

MEMORANDUM
FROM

DATE: November 13, 2025

TO: Stacy Hewitt, Applicant's Representative FROM: Brian Roberts, Staff

Amanda L. Rivera *ALR*
Hearing Deputy Examiner

RE: **DCI2023-00047 – HOME FRONT HEROES MINOR CPD**
Clarification to Hearing Examiner Recommendation

The following clarifications are offered in response to Staff's request dated November 12, 2025:

- Page 12 of the Hearing Examiner Recommendation is amended to remove reference to the North Fort Myers Planning Panel.
- Condition 1.c.ii is modified to remove reference to Tract K.
- Condition 1(c)(3) is revised to be Condition 1.c.iii.
- Condition 34.c is clarified to reflect the directional call to the southeast corner within the eagle nest zone.

The attached documents reflect these changes.

Attachments:

A: Memorandum from Brian Roberts dated November 12, 2025 (without attachments)

B: Hearing Examiner Recommendation (clean version)

Copies Provided to: Board of County Commissioners (BOCC)
Michael Jacob, Deputy County Attorney
Joseph Adams, Assistant County Attorney
Anthony Rodriguez, Zoning Manager
Brienne Cherry, Community Development
Applicant/Applicant's Representative(s)
Hearing Participants

EXHIBIT A

MEMORANDUM

FROM
THE DEPARTMENT OF
COMMUNITY DEVELOPMENT

TO: Amanda L. Rivera
Deputy Hearing Examiner

DATE: November 12, 2025

FROM: Brian Roberts
Manager, Development
Services

RE: **Home Front Heroes Minor CPD (DCI2023-00047)**

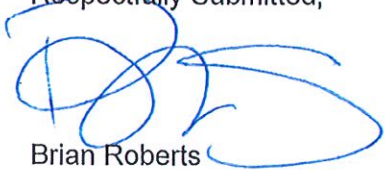
Staff and the applicant have reviewed the Hearing Examiner's recommendation for the above-referenced case and have identified the following items that require further clarification from your office:

- HEX Recommendation, (Page 12, Public): The recommendation references a public meeting with the North Fort Myers Planning Panel. However, the corresponding footnote cites the Staff Report (Attachment F) which indicates that an independent meeting was held at the North Fort Myers Recreation Center. No meeting before the North Fort Myers Planning Panel was conducted regarding this case. Further clarification is requested on behalf of the applicant.
- Exhibit B, Recommended Conditions and Deviations, (Condition 1.c.ii, pg. 24): The cited condition limits the maximum building height for Tract K to 35 feet. However, Condition 2.b., (pg. 31) which outlines "Site Development Regulations for all parcels except Home Front Heroes Minor CPD/western 15.76+/- acres of Tract M, Commercial Planned Development Tract K" allows office buildings, within Tract K, up to 80 feet. Further clarification is requested on behalf of the applicant.
- Exhibit B, Recommended Conditions and Deviations, (Condition 2.b., pg. 29): A typographical error references Condition 1(c)(3). To maintain consistency the applicant has requested a revision to 1.c.iii. Further clarification is requested.
- Exhibit B, Recommended Conditions and Deviations, (Condition 34.c., pg. 37): Condition 34.c. states that the "Southwest corner must include preservation of existing indigenous..." However, the Bald Eagle Management Plan, (Recommended Conditions and Deviations, Exhibit B4) and the Master Concept Plan (Recommended Conditions and Deviations, Exhibit B1) show that the condition should read "Southeast corner within 330-foot eagle nest zone must include preservation of existing indigenous ..." There were several instances where the word "buffer" and "zone" were used interchangeable in the case documents. Staff and the applicant agree that the use of "zone" is appropriate as it is reflected on the Master Concept Plan and the Bald Eagle Management Plan. Additionally, the directional call from Southwest to Southeast is appropriate. Further clarification is requested on behalf of the applicant.

Please provide clarification on the above items at your earliest convenience so that the appropriate revisions may be incorporated into the resolution of approval.

Please contact me if you have any questions or concerns.

Respectfully Submitted,

A handwritten signature in blue ink, consisting of a large, stylized 'B' followed by a series of loops and a long horizontal stroke.

Brian Roberts
Manager, Development Services

Attachments:

A – Hearing Examiner Recommendation, dated August 4, 2025

Summary of Hearing Examiner Recommendation

HOME FRONT HEROES MINOR CPD

Applicant seeks to amend the Moody River RPD/CPD to rezone land east of Moody Road. The requested rezoning permits operation of a non-profit entity dedicated to community youth enrichment.

Although the request seeks CPD zoning, proposed uses are narrowly tailored to social services through community outreach programs. Conditions of approval ensure the site will not be used for high-impact commercial activities such as retail or restaurants.

Existing site approvals offset trip generation by eliminating multi-family units on the affected 15.76 acres. Proposed conditions of approval and LDC regulations mitigate off-site impacts to protect surrounding residents from site activity.

The Hearing Examiner agrees with Staff's recommendation of approval, with conditions.

Detailed recommendation follows

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2023-00047

Regarding: HOME FRONT HEROES MINOR CPD

Location: South of Hancock Bridge Parkway, East of Moody Road
North Fort Myers Planning Community
(District 4)

Hearing Date: March 13, 2025

Record Closed: March 28, 2025

I. Request

Amend the Moody River Estates RPD/CPD (Z-05-048) to rezone the western 15.76± acres of Tract M from Residential Planned Development (RPD) to Commercial Planned Development (CPD) to allow a maximum of 46,000 square feet of administrative offices, two caretaker's residences, recreation, social services, and accessory multi-purpose outdoor recreation areas, boat ramps, and a private multi-slip docking facility with a maximum 10 wet slips and 10 boat trailer parking/dry slips. The maximum building height is 45 feet.

The property's 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 amend an approved planned development.¹ In satisfaction of this duty, the Hearing Examiner accepted testimony and evidence on the application to rezone 15.76± acres of the Moody River Estates RPD/CPD to CPD.²

In preparing a recommendation to the Board, the Hearing Examiner must consider the Lee County Comprehensive Plan (Lee Plan), the Land Development Code (LDC), and other applicable County regulations to the facts presented in a rezoning

¹ LDC §34-145(d)(1)a & (2)a.

² The zoning boundary includes 4.98± acres of Hanock Creek. See Legal Description & MCP.

request.³ Specifically, the Hearing Examiner must find the request is compatible with surrounding uses and complies with Lee Plan and LDC requirements relating to such items as transportation facilities, natural resources, and urban services.⁴ The Hearing Examiner may take judicial notice of previous Board decisions.⁵ The Hearing Examiner's recommendation must be based on competent and substantial evidence.⁶

The Hearing Examiner recommends approval, finding the request satisfies LDC review criteria.

Zoning Review Criteria

Before recommending approval, 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. Addresses impacts on transportation facilities by County regulations or conditions of approval;
- F. Will not adversely affect environmentally critical/sensitive areas or natural resources; and
- G. Will be served by urban services, if located in a Future Urban Area.⁷

When the requested zoning action is a planned development, the Hearing Examiner must also find:

- H. The proposed use/mix of uses is appropriate at the proposed location;
- I. Recommended conditions (1) provide sufficient safeguards to the public interest, and (2) reasonably relate to impacts on the public interest expected from the proposed development; and

³ LDC §34-145(d)(3).

⁴ LDC §34-145(d)(4).

⁵ Lee Co. Admin. Code 2-6 §2.3.D(4)(b).

⁶ Lee Co. Admin. Code 2-6 §3.3.A(2); LDC §34-83(a)(4)a.1(a).

⁷ LDC §34-145(d)(4)a.1. Future Urban Area is a defined term in the Lee Plan Glossary.

- J. Requested deviations (1) enhance achievement of planned development objectives, and (2) protect public health, safety, and welfare.⁸

Zoning History/Request Synopsis

In 2003, the Board rezoned 221.9± acres to Moody Ranch RPD/CPD to permit 1,000 residential dwelling units and 45,000 square feet of commercial uses.⁹

In 2005, the Board amended the Moody Ranch approval to add 19.56± acres identified as "Tract M" east of Moody Road.¹⁰ The amendment approved 200 dwelling units, a private club, recreational facilities, parking, and a boat ramp with dock.¹¹ Maximum approved height on Tract M is 75 feet.¹²

Subsequent development orders followed in 2013 to construct parking, restroom facilities, landscaping, and infrastructure for a private boat launch facility and clearing for future development.¹³

Intervening civil court cases imposed development restrictions and divided Tract M into two parcels.¹⁴

The scope of review for the requested amendment is limited to the western 15.76± acres of Tract M (the "site").¹⁵ Applicant proposes to develop the site with 46,000 square feet of non-residential uses, including administrative offices, two caretaker's residences, recreation areas, and social services.¹⁶ Site development will support a charitable organization aimed to educate youth, veterans, and the disabled/disadvantaged in crime prevention/public safety, social outreach, recreation activities, and animal welfare services.¹⁷

⁸ LDC §34-145(d)(4)a.2.

