

THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DCI2021-00011

IN RE: OWL CREEK RESERVE MINOR RPD

PROCEEDINGS: PUBLIC HEARING

BEFORE: Donna Marie Collins
Chief Hearing Examiner

DATE: June 23, 2022

TIME: 9:00 a.m. to 12:07 p.m.

LOCATION: Hearing Examiner's
Hearing Room
1500 Monroe Street
Second Floor
Fort Myers, FL 33901

REPORTER: Deborah M. Bruns
Florida Professional Reporter

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David R. Underhill, Jr., P.E.
Michael J. Jessich
Ashley Palmer
Hans Wilson, P.E.
Yury Bykau, P.E.
Wayne Everett

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P R O C E E D I N G S

HEARING EXAMINER COLLINS: Good morning, my name is Donna Marie Collins. I will be the Hearing Examiner presiding over today's hearing, Owl Creek Reserve Minor RPD. The date is June 23rd, 2022.

A few things, housekeeping items I want to go over with everyone. All testimony and evidence that I accept during these hearings must be taken under oath. I will administer the oath to everyone in the room at one time before we start the hearing. If you intend on speaking on the record or submitting any documents to me, I ask that you please take the oath where you swear or affirm that everything that you say will be the truth.

I am not the final decision-maker in this case, but I take in all the testimony and evidence and prepare a recommendation to the Board of County Commissioners who are the final decision-makers. They do not take any additional testimony or evidence at their hearing, so please say everything that you would like to say at this hearing so that it is part of the record.

We will have a transcript for this hearing. This will be available to you online. It's a public record. It will also be provided to the Board of County

1 Commissioners so that they can review it in preparation
2 of the final hearing.

3 The order of hearing will be as follows:

4 First, the Applicant, representing the property
5 owner, will present the case. They will explain how
6 this request is consistent with the County's Land
7 Development regulations. We may have one or more
8 experts testifying as to specific areas, like
9 environmental, stormwater, protected species, or
10 whatever the impacts may be.

11 Following their presentation, the County planner,
12 who prepared the Staff Report, will make a
13 presentation.

14 At the conclusion of their presentation, I will
15 open up the floor to members of the public. At that
16 time you may approach the podium. I will call your
17 names one at a time based on these sheets that are
18 filled out, and you may speak as long as you like, but
19 I encourage you to please take notes so that you can
20 kind of follow -- follow your notes as you speak
21 because you will only have one opportunity to speak. I
22 do not permit people to return to the podium once
23 they've spoken their piece.

24 During public comment, it is that time that you
25 may ask questions. So as you hear the presentations,

1 if questions come to mind, or you already have
2 questions, please make a note of them, and you may ask
3 them at that time. The questions will not be answered
4 at that time. We will take everyone's questions; and
5 then when we close public input, we will go back to
6 Staff and the Applicant, and they will respond to each
7 one of those questions. And the reason why we handle
8 it that way is oftentimes people have the same
9 question, and they may not be paying attention to the
10 answer, so we take all the questions at once and then
11 respond to them all at once.

12 At the conclusion of public testimony, I will
13 close the record as to the public. We will return to
14 Staff and the Applicant. They will respond to any
15 questions and make concluding remarks.

16 Following their concluding remarks, I will close
17 the hearing. The hearing may be left open for written
18 submissions; or if we don't finish today, it will be
19 continued to another day.

20 I just want to mention that the Staff Report is a
21 public record. This is available to you by going
22 online and going to the DCD website. If you need help
23 with that, please speak to one of the planners at the
24 front table here during one of the breaks.

25 Typically what I do is I will allow testimony for

1 about an hour and a half to an hour and 45 minutes, and
2 then I will take a 10- to 15-minute break. Then we
3 will resume, and we'll continue testimony and evidence
4 again for another hour and a half to 45 minutes, and
5 I'll take another break. This allows everyone to
6 stretch their legs, and it gives a break to the court
7 reporter.

8 I'm going to administer the oath at this time.
9 Please raise your right hand.

10 (Participants sworn en masse.)

11 HEARING EXAMINER COLLINS: Okay, thank you.

12 I have a request from one member of the public,
13 who is unable to stay, if they can speak at the onset
14 of the hearing so that they can go to work. It's my
15 understanding that Staff and the Applicant did not
16 object to this. This is out of the course of what I
17 usually permit. I usually require the public to listen
18 to the entire case before they enter their comments
19 into the record, but I understand this is an
20 exceptional circumstance so we will permit it for this
21 individual.

22 Steven Brodkin, would you please come to the
23 podium. Good morning, and thank you for coming.

24 MR. BRODKIN: Good morning. I appreciate this
25 opportunity to allow me to speak so I can get off to

1 work.

2 My name is Steven Brodkin. I'm here representing
3 the Concerned Citizens of Bayshore Community and also
4 representing Women for a Better Lee. I'd like to read
5 our statement.

6 We oppose the Owl Creek rezoning for the following
7 reasons:

8 One, the approval of Owl Creek RPD would result in
9 a 70 percent increase in dwelling units for the
10 property within the rural land use category. Under the
11 current Lee Plan, the Applicant would be allowed a
12 maximum of 223 dwelling units assuming consistency with
13 the rest of the Lee Plan, which we believe their plan
14 is not, but the plan would allow an increase of 157
15 dwelling units for a total of 380 dwelling units, a 70
16 percent increase.

17 Since the original Lee Plan in the 1980s --

18 THE REPORTER: Could you slow a little bit for me,
19 please.

20 HEARING EXAMINER COLLINS: Yeah, sometimes when
21 people read, they tend to go very quickly.

22 MR. BRODKIN: Okay. And, you know, when I go to a
23 County Commission meeting, you got three minutes, and I
24 understand here --

25 HEARING EXAMINER COLLINS: Take your time.

1 MR. BRODKIN: -- you don't do that so -- okay, I
2 understand.

3 Since the original Lee Plan in the 1980s, the
4 rural land use category has never allowed more than one
5 dwelling unit per acre. The Lee Plan defines rural as
6 low-density residential, et cetera, and then -- as
7 shown here. The rural areas are to remain
8 predominantly rural, that is low-density residential,
9 agricultural uses, and minimal nonresidential land uses
10 that are needed to serve the rural community, and
11 that's Policy 1.4.1.

12 This case would set a precedent for huge increases
13 in residential density and the demise of the remaining
14 rural areas and is therefore not consistent with the
15 Lee Plan.

16 2. Almost all the property lies within the
17 coastal high hazard flood zone, and all of the property
18 lies within the Category 1 Storm Surge Zone. In
19 addition, according to a study paid for by Lee County,
20 almost all of the property lies within the existing and
21 future floodplain map for stormwater flooding that
22 comes down Owl and Trout creeks.

23 Lee Plan Policy 5.1.2 states, "Prohibit
24 residential development where physical constraints or
25 hazards exist, or require the density and design to be

1 adjusted accordingly. Such constraints or hazards
2 include but are not limited to flood, storm, or
3 hurricane hazards; unstable soil or geologic
4 conditions; environmental limitations; aircraft noise;
5 or other characteristics that may endanger the
6 residential community."

7 Increasing the residential density is not
8 consistent with prohibiting development or adjusting
9 the density and design accordingly for areas prone to
10 flooding and hurricane hazards as stated in Policy
11 5.1.2. The policy doesn't say require the density or
12 design to be adjusted, it says require the density and
13 design to be adjusted accordingly.

14 So the Staff says they've adjusted the design by
15 placing housing in the uplands, which seems
16 insufficient since the uplands are still in the coastal
17 high hazard flood zone, but they haven't adjusted the
18 density as required by the policy -- because, remember,
19 it says "and" and not "or." They've increased the
20 density by 70 percent. The Applicant has not shown
21 consistency with Policy 5.1.2, unnecessarily increasing
22 the number of people who will be in danger, need to
23 evacuate, and not stay in place during a hurricane or
24 other flooding event.

25 3. The Applicant's plan is not consistent with

1 Policy 128.4.7, which states, "Boat access facilities,
2 including multi-slip docking facilities and boat ramps
3 which would disturb or destroy wetlands or grassbeds
4 must demonstrate a pressing need for the proposed
5 facility and must provide for continued use by the
6 general public."

7 Dredging will be required for the marina, and the
8 Applicant has not demonstrated a pressing need for a
9 private marina, and the private marina does not provide
10 for continued use by the general public. They try to
11 get around this by providing a paddleboard launch open
12 to the general public, but the paddleboard launch is
13 not located near the private marina, and dredging is
14 not needed for the launch. So the dredging is only for
15 the private marina which does not provide use to the
16 general public.

17 4. Traffic congestion is an increasing problem.
18 North River Road, which is County Road 78, is not
19 currently on the Lee MPO needs or financially feasible
20 maps, and there are more developments planned for the
21 area. The Lee County MPO has County Road 78 as a
22 constrained road, and I have an attached map which I'll
23 leave you which shows that. It defines these roads as
24 roads not eligible for widening based on environmental
25 impacts, impacts to existing neighborhoods and

1 businesses, and limitations of the existing
2 right-of-way. Increase in density in these rural areas
3 will add to that burden on a constrained road.

4 Development directly along the river -- this is 5.
5 Development directly along the river allows
6 insufficient opportunity to clean runoff during storm
7 events. These developments are typically lush and
8 green, requiring a lot of fertilizer and use of
9 pesticides. The development, as proposed, will add to
10 pollution of the river.

11 We ask that you recommend against approval of the
12 Owl Creek RPD rezoning, considering the issues above,
13 in order to keep our rural areas as rural as intended
14 in the Lee Plan. Reducing residential density in the
15 Coastal High Hazard Flood Zone and Hurricane Evacuation
16 Zone One would be in the interest of the public.

17 Thank you.

18 HEARING EXAMINER COLLINS: Thank you. Would you
19 like to enter that written statement into the record?

20 MR. BRODKIN: Yes, please.

21 HEARING EXAMINER COLLINS: Okay, thank you. This
22 is Brodkin Exhibit 1 with an attached map.

23 (Brodkin Exhibit 1 submitted and marked.)

24 MR. BRODKIN: And I appreciate the opportunity to
25 speak early. I wish I could stay and hear all this,

1 but I'm sure I'll be able to look at it online.

2 HEARING EXAMINER COLLINS: Yes, thank you, sir.

3 MR. BRODKIN: Thank you.

4 HEARING EXAMINER COLLINS: All right. We're ready
5 to begin with the Applicant's presentation.

6 MR. AKIN: Good morning, Madam Hearing Examiner.
7 Before I begin, I have a copy of the Applicant's
8 PowerPoint presentation, as well as the full-sized
9 master concept plan.

10 HEARING EXAMINER COLLINS: Okay. The PowerPoint
11 will be Applicant Exhibit 1.

12 (Applicant Exhibit 1 submitted and marked.)

13 HEARING EXAMINER COLLINS: Do you have more than
14 one copy of the PowerPoint?

15 MR. AKIN: Yes, I'm sure we do.

16 HEARING EXAMINER COLLINS: Because I don't like to
17 mark in the original exhibit.

18 The master concept plan will be Staff Exhibit 2 --
19 or Applicant Exhibit 2.

20 MR. AKIN: Here.

21 (Applicant Exhibit 2 submitted and marked.)

22 HEARING EXAMINER COLLINS: Okay. This is my copy.

23 MR. AKIN: All right. So good morning again,
24 Madam Hearing Examiner. My name is Richard Akin. I am
25 with Henderson Franklin. I'm here today this morning

1 on behalf of the Applicant. We have our project team
2 with us. Also here is Russell Schropp, who is my law
3 partner. We have our project planner, who is Stacy
4 Hewitt with Banks Engineering; we have project engineer
5 Dave Underhill, also with Banks Engineering; we have
6 our project hydrologist with Water Science Associates,
7 Michael Jessich; we also have our environmental
8 consultant, Ashley Palmer with DexBender Environmental
9 Consulting; we have our marine engineer, Hans Wilson
10 with Hans Wilson & Associates; and we have our
11 transportation engineer, Yury Bykau with TR
12 Transportation Consultants. We also have Wayne Everett
13 on behalf of the Applicant, D.R. Horton, here with us
14 today.

15 So this project is 342 acres that's located in the
16 North Olga Planning Community. You can see from the
17 slide in front of you the location of the project
18 outlined in black on the map. The project is on the
19 south side of North River Road approximately one half
20 mile east of 31. The project is also bisected by Owl
21 Creek Drive, which runs to the north and the south
22 through the project.

23 The request is for a rezoning from AG-2 to a minor
24 residential planned development to allow a clustered
25 residential community containing up to 380 dwelling

1 units of single-family and two-family attached. It
2 will also include associated amenities. The building
3 height would be 35 feet maximum.

4 As previously mentioned, it is in the North Olga
5 Planning area; it's in the Northeast Lee Planning
6 District. The future land use is rural and wetlands,
7 and the zoning is AG-2.

8 The Applicant did provide a 48-hour letter in
9 response to the Staff Report. That letter identified a
10 few minor issues, just wording issues that needed to be
11 changed, as well as a few clarifications to conditions.
12 Staff provided a response on June 22nd, and at this
13 point in time Staff and the Applicant are in agreement
14 with regard to all the issues contained therein.

15 I believe there is one minor wording change that
16 wasn't contained in the Staff's response letter
17 yesterday that you'll hear about today. It's just one
18 minor clarification that got worked out, I believe,
19 last night or this morning.

20 So with that, I will turn it over to our land use
21 planner, Stacy Hewitt.

22 Stacy.

23 MS. HEWITT: Thank you.

24 Good morning, Hearing Examiner. For the record,
25 Stacy Hewitt with Banks Engineering. I have previously

1 been accepted as an expert witness in land use and
2 zoning and planning matters, and my resumé is on file,
3 and I request to be accepted as such this morning.

4 HEARING EXAMINER COLLINS: Yes, please proceed.

5 MS. HEWITT: Thank you.

6 As outlined, Staff and the Applicant are in
7 agreement on the conditions as revised in the Staff's
8 response to the 48-hour notice. There is one minor
9 clarification. It's wording that was included in the
10 48-hour notice on former Condition 20 -- now it's
11 Condition 19 -- The Great Calusa Blueway designation,
12 and it is in the last line, when you get there...

13 HEARING EXAMINER COLLINS: So Staff's 48-hour
14 letter took the codified version of Applicant's revised
15 conditions?

16 MR. DANLEY: Uh-huh --

17 HEARING EXAMINER COLLINS: Okay.

18 MR. DANLEY: -- yes.

19 HEARING EXAMINER COLLINS: So now we're making
20 changes to -- plus --

21 MR. DANLEY: Yeah.

22 HEARING EXAMINER COLLINS: -- an extra, and now
23 we're making changes to 19?

24 MS. HEWITT: Yes. And this is in the second to
25 last line, "The kayak and canoe launch must remain open

1 to the public." We'd just like to just add there,
2 "during daylight hours." And that's -- and Staff and
3 Applicant are in agreement with that change.

4 HEARING EXAMINER COLLINS: Okay, thank you.

5 MS. HEWITT: All right, thank you.

6 I would like to request to incorporate the Staff
7 Report and the attachments as part of my testimony this
8 morning.

9 Another note that I did want to make, the
10 Applicant did use the revised format, but we did not
11 take into account the square in the bottom, so there is
12 a few of the slides that might have a little portion
13 cut out. So I apologize for that, but if you could go
14 along in the hard copy.

15 The future land use category for the site is rural
16 and wetlands, and this is at the convergence of Trout
17 Creek and Owl Creek, with the con -- a natural basin
18 off the Caloosahatchee River.

