



## **AGENDA FOR THE HEARING EXAMINER**

Tuesday, February 25, 2020

9:00 AM

Council Chambers

### **1. HEARINGS CALLED TO ORDER**

### **2. HEARINGS**

- A. WITHDRAWN AT THE REQUEST OF THE APPLICANT  
CASE#PDP18-0008\*; Location: North of Veteran's Parkway and west of Veterans Parkway/Surfside Boulevard intersection; south of Royal Tee Golf and Country Club/West of Sandoval; Applicant: MSI Holdings LLC this a continuance from the November 5, December 17, and January 7, 2020 Hearings, Applicant's Representative has withdrawn the application which renders the scheduled Hearing moot.
- B. Case #ZA19-0006\*; Address: 2500 & 2560 NE Pine Island Rd., 1570 Orchid Rd.; Applicant: Harry Lowell, Trustee
- C. Case # PDP19-0003\*; Address: 5822, 5826, 5870, 5874, 5878, and 5882 Shell Cove Drive ;Fish House Lot 1, 8, 9, 12, 13, 14, 15, LLCs

### **3. DATE AND TIME OF NEXT HEARINGS**

- A. A Special Hearing of the Hearing Examiner was scheduled for Thursday, March 5, 2020, at 9:00 a.m. in Council Chambers.
- B. Regular Meeting of the Hearing Examiner Hearing was scheduled for Tuesday, March 10, 2020, at 9:00 a.m., in Council Chambers

### **4. ADJOURNMENT**

In accordance with the Americans with Disabilities Act and [Florida Statutes](#) 286.26, persons needing a special accommodation to participate in this proceeding should contact the City Clerk's Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0411 for assistance, if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8700 (v) for assistance.

If a person decides to appeal any decision made by the Board/Commission/Committee with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings, and for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is based.

**PLEDGE OF CIVILITY**

We will be respectful of each other even when we disagree.  
We will direct all comments to the issues. We will avoid personal attacks.

The hearing shall, to the extent possible, be conducted as follows:

1. The Clerk shall read into the record the Ordinance or Resolution Title and Number, or the Applicant's name, file number, and the subject matter to be decided if there is no ordinance or resolution.
2. The Applicant, staff, and all Participants requesting to speak or present evidence or both the hearing shall be collectively sworn by an oath or affirmation by the Clerk.
3. Staff will testify regarding proper notice of the Hearing in accordance with City requirements.
4. The Applicant may waive the Applicant's right to an evidentiary hearing if Applicant agrees with the staff recommendation and no one from the audience wishes to speak for or against the application. The Hearing Examiner shall rule on the matter or make a recommendation, based upon the staff report and any other materials contained within the official file. Regardless of a waiver by the Applicant, a Public Hearing shall be held for all decisions requiring an ordinance or resolution.
5. If there is an evidentiary hearing, the order of the presentation shall be as follows, unless the Hearing Examiner, determines to proceed in a different order, taking proper consideration of fairness and due process:
  - The Applicant shall make the Applicant's presentation, including offering any documentary evidence, and introduce any witnesses as Applicant desires. The Applicant shall present the Applicant's entire case in thirty (30) minutes.
  - Staff shall present a brief synopsis of the application; introduce any appropriate additional exhibits from the official file that have not already been transmitted to the Hearing Examiner with the agenda materials, as staff desires; summarize issues; and make a recommendation on the application. Staff shall also introduce any witnesses that it wishes to provide testimony at the hearing. Staff shall present its entire case in thirty (30) minutes.
  - Participants in opposition to or support of the application shall make their presentation in any order as determined by the Hearing Examiner. Each Participant shall present their argument in 5 minutes.
  - The Applicant may cross-examine any witness and respond to any testimony presented.
  - Staff may cross-examine any witness and respond to any testimony presented.
  - The Hearing Examiner may choose to allow Participants to respond to any testimony if the Hearing Examiner deems the response to be necessary to ensure fairness and due process.
  - The Hearing Examiner, may ask questions of the staff, Applicant, and Participants.
  - Final argument may be made by the Applicant, related solely to the evidence in the record.
  - Final argument may be made by the staff, related solely to the evidence in the record.
  - For good cause shown, the Hearing Examiner may grant additional time to any of the hereinabove time limitations.
  - The Hearing Examiner's, decisions must be based upon Competent Substantial Evidence in the record.

<b>Item Number:</b>	<b>2.A.</b>
<b>Meeting Date:</b>	<b>2/25/2020</b>
<b>Item Type:</b>	<b>HEARINGS</b>

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

WITHDRAWN AT THE REQUEST OF THE APPLICANT CASE#PDP18-0008\*; Location: North of Veteran's Parkway and west of Veterans Parkway/Surfside Boulevard intersection; south of Royal Tee Golf and Country Club/West of Sandoval; Applicant: MSI Holdings LLC this a continuance from the November 5, December 17, and January 7, 2020 Hearings, Applicant's Representative has withdrawn the application which renders the scheduled Hearing moot.

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No  
If Yes, Priority Goals Supported are listed below.  
If No, will it harm the intent or success of the Strategic Plan? No

**Planning & Zoning Recommendations:**

**SUMMARY EXPLANATION AND BACKGROUND:**

The applicant requests approval of a Planned Development Project (PDP) entitled "Cape 84 Acres" to develop a maximum of 336 units within three phases. The PDP requests Development Plan approval along with the approval of the following deviations:

- 1) Deviation from LUDR, Section 3.1.2.A.3.b
- 2) Deviation from LUDR, Section 3.16.4,
- 3) Deviation from LUDR, Section 5.2.13.A,
- 4) Deviation from LUDR, Section 5.2.13.C.1,
- 5) Deviation from LUDR, Section 5.2.13.C.5,
- 6) Deviation from EDS, G-5 Cross, and
- 7) Deviation from EDS, Dead End Streets.

**LEGAL REVIEW:**

**EXHIBITS:**

See Attached Backup Materials.

**PREPARED BY:**



Jessica M.  
Cruz

Division- Planning

Department- Community  
Development

**SOURCE OF ADDITIONAL INFORMATION:**

Chad Boyko, AICP, Principal Planner, 239-573-3162, cboyko@capecoral.net

**ATTACHMENTS:**

<b>Description</b>	<b>Type</b>
▢ Backup Materials	Backup Material
▢ Backup Materials	Backup Material
▢ Backup Materials	Backup Material
▢ Backup Materials	Backup Material
▢ Listed Species Survey and results	Backup Material



## PLANNED DEVELOPMENT PROJECT (PDP) APPLICATION

PROPERTY OWNER IS A CORPORATION, LIMITED LIABILITY COMPANY (LLC),  
LIMITED COMPANY (LC), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUST

Project Name: Cape 84 Acres

Project Number: \_\_\_\_\_

To help prepare this application, the applicant should obtain copies of the following:

- [Land Use and Development Regulations](#) (this document is linked)
  1. Land Development Regulations (Article 4)
  2. Parking Requirements (Article 5.1)
  3. Landscape Ordinance (Article 5.2)
  4. Sign Ordinance (Article 7)
- NFPA 1 Fire Prevention Code
- Engineering Design Standards

The advisory review is conceptual only and any staff comments are subject to change based on detailed information with an application to the City of Cape Coral. Formal review may result in additional changes not noted at this time. The final design or project must comply with the Land Use and Development Regulations, Engineering Design Standards, City Code of Ordinances, Comprehensive Plan and other applicable laws and regulations.

### ACKNOWLEDGEMENT

I, MSI Holdings, LLC., as the owner of this property or the duly Authorized Representative, agree to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State and County laws, and certify that all information supplied is correct to the best of my knowledge.

In addition, I understand that prior to the issuance of the Certificate of Occupancy for this development, the engineer of record must supply the Department of Community Development with record drawings and a letter of substantial compliance for the project.

In addition, I authorize the staff of the City of Cape Coral to enter upon the property for purposes of investigating and evaluating the request made through this application.

**Please note: Advertising fees must be paid in full at least 10 days prior to public hearing or the item may be pulled from the agenda and continued to a future date once the fees have been paid.**

(Name of Entity)

\* Haig Charles Tapalian | Manager

By: NAME AND TITLE (PLEASE TYPE OR PRINT)

Haig Charles Tapalian  
SIGNATURE

STATE OF RI, COUNTY OF PROVIDENCE (SIGNATURE MUST BE NOTARIZED)

Sworn to (or affirmed) and subscribed before me this 16<sup>th</sup> day of July, 2018, by Haig Charles Tapalian who is personally known or produced DRIVERS LICENSE as identification.

NOTARY STAMP HERE

Exp. Date: \_\_\_\_\_

STEVEN A MEDEIROS  
Notary Public-State of Rhode Island  
Commission Number: \_\_\_\_\_  
August 07, 2018

Signature of Notary Public: \_\_\_\_\_

Printed name of Notary Public: Steven Medeiros

**\*Please include additional pages for multiple property owners.**

**Authorization to Represent Property Owner(s) –  
Property Owner is a Corporation, Limited Liability Company (LLC),  
Limited Company (LC), Partnership, Limited Partnership, or Trustee**

Please be advised that Ensight, Inc. (Brian R. Smith)  
(Name of Authorized Representative(s) and business entity, if any)

is authorized to submit an application and represent me in the hearing(s) to the Planning & Zoning Commission/Local Planning Agency, Board of Zoning Adjustments and Appeals and /or City Council for a Planned Development Project.

Unit N/A Block N/A Lot N/A Subdivision N/A

Or Legal Description: ☒ (described as an exhibit A in Microsoft Word format and attached hereto)

\* See attached letter of authorization

\*\* Name of Entity (Corporation, Partnership, LLC, etc)

Haig Charles Tapalian  
Signature

Manager

Title of Signatory

Haig Charles Tapalian

Name (Please print or type)

STATE OF

RI

COUNTY OF

(SIGNATURE MUST BE NOTARIZED)

Providence

Sworn to (or affirmed) and subscribed before me this 16<sup>th</sup> day of July, 2018, by  
Haig Charles Tapalian who is personally known or produced Driving License  
as identification.



Exp. Date: \_\_\_\_\_

NOTARY STAMP HERE

Signature of Notary Public: \_\_\_\_\_

Printed name of Notary Public: \_\_\_\_\_

Steven Medeiros  
Steven Medeiros

\*Please include additional pages for multiple property owners.

**\*\*Notes:**

If the applicant is a corporation, then it is executed by the corp. pres. or v. pres, sec, tres, or a director, .

If the applicant is a Limited Liability Company (L.L.C.) or Limited Company (L.C.), then the documents should be signed by the Company's "Managing Member."

If the applicant is a partnership, then a partner can sign on behalf of the partnership.

If the applicant is a limited partnership, then the general partner must sign and be identified as the "general partner" of the named partnership.

If the applicant is a trust, then they must include their title of "trustee."

In each instance, first determine the applicant's status, e.g., individual, corporate, trust, partnership, estate, etc., and then use the appropriate format for that ownership.



## PDP Applicant Checklist

Project Name: \_\_\_\_\_

**Applicant must submit the completed application and the associated documentation listed below, collated into 17 separate packets (one (1) original and 16 copies). These are minimum requirements for all PDP applications. Based on the nature of your project, additional items may be required by staff.**

### **Incomplete submittals will not be accepted**

- \_\_\_\_\_ All application pages must be initialed by the property owner or their authorized representative
- \_\_\_\_\_ 24" x 36" engineered PDP Development Plans, including landscape buffer areas and building elevations – See pages 7 – 10 for further information
- \_\_\_\_\_ Certified Boundary Surveys, in NGVD 1929, completed within the last six (6) months showing elevations – See page 7 for further information
- \_\_\_\_\_ PDP application fees paid in full at time of application – See page 11 for further information
- \_\_\_\_\_ Letter of Intent (LOI) – See page 6 for further instructions
- \_\_\_\_\_ Environmental Survey/Report – See page 7 for further instructions
- \_\_\_\_\_ Warranty or Quit Claim Deed – Applicant shall provide a copy of Warranty or Quit Claim Deed for one hundred (100) percent of the property comprising the Planned Development Project.
- \_\_\_\_\_ Vacation of Plat requests must include letter of "No Objection" from the electric company, the telephone company, and the cable company – See page 9 for further instructions
- \_\_\_\_\_ Page 1 must be signed and notarized by either all property owner(s) or the authorized agent
- \_\_\_\_\_ The "*Authorization to Represent Property Owners*", page of the application, must be signed by all property owner(s) and notarized
- \_\_\_\_\_ Properties owned by corporations, limited liability companies, limited partnerships, general partnerships, and trustees must provide legal documentation (For example, the Articles of Incorporation) listing persons authorized to sign for the entity and in these situations the property owner(s) must sign all applicable PDP forms in their corporate capacity.

### **As an alternative to submitting everything in paper format, the applicant may opt to submit the following:**

- \_\_\_\_\_ 11 sets of plans, in paper format, as described above
- \_\_\_\_\_ 11 signed and sealed Boundary Surveys, in paper format, as described above
- \_\_\_\_\_ One (1) copy of the application & all other documents you are submitting for review
- \_\_\_\_\_ 1 CD/DVD with PDFs of documents you are submitting:
  - Each document you are submitting needs to be a separate PDF, appropriately identified by name. For example, the application will be one PDF, titled "Application", the Letter of Intent will be another PDF, titled "Letter of Intent", plans, boundary surveys, etc.

## GENERAL INFORMATION

Project Name: \_\_\_\_\_

**Applicant:** \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

**\*Property Owner:** \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-Mail \_\_\_\_\_

**Authorized Representative** \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-Mail \_\_\_\_\_

### Location

Unit \_\_\_\_\_ Block \_\_\_\_\_ Lot(S) \_\_\_\_\_

Subdivision \_\_\_\_\_ Strap Number(s) \_\_\_\_\_

Legal Description ☐ (Described as Exhibit A in Microsoft Word Format and attached hereto)

Property Address: \_\_\_\_\_

Plat Book \_\_\_\_\_ Page \_\_\_\_\_ Current Zoning \_\_\_\_\_ Future Land Use \_\_\_\_\_

### This application includes the following requests: (Please check all that apply)

<input type="checkbox"/> Subdivision	<input type="checkbox"/> Special Exception	<input type="checkbox"/> Rezoning	<input type="checkbox"/> Variance
<input type="checkbox"/> Deviation to Landscaping	<input type="checkbox"/> Deviation to Non-residential Design Standards	<input type="checkbox"/> Deviation to Engineering Design Standards (EDS)	<input type="checkbox"/> All Other Deviation Requests
<input type="checkbox"/> Borrow Pit	<input type="checkbox"/> Vacation of Plat		

**\*Please include additional pages for multiple property owners.**

EXHIBIT A

DESCRIPTION:

A PLOT OR PARCEL LYING IN A PORTION OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 29, TOWNSHIP 44 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST QUARTER CORNER, WEST LINE OF SECTION 29, TOWNSHIP 44 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA; THENCE RUN S.89°51'53"E. ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER (SW 1/4) OF THE AFORESAID SECTION 29 TO A POINT ALONG THE EASTERLY RIGHT OF WAY LINE OF VETERANS PARKWAY AS RECORDED IN OFFICIAL RECORDS BOOK 2910, PAGE 2471 PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR 566.85 FEET; THENCE RUN S.89°51'53"E. FOR 2192.43 FEET; THENCE RUN S.00°12'27"W. TO A POINT ALONG THE ARC OF A CURVE AND THE AFORESAID RIGHT OF WAY LINE OF VETERANS PARKWAY FOR 2702.64 FEET; THENCE RUN ALONG THE ARC OF A CURVE CONCAVE TO THE NORTHEAST FOR 1871.14 FEET, SAID CURVE HAVING THE FOLLOWING ELEMENTS, A RADIUS OF 1565.02 FEET, A CENTRAL DELTA ANGLE OF 68°30'11" A CHORD THAT BEARS N.49°41'42"W. AND A CHORD DISTANCE OF 1761.67 FEET TO A POINT OF TANGENCY; THENCE RUN N.15°26'36"W. TO A POINT OF CURVATURE FOR 480.72 FEET; THENCE RUN ALONG THE ARC OF A CURVE TO THE LEFT, CONCAVE TO THE SOUTHWEST FOR 1001.86 FEET, SAID CURVE HAVING THE FOLLOWING ELEMENTS, A RADIUS OF 2067.90 FEET, A CENTRAL DELTA ANGLE OF 27°45'32", A CHORD THAT BEARS N.29°19'22"W. AND A CHORD DISTANCE OF 992.09 FEET TO A POINT OF TANGENCY; THENCE RUN N.43°12'08"W. FOR 329.10 FEET TO THE POINT OF BEGINNING.

CONTAINING: 3,689,459.55 SQ FEET OR 84.7 ACRES, MORE OR LESS.