⁹ See Staff Report (pg. 1, *citing* Z-03-022, Attachment M).

¹⁰ See Staff Report (pg. 1-2, *citing* Z-05-048, Attachment L).

¹¹ Z-05-048. The Resolution did not increase density for the overall development. The newly approved 200 units were part of the 1,000 units approved for the RPD/CPD.

¹² See *Id.*

¹³ See Staff Report (pg. 2, *referencing* LDO2013-00596 and DOS2013-00023, Attachment N).

¹⁴ See Staff Report (pg. 2, Attachment F). The western part of Tract M comprises 15.76± acres and the eastern portion occupies the remaining 3.63± acres. See MCP. The record references a Settlement Agreement directing use of the property for non-profit purposes/14 single-family units, but the Agreement is not part of the record and is outside the scope of Hearing Examiner Review. See LDC §34-145(d). Applicant testified the eastern portion is limited to 55 multi-family units and is under separate ownership. Hewitt Testimony (Transcript pg. 14 & 16).

¹⁵ Existing RPD/CPD approvals otherwise remain unchanged.

¹⁶ Hearing testimony reflects caretakers' quarters are requested as a security measure and to accommodate deputies' differing schedules. Akin Testimony (Transcript pg. 10).

¹⁷ See Staff Report (pg. 1, Attachment F); Applicant Ex. 1 (slides 4-5, 12).

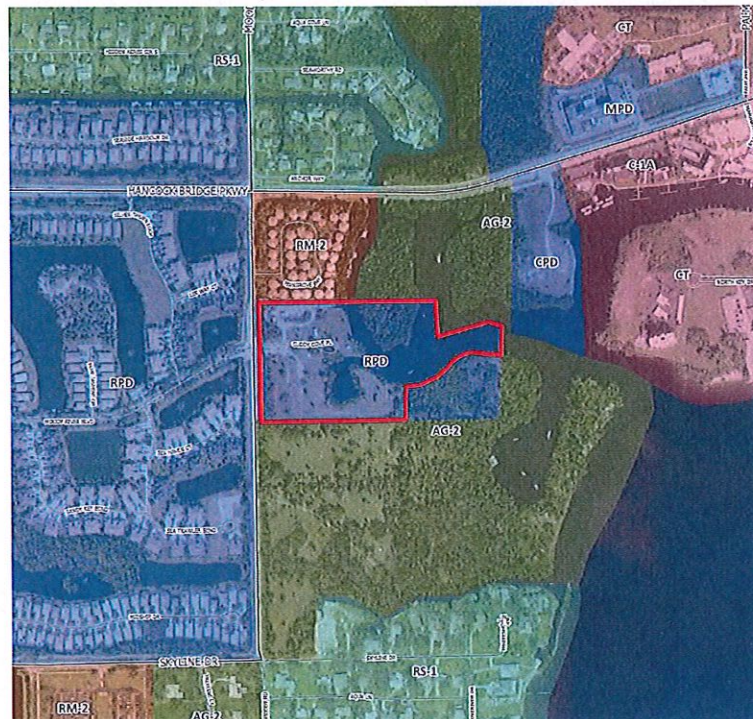
Site design retains the existing gated entrance from Moody Road.¹⁸ Moody River Estates residents/guests will continue to access the entry gate and traverse north to the boat ramp, parking, and restroom facility.¹⁹ A second gate will provide access to Applicant's charitable organization campus to the south.²⁰

Applicant proposes to reduce permitted height from 75 to 45 feet. Staff recommended approval, with conditions.

Character of the Area

The property sits south of Hancock Bridge Parkway, east of Moody Road.

The site is bounded by the Mangrove Bay multi-family residential community to the north. Moody River Estates, comprised of multi-family and single-family residences and amenity centers, sits to the west beyond Moody Road. Vacant agricultural lands within the 20/20 Conservation program abut to the south. Hancock Creek flows through the property and around commercial properties to the east before emptying into the Caloosahatchee River.



¹⁸ See Applicant Ex. 2: MCP.

¹⁹ Hewitt Testimony (Transcript pg. 21-22).

²⁰ *Id.* at 22.

Lee Plan Consistency/Compatibility

Planned developments must be consistent with the Lee Plan.²¹

Lee Plan Maps designate the site within the Suburban and Wetlands future land use categories in the North Fort Myers Planning Community.²²

Suburban lands are predominantly residential on the fringe of urban areas.²³ Industrial uses are prohibited in the Suburban category.²⁴ The request does not propose industrial use, consistent with this classification.

Wetlands consist of low impact uses that do not adversely affect wetland ecological function.²⁵ The portions of the site designated as Wetlands are located on the island east of the developable area. Conservation easements encumber the Wetlands to ensure protection of environmentally sensitive areas in perpetuity.²⁶

The North Fort Myers Planning Community aims to improve the livability and economic vitality of the community and preserve natural resources.²⁷ The request satisfies this goal by providing recreational opportunities and educational programs through community outreach for youth. Applicant protects natural resources by maintaining indigenous preserves and conservation easements. Nature trails and boardwalks provide accessibility to natural resources without compromising environmentally sensitive lands.²⁸

Compatibility

Applications to amend planned developments must demonstrate compatibility with surrounding land uses.²⁹

The Lee Plan encourages compact and contiguous development patterns where services and infrastructure exist to serve new development.³⁰ The proposed

²¹ LDC §34-411(a), (c), and (i).

²² Lee Plan Maps 1-A, 1-B, & 2-A.

²³ Lee Plan Policy 1.1.5. Commercial uses are not prohibited in the Suburban classification.

²⁴ *Id.*

²⁵ Lee Plan Policy 1.5.1.

²⁶ The MCP reflects the island is encumbered by Conservation Easement North, recorded in the Lee Co. Public Records at Instrument #2013000240535.

²⁷ Lee Plan Goal 30, Policy 30.5.3; LDC §§33-1531 *et. seq.*

²⁸ Lee Plan Policy 30.5.3.

²⁹ LDC §34-145(d)(4)a.1(c). *Compatible* is defined as: the relation between two land uses, buildings or structures, or zoning districts, the state wherein those two things exhibit either a positive relationship based on fit, similarity or reciprocity of characteristics, or a neutral relationship based on a relative lack of conflict or on a failure to communicate negative or harmful influences to another. LDC §34-2.

³⁰ Lee Plan Objectives 2.1, 2.2, Policies 2.2.1, 2.2.2, 6.1.1, 6.1.4.

project constitutes infill development consistent with surrounding development patterns.³¹

The site has been approved for 200 multi-family units and a 53 multi-slip docking facility since 2005.³² The request to amend the RPD/CPD must therefore be evaluated for impacts generated by the delta between the proposed development and existing approvals.³³ The record reflects the proposed amendment adequately addresses potential off-site impacts through design elements, conditions of approval, and Code protections.

Applicant proposes to reduce approved building heights from 75 to 45 feet. Caretakers' units are further reduced to 35 feet due to proximity to residents. The MCP decreases the multi-slip docking facility from 53 to 10 wet slips. These reductions ameliorate impacts anticipated from the proposed development.

Site design locates the social services building in the southwest corner and the caretakers' residences in the northeast to buffer neighboring residents from site impacts.³⁴ The 42,000 square foot building will host offices, classrooms, and indoor recreational facilities such as basketball courts, gymnasiums, and fitness areas.³⁵ Building design must demonstrate compliance with architectural standards.³⁶ Lighting must adhere to LDC specifications to minimize light pollution, glare, and light trespass. Conditions of approval limit hours of operation for outdoor activities and impose buffer standards to shield site activities.

Proposed uses offer valuable community programs through educational opportunities and outreach, job counseling, manpower training, and workforce education.³⁷ Caretakers on-site provide an added measure of security for site and surrounding area.³⁸

³¹ Lee Plan 6.1.7, Glossary definition of "infill." The request does not impact preserves/conservation areas, retains the existing access to Moody Road, and is surrounded by residential development with commercial uses proximate along Hancock Bridge Parkway.

³² Z-05-048; Hewitt Testimony (Transcript pg. 25). Existing approvals allow outdoor recreation facilities such as tennis courts, which would generate noise and off-site impacts. *Id.*

³³ Existing zoning presents off-site impacts based upon the approved development program. Accordingly, review criteria measures impacts generated by the request against impacts that have already been approved. Exchanging residential units for non-residential uses offsets anticipated impacts.

