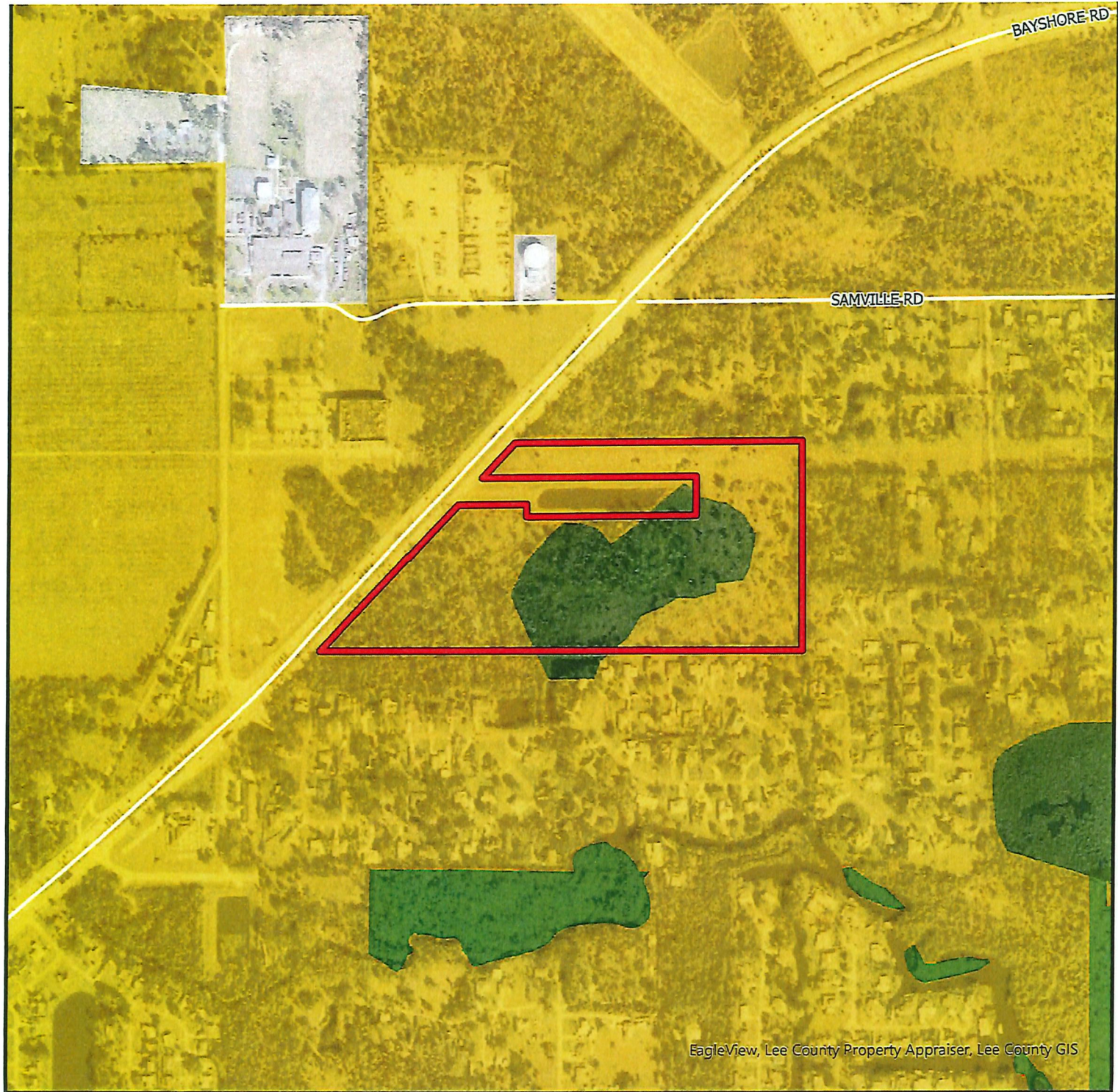


Summary of Hearing Examiner Recommendation

BAYSHORE 31 RPD

The request seeks to develop property fronting on Bayshore Road with residential land uses. The proposed project constitutes infill development on major arterial roadway featuring a wide array of residential, commercial, and light industrial uses.

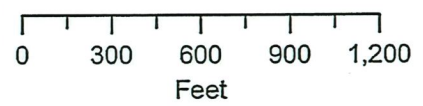
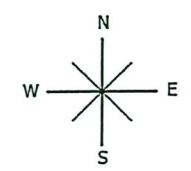
Detailed recommendation follows



