00°25'09" WEST, 1,340.40 FEET TO THE SOUTHEAST CORNER OF SAID P. JOHN HART'S AND BEING THE SOUTHWEST CORNER OF NORTH RIVER OAKS ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 34 PAGES 102 AND 103, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.; THENCE ALONG THE BOUNDARY LINE OF SAID NORTH RIVER OAKS THE FOLLOWING 2 COURSES, COURSE (1) SOUTH 89°56'54" EAST, 1,336.09 FEET; COURSE (2) NORTH 00°24'21" EAST, 2,620.55 FEET TO THE POINT OF BEGINNING.

CONTAINING 34,362,815 SQUARE FEET OR 788.86 ACRES, MORE OR LESS.

REVIEWED DCI2022-00067 Rick Burris, Principal Planner Lee County DCD/Planning 6/20/2024

#### DCI2022-00067 Lee County ePlan



Duke Prop for Neal 2022-345/2022-245 MASTER BNDY SKETCH & DESCRIP.dwg, Layout2, 3/24/2023 4:15:31

#### Exhibit A

# RHODES & RHODES LAND SURVEYING, INC.

93100 BONITA GHANDH DHIVH #107 NAPTHS, FLOHIDA 84195 PHONE (909) 405-8106 FAX (909) 405-8168

#### PARCEL 2

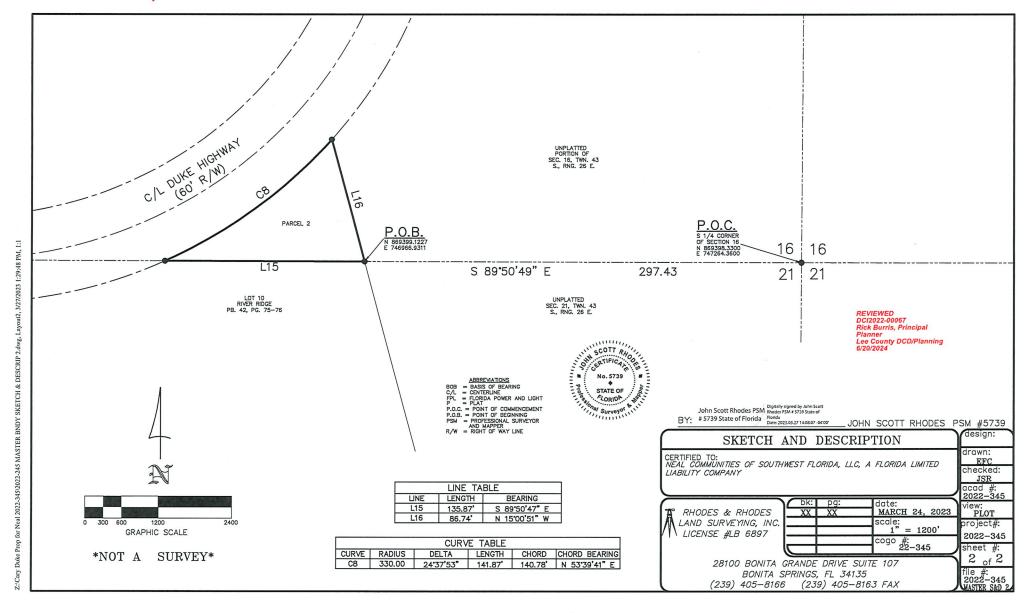
BEING A PORTION OF SECTION 16, TOWNSHIP 43 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

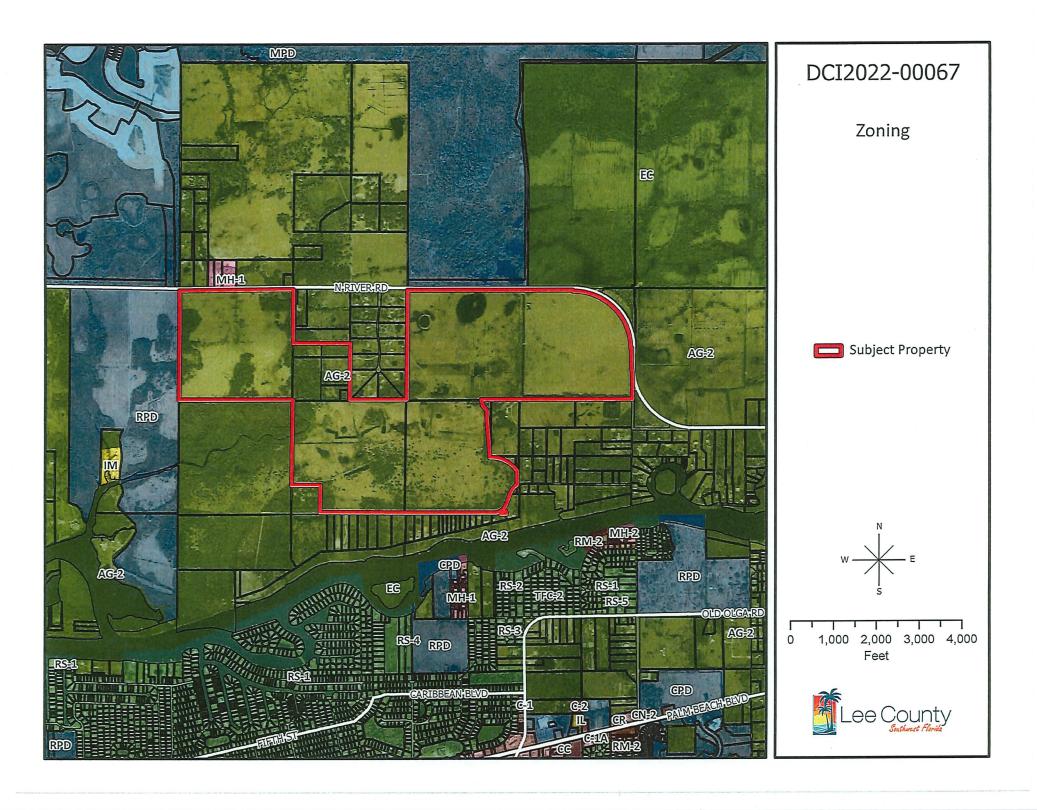
COMMENCE AT THE SOUTH ¼ CORNER OF SECTION 16, TOWNSHIP 43 SOUTH, RANGE 26 EAST, LEE COUNTY, FLORIDA.; THENCE NORTHTH 89°50'49" WEST ALONG THE SOUTHERLY LINE OF SAID SECTION 16, A DISTANCE OF 297.43 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE NORTH 89°50'47" WEST CONTINUING ALONG THE SAID SOUTH LINE OF SECTION 16, A DISTANCE OF 135.87 FEET TO A POINT ON THE SOUTH RIGHT OF WAY OF DUKE HIGHWAY ACCORDING TO THE OFFICIAL RECORDS BOOK 2026 PAGE 2985, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, TO A POINT ON A NON-TANGENTIAL CURVE; THENCE NORTHEASTERLY ALONG THE SAID SOUTHERLY RIGHT OF WAY OF DUKE HIGHWAY, 141.87 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 330.00 FEET, THROUGH A CENTRAL ANGLE OF 24°37'53" AND BEING SUBTENDED BY A CHORD THAT BEARS NORTH 53°39'41" EAST, 140.78 FEET; THENCE LEAVING SAID SOUTHERLY RIGHT OF WAY OF DUKE HIGHWAY, SOUTH 15°00'51" EAST, A DISTANCE OF 86.74 FEET TO THE POINT OF BEGINNING.

CONTAINING 4,973 SQUARE FEET OR 0.114 ACRES, MORE OR LESS.

REVIEWED DCI2022-00067 Rick Burris, Principal Planner Lee County DCD/Planning 6/20/2024

#### DCI2022-00067 Lee County ePlan





#### Exhibit B

# RECOMMENDED CONDITIONS AND DEVIATIONS As revised by the Hearing Examiner

#### CONDITIONS

#### 1. <u>Master Concept Plan (MCP) and Development Parameters</u>

- a. <u>MCP</u>. Development must be consistent with the four-page MCP entitled "Cary + Duke + Povia RPD," prepared by J.R. Evans Engineering, Inc., date stamped September 17, 2024 (Exhibit B1) except as modified by conditions below.
- b. <u>Lee Plan and Land Development Code (LDC)</u>. Development must comply with the Lee Plan and LDC at the time of local development order, except where deviations have been granted herein. Subsequent changes to the MCP may require further development approvals.
- c. <u>Development Parameters</u>. Development is limited to 1,099 dwelling units, amenity areas, and accessory uses.

#### 2. <u>Schedule of Uses and Development Regulations</u>

a. Schedule of Uses

Accessory Uses and Structures

Administrative Offices

Clubs, private

Community Gardens, within the optional amenity areas only

Dwelling Unit -

Single-Family

Two-Family Attached (Limited to the R Tract)

Entrance Gate and Gatehouse

**Essential Services** 

Essential Service Facilities, Group I only

Excavation, Water Retention

Excess Spoil Removal (20,000 cubic yards or more)

Fences, Walls

Home care facility

Home occupation

Models: Display center, display group, model home

Parking Lot: Accessory

Real Estate Sales Office

Recreational Facilities: Personal, Private-on-site

Residential accessory uses

Signs

Temporary Uses, temporary construction trailers and equipment storage sheds

Temporary amenity structures

#### b. <u>Site Development Regulations</u>

	Single-Family Detached	Two-Family Attached	Clubhouse
Minimum Lot Size	4,800 sq ft	4,200 sq ft	N/A
Minimum Lot Width	40 feet	35 feet	N/A
Minimum Lot Depth	120 feet	120 feet	N/A
Maximum Lot Coverage	60 percent	65 percent	50 percent
Maximum Building Height	35 feet	35 feet	35 feet
Minimum Building Separation	10 feet	10 feet	10 feet
	Setbac	ks	
Street (Interior Private Roads)	20 feet / 10 feet <sup>1</sup>	20 feet / 10 feet <sup>1</sup>	20 feet
Street (Public Roads)	50 feet	50 feet	50 feet
Side	5 feet <sup>5</sup>	5 feet <sup>5</sup> / 0 feet <sup>2</sup>	10 feet <sup>5</sup>
Rear (Principal)	10 feet	10 feet	10 feet
Rear (Accessory)	5 feet <sup>3</sup>	5 feet <sup>3</sup>	5 feet <sup>3</sup>
PD Perimeter	50 feet	50 feet	50 feet
Waterbody	20 feet	20 feet	20 feet
Preserve	20 feet <sup>4</sup>	20 feet <sup>4</sup>	20 feet <sup>4</sup>

#### Notes:

- 1) 20 feet for front loaded garages, 10 feet for side loaded garages, and secondary street setbacks on corner lots.
- 2) No side setback is required from common lot line for two-family attached.
- 3) 5 feet (0 feet where lot abuts lake maintenance easement).
- 4) 30 feet for indigenous plant communities subject to fire.
- 5) Equipment pads may encroach up to 4.5 feet into a side setback (see Deviation 4).
- 6) Dwelling units must be setback a minimum of 170 feet from Duke Highway and 250 feet from North River Road.

#### 3. Rural Compatibility

- a. Prior to development order approval, Developer must demonstrate that entrances features will provide design elements described in LDC §33-1669 through §33-1672.
- b. The RPD must include an enhanced native buffer consistent with the MCP. The buffer must be a minimum 25 feet in width and within the 170-foot minimum setback to fill in gaps in the existing native vegetation and restoration areas to form a continuous, 100% opaque vegetative screen within 5 years of growth.
  - i. The enhanced buffer must meet the following minimum planting per 100 linear feet by 25 foot width: six (6) native canopy trees, seven (7) native understory trees, three (3) Cabbage Palms, and twenty one (21) native shrubs.
  - ii. Planting density may be achieved with a combination of existing and proposed enhanced native vegetation so long as trees are horizontally spaced no more than 15 feet on center and Cabbage Palms and shrubs are clustered in groups of three (3).
  - iii. Enhanced buffer plantings must include minimum 10 foot tall, 2 inch caliper native canopy trees, minimum 10 foot clear trunk Cabbage Palms, minimum 10 foot tall native understory trees, and minimum four (4) foot tall shrubs.
  - iv. Enhanced native vegetation species must be consistent with and in addition to the approved Indigenous Preserve Management and Restoration Plan Supplemental Plantings List Revised May 2024 (Exhibit B2) within this buffer. Restoration plantings will not contribute to the buffer plant material requirements set forth in this condition.
  - v. Exotic vegetation within the 25-foot buffer must be hand removed to minimize disturbance to existing native vegetation.
  - vi. Developer must obtain a Certificate of Compliance on the enhanced buffer installation prior to development order approval authorizing residential lots within 300 feet of the 25-foot-wide enhanced buffer depicted on the MCP.

#### 4. Utility Connection

Development order plans must demonstrate connection to public utilities for water and wastewater services to support all phases of development.

#### 5. Public Safety

Development order submittals must demonstrate that public safety service is available to serve each phase under review as evidenced by a letter of No Objection from the Lee County Public Safety Office.

#### 6. Open Space

Development order plans must depict a total of 420.20 acres of indigenous open space in substantial compliance with the MCP consistent with the following:

- a. Rare and Unique Upland Preservation: 26.03 acres;
- b. Rare and Unique Upland Restoration: 2.68 acres;
- c. Rare and Unique Created: 300.01 acres;
- d. Upland Restoration: 7.38 acres;
- e. Upland Preservation: 23.98 acres;
- f. Wetland Preservation: 17.51 acres;
- g. Wetland Restoration: 33.95 acres; and
- h. Surface Waters: 8.66 acres.

#### 7. Protected Species

Developer must submit pre-construction species monitoring reports, where applicable, with each vegetation removal permit application to ensure no protected species are within the clearing limits.

#### 8. Conservation Easement Recording

Conservation easements must be recorded over areas used to achieve the density incentive. Conservation easements must be dedicated to the appropriate maintenance entity and provide Lee County or other public agency, acceptable to Lee County, with third party enforcement rights. Conservation Easements must be recorded within 5 years following approval of the first development order.

#### 9. Wetland Impacts

The first development order application must include a copy of the mitigation receipt of payment or mitigation plans for the 18.85 acres of wetland impacts.

#### 10. Indigenous Habitat Restoration/ Management Plan

- a. Development Order plans must be in substantial compliance with the Indigenous Preserve Management and Restoration Plan (Exhibit B2).
- b. The first development order plans must include a schedule for the indigenous preservation, restoration, and created preserve areas to be completed within at least five consecutive years.

- c. The first development order plans must include cross sections depicting the hydrological restoration, upland grading, and the type of habitat being restored/created to ensure survivability. The plans must include details of soil amendments in the restoration and creation areas, if applicable.
- d. The first development order plans must include a map depicting where mechanical and hand-removal methods of exotic vegetation removal will be located.
- e. The first development order plans must include a monitoring schedule to ensure all preserve enhancement, restoration, and creation is completed and demonstrates 80 percent survivability within five consecutive years. Monitoring will be required until 80 percent survivability is achieved.
- f. The vegetation removal permit application must include survey point maps depicting the preservation and restoration areas and mechanical clearing limits.

#### 11. Northern Buffer Planting Material

The first development order plans must depict a 25-foot-wide buffer within the restoration area along North River Road that includes 14-foot-high native canopy trees, spaced approximately 25 feet on center to comply with LDC §33-1673.

#### 12. <u>Natural Waterbody Buffer</u>

The first development order application that includes Trout Creek must include landscape plans that provide a natural waterway buffer plan in compliance with the Indigenous Preserve Management and Restoration Plan (Exhibit B2). The vegetation must meet the plant specifications of LDC §10-420. The natural waterway buffer must depict a ten-foot-wide Trout Creek maintenance easement with a 20-foot-wide Trout Creek maintenance access as depicted consistent with the MCP.

#### 13. Surface and Ground Water Monitoring

Prior to local development order approval for any phase of work, Developer must provide the attached Water Quality Monitoring Plan (Exhibit B3) with the following modifications:

 Developer must identify the groundwater withdrawal locations used to resupply the irrigation withdrawal lakes in the Water Quality Monitoring Plan;

- b. Developer must complete baseline monitoring events prior to commencement of construction and provide a baseline report to the County Division of Natural Resources;
- c. Surface water quality, groundwater quality, and groundwater level monitoring locations must be finalized and identified in the Water Quality Monitoring Plan. Surface water quality monitoring sites must be located at each proposed outfall. Groundwater level monitoring locations must be located to ensure surrounding residential uses are not adversely affected by Sandstone Aquifer withdrawal;
- d. Developer must provide water quality and groundwater level monitoring data to the Division of Natural Resources annually for a minimum of five (5) years. Annual monitoring reports must include a comparison of State surface water quality standards. plots of parameters. recommendations. After five years of meeting/exceeding State water quality monitoring standards, Developer may amend water quality monitoring and reporting after written request, review, and approval by the Division of Natural Resources. Results must be reported as an Electric Data Deliverable (EDD), in a format approved by the Division of Natural Resources; and
- e. A contingency plan to be implemented upon discovery of an exceedance of State Water Quality Standards. This plan must include notification to impacted residents, Lee County Division of Natural Resources, and applicable authorities.

#### 14. Stormwater Reporting

Development order submittals for each phase must provide a Stormwater Report with models and calculations demonstrating that offsite flow conveyance capacity will be maintained during and following construction of the development.

#### 15. Irrigation Requirements

Development order plans for each phase must demonstrate irrigation will be provided via a master-controlled central irrigation system. The master-controlled system must be designed to comply with the Water Conservation Ordinance #24-01, as amended. The Property Owner Association documents, including Declarations and Covenants (submitted prior to Development Order approval and recorded prior to issuance of Certificate of Compliance), must prohibit the installation of single-family use wells for potable or irrigation water.

#### 16. Agricultural Uses

a. <u>Termination of Agricultural Use.</u> Bona fide agricultural uses (cattle grazing) in existence when the application for this project was filed, may continue in

- accordance with the Agricultural Use Affidavit filed with the zoning application until a local development order is approved for the area that contains these uses.
- b. Additional Clearing Prohibited. Clearing or injury of native trees or other native vegetation, including understory, in agricultural areas is prohibited except when done pursuant to a vegetation removal permit. Existing areas of bona fide agricultural use that include existing grass pasture(s) may be mowed but may not be cleared or expanded. This prohibition of clearing/expansion is not intended to preclude County approved requests for removal of invasive exotic vegetation. Violations of this condition will require restoration in accordance with LDC §10-423.
- c. <u>Proof of Termination</u>. Prior to development order issuance, Developer must provide written proof, subject to approval by the Lee County Attorney's Office, of the following:
  - i. <u>Affidavit.</u> Termination of agricultural use on any portion of the property included in the development order application/approval. Proof must include a sworn affidavit from the person or entity holding title to the subject property that specifically provides:
    - 1. The date agricultural uses ceased.
    - 2. The legal description of the property subject to the development order approval.
    - 3. An affirmative statement that Developer, its successors or assigns acknowledges and agrees that all agricultural uses are illegal and prohibited on the property and that the owner covenants with the County that they will not allow any such uses on the property unless and until the property is rezoned to permit such uses.
    - 4. That the affidavit constitutes a covenant between Developer, its successors or assigns, and the County that is binding on the Developer, its successors or assigns. The covenant must be properly recorded in the public records of the County at the expense of the applicant, its successors or assigns.
- d. <u>Termination of Tax Exemption</u>. Termination of the agricultural tax exemption for any portion of the property included in the development order application/approval. Proof as to the termination must include a copy of the request to terminate the tax exemption submitted to the Property Appraiser.

#### 17. School Bus Stop

Developer must provide a school bus pull-off at the project entrances as shown on the MCP to ensure buses can stop entirely outside of the North River Road rightof-way. The location and design of the bus stop is subject to approval by the Lee County School District.

#### 18. <u>Lighting</u>

Developer and future property owners must ensure lighting from developed areas does not directly illuminate indigenous preserve or restoration areas by shielding fixtures as necessary and minimizing up-lighting. Developer must include these lighting standards in the Indigenous Management Plan, deed restrictions, and development order plans.

#### 19. <u>Development Permits</u>

County development permits do not create rights to obtain permits from state/federal agencies. Further, County development permits 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 undertake actions in violation of state/federal law. Applicant must obtain applicable state/federal permits prior to commencing development.