³⁴ Hearing testimony reflects over 200 feet from the building to nearest residence. Transcript pg. 89.

³⁵ The remaining 4,000 square feet in the request is reserved for two caretakers' quarters. See MCP.

³⁶ LDC §§33-1531 *et. seq.*

³⁷ Lee Plan Objective 160.2.

³⁸ Public comment noted current safety concerns that may be ameliorated by Sheriff personnel on site.

Transportation/Traffic

Planned developments must have access to roads with sufficient capacity to support proposed intensity.³⁹ Existing regulations or conditions of approval must address expected impacts on transportation facilities.⁴⁰

Access

The project retains a single access to Moody Road aligned with a gated entry to Moody River Estates.⁴¹ Moody Road is a county-maintained minor collector.⁴² Moody Road intersects Hancock Bridge Parkway just north of the site. Hancock Bridge Parkway is an arterial road.⁴³

The MCP reflects site access will remain gated.⁴⁴ Hearing testimony confirmed RPD/CPD residents/guests may continue to access the gated entry before traversing north to the boat ramp, parking, and restroom facility.⁴⁵ Applicant anticipates installing a second gate to access its campus to the south.⁴⁶ Emergency service providers submitted letters of no objection for the proposed access configuration.⁴⁷

Site design retains an easement along the southern boundary to preserve access to the eastern parcel.

Transportation Impacts

Applicant's traffic engineer prepared a Traffic Impact Statement (TIS) that evaluated trip generation based on a conservative development program.⁴⁸ Expert testimony confirmed the request does not significantly affect projected traffic

³⁹ LDC §34-145(d)(4)a.1(d); §34-411(d)(1).

⁴⁰ LDC §34-145(d)(4)a.1(e); §34-411(d)(2).

⁴¹ The main entrance is located on Hancock Bridge Parkway. Secondary entrances are gate restricted to residents.

⁴² See Staff Report (Attachment H); Lee Co. Admin. Code 11-1. Moody Road is classified as a major collector north of Hancock Bridge Parkway to Pondella Road, and as a minor collector for the segment south to Skyline Drive. Lee Co. Admin. Code 11-1.

⁴³ *Id.*

⁴⁴ Hewitt and Akin Testimony (Transcript pg. 22, 32, 93-94).

⁴⁵ Hewitt Testimony (Transcript pg. 21-22).

⁴⁶ *Id.* at 22.

⁴⁷ See Staff Report (Attachment K); Hewitt Testimony (Transcript pg. 31); Condition 36, Deviation 19. The record contains Letters of No Objection from North Fort Myers Fire District, Lee County Public Safety, and Lee County Sheriff's Office.

⁴⁸ See Staff Report (Attachment F). The TIS utilized classifications for a recreational center and four single-family homes to over-estimate trip generation. The request proposes a private facility and two caretakers' units, which both generate less traffic than the uses evaluated in the TIS. Additionally, expert testimony forecasted significant ride-sharing to the site given the nature of the use, and noted most site-related traffic will occur after school/weekends/summer to accommodate youth programs.

volumes beyond current entitlements.⁴⁹ Affected roadways will continue to operate at acceptable levels of service after project build-out.⁵⁰

Site related impacts will be evaluated during development order review.⁵¹

Applicant demonstrated the request has sufficient access and will not have a detrimental impact on the surrounding roadway system.⁵²

Environmental and Natural Resources

Planned development design must protect and preserve natural site features.⁵³

Site Conditions

The site is vacant, comprised mostly of disturbed lands.⁵⁴ A portion of Hancock Creek is within the property boundary.⁵⁵ Conservation 20/20 land abuts to the south.

Mangrove fringes largely consist of exotic vegetation, qualifying as indigenous under the LDC.⁵⁶ A conservation easement encumbers 1.12± acres of indigenous wetland preserve.⁵⁷

Coastal Area Development

The property lies in a Coastal High Hazard Area.⁵⁸ Land uses in coastal areas are subject to policies in the Lee Plan Conservation & Coastal Management Element.⁵⁹ The Element directs the county to protect human life and development from the impacts of coastal flooding.⁶⁰

⁴⁹ Bykau Testimony (Transcript pg. 49); Applicant Ex. 1 (slide 38). The TIS examined traffic generation for existing approvals of 145 units to conserve the 55 units assigned to the eastern portion of Tract M.

⁵⁰ See Staff Report (Attachment F & H); Bykau Testimony (Transcript pg. 50); Applicant Ex. 1 (slide 38).

⁵¹ Site related improvements include capital improvements and right-of-way dedications for "direct access" improvements to the project. Direct access improvements include site driveways/roads, median cuts made necessary by driveways/roads, right-turn, left-turn, and deceleration/acceleration lanes serving driveways/roads, traffic control measures, and roads/intersection improvements whose primary purpose at the time of construction is to provide access to the development. See Lee Plan Glossary and LDC §2-264; Lee Plan Objective 39.1, Policy 39.1.1. LDC §2-66 *et. seq.*

⁵² See Staff Report (Attachment F and H).

⁵³ LDC §34-411(h)-(g).

⁵⁴ See Staff Report (Attachment I).

⁵⁵ Classified as Bays/Estuaries on the FLUCCS Map (540).

⁵⁶ See Staff Report (Attachment I, *citing* LDC §10-1).

⁵⁷ See Staff Report (Attachment D, I, & J); Lee Plan Policies 101.1.1, 101.1.2, 101.3.2, 101.3.5, 101.4.2, & 101.4.3.

⁵⁸ See Lee Plan Map 5-A, Staff Report (pg. 7). Coastal High Hazard Areas are below the elevation of the Category 1 storm surge line established by a Sea, Lake, and Overland Surges from Hurricanes (SLOSH) computerized storm surge model. Lee Plan Glossary, *citing* F.S. §163.3177(6)(a)10,c(VI), §163.3178(2)(h).

⁵⁹ Lee Plan Objective 2.6. See Goals 59, 72, 101, Objective 101.3, Policy 101.1.1.

⁶⁰ Lee Plan Goal 101.

The Plan restricts development in Coastal High Hazard Areas to uplands.⁶¹ The request complies with this directive and replaces residential with non-residential uses, further protecting human life from potential flooding dangers.

The mangrove fringe along the property's boundary will remain intact, and Applicant proposes no new seawalls in this amendment application.⁶² Development will be subject to regulations designed to reduce vulnerability from natural disasters such as hurricanes and flooding.⁶³

Protected Species⁶⁴

A Protected Species Survey revealed no protected species on site.⁶⁵ Staff inspection confirmed this finding.⁶⁶

A bald eagle nest occupied the RPD/CPD portion west of Moody Road prior to 2022. At that time, the eagles migrated to the parcel south of the subject site.⁶⁷ Evidence indicates the nest was destroyed during Hurricane Ian.⁶⁸ The nest was reconstructed, but fledglings were never confirmed.⁶⁹ Applicant presented the request to the Eagle Technical Advisory Committee (ETAC) and obtained approval of its Bald Eagle Management Plan. Conditions of approval ensure site development complies with the approved Plan.⁷⁰

Stormwater Management⁷¹

The RPD/CPD is subject to an existing Environmental Resource Permit (ERP) issued by South Florida Water Management District (SFWMD). Applicant must obtain a new ERP to incorporate existing outfall structures and meet current design requirements under the proposed development plan.⁷²

⁶¹ Lee Plan Goal 101, Objective 72.2, Policy 101.3.2.

⁶² LDC §26-75; Lee Plan Objective 101.1, Policies 101.1.2, 101.4.2, 101.4.3, 123.1.7, 123.2.8; Staff Report (pg. 7-8).

⁶³ Lee Plan Goals 59, 72, Objectives 72.2, 101.1, Policy 72.2.1; LDC §§2-481 *et seq.* Lee Plan Goal 101 describes Coastal Flooding as including high tide events, storm surge, and impacts of sea level rise. FEMA regulations require a minimum finished floor elevation to be one foot above base flood.

⁶⁴ Applicant's ecology expert testified as to site environmental conditions. Barrett Stejskal, BearPaws Environmental Consulting. Applicant Ex. 1 (slide 34).

⁶⁵ See Staff Report (Attachment F).

⁶⁶ See Staff Report (Attachment I).

⁶⁷ Stejskal Testimony (Transcript pg. 40); Hewitt Testimony (Transcript pg. 18); Applicant Ex. 1 (slide 11).

⁶⁸ *Id.*; Staff Report (Attachment F & I).