DCI2022-00037

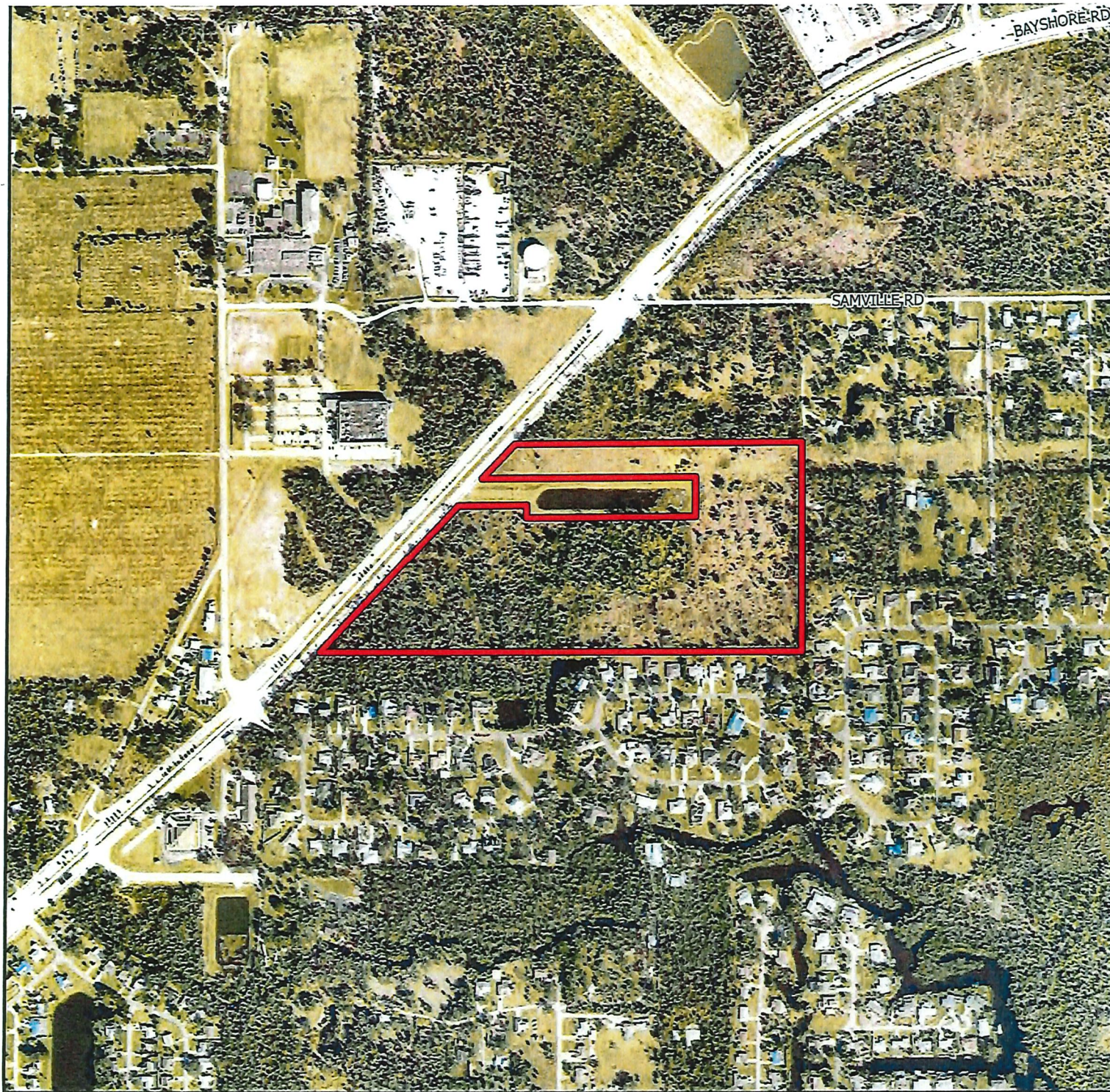
Future Land Use

-  Subject Property
-  Suburban
-  Public Facilities
-  Conservation Lands - Upland
-  Wetlands
-  Conservation Lands - Wetland



EagleView, Lee County Property Appraiser, Lee County GIS

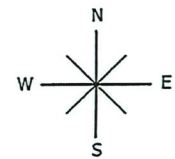




DCI2022-00037

Aerial

 Subject Property



0 300 600 900 1,200
Feet



OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2022-00037

Regarding: BAYSHORE 31 RPD

Location: 7150 and 7200 Bayshore Road
North Fort Myers Planning Community
(District 4)

Hearing Date: March 28, 2024 (Not Heard)
Continued Date: June 13, 2024

I. **Request**

Rezone 34.8± acres from Agriculture and Residential Single-Family to Residential Planned Development to allow 180 multiple-family residential units.

The legal description is set forth in Exhibit A.

II. **Hearing Examiner Recommendation**

Approve, subject to the conditions and deviations in Exhibit B.

III. **Discussion**

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners (Board) on applications to rezone property to the planned development zoning district.¹ In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on an application to rezone 34.8 acres to the Residential Planned Development District (RPD).

In preparing a recommendation to the Board, the Hearing Examiner must apply the Lee County Comprehensive Plan (Lee Plan), Land Development Code (LDC), and other County regulations to facts adduced at hearing. The record must contain substantial competent evidence to support the recommendation.

Discussion supporting the Hearing Examiner's recommendation of approval with conditions follows below.

¹ LDC §34-145(d)(4) a.

Request

The request seeks to rezone 34.8 acres from Agriculture (AG-2) and Single Family Residential (RS-1) to RPD to allow development of up to 180 dwellings. Development will consist of dwellings, surface parking, private amenities, and supportive infrastructure.

The request includes five deviations from LDC criteria.

Staff recommended approval of the request subject to conditions.

Character of Area

The property is located on Bayshore Road, west of Interstate 75 in the North Fort Myers Planning District.² The Bayshore Road corridor is a highway developing with residential, commercial, and industrial land uses. Residential and commercial land uses are in proximity to the site.

The Master Concept Plan (MCP) includes indigenous preserves, lakes, buffers, and development tracts. An FDOT detention pond and powerline easement encumber the north third of the property. Residential land uses abut to the south and east.³ Bayshore Road borders the property on the west. Across Bayshore Road is a parcel zoned for light industrial uses and a large church.

History

The property is vacant and zoned for agriculture and single family development.⁴

Lee Plan

The Lee Plan regulates land development in the County.⁵ Its Future Land Use Map divides the County into future urban, nonurban, and environmentally sensitive areas. All development must be consistent with the Lee Plan and the Future Land Use Map.⁶

The property's future land use designation is Suburban and Wetlands.⁷ Suburban designated lands consist primarily of residential land uses on the fringe of more intensely developed areas.⁸ The Lee Plan emphasizes protecting existing

² Lee Plan Map 1-B. The property address is 7150 and 7200 Bayshore Road, North Fort Myers.

³ Daughtery's Creek subdivision lies to the south/southeast.

⁴ AG-2 and RS-1.

⁵ LDC 34-491.

⁶ Lee Plan Policy 2.1.2; LDC §§34-411(a), 34-491: Rezoning must be consistent with Lee Plan goals, objectives, and policies. Potential conflicts between the Lee Plan and the LDC must be resolved in favor of the Lee Plan.

⁷ Lee Plan Map 1-A.

⁸ Lee Plan Policy 1.1.5.

residential neighborhoods in the Suburban category.⁹ Standard density is one to six units per acre. The proposed 180 dwellings is within permissible density limitations.¹⁰

Wetlands may develop with very low-density residential and recreation uses that do not impact the ecological function of the wetlands.¹¹ The MCP designates most onsite wetlands as preserve.¹²

Approximately 41% of the property lies within a Coastal High Hazard Area.¹³ Development in coastal areas is subject to additional requirements under the Lee Plan's Conservation and Coastal Management Element.¹⁴ The Plan restricts development in Coastal High Hazard Areas to uplands.¹⁵ The property is within a Hurricane Category 1 Storm Surge/Tide area and Evacuation Zone A and will be subject to County regulations designed to reduce vulnerability from hurricanes and flooding.¹⁶ In addition, FEMA regulations require a minimum finished floor elevation to be one foot above base flood.

Since the MCP impacts wetlands that function as a natural defense against coastal flooding, staff recommends a condition requiring compensation for the flood storage capacity of impacted wetlands.¹⁷

The current zoning designation is RS-1 and AG-2. The purpose of the RS-1 district is to accommodate development of detached, conventionally built single family dwellings. The purpose of the AG-2 district is to support agricultural operations with ancillary residential use.¹⁸ The Lee Plan discourages new agricultural uses in future urban areas.¹⁹ The requested RPD zoning district authorizes land uses better suited for property designated as Suburban.²⁰

⁹ *Id.*

¹⁰ The property acreage could accommodate a maximum of 197 dwelling units based on its future land use designation of Suburban and Wetlands.

¹¹ Lee Plan Policy 1.5.1; Wetlands must be consistent with Lee Plan Goal 124.

¹² The MCP proposes minimal wetland impacts.

¹³ Coastal High Hazard Areas are areas below the elevation of the category 1 storm surge line as established by a Sea, Lake, and Overland Surges from Hurricanes (SLOSH) computerized storm surge model and delineated by Lee Plan Map 5-A. Lee Plan Glossary. *See also* s. 163.3177(6)(a)10,c(VI), F.S. *See* Staff 48 Hour Submittal dated March 26, 2024.

¹⁴ Lee Plan Objective 2.6. *See* Goals 72, 101, Objective 101.3, Policy 101.1.1.

¹⁵ Lee Plan Policy 101.3.2. There is a limited exception for public facilities inapplicable to the request.

¹⁶ Florida Statutes 163.3178(2)(h), Lee Plan Goal 72, Objective 72.2, Map 5-A; LDC 2-481 *et seq*

¹⁷ Proposed Condition 6 requires the developer to quantify the flood storage volume provided by impacted wetlands within the Coastal High Hazard Area and demonstrate equal compensatory flood storage volume within the proposed development on engineer plans submitted with the development order application.

¹⁸ LDC 34-651.

¹⁹ Lee Plan Goal 9, Objective 9.2.

