

May 2, 2023

Ms. Donna Marie Collins
Lee County Hearing Examiner
1500 Monroe Street
Fort Myers, FL 33905

Via Email: hex@leegov.com

RE: Daniels South MPD; Case Number: DCI2022-00002
48-Hour Letter - Hearing Examiner Hearing Date: May 4, 2023
(Our Client File #91150.004)

Dear Ms. Collins:

Please be advised that Pavese Law Firm and the Experts listed below represent Lennar in the application to rezone 1,233 acres to Mixed Use Planned Development (MPD) with five deviations.

A. EXPERT WITNESSES:

Tina Ekblad, MPA, AICP Project Planner, Stearns, Weaver, Miller P.A. 106 E. College Ave., Ste. 700, Tallahassee, FL 32301

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- Seeking to be qualified as an expert witness in the Lee County Land Development Code, Lee Plan, Zoning, Site Planning and land use planning, and as they relate to Lee County zoning and planning.
- Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code; the Lee Plan; and documentation submitted by the applicant as part of the subject application.

Ryan Shute, P.E., Project Engineer, Morris Depew & Assoc. 2914 Cleveland Ave., Fort Myers, FL 33901

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- Seeking to be qualified as an expert witness in the Lee County Land Development Code, Lee Plan, Civil Engineering and Drainage, and Site Planning, as they relate to Lee County zoning and planning.
- Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code; the Lee Plan; and documentation submitted by the applicant and other participants as part of the subject application.

David G. Brown, P.G., National Practice Leader-Hydrogeology, Project Geologist, RESPEC, 6561 Palmer Park Cir Suite D, Sarasota, FL 34238

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- Seeking to be qualified as an expert witness in the Lee County Land Development Code, Lee Plan, and Hydrogeological Planning, as they relate to Lee County zoning and planning.
- Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code; the Lee Plan; and documentation submitted by the applicant and other participants as part of the subject application.

Shane Johnson, Project Ecologist, Senior Ecologist, Passarella and Associates, 13620 Metropolis Pkwy, Ste.200, Fort Myers, Florida 33912

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- Seeking to be qualified as an expert witness in Environmental Science, Ecology and Buffering with regard to the Lee Plan, Lee County Land Development Code and State of Florida wildlife and protected species regulations as they relate to Lee County zoning and planning.
- Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code; the Lee Plan; and documentation submitted by the applicant and other participants as part of the subject application.

Ted Treesh, PTP, Project Traffic Planner, TR Transportation Consultants, Inc. 2726 Oak Ridge Ct., Ste.503, Fort Myers, FL. 33901

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- Seeking to be qualified as an expert witness in the Lee County Land Development Code, Lee Plan, and Traffic and Transportation Planning as they relate to Lee County zoning and planning.
- The Traffic Study Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code; the Lee Plan; and documentation submitted by the applicant and other participants as part of the subject application.

Yury Bykau, P.E., Project Traffic Planner, TR Transportation Consultants, Inc., 2726 Oak Ridge Court, Suite 503, Fort Myers, FL 33901

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- Seeking to be qualified as an expert witness in the Lee County Land Development Code, Lee Plan, and Traffic and Transportation Planning as they relate to Lee County zoning and planning.
- The Traffic Study Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code; the Lee Plan; and documentation submitted by the applicant and other participants as part of the subject application.

Barry Ernst, AICP, Director of Planning and Permitting, Lennar Corporation, 10481 Ben C. Pratt/Six Mile Cypress Parkway, Fort Myers, FL. 33966

- Previously qualified as an expert witness by the Lee County Hearing Examiner. Current resume is on file with the Hearing Examiner.
- Seeking to be qualified as an expert witness in the Lee County Land Development Code, Lee Plan, Zoning, Site Planning and land use planning, and as they relate to Lee County zoning and planning.
- Report and documents are submitted with the Staff Report for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code; the Lee Plan; and documentation submitted by the applicant and other participants as part of the subject application.

