

## Summary of Hearing Examiner Recommendation

# **GRAND BAY MINOR MIXED USE PLANNED DEVELOPMENT**

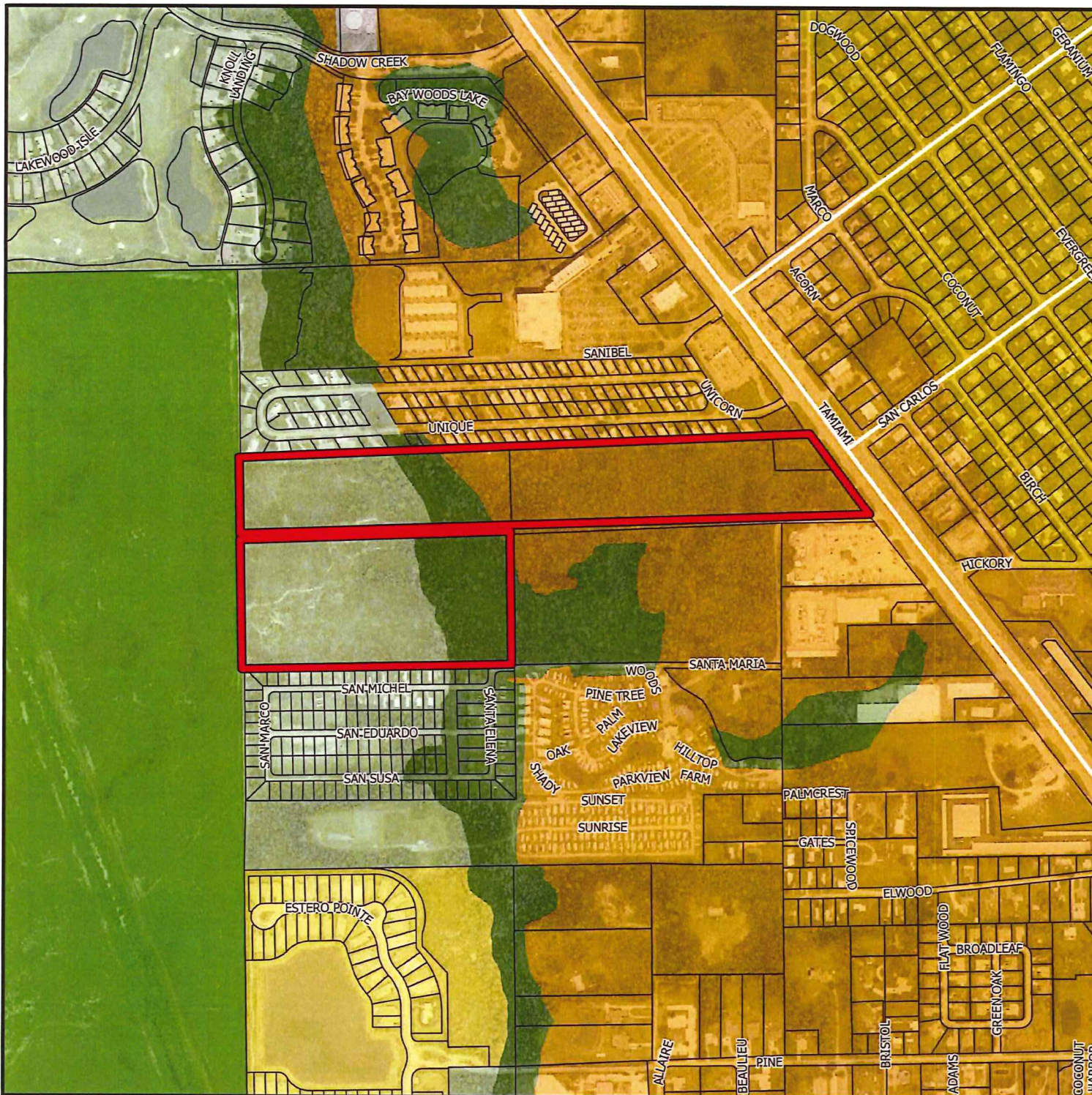
Applicant seeks to develop vacant lands along US 41 with a mix of commercial, residential, and conservation uses. Development is clustered along US 41, preserving the western two-thirds of the site. Building heights are staggered to enhance compatibility with surrounding development.

The Hearing Examiner's Recommendation of approval is contingent upon Board adoption of two concurrent Lee Plan amendments, CPA2022-00006 and CPA2022-00007.

