

THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DCI2022-00002

IN RE: DANIELS PARKWAY SOUTH MIXED USE PLANNED DEVELOPMENT
_____ /

(CONTINUED FROM MAY 4, 2023)

PROCEEDINGS: PUBLIC HEARING

BEFORE: Donna Marie Collins
Chief Hearing Examiner

DATE: July 11, 2023

TIME: 9:00 a.m. to 11:05 a.m.

LOCATION: Lee County Hearing Examiner
Hearing Room, Second Floor
1500 Monroe Street
Fort Myers, FL 33901

REPORTER: Deborah M. Bruns
Florida Professional Reporter

ORIGINAL

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Barry Ernst, Lennar
15 David Brown, RESPEC
Ryan Shute, Morris-Depew
16 Ted Treesh, TR Transportation
Shane Johnson, Passarella & Associates
17 Elizabeth Workman, Lee County Planner

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P R O C E E D I N G

1
2 HEARING EXAMINER COLLINS: Good morning. The date
3 is July 11th, 2023. We're on the second day of hearing
4 for the Daniels South Mixed-Use Planned Development.
5 We ended the hearing after 5 p.m. the last time we met.
6 We concluded with the last of public input at that
7 time, and I was prepared to start the hearing this
8 morning with rebuttal, but it's my understanding that
9 there are some people here today that were unable to
10 speak that day because they had to leave because the
11 hearing went long; is that correct?

12 UNIDENTIFIED SPEAKER: Yes.

13 HEARING EXAMINER COLLINS: Okay. So I am going to
14 permit them to speak, and then we will go to rebuttal.

15 Dan Thompson.

16 And, please, if you spoke at the first hearing,
17 please do not speak again.

18 Good morning. Thank you for coming, sir.

19 MR. THOMPSON: And good morning.

20 HEARING EXAMINER COLLINS: Hang on a second.

21 All testimony and evidence that I accept during
22 these hearings must be taken in under oath, so I'm
23 going to administer the oath to everyone in the room at
24 this time.

25 Please raise your right hand. Do you swear or

1 affirm the testimony and evidence you place in the
2 record today will be the truth?

3 (Participants respond en masse.)

4 HEARING EXAMINER COLLINS: Thank you, everyone.

5 MR. THOMPSON: Good morning.

6 HEARING EXAMINER COLLINS: Mr. Thompson.

7 MR. THOMPSON: Yes. I'm a 36-year resident of
8 Shawnee Road. I owned the property a couple years
9 prior to that.

10 I had -- is it all right for me to question some
11 of the things that came up the first go-around?

12 HEARING EXAMINER COLLINS: Okay. You are
13 permitted to ask questions --

14 MR. THOMPSON: Okay.

15 HEARING EXAMINER COLLINS: -- but they will not be
16 answered in real time. They will make a note of all
17 the questions asked from the people who speak this
18 morning --

19 MR. THOMPSON: Right.

20 HEARING EXAMINER COLLINS: -- and then when they
21 go back to rebuttal, they will address the issues
22 raised by the public.

23 MR. THOMPSON: Okay. Well, on the idea of
24 wildlife, I read some of what was put forward saying
25 that there were fox squirrels and a few other things

1 out in that area. But like I said, I've lived there
2 for 36 years; I have documentary proof of other things
3 that live out there, this notably being a panther
4 (holding up photograph). This is a male Florida
5 panther without a collar, okay?

6 This is a female Florida panther (holding up
7 photograph) with a cub.

8 Now, I go out and -- I've got two and a half acres
9 at one place and two and a half acres at the other.
10 And I'm a wildlife guy so I go out and I look around
11 the pond, and I see these tracks to this day all the
12 time. We have deer, otters, turkeys -- turkeys by
13 the -- I've got pictures of young bucks over at the
14 house. I've got pictures of turkeys that are out there
15 all the time. I've got pictures of bobcats, okay?
16 And, again, fox squirrels, which we talked about
17 earlier. So I think the wildlife assessment came in a
18 little bit short of what's actually out there.

19 My first -- the biggest problem I have right now
20 is I'm afraid that if they come in there and build a
21 road at the back of my property in order to build
22 houses on that piece of property, they're going to have
23 to raise the grade easily two to three feet, easily.
24 When they do that, eventually they're going to want to
25 all -- everybody is going to want to have green grass

1 and all that so they're going to install big wells so
2 they can irrigate this newly raised land on sand where
3 they're trying to grow pretty green grass; and I have a
4 feeling that that is going to impact our wells that we
5 have out there. And I have -- I have heard no kind of
6 guarantee or nobody addressing the point that we may
7 have a problem with our wells. So I'd like to hear
8 what they have to say on that.

9 In addition to that --

10 HEARING EXAMINER COLLINS: Okay. So you want to
11 know if they're going to be digging wells to serve the
12 irrigation purposes --

13 MR. THOMPSON: And --

14 HEARING EXAMINER COLLINS: -- and what's going to
15 be the source of the irrigation of the property and --
16 whether it's going to be the lakes or the groundwater;
17 and if so, what aquifer. Is that what you're saying?

18 MR. THOMPSON: Yes, because if -- after 35 years
19 I've had absolutely no problem with my well. If ten
20 years down the road, once they're pumping and doing
21 everything they got to do, my well goes dry, who bears
22 the cost of that? That's a -- you know, we're not --
23 most of the people that live out on Shawnee Road --
24 which is a dirt road that was -- it was inexpensive
25 land because it was east of Fort Myers. When we bought

1 it, we were eight miles east of the interstate, and
2 everybody thought, wow, that's really out there. But
3 that was back in the '80s, you know, and the town has
4 grown out to us. All the places that were actually
5 wildlife corridors before -- Zipperer's farm which --
6 where The Forum sits now; where Gateway sits was
7 Sanders Ranch, nothing but solid woods down to
8 Corkscrew Road and beyond. All that's gone. We're the
9 last wildlife corridor there is. We're the first
10 wildlife corridor there is going north and south as you
11 head east, and I fear that that is going to be gone --
12 well, I know that's going to be gone if they develop
13 that piece of property.

14 Now, years gone by they weren't going to do that
15 because there's a lot of the cypress on that property
16 and because of the contamination of the Buckingham
17 Airport. When they were there, they did all their --
18 that was a target range, and it's full of thousands and
19 thousands and thousands of these .50 millimeter
20 projectiles that they shot at targets, and they're all
21 over the place. If you grade the road, they just pop
22 up out of the ground. All right as to that.

23 My second point is I'm worried about flooding, and
24 this is one of the reasons (holding up photograph).
25 Five weeks before Ian this is what our road looked

1 like, okay? Now, it didn't used to always be that way
2 until Lee County put a culvert in Rod and Gun Club Road
3 and pushed all that water that was east of Rod and Gun
4 Club Road onto Shawnee. They said, well, we own the
5 property on both sides of the road. Well, yeah, they
6 do, but there's no barrier between Shawnee Road and Rod
7 and Gun Club Road, so whatever water they push out on
8 the west side of Rod and Gun Club Road comes directly
9 to us, and it will flood our road. Sometimes it will
10 be two or three foot deep in places.

11 So now if we've got a new subdivision on our west
12 side, we've got water coming in from the County on the
13 east side, and now we've got a berm on the west side
14 that goes a continuous part of our property. No way
15 for it to drain to the south, no way for it to drain to
16 the west, and we're going to be flooded even worse than
17 we are now. And that's a huge issue for us. I mean,
18 like I said, we've lived there for 35 years and never
19 had problems like we're starting to encounter now.

20 Well, that's enough on that so I'm going to go to
21 the traffic problem. If anybody's been at that
22 intersection lately, they'll know what I'm talking
23 about.

24 They've just put in a new subdivision right across
25 from where they want to do this one, which is slowly

1 adding to the congestion on the Daniels Road extension.
2 Now, right now we drain about half of Lehigh out
3 through 82 and -- coming around that corner and then
4 going on Daniels Road. Right now that's a -- it's a
5 good -- if you go during prime time, you've got an hour
6 trip coming into town. I mean, we're only talking
7 about 12 miles. So there's going to be a huge deal
8 with the traffic when that comes up.

9 And then the last thing that I'd kind of like to
10 talk about is the wildlife. People discount that.
11 They discount the fact that we moved eight miles east
12 of the interstate to be away from people. It's not
13 that we don't like people. It's that we like our own
14 space. We like green space. We like seeing pileated
15 woodpeckers. We like in the spring, this time of year,
16 when the turkeys start gobbling; the whippoorwills are
17 out. We watch otters go from pond to pond up and down
18 the road. We see bobcats occasionally catch a dove or
19 maybe even one of our chickens as they come through
20 there. All kinds of wildlife. When you take that away
21 from us, you've taken a large part of the attraction
22 that we had for that piece of property. You devalue
23 us, actually. It's almost inverse condemnation. We no
24 longer have that peace in the woods that we bought 35
25 years ago. So I'd like to hear some concrete answers

1 of how people are going to preserve that. Is -- is
2 there no way that there could be a buffer in there? Do
3 we not care in Lee County about the wildlife anymore
4 and that being a major corridor? I don't know, but I'd
5 like to know.

6 All right. With that, I'll turn it over to
7 whoever is next. Thank you.

8 HEARING EXAMINER COLLINS: Okay. Thank you, sir.
9 Kayla Guenther?

10 MS. GUENTHER: Good morning.

11 HEARING EXAMINER COLLINS: Good morning, Kayla,
12 thank you for coming.

13 MS. GUENTHER: Thanks for having me.

14 I'm a resident of Shawnee Road. I've lived there
15 since 2020. I live there with my two small children,
16 my 21 chickens, a couple of dogs, and my husband. We
17 moved out there, like Dan said, because we like the
18 country lifestyle.

19 Unfortunately, I wasn't able to be here last
20 time -- I didn't know that the hearing was happening --
21 but one of the things that my neighbors spoke about was
22 that they were downplaying, I guess, the -- this is
23 like a -- they were saying this is a single-family
24 residential area, and so I wanted to point out just
25 kind of how country we really are, and that like

1 Commissioner Pendergrass has stated, high-density
2 residential neighborhoods are not consistent with our
3 way of life. In fact, he recently spoke at a City of
4 Fort Myers Council meeting about how he and the County
5 Commissioners stopped a development in the Buckingham
6 area because the high-density, single-family housing
7 was not consistent with their way of life.

8 So I went through, and I just want to read some
9 things. These are real estate listings for Shawnee
10 Road over the past few years on just how the -- how
11 this area is being sold and what -- what it truly is.
12 So bear with me, it might take a minute.

13 This is for 11640 Shawnee Road: Enjoy living in
14 beautiful countryside while still being in the city
15 close to everything you need. You can bring your
16 horses, chickens, pigs, et cetera, plant fruit trees
17 and vegetables, since this lot is zoned agricultural.
18 There are miles of trails to explore on horseback, dirt
19 bikes, or --

20 THE REPORTER: Excuse me, would you slow down a
21 little bit?

22 HEARING EXAMINER COLLINS: Sometimes when we read,
23 we speak faster than we would in normal conversation --

24 MS. GUENTHER: Sure.

25 HEARING EXAMINER COLLINS: -- and she's trying

1 to --

2 MS. GUENTHER: Transcribe --

3 HEARING EXAMINER COLLINS: -- record -- yeah.

4 MS. GUENTHER: No worries. Where do I need to --

5 THE REPORTER: Dirt bikes...

6 MS. GUENTHER: Okay.

7 -- or four-wheelers and the Wild Turkey Strand
8 Preserve, with beautiful nature trails for cycling and
9 walking, is right on the next road.

10 12600 Shawnee Road: Enjoy the peace and quiet of
11 the country with the convenience of being just minutes
12 from town. Bring your horses and enjoy miles of riding
13 on the surrounding unpaved roads and trails; build your
14 dream home in a country setting.

15 12391 Shawnee Road: Shawnee Road gives you the
16 freedom of country living while still being close to
17 the city. Bring your horses, goats, chickens,
18 livestock, fruit trees, et cetera. This land has so
19 much potential.

20 12421 Shawnee Road: Escape and enjoy the country
21 life in this beautiful Florida-style home situated on
22 2.41 very private acreage. You'll fall in love with
23 this property as you enter through the gate to the
24 extended concrete driveway with a sprawling front yard,
25 with irrigation and screened back patio for your

1 outdoor entertainment.

2 11590 Shawnee Road: Bring your horses, goats,
3 chickens, or livestock, plant fruit trees, and operate
4 an agricultural business. Plenty of room for all your
5 toys, with various trails to ride your four-wheelers
6 and dirt bikes, and have fun through the back woods
7 that are great for horseback riding, as well. Shawnee
8 Road truly offers the freedom of country living while
9 still being close to shopping.

10 12210 Shawnee Road: Country living at its best.
11 This residence is situated on two and a half acres that
12 overlook a pond with wonderful sunsets. A rail fence
13 runs along the front of the property and boasts a
14 decorative and true gate. This location allows for
15 farm animals, if you choose.

16 12700 Shawnee Road: Stunningly beautiful land
17 with almost five acres that has been cleared, graded,
18 and has two good-sized ponds. Horses are welcome, with
19 miles of riding on the surrounding unpaved roads,
20 perfect for trail riding.

21 12630 Shawnee Road: Make this the ultimate family
22 homestead. Use the rest of the land for keeping farm
23 animals, planting fruit trees. Operating an RV on the
24 lots while building a home is allowed. Shawnee offers
25 beautiful country living.

1 11791 Shawnee Road: Your dream home on 4.83 acres
2 awaits right here. Located in the center of Fort
3 Myers, yet hidden in the country area off Daniels
4 Parkway, for convenience to anywhere in Lee County.
5 Come see your new ranch home and bring the dog, cat,
6 cows, goats, horses, chickens, and all other farm
7 animals you have on this 4.83-acre fenced home.

8 11751 Shawnee Road: This is a very
9 well-maintained three-bedroom/two-bath main home on
10 second and third floor of a three-story home in the
11 middle of 2.4 acres zoned agricultural. This home has
12 a fenced yard with a pond and plenty of room for a
13 large family. All types of farm animals are allowed,
14 and surrounded by many ranches with horses and cows,
15 plenty of room to build a special barn, if you need.

