

## Summary of Hearing Examiner Recommendation

# **DIPLOMAT RPD/CPD AMENDMENT**

## **DIPLOMAT HOUSE**

The site is located at the intersection of Diplomat Parkway and US 41 with access to an array of public services and infrastructure including transit. The area is uniquely suitable for dense/intense development. Accordingly, the request is appropriate and will further economic objectives to provide varied housing options for a diverse workforce.

The Hearing Examiner recommends the final resolution approving the amendment include the original legal description of the RPD/CPD to avoid confusion.<sup>1</sup>

*Detailed recommendation follows*

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<sup>1</sup> The application provided a "new" legal description of the North RPD that includes acreage of CPD parcels 1 and 2. The putative reason was to enable the North RPD to derive density from the land area from CPD parcels 1 and 2 for the purposes of density. The result in an incongruity in project acreage. It is not necessary for Applicant to supply a new legal description to benefit from Lee Plan and LDC provisions that permit density to be derived from commercial portions of a project in the Mixed Use Overlay. The resulting incongruity in acreage for the overall RPD/CPD is confusing and potentially misleading if the zoning map change later depicts CPD parcels 1 and 2 as part of the RPD.

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

**REZONING:** DCI2023-00050

**Regarding:** **AMENDMENT TO DIPLOMAT PROTPERTY RPD/CPD  
(Diplomat House)**

**Location:** Diplomat Parkway East  
0.3 miles west of the intersection with North Cleveland Avenue (US 41)  
North Fort Myers Planning Community  
(District 4)

**Hearing Date:** June 26, 2024

**Record Closed:** July 18, 2024

**I. Request**

Amend the Diplomat Property RPD/CPD to revise development parameters on a 35.18 acre tract within the project **from** 238 dwelling units (or 138 dwelling units and 400 assisted living facility units) and 50,000 square feet of commercial square footage with maximum heights of 50 feet, **to** 360 multi-family dwelling units with maximum heights of 60 feet. There are no changes proposed to the remainder of the planned development.

The RPD/CPD legal description is set forth in Exhibit A.<sup>2</sup>

**II. Hearing Examiner Recommendation**

Approve, subject to conditions and deviations set forth in Exhibit C.

**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

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<sup>2</sup> The application provided a "new" legal description of the North RPD that includes acreage of CPD parcels 1 and 2. The putative reason was to enable the North RPD to derive density from the land area from CPD parcels 1 and 2 for the purposes of density. The result in an incongruity in project acreage. It is not necessary for Applicant to supply a new legal description to benefit from Lee Plan and LDC provisions that permit density to be derived from commercial portions of a project in the Mixed Use Overlay. The resulting incongruity in acreage for the overall RPD/CPD is confusing and potentially misleading if the zoning map change later depicts CPD parcels 1 and 2 as part of the RPD.

development zoning district.<sup>3</sup> In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on an application to amend the zoning approvals of the 65.13 acre Diplomat Property RPD/CPD. The request specifically pertains to a 35.18 acre portion of the planned development located north of Diplomat Parkway.

Staff recommended approval with conditions.

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.

### **Request**

The request amends the zoning approvals of the 65.13 acre Diplomat Property RPD/CPD to authorize development of up to 360 multi-family dwelling units on a 35.18 acre tract north of Diplomat Parkway. Applicant anticipates project buildout in 2027.<sup>4</sup> The remaining tracts within the Diplomat RPD/CPD retain existing parcel designations and development entitlements.

The Master Concept Plan (MCP) proposed for the 35.18 acre site depicts a large lake on the east half and several 60 foot high buildings clustered on the west half. A small indigenous preserve lies within a FEMA floodway along the west boundary. The MCP depicts one primary access and a secondary emergency access aligning with an access across Diplomat Parkway,

If approved, the RPD/CPD will include ten deviations from the LDC.<sup>5</sup>

Building heights in the amended RPD/CPD will not exceed 60 feet.<sup>6</sup> Heights for approved commercial uses remain unchanged by the request.

Staff recommended approval of the request subject to conditions.

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<sup>3</sup> LDC §34-145(d)(4) a.

<sup>4</sup> The transportation analysis assumes buildout in 2027, See Staff Report Attachments H and I.

<sup>5</sup> Eight deviations were approved in prior zoning actions. The subject request includes two additional deviations to accommodate the desired site plan.

<sup>6</sup> These height limitations are consistent with height regulations in the Central Urban future land use category. LDC §§34-935(f)(1).

## **History**

The Board first approved the 65.13 acre Diplomat Property RPD/CPD located both north and south of Diplomat Parkway in 2006.<sup>7</sup> This resolution authorized 357 dwellings, 120 hotel rooms, and 200,000 square feet of commercial floor area, of which 100,000 square feet may be retail. Retail uses limited to parcel 4 south of Diplomat Parkway, and 120 hotel rooms. Maximum approved building heights were 50 feet for commercial land uses and 35 feet for residential land uses. The zoning approval allowed required indigenous preservation to be located on property south of Diplomat Parkway.

The property owner amended the zoning approvals the following year in 2007.<sup>8</sup> The amendment revised the property development regulations for approved Townhouse uses and approved a deviation from LDC §10-261(a).<sup>9</sup>

The Board adopted the North Fort Myers Community Plan in 2009.<sup>10</sup>

Several years later in 2011, the Board amended the development parameters and MCP on the 35.18 tract north of Diplomat Parkway to permit development of up to a 400 bed Assisted Living Facility, 138 standard dwelling units, and a 5.43 acre "optional CPD" permitted to develop up to 50,000 square feet of medical office space.<sup>11</sup> Changes to the MCP included lake reconfiguration, modifications to the west buffer, and building placement. Maximum approved building height was 50 feet.

The Board adopted LDC regulations specific to the North Fort Myers Planning Community in 2012.<sup>12</sup>

The property owner amended the zoning approvals administratively three times thereafter.<sup>13</sup> One administrative amendment sought to clarify the developer had the option to develop the north 35.18 acre RPD with RPD uses or an Assisted Living Facility with or without the 5.43 acre "optional CPD" parcel.<sup>14</sup> The second administrative amendment sought to clarify the tract south of Diplomat Parkway could be developed consistent with the 2008 MCP or consistent with an alternate MCP dated October 28, 2019. The third administrative amendment pertained to

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<sup>7</sup> Resolution Z-06-004 adopted December 21, 2006. The resolution rezoned the property from Agriculture to RPD/CPD.

<sup>8</sup> ADD-2007-00169 approved February 1, 2008.

<sup>9</sup> The newly approved deviation provided relief from minimum area standards for placement of garbage containers to allow curbside pickup at townhouse units.

<sup>10</sup> Lee Plan Goal 30 adopted by Lee County Ordinance No. 09-11 on February 25, 2009.

<sup>11</sup> Z-11-002 approved March 21, 2011.

<sup>12</sup> Lee County Ordinance No. 12-01 on January 10, 2012.

<sup>13</sup> ADD 2019-00085, ADD 2019-00181, and ADD 2020-00034.

<sup>14</sup> ADD 2019-00085 approved August 16, 2019.

CPD parcels 3 and 4.<sup>15</sup> This amendment amended the schedule of uses and established a conversion ratio for commercial intensity to residential density.<sup>16</sup>

Following those approvals, Diplomat RPD/CPD may now develop:

1. 238 dwellings (or 138 dwellings and 400 assisted living facility units) and 50,000 square feet of commercial square footage north of Diplomat Parkway,
2. 105 dwelling units (with an additional 21 units of market rate housing) on the residential tract south of Diplomat Parkway, and
3. a maximum of 200,000 square feet of commercial development on the remaining commercial tracts north and south of Diplomat Parkway.

There is an existing development order on the 35.18 acre RPD north of Diplomat Parkway. The developer must revise or withdraw the development order following approval of this amendment. There are also active development orders within the RPD/CPD unaffected by the subject request.<sup>17</sup>

In 2017, the Board expanded the boundaries of the North Fort Myers Mixed Use Overlay to include the property.<sup>18</sup>

In recognition of the site's inclusion within the Mixed Use Overlay, the property owner seeks an amendment to replace previously approved residential and "optional commercial" development entitlements on 35.18 acres north of Diplomat Parkway with up to 360 multifamily dwelling units at a maximum building height of 60 feet.<sup>19</sup>

**If approved, the development parameters for the 65.13 acre Diplomat RPD/CPD will be as follows:**

1. **360 dwellings units on the 35.18 acre tract north of Diplomat Parkway,**
2. **105 dwelling units (with an additional 21 units of market rate housing) south of Diplomat Parkway, and**
3. **Up to 200,000 square feet of commercial land uses on the remaining commercial tracts located north and south of Diplomat Parkway.**

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<sup>15</sup> ADD 2020-00034 approved June 22, 2020.

<sup>16</sup> *Id.*

<sup>17</sup> There are active South Florida Water Management District permits north and south of Diplomat Parkway.

<sup>18</sup> Lee County Ordinance No. 17-20, adopted November 22, 2017.

<sup>19</sup> Specifically, the request replaces prior approvals to develop 238 dwelling units (or 138 dwelling units and 400 assisted living facility units) and 50,000 square feet of commercial square footage with maximum height of 50 feet.

### **Character of Area**

The property is located at the confluence of two intense land use designations: Central Urban and Mixed Use Overlay. These areas typically feature higher densities and mixed use development due to the availability of public services and infrastructure.<sup>20</sup> The site is surrounded by properties with development entitlements consistent with development patterns encouraged in the Mixed Use Overlay.

### **Lee Plan**

The Lee Plan regulates land development activity in the County.<sup>21</sup> The Plan's Future Land Use Map divides the County into future urban, nonurban, and environmentally sensitive areas. All development must be consistent with the Lee Plan including the Future Land Use Map.<sup>22</sup>

The property is designated Central Urban on the Future Land Use Map.<sup>23</sup> Central Urban areas have access to a broad array of public services and infrastructure.<sup>24</sup> A wide range of land uses are permissible in the Central Urban category.<sup>25</sup> Standard density ranges from four to 10 units per acre. Maximum total density is typically 15 units per acre but may be as high as 20 units per acre with Greater Pine Island Transfer of Development Units.<sup>26</sup>

The request to amend development approvals on the north 35.18 tract derives its density by including land area from two commercial parcels north of Diplomat Parkway located on either side of the entrance to the tract.<sup>27</sup> The resulting unit count is 360 multi-family dwelling units.

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<sup>20</sup> Lee Plan Objectives 2.12, 2.2, 11.2, Policies 1.1.3, 5.1.6, 11.2.1, 11.2.5, 11.2.6, 11.2.7. Properties northeast, east, and south of the site are designated Central Urban and within the Mixed Use Overlay as well.

<sup>21</sup> LDC §34-491.

<sup>22</sup> 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.

<sup>23</sup> Lee Plan Map 1.

<sup>24</sup> Lee Plan Policy 1.1.3.

<sup>25</sup> Residential, commercial, public, and quasi-public and limited light industrial land uses are permissible in Central Urban. *Id.* The 35.18 acre site is part of a mixed use RPD/CPD. The Lee Plan encourages mixed use development in the Central Urban category. Lee Plan Objective 11.1, Policies 1.1.3, 11.1.1, 11.1.2.

<sup>26</sup> Lee Plan Policy 1.1.3. Utilizing acreage from the commercial parcels north of Diplomat Parkway, the site may develop with 381 standard dwelling units, plus 191 bonus density units, plus another 191 units derived from Greater Pine Island Transfer Development Units for a total unit count of 763. The application seeks 360 units, within the standard density range for Central Urban.

<sup>27</sup> Deriving density from commercial land areas within a single RPD/CPD is permissible in the Mixed Use Overlay pursuant to Lee Plan Policy 11.2.7. The MCP designates the two commercial tracts north of Diplomat Parkway as "Future Commercial Development Parcel 1 and 2." This results in an additional 2.95 acres for the purposes of calculating density.

Development activity in North Fort Myers is subject to a Community Plan and specific use and site design criteria.<sup>28</sup> The North Fort Myers Community Plan emphasizes protecting community character, economic vitality, and quality of life.<sup>29</sup> Existing planned developments may voluntarily comply with the North Fort Myers Plan.<sup>30</sup> The proposed modification to the 35.18 parcel will trigger compliance with LDC provisions applicable to the North Fort Myers Planning Community. This may result in minor modifications to the proposed site plan that can be approved administratively.<sup>31</sup>

The Economic Element of the Lee Plan encourages expansion of the County's economic base.<sup>32</sup> The proposed mix of land uses contributes to a positive business climate by creating housing options.<sup>33</sup> The proposed multi-family dwellings expand housing options and will support a diverse workforce.<sup>34</sup>

### Compatibility

One purpose of "planned development" zoning is to integrate new development with surrounding land uses, providing consistency and visual harmony.<sup>35</sup>

The Lee Plan encourages compact and contiguous development patterns in areas with services and infrastructure to support new development.<sup>36</sup>

The site is part of the Mixed Use Overlay, where the Lee Plan encourages an integrated mix of uses.<sup>37</sup> Property in the Mixed Use Overlay is desirable for mixed use development due to proximity to public transit, shopping, and employment centers.<sup>38</sup> The RPD/CPD as a whole provides opportunities for mixed use development.<sup>39</sup>

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<sup>28</sup> LDC §33-1534. The Board adopted the North Fort Myers Community Plan in 2009. Lee Plan Goal 30 adopted by Lee County Ordinance No. 09-11 on February 25, 2009. The Board subsequently adopted community specific LDC regulations adopted by Lee County Ordinance No. 12-01 on January 10, 2012. See also Lee Plan Map 2-A, LDC §33-1531 *et seq.*

<sup>29</sup> Lee Plan Goal 30.

<sup>30</sup> Lee Plan Goal 30 and site development regulations set forth in LDC §33-1531 *et seq.*, notably design standards governing architecture, lighting, and site design.

<sup>31</sup> LDC §33-1534.

<sup>32</sup> Lee Plan Goals 158, 161, Objective 158.2.

<sup>33</sup> Lee Plan Goals 158, 159, 160, Objective 158.3, Policies 135.1.9, 160.1.3.

<sup>34</sup> Lee Plan Policies 135.1.9, 160.1.1, 160.1.2, 161.1.3.

<sup>35</sup> Another purpose is to provide flexibility in development design. LDC §34-612(2).

<sup>36</sup> Lee Plan Objectives 2.1, 2.2, Policies 2.2.1, 5.1.3.

<sup>37</sup> Lee Plan Map 1-C: Mixed Use Overlay. The Mixed Use Overlay allows urban forms of development, which encourages maximizing land area on the site. Lee Plan Policy 11.2.5.

<sup>38</sup> Lee Plan Objectives 11.1, 11.2, 158.3, Policies 11.2.1, 39.1.3, 39.2.1, 159.2.3, See Lee Plan Goal 30, Objective 30.1, Policy 30.1.3, 30.1.4.

<sup>39</sup> Lee Plan Goal 30; Staff Report Attachment W: Environmental Staff Report. See LDC 34-145(d)(4)a.2.a)

The site is located on a major transportation corridor and proximate to properties with approved building heights of 60 feet.<sup>40</sup> Development approvals in the area include intense commercial and residential land uses. Higher residential densities are appropriate due to broad access to public services and infrastructure.<sup>41</sup> The proposed plan of development is compatible with existing and approved development near the intersection of Diplomat Parkway and US 41.<sup>42</sup>

Although not required by code, the proposed MCP and recommended conditions provide an enhanced vegetative buffer along portions of the west and north property lines. Specifically, the site plan sets back from the FEMA floodway and designates the area for removal of exotics and ongoing maintenance of indigenous vegetation. In contrast, the existing MCP depicts development in proximity to the canal separating the site from the adjacent mobile home community.

