



December 9, 2024

Ms. Beth Workman  
Principal Planner  
Lee County Government  
Zoning Department  
1500 Monroe St  
Fort Myers, FL 33901

**RE: Pelican Landing MPD  
DCI2023-00052 – Submittal 4**

Dear Ms. Workman,

It is my pleasure to submit to you the attached revised documents related to the rezoning request for the Pelican Landing MPD. Please see the following responses in **bold** to your comments received on December 2, 2024.

The following information has been provided to assist in your review of the petition:

- 1) Comment Response Letter,
- 2) Revised Request Narrative, and
- 3) Revised Schedule of Uses.

**Zoning Insufficiency Comments:**

1. The Request Narrative states that 25,000 square feet of commercial uses are being proposed. The Traffic Impact Statement evaluated 25,000 square feet of office uses. Revise the documents for consistency.

**RESPONSE: The narrative has been revised to remove references to commercial uses. All commercial retail uses will be accessory/ancillary to the principal uses.**

2. Revise the Schedule of Uses to remove all warehouse uses and commercial uses in the MU Tract. Per staff's discussion with the applicant on November 5, 2024, regarding warehouse verses indoor storage uses, the applicant stated that the storage use was for residents only and would not be open to the public, which would be classified as an accessory use for indoor storage.

**RESPONSE: The schedule of uses has been revised to remove commercial uses and stipulate that hybrid warehouse uses are only allowed as accessory uses.**

3. LDC Section 34-940(a) provides the thresholds for a Mixed-Use Planned Development. Revise the narrative to demonstrate that the applicant will be meeting the 30,000 square feet of commercial floor area (office uses may be included). Staff understands that 14,400 square feet of clubhouse floor area will be considered commercial due to the public golf course, however the rezoning request does not include commercial square feet. Please provide a breakdown of commercial/office, hotel, and residential units to demonstrate compliance with LDC Section 34-940(a).

**RESPONSE:** The Applicant proposes 729 dwelling units, 25,000 square feet of office uses, and 318 hotel rooms. While the floor area of the hotel rooms is undefined, based on the “industry standard” average hotel room size of 425 square feet which could result in over 135,000 square feet of non-residential uses within the hotel rooms. Therefore, the project will far exceed the minimum 30,000 SF of commercial development to achieve the MPD zoning district minimum criteria. The MCP incorporated the land areas used to meet the qualifying thresholds for mixed-use developments as required by LDC Section 34-940 in previous submittals.

4. Revise the Request Narrative to remove hybrid warehouse and commercial uses to be consistent with the Traffic Impact Statement.

**RESPONSE:** The request narrative has been revised as requested.

5. If the applicant is proposing commercial uses, please provide a revised Traffic Impact Statement, rezoning application, Schedule of Uses, and Narrative Request.

**RESPONSE:** No commercial retail uses are proposed. The schedule of uses and narrative request have been updated as requested.

Thank you in advance for your consideration of the above information. If you have any further questions, please do not hesitate to contact me directly at (239) 357-9580 or [jfrantz@rviplanning.com](mailto:jfrantz@rviplanning.com).

Sincerely,  
**RVi Planning + Landscape Architecture**



**Jem Frantz, AICP**  
Project Director



## PELICAN LANDING MPD Request Statement

### I. REQUEST

Kersey Smoot Investments, LLC, ("Applicant") requests to rezone 430+/- acres of land from Pelican Landing CPD/RPD and Kersey-Smoot RPD to a unified Mixed Use Planned Development (MPD) zoning district to allow for the development of a residential and resort community on the Estero Bay. All lands proposed for rezoning are within the Pelican Landing Development of Regional Impact (DRI), and a companion DRI Development Order (DO) will be submitted concurrent with this zoning request.

The proposed MPD will consolidate the remaining development entitlements associated with lands owned by the Applicant within the Pelican Landing DRI, to allow for development under a unified site plan. The Applicant proposes to eliminate unused non-residential entitlements associated with their property, including 147,000 SF of commercial retail uses and 100,389 SF of office uses to allow for increased residential and resort-oriented uses. The proposed mix of uses is appropriate considering the Property's waterfront locale and surrounding residential and recreational land uses and will also address compatibility with adjacent residential uses. The proposal has been carefully crafted to ensure the proposed MPD does not increase external vehicular trips beyond those vested by the Pelican Landing DRI approval.

The lands owned by the Applicant are currently entitled for the following densities and intensities per the underlying Planned Developments and DRI:

- 241 multi-family/timeshare units
- 147,000 SF of commercial retail uses
- 125,389 SF of office uses
- 86 hotel rooms
- 28 golf course holes

The Applicant is requesting approval to develop the following entitlements within the newly established MPD zoning district:

- 729 dwelling units
- 25,000 square feet of office uses
- 318 hotel rooms
- 27 golf course holes

The maximum building height requested is 290 feet for multi-family uses in the MU tract on the far western side of the MPD overlooking Estero Bay. This height is commensurate with existing and approved building heights in the immediate vicinity within the Village of Estero and the City of Bonita Springs.

All other residential buildings throughout the Residential and Mixed Use tracts will range in height from 50 to 110 feet with a mix of mid-rise multi-family buildings and conventional residential dwelling types. The development will include a variety of private recreational uses and amenities such as the Saltleaf Golf Preserve, a 27-hole golf course, along with associated sports courts, clubhouse and other amenities.

The project will continue to be accessed from a main ingress/egress point on Coconut Road. The project will also be served by points along Saltleaf Blvd. (FKA Coconut Point Resort Dr.) and Coconut Plantation Drive.

The development will connect to central water and sewer provided by Bonita Springs Utilities. The proposed development limits development areas to maintain existing preserve areas and protect onsite wetlands, including the "Eco-Park" and "Interface Areas".

This request will include a Master Concept Plan (MCP), Schedule Uses and Deviations to accommodate the development of the site, as well as a companion DRI amendment. The following request statement and attached exhibits demonstrate the proposed development is consistent with the Lee Plan, the Lee County LDC, and provides for compatibility with the surrounding neighborhoods through buffers, setbacks, limited access points, and significant preserves and open spaces located adjacent to existing residential communities. Additionally, the reduction of non-residential entitlements ensures the MPD will not increase the PM peak hour trips previously approved/vested.

### **III. EXISTING CONDITIONS**

The 430± acre subject property is located north of Coconut Road and West of US 41 adjacent to the City of Bonita Springs and the Village of Estero.

Access to the Property is currently provided by Saltleaf Blvd. (FKA Coconut Point Resort Dr.), a two-lane privately maintained local roadway owned by Applicant. This roadway connects to the public roadway network via Coconut Road. Coconut Road is classified as a major collector and is maintained by Lee County to the west of Via Veneto Boulevard, including the portion that provides access to the Property. The Village of Estero maintains the roadway east of Via Veneto Boulevard to Three Oaks Parkway.

The Property has unobstructed views of Estero Bay to the west. Those lands in between the western property line and the Estero Bay are saltwater wetlands, proposed for preservation per the enclosed MCP.

The portion of the Property in the Pelican Landing CPD/RPD is currently developed with golf course and related accessory uses formerly known as Raptor Bay

The portion of the Property in the Kersey-Smoot RPD is vacant and adjacent to the Hyatt Coconut Plantation Timeshare Resort and golf course (also within the Kersey-Smoot RPD). The existing timeshare resort contains recreational amenities and 96 timeshare units in four (4) buildings, containing four (4) stories (3 habitable floors over parking) and a maximum permitted building height of 75 feet.

Lands to the south of the proposed MPD are owned by the Applicant and are within the City of Bonita Springs. These lands are zoned Planned Development, as part of the 36+/-acre Saltleaf on Estero Bay RPD/CPD and the 51± acre Raptor Bay PD. These lands are permitted for multi-family and single-family dwellings, as well as Continuing Care Retirement Facilities (CCRC), along with public and private recreational amenities. Construction of a 286-foot-tall multi-family building and associated public marina and private amenities has commenced on the Saltleaf on Estero Bay property and will be Ritz-Carlton branded residences. El Dorado Estates in a single-family community

further east of the proposed MPD, which is substantially separated from the project via existing buffering and open space.

The surrounding future land uses, zoning districts, land use pattern is inventoried in the below table.

**Table 1: Inventory of Surrounding Lands**

	<b>FUTURE LAND USE</b>	<b>ZONING</b>	<b>EXISTING LAND USE</b>
<b>NORTH</b>	Village of Estero: Village Neighborhood 1; Wetlands	West Bay Club RPD; AG	Residential; Golf Course; Vacant Lots
<b>SOUTH</b>	City of Bonita Springs: Mod. Density MU/PD	Pelican Landing CPD/RPD	Residential
<b>EAST</b>	Village Neighborhood 1; Village Neighborhood 2; Wetlands; Outlying Suburban	AG; RPD; RS-1; CPD	Single Family Residential (El Dorado Estates); Outdoor Storage; Vacant CPD
<b>WEST</b>	City of Bonita Springs: Mod. Density MU/PD	Raptor Bay CPD/RPD; Bayview RPD; Pelican Landing CPD/RPD	Ritz-Carlton Residences (Under Construction); Hyatt Regency Coconut Point Resort

It is important to note as detailed below, that building heights on adjacent properties, as well as in the immediate area, are approved, built or under construction for building heights from 286-290 feet in height. Please see detailed analysis and the Surrounding Building Heights exhibit enclosed.

