

M E M O R A N D U M
FROM
THE OFFICE OF THE
LEE COUNTY HEARING EXAMINER

DATE: January 30, 2025
TO: Board of County Commissioners FROM: Amanda L. Rivera 
Deputy Hearing Examiner

RE: DCI2022-00067 – CARY+DUKE+POVIA RPD
Modification to Hearing Examiner Recommendation

The Hearing Examiner revised the Recommendation to address Staff's Request for Clarification dated January 29, 2025. Modifications are limited to:

- Replacement of the word "Road" with "Drive" referring to North Olga Drive on page 7; and
- Replacement of the term "no opacity" with "full opacity" on page 12.

Please replace the Recommendation text with the attachment listed below. All other exhibits remain unchanged.

Attachment:

1. Revised Hearing Examiner Recommendation dated January 30, 2025

Copies Provided to: Michael Jacob, Deputy County Attorney
Joseph Adams, Assistant County Attorney
Anthony Rodriguez, Zoning Manager
Tracy Toussaint, Community Development
Applicant/Applicant's Representative(s)
Hearing Participants

MEMORANDUM
FROM
THE DEPARTMENT OF
COMMUNITY DEVELOPMENT

TO: Amanda L. Rivera
Deputy Hearing Examiner

DATE: January 29, 2025

FROM: Anthony R. Rodriguez, AICP, CPM
Zoning Manager



RE: Request for Clarification
Cary + Duke + Povia RPD
DCI2022-00067

Staff and the applicant have reviewed the recommendation for the above-referenced application and request the following clarifications from your office:

- HEX Recommendation, page 7:
 - The last bullet point refers to North Olga Road with respect to project traffic; however, North Olga Drive abuts a portion of the eastern boundary of the property subject to this request, and it appears this statement was meant to reference North Olga Drive.
- HEX Recommendation, page 12:
 - The first sentence on page 12 refers to "proposed buffers with no opacity and substantial setbacks preserve the rural aesthetic along North River Road." It appears this should read "100 percent opacity" in lieu of "no opacity."

Please contact me if you have any questions.

Respectfully Submitted,

Anthony Rodriguez, AICP, CPM
Zoning Manager

cc: Dirk Danley, Jr., AICP
Joe Adams
Alexis Crespo, AICP
Jem Frantz, AICP

Summary of Hearing Examiner Recommendation

CARY+DUKE+POVIA RPD

Applicant seeks approval of a residential community on North River Road. The site is south of Babcock Ranch MPD and adjacent to Owl Creek RPD. Proposed density is comprised of 771 base units and 328 additional units awarded for creation of Rare and Unique Upland Habitat. The resulting unit count is 1,099 units at 1.39 units per acre.

Site design locates three development pods on 788± acres, mitigating off-site impacts by:

- clustering development to dedicate over 60% of project acreage to open space;
- locating two-family housing internal to the development;
- enhancing buffers along the perimeter to preserve rural vistas;
- planting dense vegetation to achieve complete opacity along Duke Highway; and
- placing 420± acres under conservation easement.

Improvements to environmental conditions, site hydrology, and water quality include:

- creation of 300.01 acres, restoration of 2.68 acres, and preservation of 26.03 acres of Rare and Unique Upland Habitat;
- extension of sanitary sewer and potable water service;
- implementation of an engineered water management system; and
- centralized irrigation control.

The environmental benefits would not be available if the property were developed with homes reliant on wells and septic tanks under existing zoning. The Lee Plan rewards projects in the Rural land use category with additional density to encourage site design that achieves these environmental benefits. As conditioned, the additional 0.39 units per acre will have a *de minimis* effect on public services and infrastructure.

In all, 36 Participants spoke at hearing, largely in opposition to the request. Opponents expressed concerns primarily related to compatibility, traffic, and loss of rural character. Applicant conducted community outreach prior to hearing to address concerns and presented several modifications on Rebuttal in response to issues raised during hearing.

The Hearing Examiner accepted testimony over three days and reviewed extensive evidence in the record before rendering this Recommendation. After careful review of the record, the Hearing Examiner finds Applicant provided competent substantial evidence to support the request as conditioned.

Detailed recommendation follows

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2022-00067

Regarding: CARY+DUKE+POVIA RPD

Location: 13230 North River Road
Northeast Lee County Planning Community
(District 5)

Hearing Dates: September 4, 2024
September 6, 2024
September 20, 2024

Record Closed: September 24, 2024

I. **Request**

Rezone 788.96± acres from Agricultural (AG-2) to Residential Planned Development (RPD) to allow a clustered residential community containing up to 1,099 dwelling units with single-family/two-family attached dwellings and amenities. Maximum building height is 35 feet.

The property legal description is set forth in Exhibit A.

II. **Hearing Examiner Recommendation**

Approval, subject to the conditions and deviations set forth in Exhibit B.

III. **Discussion**

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners ("Board") on applications to rezone property to a planned development zoning district.¹ In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on an application to rezone 788.96± acres ("the property") to RPD.

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

¹ LDC §34-145(d)(2)a.

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

Request Synopsis/Zoning History

Applicant seeks approval to convert 788.96± acres of agricultural land to a residential planned community south of North River Road. The property is in the Northeast Lee County and North Olga Planning Communities, just south of Babcock Ranch and east of S.R. 31.

The site is mostly cleared for agricultural use with no history of prior zoning action.

The requested development plan includes three residential pods surrounded by expansive preserve/open space. Trout Creek bifurcates the western pod from the bulk of the RPD, isolating that development area with a single access to North River Road.² The eastern pods share two access points on North River Road. Accesses will be gated and setback 100 feet from the road. There is no access on Duke Highway or North Olga Drive.³ The Master Concept Plan ("MCP") identifies two school bus loading areas outside the North River Road right-of-way.⁴

Site design clusters development with significant setbacks along the project perimeter, featuring buffers ranging from 160 to 800 feet.⁵ Proposed residences are limited to single-family or two-family attached dwellings. The requested 35-foot height is standard for residential uses in the LDC, and identical to building heights on adjoining lands.⁶

The proposed 1,099 units are achieved through Rare and Unique Upland Habitat incentives established in the Lee Plan.⁷ Base density permits 771 units.⁸ Applicant requests an additional 328 units by preserving 26.03 acres, restoring 2.68 acres, and creating 300.01 acres of indigenous Rare and Unique upland habitat.⁹ Applicant will place 420 acres under conservation easement, ensuring perpetual maintenance of environmentally sensitive areas.

² While the western pod is geographically isolated, residents will have full access to RPD amenities regardless of which pod they reside. Crespo Testimony (Transcript pg. 105).

³ Applicant's expert planner testified early iterations of the site plan included an egress-only onto Duke Highway, but Applicant eliminated the Duke Highway access in response to opposition by residents. Crespo Testimony (Transcript pg. 20).

⁴ The MCP does not depict a school bus stop at the eastern access in recognition of School District spacing requirements. Frey Testimony (Transcript pg. 531-32).

⁵ There is a single anomalous pinch point of 60 feet in the southwestern corner, adjacent to vacant agricultural lands. See MCP.

⁶ See generally LDC §34-654, §34-695, and Owl Creek RPD. Maximum height is 35 feet in AG-2 and RS-1 districts by right.

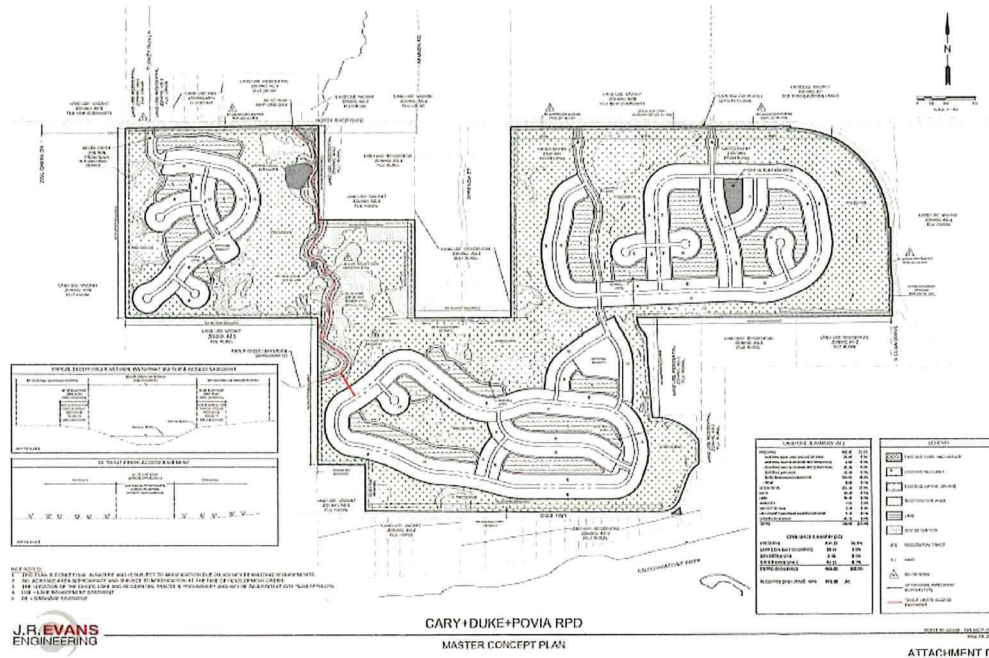
⁷ Lee Plan Policy 123.2.17.

⁸ See Staff Report (Attachment H & N).

⁹ See Staff Report (Attachment N). Resulting density is 1.39 units per acre.

The project will connect to potable water and sanitary sewer service. The Board adopted the Lee Plan amendment extending utility services to the site March 20, 2024.¹⁰

Staff recommended approval, finding the proposed RPD satisfies LDC and Lee Plan review criteria.



Character of Surrounding Area

The property is in the Northeast Lee County and North Olga Planning Communities (cumulatively, the "Community").¹¹ The Community aims to preserve a rural character, prioritizing open space and native vegetation.