Scott Edwards, Vice President, Land Development, Lennar Corporation, 10481 Ben C. Pratt/Six Mile Cypress Parkway, Fort Myers, FL. 33966

- Seeking to be qualified as an expert witness in Lee County project management, site planning and development, as they relate to Lee County zoning, planning and development. Resume will be submitted to the Hearing Examiner at the hearing.
- Report and documents submitted with the Staff Report and by the applicant for this case. Additional documents that may be relied upon and used as evidence during the hearing include: the Lee County Land Development Code; the Lee Plan; and documentation submitted by the applicant and other participants as part of the subject application.

The Applicant also reserves the right to rely upon and call any of the Expert Witnesses listed by the Staff Expert Witness List submitted with the Staff Report, as that may be added to or supplemented.

B. NOTICE OF OUTSTANDING ISSUES

In regard to the Staff Report and attachments issued for the Hearing Examiner Hearing on May 4, 2023, the Applicant has been actively coordinating with Staff who, as noted, were given a copy of the clarifications and/or corrections shown in strike-through/underline text:

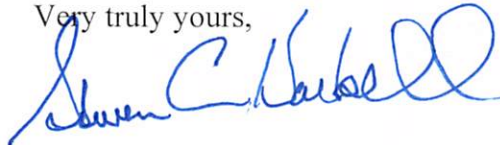
1. See Applicant's Proposed Revisions to conditions in the attached exhibit: "*Daniels South-Mixed Use Planned Development-Applicant's May 1, 2023, Proposed Revisions to Staff*"

Report, Attachment C. Reviewed by phone May 1st with Dirk Danley and revisions are acceptable to Staff except those highlighted Areas of Outstanding Issues” showing revisions to Conditions in Staff Report Attachment C in the strike-through/underline format.

C. **EXHIBIT LIST** [to be entered into evidence at the hearing]

Exhibit	Daniels South-Mixed Use Planned Development-Applicant’s May 1, 2023, Proposed Revisions to Staff Report, Attachment C. Reviewed by phone May 1st with Dirk Danley and revisions are acceptable to Staff except those highlighted Areas of Outstanding Issues.
Exhibit	Applicant’s PowerPoint Presentation
Exhibit	Master Concept Plan (24” x 36”)

Very truly yours,



Steven C. Hartsell
Florida Bar #0305030

SCH:llp

Encl.: Exhibits as noted

cc: Barry Ernst, Lennar *via email*
Tina Ekblad, AICP, Stearns, Weaver, Miller *via email*
Dirk Danley, Lee County Principal Planner, Zoning *via email*
Elizabeth Workman, Lee County Principal Planner, Zoning *via email*
Brandon Dunn, Lee County Principal Planner, Planning *via email*
Marcus Evans, P.E. Lee County Engineer, Infrastructure Planning *via email*
Nicholas DeFilippo, Lee County Senior Environmental Planner, Planning *via email*
Rebecca Sweigert, Lee County Principal Environmental Planner, Planning *via email*
Joe Adams, Lee County Attorney’s Office *via email*

Daniels South

Mixed Use Planned Development

*Applicant's May 1, 2023, Proposed Revisions
to Staff Report, Attachment C.*

*Reviewed by phone May 1st with Dirk Danley
and proposed revisions are acceptable to Staff*

except those highlighted Areas of Outstanding Issues.

[Deletions are ~~struck-through~~; Additions are underlined]

A. Conditions

1. Development must be consistent with the five-page Master Concept Plan (MCP) entitled "Daniels Parkway South" prepared by Morris Depew and Associates, dated 11/14/2022, except as modified by the conditions below. This development must comply with all requirements of the Lee County Land Development Code at time of local development order approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

The development is allowed a maximum of 1,600 residential dwelling units, a maximum total gross floor area of 350,000 square feet of commercial uses, of which a maximum of 70,000 square feet may dedicated to medical office uses.

