

THE OFFICE OF THE LEE COUNTY
HEARING EXAMINER

CASE NO.: DCI2022-00067

IN RE: CARY+DUKE+POVIA RPD

PROCEEDINGS: PUBLIC HEARING (VOLUME 3)

BEFORE: Amanda Rivera
Hearing Examiner

DATE: September 20, 2024

TIME: 9:00 a.m. to 10:50 a.m.

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

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22 Sabrina McCabe, PLA, RVi Planning
23 Brandon Frey, P.E., JR Evans Engineering
24 Yuri Bykau, TR Transportation Consultants
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P R O C E E D I N G S

HEARING EXAMINER RIVERA: Good morning, my name is Amanda Rivera. I'm the Hearing Examiner presiding over this case. The date is September 20th, 2024. This is our third day of hearing in case DCI2022-00067. It is the request for the Cary+Duke+Povia RPD.

When we last met, we had concluded with the public comment, and we were beginning with the Applicant's rebuttal. I believe we had heard testimony from two of their witnesses, and will continue to receive their rebuttal today, then we will get to the Staff rebuttal, and then we will close the hearing for today.

So just a reminder, we did close public comment. So there is no additional opportunity for the public to speak, but I'm very happy to see we've got folks here today to observe what's happening. And certainly, again, if you filled out cards previously, you will receive a copy of the recommendation before this goes to the Board of County Commissioners.

So with that, I'm ready to begin whenever the Applicant's ready with their next witness.

MS. MONTGOMERY: Yeah. Before we do that, if we could, we'd like to just do some housekeeping and submit the new 48-hour letter --

HEARING EXAMINER RIVERA: Yes, certainly.

1 MS. MONTGOMERY: -- and related information.

2 (Applicant Exhibit 3 submitted.)

3 HEARING EXAMINER RIVERA: Good morning, thank you.
4 All right. So is this a copy of the same material that
5 I received September 17th, I believe was the date?

6 MS. CRESPO: Yes.

7 HEARING EXAMINER RIVERA: Okay, thank you. So
8 that will be -- let me look at my sheet. That is
9 Applicant Exhibit 3. Okay.

10 MS. MONTGOMERY: And in that document you will see
11 some additional and some revised conditions, and
12 Ms. Crespo will address those during her testimony.

13 With that, we're going to address transportation,
14 and Yury Bykau, who has been previously sworn and is an
15 expert --

16 HEARING EXAMINER RIVERA: Yes, and I should say, I
17 believe everyone remains under oath from --

18 MS. MONTGOMERY: Oh, he might not be --

19 HEARING EXAMINER RIVERA: -- their prior
20 testimony.

21 MR. BYKAU: No.

22 HEARING EXAMINER RIVERA: If you did not -- thank
23 you.

24 MR. BYKAU: Yes.

25 HEARING EXAMINER RIVERA: So that was very timely,

1 thank you.

2 Do you swear or affirm the testimony you will
3 provide is the truth?

4 MR. BYKAU: Yes.

5 HEARING EXAMINER RIVERA: Thank you.

6 Okay. And if anyone else that speaks has not been
7 sworn, please indicate that to me when you come to the
8 podium, thank you.

9 MR. BYKAU: So for the record, Yury Bykau with TR
10 Transportation Consultants. I have been sworn in and
11 been accepted as an expert in transportation planning,
12 and would like to be accepted as one today.

13 I will briefly go over some traffic slides that
14 hopefully clears up some concerns and issues.

15 This slide here summarizes some of the projects
16 that FDOT is working on in the area. The first project
17 here is the one in purple. North is up, which is
18 the -- the one purple is the widening of SR 31 from
19 SR 78 up to Babcock Ranch; and, again, that project is
20 funded for widening. It is expected to begin this year
21 and completed by late 2026. That's the project in
22 which they're going to be widening SR 31 in the interim
23 to four lanes, with future expandability to six lanes
24 when needed; and as part of this project, they will be
25 also improving the intersection of North River Road and

1 SR 31. As Ted from my office previously testified,
2 they'll be doing that RCUT signalized intersection. We
3 understand that some residents and some folks don't
4 like that type of intersection, but that's what FDOT
5 and their consultants decided to go with. And as part
6 of this improvement, that will definitely improve and
7 address some of the queues that are happening currently
8 on North River Road. So, again, this improvement is
9 funded, and that will improve the operations of SR 31
10 and the North River intersection, as well. And, again,
11 it's predicted to be completed by late 2026.

12 The next project is here in pink. That's the
13 currently underway PD&E study that FDOT is working on.
14 It is evaluating the widening of Bayshore Road west of
15 SR 31 to just west of I-75 to a four-lane facility.
16 Again, that's just the PD&E study. It hasn't been
17 funded for construction yet. But typically after a
18 PD&E study is completed, which in this case it's
19 predicted to be completed by early next year, we then
20 move into the design phase, right-of-way acquisition
21 phase, and then the construction phase.

22 The next project here is the one in orange, and
23 that one is SR 31 widening to six lanes from SR 80 up
24 to SR 78, and that project is, in fact, funded for
25 construction by year 2029. And we actually went back

1 to talk to FDOT about this project, specifically with
2 James Bateman, who is the FDOT traffic project manager
3 for this project; and he did confirm that this project
4 is, in fact, funded for widening by 2029. And here's a
5 copy of that correspondence which happened actually on
6 the same day of the first meeting, which he did confirm
7 it is funded for construction in 2029.

8 And here's some of the latest concept plans that
9 we were able to obtain from FDOT's website regarding
10 the SR 31 widening from SR 80 to SR 78. North is to
11 your right. And as you can see, as part of the
12 six-lane project, they will be constructing a new
13 six-lane bridge over the Caloosahatchee River. So I
14 know there were some residents who mentioned that the
15 existing drawbridge is substandard, and there's a lot
16 of traffic on there, but FDOT will be constructing a
17 new six-lane bridge. That will be a fixed bridge.
18 It's not going to be a drawbridge so it will be high
19 enough to let big boats pass by without stopping the
20 traffic on SR 31. That's currently happening.

21 HEARING EXAMINER RIVERA: And was that part of the
22 2029 funding --

23 MR. BYKAU: Yes.

24 HEARING EXAMINER RIVERA: -- you just mentioned?
25 Okay.

1 MR. BYKAU: Yeah, so this is all the same project.
2 And the next slide is as you move further south,
3 so that six-lane bridge is over here. You can't see --
4 but as you go closer to the SR 80 intersection, you can
5 see they will be also improving that intersection as
6 part of the six-lane widening project with new flyovers
7 on SR 80. If you ever travel on this road, to get from
8 SR 80 to go north on SR 31, it's very difficult because
9 you've got to wait for traffic -- the through traffic
10 on SR 80 to pass by. But with this new improvement,
11 they will be doing a flyover, which basically makes
12 that left turn a free-flow condition. So they don't
13 have to wait and stop for the through traffic on SR 80
14 at the light.

15 HEARING EXAMINER RIVERA: And just to keep --
16 that's still part of the 2029 --

17 MR. BYKAU: Yes, that's all the same project as
18 part of the six-lane widen -- six-lane widening, yes.

19 HEARING EXAMINER RIVERA: Will that be akin to
20 something like what's at Gladiolus or Colonial, that
21 kind of a flyover?

22 MR. BYKAU: Yes, yeah -- yeah, something like
23 that, yeah.

24 HEARING EXAMINER RIVERA: Okay.

25 MR. BYKAU: So, again, this project is funded for

1 construction, and we've confirmed that with FDOT's
2 consultants.

3 So in summary, there's several projects that FDOT
4 is working on in the area. Most of these projects will
5 be well underway or complete before the build-out of
6 this project. A project of this size will likely have
7 to be built in several phases, so you're not going to
8 have all of a sudden 1,099 units just dropping traffic
9 on the surrounding roadway network all at once. There
10 will be a gradual increase of traffic over the years
11 from this project as each phase gets approved and a
12 development order for each phase gets approved, as
13 well.

14 And our traffic study was prepared consistent with
15 Administrative Code 13-17, which is the guidelines for
16 traffic studies prepared for rezoning applications, and
17 our traffic study is completely consistent with that,
18 as well as consistent with the latest ITE Trip
19 Generation Manual, which is a national source we're
20 required to use to come up with traffic projections for
21 projects. So, again, as part of our traffic study, we
22 don't make up any -- any traffic numbers. We take data
23 from ITE, or we take data from FDOT, or we take traffic
24 data from Lee County Public Facilities concurrency
25 report that's published every year by Lee County, and

1 that report has all the data about peak season
2 conditions and peak season traffic data. So, again, we
3 just simply take that data, and we prepare a traffic
4 report.

5 And Lee County has reviewed our traffic report and
6 has approved it. Obviously when we go through the
7 rezoning process, we just don't submit a traffic study,
8 and it gets approved right away. We go through
9 multiple rounds of comments and sufficiency reviews
10 until we make sure that all the data that we provided
11 is consistent with the traffic study guidelines for
12 rezoning applications.

13 And as we go through the process, we still have to
14 prepare multiple traffic studies if this project is, in
15 fact, going to be built in phases; and as part of those
16 traffic studies, during the development order process
17 we are preparing a much more detailed analysis that
18 will look at on-site -- on-site improvements, such as
19 turn lanes, et cetera; but from my experience with a
20 project this size, it will likely warrant eastbound
21 right-turn lanes at all project entrances on North
22 River Road, especially with the speed limit that's out
23 there.

24 And another thing I want to mention is that just
25 because a roadway is designated as a constrained

1 roadway, it doesn't mean you're not allowed to put any
2 project trips on that road. There's several roadways
3 in Lee County that are designated as constrained
4 roadways. You've got Daniels Parkway, sections of
5 US 41, Pine Island Road, Stringfellow Road, all are
6 designated as constrained roadways, and you're still
7 allowed to add project trips and build projects on
8 those roadways. So just because they're constrained,
9 that doesn't mean you can't add any traffic to them.

10 HEARING EXAMINER RIVERA: That was the question I
11 had. Where is that designation, that North River Road
12 is a constrained road? Because it's not listed on the
13 Lee Plan Table, and there is a policy in the Lee Plan
14 that deals with the Alva Community, saying that it
15 should be evaluated for suitability as a constrained
16 road, but I could not find where that --

17 MR. BYKAU: Yeah, same. And I was trying to do
18 that digging, and I think the policy you're talking
19 about is Policy 28.4.3, and it just says, "Evaluate the
20 designation of North River Road as a constrained
21 roadway for scenic purposes." And then the Lee Plan
22 has Table 2A, and it doesn't list North River Road as a
23 constrained roadway. But then I found something in --
24 I believe it was Lee County 2044 -- 2045 MPO plan, and
25 it showed -- there was a map, and it showed that listed

1 as a constrained roadway. So I'm not sure if it is
2 listed, but in the Lee Plan table it's not listed as a
3 constrained roadway. So that may be a good question
4 for Staff maybe.