#### **DEVIATIONS**

1. <u>Access.</u> Deviation (1) seeks relief from LDC §10-291(3) which requires residential developments more than five acres to provide more than one means of ingress and egress for the development, to allow one access point to the development area west of Trout Creek only.

HEX Recommendation: Approve

2. North River Road Plantings. Deviation (2) seeks relief from LDC §33-1673, which requires new developments with frontage on North River Road to provide a 25-foot-wide right-of-way buffer, planted with native canopy trees, such as Live Oaks and Laurel Oaks, with a minimum height of 14 feet and spaced 25 feet on center to allow for creation, restoration and preservation of "Rare and Unique" uplands and wetland vegetation along the North River Road frontage where proposed preserve areas abut the right-of-way.

HEX Recommendation: Approve, subject to the following condition:

Development order landscape plans abutting North River Road must meet the Indigenous Preserve Management and Restoration Plan (Exhibit B2). Landscape/restoration plants must meet the native tree specifications per LDC §33-1673 and native shrubs specifications for a Type-F buffer per LDC §10-416(d).

3. <u>Lake Bank Slopes</u>. Deviation (3) from LDC §10-329(d)(4), which requires lake banks to be sloped at a 6:1 ratio from the top of bank to a water depth of two feet below the dry season water table, to allow for a minimum ratio of 4:1 slope.

HEX Recommendation: Approve

4. <u>Equipment Pads</u>. Deviation (4) seeks relief from LDC §34-2191(5), which allows encroachments into required setbacks for equipment pads of up to 3 feet into a side, rear or waterbody setback, to allow for equipment pads encroachments of up to 4.5 feet into side setbacks.

HEX Recommendation: Approve

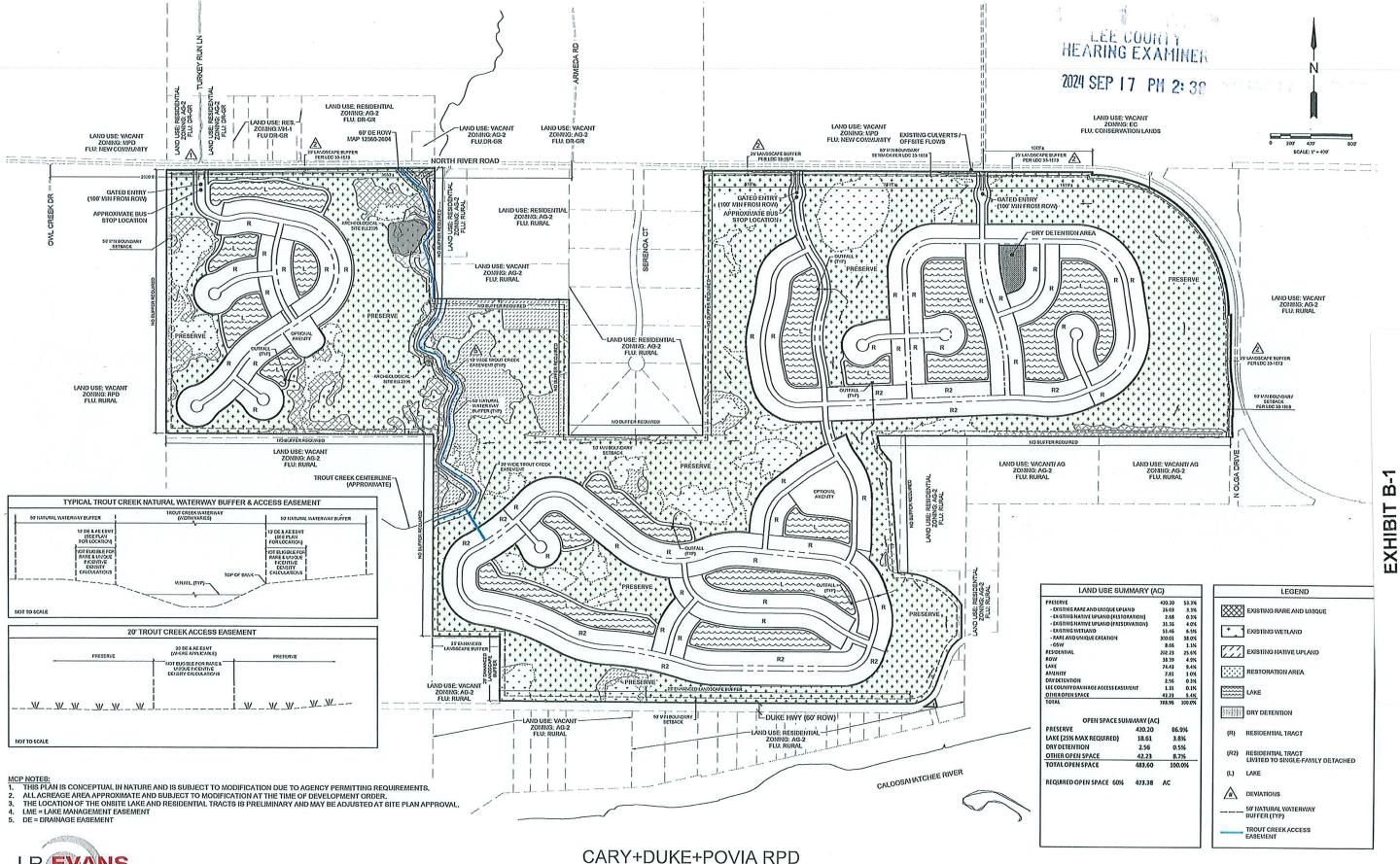
5. <u>Drainage Easement</u>. Deviation (5) seeks relief from LDC §10-328(a), which requires a 20-foot-wide easement on one side of a watercourse/drainageway/ canal/IDD easement/lake/pond/stream, and a 20-foot-wide easement on both sides for canals, lakes, or flow-ways greater than 50 feet wide for maintenance purposes, to allow a 10-foot-wide easement on one side of Trout Creek.

HEX Recommendation: Approve, subject to the following condition:

A drainage and access easement consistent with the MCP must be submitted for approval prior to development order issuance. The easement must permit Lee County the right, but not the obligation, to maintain Trout Creek and must be dedicated to Lee County prior to issuance of a Certificate of Compliance for the first development order.

#### Exhibits to Conditions:

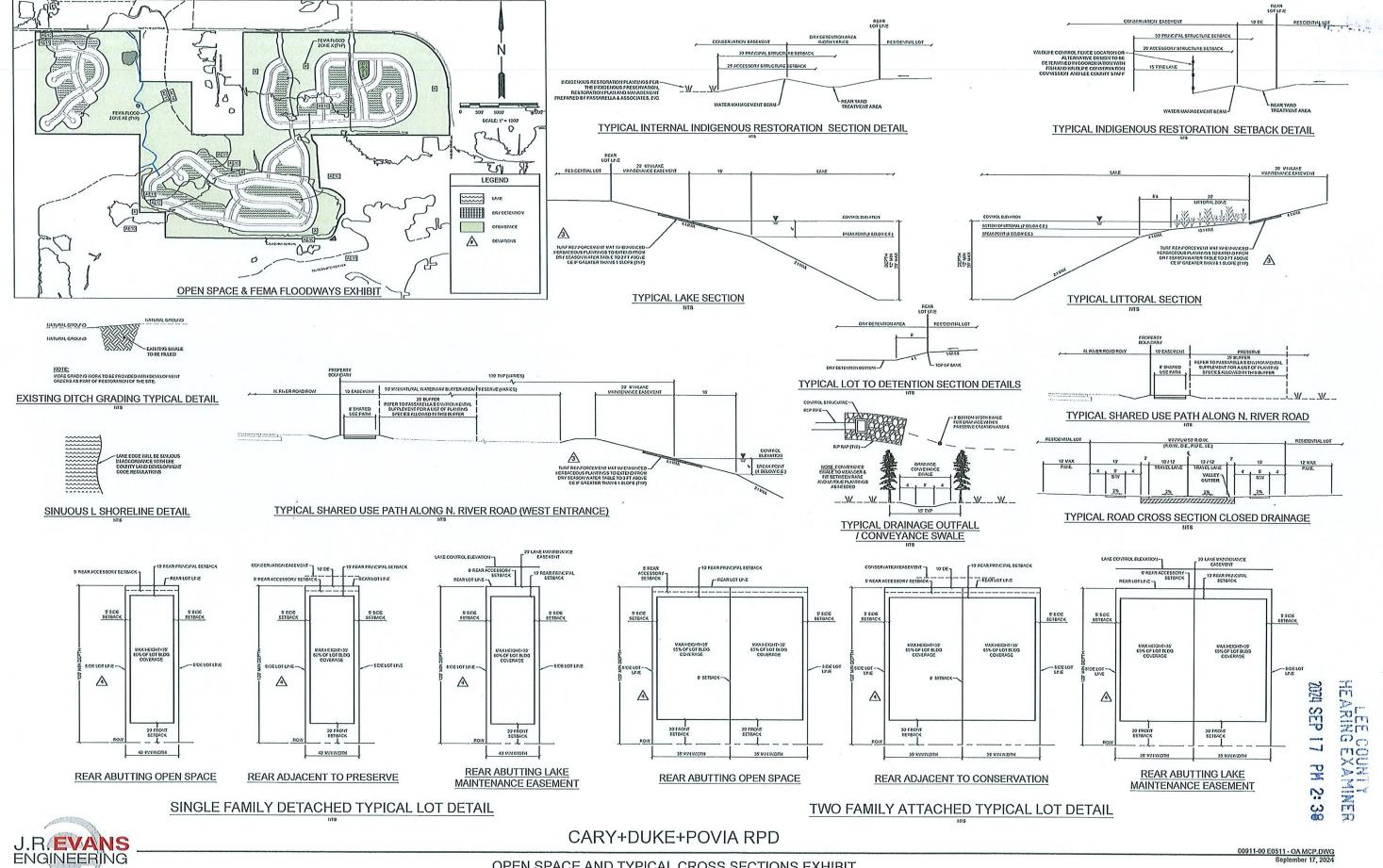
- B1 "Cary+Duke+Povia RPD" four-page MCP (stamped September 17, 2024)
- B2 Indigenous Habitat Management Plan (revised May 2024)
- B3 Water Quality Monitoring Plan (revised May 2024)



J.R. EVANS ENGINEERING

MASTER CONCEPT PLAN

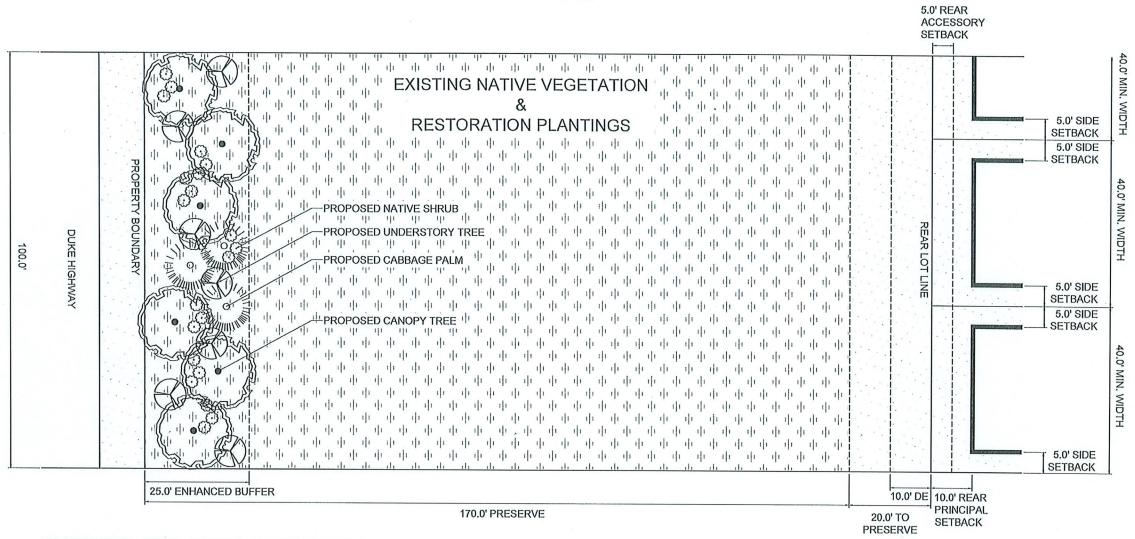
00911-00 E0511 - OA MCP.DWG



## LEE COUNTY HEARING EXAMINER

2024 SEP 17 PM 2: 39





ENHANCED NATIVE BUFFER - NO EXISTING NATIVE VEGETATION

Copyright RVI



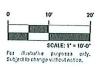
CARY + DUKE + POVIA RPD • DUKE HIGHWAY ENHANCED BUFFER

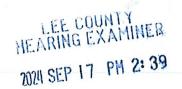
September 11,2024

# 22001300

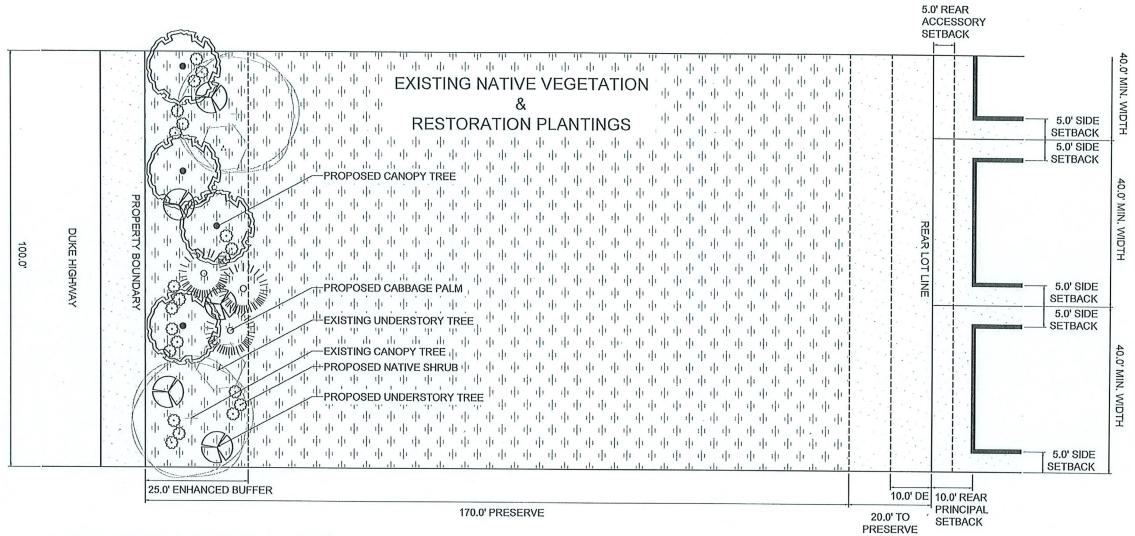
Neal Communities











ENHANCED NATIVE BUFFER - EXISTING NATIVE VEGETATION

Copyright RVI



CARY + DUKE + POVIA RPD • DUKE HIGHWAY ENHANCED BUFFER

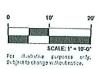
Q Lee County, FL

September 11, 2024

# 22001300

& Neal Communities





# **EXHIBIT B2**

### CARY + DUKE + POVIA RPD INDIGENOUS PRESERVE MANAGEMENT AND RESTORATION PLAN

Revised May 2024

Prepared For:

Neal Communities 28100 Bonita Grande Drive Bonita Springs, Florida 34135 (941) 328-1993

Prepared By:

Passarella & Associates, Inc. 13620 Metropolis Avenue, Suite 200 Fort Myers, Florida 33912 (239) 274-0067

# TABLE OF CONTENTS

		Page	
1.0	Intro	duction1	
2.0	Exist	ing Indigenous Habitats1	
	2.1 2.2	Indigenous Wetland Habitats    2      Indigenous Upland Habitats    3	
3.0	Exist	ing Non-Indigenous Habitats5	
	3.1 3.2 3.3	Non-Indigenous Wetland Habitats	
4.0	Indig	enous Vegetation Preservation, Enhancement, and Restoration7	
	4.1 4.2 4.3	Methods to Remove and Control Exotic and Nuisance Plants	
5.0	Rare	and Unique Upland Creation9	
	5.1	Rare and Unique Upland Grading and Planting10	
6.0	Supplemental Plantings10		
7.0	Rare and Unique Upland Restoration and Creation Soils Analysis15		
8.0	Maintenance 15		
	8.1	Prescribed Fire15	
9.0	Mon	Monitoring Reports16	
10.0	References 17		

# LIST OF TABLES

		<u>Page</u>
Table 1.	Prohibited Invasive Exotics	8
Table 2.	Supplemental Wetland Plantings	11
Table 3.	Supplemental Upland Plantings	12
Table 4.	Supplemental Rare and Unique Upland Plantings	13

# LIST OF APPENDICES

		Page
Appendix A.	Project Location Map	A-1
Appendix B.	FLUCFCS and Wetlands Map	B-1
Appendix C.	Indigenous Preserve and Restoration Management Plan	C-1
Appendix D.	Soils Overlay Map	D-1

#### 1.0 INTRODUCTION

The following outlines the Lee County Indigenous Preserve Management and Restoration Plan for the Cary + Duke + Povia RPD (Project). The Project site totals 788.98± acres and is located in Sections 16 and 17, Township 43 South, Range 26 East, Lee County (Appendix A). The proposed Project will establish on-site conservation areas totaling approximately 420.20± acres. The proposed conservation areas will contain the following elements:

- Preservation and enhancement of 67.52± acres of indigenous wetlands, indigenous uplands, and rare and unique uplands through the removal of exotic vegetation;
- Restoration of 44.01± acres of non-indigenous wetlands, uplands, and rare and unique uplands through the removal of exotic vegetation and installation of supplemental plantings;
- Creation of 300.01± acres of rare and unique indigenous uplands through the removal of exotic vegetation and supplemental plantings in non-indigenous areas; and
- Preservation of 8.66± acres of surface waters.

The rare and unique uplands that will be preserved, enhanced, restored, and created will be consistent with those community types identified in Chapter XII of the Lee Plan. This may include some, or all, of the following community types: pine flatwoods, tropical hardwood, live oak hammock, and cabbage palm hammock.

The conservation areas will be placed in an easement with inspection, enforcement, and approval rights granted to Lee County and the South Florida Water Management District (SFWMD). The total preserve area to be placed under a conservation easement is 420.20± acres.

#### 2.0 EXISTING INDIGENOUS HABITATS

Pursuant to Land Development Code (LDC) Section 10-1, indigenous native vegetation is defined as those plant species that are characteristic of the major plant communities of the county. Native habitats, where invasive exotic vegetation exceeds 75 percent coverage, are not considered to be indigenous vegetation.

Existing indigenous wetland habitat within the proposed preserve totals  $17.51\pm$  acres and primarily consists of mixed wetland hardwood, cypress, and freshwater marsh habitat. The indigenous upland habitat within the proposed preserve totals  $50.01\pm$  acres and primarily consists of pine flatwood, live oak, and hardwood/conifer mixed habitat. The indigenous areas are comprised of wetland and upland habitats that contain less than 75 percent coverage by exotic vegetation.

A Florida Land Use, Cover and Forms Classification System (FLUCFCS) and wetland map is attached as Appendix B. Listed below are the FLUCFCS (Florida Department of Transportation

1999) descriptions of the indigenous wetland and upland habitats proposed for preservation and enhancement.

#### 2.1 Indigenous Wetland Habitats

#### Cabbage Palm, Hydric, Disturbed (0-24% Exotics) (FLUCFCS Code 4281 E1)

This wetland community type includes cabbage palm (Sabal palmetto) with scattered laurel oak (Quercus laurifolia) and swamp bay (Persea palustris) in the canopy. The sub-canopy contains cabbage palm, Brazilian pepper (Schinus terebinthifolia), myrsine (Myrsine cubana), laurel oak, wax myrtle (Morella cerifera), Carolina willow (Salix caroliniana), swamp dogwood (Cornus foemina), and buckthorn (Sideroxylon sp.). The ground cover contains giant leather fern (Acrostichum danaeifolium), swamp fern (Telmatoblechnum serrulatum), cabbage palm, Brazilian pepper, Asiatic pennywort (Centella asiatica), marsh pennywort (Hydrocotyle umbellata), smartweed (Persicaria sp.), sand cordgrass (Spartina bakeri), laurel oak, dayflower (Commelina diffusa), Peruvian primrosewillow (Ludwigia peruviana), pickerelweed (Pontedaria cordata), and buttonbush (Cephalanthus occidentalis).

