LEE COUNTY BOARD OF COUNTY COMMISSIONERS

ZONING HEARING AGENDA

Wednesday, March 5, 2025
9:30AM

DCI2023-00006 Z-24-033	Playa Del Sol at Cleveland Ave CPD
DCI2022-00067 Z-24-024	Cary+Duke+Povia RPD – CONTINUED HEARING

NOTICE OF PUBLIC HEARING

The Lee County Board of County Commissioners will hold a public hearing at 9:30 am on Wednesday, March 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.

DCI2023-00006 / PLAYA DEL SOL AT CLEVELAND AVE CPD

Request to rezone 9.40 +/- acres from Agriculture (AG-2) to Commercial Planned Development (CPD) to allow 350,000 square feet of commercial uses, which include 200,000 square feet of warehouse and open storage and 150,000 square feet of commercial retail.

Located at northwest corner of N. Cleveland Ave. and Playa Del Sol Blvd., North Fort Myers Planning Community, Lee County, FL.

DCI2022-00067 / Cary+Duke+Povia RPD – CONTINUED HEARING

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, ADArequests@leegov.com or Florida Relay Service 711. Accommodation will be provided at no cost to the requestor. Requests should be made at least five business days in advance.

Comprehensive Plan Amendment
and
Zoning Hearing Agenda

Wednesday, March 5, 2025

List of Hearing Attendees by Case

Case Number	Name	Party
DCI2023-00006 Play Del Sol at Cleveland Ave CPD	Fred Drovdlic, AICP RVi Planning + Landscape Architecture	Applicant
	Yury Bykau TR Transportation Consultants, Inc.	Applicant
	Shane Johnson Passarella & Associates, Inc.	Applicant
	Christopher Pisano	Applicant
	Leo J. Salvatori Salvatori Law Office	Applicant
	Cathie Jansson	Public Participant
DCI2022-00067 Cary + Duke + Povia RPD	Alexis Crespo RVi Planning + Landscape Architecture	Applicant
	Jem Frantz RVi Planning + Landscape Architecture	Applicant
	Will Hellman RVi Planning + Landscape Architecture	Applicant
	Sabrina McCabe RVi Planning + Landscape Architecture	Applicant
	Brandon Frey JR Evans Engineering, Inc.	Applicant
	Yury Bykau TR Transportation Consultants, Inc.	Applicant
	Ted Treesh TR Transportation Consultants, Inc.	Applicant
	Shane Johnson Passarella & Associates, Inc.	Applicant
	Kirk Martin Water Science	Applicant
	Neale Montgomery, Esq. Pavese Law Firm	Applicant
	Pat Neal Neal Communities	Applicant
	Susan Allen	Public Participant
	Kathy Arnold	Public Participant
	Ralph Bond	Public Participant
	Linda Borchering	Public Participant
	Steven Brodkin	Public Participant
	Monica Busbee	Public Participant

Comprehensive Plan Amendment
and
Zoning Hearing Agenda

Wednesday, March 5, 2025

List of Hearing Attendees by Case

Case Number	Name	Party
DCI2022-00067 Cary + Duke + Povia RPD (cont.)	Keith Cary	Public Participant
	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
	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

DCI2023-00006 PLAYA DEL SOL AT CLEVELAND AVE CPD

Staff Summary

CASE NUMBER & NAME:	DCI2023-00006 / Playa Del Sol at Cleveland Ave CPD
REQUEST:	Request to rezone 9.40 +/- acres from Agriculture (AG-2) to Commercial Planned Development (CPD) to allow 350,000 square feet of commercial uses, which include 200,000 square feet of warehouse and open storage and 150,000 square feet of commercial retail.
RESOLUTION NUMBER:	Z-24-033
LOCATION:	Northwest corner of N. Cleveland Ave. and Playa Del Sol Blvd., North Fort Myers Planning Community, Lee County, FL.
OWNER:	Angel Aramis, LLC c/o Paul Hardy
APPLICANT:	Angel Aramis, LLC c/o Paul Hardy
AGENT:	Fred Drovdlic, AICP RVi Planning + Landscaping Architechure 1514 Broadway, Suite 201 Fort Myers, FL 33901
HEARING EXAMINER RECOMMENDATION:	Approval, subject to the conditions and deviations set forth in Exhibit B.
PARTICIPANTS (1):	1. Cathie Jansson

DCI2023-00006

Aerial

Subject Property

City Limits

N
W
E
S

0 300 600 900

Feet

Lee County
Southwest Florida

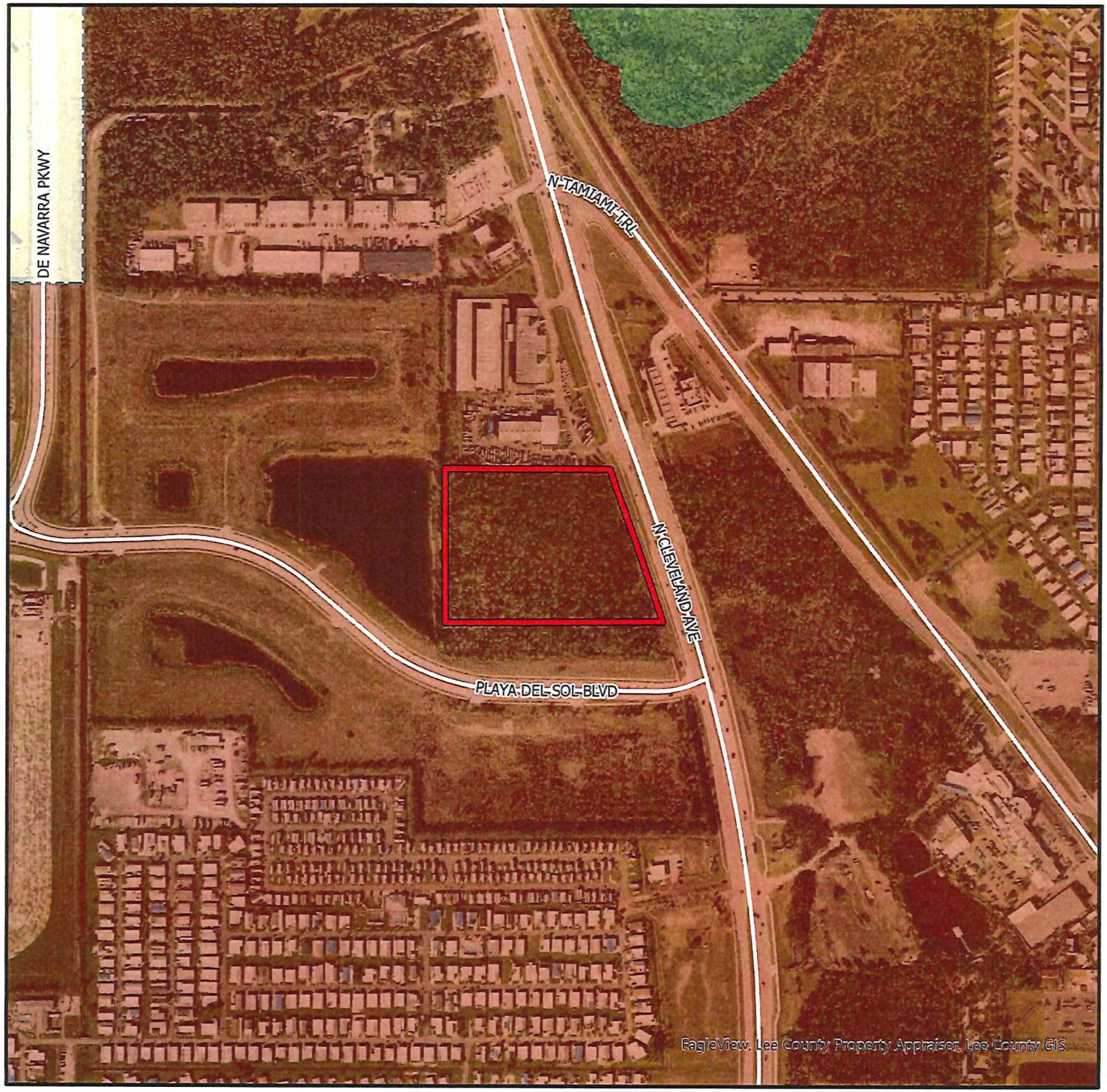
Summary of Hearing Examiner Recommendation

PLAYA DEL SOL AT CLEVELAND AVE CPD

The request seeks to develop vacant land west of US 41 in the North Fort Myers Planning Community. The proposed plan of development includes four commercial retail and public storage buildings with open storage central to the site.

The request infills a property ideally suited for the proposed development scheme. Recommended conditions of approval ensure compatibility with the surrounding area and provide opportunities for connectivity with neighboring properties.

Detailed recommendation follows



DCI2023-00006

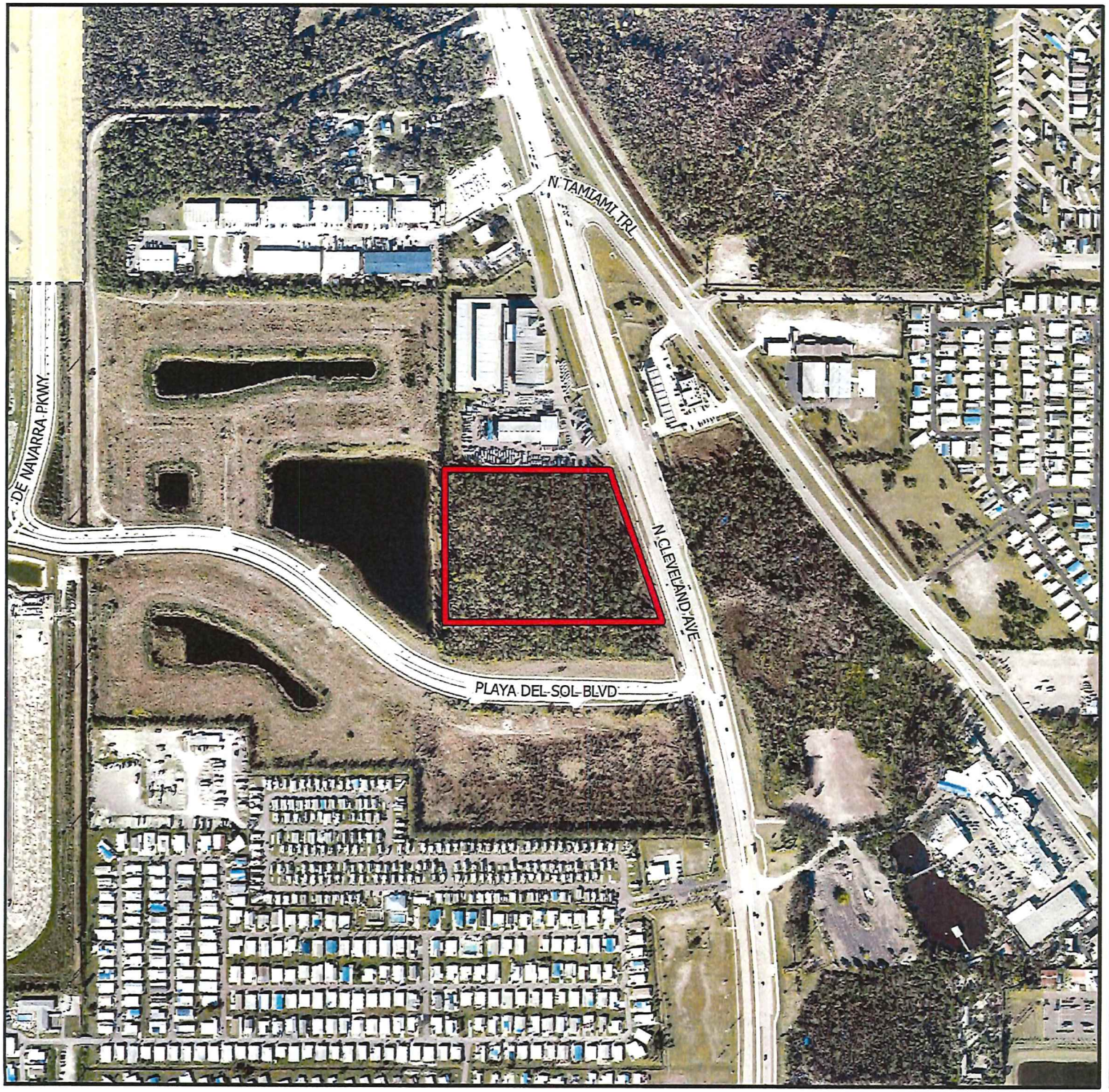
Future Land Use

- Subject Property
- Central Urban
- Wetlands
- City Limits

N
W E
S

0 300 600 900
Feet

Lee County
Southwest Florida



DCI2023-00006

Aerial

Subject Property

City Limits

N
W
E
S

0 300 600 900

Feet

Lee County
Southwest Florida

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2023-00006

Regarding: **PLAYA DEL SOL AT CLEVELAND AVE CPD**

Location: **16881 N Cleveland Ave**
North Fort Myers Planning Community
(District 4)

Hearing Date: December 12, 2024
Record Closed: **December 13, 2024**

I. Request

Rezone 9.4± acres from Agricultural (AG-2) to Commercial Planned Development (CPD) to allow a maximum of 350,000 square feet of commercial uses, comprised of 200,000 square feet of warehouse/open storage and 150,000 square feet of commercial retail. The maximum proposed height is 75 feet.

The property's 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 the planned development district.[1] In satisfaction of this duty, the Hearing Examiner accepted testimony and evidence on the application to rezone to CPD.

In preparing a recommendation to the Board, the Hearing Examiner must consider the Lee County Comprehensive Plan (Lee Plan), the Land Development Code (LDC), and other applicable County regulations to the facts presented in a rezoning request.[2] Specifically, the Hearing Examiner must find the request is compatible with surrounding uses and complies with Lee Plan and LDC requirements relating to such items as transportation facilities, natural resources, and public services.[3]

---

[1] LDC §34-145(d)(1)b.
[2] LDC §34-145(d)(3).
[3] LDC §34-145(d)(4).

The Hearing Examiner's recommendation must be based on competent and substantial evidence.[4]

Discussion supporting the recommendation of CPD approval follows below.

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. Addresses expected impacts on transportation facilities through existing County regulations or conditions of approval;

F. Will not adversely affect environmentally critical or sensitive areas and natural resources; and

G. Will be served by urban services.[5]

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

H. The proposed use or mix of uses is appropriate at the proposed location;

I. 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

J. Each requested deviation (1) enhances the achievement of the objectives of the planned development, and (2) protects public health, safety, and welfare.[6]

[4] Lee Co. Admin. Code 2-6, §3.3(A)(2); LDC §34-83(a)(4)a.1(a).
[5] LDC §34-145(d)(4)a.1.
[6] LDC §34-145(d)(4)a.2.

Request Synopsis

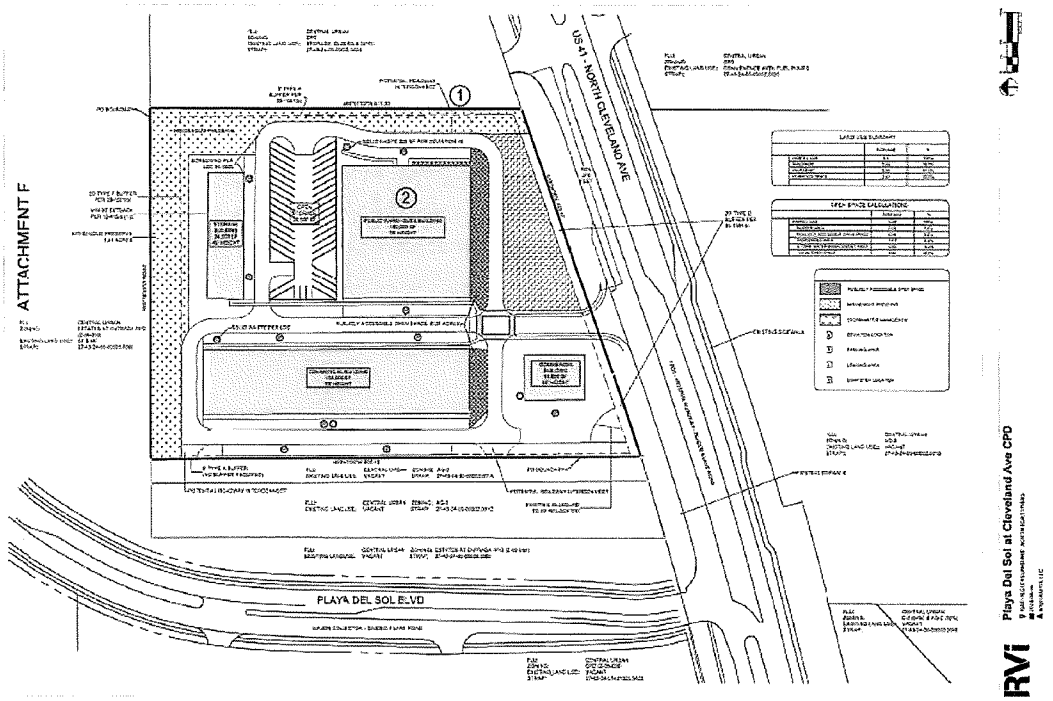
Applicant seeks to rezone 9.4± acres of vacant land to develop 350,000 square feet of commercial uses. Project intensity is comprised of 200,000 square feet of warehouse/open storage and 150,000 square feet of commercial retail. Proposed maximum building height is 75 feet. The site sits just north of the intersection of US 41/North Cleveland Avenue and Playa del Sol Boulevard.

Site design centralizes two storage/warehouse buildings with open storage nestled between. Commercial buildings occupy the southern portion of the property near Playa Del Sol Boulevard. An indigenous preserve lines the northern and western property boundaries.[7]

The Master Concept Plan (MCP) contemplates a single access to US 41. Potential interconnections to adjacent north/south properties offer future connectivity.

The request includes four deviation requests to acknowledge existing site conditions, align with neighboring development, and recognize reduced dumpster demands for the warehouse use.[8]

Staff recommended approval, finding the CPD satisfied LDC review criteria.



[7] *See* Applicant Ex. 1 (slide 7).

[8] The Staff Report evaluated two deviation requests and recommended a third. Applicant supplemented the record with two additional deviation requests and supporting justifications, inclusive of variance analysis for landscaping deviations in the North Fort Myers Planning Community. Lee Plan Policy 30.2.5.

Character of the Area

The property sits west of US 41/North Cleveland Avenue near its intersection of US 41 Business/North Tamiami Trail. Playa del Sol Boulevard lies to the south. Intense commercial and residential uses dominate the US 41 corridor. A U-Haul storage facility abuts to the north. An approved but undeveloped residential community adjoins to the west.[9]

Lee Plan Consistency/Compatibility

Planned developments must be consistent with the Lee Plan.[10] Requests for rezoning must be compatible with existing/planned uses in the surrounding area.[11] Planned developments must be located to minimize negative effects of proposed uses on neighboring properties.[12]

The property is located within the Central Urban future land use category in the Commercial Corridor of the North Fort Myers Planning Community. [13]

---

[9] Property to the west is part of the Estates at Entrada RPD/CPD under municipal jurisdiction of the City of Cape Coral. The entire western boundary of the site abuts a large lake on the Entrada property. See Staff Ex. 3 (slide 7).
[10] LDC §34-411(a).
[11] LDC §34-145(d)(4)a.
[12] LDC §§34-411(c) and (i).
[13] Lee Plan Map 1A-B, 2A, Policy 1.1.3; Lee Plan Policy 30.2.5; LDC §33-1537, §33-1566 *et. seq.* Supplemental land development regulations apply to Commercial Corridor properties.

Central Urban areas comprise the County's urban core, with access to a wide array of public services and infrastructure. Residential, commercial, public, quasi-public, and limited light industrial land uses may be found in these areas. Permissible residential densities typically range from 4 to 10 units per acre but may be higher under certain circumstances.[14]

The proposed CPD is consistent with the property's Central Urban designation. Additional indoor/open storage and commercial uses will serve surrounding residential communities. In contrast, existing Agricultural zoning is not aligned with the intensity of development contemplated for Central Urban lands. Accordingly, rezoning to CPD brings the site into greater compliance with its future land use designation.[15]

Development in North Fort Myers is subject to a Community Plan.[16] The Community Plan emphasizes economic vitality, revitalization of older neighborhoods/commercial corridors, protecting community character, and preserving natural resources.[17] Future development permitting must comply with supplemental standards in the Community Plan.[18]

The proposed development promotes contiguous and compact growth consistent with Lee Plan directives.[19] The requested CPD develops an infill parcel proximate to intense commercial and residential uses.[20] The project offers employment and retail opportunities, improving the community's economic base.[21] Supplemental regulations ensure development achieves community design standards.[22]

Preservation areas and buffers adequately protect adjacent lands from project impacts.[23] Enhanced buffers protect neighboring properties from potential headlight intrusion.[24]

The requested rezoning is consistent with the Lee Plan and compatible with the surrounding area.

---

[14] Maximum total density is 5 dwellings per acre but may go as high as 20 utilizing Greater Pine Island Transfer of Development Units. Lee Plan Policy 1.1.3.
[15] Permitted uses under the AG-2 district are misaligned with Central Urban land use directives. *See* LDC §34-651 *et. seq.*; Lee Plan Policy 1.1.3.
[16] 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.
[17] *See* Lee Plan Goal 30.
[18] 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.*, most notably design standards governing architecture, lighting, and site design.
[19] *See* Lee Plan Objectives 2.1, 2.2, Policies 2.1.1, 2.2.1, 6.1.7; *See* Staff Report (pg. 5-7).
[20] *See* Lee Plan Policies 6.1.3, 6.1.4.
[21] *See* Lee Plan Goal 158.
[22] *See* LDC §33-1542 *et. seq.*, §33-1566 *et. seq.,* Lee Plan 30.2.9.
[23] *See* Lee Plan Policy 5.1.5; Staff Report (pg.6). The MCP reflects Code compliant buffering. The Preservation Area serves as a buffer to the north and west.
[24] Drovdlic Testimony (Transcript pg. 15).

Environmental/Natural Resources

Planned development design should reflect creative use of open space.[25] Developers must protect and preserve natural site features.[26]

The site is densely vegetated with no development history.[27] Applicant received a jurisdictional determination from the South Florida Water Management District confirming there are 1.03± acres of wetlands on site.[28] The Indigenous Preserve includes most wetland areas.[29]

Site design provides enhanced buffers to mitigate off-impacts.[30] Environmental review discovered no protected species on site.[31]

The MCP demonstrates compliance with LDC open space requirements. Applicant also complies with publicly accessible open space mandates in the North Fort Myers Planning Community.[32]

Transportation Facilities/Traffic

Planned developments must have access to roads with sufficient capacity to support proposed intensity.[33] Existing regulations or conditions of approval must address expected transportation impacts.[34]

The project fronts US 41, a state-maintained arterial road.[35] Site design locates a single access point on US 41 with future interconnections to abutting north/south properties.[36] The Florida Department of Transportation (FDOT) governs access to US 41.[37] Interconnections to adjoining properties offer connectivity to the broader

---

[25] LDC §34-411(h).
[26] LDC §34-411(g).
[27] *See* Staff Report (Attachment D, G).
[28] *See* Staff Report (Attachment L, citing SFWMD ERP 36-109805-P).
[29] 0.7± acres of wetlands are within the Preserve area. Applicant must mitigate wetland impacts prior to site development.
[30] Applicant is providing buffer along the southern property boundary although none is required under the LDC.
[31] *See* Staff Report (Attachment G: Russell Property Lee County Protected Species Survey Report dated June 2023, prepared by Passarella & Associates, Inc.). Applicant must conduct further environmental study during development order review.
[32] LDC §33-1572.
[33] LDC §34-145(d)(4)(a)(1)(d); §34-411(d)(1).
[34] LDC §34-145(d)(4)(a)(1)(e); §34-411(d)(2).
[35] Pine Island Road is a four-lane road maintained by the State.
[36] Consistent with LDC §10-285(a), prohibiting access on an arterial road if projects have alternative access.
[37] Applicant asserts preliminary discussions with FDOT staff have indicated they will grant access. Drovdlic Testimony (Transcript pg. 9, 14, 24-25) .

county road network.[38] The property has adequate frontage to accommodate access.[39]

The Traffic Impact Statement (TIS) evaluated transportation impacts and concluded the request will not degrade levels of service on affected roadways/intersections.[40]

Public Services

Public services are the facilities, capital improvements, and infrastructure necessary to support development.[41] The Lee Plan requires urban service evaluation for rezoning.[42]

The request constitutes infill development in an area served by a host of urban services and infrastructure including roads, potable water, sanitary sewer, police, fire, and emergency medical services.[43]

Transit stops are within the walkshed and accessible by existing sidewalks along the US 41 corridor.[44] Applicant will also install sidewalks internal to the project that connect to the external network, providing pedestrian circulation consistent with Lee Plan directives.[45]

Conditions

The county must administer the zoning process so proposed uses acceptably minimize adverse impacts to adjacent property. Conditions must plausibly relate to impacts anticipated from the proposed development and must be pertinent to mitigating those impacts for public health, safety, and welfare.[46]

---

[38] Playa del Sol Boulevard, a county-maintained collector road, connects to De Navarra Parkway, a county-maintained arterial road. De Navarra Parkway also connects to Del Prado Boulevard, an arterial road. Business US 41/North Tamiami Trail is also an arterial road proximate to the site.
[39] *See* Staff Report (Attachment F); Lee Plan Objective 39.1, Policy 39.1.1.
[40] *See* Staff Report (pg. 2, Attachment I: TIS prepared by TR Transportation Consultants, Inc. dated Dec. 29, 2023, Attachment J: Memo from Pakorn Sutitarnnontr dated Nov. 11, 2024).
[41] Lee Plan Glossary. Public services include public water and sewer, paved streets and roads, public transit, parks and recreation facilities, urban levels of police, fire and emergency services, urban surface water management, schools, employment, institutional/public/administrative/community facilities, and libraries.
[42] Lee Plan Policy 2.2.1.
[43] *See* Staff Report (pg. 3). North Fort Myers Fire Station and EMS station is1.8± miles away. The Lee County Sheriff's substation is three miles from the site. *See* Applicant Ex. 1 (slide 9).
[44] LeeTran bus stop #3597 is located less than one mile away. LeeTran stop #2310 is within one-quarter mile. *See* Applicant Ex. 1 (slide 9).
[45] *See Id.*
[46] LDC §34-932(b).

The CPD will be subject to conditions of approval addressing development parameters and environmental features. The conditions relate to impacts anticipated from the project.[47]

LDC Compliance/Deviations

"Deviations" are departures from LDC regulations.[48] Applicant requested deviations relating to buffers, vehicular interconnections, and dumpster size enclosures. Staff supports the requested deviations.

The Hearing Examiner's standard of review requires a finding that the deviations enhance achievement of objectives of the CPD and protect public health, safety, and welfare.[49]

Deviations seeking relief from buffering requirements in the Commercial Corridor of the North Fort Myers Planning Community must demonstrate compliance with variance criteria set forth in the LDC.[50] Applicant provided justification to deviate from buffer requirements along the northern and western property boundaries.[51] The indigenous preserve will function as the buffer to meet the spirit of the Code in these locations.

Applying LDC deviation standards of review to testimony and evidence in the record, the Hearing Examiner concludes the requested deviations meet approval criteria.[52]

Public

Applicant presented its request at a community meeting in compliance with LDC requirements.[53] One member of the public appeared at the hearing before the Hearing Examiner.[54]

Conclusion

The Hearing Examiner concurs with staff's analysis and recommendation that the requested CPD meets LDC approval criteria.

---

[47] LDC §34-83(b)(4)a.3. The Hearing Examiner recommends revisions to conditions to improve clarity.
[48] LDC §34-2.
[49] LDC 34-145(d)(4).
[50] Lee Plan 30.2.5.
[51] *See* Applicant Ex. a: 48-Hour Memorandum dated Dec. 11, 2024.
[52] LDC 34-377(a)(4).
[53] LDC §33-1532. *See* Staff Report (Attachment G). The meeting was held on May 3, 2023.
[54] The neighboring owner of property to the south inquired as to access. The Parties addressed concerns and provided a condition of approval requiring an access easement to the identified property.

IV. Findings and Conclusions

The Hearing Examiner makes the following findings and conclusions based on testimony and evidence in the record:

As conditioned herein, the proposed CPD:

A. Complies with the Lee Plan. *See* Lee Plan Goals 2, 4, 6, 30, 77, 158, Objective 2.1, 2.2, 30.2, 39.1, 60.4, and Policies 1.1.3, 2.1.1, 2.2.1, 6.1.1, 6.1.3, 6.1.4, 6.1.5, 6.1.7, 30.2.5, 39.1.1, 60.4.1, 60.4.2, 60.4.3, 61.4.4, Lee Plan Maps 1A-B, 2A.