²⁰ Lee Plan Goal 5, Objective 9.2, Policies 5.1.1, 5.1.5 5.1.7, 9.2.1.

Compatibility

Compatibility exists when land uses can exist in proximity and no one use unduly impacts another in a negative manner.²¹ The planned development zoning district integrates new development with surrounding land uses.²² Planned development zoning can also further Lee Plan goals providing flexibility in planning/design.²³

Development in North Fort Myers is subject to a Community Plan.²⁴ The North Fort Myers Community Plan emphasizes protecting community character, natural resources, and quality of life.²⁵ The Lee Plan favors compact and contiguous development patterns in areas with services and infrastructure to support development.²⁶ Surrounding lands feature residential, commercial, and industrial land uses. The site constitutes infill development consistent with existing development patterns.²⁷

The staff report describes the intended product as “villa style” rental homes clustered around open space areas.²⁸ Applicant’s PowerPoint depicts dwellings resembling single family homes served by a common parking area internal to the site.²⁹

The Lee Plan encourages a diverse mix of housing to serve County residents. In furtherance of this directive, the request expands housing options in North Fort Myers and the County in general.³⁰

Perimeter buffers and open space to separate and screen the project from residential land uses along its perimeter. Buffers along the south and east property lines will be 15 feet wide, comprised of five trees and double staggered row of hedges, maintained to form a 36 inch high continuous visual screen within one year after planting.³¹

²¹ Florida Statutes s. 163.3164(9); The Lee Plan offers benchmarks to measure compatibility of uses adjacent to established residential development. Lee Plan Policies 5.1.5, 135.9.5, 135.9.6.

²² LDC §§34-411(a), 34-612(2),

²³ *Id.*

²⁴ Lee Plan Goal 30 adopted by Lee County Ordinance No. 09-11 on February 25, 2009. Community specific LDC regulations were subsequently adopted in Lee County Ordinance No. 12-01 (January 10, 2012) codified as LDC §33-1531 *et seq.*

²⁵ See Lee Plan Goal 30.

²⁶ Lee Plan Objectives 2.1, 2.2, Policies 2.2.1, 5.1.3.

²⁷ Lee Plan Policy 5.1.3.

²⁸ Lee Plan Goals 5, 135, 158. Policies 135.1.9.(directive to ensure a mix of residential housing types countywide), 160.1.3.

²⁹ Staff Report Attachment M: Application and Applicant Narrative

³⁰ Lee Plan Goals 5, 135, 158. Policies 30.1.3, 135.1.9.

³¹ LDC 10-146d.(4).

LDC

Development must comply with County land development regulations or seek deviations.

A “deviation” is a departure from a land development regulation.³² Requests for deviations must demonstrate that the deviation will enhance the planned development and not cause a public detriment.³³

The application seeks five deviations from the LDC pertaining to dead end street configuration, excavation setbacks, site access, waterway buffer encroachments, and width of buffer plantings. Applicant offered testimony in support of the deviations based on the LDC standard of review.³⁴ Staff recommended approval of all deviations.

The Hearing Examiner must recommend approval, approval with modifications, or denial of requested deviations based upon findings that the deviations (1) enhance the planned development and, (2) preserve/promote public health, safety, and welfare.³⁵ The Hearing Examiner finds the requested deviations meet LDC approval criteria.

Development in the North Fort Myers Planning District is subject to the North Fort Myers Community Plan.³⁶ Community specific LDC regulations require community review of zoning applications within the district.³⁷ Applicant conducted an advertised neighborhood meeting at the North Fort Myers Recreation Center prior to hearing.³⁸ Applicant/developer must conduct additional community meetings at the development order stage.

Development will be subject to impact fees for road, park, fire, school, and emergency medical services.³⁹

Environmental/Natural Resources

Requests to rezone property must not adversely affect environmentally critical/sensitive areas or natural resources.

³² LDC §34-2.

³³ LDC §34-373(a)(9).

³⁴ LDC §34-377(a)(4).

³⁵ LDC §34-377(a)(4).

³⁶ Lee Plan Goal 30 and supplemental development regulations in LDC §33-1531 et seq. Future development permits, including development orders, must comply with community standards.

³⁷ LDC §33-1532(a)(2).

³⁸ Staff Report Attachment H: Public Informational Meeting Summary. Meeting held on Monday November 27, 2023.

³⁹ LDC Chapter 2, Article VI.

The MCP depicts 13.92 acres of open space, which includes 6.96 acres of indigenous preserve.⁴⁰ Applicant's plan of development impacts 2.1 acres of wetlands and preserves the remaining 4.34 wetland acres onsite. Applicant must obtain state permits to authorize wetland impacts.⁴¹

The protected species survey yielded no evidence of protected species.⁴²

Buffers and landscaping within common areas must follow Xeriscape principles and consist of native landscape to conserve water.⁴³

The Hearing Examiner finds the proposed RPD zoning will not harm environmentally critical/sensitive areas or natural resources.⁴⁴ The MCP and conditions of approval will enhance the property's environmental features by removing exotic vegetation and preserving native upland and wetland vegetation.⁴⁵

Transportation/Traffic

Applications to rezone property must demonstrate sufficient road access to support proposed development intensity and expected impacts on transportation facilities will be addressed by County regulations and conditions of approval.

The property has 920 feet of frontage on Bayshore Road, a State maintained arterial roadway.⁴⁶ The MCP depicts a single driveway access to Bayshore Road and a secondary emergency access running between Hartwig Lane and Bayshore Road.⁴⁷

⁴⁰ The 6.96 acres of indigenous vegetation consist of upland and wetland preserves. Lee Plan Objective 123.2, Policies 77.3.1, 77.3.5, 123.2.4, 123.2.6, 123.2.13, 123.2.15, 123.3.1.

⁴¹ Development of wetlands in Coastal High Hazard Areas is subject to permitting by the South Florida Water Management District through the Environmental Resource Permitting process.

⁴² Applicant's protected species survey yielded no protected species. Staff Report Attachment E: BearPaws Environmental Consulting report prepared for Bayshore 35 (*sic*) Acres dated December 2021 and updated August 2023.

⁴³ Lee Plan Objective 126.2, Policy 126.2.1. The common elements of the project will have Florida friendly plantings with low irrigation requirements.

⁴⁴ Lee Plan 125.1.2.

⁴⁵ Environmental Staff Review memo dated February 23, 2024, prepared by Beth Workman, Principal Environmental Planner.

⁴⁶ Lee County Administrative Code 11-1. As a state maintained facility, FDOT will determine the precise location of the Bayshore access. Applicant's narrative statement suggests a possibility of a median opening across from the project access pending FDOT approval.

⁴⁷ A 160 foot wide FPL easement encumbers the north end of the property. An emergency only stabilized access is the only improvement planned within the easement. The emergency access is adjacent to an FDOT retention pond. This emergency access will serve the project as well as residents on Hartwig Lane. Staff Report Attachment M: Applicant Narrative Statement. Applicant 48 Hour Letter dated March 25, 2024, and June 10, 2024.