⁶⁹ Stejskal Testimony (Transcript pg. 40-42).

⁷⁰ Condition 28; Lee Plan Policy 123.6.1.

⁷¹ Applicant's civil engineer provided expert testimony and prepared a Surface Water Management Narrative in support of the request. See Staff Report (Attachment F). Samuel W. Marshall, P.E., Atwell. See Applicant Ex. 1 (slide 32).

⁷² Marshall Testimony (Transcript pg. 39).

Moody River RPD will continue to discharge water west of Moody Road through the property without modification.⁷³ Runoff is collected via catch basins/culverts, swales, and dry detention areas before discharging into Hancock Creek.⁷⁴

Applicant must demonstrate compliance with SFWMD and Lee County water quality and water quantity standards before development may commence.⁷⁵

Buffers/Open Space

The MCP reflects perimeter buffers that have either been approved by existing entitlements or recommended by ETAC.⁷⁶ Site design meets open space Code requirements.⁷⁷

Marine Engineering⁷⁸

Applicant's marine engineer provided expert testimony detailing marine-related elements of the request.⁷⁹ The site is currently entitled to 53 boat slips, while the request proposes 10 wet slips and 10 dry slips.⁸⁰ The 10 wet slips would be provided via a floating dock to accommodate a variety of vessels.⁸¹ Paddle craft access the water at a separate dock for canoe and kayak launching. Hearing testimony confirmed boat access is restricted to invitees of the project and will not be open to the public.⁸²

The project must obtain approval from state, federal, and local agencies with regulatory authority over proposed marine activities, including the Army Corps of Engineers and U.S. Fish and Wildlife Service.⁸³

Applicant demonstrated the request does not adversely affect environmentally critical, sensitive areas, or natural resources.⁸⁴

⁷³ Marshall and Hewitt Testimony (Transcript pg. 38-39).

⁷⁴ Roberts Testimony (Transcript pg. 63); Staff Report (Attachment F).

⁷⁵ Lee Plan Goal 60 & 61, Policy 60.4.1.

⁷⁶ Hewitt Testimony (Transcript pg. 29-30); See Condition 34 and Deviation 17.

⁷⁷ See MCP Open Space Table, reflecting 3.23± acres open space required and provided. See *also* Condition 35.

⁷⁸ Applicant's marine engineer is Hans Wilson, P.E.

⁷⁹ Wilson Testimony (Transcript pg. 42-48). The property is subject to a conservation easement encumbering 6.64± acres. See Staff Report (pg. 7-8, Attachment J).

⁸⁰ *Id.* Mr. Wilson detailed the restrictive nature of encumbering slip credits to ensure proposed slips remain at 10 wet and 10 dry slips.

⁸¹ Wilson Testimony (Transcript pg. 43).

⁸² Akin Testimony (Transcript pg. 84).

⁸³ *Id.*; Lee Plan Objective 128.4, Policies 128.4.5, 128.4.7, 128.4.8, 128.4.9, 128.4.10, & 128.4.11.

⁸⁴ LDC §34-145(d)(4)a.1(f).

Urban/Public Services

Public/urban services are the facilities, capital improvements, and infrastructure necessary to support development.⁸⁵ The Lee Plan requires an evaluation of available urban services during the rezoning process of lands within future urban areas.⁸⁶

Although the site is not within a future urban area, a host of urban services and infrastructure serve the property including roads, potable water, police, fire, and emergency medical services.⁸⁷ Lee County Utilities provides potable water and sanitary sewer to the site with sufficient capacity to service the project.⁸⁸

Pedestrian and transit facilities are proximate to the site. LeeTran offers seasonal trolley service with a stop across Moody Road, and year-round service via Route 70 with a stop within one mile.⁸⁹ Existing sidewalks line the west side of Moody Road to tie into the larger network of pedestrian walkways along Hancock Bridge Parkway, Pondella Road, and US 41.

Development will be subject to impact fees.⁹⁰

Deviations

“Deviations” are departures from LDC regulations.⁹¹ The request carries forward approved deviations and proposes five new deviations.⁹² Deviation numbering is retained from prior approvals to preserve continuity across development permits.⁹³ Newly requested deviations acknowledge existing site conditions and

⁸⁵ 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.

⁸⁶ Lee Plan Objective 2.2, Policy 2.2.1. The Lee Plan defines Future Urban and Future Suburban Areas. Lands within the Suburban land use category, such as the subject property, are not identified as a Future Urban Area. See Lee Plan Glossary.

⁸⁷ The Lee Plan defines and distinguishes Future Urban Areas, Future Non-Urban Areas, and Future Suburban Areas. Lee Plan Glossary. The property falls within Future Suburban and Future Non-Urban Areas. See also Staff Report (pg. 3, Attachment G). The site is serviced by North Fort Myers Fire Control & Rescue District. EMS – Medic 7 and a Lee County Sheriff's office are less than two miles away. See Staff Report (pg. 3).

⁸⁸ See Staff Report (Attachment G).

⁸⁹ Hewitt & Roberts Testimony (Transcript pg. 20 & 60).

⁹⁰ LDC Chapter 2, Article VI.

⁹¹ LDC §34-2.

⁹² See Applicant Ex 1 (slide 19-23).

⁹³ Several deviations were withdrawn under prior approvals, but remain numbered to ensure consistency with various agency permits. Newly requested deviations are enumerated 15-23.

accommodate flexible site design consistent with planned development directives.⁹⁴ Staff supports the requested deviations.⁹⁵

The Hearing Examiner's standard of review requires finding the deviation:

1. Enhances achievement of objectives of the planned development; and
2. Protects public health, safety, and welfare.⁹⁶

Applying LDC deviation standards of review to testimony and evidence in the record, the Hearing Examiner concludes requested deviations meet approval criteria.⁹⁷

Conditions

The county must administer the zoning process so proposed land uses acceptably minimize adverse impacts to adjacent property. Conditions must plausibly relate to anticipated impacts from the proposed development and must be pertinent to mitigation of those impacts on public health, safety, and welfare.⁹⁸

The RPD/CPD is subject to many conditions of approval.⁹⁹ Conditions relate to impacts anticipated from the project.¹⁰⁰ Existing conditions are carried forward without modification.¹⁰¹ New conditions are tied to the proposed amendment.

Public

Applicant held a public meeting consistent with LDC requirements.¹⁰² In addition, Applicant testified to continuous coordination with the Moody River community throughout the application process.¹⁰³

Several members of the public attended the hearing.¹⁰⁴ Residents voiced concerns about traffic, noise, safety, and compatibility.¹⁰⁵

⁹⁴ LDC §34-612(2).

⁹⁵ Emergency service providers reviewed the deviation request and issued letters of no objection. See Staff Report (Attachment J).

⁹⁶ LDC §34-145(d)(4).

⁹⁷ LDC §34-377(a)(4).

⁹⁸ LDC §34-932(b).

⁹⁹ Z-21-022.

¹⁰⁰ LDC §34-83(b)(4)a.3.

¹⁰¹ Condition 1 is modified to reflect the updated MCP and unit count reduction.

¹⁰² Applicant provided meeting minutes from the September 24, 2024 session and supporting materials consistent with LDC §33-1532. See Staff Report (Attachment F).

¹⁰³ See Applicant Ex. 1 (slide 15); Hewitt Testimony (Transcript pg. 19-20).

¹⁰⁴ Most speakers were residents from the neighboring Mangrove Bay multi-family development to the north. Public Testimony (Transcript pg. 44-63).

¹⁰⁵ Some matters fell outside the scope of Hearing Examiner review. The Hearing Examiner's authority in zoning cases is set forth in LDC §34-145(d).

Conclusion

The Hearing Examiner concurs with staff's analysis and recommendation that the requested RPD/CPD amendment meets LDC approval criteria.