B. Complies with the LDC and other County regulations. *See* LDC ch. 2, §10-1, §10-416, §§33-1531 *et. seq.*, §34-623, §34-625, §34-934.

C. Is compatible with existing and planned uses in the area. *See* Lee Plan Policies 1.1.3, 2.1.1, 2.1.2, 2.2.1, 6.1.1, 6.1.3, 6.1.4, 6.1.6, 6.1.7, LDC §34-411(c), (i), and (j).

D. Will provide sufficient access to support the proposed development.

E. Expected impacts on transportation facilities will be addressed by existing County regulations or conditions of approval. *See* Lee Plan Goal 39, Policy 6.1.1, 6.1.5, 39.1.1; LDC §34-411(d).

F. Will not adversely affect environmentally critical areas and natural resources. *See* Lee Plan Goal 77, Objectives 4.1, 77.2; Policies 6.1.1, 6.1.6, 60.4.1, 60.4.2, 60.4.3, and LDC §34-411(h).

G. Will be served by urban services. *See* Lee Plan Glossary, Maps 4A-B, Goal 2; Objectives 2.1, 2.2, 4.1; Policies 2.2.1, 6.1.4, and Standards 4.1.1 and 4.1.2; LDC §34-411(d).

H. The proposed mix of uses is appropriate at the proposed location. *See* Lee Plan Policies 1.1.3, 2.1.1, 6.1.1, and 6.1.7.

I. The recommended conditions are sufficient to protect the public interest and reasonably relate to the impacts expected from the development. *See* Lee Plan Policy 6.1.1; *See also* LDC Chapters 10, 33, and 34.

J. As conditioned herein, the deviations:

(1) Enhance the objectives of the planned development; and

(2) Protect public health, safety, and welfare. *See* §34-377(b)(4).

Date of Recommendation: January 29, 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

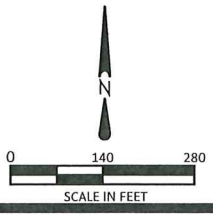
DCI2023-00006 Lee County ePlan

Exhibit A

16881 N CLEVELAND AVE
NORTH FORT MYERS, FL 33903
OF
SECTION 27, TOWNSHIP 43 SOUTH,
RANGE 24 EAST

SKETCH

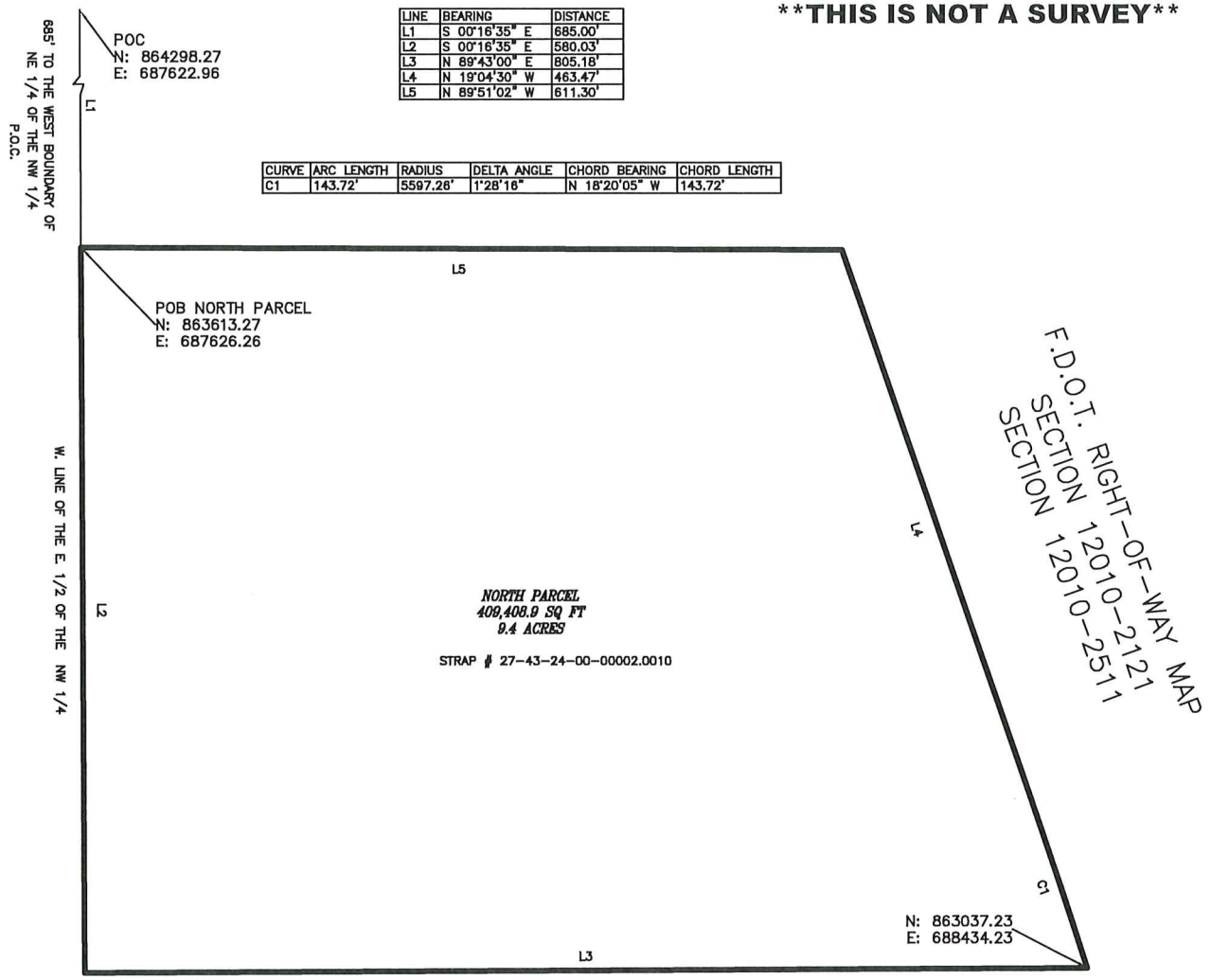
DATE: 12/19/2023



THIS IS NOT A SURVEY

LINE	BEARING	DISTANCE
L1	S 00°16'35" E	685.00'
L2	S 00°16'35" E	580.03'
L3	N 89°43'00" E	805.18'
L4	N 19°04'30" W	463.47'
L5	N 89°51'02" W	611.30'

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	143.72'	5597.28'	1°28'16"	N 18°20'05" W	143.72'



REVIEWED
DCI2023-00006
Rick Burris, Principal
Planner
Lee County DCD/Planning
3/19/2024

I CERTIFY THAT THIS SKETCH AND DESCRIPTION WAS MADE UNDER MY DIRECTION AND THAT IT MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17.050 THRU .052, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472.027, FLORIDA STATUTES.

REVISIONS:

PROJECT NO: N/A
SCALE: 1"= 140'
DRAWN BY: JJM
CHECKED BY: MDM
DATE DRAWN: 10/18/2022
FIELD BOOK: 55

CE-SITE
civil engineering . surveying . project management
EB-30108 • LB-7995
13650 Fiddlesticks Blvd., PMB202-389
Fort Myers, Florida 33912
Telephone (239) 936-9777

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

Digitally signed by Mark D McCleary
Date: 2023.12.20 21:31:52 -05'00'

MARK D. McCLEARY, P.S.M.
FLORIDA REGISTRATION NO. 6557
FOR THE FIRM LB-7995
DATE SIGNED:

DCI2023-00006 Lee County ePlan

16881 N CLEVELAND AVE
NORTH FORT MYERS, FL 33903
OF
SECTION 27, TOWNSHIP 43 SOUTH,
RANGE 24 EAST

DESCRIPTION

DATE: 12/19/2023

****THIS IS NOT A SURVEY****

DESCRIPTION:

A PARCEL OF LAND IN THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 27, TOWNSHIP 43 SOUTH, RANGE 24 EAST, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCE S 00°16'35' E ON THE WEST BOUNDARY OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 27 TOWNSHIP 43 SOUTH, RANGE 24 EAST AT 685 FEET SOUTH OF THE NORTHWEST CORNER THEREOF TO THE POINT OF BEGINNING; THENCE CONTINUE S 00°16'35' E ALONG THE WEST LINE OF THE EAST HALF (E 1/2) OF SAID NORTHWEST QUARTER (NW 1/4) 580.03 FEET TO THE NORTHERN LINE OF 40 FOOT HAUL ROUTE DESCRIBED IN O.R. BOOK 36, PAGE 117, OF THE PUBLIC RECORDS OF LEE COUNTY FLORIDA.

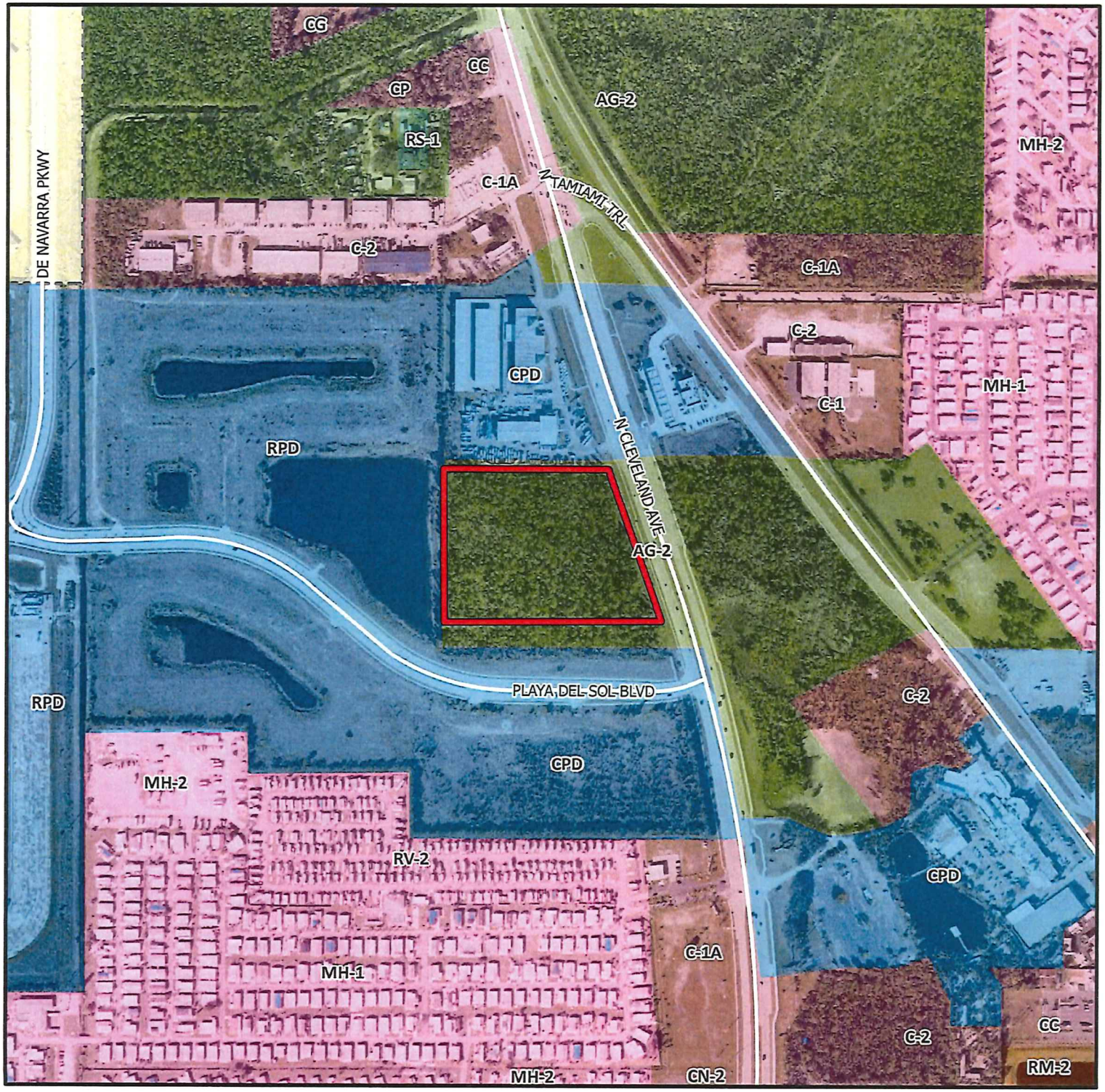
THENCE ALONG SAID NORTHERN HAUL ROUTE N 89°43'00' E A DISTANCE OF 805.18 FEET TO AN INTERSECTION WITH THE WESTERLY RIGHT-OF-WAY LINE OF U.S. 41 (S.R. 45) 200.00 FEET WIDE (PER DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP SECTION 12010-2121) AND AN INTERSECTION WITH A NON-TANGENT CURVE TO THE LEFT HAVING AN ARC LENGTH OF 143.72 FEET, WITH A RADIUS OF 5597.26 FEET, WITH A DELTA ANGLE OF 01°28'16", WITH A CHORD BEARING OF N 18°20'05' W, WITH A CHORD LENGTH OF 143.72 FEET; THENCE N 19°04'30" W A DISTANCE OF 463.47 FEET ALONG SAID RIGHT-OF-WAY; THENCE N 89°51'02" W A DISTANCE OF 611.30 FEET TO THE POINT OF BEGINNING;

REVIEWED
DCI2023-00006
Rick Burris, Principal
Planner
Lee County DCD/Planning
3/19/2024

REVISIONS:

PROJECT NO: N/A
SCALE: N/A
DRAWN BY: JJM
CHECKED BY: MDM
DATE DRAWN: 10/18/2022
FIELD BOOK: 55

CE-SITE
civil engineering . surveying . project management
EB-30108 · LB-7995
13650 Fiddlesticks Blvd., PMB202-389
Fort Myers, Florida 33912
Telephone (239) 936-9777



DCI2023-00006

Zoning

Subject Property

City Limits

N

W E

S

0 300 600 900

Feet

Lee County

Southwest Florida

Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS
As revised by the Hearing Examiner

CONDITIONS

1. **Master Concept Plan (MCP)/Development Parameters**

   a. MCP. Development must be substantially consistent with the one-page MCP entitled "Playa Del Sol at Cleveland Ave CPD," stamped received December 13, 2024, except as modified by the conditions herein (Exhibit B1).

   b. LDC and Lee Plan. Development must comply with the Lee Plan and LDC at the time of development order approval, except where deviations are granted herein. Subsequent changes may require further development approvals.

   c. Development Parameters. The CPD is limited to a maximum 350,000 square feet of commercial uses, comprised of 200,000 square feet of public warehouse/open storage and 150,000 square feet of commercial retail.

2. **Schedule of Uses/Site Development Regulations**

   a. Schedule of Uses

   Administrative Offices
   Animal Clinic or Kennel, Control Center (including Humane Society)
   Assisted Living Facility
   ATM (Automated Teller Machine)
   Auto parts store (with installation services)
   Automobile Repair and Service: Groups I & II
   Automobile Service Station
   Bait and Tackle Shop
   Banks & Financial Establishments: Group I & II
   Bar and Cocktail Lounge
   Bed and Breakfast
   Boats: Parts Store, Rental, Sales, and Storage
   Broadcast Studio, Commercial Radio, and Television
   Building Materials Sales
   Business Services: Groups I and II
   Car Wash
   Cleaning and Maintenance Services

Clothing Store, General
Clubs: Country, Commercial, Fraternal
Consumption on Premise
Contractors and Builders: Groups I, II, and III
Cultural Facilities
Department Store
Drive-through Facility for any permitted use
Drugstore Pharmacy
Entrance Gates and Gatehouse
EMS, Fire, or Sheriff's Station
Essential Service Facilities: Group I
Excavation: Water Retention
Food Stores: Groups I & II
Funeral Home or Mortuary (with or without crematory)
Hardware Store
Health Care Facilities, Group III
Hobby, Toy, and Game Shops
Household and Office Furnishings: All Groups
Insurance Companies
Laundry or Dry Cleaning: Group I
Lawn and Garden Supply Store
Library
Maintenance Facility (Government)
Medical Office
Non-Store Retailers: All Groups
Package Store
Paint, Glass, and Wallpaper
Parks: Group I
Parking Lot, All Groups
Personal Services: All Groups (Excludes bail bonding, escort services, fortune tellers, palm readers or card readers, massage parlors, and tattoo parlors)
Pet Services
Pet Shop
Pharmacy
Place of Worship
Post Office
Recreation Facilities: Group I
Religious Facilities
Rental and Leasing Establishments: All Groups
Repair Shops: Group I – IV

Research and Development and Laboratories: Groups II and IV
Restaurant, Fast Food
Restaurant, All Groups
Schools, Commercial, Noncommercial
Signs
Social Services: Groups I – III
Specialty Retail Shops: All Groups
Storage: Indoor and Open
Studios
Used Merchandise Stores: Groups I-III
Variety Store
Vehicle and Equipment Dealers: Groups I-IV
Warehouse: Public Warehouse
Wholesale Establishments: Group III

b. Site Development Regulations

Minimum lot size:	10,000 square feet
Minimum lot width:	100 feet
Minimum lot depth:	100 feet
Maximum lot coverage:	60%
Maximum building height:	75 feet
Minimum building separation:	20 feet
Setbacks:	
Development perimeter:	15 feet
Street:	25 feet
Side:	10 feet
Rear:	15 feet
Waterbody:	20 feet
Preserve:	20 feet (30 feet for fire dependent indigenous plant communities)
Minimum Open Space:	30%

3. **Open Space**
Development order plans must depict a total of 2.82 acres of open space.

4. **Indigenous Open Space**
Development order plans must depict 1.41 acres of indigenous and restored preserve area.

5. **Indigenous Restoration and Buffers**
Developer must submit an indigenous restoration plan with the first development order application for the non-indigenous wetland area within the proposed preserve. Restoration plants being used to meet the Type-F buffer requirements must comply with LDC §33-1581(b). Supplemental buffer landscaping must comply with LDC §10-420. Development order plans must specify an above ground temporary irrigation system.

6. **Interconnection and Cross Access Easement**

Developer must record a cross-access easement that depicts:

1) An interconnection to the recorded cross-access easement (Instrument #2017000027626) located north of the subject property.

2) An interconnection to the parcel located south of the subject property.

3) An access easement on the subject property connecting the north and south interconnection points.

7. **Access to US 41**
The access location on US 41/North Cleveland Avenue depicted on the MCP is conceptual and subject to modification based upon final approval from the Florida Department of Transportation (FDOT).

8. **Southern Buffer**
Development order plans must depict a five-foot-wide buffer with five trees per 100 linear feet and a single hedge row along the southern property boundary.

9. **Development 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. **Interconnections. Deviation (1)** seeks relief from LDC §§10-610(e), 33-1573(c)(2), and 33-1572(d)(2) pertaining to parking lot interconnections between commercial uses for automobiles, pedestrian, and bicycle traffic, ***to allow*** the proposed interconnection to align with the cross-access easement recorded on the properties to the north.

HEX Recommendation: Approve, subject to Condition 6.

2. **Solid Waste Facilities. Deviation (2)** seeks relief from LDC §10-261(a), which requires new commercial construction to provide sufficient on-site space for the placement of garbage containers and sufficient space for recyclable material connection containers based on 216 square feet for the first 250,000 square feet of building area plus eight square feet for each additional 1,000 square feet of building area, ***to allow*** a reduction for the public warehouse dumpster based on the first 25,000 square feet only, to provide a 220 square foot dumpster.

   HEX Recommendation: Approve

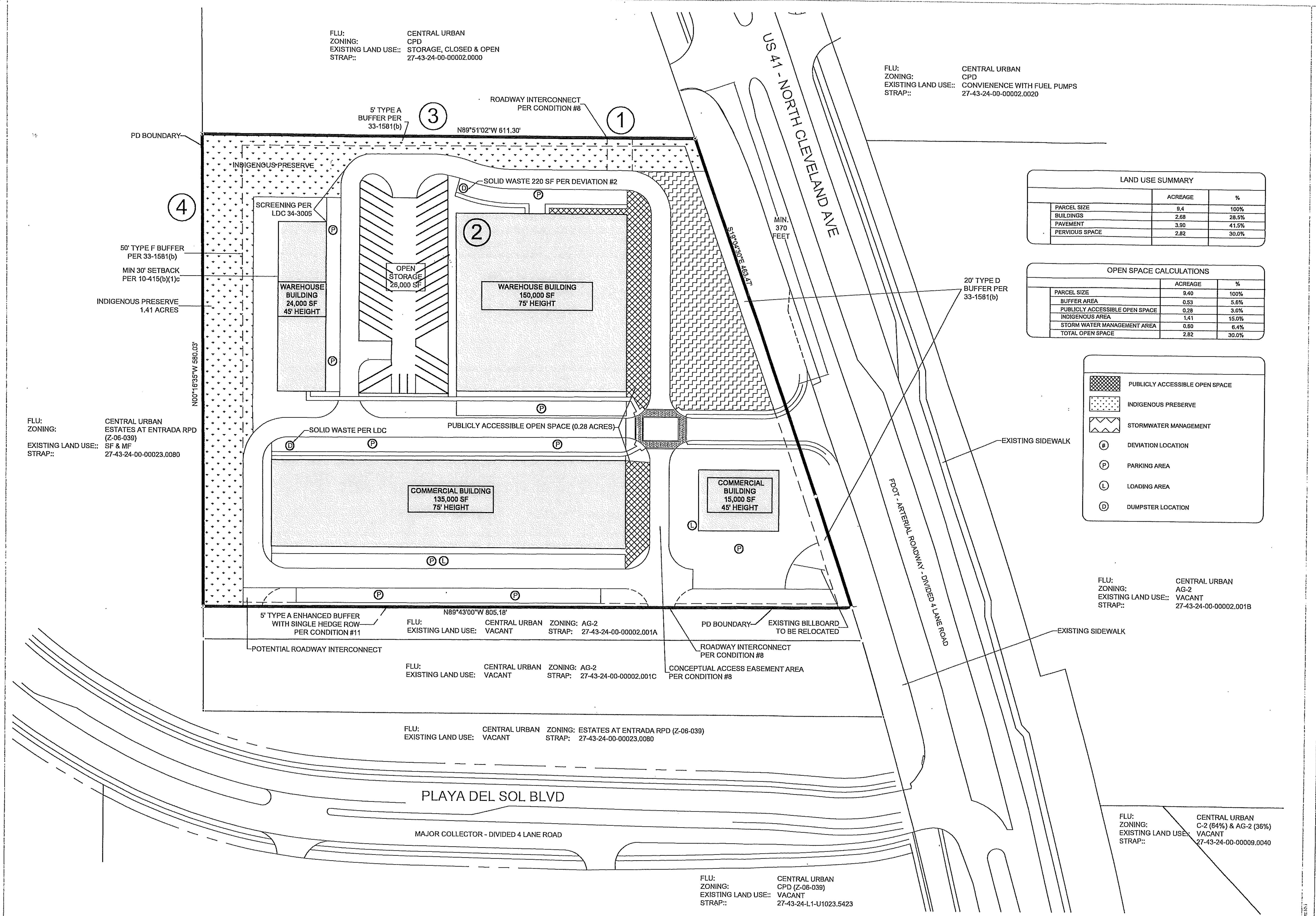
3. **Northern Buffer. Deviation (3)** seeks relief from LDC §33-1581(b), which requires a Type-A buffer between commercial uses, ***to allow*** the indigenous preservation area to meet the buffer requirement.

   HEX Recommendation: Approve

4. **Western Buffer. Deviation (4)** seeks relief from LDC §33-1581(b), which requires a Type-F buffer between commercial and residential uses, ***to allow*** the indigenous preservation area to meet the buffer requirement.

   HEX Recommendation: Approve

Exhibits to Conditions:
B1 Master Concept Plan date stamped Dec. 13, 2024



LAND USE SUMMARY

	ACREAGE	%
PARCEL SIZE	9.4	100%
BUILDINGS	2.68	28.5%
PAVEMENT	3.90	41.5%
PERVIOUS SPACE	2.82	30.0%

OPEN SPACE CALCULATIONS

	ACREAGE	%
PARCEL SIZE	9.40	100%
BUFFER AREA	0.53	5.6%
PUBLICLY ACCESSIBLE OPEN SPACE	0.28	3.0%
INDIGENOUS AREA	1.41	15.0%
STORM WATER MANAGEMENT AREA	0.60	6.4%
TOTAL OPEN SPACE	2.82	30.0%

EXHIBIT B-1

Playa Del Sol at Cleveland Ave CPD

16881 N CLEVELAND AVE, NORTH FORT MYERS
2024-11-15
Angel Aramis, LLC

RVi

Exhibit C

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments for DCI:* Prepared by Elizabeth Workman, Principal Planner, date received November 25, 2024 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]

2. *Affidavit of Publication:* For Zoning Hearing Schedule December 12, 2024, for Case DCI2023-00006, Plaza Del Sol at Cleveland Ave CPD (1 page – 8.5"x11")

3. *PowerPoint Presentation:* Prepared by Lee County Staff for Case DCI2023-00006, Plaza Del Sol at Cleveland Ave CPD, dated December 12, 2024 (multiple pages – 8.5"x11")[color]

APPLICANT EXHIBITS

a. *48-Hour Notice:* Email from Fred Drovdlic to Maria Perez, with copies to Christopher Pisano, Yury Bykau, Elizabeth Workman, and Tom Lehnert, dated Monday, December 9, 2024, 8:34 PM (multiple pages – 8.5"x11" & 1 page – 11"x17")

1. *PowerPoint Presentation:* Prepared by RVi Planning and TR Transportation, for Case DCI2023-00006, Plaza Del Sol at Cleveland Ave CPD, dated December 12, 2024 (multiple pages – 8.5"x11")[color]

2. *Master Concept Plan:* Prepared by RVi Planning for Case DCI2023-00006, Plaza Del Sol at Cleveland Ave CPD(1 page – 11"x17" & 1 page – 24"x36")

3. *Written Submissions:* Email from Jamie Princing to Maria Perez, dated Friday, December 13, 2024, 3:12 PM (multiple page2 – 8.5"x11" & 1 page – 11"x17")

Exhibit D

HEARING PARTICIPANTS

County Staff:

Elizabeth Workman

Applicant Representatives:

Fred Drovdlic

Public Participants:

Cathie Jansson

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.

Playa Del Sol at Cleveland Ave Commercial Planned Development (DCI2023-00006)

Attachment C – Conditions and Deviations

Section A. - Conditions

1. The development of this project must be consistent with one-page Master Concept Plan (MCP) dated September 11, 2024, and entitled "Playa Del Sol at Cleveland Ave CPD", prepared by RVi, attached as staff report Attachment F, 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 350,000 square feet of commercial uses, which includes 200,000 square feet of warehouse, public and open storage and 150,000 square feet of commercial retail. The maximum height is 75 feet.