#### Cabbage Palm, Hydric, Disturbed (25-49% Exotics) (FLUCFCS Code 4281 E2)

This wetland community type includes vegetation associations that are similar to FLUCFCS Code 4281 E1 except with 25 to 49 percent Brazilian pepper in the sub-canopy.

#### Cabbage Palm, Hydric, Disturbed (50-75% Exotics) (FLUCFCS Code 4281 E3)

This wetland community type includes vegetation associations that are similar to FLUCFCS Code 4281 E2 except with 50 to 75 percent Brazilian pepper in the sub-canopy.

#### Willow, Disturbed (25-49% Exotics) (FLUCFCS Code 6189 E2)

The canopy of this wetland community type contains Carolina willow with scattered cabbage palm and Brazilian pepper. The sub-canopy contains Carolina willow, cabbage palm, Brazilian pepper, wax myrtle, swamp dogwood, and buckthorn. The ground cover includes smartweed, swamp fern, shield fern (*Thelypteris* sp.), sawgrass (*Cladium jamaicense*), cattail (*Typha* sp.), Carolina willow, cabbage palm, dayflower, white-top sedge (*Rhynchospora colorata*), and Brazilian pepper.

#### Cypress, Disturbed (0-24% Exotics) (FLUCFCS Code 6219 E1)

The canopy of this wetland community type includes bald cypress (*Taxodium distichum*), cabbage palm, and scattered laurel oak. The sub-canopy contains cabbage palm, Brazilian pepper, bishopwood (*Bischofia javanica*), red maple (*Acer rubrum*), and swamp bay. The ground cover includes spikerush (*Eleocharis interstincta*), pickerelweed, giant leather fern, and swamp fern.

#### Cypress, Disturbed (25-49% Exotics) (FLUCFCS Code 6219 E2)

This wetland community type includes vegetation associations that are similar to FLUCFCS Code 6219 E1 except with 25 to 49 percent melaleuca (*Melaleuca quinquenervia*) and/or Brazilian pepper in the sub-canopy.

#### Wetland Forested Mixed, Disturbed (0-24% Exotics) (FLUCFCS Code 6309 E1)

The canopy of this wetland community type contains live oak (Quercus virginiana), laurel oak, slash pine (Pinus elliottii), cabbage palm, swamp bay, and Carolina willow. The subcanopy contains Brazilian pepper, cabbage palm, myrsine, wild coffee (Psychotria nervosa), Peruvian primrosewillow, Carolina willow, swamp dogwood, laurel oak, swamp bay, wax myrtle, persimmon (Diospyros virginiana), saltbush (Baccharis halimifolia), live oak, white stopper (Eugenia axillaris), and buckthorn. The ground cover includes swamp fern, giant leather fern, cabbage palm, marsh pennywort, Brazilian pepper, wild coffee, Peruvian primrosewillow, royal fern (Osmunda regalis var. spectabilis), arrowhead (Sagittaria lancifolia), water hyssop (Bacopa sp.), Asiatic pennywort, Southern beaksedge (Rhynchospora microcarpa), smartweed, torpedograss (Panicum repens), rosy camphorweed (Pluchea baccharis), shield fern, swamp lily (Crinum americanum), dog fennel (Eupatorium capillifolium), bulrush (Scirpus sp.), peppervine (Ampelopsis arborea), white-top sedge, and cattail.

#### Wetland Forested Mixed, Disturbed (25-49% Exotics) (FLUCFCS Code 6309 E2)

This wetland community type includes vegetation associations that are similar to FLUCFCS Code 6309 E1 except with 25 to 49 percent melaleuca and/or Brazilian pepper in the canopy and sub-canopy.

#### Wetland Forested Mixed, Disturbed (50-75% Exotics) (FLUCFCS Code 6309 E3)

This wetland community type includes vegetation associations that are similar to FLUCFCS Code 6309 E2 except with 50 to 75 percent melaleuca and/or Brazilian pepper in the canopy and sub-canopy.

#### Freshwater Marsh, Disturbed (50-75% Exotics) (FLUCFCS Code 6419 E3)

The canopy of this wetland community type is open. The sub-canopy contains wax myrtle, Brazilian pepper, and scattered cabbage palm. The ground cover contains sawgrass, giant leather fern, marsh pennywort, cattail, pickerelweed, torpedograss, sesbania (*Sesbania* sp.), creeping primrosewillow (*Ludwigia repens*), and swamp fern.

#### 2.2 Indigenous Upland Habitats

#### Palmetto Prairie, Disturbed (50-75% Exotics) (FLUCFCS Code 3219 E3)

The canopy of this upland community type contains scattered live oak and cabbage palm. The sub-canopy contains Brazilian pepper. The ground cover contains saw palmetto (Serenoa repens), caesarweed (Urena lobata), beautyberry (Callicarpa americana), Brazilian pepper, and greenbrier (Smilax sp.).

#### Pine Flatwoods, Disturbed (0-24% Exotics) (FLUCFCS Code 4119 E1)

The canopy of this upland community type contains slash pine with scattered cabbage palm and live oak. The sub-canopy contains slash pine with scattered cabbage palm, live oak, and Brazilian pepper. The ground cover contains broomsedge bluestem (*Andropogon virginicus* var. *virginicus*), Brazilian pepper, bahiagrass (*Paspalum notatum*), wax myrtle, saw palmetto, caesarweed, and blackberry (*Rubus* sp.).

#### Live Oak, Disturbed (0-24% Exotics) (FLUCFCS Code 4279 E1)

The canopy of this upland community type contains live oak with widely scattered laurel oak, pop ash (Fraxinus caroliniana), Brazilian pepper, and cabbage palm. The sub-canopy contains live oak, cabbage palm, laurel oak, wax myrtle, myrsine, wild coffee, swamp bay, caesarweed, saltbush, and Brazilian pepper. The ground cover includes saw palmetto, poison ivy (Toxicodendron radicans), beautyberry, wild coffee, Virginia creeper (Parthenocissus quinquefolia) Brazilian pepper, tropical soda apple (Solanum viarum), beggarticks (Bidens alba), St. Augustine grass (Stenotaphrum secundatum), caesarweed, Boston fern (Nephrolepis sp.), cabbage palm, broomsedge bluestem, white stopper, and carpetgrass (Axonopus fissifolius).

#### Live Oak, Disturbed (25-49% Exotics) (FLUCFCS Code 4279 E2)

This upland community type includes vegetation associations that are similar to FLUCFCS Code 4279 E1 except with 25 to 49 percent Brazilian pepper in the sub-canopy.

#### Live Oak, Disturbed (50-75% Exotics) (FLUCFCS Code 4279 E3)

This upland community type includes vegetation associations that are similar to FLUCFCS Code 4279 E2 except with 50 to 75 percent Brazilian pepper in the sub-canopy.

#### Cabbage Palm, Disturbed (25-49% Exotics) (FLUCFCS Code 4289 E2)

The canopy of this upland community type contains cabbage palm with scattered live oak. The sub-canopy contains Brazilian pepper, wax myrtle, and cabbage palm. The ground cover includes smutgrass (*Sporobolus indicus*), bahiagrass, wild coffee, dog fennel, beggarticks, knotroot foxtail (*Setaria parviflora*), scattered broomsedge bluestem, and guineagrass (*Urochloa maximum*).

#### Hardwood/Conifer Mixed, Disturbed (0-24% Exotics) (FLUCFCS Code 4349 E1)

The canopy of this upland community type contains live oak, slash pine, and cabbage palm. The sub-canopy contains live oak, Brazilian pepper, cabbage palm, wax myrtle, saltbush, beautyberry, and scattered saw palmetto. The ground cover contains bahiagrass, broomsedge bluestem, smutgrass, beautyberry, Brazilian pepper, marsh pennywort, caesarweed, live oak, cabbage palm, greenbrier, dayflower, and saw palmetto.

#### Hardwood/Conifer Mixed, Disturbed (25-49% Exotics) (FLUCFCS Code 4349 E2)

This upland community type includes vegetation associations that are similar to FLUCFCS Code 4349 E1 except with 25 to 49 percent Brazilian pepper in the sub-canopy.

#### Hardwood/Conifer Mixed, Disturbed (50-75% Exotics) (FLUCFCS Code 4349 E3)

This upland community type includes vegetation associations that are similar to FLUCFCS Code 4349 E2 except with 50 to 75 percent Brazilian pepper in the sub-canopy.

#### Cypress, Drained, Disturbed (50-75% Exotics) (FLUCFCS Code 6215 E3)

The canopy of this upland community type contains bald cypress, and the sub-canopy contains Brazilian pepper, pop ash, and cabbage palm. The ground cover contains caesarweed and scattered swamp fern.

#### 3.0 EXISTING NON-INDIGENOUS HABITATS

Existing non-indigenous wetland habitat within the preserve totals 33.95± acres. The non-indigenous wetland habitat is comprised of low pasture and areas with greater than 75 percent coverage by exotic vegetation, primarily Brazilian pepper and melaleuca.

Non-indigenous upland habitat within the preserve totals 310.07± acres and consist of pastures, disturbed land, berms, and forested areas with greater than 75 percent coverage by exotic vegetation, primarily Brazilian pepper.

Non-indigenous areas also include 8.66± acres of natural streams and man-made surface waters consisting of agricultural ditches and cow ponds. The non-indigenous wetland and upland habitat types and surface waters are depicted on Appendix B. Listed below are the FLUCFCS descriptions of the non-indigenous areas on the Project site.

#### 3.1 Non-Indigenous Wetland Habitats

#### Low Pasture (FLUCFCS Code 262)

The canopy of this wetland habitat is open. The sub-canopy contains widely scattered cabbage palm, Brazilian pepper, wax myrtle, and Carolina willow. The ground cover includes inundated beaksedge (*Rhynchospora inundata*), Southern beaksedge, Asiatic pennywort, creeping primrosewillow, dayflower, pickerelweed, bushy bluestem (*Andropogon glomeratus*), sawgrass, white-top sedge, torpedograss, marsh pennywort, savanna iris (*Iris savannarum*), frogfruit (*Phyla nodiflora*), Southern umbrellasedge (*Fuirena scirpoidea*), smartweed, arrowhead, bighead rush (*Juncus megacephalus*), aster (*Aster*: sp.), sesbania, spikerush, marsh-mallow (*Kosteletzkya* sp.), and rosy camphorweed.

#### Brazilian Pepper, Hydric (FLUCFCS Code 4221)

The canopy of this wetland habitat is dominated by Brazilian pepper with scattered live oak, cabbage palm, swamp bay, and Carolina willow. The sub-canopy is dominated by Brazilian pepper with scattered cabbage palm, live oak, swamp bay, myrsine, wax myrtle, saltbush, Carolina willow, pond apple (Annona glabra), red mangrove (Rhizophora mangle), and swamp dogwood. The ground cover contains Brazilian pepper, cabbage palm, giant leather fern, swamp fern, creeping primrosewillow, smartweed, cattail, shield fern, muscadine grapevine (Vitis rotundifolia), greenbrier, Southern beaksedge, flatsedge (Cyperus sp.), and marsh pennywort.

#### Wetland Forested Mixed, Disturbed (76-100% Exotics) (FLUCFCS Code 6309 E4)

This wetland community type includes vegetation associations that are similar to FLUCFCS Code 6309 E3 except with 76 to 100 percent melaleuca and/or Brazilian pepper in the canopy and sub-canopy.

#### Wetland Shrub, Disturbed (76-100% Exotics) (FLUCFCS Code 6319 E4)

The canopy in this wetland habitat type is open. The sub-canopy contains saltbush, giant leather fern, wax myrtle, Brazilian pepper, scattered Carolina willow, and swamp bay. The

ground cover contains giant leather fern, marsh pennywort, Brazilian pepper, saltbush, sawgrass, shield fern, and creeping primrosewillow.

#### Freshwater Marsh, Disturbed (76-100% Exotics) (FLUCFCS Code 6419 E4)

This wetland community type includes vegetation associations that are similar to FLUCFCS Code 6419 E3 except with 76 to 100 percent West Indian marsh grass (Hymenachne amplexicaulis), alligatorweed (Alternanthera philoxeroides), and water lettuce (Pistia stratiotes) in the ground cover.

#### 3.2 Non-Indigenous Upland Habitats

#### Residential, Low Density (FLUCFCS Code 110)

This upland area consists of single-family homes alongside North River Road (County Road 78).

#### Improved Pasture (FLUCFCS Code 211)

The canopy in this upland area is open and includes widely scattered slash pine, cabbage palm, and live oak. The sub-canopy is open and includes widely scattered cabbage palm, wax myrtle, and Brazilian pepper. The ground cover includes bahiagrass, tropical soda apple, smutgrass, broomsedge bluestem, blackberry, flatsedge, torpedograss, frogfruit, caesarweed, and Asiatic pennywort. The improved pasture in the southeastern portion of the site was historically a spoil cell for the dredging of the Caloosahatchee River.

#### Woodland Pasture (FLUCFCS Code 213)

The canopy of this upland community type has scattered slash pine, live oak, laurel oak, and cabbage palm. The sub-canopy includes widely scattered slash pine, Brazilian pepper, persimmon, wax myrtle, live oak, laurel oak, and cabbage palm. The ground cover contains bahiagrass, smutgrass, broomsedge bluestem, muscadine grapevine, saw palmetto, cabbage palm, caesarweed, earleaf greenbrier (*Smilax auriculata*), and blackberry.

#### Pine Flatwoods, Disturbed (76-100% Exotics) (FLUCFCS Code 4119 E4)

This upland community type includes vegetation associations that are similar to FLUCFCS Code 4119 E1 except with 76 to 100 percent Brazilian pepper in the sub-canopy.

#### Brazilian Pepper (FLUCFCS Code 422)

The canopy of this upland community type is open. The sub-canopy is dominated by Brazilian pepper with scattered wax myrtle and cabbage palm. The ground cover includes Brazilian pepper.

#### Live Oak, Disturbed (76-100% Exotics) (FLUCFCS Code 4279 E4)

This upland community type includes vegetation associations that are similar to FLUCFCS Code 4279 E3 except with 76 to 100 percent Brazilian pepper in the sub-canopy.

#### Cabbage Palm, Disturbed (76-100% Exotics) (FLUCFCS Code 4289 E4)

This upland community type includes vegetation associations that are similar to FLUCFCS Code 4289 E2 except with 76 to 100 percent Brazilian pepper in the sub-canopy.

#### Hardwood/Conifer Mixed, Disturbed (76-100% Exotics) (FLUCFCS Code 4349 E4)

This upland community type includes vegetation associations that are similar to FLUCFCS Code 4349 E3 except with 76 to 100 percent Brazilian pepper in the sub-canopy.

#### Disturbed Land (FLUCFCS Code 740)

The canopy of this upland community type is open with cabbage palm, live oak, slash pine, red cedar (Juniperus virginiana), Florida strangler fig (Ficus aurea), Washington fan palm (Washingtonia robusta), laurel oak, and other unknown landscape trees. The sub-canopy contains scattered cabbage palm, citrus (Citrus sp.), wax myrtle, and Brazilian pepper. The ground cover contains bahiagrass, smutgrass, broomsedge bluestem, wax myrtle, frogfruit, caesarweed, Brazilian pepper, and Asiatic pennywort.

#### Spoil Areas (FLUCFCS Code 743)

This upland area consists of spoil material.

#### Berm (FLUCFCS Code 747)

This upland land use type includes spoil material left over from the excavation of ditches. The canopy may include scattered slash pine and live oak. The sub-canopy may include beautyberry, wax myrtle, and Brazilian pepper. The ground cover is consistent with improved pasture (FLUCFCS Code 211).

#### Road (FLUCFCS Code 814)

This upland land use type includes an unmaintained, partially paved roadway. The canopy and sub-canopy are open. The ground cover is consistent with improved pasture (FLUCFCS Code 211).

#### 3.3 Surface Waters

#### Streams and Waterways (FLUCFCS Code 510)

These open-water areas consist of tributaries of the Caloosahatchee River.

#### Ditch (FLUCFCS Code 514)

This open-water land use type includes ditches associated with agricultural operations on the Project site. Ground cover vegetation includes cattail.

#### Cattle Pond (FLUCFCS Code 525)

This open-water area includes excavated ponds used for watering areas for cattle.

# 4.0 INDIGENOUS VEGETATION PRESERVATION, ENHANCEMENT, AND RESTORATION

Indigenous upland and wetland areas will be preserved, enhanced, and/or restored through the hand-removal/treatment of exotic and nuisance vegetation and the installation of supplemental plantings in areas with greater than 75 percent cover by exotic vegetation. The supplemental planting details are discussed in Section 6.0. The locations of the indigenous preservation areas are shown on Appendix C.

#### 4.1 Methods to Remove and Control Exotic and Nuisance Plants

Exotics to be eradicated include, but are not limited to, the 21 species of prohibited invasive exotic species listed in Section 10-420(h) of the LDC (Table 1).

Table 1. Prohibited Invasive Exotics

Common Name	Scientific Name	
Air potato	Dioscorea bulbifera	
Australian pine	Casuarina sp.	
Bishopwood	Bischofia javanica	
Brazilian pepper	Schinus terebinthifolia	
Carrotwood	Cupaniopsis anacardioides	
Chinese tallow	Sapium sebiferum	
Downy rose-myrtle	Rhodomyrtus tomentosa	
Earleaf acacia	Acacia auriculiformis	
Japanese climbing fern	Lygodium japonicum	
Java plum	Syzygium cumini	
Indian laurel	Ficus microcarpa	
Indian rosewood	Dalbergia sissoo	
Melaleuca	Melaleuca quinquenervia	
Murray red gum	Eucalyptus camaldulensis	
Old World climbing fern	Lygodium microphyllum	
Rose apple	Syzygium jambos	
Seaside mahoe	Thespesia populnea	
Tropical soda apple	Solanum viarum	
Wedelia	Wedelia trilobata	
Weeping fig	Ficus benjamina	
Woman's tongue	Albizia lebbeck	

Exotic and nuisance vegetation removal will be conducted by hand methods. Hand treatment will be either by the felling of exotic trees, hand-removal, and herbicide treatment of the tree stumps; or by hand-pulling and removal. The treatment of exotic and nuisance vegetation will include one or more of the following methods: (1) cut exotics within 12 inches of ground elevation, hand-remove cut vegetation, and treat the remaining stump with approved herbicide; (2) foliar application of approved herbicide or hand-pulling of exotic seedlings; and (3) foliar application of approved herbicide to nuisance grasses.

In areas where exotic coverage is greater than 75 percent, mechanical equipment may be utilized to assist in the removal of exotic species. The mechanical removal areas will be flagged in the field and approved by Lee County Department of Community Development (DCD) staff prior to issuance of a vegetation removal permit. The approximate locations of the mechanical clearing areas are depicted on Appendix C.

Efforts will be made to preserve and protect native trees when conducting the exotic removal with mechanized equipment. This may include the use of temporary barriers (e.g., staking, roping, fencing) around native trees prior to the use of mechanical equipment. To minimize adverse impacts to the ground surface, machinery that exerts a relatively low impact on the ground surface (i.e., tracked skid steer, feller-buncher) will be utilized within the mechanical removal areas. To prevent ground disturbance, mechanical equipment will not be utilized in areas that are saturated or inundated. If rutting occurs, the ground surface will be restored to natural grade with the use of low-impact equipment or by hand methods such as raking.

#### 4.2 Debris Removal

Exotic vegetative debris that is cut will be removed from the indigenous preserve areas. Exotic debris may be stacked in the adjacent development area and burned. No stacking of exotic debris will occur within the preserves. The preserve areas will be inspected annually for trash or garbage. Trash or garbage located within the preserve areas will be removed and disposed of by hand.

#### 4.3 Method and Frequency of Pruning and Trimming

Exotic removal within the existing indigenous habitats is scheduled to begin after Development Order approval. After completing the initial exotic removal, semi-annual inspections of the preserves will occur for the first two years. During these inspections, the conservation areas will be traversed by a qualified ecologist. Locations of nuisance and/or exotic species will be identified for immediate treatment with an appropriate herbicide. Potential problems will also be noted, and corrective actions will be taken. Once exotic/nuisance species levels have been reduced to acceptable limits, inspections of the conservation areas will be conducted a minimum of once every two years.

Exotic maintenance will be hand-removal only. Maintenance will be conducted in perpetuity to ensure that the conservation areas are free of exotic vegetation, including the prohibited invasive exotic species listed in Section 10-420(h) of the LDC (Table 1).

