



LEE COUNTY BOARD OF COUNTY COMMISSIONERS

ZONING  
and  
COMPREHENSIVE PLAN AMENDMENT HEARING  
AGENDA

Wednesday, September 2, 2020

9:30AM

REZ2019-00020  
Z-20-022

Rezoning (Amazon Sheds and Gazebos)

DCI2019-00020  
Z-20-016

Apaloosa Lane Minor RPD

CPA2019-00009 &  
CPA2019-00011

Small Brothers Commercial

## NOTICE OF PUBLIC HEARING

The Lee County Board of County Commissioners will hold a public hearing at 9:30 am on Wednesday, September 2, 2020 in the Board Chambers at 2120 Main St., Ft. Myers, FL, to review the written recommendations made by the Hearing Examiner and make a final decision on the case(s) below. (Lee County Land Development Code is abbreviated below as **LDC**.)

### **REZ2019-00020 / Rezoning (Amazon Sheds and Gazebos)**

Request to rezone 3.1± acres of Light Industrial (IL) and Agricultural (AG-2) to IL

Located At 17300 Jean Street, San Carlos Planning Community, Lee County, FL

### **DCI2019-00020 / Apaloosa Lane Minor RPD**

Request to rezone 14.97± acres from Agricultural (AG-2) and Special Commercial Office (CS-2) to Residential Planned Development (RPD) to allow up to a total of 300 Multiple-Family dwelling units (210 standard density and 90 bonus density units) with a maximum height of 55 feet.

Located At 13290 Palomino Lane, Daniels Parkway Planning Community, Lee County, FL

Copies of the Hearing Examiner's recommendation may be obtained or the file reviewed at the Zoning Section, 1500 Monroe St., Ft. Myers, FL. Telephone 239-533-8585 for additional information.

**If you did not appear before the Hearing Examiner or otherwise become a participant for that case in which you wish to testify, the law does not permit you to address the Board of County Commissioners.**

**Statements before the Board of County Commissioners regarding the zoning case will be strictly limited to testimony presented to the Hearing Examiner, testimony concerning the correctness of the findings of fact or conclusions of law contained in the record, or to allege the discovery of new, relevant information which was not available at the time of the hearing before the Hearing Examiner.**

**If a participant decides to appeal a decision made by the Board of County Commissioners with respect to any matter considered at this hearing, a verbatim record of the proceeding will be necessary to appeal a decision made at this hearing.**

**In accordance with the Americans with Disabilities Act, Lee County will not discriminate against qualified individuals with disabilities in its services, programs, or activities. To request an auxiliary aid or service for effective communication or a reasonable modification to participate, contact Joan LaGuardia, (239)533-2314, [ADArequests@leegov.com](mailto:ADArequests@leegov.com) or Florida Relay Service 711. Accommodation will be provided at no cost to the requestor. Requests should be made at least five business days in advance.**

**NOTICE OF PROPOSED AMENDMENT TO THE  
LEE COUNTY COMPREHENSIVE LAND USE PLAN  
(TRANSMITTAL HEARING)**

The Lee County Board of County Commissioners will hold a public hearing to consider proposed amendments to the Lee County Comprehensive Land Use Plan (Lee Plan) on Wednesday, September 2, 2020. The hearing will commence at 9:30 a.m., or as soon thereafter as can be heard, in the Board Chambers at 2120 Main Street in Downtown Fort Myers. At the hearing, the Board will consider the proposed amendments for transmittal to the Florida Department of Economic Opportunity:

CPA2019-00009 – Small Brother Commercial: Amend the Lee Plan Future Land Use Element to allow neighborhood commercial development in the Density Reduction/Groundwater Resource (DR/GR) future land use category; amend Policy 55.1.3 to maintain consistency with State Statutes.

CPA2019-00011 – Small Brothers Commercial Utilities: Amend Lee Plan Map 6, Future Water Service Areas, and Map 7 Future Sanitary Sewer Service Areas to add property located near the intersection of Corkscrew Road and Alico Road (15230 Corkscrew Road).

This transmittal hearing is the first step in a two step public hearing process to amend the Lee Plan. A second hearing will follow the Department of Economic Opportunity's review of the application.

Documentation for the Proposed Comprehensive Plan Amendment is available at <https://www.leegov.com/dcd/planning/cpa> or at the Department of Community Development located at 1500 Monroe Street, Fort Myers, Florida. This meeting is open to the public. Interested parties may appear at the meeting and be heard with respect to the proposed plan amendment. A verbatim record of the proceeding will be necessary to appeal a decision made at this hearing.

It is the intent of the Board of County Commissioners that the provisions of this Comprehensive Plan Amendment may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

Lee County will not discriminate against individuals with disabilities. To request an accommodation, contact Joan LaGuardia, (239) 533-2314, Florida Relay Service 711, or [ADArequests@leegov.com](mailto:ADArequests@leegov.com), at least five business days in advance.

**REZ2019-00020**  
**REZONING**  
**(AMAZON SHEDS**  
**AND GAZEBOS)**

# Staff Summary

CASE NUMBER & NAME: REZ2019-00020 / Rezoning (Amazon Sheds and Gazebos)

REQUEST: Request to rezone 3.1± acres of Light Industrial (IL) and Agricultural (AG-2) to IL.

RESOLUTION NUMBER: Z-20-022

LOCATION: 17300 Jean Street, San Carlos Planning Community, Lee County, FL

OWNER: Amazon Sheds and Gazebos Inc.

AGENT: Veronica Martin  
TDM Consulting, Inc.  
43 Barkley Circle, Ste. 200  
Fort Myers, FL 33907

HEARING EXAMINER RECOMMENDATION: Approval

PARTICIPANTS (0): None

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**REZ2019-00020**  
**Aerial**



**Legend**

 Subject Parcel



0 100  
Feet

Summary of Hearing Examiner Recommendation

**AMAZON SHEDS AND GAZEBOS**

(by Amazon Sheds and Gazebos, Inc.)

Request: Rezone from Light Industrial (IL) and Agricultural (AG-2) to Light Industrial (IL)

Location: 17300 Jean Street  
(South of Alico Road, Between US 41 and I-75)

San Carlos Planning Community

(District 2)

Size: 3.09± acres

Recommendation: Approval

Public Concerns: None

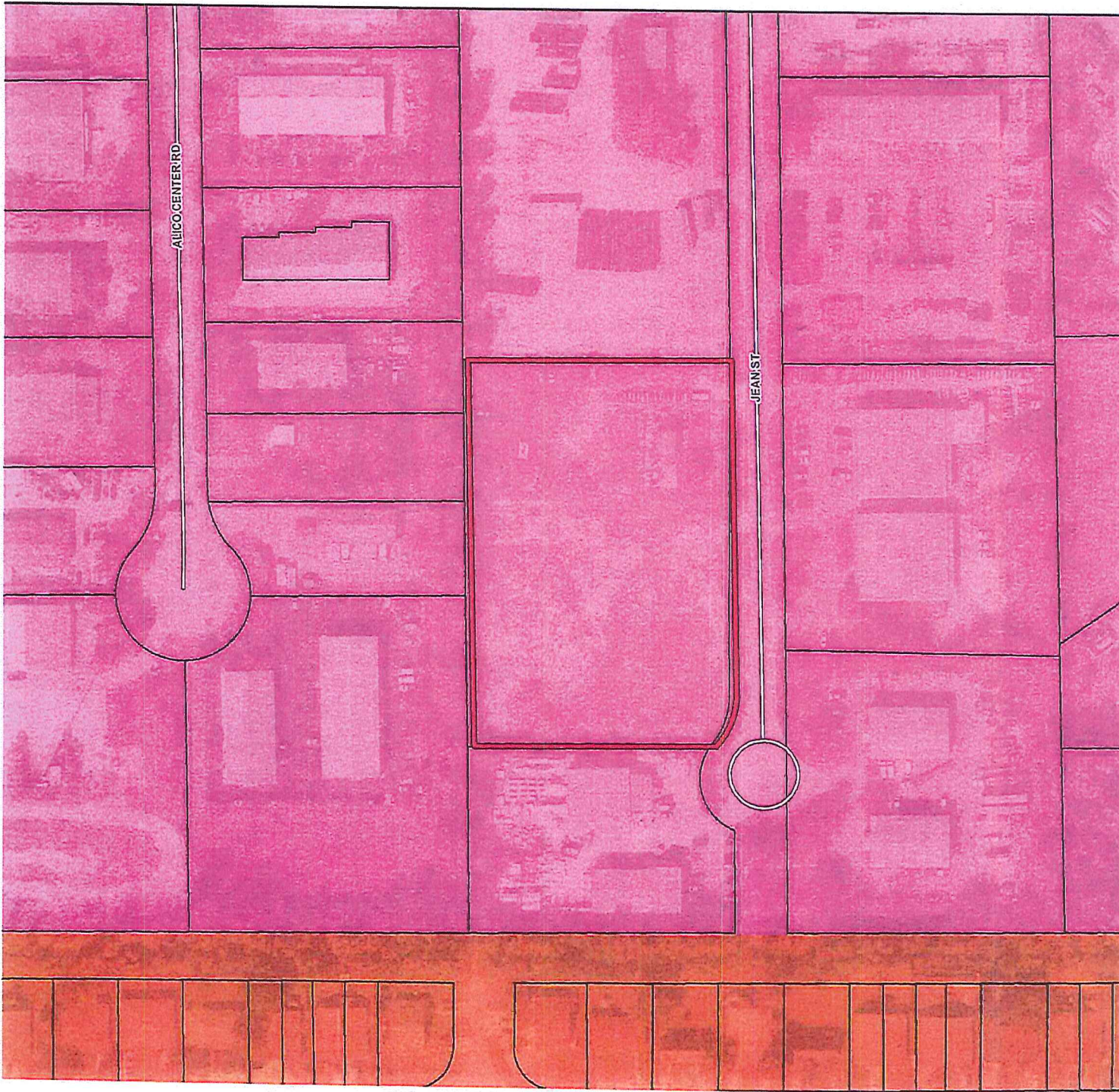
**Hearing Examiner Remarks:**

The request seeks to unify zoning from two districts to an industrial district. Rezoning the property for light industrial uses improves consistency with its Industrial Development future land use designation.




The Hearing Examiner agrees with staff's recommendation of approval.

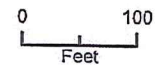
*Detailed recommendation follows*

# REZ2019-00020 Future Land Use



## Legend

-  Subject Parcel
-  Urban Community
-  Industrial







REZ2019-00020  
Aerial

Legend

 Subject Parcel



0 100  
Feet

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

**REZONING:** REZ2019-00020

**Regarding:** AMAZON SHEDS AND GAZEBOS

**Location:** 17300 Jean Street

San Carlos Planning Community  
(District 2)

**Hearing Date:** July 16, 2020

**I. Request:**

Rezone 3.09± acres from Light Industrial (IL) and Agricultural (AG-2) to Light Industrial (IL).

The property is legally described in Exhibit A.

**II. Hearing Examiner Recommendation:**

Approval

**III. Discussion:**

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners (Board) on applications to rezone property.<sup>1</sup> In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on the application to rezone 3.09± acres to the Light Industrial (IL) district.

In preparing a recommendation to the Board, the Hearing Examiner is tasked to apply the Lee County Comprehensive Plan (Lee Plan), the Land Development Code (LDC), and other County regulations to the facts presented in a rezoning request.<sup>2</sup> The record must contain competent substantial evidence to support the Hearing Examiner's recommendation.<sup>3</sup>

Discussion supporting the recommendation of approval follows below.

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<sup>1</sup> LDC 34-145(d)(1)a.

<sup>2</sup> LDC 34-145(d)(3)-(4).

<sup>3</sup> Lee Co. Admin. Code 2-6 §3.3.A(2).

### **Synopsis of Request**

Applicant seeks to rezone 3.09± acres from IL and AG-2 to IL to permit construction of a warehousing facility.<sup>4</sup> A pending development order confirms Applicant's intended use.<sup>5</sup>

Staff found the request satisfies LDC review criteria and recommended approval.

### **Character of the Area and Zoning History**

The property sits within an industrial node south of Alico Road, east of US 41, and west of Jean Street.

Industrial and commercial uses dominate the area. Adjacent properties host warehousing, manufacturing, outdoor storage, and other light industrial uses.<sup>6</sup>

The parties conducted an extensive zoning review to determine why the property retains AG-2 zoning.<sup>7</sup> Research concluded the property simply "fell through the cracks" as land was carved out, sold, and rezoned over time.<sup>8</sup>

Rezoning the site to IL allows Applicant to develop the property consistent with surrounding uses.

### **Lee Plan Consistency and Compatibility**

Before recommending rezoning approval, the Hearing Examiner must find the request complies with the Lee Plan and is compatible with existing or planned uses in the surrounding area.<sup>9</sup> The Hearing Examiner finds the requested rezoning is consistent with the Lee Plan and improves compatibility with neighboring properties.

#### Lee Plan Consistency

The property is located in the Industrial Development future land use category in the San Carlos Planning Community.<sup>10</sup>

Industrial Development properties are targeted for industrial activities and selective land use mixtures.<sup>11</sup> Appropriate land use mixtures include industrial,

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<sup>4</sup> See Staff Report (Attachment M).

<sup>5</sup> DOS2019-00051 issued to construct a light manufacturing facility with parking, drainage, and utility infrastructure. See Staff Report (Attachment M).

<sup>6</sup> See Staff Report (Attachment M).

<sup>7</sup> See Staff Report (Attachments E, F, & M); Testimony of Veronica Martin and Adam Mendez.

<sup>8</sup> See Staff Report (Attachment M).

<sup>9</sup> LDC 34-145(d)(4)(a).

<sup>10</sup> Lee Plan Map 1, Vision Statement ¶13, Policy 1.1.7.

<sup>11</sup> Lee Plan Policy 1.1.7.

manufacturing, and research uses that constitute a growing segment of the county's economy.<sup>12</sup> Uses contemplated by the current agricultural zoning classification are not consistent with the property's future urban designation.

The Lee Plan mandates zoning actions relating to industrial lands must be consistent with the Plan's Economic Element.<sup>13</sup> The request is consistent with this requirement through the creation of employment opportunities unavailable under its current agricultural zoning.<sup>14</sup> Rezoning to IL furthers Lee Plan objectives.

### Compatibility

The property sits amid industrial-zoned lands.<sup>15</sup> The majority of the property is already zoned IL.<sup>16</sup> The portion zoned AG-2 is not aligned with the Industrial Development classification. The requested IL zoning district is better suited to surrounding development. Rezoning to IL brings the site into greater compliance with its future land use designation and allows for well-planned industrial development in a suitable location.<sup>17</sup>

Rezoning the site to IL is consistent with Lee Plan directives and compatible with the surrounding area.

### Meets LDC and Other Applicable County Regulations

Requests to rezone property must meet the LDC and other applicable County regulations or qualify for deviations.<sup>18</sup>

Applicant seeks to reclassify the property to IL, a conventional zoning district.<sup>19</sup> Therefore, it is not possible to impose conditions on approval. Rather, the IL use regulation table will govern permitted uses.<sup>20</sup> Deviations from LDC requirements may be granted by variance.<sup>21</sup>

The IL zoning district permits a broad range of light industrial and quasi-industrial commercial uses.<sup>22</sup> Applicant has a development order to construct a manufacturing facility and headquarters for Amazon Sheds and Gazebos on the site.<sup>23</sup> This companion development order is consistent with permitted IL uses.

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<sup>12</sup> *Id.*

<sup>13</sup> Lee Plan Policy 7.1.10.

<sup>14</sup> See Lee Plan Goal 158.

<sup>15</sup> See Staff Report (pg. 6, Attachment C).

<sup>16</sup> See Staff Report (pg. 1, estimating 91% of the property is zoned IL and 9% is zoned AG-2).

<sup>17</sup> Lee Plan Goal 7.

<sup>18</sup> LDC 34-145(d)(4)(a)(1)(b).

<sup>19</sup> LDC 34-612(1).

<sup>20</sup> LDC 34-621(b), LDC 34-903.

<sup>21</sup> LDC 34-621(a)(2).

<sup>22</sup> LDC 34-901(b). Permitted uses include light manufacturing, warehousing, recycling services, repair shops, and administrative offices. LDC 34-903.

<sup>23</sup> See Staff Report (Attachment H, M); Testimony of Veronica Martin (*referencing* DOS2019-00051).

The request seeks no variances from LDC requirements. Applicant obtained a separation deviation administratively through the development order process.<sup>24</sup>

### **Urban Services**

Properties proposed for rezoning must be served by urban services if located in a Future Urban category.<sup>25</sup> Industrial land uses must be located in areas appropriate to their needs, considering: access by truck, air, and rail; commuter access from home-to-work trips; utilities; proximity to supportive and related land uses; and compatibility with neighboring uses.<sup>26</sup>

The site is located in an established industrial park with adequate access to urban services and infrastructure.<sup>27</sup> The property is appropriately positioned for light industrial use given its placement within an established industrial node. Alico Road provides ready access to nearby residential and commercial uses. The Southwest Florida International Airport and rail lines are proximate to the site. San Carlos Park Fire District and the Lee County Sherriff service the area.<sup>28</sup>

The property will utilize potable water and septic systems.<sup>29</sup> The Staff Report reflected Applicant would rely on sanitary sewer service.<sup>30</sup> However, Applicant learned through the development order process the project would utilize a septic system.<sup>31</sup>

### **Transportation**

Rezoning requests must demonstrate the property will have access to existing or proposed roads with sufficient capacity to support the proposed intensity.<sup>32</sup> Expected impacts on transportation facilities resulting from the rezoning must be addressed by existing regulations.<sup>33</sup>

The site fronts Jean Street. Jean Street intersects Alico Road and terminates in a cul-de-sac south of the property.<sup>34</sup> Alico Road is a county-maintained arterial road.<sup>35</sup>

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<sup>24</sup> See Staff Report (pg. 6, Attachment I: ADD2019-00111); Testimony of Veronica Martin.

<sup>25</sup> LDC 34-145(d)(4)(a)(1)(g); Lee Plan Objective 7.1.

<sup>26</sup> Lee Plan Policy 7.1.3.

<sup>27</sup> Lee Plan Policy 2.2.1; See Staff Report (pg. 3).

<sup>28</sup> See Staff Report (pg. 3); Lee Plan Policy 7.1.5.

<sup>29</sup> See Applicant's Ex. A; Testimony of Dean Martin and Veronica Martin. Potable water is available adjacent to the site, but sanitary sewer is not. Ms. Martin testified Applicant obtained county and Department of Health permits for the septic system.

<sup>30</sup> See Staff Report (pg. 5, 7, Attachment K).

<sup>31</sup> See Applicant's Ex. A; Testimony of Dean Martin and Veronica Martin.

<sup>32</sup> LDC 34-145(d)(4)(a)(1)(d).

<sup>33</sup> LDC 34-145(d)(4)(a)(1)(e).

<sup>34</sup> See Staff Report (Attachment C).

<sup>35</sup> See Staff Report (pg. 6, Attachment M).

Industrial and heavy commercial uses line Jean Street. Travel to the site is exclusively through non-residential areas.<sup>36</sup>

The property has adequate frontage to accommodate access.<sup>37</sup> Transportation impacts will be addressed at the time of development order review.<sup>38</sup>

### **Environmental**

A request to rezone cannot be approved if it will adversely affect environmentally critical or sensitive areas and natural resources.<sup>39</sup>

The property contains no environmentally critical or sensitive areas.<sup>40</sup> The site is cleared and remains vacant. Earth work in accordance with the companion development order was observed during the Hearing Examiner's site visit.<sup>41</sup>

Future development must comply with LDC requirements for open space, landscaping, and buffering.<sup>42</sup>

### **Public**

No members of the public attended the hearing.

### **Conclusion**

The Hearing Examiner concurs with staff's analysis and recommendation of approval. The requested IL zoning district satisfies approval criteria set forth in the LDC.

## **IV. Findings and Conclusions:**

Based on the testimony and evidence presented in the record, the Hearing Examiner makes the following findings and conclusions:

The requested Light Industrial (IL) zoning district:

- A. Is consistent with the Lee Plan. See Lee Plan Vision Statement Paragraph 13 (San Carlos Planning Community), Lee Plan Goals 1, 2, 4, 7, 158; Objectives 2.1, 2.2, 7.1, and Policies 1.1.7, 1.7.6, 2.2, 7.1.1, 7.1.3, 7.1.5, 7.1.10, Map 16 and Table 1(b);

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<sup>36</sup> See Lee Plan Policy 7.1.9.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*; Lee Plan Objective 39.1, Policy 39.1.1.

<sup>39</sup> LDC 34-145(d)(4)(a)(1)(f).

<sup>40</sup> See Staff Report (pg. 7).

<sup>41</sup> The Hearing Examiner conducted her site visit on July 15, 2020. Construction vehicles and relocated soils reflected recent staging for earth work.

<sup>42</sup> Lee Plan Objective 39.1, Policy 7.1.1, 7.1.8, 39.1.1.

- B. Will meet or exceed the performance and location standards for the uses allowed in the IL zoning district. See Lee Plan Objectives 2.1, 2.2 and Policy 2.1.2; 7.1.1, 7.1.3, 7.1.9;
- C. Is compatible with existing and planned uses in the surrounding area. See Lee Plan Objective 2.1, Policies 1.1.7, 2.1.1, 5.1.5, and 7.1.3; 7.1.9;
- D. Provides sufficient access to support development intensity. Expected impacts on transportation facilities will be addressed by existing county regulations. See Lee Plan Policy 7.1.5;
- E. Will not adversely affect environmentally critical or sensitive areas or natural resources on the property; and
- F. Will be served by adequate urban services. See Lee Plan Glossary, Goal 4, Objective 2.2, Policies 1.1.7, 2.2.1, Standards 4.1.1, 4.1.2.

Date of Recommendation: August 6, 2020.



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 Exhibits Presented at Hearing
- Exhibit C Hearing Participants
- Exhibit D Information

**Exhibit A**

**LEGAL DESCRIPTION AND VICINITY MAP**



SKETCH TO ACCOMPANY DESCRIPTION

A TRACT OR PARCEL OF LAND  
LYING IN THE N.E. 1/4  
SECTION 8

TOWNSHIP 16 SOUTH, RANGE 25 EAST  
LEE COUNTY, FLORIDA

THIS IS NOT A BOUNDARY SURVEY

SEE SHEET 2 OF 2, EXHIBIT 'A'

0 80 160



ALICO INDUSTRIAL CENTER  
PB. 44, PGS. 4-5

N. 106'  
LOT 18

S. 53'  
LOT 18

S. 110'  
LOT 17

N.01°22'44"W. 449.74'

STATE PLANE COORDINATES  
FLORIDA WEST ZONE  
LOT 4  
INSTR. 2007000119143 N782814.68  
E712098.15

N.89°16'41"E. 300.19'

WEST R/W  
JEAN STREET

SUBJECT PARCEL  
134,503± SQUARE FEET  
3.09± ACRES

S.01°21'03"E. 387.64'  
JEAN STREET (60' R/W)

STATE PLANE COORDINATES  
FLORIDA WEST ZONE  
PDB  
LOT 16  
N782361.28  
E711808.81

LOT 16

S.89°19'28"W. 275.88'

INSTR. 2007000271409

PC 30.00'

PRC (1)  
R/W (2)

BEARING, DISTANCE  
AND CURVE DATA  
WEST LINE OF  
NE. 1/4 SECTION 8  
288.14'

PDC  
CENTER OF SECTION 8-46-25

Curve number 1

Radius= 90.00'  
Delta= 39°16'05"  
Arc= 61.68'  
Tangent= 32.11'  
Chord= 60.48'  
Chord Brg= S.18°16'59"W.

Curve number 2

Radius= 65.00'  
Delta= 05°35'19"  
Arc= 6.34'  
Tangent= 3.17'  
Chord= 6.34'  
Chord Brg= S.35°07'22"W.

- LEGEND:**
- CL CENTERLINE
  - C1 CURVE NUMBER
  - INSTR. INSTRUMENT NUMBER
  - PRC POINT OF REVERSE CURVE
  - PG. PAGE
  - PDB POINT OF BEGINNING
  - PDC POINT OF COMMENCEMENT
  - R/W RIGHT-OF-WAY
  - PB PLAT BOOK
  - PC POINT OF CURVATURE

APPROVED  
REZ2019-00020  
Daniel Munt, Planner  
Lee County DCD  
5/4/2020

FILE# 17350 JEAN ST

HARRIS-JORGENSEN, L.L.C.  
3048 DEL PRADO BLVD. S.  
SUITE 100  
CAPE CORAL, FLORIDA 33904  
PHONE: (239) 257-2624  
FAX: (239) 257-2921

FLORIDA CERTIFICATE OF  
AUTHORIZATION LB #6921

SHEET 1 OF 2

# EXHIBIT "A"

## DESCRIPTION: (PER HARRIS-JORGENSEN, LLC.)

A TRACT OR PARCEL OF LAND LYING IN SECTION 8, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA AND BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SECTION 8, TOWNSHIP 46 SOUTH, RANGE 25 EAST, SAID COMMENCEMENT POINT ALSO BEING THE SOUTHEAST CORNER OF ALICO INDUSTRIAL PARK AS RECORDED IN PLAT BOOK 44, PAGES 4 THROUGH 5, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, THENCE RUN N01°22'44"W, ALONG THE WEST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 8 FOR 218.14 FEET TO THE POINT OF BEGINNING, THENCE CONTINUE N01°22'44"W, FOR 449.74 TO THE SOUTHWEST CORNER OF LOT 4 AS DESCRIBED IN INSTRUMENT NUMBER 2007000119143, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, THENCE RUN N89°16'41"E, ALONG THE SOUTH LINE OF SAID LOT 4 TO A POINT ALONG THE WEST RIGHT-OF-WAY LINE OF JEAN STREET (60 FEET WIDE) FOR 300.19 FEET, THENCE RUN S01°21'03"E, ALONG SAID RIGHT-OF-WAY LINE FOR 387.64 FEET TO THE BEGINNING OF A CURVE, THENCE RUN 61.68 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 90.00 FEET, A CENTRAL ANGLE OF 39°16'05", A CHORD BEARING OF S18°16'59"W, AND A CHORD DISTANCE OF 60.48 FEET TO A POINT OF REVERSE CURVATURE, THENCE RUN 6.34 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 65.00 FEET, A CENTRAL ANGLE OF 05°35'19", A CHORD BEARING OF S35°07'22"W, AND A CHORD DISTANCE OF 6.34 FEET TO THE NORTHEAST CORNER OF LANDS AS DESCRIBED IN INSTRUMENT NUMBER 2007000271409, PUBLIC RECORDS OF LEE COUNTY, FLORIDA, THENCE RUN S89°19'28"W, ALONG THE NORTH LINE OF SAID LANDS FOR 275.88 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 134,503 SQUARE FEET, MORE OR LESS.

BEARINGS ARE BASED ON THE WEST RIGHT-OF-WAY LINE OF JEAN STREET, AS BEING 'ASSUMED' S01°21'03"E.

Phillip M Mould, P.S.M., 6515  
Phillip M Mould, P.S.M.  
Digitally signed by  
6515 State of Florida  
Date: 2020.05.01  
State of Florida  
11:33:43 -04'00'

PHILLIP M. MOULD  
LS#6515  
FEBRUARY 27, 2019

### NOTE:

THIS MAP/PLAT IS CONSIDERED SIGNED USING A DIGITAL SEAL IN ACCORDANCE WITH THE APPLICABLE STATE LAWS AND STATUTES FS 668.001-006, FS 668.50, FS 472.025, 5J-17.062, FLORIDA ADMINISTRATIVE CODE, STATE OF FLORIDA.