## **II. PROPERTY HISTORY**

- **Pelican Landing DRI**

The parcels under ownership by the Applicant are a part of the much larger Pelican Landing DRI, which encompasses 2,100± acres of land between Estero Bay to the west and U.S. 41 to the east.

The Pelican Landing CPD/RPD and DRI was originally approved in 1994 and has been amended numerous times and portions of the original PD/DRI boundary were annexed into the City of Bonita Springs. The Pelican Landing DRI has been amended by Lee County a total of 16 times since the initial adoption. Modifications of a project of this size are anticipated to accommodate changes in market demand through decades of build out spanning multiple real estate cycles. From a DRI DO standpoint, the Pelican Landing DRI is permitted the following maximum entitlements (inclusive of lands in both Lee County and the City of Bonita Springs):

- 3,912 dwelling units (comprised of 930 single-family detached and 2,982 multi-family units)
- 475,000 SF office
- 300,000 SF commercial retail
- 5,000 SF restaurant
- 77 golf course holes
- 750 hotel rooms

- 65 wet slips
- 150 dry slips

The Lee County Zoning Ordinances applicable to the Property do not encompass all lands in the DRI. Numerous parcels within the DRI have been annexed into the City of Bonita Springs over the years. Many of those parcels are built out, including single-family lots and the Hyatt Regency Coconut Point Resort. The most significant unbuilt portions of the DRI that are not within Lee County are within the Raptor Bay Planned Development, approved for 503 multi-family units per Bonita Springs Zoning Ordinance 20-04. Additionally, the 150 dry slips in the DRI were assigned to the Bayview on Estero Bay RPD/CPD. This information is provided to clarify why the maximum permitted entitlements per the Lee County Zoning Ordinances do not match the entitlements under the DRI.

It is also important to note the maximum residential density under the original DRI was 4,400 dwelling units (until modified in DRI 12<sup>th</sup> DO Amendment per Lee County Case No. 2005-0001). This density is consistent with the total maximum density that will be developed in the DRI upon approval of this MPD rezone request.

- **Lee County Zoning History**

The DRI is comprised of several Planned Developments (PDs), including the Pelican Landing CPD/RPD and Kersey Smoot RPD within Lee County, and the Raptor Bay RPD within the City of Bonita Springs.

The Pelican Landing CPD/RPD was originally approved pursuant to Lee County Zoning Resolution Z-94-041. The CPD/RPD has been amended numerous times and allows for the development of the same entitlements contained in the companion DRI/DO per the latest Zoning Resolution. However, due to annexations and allocations, the Lee County lands currently within the Pelican Landing CPD/RPD excludes the 503 units allocated to the Bonita Springs Raptor Bay PD and the 362 units allocated to the Kersey-Smoot RPD.

Thus, the Lee County Pelican Landing CPD/RPD residential entitlement is technically limited to 3,047 units (3,912 total units in the DRI, less 503 units in Bonita Springs "Raptor Bay" parcel, and less 362 units in the Kersey Smoot RPD). All of these residential entitlements, except for the 503 Raptor Bay DUs and 241 of the Kersey Smoot DUs, have been constructed, or are under construction, within existing neighborhoods in the DRI.

The Kersey Smoot property consists of 204+/- acres and was acquired in 1998 by WCI. The Kersey Smoot property was added to the Pelican Landing DRI pursuant to Lee County Zoning Resolution Z-98-066, which added the acreage but did not increase the allowable density in the overall DRI. The RPD has been amended several times, most recently per Z-07-031, and currently allows for the development of a maximum of 362 dwelling units, 150 dry boat storage slips and a golf course.

To date, part of the lands in Kersey Smoot have been developed with four (4) buildings containing 96 timeshare units (all 2-bedroom units) and a portion of the Raptor Bay Golf Club and golf course, now being redeveloped as Saltleaf Golf Preserve.

The timeshare units have been treated as multi-family dwellings and counted towards the total allocation of 2,982 multi-family units allowed in the DRI. The RPD allows for ten (10) additional buildings which have not been constructed. Of the remaining 266 units, 241 units have been assigned to Applicant and 25 units are assigned to the timeshare/condominium property.

#### **IV. PUBLIC INFRASTRUCTURE**

- **Roads**

The MPD will have direct access to Coconut Road, a two-lane major collector roadway that is partially maintained by Lee County and partially maintained by the Village of Estero. The property also has direct access to Saltleaf Blvd. (FKA Coconut Point Resort Dr.) and Coconut Plantation Drive, both of which are privately maintained two-lane local roadways. As outlined in the Traffic Impact Statement submitted with this application, the surrounding roadways will continue to operate at an acceptable Level of Service considering the trips associated with this development. The reduction of non-residential entitlements ensures the maximum trip generation for the DRI will not be exceeded upon approval of this amendment.

It is understood the developer will provide a transportation analysis and a transportation mitigation plan in accordance with Chapter 10 of the Land Development Code as part of the development order application to determine off-site improvements such as turn lanes.

- **Utilities**

The Property is within the Bonita Springs Utilities (BSU) service area and utilities will be extended to the site. The proposed development makes efficient use of existing infrastructure and will provide significant private investment in this area by extending BSU infrastructure to the site.

- **Public Facilities**

The attached Public Infrastructure Map demonstrates additional public facilities and services in the immediate vicinity of the project to serve the proposed development in terms of fire, EMS, schools, and Sheriff's protection.

#### **V. PROPOSED MPD DEVELOPMENT PROGRAM**

The Pelican Landing CPD/RPD still allows for non-residential development, but includes few areas planned for such uses. The proposed MPD rezoning request allows the Property to consolidate and adjust these remaining entitlements to achieve a mix of uses better supported by the current market and location of undeveloped land in the project. The MPD will maximize available waterfront land for clustered residential and resort uses to meet market demand for waterfront living in Southwest Florida.

The proposed MCP provides for significant preservation of wetlands, rare and unique uplands, and open space while also providing for infill residential and non-residential development on the Property. The proposed site design also provides significant setbacks from Estero Bay.

The community will be developed in three clusters and accessed from Coconut Road, Saltleaf Blvd. (FKA Coconut Point Resort Dr.), and Coconut Plantation Drive. Some of the entries are intended to be gated with the internal roadway network to be privately maintained in those areas. Portions of the internal roadways will be accessible to the public and will be owned and maintained by an established Community Development District (CDD). Internal roadways will provide sidewalks as required in the LDC to accommodate pedestrian interconnectivity within the project, except where deviations are requested to minimize impervious areas on the site and allow for a compact and clustered



development footprint. The proposed roadways will meet the design standards set forth in Chapter 10 of the LDC.

A maximum of 729 dwelling units are proposed, 241 of which are already existing/approved on the Kersey Smoot RPD. The dwelling units are planned around open space and preserve areas to accommodate preservation and the redevelopment of the existing golf course. Allowable uses include residential, office, hotel, and recreational uses.

The proposed uses also include private hybrid warehouse uses (as an accessory use only) to the residential community. Sale and rental of these units will be limited to residents of the Saltleaf on Estero Bay Community as described in the Community Declaration for Saltleaf on Estero Bay recorded in Instrument #2024000108872. The accessory storage uses are limited to the MU tract by the proposed schedule of uses and will include a 50-foot setback from Coconut Rd. for the accessory hybrid warehouse use.

The Saltleaf Golf Preserve is undergoing redevelopment per the current zoning and development order approvals. The course is being redesigned to enhance the quality of the facility, with no reduction to the recreational component of the project.

Based on the above, this request adds 488 “new” dwelling units to the properties within the Pelican Landing London Bay MPD, supported by a proportionate reduction of commercial square footage to ensure that there are no impacts to transportation facilities that were not already contemplated and approved in the DRI. Specifically, to off-set the traffic impacts of the additional density and hotel rooms, the Applicant is proposing to eliminate all remaining retail square footage and reduce the office uses by over 100,000 square feet.

The proposed uses comply with the MPD zoning district minimum criteria. The Applicant proposes 729 dwelling units (241 of which are already existing/approved on the Kersey Smoot RPD), 25,000 square feet of office uses, 318 hotel rooms, and 27 golf holes. Since the golf course is public and the area does not generate residential density, the clubhouse (14,400 square feet) also applies to the commercial square footage requirement for MPD zoning. Additionally, the schedule of uses allows for hotels, continuing care facilities and centers, and assisted living facilities. While the floor area of the hotel rooms is undefined, based on the “industry standard” average hotel room size of 425 square feet which could result in over 135,000 square feet of non-residential uses within the hotel rooms. Therefore, the project will meet or exceed the minimum 30,000 square feet of commercial development to achieve the MPD zoning district minimum criteria. The MCP incorporates the land areas used to meet the qualifying thresholds for mixed-use developments as required by LDC Section 34-940.

Open space will exceed the required 40% for residential development and 30% for non-residential development. Indigenous vegetation retention will exceed at least 50 percent of the required open space area. Indigenous preserve areas are made up of wetland and upland preservation. The project will far exceed the minimum preservation requirements in the LDC and required preserve setbacks will be provided in accordance with the LDC. Development areas have been designed so that wetlands impacts, beyond those approved in the Pelican Landing DRI, are not required and there are no new impacts to wetlands within the Coastal High Hazard Area. The wetland impacts are limited to the portion of the existing Kersey Smoot RPD, for wetlands not included in the established wetland areas or preserves per the DRI.