## PROPERTY and PROJECT DEVELOPMENT DATA

- |    |  |               |         |                 |
|----|--|---------------|---------|-----------------|
| a. | Zoning District                        | _____         |         |                 |
| b. | Future Land Use Class                  | _____         |         |                 |
| c. | Area of Subject Property               | _____         | acres   |                 |
| d. | Type of Development                    | _____         |         |                 |
| e. | Estimated Number of Employees          | _____         |         |                 |
|    | Number of Seats in Assembly            | _____         |         |                 |
| f. | Parking Spaces Required                | _____         |         |                 |
| g. | Parking Spaces Provided                | _____         |         |                 |
| h. | Parking and Street Area                | _____         | sq. ft. | _____ % of Site |
| i. | Ground Floor Building Area             | _____         | sq. ft. | _____ % of Site |
| j. | Total Floor Area                       | _____         | sq. ft. | _____ % of Site |
| k. | Building Heights                       | _____         | feet    | _____ stories   |
| l. | Total Proposed Impervious Surface Area | sq. ft. _____ |         | % of Site _____ |
| m. | Permanent Open Space                   | sq. ft. _____ |         | % of Site _____ |
|    | Landscaped Area                        | _____         | sq. ft. | % of Site _____ |
| n. | Recreation Area                        | _____         | sq. ft. | % of Site _____ |

**If the proposed project is a multifamily residential development, the following additional data shall be shown on the plans.**

- |    |   |       |                  |               |
|----|---|-------|------------------|---------------|
| o. | Number of Dwelling Units (du)                       | _____ |                  |               |
| p. | Gross Density (du/acres)                            | _____ |                  |               |
| q. | Number, Type, and Floor Area of each Dwelling Unit: |       |                  |               |
| 1. | Efficiency  | _____ | Floor Area _____ | sq. ft. _____ |
| 2. | 1 Bedroom   | _____ | Floor Area _____ | sq. ft. _____ |
| 3. | 2 Bedroom   | _____ | Floor Area _____ | sq. ft. _____ |
| 4. | 3 Bedroom   | _____ | Floor Area _____ | sq. ft. _____ |
| 5. | 4 Bedroom   | _____ | Floor Area _____ | sq. ft. _____ |

## **LETTER OF INTENT**

Please include a Letter of intent (LOI), stipulating your request, addressed to the Community Development Director. This letter must specify all applicable requests. Such requests may include any and/or all of the following:

- a. General purpose and intent of the PDP
- b. Subdivision requests – See Article 4.1 and 4.2.5
- c. Rezoning requests specifying the actual request and explanation of need for the rezoning
- d. Special exception requests and explanation of need for the special exception
- e. Variance requests specifying the actual request and explanation of need. All variance requests must address the five (5) criteria for the granting the a variance, per Land Use and Development Regulations, section 8.10. Note: Variances run with the land.
- f. Vacation of Plat as outlined in section 8.11 and explanation of vacation request
- g. Borrow pit requests as outlined in section 3.23, 4.2.5, and 8.3.2

## **DEVIATION REQUEST LETTER(S)**

Applicant must complete a separate deviation request letter for each deviation type requested. Please ensure that proper justification for the requested deviation accompanies each request. Staff will not analyze any requested deviation that does not include justification for the deviation sought and this may result in a rejection of your application. Refer to the appropriate section of the LUDRs for guidance on the criteria for which a particular deviation may be sought. Note: Deviations do not run with the land.

- Landscaping Deviations shall be in accordance with Section 5.2.19
- Non-residential Design Standards Deviations shall be in accordance with Section 5.6.10 Deviation,
- Engineering Design Standards (EDS) Deviations in accordance with sheet 1, “Foreword” paragraph 5,
- All Other Deviation Requests, shall be in accordance with Section 4.2.4.K

## **TRAFFIC GENERATION ESTIMATE**

The following will determine the need of a Traffic Impact Statement. Trip Generation Estimate, based on the most current edition of the Institute of Transportation Engineers (ITE) Trip Generation manual:

ITE Code \_\_\_\_\_ Is estimate based on locally collected data? \_\_\_\_\_

Regression equation (if used)

Independent Variable

Daily Two Way Trip Estimate

Peak Hour (of generator) Entering

Peak Hour (of generator) Exiting

Total Peak Hour (of generator)

Peak Hour Entering and Exiting trips greater than 300 trips

_____
_____
_____
_____
_____
_____
_____

If the total peak hour traffic exceeds 300 trips, a Traffic Impact Statement (TIS) will be required. A methodology meeting with the City staff is required prior to submitting the TIS. The methodology meeting will be scheduled after the initial submittal of the PDP application.



**TABLE 1**  
**TRIP GENERATION COMPUTATIONS**  
Cape 84 Acres

Land Use

<u>Code</u>	<u>Land Use Description</u>	<u>Build Schedule</u>
<b>220</b>	<b>Multi-Family (Low Rise)</b>	± 384 Units

Land Use

<u>Code</u>	<u>Trip Period</u>	<u>Trip Generation Equation</u>	<u>Total Trips</u>	<u>Trips Enter/Exit</u>
<b>LUC 220</b>	Daily Traffic (ADT) =	$T = 7.56(384) - 40.86 =$	<b>2,862 ADT</b>	
	AM Peak Hour (vph) =	$\ln(T) = 0.95\ln(384) - 0.51 =$ 23% Enter/ 77% Exit =	<b>171 vph</b>	40 / 132 vph
	PM Peak Hour (vph) =	$\ln(T) = 0.89\ln(384) - 0.02 =$ 63% Enter/ 37% Exit =	<b>196 vph</b>	124 / 73 vph

## GRAPHIC STANDARDS: GENERAL INFORMATION

Sheet # of  
submitted  
plans:

The Development Plan shall be of sufficient scale to show all detail. The scale of the Plan shall be illustrated by a graphic scale on every sheet. The date and true north arrow shall be shown on every sheet. The following general information is required:

- \_\_\_\_\_ 1. Names and addresses of the owners, planner, architect, landscape architect Engineer and surveyor.
- \_\_\_\_\_ 2. A General Location and Vicinity Map (plat sheet). Please indicate the relationship of the proposed project site to surrounding existing land uses, zonings, future land uses, community facilities, major streets, utilities and any other principal buildings or physical features in and adjoining the subject property. These features shall be indicated for a distance of three hundred (300) feet from the outside boundaries of the subject property. Indicate all names and locations of adjoining subdivisions, development projects, unplatted properties, and streets within unincorporated Lee County.
- \_\_\_\_\_ 3. Certified Boundary Survey, completed within the last 6 months, meeting the Minimum Technical Standards as set forth in Chapter 5J-17, Florida Administrative Code.

## EXISTING PROPERTY CONDITIONS

Sheet # of  
submitted  
plans:

- \_\_\_\_\_ 1. Acreage of land within property.
- \_\_\_\_\_ 2. Boundary lines of the project and their bearings and distances.
- \_\_\_\_\_ 3. Existing and proposed easements and their locations, widths and distance, as well as existing structures.
- \_\_\_\_\_ 4. Streets and waterways on and adjacent to the project, their names, widths and other dimensions as may be required.
- \_\_\_\_\_ 5. The location of all existing utilities connections available to the property site.
- \_\_\_\_\_ 6. Tree Survey: The location, quantity, diameter/caliper, botanical and common name, and native status of all heritage trees and other existing trees with a caliper of two inches or greater, and whether they are proposed to be preserved or removed. Trees to be removed, if any, shall be indicated on a separate sheet. Reference 5.2.6 of the City's Land Development Regulations. The City is a designated "Tree City" and tree retention is encouraged.
- \_\_\_\_\_ 7. Environmental Site Survey - see the City's guidelines for conducting an environmental survey
- \_\_\_\_\_ 8. Flood elevation data and flood zone boundary lines delineated, if applicable.
- \_\_\_\_\_ 9. Any other significant existing features, as may be required by the Director.

## DEVELOPMENT PLANS

**Sheet # of  
submitted  
plans:**

The Development Plan should be viewed as a conceptual plan and not construction drawings or a site plan. A high level detailed site plan with information not needed will be rejected at submittal. The Development Plan shall show the following information, as applicable to the type of project being proposed, including the proposed dimensions, size, location and arrangement of the following.

- \_\_\_\_\_ 1. Name of project, north arrow, date and scale.
- \_\_\_\_\_ 2. Elevations, (drawing of front, sides, and rear faces of buildings), and use of all proposed buildings and structures.
- \_\_\_\_\_ 3. Internal and peripheral landscaping locations showing landscape area sizes and overall dimensions of the various planting areas, providing calculations per Article 5.2.
- \_\_\_\_\_ 4. Approximate location of curb cuts, driveways, access roads, alleys, and parking areas indicating the number of spaces and all dimensions.
- \_\_\_\_\_ 5. Location of existing and proposed pedestrian walks, malls, yards, and open areas.
- \_\_\_\_\_ 6. Location, number, dimensions, character and orientation of all existing and proposed signs.
- \_\_\_\_\_ 7. Location and heights of all proposed buffers, fences, screens, and walls.
- \_\_\_\_\_ 8. Location of all existing and proposed buildings and structures with setback distances from the property lines and roadways.
- \_\_\_\_\_ 9. Location of all known existing and proposed water, sewer and irrigation mains including the point of connection to the existing system and buildings, if applicable, including:
  - a) Estimate of the average daily flow for potable water.
  - b) Estimate of the average daily flow of wastewater
  - c) Estimate of the average daily flow for irrigation water.
- \_\_\_\_\_ 10. Location of all known existing and proposed easements and /or right of way.
- \_\_\_\_\_ 11. Location of proposed outdoor lighting, showing direction, height and type.
- \_\_\_\_\_ 12. An exhibit providing the peak hour trip distribution at the project entrance and adjacent local streets out to a collector.
- \_\_\_\_\_ 13. Location and character of all outside waste disposal facilities and existing or proposed appropriate screening.
- \_\_\_\_\_ 14. Phasing Plan: Where a project will be developed in phases, a Phasing Plan shall be presented for review of the entire project. Proposed development phases shall be numbered in sequence, and shall indicate the density for residential and/or floor area for non-residential uses, as applicable, for each phase. The phasing plan shall identify size, location, sequence and timing of the various phases of the development.

## ADDITIONAL INFORMATION

Sheet # of  
submitted  
plans:

- \_\_\_\_\_ 1. **Landscape Maintenance:**  
The proposed method of assuring the provision and permanent maintenance of areas required for landscaping, screening, and common uses, including a proposed statement of such assurance. The coordinated development of the site shall be compatible with the surrounding area.
- \_\_\_\_\_ 2. **Maintenance Assurance:**  
The proposed method of assuring the perpetual ownership and maintenance of areas within the project that area to be used for open space, recreation or other quasi-public purposes, including a detailed statement of such assurance, including covenants, agreements or other specific documents as required.
- \_\_\_\_\_ 3. **If seeking Subdivision approval; Covenants:**  
Copies of proposed restriction or protective covenants, if any.
- \_\_\_\_\_ 4. **Economics:**  
The Commission or City Council, as applicable, may also require that the applicant provide additional supporting data, such as economic justification, financing, and construction scheduling, topographic data or similar information when deemed necessary for project review.
- \_\_\_\_\_ 5. **Vacation of Plat**  
In the case of vacation of plats submitted in conjunction with a PDP, the following additional information shall be required:
- a. Affidavits of city and county tax collectors stating that all city and county taxes levied against land covered by the portion of the plat of which vacation is sought have been paid;
  - b. Sketches and descriptions; and
  - c. Letter of no objection from the following utilities:
    - i. Lee County Electric Cooperative, Inc (LCEC)
    - ii. Century Link Telephone Company
    - iii. Comcast Cable Company

## SUBDIVISION, PER FLORIDA STATUTES, CHAPTER 177 – IF APPLICABLE

Sheet # of  
submitted  
plans

The Subdivision Plan shall show the following information, as applicable to the type of project being proposed, including the proposed dimensions, size, location and arrangement of the following with accurate dimensions to the nearest one-hundredth of a foot. If flexibility is requested for property lines prior to Plat recording, this request must be requested in the Letter of Intent (LOI).

- \_\_\_\_\_ 1. Contours at an interval of not greater than one foot.
- \_\_\_\_\_ 2. Access roads and their relationship to existing and proposed streets, alleys and other public ways.
- \_\_\_\_\_ 3. Setback lines, permanent open space, recreation areas, separation strips, existing and proposed landscape areas and general land use activity areas.
- \_\_\_\_\_ 4. Location of areas and their acreages, if any, to be reserved or dedicated for public parks, playgrounds, schools, or other public uses, including bikeways or walks.
- \_\_\_\_\_ 5. Proposed lot numbers, lot lines, lot dimensions, lot areas, lot descriptions, lot locations, minimum yard requirements, and any other appropriate data and information for areas or parcels within the project property lines which have been designated for subdivision for any purpose or use.
- \_\_\_\_\_ 6. Utility locations on and adjacent to the project showing proposed dimensions and connections to existing utility systems.
- \_\_\_\_\_ 7. All dimensions, angles, bearings and similar data on the plan shall be tied to primary control points approved by the City Engineer. The location and description of said control points shall be given.
- \_\_\_\_\_ 8. Approximate location of proposed and existing surface water management system components including treatment, storage, conveyance, and discharge locations.
- \_\_\_\_\_ 9. Project boundary lines, right-of-way lines of streets, waterways, easements and other rights-of-way. Bearings or deflection angles, radii, arcs and central angles of all curves with dimensions to the nearest minute shall be provided for the center line of all streets and easements. Block corner radii dimensions shall also be shown.
- \_\_\_\_\_ 10. Name of each street, waterway, easement or other right-of-way and the designation of all buildings, parking areas, access roads, permanent open spaces, recreation areas, separation strips, landscaped areas, dedication or reserved areas, and other land use activity areas by name, use, purpose or other appropriate method as well as by width, length, land area or floor area devoted to such use or purpose.
- \_\_\_\_\_ 11. Certification of title and dedication, on plat, showing that the applicant is the owner and a statement by such owner dedicating streets, rights-of-way and any other sites for public use, if any.
- \_\_\_\_\_ 12. Certification by the City Engineer, on plat, that a surety bond, certified check or other guarantee has been posted with the City in sufficient amount to assure completion of all such required site improvements.
- \_\_\_\_\_ 13. Certificate of approval for recording, on plat, suitable to be signed by the Mayor as applicable, to indicate that the plan has been approved for recording.
- \_\_\_\_\_ 14. Any other appropriate certification required by the Governing Body or Necessary to comply with Florida Statutes, Chapter 177.

## Planned Development Project (PDP) Application Fees \*

	<b>Administrative Review</b>	Fees	Your Costs
<input type="checkbox"/>	PDP - without Subdivision	\$2,525.00	\$
<input type="checkbox"/>	** Additional charge for PDP's in excess of ten (10) acres: _____ acres x \$55.00 for each acre or portion thereof in excess of 10 acres.	(with maximum cap of <b>\$3,625.00</b> for additional acres)	\$
<input type="checkbox"/>	PDP - with Subdivision	\$2,815.00	\$
<input type="checkbox"/>	** Additional charge for PDP's in excess of ten (10) acres: _____ acres x \$55.00 for each acre or portion thereof in excess of 10 acres.	(with maximum cap of <b>\$3,915.00</b> for additional acres)	\$
	<b>Fire Review</b>		
<input type="checkbox"/>	Fire review (mandatory)	\$104.00	\$
<b>Public Hearing</b>			
<input type="checkbox"/>	PDP - without Subdivision	\$665.00	\$
<input type="checkbox"/>	PDP - with Subdivision	\$1,415.00	\$
<input type="checkbox"/>	Zoning Amendment within PDP	\$1,165.00	\$
<input type="checkbox"/>	Vacation of Plat within PDP	\$880.00	\$
<input type="checkbox"/>	Variance/Deviation within PDP	\$1,250.00	\$
<input type="checkbox"/>	Special Exception within PDP	\$1,365.00	\$
<input type="checkbox"/>	Borrow Pit within PDP	\$1,725.00	\$
		Total	\$

\* Advertising fees will be due at time of advertising.

\*\* PDP – Acres x \$55.00 for each acre or portion thereof in excess of 10 acres (i.e. A 20.2 acre of land is calculated as follows.  
20.2 – 10.00 = 10.2, then the 10.2 acres is rounded up to 11 acres)

November 1, 2018

**LETTER OF DEVIATION REQUESTS  
CAPE 84 ACRES  
PLANNED DEVELOPMENT PROJECT**



**Deviation #1 - LDR Section # 3.1.2.A.3.b(6)**

The applicant is requesting a deviation from LDR Section 3.1.2.A.3.b(6) where no sun shelter shall extend beyond the limits of any dock or seawall. This deviation will allow a sun shelter / gazebo to be placed directly over a body of water.

**Justification and impact:**

Due to the nature of the project and the opportunities to utilize the existing lake features on the site, it is the applicant's intentions to construct picnic type sun shelters/gazebo's with the lake area for the use of the residences of the project. These structures will be accessible via kayak's, canoe's or other similar non-motorized boat types. This request meets the intent of LDR Section 4.2.5. to provide usable common open space to compensate for decreases in typical yard requirements and the provision of public spaces.

**Deviation #2 - LDR Section #3.16.4 & 5**

The applicant is requesting a deviation from LDR Section 3.16.4 & 5 requiring mandatory sea walls with property having direct and immediate access on any body of water the entire frontage exposed to contact with the water. This deviation is requesting that slopes are allowable along the lake edge meeting the requirements of the South Florida Water Management District.

**Justification and impact:**

As explained within the letter of intent of the project, the site is utilizing creative building techniques and proposes residential units to be cantilevered over the existing water bodies. In some instances, the units will be completely located over the water with connections to land via boardwalks. It is the applicant's intent to utilize both natural lake slopes and bulkheads/seawalls on the project accordingly. This request meets the intent of LDR Section 4.2.5 as it provides for the location of dwellings in a manner that maximizes open space upland areas for the enjoyment of the community.