APPROVED  
REZ2019-00020  
Daniel Munt, Planner  
Lee County DCD  
5/4/2020

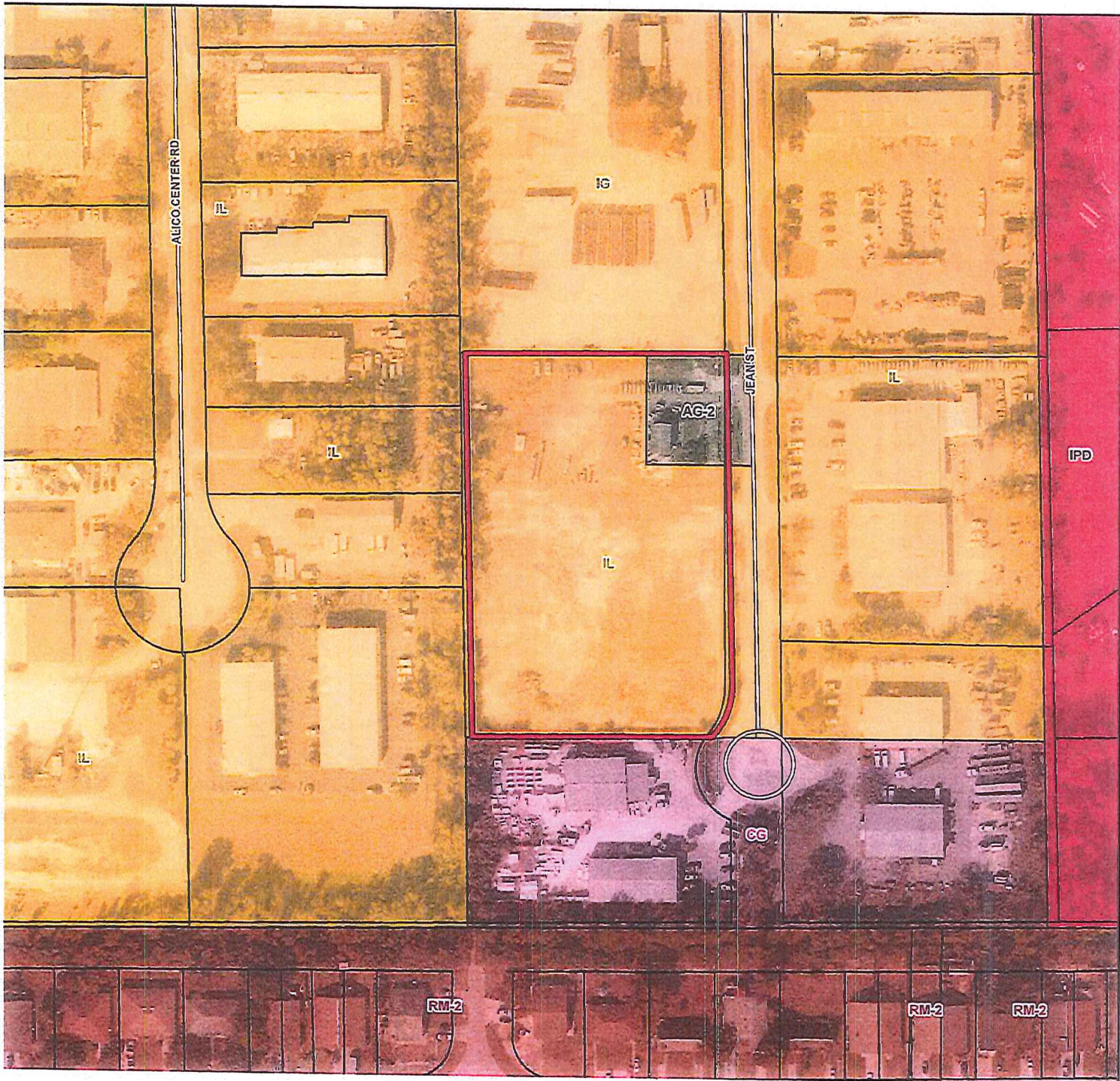
FILE# 17350 JEAN ST

HARRIS-JORGENSEN, LLC.  
3048 DEL PRADO BLVD, S.  
SUITE 100  
CAPE CORAL, FLORIDA 33904  
PHONE (239) 257-2684  
FAX (239) 257-2921

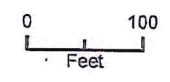
FLORIDA CERTIFICATE OF  
AUTHORIZATION LB #6921



# REZ2019-00020 Zoning



**Legend**  
[Red Outline Box] Subject Parcel



**Exhibit B**

**EXHIBITS PRESENTED AT HEARING**

**STAFF EXHIBITS**

1. *DCD Staff Report with attachments:* Prepared by Adam Mendez, Planner, date stamped received July 2, 2020 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]

**APPLICANT EXHIBITS**

- a. *48-Hour Notice:* email from Veronica Martin, with TDM Consultants, Inc., to Hearing Examiner, with copies to Adam Mendez, Audra Ennis, & Joseph Adams, dated Thursday, July 9, 2020 2:16 PM (multiple pages – 8.5"x11" & multiple pages – 11"x17")

**Exhibit C**

**HEARING PARTICIPANTS**

County Staff:

1. Adam Mendez

Applicant Representatives:

1. Dean Martin
2. Veronica Martin

Public Participants:

None

**Exhibit D**  
**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.

**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.

**Lee County, Florida**  
**DEPARTMENT OF COMMUNITY DEVELOPMENT**  
**ZONING SECTION**  
**STAFF REPORT**

**Case Number: REZ2019-00020**  
**Case Name: Amazon Sheds and Gazebos**  
**Area to be Rezoned: +/- 3.1 Acres**  
**Type of Case: Conventional Rezoning**  
**Hearing Date: July 16, 2020**  
**Sufficiency Date: May 19, 2020**

**REQUEST:**

Amazon Sheds and Gazebos, Inc., has filed an application to rezone approximately 3.09 acres from Light Industrial (IL) and Agricultural (AG-2) to exclusively Light Industrial (IL).

The subject property is located at 17300 Jean Street, San Carlos Planning Community, Lee County, FL (District #2). The applicant has indicated the property's current STRAP Number is 08-46-25-00-00003.001B. A legal description and survey of the subject property is attached as Attachment B.

**SUMMARY:**

Staff recommends **APPROVAL** of the applicant's request.

**HISTORY OF PARCEL:**

The subject property is located on Jean Street (a county-maintained local road) approximately 0.4 miles south of Alico Road (a county-maintained arterial road), at the southern end of a ±236-acre industrial node which began forming following a string of rezoning approvals in the early 1970s and 1980s (see Attachments D and E). Approximately 91 percent of the subject property is currently zoned Light Industrial (IL) while the remaining land is zoned Agricultural (AG-2). Resolution Z-78-142 rezoned approximately 91 percent of the property from Agricultural to Light Industrial as part of a 10-acre Industrial rezoning (see Attachment F). The agriculturally-zoned portion of the property is approximately one-quarter acre in size and is located in the northeast corner of the 3.09-acre property. This area is developed with a one-bedroom, one-bathroom single-family home with a 640-square-foot living area and a 710-square-foot finished lower garage/utility first appearing on the tax roll in 1970 (see Attachment G). Its location within an industrial area suggests the residence has been commonly used as a caretaker's residence.

Historically, the subject property's operations of various open-storage centered uses required no improvements that would be subject to development order review. An application to rezone the subject property from IL and AG-2 to General Industrial (IG) was filed in 2015 but was never deemed sufficient for hearing. Insufficiency comments related to title certification and legal description requirements were not addressed and the case was subsequently withdrawn. In 2019, Development Order DOS2019-00051



was issued for the single-phase construction of infrastructure to support a 25,595 square-foot single-story light industrial building on the 3.09-acre site (see Attachment H). The development order plans depict removal of the existing single-family residence and the area is noted on the plans as “AG-2 zoned area to be rezoned to IL after DO approval”. Administrative Approval ADD2019-00111 was approved in conjunction with the development order request to permit deviations from the connection separation requirement (LDC Section 10-285) on Jean Street (see Attachment I).

#### **CHARACTER OF THE AREA:**

Surrounding property is located in the Industrial Development future land use category as designated by the Lee County Comprehensive Plan (Lee Plan) and is utilized accordingly with a mixture industrial uses (see Attachment J). The areas immediately surrounding the subject property can be characterized as follows:

##### North

Lands to the north of the subject property are zoned General Industrial (IG) and predominantly consist of 3.5 acres of open storage (see Attachments C and J).

##### East

Lands to the east of the subject property are zoned Light Industrial (IL) and are developed with  $\pm 30,000$  square feet of warehousing and distribution terminals (see Attachments C and J).

##### South

Lands to the south of the subject property are zoned General Commercial (CG) and are developed with  $\pm 10,000$  square feet of warehousing and distribution terminals (see Attachments C and J).

##### West

Lands to the west of the subject property are zoned Light Industrial (IL) and are accessed from Alico Center Road, which runs parallel to Jean Street in a north to south orientation connecting to Alico Road. These lands are developed with industrial uses similar to those along Jean Street (see Attachments C and J).

Further to the south, a 50-foot-wide platted drainage right-of-way separates the industrial node from San Carlos Park North Addition (Official Records Plat Book 28, Page 17), a residential subdivision approximately 600 feet south of the existing agriculturally-zoned portion of the property (see Attachment D). The subject property is located within Airport Noise Zone C, which requires the county to notify the applicant of Southwest Florida International Airport’s nearby proximity, and requires disclosure of the potential for noises created by and incidental to the operation of the airport to future property owners or occupants as outlined in LDC Section 34-1104.

## Availability of Urban Services

Urban services are defined by the Lee Plan as: “The requisite services, facilities, capital improvements, and infrastructure necessary to support growth and development at levels of urban density and intensity.” The following details the level of urban services currently serving the subject property:

Public sewer and water: The applicant has provided a sewer and water availability letter from Lee County Utilities (LCU) (see Attachment K). Potable water and wastewater lines are available along Jean Street with available capacity should development activity trigger the connection requirements of the LDC.

Paved streets and roads: The subject property has ±450 feet of frontage and access onto Jean Street, a county-maintained local road. Jean Street connects to Alico Road 0.4 miles to the north, a six-lane county-maintained principal-arterial road, which intersects with US-41 ±1 mile to the west, and Interstate 75 (I-75) ±2 miles to the east.

Public transit: Public transit is not in nearby proximity to the subject property. The nearest Lee Tran bus stops are approximately one mile to the east along the south side of Alico Road. Lee Tran’s 2016 Transit Development Plan (TDP) does not identify the need for additional transit services in this area (see Attachment L).

Parks and recreation facilities/Community facilities: Three Oaks Park is located two miles southwest, between Three Oaks Parkway and I-75.

Urban levels of police, fire, and emergency services: The subject property will be provided urban levels of police, fire and emergency services. Fire protection is provided by San Carlos Park Fire District, located at 16901 Island Park Road, approximately 2.8 miles from the subject property. This fire station also contains an EMS substation. The Lee County Sherriff’s Office Central Headquarters is located at 14750-14754 Ben C Pratt/Six Mile Cypress, approximately 4.5 miles from the subject property.

Schools: The subject property is served by the School District of Lee County as is located in South Choice Zone, Sub Zone S-2. This request is not intended to generate impact on classroom demands.

## ANALYSIS:

The requested rezoning will impact a proportionally small (±9 percent of the subject property) area of remnant agricultural zoning within an existing industrial node by aligning this portion of the property with the existing Light Industrial (IL) zoning and industrial uses that predominate the area.

### Review Criteria

LDC Section 34-145 establishes the review criteria for requests for conventional rezoning. Before recommending approval of a conventional rezoning request, the Hearing Examiner must find the request:

- a) Complies with the Lee Plan;

- b) Meets the Land Development Code and other applicable County regulations or qualifies for deviations;
- c) Is compatible with existing and planned uses in the surrounding area;
- d) Will provide 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;
- 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.

The applicant has provided a request statement that describes the reasoning for the proposed rezoning and an analysis of the decision making criteria (Attachment M). The following sections provide staff's analysis of the request, as measured by the established criteria.

a) Compliance with the Lee Plan

Industrial development began surrounding the subject property prior to the county's initial adoption of a comprehensive plan in 1984. Fittingly, the Lee Plan designates the entirety of the ±236-acre industrial node south of Alico Road to be within the Industrial Development future land use category (**Lee Plan Policy 1.1.7**); this area, combined with the 1,400 acres of contiguous land directly north of Alico Road, comprise the largest Industrial Development area within the County. Lee Plan Vision Statement 13 pertains to the San Carlos Planning Community and envisions "the community will continue to grow into a vibrant urban core for Lee County's high-tech research and development employment base." Policy 1.1.7 of the Lee Plan describes the Industrial Development land use category as intended for primarily industrial uses, including manufacturing and research with limited commercial/recreational uses. These are uses that characterize the conventional Light Industrial (IL) zoning district. The rezoning request to Light Industrial (IL) promotes development of the County's employment base in this area by facilitating uses that are consistent with the Industrial Development land use category, and therefore, **CONSISTENT with the San Carlos Planning Community and Lee Plan Policies 1.1.7 and 7.1.10.**

**Lee Plan Policy 1.7.6:** The Planning Communities Map and Acreage Allocation Table (see Map 16 and Table 1(b) and Policies 1.1.1 and 2.2.2) depicts the proposed distribution, extent, and location of generalized land uses for the year 2030. The Lee Plan currently allocates 450 acres of industrial development within the San Carlos planning community by the year 2030. Currently, there are approximately 313 acres of industrial uses developed. There are approximately 137 acres of additional lands allocated to industrial uses within this area of Lee County remaining. Staff finds the request consistent with the allocations for the San Carlos planning community. This finding is not a guarantee that there will be sufficient allocations for industrial development in the future. Given the existing approved development order on the property, any changes requiring further

determinations will be made at time of the subsequently sought local development order approval. The request is **CONSISTENT with Policy 1.7.6 of the Lee Plan.**

**Lee Plan Objectives 2.1 and 2.2** aim to employ policies for appropriate development location and timing and promoting compact growth patterns in future urban areas where adequate public facilities exist, containing urban sprawl and minimizing impact on natural resources. Although the subject property is located in a future suburban area, the subject property is surrounded by industrial uses with adequate public facilities (as previously detailed in this report) and this rezoning will facilitate development of an infill property that is currently undergoing industrial site development in conjunction with an approved development order. Staff finds the rezoning request to be **CONSISTENT with Objectives 2.1 and 2.2 of the Lee Plan.**

**Standards 4.1.1 and 4.1.2** of the Lee Plan require development exceeding certain thresholds to be connected to potable water service and sanitary sewer service if a property lies within the boundaries of a water utility's certificated or franchised service area, or Lee County Utilities' future potable water service and sanitary sewer area. These standards are effectuated at time of development order by LDC Sections 10-352 (water) and 10-353 (Sewer). As previously stated, the applicant has provided an availability letter from LCU stating water and sewer lines are located along Jean Street with available capacity (see Attachment K), should future development trigger the connection requirements. The request is **CONSISTENT with Standards 4.1.1 and 4.1.2 of the Lee Plan.**

**Goal 7** intends to promote orderly well-planned industrial development within appropriate locations in the county. **Lee Plan Policy 7.1.1** requires certain review criteria apply to all industrial rezoning and development order requests, which is effectuated by the LDC and other applicable regulations. These review items include environmental/pollution consideration, compatibility with residential areas and buffering, water quality and drainage, employment characteristics, access and impacts to transportation facilities, utility needs and sewage collection. The subject property has recently received development order approval, which enforces the applicable standards in Policy 7.1.1 through application review. The rezoning-related factors are considered as part of the analysis contained herein. Staff finds that the request is **CONSISTENT with Policy 7.1.1 of the Lee Plan.**

**Lee Plan Policies 7.1.3 and 7.1.5** require industrial land uses to be located in areas appropriate to their needs and constraints and require the timing and location of industrial development to be permitted only with the availability and adequacy of existing or planned services and facilities. This property is primarily zoned for and is surrounded by other industrial zoning districts with existing supporting infrastructure, and is located in an area that is appropriate given the uses permitted in the proposed Light Industrial (IL) zoning district. The location and timing elements for consideration are evidenced by the existing services and facilities previously detailed in this report. The request is **CONSISTENT with Lee Plan Policies 7.1.3 and 7.1.5, and in cumulative, Goal 7 of the Lee Plan.**

**Lee Plan Policy 5.1.5** aims to protect existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment, and in the case of conventional rezoning requests, to ensure buffers required by the Land Development Code are adequate to address potentially incompatible uses in a satisfactory manner. The remnant AG-2 portion of the property is located internal to the industrial node and is approximately 600 feet north of the nearest residential area (see Attachment D). The overall property is approximately 275 feet from this nearest residential area. LDC Section 34-2441 et seq. establishes special setback regulations from specific uses to residentially-zoned property under separate ownership, due to operational characteristics that will likely produce noise, vibration, glare, fumes, orders and other interferences destructive to the residential environment. While the more intensive uses are only permitted within the General Industrial (IG) and Industrial Planned Development (IPD) districts, these provisions serve to as safeguards for residential property along the outskirts of this industrial node. The request is **CONSISTENT with Lee Plan Policy 5.1.5**.

b) Land Development Code Compliance

LDC Section 34-904 establishes property development regulations for conventional industrial districts. The IL district requires a minimum of 100 feet of lot width, 100 feet of lot depth, and a minimum lot area of 20,000 square feet. The subject property exceeds the lot dimensional requirements for the IL District. In the event the residential structure is not removed from the property, it would meet the applicable setbacks required in the IL District based on the survey the applicant provided (See Attachment B). Future use of the structure would require conformance with the Industrial Use Regulations Table (LDC Section 34-903). Additional regulations are established in Chapters 34 and 10 of the Lee County Land Development Code including maximum height, setbacks, buffer requirements, and open space. Compliance with design-related provisions of the Land Development Code must be demonstrated at the time of local development order.

c) Compatibility with existing and planned uses in the surrounding area

The subject property is surrounded by industrial development within industrial and heavy commercial zoning districts. The Lee Plan directs future growth of this area to be predominately industrial. The requested rezoning of the remaining agriculturally-zoned portion of the property to IL is compatible and consistent with the existing and planned uses in the surrounding area.

d) Sufficiency of Access and Transportation Impacts

Jean Street and Alico Road, both of which are county-maintained roadways, comprise the immediate surrounding road network serving the subject property. Access onto Jean Street is proposed with the connection separation deviations approved as part of Case Number ADD2019-00111 (see Attachment I). Staff finds that the LDC-imposed requirements on future development are sufficient to address potential roadway improvements and traffic impacts at time of development order approval.

f) No adverse impacts to environmentally critical or sensitive areas and natural resources

The subject property is located internal to an existing industrial node and does not contain environmentally critical or sensitive areas and natural resources on-site. Such impacts were considered and will continue to be considered at time of development order approval.

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

As noted and defined above, although the subject property is located within a future suburban area, the subject property has adequate access to urban services to accommodate the requested rezoning.

**CONCLUSION:**

The requested rezoning from Light Industrial (IL) and Agricultural (AG-2) to exclusively Light Industrial (IL) is consistent with the Lee Plan and Land Development Code. The rezoning will not result in negative impacts to urban services, infrastructure or surrounding property. The subject property is sufficiently served by fire, police, and emergency services personnel. The request will not impact any aquatic preserves, or flood hazard areas; or adversely affect environmentally critical or sensitive areas and natural resources. Therefore, staff recommends **APPROVAL** of the applicant's request.

**ATTACHEMENTS:**

- A. Expert Witness Information
- B. Legal Description and Boundary Survey
- C. Aerial, Future Land Use, and Current Zoning Maps
- D. Map of Industrial Park
- E. Historic Zoning Map Aerials
- F. Resolution Z-78-142
- G. Photo of Existing Single-Family Residence
- H. DOS2019-00051 Approved Site Plan
- I. Resolution ADD2019-00111
- J. Pictometry Aerial Viewer of Surrounding Property
- K. Lee County Utilities Availability Letter
- L. Lee Tran Staff Report
- M. Applicant's Request Statement

**DCI2019-00020**  
**APALOOSA LANE**  
**MINOR RPD**

# Staff Summary

CASE NUMBER & NAME: DCI2019-00020 / Apaloosa Lane Minor RPD

REQUEST: Request to rezone 14.97± acres from Agricultural (AG-2) and Special Commercial Office District (CS-2) to Residential Planned Development (RPD) for a maximum of 300 Multiple-family dwelling units (210 dwelling units, with 90 units of bonus density) with a maximum height of 55 feet.

RESOLUTION NUMBER: Z-20-016

LOCATION: 13290 Palomino Lane, Daniels Parkway Planning Community, Lee County, FL

OWNER: Triple J. Estates, LLC & NSP Trust Dated 9/17/2002

AGENT: Alexis Crespo  
Waldrop Engineering  
28100 Bonita Grande Dr., Ste. 305  
Bonita Springs, FL 34135

HEARING EXAMINER RECOMMENDATION: Approval, with conditions

PARTICIPANTS (10): Holly Atkins  
Elizabeth Brody  
W. Steve Brody  
Marilyn Brummer  
Thomas Burt  
T. Patrick Connor  
Carol Davis  
Robert Gala  
Peter Lombardi  
Marcy Taylor

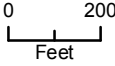
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DCI2019-00020  
Aerial

Legend

 Subject Parcel



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

**DATE: August 18, 2020**

**TO: Matthew Uhle, Esq. Applicant's Representative**      **FROM: Amanda L. Rivera**   
**Dirk Danley, Jr., Staff**      **Deputy Hearing Examiner**

**RE: DCI2019-00020 – APALOOSA LANE MINOR RPD**  
**Clarification to Hearing Examiner Recommendation**

The attached Future Land Use map replaces the map included on the second page of the Hearing Examiner's Recommendation.

Copies Provided to: Board of County Commissioners (BOCC)  
Michael Jacob, Deputy County Attorney  
Audra Ennis, Zoning Manager  
Jamie Baker, Community Development  
Applicant/Applicant's Representative(s)  
Hearing Participants



## Summary of Hearing Examiner Recommendation

# **APALOOSA LANE MINOR RPD**

(by Alexis Crespo, AICP of Waldrop Engineering, on behalf of Triple J. Estates, LLC & NSP, Trustee)

Request:	Rezone from Agricultural (AG-2) and Special Commercial Office (CS-2) to Residential Planned Development (RPD) to allow 300 multiple-family dwelling units (210 standard density and 90 bonus density units) with a maximum height of 55 feet
Location:	13301 Apaloosa Lane and 13290 Palomino Lane (North of Daniels Parkway, West of I-75)  Daniels Parkway Planning Community  (District 2)
Size:	14.97± acres
Recommendation:	Approval, with conditions
Deviations:	9
Conditions of Note:	Water Quality Monitoring
Public Concerns:	Traffic, Flooding

### **Hearing Examiner Remarks:**

The Board adopted a Lee Plan amendment in 2017 to reclassify the property to General Interchange.<sup>1</sup> The amendment evaluated development impacts based upon a density of 22 units per acre. The request seeks to develop 20 multi-family units per acre, consistent with the Board's evaluation.

Members of the public voiced concerns primarily related to traffic. Applicant and Staff noted improvements to Daniels Parkway and Palomino Lane will relieve existing congestion and aid in mitigation of the project's traffic impacts.

The Hearing Examiner recommends approval, finding Applicant provided sufficient evidence to satisfy LDC rezoning review criteria.




*Detailed recommendation follows*

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<sup>1</sup> CPA2015-00010.

# DCI2019-00020 & DCI2019-00023 Future Land Use

## Legend

-  Subject Parcel
-  Outlying Suburban
-  General Interchange
-  Wetlands



DCI2019-00020  
Aerial

Legend

 Subject Parcel



0 200  
Feet



OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

**REZONING:** DCI2019-00020

**Regarding:** APALOOSA LANE MINOR RPD

**Location:** 13301 Apaloosa Lane and 13290 Palomino Lane

Daniels Parkway Planning Community  
(District 2)

**Hearing Date:** May 28, 2020

**I. Request:**

Rezone from Agricultural (AG-2) and Special Commercial Office (CS-2) to Residential Planned Development (RPD) to allow 300 multiple-family dwelling units (210 standard density and 90 bonus density units). Maximum proposed building height is 55 feet.

The property is legally described in Exhibit A.

**II. Hearing Examiner Recommendation:**

Approve, subject to the conditions and deviations set forth in Exhibits B and C.<sup>2</sup>

**III. Discussion:**

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners (Board) on applications to rezone property.<sup>3</sup> In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on the application to rezone 14.97± acres to RPD.

In preparing a recommendation to the Board, the Hearing Examiner applies the Lee County Comprehensive Plan (Lee Plan), the Land Development Code (LDC), and other County regulations to testimony and evidence in the record.<sup>4</sup> The Hearing Examiner may also take judicial notice of previous Board decisions in the context of reviewing zoning requests and preparing recommendations to the

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<sup>2</sup> Exhibit B contains a strikethrough/underline version of conditions and deviations. A clean version of the Hearing Examiner's recommended conditions and deviations can be found in Exhibit C.

<sup>3</sup> LDC 34-145(d)(1).

<sup>4</sup> LDC 34-145(d)(4).

Board.<sup>5</sup> The record must include competent substantial evidence to support the recommendation.<sup>6</sup>

The Hearing Examiner recommends approval of the request, subject to conditions. Discussion supporting the recommendation follows below.

### **Synopsis of Request and Character of the Area**

The request seeks to rezone two parcels comprising 14.97± acres from CS-2 and AG-2 to RPD.<sup>7</sup> Applicant proposes to develop the property with 300 multi-family units disbursed over 8 buildings, a clubhouse, and amenities.<sup>8</sup>

The property sits north of Daniels Parkway, west of I-75. Intense commercial uses separate the property from Daniels Parkway to the south.<sup>9</sup> St. John XXIII Catholic Church and Senior Housing facility adjoin the property to the north. Parcels to the east and west remain largely vacant.<sup>10</sup> Residential uses are within the periphery of the property, primarily in the form of single-family homes. Some homes are “ranchette” style on large acreage.<sup>11</sup>

The parcel is couched between two county rights-of-way: Apaloosa Lane to the west, and Palomino Lane to the east. Apaloosa Lane effectively terminates at the church property. Palomino Lane provides access to commercial uses south of the site and residences lying north.

Staff recommends approval of the project, with conditions. The Hearing Examiner concurs with Staff's recommendation as detailed below.

### **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;

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

<sup>6</sup> Lee Co. Admin. Code 2-6 §3.3.A(2).

<sup>7</sup> The western parcel is 5.29± acres (CS-2) while the eastern parcel is 9.68± acres (AG-2). See Staff Report (pg. 1); Staff Ex. 2 (slide 3).

<sup>8</sup> See Staff Report (Attachment R: MCP); Testimony of Jim Ink (Trans. pg. 26); Testimony of Dirk Danley (Trans. pg. 73).

<sup>9</sup> See Applicant's Ex. 1 (slide 10).

<sup>10</sup> Property to the east is owned by the Lee County School Board. Property to the west remains largely vacant despite development order approval. Testimony of Jim Ink (Trans. pg. 15); Staff Report (pgs. 2-3).