*Detailed recommendation follows*

DCI2022-00018

Future Land Use



 Subject Property

 Urban Community

 Suburban

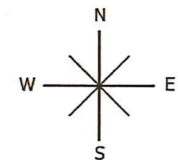
 Sub-Outlying Suburban

 Public Facilities

 Rural

 Conservation Lands - Upland

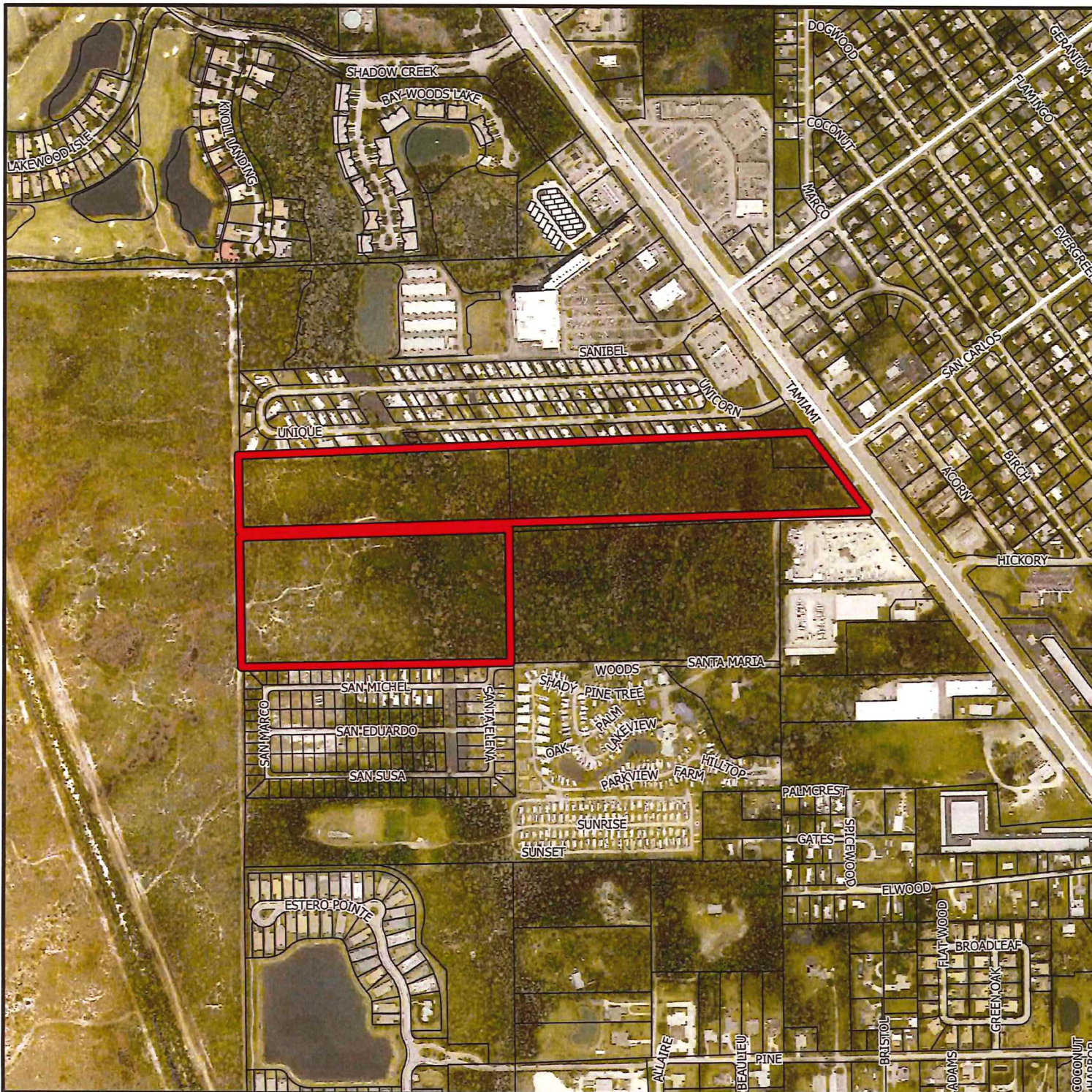
 Wetlands



0 500 1,000  
Feet



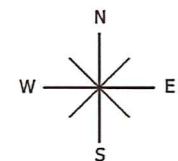
Lee County  
Southwest Florida



DCI2022-00018

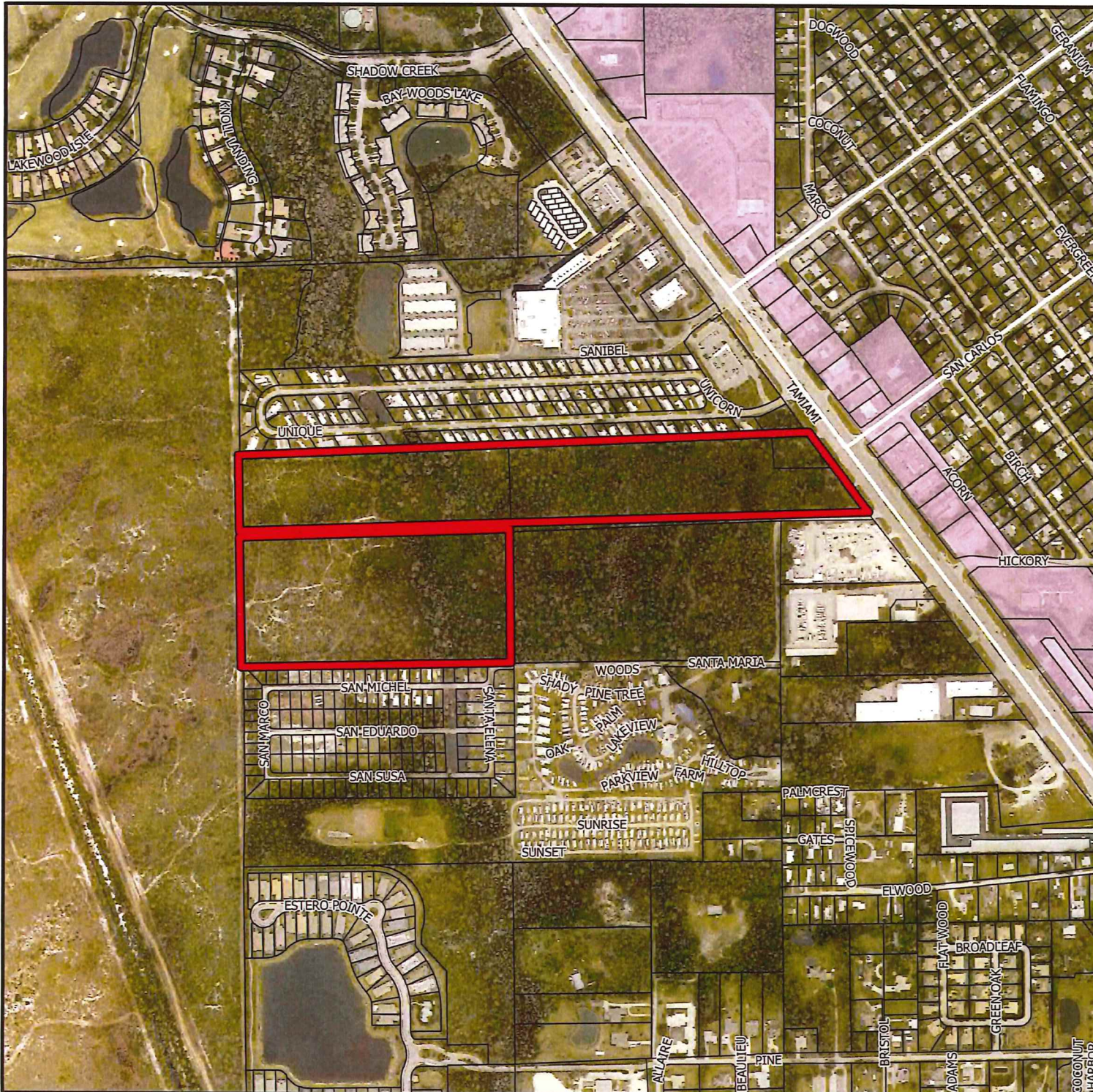
Aerial

 Subject Property



0 500 1,000  
Feet

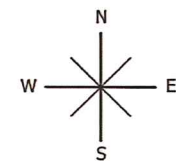




DCI2022-00018

Mixed Use Overlay

-  Subject Property
-  Mixed Use Overlay



0 500 1,000  
Feet



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

**HEARING EXAMINER RECOMMENDATION**

**REZONING:** DCI2022-00018

**Regarding:** **GRAND BAY MINOR MIXED USE PLANNED DEVELOPMENT**

**Location:** West Side of Cleveland Avenue (US 41), at the Northwest Corner of Santa Maria Street and US 41/South Cleveland Avenue Intersection

South Fort Myers Planning District  
(District 1)

**Hearing Date:** **February 9, 2023**

**I. Request**

Rezone 46.33± acres from Mobile Home (MH-1) and General Commercial (CG) to Mixed Use Planned Development (MPD) to allow a maximum 30,000 square feet of commercial retail/office uses and 300 dwelling units, inclusive of 114 bonus density units, not to exceed 53 feet in height.

The property's legal description is set forth in Exhibit A.

**II. Hearing Examiner Recommendation**

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

**III. Discussion**

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners (Board) on applications to rezone property.<sup>1</sup> In satisfaction of this duty, the Hearing Examiner accepted testimony and evidence on the application to rezone to MPD.

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

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

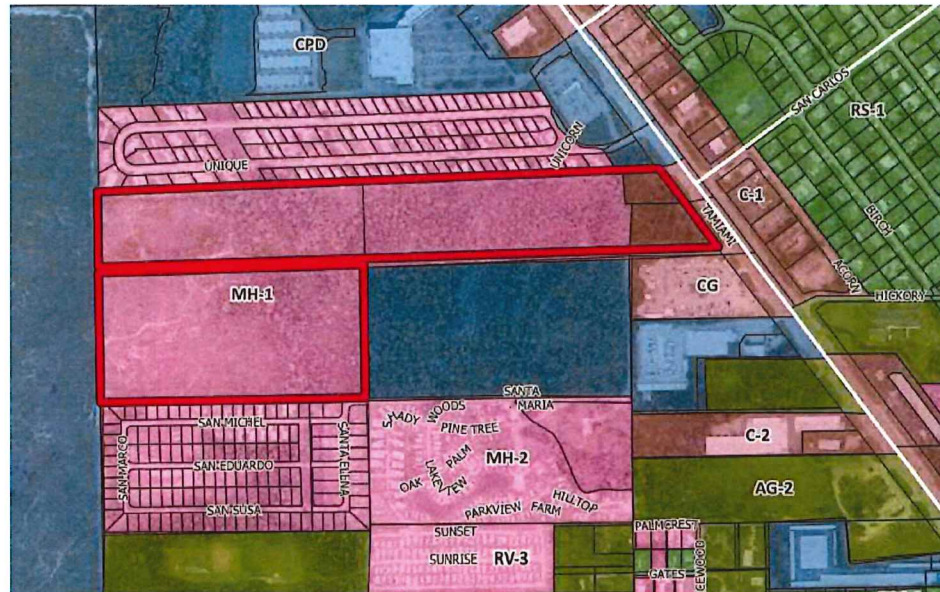
<sup>2</sup> LDC §34-145(d)(3).

<sup>3</sup> LDC §34-145(d)(4).

Hearing Examiner may take judicial notice of previous Board decisions.<sup>4</sup> The Hearing Examiner's recommendation must be based on competent and substantial evidence.<sup>5</sup>

Discussion supporting the recommendation of approval of the proposed MPD follows below.

### **Synopsis of Request and Zoning History**



The 46.33± acre property is in the South Fort Myers Planning Community. It is located north of Estero Parkway, south of Alico Road, and east of San Carlos Boulevard. Most of the site is zoned MH-1, with a small portion zoned CG along US 41.<sup>6</sup>

The property remains vacant, except for a shared access road under construction that aligns with San Carlos Boulevard and connects to the Estero Vista development to the south.<sup>7</sup> FDOT anticipates signaling the intersection of San Carlos Boulevard and US 41 along the property's frontage.<sup>8</sup>

Applicant seeks to develop the property with 30,000 square feet of commercial uses along US 41/Tamiami Trail. Multi-family residential buildings will sit behind commercial parcels, with extensive preserve areas along the western boundary.<sup>9</sup> The request proposes up to 300 dwelling units, inclusive of 114 bonus density

<sup>4</sup> Lee Co. Admin. Code 2-6, 2.3.D(4)(b).

<sup>5</sup> Lee Co. Admin. Code 2-6, 3.3.A(2); LDC §34-83(a)(4)(a)(1)(a).

<sup>6</sup> 2.73± acres are zoned CG, 43.6± acres are zoned MH-1. See Applicant's Ex. 1 (slide 12).

<sup>7</sup> *Id.*; Hewitt Testimony (Transcript pg. 10).

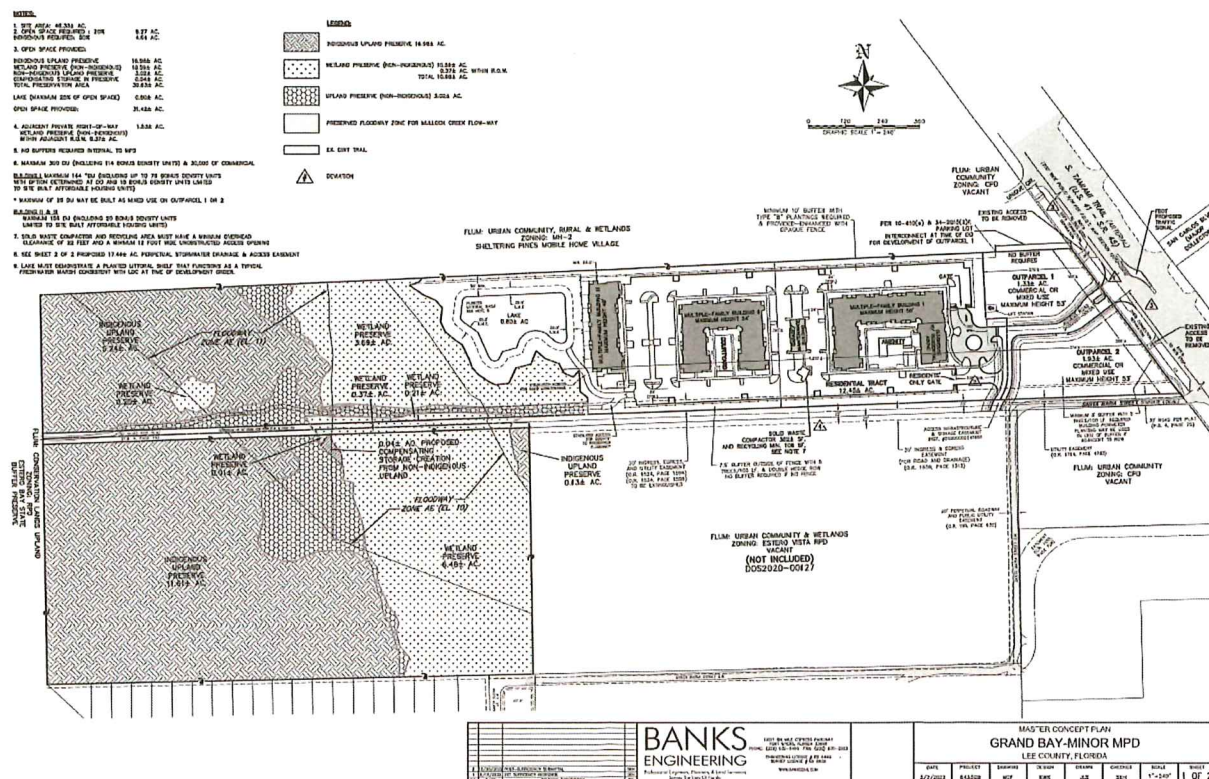
<sup>8</sup> Hewitt and Hartsell Testimony (Transcript pg. 6, 11).