19 There are existing -- Policy 6.1.2 was amended in
20 2017, and there were policies that anticipate water
21 expansion, utility expansion into this area.

22 This is the zoning for the subject property and
23 surrounding properties. The zoning for the site is
24 agricultural, AG-2, and much of the surrounding
25 properties.

1 There is a -- a special exception is outlined in
2 the Staff Report, Attachment H, on the site for a
3 mobile home.

4 To the north we have mixed use planned
5 development, which is also in the new community future
6 land use category, and consists of the Babcock Ranch
7 development.

8 To the south with -- surrounded by the property is
9 industrial marine zoning, and that is in the water
10 dependent overlay, and it consists of Owl Creek Boat
11 Works, which is an industrial marina since 1953, and it
12 accesses the Caloosahatchee through -- through Owl and
13 Trout creeks.

14 There's also two parcels that are to the south,
15 adjacent to the west, also of the subject property,
16 which is approximately 12 acres with two single-family
17 dwelling units, and also contained a special exception
18 for a mobile home in Attachment J to the Staff Report.
19 The home is set back approximately 800 feet from the
20 existing Owl Creek Drive, and as I'll show later in the
21 presentation, there's also a ditch along that area
22 providing separation. And we have coordinated with
23 both the adjacent property owners through the process
24 and have received no objections to the proposed
25 development.

1 To the east we have AG-2 zoning, as well.

2 And let's see.

3 This is an aerial. On this slide north is to your
4 left, just so we can zoom in a little bit closer on the
5 property, and we have -- to the east there is existing
6 agricultural grazing lands and some vacant South
7 Florida Water Management-owned property. There's also
8 property to the south that is also vacant and owned by
9 the South Florida Water Management District.

10 To the west there's single-family and agricultural
11 and grazing lands.

12 And, again, to the north we have the Babcock Ranch
13 development.

14 HEARING EXAMINER COLLINS: So the land south of
15 the parcel that's marked vacant, Water Management
16 District owned, is also owned by the Water Management
17 District?

18 MS. HEWITT: Yes, South Florida owns this parcel
19 and this parcel.

20 HEARING EXAMINER COLLINS: Up to the...

21 MS. HEWITT: This parcel is not owned. There's a
22 break here as far as the South Florida Water
23 Management District --

24 HEARING EXAMINER COLLINS: So that's --

25 MS. HEWITT: -- ownership --

1 HEARING EXAMINER COLLINS: -- owned by an
2 individual?

3 MS. HEWITT: Yes.

4 HEARING EXAMINER COLLINS: Okay.

5 MS. HEWITT: The subject property is existing
6 grazing lands and could be developed with a density of
7 223 dwelling units on well and septic under current
8 regulations.

9 There is a concurrent Lee Plan amendment
10 associated with the request, and pursuant to Florida
11 Statutes it is going along concurrently with the
12 rezoning application and was transmitted on April 20th
13 and is included in Staff Report Attachment K.

14 These amendments are proposed to amend Lee Plan
15 Map 4-A, the future surface water area, to add the
16 property to the map and allow for privately-funded
17 expansion of water.

18 It also proposes to amend Policy 1.4.1, the rural
19 designation, to add language to reference proposed
20 Policy 29.2.4 for a potential density incentive. That
21 incentive is included in proposed Policy 29.2.4 in
22 North Olga, which provides incentives for the
23 preservation of indigenous rare and unique upland
24 habitat in the rural future land use category in the
25 North Olga Planning Community by allowing one dwelling

1 unit for each acre of created, preserved, or restored
2 by planned development the rare and unique upland
3 habitats with criteria requiring a 60 percent open
4 space, which will include 50 percent -- minimum 50
5 percent indigenous, minimum dimension requirements,
6 soils requirements, planning standards, and
7 conservation.

8 Policy 124.1.1 and Table 1(a) regarding wetlands
9 are also proposed to be amended to add rural to the
10 list of future land use categories that are
11 incentivized to preserve freshwater wetlands to
12 transfer the density to developable contiguous uplands.
13 And this continues some -- since 2010 there's been
14 implementations in these policies to encourage the
15 preservation of wetlands, and it's been greatly
16 successful.

17 There is also a proposed update in the glossary
18 for the definition of rare and unique upland habitat,
19 which is demonstrated on this slide just to clarify the
20 high quality -- the high quality of these native
21 habitats and to define the mature nature and the
22 absence of impacts.

23 The proposed development -- these rare and unique
24 habitats are prevalent in Northeast Lee County, and
25 they're described in several policies in the comp plan,

1 the importance of these habitats. And habitats such as
2 live oak hammock and cabbage palm are prevalent in
3 Northeast Lee County and exist on the subject site.
4 And it's often easier to develop these uplands because
5 there's no mitigation required to develop them. So
6 these policies and the proposed amendment encourage the
7 creation to bring additional protection of these areas.

8 And we did discuss the 48-hour notice and Staff's
9 response. I wasn't going to go through them in detail
10 if we're -- since we're all in agreement. There were
11 just minor clarifications to conditions.

12 The conditions of approval, I wanted to briefly go
13 through some of those.

14 The Condition 1 is consistency with the master
15 concept plan and a limited schedule of uses that's
16 proposed for the site, including single-family and
17 two-family attached dwelling units.

18 A couple of things in the site development
19 regulations that I'd like to point out is the minimum
20 development perimeter setback of 50 feet and open space
21 requirements of the minimum 60 percent, which 50
22 percent must be indigenous. The property development
23 regulations, the size of the lots that are proposed
24 typically in the Land Development Code do not require
25 open space requirements of this size, but the site is

1 proposing, as consistent with the proposed Comp Plan
2 policy, a minimum of 60 percent open space.

3 There's also a requirement for a minimum 100-foot
4 setback from the existing Owl Creek Boat Works for
5 single-family lots to protect that development.

6 This is the master concept plan. Again, north is
7 to your left on this slide. Proposed is -- clustered
8 development is encouraged in the North Olga Planning
9 Community, and the development is located primarily on
10 previously impacted portions, and it preserves large
11 open areas, as encouraged in the comp plan policies for
12 North Olga.

13 HEARING EXAMINER COLLINS: So the building
14 footprint is confined to already impacted lands?

15 MS. HEWITT: To the maximum extent possible, yes.

16 HEARING EXAMINER COLLINS: Okay.

17 MS. HEWITT: There is two access points. There is
18 an existing Owl Creek Drive through the development
19 that provides access to the site and Owl Creek Boat
20 Works and the two residential parcels. We are
21 proposing to realign that as portion -- as part of the
22 development. There are two access points onto North
23 River Road. One will be a full access point, and the
24 one to the west -- or, excuse me, to the east will be
25 residential-only access point.

1 North River Road is a County-maintained arterial
2 roadway, and along the roadway there will be a
3 minimum -- in addition to some environmental areas,
4 there will be a minimum 25-foot buffer with the 14-foot
5 native canopy trees.

6 And the majority of the property has preserve
7 areas along the perimeter, and the areas where -- the
8 previously impacted areas where we do -- are within the
9 adjacent properties, there is that 50-foot minimum
10 setback which will have no lots within that area. It
11 would only contain features such as the berm or planted
12 dry detention areas.

13 The required open space per the proposed Comp Plan
14 policies require a minimum of 205.6 acres, and the
15 proposed master concept plan provides a minimum of
16 209.4 acres, exceeding that requirement. And the --

17 HEARING EXAMINER COLLINS: The 205.6 represents 60
18 percent?

19 MS. HEWITT: Correct.

20 HEARING EXAMINER COLLINS: But the project's
21 providing --

22 MS. HEWITT: A minimum of 209.4.

23 HEARING EXAMINER COLLINS: Okay, thank you.

24 MS. HEWITT: Thank you, thank you.

25 And the minimum indigenous requirement is 50

1 percent of that open space, which is 102.8 acres
2 required, but the site plan is providing a total
3 indigenous of 168.41 acres. Again, well exceeding the
4 requirement as proposed.

5 There are natural waterways that enter. There
6 is -- Owl Creek comes through the property from the
7 west, Trout Creek comes through the property to the
8 east, and there are additional natural tributaries
9 associated with these waterways on the site. And the
10 development includes incorporating a 50-foot natural
11 waterway buffer in those locations, with the exception
12 of a couple of areas that I'll go into detail for the
13 deviations for minimal impacts.

14 There is a proposed location for the multi-purpose
15 path along North River Road included, as well.

16 The proposed multi-slip docking facility is
17 located at the south of the property, which will be
18 gone into in more detail further in the presentation.

19 And there is a public canoe/kayak launch proposed
20 off of Trout Creek, which is located in this area.

21 The master concept plan also demonstrates
22 preservation of three archaeological resources, some
23 historic sites that will be also included within the
24 preservation areas.

25 HEARING EXAMINER COLLINS: Okay, hang on a second.

1 MS. HEWITT: Sure.

2 HEARING EXAMINER COLLINS: Okay. You may proceed.

3 MS. HEWITT: Thank you.

4 This is from page 2 of the master concept plan, an
5 excerpt demonstrating the density that's proposed for
6 the development. There is the -- 216.63 dwelling units
7 that is from the uplands on-site, as well as manmade
8 ditches and an existing lake, which compute to the
9 216.63 dwelling units.

10 The preserved wetlands of 106.36 dwelling units
11 transferred to adjacent uplands at the one dwelling
12 unit per acre at 106.36 dwelling units. Minimal
13 impacts to wetlands account for approximately 13.95
14 acres at one dwelling unit per 20 acres, which results
15 in .7 dwelling units. There's 5.74 acres of natural
16 open water that are not eligible for density. And then
17 the rare and unique preservation of 15.16 acres and the
18 restoration of rare and unique upland habitat of 41.28
19 acres equate to the proposed 380 dwelling units.

20 I would like to mention that the minimal wetland
21 impacts that are proposed are for public facilities
22 such as roads or water management and other portions of
23 the development.

24 HEARING EXAMINER COLLINS: So the density provided
25 for preserving rare and unique upland and restoring

1 rare and unique upland, is this part of the comp plan
2 amendment?

3 MS. HEWITT: Correct.

4 HEARING EXAMINER COLLINS: Okay, thank you.

5 MS. HEWITT: This is an excerpt demonstrating the
6 multiple areas of natural waterway buffers that are
7 being proposed through the site, and it also
8 demonstrates the location of the minimal deviation
9 impacts that will be discussed in greater detail in
10 just a moment. Again, these are all -- will be
11 provided through the majority of the site, and this is
12 an important site with the convergence of these
13 flow-ways. And the 50-foot natural waterway buffer in
14 these areas will include, at a minimum, six native
15 canopy trees and 50 native shrubs per 100 linear feet,
16 and credit for existing vegetation can be taken in
17 those areas, as well.

18 HEARING EXAMINER COLLINS: What area are you
19 speaking of?

20 MS. HEWITT: All of the natural waterbodies. This
21 dark line demonstrates the proposed 50-foot natural
22 waterway buffer that will be provided through the
23 majority of the site, with minimal impacts where
24 unavoidable, which I'll go into detail in just a moment
25 on the deviations.

1 A few more, just briefly, through the conditions.

2 Condition 3 is regarding the -- ensures the
3 restoration happens for the rare and unique upland
4 habitats for the density.

5 Condition 4 ensures maintained access and public
6 access through the site.

7 Condition 5 is regarding the residents --
8 residents only access signage.

9 Condition 6 is on FEMA compliance.

10 7 requires the open space as shown on the master
11 concept plan.

12 Condition 8 is demonstrate phasing of open space.

13 Condition 9 requires the conservation easement.

14 Condition 10 requires proof of mitigation of
15 wetland impacts.

16 Condition 11 is regarding the indigenous habitat
17 management plan proposed for the site.

18 12 is regarding the northern buffer.

19 13 requires surface and ground water monitoring
20 and a contingency plan, which will be described in
21 further detail in the presentation.

22 Condition 14 requires utility connection.

23 Condition 15 requires the drainage and access
24 easement.

25 16 is regarding the maximum boat slips, which will

1 be described in further detail later, but the site
2 qualifies for 330 boat slips and proposes 96 boat
3 slips, and is not -- is not going to transfer the 234
4 boat slips. This condition requires that we would not
5 be able to transfer those slips, which would normally
6 be allowed, which we'll go into further detail by the
7 marine expert.

8 Condition 17 is regarding the Manatee Protection
9 Plan.

10 18 is enhancements to the Indigenous Habitat
11 Management Plan with red mangroves in the proposed
12 tidal lagoon.

13 And Condition 19 is regarding the public
14 canoe/kayak launch to be added to The Great Calusa
15 Blueway, and signage that it will be open to the public
16 during daylight hours.

17 Deviation 1 is a request from Land Development
18 Code Section 34-1748(5), which requires a paved
19 turnaround having a turning radius to accommodate a
20 single unit truck to allow a turning radius for a
21 passenger car. And this is for the resident-only
22 access on the eastern end, and this is a secondary
23 access with minimum traffic, and it will have signage
24 directing others to the main access point. And the
25 Staff and Applicant agree it meets the required

1 enhancing the achievement of the objectives of the
2 planned development and preserves and promotes the
3 general intent to protect the public safety. And there
4 are conditions recommended by Staff which is acceptable
5 to the Applicant.

6 Deviation 2 is from Land Development Code Section
7 10-296(k)(1), which requires dead-end streets to
8 provide a circular turnaround to allow a dead-end
9 street with a T intersection in Tract 1. There's an
10 excerpt shown here that demonstrates the minimal area
11 here. And no objection from Bayshore Fire Protection
12 was included in the Staff Report, Attachment W, and
13 Staff and Applicant are in agreement it meets the
14 required findings, and Staff recommends approval of
15 that deviation.

16 Deviation 3A is relief from Section 10-416(d)(9),
17 which requires a 50-foot-wide vegetative buffer along
18 the waterways to provide minimal impacts in four
19 locations, which I'll go through in detail here.

20 3A is minimal impacts to -- along a tributary to
21 Owl Creek for the Tract 3 access road crossing, and any
22 necessary improvements on North River Road for any
23 potential turn lanes or anything of that nature. This
24 is a minimal impact, and Staff did provide a condition
25 limiting that impact as to what's propose -- shown on

1 the master concept plan. These are just minimal
2 impacts for filling for the road crossing, and the
3 details in sections -- which I'll go into a little more
4 detail on the next slides, but there is a crossing of
5 that tributary across North River Road which provides
6 twin 48-inch culverts, and we're proposing that same
7 culvert size on our crossing which will maintain the
8 upstream culvert size.

9 The North River Road is just potential for
10 compensating right-of-way or berms and then swales
11 associated with any turn lane and also for the
12 multi-purpose path easement.

13 This is a cross section showing North River Road
14 right-of-way, and then this is the property line here
15 with the 25-foot area we're talking about, which,
16 again, is reserved for eight-foot multi-use path
17 easement and any necessary roadway improvements.

18 This is another cross section from the master
19 concept plan which just demonstrates that we will be
20 providing those twin 48-inch culverts.

21 Deviation 3B is for the Trout Creek area, Tract 7
22 access bridge crossing, and the existing bridge. There
23 are minimal impacts for the new bridge crossing.
24 Again, to provide this -- the existing bridge is
25 narrow, and the proposed bridge provides safer access

1 for emergency vehicles and also adds pedestrian access.
2 It provides larger spans and more vertical clearance
3 than the existing bridge.