#### 5.0 RARE AND UNIQUE UPLAND CREATION

Approximately 300.01± acres of rare and unique upland habitat will be created from existing upland pasture and agricultural ditches. Rare and unique upland creation activities will include hand or mechanical removal/treatment of exotic vegetation, backfilling to natural grade, replanting of vegetation to achieve rare and unique upland community types, and ongoing maintenance and management. The rare and unique upland creation areas may include some, or all, of the following community types: pine flatwoods, tropical hardwood, live oak hammock, and cabbage palm hammock.

#### 5.1 Rare and Unique Upland Grading and Planting

The locations of the rare and unique upland creation areas are shown on Appendix C. Rare and unique upland creation will consist of the removal of exotic vegetation, backfilling of ditches, and planting with native rare and unique upland species. Exotic vegetation removal will use the same hand and/or mechanical methods described in Section 4.1. Soil modification may be required in portions of the rare and unique creation areas to backfill the ditches. Regrading will occur after the ditches have been filled to match the adjacent upland elevation. The soils used to backfill the ditches will consist of sandy, well drained soils that will support the proposed rare and unique upland community types consistent with Lee Plan Policy 123.2.17 5.b.

In areas of the Project where dredged material from the Caloosahatchee River will be removed, the soil will be removed to natural ground elevation or to an elevation that contains the appropriate soil types needed to support the establishment and success of the indigenous rare and unique upland habitat. This includes sandy or partially sandy soil types with loose to moderate density, similar to soil types documented throughout the property.

Plantings will be installed in the rare and unique upland creation areas following the completion of initial exotic vegetation removal, backfilling of the ditches, and associated regrading of the backfilled ditches. The planting details are outlined in Section 6.0.

#### 6.0 SUPPLEMENTAL PLANTINGS

Following the removal of exotics, the indigenous wetland restoration areas (33.95± acres) will be supplemented with native vegetation plantings. The target community types include a mixture of cypress, mixed wetland forest, freshwater marsh, and cabbage palm hammock habitats. Plantings will consist of tree, shrub, and ground cover species. Within forested wetlands, tree and shrub plantings will include a minimum of three of the species listed in Table 2. Ground cover plantings will include a minimum of four of the species listed in Table 2. Supplemental plantings within the open marsh habitats will consist of herbaceous species only and include a minimum of four of the species listed in Table 2. The species selected for planting will depend on market availability at the time the plantings are to occur. Additional tree, shrub, and ground cover species may be included in the planting table with approval from DCD staff.

Table 2. Supplemental Wetland Plantings

Common Name	Scientific Name	Minimum Height	Minimum Container Size	Planting Density (On Center)
	Trees		STATE OF THE STATE	
Bald cypress	Taxodium distichum	5 ft.	3 gal.	15 ft.
Dahoon holly	Ilex cassine	5 ft.	3 gal.	15 ft.
Laurel oak	Quercus laurifolia	5 ft.	3 gal.	15 ft,
Pond apple	Annona glabra	5 ft.	3 gal.	15 ft.
Pond cypress	Taxodium distichum	5 ft.	3 gal.	15 ft,
Pop ash	Fraxinus caroliniana	5 ft.	3 gal.	15 ft.
Red mangrove	Rhizophora mangle	5 ft.	3 gal.	15 ft.
Red maple	Acer rubrum	5 ft.	3 gal.	15 ft.
Slash pine	Pinus elliottii	5 ft.	3 gal.	15 ft.
Swamp bay	Persea palustris	5 ft.	3 gal.	15 ft.
Swamp dogwood	Cornus foemina	5 ft.	3 gal.	15 ft.
	Shrubs			
Buttonbush	Cephalanthus occidentalis	3 ft.	1 gal.	10 ft.
Gallberry	Ilex glabra	3 ft.	1 gal.	10 ft.
Giant leather fern	Acrostichum danaeifolium	3 ft.	1 gal.	10 ft.
Myrsine	Myrsine cubana	3 ft.	1 gal.	10 ft.
Saltbush	Baccharis halimifolia	3 ft.	1 gal.	10 ft.
Wax myrtle	Morella cerifera	3 ft.	1 gal.	10 ft.
Walter's viburnum	Viburnum obovatum	3 ft.	1 gal.	10 ft.
	Ground Cov	er -		
Arrowhead	Sagittaria lancifolia	12 in.	2 in.	3 ft.
Bushy bluestem	Andropogon glomeratus	12 in.	2 in.	3 ft.
Cordgrass	Spartina bakeri	12 in.	2 in.	3 ft.
Dotted smartweed	Persicaria punctata	12 in.	2 in.	3 ft.
Fireflag	Thalia geniculata	12 in.	2 in.	3 ft.
Frogfruit	Phyla nodiflora	12 in.	2 in.	3 ft.
Golden canna	Canna flaccida	12 in.	2 in.	3 ft.
Gulf Coast spikerush	Eleocharis cellulosa	12 in.	2 in.	3 ft.
Gulfdune paspalum	Paspalum monostachyum	12 in.	2 in.	3 ft.
Little blue	Amphicarpum	10 in	2 in.	3 ft.
maidencane	muehlenbergianum	12 in.	Z III.	311.
Maidencane	Panicum hemitomon	12 in.	2 in.	3 ft.
Muhlygrass	Muhlenbergia capillaris	12 in.	2 in.	3 ft.
Pickerelweed	Pontederia cordata	12 in.	2 in.	3 ft.
Purple lovegrass	Eragrostis spectabilis	12 in.	2 in.	3 ft.
Sawgrass	Cladium jamaicense	12 in.	2 in.	3 ft.
Soft rush	Juncus effusus	12 in.	2 in.	3 ft.
Soft-stem bulrush	Scirpus validus	12 in.	2 in.	3 ft.

Table 2. (Continued)

Common Name	Scientific Name	Minimum Height	Minimum Container Size	Planting Density (On Center)
	Ground Cover (Con	tinued)		
Spatterdock	Nuphar advena subsp. advena	12 in.	2 in.	3 ft.
Spikerush	Eleocharis interstincta	12 in.	2 in.	3 ft.
Swamp fern	Telmatoblechnum serrulatum	12 in.	2 in.	3 ft.
Tracy's beaksedge	Rhynchospora tracyi	12 in.	2 in.	3 ft.
Virginia chain fern	Woodwardia virginica	12 in.	2 in.	3 ft,

In addition, following the removal of exotics, indigenous upland restoration areas (7.38± acres) will be supplemented with native vegetation plantings. The target community types include pine flatwoods and hardwood/conifer mixed forested. Tree and shrub plantings will include a minimum of three of the species listed in Table 3. Ground cover plantings will include a minimum of four of the species listed in Table 3. The species selected for planting will depend on market availability at the time the plantings are to occur. Additional tree, shrub, and ground cover species may be included in the planting table with approval from DCD staff.

Table 3. Supplemental Upland Plantings

Common Name	Scientific Name	Minimum Height	Minimum Container Size	Planting Density (On Center)				
	Trees							
Cabbage palm	Sabal palmetto	5 ft.	3 gal.	15 ft.				
Laurel oak	Quercus laurifolia	5 ft.	3 gal.	15 ft.				
Live oak	Quercus virginiana	5 ft.	3 gal.	15 ft.				
Slash pine	Pinus elliottii	5 ft.	3 gal.	15 ft.				
	Shrubs							
Gallberry	Ilex glabra	3 ft.	1 gal.	10 ft.				
Myrsine	Myrsine cubana	3 ft.	1 gal.	10 ft.				
Rusty lyonia	Lyonia ferruginea	3 ft.	1 gal.	10 ft.				
Saw palmetto	Serenoa repens	3 ft.	1 gal.	10 ft.				
Sparkleberry	Vaccinium arboreum	3 ft.	l gal.	10 ft.				
Tarflower	Bejaria racemosa	3 ft,	1 gal.	10 ft.				
Wild coffee	Psychotria nervosa	3 ft.	1 gal.	10 ft.				
Wax myrtle	Morella cerifera	3 ft.	1 gal.	10 ft.				
	Ground Cover							
Beautyberry	Callicarpa americana	12 in.	2 in.	5 ft.				
Gulf muhly	Muhlenbergia capillaris	12 in.	2 in.	5 ft.				
Gopher apple	Geobalanus oblongifolius	12 in.	2 in.	5 ft.				
Fakahatchee grass	Tripsacum dactyloides	12 in.	2 in.	5 ft.				

Table 3. (Continued)

Common Name	Scientific Name	Minimum Height	Minimum Container Size	Planting Density (On Center)
	Ground Cover (Co	ntinued)		
Florida coontie	Zamia integrifolia	12 in.	2 in.	5 ft.
Lopsided Indian grass	Sorghastrum secundum	12 in.	2 in.	5 ft.
Purple lovegrass	Eragrostis spectabilis	12 in.	2 in.	5 ft.
Sand cordgrass	Spartina bakeri	12 in.	2 in.	5 ft.
Wiregrass	Aristida stricta	12 in.	2 in.	3 ft.

Following the removal of exotic vegetation and the completion of grading activities, supplemental plantings will be installed within the rare and unique upland restoration areas (2.68± acres) and rare and unique creation areas (300.01± acres) shown on Appendix C. The target community types may include a mixture of pine flatwoods, tropical hardwood, live oak hammock, and cabbage palm hammock habitats. Plantings will consist of tree, shrub, and ground cover species. Tree and shrub plantings will consist of a minimum of four (per stratum) of the species listed in Table 4, and ground cover plantings will consist of a minimum of four of the species listed in Table 4. The species selected for planting will depend on market availability at the time the plantings are to occur. Additional tree and ground cover species may be included in the planting table with approval from Lee County DCD staff.

The trees included in Table 4 will also be utilized to satisfy the Project's right-of-way (ROW) buffer requirements along North River Road; however, cabbage palm hammocks cannot be utilized within the ROW buffer. Cabbage palms may be planted within the ROW buffer but must be mixed with other native trees provided in Table 4.

Table 4. Supplemental Rare and Unique Upland Plantings

Common Name	Scientific Name	Minimum Height	Minimum Container Size	Planting Density (On Center)
	Trees			
Cabbage palm	Sabal palmetto	5 ft.	3 gal.	15 ft.
Gumbo limbo	Bursera simaruba	5 ft.	3 gal.	15 ft.
Live oak	Quercus virginiana	5 ft.	3 gal.	15 ft.
Hackberry	Celtis laevigata	5 ft.	3 gal.	15 ft.
Hog plum	Ximenia americana	5 ft.	3 gal.	15 ft.
Slash pine	Pinus elliottii	5 ft.	3 gal.	15 ft.
Southern red cedar	Juniperus virginiana	5 ft.	3 gal.	15 ft.
	Shrubs <sup>1</sup>			
Fiddlewood	Citharexylum spinosum	3 ft.	l gal.	10 ft,
Firebush	Hamelia patens	3 ft.	1 gal.	10 ft.
Florida privet	Forestiera segregata	3 ft.	l gal.	10 ft.
Marlberry	Ardisia escallonioides	3 ft.	1 gal.	10 ft.

Table 4. (Continued)

Common Name	Scientific Name	Minimum Height	Minimum Container Size	Planting Density (On Center)		
Shrubs <sup>1</sup> (Continued)						
Satin leaf	Chrysophyllum oliviforme	3 ft.	1 gal.	10 ft.		
Saw palmetto	Serenoa repens	3 ft.	1 gal.	10 ft.		
Shortleaf wild coffee	Psychotria tenuifolia	3 ft.	l gal.	10 ft.		
Simpson's stopper	Myrcianthes fragrans	3 ft.	1 gal.	10 ft.		
Spanish stopper	Eugenia foetida	3 ft.	1 gal.	10 ft.		
Sparkleberry	Vaccinium arboreum	3 ft.	1 gal.	10 ft.		
Walter's viburnum	Viburnum obovatum	3 ft.	1 gal.	10 ft.		
White indigoberry	Randia aculeata	5 ft.	3 gal.	10 ft.		
White stopper	Eugenia axillaris	3 ft.	l gal.	10 ft.		
Wild coffee	Psychotria nervosa	3 ft.	1 gal.	10 ft.		
Wild lime	Zanthoxylum fagara	3 ft.	1 gal.	10 ft.		
	Ground Cov	er <sup>.1</sup>				
Beautyberry	Callicarpa americana	12 in.	2 in.	3 ft.		
Coral bean	Erythrina herbacea	12 in.	2 in.	3 ft.		
Fakahatchee grass	Tripsacum dactyloides	12 in.	2 in.	5 ft.		
Florida coontie	Zamia integrifolia	12 in.	2 in.	5 ft.		
Gopher apple	Geobalanus oblongifolius	12 in.	2 in.	3 ft.		
Lopsided Indian grass	Sorghastrum secundum	12 in.	2 in.	5 ft.		
Sand cordgrass	Spartina bakeri	12 in.	2 in.	5 ft.		
Wiregrass	Aristida stricta	12 in.	2 in.	3 ft.		

<sup>&</sup>lt;sup>1</sup>No one species shall comprise more than 25 percent of the plantings.

The preserve enhancement, restoration, and creation activities may be completed in multiple phases. The wetland and upland planting activities will occur during the wet season (i.e., June through October). If plantings cannot be installed within this timeframe, irrigation will be utilized until the onset of the wet season (i.e., June) or until the vegetation is successfully established. Irrigation will be utilized on a temporary, as-needed basis, and will not be a required long-term activity.

Depending on the location of the planted areas, irrigation sources may include, but are not limited to, the on-site lakes and wells. The irrigation method may consist of an overhead sprinkler or temporary drip pipe installed to the water source. The temporary irrigation system will be removed within one year of installation or when plantings are successfully established.

In accordance with Section 10-416(d)(9) of the LDC, if restoration activity occurs within the 50-foot natural waterway buffer area, all supplemental plantings will comply with the requirements set forth under Section 10-420 of the LDC.

## 7.0 RARE AND UNIQUE UPLAND RESTORATION AND CREATION SOILS ANALYSIS

The target community types within the rare and unique restoration and creation areas may include a mixture of pine flatwoods, tropical hardwood, live oak hammock, and cabbage palm hammock habitats. Soil profiles within mesic flatwoods and mesic hammock habitats were researched with Florida Natural Areas Inventory (FNAI) in the *Guide to the Natural Communities of Florida* (2010). Per the source, mesic flatwoods habitats occupy poorly drained sandy soils, while mesic hammock habitats occupy well drained sandy soils with moderate to high amounts of organic matter.

The soils classifications within the rare and unique restoration and creation areas, per the Natural Resources Conservation Service (NRCS), are shown on Appendix D. The dominant soil classifications within these areas consist of Cypress Lake fine sand (Soil Unit 13) (24.51± acres); Immokalee sand (Soil Unit 28) (31.58± acres); Oldsmar sand (Soil Unit 33) (76.70± acres); and Caloosa fine sand (Soil Unit 144) (153.50± acres). According to the NRCS and the Soil Survey of Lee County, Florida (U.S. Department of Agriculture 1984 and 2020), Cypress Lake fine sand, Immokalee sand, and Oldsmar sand are poorly drained soils; and Caloosa fine sand is a moderately well drained soil.

Pursuant to Chapter XII of the Lee Plan, mesic hammock communities classified as rare and unique are scattered throughout the Project site and consist of Live Oak, Disturbed (FLUCFCS Codes 4279 E1, E2, and E3) and Cabbage Palm, Disturbed (FLUCFCS Code 4289 E2) (Appendix B). These mesic hammock habitats are currently established within a variety of NRCS soil unit types, including Cypress Lake fine sand, Immokalee sand, Oldsmar sand, and Caloosa fine sand. Therefore, the Project contains appropriate soil types for the establishment of rare and unique upland habitats.

#### 8.0 MAINTENANCE

After completing the initial exotic removal, semi-annual inspections of the conservation areas will occur for the first two years. During these inspections, the conservation areas will be traversed by a qualified ecologist. Locations of nuisance and/or exotic species will be identified for immediate treatment with an appropriate herbicide. Additional potential problems will also be noted, and corrective actions will be taken. Once exotic/nuisance species levels have been reduced to acceptable limits, inspections of the conservation area will be conducted annually. After the initial exotic removal, subsequent exotic maintenance will be hand-removal only. Maintenance will be conducted in perpetuity to ensure that the conservation areas are free of exotic vegetation, including the prohibited invasive exotic species listed in Section 10-420(h) of the LDC (Table 1).

#### 8.1 Prescribed Fire

Prescribed burning may be used as a management tool in the conservation area to maintain the native vegetation communities. Prescribed burns help maintain vegetative communities in their natural state, reduce fuel loads and the danger of wildfire, aid with the eradication and control of exotic and nuisance vegetation species, and improve wildlife habitat. The objectives of prescribed burning maintenance events will be to aid in the control of exotic vegetation and woody shrubs (i.e., wax myrtle and saltbush) and to stimulate the growth and diversity of herbaceous vegetation.

If utilized, the burning frequency for the conservation areas will be two to four years, which is consistent with the natural fire regime for South Florida habitats described by the FNAI in the *Guide to the Natural Communities of Florida* (2010). The edges of the Project's freshwater marshes will be burned when the fire moves through the adjacent forested habitats. The fire will be allowed to extinguish naturally within the wetter marsh habitats.

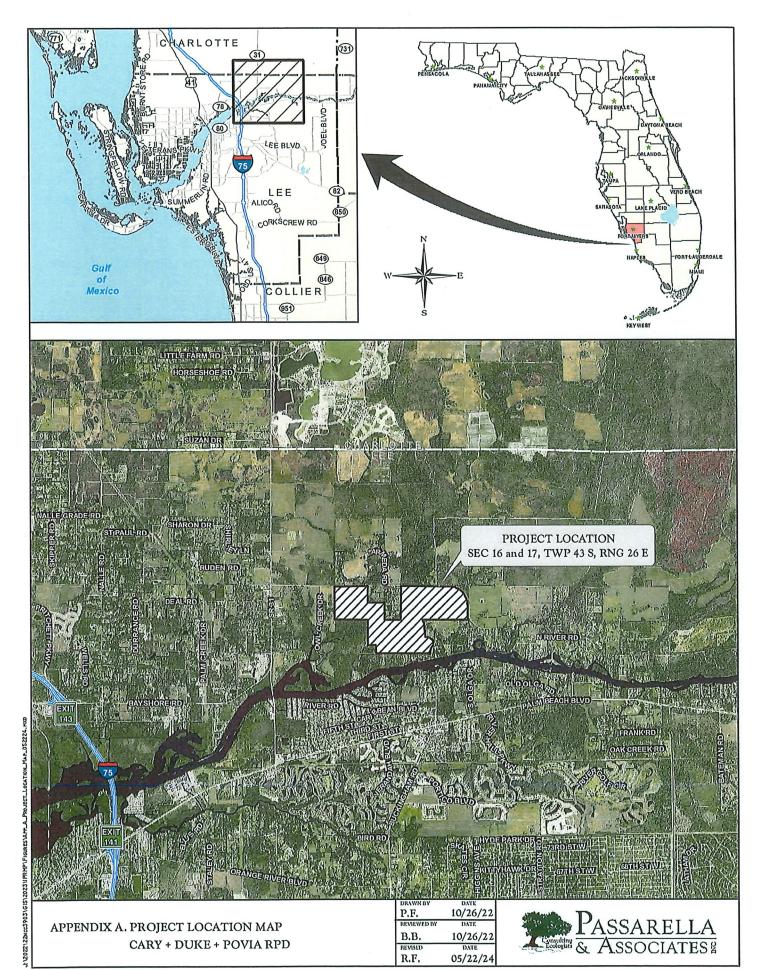
Prescribed burning is typically conducted during the winter or early spring when temperatures are reduced and wind direction is more constant. The initial burn is anticipated to occur during the late winter. Winter burns are preferred to reduce high fuel loads. Growing season burns also may be conducted as conditions allow. Changes in annual weather cycles determine when burn permits will be available, and burns may be conducted only on the day(s) of Florida Forest Service (FFS) permission.

Fire breaks will be installed in strategic locations to safely ignite and control prescribed fires. Fire breaks will be co-located with maintenance trails, recreational trails, access roads, easements, fence lines, property boundaries, and natural habitat boundaries. Fires will be excluded from planted areas for at least ten years to allow plantings to mature enough to survive fires.

Controlled burns will be conducted with a permit issued from the FFS. In addition, notice will be given to the local fire district.