16 So I think you guys get the point. This is very
17 much a country setting, not really suitable for any
18 kind of gated community.

19 A couple of the other points I want to make, the
20 Lee County Plan, as far as we can tell, according to
21 5.1.2 does not permit the building in an airport noise
22 zone. If you've ever bothered to go out to the area
23 and stand there for five minutes, you would hear an
24 airplane every couple of minutes come over, and you'll
25 have to stop talking and wait for that airplane to

1 finish passing before you can actually have a
2 conversation with somebody. This is particularly true
3 if you have the -- the Coast Guard plane come over, or
4 some of the cargo carriers come over. Occasionally
5 they'll do some touchdown training out of the Air Force
6 base up in the Tampa area. When those guys come over,
7 get your earplugs, because my watch actually notifies
8 me that I have reached a dangerous decibel level.

9 Some of the other things I want to talk about are
10 the wildlife. I know Dan touched on some of it, but I
11 have some additional species that I want to mention.
12 And I brought photographs so you can see we're not
13 making it up.

14 This here is a Cooper's hawk (holding up
15 photograph).

16 This is another picture of the Cooper's hawk
17 (holding up photograph) on a different day when he came
18 to visit and check out my chickens.

19 This is a -- it's kind of hard to tell in this
20 picture, but this is a family of deer. This is from
21 one of my dear neighbors who lives across the road, and
22 this would be directly -- about ten feet from your
23 development.

24 This is my pond. It turns out that when we have a
25 dry season, my pond doesn't dry up like a lot of my

1 neighbors. And so we were blessed during the dry
2 season with just an endless number of wading birds.
3 This particular photo (holding up photograph) shows the
4 wood storks.

5 Here is a little blue heron (holding up
6 photograph) that we actually rescued. It was
7 noticeably injured so my husband and I were able to
8 take it to the Naples Conservancy and have it looked
9 at.

10 These are (holding up photograph) -- I'm going to
11 get the name wrong, I think -- black-bellied duck of
12 some kind. They're a rare -- a rare sight in Florida
13 but not uncommon to our area.

14 We have the pileated woodpecker (holding up
15 photograph).

16 Frequently the white ibis (holding up photograph),
17 which is a protected species, like to enjoy my chicken
18 flock; so we'll get to see them coming through our yard
19 and hanging out.

20 The protected gopher tortoise (holding up
21 photograph), we have a couple of those.

22 Roseate spoonbills (holding up photograph), they
23 like to come wade.

24 So this is actually a pair (holding up
25 photograph) -- a breeding pair that comes every winter

1 of American kestrels, which is a protected bird
2 species, and they -- they come to the same cypress head
3 every year. I presume it's probably the same pair
4 given that they go to the exact same tree. This is
5 also on the side of the road that's in jeopardy.

6 Here's a better portrait of them (holding up
7 photograph).

8 This is our (holding up photograph) -- one of our
9 resident red-shouldered hawks. His territory, from
10 what we can tell, actually extends from about our --
11 our yard -- and I have seen him hanging out at Publix
12 down at the skywalk. So that would tell me that he
13 depends largely on -- on that pasture, and he hunts
14 there.

15 Some additional photos (holding up photographs) of
16 the -- the deer that come to visit.

17 (Holding up photograph) here's one of our resident
18 bald eagles.

19 And then -- oh, yeah, here's our -- here's our
20 hawk again (holding up photograph). He likes to forage
21 after we've mowed. He gets really excited by all the
22 bugs and lizards and things.

23 Some of the other species, we have alligator
24 snapping turtle, osprey, lots of snakes, including the
25 protected indigo snake, bats, flycatchers,

1 kingfishers -- the kingfishers really get mad when my
2 dogs swim in the pond because they like to keep a nest
3 nearby. So they always chase them off, that's how I
4 know they're there.

5 We have a large amount of migratory finches,
6 scrub-jays, brown thrashers; and as my friend, Dan,
7 mentioned, the river otters.

8 So, yeah, I guess I would -- I would echo the
9 question of how you intend to protect our wildlife, to
10 protect our way of life.

11 You know, we live on a -- on a privately-owned
12 dirt road for a reason. We don't want the additional
13 traffic or noise.

14 I'd like to know how it doesn't violate the 5.1.2
15 airport zone policy, and also how do you plan to market
16 that to the -- the poor souls that you're going to sell
17 these homes to when they can't go outside and enjoy --
18 enjoy their front porch because it's so loud from the
19 airport?

20 That's all, thank you.

21 HEARING EXAMINER COLLINS: Thank you.

22 Kayla Guenther?

23 MR. DANLEY: That was her.

24 HEARING EXAMINER COLLINS: That was -- I'm sorry,
25 Kayla, I called your name twice.

1 All right. Mariela Lovo Ol?

2 MS. GUENTHER: She's here. She's coming up.

3 HEARING EXAMINER COLLINS: Is there a Chantra?

4 MS. LOVO OL: That's my husband.

5 HEARING EXAMINER COLLINS: Okay.

6 MS. LOVO OL: She wasn't -- he isn't here.

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

9 MS. LOVO OL: Thank you for having me.

10 (Witness touching microphone.)

11 HEARING EXAMINER COLLINS: You don't -- it will
12 reach you.

13 MS. LOVO OL: Okay.

14 So I moved from -- I'm Mariela. I moved from
15 Texas. I lived in Texas for 30 years. I went from --
16 I chose Florida, and I went from city to city; and when
17 I found a home at Shawnee Road, I fell in love with it.
18 They sold me the listing, and I like the country life.
19 I moved here -- I love the ocean, but also I love the
20 animals that I get to see. I've seen panthers; I've
21 seen the otters; I've seen -- the bald eagle also has
22 the nest right in front of the pond, which is where
23 they intend to have seven homes on 12210 Shawnee. So
24 right behind there's a lot of wildlife that I enjoy,
25 and I guess I would like it -- for it to continue that

1 way.

2 And another thing that Dan mentioned was the
3 flooding. The flooding, it's going to get worse when
4 they start building the homes there.

5 What else can I say? The traffic. It's already
6 bad for me to take my son to school. And...

7 MS. GUENTHER: What do you do with your land?

8 MS. LOVO OL: What I do with my land?

9 MS. GUENTHER: What are you doing there?

10 MS. LOVO OL: I plant fruiting trees. I have a
11 lot of the fruiting trees, and I have my chickens, and
12 I intend to -- to have my business from there, farm
13 business.

14 And I guess that's it.

15 HEARING EXAMINER COLLINS: Okay. Thank you very
16 much.

17 MS. LOVO OL: Thank you.

18 HEARING EXAMINER COLLINS: Okay. That's all the
19 cards that I have. So I'm going to close public input
20 now, and I'm going to go back to the Applicant and
21 Staff to address questions raised during the public
22 input portion of the hearing, and from there we will go
23 to their concluding remarks.

24 And I have a few questions, too, which -- just
25 clarifications really, like details on acreage and

1 things like that.

2 MR. HARTSELL: Thank you.

3 MS. EKBLAD: Do you want me to hand out the
4 PowerPoint, Steve?

5 MR. HARTSELL: Yeah.

6 For the record, I'm Steve Hartsell with Pavese Law
7 Firm here on behalf of the Applicant. The team members
8 are back with me again today.

9 When we last left the hearing after the public
10 input had been closed -- and I guess we've opened it up
11 again for a couple of folks -- a number of questions
12 were raised that we were prepared to address. You were
13 also provided with a revised set of conditions that
14 showed the changes from the conditions that we had on
15 May 4th where the Applicant and the Staff had agreed,
16 and on July --

17 MS. EKBLAD: 7th.

18 MR. HARTSELL: -- 7th --

19 HEARING EXAMINER COLLINS: When did that come?

20 MS. EKBLAD: The 7th.

21 MR. HARTSELL: On July 7th that was --

22 HEARING EXAMINER COLLINS: Yes.

23 MR. HARTSELL: -- submitted --

24 HEARING EXAMINER COLLINS: Oh, yeah --

25 MR. HARTSELL: Okay.

1 HEARING EXAMINER COLLINS: -- I've seen this.

2 MR. HARTSELL: Yes. That's the updated set of
3 conditions that we will be referring to today.

4 HEARING EXAMINER COLLINS: Okay.

5 MR. HARTSELL: What that reflects in terms of the
6 changes to the conditions are the changes from what had
7 been accepted at the end of the last hearing, and
8 you'll see that there were four conditions that were
9 still kind of open for discussion --

10 HEARING EXAMINER COLLINS: Right.

11 MR. HARTSELL: -- and --

12 HEARING EXAMINER COLLINS: There was the May 2nd
13 version, and pretty much there was agreement on most,
14 but --

15 MR. HARTSELL: Yes.

16 HEARING EXAMINER COLLINS: -- there were a few
17 items where you were still working together.

18 MR. HARTSELL: Yes, we were working on the
19 language, and we are pleased to say that Staff and the
20 Applicant have reached agreement on the language. And
21 what you're looking at there are -- is the agreed
22 language for those conditions.

23 HEARING EXAMINER COLLINS: Okay. So the
24 underscored text and struck-through text --

25 MR. HARTSELL: Just shows you the change from the

1 May 4th version, to the extent that you wanted to see
2 what the changes were from the May 4th version.

3 HEARING EXAMINER COLLINS: Right, but this is all
4 in agreement?

5 MR. HARTSELL: Yes, ma'am.

6 HEARING EXAMINER COLLINS: Okay, very good.

7 MR. HARTSELL: And to the extent that it helps,
8 we've got a PowerPoint today, and --

9 HEARING EXAMINER COLLINS: Yes.

10 MR. HARTSELL: -- I'll provide you and the Staff
11 with copies of that.

12 (Applicant Exhibits 4 and 5 submitted.)

13 HEARING EXAMINER COLLINS: So I'm going to keep
14 this handy since we're working off of this version.

15 MR. HARTSELL: Yes, ma'am.

16 HEARING EXAMINER COLLINS: Okay.

17 MR. HARTSELL: Can that be an exhibit?

18 HEARING EXAMINER COLLINS: It's marked as
19 Applicant Exhibit 4, the July 7th --

20 MS. EKBLAD: Okay.

21 MR. HARTSELL: Good.

22 HEARING EXAMINER COLLINS: My secretary may have
23 marked it when it came in just to keep it together with
24 the rest of the record.

25 UNIDENTIFIED SPEAKER: Excuse me. Was this

1 publicly available before today?

2 MR. HARTSELL: Yes, those conditions were. They
3 were submitted.

4 UNIDENTIFIED SPEAKER: But were they --

5 HEARING EXAMINER COLLINS: So they -- they should
6 have been scanned and uploaded into the document file
7 for this case that's available online.

8 Is that correct, Dirk?

9 MR. DANLEY: That's my understanding, yeah.

10 UNIDENTIFIED SPEAKER: So when was that done, the
11 scanning?

12 HEARING EXAMINER COLLINS: Pardon me?

13 UNIDENTIFIED SPEAKER: When was the scanning done?
14 Like when was it uploaded?

15 HEARING EXAMINER COLLINS: Okay. I don't know. I
16 just -- it came in -- when was the date, the 7th?

17 MR. HARTSELL: July 7th.

18 HEARING EXAMINER COLLINS: It would have been that
19 day or the following day, very quickly after that.
20 It's all public record. You can request a copy of it
21 and have it for your -- yourself, if you're not able to
22 readily access it online. And same with this
23 PowerPoint.

24 So I'm just going to mark this as Applicant
25 Exhibit 5.

1 (Applicant Exhibit 5 marked.)

2 MR. HARTSELL: Thank you.

3 Our presentation today is going to begin with a
4 transportation question --

5 MS. EKBLAD: There should have been three, two for
6 you and one for the transcriptionist.

7 MR. HARTSELL: Yeah, or --

8 MS. EKBLAD: Yeah, there should have been three
9 full copies.

10 MR. HARTSELL: Yes, I just distributed those.

11 MS. EKBLAD: Did Dirk get two copies?

12 MR. HARTSELL: No.

13 MR. DANLEY: I have a full and a --

14 MS. EKBLAD: Oh, the extra full is for the Hearing
15 Examiner.

16 MR. DANLEY: This one?

17 HEARING EXAMINER COLLINS: Okay. So this is the
18 one I can mark on?

19 MS. EKBLAD: Yes.

20 HEARING EXAMINER COLLINS: Okay.

21 MS. EKBLAD: Sorry, I didn't mean to confuse you.

22 HEARING EXAMINER COLLINS: They don't like it when
23 I mark on the exhibits going to the Board; so I
24 appreciate this, thank you.

25 MR. HARTSELL: We're going to begin the

1 presentation today with a transportation question,
2 particularly as it relates to the signalization,
3 Condition Number 12 --

4 HEARING EXAMINER COLLINS: Okay. And can we bring
5 up a map for a second just so that you can indicate on
6 the master concept plan where this potential signal
7 would go? Can you do that?

8 MS. EKBLAD: You want -- slide 11 would be best.

9 MR. HARTSELL: (Complies.)

10 MS. EKBLAD: Sideways but -- one more.

11 MR. HARTSELL: (Complies.)

12 MS. EKBLAD: Yeah.

13 HEARING EXAMINER COLLINS: Okay. And can you
14 point to where 82 is, and where Daniels is, and where
15 this signal would potentially be?

16 MR. HARTSELL: Yes. As a matter of fact, I'm
17 going to do you one better. I'm going to bring Ted
18 Treesh up here to testify.

19 HEARING EXAMINER COLLINS: I just want to be able
20 to put this into context.

21 MR. HARTSELL: Certainly. Ted's going to kick
22 this off. After Ted, Tina will come up and talk about
23 the buffering and open space and compatibility; and
24 then David Brown is going to wrap it up dealing with
25 the hydrology, irrigation, and the ultimate benefits of

1 the groundwater recharge.