5 HEARING EXAMINER RIVERA: Okay. That was a
6 question that I had, thank you.

7 MR. BYKAU: Uh-huh.

8 HEARING EXAMINER RIVERA: Just on the River Road
9 then generally, because you've gone into depth on the
10 FDOT projects and things, but River Road itself, then
11 you will be doing some type of improvement at the time
12 of development order to assist with whatever traffic is
13 being generated specifically from this project onto
14 that roadway --

15 MR. BYKAU: Correct, yes.

16 HEARING EXAMINER RIVERA: -- is that the testimony
17 you just provided? Okay.

18 MR. BYKAU: And I testified that based on my
19 experience, for safety reasons, we will likely have to
20 be -- warrant the right-turn lanes at our project
21 entrances, eastbound right-turn lanes, because that's
22 where most of the traffic will be coming from, from the
23 west.

24 HEARING EXAMINER RIVERA: Okay.

25 MR. BYKAU: And the last important point I want to

1 mention is Lee County has opted out on transportation
2 concurrency several, several years ago. So level of
3 service from a traffic point of view is not regulatory;
4 so if there's a traffic deficiency on a public roadway
5 that's maintained by Lee County FDOT, it's not up to
6 projects to mitigate those issues. The way the project
7 moves forward is it pays its impact fees, that's
8 collected by Lee County, and then they use those fees
9 to mitigate issues when needed. And as we previously
10 testified, this project will pay a considerable amount,
11 \$10.3 million of impact fees, which is a -- a very
12 substantial amount of impact fees.

13 So that concludes my part of the presentation. If
14 you have any questions or other --

15 MS. MONTGOMERY: I have a couple --

16 MR. BYKAU: -- bullet points that -- oh.

17 MS. MONTGOMERY: Sorry.

18 Yury, can you go back to the slide where the roads
19 are different colors?

20 MR. BYKAU: Yes.

21 MS. MONTGOMERY: I noticed on 31 that there's one
22 of those portable signs that puts people on notice that
23 construction is starting soon. So do we know what
24 "soon" is?

25 MR. BYKAU: On this section over here?

1 MS. MONTGOMERY: Yes.

2 MR. BYKAU: Yes. As I testified, they expect
3 construction to begin this year.

4 MS. MONTGOMERY: And then west of the pink part
5 of --

6 MR. BYKAU: Okay.

7 MS. MONTGOMERY: -- Bayshore, there's a sign that
8 has a date for when construction on that segment is
9 starting.

10 MR. BYKAU: I'm not aware of that project. I
11 believe they're doing some median modifications there
12 because it's an undivided roadway west of Slater. So I
13 believe they're just making it a divided roadway and
14 doing some improvements of some intersections and
15 closing some of the existing intersections that are
16 unsafe. So that's the project I believe you're talking
17 about.

18 MS. MONTGOMERY: So the pink road, the
19 butterscotch road, and the blue road are all State
20 roads; correct?

21 MR. BYKAU: Yes, all of these three roads are
22 State roadways.

23 MS. MONTGOMERY: So in your expert opinion, has
24 the State committed a considerable amount of time,
25 attention, and money to improving the network in this

1 area?

2 MR. BYKAU: Yes.

3 MS. MONTGOMERY: And there are, as you know,
4 several people who submitted that your traffic analysis
5 was inconsistent with the regulations. Do you have an
6 opinion about that?

7 MR. BYKAU: No, it's completely consistent with
8 Lee County -- adopted Lee County traffic study
9 guidelines, which are in Administrative Code 13-17.

10 MS. MONTGOMERY: And there was one witness in
11 particular who spent his entire testimony submitting
12 that the timing that you just articulated is not
13 correct. It's my understanding that after that
14 testimony, you essentially double-checked with FDOT.

15 MR. BYKAU: Yes, I double-checked with James
16 Bateman, who is the project manager for these projects,
17 and he confirmed the timing --

18 MS. MONTGOMERY: Okay, thank you.

19 MR. BYKAU: -- of these projects.

20 HEARING EXAMINER RIVERA: Thank you.

21 MR. BYKAU: Thank you.

22 MS. MONTGOMERY: Mr. Neal is the next witness.

23 I just want to advance the slide so we get to the
24 right place.

25 (Discussion at lectern)

1 MR. NEAL: Hello, Madam Hearing Examiner.

2 HEARING EXAMINER RIVERA: Good morning.

3 MR. NEAL: My name is Pat Neal. I've been duly
4 sworn, and I'll take just three minutes to talk about
5 critical habitat and the density bonus.

6 There's been much testimony about granting the
7 so-called free dwelling units as part of the
8 four-tenths of a unit per acre density bonus in the
9 Comprehensive Plan for the recreation of critical
10 habitat in Lee County. Of course, the critical habitat
11 is the recreation of the habitat which existed before
12 the 1930s, before this property was cleared to use for
13 agricultural purposes, cropped, filled, ditched, and
14 converted into its current use as moderate intensity
15 agriculture. This is the habitat that existed before
16 there were people.

17 The recreation is to reintroduce the native low
18 pine flatwoods, mainly the land use and cover which
19 existed prior to the agricultural uses. Of course,
20 there were a variety of these upland and wetland
21 regimes. Most of us in Florida call this pine
22 flatwoods or sometimes low pine flatwoods.

23 The recreation of these flatwoods is the
24 introduction of trees, primarily slash pine, long-leaf
25 pine, and other less frequently found palm pines, and

1 then the understory species which are complementary to
2 them. That would be the saw palmetto, wax myrtle,
3 gallberry, and a wide variety of herbs and brush.

4 These are all reintroduced, irrigated, and maintained,
5 and then the success guaranteed by a performance bond.

6 We think the cost of this is between 17,000 and
7 \$25,000 per acre for the recreation. Using the lowest
8 figure for this sum, probably 420 acres, this is about
9 \$7,191,000. We, of course, have to bond the success,
10 roughly around \$720,000. And most importantly, we have
11 to maintain the property in order to assure that the
12 success is achieved. Primarily, this is the removal of
13 exotic species and plant varieties which are introduced
14 by natural means which may be inconsistent with the
15 recreated habitat. I think this would be about
16 \$1,800,000. So the total is just shy of \$10 million.
17 I compute this to be \$9,710,000 as the lowest estimated
18 cost, or roughly \$31,222 per additional dwelling unit.
19 That is, of course, the 311 additional units, which are
20 defined in the Comprehensive Plan as the bonus, just
21 four-tenths of one acre -- four-tenths of one unit per
22 acre, roughly 311 additional units for the roughly \$10
23 million investment. It's not free, it's expensive, but
24 also it's important.

25 This process reintroduces the habitat found in

1 nature, and to my mind was a good decision by Lee
2 County government. This provides habitat which
3 primary, secondary, and tertiary creatures can
4 recognize as critical habitat or the historical habitat
5 in this area.

6 It will comprise the buffer from North River Road
7 and assures that what is seen from the outside is
8 the -- is the habitat that existed in Lee County before
9 human introduction of the agricultural. Of course, it
10 also provides an abundant environmental framework for
11 the homes we build, not free, but about \$31,222 for
12 every home that we build under this critical habitat
13 bonus.

14 Thank you, Madam Examiner.

15 MS. MONTGOMERY: Our next witness is Brandon Frey.

16 HEARING EXAMINER RIVERA: Good morning.

17 MR. FREY: Good morning. Brandon Frey, for the
18 record. I was -- this works a lot better than the last
19 one. I have been certified as an expert and sworn in.

20 So we wanted to respond to some of the testimony
21 that was given previously, that the surrounding
22 residents are concerned with the potential for flooding
23 as a result of our project. And so we wanted to repeat
24 that there are two -- two primary conveyances within
25 the project and then some smaller ones, those two main

1 ones being Trout Creek in the middle of the project and
2 Otter Creek over -- over in the eastern third or so
3 that runs roughly here, here, and then down -- both of
4 them run into the Caloosahatchee and take a relatively
5 considerable amount of flow, I'd say.

6 So if we start with Trout Creek right here,
7 luckily we've been able to create a site plan that
8 doesn't touch it at all. There were iterations of the
9 site plan that did, and there were some concerns, and,
10 you know, we were able to separate ourselves from that
11 and the associated floodway. So the only thing that
12 we'll be doing in that area is removing the exotics,
13 which will free up and -- and increase the capacity
14 within that waterway. So we think that will be an
15 overall benefit. And then there will be a maintenance
16 entity and funding mechanism for that maintenance to
17 take place in perpetuity that doesn't exist today. So
18 I see that as a regional benefit.

19 Otter Creek over here is a little more complex but
20 similar. So as I think Shane had testified, some time
21 ago this was a natural waterway that was rerouted with
22 the dredging of the Caloosahatchee to become kind of a
23 straight ditch, I guess we'll it, through the property,
24 and it comes down and then -- sort of through here and
25 then around the edges of the Cary+Duke+Povia property.

1 So as a part of our development, we're going to
2 have to reroute the northern portion of that flow to
3 the west, and we've created space, and there are
4 culverts that -- that go in here, and then they rejoin
5 that previous conveyance that existed. And, again,
6 we're going to be obligated to clear out the exotics
7 and then maintain in perpetuity those conveyances to
8 ensure that they do have the capacity that they need.

9 Our analyses are reviewed -- you know, created by
10 a team of professionals and myself and my office, and
11 then reviewed by Lee County within various stages of
12 the development order and South Florida Water
13 Management District within the ERP. So I think that
14 there is sufficient overlap in the reviews to provide
15 reasonable assurance that this design works.

16 You know, I think there was some testimony, well,
17 what if it doesn't? And it's not a situation where we
18 just shrug our shoulders and say, deal with it, you
19 know. There are a number of enforcement actions that
20 can be taken, and we have an obligation, as
21 professionals and as developers, to make sure that
22 we're not impacting the neighbors unduly. So we would
23 have to do some corrective action in the event that
24 there was some lessened performance of these waterways
25 throughout the site.

1 So I think that that was the primary concern in my
2 area of expertise, but I'm open to answer any questions
3 you have.

4 HEARING EXAMINER RIVERA: Otter Creek still is a
5 little mystery to me. So what -- so there was a bunch
6 of testimony, as you said, from different folks. Can
7 you briefly discuss -- I know you touched on it, but is
8 it actually a conveyance mechanism now? Is there water
9 that's flowing through that, that you're going to have
10 to fill and redirect in some fashion?

