



LEE COUNTY BOARD OF COUNTY COMMISSIONERS

ZONING HEARING AGENDA

Wednesday, October 6, 2021

9:30AM

DCI2020-00014
Z-21-012

Three Oaks Logistics Center

DCI2021-00006
Z-21-011

Sanibel Passage

NOTICE OF PUBLIC HEARING

The Lee County Board of County Commissioners will hold a public hearing at 9:30 am on Wednesday, October 6, 2021 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 cases below.

DCI2020-00014 / Three Oaks Logistics Center

Rezone +/- 77.94 acres from Agricultural (AG-2) to Mixed Use Planned Development (MPD) to allow up to 1,050,000 SF of commercial, retail and industrial uses. The west side of the project will be limited to 500,000 SF with a maximum of 20% commercial / retail uses. The east side of the project will be limited to 550,000 SF with a maximum of 80% commercial / retail uses.

Located half mile north of the intersection of Oriole and Alico Road, Gateway-Airport Planning Community, Lee County, FL

DCI2021-00006 / Sanibel Passage

This request is for an amendment of Z-04-040A, to allow a deviation from Lee County Land Development Code Sec. 10-291(3) which requires residential development of larger than five acres to provide more than one means of ingress or egress from the development to provide only one means of ingress or egress.

Located at 17300 McGregor Blvd., North side of McGregor Blvd. at the intersection of Punta Rassa Rd., Iona-McGregor Planning Community, Lee County, FL.

Copies of the Hearing Examiner's recommendation may be obtained or the electronic file reviewed at the Zoning Section, 1500 Monroe St., Ft. Myers, FL. You may also view and track zoning cases online, through eConnect at <https://accelaaca.leegov.com/aca/>. 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.

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 Joan LaGuardia, (239) 533-2314, 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.

DCI2020-00014
THREE OAKS
LOGISTICS
CENTER

Staff Summary

CASE NUMBER & NAME: DCI2020-00014 / Three Oaks Logistics Center

REQUEST: Rezone 77.94± acres from Agricultural (AG-2) to Mixed Use Planned Development (MPD) to allow up to 1,050,000 SF of commercial, retail and industrial uses. The west side of the project will be limited to 500,000 SF with a maximum of 20% commercial / retail uses. The east side of the project will be limited to 550,000 SF with a maximum of 80% commercial / retail uses.

RESOLUTION NUMBER: Z-21-012

LOCATION: Half mile north of the intersection of Oriole and Alico Road, Gateway-Airport Planning Community, Lee County, FL

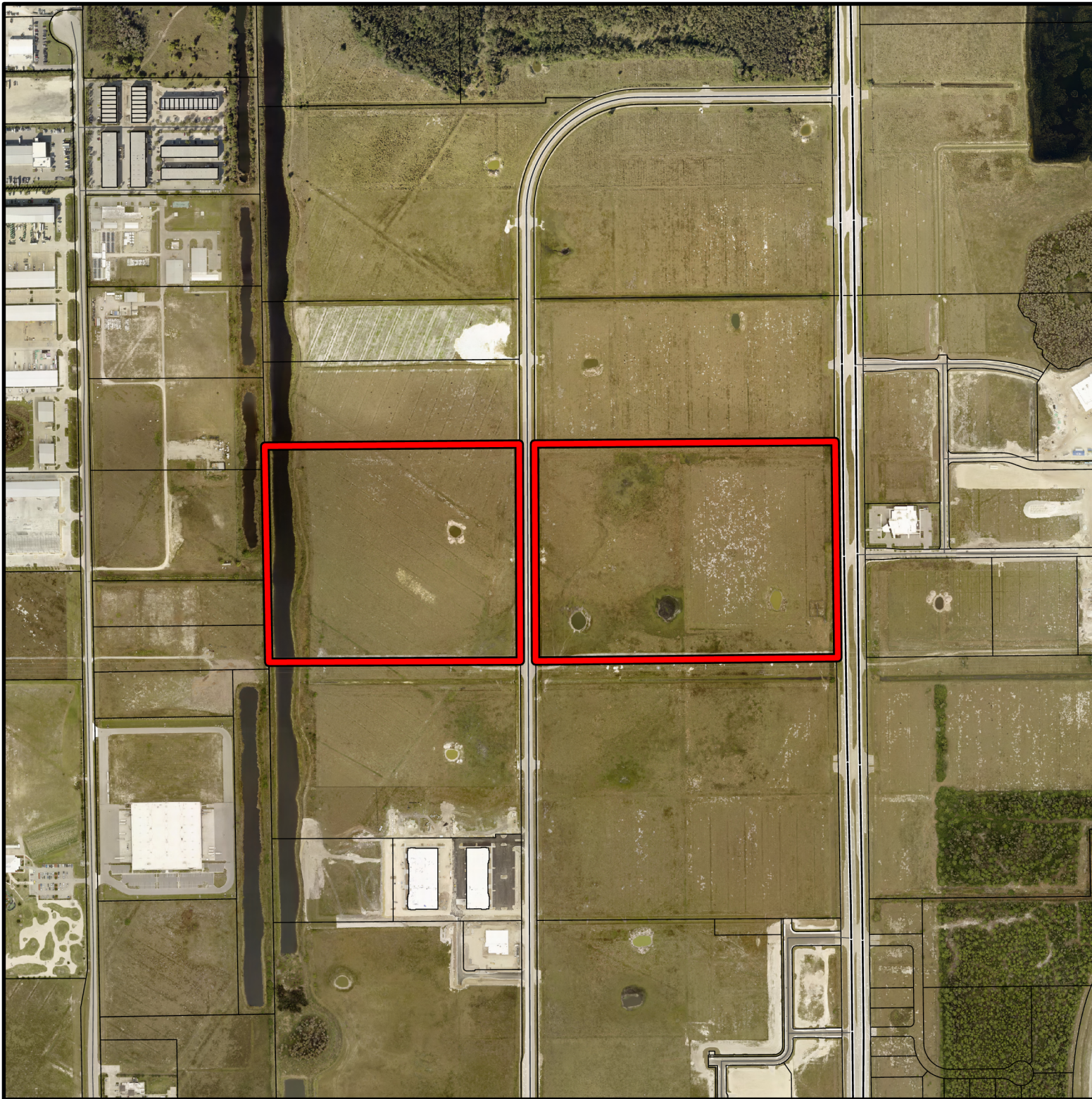
OWNER: ALICO NORTH 26 LLC + ALICO NORTH EF 26 LLC ET AL

APPLICANT: Alan C. Freeman as Trustee

AGENT: Al Quattrone
Quattrone & Associates, Inc.
4301 Veronica Shoemaker Blvd.
Fort Myers, FL 33916

HEARING EXAMINER
RECOMMENDATION: Approve with conditions

PARTICIPANTS: (0) NONE



DCI2020-00014

Aerial

 Subject Property



0 550 1,100
Feet



Summary of Hearing Examiner Recommendation

THREE OAKS LOGISTICS CENTER

(by Quattrone & Associates, Inc., on behalf of Alan C. Freeman, Trustee)

Request:	Rezone from Agriculture (AG-2) to Mixed-Use Planned Development (MPD) to allow 1,050,000 square feet of office, retail, commercial, and industrial uses; and approve 13 deviations from the Land Development Code.
Location:	Half mile north of the intersection of Oriole and Alico Roads Gateway/Airport Planning Community (District 2)
Size:	75.85 acres _±
Recommendation:	Approve with conditions
Deviations:	13
Public Concerns:	No public participants

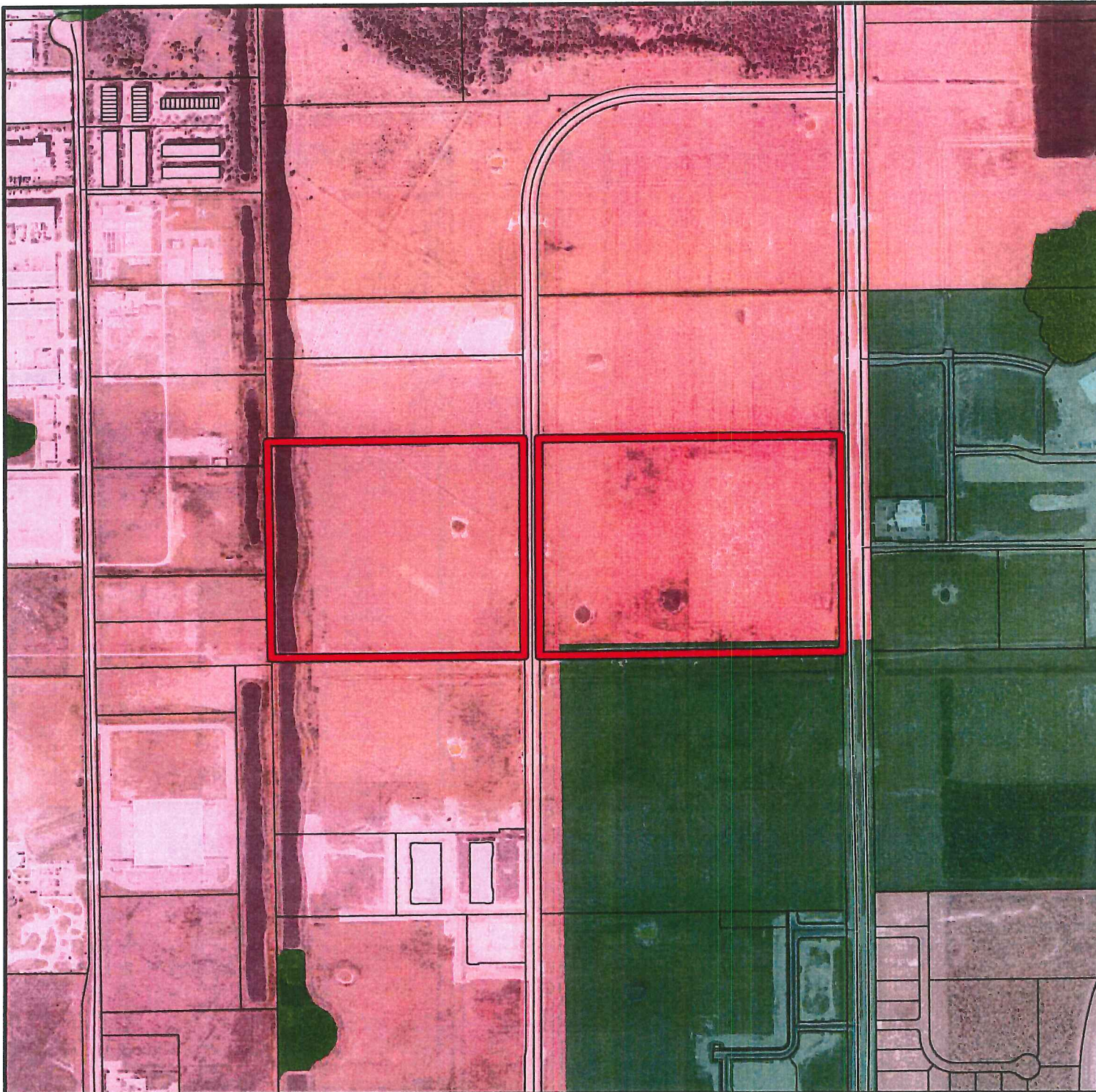
Hearing Examiner Remarks

The proposed project is located in an area intended to meet the County's commercial and industrial needs and includes uses similar to approved development along the Oriole and Three Oaks road corridors.

Detailed recommendation follows


DCI2020-00014

Future Land Use



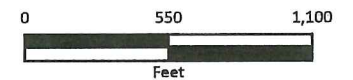
 Subject Property

 Industrial

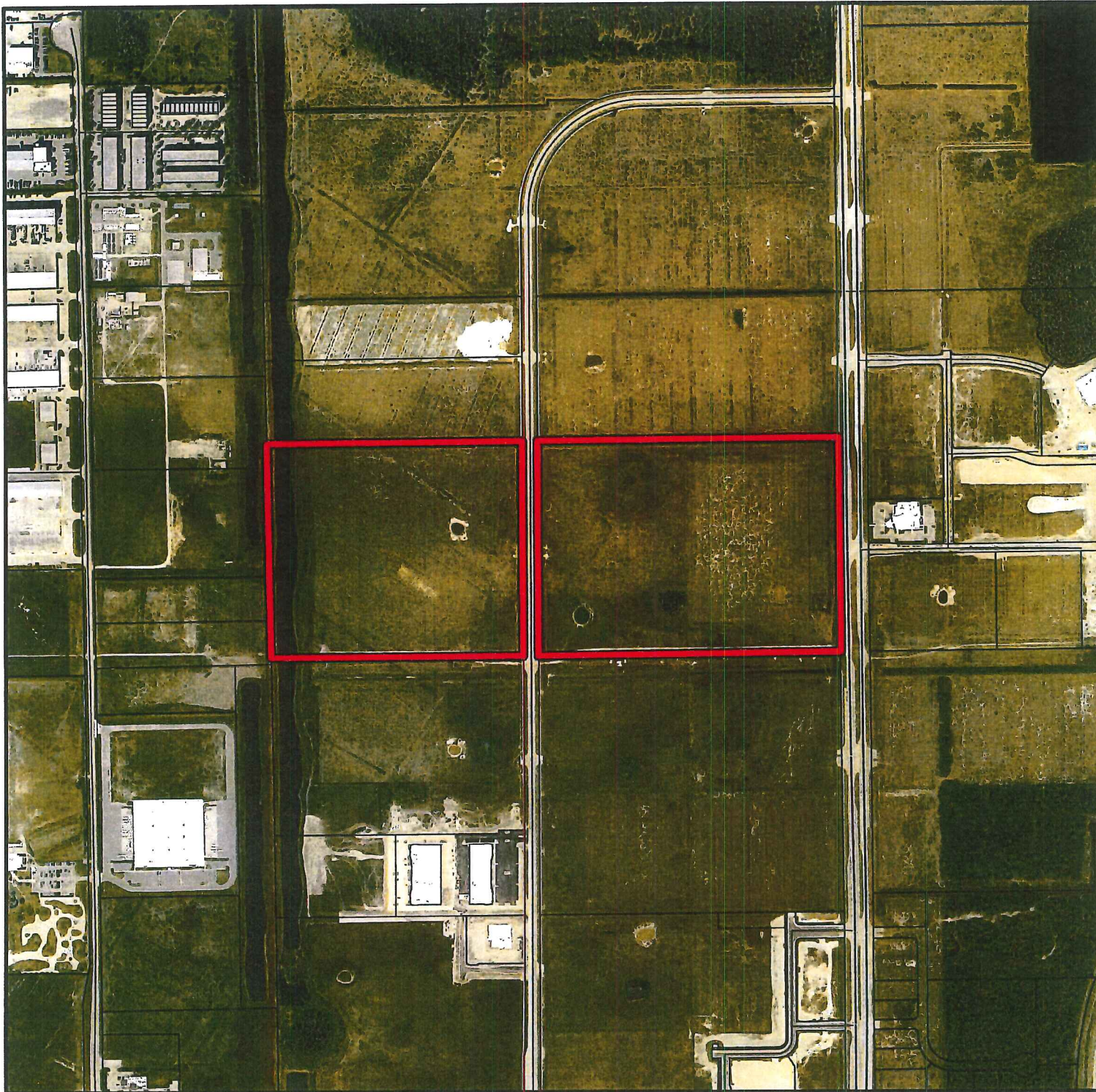
 General Interchange

 Industrial Commercial Interchange

 Wetlands



Lee County
Southwest Florida



DCI2020-00014

Aerial

 Subject Property



0 550 1,100
Feet

 Lee County
Southwest Florida

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2020-00014

Regarding: THREE OAKS LOGISTICS CENTER

Location: Half Mile north of the intersection of Oriole and Alico Roads
Gateway/Airport Planning Community
(District 2)

Hearing Date: August 26, 2021

Record Closed: September 3, 2021

I. Request

Rezone 75.85± acres from Agriculture (AG-2) to Mixed-Use Planned Development (MPD) to allow 1,050,000 square feet of office, retail, commercial, and industrial uses; and approve 13 deviations from the Land Development Code (LDC).

Property legal description is set forth in Exhibit A.

II. Hearing Examiner Recommendation

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

III. Discussion

The Hearing Examiner serves as an advisor to the Board of County Commissioners (Board) on applications to rezone property.¹ In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on the application to rezone 75.85 acres from AG-2 to MPD. The planned development zoning designation is warranted due to project size and classification as "development of county impact."²

In preparing a recommendation to the Board, the Hearing Examiner applies the Lee County Comprehensive Plan (Lee Plan), the Land Development Code (LDC) and other County regulations to facts adduced at hearing. The record must include substantial competent evidence to support the recommendation to the Board. Discussion supporting the Hearing Examiner's recommendation of approval follows below.

¹ LDC 34-145(d)(4)a.

² Lee Plan Glossary and Policies 6.1.3, 7.1.2; LDC 34-2, 34-341.

Synopsis of Request

Applicant seeks to rezone the property from AG-2 to MPD in order to develop 1,050,000 square feet of industrial, commercial, and retail uses. Requested development parameters are as follows:

West of Oriole Road: 500,000 sq. ft. A maximum of 20% of the square footage may be developed with commercial or retail uses (100,000 sq. ft.).

East of Oriole Road: 550,000 sq. ft. A maximum of 80% of the square footage may be developed with commercial or retail uses (440,000 sq. ft.).

Applicant seeks 13 deviations from the LDC and to retain its agricultural exemption until the county issues development orders for vertical development.³ Building heights will not exceed 65 feet.

Staff recommended approval with conditions.

Project History

The property consists of two parcels roughly equal in size on either side of Oriole Road, approximately one half mile north of Alico Road. The parcels are cleared, fenced, and used for cattle grazing.⁴ The tract west of Oriole Road includes a portion of a water management system designed to support surrounding properties.⁵ The parcel east of Oriole Road also has frontage on Three Oaks Parkway.

Character of Area

The property lies in the Gateway/Airport Planning Community north of Alico Road, west of the Interstate. The Lee Plan envisions the Airport/Gateway Planning Community as urbanized with commercial and industrial development.⁶

The property is vacant and zoned for agriculture.⁷ The purpose of agricultural zoning is to provide areas for agricultural operations with ancillary residential uses.⁸ Agricultural endeavors are no longer consistent with the property's

³ The governing condition permits the property owner to retain agricultural exemption status on remainder of property as each tract develops.

⁴ Staff Report. Staff Exhibit "a": Agricultural Uses at Time of Zoning Application, affidavit dated August 21, 2021. Also confirmed by Hearing Examiner site check pursuant to AC 2-6 §3.1.

⁵ The surrounding properties were previously under unified control.

⁶ Lee Plan Vision Statement Paragraph 10.

⁷ See Agricultural Use Affidavit, Staff Exhibit "a".

⁸ LDC 34-651.

designation as a Future Urban Area.⁹ Staff recommends approval of Applicant's request to continue using the remainder of the property as pastureland until the County issues development orders for vertical development.¹⁰

The surrounding area is characterized by ongoing development activity.¹¹ While much of the land north of Alico Road is vacant, there are existing development entitlements along the Oriole and Three Oaks road corridors. These entitlements include development approvals for hotel, light industrial and commercial uses.¹² When viewed in the context of these development approvals, the property meets the definition of infill development.¹³

Granting the zoning request continues development patterns in the area.

Lee Plan

All planned developments must be consistent with the Lee Plan.¹⁴ The property lies within the Industrial Development future land use category.¹⁵ These areas are reserved for industrial activity intended to expand job opportunities in the region.¹⁶ The Industrial Development land use category is intended to host industrial activity and land uses that include as manufacturing, industry, research, recreation, and office.¹⁷ The Lee Plan Economic Element encourages industrial and commercial uses to expand the County's economic base.¹⁸

⁹ Agricultural pursuits are not consistent with the County's vision for the Industrial Development land use category. Lee Plan Objectives 1.1, 2.2, Policy 2.1.1 (the property is in an area with public services and infrastructure); See also Lee Plan Goal 9, Objective 9.2, Policy 9.2.2.; planned developments within future urban areas may not establish new agricultural uses on the property.

¹⁰ However, agricultural uses may not expand beyond areas existing at the time of rezoning. LDC 34-934 note 48.

¹¹ Lee Plan Policy 1.1.1.

¹² Planned development zoning surrounds the site authorizing development of industrial, commercial and hotel uses. Industrial development is concentrated west of Oriole Road. East of Oriole, uses transition from primarily industrial to primarily commercial. The proposed MCP reflects a similar transition of use from west to east.

¹³ Lee Plan Glossary. The site is an infill parcel between existing industrial development to the west and commercial and interchange development to the east. The few remaining properties zoned for agriculture in the area will likely be rezoned because agriculture is not consistent with the area's future urban designation.

¹⁴ LDC 34-411(a).

¹⁵ Lee Plan Objective 1.3, Policies 1.1.7, 1.3.4; Lee Plan Map 1, page 1 or 8.

¹⁶ See Lee Plan Goals 2, 158, Policies 6.1.4, 7.1.3, 7.1.4.

¹⁷ Retail and recreation uses may not exceed 20% of the total acreage in the Industrial Development category of each planning community. Currently, only 4% of the Industrial Development acreage in the Gateway/Airport Planning Community is approved for commercial and retail use. The addition of the requested 540,000 square feet of retail commercial use would increase the percentage by less than one percent. The Staff Report states approving the request would increase commercial uses in the Industrial Development future land use category from 4% to 4.3% of the available acreage in the planning community.

¹⁸ Lee Plan Policy 158.3.2.

Rezoning requests must be compatible with existing or planned uses in the area.¹⁹ The project is located in an area intended to meet the County's commercial and industrial needs.²⁰ While most surrounding properties are vacant, several are approved for hotel, light industrial and commercial uses.²¹ The proposed MPD seeks uses similar to existing zoning approvals along the Oriole and Three Oaks road corridors.²²

The property lies within the Airport Noise Zone Overlay, and is subject to airport related noise.²³ Airport Noise Zone C permits construction subject to public disclosure of airport proximity and potential for noise incidental to its operation.²⁴ The proximity of the airport also prompts conditions to reduce wildlife attractants hazardous to air navigation.²⁵

Project intensity is determined after considering the Lee Plan, availability of public infrastructure/services and nature of surrounding development.²⁶ The property has access to a wide range of public services and infrastructure including public water and sanitary sewer, paved roads, police, fire and emergency medical services.²⁷ Commercial and industrial uses are ideal at this location because of the proximity of the airport, interstate, services and infrastructure.²⁸ The proposed commercial/industrial uses will contribute to a positive business climate creating additional employment opportunities for the region.²⁹

Transportation

The site is bifurcated by Oriole Road approximately a half mile north of Alico Road.³⁰ The eastern tract fronts on both Oriole Road and Three Oaks

¹⁹ LDC 34-145(d)(4)(a).

²⁰ Lee Plan Policy 158.3.5; See also Gateway/Airport Planning Community Lee Plan Vision Statement paragraph 10.

²¹ Planned development zoning surrounds the site authorizing development of industrial, commercial and hotel uses.

²² Although the site is currently zoned for agriculture, its future urban future land use designation renders agricultural uses inconsistent with the County's vision for the area.

²³ Specifically, Airport Noise Zone C. Lee Plan Policy 1.7.1, Lee Plan Map 1, page 5 of 7; LDC Map: SWFIA Airport Noise Zone Map.

²⁴ LDC 34-1104(a)(3) and (b).

²⁵ LDC 34-1110(a)(8) and (9).

²⁶ LDC 34-413; Lee Plan 7.1.3.

²⁷ Lee Plan Policies 6.1.1, 6.1.3, 7.1.3, LDC 34-411(i) and (j). Potable water service will be provided by Green Meadows Water Treatment Plant. Sanitary sewer service provided by Three Oaks Water Reclamation Facility. The site has access to two paved roadways. The closest transit route is Lee Plan Route 60 with stops approximately a half mile south on Alico Road.

²⁸ Lee Plan Objectives 2.1, 2.2, Policies 2.2.1, 2.2.2, 6.1.4, 7.1.3.

²⁹ Lee Plan Goal 158; further, proposed location in a land area allocated to meet County's future commercial and industrial needs. Lee Plan Objective 158.3 and Policy 158.3.5; See also Lee Plan Table 1(b) and Policy 7.1.10. (County approvals of industrial land uses must be consistent with the goals, objectives and policies of the Lee Plan Economic Element.)

³⁰ Oriole Road is a County maintained collector roadway. Lee County Administrative Code 11-1.

Parkway. Oriole Road is a two lane County maintained collector road. Three Oaks Parkway is a County maintained four-lane divided arterial roadway.³¹ Three Oaks Parkway runs north/south from south Fort Myers to Naples, serving as a parallel reliever for I-75. Plans to extend the roadway north to Daniels Parkway are underway.

The proposed MCP includes six access drives onto Oriole Road and three onto Three Oaks Parkway.³² The northernmost and southernmost driveways onto Three Oaks Parkway will be limited to right in/right out only turning movements.

Traffic impacts were evaluated based on buildout in 2025. Applicant's Transportation Impact Statement predicts deficiencies at buildout in two road segments and three intersections.³³ The facilities will operate below adopted level of service standards *regardless of proposed development traffic* and are considered pre-existing transportation deficiencies.³⁴

Three intersections on Oriole Road at the site access will operate below adopted level of service during the PM peak hour due to project traffic.³⁵ The County will evaluate necessary site related improvements, including turn lanes, at the development order review stage.³⁶ In addition, development will be subject to road impact fees.³⁷

Environmental

The site is cleared pastureland with no environmental features of note.³⁸ Applicant's Protected Species Survey identified 10 active burrowing owl burrows. For this reason, staff recommends a condition requiring a Florida Fish and Wildlife Conservation Commission permit prior to site work.³⁹

Project drainage includes dry pretreatment/attenuation areas discharging into the existing storm water conveyance system along the westernmost property line.

³¹ Lee County Administrative Code 11-1.

³² The MCP reflects six driveways onto Oriole Road and one full median opening and two right in/right out access drives onto Three Oaks Parkway.

³³ Staff Report Attachment H: Transportation Impact Statement for Three Oaks Logistics Center prepared by TR Transportation Consultant's, Inc. dated November 19th, 2020. See also Memo from Lili Wu, Senior Planner with Department of Community Development dated July 12, 2021. Deficiencies exist during the PM peak hour at buildout.

³⁴ Affected road segments: Oriole Road north of Alico Road, Lee Road south of Alico Road. Affected intersections: Alico and Lee Roads, Alico and Oriole Roads, Alico Road and Three Oaks Parkway.

³⁵ Staff Report Attachment H.

³⁶ Lee Plan Objective 39.1, Policy 39.1.1.

³⁷ Lee Plan Policy 38.1.1, LDC 2-265.

³⁸ The environmental survey confirmed protected species do not utilize the property.

³⁹ Lee Plan Policy 123.4.5.

The County's land development regulations dictate that when compatible development surrounds a proposed planned development, the design emphasis must integrate the project with approved development.⁴⁰ Area zoning approvals include special conditions to establish a cohesive roadside buffer along Three Oaks Parkway.⁴¹ A condition of approval requires enhanced buffering along Three Oaks Parkway reflecting conditions imposed on surrounding planned developments. The enhanced buffer promotes visual harmony along the road corridor.⁴²

Recommended conditions of approval require project landscaping and buffer plantings to consist of native Florida Friendly Landscaping.⁴³

The MCP depicts code required open space and buffers.⁴⁴

Conditions

The County must administer the zoning process so proposed land uses minimize adverse impacts on adjacent property and protect natural resources.⁴⁵ Conditions must plausibly relate to anticipated impacts, and be pertinent to mitigating impacts to public health, safety and welfare.⁴⁶

The requested MPD will be subject to several conditions of approval. The conditions reasonably relate to the impacts anticipated from the development.⁴⁷

The Hearing Examiner recommends revisions to Conditions to improve clarity.

Deviations

The request seeks 13 deviations from the LDC.⁴⁸ A "deviation" is a departure from a land development regulation.⁴⁹ Applicants must demonstrate each requested deviation enhances the planned development and will not cause a detriment to the public.⁵⁰

⁴⁰ Lee Plan Policies 6.1.6, 7.1.2; LDC 34-411(i) and (j).

⁴¹ Staff Report Attachment J (Environmental Staff Report) and Lee County AC 2-6, §2.3 D(4)(b): Hearing Examiner may take judicial notice of previous Board decisions; See also Lee Plan Objective 2.9.

⁴² Lee Plan Policies 6.1.3, 7.1.3.

⁴³ Lee Plan Glossary, Lee Plan Objective 126.2, Policies 54.1.1, 54.1.3, 60.4.1 126.2.1.

⁴⁴ LDC 10-415, 34-935(g).

⁴⁵ LDC 34-145(d)(4)a.2.(b), LDC 34-377(a)(3), and 34-932(b and c).

⁴⁶ LDC 34-932(c).

⁴⁷ LDC 34-83(b)(4)a.3

⁴⁸ Several deviations were necessary to reduce airport hazards from wildlife.

⁴⁹ LDC 34-2.