2 HEARING EXAMINER COLLINS: Okay. And is anyone
3 going to be speaking about the species, over --
4 overview of the species?

5 MR. HARTSELL: Shane is still here and will be
6 happy to --

7 HEARING EXAMINER COLLINS: Okay.

8 MR. HARTSELL: -- answer any questions about that.

9 HEARING EXAMINER COLLINS: Okay, thank you.
10 Ted, good morning. Were you here when I
11 administered the oath?

12 MR. TREESH: I was.

13 HEARING EXAMINER COLLINS: Okay.

14 MR. TREESH: And I was sworn in.

15 HEARING EXAMINER COLLINS: Speak at will.

16 MR. TREESH: Good morning, Ted Treesh with TR
17 Transportation.

18 This is the master concept plan -- which way is
19 north on this?

20 MS. EKBLAD: To your left.

21 MR. TREESH: Okay. So north is --

22 MS. EKBLAD: Uh-huh.

23 MR. TREESH: -- north is this way.

24 This is State Route 82. This is Daniels Parkway.
25 So the access drive -- there's no access to the

1 property on State Route 82. The access drives are --
2 there's several on State Route 82, but the signalized
3 intersections will be at the full median openings along
4 State Route 82, should they meet the future warrants
5 per the --

6 HEARING EXAMINER COLLINS: And where are those?

7 MR. TREESH: There is one at this location that is
8 shared with the commercial --

9 HEARING EXAMINER COLLINS: Commercial?

10 MR. TREESH: -- the commercial portion of the
11 project at the corner. So that's about a quarter mile
12 to the east -- I'm sorry, west of State Route 82.

13 And then the other one is at this location, which
14 is the shared access with Timber Creek residential, and
15 it's a -- shared with the residential access with
16 Timber Creek, and it's exclusively the residential
17 access to both Timber Creek and the Daniels South
18 project.

19 HEARING EXAMINER COLLINS: Okay. So there's three
20 accesses onto Daniels Parkway, or only the two?

21 MR. TREESH: There's another right-in/right-out
22 that is, I believe, up closer to the commercial in this
23 area that's on the controlled access resolution, but
24 it's a limited -- it's only limited to
25 right-in/right-out movements.

1 HEARING EXAMINER COLLINS: And is the project
2 intending to have an access at that location?

3 MR. TREESH: It will be built at a future date,
4 yes.

5 HEARING EXAMINER COLLINS: Okay.

6 MR. TREESH: I mean, as the -- as the development
7 progresses.

8 HEARING EXAMINER COLLINS: So this Condition 12,
9 potential traffic signalization, would apply to both
10 full access points?

11 MR. TREESH: It applies to both full median
12 openings. We've met with Staff several times, went
13 back and forth with the Deputy Director of DOT, Rob
14 Price, and Staff working through the language. The
15 gist of the language is Lee County does not -- is not
16 responsible for any of the cost so -- of the
17 construction or design of the signalization, so the
18 language is -- is meant to put the burden on the
19 developer and the property owner. So at the time of
20 the development order, the first development order, a
21 warrant study has to be done, and then there's a
22 limited development order that has to be done for the
23 signal design, and then a warrant study, so Staff is
24 comfortable with this language moving forward --

25 HEARING EXAMINER COLLINS: So --

1 MR. TREESH: -- as written.

2 HEARING EXAMINER COLLINS: -- the warrant study is
3 triggered by what?

4 MR. TREESH: The warrant study is done to show at
5 build-out when a signal is going to be warranted so the
6 County is comfortable that the signal will be installed
7 at a location either at the commercial driveway or at
8 the -- at the western driveway, that it -- that it will
9 be necessary.

10 HEARING EXAMINER COLLINS: One or both?

11 MR. TREESH: Right.

12 HEARING EXAMINER COLLINS: But what's the trigger
13 for the requirement that it actually be constructed?

14 MR. TREESH: The trigger is the trip generation.
15 So we look at -- we look at the trip generation of the
16 project. So both projects -- Lennar will build this
17 project in phases. So as we start with the development
18 orders, we'll be looking at -- this development will be
19 built -- so we'll look -- the warrant study has to be
20 done based on the build-out of the project. So the
21 warrant study will look at the trip generation. We've
22 done these before where, based on the ITE trip
23 generation manual -- ITE has studied trip generation of
24 single-family communities. We look at the hourly
25 distribution. That's been studied. We've done these

1 studies in Lee County, as well, where we've surveyed
2 communities --

3 HEARING EXAMINER COLLINS: But what's the trigger?
4 Is it a development order for a residential pod, and
5 then you don't get the development order unless you
6 enter into the signalization agreement and fund the
7 improvement? How is that going to work?

8 MS. EKBLAD: You've got to go backwards, Ted.

9 MR. HARTSELL: If you -- if you go back to the
10 conditions.

11 MR. TREESH: You go back to the condition --

12 MR. HARTSELL: Walk through the condition --

13 HEARING EXAMINER COLLINS: Page four.

14 MR. HARTSELL: Yeah.

15 MR. TREESH: Yeah. So at the time of the LDO, we
16 have to enter into a signalization agreement. So
17 there's another step. There's an -- there's an
18 official agreement that will be entered into at the
19 time of the LDO -- at the time of the development order
20 that will specifically outline those criteria. So
21 there's another agreement that will be entered into
22 once the study is completed between the County and the
23 Applicant --

24 HEARING EXAMINER COLLINS: And the issuance of the
25 DO is going to be conditioned on the execution of the

1 agreement?

2 MR. TREESH: Of that agreement, correct, and that
3 agreement will outline all the details and when that
4 signal will be installed based on the warrant study
5 that will be conducted as part of that initial
6 development order application.

7 HEARING EXAMINER COLLINS: And what's the
8 separation between those two driveways? Is it feasible
9 that both those full median openings would be
10 signalized?

11 MR. TREESH: Yes. The Daniels controlled
12 access -- Daniels controlled access resolution was set
13 up -- those -- those driveways are actually quite --
14 quite a distance apart. This illustration here is
15 Daniels.

16 HEARING EXAMINER COLLINS: It's hard to imagine
17 the scale --

18 MR. TREESH: Yeah.

19 HEARING EXAMINER COLLINS: -- when you're looking
20 at it.

21 MR. TREESH: It's quite a distance. This distance
22 is actually closer. This is -- this is a fairly close
23 distance from State Route 82 --

24 HEARING EXAMINER COLLINS: And does it meet --

25 MR. TREESH: These two --

1 HEARING EXAMINER COLLINS: -- the standard?

2 MR. TREESH: -- intersections are quite a
3 distance -- yes. Again, those median openings were
4 left as full median openings by Lee County DOT -- in
5 the controlled access resolution by Lee County DOT, so
6 they were left that way on purpose as potentially
7 future full signalized intersections.

8 MR. HARTSELL: And just to clarify while you're
9 looking at that, Ted, I believe that the
10 right-in/right-out that you were referring to has
11 been -- has been eliminated. There is not a
12 right-in/right-out --

13 MR. TREESH: This one?

14 MS. EKBLAD: Right.

15 MR. TREESH: That's been eliminated?

16 MS. EKBLAD: Yes.

17 MR. TREESH: Oh, okay.

18 HEARING EXAMINER COLLINS: All right. So two
19 access points to serve the development, both at full
20 median openings, potentially signalized in the future,
21 depending on traffic generation?

22 MR. HARTSELL: Yes.

23 MS. EKBLAD: Correct.

24 HEARING EXAMINER COLLINS: Okay.

25 MR. HARTSELL: And that will occur at the time of

1 the DO.

2 MR. TREESH: That's correct.

3 MR. HARTSELL: The studies will have to be done,
4 the design of the signal will be done, and the
5 installation will be required prior to the issuance of
6 the certificate of occupancy for any --

7 HEARING EXAMINER COLLINS: Well, I can certainly
8 understand the motivation on the part of the developer
9 to have it signaled because doing a left out of that
10 project is going to be --

11 MR. TREESH: Yes. And that's another key that --
12 the Applicant must incorporate the design. That's
13 another key element that DOT wanted, the developer
14 actually has to do the design of the signal up front as
15 part of that initial development order. So DOT will
16 have the signal design actually up front as part of the
17 initial development order -- before there's actually
18 one home occupied on this property, they'll have a
19 signal design in their office ready to build.

20 HEARING EXAMINER COLLINS: And I imagine the
21 design is going to have to provide for stacking on your
22 property?

23 MR. TREESH: Yes, it will all be designed, you
24 know, for queuing -- all the turn lanes will be
25 designed for the build-out conditions to accommodate

1 all the queuing at build-out for both Timber Creek --
2 and all the turn lanes will be designed for the
3 complete build-out of the projects.

4 HEARING EXAMINER COLLINS: All right. Well, it's
5 been a while since I've looked at your TIS to look at
6 the left -- people desiring to turn left, but I imagine
7 with only two access points, that's going to be --

8 MR. TREESH: Yes.

9 HEARING EXAMINER COLLINS: -- significant.

10 MR. TREESH: Yes, yeah, we'll have to -- we'll do
11 the analysis; and if we need to have two left turn
12 lanes to turn left out, then that's how we'll design
13 the intersection. But, again, that will all be part of
14 the design --

15 HEARING EXAMINER COLLINS: I imagine there will be
16 less pressure on that once the Alico extension is
17 constructed.

18 MR. TREESH: Correct.

19 HEARING EXAMINER COLLINS: Then some people
20 wanting to go further south would maybe opt to go to 82
21 and then --

22 MR. TREESH: Yeah, that will relieve that -- that
23 movement of those folks from Lehigh that are right now
24 coming up to Daniels.

25 HEARING EXAMINER COLLINS: But that's like ten

1 years from now; right?

2 MR. TREESH: Actually, that project has started --
3 is going to start construction by the end of this year.

4 HEARING EXAMINER COLLINS: Okay.

5 MR. TREESH: The first phase.

6 HEARING EXAMINER COLLINS: That's a long road
7 though.

8 MR. TREESH: So hopefully --

9 HEARING EXAMINER COLLINS: It's a long road.

10 MR. TREESH: It is. Over the next five years --
11 DOT is hoping to have that road connected in the next
12 five years. That's their plan.

13 HEARING EXAMINER COLLINS: And the build-out for
14 this project was 2031?

15 MR. TREESH: This is --

16 HEARING EXAMINER COLLINS: The TIS said 2031, I
17 think.

18 MR. HARTSELL: Yes.

19 MR. TREESH: 2031 is what I looked at; but, again,
20 that's just how market conditions dictate. It could be
21 sooner, could be later, depending on how sales go.

22 HEARING EXAMINER COLLINS: Okay. So this
23 condition basically represents a rewrite because --

24 MR. TREESH: Yes.

25 HEARING EXAMINER COLLINS: -- it looks like it's

1 mostly new --

2 MR. TREESH: It is.

3 HEARING EXAMINER COLLINS: -- with some struck
4 through so --

5 MR. TREESH: And it gets us to the next step,
6 which again is entering into a formal agreement at the
7 time of the development order, but this is a condition
8 that outlines the requirements at the time of zoning to
9 get us to requirements to the DO.

10 HEARING EXAMINER COLLINS: Well, I appreciate you
11 working together with DOT to resolve that.

12 MR. TREESH: Yes.

13 HEARING EXAMINER COLLINS: Did you want to
14 continue --

15 MR. HARTSELL: No.

16 HEARING EXAMINER COLLINS: -- with your
17 PowerPoint?

18 MR. HARTSELL: Yes.

19 MR. TREESH: Thank you.

20 MR. HARTSELL: Tina Ekblad will go next.

21 MS. EKBLAD: Good morning, Madam Hearing Examiner,
22 Tina Ekblad, Director of Planning for Stearns Weaver
23 Miller.

24 I have a few slides to respond to some of the
25 public comment that we heard on May 4th, and I will

1 also try to address some of the comments that we heard
2 this morning.

3 So first up is just a summary of where we were.
4 This is a concurrent application to a Comprehensive
5 Plan amendment that includes a future land use map
6 amendment for the western portion of the property.
7 What you see is sub-outlying suburban here. It
8 includes a map amendment to extend Lee County utilities
9 across the entirety of the property below this central
10 urban corridor. That will ensure that we have central
11 water and sewer to all of the development within the
12 project boundary. And then we also have a text
13 amendment that adjusts the population projection for
14 this area. And, finally, the ability to calculate
15 density across the entire property, provided that a
16 planned development is filed and that planned
17 development demonstrates 60 percent open space.

18 There was a lot of comment and questions about the
19 60 percent open space so I want to walk through that
20 now.

21 HEARING EXAMINER COLLINS: Yeah, and I just want
22 to make sure -- I think it's more helpful to us if we
23 refer to an exact acreage amount that's going to be --

24 MS. EKBLAD: Yes, yes.

25 HEARING EXAMINER COLLINS: -- rather than the 50

1 and the 60.

2 MS. EKBLAD: Yeah.

3 So when we look at traditional planned
4 developments in a mixed-use context, the Land
5 Development -- excuse me -- the Land Development Code
6 requires 30 percent open space for commercial, 40
7 percent open space for residential. Our project,
8 across its entirety, is required to have 60 percent.
9 That would mean 740 acres, about. What we have done is
10 provide 679.1 acres as indigenous restoration and
11 preservation. So almost all of our open space is
12 coming from the preservation of wetlands and uplands or
13 the restoration of wetlands and uplands on the
14 property. The remaining nine percent is your standard
15 open areas: water management, landscape buffers,
16 vehicular parking areas, things that the Land
17 Development Code allows to be counted towards open
18 space. We have also conditioned ourselves such that a
19 minimum of ten percent of open space must be provided
20 in this commercial pod. That's a standard condition in
21 planned developments that we were concerned would get
22 lost in the shuffle in this project. So we've required
23 that, as well.

24 So we are meeting the required 60 percent on-site,
25 which is exactly 739.8 acres. That is included in the

1 master concept plan. It is also conditioned in the
2 conditions in front of you. So at the time of
3 development order, the reviewers will know they're
4 looking for that increased acreage of 739, not
5 something less.