11 MR. FREY: Sort of. I wouldn't call it a major,
12 major waterway, but there's some culverts that go under
13 North River Road in this area, and there's sort of a
14 mound. Once that mound has been breached, water flows
15 through there. I had spoken to some locals, and they
16 say that there is flow that goes through there, but
17 it's not a super frequent event.

18 The other main contributor to the flow is up in
19 this area where these properties sort of flow in, and
20 then the back side of what I'll call Mount Povia, or
21 the mound that exists on the Povia property, flows
22 into. So there's not an enormous amount of flow, I
23 don't think, but there is flow that needs to be taken
24 care of and -- and dealt with, but it's certainly
25 nothing like Trout Creek. You know, Trout Creek is a

1 major waterway, I'd say, a major tributary of the
2 Caloosahatchee.

3 HEARING EXAMINER RIVERA: And your testimony now
4 is that that would actually be improved in terms of
5 capacity or water quantity --

6 MR. FREY: Absolutely.

7 HEARING EXAMINER RIVERA: -- that the flow will
8 be -- okay.

9 And then there's -- I know it's not your
10 expertise, but the water quality testimony previously
11 was that there would be an improvement -- or at least a
12 monitoring of that, as well, to be sure that there's no
13 contamination that's flowing off of the property
14 through the conveyance system that you're proposing?

15 MR. FREY: Yes, absolutely. I think Kirk had
16 testified previously that there are a number of
17 monitoring checkpoints within the development. My
18 expertise is within the surface water management
19 system.

20 So the water that is collected on these lots and
21 runs off of these lots doesn't just run off into the
22 preserve, into the ditches, and then out to the
23 Caloosahatchee. It's all collected and brought into
24 those lakes and detention areas that you can see on the
25 plan, and then from there -- there are a number of

1 different treatment mechanisms, like the littorals,
2 attenuation in general which allow some of the
3 particulates to settle out and some of the nutrients to
4 disappear.

5 We're obligated on this project to do 150 percent,
6 or one-and-a-half times what the South Florida Water
7 Management District requires as -- as treatment, and we
8 have to prove to them that we're doing that. So,
9 again, they're an agency that reviews and confirms that
10 we're providing treatment and reducing nutrients in the
11 post-development scenario.

12 HEARING EXAMINER RIVERA: And there was some
13 testimony from the public, I believe, that lakes are --
14 they weren't desirable for a number of reasons, it
15 sounds like, but can you just briefly discuss what
16 purpose they serve in this kind of water conveyance
17 system?

18 MR. FREY: Yeah. And I think desirability is
19 relative, but in this case I think that they provide an
20 important function to the water quality. I think they
21 do provide an important function to wildlife. I'm not
22 an ecologist, but you'll certainly see a lot of
23 wildlife around these lakes.

24 So the littoral zones and the slopes and the
25 volume that they're able to hold themselves provides a

1 critical function in ensuring that we're able to
2 provide the treatment to ensure that our water has been
3 cleaned prior to being discharged off the site.

4 HEARING EXAMINER RIVERA: Okay, thank you.

5 MR. FREY: Yeah, I think there -- there was some
6 concern on, you know, the slope stabilization methods
7 that would be used, and there's a couple different ways
8 to do that. I think that the provision of -- of the
9 person who had given that testimony was like a coco
10 matting and -- coco matting or straw matting. It's a
11 biodegradable coconut fiber, and it's held together
12 with like a net. And I think both of those break down
13 over time, but it can, I think, provide probably some
14 opportunities for birds and other small-footed
15 creatures.

16 The slope stabilization methods that we're
17 proposing here are much more permanent and a lot
18 thicker. So they'll set -- maybe it's like a
19 two-inch-thick grid beneath and -- beneath the sod, and
20 then it's filled in and compacted with soil, and then
21 over the top with -- with a little bit of topsoil and
22 sod. So it -- I don't know how anything would get
23 stuck under that, and it would be obvious that -- you
24 know, if some significant erosion were to occur --
25 which is specifically what it's designed to prevent,

1 but if it were to occur, it would be obvious, and the
2 maintenance entity would then be required to, you know,
3 swiftly correct it.

4 HEARING EXAMINER RIVERA: Okay. And I assume on a
5 project this size, you're anticipating having an HOA,
6 at least one, or a master HOA that would be looking
7 over that, or a CDD or some type of regulating entity?

8 MR. FREY: Yeah, yeah. I don't think we've
9 confirmed which type of entity exactly would be --
10 would be utilized there, but an HOA or a CDD, you know,
11 they have performance criteria and regular inspections
12 that they have to do on lake banks, control structures,
13 et cetera.

14 HEARING EXAMINER RIVERA: Okay, thank you.

15 MS. MONTGOMERY: Yeah, I have a couple of
16 follow-up questions.

17 MR. FREY: Sure.

18 MS. MONTGOMERY: So Mr. Kennedy testified that the
19 drainage out here was altered 50 years ago. That's the
20 system, what you just testified to, that when the Corps
21 did the digging, they --

22 MR. FREY: When the Corps had -- had dredged the
23 Caloosahatchee and placed material all in this
24 corridor, some of the drainage patterns were altered.

25 MS. MONTGOMERY: And you are implementing a

1 program that seeks to restore it more to its natural
2 flow?

3 MR. FREY: Yes, yeah. And, you know, not only
4 more natural and less linear, but to improve the
5 capacity therein, uh-huh.

6 MS. MONTGOMERY: And Ms. Redfern did testify that
7 Otter Creek flows through her property and that she has
8 flooding, and I think that's what the Hearing Examiner
9 was alluding to, that testimony. In your expert
10 opinion, are we going to exacerbate any flooding she
11 may experience from Otter Creek?

12 MR. FREY: No. Everything that we're doing is to,
13 you know, either maintain the level of performance that
14 the waterways have or improve that level of
15 performance. I think -- I'm not 100 percent sure, but
16 I think that the flooding that was mentioned was
17 coincident with like a high tide or -- you know,
18 flooding comes from two different sources: There's the
19 conveyance of water, you know, not having enough area
20 to flow through, and then there's tidal cycles. And
21 sometimes those tidal cycles or surge cause water to
22 rise, you know, past a desirable level, and I'm not
23 aware of anything that anyone can do to, you know, stop
24 storm surge or lessen those tide cycles.

25 MS. MONTGOMERY: And the Hearing Examiner did ask

1 you about whether there would be someone maintaining
2 the system. Does the Applicant's Handbook Volume I
3 require a responsible legal entity of some form in
4 order to get your ERP?

5 MR. FREY: Yes, as a -- as a component of the ERP,
6 we're required to get with the South Florida Water
7 Management District, and we do have to list the
8 maintenance entity and provide draft documents that are
9 reviewed to ensure that what we're proposing to do is
10 consistent with their rules and regulations.

11 MS. MONTGOMERY: And if you know, does the Lee
12 County LDC, in Chapter 10, also require a maintenance
13 entity that meets a checklist that the County has?

14 MR. FREY: Yes, I believe so.

15 MS. MONTGOMERY: And I just want to go back over
16 the lakes. The lakes, as I understand it, provide two
17 functions: One is water quality, and one is storage
18 and conveyance.

19 MR. FREY: Agreed.

20 MS. MONTGOMERY: And both of those items, are they
21 reviewed by South Florida --

22 MR. FREY: Yes.

23 MS. MONTGOMERY: -- before you can get your ERP?

24 MR. FREY: By South Florida and Lee County,
25 yeah --

1 MS. MONTGOMERY: Okay.

2 MR. FREY: -- with the development order process.

3 MS. MONTGOMERY: All right, thank you.

4 I don't have any other questions.

5 HEARING EXAMINER RIVERA: Thank you.

6 MR. FREY: Thank you.

7 MS. MONTGOMERY: And before -- our next witness is
8 Alexis Crespo, but before she goes I'd like to address
9 some comments that were made.

10 There was a lot of discussion, and everybody says
11 they're for private property rights, but I wanted to,
12 as an actual lawyer, testify in regards to that. And I
13 would note that the Carys are well aware of the law
14 because Keith Cary is a lawyer, as is Travis. So there
15 are two people with an ownership interest in this
16 property that are lawyers.

17 Section 70.002 is the Property Owner Bill of
18 Rights, and property owners -- in this case the
19 Carys -- have the right to acquire, possess, and
20 protect their property; they have the right to use and
21 enjoy their property; they have the right to exclude
22 others from their property; they have the right to
23 dispose of their property; they have the right to due
24 process. All of those things are at play here and are
25 permitted under the Florida Statutes.

1 There's also been considerable testimony from
2 people not qualified in regard to Section 70.001, which
3 is the Bert Harris Act, and that Act applies to when
4 the government takes an action that impacts the owner
5 of the property. It doesn't speak to someone having a
6 right to dictate or direct what happens on another
7 person's property.

8 So the government's obligated to protect existing
9 rights and foreseeable, nonspeculative rights. The
10 Carys have a right to foresee that their property can
11 be developed consistent with the Comprehensive Plan,
12 and so the Bert Harris Act, should the government not
13 allow them to proceed with development reasonably
14 consistent with the Comprehensive Plan, would, indeed,
15 be in violation of the Bert Harris Act.

16 So thank you for letting me put that on the
17 record.

18 MS. CRESPO: Good morning.

19 HEARING EXAMINER RIVERA: Good morning.

20 MS. CRESPO: Alexis Crespo with RVi. I might be a
21 little bit longer than the other folks. I wanted to
22 start by walking you through the 48-hour letter, the
23 changes we've made. We are in agreement with Staff,
24 and we do have members of the public that I think would
25 benefit from hearing those changes we're proposing. I

1 also want to just briefly touch on some zoning items
2 mentioned during public comment, and then close out on
3 Lee Plan consistency.

4 So we went back to the master concept plan and the
5 site plan after the last hearing and made some
6 adjustments relating to lot size and lot location. So
7 with the two-family attached product, we are limiting
8 that to R tracts only. So we've labeled those on the
9 master concept plan. I've highlighted them -- or
10 they're highlighted in orange here -- the reverse
11 actually. The orange are R-2 tracts, and they are not
12 allowed to have single-family attached dwelling types
13 in them. So the single-family attached may go in the
14 white tracts internal to the project and away from Duke
15 Highway and other large lots in order to address some
16 of those concerns. So the R-2 -- or the R in the
17 orange on this slide would be single-family detached
18 only, and that would make sure that those smaller lots
19 are at least 300 feet from any external large-lot
20 residential uses.