**Deviation #3 - LDR Section #5.2.13.A**

The applicant is requesting a deviation from LDR Section 5.2.13.1 where all sites shall have at least one canopy tree for each 1,000 s.f. of gross land area. This deviation is to allow for a reduction of this requirement to allow for one canopy tree for 1,500 s.f. of development area.

**Justification and impact:**

Out of the 84 acres on the site, 56 acres are existing water bodies. The site is required to have 3,690 trees on the site. Based on the proposed development plan and existing features remaining there is not enough land area on the site to accommodate that many trees. It would not benefit the project and would not benefit the health of any tree planted. This request meets the intent of this Code section as well as LDR Section 4.2.K by providing integration of natural resources in a sustainable manner. The reduced planting will ensure adequate light, air and space for the continued health of the planted trees. It will provide site and community beautification in a manner that will support the overall purpose of the landscaping Code.

**Deviation #4 - LDR Section #5.2.13.C.1**

The applicant is requesting a deviation from LDR Section 5.2.13.C.1 where foundation landscaping is required for new buildings to allow for plantings along the shoreline adjacent to the boardwalks, sidewalks and parking areas for those units proposed over water.

**Justification and impact:**

There is no planting area at the front of the units that are located over the water. Based on the cross section provided on Sheet C-03, plantings along the shoreline, boardwalks, sidewalks and parking areas will

compensate for foundation plantings on these units. This request meets the intent of LDR Section 4.2.K in that it provides for the open space enjoyment of the community.

Deviation #5 - LDR Section #5.2.13.C.5

The applicant is requesting a deviation from LDR Section 5.2.13.C.5 where a Type 'A' buffer is required between a multi-family zoning and single-family zoning. The deviation would eliminate the Type 'A' buffer along the eastern property line where the existing lake (shared between Sandoval) occurs. This buffer is 1,311 linear feet and only 427 feet can be planted.

Justification and impact:

Due to the location of the existing water bodies along the eastern property line, there is not any physical land available to plant the required buffer. The buffer length is 1,311 linear feet and only 427 feet can be planted. The attached landscape plan depicts the buffer location. This request meet the intent of LDR Section 4.2.K through the preservation of the lake as open space and beautification.

If you should have any comments or concerns, please do not hesitate to contact us at (239) 226-0024 or [brians@en-site.com](mailto:brians@en-site.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'BRS', with a horizontal line extending from the end.

Brian R. Smith  
Project Manager

CC: Mr. Charles Tapalian



# PLAT PROPERTY INFORMATION REPORT

**Showing Information Required by F.S. 177.041 Prior to Platting Lands**

**Issuer: Attorneys' Title Fund Services, LLC and Roetzel & Andress, L.P.A.**

**Recipient: MSI Holdings, LLC, a Rhode Island limited liability company, and City of Cape Coral, Florida**

**Fund File Number: 653477**

**Provided For: Roetzel & Andress, L.P.A.**

**Agent's File Reference: 133742.0026**

**Effective Date of Search: October 3, 2018 at 11:00 PM**

**Description of Real Property Situated in Lee County, Florida:**

**Legal Description**

The Southwest Quarter (SW 1/4) of Section 29, Township 44 South, Range 23 East, lying Easterly of Veterans Parkway, Lee County, Florida.

LESS AND EXCEPT that portion thereof as conveyed to the City of Cape Coral by Warranty Deed recorded in Official Record Book 2910, Page 2470, of the Public Records of Lee County, Florida.

**Record Title Vested in:**

MSI Holdings, LLC, a Rhode Island limited liability company, by Warranty Deed and Quit Claim Deeds recorded in Instrument Number 2017000170397, Instrument Number 2017000170398, Instrument Number 2017000170399 and Instrument Number 2017000171543, Public Records of Lee County, Florida.

**Prepared Date: October 31, 2018**

**Prepared by: Teresa McConnell, Senior Examiner**

**Phone Number: (800) 526-3855 x6807**

**Email Address: TMcConnell@TheFund.com**

**Attorneys' Title Fund Services, LLC**

  
\_\_\_\_\_  
Cyndi Bolyard, Branch Manager

# **PLAT PROPERTY INFORMATION REPORT**

**Fund File Number: 653477**

***The following mortgages are all the mortgages of record that have not been satisfied or released of record nor otherwise terminated by law:***

1. Nothing Found

***Other encumbrances affecting the title:***

1. Any lien provided by County Ordinance or by Chapter 159, F.S., in favor of any city, town, village or port authority, for unpaid service charges for services by any water systems, sewer systems or gas systems serving the land described herein; and any lien for waste fees in favor of any county or municipality.
2. Riparian and littoral rights are not insured.
3. Any portion of the Land lying waterward of the ordinary high water mark of lakes, and lands accreted thereto.
4. Rights of the lessees under unrecorded leases.
5. Ordinance 16-85 recorded in O.R. Book 1779, Page 1603, Public Records of Lee County, Florida.
6. Easement contained in instrument recorded June 15, 1988, under O.R. Book 1996, Page 2336, Public Records of Lee County, Florida.
7. Lee County Ordinance No. 86-14 recorded November 30, 1990, in O.R. Book 2189, Page 3281 and amended by Ordinance No. 86-38 in O.R. Book 2189, Page 3334, Public Records of Lee County, Florida.
8. Special Deed of Conservation Easement recorded in O.R. Book 3416, Page 4514, as corrected in O.R. Book 3681, Page 4579, Public Records of Lee County, Florida.
9. Easement contained in instrument recorded July 2, 2002, under O.R. Book 3678, Page 3047 and O.R. Book 3678, Page 3052, Public Records of Lee County, Florida.
10. FOR INFORMATIONAL PURPOSES ONLY, it is not clear that real property taxes for the year 2017, pursuant to tax sale certificate no. 18-030840 have been redeemed by, or paid on behalf of, the taxpayer.

***This search is provided pursuant to the requirements of section 177.041, F.S. for the uses and purposes specifically stated therein and is not to be used as the basis for issuance of an insurance commitment and/or policy.***

***The information contained herein is furnished for information only.***

***This report is not title insurance. Pursuant to s. 627.7843, Florida Statutes, the maximum liability of the issuer of this property information report for errors or omissions in this property information report is limited to the amount paid for this property information report, and is further limited to the person(s) expressly identified by name in the property information report as the recipient(s) of the property information report.***

Prepared by:

Pete Doragh  
12734 Kenwood Lane, Suite 15  
Fort Myers, Florida 33907

When recorded return to:

Pete Doragh  
12734 Kenwood Lane, Suite 15  
Fort Myers, Florida 33907

(Space above this line reserved for recording office use only)

### **WARRANTY DEED**

#### **1. IDENTIFICATION OF GRANTOR**

Grantor's name and address is: Matthew T. Muller, individually and as Successor  
Trustee of the G&M Trust, under a Land Trust  
Agreement dated January 20, 2009.  
5782 Beechwood Trail  
Fort Myers, Florida 33919

The word "I" or "me" as hereafter used means the Grantor.

#### **2. IDENTIFICATION OF GRANTEE**

Grantee's name and address is: MSI Holdings, LLC, a Rhode Island limited liability  
company  
100 North Main Street  
Providence, Rhode Island 02903

The word "you" as hereafter used means the Grantee.

#### **3. MEANINGS OF TERMS**

The terms "I," "me," "you," "grantor," and "grantee," shall be non-gender specific ((i) masculine, (ii) feminine, or (iii) neuter, such as corporations, partnerships or trusts), singular or plural, as the context permits or requires, and include heirs, personal representatives, successors or assigns where applicable and permitted.

#### **4. DESCRIPTION OF REAL PROPERTY CONVEYED**

Attached Exhibit A

The Property Appraiser's Parcel Identification Number is 29-44-23-C4-00002.0010 and  
29-44-23-C4-00002.0000.

**5. CONSIDERATION**

Good and valuable consideration plus the sum of Ten Dollars (\$10.00) received by me from you.

**6. CONVEYANCE OF REAL PROPERTY**

For the consideration described in Paragraph 5, I have granted, bargained and sold to you the Real Property to have and to hold in fee simple (estate in property unlimited as to duration, disposition and descendability) forever.

**7. WARRANTY**

I fully warrant the title to the Real Property and will defend the same against the lawful claims of all persons whomsoever.

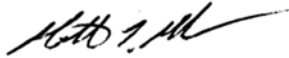
**8. Homestead,**

The Real Property is not now nor has ever been my homestead or the homestead of any member of my family.

**9. EXCEPTIONS**

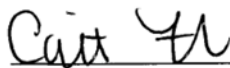
This conveyance is subject to all matters of record and taxes for year 2016 and subsequent years.

Executed on August 3<sup>rd</sup>, 2017.



Matthew T. Muller, individually and  
Successor Trustee of the G&M Trust,  
under a Land Trust Agreement  
dated January 20, 2009

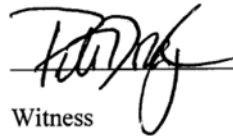
Signed in the presence of:



Witness

8/3/17  
(Date)

Signed in the presence of:



Witness

8/3/17  
(Date)

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of August, 2017, by Matthew T. Muller, Successor Trustee of the G&M Trust, under a Land Trust Agreement dated January 20, 2009, and individually who is personally known to me or has produced \_\_\_\_\_ as identification.