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

a. Schedule of Uses

Residential Single Family – SF

Accessory Uses and Structures

Dwelling Units:

Single-family

Two-Family Attached

Entrance Gates and Gatehouse: (Gatehouses limited to 2)

Essential Services

Essential Service Facilities, Group I

Excavation, Water Retention Only

Fences, Walls

Home Occupation

Models:

Model Home

Model Unit

Parking Lot, Accessory (limited to lots abutting model homes/units)

Real Estate Sales Office (limited to clubhouse, amenity, or model locations)
Recreation Facilities, Personal
Signs
Temporary Uses (limited to Temporary Contractor's Office and Equipment Storage
Shed)

Residential Multi-Family - MF

Accessory Uses and Structures
Administrative Offices
Dwelling Units:
 Two-family Attached
 Townhouse
 Multiple Family Building
Entrance Gates and Gatehouse (Entrance Gates limited to 2, Gatehouse limited to 1)
Essential Services
Essential Service Facilities, Group I
Excavation, Water Retention Only
Fences, Walls
Home Occupation
Models:
 Model Home
 Model Unit
Parking Lot, Accessory
Real Estate Sales Office (limited to clubhouse, amenity or model locations)
Recreation Facilities, Personal, Private on-site
Signs
Temporary Uses (limited to Temporary Contractor's Office and Equipment Storage
Shed)

Residential Amenities – RA

Administrative Offices
Clubs, Private
Consumption on Premises (only in conjunction with Food and Beverage Service,
limited);
Food and Beverage, limited
Community Garden
Essential Services
Essential Service Facilities, Group I
Excavation, Water Retention Only
Personal Services, Groups I and II (limited to Health Clubs or Spas)
Parking lot, Accessory

Real Estate Sales Office
Recreation Facilities, Private, on-site
Rental or Leasing Establishments, Group I
Signs
Specialty Retail Shops, limited to sales ancillary to the residential amenity
Temporary Uses (limited to Temporary Contractor's Office and Equipment Storage Shed)

Commercial - C

Accessory Uses & Structures
Administrative Offices
Animal Clinic or Kennel
ATM
Auto Parts Store
Automobile Repair and Service, all groups
Banks and Financial Establishments, Groups I, II
Bar or Cocktail Lounge
Boat Parts Store
Building Material Sales
Business Services, Groups I, II
Car Wash
Cleaning and Maintenance Services
Clubs, Commercial, Fraternal, Private
Computer and Data Processing
Consumption on Premises
Contractors and Builders, All Groups
Convenience Food & Beverage Store (limited to one, up to 8,000 SF)
Cultural Facilities
Day Care Center, Child, Adult
Department Store
Drive-Thru Facility for any permitted use
Essential Services
Essential Services Facilities, Group I
Excavation, Water Retention
Fences, Walls
Food and Beverage Service, Limited
Food Stores, Group I
Funeral Home (No Crematory)
Hardware Stores
Healthcare Facilities, Groups I, II, III, IV
Hobby, toy and game shops
Hotel/Motel

Household and Office Furnishings, All Groups
Insurance Companies
Laundry or Dry Cleaning, Group I
Lawn and Garden Supply Stores
Library
Manufacturing,
 Food and Kindred Products, Groups II (limited to malt beverages) & III
Medical Office
Motion Picture Production Studio
Nightclubs
Non-store Retailers, All Groups
Package Store
Paint, Glass & Wallpaper
Parcel and Express Services
Parking Lot
 Accessory
 Commercial
 Garage
 Public Park & Ride
 Temporary
 Personal Services, All Groups (Except escort services, palm reader & tattoo from
 Group IV)
Pet Services
Pet Shop
Photofinishing Laboratory
Place of Worship
Post Office
Printing and Publishing
Processing and Warehousing
Real Estate Sales Office
Recreation Facilities, Commercial, Groups I, III, & IV
Religious Facilities
Rental or Leasing Establishments, Group I, II, III
Repair Shops, Group I
Research and Development Laboratories, Groups II & IV
Restaurant, Fast Food
Restaurant, All Groups
Schools, Commercial & Non-Commercial
Self-Service Fuel Pumps (limited to a maximum of 12 pumps accessory to a
 Convenience Food and Beverage Store Only)
Signs
Social Services, Groups I & II

Specialty Retail Shops, All Groups
 Studios
 Theater
 Transportation Services, Groups I, II & III
 Used Merchandise Stores, Group I
 Variety Store
 Vehicle and Equipment Dealers, Groups I, II, III & IV
 Warehouse:
 Hybrid Warehouse
 Mini warehouse
 Public