4 And this is a demonstration showing the existing
5 bridge is 12 feet wide. We're proposing approximately
6 30 feet wide, and the clearance of the existing bridge
7 is 4.7, and we'll be proposing a 6-foot clearance.

8 This is just another exhibit demonstrating that
9 cross section of the proposed bridge and the minimal
10 impacts to the natural waterway buffer.

11 Condition -- or Deviation 3c is for the natural
12 basin of the Caloosahatchee River to allow the flushing
13 connection, which will be discussed in further detail
14 also, but this is just a minimal impact to connect the
15 interior wetlands and the proposed tidal lagoon to the
16 basin. And the tidal lagoons create significant
17 wetland and wildlife habitat, they're an enhancement to
18 the tidal flushing of the marina, and they also reduce
19 potential flooding of the headwaters of Trout Creek by
20 increasing the available floodway width. This
21 deviation, again, has been recommended for approval by
22 Staff conditioned to the drawings and minimal locations
23 provided.

24 Deviation 3D is for the flushing connection to
25 Trout Creek, which is demonstrated in this area, which

1 also connects to the public canoe/kayak launch and the
2 tidal basin. This creates a recreation area for the
3 proposed canoe launch with a sandy beach area to allow
4 the public access to the Caloosahatchee River. And,
5 again, it aids in the flushing of the marina and the
6 reduction of potential flooding from Trout Creek, and
7 increases the available width for floodway. Staff
8 recommends approval of this deviation, as well.

9 Deviation 4 seeks relief from Land Development
10 Code Section 10-416 (d)(6), which requires where
11 proposed roads, drives, or parking areas are located
12 less than 125 feet from existing single-family lots
13 that a buffer be provided. This image demonstrates
14 there's about a 345-foot distance, where the proposed
15 roadway is within 125 feet of the adjacent
16 single-family lot.

17 The existing Owl Creek Drive and the existing
18 drainage ditches on the common property line at this
19 location separate the area, as well. The existing
20 residence is located approximately 800 feet from this
21 area, and the existing wetlands on-site provide
22 constraints for the location of the proposed roadway.
23 A wall or buffer in this location would serve no
24 purpose, and the interior tidal lagoons that are
25 proposed create a significant wetland and wildlife

1 habitat and are an enhancement to the area. And Staff
2 and Applicant are in agreement that it meets the
3 criteria and recommended for approval.

4 In regards to public facilities and services, this
5 site is not located in a future urban area, but it does
6 have -- public facilities exist. The letters of
7 availability are included in Staff Report Attachment S,
8 and they were based on the original request, when we
9 filed the application was for a total of 440 dwelling
10 units; and as we've worked through the process, that
11 request has been reduced down to the 300 dwelling units
12 before you today.

13 In regards to the water, Lee County Utilities has
14 sufficient capacity, and the developer-funded
15 enhancement for the utility expansion minimizes public
16 costs of services.

17 The sewer will be provided by FGUA, and they have
18 demonstrated they have sufficient capacity, again, for
19 developer-funded enhancements, which will be described
20 in further detail in the presentation. And Lee County
21 Utilities has provided no objection to that connection.

22 Bayshore Fire Rescue has indicated they have
23 adequate levels of service, and a station is located
24 approximately 4.8 miles from the site.

25 Lee County EMS has also indicated they have

1 adequate level of service. Medic 11 is approximately
2 5.1 miles southwest of the site, and there's a second
3 EMS station within approximately 6 miles.

4 The Lee County Sheriff's Office has indicated they
5 have no problems regarding services on the proposed
6 development, and the North District Substation in North
7 Fort Myers is approximately 11.3 miles from the site.

8 Riverdale High School is approximately 6.2 miles
9 from the site, and River Hall Elementary is
10 approximately 7.5 miles from the site.

11 And access is proposed onto North River Road, an
12 arterial roadway, and the traffic impact statement is
13 Attachment M to the Staff Report.

14 In regards to community coordination, the site's
15 located within the Northeast Lee County Planning
16 District, which also has -- is broken up into planning
17 communities of North Olga, which is on the west side of
18 the planning community, and Alva, which is on the
19 easternmost side of the planning community. Our site's
20 located in North Olga.

21 Requirements for public information meetings are
22 to place an ad in the paper, but the Applicant for the
23 initial meetings did mail property owners within 500
24 feet a notice of that interested -- or a notice of that
25 public information meeting, and we also noticed

1 interested parties that were listed with Lee County for
2 the northeast area. And we made the meetings available
3 for online or in-person attendance; and for the second
4 follow-up meetings, we did email anybody that had
5 signed in at the prior meetings to try to keep as much
6 involvement and -- and everyone involved in the
7 process.

8 We held two meetings in North Olga, October 15th,
9 2020, and December 1st, 2021; and two meetings in Alva,
10 October 6 of 2020 and December 9th of 2021.

11 With that, I'm going to turn it over to David
12 Underhill.

13 I would like to return after the other experts to
14 put testimony on the Lee Plan compliance and the Land
15 Development Code findings. Thank you.

16 (Discussion at lectern)

17 MR. UNDERHILL: Hi, Dave Underhill. I'm a
18 professional engineer with Banks Engineering. I've
19 previously been accepted as a witness, an expert
20 witness in civil engineering, and my resumé is on file.

21 HEARING EXAMINER COLLINS: Please proceed.

22 MR. UNDERHILL: The -- I just wanted to walk
23 through the stormwater management system for the
24 project. There's a stormwater management report that's
25 included in the Staff Report as Attachment D, so that

1 provides a little bit more detail than what I'm going
2 to get into.

3 The project, as previously been stated, that most
4 of the site's been -- or much of the site's been
5 cleared and has active agricultural uses. It's used
6 for cattle grazing. The predominant natural features
7 through the site are the -- the existing creeks.
8 There's Owl Creek to the west of the project. The main
9 Owl Creek extends off-site to the west, and there's a
10 small tributary that extends through the project. Both
11 of those have off-site flows from the north. And then
12 Trout Creek extends across North River Road, as well,
13 to the east of the property, and that passes through
14 the site in an east/west direction down by the Boat
15 Works.

16 Both -- both of these natural creeks are tidally
17 influenced in the area of the project, so they connect
18 directly to the Caloosahatchee River and, you know,
19 fluctuate with the tides.

20 The topography for the site generally slopes from
21 north to south. The grade up around North River Road
22 is around elevation eight, and it drops down to
23 elevation two to three as it gets closer to Trout Creek
24 and around elevation two as it goes to the south of
25 Trout Creek.

1 The site -- the development and the -- is
2 primarily developed in the cleared areas. These
3 natural historic flow-ways, these natural waterbodies
4 are being maintained through the site, and are
5 maintained in their current condition with those
6 natural waterway buffers. They also include some
7 vegetated areas that haven't been cleared, so all those
8 areas are being maintained to the greatest extent
9 possible.

10 The -- these creeks are outside the water
11 management system so the natural flows can pass through
12 the site without being restricted.

13 The surface water management system provides
14 additional treatment from what's typically provided.
15 All the water management system, all the development,
16 first drains to dry detention areas that then discharge
17 to the lakes. So the Owl Creek water management system
18 provides additional treatment that's not usually
19 provided in your typical residential areas. The water
20 management system's designed to mimic the natural flows
21 as the -- it's set up with a series of independent lake
22 basins. So as the grade drops from north to south, the
23 water management control elevations in the lake
24 likewise drops from north to south. This allows the
25 system to help hydrate the wetlands and also to mimic

1 the natural flow, which means that the areas -- the
2 same areas discharge where they do naturally. So the
3 areas discharge in the way that they do now, which
4 helps to maintain the water levels in the wetlands,
5 and -- and helps to improve the hydroperiods in the
6 wetlands, which are generally adjacent to these natural
7 waterbodies.

8 The project meets and exceeds the surface water
9 management and water quality and storage requirements
10 in the Lee Plan and the LDC.

11 The -- the FEMA -- this map here shows the current
12 FEMA flow-ways. There are some regulatory flow-ways
13 that -- highlighted here in yellow that generally
14 follow Owl Creek and Trout Creek. This area has been
15 modified by different studies over the years. It
16 originally went in in 2008. The County also has a
17 recent coastal map amendment that you may be aware of
18 that remaps the county-wide coastal areas. So that map
19 is scheduled to go into effect in -- in November, and
20 that map would remove these flow-ways and converts to a
21 different -- to a different floodplain.

22 So we're in agreement with the Staff condition. I
23 think it's -- it's Staff Condition 6 that says we have
24 to meet the FEMA requirements, basically, that are in
25 effect at the time of the development order. So we're

1 in agreement with that, and we've also submitted a LOMR
2 application to the County that's in for review for
3 the -- for the project.

4 HEARING EXAMINER COLLINS: Okay. Explain to me
5 what that is and what it will accomplish for the
6 project.

7 MR. UNDERHILL: So the current FEMA map has the --
8 the flood elevation -- it has these regulatory
9 flow-ways, and the elevation for the flood elevation
10 for the project is elevation 7. The new map for the
11 County -- that the County's implementing that should go
12 into effect for November raises the flood elevation to
13 elevation -- I'm sorry, it raises the flood elevation
14 from 7 to 11, and it eliminates these floodways.

15 We've submitted an application. We had -- a
16 floodplain expert reviewed all the work that had been
17 done and submitted an application to request a map
18 revision that's in review for the County now that
19 changes the elevation to 10. So the result of the
20 mapping is that the floodplain in the -- in the site
21 area goes up significantly versus what exists today
22 and --

23 HEARING EXAMINER COLLINS: And what is the effect
24 of that?

25 MR. UNDERHILL: It requires the homes to be placed

1 at a higher elevation, so we've designed the site to
2 meet those new requirements. So right now you could
3 put the houses at elevation 8 to be one foot above the
4 FEMA elevation, whereas we're designing the houses up
5 at elevation 11.

6 HEARING EXAMINER COLLINS: And how is that
7 accomplished?

8 MR. UNDERHILL: How is --

9 HEARING EXAMINER COLLINS: Is it on stilts? Is
10 it --

11 MR. UNDERHILL: No, the houses are at grade. So
12 they're just your -- your normal house. The roads are
13 up, and then the houses are a couple feet above the
14 roads, which would be typical for a residential
15 development in the area.

16 HEARING EXAMINER COLLINS: So they'll bring in
17 fill to elevate --

18 MR. UNDERHILL: They'll bring in fill, yes.

19 HEARING EXAMINER COLLINS: Okay, thank you.

20 MR. UNDERHILL: The condition -- I think it's 14
21 deals with the off-site utilities. So water and sewer
22 service will be extended to the property. The
23 utilities are available approximately three miles away
24 on Bayshore Road. There's a 16-inch water main that's
25 operated by Lee County Utilities. That will be

1 extended to the site, and that will also provide
2 additional hydrants out in the area that can assist
3 with the Fire Department and give the other commercial
4 and residential areas the opportunity to connect to
5 that main.

6 The sewer force main is being extended. That's
7 operated by FGCU -- I'm sorry, FGUA, and that will be
8 extended out to the site, as well, to provide sewer
9 service. So Condition 14 just says that the project
10 has to have water and sewer service. Those utilities
11 extensions have previously been submitted to the County
12 for review, and we're working through the permitting
13 with them.

14 And that's really all I had for my presentation
15 unless you had any questions.

16 HEARING EXAMINER COLLINS: I do not, thank you.

17 MR. UNDERHILL: Then I'll turn it over to Mike to
18 get into the hydrology and a little bit more into the
19 water quality.

20 MR. AKIN: Madam Hearing Examiner, Michael Jessich
21 is our project hydrologist. He has not been previously
22 accepted as an expert in front of the Hearing Examiner.
23 I do have a copy of his resumé for you if you'd like
24 it. We also submitted a copy of his resumé along with
25 our 48-hour letter.

1 HEARING EXAMINER COLLINS: Okay, I'll take it.

2 (Applicant Exhibit 3 submitted and marked.)

3 HEARING EXAMINER COLLINS: And you're going to go
4 over his background and experience?

5 MR. AKIN: Yes, I will go over it --

6 HEARING EXAMINER COLLINS: Okay, thank you.

7 MR. AKIN: -- briefly now.

8 So, Madam Hearing Examiner, Mr. Jessich has been
9 with Water Science Associates here in Southwest Florida
10 since 2015. He has a Bachelor of Science in Ecology
11 from the University of Minnesota which he obtained in
12 2008. He has over ten years of experience working in
13 hydrogeological investigations and permitting here in
14 Florida. He's worked on applications for water use
15 permits, including public water supply, agricultural
16 and irrigation water supply, industrial water supply,
17 and mining and construction dewatering.

18 As indicated, we're asking that Mr. Jessich be
19 accepted as an expert in hydrology. I'll turn it over
20 to Mr. Jessich to explain his experience and
21 associated -- or associated training in further detail.

22 MR. JESSICH: Thank you.

23 Thank you, Madam Hearing Examiner.

24 Just a background on some of my experience. Yes,
25 I graduated from University of Minnesota in 2008 with a

1 Bachelor of Science. I have over 12 years' experience
2 in hydrological investigations and permitting in South
3 Florida and over seven years of experience working with
4 Water Science Associates, my current firm.

5 Some examples of some qualifying projects on the
6 subject matter include the design and permitting of
7 over a hundred -- hundreds of water use permits,
8 various sizes within the South Florida Water Management
9 District for both consumptive use and --

10 THE REPORTER: You're going to have to --

11 HEARING EXAMINER COLLINS: Slow down, yeah.

12 MR. JESSICH: Sorry -- and construction
13 dewatering.

14 I have been in the planning and permitting of the
15 phased land use transfer of water use allocations from
16 large-scale agricultural operations to landscape
17 irrigation for Fiddler's Creek development. I've
18 provided salinity profiling, which included test well
19 installations and data interpretations for the
20 (inaudible) Preserve and Fleischmann project area in
21 Collier County. And I've been a part of various
22 multi-discipline team efforts for Comprehensive Plan
23 amendments and the planned development rezoning,
24 including WildBlue, CenterPlace, Pepperland, and
25 Saphira projects.

1 With that, I'd like to be recognized as an expert
2 witness in the field of hydrology.

3 HEARING EXAMINER COLLINS: Yes, you may proceed.

4 MR. JESSICH: Thank you.

5 HEARING EXAMINER COLLINS: Speak slowly, please.

6 MR. JESSICH: Yes, I will, sorry.

7 As previously stated, the project will provide for
8 the privately-funded utility extension of potable water
9 supply from Lee County Utilities. This will provide as
10 a water resource an elimination of the need of
11 individual domestic supply wells, which will result in
12 removing potentially competing water uses of freshwater
13 resources in the area.

14 We have, with that, an improved planning and --
15 and control of the water uses in -- in the area.
16 Again, with the extension of the sanitary sewer
17 service, it will result in the elimination of any
18 septic tank discharges to ground water and impaired
19 waterbodies, and the centralized utility will provide
20 for a higher-level protection of existing water
21 resources.

22 Some water quality improvements associated with
23 the project would -- would require the removal of 80
24 plus or minus head of cattle with an estimated 3,100
25 pounds of -- 3,100 pounds per year of on-site nitrogen

1 generation. It will remove the potential of 223 septic
2 systems, with an estimated 2,500 pounds per year of
3 on-site nitrogen generation. The project will provide
4 for improved nutrient uptake and treatment through
5 flow-way restorations and controlled surface water
6 management systems.

7 And then further, to provide for a surface water
8 and groundwater monitoring plan prior to the local
9 development order, which will be reviewed and approved
10 by Lee County as required in the proposed condition --
11 I believe it's now 13.