Caitlyn

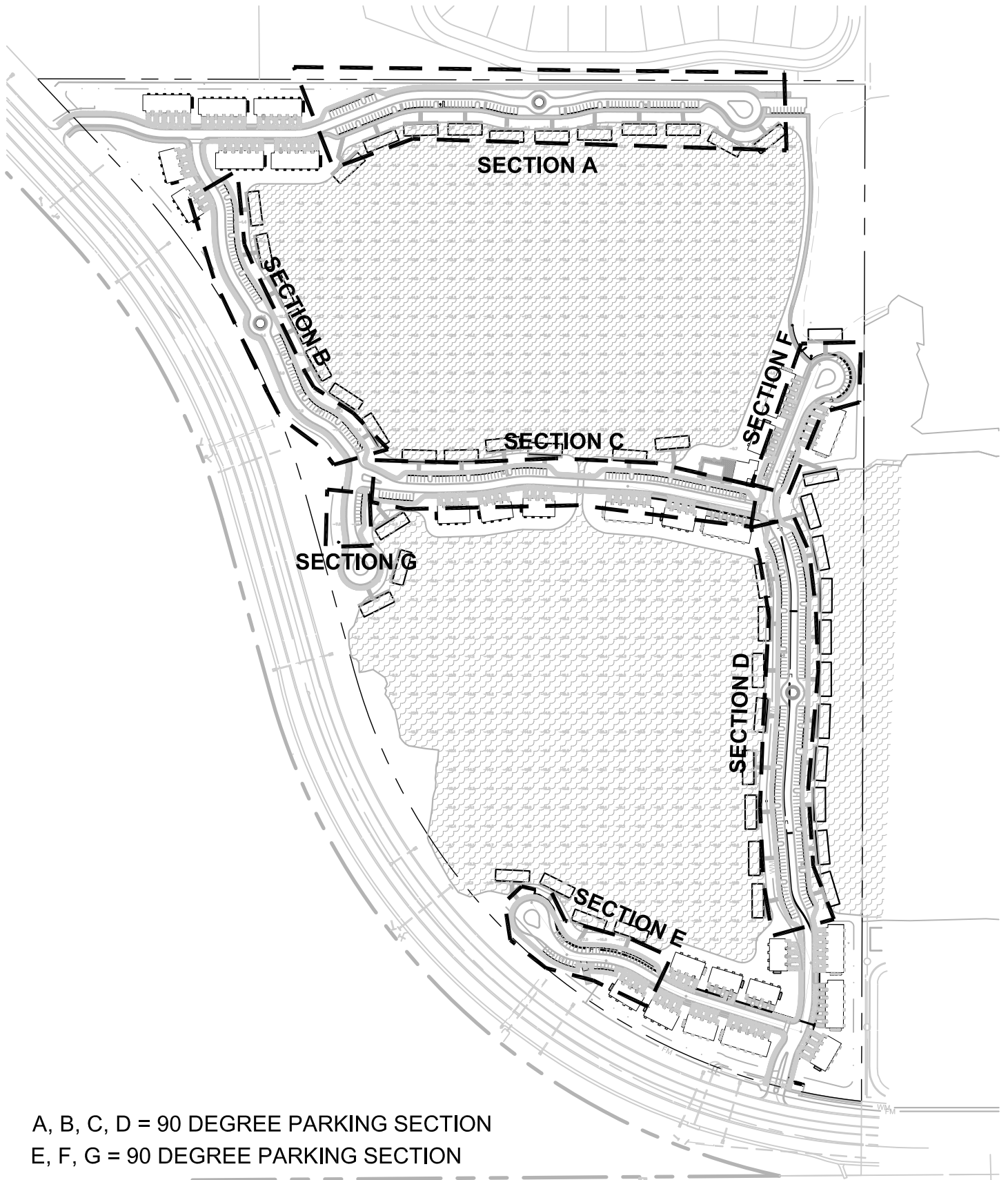
Notary Public - State of Florida



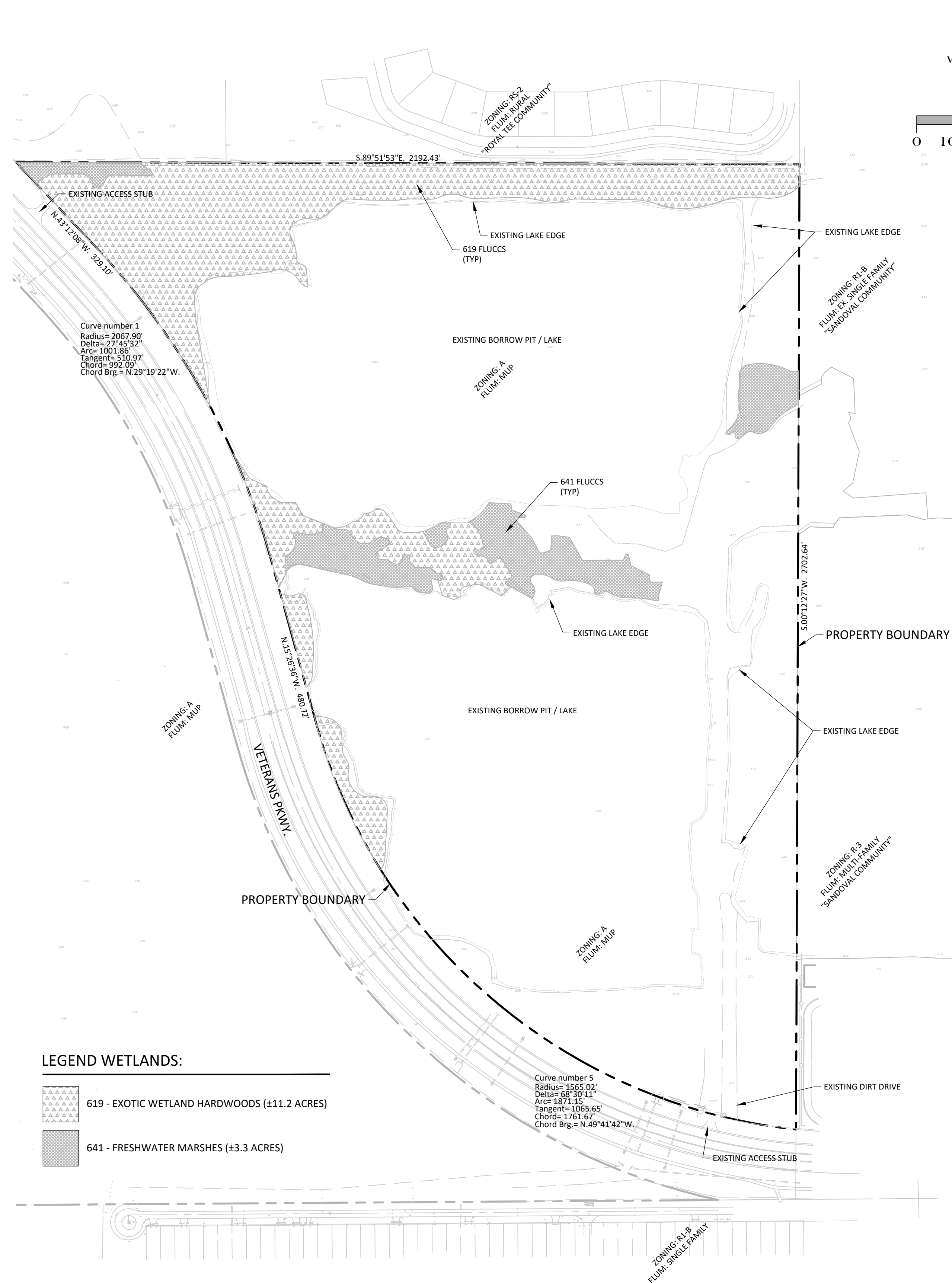
**Exhibit A**  
**Legal Description**

**The Southwest Quarter (SW 1/4) of Section 29, Township 44 South, Range 23 East, Lee County, Florida.**

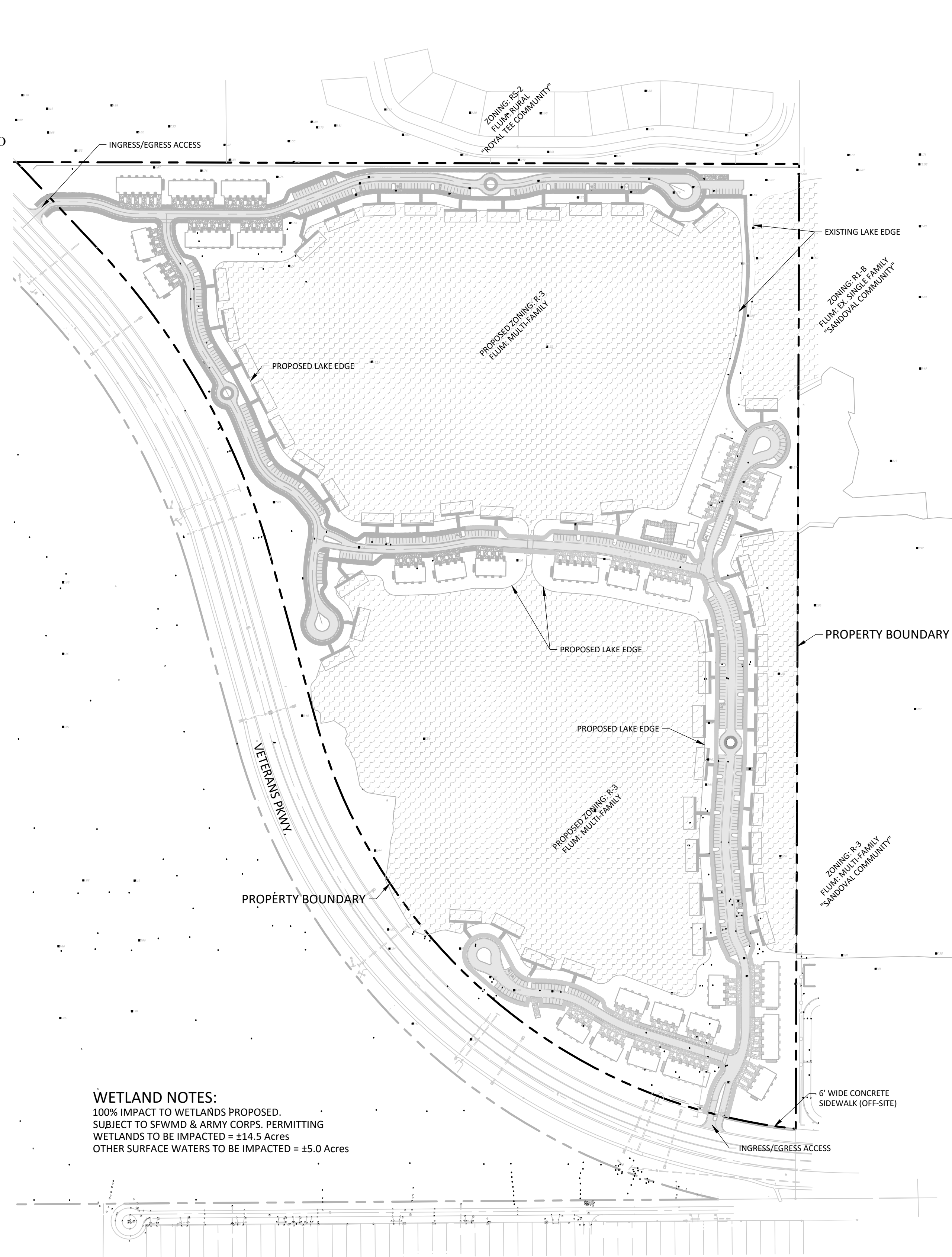
**LESS AND EXCEPT that portion thereof as conveyed to the City of Cape Coral by Warranty Deed recorded in Official Record Book 2910, Page 2470, of the Public Records of Lee County, Florida.**







EXISTING CONDITIONS - TOTAL SITE ±84 ACRES

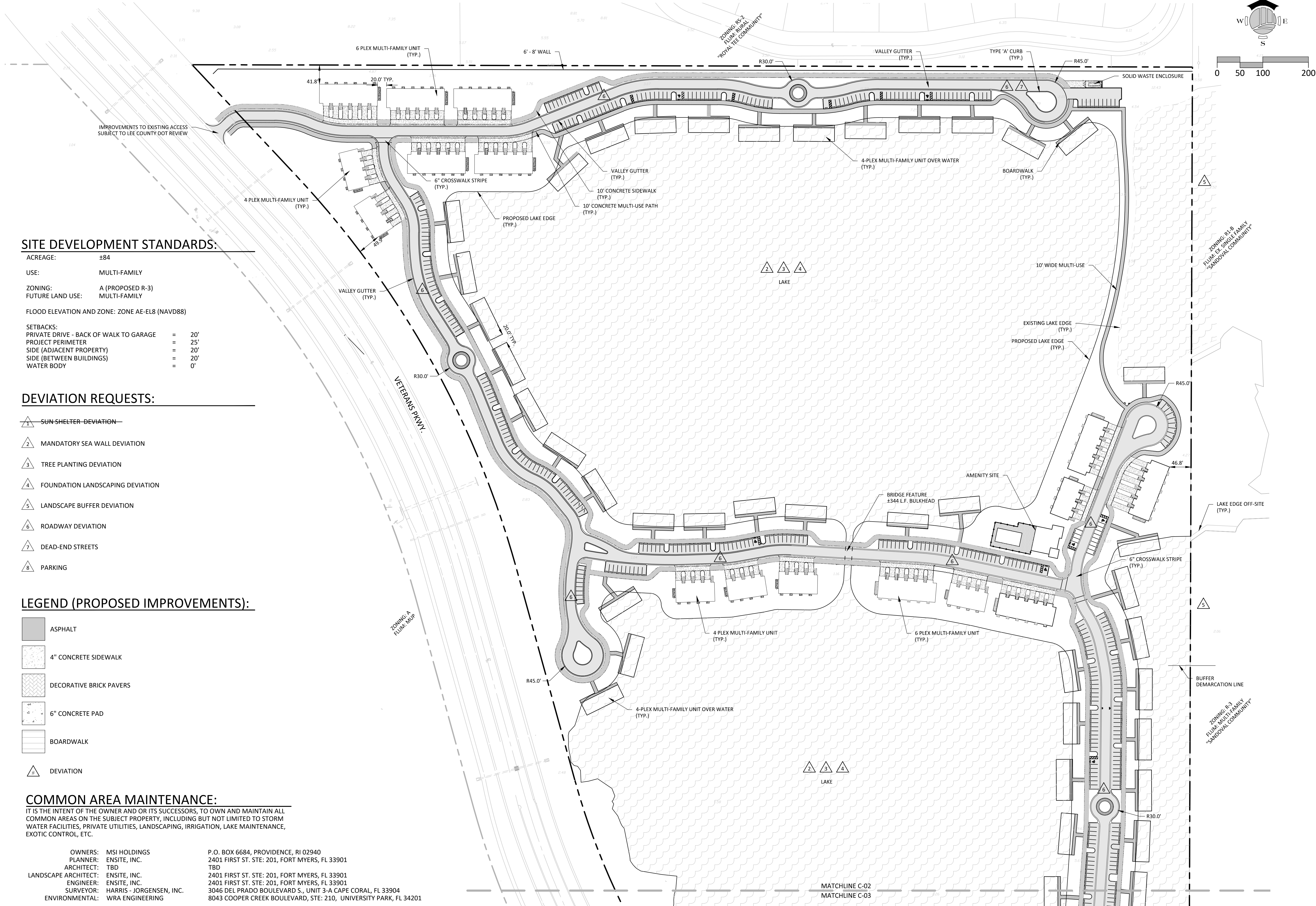


PROPOSED OVERALL SITE PLAN

REVISIONS		DATE
NO.	DESCRIPTION	
R1	PER CITY OF CAPE CORAL COMMENTS	10-31-18
R2	PER CITY OF CAPE CORAL COMMENTS	2-13-19
R3	PER CITY OF CAPE CORAL COMMENTS	6-4-19
R4	PER CITY OF CAPE CORAL COMMENTS	8-13-19
R5		
R6		

DATE:	7-6-18
PROJECT NO.	1349-04
FILE NO.	1349-04-XCM.dwg
SCALE:	AS SHOWN





SITE DEVELOPMENT STANDARDS:

ACREAGE: ±84  
USE: MULTI-FAMILY  
ZONING: A (PROPOSED R-3)  
FUTURE LAND USE: MULTI-FAMILY  
FLOOD ELEVATION AND ZONE: ZONE AE-EL8 (NAVD88)  
SETBACKS:  
PRIVATE DRIVE - BACK OF WALK TO GARAGE = 20'  
PROJECT PERIMETER = 25'  
SIDE (ADJACENT PROPERTY) = 20'  
SIDE (BETWEEN BUILDINGS) = 20'  
WATER BODY = 0'

DEVIATION REQUESTS:

- 1. SUN SHELTER DEVIATION
- 2. MANDATORY SEA WALL DEVIATION
- 3. TREE PLANTING DEVIATION
- 4. FOUNDATION LANDSCAPING DEVIATION
- 5. LANDSCAPE BUFFER DEVIATION
- 6. ROADWAY DEVIATION
- 7. DEAD-END STREETS
- 8. PARKING

LEGEND (PROPOSED IMPROVEMENTS):

- ASPHALT
- 4" CONCRETE SIDEWALK
- DECORATIVE BRICK PAVERS
- 6" CONCRETE PAD
- BOARDWALK
- DEVIATION

COMMON AREA MAINTENANCE:

IT IS THE INTENT OF THE OWNER AND OR ITS SUCCESSORS, TO OWN AND MAINTAIN ALL COMMON AREAS ON THE SUBJECT PROPERTY, INCLUDING BUT NOT LIMITED TO STORM WATER FACILITIES, PRIVATE UTILITIES, LANDSCAPING, IRRIGATION, LAKE MAINTENANCE, EXOTIC CONTROL, ETC.

OWNERS: MSI HOLDINGS  
PLANNER: ENSITE, INC.  
ARCHITECT: TBD  
LANDSCAPE ARCHITECT: ENSITE, INC.  
ENGINEER: ENSITE, INC.  
SURVEYOR: HARRIS - JORGENSEN, INC.  
ENVIRONMENTAL: WRA ENGINEERING  
P.O. BOX 6684, PROVIDENCE, RI 02940  
2401 FIRST ST. STE: 201, FORT MYERS, FL 33901  
TBD  
2401 FIRST ST. STE: 201, FORT MYERS, FL 33901  
2401 FIRST ST. STE: 201, FORT MYERS, FL 33901  
3046 DEL PRADO BOULEVARD S., UNIT 3-A CAPE CORAL, FL 33904  
8043 COOPER CREEK BOULEVARD, STE: 210, UNIVERSITY PARK, FL 34201



MSI HOLDINGS  
P.O. BOX 6684  
PROVIDENCE, RI  
02940

84 ACRES  
CAPE CORAL, FLORIDA

REVISIONS

NO.	DESCRIPTION	DATE
R1	PER CITY OF CAPE CORAL COMMENTS	10-31-18
R2	PER CITY OF CAPE CORAL COMMENTS	2-13-19
R3	PER CITY OF CAPE CORAL COMMENTS	6-4-19
R4		
R5		
R6		

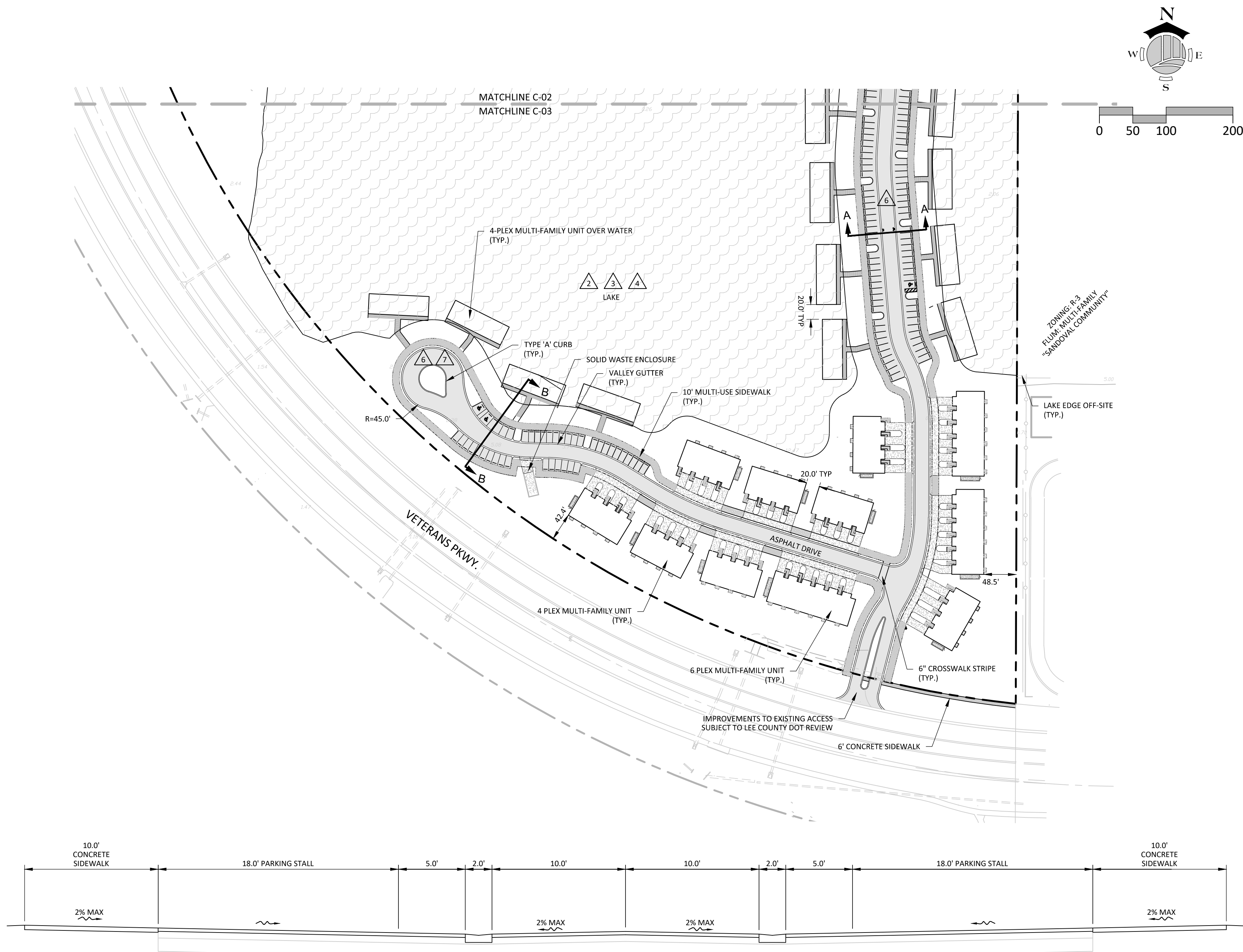
DATE: 7-6-18  
PROJECT NO. 1349-04  
FILE NO. 1349-04-MAS.dwg  
SCALE: AS SHOWN

PDP MASTER  
PLAN

C-02

REVISIONS		DATE
NO.	DESCRIPTION	
R1	PER CITY OF CAPE CORAL COMMENTS	11-1-18
R2	PER CITY OF CAPE CORAL COMMENTS	2-13-19
R3	PER CITY OF CAPE CORAL COMMENTS	6-4-19
R4		
R5		
R6		

DATE:	7-6-18
PROJECT NO.	1349-04
FILE NO.	1349-04-MAS.dwg
SCALE:	AS SHOWN



#### SITE DEVELOPMENT STANDARDS:

ACREAGE:	±84
USE:	MULTI-FAMILY
ZONING:	A (PROPOSED R-3)
FUTURE LAND USE:	MUP (PROPOSED MULTI-FAMILY)
FLOOD ELEVATION AND ZONE:	ZONE AE-EL8 (NAVD88)
SETBACKS:	
PRIVATE DRIVE - BACK OF WALK TO GARAGE	= 20'
OFF-SITE R.O.W.	= 25'
SIDE (ADJACENT PROPERTY)	= 20'
SIDE (BETWEEN BUILDINGS)	= 20'
WATER BODY	= 0'
PROJECT PERIMETER	= 25'

#### DEVIATION REQUESTS:

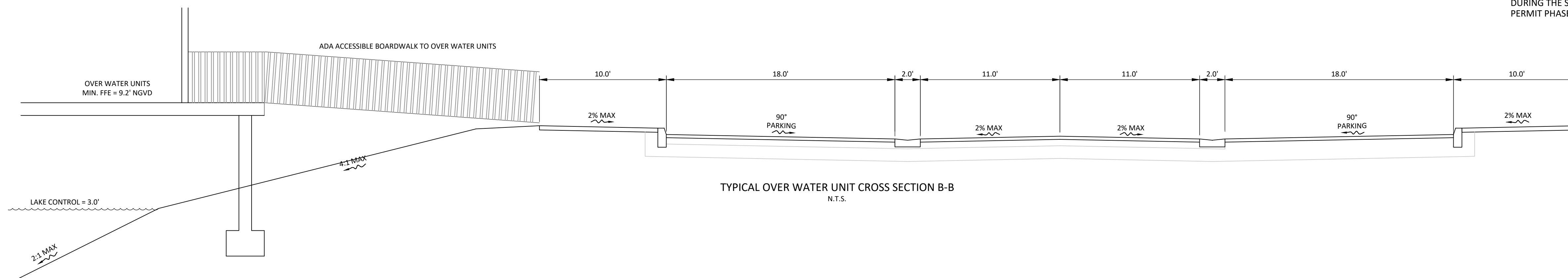
- SUN SHELTER DEVIATION
- MANDATORY SEA WALL DEVIATION
- TREE PLANTING DEVIATION
- FOUNDATION LANDSCAPING DEVIATION
- LANDSCAPE BUFFER DEVIATION
- ROADWAY DEVIATION
- DEAD-END STREETS
- PARKING

#### LEGEND (PROPOSED IMPROVEMENTS):

- ASPHALT
- 4" CONCRETE SIDEWALK
- DECORATIVE BRICK PAVERS
- 6" CONCRETE PAD
- BOARDWALK
- DEVIATION

#### NOTE:

UTILITIES, DRAINAGE AND EASEMENTS SHALL BE PROVIDED AND ESTABLISHED DURING THE SITE DEVELOPMENT AND WATER MANAGEMENT DISTRICT PERMIT PHASE.