The Property is located in the Estero Planning Community, which does not include any unique development standards or public meeting requirements. Minimum lot sizes and development



standards are consistent with other planned developments in Lee County and are identified in the attached Schedule of Uses and Development Regulations Exhibit.

Adjacent properties to the south and within the City of Bonita Springs are also under common ownership and will include similar development intensities. The Raptor Bay CPD/RPD allows for 503 dwelling units and a maximum height of 20 floors over two floors of parking, with no height limitation in terms of feet per a settlement agreement. The Raptor Bay CPD/RPD is also within the Pelican Landing DRI.

The Bayview RPD/CPD to the west/southwest of the site allows for 300 units and a maximum height of 286 feet. The Bayview PD is not a part of the Pelican Landing DRI and is currently being developed with residential multi-family, marina, and restaurant parcels.

The adjacent existing development to the southeast is zoned RS-1 (El Dorado Estates), which allows for single-family dwellings with a maximum building height of 35 feet. The proposed development standards ensure that building heights are related to existing surrounding development and buffering is provided where appropriate. Specifically, building heights are limited on those tracts abutting El Dorado, and the 290' buildings are proposed several hundred feet from the shared property line in the far western portion of the site.

As proposed the residential uses will be well-screened and separated from surrounding land uses, and the community will be complimentary to the existing and planned surrounding neighborhoods.

In terms of building heights, the majority of surrounding lands in the generally area are developed with mid- and high-rise development including a 290' tall building approved by the Village of Estero in West Bay Club; the adjacent Saltleaf at Estero Bay and Raptor Bay developments noted above approved for 286'/20 stories over parking; the Hyatt Coconut Point Resort (213'/18 stories), Navona at The Colony Golf & Bay Club (maximum of 254'/20 stories over parking), and Altaira at the Colony Golf & Bay Club (maximum of 249', 20 stories over parking). Thus, the varying building heights proposed in MPD are compatible with the heights and intensities of surrounding development and do not introduce building heights that are out of scale with the neighborhoods. Viewsheds from surrounding properties will be further improved via external perimeter buffers, setbacks from PD boundaries, building perimeter plantings, and a high level of architectural design and articulation on the buildings.

The amendment will provide for highly demanded public access to Estero Bay, including public boat ramp, public parking, and public park area. The amendment carefully limits the size and scope of these public facilities to protect the surrounding neighborhoods along Coconut Road from external impacts.

Deviations are requested and described in further detail in the attached Schedule of Deviations and Justifications Exhibit. These deviations are intended to provide flexibility in the design of compact pods of development, a community in that minimizes impacts to wetlands and floodplain areas and that accommodates.

As an infill development, this proposal ensures that development is directed to the urbanized area of Lee County where significant public and private investment have already provided for adequate public facilities. Furthermore, the proposed rezoning ensures that the remaining development capabilities on these properties are coordinated in a unified plan of development.

Finally, the proposed MPD is consistent with the Lee Plan and Land Development Code as described in the remaining sections of this Project Narrative

## VI. PROPOSED USES/DESIGN STANDARDS

The proposed Schedule of Uses allows for a wide range of residential uses, including single-family, townhome, and multi-family dwelling types as well as office, hotel, and recreational uses accessory to the residential development. The existing golf course will remain, with the golf holes reoriented and the existing golf clubhouse is planned to remain to the south of the Hyatt Timeshare buildings. Other optional amenities may be located in any of the development tracts. Except where deviations are requested, the design standards will meet or exceed the requirements in the LDC and mirror those of typical RPD zoning districts throughout the County.

The proposed development carries forward several deviations previously approved for the Pelican Landing CPD/RPD and Kersey Smoot RPD and limited new deviations as outlined in the Deviation & Justification Narrative.

## VII. DECISION-MAKING COMPLIANCE

In accordance with LDC Section 34-145(d)(4), the data and analysis provided in the enclosed application demonstrate that the request meets or exceeds the following:

- a) **The request will meet or exceed all performance and locational standards set forth for the proposed residential planned development, except where a deviation has been approved.**

The Property has been deemed an appropriate location for the development of residential, golf course, and resort-oriented recreational uses based upon prior approvals.

Traffic impacts of the project are discussed in the attached Traffic Impact Statement (TIS) which demonstrates all impacted roadways will function at an acceptable Level of Service. Any off-site improvements required by the project will be addressed at the time of local development order review.

Utilities and other required infrastructure are available to serve the proposed uses, densities and intensities.

The request for the development of a total of 729 residential dwelling units (241 of which are already existing/approved on the Kersey Smoot RPD) is consistent with the maximum allowable densities in the Suburban and Outlying Suburban Future Land Use Categories (FLUC) and will result in a compact form of development compatible with the surrounding existing and planned development pattern. The request is consistent with the goals, objectives and policies of the Lee Plan, as outlined in this application.

Requested deviations include those previously approved in the Pelican Landing CPD and Kersey Smoot RPD where needed are requested to facilitate the redevelopment of the site and accommodate the existing site development characteristics plan. The deviations are described in more detail in the attached Schedule of Deviations and Justifications.

These deviations are still necessary to maximize the preservation areas on the property, ensure compact development tracts, and address certain site constraints. More details regarding each justification are provided in the attached Deviations and Justifications exhibit.

**b) Complies with the Lee Plan.**

The request will allow for mixed use development in accordance with the Outlying Suburban and Suburban FLUCs and other relevant Goals, Objectives, and Policies. Densities account for the limited wetland impact areas and comply with Table 1(a) outlining Residential Densities and Table 1(b), which allocates a maximum of 454 acres of residential development in the Outlying Suburban FLUC and within the Estero Planning District. According to the Planning Department, 360 acres have been allocated and 94 acres remain for residential acreage. Moreover, the density proposed was previously approved in the original DRI, which is evidence the density of this MPD is consistent with the Lee Plan.

The only non-residential uses proposed are hotel/resort and golf uses, as well as 25,000 SF of office space. Portions of the proposed development have already extinguished residential development acreage so only Tract R-1, and portions of Tracts R-2 and MF include new residential acreage within the Estero Planning District. The MCP demonstrates 57.31 acres of residential development acres required to accommodate the proposed development. Therefore, sufficient acreage is allocated for the proposed development.

Additional information regarding compliance with Lee Plan policies is included in the remaining sections of this Project Narrative.

A companion DRI amendment is also submitted to modify the maximum residential dwelling units and commercial/office square footage.

**c) Meets this Code and other applicable County regulations or qualifies for deviations.**

The request includes proposed development standards, and deviations in compliance with the Lee Plan and LDC regulations as described in the remaining sections of this Project Narrative. As outlined in the Deviation Justification Narrative, requested deviations will fully meet the intent of the LDC.

**d) Is compatible with existing and planned uses in the surrounding area.**

The request will ensure that the property is developed with uses similar to neighboring properties. The proposed MPD includes development standards which comply with the LDC. Buffers and setbacks will be provided to adjacent properties, where required. In particular, a Type "F" buffer is proposed in the following locations:

- Along the southeastern property lines, adjacent to the El Dorado Estates subdivision, and
- Along the northern property line where the golf course is adjacent to the West Bay Club RPD.

Impacts to surrounding land uses are minimal due to the similarity of intent and intensity of uses and the reduction of commercial square footage. The proposed development standards and LDC requirements have adequately addressed any potential impacts on adjacent uses.

As detailed above, there are several buildings in the immediate vicinity approved for similar building heights, including the West Bay Club also approved for 290'. Viewsheds from surrounding properties will be further improved via external perimeter buffers, setbacks from PD boundaries, building perimeter plantings, and a high level of architectural design and articulation on the buildings.

**e) Will provide access sufficient to support the proposed development intensity.**

A Traffic Impact Statement (TIS) is attached which demonstrates that the proposed access points are sufficient to support the proposed development activity. The project will be accessed from Coconut Road, as well as from Saltleaf Blvd. (FKA Coconut Point Resort Dr.). These access points meet the requirement in LDC section 10-291 that residential development of more than five acres must provide more than one means of ingress or egress for the development areas with access to Saltleaf Blvd. (FKA Coconut Point Resort Dr.) Due to the unique location at the terminus of Coconut Road, this is only viable access and will be supplemented by appropriate mitigation via the entry designs and internal emergency turnaround features and limitations on the disbursement of units in each development tract.

**f) The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval.**

The attached TIS has demonstrated that all analyzed roadways are projected to operate at acceptable Levels of Service with the increase of residential units and corresponding decrease in commercial entitlements. Sidewalk and bikeway facilities will comply with the minimum requirements and options set forth in Chapter 10 of the LDC. The reduction in commercial/retail entitlements ensure the MPD will not increase the number of trips approved by the current DRI.

The project will require development order approvals prior to site development activities. The project's impacts and the need for turn lane improvements at the site access drive intersections will be evaluated at that time in accordance with the LDC.

**g) Will not adversely affect environmentally critical or sensitive areas and natural resources.**

The proposal ensures environmentally critical areas and natural resources are protected while allowing for development consistent with the Suburban, Outlying Suburban and Wetlands FLUCs.

The Project provides 209.64 acres of open space, or 49 percent of the total acreage, which significantly exceeds the minimum requirements of the LDC of 40% open space.