IV. Findings and Conclusions

The Hearing Examiner makes the following findings and conclusions based on the testimony and evidence in the record:

As conditioned herein, the proposed RPD/CPD amendment:

- A. Complies with the Lee Plan. See Lee Plan Goals 2, 4, 5, 6, 30, 60, 101, 128, 160, Objectives 2.1, 2.2, 5.1, 6.1, 30.1, 128.4, 160.3, and Policies 1.1.5, 1.5.1, 2.1.1, 2.1.2, 2.2.1, 5.1.2, 5.1.5, 6.1.1, 6.1.4, 6.1.5, 6.1.6, 6.1.8, 60.4.1, 101.1.1, 101.1.2, 101.3.2, 101.3.5, 101.4.2, 101.4.3, 123.6.1, 128.4.5, 128.4.6, 128.4.7, 128.4.8, 128.4.9, 128.4.11, 135.9.5, 141.1.2; Lee Plan Maps 1A-B, 2A, 4-A, 4-B.
- B. Meets the LDC and other County regulations. See LDC Chapters 10, 33, and 34; §§33-1531 *et. seq.*
- C. Is compatible with existing and planned uses in the area. See, Lee Plan Policies 1.1.5, 2.1.1, 2.1.2, 2.2.1, 5.1.5, 6.1.4, 6.1.8, 135.9.5; LDC §34-411(c), (i), and (j).
- D. Provides sufficient access to support the proposed intensity. LDC §34-411(d).
- E. Addresses expected impact on transportation facilities by County regulations or conditions of approval. See Lee Plan Goal 39, Objective 39.1, Policy 6.1.5, LDC §34-411(d).
- F. Will not adversely affect environmentally critical areas and natural resources. See Lee Plan Goals 77, Objectives 1.5, 4.1, 77.1, Policy 1.5.1, 6.1.6, 60.4.1, 101.1.1, 101.1.2, 101.3.2, 101.3.5, 101.4.2, 101.4.3, 123.6.1, 128.4.5, 128.4.6, 128.4.7, 128.4.8, 128.4.9, 128.4.11, Standard 4.1.4, LDC §34-411(g)-(h).
- G. Will be served by urban services. See, Lee Plan Glossary, Map 4A-B, Goal 2; Objectives 2.1, 2.2, 4.1, 53.1, 56.1; Policies 2.2.1, 6.1.4, 6.1.5, 6.1.7, and Standards 4.1.1 and 4.1.2; LDC §34-411(d)-(e).
- H. The proposed mix of uses is appropriate at the proposed location. See Lee Plan Policies 1.1.5, 2.1.1, 5.1.5, and 135.9.5.

- I. The recommended conditions are sufficient to protect the public interest and reasonably relate to the impacts expected from the development. See Lee Plan Policies 5.1.5, 135.9.6; See *also* LDC Chapters 10, 33, and 34.
- J. As conditioned herein, the approved deviation:
 - 1. Enhances objectives of the planned development; and
 - 2. Protects public health, safety, and welfare. §34-145(d)(4)a.2(c).

Date of Recommendation: August 4, 2025.

Amanda L. Rivera
Deputy Hearing Examiner

Lee County Hearing Examiner
1500 Monroe Street, Suite 218
Post Office Box 398
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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

References to uses are as defined in the Lee County Land Development Code (LDC).

CONDITIONS

1. Master Concept Plan (MCP) and Development Parameters

- a. MCP. Development must be consistent with the two-page MCP entitled "Moody River Estates," and "Home Front Heroes Minor CPD," stamped received February 6, 2025 (Exhibit B1).
- b. Lee Plan and LDC Compliance. Development must comply with the LDC and Lee Plan at time of development order approval, except as granted by deviation herein. Subsequent changes may require additional approvals.
- c. Development Parameters.
 - i) Overall RPD/CPD: Limited to 1,000 residential dwelling units and 91,000 square feet of commercial uses. Dwelling units may consist of single-family, zero-lot-line, townhouse, and multi-family units.
 - ii) Tracts A-J & L: Maximum height is 35 feet.
 - iii) Tract M:
 - 1) Eastern 3.63± acres: Maximum 200 dwelling units (of the total 1,000 permitted) and maximum building height of 75 feet.
 - 2) Western 15.76± acres: CPD allowing up to 46,000 square feet of non-residential intensity, including two caretakers' residences.
 - iv) Tract K: CPD allows up to 45,000 square feet of commercial uses.
 - v) Tracts B and M: If multiple-family dwelling units are developed within 250 feet of Moody Road, Developer must provide the following buffer with the first development order for the project.
 - 1) The buffer must be no less than 20 feet in width.
 - 2) There may be no fewer than five trees per 100 linear feet of the length of the buffer.
 - 3) Trees must be no less than four inches in diameter at 12 inches above the ground and no less than 16 feet in height at planting.
 - 4) Shrubs must be a minimum ten-gallon container size; planted in double staggered rows; at least 48 inches in height; and spaced 36 inches on center. They must be at least 60 inches in height within 12 months of the time of planting and maintained in perpetuity at a height of no less than 60 inches

above the adjacent pavement that is required to be buffered, screened, or both, except for visibility at intersections and where pedestrian access is provided.

- 5) In Tract B, no building backs may face Moody Road, and no multi-family building backs may contain more than four dwelling units. In Tract M, no multi-family building backs may face Moody Road.

- 6) Tract B along Moody Road:

Minimum Width: 20 feet

Minimum # of trees: 5 per 100 linear feet

Minimum tree size: Trees must be no less than four inches in diameter at 12 inches above the ground and no less than 16 feet in height at the time of planting.

Hedges: Shrubs must be a minimum 10-gallon container size; planted in double staggered rows; at least 48 inches in height; and spaced 36 inches on-center. They must be at least 60 inches in height within 12 months of time of planting and maintained in perpetuity at a height of no less than 60 inches above the adjacent pavement required to be buffered, screened or both, except for visibility at intersections and where pedestrian access is provided.

At least 75 percent of the trees and 50 percent of the shrubs used to fulfill these requirements must be native Florida species.

No wall is required for this buffer.

- vi) Tract I: Single-family lot area must be at least 7,500 square feet.

2. Uses and Development Regulations

a) Schedule of Uses

RPD - PERMITTED LAND USES

Tract I - Residential IA (R-1A)

Accessory Uses

Administrative Offices

Agricultural Uses, continuation of bona fide use only

Dwelling Units

Single Family, detached (up to 500 units)

Entrance Gates and Gatehouses
Essential Services
Essential Service Facilities, Group I
Excavation, Water Retention
Fences and Walls
Home Occupation, as limited by the LDC
Model Homes, Model Units, and Model Display Center, including accessory parking lots, Real Estate Sales and Rental Office - limited to sales of lots, homes, or units within the development.
Real Estates Sales and Rental Office - limited to sales of lots, homes or units within the development.
Recreation Facilities, Personal and Private On-Site
Residential accessory uses, including but not limited to:
 Private garages, carports, and parking areas
 Private swimming pools and enclosures
 Private Boat Dock and tennis courts
Signs
Temporary Uses - limited to a sales center and a construction Office

Tracts C, D, F, H, and J - Residential 1 (R-1)

All uses permitted in the R-1A District plus Dwelling Units: Townhouses (up to 500 units) and Two-family Attached (up to 400 units)

Tracts A, B, and G - Residential 2 (R-2)

All uses permitted in the R-1A District plus Dwelling Units: Multiple Family Buildings (up to 600 units)

Eastern 3.63± Acres of Tract M - Residential 3 (R-3) (up to 200 units)

All uses in the Residential 1A- R-2 districts and the following:

 Multi-slip docking facility
 Parking Lot
 Accessory

Tract E - Recreational Facilities, Private On-Site or Off-Site

Accessory Uses

Administrative Offices

Agricultural Uses, continuation of bona fide use only

Club (up to 20,000 square feet) Private including but not limited to the following ancillary uses:

 Food and Beverage Service
 Pro Shop and Specialty Retail, Group I
 Locker Rooms
 Health Club and Spa
 Rental or Leasing Establishment, Group I (limited to bicycles, tennis rackets, and other small sports equipment for use within the development)

Entrance Gates and Gatehouses
Essential Services
Essential Service Facilities, Group I
Excavation, Water Retention
Fences and Walls
Project Maintenance Facility
Recreational Facilities, Group I, for use by residents and their guests
Signs, including the existing billboard
Temporary Uses - limited to Real Estate Sales and Rental Office limited
to sales of lots, homes, or units within the development and a
Construction Office

CPD PERMITTED USES

Tract K (up to 45,000 sq ft)

Accessory Uses
Administrative Offices
Animal Clinic - outside kennels are prohibited
ATM (automatic teller machine)
Auto Parts Store
Banks and Financial Establishments, All Groups
Business Services, Group I
Clothing Stores
Daycare Center, Child or Adult
Department Store
Drive-through facility accessory to any permitted use
Drug Store
Essential Services
Essential Service Facility, Group I
Fences and Walls
Gift and Souvenir Shop
Hardware Store
Health Care Facility, Group III
Hobby, Toy and Game Shop
Hospice
Offices, Medical
Personal Services Groups I and II - limited to Beauty Spas, Health Clubs or
Spas, Reducing or Slenderizing Salons, Group III, and Group IV -
limited to babysitting bureaus, debt counseling services, portrait
copying, shopping services, and tax return preparation services
Real Estate Sales and Rental Office
Rental and Leasing Establishments, Group II - outside storage is prohibited
Restaurants, Standard - Groups I, II, and III
Shopping Center
Signs, in compliance with the LDC