Transportation studies concluded project traffic will not negatively impact surrounding roadways.⁴⁸ Further, no road improvements are necessary to accommodate projected trip generation. The Traffic Impact Statement concludes the project will pay for transportation impacts with road impact fees.⁴⁹

Developer must address site related improvements during development order review.⁵⁰

Public Services and Infrastructure

Public services are the services, facilities, capital improvements, and infrastructure necessary to support development.⁵¹ The Lee Plan requires an evaluation of the availability of public services during zoning.⁵²

The property fronts on Bayshore Road, a State maintained arterial roadway with a multipurpose trail.⁵³ The MCP depicts one primary access serving the project from Bayshore and an emergency access to Bayshore. This emergency access will also connect to Hartwig Lane.⁵⁴ Lee County Utilities has potable water lines to serve the project.⁵⁵ Florida Governmental Utility Authority has infrastructure to provide sanitary sewer service.

The North Fort Myers Fire Control & Rescue Service District Station on Slater Road provides fire protection and emergency medical services to the area.⁵⁶ The North District Offices of the Lee County Sheriff provides law enforcement services to the community.

Schools, parks, libraries, community facilities, shopping, and employment centers are located within a reasonable distance.⁵⁷

⁴⁸ Chahram Badamchian, Senior Planner dated February 23, 2024, and Traffic Impact Statement prepared by TR Transportation Consultants, Inc. for Bayshore 31 RPD revised August 9, 2023.

⁴⁹ Lee Plan Policies 38.1.1, 38.1.5. Staff Report Attachment N: Traffic Impact Statement prepared by TR Transportation Consultants, Inc. for Bayshore 31 RPD revised August 9, 2023.

⁵⁰ Lee Plan Objective 39.1 and Policy 39.1.1.

⁵¹ Public services and infrastructure available to serve the project will include public water (Lee County Utilities), sewer (FGUA), paved streets, parks and recreation facilities, libraries, police, fire and emergency services, urban surface water management, and schools.

⁵² Lee Plan Policy 2.2.1.

⁵³ The Lee Plan designates Bayshore Road as a future shared use facility for cyclists and pedestrians. Lee Plan Map 3-D.

⁵⁴ The planned emergency access to Bayshore will also serve residents along Hartwig Lane, who currently only have access to Sanville Road.

⁵⁵ Lee Plan Map 4-A.

⁵⁶ North Fort Myers Fire Control & Rescue Service District Station 3.

⁵⁷ Staff Report Attachment M: Application and Applicant Narrative. There are four elementary schools, and six parks/recreational facilities within five miles of the site.

Conditions

The County must administer the zoning process so proposed land uses minimize adverse impacts on adjacent property and protect County's water resources.⁵⁸ Conditions must plausibly relate to anticipated impacts, and pertinent to mitigating impacts to public health, safety, and welfare.⁵⁹ The RPD will be subject to conditions of approval designed to address impacts reasonably anticipated from development.⁶⁰

The Hearing Examiner recommends minor revisions to wording of conditions and deviations to improve clarity.

Public

Two residents of Daughtrey's Creek subdivision spoke at hearing. They expressed concerns regarding potential increases in the risk of flooding due to the differential in elevation between the project and their property. Applicant's representatives clarified state and county development regulations are designed to ensure minimal if any offsite impacts from stormwater flows.

Conclusion

The Hearing Examiner finds the requested Bayshore 31 RPD district meets LDC criteria and, as conditioned, is compatible with surrounding development. Accordingly, the Hearing Examiner recommends approval subject to conditions in Exhibit B.

The Hearing Examiner revised conditions of approval for clarity, compliance with state law and to remove references to the LDC applicable to development by Condition 1.

IV. Findings and Conclusions

Based on the testimony and exhibits presented in the record, the Hearing Examiner finds:

- A. The requested Bayshore 31 RPD is consistent with the Lee Plan. Lee Plan Goals 2, 4, 5, 30, 60, 61, 77, 95, 123, 125, 135, 158; Objectives 1.5, 2.1, 2.2, 4.1, 5.1, 6.1, 77.1, 77.3, 95.1.3, 123.2, 123.4, 126.2, 135.1, 158.1, and Policies 1.1.5, 1.5.1, 1.6.5, 2.1.2, 2.2.1, 2.2.2, 5.1.1, 5.1.5, 5.1.7, 5.1.10, 5.2.4, 123.2.4, 124.1.1, 135.1.9, 135.9.6, 158.1.7; Lee Plan Maps 1-A, 1-B, 3-D, 4-A, 4-B, 4-E, and Table 1(a).

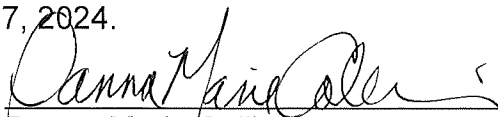
⁵⁸ Lee Plan Policies 5.1.5, 135.9.5, 135.9.6; LDC 34-145(d)(4) a.2.(b), LDC §§34-377(a)(3), 34-411, and 34-932(c).

⁵⁹ LDC §34-932(b).

⁶⁰ LDC §§34-83(b)(4) a.3, 34-377(a)(2)c; Lee Plan Goals 60, 61, 77, 125, Policies 5.1.5, 60.1.1, 61.3.11.

- B. As conditioned, the RPD zoning designation:
1. Is consistent with the Land Development Code or qualifies for deviations. LDC Chapters 2, 10, 33, and 34.
 2. Is compatible with existing or planned uses in the surrounding area. Lee Plan Objectives 2.1, 158.1, and Policies 5.1.2, 5.1.3, 5.1.5, 5.2.4, 135.1.9, 135.9.5, 135.9.6, 158.1.7; LDC §§34-411, 34-413, *and*
 3. Provides sufficient road access to support proposed development intensity. Lee Plan Policies 39.2.1, 39.2.2.
 4. Expected impacts on transportation facilities will be addressed by County regulations and conditions of approval. Lee Plan Objective 39.1, Policies 37.3.3, 38.1.1, 38.1.5, 39.1.1, 39.1.3; LDC §§2-261 *et seq.*, 34-411(d) and (e).
 5. Will not adversely affect environmentally sensitive areas or natural resources. Lee Plan Goals 60, 61, 77, 123, 125, Objectives 60.4, 61.2, 123.1, 123.2, 123.4, 123.8, 124.1, 126.2, Policies 5.1.6, 30.5.3, 60.1.2, 60.4.1, 60.4.2, 60.4.3, 61.3.4, 61.3.6, 61.3.8, 61.3.11, 77.3.1, 77.3.5, 77.3.7, 123.2.4, 123.2.13, 123.8.1, 125.1.2, 125.1.4, 126.1.4, 126.2.1, 158.1.7, and Standard 4.1.4.
 6. Public services and infrastructure will be available to serve the development. Goals 2, 4, 95, Objectives 2.1, 2.2, 4.1, Policies 2.2.1, 95.1.3, Standards 4.1.1, 4.1.2.
- C. The proposed uses are appropriate at the subject location. Lee Plan Goals 2, 5, 6, 30; Objectives 2.1, 2.2, Policies 2.1.1, 2.1.2, 5.1.2, 5.1.3, 5.1.5, 5.2.4, 124.1.1, 135.9.5, 135.9.6.
- D. The County regulations and recommended conditions provide sufficient safeguards to protect the public interest and relate to impacts expected from the proposed development. Lee Plan Policies 5.1.2, 5.1.5, 61.3.3, 61.3.8, 123.2.15, 123.2.9, 135.9.6, 158.1.7; LDC §§34-377(a)(3), 34-411 and 34-932(c).
- E. Deviations recommended for approval enhance the planned development and preserve public health, safety, and welfare. LDC §§34-373(a)(9), 34-377(a)(4).

Date of Recommendation: June 17, 2024.