⁵⁰ LDC 34-373(a)(9).

Applicant's deviations pertain to intersection separation,⁵¹ water retention excavation setbacks and bank slopes,⁵² fencing,⁵³ right-of-way buffers,⁵⁴ littoral shelf plantings,⁵⁵ substitution of wetland trees,⁵⁶ roadway planting strips,⁵⁷ cul-de-sacs,⁵⁸ and signs.⁵⁹ Applicant offered testimony/evidence to support approval of the deviations based on LDC review standards.⁶⁰ Staff recommended approval of all deviations finding the deviations advance the objectives of the planned development and protect public health, safety and welfare.

The LDC requires the Hearing Examiner to recommend approval, approval with modifications or denial of requested deviations based upon the applicable standard of review. The Hearing Examiner finds the requested deviations meet LDC approval criteria.

Conclusion

The Hearing Examiner recommends approval of the proposed Three Oaks Logistics Center MPD.

IV. Findings and Conclusions

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

- A. The proposed Mixed Use Planned Development complies with the Lee Plan. Lee Plan Vision Statement Paragraph 10 (Gateway/Airport), Lee Plan Goals 2, 4, 6, 7, 61, 77, 158, Objectives 1.7, 2.1, 2.2, 4.1, 11.1, 47.2, 126.2, 158.3, Policies 1.1.7, 1.7.1, 2.1.2, 2.2.1, 6.1.1, 6.1.4, 6.1.5, 6.1.7, 7.1.1, 7.1.2, 7.1.3, 7.1.5, 7.1.9, 7.1.10, 61.3.6, 158.3.5.
- B. *As conditioned*, the Mixed Use Planned Development:
 - 1. Meets the LDC and other county regulations or qualifies for deviations. LDC §§ 2-265, 2-385, 10-287, 10-321, 10-415, 10-416(d), 10-1104, 34-411, 34-413, 34-491, 34-612(2), 34-935(g), 34-1104, 34-1110(a);

⁵¹ LDC 10-285(a).

⁵² LDC 10-329(d)(1)a.3. and LDC 10-329(d)(4).

⁵³ LDC 10-329(d)(6).

⁵⁴ LDC 10-416(d)(4)3.

⁵⁵ LDC 10-418(2)a.

⁵⁶ LDC 10-418(2)(d)(3); Deviations from LDC planting requirements are necessary due to site's proximity to the airport. Lee Plan Policy 47.6.4; LDC 34-1012(a)(10).

⁵⁷ LDC 10-296(e)(2)d.


⁵⁸ LDC 10-296(k).

⁵⁹ LDC 30-153(2).

⁶⁰ LDC 34-377(a)(4).

2. Is compatible with existing and planned uses in the surrounding area. Lee Plan Policies 2.1.2, 2.2.1, 6.1.3, 6.1.4, 7.1.2, 7.1.3;
 3. Provides access sufficient to support the proposed development intensity. Expected impacts on transportation facilities will be addressed by county regulations and conditions of approval. Lee Plan Objective 39.1, Policies 2.2.1, 6.1.1, 6.1.3, 6.1.5, 7.1.1, 7.1.2, 7.1.5, 38.1.1, 39.1.1; LDC §34-411(d) and (e);
 4. Will not adversely affect environmentally critical areas and natural resources. Lee Plan Goals 61, 77, Objectives 77.2, 77.3, 126.2, Policies 54.1.1, 54.1.3, 60.4.1, 61.2.4, 61.3.6, 61.3.11, 123.4.5, 126.2.1, Standard 4.1.4; and
 5. Will be served by urban services including paved roads, potable water, sanitary sewer, urban surface water management, police, fire, and emergency services. Lee Plan Glossary, Lee Plan Goals 2, 4, Objectives 2.1, 4.1, 6.1, 7.1, Policies 2.2.1, 6.1.4, 7.1.1, 7.1.5, 7.1.6, Standards 4.1.1 and 4.1.2 and Maps 6, 7; LDC §34-411(d).
- C. The proposed uses are appropriate at the proposed location. Lee Plan Goal 158, Objective 2.1, Policies 2.1.1, 2.1.2, 6.1.1, 6.1.2, 7.1.1, 7.1.2, 7.1.3.
- D. Recommended conditions and applicable regulations provide sufficient safeguards to protect the public interest. In addition, recommended conditions reasonably relate to impacts expected from the proposed development. Lee Plan Policies 1.7.1, 6.1.1, 6.1.3, 6.1.6, 7.1.2, 7.1.8, 47.2.2, 47.2.5, 123.2.13; LDC §§10-1104(b), 34-377(a)(3), 34-411, 34-932(b) and (c), 34-1012, 34-1104.
- E. As conditioned, the requested deviations:
1. Enhance the planned development; and
 2. Preserve and promote the general intent of the LDC to protect the public health, safety and welfare.

Date of Recommendation: September 9, 2021.



Donna Marie Collins
Chief Hearing Examiner

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

Exhibits to Hearing Examiner's Recommendation

Exhibit A Legal Description and Vicinity Map
Exhibit B Recommended Conditions and Deviations (Strike Through & Underlined Version)
Exhibit C Recommended Conditions and Deviations (Clean Version)
Exhibit D Exhibits Presented at Hearing
Exhibit E Hearing Participants
Exhibit F Information

Exhibit A

LEGAL DESCRIPTION AND VICINITY MAP

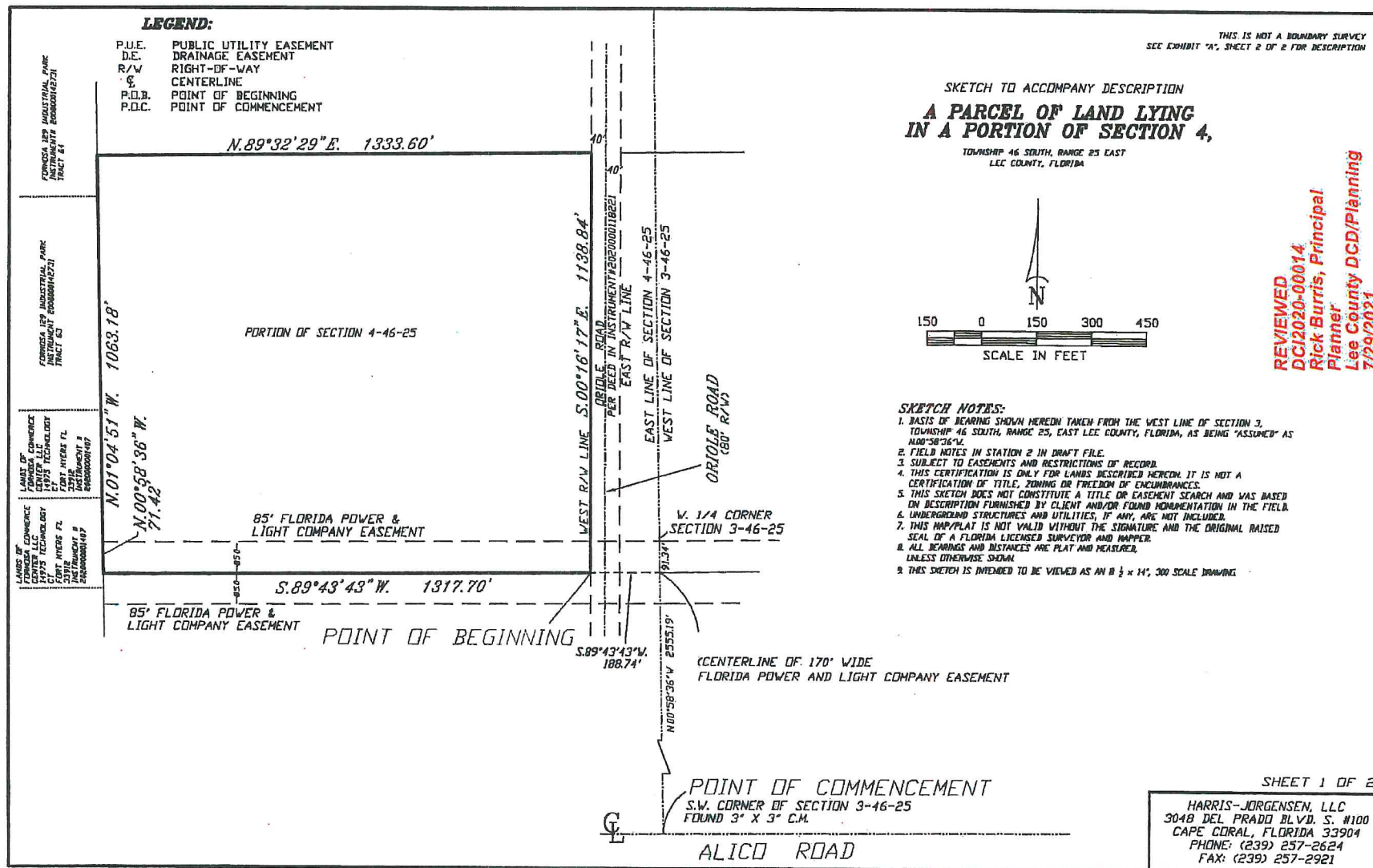


Exhibit A

DESCRIPTION TO ACCOMPANY SKETCH

EXHIBIT "A"

A PARCEL OF LAND LYING
IN A PORTION OF SECTION 4,
TOWNSHIP 46 SOUTH, RANGE 25 EAST,
LEE COUNTY, FLORIDA

DESCRIPTION:

A PLOT OR PARCEL OF LAND LYING IN A PORTION OF SECTION
4, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA,
BEING FURTHER DESCRIBED AS FOLLOWS:

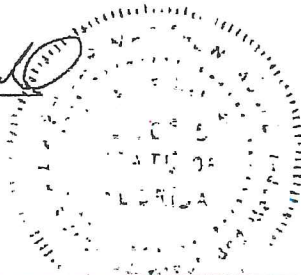
COMMENCING AT THE SOUTHWEST CORNER OF THE AFORESAID
SECTION 4; THENCE RUN N.00°58'36"W. ALONG THE EAST LINE
OF SAID SECTION 4 TO A POINT ALONG THE CENTERLINE OF A
170 FEET WIDE FLORIDA POWER AND LIGHT COMPANY EASEMENT
FOR 2555.19 FEET; THENCE RUN S.89°43'43"W. TO A POINT
ALONG THE WEST RIGHT OF WAY LINE OF ORIOLE ROAD (80
FEET WIDE) FOR 188.74 FEET TO THE POINT OF BEGINNING;
THENCE RUN S.89°43'43"W. FOR 1317.70 FEET; THENCE RUN
N.00°58'36"W. FOR 71.42 FEET; THENCE RUN N.01°04'51"W FOR
1063.18 FEET; THENCE RUN N.89°32'29"E. TO A POINT ALONG THE
AFORESAID WEST RIGHT OF WAY LINE OF ORIOLE ROAD (80
FEET WIDE) FOR 1333.60 FEET; THENCE RUN S.00°16'17"E. ALONG
SAID WEST RIGHT OF WAY LINE FOR 1138.84 FEET TO THE
POINT OF BEGINNING.

CONTAINING: 1,506,761.38 SQUARE FEET OR 34.59 ACRES, MORE
LESS.

REVIEWED
DCI2020-00014
Rick Burris, Principal
Planner
Lee County DCD/Planning
7/29/2021

Phillip M Mould

PHILLIP M MOULD
LS6515
09/30/2020



SHEET 2 OF 2

HARRIS-JORGENSEN, LLC
3048 DEL PRADO BLVD. S. #100
CAPE CORAL, FLORIDA 33904
PHONE: (239) 257-2624
FAX: (239) 257-2921

Exhibit A

DESCRIPTION TO ACCOMPANY SKETCH

EXHIBIT "B"

A PARCEL OF LAND LYING
IN PORTIONS OF SECTIONS 3 AND 4,
TOWNSHIP 46 SOUTH, RANGE 25 EAST,
LEE COUNTY, FLORIDA

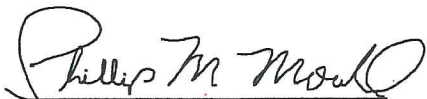
DESCRIPTION:

A PLOT OR PARCEL OF LAND LYING IN A PORTION OF SECTIONS
3 AND 4, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY,
FLORIDA, BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE AFORESAID
SECTION 3; THENCE RUN N.00°58'36"W. ALONG THE COMMON LINE
OF SAID SECTIONS 3 AND 4 TO A POINT ALONG THE
CENTERLINE OF A 170 FEET WIDE FLORIDA POWER AND LIGHT
COMPANY EASEMENT FOR 2555.19 FEET TO THE POINT OF
BEGINNING; THENCE RUN S.89°43'43"W. TO A POINT ALONG THE
EAST RIGHT OF WAY LINE OF ORIOLE ROAD (80 FEET WIDE)
FOR 108.74 FEET; THENCE RUN N.00°16'17"W. ALONG SAID EAST
RIGHT OF WAY LINE FOR 1139.10 FEET; THENCE RUN
N.89°32'29"E. TO A POINT ALONG THE WEST RIGHT OF WAY LINE
OF THREE OAKS PARKWAY (150 FEET WIDE) FOR 1576.59 FEET;
THENCE RUN S.00°38'24"E. ALONG SAID WEST RIGHT OF WAY
LINE FOR 1134.93 FEET; THENCE RUN S.89°21'36"W. TO A POINT
ALONG THE AFORESAID COMMON LINE OF SAID SECTIONS 3 AND
4 FOR 1475.17 FEET TO THE POINT OF BEGINNING.

CONTAINING: 1,797,304.06 SQUARE FEET OR 41.26 ACRES, MORE
OR LESS.

REVIEWED
DCI2020-00014
Rick Burris, Principal
Planner
Lee County DCD/Planning
7/29/2021



PHILLIP M MOULD
LS6515
09/30/2020

SHEET 2 OF 2

HARRIS-JORGENSEN, LLC
3048 DEL PRADO BLVD. S. #100
CAPE CORAL, FLORIDA 33904
PHONE: (239) 257-2624
FAX: (239) 257-2921

LEGEND:

P.U.E.	PUBLIC UTILITY EASEMENT
D.E.	DRAINAGE EASEMENT
R/W	RIGHT-OF-WAY
C.	CENTERLINE
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT

SKETCH TO ACCOMPANY DESCRIPTION

**A PARCEL OF LAND LYING
IN PORTIONS OF SECTIONS 3 AND 4,**

TOWNSHIP 46 SOUTH, RANGE 25 EAST
LEE COUNTY, FLORIDA

N. 89° 32' 29" E. 1576.59'

THIS IS NOT A BOUNDARY SURVEY
SEE EXHIBIT "B", SHEET 2 OF 2 FOR DESCRIPTION

REVIEWED
DCI/2020-00014
Rick Burris, Principal
Planner
Lee County DCB/Planning
7/29/2021

PORTION OF SECTION 3-46-25

W. 1/4 CORNER
SECTION 3-46-25

85' FLORIDA POWER &
LIGHT COMPANY EASEMENT

S. 89° 21' 36" W. 1475.17'

85' FLORIDA POWER &
LIGHT COMPANY EASEMENT

S. 89° 43' 43" W.
108.74'

POINT OF BEGINNING
(CENTERLINE OF 170' WIDE
FLORIDA POWER AND LIGHT COMPANY EASEMENT

POINT OF COMMENCEMENT

S.W. CORNER OF SECTION 3-46-25
FOUND 3" X 3" C.M.

ALICO ROAD

150 0 150 300 450

SCALE IN FEET

SCALE IN FEET
SHEET 1 OF 2

HARRIS-JORGENSEN, LLC
3048 DEL PRADO BLVD. S. #100
CAPE CORAL, FLORIDA 33904
PHONE: (239) 257-2624
FAX: (239) 257-2921

SKETCH NOTES:

4. ADJACENT LANDS HEREIN TAKEN FROM THE WEST LINE OF SECTION 3,
TOWNSHIP 46 NORTH, RANGE 25, EAST LEE COUNTY, FLORIDA, AS BEING "ASSUMED" AS
N00-5936-36.
5. FIELD NOTES IN STATION 2 IN DRAFT FILE.
6. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
7. THIS CERTIFICATION IS ONLY FOR LANDS DESCRIBED HEREIN. IT IS NOT A
CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.
8. THIS SKETCH DOES NOT CONSTITUTE A TITLE OR EASEMENT SEARCH AND WAS BASED
ON THE RECORDS OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, IN THE FIELD.
9. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED.
10. THIS MAP/PATL IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED
SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
11. ALL BOUNDARIES AND DISTANCES ARE PLAT AND MEASURED,
UNLESS OTHERWISE SHOWN.
12. THIS SKETCH IS INTENDED TO BE VIEWED AS 8 1/2 x 14", 300 SCALE DRAWING.



DCI2020-00014

Zoning

 Subject Property

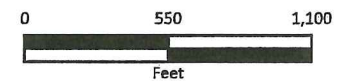


Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS

As revised by the Hearing Examiner

(Strike Through & Underlined Version)

CONDITIONS

1. Master Concept Plan/Development Parameters

Master Concept Plan. Development must be consistent with the Master Concept Plan (MCP) entitled "Three Oaks Logistics Center" received August 31, 2021, except where modified by conditions below.

Development must comply with the Lee Plan and the Lee County Land Development Code (LDC) at time of local Development Order approval, subject to County approved deviations. Subsequent changes to the MCP require further development review and approval.

Approved Development Parameters.

This project is approved for 1,050,000 square feet of commercial and industrial development floor area as follows:

510,000 square feet industrial floor area and
540,000 square feet commercial floor area.

Approved square footage may be distributed on parcels east and west of Oriole Road as follows:

West of Oriole Road: 500,000 total square footage. A maximum of 20% of the square footage west of Oriole Road may be developed with commercial or retail uses (100, 000 sq. ft.).

East of Oriole Road: 550,000 total square footage. A maximum of 80% of the square footage east of Oriole Road may be developed with commercial or retail uses (440,000 sq. ft.).

This zoning resolution approves 13 deviations from the LDC. Building heights may not exceed 65 feet.

2. Permitted Uses and Site Development Regulations

a. Schedule of Uses

Tracts A & B

(Subtracts A-1 through A-4 and B-1 through B-4)

Accessory Uses and Structures
Administrative Offices
Agricultural Uses and Agricultural Accessory Uses (Subject to
Condition 6.3)

Hearing Examiner Note: Agricultural Uses are addressed in
Condition 3)

Aircraft Food Services and Catering
Animals: Clinic or Kennel
Automobile Repair and Service: All Groups
Automobile Service Station (Limited to One for the MPD)
Bait and Tackle Shop
Banks and Financial Establishments: All Groups
Bar or Cocktail Lounge
Boats:
 Boat Parts Store
 Repair and Service
 Sales
 Dry Storage
Broadcast Studio, Commercial Radio and Television
Building Material Sales
Business Services: All Groups
Bus Station/Depot
Caretaker's Residence
Car Wash
Cleaning and Maintenance Services
Clothing Stores, General
Clubs: Commercial & Fraternal, Membership Organization
Cold Storage, Pre-Cooling, Warehouse & Processing Plant
Computer and Data Processing Services
Consumption on Premises in conjunction with restaurant or bar or
 cocktail lounge
Contractors and Builders: All Groups
Convenience Food and Beverage with a maximum of 20 fuel
 pumps (Limited to one for the entire MPD)
Cultural Facilities
Day Care Center: Child, Adult
Department Store
Drive through Facility for any Permitted Use
Drugstore/Pharmacy
Emergency Operations Center
EMS, Fire or Sheriff's Station
Entrance Gates and Gatehouse
Essential Services

Essential Service Facilities: Group I
Excavation: Water Retention
Excess Spoil Removal
Factory Outlets, Point of Manufacture Only
Fences, Walls
Food and Beverage Service, Limited
Food Stores: All Groups
Freight or Cargo Handling Systems
Funeral Home and Mortuary (with or without crematorium)
Gasoline Dispensing System, Special
Gift and Souvenir Shop
Hardware Store
Health Care Facilities: All Groups
Hobby, Toy and Game Shops
Household and Office Furnishings: All Groups
Insurance Companies
Laundry or Dry Cleaning: All Groups
Lawn & Garden Supply Store
Library
Maintenance Facility (Government)
Manufacturing of:
 - Apparel Products
 - Boats
 - Chemical and Allied Products: All Groups
 - Electrical Machinery and Equipment
 - Fabricated Metal Products, Groups II, III
 - Food and Kindred Products, Groups II, III
 - Furniture and Fixtures
 - Leather and Leather Products, Group II
 - Lumber and Wood Products, Group II
 - Machinery, all groups
 - Measuring, Analyzing and Controlling Instruments
 - Novelties, Jewelry, Toys and Signs, All Groups
 - Paper and Allied Products, Groups II, III
 - Rubber and Plastic Products, Group II
 - Stone, Clay, Glass and Concrete Products, Group I
 - Textile Mill Products: All Groups
 - Transportation Equipment, Group I
Medical Office
Motion Picture Production Studio
Nightclubs (limited to one for the entire MPD)
Non-store Retailers: All Groups
Paint, Glass and Wallpaper
Parcel and Express Services
Package Store
Parks, Groups I, II

Parking Lot:

- Accessory
- Commercial
- Garage
- Temporary

Personal Services: All Groups (Excluding Steam or Turkish Baths, Escort Services, Palm Readers, Fortunetellers or Card Readers)

Pet Services

Pet Shop

Photofinishing Laboratory

Place of Worship

Plant Nursery

Post Office

Printing and Publishing

Processing and Warehousing

Real Estate Sales Office

Recreation Facilities Commercial: Groups I, III, and IV

Rental or Leasing Establishment: All Groups

Repair Shops: Groups I, II, III and IV

Research and Development Laboratories: All Groups

Restaurant, Fast Food

Restaurants: All Groups

Retail and wholesale sales, when incidental and subordinate to the principal use on same premises

Schools:

- Commercial
- Noncommercial

Signs

Social Services: Groups I, II

Specialty Retail Shops: All Groups

Storage: Open & Indoor

Studios

Temporary Uses

Theater, Indoor

Transportation Services: Groups II, III and IV

Used Merchandise Stores: All Groups

Variety Store

Vehicle & Equipment Dealers: All Groups

Warehouse:

- Mini-warehouse,
- Private,
- Public,

Wholesale Establishments: Groups I, II, and IV

Tracts C and D

Accessory Uses and Structures
Administrative Offices
Agricultural Services: Office/Base Operations
Agricultural Uses and Agricultural Accessory Uses (**Subject to Condition 6.3**)

Hearing Examiner Note: Agricultural Uses are addressed in Condition 3)

Aircraft Food Services and Catering
Animals: Clinic or Kennel
Automobile Repair and Service: All Groups
Banks and Financial Establishments: Group I
Boats:
 Boat Parts Store
 Repair and Service
 Sales
 Dry Storage
Broadcast Studio, Commercial Radio and Television
Building Material Sales
Business Services: All Groups
Bus Station/Depot
Caretaker's Residence
Car Wash
Cleaning and Maintenance Services
Cold Storage, Pre-Cooling, Warehouse & Processing Plant
Computer and Data Processing Services
Consumption on Premises in conjunction with restaurant
Contractors and Builders: All Groups
Drive through Facility for any permitted use
Drugstore/Pharmacy
Emergency Operations Center
EMS, Fire or Sheriff's Station
Entrance Gates and Gatehouse
Essential Services
Essential Service Facilities: Group I
Excavation: Water Retention
Excess Spoil Removal
Fences, Walls
Food and Beverage Service, Limited
Freight or Cargo Handling Systems
Gasoline Dispensing System, Special
Hardware Store
Hobby, Toy and Game Shops
Household and Office Furnishings: All Groups

Laundry or Dry Cleaning: All Groups

Lawn & Garden Supply Store

Maintenance Facility (Government)

Manufacturing of:

- Apparel Products
- Boats
- Chemical and Allied Products: All Groups
- Electrical Machinery and Equipment
- Fabricated Metal Products, Groups II, III
- Food and Kindred Products, Groups II, III
- Furniture and Fixtures
- Leather and Leather Products, Group II
- Lumber and Wood Products, Group II
- Machinery, All groups
- Measuring, Analyzing and Controlling Instruments
- Novelties, Jewelry, Toys and Signs, All Groups
- Paper and Allied Products, Groups II, III
- Rubber and Plastic Products, Group II
- Stone, Clay, Glass and Concrete Products, Group I
- Textile Mill Products: All Groups
- Transportation Equipment, Group I

Medical Office

Motion Picture Production Studio

Non-store Retailers: All Groups

Paint, Glass and Wallpaper

Parcel and Express Services

Parking Lot:

- Accessory
- Commercial
- Garage
- Temporary

Personal Services: All Groups (Excluding Steam or Turkish Baths, Escort Services, Palm Readers, Fortunetellers or Card Readers)

Pet Services

Pet Shop

Photofinishing Laboratory

Place of Worship

Post Office

Printing and Publishing

Processing and Warehousing

Real Estate Sales Office

Recreation Facilities Commercial: Groups I, III, and IV

Rental or Leasing Establishment: All Groups

Repair Shops: Groups I, II, III and IV

Research and Development Laboratories: All Groups

Restaurants: Groups I, II
Retail and wholesale sales, when incidental and subordinate to a principal use on same premises
Schools:
 Commercial
 Noncommercial
Signs
Social Services: Groups I, II
Specialty Retail Shops: All Groups
Storage: Open & Indoor
Studios
Temporary Uses
Transportation Services: Groups II, III and IV
Truck Stop, Trucking Terminal
Used Merchandise Stores: All Groups
Vehicle & Equipment Dealers: All Groups
Warehouse: Mini-warehouse, Private, Public
Wholesale Establishments: Groups I, III and IV

b. Site Development Regulations

Minimum Lot Area and Dimensions

Lot Size:	10,000 square feet
Lot Width:	100 feet
Lot Depth	100 feet

Minimum Setbacks

Street, Public	25 feet
Internal Street	20 feet
Side	10 feet
Rear	15 feet
Water Body	20 feet (top of bank)

Minimum Perimeter Setbacks	15 feet / 25 feet (Industrial Uses)
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Accessory Uses:	Per LDC 34-1171 et seq.
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Maximum Lot Coverage:	40%
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Minimum Open Space:	Commercial 30%
	Industrial 20%

Maximum Building Height:	65 feet (height in excess of 35 feet must maintain additional building)
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setbacks and separation per LDC §34-2174(a))

Building Separation:

The greater of one-half the sum of the heights of both buildings, or 20 feet.

3. **Agricultural Uses**

Existing bona fide agricultural uses (livestock pasture) on this site are allowed uses in compliance with the following:

- a. Bona fide agricultural uses in the form of cattle grazing currently exist on the entire 75.85-acre property. Bona fide agricultural uses may continue on any portion of the property that meets the state requirements for bona fide agricultural use of the property. The approved existing agricultural uses may not be expanded beyond the boundaries that existed at the time of rezoning. No new agricultural uses are authorized.
- b. Upon rezoning, additional clearing of trees or other vegetation in agricultural areas must receive a vegetation removal permit from Lee County as provided for in the Lee County Development Code. Existing areas of bona fide agricultural use may be maintained, i.e., mowed, but not cleared or expanded. This prohibition is not intended to preclude County approval requests for the removal of invasive exotic vegetation.
- c. Existing agricultural uses within a tract or phase must be discontinued upon local development order approval for development defined in LDC Chapter 34. Development not included within the Chapter 34 definition but that requires a development order under Chapter 10 (including but not limited to plats, lots splits, and lot re-combinations) will not trigger the requirement to discontinue agricultural uses.

4. **Development Permits**

County development permits do not establish a right to obtain permits from state or federal agencies. Further, it does not establish liability on the part of the County if Developer: (a) does not obtain requisite approvals or fulfill obligations imposed by state or federal agencies or (b) undertakes actions in violation of state or federal law.

5. **Environmental**

- a. Burrowing Owls. Prior to the issuance of a vegetation removal permit, developer must provide documentation from the Florida Fish and

Wildlife Conservation Commission (FWCC) for burrowing owl impacts.

- b. Open Space. The development must provide a minimum of 15.59 acres of open space. Commercial uses must provide 30% open space and industrial uses must provide 20% open space.
- c. Substitution of Plant Material. Prior to development order approval, native wetland trees may be substituted for up to 100% of the total number of herbaceous plants required. One tree (minimum ten-foot-height; two-inch caliper, with a four-foot spread) may be substituted for 100 herbaceous plants.
- d. Street Trees Internal to Project. Development order plans must depict street trees on one side of streets internal to the project. Street trees must include the following:
 - a. Nine palm trees per 100 linear feet; and
 - b. Palm trees must be native species; and
 - c. Palm trees must be specified at staggered heights ranging from ten to fourteen-foot clear trunk.
 - d. Palm trees may be clustered.
- e. Right-of-Way Buffer. Development order landscape plans must depict a Type-D right-of-way buffer. The right-of-way buffer must be at a minimum 7.5 feet in width with 15 native palm trees every 100 linear feet. The native palms must be clustered in groups of three with staggered heights ranging from 10-foot clear trunk to 14-foot clear trunk.