North River Road serves as the primary means of access through the Community. It is a county maintained two-lane arterial road running from S.R. 31 to the Hendry County line. The viewshed along the road is primarily agricultural lands, with single-family homes visible at a distance. Staff estimates homes proximate to the site are set back roughly 300 feet from the road.¹²

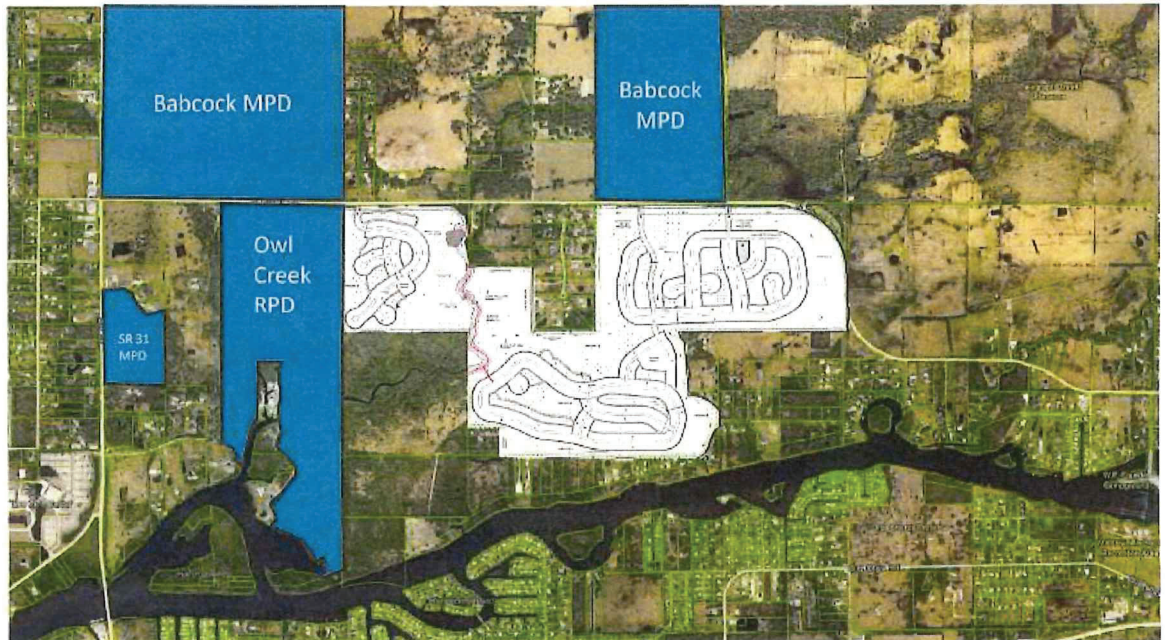
Lands to the east are engaged in agricultural pursuits. North River Road abuts to the north with the Babcock Mixed Use Planned Development ("MPD") across the road. Properties to the south host riverfront single-family homes along Duke Highway.

¹⁰ See Staff Report (pg. 3, Attachment M). The Board adopted CPA2022-00019 by Ordinance 24-06. *Id.*

¹¹ Northeast Lee County is located east of S.R. 31 and north of the Caloosahatchee River.

¹² See Staff Report (pg. 1).

In 2022, the Board rezoned the adjacent 343± acres to the Owl Creek RPD.¹³ Owl Creek RPD permits 380 units in a clustered development of single- and two-family attached homes at 35 feet in height.¹⁴



Zoning Review Criteria

Before recommending approval for rezoning to the Board, the Hearing Examiner must find the request:

- A. Complies with the Lee Plan;
- B. Meets the LDC and other applicable County regulations, or qualifies for deviations;
- C. Is compatible with existing and planned uses in the surrounding area;
- D. Provides access sufficient to support the proposed development intensity;
- E. The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;

¹³ Z-22-022.

¹⁴ *Id.*

- F. Will not adversely affect environmentally critical or sensitive areas and natural resources; and
- G. Will be served by urban services, defined in the Lee Plan, if located in a Future Urban area category.¹⁵

If the request involves planned development zoning, such as RPD, the Hearing Examiner must also find:

- H. The proposed use is appropriate at the proposed location;
- I. Recommended conditions provide sufficient safeguards to the public interest and reasonably relate to the impacts on the public's interest expected from the proposed development; and
- J. Each requested deviation (1) enhances the achievement of the objectives of the planned development, and (2) protects public health, safety, and welfare.¹⁶

Lee Plan Consistency

Planned developments must be consistent with the Lee Plan and minimize negative effects of proposed uses on neighboring properties.¹⁷

The Lee Plan Future Land Use Map designates the property in the Rural and Wetlands future land use categories.¹⁸

Rural areas are suited for low density residential, agricultural, and minimal non-residential land uses.¹⁹ Maximum density is one dwelling unit per acre, with density incentives available from preserving/restoring/creating Rare and Unique Upland Habitat.²⁰ The Rural land use category does not impose minimum lot sizes.²¹

Wetlands consist of low density residential and recreational uses that do not adversely affect ecological wetland function.²² Maximum permitted density is one unit per 20 acres, though developers may transfer density from wetland areas to contiguous uplands under common ownership.²³

¹⁵ See LDC §34-145(d)(4)(a)(1). The property is in a Rural land use category.

¹⁶ See LDC §34-145(d)(4)(a)(2).

¹⁷ Lee Plan Policy 2.1.2; LDC §34-411(a), (c), and (i).

¹⁸ Lee Plan Map 1-A, Policy 1.4.1, 1.5.1.

¹⁹ Lee Plan Policy 1.4.1.

²⁰ See *Id.*

²¹ Compare with: Lee Plan Policy 1.4.3 (Rural Community Preserves – minimum lot size requirements).

²² Lee Plan Policy 1.5.1.

²³ Lee Plan Policies 1.5.1, 124.1.1.

The property is subject to a host of site-specific Lee Plan directives given its location in the Northeast Lee County and North Olga Planning Communities. These Communities prioritize a rural lifestyle with open vistas and environmental preservation.²⁴

The Lee Plan is replete with policies designed to balance the Community's historic rural character and emerging growth patterns. Efforts to achieve this balance and honor the rural character include:

- Defining "rural character" by characteristics that convey a sense of rural lifestyle such as large lots or clustered development;²⁵
- Maintaining scenic qualities of North River Road;²⁶
- Preserving open space;
- Conserving large areas of open lands;²⁷
- Ample views of wooded areas;²⁸ and
- Protecting environmentally sensitive lands while providing regulatory flexibility.²⁹

The Community Plans encourage clustered development to conserve large areas of open lands.³⁰ Clustered development concentrates buildings/uses to reduce the project footprint.³¹ This technique allows the project's perimeter to be used for open space, buffering, recreation, water management, and protection of environmentally sensitive areas.³² The RPD clusters development in three pods, reserving 61% of project acreage as open space.³³

Applicant demonstrated the proposed site design achieves Lee Plan objectives by:

- Enhancing buffers along North River Road and Duke Highway utilizing native plant material;
- Screening development near Duke Highway with 100% vegetative opacity;³⁴
- Devoting 61% of the acreage to open space (483.6 acres);³⁵

²⁴ Lee Plan Goals 27, 29, Objectives 27.1, 27.2, 29.1, Policies 27.1.1, 27.1.2, 27.4.1, 29.1.1, 29.2.1.

²⁵ Lee Plan Objectives 27.1, 29.2, Policies 27.1.1, 27.1.2, 29.2.1.

²⁶ Lee Plan Objective 27.1, 27.3, 29.1, Policies 27.4.1, 29.1.1, 29.1.3.

²⁷ Lee Plan Objective 27.3, Policies 27.1.1, 27.1.2, 29.1.1.

²⁸ Lee Plan Objective 27.1.

²⁹ Lee Plan Objectives 27.1, 27.2, 27.3.

³⁰ Lee Plan Objective 27.1, 27.2, Policies 27.1.1, 27.1.2, 27.4.1, 29.1.1, 29.2.1.

³¹ Lee Plan Glossary.

³² *Id.*

³³ Alternatively, the record indicates that 788 single-family homes reliant on septic tanks could be developed on the property. The Lee Plan discourages septic tank use when sanitary sewer service is available. Lee Plan Goal 56, Objective 56.2, Policies 56.2.1, 135.9.7; See also Staff Ex. 5.

³⁴ Crespo and Hellman Testimony (Transcript pg. 96-116); Applicant Ex. 1 (slide 100-03). Applicant provided detailed lines of sight and illustrative renderings of the buffer at time of planting and after five years. See Conditions 3, 11. Applicant's planning expert is Alexis Crespo, AICP, RVI Planning & Landscape Architecture, Inc.

³⁵ See MCP (Land Use Summary table).

- Maintaining rural vistas along the perimeter, with 300- to 800-foot setbacks on North River Road and 170 feet on Duke Highway;³⁶
- Locating the nearest residence 405 feet from the North River Road right-of-way;³⁷
- Restoring lands impacted by decades of agricultural activity to improve species' habitat;
- Preserving 420 acres under conservation easement to ensure perpetual protection of environmentally sensitive lands;³⁸
- Providing two amenity campuses including community gardens;³⁹
- Connecting residents to sanitary sewer system rather than reliance on septic tanks;⁴⁰ and
- Directing project traffic to North River Road, with no access to Duke Highway or North Olga Drive.⁴¹

Applicant's landscape expert provided line of sight exhibits to illustrate visual impact on the traveling public.⁴² The northwestern pod offers the narrowest setback along North River Road yet still provides 405 feet of separation from the nearest residence.⁴³ Existing conditions in this location feature impacted pastureland without vegetation. Applicant proposes restoration plantings introducing 14-foot-high native canopy trees within the first 25 feet of the project boundary.⁴⁴

Restoration plantings were curated based on native plant communities to maintain and enhance rural character, add aesthetic value over present conditions, and create wildlife habitat.⁴⁵

³⁶ See Applicant Ex. 1 (slide 22).

³⁷ Hellman Testimony (Transcript pg. 39).

³⁸ See Condition 8; Crespo Testimony (Transcript pg. 35).

³⁹ Lee Plan Policies 29.2.3, 29.5.1; Crespo Testimony (Transcript pg. 23-24).

⁴⁰ Lee Plan Goal 56, Objective 56.2, Policies 56.2.1, 135.9.7; *See also* Staff Ex. 5.

⁴¹ Alternatively, individual lots could be developed under current AG-2 zoning that would generate additional traffic on Duke Highway and North Olga Drive.

⁴² Hellman Testimony (Transcript pg. 38-41, 96-99); Applicant Ex. A: 48-Hour Letter Expert Witness List, dated Aug. 30, 2024; Applicant Ex. 1 (slides 26-31); Applicant Ex. 4-5. Line of sight exhibits reflect the perspective of a six-foot-tall person standing at the property boundary. Lee Plan Policy 27.4.1.

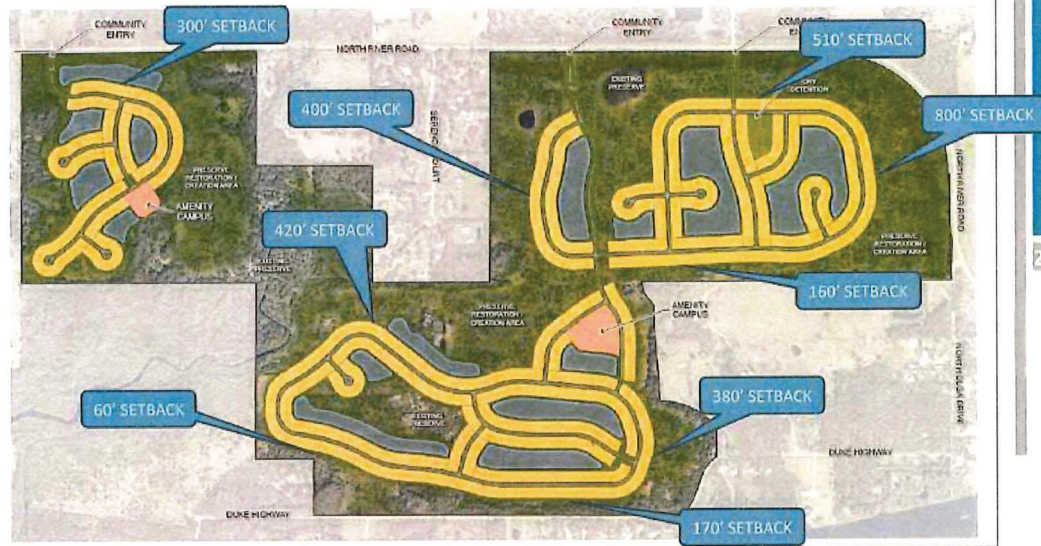
⁴³ Hellman Testimony (Transcript pg. 39-40).