<sup>9</sup> See Staff Report (pg. 1); See also Z-02-021.

units. Applicant has a development order under review consistent with the proposed site plan for the residential portion of the project.<sup>10</sup>

Two concurrent Lee Plan amendments accompany the request.<sup>11</sup> Applicant is seeking a Lee Plan Map Amendment to add 15.64 acres to the Mixed-Use Overlay. Applicant also proposes to amend a Lee Plan Policy to allocate density between land use categories consistent with current practices.<sup>12</sup>

Staff recommended approval, finding the proposed MPD satisfies LDC review criteria. The Hearing Examiner's recommendation of approval is contingent upon Board adoption of Applicant's two pending Lee Plan amendments.



## Zoning Review Criteria

Before recommending approval, the Hearing Examiner must find the request:

- A. Complies with the Lee Plan;
- B. Meets the LDC and other applicable County regulations or qualifies for deviations:

<sup>10</sup> DOS2022-00145.

<sup>11</sup> CPA2022-00006 and CPA2022-00007, both transmitted by the Board on January 18, 2023.

<sup>12</sup> Lee Plan Policy 5.1.10; Staff Report (pg. 1, Attachment E).

- C. Is compatible with existing and planned uses in the surrounding area;
- D. Will provide access sufficient to support the proposed development intensity;
- E. Addresses impacts on transportation facilities by County regulations or conditions of approval;
- F. Will not adversely affect environmentally critical/sensitive areas or natural resources; and
- G. Will be served by urban services if located in a Future Urban area.<sup>13</sup>

When the requested zoning action is a planned development, the Hearing Examiner must also find:

- H. The proposed use/mix of uses is appropriate at the proposed location;
- I. Recommended conditions (1) provide sufficient safeguards to the public interest, and (2) reasonably relate to impacts on the public interest expected from the proposed development; and
- J. Requested deviations (1) enhance achievement of the objectives of the planned development, and (2) promote the LDC's intent to protect public health, safety, and welfare.<sup>14</sup>

### **Character of the Area**

The property is generally located between Alico Road and Estero Parkway. More narrowly, the site is at the northwest corner of the US 41/Santa Maria Street intersection, across from San Carlos Boulevard. Intense commercial and residential developments characterize the area. A place of worship, car wash, pharmacy, mobile home developments, and shopping centers are within proximity. Conservation lands and the Estero Bay State Preserve sit to the west.<sup>15</sup> The Estero Vista RPD is southwest of the property, approved for 144 multi-family units including bonus density.<sup>16</sup>

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<sup>13</sup> LDC §34-145(d)(4)(a)(1).

<sup>14</sup> LDC §34-145(d)(4)(a)(2).

<sup>15</sup> See Staff Report (pg. 2), indicating the conservation lands are zoned RPD as part of the Estero Bay State Buffer Preserve.

<sup>16</sup> See Staff Report (pg. 2). Maximum building heights are 55 feet for this development. *Id.*

### **Lee Plan Consistency and Compatibility**

Planned developments must be consistent with the Lee Plan.<sup>17</sup> Rezoning requests must be compatible with existing/planned uses in the surrounding area.<sup>18</sup> Planned developments must be located to minimize negative effects of proposed uses on neighboring properties.<sup>19</sup>

The Lee Plan Future Land Use Map classifies the site as Urban Community, Rural, and Wetlands in the South Fort Myers Planning Community.<sup>20</sup>

Applicant is seeking two Lee Plan amendments concurrent with the zoning request. The first is a map amendment to include 15.64± acres in the Mixed Use Overlay.<sup>21</sup> This area comprises the site's Urban Community lands. The second amendment proposes text changes to reflect the county's methodology in calculating density when sites bear multiple land use designations.<sup>22</sup>

Urban Community lands are characterized by a mix of relatively intense commercial and residential uses.<sup>23</sup> The standard density range is one to six dwelling units per acre, with a maximum density of 10-15 units per acre.<sup>24</sup> The Lee Plan encourages mixed use development in the Urban Community.<sup>25</sup> The request combines multi-family buildings with commercial uses consistent with the Urban Community designation. Proposed density remains within permitted ranges, assuming Board adoption of the proposed Lee Plan amendments.<sup>26</sup>

Rural lands are predominantly low density residential and agricultural areas needed to serve the rural community.<sup>27</sup> The site's Rural lands are designated within the Coastal High Hazard Area.<sup>28</sup> Applicant proposes to preserve Rural lands and transfer density to the eastern portion of the site.<sup>29</sup> This density transfer clusters development and preserves sensitive lands consistent with Lee Plan directives.<sup>30</sup>

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<sup>17</sup> LDC §34-411(a).

<sup>18</sup> LDC §34-145(d)(4)(a).

<sup>19</sup> LDC §34-411(c) and (i).

<sup>20</sup> See Lee Plan Map 1-A, Policy 1.1.4, 1.4.1, 1.5.1; Staff Report (pg. 1-2, Attachment B).

<sup>21</sup> CPA2022-00006.

<sup>22</sup> CPA2022-00007 proposes changes to Policy 5.1.10.

<sup>23</sup> Lee Plan Policy 1.1.4.

<sup>24</sup> *Id.* Maximum density is 10 units per acre, with the ability to increase to 15 units per acre with Greater Pine Island Transfer of Development Units.

<sup>25</sup> Lee Plan Policy 1.1.4, referencing Objective 11.1.

<sup>26</sup> The Staff Report details density calculations assuming Lee Plan amendment adoption. If the Board does not adopt the proposed amendments, the zoning request cannot move forward as it exceeds density limitations. See Staff Report (pg. 7-12). With the amendments, the site's maximum density is 338 units. Applicant seeks approval for 300 units. See Staff Ex. 2 (slides 11-13).

<sup>27</sup> Lee Plan Policy 1.4.1.

<sup>28</sup> Lee Plan Map 5-A.

<sup>29</sup> Utilizing Lee Plan Policy 5.1.10, as amended by CPA2022-00007.

<sup>30</sup> Lee Plan Objective 2.1, Policy 5.1.6, 124.1.2.

Wetlands consist of very low density residential/recreational uses without adverse effect to ecological function.<sup>31</sup> The center of the site is within the Mullock Creek flow-way and designated as Wetlands.<sup>32</sup> The site plan preserves wetlands with minimal impacts. Wetland impacts are mitigated by on-site restoration and creation of new wetland areas.<sup>33</sup>

The request utilizes bonus density consistent with LDC and Lee Plan directives:<sup>34</sup>

- Additional traffic will not travel through areas with significantly lower density to reach the nearest collector/arterial road.<sup>35</sup> The site directly accesses US 41/Tamiami Trail with cross accesses proposed to adjoining properties.
- Public facilities are not so overwhelmed that a density increase would be contrary to the public interest.<sup>36</sup> US 41/Tamiami Trail has sufficient capacity to accommodate trips generated by the request.<sup>37</sup> FDOT is signaling the intersection serving the site. There is potable water/sanitary sewer capacity to serve the project.<sup>38</sup>
- Storm shelters or other appropriate mitigation is provided.<sup>39</sup> The property is located within the Coastal High Hazard Area.<sup>40</sup> Applicant must demonstrate compliance with LDC requirements at the time of development order.
- The development is compatible with surrounding land uses.<sup>41</sup> The property is uniquely situated along a major arterial road primarily developed with commercial and high density uses. Intense land uses line US 41 with vacant/conservation lands to the west. The MCP reflects a transition from the busy road corridor to less intense uses, maintaining compact development patterns. Notably, the Board approved bonus density on a nearby parcel.

While the property is slated to be within the Mixed Use Overlay (MUO), Applicant is foregoing many of the relaxed development standards the MUO offers. Applicant

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<sup>31</sup> Lee Plan Policy 1.5.1.

<sup>32</sup> See Staff Report (pg. 7).

<sup>33</sup> The MCP preserves 66% of the site under a conservation easement pursuant to the development order. An additional 0.4 acres of wetlands will be created by the request. Regulations require 4.63 acres of indigenous preserve; the MCP provides 10.59 acres of restored wetlands and 16.98 acres of indigenous uplands. Hewitt Testimony (Transcript pg. 30, 32, 36).

<sup>34</sup> Lee Plan Policy 101.3.7 permits bonus density for site-built affordable housing within the Coastal High Hazard Area. The parties demonstrated compliance with LDC bonus density requirements. LDC §2-146, §2-147. Applicant will offer 20-38 site-built affordable housing units. Remaining bonus units will be site-built affordable housing or Applicant will utilize the cash contribution option. See Staff Report (pg. 12, Attachment J). Cash contribution units will not be built in the Coastal High Hazard Area.

<sup>35</sup> LDC §2-146(b)(1).

<sup>36</sup> LDC §2-146(b)(2).

<sup>37</sup> See Staff Report (Attachment M: TIS prepared by TR Transportation Consultants, Inc. dated Feb. 25, 2022) (Attachment N Development Services Memorandum dated Nov. 16, 2022).

<sup>38</sup> Staff Report (Attachment L).

<sup>39</sup> LDC §2-146(b)(3).

<sup>40</sup> Lee Plan Map 5-A.

<sup>41</sup> LDC §2-146(b)(4).

exceeds open space requirements and provides enhanced buffers with opaque fencing along the northern boundary to shield neighboring residents from development impacts.<sup>42</sup>

The requested MPD is consistent with the Lee Plan and compatible with the surrounding area.<sup>43</sup>

### **Transportation/Traffic**

Planned developments must have access to roads with sufficient capacity to support proposed intensity.<sup>44</sup> Existing regulations or conditions of approval must address expected impacts on transportation facilities.<sup>45</sup>

The site plan reflects direct access to US 41 via a shared access road. FDOT controls access to US 41. The access road is shared with the development to the south and is under construction.<sup>46</sup> The site plan also shows an interconnection to the commercial property to the north.<sup>47</sup>

The Traffic Impact Statement (TIS) evaluated transportation impacts and concludes the request will not degrade levels of service on affected roadways/intersections.<sup>48</sup>

The traffic engineer testified that FDOT will signalize the US 41/San Carlos Boulevard intersection this year.<sup>49</sup>

Applicant demonstrated the request provides sufficient access to support proposed development.<sup>50</sup> Site related impacts will be evaluated during development order review.<sup>51</sup>

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<sup>42</sup> Workman and Hewitt Testimony (Transcript pg. 15, 44-46).