6 Did you have specific questions about the acreage?

7 HEARING EXAMINER COLLINS: No. I just wanted --

8 MS. EKBLAD: Okay.

9 HEARING EXAMINER COLLINS: -- to make sure that --
10 when I prepare my recommendation to the Board, that I'm
11 clearly explaining how much of the open space is going
12 to consist of indigenous.

13 MS. EKBLAD: 679 acres.

14 HEARING EXAMINER COLLINS: Right, thank you for
15 clarifying that for me.

16 MS. EKBLAD: So the other open space-related
17 questions, and related to some of the comments we heard
18 this morning, as well, was about the residential
19 buffering. So to be clear, we have commercial and
20 residential adjacent to property that is zoned
21 agricultural but utilized for single-family along
22 Shawnee Road. So the first item to keep in mind is
23 that we have conditioned ourselves to provide an
24 enhanced buffer in the commercial pod along our eastern
25 boundary. So that is above and beyond the Land

1 Development Code there because we have commercial next
2 to agricultural. That property is mostly owned by Lee
3 County, it's not used for single-family, but we
4 included that condition.

5 The remainder of the boundary would be considered
6 residential against agricultural or residential against
7 a residential use, which does not require a buffer;
8 however, you'll see on page 2 of the master concept
9 plan, we've identified this area as other open space.
10 We are proposing to retain the native vegetation in
11 that area where we can. We want to be very clear that
12 we know that we have to make improvements on the
13 property related to drainage. There is approximately
14 30 feet between the property boundary and where the
15 back of our proposed lots will start to address that
16 drainage and the requirements of the conceptual ERP.
17 If we can retain native vegetation, we will. We expect
18 that we'll be able to do that, but that's a
19 construction standard that's going to come into play at
20 the time of development order.

21 There were questions about the berm and the ditch
22 that are located along that boundary. It does meander.
23 Some of it is on the lots adjacent to Shawnee; some of
24 it is on our property. Where it is on our property,
25 and we can control that berm and ditch, we will be

1 moving it up against the boundary as close as possible.
2 That is incorporated into the conceptual ERP and part
3 of the stormwater management system.

4 In areas where we have our indigenous, obviously
5 the native vegetation will remain if preservation is
6 required, or we will be doing restoration plantings
7 consistent with the Indigenous Habitat Management Plan,
8 and that would exceed any of the buffering requirements
9 in the Land Development Code.

10 With regard to the questions about single-family
11 on Shawnee Road peering into our development, we had
12 three speakers at the May 4th hearing. Obviously you
13 heard from some more today. We've identified the
14 location of their lots in relationship to our design.
15 As I mentioned, along our eastern property boundary we
16 have a minimum of 30 feet. You can see in places there
17 is obviously an increased setback, again, where we
18 expect that native vegetation to be retained; and then
19 when you start to look at the conditions on Shawnee
20 Boulevard (sic), a lot of the single-family homes are
21 set back at least 145 to 290 feet. What you're seeing
22 in this graphic is that separation. This home is
23 approximately 145 feet here, and we have the 290 foot
24 being demonstrated here.

25 It's important to note that these structures in

1 the rear here are sheds or utility buildings. They are
2 not the single-family home, which is closer to Shawnee
3 Boulevard here. So that setback increases further when
4 you start looking at the actual principal structure and
5 the residential structure on the lot beyond the 145
6 feet that we've listed.

7 So if you take into account our 30 feet of
8 separation, there's a minimum of 175 feet between the
9 back of our lots and any single-family home structure
10 adjacent to Shawnee Road on that western side of the
11 boundary.

12 HEARING EXAMINER COLLINS: On the three lots you
13 examined.

14 MS. EKBLAD: Yes. And we also took into account
15 some of the other development that is occurring in this
16 area here, and we did not find anything less than that
17 145 feet.

18 HEARING EXAMINER COLLINS: Is there any plan to
19 plant on top of that berm or install any additional
20 plantings within that 30-foot setback area? And I
21 understand that there's no Code requirement for
22 residential against residential. I'm just asking for
23 clarification, will there be anything?

24 MS. EKBLAD: If you'll permit me to finish with
25 this, run back there, get some answers and then come

1 back up, I can do that.

2 HEARING EXAMINER COLLINS: Okay, thank you.

3 MS. EKBLAD: Because I'm getting blank stares.

4 The other item that you've heard me talk about is
5 the conceptual ERP. Since the time of the May 4th
6 hearing, we did receive -- give me one second -- we did
7 receive that approval from the South Florida Water
8 Management District on May 23rd. That conceptual ERP
9 does match the master concept plan, and what that means
10 is we will now go into that detailed construction
11 review for the residential portion of the development.
12 It's my understanding that Lennar is expecting to
13 submit that development order shortly after this zoning
14 is heard by the Board, so we'll start that process over
15 again. And I -- go ahead.

16 HEARING EXAMINER COLLINS: I don't know how much
17 flexibility you have with this design, and you have
18 preserved an extraordinary amount of native habitat,
19 but I'm just thinking toward the Board's reception of
20 this. Perhaps you might want to remain open to
21 planting trees or something along that area where your
22 residential pods back up against the homes. I'm not
23 saying you need to incorporate it for my purposes; but,
24 you know, observing the Board's reaction to this type
25 of development next to established more residential

1 types of development, you might want to be open to that
2 idea.

3 MS. EKBLAD: Understood. And I would just say let
4 me -- let me finish with this portion of the
5 presentation, discuss with Mr. Johnson, and I might be
6 able to bring some additional detail to your attention.
7 And it will relate to this detailed ERP permitting, as
8 well, because that's where the environmental and the
9 drainage kind of come together.

10 HEARING EXAMINER COLLINS: Is Shane the one that's
11 going to talk about the drainage and how it's not going
12 to flow east?

13 MS. EKBLAD: No, that would be Mr. Shute.

14 HEARING EXAMINER COLLINS: Mr. Shute, okay.

15 MS. EKBLAD: So with regard to considering the
16 ERP, the separation distances and the 30 feet that we
17 have between our development footprint and our
18 boundary, there was a question this morning about
19 residential uses and -- and Goal 5 in the Comprehensive
20 Plan.

21 And so the first thing I want to point out is that
22 while it is not written on this slide, I did present
23 regarding Policy 5.1.2 on May 4th. That policy does
24 say that development is prohibited where hazards exist,
25 but it goes on to state unless that development can be

1 clustered or shifted in a way where the hazard is
2 mitigated. And so we are -- our development is
3 consistent with that policy because the location where
4 residential is prohibited adjacent to the airport is
5 this noise zone boundary here, which is known as Zone
6 C. We do not have any residential boundary within that
7 noise zone. There is a secondary noise zone, Noise
8 Zone B, that crosses the property in this location
9 here. Residential development is allowed within Noise
10 Zone B provided that you have consistency with Land
11 Development Code Section 34-1104, and that other
12 restrictions are identified for future purchases.

13 With regard to that, the conditions in front of
14 you, specifically Condition 15, demonstrates what it is
15 that the developer or seller of these properties has to
16 do to notify the future residents. It gets recorded on
17 the plat, there's additional disclosures, et cetera.

18 Furthermore, when it comes to wildlife and
19 lighting and the coordination of this particular
20 project and its construction, we have Condition 3 and
21 19, where the development order construction and other
22 points in time must be coordinated with the Department
23 of Community Development and the Lee County Port
24 Authority to address the concerns that were raised.
25 That is a collaborative process. We've been working

1 with both departments/organizations of Lee County since
2 the inception of this project. And as a result of
3 that, we have been able to gain alignment on all of
4 these conditions, and we are no longer, as you heard in
5 the last hearing, kind of arguing over who's going to
6 do what at what point in time. So we are consistent
7 with Policy 5.1.2 for those reasons.

8 I would also add that we're consistent with Policy
9 5.1.5 because our design does protect the existing
10 residential areas from our future development. We've
11 talked about the buffering, the separation, some of the
12 additional coordination that needs to take place.

13 While we are on the topic, I just want to give a
14 brief reminder about this conceptual plan. This was
15 prepared in April of 2022 for our neighborhood
16 meetings. I did not -- I did testify on May 4th.
17 There were some changes that were made. I did not want
18 to change this graphic in between the hearings. So to
19 be very clear, this access point to Shawnee Road is not
20 part of the master concept plan, and it is not being
21 approved as part of this project.

22 The right-in/right-out that Mr. Treesh talked
23 about in this commercial pod has also been pulled from
24 the master concept plan. We had some extensive
25 conversations with DOT about that and the Controlled

1 Access Management Plan. Both sides agreed that should
2 an access point -- a right-in/right-out like that be
3 needed in the future, we would go through a separate
4 amendment process with the Controlled Access Management
5 Plan to address it, based on the traffic counts in the
6 development at that time.

7 We then have a full median cut here that provides
8 the shared access to the commercial and residential
9 that is the subject of that traffic light condition.
10 There is a right-in/right-out for the emergency
11 services parcel. That, in my opinion, makes sense
12 given that it will be for emergency services. This
13 location aligns with the Controlled Access Management
14 Plan.

15 As we move further south on Daniels Parkway, we
16 again have a full median cut that aligns with the
17 Timber Creek project entry and further back into the
18 Daniels South project. This is another location where
19 we would be subject to that traffic condition,
20 Condition 12. So I just wanted to clarify that.

21 Another question that was asked on May 4th was the
22 property owner owns more land, how do we know this
23 isn't going to expand? The answer to that is the
24 process in the Land Development Code. We would have to
25 come back through this public hearing process,

1 demonstrate consistency with the Lee Plan. At that
2 point this community would be under construction, and
3 major changes would have to move forward. So I
4 personally don't foresee that happening, given the
5 speed with which Lennar is trying to get this
6 development out of the ground, but the Land Development
7 Code does state that planned developments can
8 incorporate more land provided they come through the
9 public hearing process.

10 HEARING EXAMINER COLLINS: Okay. So that would be
11 on the other side of the power easement though; right?

12 MS. EKBLAD: It would. It would.

13 Sorry, it's not responding.

14 MR. DANLEY: Try again.

15 MS. EKBLAD: Okay.

16 Another series of questions that were asked was
17 about the stormwater management deviations. I
18 mentioned that we received the conceptual ERP. That
19 aligns with these deviations. They -- there are four.
20 It was commented that if we need deviations, perhaps
21 the project should not go forward. I want to be very
22 clear that these deviations are specific to the
23 10,000-foot hazardous wildlife buffer which generally
24 runs through the property here. The intent of that
25 hazardous wildlife buffer is to reduce the opportunity

1 for wading birds and their habitat within the wildlife
2 buffer. And so to that end, we have increased the lake
3 bank slope to four to one; we have eliminated littoral
4 plantings; we've increased the planting of trees
5 because that is consistent with the Federal Aviation
6 Guidelines; and we've requested a hundred percent
7 hardened shoreline. When we do that, and we go forward
8 with the County, there are conditions -- and those are
9 included in the Staff Report, and we did not have any
10 objections -- that we will have to comply with, and
11 then also these construction standards get considered
12 by the Water Management District. So Condition 5
13 regarding our monitoring -- excuse me, Conditions 5 and
14 6 regarding our surface water and our groundwater
15 monitoring relate to these deviations and will ensure
16 that we don't have any issues within these stormwater
17 management ponds.

18 And related to that, there were a number of
19 questions about groundwater and surface water. So the
20 remainder of the presentation will be Mr. Brown and
21 kind of walking through the responses to those
22 comments.

23 Before he comes up, I wanted to see, Madam Hearing
24 Examiner, if you had any other planning questions I
25 could answer, and I will get you a response on the

1 planting between the back of the development and the
2 property boundary.

3 HEARING EXAMINER COLLINS: Okay. So you provided
4 the number --

5 MS. EKBLAD: Uh-huh.

6 HEARING EXAMINER COLLINS: -- of the indigenous --

7 MS. EKBLAD: Yes.

8 HEARING EXAMINER COLLINS: -- which is 6 -- I was
9 close. I thought it was 660.

10 MS. EKBLAD: 679.1. And give me one second
11 because I think Staff conditioned that, as well, in...

12 HEARING EXAMINER COLLINS: Okay. When I was
13 looking at the backup on the Comp Plan amendment, it
14 says 153.7 acres went from DR/GR to sub-outlying
15 suburban, and I think the Staff Report had something
16 else.

17 MS. EKBLAD: Yes.

18 HEARING EXAMINER COLLINS: So I want to confirm,
19 what is the acreage on this property that went from
20 DR/GR to sub-outlying suburban? Which I'm assuming
21 that Comp Plan amendment will coincide with the zoning
22 hearing on this.

23 MS. EKBLAD: Yes, and we did have an issue with
24 the legal descriptions related to the acreages. So the
25 Staff Report on the Comp Plan that was part of the

1 transmittal hearing was an overestimate. Give me one
2 second.

3 So when the Board adopts the map amendment, it
4 will be for 149 acres, not 153.

5 HEARING EXAMINER COLLINS: Thank you for
6 clarifying that.

7 All right. Those issues have to do with the
8 testimony of the next witness, but --

9 MS. EKBLAD: Okay.

10 HEARING EXAMINER COLLINS: -- just if you
11 could walk -- if we could go back to that map?

12 MS. EKBLAD: Yeah.

13 HEARING EXAMINER COLLINS: If you could just
14 explain what the buffer is going to be in that area
15 where you're going to have commercial? I understand
16 that you said much of that land across to the east is
17 owned by the County, but what is the planned buffer
18 along that corridor there?

19 MR. HARTSELL: Condition 11.

20 MS. EKBLAD: Thank you because I'm fumbling. So
21 Condition 11 --

22 MR. HARTSELL: It's on page 10 of 13.

23 MS. EKBLAD: Item 1.

24 MR. HARTSELL: On the conditions.

25 HEARING EXAMINER COLLINS: And this is more for

1 the public.