Along the shared boundary with the Serendipity community, recommended conditions require an enhanced 30 foot wide buffer along the north property line consisting of 10 trees every 100 linear feet and a double staggered hedge row 48 inches in height at installation and maintained at 60 inches high up to the lake.<sup>43</sup> The property line north of the lake will feature a buffer 15 feet in width with five trees per 100 linear feet and a double hedge row maintained to form a 36 inch high continuous visual screen within one year of planting.

The Hearing Examiner concludes these measures provide an effective transition between projects of differing intensity.<sup>44</sup>

## LDC

Development must comply with County land development regulations or seek deviations. A “deviation” is a departure from a land development regulation.<sup>45</sup> Applicants must demonstrate deviations enhance the planned development and will not cause detriment to the public.<sup>46</sup>

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<sup>40</sup> The MIVO Fort Myers RPD abutting the property authorizes building heights up to 60 feet. See Z-23-003 approved April 5, 2023. The property has been approved for relatively intense development since 2006. The proposed increase in density constitutes infill development. Lee Plan Objectives 2.1, 2.2, Policies 1.1.3, 2.2.1, 2.2.2, 6.1.1, 6.1.7, 39.1.3, See Lee Plan Glossary definition - infill.

<sup>41</sup> A broad range of infrastructure and services are available to the property, including potable water, sanitary sewer, transit, medical facilities, education, law enforcement, fire, and emergency medical services. Lee Tran Route 595 serves the area. Lee Plan Goal 11, Objectives 2.1, 2.2, 4.1, 11.1, Policies 1.1.3, 2.2.1, 2.2.2, 6.1.4, 39.1.3, 54.1.10, 54.1.11, 61.1.6, 126.1.2, Standards 4.1.1, 4.1.2, 4.1.3; LDC §34-413.

<sup>42</sup> LDC §34-413.

<sup>43</sup> The buffer is “enhanced” because the LDC requires only a Type B buffer between multifamily and single family residential land uses. LDC §10-416(d).

<sup>44</sup> LDC §34-411.

<sup>45</sup> LDC §34-2.

<sup>46</sup> LDC §34-373(a)(9).

The request seeks two additional deviations from the LDC. Existing deviations pertain to intersection separation, dead end street configuration, open space, indigenous native vegetation/trees, setbacks, site access and square footage assigned to waste collection/recycling, buffers, and landscape standards.

Applicant offered testimony and evidence in support of two new deviations concerning backout parking for dwellings and building separation.<sup>47</sup>

Staff recommended approval of the new deviations and revisions to existing deviations. The Hearing Examiner agrees with staff's recommendation, finding all deviations meet LDC approval criteria.<sup>48</sup>

Development of the site must comply with the LDC regulations applicable within the North Fort Myers Community Planning Community.<sup>49</sup> Applicant hosted a public meeting on the request prior to hearing.<sup>50</sup> The property will be subject to further community review at the development order stage.<sup>51</sup>

The project will be subject to road, park, fire, EMS, and school impact fees.<sup>52</sup>

### **Environmental/Natural Resources**

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

The property is vacant and covered with dense vegetation of pine forest and palmetto prairies.<sup>53</sup> There is a large burrow pit on the east side of the site.

The MCP preserves the existing FEMA Floodway on the west boundary.<sup>54</sup> Conditions of approval require the developer to preserve the natural vegetation within the floodway. Prior zoning approvals allow preservation areas on the south side of Diplomat Parkway to serve the entire RPD/CPD.

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<sup>47</sup> LDC §§34-2013(a), 34-935(e)(4).

<sup>48</sup> The Hearing Examiner may recommend approval, approval with modifications or denial of requested deviations based upon findings that a deviation (1) enhances the planned development and, (2) preserves/promotes public health, safety, and welfare. LDC §34-377(a)(4).

<sup>49</sup> LDC §33-1531 *et seq.*

<sup>50</sup> Advertised meeting held on March 27, 2024, at the North Fort Myers Recreation Center. LDC §33-1532(a). See Staff Report Attachment Q.

<sup>51</sup> LDC §33-1532.

<sup>52</sup> LDC Chapter 2.

<sup>53</sup> The upland vegetation does not meet the Lee Plan definition of rare and unique uplands. See Protected Species Assessment, prepared for Diplomat Fort Myers, LLC by Atwell updated December 2023. (Applicant 48 Hour Submittal).

<sup>54</sup> Lee Plan Standard 4.1.4; LDC §34-411(g).

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Applicant's protected species assessment concludes there is no evidence of species listed by FWS or FWC on the property.<sup>55</sup>

Buffers and landscaped areas must follow Xeriscape principles and consist of native landscape to conserve water.<sup>56</sup>

The Hearing Examiner finds the proposed amendments to the Diplomat RPD/CPD will not harm environmentally critical/sensitive areas or natural resources.<sup>57</sup>

### **Transportation**

The MCP must depict sufficient road access to support proposed development intensity and expected impacts on transportation facilities must be addressed by County regulations and conditions of approval.

The RPD/CPD fronts on Diplomat Parkway, an arterial roadway maintained by the City of Cape Coral. The MCP depicts access to Diplomat Parkway from each tract via a single driveway.<sup>58</sup>

Applicant's Traffic Impact Statement and staff's analysis conclude the proposed amendment will not cause roads to operate below adopted levels of service at project buildout.<sup>59</sup>

Lee Tran Route 595 operates along Diplomat Parkway East.<sup>60</sup> The developer will be required to address transit stop improvements during development order permitting.<sup>61</sup>

Site-related turn lane improvements will be evaluated at the time of development order permitting.

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<sup>55</sup> Specifically, no evidence of scat, tracks, or nesting. Further, in addition to the site inspection, a search of the FWC species database disclosed no known protected species in the immediate area. Protected Species Assessment, prepared for Diplomat Fort Myers, LLC by Atwell updated December 2023. (Applicant 48 Hour Submittal).

<sup>56</sup> Lee Plan Objective 126.2, Policy 126.2.1.

<sup>57</sup> Lee Plan 125.1.2.

<sup>58</sup> The RPD/CPD has an approved deviation from LDC access standards to allow a single driveway to serve the development tracts north and south of Diplomat Parkway.

<sup>59</sup> Staff Report Attachments H, I: Traffic Impact Statement for Diplomat North Rezoning revised March 5, 2022 prepared by TR Transportation Consultants, Inc. and Memo from Md Rakibul Alam, Principal Transportation Planner dated May 25, 2024.

<sup>60</sup> Connections to transit routes 590 and 140 is within a half mile of the project. Applicant Hearing Exhibit 1: PowerPoint Presentation.

<sup>61</sup> Lee Plan 30.1.4, 39.1.3, 43.1.1. LDC §§10-442, 33-1574.

## **Public Services and Infrastructure**

Public services are services, facilities, capital improvements, and infrastructure necessary to support development.<sup>62</sup> The Lee Plan requires an evaluation of public services during the rezoning process.<sup>63</sup>

The property fronts on Diplomat Parkway a four lane divided arterial roadway maintained by the City of Cape Coral. There are existing on road bike lane improvements. Developer must comply with LDC requirements regarding future improvements to accommodate bike/pedestrian access from the site.<sup>64</sup>

The property has access to public services and infrastructure.<sup>65</sup> Lee County Utilities and FGUA have public water and sanitary sewer infrastructure available to serve the property.<sup>66</sup> Fire, EMS, and law enforcement have stations in proximity to the site.<sup>67</sup> Lee Tran serves the area.

Residents will have access to schools, parks, hospital/medical facilities, shopping, and employment centers within reasonable distances.<sup>68</sup>

Development will be subject to impact fees for road, park, fire, school, and emergency medical services.<sup>69</sup>

## **Conditions**

The County must administer the zoning process so proposed land uses minimize adverse impacts on adjacent property and protect County's resources.<sup>70</sup> Conditions must be plausibly related to the project's anticipated impacts, and pertinent to mitigating impacts to the public.<sup>71</sup> The RPD/CPD will be subject to conditions of approval designed to address impacts reasonably anticipated from

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<sup>62</sup> Public services and infrastructure available to serve the project will include public water and sewer paved streets, parks and recreation facilities, libraries, police, fire and emergency services, urban surface water management, and schools.

<sup>63</sup> Lee Plan Goal 95 and Policy 2.2.1.

<sup>64</sup> LDC §10-256.

<sup>65</sup> Lee Plan Glossary definition of Public Services, Goal 4, Policies 1.1.5, 2.2.1, 5.1.3, Standards 4.1.1, 4.1.2.

<sup>66</sup> Lee Plan Standards 4.1.1, 4.1.2; Staff Report Attachment G: Applicant Narrative.

<sup>67</sup> Lee Plan Objectives 2.1, 2.2, Policy 2.1.1, North Fort Myers Fire Control & Rescue Service District Station #s 1 & 2 and Lee County Medic #s 7 & 31 are within four miles of the property. Lee County Sheriff North District Office is 2.7 miles from the property on Pondella Road. Staff Report Attachment G: Applicant Narrative.

<sup>68</sup> Lee Plan Goals 66, 95, Objective 95.1. There are two elementary, one middle and one high school within 3.4 miles of the property. There are five park/recreation facilities within 3.5 miles: Judd Community Park, North Fort Myers Recreation Center, Mary Moody Park, and North Fort Myers Community Pool. Shopping and employment centers lie along US 41 and the City of Cape Coral. Lee Memorial Health has hospitals in Cape Coral and US 41.

<sup>69</sup> LDC Chapter 2, Article VI.

<sup>70</sup> Lee Plan Policies 5.1.5, 135.9.6; LDC §§34-145(d)(4) a.2.(b), 34-377(a)(3), 34-411, and 34-932(c).

<sup>71</sup> LDC §34-932(b).

development.<sup>72</sup> Notable conditions require an indigenous preservation management plan, gopher tortoise protection, and potential contribution toward intersection improvements at US 41.

The Hearing Examiner revised wording of conditions/deviations to improve clarity. Prior conditions restating LDC requirements have been deleted.

### **Public**

Two members of the public attended the hearing representing the Serendipity mobile home community to the north. The speakers requested clarification on stormwater management, buffers, and security enhancements. Applicant's representatives provided additional testimony to clarify stormwater management and buffer composition.

### **Conclusion**

The Hearing Examiner recommends approval and finds the requested amendments to the 35.18 acre portion of the Diplomat RPD/CPD meets LDC criteria and, as conditioned, is compatible with surrounding development.<sup>73</sup> The recommended conditions and deviations represent a codification of all development approvals affecting the 65.13 acre RPD/CPD.

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 amendments to the Diplomat RPD/CPD are consistent with the Lee Plan. Lee Plan Goals 2, 4, 5, 6, 11, 30, 60, 61, 77, 95, 123, 124, 125, 126, 135, 151, 158, 159, 160; Objectives 2.1, 2.2, 4.1, 5.1, 6.1, 11.1, 11.2, 30.1, 60.4, 61.2, 77.1, 77.2, 77.3, 122.2, 123.1, 123.2, 123.3, 123.4, 123.6, 123.8, 124.1, 126.2, 135.1, 161.1, 161.3, and Policies 1.1.3, 1.6.5, 2.1.1, 2.1.2, 2.2.1, 5.1.1, 5.1.2, 5.1.3, 5.1.5, 5.1.6, 5.1.7, 11.2.2, 11.2.5, 11.2.7, 30.1.3, 135.1.9, 135.9.6, 160.1.3, Lee Plan Maps 1-A, 1-B, 1-C, Table 1(a).

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<sup>72</sup> LDC §§34-83(b)(4) a.3, 34-377(a)(2)c; Lee Plan Objectives 77.3, Policies 5.1.5, 6.1.4, 77.3.1.


<sup>73</sup> Lee Plan Policy 6.1.4.

- B. As conditioned, the proposed amendments:
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 Goals 2, 11, Objectives 2.1, 2.2, 11.2, 161.1, 161.3, and Policies 1.1.3, 2.1.1, 5.1.5, 6.1.4, 30.1.3, 135.9.5, 135.9.6, 160.1.3, 161.2.2, 161.3.1; LDC §§34-411, 34-413.
  3. Provides sufficient road access to support proposed development intensity. Lee Plan Objective 161.4, Policies 161.1.2, 161.4.3.
  4. Expected impacts on transportation facilities will be addressed by County regulations and conditions of approval. Lee Plan Objective 39.1, Policies 30.3.3, 38.1.1, 38.1.5, 39.1.1, 39.1.3, 39.2.1, 43.1.1; LDC §§2-261 *et seq.*, 34-411(d) and (e).
  5. Will not adversely affect environmentally sensitive areas or natural resources. Lee Plan Goals 59, 60, 61, 77, 123, 125, 126, Objectives 60.4, 61.2, 77.1, 77.3, 122.2, 123.6, 124.1, 125.1, 126.2, Policies 6.1.6, 59.1.5, 60.1.2, 60.4.1, 60.4.2, 60.4.3, 61.1.6, 61.3.3, 61.3.6, 61.3.9, 61.3.11, 77.3.1, 77.3.3, 123.1.5, 123.2.3, 123.2.10, 125.1.1, 125.1.2, 125.1.3, 125.1.4, 126.1.1, 126.1.2, 126.1.4, 126.2.1, and Standard 4.1.4.
  6. Public services and infrastructure will be available to serve the development. Goals 2, 4, 5, 56, 95, Objectives 2.1, 2.2, 4.1, 65.2, Policies 1.1.1, 1.1.3, 2.1.1, 2.2.1, 30.3.3, 54.1.10, 54.1.11, 55.1.1, 56.1.4, 57.1.5, 61.1.6, 160.1.1, 160.1.2, 160.1.3, 161.1.2, Standards 4.1.1, 4.1.2.
- C. The proposed uses are appropriate at the location. Lee Plan Goals 2, 5, 6, 135, 158, 159; Objectives 2.1, 2.2, 11.2, 56.2, 135.1, Policies 2.1.1, 2.1.2, 5.1.3, 11.2.1, 30.1.4, 39.1.3, 39.2.1, 135.1.9, 135.9.6, 160.1.3, Lee Plan Tables 1(a).
- 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 Goals 56, 123, 124, 125, Objectives 77.3, 123.6, 126.2, Policies 5.1.5, 53.1.5, 54.1.10, 54.1.11, 56.1.4, 61.3.8, 77.3.1, 126.2.1, 135.9.5, 135.9.6; LDC §§34-145(d)(4)a.2.b), 34-377(a)(3), 34-936, 34-411 and 34-932(c).

Case: DCI2023-00050

- 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).

Recommendation date: July 18, 2024.



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 of RPD/CPD and Vicinity Map
- Exhibit B Recommended Conditions and Deviations Strike Through/Underlined Version(Codified)
- Exhibit C Recommended Conditions and Deviations Clean Version(Codified)
- Exhibit D Exhibits Presented at Hearing
- Exhibit E Hearing Participants
- Exhibit F Information

Case: DCI2023-00050

**Exhibit A**

**LEGAL DESCRIPTION AND VICINITY MAP  
65.13 Acre RPD/CPD**

DCI 2010-00015

# Banks Engineering

Professional Engineers, Planners & Land Surveyors  
2515 Northbrooke Plaza Drive - Suite 200  
Naples, Florida 34119  
(239) 597-2061  
Fax (239) 597-3082

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DESCRIPTION  
OF A  
PARCEL OF LAND  
LYING IN  
SECTION 34, TOWNSHIP 43 SOUTH, RANGE 24 EAST  
LEE COUNTY, FLORIDA  
**COMMUNITY DEVELOPMENT**  
(CPD ZONING DESCRIPTION)

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTION 34, TOWNSHIP 43 SOUTH, RANGE 24 EAST AND BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

**NORTH CPD ZONNING PARCEL**

COMMENCING AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF U.S. 41 (STATE ROAD 45) (200 FEET WIDE) AND THE SOUTHERLY RIGHT-OF-WAY LINE OF LITTLETON ROAD (50 FEET WIDE); THENCE 94.14 FEET ALONG SAID WESTERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 5829.58 FEET AND SUBTENDED BY A CHORD HAVING A LENGTH OF 94.14 FEET AND BEARING S.03°47'10"W. TO A POINT OF TANGENCY; THENCE S.03°25'50"W. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 2338.37 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S.03°25'50"W. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 199.95 FEET TO POINT "A" AND TO AN INTERSECTION WITH THE NORTHERLY RIGHT-OF-WAY LINE OF DIPLOMAT PARKWAY (100 FEET WIDE); THENCE N.86°35'21"W. ALONG SAID NORTHERLY RIGHT-OF-WAY LINE FOR 12.52 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 2150.00 FEET; THENCE WESTERLY ALONG SAID CURVE AND ALONG SAID NORTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 3°32'51" FOR 133.12 FEET; THENCE S.89°51'48"W. ALONG SAID NORTHERLY RIGHT-OF-WAY LINE FOR 1484.79 FEET TO POINT "B"; THENCE N.00°08'12"W. FOR 250.00 FEET; THENCE N.89°51'48"E. FOR 1145.24 FEET; THENCE S.03°25'50"W. FOR 53.49 FEET; THENCE S.89°54'50"E. FOR 500.85 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 8.78 ACRES, MORE OR LESS.