12 The water resources anticipated for this site
13 will -- will be for our irrigation use. The proposed
14 irrigation supply would be from a combination of
15 stormwater harvesting from the on-site lake systems,
16 with irrigation recharge from the sandstone aquifer.

17 The project's irrigation demands show up to a 50
18 percent reduction in historic maximum monthly permitted
19 use for the site both for agricultural irrigation to
20 landscape irrigation for the development.

21 HEARING EXAMINER COLLINS: So there will be a
22 central irrigation system?

23 MR. JESSICH: Yes, a centralized irrigation
24 system.

25 HEARING EXAMINER COLLINS: Okay, thank you.

1 MR. JESSICH: The -- the proposed irrigation water
2 use through the South Florida Water Management District
3 is currently in review, and it will meet all the
4 conditions required pertaining to the aquifer system,
5 the environment, and existing legal users, including
6 Lee County Utilities.

7 The project's application is currently in --
8 in-house with the South Florida Water Management
9 District and is in concurrency with the ERP, so review
10 has been deemed complete until further processing of
11 the ERP application.

12 HEARING EXAMINER COLLINS: Okay. So the ERP is
13 also pending?

14 MR. JESSICH: Yes.

15 And then further, the project meets or exceeds all
16 water quality and water resource goals and objectives
17 of the Lee Plan and LDC.

18 HEARING EXAMINER COLLINS: Thank you. I don't
19 have any questions.

20 MR. JESSICH: Thank you.

21 MR. AKIN: Madam Hearing Examiner, next you're
22 going to hear from our project ecologist, which is
23 Ashley Palmer. She has not been recognized as an
24 expert previously in front of the Hearing Examiner. I
25 have a copy of her resumé, which was also provided

1 along with our 48-hour letter.

2 HEARING EXAMINER COLLINS: Okay. This will be
3 Applicant Exhibit 4. Thank you.

4 MR. AKIN: You're welcome.

5 (Applicant Exhibit 4 submitted and marked.)

6 MR. AKIN: So, Madam Hearing Examiner, Ms. Palmer
7 is the project ecologist. She's been with DexBender
8 since -- I believe it's 2017. We're asking that she be
9 recognized as an expert in ecology. She has her
10 Bachelor of Science from Florida Gulf Coast University,
11 which she received in marine science in 2016. She's
12 worked on vegetation and wildlife monitoring in support
13 of accepted mitigation monitoring plans. She's also
14 worked on and been a part of protected species surveys
15 in vegetation mapping. She did previously work as an
16 environmental planner for Lee County from September
17 2021 until April of 2022.

18 I'll turn it over to Ms. Palmer to go through her
19 background in a little further detail.

20 HEARING EXAMINER COLLINS: Okay, thank you.

21 MS. PALMER: Good morning.

22 So like Mr. Akin said, I graduated from Florida
23 Gulf Coast University in 2016 with a major in marine
24 science and minors in geology and biology. From there
25 I began at DexBender where I have five years'

1 experience working on projects ranging from less than
2 an acre to over a thousand acres within Southwest
3 Florida, so Lee, Charlotte, Collier, Sarasota, Hendry,
4 Glades County. And I would provide required
5 environmental components for local, state, and federal
6 agencies, whether it be protected species assessments,
7 mitigation monitoring plans, wetland delineations, and
8 species-specific management.

9 And then during my time at Lee County, I worked in
10 Development Services, where I would apply environmental
11 aspects from the Land Development Code to landscape
12 plans submitted at time of development order review.
13 And then I would also process and issue the vegetation
14 removal permits.

15 HEARING EXAMINER COLLINS: Okay, thank you. You
16 may proceed.

17 MS. PALMER: Okay. So for the record, my name is
18 Ashley Palmer. I am an ecologist at DexBender. We are
19 representing the client as the environmental consultant
20 team.

21 The existing 342.68-acre parcel has primarily been
22 used for row crop farming. By early 2014 the farming
23 operations had ceased, and the property has since been
24 used for cattle grazing. A mosaic of upland and
25 wetland communities are scattered throughout the

1 property, as well as two small lakes and several
2 ditches.

3 The existing wetlands on-site have been invaded by
4 exotic vegetation, and some of the wetland areas are
5 currently being used as pasture.

6 Stacy touched on the rare and unique and the
7 importance of protection due to the fact that there's
8 no mitigation required to impact those areas. The
9 Applicant is proposing to preserve 15.16 acres and
10 restore 41.2 acres of the rare and unique uplands.

11 On -- the on-site areas that will be preserved as
12 rare and unique include live oak hammocks and cabbage
13 palm hammocks, which are on-site.

14 The areas that are proposed to be restored were
15 historically live oak hammocks that were converted to
16 and maintained as pasture.

17 The preservation on-site will include 45.69 acres
18 of existing wetlands, rare and unique uplands, other
19 surface waters, and surface waters. It will also
20 include preservation of historic flow-ways associated
21 with Owl and Trout Creek. It can be broken down as
22 follows:

23 It will be 23.56 acres of wetlands; 15.16 acres of
24 forested and rare and unique uplands; 5.61 acres of
25 surface waters, which is Owl and Trout Creek; 1.36

1 acres of other surface waters.

2 And for the restoration, a total of 128.58 acres
3 will be restored through the removal of exotic
4 vegetation and planting of native vegetation, and that
5 can be broken down as follows:

6 42.90 acres of uplands and rare and unique
7 uplands; 82.80 acres of wetlands; 2.88 acres of
8 littoral shelf wetlands; and, additionally, 11.83 acres
9 will be restored to surface water habitat as part of
10 the flushing basin associated with the proposed docking
11 facility.

12 The current land uses practices within the
13 property and the exotic vegetation infestation
14 significantly diminish wildlife utilization. All of
15 the proposed preservation and restoration areas will
16 have exotic vegetation removed. Areas with more than
17 75 percent coverage of exotic vegetation are considered
18 restoration. All of the restoration areas will be
19 planted with appropriate native vegetation. This
20 includes planting approximately 16,888 trees; 16,888
21 shrubs; and 87,413 ground-cover plants.

22 The overall effect of the proposed preservation
23 and restoration areas described will be a total of
24 186.05 acres of uplands, wetlands, other surface
25 waters, and surface waters on-site. And a conservation

1 easement will be recorded and placed over that 186.05
2 acres.

3 Stacy mentioned that the project is within the
4 vicinity of three archaeological sites. They are
5 located in the proposed uplands and wetlands with a
6 very small area -- you can see them -- oh, hold on.
7 You can see them, there's one and then the other two.
8 So that one's little areas in the rare and unique, and
9 then the other are within the upland and wetland
10 restoration -- preserve areas.

11 The -- so those will all be under the conservation
12 easement. And the exotic vegetation removal and
13 plantings will adhere to the archeologist's
14 recommendation guidelines for work in these areas.

15 The habitat improvements and preservation are
16 expected to encourage native species to thrive in the
17 preserve areas on-site, as well as reduce the exotic
18 vegetation seed source for the surrounding properties.

19 The proposed on-site wetland enhancement and
20 preservation will provide long-term viability for a
21 myriad of fish and wildlife species, including
22 potential county, state, and federally listed species,
23 which currently none are found on-site or known to be
24 on-site.

25 It's expected that prey and forage habitat for

1 listed and non-listed species will be enhanced through
2 the removal and maintenance of the invasive exotic
3 plants and protection by implementation of the proposed
4 enhancement and preservation of on-site wetlands.

5 The site development plan was designed to preserve
6 almost all of the wetlands and forested uplands
7 throughout the site which are adjacent to Owl and Trout
8 Creek. The Owl Creek property has the potential to
9 have a vital significance to wildlife as it's located
10 at the southern extent of Owl and Trout Creek wildlife
11 corridors. The preservation and restoration areas will
12 become part of a contiguous wetland and upland corridor
13 and flow-way along Trout and Owl creeks.

14 So here is kind of an image of the wildlife
15 corridors. Here's Owl Creek wildlife corridor, and
16 then Trout Creek wildlife corridor in here is the
17 subject parcel. So two wildlife corridors totaling
18 139.64 acres will be established on-site, so that's
19 where they connect here, off-site, and off-site.

20 The Owl Creek and Trout Creek corridors currently
21 consist of active pasture -- Owl Creek -- and exotic
22 vegetation-infested uplands and wetlands. These areas
23 will be enhanced and preserved and will be part of the
24 conservation easement. The Trout Creek wildlife
25 corridor connects the subject parcel to Babcock and to

1 the Lee County conservation lands, and providing a
2 permanent link between the surrounding wildlife
3 corridor areas and providing a permanent refuge for
4 wildlife.

5 The enhancement of the property will ultimately
6 provide an increased acreage of higher-quality habitat
7 for wading -- wading birds, as well as within the
8 littoral marsh restoration areas. And this corridor
9 will provide an interconnectivity of wildlife habitat
10 areas for large mammals and their prey, large mammals
11 such as bears, deer, bobcats to move locally in their
12 range, and restoring that link that's been disrupted by
13 the extensive exotic vegetation and current land
14 practices.

15 So in conclusion, we believe that the goals,
16 objectives, and policies of the Land Development Code
17 have been met regarding planting rare and unique wet --
18 rare and unique uplands, wetland protection through the
19 proposed restoration and preservation.

20 HEARING EXAMINER COLLINS: Okay, thank you very
21 much.

22 MS. PALMER: Thank you.

23 MR. WILSON: Good morning, Madam Hearing Examiner.
24 My name is Hans Wilson. I'm a licensed professional
25 engineer. I have been recognized as an expert witness

1 in marine engineering, environmental consulting,
2 waterfront facility design and permitting, and my
3 resumé is on file.

4 HEARING EXAMINER COLLINS: Yes, please proceed.

5 MR. WILSON: Thank you.

6 The project that we're talking about is the
7 marina-related component, and that consists of
8 basically three areas that we're talking -- we've got
9 this natural waterbody in here where we've proposed a
10 multi-slip docking facility; we've got basically farm
11 fields -- fallow farm fields where we propose a tidal
12 lagoon for multiple purposes; and then we're excavating
13 a proposed flushing channel through this location to
14 provide access where the canoe/kayak launch location
15 would be.

16 This is a bathymetric survey of the entrance to
17 the property -- let me go back real quick and point out
18 the fact that the property limits really -- we didn't
19 have a whole lot of places we could put any kind of
20 docking facility. This property is out of the picture.
21 So we have this shoreline here, and we have this
22 shoreline here on both sides of Trout Creek where
23 docking facilities could be proposed, and then we've
24 got the shoreline down here.

25 This particular area of Trout Creek is very

1 narrow. We'd have a very difficult time locating any
2 kind of docking facility. The shoreline on this
3 location was more appropriate. We had to deal with
4 setback requirements because we're on Sovereign
5 Submerged Lands, State-owned lands at this location.
6 So what you see is this proposed marina facility with
7 an entrance channel, this minimally excavated basin, to
8 create boat slips. The shoreline itself, according to
9 the County's Manatee Protection Plan, qualifies the
10 site for 330 boat slips. This project is for 96.

11 When we did the bathymetry in this location, we've
12 got this existing entrance channel coming in that goes
13 to Owl Creek. They have some very large vessels that
14 run through here. This is generally five to six feet
15 of water depth.

16 This is the intercoastal waterway subject to
17 significant boat traffic, particularly large boat
18 traffic. We'll have some 60-, 70-foot Hatterasses
19 cranking through here that puts out some significant
20 boat weight.

21 So we're trying to select a location -- we need
22 something that was relatively protected from boat wake
23 energy, we wanted something that was in close proximity
24 to the access channel, and we also had to meet the
25 setback requirements, 25 percent of the width of the

1 water body. And so this was basically the -- the
2 location that was most appropriate that we could secure
3 boating access.

4 Water depths in here, you can see, are three to
5 four feet. When we did some spot checks in here, we
6 found that there was anywhere from zero sediment or
7 silt -- particularly along this little bar here; I
8 believe this bar was created from when they dug this
9 channel and side-cast it -- to some areas up in here
10 where the silt's almost a foot and a half, two feet
11 thick. The -- generally the basin is almost all
12 consistently four feet to the hard bottom, which is a
13 criterion in the County's Manatee Protection Plan. The
14 other thing is that we also ended up with a short
15 travel distance from the marina out into the
16 Caloosahatchee River, and that was also an advantage to
17 why we placed the marina at this location.

18 The tidal lagoons were a feature that serves many
19 purposes. The majority of the proposed tidal lagoons
20 are in areas that are currently fallow or farm fields,
21 basically ag fields, cow pasture. They're hydric
22 because of the low nature, but they're not a pristine
23 habitat by any stretch.

24 The purpose of the flushing channel or the tidal
25 lagoons -- there's actually multiple purposes for it.

1 Principally, from a marina design standpoint, it
2 assists with flushing of the marina. I'll back up real
3 briefly and show you. The water flow -- of course,
4 this is the flood direction. Water flows into this
5 area, somewhat flows into here; but by making a
6 connection into this interior tidal lagoon, we
7 basically allow the water to flow through the marina
8 and into the tidal lagoon itself.

9 Now, we really don't need the tidal lagoon, per
10 se. I can probably get this approved with the State
11 for flushing based on the fact that we've got a fairly
12 open body of water. We have an alignment that's
13 basically east to west, obviously morning wind from the
14 east and then the afternoon sea breezes. So wind
15 mixing in this particular basin is good, and water
16 quality would be good even with the addition of the
17 marina facility.

18 However, by adding this tidal lagoon, I have now
19 kind of created this interior waterbody -- it's very
20 shallow, minus three feet mean lower low water -- and
21 that allows the water to pass through the marina into
22 the tidal lagoon on the flood tide; and then when the
23 tide runs back out, it runs back through the marina
24 assisting with flushing.

25 Other advantages to this situation is that we

1 proposed a flushing channel up here, and what that does
2 is that takes water coming out of Trout Creek and
3 splits it. It allows it to flow through this system.
4 In the summertime when we have a lot of freshwater
5 discharge -- from a very broad flood zone or floodway
6 we have a lot of water discharge, it basically
7 increases the ability for Trout Creek to convey water
8 through this system. It runs this fresh water through
9 these tidal lagoons and out the marina facility.

10 This is the -- a detail on the tidal lagoons. The
11 perimeter would be all planted with littoral wetland
12 vegetation resulting in 2.88 acres of intertidal
13 habitat. The tidal lagoon itself is almost 12 acres in
14 size. There's a number of features that are associated
15 with this, as well, aside from the open channel
16 flow-through, which goes through a box culvert
17 underneath the main road.

18 We've got a couple of things that are beneficial
19 about this particular setup. Nutrient uptake: As the
20 water flows through Trout Creek and runs into the
21 system, the littoral plantings on the side assist with
22 the uptake of nitrogen and phosphorus, which is an
23 important component of water quality protection in this
24 area. Again, adding additional flow through here
25 assists with decreasing upstream potential flooding by

1 increasing the volume of water that can be discharged,
2 and that volume of water being cleansed as it moves
3 through this system.

4 The other thing that's, I think, really important
5 is that this shallow body of water, one foot mean lower
6 low water, and being excavated to a clean sand
7 substrate I think will increase the possibility of
8 establishing seagrasses, a potentially significant
9 volume of seagrasses or area of seagrasses in this
10 location.