2. The following limits apply to the project and uses:

   a. Schedule of Uses

      Administrative Offices
      Animal Clinic or Kennel, Control Center (including Humane Society)
      Assisted Living Facility
      ATM (Automated Teller Machine)
      Auto parts store (with installation services)
      Automobile Repair and Service: Groups I & II
      Automobile Service Station
      Bait and Tackle Shop
      Banks & Financial Establishments: Group I & II
      Bar and Cocktail Lounge
      Bed and Breakfast
      Boats: Parts Store, Rental, Sales, and Storage
      Broadcast Studio, Commercial Radio, and Television
      Building Materials Sales
      Business Services: Groups I and II
      Car Wash
      Cleaning and Maintenance Services
      Clothing Store, General
      Clubs: Country, Commercial, Fraternal
      Consumption on Premise
      Contractors and Builders: Groups I, II, and III
      Cultural Facilities
      Department Store
      Drive-through Facility for any permitted use
      Drugstore Pharmacy
      Entrance Gates and Gatehouse

EMS, Fire, or Sheriff's Station
Essential Service Facilities: Group I
Excavation: Water Retention
Food Stores: Groups I & II
Funeral Home or Mortuary (with or without crematory)
Hardware Store
Health Care Facilities, Group III
Hobby, Toy, and Game Shops
Household and Office Furnishings: All Groups
Insurance Companies
Laundry or Dry Cleaning: Group I
Lawn and Garden Supply Store
Library
Maintenance Facility (Government)
Medical Office
Non-Store Retailers: All Groups
Package Store
Paint, Glass, and Wallpaper
Parks: Group I
Parking Lot, All Groups
Personal Services: All Groups (Excludes bail bonding, escort services, fortune tellers, palm readers or card readers, massage parlors, and tattoo parlors)
Pet Services
Pet Shop
Pharmacy
Place of Worship
Post Office
Recreation Facilities: Group I
Religious Facilities
Rental and Leasing Establishments: All Groups
Repair Shops: Group I – IV
Research and Development and Laboratories: Groups II and IV
Restaurant, Fast Food
Restaurant, All Groups
Schools, Commercial, Noncommercial
Signs
Social Services: Groups I – III
Specialty Retail Shops: All Groups
Storage: Indoor and Open
Studios
Used Merchandise Stores: Groups I-III
Variety Store

Vehicle and Equipment Dealers: Groups I-IV
Warehouse: Public Warehouse
Wholesale Establishments: Group III

b. Site Development Regulations

Minimum lot size:	10,000 square feet
Minimum lot width:	100 feet
Minimum lot depth:	100 feet
Maximum lot coverage:	60 percent
Maximum building height:	75 feet
Minimum building separation:	20 feet
Setbacks:	
Development perimeter:	15 feet
Street:	25 feet
Side:	10 feet
Rear:	15 feet
Waterbody:	20 feet
Preserve:	20 feet (30 feet for fire dependent indigenous plant communities)
Minimum Open Space:	30 percent

5. Open Space
Prior to the issuance of the first development order, the development order plans must depict a total of 2.82 acres of open space.

6. Indigenous Open Space
Prior to the issuance of the first development order, the development order plans must depict 1.41 acres of indigenous and restored preserve area.

7. Indigenous Restoration and Buffers
Prior to the issuance of the first development order, an indigenous restoration plan must be submitted for the non-indigenous wetland area within the proposed preserve. The restoration plants being used to meet the Type-F buffer requirements must comply with LDC Section 33-1581(b). 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.

8. Interconnection and Cross Access Easement
Prior to the issuance of the first development order, the applicant or successor must depict an interconnection to the recorded cross access easement (Instrument #2017000027626) located north of the subject property.

10. The access location on North Cleveland Avenue shown on the Master Concept Plan is 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) **Sections 10-610(e), 33-1573(c)(2), and 33-1572(d)(2)** pertaining to parking lot interconnections between commercial uses for automobiles, pedestrian, and bicycle traffic, to allow the proposed interconnection to align with the cross-access easement recorded on the properties to the north.

   This deviation is **APPROVED subject to Condition 8**.

2. **Deviation (2)** seeks relief from Lee County Land Development Code (LDC) Section 10-261(a), which requires all new commercial construction to provide sufficient on-site space for the placement of garbage containers and sufficient space for recyclable material connection containers based on 216 square feet for the first 250,000 square feet of building area plus eight square feet for each additional 1,000 square feet of building area, to allow a reduction for the public warehouse dumpster based on the first 25,000 square feet only, to provide a 220 square foot dumpster.

   This deviation is **APPROVED**.

3. **Deviation (3)** seeks relief from Lee County Land Development Code (LDC) Section 33-1581, which requires a Type-C (20-foot-wide with wall) or Type-F (50-foot-wide) buffer between commercial and residential uses, to allow the indigenous preservation area to meet the Type-F buffer requirement.

   This deviation is **APPROVE subject to Condition 7.**

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

Case Number: DCI2023-00006
Case Name: Playa del Sol at Cleveland Avenue CPD
Area Subject to Request: +/- 9.4 Acres
Case Type: Major Planned Development
Sufficiency Date: October 15, 2024
Hearing Date: December 12, 2024

REQUEST:

RVi Planning + Landscape Architecture, on behalf of Angel Aramis LLC, has filed an application to rezone approximately 9.4 acres from Agricultural (AG-2) to Commercial Planned Development (CPD) to allow a maximum of 350,000 square feet of commercial uses, which includes 200,000 square feet of warehouse and open storage and 150,000 square feet of commercial retail. The maximum proposed height is 75 feet.

The subject property is located near the northwest corner of Playa Del Sol Boulevard and North Cleveland Avenue in North Fort Myers. The parcel is located within the Central Urban Future Land Use Category and the North Fort Myers Community Plan area, specifically in the Commercial Corridor in accordance with **LDC Section 33-1566**. The applicant conducted a public informational meeting in compliance with **Lee Plan Objective 17.3** and **Land Development Code (LDC) Section 33-1532** (Attachment G). A legal description and boundary survey of the subject property are attached as Attachment B of the staff report.

SUMMARY:

Staff recommends **APPROVAL** of the applicant's request, as conditioned, to rezone approximately 9.4 acres to Commercial Planned Development to allow a maximum of 350,000 square feet of commercial uses, consisting of 200,000 square feet of warehouse and open storage and 150,000 square feet of commercial retail with a maximum height of 75 feet. The applicant has requested two deviations from **LDC Section 10-610(e) and Section 10-261(a)** (Attachment G). Deviation #1 is from **LDC Sections 10-610(e), 33-1573(c)(2), and 33-1572(d)(2)** pertaining to parking lot interconnections between commercial uses for automobiles, pedestrian, and bicycle traffic. **LDC Section 10-610(e)** requires that adjacent commercial uses must provide parking lot interconnections for automobile, bicycle and pedestrian traffic, and the applicant proposes to allow an interconnection to an existing internal accessway to the north of the subject property instead of through the between the subject property and the property to the north. Deviation #1 also applies to **LDC Section 33-1573(c)(2)**, which states that commercial development adjacent to commercial, mixed-use, or multi-family development must provide interconnections for automobile, bicycle and pedestrian traffic, to allow an interconnection via the existing internal accessway on the property to the north. **LDC Section 33-1573(d)(2)**, also requires that sidewalks or pedestrian walkways must connect the on-site pedestrian systems to pedestrian systems on adjacent properties, to instead allow a potential automobile interconnection but no interconnection for bicycle and pedestrian traffic with the commercial parcel to the north. Deviation #2 is being requested from LDC Section 10-261(a), which requires all new commercial

construction to provide sufficient on-site space for the placement of garbage containers and sufficient space for recyclable material collection containers based on 216 square feet for the first 250,000 square feet of building area plus eight square feet for each additional 1,000 square feet of building area, to allow a reduction based on the first 25,000 square feet only and to provide a 220 square-foot dumpster.

HISTORY OF PARCEL:

The subject property has been zoned Agricultural (AG-2) and in the Central Urban Future Land Use Category since zoning was established in Lee County and the Lee Plan was adopted. The subject property was part of three other parcels prior to 1997 when the overall parcel was split with the extension of North Cleveland Avenue. The subject property was further split to create the subject property and two small strips south of the subject property. The subject property is identified as STRAP #27-43-24-00-00002.0010 and the remaining three parcels are identified as STRAP #'s 27-43-24-00-00002.01A, .01B, and .01C.

CHARACTER OF THE AREA:

The subject parcel is located in an area that has existing and planned uses. The parcels abutting the subject property consist of single-family and multi-family residential developments. The parcels further north and south of the subject property, which abut North Cleveland Avenue, are all commercially-zoned. Property immediately surrounding the subject property is depicted in Attachment D of this report and can be characterized as follows:

North

The subject property abuts U-Haul which is zoned Commercial Planned Development (CPD) approved for a mini-warehouse, open storage and related retail in accordance with Resolution Z-15-004 and subsequent amendments (Attachment E). The properties further north of the subject property are zoned Commercial (C-1, C-1A, and CC) with a range of uses consisting of Specialty Retail, Automotive Repair, and open storage. The properties to the north are in the Central Urban future land use category and in the Commercial Corridor of the North Fort Myers Community Plan area.

East

The subject property abuts North Cleveland Avenue, a State-maintained arterial road. Further east is the vacant Agricultural (AG-2) zoned land that was part of the subject property prior to 1997. On the east side of the AG-2 zoned property is North Tamiami Trail, a State-maintained arterial road. Properties to the east are in the Central Urban future land use category and are undeveloped.

West and South

The subject property abuts abuts two remnant parcels that were split from the subject property. Each parcel is zoned Agricultural (AG-2). Further south of the two remnant parcels is vacant land zoned Residential Planned Development (RPD) that is part of the Estates at Entrada subdivision which was rezoned to RPD by Resolution Z-06-039 to allow 325 single family dwelling units, 975 town homes, and 300 multiple-family dwelling units; 30,000 square feet of commercial retail; and 140,000 square feet of commercial, warehouse, and office use (Attachment E). The resolution was amended in 2013 (ADD2013-00021) to allow adult living

facilities, continuing care facilities, and independent living facilities (Attachment E). The case was further amended by ADD2020-00129A to change dwelling unit types and the Master Concept Plan (Attachment E). South of the Estates at Entrada RPD parcel is Playa Del Sol Boulevard, a County-maintained major collector road. Properties to the south are in the Central Urban future land use category. The west property line of Estates at Entrada abuts De Navarra Parkway, which is a County-maintained major collector. Properties to the west are within the Central Urban future land use category.

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:

Public water and sewer: The applicant has provided a letter of availability for potable water from Lee County Utilities and has not provided a sanitary sewer letter from FGUA. Potable water utility lines are available in proximity to the subject property, with sufficient capacity available for three commercial units with an estimated potable water flow of approximately 4,600 gallons per day; however, developer funded system enhancements such as line extensions may be required (Attachment H).

OUTSTANDING ISSUE: The applicant must provide a Letter of Availability from FGUA with the applicant's 48-hour letter.

Public transit and pedestrian facilities: The Lee County Walkways and Bikeways Map 3-D Lee Plan Map depicts a proposed sidewalk abutting the subject property. The closest southbound LeeTran bus stop (Stop #3597) is located less than one mile away at the intersection of Littleton Road and North Cleveland Avenue for Route 595 which serves Pine Island Road and North Tamiami Trail. The closest northbound Lee Tran bus stop (Stop #2310) is located less than a quarter mile from the property and serves Bayshore Road to North Tamiami Trail on Route 590. Prior to development order approval, the applicant will be required to provide sidewalks internal to the project and abutting the subject property in accordance with LDC Section 10-256.

Police, fire, and emergency services: North Fort Myers Fire Station #1 and Emergency Management Services Medic Station ##17 are located approximately 1.79 miles to the north of the subject property at 2900 Trail Dairy Circle. The Lee County Sheriff's Substation is located at 121 Pondella Road, approximately three miles from the subject parcel.

PROPERTY DEVELOPMENT REGULATIONS & OFF-STREET PARKING:

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

DEVIATIONS:

The applicant has requested two deviations from **LDC Sections 10-610(e), 33-1573(c)(2), 33-1572(d)(2), and Section 10-261(a)** (Attachment G). Deviation #1 seeks relief from **LDC Sections 10-610(e), 33-1573(c)(2), and 33-1572(d)(2)** pertaining to parking lot interconnections between commercial uses for automobiles, pedestrian, and bicycle traffic. **LDC Section 10-610(e)** requires that adjacent commercial uses must provide parking lot interconnections for automobile, bicycle and pedestrian traffic, to allow an interconnection to the existing internal accessway of the property to the north instead of the parking lot between the subject property and the property to the north. Deviation #1 also applies to **LDC Section 33-1573(c)(2)**, which states that commercial development adjacent to commercial, mixed-use, or multi-family development must provide interconnections for automobile, bicycle and pedestrian traffic, to allow an interconnection through the existing internal accessway on the property to the north. **LDC Section 33-1573(d)(2)** requires that sidewalks or pedestrian walkways must connect the on-site pedestrian systems to pedestrian systems on adjacent properties, to instead allow a potential automobile interconnection but no parking interconnection for bicycle and pedestrian traffic with the commercial parcel to the north. The property to the north is developed with a U-Haul rental and storage facility that has an internal access easement that connects each commercial use along the easement to North Fork Drive. The applicant is requesting a deviation from the LDC to allow the interconnect to align with the cross-access easement recorded by the properties to the north and not to the subject property's parking area (Attachment K). Without the deviation, the applicant would be required to have an interconnect between the onsite parking area and the U-Haul open storage area. Granting the interconnection deviations will provide a logical and safer situation to protect the public. Staff has recommended approval of Deviation #1 to allow the interconnection between the subject property and the recorded cross-access easement to the north. Staff has recommended a condition that prior to development order approval, the applicant or successor must record a new cross-access easement to include the subject property.

Deviation #1 is **APPROVED SUBJECT TO CONDITION 8 (see Attachment C).**

Deviation #2 is being requested from LDC Section 10-261(a), which requires all new commercial construction to provide sufficient on-site space for the placement of garbage containers and sufficient space for recyclable material connection containers based on 216 square feet for the first 250,000 square feet of building area plus eight square feet for each additional 1,000 square feet of building area, to allow a reduction for the public warehouse dumpster based on the first 25,000 square feet only, and to provide a 220 square-foot dumpster.

Deviation #2 is recommended to be **APPROVED.**

REVIEW CRITERIA:

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

a) Complies with the Lee Plan;
b) Meets the Land Development Code and other applicable County regulations or qualifies for deviations;
c) Is compatible with existing and planned uses in the surrounding area;
d) Will provide access sufficient to support the proposed development intensity;

e) The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;
f) Will not adversely affect environmentally critical or sensitive areas and natural resources; and
g) Will be served by urban services, defined in the Lee Plan, if located in a Future Urban Area category.

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

a) The proposed use or mix of uses is appropriate at the proposed location;
b) The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development; and
c) That each requested deviation:
    1) Enhances the achievement of the objectives of the planned development; and
    2) Preserves and promotes the general intent of this Code to protect the public health, safety and welfare.

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

REVIEW CRITERIA ANALYSIS:

The subject property is within the Central Urban Future Land Use Category (FLUC). **Lee Plan Policy 1.1.3** characterizes the Central Urban FLUC as the "urban core" of the County since this land use category is in the most heavily settled areas that have the highest levels of public services. The properties surrounding the subject property are in the Central Urban FLUC with the commercially-zoned properties abutting North Cleveland Avenue, a State-maintained arterial road. The Central Urban FLUC allows for residential, commercial, light industrial, public and quasi-public uses providing a mix of services within the FLUC. The subject property is in a growing area of North Fort Myers with commercial and residential growth proposed surrounding the subject property. Residential subdivisions are proposed to the west of the subject property and heavily dense mobile home parks are located to the south of the subject property. The commercially-zoned developments along North Cleveland Avenue provide the goods and services to support the residential development within the vicinity. The request to rezone the subject property for commercial uses will be **CONSISTENT with Lee Plan Policy 1.1.3**.

The proposed development complies with **Objectives 2.1 and 2.2** for development location and timing due to the development being an infill project which supports the surrounding residential and commercial uses. The site is in an area that has access to potable water and sanitary sewer and the property has access to sidewalks and public transportation, and 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**. The applicant has provided an Environmental Assessment and has redesigned the site through the review process to preserve environmentally sensitive areas along the north and west property lines demonstrating that the request is **CONSISTENT with Lee Plan 4.1.4 and LDC Sections 10-415 and 33-1582**.

Goal 6 and subsequent policies pertain to permitting orderly and well-planned commercial development at appropriate locations within the County. As mentioned, the location of the proposed project is considered infill development supporting the residential and commercial uses that are existing and proposed. Traffic

and access impacts are evaluated at time of zoning to ensure the current roadway system may support the intensity of the commercial project. The traffic and access points are further reviewed at time of development order to require intersection or other road improvements to support the level of intensity for the uses proposed in the development order. Lee County Department of Transportation has provided a memorandum that analyzes the applicant's Traffic Impact Statement (see Attachment J). The applicant is proposing 150,000 square feet of retail uses and 125,000 square feet of public storage. The Traffic Impact Statement evaluated up to 200,000 square feet of retail uses, which is over the amount being proposed. LDOT has determined that the project will not adversely affect the surrounding roadway network based on 350,000 square feet of commercial uses and that the access depicted on the master concept plan is conceptual and must be approved by the Florida Department of Transportation. The access and traffic impacts are **CONSISTENT with Lee Plan Policy 6.1.1, as conditioned**.

Commercial uses are required to be screened by buffers to provide compatibility with the surrounding uses. The applicant is demonstrating code compliant buffering that includes utilizing the indigenous preserve to meet the buffer requirements. The applicant will need to request a deviation from LDC Section 33-1581 to allow the existing indigenous vegetation to meet the Type-F buffer (50-foot-wide buffer with 15 trees and a double hedge). The applicant has provided an environmental assessment describing the existing conditions, level of exotic species to determine indigenous vegetation and wetlands and documented protected species. The screening, buffering, and environmental considerations are **CONSISTENT with Lee Plan Policy 6.1.1, as conditioned**.

OUTSTANDING ISSUE: Applicant must request a deviation from LDC Section 33-1581 to allow the indigenous preservation area to meet the 50-foot-wide Type-F buffer.

The proposed project is in an area of North Fort Myers that is expanding with a mix of residential and commercial uses demonstrating consistency with the Central Urban FLUC. The property is in the North Fort Myers Community Plan Area and is specifically located in the Commercial Corridor, which provides a mix of commercial uses abutting North Cleveland Avenue and North Tamiami Trail. The applicant is proposing retail and public storage to serve the surrounding residential uses. The proposed project has access to Lee County Utilities and FGUA sanitary sewer and is served by LeeTran bus routes 595 and 590. At time of development order, the applicant will be required to depict sidewalk connections to the public sidewalks along North Cleveland Avenue. The public facilities, the mix of uses, and compliance with the Commercial Corridor requirements are **CONSISTENT with Lee Plan Policy 6.1.1, as conditioned**.

As mentioned, the proposed project is in the Commercial Corridor in the North Fort Myers Community Plan Area. Lee Plan Policy 30.2.5 requires deviations from landscaping, buffering, signage, or architectural requirements to meet the approval criteria for variances set forth in LDC Section 34-145(b)(3). The applicant has requested two deviations that are not from landscaping, buffering, signage, or architectural requirements. LDC Section 33-1581(b) requires a 50-foot-wide buffer between a commercial use and residential use, which would apply to the north and west property lines. The applicant is providing the indigenous preserve to meet the buffer requirements, which requires 15 trees per 100 linear feet and a hedge installed at 48 inches and maintained at 60 inches. The applicant has not requested a deviation from this section of code and must seek a deviation, which must meet the variance criteria, to allow the preserve to meet the 50-foot-wide Type-F buffer. Staff is recommending a condition to ensure that the 50-foot buffer

meets the landscaping requirements due to the Florida Land Use Cover and Classification System (FLUCCS) code for the preserve areas. The north and southwest property lines consist of Pine flatwood (FLUCCS 4119). The north property line consists of less than 25 percent exotic vegetation and the southwest property line consists of 25 percent to 50 percent exotic vegetation. The west property line, according to the FLUCCS map, consists of hydric pine that has 76 percent to 100 percent exotic vegetation levels, which does not meet the definition of indigenous vegetation per LDC Section 10-1. The Formal Wetland Determination indicates that there is 1.03 acres of State wetlands on the site, at which 0.70 acres is located within the west indigenous preserve. Staff is recommending a condition requiring the development order plans to include a restoration plan for the 0.70-acre area of hydric pine to comply with LDC Section 33-1581(b). In addition, staff is recommending a condition to require all exotics to be hand removed within the indigenous areas to ensure no impacts to existing native vegetation. Staff finds the project, with the pending deviation and recommended conditions, **CONSISTENT with Lee Plan Policy 30.2.5.**

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, preservation of existing natural flow-ways, and the inclusion of flow-ways as part of the surface water management plan with depictions of the watersheds and their trunk and major tributaries. The applicant submitted a Surface Water Management Plan (Attachment G). The surface water management system will be designed to drain from west to east to the wet detention along North Cleveland Avenue. The indigenous preserve consists of upland and wetland areas and the wetland portion of the preserve will be incorporated into the stormwater system. Staff has recommended an indigenous restoration condition to ensure that the wetland is restored with compatible wetland plants and meets the buffering requirements per **LDC Section 33-1581(b)**. The wet detention lakes will be designed to meet the attenuation and pollutant filtering through the control structure and the planted littoral shelves in compliance with **LDC Sections 10-329(d)(4) and LDC Section 10-418**. 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 has received the request and finds that the request:

a) Complies with the Lee Plan.

The proposed rezoning is consistent with the Lee Plan as demonstrated in the analysis.

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 deviation from interconnections that is requested are needed to provide interconnections that link to an existing offsite access easement, which provides a safer pedestrian and vehicle connection. The deviation for dumpster sizes is necessary due to the public warehouse use needing a smaller container than what the code requires because of the logistics of a warehouse use. The deviation from LDC 33-1581(b) must be sought because the applicant is preserving and restoring indigenous areas on the site to serve as the buffer. The natural vegetation may not meet a double staggered hedge or restoration in areas that are heavily exotic will need to be restored to provide water quality and attenuation and adequate screening. The applicant will need to revise the schedule of deviations and justifications to include the buffer deviation and demonstrate compliance with the variance criteria.

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

As previously stated above, the proposed development is compatible with the surrounding land uses.

d) Has sufficient Access.

The proposed development is proposing to provide access from North Cleveland Avenue and an existing access easement to the north. Per the Traffic Impact Statement, the access is sufficient to support the proposed development (see Attachments I & J).

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 350,000 square feet of retail/public warehouse (200,000 square feet of retail and 150,000 square feet of public warehouse). The Master Concept Plan depicts 174,000 square feet of retail and 150,000 square feet of public warehouse. The proposed project based on 350,000 square feet of retail/public warehouse is not expected to adversely affect the surrounding roadway network (see Attachments I & J).

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

The applicant has been issued a Formal Wetland Determination that states that the project has approximately 1.03 acres of State wetlands. The applicant is proposing to preserve 0.70 acres of

the 1.03 acres of State wetlands. The portion being preserved is 75 percent to 100 percent invasive exotic consisting of melaleuca (Melaleuca quinquenervia), swamp fern (Blechnum serrulatum), beakrush (Thynchospora spp.), and camphorweed (Pluchea rosea). The applicant has indicated in the Surface Water Management Plan that the wetlands being preserved will be incorporated into the stormwater management system. The existing indigenous area and restored preserve will be utilized to meet the required buffers per LDC Section 33-1581(b). Staff has recommended conditions to ensure that the restoration plan mimics the native wetland vegetation and provides sufficient screening to buffer the residential developments to the west and north. Per the Environmental Assessment, there were no protected species on the site (see Attachment G).

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.

3) Landscaping deviations meet the variance criteria per LDC Section 34-145(b)(3).

OUTSTANDING ISSUE:

There applicant will need to provide a Letter of Availability from FGUA and revise the Schedule of deviations and justifications document to include a buffer deviation from LDC Section 33-1581(b) and provide an analysis of the variance criteria per LDC Section 34-145(b)(3). The Master Concept Plan must be revised to depict the buffer deviation.

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 Central Urban future land use designation 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 Agricultural (AG-2) to Commercial Planned Development (CPD) to allow a maximum of 350,000 square feet of commercial uses, which includes 200,000 square feet of warehouse and open storage and 150,000 square feet of commercial retail with maximum proposed height of 75 feet with the conditions attached as Attachment C of this report.

ATTACHMENTS:

A. Expert Witness Information
B. Legal Description, Sketch and Description
C. Development Regulations and Conditions
D. Location Aerial, Future Land Use, and Current Zoning Maps
E. ADD2020-00129A (includes Estates at Entrada Resolutions Z-06-039, Z-15-004, & ADD2013-00021)
F. Master Concept Plan
G. 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 Environmental Assessment
H. Utility Availability Letter
I. Applicant's Transportation Impact Statement
J. Department of Transportation Memorandum
K. Access Easement Instrument Number 2017000027626
L. SFWMD Formal Wetland Determination

DCI2022-00067
CARY+DUKE+POVIA
RPD

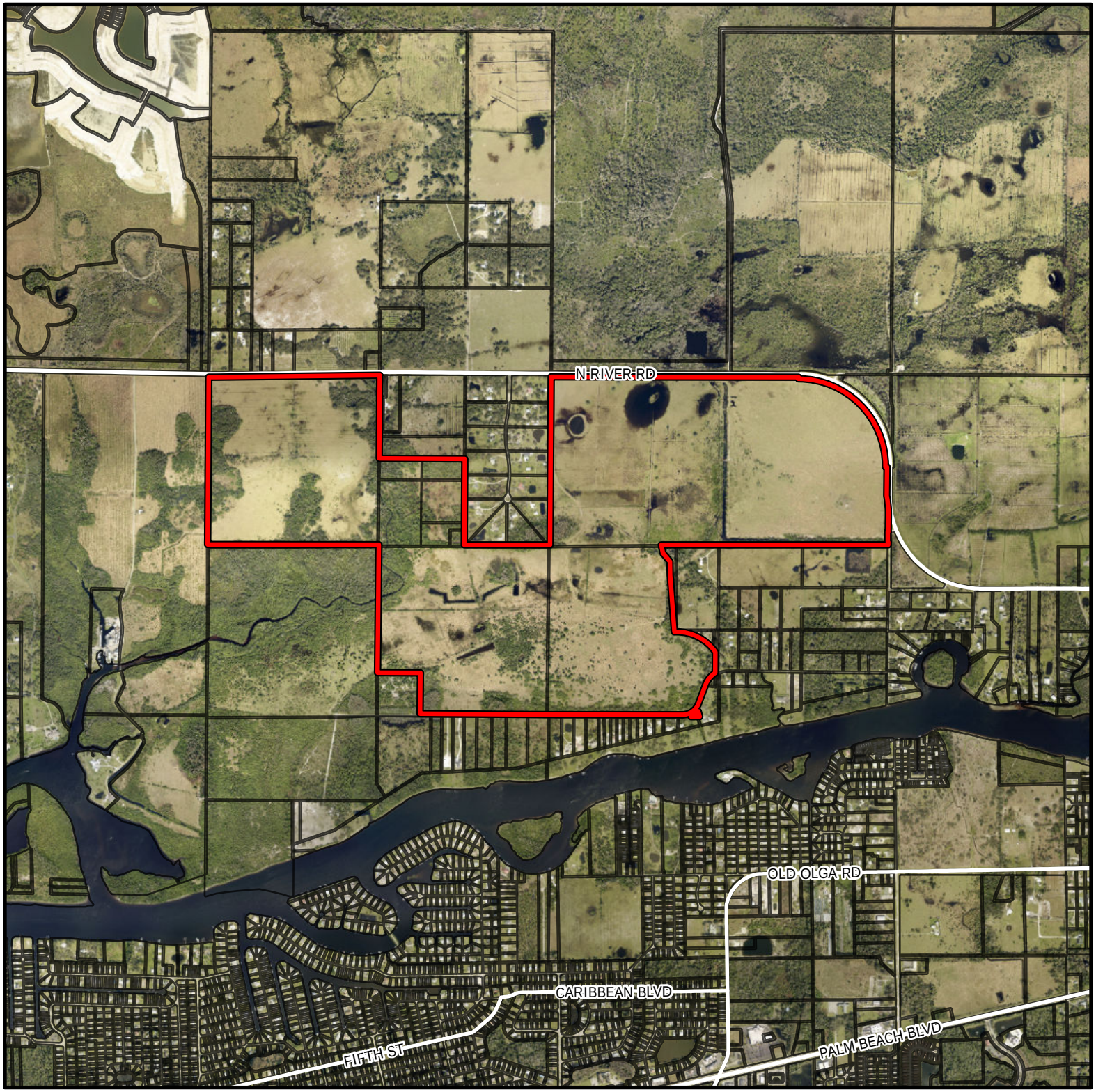
Staff Summary

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

DCI2022-00067

Aerial



Subject Property

N
W E
S

0 1,000 2,000 3,000 4,000
Feet

Lee County
Southwest Florida

MEMORANDUM
FROM
THE OFFICE OF THE
LEE COUNTY HEARING EXAMINER

DATE: **January 30, 2025**

TO: **Board of County Commissioners** **FROM:** **Amanda L. Rivera**
Deputy Hearing Examiner

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. All other 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**
Deputy Hearing Examiner

DATE: **January 29, 2025**

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:
  - 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: 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.[1] 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.

---

[1] LDC §34-145(d)(2)a.

Discussion supporting the Hearing Examiner's recommendation of approval 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.[2] 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.[3] The Master Concept Plan ("MCP") identifies two school bus loading areas outside the North River Road right-of-way. [4]

Site design clusters development with significant setbacks along the project perimeter, featuring buffers ranging from 160 to 800 feet.[5] 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.[7] Base density permits 771 units.[8] 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.[9] Applicant will place 420 acres under conservation easement, ensuring perpetual maintenance of environmentally sensitive areas.