6. **Airport Noise**

The developer, successor or assign acknowledges the property's proximity to Southwest Florida International Airport and the potential for noises created by and incidental to the operation of the airport as outlined in LDC §34-1104. The developer, successor or assign acknowledges that a disclosure statement is required on plats, and in association documents for condominium, property owner and homeowner associations as outlined in Land Development Code §34-1104(b).

7. **Water Retention/ Detention Excavation Setbacks**

The developer must provide for the protection of wayward vehicles using guardrails, berms, swales, vegetation or other methods as determined by the Lee County Development Services Manager.

8. **Internal Roads and Accessways**

Hammer head turnarounds are approved only where noted on the MCP. Development of hammer head configurations on individual tracts require additional deviations.

9. **Signs**

Developer must submit a detailed, final sign package covering proposed signs along Three Oaks Parkway Extension and Oriole Road for review and approval by the Department of Community Development in conjunction with the first local development order for the property.

- a. Ground mounted identification signs must have a minimum separation of 300 feet on Oriole Road and 400 feet on Three Oaks Parkway.
- b. Ground mounted identification signs must have a maximum height of 20 feet.
- c. ~~The signs must be placed and constructed in accordance with LDC § 30-93, visibility triangle safe sight distance requirements.~~

Hearing Examiner Note: Restatement of LDC applicable pursuant to Condition 1. Suggest removal.

DEVIATIONS

Connection Separation on Three Oaks Parkway. Deviation (1A) seeks relief from LDC §10-285(a) Table 1, which requires a minimum connection separation of 440 feet on minor arterial roads with speed limit of 45 miles per hour, to allow minimum separation of 100 feet between the project's southernmost driveway and the FPL Patrol Road. Deviation (1A) is APPROVED.

Connection Separation on Oriole Road. Deviation (1B) seeks relief from LDC §10-285(a) Table 1, which requires a minimum connection separation of 245 feet on major collector roads with speed limit of 30 miles per hour, to allow minimum separation of 100 feet on Oriole Road between the project's southernmost driveway and the FPL Patrol Road. Deviation (1B) is APPROVED.

Excavation Setback Standards. Deviation (2A) seeks relief from LDC §10-329(d)(1)a.2, which requires that no excavation will be allowed within 50 feet of an existing or proposed right-of-way line or easement for a collector or arterial street, to allow a 25-foot setback. Deviation (2A) is APPROVED subject to Condition 7.

Excavation Setback Standards. Deviation (2B) seeks relief from LDC §10-329(d)(1)a.3, which requires that no excavation will be allowed within 50 feet of a private property line under separate ownership, to allow a 25-foot setback and/or to allow a zero-foot setback when the lake is combined with an adjacent property lake. Deviation (2B) is APPROVED.

Excavation Bank Slopes. Deviation (2C) seeks relief from LDC §10-329(d)(4), which requires excavations to be sloped at a ratio not greater than six horizontal to one vertical from the top of bank to a water depth of two feet below the dry season water table, to allow the existing lake bank to be sloped at a ratio of four horizontal to one vertical. Deviation (2C) is APPROVED.

Excavation Fencing. Deviation (2D) seeks relief from LDC §10-329(d)(6), which requires a four-foot fence around water retention excavations when located less than 100 feet from a property under separate ownership, to allow no fencing around existing and proposed lakes. Deviation (2D) is APPROVED.

Landscape Standards – Buffering Adjacent Property. Deviation (3A) seeks relief from LDC §10-416(d)(4)(note3), which limits palm trees to a maximum of 50 percent of the right-of-way tree requirement, to allow palms to comprise 100 percent of the right-of-way tree requirement along Three Oaks Parkway for Tracts A-1, A-2, B-1 and B-2. Deviation (3A) is APPROVED.

Surface Water Management Systems. Deviation (3B) seeks relief from LDC §10-418(2)a, which requires all surface water management systems to provide a planted littoral shelf mimicking the function of a natural marsh, to provide no littoral shelf. Deviation (3B) is APPROVED.

Surface Water Management Systems. Deviation (3B-1) seeks relief from LDC ~~§40-428(2)(d)(3)~~, §10-418(2)(d)(3) which allows native wetland trees to be substituted for up to 25% of required herbaceous plants, to substitute native wetland trees for 100% of the required herbaceous plants. Deviation (3B-1) is APPROVED, subject to Condition 5c.

Hearing Examiner Note: Typo corrected.

Street Design and Construction Standards – Street Trees. Deviation (4A) seeks relief from LDC §10-296(e)(2)d, which requires street trees to be planted on both sides of the road in a 6-foot planting area between the sidewalk and road edge of pavement, required small trees must be evenly spaced along the frontage and not clustered, and limits palm trees to a maximum of 50 percent of the required small trees, to allow trees to be planted on only one side of the road, and to allow 100% of the trees to be clustered palm trees. Deviation (4A) is APPROVED subject to Condition 5d.

Street Design and Construction Standards - Culs-de-sac. Deviation (4B) seeks relief from LDC §10-296(k)(1), which requires that dead-end streets must be closed at one end by a circular turnaround for vehicles, to allow internal roads and accessways to be constructed with a hammer head road configuration instead of culs-de-sac. Deviation (4B) is APPROVED subject to Condition 8.

Signs in Commercial and Industrial Areas. Deviations (5A) and (5B) relief from LDC §§30-153(2)a and 30-153(2)(a)1.ii., which establishes a limitation of one identification sign equal to one square foot of sign area per face for every one linear foot of frontage, to allow two additional ground-mounted identification signs, located on each of the project's road frontages on Three Oaks Parkway and on the west and east sides of Oriole Road, with a sign area not to exceed 200 square feet per sign (total of 9 signs). Deviations (5A and 5B) are APPROVED subject to Condition 9.

Exhibits to Conditions:
B1 Master Concept Plan

Exhibit C

RECOMMENDED CONDITIONS AND DEVIATIONS

As revised by the Hearing Examiner

(Clean Version)

CONDITIONS

1. Master Concept Plan/Development Parameters

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This zoning resolution approves 13 deviations from the LDC. Building heights may not exceed 65 feet.

2. Permitted Uses and Site Development Regulations

a. Schedule of Uses

Tracts A & B

(Subtracts A-1 through A-4 and B-1 through B-4)

Accessory Uses and Structures
Administrative Offices
Agricultural Uses and Agricultural Accessory Uses (Subject to Condition 3)
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Animals: Clinic or Kennel
Automobile Repair and Service: All Groups
Automobile Service Station (Limited to One for the MPD)
Bait and Tackle Shop
Banks and Financial Establishments: All Groups
Bar or Cocktail Lounge
Boats:
 Boat Parts Store
 Repair and Service
 Sales
 Dry Storage
Broadcast Studio, Commercial Radio and Television
Building Material Sales
Business Services: All Groups
Bus Station/Depot
Caretaker's Residence
Car Wash
Cleaning and Maintenance Services
Clothing Stores, General
Clubs: Commercial & Fraternal, Membership Organization
Cold Storage, Pre-Cooling, Warehouse & Processing Plant
Computer and Data Processing Services
Consumption on Premises in conjunction with restaurant or bar or cocktail lounge
Contractors and Builders: All Groups
Convenience Food and Beverage with a maximum of 20 fuel pumps (Limited to one for the entire MPD)
Cultural Facilities
Day Care Center: Child, Adult
Department Store
Drive through Facility for any Permitted Use
Drugstore/Pharmacy
Emergency Operations Center
EMS, Fire or Sheriff's Station
Entrance Gates and Gatehouse
Essential Services
Essential Service Facilities: Group I
Excavation: Water Retention
Excess Spoil Removal
Factory Outlets, Point of Manufacture Only
Fences, Walls

Food and Beverage Service, Limited
Food Stores: All Groups
Freight or Cargo Handling Systems
Funeral Home and Mortuary (with or without crematorium)
Gasoline Dispensing System, Special
Gift and Souvenir Shop
Hardware Store
Health Care Facilities: All Groups
Hobby, Toy and Game Shops
Household and Office Furnishings: All Groups
Insurance Companies
Laundry or Dry Cleaning: All Groups
Lawn & Garden Supply Store
Library
Maintenance Facility (Government)
Manufacturing of:
 - Apparel Products
 - Boats
 - Chemical and Allied Products: All Groups
 - Electrical Machinery and Equipment
 - Fabricated Metal Products, Groups II, III
 - Food and Kindred Products, Groups II, III
 - Furniture and Fixtures
 - Leather and Leather Products, Group II
 - Lumber and Wood Products, Group II
 - Machinery, all groups
 - Measuring, Analyzing and Controlling Instruments
 - Novelties, Jewelry, Toys and Signs, All Groups
 - Paper and Allied Products, Groups II, III
 - Rubber and Plastic Products, Group II
 - Stone, Clay, Glass and Concrete Products, Group I
 - Textile Mill Products: All Groups
 - Transportation Equipment, Group I
Medical Office
Motion Picture Production Studio
Nightclubs (limited to one for the entire MPD)
Non-store Retailers: All Groups
Paint, Glass and Wallpaper
Parcel and Express Services
Package Store
Parks, Groups I, II
Parking Lot:
 Accessory
 Commercial
 Garage
 Temporary

Personal Services: All Groups (Excluding Steam or Turkish Baths, Escort Services, Palm Readers, Fortunetellers or Card Readers)

Pet Services

Pet Shop

Photofinishing Laboratory

Place of Worship

Plant Nursery

Post Office

Printing and Publishing

Processing and Warehousing

Real Estate Sales Office

Recreation Facilities Commercial: Groups I, III, and IV

Rental or Leasing Establishment: All Groups

Repair Shops: Groups I, II, III and IV

Research and Development Laboratories: All Groups

Restaurant, Fast Food

Restaurants: All Groups

Retail and wholesale sales, when incidental and subordinate to the principal use on same premises

Schools:

Commercial

Noncommercial

Signs

Social Services: Groups I, II

Specialty Retail Shops: All Groups

Storage: Open & Indoor

Studios

Temporary Uses

Theater, Indoor

Transportation Services: Groups II, III and IV

Used Merchandise Stores: All Groups

Variety Store

Vehicle & Equipment Dealers: All Groups

Warehouse:

Mini-warehouse,

Private,

Public,

Wholesale Establishments: Groups I, II, and IV

Tracts C and D

Accessory Uses and Structures

Administrative Offices

Agricultural Services: Office/Base Operations

Agricultural Uses and Agricultural Accessory Uses (Subject to Condition 3)

Aircraft Food Services and Catering

Animals: Clinic or Kennel

Automobile Repair and Service: All Groups

Banks and Financial Establishments: Group I

Boats:

Boat Parts Store

Repair and Service

Sales

Dry Storage

Broadcast Studio, Commercial Radio and Television

Building Material Sales

Business Services: All Groups

Bus Station/Depot

Caretaker's Residence

Car Wash

Cleaning and Maintenance Services

Cold Storage, Pre-Cooling, Warehouse & Processing Plant

Computer and Data Processing Services

Consumption on Premises in conjunction with restaurant

Contractors and Builders: All Groups

Drive through Facility for any permitted use

Drugstore/Pharmacy

Emergency Operations Center

EMS, Fire or Sheriff's Station

Entrance Gates and Gatehouse

Essential Services

Essential Service Facilities: Group I

Excavation: Water Retention

Excess Spoil Removal

Fences, Walls

Food and Beverage Service, Limited

Freight or Cargo Handling Systems

Gasoline Dispensing System, Special

Hardware Store

Hobby, Toy and Game Shops

Household and Office Furnishings: All Groups

Laundry or Dry Cleaning: All Groups

Lawn & Garden Supply Store

Maintenance Facility (Government)

Manufacturing of:

- Apparel Products

- Boats

- Chemical and Allied Products: All Groups

- Electrical Machinery and Equipment

- Fabricated Metal Products, Groups II, III
- Food and Kindred Products, Groups II, III
- Furniture and Fixtures
- Leather and Leather Products, Group II
- Lumber and Wood Products, Group II
- Machinery, All groups
- Measuring, Analyzing and Controlling Instruments
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- Paper and Allied Products, Groups II, III
- Rubber and Plastic Products, Group II
- Stone, Clay, Glass and Concrete Products, Group I
- Textile Mill Products: All Groups
- Transportation Equipment, Group I

Medical Office

Motion Picture Production Studio

Non-store Retailers: All Groups

Paint, Glass and Wallpaper

Parcel and Express Services

Parking Lot:

Accessory

Commercial

Garage

Temporary

Personal Services: All Groups (Excluding Steam or Turkish Baths, Escort Services, Palm Readers, Fortunetellers or Card Readers)

Pet Services

Pet Shop

Photofinishing Laboratory

Place of Worship

Post Office

Printing and Publishing

Processing and Warehousing

Real Estate Sales Office

Recreation Facilities Commercial: Groups I, III, and IV

Rental or Leasing Establishment: All Groups

Repair Shops: Groups I, II, III and IV

Research and Development Laboratories: All Groups

Restaurants: Groups I, II

Retail and wholesale sales, when incidental and subordinate to a principal use on same premises

Schools:

Commercial

Noncommercial

Signs

Social Services: Groups I, II

Specialty Retail Shops: All Groups
Storage: Open & Indoor
Studios
Temporary Uses
Transportation Services: Groups II, III and IV
Truck Stop, Trucking Terminal
Used Merchandise Stores: All Groups
Vehicle & Equipment Dealers: All Groups
Warehouse: Mini-warehouse, Private, Public
Wholesale Establishments: Groups I, III and IV

b. Site Development Regulations

Minimum Lot Area and Dimensions

Lot Size:	10,000 square feet
Lot Width:	100 feet
Lot Depth	100 feet

Minimum Setbacks

Street, Public	25 feet
Internal Street	20 feet
Side	10 feet
Rear	15 feet
Water Body	20 feet (top of bank)

Minimum Perimeter Setbacks 15 feet / 25 feet (Industrial Uses)

Accessory Uses: Per LDC 34-1171 et seq.

Maximum Lot Coverage: 40%

Minimum Open Space: Commercial 30%
 Industrial 20%

Maximum Building Height: 65 feet (height in excess of 35 feet
must maintain additional building
setbacks and separation per LDC
§34-2174(a))

Building Separation: The greater of one-half the sum of
the heights of both buildings, or 20
feet.

3. **Agricultural Uses**

Existing bona fide agricultural uses (livestock pasture) on this site are allowed uses in compliance with the following:

- a. Bona fide agricultural uses in the form of cattle grazing currently exist on the entire 75.85-acre property. Bona fide agricultural uses may continue on any portion of the property that meets the state requirements for bona fide agricultural use of the property. The approved existing agricultural uses may not be expanded beyond the boundaries that existed at the time of rezoning. No new agricultural uses are authorized.
- b. Upon rezoning, additional clearing of trees or other vegetation in agricultural areas must receive a vegetation removal permit from Lee County as provided for in the Lee County Development Code. Existing areas of bona fide agricultural use may be maintained, i.e., mowed, but not cleared or expanded. This prohibition is not intended to preclude County approval requests for the removal of invasive exotic vegetation.
- c. Existing agricultural uses within a tract or phase must be discontinued upon local development order approval for development defined in LDC Chapter 34. Development not included within the Chapter 34 definition but that requires a development order under Chapter 10 (including but not limited to plats, lots splits, and lot re-combinations) will not trigger the requirement to discontinue agricultural uses.

4. **Development Permits**

County development permits do not establish a right to obtain permits from state or federal agencies. Further, it does not establish liability on the part of the County if Developer: (a) does not obtain requisite approvals or fulfill obligations imposed by state or federal agencies or (b) undertakes actions in violation of state or federal law.

5. **Environmental**

- a. Burrowing Owls. Prior to the issuance of a vegetation removal permit, developer must provide documentation from the Florida Fish and Wildlife Conservation Commission (FWCC) for burrowing owl impacts.
- b. Open Space. The development must provide a minimum of 15.59 acres of open space. Commercial uses must provide 30% open space and industrial uses must provide 20% open space.

- c. Substitution of Plant Material. Prior to development order approval, native wetland trees may be substituted for up to 100% of the total number of herbaceous plants required. One tree (minimum ten-foot-height; two-inch caliper, with a four-foot spread) may be substituted for 100 herbaceous plants.
 - d. Street Trees Internal to Project. Development order plans must depict street trees on one side of streets internal to the project. Street trees must include the following:
 - e. Nine palm trees per 100 linear feet; and
 - f. Palm trees must be native species; and
 - g. Palm trees must be specified at staggered heights ranging from ten to fourteen-foot clear trunk.
 - h. Palm trees may be clustered.
 - e. Right-of-Way Buffer. Development order landscape plans must depict a Type-D right-of-way buffer. The right-of-way buffer must be at a minimum 7.5 feet in width with 15 native palm trees every 100 linear feet. The native palms must be clustered in groups of three with staggered heights ranging from 10-foot clear trunk to 14-foot clear trunk.
6. **Airport Noise**
The developer, successor or assign acknowledges the property's proximity to Southwest Florida International Airport and the potential for noises created by and incidental to the operation of the airport as outlined in LDC §34-1104. The developer, successor or assign acknowledges that a disclosure statement is required on plats, and in association documents for condominium, property owner and homeowner associations as outlined in Land Development Code §34-1104(b).
7. **Water Retention/ Detention Excavation Setbacks**
The developer must provide for the protection of wayward vehicles using guardrails, berms, swales, vegetation or other methods as determined by the Lee County Development Services Manager.
8. **Internal Roads and Accessways**
Hammer head turnarounds are approved only where noted on the MCP. Development of hammer head configurations on individual tracts require additional deviations.
9. **Signs**
Developer must submit a detailed, final sign package covering proposed signs along Three Oaks Parkway Extension and Oriole Road for review and approval by the Department of Community Development in conjunction with the first local development order for the property.

- a. Ground mounted identification signs must have a minimum separation of 300 feet on Oriole Road and 400 feet on Three Oaks Parkway.
- b. Ground mounted identification signs must have a maximum height of 20 feet.

DEVIATIONS

Connection Separation on Three Oaks Parkway. Deviation (1A) seeks relief from LDC §10-285(a) Table 1, which requires a minimum connection separation of 440 feet on minor arterial roads with speed limit of 45 miles per hour, to allow minimum separation of 100 feet between the project's southernmost driveway and the FPL Patrol Road. Deviation (1A) is APPROVED.

Connection Separation on Oriole Road. Deviation (1B) seeks relief from LDC §10-285(a) Table 1, which requires a minimum connection separation of 245 feet on major collector roads with speed limit of 30 miles per hour, to allow minimum separation of 100 feet on Oriole Road between the project's southernmost driveway and the FPL Patrol Road. Deviation (1B) is APPROVED.

Excavation Setback Standards. Deviation (2A) seeks relief from LDC §10-329(d)(1)a.2, which requires that no excavation will be allowed within 50 feet of an existing or proposed right-of-way line or easement for a collector or arterial street, to allow a 25-foot setback. Deviation (2A) is APPROVED subject to Condition 7.

Excavation Setback Standards. Deviation (2B) seeks relief from LDC §10-329(d)(1)a.3, which requires that no excavation will be allowed within 50 feet of a private property line under separate ownership, to allow a 25-foot setback and/or to allow a zero-foot setback when the lake is combined with an adjacent property lake. Deviation (2B) is APPROVED.

Excavation Bank Slopes. Deviation (2C) seeks relief from LDC §10-329(d)(4), which requires excavations to be sloped at a ratio not greater than six horizontal to one vertical from the top of bank to a water depth of two feet below the dry season water table, to allow the existing lake bank to be sloped at a ratio of four horizontal to one vertical. Deviation (2C) is APPROVED.

Excavation Fencing. Deviation (2D) seeks relief from LDC §10-329(d)(6), which requires a four-foot fence around water retention excavations when located less than 100 feet from a property under separate ownership, to allow no fencing around existing and proposed lakes. Deviation (2D) is APPROVED.

Landscape Standards – Buffering Adjacent Property. Deviation (3A) seeks relief from LDC §10-416(d)(4)(note3), which limits palm trees to a maximum of 50 percent of the right-of-way tree requirement, to allow palms to comprise 100 percent of the right-of-way tree requirement along Three Oaks Parkway for Tracts A-1, A-2, B-1 and B-2. Deviation (3A) is APPROVED.

Surface Water Management Systems. Deviation (3B) seeks relief from LDC §10-418(2)a, which requires all surface water management systems to provide a planted littoral shelf mimicking the function of a natural marsh, to provide no littoral shelf. Deviation (3B) is APPROVED.

Surface Water Management Systems. Deviation (3B-1) seeks relief from LDC §10-418(2)(d)(3), which allows native wetland trees to be substituted for up to 25% of required herbaceous plants, to substitute native wetland trees for 100% of the required herbaceous plants. Deviation (3B-1) is APPROVED, subject to Condition 5c.

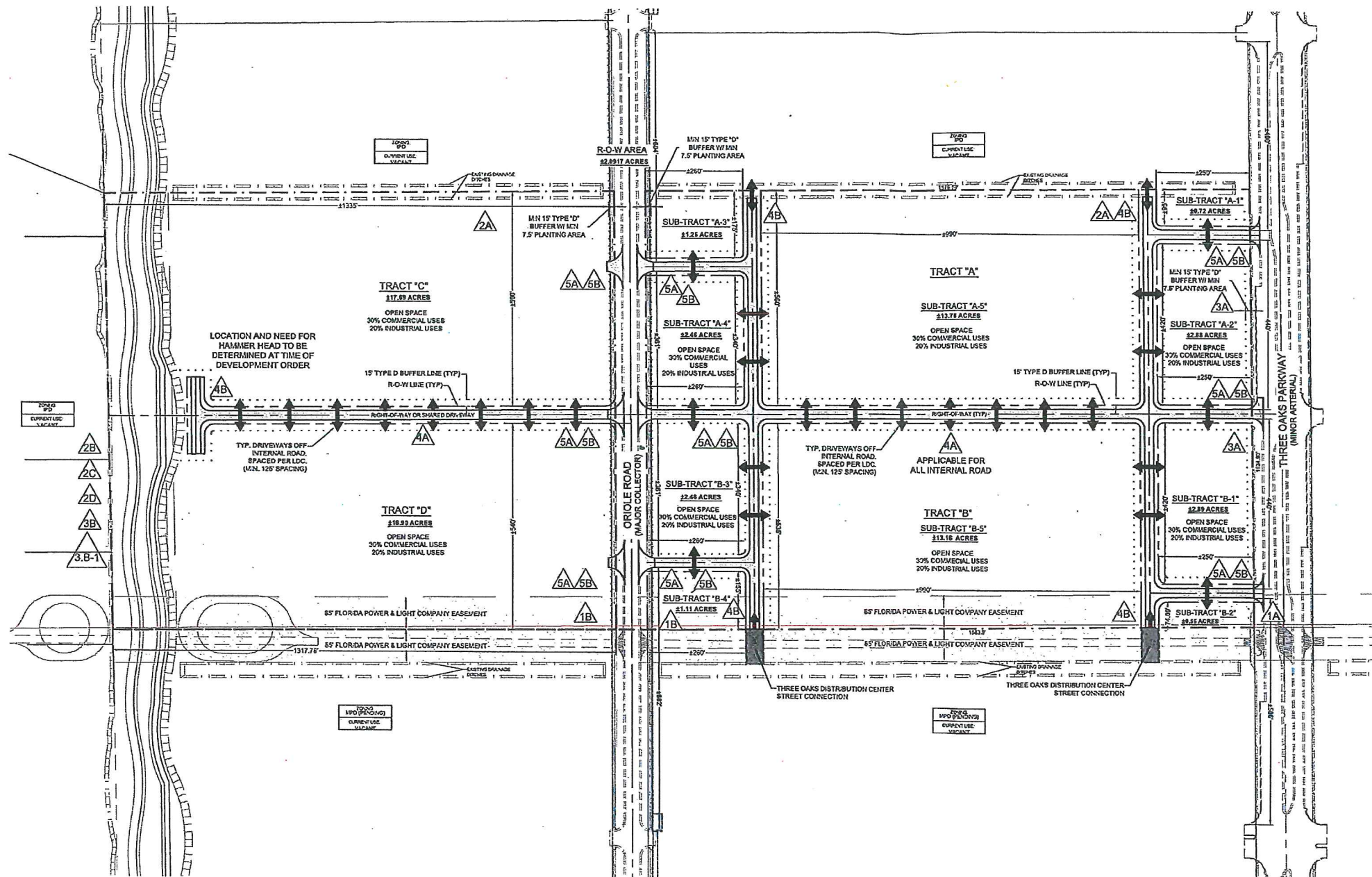
Street Design and Construction Standards – Street Trees. Deviation (4A) seeks relief from LDC §10-296(e)(2)d, which requires street trees to be planted on both sides of the road in a 6-foot planting area between the sidewalk and road edge of pavement, required small trees must be evenly spaced along the frontage and not clustered, and limits palm trees to a maximum of 50 percent of the required small trees, to allow trees to be planted on only one side of the road, and to allow 100% of the trees to be clustered palm trees. Deviation (4A) is APPROVED subject to Condition 5d.

Street Design and Construction Standards - Culs-de-sac. Deviation (4B) seeks relief from LDC §10-296(k)(1), which requires that dead-end streets must be closed at one end by a circular turnaround for vehicles, to allow internal roads and accessways to be constructed with a hammer head road configuration instead of culs-de-sac. Deviation (4B) is APPROVED subject to Condition 8.

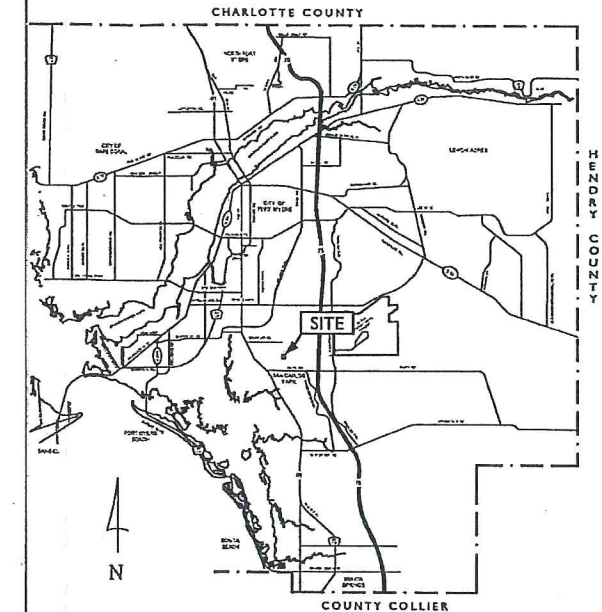
Signs in Commercial and Industrial Areas. Deviations (5A) and (5B) relief from LDC §§30-153(2)a and 30-153(2)(a)1.ii., which establishes a limitation of one identification sign equal to one square foot of sign area per face for every one linear foot of frontage, to allow two additional ground-mounted identification signs, located on each of the project's road frontages on Three Oaks Parkway and on the west and east sides of Oriole Road, with a sign area not to exceed 200 square feet per sign (total of 9 signs). Deviations (5A and 5B) are APPROVED subject to Condition 9.