2 MS. EKBLAD: Uh-huh. States that it is a
3 25-foot-wide buffer -- so actually it stops just short
4 of the central urban because we have some multi-family;
5 but generally along this portion of the boundary, there
6 will be a 25-foot-wide buffer with seven trees, a
7 double hedgerow, and 33 ground covers per 100 linear
8 feet. So what that will look like is the more standard
9 landscaping that you see along the public right-of-way.
10 So the hedge will be continuous and taller, and then
11 there will be some grasses at the ground, and we'll
12 have native trees along the edge there which will
13 create more screening. So the hedgerow is required, if
14 I remember correctly, to be at a minimum of 36 --

15 MR. HARTSELL: 48 inches.

16 MS. EKBLAD: 48 inches. What that does is ensure
17 that a vehicle driving through the parking lot is not
18 shining lights into the residential development; and if
19 they park, again, lights aren't shining into the
20 residential development. I would note that our
21 lighting also has to be coordinated with the Port
22 Authority because there are requirements related to
23 that, as well. So you're going to get some additional
24 review and conditioning there.

25 HEARING EXAMINER COLLINS: Okay. So back to the

1 site design.

2 MS. EKBLAD: Uh-huh.

3 HEARING EXAMINER COLLINS: This site will most
4 likely be elevated, fill will be brought in, and then
5 the buffer/berm that will be installed there will
6 include this level of planting.

7 MS. EKBLAD: Correct.

8 HEARING EXAMINER COLLINS: Now, look at the
9 property on the other side.

10 MS. EKBLAD: Uh-huh.

11 HEARING EXAMINER COLLINS: Am I correct in saying
12 that that's wetlands, designated as wetlands, based on
13 how you have it colored on this map?

14 MS. EKBLAD: It currently is, yes, and the
15 Comprehensive Plan has a process for bringing that in
16 line with a jurisdictional determination. So whether
17 or not it's wetlands on the ground I believe remains to
18 be determined.

19 HEARING EXAMINER COLLINS: Well, I know that the
20 plan allows for the construction of a single-family
21 home on wetlands under certain circumstances, and so my
22 question is you said the County owns part of that
23 property. Can you elaborate on what exactly the County
24 owns in that area?

25 MS. EKBLAD: Yeah, they own the property that

1 fronts up against 82. It's a larger triangular-shaped
2 parcel here. So if I -- if I move forward one --
3 maybe.

4 MR. DANLEY: Try again.

5 MS. EKBLAD: The County owns like right in here,
6 north. That's why we were proposing this access. We
7 were proposing to work with the County to give this
8 property access that was taken away during the
9 continuous flow intersection by the State. So the
10 County's ownership runs to right about here.

11 HEARING EXAMINER COLLINS: And is it on both sides
12 of Shawnee or only the one side?

13 MS. EKBLAD: I don't recall. I can look that up
14 and --

15 MR. HARTSELL: I think it's both.

16 UNIDENTIFIED SPEAKER: It's both.

17 MS. EKBLAD: It's both?

18 I'm hearing "both."

19 HEARING EXAMINER COLLINS: And what's the plan for
20 that? Do we know?

21 MS. EKBLAD: We have not heard an official summary
22 at this time.

23 HEARING EXAMINER COLLINS: Okay. So that's really
24 not that big an issue, that buffer there, it sounds
25 like to me.

1 So then as we continue south, we have a lake.

2 MS. EKBLAD: Uh-huh.

3 HEARING EXAMINER COLLINS: And then we have the
4 back side of single-family homes; right? That's a
5 single-family home pod.

6 MS. EKBLAD: Correct.

7 HEARING EXAMINER COLLINS: Then an indigenous
8 area, open space, and then more single-family. And
9 then for the remainder -- and I can't really tell how
10 many lots are south of that on Shawnee, but the
11 remainder of the property is going to be in its natural
12 state once you remove the exotic vegetation.

13 MS. EKBLAD: Correct.

14 MR. HARTSELL: Yes. And when the exotics are
15 removed, they'll be restored with --

16 MS. EKBLAD: Plantings.

17 HEARING EXAMINER COLLINS: Right, and then it will
18 propagate.

19 MR. HARTSELL: Yes.

20 And then with regard to -- just to follow up on
21 that.

22 MS. EKBLAD: Yes.

23 MR. HARTSELL: With regard to the buffering on the
24 east side of the property, Condition 11-B -- or 11 sub
25 2 shows that at the time of the local development order

1 for the residential portion, adequate plant material
2 for a Type D buffer, which is 5 trees per 100 linear
3 feet and a double-staggered hedge will be preserved --
4 to the extent that it's indigenous or native vegetation
5 on that east buffer, that will be preserved.

6 HEARING EXAMINER COLLINS: But that's only on that
7 open space area, not on the backs of the lots.

8 MR. HARTSELL: Well, the backs of the lots will
9 have at least 30 feet of separation.

10 HEARING EXAMINER COLLINS: Well, I'm just trying
11 to put a finer point on what this double "I" condition
12 is going to speak to.

13 MR. HARTSELL: It goes on to say that if the plant
14 material does not exist within that preserve, then the
15 developer has to install plant material to meet the
16 requirements for that Type D buffer.

17 HEARING EXAMINER COLLINS: Right, but that's only
18 on the preserve. So we've got two areas where there's
19 preserve. The rest is just single-family homesites.
20 Which I understand no buffer is required, I just --
21 because this condition is not clear on that point. You
22 don't talk about preserve areas until you get three
23 lines down. So I'm trying to determine where does that
24 condition actually apply.

25 MS. EKBLAD: Let me -- sorry, I have the master

1 concept plan digitally.

2 (Discussion at podium)

3 MS. EKBLAD: So, Madam Hearing Examiner, to
4 your -- your point, because we are a planned
5 development -- proposed planned development to ag, the
6 eastern property boundary is not required to have a
7 buffer. The Type D buffer comes into play when we are
8 adjacent to roadways, or we have multi-family adjacent
9 to roadways; and then the FPL easement would not
10 obviously have a required buffer either, but we've
11 proposed preservation. I'm --

12 HEARING EXAMINER COLLINS: So these landscape
13 requirements do not speak to the eastern boundary.

14 MS. EKBLAD: At this time. I -- Mr. Edwards just
15 mentioned to me that if -- if everyone is more
16 comfortable, we are in agreement to doing the Type D
17 buffer adjacent to this eastern property boundary as
18 identified in item double "I". I think that's what you
19 were getting at, is make that applicable to the eastern
20 boundary.

21 HEARING EXAMINER COLLINS: I think it's wise.

22 MS. EKBLAD: He's shaking his head "yes."

23 (Elizabeth Workman enters the room.)

24 HEARING EXAMINER COLLINS: We have Beth Workman
25 here.

1 MS. EKBLAD: Oh.

2 HEARING EXAMINER COLLINS: Do you have input on
3 this? Would you like to speak?

4 MS. EKBLAD: Do you want to --

5 MS. WORKMAN: No.

6 I've been -- Beth Workman, for the record. I've
7 been following along. The only concern that Staff'
8 would have with the buffer on the back side of the lots
9 is that they need to be in their own tracts. They
10 cannot be on the --

11 MS. EKBLAD: Correct.

12 MS. WORKMAN: So that we don't have people
13 removing them to put their tomato garden and changing
14 that buffer --

15 MS. EKBLAD: We understand.

16 MS. WORKMAN: -- that kind of thing. But
17 otherwise we're okay with that, and I understand what
18 the question was from the public's perspective --

19 HEARING EXAMINER COLLINS: Right.

20 MS. WORKMAN: -- on that.

21 HEARING EXAMINER COLLINS: And I'm trying to be
22 aware of a trend I see. The Board is moving toward
23 something where there's a little less tolerance for,
24 you know, a dramatic change in residential style, you
25 know, next to each other, and I think that --

1 MS. WORKMAN: Yes.

2 HEARING EXAMINER COLLINS: -- would be helpful, If
3 they did have a tract, even if it is just a "D" buffer,
4 because there would be trees and shrubs.

5 MS. WORKMAN: Yes. And if I could just ask one
6 question of the Applicant?

7 HEARING EXAMINER COLLINS: (Nods head.)

8 MS. WORKMAN: So where the "D" buffer is going on
9 the back side of single-family lots, is that bermed, or
10 is that a swale, or what does that look like back
11 there? Because I understand that they'll be berming
12 around the -- like for the water management and that,
13 but I'm not sure if that's going to give some height to
14 it, to the buffer or not; or if it's just going to be
15 at the grade of the lot. I know I'm asking a lot, but
16 I'm just trying to figure like view in --

17 HEARING EXAMINER COLLINS: This is like DO stuff;
18 right?

19 MS. EKBLAD: Yeah.

20 MS. WORKMAN: It is like DO stuff.

21 MS. EKBLAD: Yeah. So there is absolutely a berm
22 and ditch that is proposed as part of the stormwater
23 management system. We're throwing this buffer in today
24 so I don't have an answer, but I do know that the
25 buffer -- a Type D buffer is 15 feet wide, and we have

1 30 feet. So I have to imagine we have enough room to
2 navigate some of these things.

3 Someone please throw a pen at me if I'm not
4 correct.

5 MR. SHUTE: You're okay.

6 MS. EKBLAD: Okay.

7 MS. WORKMAN: Just the --

8 HEARING EXAMINER COLLINS: I'm just suggesting --

9 MS. WORKMAN: -- the grade and the height.

10 HEARING EXAMINER COLLINS: -- it. I mean, you
11 don't have to do it.

12 MS. EKBLAD: Yeah.

13 HEARING EXAMINER COLLINS: Okay.

14 MS. WORKMAN: I'm good.

15 MS. EKBLAD: Okay.

16 HEARING EXAMINER COLLINS: And this would apply
17 only where residential pod development is abutting that
18 eastern boundary with the ranchettes on --

19 MS. WORKMAN: Correct.

20 HEARING EXAMINER COLLINS: -- Shawnee.

21 MS. WORKMAN: That's how I was following the
22 questions.

23 HEARING EXAMINER COLLINS: Okay, thank you.

24 Thank you, Tina.

25 MS. EKBLAD: Any others?

1 HEARING EXAMINER COLLINS: I'm ready for David
2 Brown.

3 MS. EKBLAD: Okay.

4 HEARING EXAMINER COLLINS: Beth, if you're
5 staying, I'm going to swear you in real quick.

6 MS. WORKMAN: Yes, ma'am.

7 HEARING EXAMINER COLLINS: Would you -- do you
8 swear or affirm to tell the truth during this hearing?

9 MS. WORKMAN: Yes, ma'am.

10 HEARING EXAMINER COLLINS: Thank you.

11 MR. BROWN: Good morning. I'm David Brown,
12 certified professional geologist with RESPEC Company,
13 LLC. My office is in Sarasota. And I'd like to go
14 through some responses to some of the questions that
15 regarded ground and surface water resources both at the
16 previous hearing and also this morning.

17 I'd like to start out with some of the responses,
18 talking about some of these prominent triangularly
19 shaped elevated berms that were clearly evident in this
20 1944 aerial imagery. And, again, those were created as
21 part of a World War II military training facility.

22 I've shown the outline of the property in red on the
23 aerial image to the left, and you can see these white
24 features up there that are south of Highway 82, and
25 many of us have referred to these things as the coat

1 hangers because they resemble a coat hanger in their
2 triangular shape. One of these features is bisected by
3 the project in the northwest corner. Daniels Parkway
4 also crosses right through it, was removed as part of
5 the development of Daniels Parkway. And, again, these
6 features were associated with the Buckingham Army
7 Airfield.

8 East/west, these features range from about 1,300
9 feet to 1,400 feet; north/south, they're about 300 to
10 400 feet. So they're large features. And as shown by
11 my cross section, which I drew a cross section through
12 one of the berms, they're about eight to ten feet in
13 height.

14 So these features, again, were associated with the
15 Buckingham Army Airfield, and these were part of what
16 was called a flexible gunnery training base, and it was
17 used to train the gunners that would defend the bomber
18 aircraft. So these individuals would be inside the
19 bombers operating these firearms to defend that bomber
20 during World War II.

21 This is a photograph that I obtained of the
22 practice field from -- from that time period, and
23 basically how this works is the machine gun is kind of
24 mounted on a -- on a flexible or an articulated joint
25 there so it can move in all directions, all right?

1 And then if you look at the background -- this is
2 really fascinating -- there's a Jeep, and you can see
3 there are actually some metal structures, like
4 pipe-looking features, and then there's a fake aircraft
5 that is attached to that. That Jeep was mounted -- and
6 then you can see the berm in the background immediately
7 behind the Jeep. That Jeep would run on top of that
8 berm. There was a track, and so it would go around,
9 and that's where these personnel would basically
10 practice.

11 Again, this airfield was constructed in 1942,
12 encompassed approximately 7,000 acres, but it was
13 closed on September 30th, 1945, at the end of World War
14 II. So it had a short duration.

15 For a brief time the barracks that remained were
16 used by Edison College. In 1968 the Lee County
17 Mosquito Control District moved into some of the old
18 barracks and moved their operations to the Buckingham
19 Airfield in Lehigh Acres, and some of the original
20 runways still are used there in Buckingham.

21 So in reviewing this information, I made an
22 inquiry -- and there's a fascinating museum here in
23 Fort Myers. It's the Southwest Florida Military Museum
24 at the Edison Mall. I talked to the curator about the
25 composition of this ammunition, and it is predominantly

1 zinc and copper, not lead, in composition. And so you
2 can see some of the ammunition that's being fed into
3 this machine. So that was the composition of that --
4 of those shells.

5 So here's kind of another detailed zoom-in of that
6 same feature that's on our property. And if you look
7 closely, you can see kind of the tire tracks and the --
8 the track that ran around the top of it. And then the
9 gunners would be back further kind of near where
10 Highway 82 -- which kind of angles in the northwest
11 corner of that imagery.

12 So a detailed study of the soils, which is a Phase
13 II environmental assessment, was performed on one of
14 these features immediately west of the property, and
15 the results of the laboratory analysis from that soil
16 analysis for the 13 priority pollutant metals, and
17 those metals were either below the detection limits, or
18 they were below FDEP's cleanup target levels, as
19 dictated by Chapter 62-777 Florida Administrative Code.