---

[2] 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).

[3] 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).

[4] 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).

[5] There is a single anomalous pinch point of 60 feet in the southwestern corner, adjacent to vacant agricultural lands. *See* MCP.

[6] *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.

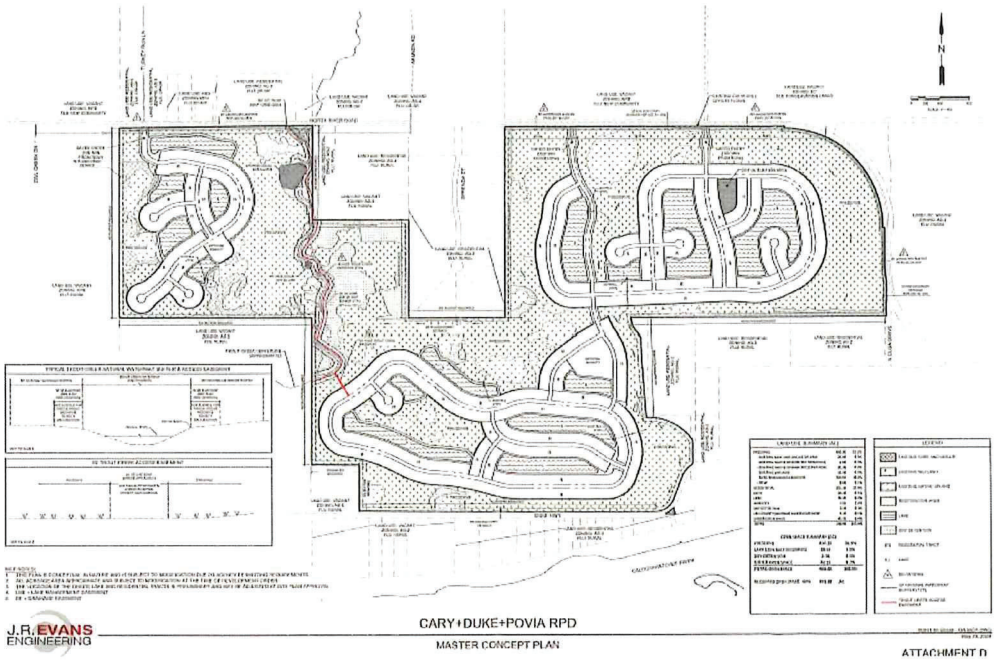
[7] Lee Plan Policy 123.2.17.

[8] *See* Staff Report (Attachment H & N).

[9] *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.[10]

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



Character of Surrounding Area

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

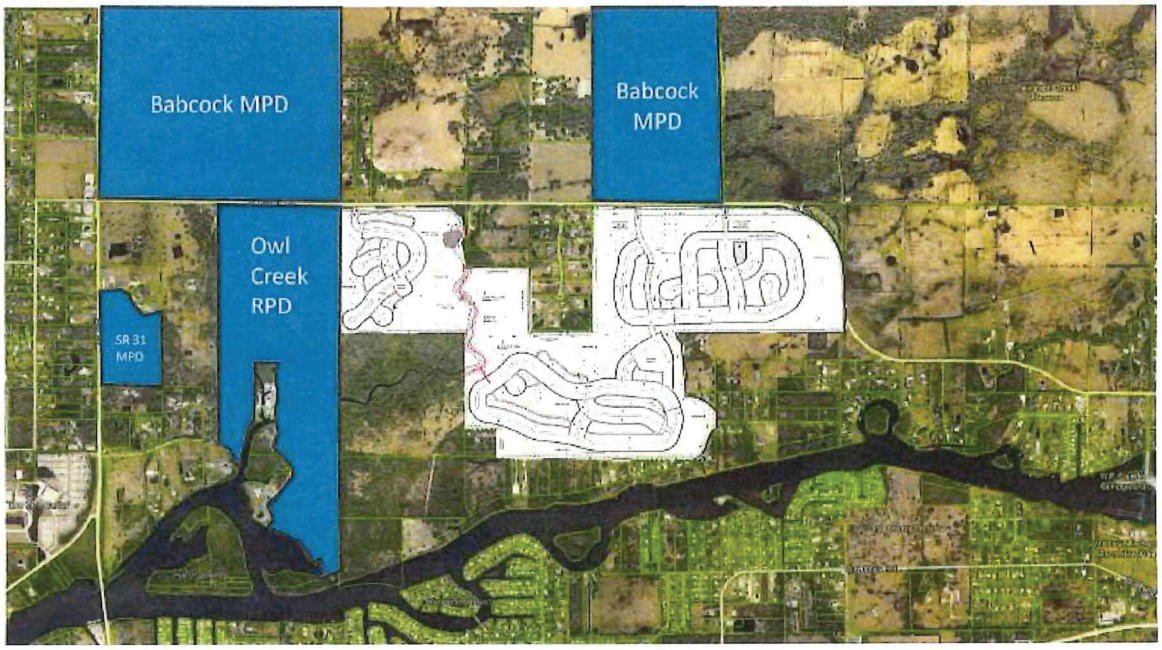
North River Road serves as the primary means of access through the Community. It is a county maintained two-lane arterial road running from S.R. 31 to the Hendry County line. The viewshed along the road is primarily agricultural lands, with single-family homes visible at a distance. Staff estimates homes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

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.

---

[10] *See* Staff Report (pg. 3, Attachment M). The Board adopted CPA2022-00019 by Ordinance 24-06. *Id.*
[11] Northeast Lee County is located east of S.R. 31 and north of the Caloosahatchee River.
[12] *See* Staff Report (pg. 1).

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



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;

[13] Z-22-022.
[14] *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

Planned developments must be consistent with the Lee Plan and minimize negative effects of proposed uses on neighboring properties.[17]

The Lee Plan Future Land Use Map designates the property in the Rural and Wetlands future land use categories.[18]

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

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

---

[15] *See* LDC §34-145(d)(4)(a)(1). The property is in a Rural land use category.
[16] *See* LDC §34-145(d)(4)(a)(2).
[17] Lee Plan Policy 2.1.2; LDC §34-411(a), (c), and (i).
[18] Lee Plan Map 1-A, Policy 1.4.1, 1.5.1.
[19] Lee Plan Policy 1.4.1.
[20] *See Id.*
[21] *Compare with:* Lee Plan Policy 1.4.3 (Rural Community Preserves – minimum lot size requirements).
[22] Lee Plan Policy 1.5.1.
[23] 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.[24]

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;[25]
- Maintaining scenic qualities of North River Road; [26]
- Preserving open space;
- Conserving large areas of open lands;[27]
- Ample views of wooded areas;[28] and
- Protecting environmentally sensitive lands while providing regulatory flexibility.[29]

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

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;[34]
- Devoting 61% of the acreage to open space (483.6 acres);[35]

---

[24] 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.
[25] Lee Plan Objectives 27.1, 29.2, Policies 27.1.1, 27.1.2, 29.2.1.
[26] Lee Plan Objective 27.1, 27.3, 29.1, Policies 27.4.1, 29.1.1, 29.1.3.
[27] Lee Plan Objective 27.3, Policies 27.1.1, 27.1.2, 29.1.1.
[28] Lee Plan Objective 27.1.
[29] Lee Plan Objectives 27.1, 27.2, 27.3.
[30] Lee Plan Objective 27.1, 27.2, Policies 27.1.1, 27.1.2, 27.4.1, 29.1.1, 29.2.1.
[31] Lee Plan Glossary.
[32] *Id.*
[33] 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.
[34] 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.
[35] *See* MCP (Land Use Summary table).

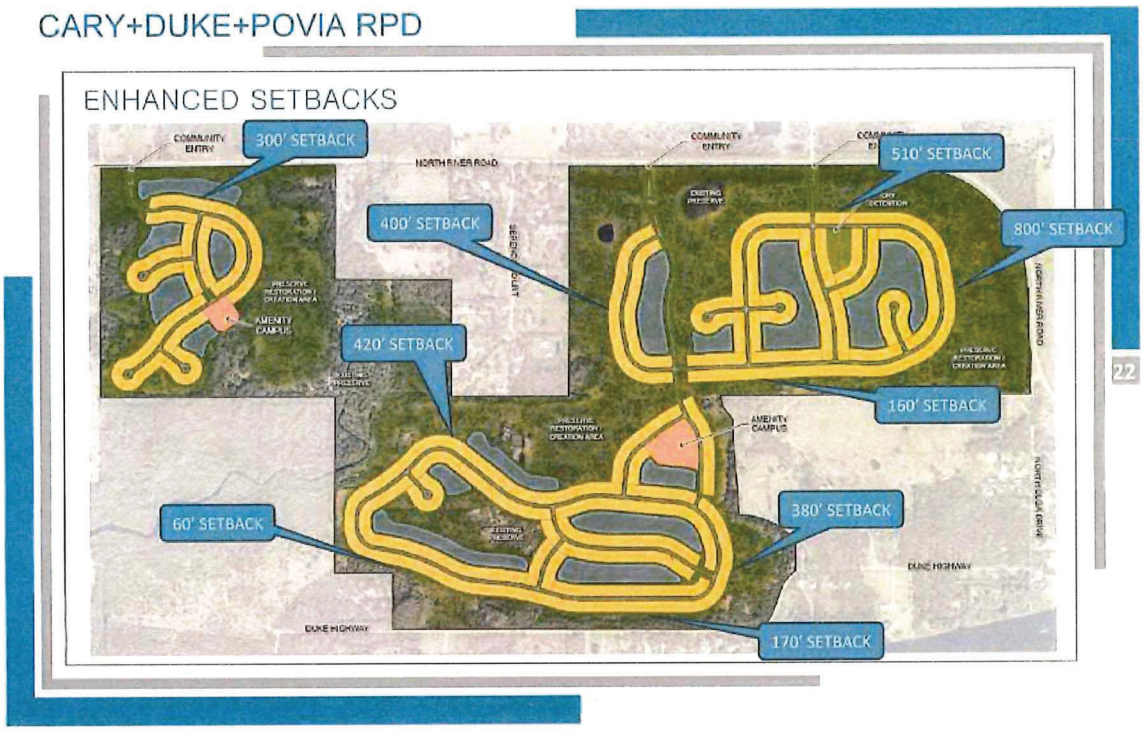
- Maintaining rural vistas along the perimeter, with 300- to 800-foot setbacks on North River Road and 170 feet on Duke Highway;[36]
- Locating the nearest residence 405 feet from the North River Road right-of-way;[37]
- Restoring lands impacted by decades of agricultural activity to improve species' habitat;
- Preserving 420 acres under conservation easement to ensure perpetual protection of environmentally sensitive lands;[38]
- Providing two amenity campuses including community gardens;[39]
- 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 Drive.[41]

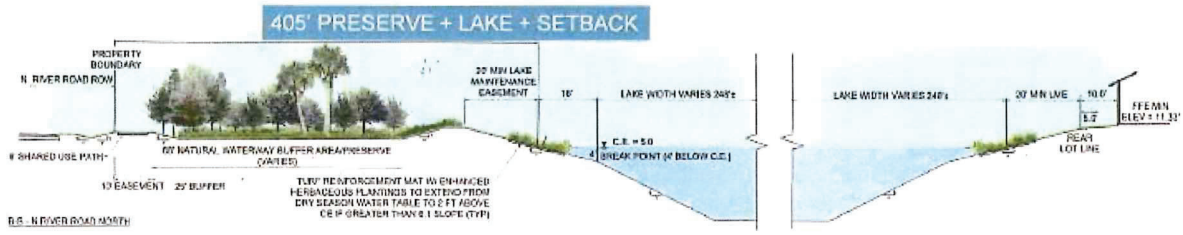
Applicant's landscape expert provided line of sight exhibits to illustrate visual impact on the traveling public.[42] The northwestern pod offers the narrowest setback along North River Road yet still provides 405 feet of separation from the nearest residence.[43] Existing conditions in this location 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]

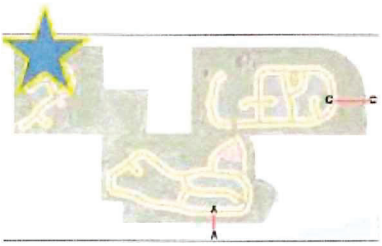
Restoration plantings were curated based on native plant communities to maintain and enhance rural character, add aesthetic value over present conditions, and create wildlife habitat.[45]

---

[36] *See* Applicant Ex. 1 (slide 22).
[37] Hellman Testimony (Transcript pg. 39).
[38] *See* Condition 8; Crespo Testimony (Transcript pg. 35).
[39] Lee Plan Policies 29.2.3, 29.5.1; Crespo Testimony (Transcript pg. 23-24).
[40] Lee Plan Goal 56, Objective 56.2, Policies 56.2.1, 135.9.7; *See also* Staff Ex. 5.
[41] Alternatively, individual lots could be developed under current AG-2 zoning that would generate additional traffic on Duke Highway and North Olga Drive.
[42] 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.
[43] Hellman Testimony (Transcript pg. 39-40).
[44] *Id.*
[45] Applicant Ex. 1 (slide 32); Hellman Testimony (Transcript pg. 41).







Additional Units

"Incentive" density is distinguishable from "bonus" density, although the terms were used interchangeably throughout the record.[46] The request does not seek bonus units. Rather, Applicant seeks additional units through Lee Plan incentives

[46] 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.[47] Applicant must prove the project qualifies for additional units through extensive measures *before* additional units are awarded.[48] The record demonstrates Applicant's proposed measures improve environmental features/function of the property over present conditions.[49]

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.[50] 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 county-maintained arterial.*[51]

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.*[52]

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.
    - *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.

---

[47] *See* Lee Plan Policies 1.4.1, 123.2.17.
[48] The Lee Plan imposes quantitative *and* qualitative metrics to development proposals in the Rural category.
[49] *See* Staff Report (Attachment N); Johnson Testimony (Transcript pg. 49-67, 458-75).
[50] Lee Plan Policy 123.2.17.
[51] Lee Plan Map 3-B; Staff Report (pg. 1).
[52] *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.*[53]

Compatibility

The Hearing Examiner must evaluate zoning requests for compatibility with surrounding land uses and community character.[54] 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.[55]

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.[56]

Members of the public found the proposed lot sizes to be incompatible with historic development patterns.[57] 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.[58]

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

---

[53] *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). .

[54] 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.

[55] LDC §34-413.

[56] LDC §34-2.

[57] Public Testimony (Transcript pg. 142-458).

[58] 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.

[59] Lee Plan Policy 5.1.5, 135.9.5.

[60] The plain language of the LDC does not define "compatible" to mean "identical." *Id.*

[61] 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.[62] Planned development zoning is appropriate because it offers flexibility in project design while still implementing the goals, objectives, and policies of the Lee Plan.[63]

Conditions of approval integrate the project with surrounding uses through screening/buffering, open space, and landscape design.[64] 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.[67] The RPD furthers emerging development patterns that include single-family homes on acreage *and subdivisions on smaller lots*.[68]

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.[69]

A hallmark of maintaining compatibility in the Community is to maintain existing patterns of setbacks from North River Road.[70] Setbacks and landscaping with canopy trees preserve rural vistas.[71] The RPD employs this design feature, exceeding roadside landscaping approved in the Owl Creek and Babcock PDs.[72]

---

[62] LDC §34-931(b), §34-932.
[63] Lee Plan Glossary; LDC §34-612(2), §34-935. Babcock property is in the New Community future land use category.
[64] LDC §34-612(2). Another purpose is to further Lee Plan goals while providing flexibility in development design.
[65] The adjacency and proximity of planned developments assuages spot zoning concerns expressed during public comment.
[66] *See* Staff Report (Attachment K, Z-17-026 approved February 7, 2018). Lee Plan Objective 29.9, Policies 29.9.1, 29.9.2.
[67] Lee Plan Policy 5.1.5; Danley Testimony (Transcript pg. 129); Staff Ex. 3 (slide 18).
[68] 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.
[69] Lee Plan Goal 77, Objectives 77.1, 77.3, Policies 5.1.5, 29.2.2, 77.3.1, 77.3.4.
[70] Lee Plan Policy 27.4.1.
[71] Lee Plan Goals 27, 29, 77, Objectives 29.1, 29.2, Policies 29.1.1, 29.1.3; *See also* LDC §33-1673.
[72] *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.[73]

Environmental/Natural Resources[74]

Planned development design should reflect creative use of open space.[75] Developers must protect and preserve natural site features.[76] 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.[77] The site has historically been used for agricultural pursuits, mostly logging and cattle grazing.[78] 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.[79]

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

---

[73] Lee Plan Goals 27, 29, Policies 2.2.1, 5.1.5, 27.1.1, 27.1.2, 29.1.1, 29.2.1.
[74] 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).
[75] LDC §34-411(h).
[76] LDC §34-411(g).
[77] *Id.* at 49-50.
[78] *Id.* at 50.
[79] 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.
[80] Lee Plan Policy 77.3.3.
[81] Johnson Testimony (Transcript pg. 53-54, 58).
[82] Lee Plan Policy 77.3.1.
[83] *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.[87]

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]

---

[84] 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.
[85] Crespo Testimony (Transcript pg. 22); Lee Plan Goal 77.
[86] 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.
[88] *See* Staff Report (Attachment N, Ex. A: Protected Species Survey prepared by Passarella & Associates, Inc., revised May 2023).
[89] 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).
[90] 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).
[91] 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).
[92] Frey Testimony (Transcript pg. 77-78, 512-15); Lee Plan Policy 61.2.1.
[93] 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.
[94] 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.
[95] 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;[102]

---

[96] 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).

[97] *See* Condition 13; Applicant Ex. 1 (slide 63). Seven monitoring stations will be sampled biannually with reporting requirements to regulatory agencies.

[98] Martin Testimony (Transcript pg. 81).

[99] *Id.*

[100] 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.*

[101] 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

[102] 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

[103] 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.
[104] Applicant Ex. 1 (slide 66).
[105] *Id.* at 67.
[106] Lee Plan 125.1.2; LDC §34-145(d)(4).
[107] LDC §34-145(d)(4)(a)(1)(d); §34-411(d)(1).
[108] LDC §34-145(d)(4)(a)(1)(e); §34-411(d)(2).
[109] Lee Plan Map 3-B.
[110] 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.[111] Initial design expands S.R. 31 to four lanes, but the project can accommodate six lanes in the future.[112] Improvements are also programmed for S.R. 31 south of S.R. 78/Bayshore Road to S.R. 80/Palm Beach Boulevard.[113]

Applicant's transportation experts prepared a Traffic Impact Statement ("TIS") consistent with County requirements.[114] The TIS concluded project traffic will not significantly impact surrounding roadways.[115] 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%.[116]

FDOT programmed improvements along the S.R. 78 and S.R. 31 corridors will increase carrying capacity to accommodate anticipated growth.[117] Testimony confirmed road improvements should be completed prior to project build-out.[118] The TIS concludes no County road improvements are necessary to accommodate the projected trip generation.[119] The RPD will mitigate transportation impacts with road impact fees.[120]

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

---

[111] *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.

[112] *See Id.*; *See* Staff Report (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024).

[113] 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).

[114] 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.

[115] *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).

[116] 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).

[117] 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).

[118] Bykau Testimony (Transcript pg. 497-500).

[119] *See* Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023).

[120] 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).

[121] 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.[122] 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.[123] 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.[125] The Lee Plan requires an evaluation of available urban services during the rezoning process.[126]

Despite the property's non-urban designation, it will have access to public services and infrastructure.[127] The project will connect to Lee County Utilities' potable water supply, eliminating the need for individual wells.[128] 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.

---

[122] 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).

[123] *See* Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023).

[124] 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.

[125] 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.

[126] Lee Plan Policy 2.2.1.

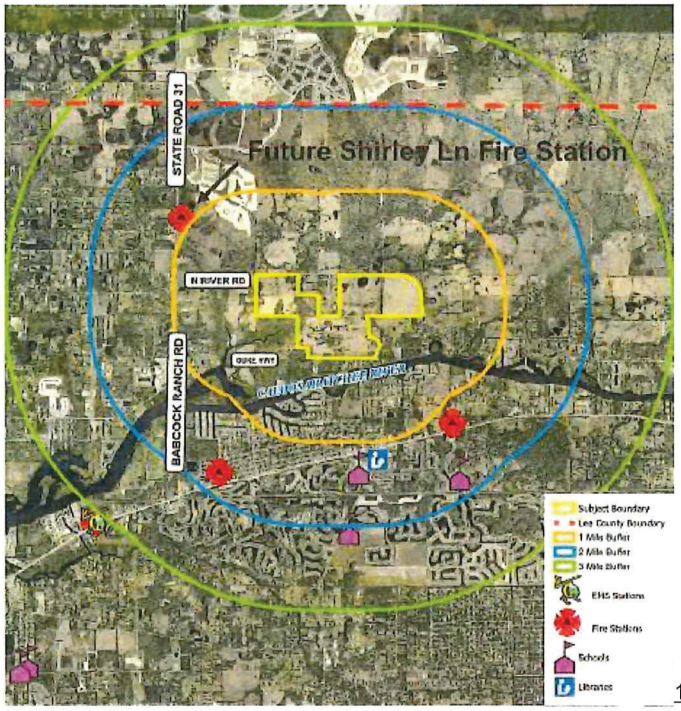
[127] Danley Testimony (Transcript pg. 122-23); Staff Ex. 3 (slide 10, 12).

[128] 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.

[129] Martin Testimony (Transcript pg. 82-84, 474-87); Applicant Ex. 1 (slide 64-65).

[130] Crespo Testimony (Transcript pg. 19, 106, 552-54).

[131] *Id.* at 19, 552-53.



132

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

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] Applicant must install an eight-foot shared use path 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]

---

[132] Applicant Ex. 1 (slide 13).
[133] 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.
[134] Lee Plan Map 3-D.
[135] 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.
[136] *Id.* at 73.
[137] 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.[138] Applicant must also comply with the North Olga Planning Community's adopted supplemental regulations.[139] These regulations include community review of zoning and development order applications, architectural and design standards, enhanced landscaping, tree preservation, and restricted signage. [140] Applicant seeks five deviations from the LDC.

Deviations

The proposed RPD includes five deviation requests.[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,[144] roadway plantings,[145] lake bank slopes,[146] equipment pad setbacks,[147] and drainage easement width.[148] Most deviations are sought to limit the development footprint and avoid crossing Trout Creek.[149] Applicant offered testimony and evidence in support of the requested

---

[138] LDC §34-145(d)(4)a.1(b).
[139] *See generally* LDC ch. 10, ch. 34, and §§33-1661 *et. seq*. Lee Plan Policy 29.1.3.
[140] LDC §§33-1661 *et seq*.
[141] Applicant Ex. 1 (slides 15-19).
[142] LDC §34-2.
[143] LDC §34-377(a)(4).
[144] 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).
[145] 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.
[146] 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).
[147] 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).
[148] 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).
[149] 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.

---

[150] LDC §34-145(d)(4)a.2(c), §34-377(a)(4); *See also* LDC §33-1665.
[151] LDC §34-373(a)(9), §34-377(a)(4).
[152] *See* Lee Plan Policies 17.3.5, 27.1.6, 27.1.8; LDC §33-1663.
[153] 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).
[154] 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.
[155] Public Testimony (Transcript pg. 142-260, 265-457).

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.[157]

If the Board approves the request, the RPD will be subject to additional community meetings during development order review.[158]

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.[159] Conditions must plausibly relate to the project's anticipated impacts and be pertinent to mitigating impacts on public health, safety, and welfare.[160] 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.[162]

The School Board anticipates the project will generate 326 school aged children.[163] 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

[156] Applicant Ex. 3-5; Rebuttal Testimony (Transcript pg. 458-569).
[157] 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).
[158] LDC §33-1663(a)(1).
[159] 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).
[160] LDC §34-932(b).
[161] 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.
[162] 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.[164] Designing the project to accommodate safe school bus access is prudent since the project will generate a significant number of students.[165]

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,

[164] *See* Condition 18; Applicant Ex. 3: Second 48-Hour Letter dated Sept. 17, 2024; Revised MCP stamped Sept. 17, 2024.
[165] 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. MCP. 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. Lee Plan and Land Development Code (LDC). 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. Development Parameters. 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. Site Development Regulations

	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
Setbacks			
Street (Interior Private Roads)	20 feet / 10 feet[1]	20 feet / 10 feet[1]	20 feet
Street (Public Roads)	50 feet	50 feet	50 feet
Side	5 feet[5]	5 feet[5] / 0 feet[2]	10 feet[5]
Rear (Principal)	10 feet	10 feet	10 feet
Rear (Accessory)	5 feet[3]	5 feet[3]	5 feet[3]
PD Perimeter	50 feet	50 feet	50 feet
Waterbody	20 feet	20 feet	20 feet
Preserve	20 feet[4]	20 feet[4]	20 feet[4]

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. 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;

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, and 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. Termination of Agricultural Use. 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. Proof of Termination. Prior to development order issuance, Developer must provide written proof, subject to approval by the Lee County Attorney's Office, of the following:

i. Affidavit. 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. Termination of Tax Exemption. 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 right-

of-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. **Access.** 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. **Lake Bank Slopes**. 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. **Equipment Pads**. 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. **Drainage Easement**. 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 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

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

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:

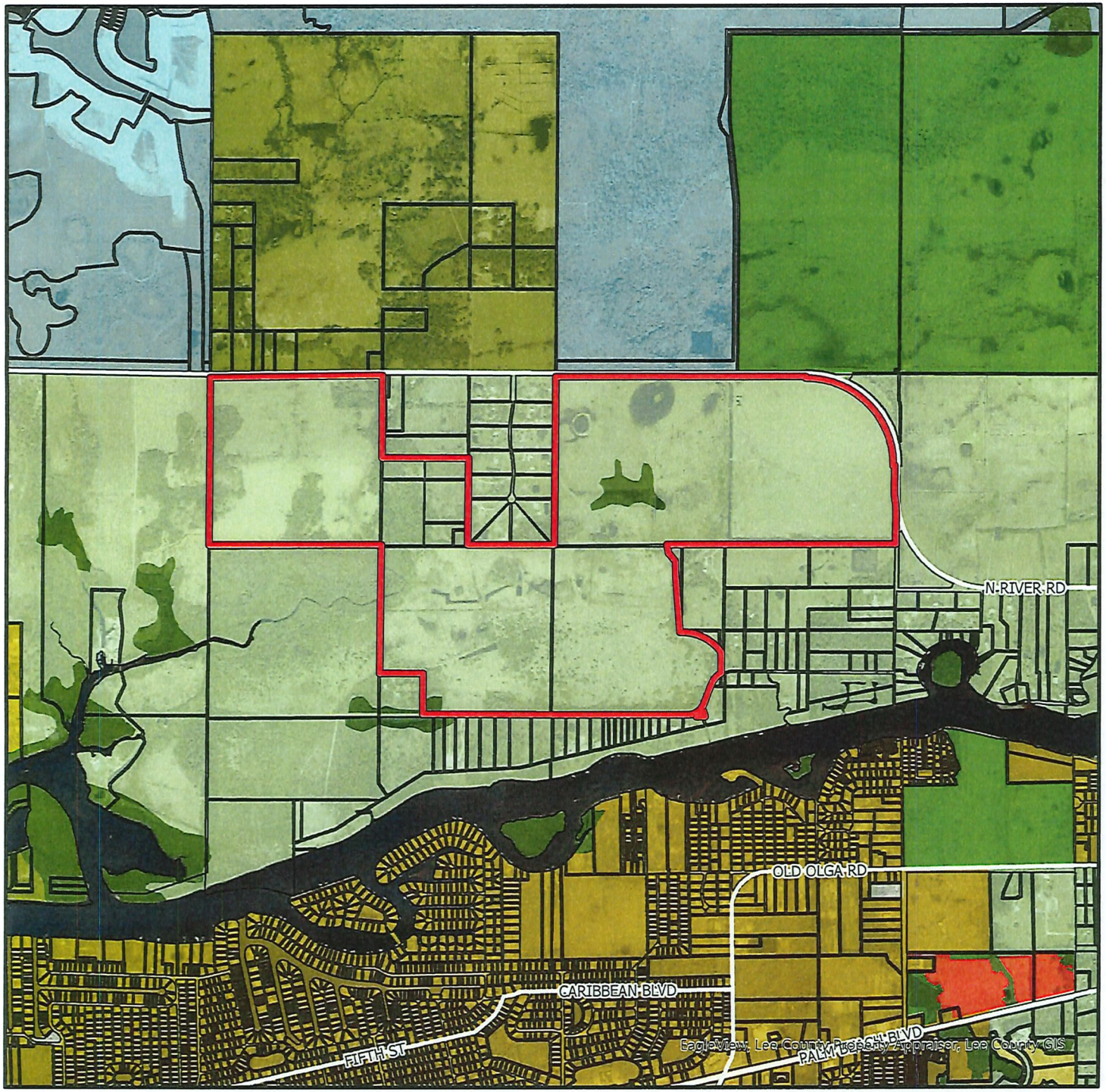
- creation of 300.01 acres, restoration of 2.68 acres, and preservation of 26.03 acres of Rare and Unique Upland Habitat;
- extension of sanitary sewer and potable water service;
- implementation of an engineered water management system; and
- centralized irrigation control.