⁴⁴ *Id.*

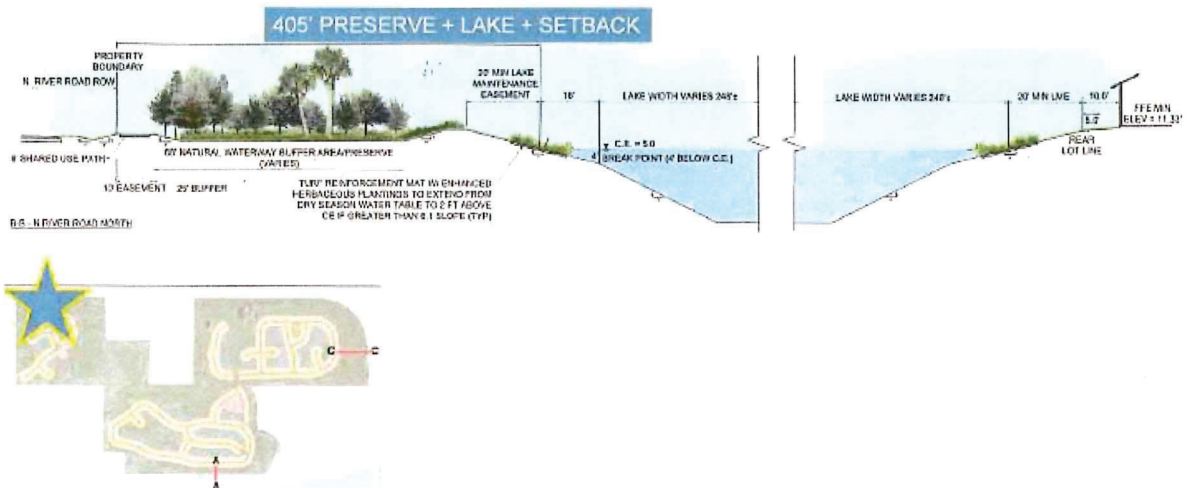
⁴⁵ Applicant Ex. 1 (slide 32); Hellman Testimony (Transcript pg. 41).

CARY+DUKE+POVIA RPD

ENHANCED SETBACKS



22

Additional Units

"Incentive" density is distinguishable from "bonus" density, although the terms were used interchangeably throughout the record.⁴⁶ The request does not seek bonus units. Rather, Applicant seeks additional units through Lee Plan incentives

⁴⁶ Bonus density is governed by Chapter 2 of the LDC and relates to Affordable Housing and Transfer of Development Rights ("TDR") Programs. See LDC Ch. 2, Div. 2, §§2-146 *et. seq.*

designed to create/preserve/restore Rare and Unique Uplands.⁴⁷ Applicant must prove the project qualifies for additional units through extensive measures *before* additional units are awarded.⁴⁸ The record demonstrates Applicant's proposed measures improve environmental features/function of the property over present conditions.⁴⁹

Rare and Unique Upland Habitat

The Lee Plan incentivizes preservation, enhancement, and restoration of indigenous Rare and Unique upland habitat within the Rural land use category.⁵⁰ The Plan awards one dwelling unit for each acre of created/ enhanced/restored habitat satisfying enumerated criteria.

Applicant demonstrated compliance with the criteria as follows:

1. Development must be at least 10 acres and developed as a unified planned development.
 - *The requested RPD comprises 788± acres.*
2. Development must have direct access to an arterial road.
 - *The MCP depicts three access points to North River Road, a county-maintained arterial.*⁵¹
3. Development must provide connection to public water and sewer services.
 - *The property lies within the County water/wastewater service areas. Developer must extend lines to serve the project. A condition of approval ensures Applicant constructs the infrastructure necessary to support the requested density.*⁵²
4. Development is clustered to maintain large, contiguous tracts of open space and protect environmentally sensitive areas. To comply with this criterion, a minimum of 60% open space is required, of which 50% must be indigenous preserve.
 - *The RPD reserves 61% of its land area for open space.*
5. Creation, preservation, or restoration of indigenous Rare and Unique upland habitats must meet four technical criteria relating to open space dimension, soil composition, ecological restoration plans, and conservation easement recordation.

⁴⁷ See Lee Plan Policies 1.4.1, 123.2.17.

⁴⁸ The Lee Plan imposes quantitative *and* qualitative metrics to development proposals in the Rural category.

⁴⁹ See Staff Report (Attachment N); Johnson Testimony (Transcript pg. 49-67, 458-75).

⁵⁰ Lee Plan Policy 123.2.17.

⁵¹ Lee Plan Map 3-B; Staff Report (pg. 1).

⁵² See Lee Co. Ord. 24-06 (adopting CPA2022-00019); Condition 4.

- *County Environmental Staff provided detailed analysis of the request for each of the four criteria. Conditions of approval ensure compliance before the county grants additional density.*⁵³

Compatibility

The Hearing Examiner must evaluate zoning requests for compatibility with surrounding land uses and community character.⁵⁴ Rezoning requests are determined on a case-by-case basis considering the uses permitted by the Lee Plan and the nature of the surrounding area.⁵⁵

The LDC defines *compatible* as the state wherein two land uses/zoning districts exhibit either: (1) a positive relationship based on fit, similarity, or reciprocity of characteristics; or (2) a neutral relationship based on a relative lack of conflict or a failure to communicate negative/harmful influences on one another.⁵⁶

Members of the public found the proposed lot sizes to be incompatible with historic development patterns.⁵⁷ However, the Community Plan does not impose minimum lot sizes and the Lee Plan incentivizes clustered development patterns to preserve open space in the Rural category.⁵⁸

The Lee Plan protects existing residential areas from encroachment of *uses* deemed destructive to the character of the residential environment.⁵⁹ The LDC does not require new development to be identical to existing uses.⁶⁰ Neither the Lee Plan nor the LDC require density of adjacent properties to match.⁶¹

⁵³ See Staff Report (pg. 4, Attachment G & N); Conditions 6, 8-10. Applicant's expert ecologist testified as to the project meeting criteria 4-5. Johnson Testimony (Transcript pg. 49-67, 458-74). See also Crespo Testimony (Transcript pg. 111-13); Danley Testimony (Transcript pg. 121-22).

⁵⁴ FLA. STAT. §163.3164(9) (2024). The County evaluates compatibility during the zoning process. LDC §34-145(d), §34-411(c); The Lee Plan provides guideposts to measure compatibility, particularly adjacent to established residential development. See Lee Plan Policies 5.1.5, 135.9.5, 135.9.6.

⁵⁵ LDC §34-413.

⁵⁶ LDC §34-2.

⁵⁷ Public Testimony (Transcript pg. 142-458).

⁵⁸ Applicant provided substantial evidence and testimony demonstrating consistency with Lee Plan Policy 29.2.2. Crespo Testimony (Transcript pg. 89-101); Applicant Ex. 1 (slide 91-101). Danley Testimony (Transcript pg. 125-26). The Community Plans permit clustered development and recognize well-planned subdivisions may be woven into the fabric of the Community without detriment. Lee Plan Objectives 27.1, 29.2, Policies 27.1.1, 27.1.2, 29.2.1.

⁵⁹ Lee Plan Policy 5.1.5, 135.9.5.

⁶⁰ The plain language of the LDC does not define "compatible" to mean "identical." *Id.*

⁶¹ Residential land uses are inherently compatible with other residential land uses. Lee Plan Policy 5.1.5. A plain reading reveals this policy aims to protect residents from potentially harmful "uses," such as commercial or industrial projects infringing on residential communities. In this case, proposed single- and two-family residential uses are facially consistent with this policy.

Applicant seeks to rezone the property to a planned development district.⁶² Planned development zoning is appropriate because it offers flexibility in project design while still implementing the goals, objectives, and policies of the Lee Plan.⁶³

Conditions of approval integrate the project with surrounding uses through screening/buffering, open space, and landscape design.⁶⁴ These design elements achieve compatibility with surrounding development patterns.

Continuation of Approved Development Patterns

There are similar planned developments near the site.⁶⁵ The Board approved Babcock MPD across North River Road to develop up to 1,630 dwelling units and 1,170,000 square feet of non-residential uses including 600 hotel rooms.⁶⁶ Babcock MPD reserves large open spaces and preserves environmentally sensitive lands by clustering development within the site. Owl Creek RPD abuts to the west and permits 380 units also implementing clustered development. Both projects were designed to exercise similar density incentives as the request.

The Lee Plan encourages a diverse mix of housing options.⁶⁷ The RPD furthers emerging development patterns that include single-family homes on acreage and subdivisions on smaller lots.⁶⁸

By clustering development on smaller lots, the RPD is able to devote over 60% of the site to open space. Large tracts of native vegetation surround development areas, buffering adjacent land uses.⁶⁹

A hallmark of maintaining compatibility in the Community is to maintain existing patterns of setbacks from North River Road.⁷⁰ Setbacks and landscaping with canopy trees preserve rural vistas.⁷¹ The RPD employs this design feature, exceeding roadside landscaping approved in the Owl Creek and Babcock PDs.⁷²

⁶² LDC §34-931(b), §34-932.

⁶³ Lee Plan Glossary; LDC §34-612(2), §34-935. Babcock property is in the New Community future land use category.

⁶⁴ LDC §34-612(2). Another purpose is to further Lee Plan goals while providing flexibility in development design.

⁶⁵ The adjacency and proximity of planned developments assuages spot zoning concerns expressed during public comment.

⁶⁶ See Staff Report (Attachment K, Z-17-026 approved February 7, 2018). Lee Plan Objective 29.9, Policies 29.9.1, 29.9.2.

⁶⁷ Lee Plan Policy 5.1.5; Danley Testimony (Transcript pg. 129); Staff Ex. 3 (slide 18).

⁶⁸ The Board must evaluate compatibility with surrounding land uses and community character. Lee Plan Objective 2.1 and Policy 2.2.2. There are single-family subdivisions on smaller lots in proximity to the site. Most notably, Owl Creek RPD and Babcock Ranch MPD.

⁶⁹ Lee Plan Goal 77, Objectives 77.1, 77.3, Policies 5.1.5, 29.2.2, 77.3.1, 77.3.4.

⁷⁰ Lee Plan Policy 27.4.1.

⁷¹ Lee Plan Goals 27, 29, 77, Objectives 29.1, 29.2, Policies 29.1.1, 29.1.3; See also LDC §33-1673.

⁷² See Staff Report (Attachments K-L).

Proposed buffers with full opacity and substantial setbacks preserve the rural aesthetic along North River Road.

The Hearing Examiner finds the proposed RPD complies with Lee Plan directives to protect the rural character of the Community because the Plan encourages clustered development to preserve open space.⁷³

Environmental/Natural Resources⁷⁴

Planned development design should reflect creative use of open space.⁷⁵ Developers must protect and preserve natural site features.⁷⁶ Rezoning requests may not adversely affect environmentally critical/sensitive areas or natural resources.