<sup>43</sup> Hewitt and Workman Testimony (Transcript pg. 36-38, 44, 46-48) citing compliance with Lee Plan Objective 2.1, 2.2, 11.1, 61.3, 101.1, Policy 1.1.4, 1.4.1, 1.5.1, 2.1.1, 1.4.1, 5.1.3, 5.1.5, 5.1.6, 5.1.10 (as amended), 6.1.6, 6.1.7, 11.1.1, 11.2.2, 11.2.6, 11.2.7, 59.1.4, 59.1.9, 60.4.3, 61.3.2, 61.3.3, 101.1.1, 101.1.2, 101.3.2, 101.3.6, 101.3.7, 125.1.2, 125.1.3.

<sup>44</sup> LDC §34-145(d)(4)(a)(1)(d); §34-411(d)(1).

<sup>45</sup> LDC §34-145(d)(4)(a)(1)(e); §34-411(d)(2).

<sup>46</sup> See MCP, referencing DOS2020-00128.

<sup>47</sup> See MCP, referencing "Parking Lot Interconnection at Time of DO for Development of Outparcel 1."

<sup>48</sup> See Staff Report (Attachment M-N); Applicant's Ex. 1 (slide 33).

<sup>49</sup> Bykau Testimony (Transcript pg. 33-34).

<sup>50</sup> LDC §34-145(d)(4)(a)(1)(d); Staff Report (pg. 19, Attachment M-N).

<sup>51</sup> Site related improvements include capital improvements and right-of-way dedications for "direct access" improvements to the project. Direct access improvements include site driveways/roads, median cuts made necessary by driveways/roads, right-turn, left-turn and deceleration/acceleration lanes serving driveways/roads, traffic control measures, and roads/intersection improvements whose primary purpose at the time of construction is to provide access to the development. See, Lee Plan Glossary and LDC §2-264; Lee Plan Objective 39.1, Policy 39.1.1. LDC §2-66 *et. seq.*

## **Environmental and Natural Resources**

Planned development design should reflect creative use of open space.<sup>52</sup> Developers must make an effort to protect and preserve natural site features.<sup>53</sup>

The site is largely comprised of low-quality wetlands and forested uplands.<sup>54</sup> The MCP preserves 66% of the site under a conservation easement.<sup>55</sup> The request proposes to restore on-site wetlands and create an additional 0.04 acres of wetlands. Minimal wetland impacts will be mitigated consistent with the site's Environmental Resource Permit.<sup>56</sup>

The property lies within the Mullock Creek flow-way. Current stormwater conditions include gravity sheet flow from east to west through a spreader swale.<sup>57</sup> The system is nonfunctioning due to four crushed culverts.<sup>58</sup> Applicant proposes to replace the culverts, restoring the flow-way. Staff concluded the proposed restoration will significantly improve drainage in the area.<sup>59</sup> Applicant's engineer also concluded restoration activities will improve water quality.<sup>60</sup> Conditions of approval impose a water quality monitoring program.<sup>61</sup>

Western portions of the site are located within the Coastal High Hazard Area.<sup>62</sup> The site plans reflect compliance with Lee Plan directives to protect and conserve this environmentally sensitive area and buffer impacts from future flooding.<sup>63</sup>

Applicant's ecologist identified potential protected species during site review.<sup>64</sup> Additional species review will occur at the development order stage. State and federal agencies will address permits as needed.<sup>65</sup>

Notably, the project offers several methods to address environmental concerns. Site design protects wetlands by clustering development. The water management

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<sup>52</sup> LDC §34-411(h).

<sup>53</sup> LDC §34-411(g).

<sup>54</sup> Palmer Testimony (Transcript pg. 29); Applicant's Ex. 1 (slide 29).

<sup>55</sup> Applicant's Ex. 1 (slide 30). The parties testified the development order requires a conservation easement. The Hearing Examiner recommends a condition requiring the easement to be consistent with this approval and the development order. Palmer Testimony (Transcript pg. 30); Hewitt Testimony (Transcript pg. 32), Workman Testimony (Transcript pg. 45).

<sup>56</sup> South Florida Water Management District issues ERPs. Workman Testimony (Transcript pg. 48). 0.17 acres of wetlands will be impacted by the development.

<sup>57</sup> Kellum Testimony (Transcript pg. 23-25).

<sup>58</sup> *Id.*

<sup>59</sup> Workman Testimony (Transcript pg. 46).

<sup>60</sup> Kellum Testimony (Transcript pg. 23-27).

<sup>61</sup> Condition 6.

<sup>62</sup> Lee Plan Map 5-A.

<sup>63</sup> Lee Plan Goal 101, Objective 101.1, Policy 101.1.1, 101.1.2.

<sup>64</sup> Palmer Testimony (Transcript pg. 31); Staff Report (Attachment K).

<sup>65</sup> *Id.*; Applicant's Ex. 1 (slide 30); Florida Fish and Wildlife Conservation Commission will oversee gopher tortoise impacts and the US Fish and Wildlife Service will oversee bonneted bats if located onsite.

system is designed to provide water quality treatment and control the flow of water.<sup>66</sup> The MCP greatly exceeds code required open space and offers an enhanced buffer along the northern boundary close to residents.<sup>67</sup>

### **Public Services**

Public/urban services are the facilities, capital improvements, and infrastructure necessary to support development.<sup>68</sup> The Lee Plan requires an evaluation of available urban services during the rezoning process.<sup>69</sup>

A host of urban services and infrastructure serve the property including roads, transit, potable water, sanitary sewer, police, fire, and emergency medical services.<sup>70</sup>

### **Deviations**

“Deviations” are departures from LDC regulations.<sup>71</sup> The request proposes three deviations.<sup>72</sup> The deviations relate to solid waste disposal, access, and entrance gate turnaround. Staff supports the requested deviations.<sup>73</sup>

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

1. Enhances achievement of objectives of the planned development; and
2. Preserves and promotes the general intent of the LDC to protect the public health, safety, and welfare.<sup>74</sup>

Applying LDC deviation standards of review to testimony and evidence in the record, the Hearing Examiner concludes requested deviations meet approval criteria.<sup>75</sup>

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<sup>66</sup> Lee Plan Policies 28.5.3, 60.4.1, 60.4.2. Kellum Testimony.

<sup>67</sup> The LDC requires 9.27 acres of open space. The MCP reflects 31.42 acres. The code requires 3.02 acres of indigenous preserve. The MCP provides 16.98 acres. Workman Testimony (Transcript pg. 50).

<sup>68</sup> Lee Plan Glossary: Public services include public water/sewer, paved streets/roads, public transit, parks/recreation facilities, urban levels of police, fire, and emergency services, urban surface water management, schools, employment, industrial, and commercial centers, institutional, public, or administrative facilities, community facilities such as senior citizens centers, libraries, and community centers.

<sup>69</sup> Lee Plan Policy 2.2.1.

<sup>70</sup> Applicant's Ex. 1 (slide 20); See Staff Report (pg. 3, Attachment L). The site is serviced by San Carlos Park Fire Protection & Rescue Service Station #51 and EMS Medic #9 is less than one mile away. The nearest Lee County Sheriff's office is the South District office.

<sup>71</sup> LDC §34-2.

<sup>72</sup> Applicant originally sought four deviations but withdrew Deviation 3. See Applicant's Ex. A: 48 Hour Notice.

<sup>73</sup> See Staff Ex. 2 (slides 17-19).

<sup>74</sup> LDC §34-145(d)(4).

<sup>75</sup> LDC §34-377(a)(4).

### **Conditions**

The county must administer the zoning process so proposed land uses acceptably minimize adverse impacts to adjacent property. Conditions must plausibly relate to anticipated impacts from the proposed development and must be pertinent to mitigation of those impacts on the public health, safety, and welfare.<sup>76</sup>

The MPD will be subject to conditions of approval. The conditions relate to impacts anticipated from the project.<sup>77</sup> The Hearing Examiner recommends:

1. Revisions to conditions to improve clarity;
2. Adding a condition codifying the development order's conservation easement requirement; and
3. Deletion of conditions that restate LDC standards and criteria applicable to the project pursuant to Condition 1.

### **Public**

One member of the public spoke at hearing. The speaker is the landowner of the property to the north. He wanted to ensure the properties maintain a shared access. The parties testified the site plan complied with the LDC interconnection requirement. The exact location will be determined at the time of development order review.<sup>78</sup>

### **Conclusion**

The Hearing Examiner concurs with staff's analysis and recommendation of approval.

## **IV. Findings and Conclusions**

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

A. *As conditioned herein*, the proposed MPD:

1. Complies with the Lee Plan. See, Lee Plan Goals 2, 4, 5, 6, 11, 39, 59, 60, 61, 77, 101, 125, Objectives 2.1, 2.2, 60.3, 61.3, 101.1, and Policies 1.1.4, 1.4.1, 1.5.1, 2.1.1, 2.2.1, 4.1.4, 5.1.3, 5.1.5, 5.1.6, 5.1.10, 6.1.1, 6.1.3, 6.1.4, 6.1.6, 6.1.7, 11.1.1, 11.2.2, 11.2.6, 11.2.7, 59.1.9, 59.1.4, 60.4.3, 61.3.3, 61.3.2, 101.1.2, 101.1.1, 101.3.2,

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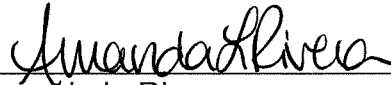
<sup>76</sup> LDC 34-932(b).

<sup>77</sup> LDC §34-83(b)(4)a.3.

<sup>78</sup> The parties further clarified that the pending development order covers only the residential portion of the MPD and reserves the commercial parcels for future development.