**TOGETHER WITH: ADDITIONAL NORTH CPD ZONNING PARCEL**

COMMENCING AT SAID POINT "B" ; THENCE S.89°51'48"W. ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF DIPLOMAT PARKWAY (100 FEET WIDE) FOR 80.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S.89°51'48"W. ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 253.42 FEET; THENCE N.28°32'51"W. FOR 6.70 FEET; THENCE N.00°20'36"W. FOR 244.12 FEET; THENCE N.89°51'48"E. FOR 257.48 FEET; THENCE S.00°08'12"E. FOR 250.00 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 1.48 ACRES, MORE OR LESS.

**TOGETHER WITH: SOUTH CPD ZONNING PARCEL**

COMMENCING AT SAID POINT "A"; THENCE S.03°25'50"W. ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF U.S. 41 (STATE ROAD 45) (200 FEET WIDE) FOR 100.00 FEET TO THE POINT OF BEGINNING;

SHEET 1 OF 3

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Fort Myers Office  
10511 Six Mile Cypress Pkwy, Suite #101  
Fort Myers, Florida 33966  
(239) 939-5490  
Fax (239) 939-2523

Sarasota Office  
1144 Tallevast Road Suite #115  
Sarasota, Florida 34243  
(941) 360-1618  
Fax (941) 360-6918

Port Charlotte Office  
12653 SW CR 769 Suite B  
Lake Suzy, Florida 34269  
(941) 625-1165  
Fax (941) 625-1149

**EXHIBIT "A"**  
(Page 1 of 6)

APPLICANT EXHIBIT# 3  
DCI 2023-00050

DCI 2010-00015

THENCE CONTINUE S.03°25'50"W. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 429.00 FEET TO THE NORTHEAST CORNER OF A PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2113 AT PAGE 1590 OF SAID PUBLIC RECORDS, ALSO BEING THE NORTHEAST CORNER OF MERCHANTS CROSSING, A SUBDIVISION RECORDED IN PLAT BOOK 52 AT PAGES 37 THROUGH 47 OF SAID PUBLIC RECORDS; THENCE N.86°34'10"W. ALONG THE NORTH LINE OF SAID PARCEL AND SAID SUBDIVISION FOR 72.00 FEET TO THE SOUTHEAST CORNER OF A PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2833 AT PAGE 4156 OF SAID PUBLIC RECORDS; THENCE N.03°25'50"E. ALONG THE EASTERLY LINE OF SAID PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2833 AT PAGE 4156 FOR 65.00 FEET; THENCE N.86°33'36"W. ALONG THE NORTHERLY LINE OF SAID PARCEL FOR 39.68 FEET; THENCE S.03°26'24"W. ALONG THE WESTERLY LINE OF SAID PARCEL FOR 8.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 17.00 FEET; THENCE SOUTHWESTERLY ALONG SAID PARCEL AND SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'01" FOR 26.70 FEET; THENCE N.86°33'36"W. ALONG THE NORTHERLY LINE OF SAID PARCEL FOR 487.82 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 80.00 FEET; THENCE NORTHWESTERLY ALONG SAID PARCEL AND SAID CURVE THROUGH A CENTRAL ANGLE OF 86°25'24" FOR 120.67 FEET; THENCE N.00°08'12"W. ALONG THE EASTERLY LINE OF SAID PARCEL FOR 274.66 FEET TO POINT "C" AND TO AN INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF DIPLOMAT PARKWAY (100 FEET WIDE) AS DESCRIBED IN OFFICIAL RECORDS BOOK 2833 AT PAGE 4156 OF SAID PUBLIC RECORDS; THENCE N.89°51'48"E. ALONG SAID SOUTHERLY RIGHT-OF-WAY FOR 575.20 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2050.00 FEET; THENCE EASTERLY ALONG SAID RIGHT-OF-WAY AND SAID CURVE THROUGH A CENTRAL ANGLE OF 3°32'51" FOR 126.93 FEET; THENCE S.86°35'21"E. ALONG SAID RIGHT-OF-WAY FOR 12.49 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 6.00 ACRES, MORE OR LESS.

**TOGETHER WITH: ADDITIONAL SOUTH CPD ZONING PARCEL**  
 COMMENCING AT SAID POINT "C"; THENCE S.89°51'48"W. ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF DIPLOMAT PARKWAY (100 FEET WIDE) FOR 40.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S.89°51'48"W. ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 383.07 FEET; THENCE S.00°08'12"E. FOR 186.04 FEET; THENCE N.59°04'35"E. FOR 185.65 FEET; THENCE S.76°11'27"E. FOR 125.61 FEET; THENCE S.41°41'10"E. FOR 153.30 FEET TO AN INTERSECTION WITH THE WESTERLY LINE OF THE AFORESAID PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2833 AT PAGE 4156 OF SAID PUBLIC RECORDS; THENCE N.00°08'12"W. ALONG THE WESTERLY LINE FOR 236.02 FEET TO THE POINT OF BEGINNING.

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PARCEL CONTAINS 1.22 ACRES.

NET AREA AS DESCRIBED CONTAINS 17.48 ACRES, MORE OR LESS.

COMMUNITY DEVELOPMENT

BEARINGS ARE BASED ON THE WESTERLY RIGHT-OF-WAY OF U.S. 41 (STATE ROAD 45) AS BEARING S.03°25'50"W.

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

DESCRIPTION PREPARED NOVEMBER 2, 2006.

*Richard M. Ritz*  
 RICHARD M. RITZ  
 REGISTERED LAND SURVEYOR  
 FLORIDA CERTIFICATION NO. 4000

Applicant's Legal Checked  
 by 11/08/06 csl

EXHIBIT "A"  
(Page 2 of 6)



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BEGINNING; THENCE CONTINUE N.86°34'10"W. ALONG SAID NORTHERLY LINE FOR 33.50 FEET TO THE NORTHWEST CORNER OF SAID PARCEL; THENCE S.48°25'48"W. ALONG THE WESTERLY LINE DEVELOPMENT OF SAID PARCEL AND SAID SUBDIVISION FOR 212.13 FEET; THENCE S.03°25'50"W. ALONG THE WESTERLY LINE OF SAID PARCEL AND SAID SUBDIVISION FOR 100.00 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL AND TO THE SOUTH LINE OF A PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2389 AT PAGE 1936 OF SAID PUBLIC RECORDS; THENCE N.86°34'10"W. ALONG THE SOUTH LINE OF SAID PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2389 AT PAGE 1936 AND THE NORTHERLY LINE OF SAID SUBDIVISION FOR 747.11 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF A DRAINAGE EASEMENT (50 FEET WIDE) DESCRIBED IN DEED BOOK 237 AT PAGES 564 AND 565 OF SAID PUBLIC RECORDS; THENCE N.28°32'51"W. ALONG THE NORTHEASTERLY LINE OF SAID DRAINAGE EASEMENT FOR 666.39 FEET TO AN INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF DIPLOMAT PARKWAY (100 FEET WIDE) AS DESCRIBED IN OFFICIAL RECORDS BOOK 2833 AT PAGE 4156 OF SAID PUBLIC RECORDS; THENCE N.89°51'48"E. ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE FOR 765.84 FEET; THENCE S.00°08'12"E. FOR 186.04 FEET; THENCE N.59°04'35"E. FOR 185.65 FEET; THENCE S.76°11'27"E. FOR 125.61 FEET; THENCE S.41°41'10"E. FOR 153.30 FEET TO AN INTERSECTION WITH THE WESTERLY LINE OF A PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2833 AT PAGE 4156 OF SAID PUBLIC RECORDS; THENCE S.00°08'12"E. ALONG THE WESTERLY LINE OF SAID PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2833 AT PAGE 4156 FOR 38.64 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 120.00 FEET; THENCE SOUTHEASTERLY ALONG SAID WESTERLY LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 86°25'24" FOR 181.00 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 12.47 ACRES, MORE OR LESS.

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NET ACREAGE IS 47.65 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE WESTERLY RIGHT-OF-WAY OF U.S. 41 (STATE ROAD 45) AS BEARING S.03°25'50"W.

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

DESCRIPTION PREPARED NOVEMBER 2, 2006.

*Richard M. Ritz*  
RICHARD M. RITZ  
REGISTERED LAND SURVEYOR  
FLORIDA CERTIFICATION NO. 4009

Applicant's Legal Checked  
by *CSB 11/6/06*

DCI 2010-00015

# Banks Engineering

Professional Engineers, Planners & Land Surveyors  
2515 Northbrooke Plaza Drive-Suite 200  
Naples, Florida 34119  
(239) 597-2061  
Fax (239) 597-3082

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COMMUNITY DEVELOPMENT

DESCRIPTION  
OF A  
PARCEL OF LAND  
LYING IN  
SECTION 34, TOWNSHIP 43 SOUTH, RANGE 24 EAST  
LEE COUNTY, FLORIDA  
(RPD ZONING DESCRIPTION)

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTION 34, TOWNSHIP 43 SOUTH, RANGE 24 EAST AND BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

**NORTH RPD PARCEL:**

COMMENCING AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF U.S. 41 (STATE ROAD 45) (200 FEET WIDE) AND THE SOUTHERLY RIGHT-OF-WAY LINE OF LITTLETON ROAD (50 FEET WIDE) THENCE 94.14 FEET ALONG SAID WESTERLY RIGHT-OF-WAY LINE AND ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 5829.58 FEET AND SUBTENDED BY A CHORD HAVING A LENGTH OF 94.14 FEET AND BEARING S.03°47'10"W. TO A POINT OF TANGENCY; THENCE S.03°25'50"W. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 2338.37 FEET; THENCE N.89°54'50"W. FOR 500.85 FEET; THENCE N.03°25'50"E. FOR 53.49 FEET TO THE POINT OF BEGINNING; THENCE S.89°51'48"W. FOR 1145.24 FEET; THENCE S.00°08'12"E. FOR 250.00 FEET TO AN INTERSECTION WITH THE NORTHERLY RIGHT-OF-WAY LINE OF DIPLOMAT PARKWAY (100 FEET WIDE) AS DESCRIBED IN OFFICIAL RECORDS BOOK 2833 AT PAGE 4156 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S.89°51'48"W. ALONG SAID NORTHERLY RIGHT-OF-WAY LINE FOR 80.00 FEET; THENCE N.00°08'12"W. FOR 250.00 FEET; THENCE S.89°51'48"W. FOR 257.48 FEET; THENCE N.00°20'36"W. FOR 703.76 FEET; THENCE N.85°23'00"E. FOR 335.22 FEET; THENCE N.02°25'15"W. FOR 346.19 FEET; THENCE S.89°54'50"E. FOR 1231.65 FEET; THENCE S.03°25'50"W. FOR 1073.15 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 35.18 ACRES, MORE OR LESS.

AND;

**SOUTH RPD PARCEL:**

COMMENCING AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY OF U.S. 41 (STATE ROAD 45) (200 FEET WIDE) AND THE SOUTHERLY RIGHT-OF-WAY OF LITTLETON ROAD (50 FEET WIDE) THENCE 94.14 FEET ALONG THE WESTERLY RIGHT-OF-WAY AND ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 5829.58 FEET AND SUBTENDED BY A CHORD HAVING A LENGTH OF 94.14 FEET AND BEARING S.03°47'10"W. TO A POINT OF TANGENCY; THENCE S.03°25'50"W. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 2338.37 FEET TO THE SOUTHEASTERLY CORNER OF A PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 1972 AT PAGE 335 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE CONTINUE S.03°25'50"W. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 728.95 FEET TO THE NORTHEAST CORNER OF A PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2113 AT PAGE 1590 OF SAID PUBLIC RECORDS, ALSO BEING THE NORTHEAST CORNER OF MERCHANTS CROSSING, A SUBDIVISION RECORDED IN PLAT BOOK 52 AT PAGES 37 THROUGH 47 OF SAID PUBLIC RECORDS; THENCE N.86°34'10"W. ALONG THE NORTH LINE OF SAID PARCEL AND SAID SUBDIVISION FOR 616.50 FEET TO THE POINT OF

SHEET 1 OF 3

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Fort Myers Office  
10511 Six Mile Cypress Pkwy, Suite #101  
Fort Myers, Florida 33966  
(239) 939-5490  
Fax (239) 939-2523

Sarasota Office  
1144 Tallevast Road Suite #115  
Sarasota, Florida 34243  
(941) 360-1618  
Fax (941) 360-6918

Port Charlotte Office  
12653 SW CR 769 Suite B  
Lake Suzy, Florida 34269  
(941) 625-1165  
Fax (941) 625-1149

# SKETCH TO ACCOMPANY DESCRIPTION

OF A  
PARCEL OF LAND  
LYING IN  
SECTION 34, TOWNSHIP 43 SOUTH, RANGE 24 EAST  
LEE COUNTY, FLORIDA



**LINE TABLE**

LINE	BEARING	DISTANCE
L1	S 03°25'30" W	100.00'
L2	N 86°34'10" W	33.50'
L3	S 48°25'48" W	212.13'
L4	S 00°08'12" E	36.64'
L5	S 00°08'12" E	186.04'
L6	N 59°24'35" E	185.65'
L7	S 76°11'27" E	123.61'
L8	S 41°41'10" E	153.30'
L9	S 89°51'48" W	80.00'