In its natural state, the property hosted two tributaries with flow-ways to the Caloosahatchee River and a sizeable marsh.⁷⁷ The site has historically been used for agricultural pursuits, mostly logging and cattle grazing.⁷⁸ Significant ditching necessary to support agricultural operations caused Otter Creek to cease function as a tributary or connect to Trout Creek. Spoil material from Caloosahatchee River dredging deposited on the site in the 1960s-70s eradicated the marsh. Cattle demands led to several ponds peppered around the property. Experts agree the site is no longer pristine environmental land as a result of these actions.⁷⁹

Although the site has been impacted by agriculture, it contains pockets of natural resources worthy of preservation.⁸⁰ The ecologist estimates 9% of the property contains indigenous vegetation, consisting of isolated wetlands and rare/unique uplands with Live Oak and Cabbage Palm hammocks.⁸¹

The plan of development preserves/restores wetlands and creates 420.2± acres of Rare and Unique uplands.⁸² Development impacts to wetlands will be limited to 18.85 acres.⁸³ Proposed restoration activities will re-establish the site's

⁷³ Lee Plan Goals 27, 29, Policies 2.2.1, 5.1.5, 27.1.1, 27.1.2, 29.1.1, 29.2.1.

⁷⁴ Shane Johnson, Senior Ecologist, Passarella & Associates, Inc. provided detailed testimony on the historical, present, and proposed environmental condition of the property. Johnson Testimony (Transcript pg. 49-67, 458-74); Applicant Ex. 1 (slides 40-53).

⁷⁵ LDC §34-411(h).

⁷⁶ LDC §34-411(g).

⁷⁷ *Id.* at 49-50.

⁷⁸ *Id.* at 50.

⁷⁹ Johnson Testimony (Transcript pg. 52); Staff Report (Attachment N: Environmental Staff Report). Mr. Johnson estimates 91% of the land is disturbed nonindigenous areas. Transcript at pg. 53.

⁸⁰ Lee Plan Policy 77.3.3.

⁸¹ Johnson Testimony (Transcript pg. 53-54, 58).

⁸² Lee Plan Policy 77.3.1.

⁸³ See Condition 9. Hearing testimony reflects impacted wetlands are very low quality. Johnson Testimony (Transcript pg. 467-68). Mr. Danley further noted that site design avoids development in Coastal High Hazard Areas, consistent with Lee Plan Goal 101 and attendant policies. Transcript pg. 123-24, 128; Staff. Ex. 3 (slide 13).

environmental integrity.⁸⁴ The MCP devotes 61% of the property to open space, 50% of which is native/indigenous vegetation.⁸⁵ Conditions of approval require Applicant to provide conservation easements over areas used to achieve density incentives.⁸⁶

The MCP preserves two sites of archeological significance within open space/preserve areas.⁸⁷

Applicant's protected species surveys identified several listed animal and plant species.⁸⁸ Development must abide by a detailed Protected Species Management and Human-Wildlife Coexistence Plan imposing protective measures, signage, and educational programs.⁸⁹ Restored lands provide on-site interconnections for wildlife movement.⁹⁰

Applicant's civil engineer detailed pre- and post-development drainage conveyances.⁹¹ Stormwater management design avoids disruption to upstream or downstream residents.⁹² Restored flow-ways/wetlands improve the function of conveyances, allowing offsite flows to pass through, re-establishing historical drainage patterns.⁹³ Onsite wet and dry detention together with preserves treat/filter storm water flows prior to discharging off-site.⁹⁴ Proposed conditions require a unified maintenance entity subject to regulatory oversight to ensure perpetual operation of the stormwater management system.⁹⁵

⁸⁴ Conditions of approval require development order plans to reflect 420.2 acres of restoration/preservation in detail. Condition 6; Lee Plan Objective 29.7, Policies 29.7.2, 123.2.9.

⁸⁵ Crespo Testimony (Transcript pg. 22); Lee Plan Goal 77.

⁸⁶ Lee Plan Objectives 27.3, 29.7, Policy 29.7.2; Conditions 3, 8-9. The County or other public agency will have third party enforcement rights over conservation easements.

⁸⁷ Lee Plan Policy 143.2.2.

⁸⁸ See Staff Report (Attachment N, Ex. A: Protected Species Survey prepared by Passarella & Associates, Inc., revised May 2023).

⁸⁹ Lee Plan Policies 123.3.3, 123.8.1, 123.10.2; See Staff Report (Attachment N, Ex. B: Protected Species Management and Human-Wildlife Coexistence Plan prepared by Passarella & Associates, Inc., revised April 2024).

⁹⁰ Lee Plan Policy 27.4.3. Mr. Johnson clarified on rebuttal that the property is bounded by North River Road and the Caloosahatchee River, so there are no existing wildlife corridors to preserve. Further, the vast majority of the site is not habitable for animal species, though the creation of rare/unique uplands will provide greater habitat. Johnson Testimony (Transcript pg. 458-74).

⁹¹ Applicant's civil engineering expert is Brandon Frey, P.E., J.R. Evans Engineering, P.A. Frey Testimony (Transcript pg. 67-80, 509-19); Applicant Ex. 1 (slides 57-58).

⁹² Frey Testimony (Transcript pg. 77-78, 512-15); Lee Plan Policy 61.2.1.

⁹³ Frey Testimony (Transcript pg. 70-71, 75-80, 512-14). See generally Lee Plan Goals 59, 60, 61, Policies 59.1.6, 60.4.1, 60.4.3, 60.4.5, 61.2.4, 61.3.3, 61.3.6, 61.3.8, 61.3.12, 77.3.4.

⁹⁴ Frey & Martin Testimony (Transcript pg. 69-71, 80-88, 509-19); Lee Plan Goals 60, 61, 125, Objectives 60.4, 61.2, Policies 60.4.1, 60.4.5, 61.3.11, 125.1.1, 125.1.2.

⁹⁵ Applicant must obtain permits from the South Florida Water Management District as well as Lee County. A unified entity such as a HOA or CDD will have perpetual maintenance responsibilities over the water management system. There are various mechanisms in place through development approvals to ensure perpetual maintenance.

The introduction of sanitary sewer and centralized water service, together with the restoration of flow-ways/open space areas, will improve water quality and nutrient uptake on the site.⁹⁶ Recommended conditions require a Surface Water and Groundwater Quality Monitoring Plan to ensure water levels/quality stay within permissible ranges.⁹⁷

Proposed lake system design must meet County, State, and Federal standards for water retention, flood management, and water quality.⁹⁸ The system directs surface waters to preserve areas to provide multiple levels of treatment and water quality storage before discharging off-site.⁹⁹

Expert testimony confirms there will be a significant reduction in groundwater use over current agricultural operations. Projections indicate reductions of 50-95% of water usage and nutrient loading. These reductions in water use will greatly benefit a community reliant on wells.¹⁰⁰ The proposed centralized irrigation system further protects groundwater from indiscriminate watering by residents.¹⁰¹

Applicant established the request improves site hydrology and protects water quality by: introducing sanitary sewer, implementing an engineered water management system, discontinuing livestock grazing, and centralizing irrigation.

Benefits of the proposed RPD over current conventional AG-2 zoning include:

- Eliminating nearly 800 homes reliant on private well and septic systems;¹⁰²

⁹⁶ Applicant Ex. 1 (slides 62-68); Lee Plan Goal 125, Policies 125.1.1, 125.1.2. The project Hydrologist is Kirk Martin, P.G., Water Science Associates. Martin Testimony (Transcript pg. 82-84, 474-87).

⁹⁷ See Condition 13; Applicant Ex. 1 (slide 63). Seven monitoring stations will be sampled biannually with reporting requirements to regulatory agencies.

⁹⁸ Martin Testimony (Transcript pg. 81).

⁹⁹ *Id.*

¹⁰⁰ Testimony confirmed sanitary sewer system reduces nitrogen by 89% over septic tanks with overall reduced nutrient loading of 50% to 95%. *Id.* at 83-84; Applicant Ex. 1 (slide 66-67). Mr. Martin estimates reduced water usage of 50%. *See Id.*

¹⁰¹ Mr. Martin detailed benefits of a centralized sewer connection over septic tanks, including increased buffering, more preserve area, greater wildlife habitat, improved floodplain management, increased stormwater storage and treatment. Transcript at 83. Mr. Martin provided extensive testimony on the project's reduced irrigation system and demands. Irrigation will be limited to approximately 12 percent of the property and will be sourced entirely on-site. *Id.* at 84-86, 476-77. Mr. Martin further testified modeling reported to South Florida Water Management District confirmed less than 0.1 feet of drawdown at the property boundary, concluding the project's irrigation system presents no off-site impacts. *Id.* at 484. Lee Plan Policy 61.1.6

¹⁰² The site is 788± acres but the record reflects 771.07 acres may be developed. *See* Staff Report (Attachment H). The Rural land use classification permits residential development at a base density of one unit per acre and Wetlands permit one unit per 20 acres. Lee Plan Policies 1.4.1, 1.5.1. If the property were subdivided into one-acre lots under the existing agricultural zoning designation, there would be no dedicated water management plan to address sheet flow from the north or to improve water quality of surface water runoff. Septic tanks would serve the dwelling units, but there could be no requirement for upgraded/enhanced septic systems. Finally, there would be no requirement for buffers or preservation of native vegetation. Applicant presented a rendering to illustrate what one-acre lots might produce on the site. Applicant Ex. 5 (slide R7).

- Protecting nearby Wellfield Protection areas;
- Improving flood plain management, increasing water storage, and reducing runoff;
- Providing 483.6 acres of open space and 420.2 acres of preserves, or 61% and 50% of the total RPD area, respectively;¹⁰³
- Preserving 26.03 acres, restoring 2.68 acres, and creating 300.01 acres of indigenous Rare and Unique Upland Habitat;
- Removing exotic vegetation;
- Conserving 51.46 acres of Wetlands;
- Implementing a Protected Species Management and Plan;
- Imposing a centralized irrigation system to limit water withdrawals;
- Connecting to sanitary sewer system to reduce nutrient loading by 50-95% over septic tanks;¹⁰⁴
- Centralizing potable water service to reduce water usage by 50% over private wells;¹⁰⁵
- Establishing Surface Water and Groundwater Monitoring Plans; and
- Protecting Trout Creek and Otter Creek floodplains.

The Hearing Examiner finds the proposed RPD will not harm environmentally critical/sensitive areas or natural resources.¹⁰⁶

Transportation

Planned developments must have access to roads with sufficient capacity to support proposed intensity.¹⁰⁷ Existing regulations or conditions of approval must address expected impacts on transportation facilities.¹⁰⁸

The MCP depicts three access points on North River Road. North River Road is a County maintained two-lane arterial road.¹⁰⁹ S.R. 31, a State maintained two-lane arterial road, intersects North River Road to the west.

The Florida Department of Transportation ("FDOT") governs S.R. 31 and is overseeing improvements to widen the roadway to four lanes and improve the North River Road/S.R. 31 intersection.¹¹⁰ Improvements are underway and slated

¹⁰³ Preserve acreage is included in open space calculations. The MCP reflects 483.6 acres of open space, of which 420.2 acres are preserved. Site design yields 40% development and 60% open space. Half of the open space will be vegetated.

¹⁰⁴ Applicant Ex. 1 (slide 66).

¹⁰⁵ *Id.* at 67.