## 9.0 MONITORING REPORTS

The proposed monitoring of the Lee County Indigenous Preserve areas will consist of baseline, time-zero, and annual monitoring. Annual reports documenting the achievement of the enhancement, restoration, and creation activities will be submitted to Lee County's DCD. Annual monitoring reports will be provided for five years after the Certificate of Compliance has been issued by the DCD. The monitoring reports will include documented exotic and nuisance species; mortality of vegetation; estimated causes of mortality; the growth of the vegetation; and hydrologic conditions of the wetland preserve areas, including monitoring well hydrographs, wildlife observed, photographs, and factors that demonstrate the functional health of the conservation areas. A brief description of anticipated maintenance work to be conducted over the next year will also be included. In addition, monitoring reports will provide recommendations and/or corrective measures to address deficiencies observed, including impacts to wetland hydrology. Periodic inspections will be conducted by DCD staff to ensure the accuracy of the monitoring reports.



## 10.0 REFERENCES

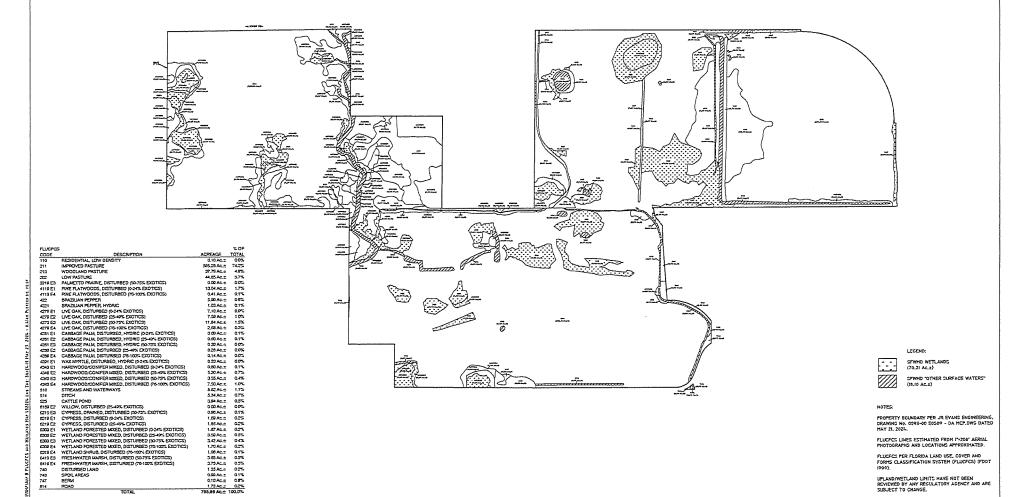
- Florida Department of Transportation. 1999. Florida Land Use, Cover and Forms Classification System (FLUCFCS). Procedure No. 550-010-001-a. Third Edition.
- Florida Natural Areas Inventory. 2010. Guide to the Natural Communities of Florida: 2010 Edition. Florida Natural Areas Inventory, Tallahassee, Florida.
- U.S. Department of Agriculture, Soil Conservation Service. 1984. Soil Survey of Lee County, Florida.
- U.S. Department of Agriculture, Soil Conservation Service. 2020. Soil Survey of Lee County, Florida.

## APPENDIX A PROJECT LOCATION MAP

## APPENDIX B FLUCFCS AND WETLANDS MAP



SCALE: 1" # 400



KIVISONS DRAWNE R.F. 11/29/22 03/07/23 Revised boundary 11/29/22 04/01/24 Revised boundary RESTERTED DATE 11/29/22 05/22/24 Revised boundary B.B.

13620 Metropolis Avenue Suite 200 Fr. Myers, FL 33912 Phone (239) 274-0067 Fax (239) 274-0069

PASSARELLA & ASSOCIATES 2

CARY + DUKE + POVIA RPD FLUCFCS AND WETLANDS MAP

22NCC3903

UPLAND/WETLAND LIMITS HAVE NOT BEEN REVIEWED BY ANY REGULATORY ACENCY AND ARE SUBJECT TO CHANGE.

APPENDIX B

# APPENDIX C INDIGENOUS PRESERVE AND RESTORATION MANAGEMENT PLAN





 13620 Metropolis Avenue Suire 200 Ft. Myers, FL 33912 Phone (239) 274-0067 Fax (239) 274-0069



 $\label{eq:cary+Duke+Povia RPD} \mbox{Indigenous preserve and restoration management plan}$ 

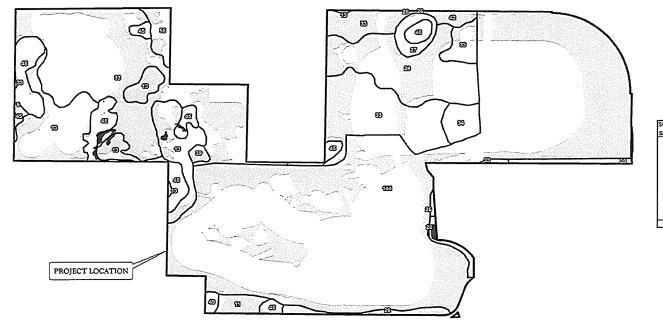
22NCC3903

APPENDIX C

## APPENDIX D SOILS OVERLAY MAP



500 1,000 Feet



#### LEGEND

CARY + DUKE + POVIA RPD

RARE AND UNIQUE UPLAND CREATION (300.01 AC.±) RARE AND UNIQUE UPLAND RESTORATION (2.68 AC.±)

3 LEE SOILS

OILS THAT FALL WITHIN RARE AND UNIQUE CREATION AND RESTORATION AREAS					
oti Unit	Description	Acres			
11	Myakka fine sand, 0 to 2 percent slopes	4.69 Ac. =			
13	Cypress Lake fine sand, 0 to 2 percent stopes	24,51 Ac.±			
26	Pineda-Pineda, wet, fine sand, 0 to 2 percent slopes	0,80 Ac,±			
27	Pompano fine sand, frequently pended, 0 to 1 percent stopes	0,79 Ac.±			
28	Immokalce sand, 0 to 2 percent slopes	31,58 Ac.±			
33	Oldsmar sand, 0 to 2 percent slopes	76.70 Ac.±			
39	isles fine sand, frequently pended, 0 to 1 percent slopes	1.24 Ac.=			
42	Wabasso sand, limestone substratum, 0 to 2 percent slopes	3.66 Ac. ±			
45	Copeland fine sandy learn, frequently pended, 0 to 1 percent slopes	2.59 Ac.±			
49	Felda fine sand, frequently ponded, 0 to 1 percent slopes	0.09 Ac.±			
55	Cocca fine sand, 0 to 2 percent slopes	2.54 AC.±			
144	Calposa fine sand, 0 to 2 percent slopes	153.50 Ac.±			
	TOTAL	102.69 Ac.±			

NOTES:

PROPERTY BOUNDARY PER JR EVANS ENGINEERING DRAWING NO. 00911-00 E0509 - OA MCP.DWG DATED MAY 21, 2024.

SOILS MAPPING WAS ACQUIRED FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE WEBSITE OCTOBER 2022.

1			
REVINONS	DATE	H.H., R.F.	03/07/23
Revised boundary	04/01/24	DENGINED BY	DATE
Revised boundary	05/22/24	C.R.	03/07/23
		S.L.	03/07/23

13620 Metropolis Avenue Suite 200 Fort Myers, Florida 33912 Phone (239) 274-0067 Fax (239) 274-0069



CARY + DUKE + POVIA RPD SOILS OVERLAY MAP

22NCC3903

APPENDIX D

## **EXHIBIT B3**

Water Quality Monitoring Plan

Cary-Duke-Povia DCI2022-00067





— An Apex Company —

Evan Lentz

Evan Lentz Staff Scientist

MA

Michael Alfieri P.G. 2476 Senior Managing Hydrogeologist

**MAY 2024** 

## **TABLE OF CONTENTS**

SECTION 1	INTRODUCTION AND BACKGROUND	1
SECTION 2	GOALS AND OBJECTIVES	2
SECTION 3	MONITORING SITES	3
SECTION 4	PARAMETERS AND REPORTING SCHEDULE	1
SECTION 5	CONTINGENCY PLAN	6
<u>FIGURES</u>		
FIGURE 1 FIGURE 2	Regional Location Map Proposed Surface Water Quality Monitoring Site Locations	
<u>TABLES</u>		
TABLE 1	Proposed Monitoring Parameters and Schedule	
<u>EXHIBITS</u>		
EXHIBIT A	Excerpt from Rezoning Application DCI2022-00067	

## 1.0 INTRODUCTION AND BACKGROUND

The Cary-Duke-Povia project is an approximately 790-acre proposed residential community development located within Section 17 and 16, Township 43S, Range 26 in Lee County, Florida. The proposed Cary-Duke-Povia development is situated approximately one mile east of State Road 31 on the south side of State Road 78 (North River Road). The project is currently seeking approval to change the zoning category from Agricultural (AG-2) to a Residential Planned Development (RPD) under Application DCI2022-00067. Refer to Figure 1 for a regional location map showing the Cary-Duke-Povia boundary.

## 2.0 GOALS AND OBJECTIVES

This Water Quality Monitoring Plan provides a response to the Lee County Comment Letter, dated January 19, 2023, Comment No. 6 of the Natural Resources Review section regarding the proposed outflow to Trout Creek. Specifically, the main objective of the Water Quality Monitoring Plan is to establish baseline conditions and to quantify potential impacts of the proposed residential development on Trout Creek. The first task is identification of outfall locations, establishing a water quality monitoring parameter list, and establishment of a schedule for the monitoring program. The second objective of the monitoring plan is to provide documentation of the analytical results to the Lee County Division of Natural Resources (LCDNR) through regular reporting and data transfer such that the water quality database maintained by Lee Country accurately identifies and characterizes any contribution of contamination to Trout Creek. This Water Quality Monitoring Plan includes sampling locations, sampling frequency, reporting requirements, and evaluations of the water quality within the project site.

## 3.0 MONITORING SITES

The existing topography of the Cary-Duke-Povia project site generally directs stormwater runoff from the northeast to the southwest and from the northwest to the southeast into surrounding wetlands/preserves within the site property boundary. Development plans for the project indicate that there are five proposed outfall control structures where water can flow out of the proposed stormwater management system and leave the project site. These control structures, CS A, CS B-1, CS B-2, CS C, and CS D are identified in **Figure 2**. Flow leaving the proposed stormwater management system from the five outfall locations will enter the onsite wetland preserve areas and continue through existing wetlands to Trout Creek, located in the eastern portion of the project area.

The proposed Water Quality Monitoring Plan includes the installation of seven surface water sampling locations five at outfall locations and two staff gages installed in the irrigation withdrawal lakes (SG-1 & SG-2), two shallow monitor wells tapping the upper portion of the Water Table Aquifer (WT-1 & WT-2), and a deeper monitor well tapping the upper portion of the Sandstone Aquifer (SS-1) to record stage and ground water elevations and obtain surface and ground water samples. Sampling at CS A through CS D is proposed at the downstream end of the outfall structure from within the adjoining wetland. The seven surface water samples will be measured in the field and the Sandstone Aquifer wells will be outfitted with electronic water level transducers set to record water levels every 6 hours. Water quality data will be collected from the shallow Water Table wells and outfall locations. The water level elevations will be referenced to the North American Vertical Datum of 1988 (NAVD 88). Proposed sampling locations at the individual control structures, CS A, CS B-1, CS B-2, CS C, and CS D are shown in **Figure 2**.

## 4.0 PARAMETERS AND REPORTING SCHEDULE

The proposed monitoring parameter list is provided in **Table 1**. Monitoring includes a baseline sampling event prior to construction commencement followed by semi-annual sampling events. The sampling events are proposed to occur twice per year during the wet season (June through October). The early wet season monitoring event is proposed to occur in June, while the late wet season event is proposed to occur in October. Monitoring will include stage measurements using previously established benchmarks and the discharge condition will be recorded as either a "yes or no" depending on whether or not water is flowing through the control structures at the time of sampling. Water Quality samples will be collected from the water table monitor wells, staff gauge monitoring stations, and outfall locations. One field blank and a field duplicate will be collected during each sampling event for quality assurance purposes. Chain of custody forms and laboratory analysis reports will be provided in corresponding quarterly reports.

Table 1. Summary of Surface Water and Groundwater Sampling Parameters

PARAMETER	UNITS	BASELINE	Semi- Annualy	Groundwater Target Level	Surface Water Target Levels	ANALYSIS TYPE
Total Kjeldahl Nitrogen (TKN)	mg/Las N	х	х	NA	1.54	Laboratory
Ammonia (un-ionized)	mg/Las N	x	х	NA	0.02	Laboratory
Nitrite+Nitrate as Nitrogen (NOX)	mg/Las N	х	х	10	NON-NUMERIC	Laboratory
Nitrite	mg/Las N	x	-	1	NON-NUMERIC	Laboratory
Nitrate	mg/Las N	х		10	10	Laboratory
Total Phosphorus	mg/L	х	х	NA	0.12	Laboratory
Chloride	mg/L	х	х	250	250	Laboratory
Total Dissolved Solids (TDS)	mg/L	х	х	500	500 Average	Laboratory
Florida PRO (TRPH)	μg/L	х	x (Annualy)	5000	5000	Laboratory
Arsenic	μg/L	х		10	10	Laboratory
Copper	μg/L	x	х	1000	2.72	Laboratory
Mercury	μg/L	х	х	2	0.012	Laboratory
Lead	mg/L	х	х	0.015	0.0085	Laboratory
E. coli	MPN/100mL	х	х	NA	126 Average	Laboratory
Total Hardness	mg/l	x	х	NA	NA	Laboratory
Temperature	С	х	х	NA	NA	Field
Specific Conductance	mhos/cm	x	х	NA	1275 or <50% Increase	Field
рН	pH units	х	х	6.5-8.5	1 unit from background	Field
Dissolved Oxygen (DO)	mg/L	x	х	NA	>5.0	Field
Lake Stage	ft NAVD	x	х	NA	NA	Field/Recorder
Water Table Aquifer Elevation	ft NAVD	х	х	NA	NA	Field/Recorder
Sandstone Aquifer Elevation	ft NAVD	х	х	NA	NA	Field/Recorder

NA=Not Applicable

Note - Groundwater Target Levels per Chapter 62-550 and Rule 62-520.420, FAC with exception of FL-PRO. FL-PRO is a petroleum screening parameter with a target level of 5 mg/l listed in Chapter 62-777, FAC. Surface Water Target Levels per Chapter 62-302.

### **Quality Assurance**

Water samples will be collected and handled following protocols contained in Florida Department of Environmental Protection (FDEP) Quality Assurance Rule F.A.C. 62-160 and adopted as the 2014 FDEP Standard Operating Procedures for Field Activities (DEP-SOP-001/01), effective July 30, 2014. Water Quality samples will be collected at surface water monitoring stations documented on **Figure 2**. One field blank and a field duplicate will be collected during each sampling event for quality assurance purposes. A chain of custody form and laboratory analysis reports will be provided in corresponding annual reports.

Water samples will be tested by a certified laboratory under the National Environmental Laboratory Accreditation Program (NELAP) using approved test methods and QA testing requirements (i.e. blanks, sample duplicates, surrogates, matrix spikes etc.) as contained in F.A.C 62-160 QA Rules.

### Water Monitoring Reporting and Analysis

An annual report, which will include a comparison of State water quality standards, plots of parameters, and any conclusions or recommendations will be provided to the LCDNR annually for at least 5 years. The monitoring reports will be submitted once per year as an Electric Data Deliverable (EDD) in a comma delimited text format approved by the within 60 days of receipt of the laboratory reports. Conclusions and recommendations will be based on applicable target levels, statistical analyses, and trends of measured constituents.

Results of each water quality sampling events will be compared to applicable target levels, if listed and deviation from the initial baseline sampling. Parameters that do not have numeric target levels will be evaluated for trends. The surface water and groundwater laboratory results will undergo statistical analyses for the development of conclusions and recommendations within the annual reports.

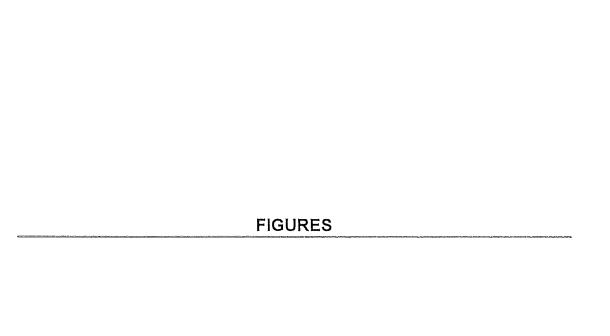
Water quality reporting will continue for a minimum of 5 years from the date of completion of the stormwater management system. After 5 years of meeting or exceeding state water quality monitoring standards, the developer may amend or discontinue water quality monitoring and reporting after submitting a written request, review, and approval by LCDNR.

## **5.0 CONTINGENCY PLAN**

Should water quality concentrations be identified as exceeding target levels, deviations from baselines, or through statistical trend analyses, site conditions will be reviewed for possible onsite and offsite incidents that could contribute to elevated readings. If no incident or cause can be identified, the samples will be re-collected and re-analyzed for the parameter of concern. Following any re-sampling event, the Applicant will coordinate with the LCDNR to aid in identifying potential causes and/or the potential need to modify monitoring parameters, frequency, and/or reporting. If re-sampling shows water quality concerns, LCDNR will be notified to discuss potential corrective actions.

Potential investigative and corrective actions may include:

- Review potential for contamination from the nearest upgradient facility's lakes;
- Review and revision of community lake management, stormwater management, and fertilizer application procedures and schedules;
- Include additional surface water sampling sites; and/or
- Notification to impacted residents and applicable authorities as needed.