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



DCI2022-00067

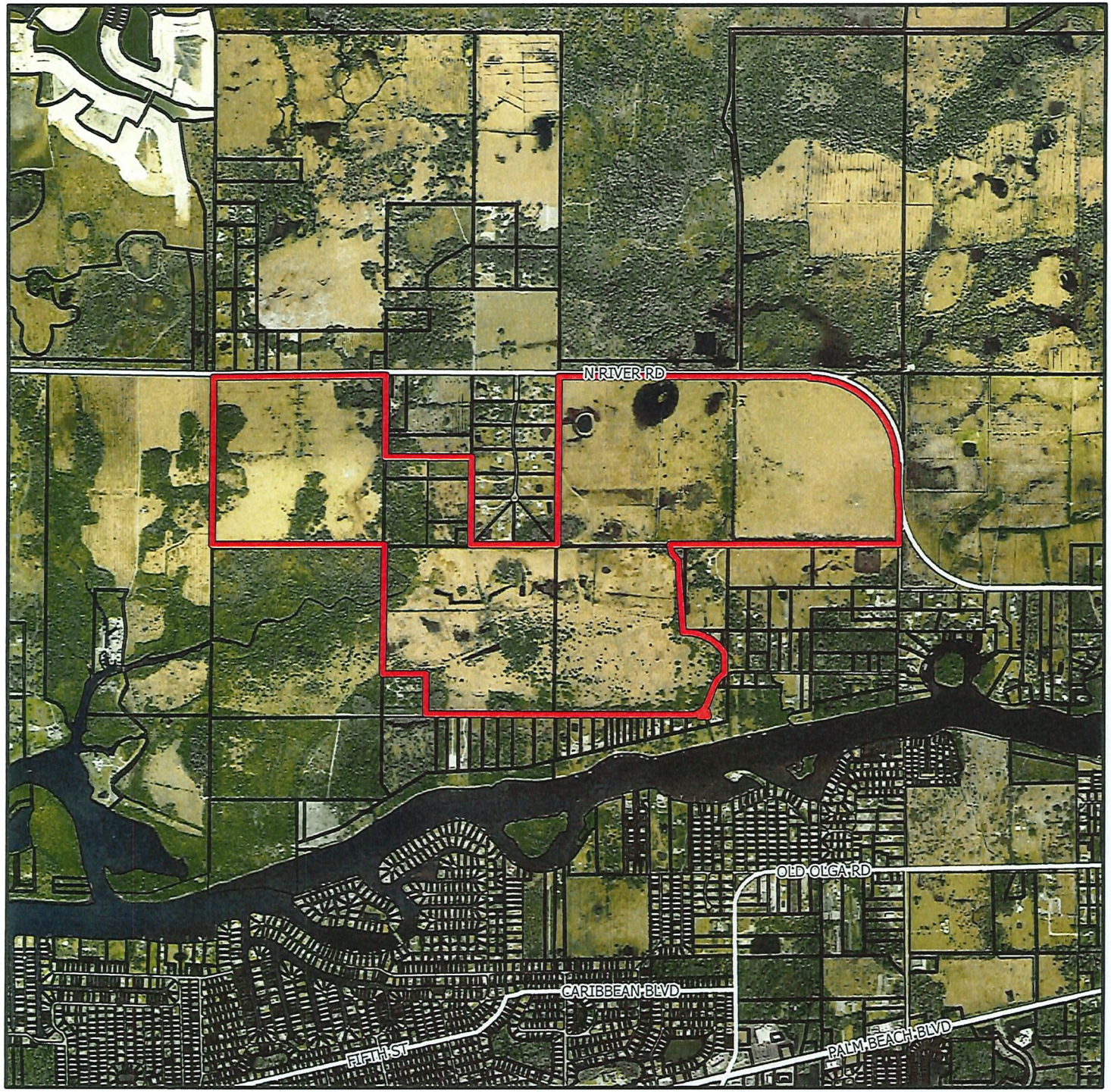
Future Land Use

- Subject Property
- Suburban
- Outlying Suburban
- Sub-Outlying Suburban
- Commercial
- Public Facilities
- New Community
- Rural
- Outer Island
- Density Reduction/Groundwater Resource
- Conservation Lands - Upland
- Wetlands

N
W E
S

0 1,000 2,000 3,000 4,000
Feet

Lee County
Southwest Florida



DCI2022-00067

Aerial

Subject Property

N
W E
S

0 1,000 2,000 3,000 4,000
Feet

Lee County
Southwest Florida

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.[1] 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.

---

[1] LDC §34-145(d)(2)a.

Discussion supporting the Hearing Examiner's recommendation of approval 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.[2] 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.[3] The Master Concept Plan ("MCP") identifies two school bus loading areas outside the North River Road right-of-way. [4]

Site design clusters development with significant setbacks along the project perimeter, featuring buffers ranging from 160 to 800 feet.[5] 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.[7] Base density permits 771 units.[8] 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.[9] Applicant will place 420 acres under conservation easement, ensuring perpetual maintenance of environmentally sensitive areas.

---

[2] 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).

[3] 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).

[4] 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).

[5] There is a single anomalous pinch point of 60 feet in the southwestern corner, adjacent to vacant agricultural lands. *See* MCP.

[6] *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.

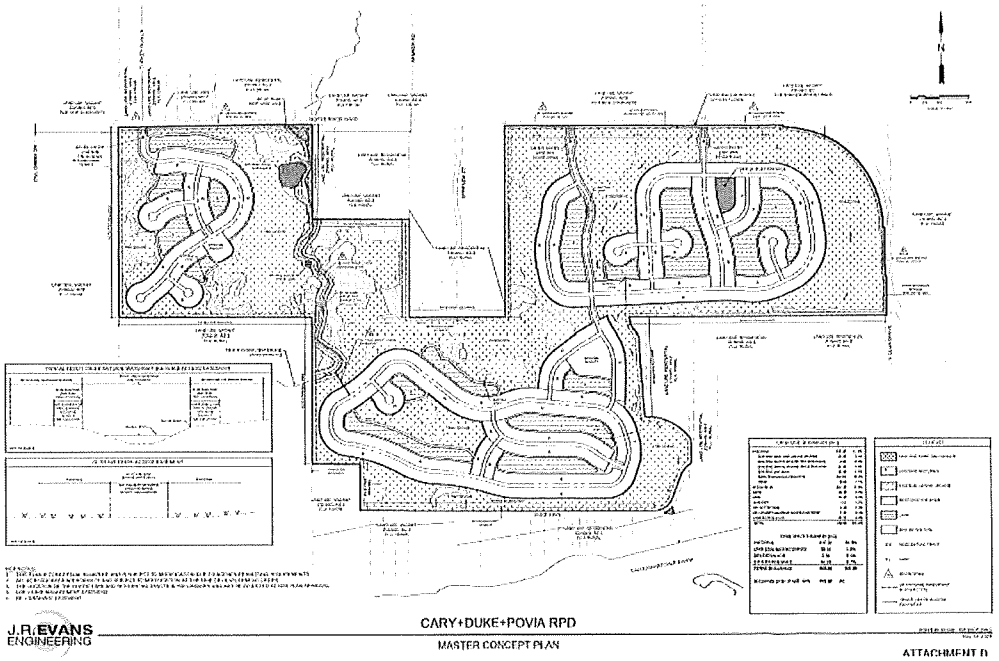
[7] Lee Plan Policy 123.2.17.

[8] *See* Staff Report (Attachment H & N).

[9] *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.[10]

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



Character of Surrounding Area

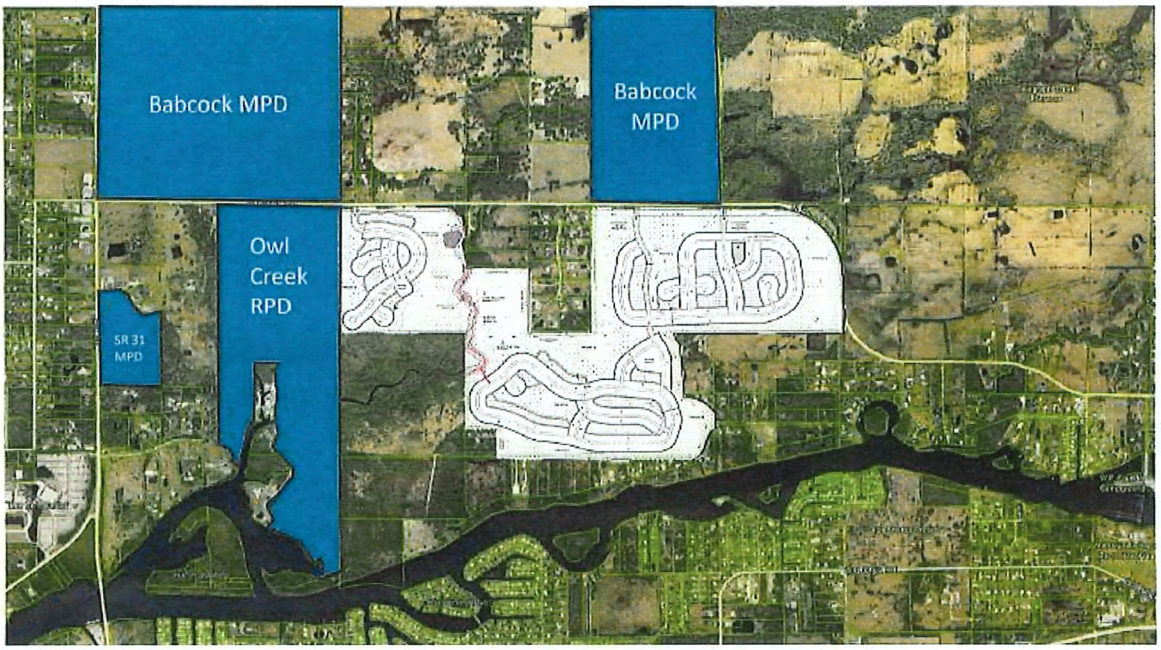
The property is in the Northeast Lee County and North Olga Planning Communities (cumulatively, the "Community").[11] The Community aims to preserve a rural character, prioritizing open space and native vegetation.

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.[12]

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.

[10] *See* Staff Report (pg. 3, Attachment M). The Board adopted CPA2022-00019 by Ordinance 24-06. *Id.*
[11] Northeast Lee County is located east of S.R. 31 and north of the Caloosahatchee River.
[12] *See* Staff Report (pg. 1).

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



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;

[13] Z-22-022.
[14] *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

Planned developments must be consistent with the Lee Plan and minimize negative effects of proposed uses on neighboring properties.[17]

The Lee Plan Future Land Use Map designates the property in the Rural and Wetlands future land use categories.[18]

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

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

---

[15] *See* LDC §34-145(d)(4)(a)(1). The property is in a Rural land use category.
[16] *See* LDC §34-145(d)(4)(a)(2).
[17] Lee Plan Policy 2.1.2; LDC §34-411(a), (c), and (i).
[18] Lee Plan Map 1-A, Policy 1.4.1, 1.5.1.
[19] Lee Plan Policy 1.4.1.
[20] *See Id.*
[21] *Compare with:* Lee Plan Policy 1.4.3 (Rural Community Preserves – minimum lot size requirements).
[22] Lee Plan Policy 1.5.1.
[23] 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.[24]

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;[25]
- Maintaining scenic qualities of North River Road; [26]
- Preserving open space;
- Conserving large areas of open lands;[27]
- Ample views of wooded areas;[28] and
- Protecting environmentally sensitive lands while providing regulatory flexibility.[29]

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

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;[34]
- Devoting 61% of the acreage to open space (483.6 acres);[35]

---

[24] 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.
[25] Lee Plan Objectives 27.1, 29.2, Policies 27.1.1, 27.1.2, 29.2.1.
[26] Lee Plan Objective 27.1, 27.3, 29.1, Policies 27.4.1, 29.1.1, 29.1.3.
[27] Lee Plan Objective 27.3, Policies 27.1.1, 27.1.2, 29.1.1.
[28] Lee Plan Objective 27.1.
[29] Lee Plan Objectives 27.1, 27.2, 27.3.
[30] Lee Plan Objective 27.1, 27.2, Policies 27.1.1, 27.1.2, 27.4.1, 29.1.1, 29.2.1.
[31] Lee Plan Glossary.
[32] *Id.*
[33] 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.
[34] 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.
[35] *See* MCP (Land Use Summary table).

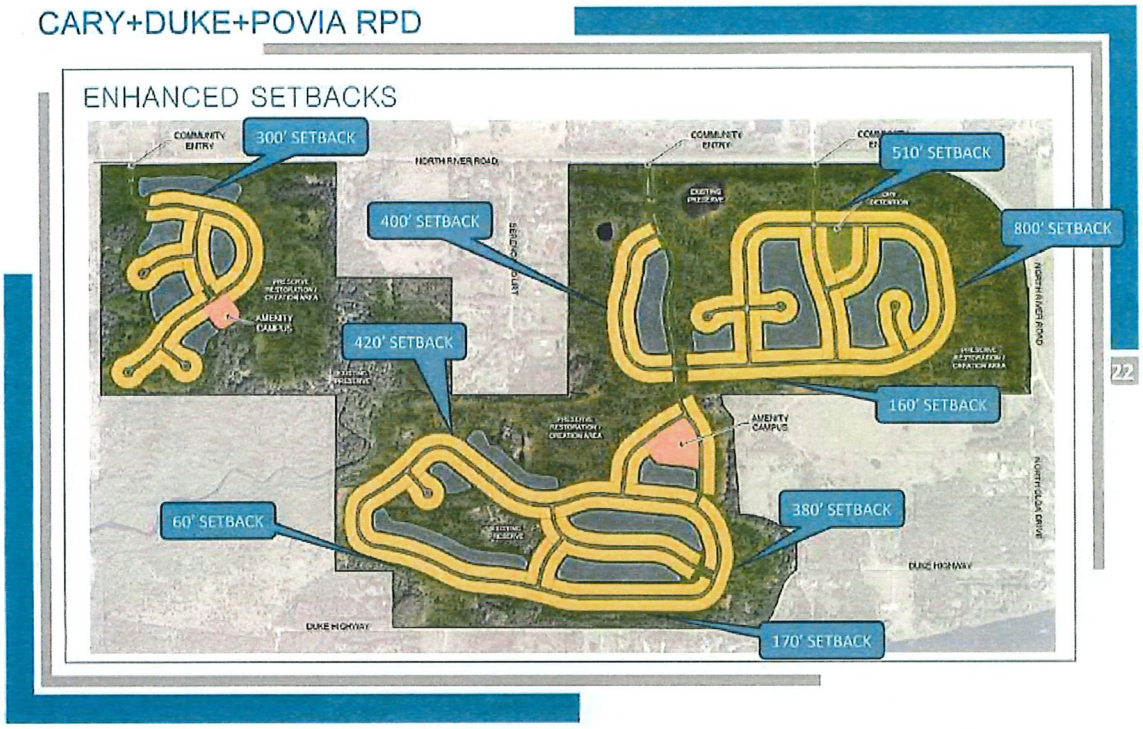
- Maintaining rural vistas along the perimeter, with 300- to 800-foot setbacks on North River Road and 170 feet on Duke Highway;[36]
- Locating the nearest residence 405 feet from the North River Road right-of-way;[37]
- Restoring lands impacted by decades of agricultural activity to improve species' habitat;
- Preserving 420 acres under conservation easement to ensure perpetual protection of environmentally sensitive lands;[38]
- Providing two amenity campuses including community gardens;[39]
- 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]

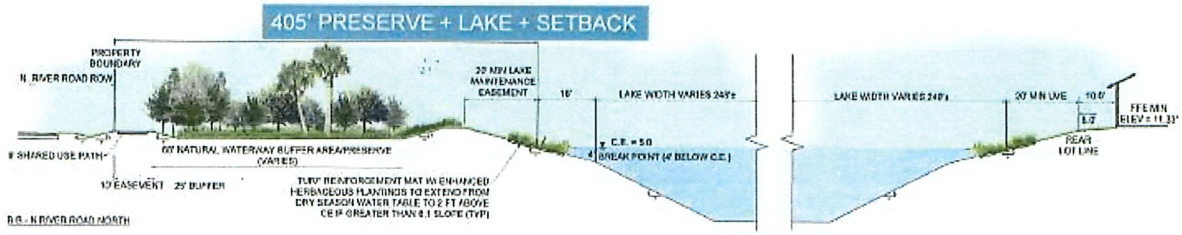
Applicant's landscape expert provided line of sight exhibits to illustrate visual impact on the traveling public.[42] The northwestern pod offers the narrowest setback along North River Road yet still provides 405 feet of separation from the nearest residence.[43] Existing conditions in this location 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]

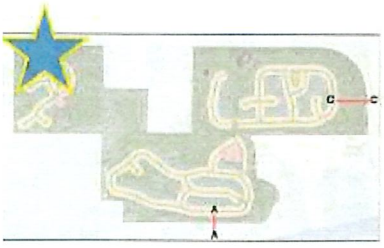
Restoration plantings were curated based on native plant communities to maintain and enhance rural character, add aesthetic value over present conditions, and create wildlife habitat.[45]

---

[36] *See* Applicant Ex. 1 (slide 22).
[37] Hellman Testimony (Transcript pg. 39).
[38] *See* Condition 8; Crespo Testimony (Transcript pg. 35).
[39] Lee Plan Policies 29.2.3, 29.5.1; Crespo Testimony (Transcript pg. 23-24).
[40] Lee Plan Goal 56, Objective 56.2, Policies 56.2.1, 135.9.7; *See also* Staff Ex. 5.
[41] Alternatively, individual lots could be developed under current AG-2 zoning that would generate additional traffic on Duke Highway and North Olga Drive.
[42] 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.
[43] Hellman Testimony (Transcript pg. 39-40).
[44] *Id.*
[45] Applicant Ex. 1 (slide 32); Hellman Testimony (Transcript pg. 41).







Additional Units

"Incentive" density is distinguishable from "bonus" density, although the terms were used interchangeably throughout the record.[46] The request does not seek bonus units. Rather, Applicant seeks additional units through Lee Plan incentives

[46] 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.[47] Applicant must prove the project qualifies for additional units through extensive measures *before* additional units are awarded.[48] The record demonstrates Applicant's proposed measures improve environmental features/function of the property over present conditions.[49]

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.[50] 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 county-maintained arterial.*[51]

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.*[52]

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.
    - *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.

---

[47] *See* Lee Plan Policies 1.4.1, 123.2.17.
[48] The Lee Plan imposes quantitative *and* qualitative metrics to development proposals in the Rural category.
[49] *See* Staff Report (Attachment N); Johnson Testimony (Transcript pg. 49-67, 458-75).
[50] Lee Plan Policy 123.2.17.
[51] Lee Plan Map 3-B; Staff Report (pg. 1).
[52] *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.*[53]

Compatibility

The Hearing Examiner must evaluate zoning requests for compatibility with surrounding land uses and community character.[54] 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.[55]

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.[56]

Members of the public found the proposed lot sizes to be incompatible with historic development patterns.[57] 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.[58]

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

---

[53] *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). .

[54] 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.

[55] LDC §34-413.

[56] LDC §34-2.

[57] Public Testimony (Transcript pg. 142-458).

[58] 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.

[59] Lee Plan Policy 5.1.5, 135.9.5.

[60] The plain language of the LDC does not define "compatible" to mean "identical." *Id.*

[61] 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.[62] Planned development zoning is appropriate because it offers flexibility in project design while still implementing the goals, objectives, and policies of the Lee Plan.[63]

Conditions of approval integrate the project with surrounding uses through screening/buffering, open space, and landscape design.[64] 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.[67] The RPD furthers emerging development patterns that include single-family homes on acreage *and subdivisions on smaller lots*.[68]

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.[69]

A hallmark of maintaining compatibility in the Community is to maintain existing patterns of setbacks from North River Road.[70] Setbacks and landscaping with canopy trees preserve rural vistas.[71] The RPD employs this design feature, exceeding roadside landscaping approved in the Owl Creek and Babcock PDs.[72]

---

[62] LDC §34-931(b), §34-932.
[63] Lee Plan Glossary; LDC §34-612(2), §34-935. Babcock property is in the New Community future land use category.
[64] LDC §34-612(2). Another purpose is to further Lee Plan goals while providing flexibility in development design.
[65] The adjacency and proximity of planned developments assuages spot zoning concerns expressed during public comment.
[66] *See* Staff Report (Attachment K, Z-17-026 approved February 7, 2018). Lee Plan Objective 29.9, Policies 29.9.1, 29.9.2.
[67] Lee Plan Policy 5.1.5; Danley Testimony (Transcript pg. 129); Staff Ex. 3 (slide 18).
[68] 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.
[69] Lee Plan Goal 77, Objectives 77.1, 77.3, Policies 5.1.5, 29.2.2, 77.3.1, 77.3.4.
[70] Lee Plan Policy 27.4.1.
[71] Lee Plan Goals 27, 29, 77, Objectives 29.1, 29.2, Policies 29.1.1, 29.1.3; *See also* LDC §33-1673.
[72] *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.[73]

Environmental/Natural Resources[74]

Planned development design should reflect creative use of open space.[75] Developers must protect and preserve natural site features.[76] 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.[77] The site has historically been used for agricultural pursuits, mostly logging and cattle grazing.[78] 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.[79]

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

---

[73] Lee Plan Goals 27, 29, Policies 2.2.1, 5.1.5, 27.1.1, 27.1.2, 29.1.1, 29.2.1.
[74] 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).
[75] LDC §34-411(h).
[76] LDC §34-411(g).
[77] *Id.* at 49-50.
[78] *Id.* at 50.
[79] 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.
[80] Lee Plan Policy 77.3.3.
[81] Johnson Testimony (Transcript pg. 53-54, 58).
[82] Lee Plan Policy 77.3.1.
[83] *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.[87]

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]

---

[84] 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.
[85] Crespo Testimony (Transcript pg. 22); Lee Plan Goal 77.
[86] 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.
[88] *See* Staff Report (Attachment N, Ex. A: Protected Species Survey prepared by Passarella & Associates, Inc., revised May 2023).
[89] 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).
[90] 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).
[91] 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).
[92] Frey Testimony (Transcript pg. 77-78, 512-15); Lee Plan Policy 61.2.1.
[93] 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.
[94] 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.
[95] 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;[102]

---

[96] 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).

[97] *See* Condition 13; Applicant Ex. 1 (slide 63). Seven monitoring stations will be sampled biannually with reporting requirements to regulatory agencies.

[98] Martin Testimony (Transcript pg. 81).

[99] *Id.*

[100] 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.*

[101] 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

[102] 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

[103] 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.
[104] Applicant Ex. 1 (slide 66).
[105] *Id.* at 67.
[106] Lee Plan 125.1.2; LDC §34-145(d)(4).
[107] LDC §34-145(d)(4)(a)(1)(d); §34-411(d)(1).
[108] LDC §34-145(d)(4)(a)(1)(e); §34-411(d)(2).
[109] Lee Plan Map 3-B.
[110] 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.[111] Initial design expands S.R. 31 to four lanes, but the project can accommodate six lanes in the future.[112] Improvements are also programmed for S.R. 31 south of S.R. 78/Bayshore Road to S.R. 80/Palm Beach Boulevard.[113]

Applicant's transportation experts prepared a Traffic Impact Statement ("TIS") consistent with County requirements.[114] The TIS concluded project traffic will not significantly impact surrounding roadways.[115] 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%.[116]

FDOT programmed improvements along the S.R. 78 and S.R. 31 corridors will increase carrying capacity to accommodate anticipated growth.[117] Testimony confirmed road improvements should be completed prior to project build-out.[118] The TIS concludes no County road improvements are necessary to accommodate the projected trip generation.[119] The RPD will mitigate transportation impacts with road impact fees.[120]

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

---

[111] *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.

[112] *See Id.*; *See* Staff Report (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024).

[113] 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).

[114] 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.

[115] *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).

[116] 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).

[117] 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).

[118] Bykau Testimony (Transcript pg. 497-500).

[119] *See* Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023).

[120] 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).

[121] 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.[122] 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.[123] 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.[125] The Lee Plan requires an evaluation of available urban services during the rezoning process.[126]

Despite the property's non-urban designation, it will have access to public services and infrastructure.[127] The project will connect to Lee County Utilities' potable water supply, eliminating the need for individual wells.[128] 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.

---

[122] 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).

[123] *See* Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023).

[124] 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.

[125] 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.

[126] Lee Plan Policy 2.2.1.

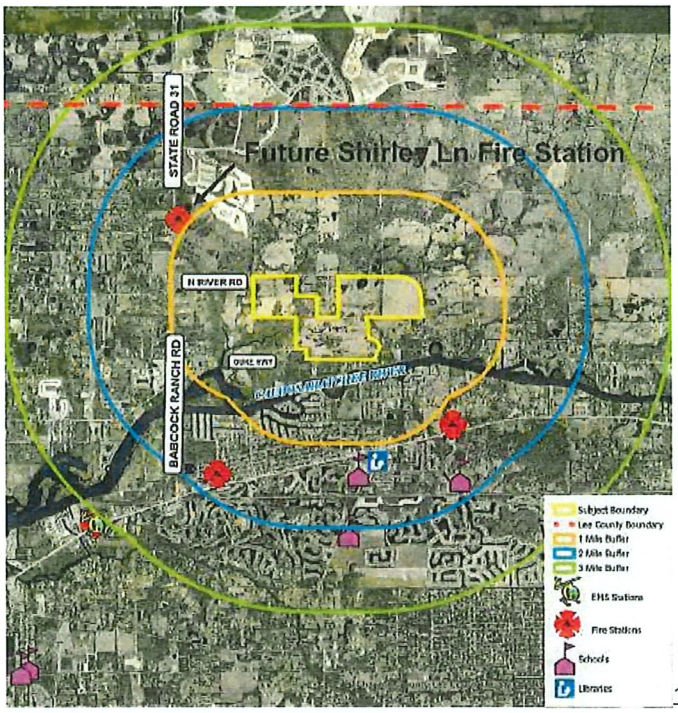
[127] Danley Testimony (Transcript pg. 122-23); Staff Ex. 3 (slide 10, 12).

[128] 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.

[129] Martin Testimony (Transcript pg. 82-84, 474-87); Applicant Ex. 1 (slide 64-65).

[130] Crespo Testimony (Transcript pg. 19, 106, 552-54).

[131] *Id.* at 19, 552-53.



[132]

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

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] Applicant must install an eight-foot shared use path 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]

---

[132] Applicant Ex. 1 (slide 13).
[133] 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.
[134] Lee Plan Map 3-D.
[135] 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.
[136] *Id.* at 73.
[137] 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.[138] Applicant must also comply with the North Olga Planning Community's adopted supplemental regulations.[139] These regulations include community review of zoning and development order applications, architectural and design standards, enhanced landscaping, tree preservation, and restricted signage.[140] Applicant seeks five deviations from the LDC.

Deviations

The proposed RPD includes five deviation requests.[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,[144] roadway plantings,[145] lake bank slopes,[146] equipment pad setbacks,[147] and drainage easement width.[148] Most deviations are sought to limit the development footprint and avoid crossing Trout Creek.[149] Applicant offered testimony and evidence in support of the requested

---

[138] LDC §34-145(d)(4)a.1(b).
[139] *See generally* LDC ch. 10, ch. 34, and §§33-1661 *et. seq.* Lee Plan Policy 29.1.3.
[140] LDC §§33-1661 *et seq.*
[141] Applicant Ex. 1 (slides 15-19).
[142] LDC §34-2.
[143] LDC §34-377(a)(4).
[144] 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).
[145] 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.
[146] 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).
[147] 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).
[148] 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).
[149] 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.