Preserve areas have been designed to retain native vegetation areas to the maximum extent possible. The Project site includes 81.24± acres of wetlands and 25.34± acres of "Other Surface Waters" (OSW), not including the 60-acre SFWMD conservation area, which are located within preserve areas on the proposed MCP. This exceeds the LDC requirement that 50% of open space areas be in the form of indigenous vegetation.

An Indigenous Preserve Management Plan and Protected Species Management Plans will be provided at the time of DO.

**h) Will be served by urban services, defined in the Lee Plan, if located in a Future Urban area category.**

Public infrastructure and services will be available to service the proposed development. The Property is located within the Suburban, Outlying Suburban, and Wetlands FLUC, which are Future Urban Areas per the Lee Plan. These areas are permitted for residential and commercial office uses as proposed.

The Property is within the Bonita Springs Utilities Service Area and extending water and sewer service throughout the property will require developer funded infrastructure improvements.

The property is served by the Estero Fire District with Fire Station #42 located on Sweetwater Ranch Boulevard and US 41 and Lee County EMS Station Medic 21 located on Three Oaks Parkway. The Lee County Sheriff provides service in South District - Zone S3.

The data and analysis provided in the enclosed application also demonstrates that the request meets or exceeds the following Planned Development Rezoning review criteria.

**i) The proposed use or mix of uses is appropriate at the proposed location;**

The Suburban and Outlying Suburban FLUCs allow for medium and low density residential, non-residential land uses. The mix of uses have been historically approved and partially developed on the site dating back to prior approvals.

This request includes elimination of previously approved commercial retail land uses assigned to the Applicant, as well as significant reduction in unused office square footage. Moreover, the development of residential dwellings on the 430± acre property is appropriate for this location which includes significant buffers, open space and preserves to provide compatibility with the variety of neighboring uses which include single-family residential subdivisions, high-rise residential towers, and preserve areas. The proposed unified MPD maintains the extensive environmental protections on the property via preserved natural flowways, on-site wetlands, and preservation of upland habitats.

**j) The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development.**

The proposed development standards address all development characteristics, environmental protection and infrastructure needs to sufficient to ensure the protection of the public health, safety and welfare and are sufficient and reasonably related to the impacts on the public interest.

**k) If the application includes deviations pursuant to section 34-373(a)(9), that each requested deviation:**

- 1) Enhances the achievement of the objectives of the planned development; and**
- 2) Preserves and promotes the general intent of this Code to protect the public health, safety and welfare.**

Please refer to the enclosed Schedule of Deviations and Justifications, which addresses these criteria. The requested deviations preserve and promote the general intent of the LDC and will not negatively impact public health, safety, or welfare.

## VIII. LEE PLAN COMPLIANCE

The following is an analysis of the RPD's consistency with goals, objectives and policies of the Lee County Comprehensive Plan (Lee Plan).

**POLICY 1.1.5: The Suburban future land use category will consist of predominantly residential areas that are either on the fringe of the Central Urban or Urban Community future land use categories or in areas where it is appropriate to protect existing or emerging residential neighborhoods. This category provides housing near the more urban areas but does not provide the full mix of land uses typical of urban areas. Industrial land uses are not permitted. This category has a standard density range from one dwelling unit per acre (1 du/acre) to six dwelling units per acre (6 du/acre). The maximum total density may only be increased to eight dwelling units per acre (8 du/acre) utilizing Greater Pine Island Transfer of Development Units except in areas that specifically prohibit bonus density. Other forms of bonus densities are not allowed.**

**POLICY 1.1.6: The Outlying Suburban future land use category is characterized by its peripheral location in relation to established urban areas. In general, this category is rural in nature or contains existing low-density development. Some of the requisite infrastructure needed for higher density development is planned or in place. Industrial land uses are not permitted. The standard density range is from one dwelling unit per acre (1 du/acre) to three dwelling units per acre (3 du/acre). Bonus densities are not allowed.**

The proposed PD includes the redevelopment of the existing Raptor Bay Golf Course (now known as Saltleaf Golf Preserve) as well as infill development within the Kersey Smoot RPD. Portions of the Property are located in the Suburban and Outlying Suburban FLUCs, as shown in the attached Future Land Use Map. The attached Preliminary Density Calculation utilizes densities in these FLUCs of 6 du/acre and 3 du/acre consistent with these policies. The proposed schedule of uses is consistent with the FLUCs on site and includes single-family and multifamily residential uses, as well non-residential uses like office and recreational uses. These uses are consistent with the Suburban and Outlying Suburban FLUCs and were previously approved in the existing Pelican Landing and Kersey Smoot PDs. Therefore, the proposed uses and density are entirely consistent with the above policy and other related Rural FLUC policies governing use of these lands.

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

The attached proposed density calculation for the Pelican Landing London Bay RPD utilizes a density calculation for impacted freshwater and preserved/impacted saltwater wetlands of 1 du/20 acres. Preserved freshwater wetlands utilize a density calculation of 6 du/acre adjacent to the Suburban FLUC and 3 du/acre adjacent to the Outlying Suburban FLUC consistent with the allowed density in Outlying Suburban, as allowed in Table 1(a) Note 8. Therefore, the proposed RPD is consistent with this policy.



**POLICY 1.6.5: The Planning Districts Map and Acreage Allocation Table (Map 1-B and Table 1(b)) depict the proposed distribution, extent, and location of generalized land uses through the Plan's horizon. Acreage totals are provided for land in each Planning District in unincorporated Lee County. No development orders or extensions to development orders will be issued or approved by Lee County that would allow the acreage totals for residential, commercial or industrial uses contained in Table 1(b) to be exceeded. This policy will be implemented as follows:**

- 1. For each Planning District the County will maintain a parcel based database of existing land use.**
- 2. Project reviews for development orders must include a review of the capacity, in acres, that will be consumed by buildout of the development order. No development order, or extension of a development order, will be issued or approved if the acreage for a land use, when added to the acreage contained in the updated existing land use database, exceeds the limitation established by Table 1(b) regardless of other project approvals in that Planning District.**
- 3. When updating the Lee Plan's planning horizon, a comprehensive evaluation of the Planning Districts Map and Acreage Allocation Table will be conducted.**

Table 1(b) currently allocates a maximum of 454 acres of residential development in the Outlying Suburban FLUC and within the Estero Planning District. According to the Planning Department, 360 acres have been allocated and 94 acres remain for residential acreage. The MCP demonstrates 57.31 acres of residential development association with the proposed RPD. Therefore, sufficient acreage is allocated for the proposed development.

***OBJECTIVE 2.1: DEVELOPMENT LOCATION. Contiguous and compact growth patterns will be promoted through the rezoning process to contain urban sprawl, minimize energy costs, conserve land, water, and natural resources, minimize the cost of services, prevent development patterns where large tracts of land are by-passed in favor of development more distant from services and existing communities.***

The proposed rezoning will facilitate infill and redevelopment within urban FLUCs. The project does not include new impacts to areas previously identified wetlands. The development location ensures the efficient use of land in suburban and outlying suburban areas in direct compliance with this and other policies in the Lee Plan. As outlined in detail within the application, the project provides for compatibility with the surrounding low-density residential development preserves and non-residential uses. Development within the project is clustered primarily within existing uplands and provides 49 percent open space, representing a compact development footprint. The project is within the Bonita Springs Utilities service area and does not require a significant expansion of services. Redeveloping the golf course area and continuing the build out of the Kersey Smoot RPD represents efficient use of lands contiguous to growth areas in compliance with this policy.

***OBJECTIVE 2.2: DEVELOPMENT TIMING. Direct new growth to those portions of the Future Urban Areas where adequate public facilities exist or are assured and where compact and contiguous development patterns can be created. Development orders and permits (as defined in F.S. 163.3164(7)) will be granted only when consistent with the provisions of Sections 163.3202(2)(g) and 163.3180, Florida Statutes and the county's Concurrency Management Ordinance.***

The Property is contiguous to developed or developing properties in Bonita Springs and Estero, representing logical and efficient growth within the Suburban and Outlying Suburban FLUCs. The attached letters of availability demonstrate there is sufficient capacity to provide potable water and sanitary sewer services to support the proposed density. Additionally, the attached Public Infrastructure Map demonstrates the Property is in the vicinity of adequate public facilities and public investment. Therefore, the proposed amendment and rezoning fully complies with this policy's intent to direct new growth to appropriate Future Urban Areas of the county.

***POLICY 2.2.1: Rezoning and Development of Regional Impact proposals will be evaluated as to the availability and proximity of the road network; central sewer and water lines; community facilities and services such as schools, EMS, fire and police protection, and other public facilities; compatibility with surrounding land uses; and any other relevant facts affecting the public health, safety, and welfare.***

The road network in the region has been constructed to support the urban character of the area. The property is near existing networks, utility services and compatible, similar land uses. The Property is within the Bonita Springs Utilities service area. There are adequate public facilities and services in the immediate vicinity of the project to serve the proposed development in terms of schools, fire, EMS and Sheriff's protection.

The proposed Master Concept plan provides compatibility with surrounding areas through the provision of expansive preserve areas and compact residential development areas. Finally, buffering, maximum building heights, and development standards are similar to other planned developments approved in the surrounding community.

***OBJECTIVE 4.1: WATER, SEWER, AND ENVIRONMENTAL STANDARDS. Consider water, sewer, and environmental standards during the rezoning process. Ensure the standards are met prior to issuing a local development order.***

***STANDARD 4.1.1: WATER.***

***3. The developer must provide proof that the prior commitments of the water utility, plus the projected need of the developer, do not exceed the supply and facility capacity of the utility.***

A letter of availability dated July 26, 2022, was provided by Bonita Springs Utilities identifying the facility's capacity for the development of projected water and sewer demand.