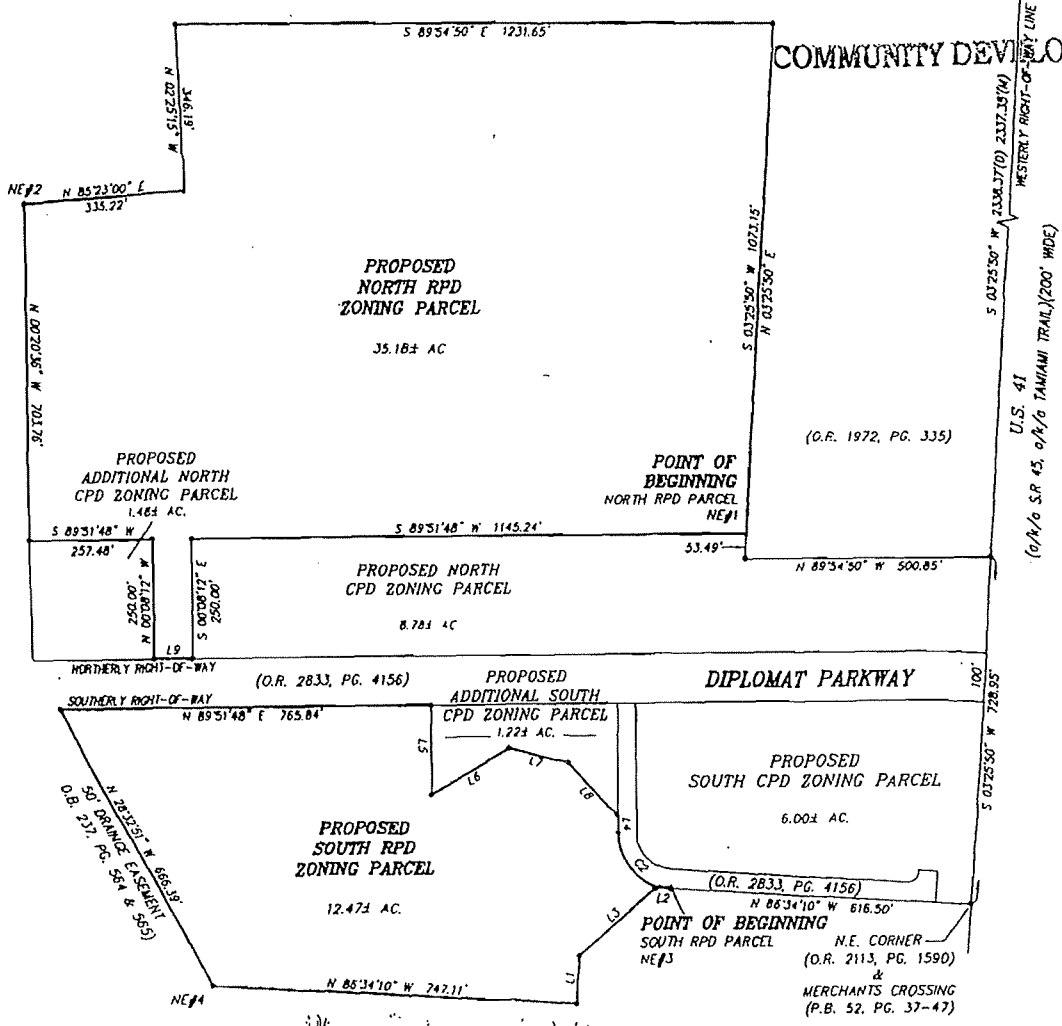
**CURVE TABLE**

CURVE	RADIUS	DELTA	ARC	CHORD	CHORD BEARING
C1	5829.58'	00°35'31"	94.14'	94.14'(0)	S 03°47'10" W(0)
C2	120.00'	86°25'24"	181.00'	94.23'(M)	S 03°30'44" W(M)
				164.33'	N 43°20'54" W

**COORDINATE TABLE**

POINT	NORTHING	EASTING
NE#1	858582.081	687836.83
NE#2	857202.301	686349.89
NE#3	855837.181	687675.48
NE#4	855645.331	686731.56

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- NOTES:**
1. SEE ACCOMPANYING SHEETS FOR COMPLETE METES AND BOUNDS DESCRIPTION.
  2. STATE PLANE COORDINATES (FLORIDA ZONE WEST) SHOWN HEREON ARE BASED ON NAD83 AND ARE FOR DIS PURPOSES ONLY.
  3. BEARINGS ARE BASED ON THE WESTERLY RIGHT-OF-WAY OF U.S. 41 AS S.03°25'50" W.

- LEGEND:**
- O.R. INDICATES OFFICIAL RECORDS BOOK OF LEE COUNTY
  - P.G. INDICATES PAGE NUMBER
  - C1 INDICATES CURVE 1 OF THE CURVE TABLE
  - L1 INDICATES LINE 1 OF THE LINE TABLE
  - NE#1 INDICATES COORDINATE #1 OF THE COORDINATE TABLE
  - P.B. INDICATES PLAT BOOK
  - D.B. INDICATES DEED BOOK
  - (0) INDICATES DEED
  - (M) INDICATES MEASURED

\*\*\*THIS IS NOT A SURVEY\*\*\*

*Richard M. Ritz*  
 RICHARD M. RITZ  
 REGISTERED LAND SURVEYOR  
 FLORIDA CERTIFICATION NO. 4809

SKETCH

THIS SKETCH IS NOT VALID UNLESS IT BEARS THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA PROFESSIONAL SURVEYOR AND MAPPER

PREPARED BY:  
**Banks Engineering**  
 ENGINEERING, SURVEYING & LAND PLANNING  
 2518 NORTHWOODS PLAZA DRIVE - SUITE 200  
 NAPLES, FLORIDA 34110  
 (239) 597-2081  
 FLORIDA SURVEYING BUSINESS CERTIFICATION NO. 8890

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**Exhibit B**

**RECOMMENDED CONDITIONS AND DEVIATIONS (Codified)**

**Strike Through/Underlined Version**

*(As revised by the Hearing Examiner)*

**CONDITIONS**

1. **Master Concept Plan (MCP)**. Development must be substantially consistent with the MCP (Exhibit B-1) as follows:

MCP Page 1 of 3 entitled "Master Concept Plan, Diplomat Parcel, Lee County, Florida," dated 08-27-2007, last revised June 25, 2024;

MCP Page 2 of 3 entitled "Alternate Diplomat North RPD Master Concept Plan, Diplomat House" last revised June 25, 2024;

MCP Page 3 of 3 entitled "Alternate Diplomat South RPD MCP, Diplomat Parcel" dated 10/28/2019, last revised June 25, 2024, consistent with the conditions herein.

**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 require further approvals.

**Approved Development Parameters.**

**North RPD:** The 35.18 acre North RPD is comprised of the former 29.75 acre North RPD and the former 5.43 Acre "Optional CPD" parcel north of Diplomat Parkway. This 35.18 acre parcel may develop up to 360 dwelling units utilizing density derived from the 35.18 RPD and 2.95 acres derived from CPD parcels 1 and 2. (Standard Density utilizing 35.18 acre RPD and commercial parcels 1 (1.48 Acres) and 2 (1.47 acres).

**South RPD:** The 13.19 acre RPD parcel south of Diplomat Parkway may develop up to 105 dwelling units. An additional 21 units may be constructed if marketed at a price affordable to moderate income households at the time of building permit application. The additional 21 units may only be sold to buyers who qualify as a Moderate Income Household at time of purchase. Moderate Income Household means 120 percent of the yearly median income based on yearly income levels developed for the SHIP Program by the Housing Section of the Lee County Division of Planning. (Approved density on the South RPD equates to eight dwelling units per acre, with a potential additional 1.6 units per acre subject to affordability requirements outlined herein.)

CPD Parcels 1 - 4. Maximum Total Commercial Floor Area: 200,000 square feet of commercial uses. North RPD utilizes acreage from CPD Parcels 1 and 2 residential density with no impact to commercial intensity due to Mixed Use Overlay. Commercial Parcels 3 and 4 may convert commercial intensity to residential density up to 116 dwelling units consistent with the conversion matrix in Condition 14 to allow up to 8 dwelling units per acre on 14.53 acres.

**Codification of Prior Approvals**. This resolution represents a codification of prior approvals.

2. **Permitted Uses and Property Development Regulations**.

a. **Schedule of Uses**

**CPD – Parcels 1, 2, 3 & 4**

Administrative Office

Animals: Clinic, Kennel, Control Center (including Humane Society) - indoors, no outdoor runs.

Automatic Teller Machine

Auto Parts Store - No installation service.

Auto Repair and Service, Group I

Bait and Tackle Shop

Banks and Financial Establishments, Group I and II

Boat Part Stores

Building Material Sales (indoor only, no outdoor display)

Business Services, Group I and II (no impound yards or armored car services) Cleaning and Maintenance Services

Clothing Stores, General

Communication facilities, wireless

A wireless communication facility may be administratively approved, provided it is co-located on a building and the height of the tower does not exceed 50 feet from existing grade.

Community Garden

Consumption on Premises – Indoor, limited to Group III restaurants.

Outdoor Consumption on Premises requires special exception approval

Contractors and Builders, Group I, II

Cultural Facilities

Day Care, Adult, Child

Department Store

Drive-through facility for any permitted use. No fast food drive-through.

Drugstore, Pharmacy (limited to 1 on Parcel 3 or 4)

Dwelling units, multifamily (Limited to Parcels 3, 4) See Conditions 1, 14, 15

Entrance Gate and Gatehouse

Emergency Operations Center

EMS, Fire or Sheriff's Station

Essential Services  
Essential Service Facilities, Group I  
Excavation, Water Retention - removal of excavated material from site prohibited.  
Fences and Walls-  
Flea Market, Indoor Only  
Food and Beverage Services, Limited  
Food Stores, Groups I, II  
Funeral Home or Mortuary, with or without cremation  
Gasoline Dispensing System, Special  
Hardware Store  
Health Care Facility, Groups I, II, and III  
Hotel/Motel - Limited to 120 rooms.  
Household and Office Furnishings - indoor only, no outdoor display  
Insurance Companies  
Lawn and Garden Supply Stores - indoor only, no outdoor display  
Library  
Medical Office  
Model Home, Model Display Center, Model Unit (Limited to Parcels 3 and 4)  
Non-store Retailer, All Groups  
Paint, Glass and Wallpaper - (indoor only, no outdoor display)  
Parking Lot, Accessory, Commercial, Garage, Public Parking, Temporary  
Personal Services, Groups I, II, III, IV.  
    Excluding Laundromats, Laundry Agents, Massage Establishments, Massage Parlors, Steam or Turkish Baths, Dating Services, Escort Services, Palm Readers, Fortune Tellers, Card Readers, Tattoo Parlors.  
Pet Services, Pet Shops - Indoor only, no outdoor display. No outdoor runs.  
Place of Worship  
Plant Nursery  
Post Office  
Printing and Publishing  
Processing and Warehousing  
Real Estate Sales  
    Limited to rental/sales within multifamily development permitted on Parcel 3 and 4  
Real Estate Sales Office  
Religious Facilities  
Rental or Leasing Establishments, Group II only - excluding tools and equipment primarily for home use. Indoor only. No outdoor display.  
Repair Shop, Groups I, II, III  
Research and Development Laboratories, Groups I, II, III and IV  
Residential accessory uses (Limited to Parcels 3 and 4)  
Restaurants, Groups I, II, III, and IV

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Restaurant, Fast Food, within a multi-occupancy building only. No stand-alone or drive-through  
Schools, Commercial and Non-Commercial  
Signs  
Social Services Group I only  
Specialty Retail, Groups I, II, III and IV  
Storage, Indoor Only  
Studios  
Supermarkets  
Temporary Uses  
Used Merchandise, Groups I and II, Indoor only. No outdoor display.  
Variety Store

**North RPD (35.18 acres north of Diplomat Parkway)**

**Hearing Examiner Note:** *The 35.18 acres includes the former 5.48 acre "Optional CPD" parcel.*

Accessory Uses and Structures  
Administrative Office  
Clubs, Private - As shown on the approved MCP. (Recreation Areas)  
Community Garden  
Dwelling Units, subject to Condition 1  
    Multifamily,  
    Townhomes  
Entrance Gates and Gatehouse  
Essential Services  
Essential Service Facilities, Group I only  
Excavation, Water Retention, removal of excavated material from site prohibited.  
Fences and Walls.  
Home Occupation  
Home Care Facility  
Model Home, Model Display Center, Model Unit - See Condition 3 (Model home and RE)  
Parking Lot, Accessory  
Real Estate Sales - limited to sale of lots/homes/units within the development.  
Model home and club locations only. See Condition 3  
Recreational Facilities - Private, on-site. Limited to locations shown on MCP  
Religious Facilities  
Residential Accessory Uses  
Signs  
Temporary Uses  
Temporary Real Estate Sales Office

**South RPD (13.19 acres south of Diplomat Parkway)**

Accessory Uses and Structures

Administrative Office

Clubs, Private - As shown on the MCP.

Community Garden

Dwelling Units\_– limited to a maximum of 105 dwelling units (or up to 126 dwelling units pursuant to Condition 1)

Single-family

Duplex

Two-family attached

Multiple-family

Townhomes

Entrance Gates and Gatehouse

Essential Services

Essential Service Facilities, Group I

Excavation, Water Retention - not to include the removal of excavated material from the site.

Fences and Walls.

Home Occupation, No outside help.

Home Care Facility

Model Home, Model Display Center, Model Unit - See Condition 3

Parking Lot, Accessory

Real Estate Sales - limited to sales of lots, homes or units within the development. Model home and club locations only. see Condition 3

Recreational Facilities - Private, on-site. Shown on MCP

Residential Accessory Uses

Signs

Temporary Uses

Temporary Real Estate Sales Office

b. **Site Development Regulations**

**CPD Parcels 1, 2, 3 & 4**

Minimum Lot Areas and Dimensions

Lot Size: 10,000 square feet

Lot Width: 100 feet

Lot Depth: 100 feet

Minimum Setbacks

Street: 25 feet (public)  
20 feet (private)

Side: 10 feet

Rear: 20 feet

Water body: 25 feet

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Accessory Uses: Per LDC.

Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet

Minimum Building Separation: 20 feet, buildings exceeding 35 feet in height must maintain additional building separation per LDC.

Maximum Building Height: 50 feet/ 3 stories  
35 feet/ 2 stories – adjacent to west boundary

Maximum Lot Coverage: 60 percent

### **RPD North**

#### Townhome

##### Minimum Lot Size and Dimensions

Lot Size: 0 square feet  
Lot Width: 16 feet  
Lot Depth: 0 feet

##### Minimum Setbacks

Street: 0 feet (public)  
0 feet (private)  
Side: 0 feet  
Rear: 0 feet  
Waterbody: 25 feet

All Accessory Uses: 0 feet

##### Setbacks from Preserves

All Structures: Per LDC.

Minimum Perimeter Setbacks: 15 feet

Minimum Building Separation: 20 feet

Maximum Building Height: 35 feet

Maximum Lot Coverage: No Maximum

Multiple-Family

Minimum Lot Size and Dimensions

Lot Size: 0 square feet  
Lot Width: 25 feet  
Lot Depth: 0 feet

Minimum Setbacks

Street: 0 feet (public)  
0 feet (private)  
Side: 0 feet  
Rear: 0 feet  
Waterbody: 25 feet

All Accessory Uses: 0 feet

Setbacks from Preserves  
(All Structures) Per LDC.

Minimum Perimeter Setbacks 15 feet

Minimum Building Separation : 20 feet

Maximum Building Height 60 feet

Maximum Lot Coverage No Maximum

Recreational Area/Clubhouse

Minimum Lot Size and Dimensions

Lot Size: 0 square feet  
Lot Width: 25 feet  
Lot Depth: 0 feet

Minimum Setbacks

Street: 0 feet (public)  
0 feet (private)  
Side: 0 feet  
Rear: 0 feet  
Waterbody: 25 feet

All Accessory Uses: 0 feet

Setbacks from Preserves  
All Structures: Per LDC.

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Minimum Perimeter Setbacks: 15 feet  
Minimum Building Separation: 10 feet  
Maximum Building Height: 35 feet  
Maximum Lot Coverage: No Maximum

**South RPD**

Single Family

Minimum Lot Areas and Dimensions

Lot Size: 7,500 square feet  
Lot Width: 75 feet  
Lot Depth: 100 feet

Minimum Setbacks

Street: 25 feet (public)  
20 feet (private)  
Side: 5 feet  
Rear: 30 feet on lots containing enhanced buffer  
20 feet other lots  
Water body: 25 feet

Accessory Uses: Per LDC.

Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet  
30 feet on lots containing enhanced buffer

Minimum Building Separation: 10 feet  
Maximum Building Height: 35 feet  
Maximum Lot Coverage: 45 percent

Duplex, Two-Family Attached

Minimum Lot Areas and Dimensions

Lot Size: 7,500 square feet  
Lot Width: 75 feet (37.5 feet per unit)  
Lot Depth: 100 feet

Minimum Setbacks

Street: 25 feet (public)  
20 feet (private)

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Side: 5 feet (0 feet for common wall unit)  
Rear: 30 feet on lots containing enhanced buffer  
20 feet other lots  
Water body: 25 feet

All Accessory Uses: Per LDC.

Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet  
30 feet on lots containing enhanced buffer

Minimum Building Separation: 10 feet  
Maximum Building Height: 35 feet  
Maximum Lot Coverage: 45 percent

### Townhouse

#### Minimum Lot Areas and Dimensions

Lot Size: 1,600 square feet  
Lot Width: 16 feet  
Lot Depth: 100 feet

#### Minimum Setbacks

Street: 25 feet (public)  
20 feet (private)  
Side: 10 feet  
0 feet (for a common wall unit)  
Rear: 30 feet on lots containing enhanced buffer.  
20 feet on other lots  
Water body: 25 feet

All Accessory Uses: Per LDC.

Setbacks from Preserves (All structures) 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet  
30 feet on lots containing enhanced buffer

Minimum Building Separation: 20 feet  
Maximum Building Height: 35 feet  
Maximum Lot Coverage: 65 percent

### Multiple-Family

#### Minimum Lot Areas and Dimensions

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Lot Size: 10,000 square feet  
Lot Width: 100 feet  
Lot Depth: 100 feet

Minimum Setbacks

Street: 25 feet (public)  
20 feet (private)  
Side: 10 feet  
Rear: 30 feet on lots containing enhanced buffer.  
20 feet on other lots  
Water body: 25 feet

All Accessory Uses: Per LDC.

Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet  
30 feet on lots containing enhanced  
buffer

Minimum Building Separation: 20 feet  
Maximum Building Height: 35 feet  
Maximum Lot Coverage: 45 percent

Recreational Area/Facilities

Minimum Lot Areas and Dimensions

Lot Size: 9,000 square feet  
Lot Width: 50 feet  
Lot Depth: 120 feet

Minimum Setbacks (see Deviation 5)

Street: 25 feet (public)  
20 feet (private)  
Side: 10 feet  
Rear: 20 feet  
Water body: 25 feet

Accessory Uses: Per LDC.

Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet

Minimum Building Separation: 10 feet  
Maximum Building Height: 35 feet/ 2 stories  
Maximum Lot Coverage: 45 percent

### ~~3.~~ **CONCURRENCY**

~~Approval of this rezoning does not constitute a finding that the proposed project meets the concurrency requirements set forth in LDC Chapter 2 and the Lee Plan. The developer is required to demonstrate compliance with all concurrency requirements prior to issuance of a local development order.~~

**Hearing Examiner Note: *Restatement of LDC applicable by virtue of Condition 1. Recommend deletion.***

### 4.3 **MODEL HOME AND REAL ESTATE SALES**

Model units/homes and real estate sales are permitted in compliance with the following conditions:

- a. Each model must be a unique example. Multiple examples of the same unit are not permitted.
- b. Model sites must be designated on the development order plans.
- c. Prior to construction, the lots hosting model homes must be shown on a preliminary plat (not the final). The preliminary plat must be filed concurrently with the development order application. The model homes must comply with the property development regulations in Condition 2.
- d. Dry models are prohibited.
- e. The number of model homes/model units will be limited to 10 within the development at one time.
- f. DELETED
- g.f. Real Estate sales in RPDs
  - i. Limited to the sale of lots/units within the development.
  - ii. Limited to within model homes or clubhouse.
  - iii. Hours of operation for models and real estate sales are limited to Monday through Sunday 8:00 a.m. to 8:00 p.m.
  - iv. Model homes and real estate sales will be valid for the duration permitted in the LDC.

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**5. ~~NO AGRICULTURAL USES APPROVED~~**

~~Agricultural uses are prohibited.~~

*Hearing Examiner Note: list of permitted uses in Condition 2 does not include agriculture. Recommend deletion.*

**6. ~~DELETED~~**

**7.4. REQUIRED NATIVE VEGETATION**

Required buffers must utilize 100 percent native vegetation.

**8. ~~ADDITIONAL BUILDING SETBACK REQUIRED~~**

~~Buildings exceeding 35 feet in height must maintain additional building setback as regulated by LDC §34-2174(a).~~

*Hearing Examiner Note: Restatement of LDC applicable pursuant to Condition 1. Recommend deletion.*

**9. ~~TRAFFIC~~**

~~Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.~~

*Hearing Examiner Note: Restatement of LDC applicable pursuant to Condition 1. Recommend deletion.*

**10. ~~LEE PLAN~~**

~~Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b), as well as all other Lee Plan provisions.~~

*Hearing Examiner Note: Restatement of LDC applicable pursuant to Condition 1. Recommend deletion.*

**11.5. INTERSECTION IMPROVEMENTS**

Developer must contribute its proportionate share of the costs of intersection improvements at the time a traffic control device is warranted at the intersection of US 41 and Diplomat Parkway if requested by Florida Department of Transportation or City of Cape Coral.

**12.6. WIRELESS COMMUNICATION FACILITIES**

- a. Freestanding wireless communication facilities (towers, including stealth type) must be approved via amendment to this planned development.
- b. Wireless Communication Facilities (including wall-mounted and roof-mounted antennas) may be approved in accordance with LDC limited to commercial parcels.

**13. ACCESSORY USES**

~~Accessory uses must be located on the same tract, parcel or outparcel where a principal use is located. Accessory uses must be incidental and subordinate to the principal use of the tract, parcel or outparcel.~~

*Hearing Examiner Note: Restatement of LDC applicable pursuant to Condition 1. Recommend deletion.*

**14.7. OPEN SPACE**

Development order landscape plans must demonstrate each parcel provides open space consistent with the MCP open space table.

**15.8. ENVIRONMENTAL**

If the Florida Fish and Wildlife Conservation Commission (FWC) allows relocation of tortoises within on-site indigenous preserves:

- a. Development order submittals must include a detailed indigenous preservation management plan including methods of maintaining the western 3.0 acres of the preserve as gopher tortoise habitat. This plan will be subject to staff review and approval.
- b. Development order landscape plans must include a permanent gopher tortoise fence along Diplomat Parkway where the three-acre gopher tortoise preserve abuts the road. In addition, landscape plans must depict a double staggered native hedge a minimum 3-gallon container size, 24-inch height at planting, and maintained at a minimum 36-inch height, on the roadside of the fence.
- c. Development order landscape plans must depict a double staggered native hedge minimum three-gallon container size, 24-inch height at planting, maintained at a minimum 36-inch height along the interface of the indigenous preserve with the residential tract.

- d. Developer must remove invasive exotic vegetation by hand within the indigenous preserve prior to issuance of a Vegetation Removal Permit.

#### **16.9. COMMERCIAL PARCELS NORTH OF DIPLOMAT PARKWAY**

Commercial buildings located within Parcels 1, 2 and the westernmost 2.3 acres of Parcel 3 are limited to a maximum of 10,000 square feet per building and may not exceed two stories/35 feet in height. Building locations must be staggered between the front and rear of the commercial parcels to provide a campus-like setting. Development order submittals must include a parking plan devised to keep the amount of parking spaces along Diplomat Parkway to a minimum. Parking areas and commercial buildings must be buffered from Diplomat Parkway by a minimum two-foot-high berm with 10 trees and a staggered 36-inch-high hedge per 100 linear feet.

Commercial buildings on Commercial Parcels 1, 2 and 3 must be of similar architectural design and coloring as residential buildings, to identify them as a unified project. Residential and commercial project identification signs must be of similar architectural design and coloring.

#### **~~17. NOT UTILIZED~~**

#### **~~18. SOLID WASTE/RECYCLING~~**

~~Prior to local development order approval for vertical development, the Developer must provide facilities in compliance with LDC §10-261 and Lee County Solid Waste Ordinance #08-10 for the pick up/disposal of solid waste and recyclables. The minimum area required for and specific locations of these facilities will be reviewed at the time of local development order application (Also see Deviation 7).~~

**Hearing Examiner Note: LDC controls except as to Deviation 7. Recommend deletion.**

#### **~~19. PRIOR ZONING~~**

~~The terms and conditions of Zoning Resolution Nos. Z-06-004 and Z-11-002 and Administrative Amendments ADD2007-00169, ADD2019-00085, ADD2019-00181 and ADD2020-00034 are superseded by this zoning action and are rendered null and void by this approval.~~

**Hearing Examiner Note: Addressed in Condition 1.**

#### **20.10. INDIGENOUS PRESERVATION/HERITAGE TREES (NORTH RPD PARCEL)**

- a. Development order submittals must include tree survey depicting location, diameter at breast height, and species of heritage trees within the development area.

- b. Development order landscape plans must depict heritage trees within the development footprint determined to be of good health per a certified arborist. Those trees must be incorporated into the internal open space (i.e., perimeter planting, enlarged landscape areas, etc.), or must be replaced with a 20-foot like species to a suitable open space area where final site design constraints (i.e., fill requirements, entrance roads, etc.) do not allow preservation.

**21.11. PROTECTED SPECIES**

- a. Prior to development order approval, the Applicant must first seek approval for on-site preservation of the gopher tortoises through avoidance or relocation before pursuing off-site relocation options. All communication with FWC verifying on-site avoidance or relocation attempts were made must be provided to DES Staff.
- b. Development order submittals must include a copy of the FWC gopher tortoise relocation permit prior to excavation and moving gopher tortoises. Applicant must seek approval of an on-site relocation before pursuing off-site relocation options. Gopher tortoises and commensal species found during burrow excavation must be moved to preserves with suitable gopher tortoise habitat as approved by the FWC and DES Staff.

**22. DELETED**

**23.12. BUFFERS (North RPD)**

- a. Development order plans must demonstrate preservation of native vegetation within the flood way.
- b. Developer must install an LDC "Type F" buffer along the north property line west of the lake, consistent with the MCP. Specifically, the buffer must be 30 feet in width and include 10 native canopy trees per 100 linear feet, and a double hedge row planted at 48" in height at time of planting.

**24.13. NATIVE PLANTINGS REQUIRED (North RPD)**

Required buffer plantings, general trees, and internal canopy trees must be 100 percent native species.

**25.14. LAND USE CONVERSION MATRIX**

CPD Parcels 3 and 4 may convert unused commercial intensity to multifamily dwelling units consistent with Land Use Conversion Matrix below:

	<u>Multifamil y Residenti al LUC 220 (0.56 Trips/DU)</u>	<u>Commercial Retail (Shopping Center) LUC 820 (3.81 Trips/1,000 sq. ft.)</u>
<u>Multifamily Residential LUC 220 (0.56 Trips/DU)</u>	<u>Same</u>	<u>147 sq ft./1 DU</u>
<u>Commercial Retail (Shopping Center) LUC 820 (3.81 Trips/1,000 sq. ft.)</u>	<u>6.80 DU/1,000 sq. ft.</u>	<u>Same</u>

- ~~26. A maximum of 116 multifamily dwelling units (8 dwelling units per acre) may be constructed on CPD Parcels 3 and 4 in accordance with the Land Use Conversion Matrix in Condition 25.~~

**Hearing Examiner Note: This Condition restates Condition 1. Recommend deletion.**

**27.15. DENSITY REPORT**

Development order submittals for multifamily residential development on CPD Parcels 3 and 4 must include a report itemizing:

- a. Density (expressed in number of dwelling units) and, if applicable, the intensity (expressed in the square feet of floor area) of each use proposed by the development order application.
- b. Cumulative total density and intensity permitted on CPD Parcels 1, 2, 3, and 4 approved by prior development order approvals.
- c. Remaining density and intensity available for future development on CPD Parcels 1, 2, 3, and 4 for each classification in Condition 15(a).

**16. STATE AND FEDERAL PERMITS**

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.

## DEVIATIONS

1. Intersection Separation. Deviation 1 seeks relief from the LDC §10-285(a) requirement to provide a minimum access connection separation of 660 feet on an arterial road to permit an access separation of 364 feet between the project's proposed main access and the proposed exit-only access for the residential portion of the southern parcel. This deviation is approved.
2. One dead-end street permitted. Deviation 2 seeks relief from the LDC §10-296(k)(1) requirement that dead-end streets be closed at one end by a circular turn-around, to allow one dead-end street shown on the South RPD MCP. This deviation is approved.
3. Open Space. Deviation 3 seeks relief from the LDC §10-415(b)(1)(a) requirement that large developments with indigenous vegetation communities to provide 50 percent of their open space percentage requirements through on-site preservation of existing native vegetative communities, to permit 0.45 acres of right of way to be vacated, enhanced and preserved to count toward the preservation requirement.

This deviation is approved, subject to the following condition:

Prior to local development order approval for Commercial Parcel 4, the existing roadway easement depicted within the indigenous preserve must be vacated.

This deviation applies to the South RPD and CPD.

4. Installation of storm water management system. Deviation 4 seeks relief from the LDC §10-415(b)(1)a. requirement that large developments with existing indigenous native vegetation communities provide 50 percent of their open space requirement through on-site preservation of indigenous native vegetation, to allow portions of the preservation area to be disturbed and restored in order to install a storm water management system. This deviation is approved, subject to the following conditions:

1. Prior to local development order, the development orders plans must delineate the general location of the surface water management outfall through the indigenous preserve to the canal. The outfall must be designed as an open system that can be planted with native vegetation.
2. Prior to issuance of a Vegetation Removal Permit, the location of the surface water management outfall through the indigenous preserve must be field staked, to avoid impacting any large native trees or gopher tortoise burrows, for the Division of Environmental Sciences Staff review and approval.

This deviation applies to the South RPD and CPD.

5. Separation from residential uses. Deviation 5 seeks relief from the LDC §34-2474(b)(6) requirement that recreation halls and ancillary facilities and private clubs be located at least 40 feet from any residential dwelling unit, to allow a 20-foot minimum separation for any recreation building from a residential dwelling unit. This deviation is approved, subject to the following condition:

Development of a recreational facility and clubhouse must be generally consistent with the location shown on the approved MCP.

Deviation applies to the recreation area shown on the North RPD.

- 6a. Required Street Access - Single Ingress. - Deviation 6a seeks relief from the LDC §10-291(3) requirement that residential developments more than five acres in size provide two or more means of ingress into the development, to allow a single ingress/egress to the RPD north of Diplomat Parkway. This deviation is approved, subject to the following conditions:

1. Access to the RPD north of Diplomat Parkway must be generally consistent with the MCP; and
2. The MCP and local development order must depict a minimum 70-foot-wide divided entrance to the North RPD that includes a median with two lanes on each side of the median for ingress and egress; and
3. Development order submittals must include written documentation from the North Fort Myers Fire District confirming the access provides adequate access for emergency vehicles. Development order submittals must also include plans for the secondary/emergency access referenced below.
4. Prior to build-out of the RPD north of Diplomat Parkway, developer must install a secondary/emergency access from the North RPD to commercial Parcel 3, consistent with the MCP. The emergency access gate must comply with applicable regulations including required equipment for an emergency override mechanism. If an emergency necessitates breaking an entrance gate, the cost of repairing the gate and the emergency vehicle (if applicable) will be the responsibility of the owner/operator of the gate.

- 6b. Ingress Egress. Deviation 6b seeks relief from the LDC §10-291(3) requirement that residential developments more than five acres in size provide two or more means of ingress into the development, to allow a single ingress/egress to the South RPD. This deviation is approved, subject to the following conditions.

1. Access to the South RPD must be generally consistent with the MCP; and
2. Emergency access gates must comply with applicable regulations with respect to required equipment for an emergency override mechanism at the time of installation. If an emergency necessitates breaking an entrance

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gate, the cost of repairing the gate and the emergency vehicle (if applicable) will be the responsibility of the owner/operator of the gate; and

3. Development order submittals must include written documentation from the North Fort Myers Fire District confirming the access provides adequate access for emergency vehicles.
  
7. Curbside garbage collection for townhouse units and reduction in collection area for multi-family units. Deviation 7 (townhouse previously contained in ADD2007-000169 and subsequent approvals) seeks relief from the LDC §10-261 requirement that all new multiple-family residential developments to provide sufficient space for the placement of garbage containers or receptacles, to allow reduction in required multi-family container space of 216 SF (120 + 96) for first 25 multi-family units plus 8 SF for each additional unit; to allow space for the compactor and a minimum 144 square feet for recyclable materials collection area for the North RPD. (amendment to previously approved deviation)

*Hearing Examiner Recommendation:* Approved.