11 If you go to the site, and you go over the bridge
12 here, if you take a look at this little ditch area
13 along this side, there are already seagrasses
14 established. Vallisneria is visible along the ditch,
15 so I'm pretty comfortable that we're going to get some
16 seagrasses established. We're also creating sawfish --
17 smalltooth sawfish habitat. We're at the limit of what
18 the habitat is to the eastern limit, but this meets
19 their criteria, which is less than three foot mean
20 lower low water, wetland plant species along the
21 shoreline and euryhaline site condition, a mix of fresh
22 and saltwater.

23 And then of course the last thing is this creates
24 a great little -- with paddle crafts a great little
25 recreational opportunity either going upstream to Trout

1 Creek on the incoming tide, or if you go through the
2 box culvert, paddling around in the tidal lagoons and
3 observing the wildlife that will establish in that
4 location.

5 The -- I wanted to just highlight a little bit
6 about this location for the marina facility. I think
7 it's really important that we understand what the site
8 conditions are. Places that we propose dredging,
9 again, you know, this is a -- this is basically a
10 three-foot contour. This is that little bar where it
11 goes less than three feet, but this is all three to
12 four feet in here. And these are -- these are the
13 probes that we did which shows you the thickness of the
14 silt in this location, 1.3, 0.6, and this is not a
15 great (inaudible). You can see a handful of it right
16 here. Seagrasses are having a hard time establishing
17 in this location.

18 The -- I think that's pretty much the rationale
19 behind how we established this location for the marina
20 facility. It's the best location on-site. Dredging is
21 not prohibited in the County Manatee Protection Plan.
22 It does allow minimal dredging. And with this work
23 that we're proposing -- I think the other thing that's
24 important to realize is that we are doing some
25 trade-outs on the slip credits or on the slips

1 themselves.

2 This is the proposed paddle craft. This
3 location -- again, sort of the summary for the marina
4 facility is upper -- in the upper left-hand corner, but
5 I think what's important is that we qualify for 330
6 boat slips. The design is for 96. We could have taken
7 the balance of those boat slips and transferred them
8 off-site to another location under the County's slip
9 credit transfer program, a transfer of slip credits.
10 Instead, the Applicant is proposing to take the
11 remaining 234 slips out of the system.

12 Now, as a boating advocate, that's a little bit of
13 a problem because we have a shortage of boating access
14 locations. We really do. However, this is consistent
15 or following the intent of the County's Manatee
16 Protection Plan. It's a protection plan. So we're
17 trying to decrease or mitigate what the impact of those
18 boats would be, and so taking them out of the program I
19 think certainly meets the intent of the County's
20 Manatee Protection Plan. The canoe/kayak launch
21 location, again, would be open to the public, and it's
22 basically allowing for paddle craft access. And then
23 the 96 boat slips that are proposed are also the --
24 while it's not open to the public, what it is doing is
25 it's freeing up 96 boat slips or parking places in a

1 boat ramp elsewhere that the public would be using, and
2 instead it's taking those 96 slips and putting them
3 into this marina facility. So while it's not a public
4 facility open to the public, it's taking demand for
5 those boat spaces, whether it's a boat trailer or a wet
6 slip or a dry storage, taking the demand for that
7 access and now bringing it to this site, which opens up
8 those 96 spaces for the general public and public
9 facilities.

10 That's it. Questions?

11 HEARING EXAMINER COLLINS: So the boat slips that
12 you're not building, that has value.

13 MR. WILSON: Absolutely.

14 HEARING EXAMINER COLLINS: And I'm not clear on
15 why you're relinquishing -- why the property owner
16 would relinquish them altogether.

17 MR. WILSON: To basically meet the intent of the
18 County's Manatee Protection Plan.

19 HEARING EXAMINER COLLINS: Thank you, no
20 questions.

21 MR. WILSON: Thank you.

22 (Sotto voce between Hearing Examiner and reporter)

23 MR. BYKAU: Good morning.

24 HEARING EXAMINER COLLINS: Thank you, good
25 morning. You may begin.

1 MR. BYKAU: For the record, Yury Bykau with TR
2 Transportation Consultants. I have been sworn in and
3 previously accepted as an expert in transportation
4 planning.

5 HEARING EXAMINER COLLINS: Please proceed.

6 MR. BYKAU: Thank you.

7 We completed a traffic study from the proposed
8 rezoning application, and actually our traffic study
9 looked at the development of 385 dwelling units, where
10 the request before you today is for 380 units. So our
11 traffic analysis looked at a slightly more intense case
12 scenario.

13 As part of the traffic study, we first prepare a
14 trip generation analysis to estimate number of trips
15 that this project --

16 THE REPORTER: Okay. Could you start again a
17 little louder and a little slower, please?

18 MR. BYKAU: Sure. Where do you want me to start
19 back?

20 THE REPORTER: Just start after where your traffic
21 analysis looked at a slightly more intense case.

22 MR. BYKAU: Okay, no problem.

23 So then we first prepare a trip generation
24 analysis to estimate the number of trips our project is
25 anticipated to generate. We then added those trips to

1 the surrounding roadway network and analyzed all
2 roadway links that are anticipated to be significantly
3 impacted by our project. And the results of our link
4 level of service analysis indicate that North River
5 Road, as well as SR 31 within the vicinity of the site,
6 are projected to operate at acceptable level of service
7 under the future build-out traffic conditions.

8 We also analyzed the surrounding intersections
9 that are projected to be significantly impacted. These
10 intersections included our project driveways on North
11 River Road, as well as the signalized intersection of
12 SR 31 and North River Road. And our results of our
13 intersection analysis indicate all three intersections
14 are projected to operate at acceptable level of service
15 under the future build-out traffic conditions.

16 I also want to mention there are several SR 31
17 improvements that may potentially be coming into this
18 area. The first is the widening of SR 31 from SR 78 up
19 to Babcock Ranch. I believe that that improvement is
20 actually being currently funded by Babcock Ranch. The
21 second is also FDOT has been doing a PD&E study to
22 evaluate the potential widening of SR 31 from SR 80 to
23 SR 78, or Bayshore Road. So there are improvements
24 coming into this area, and I believe in the interim
25 they are trying to make this four lanes, but for

1 potential future expansion to make it six lanes.

2 HEARING EXAMINER COLLINS: This is SR 31?

3 MR. BYKAU: Yes. And just an FYI, our traffic
4 analysis analyzed SR 31 based on existing
5 configuration, which is only two lanes so...

6 So to conclude, the County Staff reviewed our
7 traffic study, they agree with our conclusions and
8 analysis, and this project can be found consistent with
9 the transportation goals, objectives of the Lee Plan
10 and the Land Development Code.

11 HEARING EXAMINER COLLINS: Okay, thank you, Yury.

12 MR. BYKAU: Thank you.

13 HEARING EXAMINER COLLINS: Stacy, we're going to
14 take a brief break, a ten-minute break. Let's resume
15 at 10:45.

16 (Recess from 10:35 a.m. to 10:45 a.m.)

17 HEARING EXAMINER COLLINS: Okay, everyone, we're
18 back on the record. We're going to resume with the
19 Applicant's presentation now.

20 MS. HEWITT: Thank you. Again, Stacy Hewitt for
21 the record.

22 The request is consistent with the findings for
23 zoning matters found in Land Development Code Section
24 34-145(d) (4)a.1.

25 The request complies with the Lee Plan,

1 specifically, Policy 1.4.1, the rural category, as the
2 resultant request remains low density residential with
3 a slight density incentive which will become consistent
4 upon the proposed language with adoption of the
5 Comprehensive Plan amendment.

6 It's consistent with Objective 1.5, Goal 124,
7 Policies 1.5.1, 124.1.1, and Table 1(a), Note 8 for
8 wetlands. The project preserves 106.36 acres of
9 wetlands, transferring the density to the uplands. And
10 impacted wetlands will be calculated at the one
11 dwelling unit per 20 acres, and this will be
12 consistent, again, upon adoption of the concurrent
13 Comprehensive Plan amendment.

14 It's consistent with Objectives 2.1 and 2.2,
15 Policy 2.2.1. It's uniquely situated between Babcock
16 Ranch and the industrial marina on the Caloosahatchee
17 River and more development -- more urban development
18 south of the river. And letters of availability and
19 the traffic impact statement have been added to the
20 record which demonstrate compliance with this.

21 It's consistent with Policies 5.1.2 and 5.1.5.
22 The master concept plan adjusts the density location
23 and design by clustering the development internally on
24 previously impacted upland areas, and preserves the
25 flow-ways and associated wetlands and uplands outside

1 of the surface water management system, which lessens
2 impacts of flooding events and improves water quality.

3 In response to the comments received by
4 Mr. Brodtkin, both the Staff Report and the Applicant's
5 analysis has provided professional planning opinions
6 that we are consistent with Policy 5.1.2.

7 We are consistent with Objective 27.1, Policies
8 27.1.1, 27.1.6, 29.1.1, and 29.2.2 in the Northeast Lee
9 County and North Olga policies. It is a clustered
10 development that preserves large areas of open -- open
11 land and provides for long-term preservation of natural
12 resources and open space areas on the site.

13 It's consistent with Policy 27.1.8, as multiple
14 meetings were held within the Alva and the North Olga
15 planning communities.

16 It's consistent with Policy 29.2.1, Goal 135, and
17 Policy 135.1.9, as it provides a mix of unit types and
18 flexible lot sizes and provides preservation of open
19 space and natural assets.

20 The request is consistent with proposed Policy
21 29.2.4, providing the 60 -- minimum 60 percent open
22 space with 50 percent indigenous requirement, provides
23 management and monitoring in a restoration plan,
24 conservation easement, and it will be consistent upon
25 adoption of the Comprehensive Plan amendment.

1 It's consistent with Goal 60, surface water
2 management. The filtration on the site through the
3 preserved and restored wetlands and preservation and
4 restoration of the flow-ways will retain the natural
5 flow patterns for lessening flooding impacts.

6 It's consistent with Policy 125.1.2. The removal
7 of the cattle grazing and the potential for 223 septic
8 tanks by connection to the sanitary sewer provides
9 consistency with this policy, and the surface water and
10 groundwater monitoring plan will also be included,
11 ensure that water leaving the site is maintained or
12 improved for protection of the environment.

13 It's consistent with Policy 125.1.6 as the site
14 will comply with the wellfield protection zone
15 ordinance.

16 It's consistent with 126.1.4 on water resources,
17 maintaining or improving the surface water flows,
18 groundwater levels and lake levels, the flow-way
19 restoration, the removal of the potential wells by
20 connection to potable water, and it will reduce the
21 stress on the shallow aquifer and help to maintain or
22 improve groundwater levels near the site.

23 It's consistent with Policies 128.4.6, 128.4.7,
24 and 128.4, as the multi-slip docking facility complies
25 with the Manatee Protection Plan: There are no

1 existing seagrasses, and limiting the site to 96 slips,
2 with the remaining 234 slips not being able to be
3 transferred. Additionally, additional discharge outlet
4 for Trout Creek is being provided.

5 It's consistent with Policies 128.4.7, 27.3.2,
6 27.3.3, 29.6.2, 29.6.3, and 82.1.2, as it provides the
7 public canoe/kayak launch public, providing access --
8 public access to the Caloosahatchee River through Trout
9 Creek.

10 The request complies with the Land Development
11 Code and qualifies for the four proposed deviations:

12 Is compatible with existing and planned uses in
13 the surrounding area, as the proposed clustered
14 residential, recreational uses and enhanced open space
15 areas are consistent with the existing and planned
16 residential, agricultural, and the adjacent existing
17 industrial marina uses; and, again, the request does
18 qualify for the four proposed deviations.

19 The access will provide sufficient access to
20 support the proposed development intensity, the
21 proposed two access points onto North River Road, and
22 the -- as the traffic expert has testified, as well.

23 The expected impacts on the transportation
24 facilities will be addressed by existing County
25 regulations and conditions of approval; the

1 site-related improvements will be addressed by these
2 regulations and the conditions of approval at the time
3 of development; and the roadways will still operate at
4 an acceptable level of service per the transportation
5 impact statement and the infrastructure planning
6 memorandum attached to the Staff Report.

7 The site will not adversely affect environmentally
8 critical or sensitive areas and natural resources. The
9 indigenous habitat management plan demonstrates
10 protection of these areas, and the site will be --
11 although we're not in a future urban area, there are
12 adequate services existing or planned.

13 The proposed uses are appropriate at the proposed
14 location. The proposed clustered residential and
15 recreational uses and enhanced open space areas are
16 consistent with the planned and existing uses in the
17 area.

18 The Applicant and Staff agree that the proposed
19 conditions provide sufficient safeguards to the public
20 interest and are reasonably related to the impacts on
21 the public interest expected from the proposed
22 development.

23 Staff and Applicant also agree that each of the
24 requested deviations enhance the achievement of the
25 objective of the planned development and preserve and

1 promote the general intent of the Code to protect the
2 public health, safety, and welfare.

3 In conclusion, based on my experience, review of
4 the request, and review of the Staff Report and
5 conditions, it's my professional opinion that the
6 request is consistent with the intent of the Lee Plan
7 and the Land Development Code and other applicable
8 codes and regulations. It's appropriate at the subject
9 location and consistent and compatible with the
10 surrounding land uses, and I believe the Applicant has
11 proven entitlement to the requested rezoning to
12 residential planned development.

13 And with that, it concludes my presentation.

14 HEARING EXAMINER COLLINS: I have one question,
15 and that has to do with public access to the canoe and
16 kayak launch point.

17 MS. HEWITT: Yes.

18 HEARING EXAMINER COLLINS: There was earlier
19 testimony that there was going to be a gate or a
20 gatehouse at the easternmost driveway. What is going
21 to be the control feature on the main entrance to the
22 subdivision?

23 MS. HEWITT: There is proposed a guard gate at
24 that entrance, and access will be maintained for the
25 existing uses, and public access will be provided

1 during daylight hours. That's the condition revision
2 that we had discussed earlier.

3 HEARING EXAMINER COLLINS: So any member of the
4 public can approach that gate and be -- and be allowed
5 admittance during daytime hours to access the canoe
6 launch?

7 MS. HEWITT: Correct.

8 HEARING EXAMINER COLLINS: So that's going to be a
9 manned gate at all times during daylight hours?

10 MS. HEWITT: That's my understanding during
11 daylight hours, yes.

12 HEARING EXAMINER COLLINS: Okay. Because if it's
13 not manned, how is the public going to access the
14 launch?

15 MS. HEWITT: Exactly.

16 HEARING EXAMINER COLLINS: Okay. Maybe you can
17 ask someone and --

18 MS. HEWITT: Okay.

19 HEARING EXAMINER COLLINS: -- get back to me on
20 that.

21 MS. HEWITT: Okay, will do.

22 HEARING EXAMINER COLLINS: Okay.

23 MR. DANLEY: If I could -- I could jump in on
24 that. Condition 4b says the project entrance gate at
25 North River Road and Owl Creek Drive must remain open

1 to allow public access during daylight hours.

2 HEARING EXAMINER COLLINS: Okay. So the gate --
3 it's not going to be controlled by a gate then --

4 MR. DANLEY: Well --

5 HEARING EXAMINER COLLINS: -- pursuant to that
6 condition?

7 MR. DANLEY: During daylight hours the gate will
8 be open.

9 HEARING EXAMINER COLLINS: Okay. Very good, thank
10 you.

11 If that concludes Applicant's presentation, I will
12 move to the Staff presentation now.

13 MS. HEWITT: Thank you.

14 MR. AKIN: Yes, that concludes the Applicant's
15 presentation. Thank you.

16 HEARING EXAMINER COLLINS: Okay, thank you.
17 Staff?

18 (Staff's Exhibit 2 submitted and marked.)