***4. All waterline extensions to new development will be designed to provide minimum fire flows, as well as adequate domestic services as required by Fla. Admin. Code R. 62-555.***

The proposed waterline extensions shall be designed to meet minimum fire flows and provide adequate domestic service water flows as required by the Florida Administrative Code.

***STANDARD 4.1.2: SEWER***

***1. Any new residential development that exceeds 2.5 dwelling units per gross acre, and any new single commercial or industrial development that generates***

more than 5,000 gallons of sewage per day, must connect to a sanitary sewer system.

2. If the proposed development exceeds the thresholds listed above and lies within the boundaries of a sewer utility's certificated or franchised service area, or Lee County Utilities' future sanitary sewer service area (see Map 4-B), and that utility has sufficient capacity to provide minimum service to the development, then the development must connect to that sewer utility if there is existing infrastructure adequate to accept the effluents of the development within 1/4 mile from any part of the development.

The Property is within the Bonita Springs Utilities Service Area. A letter of availability dated July 26, 2022, was provided by Bonita Springs Utilities identifying the facility's capacity for the development of projected water and sewer demand. Any required improvements needed to provide connection to BSU infrastructure will be developer funded.

#### **STANDARD 4.1.3: REUSE**

1. Any development that requires a development order, on a property that is adjacent to public reuse infrastructure with sufficient capacity, must connect to the reuse system for irrigation needs.

2. Any new development that, at build-out, has an anticipated irrigation demand of 50,000 gallons per day, or more, using the Blaney-Criddle method, must connect to a public reuse system for irrigation needs when sufficient capacity and adequate infrastructure is within 1/4 mile from any part of the development.

3. If there is not sufficient capacity or adequate infrastructure within 1/4 mile of the development, the developer must provide proof in the form of a clearly stated rejection of service.

4. If a development has been rejected for reuse service, the proposed source of irrigation water must be identified consistent with Policy 61.1.6.

The Property is not adjacent to any public reuse infrastructure and no such infrastructure exists within 1/4 mile from the development. The attached letter of availability from Bonita Springs Utilities demonstrates that reuse service was rejected, as required by this Policy. Previously permitted irrigation wells will continue to serve the irrigation demands for the golf course.

**POLICY 5.1.1: Residential developments requiring rezoning and meeting Development of County Impact (DCI) thresholds must be developed as planned developments except if located within the Mixed Use Overlay.**

The Application is to rezone several properties to a unified Mixed Use Planned Development in accordance with this policy.

**POLICY 5.1.2: Prohibit residential development where physical constraints or hazards exist, or require the density and design to be adjusted accordingly. Such constraints or hazards include but are not limited to flood, storm, or hurricane hazards; unstable soil or geologic**

**conditions; environmental limitations; aircraft noise; or other characteristics that may endanger the residential community.**

While portions of the Property are located in the Coastal High Hazard Area (CHHA), the proposed MPD preserves the wetlands and uplands surrounding the natural floodway of Halfway Creek. The proposed MPD protects against impacts from coastal flooding by providing storage within the surface water management system and the protection of 204± acres of wetland and uplands on site. The MPD does not propose to exceed allowable maximum density permitted by the underlying FLUCs. Additionally, impacts to hurricane shelters will be addressed through the impact mitigation requirements in LDC Section 2-485 at the time of local development order.

**POLICY 5.1.5: Protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment. Requests for conventional rezonings will be denied in the event that the buffers provided in Chapter 10 of the Land Development Code are not adequate to address potentially incompatible uses in a satisfactory manner. If such uses are proposed in the form of a planned development or special exception and generally applicable development regulations are deemed to be inadequate, conditions will be attached to minimize or eliminate the potential impacts or, where no adequate conditions can be devised, the application will be denied altogether. The Land Development Code will continue to require appropriate buffers for new developments.**

The request is intended to allow for the development of a range of residential dwellings on the 430± acre property in the form of a Mixed Use Planned Development subject to conditions, performance/design standards, limited schedule of uses, and a binding Master Concept Plan. The request will ensure that the property is developed with uses similar neighboring properties, thereby protecting the character and integrity of the existing communities.

The Applicant has proposed development standards including buffers, lakes, and setbacks to the adjacent properties, consistent with the LDC. The preservation of existing native vegetation and buffering to provide visual screening to surrounding development consistent with LDC requirements. Minimum setbacks to the PD perimeter boundary are 25 feet. The Applicant has limited the previously disturbed areas or previously identified development tracts. The proposed density is consistent with the allowable density in the Suburban and Outlying Suburban FLUCs.

The project will not negatively impact surrounding land uses due to the similarity of uses, density and open space provisions. The development standards and LDC requirements have adequately addressed any potential impacts on adjacent uses.

**POLICY 5.1.7: Maintain development regulations that require that community facilities (such as park, recreational, and open space areas) in residential developments are functionally related to all dwelling units and easily accessible via pedestrian and bicycle pathways. These pathways must be interconnected with adjoining developments and public pathways whenever possible. Townhouses, condominiums, apartments, and other types of multi-family residential development must have directly accessible common open space.**

The proposed MCP incorporates 49% open space and includes 27 golf holes, an existing clubhouse and other recreation facilities in addition to community amenity centers with

recreational facilities. Existing pedestrian and bicycle pathways are located throughout the golf course and along Saltleaf Blvd (FKA Coconut Point Resort Dr.). All open space and amenities will be directly accessible to all residents within the RPD.

**POLICY 5.1.10: In those instances where contiguous land is within two or more land use categories, the allowable number of dwelling units will be the sum of the allowable dwelling units for each land use category. This dwelling units may be allocated across the property provided that the resultant development affords further protection to environmentally sensitive lands, if they exist on the property, and the number of dwelling units within any Future Non-Urban Area land use category does not exceed the density allowed in that future land use category.**

Dwelling units have been allocated across the property, as allowed by this Policy. The resultant development ensures that significant preservation is provided on the property. The attached preliminary density calculations demonstrate that proposed densities do not exceed the density allowed in each future land use category. The MPD is in the Future Urban Area, is under single ownership, and protects environmentally sensitive lands.

**OBJECTIVE 6.1: Development approvals for commercial land uses must be consistent with the following policies, the general standards under Goal 4, and other provisions of this plan.**

**POLICY 6.1.1: All applications for commercial development will be reviewed and evaluated as to:**

**1. Traffic and access impacts (rezoning and development orders);**

The attached Traffic Impact Statement (TIS) demonstrates no impacts to the surrounding transportation system. The request includes access points along Coconut Rd., Saltleaf Blvd. (FKA Coconut Point Resort Dr.), and Coconut Plantation Dr.

**2. Screening and buffering (Planned Development rezoning and development orders);**

The attached MCP identifies required buffers in compliance with the LDC, except where a deviation is requested for internal development tracts, including a 30-foot Type "F" buffer where golf or redevelopment tracts abut adjacent residential uses as required by LDC section 10-416(C)(6).

**4. Availability and adequacy of services and facilities (rezoning and development orders);**

The attached letter of availability from BSU demonstrates water and sewer facilities are available to serve the property.

**5. Impact on adjacent land uses and surrounding neighborhoods (rezoning);**

The request ensures there are no impacts on adjacent land uses and surrounding neighborhoods through development standards that are comparable to surrounding development. The request maintains large preserve tracts and development tracts that are closer to existing neighborhoods are limited to golf courses, or residential and mixed-use development that is compatible with the surrounding neighborhoods. Maximum

building heights are comparable to surrounding approved and developed structures. All development

#### **6. Proximity to other similar centers (rezoning); and**

The request locates all redevelopment in proximity to the abutting properties to the west, which will be developed as a unified mixed-use development. The attached Approved Building Heights Map demonstrates approved building heights within one mile which are comparable to the heights proposed on the subject property. Office uses are located adjacent to other commercially zoned properties along Coconut Rd.

#### **7. Environmental considerations (rezoning and development orders).**

The environmental analysis provided by Passarella and Associates, demonstrates the preservation of 61.54 acres wetlands and 57.74 acres of uplands in addition to 60 acres of wetlands preserved under an existing SWFMD Conservation Area. All proposed development is located within previously cleared golf course areas or areas identified for development in the Kersey-Smoot RPD.

#### **POLICY 6.1.2: Commercial development in non-urban future land use categories is limited to Minor Commercial except that:**

- **Neighborhood Commercial uses serving the Lee County Civic Center are permitted within one quarter mile of SR31 between North River Road and the Caloosahatchee River in the North Olga Community Planning Area and may be expanded to Community Commercial when approved as part of a Planned Development that is located at the intersection of two arterial roadways and has direct access to, or the ability to extend, existing water and sanitary sewer utilities.**
- **Neighborhood Commercial uses are permitted in the Southeast Lee County Planning District as provided for in Objectives 13.3 and 33.2.5.**

**Minor Commercial development may include limited commercial uses serving rural areas and agricultural needs, and commercial marinas. Minor Commercial development must be located so that the retail use, including buildings and outdoor sales area, is located at the intersection (within 330 feet of the adjoining rights-of-way of the intersecting roads) of arterial and collector roads or two collector roads with direct access to both intersecting roads. Direct access may be achieved with an internal access road to either intersecting roads. On islands, without an intersecting network of collector and arterial roads, commercial development may be located at the intersection of local and collector, or local and arterial, or collector and collector roads.**

This request is limited to a maximum of 25,000 square feet of office uses only. The portion of Coconut Rd. west of US 41 does not have an intersecting network of collector and arterial roads. Therefore, the office uses are located as close as possible to the intersection of Coconut Rd and Coconut Plantation Rd. The location of the planned office uses is consistent with the intent of this provision, while also ensuring that the existing preserves located between the commercial development and Coconut Plantation Rd. are not impacted.