Emergency Services – ES

Administrative Offices
 Community Garden
 Cultural Facility
 Emergency Operations Center
 EMS, fire or Sheriff's Station
 Essential services
 Essential services, Group I
 Excavation, water retention
 Fences, walls
 Library
 Maintenance Facility (Government)
 Parking lot, accessory
 Post Office
 Signs
 Transportation Services, Group II

b. Site Development Regulations

Residential Property Development Regulations

Land Use	Min Lot Area (SF)	Min Lot Width (FT)	Min Lot Depth (FT)	Min Front Setback (FT) ³	Min Side Setback (FT)	Min Rear Lot Setback (FT) ¹	<u>Min Rear Accessory Setback (FT)</u> ¹	Max Building Height (FT) ²	Max Lot Coverage (%)
Single-family	4,400	40	110	20	5	10	<u>5</u>	45	60
Two-family attached	3,300	30	110	20	Internal 0 External 5	10	<u>5</u>	45	60
Townhouse	2,200	20	110	20	Internal 0 External 5	10	<u>5</u>	45	60
Multi-family	7,150	65	110	20	7.5	10	<u>5</u>	65	55

Non-Residential Property Development Regulations

Land Use	Min Lot Area (SF)	Min Lot Width (FT)	Min Lot Depth (FT)	Min Front Setback (FT) ³	Min Side Setback (FT)	Min Rear Lot Setback (FT) ¹	Max Building Height (FT) ²	Max Lot Coverage (%)
Commercial	10,000	100	100	25	15	25	55	55
Hotel	10,000	100	100	25	15	25	65	55
Emergency Services Parcel	6,500	65	100	25	7.5	10	45	55

Notes:

¹ Structural setback of 25ft to be provided to the boundary of preserved wetlands and 30ft to be provided to the boundary of preserved uplands.

² Maximum building height will be determined at the time of Development Order based on the airport height restriction lines shown on the Master Concept Plan.

³ On corner lots the secondary frontage will be treated as a side setback.

3. Lighting – Airport Compatibility

- (i) Photometric Plans must demonstrate no light spillage into the preserves and conservation easement areas.
- (ii) Photometric Plans submitted with development order applications will be reviewed by the Lee County Port Authority for compliance with LDC Section 34-1110(a).

4. Construction Activities

In order to demonstrate compliance with LDC Section 34-1110(a)(3), the applicant must coordinate construction activities with the Lee County Port Authority to ensure that no operations will produce smoke, dust, visible fumes or vapors, glare or other visual hazards.

5. Groundwater Preservation

- (i) Development order plans for the first development order must identify the location and aquifer source for all irrigation wells. The development must utilize the on-site lakes for irrigation withdrawals with a maximum of eight groundwater makeup wells, of which a minimum of two must be finished into the Mid-Hawthorn Aquifer. The location of all irrigation wells must be in substantial compliance with locations depicted in Attachment 2.
- (ii) Development order plans must depict connection to public water and sewer service.
- (iii) Development order plans must demonstrate that irrigation will be provided via a master-controlled central irrigation system. The Property Owner Association documents, including Declarations and Covenants (submitted prior to Development Order approval and recorded prior to issuance of Certificate of Compliance), must prohibit the installation of single-family use wells for potable or irrigation water. Landscape irrigation must comply with the Water Conservation Ordinance #17-04, as amended.
- (iv) Both surface and groundwater withdrawal irrigation pumps must be equipped with water meters.

6. Enhanced Lake Management Plan

Prior to local development order approval, the Figure 4 of the Enhanced Lake Management Plan (dated November 2022, attached as Attachment L3) must be modified to reflect the use of two the Mid-Hawthorn Aquifer irrigation wells, with the six remaining irrigation wells using the Sandstone Aquifer, and must contain a Surface Water Quality and Groundwater Level Monitoring Plan for review and approval by Lee County Division of Natural Resources. At a minimum, the Surface Water Quality and Groundwater Level and Monitoring Plan must be submitted for review and approval by Lee County Division of Natural Resources that establishes:

- (i) The overall Goals and Objectives of the Surface Water Quality and Groundwater Level and Monitoring Plan.
- (ii) Collection of a single baseline surface water quality sample to be completed prior to commencement of construction.
- (iii) Initiation of surface water quality~~An outfall monitoring schedule after completion of the stormwater management system that consists of two~~schedule during "wet" season of (June through September) sampling events and a single "dry" season of (October through May) sampling event at a total of six locations for Total Kjeldahl Nitrogen (mg/L), Ammonia (mg/L), Ammonium (mg/L), Total Nitrogen (mg/L), Nitrite (mg/L), Nitrate (mg/L), Chlorophyll A (mg/M³), Total Phosphorus (mg/L), and Ortho-phosphate (mg/L), Field Temperature, Field Specific Conductance, Field pH and Field Dissolved Oxygen. In addition, Total Suspended Solids, Zinc, Iron, E. coli and Total Hardness must be sampled on the same schedule, at two of the six locations, located along the western development boundary, Field Temperature, Specific Conductance, pH and Dissolved Oxygen.
- ~~(iv)~~ A baseline monitoring event to be part of the monitoring plan that must be completed prior to commencement of construction.
- ~~(v)~~ (iv) Submittal of water quality monitoring results~~data must be provided to the Division of Natural Resources annually after issuance of the first development order, and must that includes a report comparing the onsite data to with a comparison of State water quality standards where applicable, plots of test results, parameters conclusions and recommendations. Five years after issuance of final Certificate of~~ **Compliance [Staff proposes Occupancy]**, and after meeting or exceeding State water quality monitoring standards, the developer may request to eliminate ~~amend~~ water quality monitoring and reporting requirements after in written request~~with review, and approval by the Division of Natural Resources. Monitoring results must be reported as an Electric Data Deliverable (EDD), in a format approved by the Division of Natural Resources.~~
- ~~(vi)~~ (v) A single Sandstone Aquifer groundwater level monitoring well must be installed on the eastern boundary of the development project. The monitoring well must take Water level monitoring measurements must be performed hourly and groundwater level monitoring~~the data must be submitted to Lee County Division of Natural Resources quarterly as an Electronic Data Deliverable (EDD), in a format approved by the Division of Natural Resources. The developer may amend water level monitoring and reporting after written request, review, and approval by the Division of Natural Resources.~~
- ~~(vii)~~ (vi) A contingency plan in the event an exceedance of State Water Quality Standards is discovered. This plan must include notification to impacted residents within the development and applicable authorities.

(vii) Submittal of the previous calendar year's monthly pumpage for all surface and groundwater withdrawals must be provided to the Division of Natural Resources annually.

7. Open Space

Development order plans for the first development order must depict 60 percent open space that includes 55 percent indigenous open space. If the first development order includes the commercial tract, the commercial tract applicant must depict ten percent open space.

8. Indigenous Preservation, Restoration, and Management Plan

- (i) Development order plans must be in substantial compliance with the Indigenous Preservation, Restoration and Management Plan attached hereto as Attachment M. Phasing may be changed to allow sub-phasing.
- (ii) A Conservation Easement required as part of the planned development must be recorded within 5 years of the first development order approval. The conservation easement must be dedicated to the appropriate maintenance entity that provides Lee County or some other public agency, acceptable to Lee County, with third party enforcement rights.
- (iii) Development order plans for the first development order must include a phasing schedule for the indigenous preservation and restoration to be completed within at least five consecutive years from the issuance of the first development order.
- (iv) Development order plans for the first development order must include a map depicting where mechanical and hand-removal methods of exotic vegetation removal will be located.
- (v) The applicant must submit vegetation removal permits that includes a survey point maps depicting the work limits for the preservation, restoration and/or the mechanical exotic removal.