19 HEARING EXAMINER COLLINS: Thank you. Staff's
20 PowerPoint presentation will be Exhibit 2, Staff
21 Exhibit 2.

22 MR. DANLEY: Good morning. My name is Dirk
23 Danley. I'm a principal planner in the Zoning Division
24 of Lee County Community Development. I have previously
25 been accepted as an expert witness in the Lee County

1 Land Development Code and the Lee Plan, and would like
2 to do so again today.

3 HEARING EXAMINER COLLINS: Please proceed.

4 MR. DANLEY: Just to begin with on a couple
5 housekeeping items, the Staff is in agreement about the
6 daylight hours condition as it pertains to the kayak
7 launch and it being publicly accessible throughout
8 daylight hours --

9 HEARING EXAMINER COLLINS: So the main project
10 entrance gate will be up during daylight hours?

11 MR. DANLEY: As -- as proposed in condition -- I
12 believe it was 4b, which should -- should protect for
13 that; but if it needs to be reiterated in Condition 19,
14 as well, then Staff does not object to that. And to
15 confirm it is 4b, Condition 4b.

16 Okay. So the request, as the Applicant's already
17 previously stated -- I'll try not to overlap with
18 whatever analysis was provided by them, but this is a
19 rezoning of approximately 342 acres from agricultural
20 to residential planned development to allow for up to
21 380 dwelling units, ancillary amenities, and a maximum
22 building height of 300 -- or, sorry, 35 feet.

23 The history of the parcel is pretty basic. It's
24 been used primarily for agricultural uses. There was a
25 special exception approval under ZB-86-2 for a mobile

1 home. Today the Land Development Code would have
2 allowed that by right, so even though it's not really
3 significant to the history of the parcel, we did
4 include it as part of our -- our review.

5 This is the master concept plan that was provided
6 by the Applicant. They've gone into it at length so
7 I'm not going to try to discuss it too much, except for
8 the fact that this is what it would look like kind of
9 in the context of the existing aerials today. You can
10 kind of see where the creeks align -- and Applicant had
11 great exhibits to also demonstrate these things, as
12 well, but just to see how they would line up today or
13 if this was constructed as the master concept plan
14 depicts.

15 There is a concurrent Comp Plan amendment under
16 CPA2020-0004 and 2020-0005.

17 The first -- the first piece of this Comprehensive
18 Plan amendment is to include this in the utility
19 service areas for both water and wastewater.

20 And then Policy 29.2.4 includes the incentive
21 language about preserving rare and unique indigenous
22 upland habitat in the rural future land use category,
23 specifically in the North Olga Community Plan area.

24 And then the last is allow for the density
25 transfer from preserved freshwater wetlands in a rural

1 area. This provision is available to urban areas in
2 the county. If you have preserved freshwater wetlands,
3 then you can utilize that density on upland properties.
4 But that is not available currently today without this
5 Comp Plan amendment for rural areas.

6 In terms of where this stands in the process, the
7 case was heard by the LPA and the Board of County
8 Commissioners. The County Commissioners transmitted
9 this case to the State for review, and it has not been
10 scheduled yet for final adoption. My understanding, at
11 least today, is that this -- they're looking to have
12 these cases considered at the same time at the Board.
13 Whether or not that takes place remains to be seen.

14 I won't --

15 HEARING EXAMINER COLLINS: Right, because the
16 amendments are not project specific. They would
17 apply --

18 MR. DANLEY: Correct.

19 HEARING EXAMINER COLLINS: -- countywide.

20 MR. DANLEY: Some of them countywide, and some of
21 them -- well, the utility service area would be for
22 this property.

23 HEARING EXAMINER COLLINS: Right.

24 MR. DANLEY: The preserved upland, indigenous rare
25 and unique habitat would be specific to the North

1 Olga --

2 HEARING EXAMINER COLLINS: North Olga.

3 MR. DANLEY: -- Community Plan, and the rural
4 development density transfer off of wetlands would be
5 countywide.

6 HEARING EXAMINER COLLINS: Countywide.

7 MR. DANLEY: I won't reiterate the decision-making
8 criteria that have been listed out in the Staff Report,
9 and the Applicant's gone through them, but the rest of
10 our analysis will look into those decision-making
11 criteria as we move forward.

12 Regarding the density, the Applicant has gone into
13 this at length, but the proposed density that they're
14 seeking can only exist with the approval of the Comp
15 Plan cases.

16 HEARING EXAMINER COLLINS: So what's the effect of
17 density of the project?

18 MR. DANLEY: Are you saying what the total
19 build-out density -- they're looking for 380 dwelling
20 units.

21 HEARING EXAMINER COLLINS: No, I mean what is it
22 per -- it's more than one unit per acre obviously.
23 What does it come out to?

24 MS. HEWITT: It's 1.1.

25 MR. DANLEY: 1.1? Yeah, that is -- I think it's

1 1.1 units per acre because it's 342, so it's 380
2 divided by 342.

3 This is just a table that's doing the calculation
4 of the total development density on the projects and
5 how they're deriving different dwelling unit counts.
6 This is also restated in the Staff Report, as well.
7 And the Applicant's gone through the activity saying
8 where each of these things are being -- are being
9 derived from in the different actions in those Comp
10 Plan cases.

11 The property is in the rural future land use
12 category. The standard -- the maximum standard density
13 is one unit per acre. Any exceedance from that is
14 based off of these Comp Plan cases.

15 There are approximately 106.36 acres of freshwater
16 wetlands being preserved, and approximately 13.99 acres
17 of wetlands being impacted. The Applicant did have --
18 did show that on their slide, show where those impacts
19 were taking place.

20 And then the Applicant intends to utilize density
21 from the preserved wetlands in the upland areas of the
22 project.

23 Objectives 2.1 and 2.2 are to encourage new growth
24 in future urban areas. And this is kind of an
25 interesting area of our Lee Plan to consider while

1 we're going through this activity because this is
2 really in a rural future land use category by
3 definition. It's in a weird spot though because of the
4 positioning between Babcock Ranch to the north and more
5 urban areas to the south.

6 And the Lee Plan policies that are being
7 implemented through those Comp Plan cases are requiring
8 urban services; and so while we're not directing
9 development to an urban area, there will be urban
10 services available to them, and they're still meeting
11 the intent of the density as considered by both the
12 rural future land use category and those exceedances in
13 those Comp Plan cases.

14 In terms of residential land use review in Goal 5,
15 the Applicant's already stated the southern portion of
16 this property is in the coastal high hazard area, the
17 majority of it. There are portions of the property
18 that are in floodways along Trout and Owl Creek; and
19 from what I understand, they're looking to make some
20 adjustments to what the future FEMA maps show on the
21 property.

22 But Chapter 2, Article -- Article XI of the Land
23 Development Code does speak to hurricane preparedness
24 and the requirements for developments as they come
25 online and -- in terms of the mitigation that's going

1 to be required. The Applicant hasn't sought any
2 deviation from those requirements and will need to
3 comply with those requirements at the time of
4 development order.

5 Goal 5 speaks to protecting residential land
6 uses -- Policy 5.1.5, sorry, seeks to protect existing
7 and future residential areas from any encroachment of
8 uses that are potentially destructive to the character
9 and integrity of the residential developments. We'll
10 get into this a little bit later, but the proposed
11 community clusters residential density inward. This is
12 actually a requirement of one of the policies for the
13 North Olga Community Plan. But this also allows for --
14 from a driveby -- a person driving by to not feel so
15 much that there's a suburban-type community, but rather
16 it's being clustered away to reduce some of the visual
17 impacts of this neighborhood.

18 Additionally, there's enhanced open space that's
19 required by those Comp Plan amendments and others, but
20 that also provides visual compatibility with the
21 surrounding rural community.

22 Goal 120 -- or Goal 27 of the Lee Plan speaks to
23 the Northeast Lee County Community Plan, and Objective
24 21 is to enhance and maintain the viability of existing
25 and evolving commercial agricultural operations,

1 preserve open space, and retain the rural character of
2 Northeast Lee County.

3 As previously stated, 27.1.1 and 27.1.6, to
4 support that rural character, is to encourage new
5 developments to cluster and to conserve large areas of
6 open lands.

7 27.1.8 requires community planning meetings to
8 take place in Northeast Lee County both in Alva and
9 North Olga. The Applicant stated the dates and times
10 that they were -- they held those meetings in the
11 community plan area, and those -- that documentation is
12 attached to the Staff Report, as well.

13 And then Policy 29.2.1 states that proposed
14 planned developments should provide a mix of housing
15 types, clustering, and preservation of open space.
16 We've gone through that a little bit, but the -- they
17 are providing two different types of housing units,
18 both the single-family detached and the two-family
19 detached -- or, sorry, two-family attached.

20 Just to speak quickly to Goal 60, reducing hazards
21 to life, health, and property created by flooding due
22 to rainfall in a manner that preserves environmental
23 and natural resources, the Applicant at length has gone
24 through how they're looking to preserve the natural
25 flow of water on-site, particularly with the existing

1 two creeks that run through the property; and then
2 additionally the -- the acreage associated with the
3 wetlands on-site will help preserve, you know, water
4 retention on the property and also create some type of
5 protections from the residential development, as it
6 comes in, to offload some of the stormwater on the
7 property.

8 Goal 125 speaks to water quality. The Applicant's
9 gone extensively into how they -- they intend to do
10 that. And then there's -- I think something that they
11 didn't speak to at length enough is the irrigation
12 standards. I think they briefly touched it, but the
13 intent is to utilize existing stormwater retained
14 on-site for their irrigation; and then in the instances
15 where there's not sufficient stormwater on-site, to
16 refill those areas with groundwater. And Staff has
17 reviewed that irrigation plan and hasn't found any
18 objection to their intent to do that.

19 Goal 135 speaks to ensuring a mix of residential
20 uses, specifically Policy 135.1.9. We don't need to
21 repeat that too much.

22 So just to speak briefly on environmental
23 conditions, as part of the Comp Plan amendment to
24 29.2.4, there is a requirement for preservation of 60
25 percent open space, and of which 50 percent of that

1 must be indigenous preserve. Staff has included
2 conditions in both the Staff Report and in Attachment C
3 to kind of provide some protections for that to ensure
4 that that takes place at time of development order.
5 And the Applicant -- you know, we've worked on these
6 conditions at length, and I think we're in agreement on
7 how those conditions are worked out.

8 The Applicant did provide an indigenous habitat
9 management plan that creates and preserves and restores
10 natural habitat areas. The Applicant team did go into,
11 at length, what was going on in that plan and what the
12 intent is through the development, and how they're
13 going to restore these habitat areas and preserve them.

14 As previously stated, you know, there are
15 conditions imposed -- or proposed by the Staff in the
16 Staff Report, (inaudible) conditions, and we're in
17 agreement with those conditions as they're written
18 today.

19 And just to speak briefly, we talked about it in
20 the Staff Report, but there is an inconsistency between
21 required northern buffer plantings and the requirements
22 for restoration areas, and along State Road 78 there is
23 a restoration area that will also have a required
24 buffer. So Staff also included a condition to make
25 sure that there wasn't any type of confusion by the

1 time it made it to development order to ensure that
2 they're getting the restoration area requirements but
3 also getting the required buffer plantings, as well.

4 And just to speak briefly on the natural
5 resources, the considerations made during the review,
6 we talked about 125.1.2. And then 126.1.4, to improve
7 surface water flows, you know, just -- the existing
8 agricultural uses didn't necessarily have managed
9 stormwater on the upland areas, at least to the
10 satisfaction of the South Florida Water Management
11 District or others, so bringing this online consistent
12 with those requirements will likely improve the surface
13 water flows on that property.

14 And then additionally, Policy 60.1.1 requires the
15 surface water protects or enhances groundwaters. The
16 same goes for what I previously stated. The existing
17 agricultural uses don't necessarily take in
18 pretreatment and treatment areas for stormwater as they
19 come off of upland areas into the wetland areas, and
20 the development will -- as it's proposed will
21 ultimately enhance groundwaters just by the fact that
22 there's less pollutants going in.

23 Also, as previously stated, that the majority of
24 the property is in a coastal high hazard area and
25 subject to Policy 101.1.1. That policy requires

1 development within this area to be compatible with
2 natural systems, which we've gone through at length.
3 And then additionally, we've imposed conditions or
4 proposed conditions to ensure consistency with this
5 policy moving forward.

6 The Applicant did go on at length about the
7 multi-slip docking facility. They are subject, moving
8 forward, to the Manatee Protection Plan and all the Lee
9 Plan policies associated with these types of
10 facilities. I just want to clarify when we get to --
11 when reviewing the conditions document, a marina is a
12 permitted use in a residential planned development. My
13 understanding is they did not request that. Multi-slip
14 docking facility, as a defined use, is not technically
15 permitted but it is stated as part of the definition
16 for a private recreation facility. And my
17 understanding of why it's stated that way is so that it
18 doesn't necessarily allow for, you know, the public to
19 utilize the multi-slip docking facility portion of it.
20 And that's why, you know, we've kind of tiptoed around
21 the language of the -- the boat launch specifically for
22 the use and enjoyment of the public, but the actual
23 docks themselves are for the residents of the community
24 because, technically speaking, the multi-slip docking
25 facility as a standalone use, and not as a recreation

1 facility for the use and enjoyment of the residents, is
2 not permitted in an RPD.

3 HEARING EXAMINER COLLINS: And there's no boat
4 ramp associated with the multi-slip docking facility;
5 correct?

6 MR. DANLEY: Correct.

7 HEARING EXAMINER COLLINS: And it's reserved for
8 residents only?

9 MR. DANLEY: Yes.

10 The Applicant's gone on at length about the plan
11 to not disturb or -- disturb or destroy wetlands or
12 grassbeds, probably more than likely are actually
13 creating more wetlands and grassbeds by -- particularly
14 by the flushing canal in the tidal lagoon.

15 HEARING EXAMINER COLLINS: So they're going to
16 excavate that black muck out of the --

17 MR. DANLEY: Yes.

18 HEARING EXAMINER COLLINS: -- lagoon there --

19 MR. DANLEY: Uh-huh.

20 HEARING EXAMINER COLLINS: -- and the idea is that
21 that would possibly stimulate the growth of seagrass?

22 MR. DANLEY: That, and the areas in here that Hans
23 went through saying that, you know, this area when it's
24 cleared out may end up facilitating additional
25 grassbeds. Because currently this -- this whole piece

1 is not open water. It is -- it is -- I think it's
2 called hydric pastureland where it floods sometimes,
3 and times it doesn't.

4 HEARING EXAMINER COLLINS: But it will be open
5 water --

6 MR. DANLEY: It will be open water at the
7 completion of their project as proposed today.

8 HEARING EXAMINER COLLINS: And it will be subject
9 to the flushing channel?

10 MR. DANLEY: Yes.

11 The Applicant did go on at length about the kayak
12 launch, and we've also included that condition that we
13 talked about, Condition 19 about being implemented on
14 the -- Calusa -- for the Great Calusa Blueway map.

15 Just to speak briefly, we had an off-line
16 conversation about the implementation of actually
17 getting placed onto the Blueway map. That's updated
18 every couple of years. So in the instance where that
19 kayak launch does not -- or that comes online at a time
20 where we're kind of off-cycle from updating that map,
21 Staff will likely end up requiring that the folks here
22 at Lee County that update that map provide some type of
23 correspondence that it's slated to be placed on the map
24 at the next update. And then there's additional public
25 outreach that Staff do to ensure that the public is --

1 is aware that that ramp is available for the public.