- 101.3.6, 101.3.7, 124.1.2, 125.1.2, 125.1.3, Standards 4.1.1, 4.1.2; Lee Plan Maps 1A-B, 2A, 5A.
2. Complies with the LDC and other County regulations or qualifies for deviations. See, LDC Chapters 10 and 34.
  3. Is compatible with existing and planned uses in the area. See, Lee Plan Policies 1.1.4, 1.4.1, 1.5.1, 2.1.1, 2.1.2, 2.2.1, 5.1.5, 6.1.4, 6.1.8; LDC 34-411(c), (i), and (j).
  4. Provides sufficient access to support the proposed development intensity, with expected impacts on transportation facilities addressed by existing County regulations or conditions of approval. See Lee Plan Policy 6.1.5.
  5. Will not adversely affect environmentally critical areas and natural resources. See, Lee Plan Goals 77, 124, 125, Objectives 1.5, 4.1, 77.1, Policy 1.5.1, 6.1.6, 124.1.2, Standard 4.1.4, LDC 34-411(h).
  6. Will be served by urban services. See, Lee Plan Glossary, Map 4A-B, Goal 2; Objectives 2.1, 2.2, 4.1, 53.1, 56.1; Policies 2.2.1, and Standards 4.1.1 and 4.1.2; LDC 34-411(d).
- B. The Master Concept Plan reflects sufficient access to support the intensity of development. In addition, County regulations and conditions of approval will address expected impacts to transportation facilities. See, Lee Plan Goal 39, Objective 39.1; LDC 34-411(d).
- C. The proposed mix of uses is appropriate at the proposed location. See, Lee Policies 1.1.4, 1.4.1, 1.5.1, 2.1.1, 6.1.4, 6.1.7.
- D. The recommended conditions are sufficient to protect the public interest and reasonably relate to the impacts expected from the development. See, LDC Chapters 10 and 34.
- E. As conditioned herein, the deviations:
1. Enhance the objectives of the planned development; and
  2. Promote the intent of the LDC to protect the public health, safety, and welfare. See, 34-377(b)(4).

Date of Recommendation: April 25, 2023.



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Amanda L. Rivera  
Deputy Hearing Examiner

Lee County Hearing Examiner  
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Post Office Box 398  
Fort Myers, FL 33902-0398

**Exhibits to Hearing Examiner's Recommendation**

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

**Exhibit A**

**LEGAL DESCRIPTION AND VICINITY MAP**



Professional Engineers, Planners & Land Surveyors

DESCRIPTION  
OF  
A PARCEL OF LAND  
LYING IN  
SECTION 20, TOWNSHIP 46 SOUTH, RANGE 25 EAST,  
LEE COUNTY, FLORIDA

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTION 20, TOWNSHIP 46 SOUTH, RANGE 25 EAST, BEING A PORTION OF LOTS 2 AND 3, SAN CARLOS GROVE TRACT, RECORDED IN PLAT BOOK 4, PAGE 75, PUBLIC RECORDS OF LEE COUNTY, FLORIDA AND BEING FURTHER BOUND AND DESCRIBED AS FOLLOWS:

**PARCEL I**

COMMENCING AT THE NORTHWEST CORNER SAID SECTION 20; THENCE S 01°00'14" E ALONG THE WEST LINE OF SAID SECTION FOR 934.55 FEET TO AN INTERSECTION WITH A LINE LYING 934.2 FEET SOUTH OF AND PARALLEL WITH (AS MEASURED ON A PERPENDICULAR) THE NORTH LINE OF SAID SECTION, SAID POINT ALSO BEING THE **POINT OF BEGINNING** OF A PARCEL OF LAND HEREIN DESCRIBED; THENCE N 87°26'16" E ALONG SAID PARALLEL LINE FOR 2,806.25 FEET TO AN INTERSECTION WITH THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF TAMiami TRAIL (STATE ROAD 45 – 200 FEET WIDE); THENCE S 36°56'36" E ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE FOR 491.36 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF SAID LOT 2; THENCE S 88°00'17" W ALONG SAID SOUTH LINE FOR 3,094.06 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2; THENCE N 01°00'14" W ALONG THE WEST LINE OF SAID LOT 2 AND SAID WEST LINE OF SECTION 20 FOR 375.05 FEET **POINT OF BEGINNING**.

AND

**PARCEL II**

**BEGINNING** AT THE NORTHWEST CORNER OF SAID LOT 3, SAID POINT LYING S 01°00'14" E FOR 30.00 FEET FROM THE SOUTHWEST CORNER OF SAID LOT 2; THENCE N 88°00'17" E ALONG THE NORTH LINE OF SAID LOT 3 FOR 1,325.25 FEET TO AN INTERSECTION WITH THE EAST LINE OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE S 00°53'51" E ALONG SAID EAST LINE FOR 665.37 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF SAID LOT 3; THENCE S 88°47'22" W ALONG SAID SOUTH LINE FOR 1,323.82 FEET TO THE SOUTHWEST CORNER OF SAID LOT 3; THENCE N 01°00'14" W ALONG THE WEST LINE OF SAID LOT 3 AND SAID WEST LINE OF SECTION 20 FOR 647.21 FEET TO THE **POINT OF BEGINNING**.

GROSS AREA CONTAINS: 46.33 ACRES, MORE OR LESS.

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

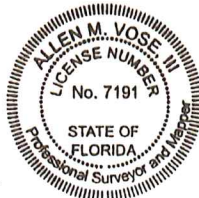
BEARINGS AND DISTANCES ARE BASED ON THE "STATE PLANE COORDINATE SYSTEM" FLORIDA ZONE WEST NAD 83 (CORS), WHEREIN THE WEST LINE OF SECTION 20, TOWNSHIP 46 SOUTH, RANGE 25 EAST BEARS S 01°00'14" E. THE SCALE FACTOR IS 0.999944648.

DESCRIPTION PREPARED: 03-03-2021

Digitally signed by Allen M Vose III  
Date: 2021.03.03 14:00:00 -05'00'

ALLEN M. VOSE III, P.S.M.  
PROFESSIONAL SURVEYOR AND MAPPER  
FLORIDA CERTIFICATION NO. 7191  
DATE SIGNED 03-03-2021

S:\Jobs\84XX\8433\Surveying\Descriptions\8433 FREELAND PARCEL LGL.dwg  
S:\Jobs\84XX\8433\Surveying\Descriptions\8433 FREELAND PARCEL SKT.dwg



**REVIEWED**  
**DCI2022-00018**  
**Hunter Searson, GIS**  
**Planner**  
**Lee County Government**  
**4/14/2022**

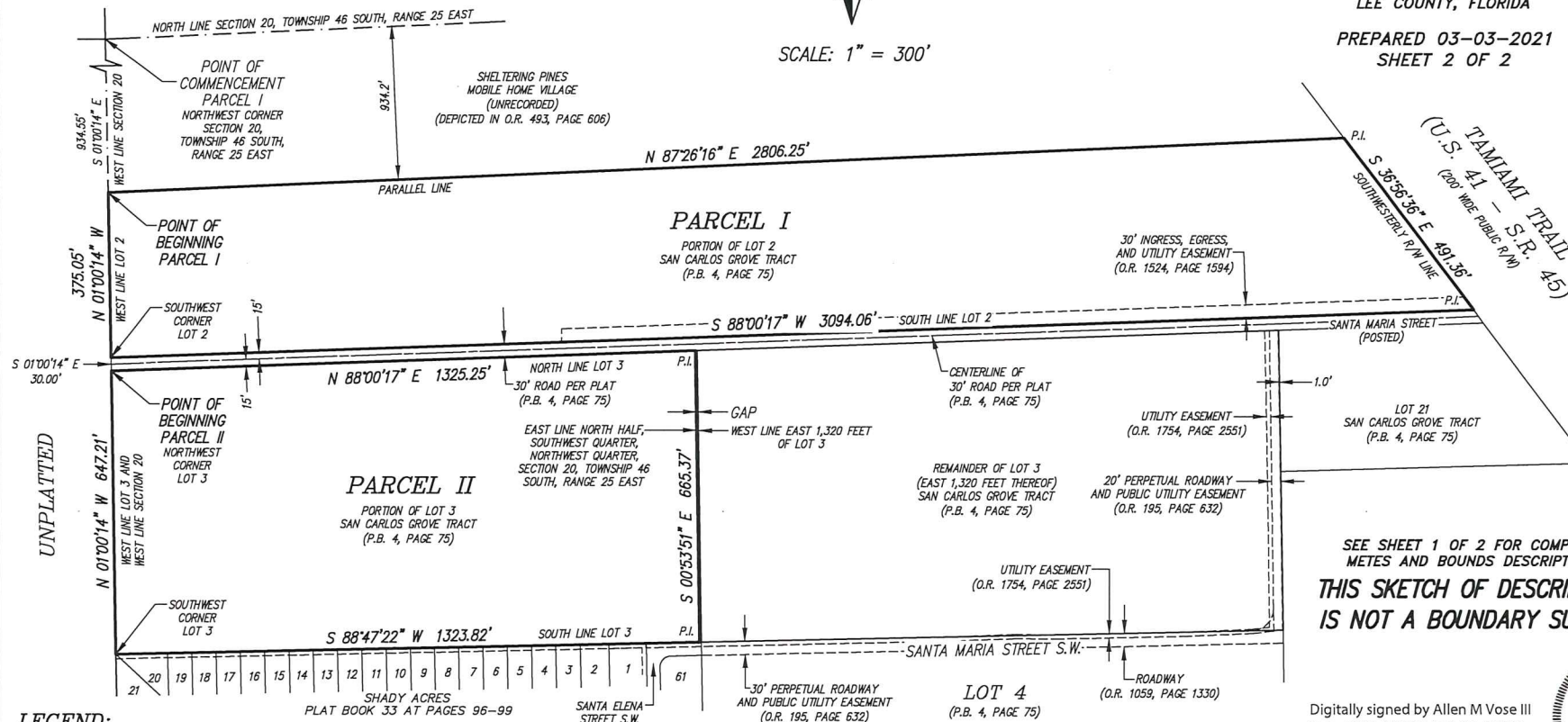
**SHEET 1 OF 2**  
**• SERVING THE STATE OF FLORIDA •**

10511 Six Mile Cypress Parkway • Suite 101 • Fort Myers, Florida 33966  
Phone 239-939-5490 • www.bankseng.com • Fax 239-939-2523  
Engineering License No. EB 6469 • Surveying License No. LB 6690

WWW.BANKSENG.COM

OF  
A PARCEL OF LAND LYING IN  
SECTION 20, TOWNSHIP 46 SOUTH, RANGE 25 EAST,  
LEE COUNTY, FLORIDA

PREPARED 03-03-2021  
SHEET 2 OF 2



SEE SHEET 1 OF 2 FOR COMPLETE  
METES AND BOUNDS DESCRIPTION.  
THIS SKETCH OF DESCRIPTION  
IS NOT A BOUNDARY SURVEY

Digitally signed by Allen M Vose III  
Date: 2021.03.03 14:00:27 -05'00'

ALLEN M. VOSE III, P.S.M.  
PROFESSIONAL SURVEYOR AND MAPPER  
FLORIDA CERTIFICATION NO. 7191  
- DATE SIGNED: 03-03-2021  
- THIS SKETCH OF DESCRIPTION IS NOT VALID  
WITHOUT THE ORIGINAL SIGNATURE AND SEAL OF  
A FLORIDA LICENSED SURVEYOR AND MAPPER.