21 Similarly, we looked at the different product
22 types that Mr. Neal intends to construct on the
23 property, and we're able to increase the lot sizes. So
24 we're increasing the single-family detached up to 4,800
25 square feet. That's achieved by increasing the lot

1 depth. And then on the single-family attached, that's
2 going up to 4,200 square feet from the 3,000 originally
3 proposed, and that's going to be both a depth and width
4 increase. So the width will go up to 35 feet in order
5 to achieve that larger lot.

6 When we opened up the table, in reviewing it in
7 its entirety, we realized footnote 6 needed to be added
8 because there was a 50-foot PD setback, but everything
9 we explained to you and the public was much more
10 substantial. So we amended that footnote to ensure
11 that the setback for dwelling units will be that
12 170-foot from Duke Highway that we mentioned several
13 times in the hearing, and then the 250-foot minimum
14 dwelling unit setback from North River Road, to comply
15 with the previous testimony.

16 So I just zoomed in here, just a closer look at --
17 these areas cannot have single-family attached, shown
18 in orange, and similarly in that northeast corner.

19 Condition 3.b. This was negotiated with Staff
20 following the hearing so we're appreciative of having
21 that additional time to work through this. So it's now
22 a very lengthy condition, and it relates to the Duke
23 Highway enhanced buffer. We note that the 170-foot
24 adjacent to Duke Highway will be our restoration area.
25 We also noted there's extensive exotics there; and in

1 order to provide a nice visual screen, a 100 percent
2 opaque visual screen for the residents on the south
3 side of Duke Highway, that enhanced buffer needed to be
4 added in order to achieve full opacity. So what we're
5 proposing here, the width will be 25 feet; it will be
6 100 percent opaque within 5 years of growth, and this
7 is intended to fill in any visual gaps within that
8 preserve restoration area.

9 We worked with Beth Workman and Dirk on the
10 planting density. Because this doesn't need to be a
11 manicured typical right-of-way buffer -- we want it to
12 look natural -- we are proposing kind of a different
13 way of specifying the plant quantities. Instead of 5
14 trees every 20 feet, it's more of a density in this
15 plantable area of 6 native canopy trees, 7 native
16 understory trees, 3 cabbage palms, and then 21 native
17 shrubs, which is shown on the exhibits.

18 The planting density can be achieved with a
19 combination of existing/proposed native vegetation. So
20 we will go in with hand removal to get rid of the
21 exotics; and to the extent there's nice pines and oaks,
22 which we do know to exist there, those will be
23 incorporated and count towards this buffer.

24 In terms of the planting, Staff did request -- we
25 came forth with a proposal at the last hearing, and

1 Staff said we would like to see larger trees at the
2 time of planting. So we were in agreement with Staff
3 and increased the canopy trees to 10-foot tall at
4 installation. The clear trunk cabbage palms we had
5 proposed at 5, Staff asked for 10-foot so we made that
6 modification, also 10-foot native understory trees. So
7 these are large trees at the time of planting to
8 achieve the screening desired. And then 4-foot-tall
9 shrubs in lieu of the 2-foot-tall shrubs that we had
10 requested.

11 Footnote 4 just mentions that it must be
12 consistent with the management plans that are being
13 submitted, and that the restoration plantings and that
14 quantity of plantings do not get to count towards this
15 buffer. So this will be above and beyond the required
16 restoration planting density in that area.

17 I mentioned footnote 5. That was Ms. Workman who
18 requested that we commit to hand removal in order to
19 maintain as much existing vegetation as possible.

20 And then the last is probably a very critical
21 point, and that's the timing of installing this
22 enhanced buffer. So we worked with Staff -- and I
23 apologize for this, it's slightly cut off, but we will
24 get the buffer in place before construction starts of
25 the homes in that southernmost tract. So it reads

1 (as read), Prior to approval of a development order
2 authorizing residential lots within 300 feet of the
3 25-foot-wide enhanced buffer, a Certificate of
4 Compliance must be issued for the installation of the
5 buffer. So before even a DO, much less a building
6 permit, is issued for lots within 300 foot of this
7 buffering, in effect, Duke Highway, this will not only
8 have to be installed, it will have to be certified by
9 the County that it was installed to all of these
10 specifications.

11 HEARING EXAMINER RIVERA: Is Duke Highway the only
12 portion where that is true or -- there's also that
13 piece where there's a pinch point on the northwest
14 side. Would it apply there, as well? The way that
15 it's written, it's not tied specifically to Duke
16 Highway. It just references this 25-foot enhanced
17 buffer. So I want to be clear about where that's
18 going.

19 MS. CRESPO: Yes, it's labeled on the plan, and
20 it's in green. These green areas is where this
21 enhanced buffer will go. Everything on the west side
22 of the site is either going to be owned by Mr. Neal or
23 is owned by Mr. Neal. Nothing abutting Serenoa Court,
24 which would be this area, is within the 300 foot. And
25 then there is the Cary homestead on this property.

1 This is the only residential lot in this area. He also
2 owns all three of these lots that he will maintain to
3 own, and he issued -- let me just jump to it -- a
4 letter of no objection to Staff, that he does not
5 require the enhanced buffer there. He's satisfied with
6 the development plan and the restoration that will abut
7 him. So that is why we only are proposing a buffer in
8 that area.

9 HEARING EXAMINER RIVERA: Okay. And the note you
10 were talking about, I didn't see it previously. So
11 that's where it says the 25-foot enhanced landscape
12 buffer along the entirety of Duke Highway?

13 MS. CRESPO: Yes, and it goes around that cutout
14 at that southwest corner, as well. There's the
15 label...

16 HEARING EXAMINER RIVERA: Okay, thank you.

17 MS. CRESPO: And Sabrina McCabe is -- she's a
18 registered landscape architect also with RVi. She can
19 give you any further testimony you'd like on the
20 planting plants, but this would be attached to the
21 resolution to depict, where there is no existing
22 vegetation, the quantity of plantings to achieve 100
23 percent opacity. And, again, this is the mix of
24 canopies, cabbage palm, and understory trees with the
25 shrub ground cover, to really hit all levels of

1 planting in that -- in that screening area.

2 And then we've also done a depiction where there
3 is existing vegetation because we do have segments that
4 will have some nice existing trees we can incorporate
5 into the buffer, and so we've done two visuals of what
6 that would look like.

7 And then this is just the line of sight that you
8 received. I have a new copy with the taller planting.
9 So the one you received last week, I believe on the 5th
10 or 6th, is consistent with this, but we updated it to
11 do the 10-foot instead of the 5-foot trees that we had
12 proposed previously before meeting with Staff.

13 (Sotto voce between Hearing Examiner and reporter)

14 HEARING EXAMINER RIVERA: Okay. If we can pause
15 for one second, and it gives me a moment to make a
16 note, too.

17 Okay. So this slide 6 is just intended to
18 substitute out from the September 4 -- I believe was
19 the day that we received testimony on the line of
20 sight, so this single page. But this is not being
21 appended to the resolution, but you are intending for
22 the planting drawings that you just showed, those
23 should be part of the master concept plan?

24 MS. CRESPO: Yes.

25 HEARING EXAMINER RIVERA: Okay.

1 MS. CRESPO: And I have a hard copy of this
2 updated --

3 HEARING EXAMINER RIVERA: Okay, thank you. That
4 will be helpful.

5 (Applicant Exhibit 4 submitted.)

6 HEARING EXAMINER RIVERA: Thank you very much, and
7 that will be -- let's see -- Applicant Exhibit 4.

8 Okay. Go ahead, thank you.

9 MS. CRESPO: Just to recap, we didn't want to mix
10 previous conditions with today, so we'll just continue
11 on with the change to Condition 5 that Staff was in
12 agreement with, to add just a bit more specificity,
13 that we must demonstrate availability of services, is
14 the typical language for that.

15 And Condition 10 relating to indigenous habitat
16 restoration/management plan, this again conditions that
17 prior to the first development order, we are going in
18 with our restoration. We just noted that in sub --
19 subparagraph a. "for any phase of work" was included,
20 but the first DO would address that. So Staff agreed
21 it was somewhat redundant, and the other -- other
22 subletters did not include that terminology. So it's
23 benign, but it's understood with the very first DO we
24 are committing to the restoration.

25 Condition 16, we are in agreement with Staff to

1 eliminate the trip cap as the unit count would cover
2 that.

3 Condition 17, agricultural use affidavit. We just
4 wanted to add some specificity, that if we do have a
5 vegetation removal permit, clearing can occur subject
6 to permits within those use areas, and I don't think
7 Staff took any issue with that.

8 And then 18 and 19 came out of public comment
9 testimony that we thought was -- was valuable, and so
10 we went back and addressed school bus pull-off.
11 Certainly we expect to have some children in the
12 community, and so having a way for the school bus to
13 get off North River Road and not block travel lanes
14 made a lot of sense. We are going to of course --
15 because the western pod doesn't interconnect with the
16 eastern, it was necessary to have two to service both
17 pods. So the blue stars at the entry, we'll design it
18 wide enough, where that gatehouse is, to have the bus
19 fully pull off and pick up school-aged children.

20 HEARING EXAMINER RIVERA: Do we know how many
21 students are anticipated? I could not find the school
22 concurrency letter anywhere in the Staff Report, and I
23 combed through it a number of times. Do we have that
24 information, or can somebody --

25 MS. CRESPO: I can get that.

1 HEARING EXAMINER RIVERA: -- provide that? I'm
2 sure you had to have it probably even for the --

3 MR. DANLEY: The Comp Plan (inaudible) --

4 HEARING EXAMINER RIVERA: It was referenced in the
5 transcript when I asked the first time. It was
6 referenced that it was in the -- the CPA documents, but
7 not in -- I couldn't find it. It might be in there,
8 but I would like to know that.

9 MS. CRESPO: Okay.

10 HEARING EXAMINER RIVERA: I would expect --

11 MR. DANLEY: We can make sure you get it.

12 HEARING EXAMINER RIVERA: Thank you.

13 I would expect we're generating a number of
14 students so can you detail that a little more? It
15 looked like it was in enough -- I -- the way that it
16 shows on the master concept plan, it's behind the gated
17 entry. I would assume it's actually the reverse. I
18 would think you would have the pull-off before the
19 gate, but I do have --

20 MS. MONTGOMERY: The School District won't go into
21 gated communities.

22 HEARING EXAMINER RIVERA: I wouldn't think so. So
23 I just -- I assumed that that was just done as a last
24 addition, and that's why it's shown in that order?

25 MR. FREY: Right. And, again, Brandon Frey for

1 the record.