<sup>11</sup> See Staff Report (pg. 3).



- C. Is compatible with existing and planned uses in the surrounding area;
- D. Will provide 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;
- 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.<sup>12</sup>

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

- H. The proposed use or mix of uses is appropriate at the proposed location;
- I. The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development; and
- J. Each requested deviation: (1) enhances the achievement of the objectives of the planned development; and (2) preserves and promotes the general intent of the LDC to protect the public health, safety, and welfare.<sup>13</sup>

### **Lee Plan Consistency and Compatibility**

All planned developments must be consistent with the Lee Plan.<sup>14</sup> Requests for rezoning must be compatible with existing or planned uses in the surrounding area.<sup>15</sup> Planned development parcels must be located to minimize the negative effects of the proposed uses on neighboring properties.<sup>16</sup> As conditioned, the request is consistent with the Lee Plan and compatible with the surrounding area.

The property is within the Daniels Parkway Planning Community in the General Interchange future land use category.<sup>17</sup> The Lee Plan considers property in the Daniels Parkway community to be a primary gateway to Lee County.<sup>18</sup> General

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<sup>12</sup> LDC 34-145(d)(4)(a)(1).

<sup>13</sup> LDC 34-145(d)(4)(a)(2).

<sup>14</sup> LDC 34-411(a).

<sup>15</sup> LDC 34-145(d)(4)(a).

<sup>16</sup> LDC 34-411(c) and (i).

<sup>17</sup> Lee Plan Map 1, pg 1; Lee Plan Vision Statement ¶11, Policy 1.3.2.

<sup>18</sup> Lee Plan Vision Statement ¶11.

Interchange areas permit a broad range of land uses aimed to attract multi-family and commercial uses.<sup>19</sup>

The Board reclassified the property's future land use designation from Outlying Suburban to General Interchange in 2017.<sup>20</sup> The result of this change significantly increased permitted density for the property.<sup>21</sup> The General Interchange category permits a density range of 8 to 14 units per acre, with a maximum of 22 units per acre.<sup>22</sup> The request proposes 20 multi-family units per acre, consistent with Lee Plan directives.<sup>23</sup>

Applicant identified considerable commercial and intensive planned developments proximate to the site.<sup>24</sup> The most intense projects are adjacent to Daniels Parkway.<sup>25</sup> Transitional development patterns are then observed as properties farther north exhibit lower intensity and density in stepped-down fashion.<sup>26</sup>

Building heights similarly transition in tiered manner away from Daniels Parkway.<sup>27</sup> Applicant maintains compatibility with surrounding building heights by limiting height to 55 feet.<sup>28</sup> Extensive buffering further ensures compatibility with adjacent properties.<sup>29</sup>

The property is ideally suited for infill development to complement surrounding uses.<sup>30</sup> Locating residential use on the site is a logical continuation of existing and projected development patterns. The 2017 land use reclassification contemplated higher density on the property to effectuate a mixed-use, compact development pattern near the Daniels/I-75 Interchange.<sup>31</sup>

The task of the Hearing Examiner is to evaluate the request for compliance with the Lee Plan.<sup>32</sup> Accordingly, the General Interchange classification controls property development.<sup>33</sup> The General Interchange land use category clearly

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<sup>19</sup> Lee Plan Policy 1.3.2; See Staff Report (pg. 6).

<sup>20</sup> CPA2015-00010; Applicant's Ex. 1 (slide 31); See Staff Report (pg. 2, Attachment H).

<sup>21</sup> Outlying Suburban properties permit 1-3 units per acre, without the opportunity for bonus density. Lee Plan Policy 1.1.6.

<sup>22</sup> Lee Plan Policy 1.3.2.

<sup>23</sup> See Staff Report (pg. 2, 4, 6).

<sup>24</sup> Applicant's Ex. 3 (slide 32); Testimony of Alexis Crespo (Trans. pg. 48-49).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> See Applicant's Ex. 3.

<sup>28</sup> See Applicant's Ex. 1 (slides 48-49); Applicant's Ex. 3; Testimony of Alexis Crespo (Trans. pg. 59-61). General Interchange permits a building height of 75 feet. LDC 34-2175(b)(4).

<sup>29</sup> Applicant's Ex. 1 (slides 50-51); Testimony of Alexis Crespo (Trans. pg. 60-62).

<sup>30</sup> No single family homes abut the property. The record reflects adequate infrastructure in place to support the development.

<sup>31</sup> Applicant's Ex. 3 (pg. 1).

<sup>32</sup> LDC 34-145(d)(4)(a)(1)(a), 34-491; Lee Plan Policy 2.1.2.

<sup>33</sup> *Id.*; Lee Plan Policy 1.3.2.

envisions higher intensity development.<sup>34</sup> Requested density of 20 units per acre aligns with the analysis presented in the Board's adopted land use amendment.<sup>35</sup>

The request satisfies many Lee Plan directives by: containing urban sprawl; supporting affordable housing; directing development to an area served by urban services; and protecting neighboring uses through extensive buffering and site design.<sup>36</sup>

The Hearing Examiner finds the request is consistent with the Lee Plan.

### **Transportation/Traffic**

Planned developments must have access to existing or proposed roads with sufficient capacity to support the proposed intensity.<sup>37</sup> Expected impacts on transportation facilities resulting from the rezoning must be addressed by existing regulations or conditions of approval.<sup>38</sup> Applicant sufficiently demonstrated the project meets LDC transportation review criteria.

The property fronts Apaloosa Lane and Palomino Lane.<sup>39</sup> Palomino Lane is a county maintained north/south two-lane collector roadway.<sup>40</sup> Apaloosa Lane is a north/south two-lane local road maintained by a Property Owners Association ("POA").<sup>41</sup> Applicant indicated it will share in Apaloosa Lane maintenance obligations as a POA member.<sup>42</sup>

The site plan depicts two access points for the project: one on Apaloosa Lane and another on Palomino Lane.<sup>43</sup> Both offer indirect access to Daniels Parkway.<sup>44</sup>

Daniels Parkway is a six-lane county maintained arterial roadway.<sup>45</sup> It is identified as a "constrained" road.<sup>46</sup> The Lee Plan accepts reduced levels of service ("LOS") on constrained roads.<sup>47</sup>

Applicant's traffic engineer conducted extensive traffic analysis on affected roadways in conjunction with this application and the property's 2017 Lee Plan

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<sup>34</sup> Lee Plan Policy 1.3.2.

<sup>35</sup> See Staff Report (pg. 2, Attachment H)

<sup>36</sup> Lee Plan Objectives 2.1 & 2.2, Policies 2.1.1, 2.1.2, 2.2.1, 5.1.3, 5.1.5, & 135.1.4; Testimony of Alexis Crespo (Trans. pg. 59-64); Applicant's Ex. 1 (slide 52).

<sup>37</sup> LDC 34-145(d)(4)(a)(1)(d); 34-411(d)(1).

<sup>38</sup> LDC 34-145(d)(4)(a)(1)(e); 34-411(d)(2).

<sup>39</sup> See Staff Report (pg. 3, Attachment D).

<sup>40</sup> See Staff Report (Attachments D & L); Testimony of Ted Treesh (Trans. pg. 30).

<sup>41</sup> *Id.*

<sup>42</sup> Applicant's Ex. 1 (slide 22); Testimony of Ted Treesh (Trans. pg. 30).

<sup>43</sup> See Staff Report (Attachment R: MCP).

<sup>44</sup> Testimony of Ted Treesh (Trans. pg. 30).

<sup>45</sup> *Id.*; Applicant's Ex. 1 (slide 22).

<sup>46</sup> Lee Plan Objective 37.2, Policy 37.2.1, & Table 2(a).

<sup>47</sup> Lee Plan Policy 37.2.1; See Staff Report (pg. 7-8).

amendment.<sup>48</sup> The methodology assumed a “worst-case” development scenario.<sup>49</sup> Transportation impacts evaluated the project based upon development of 22 dwelling units per acre.<sup>50</sup> The request proposes 20 units per acre, less than the Plan amendment contemplated.

Staff agreed with Applicant’s Traffic Impact Statement, finding the proposed project does not have a detrimental impact on the surrounding roadway system.<sup>51</sup>

Significant public comment centered on concerns the project would exacerbate existing traffic congestion along Daniels Parkway and Palomino Lane. In response, Applicant provided information regarding the Three Oaks Parkway North Extension Project (“Extension Project”).<sup>52</sup> Relevant improvements under the Extension Project include:

- Widening Daniels Parkway to eight lanes from I-75 to Apaloosa Lane;
- Adding turn lanes at the Daniels Parkway/Palomino Lane intersection;
- Widening Palomino Lane from its intersection at Daniels Parkway to 730± feet north; and
- Signalizing the Daniels Parkway/Apaloosa Lane intersection.<sup>53</sup>

Extension project improvements were not included in Applicant’s traffic analysis.<sup>54</sup> Accordingly, Staff found the project satisfied LDC transportation review criteria before taking these additional improvements into account.<sup>55</sup> Staff and Applicant both testified the Extension Project would improve traffic congestion on the project’s affected roadways.<sup>56</sup> Applicant’s traffic engineer indicated project and Extension Project construction times will dovetail.<sup>57</sup>

Specific site-related improvements will be determined at the time of development order review.

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<sup>48</sup> Testimony of Ted Treesh (Trans. pgs. 27-29, 39-41, 132); Applicant’s Ex. 1 (Slides 21-29); CPA2015-00010.

<sup>49</sup> Testimony of Ted Treesh (Trans. pg. 27-29, 39-41); Applicant’s Ex. 1 (slide 21). Traffic analysis assumed 300 low rise multi-family units. The request proposes mid-rise multi-family units, said to generate 20-25% less peak hour trips than the low-rise units Applicant evaluated. *Id.*

<sup>50</sup> Testimony of Matt Uhle, Esq. (Trans. pg. 13) and Ted Treesh (Trans. pg. 40); Applicant’s Ex. 1 (slides 8, 21, 29).

<sup>51</sup> See Staff Report (pg. 7-8, Attachment L); Testimony of Dirk Danley (Trans. pg. 73-74); Testimony of Ted Treesh (Trans. pg. 45-46).

<sup>52</sup> Applicant’s Ex. 1 (slides 23-26); Testimony of Ted Treesh (Trans. pg. 32-43, 132).

<sup>53</sup> Applicant’s Ex. 1 (slide 24); Testimony of Ted Treesh (Trans. pg. 33-34).

<sup>54</sup> Testimony of Ted Treesh (Trans. pg. 33, 38, 44-45); Applicant’s Ex. 1 (slide 23).

<sup>55</sup> See Staff Report (pg. 7-8, Attachment L); Testimony of Dirk Danley (Trans. pg. 81-84).

<sup>56</sup> The affected roadways are Daniels Parkway, Apaloosa Lane, and Palomino Lane. Testimony of Ted Treesh (Trans. pg. 37); Testimony of Dirk Danley (Trans. pg. 73-84); Staff’s Ex. 2 (slides 8-11).

<sup>57</sup> Testimony of Ted Treesh (Trans. pg. 38). Mr. Treesh indicated current projections show Extension Project work commencing for this segment in 2023, with completion targeted in 2025-26; this is the same timeline he analyzed for project buildout.

## **Environmental and Natural Resources**

Planned development design should reflect creative use of the open space requirement.<sup>58</sup> The developer must protect, preserve, or not unnecessarily destroy or alter natural features of the site.<sup>59</sup>

The property contains no environmentally critical areas.<sup>60</sup> Site design ensures adjacent properties are protected from development impacts.<sup>61</sup> Applicant agreed to enhance buffers along the northern and western boundaries to further shield neighboring parcels.<sup>62</sup> As presented, the project meets open space requirements.<sup>63</sup>

### **Stormwater**

Applicant's engineer provided expert testimony regarding area drainage patterns and the site's stormwater management.<sup>64</sup> The stormwater management system is designed to ensure the proposed development produces no adverse impacts on adjacent properties.<sup>65</sup>

Applicant provided a conceptual routing plan to demonstrate how stormwater will be collected and directed through the project.<sup>66</sup> Site-specific engineering requirements will be determined at the time of development permitting.<sup>67</sup>

Staff proposed a condition requiring water quality monitoring.<sup>68</sup> In addition to Lee County requirements, Applicant must abide by South Florida Water Management District ("SFWMD") mandates.<sup>69</sup>

## **Urban Services**

Urban services are the services, facilities, capital improvements, and infrastructure necessary to support development at urban levels of density and intensity.<sup>70</sup> The

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<sup>58</sup> LDC 34-411(h).

<sup>59</sup> LDC 34-411(g).

<sup>60</sup> See Staff Report (pg. 8-9, Attachment M).

<sup>61</sup> *Id.*

<sup>62</sup> See Condition 11; Testimony of Alexis Crespo (Trans. pg. 62).

<sup>63</sup> See Staff Report (Attachments M & R).

<sup>64</sup> Testimony of Jim Ink (Trans. pg. 22-26); Applicant's Ex. 1 (slides 14-19); Applicant's Ex. 3.

<sup>65</sup> Applicant's Ex. 1 (slide 16); Testimony of Jim Ink (Trans. pg. 23-25, 130-31)

<sup>66</sup> Applicant's Ex. 1 (slide 18).

<sup>67</sup> Lee Plan Objective 61.3.

<sup>68</sup> Proposed Condition 9; Applicant's Ex. 1 (slide 19).

<sup>69</sup> Applicant's Ex. 1 (slide 17); Testimony of Jim Ink (Trans. pg. 24).

<sup>70</sup> Urban services include public water and sewer, paved streets, parks and 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, and community facilities.

Lee Plan requires an evaluation of the availability of urban services during the rezoning process.<sup>71</sup>

The site is located on an established corridor with access to urban services and infrastructure.<sup>72</sup> Public water and sanitary sewer are available to serve the property.<sup>73</sup> The South Trail Fire District, Lee County EMS, and Lee County Sheriff's Office provide services to the area.<sup>74</sup>

### **Bonus Density**

Requests for bonus density must demonstrate compliance with supplemental requirements set forth in the LDC.<sup>75</sup> Applicants must show:

1. Additional traffic will not be required to travel through areas with significantly lower densities before reaching the nearest collector or arterial road;
2. Existing and committed public facilities are not so overwhelmed that a density increase would be contrary to the overall public interest;
3. Storm shelters are provided if the development is located within the coastal high hazard area; and
4. The resulting development will be compatible with existing and planned surrounding land uses.

### **Traffic**

The project's traffic will indirectly access Daniels Parkway via Palomino Lane and Apaloosa Lane.<sup>76</sup> Palomino Lane is a collector roadway.<sup>77</sup> Daniels Parkway is an arterial road.<sup>78</sup>

Site access points direct residents to travel south to Daniels Parkway past existing commercial developments.<sup>79</sup>

Applicant demonstrated compliance with this criterion as additional traffic will not be required to travel through lower density areas to reach either Palomino Lane (collector roadway) or Daniels Parkway (arterial road).

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<sup>71</sup> Lee Plan Policy 2.2.1.

<sup>72</sup> See Staff Report (pg. 10); Lee Plan Policy 2.2.1; Testimony of Jim Ink (Trans. pg. 16-17); Applicant's Ex. 1 (slides 11-12).

<sup>73</sup> Lee Plan Goal 4, Standards 4.1.1 and 4.2.1. See Staff Report (pg. 10, Attachment O).

<sup>74</sup> South Trail Fire Protection and Rescue District with EMS is located 0.8 miles from the site. A Sheriff substation is 1.8 miles from the property. See Staff Report (pg. 10).

<sup>75</sup> LDC 2-146(b).

<sup>76</sup> See Staff Report (pg. 4-5, Attachments K-L); Applicant's Ex. 1 (slide 27); Testimony of Ted Treesh (Trans. pg. 39). Apaloosa Lane meets Daniels Parkway approximately 900 feet south of the project; Palomino Lane intersects Daniels Parkway approximately 660 feet south. Applicant's Ex. 1 (slide 27).

<sup>77</sup> See Staff Report (Attachments K-L).

<sup>78</sup> *Id.*

<sup>79</sup> See Applicant's Ex. 1 (slide 27).

### Public Facilities

The record reflects existing and committed public facilities will not be so overwhelmed that a density increase would be contrary to the public interest.<sup>80</sup> Staff testified this criterion was carefully evaluated.<sup>81</sup> Particularly with respect to traffic generation, Staff found no significant impact resulted from adding the requested bonus units.<sup>82</sup>

### Coastal High Hazard Protections and Compatibility

The property is located outside of the coastal high hazard area.<sup>83</sup> This criterion is not applicable to the request. Compatibility is addressed above.

Applicant provided sufficient evidence to satisfy each of the requisite criteria to support participation in the bonus density program.

### Deviations

“Deviations” are departures from land development regulations.<sup>84</sup> Applicant proposes nine deviations.<sup>85</sup>

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

- Enhances the achievement of the objectives of the planned development; and
- Preserves and promotes the general intent of the LDC to protect the public health, safety, and welfare.<sup>86</sup>

Staff supports the requested deviations. Applying the LDC standards of review to the testimony and evidence in the record, the Hearing Examiner finds the requested deviations meet criteria for approval.

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<sup>80</sup> See Applicant’s Ex. 1 (slide 28); Staff Report (pg. 4-6 & Attachments I-O). Testimony of Ted Treesh (Trans. pg. 40); Testimony of Dirk Danley (Trans. pg. 75-77, 81-84).

<sup>81</sup> Testimony of Dirk Danley (Trans pg. 75-76, 81-84).

<sup>82</sup> *Id.*; Staff Report (pgs. 4-5, 7-8).

<sup>83</sup> Staff Report (pg. 5); Testimony of Alexis Crespo (Trans. pg. 67); Testimony of Dirk Danley (Trans. pg. 76).

<sup>84</sup> LDC 34-2; LDC 34-377(a)(4).

<sup>85</sup> The ninth deviation was omitted from the Staff Report. Applicant included it in its 48 hour letter. Staff did not object to this deviation at hearing. See Applicant Ex. A; Testimony of Dirk Danley (Trans. pg. 78-79).

<sup>86</sup> LDC 34-377(a)(4).

## **Conditions**

Conditions may be applied to planned developments to address unique aspects of the property in the protection of a bona fide public interest.<sup>87</sup>

The RPD is subject to 13 proposed conditions of approval. The conditions reasonably relate to impacts anticipated from the project.<sup>88</sup>

The Hearing Examiner recommends removing conditions that restate the LDC and other applicable laws. The Hearing Examiner revised proposed conditions to enhance clarity.<sup>89</sup>

## **Public**

Ten members of the public spoke at hearing. Staff submitted letters of concern from 45 additional residents.<sup>90</sup> Applicant provided letters of support from four landowners west of Apaloosa Lane.<sup>91</sup>

Most concerns center on increased traffic and flooding.<sup>92</sup> Many residents object to additional development in the area until road improvements relieve existing traffic congestion.<sup>93</sup>

The designation of Daniels Parkway as a constrained road recognizes existing traffic conditions along this corridor.<sup>94</sup> The parties' experts testified the Three Oaks Parkway Expansion Project will improve traffic congestion in the project's immediate vicinity.<sup>95</sup>

Other residents expressed frustration that adding more residential units with access only to Palomino Lane would exacerbate travel times along that roadway. At hearing, the parties' stressed the project will access Apaloosa Lane as well as Palomino Lane to provide alternative travel routes for residents.<sup>96</sup>

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<sup>87</sup> LDC 34-932(b) provides conditions may be applied to address unique aspects of the parcel to protect a bona fide public interest. LDC 34-936(a) requires conditions of approval in the zoning resolution be incorporated into covenants, restrictions and rules of operation binding on the developer, his successors and heirs, tenants-in-fee, or leasehold.

<sup>88</sup> LDC 34-83(b)(4)(a)(3); LDC 34-932.

<sup>89</sup> LDC 34-932.

<sup>90</sup> See Staff Ex. 3. Many writers expressed desire to provide written comments in lieu of physical attendance during a pandemic. Some shared hope their comments would be considered in their absence. The Hearing Examiner thoroughly reviewed all comments in the record, both spoken and written.

<sup>91</sup> Applicant's Ex. 2; Applicant's Ex. 1 (slide 53).

<sup>92</sup> See Staff's Ex. 3; Testimony of the public (Trans. pgs. 84-126).

<sup>93</sup> See Staff's Ex. 3.

<sup>94</sup> Lee Plan Objective 37.2, Table 2(a); Testimony of Dirk Danley (Trans. pg. 81-84).

<sup>95</sup> Testimony of Ted Treesh (pg. 32-43); Testimony of Dirk Danley (Trans. pg. 73-75, 81-84).

<sup>96</sup> Testimony of Dirk Danley (pg. 75, 81-82); Testimony of Ted Treesh (pg. 32-43).



## **Conclusion**

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

## **IV. Findings and Conclusions:**

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

A. *As conditioned herein*, the proposed RPD:

1. Complies with the Lee Plan. See, Lee Plan Vision Statement Paragraph 11 (Daniels Planning Community), Lee Plan Goals 2, 4, 5, Objectives 2.1, 2.2, 4.1, Standards 4.1.1, 4.1.2, and Policies 1.3.2, 2.2.1, 5.1.2, 5.1.3, 5.1.5, 61.3.6, 135.1.4, 135.1.9; Lee Plan Maps 1, 16.

2. Complies with the LDC and other County regulations. See, LDC Chapters 10 and 34;

3. Is compatible with existing and planned uses in the area. See, Lee Plan Policies 1.3.2, 2.1.1, 2.1.2, 2.2.1; LDC 34-411(c), (i), and (j).

4. Will not adversely affect environmentally critical areas and natural resources. See, Lee Plan Goal 77, Objective 4.1, and LDC 34-411(h).

5. Will be served by urban services. See, Lee Plan Glossary, Maps 6, 7, Goal 2; Objectives 2.1, 2.2, 4.1; Policy 2.2.1, and Standards 4.1.1 and 4.1.2; LDC 34-411(d).

B. The Master Concept Plan reflects sufficient access to support the intensity of development. In addition, County regulations and conditions of approval will address expected impacts to transportation facilities. See, LDC 34-411(d).

C. The proposed mix of uses is appropriate at the proposed location. See, Lee Plan Policies 1.3.2, 2.1.1, 5.1.3.

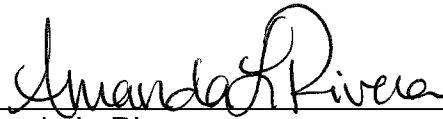
D. The recommended conditions are sufficient to protect the public interest and reasonably relate to the impacts expected from the development. See, LDC Chapters 10 and 34.

E. *As conditioned herein*, the deviations:

1. Enhance the objectives of the planned development; and

2. Promote the intent of the LDC to protect the public health, safety and welfare. See, 34-377(b)(4).

Date of Recommendation: August 4, 2020.



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Amanda L. Rivera  
Deputy Hearing Examiner

Office of the 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 (Strike Through/Underlined Version)
- Exhibit C Recommended Conditions and Deviations (Clean Version)
- Exhibit D Exhibits Presented at Hearing
- Exhibit E Hearing Participants
- Exhibit F Information

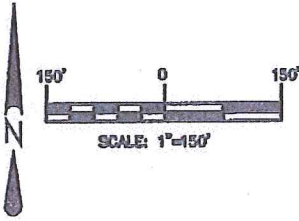
**Exhibit A**

**LEGAL DESCRIPTION AND VICINITY MAP**

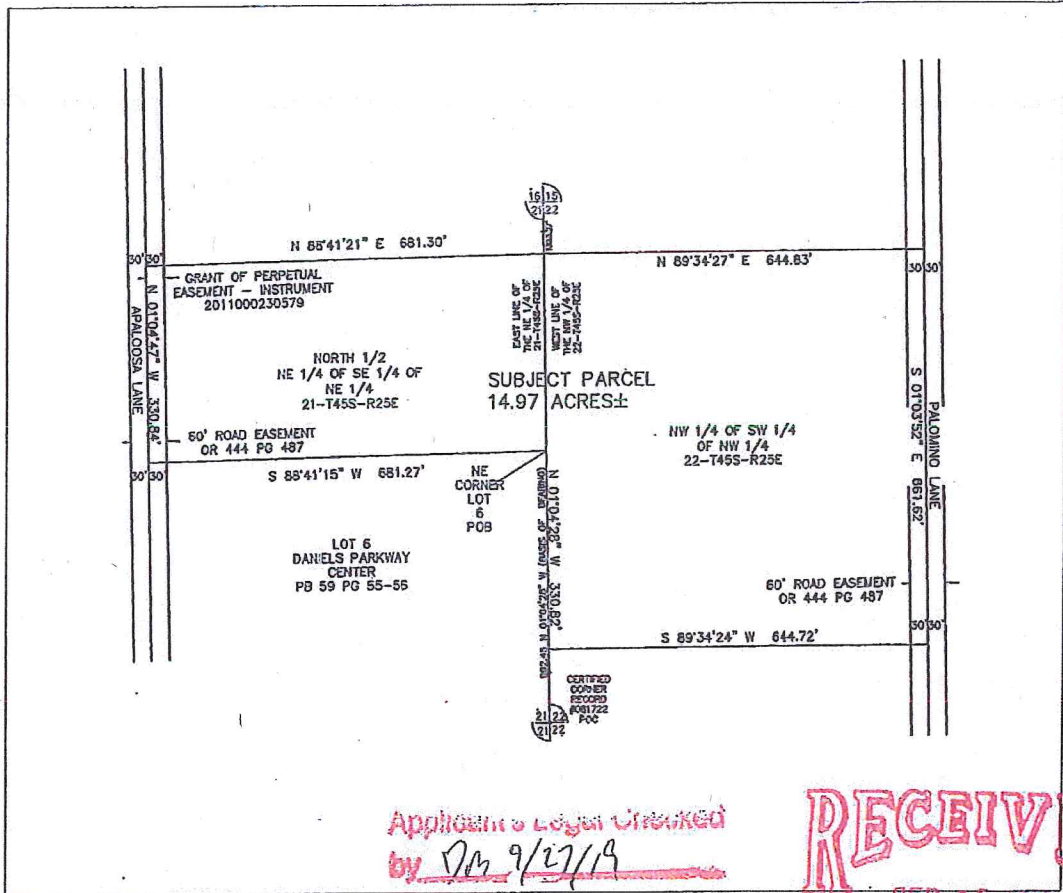
# EXHIBIT A

## BOUNDARY SKETCH

OF



PART OF TRACT 34 OF COLONIAL RANCHETTES, INC., AN UNRECORDED SUBDIVISION MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
 THE NORTH HALF OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21,  
 TOWNSHIP 45 SOUTH, RANGE 25 EAST, LEE COUNTY FLORIDA.  
 AND  
 TRACT 35 OF COLONIAL RANCHETTES, INC. AN UNRECORDED SUBDIVISION, MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
 THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 45 SOUTH,  
 RANGE 25 EAST, CONTAINING TEN ACRES, MORE OR LESS.