*LEGEND:*

|        |                                            |               |
|--------|--------------------------------------------|---------------|
| P.B.   | INDICATES PLAT BOOK                        | ACR           |
| S.R.   | INDICATES STATE ROAD                       |               |
| R/W    | INDICATES RIGHT-OF-WAY                     | PARCEL        |
| O.R.   | INDICATES OFFICIAL RECORDS                 | <u>PARCEL</u> |
| LB     | INDICATES LICENSED BUSINESS                | GROSS A       |
| P.I.   | INDICATES POINT OF INTERSECTION            |               |
| P.S.M. | INDICATES PROFESSIONAL SURVEYOR AND MAPPER |               |

**ACREAGE SUMMARY:**

PARCEL I CONTAINS: 26.38 ACRES, MORE OR LESS  
PARCEL II CONTAINS: 19.95 ACRES, MORE OR LESS  
GROSS AREA CONTAINS: 46.33 ACRES, MORE OR LESS

NOTES:

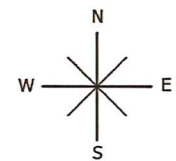
- 1.) SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.
- 2.) BEARINGS AND DISTANCES ARE BASED ON THE "STATE PLANE COORDINATE SYSTEM"  
FLORIDA ZONE WEST NAD 83 (CORS), WHEREIN THE WEST LINE OF SECTION 20, TOWNSHIP  
46 SOUTH, RANGE 25 EAST BEARS S 01°00'14" E. THE SCALE FACTOR IS 0.999944648.
- 3.) ALL DISTANCES SHOWN ARE IN FEET AND DECIMALS THEREOF.

S:\JOBS\84XX\8433\SURVEYING\DESCRIPTIONS\8433 FREELAND PARCEL LGL.DOC  
S:\JOBS\84XX\8433\SURVEYING\DESCRIPTIONS\8433 FREELAND PARCEL SKT.DWG

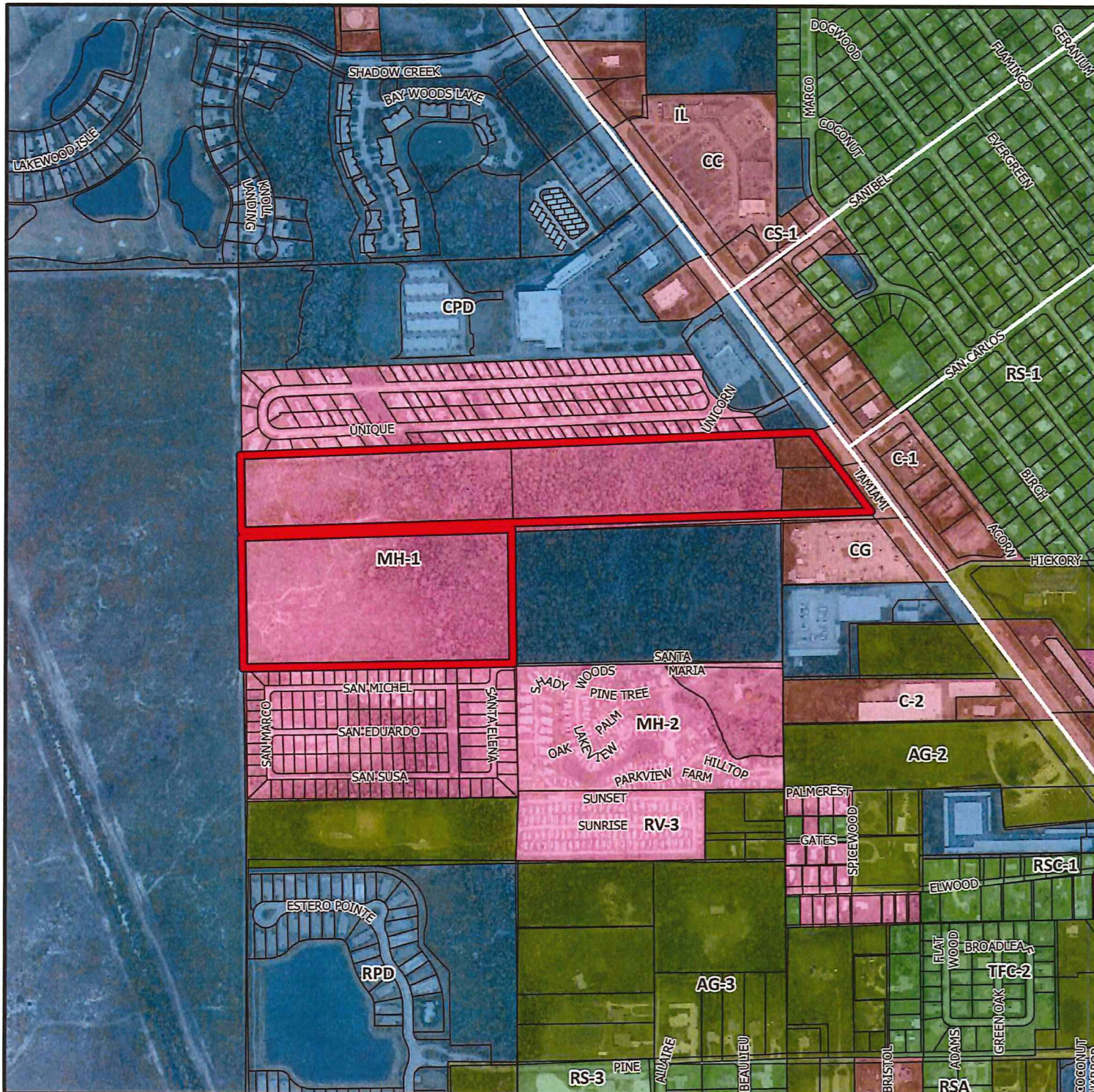
DCI2022-00018

Zoning

 Subject Property



0 500 1,000  
Feet



## Exhibit B

### RECOMMENDED CONDITIONS AND DEVIATIONS

#### CONDITIONS

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

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

- a. MCP. Development must be substantially consistent with the two-page MCP entitled "Grand Bay Minor MPD", prepared by Banks Engineering, stamped received January 9, 2023 (Exhibit B1).
- b. LDC and Lee Plan. Development must comply with the LDC and Lee Plan at time of development order approval except where granted by deviation herein. Subsequent amendments to this resolution or MCP may be subject to further development approvals.
- c. Development Parameters. The MPD is approved for a maximum of 300 dwelling units, including 114 bonus density units, not to exceed a height of 56 feet, and 30,000 square feet of commercial retail/office uses not to exceed 53 feet in height.

2. **Schedule of Uses and Property Development Regulations**

a. **Schedule of Uses**

Residential Tract  
Accessory uses and structures  
Administrative Offices  
Clubs: private  
Community Gardens  
Dwelling unit: Multi-family  
Entrance gates and gatehouse  
Essential services  
Essential service facilities: Group I  
Excavation: Water retention  
Fences, walls  
Home Occupation  
Models: Model unit  
Real Estate Sales Office  
Recreation facilities:  
    Personal  
    Private on-site

Parking Lot:

Accessory

Temporary

Residential accessory uses

Signs

Temporary Use

Outparcels 1 and 2

Accessory uses and structures

Administrative Offices

Agricultural services: office/base operations

Aircraft food services and catering

Animals:

Clinic or Kennel (no outdoor runs)

Control Center (including Humane Society)

ATM (automatic teller machine)

Auto parts store

Automobile repair and service, all groups

Automobile service station

Bait and tackle shop

Banks and financial establishments: Groups I and II

Bar or cocktail lounge, subject to LDC Section 34-1264

Boarding House

Boats:

Boat parts

Boat rental

Boat sales

Boat Storage (dry)

Boatyard

Broadcast studio, commercial radio, and television

Building material sales

Business services: Groups I and II

Bus station/depot

Caretaker's residence (limited to one)

Car wash

Cleaning and maintenance services

Clothing stores, general

Clubs:

- Country
- Commercial
- Fraternal, membership organization
- Private

Cold storage, pre-cooling, warehouse and processing plant

Communication facility, wireless

Community Gardens

Community Residential Homes

Computer and data processing services

Consumption on premises

Continuing care facilities

Contractors and builders: Groups I and II

Convenience food and beverage store

Cultural facilities

Day care center, child, adult

Department Store

Drive-through facility for any permitted use

Drugstore, pharmacy

Dwelling unit: live-work, townhouse, multiple-family building

Entrance gates and gatehouse

Emergency operations center

EMS, fire or sheriff's station

Essential services

Essential service facilities: Group I

Excavation: Water retention; oil or gas

Excess spoil removal

Factory outlets (point of manufacture only)

Farm equipment, sales, storage, rental, or service

Fences, walls

Fish house, wholesale

Flea market:

- Open

- Indoor

Food and beverage service, limited

Food stores: Group I and II

Funeral home and mortuary (with or without a crematory)

Gasoline dispensing system, special

Gift and souvenir shop

Hardware store

Health care facilities: Group I, Group II, Group III

Hobby, toy, and game shops

Home care facilities

Home occupation

- Hospice
- Household and office furnishings, all groups
- Insurance companies
- Laundry or dry cleaning: Group I and II
- Lawn and garden supply stores
- Library
- Maintenance facilities (government)
- Medical office
- Mobile home dealers
- Models: Model unit
- Motion picture production studio
- Nightclubs
- Non-store retailers, all groups
- Parcel and express services
- Package store
- Paint, glass, and wallpaper
- Parks: Group I and II
- Parking lot:
  - Accessory
  - Commercial
  - Garage, public
  - Park-and-ride, temporary
- Personal services: Group I through IV
- Pet services
- Pet shop
- Pharmacy
- Photofinishing laboratory
- Place of worship
- Post office
- Printing and publishing
- Real estate sales office
- Recreation facilities:
  - Commercial, groups I, III
  - Commercial, group IV
  - Personal; private – on-site
  - Private: off-site
- Religious facilities
- Rental or leasing establishments: Group I through III
- Repair Shops, Groups I through IV
- Research and development laboratories: Group I through IV
- Residential accessory uses
- Restaurant, fast food
- Restaurants: Group I through IV
- Retail and wholesale sales, when clearly incidental and subordinate to a permitted principal use on the same premises
- Rooming house