PHASING:

TOTAL UNITS ±336 UNITS (78 BUILDINGS)

PHASE I:  
26 BLDGS (4-PLEX OVER WATER) = 104 UNITS  
10 BLDGS (4-PLEX LAND UNITS) = 40 UNITS  
7 BLDGS (6-PLEX LAND UNITS) = 42 UNITS  
TOTAL UNITS = 186 UNITS

PHASE II:  
11 BLDGS (4-PLEX OVER WATER) = 44 UNITS  
2 BLDGS (4-PLEX LAND UNITS) = 8 UNITS  
5 BLDGS (6-PLEX LAND UNITS) = 30 UNITS  
TOTAL UNITS = 82 UNITS

PHASE III:  
14 BLDGS (4-PLEX OVER WATER) = 56 UNITS  
3 BLDGS (4-PLEX LAND UNITS) = 82 UNITS  
TOTAL UNITS = 68 UNITS

8

PARKING:

PHASE I:  
104 2-BEDROOM UNITS = 104 X 2 = 208 PARKING STALLS  
82 3-BEDROOM UNITS = 82 X 2 = 164 PARKING STALLS  
TOTAL PARKING = 372 PARKING STALLS  
PARKING PROVIDED = 386 PARKING STALLS

PHASE II:  
44 2-BEDROOM UNITS = 44 X 2 = 88 PARKING STALLS  
38 3-BEDROOM UNITS = 38 X 2 = 76 PARKING STALLS  
TOTAL PARKING = 164 PARKING STALLS  
PARKING PROVIDED = 214 PARKING STALLS

PHASE III:  
56 2-BEDROOM UNITS = 56 X 2 = 112 PARKING STALLS  
12 3-BEDROOM UNITS = 12 X 2 = 24 PARKING STALLS  
TOTAL PARKING = 136 PARKING STALLS  
PARKING PROVIDED = 118 PARKING STALLS

TOTAL PARKING (ALL PHASES) = 672 PARKING STALLS  
10% PARKING FOR GUESTS = 50 PARKING STALLS  
TOTAL PARKING REQUIRED = 722 PARKING STALLS  
TOTAL PARKING PROVIDED = 777 PARKING STALLS

SITE WORK CONSTRUCTION:

PHASE I  
186 UNITS (43 BUILDINGS)  
AMENITY SITE  
INFRASTRUCTURE  
ESTABLISH LAKE BANK FOR ENTIRE PROJECT  
TEMPORARY CONSTRUCTION ROADS TO FUTURE PHASES

PHASE II  
82 UNITS (18 BUILDINGS)  
INFRASTRUCTURE

PHASE III  
68 UNITS (17 BUILDINGS)  
INFRASTRUCTURE

NOTE:

APPLICANTS / OWNER RESERVES THE RIGHT TO ALTER PHASES OF DEVELOPMENT WITHOUT THE NEED FOR A PDP AMENDMENT.



MSI HOLDINGS  
P.O. BOX 6684  
PROVIDENCE, RI  
02940

84 ACRES  
CAPE CORAL, FLORIDA

REVISONS		DATE
NO.	DESCRIPTION	
R1	PER CITY OF CAPE CORAL COMMENTS	10-31-18
R2	PER CITY OF CAPE CORAL COMMENTS	2-13-19
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R5		
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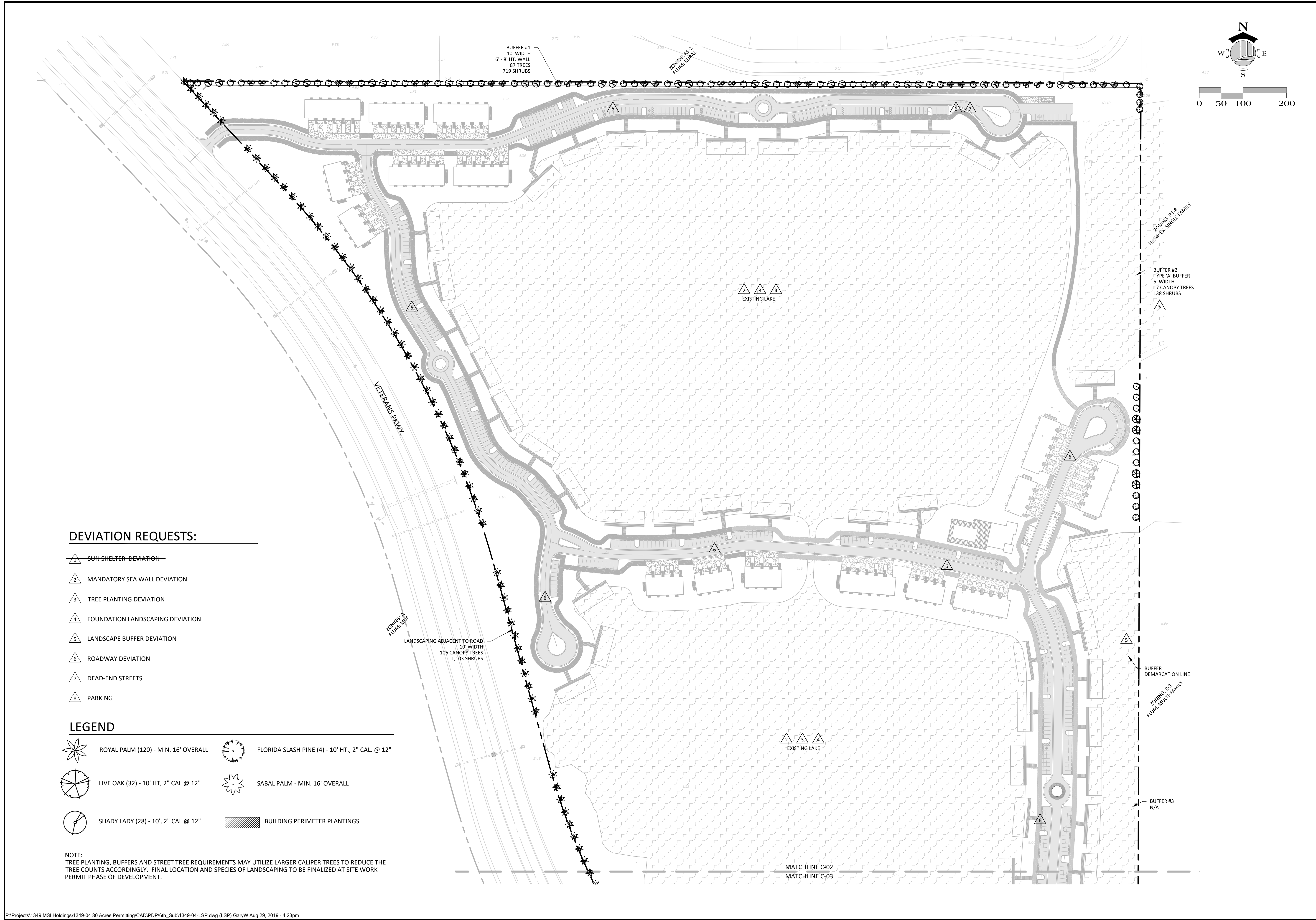
DATE:	7-6-18
PROJECT NO.	1349-04
FILE NO.	1349-04-PHASE.dwg
SCALE:	AS SHOWN

MASTER  
PHASING PLAN

C-04

NO.	REVISIONS	DESCRIPTION	DATE
R1	PER CITY OF CAPE CORAL COMMENTS	11-1-18	
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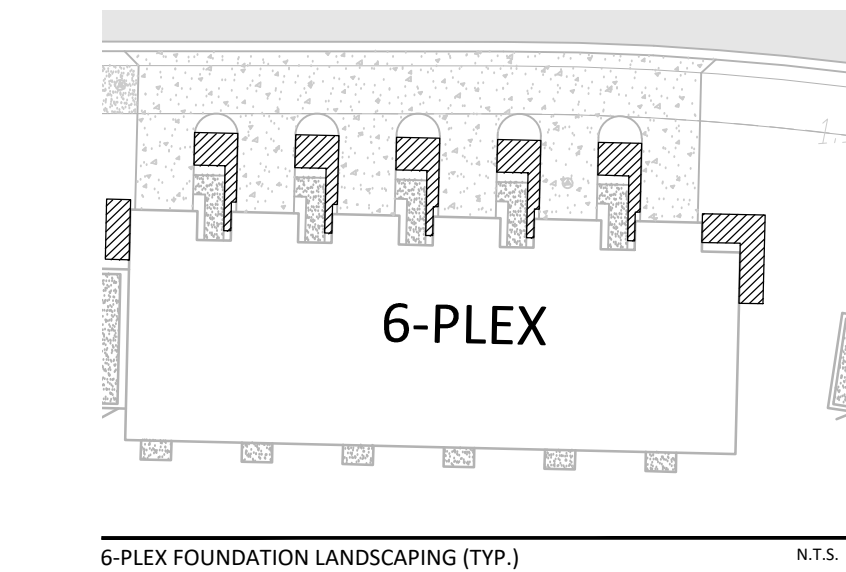
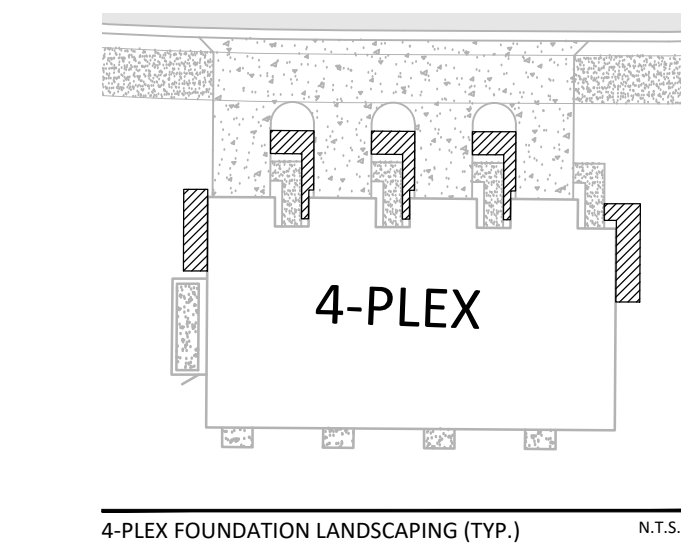
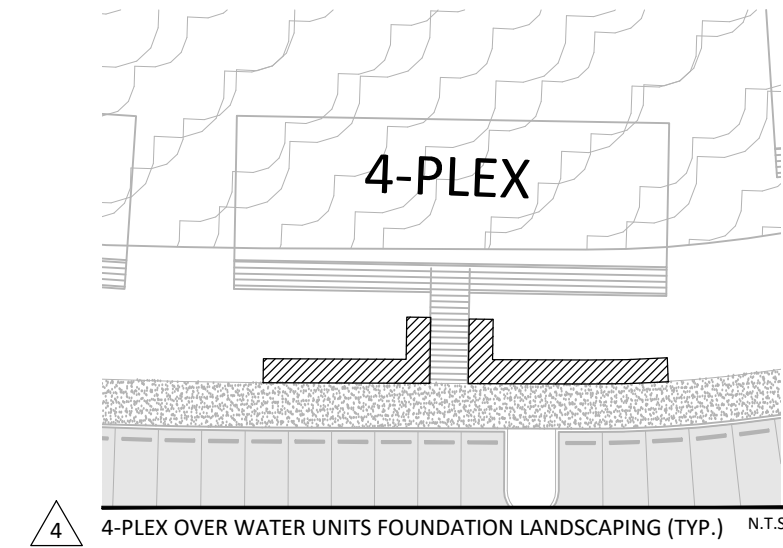
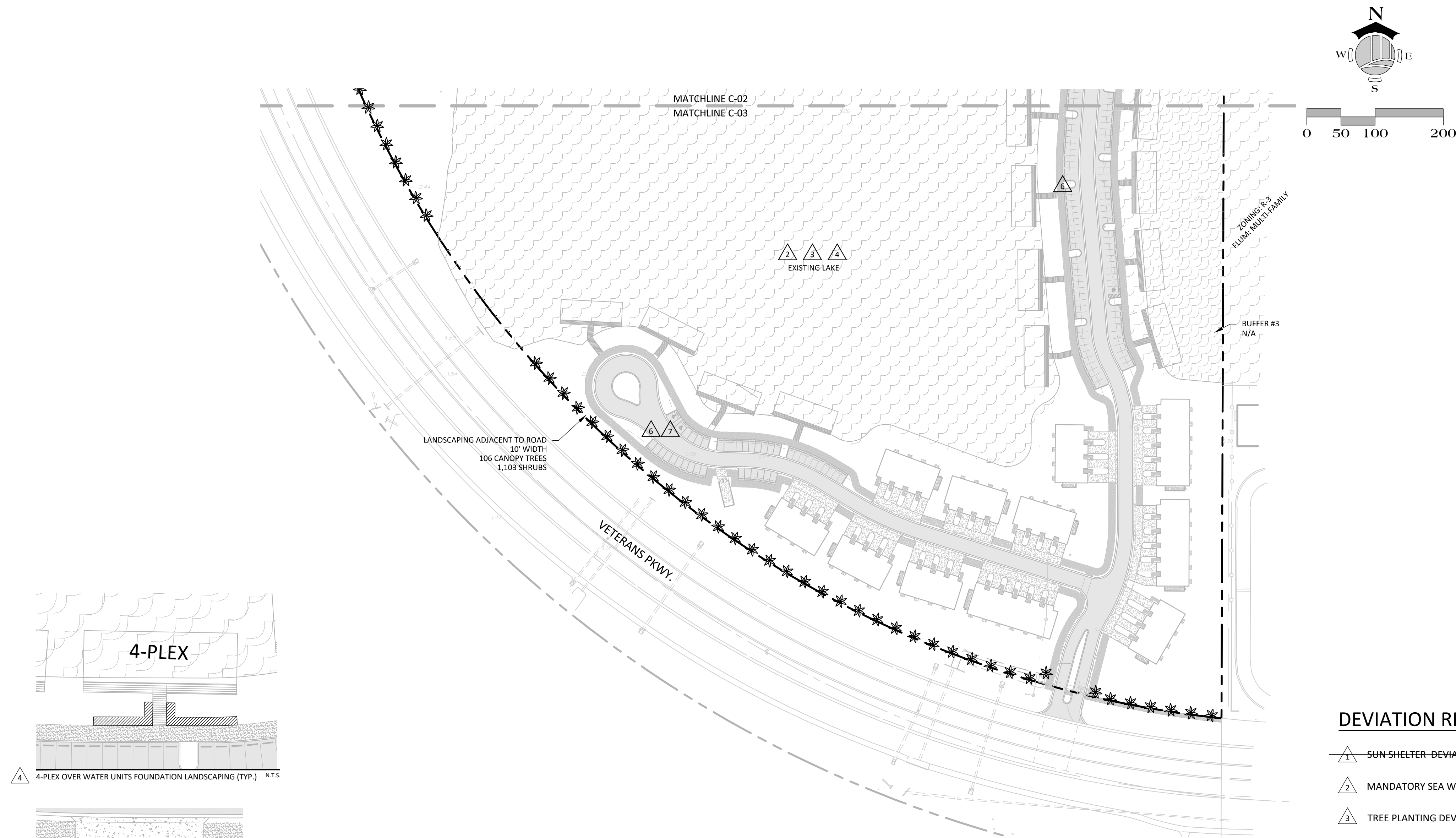
DATE:	7-6-18
PROJECT NO.	1349-04
FILE NO.	1349-04-LSP.dwg
SCALE:	AS SHOWN





NO.	REVISIONS	DESCRIPTION	DATE	
			11-1-18	2-13-19
R1		PER CITY OF CAPE CORAL COMMENTS		
R2		PER CITY OF CAPE CORAL COMMENTS		
R3		PER CITY OF CAPE CORAL COMMENTS		
R4		PER CITY OF CAPE CORAL COMMENTS		
R5				
R6				