2 The Applicant did go through the deviations. I
3 don't feel like I need to go through them at length.

4 HEARING EXAMINER COLLINS: No.

5 MR. DANLEY: We did recommend approval of
6 Deviations 1 through 4 with conditions, and the
7 Applicant is in agreement with our -- our proposed
8 conditions.

9 And with that, Staff does recommend approval of
10 the planned development rezoning as conditioned in
11 Attachment C found in the Staff's response to the
12 48-hour letter by the Applicant.

13 I don't have it up here with me, but I'd like to
14 just submit on the record I did have some
15 correspondence from the public over email, some of
16 which stated they may not be able to actually make it
17 to the hearing. I just wanted to have it submitted for
18 the record.

19 HEARING EXAMINER COLLINS: All right. I will
20 enter that as a Staff exhibit.

21 MR. DANLEY: Okay. And I'm here with any
22 questions that you have.

23 HEARING EXAMINER COLLINS: Thank you.

24 MR. DANLEY: Also, we have other Staff here if you
25 have questions for others.

1 HEARING EXAMINER COLLINS: So Staff Exhibit 3 is a
2 composite of correspondence with members of the public
3 who may or may not be present today?

4 MR. DANLEY: Yes.

5 (Staff Exhibit 3 submitted and marked.)

6 HEARING EXAMINER COLLINS: Okay. At this point
7 I'd like to open up the podium to members of the public
8 that wish to put comments onto the record.

9 I will start with this pile. If I get through
10 this pile, and your name has not been called, you
11 certainly will have an opportunity to speak if you
12 choose to.

13 Nancy Bright?

14 MS. BRIGHT: I don't wish to speak.

15 HEARING EXAMINER COLLINS: Okay, thank you.

16 Philip Busse? Good morning, sir. Thank you for
17 coming.

18 MR. BUSSE: Thank you.

19 HEARING EXAMINER COLLINS: State your name for the
20 record, please.

21 MR. BUSSE: Oh, Philip Busse. I'm a resident of
22 Alva right up the street. You consider this North
23 Olga. Most of us consider that Alva.

24 My one question -- first question is do we know
25 what zip code this is going to be coming under?

1 HEARING EXAMINER COLLINS: Okay. They're going to
2 not answer you. They're going to --

3 MR. BUSSE: Oh, okay.

4 HEARING EXAMINER COLLINS: -- take everyone's
5 questions, and then they're going to respond to
6 everyone's questions --

7 MR. BUSSE: Okay.

8 HEARING EXAMINER COLLINS: -- after.

9 MR. BUSSE: The reason behind that is because of
10 the post office.

11 There's a lot of reasons why we consider this not
12 to be beneficial to the community. There's no place
13 like Alva. It is literally the last spot in Lee County
14 that is rural. There's cows, there's goats, there's
15 pastures, and we have a couple little housing
16 communities sprinkled in between.

17 I've lived in Alva for the last three years. I've
18 been a Lee County resident for 14 years. The other
19 part of that time was in Cape Coral. Needless to say,
20 I got out of the Cape because of the continued growth
21 and, you know, the congestion.

22 Several years ago my wife and I found two acres in
23 Alva that we purchased and built our dream home. We
24 enjoy seeing the animals, and we enjoy the quietness
25 until recently. The explosion of dump trucks on River

1 Road and 31 -- and 31 is a major trucking route -- has
2 just gotten out of hand. We fought very hard with
3 Frank Mann to get that light up at 31 and 78 which has
4 saved some lives. Recently there was just a horrible
5 accident with a dump truck that ran the red light and
6 slammed into multiple vehicles right there at 31 and
7 78, and I don't know if anyone -- if there was any
8 deaths, but there was a lot of mangled vehicles. And
9 then two days later another dump truck slammed into two
10 people pulling out of Verandah just down the street on
11 Palm Beach and killed them, once again not paying
12 attention.

13 The infrastructure is not in place for anything
14 like this to even be considered right now. 31 is one
15 lane in each direction. I know it's under -- it's
16 starting to be developed, but something like this
17 should never even be considered until the roads are
18 there.

19 You've got Babcock Ranch up the street, which is a
20 complete disaster because Lee County gets all the crap
21 that flows from Babcock. Pardon my language. We get
22 all the traffic. We get the congestion. 99 percent of
23 the people are traveling south on 31. They do not go
24 north. There's nothing up there. So you sit at the
25 red light -- when we come out of River Road now, we sit

1 there for two to three red lights before this
2 development even goes in; and in season it's five and
3 six red lights trying to make the turn. Again, thank
4 God for the red light.

5 The electrical grid has its troubles right now
6 with us out there to the point that FPL has installed
7 special sensors in our area to try to figure out why
8 the power keeps flickering out.

9 Internet is another example. CenturyLink® is the
10 only service ability out there. It has a low
11 bandwidth.

12 We don't have enough schools for the existing
13 students.

14 The fire stations. Well, Bayshore Fire Department
15 is a long way away from where we are and where this
16 development is. It's already going to be overtaxed by
17 the new developments going on Bayshore Road that are
18 under construction now. So I don't exactly know where
19 all these emergency vehicles are going to come from for
20 all these developments that are going in, but hopefully
21 you guys have a plan for that.

22 Which leads me to the other point about the Alva
23 Post Office. The Alva Post Office is about half the
24 size of this room. It can't even keep up with what we
25 got now. Sometimes we don't even get mail delivery

1 because they don't have enough people to deliver the
2 mail.

3 The Caloosahatchee River is a biohazard and toxic
4 river, probably one of the worst in the state. It
5 contributes to -- all the way down to Cape Coral and
6 the Gulf of Mexico. By putting all these homes right
7 on the river, obviously the water is going to run off
8 into the river, which is going to make it even worse.

9 We spoke about Babcock, and we spoke about the
10 traffic -- now, here's the other thing about the
11 traffic. You've got one lane coming in from Palm Beach
12 Boulevard over a drawbridge that goes up about every 15
13 minutes in season, which backs up traffic almost from
14 the drawbridge to the existing Babcock Ranch
15 development in the summertime. You've got another
16 development that you want to put several hundred homes
17 in that's going to go down that way, so what do you
18 think that traffic's going to do? It's going to back
19 up on River Road, and then eventually it will go out on
20 31, which will back up even worse.

21 The only other way out is through Bayshore, which
22 is one direction in -- right now. And you're putting
23 another development in by Lee Posse Arena, which is
24 just up the street from the civic center. Again, we
25 only got one lane -- one coming in on Bayshore now.

1 You've got one on Palm Beach Boulevard. I don't know
2 where all the traffic is going to go. It doesn't go
3 now. So you throw in hundreds and possibly thousands
4 of more homes with more developments going in, you're
5 going to have a traffic nightmare.

6 Hurricane, that is the main concern. We only got
7 three ways in and three ways out. You either go north
8 on River Road up to Alva, you go south on River Road to
9 31, and you go north or south, which is still, as I
10 said, one lane in each direction. The expansion
11 facility will take years on 31 to do, and I understand
12 there's not even any consideration for the bridge at
13 this point, that drawbridge. So, again, we're years
14 away from getting any relief out there, and it's
15 already a nightmare.

16 That's basically all I had to say. We want to
17 live in peace and harmony. You guys are up at Babcock
18 five minutes up the street. We don't need another one.

19 That's all I have to say. Thank you.

20 HEARING EXAMINER COLLINS: Thank you, sir.

21 Stan Stouder?

22 MR. STOUDER: Thank you, Madam Hearing Examiner.

23 For the record, I'm Stan Stouder, and I'm here today
24 strictly as a private citizen and in no other capacity.

25 I have heard the deft presentation by the

1 Applicant and by the Staff, and I have more than a
2 passing familiarity with the Comp Plan and with the
3 Land Development Code, and therefore I'm asking that
4 the Hearing Examiner today recommend to the BoCC that
5 they approve both the Comp Plan application and the LDC
6 requirements or requests as presented.

7 I'm doing this because I find it to be consistent
8 with the intent of the Lee Plan and the Land
9 Development Code and other applicable codes and
10 regulations. I find that it is appropriate at the
11 subject location and consistent with compatible and
12 surrounding uses, and that they are entitled to the
13 approval of the requested rezoning to RPD.

14 Thank you.

15 HEARING EXAMINER COLLINS: Thank you.

16 B.J. Griffin Gerald. Good morning, thank you for
17 coming.

18 MS. GERALD: Good morning. I have been a resident
19 of Alva since 1981. My husband and I built our first
20 house there right down from Owl Creek and -- because I
21 have horses, and I needed a rural place to be, and I
22 just found that was the prettiest part of Lee County,
23 and that's why we bought there. And then I needed more
24 land, so we purchased a little over 12 acres from a
25 friend of ours in Alva and built another home there.

1 And since my husband passed and I didn't need my farm
2 anymore, I sold that, and I just finished building my
3 third house in Alva off North River Road in Telegraph
4 Creek Estates. And, you know, it's just one acre, but
5 I chose to be in Alva for the third time because it's
6 quiet, it's peaceful. It's just -- I remember when I
7 built the first house, I knew every neighbor for miles
8 on North River Road. I'm a cyclist and a runner, and I
9 knew everybody. People would beep, "Hey, B.J."; "Hey,
10 B.J."; and, "Biking today, huh?" And it was -- it was
11 wonderful. That's why I stayed there. I had my horses
12 there, could travel wherever.

13 And then I hear about this, and we didn't know.
14 This -- we heard today that there have been several
15 meetings. Well, none of us know that. It was a
16 surprise, and it's kind of questionable to me, too.

17 So I feel that this development would be a
18 disaster for Alva as we now know it, and I believe this
19 will set a precedent for future development. There's
20 property adjacent to this that was almost developed
21 years ago, and the economy trashed. Alva, Inc., that I
22 used to be vice president of, fought this tooth and
23 nail, but we lost, and the development was going to go
24 on. But fortunately it didn't because the economy
25 tanked, and so that stopped that. And that was going

1 to be like a little city in there.

2 And I just -- you know, we love to see our cows
3 and our horses and people's critters on their farm, and
4 we've had this lifestyle for -- forever. I mean, there
5 are people that are second and third generation out
6 there, and fourth generation out there.

7 And it's quiet, we have all the wildlife, the
8 deer, the wild hogs, the turkeys, the -- everything out
9 there. They cross the road. Well, the traffic is
10 getting busier now so we have a lot more roadkill. You
11 know, I see a dead deer on the road every few weeks,
12 and that's devastating. Any animal life loss is
13 devastating. And when a development comes in and they
14 start excavating, those animals don't say, well, I'm
15 just going to go across the street and wait till this
16 is done, and maybe they'll provide a home for us.
17 That's not how it happens. Animals aren't welcome on
18 other animals' property. It's just like you're not
19 going to allow somebody into your house because they're
20 disjointed from their home. So it doesn't work that
21 way.

22 I know they've said different things. When the
23 land is developed, there will be some critters coming
24 in. But I have watched the coyotes, I've seen panther,
25 I've seen everything. And the more noise -- the road

1 noise scares critters off, and that's unacceptable.

2 But the future of Alva -- I just -- I just know
3 this is going to set a precedent. That next piece of
4 property that's just about adjacent to this, that's
5 going to be developed next. Somebody is going to come
6 in and buy that from the property owners, who are
7 friends of mine, and it's going to happen again, and
8 it's going to keep going eastbound until there's no
9 Alva left. Frank Mann would be devastated over this.
10 He and my husband were -- grew up together.

11 So the -- if we keep rezoning our AG-2 lands to
12 developments, there is no more ag land. I mean, the
13 purpose of keeping something rural -- if you've ever
14 driven down North River Road, it is an amazing scenic
15 road. There is Caloosahatchee Regional Park, the Bob
16 Janes Preserve, the Telegraph Creek Preserve. There's
17 just so much -- the Daniels Preserve, a friend of mine,
18 there are all these out there. I hike over every inch
19 of it almost every day, and to think that more noise,
20 more development is coming out, the critters are going
21 to be chased off, and that's, to me, unconscionable.

22 The traffic on our road is so different than it
23 was ten years ago. We used to have a sign there seven,
24 eight years ago that said no trucks through, so trucks
25 coming down North River Road were only allowed to go to

1 a destination off North River Road. But that sign's
2 gone, and so we have a huge influx of traffic.

3 You build something there, that's going to create
4 at least 800 more cars on our road and in that
5 intersection. And like Philip said before me, it's
6 like traffic light after traffic light after traffic
7 light you have to wait to get through, and it's such a
8 deadly intersection. It's just -- it's scary.

9 And to add this development, you're going to put
10 in more roads, take away a lot of greenery, and you
11 build a house, you put roads, you put concrete in, and
12 that causes -- creates more heat in our environment.
13 You put -- they talked about a possibly -- either a
14 berm or a wall. That creates less airflow and more
15 heat in our environment. I don't understand that. In
16 our rural lifestyle, we don't have berms in Alva. We
17 don't. It's just open farmland, and it needs to stay
18 open farmland, but those people that reside there --
19 possibly in there are not going to want to hear the
20 road noise, and so they're going to want the
21 protection. And, no, that's not a rural lifestyle.
22 That's -- that's not how it should be.

23 And the other thing, the pollution/environmental
24 aspect of this to me is also extraordinarily negative
25 because people have a yard person do their yard. Even

1 though in the summer -- I used to be a very active
2 member of the Sierra Club, and we helped to create
3 the -- the give-your-fertilizer-a-vacation-break in the
4 summertime and -- but there's people doing
5 landscaping -- one's doing my neighbor's, and I said,
6 "What are you putting down?" And he said, "Well,
7 fertilizer." And I said, "No, you can't do that.
8 You're not allowed to do that."

9 But it's going -- what I'm saying is it's going to
10 happen, and they are right on the river and right on
11 Trout Creek and Owl Creek, and that is going to pollute
12 that ground. There's no way -- pesticides, everything.
13 We need -- we need the bugs in the ground for the birds
14 to eat. We desperately need those. If you take those
15 away by spraying and keeping the bugs out of your yard,
16 then the birds utilize that for food -- or they may eat
17 some of that, and how is that going to affect their
18 DNA? We need to be concerned about everything in our
19 environment, our snakes and our possums and all of our
20 critters that are here.

21 So I'm just saying this is unconscionable for
22 those of us that live here. And this is -- we just
23 heard about this because we saw the zoning change up
24 there, and we -- we're talking about it in the
25 neighborhood and saying, "No way, no way." This is

1 just for financial gain for the landowner, and it's not
2 fair. I know it brings a great tax base for the
3 County, but at what cost? This is Alva. It's a rural
4 community, and we really want to stay there.