Application Legal Checked  
 by DM 9/27/19

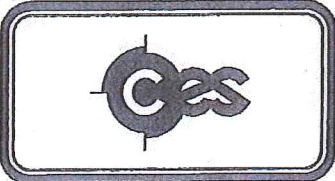
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PAGE 1 OF 2

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 CHECKED BY: MDM  
 DATE DRAWN: 03/11/2019  
 REVISED:



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 Fort Myers, Florida 33912  
 Telephone (239) 936-5777

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 WALTER M. McLELLAN, P.E.  
 REGISTERED PROFESSIONAL SURVEYOR  
 FOR THE STATE OF FLORIDA  
 DATE RECORDED: 9/28/19

DCI 20 19- 00 020

DESCRIPTION

OF

PART OF TRACT 34 OF COLONIAL RANCHETTES, INC. AN UNRECORDED SUBDIVISION MORE PARTICULARLY DESCRIBED AS FOLLOWS: THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 45 SOUTH, RANGE 25 EAST, LEE COUNTY FLORIDA. AND TRACT 35 OF COLONIAL RANCHETTES, INC. AN UNRECORDED SUBDIVISION, MORE PARTICULARLY DESCRIBED AS FOLLOWS: THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 45 SOUTH, RANGE 25 EAST, CONTAINING TEN ACRES, MORE OR LESS.

DESCRIPTION:

PART OF TRACT 34 OF COLONIAL RANCHETTES, INC., AN UNRECORDED SUBDIVISION MORE PARTICULARLY DESCRIBED AS FOLLOWS: THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 45 SOUTH, RANGE 25 EAST, LEE COUNTY FLORIDA.

AND

TRACT 35 OF COLONIAL RANCHETTES, INC. AN UNRECORDED SUBDIVISION, MORE PARTICULARLY DESCRIBED AS FOLLOWS: THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 45 SOUTH, RANGE 25 EAST, CONTAINING TEN ACRES, MORE OR LESS.

COMBINED DESCRIPTION OF BOTH PARCELS:

COMMENCING AT THE QUARTER CORNER (CERTIFIED CORNER RECORD NUMBER 081722) COMMON TO SECTIONS 21 & 22 TOWNSHIP 45 SOUTH, RANGE 25 EAST; THENCE N 01°04'28" W (BASIS OF BEARING) ALONG THE WEST SECTION LINE OF SECTION 22 AND THE EAST SECTION LINE OF SECTION 21 A DISTANCE 992.45 FEET TO THE POINT OF THE BEGINNING AND THE NORTHEAST CORNER OF LOT 6, DANIELS PARKWAY CENTER AS RECORDED IN PLAT BOOK 59, PAGE 56 OF PUBLIC RECORDS OF LEE COUNTY; ALSO BEING THE SOUTHEAST CORNER OF THE NORTH HALF (N 1/2), OF THE NORTHEAST QUARTER (NE 1/4), OF THE SOUTHEAST QUARTER (SE 1/4), OF THE NORTHEAST QUARTER (NE 1/4), OF SAID SECTION 21; THENCE S 88°41'48" W ALONG THE NORTH LINE OF SAID LOT 6, DANIELS PARKWAY CENTER AND THE SOUTH LINE OF THE NORTH HALF (NE 1/2), OF THE NORTHEAST QUARTER (NE 1/4), OF THE SOUTHEAST QUARTER (SE 1/4), OF THE NORTHEAST QUARTER (NE 1/4), OF SAID SECTION 21 A DISTANCE 681.27 FEET TO THE WEST LINE OF THE NORTH HALF (N 1/2), OF THE NORTHEAST QUARTER (NE 1/4), OF THE SOUTHEAST QUARTER (SE 1/4), OF THE NORTHEAST QUARTER (NE 1/4), OF SAID SECTION 21; THENCE N 01°04'47" W. ALONG SAID WEST LINE OF THE NORTH HALF (N 1/2), OF THE NORTHEAST QUARTER (NE 1/4), OF THE SOUTHEAST QUARTER (SE 1/4), OF THE NORTHEAST QUARTER (NE 1/4), OF SAID SECTION 21; THENCE N 01°04'28" W ALONG SAID WEST LINE OF THE NORTH HALF (N 1/2), OF THE NORTHEAST QUARTER (NE 1/4), OF THE SOUTHEAST QUARTER (SE 1/4), OF THE NORTHEAST QUARTER (NE 1/4), OF SAID SECTION 21; THENCE NORTH 88°41'21" ALONG SAID NORTH LINE OF THE NORTH HALF (N 1/2), OF THE NORTHEAST QUARTER (NE 1/4), OF THE SOUTHEAST QUARTER (SE 1/4), OF THE NORTHEAST QUARTER (NE 1/4) A DISTANCE OF 681.30 FEET TO THE EAST LINE OF THE NORTH HALF (N 1/2), OF THE NORTHEAST QUARTER (NE 1/4), OF THE SOUTHEAST QUARTER (SE 1/4), OF THE NORTHEAST QUARTER (NE 1/4), OF SAID SECTION 21; THENCE N 89°34'27" E ALONG THE NORTHWEST QUARTER (NW 1/4), OF THE SOUTHWEST QUARTER (SW 1/4), OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 22, TOWNSHIP 45 SOUTH, RANGE 25 EAST A DISTANCE OF 644.83 FEET TO THE EAST LINE OF THE NORTHWEST QUARTER (NW 1/4), OF THE SOUTHWEST QUARTER (SW 1/4), OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 22; THENCE S 01°03'52" E ALONG SAID EAST LINE TO THE SOUTH LINE OF THE NORTHWEST QUARTER (NW 1/4), OF THE SOUTHWEST QUARTER (SW 1/4), OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 22; A DISTANCE OF 661.62 FEET; THENCE SOUTH 89°34'24" W ALONG SAID SOUTH LINE TO THE WEST LINE OF NORTHWEST QUARTER (NW 1/4), OF THE SOUTHWEST QUARTER (SW 1/4), OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 22 A DISTANCE OF 644.72 FEET TO THE WEST LINE OF THE NORTHWEST QUARTER (NW 1/4), OF THE SOUTHWEST QUARTER (SW 1/4), OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 22; THENCE N 01°04'28" W ALONG SAID LINE OF THE NORTHWEST QUARTER (NW 1/4), OF THE SOUTHWEST QUARTER (SW 1/4), OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 22 TO A DISTANCE OF 330.82 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 14.97 ACRES, MORE OR LESS, WITH EASEMENTS FOR ROADWAY.

Applicant's Legal Checked by JM 9/27/19

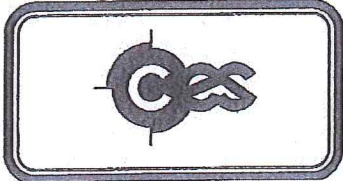
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PAGE 2 OF 2

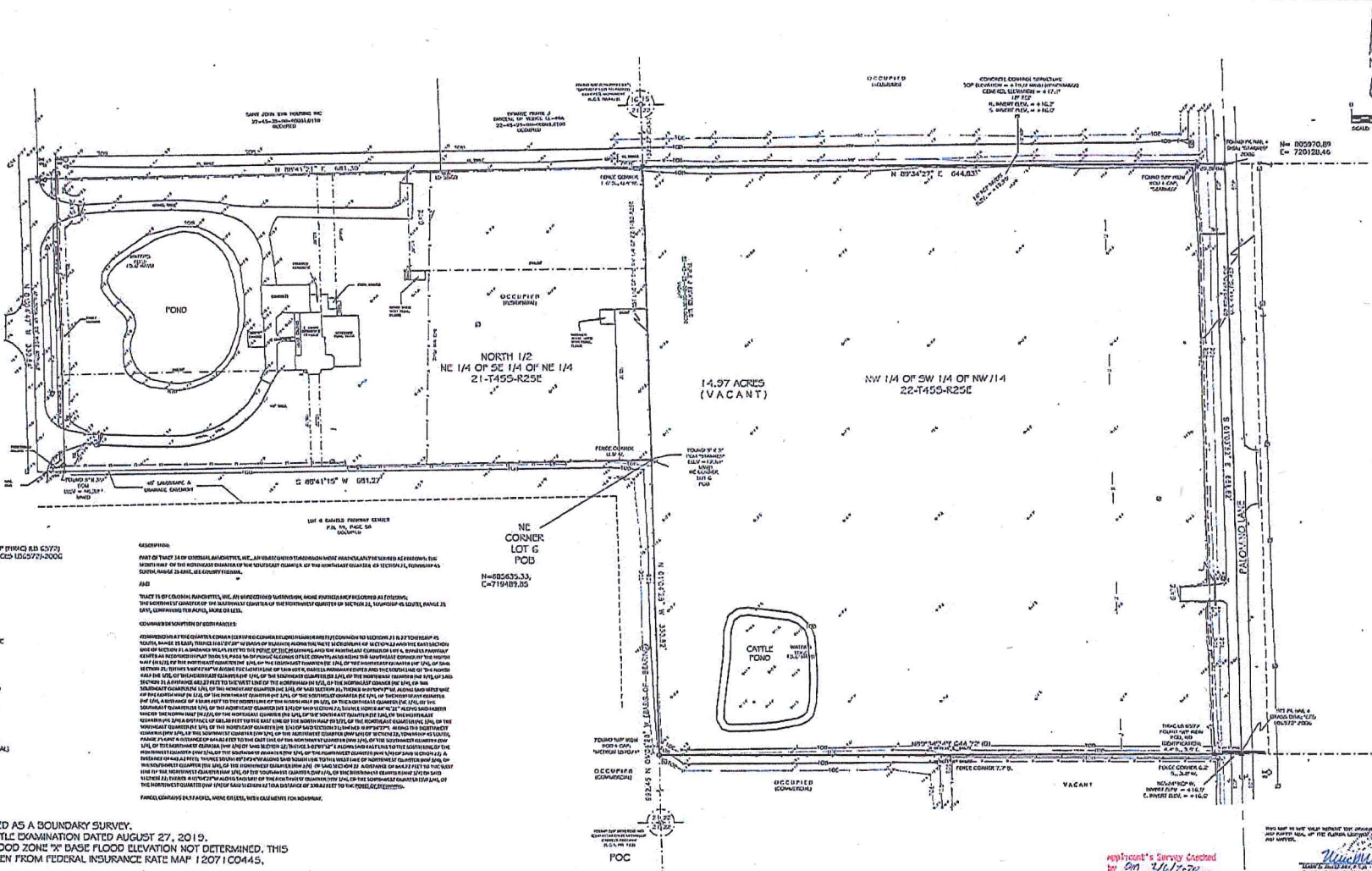
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CE-SITE EB-30108 • LB-7995 13650 Fiddlerslicks Blvd. PUB 202-389 Fort Myers, Florida 33812 Telephone (239) 936-9777

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DCI 2019-00020



- LEGEND**
- = FOUND IRON ROD
  - = FOUND 3/4" IRON ROD A CAP (PINS) (SEE C577)
  - A = SET OF NAIL & TIMBER DOG (SEE C577-578)
  - △ = FOUND NAIL & WIRE
  - ⊞ = ELECTRIC DOG
  - ⊞ = UTILITY POLE
  - ⊞ = WATER MAIN
  - = FENCE POST
  - = LEASED SURVEY
  - = LEASED SURVEY
  - = MEASURED
  - = SET
  - = CALCULATED
  - = REINFORCED CONCRETE PILE
  - = ELEVATION
  - = FLAT ROCK
  - = CRITICAL RECORD
  - = FENCE
  - = TOP OF BANK
  - = TOP OF FENCE
  - = C.E.C. = CERTIFIED CORNER RECORD
  - = POINT OF BEGINNING
  - = POINT OF BEGINNING
  - = DIGGING ELEVATION
  - = CENTERLINE
  - — — = OVERHEAD UTILITY LINES
  - — — = DATED WIRE FENCE (PHYSICAL)

**DESCRIPTION**

PART OF TRACT 34 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 34"), BEING THE NORTH 1/2 OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 11 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 11"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 12 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 12"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 13 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 13"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 14 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 14"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 15 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 15"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 16 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 16"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 17 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 17"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 18 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 18"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 19 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 19"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 20 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 20"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

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TRACT 21 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 21"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 22 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 22"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

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TRACT 23 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 23"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 24 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 24"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 25 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 25"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

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TRACT 26 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 26"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

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TRACT 27 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 27"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 28 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 28"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

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TRACT 29 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 29"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

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TRACT 30 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 30"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

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TRACT 33 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 33"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

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TRACT 34 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 34"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

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TRACT 35 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 35"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

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TRACT 37 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 37"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

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TRACT 38 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 38"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

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TRACT 39 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 39"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 40 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 40"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 41 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 41"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 42 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 42"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

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TRACT 43 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 43"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

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TRACT 44 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 44"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 45 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 45"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

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TRACT 46 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 46"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 47 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 47"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 48 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 48"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

AND

TRACT 49 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 49"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

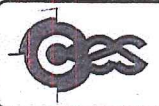
AND

TRACT 50 OF CENTRAL REALTY, INC., AN UNINCORPORATED PARTNERSHIP (HEREINAFTER REFERRED TO AS "TRACT 50"), BEING THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 23 EAST, LEO COUNTY, FLORIDA.

- SURVEYOR'S NOTES:**
1. THIS PLAT WAS PREPARED AS A BOUNDARY SURVEY.
  2. SURVEY BASED ON A TITLE EXAMINATION DATED AUGUST 27, 2019.
  3. THIS PARCEL LIES IN FLOOD ZONE "X" BASE FLOOD ELEVATION NOT DETERMINED. THIS INFORMATION WAS TAKEN FROM FEDERAL INSURANCE RATE MAP 12071C0445, DATED 02-28-2008.
  4. ELEVATIONS SHOWN HEREON ARE BASED 1985 NAVD.
  5. DATE OF LAST FIELDWORK: 08-27-2019.

date 08-11-2019  
 drawn MDV  
 file name PACO\_APA\_COMMAND  
 job

Section 21 & 22, Township 45 South, Range 23 East  
 Leo County, Florida



**CE - SITE**  
 civil engineering • surveying • project management  
 EB-30108 LB-7095  
 13500 FIDDLESTICKS BLVD, PMB 202-300  
 Fort Myers, Florida 33912  
 Telephone (239) 936-9777

**BOUNDARY SURVEY**  
 FOR  
 PAULUS NICHOLAS S TR  
 TRIPLE J ESTATES LLC

**RECEIVED**  
 JAN 30 2020  
 COMMUNITY DEVELOPMENT

scale: 1" = 100'  
 V.P. = N/A

**SHEET**  
 1 of 1

BC12019-00020

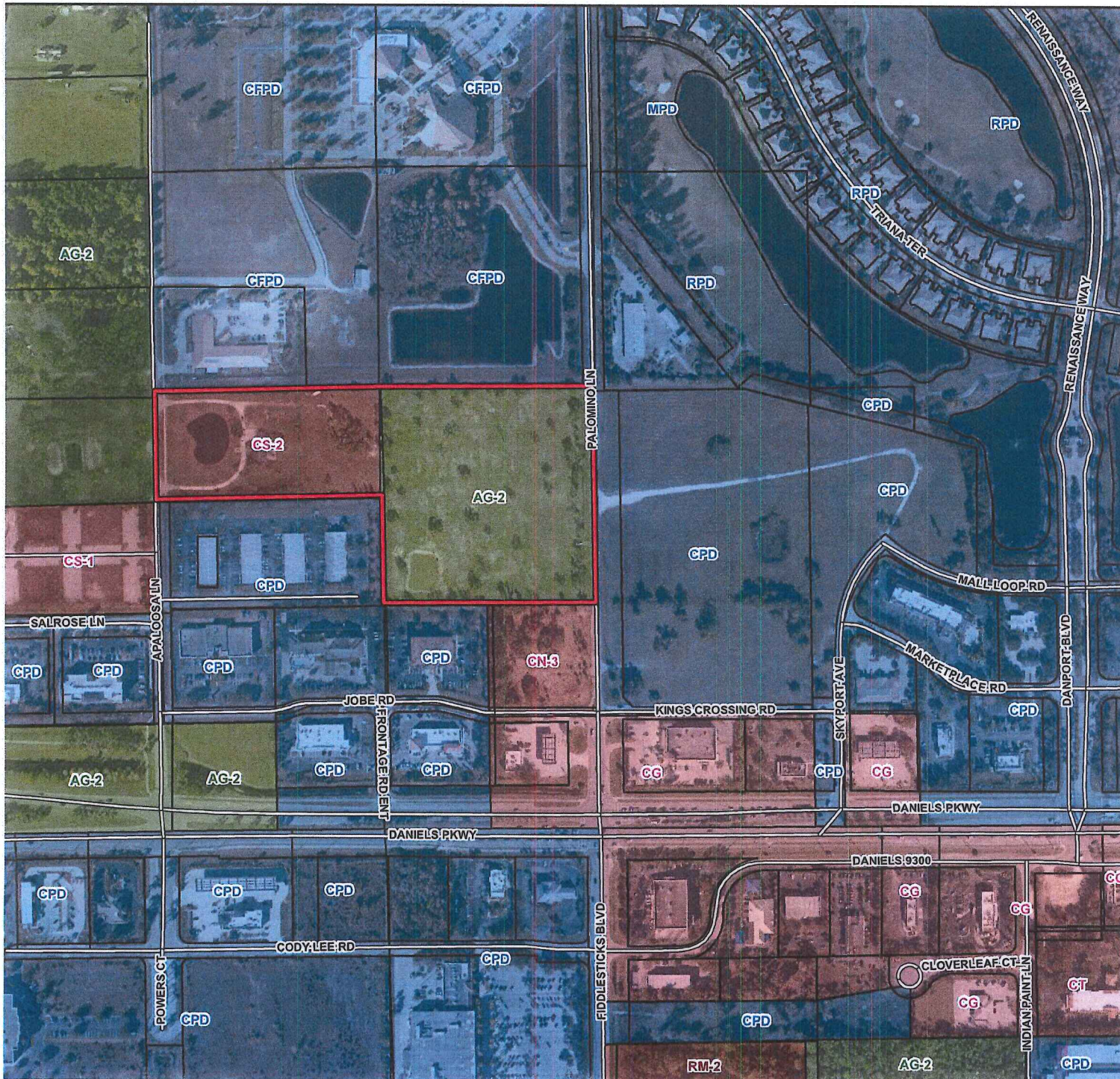
# DCI2019-00020 Zoning

## Legend

 Subject Parcel



0 200  
Feet



**Exhibit B**

**RECOMMENDED CONDITIONS AND DEVIATIONS  
(Strike Through/Underline Version)**

**The Hearing Examiner revised formatting and proposed wording of conditions and deviations to improve clarity. A clean copy of the Hearing Examiner's recommended conditions follow in Exhibit C.**

**CONDITIONS:**

**All references to uses are as defined and regulated in the Land Development Code (LDC).**

**1. Master Concept Plan (MCP) and Development Parameters**

- (a) Master Concept Plan. Development must be substantially consistent with the one-page ~~Master Concept Plan (MCP)~~ entitled "Apaloosa Lane RPD," prepared by Waldrop Engineering date stamped "Received April 23, 2020," (Exhibit B1) except as modified by the conditions below.
- (b) Land Development Code (LDC) and Lee Plan. This Development and uses must comply with all requirements of the Lee County ~~Land Development Code LDC~~ and Lee County Comprehensive Plan (Lee Plan) at time of local development order approval, except where as may be granted by deviations as part of this planned development are approved herein. Subsequent amendments ~~If changes to the Master Concept Plan MCP are subsequently pursued,~~ conditions, or deviations herein may require further development ~~appropriate approvals will be necessary.~~
- (c) Development Parameters. Project density is limited to the ~~development of a maximum of 300 multiple-family dwelling units, (including 210 standard density units and up to 90 bonus density units).~~ pursuant LDC Chapter 2, Section 2-141 et seq. Bonus density units must be approved consistent with Chapter 2 of the LDC.

**2. Schedule of Uses and Property Development Regulations** ~~The following limits apply to the project and uses.~~

**(a). Schedule of Uses**

Accessory Uses and Structures  
Administrative Office  
Agricultural Uses (See Condition 76)  
Clubs, Private



Dwelling Unit:  
Multiple-family  
Townhouses  
Single-family (Existing Only)  
Entrance Gates and Gatehouses  
Essential Services  
Essential Services Facilities, Group I  
Excavation - Water Retention  
Fences and Walls  
Home Care Facility  
Home Occupation  
Models: Model Unit (See Condition 87)  
Parking Lot, Accessory  
Real Estate Sales Office (See Condition 87)  
Recreation Facilities, Private, On Site  
Residential Accessory Uses  
Signs  
Temporary uses, limited to construction trailers

**HEX NOTE:** Applicant requested these two uses in its 48-hour letter.  
Staff did not object to the addition of either use.

**(b) Site Development Regulations**

**Multiple-Family Buildings**

Lot Size

Minimum Lot Area: 10,000 square feet  
Minimum Lot Depth: 100 feet  
Minimum Lot Width: 100 feet

Setbacks<sup>1</sup>

Development Perimeter: 20 feet  
Street (public): 25 feet  
Street (private): 20 feet  
55 feet for structures adjacent to Apaloosa Lane  
Side: 10 feet  
Rear: 10 feet  
Water body: 20 feet

---

<sup>1</sup> Accessory uses and setbacks must comply with the LDC§ 34-1174 *et seq.* and LDC§ 34-2194.

Minimum building separation: 20 feet or one half the building height,  
whichever is greater

Maximum Lot Coverage: 40 percent

Maximum Building Height: 55 feet

### **Townhouse**

#### Lot Size

Minimum Lot Area: 1,800 square feet

Minimum Lot Depth: 100 feet

Minimum Lot Width: 18 feet

#### Setbacks<sup>2</sup>

Development Perimeter: 20 feet

Street (public): 25 feet

Street (private): 20 feet

Side: 0/10 feet

Rear: 10 feet

Water body: 20 feet

Minimum building separation: 10 feet or one half the building height, whichever  
is greater

Maximum Lot Coverage: 65 percent

Maximum Building Height: 45 feet

### **Single-Family Home (only applicable to existing dwelling unit)**

#### Lot Size

Minimum Lot Area: 10,000 square feet

Minimum Lot Depth: 100 feet

Minimum Lot Width: 100 feet

#### Setbacks<sup>3</sup>

---

<sup>2</sup> Accessory uses and setbacks must comply with the LDC§ 34-1174 *et seq.* and LDC§ 34-2194.

<sup>3</sup> Accessory uses and setbacks must comply with the LDC§ 34-1174 *et seq.* and LDC§ 34-2194.

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

Minimum building separation: 10 feet  
Maximum Lot Coverage: 65 percent

Maximum Building Height: 35 feet

### **Amenity Tracts/Private On-Site Recreational Facilities**

#### Lot Size

Minimum Lot Area: 4,000 square feet  
Minimum Lot Depth: 100 feet  
Minimum Lot Width: 40 feet

#### Setbacks

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

Minimum building separation: 20 feet or one-half the building height  
for structures greater than 40 feet

Maximum Lot Coverage: 45 percent

Maximum Building Height: 45 feet

#### 3. Vehicular/Pedestrian Impacts

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

#### 4. Lee Plan Consistency

~~Approval of this zoning request does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage~~

~~Allocation Table, Map 16 and Table 1 (b), be reviewed for, and found consistent with Lee Plan provisions.~~

**HEX NOTE:** Recommend deletion as Lee Plan compliance is required under Condition 1.

5.4. Concurrency

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

6.5. Development Permits

~~Issuance of a County development permit does not establish a right to obtain a permits from state or federal agencies. Further, it does not establish liability on the part of the county if the developer: (a) does not obtain requisite approvals or fulfill the obligations imposed by state or federal agencies; or (b) undertakes actions that result in a violation of state or federal law.~~

7.6. Agricultural Uses

Existing bona fide agricultural uses in the form of grazing lands may continue on the property subject to the following:

- a. Termination of Agricultural Use. Agricultural uses must terminate on project areas receiving development order approval for vertical development and prior to county issuance of a vegetation removal permit. Development order approvals for plats, infrastructure improvements, landscaping, surface water management, or other non-vertical development do not trigger termination. Bona fide agricultural uses consisting of "grazing lands", which were 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 such time as a local development order is approved for the area that contains these uses.
- b. Additional Clearing Prohibited. Clearing or injury of native trees and/or other native vegetation, including understory, in agricultural areas is prohibited. 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 or expansion is not intended to does not preclude County approved requests for removal of invasive exotic vegetation. Violations of this condition will require restoration in accordance with Section 10-423 of the LDC.

- c. Proof of Termination. Upon approval of a local development order for vertical development and prior to issuance of a vegetation removal permit, the property owner must provide written proof of the following, subject to approval by the County Attorney's Office:
- ~~1) Prior to issuance of a local development order, the applicant, its successors or assigns must provide written proof, subject to approval by the Lee County Attorney's Office, of the following:~~
  - ~~2) 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) Affidavit. Sworn affidavit from the property owner confirming:
      - a. The Date the agricultural uses ceased;
      - b. The Legal description of the property subject to the development order approval for vertical development;
      - c. An affirmative statement that ~~the applicant, its successors or assigns~~ acknowledgesing and agreeesing 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 agricultural uses on the property to resume unless and until the property is rezoned to permit agriculture such uses; and
      - d. That The affidavit constitutes a covenant between the property owner applicant, its successors or assigns, and the County that is binding on the applicant, owner and its successors or assigns. The covenant must be properly recorded in the public records of the County at the owner's expense of the applicant, its successors or assigns.
    - 2) Termination of Tax Exemption. Termination of the agricultural tax exemption for any portions of the property subject to a included in the development order for vertical development application/approval. Proof as to the of termination must

include a copy of the request to terminate the tax exemption submitted to the Lee County Property Appraiser.

8.7. Model Units/ Real Estate Sales

Real Estate Sales are limited to clubhouses and model units. Hours of operation for model units and real estate sales are limited to Monday through Sunday 8 a.m. to 8 p.m daily.

9.8. Open Space

Prior to local development order approval, the Development Order plans must demonstrate depict a minimum 5.99 acres of open space.

10.9. Surface/Groundwater Monitoring

Prior to Development Order Approval, the applicant Developer must provide a surface water monitoring plan for review and approval by the Lee County Natural Resources Department during development order review. Any Required monitoring must address the 2019 Surface Water Monitoring Chemical Constituent List, as may be amended.

11.10. Stormwater Management within 10,000 feet of Airport Facilities

Pursuant to FAA AC 150/5200-33B as amended, renumbered, or replaced, all water management ponds, lakes, canals, conveyances, and other features within 10,000 feet of any public airport are encouraged to be designed and built in accordance with FAA recommendations.

12.11. Enhanced Landscape Buffers

Development order landscape plans must depict:

- ~~Prior to the issuance of a development order, the landscape plans must illustrate an~~ Enhanced Type “A” buffer along the northern property line with ten (10) palm trees per 100 linear feet that have with a 14- to 16-foot clear trunk at the time of planting, measured from finished grade.
  
- ~~Prior to the issuance of a development order, the landscape plans must illustrate an~~ Enhanced Type “D” buffer along the western property line adjacent to Apaloosa Lane. The buffer must be 20 feet wide and ~~must contain:~~
  - A three-foot-high berm;
  - A double-staggered hedge row; and
  - Five canopy trees per 100 linear feet. The double-staggered hedgerow must be maintained at a minimum height of 36 inches within one year after the time of planting. Canopy Trees must be a minimum of 45 gallons, 12-14 feet at the time of planting, with a 6-foot spread and 3-inch caliper.

13.12. Unified Design Theme

~~Prior to Development Order approval,~~ Development order plans must include a unified architectural theme on all sides of all buildings in compliance with the ~~Land Development Code LDC~~ to ensure an equally attractive architectural elevation from all adjacent property lines. ~~The Development of the subject property~~ must include a unified, common signage theme consistent with the architectural theme throughout the project.