¹⁰⁶ Lee Plan 125.1.2; LDC §34-145(d)(4).

¹⁰⁷ LDC §34-145(d)(4)(a)(1)(d); §34-411(d)(1).

¹⁰⁸ LDC §34-145(d)(4)(a)(1)(e); §34-411(d)(2).

¹⁰⁹ Lee Plan Map 3-B.

¹¹⁰ Babcock Ranch Community Independent Special District manages the design/build project for improvements to S.R. 31 from S.R. 78 to Babcock Ranch. Treesh Testimony (Transcript pg. 44-45); Applicant Ex.1 (slide 37); Staff Report (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024).

for completion in 2026.¹¹¹ Initial design expands S.R. 31 to four lanes, but the project can accommodate six lanes in the future.¹¹² Improvements are also programmed for S.R. 31 south of S.R. 78/Bayshore Road to S.R. 80/Palm Beach Boulevard.¹¹³

Applicant's transportation experts prepared a Traffic Impact Statement ("TIS") consistent with County requirements.¹¹⁴ The TIS concluded project traffic will not significantly impact surrounding roadways.¹¹⁵ A "significant impact" is found when a proposed rezoning generates traffic that reduces Level of Service ("LOS") volumes of affected roads by at least 10%.¹¹⁶

FDOT programmed improvements along the S.R. 78 and S.R. 31 corridors will increase carrying capacity to accommodate anticipated growth.¹¹⁷ Testimony confirmed road improvements should be completed prior to project build-out.¹¹⁸ The TIS concludes no County road improvements are necessary to accommodate the projected trip generation.¹¹⁹ The RPD will mitigate transportation impacts with road impact fees.¹²⁰

While there are no plans to widen North River Road, several factors are expected to improve road conditions.¹²¹ FDOT is improving the North River Road/S.R. 31

¹¹¹ See Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023); Bykau Testimony (Transcript pg. 496-497); Staff Ex. 4.

¹¹² See *Id.*; See Staff Report (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024).

¹¹³ Treesh & Bykau Testimony (Transcript pg. 44-49, 497-498). Residents questioned the timing and status of this project during public testimony. The Parties addressed the matter on rebuttal to confirm FDOT has completed the PD&E study and funded the project with an estimated commencement date of 2029. Applicant Ex. 5 (e-mail from Patrick Bateman, P.E., FDOT Project Manager, dated 9/4/24); Staff Ex. 4 (e-mail from Jillian Scholler, P.E., LDOT Deputy Director); Treesh & Bykau Testimony (Transcript pg. 44-49, 496-506).

¹¹⁴ Lee Co. Admin. Code 13-17; LDC §34-371, §34-373(a)(7). Applicant's transportation experts are Ted Treesh, PTP and Yury Bykau, P.E. with TR Transportation Consultants, Inc.

¹¹⁵ See Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023), (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024).

¹¹⁶ Staff Report (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024, citing Lee Co. Admin. Code 13-17). The definition measures reductions from LOS C. The road segment of S.R. 31 south of S.R. 78 was projected to operate at a LOS F with the project, but transportation experts for the Parties concluded FDOT improvements address the projected capacity deficiency. See Staff Report (Attachments P & Q); Treesh & Bykau Testimony (Transcript pg. 44, 48-49, 496-507).

¹¹⁷ Treesh, Bykau, and Danley Testimony; Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023), (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024).

¹¹⁸ Bykau Testimony (Transcript pg. 497-500).

¹¹⁹ See Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023).

¹²⁰ Lee Plan Policies 38.1.1, 38.1.5, LDC §§2-261 *et. seq.* See Staff Report (Attachment Q: Memorandum from P. Sutitarnnontr dated July 31, 2024). Applicant estimates the project will generate \$10.3 million in road impact fees. See Applicant Ex. 5; Bykau Testimony (Transcript pg. 503-04).

¹²¹ The record contains references to North River Road designation as a "constrained road." A constrained road refers to roadway segments that cannot/will not be widened. North River Road is not designated as a constrained road in the Lee Plan but is shown as such in the 2045 MPO Plan and adopted by reference in Lee Plan Policy 36.1.1. Bykau and Danley Testimony (Transcript pg. 500-03, 563).

intersection to facilitate traffic circulation.¹²² Site-related improvements required by the Owl Creek and Babcock PDs may also improve conditions on North River Road.

In sum, Applicant demonstrated the RPD has sufficient access to an arterial roadway proximate to a State arterial road undergoing significant improvements. Transportation studies concluded project traffic will not significantly impact surrounding roadways.¹²³ Applicant must provide further traffic analysis and address site-related improvements during development order review.¹²⁴

Public/Urban Services

Public/urban services are the facilities, capital improvements, and infrastructure necessary to support development.¹²⁵ The Lee Plan requires an evaluation of available urban services during the rezoning process.¹²⁶

Despite the property's non-urban designation, it will have access to public services and infrastructure.¹²⁷ The project will connect to Lee County Utilities' potable water supply, eliminating the need for individual wells.¹²⁸ The RPD will also connect to FGUA sanitary sewer services. Sanitary sewer service eliminates the possibility of septic tank discharges affecting groundwater and the Caloosahatchee River.¹²⁹

Fire and emergency services will be provided by Bayshore Fire Protection and Rescue Service District. The Babcock Development Agreement requires conveyance of a parcel for a fire/EMS station on Shirley Lane. This future station is within two miles of the site.¹³⁰ Applicant asserts EMS services will be operational at the station before residents occupy the RPD.¹³¹ The graphic below depicts the location of the station relative to the property.

¹²² Current design plans indicate FDOT selected a Restricted Crossing U-turn ("RCUT") design for this intersection. RCUT intersections route traffic to right-turns with designated median openings for travelers seeking to go left. Treesh Testimony (Transcript pg. 45-46); Applicant Ex. 1 (slide 37).

¹²³ See Staff Report (Attachment P: Traffic Impact Statement by TR Transportation Consultants, Inc. dated Feb. 6, 2023).

¹²⁴ Lee Plan Objective 39.1 and Policy 39.1.1, LDC §10-287. Site related improvements such as turn lane installations will be determined at the development order stage based upon specific development parameters.

¹²⁵ Lee Plan Glossary: Public services include public water/sewer, paved streets/roads, public transit, parks/recreation facilities, urban levels of police, fire, and emergency services, urban surface water management, schools, employment, industrial, and commercial centers, institutional, public, or administrative facilities, community facilities such as senior citizens centers, libraries, and community centers.

¹²⁶ Lee Plan Policy 2.2.1.

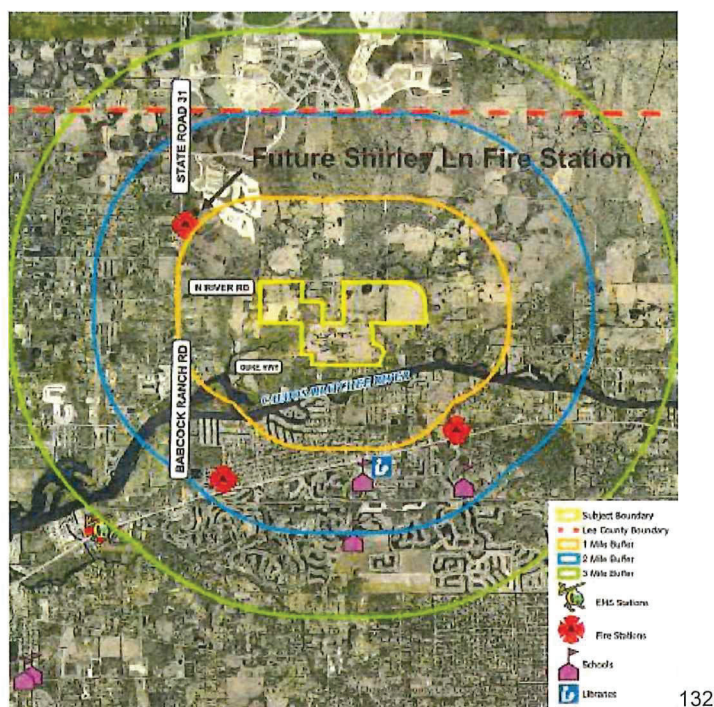
¹²⁷ Danley Testimony (Transcript pg. 122-23); Staff Ex. 3 (slide 10, 12).

¹²⁸ Applicant will fund extension of a water main to serve the property. The water line extension will accommodate fire hydrants along its length, improving fire safety within the North Olga planning community. Developer will also fund extension of sanitary sewer service to the property.

¹²⁹ Martin Testimony (Transcript pg. 82-84, 474-87); Applicant Ex. 1 (slide 64-65).

¹³⁰ Crespo Testimony (Transcript pg. 19, 106, 552-54).

¹³¹ *Id.* at 19, 552-53.



Notably, Applicant proposes to nearly double the number of fire hydrants in the area, dramatically improving public safety by providing a reliable water source for fire suppression.¹³³

The Lee County Sheriff provides law enforcement services to the area from its North District offices.

The Lee Plan designates North River Road as a future bike/pedestrian facility.¹³⁴ Applicant must install an eight-foot shared use path consistent with the Community Plan.¹³⁵ The path constitutes approximately two miles along the RPD's North River Road frontage.¹³⁶

Development will be subject to road, park, school, fire, and EMS impact fees.¹³⁷

¹³² Applicant Ex. 1 (slide 13).

¹³³ Frey Testimony (Transcript pg. 73-74); Applicant Ex. 1 (slide 60). Testimony reflects there are currently only four hydrants in this area; Applicant proposes seven hydrants.

¹³⁴ Lee Plan Map 3-D.

¹³⁵ Crespo & Frey Testimony (Transcript pg. 22, 73); Applicant Ex. 1 (slide 59); LDC §10-256; *See also* Lee Plan Policies 27.4.1, 27.4.2, 27.4.4.

¹³⁶ *Id.* at 73.

¹³⁷ LDC §§2-261 *et seq.*, §§2-301 *et seq.*, §§2-341 *et seq.*, §§2-381 *et seq.* §§2-400 *et seq.*

LDC

Rezoning applications must meet the LDC and other County regulations or qualify for deviations.¹³⁸ Applicant must also comply with the North Olga Planning Community's adopted supplemental regulations.¹³⁹ These regulations include community review of zoning and development order applications, architectural and design standards, enhanced landscaping, tree preservation, and restricted signage.¹⁴⁰ Applicant seeks five deviations from the LDC.

Deviations

The proposed RPD includes five deviation requests.¹⁴¹ "Deviations" are departures from the land development regulations.¹⁴²

The Hearing Examiner's standard of review for deviations requires a finding that the deviation:

1. Enhances objectives of the planned development; and
2. Protects public health, safety, and welfare.¹⁴³

The requested deviations pertain to access,¹⁴⁴ roadway plantings,¹⁴⁵ lake bank slopes,¹⁴⁶ equipment pad setbacks,¹⁴⁷ and drainage easement width.¹⁴⁸ Most deviations are sought to limit the development footprint and avoid crossing Trout Creek.¹⁴⁹ Applicant offered testimony and evidence in support of the requested

¹³⁸ LDC §34-145(d)(4)a.1(b).

¹³⁹ See *generally* LDC ch. 10, ch. 34, and §§33-1661 *et. seq.* Lee Plan Policy 29.1.3.