---

[150] LDC §34-145(d)(4)a.2(c), §34-377(a)(4); *See also* LDC §33-1665.
[151] LDC §34-373(a)(9), §34-377(a)(4).
[152] *See* Lee Plan Policies 17.3.5, 27.1.6, 27.1.8; LDC §33-1663.
[153] 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).
[154] 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.
[155] Public Testimony (Transcript pg. 142-260, 265-457).

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.[157]

If the Board approves the request, the RPD will be subject to additional community meetings during development order review.[158]

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.[159] Conditions must plausibly relate to the project's anticipated impacts and be pertinent to mitigating impacts on public health, safety, and welfare.[160] 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.[162]

The School Board anticipates the project will generate 326 school aged children.[163] 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

---

[156] Applicant Ex. 3-5; Rebuttal Testimony (Transcript pg. 458-569).
[157] 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).
[158] LDC §33-1663(a)(1).
[159] 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).
[160] LDC §34-932(b).
[161] 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.
[162] 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.[164] Designing the project to accommodate safe school bus access is prudent since the project will generate a significant number of students.[165]

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,

[164] *See* Condition 18; Applicant Ex. 3: Second 48-Hour Letter dated Sept. 17, 2024; Revised MCP stamped Sept. 17, 2024.
[165] 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 10, 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 A

RHODES & RHODES LAND SURVEYING, INC.
28100 BONITA GRANDE DRIVE #107 NAPLES, FLORIDA 34135
PHONE (239) 405-5106 FAX (239) 405-5108

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

DCI2022-00067 Lee County ePlan

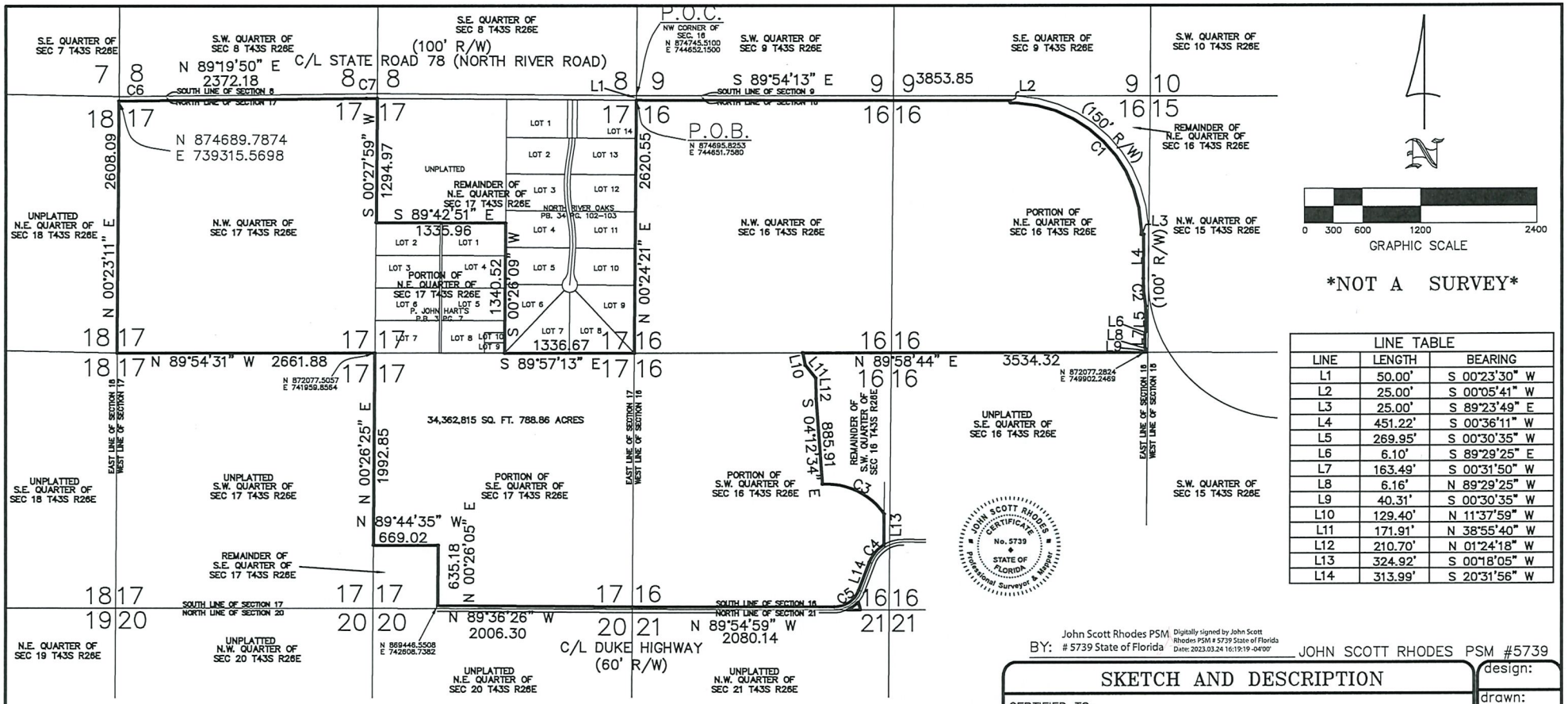
RHODES & RHODES LAND SURVEYING, INC.
23100 BONITA GRANDE DRIVE #107 NAPLES, FLORIDA 34135
PHONE (239) 495-8166 FAX (239) 495-8168

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



LINE TABLE		
LINE	LENGTH	BEARING
L1	50.00'	S 00°23'30" W
L2	25.00'	S 00°05'41" W
L3	25.00'	S 89°23'49" E
L4	451.22'	S 00°36'11" W
L5	269.95'	S 00°30'35" W
L6	6.10'	S 89°29'25" E
L7	163.49'	S 00°31'50" W
L8	6.16'	N 89°29'25" W
L9	40.31'	S 00°30'35" W
L10	129.40'	N 11°37'59" W
L11	171.91'	N 38°55'40" W
L12	210.70'	N 01°24'18" W
L13	324.92'	S 00°18'05" W
L14	313.99'	S 20°31'56" W

CURVE TABLE					
CURVE	RADIUS	DELTA	LENGTH	CHORD	CHORD BEARING
C1	1357.40	90°30'30"	2144.24'	1928.15'	N 44°39'04" W
C2	1482.40	11°16'39"	291.78'	291.31'	S 05°02'09" E
C3	735.02	57°50'17"	741.98'	710.87'	N 63°49'32" W
C4	370.00	37°20'01"	241.09'	236.85'	S 39°14'38" W
C5	270.00	69°38'12"	328.15'	308.33'	N 55°16'41" E
C6	11509.16	0°53'36"	179.42'	179.42'	N 89°47'08" E
C7	11409.16	0°34'27"	114.31'	114.31'	N 89°50'15" E

ABBREVIATIONS
BOB = BASIS OF BEARING
C/L = CENTERLINE
FPL = FLORIDA POWER AND LIGHT
P = PLAT
P.O.C. = POINT OF COMMENCEMENT
P.O.B. = POINT OF BEGINNING
PSM = PROFESSIONAL SURVEYOR AND MAPPER
R/W = RIGHT OF WAY LINE

REVIEWED
DCI2022-00067
Rick Burris, Principal Planner
Lee County DCD/Planning
6/20/2024

JOHN SCOTT RHODES CERTIFICATE No. 5739 STATE OF FLORIDA Professional Surveyor & Mapper

BY: John Scott Rhodes PSM # 5739 State of Florida Digitally signed by John Scott Rhodes PSM # 5739 State of Florida Date: 2023.03.24 16:19:19 -04'00' JOHN SCOTT RHODES PSM #5739

SKETCH AND DESCRIPTION

CERTIFIED TO:
NEAL COMMUNITIES OF SOUTHWEST FLORIDA, LLC, A FLORIDA LIMITED LIABILITY COMPANY

RHODES & RHODES LAND SURVEYING, INC.
LICENSE #LB 6897
28100 BONITA GRANDE DRIVE SUITE 107
BONITA SPRINGS, FL 34135
(239) 405-8166 (239) 405-8163 FAX

bk:	pg:	date:
XX	XX	MARCH 24, 2023
		scale: 1" = 1200'
		cogo #: 22-345

design:
drawn: EFC
checked: JSR
acad #: 2022-345
view: PLOT
project#: 2022-345
sheet #: 3 of 3
file #: 2022-345

Z:\Cary Duke Prop for Neal 2022-345\2022-345 MASTER BNDY SKETCH & DESCRIP.dwg, Layout2, 3/24/2023 4:15:31 PM, 1:1

DCI2022-00067 Lee County ePlan

Exhibit A

RHODES & RHODES LAND SURVEYING, INC.
25100 BONITA GRANDE DRIVE #107 NAPLES, FLORIDA 34135
PHONE (239) 405-5106 FAX (239) 405-5163

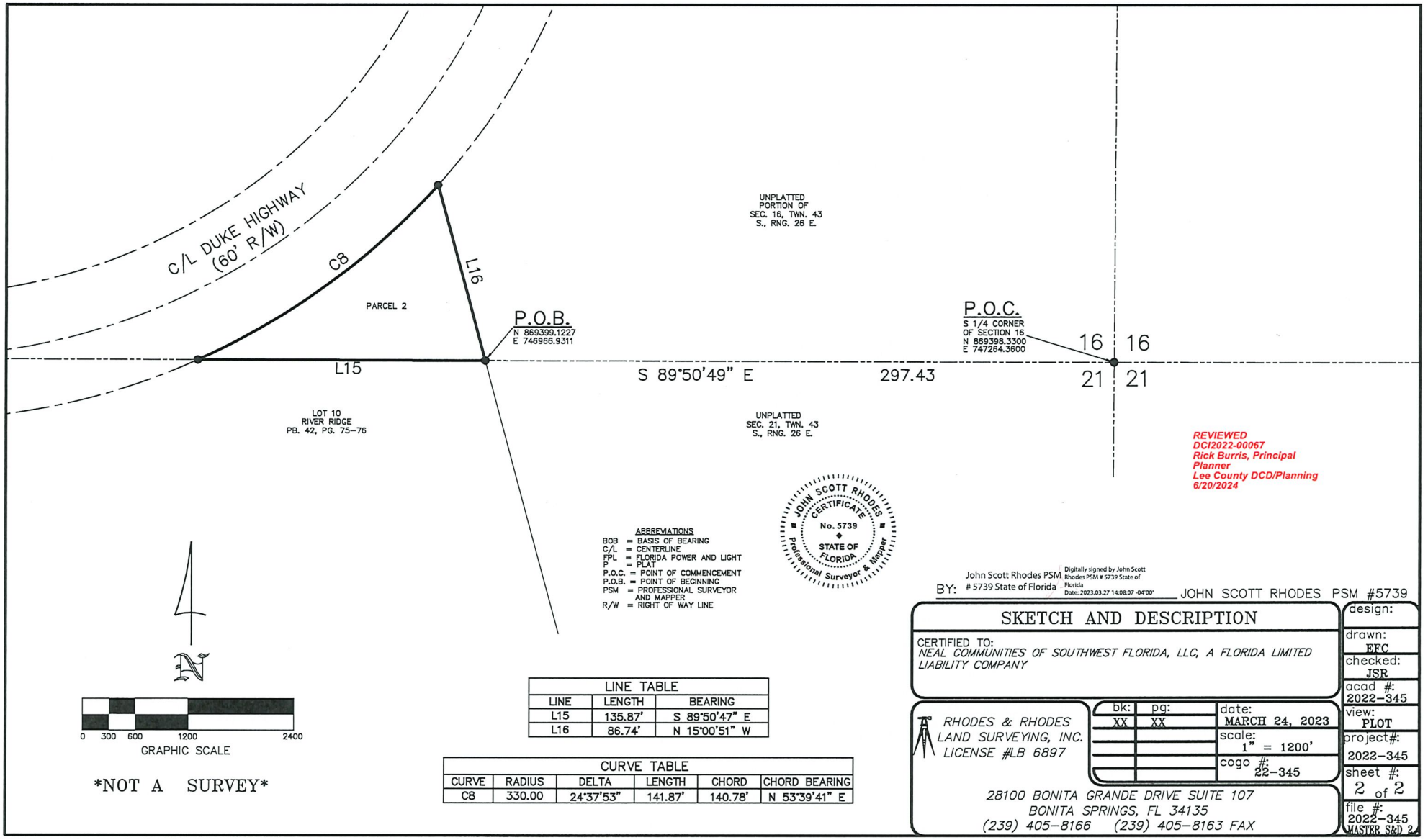
PARCEL 2

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



ABBREVIATIONS

BOB	= BASIS OF BEARING
C/L	= CENTERLINE
FPL	= FLORIDA POWER AND LIGHT
P	= PLAT
P.O.C.	= POINT OF COMMENCEMENT
P.O.B.	= POINT OF BEGINNING
PSM	= PROFESSIONAL SURVEYOR AND MAPPER
R/W	= RIGHT OF WAY LINE

JOHN SCOTT RHODES CERTIFICATE No. 5739 STATE OF FLORIDA Professional Surveyor & Mapper

REVIEWED
DCI2022-00067
Rick Burris, Principal
Planner
Lee County DCD/Planning
6/20/2024

BY: John Scott Rhodes PSM # 5739 State of Florida — Digitally signed by John Scott Rhodes PSM # 5739 State of Florida Date: 2023.03.27 14:08:07 -04'00' — JOHN SCOTT RHODES PSM #5739

LINE TABLE		
LINE	LENGTH	BEARING
L15	135.87'	S 89°50'47" E
L16	86.74'	N 15°00'51" W

CURVE TABLE					
CURVE	RADIUS	DELTA	LENGTH	CHORD	CHORD BEARING
C8	330.00	24°37'53"	141.87'	140.78'	N 53°39'41" E

SKETCH AND DESCRIPTION

CERTIFIED TO:
NEAL COMMUNITIES OF SOUTHWEST FLORIDA, LLC, A FLORIDA LIMITED LIABILITY COMPANY

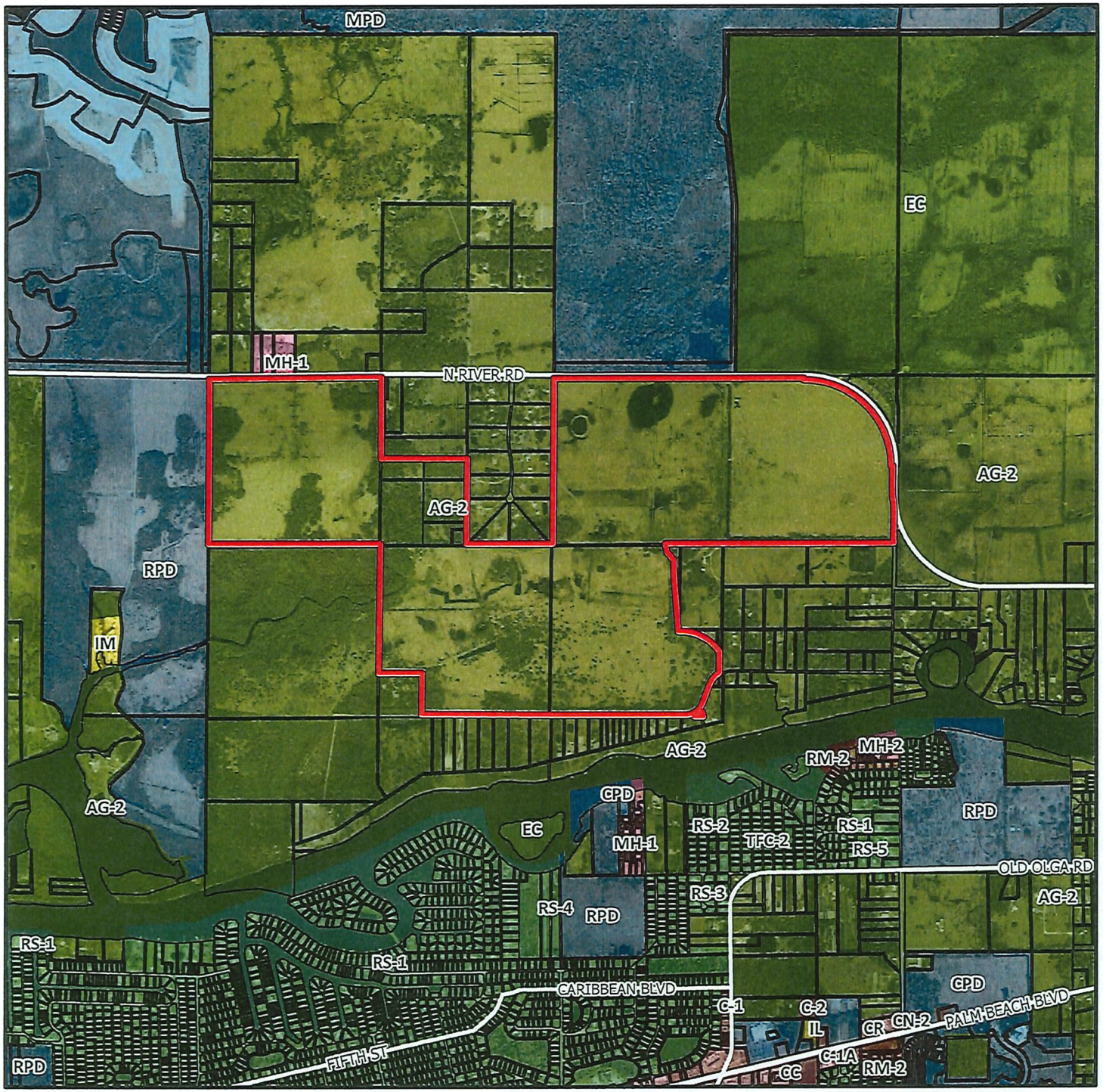
RHODES & RHODES
LAND SURVEYING, INC.
LICENSE #LB 6897

28100 BONITA GRANDE DRIVE SUITE 107
BONITA SPRINGS, FL 34135
(239) 405-8166 (239) 405-8163 FAX

bk:	pg:	date:
XX	XX	MARCH 24, 2023
		scale: 1" = 1200'
		cogo #: 22-345

design:	
drawn:	EFC
checked:	JSR
acad #:	2022-345
view:	PLOT
project#:	2022-345
sheet #:	2 of 2
file #:	2022-345 MASTER S&D 2

Z:\Cary Duke Prop for Neal 2022-345\2022-245 MASTER BNDY SKETCH & DESCRIP 2.dwg, Layout2, 3/27/2023 1:29:48 PM, 1:1



DCI2022-00067

Zoning

Subject Property

N
W E
S

0 1,000 2,000 3,000 4,000
Feet

Lee County
Southwest Florida

Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS
As revised by the Hearing Examiner

CONDITIONS

1. Master Concept Plan (MCP) and Development Parameters

a. MCP. 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. Lee Plan and Land Development Code (LDC). 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. Development Parameters. 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. Site Development Regulations

	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
Setbacks			
Street (Interior Private Roads)	20 feet / 10 feet[1]	20 feet / 10 feet[1]	20 feet
Street (Public Roads)	50 feet	50 feet	50 feet
Side	5 feet[5]	5 feet[5] / 0 feet[2]	10 feet[5]
Rear (Principal)	10 feet	10 feet	10 feet
Rear (Accessory)	5 feet[3]	5 feet[3]	5 feet[3]
PD Perimeter	50 feet	50 feet	50 feet
Waterbody	20 feet	20 feet	20 feet
Preserve	20 feet[4]	20 feet[4]	20 feet[4]

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. 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;

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, and 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. Termination of Agricultural Use. 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. Proof of Termination. Prior to development order issuance, Developer must provide written proof, subject to approval by the Lee County Attorney's Office, of the following:

i. Affidavit. 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. Termination of Tax Exemption. 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 right-

of-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. **Access.** 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. **Lake Bank Slopes**. 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. **Equipment Pads**. 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. **Drainage Easement**. 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.

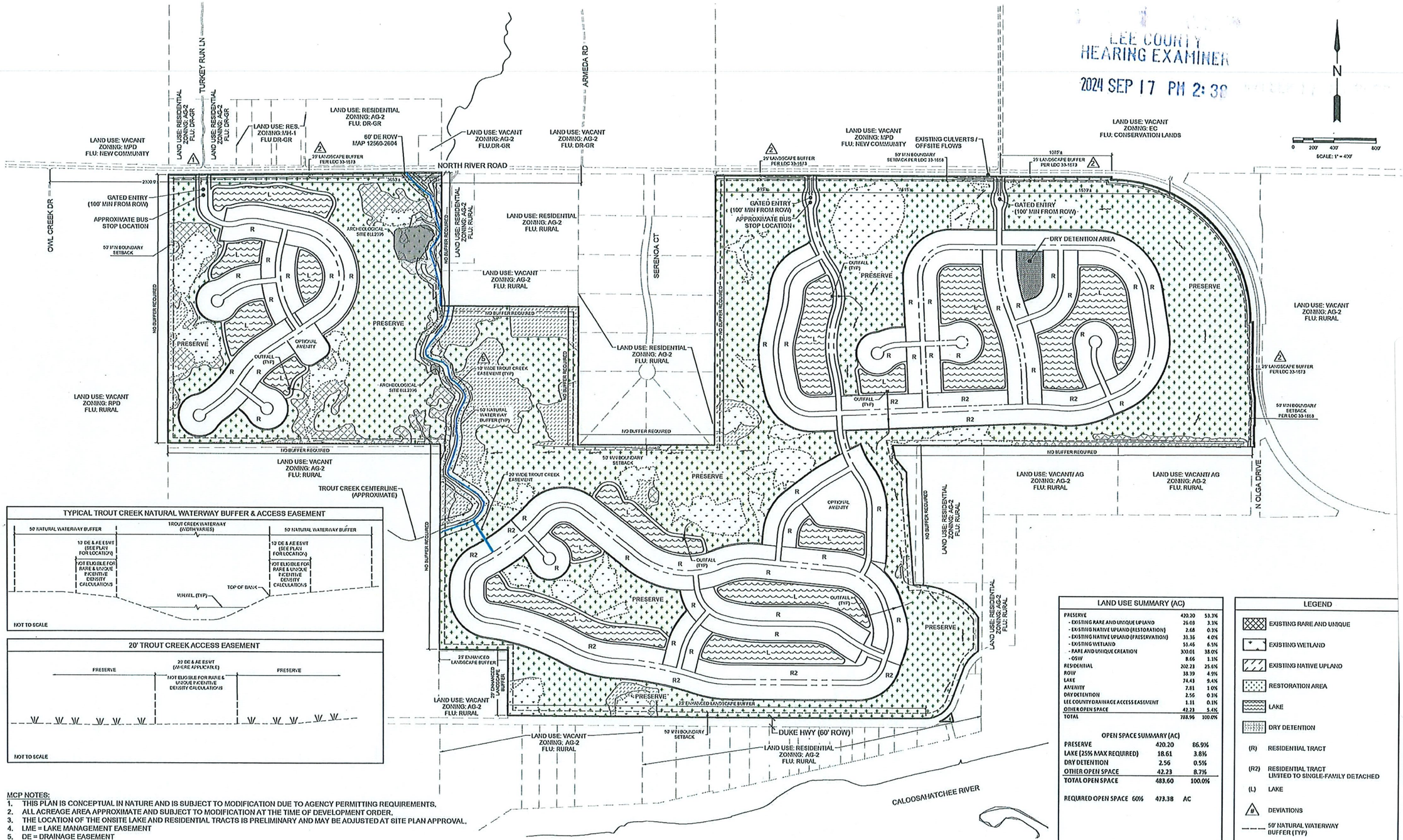
   HEX Recommendation: Approve, subject to the following condition:

   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)

LEE COUNTY
HEARING EXAMINER
2024 SEP 17 PM 2:38



LAND USE SUMMARY (AC)		
PRESERVE	420.20	53.3%
- EXISTING RARE AND UNIQUE UPLAND	26.03	3.3%
- EXISTING NATIVE UPLAND (RESTORATION)	2.68	0.3%
- EXISTING NATIVE UPLAND (PRESERVATION)	31.36	4.0%
- EXISTING WETLAND	51.46	6.5%
- RARE AND UNIQUE CREATION	300.01	38.0%
- OSW	8.66	1.1%
RESIDENTIAL	202.23	25.6%
ROW	38.39	4.9%
LAKE	74.43	9.4%
AMENITY	7.81	1.0%
DRY DETENTION	2.56	0.3%
LEE COUNTY DRAINAGE ACCESS EASEMENT	1.11	0.1%
OTHER OPEN SPACE	42.23	5.4%
TOTAL	788.96	100.0%

OPEN SPACE SUMMARY (AC)		
PRESERVE	420.20	86.9%
LAKE (25% MAX REQUIRED)	18.61	3.8%
DRY DETENTION	2.56	0.5%
OTHER OPEN SPACE	42.23	8.7%
TOTAL OPEN SPACE	483.60	100.0%
REQUIRED OPEN SPACE 60%	473.38	AC

LEGEND

- EXISTING RARE AND UNIQUE
- EXISTING WETLAND
- EXISTING NATIVE UPLAND
- RESTORATION AREA
- LAKE
- DRY DETENTION
- (R) RESIDENTIAL TRACT
- (R2) RESIDENTIAL TRACT LIMITED TO SINGLE-FAMILY DETACHED
- (L) LAKE
- # DEVIATIONS
- 50' NATURAL WATERWAY BUFFER (TYP)
- TROUT CREEK ACCESS EASEMENT

MCP NOTES:
1. THIS PLAN IS CONCEPTUAL IN NATURE AND IS SUBJECT TO MODIFICATION DUE TO AGENCY PERMITTING REQUIREMENTS.
2. ALL ACREAGE AREA APPROXIMATE AND SUBJECT TO MODIFICATION AT THE TIME OF DEVELOPMENT ORDER.
3. THE LOCATION OF THE ONSITE LAKE AND RESIDENTIAL TRACTS IS PRELIMINARY AND MAY BE ADJUSTED AT SITE PLAN APPROVAL.
4. LME = LAKE MANAGEMENT EASEMENT
5. DE = DRAINAGE EASEMENT

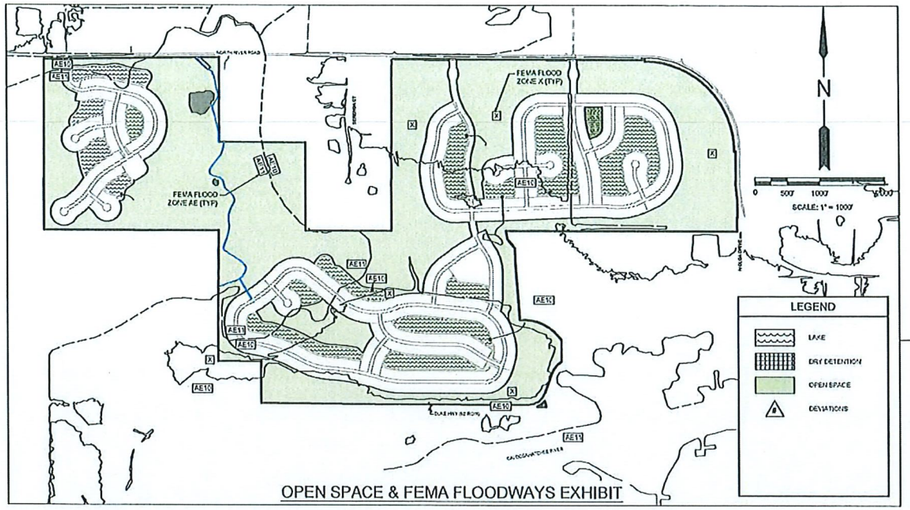
J.R. EVANS ENGINEERING

CARY+DUKE+POVIA RPD

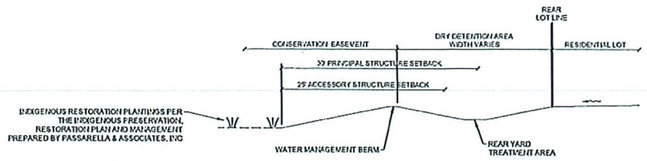
MASTER CONCEPT PLAN

00911-00 E0511 - OA MCP.DWG
September 17, 2024

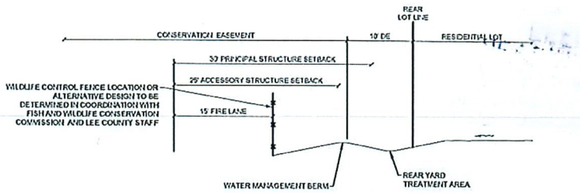
EXHIBIT B-1



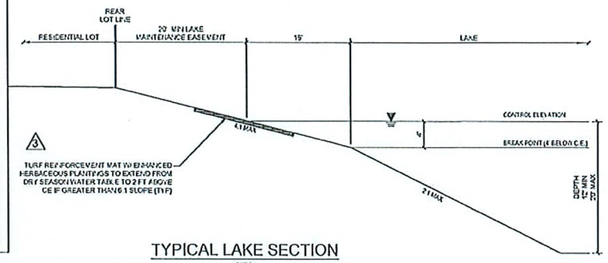
OPEN SPACE & FEMA FLOODWAYS EXHIBIT



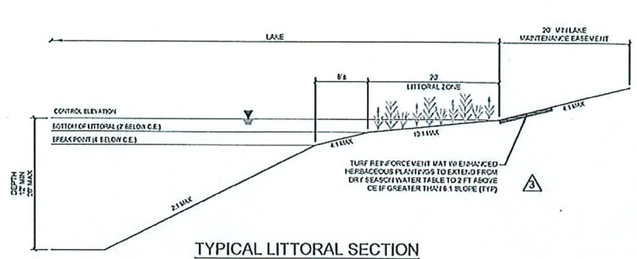
TYPICAL INTERNAL INDIGENOUS RESTORATION SECTION DETAIL
NTS



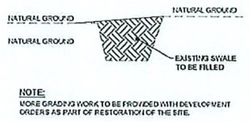
TYPICAL INDIGENOUS RESTORATION SETBACK DETAIL
NTS



TYPICAL LAKE SECTION
NTS



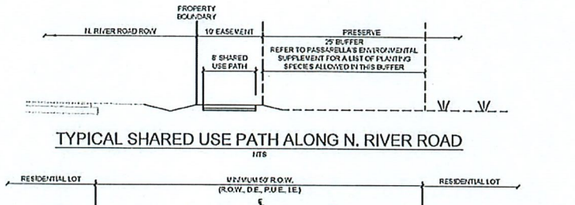
TYPICAL LITTORAL SECTION
NTS



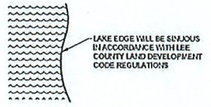
NOTE:
MORE GRADING WORK TO BE PROVIDED WITH DEVELOPMENT ORDERS AS PART OF RESTORATION OF THE SITE.