THREE OAKS LOGISTICS CENTER

LOCATED IN SECTION 3/4 TOWNSHIP 46 -S, RANGE 25 -E, LEE COUNTY, FLORIDA



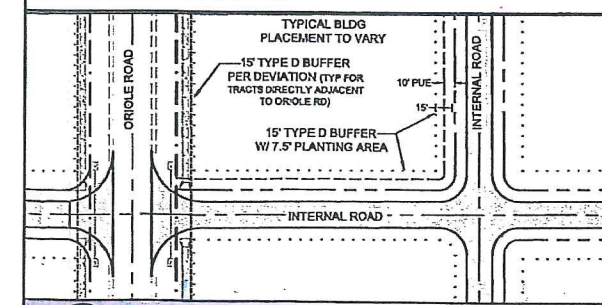
MASTER CONCEPT PLAN



LOCATION MAP (NOT TO SCALE)

ZONING	OPEN SPACE
INDUSTRIAL DEVELOPMENT AG-2 TO MPD	30% FOR COMMERCIAL USES 20% FOR INDUSTRIAL USES PROJECT MINIMUM = 15.59 ACRES (20%)
PARCEL No. & ADDRESS 03-45-25-00-00001.1070 04-45-25-00-00003-0040	DEVIATIONS #A DEVIATION SYMBOL
PROJECT ACRES 75.65 ACRES	NOTES: TRACKS AREAS AND ACRES INCLUDE HALF OF INTERNAL R.O.W.
PROJECT INTENSITY TOTAL MAXIMUM OF 1,050,000 SF COMMERCIAL/RETAIL: MINIMUM 30,000 SF / MAXIMUM 640,000 SF.* INDUSTRIAL: MINIMUM 30,000 SF / MAXIMUM 1,020,000 SF.* * MAXIMUM VALUES ARE NOT CUMULATIVE	

TYPICAL LOT LAYOUT:



Quattrone & Associates, Inc.
Engineers, Planners, & Development Consultants
4301 Veronica Shoemaker Blvd. | Fort Myers, FL 33916 | 239.936.5222 | QAInc.net

P:\2021 Projects\20210303 THREE OAKS LOGISTICS CENTER - ACTIVE\01-CADD FILES\01-CADD MASTER MODIFIED PER COMMENTS\20210303 MCP ZONING

PLOTTED BY: DONALD
TUE, 8-31-2021 3:09 PM
20210303 MCP ZONING.DWG

66:8 AM 31 AUG 2021
HEARING EXAMINER
LEE COUNTY



0' 150' 300'
PLAN VIEW SCALE

200303 MCP ZONING.DWG

Exhibit D

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments for DCI:* Prepared by Brian Roberts, Plan Reviewer, date stamped received August 12, 2021 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *PowerPoint Presentation:* Prepared for Three Oaks Logistics Center (multiple pages – 8.5"x11")[color]
3. *Revised Conditions & Deviations:* (multiple pages – 8.5"x11")
4. *Land Development Code:* Section 34-934, Use Regulation Table (1 page – 8.5"x11")
5. *Written Submissions:* Email from Jamie Princing, to Hearing Examiner, with copies to Brian Roberts, Alan Freeman, Al Quattrone, Russell Schropp, Esq., Yury Byhou, Maria Perez, & TR Transportation, dated Monday, August 30, 2021 12:14 PM (multiple pages – 8.5"x11" & 1 page – 11"x17")

APPLICANT EXHIBITS

- a. *48-Hour Notice:* Email from Sharon Hrabak, with Quattrone & Associates, Inc., to Hearing Examiner, Brian Roberts, Joseph Adams, Esq., Jamie Princing, & Maria Perez, dated Monday, August 23, 2021 5:30 AM (multiple pages – 8.5"x11")[color]
1. *PowerPoint Presentation:* Prepared by Quattrone & Associates, Inc., for Three Oaks Logistics Center, Lee County Hearing Examiner Public Hearing dated Thursday, August 26, 2021 (multiple pages – 8.5"x11")[color]
2. *Revised Language for Condition 3:* (1 page – 8.5"x11")
3. *Written Submissions:* Email from Sharon, with Quattrone & Associates, Inc., to Hearing Examiner, Brian Roberts, & Jamie Princing, dated Tuesday, August 31, 2021 4:58 PM (1 page – 8.5"x11" & 1 page – 11"x17")

Exhibit E

HEARING PARTICIPANTS

County Staff:

1. Joseph Adams, Esq.
2. Brian Roberts

Applicant Representatives:

1. Yury Byhou
2. Alan Freeman
3. Al Quattrone
4. Russell Schropp, Esq.

Exhibit F
INFORMATION

UNAUTHORIZED COMMUNICATIONS

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

HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS

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

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

COPIES OF TESTIMONY AND TRANSCRIPTS

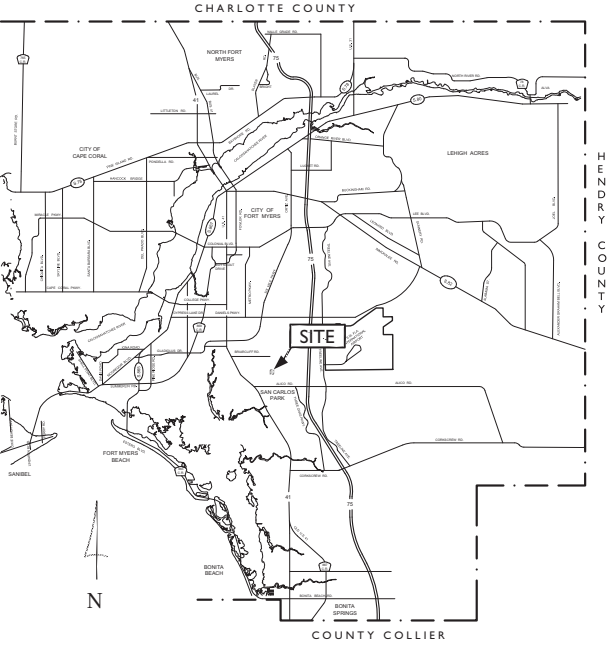
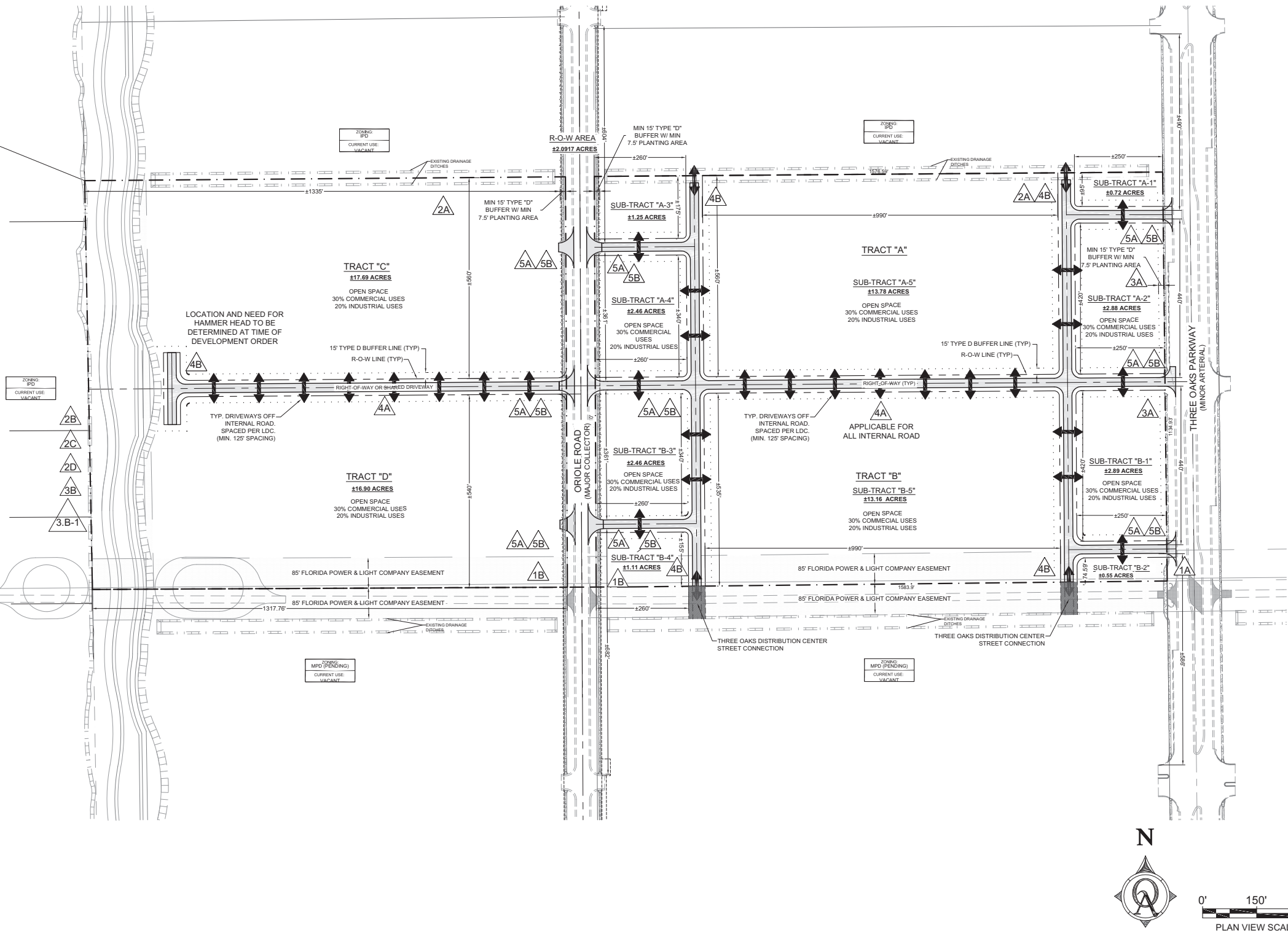
A. Every hearing is recorded. Recordings are public records that become part of the case file maintained by the Department of Community Development. The case file and recordings are available for public examination Monday through Friday between 8:00 a.m. and 4:30 p.m.

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

THREE OAKS LOGISTICS CENTER

LOCATED IN SECTION 3/4 TOWNSHIP 46 -S, RANGE 25 -E, LEE COUNTY, FLORIDA

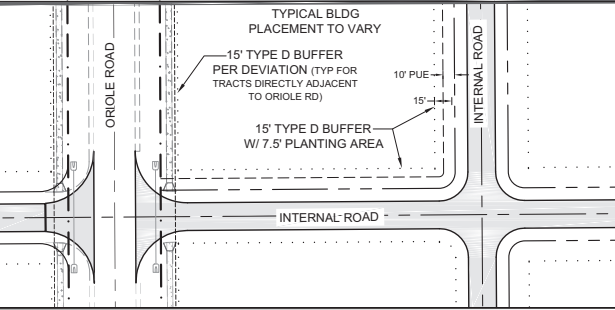
MASTER CONCEPT PLAN



LOCATION MAP (NOT TO SCALE)

ZONING	OPEN SPACE
INDUSTRIAL DEVELOPMENT AG-2 TO MPD	30% FOR COMMERCIAL USES 20% FOR INDUSTRIAL USES PROJECT MINIMUM = 15.59 ACRES (20%)
PARCEL No. & ADDRESS	DEVIATIONS
03-46-25-00-00001.1070 04-46-25-00-00003-0040	## DEVIATION SYMBOL
PROJECT ACREAGE	NOTES:
75.85 ACRES	TRACKS AREAS AND ACREAGE INCLUDE HALF OF INTERNAL R-O-W.
PROJECT INTENSITY	
TOTAL MAXIMUM OF 1,050,000 SF	
COMMERCIAL/RETAIL: MINIMUM 30,000 SF / MAXIMUM 540,000 SF. *	
INDUSTRIAL: MINIMUM 30,000 SF / MAXIMUM 1,020,000 SF. *	
* MAXIMUM VALUES ARE NOT CUMULATIVE	

TYPICAL LOT LAYOUT:



Quattrone & Associates, Inc.
Engineers, Planners, & Development Consultants
4301 Veronica Shoemaker Blvd. | Fort Myers, FL 33916 | 239.936.5222 | QAIInc.net

DCI2020-00014 Three Oaks Logistics Center MPD

Conditions and Deviations

- Revised August 25, 2021 – Condition 3 Agricultural Uses(~~striketrough~~ and underline)
- Revised August 30, 2021 – revise Master Concept Plan dated August 26, 2021 and Deviation (1B) to Oriole Road.

A. Conditions

1. MASTER CONCEPT PLAN/DEVELOPMENT PARAMETERS

The development of this project must be consistent with the Master Concept Plan entitled “Three Oaks Logistics Center” received ~~July 28, 2021~~August 26, 2021, except as modified by the conditions below. This development must comply with all requirements of the Lee County LDC at time of local Development Order approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

This project will allow a maximum of 1,050,000 square feet of commercial and industrial development floor area (510,000 square feet of industrial floor area and 540,000 square feet of commercial floor area). Tracts west of Oriole Road are limited to 500,000 square feet of total floor area with a maximum of 20 percent of total floor area allocated to commercial retail. Tracts east of Oriole Road are limited 550,000 square feet of total floor area with a maximum of 80 percent of total floor area allocated to commercial retail.

2. USES AND SITE DEVELOPMENT REGULATIONS

a. Schedule of Uses

TRACTS A & B (SUBTRACTS A-1 THROUGH A-4 AND B-1 THROUGH B-4)

Accessory Uses and Structures
Administrative Offices
Agricultural Uses and Agricultural Accessory Uses (Subject to Condition 6)
Aircraft Food Services and Catering
Animals: Clinic or Kennel
Automobile Repair and Service: All Groups
Automobile Service Station (Limited to One for the MPD)
Bait and Tackle Shop
Banks and Financial Establishments: All Groups
Bar or Cocktail Lounge
Boats:
 Boat Parts Store
 Repair and Service

Sales
 Dry Storage
 Broadcast Studio, Commercial Radio and Television
 Building Material Sales
 Business Services: All Groups
 Bus Station/Depot
 Caretaker's Residence
 Car Wash
 Cleaning and Maintenance Services
 Clothing Stores, General
 Clubs: Commercial & Fraternal, Membership Organization
 Cold Storage, Pre-Cooling, Warehouse & Processing Plant
 Computer and Data Processing Services
 Consumption on Premises in conjunction with restaurant or bar or cocktail lounge
 Contractors and Builders: All Groups
 Convenience Food and Beverage with a maximum of 20 fuel pumps
 (Limited to one for the entire MPD)
 Cultural Facilities
 Day Care Center: Child, Adult
 Department Store
 Drive through Facility for Any Permitted Use
 Drugstore/Pharmacy
 Emergency Operations Center
 EMS, Fire or Sheriff's Station
 Entrance Gates and Gatehouse
 Essential Services
 Essential Service Facilities: Group I
 Excavation: Water Retention
 Excess Spoil Removal
 Factory Outlets, Point of Manufacture Only
 Fences, Walls
 Food and Beverage Service, Limited
 Food Stores: All Groups
 Freight or Cargo Handling Systems
 Funeral Home and Mortuary (with or without crematorium)
 Gasoline Dispensing System, Special
 Gift and Souvenir Shop
 Hardware Store
 Health Care Facilities: All Groups
 Hobby, Toy and Game Shops
 Household and Office Furnishings: All Groups
 Insurance Companies
 Laundry or Dry Cleaning: All Groups
 Lawn & Garden Supply Store
 Library
 Maintenance Facility (Government)
 Manufacturing of:
 - Apparel Products
 - Boats
 - Chemical and Allied Products: All Groups

- Electrical Machinery and Equipment
- Fabricated Metal Products, Groups II and III
- Food and Kindred Products, Groups II and III
- Furniture and Fixtures
- Leather and Leather Products, Group II
- Lumber and Wood Products, Groups II
- Machinery, all groups
- Measuring, Analyzing and Controlling Instruments
- Novelties, Jewelry, Toys and Signs, All Groups
- Paper and Allied Products, Groups II and III
- Rubber and Plastic Products, Group II
- Stone, Clay, Glass and Concrete Products, Group I
- Textile Mill Products: All Groups
- Transportation Equipment, Group I

Medical Office

Motion Picture Production Studio

Nightclubs (limited to one for the entire MPD)

Nonstore Retailers: All Groups

Paint, Glass and Wallpaper

Parcel and Express Services

Package Store

Parks, Groups I and II

Parking Lot:

Accessory

Commercial

Garage

Temporary

Personal Services: All Groups (Excluding Steam or Turkish Baths, Escort Services, Palm Readers, Fortunetellers or Card Readers)

Pet Services

Pet Shop

Photofinishing Laboratory

Place of Worship

Plant Nursery

Post Office

Printing and Publishing

Processing and Warehousing

Real Estate Sales Office

Recreation Facilities Commercial: Groups I, III, and IV

Rental or Leasing Establishment: All Groups

Repair Shops: Groups I, II, III and IV

Research and Development Laboratories: All Groups

Restaurant, Fast Food

Restaurants: All Groups

Retail and wholesale sales, when clearly incidental and subordinate to a permitted principal use on the same premises

Schools:

Commercial

Noncommercial

Signs

Social Services: Groups I and II

Specialty Retail Shops: All Groups
Storage: Open & Indoor
Studios
Temporary Uses
Theater, Indoor
Transportation Services: Groups II, III and IV
Used Merchandise Stores: All Groups
Variety Store
Vehicle & Equipment Dealers: All Groups
Warehouse:
 Mini-warehouse,
 Private,
 Public,
Wholesale Establishments: Groups I, II, and IV

TRACTS C and D

Accessory Uses and Structures
Administrative Offices
Agricultural Services: Office/Base Operations
Agricultural Uses and Agricultural Accessory Uses (Subject to condition 6)
Aircraft Food Services and Catering
Animals: Clinic or Kennel
Automobile Repair and Service: All Groups
Banks and Financial Establishments: Group I
Boats:
 Boat Parts Store
 Repair and Service
 Sales
 Dry Storage
Broadcast Studio, Commercial Radio and Television
Building Material Sales
Business Services: All Groups
Bus Station/Depot
Caretaker's Residence
Car Wash
Cleaning and Maintenance Services
Cold Storage, Pre-Cooling, Warehouse & Processing Plant
Computer and Data Processing Services
Consumption on Premises in conjunction with restaurant
Contractors and Builders: All Groups
Drive through Facility for Any Permitted Use
Drugstore/Pharmacy
Emergency Operations Center
EMS, Fire or Sheriff's Station
Entrance Gates and Gatehouse
Essential Services
Essential Service Facilities: Group I
Excavation: Water Retention
Excess Spoil Removal

Fences, Walls
 Food and Beverage Service, Limited
 Freight or Cargo Handling Systems
 Gasoline Dispensing System, Special
 Hardware Store
 Hobby, Toy and Game Shops
 Household and Office Furnishings: All Groups
 Laundry or Dry Cleaning: All Groups
 Lawn & Garden Supply Store
 Maintenance Facility (Government)
 Manufacturing of:
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 - Boats
 - Chemical and Allied Products: All Groups
 - Electrical Machinery and Equipment
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 - Textile Mill Products: All Groups
 - Transportation Equipment, Group I
 Medical Office
 Motion Picture Production Studio
 Non-store Retailers: All Groups
 Paint, Glass and Wallpaper
 Parcel and Express Services
 Parking Lot:
 Accessory
 Commercial
 Garage
 Temporary
 Personal Services: All Groups (Excluding Steam or Turkish Baths, Escort
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 Pet Services
 Pet Shop
 Photofinishing Laboratory
 Place of Worship
 Post Office
 Printing and Publishing
 Processing and Warehousing
 Real Estate Sales Office
 Recreation Facilities Commercial: Groups I, III, and IV
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 Storage: Open & Indoor
 Studios
 Temporary Uses
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 Truck Stop, Trucking Terminal
 Used Merchandise Stores: All Groups
 Vehicle & Equipment Dealers: All Groups
 Warehouse: Mini-warehouse, Private, Public
 Wholesale Establishments: Groups I, III and IV

b. Site Development Regulations

Minimum Lot Area and Dimensions

Lot Size:	10,000 square feet
Lot Width:	100 feet
Lot Depth	100 feet

Minimum Setbacks

Street, Public	25 feet
Internal Street	20 feet
Side	10 feet
Rear	15 feet
Water Body	20 feet (top of bank)

Minimum Perimeter Setbacks 15 feet / 25 feet (Industrial Uses)

Accessory Uses: Per LDC 34-1171 et seq.

Maximum Lot Coverage: 40%

Minimum Open Space:	Commercial	30%
	Industrial	20%

Maximum Building Height: 65 feet (height in excess of 35 feet must maintain additional building setbacks and separation per LDC Section 34-2174(a))

Building Separation:

One-half the sum of the heights of both buildings or 20 feet, whichever is greater.

3. **AGRICULTURAL USES**

Existing bona fide agricultural uses (livestock pasture) on this site are allowed uses in compliance with the following:

- A) Bona fide agricultural uses in the form of cattle grazing currently exist on the entire 75.85-acre property. Bona fide agricultural use may continue on any portion, tract, or phase of the property until development as defined in Chapter 34 commences on that portion, tract, or phase. The approved existing agricultural uses may not be expanded beyond the boundaries that existed at the time of rezoning. No new agricultural uses are authorized.
- B) Upon rezoning, additional clearing of trees or other vegetation in agricultural areas must receive a vegetation removal permit from Lee County as provided for in the Lee County Development Code. Existing areas of bona fide agricultural use may be maintained, i.e., mowed, but not cleared or expanded. This prohibition is not intended to preclude County approval requests for the removal of invasive exotic vegetation.
- C) ~~Termination of the agricultural tax exemption for any lot or portion of the property will be based on the state statute governing receipt of agricultural exemptions which requires bona fide agricultural use of the property. The Property Appraiser shall determine compliance with state regulations as of January 1 of each year.~~
- D) Existing agricultural uses within any tract or phase must be discontinued upon local development order approval for development as defined in Chapter 34. Development orders for development that is not included within the definition in Chapter 34 but otherwise requires a development order under Chapter 10 (including but not necessarily limited to plats, lot splits, and lot recombinations) will not require the discontinuance of agricultural uses.

4. **DEVELOPMENT PERMITS**

County development permits do not establish a right to obtain permits from state or federal agencies. Further, it does not establish liability on the part of the County if the Developer: (a) does not obtain requisite approvals or fulfill obligations imposed by state or federal agencies or (b) undertakes actions that result in a violation of state or federal law.

5. **ENVIRONMENTAL**

- a. Prior to the issuance of a vegetation removal permit, the applicant must provide documentation from the Florida Fish and Wildlife Conservation Commission (FWCC) for burrowing owl impacts.
- b. The development must provide a minimum of 15.59 acres of open space. Commercial uses must provide 30% open space and industrial uses must provide 20% open space.

- c. Prior to development order approval, native wetland trees may be substituted for up to 100% of the total number of herbaceous plants required. One tree (minimum ten-foot-height; two-inch caliper, with a four-foot spread) may be substituted for 100 herbaceous plants.
- d. The development order plans must depict street trees on one side of the street and must include the following:
 - a. Nine palm trees per 100 linear feet; and
 - b. Palm trees must be native species; and
 - c. Palm trees must be specified at staggered heights ranging from ten to fourteen-foot clear trunk.
 - d. Palm trees may be clustered.
- e. Prior to development order approval, the landscape plans must depict a Type-D right-of-way buffer. The right-of-way buffer must be at a minimum 7.5 feet in width with 15 native palm trees every 100 linear feet. The native palms must be clustered in groups of three with staggered heights ranging from 10-foot clear trunk to 14-foot clear trunk.

6. **AIRPORT NOISE**

The developer, successor or assign acknowledges the property's proximity to Southwest Florida International Airport and the potential for noises created by and incidental to the operation of the airport as outlined in Land Development Code Section 34-1104. The developer, successor or assign acknowledges that a disclosure statement is required on plats, and in association documents for condominium, property owner and homeowner associations as outlined in Land Development Code Section 34-1104(b).

7. **SETBACKS FOR WATER RETENTION OR DETENTION EXCAVATIONS**

The developer must provide for the protection of wayward vehicles using guardrails, berms, swales, vegetation or other methods as determined by the Lee County Development Services Manager.

8. **INTERNAL ROADS AND ACCESSWAYS**

Hammer head turnarounds are approved only where noted on the Master Concept Plan. Any development of individual tracts with a hammer head configuration will require an additional deviation.

9. **SIGNAGE**

The Developer must submit a detailed, final sign package covering the proposed signs along Three Oaks Parkway Extension and Oriole Road for review and approval by the Department of Community Development in conjunction with the first local development order for the property.

- a. Ground mounted identification signs must have a minimum separation of 300 feet on Oriole Road and 400 feet on Three Oaks Parkway.
- b. Ground mounted identification signs must have a maximum height of 20 feet.

- c. The signs must be placed and constructed in accordance with LDC Section 30-93, visibility triangle safe sight distance requirements.

B. **Deviations**

Deviation (1A) Connection Separation (Three Oaks Parkway) seeks relief from LDC Section 10-285(a) Table 1, which requires a minimum connection separation of 440 feet on a minor arterial road with a speed limit of 45 miles per hour, to allow a minimum separation of 100 feet on Three Oaks Parkway between the project's southernmost driveway and the FPL access driveway for the FPL Patrol Road. This Deviation is **APPROVED**.

Deviation (1B) Connection Separation (Oriole Road) seeks relief from LDC Section 10-285(a) Table 1, which requires a minimum connection separation of 245 feet on a major collector road with a speed limit of 30 miles per hour, to allow a minimum separation of 100 feet on ~~Three Oaks Parkway~~Oriole Road between the project's southernmost driveway and the FPL access driveway for the FPL Patrol Road. This Deviation is **APPROVED**.

Deviation (2A) Setbacks for Water Retention or Detention Excavations (right-of-way) seeks relief from LDC Section 10-329(d)(1)a.2, which requires that no excavation will be allowed within 50 feet of any existing or proposed right-of-way line or easement for a collector or arterial street, to allow a 25-foot setback. This Deviation is **APPROVED SUBJECT to condition 7**.

Deviation (2B) Setbacks for Water Retention or Detention Excavations (property line) seeks relief from LDC Section 10-329(d)(1)a.3, which requires that no excavation will be allowed within 50 feet of any private property line under separate ownership, to allow a 25-foot setback and/or to allow a zero-foot setback when the lake is combined with an adjacent property lake. This Deviation is **APPROVED**.

Deviation (2C) Bank Slopes seeks relief from LDC Section 10-329(d)(4), which requires excavations to be sloped at a ratio not greater than six horizontal to one vertical from the top of bank to a water depth of two feet below the dry season water table, to allow the existing lake bank to be slope at a ratio of four horizontal to one vertical. This Deviation is **APPROVED**.

Deviation (2D) Fencing seeks relief from LDC Section 10-329(d)(6), which requires a four-foot fence around water retention excavations when located less than 100 feet from a property under separate ownership, to allow no fencing around existing or proposed lakes. This Deviation is **APPROVED**.

Deviation (3A) Notes for Buffer Type Table seeks relief from LDC Section 10-416(d)(4)(3), which limits palm trees to a maximum of 50 percent of the right-of-way tree requirement, to allow palms to make up 100 percent of the right-of-way tree requirement along Three Oaks Parkway for Tracts A-1, A-2, B-1 and B-2. This Deviation is **APPROVED**.

Deviation (3B) Planted Littoral Shelf seeks relief from LDC Section 10-418(2)a, which requires all surface water management systems to provide a planted littoral

shelf that mimics the function of a natural marsh, to provide no littoral shelf. This Deviation is **APPROVED**.

Deviation (3B-1) Plant Selection seeks relief from LDC Section 10-428(2)(d)(3), which allows native wetland trees to be substituted for up to 25% of the total number of herbaceous plants required, to allow native wetland trees to be substituted for 100% of the total number of herbaceous plants required. This Deviation is **APPROVED. SUBJECT to Condition 5c.**

Deviation (4A) Planting Strips seeks relief from LDC Section 10-296(e)(2)d, which requires street trees to be planted on both sides of the road in the 6-foot planting area between the sidewalk and road edge of pavement, required small trees to be evenly spaced along the frontage and not clustered, and limits palm trees to a maximum of 50 percent of the required small trees, to allow trees to be planted on only one side of the road, and to allow 100% of the trees to be clustered palm trees. This Deviation is **APPROVED SUBJECT to Condition 5d.**

Deviation (4B) Culs-de-Sac seeks relief from LDC Section 10-296(k)(1), which requires that dead-end streets must be closed at one end by a circular turnaround for vehicles, to allow the internal roads and or accessways to be constructed with a hammer head road configuration instead of culs-de-sac. This Deviation is **APPROVED SUBJECT to Condition 8.**

Deviation (5A) and (5B) Nonresidential Subdivision Signage seeks relief from LDC Section 30-153(2)a and Section 30-153(2)(a)1.ii., which establishes a limitation of one identification sign equal to one square foot of sign area per face for every one linear foot of frontage, to allow two additional ground-mounted identification signs, located on each of the project's road frontages on Three Oaks Parkway and on the west and east sides of Oriole Road, with a sign area not to exceed 200 square feet per sign (total of 9 signs). This Deviation is **APPROVEDSUBJECT to Condition 9.**

Lee County, Florida
Department of Community Development
Zoning Section
Staff Report

Case Number: DCI2020-00014
Case Name: Three Oaks Logistics Center
Type of Case: Major Planned Development
Area Affected by Request: 75.85 +/- acres
Date Sufficient: June 28, 2021
Hearing Examiner Date: August 26, 2021

Summary of Request and Recommendation:

Quattrone and Associates, Inc. on behalf of Alan C. Freeman, Trustee, has submitted an application to rezone the subject parcel from Agricultural (AG-2) to Mixed-Use Planned Development (MPD). The applicant is requesting zoning approval to allow up to 1,050,000 square feet of office, retail, commercial, and industrial uses and the approval of thirteen deviations from the Land Development Code. The applicant's request statement is attached as Attachment "D." The subject property is cleared and undeveloped and is located approximately 2,700 feet north of the intersection of Oriole Road and Alico Road. The STRAP numbers are 03-46-25-00-00001.1070 and 04-46-25-00-00003.0040. The subject property is located in the Gateway/Airport Planning Community. A legal description and sketch of the subject property is attached as Attachment "B."

Staff recommends **APPROVAL** of the applicant's request with conditions found in Attachment "E." Staff also recommends approval of the thirteen proposed deviations and finds that the deviations will advance the objectives of the planned development while protecting public health, safety, and welfare in accordance with Land Development Code (LDC) Section 34-373(a)(9). The deviations are discussed in greater detail later in this report.