8. Certain internal buffers not required – North RPD. Deviation 8 seeks relief from LDC §10-425(f)(1) requirement for five-foot wide buffer along rights-of-way planted with five trees per 100 linear feet, to allow no buffer within the North RPD internal rights-of-way. This deviation is approved.
  
9. Backout parking within internal right-of-way – North RPD. Deviation 9 seeks relief from LDC 34-2013(a)(2), which requires parking that backs out into rights-of-way in residential developments must be limited to development amenities not for dwelling units or commercial uses, to allow back out parking spaces for dwelling units and guests limited to the location shown on Page 2 of 3 of the MCP.

*Hearing Examiner Recommendation:* Approved.

10. Minimum Building Separation – North RPD. Deviation 10 seeks relief from LDC §34-935(e)(4), which requires a minimum building separation of one-half the sum of the building heights, or 20 feet, whichever is greater; to allow a minimum building separation of 20 feet.

*Hearing Examiner Recommendation:* Approved.

Exhibit to Conditions  
B1 Master Concept Plan

## Exhibit C

### RECOMMENDED CONDITIONS AND DEVIATIONS (Codified)

#### Clean Version

*(As revised by the Hearing Examiner)*

#### CONDITIONS

1. **Master Concept Plan (MCP).** Development must be substantially consistent with the MCP (Exhibit B-1) as follows:

MCP Page 1 of 3 entitled "Master Concept Plan, Diplomat Parcel, Lee County, Florida," dated 08-27-2007, last revised June 25, 2024;

MCP Page 2 of 3 entitled "Alternate Diplomat North RPD Master Concept Plan, Diplomat House" last revised June 25, 2024;

MCP Page 3 of 3 entitled "Alternate Diplomat South RPD MCP, Diplomat Parcel" dated 10/28/2019, last revised June 25, 2024, consistent with the conditions herein.

**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 require further approvals.

#### Approved Development Parameters.

**North RPD:** The 35.18 acre North RPD is comprised of the former 29.75 acre North RPD and the former 5.43 Acre "Optional CPD" parcel north of Diplomat Parkway. This 35.18 acre parcel may develop up to 360 dwelling units utilizing density derived from the 35.18 RPD and 2.95 acres derived from CPD parcels 1 and 2. (Standard Density utilizing 35.18 acre RPD and commercial parcels 1 (1.48 Acres) and 2 (1.47 acres).

**South RPD:** The 13.19 acre RPD parcel south of Diplomat Parkway may develop up to 105 dwelling units. An additional 21 units may be constructed if marketed at a price affordable to moderate income households at the time of building permit application. The additional 21 units may only be sold to buyers who qualify as a Moderate Income Household at time of purchase. Moderate Income Household means 120 percent of the yearly median income based on yearly income levels developed for the SHIP Program by the Housing Section of the Lee County Division of Planning. (Approved density on the South RPD equates to eight dwelling units

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per acre, with a potential additional 1.6 units per acre subject to affordability requirements outlined herein.)

CPD Parcels 1 - 4. Maximum Total Commercial Floor Area: 200,000 square feet of commercial uses. North RPD utilizes acreage from CPD Parcels 1 and 2 residential density with no impact to commercial intensity due to Mixed Use Overlay. Commercial Parcels 3 and 4 may convert commercial intensity to residential density up to 116 dwelling units consistent with the conversion matrix in Condition 14 to allow up to 8 dwelling units per acre on 14.53 acres.

**Codification of Prior Approvals.** This resolution represents a codification of prior approvals.

## 2. **Permitted Uses and Property Development Regulations.**

### a. **Schedule of Uses**

#### **CPD – Parcels 1, 2, 3 & 4**

Administrative Office

Animals: Clinic, Kennel, Control Center (including Humane Society) - indoors, no outdoor runs.

Automatic Teller Machine

Auto Parts Store - No installation service.

Auto Repair and Service, Group I

Bait and Tackle Shop

Banks and Financial Establishments, Group I and II

Boat Part Stores

Building Material Sales (indoor only, no outdoor display)

Business Services, Group I and II (no impound yards or armored car services) Cleaning and Maintenance Services

Clothing Stores, General

Communication facilities, wireless

A wireless communication facility may be administratively approved, provided it is co-located on a building and the height of the tower does not exceed 50 feet from existing grade.

Community Garden

Consumption on Premises – Indoor, limited to Group III restaurants.

Outdoor Consumption on Premises requires special exception approval

Contractors and Builders, Group I, II

Cultural Facilities

Day Care, Adult, Child

Department Store

Drive-through facility for any permitted use. No fast food drive-through.

Drugstore, Pharmacy (limited to 1 on Parcel 3 or 4)

Dwelling units, multifamily (Limited to Parcels 3, 4) See Conditions 1, 14, 15

Entrance Gate and Gatehouse  
Emergency Operations Center  
EMS, Fire or Sheriff's Station  
Essential Services  
Essential Service Facilities, Group I  
Excavation, Water Retention - removal of excavated material from the site prohibited.  
Fences and Walls-  
Flea Market, Indoor Only  
Food and Beverage Services, Limited  
Food Stores, Groups I, II  
Funeral Home or Mortuary, with or without cremation  
Gasoline Dispensing System, Special  
Hardware Store  
Health Care Facility, Groups I, II, and III  
Hotel/Motel - Limited to 120 rooms.  
Household and Office Furnishings - indoor only, no outdoor display  
Insurance Companies  
Lawn and Garden Supply Stores - indoor only, no outdoor display  
Library  
Medical Office  
Model Home, Model Display Center, Model Unit (Limited to Parcels 3 and 4)  
Non-store Retailer, All Groups  
Paint, Glass and Wallpaper - (indoor only, no outdoor display)  
Parking Lot, Accessory, Commercial, Garage, Public Parking, Temporary  
Personal Services, Groups I, II, III, IV.  
    Excluding Laundromats, Laundry Agents, Massage Establishments, Massage Parlors, Steam or Turkish Baths, Dating Services, Escort Services, Palm Readers, Fortune Tellers, Card Readers, Tattoo Parlors.  
Pet Services, Pet Shops - Indoor only, no outdoor display. No outdoor runs.  
Place of Worship  
Plant Nursery  
Post Office  
Printing and Publishing  
Processing and Warehousing  
Real Estate Sales  
    Limited to rental/sales of units within multifamily development permitted on Parcel 3 and 4  
Real Estate Sales Office  
Religious Facilities  
Rental or Leasing Establishments, Group II only - excluding tools and equipment primarily for home use. Indoor only. No outdoor display.  
Repair Shop, Groups I, II, III  
Research and Development Laboratories, Groups I, II, III and IV

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Residential accessory uses (Limited to Parcels 3 and 4)  
Restaurants, Groups I, II, III, and IV  
Restaurant, Fast Food, within a multi-occupancy building only. No stand-alone or drive-through  
Schools, Commercial and Non-Commercial  
Signs  
Social Services Group I only  
Specialty Retail, Groups I, II, III and IV  
Storage, Indoor Only  
Studios  
Supermarkets  
Temporary Uses  
Used Merchandise, Groups I and II, Indoor only. No outdoor display.  
Variety Store

**North RPD (35.18 acres north of Diplomat Parkway)**

Accessory Uses and Structures  
Administrative Office  
Clubs, Private - As shown on the approved MCP. (Recreation Areas)  
Community Garden  
Dwelling Units, subject to Condition 1  
    Multifamily,  
    Townhomes  
Entrance Gates and Gatehouse  
Essential Services  
Essential Service Facilities, Group I only  
Excavation, Water Retention, removal of excavated material from the site prohibited.  
Fences and Walls.  
Home Occupation  
Home Care Facility  
Model Home, Model Display Center, Model Unit - See Condition 3  
Parking Lot, Accessory  
Real Estate Sales - limited to sale of lots/homes/units within the development.  
Model home and club locations only. See Condition 3  
Recreational Facilities - Private, on-site. Limited to locations shown on MCP  
Religious Facilities  
Residential Accessory Uses  
Signs  
Temporary Uses  
Temporary Real Estate Sales Office

**South RPD (13.19 acres south of Diplomat Parkway)**

Accessory Uses and Structures  
Administrative Office  
Clubs, Private - As shown on the MCP.  
Community Garden  
Dwelling Units\_– limited to a maximum of 105 dwelling units (or up to 126 dwelling units pursuant to Condition 1)  
    Single-family  
    Duplex  
    Two-family attached  
    Multiple-family  
    Townhomes  
Entrance Gates and Gatehouse  
Essential Services  
Essential Service Facilities, Group I  
Excavation, Water Retention - not to include the removal of excavated material from the site.  
Fences and Walls.  
Home Occupation, No outside help.  
Home Care Facility  
Model Home, Model Display Center, Model Unit - See Condition 3  
Parking Lot, Accessory  
Real Estate Sales - limited to sales of lots, homes or units within the development. Model home and club locations only. See Condition 3  
Recreational Facilities - Private, on-site. Shown on MCP  
Residential Accessory Uses  
Signs  
Temporary Uses  
Temporary Real Estate Sales Office

**b. Site Development Regulations**

**CPD Parcels 1, 2, 3 & 4**

Minimum Lot Areas and Dimensions

Lot Size: 10,000 square feet

Lot Width: 100 feet

Lot Depth: 100 feet

Minimum Setbacks

Street: 25 feet (public)

20 feet (private)

Side: 10 feet

Rear: 20 feet

Water body: 25 feet

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Accessory Uses: Per LDC.

Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet

Minimum Building Separation: 20 feet, buildings exceeding 35 feet in height must maintain additional building separation per LDC.

Maximum Building Height: 50 feet/ 3 stories  
35 feet/ 2 stories – adjacent to west boundary

Maximum Lot Coverage: 60 percent

**North RPD**

Townhome

Minimum Lot Size and Dimensions

Lot Size: 0 square feet  
Lot Width: 16 feet  
Lot Depth: 0 feet

Minimum Setbacks

Street: 0 feet (public)  
0 feet (private)  
Side: 0 feet  
Rear: 0 feet  
Waterbody: 25 feet

All Accessory Uses: 0 feet

Setbacks from Preserves

All Structures: Per LDC.

Minimum Perimeter Setbacks: 15 feet

Minimum Building Separation: 20 feet

Maximum Building Height: 35 feet

Maximum Lot Coverage: No Maximum

Multiple-Family

Minimum Lot Size and Dimensions

Lot Size: 0 square feet  
Lot Width: 25 feet  
Lot Depth: 0 feet

Minimum Setbacks

Street: 0 feet (public)  
0 feet (private)  
Side: 0 feet  
Rear: 0 feet  
Waterbody: 25 feet

All Accessory Uses: 0 feet

Setbacks from Preserves  
(All Structures) Per LDC.

Minimum Perimeter Setbacks 15 feet

Minimum Building Separation : 20 feet

Maximum Building Height 60 feet

Maximum Lot Coverage No Maximum

Recreational Area/Clubhouse

Minimum Lot Size and Dimensions

Lot Size: 0 square feet  
Lot Width: 25 feet  
Lot Depth: 0 feet

Minimum Setbacks

Street: 0 feet (public)  
0 feet (private)  
Side: 0 feet  
Rear: 0 feet  
Waterbody: 25 feet

All Accessory Uses: 0 feet

Setbacks from Preserves  
All Structures: Per LDC.

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Minimum Perimeter Setbacks: 15 feet  
Minimum Building Separation: 10 feet  
Maximum Building Height: 35 feet  
Maximum Lot Coverage: No Maximum

**South RPD**

Single Family

Minimum Lot Areas and Dimensions

Lot Size: 7,500 square feet  
Lot Width: 75 feet  
Lot Depth: 100 feet

Minimum Setbacks

Street: 25 feet (public)  
20 feet (private)  
Side: 5 feet  
Rear: 30 feet on lots containing enhanced buffer  
20 feet other lots  
Water body: 25 feet

Accessory Uses: Per LDC.

Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet  
30 feet on lots containing enhanced buffer

Minimum Building Separation: 10 feet  
Maximum Building Height: 35 feet  
Maximum Lot Coverage: 45 percent

Duplex, Two-Family Attached

Minimum Lot Areas and Dimensions

Lot Size: 7,500 square feet  
Lot Width: 75 feet (37.5 feet per unit)  
Lot Depth: 100 feet

Minimum Setbacks

Street: 25 feet (public)  
20 feet (private)

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Side: 5 feet (0 feet for common wall unit)  
Rear: 30 feet on lots containing enhanced buffer  
20 feet other lots  
Water body: 25 feet

All Accessory Uses: Per LDC.

Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet  
30 feet on lots containing enhanced buffer

Minimum Building Separation: 10 feet  
Maximum Building Height: 35 feet  
Maximum Lot Coverage: 45 percent

### Townhouse

Minimum Lot Areas and Dimensions  
Lot Size: 1,600 square feet  
Lot Width: 16 feet  
Lot Depth: 100 feet

Minimum Setbacks  
Street: 25 feet (public)  
20 feet (private)  
Side: 10 feet  
0 feet (for a common wall unit)  
Rear: 30 feet on lots containing enhanced buffer.  
20 feet on other lots  
Water body: 25 feet

All Accessory Uses: Per LDC.

Setbacks from Preserves (All structures) 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet  
30 feet on lots containing an enhanced  
buffer

Minimum Building Separation: 20 feet  
Maximum Building Height: 35 feet  
Maximum Lot Coverage: 65 percent

Multiple-Family

Minimum Lot Areas and Dimensions

Lot Size: 10,000 square feet  
Lot Width: 100 feet  
Lot Depth: 100 feet

Minimum Setbacks

Street: 25 feet (public)  
20 feet (private)  
Side: 10 feet  
Rear: 30 feet on lots containing enhanced buffer.  
20 feet on other lots  
Water body: 25 feet

All Accessory Uses: Per LDC.

Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet  
30 feet on lots containing enhanced buffer

Minimum Building Separation: 20 feet  
Maximum Building Height: 35 feet  
Maximum Lot Coverage: 45 percent

Recreational Area/Facilities

Minimum Lot Areas and Dimensions

Lot Size: 9,000 square feet  
Lot Width: 50 feet  
Lot Depth: 120 feet

Minimum Setbacks (see Deviation 5)

Street: 25 feet (public)  
20 feet (private)  
Side: 10 feet  
Rear: 20 feet  
Water body: 25 feet

Accessory Uses: Per LDC.

Setbacks from Preserves (All structures): 25 feet, per LDC.

Minimum Perimeter Setbacks: 25 feet

Minimum Building Separation:	10 feet
Maximum Building Height:	35 feet/ 2 stories
Maximum Lot Coverage:	45 percent

**3. MODEL HOME AND REAL ESTATE SALES**

Model units/homes and real estate sales are permitted in compliance with the following conditions:

- a. Each model must be a unique example. Multiple examples of the same unit are not permitted.
- b. Model sites must be designated on the development order plans.
- c. Prior to construction, the lots hosting model homes must be shown on a preliminary plat (not the final). The preliminary plat must be filed concurrently with the development order application. The model homes must comply with the property development regulations in Condition 2.
- d. Dry models are prohibited.
- e. The number of model homes/model units will be limited to 10 within the development at one time.
- f. Real Estate sales within the RPD
  - i. are limited to the sale of lots/units within the development.
  - ii. are limited to within model homes or clubhouse.
  - iii. Hours of operation for models and real estate sales within the RPD are limited to Monday through Sunday 8:00 a.m. to 8:00 p.m.
  - iv. Model homes and real estate sales within the RPD will be valid for the duration permitted in the LDC.

**4. REQUIRED NATIVE VEGETATION**

Required buffers must utilize 100 percent native vegetation.