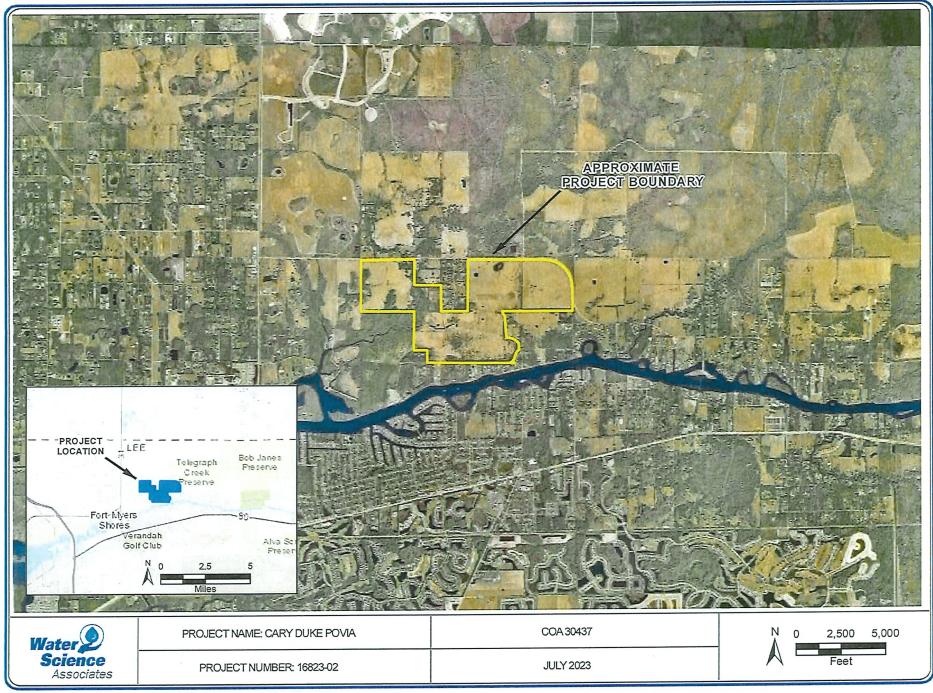


FIGURE 1. REGIONAL LOCATION MAP

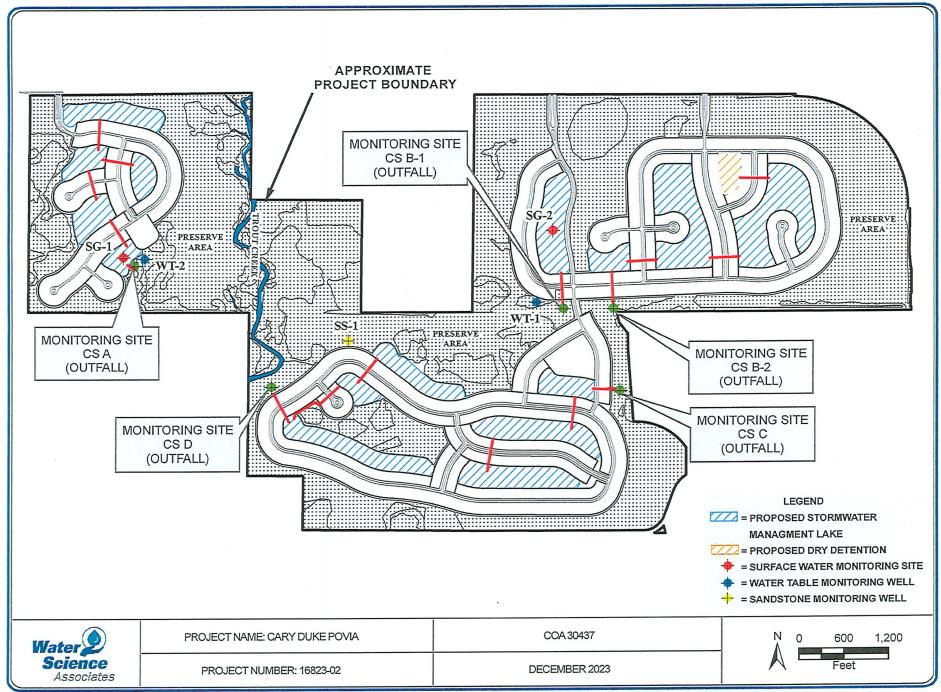


FIGURE 2. PROPOSED SURFACE WATER QUALITY MONITORING SITES

#### Exhibit C

#### EXHIBITS PRESENTED AT HEARING

## STAFF EXHIBITS

- 1. DCD Staff Report with attachments for DCI: Prepared by Dirk Danley, Jr., Principal Planner, date received August 21, 2024 (multiple pages 8.5"x11" & 11"x14") [black & white, color]
- 2. Affidavit of Publication: For Zoning Case DCI2022-00067, Cary+Duke+Povia RPD (1 page 8.5"x11")
- 3. PowerPoint Presentation: Prepared by Lee County Staff for Zoning case DCI2022-00067, Cary+Duke+Povia RPD, dated September 4, 2024 (multiple pages 8.5"x11")[color]
- 4. *Email:* From Jillian Scholler, PE, Deputy Director of Department of Transportation, to Dirk Danley, Jr., with Community Development, dated Thursday, September 5, 2024, 3:02 PM (2 pages 8.5"x11')
- 5. *Memorandum:* From Nathan Beals, PMP, to Dirk Danley, Jr, AICP, dated September 19, 2024 (1 page 8.5"x11")

## APPLICANT EXHIBITS

- a. 48-Hour Notice: Email from Jem Frantz with RVI Planning and Landscape Architecture, to Maria Perez, Steven Hartsell, Shane Johnson, Brandon Frey, and Yury Bykau, with copies to 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 Friday, August 30, 2024, 9:23 AM (multiple pages 8.5"x11")
- 1. PowerPoint Presentation: Prepared for Zoning case DCI2022-00067, Cary+Duke+Povia RPD, dated September 4, 2024 (multiple pages 8.5"x11")[color]
- 2. Allapattah Community's Assn, Inc. of Florida v. City of Miami: 379 So.2d 387 (1980) (multiple pages 8.5"x11")
- 3. 48-Hour Notice for September 20, 2024 Hearing: Email from Alexis Crespo with RVI Planning and Landscaping, to Maria Perez, with copies to Dirk Danley, Jr., Elizabeth Workman, Patric Neal, Jack Weber, C. Thrushman, Will Hellman, Jem Frantz, Sabrina McCabe, Shane Johnson, Kirk Martin, Neale Montgomery, Esq.,

- Ted Treesh, Yury Bykau, Joseph Adams, Esq., Etc., dated Tuesday, September 17, 2024, 12:41 PM (multiple pages 8.5"x11" and 11"x17")
- 4. *Updated Line of Sight:* Prepared by RVI Planning and Landscaping for Cary+Duke+Povia RPD, dated September 18, 2024 (1 page 11"x17")[color]
- 5. PowerPoint Presentation: Prepared for Zoning case DCI2022-00067, Cary+Duke+Povia RPD, dated September 20, 2024 (multiple pages 8.5"x11")[color]
- 6. Written Submissions: Email from Alexis Crespo with RVI Planning and Landscaping, to Maria Perez, with copies to Neale Montgomery, Esq., Dirk Danley, Jr., and Elizabeth Workman, dated Friday, September 20, 2024, 12:05 PM (3 page 8.5"x11")

## OTHER EXHIBITS

## Steven Brodkin

1. *Presentation:* (3 pages – 8.5"x11")

## Marsha Ellis

1. PowerPoint Presentation: Prepared by for Zoning case DCI2022-00067, Cary+Duke+Povia RPD, dated September 4, 2024 and September 6, 2024 (multiple pages – 8.5"x11")

## Elly Hagen

- 1. *Documents:* (multiple pages 8.5"x11")
- 2. *Letter:* From Richard Durling (4 pages 8.5"x11")

## James Kennedy

1. Presentation and PowerPoint Presentation: (multiple pages – 8.5"x11")

## Donalyn Moon

1. *Document:* (multiple pages – 8.5"x11")

## Katrina Salokar

1. Roar Newspapers: (multiple newspapers)

## **Holly Swartz**

1. *Documents:* (multiple pages – 8.5"x11")

## **Exhibit D**

## **HEARING PARTICIPANTS**

## County Staff:

- 1. Dirk Danley, Jr.
- 2. Elizabeth Workman

## Applicant Representatives:

- 1. Yury Bykau
- 2. Alexis Crespo
- 3. Brandon Frey
- 4. Will Hellman
- 5. Shane Johnson
- 6. Kirk Martin
- 7. Neale Montgomery, Esq.
- 8. Pat Neal
- 9. Ted Treesh

## Public Participants:

- 1. Susan Allen
- 2. Kathy Arnold
- 3. Ralph Bond
- 4. Linda Borchering
- 5. Steven Brodkin
- 6. Monica Busbee
- 7. Keith Cary

## DCI2022-00067

- 8. Terri Chadwell
- 9. Amanda Cochran
- 10. Darius Cochran
- 11. Freida Lauer Cochran
- 12. Jimmie Cochran
- 13. Keith Durling
- 14. Glen Dyess
- 15. Denise Eberle
- 16. Dave Edwards
- 17. Marsha Ellis
- 18. William Fields
- 19. Cheryl Fischer
- 20. Grant Fichter
- 21. Roxanne Gause
- 22. Elly Hagen
- 23. James Kennedy
- 24. Alan Klingensmith
- 25. Donalyn Moon
- 26. Tom Mulling II
- 27. Terry Paska
- 28. Codty Piece
- 29. Linda Redfern
- 30. William Redfern

## DCI2022-00067

- 31. Katrina Salokar
- 32. Katherine Sanderford
- 33. Jack Snider
- 34. Holly Schwartz
- 35. Don Tate
- 36. Andy Tilton

## 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.

## Cary + Duke + Povia RPD

### Attachment C - Conditions

## Section A. - Conditions

1. The development of this project must be consistent with the two-page Master Concept Plan (MCP) entitled "Cary + Duke + Povia RPD," prepared by J.R. Evans Engineering, Inc., date stamped May 30, 2024, except as modified by the conditions below. This development must comply with all requirements of the Lee County LDC at the time of local development order, 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.

This project is limited to a total of 1,099 dwelling units, amenity areas, and accessory uses.

- 2. The following limits apply to the project and uses:
  - a. Schedule of Uses

Accessory Uses and Structures

Administrative Offices

Clubs, private

Community Gardens, within the optional amenity areas only

Dwelling Unit -

Single-Family

Two-Family Attached

**Entrance Gate and Gatehouse** 

**Essential Services** 

Essential Service Facilities, Group I only

Excavation, Water Retention

Excess Spoil Removal (20,000 cubic yards or more)

Fences. Walls

Home care facility

Home occupation

Models: Display center, display group, model home

Parking Lot: Accessory Real Estate Sales Office

Recreational Facilities: Personal, Private-on-site

Residential accessory uses

Signs

Temporary Uses, temporary construction trailers and equipment storage sheds,

Temporary amenity structures

## b. <u>Site Development Regulations</u>

	Single-Family Detached	Two-Family Attached	Clubhouse
Minimum Lot Size	4,000 sq ft	3,000 sq ft	N/A
Minimum Lot Width	40 feet	30 feet	N/A
Minimum Lot Depth	100 feet	100 feet	N/A
Maximum Lot Coverage	60 percent	65 percent	50 percent
Maximum Building Height	35 feet	35 feet	35 feet
Minimum Building Separation	10 feet	10 feet	10 feet
	Set	backs	
Street (Interior Private Roads)	20 feet / 10 feet <sup>1</sup>	20 feet / 10 feet <sup>1</sup>	20 feet
Street (Public Roads)	50 feet	50 feet	50 feet
Side	5 feet <sup>5</sup>	5 feet <sup>5</sup> / 0 feet <sup>2</sup>	10 feet <sup>5</sup>
Rear (Principal)	10 feet	10 feet	10 feet
Rear (Accessory)	5 feet <sup>3</sup>	5 feet <sup>3</sup>	5 feet <sup>3</sup>
PD Perimeter	50 feet	50 feet	50 feet
Waterbody	20 feet	20 feet	20 feet
Preserve	20 feet <sup>4</sup>	20 feet <sup>4</sup>	20 feet <sup>4</sup>

### Notes:

- 1) 20 feet for front loaded garages, 10 feet for side loaded garages and secondary street setbacks on corner lots.
- 2) No side setback is required from common lot line for two-family attached.
- 3) 5 feet (0 feet where lot abuts lake maintenance easement).
- 4) 30 feet for indigenous plant communities subject to fire.
- 5) Equipment pads may encroach up to 4.5 feet into a side setback subject to Deviation #4.

## 3. Rural Compatibility

- a. Prior to development order approval the applicant must demonstrate that entrances features into the development must provide design elements described in LDC Section 33-1669 through LDC Section 33-1672.
- b. Prior to development order approval for individual lots within the development, any lot within 300 feet of the development perimeter to be a minimum of 15,000 square feet.

## 4. <u>Utility Connection</u>

Prior to local development order approval for any phase of work, the development plans must demonstrate connection to public utilities for water and wastewater services.

## 5. Public Safety Level of service

Prior to Development Order approval for any phase of work, the applicant must demonstrate that sufficient Level of Service for public safety can be provided with no objection from the Lee County Public Safety Office for that phase of work.

## 6. Open Space

Prior to the issuance of the first development order for any phase of work, the development order plans must depict a total of 420.20 acres of indigenous open space in substantial compliance with the Master Concept Plan dated May 29, 2024, per the following breakdown:

- a) Rare and Unique Upland Preservation: 26.03 acres;
- b) Rare and Unique Upland Restoration: 2.68 acres;
- c) Rare and Unique Created: 300.01 acres;
- d) Upland Restoration: 7.38 acres;
- e) Upland Preservation: 23.98 acres;
- f) Wetland Preservation: 17.51 acres;
- g) Wetland Restoration: 33.95 acres; and
- h) Surface Waters: 8.66 acres.

## 7. Protected Species

Prior to the issuance of a vegetation removal permit for any development order, preconstruction species monitoring reports, where applicable, must be submitted to ensure no protected species are within the clearing limits.

## 8. Recording of Conservation Easement

Conservation easement must be recorded for all areas used towards density incentive. The conservation easements must be dedicated to the appropriate maintenance entity that provides Lee County or some other public agency, acceptable to Lee County, with third party enforcement rights. All Conservation Easements required as part of the planned development must be recorded within 5 years from first development order approval.

## 9. Wetland Impacts

Prior to the issuance of the first development order, the applicant must submit a copy of the mitigation receipt of payment or mitigation plans for the 18.85 acres of wetland impacts.

## 10. Indigenous Habitat Restoration/ Management Plan

a. Prior to the issuance of the first development order for any phase of work, the development order plans must be in substantial compliance with the Indigenous Habitat Management Plan Revised May 2024 and received May 31, 2022.

- b. Prior to the issuance of the first development order, the development order plans must include a schedule for the indigenous preservation, restoration, and created preserve areas to be completed within at least five consecutive years.
- c. Prior to the issuance of the first development order, the development order plans must include cross sections depicting the hydrological restoration, upland grading and the type of habitat being restored or created to ensure survivability. The plans must include details of soil amendments in the restoration and creation areas, if applicable.
- d. Prior to the issuance of the first development order, the development order plans must include a map depicting where mechanical and hand-removal methods of exotic vegetation removal will be located.
- e. Prior to the issuance of the first development order, a monitoring schedule must be established to ensure all preserve enhancement, restoration, and creation is completed and demonstrate 80 percent survivability within five consecutive years. Monitoring will be required until 80 percent survivability is achieved.
- f. The applicant must submit with the vegetation removal permit survey point maps depicting the preservation and restoration areas and mechanical clearing limits.

# 11. Northern Buffer Planting Material

Prior to the issuance of the first development order, the development order plans must depict a 25-foot-wide buffer within the restoration area along North River Road that includes 14-foot-high native canopy trees, spaced approximately 25 feet on center to comply with LDC Section 33-1673.

# 12. Natural Waterbody Buffer

Prior to the issuance of the first development order that includes Trout Creek, the landscape plans must provide a natural waterway buffer plan that is in compliance with the Indigenous Preserve Management and Restoration Plan. The vegetation must meet the plant specifications per LDC Section 10-420. The natural waterway buffer must depict a ten-footwide Trout Creek maintenance easement with a 20-foot-wide Trout Creek maintenance access as depicted on the Master Concept Plan dated May 29, 2024.

# 13. Surface and Ground Water Monitoring

Prior to local development order approval for any phase of work, the developer must provide the attached Water Quality Monitoring Plan with the following modifications:

- a) The groundwater withdrawal locations used to resupply the irrigation withdrawal lakes must be identified in the Water Quality Monitoring Plan;
- b) Baseline monitoring events must be completed prior to commencement of construction and a baseline report must be provided to Lee County Division of Natural Resources;

- c) Surface water quality, groundwater quality, and groundwater level monitoring locations must be finalized and identified in the Water Quality Monitoring Plan. Surface water quality monitoring sites must be located at each proposed outfall. Groundwater level monitoring locations must be located to ensure surrounding residential uses are not adversely affected by Sandstone Aquifer withdrawal;
- d) Water quality and groundwater level monitoring data must be provided to the Division of Natural Resources annually for a minimum of 5 years. Annual monitoring reports must include a with a comparison of State surface water quality standards, plots of parameters, and recommendations. After five years of meeting or exceeding state water quality monitoring standards, the developer may amend water quality monitoring and reporting after written request, review, and approval by the Division of Natural Resources. Results must be reported as an Electric Data Deliverable (EDD), in a format approved by the Division of Natural Resources; and
- e) A contingency plan in the event an exceedance of State Water Quality Standards is discovered. This plan must include notification to impacted residents, Lee County Division of Natural Resources and applicable authorities.

# 14. Stormwater Reporting

Prior to local development order approval for any phase of work, the developer must provide a Stormwater Report with models and calculations demonstrating that offsite flow conveyance capacity will be maintained during and following construction of the development.

# 15. Irrigation Requirements

Prior to local development order approval for any phase of work, the development order plans must demonstrate that irrigation will be provided via a master-controlled central irrigation system. The master-controlled system must be designed to comply with the Water Conservation Ordinance #24-01, as amended. The Property Owner Association documents, including Declarations and Covenants (submitted prior to Development Order approval and recorded prior to issuance of Certificate of Compliance), must prohibit the installation of single-family use wells for potable or irrigation water.

# 16. <u>Transportation Impacts</u>

Regardless of any land use density/intensity conversion allowed per the Land Development Code or zoning condition specific to this development, the development is allowed a maximum calculated development intensity with respect to new trip generation utilizing the following development scenario based upon the Institute of Transportation Engineers (ITE) Trip Generation Manual in effect at the time of local development order: 1,099 Units of Single-Family Residential (LUC 210).

## 17. Agricultural Uses:

(i) Bona fide agricultural uses consisting of "cattle grazing", which were in existence when the application for this project was filed, may continue in accordance with the Agricultural

- Use Affidavit filed with the zoning application until such time as a local development order is approved for the area that contains these uses.
- (ii) Clearing or injury of native trees and/or other native vegetation, including understory, in agricultural areas is prohibited. Existing areas of bona fide agricultural use that include existing grass pasture(s) may be moved but may not be cleared or expanded. This prohibition of clearing or expansion is not intended to preclude County approved requests for removal of invasive exotic vegetation. Violations of this condition will require restoration in accordance with Section 10-423 of the LDC.
- (iii) Prior to issuance of a local development order, the applicant, its successors or assigns must provide written proof, subject to approval by the Lee County Attorney's Office, of the following:
  - 1) Termination of all agricultural use on any portion of the property included in the development order application/approval. Proof must include a sworn affidavit from the person or entity holding title to the subject property that specifically provides:
    - a. The date the agricultural uses ceased;
    - b. The legal description of the property subject to the development order approval;
    - c. An affirmative statement that the applicant, its successors or assigns acknowledges and agrees that all agricultural uses are illegal and prohibited on the property and that the owner covenants with the County that they will not allow any such uses on the property unless and until the property is rezoned to permit such uses; and,
    - d. That the affidavit constitutes a covenant between the applicant, its successors or assigns, and the County that is binding on the applicant, its successors or assigns. The covenant must be properly recorded in the public records of the County at the expense of the applicant, its successors or assigns.
  - 2) Termination of the agricultural tax exemption for any portion of the property included in the development order application/approval. Proof as to the termination must include a copy of the request to terminate the tax exemption submitted to the property appraiser.

# Section B. – Deviations

1. Deviation (1) seeks relief from LDC Section10-291(3) which requires residential developments of more than five acres to provide more than one means of ingress and egress for the development, to allow one access point to the development area west of Trout Creek only.

This deviation is approved.

2. Deviation (2) seeks relief from LDC Section 33-1673, which requires new developments with frontage on North River Road to provide a 25-foot-wide right-of-way buffer, planted with native canopy trees, such as Live Oaks and Laurel Oaks, with a minimum height of 14 feet and spaced 25 feet on center to allow for creation, restoration and preservation of "Rare and Unique" uplands and wetland vegetation along the North River Road frontage where proposed preserve areas abut the right-of-way.

This deviation is **approved**, subject to the following condition:

Prior to the issuance of a development order that abuts North River Road, the landscape plans must meet the Indigenous Preserve Management and Restoration Plan and all landscape/restoration plants must meet the native tree specifications per LDC Section 33-1673 and native shrubs specifications for a Type-F buffer per LDC Section 10-416(d).

3. Deviation (3) from LDC Section 10-329(d)(4), which requires lake banks to be sloped at a 6:1 ratio from the top of bank to a water depth of two feet below the dry season water table; to allow for a minimum ratio of 4:1 slope.

This deviation is approved.

4. Deviation (4) seeks relief from Lee County Land Development Code (LDC) Section 34-2191(5), which allows encroachments into required setbacks for equipment pads of up to 3 feet into a side, rear or waterbody setback, to allow for equipment pads encroachments of up to 4.5 feet into side setbacks.

This deviation is approved.

5. Deviation (5) seeks relief from Lee County Land Development Code (LDC) Section 10-328(a), which requires a 20-foot-wide easement on one side of a watercourse, drainageway, canal, IDD easement, lake, pond or stream, and a 20-foot-wide easement on both sides for canals, lakes, or flow-ways greater than 50 feet wide for maintenance purposes; to allow a 10-foot-wide easement on one side of Trout Creek.

This deviation is **approved**, subject to the following condition:

Prior to issuance of a local development order, a drainage and access easement that complies with the Master Concept Plan must be submitted for review and approval. The easement must permit Lee County the right, but not the obligation, to maintain Trout Creek and must be dedicated to Lee County prior to issuance of a Certificate of Compliance for the first Development Order.