Social Services, Group I only
Specialty Retail Shops, Groups I - IV
Storage, Indoor only and only as ancillary use
Studios
Temporary Uses - limited to sales center and construction offices, in compliance with LDC regulations regarding temporary uses
Variety Store (ADD2017-00148)

HOME FRONT HEROES MINOR CPD – Western 15.76± acres of Tract M (up to 46,000 sq ft)

Accessory Uses and Structures*
Administrative Offices
Boats: Boat ramps and dockage (not marinas) – 2 non-motorized ramps
Limited for the use of Home Front Heroes Minor CPD and guests
Boat Ramp – private (Existing Moody River Estates Waterpark)
Limited to residents/guests/property owners within Moody River Estates RPD and Home Front Heroes Minor CPD
Caretakers' Residences (maximum 2)
Community gardens
Entrance gate and gatehouse
EMS, fire or sheriff's station, limited to sheriff's office and ancillary uses
Essential services
Essential service facilities, Group I
Excavation, water retention
Fences, walls
Parking lot: accessory, temporary
Private multi-slip docking facility (maximum 10 wet slips and 10 boat trailer parking/dry slips)
Recreational facilities, personal, private on-site
Signs, in accordance with Chapter 30
Social Services, Groups I and II, excluding Offender Rehabilitation Agencies and Offender Self-Help Organizations
Storage, Indoor only
Temporary Uses

*Anticipated Accessory Uses include, but not limited to:

Outreach Education/Youth Programs
Community Outreach Programs to include Crime Prevention Education/Presentations.
Sailing/Boating Lessons
Boxing Lessons
Various Programs with Sheriff's Youth Athletic League
Soccer
Basketball
Pickleball

Explorers Programs
 Camping Tents
 Kayaking/Canoeing Fishing
 Sheriff's Summer Camp
 Arts and Crafts
 Shade Structures
 Tutoring
 Temporary events: Petting Zoo, Bounce Houses, Mobile Food Vendors
 (pursuant to LDC §34-3052), and similar uses
 Lee County Sheriff demonstration events - No tactical training or
 discharging of firearms

Conservation Areas (Wetland and Upland Conservation Areas)

Interpretative centers and signage, rain shelters, gazebos
 Nature and foot trails including boardwalks, benches, and jogging trails
 Paths, boardwalks and bridges
 Water Management Facilities
 Wildlife Management
 Mitigation and Restoration Activities

- b) Site Development Regulations for all parcels except Home Front Heroes
Minor CPD/western 15.76± acres of Tract M: As approved by Zoning
Resolution Z-05-048, except for building heights in the eastern 3.63± acres
of Tract M as limited by Condition 1(c)iii.

OPEN SPACE AND INDIGENOUS VEGETATION/ WEST OF MOODY RD							
	ACRES	OPEN SPACE			INDIGENOUS VEGETATION		
		REQUIRED		MIN. PROVIDE D	REQUIRED		MIN. PROVIDED
		%OPEN SPACE	ACRES	ACRES	% INDIGENOUS	ACRES	ACRES
RESIDENTIAL PLANNED DEVELOPMENT							
RESIDEN. TRACTS W/LOTS GREATER THAN 6,500 SF.	54.0*	N/A	N/A	4.32	N/A	2.16	2.16
BALANCE OF DEVELOPMENT	163.4	40%	65.36	65.36	50%	32.68	32.68
TOTAL	217.4		65.36	69.68	50%	34.84	34.84
COMMERCIAL PLANNED DEVELOPMENT							
CPD	4.5	30%	1.35	1.35	50%	.68	.68**
TOTAL PROJECT	221.9		66.71	71.03		35.52	35.52

• If the acreage of "Residential Tracts with lots greater than 6,500 square feet" changes, this table will be adjusted accordingly.

** This acreage may be provided within the Residential Planned Development.

COMMERCIAL PLANNED DEVELOPMENT TRACT K		
	PRINCIPAL USES	ACCESSORY USES
MIN. LOT OR PARCEL AREA	10,000 square feet	N/A
MIN. LOT WIDTH	75 feet	N/A
MINIMUM BUILDING SETBACKS:		
HANCOCK BRIDGE PARKWAY	35 feet or BH, whichever is greater	20 feet
INTERNAL FRONTAGE ROAD	15 feet	20 feet
WATERFRONT	25 feet	Zero (0) feet to bulkhead or rip-rap at top of bank
MINIMUM DISTANCE:		
Between Structures part of an architecturally unified group	10 feet	10 feet*
Between All Other Structures	20 feet	10 feet
MAXIMUM BUILDING HEIGHT:		
Office Buildings	80 feet	80 feet
Boat Dry Storage	35 feet	35 feet
Architectural features	N/A	100 feet
MAXIMUM LOT COVERAGE *	55 percent	55 percent

* as defined by LDC Chapter 34

c) HOME FRONT HEROES MINOR CPD (Western 15.76± acres of Tract M)

Minimum Lot Area and Dimensions:

Area: Conservation Easement Island 1.12 acres (no minimum width/depth)
Main Development Parcel: 9.66 acres
Width: 670 feet
Depth: 360 feet

Minimum Building Setbacks:

Perimeter (Principal) 15 feet or ½ building height (whichever is greater)
Street:
Moody Road: 25 feet
Private: 20 feet
Side: 15 feet or ½ building height (whichever is greater)
Rear: 20 feet
Waterbody: 20 feet
Accessory Structures: In compliance with LDC

Minimum Building Separation:	20 feet or ½ building height (whichever is greater)
Maximum Lot Coverage:	45 percent
Maximum Building Height:	45 feet (Over 35 feet subject to LDC §34-2174)
Open Space:	30 percent (see Deviation 15)

3. **Open Space.** Open space requirements must be tracked with each development order and must be substantially consistent with the Open Space and Indigenous Vegetation. A cumulative open space table listing the development tract, development order number, type of use, lot size, lot coverage, and required open space must be included with each development order. The open space table must include all development orders under review and approved. The development order plans must demonstrate how the open space requirements for common open space and indigenous/native tree preservation are being met. The residential development tracts must be labeled as to minimum lot size and maximum lot coverage. A minimum of 54 acres, including associated lakes and roadways, must be single family residential lots with a minimum lot size of 6,500 square feet and a maximum lot coverage of 45 percent.

4. **Species Survey.** Prior to issuance of a Vegetation Removal Permit: (1) the existing borrow pit area and wetlands must be surveyed specifically for the presence of wading bird and alligator nests. If any active nests are located, then buffer areas must be established to protect these areas; and (2) the area located north of Hancock Bridge Parkway must be resurveyed for gopher tortoise burrows.

5. **Gopher Tortoise Protection.** Gopher tortoises must be protected on-site. The gopher tortoise preserve must be provided in the CO tract with the bald eagle nest on the MCP stamped received February 25, 2005. Development order plans must include the location and detail of sandy earthen berms to be created within the gopher tortoise preserve to provide a high, dry area for burrowing; and a vegetative barrier or permanent fencing must be delineated along any roadway abutting the gopher tortoise preserve. The berms within the preserve must be planted with a mixture of bahia grass, other broad leaf vegetation, and scattered native shrubs prior to moving gopher tortoises to the preserve. Supplemental feeding such as alfalfa hay may be necessary until the berm plantings establish.

Prior to the issuance of a Certificate of Compliance for the infrastructure, either the vegetative barrier or permanent fencing must be installed along any roadways or development areas under construction abutting the gopher tortoise preserve, whichever is chosen at time of local development order review.

6. **Alligator Education.** Prior to local development order approval, the plans must include signs adjacent to the lake abutting the Club Tract E stating "It is unlawful to feed or harass alligators." Additional information regarding how to live with

alligators, including the danger of approaching or feeding alligators, must be available for residents or potential residents in the sales center and club house.

7. **Waterway Buffer.** Prior to local development order approval, a minimum 10-foot waterway buffer must be delineated along the canal measured from the State jurisdictional wetland line. Native vegetation within the waterway buffer must be retained during subdivision development and perpetually by future residents. Additionally, any native tree clusters which occur within 25- feet of the State jurisdictional wetland line must be preserved or relocated on-site using proper horticultural means if the trees interfere with building layout or the site drainage system. Sabal palms located landward of the 10-foot-wide waterway buffer may be preserved in place or relocated on-site. An accessway to a dock or fishing/observation pier may be installed through the waterway buffer limited to a four-foot width and placed to avoid existing native vegetation to the maximum extent possible.