**POLICY 6.1.3: Commercial developments requiring rezoning and meeting DCI thresholds must be developed as Planned Developments except if located within the Mixed Use Overlay. The Planned Development must be designed to arrange uses in an integrated and cohesive unit in order to: provide visual harmony and screening; reduce dependence on the**



**automobile; promote pedestrian movement within the development; utilize joint parking, access and loading facilities; avoid negative impacts on surrounding land uses and traffic circulation; protect natural resources; and, provide necessary services and facilities where they are inadequate to serve the proposed use.**

The application is for a Planned Development, as required by this Policy, and is not located within the Mixed-Use Overlay. The proposed development includes a mix residential and non-residential uses which will reduce the need for residents to travel outside of the development for office uses. The proposed development will comply with development standards in the LDC, except where a deviation is requested. Additionally, the TIS demonstrates no negative impacts on traffic circulation.

**POLICY 6.1.4: Commercial development will be approved only when compatible with adjacent existing and proposed land uses and with existing and programmed public services and facilities.**

Adjacent land uses include multi-family residential development, single-family residential lots, vacant properties, and commercially zoned properties on Coconut Rd. The Master Concept Plan concentrates development within previously cleared golf course areas, or within areas identified for development in the Kersey-Smoot RPD. The MCP provides buffering and setbacks in compliance with the Land Development Code, except where deviations are requested.

**POLICY 6.1.5: The land development regulations will require that commercial development be designed to protect the traffic-carrying capacity of roads and streets. Methods to achieve this include, but are not limited to: frontage roads; clustering of activities; limiting access; sharing access; setbacks from existing rights-of-way; acceleration, deceleration and right-turn-only lanes; and, signalization and intersection improvements.**

The application proposes to reduce the available commercial and industrial square footage within the Pelican Landing DRI in order to ensure traffic-carrying capacity of roads and streets is protected. Commercial uses are clustered within the MU tract. The MPD proposes one access location directly on Coconut Rd which will be used to access all uses within the MU tract. Proposed setbacks for the MU tract are consistent with the requirements in the LDC. All off-site transportation improvements will be addressed at the time of Local Development Order.

**POLICY 6.1.6: The land development regulations will require that commercial development provide adequate and appropriate landscaping, open space, and buffering. Such development is encouraged to be architecturally designed so as to enhance the appearance of structures and parking areas and blend with the character of existing or planned surrounding land uses.**

All non-residential areas will be buffered and include landscaping and open space consistent with the LDC. The proposed project will be unified throughout the MPD and include high-quality design characteristics. Specific structures and parking areas will be identified at the time of Local Development Order.

**POLICY 6.1.7: Prohibit commercial developments from locating in such a way as to open new areas to premature, scattered, or strip development; but permit commercial development to**

**infill on small parcels in areas where existing commercial development would make a residential use clearly unreasonable.**

The Pelican Landing DRI has previously permitted commercial development and commercial zoning is located directly adjacent to the proposed project, therefore this application does not open new areas to premature, scattered, or strip development. Moreover, the application represents infill development as it will allow for the redevelopment of portions of an existing golf course and is surrounded by existing development.

**POLICY 6.1.11: Encourage the upgrading or revitalization of deteriorating commercial areas, but prohibit the expansion or replacement of commercial uses which are inappropriately located or that have an adverse impact on surrounding residential and non-residential uses. Such revitalization includes, but is not limited to: store-front renewal, sign control, and the provision of common parking areas and consolidated access.**

Non-residential areas within the Pelican Landing MPD are located to complement surrounding land uses and limited to office uses only. Proposed development standards, including setbacks and buffers, will ensure that office buildings are compatible with surrounding residential and non-residential uses.

**OBJECTIVE 11.1: MIXED USE DEVELOPMENT. Allow and encourage mixed use development within certain future land use categories and at appropriate locations where sufficient infrastructure exists to support development.**

**POLICY 11.1.2: Residential densities may be calculated from the entire project area when the development is consistent with the following:**

- **At least three uses are proposed and must include residential, commercial (including office) and light industrial (including research and development use).**
- **The development is located in the Intensive Development, Central Urban, or Urban Community future land use categories.**

Since this request does not meet the criteria for three uses or future land use categories, residential densities are calculated without using acreage from commercial areas. Public infrastructure in the area is sufficient to support the proposed development as demonstrated through the TIS and utilities availability letter. Including non-residential uses in this area relieves pressure on Coconut Rd. since nearby commercial uses are primarily located along US 41.

**POLICY 59.1.3: Maintain floodplain regulations in accordance with the most recently adopted Flood Insurance Rate Map (FIRM) and other available sources.**

The proposed project is located within designed FEMA flood zones AE-11 and X. The Halfway Creek Floodway within the AE-10.5 flood zone and is depicted on the proposed MCP as a preserve area. No development is proposed within the Floodway.

**OBJECTIVE 60.1: SURFACE WATER. Develop a surface water management program that is multi-objective in scope, geographically based on basin boundaries, and incorporates the requirements of applicable adopted Basin Management Action Plans.**

**POLICY 60.1.1: Require design of surface water management systems to protect or enhance the groundwater.**

A surface water management system is proposed which will provide water quality treatment before discharging into onsite wetlands.

**POLICY 60.1.2: Incorporate, utilize, and where practicable restore natural surface water flowways and associated habitats.**

The proposed MPD includes wetland preservation areas which will maintain existing flow-ways and associated habitats to the maximum extent practicable.

**OBJECTIVE 60.4: INCORPORATION OF NATURAL SYSTEMS INTO THE SURFACE WATER MANAGEMENT SYSTEM.** Incorporate natural systems into surface water management systems to improve water quality, air quality, water recharge/infiltration, water storage, wildlife habitat, recreational opportunities, and visual relief.

**POLICY 60.4.1: Encourage new developments to design surface water management systems with Best Management Practices including, but not limited to, filtration marshes, grassed swales planted with native or Florida Friendly Landscaping vegetation, retention/detention lakes with enlarged littoral zones, preserved or restored wetlands, and meandering flow-ways.**

The proposed MPD includes a surface water management plan that complies with all LDC design standards.

**POLICY 60.4.2: The County encourages new developments to design their surface water management system to incorporate existing wetland systems.**

The MPD provides 81.24± acres of wetland preservation in the Eco-Park area, in addition to a 60-ac SFWMD Conservation Area. The surface water management system was designed to protect and maintain the function of the on-site wetland areas.

**POLICY 60.4.3: The County encourages the preservation of existing natural flow-ways and the restoration of historic natural flow-ways.**

The existing wetland preserves, including the Halfway Creek Flow-way, are proposed to remain in preservation. Wetland preservation areas will not be disconnected from the surrounding wetland system.

**POLICY 61.1.1: Lee County recognizes that all fresh waters are a resource to be managed and allocated wisely, and will support allocations of the resource on the basis 1) of ensuring that sufficient water is available to maintain or restore valued natural systems, and 2) of assigning to any specified use or user the lowest quality freshwater compatible with that use, consistent with financial and technical constraints.**

The Applicant will obtain an Environmental Resource Permit from the South Florida Water Management District. The master drainage system and established conservation areas proposed in this amendment request, and which will be established through the ERP and subsequent development orders, are designed in compliance with this policy.

**POLICY 61.1.6: When and where available, reuse water should be the first option for meeting irrigation needs of a development. Where reuse water is not available, surface water or low quality groundwater should be utilized for irrigation. All other potential water sources must be eliminated prior to selecting potable water as the sole source for meeting the irrigation needs of a development. New developments will coordinate with County staff regarding the source of irrigation water.**

Surface water will be used for all irrigation of landscaping within the community. The proposed community will not use potable water provided as a result of this amendment for irrigation purposes.

**POLICY 61.3.3: Keep floodways as unobstructed as possible.**

The Property includes a portion of the Halfway Creek floodway, which is demonstrated on the proposed MCP. No development is proposed within this area.

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

**POLICY 101.1.1: Require that development within the Coastal High Hazard Area be compatible with natural systems, such as, water retention and purification, wildlife habitat, primary productivity, and defense against coastal flooding.**

The site plan, in conjunction with the activities proposed within the Indigenous Preserve and Protected Species Management Plan, was designed to be compatible with surrounding natural systems and will protect and continue to provide functions including water retention and purification. Defense against flooding is provided through the proposed stormwater management system and through the preservation of 204± acres of on-site preserve areas.

The site plan includes the construction of a permitted stormwater management system and will provide long-term protection of wildlife habitat. The site plan was designed to protect and maintain the function of the on-site wetland areas and adjacent upland habitat and to provide on-site preservation adjacent to proposed off-site preservation areas located to the north.