¹⁴⁰ LDC §§33-1661 *et seq.*

¹⁴¹ Applicant Ex. 1 (slides 15-19).

¹⁴² LDC §34-2.

¹⁴³ LDC §34-377(a)(4).

¹⁴⁴ Deviation 1 seeks relief from the LDC §10-291(3) requirement for multiple access points to permit the development pod west of Trout Creek a single access. Justification for this deviation includes eliminating crossing the creek and allowing for greater area for preservation of environmentally and archaeologically sensitive lands. See Applicant Ex. 1 (slide 15).

¹⁴⁵ Deviation 2 seeks relief from the LDC §33-1673 buffer requirements to permit Applicant to implement native restoration work along North River Road. The spirit of the LDC continues to be met through enhanced plantings, preserving the intent of the buffer with native trees to preserve the visual experience along the roadway for the traveling public. See Applicant Ex. 1 (slide 16). This request requires Applicant to meet LDC chapter 34 variance criteria, which was provided in the record. See Staff Report, Transcript pg. 534-36, Lee Plan Policies 27.4.1, 29.1.4.

¹⁴⁶ Deviation 3 seeks relief from LDC §10-329(d)(4) lake bank slope requirements to reduce the development footprint by allowing a 4:1 slope. Turf reinforcement mats and enhanced herbaceous plantings mitigate erosion potential. See Applicant Ex. 1 (slide 17).

¹⁴⁷ Deviation 4 allows equipment pad encroachments into side yards. This deviation is routinely granted and an LDC amendment is expected to codify this standard County-wide. See Crespo and Danley Testimony (Transcript pg. 27, 143); Applicant Ex. 1 (slide 18).

¹⁴⁸ Deviation 5 reduces the maintenance easement width along the western development pod to permit greater land area for preservation and restoration activities. Applicant Ex. 1 (slide 19); Crespo Testimony (Transcript pg. 28-29).

¹⁴⁹ Crespo Testimony (Transcript pg. 24-29); Applicant Ex. 1 (slides 15-19).

deviations based on the standard of review set forth in the LDC.¹⁵⁰ Staff found all deviations met LDC criteria for approval.

The Hearing Examiner agrees with staff's recommendations and finds, as conditioned, the requested deviations enhance the RPD and protect public health, safety, and welfare.¹⁵¹

Public Participation

Applicants seeking rezoning in Northeast Lee County must conduct public information sessions in Alva and North Olga.¹⁵² Applicant held multiple community meetings in satisfaction of Lee Plan and LDC requirements.¹⁵³

At hearing, the Hearing Examiner accepted testimony and evidence from the public consistent with the LDC.¹⁵⁴ Over a two-day period, 36 Participants offered testimony and numerous exhibits.¹⁵⁵

Although some speakers were in support, most participants were unified in opposition to the request. Concerns primarily related to increased traffic, environmental impacts, and loss of rural character.

Expert testimony on the record confirms project traffic maintains acceptable levels of service, proposed restoration/preservation measures improve environmental conditions, and significant benefits inure from utilizing sanitary sewer rather than hundreds of homes reliant on well/septic systems.

Inconsistency with rural character was a recurrent theme. However, both Staff and the Applicant demonstrated the request complies with adopted Community Plans that envision clustered development to maximize open spaces. The RPD achieves this vision by preserving 61% of its acreage and limiting development to three pods. Moreover, the Board approved the Owl Creek and Babcock projects with similar development designs, confirming consistency with emerging development patterns. The Lee Plan's grant of density in exchange for restoring/preserving/creating environmentally sensitive lands is an expression of the Board's legislative intent to expand development options in North Olga.

¹⁵⁰ LDC §34-145(d)(4)a.2(c), §34-377(a)(4); See also LDC §33-1665.

¹⁵¹ LDC §34-373(a)(9), §34-377(a)(4).

¹⁵² See Lee Plan Policies 17.3.5, 27.1.6, 27.1.8; LDC §33-1663.

¹⁵³ Lee Plan Policies 17.3.5, 27.1.8; LDC §33-1663; Crespo Testimony. Applicant presented the application to the North Olga and Alva communities on the following dates: North Olga Community Planning Panel – January 26, 2023 and June 20, 2023, and in Alva on March 14, 2023. Staff Report (Attachment J). It is noteworthy that applications for local development orders are also subject to community review in the North Olga Planning Community pursuant to LDC §33-1663(a)(1). Danley Testimony (Transcript pg. 138); Staff Ex. 3 (slide 20).

¹⁵⁴ LDC §34-231(c); Lee Co. Admin. Code 2-6 §2.3. Hearing participants were afforded notice of the proceedings and an opportunity to be heard. See Staff Ex. 2.

¹⁵⁵ Public Testimony (Transcript pg. 142-260, 265-457).

Applicant presented several modifications to the proposed development plan in response to residents' concerns, including:

- Limiting the location of two-family attached homes;
- Increasing minimum lot sizes;
- Establishing a 170-foot setback and 250-foot setback on Duke Highway and North River Road, respectively;
- Adding school bus stops; and
- Imposing lighting restrictions to address DarkSky concerns.¹⁵⁶

In addition, many concerns will be addressed during development order permitting and by the recommended conditions of approval.¹⁵⁷

If the Board approves the request, the RPD will be subject to additional community meetings during development order review.¹⁵⁸

Conditions

The County must administer the zoning process so that proposed land uses acceptably minimize adverse impacts to adjacent residential properties and protect County water resources.¹⁵⁹ Conditions must plausibly relate to the project's anticipated impacts and be pertinent to mitigating impacts on public health, safety, and welfare.¹⁶⁰ Accordingly, the proposed RPD will be subject to conditions of approval designed to address the impacts reasonably anticipated from the development.¹⁶¹

Proposed conditions of approval govern enhanced buffers, site development parameters, permitted uses, open space compliance, and indigenous preservation.¹⁶²

The School Board anticipates the project will generate 326 school aged children.¹⁶³ On remand, Applicant agreed to a condition of approval to provide two school bus stops at the RPD's westernmost access points. As designed, the bus stops will be entirely within the confines of the development and outside the North River Road

¹⁵⁶ Applicant Ex. 3-5; Rebuttal Testimony (Transcript pg. 458-569).

¹⁵⁷ The LDC and proposed conditions of approval require the developer to submit protected species surveys and prepare management plans for wildlife habitat. (Conditions 3, 7, 10, 12,) Conditions of approval impose detailed monitoring of surface and groundwater impacts. (Condition 13).

¹⁵⁸ LDC §33-1663(a)(1).

¹⁵⁹ Lee Plan Policies 5.1.5, 29.1.1, 29.2.2, 29.2.3, 135.9.5, 135.9.6; LDC §34-145(d)(4)a.2.(b), §34-377(a)(3), §34-411, and §34-932(c).

¹⁶⁰ LDC §34-932(b).

¹⁶¹ LDC §34-83(a)(4)a.3, §34-377(a)(3); Lee Plan Goals 59, 61, 77, Policies 5.1.5, 27.4.2, 60.1.1, 61.3.11.

¹⁶² The Parties revised conditions prior to the final day of hearing. Applicant Ex. 3. Staff agreed to remove the proposed transportation tracking condition after deeming it unnecessary and potentially redundant. Danley Testimony (Transcript pg. 139-40).

¹⁶³ See Applicant Ex. 6: Post-Hearing Written Submissions, (dated Sept. 20, 2024).

right-of-way.¹⁶⁴ Designing the project to accommodate safe school bus access is prudent since the project will generate a significant number of students.¹⁶⁵

The Hearing Examiner recommends revisions to the proposed wording of conditions and deviation to improve clarity.

Conclusion

Upon careful consideration and examination of the record, the Hearing Examiner finds the request meets LDC review criteria and, as conditioned, is compatible with surrounding development. Applicant provided competent substantial evidence in support of the rezoning request.

The Hearing Examiner recommends approval of the requested RPD, subject to the conditions set forth in Exhibit B.

IV. Findings and Conclusions

Based on record testimony and evidence, the Hearing Examiner makes the following findings and conclusions. *As conditioned*, the proposed RPD:

- A. Complies with the Lee Plan. Lee Plan Goals 2, 4, 5, 27, 29, 56, 59, 60, 61, 77, 101, 124, 125, 135; Objectives 1.5, 2.1, 2.2, 4.1, 5.1, 27.1, 27.2, 27.3, 27.4, 27.5, 29.1, 29.2, 29.4, 29.6, 29.7, 56.2, 77.1, 77.3, 135.1; Policies 1.4.1, 1.5.1, 2.1.2, 2.2.1, 5.1.2, 5.1.5, 5.1.6, 27.1.1, 27.1.2, 27.1.6, 27.1.8, 27.3.1, 27.4.1, 27.4.2, 29.1.1, 29.1.3, 29.1.4, 29.2.1, 29.2.2, 29.2.3, 29.2.4, 29.3.4, 29.4.3, 29.5.1, 29.7.2, 39.3.2, 60.4.1, 61.2.1, 67.3.7, 68.3.7, 77.3.1, 77.3.4, 101.1.1, 101.3.2, 123.2.7, 124.1.1, 125.1.1, 125.1.2, 135.1.9, 135.9.5, 135.9.6, Standards 4.1.1, 4.1.2, 4.1.4; Lee Plan Maps 1-A, 1-B, 2-A, 3-B, 4-A, 5-A, and Table 1(a).
- B. Meets the LDC and other County regulations or qualifies for deviations. LDC §§33-1661 *et seq.*, §34-145(d), §34-341, §34-378, §34-411, §34-413, § 34-491, §34-612(2), §34-373(a)(9), §34-932, §34-936.
- C. Is compatible with existing and planned uses in the surrounding area. Lee Plan Objectives 2.1, 2.2, 27.1, 27.3, 29.1, 29.2, 29.4, Policies 5.1.5, 29.1.1, 29.1.3, 29.2.1, 29.2.2, 135.9.5, 135.9.6; LDC §34-411, §34-413.
- D. Provides access sufficient to support proposed development intensity. Expected impacts to transportation facilities will be addressed by the conditions of approval and County regulations. Lee Plan Objectives 27.4,

¹⁶⁴ See Condition 18; Applicant Ex. 3: Second 48-Hour Letter dated Sept. 17, 2024; Revised MCP stamped Sept. 17, 2024.

¹⁶⁵ Developing the site to provide safe access to school buses is consistent with the Lee Plan. See Lee Plan Policies 39.3.2, 67.3.7, 68.3.7.

29.4, 39.1, Policies 27.4.1, 27.4.2, 29.4.3, 38.1.1, 38.1.5, 39.1.1; LDC §2-261 *et seq.*, §10-287, §34-411(d)-(e).