Property History and Character of the Area:

The subject properties are zoned Agricultural (AG-2) and are surrounded by properties zoned Industrial Planned Development (IPD) and Mixed-Use Planned Development (MPD). The subject properties in the applicant's request are located on the west and east sides of Oriole Road. There is an existing access point to Oriole Road for each parcel, as well as an existing access point to Three Oaks Parkway for the eastern parcel. Three Oaks Parkway is a County-maintained arterial roadway and Oriole Road is a County-maintained major collector roadway. The western parcel also includes a narrow water management lake parallel to the western property line at the rear of the site that serves as part of the backbone surface water management system for the subject parcels and parcels to the north and south. The subject properties are currently being used for cattle grazing at this time.

North

The properties to the north of the subject parcel are zoned Industrial Planned Development (IPD) and are designated Industrial Development on the Future Land Use Map of the Lee County Comprehensive Plan. The property to the north was approved for up to 600,000 square feet of mixed uses. The property to the north has not been developed.

West

Several smaller properties adjacent to the subject property's west property line are zoned Industrial Planned Development (IPD) and are designated Industrial Development on the Future Land Use Map of the Lee County Comprehensive Plan. Resolution Number Z-20-001 allows the development of a maximum of 1,100,000 square feet of industrial uses and 30,000 square feet of commercial office/retail uses.

East

The properties to the east of the subject property and across Three Oaks Parkway are zoned Mixed-Use Planned Development (MPD) and are designated Industrial Commercial Interchange on the Future Land Use Map of the Lee County Comprehensive Plan. Resolution Number Z-18-001 allows the development of a maximum of 896,000 square feet of floor area with 505,000 square feet of industrial uses, 249,000 square feet of commercial office and 142,000 square feet of commercial retail. It also limits hotel rooms to a maximum of 200 rooms.

South

The properties to the south of the subject properties are zoned Mixed-Use Planned Development. Resolution Number Z-20-002 allows the development of 600,000 square feet of industrial and 600,000 square feet of commercial office and retail uses. The property to the west of Oriole Road is designated Industrial Development, and the property to the east of Oriole Road is designated Industrial Commercial Interchange.

ANALYSIS:

The request is to rezone the subject parcel from Agricultural (AG-2) to Mixed-Use Planned Development (MPD) to develop up to 1,050,000 square feet of commercial, retail, and industrial uses. The applicant is requesting thirteen deviations in conjunction with the rezoning request.

Section 34-612 of the Lee County Land Development Code describes the intent of the utilization of the Planned Development zoning district. The purpose of planned development zoning is to further implement the goals, objectives, and policies of the Lee Plan, while providing some degree of flexibility in the planning and design of proposed developments. LDC Section 34-145(d) establishes the review criteria for all rezoning requests. Before recommending approval of a rezoning request, the Hearing Examiner must find the request:

- a) Complies with the Lee Plan;
- b) Meets the Land Development Code and other applicable County regulations or qualifies for deviations;
- c) Is compatible with existing and planned uses in the surrounding area;

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

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

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

Compliance with the Lee Plan

The subject parcel is located in the Gateway/Airport Planning Community as defined in the Lee Plan. The Gateway Planning Community contains three discernible areas. These areas include the Gateway Area, Southwest Florida International Airport, and the area south and west of Gateway and the Airport. The subject parcels are located south and west of I-75 and the Airport. The Lee Plan describes this as an area that will be energized by the airport expansion and Florida Gulf Coast University and is expected to develop with commercial and industrial uses. The applicant is proposing a Mixed-Use Planned Development that will provide commercial and industrial uses in an area that is well suited for this development pattern. Staff finds that the proposed planned development rezoning is in compliance with the Gateway/Airport Planning Community.

Policy 1.1.7 The Industrial Development future land use category seeks to strengthen the county economic base, expand job opportunities, and provide investment and production opportunities. These areas are reserved for industrial activities and certain land use mixtures to include manufacturing, industrial, research, recreational uses and offices. Retail and recreational uses may not exceed 20 percent of the total acreage within the Industrial Development Future Land Use Category of each Planning Community. The applicant is proposing a development intensity of 500,000 square feet with a maximum of 20% (100,000 square feet) commercial or retail uses on the western parcel and 550,000 square feet with a maximum 80% (440,000 square feet) commercial or retail uses on the eastern parcel. Currently, commercial and retail uses in the Industrial Development Future Land Use total approximately 4 percent of the available acreage within the Gateway/Airport Planning Community. The addition of the retail/commercial allocation will increase the total acreage dedicated to commercial and retail uses to 4.3 percent of the available acreage within this Planning Community. Furthermore, the mix of uses proposed by the applicant complements the range of uses detailed in the Industrial Development Future

Land Use category. For these reasons, Staff finds the request consistent with Policy 1.1.7 of the Lee Plan.

Policy 1.7.1 addresses Airport Noise Zones; the subject properties are in Airport Noise Zone “C.” Airport Noise Zone “C” allows new construction and land uses permitted by the Land Development Code. Land Development Code Section 34-1104(b)(2) requires the following condition for approval of planned developments in Airport Noise Zone “C”:

The developer, successor or assign acknowledges the property's proximity to Southwest Florida International Airport and the potential for noises created by and incidental to the operation of the airport as outlined in Land Development Code Section 34-1104. The developer, successor or assign acknowledges that a disclosure statement is required on plats, and in association documents for condominium, property owner and homeowner associations as outlined in Land Development Code Section 34-1104(b).

Staff finds that the proposed rezoning, as conditioned, is consistent with Policy 1.7.1.

Objective 2.1 and Objective 2.2 detail the need to promote contiguous and compact growth patterns in areas where public facilities exist to contain urban sprawl, while minimizing the impact to natural resources. The subject parcels are bisected by Oriole Road, a County-maintained collector roadway, which provides access and frontage to both parcels. Additionally, the eastern parcel abuts Three Oaks Parkway, a County-maintained arterial road, on the east side. A full access point and two right-in/right-out only access points to the north and south are proposed to be provided. The applicant has provided a protected species report, and meets the open space and buffer requirements established by the LDC. For these reasons, the requested rezoning is consistent with Objective 2.1 and Objective 2.2 of the Lee Plan.

Goal 4 of the Lee Plan addresses general development standards such as water and sewer availability and protection of natural resources. The applicant has provided a potable water and sewer letter of availability attached as Attachment “G.” The Master Concept Plan submitted by the applicant (Attachment “F”) depicts the location of buffers, open space, and indigenous open space that complies with the Land Development Code. Staff finds that this request is consistent with Goal 4 of the Lee Plan.

Policy 6.1.1 provides the review and evaluation criteria for applications for commercial development:

1. Traffic and access impacts (rezoning and development orders);
2. Landscaping and detailed site planning (development orders);
3. Screening and buffering (planned development rezoning and development orders);
4. Availability and adequacy of services and facilities (rezoning and development orders);
5. Impact on adjacent land uses and surrounding neighborhoods (rezoning);
6. Proximity to other similar centers (rezoning); and
7. Environmental considerations (rezoning and development orders).

The subject properties are bisected by and have access to a collector roadway while the eastern parcel also has frontage on an arterial roadway. The applicant has provided a traffic impact study that was reviewed by the Department of Community Development. The findings of that review and the traffic impact study are attached as Attachment “H.” The parcels are surrounded by properties that have been rezoned to IPD and MPD with similar uses; thus, the proposed MPD zoning and schedule of uses are consistent and compatible with prior approvals in the area. The parcels are cleared and currently being used for cattle grazing. The Master Concept Plan provided by the applicant depicts the required buffering and open space with the appropriate deviations. Therefore, the proposed rezoning is consistent with Lee Plan **Policies 6.1.1, 6.1.4, 6.1.5, and 6.1.7.**

Policy 7.1.1 of the Lee Plan addresses the need for well-planned industrial development in suitable locations within the county, and describes several provisions required for approvals of industrial land uses:

1. The development must comply with local, state, and federal air, water, and noise pollution standards.
2. When located next to residential areas, industry must not generate noise levels incompatible with the residential development.
3. Bulk storage or production of toxic, explosive, or hazardous materials will not be permitted near residential areas.
4. Contamination of ground or surface water will not be permitted.
5. Applications for industrial development will be reviewed and evaluated as to:
 - a. __ air emissions (rezoning and development orders);
 - b. __ impact and effect on environmental and natural resources (rezoning and development orders);
 - c. __ effect on neighbors and surrounding land use (rezoning);
 - d. __ impacts on water quality and water needs (rezoning and development orders);
 - f. __ employment characteristics (rezoning);
 - g. __ fire and safety (rezoning and development orders);
 - h. __ noise and odor (rezoning and development orders);
 - i. __ buffering and screening, except properties within the Industrial Development future land use category adjacent to lands redesignated to the Urban Community future land use category by Ordinance 16-17 will retain their development potential and land development regulations (including buffers and setbacks) consistent with the requirements previous to the redesignation, as though the redesignated lands are non-residential in use (planned development rezoning and development orders);
 - j. __ impacts on transportation facilities and access points (rezoning and development orders);
 - k. __ access to rail, major thoroughfares, air, and, if applicable, water (rezoning and development orders);
 - l. __ utility needs (rezoning and development orders); and
 - m. __ sewage collection and treatment (rezoning and development orders).

The subject parcels are not located in an area of residential development. The parcels have been previously cleared and are currently being used for cattle grazing. There are no proposed impacts to the environment or natural resources as part of this request and an existing on-site lake provides some water quality treatment. As the individual parcels develop, a modification of the existing South Florida Water Management District permit will be required. Attachment “I” details the applicant’s management of surface water flows and treatment requirements. The proposed uses and intensity will create jobs and economic growth in the area. There are no anticipated detrimental impacts to transportation facilities as detailed in the applicant’s traffic impact statement. There are existing access points on Oriole Road and Three Oaks Parkway, as well as additional access points proposed onto both roads that will provide adequate access to the parcels. The applicant has obtained a letter of availability of potable water and wastewater services from Lee County Utilities. Staff finds that the proposed rezoning is consistent with **Policy 7.1.1** of the Lee Plan.

Policy 7.1.3 requires industrial land uses to be located in appropriate areas in consideration of site selection, access, utilities, proximity to related land uses, and compatibility. The subject parcels are surrounded by similar land uses. The continuation of industrial and commercial uses are compatible with the area. Existing access points and utility availability further support this policy. Staff finds that the proposed rezoning is consistent with **Policy 7.1.3** of the Lee Plan.

Policy 7.1.5 limits the timing and location of industrial development to ensure the adequacy of existing or planned services and facilities. Oriole Road bisects the parcels that are the subject of the applicant’s request and provide frontage and access to the parcels comprising the subject property. Additionally, the eastern parcel has frontage on Three Oaks Parkway. The area is serviced by Lee County Utilities, San Carlos Park Fire District and the South District of the Lee County Sheriff’s Department. Staff finds that the proposed rezoning is consistent with **Policy 7.1.5** of the Lee Plan.

Policy 7.1.9 prohibits industrial development if it allows industrial traffic to travel through predominantly residential areas. The subject parcels are not located in a residential area. The sites will be accessed via Three Oaks Parkway or Oriole Road and will not require travel through residential areas. Staff finds that the proposed rezoning is consistent with **Policy 7.1.9** of the Lee Plan.

Objective 11.1 encourages mixed-use development at appropriate locations where sufficient infrastructure exists to support the development. The subject parcels have frontage on and access to an arterial and a collector roadway in an area where mixed-use development has been approved in the past. The mixed-uses proposed by the applicant include commercial and light industrial uses and the parcels are serviced by Lee County Utilities. For these reasons, Staff finds that the request meets the requirements of **Objective 11.1** of the Lee Plan.

Policy 61.3.6 of the Lee Plan requires developments to provide surface water management systems, acceptable programs for operation and maintenance, and post-development runoff conditions that reflect the natural surface water flow rate, direction, quality, hydroperiod, and drainage basin. At the time of local development order approval, the applicant will need to

demonstrate that the design of the surface water management system complies with this policy. The proposed development will require a modification to the existing South Florida Water Management District Environmental Resource Permit.

Land Development Code Compliance and Deviation:

Section 34-411 of the Lee County Land Development Code requires all planned developments to be consistent with the Land Development Code except as approved through deviations during the planned development process.

The applicant has requested thirteen deviations from the Land Development Code (LDC) as part of the proposed rezoning:

Deviation (1A) Connection Separation Three Oaks Parkway seeks relief from LDC Section 10-285(a) Table 1, which requires a minimum connection separation of 440 feet on a minor arterial road with a speed limit of 45 miles per hour to allow a minimum separation of 100 feet on Three Oaks Parkway between the project's southernmost driveway and the FPL access driveway for the FPL Patrol Road.

The FPL access driveway is only used by FPL trucks for maintenance of the power lines and does not function as an active driveway. The proposed access point for this deviation will only allow right-in/right-out traffic movements. Therefore, Staff recommends **APPROVAL** of the applicant's request.

Deviation (1B) Connection Separation Oriole Road seeks relief from LDC Section 10-285(a) Table 1, which requires a minimum connection separation of 245 feet on a major collector road with a speed limit of 30 miles per hour, to allow a minimum separation of 100 feet on Three Oaks Parkway between the project's southernmost driveway and the FPL access driveway for the FPL Patrol Road.

The FPL access driveway is only used by FPL trucks for maintenance of the power lines and does not function as an active driveway. Therefore, Staff recommends **APPROVAL** of the applicant's request.

Deviation (2A) Setbacks for Water Retention or Detention Excavations (right-of-way) seeks relief from LDC Section 10-329(d)(1)a.2, which requires that no excavation will be allowed within 50 feet of any existing or proposed right-of-way line or easement for a collector or arterial street, to allow a 25-foot setback. Staff recommends **APPROVAL** of the applicant's request. **SUBJECT** to the following condition:

The developer must provide for the protection of wayward vehicles using guardrails, berms, swales, vegetation, or other methods as determined by the Lee County Development Services Manager.

The adjacent properties are part of a master stormwater management system permitted by the South Florida Water Management District in Permit #36-05268-P, which provides for existing drainage easements that extend beyond the north and south property lines.

Deviation (2B) Setbacks for Water Retention or Detention Excavations (property line) seeks relief from LDC Section 10-329(d)(1)a.3, which requires that no excavation will be allowed within 50 feet of any private property line under separate ownership, to allow a 25-foot setback and/or to allow a zero-foot setback when the lake is combined with an adjacent property lake. The adjacent properties are part of a master storm water management system permitted by the South Florida Water Management District in Permit #36-05268-P, which provides for existing drainage easements that extend beyond the north and south property lines. Therefore, Staff recommends **APPROVAL** of the applicant's request.

Deviation (2C) Bank Slopes seeks relief from LDC Section 10-329(d)(4), which requires excavations to be sloped at a ratio not greater than six horizontal to one vertical from the top of bank to a water depth of two feet below the dry season water table, to allow the existing lake bank to be sloped at a ratio of four horizontal to one vertical. The existing lake was approved via DOS2008-00100 and constructed in 2009 with a lake bank slope ratio of 4:1. Therefore, Staff recommends **APPROVAL** of the applicant's request.

Deviation (2D) Fencing seeks relief from LDC Section 10-329(d)(6), which requires a four-foot fence around water retention excavations when located less than 100 feet from a property under separate ownership, to allow no fencing around existing or proposed lakes. Staff recommends **APPROVAL** of the applicant's request.

The lakes are existing and in some cases straddle the property lines. Additionally, the property is surrounded by other industrial and commercial uses that are part of the same master drainage system.

Deviation (3A) Notes for Buffer Type Table seeks relief from LDC Section 10-416(d)(4), Note 3, which requires palm trees to be limited to a maximum of 50 percent of the right-of-way tree requirement, to allow palms to make up 100 percent of the right-of-way tree requirement along Three Oaks Parkway for Tracts A-1, A-2, B-1 and B-2. Staff recommends **APPROVAL** of the applicant's request with the following condition:

Prior to development order approval, the landscape plans must depict a Type-D right-of-way buffer. The right-of-way buffer must be at a minimum 7.5 feet in width with 15 native palm trees every 100 linear feet. The native palms must be clustered in groups of three with staggered heights ranging from 10-foot clear trunk to 14-foot clear trunk.

Deviation (3B) Planted Littoral Shelf seeks relief from LDC Section 10-418(2)a, which requires all surface water management systems to provide a planted littoral shelf that

mimics the function of a natural marsh, to provide no littoral shelf. Staff recommends **APPROVAL** of the applicant's request.

Deviation (3B-1) Plant Selection seeks relief from LDC Section 10-428(2)(d)(3), which allows native wetland trees to be substituted for up to 25 percent of the total number of herbaceous plants required, to allow native wetland trees to be substituted for 100 percent of the total number of herbaceous plants required. Staff recommends **APPROVAL** of the applicant's request **SUBJECT** to the following condition:

Prior to development order approval, native wetland trees may be substituted for up to 100% of the total number of herbaceous plants required. One tree (minimum ten-foot-height; two-inch caliper, with a four-foot spread) may be substituted for 100 herbaceous plants.

These two deviations are necessary because the subject properties are located within 10,000 feet of airport operations. The Federal Aviation Administration requirements prohibit herbaceous littorals around surface water management lakes and dry detention areas to limit suitable habitat for wading birds, which have the potential to disrupt airport operations.

Deviation (4A) Planting Strips seeks relief from LDC Section 10-296(e)(2)d, which requires street trees to be planted on both sides of the road in the 6-foot planting area between the sidewalk and road edge of pavement, required small trees to be evenly spaced along the frontage and not clustered, and limits palm trees to a maximum of 50 percent of the required small trees, to allow trees to be planted on only one side of the road, and to allow 100% of the trees to be clustered palm trees. Staff recommends **APPROVAL** of the applicant's request **SUBJECT** to the following condition:

The development order plans must depict street trees on one side of the street in compliance with the following:

- a. Nine palm trees per 100 linear feet must be provided; and*
- b. Palm trees must be native species; and*
- c. Palm trees must be specified at staggered heights ranging from ten to fourteen-foot clear trunk.*
- d. Palms may be clustered.*

The tracts abutting Three Oaks Parkway include easements that abut the right-of-way and limit the amount of space for tree root growth that will impact utilities. Palm trees have a limited root system and are compatible with the abutting utility easements. This deviation will also allow a consistent planting theme along Three Oaks Parkway.

Deviation (4B) Culs-de-Sac seeks relief from LDC Section 10-296(k)(1), which requires dead-end streets to be closed at one end by a circular turnaround for vehicles, to allow the internal roads and or accessways to be constructed with a hammer head road configuration instead of culs-de-sac. The hammer head configuration will allow design flexibly during phasing and development of internal parcels. The hammer head design

provides sufficient area for vehicles and emergency vehicles to turn around. This configuration has been approved in the past for similar projects. Therefore, Staff recommends **APPROVAL** of the applicant's request **SUBJECT** to the following condition:

Hammer head turnarounds are approved only where noted on the Master Concept Plan. Any development of individual tracts with a hammer head configuration will require an additional deviation.

Deviations (5A) and (5B) Nonresidential Subdivision Signage seeks relief from LDC Section 30-153(2)a and Section 30-153(2)(a)1.ii., which permit one identification sign equal to one square foot of sign area per face for every one linear foot of frontage, to allow two additional ground-mounted identification signs, located on each of the project's road frontage on Three Oaks Parkway and on the west and east sides of Oriole Road, with a sign area not to exceed 200 square feet per sign (total of 9 signs). Staff recommends **APPROVAL** of the applicant's request **SUBJECT** to the following condition:

The Developer must submit a detailed, final sign package covering the proposed signs along Three Oaks Parkway Extension and Oriole Road for review and approval by the Department of Community Development in conjunction with the first local development order for the property.

- a. Ground mounted identification signs must have a minimum separation of 300 feet on Oriole Road and 400 feet on Three Oaks Parkway.*
- b. Ground mounted identification signs are limited to a maximum height of 20 feet.*
- c. The signs must be placed and constructed in accordance with LDC Section 30-93, visibility triangle safe sight distance requirements.*

The additional signage will assist the traveling public by providing notifications that will allow safe turning movements and assist the public in selecting the most favorable access point to the proposed development.

The uses requested by the applicant are permitted in the MPD zoning district. The parcel is of sufficient size and has access to permit the development proposed in the Master Concept Plan, while meeting the required site design elements, setbacks, open space and buffering with the approval of the deviations and conditions proposed.

Compatibility with existing and planned uses in the surrounding area

The subject parcels are bisected by Oriole Road, while the eastern parcel also has frontage on Three Oaks Parkway to the east. The parcels are located in an area of mixed-use and industrial growth. The surrounding parcels are zoned MPD and IPD with similar proposed and existing uses. The applicant's proposal will follow the existing growth patterns by concentrating industrial development on the western side of Oriole Road, while focusing on commercial type

uses adjacent to Three Oaks Parkway. For these reasons, Staff finds that the proposed rezoning to MPD is compatible with existing uses in the surrounding area.

Sufficient access to support the development and impacts on transportation facilities

Access to the subject parcels will be provided via three access connections onto Three Oaks Parkway (County-maintained arterial) and six access connections to Oriole Road (County-maintained collector) as shown on the MCP. The northern and southern accesses onto Three Oaks Parkway will only allow right-in and right-out traffic movements. The applicant submitted a Traffic Impact Statement that was reviewed by the Department of Community Development. The Traffic Impact Statement and the review memo are attached as Attachment “H.” The traffic generated by the proposed development will not negatively impact existing transportation facilities. For these reasons Staff finds that the proposed rezoning to MPD has sufficient access to support the development and does not negatively impact existing transportation facilities.

Impacts to environmentally critical or sensitive areas and natural resources

Lee County Environmental Staff reviewed the requested rezoning and deviations, and their analysis is included as Attachment “J.” The site is currently being used for cattle grazing and is highly disturbed. Staff has noted that a Protected Species Report was submitted by the applicant that indicated ten active burrowing owl burrows were found on the site. There is also an active southern bald eagle nest located within 1,900 feet of the south property line. This active nest is located outside of the 660-foot protection zone. Staff recommends the following condition to address the presence of active burrowing owls:

Prior to the issuance of a vegetation removal permit, the applicant must provide documentation from the Florida Fish and Wildlife Conservation Commission (FWCC) for burrowing owl impacts.

The proposed mixed-use planned development will consist of commercial and industrial uses. The applicant must provide 20 percent open space for all industrial uses and 30 percent open space for all commercial uses for a large development in accordance with the Land Development Code requirements. The Master Concept Plan provided notes a minimum open space requirement of 15.59 acres (20 percent). Staff recommends approval of the open space and recommends the following condition:

The development must provide a minimum of 15.59 acres of open space. Commercial uses must provide 30 percent open space and industrial uses must provide 20 percent open space.

The submitted MCP is in compliance with the landscaping, open space, and indigenous open space in accordance with the Land Development Code and the approved requested deviations. Environmental Staff has recommend approval of the requested deviations with conditions. The attached conditions of approval include those recommended conditions. Staff finds that the requested rezoning does not impact environmentally critical or sensitive areas and natural resources.

Urban Services

The applicant has provided a letter from Lee County Utilities which verifies that potable water and wastewater capacity is available. The letter is attached as Attachment “G.” The subject property is currently within the San Carlos Park Fire District. San Carlos Park Fire Rescue Station 54 is approximately 0.3 miles south of the subject property and provides fire suppression, emergency medical services, rescue, and advanced life support. The subject parcel is served by the South District of the Lee County Sheriff’s Department. Lee County Transit has reviewed the rezoning request and provided their analysis attached as Attachment “K.” Based on Lee Transit’s analysis, no additional improvements to transit facilities are required.

CONCLUSION:

Staff finds that the request, as conditioned, is consistent with the Lee Plan and with the requirements of the Land Development Code. This request has been reviewed against the decision making criteria set forth in LDC Sec. 34-145(d)4, and staff has found the request:

- Complies with the Lee Plan;
- Meets this Code and other applicable County regulations or qualifies for deviations;
- Will provide access sufficient to support the proposed development intensity;
- Will be able to address expected impacts on transportation facilities in accordance with the requirements of the Land Development Code;
- Will not adversely affect environmentally critical or sensitive areas and natural resources; and
- Will be served by urban services, defined in the Lee Plan, if located in a Future Urban area category.

In addition, staff has found:

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

Staff recommends **approval** of the request with the deviations and conditions attached.

ATTACHMENTS:

- A. Expert Witness Information
- B. Sketch and Legal Description
- C. Maps: surrounding zoning, future land use and aerial photograph
- D. Applicants Request Statement
- E. Proposed Schedule of Uses, Conditions, and Deviations
- F. Master Concept Plan – Three Oaks Logistics Center
- G. Potable Water and Wastewater Availability Letter
- H. Traffic Analysis Memo (dated 07/12/2021) and Traffic Impact Statement (dated 11/19/2020 and amended 06/03/2020)
- I. Applicant’s Surface Water Management Plan
- J. Environmental Staff Report and Protected Species Report
- K. Lee Transit Letter (dated June 14, 2021)

DCI2021-00006
SANIBEL PASSAGE

Staff Summary

CASE NUMBER & NAME: DCI2021-00006 / Sanibel Passage

REQUEST: This request is for an amendment of Z-04-040A, to allow a deviation from LDC Sec. 10-291(3) which requires residential development of larger than five acres to provide more than one means of ingress or egress from the development to provide only one means of ingress or egress.