DATE:	7-6-18
PROJECT NO.	1349-04
FILE NO.	1349-04-LSP.dwg
SCALE:	AS SHOWN



#### SITE DEVELOPMENT LANDSCAPING CALCULATIONS:

3. TREE PLANTING REQUIREMENTS:  
PER DEVIATION REQUEST, 1 CANOPY TREE PER 1,000 SQ. FT. OF DEVELOPABLE AREA =  
TOTAL DEVELOPABLE AREA: 1,361,667 S.F.  
1 TREE PER 1,000 SQ. FT. OF DEVELOPABLE AREA = 1,362 TREES REQUIRED  
PROVIDED:  
= 7 TREE PLANTING TREES  
= 104 BUFFER TREES  
= 106 ADJACENT TO ROADS  
= 237 VEHICLE USE TREES  
= 908 ADDITIONAL TREES TO BE PLANTED IN DEVELOPMENT  
= 1,362 TOTAL PROVIDED
4. FOUNDATION LANDSCAPING:  
PER SECTION 5.2.13.C.1, 10% OF GROSS GROUND LEVEL FLOOR AREA  
AMENITY CENTER (3,505 S.F.) 351/9 = 39 SHRUBS  
15 (4 PLEX LAND UNITS) = 3,909 x 10% = 391 /9 S.F. = 44 x 15 = 660 SHRUBS  
15 (6 PLEX LAND UNITS) = 5,842 x 10% = 585 /9 S.F. = 65 x 15 = 975 SHRUBS  
51 (4 PLEX OVERWATER) = 3,909 x 10% = 391 /9 S.F. = 44 x 51 = 2,244 SHRUBS  
TOTAL SHRUBS REQUIRED = 3,918 SHRUBS  
PROVIDED:  
TOTAL SHRUBS = 3,918
5. LANDSCAPING ADJACENT TO ROADS:  
PER SECTION 5.2.13.C.2.=  
WEST:  
VETERANS PKWY. (3,187 LINEAR FEET)  
10' IN WIDTH REQUIRED - 10' WIDTH PROVIDED.  
1 CANOPY TREE PER 30 L.F. OF FRONTAGE = 106 CANOPY TREES REQUIRED  
1 SHRUB PER 3 L.F. OF FRONTAGE = 1,062 SHRUBS REQUIRED  
PROVIDED = 106 CANOPY TREES  
= 1,062 SHRUBS
6. UNCOVERED SURFACE PARKING AND VEHICULAR USE AREAS:  
PER SECTION 5.2.13.C.3.=  
10% OF THE TOTAL UNCOVERED SURFACE PARKING AND VEHICULAR USE AREAS:  
354,924 S.F. X 10% = 35,492 S.F.  
1 CANOPY TREE PER 150 S.F. OF PLANTING = 35,492 S.F. / 150 = 237 CANOPY TREES  
PROVIDED = 35,492 S.F.  
= 237 CANOPY TREES\*
- \*LARGER TREES PROVIDED WITH ADDITIONAL 2" CALIPER

5. BUFFER YARDS:  
PER SECTION 5.2.13.C.5.=  
BUFFER #1 LANDSCAPING REQUIRED: (±2,174 LINEAR FEET)  
NOT REQUIRED  
PROPOSED:  
20' WIDTH  
6' - 8' WALL  
4 CANOPY TREES PER 100 L.F. = 2,177 / 100 x 4 = 87 TREES PROVIDED  
33 SHRUBS PER 100 L.F. = 2,177 / 100 x 33 = 719 SHRUBS PROVIDED
6. BUFFER #2 LANDSCAPING REQUIRED: (±1,300 LINEAR FEET)  
DEVIATION REQUESTED FOR 419 L.F. TO BE PLANTED  
ADJACENT USE - R-1B (TYPE 'A' BUFFER)  
5' WIDTH & WALL REQUIRED  
4 CANOPY TREES PER 100 L.F. = 4.19 X 4 = 17 TREES REQUIRED  
33 SHRUBS PER 100 L.F. = 4.19 X 33 = 138 SHRUBS REQUIRED (SEE NOTE #2)  
5' WIDTH PROVIDED  
17 CANOPY TREES PROVIDED  
138 SHRUBS PROVIDED
7. BUFFER #3 LANDSCAPING REQUIRED:  
N/A MULTI-FAMILY TO MULTI-FAMILY
8. TOTAL LANDSCAPING REQUIREMENTS:  
SITE LANDSCAPING TOTALS REQUIRED:  
TREES 1,362 CANOPY TREES (50% NATIVE REQUIRED = 227)  
SHRUBS 1,919 SHRUBS (30% NATIVE REQUIRED = 576)  
INTERNAL LANDSCAPING 35,492 S.F.  
BUILDING FOUNDATION LANDSCAPING 391 S.F. PER 4-PLEX, 585 PER 6-PLEX  
MIN. 5 TREE SPECIES REQUIRED 5 REQ.
9. SITE LANDSCAPING TOTALS PROVIDED:  
TREES 1,362 TREES COUNTED AS CANOPY (50% NATIVE REQUIRED)  
SHRUBS 1,919 SHRUBS (30% NATIVE REQUIRED)  
INTERNAL LANDSCAPING +153,317 S.F.  
BUILDING FOUNDATION LANDSCAPING 3,918 SHRUBS (30% NATIVE REQUIRED)  
MIN. 5 TREE SPECIES REQUIRED 5 TO BE UTILIZED

#### DEVIATION REQUESTS:

1. SUN SHELTER DEVIATION  
2. MANDATORY SEA WALL DEVIATION  
3. TREE PLANTING DEVIATION  
4. FOUNDATION LANDSCAPING DEVIATION  
5. LANDSCAPE BUFFER DEVIATION  
6. ROADWAY DEVIATION  
7. DEAD-END STREETS DEVIATION  
8. PARKING DEVIATION

#### LEGEND

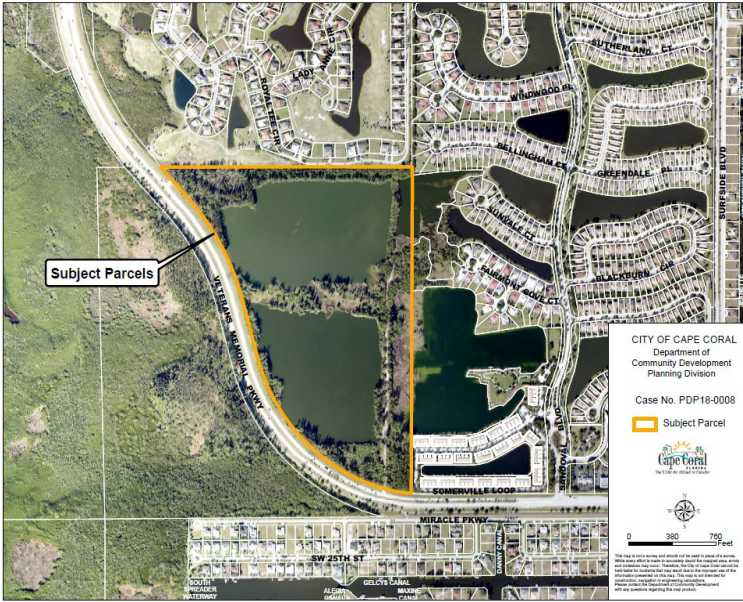
- ROYAL PALM (120) - MIN. 16' OVERALL  
LIVE OAK (32) - 10' HT., 2" CAL @ 12"  
SHADY LADY (28) - 10', 2" CAL @ 12"  
FLORIDA SLASH PINE (4) - 10' HT., 2" CAL. @ 12"  
SABAL PALM - MIN. 16' OVERALL  
BUILDING PERIMETER PLANTINGS

#### NOTE:

1. TREE SPECIES AND FINAL LOCATIONS SUBJECT TO CHANGE AND REVIEW PER PHASE OF DEVELOPMENT SITE PLAN PERMIT APPLICATIONS.  
2. SHRUBS & GROUND COVER NOT SHOWN IN DETAIL. FINAL LANDSCAPE DESIGN SUBJECT TO PHASING & SITE PLAN PERMIT APPLICATIONS.  
3. LANDSCAPING AREAS & BUFFERS SHALL BE MAINTAINED PERPETUITY BY OWNER AND OR ITS SUCCESSORS.  
4. FOUNDATION, VEHICLE USE & BUFFER SHRUBS SHALL BE IN COMPLIANCE AND DETAIL SHOWN AT SITE DEVELOPMENT STAGE.

**PLANNING DIVISION STAFF REPORT**  
**PDP18-0008 – CAPE 84 ACRES**

<b>SITE LOCATION</b> North of Veterans Parkway West	<b>APPLICANT/PROPERTY OWNER</b> MSI Holdings, LLC
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<p><b>SUMMARY OF PDP REQUESTS</b></p> <p>The applicant requests approval of a Planned Development Project (PDP) entitled “Cape 84 Acres” to develop a maximum of 336 units within three phases. The PDP requests Development Plan approval along with the approval of the following deviations:</p> <ol style="list-style-type: none"> <li>1) Deviation from LUDR, Section 3.1.2.A.3.b</li> <li>2) Deviation from LUDR, Section 3.16.4,</li> <li>3) Deviation from LUDR, Section 5.2.13.A,</li> <li>4) Deviation from LUDR, Section 5.2.13.C.1,</li> <li>5) Deviation from LUDR, Section 5.2.13.C.5,</li> <li>6) Deviation from EDS, G-5 Cross, and</li> <li>7) Deviation from EDS, Dead End Streets.</li> </ol>	
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STAFF RECOMMENDATION: Approval

<b>Positive Aspects of Application:</b>	Site has frontage on a major arterial. Development is surrounded by single and multi-family homes. The PDP is a “redevelopment” of an old borrow pit site.
<b>Negative Aspects of Application:</b>	The PDP involves several deviations including deviations for reduction of landscaping requirements.
<b>Mitigating Factors:</b>	The PDP demonstrates unique design and the landscape deviations are offset by enhanced landscaping throughout other areas of the development.

**SITE INFORMATION**

**Location:** North of Veterans Parkway West and west of Veterans Parkway and Surfside Boulevard intersection.

South of Royal Tee Golf and Country Club / West of Sandoval

**STRAP Number:** 29-44-23-C4-00002.0000

**Site Area:** 84.47 acres

<b>Site:</b>	<b>Future Land Use</b>	<b>Zoning</b>
<b>Current:</b>	<b>Multi-Family Residential (MF)</b>	<b>Residential Multi-Family Low (RML)</b>
<b>Proposed:</b>	<b>N/A</b>	<b>N/A</b>
	<b>Surrounding Future Land Use</b>	<b>Surrounding Zoning</b>
<b>North:</b>	<b>Lee County</b>	<b>Lee County</b>
<b>South:</b>	<b>Mixed Use (MX) and Single-Family Residential (SF)</b>	<b>Agricultural (A) and Single-Family Residential (R1)</b>
<b>East:</b>	<b>MF and SF</b>	<b>RML and</b>
<b>West:</b>	<b>MX</b>	<b>Agricultural (A)</b>

**Urban Service**

**Area:** Transition

**City Water/Sewer:** There are no connections to the site currently, however, the Sandoval residential subdivision – which is adjacent to the east – has utilities available.

**Access Road:** The site has frontage on Veterans Memorial Parkway which is a principal arterial. Two driveway stub-outs are on the site. The applicant has indicated they will seek a third access from Veterans Parkway<sup>1</sup>.

**PROJECT REQUESTS**

The Cape 84 Acres PDP includes the five following requests for approval:

- 1.Deviation from LUDR, Section 3.1.2.A.3.b
- 2.Deviation from LUDR, Section 3.16.4,
- 3.Deviation from LUDR, Section 5.2.13.A,
- 4.Deviation from LUDR, Section 5.2.13.C.1,
- 5.Deviation from LUDR, Section 5.2.13.C.5,
- 6.Deviation from EDS, G-5 Cross,
- 7.Deviation from EDS, Dead End Streets, and
- 8.Development Plan Approval.

<sup>1</sup> Veterans is maintained by Lee County Department of Transportation.

## **FINDINGS OF FACT**

The 84.47 site is in the southwestern quadrant of the City and was formerly a borrow pit that has ceased operations for several years. The site has frontage along Veterans Parkway West and is surrounded by two residential subdivisions<sup>2</sup> to the north and east, an undeveloped site to the west<sup>3</sup>, and single-family homes to the south. The site has an irregular shape due to the frontage along Veterans Parkway. The site topography is similar to many former borrow pits with the majority of the site consisting of two large lakes where soil was dredged out. The site also has two driveway stubs from Veterans Parkway that will allow access at the time of development.

The site's original future land designation from the adoption of the 1989 Comprehensive Plan was Single-Family/Multi-Family (SM)<sup>4</sup>. In 2007, the future land use designation was amended to Mixed Use Preserve (MUP) Type III, Class D. In 2018, the future land use designation was amended to Multi-Family Residential (MF). The site has retained Agricultural (A) zoning since 1989, however the site was rezoned to Multi-Family Residential Low (RML) in 2019.

## **PROJECT DESCRIPTION**

The applicant is seeking PDP approval for a multi-family development on 84 acres. The applicant has submitted a "PDP Master Plan" that includes 336 units to be developed in three phases. The PDP originally requested a rezone to the Multi-Family Residential (R-3) zoning district to allow for the multi-family units, however, the Land Development Code was adopted on August 5, 2019 that also included a rezone of the site to Multi-Family Residential Low (RML)<sup>5</sup>. The "PDP Master Plan" shows three access points along Veterans Parkway – a Lee County roadway. There are two existing road stub-outs at the north and south ends of the property, while the third proposed access is between the two existing access points. The multi-family units will be primarily be constructed around two large water bodies with some units being built into and over the water. Additionally, the PDP Master Plan shows an amenity site near the center of the development as well as floating gazebos that are built in the water.

The multi-family units will either be one-story four or six-unit buildings. The applicant proposed to install sidewalks along the internal roads in front of the multi-family units. The development will also include landscaping on the interior of the development and perimeter landscape buffering, however, the applicant has applied for deviations to eliminate or minimize some of the required landscaping. The applicant has applied for other deviations regarding the seawall construction, and roadway design.

The "PDP Master Plan" shows the development being constructed in three phases. Phase one will be near the southernmost entrance, near the Sandoval residential subdivision. The first phase will include 186 units and 432 parking spaces. Phase two will be at the northernmost entrance, near the Cape Royal residential subdivision. The second phase will include 82 units and 275 parking spaces. The third phase will be in between the phase one and two entrances and will include 68 units and 157 parking spaces.

## **ANALYSIS**

### Deviation from LUDR, Section 3.16.4

The applicant seeks a deviation from LUDR, Section 3.16.4 which states:

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<sup>2</sup> The subdivision to the north is within unincorporated Lee County.

<sup>3</sup> The site is also owned by the applicant.

<sup>4</sup> From the 1989 adoption of the Comprehensive Plan.



“All real property having frontage or direct and immediate access to frontage on any canal or other body of water located within or bordering the boundaries of the city, wherein the water is in any proportion saline or brackish, or the levels of which fluctuate by reason of tidal influences, shall be required to have constructed on it, at the owner’s expense, seawalls bulkheading the entire frontage exposed to contact with the water. Seawalls shall be structurally maintained at owner’s expense so as not to cause a nuisance or hazard to safety”.

The applicant is requesting the deviation in order to not construct seawalls along the existing lakes. The applicant states they will slope the lake edges according to requirements set by the South Florida Water Management District (SFWMD).

#### Analysis and Recommendation

Deviations requested within a PDP are reviewed according to the standards set forth in LUDR, Section 4.2.4.K., which state the following:

“To provide design flexibility in developing land through the PDP process, deviations from the City of Cape Coral Land Use and Development Regulations which relate to standards of the zoning district of the site in question, including, but not limited to, area, dimensional, and other standards, may be approved in a PDP development order by the City Council provided that the PDP demonstrates unique and innovative design which would be enhanced by the approval of such deviation(s) and that the intent of such regulations to protect the health, safety, and welfare of the public would be served by the approval of the deviation.”

As discussed previously, the applicant states in their letter of intent that the site is utilizing creative building techniques which include multi-family buildings extending over and into the lakes using a system of cantilevers and pilings. The applicant states that some buildings will only be connected to the land through boardwalks. The applicant states that a combination of lake slopes, bulkheads, and seawalls will be used where appropriate and necessary.

#### **Unique and Innovative Design**

LUDR, Section 4.2.4.K provides examples of what may constitute a unique and innovative design. Such examples include dedication of open space for recreational use, the setting aside of land for conservation purposes or providing areas for public assembly. Planning staff finds that the applicant has demonstrated adequate justification for the deviation request as the applicant intends to utilize an innovative design that has not been used previously in Cape Coral. The large lakes on the site present a significant challenge for development unless the lakes are filled in, however, the applicant intends to use the lakes as a feature in the multi-family development. Staff acknowledges that seawalls around the entire perimeter of the lake could make the proposed design difficult if not impossible due to some of the multi-family units extending over the water.

#### **Health, Safety and Welfare of Public**

Planning staff finds that the applicant’s requested deviation does not have a specific negative impact on the health, safety or welfare of the public. Seawalls are important for waters that experience tidal influences in order to stabilize the shoreline and protect residences from experiencing foundational issues. The on-site lakes are considered brackish due to their proximity to Charlotte Harbor, but they are not free-flowing canal systems that experience many of the

tidal influences typically found in brackish canals. The Land Use and Development Regulations, as well as the newly adopted Land Development Code, allow for sloped seawalls on freshwater canals that do not experience tidal flow. Staff finds that the sloped shorelines built under the provisions of the South Florida Water Management District should ensure that the multi-family residences are stabilized adequately.