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

CASE NUMBER: DCI2022-00067

CASE NAME: CARY + DUKE + POVIA RPD

TYPE OF CASE: MAJOR RESIDENTIAL PLANNED DEVELOPMENT

HEARING EXAMINER DATE: SEPTEMBER 4 & 6, 2024

SUFFICIENCY DATE: JUNE 27, 2024

## **REQUEST:**

The applicant seeks a rezoning of 788± acres from Agricultural (AG-2) to Residential Planned Development (RPD) to allow for a maximum of 1,099 dwelling units, private on-site recreational uses, and supporting infrastructure. The maximum building height is 35 feet. The site will connect to centralized water and sewer services.

The subject property is located at 13230 North River Road, Northeast Lee County Planning Community, Lee County, FL. (District #5). The legal description for this property can be found in Attachment S.

# SUMMARY:

Staff recommends APPROVAL of the applicant's request, with the conditions and deviations found in Attachment C. The applicant seeks five deviations from the required of number of access points, buffering along North River Road, lake bank slopes, encroachments into required setbacks, and drainage and access easement requirements. Staff recommends approval of these five deviations with conditions.

Staff recommends additional conditions to ensure that adequate EMS level of service is provided, entrances are designed to incorporate surrounding rural character, that lots within a certain distance from the development boundary are larger in size to enhance compatibility with the rural character, and that the environmental enhancements required by Lee Plan Policy 123.2.17 are achieved to receive additional density.

## HISTORY OF PARCEL AND CHARACTER OF THE AREA:

The subject property is located approximately one mile east of the intersection State Road 31 and North River Road. The property is approximately 788 acres in area and is currently characterized as vacant agricultural land. There is no significant zoning on the property. The property runs along the south side of North River Road, which is a County-maintained arterial roadway. It is a two-lane undivided road that runs east-west from State Road 31 to the Hendry County line. Lands along the roadway are predominantly rural in character and include preserved land, large lot residential uses, and agricultural land. Most property properties are larger than 1 acre with considerable setbacks from the roadway itself. Proximate to the subject property, staff identified a setback of approximately 300 feet for the nearest existing structure to North River Road. The future land use categories in the area along North River Road include New Community, Density Reduction/Groundwater Resource,

Rural, Conservation Lands Uplands, and Wetlands. The western terminus of North River Road is its intersection with State Road 31 and North River Road. State Road 31 and the properties along this roadway are under considerable change driven predominantly by the development of Babcock Ranch development. There are currently construction efforts to the north and south of North River Road for widening of State Road 31.

The subject property is in the Northeast Lee County and North Olga Community Plan Areas as described in the Lee County Comprehensive Plan Goals 27 and 29. These goals describe the unique rural characteristics of Northeast Lee County and North Olga and include objectives and policies to help preserve that unique rural character in the area. For instance, Objective 29.2 aims to protect and enhance the rural character of the North Olga community and characterizes the rural character as large lot or clustered developments with ample views of wooded areas and open spaces, riverfront working farms, productive agricultural uses as well as the protection of environmentally sensitive lands. Policy 29.2.1 encourages a mix of unit types and flexible lot sizes to allow for clustering, housing affordability, and preservation of open space, and a diversity of choice within the community. Policy 29.2.2 requires residential developments adjacent to existing large lot residential areas or commercial agricultural businesses to provide appropriate separation from these adjacent uses to preserve the rural character noted in the community plan.

The following are the zoning districts and existing land uses that surround the subject property:

#### North:

Approximately 120 acres of land surrounded by subject property and abutting North River Road is zoned Agricultural (AG-2) and is in the Rural future land use category. This area includes a residential community called North River Oaks that is developed with ranchettes ranging between five and eight acres, as well as additional land that is being used for agricultural purposes.

Lands north of the subject property and across North River Road include Babcock Ranch and agricultural land. The Babcock Ranch Mixed Use Planned Development was approved by Resolution Z-17-026 (Attachment K) and includes 4,157 acres of land that was rezoned from Agricultural (AG-2) to Mixed Use Planned Development (MPD) to allow for 1,630 dwelling units, 1,170,000 square feet of commercial uses, and 600 hotel rooms. The design of this project included clustering of pods along the northern boundary of Lee County and along State Road 31. There are two segments of this development that reach North River Road. The western portion includes no development within 1300 feet of North River Road and the eastern portion has no development considered until areas proximate to the Lee County and Charlotte County Line. In between these two portions of the Babcock Ranch development there is approximately one mile of land zoned Agricultural (AG-2) along North River Road that is predominantly undeveloped or used as agricultural land or large lot residential development. Staff notes that there is approximately 10 acres within this area that is zoned Mobile Home Residential District (MH-1).

## East:

Properties to the east are zoned Agricultural (AG-2) and are in the Rural and Wetlands Future Land Use Categories. These properties consist primarily of agricultural land large lot residential uses.

#### South:

Property to the south is separated by Duke Highway, is zoned Agricultural (AG-2) and is in the Rural and Wetlands future land use categories. These properties are developed with large lot residential uses adjacent to the Caloosahatchee River.

#### West:

Property to the west is the Owl Creek Residential Planned Development (RPD), approved by Resolution Z-22-022 (Attachment L), and is in the Rural future land use category. This project is 342.68 acres and was approved for 380 one- and two-family dwelling units, a 96-slip multi-slip docking facility, and amenities. Owl Creek was approved with a 50-foot boundary setback (including along North River Road) for residential structures. This project utilizes Lee Plan Policy 123.2.17 to exceed the Rural future land use category maximum density of one unit per acre.

# **ANALYSIS**

The applicant has provided a request statement that describes nature of the application (Attachment G). In the request statement, the applicant seeks a rezoning of 788± acres from Agricultural (AG-2) to Residential Planned Development (RPD) to allow for a maximum of 1,099 dwelling units, private on-site recreational uses, and supporting infrastructure. The maximum building height is 35 feet, and the development will connect to centralized water and sewer services.

The request includes consideration of one- and two- family dwelling units and cluster development into three 'pods' to allow environmental enhancements and enhanced open space to support the development. The applicant proposes to utilize habitat incentives from Lee Plan Policy 123.2.17 in addition to base density to allow a maximum of 1.39 dwelling units per acre.

# Comprehensive Plan Amendment

Comprehensive Plan Amendment CPA2022-00019 was submitted concurrently with this zoning action and was adopted by Ordinance Number 24-06 on March 20, 2024 (Attachment M). This amendment approved inclusion of the subject property the Lee County Utilities Future Water Service Areas (Lee Plan Map 4-A) and Lee County Utilities Future Sewer Service Areas (Lee Plan Map 4-B). Connection to water and wastewater is required to meet the requirements of Policy 123.2.17, which allows an exceedance of the rural future land use categories density limitations.

## Development Density

The subject property is in the Rural and Wetlands future land use categories as defined in Lee Plan Policy 1.4.1 and Objective 1.5. Standard maximum density for land in the Rural future land use category is one unit per acre. However, Policy 123.2.17 allows additional density as an incentive to preserve, enhance, and restore indigenous Rare and Unique upland habitat on land within the Rural future land use category. The incentive of this policy is to allow one (1) additional dwelling unit to be created for each one (1) acre of created, preserved and/or restored indigenous Rare and Unique upland habitat if approved and developed as a unified Planned Development that meets all the following criteria:

- 1. Development must be a minimum of 10 acres.
- 2. Development must have direct access to an arterial road.
- 3. Development must provide connection to public water and sewer services.
- 4. Development must be clustered to maintain large, contiguous tracts of open space and protect environmentally sensitive areas. To comply with these criteria, a minimum of 60% open space is required, of which 50% must be indigenous preserve. The indigenous preserve may consist of created or restored wetlands, flowways/creeks, or Rare and Unique upland habitats. Management and monitoring of the indigenous preserve must be in compliance with the indigenous management plan required by the LDC. Monitoring timelines will be extended as needed to assure success criteria established in the indigenous management plan is achieved for at least five consecutive years.
- 5. Creation, preservation, and/or restoration of indigenous Rare and Unique upland habitats, as defined, must meet the following:
  - a. The area of the Rare and Unique upland habitats must comply with the minimum dimensions required for indigenous open space areas set forth in the LDC.
  - b. The land where creation and/or restoration of indigenous Rare and Unique upland habitats will occur must contain the soil(s) needed to support the establishment and success of the indigenous Rare and Unique upland habitats.
  - c. Habitats impacted by logging, drainage, and/or exotic infestation may not count towards the density incentive unless restored to standards established in an approved site-specific ecological restoration plan. The ecological restoration plan must include, at a minimum, a replanting plan, habitat restoration plan, success criteria, and long-term monitoring and maintenance criteria.
  - d. A Conservation Easement, to be dedicated to the appropriate maintenance entity that provides Lee County or some other public agency, acceptable to Lee County, with third party enforcement rights must be recorded for areas used towards the density incentive. All Conservation Easements required as part of the planned development must be recorded within 5 years from first development order approval.

The request intends to satisfy the requirements of this policy to allow additional density on the subject property. Compliance with Criteria 1 and 2 of this policy have been discussed in the background information provided earlier in the report as the subject property is 788 acres of land and is on North River Road, an arterial roadway. Public water and sewer have not been constructed to the subject property but Comprehensive Plan Amendment CPA2022-00019 places the subject property in the County water and wastewater services areas. Criterion 3 will not be satisfied until water and wastewater lines have been constructed to the property, and although there is an application for a Limited Development Order (LDO2023-00396) under review for the extension of these lines, staff proposes a condition to ensure that these lines are constructed, and the development is connected prior to approval of the additional density beyond the base of one unit per acre. Environmental staff provided analysis of Criteria 4 and 5 in the Environmental memorandum found in Attachment N, and additional environmental conditions assuring the compliance with these criteria are discussed as part of the environmental considerations on this report.

The applicant has provided a density calculation to demonstrate how density is calculated for the development (Attachment H), and these calculations are provided herein for ease of reference.

Table 1.a through 1.c Preliminary Density Calculations (See Attachment H)

# 1.a - Base Density

Future Land Use Category	Acres	Lee Plan Table 1(a) Max. standard density	Units
Rural	718.67	1 du/ac	718.67
Wetlands	70.31	1 du/ac & 1 du/20 ac	52.4
Preserved Wetlands	51.46	1 du/ac	51.46
Impacted Wetlands	18.85	1 du/20 ac	0.94
Subtotal	788.98		771.07 DU

# 1.b - Rare & Unique Habitat Incentive (Lee Plan Policy 123.2.17)

Rare and Unique Habitat Incentive Areas	Acres	Lee Plan Table 1(a) Max. standard density	Units
Rare & Unique Upland Creation	300.01	1 du/ac	300.01
Rare & Unique Upland Preservation	26.03	1 du/ac	26.03
Rare & Unique Upland Restoration	2.68	1 du/ac	2.68
Subtotal	328.72		328.72 DU

# 1.c - Maximum Allowable Dwelling Units

Future Land Use Category	Acres	Lee Plan Table 1(a) Max. standard density	Units
Rural	718.67	1 du/ac	718.67
Wetlands	70.31	1 du/ac & 1 du/20 ac	52.4
Rare & Unique Habitat Incentive Areas	328.72	1 du/ac	328.72
Maximum Allowable Dwelling Units	1,099.79 DU		

Staff notes that the 328 dwelling units are derived from the Rare and Unique Habitat incentive and the conditions considered in the environmental analysis to ensure that the additional dwellings are not achieved without the establishment and success of the Rare and Unique restoration habitat.

## Master Concept Plan:

The applicant has provided a Master Concept Plan (MCP) which depicts the conceptual development scheme proposed by the applicant (Attachment D). The Master Concept Plan depicts three development pods, preserve areas, archaeological sites, the location of Trout Creek, restoration areas, existing wetland areas, and reference locations for proposed deviations.

The westernmost development pod is accessed by a single point at North River Road and is separated from the other two development pods by Trout Creek, which runs through the property in

a north-south direction. As depicted on the Mater Concept Plan, land considered for residential structures is approximately three hundred feet from North River Road and is separated by preserve and a lake. Residential development continues southward to the rear of the development and is setback approximately 50 where the subject property abuts the Owl Creek RPD to the west and a vacant undeveloped tract to the south. Within this development pod, there is an optional amenity area for the use of the residents.

The second pod is accessed by two points along North River Road. Residential uses are separated approximately 500 feet from north river road and are separated by preserves and wetlands. Residential development on the southern portion of this pod is separated from abutting uses by approximately 150 feet of preserved land.

The southernmost pod is connected to the second pod and does not have direct vehicular access to the county roadway system. This pod contains a larger amenity tract than the west pod and is separated from the development boundary by approximately 150 feet. This tract also provides vehicular access to Trout Creek for maintenance entities.

## Planned Development Rezoning:

Section 34-612 of the Lee County Land Development Code (LDC) describes the intent of the utilization of the Planned Development zoning district. The purpose of planned developments 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.

Section 34-145 of the Land Development Code (LDC) 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.

## Development Pattern Considerations:

Portions of the subject property are in the Rural future land use category as described in Lee Plan Policy 1.4.1. These areas are described as being characterized by low-density residential uses and agricultural land. Maximum standard density considered for the Rural future land use category is one unit per acre. The proposed planned development exceeds the one unit per acre in density because of the Rare and Unique upland habitat restoration, creation, and restoration proposed in accordance with Policy 123.2.17. Staff finds that the request, as conditioned, is consistent with Policy 1.4.1.

Portions of the development are in the Wetlands Future Land Use Category as defined in Objective 1.5 of the Lee Plan. The applicant notes that there are approximately 70.31 acres of land designated as Wetlands within the development. 18.85 acres are proposed to be impacted as part of this development, and the applicant intends to address these wetland impacts during state permitting at the time of Development Order Approval. Staff finds the proposed request consistent with Objective 1.5.

Goal 124 establishes Objectives and Policies for development in wetlands that works with existing state and federal permitting processes, while protecting the fragile ecological characteristics of wetland systems. Objective 124.1 aims to protect and conserve wetlands by limiting uses in wetland areas to low density residential uses, low impact recreational uses, and conservation areas. The applicant's proposed Master Concept Plan aims to protect and preserve wetlands and designate these areas as open space and preserve areas while configuring development around existing wetland areas. During the Development Order process, the applicant will be required to demonstrate compliance with the criteria in State permitting procedures, while demonstrating compliance with the criteria found in Chapters 10, 14 and 34 of the LDC for open space and wetland areas. Conditions are also proposed by staff to address potential impacts to water quality as it relates to this development (Attachment O). Staff finds the proposed rezoning, as conditioned, is consistent with Goal 124, Objective 124.1.

Objectives 2.1 and 2.2 encourage new growth in future urban areas where adequate facilities exist or are assured and where compact and contiguous development patterns can be created. Policy 2.2.1 states that rezonings will be evaluated as to the availability of the road network, central water and sewer lines, and public facilities and services. The project is in a future non-urban area that has historically been utilized for agricultural and low-density residential uses. This area of the county sits between Babcock Ranch to the north and more urban development to the south of the Caloosahatchee River. Development to the west of the subject property, including the Owl Creek Residential Planned Development (RPD) and the Greenwell SR31 Mixed Use Planned Development (MPD), has access to urban services like what are needed to facilitate the proposed development. The area is in transition because of county-wide development pressure. However, the project must remain consistent with the requirements of the Rural future land use category and the Northeast Lee County and North Olga Community Plan Areas. Staff finds the request meets the intent of the Rural future land use category while providing similar urban services as Babcock Ranch, Owl Creek, and the Greenwell SR31 project. This is evidenced by the letters of utility availability, which notes the requirement of privately funded expansions to the utility system, and the Traffic Impact Statement (Attachments I and P). Staff finds this 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 August 19, 2024 / DAD

aircraft noise. Approximately 183 acres of the subject property are within the Coastal High Hazard Area and the remainder of the property is outside of the area. Flood zones for this property include AE-EL9, AE-EL10, Coastal A (AE-EL11), X (shaded) and X. The property is outside the FEMA floodway and will be subject to all FEMA regulations at the time of permitting. The design of the Master Concept Plan focuses areas for residential development away from Trout Creek and wetland areas that are proposed to be preserved. Staff finds that the proposed development, as conditioned, is consistent with Policy 5.1.2.

Policy 5.1.5 of the Lee Plan intends to protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment. Staff recognizes that the request is a significant change to the land use pattern in the area; however the request, as conditioned, is not inconsistent with the development pattern of new projects in the area including the Owl Creek RPD to the west and Babcock Ranch to the north. To provide clarity to what would be considered potentially destructive to the character and integrity of the residential environment, Goal 27 and Goal 29 establish the Community Plan for Northeast Lee County and North Olga. Objective 29.1 and Policy 27.4.1 speak to managing future development in a way that protects and enhances the rural character and aesthetic appearance of the North Olga Community Plan Area. Policy 29.1.1 promotes compact or clustered development that maintains large, continuous tracts of open space. Policy 29.1.3 speaks to maintaining enhanced design standards for landscaping, signage and architectural standards to promote the rural character of the North Olga Community Plan Area, and Policy 29.1.4 states that any deviation for these standards must meet variance criteria set forth in Chapter 34 of the Land Development Code. The applicant notes that five deviations are sought in conjunction with this request, but only one pertains to these design criteria and is required to meet variance criteria.

The applicant proposes small lot one- and two-family residential uses which is not common in this area, particularly the further east along North River Road moving toward the Hendry County line. However, staff notes that the Master Concept Plan shows clustered residential uses interior to the property, thereby minimizing the visual impact on surrounding properties consistent with Policy 29.1.1. Policy 29.2.2 requires residential development to provide appropriate separation from existing large lot residential uses. The applicant's design provides robust preserve areas in all directions to ensure that all adjacent residential uses will experience minimal visual impact from the proposed development. As noted earlier in the report, typical separation between proposed residential uses and neighboring lots is between 200 and 500 feet. Staff sees the potential for visual impact in areas where there is not sufficient separation, with the potential for the rural character of the community to not be preserved. To mitigate this impact staff recommends a condition requiring that all lots within 300 feet of the development perimeter, to be a minimum of 15,000 square feet in area, to reduce the visual impact by providing appropriate transition along the development perimeter. Staff also recommends a condition requiring rural design elements at the development entrances, including agricultural style fencing and other farm style ornamental features. With the proposed conditions, staff finds the request consistent with Policy 5.1.5, Objective 29.1, Policy 29.1.1, Policy 29.1.3, Policy 29.1.4, and 29.2.2.

Goal 27 of the Lee Plan represents Lee County's goal to maintain, enhance, and support the heritage, rural character, and natural resources in the Alva and North Olga community plans. Objective 27.1 aims to maintain and enhance the viability of the existing and evolving commercial agricultural operations, preserve open space, and retain the rural character of Northeast Lee County. Policies 27.1.1 and 27.1.6 support rural character within Northeast Lee County by encouraging new

August 19, 2024 / DAD

development to be clustered to conserve large areas of open lands. The proposed development clusters residential development to the interior of the property to maintain the rural character of the area. Staff finds the proposed request consistent with Objective 27.1, Policy 27.1.1, and Policy 27.1.6.

Policy 27.1.8 requires that all rezoning applications 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, and the applicant held two separate public information meetings in accordance with this policy. Requisite documentation has been provided in the application materials (Attachment J). Public Information meetings were held on January 26, 2023, March 14, 2023, and June 20, 2023. Staff finds the request consistent with Policy 27.1.8.

Policy 29.2.1 states that proposed planned developments should provide a mix of unit types and flexible lot sizes to allow for clustering, affordability, preservation of open space and natural assets, and diversity of choice within the community. The proposed development plan includes a mix of single-family detached and two-family attached dwelling units. Staff finds the proposed request consistent with Policy 29.2.1.

Policy 29.7.2 encourages future development to maintain on-site native vegetation communities. This request includes the restoration, creation, and preservation of rare and unique habitat and is therefore consistent with Policy 29.7.2.

Goal 60 intends to reduce hazards to life, health, and property created by flooding due to rainfall in a manner that preserves environmental and natural resources. This includes the incorporation or restoration of natural surface water flow ways into the surface water management system. As described in the Surface Water Management Plan, the storm water management system has been designed to mimic the natural sheet flow pattern (Attachment U). Staff finds this amendment consistent with Goal 60.