2 So there's typically -- actually, it's required by
3 Lee County to have a turnaround in front of the gate
4 or -- you know, prior to passing through that gate up
5 to a certain size box truck. I think it's called an
6 SU-30 box truck. So we're required to have a
7 turnaround already; it's not necessarily sized for a
8 school bus. So what we had to do was just enlarge that
9 turnaround that would have been Code required in order
10 to allow school buses to not just leave the
11 right-of-way, but get into a point where, you know,
12 they wouldn't be disruptive to residents of the
13 community or folks on North River Road. And it will be
14 sized such that the school bus will be able to turn
15 around and get them pointed back in the right
16 direction. But, no, they will not have to cross
17 through the gate in order to utilize that turnaround.

18 HEARING EXAMINER RIVERA: Okay. And the students
19 will still be safely inside of the property boundaries
20 then, not -- because there aren't sidewalks anywhere
21 along North River Road, and -- even if you're going to
22 put them in your section -- they're not going to be
23 obstructing traffic flow in any way or in any kind of
24 danger --

25 MR. FREY: No, no, they would be staged where the

1 bus would stop, and the bus would stop off the roadway.
2 So I'm not sure why they would be up that far because
3 of that.

4 HEARING EXAMINER RIVERA: Okay. And there's no
5 stop, though, on the extreme far east. So any student
6 that's in the western pod is going to be directed to
7 the westernmost access for that pod?

8 MR. FREY: Do you have the image with the stars?

9 MS. CRESPO: (Complies.)

10 MR. FREY: So there are three entries, but the
11 eastern pod and the southern pod are all connected so
12 it's anticipated that they would all aggregate in one
13 area. It's not -- I'm not a bus route expert, but I
14 would imagine that those would be too close together
15 for the School District to allow independent accesses.

16 HEARING EXAMINER RIVERA: Okay. I just wanted to
17 be sure that they had access to get to that one stop.

18 MR. FREY: They do, yeah.

19 HEARING EXAMINER RIVERA: Okay, thank you.

20 Okay, go ahead, thank you.

21 MS. CRESPO: There will be internal sidewalks in
22 compliance with the Code.

23 So that summarizes the changes to our conditions
24 per the letter --

25 HEARING EXAMINER RIVERA: I think --

1 MS. MONTGOMERY: You forgot one.

2 MS. CRESPO: Oh, I think you're right.

3 MS. MONTGOMERY: Lighting.

4 MS. CRESPO: Okay, yes. This was Ms. Schwartz,
5 who is here, she referenced lighting standards
6 particularly for protected species in the preserves.
7 And so we've -- this is a condition approved at the
8 Babcock MPD so it's language the County is familiar
9 with, to state that the developer and future property
10 owners must ensure lighting from development areas to
11 not directly illuminate indigenous preserve and
12 restoration areas by shielding fixtures as necessary
13 and minimizing uplighting. The developer must include
14 these lighting standards in the indigenous management
15 plan, deed restrictions, and on development order
16 plans.

17 So that was -- we looked -- I did not find a
18 lighting condition for Owl Creek, so this was something
19 in the immediate area that was included in the zoning
20 conditions, and Staff was in agreement with that.

21 Touching briefly on some zoning considerations
22 that were mentioned, there was reference that the
23 request is spot zoning. Spot zoning is an isolated
24 zoning district surrounded entirely by other districts.
25 I would submit that this is a logical continuation of

1 the rural planned development in -- residential planned
2 development in the rural framework within the North
3 Olga Community. We have -- we abut residential planned
4 development to our immediate west, which would
5 immediately indicate it's not spot zoning, and then
6 similarly abut -- the Babcock MPD is to our north
7 across North River Road, and there's other PDs in the
8 area, again, that have used the rural incentive density
9 framework.

10 There was also reference that, per the North Olga
11 Community Plan, certain types of deviations must meet
12 variance criteria, and it was noted that I did not put
13 that on the record so I wanted certainly to do that.
14 We only have one deviation that would trigger that
15 additional criteria, that would be our North River Road
16 buffer, and this is not a reduction to the planting
17 width or the plantings at all. The intent of this
18 deviation is to allow existing vegetation so long as it
19 meets all the planting specs of the Code, the height,
20 the spacing. It can serve as the required right-of-way
21 buffer because that will result in a much more
22 natural -- it will maintain existing vegetation,
23 heritage oaks, things like that, so it's, again, not a
24 reduction.

25 So it's a little clunky applying variance criteria

1 to this type of scenario; but, nonetheless, we have
2 done that. It has been reviewed by Staff. The
3 testimony we submitted -- or the justification we
4 submitted with the application materials outlines the
5 a. through e. criteria. So the property does have
6 exceptional conditions in terms of:

7 The substantial frontage on North River Road, the
8 substantial existing native vegetation along that
9 right-of-way that can better provide for that required
10 buffer than eliminating some of those trees and
11 installing younger, smaller trees.

12 The -- that exceptional condition is not the
13 result of the property owner.

14 This is the minimum needed to allow for that
15 native vegetation to be maintained.

16 The granting of the variance will be quite the
17 opposite of injurious to the neighborhood. It will
18 uphold public health, safety, welfare by maintaining
19 the existing natural viewsheds and vistas along the
20 roadway, as opposed to that more manicured style that
21 would detract from the rural character.

22 And the variance is also consistent with the Lee
23 Plan, is directly in line with the goals, objectives,
24 and policies, particularly those pertaining to North
25 Olga and Northeast Lee County.

1 So then I will close up with Lee Plan
2 considerations and walk through some of that
3 discussion.

4 There was reference of coastal high hazard. The
5 site does have a portion of it within coastal high
6 hazard shown in that grayish blue. It is because the
7 Caloosahatchee River is tidal in this location, so
8 those policies in the Lee Plan do apply to the
9 property. We will be fully compliant.

10 The Lee Plan has several policies. 72.2.2 states
11 that all new residential development upon the projected
12 hurricane evacuation network requires mitigation,
13 either on-site or off-site. And this is a well-vetted
14 policy that has been implemented in the Land
15 Development in Chapter 2. There is a specific
16 calculation in that referenced Article XI that
17 specifies how much we will pay towards shelter
18 mitigation based on our unit count.

19 Objective 73.1 relates to evacuation time, and
20 this really places the burden on the County to work on
21 increasing shelter availability by collecting payments
22 from the developers in these areas to do that, and then
23 approve an evacuation time.

24 Okay, so those were the key policies. There,
25 again, we will comply and make sure of fair-share

1 payment of shelter mitigation.

2 There is also discussion that the development
3 was -- is a form of sprawl, and so we wanted to address
4 that, as well. And the Lee Plan does include a
5 glossary, a definition of this term. It defines urban
6 sprawl as -- there's no general sprawl. It's just
7 urban sprawl -- that uncontrolled, premature, or
8 untimely expansion and spreading out of urban levels of
9 density or intensity into outlying nonurban areas.

10 This site is in the Rural Future Land Use
11 category. This is a future nonurban area. So we are
12 not incorporating and spreading new development into --
13 well, from urban levels into this area. Our density is
14 consistent with the Rural Future Land Use category
15 allowances under the incentive density provisions of
16 Goal 123, and so just simply does not trigger urban
17 levels of densities to fall within -- within that
18 definition.

19 We also have water and sewer service already
20 applicable to the property. That Comprehensive Plan
21 change was adopted, and this area is now served by
22 water and sewer. Largely due to the environmental
23 sensitivity in proximity to the river, this was deemed
24 consistent with the Lee Plan as a whole, to bring this
25 area into that service, and so the availability of

1 public infrastructure would also be indicative that
2 this is not sprawl.

3 We developed this plan at one point just to see
4 what the one-acre lot layout could look like. We have
5 not submitted this to the County. There would need --
6 you know, if we were to proceed with a development
7 order for this -- because, in theory, one-acre lots can
8 proceed through a development order process. But I
9 would submit to you a clustered project that -- that
10 exceeds the typical 40 percent open space, providing 60
11 percent open space, providing for the restoration,
12 is -- is not sprawl. It is an appropriate framework to
13 preserve the rural character of the area and allow for
14 responsible development and growth, as opposed to
15 large-lot across the entirety of the property.

16 Getting into the Rural policies in Northeast Lee
17 County and North Olga, Mr. Fichter was -- gave really
18 good testimony and said, I'm looking at Table 1A of the
19 Lee Plan. Rural does not allow bonus density. How is
20 this even possible? And I believe I may have added to
21 the confusion by referencing the word "bonus" in
22 previous testimony. So I want to correct that and
23 respond to that, in that this is not bonus density.
24 This is incentive density, which there is a difference
25 in that terminology and how it relates to the

1 Comprehensive Plan.

2 So this was developed as a framework several years
3 ago by Lee County to build upon the goals, objectives,
4 and policies of the Northeast Lee County Community
5 Plan, the North Olga Community Plan, which said we want
6 to preserve large tracts of open space; we want to
7 preserve our natural resources. We believe clustered
8 development is appropriate in this area in order to
9 achieve those goals. So this policy was -- was
10 created. It is incentives that -- conventional bonus
11 density, and it allows for the -- the one unit to be
12 created in exchange for created, preserved, or restored
13 indigenous upland habitat, being rare and unique.

14 You have to meet five criteria, which are very
15 stringent locational criteria -- I see the same one
16 duplicated there -- direct access to arterial roadway;
17 connection to public water and sewer; it must be
18 clustered to achieve the 60 percent open space, 50
19 percent indigenous, which the site clearly meets; and
20 there is success criteria built into these management
21 plans of that restoration area to ensure -- to ensure
22 its success. I think there was comment -- and Shane
23 did address that, as well, but this is -- this is going
24 to be monitored to ensure it survives and thrives as
25 part of not only the Land Development Code, the PD

1 resolution, but also the Comprehensive Plan.

2 And then criteria 5 goes into greater detail about
3 that restoration area:

4 It must meet all the minimum dimensions. So it
5 can't be, you know, little strips and scraps. It's got
6 to be meaningful areas to provide habitat connectivity.

7 We must demonstrate appropriate soils, which was
8 reviewed at length by Staff, that would support the
9 rare and unique habitat we're proposing.

10 C. does not apply.

11 And then it must be placed under conservation
12 easement dedicated to an appropriate maintenance
13 entity. So this is, again, in perpetuity through those
14 safeguards.

15 HEARING EXAMINER RIVERA: Go back for a second,
16 the sub -- the prior slide, excuse me. So the
17 conservation easement is in perpetuity. This with the
18 five consecutive years, there were a number of speakers
19 that had concern about that. Is there any oversight
20 that continues beyond that through the DO since the
21 management plans are all being adopted subsequent to
22 the DO? So if any portion of that is failing in year
23 six, is there still some capability for Lee County or
24 another entity to go in and require restoration work or
25 whatever is needed to ensure that it's continuing to

1 thrive?