9. 10,000' Hazardous Wildlife Monitoring Program

Prior to construction, the applicant will coordinate a wildlife monitoring program with the Lee County Port Authority (LCPA) and Department of Community Development (DCD) staff. The During construction of horizontal infrastructure within the Southwest Florida International Airport 10,000-foot hazardous wildlife buffer, and prior to Certificate of Compliance, the monitoring program will consist of periodic observations within the development footprint and preserve areas by a qualified biologist to help identify and reduce potential wildlife hazards during construction activities, dewatering, initial exotic vegetation removal activities, and other site preparation activities. Monitoring will occur only during periods where the aforementioned activities are occurring. In addition, the monitoring program will include specific construction-related Best Management Practices (BMPs) similar to what has been successfully implemented for projects at the Southwest Florida International Airport. This monitoring program e-Airport Wildlife Management Plan during Construction Activities will cease when all horizontal infrastructure construction activities on site have been completed and will not be a requirement post construction. The following BMPs (at a minimum) will be incorporated into the wildlife monitoring program:

- (i) Stormwater management system will utilize hardened shorelines and will be maintained in a manner that keeps them free of both emergent and submergent vegetation.
- (ii) Pursuant to Section 34-1110(a)(8) of the Lee County Land Development Code, any use of land or developments that attract birds and other wildlife that are hazardous to aircraft or

airport operations, greater than the existing conditions, are prohibited. Developments with uses including, but not limited to; sanitary landfills, waste disposal operations, underwater waste discharge, wastewater treatment facilities, agricultural activities, artificial marshes, wetland mitigation and creation, will be reviewed on a case by case basis to determine the likelihood of creating a wildlife attractant hazardous to air navigation. If such attractant is determined to exist by the LCPA and the FAA, the landowner will have the full and sole responsibility to eliminate the hazardous situation.

- (iii) Existing wetland and upland habitats will be managed such that they are restored where applicable in a like for like manner.
- (iv) All plantings will adhere to the LCPA Compatible Native Plant list.
- (v) Construction contractors must carefully control and continuously remove waste or loose material that might attract wildlife.
- (vi) Construction personnel must be aware of and avoid construction activities that could create airspace hazards off the end of the runway by attracting wildlife.
- (vii) Trash and food scraps from construction personnel activity must be collected and properly disposed of routinely.
- (viii) Except for stormwater management lakes and areas specifically designated for dewatering, large pools of water that collect within the development area shall be eliminated at the earliest opportunity to minimize wildlife attractants.
- (ix) All turf grass replacement shall be completed via sodding. Seeding shall not be utilized.
- (x) Construction contractor shall communicate with the project biologist at least five days in advance prior to making any hydrologic changes (dewatering activities) within the construction area. Initiation of hydrologic changes (dewatering) shall be timed to minimize the attractiveness for dusk and dawn scavengers.
- (xi) Construction clearing/fill activities may turn-up organic materials, vegetation, or soils that contain crustaceans, invertebrates, fish, or others prey species. The contractor will minimize the time that turned up material is left exposed to the greatest extent possible. These areas will be inspected at regular intervals for foraging wildlife. If these wildlife attractants are observed, the construction company will minimize the hazard throughout the day to the extent possible.
- (xii) Construction contractor shall allow wildlife the opportunity to move out of harm's way.
- (xiii) Construction contractor or another designated observer shall immediately dispose of carcasses found on site. This may occur by burying them at a depth of 36 inches or by another acceptable means of disposal.
- (xiv) Wildlife monitoring will occur a minimum of once per week during dewatering, land clearing/filling, and initial exotic vegetation removal activities and will continue as long as no

~~wildlife attractants are identified through construction of all horizontal infrastructure.~~ However, monitoring will occur more frequently (preferably daily at dawn and dusk) if construction activities are found to be attracting wildlife (i.e., flocks of birds). If wildlife hazards are identified within the Project, the Project team will coordinate with LCPA staff (and FAA, if necessary) to immediately correct the issue(s). This may also involve other coordination with local, state, and federal permitting agencies.

10. Protected Species

- (i) ~~At the first development order application, the~~The developer must submit the Protected Species Management and Human Wildlife Coexistence Plan that is in substantial compliance with the Plan dated September 2022 attached hereto as Attachment M, Exhibit H.
- (ii) Prior to the issuance of a Vegetation Removal Permit, the developer must submit updated species surveys and provide the protection measures for those protected species that are located within the approved clearing limits.