A handwritten signature in black ink, appearing to read "Donna Marie Collins", written over a horizontal line.

Donna Marie Collins
Chief Hearing Examiner

Lee County Hearing Examiner
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398

Exhibits to Hearing Examiner's Recommendation

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

Exhibit A

LEGAL DESCRIPTION AND VICINITY MAP

Exhibit A

LEGAL DESCRIPTION

SECTION 29, TOWNSHIP 43 SOUTH, RANGE 25 EAST
NORTH FORT MYERS, FLORIDA

DESCRIPTION:

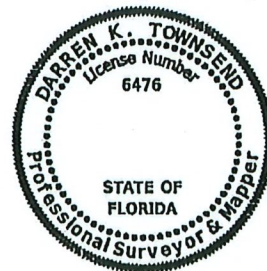
ALL OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 2905, PAGE 2913 LYING EAST OF STATE ROAD 78 (BAYSHORE ROAD) AND ALL LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 2905, PAGE 2915, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; LESS THAT PORTION OF LAND DESCRIBED IN ORDER OF TAKING RECORDED IN OFFICIAL RECORDS BOOK 3852, PAGE 2525, OF SAID PUBLIC RECORDS; SAID LANDS LYING IN THE NORTHWEST QUARTER (NW 1/4) OF SECTION 29, TOWNSHIP 43 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 29; THENCE N 00°14'26" W, ALONG THE WEST LINE OF SAID NORTHWEST QUARTER (NW 1/4), FOR 1012.23 FEET; THENCE N 89°59'37" EAST, ALONG THE SOUTH LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 2905, PAGE 2913, FOR 440.41 FEET TO THE EASTERLY BOUNDARY OF SAID ORDER OF TAKING, SAID EASTERLY BOUNDARY ALSO BEING THE EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD 78 (BAYSHORE ROAD), AND THE POINT OF BEGINNING; THENCE ALONG SAID EASTERLY BOUNDARY THE FOLLOWING SEVEN (7) COURSES: 1) N 42°40'02" E, FOR 587.21 FEET; 2) S 47°19'58" E, FOR 5.00 FEET; 3) N 42°40'02" E, FOR 332.86 FEET; 4) N 89°35'54" E, FOR 313.06 FEET; 5) S 00°24'13" E, FOR 58.18 FEET; 6) N 89°35'54" E, FOR 771.92 FEET TO THE MOST EASTERLY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3852, PAGE 2525, OF SAID PUBLIC RECORDS; 7) N 00°24'08" W, ALONG SAID MOST EASTERLY LINE, FOR 182.19 FEET TO THE SOUTH LINE OF THE NORTH 160.00 FEET OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 2905, PAGE 2915, SAID SOUTH LINE ALSO BEING THE SOUTH LINE OF A 160.00 FOOT WIDE POWERLINE UTILITY EASEMENT DESCRIBED IN DEED BOOK 234, PAGE 45, OF SAID PUBLIC RECORDS; THENCE ALONG SAID SOUTH LINES, S 89°41'37" W, FOR 974.39 FEET TO SAID EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD 78 (BAYSHORE ROAD) PER ORDER OF TAKING RECORDED IN OFFICIAL RECORDS BOOK 3852, PAGE 2525; THENCE N 42°40'02" E, ALONG SAID EASTERLY RIGHT OF WAY LINE, FOR 218.68 FEET TO THE NORTH LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 2905, PAGE 2915, SAID LINE ALSO BEING THE NORTH LINE OF SAID POWERLINE UTILITY EASEMENT; THENCE ALONG SAID NORTH LINES, N 89°41'37" E, FOR 1310.98 FEET TO THE EAST LINE OF SAID NORTHWEST QUARTER (NW 1/4); THENCE S 00°24'06" E, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER (NW 1/4), FOR 967.12 FEET; THENCE S 89°59'37" W, ALONG THE SOUTH LINE OF SAID LANDS, FOR 2202.90 FEET TO THE POINT OF BEGINNING.

SAID LANDS CONTAINING 34.80 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE EAST LINE OF BAYSHORE ROAD AS BEING N 42°40'02" E.

REVIEWED
DCI2022-00037
Rick Burris, Principal
Planner
Lee County DCD/Planning
2/13/2024



Digitally signed
by Darren
Townsend
Date:
2023.11.03
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DARREN TOWNSEND
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 6476

NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND
SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

THIS IS NOT A SURVEY

NOT VALID WITHOUT THE ATTACHED SKETCH OF DESCRIPTION.



AIM Engineering & Surveying, Inc.
2161 FOWLER STREET, SUITE 100
FORT MYERS, FLORIDA 33901
www.aimengr.com
PHONE (239) 332-4569
TOLL FREE (800) 226-4569
LICENSED BUSINESS No. 3114

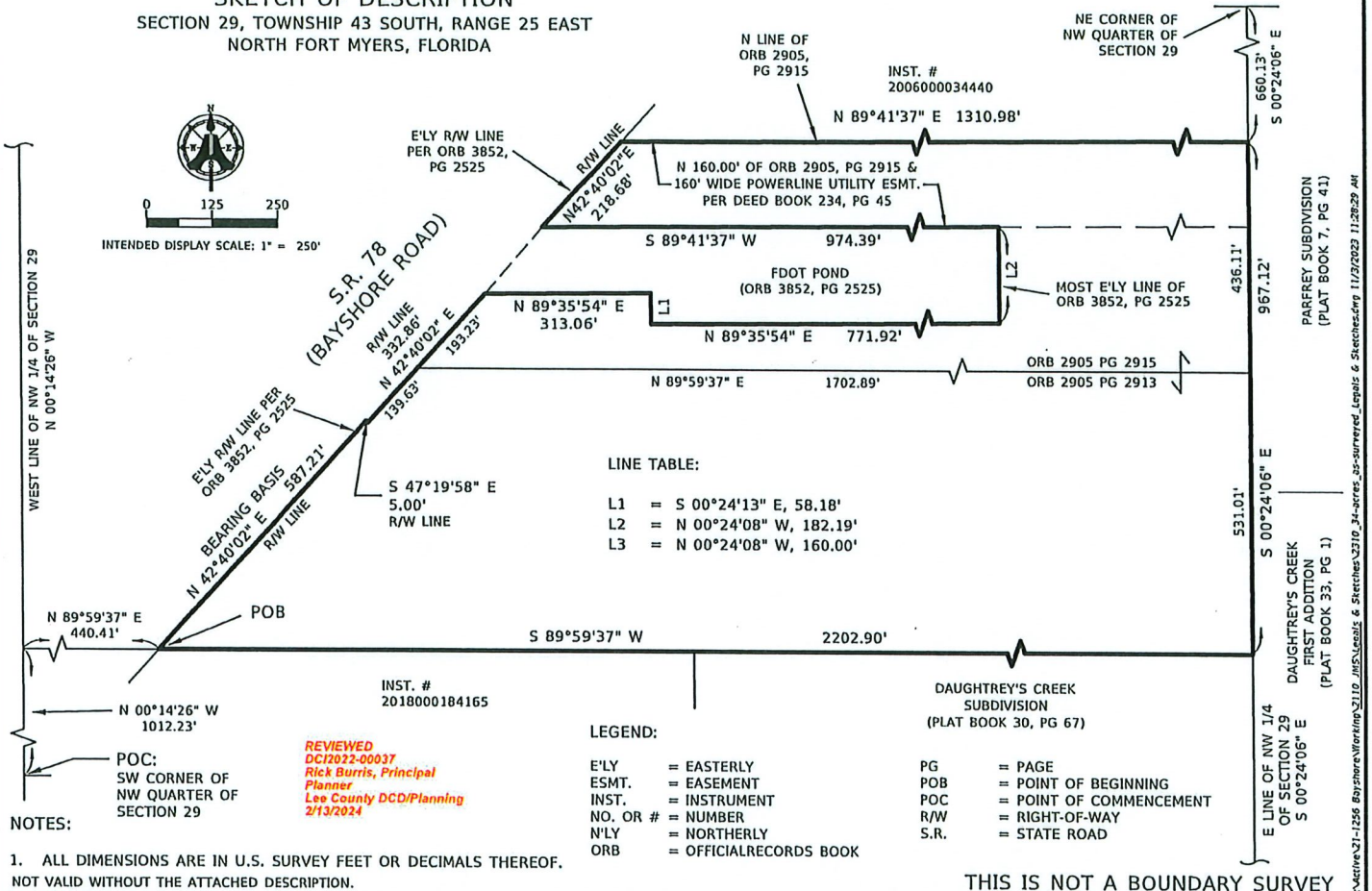
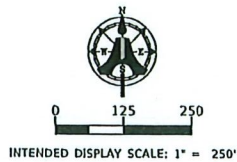
LEGAL DESCRIPTION & SKETCH 34-ACRE PARCEL