20 I'm not going to list them all, but of the 13
21 priority pollutant metals, they include arsenic,
22 cadmium, copper, lead, mercury, and zinc. So those
23 were -- are part of those 13 priority metals.

24 Also, an investigation of the -- of the property
25 in question, there were no cattle dipping sites. That

1 was another question that was asked previously.

2 Also, in regards to water resources, there were
3 some questions about monitoring and concerns on the
4 sandstone aquifer, and there was a question about how
5 many monitoring wells are looking at the sandstone
6 aquifer. If you look at the map to the left, the
7 purple-shaded area is Lehigh Acres. There's two areas
8 to the south of Lehigh. One is shaded green. That is
9 the Applicant's Timber Creek development. It is
10 located west of Daniels. And the yellow is the subject
11 property, which is Daniels South.

12 Those red squares denote all of the sandstone
13 aquifer monitoring wells, and those wells are monitored
14 and maintained by the USGS, South Florida Water
15 Management District, the Applicant, as well as Lee
16 County. So there's a huge network of monitoring wells
17 in the area, and the primary focus is looking at Lehigh
18 Acres itself.

19 And we have also proposed -- if you look at the
20 yellow triangular-shaped property, a monitor well on
21 the eastern boundary near Shawnee Road.

22 The hydrograph that you see at the bottom of the
23 slide, this is the water levels that we've observed at
24 Timber Creek. So it's the nearest monitoring well to
25 our property. If you look at the red circle, water

1 levels have risen since the height of the drought.
2 We're about ten feet higher than we were previously.
3 So now water levels in the vicinity of the project are
4 35 feet above the maximum developable limit, which is
5 that dashed line right there. That basically
6 represents the MFL for the sandstone aquifer. So we're
7 well above the limit for the sandstone aquifer in the
8 area.

9 HEARING EXAMINER COLLINS: This is existing
10 conditions?

11 MR. BROWN: Yeah, it is.

12 HEARING EXAMINER COLLINS: And then are you able
13 to predict, based on your projected water consumption,
14 how that might affect --

15 MR. BROWN: Yeah, I'll get to that.

16 HEARING EXAMINER COLLINS: Okay.

17 MR. BROWN: Yeah.

18 HEARING EXAMINER COLLINS: Okay. So just to --
19 back up.

20 MR. BROWN: (Complies.)

21 HEARING EXAMINER COLLINS: What's the blue dot on
22 the green property?

23 MR. BROWN: That is an existing monitor well that
24 the Applicant maintains, and that's where the water
25 levels are coming from that you're looking at right

1 here.

2 HEARING EXAMINER COLLINS: All right. And that is
3 groundwater?

4 MR. BROWN: Correct.

5 HEARING EXAMINER COLLINS: And you're proposing to
6 construct a new one on the eastern property line?

7 MR. BROWN: Correct, another monitor well to
8 monitor the exact same zone. So we're adding to this
9 network.

10 HEARING EXAMINER COLLINS: The exact same thing?

11 MR. BROWN: Yeah.

12 HEARING EXAMINER COLLINS: Okay. And these red
13 blocks are the exact same thing only --

14 MR. BROWN: Correct.

15 HEARING EXAMINER COLLINS: -- off-site?

16 MR. BROWN: Yeah.

17 HEARING EXAMINER COLLINS: Okay.

18 MR. BROWN: So it's really, in my experience, an
19 unprecedented network of monitoring for the sandstone
20 aquifer in the area. And we're monitoring water levels
21 every hour on the Applicant's property, and we have
22 proposed to do that on the proposed well, as well.

23 So there also was some question about reclaimed
24 water. Previous communications with Lee County
25 indicated that we do not have reclaimed water

1 quantities available to the subject property.
2 Therefore, being mindful of using an alternative water
3 supply, which is why the Applicant -- we're using the
4 recycled stormwater from the -- we're going to remove
5 that or pump that from the man-made stormwater
6 detention lakes on-site. Groundwater is a secondary
7 source, okay? And that will only be used as needed,
8 and we're deriving it from two aquifers, as I testified
9 to previously, the sandstone aquifer and the
10 Mid-Hawthorn aquifer. Nobody in the area is utilizing
11 the Mid-Hawthorn aquifer so there's no potential for
12 interference with any existing legal users.

13 HEARING EXAMINER COLLINS: Okay. Hang on a
14 second. So the primary source of irrigation water is
15 going to be from the lakes.

16 MR. BROWN: Right.

17 HEARING EXAMINER COLLINS: Is that a similar
18 situation with the project across the street?

19 MR. BROWN: Yes.

20 HEARING EXAMINER COLLINS: Okay. And so if the
21 lakes get too low in winter, then you already are going
22 to have irrigation wells constructed that will pull up
23 from the groundwater?

24 MR. BROWN: Correct.

25 HEARING EXAMINER COLLINS: How do you decide

1 whether you're taking it from sandstone or
2 Mid-Hawthorn?

3 MR. BROWN: Well, the wells are constructed
4 differently, and so we basically geographically placed
5 the Mid-Hawthorn wells closest to Lehigh Acres, on the
6 northern side of the property. So basically our
7 Mid-Hawthorn wells, our deeper wells, are on the
8 northern side of the property; and our sandstone wells
9 are on the southern side of the property. And I can
10 show that in a -- in a graphic.

11 HEARING EXAMINER COLLINS: And will there be a
12 central irrigation system?

13 MR. BROWN: Uh-huh.

14 HEARING EXAMINER COLLINS: So you don't have to
15 worry about homeowners like running their irrigation
16 every other day or something --

17 MR. BROWN: Absolutely correct, Madam Hearing
18 Officer. It's a master controlled irrigation system.
19 No individual homeowner will be able to turn on the
20 sprinklers and turn off the sprinklers. And so this
21 really -- the Districts love this, the County loves
22 this, because it gives unprecedented control during
23 times of drought or water restrictions. You're not
24 dealing with a lot of different residents. You're
25 dealing with a single entity, which will be the HOA.

1 So no domestic wells in the area at all are
2 finished into the Mid-Hawthorn, as I said previously,
3 so there's no chance for interference. Mainly because
4 it doesn't meet potable standards.

5 HEARING EXAMINER COLLINS: Also, all the required
6 vegetation is going to have to be xeriscape, low-water
7 consumption --

8 MR. BROWN: Correct.

9 HEARING EXAMINER COLLINS: -- by Code.

10 MR. BROWN: Correct, yeah. There's certain
11 landscape requirements that you've got to go through --

12 HEARING EXAMINER COLLINS: Drought tolerant --

13 MR. BROWN: Correct, yeah.

14 So -- so to -- to address your question, Madam
15 Hearing Officer, about potential interference, we've
16 performed detailed groundwater flow modeling. The
17 modeling that I performed was in accordance with the
18 methodology prescribed by the South Florida Water
19 Management District. And I'd like to reiterate, I have
20 been modeling for over 30 years, and 10 of those years
21 I worked at the Water Management District. So I'm very
22 familiar with the rules and regulations and
23 impact-related criteria from -- for water use permits.

24 So basically you run a 90-day maximum -- so that's
25 the maximum permitted amount that they could pump, and

1 you maintain that for 90 days straight, and that kind
2 of represents the dry season -- March, April, May is
3 what you're simulating -- but there's absolutely no
4 recharge from rainfall or from any aquifer system. So
5 it's -- basically zero recharge occurs.

6 HEARING EXAMINER COLLINS: That's the assumption.

7 MR. BROWN: That's the assumption, right, that
8 there's no recharge. So it's very, very conservative.
9 But it also has other conservative elements to this
10 modeling, okay? It ignores water restrictions, okay,
11 and assumes that the maximum amount is pumped every
12 single day for 90 days, okay? Not odd and even or once
13 a week, every day.

14 The model -- we must also assume that there's no
15 water supplies in the stormwater detention lakes. So
16 basically there's zero water in the lakes, and we're
17 running on 100 percent groundwater, okay? Which is not
18 going to happen, but we make that assumption that it's
19 not there, that we don't have it, okay?

20 It also assumes in the development every square
21 inch is irrigated simultaneously. So no odd and even
22 irrigations, everything is being irrigated. So
23 basically it's full blast, full bore, for 90 days, no
24 recharge at all at the highest maximum amount that they
25 would be permitted for. So that is the conservative

1 nature of the modeling that you have to perform.

2 And based on our analysis, this irrigation system
3 meets the impact-related guidelines for the South
4 Florida Water Management District under conditions of
5 issuance. And those rules prescribe under Chapter 373,
6 under the three-prong test, that there cannot be
7 adverse impacts to existing legal users. So existing
8 legal users are protected by Florida law.

9 HEARING EXAMINER COLLINS: So based on these very
10 conservative assumptions, you run the model, and you
11 were able to conclude that the impact to the
12 groundwater levels were within acceptable parameters.

13 MR. BROWN: Correct.

14 HEARING EXAMINER COLLINS: Where it would not
15 create a detriment to nearby wells.

16 MR. BROWN: Correct, yeah. And despite meeting
17 all of these criteria that we've done, we still
18 offered -- and we've decided, and we were obligated to
19 install the sandstone aquifer monitor well along that
20 eastern boundary --

21 HEARING EXAMINER COLLINS: So you're watching
22 anyway.

23 MR. BROWN: We're watching anyway.

24 HEARING EXAMINER COLLINS: Notwithstanding all
25 this.

1 MR. BROWN: Right. So we're -- regardless of
2 that, we're still going to be monitoring this and
3 taking hourly water level readings.

4 HEARING EXAMINER COLLINS: So if that --

5 MR. BROWN: So this is the model -- okay.

6 HEARING EXAMINER COLLINS: -- if that shows
7 negative impact, this monitoring well, so you pull
8 everything out and put cactuses in or something? I
9 mean, there's some measure that's put into place so
10 that you aren't drawing as much?

11 MR. BROWN: Absolutely, and we don't -- are not
12 only going to have to submit these water level data to
13 Lee County, but also to the Water Management District
14 as we go through the -- we're going to offer this as
15 part of the water use permit. So --

16 HEARING EXAMINER COLLINS: Okay.

17 MR. BROWN: -- both --

18 HEARING EXAMINER COLLINS: And all this data is
19 public record.

20 MR. BROWN: Correct, everything is public record.
21 It's going to get uploaded. It will be more than what
22 is required typically. They don't require hourly water
23 level data, but we -- we put a transducer that is in
24 the well, and that's all it does, is take water level
25 readings; and then we go and download those, and we

1 take the water quality monitoring samples.

2 HEARING EXAMINER COLLINS: And you're doing this
3 in two places, really, because you're doing it across
4 the street, too.

5 MR. BROWN: Correct, correct. And then -- and
6 then you can look at that -- if you wanted to, into
7 that entire network of wells that are surrounding the
8 property.

9 And so it's kind of hard to see on this graphic,
10 but if you look at this aerial -- and this is the
11 development. The green area is the irrigated area.
12 The blue is the lakes. You can see the orange dots.
13 Those are the sandstone aquifer wells. You can also
14 see the proposed location for the monitoring well. And
15 if you look at the output from that model after running
16 it for 90 days, we don't have -- the drawdown
17 on-site -- the highest drawdown that we saw, at the
18 center of the property at the wells, is less than a
19 foot, okay? It's nine-tenths of a foot.

20 HEARING EXAMINER COLLINS: And that's based on
21 your assumptions.

22 MR. BROWN: Correct.

23 HEARING EXAMINER COLLINS: Conservative
24 assumptions.

25 MR. BROWN: Correct. And then if you look at

1 that, there's kind of a curved -- kind of a circular
2 contour line, a little bit larger, that's 0.8 feet, and
3 so -- and that's within the property itself. And,
4 remember, we have the water level at about 35 feet
5 above the MDL currently; and during the height of a
6 drought, a severe drought, it was 25 feet above. So
7 we're -- we're not going to adversely impact the
8 sandstone aquifer. And, again, South Florida won't
9 even require additional analysis to look off-site if
10 your drawdown is less than one foot at the property
11 line.

12 There also were some questions in regards to water
13 quality and what happens in legacy nutrients. Again,
14 obviously we haven't built this -- this development
15 yet, but here's looking at some of the graphs. We also
16 do a lot of the monitoring for these -- these projects.
17 And I -- so this is at the project again next-door,
18 Timber Creek, okay? So it's adjacent, and it's
19 analogous to what we're talking about today.

20 And the x-axis along the bottom is time. So the
21 beginning it starts in like January of '21, and it goes
22 through March of '23. We've just recently sampled
23 these sites again, but I don't have the results back
24 from the lab.

25 On the y-axis, which runs, you know, up and down,

1 you can look at all these graphs, that concentrations
2 were higher at the beginning at the baseline versus
3 what they are now. So we're actually seeing over time,
4 which is what my experience has shown, as these ponds
5 develop, they're meant to treat water quality. That's
6 what they do, okay? And you can see that in this, that
7 we have improved water quality from baseline conditions
8 over time.

9 So the adjacent development stormwater
10 ponds' surface water exhibits improved water quality
11 for nitrate -- that's the one that, really, people are
12 most concerned about -- chlorophyll a, that's what's in
13 the algae, the green algae, so you're looking at
14 chlorophyll a, and then obviously phosphorus. And
15 these -- these same parameters that I'm showing right
16 here, plus some additional ones, are going to be
17 monitored in accordance with Condition 6. So we'll be
18 looking at these same constituents.

19 In fact, we're going to be looking at a whole lot
20 more than just that, okay? We -- we provided a
21 detailed enhanced lake management plan, okay, and
22 that's codified, basically, in Condition 6. That
23 requires surface water quality samples taken three
24 times per year -- one dry season, two wet season --
25 okay, at six separate locations. Those are shown by

1 the blue squares by the ponds. That's at the outfall
2 structures for those ponds, okay? So 18 water quality
3 samples per year, okay?

4 And so there were some questions about what the
5 fertilizer ordinance and -- you know, the disposition
6 of the fertilizer ordinance. So -- so in lieu of the
7 fertilizer ordinance, this monitoring is required.
8 This data will be uploaded. We're required to meet
9 State water quality standards. And so the public can
10 review this.