11. Landscaping Requirements

- (i) The landscape plans submitted with the application for local development order for the eastern property boundary of the commercial tract portion must depict a 25-foot-wide buffer with seven trees, a double hedge row, and 33 ground covers per 100 linear feet. Palms are limited to a maximum of 25 percent of the buffer tree requirement. The hedge must be 48 inches in height at installation and be maintained at 72 inches high. Ground covers must be a minimum one gallon container size at time of planting.
- (ii) The landscape plans submitted with the local development order for the residential portion must depict adequate plant material to meet the requirements of a Type D buffer (five trees per 100 linear feet and a double staggered hedge) where the project will use preserve areas to meet the buffer requirements. If the plant material does not exist within the preserve, the developer must install the plant material necessary to meet the requirements. If the developer uses the restoration plant material to meet the buffer requirements, the plant material specifications must meet the planting requirements per LDC Section 10-420.
- (iii) Development order landscape plans must depict 100 percent native vegetation for required buffers and landscaping. Any buffers within the 10,000-foot Hazardous Wildlife Buffer and not included in the Indigenous Preservation, Restoration, and Management Plan must be planted in compliance with the Lee County Port Authority "Recommended Compatible and Non-Compatible Native Landscape List" for landscaping as attached hereto as Attachment M, Exhibit E. The planting requirements and plant list must be incorporated into the project covenants and deed restrictions.

~~12. —~~ Potential Traffic Signalization

~~The applicant its successors or assigns must enter into agreement(s) for the fair-share contribution towards the design and installation/construction of traffic signal facilities at the access locations on Daniels Parkway at such time as projected to be warranted by the developer's analysis and approved by the County Engineer.~~
[Condition deleted but numbering remains the same].

13. Agricultural Uses:

- (i) Bona fide agricultural uses consisting of “livestock grazing, row crops”, which were in existence when the application for this project was filed, may continue in accordance with the Agricultural Use Affidavit filed with the zoning application until such time as a local development order for vertical construction is approved for the area that contains these uses. Development order approvals for plats, infrastructure improvements, landscaping, surface water management, or other non-vertical development do not trigger termination.
- (ii) Clearing or injury of native trees and/or other native vegetation, including understory, in agricultural areas is prohibited. Existing areas of bona fide agricultural use that include existing grass pasture(s) may be mowed, but may not be cleared or expanded. This prohibition of clearing or expansion is not intended to preclude County approved requests for removal of invasive exotic vegetation. Violations of this condition will require restoration in accordance with Section 10-423 of the LDC.
- (iii) Prior to issuance of a local development order for a tract or phase, existing agricultural uses must be discontinued upon approval for development defined in LDC Chapter 34. Development not included within the Chapter 34 definition but that requires a development order under Chapter 10 (including but not limited to plats, lot splits and lot re-combinations) will not trigger the requirement to discontinue agricultural uses. †The applicant, its successors or assigns must provide written proof, subject to approval by the Lee County Attorney’s Office, of the following:
 - 1) Termination of all agricultural use on any portion of the property included in the development order application/approval for development as defined in Chapter 34. Proof must include a sworn affidavit from the person or entity holding title to the subject property that specifically provides:
 - a. The date the agricultural uses ceased;
 - b. The legal description of the property subject to the development order approval;
 - c. An affirmative statement that the applicant, its successors or assigns acknowledges and agrees that all agricultural uses are illegal and prohibited on the property and that the owner covenants with the County that they will not resume agricultural uses of allow any such uses on the property unless and until the property is rezoned to permit such uses; and,
 - d. That the affidavit constitutes a covenant between the applicant, its successors or assigns, and the County that is binding on the applicant, its successors or assigns. The covenant must be properly recorded in the public records of the County at the expense of the applicant, its successors or assigns.
 - 2) Termination of the agricultural tax exemption for any portion of the property included in the development order application/approval. Proof as to the termination must include a copy of the request to terminate the tax exemption submitted to the property appraiser.

14. Model Homes and Real Estate Sales

- a. Maximum model homes/units: 10
- b. Model homes/units or real estate sales must be identified on development order plans.