**POLICY 101.1.2: Protect and conserve the following environmentally sensitive coastal areas: wetlands, estuaries, mangrove stands, undeveloped barrier islands, beach and dune systems, aquatic preserves, wildlife refuges, undeveloped tidal creeks and inlets, critical wildlife habitats, benthic communities, and marine grass beds.**

As required by Lee Plan Policy 101.1.2, the site plan protects environmentally sensitive areas through the preservation of 204± acres of preserve areas. The wetland areas, in combination with adjacent upland areas, are protected in perpetuity through a conservation easement. All mangrove wetlands on the western portion of the property will remain in preservation. The Project does not contain estuaries, undeveloped barrier islands, beach and dune systems, aquatic preserves, wildlife refuges, undeveloped tidal creeks and inlets, critical wildlife habitats, benthic communities, or marine grass beds.

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

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

A portion of the Property is located within the Coastal High Hazard Area (CHHA). The proposed project does not include any wetland impacts within the CHHA. Wetland limits were previously reviewed and approved on a portion of the Property by SFWMD as part of permit number 36-03813-P.

**POLICY 101.3.4: Encourage new residential development, as required by the Land Development Code, to provide continuing information to residents concerning hurricane evacuation and shelters.**

A homeowners' or residents' association will be established to provide continuing information concerning hurricane evacuation and shelters. Additionally, the developer will mitigate impacts to shelter space through the payment schedule outlined in Chapter 2 of the LDC.

**POLICY 123.1.5: Encourage private restoration of natural habitats to support connectivity between public and private conservation and preservation efforts.**

The proposed MPD includes significant preservation areas which have been previously permitted. The proposed preserve area is intended to preserve habitat on site, as well as to support connectivity with adjacent public conservation lands in compliance with this policy.

**OBJECTIVE 123.2: PLANT COMMUNITIES. Maintain and enhance the biodiversity of the natural plant communities within Lee County to create a more resilient and sustainable ecosystem.**

**POLICY 123.2.4: Encourage the protection of viable tracts of sensitive or high-quality natural plant communities within developments.**

**POLICY 123.2.6: Avoid destruction of upland vegetation communities including coastal and interior hammocks through consideration of alternative site design layouts.**

**POLICY 123.2.8: Promote the long-term maintenance of natural systems through such instruments as conservation easements, transfer of development rights, restrictive zoning, public acquisition, and appropriate other means.**

**POLICY 123.2.13: Promote optimal conditions rather than minimum conditions for the natural system as the basis for sound planning.**

**POLICY 123.2.15: Protect Rare and Unique upland habitats from development impacts to the maximum extent possible, through conservation and/or site design.**

The proposed preserve areas exceed the minimum requirements of the LDC per the enclosed MCP. Preservation areas are designed to maintain previous approvals, provide large contiguous preserve areas, and increase viability of the plant communities and provide significant buffers to surrounding natural areas.

**OBJECTIVE 123.3: WILDLIFE. Maintain and enhance the fish and wildlife diversity and distribution within Lee County for the benefit of a balanced ecological system. (Ord. No. 94-30, 18-28)**

In compliance with Objective 123.3 of the Lee Plan, the protection and enhancement of the on-site preserve will maintain the function of the on-site wetland and upland preservation areas. It will also provide perpetual protection of wildlife habitat, which will be available for utilization by various common and protected wildlife species including, but not limited to, amphibians species, reptiles species, small mammal species, and avian species, including wading birds. The enhancement and long-term protection of the 204± acre on-site preserve area will help to maintain wildlife diversity in Lee County, in compliance with Objective 123.3 of the Lee Plan.

**POLICY 123.3.3: Protect wildlife from impacts of new non-agricultural development in nonurban areas through the creation and implementation of a human-wildlife coexistence plan for each new development requiring a development order.**

A human-wildlife coexistence plan is attached in compliance with this policy. See the Protected Species Management and Human-Wildlife Coexistence Plan enclosed.

**OBJECTIVE 123.8: GOPHER TORTOISES. Restore and maintain secure, viable populations of Gopher Tortoises in Lee County.**

**POLICY 123.8.1: Protect Gopher Tortoise burrows wherever they are found. If unavoidable conflicts make on-site protection infeasible, off-site mitigation may be provided in accordance with FWC requirements.**

Please see the attached Indigenous Preserve and Protected Species Management Plan that was prepared for the Project. Gopher tortoise (*Gopherus polyphemus*) burrows that will be impacted by construction activities will be relocated on-site where feasible, or off-site in accordance with the Florida Fish and Wildlife Conservation Commission Gopher Tortoise Permitting Guidelines.

**OBJECTIVE 123.10: WOOD STORK. Lee County will maintain regulatory measures to protect the wood stork's feeding and roosting areas and habitat.**

No wood stork (*Mycteria americana*) rookeries or roosting areas were documented on the Project site. Compensation for impacts to wood stork foraging habitat will be provided through the enhancement and preservation of on-site wetland areas, or through the purchase of credits from a wetland mitigation bank. Additionally, the enhancement and preservation of wetland areas within the onsite preserve will provide and protect potential foraging habitat for woods storks and other wading birds. The proposed stormwater system will comply with all design requirements in the LDC, including the littoral planting requirements, which provides potential forage areas.

**OBJECTIVE 124.1: Protect and conserve the natural functions of wetlands and wetland systems by maintaining wetland protection regulations.**

**POLICY 124.1.1: Ensure that development in wetlands is limited to very low density residential uses and uses of a recreational, open space, or conservation nature that**



are compatible with wetland functions. The maximum density in the Wetlands category is one unit per 20 acres, except that one single family residence will be permitted on lots meeting the standards in Chapter XIII. Owners of wetlands adjacent to Intensive Development, General Interchange, Central Urban, Urban Community, Suburban, New Community, Outlying Suburban, Sub-Outlying Suburban, and Rural future land use categories may transfer dwelling units from preserved freshwater wetlands to developable contiguous uplands under common ownership at the same underlying density as permitted for those uplands.

The proposed development is limited to previously impacted or planned residential areas. Density is calculated at 1 du/20 acres in all wetlands proposed to be impacted in accordance with table 1(a). Densities from preserved wetlands are transferred to developable contiguous uplands under common ownership at consistent with the maximum allowable density for the adjacent Suburban and Outlying Suburban Future Land Use Categories as identified in this policy and Table 1(a).

**POLICY 124.1.2: The County's wetlands protection regulations will be consistent with the following:**

**2. No development in wetlands regulated by the State of Florida may be commenced without the appropriate state agency permit or authorization. Development orders and development permits authorizing development within wetlands or lands located within the Wetlands future land use category may be issued subject to a condition that construction may not commence until issuance of the required state permits.**

A condition is proposed which requires that construction may not commence until an ERP is obtained to authorize any impacts to wetlands proposed by the MCP.

**6. The density on wetlands that have been impacted, or will be impacted, in accordance with a state agency permit will be calculated at a density of one dwelling unit per 20 acres. Nonresidential uses on wetlands that have been impacted, or will be impacted, in accordance with a state agency permit must be consistent with the non-residential uses permitted in the immediately adjacent, least intense, upland future land use category.**

The proposed development calculates allowable density for uplands based and preserved wetlands based on the maximum of 6 dwelling units per acre for Suburban areas and 3 dwelling units per acre for Outlying Suburban areas, and as mentioned above, a calculation of 1 du/20 acres in all wetlands proposed to be impacted in accordance with table 1(a). The application and preliminary density calculation demonstrate available density if all wetlands were impacted as a worst case scenario only and currently preserved wetlands will not be impacted.

**POLICY 125.1.2: New development and additions to existing development must not degrade surface and ground water quality.**

**POLICY 125.1.3: The design, construction, and maintenance of artificial drainage systems must provide for retention or detention areas and vegetated swale systems that minimize nutrient loading and pollution of freshwater and estuarine systems.**

**POLICY 125.1.4: Developments which have the potential of lowering existing water quality below state and federal water quality standards will provide standardized appropriate monitoring data.**

The proposed MPD will include stormwater lakes within the development tracts to address water quality. The surface water system will also be required to obtain an ERP from the South Florida Water Management District at the time of DO. The proposed RPD will not impact existing infrastructure in the area, and roadways, schools, EMS, potable water and sanitary sewer service are available to serve the property.

**POLICY 126.1.1: Natural water system features which are essential for retention, detention, purification, runoff, recharge, and maintenance of stream flows and groundwater levels shall be identified, protected, and managed.**

The Property includes a portion of the Halfway Creek floodplain, the limits of which are shown on the proposed MCP. No development is proposed within this area, and it is included within the proposed preserve areas on the MCP. The Surface Water Management System will be designed to maintain existing off-site flows.

**POLICY 126.1.3: Freshwater resources will be managed in order to maintain adequate freshwater supplies during dry periods and to conserve water.**

Irrigation for the proposed development will be provided via onsite lakes and resupplied by groundwater.

**POLICY 126.1.4: Development designs must provide for maintaining or improving surface water flows, groundwater levels, and lake levels at or above existing conditions.**

The development of the proposed stormwater management system will provide water quality and water quantity improvements. The system will be designed so that sufficient flow of water to retain the existing hydroperiods will be maintained. The attached Surface Water Management Plan provides additional details regarding the surface water management system.

**POLICY 135.1.9: The County will ensure a mix of residential types and designs on a County-wide basis by providing for a wide variety of allowable housing densities and types through the planned development process and a sufficiently flexible Future Land Use Map.**

The proposed development allows for a mix of residential types, including Single-family, Zero lot line, Two-family attached, Townhouse , and Multiple-family buildings in the form of high-rise and mid-rise multi-family dwellings. The proposed density is consistent with the Lee Plan.