Planning staff finds that the applicant's request for a deviation from LUDR, Section 3.16.4 meets both criteria found in LUDR, Section 4.2.4.K and staff recommends approval.

#### Deviation from LUDR, Section 5.2.13.A

The applicant seeks a deviation from LUDR, Section 5.2.13.A which states:

"Except in the South Cape Downtown District, all sites shall have at least one canopy tree for each 1,000 square feet of gross land area, except that accent trees or palm trees may be substituted for a required canopy tree as indicated below".

The applicant states that according this section, the proposed development would be required to provide 3,690 trees throughout the project. The applicant also states that this requirement is difficult to meet because of the large lakes on the site which restrict the amount of developable land. The applicant's landscape plan provides a total of 1,362 canopy. The landscape plan states that the number of trees provided is based upon the site having 1,361,677 sq. ft. of developable land.

#### Analysis and Recommendation

Deviations requested within a PDP are reviewed according to the standards set forth in LUDR, Section 4.2.4.K., which state the following:

"To provide design flexibility in developing land through the PDP process, deviations from the City of Cape Coral Land Use and Development Regulations which relate to standards of the zoning district of the site in question, including, but not limited to, area, dimensional, and other standards, may be approved in a PDP development order by the City Council provided that the PDP demonstrates unique and innovative design which would be enhanced by the approval of such deviation(s) and that the intent of such regulations to protect the health, safety, and welfare of the public would be served by the approval of the deviation."

As discussed previously, the applicant states in their letter of intent that the development will provide 1,362 canopy trees instead of 3,690 canopy trees.

#### **Unique and Innovative Design**

LUDR, Section 4.2.4.K provides examples of what may constitute a unique and innovative design. Such examples include dedication of open space for recreational use, the setting aside of land for conservation purposes or providing areas for public assembly. Planning staff finds that the size of the lakes makes a large portion of the site undevelopable. Staff finds that providing one canopy tree per 1,000 sq. ft. of developable land is a unique design that provides landscaping in appropriate locations on the site. Most developments do not have canopy trees along or near the waterbodies due to several factors such as soil conditions and soil stabilization. The provision of 1,362 canopy trees should provide adequate buffering and visual interest throughout the site.

## **Health, Safety and Welfare of Public**

Planning staff finds that the applicant's requested deviation does not have a specific negative impact on the health, safety or welfare of the public. The requested will allow for a reduction of canopy trees but should provide enough canopy trees throughout the site's developable area to allow for appropriate buffering and shading. The reduction of canopy trees should not have any negative affects on safety.

Planning staff finds that the applicant's request for a deviation from LUDR, Section 5.2.13.A meets both criteria found in LUDR, Section 4.2.4.K and staff recommends approval.

### Deviation from LUDR, Section 5.2.13.C.1

The applicant seeks a deviation from LUDR, Section 5.2.13.C.1 which states:

"To provide aesthetic relief between a building and off-street parking or vehicular use areas, all new development, except in the Industrial District and South Cape Downtown District, must provide foundation landscaped areas equal to 10% of the proposed building gross level floor area. These foundation landscaped areas must be located between the off-street parking area and the building, between public streets and the building, or between vehicular access ways and the building, or any combination thereof, with emphasis on the side(s) most visible to the public."

The applicant states multi-family buildings which are built over the water have no area for foundational plantings. The applicant states that foundational landscaping will be installed along the boardwalks and sidewalks that provide access to the multi-family units.

### Analysis and Recommendation

Deviations requested within a PDP are reviewed according to the standards set forth in LUDR, Section 4.2.4.K., which state the following:

"To provide design flexibility in developing land through the PDP process, deviations from the City of Cape Coral Land Use and Development Regulations which relate to standards of the zoning district of the site in question, including, but not limited to, area, dimensional, and other standards, may be approved in a PDP development order by the City Council provided that the PDP demonstrates unique and innovative design which would be enhanced by the approval of such deviation(s) and that the intent of such regulations to protect the health, safety, and welfare of the public would be served by the approval of the deviation."

As discussed previously, the applicant states in their letter of intent that the foundational landscaping will be installed along boardwalks and sidewalks where room is available. The applicant's landscape plan shows the same square footage of plantings as required by code but placed further from the multi-family units than the LUDR allows. Multi-family buildings that are not built over the water will still meet the LUDR requirement regarding the location of foundational plantings.

### **Unique and Innovative Design**

LUDR, Section 4.2.4.K provides examples of what may constitute a unique and innovative design. Such examples include dedication of open space for recreational use, the setting aside of land for conservation purposes or providing areas for public assembly. Planning staff finds that the applicant has demonstrated unique and innovative design through both the construction of the multi-family units over water and by proposing to install landscaping along the boardwalk area that provides access to the over water units. The landscaping along the boardwalk will achieve nearly the same affect as landscaping along the front of the building by providing visual interest and making the entry area more aesthetically pleasing. Furthermore, based upon the design of the over water units, there is no logical place for the foundational landscaping to be placed.

### **Health, Safety and Welfare of Public**

Planning staff finds that the applicant's requested deviation does not have a specific negative impact on the health, safety or welfare of the public. The requested will allow for a relocation of the foundational landscaping that is normally required along the front or sides of a building. Foundational landscaping is required to provide screening of buildings and to provide a more pleasing visual aesthetic. The relocation of the plantings should provide the same benefits and will not take away from health, safety or welfare.

Planning staff finds that the applicant's request for a deviation from LUDR, Section 5.2.13.C.1 meets both criteria found in LUDR, Section 4.2.4.K and staff recommends approval.

### Deviation from LUDR, Section 5.2.13.C.5

The applicant seeks a deviation from LUDR, Section 5.2.13.C.5 which states that properties with a zoning of Multi-Family Residential (R-3) that are developing adjacent to properties with Single-Family Residential (R-1B) zoning shall provide a Type "A" landscape buffer.

The applicant is seeking to not install a Type "A" buffer along a portion of the eastern property line that is adjacent to the Sandoval and has a zoning of R-1B. There is approximately 1,311 feet of linear frontage along the eastern property that is adjacent to R-1B zoning. The applicant states that Type "A" buffer is not able to be installed along this property line because the lake system makes up the majority of the eastern property line frontage. The applicant proposes to plant 427 linear feet of a Type "A" buffer where there is land available to install the buffer.

### Analysis and Recommendation

Deviations requested within a PDP are reviewed according to the standards set forth in LUDR, Section 4.2.4.K., which state the following:

"To provide design flexibility in developing land through the PDP process, deviations from the City of Cape Coral Land Use and Development Regulations which relate to standards of the zoning district of the site in question, including, but not limited to, area, dimensional, and other standards, may be approved in a PDP development order by the City Council provided that the PDP demonstrates unique and innovative design which would be enhanced by the approval of such deviation(s) and that the intent of such regulations to protect the health, safety, and welfare of the public would be served by the approval of the deviation."

As discussed previously, the applicant states in their letter of intent that a large portion of the eastern property line – where the Type "A" buffer is required – is comprised of lakes and there is no land available to plant the buffer. The

applicant's landscape plan shows a Type "A" buffer for 427 feet along the eastern property line. The Type "A" buffer will be five feet wide and will include 17 canopy trees and 138 shrubs.

### **Unique and Innovative Design**

LUDR, Section 4.2.4.K provides examples of what may constitute a unique and innovative design. Such examples include dedication of open space for recreational use, the setting aside of land for conservation purposes or providing areas for public assembly. Planning staff finds that the applicant has demonstrated unique and innovative design through both the construction of the multi-family units over water and by proposing to install a Type "A" buffer where there is available land. The portion of the eastern property line that will not have the Type "A" buffer will consist of the on-site lakes which are adjacent to the Sandoval community.

### **Health, Safety and Welfare of Public**

Planning staff finds that the applicant's requested deviation does not have a specific negative impact on the health, safety or welfare of the public. The requested deviation will allow the applicant to place the Type "A" in an appropriate location where uplands are available on the eastern property line. The Type "A" buffer where installed should provide some moderate screening of the multi-family units from the nearby single-family homes. Staff also finds that most of the homes in the nearby Sandoval development will be adjacent to the large water bodies for several hundred feet. The shortening of the buffer should provide the same benefits and will not take away from health, safety or welfare.

Planning staff finds that the applicant's request for a deviation from LUDR, Section 5.2.13.C.1 meets both criteria found in LUDR, Section 4.2.4.K and staff recommends approval.

### **Deviation from Engineering and Design Standards, Sheet G-5 (Cross Section)**

The applicant is requesting a deviation from the City Engineering and Design Standards (EDS), Sheet G-5 which is a cross section that determines standards for construction of local roads. The cross section requires local roads to be 60 feet wide along with four-foot shoulders and an eight-foot grass strip on the edge of the right of way. The applicant is requesting to install the following on the roads within the development:

1. A 50-foot wide private access way,
2. 11-foot lane widths abutting a 2' Valley Curb,
3. A 3-foot wide grass strip, and
4. An eight-foot wide multi-use path on one side of the drive.

The proposed roadway design is requested due to some of the narrow strips of land that are within the development. The applicant is adding the eight-foot wide to allow pedestrian and bicycle paths. The requested EDS Deviation has been reviewed by the City Site Development Division and the City Public Works Department. Both the Site Development Division and the Public Works Department have approved the EDS Deviation request.

### **Deviation from Engineering and Design Standards, Sheet G-4 (Dead End Streets)**

The applicant is requesting a deviation from the City Engineering and Design Standards (EDS), Sheet G-4 which states that dead end cul-de-sac streets shall not exceed 400 feet in length. The applicant is requesting the deviation to allow for dead end cul-de-sac streets that are approximately 500 feet in length. The proposed roadway design is requested due to some of the narrow strips of land that are within the development.

The applicant states that multiple driveway connections that allow continuous vehicular connections are not possible. The applicant is providing two access points from Veterans Parkway and potentially a third access point that would allow for emergency vehicles to have 2-3 options for entrance into the development.

The requested EDS Deviation has been reviewed by the City Site Development Division and the City Public Works Department. Both the Site Development Division and the Public Works Department have approved the EDS Deviation request.

#### Comprehensive Plan

#### **Policy 1.15 – Multi-Family Residential (MF)**

Densities up to 25 units per acre are permitted in this future land use classification. For properties less than one acre in size, densities shall be calculated as a product of the size of the property divided by 43,560, multiplied by 25, rounded down. The development of multi-family projects in the Urban Services Reserve Area is also subject to the terms of Policies of 7.7 and 7.8, below

The Residential Multi-Family Low (RML) District is designed to permit multi-family residential development. Single-family attached projects (three or more units only), single-family residences, and duplexes are also permitted in this zoning district.

The Residential Multi-Family Medium (RMM) District is designed to permit higher-density multi-family residential development. Lower-density, multi-family residential projects such as duplexes or single-family residences are not permitted in this zoning district.

**Staff Response:** The development has a zoning of RML, which as stated, is compatible with the MF future land use designation. The development's proposed density is approximately four dwelling units per acre, which is well under, the maximum density of 16 units per acre.

#### **Policy 1.7**

The City has identified a shortfall of multi-family residential housing stock in the community. To provide better guidance in identifying properties which are appropriate for multi-family residential development, to reduce this shortfall, locational guidelines have been developed. The following locational guidelines are as follows:

##### 1.) Proximity to major roadways.

To prevent the establishment of multi-family residential development far in the middle of predominantly single-family neighborhoods, an appropriate location for multi-family residential development is adjacent to or within  $\frac{1}{4}$  mile of major roadways such as arterial and collector roadways, as identified by *Figure 7 City Roadway Classifications*.

##### 2.) Proximity to non-residential land uses.

An important consideration for siting multi-family residential development is the need for multi-family residential uses to be in proximity to major employment centers. Providing housing near commercial uses can result in shorter trips, lessened traffic generation by workers, and providing multiple transportation mode options (walking, bicycling, automobile, bus) for employees.

An appropriate location for multi-family residential development is adjacent to or within ¼ mile of non-residential land uses such as the Commercial/Professional, Light Industrial, Mixed Use, Downtown Mixed, Pine Island Road District, or Commercial Activity Center future land use classifications.

3.) Transitioning from commercial uses to less intense uses.

Multi-family residential uses have traditionally provided a role in buffering single-family uses or neighborhoods from nearby commercial development. Multi-family residential development is often self-contained with parking lots which provide a physical barrier visually separating commercial uses, particularly the lighting and loading areas, from single-family residential uses, which is a benefit to the community.

Therefore, an appropriate location for Multi-family residential development is physically between single-family development and non-residential land uses such as the Commercial/Professional, Light Industrial, Mixed Use, Downtown Mixed, Pine Island Road District, or Commercial Activity Center future land use classifications.

4.) Assemblage opportunities and adjacency to existing multi-family residential.

Single, isolated pre-platted parcels provide little opportunity for larger-scale multi-family residential development and contribute to the same ills that strip center commercial developments offer; a proliferation of driveways onto major roadways.

Therefore, an appropriate location for multi-family residential development is a collection of properties of 3-acres or greater which provide multi-family assemblage opportunities, or for properties which alone are 3-acres or greater in size. Furthermore, consideration will be given to logical extensions from existing multi-family residential designated properties.

**Staff Response:** The development meets two of the four multi-family siting criteria. The development has frontage on Veterans Parkway, which is classified, as a principal arterial. The site is also adjacent to existing multi-family development to the east and represents a large site that exceeds the required size of three acres.

General Standards and Requirements for PDPs

This project was also evaluated for compliance with general standards and requirements found in LUDR, Section 4.2 that is provided below.

- A. *Environmental control standards:* The authorized representative reported the results of an environmental survey that was conducted May 25, 2018. No state or federally protected species were reported nor sensitive lands were found. The project complies with the four standards in LUDR, Section 5.4.
- B. *Maintenance of improvements:* A landscape plan was submitted as part of the PDP application. Full compliance with the City landscaping regulations will be verified when a site plan for the project is submitted.
- C. *Consistency with Comprehensive Plan:* This project is consistent with several policies and goals in the Comprehensive Plan that are discussed in greater detail elsewhere in this report.
- D. *Financial Responsibility:* This standard is not applicable as the owner will not be required to provide a statement of financial responsibility for this project.
- E. *Dimensional requirements:* The project is compliant with dimensional requirements for the R-3 District.
- F. *Maximum density:* This project does not exceed the maximum density of 16 units per acre. This standard is met.
- G. *Minimum parcel size:* The R-3 district does not have a minimum size requirement, therefore, this standard is not applicable.
- H. *Time limitation:* Substantial construction is required to commence within two years from the date of project approval or within one year fo the last permit approval for all appropriate regulatory bodies, whichever is less.
- I. *Ownership requirements:* The property owners have signed the PDP application as required by the City.
- J. *Special exceptions:* No special exception has been requested, therefore, this standard is not applicable.
- K. *Deviations:* Seven deviations are requested. The deviations have been justified adequately by the applicant, meet the deviation standards in the LUDR, and staff recommends approval.
- L. *Underground Utilities:* This project will involve new construction and utilities will be placed underground.

#### Economic Development Master Plan Analysis

The amendment is directly supported by the City Economic Development Master Plan. The site proposes to develop new multi-family residential units at an appropriate location.

#### Concurrency Review

The project will meet concurrency requirements for solid waste, drainage, potable water, sewer, and transportation. Details are provided in Table 4.

**Table 2. Information on Design Capacity, Usage, and Concurrency Status for Various Services.**

SERVICE	FACILITY DESIGN CAPACITY	USAGE	STATUS
Solid Waste	1,836 Tons	1,384 Tons	Capacity exists



Drainage	NA	NA	NA
Potable Water	30.1 MGD <sup>6</sup>	9.4 MGD	Capacity exists
Sewer	28.4 MGD	12.8 MGD	Capacity exists
Roads Veterans Parkway	Level of Service D Level of Service D	14,500 AADT No data	Capacity exists Capacity exists

### Public Notification

This case will be publicly noticed as required by LUDR, Section 8.3.2.A and 8.3.4 as further described below.

Publication: A display ad will be prepared and sent to the *News-Press* announcing the intent of the petitioners as described within this report. The ad will appear in the *News-Press* a minimum of 10 days prior to the public hearing scheduled before the Hearing Examiner.

Written notice: Property owners located within 500 feet from the property lines of the PDP will receive written notification of the scheduled public hearing. These letters will be mailed to the aforementioned parties a minimum of 10 days prior to the public hearing scheduled before the Hearing Examiner.

Posting of a Sign: A large sign identifying the case and providing salient information will be posted on the property, as another means of providing notice of the request.

### **RECOMMENDATION**

Staff finds that this PDP is consistent with the City LUDRs and Comprehensive Plan. Staff supports all requests and recommends approval of the PDP. Further conditions or requirements may be in the Resolution that approves the PDP request.

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### **Staff Contact Information**

Chad Boyko, AICP, Principal Planner

PH: 239-573-3162

Email: [cboyko@capecoral.net](mailto:cboyko@capecoral.net)

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




# CITY OF CAPE CORAL

Department of  
Community Development  
Planning Division

CURRENT ZONING MAP  
500 Proximity Boundary

Case No. PDP18-0008

## LEGEND

-  Subject Parcel
-  500' Boundary
-  A
-  C-1
-  MR
-  P-1
-  PRES- Regulated by FLU
-  R-1B
-  R-3
-  RD



APRIL 4, 2019

0 310 620 930 1,240 Feet

This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.