14.13. Traffic Calming

~~At the time of local development order approval,~~ Development order plans must ~~demonstrate~~ depict internal traffic calming measures internal to the parking lot and parking lot access isles to address safe pedestrian and vehicular circulation of pedestrians and vehicles throughout the site.

**DEVIATIONS:**

1. Lake Setback. Deviation (1) seeks relief from ~~the~~ LDC Section 10-329(d)(1)(a)(3) ~~which requires~~ requirement of a 50-foot setback between any private property line under separate ownership and excavations, to allow a 30-foot minimum setback from the proposed lakes and the northern property line.

*HEX Recommendation: Approval*

2. Building Setback. Deviation (2) seeks relief from ~~the~~ LDC Section 34-935(b)(1)(e) ~~requirement which requires of a PD development perimeter setback equal to one-half the building height, to allow 55-foot tall buildings to be setback a minimum of 20 feet from the from the northern and southern boundary lines.~~

*HEX Recommendation: Approval*

3. Vehicle Stacking. Deviation (3) seeks relief from ~~the~~ LDC Section 34-1748(1) and (5) ~~which requires~~ requirements that residential entrance gates and gatehouses for residential uses with 3 or more dwelling units to be setback a minimum of 100 feet from the existing street right-of-way or provide stacking for a minimum of five (5) vehicles and provide for single unit truck turnaround; to allow to allow for the stacking of for one (1) vehicle between the gate and the western property line. The remaining four (4) stacking spaces will be provided in a right turn lane constructed by the developer in Apaloosa Lane.

*HEX Recommendation: Approval, subject to the following condition:*

- ~~Prior to Development Order approval, the applicant Developer must provide the required stacking for the remaining four (4) spaces required for the residential gate in a right turn lane it constructs on Apaloosa Lane and lengthened to accommodate any required turn lane to address any required traffic impact mitigation. This deviation does not apply if Developer provides full stacking within the RPD boundary.~~

4. Private accessway. Deviation (4) seeks relief from LDC Sec. 10-296(l)(4)(a) to allow a privately maintained accessway serving more than 100 multi-family residential units to not meet the required minimum roadway right-of-way widths specified in 10-296(b).

*HEX Recommendation: Approval*

5. Lake Bank Slope. Deviation (5) seeks relief from the LDC Section 10-329(d)(4) which requires requirement of a 6:1 lake bank slope, to allow for 4:1 lake bank slopes on the lakes shown on the MCP Master Concept Plan.

*HEX Recommendation: Approval, subject to the following condition:*

- ~~Prior to development order approval, the Development order engineering plans must depict a 4:1 lake bank slope that includes a cross section illustrating the stabilization technique and slope enhancements.~~

6. Shoreline. Deviation (6) seeks relief from the LDC Section 10-418(1) requirement of which requires a sinuous shoreline, to allow for a non-sinuous lake shoreline.

*HEX Recommendation: Approval*

7. Littoral Shelf. Deviation (7) seeks relief from LDC Section 10-418(2)(c) to omit the 20-foot-wide planted littoral shelf extending waterward of the control elevation at a depth no greater than two feet below the control elevation to minimize the potential for bird attractants.

*HEX Recommendation: Approval, subject to the following conditions:*

Landscape plans must:

- ~~Prior to development order approval, the landscape plans must Depict one wetland tree substituted for every 100 herbaceous littorals within the 4:1 lake bank slope. The Wetland trees must be specified at ten feet-in-height, two inch caliper, and a four-foot spread.~~



- ~~Prior to development order approval, the landscape plans must~~ Specify plant material that is in compliance with the Lee County Port Authority plant compatibility list.
8. Native Plantings. Deviation (8) seeks relief from the LDC Section 10-418(2)(d) requirement, which ~~allowings~~ native trees to be substituted for up to 25% of the total number of herbaceous plants, to allow ~~for~~ native trees to be substituted for 100% of the required herbaceous plants.

*HEX Recommendation: Approval, subject to the following conditions:*

Landscape plans must:

- ~~Prior to development order approval, the landscape plans must~~ Depict one wetland tree substituted for every 100 herbaceous littorals within the 4:1 lake bank slope. The Wetland trees must be specified at ten feet-in-height, two inch caliper, and a four-foot spread.
  - ~~Prior to development order approval, the landscape plans must~~ Specify plant material that is in compliance with the Lee County Port Authority plant compatibility list.
9. Internal Street Setback. Deviation (9) seeks relief from the LDC 34-2192 requirement that buildings be setback at least 20 feet from a private street easement, to allow a 10-foot setback from the conceptual private street easement shown on the MCP.

*HEX Recommendation: Approval*

Exhibits to Conditions:  
B1 Master Concept Plan

**Exhibit C**

**RECOMMENDED CONDITIONS AND DEVIATIONS  
(Clean Version)**

**CONDITIONS:**

**All references to uses are as defined and regulated in the Land Development Code (LDC).**

**1. Master Concept Plan (MCP) and Development Parameters**

- (a) Master Concept Plan. Development must be substantially consistent with the one-page MCP entitled "Apaloosa Lane RPD," prepared by Waldrop Engineering date stamped "Received April 23, 2020," (Exhibit B1) except as modified by the conditions below.
- (b) Land Development Code (LDC) and Lee Plan. Development and uses must comply with the Lee County LDC and Lee County Comprehensive Plan (Lee Plan) at time of local development order approval, except where deviations are approved herein. Subsequent amendments to the MCP, conditions, or deviations herein may require further development approvals.
- (c) Development Parameters. Project density is limited to a maximum of 300 multiple-family dwelling units (210 standard density units and 90 bonus density units). Bonus density units must be approved consistent with Chapter 2 of the LDC.

**2. Schedule of Uses and Property Development Regulations**

(a) **Schedule of Uses**

Accessory Uses and Structures  
Administrative Office  
Agricultural Uses (See Condition 6)  
Clubs, Private  
Dwelling Unit:  
    Multiple-family  
    Townhouses  
    Single-family (Existing Only)  
Entrance Gates and Gatehouses  
Essential Services  
Essential Services Facilities, Group I

Excavation - Water Retention  
Fences and Walls  
Home Care Facility  
Home Occupation  
Models: Model Unit (See Condition 7)  
Parking Lot, Accessory  
Real Estate Sales Office (See Condition 7)  
Recreation Facilities, Private, On Site  
Residential Accessory Uses  
Signs  
Temporary uses, limited to construction trailers

(b) **Site Development Regulations**

**Multiple-Family Buildings**

Lot Size

Minimum Lot Area: 10,000 square feet  
Minimum Lot Depth: 100 feet  
Minimum Lot Width: 100 feet

Setbacks<sup>1</sup>

Development Perimeter: 20 feet  
Street (public): 25 feet  
Street (private): 20 feet  
55 feet for structures adjacent to Apaloosa Lane  
Side: 10 feet  
Rear: 10 feet  
Water body: 20 feet

Minimum building separation: 20 feet or one half the building height, whichever is greater

Maximum Lot Coverage: 40 percent

Maximum Building Height: 55 feet

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<sup>1</sup> Accessory use setbacks must comply with LDC§ 34-1174 *et seq.* and LDC§ 34-2194.

## Townhouse

### Lot Size

Minimum Lot Area:	1,800 square feet
Minimum Lot Depth:	100 feet
Minimum Lot Width:	18 feet

### Setbacks<sup>2</sup>

Development Perimeter:	20 feet
Street (public):	25 feet
Street (private):	20 feet
Side:	0/10 feet
Rear:	10 feet
Water body:	20 feet

Minimum building separation: 10 feet or one half the building height, whichever is greater

Maximum Lot Coverage: 65 percent

Maximum Building Height: 45 feet

## Single-Family Home (only applicable to existing dwelling unit)

### Lot Size

Minimum Lot Area:	10,000 square feet
Minimum Lot Depth:	100 feet
Minimum Lot Width:	100 feet

### Setbacks<sup>3</sup>

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

Minimum building separation: 10 feet

Maximum Lot Coverage: 65 percent

<sup>2</sup> Accessory use setbacks must comply with LDC§ 34-1174 *et seq.* and LDC§ 34-2194.

<sup>3</sup> Accessory use setbacks must comply with LDC§ 34-1174 *et seq.* and LDC§ 34-2194.

Maximum Building Height: 35 feet

**Amenity Tracts/Private On-Site Recreational Facilities**

Lot Size

Minimum Lot Area: 4,000 square feet

Minimum Lot Depth: 100 feet

Minimum Lot Width: 40 feet

Setbacks

Development Perimeter: 20 feet

Street (public): 25 feet

Street (private): 20 feet

Side: 10 feet

Rear: 10 feet

Water body: 20 feet

Minimum building separation: 20 feet or one-half the building height for structures greater than 40 feet

Maximum Lot Coverage: 45 percent

Maximum Building Height: 45 feet

3. Vehicular/Pedestrian 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 development order.

4. Concurrency

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

5. Development Permits

County development permit do not establish a right to obtain permits from state or federal agencies. Further, it does not establish liability on the part of the county if the developer: (a) does not obtain requisite approvals or fulfill obligations imposed by state or federal agencies; or (b) undertakes actions that result in a violation of state or federal law.

6. Agricultural Uses

Existing bona fide agricultural uses in the form of grazing lands may continue on the property subject to the following:

- a. Termination of Agricultural Use. Agricultural uses must terminate on project areas receiving development order approval for vertical development and prior to county issuance of a vegetation removal permit. Development order approvals for plats, infrastructure improvements, landscaping, surface water management, or other non-vertical development do not trigger termination.
- b. Additional Clearing Prohibited. Clearing of native trees or other native vegetation, including understory, in agricultural areas is prohibited. 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 does not preclude County approved requests for removal of invasive exotic vegetation.
- c. Proof of Termination. Upon approval of a local development order for vertical development and prior to issuance of a vegetation removal permit, the property owner must provide written proof of the following, subject to approval by the County Attorney's Office:
  - 1) Affidavit. Sworn affidavit from the property owner confirming:
    - a. Date agricultural uses ceased;
    - b. Legal description of the property subject to the development order approval for vertical development;
    - c. An affirmative statement acknowledging and agreeing agricultural uses are illegal and prohibited on the property, and that the owner covenants with the County they will not allow agricultural uses to resume until the property is rezoned to permit agriculture; and
    - d. The affidavit constitutes a covenant between the property owner and the County binding on the owner and its successors. The covenant must be properly recorded in the public records of the County at the owner's expense.
  - 2) Termination of Tax Exemption. Termination of the agricultural tax exemption for portions of the property subject to development order for vertical development. Proof of termination must include a copy of the request to terminate the tax exemption submitted to the Lee County Property Appraiser.

7. Model Units/ Real Estate Sales  
Real Estate Sales are limited to clubhouses and model units. Hours of operation are limited to 8 a.m. to 8 p.m daily.
8. Open Space  
Development Order plans must depict a minimum 5.99 acres of open space.
9. Surface/Groundwater Monitoring  
Developer must provide a surface water monitoring plan for review and approval by the Lee County Natural Resources Department during development order review. Required monitoring must address the 2019 Surface Water Monitoring Chemical Constituent List, as amended.
10. Stormwater Management within 10,000 feet of Airport Facilities  
Pursuant to FAA AC 150/5200-33B as amended, renumbered, or replaced, all water management ponds, lakes, canals, conveyances, and other features within 10,000 feet of any public airport are encouraged to be designed and built in accordance with FAA recommendations.
11. Enhanced Landscape Buffers  
Development order landscape plans must depict:
  - a. Enhanced Type "A" buffer along the northern property line with ten (10) palm trees per 100 linear feet with a 14- to 16-foot clear trunk at time of planting, measured from finished grade.
  - b. Enhanced Type "D" buffer along the western property line adjacent to Apaloosa Lane. The buffer must be 20 feet wide and contain:
    - 1) A three-foot-high berm;
    - 2) A double-staggered hedge row; and
    - 3) Five canopy trees per 100 linear feet. The double-staggered hedgerow must be maintained at a minimum height of 36 inches within one year after the time of planting. Canopy Trees must be a minimum of 45 gallons, 12-14 feet at the time of planting, with a 6-foot spread and 3-inch caliper.
12. Unified Design Theme  
Development order plans must include a unified architectural theme on all sides of all buildings in compliance with the LDC to ensure an equally attractive architectural elevation from all adjacent property lines. Development must include a unified, common signage theme consistent with the architectural theme throughout the project.

13. Traffic Calming

Development order plans must depict internal traffic calming measures to address safe pedestrian and vehicular circulation throughout the site.

**DEVIATIONS:**

1. Lake Setback. Deviation (1) seeks relief from the LDC 10-329(d)(1)(a)(3) requirement of a 50-foot setback between private property line under separate ownership and excavations, to allow a 30-foot minimum setback from proposed lakes and the northern property line.

*HEX Recommendation: Approval*

2. Building Setback. Deviation (2) seeks relief from the LDC 34-935(b)(1)(e) requirement of a perimeter setback equal to one-half the building height, to allow 55-foot tall buildings to be setback 20 feet from the northern and southern boundary lines.

*HEX Recommendation: Approval*

3. Vehicle Stacking. Deviation (3) seeks relief from the LDC 34-1748(1) and (5) requirements that residential entrance gates and gatehouses be setback 100 feet from the existing street right-of-way or provide stacking for five vehicles and single unit truck turnaround; to allow stacking for one vehicle between the gate and the western property line.

*HEX Recommendation: Approval, subject to the following condition:*

- Developer must provide stacking for the remaining four spaces in a right turn lane it constructs on Apaloosa Lane. This deviation does not apply if Developer provides full stacking within the RPD boundary.

4. Private accessway. Deviation (4) seeks relief from LDC Sec. 10-296(l)(4)(a) to allow a privately maintained accessway serving more than 100 multi-family residential units to not meet the required minimum roadway right-of-way widths specified in 10-296(b).

*HEX Recommendation: Approval*

5. Lake Bank Slope. Deviation (5) seeks relief from the LDC 10-329(d)(4) requirement of a 6:1 lake bank slope, to allow for 4:1 lake bank slopes on the lakes shown on the MCP.

*HEX Recommendation: Approval, subject to the following condition:*



- Development order engineering plans must depict a 4:1 lake bank slope that includes a cross section illustrating stabilization technique and slope enhancements.

6. Shoreline Deviation (6) seeks relief from the LDC 10-418(1) requirement of a sinuous shoreline, to allow a non-sinuous lake shoreline.

*HEX Recommendation: Approval*

7. Littoral Shelf Deviation (7) seeks relief from LDC 10-418(2)(c) to omit the 20-foot-wide planted littoral shelf extending waterward of the control elevation at a depth no greater than two feet below the control elevation to minimize potential for bird attractants.

*HEX Recommendation: Approval, subject to the following conditions:*

Landscape plans must:

- Depict one wetland tree substituted for every 100 herbaceous littorals within the 4:1 lake bank slope. Wetland trees must be specified at ten feet-in-height, two inch caliper, and a four-foot spread.
  - Specify plant material in compliance with the Lee County Port Authority plant compatibility list.
8. Native Plantings Deviation (8) seeks relief from the LDC 10-418(2)(d) requirement allowing native trees to be substituted up to 25% of the total number of herbaceous plants, to allow native trees to be substituted for 100% of the required herbaceous plants.

*HEX Recommendation: Approval, subject to the following conditions:*

Landscape plans must:

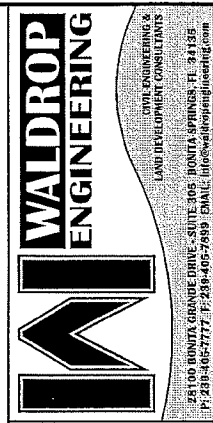
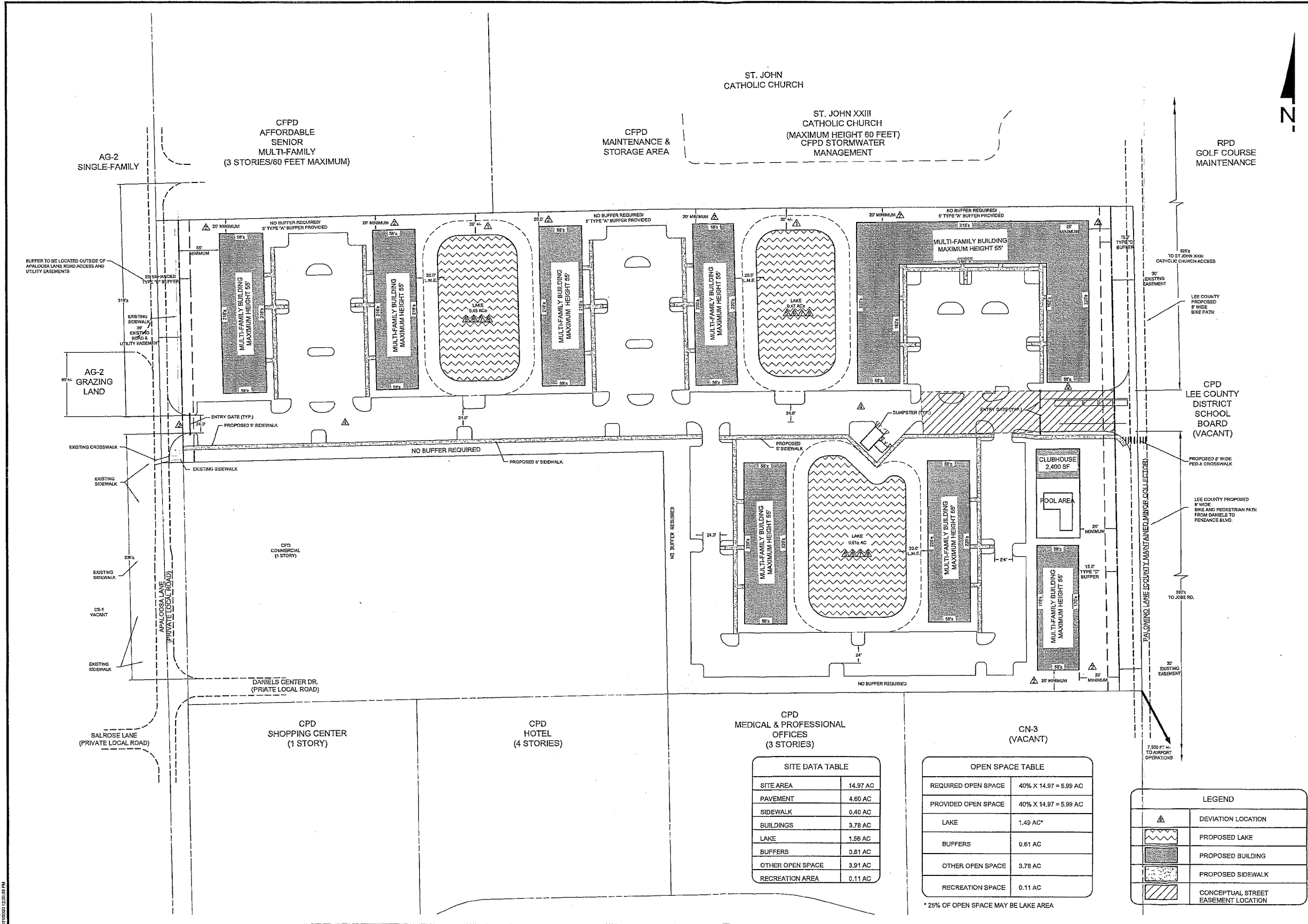
- Depict one wetland tree substituted for every 100 herbaceous littorals within the 4:1 lake bank slope. Wetland trees must be specified at ten feet-in-height, two inch caliper, and a four-foot spread.
  - Specify plant material in compliance with the Lee County Port Authority plant compatibility list.
9. Internal Street Setback Deviation (9) seeks relief from the LDC 34-2192 requirement that buildings be setback at least 20 feet from a private street

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easement, to allow a 10-foot setback from the conceptual private street easement shown on the MCP.

*HEX Recommendation: Approval*

Exhibits to Conditions:  
B1 Master Concept Plan



MASTER CONCEPT PLAN  
**APALOOSA LANE RPD**  
 LEE COUNTY, FLORIDA  
 TRIPLE J ESTATES LLC & NSP TRUST

PLAN REVISIONS

NO.	DATE	DESCRIPTION
1	11/27/19	REVISED PER COUNTY COMMENTS
2	01/22/20	REVISED PER COUNTY COMMENTS
3	02/10/20	REVISED PER COUNTY COMMENTS
4	04/23/20	REVISED PER COUNTY COMMENTS

SCALE IN FEET

FLORIDA CERTIFICATE OF AUTHORIZATION #9494

LEGEND

	DEVIATION LOCATION
	PROPOSED LAKE
	PROPOSED BUILDING
	PROPOSED SIDEWALK
	CONCEPTUAL STREET EASEMENT LOCATION

SET NUMBER: 1077-001-E0401  
 SHEET: 1

SITE DATA TABLE

SITE AREA	14.97 AC
PAVEMENT	4.80 AC
SIDEWALK	0.40 AC
BUILDINGS	3.78 AC
LAKE	1.56 AC
BUFFERS	0.61 AC
OTHER OPEN SPACE	3.91 AC
RECREATION AREA	0.11 AC

OPEN SPACE TABLE

REQUIRED OPEN SPACE	40% X 14.97 = 5.99 AC
PROVIDED OPEN SPACE	40% X 14.97 = 5.99 AC
LAKE	1.49 AC*
BUFFERS	0.61 AC
OTHER OPEN SPACE	3.78 AC
RECREATION SPACE	0.11 AC

\* 25% OF OPEN SPACE MAY BE LAKE AREA

LEGEND

	DEVIATION LOCATION
	PROPOSED LAKE
	PROPOSED BUILDING
	PROPOSED SIDEWALK
	CONCEPTUAL STREET EASEMENT LOCATION

RPD-1077-001-E0401-Apaloosa Lane RPD (Private Local Road) - 1077-001-E0401.dwg  
 4/23/2020 12:35:38 PM

EXHIBIT B-1

## Exhibit D

### EXHIBITS PRESENTED AT HEARING

#### STAFF EXHIBITS

1. *DCD Staff Report with attachments:* Prepared by Dirk Danley, Jr., Senior Planner, date stamped May 14, 2020 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *PowerPoint Presentation:* Prepared for Apaloosa Lane RPD, DCI2019-00020 (multiple pages – 8.5"x11")[color]
3. *Emails:* Submitted by members of the public (multiple pages – 8.5"x11")

#### APPLICANT EXHIBITS

- a. *48-Hour Notice:* From Matthew Uhle, Esq., to Hearing Examiner & Dirk Danley Jr., dated Friday May 22, 2020 6:59 AM (2 pages – 8.5"x11")
1. *PowerPoint Presentation:* Prepared by Waldrop Engineering, for Apaloosa Lane RPD, DCI2019-00020, dated May 28, 2020 (multiple pages – 8.5"x11")[color]
2. *Letters of Support:* Submitted by members of the public (multiple pages – 8.5"x11")
3. *Back-up Data & Analysis:* Prepared by Waldrop Engineering for Apaloosa Lane RPD, DCI2019-00020, dated May 28, 2020 (multiple pages – 8.5"x11")[color]

**Exhibit E**

**HEARING PARTICIPANTS**

County Staff:

1. Dirk Danley
2. Elizabeth Workman

Applicant Representatives:

1. Alexis Crespo
2. James Ink
3. Ted Treesh
4. Matthew Uhle, Esq.

Public Participants:

1. Holly Atkins
2. Elizabeth Brody
3. W. Steve Brody
4. Marilyn Brummer
5. Thomas Burt
6. T. Patrick Connor
7. Carol Davis
8. Robert Gala
9. Peter Lombardi
10. Marcy Taylor

**Exhibit F**  
**INFORMATION**

**UNAUTHORIZED COMMUNICATIONS:**

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

**HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS:**

A. The Hearing Examiner will provide a copy of this recommendation to the Board of County Commissioners.

B. The Board will hold a final hearing to consider the Recommendation and record made before the Hearing Examiner. The Department of Community Development will notify hearing participants of the final hearing date. Only Parties and participants may address the Board at the final hearing. Presentation by participants are limited to the substance of testimony presented to the Hearing Examiner, testimony concerning the correctness of Findings of Fact or Conclusions of Law contained in the Recommendation, or allegations of relevant new evidence not known or that could not have been reasonably discovered by the speaker at the time of the Hearing Examiner hearing.

**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.

A. Conditions

1. Development must be consistent with the one-page Master Concept Plan (MCP) entitled "Apaloosa Lane RPD," prepared by Waldrop Engineering date stamped "Received April 23, 2020," except as modified by the conditions below. This development must comply with all requirements of the Lee County Land Development Code at time of local Development Order Approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

Project density is limited to the development of a maximum of 300 multiple-family dwelling units, including 210 standard density units and up to 90 bonus density units pursuant LDC Chapter 2, Section 2-141 et seq.

2. The following limits apply to the project and uses.

a. Schedule of Uses

- Accessory Uses and Structures.
- Administrative Office
- Agricultural Uses (See Condition 7)
- Clubs, Private
- Dwelling Unit –
  - Multiple family
  - Townhouses
  - Single-Family (Existing Only)
- Essential Services.
- Essential Services Facilities, Group I.
- Excavation - Water Retention
- Fences and Walls
- Home Occupation
- Models: Model Unit (See Condition 8)
- Parking Lot, Accessory
- Real Estate Sales Office (See Condition 8)
- Recreation Facilities, Private, On Site.
- Residential Accessory Uses
- Signs
- Temporary uses - limited to construction trailers

b. Site Development Regulations

**Multiple-Family Buildings**

Lot Size

Minimum Lot Area:	10,000 square feet
Minimum Lot Depth:	100 feet
Minimum Lot Width:	100 feet

Setbacks

Development Perimeter	20 feet
Street (public)	25 feet

Street (private)	20 feet, 55 feet for structures adjacent to Apaloosa Lane.
Side	10 feet
Rear	10 feet
Water body	20 feet

Accessory uses and setbacks must comply with the LDC§ 34-1174 *et seq.* and LDC§ 34-2194.

Minimum building separation: 20 feet or one half the building height whichever is greater

Maximum Lot Coverage 40 percent

Maximum Height 55 feet

**Townhouse**

Lot Size

Minimum Lot Area:	1,800 square feet
Minimum Lot Depth:	100 feet
Minimum Lot Width:	18 feet

Setbacks

Development Perimeter	20 feet
Street (public)	25 feet
Street (private)	20 feet
Side	0/10 feet
Rear	10 feet
Water body	20 feet

Accessory uses and setbacks must comply with the LDC§ 34-1174 *et. seq.* and§ 34-2194.

Minimum building separation: 10 feet or one half the building height whichever is greater

Maximum Lot Coverage 65 percent

Maximum Height 45 feet

**Single-Family Home (only applicable to existing dwelling unit)**

Lot Size

Minimum Lot Area:	10,000 square feet
Minimum Lot Depth:	100 feet
Minimum Lot Width:	100 feet

Setbacks

Development Perimeter	20 feet
Street (public)	25 feet



Street (private)	20 feet
Side	10 feet
Rear	20 feet
Water body	20 feet

Accessory uses and setbacks must comply with the LDC§ 34-1174 *et. seq.* and § 34-2194.

<u>Minimum building separation:</u>	10 feet
<u>Maximum Lot Coverage</u>	65 percent
<u>Maximum Height</u>	35 feet

**Amenity Tracts/Private On-Site Recreational Facilities**

Lot Size.