## **IX. CONCLUSION**

The proposed Pelican Landing London Bay MPD will allow for buildout of an approved DRI with the intended mix of residential, non-residential and resort-oriented recreational amenities originally envisioned for this property. Due to the pattern of development in the area, internal to the site, as well as the roadway access, the Applicant is seeking to reduce unused commercial entitlements permitted by the DRI and correspondingly increase the allowable unit count. The result is no net

increase to trips and project that meets market demand for a master-planned waterfront community.

Previous zoning approvals for the Pelican Landing CPD/RPD and Kersey Smoot RPD anticipated development and comparable densities and intensities on the Property. The proposed infill/redevelopment of these areas through the Pelican Landing London Bay MPD makes efficient use of land available for development and responds to housing needs and public investment in infrastructure in the surrounding areas.

The proposed building height and relatively low, highly clustered density will be compatible with the densities and building heights in the immediate area. Viewsheds from surrounding properties will be further improved via the proposed design standards.

The project is well-planned in relation to the environmentally sensitive areas, both on- and off-site. The MCP demonstrates preserve and open space far exceeding the LDC requirements.

The MPD provides for compatibility with the surrounding neighborhoods through buffers, setbacks, limited access points, and significant preserves and open spaces located adjacent to existing residential communities.

For these reasons, the Applicant respectfully requests approval of the MPD rezoning as proposed.



# Pelican Landing MPD

## Schedule of Uses, Site Development Regulations

### **1. PERMITTED DENSITY**

Maximum of:

- 729 dwelling units
- 25,000 square feet of office uses
- 27 golf holes
- 318 hotel rooms

### **2. SCHEDULE OF USES**

#### **All Tracts (Except in MF)**

Accessory uses, buildings and structures

Accessory Apartment and Accessory Dwelling Unit

Administrative offices

Clubs:

Private, Country, including sale of wine, beer, and liquor for on premises consumption

Entrance Gates and Gatehouses

Essential Services

Essential Services Facilities – Group I Only

Excavation:

Water Retention

Excess Spoil Removal (20,000 cubic yards or more in volume)

Fences, Walls

Models:

Display Center/Sales Center

Model Home

Model Unit

Parking Lot, Accessory

Real Estate Sales Office

Recreation Facilities

Personal

Private – On-Site

Residential Accessory Uses

Signs in conformance with LDC Chapter 30

Temporary Uses

Including Temporary Sales Office, Temporary Construction Office, Temporary Construction-Related Storage, Temporary Amenity Structures

#### **MU Tract**

Dwelling Units:

Single-family

Zero lot line

Two-family attached

Townhouse

- Multiple-family buildings
- Automatic Teller Machine
- Banks and Financial Establishments
- Business Services, Group I
- Cleaning and Maintenance Services
- Emergency Operations Center
- EMS, Fire or Sheriff's Station
- Golf Course Maintenance Facility
- Health Care Facilities
- Home Occupation, No Outside Help
- Insurance Companies
- Maintenance Facility (Government)
- Mass Transit Depot or Maintenance Facility (government-operated)
- Medical Office
- Parking Lot, Accessory, Park-and-Ride, Temporary
- Place of worship
- Post Office
- Religious Facilities
- Research and Development Laboratories, Group II
- Schools, Commercial, Noncommercial
- Signs in accordance with Chapter 30
- Social Services, Group I
- Storage, Indoor (accessory only)
- Warehouse:
  - Hybrid (accessory to residential only)

**RES Tract****Dwelling Units:**

- Single-family
- Zero lot line
- Two-family attached
- Townhouse
- Multiple-family buildings

Restaurant, Group I, II, III (in association with golf facilities), including sale of wine, beer, and liquor for on premises consumption

**MF Tract****Residential Dwelling Units:**

- Single-family
- Zero lot line
- Two-family attached
- Townhouse
- Multiple-family buildings

Hotel/Convention Center, including sale of wine, beer, and liquor for on premises consumption and for off premises sales as permitted by state law

Consumption on Premises, including sale of wine, beer, and liquor for on premises consumption and for off premises sales as permitted by state law

Care Facilities and Centers, including sale of wine, beer, and liquor for on premises consumption

Assisted Living Facility

Clubs:

- Private, Country, including sale of wine, beer, and liquor for on premises consumption

Continuing Care Facilities, including sale of wine, beer, and liquor for on premises consumption  
Independent Living Facilities  
Health Care Facilities (accessory only to ALF & CCF uses)  
Accessory uses, buildings and structures  
Accessory Apartment and Accessory Dwelling Unit  
Administrative offices  
Entrance Gates and Gatehouses  
Excavation:  
    Water Retention  
Excess Spoil Removal (20,000 cubic yards or more in volume)  
Fences, Walls  
Models:  
    Display Center/Sales Center  
    Model Home  
    Model Unit  
Parking Lot, Accessory  
Recreation Facilities  
    Personal  
    Private – On-Site  
Residential Accessory Uses  
Signs in conformance with LDC Chapter 30  
Temporary Uses  
    Including Temporary Sales Office, Temporary Construction Office, Temporary Construction-Related Storage, Temporary Amenity Structures

**GC Tract**

Golf Courses, Golf Course Accessory and Associate Uses, including but not limited to:

- Club house
- Maintenance facility
- Pro shop
- Snack bar at the ninth hole or other appropriate location, including sale of wine, beer, and liquor for on premises consumption
- Ball washers
- Restrooms and other uses which are normal and accessory to the golf course
- Consumption on Premises, including sale of wine, beer, and liquor for on premises consumption and for off premises sales as permitted by state law

Golf Driving Range

**Preserves**

Uses permitted in the preserve areas are limited to activities which make this area available for resource-based recreational activities, enjoyment of nature and educational enrichment, including but not limited to:

- Picnic areas, trails, benches, boardwalks, biking/jogging trails, vita course, bird viewing blinds/towers and interpretive facilities, signs, on-going maintenance and removal of exotic vegetation and compliance with the Raptor Bay Golf Course Renovation Indigenous Preserve and Protected Species Management Plan dated March 2022.

**Interface Area**

Uses permitted in the Interface area are limited to golf courses, developed in accordance with the "Pelican Landing Golf Course Management Plan," and any related appurtenances or uses, stormwater management; and created wetland marsh and any other created vegetative system or



lake system which will promote wildlife diversity, activities which make this area available for resource-based recreational activities, enjoyment of nature and education enrichment, including but not limited to:

Picnic areas, trails, benches, boardwalks, biking/jogging trails, vita course, bird viewing blinds/towers and interpretive facilities, signs, access to the southern segmented ridge, on-going maintenance and removal of invasive exotic vegetation and compliance with the Raptor Bay Golf Course Renovation Indigenous Preserve and Protected Species Management Plan dated March 2022.

### **3. MINIMUM LOT AREA AND DIMENSIONS**

	Minimum Lot Size	Width	Depth	Lot Coverage
<b>Single-Family Detached</b>	4,000 SF	40'	100'	60%
<b>Zero Lot Line Units</b>	4,000 SF	40'	100'	65%
<b>Multi-Family</b>	N/A	N/A	N/A	50%
<b>Two-Family Attached and Townhouses</b>	3,000 SF	18'	100'	65%
<b>Non-Residential</b>	10,000 SF	100'	100'	50%

### **4. MINIMUM SETBACKS**

	Street*	Side	Rear***	Waterbody	Building Separation****	
<b>Single-Family Detached</b>	20'	5'	10'	20'	10'	
<b>Zero Lot Line Units</b>	20'	5/0'	10'	20'	10'	
<b>Multi-Family</b>	20'	10'*/0'****	10'/0'****	20'	Buildings 35 feet or less	10'
					Buildings greater than 35 feet	35% of the sum of the building heights (see Deviation 12)
<b>Two-Family Attached and Townhouses</b>	20'	5/0'	10'	20'	10'	
<b>Nonresidential</b>	20'*****	10'	10'	20'	10' or ½ the building height for buildings over 35'	

\*15-foot front setback for a dwelling with side entry garage and 10-foot front setback for secondary front yards on corner lots.

\*\*Zero-foot side setback when the property line is adjacent to other tracts within the Pelican Landing MPD (see Deviation 11).

\*\*\*5-foot rear yard setback for accessory structures

\*\*\*\* 0-foot side or rear setbacks when adjacent to GC Tract and associated GC uses.

\*\*\*\*\* When buildings are connected with roofed structures, including but not limited to breezeway, parking structure/garage area, foundation/podium, minimum building separations will not apply, and buildings will be treated as one structure.

\*\*\*\*\* Minimum 50-foot setback from Coconut Road for hybrid warehouse uses in the MU tract.

## **5. BUILDING HEIGHT**

<b>Tract</b>	<b>Maximum Height*</b>
<b>MU Tract</b>	50 FT
<b>RES Tract</b>	110 FT
<b>GC Tract</b>	50 FT
<b>MF Tract</b>	290 FT

\*Measured from the lowest minimum habitable floor elevation for which a building permit may be issued to the highest point of the roof surface of a flat or roof, to the deck line of a mansard roof, or to the mean height level between the eaves and ridge of gable, hip, shed and gambrel roofs per LDC Section 34-2171(b) and subject to resiliency provisions in LDC Section 34-2172 & 34-2174.