11 And we're looking at total nitrogen, nitrate,
12 nitrite, ammonium, ammonia, Kjeldahl nitrogen, total
13 phosphorus, chlorophyll a, orthophosphate. We're
14 looking at iron, zinc, E. coli, and total suspended
15 solid. So it's a very comprehensive list of water
16 quality constituents.

17 Also, there were some questions in regards to
18 recharge on disturbed properties or what happens, and
19 this kind of echos what I testified to previously. We
20 ran an integrated model; so it looks at surface water,
21 stormwater, as well as groundwater combined. So the
22 other models that I talked about were purely
23 groundwater when I looked at the impacts, but now we're
24 looking at what happens to the property in regards to
25 these stormwater ponds and potential recharge to the

1 aquifer. If you look at the graphic -- and these are
2 LiDAR images which is why they're kind of the funny
3 colors, denotes different elevations. But if you look
4 at the image to the left and the existing conditions,
5 those light blue areas, those are --

6 THE REPORTER: Dave, you have to slow down.

7 MR. BROWN: Oh, I'm sorry. I'm sorry, I get
8 excited when I talk about this.

9 THE REPORTER: I know. If you look at the light
10 blue areas --

11 MR. BROWN: The light blue areas on the graphic to
12 the left, under the existing conditions, those
13 represent the wetlands that exist on-site today.

14 And so basically there is some recharge in the
15 uplands. Most recharge, it runs off to these wetland
16 features. That's where it's ponded, and that's where
17 recharge occurs to the underlying surficial aquifer.

18 If you look at the image to the right, you can see
19 superimposed on that -- and this is a very complex
20 modeling that we did. You can see the light blue
21 stormwater pond. So we have a lot more storage
22 on-site. So it makes sense or it's intuitive that if
23 we're holding more water on-site, we can -- we can
24 induce more recharge.

25 And the results of this integrated model, which is

1 required by the Lee County plan, for a 25-year/3-day
2 event, which is the design storm event that you design
3 the entire stormwater management system for, okay? The
4 project's stormwater ponds will increase groundwater by
5 94 acre-feet, or over 30 million gallons, over the
6 15-day simulation time frame. So we store a lot of
7 water on-site -- that's what stormwater ponds do, they
8 attenuate flow, okay? They slow it down, so to speak.
9 And by doing that, we allow it to recharge, okay? So
10 it's intuitive, and the plot is from our -- our
11 modeling there.

12 So -- so with that, if there's any questions,
13 Madam Hearing Officer?

14 HEARING EXAMINER COLLINS: Yes, let's go back to
15 that previous slide.

16 MR. BROWN: Okay. Right here?

17 HEARING EXAMINER COLLINS: Yes. Tell me what this
18 graph is showing.

19 MR. BROWN: Okay. I'll have to approach. Red is
20 existing conditions. So this is recharge, okay? As
21 you go through time, okay, hours, and then here's the
22 proposed conditions. You see we match it closely, and
23 then we exceed. We actually get higher. So basically
24 this is where we're exceeding recharge that currently
25 exists.

1 HEARING EXAMINER COLLINS: And what is this based
2 on, a representation of time, or what is...

3 MR. BROWN: It's --

4 HEARING EXAMINER COLLINS: What's the bottom
5 graph? What's the bottom axis?

6 MR. BROWN: Time. X-axis is time, hours.

7 HEARING EXAMINER COLLINS: Is that years, days?

8 MR. BROWN: No, hours. That's what I said, those
9 are hours.

10 HEARING EXAMINER COLLINS: Oh, hours.

11 MR. BROWN: Yeah. So this happens really quickly.

12 HEARING EXAMINER COLLINS: I see.

13 MR. BROWN: So stormwater management systems are
14 designed to capture stormwater and release them at a
15 controlled rate. The fact that we're holding it --
16 capturing it and holding it there, okay, and it's --

17 HEARING EXAMINER COLLINS: It goes down.

18 MR. BROWN: -- elevated allows it to -- to charge.

19 HEARING EXAMINER COLLINS: Okay. So --

20 MR. BROWN: You basically -- you support a water
21 level higher than the water table surrounding it. So
22 you basically force water into it for recharge.

23 HEARING EXAMINER COLLINS: I heard a concern
24 expressed by the public that perhaps there was some
25 sheet flow going east to west that they were afraid

1 might be blocked by the construction of a berm along
2 the eastern project line. Can you speak to that or
3 provide any kind of explanation to alleviate concern
4 regarding that?

5 MR. BROWN: I'm going to turn it -- the stormwater
6 engineer is here --

7 HEARING EXAMINER COLLINS: Okay.

8 MR. BROWN: -- for the conceptual ERP. So all of
9 those things have been addressed, and he can -- he can
10 provide --

11 HEARING EXAMINER COLLINS: Okay.

12 MR. BROWN: -- a response to that so...

13 HEARING EXAMINER COLLINS: So you're --

14 MR. BROWN: I'm really the groundwater guy. I'm
15 the guy below the ground, and -- and water quality.

16 HEARING EXAMINER COLLINS: Okay, thank you. I
17 don't have any questions. I appreciate you clarifying
18 your presentation.

19 MR. BROWN: Okay, thank you very much.

20 HEARING EXAMINER COLLINS: Oh, I'm at the end.

21 MR. HARTSELL: Yes. At this point, based on the
22 testimony that we heard today, I'm going to ask Ryan
23 Shute, the project engineer, to come to address the
24 question that you had --

25 HEARING EXAMINER COLLINS: Okay.

1 MR. HARTSELL: -- with regard to the berm and the
2 stormwater management system in general on the
3 property.

4 HEARING EXAMINER COLLINS: Okay. Would you state
5 your full name for the record, please.

6 MR. SHUTE: Ryan Shute. I'm a licensed engineer
7 with Morris-Depew Associates.

8 HEARING EXAMINER COLLINS: And were you here when
9 I administered the oath to everyone?

10 MR. SHUTE: I was. I was hiding in the back.

11 HEARING EXAMINER COLLINS: Okay. Were you present
12 when members of the public expressed concern that
13 somehow water would not flow from Shawnee off their
14 site once this is developed? Can you speak to that at
15 all?

16 MR. SHUTE: I can speak to our site and what we've
17 done to design for potential of flow from the Shawnee
18 direction.

19 So we talked about the 30-foot buffer between the
20 back of the lots and the property line, and one of the
21 reasons that we are maintaining that buffer is there's
22 an existing ag berm that meanders on the property
23 line -- mostly on our site, but occasionally it
24 straddles the site -- that we intend to leave in place.
25 That ag berm acts as a block from anything from Shawnee

1 to come on our site. However, we're not completely
2 sure the ag berm is entirely intact or is high in every
3 location. So on our property behind the ag berm, we
4 are constructing a ditch or a swale to allow off-site
5 flow that comes from the east -- if any comes from the
6 east, to continue around our site and not block flow.
7 And that -- it's going to be within -- there's the
8 button. It will go straight down our property line,
9 and it will connect to the flows here, and it will
10 connect to the flows here. We've modeled it in our
11 Water Management permit application to account for the
12 potential of worst-case flows through there --

13 HEARING EXAMINER COLLINS: So what do you do,
14 install a pipe in the berm to convey --

15 MR. SHUTE: It's a swale -- it's a berm-swale
16 combination. So we leave the existing berm at its
17 existing elevation. We have a swale behind it so any
18 flow that perhaps comes from a low point in the berm,
19 or if there's no berm at all, we collect that and
20 bypass the system, bypass our site. So we do not block
21 it. We provided a --

22 HEARING EXAMINER COLLINS: So you're not changing
23 anything from today.

24 MR. SHUTE: Correct.

25 HEARING EXAMINER COLLINS: You'll accommodate

1 it --

2 MR. SHUTE: Correct.

3 HEARING EXAMINER COLLINS: -- as it's being
4 accommodated today, which sounds like not too great,
5 but it's not going to be worse.

6 MR. SHUTE: Correct, it's not going to be worse.

7 To the other point -- Mr. Brown did a little bit.
8 Since we -- since we are constructing the water
9 management system, all these large on-site lakes, as
10 Mr. Brown indicated, we detain the runoff. It stays on
11 our site longer. We did a pre versus post drainage
12 analysis, and we discharge from our site at a lower
13 discharge rate, basically, to help alleviate potential
14 for flooding downstream. We made it -- we're making it
15 better. Not to say that anything downstream will not
16 continue to flood, but we are making it where we're not
17 going to be --

18 HEARING EXAMINER COLLINS: Well, it wasn't --

19 MR. SHUTE: -- causing that.

20 HEARING EXAMINER COLLINS: -- it wasn't draining
21 east anyway; right? It was --

22 MR. SHUTE: Correct.

23 HEARING EXAMINER COLLINS: -- draining west and
24 south; right?

25 MR. SHUTE: Our site discharges through this

1 system towards this location.

2 HEARING EXAMINER COLLINS: Okay. I thought I
3 remembered testimony that it was in two basins, and
4 part --

5 MR. SHUTE: Correct.

6 HEARING EXAMINER COLLINS: -- of it was going --

7 MR. SHUTE: Correct. There's two basins.
8 There's -- they talk about the existing ag road that
9 kind of runs through this location. So we have some of
10 our site discharging this way, and then some of the
11 site -- the rest of the site discharges this direction.

12 HEARING EXAMINER COLLINS: The site is not
13 discharging to the east onto Shawnee?

14 MR. SHUTE: It is not discharging to the east onto
15 Shawnee. It discharges through this on-site system.
16 Basically it gets to here eventually, and that's based
17 on existing topography and where the water --

18 HEARING EXAMINER COLLINS: So once it exits the
19 site, I understand you own the property on the other
20 side of the power line. Does it just like sheet flow
21 down from there? What happens to it?

22 MR. SHUTE: Some of it sheet flows down the power
23 line. There's a big culvert system in this area that
24 it goes through, and eventually just keeps going to the
25 south/southeast. Again, we're at the top of what is

1 called the drainage basin. Shawnee is, as well. So
2 off-flow from this side of State Road 82 basically goes
3 south/southeast.

4 HEARING EXAMINER COLLINS: Okay, thank you.

5 MR. HARTSELL: Next I'm going to call Shane and
6 ask Shane to address the wildlife questions.

7 MR. JOHNSON: Good morning. Shane Johnson, for
8 the record, Passarella & Associates.

9 So I took a bunch of notes here so bear with me.
10 I just want to address the concerns as best I can
11 regarding wildlife.

12 So most of the concerns I heard regarding wildlife
13 were non-listed species, species that are not regulated
14 or considered protected species by Lee County, so I'm
15 not going to address those. I'm going to address the
16 species that were -- that are listed species and that
17 we have prepared a management plan for.

18 So I just want to point out that, as part of the
19 zoning process, we, Passarella & Associates on behalf
20 of the Applicant, conducted a protected species survey
21 in accordance with Lee County requirements. So based
22 on the results of that survey is -- we developed a
23 Protected Species and Human-Wildlife Coexistence
24 Management Plan that I did talk about in detail in my
25 initial testimony. I'm not going to go too much into

1 detail in the plan itself, but I wanted to point that
2 out.

3 But also for the environmental permitting process
4 that's aside from all this zoning, we're required to
5 conduct multiple species-specific surveys for --

6 HEARING EXAMINER COLLINS: And this will happen in
7 the future?

8 MR. JOHNSON: No, we've already conducted them.

9 HEARING EXAMINER COLLINS: Okay.

10 MR. JOHNSON: This is part of the environmental
11 permitting process, the ERP that's already been issued,
12 and also the State 404 permit that's currently being --
13 being reviewed by the Florida Department of
14 Environmental Protection. So I just want to point that
15 out. That amounts to months of time that we've spent
16 on this property so we're very familiar with the
17 wildlife utilization on the property, what we've
18 observed as far as listed species utilizing the
19 property, and what wildlife potential there is --
20 potential of listed species' utilization of the
21 property is.

22 So in addition to that, our requirement is not
23 only at the County level, but as part of the
24 environmental permit process, requires us to conduct
25 additional surveys prior to construction.

1 In addition to that -- I won't talk too much into
2 detail about this, but we talked about a -- a hazardous
3 wildlife monitoring program because of the property's
4 proximity to the airport. That's going to be ongoing
5 monitoring, during construction, for wildlife, okay?

6 So I just want to point out the extensive surveys
7 that we have conducted on the property that are
8 required prior to construction, and also during
9 construction as we move forward through the different
10 phases of development.

11 So I'd like to start by just focusing on the map
12 here and seeing how the Applicant has really done a
13 tremendous job in concentrating the development into
14 these ag areas, into the pastures. So this has allowed
15 for the massive large-scale preservation and
16 restoration of the remainder of the property, which is
17 essentially, you know, indigenous, forested, and
18 herbaceous habitat types. As Tina pointed out, that
19 acreage totals -- the indigenous alone is 679 acres.
20 That's a pretty massive area. So by concentrating
21 development in the ag areas, these are lower quality
22 areas -- this is not just my opinion. So when we go to
23 do a Florida panther mitigation analysis as part of the
24 DEP's State 404 permit process, we use a U.S. Fish and
25 Wildlife Service compensation calculator for the

1 panther. And as part of that -- it's a numeric
2 quantitative analysis, and as part of that, pasture
3 areas are scored relatively low from a numeric
4 perspective compared to the areas that are being
5 preserved. Those are the forested areas, the pine, the
6 cypress, the freshwater marsh.

7 So, again, the Applicant is impacting then the
8 lower quality pasture areas and then preserving the
9 balance of the property, which is native vegetation
10 that will be preserved and restored.

11 I also want to point out the project is in the
12 DR/GR, but it's not in the environmental enhancement
13 and preservation overlay like some of the other
14 projects along Corkscrew Road. But this project very
15 much rivals those projects in the enhancement overlay
16 due to 55 percent being set aside for preservation and
17 restoration enhancement.