Minimum Lot Area:	4,000 square feet
Minimum Lot Depth:	100 feet
Minimum Lot Width:	40 feet

Setbacks

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

Minimum building separation: 20 feet or one-half the building height for structures greater than 40 feet

<u>Maximum Lot Coverage</u>	45 percent
<u>Maximum Height</u>	45 feet

3. Vehicular/Pedestrian Impacts

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

4. Lee Plan Consistency

Approval of this zoning request does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1 (b), be reviewed for, and found consistent with Lee Plan provisions.

5. Concurrency

Approval of this rezoning does not constitute a finding that the proposed project meets the concurrency requirements set forth in LDC Chapter 2 and the Lee Plan. The developer is

required to demonstrate compliance with all concurrency requirements prior to issuance of a local development order.

6. Development Permits

Issuance of a county development permit does not establish a right to obtain a permit from state or federal agencies. Further, it does not establish liability on the part of the county if the developer: (a) does not obtain requisite approvals or fulfill the obligations imposed by state or federal agencies or (b) undertake actions that result in a violation of state or federal law.

7. Agricultural Uses

- a. Bona fide agricultural uses consisting of “grazing lands”, which were 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 such time as a local development order is approved for the area that contains these uses.
- b. Clearing or injury of native trees and/or other native vegetation, including understory, in agricultural areas is prohibited. 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 or 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 Section 10-423 of the LDC.
- c. Prior to issuance of a local development order, the applicant, its successors or assigns must provide written proof, subject to approval by the Lee County Attorney’s Office, of the following:
  - 1) 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:
    - a. The date the agricultural uses ceased;
    - b. The legal description of the property subject to the development order approval;
    - c. An affirmative statement that the applicant, 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; and,
    - d. That the affidavit constitutes a covenant between the applicant, its successors or assigns, and the County that is binding on the applicant, 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.

- 2) 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.

8. Model Units/ Real Estate Sales

Real Estate Sales are limited to clubhouses and model units. Hours of operation for model units and real estate sales are limited to Monday through Sunday 8 a.m. to 8 p.m.

9. Open Space

Prior to local development order approval, the development order plans must demonstrate a minimum 5.99 acres of open space.

10. Surface/Groundwater Monitoring

Prior to Development Order Approval, the applicant must provide a surface water monitoring plan for review and approval by the Lee County Natural Resources Department. Any required monitoring must address the 2019 Surface Water Monitoring Chemical Constituent List, as may be amended.

11. Stormwater Management within 10,000 feet of Airport Facilities

Pursuant to FAA AC 150/5200-33B as amended, renumbered or replaced, all water management ponds, lakes, canals, conveyances, and other features within 10,000 feet of any public airport are encouraged to be designed and built in accordance with FAA recommendations.

12. Enhanced Landscape buffers

- Prior to the issuance of a development order, the landscape plans must illustrate an enhanced Type "A" buffer along the northern property line with ten (10) palm trees per 100 linear feet that have a 14 to 16-foot clear trunk at the time of planting, measured from finished grade.
- Prior to the issuance of a development order, the landscape plans must illustrate an enhanced Type "D" buffer along the western property line adjacent to Apaloosa Lane. The buffer must be 20 feet wide and must contain a three-foot-high berm, a double-staggered hedge row, and five (5) canopy trees per 100 linear feet. The double-staggered hedgerow must be maintained at a minimum height of 36 inches within one year after the time of planting. Canopy Trees must be a minimum of 45 gallons, 12-14 feet at the time of planting, with a 6-foot spread and 3-inch caliper.

13. Unified Design Theme

Prior to Development Order approval, development plans must include a unified architectural theme on all sides of all buildings in compliance with the Land Development Code to ensure an equally attractive architectural elevation from all adjacent property lines. The development of the subject property must include a unified, common signage theme consistent with the architectural theme throughout the project.

## 14. Traffic Calming

At the time of local development order approval, development plans must demonstrate traffic calming measures internal to the parking lot and parking lot access isles to address safe circulation of pedestrians and vehicles throughout the site.

### B. Deviations

1. Deviation (1) seeks relief from LDC Section 10-329(d)(1)(a)(3) which requires a 50-foot setback between any private property line under separate ownership and excavations, to allow a 30-foot minimum setback from the proposed lakes and the northern property line.

Staff recommends **approval** of this deviation.

2. Deviation (2) seeks relief from LDC Section 34-935(b)(1)(e) which requires a PD development perimeter setback equal to one-half the building height, to allow 55-foot tall buildings to be setback a minimum of 20 feet from the from the northern and southern boundary line."

Staff recommends **approval** of this deviation.

3. Deviation (3) seeks relief from LDC Section 34-1748(1) and (5), which requires entrance gates and gatehouses for residential uses with 3 or more dwelling units to be setback a minimum of 100 feet from the existing street right-of-way or provide stacking for a minimum of five (5) vehicles and provide for single unit truck turnaround; to allow to allow for the stacking of one (1) vehicle between the gate and the property line. The remaining four (4) stacking spaces will be provided in a right turn lane constructed by the developer in Apaloosa Lane. ~~The right turn lane is only required if the developer enacts this deviation at the time of local development order. If the full stacking is provided in the RPD boundary in accordance with the LDC, the right turn lane will not be required.~~

Staff recommends **approval** of this deviation.

- Prior to Development Order approval, the applicant must provide the required stacking for remaining four (4) spaces required for the residential gate and lengthened to accommodate any required turn lane to address any required traffic impact mitigation.

4. Deviation (4) seeks relief from LDC Sec. 10-296(l)(4)(a) to allow a privately maintained accessway serving more than 100 multi-family residential units to not meet the required minimum roadway right-of-way widths specified in 10-296(b).

Staff recommends **approval** of this deviation.

5. Deviation (5) seeks relief from LDC Section 10-329(d)(4), which requires a 6:1 lake bank slope, to allow for 4:1 lake bank slopes on the lake shown on the Master Concept Plan.

Staff recommends **approval** of this deviation with the following condition:

- Prior to development order approval, the engineering plans must depict a 4:1 lake bank slope that includes a cross section illustrating the stabilization technique and slope enhancements.

6. Deviation (6) seeks relief from LDC Section 10-418(1) which requires a sinuous shoreline to allow for a non-sinuous lake shoreline.

Staff recommends **approval** of this deviation.

7. Deviation (7) seeks relief from LDC Section 10-418(2)(c) to omit the 20-foot-wide planted littoral shelf extending waterward of the control elevation at a depth no greater than two feet below the control elevation to minimize the potential for bird attractants.

Staff recommends approval of this deviation with the following conditions:

- Prior to development order approval, the landscape plans must depict one wetland tree substituted for 100 every herbaceous littorals within the 4:1 lake bank slope. The wetland trees must be specified at ten feet-in-height; two-inch caliper; and a four-foot spread.
- Prior to development order approval, the landscape plans must specify plant material that is in compliance with the Lee County Port Authority plant compatibility list.

8. Deviation (8) seeks relief from LDC Section 10-418(2)(d), which allows native trees to be substituted for up to 25% of the total number of herbaceous plants, to allow for native trees to be substituted for 100% of the required herbaceous plants.

Staff recommends approval of this deviation with the following conditions:

- Prior to development order approval, the landscape plans must depict one wetland tree substituted for every 100 herbaceous littorals within the 4:1 lake bank slope. The wetland trees must be specified at ten feet-in-height; twinch caliper; and a four-foot spread.
- Prior to development order approval, the landscape plans must specify plant material that is in compliance with the Lee County Port Authority plant compatibility list.

**Lee County, Florida**  
**DEPARTMENT OF COMMUNITY DEVELOPMENT**  
**ZONING SECTION**  
**STAFF REPORT**

**CASE NUMBER: DCI2019-00020**

**CASE NAME: APALOOSA LANE MINOR RPD**

**TYPE OF CASE: MINOR PLANNED DEVELOPMENT**

**HEARING EXAMINER DATE: May 28, 2020**

**SUFFICIENCY DATE: MARCH 3, 2020**

**REQUEST:**

An application has been submitted by Alexis Crespo, AICP of Waldrop Engineering, on behalf of Triple J. Estates, LLC & NSP, Trustee dated 9/17/2002 to rezone 14.97± acres from Agricultural (AG-2) and Special Commercial Office District (CS-2) to Residential Planned Development (RPD) for a maximum of 300 Multiple-family dwelling units (210 standard density dwelling units and 90 bonus density units), and accessory uses with a maximum building height of 55 feet.

The subject property is located at 13301 Apaloosa Lane and 13290 Palomino Lane, Daniels Parkway Planning Community, Lee County, FL. (District #2), STRAP Numbers 21-45-25-01-00000.0340 and 22-45-25-00-00001.0000.

**SUMMARY:**

Staff recommends APPROVAL of the applicant's request, including requested deviations, with Conditions found in Attachment C.

Deviations have been requested from roadway connection separation on Apaloosa Lane, setback requirements for excavations adjacent to properties under separate ownership, setback requirements, gate stacking requirements, and for dimensional requirements for rights-of-way within the residential development. As conditioned, staff recommends approval of the deviation requests.

Deviations are also requested from the applicant to address proximity to Southwest Florida International Airport, including lake bank slope, planted littoral shelf requirements, and lake shoreline sinuosity.

**HISTORY OF PARCEL:**

The subject property is approximately 14.97 acres and consists of two parcels:

The western parcel fronts on Apaloosa Lane and is approximately 5.29 acres. The parcel was rezoned under Resolution Z-07-058 from Agricultural (AG-2) to Special Commercial Office District (CS-2). Since the parcel was rezoned, records indicate that there has been no significant development activity, and is still occupied by a single-family home in existence since 1973.

The eastern parcel fronts Palomino Lane and is approximately 9.68 acres. This parcel is currently zoned Agricultural (AG-2), is undeveloped, and being used for grazing land.

The subject property received a Land Use change from Outlying Suburban to General Interchange Category under case number CPA2015-00010 (Attachment H). This amendment was a County initiated amendment that was directed by the Board of County Commissioners on September 1, 2015. The amendment originally included additional land to the north and west of the subject property, and was subsequently reduced to include the subject property as the northern and western boundary. This amendment changed the future land use map designation for properties east of Apaloosa Lane to General Interchange, and approved a text amendment that precludes properties more than 2400 feet west of Interstate 75 from requesting industrial uses. This amendment was made to address the changes in the Daniels Road Corridor development pattern.

The result of this amendment changed the density permitted on this site from a maximum of three units per acre, to a maximum standard density of 14 dwelling units per acre, and a maximum bonus density of 22 dwelling units per acre. The applicant has requested a maximum of 300 units, resulting in an overall density of  $\pm 20.1$  dwelling units per acre.

There are no active Code Enforcement violations on the property.

#### **CHARACTER OF THE AREA:**

The subject property is located approximately 660 feet north of Daniels Parkway, a County maintained arterial roadway. The property is accessed by Apaloosa Lane, a non-county maintained private roadway, and Palomino Lane, a County maintained minor collector roadway. The subject property is located within the General Interchange land use category as designated by the Lee Plan (see Attachment B) and the subject property is within the Daniels Parkway Planning Community. The surrounding development patterns can be characterized as follows:

##### **North:**

Property to the north is zoned Community Facilities Planned Development (CFPD), and is developed as a religious facility, including a home for the aged. This development was approved under Resolution Z-03-023, and subsequently amended by Resolution Z-09-029. To the north of the religious facility is the Danforth Lakes Residential Development, approved under Resolution Z-00-016 and then again amended by Resolution Z-02-023. This residential development consists primarily of single-family homes.

##### **East:**

Property to the east, separated by Palomino Lane, is zoned Commercial Planned Development (CPD) approved under resolution Z-03-020. The property is currently undeveloped.

South:

Properties to the south are zoned Commercial Planned Development (CPD) and Neighborhood Commercial (CN-3). The properties zoned Commercial Planned Development (CPD) are developed with a hotel and office uses. The parcel zoned Neighborhood Commercial (CN-3) is currently undeveloped.

West:

Property to the west is zoned Agricultural (AG-2), and is undeveloped. Beyond this property, there are single family 'ranchette' style homes that are on larger tracts of land ranging from 1.5 to 20 acres.

## **ANALYSIS**

This request is to rezone the subject property from Agricultural (AG-2) and Special Commercial Office District (CS-2) to Residential Planned Development (RPD) for a maximum of 300 Multiple-family dwelling units (210 dwelling units and 90 units of bonus density), and customary accessory uses with a maximum building height of 55 feet. As part of this rezoning request, the applicant has requested deviations and proposed conditions of approval for staff consideration.

### *Planned Development Rezoning:*

Section 34-612 of the Lee County Land Development Code describes the intent of the utilization of the Planned Development zoning district. The purpose of planned developments is to further implement the goals, objectives, and policies of the Lee Plan, while providing some degree of flexibility in the planning and design of proposed developments.

Section 34-145 of the Land Development Code (LDC) establishes the review criteria for all rezoning requests. Before recommending approval of a rezoning request, the Hearing Examiner must find the request:

- a) Complies with the Lee Plan;
- b) Meets the Land Development Code and other applicable County regulations or qualifies for deviations;
- c) Is compatible with existing and planned uses in the surrounding area;
- d) Will provide 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;
- 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.

For Planned Development rezoning requests, the Hearing Examiner must also find:

- a) The proposed use or mix of uses is appropriate at the proposed location;



- b) The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development; and
- c) That each requested deviation:
  - 1) Enhances the achievement of the objectives of the planned development; and
  - 2) Preserves and promotes the general intent of this Code to protect the public health, safety and welfare.

The applicant has provided a request statement that explains the request to rezone the property from Residential Planned Development (RPD)/ Commercial Planned Development (CPD) to Residential Planned Development (RPD) and has provided a Comprehensive Plan analysis for the request (Attachment D).

*Master Concept Plan:*

The applicant has provided a one page master concept plan titled "Apaloosa Lane RPD" date stamp received January 30, 2020. The master concept plan describes the location of existing and proposed development areas as well as access points and open space (Attachment R). Deviations have been referenced on the master concept plan.

*Density Analysis:*

The applicant has requested a maximum build out of 300 multiple family dwelling units. The subject property is within the General Interchange land use category, which allows a standard density range of 8 to 14 dwelling units per acre, with the ability to attain bonus density of up to 22 units per acre. The applicant has requested the maximum standard density of 14 units per acre, plus additional bonus density units that will allow for up to  $\pm 20.1$  units per acre for the proposed residential development.

Bonus Density is administered through Chapter 2, Article IV of the Land Development Code (LDC). There are two primary ways to receive bonus density for a project, including the Transfer of Development Rights program and the provision of site built affordable housing. Minimum requirements for the approval of bonus density, established in LDC Sec. 2-146(b), require the applicant to demonstrate the following:

1. The additional traffic will not be required to travel through areas with significantly lower densities before reaching the nearest collector or arterial road;
2. Existing and committed public facilities are not so overwhelmed that a density increase would be contrary to the overall public interest;
3. Storm shelters or other appropriate mitigation is provided if the development is located within the coastal high hazard area as defined in section 2-483; and
4. The resulting development will be compatible with existing and planned surrounding land uses.

Within a Planned Development Rezoning, the request language must specifically include how much bonus density is being requested, and be consistent with the decision-making criteria for all rezoning

requests. The following review addresses the minimum requirements for bonus density as stated above, and is included as a consideration when reviewing the rezoning request as a whole.

1. The additional traffic will not be required to travel through areas with significantly lower densities before reaching the nearest collector or arterial road;

The subject property is located approximately 660 feet north of Daniels Parkway. The uses that separate the subject property and Daniels Parkway include commercial properties zoned Commercial Planned Development (CPD) and Neighborhood Commercial District (CN-3). Land to the south is primarily built out with commercial development. The traffic from the proposed residential development will not be required to travel through areas with significantly lower densities to reach Daniels Parkway and can use either Palomino Lane or Apaloosa Lane to do so.

2. Existing and committed public facilities are not so overwhelmed that a density increase would be contrary to the overall public interest;

The Lee County School Board has determined that the proposed density, including the proposed bonus density, does not present a capacity issue with the surrounding schools (Attachment I). Additionally, the applicant has provided a letter from Lee County Utilities, confirming water and sewer availability for the 300 proposed dwelling units (Attachment O). There are several parks located within five miles of the subject property, including Fenway South Park, Six Mile Cypress Slough, and Flag Pond Reserve.

The roadway infrastructure, as described in the 'Transportation Considerations' section below, are able to address to proposed density of 300 units, by utilizing both Apaloosa Lane and Palomino Lane. Additional roadway improvements are planned from the Three Oaks extension project and Daniels Parkway that will further alleviate some of the congestion issues on Palomino Lane. Staff finds that the proposed bonus density will not overwhelm existing and committed public facilities in proximity to the subject property.

3. Storm shelters, or other appropriate mitigation, is provided if the development is located within the coastal high hazard area as defined in section 2-483;

The subject property is not located within a coastal high hazard area.

4. The resulting development will be compatible with existing and planned surrounding land uses.

The subject property was part of a land use amendment to change the property from Outlying Suburban to General Interchange land use category under case number CPA2015-00010, adopted September 6, 2017. This category is designated as a 'Future Urban Area' as defined in the Lee Plan. This property is in near proximity to the Daniels Parkway Corridor, which is an area with high traffic volume and significant urban development. The resulting development pattern is not inconsistent

with the recent land use amendment, nor with the development pattern along the Daniels Road Corridor.

*Development Pattern Considerations:*

The subject property is in the General Interchange future land use category, as described in Policy 1.3.2 of the Lee Plan. Properties located in the General Interchange future land use category are described as areas primarily intended for land uses that serve the traveling public, but also attract multiple family, general commercial, or tourist commercial uses. The subject property is in a corridor with a mix of commercial residential and institutional uses, near Daniels Parkway and Interstate 75. The proposed multiple-family residential development is a use contemplated in the General Interchange land use category. Standard density range for this land use category is 8 to 14 units per acre. Note 2 in the Clarifications and Exceptions of Table 1(a) requires that new residential development in the General Interchange must provide at least the minimum density. Maximum density, using bonus density, is 22 units per acre. The proposed use and density are consistent with the land use category, and consistent with Policy 1.3.2 of the Lee Plan.

Objectives 2.1 and 2.2 of the Lee Plan intend to direct new growth to future urban areas in compact and contiguous growth patterns where adequate public facilities exist. The result of the rezoning will promote compact and contiguous growth patterns within an urban area and will have access to adequate public facilities within the Daniels Parkway Planning Community. Staff finds the proposed planned development rezoning consistent with Objective 2.1, Objective 2.2., and Policy 2.2.1.

Policy 5.1.2 prohibits residential development where natural physical constraints or hazards exist, including hurricane and flood hazards, soil or geologic conditions, environmental limitations, or aircraft noise. The subject property is not within a flood zone, coastal high hazard area, or in an airport noise zone. Additionally, there are no significant environmental conditions such as wetlands, flowways, or conservation lands on this property. Staff finds that the proposed development is consistent with Policy 5.1.2.

Policy 5.1.3 directs high-density residential developments to locations that are near employment and shopping centers, are close to parks and schools, and are accessible by mass transit and bicycle facilities. The subject property is located approximately 0.4 miles from a Publix Shopping Center, and approximately 600 feet from a Dunkin Donuts, Starbucks, and Best Western hotel. Additionally, Daniels Parkway connects several other shopping and employment centers, including the Fenway South Park 2.8 Miles away. There are three schools within 4 miles of the proposed development, including South Fort Myers High School, Six Mile Charter Academy, and Gateway Charter School. Bicycle facilities exist along Palomino lane and Daniels Parkway, and the subject property is within ¼ mile of Lee Tran Route 50. Staff finds the proposed planned development rezoning consistent with Policy 5.1.3.

Policy 5.1.5 of the Lee Plan intends to protect the existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of residential development. The nearest residential uses are immediately adjacent to the proposed development, to the west. Saint John XXIII Catholic Church has a residential facility for the aged, directly to the north.

Further north of this facility, the nearest residential development includes single-family ranchettes and the Danforth Lakes residential subdivision. The residential use proposed is a significantly higher density than what currently surrounds this development. The significant difference in the residential density is possible due to the Comprehensive Plan amendment that reclassified the subject property, along with others in close proximity, to the General Interchange land use category in 2017. Staff, during the review of this application request, expressed concern about the proposed density in proximity to the ranchette properties to the west, and the applicant provided an increased setback and an enhanced buffer to ameliorate this concern. This project will serve as a buffer between the commercial uses to the south, and the lower density residential uses to the north. Staff finds this planned development rezoning request consistent with Policy 5.1.5.

Goal 135 of the Lee Plan addresses the necessity to meet housing needs as Lee County grows in population. Policy 135.1.9 states that the county will ensure a mix of residential housing types on a county wide basis through the planned development process. Policy 135.1.4 provides support for the provision of bonus density for projects in urban areas to stimulate the construction of low and moderate income affordable levels of housing in Lee County. Policy 135.1.8 further provides that the rezoning processes within Lee County will assist in the provision of adequate sites for low and moderate income level houses. The proposed rezoning requests 300 multiple family dwelling units. The surrounding development pattern is low and moderate density housing types, most of which are single family homes. A new multiple-family residential development will further transition the mixture of housing in this area. The applicant requested this housing type, with the provision of bonus density, to allow a maximum of 20 units per acre, which is slightly below the maximum density of 22 units per acre. This request is consistent with policies 135.1.4, 135.1.8, and 138.1.9.

As previously stated, the subject property is in the Daniels Parkway Planning Community. While there are no direct objectives and policies associated with this planning community, staff finds the request consistent with the vision of the Daniels Parkway Planning Community.

#### *Transportation Considerations:*

The subject property is located along the Daniels Parkway corridor which has been classified as a 'Constrained Road' in Table 2(a) of the Lee Plan due to limited availability of Right-of-Way width. Generally, Lee County requires significant roadway improvements when a roadway volume to capacity ratio exceeds 1.0 (a failing level of service). When a roadway exceeds the volume to capacity ratio, the travelling public will likely experience reduced speeds, congestion, and significantly longer travel times. Objective 37.2 of the Lee Plan states that Reduced Levels of Service (volume to capacity ratio greater than 1.0) will be accepted on constrained roads identified within Table 2(a). Ordinance 91-32 furthers the intent of this objective by establishing a maximum volume to capacity ratio of 1.85 within Lee County to be considered an acceptable Level of Service for constrained roadways. Because of the existing and well known capacity issues on Daniels Parkway, there is an up-stream effect on congestion along Palomino Lane that causes delays for the travelling public.

To alleviate some of the capacity issues on Daniels Parkway and other roadways in Lee County, a Capital Improvement Project to extend Three Oaks Parkway from Alico Road to the intersection of Daniels Parkway and Palomino Lane is in the pre-construction phases. Impacts at Daniels and Palomino are part of the second phase of the project, intended to begin in 2023 and be completed between 2025 and 2026. As part of this project, an additional signal has been proposed for the intersection of Apaloosa Lane and Daniels Parkway, as well as intersection improvements at the existing signalized intersection of Daniels Parkway and Palomino Lane (Attachment J).

Administrative Code 13-17 establishes the procedure for how traffic impacts are reviewed during the Planned Development rezoning process. This review requires a measurement of the annual daily trips, as well as the AM/PM peak hour daily trips. This measure is then combined with the trip counts on the existing roadway, to determine the impact on the roadway system.

The applicant has provided a traffic impact statement for the proposed development, and provided analysis on the surrounding transportation system (Attachment K). Infrastructure Planning staff has provided analysis and comment of the applicants traffic impact statement (Attachment L).

The proposed rezoning to a Residential Planned Development (RPD), as shown in the Master Concept Plan, provides access points to enter and leave the RPD on both Apaloosa Lane and Palomino Lane. This will allow for residents of the proposed development to access Daniels Parkway from multiple access points when either Apaloosa Lane or Palomino Lane experiences congestion. This allows for a dispersal of trips coming in and out of the Apaloosa Lane RPD to be able to use connector roadways like Salrose Ln and Jobe Road to find additional routes to Daniels Parkway.

While the applicant information demonstrates that the proposed residential development impacts both Palomino Lane and Apaloosa Lane, as measured from the intersections of Daniels Parkway, the impacts do not change the level of service for either intersection.

*Bicycle and Pedestrian Facilities:*

The subject property fronts on Palomino Lane, which has bicycle/pedestrian facilities in existence. These facilities connect to Daniels Parkway and the greater bicycle/pedestrian network described on Lee Plan Map 3D. Currently no bicycle/pedestrian facilities exist on Apaloosa Lane. At the time of development order approval, all new development must comply with the bicycle and pedestrian requirements contained in Chapter 10 of the Land Development Code.

*Environmental Considerations:*

Environmental Staff has provided an analysis of the proposed request (Attachment M). Staff recommends an enhanced buffer, including a berm and enhanced plantings, to provide a visual buffer to increase compatibility with surrounding uses. Staff recommends the following condition to address this enhanced buffer:

- Prior to the issuance of a development order, the landscape plans must depict a 20-foot wide buffer that includes a 3-foot in height berm and five trees per 100 linear feet and a double

staggered hedge row adjacent to Apaloosa Lane. The berm height and the plant material must be measured from the finished grade of the adjacent multi-family building.

To improve compatibility with adjacent uses to the north, the following condition has been proposed by the applicant:

- Prior to the issuance of a development order, the landscape plans must illustrate an enhanced Type “A” buffer along the northern property line with ten (10) palm trees per 100 linear feet that have a 14 to 16- foot clear trunk at the time of planting, measured from finished grade.

The subject property is within 10,000 linear feet of the Southwest Florida International Airport. LDC Section 34- 1110(9) states:

*“Pursuant to FAA AC 150/5200-33B as amended, renumbered or replaced, all water management ponds, lakes, canals, conveyances, and other features within 10,000 feet of any public airport are encouraged to be designed and built in accordance with FAA recommendations.”*

The subject property is within 10,000 feet of Southwest Florida International Airport, and is subject to the requirements set forth in LDC Section 34-1110(a)(9):

*“Pursuant to FAA AC 150/5200-33B as amended, renumbered or replaced, all water management ponds, lakes, canals, conveyances, and other features within 10,000 feet of any public airport are encouraged to be designed and built in accordance with FAA recommendations.”*

The applicant has requested several deviations from Chapter 10 to address the FAA recommendations which include 4:1 lake bank slopes, no planted littoral shelf, and a non-sinuuous shoreline for the lake, all of which are intended to reduce the potential to attract birds in proximity to the airport and flight operations. Staff has recommended the following conditions to ensure that the project remains consistent with the Lee Plan and with the FAA guidelines:

- Prior to development order approval, the engineering plans must depict a 4:1 lake bank slope that includes a cross section illustrating the stabilization technique and slope enhancements.
- Prior to development order approval, the landscape plans must depict one wetland tree substituted for 100 herbaceous littorals within the 4:1 lake bank slope. The wetland trees must be specified at ten feet-in-height; two-inch caliper; and a four foot spread.
- Prior to development order approval, the landscape plans must specify plant material that is in compliance with the Lee County Port Authority plant compatibility list.

*Transit Facilities:*

Lee Tran staff has provided an analysis of the proposed development with respect to the transit system (Attachment N). The subject property is within ¼ mile of Lee Tran Route 50. At the time of development order approval, all new development must comply with the transit facility requirements found in Chapter 10 of the Land Development Code.

*Urban Services:*

The subject property is serviced by Fire and EMS approximately 0.8 miles from the property, and a Sheriff's substation 1.8 miles from the property.

Standards 4.1.1 and 4.1.2 address water and sanitary sewer requirements for residential developments over 2.5 dwelling units per acre. The applicant has provided a letter of utility availability to support the future development of this parcel as described in this request (Attachment O). Staff finds the proposed development consistent with Standards 4.1.1 and 4.1.2.

