

**MEMORANDUM
FROM THE
DEPARTMENT OF COMMUNITY DEVELOPMENT
ZONING SECTION**

DATE: March 26, 2024

TO: Donna Marie Collins
 Chief Hearing Examiner

FROM: Chahram Badamtcian
 Planner, Senior

SUBJECT: 48-Hour Memorandum for DCI2022-00037, Bayshore 31 RPD

Staff would like to submit the following additional analysis and conditions for the above-mentioned zoning case scheduled for March 28, 2024, public hearing:

Approximately 41.5 percent of this 34.8-acre site is located within the Coastal High Hazard Area. The application states that the site contains 6.49 acres of wetlands, of which 2.1 acres will be impacted and 4.34 acres will be preserved.

In addition to the Lee Plan Goals, Objectives and Policies analyzed in the staff report the following Goals, Objectives and Policies are also applicable to this site:

GOAL 101: COASTAL AREAS. Protect human life along with current and future development from the impacts of coastal flooding. Coastal flooding includes, but is not limited to, high tide events, storm surge, flash floods, stormwater runoff, and impacts of sea level rise.

OBJECTIVE 101.3: DEVELOPMENT IN COASTAL AREAS. Protect human life and property from natural and man-made disasters.

POLICY 101.3.2: Restrict development in the Coastal High Hazard Area to uplands except as needed for the provision of public facilities.

A portion of the subject property is located within the Coastal High Hazard area (CHHA) according to the Lee Plan Map 5-A. Policy 101.3.2 restricts development in the Coastal High Hazard to uplands. The applicant is proposing development of the uplands and a portion of wetlands within the property boundaries. The development proposed in the CHHA wetland areas is anticipated to be permitted through the issuance of an Environmental Resource Permit (ERP) by the South Florida Water Management District (SFWMD).

Policy 101.3.2 does not address development approval of impacts to wetlands in the CHHA. The development in the Wetlands Future Land Use category is specifically regulated by Goal 124 and subsequent objectives and policies.

POLICY 1.5.1: Permitted land uses in Wetlands consist of very low-density residential uses and recreational uses that will not adversely affect the ecological functions of wetlands. All development in Wetlands must be consistent with Goal 124. The maximum density is one dwelling unit per twenty acres (1 du/20 acre) except as otherwise provided in Table 1(a) and Chapter XIII.

Table 1(a), footnote 8(b) and Policy 124.1.1 allow the density from the preserved freshwater wetlands to be transferred to upland portions of the site at the same underlying density as permitted for those uplands.

Staff proposes the following additional conditions to mitigate the impact to the wetlands and development within the Coastal High Hazard Areas.

5. Wetland Impacts

Prior to the issuance of the first development order, developer must submit a copy of the mitigation payment receipt or mitigation plans for all wetland impacts to Lee County Department of Community Development.

6. Coastal High Hazard Area

Prior to issuance of a local development order, the developer must provide calculations that qualify the flood storage volume provided by wetlands within the Coastal High Hazard Area and demonstrate equal compensatory flood storage volume within the proposed development on the engineer plans.

7. State and Federal Permits

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

If the State does not approve wetland impacts or if State wetland permits are not consistent with proposed wetland impacts reflected in County development permits, then Developer must amend County development permit approvals to be consistent with state wetland permits and applicable Lee Plan and LDC regulations regarding development within wetlands.