2 MS. CRESPO: Yes. Through our ERP we are required
3 to do continuous exotic prevention and maintenance of
4 preserve areas. So while it may not be monitored by
5 this condition of the Lee Plan, it will continue to be
6 monitored. And that gets passed on to the HOA
7 eventually and carries forward so that it's always
8 monitored.

9 HEARING EXAMINER RIVERA: So that's essentially in
10 perpetuity, as well. It's not just the conservation
11 easement that provides that level of protection?

12 MS. CRESPO: That's a good point, yes.

13 HEARING EXAMINER RIVERA: Okay, thank you.

14 MS. CRESPO: All right. And so this -- this is
15 the table that explains the calculation. It is
16 consistent with the Lee Plan, and it is just under 0.4
17 additional units per acre of incentive bonus that meets
18 all of these criteria.

19 All right. Now I'm going to just touch on a few
20 of the key Northeast Lee County and North Olga
21 Community Plan goals, objectives, and policies.

22 These were adopted into the Lee Plan around
23 2010/2011. This -- what preceded that was a
24 development proposal called North River Village by
25 Bonita Bay, which was a developer in the area at the .

1 time. They still own some land around us. But they
2 were able to get several large tracts, including the
3 subject property, under contract. They were proposing
4 to convert out of the Rural Future Land Use category
5 into one of the Suburban categories and achieve
6 densities, I believe, between two and three units per
7 acre. This development greatly polarized the
8 community. There was significant opposition to it.
9 There were a lot of workshops and discussion over the
10 matter. Some may say in the community fortunately the
11 downturn in the economy hit, and the project was
12 withdrawn due to the economic condition, so they didn't
13 proceed forward.

14 From that process large and small landowners
15 alike, because it was polarizing, because of the
16 lengthy community meetings, everyone was getting to
17 know each other, getting -- they've known -- everyone
18 knows each other out there, but even more so, and
19 debating what is good policy. Babcock was approved at
20 this time. So it just opened a discussion of the
21 growth pressures are on; we are going to be facing this
22 long-term. Let's control the form of growth in this
23 area rather than have a developer dictate how that
24 should happen, and so the planning panel was formed.
25 It was a mix of large and small landowners that made up

1 that panel, and I -- I would venture to say 40 plus
2 community meetings to adopt not only the Comprehensive
3 Plan policies into the Plan, but also create Land
4 Development Code standards to implement it. I believe,
5 as we go through these, that that next step of the
6 incentive density is directly in line with what came
7 out of that community plan about, again, natural
8 resource protection, how can we do that? We can do
9 that by clustering the development form and requiring
10 much, much higher amounts of open space and native
11 preservation in key areas of the site to maintain the
12 viewsheds and -- and maintain those areas of natural
13 resource protection as an alternative to other forms of
14 development.

15 So sorry for that lengthy diatribe, but I felt
16 that some of the history of how we got here is
17 important.

18 And so Objective 27 is the shared Northeast Lee
19 County. So that covers -- Alva and North Olga were
20 told by the County, you guys got to get together and do
21 an overarching Goal 27, and then you can each do your
22 own slightly different community plans. But 27 deals
23 with the whole area from 31 to the Hendry County line,
24 and it defines rural character. This is also, I
25 believe, defined in the North Olga goal, as well, but

1 rural character is defined as those characteristics
2 that convey a sense of rural lifestyle, such as large
3 lots or clustered development, ample views of wooded
4 areas, open spaces, riverfronts, working farms and
5 productive agricultural uses, and the protection of
6 environmentally sensitive lands. So the objective
7 itself prescribes clustered development as an
8 appropriate -- with other -- with other elements to it,
9 an appropriate form of development in this area.

10 I thought this would be a helpful slide to show,
11 as well, in terms of the amount of preservation
12 committed either in government ownership or under
13 conservation easement in North Olga in this area. So
14 the dark green, you've got the Bob Janes Preserve and
15 20/20 lands that encompass over 5,000 acres in this
16 area. The Babcock Ranch project has similar
17 requirements for, I believe, 2,600 acres, 60 percent of
18 the property to be in permanent conservation, so that's
19 shown in green. Those conservation easements are
20 already being obtained. And then you have a couple of
21 Water Management District properties along the south.

22 But the majority of the acreage in this area is
23 already off the books for development and covered by
24 either government ownership or conservation easements
25 delegated to local government. So that aspect of the

1 plan is -- is taken care of by way of those preserve
2 areas.

3 So tying back to that original policy about form
4 of development, clustered lots, just as a reminder the
5 300-foot setback at that western entrance, and then
6 it -- it bumps up to 510 and even 800 foot for folks
7 that live on Duke Highway and North Olga Road. As they
8 make that turn to go home, their view will be native
9 vegetation, as Pat said, what existed on this site
10 dating back to the 1930s. They will not see a
11 residence from -- from those viewsheds.

12 And then we continue on with substantial setbacks
13 as we move towards Duke Highway with that enhanced
14 buffer and -- around the site. So I think this is
15 implementing that policy to the T in terms of 60
16 percent open space and strategically located preserve
17 and restoration areas to maintain the rural sense and
18 lifestyle and sense of character.

19 This, again, still is in the Northeast Lee County
20 section of the Plan covering both Alva and North Olga,
21 and the policy states they will work with residents and
22 property owners to develop standards and guidelines for
23 clustering future development and conserving large
24 areas of open lands to promote compatibility with
25 adjacent residential areas.

1 I would submit that the furthering of Policy
2 123.2.17 with this incentive density does just that, it
3 requires 60 percent open space, which really is the
4 definition of clustering, and maintaining large tracts
5 of open lands to achieve compatibility. So fully in
6 compliance with that policy.

7 As we move into 29, which is specific to North
8 Olga, again, these concepts are reiterated, promoting
9 compact or clustered development that maintain large,
10 contiguous tracts of open space. So the proposal is
11 entirely consistent, again, with these continuing
12 policies throughout the plan.

13 There's a policy that states enhanced design,
14 landscaping, to promote the rural character of North
15 Olga. I think what we described in terms of our buffer
16 treatment along Duke, along North River Road, shows
17 enhanced landscaping to achieve this policy, and then
18 just the design of the community, the layout of where
19 the development occurs will also promote rural
20 character. And we've addressed the variance criteria
21 for that buffer.

22 I think this is my last policy slide. This is
23 relating to residential land uses, again, in North
24 Olga, and it goes on to suggest it has the same rural
25 definition that you saw in the Northeast Lee County:

1 large lots or clustered development, ample views of
2 wooded areas, open spaces, riverfronts, working farms,
3 productive ag, and protection of environmentally
4 sensitive lands, exactly what is being proposed.

5 Policy 29.2.1 promotes flexible lot sizes in order
6 to achieve the goal of more commonly maintained open
7 space and preserve areas. So this proposal is fully in
8 line with that policy.

9 And then 29.2.2 is what we worked with Staff --
10 that the proposed residential development adjacent to
11 any existing large-lot residential area must be
12 appropriately treated through separation, larger lot
13 sizes. We did note we don't directly abut Duke
14 Highway. That does not mean they are not a nearby and
15 potentially impacted area. So we've worked with Staff
16 to have a 170-foot setback, a limitation on
17 single-family attached, and a 100 percent opaque
18 enhanced buffer to be installed and certified before a
19 home is even started to be constructed, to meet this
20 policy.

21 When you review other planned developments in
22 Buckingham, North Olga, Bayshore, you'll note this
23 policy has been applied in others. I would -- I would
24 suggest that our limitations and the combination of
25 extensive setbacks, limitation on lot sizes, and the

1 enhanced buffering, we far exceed what those other PDs
2 have done to achieve consistency with this -- with this
3 policy, and Staff is in agreement with that.

4 So to conclude, the proposed PD, it maintains the
5 Rural Future Land Use. The hopes of going through
6 these community planning efforts, the -- I believe the
7 County's intent with the incentive density was to keep
8 this area in the Rural Future Land Use category and not
9 handcuff people to have to convert out of it to achieve
10 reasonable use of their property. They created a
11 workable framework with very -- still very low nonurban
12 densities in exchange for really significant
13 environmental enhancements that are great for natural
14 resource and also achieve compliance with maintaining
15 the rural character.

16 So with that, my testimony is this project is
17 completely consistent with the Comprehensive Plan and
18 LDC, and I'm happy to answer any questions.

19 HEARING EXAMINER RIVERA: The one condition -- I
20 asked Staff about it, but I did not ask about the
21 timing. So I know that you've referenced two different
22 conditions where it says prior to the first development
23 order, the restoration plan -- the restoration work
24 will be done, or the plans will be in place. But it's
25 a question that I still have because we do have that

1 Oak Creek condition about the platting being tied to
2 the restoration work that we don't have and this. So I
3 just wanted to get the Applicant's perspective on what
4 the intention is. I understand -- well, I should
5 clarify. The intention, by your testimony under oath,
6 is that the restoration work will be done with the
7 first development order. But because it's such a large
8 project, and it's going to be phased, I'm curious about
9 how the Applicant foresees that actually working.

10 MS. CRESPO: In terms of certifying the
11 restoration?

12 HEARING EXAMINER RIVERA: The timing, right,
13 because the whole point of this is getting that
14 incentive density, and so the reason you get the
15 incentive density is because you do the restoration
16 work. And so in Oak Creek and in the Bayshore case
17 that Ms. Workman testified about the second day or the
18 first day of hearing -- I think it was the second day.
19 She talked about how each project is different, and so
20 in this case there wasn't a condition that was
21 proposed, even though Oak Creek had that platting
22 requirement to essentially give the County some comfort
23 that the restoration work was getting done to earn the
24 density. Because the concern otherwise is that you get
25 the density, but you didn't do the work -- or you start

1 to do the work, and then something changes and you
2 double-dip in some way.

3 MS. CRESPO: Right.

4 HEARING EXAMINER RIVERA: So that's -- I'm just
5 curious because I asked the Staff that, but I did not
6 ask the Applicant yet.

7 MS. CRESPO: Yes, so -- I'm just going to get to
8 the condition about -- so it's prior to the issuance of
9 the first DO, the development order must be in
10 substantial compliance with the indigenous habitat
11 management plan. And with the DO we must provide
12 Ms. Workman with the phasing schedule of how we're
13 going to be installing the indigenous preserve and have
14 it completed over the five-year period per sub b. So
15 we know we have a hard and fast when we must start with
16 that first DO, so it goes on with the first phase, and
17 then the bookend would be through the DO process that
18 it would be completed within five years.