Prior to plat approval, the homeowner's documents/deed restrictions must include language detailing the preservation of native trees along the canal.

8. **Sabal Palms.** Any sabal palms with a minimum eight-foot clear trunk located within the project boundaries north of Hancock Bridge Parkway must be either preserved in place or relocated on-site to buffers or common areas. Efforts must be made to coordinate the salvaging of any sabal palms with a minimum eight-foot clear trunk located within the project boundaries south of Hancock Bridge Parkway with the Division of Environmental Sciences' Staff, whether used on-site or otherwise. Any sabal palms being relocated must be moved in a horticulturally correct manner, per Lee County Extension Services brochure Lee 8/2000A (Exhibit B2). Preserved/relocated palms must be delineated on development order plans and receive protected tree credits per LDC §10-420(h).
9. **Littoral Plantings.** Bulkhead or rip-rap may be used along up to 30 percent of lake shorelines adjacent to internal roadways and Club Tract E. If bulkhead or rip-rap is proposed, it must be delineated on the landscape plan and the paving/grading plan with cross-sections. A compensatory littoral zone must be provided for each linear footage of bulkhead/rip-rap and must consist of an 8:1 slope, with two herbaceous littoral plants per linear foot of shoreline. Littoral plantings must be clustered within the compensatory littoral zone.
10. **Median Openings.** Full median openings indicated on the MCP are subject to future operational decisions by the County to install a traffic signal or to modify/remove the median opening. If installation of a traffic signal is deemed to be appropriate by the County at the project entrance, Developer will be responsible for the full cost of the traffic signal improvement.

11. **Model Homes/Units.** Model Homes and Model Units are regulated by LDC §34-1951. Model Homes, Model Units, and Model Display Centers throughout the entire project are subject to LDC §34-1954(d) time limitations.
12. **Building Separation.** Commercial buildings exceeding 35 feet in height must maintain additional building separation as regulated by LDC §34-2174(a).
13. **Mitigation of Impacts.** Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.
14. **Future Approvals.** Approval of this rezoning does not guarantee local development order approval. Future development order approvals must satisfy requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table 1(b).
15. **Easements.** Drainage and access easements depicted on the Master Concept Plan must be accommodated and incorporated (at development order approval stage) into the development orders and plats for the subject property, unless proof that the easements have been released or relocated is provided.
16. **Blasting.** No development blasting activity is permitted unless approved through the public hearing process to amend the RPD/CPD.
17. **LCEC Easement.** The 12-foot-wide Lee County Electric Cooperative (LCEC) easement depicted on the MCP (recorded at O.R. Book 1054, Page 776), must be released or relocated at the time of development order approval.
18. **Agricultural Uses.** Existing bona fide agricultural uses are allowed only in strict compliance with the following:
 - a. Bona fide agricultural uses in existence at the time application for this project was filed (Exhibit B3) attached hereto, may continue until approval of a local development order for the area of the project containing those uses.
 - b. Additional clearing of trees or other vegetation in agricultural areas is prohibited. Existing areas of bona fide agricultural use may be maintained, i.e., mowed, but not cleared or expanded. This prohibition is not intended to preclude County approved requests for the removal of invasive exotic vegetation.
 - c. Prior to issuance of a local development order, the property owner must provide written proof, subject to approval by the County Attorney's Office, of the following:

- i. Termination of all 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 the agricultural uses ceased;
 2. the legal description of the property subject to the development order approval;
 3. an affirmative statement that the owner 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 re-zoned to permit such uses; and,
 4. that the affidavit constitutes a covenant between the owner and the county that is binding on the owner and their assignees and successors in interest. The covenant must be properly recorded in the public records of the county at the owner's expense.
 - ii. Termination of the agricultural tax exemption for any portion of the property included in the development order application/approval. Proof as to termination must include of a copy of the request to terminate the tax exemption provided to the Property Appraiser.
19. **Access.** Design of the right-out turn onto Hancock Bridge Parkway must include adequate sight distance for a vehicle to turn onto Hancock Bridge Parkway and obtain a safe speed without interfering with thru traffic, as described in AASHTO. The access point must also meet the intersection separation distance of 660 lineal feet, as defined in LDC §10-285.
20. DELETED
21. **Boat Ramp.** Development order plans must delineate the boat ramp, docks, and mooring pilings. Final design is subject to review through the Lee County Dock and Shoreline Permit process.
22. DELETED
23. DELETED
24. **Material Transfer.** The transfer of excavated materials south across Skyline Drive is limited to a maximum of 188,000 cubic yards. Material transfer is prohibited between 7:30 a.m. to 8:30 a.m. and 1:30 p.m. to 2:30 p.m. on days

the School District of Lee County holds classes. Otherwise, excavated material may be transferred from 6:00 a.m. to 6:00 p.m. Monday through Friday, provided the crossing section of Skyline Drive is well lit during early morning/late evening. Fill transfer is only permitted on Saturdays from 8:00 a.m. to 5:00 p.m. Fill transfer is prohibited on Sunday.

25. **Roadway Repair**. Developer is responsible for damage to Skyline Drive resulting from project construction activity. Developer must coordinate repairs with the Lee County Department of Transportation.
26. **Skyline Drive Crossing**. Developer must provide personnel to direct traffic and extra lighting at the crossing of Skyline Drive to prevent accidents.
27. **Mood Road Signage**. At the intersection of the project's internal road connection with Moody Road, Developer is responsible for the erection of signs warning Moody Road motorists of the potential crossing of vehicles with boat trailers.
28. **Bald Eagle Management – Tract M**. Prior to local development order approval on the western 15.76 acres of Tract M, Developer must adhere to the attached Bald Eagle Management Plan dated October 2024 (Exhibit B4) for proposed impacts within 660 feet of the bald eagle nest. The 660-foot buffer zone and activities/restrictions outlined in the Plan must be shown on development order plans.
29. **Conservation Easement – Tract M**. Prior to local development order approval on the western 15.76 acres of Tract M, Developer must demonstrate the recorded Conservation Easement has been modified to allow for a maximum of 20 boat slips to remain on the property.
30. **Boat Slips – Tract M**. Prior to local development order approval on the western 15.76 acres of Tract M, Developer must depict and number all proposed boat slips on development order plans.
31. **Bollards – Tract M**. Prior to local development order approval on the western 15.76 acres of Tract M, Developer must depict permanent bollards on development order plans that prevent motorized vessel access at the non-motorized boat ramp identified on the MCP.
32. **Indigenous Preserve – Tract M**. Prior to local development order approval on the western 15.76 acres of Tract M, development order plans must depict 1.12 acres of indigenous preserve area.
33. **Exotic Vegetation – Tract M**. Prior to local development order approval on the western 15.76 acres of Tract M, Developer must remove exotic vegetation by hand from the mangrove fringe as depicted on MCP.

34. **Buffers – Tract M.** Prior to development order approval for the western 15.76 acres of Tract M, Developer must provide the following buffers:
- a. North property line must depict a Type-B buffer preserving existing heritage trees.
 - b. South property line must depict a 30-foot-wide buffer between the 660-foot and 330-foot eagle nest zone consisting of a ten-foot-wide tree planting strip and ten-foot-wide planted swale consisting of the following:
 - i. Slash Pine (*Pinus elliottii*) and Live Oaks (*Quercus virginiana*) must six-foot-in-height, 25 gallon, and installed 20-foot on center; and
 - ii. *Spartina bakerii* must be one gallon and specified to be installed two feet on center within the swale.
 - c. Southeast corner within the 330-foot eagle nest zone must include preservation of existing indigenous vegetation, no earth work, and hand removal of exotics.
 - d. East property line must preserve existing indigenous vegetation, no earth work, hand removal of exotics within the 330-foot eagle nest zone and a Type-C or Type-F buffer outside of the 330-foot eagle nest zone.
 - e. West property line must depict a Type-D buffer preserving existing heritage trees and a decorative fence along the property line.
35. **Open Space – Tract M.** Prior to development order approval on the western 15.76 acres of Tract M, development order plans must depict 3.23 acres of open space based on 30 percent of 10.78 acres of land.
36. **Notice – Tract M.** Prior to development order approval on the western 15.76 acres of Tract M, Developer must demonstrate the required notice to future property owners has been recorded in the public record detailing the emergency access plan and where a copy of this plan may be obtained.
37. **Platted Lake Maintenance Easement:** The platted lake maintenance easement may continue to be located within single-family lots in Tracts A and G. This easement or right of way must be kept clear by the property owners and have satisfactory vehicle access, as required by LDC §10-328(a). (Approved in ADD2014-00053)
38. **Building Separation:** The minimum building separation for buildings 2-story or greater on property located 13210, 13220, 13230, and 13240 Silver Thorn Loop, and 3180, 3181, and 3191 Sea Trawler Bend shall be as depicted on Exhibit B5. (Approved in ADD2020-00019)

39. **Hours of Operation – Tract M.** Hours of operation for outdoor activities including food trucks, bounce houses, or sporting events for the western 15.76 acres of Tract M are limited to 7:00 a.m. to 9:00 p.m., Sunday through Thursday, and 7:00 a.m. to 11:00 p.m., Friday and Saturday.
40. **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 federal/state agencies or undertakes actions in violation of state/federal law. Applicant must obtain applicable state/federal permits prior to commencing development.