5 Thank you so much.

6 HEARING EXAMINER COLLINS: Thank you for coming,
7 ma'am.

8 MS. GERALD: All right.

9 HEARING EXAMINER COLLINS: Alan Klingensmith?

10 MR. KLINGENSMITH: I have no questions.

11 HEARING EXAMINER COLLINS: Guy Mahan?

12 MR. MAHAN: Mahan.

13 HEARING EXAMINER COLLINS: I'm sorry if I
14 butchered your name, sir.

15 MR. MAHAN: Thank you. I've been a --

16 HEARING EXAMINER COLLINS: Mahon?

17 MR. MAHAN: -- resident --

18 HEARING EXAMINER COLLINS: Mahan? State your
19 name --

20 MR. MAHAN: Pronounce it Mahan --

21 HEARING EXAMINER COLLINS: -- for the record.

22 MR. MAHAN: -- pronounce it Mahan, M-A-H-A-N.

23 I've been a resident of Alva for eight years, live
24 off of North River Road.

25 The amount of traffic, particularly dump trucks

1 that are using North River Road now -- I mean, we're --
2 I guess I'm about 700 or 800 feet off the road, but
3 it's become very noisy. I was involved in helping get
4 the traffic light at 31 and North River Road, and I've
5 contacted the State a number of times. You come off
6 the bridge across the Caloosahatchee, and I think it's
7 40 or 45. It immediately goes to 50 miles an hour, and
8 right after that it goes to 60 miles an hour through
9 that intersection. And that's why even -- there were a
10 number of accidents where people lost their lives
11 before the light went in. There's been accidents since
12 they put the light in. It would be, I think, a smart
13 move to keep that -- at least through that section
14 until you get up near Babcock Ranch to be in the 45-,
15 50-mile-an-hour zone, not 60 going through there. It
16 makes no sense, particularly with all the dump trucks
17 that use 31 to get fill to -- and they'll be coming --
18 more dump trucks getting fill for this development, as
19 well. It's just -- it's a noise factor, and I think
20 it's a traffic hazard factor.

21 And the other point I want to make is that I
22 didn't know about this either until the zoning sign
23 went up two weeks ago. That was the first time I had
24 heard anything about it. I'm not sure where the
25 notification went, who it went to, but apparently other

1 people didn't get notified either until we saw the
2 sign.

3 That's all I have to say, thank you.

4 HEARING EXAMINER COLLINS: Thank you, sir.

5 Craig Randall?

6 MR. RANDALL: Thank you.

7 HEARING EXAMINER COLLINS: Good morning --

8 MR. RANDALL: I've been a resident of Alva for ten
9 years.

10 HEARING EXAMINER COLLINS: Good morning. State
11 your name for the record.

12 MR. RANDALL: Craig Randall.

13 HEARING EXAMINER COLLINS: Thank you for coming.

14 MR. RANDALL: So I've been a resident of Alva on
15 this side for about eight years.

16 I've got three -- three topics: The first is I
17 don't know anybody in Alva or Olga who is for this, so
18 this is basically the suits versus the people. I don't
19 know a single resident, and I've talked to quite a few.
20 The residents of this area universally are against
21 this. So message to the ultimate Board is I'm not
22 really sure who they're representing if this is
23 approved because they're not representing anybody up in
24 North -- Northeastern Lee County. That was -- that's
25 the first comment.

1 The second comment has to do with the density of
2 this, and how this is making a travesty of the word
3 "rural," okay? If you look at this, basically what
4 they have is about 400 acres; right? About half can't
5 be built on. So they've taken these, and as you
6 notice, not in one -- not in a single PowerPoint that
7 they put up did they actually put the lot lines on
8 there because putting the lot lines -- actually, they
9 did on one. I bet you it was a mistake. They put the
10 lot lines on there. These lots are about an eighth to
11 a tenth of an acre, maybe a seventh of an acre. These
12 are high -- this is a high-density development. Call
13 it clustered if you want, but the real word is high
14 density. When you saw them here, it was lot, lot, lot,
15 lot, lot, lot, lot, lot, lot, lot. It's crazy. This
16 is not -- so if you take 400 acres, and you put in
17 300 -- 300 houses, okay, you can say it's 1.1 acres if
18 you want. But what they've got is undevelopable land.
19 They're putting 300 houses on these small pieces. It's
20 a travesty.

21 That is not the rural nature. It's against the
22 spirit of the law. I maintain it's against the law.
23 There's some codes that they've changed to say if you
24 cluster, you can do it. There's nothing rural about
25 this, okay? This is high-density development, okay?

1 So that's my second point.

2 The first is no population in this area that is
3 being represented in the county wants this. I talked
4 to nobody who said, yeah, let's go ahead, except the
5 gentleman over there. That's number one.

6 Number two, is this is not rural. It's high
7 density.

8 The third one was traffic, acceptable. Funny how
9 there was no numbers, okay? Let's figure 400 houses.
10 Let's just -- let's just average it, 400 houses. Three
11 trips a day, 1,200 trips. You got what, three a minute
12 coming in out and out of there on average during
13 daylight. Rush hour -- going to work in the morning,
14 coming home at night -- you're going to need a traffic
15 light right there, maybe two. Otherwise, you're going
16 to have accidents. Okay? It's just math, people. The
17 traffic guy said acceptable. Acceptable to people who
18 don't live there, I agree. I don't understand -- and I
19 don't understand the report, acceptable, no numbers,
20 400 houses. If there were numbers in that report --
21 they know exactly how many people are going to be
22 coming and going an hour. They know exactly the
23 number. They know there's going to need to be a
24 traffic light there.

25 And as my -- as my esteemed colleague said, the

1 traffic light up there is a nightmare, the one by the
2 two Shell -- the two gas stations. It used to be fine,
3 but now you need a traffic light, and sometimes you
4 can't get out for a couple lights. With 380 homes here
5 needing to leave in the morning -- and, as he said,
6 going south I'm not going to be able to get out of
7 there. I'm not going to be able to make it to work on
8 time. This is just craziness.

9 I'm not against development. I think the person
10 who sold this land absolutely should be able to sell
11 it, and D.R. Horton should be able to put in houses,
12 but they should be half-acre lots, half-acre lots.
13 Unfortunately, that's not the business D.R. Horton's
14 in. D.R. Horton is in zero-lot-line houses. That's
15 what they do. That's their business, okay? So these
16 have to be zero-lot-line houses, okay? But if this was
17 like the Serengeti, which is down here -- well, look at
18 this one. This is a nice little development. Look at
19 it, a nice development, beautiful. You could do the
20 same thing here, but that's not the business D.R.
21 Horton's in, okay? D.R. Horton is in eighth acre,
22 tenth acre, seventh of an acre -- you're looking at,
23 you know, houses the size of this room on a -- on a lot
24 not much bigger. If that's rural, then I don't know
25 the definition of the word "rural," okay?

1 And, again, I don't think anybody is against
2 development, but not this development.

3 And, again, it's funny that in all the
4 presentations that were given, and all the ones that
5 showed the roads, not a single one showed where the
6 house lots were. Because if you saw the house lots,
7 you'd be outraged. You'd absolutely be outraged.

8 So that's it, three points: Nobody in this area
9 supports it so who is voting for this, number one;
10 number two, the density is outrageous of what they're
11 actually putting in; and, three, the traffic,
12 especially the traffic report, it's a joke.

13 Thank you.

14 HEARING EXAMINER COLLINS: Thank you, sir.

15 Jack Webb -- Jack Webber? I'm sorry if I'm
16 mispronouncing your name. Jack --

17 MR. WEBBER: Nothing to add, Madam Chair.

18 HEARING EXAMINER COLLINS: Okay, thank you.

19 Aldo Ibarra?

20 Richard Durling?

21 MR. DURLING: No comment.

22 HEARING EXAMINER COLLINS: That's the last of the
23 sheets that I have. Is there anyone else that is
24 present in the room from the public that would like to
25 put remarks on the record? Okay, thank you.

1 I'm going to close public input and come back to
2 Staff and the Applicant to respond to any questions
3 that they heard raised and for their concluding
4 remarks.

5 MR. AKIN: Madam Hearing Examiner, could we have a
6 brief break to discuss our rebuttal?

7 HEARING EXAMINER COLLINS: Absolutely. We'll go
8 off the record for 10 minutes? 15 minutes?

9 MR. AKIN: (Nods head.)

10 HEARING EXAMINER COLLINS: 15 minutes.

11 MR. AKIN: Thank you.

12 (Recess from 11:45 a.m. to 12:00 p.m.)

13 HEARING EXAMINER COLLINS: Good afternoon, we're
14 back on the record.

15 MR. AKIN: Good afternoon, Madam Hearing Examiner.
16 The Applicant does have a brief rebuttal, but we're
17 going to first -- Mr. Underhill is going to come up to
18 provide some rebuttal, and then you'll hear from
19 Ms. Hewitt, and then finally Mr. Bykau.

20 MR. UNDERHILL: Hi, David Underhill again for the
21 record. I just wanted to speak a little bit to the
22 nutrient loading and the runoff that was expected from
23 the site.

24 So the existing site is -- is pasture. That's one
25 of the highest-generating nutrient-loading land uses

1 that there are. As part of our application to the
2 South Florida Water Management District, we analyzed
3 the nutrient runoff from the site using a BMP training
4 program prepared by the University of Central Florida,
5 and that uses a Harvey Harper method for estimating
6 nutrient runoff from the various land uses. And we
7 compared the existing pasturelands to the proposed
8 developed site that includes pretreatment, the lakes,
9 the -- you know, stormwater management system that's a
10 component of the site, and the -- the -- our analysis
11 showed that the nutrient reduction for the site was
12 expected to be 43 percent reduction in total nitrogen
13 discharge from the project and 84 percent reduction
14 from -- from total phosphorus, and that only considered
15 the lakes. It didn't consider the pretreatment
16 facilities or the littoral zones in the lakes, which
17 are other treatment components that do provide
18 treatment but -- and will provide further reduction
19 from those values of 43 and 84 percent.

20 So the developed project will reduce the runoff
21 and the pollution to the river, so I just wanted to put
22 that on the record.

23 HEARING EXAMINER COLLINS: Okay, thank you.

24 Thank you.

25 MR. BYKAU: Hi, I just want to speak a little bit

1 about the traffic concerns that were made.

2 HEARING EXAMINER COLLINS: State your name for the
3 record.

4 MR. BYKAU: Yury Bykau with TR Transportation
5 Consultants.

6 The first thing I want to mention is that our
7 traffic study was conducted consistent with the traffic
8 study guidelines per the Lee County Land Development
9 Code. And on each road -- well, North River Road is a
10 County-maintained roadway, and that roadway has an
11 adopted level of service standard of Level of Service
12 E, or in other words, about 1,140 vehicles in peak
13 hour, peak direction. That's the capacity of that
14 roadway. With our project, we are at 414; so 414 out
15 of 1,140, so we're not exceeding the capacity on that
16 roadway.

17 Then you have SR 31. Again, we analyzed based --
18 as a two-lane facility. SR 31 north of North River
19 Road has a capacity and a Level of Service standard of
20 C; or in other words, 890 vehicles in the peak hour,
21 peak direction. With our project, we are 591, so we're
22 not exceeding that capacity.

23 SR 31 south of SR 78, which is the next link
24 that -- oh, I'm so sorry, south of North River Road,
25 which is the next link that we're significantly

1 impacting, has a capacity of 880 vehicles. With our
2 project, we are at 795. Again, we're not projected to
3 exceed that capacity with our project.

4 And at the beginning of our presentation, I forgot
5 to address this. There was a gentleman named Steven
6 Brodkin. He mentioned that SR 78 is a constrained
7 roadway. Well, that's not true. There's a Table 2A
8 that's adopted in the Lee Plan that lists all the
9 constrained roadways in the county, including state and
10 county roadways, and SR 78 is not on that list.

11 And, actually, I quickly looked up -- FDOT is
12 beginning a PD&E study on SR 78, as well, to evaluate
13 future widening of that roadway, as well. So I just
14 wanted to put these numbers and this traffic --

15 HEARING EXAMINER COLLINS: Is that FDOT?

16 MR. BYKAU: That is an FDOT roadway, yes, so they
17 are the ones who are doing that study.

18 HEARING EXAMINER COLLINS: And what are the
19 parameters of the study from --

20 MR. BYKAU: It is from I-75 to SR 31.

21 HEARING EXAMINER COLLINS: Okay, so west of the
22 project?

23 MR. BYKAU: Yes, yes.

24 HEARING EXAMINER COLLINS: Okay.

25 MR. BYKAU: And that's all I have, thank you.

1 MS. HEWITT: For the record, Stacy Hewitt. I just
2 wanted to touch a little bit as far as the public
3 notice. Again, we did our best to notify the public of
4 the proposed amendments. As stated, we held multiple
5 meetings. And at the meetings -- it's only required to
6 place an ad in the paper, and we mailed notice to
7 property owners within 500 feet. The meetings were
8 held with the organized groups in North Olga and in
9 Alva, and we held two meetings with both of those. So
10 I believe the Applicant did go above and beyond to try
11 to get the word out and have the community involvement.

12 Another thing that I wanted to touch on is that
13 the project is Northeast Lee County, and our site is
14 actually on the western edge of the North Olga Planning
15 Community. I know there was a lot of testimony about
16 the Alva community. The Alva Planning Community is
17 actually approximately six and a half miles east of the
18 project site. And I just want to make that distinction
19 because the goals, objectives, and policies for the
20 Alva Planning Community are distinctly different than
21 what are provided for the North Olga Planning
22 Community.

23 And as far as the rural descriptions that were
24 discussed, again reiterate that our density is 1.1 at
25 the end of -- with the proposed project. And with

1 that, we are also obtaining these preserved flow-ways
2 and stormwater management and removing septic and
3 wells. And the traditional standard subdivision that
4 was referenced -- none of those benefits would come on
5 board should a traditional subdivision have been
6 proposed on this site, and those would have the septic
7 and the wells impacting and -- so -- and with the
8 review of the request, it's a balance of the goals,
9 objectives of policies which we believe makes this
10 request appropriate.

11 HEARING EXAMINER COLLINS: Okay, thank you.

12 MS. HEWITT: Thank you.

13 HEARING EXAMINER COLLINS: Anything further?

14 MR. AKIN: No, ma'am, thank you.

15 HEARING EXAMINER COLLINS: Okay. Staff, do you
16 have any concluding remarks?

17 MR. DANLEY: Not at this time, no.

18 HEARING EXAMINER COLLINS: Okay. I'd like to
19 thank everyone for coming. That's it for --

20 MR. RANDALL: I just wanted --

21 HEARING EXAMINER COLLINS: Public input is closed.
22 You can speak to the Applicant or Staff after the
23 hearing if you have any questions.

24 Okay. Thank you for coming. I have all the
25 exhibits. I will have the transcript of this case.

1 For members of the public, all these things are public
2 record. You can obtain a copy of them. Once the
3 stenographer has transcribed the hearing, it will be
4 available online. We will post that.

5 I should be rendering my recommendation -- I have
6 a few cases ahead of this one so it could be as many as
7 four to six weeks before I issue a recommendation.
8 I'll try my hardest to get it out before then. And
9 then following that, the Board will hold the final
10 hearing. If you attended today and filled out one of
11 these papers, you will receive notice of the Board's
12 hearing. If you provided your email address, that is
13 the manner in which you receive your notice. And then,
14 again, at the Board hearing only members of the public
15 that spoke during this hearing will have an opportunity
16 to address the Board directly at that hearing.

17 Thank you, everyone, for coming.

18 MS. HEWITT: Thank you.

19 MR. AKIN: Thank you.

20 (Proceedings concluded at 12:07 p.m.)
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2
3 CERTIFICATE OF REPORTER
4

5 STATE OF FLORIDA)

6 COUNTY OF LEE)
7

8 I, Deborah Bruns, Florida Professional
9 Reporter, do hereby certify that I was
10 authorized to and did report the foregoing
11 proceedings, and that the transcript, pages 1
12 through 116, is a true and correct record of my
13 stenographic notes.
14

15 Dated this 27th day of June, 2022.
16

17 
18 Deborah M. Bruns, FPR
19

20
21 (This transcript was electronically signed.)
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