- E. Will not adversely affect environmentally critical/sensitive areas and natural resources. Lee Plan Goals 59, 60, 61, 77, 101, 123, 125, Objectives 27.3, 29.6, 29.7, 60.4, 60.5, 61.2, 61.3, 77.1, 77.3, 123.1, 123.2, 124.1, 126.2, Policies 1.5.1, 27.4.3, 27.7.2, 29.2.1, 29.7.2, 29.1.3, 59.1.6, 60.1.1, 60.4.1, 60.4.2, 60.4.3, 60.4.5, 61.2.4, 61.3.3, 61.3.6, 61.3.8, 61.3.11, 61.3.12, 101.1.1, 101.3.2, 123.2.4, 123.2.6, 123.2.8, 123.2.9, 123.2.11, 123.2.13, 123.2.15, 123.2.17, 123.3.1, 123.3.3, 125.1.1, 125.1.2, 125.1.3, 126.2.1, 143.2.2, Standard 4.1.4; and LDC §34-411(h).
- F. Public services and infrastructure will serve the RPD, notwithstanding its Rural designation. Lee Plan Glossary, Lee Plan Goals 2, 4, 56, Objectives 2.1, 2.2, 4.1, 56.2, Policy 1.4.1, 27.4.2, 29.4.3, 53.1.8, 53.1.9, 56.2.1, 61.1.6, 135.9.7, Standards 4.1.1, 4.1.2; LDC §34-411(d).
- G. The proposed use is appropriate at the proposed location. Lee Plan Goals 2, 5, 27, 29; Objective 29.1, 29.2, Policies 1.4.1, 2.1.1, 2.2.2, 5.1.2, 5.1.5, 27.1.1, 29.1.1, 29.1.3, 29.2.1, 29.2.2, 124.1.1, 135.1.9.
- H. Recommended conditions and County regulations provide sufficient safeguards to protect the public interest and are reasonably related to expected impacts. Lee Plan Policies: 5.1.5, 5.1.6, 27.4.1, 27.4.2, 29.1.1, 29.1.3, 29.2.2, 61.3.3, 61.3.8, 123.2.9, 135.9.6; LDC §34-377(a)(3), §34-411, §34-932.
- I. Requested deviations, as conditioned:
 - 1. Enhance objectives of the planned development, and
 - 2. Protect public health, safety and welfare. Lee Plan Policy 29.1.4, LDC §34-373(a)(9), §34-377(a)(4).

Date of Recommendation: January 30, 2025.

A handwritten signature in black ink, reading "Amanda L. Rivera", is positioned above a horizontal line.

Amanda L. Rivera
Deputy Hearing Examiner

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

Exhibits to Hearing Examiner's Recommendation

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

Exhibit A

LEGAL DESCRIPTION AND VICINITY MAP

Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS

As revised by the Hearing Examiner

CONDITIONS

1. Master Concept Plan (MCP) and Development Parameters

- a. MCP. Development must be consistent with the four-page MCP entitled "Cary + Duke + Povia RPD," prepared by J.R. Evans Engineering, Inc., date stamped September 17, 2024 (Exhibit B1) except as modified by conditions below.
- b. Lee Plan and Land Development Code (LDC). Development must comply with the Lee Plan and LDC at the time of local development order, except where deviations have been granted herein. Subsequent changes to the MCP may require further development approvals.
- c. Development Parameters. Development is limited to 1,099 dwelling units, amenity areas, and accessory uses.

2. Schedule of Uses and Development Regulations

a. Schedule of Uses

Accessory Uses and Structures
Administrative Offices
Clubs, private
Community Gardens, within the optional amenity areas only
Dwelling Unit -
 Single-Family
 Two-Family Attached (Limited to the R Tract)
Entrance Gate and Gatehouse
Essential Services
Essential Service Facilities, Group I only
Excavation, Water Retention
Excess Spoil Removal (20,000 cubic yards or more)
Fences, Walls
Home care facility
Home occupation
Models: Display center, display group, model home
Parking Lot: Accessory
Real Estate Sales Office
Recreational Facilities: Personal, Private-on-site
Residential accessory uses

Signs

Temporary Uses, temporary construction trailers and equipment storage sheds

Temporary amenity structures

b. Site Development Regulations

	Single-Family Detached	Two-Family Attached	Clubhouse
Minimum Lot Size	4,800 sq ft	4,200 sq ft	N/A
Minimum Lot Width	40 feet	35 feet	N/A
Minimum Lot Depth	120 feet	120 feet	N/A
Maximum Lot Coverage	60 percent	65 percent	50 percent
Maximum Building Height	35 feet	35 feet	35 feet
Minimum Building Separation	10 feet	10 feet	10 feet
Setbacks			
Street (Interior Private Roads)	20 feet / 10 feet ¹	20 feet / 10 feet ¹	20 feet
Street (Public Roads)	50 feet	50 feet	50 feet
Side	5 feet ⁵	5 feet ⁵ / 0 feet ²	10 feet ⁵
Rear (Principal)	10 feet	10 feet	10 feet
Rear (Accessory)	5 feet ³	5 feet ³	5 feet ³
PD Perimeter	50 feet	50 feet	50 feet
Waterbody	20 feet	20 feet	20 feet
Preserve	20 feet ⁴	20 feet ⁴	20 feet ⁴

Notes:

- 1) 20 feet for front loaded garages, 10 feet for side loaded garages, and secondary street setbacks on corner lots.
- 2) No side setback is required from common lot line for two-family attached.
- 3) 5 feet (0 feet where lot abuts lake maintenance easement).
- 4) 30 feet for indigenous plant communities subject to fire.
- 5) Equipment pads may encroach up to 4.5 feet into a side setback (see Deviation 4).
- 6) Dwelling units must be setback a minimum of 170 feet from Duke Highway and 250 feet from North River Road.

3. Rural Compatibility

- a. Prior to development order approval, Developer must demonstrate that entrances features will provide design elements described in LDC §33-1669 through §33-1672.
- b. The RPD must include an enhanced native buffer consistent with the MCP. The buffer must be a minimum 25 feet in width and within the 170-foot minimum setback to fill in gaps in the existing native vegetation and restoration areas to form a continuous, 100% opaque vegetative screen within 5 years of growth.
 - i. The enhanced buffer must meet the following minimum planting per 100 linear feet by 25 foot width: six (6) native canopy trees, seven (7) native understory trees, three (3) Cabbage Palms, and twenty one (21) native shrubs.
 - ii. Planting density may be achieved with a combination of existing and proposed enhanced native vegetation so long as trees are horizontally spaced no more than 15 feet on center and Cabbage Palms and shrubs are clustered in groups of three (3).
 - iii. Enhanced buffer plantings must include minimum 10 foot tall, 2 inch caliper native canopy trees, minimum 10 foot clear trunk Cabbage Palms, minimum 10 foot tall native understory trees, and minimum four (4) foot tall shrubs.
 - iv. Enhanced native vegetation species must be consistent with and in addition to the approved Indigenous Preserve Management and Restoration Plan Supplemental Plantings List Revised May 2024 (Exhibit B2) within this buffer. Restoration plantings will not contribute to the buffer plant material requirements set forth in this condition.
 - v. Exotic vegetation within the 25-foot buffer must be hand removed to minimize disturbance to existing native vegetation.
 - vi. Developer must obtain a Certificate of Compliance on the enhanced buffer installation prior to development order approval authorizing residential lots within 300 feet of the 25-foot-wide enhanced buffer depicted on the MCP.

4. Utility Connection

Development order plans must demonstrate connection to public utilities for water and wastewater services to support all phases of development.

5. Public Safety

Development order submittals must demonstrate that public safety service is available to serve each phase under review as evidenced by a letter of No Objection from the Lee County Public Safety Office.

6. Open Space

Development order plans must depict a total of 420.20 acres of indigenous open space in substantial compliance with the MCP consistent with the following:

- a. Rare and Unique Upland Preservation: 26.03 acres;
- b. Rare and Unique Upland Restoration: 2.68 acres;
- c. Rare and Unique Created: 300.01 acres;
- d. Upland Restoration: 7.38 acres;
- e. Upland Preservation: 23.98 acres;
- f. Wetland Preservation: 17.51 acres;
- g. Wetland Restoration: 33.95 acres; and
- h. Surface Waters: 8.66 acres.

7. Protected Species

Developer must submit pre-construction species monitoring reports, where applicable, with each vegetation removal permit application to ensure no protected species are within the clearing limits.

8. Conservation Easement Recording

Conservation easements must be recorded over areas used to achieve the density incentive. Conservation easements must be dedicated to the appropriate maintenance entity and provide Lee County or other public agency, acceptable to Lee County, with third party enforcement rights. Conservation Easements must be recorded within 5 years following approval of the first development order.

9. Wetland Impacts

The first development order application must include a copy of the mitigation receipt of payment or mitigation plans for the 18.85 acres of wetland impacts.

10. Indigenous Habitat Restoration/ Management Plan

- a. Development Order plans must be in substantial compliance with the Indigenous Preserve Management and Restoration Plan (Exhibit B2).
- b. The first development order plans must include a schedule for the indigenous preservation, restoration, and created preserve areas to be completed within at least five consecutive years.

- c. The first development order plans must include cross sections depicting the hydrological restoration, upland grading, and the type of habitat being restored/created to ensure survivability. The plans must include details of soil amendments in the restoration and creation areas, if applicable.
- d. The first development order plans must include a map depicting where mechanical and hand-removal methods of exotic vegetation removal will be located.
- e. The first development order plans must include a monitoring schedule to ensure all preserve enhancement, restoration, and creation is completed and demonstrates 80 percent survivability within five consecutive years. Monitoring will be required until 80 percent survivability is achieved.
- f. The vegetation removal permit application must include survey point maps depicting the preservation and restoration areas and mechanical clearing limits.

11. Northern Buffer Planting Material

The first development order plans must depict a 25-foot-wide buffer within the restoration area along North River Road that includes 14-foot-high native canopy trees, spaced approximately 25 feet on center to comply with LDC §33-1673.

12. Natural Waterbody Buffer

The first development order application that includes Trout Creek must include landscape plans that provide a natural waterway buffer plan in compliance with the Indigenous Preserve Management and Restoration Plan (Exhibit B2). The vegetation must meet the plant specifications of LDC §10-420. The natural waterway buffer must depict a ten-foot-wide Trout Creek maintenance easement with a 20-foot-wide Trout Creek maintenance access as depicted consistent with the MCP.

13. Surface and Ground Water Monitoring

Prior to local development order approval for any phase of work, Developer must provide the attached Water Quality Monitoring Plan (Exhibit B3) with the following modifications:

- a. Developer must identify the groundwater withdrawal locations used to resupply the irrigation withdrawal lakes in the Water Quality Monitoring Plan;

- b. Developer must complete baseline monitoring events prior to commencement of construction and provide a baseline report to the County Division of Natural Resources;
- c. Surface water quality, groundwater quality, and groundwater level monitoring locations must be finalized and identified in the Water Quality Monitoring Plan. Surface water quality monitoring sites must be located at each proposed outfall. Groundwater level monitoring locations must be located to ensure surrounding residential uses are not adversely affected by Sandstone Aquifer withdrawal;
- d. Developer must provide water quality and groundwater level monitoring data to the Division of Natural Resources annually for a minimum of five (5) years. Annual monitoring reports must include a comparison of State surface water quality standards, plots of parameters, and recommendations. After five years of meeting/exceeding State water quality monitoring standards, Developer may amend water quality monitoring and reporting after written request, review, and approval by the Division of Natural Resources. Results must be reported as an Electric Data Deliverable (EDD), in a format approved by the Division of Natural Resources; and
- e. A contingency plan to be implemented upon discovery of an exceedance of State Water Quality Standards. This plan must include notification to impacted residents, Lee County Division of Natural Resources, and applicable authorities.