DRAWN: JS 10-31-2023		CHECKED: DT 11-01-2023		CLIENT: LAND AMERICA, LLC	
PROJECT NO.: 21-1256	SECTION: 29	TOWNSHIP: 43 S	RANGE: 25 E	COUNTY: LEE	SHEET 1 OF 2

ATTACHMENT O

J:\Active\21-1256 Bayshore\Working\2110_JMS\Legals & Sketches\2310_34-acres_as-surveyed_Legals & Sketches.dwg 11/13/2023 11:28:29 AM

SKETCH OF DESCRIPTION
SECTION 29, TOWNSHIP 43 SOUTH, RANGE 25 EAST
NORTH FORT MYERS, FLORIDA



AIM Engineering & Surveying, Inc.
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LICENSED BUSINESS No. 3114

SEE SHEET 1

DARREN TOWNSEND
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 6476

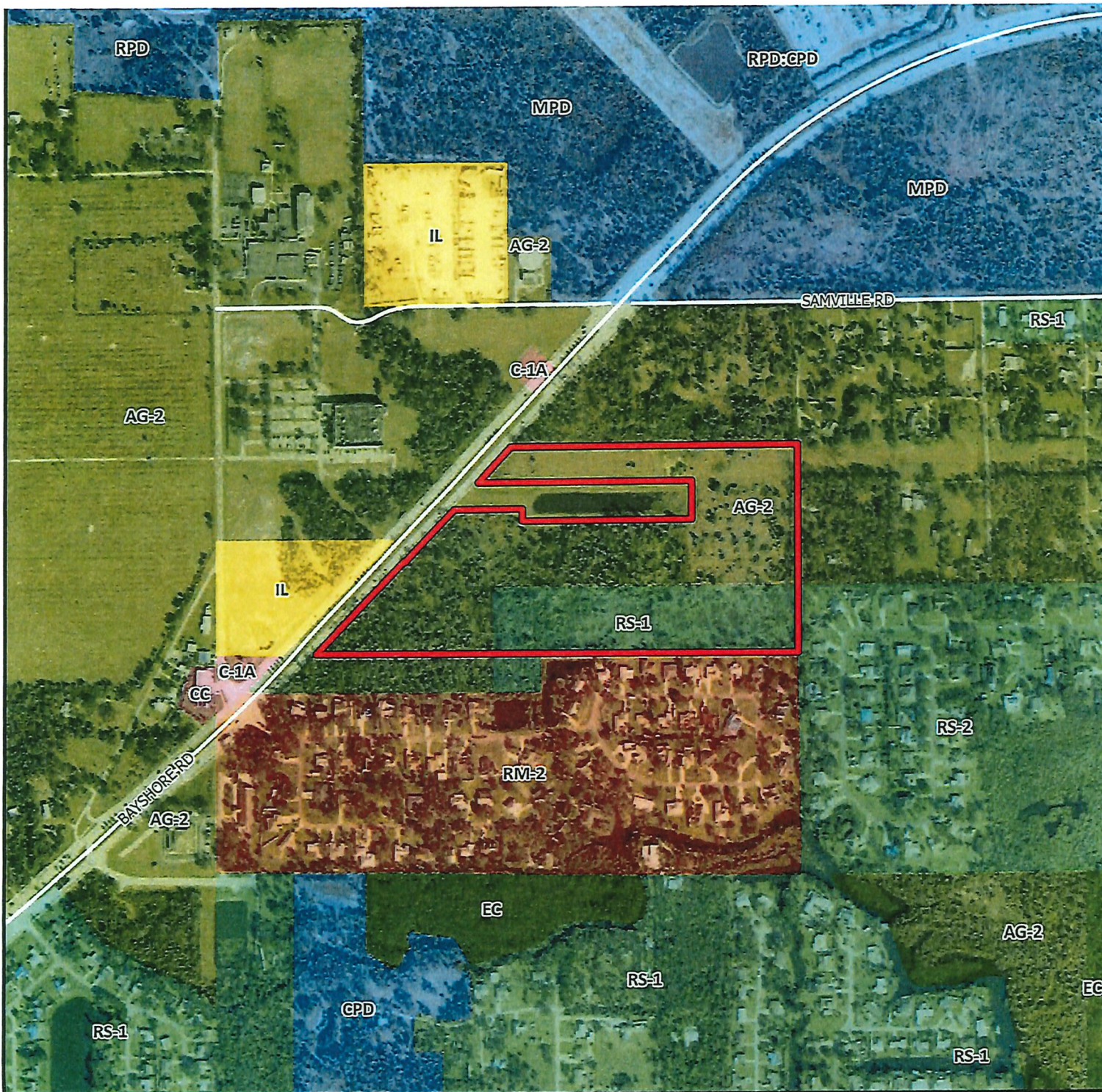
NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND
SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

LEGAL DESCRIPTION & SKETCH
34-ACRE PARCEL

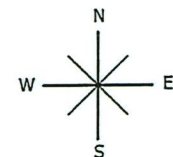
DRAWN: RH	10-31-2023	CHECKED: DT	11-01-2023	CLIENT: LAND AMERICA, LLC
PROJECT NO.:	21-1256	SECTION:	29	TOWNSHIP:
				43 S
				RANGE:
				25 E
				COUNTY:
				LEE
				SHEET 2 OF 2

DCI2022-00037

Zoning



 Subject Property



0 300 600 900 1,200
Feet



Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS

As Revised by the Hearing Examiner

CONDITIONS

1. Master Concept Plan and Approved Development Parameters

Master Concept Plan (MCP). Development must be consistent with the one-page MCP entitled “Bayshore 31 RPD” dated June 13, 2024, except as modified by conditions below.

Compliance with Lee Plan and Land Development Code (LDC). Development must comply with the Lee Plan and LDC except where deviations have been approved in this resolution. Changes to the MCP or conditions of approval may require further development approvals.

Approved Development Parameters. The RPD is approved to develop up to 180 multiple family dwelling units.