*Deviation Requests:*

The applicant has requested the following deviations as part of this Planned Development rezoning request and provided justifications for each request (Attachment G). The following is a review from County staff regarding these requests, and a recommendation for each deviation:

1. Deviation (1) seeks relief from LDC Section 10-329(d)(1)(a)(3) which requires a 50-foot setback between any private property line under separate ownership and excavations, to allow a 30-foot minimum setback from the proposed lakes and the northern property line.

The applicant has proposed a 30-foot setback to address site constraints on the site. Excavations are separated by a 6-foot easement on the adjacent property, as well as a Type "A" buffer separating the catholic church uses and the subject property. Staff recommends **approval** of this deviation.

2. Deviation (2) seeks relief from LDC Section 34-935(b)(1)(e) which requires a PD development perimeter setback equal to one-half the building height, to allow 55-foot tall buildings to be setback a minimum of 20 feet from the PD perimeter.

The proposed deviation has been requested to allow some development flexibility while achieving an urban density consistent with the General Interchange Land Use Category. However, the Master Concept Plan prepared by the applicant includes a proposed setback of 55 feet along Apaloosa Lane and a 25-foot minimum along Palomino Lane. Staff recommends **approval**, provided that the deviation language is amended as follows:

"Deviation (2) seeks relief from LDC Section 34-935(b)(1)(e) which requires a PD development perimeter setback equal to one-half the building height, to allow 55-foot tall buildings to be setback a minimum of 20 feet from the northern and southern boundary line."

3. Deviation (3) seeks relief from LDC Section 34-1748(1) and (5), which requires entrance gates and gatehouses for residential uses with 3 or more dwelling units to be setback a minimum of 100 feet from the existing street right-of-way or provide stacking for a minimum of five (5) vehicles and provide for single unit truck turnaround; to allow to allow for the stacking of one (1) vehicle between the gate and the property line. The remaining four (4) stacking spaces will be provided in a right turn lane constructed by the developer in Apaloosa Lane. ~~The right turn lane is only required if the developer enacts this deviation at the time of local development order. If the full stacking is provided in the RPD boundary in accordance with the LDC, the right turn lane will not be required.~~

The applicant has requested this amendment to address site constraints in the development. The width of the western portion of the property does not allow for an entrance with a stacking for five cars without precluding development on this site. This access point will likely be a secondary access, based upon the TIS provided by the applicant. Staff recommends **approval** of this deviation with the following condition:

- Prior to Development Order approval, the applicant must provide the required stacking for remaining four (4) spaces required for the residential gate and lengthened to accommodate any required turn lane to address any required traffic impact mitigation.
4. Deviation (4) seeks relief from LDC Sec. 10-296(l)(4)(a) to allow a privately maintained accessway serving more than 100 multi-family residential units to not meet the required minimum roadway right-of-way widths specified in 10-296(b).

LDC Section 10-296(l)(4)(a) states:

*Privately maintained accessways. The following privately maintained accessways are not required to meet the minimum roadway right-of-way widths specified in subsection (b) of this section:*

- (1) *Parking lot aisles (as defined in chapter 34);*
- (2) *Parking lot accesses (as defined in chapter 34);*
- (3) *Driveways (as defined in this chapter); and*
- (4) *Accessways that meet the following three requirements:*
  - a. *Provide vehicle access to 100 or fewer multi-family residential units;*
  - b. *Pavement width meets the dimensional requirements for parking lot aisles at areas of back-out parking; and*
  - c. *Provide for utility easements in accordance with section 10-355(a)(1) if utilities are to be located in or adjacent to the accessway.*

*(Underline added for emphasis)*

The applicant has requested this deviation to allow for a reduced accessway width for the proposed development. The orientation of the drives in the proposed development will ultimately serve an estimated 128 units per accessway, which exceeds the requirement of LDC



Section 10-296(l)(4)(a). Development Services has reviewed this deviation, and recommended approval of the deviation.

Staff recommends **approval** of this deviation.

5. Deviation (5) seeks relief from LDC Section 10-329(d)(4), which requires a 6:1 lake bank slope, to allow for 4:1 lake bank slopes on the lake shown on the Master Concept Plan.

This deviation is required per FAA AC 150/5200-33B, as amended due to its proximity to Southwest Florida International Airport. Staff recommends **approval** of this deviation with the following condition:

- Prior to development order approval, the engineering plans must depict a 4:1 lake bank slope that includes a cross section illustrating the stabilization technique and slope enhancements.

6. Deviation (6) seeks relief from LDC Section 10-418(1) which requires a sinuous shoreline to allow for a non-sinuous lake shoreline.

This deviation is required per FAA AC 150/5200-33B, as amended due to its proximity to Southwest Florida International Airport. Staff recommends **approval** of this deviation.

7. Deviation (7) seeks relief from LDC Section 10-418(2)(c) to omit the 20-foot-wide planted littoral shelf extending waterward of the control elevation at a depth no greater than 2 feet below the control elevation to minimize the potential for bird attractants.

This deviation is required per FAA AC 150/5200-33B, as amended due to its proximity to Southwest Florida International Airport. Staff recommends **approval** of this deviation with the following conditions:

- Prior to development order approval, the landscape plans must depict one wetland tree substituted for every 100 herbaceous littorals within the 4:1 lake bank slope. The wetland trees must be specified at ten feet-in-height; two-inch caliper; and a four-foot spread.
- Prior to development order approval, the landscape plans must specify plant material that is in compliance with the Lee County Port Authority plant compatibility list.

8. Deviation (8) seeks relief from LDC Section 10-418(2)(d), which allows native trees to be substituted for up to 25% of the total number of herbaceous plants, to allow for native trees to be substituted for 100% of the required herbaceous plants.

This deviation is required per FAA AC 150/5200-33B, as amended due to its proximity to Southwest Florida International Airport. Staff recommends **approval** of this deviation with the following conditions:

- Prior to development order approval, the landscape plans must depict one wetland tree substituted for every 100 herbaceous littorals within the 4:1 lake bank slope. The

wetland trees must be specified at ten feet-in-height; two-inch caliper; and a four-foot spread.

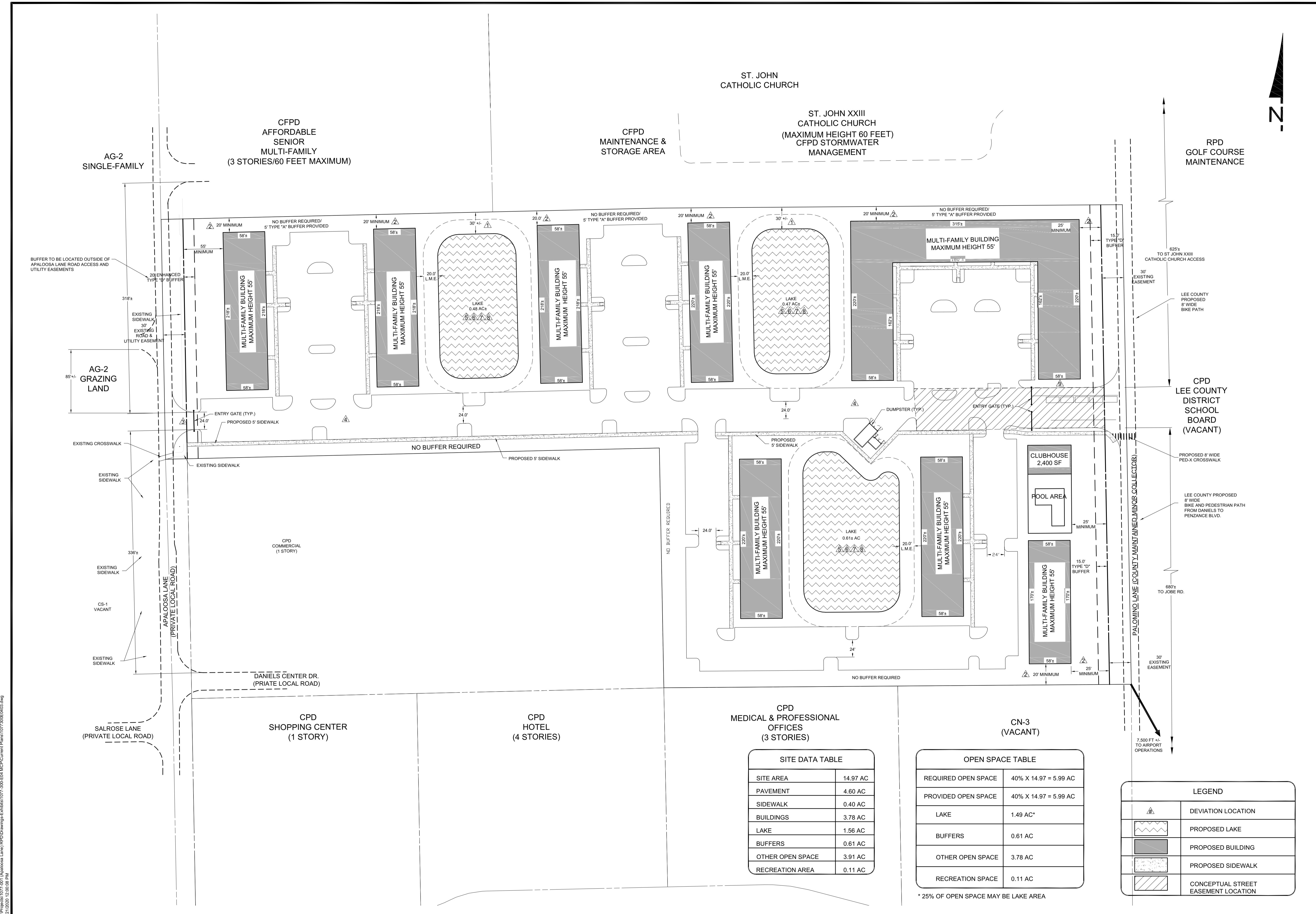
- Prior to development order approval, the landscape plans must specify plant material that is in compliance with the Lee County Port Authority plant compatibility list.

**CONCLUSION:**

The proposed rezoning from Agricultural (AG-2) and Special Commercial Office District (CS-2) to Residential Planned Development (RPD) for a maximum of 300 Multiple-family dwelling units (210 standard density units and 90 bonus density units) and customary accessory uses with a maximum building height of 55 feet is consistent with the Lee Plan. Staff has found the requested deviations, as conditioned, to be consistent with the Lee Plan and compatible with the surrounding land uses. As conditioned, the requested rezoning is compatible with the uses surrounding the subject property. As conditioned, this application meets all the criteria for rezoning including compliance with the Land Development Code. The request will not adversely affect environmentally critical areas or natural resources as conditioned. Approval of the request, as conditioned, will not place an undue burden upon existing transportation or planned infrastructure facilities. Urban services, as defined in the Lee Plan, as conditioned, will be available and adequate to serve the proposed development.

**ATTACHMENTS:**

- A. Expert Witness Information
- B. Maps: surrounding zoning, future land use and aerial photograph
- C. Recommended Conditions and Deviations
- D. Request Statement
- E. Legal Description
- F. Applicant Proposed Conditions
- G. Proposed Schedule of Deviations
- H. CPA2015-00010
- I. School Board Memorandum
- J. Three Oaks Extension Project Details
- K. Traffic Impact Statement
- L. Infrastructure Planning Comments
- M. Environmental Comments
- N. Lee Tran Memorandum
- O. Letter of Utility Availability
- P. Development Service Memorandum
- Q. Agricultural Use Affidavit
- R. Master Concept Plan



**WALDROP ENGINEERING**  
 CIVIL ENGINEERING & LAND DEVELOPMENT CONSULTANTS  
 28100 BUNTA GRANDE DRIVE - SUITE 205 BUNTA SPRINGS, FL 34135  
 P: 239-405-7777 F: 239-405-7899 EMAIL: info@waldropengineering.com

MASTER CONCEPT PLAN  
**APALOOOSA LANE RPD**  
 LEE COUNTY, FLORIDA  
 TRIPLE J ESTATES LLC & NSP TRUST

SITE DATA TABLE	
SITE AREA	14.97 AC
PAVEMENT	4.60 AC
SIDEWALK	0.40 AC
BUILDINGS	3.78 AC
LAKE	1.56 AC
BUFFERS	0.61 AC
OTHER OPEN SPACE	3.91 AC
RECREATION AREA	0.11 AC

OPEN SPACE TABLE	
REQUIRED OPEN SPACE	40% X 14.97 = 5.99 AC
PROVIDED OPEN SPACE	40% X 14.97 = 5.99 AC
LAKE	1.49 AC*
BUFFERS	0.61 AC
OTHER OPEN SPACE	3.78 AC
RECREATION SPACE	0.11 AC

\* 25% OF OPEN SPACE MAY BE LAKE AREA

LEGEND	
	DEVIATION LOCATION
	PROPOSED LAKE
	PROPOSED BUILDING
	PROPOSED SIDEWALK
	CONCEPTUAL STREET EASEMENT LOCATION

PLAN REVISIONS

NO.	DATE	DESCRIPTION
1	11/27/19	REVISED PER COUNTY COMMENTS
2	01/27/20	REVISED PER COUNTY COMMENTS
3	03/16/20	REVISED PER COUNTY COMMENTS
4	04/27/20	REVISED PER COUNTY COMMENTS

REVISIONS SUBMITTED: 04/23/2020

SCALE IN FEET: 0 30 60 120

FLORIDA CERTIFICATE OF AUTHORIZATION #8636

SET NUMBER: 1077-001-E0401  
 SHEET: 1

**CPA2019-00009**

**&**

**CPA2019-00011**

**SMALL BROTHERS  
COMMERCIAL**

**Summary Sheet**  
**SMALL BROTHERS COMMERCIAL**  
**CPA2019-00009 & CPA2019-00011**

**Request:**

- CPA2019-00009 - Amend Policies 1.4.5 and 33.3.5, and create Objective 33.5 to allow commercial development on properties located in Southeast Lee County with previously approved commercial zoning in the Density Reduction/Groundwater Resource (DR/GR) Future Land Use category; Amend Policy 55.1.3 to maintain consistency with State Statutes.
- CPA2019-00011 - Amend Maps 6 and 7 to add 12.1 ± acres to the Lee County Utilities Future Water and Wastewater Service Areas.

**Public Comments:**

One member of the Public addressed the LPA, stating opposition to the proposed amendments and concern over the potential flooding upstream.

**LPA Motions:**

A motion was made to recommend the BoCC transmit CPA2019-00009 with modifications. The motion included a request to revise the language to further address impacts to species, impacts to flowways, and rewrite Policy 33.5.1, #5 for clarity. The motion was called and passed 4-1.

A motion was made to recommend the BoCC transmit CPA2019-00011 as recommended by staff. The motion was called and passed 5-0.

**Staff Recommendation:**

Staff has incorporated appropriate changes to address the LPA motion and discussion as well as comments Lee County has received from the South Florida Water Management District. These changes, including an explanation for each is found in Part 5C of the attached Staff Report.

Staff recommends that the Board of County Commissioners transmit CPA2019-0009 and CPA2019-00011. Attachment 1 contains the staff recommendation as updated to address the LPA motion.

**STAFF REPORT FOR  
CPA2019-00009 & CPA2019-00011:  
Small Brothers Commercial**

Privately Initiated Text & Map Amendments to the Lee Plan



**Applicant:**

Small Brothers  
Commercial

**Representative:**

Daniel DeLisi, AICP

**Property Location:**

SW corner of Corkscrew  
Road & Alico Road  
Intersection

**Size:**

±12.1 acres

**Planning Community:**

Southeast Lee County

**Commissioner District:**

District #3

**Attachments:**

1. Recommended Text Amendments
2. Proposed Maps 6 & 7 Boundary Changes
3. Link to Applicant Materials

**Hearing Dates:**

LPA: 7/27/2020

Transmittal: 9/2/2020

**REQUESTS**

- Amend Policies 1.4.5 and 33.3.5, and create Objective 33.5 to allow commercial development on properties located in Southeast Lee County with previously approved commercial zoning in the Density Reduction/Groundwater Resource (DR/GR) Future Land Use category; Amend Policy 55.1.3 to maintain consistency with State Statutes.
- Amend Maps 6 and 7 to add 12.1 ± acres to the Lee County Utilities Future Water and Wastewater Service Areas.

**SUMMARY**

The amendments are to allow commercial development with a maximum intensity of 10,000 square feet per upland acre on properties located in Southeast Lee County that were zoned commercial prior to the creation of the DR/GR future land use category (September 17, 1990). Properties meeting this criteria will be required to use the planned development rezoning process in order to ensure commercial development will be: consistent with the process required to allow commercial development in the Environmental Enhancement Preservation, Mixed-Use, and Rural Golf Course Communities; compatible with the Wetlands and DR/GR future land use categories; and, designed to protect water and other environmental resources.

**FIGURE A: AERIAL LOCATION MAP**



**RECOMMENDATION**

Staff recommends that the Board of County Commissioners **TRANSMIT** CPA2019-00009 and CPA2019-00011, as provided in attachments 1 and 2, based on the analysis and findings provided in this staff report.

**PART 1  
BACKGROUND**

**Request:**

The applicant has submitted two applications to amend the Lee Plan, a text amendment and a map amendment. The text amendment is to amend Policies 1.4.5 and 33.3.5 and create Objective 33.5 in order to allow neighborhood commercial development on properties located in Southeast Lee County with the Density Reduction/Groundwater Resource (DR/GR) Future Land Use category (see Attachment 1).

The map amendment is to add 12.1 acres to the future water and wastewater service areas, Lee Plan Maps 6 and 7 (see Attachment 2).

**Subject Property:**

Throughout this staff report the property that will benefit from the text amendments and that is being added to Maps 6 and 7 is referred to as “the subject property”.

The subject property is on the south side of Corkscrew Road, near the intersection of Alico Road and Corkscrew Road. As provided in Table 1, the subject property was rezoned to Community Commercial (CC) in 1982 and received a variance (Zoning Resolution ZAB-82-337) to allow a private sewer treatment plant on the western side of the property in association with the proposed development of a mobile home park on the property to the south (SP-82-337). The mobile home community was never constructed and is now owned by South Florida Water Management District.

**TABLE 1: SUBJECT PROPERTY**

<b>STRAP</b>	<b>Size/ Use</b>	<b>Future Land Use Category</b>	<b>Zoning</b>	<b>Wellfield Zone</b>
22-46-26-00-00001.0010	12.1 acres/ vacant	DR/GR & Wetlands	Zoned CC; Zoning Resolution ZAB-82-337, Hearing #81-11-1 DCI	6-month to 5-year travel time

**Surrounding Properties:**

The surrounding properties to the north, south, east and west are predominantly within DR/GR, Wetlands and Conservation future land use categories and are zoned Agricultural (AG-2), Mobile Home (MH-1), Industrial Planned Development (IPD) and Residential Planned Development (RPD). Additional information on the surrounding properties is provided below in Table 2.

**TABLE 2:  
SURROUNDING PROPERTIES**

	<b>Future Land Use Category</b>	<b>Zoning</b>	<b>Existing Use</b>	<b>Wellfield Travel Times</b>
<b>North</b>	DR/GR & Wetlands	West Lakes Excavation IPD; 177.6 acre mining	Corkscrew Road, Mining operation	ASR Zone, 6 months to 5 years
<b>Northeast</b>	DR/GR, Public Facilities & Wetlands	AG-2	Lee County Utilities Wellfield	ASR Zone, 6 months to 5 years

<b>South</b>	Conservation Lands Wetlands & Uplands	MH-1	Conservation (Governmental – SFWMD)	6 months to 5 years
<b>East</b>	DR/GR & Wetlands	AG-2	Conservation (Governmental – Lee County)	ASR Zone, 6 months to 5 years
<b>West</b>	DR/GR	Corkscrew Shores RPD; approved for 800 residential units	Single Family Residential	1 to 5 years

**PART 2  
STAFF DISCUSSION AND ANALYSIS OF PROPOSED AMENDMENTS**

The subject property is located in the Southeast Lee Planning Community and is within the DR/GR and Wetlands future land use categories.

**Southeast Lee Planning Community:**

The Southeast Lee Planning Community allows for agricultural, residential, conservation and mining operations. Development in the Southeast Lee County community plan area is guided by Goal 33 which seeks to balance the need protect and restore natural resources and groundwater resource areas and accommodate managed growth. Residential and commercial developments are not anticipated to be significantly increased except in very limited areas where development rights are concentrated by the Lee Plan (Vision and Goal 33). Policy 33.3.5 permits commercial development in Southeast Lee County in conjunction with an Environmental Enhancement and Preservation Community, Rural Golf Course Community, or Mixed-Use Community which are specifically depicted on Map 17: Southeast DR/DR Residential Overlay and do not include the subject property. These developments, through requirements of the Lee Plan<sup>1</sup> and approved Planned Development zonings<sup>2</sup>, have committed substantial amounts of land for environmental purposes and resource protection, including restoration of flowways and habitat for listed species.

**Future Land Use Category:**

The subject property has been designated as DR/GR and Wetlands on the Future Land Use Map since 1990. The DR/GR and Wetlands future land use categories, as provided in Policies 1.4.5 and 1.5.1 below, restrict commercial development.

Policy 1.4.5.2.a provides that “*Commercial and civic uses can be incorporated into Mixed-Use Communities, Environmental Enhancement and Preservation Communities, and Rural Golf Course Communities that are depicted on Map 17 to the extent specifically provided in those policies.*” There are no other references to commercial uses in Policy 1.4.5. The subject property is not in any of the areas identified in the Policy.

Policy 1.5.1 provides that “*land uses in Wetlands consist of very low density residential uses and recreational uses that will not adversely affect the ecological functions of wetlands. All development in*

<sup>1</sup> Lee Plan Goal 13: Private Recreation Facility Planned Development; Objective 33.3: Residential and Mixed-Use Development

<sup>2</sup> DCI2014-00009 (WildBlue); DCI2019-00018 (Verdana Village); DCI2019-00007 (Old Corkscrew Golf Club Commercial)

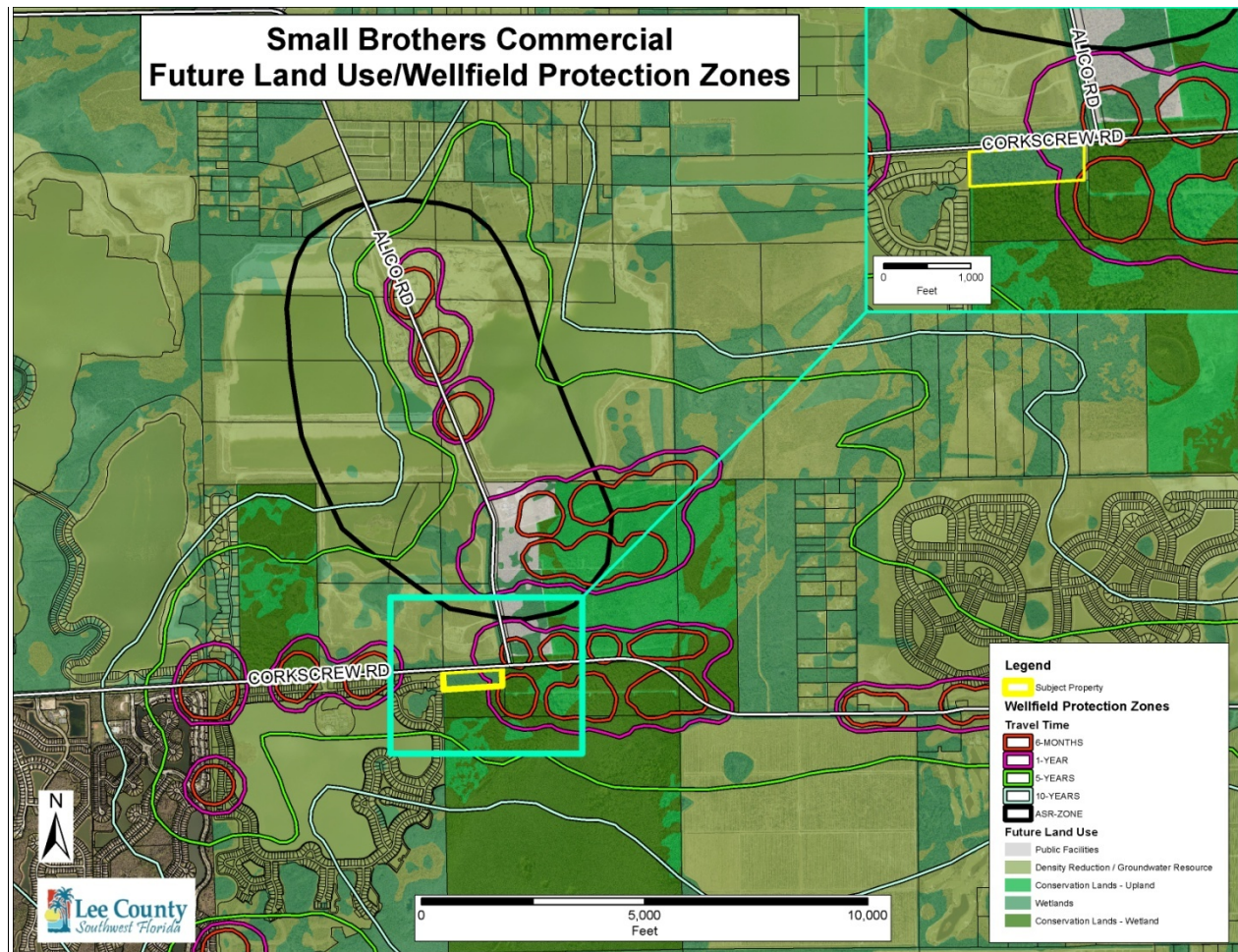


Wetlands must be consistent with Goal 124 of this plan.” While Policy 1.5.1 does not allow for commercial uses in the Wetlands future land use category, Policy 124.1.2 provides for development of non-residential uses on wetlands that have been impacted, or will be impacted, in accordance with a state agency permit with non-residential uses permitted in the immediately adjacent, least intense, upland future land use category. In the case of the subject property, the immediately adjacent, least intense future land use categories are DR/GR and Conservation Lands – Uplands. Neither of these categories would allow for commercial uses on the subject site.

**Wellfield Protection:**

The subject property is within the Wellfield Protection Zones for the Pinewoods Water Treatment Plant, which provides the drinking water supply to much of south Lee County. The Pinewoods Water Treatment Plant treats groundwater from the Sandstone and Surficial aquifers using nanofiltration and water from the Lower Hawthorn aquifer using reverse osmosis from the Pinewoods wellfield. The water from both treatment units is then blended together and sent to degasifiers, where hydrogen sulfide is removed and the water is further treated.

**FIGURE B: FUTURE LAND USE CATEGORIES & WELLFIELD PROTECTION ZONES**



The Wellfield Protection Ordinance provides regulations to ensure that Lee County has adequate potable water supply (quality and quantity) by restricting activities and substances that may occur or be used within the County's Wellfield protection zones. Objective 63.1 and Policies 63.1.2 and 63.1.3 require all development applications for the subject property to be reviewed by the staff hydrologist for consistency with the Wellfield Protection Ordinance. This is because the entire property is within the 10-year and 5-year travel times from existing wellheads, and portions of the property are within the 1-year and 6-month travel times (Policy 63.1.2). The upland portions are also within the DR/GR future land use category (Policy 63.1.3).