RESOLUTION NUMBER: Z-21-011

LOCATION: 17300 McGregor Blvd., North side of McGregor Blvd. at the intersection of Punta Rassa Rd., Iona/McGregor Planning Community, Lee County, FL

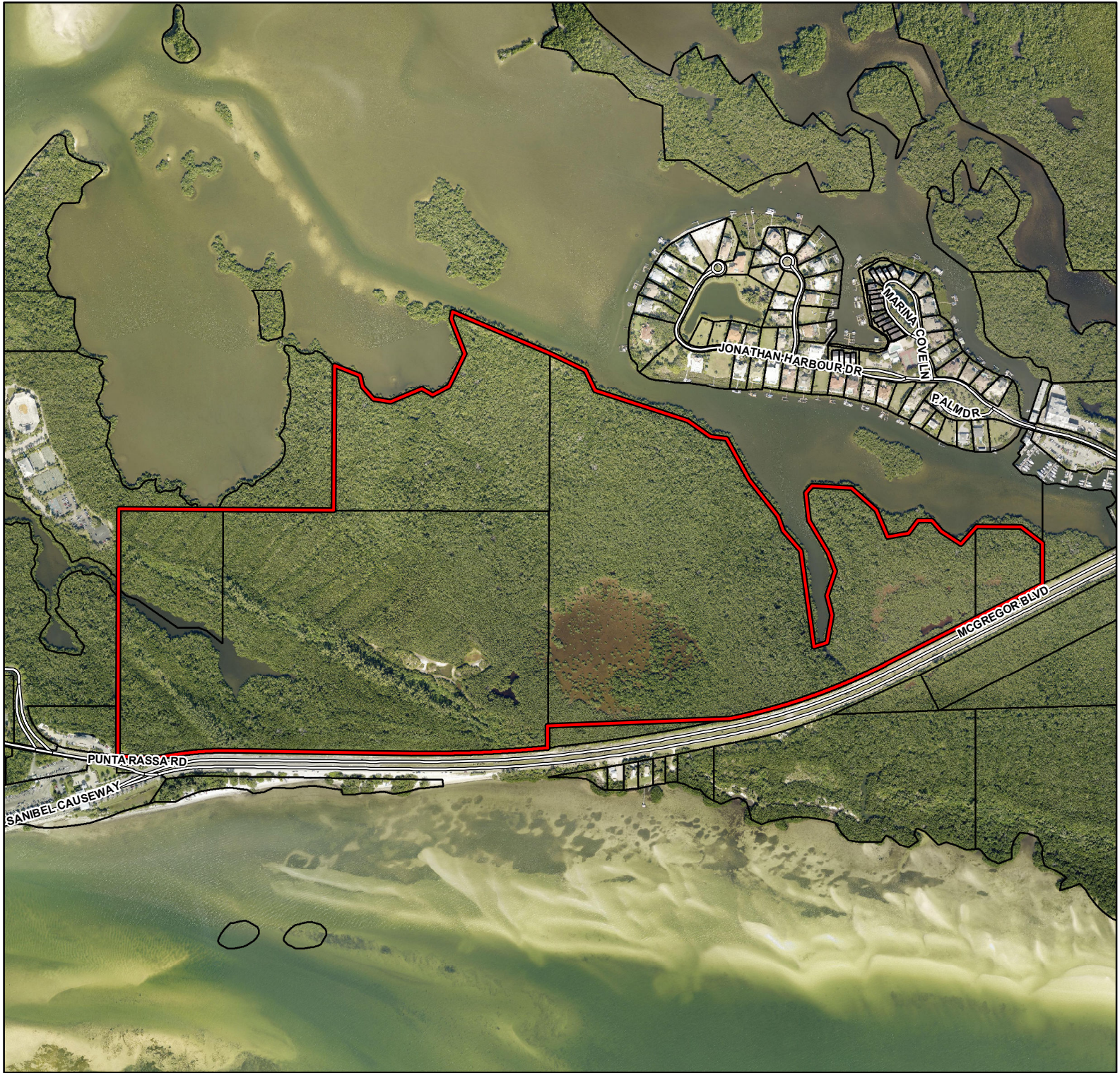
OWNER: PRH SANIBEL LLC

APPLICANT: Michael Hammon

AGENT: Peter Van Buskirk
Kimley-Horn and Associates, Inc
1412 Jackson Street
Fort Myers, FL 33901

HEARING EXAMINER
RECOMMENDATION: Approve

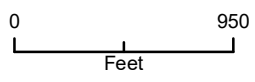
PARTICIPANTS: (6) James Evans
Jim Metzler
Holly Milbrandt
Tom Schmidt
Holly Schwartz
Mary Tracy Sigman



DCI2021-00006
Aerial

Legend

 Subject Parcel



Summary of Hearing Examiner Recommendation

SANIBEL PASSAGE

(by Kimley-Horn & Associates on behalf of PRH Sanibel, LLC)

Request:	Amend the Sanibel Passage (fka MLG/Island Passage) Residential Planned Development (RPD) to add a deviation permitting a single access point.
Location:	17100, 17251, 17300, 18351 McGregor Boulevard (North side of McGregor Blvd/Punta Rassa Rd intersection) Iona/McGregor Planning Community District 3
Size:	207.79± acres
Recommendation:	Approve
Deviations:	2 (1 previously approved, 1 new)
Conditions of Note:	None
Public Concerns:	None related to this amendment

Hearing Examiner Remarks:

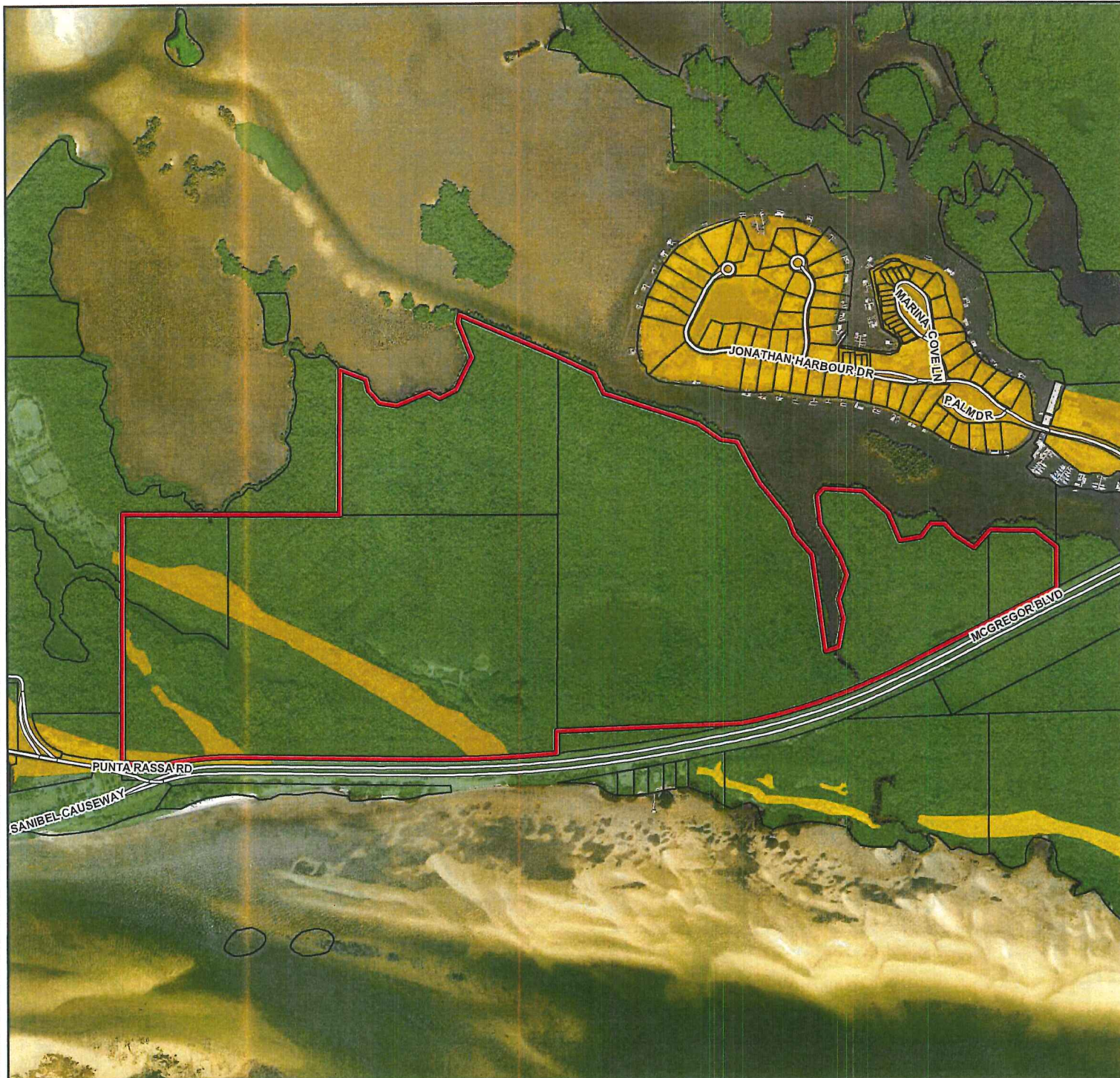
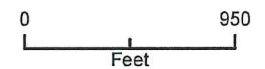
Applicant seeks to add a deviation to an approved RPD to maintain a single project access point to McGregor Boulevard. LDC revisions since original zoning approval require projects to have two points of access to the county road network. Maintaining a single access point reduces development impact.

Detailed recommendation follows

DCI2021-00006
Future Land Use

Legend

-  Subject Parcel
-  Suburban
-  Outlying Suburban
-  Conservation Lands
- Upland
-  Wetlands
-  Conservation Lands
- Wetland



DCI2021-00006
Aerial

Legend

 Subject Parcel

ATTACHMENT C



0 950
Feet



OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2021-00006

Regarding: **SANIBEL PASSAGE RPD**

Location: 17100, 17251, 17300, 18351 McGregor Boulevard
(North side of McGregor Boulevard, east of Punta Rassa Road)

Iona/McGregor Planning Community
(District 3)

Hearing Date: August 5, 2021

Record Closed: August 13, 2021

I. Request

Amend the Sanibel Passage Residential Planned Development (RPD) to add a deviation permitting a single project access point.

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.¹ In satisfaction of this duty, the Hearing Examiner accepted testimony and evidence on the application to amend an existing RPD.

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 that the request is compatible with surrounding uses and complies with Lee Plan and LDC requirements relating to such items as transportation facilities, natural resources,

¹ LDC 34-145(d)(1)(a) & (2)(a).

² LDC 34-145(d)(3).

and urban services.³ The Hearing Examiner's recommendation must be based on competent and substantial evidence.⁴

Discussion supporting the recommendation of approval of the proposed RPD amendment follows below.

Synopsis of Request

The request adds a deviation to an approved RPD in the Iona/McGregor Planning Community. The 207.79± acre vacant property is located north of McGregor Boulevard, just before the Sanibel Causeway. Punta Rassa and Jonathan Harbour flank the property.

Mangroves, native vegetation, and conservation areas dominate the site.⁵ The RPD approves 50 multi-family units in a single 155-foot-high building.⁶ The Master Concept Plan (MCP) reflects 98.6% open space will remain after development.⁷

The Board approved the project in 2005.⁸ The site plan reflects a single project access to McGregor Boulevard, consistent with LDC requirements in effect during original zoning approval.⁹ Subsequent LDC amendments require a second access.¹⁰

Applicant seeks the deviation to conform to current LDC requirements.¹¹ The requested deviation *proposes no changes* to the approved development plan.

Staff recommended approval, finding the proposed RPD amendment satisfied LDC review criteria.

Zoning Review Criteria

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

³ LDC 34-145(d)(4).

⁴ Lee Co. Admin. Code 2-6, 3.3(A)(2); LDC 34-83(a)(4)(a)(1)(a).

⁵ See Applicant's Ex. 1 (slide 13). Conservation easements cover 194.78 of the 207.79 acres, or 93.7%. See Staff Report (Attachment G), amended by Post-Hearing Written Submissions, revised MCP dated March 2021.

⁶ *Id.* Proposed density yields 0.23 units per acre. See Staff Report (pg. 4).

⁷ See Staff Report (Attachment G, pg. 2), amended by Post-Hearing Written Submissions, revised MCP dated March 2021. Development area occupies just 4.98 acres of the 207.79 acre site. See Applicant's Ex. 1 (slide 14).

⁸ The Board originally denied the project in 2004. Applicant appealed. The Circuit Court quashed the denial and remanded the case back to the Board. The Board subsequently approved the request in Z-04-040A. See Staff Report (Attachment E, fourth clause detailing case history).

⁹ See Staff Report (Attachment G), amended by Post-Hearing Written Submissions, revised MCP dated March 2021; Staff Report (pg. 2-3).

¹⁰ See LDC 10-291(3).

¹¹ See Applicant's Ex. 1 (slide 5).

- 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. 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.¹²

If the request involves planned development zoning, such as amending a RPD, 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) preserves and promotes the general intent of the LDC to protect the public health, safety, and welfare.¹³

Character of the Area and Zoning History

The property is located west of the Shell Point community, east of the Sanibel Causeway. Commercial and residential uses are concentrated along the McGregor Boulevard corridor.¹⁴ Punta Rassa abuts to the west, with Jonathan Harbour to the east.¹⁵ Undeveloped wetlands sit south of McGregor Boulevard.

¹² See LDC 34-145(d)(4)(a)(1).

¹³ See LDC 34-145(d)(4)(a)(2).

¹⁴ See Staff Report (Attachment B).

¹⁵ See Applicant's Ex. 1 (slide 7).

The Board approved the RPD in 2005. In 2008, Applicant added timeshare as a permitted use.¹⁶ The zoning resolution and MCP otherwise remain unchanged.

Applicant submitted a development order consistent with the approved MCP in 2020.¹⁷

Lee Plan Consistency and Compatibility

Planned developments must be consistent with the Lee Plan.¹⁸ Requests for rezoning must be compatible with existing or planned uses in the surrounding area.¹⁹

The Lee Plan Future Land Use Map classifies the property as predominately Wetlands with 11± upland acres as Suburban.²⁰ The site also lies in the Coastal High Hazard area within the Iona/McGregor Planning Community.²¹ The Lee Plan envisions substantial growth for this area.²² Careful site design ensures compliance with Coastal High Hazard directives.²³

The Wetlands category permits low density residential uses that do not adversely affect ecological function.²⁴ RPD conditions of approval require Applicant to place 194.78± acres under conservation easement.²⁵ This equates to conserving 94% of the site to ensure wetland protection.

The requested deviation to retain a single project access does not pose wetland impacts.²⁶ Conversely, a second access *would* impact wetlands because it must traverse conservation lands.²⁷

Suburban areas are generally residential in nature, providing housing near more urban areas.²⁸ The standard density range is one to six units per acre.²⁹ The

¹⁶ ADD2008-00067.

¹⁷ DOS2020-00023; Applicant's Ex. 1 (slide 29); See Staff Report (pg. 2).

¹⁸ LDC 34-411(a).

¹⁹ LDC 34-145(d)(4)(a).

²⁰ Lee Plan Map 1; Staff Report (pg. 2, Attachment B).

²¹ Lee Plan Maps 5, 16.

²² Lee Plan Map 16; Lee Plan Vision Statement ¶12.

²³ See Staff Report (pg. 5). Applicant proposes no changes to existing hydrology of the wetland areas. The RPD maintains or enhances the adjacent estuary by invasive exotic removal, restoration of tropical hardwood hammock, and a surface water management system. *Id.* See Lee Plan Goal 101, Policy 101.3.2.

²⁴ See Lee Plan Policy 1.5.1.

²⁵ See Condition 7; Z-04-040A.

²⁶ The deviation does not alter the development footprint already approved in Z-04-040A.

²⁷ See Staff Report (pg. 2, 5). Applicant also identified legal concerns associated with locating a second access point within areas encumbered by conservation easements. Testimony of Neale Montgomery (Trans. pg. 23-24).

²⁸ Lee Plan Policy 1.1.5.

²⁹ *Id.*

requested RPD amendment does not change the approved density of 0.23 units per acre.³⁰

Retaining the RPD's compact development footprint with substantial conservation easements remains consistent with the site's future land use designations.³¹

The Board previously found the RPD compatible with the surrounding area and in compliance with the Lee Plan.³² *Applicant proposes no changes to alter this finding.* Indeed, limiting access points to the RPD minimizes wetland impacts.³³

The request is compatible with existing and planned uses in the surrounding area.³⁴

Transportation/Traffic

Planned developments must have access to roads with sufficient capacity to support proposed intensity.³⁵ Existing regulations or conditions of approval must address expected impacts on transportation facilities.³⁶

McGregor Boulevard is a four lane arterial road intersecting Punta Rassa Road west of the site.³⁷ The prior Board approval authorized a single project access to McGregor Boulevard.³⁸ The single access point remains unchanged since original Board approval.³⁹

Applicant provided adequate evidence to demonstrate the previously approved project access is sufficient to support the proposed development.⁴⁰ Site-related impacts will be evaluated during development order review.⁴¹

³⁰ See Staff Report (pg. 4).

³¹ See Lee Plan Policies 1.1.5, 1.5.1.

³² Z-04-040A.

³³ A second access point would necessarily need to locate within wetland areas under conservation easement. Testimony of Peter Van Buskirk (Trans. pg. 23-24).

³⁴ See LDC 34-145(d)(4)(a)(1)(c); Staff Report (pg. 2-4); Applicant's Ex. 1.

³⁵ LDC 34-145(d)(4)(a)(1)(d); 34-411(d)(1).

³⁶ LDC 34-145(d)(4)(a)(1)(e); 34-411(d)(2).

³⁷ McGregor Boulevard is a county-maintained road. See Staff Report (Attachment I).

³⁸ See Staff Report (Attachment I).

³⁹ Z-04-040A. Applicant submitted a development order in 2020 consistent with a single access point. See Staff Report (pg. 2, 6).

⁴⁰ LDC 34-145(d)(4)(a)(1)(d); Applicant's Ex. 1 (slide 15); See Staff Report (pg. 6, Attachment I); Testimony of Peter Van Buskirk (Trans. pg. 16).

⁴¹ Site related improvements include capital improvements and right-of-way dedications for "direct access" improvements to the project. Direct access improvements include site driveways and roads, median cuts, right-turn left-turn and deceleration/acceleration lanes, traffic control measures, and roads/intersection improvements whose primary purpose at the time of construction is to provide access to the development. See, Lee Plan Glossary and LDC 2-264; Lee Plan Objective 39.1, Policy 39.1.1. LDC 2-66 *et. seq.*

Environmental and Natural Resources

Planned development design should reflect creative use of open space.⁴² Developers must make an effort to protect and preserve natural site features.⁴³

The property is predominately encumbered by conservation easements.⁴⁴ Accordingly, the proposed development substantially exceeds LDC open space requirements.⁴⁵

In addition to conserving 94% of the property, Applicant must remove invasive exotics and restore 3.8 acres of upland tropical hardwood hammock.⁴⁶ Staff found the cumulative impact of the RPD's environmental conditions enhance the adjacent estuary.⁴⁷

The request to retain a single project access does not impact environmentally critical or sensitive areas.

Urban Services

Urban services are the facilities, capital improvements, and infrastructure necessary to support development.⁴⁸ The Lee Plan requires an evaluation of urban services during the rezoning process.⁴⁹

A host of urban services and infrastructure serve the property including roads, potable water, sanitary sewer, police, fire, and emergency medical services.⁵⁰

Deviations

"Deviations" are departures from LDC regulations.⁵¹ The RPD has one previously approved deviation.⁵²

⁴² See LDC 34-411(h).

⁴³ See LDC 34-411(g).

⁴⁴ See LDC 10-415, 34-411.

⁴⁵ See Lee Plan Goal 77, Objective 77.2; Staff Report (pg. 6).

⁴⁶ See Condition 7; Staff Report (pg. 6).

⁴⁷ See Staff Report (pg. 6); Lee Plan Policies 101.1, 101.3.2.

⁴⁸ Lee Plan Glossary; Urban 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, industrial, and commercial centers, institutional, public, or administrative facilities, community facilities such as senior citizens centers, libraries and community centers.

⁴⁹ Lee Plan Policy 2.2.1.

⁵⁰ See Applicant's Ex. 1 (slides 16-18, 22).

⁵¹ LDC 34-2.

⁵² Z-04-040A, ADD2008--00067. Deviation 1 approves a building height of 155 feet, rather than the 45 feet the LDC permits. These prior development approvals will be codified into one resolution setting forth all approved conditions and deviations.

Applicant proposes one additional deviation to comply with LDC amendments since original zoning approval.⁵³ Staff supports the requested deviation.⁵⁴

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

1. Enhances achievement of the objectives of the planned development; and
2. Preserves and promotes the general intent of the LDC to protect the public health, safety, and welfare.⁵⁵

The RPD was first approved in 2005.⁵⁶ At that time, the LDC granted the zoning director authority to determine if projects warranted a second access point.⁵⁷ An LDC amendment in 2007 mandated two project access points or a public hearing to deviate from the requirement.⁵⁸

Applicant applied for a development order consistent with the approved MCP in 2006, but did not complete work under that DO.⁵⁹ In 2020, Applicant re-applied for a development order,⁶⁰ but county staff concluded Applicant must undergo the public hearing process to deviate from the subsequently adopted LDC requirement for a second access point.⁶¹

Applying LDC standards of review for deviations to the testimony and evidence in the record, the Hearing Examiner concludes the requested deviation meets approval criteria.⁶²

Conditions

The county must administer the zoning process so proposed land uses acceptably minimize adverse impacts to adjacent property as specified in development regulations. Conditions must plausibly relate to the impacts anticipated from proposed development and must be pertinent to mitigation of those impacts on the public health, safety, and welfare.⁶³

⁵³ See Applicant's Ex. 1 (slide 3-5).

⁵⁴ See Staff Report (pg. 1-6).

⁵⁵ LDC 34-145(d)(4).

⁵⁶ See Z-04-040A, approved by the Board on August 1, 2005.

⁵⁷ See LDC 10-291 (2005, shown in strikethrough in Lee Co. Ord. 07-24).

⁵⁸ See Lee Co. Ord. 07-24.

⁵⁹ See Staff Report (Attachment J); Testimony of Peter Van Buskirk (Trans. pg. 10, 18-20).

⁶⁰ Testimony of Peter Van Buskirk (Trans. pg. 19-20); Applicant's Ex. 1 (slide 29).

⁶¹ Testimony of Peter Van Buskirk (Trans. pg. 9).

⁶² LDC 34-377(a)(4).

⁶³ LDC 34-932(b).

The RPD is subject to several conditions of approval.⁶⁴ The conditions relate to impacts anticipated from the project.⁶⁵ The Hearing Examiner recommends:

1. Revisions to conditions to improve clarity; and
2. Deletion of conditions that restate LDC standards and criteria applicable to the project pursuant to Condition 1.

Public

Members of the public spoke at hearing to express concerns primarily related to wetland impacts, traffic, and hurricane evacuation implications the project poses to Sanibel residents.⁶⁶ Speakers recognized, however, that the request to retain a single project access does not touch those specific concerns.⁶⁷ Many comments centered on matters related to permits issued by other agencies.⁶⁸

Conclusion

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

IV. Findings and Conclusions

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

- A. As conditioned herein, the proposed amendment to the Sanibel Passage RPD:
 1. Complies with the Lee Plan. See, Lee Plan Vision Statement Paragraph 12 (Iona/McGregor Planning Community), Lee Plan Goals 2, 4, 5, 77, 101, Objectives 2.1, 2.2, 5.1, and Policies 1.1.5, 1.5.1, 1.7.6, 5.1.2, 5.1.5, 101.1, 101.3.2; Lee Plan Maps 1, 16.
 2. Complies with the LDC and other County regulations. See, LDC Chapters 10 and 34;

⁶⁴ Original zoning approval conditions required Applicant to execute conservation easements that have since been recorded. These conditions have been carried forward, however, since the recorded easements specifically reference the zoning resolution conditions by number. See Testimony of Brian Roberts and Peter Van Buskirk (Trans. pg. 36-38).

⁶⁵ LDC 34-83(b)(4)a.3.

⁶⁶ See Public Testimony (Trans. pg. 41-52). Three e-mails were submitted in opposition to the request as well. See Staff Ex. 3.

⁶⁷ *Id.* The request seeks only to retain the single access point the Board already approved. Adding a second access point does not increase traffic generation, nor would it impact hurricane evacuation from Sanibel Island. Applicant presented letters of no objection from emergency service providers. See Applicant's Ex. 1 (slides 16-18); Staff Report (pg. 6, Attachment H).

⁶⁸ See Public Testimony (Trans. pg. 41-52). Speakers identified concerns regarding Army Corps of Engineer and South Florida Water Management District permits. *Id.*

3. Is compatible with existing and planned uses in the area. See, Lee Plan Policies 1.1.5, 1.5.1, 2.1.1, 2.1.2, 2.2.1, 5.1.5; LDC 34-411(c), (i), and (j).
 4. Will not adversely affect environmentally critical areas and natural resources. See, Lee Plan Goals 77, 101, Objective 77.1, Policies 1.5.1, 101.3.2, LDC 34-411(h).
 5. Will be served by urban services. See, Lee Plan Glossary, Maps 6, 7, Goal 2; Objectives 2.1, 2.2, 4.1, 53.1, 56.1; Policies 2.2.1, 5.1.3, 135.9.7 and Standards 4.1.1 and 4.1.2; LDC 34-411(d).
- B. The Master Concept Plan reflects sufficient access to support the intensity of development. In addition, County regulations and conditions of approval will address expected impacts to transportation facilities. See, Lee Plan Goal 39, Objective 39.1; LDC 34-411(d).
- C. The proposed mix of uses is appropriate at the proposed location. See, Lee Plan Policies 1.1.5, 2.1.1, 5.1.2, 5.1.5, and 135.1.9.
- D. The recommended conditions are sufficient to protect the public interest and reasonably relate to the impacts expected from the development. See, Lee Plan Policies 5.1.5, 135.9.6; See *also*, LDC Chapters 10 and 34.
- E. As conditioned herein, the deviations:
1. Enhance the objectives of the planned development; and
 2. Promote the intent of the LDC to protect the public health, safety, and welfare. See, 34-377(b)(4).

Date of Recommendation: September 10, 2021.


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



E.F. Gaines Surveying Services, Inc.
5235 Ramsey Way, Suite 10
Fort Myers, Florida 33907
(P) 239-418-0126: (W) EFGaines.com

Description of Sanibel Passage

located in Sections 9 and 10, Township 46 South, Range 23 East, Lee County, Florida

(this description was prepared for Lee County for the purpose of providing a continuously described parcel without any less and except parcels; this description is intended to describe the same lands as described in Lee County Instrument Number 2019000725774)

A Tract or parcel of land situated in the State of Florida, County of Lee, lying in Government Lots 1, 4 & 5 of Section 9, Township 46 South, Range 23 East, and in Government Lots 2, 3 & 4 of Section 10, Township 46 South, Range 23 East being further bound and described as follows:

BEGINNING at the Northwest corner of said Government Lot 4 of Section 9, Township 46 South, Range 23 East; thence South 89 deg. 42'50" East, a distance of 1,320.26 feet to the Northeast corner of said Government Lot 4; thence North 00 deg. 16'21" East, along the West line of the East half (E 1/2) of said Government Lot 1, a distance of 889.78 feet, more or less, to the waters of Punta Rassa Cove; thence along said waters, more or less, for the following 38 courses:

1) South 68 deg. 21'57" East, a distance of 167.96 feet; 2) South 12 deg. 50'55" East, a distance of 71.59 feet; 3) South 41 deg. 40'06" East, a distance of 99.25 feet; 4) South 79 deg. 58'11" East, a distance of 106.89 feet; 5) North 66 deg. 56'23" East, a distance of 210.77 feet; 6) South 59 deg. 08'47" East, a distance of 76.32 feet; 7) North 62 deg. 40'52" East, a distance of 111.80 feet; 8) North 25 deg. 48'40" East, a distance of 223.61 feet; 9) North 21 deg. 09'50" West, a distance of 229.40 feet; 10) North 11 deg. 46'30" East, a distance of 46.10 feet; 11) South 66 deg. 38'20" East, a distance of 648.31 feet; 12) South 64 deg. 10'51" East, a distance of 243.77 feet; 13) South 26 deg. 15'35" East, a distance of 134.16 feet; 14) South 71 deg. 42'48" East, a distance of 599.27 feet; 15) South 55 deg. 32'06" East, a distance of 169.19 feet; 16) South 81 deg. 09'51" East, a distance of 101.12 feet; 17) South 28 deg. 56'37" East, a distance of 286.53 feet; 18) South 37 deg. 56'41" East, a distance of 288.03 feet; 19) South 19 deg. 26'11" East, a distance of 90.14 feet; 20) South 41 deg. 20'39" East, a distance of 166.51 feet; 21) South 07 deg. 43'06" East, a distance of 595.40 feet; 22) North 72 deg. 38'58" East, a distance of 83.82 feet; 23) North 10 deg. 00'41" East, a distance of 172.63 feet; 24) North 14 deg. 01'58" West, a distance of 123.69 feet; 25) North 18 deg. 26'19" East, a distance of 158.11 feet; 26) North 19 deg. 58'46" West, a distance of 117.05 feet; 27) North 30 deg. 57'37" West, a distance of 233.24 feet; 28) North 06 deg. 42'23" West, a distance of 171.17 feet; 29) North 41 deg. 38'13" East, a distance of 60.21 feet; 30) South 86 deg. 25'13" East, a distance of 240.47 feet; 31) South 48 deg. 28'45" East, a distance of 204.44 feet; 32) South 23 deg. 21'14" East, a distance of 178.53 feet; 33) North 79 deg. 42'57" East, a distance of 129.61 feet; 34) North 37 deg. 05'03" East, a distance of 95.54 feet; 35) North 90 deg. 00'00" East, a distance of 86.82 feet; 36) South 41 deg. 55'48" East, a distance of 88.43 feet; 37) South 56 deg. 27'49" East, a distance of 142.77 feet; 38) North 41 deg. 31'44" East, a distance of 129.22 feet;

thence South 00 deg. 00'30" E, a distance of 553.25 feet to a point on the northerly right-of-way line of Summerlin Road (C.R. 869); thence along said northerly right-of-way line for the following 9 courses: 1) South 62 deg. 56'41" West, a distance of 613.84 feet to a point of curve to the right having a radius of 3,744.72 feet and a central angle of 15 deg. 38'47"; 2) Southwesterly along the arc a distance of 1,022.61 feet; 3) South 87 deg. 40'59" West, a distance of 1116.51 feet; 4) South 00 deg. 18'19" West, a distance of 134.27 feet to a point on a non-tangent curve to the right having a radius of 7564.44 feet and to which point a radial line bears South 05 deg. 28'39" East; 5) thence Westerly along the arc of said curve through a central angle of 06 deg. 20'27" for 837.16 feet; 6) North 89 deg. 08'12" West, a distance of 1,116.02 feet to a point of curve to the left having a radius of 1,984.86 feet and a central angle of 12 deg. 53'27"; 7) Westerly along the arc a distance of 446.57 feet;

EXHIBIT A

8) North 89 deg. 08'12" West, a distance of 93.61 feet to a point of curve to the right having a radius of 1,382.40 feet and a central angle of 06 deg. 14'09"; 9) Westerly along the arc a distance of 150.45 feet to a point on the West line of said Government Lot 4; thence North 00 deg. 14'22" East, along said West line of said Government Lot 4, a distance of 1515.90 feet to the point of beginning.

Bearings are based on the west line of Government Lot 4, Section 9, Township 46 South, Range 23 East, Lee County, Florida being N.00°14'22"E.