2. Permitted Uses and Site Development Regulations

a. Schedule of Uses

Accessory Uses and Structures

Administrative Offices

Dwelling Units:

Multiple-Family, limited to 180 dwelling units

Entrance Gates and Gatehouses

Essential Services

Essential Service Facilities, Group I

Excavation, Water Retention

Fences and Walls

Models:

Model Unit

Parking Lot, Accessory

Real Estate Sales Office

Recreational Facilities

Personal

Private-On-Site

Residential Accessory Uses

Signs

Temporary Uses, limited to construction trailers and storage during development.

b. Site Development Regulations

Minimum Lot Area and Dimensions:

Area: 10,000 square feet
Width: 100 feet
Depth: 100 feet

Minimum Building Setbacks:

Development Perimeter: 15 feet
Street: 25 feet
Side: 0 feet
Rear: 0 feet
Waterbody: 25 feet

Building Separation: 10 feet
Maximum Lot Coverage: 50%
Maximum Building Height: 35 feet

3. Model Unit and Real Estate Sales

- a. Number of Model Units. The project may include up to nine active model units at one time.
- b. Location. Development order plans must identify the location of model units.
- c. Floor Plans. Each model unit must exhibit a unique floor plan.

4. Natural Resources

Development order submittals must include a draft drainage and access easement in favor of Lee County. The easement must permit County access to the onsite flow way and allow the right, but not the obligation, to maintain the flow way in accordance with LDC criteria. Applicant/developer must execute a drainage and access easement prior to county issuance of a certificate of completion for the project.

5. Wetland Impacts

Development order submittals must include either a.) the receipt for wetland mitigation payments or b.) wetland mitigation plans for impacted wetlands.

6. Coastal High Hazard Area

Development order submittals must include calculations that quantify 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 § regulations regarding development within wetlands.

DEVIATIONS

1. Street Design and Construction Standards. Deviation 1 seeks relief from LDC §10-296(k), which requires dead-end streets to be closed at one end by a circular turnaround, to instead to allow a hammerhead design for dead-end streets that are a maximum of 150 feet in length.

Hearing Examiner Recommendation: Approved.

2. Excavations. Deviation 2 seeks relief from LDC §10-329(d)(1)a.3, which requires excavation setbacks of 50 feet from property lines under separate ownership, to allow a 30-foot excavation setback from a Florida Department of Transportation (FDOT) detention pond.

Hearing Examiner Recommendation: Approved, subject to the following condition:

Development order landscape plans must depict an enhanced Type-A landscape buffer abutting the FDOT detention pond along the northeast property line. The Type-A buffer must include four

trees per 100 linear feet and a single hedge row. Landscape vegetation must comply with LDC Plant Material Standards.

3. Required Street Access. Deviation 3 seeks relief from LDC §10-291(3), which requires developments greater than five acres to provide more than one means of ingress or egress, to allow one primary access to Bayshore Road and one “emergency only” stabilized access to Hartwig Lane.

Hearing Examiner Recommendation: Approved.

4. Landscape Standards. Deviation 4 seeks relief from LDC §10-416(d)(9), which requires a 50-foot-wide natural waterway buffer, to allow an existing FDOT drainage easement to encroach within the waterway buffer.

Hearing Examiner Recommendation: Approved.

5. Plant Installation and Maintenance Standards. Deviation 5 seeks relief from LDC §10-421(a)(2), which requires buffer trees and shrubs to be planted in a minimum width area equal to one-half the required width of the buffer, to allow a planting width of between 17 and 26 feet.

Hearing Examiner Recommendation: Approved, subject to the following condition:

Development order plans must depict a minimum 17-foot to 25-foot-wide planting area outside the 70-foot FDOT drainage easement and 20-foot Lee County maintenance easement.

Exhibits to Conditions:

B1 Master Concept Plan entitled “Bayshore 31 RPD” dated June 13, 2024

OPEN SPACE CALCULATION

REQUIRED
34.8 AC X 40% = 13.92 AC

PROVIDED
LAKE (MAX LAKE = 3.48 AC) 3.48 AC
PRESERVE 6.96 AC
BUFFERS / OTHER OPEN 3.48 AC
OPEN SPACE PROVIDED = 13.92 AC

INDIGENOUS CALCULATION

REQUIRED
13.92 AC X 50% = 6.96 AC

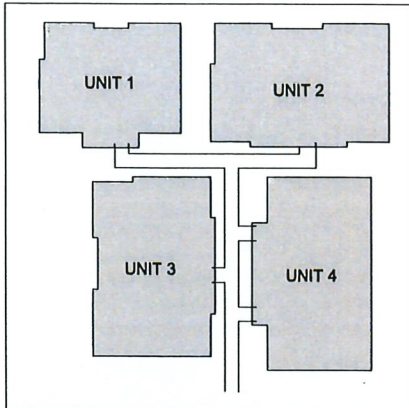
PROVIDED
UPLAND 2.58 AC
WETLAND 4.38 AC
INDIGENOUS PROVIDED = 6.96 AC

LAND USE SUMMARY

PRESERVE	6.96 AC
LAKE	0.86 AC
DEVELOPMENT AREA	10.28 AC
AMENITY/SERVICE AREA/LEASING	0.24 AC
PARKING / ACCESSWAYS	4.48 AC
DETENTION / OPEN SPACE	11.98 AC
PROJECT TOTAL:	34.8 AC