#### **Community Commercial (CC) Zoning District:**

The Lee County Land Development Code (LDC), Section 34-841 (g), provides "the purpose and intent of the CC district is to permit the designation of suitable locations for **medium- to large-scale consumer-oriented commercial facilities, particularly for multiple-occupancy complexes known as community or regional shopping centers**, and to facilitate their proper development and use. In addition to the retail sale of consumer goods, this district is intended to permit a wide range of services, financial and other, including business and professional offices, all arranged in discrete commercial centers or evolving business districts. **Such centers or districts differ from neighborhood commercial facilities in concentrating a greater floor area of use and a broader mix of goods and services in order to serve a wider market or service area and a larger population. This is expected to create greater impact on surrounding land uses and therefore require buffering and designed gradients of intensity adjacent to less intense uses** (emphasis added)." As its intended, the CC district is not consistent with either of the property's future land use categories (Wetlands and DR/GR) or the property's location within Lee County's Wellfield Protection Zones.

Closer examination of the uses allowed within the CC district confirm that there are a number of land uses allowed that are not consistent with the Wellfield Ordinance. Given the subject property's proximity to wellfields, land uses should be limited to protect the county's drinking water supply. These uses includes things such as auto and boat repair, fuel pumps, car wash, cleaning and maintenance services, funeral homes, on-site dry cleaning, research and development laboratories, vehicle equipment dealers or any other similar use that may contain the storage of hazardous chemicals. Additionally, through a Special Exception or other process, uses such as bus station or depot, excavation of oil of gas and commercial parking lot could be permitted in the CC district could be approved if deemed consistent with the Lee Plan. Many of these uses have been specifically prohibited on properties subject to the Environmental Enhancement and Preservation Community Overlay (Policy 33.3.4.e). Additionally, in the Rural Golf Course Community Overlay, the storage of toxic or hazardous substances is specifically prohibited (Policy 13.3.9).

There are uses that are allowed in the CC district such as places of worship and schools that would be appropriate on the subject property; however, development of commercial uses would be inconsistent with the subject property's future land use categories, Wellfield Protection Ordinance, and commercial limitations identified for the Southeast Lee County community plan area (Policy 33.3.5). Furthermore, development of the subject property would be limited in accordance with: Florida Statute 163.3194 which requires all development must be consistent with the local comprehensive plan; LDC 34-491 which provides where there is a conflict between the Lee Plan and any regulation in the LDC, the Lee Plan prevails; LDC 10-81 which requires that development order approvals, including amendments to existing or approved development orders, must be consistent with the Lee Plan provisions and approved zoning actions applicable to the subject property at the time the approvals are issued; and, Lee Plan

Chapter XIII which states that “development permits issued by the county must be consistent with the Plan as adopted on the date of issuance.”

### **Proposed Lee Plan Amendments**

To address the inconsistencies of allowing commercial uses on the subject property with the Lee Plan, the proposed text amendments would require the subject property be rezoned to a planned development in order to ensure consistency with commercial development allowed in the Environmental Enhancement Preservation, Mixed-Use, and Rural Golf Course Communities; compatibility with the Wetlands and DR/GR future land use categories; and, protection of Southeast Lee County’s water and other environmental resources.

The remainder of this report identifies the proposed text amendments and analysis by staff. All proposed edits are shown in strikethrough and underline of existing Lee Plan language.

Cross References in POLICY 1.4.5 (DR/GR future land use category): The requested amendments to Policy 1.4.5 simplifies existing language and adds a cross-reference to the new Objective 33.5, which is proposed to address stand-alone commercial development in Southeast Lee County. Staff supports adoption of the following amendments to Policy 1.4.5:

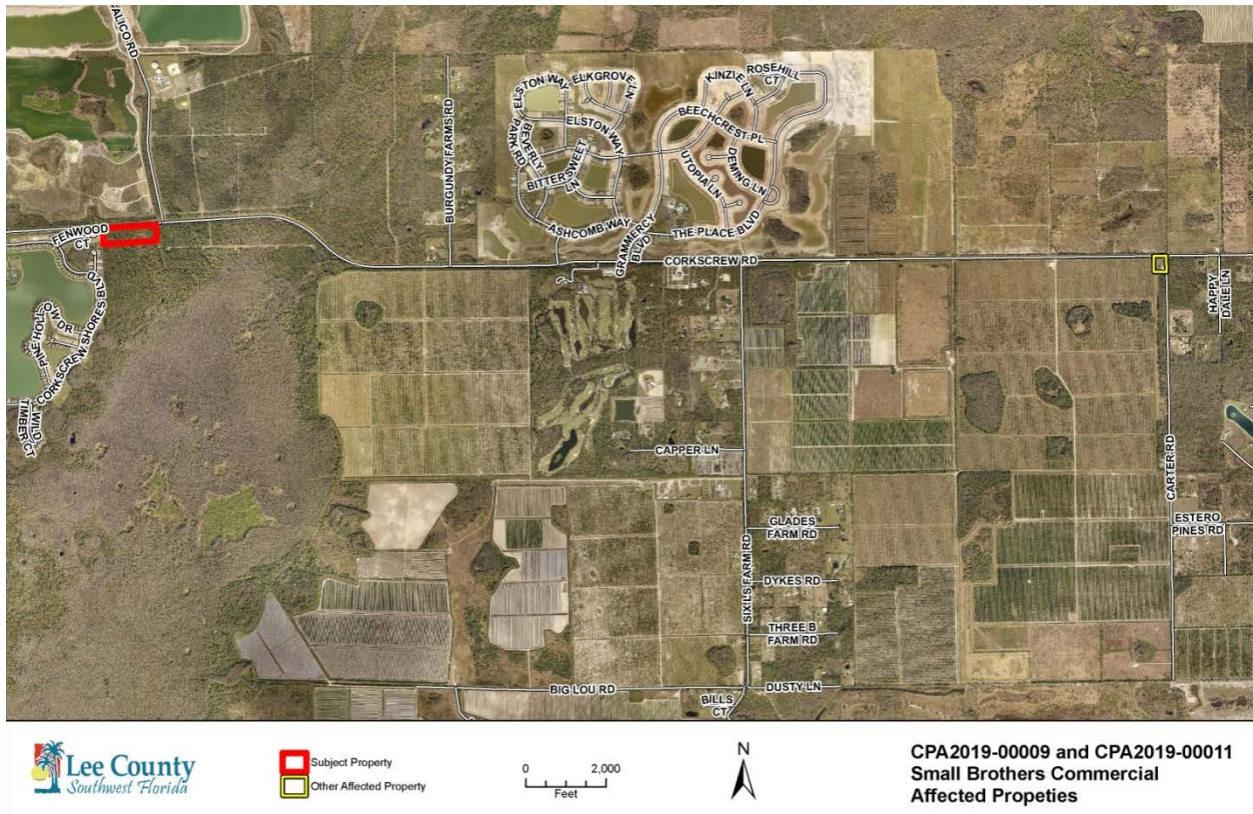
#### **POLICY 1.4.5:**

2. Permitted land uses include agriculture, natural resource extraction and related facilities, conservation uses, public and private recreation facilities, and residential uses at a maximum density of one dwelling unit per ten acres (1 du/10 acres). See Objectives 33.3 and 33.4 ~~Policies 33.3.2, 33.3.3, and 33.3.4~~ for potential density adjustments resulting from concentration or transfer of development rights.
  - a. ~~For residential development, also see Objective 33.3 and following policies.~~ Commercial and civic uses ~~can~~ may only be permitted on properties in Southeast Lee County as provided in Objectives 33.3 and 33.5, incorporated into Mixed Use Communities, Environmental Enhancement and Preservation Communities, and Rural Golf Course Communities that are depicted on Map 17 to the extent specifically provided in those policies.

General Commercial Limitations in Southeast Lee County: The following amendment to Policy 33.3.5 is proposed to maintain consistency within the Lee Plan:

**POLICY 33.3.5:** Commercial uses may only be permitted if on property with existing conventional commercial zoning approved prior to September 17, 1990, or if incorporated into a Mixed-Use Community, Environmental Enhancement and Preservation Community, or Rural Golf Course Community depicted on Map 17. The maximum commercial floor area that may be approved within the Southeast Lee County community plan area may not exceed 300,000 square feet.

The amendment to Policy 33.3.5 is necessary to allow commercial development on the subject property which is otherwise limited by its location within the Southeast Lee County community plan area and DR/GR and Wetlands future land use categories. The proposed text amendments would be applicable to the subject property and one other property in Southeast Lee County that also has conventional commercial zoning approved prior to the adoption of the DR/GR future land use category.



The amendment to Policy 33.3.5 will require development of the subject property to comply with the overall commercial intensity threshold for the Southeast Lee County community plan area of 300,000 square feet. This will ensure that the amount of commercial development will not promote the urbanization of this less dense area of the county while providing commercial services to the residents in the immediate area. Policy 33.3.5 also limits additional intensity and external impacts, such as traffic, to a level that is already anticipated within Southeast Lee County.

A review of recent approvals and recent applications in Southeast Lee County demonstrate that of the 300,000 square feet, there is still commercial square footage available - WildBlue (DCI2014-00009) was approved with 40,000 square feet of commercial, Verdana Village (DCI2019-00018) was approved with 100,000 square feet of commercial, and Old Corkscrew Golf Club Commercial (DCI2019-00007) has requested 100,000 square feet of commercial, which leaves approximately 60,000 square feet of commercial development available for approval<sup>3</sup>.

Commercial Development Requirements: These text amendments create a new Objective in Goal 33 to provide guidance for commercial development within the DR/GR future land use category within Southeast Lee County. The new Objective 33.5, specific for commercial zonings approved prior to the adoption of the DR/GR future land use category is proposed as follows:

<sup>3</sup> The calculation of available commercial square feet per Policy 33.3.5 is based on the maximum commercial square footage either approved by zoning, or as being requested in the case of DCI2019-00007 which has not yet been heard by the BoCC. Actual commercial square feet will be confirmed at time of development order and could be less than the maximum approved by zoning.

**OBJECTIVE 33.5: COMMERCIAL ZONING APPROVED PRIOR TO SEPTEMBER 17, 1990:** To allow development of commercial uses on properties designated DR/GR that have existing conventional commercial zoning approved prior to September 17, 1990.

The addition of Objective 33.5 is appropriate to address stand-alone commercial development on properties with existing commercial zoning in Southeast Lee County. Goal 33 does not currently have an Objective that addresses commercial as a primary use since the only commercial currently permitted is subject to Objective 33.3: Residential and Mixed Use Development. Objective 33.3 contains a number of residential overlays, some of which allow for commercial uses, but all of which require residential development as the primary use and, if proposed, the commercial uses as secondary. All of these overlays are also identified on Lee Plan Map 17: Southeast DR/GR Residential Overlay. This map does not include or identify commercial-only development.

Commercial development allowed under Objective 33.3 requires a planned development rezoning. The same requirement is proposed in Policy 33.5.1. Through the planned development process consistency with the additional criteria outlined in Policy 33.5.1 must be demonstrated. Policy 33.5.1 is proposed as follows:

**POLICY 33.5.1:** Property with existing conventional commercial zoning approved prior to September 17, 1990 may be approved for development of commercial uses if the project is found consistent with and demonstrates through a planned development rezoning all of the following:

1. The allowable total square footage for commercial uses in Southeast Lee County set forth in Policy 33.3.5 is not exceeded.
2. The development will be served by central water and sewer.
3. The development will be designed to minimize impacts to wetlands by only allowing impacts for stormwater retention/detention, accessways, and limited parking. Buildings and structures are prohibited in wetlands. Deviations may be considered through the planned development process to facilitate protection of wetlands.
4. The development does not exceed 10,000 square feet per upland acre of commercial uses and does not include any of the following uses: auto parts stores, lawn and garden supply stores, fuel pump stations, drycleaners (on-site), or any other use that is not compatible with protecting Southeast Lee County's environment.
5. If development is proposed within the 6-month, 1-year, 5-year, or 10-year travel zones of the Wellfield Protection Ordinance, a total of 1 ½ -inches of treatment, ½ -inch of which must be completed via dry pretreatment, must be provided at a minimum. Dry and wet treatment must be located outside of the 6-month and 1-year travel zones. The entire development will be considered to be within the most restrictive wellfield protection zone as provided in the Wellfield Protection Ordinance.
6. Ground water quality monitoring well(s) for the Surficial Aquifer System are provided and located between Lee County's nearest production well(s) and the development.
7. Flowway connection(s) are provided for all surface water discharge to adjacent Conservation Lands.

The criteria proposed in Policy 33.5.1 is to ensure wellfield and wetlands are protected. To ensure that wellfields are protected and that surface and groundwater is not degraded, which is critically important for protecting the county's public drinking water supply and groundwater, criteria is proposed to limit uses to those compatible with the wellfield protection zones and to allow for conditions that address mitigation for potential impacts. Minimizing impacts to wetlands on this project will allow recharge to the public supply wells. To ensure wetlands are protected, criteria is proposed to limit impacts on wetlands by not allowing construction of buildings or structures in these areas and restricting what types of improvements may be permitted. Consistent with Objective 60.4, the criteria allows for wetlands to be incorporated into future surface water management systems required for development. In addition, through the planned development rezoning process, deviations necessary to facilitate protection of wetlands may be considered.

The applicant has also proposed amendments to Lee Plan Maps 6 and 7 that would allow the property to connect to public water and sewer services (CPA2019-00011). Staff supports the request to add the property to Lee Plan Maps 6 and 7.

**Public Service Availability:**

The proposed amendment to the Future Land Use Map would expand the types of uses allowed on the subject property to include commercial uses. There are adequate potable water, sanitary sewers, solid waste, police, and fire/EMS, and transportation facilities to serve the subject property.

Transportation: The subject property is located at the southwest corner of Corkscrew Road and Alico Road. Alico Road is a major collector roadway and Corkscrew Road is an arterial facility, both are maintained by the County. Corkscrew Road from Ben Hill Griffin Parkway to Alico Road will be widened from 2-lane to 4-lane within 5 years.

Lee Plan amendments require a short range (5 years) and long range (20+ years) level of service (LOS) analysis. The 5 year and the long range 2040 LOS analysis indicates that in the three mile study area all the roadway segments are anticipated to operate at or better than the adopted LOS standard in year 2024 and year 2040. Based on the submitted data and analysis, there are no required modifications to the adopted Lee County 2040 Cost Feasible Plan network as result of this request.

Utilities: Potable water is available from the Pinewood Water Treatment Plant and wastewater service would be provided by the Three Oaks Water Reclamation Facility.

Solid Waste: The subject property has access to solid waste services. Solid waste collection services will be provided by Lee County using the Lee County Resource Recovery Facility and the Lee-Hendry Regional Landfill.

Fire: Estero Fire Rescue indicated they are capable of providing fire protection.

EMS: The subject property has access to EMS services by Lee County Emergency Medical Services.

Police: The Lee County Sheriff will provide law enforcement services primarily from the Lehigh Acres and Bonita Springs substations. The future development of the subject property will not affect the ability of the Lee County Sheriff's Office to provide core services at this time.

**PART 4  
CONCLUSIONS**

The proposed text amendments will allow two properties in Southeast Lee County with existing zoning that is inconsistent with the Lee Plan to obtain limited commercial development by rezoning to a planned development.

The proposed amendments will require development to:

- Be consistent with the allowable total square footage for commercial uses in Southeast Lee County set forth in Policy 33.3.5;
- Connect to central water and sewer;
- Limit wetland impacts;
- Limit intensity to 10,000 square feet per upland acre and precludes uses that are not compatible with protecting Southeast Lee County's environment;
- Provide enhanced stormwater management system;
- Provide ground water quality monitoring well(s); and,
- Provide flowway connections to adjacent Conservation Lands.

The proposed map amendments will allow the subject property to be added to Maps 6 and 7 in order to be within the central water and wastewater service areas.

For the reasons discussed in this staff report, staff recommends that the Board of County Commissioners **TRANSMIT CPA2019-0009 and CPA2019-00011**.

**PART 5  
LOCAL PLANNING AGENCY  
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: July 27, 2020

**A. LOCAL PLANNING AGENCY REVIEW:**

The applicant's representatives provided a detailed presentation of the proposed amendments including public outreach; existing conditions, zoning, and future land use categories; environmental impacts; water resources; wellfield protection; commercial needs analysis; and Lee Plan consistency.

Following the applicant's presentation members of the LPA asked questions for clarification concerning the location of stormwater management areas in relation to the Wellfield Protection Zones and expressed concern of internal consistency of the Policy. The applicant and staff agreed that further clarification could be made.

Members of the LPA also asked about uses appropriate in the wellfield protection zones; impacts specific to black bears, Florida panthers, and the Florida Bonneted Bat; clarifications about impacts to wetlands; flowway connections; and the possibility for a concurrent rezoning request in order to have a better understanding of proposed uses and wetland impacts. The applicant stated that they intended to prepare and submit a concurrent rezoning application to be ready prior to the proposed amendments going to the BoCC for final adoption.

Following the applicant’s presentation and questions from the members of the LPA, staff provided a brief summary of the amendment including staff’s conclusions and recommendation.

One member of the public addressed the LPA, stating opposition to the proposed amendments and concern over the potential flooding upstream.

A motion was made to recommend the BoCC transmit CPA2019-00009. The motion also included a request for the applicant to request a rezoning concurrent with this plan amendment for consideration by the Board of County Commissioners at the time of adoption.

During discussion of the motion, members of the LPA stated that there were positives about the proposed amendment. However, they were concerned about the uncertainties concerning impacts to wildlife and wetlands. The LPA also discussed requirements for flowway restoration on the site.

**B. LOCAL PLANNING AGENCY RECOMMENDATION:**

CPA2020-00009:

A motion was made to recommend the BoCC **transmit** CPA2019-00009 with modifications. The motion included a request to revise the language to further address impacts to species, impacts to flowways, and rewrite Policy 33.5.1, #5 for clarity. The motion was called and passed 4-1.

**VOTE:**

<b>RAYMOND BLACKSMITH</b>	<b>AYE</b>
<b>DUSTIN GARDNER</b>	<b>ABSENT</b>
<b>JAMES INK</b>	<b>AYE</b>
<b>ALI OLIVO</b>	<b>NAY</b>
<b>DON SCHROTENBOER</b>	<b>AYE</b>
<b>STAN STOUDE</b>	<b>AYE</b>
<b>HENRY ZUBA</b>	<b>ABSENT</b>

CPA2020-00011:

A motion was made to recommend the BoCC **transmit** CPA2019-00011 as recommended by staff. The motion was called and passed 5-0.

<b>RAYMOND BLACKSMITH</b>	<b>AYE</b>
<b>DUSTIN GARDNER</b>	<b>ABSENT</b>
<b>JAMES INK</b>	<b>AYE</b>
<b>ALI OLIVO</b>	<b>AYE</b>
<b>DON SCHROTENBOER</b>	<b>AYE</b>
<b>STAN STOUDE</b>	<b>AYE</b>
<b>HENRY ZUBA</b>	<b>ABSENT</b>

**C. STAFF RESPONSE AND RECOMMENDATION:**

To address concerns raised by the LPA, staff provides the following.



**Rewrite Policy 33.5.1, #5 for clarity.** Although staff and the applicant understand the intent of the requirement for Wellfield protection, it was acknowledged that there could be confusion and the policy should be clarified for better understanding. To address this staff and the applicant propose a revision that will provide separate requirements for compliance with the Wellfield Protection Ordinance and stormwater management requirements as shown below.

5. The entire development is consistent with the most restrictive wellfield protection zone as provided in the Wellfield Protection Ordinance.
6. If development is proposed within the 6-month, 1-year, 5-year, or 10-year travel zones of the Wellfield Protection Ordinance, a total of 1 ½ inches of stormwater treatment, ½ inch of which must be completed via dry pretreatment, must be provided at a minimum. Dry and wet treatment must be located outside of the 6-month and 1-year travel zones. The entire development will be considered to be within the most restrictive wellfield protection zone as provided in the Wellfield Protection Ordinance.

The proposed revision clarifies that wet and dry treatment of stormwater may occur within the 5 and 10-year travel zones even though, for the purposes of land uses and storage of materials, the entire development will be considered to be within the most restrictive wellfield protection zone as provided in the Wellfield Protection Ordinance.

The LPA, raised concerns about unknown **impacts to listed species**, specifically black bears, Florida panthers, and the Florida Bonneted Bat. Lee Plan Policy 123.3.3 requires that all non-agricultural development in non-urban areas is required to create a human-wildlife coexistence plan at time of development order. Both DR/GR and the Wetlands future land use category are considered to be future non-urban areas, so future development of this property will require a human-wildlife coexistence plan. To provide for additional protections and for consistency with how potential impacts to wildlife are addressed in the Environmental Enhancement and Protection Communities Overlay, staff is proposing the following addition to Policy 33.5.1:

9. The indigenous management plan includes a human-wildlife coexistence plan that at a minimum provides for bear-proof refuse containers, below ground grease traps, and prevents light spillage onto adjacent preserve areas.

To address the uncertainty to **wetlands and flowways impacts** the applicant has committed to delaying final adoption of the proposed amendments until the required Commercial Planned Development can be presented to the Board of County Commissioners concurrently. Additionally, there are numerous provisions within Goals 123, 124, and 125, as well as LDC and SFWMD requirements for stormwater management that will require the protection and restoration of wetlands and flowways that are on the subject property. The other commercial property that could benefit from these amendments does not appear to contain any wetlands or existing flowways.

In addition to the amendments requested by the applicant and reviewed by the LPA, staff is also recommending a minor amendment to Policy 55.1.3 to address recent comments from the South Florida Water Management District (SFWMD) concerning consistency with Florida Statute 163.3177(1)(b) and 163.3177(6)(c)3. SFWMD has requested Lee County reference the specific Water Supply Plan. To address these concerns, staff is proposing the following revisions to Policy 55.1.3.

**POLICY 55.1.3:** Actively implement and utilize the 2017 Water Supply Facilities Work Plan as a guide to potable water supply facility planning consistent with Table 5, the 10 Year Water Supply Development Projects Table, potable water resources, and water conservation.

Staff continues to recommend that the Board of County Commissioners **transmit CPA2019-0009 and CPA2019-00011**. Attachment 1 contains the staff recommendation as updated to address the LPA motion. New language is shown with double underline.

## **PART 6 ATTACHMENTS**

Attachment 1: Proposed Text Amendments (CPA2019-00009)

Attachment 2: Proposed Map 6 & 7 Boundary Change (CPA2019-00011)

### **Electronic Files:**

<https://www.leegov.com/dcd/planning/cpa/compplansearch?case=CPA2019-00009>

<https://www.leegov.com/dcd/planning/cpa/compplansearch?case=CPA2019-00011>

# ATTACHMENT 1

II. Future Land Use

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**POLICY 1.4.5:** The Density Reduction/Groundwater Resource (DR/GR) land use category includes upland areas that provide substantial recharge to aquifers most suitable for future wellfield development. These areas also are the most favorable locations for physical withdrawal of water from those aquifers. Only minimal public facilities exist or are programmed.

2. Permitted land uses include agriculture, natural resource extraction and related facilities, conservation uses, public and private recreation facilities, and residential uses at a maximum density of one dwelling unit per ten acres (1 du/10 acres). See Objectives 33.3 and 33.4~~Policies 33.3.2, 33.3.3, and 33.3.4~~ for potential density adjustments resulting from concentration or transfer of development rights.

a. ~~For residential development, also see Objective 33.3 and following policies.~~  
Commercial and civic uses can may only be permitted on properties in Southeast Lee County as provided in Objectives 33.3 and 33.5 incorporated into Mixed-Use Communities, Environmental Enhancement and Preservation Communities, and Rural Golf Course Communities that are depicted on Map 17 to the extent specifically provided in those policies.

(Ordinance No. 91-19, 94-30, 99-16, 02-02, 10-20, 12-24, 15-13, 18-18)

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**POLICY 33.3.5:** Commercial uses may only be permitted if on properties with existing conventional commercial zoning approved prior to September 17, 1990, or if incorporated into a Mixed-Use Community, Environmental Enhancement and Preservation Community, or Rural Golf Course Community depicted on Map 17. The maximum commercial floor area that may be approved within the Southeast Lee County community plan area may not exceed 300,000 square feet.

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**OBJECTIVE 33.5: COMMERCIAL ZONING APPROVED PRIOR TO SEPTEMBER 17, 1990.** To allow development of commercial uses on properties designated DR/GR that have existing conventional commercial zoning approved prior to September 17, 1990.

**POLICY 33.5.1:** Property with existing conventional commercial zoning approved prior to September 17, 1990 may be approved for development of commercial uses if the project is found consistent with and demonstrates through a planned development rezoning all of the following:

1. The allowable total square footage for commercial uses in Southeast Lee County set forth in Policy 33.3.5 is not exceeded.
2. The development will be served by central water and sewer.
3. The development will be designed to minimize impacts to wetlands by only allowing impacts for stormwater retention/detention, accessways, and limited parking. Buildings and structures are prohibited in wetlands. Deviations may be considered through the planned development process to facilitate protection of wetlands.
4. The development does not exceed 10,000 square feet per upland acre of commercial uses and does not include any of the following uses: auto parts stores, lawn and garden supply stores, fuel pump stations, drycleaners (on-site), or any other use that is not compatible with protecting Southeast Lee County's environment.
5. The entire development is consistent with the most restrictive wellfield protection zone as provided in the Wellfield Protection Ordinance.
6. ~~If development is proposed within the 6-month, 1-year, 5-year, or 10-year travel zones of the Wellfield Protection Ordinance, a total of 1 ½ inches of stormwater treatment, ½ inch of which must be completed via dry pretreatment, must be provided at a minimum. Dry and wet treatment must be located outside of the 6-month and 1-year travel zones. The entire development will be considered to be within the most restrictive wellfield protection zone as provided in the Wellfield Protection Ordinance.~~
67. Ground water quality monitoring well(s) for the Surficial Aquifer System are provided and located between Lee County's nearest production well(s) and the development.
78. Flowway connection(s) are provided for all surface water discharge to adjacent Conservation Lands.
9. The indigenous management plan includes a human-wildlife coexistence plan that at a minimum provides for bear-proof refuse containers, below ground grease traps, and prevents light spillage onto adjacent preserve areas.



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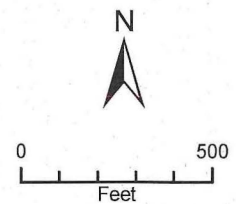
**POLICY 55.1.3:** Actively implement and utilize the 2017 Water Supply Facilities Work Plan as a guide to potable water supply facility planning consistent with Table 5, the 10 Year Water Supply Development Projects Table, potable water resources, and water conservation.

# ATTACHMENT 2





**CPA2019-00011**  
**Small Brothers Commercial**  
**Current Water and Sewer Service Area**

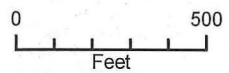
-  Subject Property
-  Existing Future Water and Sewer Service Area





**CPA2019-00011**  
**Small Brothers Commercial**  
**Proposed Water and Sewer Service Area**

-  Subject Property
-  Proposed Future Water and Sewer Service Area





TO VIEW APPLICANT MATERIALS FOR  
CPA2019-00009 (SMALL BROTHERS  
COMMERCIAL)

CLICK THE LINK BELOW:

[Click Here](#)

TO VIEW APPLICANT MATERIALS FOR  
CPA2019-00011 (SMALL BROTHERS  
COMMERCIAL UTILITIES)

CLICK THE LINK BELOW:

[Click Here](#)