- c. Real estate sales are limited to lots/units within the MPD only.
- d. Models cannot be of the same floor plan and each must be a different design.
- e. Development order applications including a model home must include the following:
 - i. Number and location of model homes proposed;
 - ii. Cumulative number and locations of model homes permitted by prior development order approvals;
 - iii. Remaining number of model homes permitted within the MPD; and
 - iv. If the permissible maximum number of model homes has been previously reached, the number and location of previously approved model homes to be extinguished to accommodate new model homes.

15. Airport Noise Zone

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

16. Daniels Parkway Access

At the time of development order approval the access points on Daniels Parkway must be consistent with the access points shown in the Daniels Parkway Controlled Access Resolution (Lee County Resolution 22-03-19). If an amendment to Resolution 22-03-19 is subsequently approved by the Board of County Commissioners, the Master Concept Plan may be administratively amended to show the approved driveway locations.

17. "Bear-proof" Trash Receptacles

- a. Residential and Residential Amenity trash receptacles shall be a "bear-proof" design and located within completely enclosed structures except on the day of trash collection;
- b. Commercial trash receptacles shall be a "bear-proof" design; and
- c. Grease traps will be located below ground only.

B. Deviations

- 1. Deviation from Section 10-329(d)(4), which requires the shorelines of excavations for retention and detention areas to be sloped at a ratio not greater than six horizontal to one vertical from the top of bank to a water depth of two feet below the dry season water table, to allow the shorelines of excavations for retention and detention areas within the Airport Wildlife Hazard Protection Zone ("AWHPZ") to be sloped at a ratio of four horizontal to one vertical from the top of bank to a water depth two feet below the dry season water table with enhanced slope protection measures to be proposed by the project engineer at the time of development order to prevent erosion and scouring.

Staff recommends **approval** of this deviation.

- 2. Deviation from Section 10-418(2)b. and c., which require planted littoral shelves for all surface water management systems to mimic the function of natural systems, subject to certain design requirements, to allow those surface water management systems within the Airport Wildlife Hazard Protection Zone to eliminate the planted littoral shelf requirement.

Staff recommends **approval** of this deviation with the following condition:

- a. Prior to development order approval for lakes within the 10,000-foot Hazardous Wildlife Buffer Zone, the landscape plans must depict one native wetland tree per 100 required littorals per the littoral calculation in LDC Section 10-418(2)d.2. The native wetland trees must meet LDC Section 10-420(c)(1) plant specifications and the Lee County Port Authority “Compatible and Incompatible Native Landscape List”.
3. Deviation from Section 10-418(2)d.3, which limits substitution of native wetland trees to 25 percent of the required number of herbaceous plants, to allow substitution of 100 percent of the required number of herbaceous plants to be native wetland trees.

Staff recommends **approval** of this deviation with the following condition:

- a. Prior to development order approval for lakes within the 10,000-foot Hazardous Wildlife Buffer Zone, the landscape plans must depict one native wetland tree per 100 required littorals per the littoral calculation in LDC Section 10-418(2)(d)(2). The native wetland trees must meet LDC Section 10-420(c)(1) plant specifications and the Lee County Port Authority “Compatible and Incompatible Native Landscape List”.
4. Deviation from Section 10-418(3) which limits bulkheads, geo-textile tubes, rip-rap revetments or other similar hardened shoreline structures to 20 percent of an individual lake shoreline and prohibits use of these structures adjacent to single-family residential uses, to allow bulkheads, geo-textile tubes, rip-rap revetments or other similar hardened structures to be used for 100 percent of an individual lake shoreline and to allow these hardening methods to be used adjacent to single-family residential uses.

Staff recommends **approval** of this deviation, subject to the following condition:

- a. Development order plans that depict lakes within the 10,000-foot Hazardous Wildlife Buffer Zone that abut single-family residential uses must provide signage and fencing cautioning residents of steep-sided slopes.
5. Deviation from Section 10-296(e)(3)e.4.iii, which requires non-urban local streets to be designed with open drainage, to allow non-urban local streets to be designed in accordance with the requirements for suburban local streets with closed drainage as shown in 10-296(e)(2)h.5.iii in residential areas only.

Staff recommends **approval** of this deviation.