Prepared by:

E.F. Gaines Surveying Services, Inc.
Florida License No. LB7165

Elizabeth F. Gaines P.S.M. Digitally signed by Elizabeth F.
4576 State of Florida Gaines P.S.M. 4576 State of Florida
Date: 2020.11.05 17:48:01 -05'00'

Elizabeth F. Gaines, PSM
Florida License No. LS4576

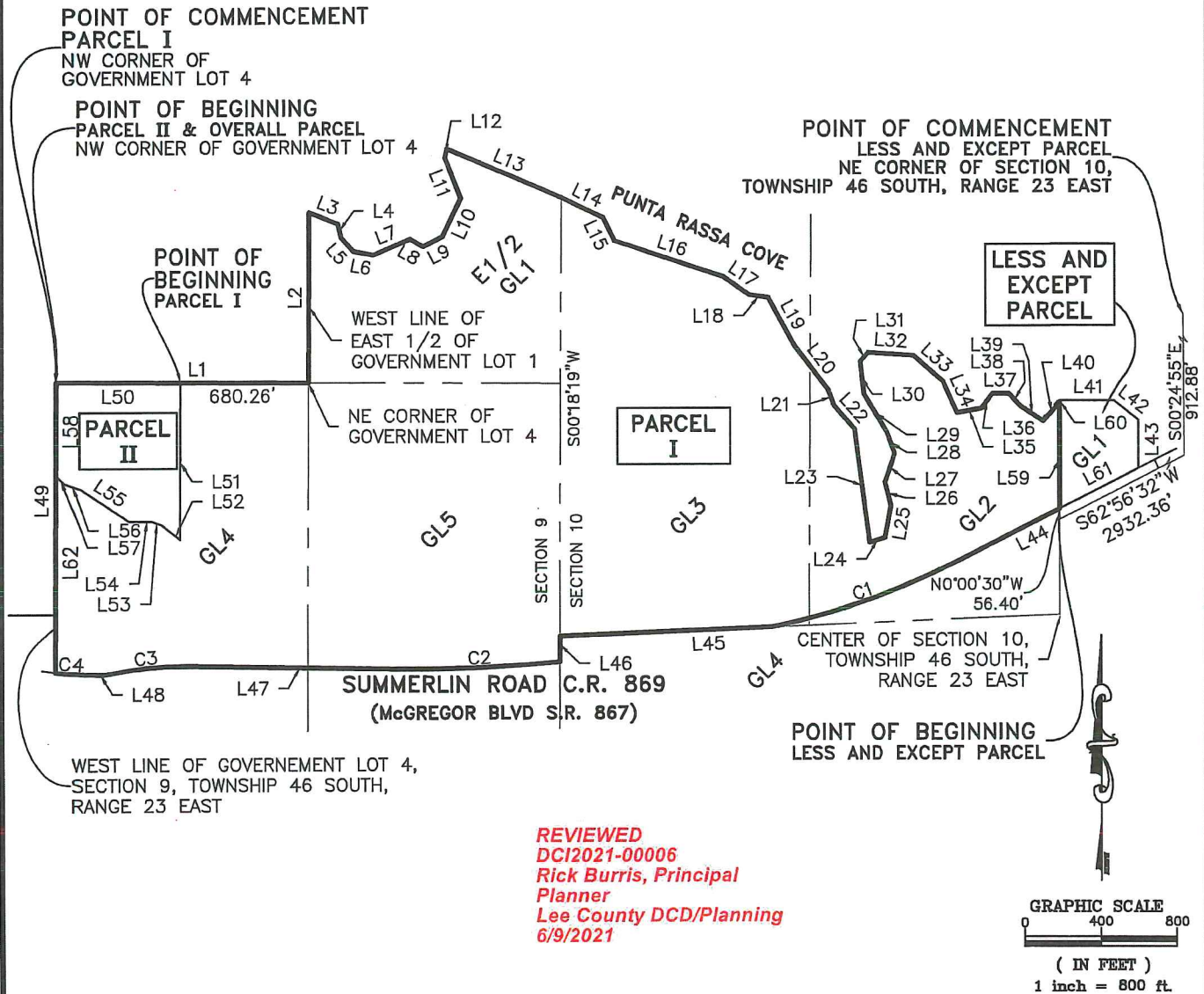
Not valid without the signature and raised seal or Adobe electronic signature of the signing surveyor shown above.
References: 0777-004 (sketch)

REVIEWED
DCI2021-00006
Rick Burris, Principal
Planner
Lee County DCD/Planning
6/9/2021

Exhibit A

SURVEY NOTES

1. DISTANCES ARE IN FEET AND DECIMALS THEREOF.
2. BEARINGS ARE BASED ON THE EAST LINE OF SECTION 9, TOWNSHIP 46 SOUTH, RANGE 23 EAST BEING S00°18'19"W
3. SEE SHEETS 2 OF 2 FOR LINE AND CURVE DATA TABLES.
4. OVERALL PARCEL CONTAINS 204.70 ± ACRES. LESS AND EXCEPT PARCEL CONTAINS 4.21 ± ACRES. SUBJECT PROPERTY CONTAINS 200.49 ± NET ACRES.



SANIBEL PASSAGE

This is a sketch to accompany a legal description (see attached) of a parcel of land located in Sections 9 and 10, Township 46 South, Range 23 East, Lee County, Florida.

Elizabeth F. Gaines P.S.M.
 4576 State of Florida

Digitally signed by Elizabeth F. Gaines
 P.S.M. 4576 State of Florida
 Date: 2020.10.12 11:44:31 -04'00'

Elizabeth F. Gaines, PSM
 Florida License No. LS4576

Not valid without the signature and raised seal or Adobe electronic signature of Elizabeth F. Gaines, PSM shown above

Issue Date: 10/12/2020

Field Date: N/A

Checked: EFG

Drawn: KAS

Field: N/A

Scale: 1"=800'

Project No.: 0777

CAD File: 0777-003

Sheet No. 1 of 2



E.F. Gaines
Surveying Services, Inc.

FL License No. LB7165

5235 Ramsey Way, Suite 10

Fort Myers, Florida 33907

Phone: 239-418-0126

Fax: 239-418-0127


Web: EFGaines.com

LINE DATA TABLE		
Line #	Distance	Bearing
L1	1320.26	S89° 42' 50"E
L2	889.78	N0° 16' 21"E
L3	167.96	S68° 21' 57"E
L4	71.59	S12° 50' 55"E
L5	99.25	S41° 40' 06"E
L6	106.89	S79° 58' 11"E
L7	210.77	N66° 56' 23"E
L8	76.32	S59° 08' 47"E
L9	111.80	N62° 40' 52"E
L10	223.61	N25° 48' 40"E
L11	229.40	N21° 09' 50"W
L12	46.10	N11° 46' 30"E
L13	648.31	S66° 38' 20"E
L14	243.77	S64° 10' 51"E
L15	134.16	S26° 15' 35"E
L16	599.27	S71° 42' 48"E
L17	169.19	S55° 32' 06"E
L18	101.12	S81° 09' 51"E
L19	286.53	S28° 56' 37"E
L20	288.03	S37° 56' 41"E
L21	90.14	S19° 26' 11"E

LINE DATA TABLE		
Line #	Distance	Bearing
L22	166.51	S41° 20' 39"E
L23	595.40	S7° 43' 06"E
L24	83.82	N72° 38' 58"E
L25	172.63	N10° 00' 41"E
L26	123.69	N14° 01' 58"W
L27	158.11	N18° 26' 19"E
L28	117.05	N19° 58' 46"W
L29	233.24	N30° 57' 37"W
L30	171.17	N6° 42' 23"W
L31	60.21	N41° 38' 13"E
L32	240.47	S86° 25' 13"E
L33	204.44	S48° 28' 45"E
L34	178.53	S23° 21' 14"E
L35	129.61	N79° 42' 57"E
L36	95.54	N37° 05' 03"E
L37	86.82	N90° 00' 00"E
L38	88.43	S41° 55' 48"E
L39	142.77	S56° 27' 49"E
L40	147.15	N41° 31' 44"E
L41	271.37	S89° 26' 59"E
L42	165.49	S52° 22' 39"E

LINE DATA TABLE		
Line #	Distance	Bearing
L43	251.32	S0° 04' 14"E
L44	1079.33	N62° 56' 41"E
L45	1116.51	S87° 40' 59"W
L46	134.27	S0° 18' 19"W
L47	1116.02	N89° 08' 12"W
L48	93.61	N89° 08' 12"W
L49	1515.90	N0° 14' 22"E
L50	640.00	S89° 42' 50"E
L51	820.00	S0° 17' 10"W
L52	125.08	N51° 42' 47"W
L53	54.91	N70° 46' 15"W
L54	121.47	S89° 29' 45"W
L55	296.40	N55° 33' 44"W
L56	82.81	N68° 57' 09"W
L57	62.20	N45° 57' 44"W
L58	488.08	N0° 14' 22"E
L59	553.25	N0° 00' 30"W
L60	17.93	N41° 31' 44"E
L61	465.49	S62° 56' 41"W
L62	1027.81	N0° 14' 22"E

CURVE DATA TABLE					
Curve #	Arc Length	Radius	Delta	Chord Bearing	Chord Distance
C1	1022.61	3744.72	15°38'47"	S70° 46' 04"W	1019.44
C2	837.16	7564.44	6°20'27"	S87° 41' 35"W	836.74
C3	446.57	1984.86	12°53'27"	S84° 25' 05"W	445.63
C4	150.45	1382.40	6°14'09"	N86° 01' 07"W	150.38

LINE & CURVE DATA TABLES	SANIBEL PASSAGE		Issue Date: 10/12/2020	 E.F. Gaines Surveying Services, Inc. FL License No. LB7165 5235 Ramsey Way, Suite 10 Fort Myers, Florida 33907 Phone: 239-418-0126 Fax: 239-418-0127 Web: EFGaines.com
			Field Date: N/A	
			Checked: EFG	
			Drawn: KAS	
			Field: N/A	
			Scale: N/A	
			Project No.: 0777	
			CAD File: 0777-003	
			Sheet No. 2 of 2	

DCI2021-00006 Zoning

Legend

 Subject Parcel



0 950
Feet

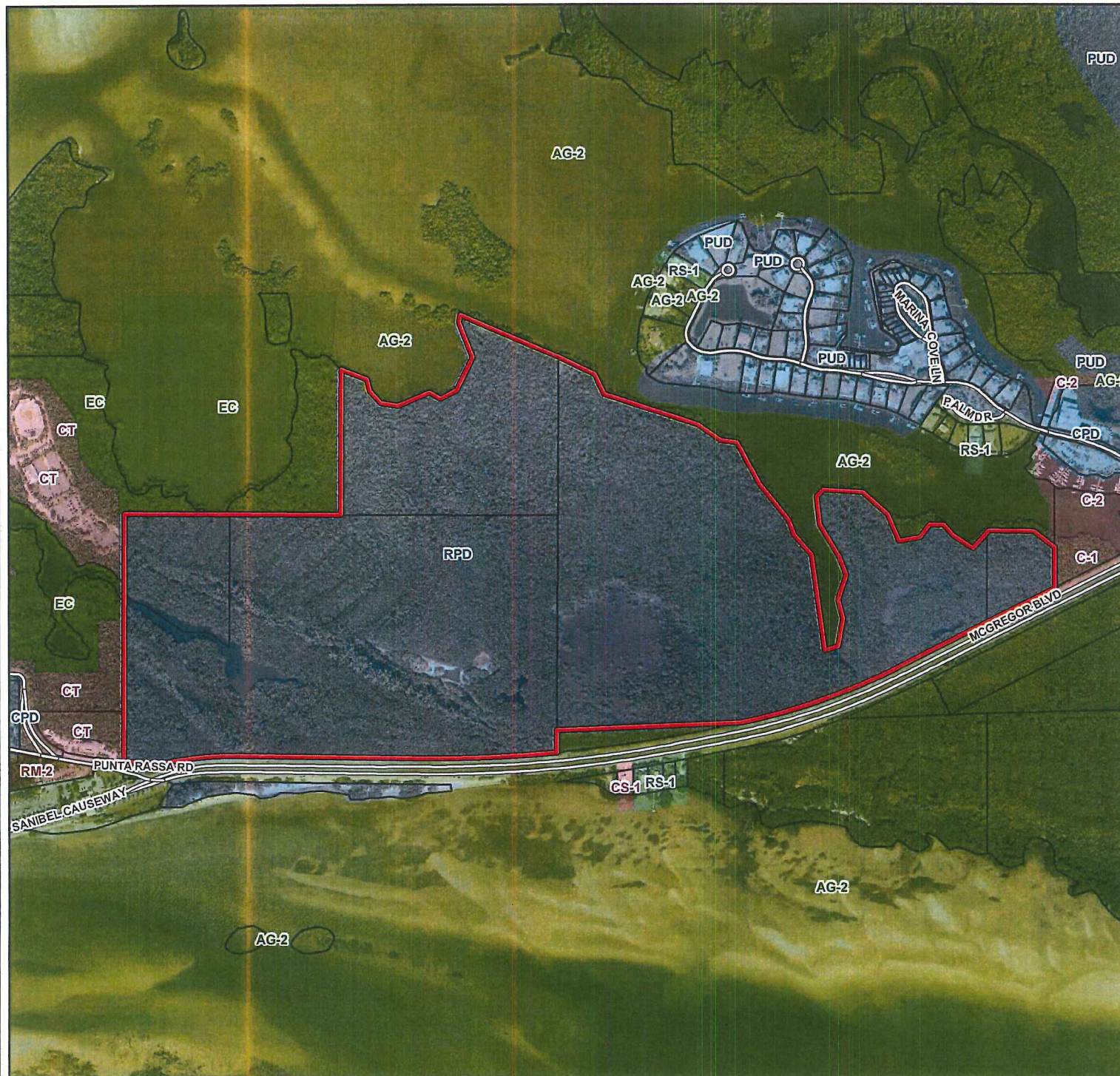


Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS

CONDITIONS

This zoning resolution codifies and supersedes Resolution Z-04-044 and ADD2008-00067.

1) Master Concept Plan/Development Parameters

- a) Master Concept Plan (MCP): Development must be substantially consistent with the MCP entitled "Exhibit IV-A2," prepared by Kimley Horn dated March 2021 (Exhibit B1), except where modified by the conditions below.
- b) Land Development Code (LDC) and Lee Plan: Development must comply with the LDC and Lee Plan at the time of local development order approval, except where deviations are approved herein. Subsequent amendments to the MCP, conditions, or deviations may require further development approvals.
- c) Development Parameters: The RPD is limited to 50 multi-family units.

2) Uses and Site Development Regulations

- a) Schedule of Uses:

Accessory Uses
Administrative Offices
Clubs, Private
Docks (accessory to residential uses)
Dwelling Unit, Multiple-family
Entrance Gate
Essential Services
Essential Services Facilities, Group I
Excavation, Water Retention
Fences, walls
Gatehouse
Model Units (limited to two units at any time within the building, daily hours of operation 9:00 a.m. to 6:00 p.m.)
Parks, Group I
Real Estate Sales Office (limited to one):

Temporary sales office (Prior to main building completion, location to be determined at time of development order approval, daily hours of operation 9:00 a.m. to 6:00 pm, must be removed once sales office opens in main building)

Permanent office (Located in the main building, daily hours of operation 9:00 a.m. to 6:00pm)

Recreation Facilities, Private on-site

Signs

Temporary Uses:

Contractor's Office

Real Estate Sales (see Real Estate Sales Office above)

Equipment storage shed

Timeshare Unit⁶⁹

b) Site Development Regulations

Minimum Lot Area and Dimensions: See Condition 8

Minimum Setbacks:

Street right-of-way/easement: 50 feet or half the building height, whichever is greater

Side: 50 feet or half the building height, whichever is greater

Rear: 50 feet or half the building height, whichever is greater

Water Body: 50 feet or half the building height, whichever is greater

Maximum Building Height: 155 feet, 15 stories

Maximum Lot Coverage: 45%

- 3) Development Permits. County development permits do not establish a right to obtain permits from state or federal agencies. Further, it does not establish liability on the part of the County if the Developer: (a) does not obtain requisite approvals or fulfill obligations imposed by state or federal agencies; or (b) undertakes actions that result in a violation of state or federal law.

- 4) Archeological Condition. Ground disturbing activity must cease if archaeological sites, objects, artifacts, or human remains are uncovered during development. Developer must notify Lee County Department of Community Development of uncovered archaeological sites, objects, or artifacts. If human remains are found during construction or maintenance

⁶⁹ Approved in ADD2008-00067.

activities, Florida Statutes Chapter 872 will apply and the State Archaeological or District Medical Examiner will have jurisdiction.

- 5) Emergency Access Plan Notice. Developer must record a Notice to all future property owners in the Lee County Official Records prior to local development order issuance allowing construction of access to the development. The Notice must detail the emergency access plan and provide information as to where a copy of the plan may be obtained from the developer or its successor.
- 6) Vegetative Removal. Prior to Vegetation Removal Permit issuance, the clearing contractor must meet on-site with county Environmental Sciences staff to determine: (a) appropriate barricading to protect surrounding coastal wetlands from impact during the construction process; and (b) if impacted native vegetation may be relocated on-site.
- 7) Development Order Environmental Submittals. Developer must submit the following items with the development order application:
 - a. Development order plans delineating the 194.74 acre preservation area in substantial compliance with the MCP;
 - b. A legal description map/sketch of recorded Conservation Easement areas that clearly identifies easement areas within the RPD boundary, prepared by a licensed Professional Surveyor and Mapper;
 - c. Copies of the recorded Conservation Easement covering the 54.68 acres of preserve area with Lee County as Co-Grantee;
 - d. A detailed restoration plan for the 3.8 acres of upland tropical hardwood hammock specifying 500 native hardwood hammock plants (minimum 3-gallon container size) utilizing a minimum of twenty native tropical hardwood hammock tree/shrub species; and
 - e. Copies of the recorded Conservation Easements totaling 140.06 acres.
- 8) Subdivision. The 207.79± acre RPD may not be subdivided to create multiple lots for sale/development without first amending this zoning resolution through the public hearing process.
- 9) Certification of Compliance Environmental Conditions. Developer must complete the following prior to issuance of the first Certification of Compliance.

- a. Provide proof of recording the Conservation Easement covering the 54.68 acres in the Lee County Official Records, as approved by the County Attorney's Office;
 - b. Complete restoration of the 3.8 upland acres; and
 - c. Remove invasive exotics for the entire property.
- 10) Crime Prevention. Developer must provide a Crime Prevention Through Environmental Design (CPTED) report to the Lee County Sheriff's Office and Development Services at the time of local development order application.

DEVIATIONS:

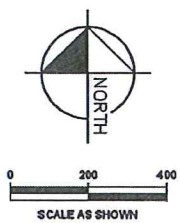
NOTE: Deviation 1 was approved in previous zoning action.

1. Building Height. Deviation (1) seeks relief from the LDC 34-935(f)(1)e limitation on building height in the Suburban land use category, to permit a maximum building height of 155 feet.
2. Access. Deviation (2) seeks relief from the LDC 10-291(3) requirement for residential developments more than five acres to provide more than one means of development ingress/egress, to allow one access point.

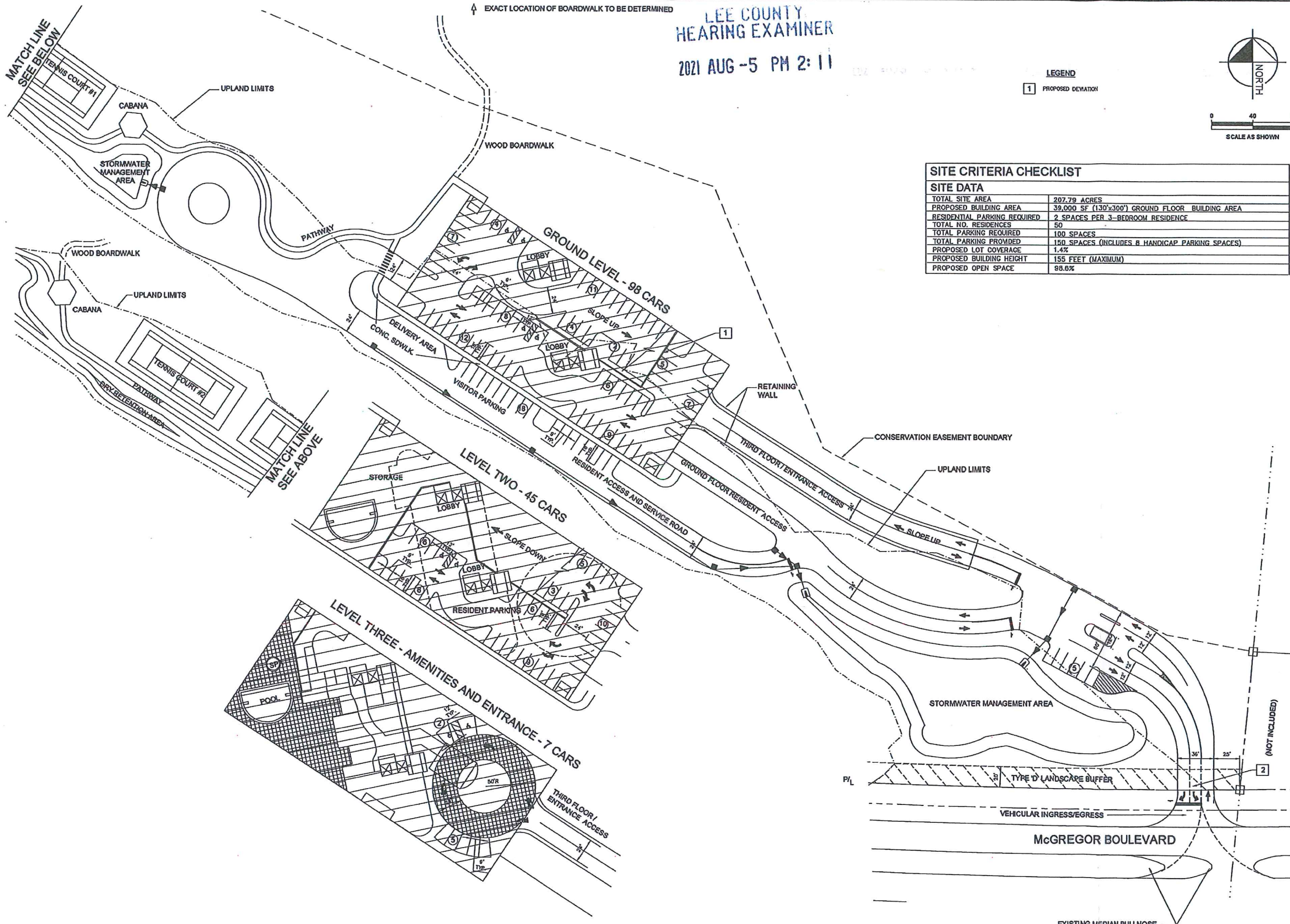
HEX Recommendation: Approval.

Exhibits to Conditions:
B1 Master Concept Plan

LEE COUNTY
HEARING EXAMINER
2021 AUG -5 PM 2:11

[illegible]

Drawing name: K:\VTM_Civil\1488833001 - Semblal Passage (Redacted)\Old_CADD\CADD\3770000_JCP_02-22-21.dwg 2435MCP-2 Aug 05, 2021 12:59pm by Peter.Vanbushlik



SITE CRITERIA CHECKLIST	
SITE DATA	
TOTAL SITE AREA	207.79 ACRES
PROPOSED BUILDING AREA	39,000 SF (130'x300') GROUND FLOOR BUILDING AREA
RESIDENTIAL PARKING REQUIRED	2 SPACES PER 3-BEDROOM RESIDENCE
TOTAL NO. RESIDENCES	50
TOTAL PARKING REQUIRED	100 SPACES
TOTAL PARKING PROVIDED	150 SPACES (INCLUDES 8 HANDICAP PARKING SPACES)
PROPOSED LOT COVERAGE	1.4%
PROPOSED BUILDING HEIGHT	155 FEET (MAXIMUM)
PROPOSED OPEN SPACE	98.6%


MLG REAL ESTATE 2000, LLC SUMMERLIN ROAD PROPERTY	EXHIBIT IV-A2 PARKING LEVELS 1-3 MASTER CONCEPT PLAN	<div> <div>  <p>Kimley»Horn</p> <p>© 2002 KIMLEY-HORN AND ASSOCIATES, INC. 1412 JACKSON STREET, SUITE 2, FORT MYERS, FL 33901 PHONE: 239-271-2650 FAX: 941-378-4352</p> </div> <div> <p>DESIGN ENGINEER: PETER T. VAN BUSKIRK, P.E. FLORIDA REGISTRATION NUMBER: 389559</p> </div> </div>	<div> <div> <p>SCALE/S NOTED DESIGNED BY</p> </div> <div> <p>DRAWN BY KSC</p> </div> <div> <p>CHECKED BY</p> </div> </div>	<div> <div>1</div> <div>2</div> </div> <div> <p>1 RECORDED TOWN'S COURT 2 RECORDED NUMBER OF LOTS</p> </div> <div> <p>3-15-04 6-15-04</p> </div>
---	--	---	--	--

Exhibit C

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

- a. *48-Hour Notice*: Email from Jamie Princing, to Hearing Examiner, Neale Montgomery, Esq., Peter Vanbuskirk, Mallory Clancy, Brian Roberts, Anthony Rodriguez, Tina Boone, Lauren Schaefer, Andrea Eggen, Elizabeth Workman, Nicholas DeFilippo, Rebecca Sweigert, Marcus Evans, Brandon Dunn, Michael Pavese, Lili Wu, Tyler Griffin, & Tracy Toussaint, dated Tuesday, August 3, 2021 9:33 AM (multiple pages – 8.5"x11")
1. *DCD Staff Report with attachments for DCI*: Prepared by Brian Roberts, Plan Reviewer, date stamped received July 22, 2021 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *PowerPoint Presentation*: Prepared for DCI2021-00006, Sanibel Passage (multiple pages - 8.5"x11")[color]

APPLICANT EXHIBITS

- a. *48-Hour Notice*: Email from Mallory Clancy to Hearing Examiner, with copies to Brian Roberts, Peter Vanbuskirk, & Neale Montgomery (multiple pages – 8.5"x11")
1. *PowerPoint Presentation*: Prepared for DCI2021-00006, Sanibel Passage (multiple pages - 8.5"x11")[color]
2. *Master Concept Plan*: Prepared by Kimley Horn, dated 07-03 (2 pages – 11"x17")
3. *Conservation Easement Map with Recorded Easements*: (multiple pages – 8.5"x11")[color]
4. *Letters of No Objection*: From Edward Steffens, Division Chief with the Iona/McGregor Fire District; Benjamin Abes, Director of Public Safety with Lee County; Carmine Marceno, with Lee County Sheriff Department (4 pages – 8.5"x11")
5. *Written Submissions*: Email from Peter Vanbuskirk, to Maria Perez, with copies to Brian Roberts, Neale Montgomery, Esq., Wahab Najib, R. Fortenbury, Michael Hamman, & Mallory Clancy, dated Thursday, August 5, 2021 1:49 PM (2 pages – 8.5"x11" & 11"x17")

Exhibit D

HEARING PARTICIPANTS

County Staff:

1. Brian Roberts

Applicant Representatives:

1. Neale Montgomery, Esq.
2. Peter Vanbuskirk

Public Participants:

1. James Evans
2. Jim Metzler
3. Holly Milbrandt
4. Tom Schmidt
5. Holly Schwartz
6. Mary Tracy Sigman

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.

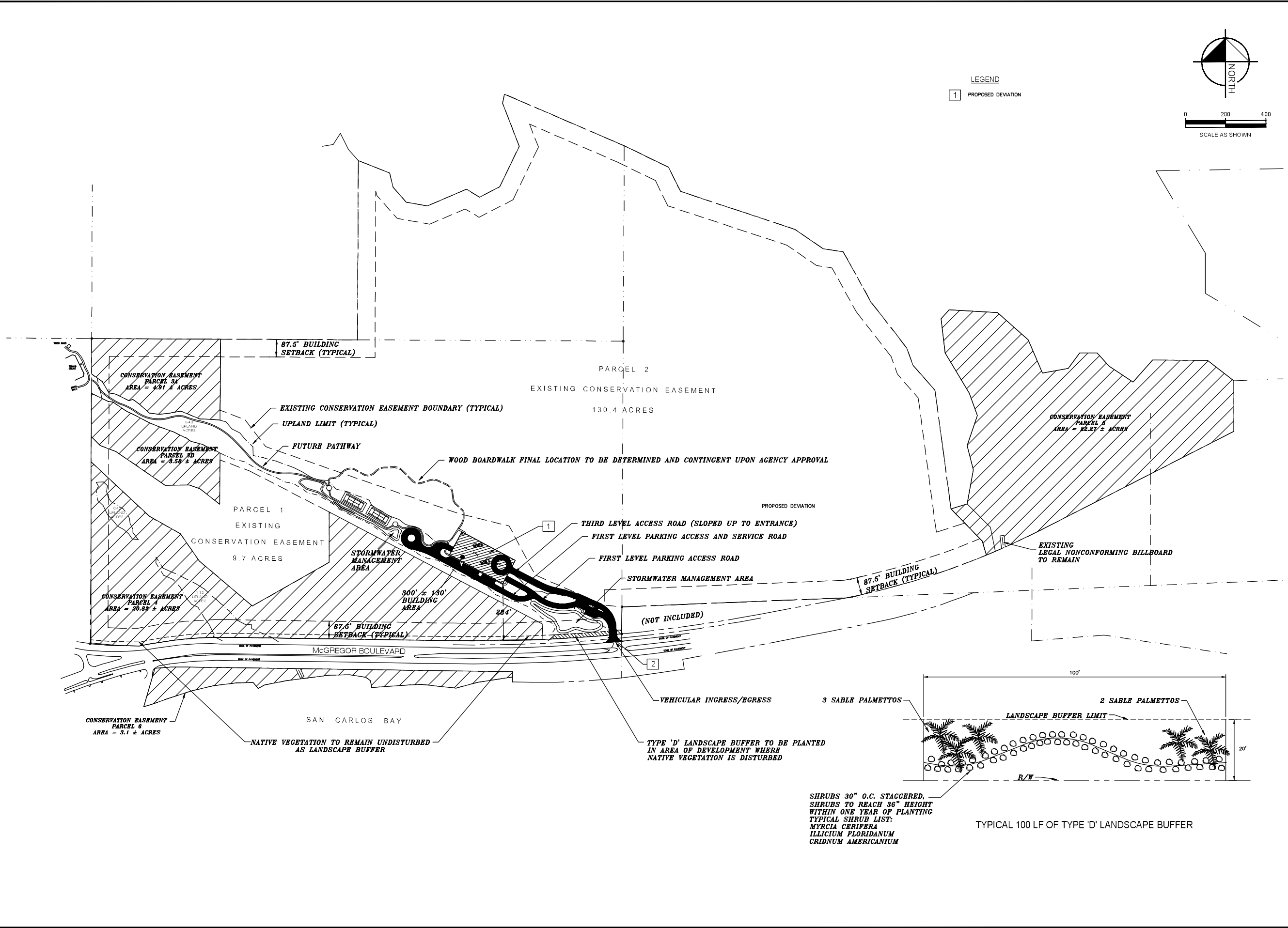
COPIES OF TESTIMONY AND TRANSCRIPTS

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.