Policy 101.1.1 requires that development within the Coastal High Hazard Area be compatible with natural systems, including water retention and purification, wildlife habitat, primary productivity, and defense against coastal flooding. The applicant notes that in conjunction with the activities proposed within the Indigenous Preserve and Protected Species Management Plan, the Master Concept Plan was designed to be compatible with surrounding natural systems and will protect and continue to provide functions including water retention and purification, and defense against flooding including the preservation of restoration of 420± acres of wetland and upland habitat on-site. Staff finds this request consistent with Lee Plan Policy 101.1.1

Policy 101.1.2 requires the protection and conservation of environmentally sensitive coastal areas: wetlands, estuaries, mangrove stands, undeveloped barrier islands, beach and dune systems, aquatic preserves, wildlife refuges, undeveloped tidal creeks and inlets, critical wildlife habitats, benthic communities, and marine grass beds. Portions of the property are in the Coastal High Hazard area and include wetlands that are relevant to this Policy. The proposed Master Concept Plan protects environmentally sensitive areas through the preservation and enhancement of 420± acres of on-site wetlands and rare and unique upland habitat. The wetland areas, in combination with adjacent upland areas, will be protected in perpetuity through a conservation easement. Staff finds the request consistent with Policy 101.1.2.

Policy 101.3.2 restricts development in the Coastal High Hazard Area to uplands except as needed for the provision of public facilities. The applicant states that the proposed development impacts approximately 0.29 acres of wetlands within the Coastal High Hazard Area. An Environmental Resource Permit must be obtained that shows the wetland impacts with on- and off-site mitigation. County staff has previously opined that state-permitted impacts to wetlands that are appropriately mitigated are treated as developable uplands for development purposes. Staff notes that a condition has been proposed to require demonstration of state permitting prior to commencement of construction per Lee Plan Policy 124.1.2. Staff finds the request, as conditioned, consistent with Lee Plan Policy 101.3.2.

Policy 125.1.2 requires new development and additions to existing development to not degrade surface and ground water quality. Future development of the property will require an Environmental Resource Permit from the South Florida Water Management District and must address water quality impacts as part of Development Order Approval. Conditions are proposed by staff to address potential impacts to water quality as it relates to this development (Attachment O). Staff finds this request, as conditioned, is consistent with Policy 125.1.2.

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 provides for a mix of single-family and two-family attached dwelling units. This request is consistent with Goal 135 and Policy 135.1.9.

## Environmental Considerations:

Environmental staff has reviewed this request and has provided a report containing an analysis of the request (Attachment N). The staff report details the environmental characteristics associated with the rezoning, including the requirements to become consistent with Policy 123.2.17. This policy allows the creation of additional density contingent upon the preservation of 60 percent open space, of which 50 percent must be indigenous preserve including wetlands, Flowways or Rare and Unique Habitat. Rare and Unique Habitat can either be created, preserved or restored.

Staff notes that the following condition is necessary to address the open space requirement of this policy:

Prior to the issuance of the first development order, the development order plans must depict 60% open space and provide a phasing schedule demonstrating how the open space requirement will support the proposed dwelling units.

Policy 123.2.17 also allows a density increase of one unit per acre beyond the Rural Future Land Use Category's standard density of one unit per acre, with the preservation and restoration of indigenous Rare and Unique upland habitats. The proposed development includes preserved wetlands, Rare and Unique upland habitat, and surface water (Trout Creek). Based on further analysis provided by Environmental staff, the following condition is recommended to demonstrate consistency with Lee Plan Policies 124.1.1 and 124.1.2:

Prior to the issuance of the first development order, the development order plans must depict a total of 420.20 acres of indigenous open space in substantial compliance with the Master Concept Plan date stamped May 30, 2024, per the following breakdown:

- a) Rare and Unique Upland Preservation: 26.03 acres;
- b) Rare and Unique Upland Restoration: 2.68 acres;
- c) Rare and Unique Upland Created: 300.01 acres;
- d) Upland Restoration: 7.38 acres;
- e) Upland Preservation: 23.98 acres;
- f) Wetland Preservation: 17.51 acres;
- g) Wetland Restoration: 33.95 acres; and
- h) Surface Waters: 8.66 acres.

Conservation easements must be recorded for all areas used towards density incentive. The conservation easements must be dedicated to the appropriate maintenance entity that provides Lee County or some other public agency, acceptable to Lee County, with third party enforcement rights. All conservation easements required as part of the planned development must be recorded within 5 years from first development order approval.

Prior to the issuance of the Vegetation Removal Permit, the applicant must submit a copy of the mitigation receipt of payment or mitigation plans for the 18.85 acres of wetland impacts.

Based on the restoration and preservation activities proposed as part of the project, the applicant provided an Indigenous Habitat Management Plan that details the activities to create, preserve, and restore habitat areas and provide for a long-term monitoring and maintenance to the open space areas to ensure consistency with the requirements of Policy 123.2.17. After additional analysis by environmental staff, the following conditions are recommended to correlate to the Indigenous Habitat Management Plan for future work on the property:

Prior to the issuance of the first development order, the development order plans must be in substantial compliance with the Indigenous Habitat Management Plan Revised May 2024 and received May 31, 2022.

Prior to the issuance of the first development order, the development order plans must include a schedule for the indigenous preservation, restoration, and created preserve areas to be completed within at least five consecutive years.

Prior to the issuance of the first development order, the development order plans must include cross sections depicting the hydrological restoration, upland grading and the type of habitat being restored or created to ensure survivability. The plans must include details of soil amendments in the restoration and creation areas, if applicable.

Prior to the issuance of the first development order, the development order plans must include a map depicting where mechanical and hand-removal methods of exotic vegetation removal will be located.

Prior to the issuance of the first development order, a monitoring schedule must be established to ensure all preserve enhancement, restoration, and creation is completed and demonstrates 80 percent survivability within five consecutive years. Monitoring will be required until 80 percent survivability is achieved.

The applicant must submit with the vegetation removal permit survey point maps depicting the preservation and restoration areas and mechanical clearing limits.

Environmental staff also notes that the applicant submitted a Protected Species Management and Human Wildlife Coexistence Plan that details the permitting process for each protected species that was observed or has the potential to utilize the restored and/or created habitat once the project is completed. In their analysis, Environmental staff details the work completed by the Florida Fish and Wildlife Conservation Commission and Lee County staff to ensure that each protection measure is achieved through each phase of work. In the analysis, staff notes that Florida Sandhill Crane and Crested Caracara were observed onsite and there were approximately 137 gopher tortoise burrows observed as well. Staff recommends the following conditions to ensure species are protected during land clearing and preserve restoration or creation.

Prior to the issuance of a vegetation removal permit for any development order, pre-construction species monitoring reports, where applicable, must be submitted to ensure no protected species are within the clearing limits.

In their analysis, Environmental staff also described the proposed buffers along the north, south, east and west sides of the property as well as the natural waterway buffer required along Trout Creek. Staff recommends the following condition to ensure that the right-of-way buffer abutting North River Road is designed for proposed development so that the preserves create a setback and screening:

Prior to the issuance of the first development order, the development order plans must depict a 25-foot-wide buffer within the restoration area along North River Road that includes 14-feet-high native canopy trees, spaced approximately 25-feet-on-center to comply with LDC Section 33-1673.

Prior to the issuance of the first development order that includes Trout Creek, the landscape plans must provide a natural waterway buffer plan that is in compliance with the Indigenous Preserve Management and Restoration Plan. The vegetation must meet the plant specifications per LDC Section 10-420. The natural waterway buffer must depict a ten-foot-wide Trout Creek maintenance easement with a 20-foot-wide Trout Creek maintenance access as depicted on the Master Concept Plan date stamped May 30, 2024.

#### Natural Resources Considerations:

Natural Resources reviewed and analyzed the request and provided a memorandum regarding the proposed Planned Development rezoning request (Attachment O). In the report, staff details the stormwater system of the project based on the Stormwater Management Plan, how the surface water will allow for conveyance of unimpeded off-site water flows from the north side of North River Road, and that there are two creeks found on the property including Trout and Otter Creek. Staff notes that the stormwater management system will consist of both wet and dry detention prior to discharging into the on-site preserves before reaching onsite creeks and ultimately the Caloosahatchee River.

The applicant is proposing to use surface water from the on-site wet detention lakes to irrigate the community because reuse water is not available consistent with Policy 61.1.6. Many of the surrounding residential homes rely on the Sandstone Aquifer as a domestic water source. To address consistency with Lee Plan Policy 126.1.4 regarding groundwater levels and to ensure that

groundwater levels are not adversely affected, the applicant has included a groundwater level monitoring plan.

Lee Plan Policy 125.1.2 states new development and additions to existing development must not degrade surface and ground water quality. Lee Plan Policy 125.1.4 states developments which have the potential of lowering existing water quality below state and federal water quality standards will provide standardized appropriate monitoring data.

The northern portion of the property is also located in the Wellfield Protection Zone and must remain consistent with Lee Plan Policy 125.1.6. In order to remain consistent with the above-mentioned Lee Plan Policies, staff recommends the following conditions:

Prior to local development order approval, the developer must provide the attached Water Quality Monitoring Plan with the following modifications:

- a) The groundwater withdrawal locations used to resupply the irrigation withdrawal lakes must be identified in the Water Quality Monitoring Plan.
- b) Baseline monitoring events must be completed prior to commencement of construction and a baseline report must be provided to Lee County Division of Natural Resources.
- c) Surface water quality, groundwater quality, and groundwater level monitoring locations must be finalized and identified in the Water Quality Monitoring Plan. Surface water quality monitoring sites must be located at each proposed outfall. Groundwater level monitoring locations must be located to ensure surrounding residential uses are not adversely affected by Sandstone Aquifer withdrawal.
- d) Water quality and groundwater level monitoring data must be provided to the Division of Natural Resources annually for a minimum of 5 years. Annual monitoring reports must include a comparison of State surface water quality standards, plots of parameters, and recommendations. After five years of meeting or exceeding state water quality monitoring standards, the developer may amend water quality monitoring and reporting after written request, review, and approval by the Division of Natural Resources. Results must be reported as an Electric Data Deliverable (EDD), in a format approved by the Division of Natural Resources.
- e) A contingency plan in the event an exceedance of State Water Quality Standards is discovered. This plan must include notification to impacted residents, the Lee County Division of Natural Resources, and applicable authorities.

Prior to local development order approval, the developer must provide a Stormwater Report with models and calculations demonstrating that offsite flow conveyance capacity will be maintained during and following construction of the development.

Prior to local development order approval, the development order plans must depict connection to public water and sewer service.

Prior to local development order approval, the development order plans must demonstrate that irrigation will be provided via a master-controlled central irrigation system. The master-controlled system must be designed to comply with the Water Conservation Ordinance #24-01, as amended. The Property Owner Association documents, including Declarations and Covenants

(submitted prior to Development Order approval and recorded prior to issuance of Certificate of Compliance), must prohibit the installation of single-family use wells for potable or irrigation water.

# Transportation Considerations:

The applicant has provided a traffic impact statement for the proposed development and has provided analysis of the surrounding transportation system (Attachment P). Infrastructure planning staff has provided analysis of the applicant's traffic impact statement (Attachment Q). Staff notes State Road 31 between State Road 78 (Bayshore Rd) and SR 80 (Palm Beach Blvd) is projected to operate at a poor Level of Service in 2030 with the proposed development traffic added to this roadway. However, FDOT is currently conducting a PD&E study on State Road 31 from State Road 78 to State Road 80 to evaluate future widening from the current two-lane undivided facility to a six-lane divided facility. This future improvement would address the projected State Road 31 capacity deficiency.

Staff concludes that the requested planned development does not adversely impact the surrounding roadway network but recognizes that that the future signalized intersection of State Road 31 with State Road 78 is predicted to operate at a poor LOS "F" in 2030 with the post-project build-out traffic. Staff notes that offsite intersection improvements are mitigated through the payment of roadway impact fees. Infrastructure Planning Staff recommends the following condition of approval for consideration:

Regardless of any land use density/intensity conversion allowed per the Land Development Code or zoning condition specific to this development, the development is allowed a maximum calculated development intensity with respect to new trip generation utilizing the following development scenario based upon the Institute of Transportation Engineers (ITE) Trip Generation Manual in effect at the time of local development order: 1,099 Units of Single-Family Residential (LUC 210).

## Bicycle and Pedestrian Facilities:

The subject property fronts North River Road, which is designated as a future bike/pedestrian way on Lee Plan Map 3-D. At the time of development order approval, the applicant must comply with the bicycle and pedestrian facilities requirements of LDC Chapter 10.

# Public Safety:

During the review of this request, Lee County Public Safety advised that current EMS infrastructure is not able to respond to emergency calls at an acceptable level of service (Attachment R). Public safety also noted that a site at Babcock Ranch is planned for development of a new facility which will correct level of service for EMS. Given the existence of the service deficiency, staff recommends a condition of approval to limit development until such time that the appropriate level of service can be met.

# Urban Services:

The subject property is serviced by Bayshore Fire Station, which is approximately 5.1 miles from the site, EMS approximately 5.1 to the southwest of the site, and the nearest Sheriff's station, which is approximately 12 miles west of the property. The proposed development will have access to the Lee County Utilities water and wastewater after the applicant's proposed privately-funded improvements August 19, 2024 / DAD

to the utility system (Attachment I). The request, as conditioned, is consistent with Lee Plan Standards 4.1.1 and 4.1.2.

# Deviation Requests:

The applicant has requested five deviations and provided analysis of these deviation requests (Attachment F). Staff provides the following analysis of the proposed deviations:

1. Deviation (1) seeks relief from LDC Section10-291(3) which requires residential developments of more than five acres to provide more than one means of ingress and egress for the development, to allow one access point to the development area west of Trout Creek only.

The applicant states that the proposed development will provide three total access points, but the westernmost pod that is separated by Trout Creek is proposed to have one access point. This pod on its own meets the threshold for the requirements of LDC Section 10-291(3) which is why a deviation is requested. The applicant provided letters of no objection included with the deviation analysis from appropriate public safety agencies; therefore, staff recommends **approval** of this deviation.

2. Deviation (2) seeks relief from LDC Section 33-1673, which requires new developments with frontage on North River Road to provide a 25-foot-wide right-of-way buffer, planted with native canopy trees, such as Live Oaks and Laurel Oaks, with a minimum height of 14 feet and spaced 25 feet on center to allow for creation, restoration and preservation of "Rare and Unique" uplands and wetland vegetation along the North River Road frontage where proposed preserve areas abut the right-of-way.

The applicant states that MCP and Mitigation Area Plan demonstrate significant Rare and Unique Upland Habitat preserve areas along the portion of the RPD boundary that abuts North River Road. The required vegetation within the Rare and Unique Upland Habitat preserve areas will include a mix of native plants, including but not limited to: a mixture of pine flatwoods, tropical hardwood, live oak hammock, and cabbage palm hammock habitats. Environmental staff reviewed the request and states that the proposed deviation will provide a more enhanced and more diverse buffer than the limited requirement of Live Oaks or Laurel Oaks space 25-feet-oncenter. The applicant is proposing to restore the pasture along North River Road to Rare and Unique habitat, creating a more diverse ecosystem to support wildlife and provide a natural view along North River Road. The North Olga Community Plan strives to create a uniform landscape theme along North River Road.

The applicant states that the property has inherent exceptional conditions, namely the existing native vegetation along the North River Road right-of-way that can provide a mature and natural buffer more consistent with the intent of the Lee Plan, LDC and North Olga Community Plan, when compared to a planted buffer and that these conditions are not the result of the actions of the property owner. The applicant also notes that the granting of the variance is the minimum necessary, and that the approval of the deviation will enhance the landscaping along the property line. The proposed relief will not be injurious to the surrounding public and is consistent with the Lee Plan. Staff recommends **approval** of this deviation subject to the following condition:

Prior to the issuance of a development order that abuts North River Road, the landscape plans must meet the Indigenous Preserve Management and Restoration Plan and all landscape/restoration plants must meet the native tree specifications per LDC Section 33-1673 and native shrubs specifications for a Type-F buffer per LDC Section 10-416(d).

3. Deviation (3) from LDC Section 10-329(d)(4), which requires lake banks to be sloped at a 6:1 ratio from the top of bank to a water depth of two feet below the dry season water table; to allow for a minimum ratio of 4:1 slope

The applicant states that the 4:1 lake bank slope is necessary to accommodate the appropriate lake depth specified in the LDC within the spatial constraints of the subject property in a manner that minimally impacts the preserve and restoration areas. The applicant shows a cross-section on the Master Concept Plan with appropriate slope protection measures as described in LDC Section 10-329(d)(4). Development Services staff reviewed this deviation and did not object to the request. Staff recommends **approval** of this deviation.

4. Deviation (4) seeks relief from Lee County Land Development Code (LDC) Section 34-2191(5), which allows encroachments into required setbacks for equipment pads of up to 3 feet into a side, rear or waterbody setback, to allow for equipment pads encroachments of up to 4.5 feet into side setbacks.

The applicant states that the deviation is sought to allow design flexibility and to maximize preserve areas to the greatest extent possible. The proposed development will utilize grade level pads only and will not use raised platforms for equipment pads. The Land Development Code currently allows for a three-foot encroachment, and the applicant is seeking an additional 1.5 feet. Staff recommends **approval** of this deviation.

5. Deviation (5) seeks relief from Lee County Land Development Code (LDC) Section 10-328(a), which requires a 20-foot-wide easement on one side of a watercourse, drainageway, canal, IDD easement, lake, pond or stream, and a 20-foot-wide easement on both sides for canals, lakes, or flow-ways greater than 50 feet wide for maintenance purposes; to allow a 10-foot-wide easement on one side of Trout Creek.

The applicant seeks to retain native existing vegetation within the 50-foot natural waterway buffer, and to permit Rare and Unique Upland restoration on the Property. The proposed MCP includes a 20-foot-wide easement at the southern portion of Trout Creek from the internal right-of-way to Trout Creek to ensure adequate access and staging capabilities. Natural Resources staff reviewed this request and supports the request, subject to the following condition:

Prior to issuance of a local development order, a drainage and access easement that complies with the Master Concept Plan must be submitted for review and approval. The easement must permit Lee County the right, but not the obligation, to maintain Trout Creek and must be dedicated to Lee County prior to issuance of a Certificate of Compliance for the first Development Order.

# **CONCLUSION:**

Based on the analysis provided above, staff offers the following review of the decision-making criteria for the planned development rezoning request. Staff finds that the proposed request, as conditioned:

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 density is compatible with existing and proposed uses, and meets or exceeds the objectives and policies above.

b) Meets this Code and other applicable County regulations or qualifies for deviations;

The applicant seeks five deviations from requirement buffer requirements for roads adjacent residential properties, lake bank slopes, the number of minimum required access points, setbacks for equipment pads, and drainage and access easement widths. Staff recommends approval of the five requested, as conditioned above.

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

The mix of uses surrounding the subject property includes residential uses and agricultural land. The proposed uses, as designated on the Master Concept Plan, are compatible with surrounding existing and planned uses, as conditioned.

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

Access is proposed on North River Road at three separate locations. Staff finds that there is sufficient access to the proposed development, subject to the recommended conditions of approval.

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 despite the roadway capacity constraints that with the roadway is not expected to be adversely impacted by the proposed development.

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

Staff has reviewed the potential environmental impacts and has determined that the requirements of the Land Development Code and Lee Plan, as well as recommended conditions of approval, sufficiently protect existing environmentally critical areas.

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

## Additionally,

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

The proposed residential uses are appropriate at their location given the consistency with the Lee Plan Policies for development in the Rural Future Land Use Category, and the Northeast Lee County and North Olga Community Plan Areas.

- 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 as conditioned the public's interests are sufficiently addressed.
- c) That each requested deviation enhances the achievement of the objectives of the planned development; and preserves and promotes the general intent of this Code to protect the public health, safety and welfare:

There are five requested deviations and staff recommends approval of these deviations.

Staff, therefore, recommends approval of this planned development rezoning request, 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 Schedule of Uses
- F. Applicant's Schedule of Deviations and Justifications
- G. Applicant's Request Narrative and Lee Plan Consistency
- H. Applicant's Preliminary Density Calculations
- I. Utility and Public Service Availability Correspondence
- J. Public Information Session Summary Documents: Northeast Lee County and North Olga
- K. Resolution Z-17-026 Babcock Ranch MPD
- L. Resolution Z-22-022 Owl Creek RPD
- M. CPA2022-00019
- N. Lee County Environmental Staff Memorandum
- O. Lee County Natural Resources Conditions and Groundwater Monitoring Parameters
- P. Traffic Impact Statement
- Q. Lee County Infrastructure Planning Staff Memorandum
- R. Public Safety Correspondence
- S. Legal Description, Sketch and Boundary Survey
- T. Agricultural Use Affidavit
- U. Surface Water Management Plan