**5. INTERSECTION IMPROVEMENTS**

The developer must contribute its proportionate share of the costs of intersection improvements at the time a traffic control device is warranted at the intersection of US 41 and Diplomat Parkway if requested by Florida Department of Transportation or City of Cape Coral.

**6. WIRELESS COMMUNICATION FACILITIES**

- a. Freestanding wireless communication facilities (towers, including stealth type) must be approved via amendment to this planned development.
- b. Wireless Communication Facilities (including wall-mounted and roof-mounted antennas) may be approved in accordance with LDC limited to commercial parcels.

**7. OPEN SPACE**

Development order landscape plans must demonstrate each parcel provides open space consistent with the MCP open space table.

**8. ENVIRONMENTAL**

If the Florida Fish and Wildlife Conservation Commission (FWC) allows relocation of tortoises within on-site indigenous preserves:

- a. Development order submittals must include a detailed indigenous preservation management plan including methods of maintaining the western 3.0 acres of the preserve as gopher tortoise habitat. This plan will be subject to staff review and approval.
- b. Development order landscape plans must include a permanent gopher tortoise fence along Diplomat Parkway where the three-acre gopher tortoise preserve abuts the road. In addition, landscape plans must depict a double staggered native hedge a minimum 3-gallon container size, 24-inch height at planting, and maintained at a minimum 36-inch height, on the roadside of the fence.
- c. Development order landscape plans must depict a double staggered native hedge minimum three-gallon container size, 24-inch height at planting, maintained at a minimum 36-inch height along the interface of the indigenous preserve with the residential tract.
- d. Developer must remove invasive exotic vegetation by hand within the indigenous preserve prior to issuance of a Vegetation Removal Permit.

**9. COMMERCIAL PARCELS NORTH OF DIPLOMAT PARKWAY**

Commercial buildings located within Parcels 1, 2 and the westernmost 2.3 acres of Parcel 3 are limited to a maximum of 10,000 square feet per building and may not exceed two stories/35 feet in height. Building locations must be staggered between the front and rear of the commercial parcels to provide a campus-like setting. Development order submittals must include a parking plan devised to

keep the amount of parking spaces along Diplomat Parkway to a minimum. Parking areas and commercial buildings must be buffered from Diplomat Parkway by a minimum two-foot-high berm with 10 trees and a staggered 36-inch-high hedge per 100 linear feet.

Commercial buildings on Commercial Parcels 1, 2 and 3 must be of similar architectural design and coloring as residential buildings, to identify them as a unified project. Residential and commercial project identification signs must be of similar architectural design and coloring.

**10. INDIGENOUS PRESERVATION/HERITAGE TREES (NORTH RPD PARCEL)**

- a. Development order submittals must include tree survey depicting location, diameter at breast height, and species of heritage trees within the development area.
- b. Development order landscape plans must depict heritage trees within the development footprint determined to be of good health per a certified arborist. Those trees must be incorporated into the internal open space (i.e., perimeter planting, enlarged landscape areas, etc.), or must be replaced with a 20-foot like species to a suitable open space area where final site design constraints (i.e., fill requirements, entrance roads, etc.) do not allow preservation.

**11. PROTECTED SPECIES**

- a. Prior to development order approval, the Applicant must first seek approval for on-site preservation of the gopher tortoises through avoidance or relocation before pursuing off-site relocation options. All communication with FWC verifying on-site avoidance or relocation attempts were made must be provided to DES Staff.
- b. Development order submittals must include a copy of the FWC gopher tortoise relocation permit prior to excavation and moving gopher tortoises. Applicant must seek approval of an on-site relocation before pursuing off-site relocation options. Gopher tortoises and commensal species found during burrow excavation must be moved to preserves with suitable gopher tortoise habitat as approved by the FWC and DES Staff.

**12. BUFFERS (North RPD)**

- a. Development order plans must demonstrate preservation of native vegetation within the flood way.
- b. Developer must install an LDC "Type F" buffer along the north property line west of the lake, consistent with the MCP. Specifically, the buffer must be

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30 feet in width and include 10 native canopy trees per 100 linear feet, and a double hedge row planted at 48" in height at time of planting.

**13. NATIVE PLANTINGS REQUIRED (NORTH RPD)**

Required buffer plantings, general trees, and internal canopy trees must be 100 percent native species.

**14. LAND USE CONVERSION MATRIX**

CPD Parcels 3 and 4 may convert unused commercial intensity to multifamily dwelling units consistent with Land Use Conversion Matrix below:

	<u>Multifamil y Residenti al LUC 220 (0.56 Trips/DU)</u>	<u>Commercial Retail (Shopping Center) LUC 820 (3.81 Trips/1,000 sq. ft.)</u>
<u>Multifamily Residential LUC 220 (0.56 Trips/DU)</u>	<u>Same</u>	<u>147 sq ft./1 DU</u>
<u>Commercial Retail (Shopping Center) LUC 820 (3.81 Trips/1,000 sq. ft.)</u>	<u>6.80 DU/1,000 sq. ft.</u>	<u>Same</u>

**15. DENSITY REPORT**

Development order submittals for multifamily residential development on CPD Parcels 3 and 4 must include a report itemizing:

- a. Density (expressed in number of dwelling units) and, if applicable, the intensity (expressed in the square feet of floor area) of each use proposed by the development order application.
- b. Cumulative total density and intensity permitted on CPD Parcels 1, 2, 3, and 4 approved by prior development order approvals.
- c. Remaining density and intensity available for future development on CPD Parcels 1, 2, 3, and 4 for each classification in Condition 15(a).

## 16. STATE AND FEDERAL PERMITS

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.

## DEVIATIONS

1. Intersection Separation. Deviation 1 seeks relief from the LDC §10-285(a) requirement to provide a minimum access connection separation of 660 feet on an arterial road to permit an access separation of 364 feet between the project's proposed main access and the proposed exit-only access for the residential portion of the southern parcel. This deviation is approved.
2. One dead-end street permitted. Deviation 2 seeks relief from the LDC §10-296(k)(1) requirement that dead-end streets be closed at one end by a circular turn-around, to allow one dead-end street shown on the South RPD MCP. This deviation is approved.
3. Open Space. Deviation 3 seeks relief from the LDC §10-415(b)(1)(a) requirement that large developments with indigenous vegetation communities to provide 50 percent of their open space percentage requirements through on-site preservation of existing native vegetative communities, to permit 0.45 acres of right of way to be vacated, enhanced and preserved to count toward the preservation requirement.

This deviation is approved, subject to the following condition:

Prior to local development order approval for Commercial Parcel 4, the existing roadway easement depicted within the indigenous preserve must be vacated.

This deviation applies to the South RPD and CPD.

4. Installation of storm water management system. Deviation 4 seeks relief from the LDC §10-415(b)(1)a. requirement that large developments with existing indigenous native vegetation communities provide 50 percent of their open space requirement through on-site preservation of indigenous native vegetation, to allow portions of the preservation area to be disturbed and restored in order to install a storm water management system. This deviation is approved, subject to the following conditions:
  1. Prior to local development order, the development orders plans must delineate the general location of the surface water management outfall

through the indigenous preserve to the canal. The outfall must be designed as an open system that can be planted with native vegetation.

2. Prior to issuance of a Vegetation Removal Permit, the location of the surface water management outfall through the indigenous preserve must be field staked, to avoid impacting any large native trees or gopher tortoise burrows, for the Division of Environmental Sciences Staff review and approval.

This deviation applies to the South RPD and CPD.

5. Separation from residential uses. Deviation 5 seeks relief from the LDC §34-2474(b)(6) requirement that recreation halls and ancillary facilities and private clubs be located at least 40 feet from any residential dwelling unit, to allow a 20-foot minimum separation for any recreation building from a residential dwelling unit. This deviation is approved, subject to the following condition:

Development of a recreational facility and clubhouse must be generally consistent with the location shown on the approved MCP.

Deviation applies to the recreation area shown on the North RPD.

- 6a. Required Street Access - Single Ingress. - Deviation 6a seeks relief from the LDC §10-291(3) requirement that residential developments more than five acres in size provide two or more means of ingress into the development, to allow a single ingress/egress to the RPD north of Diplomat Parkway. This deviation is approved, subject to the following conditions:

1. Access to the RPD north of Diplomat Parkway must be generally consistent with the MCP; and
2. The MCP and local development order must depict a minimum 70-foot-wide divided entrance to the North RPD that includes a median with two lanes on each side of the median for ingress and egress; and
3. Development order submittals must include written documentation from the North Fort Myers Fire District confirming the access provides adequate access for emergency vehicles. Development order submittals must also include plans for the secondary/emergency access referenced below.
4. Prior to build-out of the RPD north of Diplomat Parkway, developer must install a secondary/emergency access from the North RPD to commercial Parcel 3, consistent with the MCP. The emergency access gate must comply with applicable regulations including required equipment for an emergency override mechanism. If an emergency necessitates breaking an entrance gate, the cost of repairing the gate and the emergency vehicle (if applicable) will be the responsibility of the owner/operator of the gate.

6b. Ingress Egress. Deviation 6b seeks relief from the LDC §10-291(3) requirement that residential developments more than five acres in size provide two or more means of ingress into the development, to allow a single ingress/egress to the South RPD. This deviation is approved, subject to the following conditions.

1. Access to the South RPD must be generally consistent with the MCP; and
2. Emergency access gates must comply with applicable regulations with respect to required equipment for an emergency override mechanism at the time of installation. If an emergency necessitates breaking an entrance gate, the cost of repairing the gate and the emergency vehicle (if applicable) will be the responsibility of the owner/operator of the gate; and
3. Development order submittals must include written documentation from the North Fort Myers Fire District confirming the access provides adequate access for emergency vehicles.

7. Curbside garbage collection for townhouse units and reduction in collection area for multi-family units. Deviation 7 (townhouse previously contained in ADD2007-000169 and subsequent approvals) seeks relief from the LDC §10-261 requirement that all new multiple-family residential developments to provide sufficient space for the placement of garbage containers or receptacles, to allow reduction in required multi-family container space of 216 SF (120 + 96) for first 25 multi-family units plus 8 SF for each additional unit; to allow space for the compactor and a minimum 144 square feet for recyclable materials collection area for the North RPD. (amendment to previously approved deviation)

**Hearing Examiner Recommendation:** Approved.

8. Certain internal buffers not required – North RPD. Deviation 8 seeks relief from LDC §10-425(f)(1) requirement for five-foot wide buffer along rights-of-way planted with five trees per 100 linear feet, to allow no buffer within the North RPD internal rights-of-way. This deviation is approved.

9. Backout parking within internal right-of-way – North RPD. Deviation 9 seeks relief from LDC 34-2013(a)(2), which requires parking that backs out into rights-of-way in residential developments must be limited to development amenities not for dwelling units or commercial uses, to allow back out parking spaces for dwelling units and guests limited to the location shown on Page 2 of 3 of the MCP.

**Hearing Examiner Recommendation:** Approved.

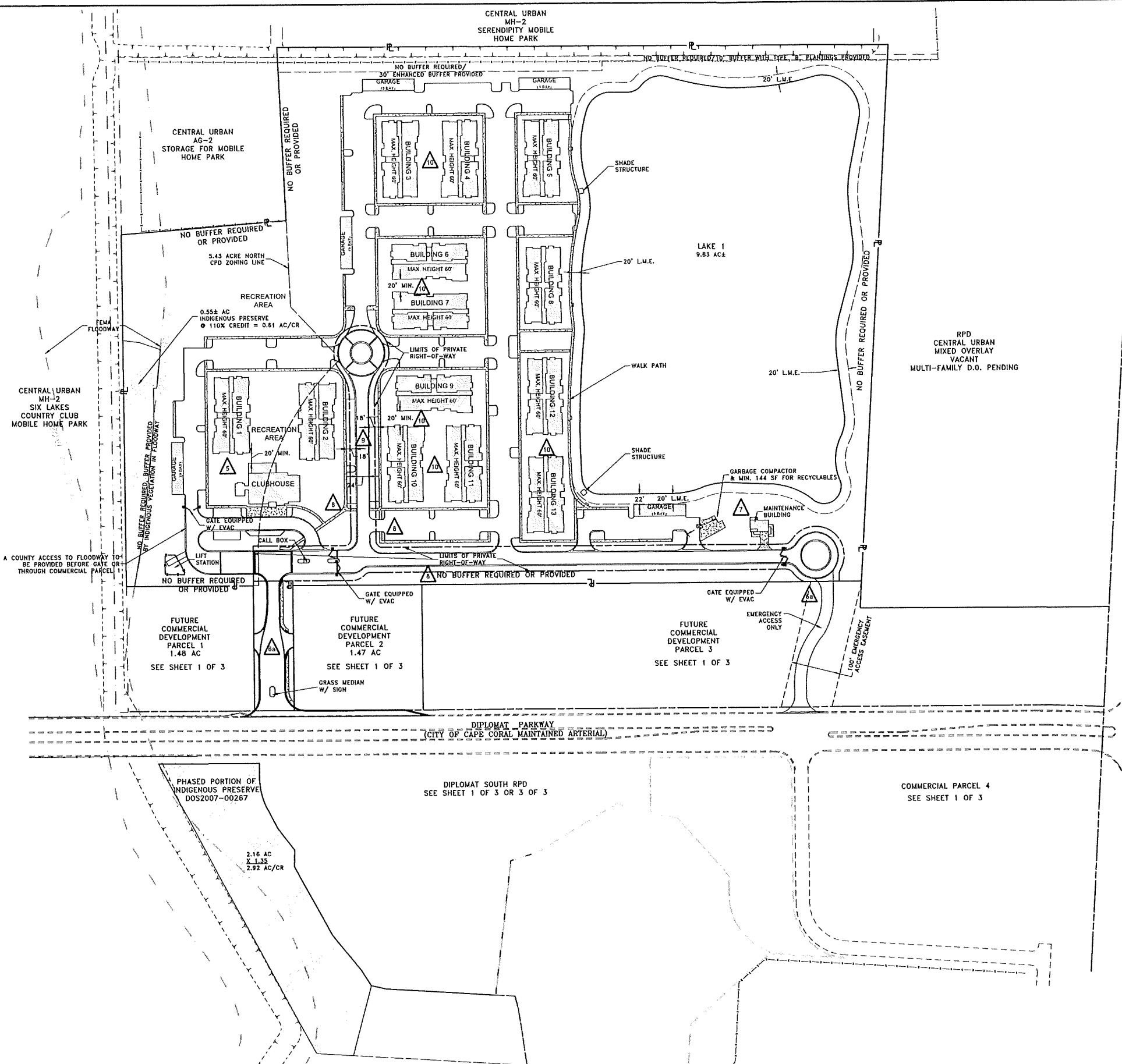
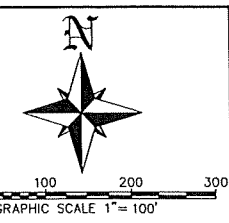
10. Minimum Building Separation – North RPD. Deviation 10 seeks relief from LDC §34-935(e)(4), which requires a minimum building separation of one-half the sum of the building heights, or 20 feet, whichever is greater; to allow a minimum building separation of 20 feet.

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Hearing Examiner Recommendation: Approved.