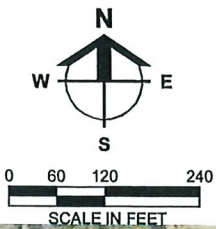
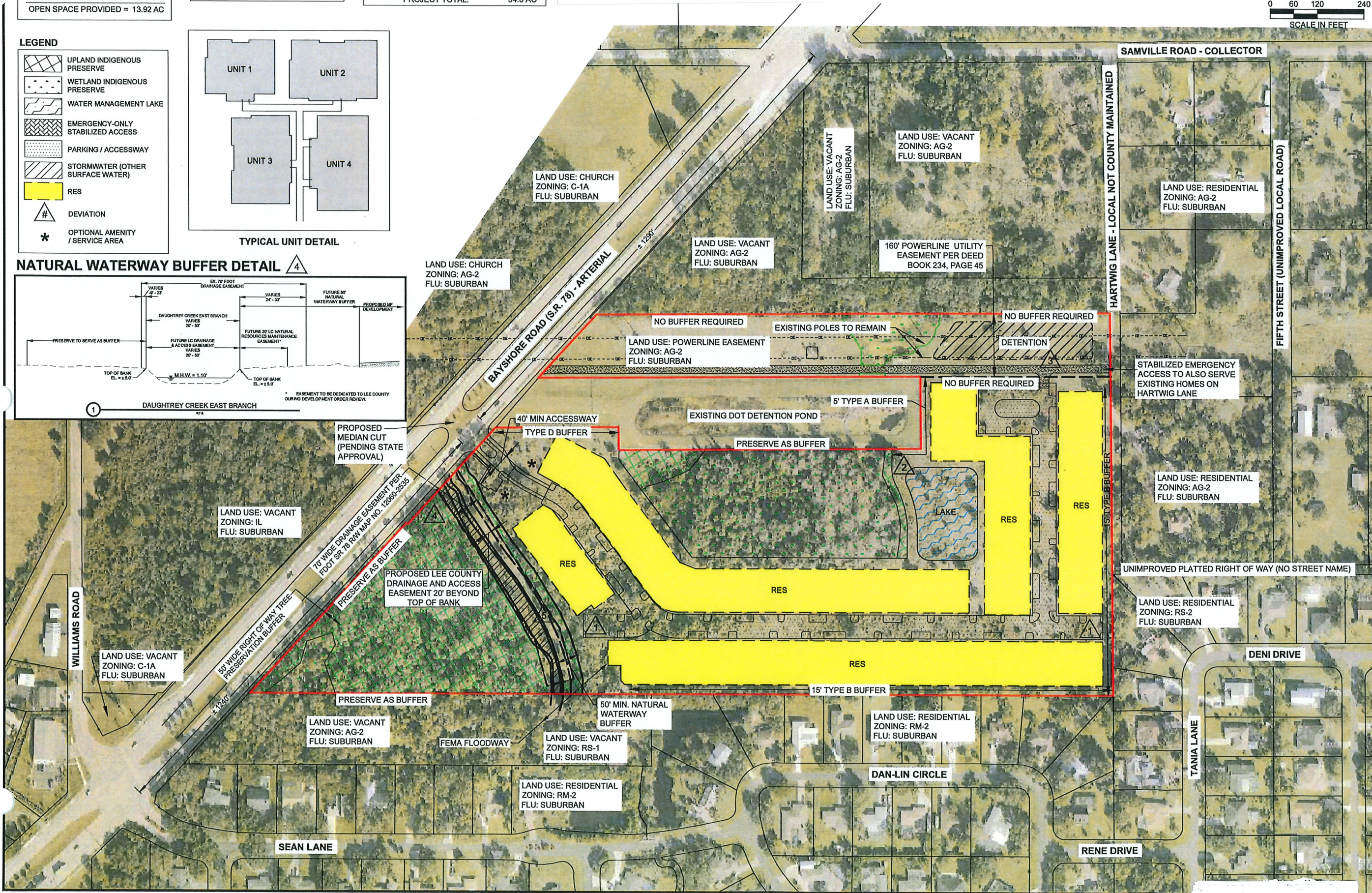
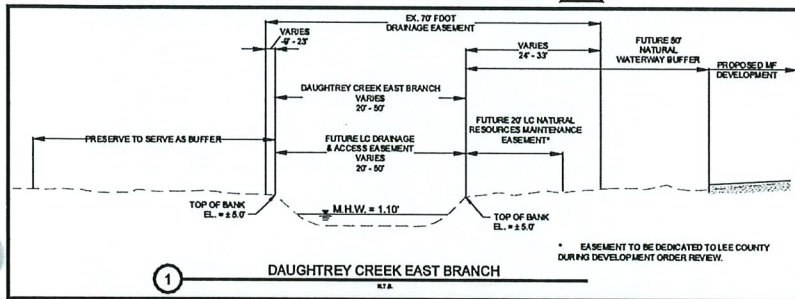
EXHIBIT B-1

LEGEND



TYPICAL UNIT DETAIL

NATURAL WATERWAY BUFFER DETAIL



Barraco
and Associates, Inc.

CIVIL ENGINEERING - LAND SURVEYING
LAND PLANNING

www.barraco.net

2271 MCGREGOR BLVD., SUITE 100
POST OFFICE DRAWER 2800
FORT MYERS, FLORIDA 33902-2800
PHONE (239) 481-3170
FAX (239) 481-3169

FLORIDA CERTIFICATES OF AUTHORIZATION
ENGINEERING 7995 - SURVEYING LB-6940

PREPARED FOR

**BLACK SPIDER
LAND
COMPANY, LLC**

101 PUGLIESE WAY SUITE 200
DELRAY BEACH, FLORIDA, 33444

PROJECT DESCRIPTION

**BAYSHORE
31 RPD**

PART OF SECTION 29,
TOWNSHIP 43 SOUTH, RANGE 25 EAST
LEE COUNTY, FLORIDA

DRAWING NOT VALID WITHOUT SEAL, SIGNATURE AND DATE
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FILE NAME J:\24085\DWG\ZONING\

LOCATION J:\24085\DWG\ZONING\

PLOT DATE WED, 6-12-2024 - 11:00 AM

PLOT BY WES KAYNE

CROSS REFERENCED DRAWINGS

BASEPLAN = 24085200-NEW.DWG

PLAN REVISIONS

6/13/2024 HEX HEARING

PLAN STATUS

Exhibit C

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

- a. *48-Hour Notice*: Email from Jamie Princing, to Hearing Examiner, Tom Sacharski, Chahram Badamtchian, Anthony Rodriguez, Elizabeth Workman, Nicholas DeFilippo, Brandon Dunn, Katherine Woellner, Phil Gillogly, Marcus Evans, Md Rakibul Alam, Tina Boone, Lauren Schaefer, and Erica Temerario, dated Tuesday, March 26, 2024, 10:56 AM (5 pages – 8.5"x11")
1. *DCD Staff Report with attachments for DCI*: Prepared by Chahram Badamtchian, Senior Planner, date received March 8, 2024 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *Publication Notice*: Notice of Public Hearing for Zoning Case Number DCI2022-00037, Bayshore 31 RPD (1 page – 8.5"x11")

APPLICANT EXHIBITS

- a. *48-Hour Notice*: Tom Sacharski, to Hearing Examiner and Chahram Badamtchian, with copies to Alexis Crespo, Richard Akin, Esq., Chris King, and William Hulton, dated Monday, March 25, 2024, 3:36 PM (6 pages – 8.5"x11" & 1 page – 11"x17")
- b. *Second 48-Hour Notice*: Tom Sacharski, to Maria Perez, C. King, Chahram Badamtchian, Alexis Crespo, Richard Akin, Esq., and Carl Barraco, dated Monday, June 10, 2024, 10:28 AM (7 pages – 8.5"x11" & 1 page – 11"x17")
- c. *Third 48-Hour Notice*: Tom Sacharski, to Maria Perez, C. King, Chahram Badamtchian, Alexis Crespo, Richard Akin, Esq., and Carl Barraco, dated Wednesday, June 12, 2024, 1:30 PM (7 pages – 8.5"x11" & 1 page – 11"x17")
1. *PowerPoint Presentation*: Prepared by RVi Planning and Landscape Architecture, for Bayshore 31 RPD, DCI2022-00037, Lee County Hearing Examiner, dated June 13, 2024 (multiple pages – 8.5"x11") [color]
2. *Master Concept Plan*: Prepared by Barraco and Associates, Inc., for Bayshore 31 RPD, dated June 13, 2024 (1 page – 11"x17 and 1 page – 24"x36") [color]
3. *Résumé*: For Tom Sacharski, AICP, Planning Senior Project Manager with RVi Planning and Landscape Architecture (1 page – 8.5"x11")

OTHER EXHIBITS

Miles Eckert

1. (1 page – 8.5"x11")

Exhibit D
HEARING PARTICIPANTS

County Staff:

1. Chahram Badamtchian, Senior Planner

Applicant Representatives:

1. Richard Akin, Esq.
2. Carl Barraco, P.E.
3. Tom Sacharski, AICP
4. Barrett Stejskal
5. Ted Treesh

Public Participants:

1. Miles Eckert
2. Rachel Morreale

Exhibit E
INFORMATION

UNAUTHORIZED COMMUNICATIONS

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

HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS

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

COPIES OF TESTIMONY AND TRANSCRIPTS

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