18 HEARING EXAMINER COLLINS: 60.

19 MR. JOHNSON: Well, 60 open space.

20 HEARING EXAMINER COLLINS: Right, okay.

21 MR. JOHNSON: 55 percent -- again, 679 acres of
22 indigenous habitat set aside and placed under a
23 conservation easement.

24 HEARING EXAMINER COLLINS: Okay.

25 MR. JOHNSON: So when you look at the panther

1 telemetry on this project site, it's essentially from
2 one panther that's now deceased. There's been previous
3 testimony by one of the public members that testified
4 to this. And if you look at that telemetry, you see,
5 ironically, it falls within all the areas that we're
6 preserving. That further supports the notion that
7 these are the higher quality wetlands, these thicker
8 areas of vegetation, forested habitat, shrub, wetlands
9 that panthers are utilizing, and not the pastures. I'm
10 not suggesting that panthers never use pastures,
11 because they do, just not with the same frequency or
12 the same manner as they do the other habitats that are
13 being preserved on the site.

14 So also in my previous testimony, I touched on, as
15 part of the Protected Species and Human-Wildlife
16 Coexistence Plan, there's going to be fencing along the
17 entire perimeter of the project area between the
18 preserve and the development, along that interface. So
19 that's going to preclude panther and bear and other
20 species, even their prey species such as white-tailed
21 deer, from entering the development area.

22 Also, as part of the connector roads, the roads
23 that connect the pods here and here, there's wildlife
24 crossings. So there's full access for wildlife to
25 access the entire 679-acre preserve area.

1 One last thing I'd like to point out on the
2 Florida panther, again, we're currently in the DEP's
3 State 404 permitting process, and as part of that,
4 there's coordination -- close coordination with the
5 U.S. Fish and Wildlife Service, and they're the lead
6 agency that addresses panther mitigation. So we're
7 going through that process now and closely coordinating
8 with the U.S. Fish and Wildlife Service on panther
9 impacts and panther mitigation associated with this
10 project.

11 A few of the other listed species that were
12 mentioned, wading bird species such as the little blue
13 heron, white ibis, roseate spoonbills, wood storks, of
14 the 679 acres of preserve area, there's over 507 acres
15 of wetlands within that system that is being preserved
16 and enhanced that will benefit wading birds.

17 We can't control ponds on adjacent properties and
18 usage of those properties, but we can control what's
19 within our boundary. And, again, the Applicant has
20 done an amazing job in concentrating development in the
21 lower quality pastures, not just for habitat types but
22 to also minimize wetland impacts. The project is
23 providing, like I mentioned, over 507 acres of
24 wetlands. That's over 95 percent of the total wetlands
25 on the project site. So that will directly benefit the

1 wading bird species mentioned.

2 Also, gopher tortoise, we only had one gopher
3 tortoise burrow observed within the property. That
4 species is covered in our Protected Species and
5 Human-Wildlife Coexistence Plan. If we find more
6 burrows within the development footprint prior to
7 construction, we're obligated to coordinate with the
8 Florida Fish and Wildlife Conservation Commission to
9 obtain a relocation permit to move those tortoises
10 off-site.

11 Also, I just want to touch on the bald eagle that
12 was mentioned. We're very familiar with the project.
13 We know that there's no bald eagle nests on the
14 property. However, at any point in time during a
15 particular nesting season, a bald eagle could
16 potentially come and nest on the property. If that's
17 the case, we would identify the nest, coordinate with
18 Lee County Staff, you know, go through the ETAC
19 approval process with the preparation of a Bald Eagle
20 Management Plan. ETAC is the Eagle Technical Advisory
21 Committee process. Have a Bald Eagle Management Plan
22 approved with respect to development and the buffer
23 zones required around active bald eagle nests. But we
24 surveyed the property extensively, and no bald eagle
25 nests on or adjacent to the property. The closest nest

1 that we researched is within Wild Turkey Strand
2 Preserve, which is over one mile to the east.

3 So just to conclude here, with respect to the
4 Florida panther, the listed wading bird species, gopher
5 tortoise, these are all species that are addressed in
6 our Protected Species and Human-Wildlife Coexistence
7 Plan. Furthermore, for the Florida panther, we're
8 currently coordinating with the U.S. Fish and Wildlife
9 Service in the environment permitting process to
10 address impacts of the species and mitigation.

11 HEARING EXAMINER COLLINS: Thank you.

12 MR. JOHNSON: Yeah, that's all I had.

13 MR. HARTSELL: Thanks, Shane.

14 HEARING EXAMINER COLLINS: I'm thinking about
15 taking a break at 11:00 unless you think we're going to
16 be wrapping up soon.

17 MR. HARTSELL: We are prepared to wrap up at this
18 stage --

19 HEARING EXAMINER COLLINS: Okay.

20 MR. HARTSELL: -- unless you have additional
21 questions that you would like to have answered.

22 HEARING EXAMINER COLLINS: I don't think so. I'll
23 take a quick minute and look. No, that's it. I'm
24 done.

25 Are you going to have a presentation?

1 MR. DANLEY: It will be brief.

2 HEARING EXAMINER COLLINS: Okay.

3 Steve, I understand that Dirk is going to have a
4 brief presentation. Do you want to reserve your final
5 remarks for after he goes, or do you want to just go
6 ahead?

7 MR. HARTSELL: I'll reserve.

8 HEARING EXAMINER COLLINS: Okay. Then we're ready
9 for you, Dirk.

10 (Elizabeth Workman exited the room.)

11 MR. DANLEY: For the record, Dirk Danley, Lee
12 County Zoning. I'm actually using the PowerPoint from
13 my previous presentation for this case, just pulling up
14 some slides for reference.

15 Just to speak briefly, the airport protection
16 zones were brought up. I wanted to rearticulate from
17 Staff's stance that the Applicant did go through the
18 steps of ensuring that they're complying with all the
19 Land Development Code requirements as it pertains to
20 airport protection --

21 HEARING EXAMINER COLLINS: I'm glad you brought
22 that up because I have a question regarding Condition 3
23 and Condition 4. 3 is lighting, and 4 is construction
24 activities. Are those conditions basically a
25 restatement of land development requirements? And you

1 know I don't usually like to include restatements of
2 Code since Code applies anyway, unless it was the Port
3 Authority that insisted that it be memorialized into
4 the resolution.

5 MR. DANLEY: Yes. So my understanding is 3i is
6 not a restatement of the Code necessarily, but just
7 packaging it with the Code requirement for the
8 photometric plans for the Port Authority. But, yes,
9 Conditions 3 and 4 were an activity between Staff, the
10 Applicant, and the Port Authority to ensure that we
11 were being as compliant -- or being compliant with all
12 the requirements moving --

13 HEARING EXAMINER COLLINS: All right.

14 MR. DANLEY: -- forward with this --

15 HEARING EXAMINER COLLINS: So they don't have
16 confidence in Code alone?

17 MR. DANLEY: Well, there's -- there's some --
18 there's some concerns over the recreation area,
19 specifically, being so close to the airport, and as
20 that evolves over time making sure that nothing slips
21 out from under them --

22 HEARING EXAMINER COLLINS: Okay.

23 MR. DANLEY: -- (inaudible.)

24 MR. HARTSELL: To the extent that it's helpful, on
25 behalf of the Applicant, we did work very closely with

1 the Port Authority, and consequently would -- I
2 appreciate your comment about the Code. I happen to
3 think the same thing, the Code covers these very well,
4 but in this instance we worked real closely with the
5 Port Authority, and we're comfortable with the
6 conditions as they've been presented.

7 MR. DANLEY: Okay. And just to say
8 rearticulate -- I have further along in the slides
9 here -- Airport Noise Zone B is located here. There
10 are no residential dwelling units proposed, just the
11 recreation area here, and then it just goes into open
12 space.

13 Airport Noise Zone C is located along this area.
14 There is a requirement that's stated in the conditions
15 document, as well, about notification of being within
16 those airport noise zones.

17 So it's Staff's opinion that the -- the work has
18 been put in to ensure that there's consistency with the
19 requirements of FAA, LCPA, and the Land Development
20 Code.

21 Just because there was a couple places on the
22 Applicant's slide -- and they did make note of it, but
23 I wanted to put on the record of Staff that there is no
24 access proposed onto Shawnee Road. Right now the
25 master concept plan indicates a cul-de-sac that ends at

1 the -- at the eastern boundary. It is not proposed to
2 end -- or to continue onto property on Shawnee Road.

3 And then just speaking briefly to the conditions
4 that were worked out between Staff and the Applicant
5 since our last hearing, Staff is in agreement with
6 what's been changed. We have worked closely with DOT,
7 the LCPA, and Lee County Natural Resources to ensure
8 that all their interests are being protected with the
9 conditions in the document.

10 And with that, I'm here for any questions you
11 might have.

12 HEARING EXAMINER COLLINS: Okay. Thank you very
13 much, Dirk. I don't have any questions.

14 MS. EKBLAD: Madam Hearing Examiner, we had a few
15 points of clarification. Earlier in the presentation,
16 you asked about the separation distance between the two
17 access points that are subject to the traffic light?

18 HEARING EXAMINER COLLINS: Yes.

19 MS. EKBLAD: The master concept plan includes that
20 dimension. It's 3,317 feet.

21 With regard to any revision to the CAM (phonetic),
22 Condition 16 outlines that process.

23 Condition 5iii requires the central irrigation
24 that Mr. Brown was talking about. Condition --

25 MR. HARTSELL: She's looking.

1 MS. EKBLAD: Oh, okay.

2 Condition 10 requires updated protected species
3 surveys and the Human-Wildlife Coexistence Plan at the
4 time of the development order.

5 And then I just had a question for Mr. Edwards.
6 The Land Development Code does allow residential
7 projects to put up a wall. While we are continuing to
8 agree to do that Type D buffer on the eastern property
9 boundary, we would like the ability to put in a
10 residential project wall. So that could be added to
11 the condition. We would be compliant with that section
12 of the Code.

13 HEARING EXAMINER COLLINS: Okay. You want to
14 shoot me some language? I can leave the record open 48
15 hours --

16 MS. EKBLAD: Okay.

17 HEARING EXAMINER COLLINS: -- and you can work
18 with Dirk, make sure you're on the same page, and we
19 can include that?

20 Just a couple of things. There was -- I didn't
21 bring my conditions I was working on. I noticed a
22 couple of the conditions like refer to these management
23 plans as exhibits. So they would potentially become
24 exhibits to the resolution.

25 MS. EKBLAD: Correct.

1 HEARING EXAMINER COLLINS: So my staff may be
2 contacting you for a fresh copy of what's going to be
3 attached just to make sure that it's marked properly,
4 unless Staff is comfortable simply with the condition
5 identifying the document and the date. I'm -- I'm not
6 sure what the preference is on that.

7 MR. HARTSELL: We can provide copies. I
8 understand what you're asking.

9 HEARING EXAMINER COLLINS: Okay.

10 MR. DANLEY: My understanding is all of those
11 plans have been incorporated into the Staff Report as
12 a clean --

13 HEARING EXAMINER COLLINS: Yeah, I don't want --

14 MR. DANLEY: -- separated out copy --

15 HEARING EXAMINER COLLINS: -- I don't want the
16 markings on it that says attachment M or --

17 MR. DANLEY: Okay, understood.

18 HEARING EXAMINER COLLINS: I want a fresh -- and
19 we'll mark it with the exhibit -- we mark the exhibits
20 to conditions with "B" numbers, and that way if you
21 just provide it to us, we can mark it the way they do
22 it for the final resolution, and it will go -- travel
23 to the Board that way.

24 MR. DANLEY: Understood.

25 MR. HARTSELL: And we'll provide you with -- we'll

1 work with Staff to come up with a revised Condition 11
2 sub 2.

3 HEARING EXAMINER COLLINS: And simply to restate
4 what you're looking to do, is have the option of either
5 providing a wall or a vegetative buffer. So if it was
6 a wall, then you wouldn't have to plant trees and
7 shrubs. It would just be a residential project wall.

8 MR. HARTSELL: It would be a residential wall,
9 which I believe requires --

10 HEARING EXAMINER COLLINS: But doesn't Code
11 require --

12 MR. HARTSELL: -- requires landscaping, as well,
13 yes, so...

14 MS. EKBLAD: Yes.

15 MR. HARTSELL: Yes, we'll make that clear.

16 HEARING EXAMINER COLLINS: Okay. So I want to
17 give you time to work on that, 48 hours, and then if
18 you could provide that to me.

19 It just so happens that I can work on this
20 immediately. So as soon as you complete the record, I
21 can turn my attention to it --

22 MR. HARTSELL: Good. We'll get together --

23 HEARING EXAMINER COLLINS: -- before another case
24 slips in. I've got a case tomorrow so...

25 MR. HARTSELL: We'll get it to you quickly.

1 HEARING EXAMINER COLLINS: Okay.

2 All right. Anything else?

3 MR. HARTSELL: We don't have anything.

4 HEARING EXAMINER COLLINS: Thank you, everyone,
5 for coming. That concludes the testimony that will be
6 on the record. I left the record open for 48 hours for
7 them to provide a supplement to Condition 11.

8 You will receive notification of the final Board
9 hearing on this case to the email that you provided, if
10 you filled out a public participation form. The only
11 other advertisement for that hearing will be in the
12 News-Press or on the County website. So if you want to
13 provide your email address, and you haven't, if you
14 provide that to me, we'll make sure you get a copy of
15 that. You'll receive a copy of my recommendation, in
16 addition to notice of the future Board hearing.

17 Thank you, everyone.

18 (Proceedings concluded 11:23 a.m.)

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3 CERTIFICATE OF REPORTER
4

5 STATE OF FLORIDA)

6 COUNTY OF LEE)
7

8 I, Deborah M. Bruns, Florida Professional
9 Reporter, do hereby certify that I was
10 authorized to and did report the foregoing
11 proceedings, and that the transcript, pages 1
12 through 103, is a true and correct record of my
13 stenographic notes.
14

15 Dated this 17th day of July, 2023.
16

17 
18 _____
19 Deborah M. Bruns, FPR
20

21 (This transcript was electronically signed.)
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23
24
25

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