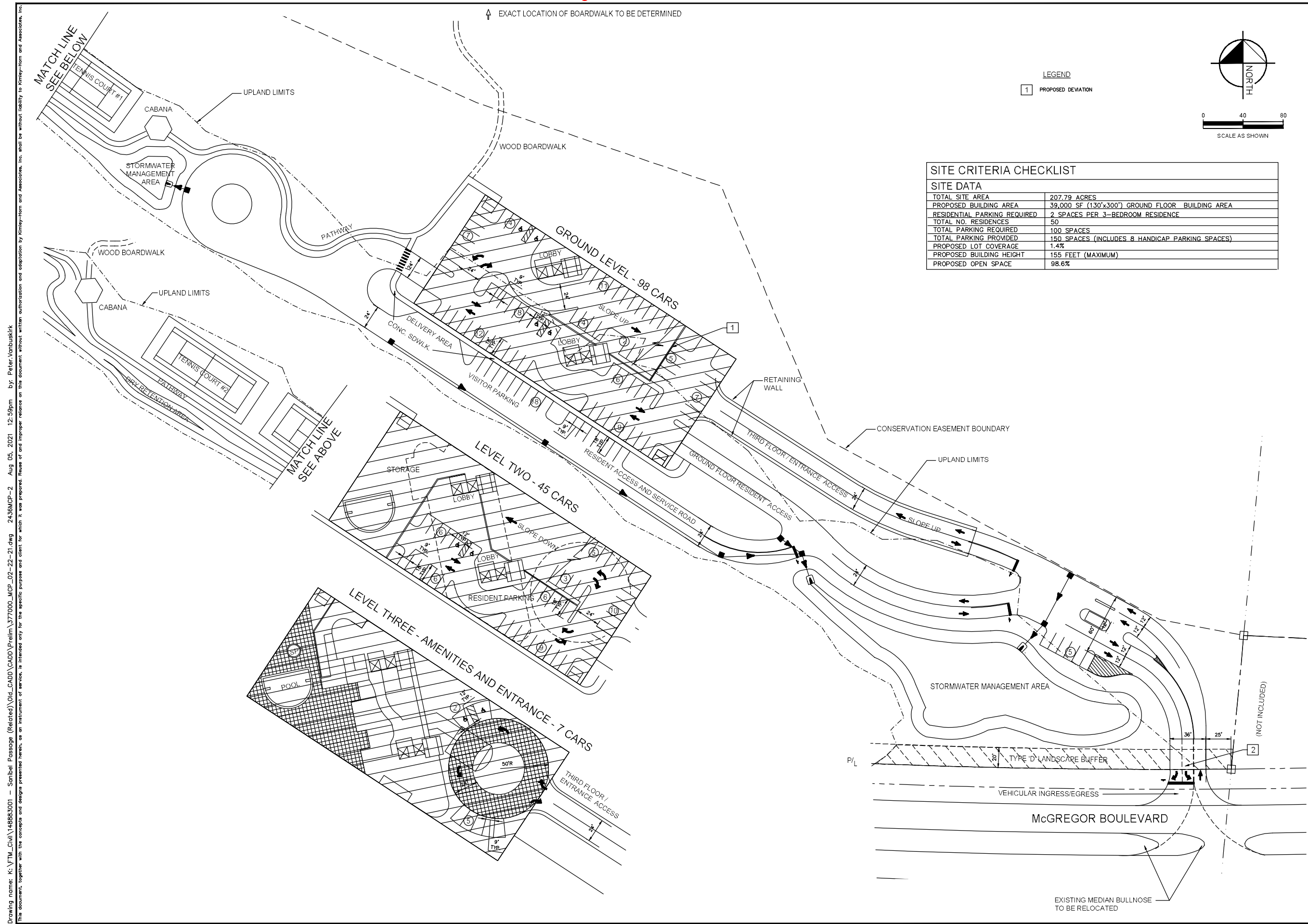
B. A verbatim transcript may also be available for purchase from the court reporting service.

Drawing name: K:\FTM_Civil\14883001 - Sanibel Passoge (Related)\Old_CADD\CADD\Prelim\377000_MCP_02-22-21.dwg 2436MCP-1 Aug 05, 2021 12:58pm by: Peter.Vanbuskirk

This document, together with the concepts and designs presented herein, is an instrument of service, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. No other use or reproduction of this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.



MLG REAL ESTATE 2000, LLC SUMMERLIN ROAD PROPERTY		FLORIDA LEE COUNTY	
EXHIBIT IV-A2 MASTER CONCEPT PLAN		DESIGN ENGINEER: PETER T. VAN BUSKIRK, PE FLORIDA REGISTRATION NUMBER: 38859 SEAL	
SCALE: AS NOTED		DESIGNED BY: KBC DRAWN BY: KBC CHECKED BY:	
DATE 03-2021		REVISIONS	
PROJECT NO. 048377000		No.	
EXHIBIT MCP-1 1 of 2		DATE BY	



Drawing name: K:\FTM_Civil\148883001 - Sanibel Passageway (Related)\Old_CADD\CADD\Prelim\377000_MCP_02-22-21.dwg 2436MCP-2 Aug 05, 2021 12:59pm by: Peter.Vanbuskirk

This document, together with the concepts and designs presented herein, is intended only for the specific purpose and client for which it was prepared. Review of and proper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

MLG REAL ESTATE 2000, LLC		EXHIBIT IV-A2		DESIGN ENGINEER:		Kimley»Horn		CRD	
SUMMERLIN ROAD		PARKING LEVELS 1-3		PETER T. VAN BUSKIRK, PE		© 2002 KIMLEY-HORN AND ASSOCIATES, INC.		3-18-04	
PROPERTY		MASTER CONCEPT PLAN		FLORIDA REGISTRATION NUMBER:		1412 JACKSON STREET, SUITE 2, FORT MYERS, FL 33901		6-10-04	
LEE COUNTY				38859		PH: 888-888-8882			
				SEAL		WWW.KIMLEY-HORN.COM CA 0000098			
DATE		03-2021		CHECKED BY		REVISIONS		DATE	
PROJECT NO.		048377000		KBC		No.		BY	
EXHIBIT		MCP-2		2 of 2					

A. Conditions

1. Development must be consistent with the one-page Master Concept Plan (MCP) entitled "Exhibit IV-A2," prepared by Kimley Horn dated July 2003 except as modified by the conditions below. This development must comply with all requirements of the Lee County Land Development Code at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.
2. The following limits apply to the project and uses.
 - a. **SCHEDULE OF USES:**
 - Accessory Uses
 - Administrative Offices
 - Clubs: Private
 - Docks (accessory to residential uses)
 - Dwelling Unit: Multiple-family
 - Entrance Gate
 - Essential Services
 - Essential Services Facilities, Group I
 - Excavation: Water Retention
 - Fences, walls
 - Gatehouse
 - Models: Model Unit (a maximum of two units at any given time within the building, with hours of operations from 9:00 a.m. through 6:00 p.m., Sunday through Saturday)
 - Parks, Group I
 - Real Estate Sales Office (temporary one to be located on-site prior to main building being completed, location to be determined at time of development order approval, hours of operation to be the same as one to be located in main building, once sales office is opened in main building temporary one must be removed from site; main sales office to be located in the main building with hours of operation from 9:00 a.m. through 6:00pm., Sunday through Saturday)
 - Recreation Facilities, Private, on-site
 - Signs, in Compliance with LDC Chapter 30
 - Temporary Uses: Temporary Contractor's Office, real estate sales office (see above under real estate sales office), and equipment storage shed
 - Timeshare Unit (approved in ADD2008-00067)
 - b. **SITE DEVELOPMENT REGULATIONS:**

Development of the MPD will comply with the following Property Development Regulations

Minimum Lot Area and Dimensions:

Properties on the North of McGregor road are to remain undivided as is depicted on the Master Concept Plan.

Setbacks:

Street right-of-way or easement: 50 feet, or half the building height, whichever is greater
Side yard: 50 feet, or half the building height, whichever is greater
Rear yard: 50 feet, or half the building height, whichever is greater
Water Body: 50 feet, or half the building height, whichever is greater

Maximum height of building: 155 feet
Maximum height of building: 15 stories (total)
Maximum Lot Coverage: 45 percent

3. Development Permits

Issuance of a county development permit does not establish a right to obtain a permit from state or federal agencies. Further, it does not establish liability on the part of the county if the developer: (a) does not obtain requisite approvals or fulfill the obligations imposed by state or federal agencies or (b) undertake actions that result in a violation of state or federal law.

4. In the course of development of any archaeological sites, objects, artifacts or human remains are uncovered, all ground disturbing activity will be stopped. Lee County Department of Community Development will be notified of any archaeological sites, objects or artifacts that are uncovered. In the event that human remains are found during construction or maintenance activities, the provisions of Chapter 872 of the Florida Statutes will apply and either the State Archaeological or the District Medical Examiner will have jurisdiction as appropriate.

5. ~~Prior to issuance of local development order approval:~~

- ~~a. The development order plans must delineate the 194.74 acres of preservation area, in substantial compliance with the attached MCP; and~~
- ~~b. A map or sketch of the legal descriptions contained in the Conservation Easement recorded at Lee County Public Records Book 2927, Page 1269 must be submitted that clearly identifies the various easement areas within the planned development boundary. The map or sketch must be prepared by a licensed Professional Surveyor and Mapper; and~~
- ~~c. A draft conservation easement covering the 54.68 acres of new preservation area must be submitted as part of the initial development order application for review and approval of the County. Lee County must be identified as Co-Grantee; and~~
- ~~d. A detailed restoration plan for the 3.9 acres of upland restoration to tropical hardwood hammock must be submitted with the specifications for 500 native hardwood hammock plants (minimum 3 gallon container size) utilizing a minimum of twenty species of native tropical hardwood hammock trees and shrubs; and~~

- ~~e. Copies of the recorded existing Conservation easements totaling 140.06 acres must be submitted.~~

The developer must record a notice to all future property owners, in the public record, prior to issuance of a local development order allowing construction of the access to the development. The notice must detail the emergency access plan and provide information as to where a copy of this plan may be obtained from the developer or developer's successor.

- 6. Prior to the issuance of a Vegetation Removal Permit, the clearing contractor must meet on-site with the Division of Environmental Sciences staff to determine the appropriate barricading to protect the surrounding coastal wetlands from impact during the construction process, and determine if any existing native vegetation to be impacted may be relocated on-site.
- 7. ~~Prior to issuance of the first Certificate of Compliance for any portion of the project:~~
 - ~~a. The Conservation Easement, as approved by the county Attorney's Office, covering the 54.68 acres must be recorded in the Lee County Public Records and proof as to the recording must be submitted to the County; and~~
 - ~~b. The 3.8 acre upland restoration must be completed; and~~
 - ~~c. The invasive exotics removal must be completed for the entire property; and~~

Prior to issuance of local development order approval:

- a. The development order plans must delineate the 194.74 acres of preservation area, in substantial compliance with the attached MCP; and
- b. A map or sketch of the legal descriptions contained in the Conservation Easement recorded at Lee County Public Records Book 2927, Page 1269 must be submitted that clearly identifies the various easement areas within the planned development boundary. The map or sketch must be prepared by a licensed Professional Surveyor and Mapper; and
- c. A draft conservation easement covering the 54.68 acres of new preservation area must be submitted as part of the initial development order application for review and approval of the County. Lee County must be identified as Co-Grantee; and
- d. A detailed restoration plan for the 3.9 acres of upland restoration to tropical hardwood hammock must be submitted with the specifications for 500 native hardwood hammock plants (minimum 3-gallon container size) utilizing a minimum of twenty species of native tropical hardwood hammock trees and shrubs; and
- e. Copies of the recorded existing Conservation easements totaling 140.06 acres must be submitted.

8. The 207 acres comprising this planned development may not be subdivided to create multiple lots for sale or development without first amending this zoning resolution through the public hearing process. (This condition is intended to clarify language found in Condition 2.b. under minimum lot area and dimensions).
9. ~~The developer must record a notice to all future property owners, in the public record, prior to issuance of a local development order allowing construction of the access to the development. The notice must detail the emergency access plan and provide information as to where a copy of this plan may be obtained from the developer or developer's successor.~~

Prior to issuance of the first Certificate of Compliance for any portion of the project:

- a. The Conservation Easement, as approved by the county Attorney's Office, covering the 54.68 acres must be recorded in the Lee County Public Records and proof as to the recording must be submitted to the County; and
 - b. The 3.8-acre upland restoration must be completed; and
 - c. The invasive exotics removal must be completed for the entire property.; ~~and~~
10. At the time of the initial development order the applicant must provide a Crime Prevention Through Environmental Design (CPTED) report to the Lee County Sheriff's Office. A copy of this report must be submitted with the Development Order application.

DEVIATIONS (Note: Deviation (1) was previously approved in Z-04-040A)

Deviation(1) seeks relief from LDC Section 34-935(f)(3)e, requirement to limit the height of building within the suburban land use category to 45 feet unless evidence is presented to demonstrate the need to increase the height to a maximum of 75 feet which would increase common open space to permit a maximum building height of 155 feet.

Deviation(2) seeks relief from LDC Section 10-291(3) which requires residential development of more than five acres to provide more than one means of ingress or egress for the development to allow only one access point to the development. Staff recommends **APPROVAL** of the deviation **SUBJECT** to Condition ~~405~~ **and 10**.

Lee County, Florida
Department of Community Development
Zoning Section
Staff Report

Case Number:	DCI2021-00006
Case Name:	Sanibel Passage
Type of Case:	Minor PD Amendment
Area Affected by Request:	207.79 +/- acres
Date Sufficient:	June 11, 2021
Hearing Examiner Date:	Aug 5, 2021

Summary of Request and Recommendation:

Kimley-Horn and Associates, Inc. on behalf of PRH Sanibel, LLC, has submitted an application to amend a Residential Planned Development (RPD) originally approved in Resolution Number Z-04-040A. The applicant seeks to deviate from Land Development Code (LDC) Section 10-291(3), which requires residential development of more than five acres to provide more than one means of ingress or egress for the development. The development intensity will remain the same as originally approved in Resolution Number Z-04-040A. There is no proposed change to the Master Concept Plan as part of this request. The applicant's request statement is attached as Attachment "J." The subject property is undeveloped and is located on the north side of McGregor Boulevard at the intersection of Punta Rassa Road. The property is currently zoned Residential Planned Development (RPD) and the STRAP numbers are 09-46-23-00-00004.0020, 10-46-23-00-00004.2000, 10-46-23-00-00004.00004, 10-46-23-00-00004.0010, and 09-46-23-00-00004.0000. The subject property is located in the Suburban and Wetlands future land use categories. The approved legal description and sketch is enclosed as Attachment "B."

Staff recommends **APPROVAL** of the request and the applicant's proposed deviation with conditions found in Attachment "D." Staff finds that the deviation will advance the objectives of the planned development while protecting public health, safety, and welfare in accordance with Land Development Code (LDC) Section 34-373(a)(9). The deviation is discussed in greater detail later in this report.

Property History and Character of the Area:

The subject property was rezoned from Agricultural (AG-2) to Residential Planned Development (RPD) in Resolution Z-04-040A (Attachment "E"). The approved resolution allowed 50 multi-family units in a 155-foot-high building with accessory uses such as a pool, spa, tennis courts, cabanas and boardwalks. The approved resolution contained the property development regulations, ten conditions and one deviation. The subject request includes the addition of one deviation. An administrative amendment was approved in Case Number ADD2008-00067 (Attachment "F") which added "timeshare unit" to the schedule of uses. The terms and conditions of Resolution

Number Z-04-040A and ADD2008-00067 are proposed to be carried forward as part of this approval.

The property is located on the north side of McGregor Boulevard, a County-maintained arterial roadway, at the intersection of Punta Rassa Road. The subject property has approximately 4,200 feet of frontage on McGregor Boulevard. A single access point was approved in Resolution Number Z-04-040A onto to McGregor Boulevard as shown on the attached Master Concept Plan attached as Attachment “G.” Most of the subject property is within the Wetlands future land use category with approximately 11 acres of uplands in the Suburban future land use category. There are conservation easements covering most of the existing wetland area. The subject property is in the Coastal High Hazard Area and Archaeological Sensitivity Zone 2. The subject property was never developed and the parcels remain vacant with existing vegetation. The applicant has submitted development order number DOS2020-00023 which is in substantial compliance with the previously approved Master Concept Plan.

North

The property to the north of the site is zoned Environmentally Critical (EC) and is located in the Wetlands future land use category. A portion of the subject property also abuts Pine Island Sound to the north. The property to the north is designated Wetlands on the Future Land Use Map of the Lee County Comprehensive Plan.

South

The subject property abuts McGregor Boulevard to the south with property zoned Agricultural (AG-2) across McGregor Boulevard. The property to the south is designated Wetlands on the Future Land Use Map of the Lee County Comprehensive Plan.

West

The property to the west includes parcels zoned Tourist Commercial (CT) and Environmentally Critical (EC). Development to the west of the subject property includes the Bimini Bait Shack restaurant and the Sanibel Harbor Resort and Spa. The properties to the west are designated Wetlands and Suburban on the Future Land Use Map of the Lee County Comprehensive Plan.

East

The properties to the east are zoned Commercial (C-1) and Commercial Planned Development (CPD) and include the Lighthouse Restaurant & Bar and retail establishments. The properties to the east are designated Wetlands and Suburban on the Future Land Use Map of the Lee County Comprehensive Plan.

The subject parcel is zoned Residential Planned Development (RPD) and is designated Suburban and Wetlands on the Future Land Use Map of the Lee County Comprehensive Plan and is located in the Iona/McGregor Planning Community.

ANALYSIS:

The request is to add an additional deviation to the previously approved zoning resolution. When the subject property was rezoned in 2005, the Land Development Code gave the Director authority

to determine if an additional access point was required. The property was not developed and subsequent changes to the Land Development Code in LDC Section 10-291 now require an additional ingress or egress point unless a deviation is granted through the public hearing process. Ordinance Number 07-24 changed LDC Section 10-291 and removed the Director's ability to determine if an additional ingress or egress point was required. It further added language that required any deviation or variance from the access point requirement to be subject to the public hearing process. In this request the applicant is only requesting a deviation from the current Land Development Code requirements in Section 10-291(3) to provide an additional ingress or egress point from the development to provide only the single access point previously approved. All other conditions and approvals are unchanged and will be brought forward in this request.

The subject property is designed in a small compact development area within several large parcels of land. The majority of the development is protected mangrove areas that are in a conservation easement. The development footprint including the building and associated amenities amounts to approximately 5 acres of land.

Section 34-612 of the Lee County Land Development Code describes the intent of the utilization of the Planned Development zoning district. The purpose of planned development zoning is to further implement the goals, objectives, and policies of the Lee Plan, while providing some degree of flexibility in the planning and design of proposed developments. LDC Section 34-145(d) establishes the review criteria for all rezoning requests. Before recommending approval of a rezoning request, the Hearing Examiner must find the request:

- a) Complies with the Lee Plan;
- b) Meets the Land Development Code and other applicable County regulations or qualifies for deviations;
- c) Is compatible with existing and planned uses in the surrounding area;
- d) Will provide access sufficient to support the proposed development intensity;
- e) The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;
- f) Will not adversely affect environmentally critical or sensitive areas and natural resources; and
- g) Will be served by urban services, defined in the Lee Plan, if located in a Future Urban Area category.

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

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

Compliance with the Lee Plan

The subject parcel is located in the Iona/McGregor Planning Community as defined in the Lee Plan. The subject rezoning request is within the McGregor Blvd/San Carlos Blvd area. This sub-area is described by the Lee Plan as approaching build out by 2030 with some older (pre1980) developments beginning to redevelop. The Iona/McGregor area is anticipated to grow substantially through 2030. Staff finds that the proposed amendment is in compliance with the Iona/McGregor Planning Community given the past history and approvals.

The request does not change the number of dwelling unit previously approved. Zoning Resolution Z-04-040A approved 50 dwelling units or a density of 0.23 dwelling units per acre. This request does not propose a change to the number of dwelling units. The applicant's density calculation included 7.92 acres of uplands X 6.0 du/ac + 192.57 acres of wetlands X 1/20 du/acre for a total of 57 dwelling units rounded down. This results in an overall density of 0.25 dwelling units per acre.

Policy 1.1.5 of the Lee Plan defines the Suburban land use category as predominately residential areas that are on the fringe of Central Urban or Urban Community areas where it is appropriate to protect existing or emerging residential neighborhoods. These areas provide housing near the more urban areas but do not provide the full mix of land uses typical of urban areas. Standard densities range from one dwelling unit per acres to six dwelling units per acre. The original approval allowed 50 dwelling units and an overall density of 0.23 dwelling units per acre. The applicant has not proposed to change the allowed dwelling units as part of this request and has provided density calculations that support 50 dwelling units. Staff finds that the request is consistent with this policy.

Policy 1.5.1 of the Lee Plan describes Wetlands as area consisting of very low density residential uses and recreational uses that will not adversely affect the ecological functions of wetlands. The majority of the wetlands are currently in a conservation easement. The applicant has not requested any additional wetland impacts as part of this request. Staff finds that the request is consistent with this policy.

Objective 2.1 and Objective 2.2 detail the need to promote contiguous and compact growth patterns in areas where public facilities exist to contain urban sprawl, as well as minimize the impact to natural resources. The subject parcels previously approved zoning was found to be consistent with Objectives 2.1 and 2.2. The applicant has not requested any changes to the development as part of this request. The proposed development is in close proximity to existing development of similar height and the compact development footprint preserves the existing wetland areas. For these reasons, the request is consistent with Objective 2.1 and Objective 2.2 of the Lee Plan.

Policy 5.1.2 seeks to prevent residential development in areas where "physical constraints or hazards exist" such as flood, storm or hurricane hazards. It further requires that the density and design be adjusted accordingly. The very low overall density in addition to the provisions of a single building housing all residents minimizes the exposure of residents to the potential adverse effects of living in the Coast High Hazard Area. Staff finds that the request is consistent with this policy.

Policy 5.1.5 seeks to protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential development. The location and proposed height of the building is not changing as part of this request. The original approval found the proposed development consistent with Policy 5.1.5.

Goal 101.1 details the need to protect human life along with current and future development from the impacts of coastal flooding. The majority of the property is composed of wetland mangroves that are covered by conservation easements. The development area is located largely in the upland areas. The applicant is not proposing any changes to the existing hydrology of the wetland areas. The proposed development will maintain or enhance the adjacent estuary through the removal of invasive exotic vegetation and restoration of tropical hardwood hammock. Additionally, a surface water management system will be designed protect the adjacent estuary. For these reasons, Staff finds that the request is consistent with this Goal

Policy 101.3.2 restrict development in the Coastal High Hazard Area to uplands except as needed for the provision of public facilities. The development on the subject property is proposed on the larger of the two existing upland areas. The requested deviation will allow a single access point, as approved in Zoning Resolution Z-04-040A, while preventing additional impacts to wetlands that would be required to provide an additional ingress or egress point as required in LDC Section 10-291(3). Existing conservation easements cover approximately 194 acres of the site. This request does not change the development footprint from that originally approved in Resolution Number Z-04-40A. Staff finds the request consistent with this Policy.

Land Development Code Compliance and Deviations:

Section 34-411 of the Lee County Land Development Code requires all planned developments to be consistent with the Land Development Code except as approved through deviations during the planned development process.

The applicant has requested the addition of one deviation in this amendment:

Deviation (2) seeks relief from LDC Section 10-291(3) which requires residential development of more than five acres to provide more than one means of ingress or egress for the development to allow only one access point to the development. Staff recommends **APPROVAL** of the deviation **SUBJECT** to the following conditions:

- *Prior to issuance of a local development order allowing construction of the access to the development, the developer must record a notice to all future property owners, in the public records,. The notice must detail the emergency access plan and provide information as to where a copy of this plan may be obtained from the developer or developer's successor.*
- *At the time of the initial development order, the applicant must provide a Crime Prevention Through Environmental Design (CPTED) report to the Lee County*

Sheriff's Office. A copy of this report must be submitted with the Development Order application.

The applicant has provided letters of no objection from the Lee County Sheriff's Office, Public Safety and Iona McGregor Fire District. These letters are included as Attachment "H." The compact footprint of the development and the low number of dwelling units proposed do mitigate the need for an additional access point. Additionally, the development of an additional access point would require impacts to wetland areas currently in a conservation easement.

Staff finds that approval of the deviation, as conditioned, enhances the objectives of the planned development and preserves the general intent of the Land Development Code to protect public safety, health, and welfare.

The applicant has submitted development order number DOS2020-00023 to develop the site in conformance with the Master Concept Plan. The applicant is requesting the deviation in response to comments issued during the review of that development order. There are no changes to the Master Concept Plan as part of this amendment request. Staff finds the request consistent with the Land Development Code with the requested deviation.

Compatibility with existing and planned uses in the surrounding area:

The subject property is adjacent to an arterial roadway that is developed with commercial and residential uses to the east of the site and commercial uses to the west. Resolution Number Z-04-040(A) approved a deviation to allow a maximum building height of 155 feet. This height was found compatible with the surrounding area. The requested deviation does not change any approvals in Z-04-040A and is only adding an additional deviation. For these reason, Staff finds the request compatible with the existing and planned uses in the surrounding area.

Sufficient access to support the development and impacts on transportation facilities:

The applicant is proposing a single access point on McGregor Boulevard. McGregor Boulevard is a county-maintained arterial roadway with a speed limit of 55 miles-per-hour in this area. A Traffic Impact Statement (Attachment "I") was submitted with the development order application and found sufficient. The applicable emergency services have reviewed the request for the single access point and have no objection. For these reasons, Staff finds that the amendment request has sufficient access to support the development and does not impact existing transportation facilities.

Impacts to environmentally critical or sensitive areas and natural resources:

The subject property currently includes 194 acres in conservation easements based on the prior zoning approval and State permitting. Resolution Number Z-04-040A also requires the restoration of 3.8 acres of upland tropical hardwood hammock. The proposed compact development footprint and large areas under conservation easements will enhance the adjacent estuary through the removal of exotics, hardwood hammock restoration and a surface water management system designed for the proposed development. The submitted MCP is in

compliance with the landscaping, open space, and indigenous opens space requirements of the Land Development Code. Environmental Staff has recommended approval of the requested deviation. Staff finds that the request does not impact environmentally critical or sensitive areas and natural resources.

Urban Services:

Lee County Utilities has reviewed the proposed utility services in development order number DOS2020-00023 and has approved the development order with stipulations. The subject property is located in the Iona-McGregor Fire District which provides fire suppression, emergency medical services, and rescue. The subject parcel is served by the West District of the Lee County Sheriff's Department. The subject property abuts and has access to McGregor Boulevard. Staff finds that sufficient urban services exist to serve the proposed development.

CONCLUSION:

Staff finds that the request is consistent with the Lee Plan and with the requirements of the Land Development Code. This request has been reviewed against the decision making criteria set forth in LDC Sec. 34-145(d)4, and staff has found the request:

- Complies with the Lee Plan;
- Meets this Code and other applicable County regulations or qualifies for deviations;
- Will provide access sufficient to support the proposed development intensity;
- Will be able to address expected impacts on transportation facilities in accordance with the requirements of the Land Development Code;
- Will not adversely affect environmentally critical or sensitive areas and natural resources; and
- Will be served by urban services, defined in the Lee Plan, if located in a Future Urban area category.

In addition, staff has found:

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

Staff recommends **approval** of the request with the deviations and conditions attached.

ATTACHMENTS:

- A. Expert Witness Information
- B. Legal Description
- C. Maps: surrounding zoning, future land use and aerial photograph
- D. Recommended Conditions, Schedule of Uses, and Deviations
- E. Z-04-04A
- F. ADD2008-00067
- G. Master Concept Plan (dated 07/03)
- H. Letter of No Objection
- I. Traffic Analysis Memo (dated May 12, 2020)
- J. Applicant's Request (dated May 2021)