19 HEARING EXAMINER RIVERA: Okay. So the --

20 MS. CRESPO: That schedule --

21 HEARING EXAMINER RIVERA: -- the intention
22 essentially -- and I'm going to ask Staff about this
23 again. The concern that I have is because, again,
24 we've got Oak Creek right next-door, and they've got a
25 very clear condition that says they cannot get any of

1 the bone -- excuse me, the incentive density until they
2 get their plat, because once it's platted, then there's
3 just another avenue to say that there's some certainty
4 that that's actually going to be restoration lands,
5 because as we all know, DOs are subject to several
6 iterations and modification, and so the concern, again,
7 is that you have this ability to double-dip on the
8 density without actually securing those lands for that
9 purpose.

10 MS. CRESPO: Right. And I know -- and I don't
11 want to speak for Beth, but I believe the phasing plan
12 that goes into the DO is where Staff develops those
13 firm commitments based on the phasing of the DOs.
14 That's usually not -- that hasn't been included or
15 requested to be included in this, but I think if we
16 need to develop a condition that addresses those
17 additional -- the above 788 units to get us to the
18 1099, I think we can work something out rather --
19 rather quickly.

20 MS. WORKMAN: I can -- I can speak to that right
21 now, if you like, or I can wait.

22 HEARING EXAMINER RIVERA: If you would like --
23 well, we can wait --

24 MS. WORKMAN: Okay.

25 HEARING EXAMINER RIVERA: -- because I have other

1 questions.

2 MS. WORKMAN: Okay.

3 HEARING EXAMINER RIVERA: But that's something I
4 do want to come back to.

5 And then the only other thing that I had notes of
6 that had not been touched upon -- I think would be in
7 your wheelhouse -- was that EMS timing. I know that we
8 had that modification that was minor to the condition,
9 but there were a lot of folks that were concerned that
10 the additional units would slow existing response
11 times, that existing response times are not great, and
12 that there's a public safety concern now, and their
13 concern was that the additional units would exacerbate
14 that. Can you just elaborate on what evaluation goes
15 into whatever discussions have been had with the EMS
16 and that provision of service?

17 MS. CRESPO: Yes. So we -- we're required, for
18 the Comp Plan, to get a letter of availability from Ben
19 Abes, and so we've gone through that initial process.
20 We're required to do that again at the time of DO.

21 The changing conditions in this area that will
22 address that is, I believe by the end of September,
23 Kitson will have conveyed the three-acre EMS site at
24 Shirley Lane and 31 to Lee County, and the construction
25 of that EMS station is funded in the five-year CIP. So

1 long term I believe it's intended to be a co-location
2 of fire and EMS, but short term what is -- what we know
3 is funded is EMS going in two miles from this site. So
4 that will vastly improve response times because, as was
5 noted earlier, not all units come out of the ground day
6 one. The timing of that, as we get our DOs, we'll be
7 having to coordinate with Ben Abes on response times,
8 and then time -- time it appropriately so that we, at a
9 certain point, could not get more DOs if that was not
10 constructed, or if there were issues, we'd have to pay
11 further mitigation.

12 HEARING EXAMINER RIVERA: Did you have questions,
13 Ms. Montgomery?

14 MS. MONTGOMERY: No. It's an interesting issue
15 just because 95.1.3 says the fire and EMS are not
16 regulatory, plus we're paying impact fees, plus we are
17 in the Rural Land Use category where you're not
18 supposed to expect urban levels. So it's a weird
19 juxtaposition of different rules.

20 HEARING EXAMINER RIVERA: It is, and it's not
21 regulatory, but I can understand why the community
22 is --

23 MS. MONTGOMERY: Absolutely.

24 HEARING EXAMINER RIVERA: -- concerned about
25 public safety.

1 MS. MONTGOMERY: Yeah.

2 HEARING EXAMINER RIVERA: So I think it's a fair
3 question, and I appreciate the clarification on that.

4 That was the last -- was there any additional
5 questions you had?

6 MS. MONTGOMERY: I didn't have -- well, I did have
7 one question for Alexis.

8 You did an exhibit that demonstrated what could
9 occur if we created one-acre lots, which some people
10 thought was a good idea. There was also concern about
11 what kind of housing could be developed. Is there
12 anything that would dictate what kind -- how big or how
13 small a house somebody could build on their one acre,
14 if that were to be the plan?

15 MS. CRESPO: There would be a maximum lot coverage
16 associated with the AG-2 district regulations.

17 MS. MONTGOMERY: But there wouldn't be any
18 architectural requirements?

19 MS. CRESPO: No.

20 MS. MONTGOMERY: And I believe there actually is a
21 Florida Statute that says -- lots of communities have
22 architectural review, but you're not allowed to dictate
23 architecture on a single-family or even a two-family
24 parcel. So the one house they saw was beautiful, but
25 you can't require that.

1 HEARING EXAMINER RIVERA: Thank you.

2 MS. MONTGOMERY: Did you have any other questions
3 that we didn't answer?

4 HEARING EXAMINER RIVERA: I did not, not for the
5 Applicant, no. I've got a few for Staff that I want to
6 address.

7 MS. MONTGOMERY: Thank you.

8 HEARING EXAMINER RIVERA: Did that conclude
9 rebuttal for the Applicant?

10 MS. MONTGOMERY: Yes, ma'am.

11 HEARING EXAMINER RIVERA: Okay. We're going to
12 take a break then before we get to the Staff, and so
13 let's come back in ten minutes, at 10:30, please.

14 (Recess from 10:20 a.m. to 10:30 a.m.)

15 HEARING EXAMINER RIVERA: Okay. We are back on
16 the record, and we can begin with Staff whenever you're
17 ready.

18 MR. DANLEY: Okay. For the record, Dirk Danley
19 with Lee County Community Development.

20 I only have a couple of things to put on the
21 record following the Applicant's presentation, but we
22 are here for questions after I just put this little bit
23 on the record.

24 We talked a little bit about this condition
25 because this really was the sticky point between Staff

1 and the Applicant prior to coming into this hearing.
2 And with the piece that's here -- you know, we worked
3 with the Applicant on everything else to get them kind
4 of buttoned up on a landscaping condition that we would
5 find would adequately address the -- the separation.
6 So as an alternative for separation, shielding is
7 usually a good way to help, you know. So we tried to
8 balance that going through that specific Lee Plan
9 Policy to make sure that we were providing the best
10 protection possible with this portion here, with the
11 letter of no objection, and the fact that the person
12 who owns these properties is part of the contract
13 selling -- or the contract seller side of this whole
14 application, it gives us a little less standing to
15 require such an extensive landscaping buffer along that
16 side because they are also providing that separation
17 that Lee Plan policy is looking for. So we were in
18 agreement that in that area, particularly with the
19 removal of duplexes in that area and on the side, that
20 they are adequately addressing that.

21 I think you brought up the western side, as well.
22 I don't have an exhibit to show it to you, but Owl
23 Creek runs right adjacent to this, and they come
24 equally close in this area, and so we didn't see that
25 that was necessarily as important. I believe at the

1 last hearing, the engineer for this property was here
2 for a potential future project. There were no plans
3 that I understood, but they were there just monitoring,
4 and they didn't seem to have an objection to that
5 design either. So I just wanted to put a little bit of
6 that on the record and make sure that -- we are
7 generally in agreement with that.

8 We do have -- we are in agreement about the way
9 that the condition is written today, that it adequately
10 addresses the timing component that you talked about.
11 This project is a little different compared to Owl
12 Creek because there was some phasing discussed through
13 the whole project with Owl Creek; and this one, all the
14 phasing has been deferred to the development order.
15 And so we were able to kind of work through some of
16 those issues a little more -- with a more fine point at
17 the zoning side, and that's why the plat sufficient --
18 or the plat condition was in there.

19 With this one, those conditions will likely still
20 be placed on them, just at the time of development
21 order. Because we didn't have any of the phasing to
22 discuss as part of the zoning, we asked the question
23 through sufficiency, so it's going to be a single
24 phase. Obviously that's not going to take place in the
25 development order, but from a zoning side, they were

1 looking at this project as a whole.

2 HEARING EXAMINER RIVERA: Okay. So just to get
3 clarification on that -- because I was not involved in
4 the Oak Creek case. So in the Oak Creek case, they
5 came in, and they said, we're going to do, let's say,
6 three phases and do 100 units each phase. And so you
7 were able to tie it and lock it at that point and just
8 say this amount of restoration for the first 100 and
9 then so on, and you essentially dealt with it through
10 the plat rather than the DO because you had that
11 detailed specificity that you don't have at this stage?

12 MR. DANLEY: Right.

13 HEARING EXAMINER RIVERA: But Staff is confident
14 that --

15 MR. DANLEY: Right.

16 HEARING EXAMINER RIVERA: -- you're going to
17 achieve the same end --

18 MR. DANLEY: Correct, yeah.

19 HEARING EXAMINER RIVERA: -- through the
20 development order?

21 MR. DANLEY: Yeah, it was a little different, and
22 I'll let Beth jump in on this a little bit, but they
23 had multiple -- the restoration was not phased on that
24 side. It was the development as it was coming in, the
25 actual units as they came in were phased. The

1 restoration, I believe, was on the front end, and
2 were -- they just were working to get that to a final
3 restoration product at the end of it. But that last
4 phase of those bonuses was tied to a plat that they
5 weren't able to get until they were able to demonstrate
6 that restoration.

7 And I don't know if Beth wants to add anything to
8 that.

9 MS. WORKMAN: Yeah, I do, a little bit. Do you
10 want to finish your --

11 MR. DANLEY: Everything else is off the subject of
12 the phasing, so this is a good --

13 MS. WORKMAN: You want me to -- okay.

14 MR. DANLEY: Yeah.

15 HEARING EXAMINER RIVERA: Good morning.

16 MS. WORKMAN: Hi, good morning. For the record,
17 Beth Workman. I'm a principal planner in the Zoning
18 section, and I did the Staff Report for the
19 environmental portion of this project.

20 The condition that Staff has put on
21 Cary+Duke+Povia is driving, essentially, the same thing
22 that you see in Owl Creek. So prior to the issuance of
23 the first development order, the development order
24 plans must be consistent with the indigenous management
25 plan and the indigenous areas and restoration. So when

1 that first DO comes in, that development order is going
2 to show all of these areas. It will show all of them.
3 That first DO establishes where the conservation
4 easement is, where the restoration, creation, and
5 preservation is. Lays everything out in that first DO.
6 All the indigenous management plans come in at that
7 time. Everything is reviewed by Staff.