Schools:

Commercial

Noncommercial

Self-service fuel pumps

Signs

Social services: Group I, Group II

Special retail shops: Group 1 through IV

Storage: Indoor only; Storage, open

Studios

Temporary use

Theatre, indoor or outdoor (drive in)

Transportation services: Group II and III

Used merchandise stores: Group I through IV

Variety store

Vehicle and equipment dealers: Groups I through V

Warehouse:

Mini warehouse

Private

Public

Cold storage only

Wholesale establishment: Groups I through IV

**b. Site Development Regulations**

**Commercial, Multi-Family, and Mixed Use Buildings**

Lot Area and Dimensions:

Minimum lot size: n/a

Minimum lot width: 25 feet

Minimum lot depth: n/a

Minimum Setback:

Perimeter: 15 feet

Sheltering Pines Mobile Home Village (north): 20 feet plus 1/2 foot  
for every one foot over 35 feet in height

Residential Building III: 29 feet

Side yard: n/a

Rear yard: n/a

Waterbody: 20 feet

Preserve:

20 feet from wetland

30 feet from upland preserves

Street:

Public: 25 feet

Private: 20 feet

Accessory structures:

Rear: 5 feet

Side: 5 feet

Maximum lot coverage: No maximum within the Mixed Use Overlay

Building height:

Building I: 56 feet

Building II: 54 feet

Building III: 49 feet

Outparcels: 53 feet

Minimum Building Separation: 20 feet

**3. Open Space/Indigenous Open Space/Preservation/Compensatory Storage**

Development order plans must depict 16.98 acres of indigenous preservation area and 14.45 acres of non-indigenous open space in substantial compliance with the MCP prior to issuance of the first development order:

- a. Indigenous Upland Preserve 16.98 acres;
- b. Wetland Preserve (Non-Indigenous) 10.59 acres;
- c. Non-Indigenous Upland Preserve 3.02 acres;
- d. Compensating Storage in Preserve 0.04 acres; and
- e. Lake (Maximum of 25% Open Space) 0.80 acres.

Developer must execute a conservation easement consistent with development order requirements.

**HEX Recommendation:** The parties testified the pending DO requires a conservation easement. The Hearing Examiner recommends codifying that requirement in the zoning resolution.

**4. Wetland Creation**

Developer must depict the wetland creation area on development order plans and provide calculations that quantify the wetland's flood storage volume.

**5. Indigenous Habitat Management Plan**

Developer must submit a species management/indigenous management plan to Lee County prior to issuance of the first development order or vegetation permit.

**6. Surface Water Quality Monitoring**

Developer must provide a Surface Water Quality Monitoring Plan for approval by the Lee County Division of Natural Resources prior to issuance of the first development order. At a minimum, the Surface Water Quality Monitoring Plan must establish the following:

- a. The overall Goals and Objectives of the Surface Water and Groundwater Monitoring Plan;
- b. An outfall monitoring schedule during “wet” season of June through September and “dry” season of October through May, for Total Kjeldahl Nitrogen, Ammonia, Total Nitrogen, Nitrite, Nitrate, Chlorophyll A, Total Phosphorus, Chloride, Total Dissolved Solids, Florida PRO, Arsenic, Copper, Mercury, Lead, Enterococci, Total Hardness, Field Temperature, Specific Conductance, pH, and Dissolved Oxygen.
- c. A baseline monitoring event to be part of the monitoring plan that must be completed prior to commencement of construction.
- d. Identify the monitoring point locations.
- e. Water quality monitoring data must be provided to the Division of Natural Resources annually for a minimum of 5 years and must include a report with a comparison of State water quality standards, plots of parameters, and recommendations. After five years of meeting or exceeding state water quality monitoring standards, the developer may amend water quality monitoring and reporting after written request, review, and approval by the Division of Natural Resources. Results must be reported as an Electric Data Deliverable (EDD), in a format approved by the Division of Natural Resources.
- f. A contingency plan in the event an exceedance of State Water Quality Standards is discovered. The plan must include notification to impacted residents and applicable authorities.

**7. Culvert Replacement**

Developer must replace the four 36-inch culverts as identified in the 2018 Lee County Flood Study Report (Observation ID#708, Appendix A, Page 1). Culvert replacement must be depicted on the engineering plans and completed prior to issuance of a Certificate of Completion for the first vertical building. Extensions for completion may be approved administratively by Natural Resources. Once the culverts have been replaced, the surrounding grade must be restored to the existing grade.

**8. Ingress and Egress**

- a. Developer must record a notice to future property owners in the public records prior to issuance of a local development order for construction of the development's access. The notice must articulate the emergency access plan and provide information as to where a copy of the plan may be obtained from the developer/developer's successor.
- b. Developer must provide a letter of no objection to the proposed access from Public Safety, the Lee County Sheriff's office, and San Carlos Fire and Rescue District prior to development order approval.

**9. Turnaround**

- a. Developer must provide signage stating that the southern access point is a resident only access prior to development order approval.
- b. Developer must provide a letter of no objection to the access from the San Carlos Fire Protection and Rescue Service District. The letter must be provided prior to development order approval for the resident only access gate as designated on the MCP.

**10. Solid Waste**

Developer must provide a letter of no objection from Lee County Solid Waste prior to development order approval.

**11. State and Federal Permits**

- a. Generally. County development permits do not create rights to obtain permits from state or federal agencies and do not create liability on the part of the County if applicant fails to obtain requisite approvals or fulfill obligations imposed by state/federal agencies or if applicant undertakes actions resulting in a violation of state or federal law. Applicant must obtain applicable state/federal permits prior to commencing development.
- b. State Wetland Permits. Developer may not commence construction on development impacting wetlands until issuance of required state permits. Development activity must comply with state wetland permits and applicable local development permits.

**DEVIATIONS**

1. **Access**. **Deviation 1** seeks relief from LDC §10-291(3), which requires residential developments more than five (5) acres provide more than one means of ingress or egress, to allow the two residential access connections to the access road approved under DOS2020-00128, which provides a single access to US 41.

*HEX Recommendation: Approval, subject to Condition 8.*

2. **Entrance Gate**. **Deviation 2** seeks relief from LDC §34-1748(5), which requires a paved turnaround having a turning radius sufficient to accommodate a U-turn for a single unit truck (SU) vehicle as specified in the AASHTO Green Book current edition, to be provided on the ingress side of the gate or gatehouse to allow no turnaround for the southern gate at the secondary resident-only access point.

*HEX Recommendation: Approval, subject to Condition 9.*

3. **Deviation 3: WITHDRAWN.**

4. **Solid Waste Disposal.** **Deviation 4** seeks relief from LDC §10-261(a), which requires a new multifamily residential development to provide sufficient on-site space for garbage and recyclable materials collection containers at a rate of 216 square feet for the first 25 units plus 8 square feet for each additional dwelling unit, to allow space for a compactor (382± square feet) and a minimum of 106 square feet for recyclable materials collection containers.

*HEX Recommendation: Approval, subject to Condition 10.*

Exhibits to Conditions:

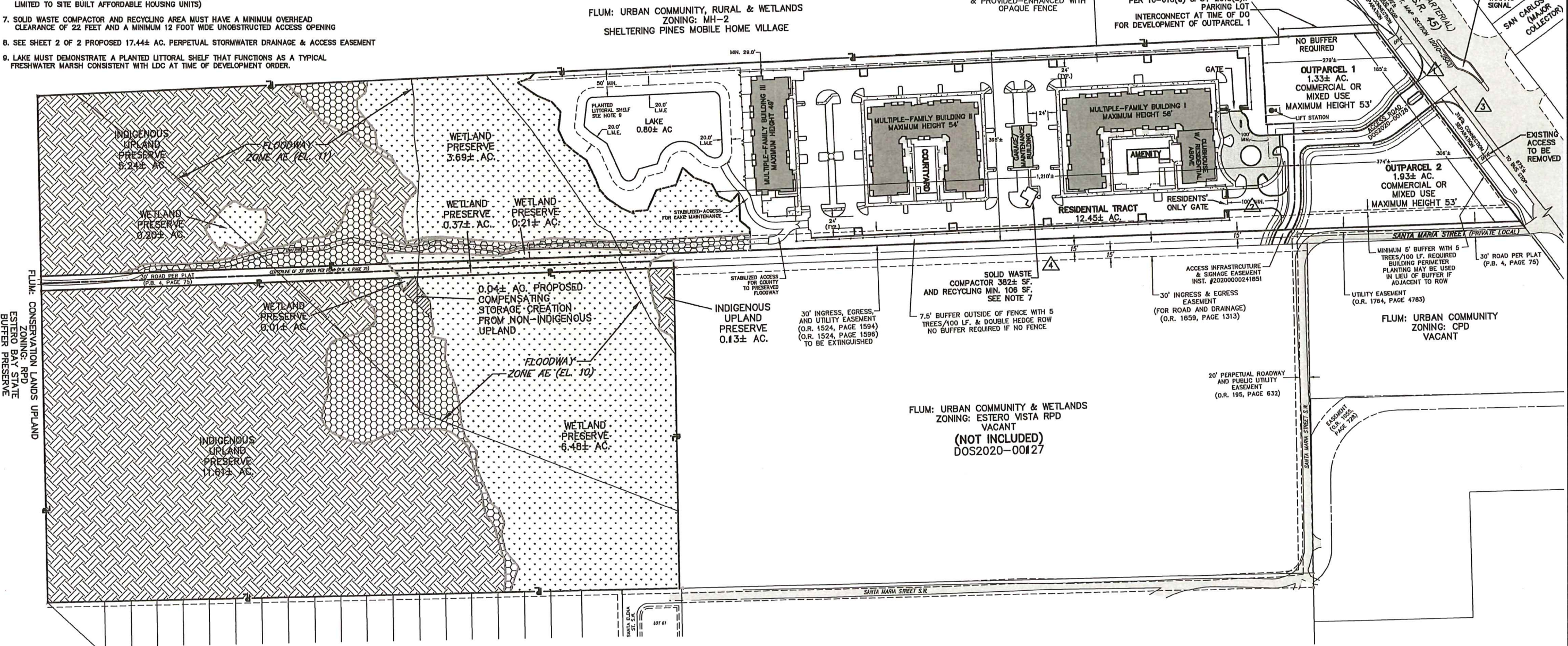
B1 Master Concept Plan stamped 1/9/2023

NOTES:

1. SITE AREA: 46.33± AC.  
2. OPEN SPACE REQUIRED : 20%  
INDIGENOUS REQUIRED: 50% 9.27 AC.  
4.64 AC.
3. OPEN SPACE PROVIDED:  
INDIGENOUS UPLAND PRESERVE 16.98± AC.  
WETLAND PRESERVE (NON-INDIGENOUS) 10.59± AC.  
NON-INDIGENOUS UPLAND PRESERVE 3.02± AC.  
COMPENSATING STORAGE IN PRESERVE 0.04± AC.  
TOTAL PRESERVATION AREA 30.63± AC.
- LAKE (MAXIMUM 25% OF OPEN SPACE) 0.80± AC.  
OPEN SPACE PROVIDED: 31.42± AC.
4. ADJACENT PRIVATE RIGHT-OF-WAY 1.53± AC.  
WETLAND PRESERVE (NON-INDIGENOUS) WITHIN ADJACENT R.O.W. 0.37± AC.
5. NO BUFFERS REQUIRED INTERNAL TO MPD
6. MAXIMUM 300 DU (INCLUDING 114 BONUS DENSITY UNITS) & 30,000 OF COMMERCIAL
- BUILDING I MAXIMUM 144 \*DU (INCLUDING UP TO 76 BONUS DENSITY UNITS WITH OPTION DETERMINED AT DO AND 18 BONUS DENSITY UNITS LIMITED TO SITE BUILT AFFORDABLE HOUSING UNITS)
- \* MAXIMUM OF 25 DU MAY BE BUILT AS MIXED USE ON OUTPARCEL 1 OR 2
- BUILDING II & III  
MAXIMUM 156 DU (INCLUDING 20 BONUS DENSITY UNITS LIMITED TO SITE BUILT AFFORDABLE HOUSING UNITS)
7. SOLID WASTE COMPACTOR AND RECYCLING AREA MUST HAVE A MINIMUM OVERHEAD CLEARANCE OF 22 FEET AND A MINIMUM 12 FOOT WIDE UNOBSTRUCTED ACCESS OPENING
8. SEE SHEET 2 OF 2 PROPOSED 17.44± AC. PERPETUAL STORMWATER DRAINAGE & ACCESS EASEMENT
9. LAKE MUST DEMONSTRATE A PLANTED LITTORAL SHELF THAT FUNCTIONS AS A TYPICAL FRESHWATER MARSH CONSISTENT WITH LDC AT TIME OF DEVELOPMENT ORDER.

LEGEND:

- INDIGENOUS UPLAND PRESERVE 16.98± AC.
- WETLAND PRESERVE (NON-INDIGENOUS) 10.59± AC.  
0.37± AC. WITHIN R.O.W.  
TOTAL 10.96± AC.
- UPLAND PRESERVE (NON-INDIGENOUS) 3.02± AC.
- PRESERVED FLOODWAY ZONE FOR MULLOCK CREEK FLOW-WAY
- EX. DIRT TRAIL
- DEVIATION



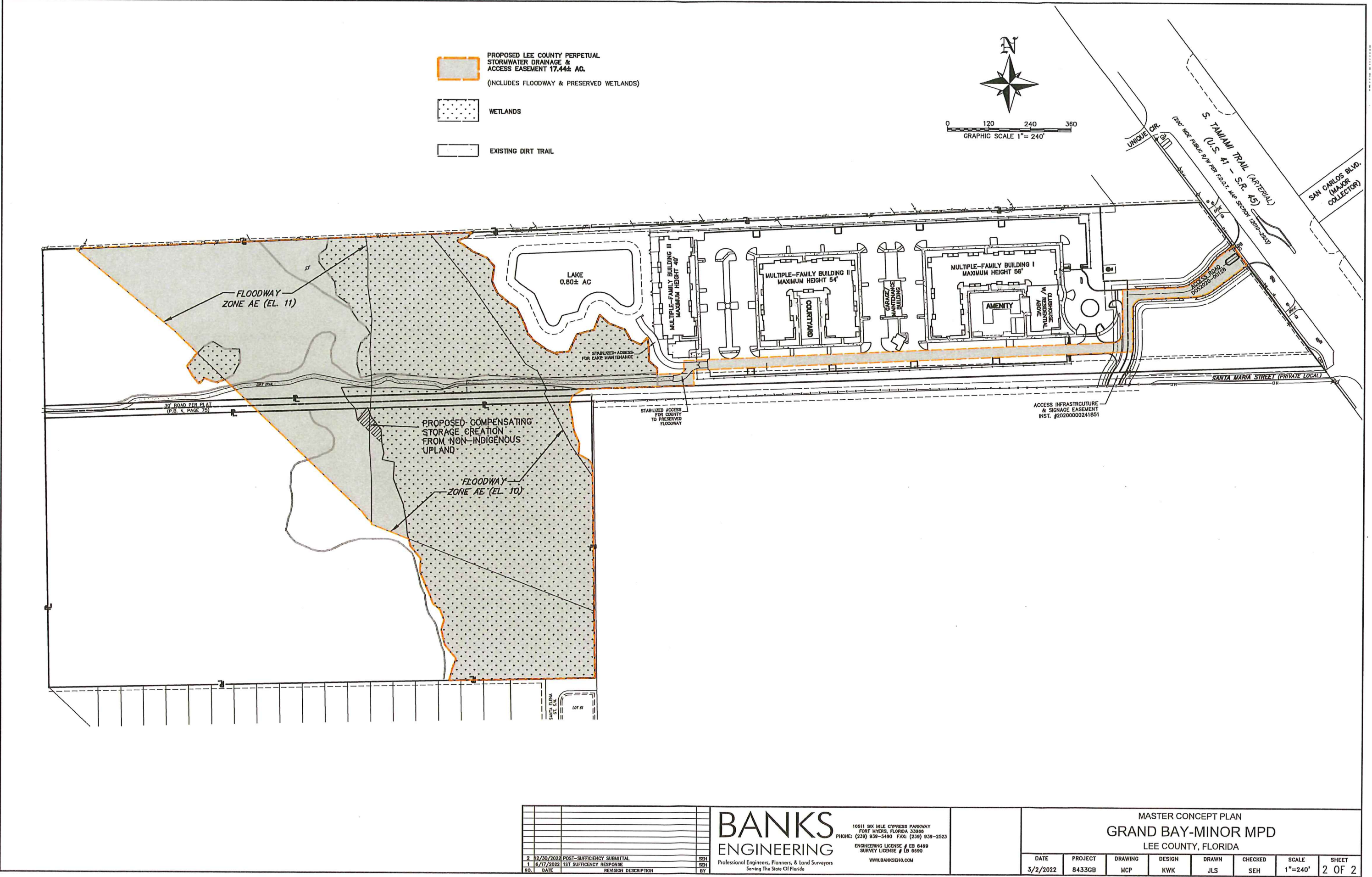
| NO. | DATE       | REVISION DESCRIPTION       | BY  |
|-----|------------|----------------------------|-----|
| 2   | 12/30/2022 | POST-SUFFICIENCY SUBMITTAL | SEH |
| 1   | 6/17/2022  | 1ST SUFFICIENCY RESPONSE   | SEH |

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10511 SIX MILE CYPRESS PARKWAY  
FORT MYERS, FLORIDA 33806  
PHONE: (239) 939-5490 FAX: (239) 939-2523  
ENGINEERING LICENSE # EB 6469  
SURVEY LICENSE # LB 6690  
WWW.BANKSENG.COM

| MASTER CONCEPT PLAN<br>GRAND BAY-MINOR MPD<br>LEE COUNTY, FLORIDA |         |         |        |       |         |         |        |
|-------------------------------------------------------------------|---------|---------|--------|-------|---------|---------|--------|
| DATE                                                              | PROJECT | DRAWING | DESIGN | DRAWN | CHECKED | SCALE   | SHEET  |
| 3/2/2022                                                          | B433GB  | MCP     | KWK    | JLS   | SEH     | 1"=240' | 1 OF 2 |



## Exhibit C

### EXHIBITS PRESENTED AT HEARING

#### STAFF EXHIBITS

1. *DCD Staff Report with attachments for DCI:* Prepared by Elizabeth Workman, Planner, date received January 25, 2023 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *PowerPoint Presentation:* Prepared by Lee County staff, for Grand Bay Minor MPD, DCI2022-00018, Hearing Examiner Public Hearing, dated February 9, 2023 (multiple pages – 8.5"x11")[color]

#### APPLICANT EXHIBITS

- a. *48-Hour Notice:* Email from Laurie L. Plue, to Hearing Examiner, with copies to Steve Hartsell, Esq., Kurt Kehoe, Elizabeth Workman, Brandon Dunn, Marcus Evans, Joseph Adams, Esq., Stacy Hewitt, Brian Roberts, and Nicholas DeFilippo, dated Monday, February 6, 2023, 5:12 PM (multiple pages – 8.5"x11")
1. *PowerPoint Presentation:* Prepared for Grand Bay Minor MPD, DCI2022-00018, Hearing Examiner Public Hearing, dated February 9, 2023 (multiple pages – 8.5"x11")[color]
2. *Master Concept Plan:* Prepared by Banks Engineering, for Grand Bay Minor MPD, dated 3/2/2022 (2 pages - 24"x36")
3. *Resolution:* Z-88-319, adopted February 13, 1989 (multiple pages – 8.5"x11")

#### OTHER EXHIBITS

##### David Dickey

1. (3 pages – 8.5"x11")

**Exhibit D**

**HEARING PARTICIPANTS**

County Staff:

1. Elizabeth Workman

Applicant Representatives:

1. Yury Byhau
2. Steve Hartsell, Esq.
3. Kurt Kehoe
4. Ken Kellum
5. Stacy Hewitt
6. Ashley Palmer

Public Participants:

1. David Dickey

**Exhibit E**  
**INFORMATION**

**UNAUTHORIZED COMMUNICATIONS**

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

**HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS**

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

**COPIES OF TESTIMONY AND TRANSCRIPTS**

- A. Every hearing is recorded. Recordings are public records that become part of the case file maintained by the Department of Community Development. The case file and recordings are available for public examination Monday through Friday between 8:00 a.m. and 4:30 p.m.
- B. A verbatim transcript may also be available for purchase from the court reporting service.