EXISTING DITCH GRADING TYPICAL DETAIL
NTS

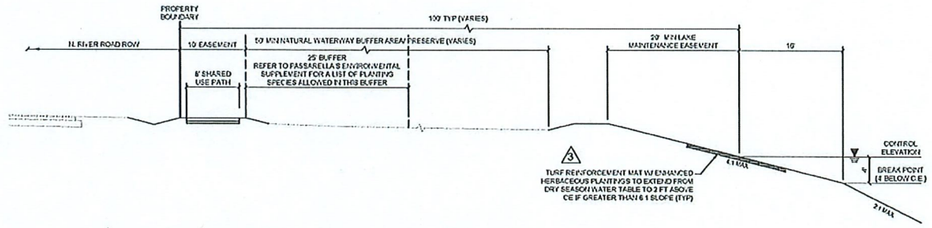
TYPICAL LOT TO DETENTION SECTION DETAILS
NTS



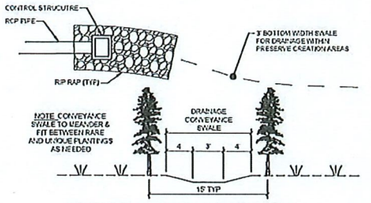
TYPICAL SHARED USE PATH ALONG N. RIVER ROAD
NTS



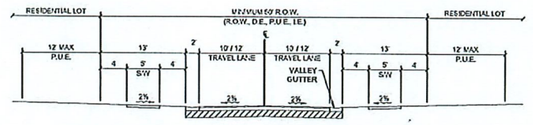
SINUOUS L SHORELINE DETAIL
NTS



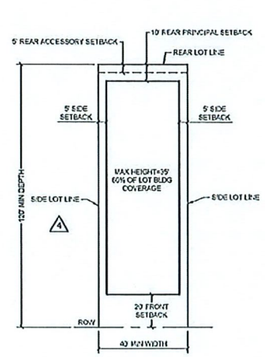
TYPICAL SHARED USE PATH ALONG N. RIVER ROAD (WEST ENTRANCE)
NTS



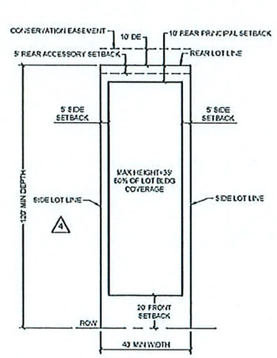
TYPICAL DRAINAGE OUTFALL / CONVEYANCE SWALE
NTS



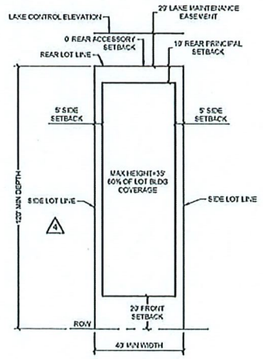
TYPICAL ROAD CROSS SECTION CLOSED DRAINAGE
NTS



REAR ABUTTING OPEN SPACE

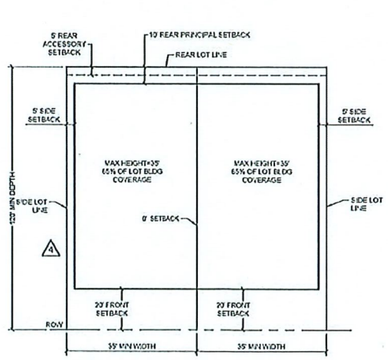


REAR ADJACENT TO PRESERVE

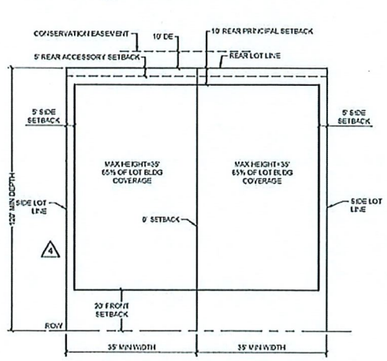


REAR ABUTTING LAKE MAINTENANCE EASEMENT

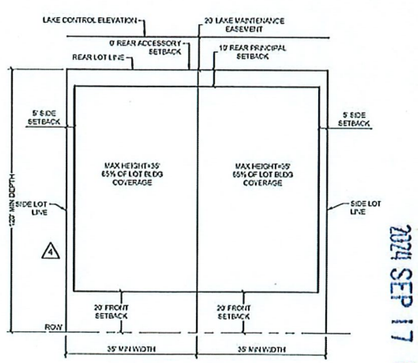
SINGLE FAMILY DETACHED TYPICAL LOT DETAIL
NTS



REAR ABUTTING OPEN SPACE



REAR ADJACENT TO CONSERVATION



REAR ABUTTING LAKE MAINTENANCE EASEMENT

TWO FAMILY ATTACHED TYPICAL LOT DETAIL
NTS

LEE COUNTY
HEARING EXAMINER
2024 SEP 17 PM 2:38

J.R. EVANS ENGINEERING

CARY+DUKE+POVIA RPD

OPEN SPACE AND TYPICAL CROSS SECTIONS EXHIBIT

00911-00 E0511 - OA MCP.DWG
September 17, 2024

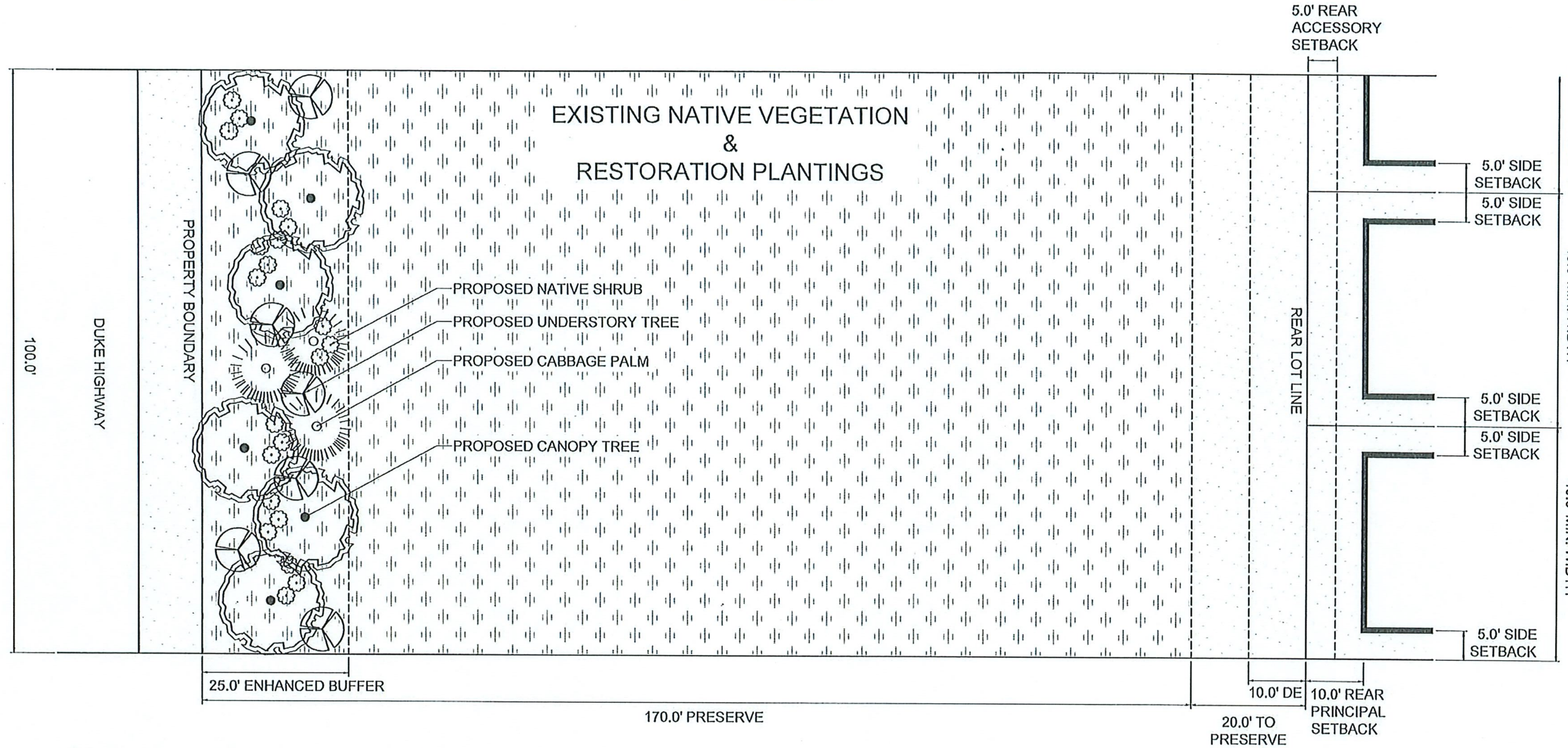
LEE COUNTY
HEARING EXAMINER
2024 SEP 17 PM 2:39

ENHANCED NATIVE BUFFER
25 FT. WIDE ENHANCED BUFFER

	Required
Canopy Trees	6 / 100 LF
Understory Trees	7 / 100 LF
Cabbage Palms	3 / 100 LF
Native Shrubs	21 / 100 LF

AN ENHANCED NATIVE BUFFER SHALL BE PROVIDED ADJACENT TO DUKE HIGHWAY WITH A MINIMUM WIDTH OF 25 FEET AND WITHIN THE 170 FOOT MINIMUM SETBACK TO FILL IN VISUAL GAPS BETWEEN EXISTING NATIVE VEGETATION TO FORM A CONTINUOUS, 100% OPAQUE VEGETATIVE SCREEN WITHIN 5 YEARS OF GROWTH.

1. THE ENHANCED BUFFER SHALL MEET THE FOLLOWING MINIMUM PLANTING DENSITY 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.
2. THE PLANTING DENSITY MAY BE ACHIEVED WITH A COMBINATION OF EXISTING AND/OR 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).
3. ENHANCED BUFFER PLANTINGS WILL INCLUDE MINIMUM 10-FOOT-TALL, 2-INCH CALIPER NATIVE CANOPY TREES, MINIMUM 5-FOOT CLEAR TRUNK CABBAGE PALMS, MINIMUM 5-FOOT-TALL NATIVE UNDERSTORY TREES, AND MINIMUM 24-INCH HEIGHT NATIVE SHRUBS.
4. THE ENHANCED NATIVE VEGETATION SPECIES WILL BE CONSISTENT WITH AND IN ADDITION TO THE APPROVED INDIGENOUS PRESERVE MANAGEMENT AND RESTORATION PLAN SUPPLEMENTAL PLANTINGS LIST (MAY 2024) WITHIN THIS BUFFER.



ENHANCED NATIVE BUFFER - NO EXISTING NATIVE VEGETATION

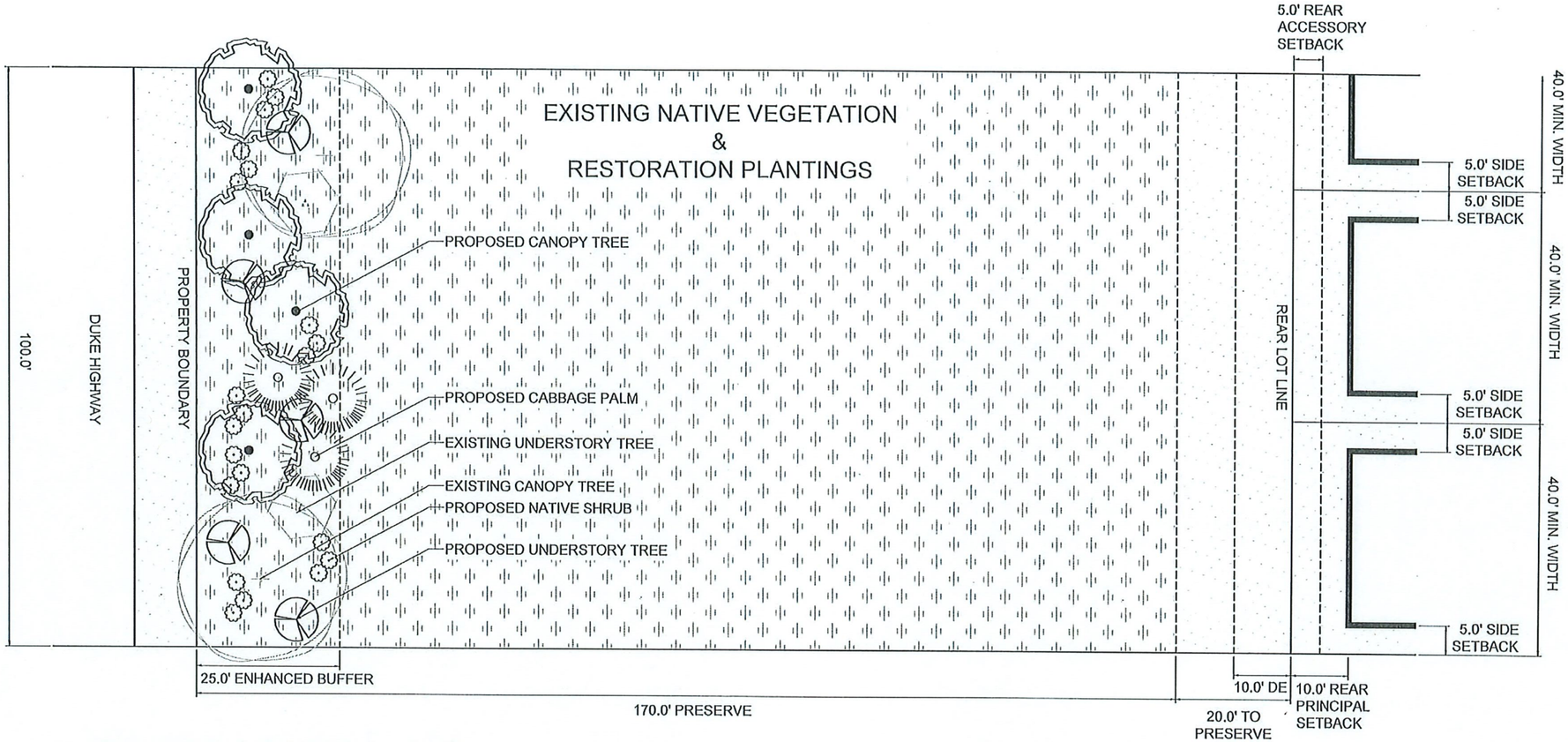
Copyright RVi

LEE COUNTY
HEARING EXAMINER
2024 SEP 17 PM 2:39

ENHANCED NATIVE BUFFER 25 FT. WIDE ENHANCED BUFFER	
	Required
Canopy Trees	6 / 100 LF
Understory Trees	7 / 100 LF
Cabbage Palms	3 / 100 LF
Native Shrubs	21 / 100 LF

AN ENHANCED NATIVE BUFFER SHALL BE PROVIDED ADJACENT TO DUKE HIGHWAY WITH A MINIMUM WIDTH OF 25 FEET AND WITHIN THE 875-FOOT MINIMUM SETBACK TO BE IN VIOLING GAPS BETWEEN EXISTING NATIVE VEGETATION TO FORM A CONTINUOUS, 100% OPAQUE VEGETATIVE SCREEN WITHIN 5 YEARS OF PLANTING.

1. THE ENHANCED BUFFER SHALL MEET THE FOLLOWING MINIMUM PLANTING DENSITY 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.
2. THE PLANTING DENSITY MAY BE ACHIEVED WITH A COMBINATION OF EXISTING AND/OR PROPOSED ENHANCED NATIVE VEGETATION SO LONG AS TREES ARE HORIZONTALLY SPACED NO MORE THAN 30 FEET ON CENTER AND CABBAGE PALMS AND SHRUBS ARE CLUSTERED IN GROUPS OF THREE (3).
3. ENHANCED BUFFER PLANTINGS WILL INCLUDE MINIMUM 15-FOOT-TALL, 2-INCH CALIPER NATIVE CANOPY TREES, MINIMUM 8-FOOT CLEAR TRUNK CABBAGE PALMS, MINIMUM 8-FOOT-TALL NATIVE UNDERSTORY TREES, AND MINIMUM 24-INCH-HEIGHT NATIVE SHRUBS.
4. THE ENHANCED NATIVE VEGETATION SPECIES WILL BE CONSISTENT WITH AND IN ADDITION TO THE APPROVED INDIGENOUS PRESERVE MANAGEMENT AND RESTORATION PLAN SUPPLEMENTAL PLANTINGS LIST (MAY 2023) WITHIN THIS BUFFER.



ENHANCED NATIVE BUFFER - EXISTING NATIVE VEGETATION

Copyright RVi

RVi
28100 Bonita Grande Drive
Suite 305
Bonita Springs, Florida 34135
Tel 239.405.7777
www.rviplanning.com

CARY + DUKE + POVIA RPD • **DUKE HIGHWAY ENHANCED BUFFER**

- Lee County, FL
- September 11, 2024
- # 22001300
- Neal Communities

NEALCOMMUNITIES
Building. Home. Life.

0 10' 20'
SCALE: 1" = 10'-0"
For illustrative purposes only. Subject to change without notice.

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

Project No. 22NCC3903

TABLE OF CONTENTS

LIST OF TABLES

LIST OF APPENDICES

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± acres and primarily consists of mixed wetland hardwood, cypress, and freshwater marsh habitat. The indigenous upland habitat within the proposed preserve totals 50.01± 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 sub-canopy 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				
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 Cover				
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 maidencane	*Amphicarpum muehlenbergianum*	12 in.	2 in.	3 ft.
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 (Continued)				
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.	1 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 (Continued)				
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[1]				
Fiddlewood	*Citharexylum spinosum*	3 ft.	1 gal.	10 ft.
Firebush	*Hamelia patens*	3 ft.	1 gal.	10 ft.
Florida privet	*Forestiera segregata*	3 ft.	1 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[1] (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.	1 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.	1 gal.	10 ft.
Wild coffee	*Psychotria nervosa*	3 ft.	1 gal.	10 ft.
Wild lime	*Zanthoxylum fagara*	3 ft.	1 gal.	10 ft.
Ground Cover[1]				
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.

[1]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.

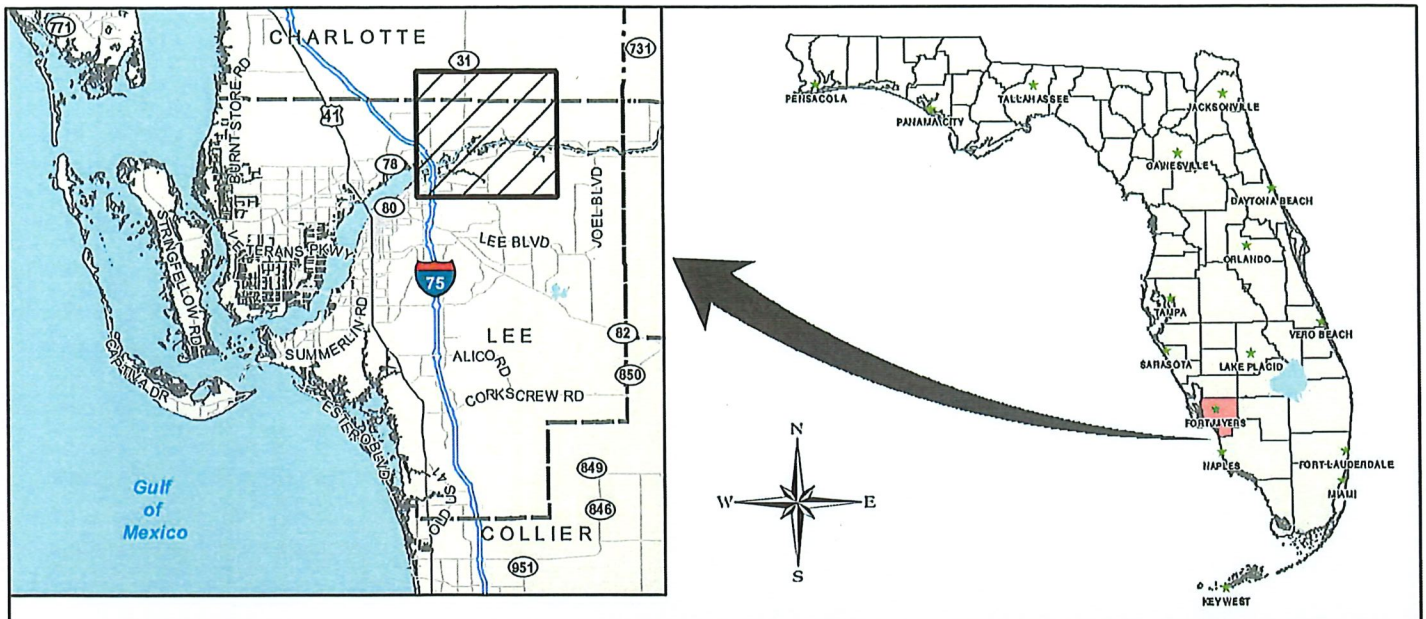
Prescribed burning is typically conducted during the winter or early spring when temperatures are reduced and wind direction is more constant. The initial burn is anticipated to occur during the late winter. Winter burns are preferred to reduce high fuel loads. Growing season burns also may be conducted 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.

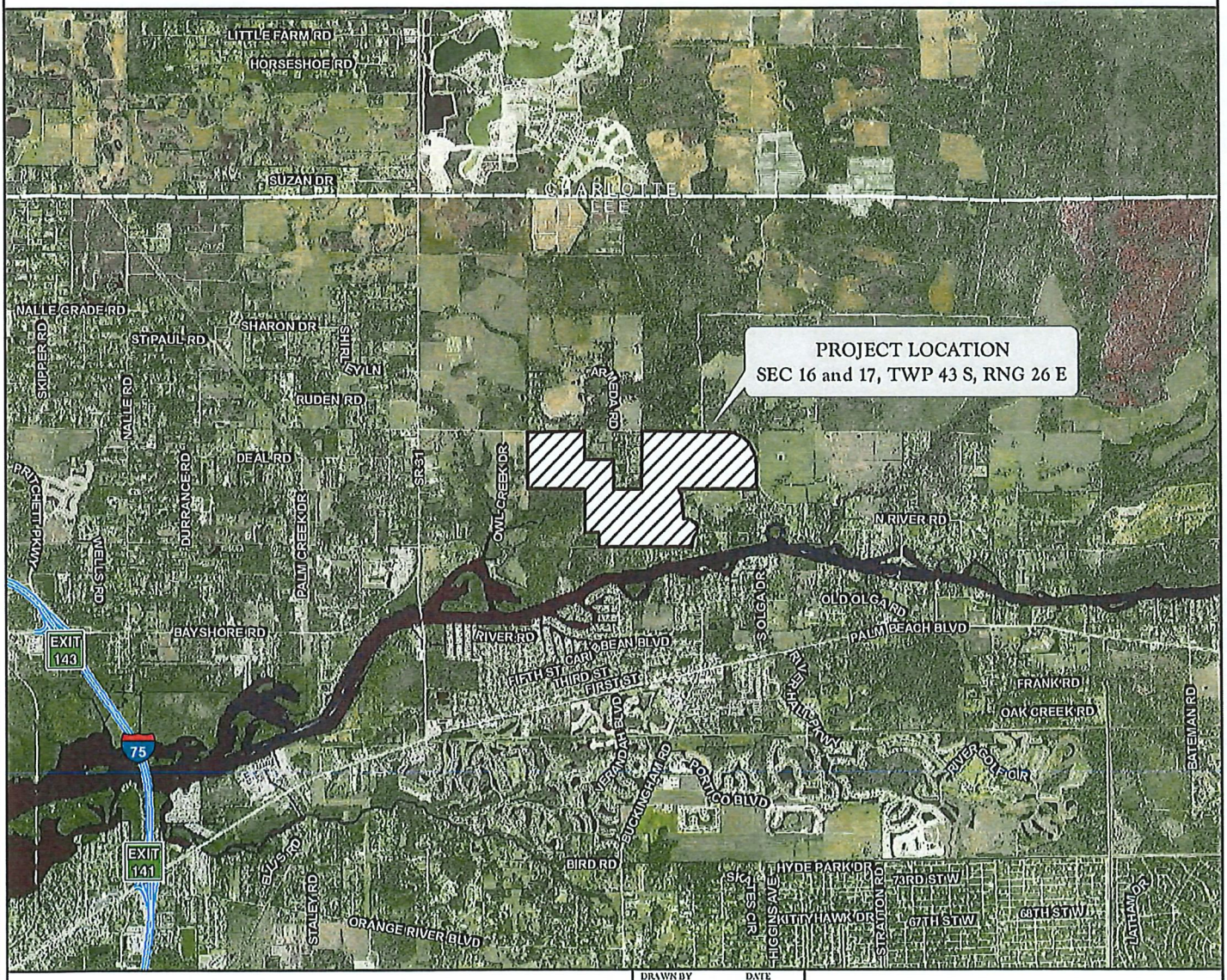
Fire breaks will be installed in strategic locations to safely ignite and control prescribed fires. Fire breaks will be co-located with maintenance trails, recreational trails, access roads, easements, fence lines, property boundaries, and natural habitat boundaries. Fires will be excluded from planted 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.





APPENDIX A. PROJECT LOCATION MAP
CARY + DUKE + POVIA RPD

DRAWN BY	DATE
P.F.	10/26/22
REVIEWED BY	DATE
B.B.	10/26/22
REVISED	DATE
R.F.	05/22/24

PASSARELLA & ASSOCIATES INC
Consulting Ecologists

J:\2022\22NCE5903\GIS\2023\UPRP\FIGURES\APP_A_PROJECT_LOCATION_MAP_052224.MXD

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.