8 The Applicant, in the development order, can phase
9 at that time. So we don't have a phasing schedule
10 conditioned in the zoning so every time there's a
11 hiccup, you've got to come back through zoning when you
12 go to build it. So if they're coming in -- and it's my
13 understanding there's a development order in right now
14 that is for a portion of this phase, and it kind of
15 hangs down into this phase. So that development order
16 will need to show everything, but then show this as the
17 first phase. That sets the table for the plat, as
18 well, because a development order cannot be issued
19 without a rider plat coming along. And so every time
20 they come in and add another section, the plat gets
21 updated as it goes along, but all along the
22 conservation areas are already on that first plat. So
23 then you're coloring in -- you're coloring in the pods
24 for the -- for the lakes and for the development as the
25 replats come in associated with those additional

1 development orders, but all the infrastructure is up
2 front. It doesn't mean that it has to be built like
3 right away; but as they're coming through, they're
4 keeping alive that development order because they're
5 showing a right to pursue within -- six years is what a
6 DO is good for. But if you're showing the right to
7 pursue, you have the ability to get extensions and that
8 kind of thing, which you -- which you will. And that's
9 kind of what Owl Creek did, but we hooked the plat to
10 it, plus we had, during the review, more details of how
11 they wanted to roll out the project. In this case we
12 didn't have the detail so we treated it as a whole.

13 HEARING EXAMINER RIVERA: Okay. So the 420 acres
14 of restoration will be shown on the very first
15 development order.

16 MS. WORKMAN: Yes.

17 HEARING EXAMINER RIVERA: Even if that work is not
18 completed yet, there is some mechanism that the County
19 has in place through the development order process to
20 ensure that the units are not being released for the
21 incentivized work that they're doing in those
22 restoration areas for the 420 acres, so that if there
23 are subsequent DO amendments, that would reduce that
24 number --

25 MS. WORKMAN: So as the -- and this kind of segues

1 into my testimony about Babcock.

2 So as the DOs come in on that project, there's a
3 tally that comes in. We have this -- this preserve --
4 all of this preserve we're working on, we have it
5 underway. It's going to be CC'd with the units that
6 are coming in on this because it's going to give us
7 those units, and there's a tally that comes in -- and
8 there's four different builders in there. So that's
9 how Development Services Staff has been doing that, as
10 it comes in. With that project, their state and
11 federal permits are running so far in advance, ahead of
12 schedule, the acreage is bigger than the units that
13 they're doing at a time. So they're always ahead of
14 the game.

15 So Mr. Neal and his group are going to have to
16 decide how they're going to change/mod that first DO
17 because it needs to show everything, according to that
18 condition in the zoning.

19 HEARING EXAMINER RIVERA: Okay, thank you.

20 MS. WORKMAN: Does that help you?

21 HEARING EXAMINER RIVERA: It does.

22 MS. WORKMAN: Okay, good, thank you.

23 MR. DANLEY: So some of this is going to just feel
24 a little piecemeal, and I apologize about that, if
25 there's anything that can help sew them all together...

1 In Staff's opinion, there's some details left that
2 just need to be clarified.

3 The question about the constrained road was one of
4 those pieces. The Applicant did note that the
5 long-range transportation plan by the MPO references
6 this as a constrained roadway. Policy 36.1.1
7 incorporates by reference all the road classifications
8 by the long-range transportation plan. And so
9 that's -- even though it's not on our tables that need
10 to be updated, the long transportation plan does
11 reference it, and then we reference the long-range
12 transportation plan. So it's a little back -- you've
13 got to back into it a little bit, but we are in
14 agreement that it is a constrained road.

15 The discussion on public safety, I just wanted to
16 maybe restate what was in the first -- first
17 presentation. There has been a concern, not an
18 objection, by Public Safety Staff at the onset of this,
19 that they wanted to be able to say yes or no to new
20 phases as they came in to ensure that they're providing
21 the adequate level of service expected both in rural
22 and nonrural areas. They wanted to be able to say we
23 are -- we are at a critical capacity here. And there's
24 a bit of speculation with the Babcock project -- not
25 that there's any issue with the property being conveyed

1 or an assumption that it won't happen, but just because
2 it's not there now, and it doesn't exist -- there's not
3 a built facility there -- we wanted to make sure that
4 that Emergency Services condition was in there to allow
5 for Emergency Services to provide an objection should
6 they find that there's a problem.

7 So with that, we still find that this project is
8 consistent with all the policies and objectives, as
9 well as the Land Development Code for that, but we do
10 find that to be appropriately addressed by the ability
11 that, moving forward, anything that comes in, that
12 Emergency Services can pump the brakes until the
13 adequate facilities are in.

14 I have two memos on two different subjects here:
15 One from our Utilities Staff, and then one is from our
16 DOT Staff.

17 I'll just touch on the DOT because Yury did a
18 great job just kind of explaining what we also received
19 from FDOT about the project phases that -- and this
20 kind of enumerates what's going on in each of those
21 phases. I don't want to necessarily restate them
22 because he stated them accurately, but what else is on
23 this memorandum is just kind of a brief history of the
24 "no through trucks" designation on North River Road.
25 Our Staff noted that that was part of the State Road 80

1 construction project, expansion. They didn't want the
2 construction traffic to be used -- or to use State
3 Road 78 through that, and so they put up those signs,
4 and then there was a weight concern on -- I think it's
5 Broadway is where the bridge is crossing the river.
6 Those have since been taken down, and those were
7 specifically correlated to that project.

8 Our Staff also notes that they do get requests
9 pretty frequently about reasserting that. Typically
10 speaking, there has to be an engineering reason to
11 provide them, and unless that policy changes either by
12 FDOT or some other organization, they probably can't
13 put them back in. But that's just a little bit of
14 background on that, and so I just want to provide you a
15 memo of that.

16 HEARING EXAMINER RIVERA: Okay, thank you. So
17 this would be Staff Exhibit 4, and this is the DOT
18 letter.

19 (Staff Exhibit 4 submitted.)

20 HEARING EXAMINER RIVERA: Thank you.

21 MR. DANLEY: The memo from Lee County Utilities is
22 a little more brief, but it just hits a couple of
23 subjects, just about the fact that FDEP -- and I'm
24 just -- I'm reviewing this. I'm not personally a
25 utilities expert, but I wanted to put this on the

1 record, that DEP has been clear, in their policies and
2 the direction that they're moving, that septic systems
3 are not -- they're not a priority for these areas,
4 particularly with constrained waterways, and that
5 extension of utility services is more of their
6 priority. So this is more in line with what the DEP is
7 looking for in this area compared to septic systems and
8 wells.

9 Currently, right now, there's also no policy
10 that's requiring why these lines get extended. There's
11 no policy requiring property owners adjacent to the
12 lines to connect to it. I personally live in Cape
13 Coral. It's different there. We're required to
14 connect to it, but the -- in this area that is not a
15 requirement. And so just making sure that that was on
16 the record, that the extension of the line isn't
17 compelling anybody to connect to those systems.

18 There is also -- there was a brief discussion with
19 one of the members of the public about future water
20 sources for Lee County Utilities in this area because
21 this is in a wellfield area. The comment that was made
22 is that Lee County Utilities, for municipal drinking
23 water supply, intends to use the Lower Hawthorne, which
24 is not typically utilized by individual wells in the
25 area, and so they don't have any expectation for that

1 to impact drinking supplies of existing wells.

2 And here's that memo for you, as well.

3 HEARING EXAMINER RIVERA: Okay, thank you. So
4 that will be Staff Exhibit 5.

5 (Staff Exhibit 5 submitted.)

6 HEARING EXAMINER RIVERA: Thank you very much.

7 MR. DANLEY: I think that covers all the points I
8 wanted to hit. Were there any questions that you had
9 for Staff? Oh, we did want to acknowledge, too, about
10 the School Board letter. We'll make sure that you get
11 that subsequent to this hearing.

12 HEARING EXAMINER RIVERA: Okay. And you did
13 review the 48-hour -- I think that was the second
14 48-hour letter that they submitted, and you're in
15 agreement with the proposed --

16 MR. DANLEY: Yes --

17 HEARING EXAMINER RIVERA: -- changes?

18 MR. DANLEY: -- yes, we've been working
19 extensively with the Applicant to make sure that all
20 those last details are ironed out, and we are in
21 agreement.

22 HEARING EXAMINER RIVERA: Okay, thank you. I
23 think that covered everything that I had, thank you.

24 Okay. Did you want to submit your PowerPoint from
25 today, the Applicant? I didn't have that.

1 MS. CRESPO: I don't have a hard copy. I can --

2 HEARING EXAMINER RIVERA: Okay.

3 MS. CRESPO: -- I can send it electronically.

4 HEARING EXAMINER RIVERA: Yes, you can send it
5 electronically. I'll pre-label it Applicant Exhibit 5.

6 MS. MONTGOMERY: Yes, we do definitely want it to
7 be part of the record.

8 HEARING EXAMINER RIVERA: Okay. I want to be sure
9 that we do that.

10 Okay. Were there any final comments from either
11 party?

12 MS. MONTGOMERY: No final comments from the
13 Applicant unless the Hearing Examiner has anything that
14 we haven't addressed that you feel needs to be
15 addressed.

16 HEARING EXAMINER RIVERA: I just want to check
17 through all my notes because I have copious notes in
18 this case. So give me one moment, please.

19 I think that we covered everything that I had
20 noted here.

21 So, yes, I will leave the record open just for the
22 school concurrency letter, if I could.

23 MS. MONTGOMERY: And the electronic copy of the
24 PowerPoint.

25 HEARING EXAMINER RIVERA: Yes, and the electronic

1 copy of the PowerPoint, both of those things, thank
2 you.

3 I can't imagine you need a lot of time to do that.
4 So end of business Tuesday, is that sufficient time for
5 everyone? So I will do that.

6 So for everyone, again, that spoke and submitted a
7 card, you will receive a copy of the recommendation
8 once that's released. I do have other cases in front
9 of this, and this -- there's a lot of documents, and I
10 want to be sure that I'm very thorough with it. It's
11 going to probably be a little bit of time before I
12 release that. I want to be very careful in my review
13 so I'm not going to rush to anything. You will receive
14 a copy of that, as well as notice of the Board hearing
15 when this goes to the Board.

16 So thank you, everybody, I appreciate everyone's
17 time and level of detail on this case because I did
18 review everything in detail, and I want to continue to
19 do that. So I appreciate everyone's thoroughness and
20 all of your comments, thank you.

21 MS. MONTGOMERY: Thank you very much.

22 HEARING EXAMINER RIVERA: Please stay well and
23 stay safe, and everyone have a great weekend, thank
24 you.

25 (Proceedings concluded at 10:50 a.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF LEE)

I, Deborah M. Bruns, Florida Professional Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript, pages 491 through 569, is a true and correct record of my stenographic notes.

Dated this 24th day of September, 2024.



Deborah M. Bruns, FPR

(This transcript was electronically signed.)

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