14. Stormwater Reporting

Development order submittals for each phase must provide a Stormwater Report with models and calculations demonstrating that offsite flow conveyance capacity will be maintained during and following construction of the development.

15. Irrigation Requirements

Development order plans for each phase must demonstrate irrigation will be provided via a master-controlled central irrigation system. The master-controlled system must be designed to comply with the Water Conservation Ordinance #24-01, as amended. The Property Owner Association documents, including Declarations and Covenants (submitted prior to Development Order approval and recorded prior to issuance of Certificate of Compliance), must prohibit the installation of single-family use wells for potable or irrigation water.

16. Agricultural Uses

- a. Termination of Agricultural Use. Bona fide agricultural uses (cattle grazing) in existence when the application for this project was filed, may continue in

accordance with the Agricultural Use Affidavit filed with the zoning application until a local development order is approved for the area that contains these uses.

- b. Additional Clearing Prohibited. Clearing or injury of native trees or other native vegetation, including understory, in agricultural areas is prohibited except when done pursuant to a vegetation removal permit. Existing areas of bona fide agricultural use that include existing grass pasture(s) may be mowed but may not be cleared or expanded. This prohibition of clearing/expansion is not intended to preclude County approved requests for removal of invasive exotic vegetation. Violations of this condition will require restoration in accordance with LDC §10-423.
- c. Proof of Termination. Prior to development order issuance, Developer must provide written proof, subject to approval by the Lee County Attorney's Office, of the following:
 - i. Affidavit. Termination of agricultural use on any portion of the property included in the development order application/approval. Proof must include a sworn affidavit from the person or entity holding title to the subject property that specifically provides:
 - 1. The date agricultural uses ceased.
 - 2. The legal description of the property subject to the development order approval.
 - 3. An affirmative statement that Developer, its successors or assigns acknowledges and agrees that all agricultural uses are illegal and prohibited on the property and that the owner covenants with the County that they will not allow any such uses on the property unless and until the property is rezoned to permit such uses.
 - 4. That the affidavit constitutes a covenant between Developer, its successors or assigns, and the County that is binding on the Developer, its successors or assigns. The covenant must be properly recorded in the public records of the County at the expense of the applicant, its successors or assigns.
- d. Termination of Tax Exemption. Termination of the agricultural tax exemption for any portion of the property included in the development order application/approval. Proof as to the termination must include a copy of the request to terminate the tax exemption submitted to the Property Appraiser.

17. School Bus Stop

Developer must provide a school bus pull-off at the project entrances as shown on the MCP to ensure buses can stop entirely outside of the North River Road right-

of-way. The location and design of the bus stop is subject to approval by the Lee County School District.

18. Lighting

Developer and future property owners must ensure lighting from developed areas does not directly illuminate indigenous preserve or restoration areas by shielding fixtures as necessary and minimizing up-lighting. Developer must include these lighting standards in the Indigenous Management Plan, deed restrictions, and development order plans.

19. Development Permits

County development permits do not create rights to obtain permits from state/federal agencies. Further, County development permits do not create liability on the part of the County if Applicant fails to obtain requisite approvals or fulfill obligations imposed by state/federal agencies or undertake actions in violation of state/federal law. Applicant must obtain applicable state/federal permits prior to commencing development.

DEVIATIONS

1. **Access.** Deviation (1) seeks relief from LDC §10-291(3) which requires residential developments more than five acres to provide more than one means of ingress and egress for the development, to allow one access point to the development area west of Trout Creek only.

HEX Recommendation: Approve

2. **North River Road Plantings.** Deviation (2) seeks relief from LDC §33-1673, which requires new developments with frontage on North River Road to provide a 25-foot-wide right-of-way buffer, planted with native canopy trees, such as Live Oaks and Laurel Oaks, with a minimum height of 14 feet and spaced 25 feet on center to allow for creation, restoration and preservation of "Rare and Unique" uplands and wetland vegetation along the North River Road frontage where proposed preserve areas abut the right-of-way.

HEX Recommendation: Approve, subject to the following condition:

Development order landscape plans abutting North River Road must meet the Indigenous Preserve Management and Restoration Plan (Exhibit B2). Landscape/restoration plants must meet the native tree specifications per LDC §33-1673 and native shrubs specifications for a Type-F buffer per LDC §10-416(d).

3. **Lake Bank Slopes.** Deviation (3) from LDC §10-329(d)(4), which requires lake banks to be sloped at a 6:1 ratio from the top of bank to a water depth of two feet below the dry season water table, to allow for a minimum ratio of 4:1 slope.

HEX Recommendation: Approve

4. **Equipment Pads.** Deviation (4) seeks relief from LDC §34-2191(5), which allows encroachments into required setbacks for equipment pads of up to 3 feet into a side, rear or waterbody setback, to allow for equipment pads encroachments of up to 4.5 feet into side setbacks.

HEX Recommendation: Approve

5. **Drainage Easement.** Deviation (5) seeks relief from LDC §10-328(a), which requires a 20-foot-wide easement on one side of a watercourse/drainageway/canal/IDD easement/lake/pond/stream, and a 20-foot-wide easement on both sides for canals, lakes, or flow-ways greater than 50 feet wide for maintenance purposes, to allow a 10-foot-wide easement on one side of Trout Creek.

HEX Recommendation: Approve, subject to the following condition:

A drainage and access easement consistent with the MCP must be submitted for approval prior to development order issuance. The easement must permit Lee County the right, but not the obligation, to maintain Trout Creek and must be dedicated to Lee County prior to issuance of a Certificate of Compliance for the first development order.

Exhibits to Conditions:

- B1 "Cary+Duke+Povia RPD" four-page MCP (stamped September 17, 2024)
- B2 Indigenous Habitat Management Plan (revised May 2024)
- B3 Water Quality Monitoring Plan (revised May 2024)

Exhibit C

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments for DCI:* Prepared by Dirk Danley, Jr., Principal Planner, date received August 21, 2024 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *Affidavit of Publication:* For Zoning Case DCI2022-00067, Cary+Duke+Povia RPD (1 page – 8.5"x11")
3. *PowerPoint Presentation:* Prepared by Lee County Staff for Zoning case DCI2022-00067, Cary+Duke+Povia RPD, dated September 4, 2024 (multiple pages – 8.5"x11")[color]
4. *Email:* From Jillian Scholler, PE, Deputy Director of Department of Transportation, to Dirk Danley, Jr., with Community Development, dated Thursday, September 5, 2024, 3:02 PM (2 pages – 8.5"x11')
5. *Memorandum:* From Nathan Beals, PMP, to Dirk Danley, Jr, AICP, dated September 19, 2024 (1 page – 8.5"x11")

APPLICANT EXHIBITS

- a. *48-Hour Notice:* Email from Jem Frantz with RVI Planning and Landscape Architecture, to Maria Perez, Steven Hartsell, Shane Johnson, Brandon Frey, and Yury Bykau, with copies to Rebecca Sweigert, Tracy Toussaint, Jamie Prining , Elizabeth Workman, Audra Ennis, Nicholas DeFilippo, Ohdet Kleinmann, Abby Henderson, Lee Werst, Warren Baucom, Mikki Rozdolski, Anthony Rodriguez, Dirk Danley, Jr., Phil Gillogly, Marcus Evans, and Jennifer Rodriguez, dated Friday, August 30, 2024, 9:23 AM (multiple pages – 8.5"x11")
1. *PowerPoint Presentation:* Prepared for Zoning case DCI2022-00067, Cary+Duke+Povia RPD, dated September 4, 2024 (multiple pages – 8.5"x11")[color]
2. *Allapattah Community's Assn, Inc. of Florida v. City of Miami:* 379 So.2d 387 (1980) (multiple pages – 8.5"x11")
3. *48-Hour Notice for September 20, 2024 Hearing:* Email from Alexis Crespo with RVI Planning and Landscaping, to Maria Perez, with copies to Dirk Danley, Jr., Elizabeth Workman, Patric Neal, Jack Weber, C. Thrushman, Will Hellman, Jem Frantz, Sabrina McCabe, Shane Johnson, Kirk Martin, Neale Montgomery, Esq.,

Ted Treesh, Yury Bykau, Joseph Adams, Esq., Etc., dated Tuesday, September 17, 2024, 12:41 PM (multiple pages – 8.5"x11" and 11"x17")

4. *Updated Line of Sight:* Prepared by RVI Planning and Landscaping for Cary+Duke+Povia RPD, dated September 18, 2024 (1 page - 11"x17")[color]
5. *PowerPoint Presentation:* Prepared for Zoning case DCI2022-00067, Cary+Duke+Povia RPD, dated September 20, 2024 (multiple pages – 8.5"x11")[color]
6. *Written Submissions:* Email from Alexis Crespo with RVI Planning and Landscaping, to Maria Perez, with copies to Neale Montgomery, Esq., Dirk Danley, Jr., and Elizabeth Workman, dated Friday, September 20, 2024, 12:05 PM (3 page – 8.5"x11")

OTHER EXHIBITS

Steven Brodkin

1. *Presentation:* (3 pages – 8.5"x11")

Marsha Ellis

1. *PowerPoint Presentation:* Prepared by for Zoning case DCI2022-00067, Cary+Duke+Povia RPD, dated September 4, 2024 and September 6, 2024 (multiple pages – 8.5"x11")

Elly Hagen

1. *Documents:* (multiple pages – 8.5"x11")
2. *Letter:* From Richard Durling (4 pages – 8.5"x11")

James Kennedy

1. *Presentation and PowerPoint Presentation:* (multiple pages – 8.5"x11")

Donalyn Moon

1. *Document:* (multiple pages – 8.5"x11")

Katrina Salokar

1. *Roar Newspapers:* (multiple newspapers)

Holly Swartz

1. *Documents:* (multiple pages – 8.5"x11")

Exhibit D

HEARING PARTICIPANTS

County Staff:

1. Dirk Danley, Jr.
2. Elizabeth Workman

Applicant Representatives:

1. Yury Bykau
2. Alexis Crespo
3. Brandon Frey
4. Will Hellman
5. Shane Johnson
6. Kirk Martin
7. Neale Montgomery, Esq.
8. Pat Neal
9. Ted Treesh

Public Participants:

1. Susan Allen
2. Kathy Arnold
3. Ralph Bond
4. Linda Borchering
5. Steven Brodtkin
6. Monica Busbee
7. Keith Cary

8. Terri Chadwell
9. Amanda Cochran
10. Darius Cochran
11. Freida Lauer Cochran
12. Jimmie Cochran
13. Keith Durling
14. Glen Dyess
15. Denise Eberle
16. Dave Edwards
17. Marsha Ellis
18. William Fields
19. Cheryl Fischer
20. Grant Fichter
21. Roxanne Gause
22. Elly Hagen
23. James Kennedy
24. Alan Klingensmith
25. Donalyn Moon
26. Tom Mulling II
27. Terry Paska
28. Codty Piece
29. Linda Redfern
30. William Redfern

31. Katrina Salokar
32. Katherine Sanderford
33. Jack Snider
34. Holly Schwartz
35. Don Tate
36. Andy Tilton

Exhibit E
INFORMATION

UNAUTHORIZED COMMUNICATIONS

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

HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS

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

COPIES OF TESTIMONY AND TRANSCRIPTS

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