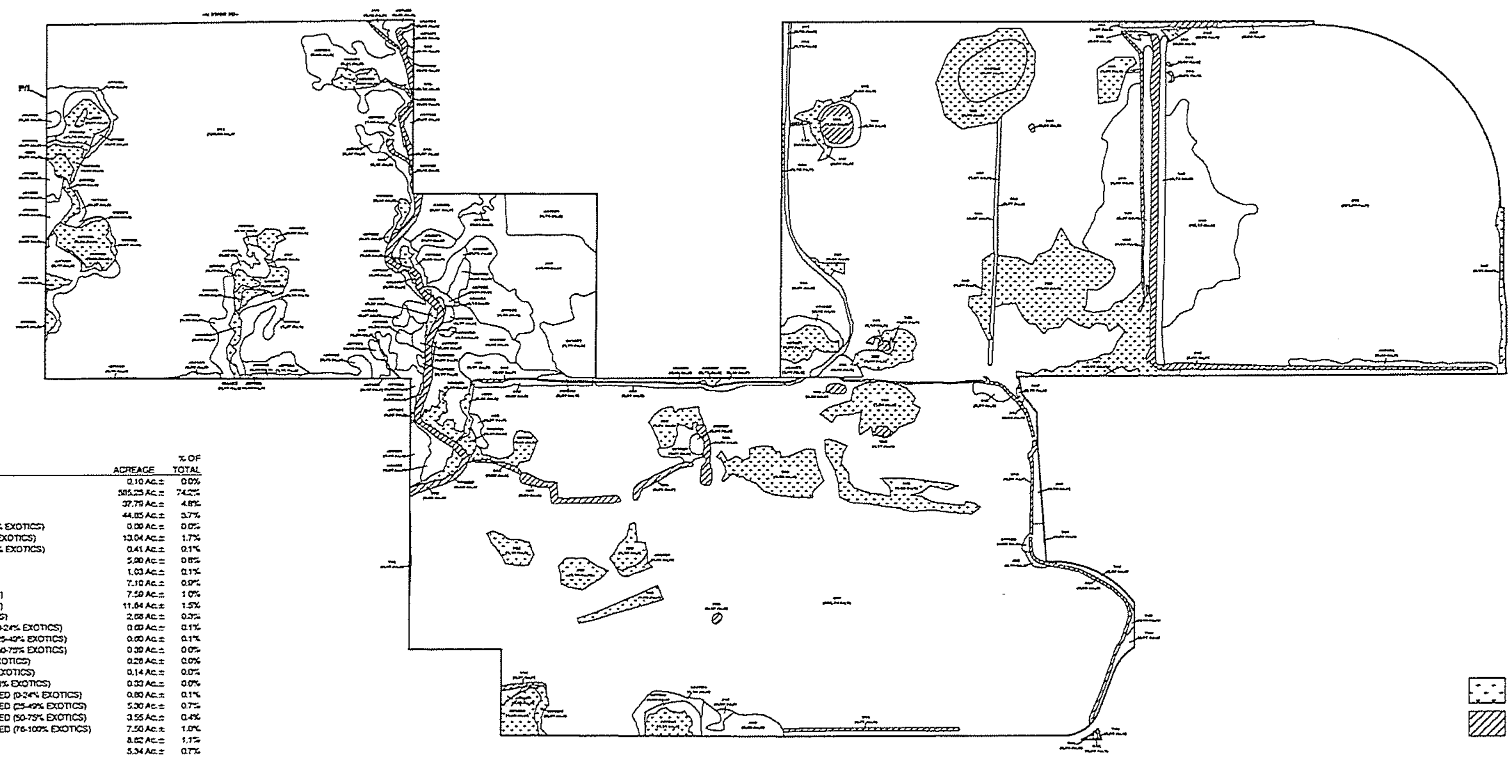
APPENDIX A

PROJECT LOCATION MAP

APPENDIX B

FLUCFCS AND WETLANDS MAP

SCALE: 1" = 400'



FLUCFCS CODE	DESCRIPTION	ACREAGE	% OF TOTAL
110	RESIDENTIAL, LOW DENSITY	0.10 Ac.±	0.0%
211	IMPROVED PASTURE	585.25 Ac.±	74.2%
213	WOODLAND PASTURE	37.79 Ac.±	4.8%
232	LOW PASTURE	44.05 Ac.±	3.7%
3219 E3	PALMETTO PRAIRIE, DISTURBED (50-75% EXOTICS)	0.00 Ac.±	0.0%
4119 E1	PINE FLATWOODS, DISTURBED (0-24% EXOTICS)	13.04 Ac.±	1.7%
4119 E4	PINE FLATWOODS, DISTURBED (76-100% EXOTICS)	0.41 Ac.±	0.1%
422	BRAZILIAN PEPPER	5.90 Ac.±	0.8%
4221	BRAZILIAN PEPPER, HYDRIC	1.03 Ac.±	0.1%
4279 E1	LIVE OAK, DISTURBED (0-24% EXOTICS)	7.10 Ac.±	0.9%
4279 E2	LIVE OAK, DISTURBED (25-49% EXOTICS)	7.59 Ac.±	1.0%
4279 E3	LIVE OAK, DISTURBED (50-75% EXOTICS)	11.64 Ac.±	1.5%
4279 E4	LIVE OAK, DISTURBED (76-100% EXOTICS)	2.08 Ac.±	0.3%
4281 E1	CABBAGE PALM, DISTURBED, HYDRIC (0-24% EXOTICS)	0.69 Ac.±	0.1%
4281 E2	CABBAGE PALM, DISTURBED, HYDRIC (25-49% EXOTICS)	0.60 Ac.±	0.1%
4281 E3	CABBAGE PALM, DISTURBED, HYDRIC (50-75% EXOTICS)	0.30 Ac.±	0.0%
4289 E2	CABBAGE PALM, DISTURBED (25-49% EXOTICS)	0.28 Ac.±	0.0%
4289 E4	CABBAGE PALM, DISTURBED (76-100% EXOTICS)	0.14 Ac.±	0.0%
4291 E1	WAX MYRTLE, DISTURBED, HYDRIC (0-24% EXOTICS)	0.33 Ac.±	0.0%
4349 E1	HARDWOOD/CONIFER MIXED, DISTURBED (0-24% EXOTICS)	0.80 Ac.±	0.1%
4349 E2	HARDWOOD/CONIFER MIXED, DISTURBED (25-49% EXOTICS)	5.30 Ac.±	0.7%
4349 E3	HARDWOOD/CONIFER MIXED, DISTURBED (50-75% EXOTICS)	3.56 Ac.±	0.4%
4349 E4	HARDWOOD/CONIFER MIXED, DISTURBED (76-100% EXOTICS)	7.50 Ac.±	1.0%
510	STREAMS AND WATERWAYS	8.62 Ac.±	1.1%
514	DITCH	5.34 Ac.±	0.7%
525	CATTLE POND	3.94 Ac.±	0.5%
6189 E2	WILLOW, DISTURBED (25-49% EXOTICS)	0.00 Ac.±	0.0%
6215 E3	CYPRESS, DRAINED, DISTURBED (50-75% EXOTICS)	0.90 Ac.±	0.1%
6219 E1	CYPRESS, DISTURBED (0-24% EXOTICS)	1.69 Ac.±	0.2%
6219 E2	CYPRESS, DISTURBED (25-49% EXOTICS)	1.85 Ac.±	0.2%
6309 E1	WETLAND FORESTED MIXED, DISTURBED (0-24% EXOTICS)	1.67 Ac.±	0.2%
6309 E2	WETLAND FORESTED MIXED, DISTURBED (25-49% EXOTICS)	3.59 Ac.±	0.5%
6309 E3	WETLAND FORESTED MIXED, DISTURBED (50-75% EXOTICS)	3.42 Ac.±	0.4%
6309 E4	WETLAND FORESTED MIXED, DISTURBED (76-100% EXOTICS)	1.70 Ac.±	0.2%
6319 E4	WETLAND SHRUB, DISTURBED (76-100% EXOTICS)	1.08 Ac.±	0.1%
6419 E3	FRESHWATER MARSH, DISTURBED (50-75% EXOTICS)	3.65 Ac.±	0.5%
6419 E4	FRESHWATER MARSH, DISTURBED (76-100% EXOTICS)	3.75 Ac.±	0.5%
740	DISTURBED LAND	1.35 Ac.±	0.2%
743	SPOIL AREAS	0.90 Ac.±	0.1%
747	BERM	0.10 Ac.±	0.8%
814	ROAD	1.73 Ac.±	0.2%
	TOTAL	788.98 Ac.±	100.0%

LEGEND:

SFWMD WETLANDS (70.31 Ac.±)

SFWMD "OTHER SURFACE WATERS" (18.10 Ac.±)

NOTES:

PROPERTY BOUNDARY PER JR EVANS ENGINEERING, DRAWING No. 00911-00 E0509 - DA MCP.DWG DATED MAY 21, 2024.

FLUCFCS LINES ESTIMATED FROM 1"=200' AERIAL PHOTOGRAPHS AND LOCATIONS APPROXIMATED.

FLUCFCS PER FLORIDA LAND USE, COVER AND FORMS CLASSIFICATION SYSTEM (FLUCFCS) (FDOT 1999).

UPLAND/WETLAND LIMITS HAVE NOT BEEN REVIEWED BY ANY REGULATORY AGENCY AND ARE SUBJECT TO CHANGE.

REVISIONS	DATE
Revised boundary	03/07/23
Revised boundary	04/01/24
Revised boundary	05/22/24

		DATE
DRAWN BY	R.F.	11/29/22
DESIGNED BY	B.B.	11/29/22
REVIEWED BY	B.B.	11/29/22

13620 Metropolis Avenue
Suite 200
Ft. Myers, FL 33912
Phone (239) 274-0067
Fax (239) 274-0069

PASSARELLA & ASSOCIATES INC

CARY + DUKE + POVIA RPD

FLUCFCS AND WETLANDS MAP

DRAWING No. 22NCC3903

SHEET No. APPENDIX B

APPENDIX C

INDIGENOUS PRESERVE AND RESTORATION MANAGEMENT PLAN

LEGEND:

- INDIGENOUS WETLAND PRESERVATION AND ENHANCEMENT (17.51 Ac.±)
- INDIGENOUS UPLAND PRESERVATION AND ENHANCEMENT (23.98 Ac.±)
- INDIGENOUS WETLAND RESTORATION (53.95 Ac.±)
- INDIGENOUS UPLAND RESTORATION (7.38 Ac.±)
- RARE AND UNIQUE UPLAND CREATION* (300.01 Ac.±)
- RARE AND UNIQUE UPLAND PRESERVATION* AND ENHANCEMENT (26.05 Ac.±)
- RARE AND UNIQUE UPLAND RESTORATION* (2.68 Ac.±)
- OSW PRESERVATION (8.66 Ac.±)
- LEE COUNTY DRAINAGE ACCESS DESIGNATION - NOT INCLUDED IN CONSERVATION AREA (1.11 Ac.±)
- MECHANICAL CLEARING AREAS (16.91 Ac.±)
- ⊕ APPROXIMATE ACCESS POINTS FOR MECHANICAL CLEARING

*UTILIZED FOR ZONING DENSITY INCREASE

NOTES:

PROPERTY BOUNDARY, SITE PLAN AND CONSERVATION AREAS PER JR EVANS ENGINEERING, DRAWING No. 00911-00 E0509 - OA MCP.DWG DATED MAY 21, 2024.

REVISIONS	DATE	DRAWN BY	DATE
		R.F.	04/20/23
New site plan	01/24/24	DESIGNED BY J.S.	DATE 04/20/23
New site plan	03/26/24		
New site plan	05/22/24	REVIEWED BY S.J.	DATE 04/20/23

13620 Metropolis Avenue
Suite 200
Ft. Myers, FL 33912
Phone (239) 274-0067
Fax (239) 274-0069

PASSARELLA & ASSOCIATES INC

CARY + DUKE + POVIA RPD

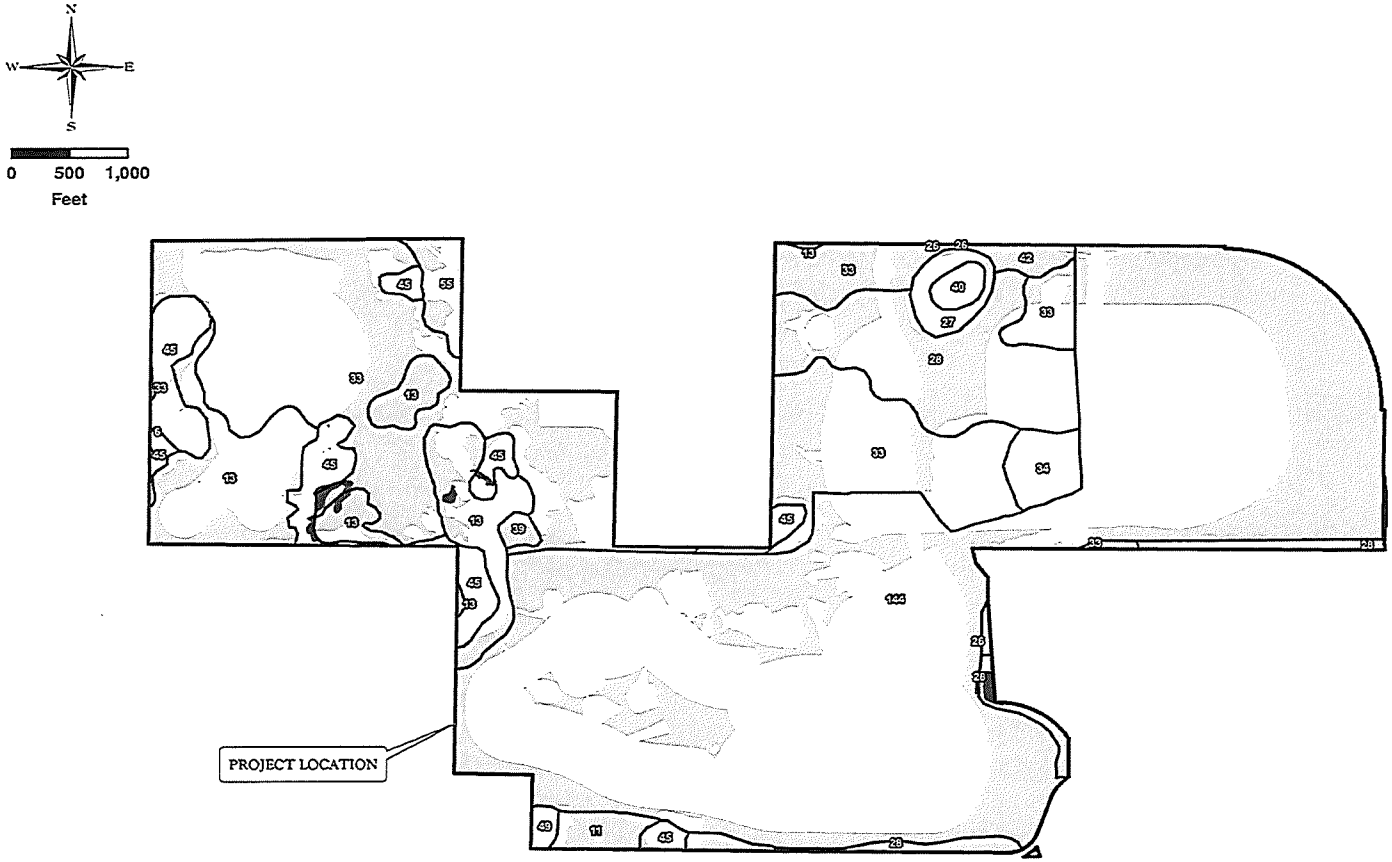
INDIGENOUS PRESERVE AND RESTORATION MANAGEMENT PLAN

DRAWING No. 22NCC3903

SHEET No. APPENDIX C

APPENDIX D

SOILS OVERLAY MAP



LEGEND

- CARY + DUKE + POVIA RPD
- RARE AND UNIQUE UPLAND CREATION (300.01 AC.±)
- RARE AND UNIQUE UPLAND RESTORATION (2.68 AC.±)
- LEE SOILS

SOILS THAT FALL WITHIN RARE AND UNIQUE CREATION AND RESTORATION AREAS		
Soil Unit	Description	Acres
11	Myakka fine sand, 0 to 2 percent slopes	4.69 Ac.±
13	Cypress Lake fine sand, 0 to 2 percent slopes	24.51 Ac.±
26	Pineda-Pineda, wet, fine sand, 0 to 2 percent slopes	0.80 Ac.±
27	Pompano fine sand, frequently ponded, 0 to 1 percent slopes	0.79 Ac.±
28	Immokalee 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 ponded, 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 loam, frequently ponded, 0 to 1 percent slopes	2.59 Ac.±
49	Felda fine sand, frequently ponded, 0 to 1 percent slopes	0.09 Ac.±
55	Cocoa fine sand, 0 to 2 percent slopes	2.54 Ac.±
144	Caloosa fine sand, 0 to 2 percent slopes	153.50 Ac.±
	TOTAL	302.69 Ac.±

NOTES:

PROPERTY BOUNDARY PER JR EVANS ENGINEERING DRAWING No. 0091I-00 E0509 - OA MCP.DWG DATED MAY 21, 2024.

SOILS MAPPING WAS ACQUIRED FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE WEBSITE OCTOBER 2022.

REVISIONS	DATE
Revised boundary	04/01/24
Revised boundary	05/22/24

DRAWN BY	H.H., R.F.	03/07/23
DESIGNED BY	C.R.	03/07/23
REVIEWED BY	S.J.	03/07/23

13620 Metropolis Avenue
Suite 200
Fort Myers, Florida 33912
Phone (239) 274-0067
Fax (239) 274-0069

PASSARELLA & ASSOCIATES LLC
Consulting Engineers

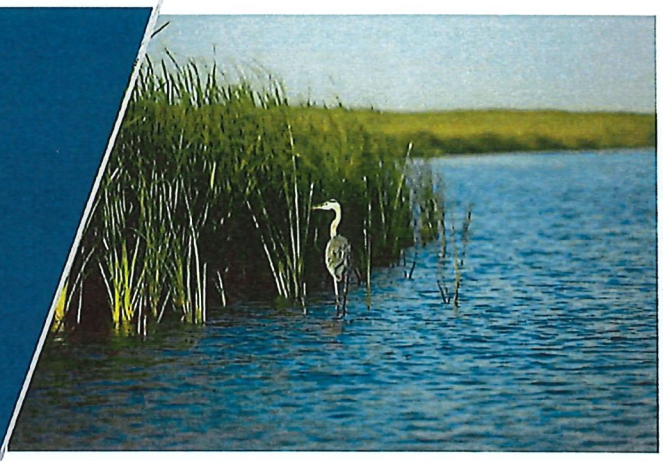
CARY + DUKE + POVIA RPD
SOILS OVERLAY MAP

DRAWING No. 22NCC3903
SHEET No. APPENDIX D

EXHIBIT B3

Water Quality Monitoring Plan

Cary-Duke-Povia
DCI2022-00067



Water Science Associates
An Apex Company

Evan Lentz
Staff Scientist

Michael Alfieri P.G. 2476
Senior Managing Hydrogeologist

MAY 2024

TABLE OF CONTENTS

FIGURES

TABLES

EXHIBITS

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/L as N	x	x	NA	1.54	Laboratory
Ammonia (un-ionized)	mg/L as N	x	x	NA	0.02	Laboratory
Nitrite+Nitrate as Nitrogen (NOX)	mg/L as N	x	x	10	NON-NUMERIC	Laboratory
Nitrite	mg/L as N	x		1	NON-NUMERIC	Laboratory
Nitrate	mg/L as N	x		10	10	Laboratory
Total Phosphorus	mg/L	x	x	NA	0.12	Laboratory
Chloride	mg/L	x	x	250	250	Laboratory
Total Dissolved Solids (TDS)	mg/L	x	x	500	500 Average	Laboratory
Florida PRO (TRPH)	µg/L	x	x (Annualy)	5000	5000	Laboratory
Arsenic	µg/L	x		10	10	Laboratory
Copper	µg/L	x	x	1000	2.72	Laboratory
Mercury	µg/L	x	x	2	0.012	Laboratory
Lead	mg/L	x	x	0.015	0.0085	Laboratory
E. coli	MPN/100mL	x	x	NA	126 Average	Laboratory
Total Hardness	mg/l	x	x	NA	NA	Laboratory
Temperature	C	x	x	NA	NA	Field
Specific Conductance	mhos/cm	x	x	NA	1275 or <50% Increase	Field
pH	pH units	x	x	6.5-8.5	1 unit from background	Field
Dissolved Oxygen (DO)	mg/L	x	x	NA	>5.0	Field
Lake Stage	ft NAVD	x	x	NA	NA	Field/Recorder
Water Table Aquifer Elevation	ft NAVD	x	x	NA	NA	Field/Recorder
Sandstone Aquifer Elevation	ft NAVD	x	x	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.

FIGURES

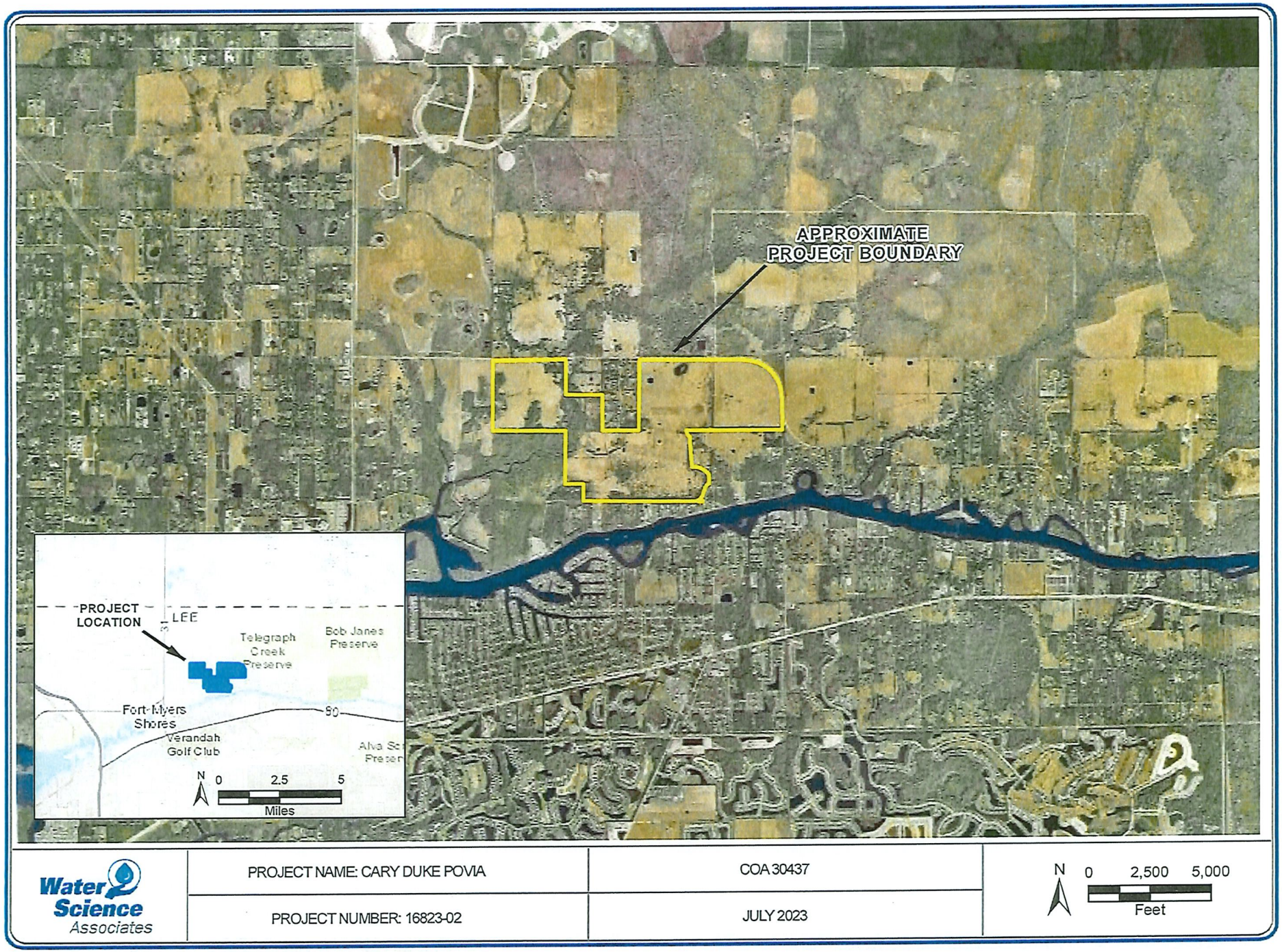


FIGURE 1. REGIONAL LOCATION MAP

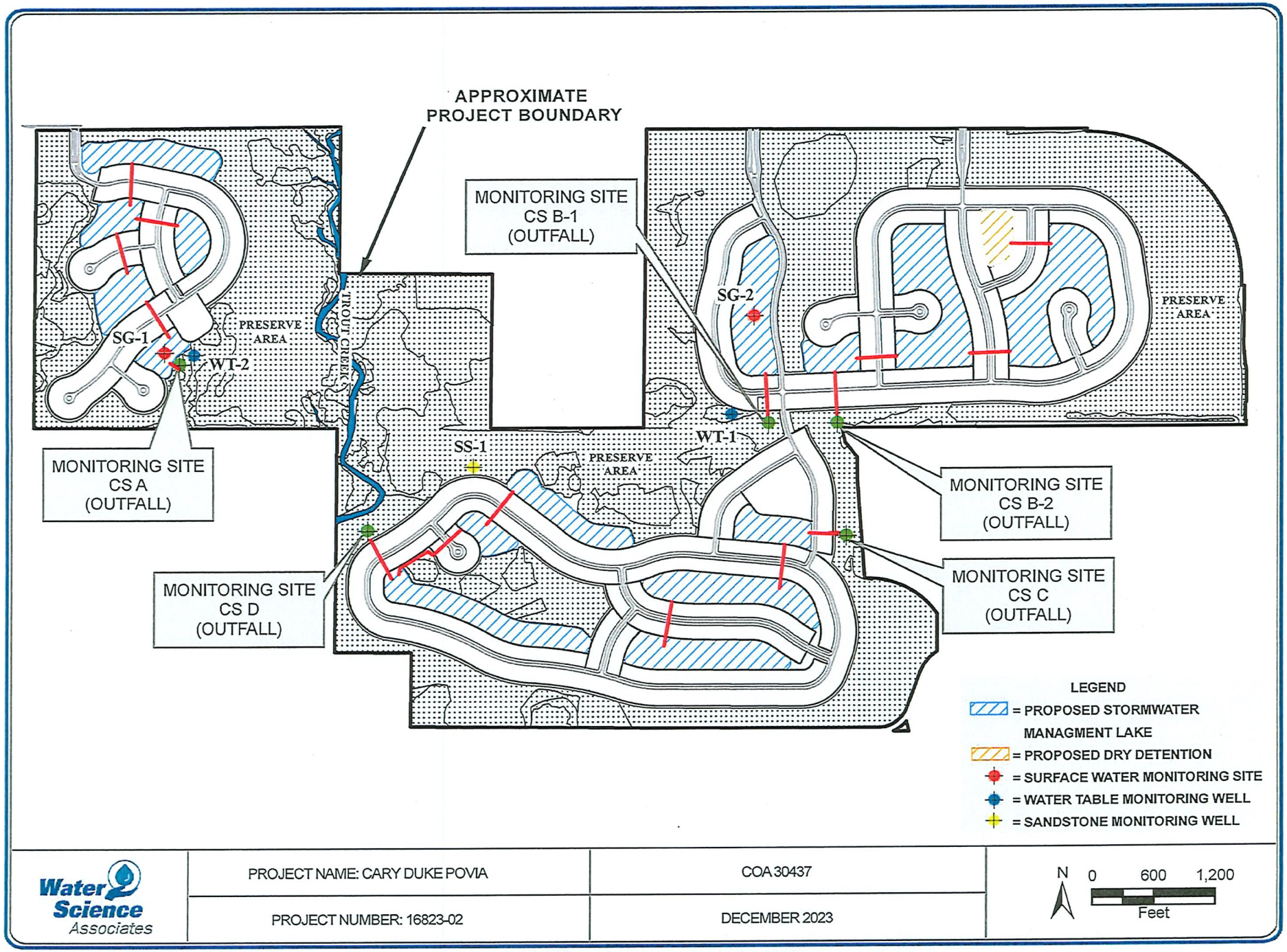


FIGURE 2. PROPOSED SURFACE WATER QUALITY MONITORING SITES

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

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

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. Site Development Regulations

	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
Setbacks			
Street (Interior Private Roads)	20 feet / 10 feet[1]	20 feet / 10 feet[1]	20 feet
Street (Public Roads)	50 feet	50 feet	50 feet
Side	5 feet[5]	5 feet[5] / 0 feet[2]	10 feet[5]
Rear (Principal)	10 feet	10 feet	10 feet
Rear (Accessory)	5 feet[3]	5 feet[3]	5 feet[3]
PD Perimeter	50 feet	50 feet	50 feet
Waterbody	20 feet	20 feet	20 feet
Preserve	20 feet[4]	20 feet[4]	20 feet[4]

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. Utility Connection

   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, pre-construction 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-foot-wide 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. Transportation Impacts

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 mowed 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

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

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

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-on-center. 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