DEVIATIONS

Deviations 1-14 are carried forward from prior approvals without substantive modification.

1. Withdrawn.
2. Withdrawn.
3. **Bank Slopes.** Deviation 3 seeks relief from the LDC §10-329(d)(4) requirement to slope excavation banks, to allow up to 40 percent of the banks to utilize either:
 - a vertical slope, with the condition that lake bottom slopes at the toe of bulkheads may be no greater than 4:1; or
 - a 2:1 (horizontal/vertical) slope to a depth of six-feet below control elevation, with the condition that the 2:1 sections be stabilized with rip-rap.

This deviation was APPROVED subject to Condition 9, and that adequate elements for the protection of wayward vehicles are provided when adjacent to any roadway, parking lot, or driveway aisle.
4. Withdrawn.
5. Withdrawn.
6. Withdrawn.
7. Withdrawn.

8. **Connection Separation**. Deviation 8 seeks relief from the LDC §10-285(a) requirement to provide connection separations on local roads a minimum of 125 feet, to allow driveways serving multi-family units with private driveways to have a minimum separation of 20 feet.

This deviation was APPROVED SUBJECT TO the following condition:

If the setback applies to internal roads/accessways with a posted maximum speed of 20 MPH, there must be a visual clear zone in accordance with LDC §34-3131, traffic calming devices (if required) as identified in the ITE Residential Street Design and Traffic Control Book, and each drive may only serve a private driveway/garage for an individual unit.

9. Withdrawn.

10. Withdrawn.

11. **Accessways**. Deviation 11 seeks relief from the LDC §10-296(l)(4) requirement that no more than 100 multi-family units be constructed without provision of a right-of-way, to allow up to 200 units.

This deviation was APPROVED SUBJECT TO the condition that Developer demonstrates the Emergency Medical Service and local Fire District review/approve the design supporting this deviation in development order plans prior to local development order approval, and that the health, safety, and welfare of the residents in the Eastern 3.63± acres of Tract M have been protected.

12. **Excess Spoil Removal**. Deviation 12 seeks relief from the LDC §10-329 (b) Table1 requirement which limits excess spoil removal plans for development order projects to 20,000 cubic yards of material, to allow up to 188,000 cubic yards.

This deviation was APPROVED SUBJECT TO the condition that soil removal is from the RPO site to the project's RM-2 parcel on the south side of Skyline Drive.

13. **Cul-de-sacs**. Deviation 13 seeks relief from the LDC §10-296(k)(1) requirement to provide a circular turnaround (cul-de-sac) for dead-end streets, to allow a hammerhead turnaround.

This deviation was APPROVED SUBJECT TO the condition that Developer demonstrates the Emergency Medical Service and local Fire District review/approve the design supporting this deviation in development order plans prior to development order approval, and that the health, safety, and welfare of residents in Tract G has been protected.

14. Withdrawn

Deviations 15-19 are newly requested in the RPD/CPD amendment application.

15. **Open Space – Western 15.76± acres of Tract M.** Deviation 15 seeks relief from LDC §10-415 to allow navigable waterways within the boundary to be excluded from the required open space calculations and to allow preservation of existing mangroves to meet indigenous requirement.

HEX Recommendation: Approve, SUBJECT TO Condition 35.

16. **Plant Installation - Western 15.76± acres of Tract M.** Deviation 16 seeks relief from LDC §10-421(a)(8) which requires buffer plantings be installed on the exterior side of the wall/fence, to allow the decorative fence to be outside the existing buffer along Moody Road.

HEX Recommendation: Approve

17. **Buffers - Western 15.76± acres of Tract M.** Deviation 17 seeks relief from LDC §10-416(d) which requires a type C/F buffer when commercial abuts residential and a 30' buffer when commercial abuts a public preserve, to allow the following buffers shown on the MCP:
- North property line - allow the existing type B buffer to remain;
 - East property line - allow existing indigenous trees within the 330-foot eagle nest zone and Type C/F buffer outside 330-foot eagle nest zone; and
 - South property line - allow existing indigenous trees within the 330-foot eagle nest zone with 10-foot tree planting area outside the 330-foot zone and proposed 30-foot buffer between 330-foot eagle nest zone and 660-foot eagle nest zone to serve as the preserve buffer.

HEX Recommendation: Approve SUBJECT TO Condition 34.

18. **Parking Spaces – Western 15.76± acres of Tract M.** Deviation 18 seeks relief from LDC §34-2020(b) which requires 1 parking space per 350 square feet of social services, Group I office uses, and 1 parking space for every 2 boat slips, to allow a 10 percent reduction in required parking pursuant to LDC §34-2020(c)(2).

HEX Recommendation: Approve

19. **Single Access - Western 15.76± acres of Tract M.** Deviation 19 seeks relief from LDC §10-291(3) which requires commercial developments more than ten acres to provide more than one means of ingress/egress, to allow the previously approved/constructed single access.

HEX Recommendation: Approve SUBJECT TO Condition 36.

20. Withdrawn

21. **Sign.** Deviation 21 (ADD2012-00058) seeks relief from LDC §30-152(2)c.1. requiring 15-foot setback from right of way and five feet from edge of pavement of entrance and exit lanes for signs, to allow the internal subdivision sign three feet from the entrance lane.

HEX Recommendation: Approve

22. **Easement.** Deviation 22 (ADD2014-00053) seeks relief from LDC §10-328(a) restricting any portion of required maintenance easement area within the limits of a platted single-family residential lot, to allow the existing platted lake maintenance easement to remain within the single family lots in Tracts A and G, Moody River Estate, Unit Four.

HEX Recommendation: Approve SUBJECT TO Condition 37.

Exhibits to Conditions:

- B1 MCP "Home Front Heroes Minor CPD" dated 2/06/2025
- B2 Lee County Extension Services brochure Lee 8/2000A
- B3 Bona Fide Agricultural Uses
- B4 Bald Eagle Management Plan dated October 2024
- B5 Minimum Building Separation Drawing

Exhibit C

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments for DCI:* Prepared by Brian Roberts, Manager, Development Services, date received February 26, 2025 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. Affidavit of Publication: For Zoning Case DCI2023-00047, Home Front Heroes Minor CPD (1 page – 8.5"x11")
3. *PowerPoint Presentation:* Prepared by Lee County Staff for DCI2023-00047, Home Front Heroes Minor CPD, dated March 13, 2025 (multiple pages – 8.5"x11")[color]

APPLICANT EXHIBITS

- a. *48-Hour Notice:* Email from Stacy Hewitt to Hearing Examiner, with copies to Brian Robers, Lauren Schaefer, Sandra Kokotilo, Joseph Adams, Esq., Amanda Swindle, Esq., Michael Jacob, Esq., Richard Akin, Esq., and Maria Perez, dated Monday, March 10, 2025, 2:23 PM (multiple pages – 8.5"x11" and 11"x17")
1. *PowerPoint Presentation:* Prepared by Home Front Heroes, Inc., for DCI2023-00047, Home Front Heroes Minor CPD, dated March 13, 2025 (multiple pages – 8.5"x11")[color]
2. *Master Concept Plan:* Prepared by Wilson Miller for Colonial Homes and Home Front Heroes (2 pages – 11"x17" and 24"x36")
3. *Written Submissions:* Email from Stacy Hewitt to Hearing Examiner, with copies to Brian Roberts, Richard Akin, Esq., and Maria Perez, dated Wednesday, March 26, 2025, 1:04 PM (multiple pages – 8.5"x11"){post hearing submittal}

Exhibit D

HEARING PARTICIPANTS

County Staff:

1. Brian Roberts

Applicant Representatives:

1. Richard Akin, Esq.
2. Yury Bykau
3. Stacy Ellis Hewitt
4. Sam Marshall
5. Barrett Stejskal
6. Hans Wilson

Public Participants:

1. Joyce Campana
2. Dawn M. Krutz
3. Beth Russo
4. Tom Ward
5. Kirk Woodbury

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.