Exhibit to Conditions  
B1 Master Concept Plan





**NORTH RPD & 5.43 ACRE NORTH CPD OPEN SPACE:**  
 OPEN SPACE REQUIRED: 20% (35.18 AC X 0.2 = 7.04 AC)  
 • 50% OF REQUIRED OPEN SPACE MUST BE INDIGENOUS OPEN SPACE: (3.52 AC)  
 • 0.55± AC INDIGENOUS PROVIDED WITHIN FLOODWAY  
 • ONSITE WITH 110% CREDIT FOR MINIMUM 1/2 ACRE/50' WIDTH = 0.61 ACRE CREDIT. 3.52-0.61 = 2.91 AC REQUIRED TO BE MET ON SOUTH PARCEL.  
 • INDIGENOUS OPEN SPACE PROVIDED ON SOUTH RPD FOR RESIDENTIAL NORTH PER DOS2007-00267: (7.03 AC), (UPDATED TO 7.01 AC PER BELOW)  
 • 2.92 ACRE/CREDIT PHASED PORTION OF UPLAND INDIGENOUS PRESERVE ON SOUTH RPD PARCEL TO BE PROVIDED BEFORE CERTIFICATION OF COMPLETION OF D.O. FOR NORTH RPD & 5.43 ACRE NORTH CPD. 2.92 AC/135% CREDIT\* = MINIMUM 2.16 AC \*135% CREDIT FOR MINIMUM 1 AC/75' WIDTH AND ADJACENT TO OFFSITE PRESERVE.  
 • REGULAR OPEN SPACE REQUIRED ON SITE: (3.52 AC)  
 • PROVIDED REGULAR OPEN SPACE ON SITE: MINIMUM 3.52 AC

**OVERALL RPD/CPD OPEN SPACE CALCULATIONS:**

**OPEN SPACE CALCULATIONS (100% FOR COMMERCIAL/100% COMMON OPEN SPACE FOR RESIDENTIAL)**

TRACT	AREA	INDIGENOUS REQUIRED	OTHER OPEN SPACE REQUIRED	INDIGENOUS PROVIDED
COMMERCIAL 1	1.47 AC	0.22 AC 15%	0.22 AC(0)	0.22 AC(0)
COMMERCIAL 2	1.48 AC	0.22 AC 15%	0.22 AC(0)	0.22 AC(0)
COMMERCIAL 3	7.31 AC	1.10 AC 15%	1.10 AC(0)	1.10 AC(0)
COMMERCIAL 4	7.22 AC	1.08 AC 15%	1.08 AC(0)	1.08 AC(0)
RESIDENTIAL NORTH	35.18 AC	3.52 AC 10%	3.52 AC(0)	3.52 AC(0) + 0.61 AC(0)
RESIDENTIAL SOUTH	12.47 AC	2.49 AC 20%	2.49 AC(0)	2.54 AC(0)
TOTALS	65.13 AC	8.63 AC	8.63 AC(0)	12.17 AC(0) + 0.61 AC(0)

(0) INDIGENOUS OPEN SPACE AREA IS PROVIDED ON SOUTHERN PORTION OF DEVELOPMENT AND IS TO PROVIDE TOTAL REQUIRED INDIGENOUS OPEN SPACE FOR ALL TRACTS.  
 (1) OTHER (NON-INDIGENOUS) OPEN SPACE SHALL BE PROVIDED ON THE RESPECTIVE TRACT AND SHALL BE IDENTIFIED AT THE TIME OF DEVELOPMENT ORDER PERMITTING.  
 (2) NORTH RPD & 5.43 ACRE NORTH CPD PROVIDING 0.55± AC INDIGENOUS WITHIN FLOODWAY ONSITE WITH 110% CREDIT FOR MINIMUM 1/2 ACRE/50' WIDTH = 0.61 ACRE CREDIT.  
 \* 2.91 ACRE CREDIT PHASED PORTION BEFORE CERTIFICATION OF COMPLETION OF D.O. FOR NORTH RPD & 5.43 ACRE NORTH CPD. 2.92 AC/135% CREDIT\* = MINIMUM 2.16 AC \*135% CREDIT FOR MINIMUM 1 AC/75' WIDTH AND ADJACENT TO OFFSITE PRESERVE.

**INDIGENOUS NOTES:**  
 • 150% CREDIT FOR MINIMUM 3 ACRES AND 100' WIDTH PER LDC SECTION 10-415(b)(2)c.  
 • 125% CREDIT FOR MINIMUM 1 ACRE AND 75' WIDTH PER LDC SECTION 10-415(b)(2)c, AND ADDITIONAL 10% CREDIT FOR PRESERVATION ADJACENT TO ROADWAY PER LDC SECTION 10-415(b)(2)c.  
 • 10% CREDIT FOR CONNECTION TO OFFSITE ENVIRONMENTAL CONSERVATION OR PRESERVE AREAS PER LDC SECTION 10-415(b)(2)c.

- LEGEND:**
- DEVIATIONS:**
- △ TO ALLOW MINIMUM 20' SEPARATION BETWEEN RECREATION BUILDING AND DWELLING UNIT
  - △ TO ALLOW ONE ACCESS AND EMERGENCY ONLY ACCESS
  - △ TO ALLOW REDUCED MINIMUM COLLECTION CONTAINER AREA FOR RECYCLABLE MATERIALS DUE TO COMPACTOR
  - △ TO ALLOW NO INTERNAL R.O.W. BUFFER
  - △ TO ALLOW BACKOUT PARKING INTO R.O.W.
  - △ TO ALLOW MINIMUM BUILDING SEPARATION OF 20'
- INDIGENOUS PRESERVATION

N. CLEVELAND AVE/ U.S. 41 STATE MAINTAINED ARTERIAL

2021  
2021.01  
131-15

NO.	DATE	REVISION DESCRIPTION	BY
3	6/25/2024	CLARIFY INDIGENOUS OPEN SPACE	NFK
2	6/19/2024	48-HOUR NOTICE	SOJ
1	3/17/2024	FIRST SUFFICIENCY	NFK

**BANKS ENGINEERING**  
 Professional Engineers, Planners, & Land Surveyors  
 Serving The State Of Florida

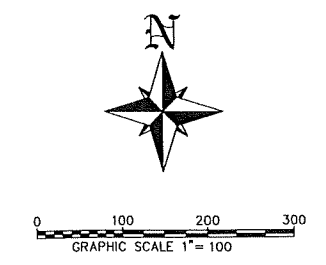
10511 SW SIX MILE CYPRESS PARKWAY  
 FORT MYERS, FLORIDA 33966  
 PHONE: (239) 939-5490 FAX: (239) 939-2523  
 ENGINEERING LICENSE # EB 6469  
 SURVEY LICENSE # LB 6690  
 WWW.BANKSENG.COM

ALTERNATE DIPLOMAT NORTH RPD MASTER CONCEPT PLAN						
DIPLOMAT HOUSE						
LEE COUNTY, FLORIDA						
DATE	PROJECT	DRAWING	DESIGN	DRAWN	CHECKED	SCALE
12/7/2023	2028TW	ALT_MCP	NFK	NFK	SWM	1"=100'
						SHEET
						2 OF 3

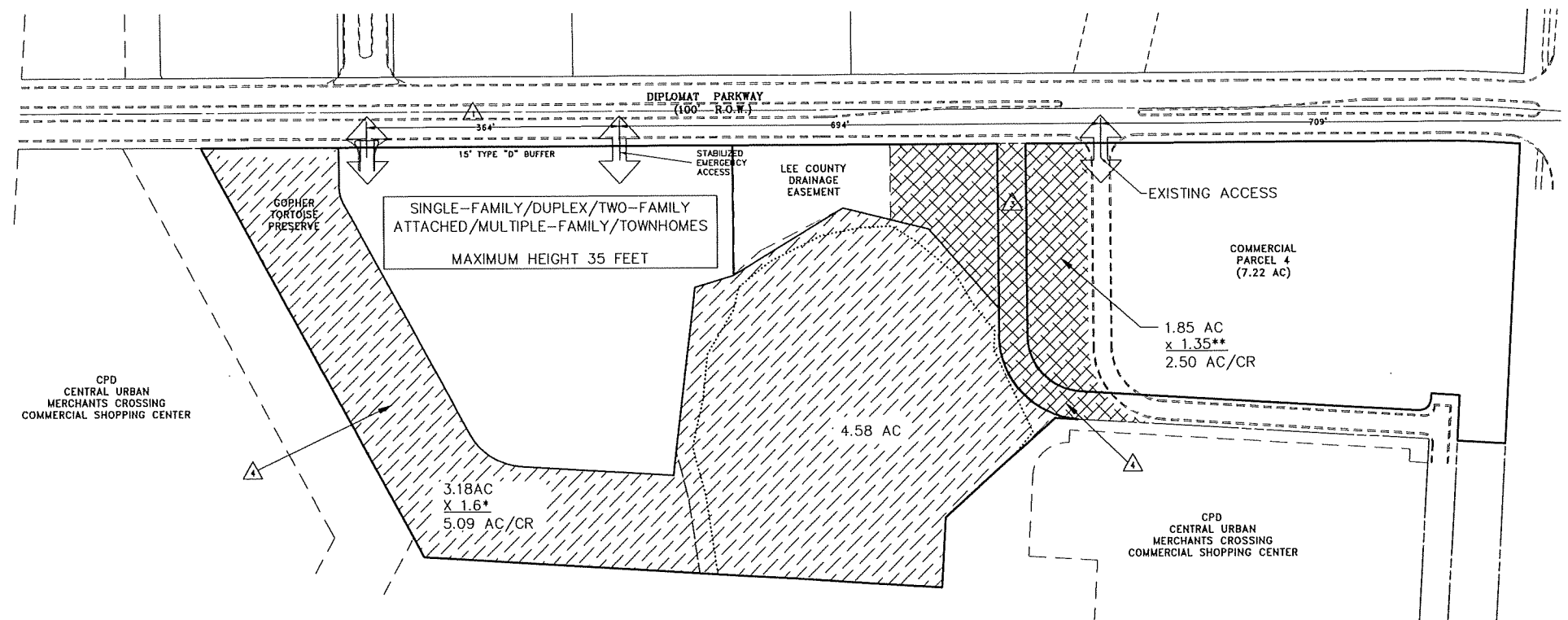
OPEN SPACE CALCULATIONS (50% FOR COMMERCIAL/10% COMMON OPEN SPACE FOR RESIDENTIAL)				
BOLD ITALIC TEXT DEPICTS REVISIONS FROM 2018/01/01 OPEN SPACE TABLE				
NORTH RPD & S 43 ACRE NORTH CPD ALLEGED TO UTILIZE MIXED USE OVERLAY				
TRACT	AREA	INDIGENOUS REQUIRED	OTHER OPEN SPACE REQUIRED	INDIGENOUS PROVIDED
COMMERCIAL 1	1.47 AC	0.22 AC 15%	0.22 AC(0)	0.22 AC(0)
COMMERCIAL 2	1.44 AC	0.22 AC 15%	0.22 AC(0)	0.22 AC(0)
COMMERCIAL 3	7.31 AC	1.10 AC 15%	1.10 AC(0)	1.10 AC(0)
COMMERCIAL 4	7.22 AC	1.08 AC 15%	1.08 AC(0)	1.08 AC(0)
RESIDENTIAL NORTH	33.19 AC	3.32 AC 10%	3.32 AC(0)	7.01 AC(0) + 8.41 AC(0)
RESIDENTIAL SOUTH	12.47 AC	2.49 AC 20%	2.49 AC(0)	2.54 AC(0)
TOTALS	68.11 AC	8.63 AC	8.63 AC(0)	12.17 AC(0) + 8.41 AC(0)

(0) INDIGENOUS OPEN SPACE AREA IS PROVIDED ON SOUTHERN PORTION OF DEVELOPMENT AND IS TO PROVIDE TOTAL REQUIRED INDIGENOUS OPEN SPACE FOR ALL TRACTS.  
 (1) OTHER (NON-INDIGENOUS) OPEN SPACE SHALL BE PROVIDED ON THE RESPECTIVE TRACT AND SHALL BE IDENTIFIED AT THE TIME OF DEVELOPMENT ORDER PERMITTING.  
 (2) NORTH RPD & S 43 ACRE NORTH CPD PROVIDING 0.55% AC INDIGENOUS WITHIN FLOODWAY ONSITE WITH 110% CREDIT FOR MINIMUM 10 ACRES W/TH 9.8 AC CREDIT.  
 (3) 1.92 AC CREDIT PHASED PORTION BEFORE CERTIFICATION OF COMPLETION OF D.O. FOR NORTH RPD & S 43 ACRE NORTH CPD 2.91 AC (135% CREDIT) = MINIMUM 2.14 AC (135% CREDIT FOR MINIMUM 1 AC(75' WIDTH AND ADJACENT TO OFFSITE PRESERVE

INDIGENOUS NOTES:  
 \*150% CREDIT FOR MINIMUM 3 ACRES AND 100' WOTH PER LDC SECTION 10-415(b)(2)c.  
 \*\*125% CREDIT FOR MINIMUM 1 ACRE AND 75' WOTH PER LDC SECTION 10-415(b)(2)c. AND ADDITIONAL 10% CREDIT FOR PRESERVATION ADJACENT TO ROADWAY PER LDC SECTION 10-415(b)(2)b.  
 \*\*\*110% CREDIT FOR CONNECTION TO OFFSITE ENVIRONMENTAL CONSERVATION OR PRESERVE AREAS PER LDC SECTION 10-415(b)(2)b.



- = RESIDENTIAL INDIGENOUS
- = COMMERCIAL INDIGENOUS
- = DEVIATION PLEASE REFER TO SCHEDULE OF DEVIATIONS AND JUSTIFICATIONS



**LEE COUNTY HOUSING AUTHORITY**  
 14170 WARNER CIRCLE  
 NORTH FORT MYERS, FL 33903

**ANKS Engineering**  
 Professional Engineers, Planners & Land Surveyors  
 FORT MYERS • NAPLES • SARASOTA  
 2515 HORTHORNE PLAZA, SUITE 200  
 FORT MYERS, FL 33907  
 PHONE: (888) 597-2001 FAX: (888) 597-2002  
 WWW.ANKSENG.COM SOURCE: USGS/7/10/2008

ALTERNATE DIPLOMAT SOUTH RPD MCP  
**DIPLOMAT PARCEL**  
 LEE COUNTY, FLORIDA

DATE: 10/28/2018 PROJECT: 2028 DRAWING: MCP SHEET: 3 OF 3 SCALE: 1"=100' CHECKED: SWM SDI SEH DESIGNED: SWM SDI SEH

FILE NO. (S-1-18) 34-4-03-24

PREPARED FOR:  
 2028 DIPLOMAT PARCEL

## Exhibit D

### EXHIBITS PRESENTED AT HEARING

#### STAFF EXHIBITS

1. *DCD Staff Report with attachments:* Prepared by Dirk Danley, Jr., Principal Planner, date received June 12, 2024 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *PowerPoint Presentation:* Prepared by Lee County Staff for Diplomat House RPD/CPD – Amendment, dated June 25, 2024 (multiple pages – 8.5"x11")[color]

#### APPLICANT EXHIBITS

- a. *48-Hour Notice:* Email from Stacy Hewitt to Hearing Examiner, with copies to Dirk Danley, Jr., Maria Perez, Tina Boone, Lauren Schaefer, Erica Temerario, Joseph Adams, Esq., Amanda Swindle, Esq., and Michael Jacob, Esq., dated Friday, June 21, 2024, 3:46 PM (multiple pages – 8.5"x11")
1. *PowerPoint Presentation:* Prepared for Diplomat House RPD f/k/a Diplomat North RPD Amendment, DCI2023-00050, Applicant Presentation, Lee County Hearing Examiner Public Hearing, June 26, 2024 (multiple pages – 8.5"x11")[color]
2. *Applicant's Additional Information:* Reference DCI2023-00050 – Diplomat House a/k/a Diplomat North RPD Amendment (multiple pages – 8.5"x11", 11"x17", and 24"x36")
3. *Legal Description:* (multiple pages – 8.5"x11")
4. *Clarification Requested by Hearing Examiner:* Email from Stacy Hewitt to Hearing Examiner, with copies to Dirk Danley, Jr., and Maria Perez, dated Thursday, July 18, 2024, 9:13 AM (4 pages – 8.5"x11")

**Exhibit E**

**HEARING PARTICIPANTS**

County Staff:

1. Dirk Danley, Jr.
2. Elizabeth Workman

Applicant Representatives:

1. Christian Casey
2. Stacy Hewitt
3. Sam Marshall
4. Ted Treesh

Public Participants:

1. Brandon George
2. Ryan Vatalaro

**Exhibit F**  
**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.