KRKA

SUBJECT PARCELS

500' PROXIMITY BOUNDARY

GELCYS CANAL

SOUTH SPREADER  
WATERWAY

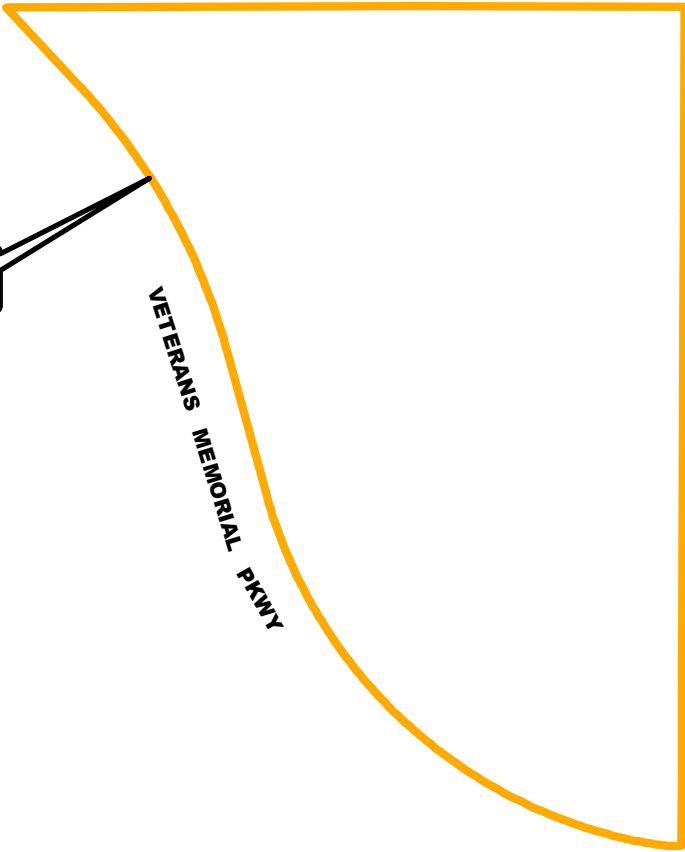
ALECIA CANAL

MAXINE CANAL

DANNY CANAL

MCDONOUGH CANAL

Subject Parcels



ROYAL TEE CIR  
LADY ANNE CIR

WINDWOOD PL

SUTHERLAND CT

BELLINGHAM CT

GREENDALE PL

SURFSIDE BLVD

SUNVALE CT

FAIRMONT COVE CT

BLACKBURN CIR

VETERANS MEMORIAL PKWY

SOMERVILLE LOOP


MIRACLE PKWY

SANDOVAL BLVD

SW 25TH ST

CITY OF CAPE CORAL  
Department of  
Community Development  
Planning Division

Case No. PDP18-0008

 Subject Parcel



0 380 760 Feet

This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.



## 500' NOTICE TO SURROUNDING PROPERTY OWNERS

**CASE NUMBER:** PDP18-0008

**REQUEST:** The applicant requests approval of a Planned Development Project (PDP) entitled "Cape 84 Acres" to develop a maximum of 336 units within three phases. The PDP requests Development Plan approval along with the approval of several deviations.

**CAPE CORAL STAFF CONTACT:** Chad Boyko, Principal Planner, 239-573-3162, cboyko@capecoral.net

**PROPERTY OWNER(S):** MSI Holdings, LLC

**AUTHORIZED REPRESENTATIVE:** EnSite, Inc.

**UPCOMING PUBLIC HEARING:** Notice is hereby given that the City of Cape Coral Hearing Examiner will hold a public hearing at 9:00 A.M. on November 5, 2019 on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

All interested parties are invited to appear and be heard. All materials presented before the Hearing Examiner will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available 5 days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

**DETAILED INFORMATION:** The case report and colored maps for this application are available at the City of Cape Coral website, [www.capecoral.net/publichearing](http://www.capecoral.net/publichearing) (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice.

**HOW TO CONTACT:** Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The hearings may be continued from time to time as necessary.

**ADA PROVISIONS:** In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

**APPEALS:** If a person decides to appeal any decision made by the Hearing Examiner with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Department of Community Development  
Post Office Box 150027 • Cape Coral, Florida 33915-0027  
1015 Cultural Park Blvd. • Cape Coral, Florida 33990  
Email: [planningquestions@capecoral.net](mailto:planningquestions@capecoral.net)

## **NOTICE OF PUBLIC HEARING ADVERTISEMENT**

**CASE NUMBER:** PDP18-0008

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by order of  
Kimberly Bruns, CMC  
City Clerk  
REF # PDP18-0008

**LEGAL AD - DCD**

**PUBLISH AD:** Saturday October 26, 2019

Department of Community Development  
Post Office Box 150027 • Cape Coral, Florida 33915-0027  
1015 Cultural Park Blvd. • Cape Coral, Florida 33990  
Email: [planningquestions@capecoral.net](mailto:planningquestions@capecoral.net)

**Classified Ad Receipt**  
**(For Info Only - NOT A BILL)**

**Customer:** CITY OF CAPE CORAL\_DEPT OF COM

**Ad No.:** 0003852356

**Address:** 1015 CULTURAL PARK BLVD  
CAPE CORAL FL 33990  
USA

**Net Amt:** \$330.41

**Run Times:** 1

**No. of Affidavits:** 1

**Run Dates:** 10/26/19

**Text of Ad:**

**NOTICE OF PUBLIC HEARING**  
CASE NUMBER: PDP18-0008

**REQUEST:** The applicant requests approval of a Planned Development Project (PDP) entitled "Cape 84 Acres" to develop a maximum of 336 units within three phases. The PDP requests Development Plan approval along with the approval of several deviations.  
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by order of  
Kimberly Bruns, CMC



Department of Community Development  
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: Cape 84 Acres

APPLICATION NO: PDP18-0008

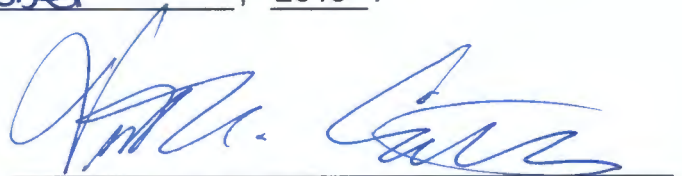
STATE OF FLORIDA       )  
                                      ) §  
COUNTY OF LEE        )

I, Vincent A. Cautero, AICP having first been duly sworn according to law, state on my oath the following:

That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral.

That pursuant to City of Cape Coral Code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also, posting of a sign has been done when applicable per Section 8.3.2A.

DATED this 28<sup>th</sup> day of October, 2019.

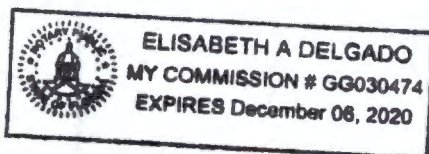


Vincent A. Cautero, AICP

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of October, 2019, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath.

Exp. Date 12/16/20 Commission # GG030474



Elisabeth A. Delgado  
Signature of Notary Public

Elisabeth A. Delgado  
Print Name of Notary Public





May 25, 2018

En-Site, Inc.  
c/o Brian R. Smith, Principal  
2401 First Street, Suite 201  
Ft. Myers, FL 33901

Subject: **En-Site – Cape 160 East  
Listed Species Survey and Results**

Dear Mr. Smith,

The purpose of this letter is to summarize the findings of our remote sensing and site visit performed on September 26 & 27, 2017 and May 24, 2018 by a qualified biologist with WRA for the En-Site – Cape 160 East Project (Project). Our WRA scientist completed a desktop review and surveyed the area for the presence of species listed as endangered (E), threatened (T), or species of special concern (SSC) as defined by the United States Fish and Wildlife Service (USFWS) and/or the Florida Fish and Wildlife Conservation Commission (FWC) and their associated habitat.

## **EXISTING SITE CONDITIONS**

The proposed project consists of an approximately 85.1 acre project site to be utilized for future development. The subject property is located in Section 29 of Township 44 South, Range 23 East in Lee County, Florida. (See **Exhibit 1- Regional** and **Exhibit 2- Aerial Map**). The Cape 160 East project is located in Cape Coral, Florida and is immediately adjacent to the east of Veterans Memorial Parkway.

## **ENVIRONMENTAL CONSIDERATIONS**

### ***USDA – NRCS Soils***

A United States Department of agriculture (USDA) Soil Survey Map of the site (**Exhibit 3 – USDA Soils Map**) was reviewed. Hydric soils listed are in bold.

### **Hallandale Fine Sand (6) (1.6 acres)**

This soil unit consists of poorly drained soils found on low, broad flatwoods areas. The natural vegetation consists of saw palmetto (*Serenoa repens*), pineland threeawn (*Aristida stricta*), bluestem species (*Andropogon spp.*), panicum species (*Panicum spp.*) and South Florida slash pine (*Pinus elliottii*).

In most years, and under typical conditions, the water table is less than 10 inches below the surface for one to three months, then recedes below the limestone for approximately seven months.

#### **Boca Fine Sand (13) (33.2 acres)**

This soil unit is poorly drained and commonly found on flatwood habitats with smooth slopes ranging from zero to two percent. The natural vegetation consists of saw palmetto, pineland threeawn, South Florida slash pine and wax myrtle (*Myrica cerifera*). Under natural conditions, the water table is within ten inches of the surface for two to four months, then recedes below the limestone for approximately six months.

#### **Water (99) (50.3 acres)**

This unit does not contain soil. There is open surface water present in this area.

#### ***Vegetation and Community Types***

The land use categories reviewed on this project area were evaluated by WRA using the Florida Land Use, Cover and Forms Classification System (FLUCCS), Florida Department of Transportation (FDOT) Handbook (January 1999) as a guideline.

A WRA Environmental Scientist classified habitat types based on fieldwork consisting of traversing 15% of each habitat type on the site using a combination of pedestrian and vehicular transects and review of the current Soil Survey of Lee County in GIS. The boundaries that are shown on the FLUCCS map identify the estimated acreages (**Exhibit 4 – FLUCCS Map**). The land uses identified within the project area include the following: Upland Shrub and Brushland (FLUCCS 320), Brazilian Pepper (FLUCCS 422), Australian Pine (FLUCCS 437), Mixed Hardwoods (FLUCCS 438), Reservoirs (FLUCCS 530), Exotic Wetland Hardwoods (FLUCCS 619) and Freshwater Marshes (FLUCCS 641).

#### **Upland Shrub and Brushland (320) (7.1 ac.)**

This habitat type consists mainly of woody scrub plant species such as wax myrtle and Brazilian pepper (*Schinus terebinthifolius*) with a moderate canopy layer made up of live oak, laurel oak and earleaf acacia (*Acacia auriculiformis*). When entering the site from the southeast gate, a large portion of this habitat was present to the west and extending to the north within close proximity to the Project's boundary. An additional portion was also identified between the two smaller reservoirs present along the northeastern and central-eastern boundary.

#### **Brazilian Pepper (422) (2.2 ac.)**

The southeastern corner of the Project site consists of a highly dense habitat dominated by the Category I (as defined by the Florida Exotic Pest Plant Council's (FLEPPC) 2017 List of Invasive Plant Species) exotic Brazilian pepper. Minimal canopy coverage consists of several, mixed hardwoods, however the dominant species throughout the habitat is Brazilian pepper.

#### **Australian Pine (437) (0.9 ac.)**

The Australian pine community is located along the southwestern portion of the site. This habitat consists of a dense thicket of hardwood Australian pine (*Casuarina equisetifolia*) canopy that has minimal to no shrub or ground cover due to the abundance of dropped needles and high level of shading caused by the thick pine canopy. This canopy species is considered a Category I FLEPPC invasive species.

#### Mixed Hardwoods (438) (1.6 ac.)

This mixed hardwoods land use is located in the central portion of the Project site between two large, onsite reservoirs. This hardwood community has no single dominant species within the canopy. Instead, the entirety of the canopy regularly is made up of a combination of large and small species such as earleaf acacia, Australian pine, laurel oak and live oak. The shrub stratum is similar in diversity and consists of species such as wax myrtle, rattlebox (*Sesbania spp.*), groundseltree (*Baccharis halimifolia*), American beauty-berry (*Callicarpa americana*) and Caesar weed (*Urena lobata*).

#### Reservoirs (530) (58.8 ac.)

The majority of the site consists of two large, open surface water reservoirs centrally located within the Project site. Two additional, smaller reservoirs are located along the eastern boundary and extend off-site to the east. These communities are classified as artificial impoundments of open surface waters.

#### Exotic Wetland Hardwoods (619) (11.2 ac.)

This wetland community is characterized as having vegetative layer(s) dominated by multiple exotic species within several community layers. Found primarily along the southwestern and northern boundaries of the Project site, these exotic communities are dominated by a combination of exotic, wetland species such as Australian pine, melaleuca (*Melaleuca quinquenervia*), earleaf acacia, Brazilian pepper and/or rattlebox.

#### Freshwater Marshes (641) (3.3 ac.)

Located within the central and northeastern portion of the property, five freshwater marsh communities have been identified and field verified. The freshwater marsh located in the northwestern corner of the Property has been established due to the expansion of a previously created marsh immediately to the north. The remaining four freshwater communities are similar in location due to their associated connections to the previously identified onsite reservoirs. All four of these freshwater habitats have become established due to their constant exposure to historic and current hydrologic sheetflow coming the adjacent reservoirs. As displayed on **Exhibit 4**, three of these marshes currently serve as connections between the reservoirs. All five freshwater communities consisted of standing waters and/or were highly saturated. Common species found throughout the freshwater marsh systems include bluestem grasses, cattails (*Typha spp.*), needle rush (*Juncus spp.*) and buttonbush (*Cephalanthus occidentalis*).

#### ***Endangered/Threatened Wildlife Species***

A WRA scientist conducted a desktop review of available published information from federal and state online databases. Data collection consisted of literature review of existing sources for information useful in identifying the occurrence or potential occurrence of wildlife species listed as E, T or SSC (collectively recognized as listed species), as defined by the USFWS and/or the FWC. In addition, the presence of designated critical habitat and/or vegetative communities and land uses with the potential to support listed species was evaluated. The literature review included, but was not limited to, the following sources: SFWMD FLUCCS, USDA NRCS Web Soil Survey, FWC Bald Eagle and Waterbird Colony databases, Florida Natural Areas Inventory (FNAI) Lee County Tracking List. Additional resources, such as the FNAI Field Guides and Rare and Endangered Biota of Florida Series, were also used to evaluate habitat and vegetative community requirements for those species potentially occurring within the Project area.

During the habitat assessment (September 26, 2017) meandering pedestrian transects were conducted throughout all habitats by a WRA scientist to determine the presence of protected wildlife species (**Attachment A – Lee County Protected Species List**). The main species searched for on the property were



the gopher tortoise (*Gopherus polyphemus*), Eastern indigo snake (*Drymarchon couperi*), Florida scrub-jay (*Aphelocoma coerulescens*), bald eagle (*Haliaeetus leucocephalus*), Sherman's fox squirrel (*Sciurus niger shermani*), wood stork (*Mycteria americana*), Florida burrowing owl (*Athene cunicularia*), Florida sandhill crane (*Grus canadensis pratensis*) and listed wading birds, though all appropriate species were considered (**Exhibit 5 & 6 Wildlife and Regional Wildlife Map**).

#### Eastern Indigo Snake and Gopher Tortoise (*Drymarchon couperi* & *Gopherus polyphemus*)

The eastern indigo snake is listed by the USFWS as threatened. The species inhabits a wide variety of habitats, including pine flatwoods, hardwood forests, forested wetlands, as well as wet and dry prairies. Although this species seems to be strongly associated with high, dry, well-drained soils; it also frequents streams and swamps. In drier communities where habitat use coincides, indigo snakes will occasionally utilize gopher tortoise burrows for shelter. No eastern indigo snakes were observed during the WRA field assessments.

The gopher tortoise is listed as threatened by FWC. The gopher tortoise occurs in sandhill (pine-turkey oak associations), sand pine scrub, xeric hammock, pine flatwoods, dry prairie, coastal grasslands and dunes and mixed hardwood pine communities. These burrows are known to serve as refuge to many species, some of which are protected (eastern indigo snake, Florida mouse (*Peromyscus floridanus*), gopher frog (*Rana capito*), and Florida pine snake (*Pituophis melanoleucus*)).

The majority of the project site consists of open surface waters (Reservoirs), marshes and forested wetlands, which is not suitable habitat (i.e., pine flatwoods, xeric scrub) for gopher tortoises. The upland habitats (i.e., shrub, Brazilian pepper, mixed hardwoods) observed onsite consist of highly dense vegetation. While conducting the habitat assessment, no gopher tortoises or their associated burrows were observed onsite. We conclude that the onsite conditions are not suitable habitat for gopher tortoise foraging and/or burrowing.

Therefore, It is anticipated that this project is **"Not Likely to Adversely Affect"** the eastern indigo snake or the gopher tortoise.

Also to note, the City of Cape Coral requests a Burrowing Owl/Gopher Tortoise Affidavit (please reference **Attachment B**) to be submitted within 30 days of inspecting the property, as well as any vacant properties near the jobsite where vehicles (particularly construction/development related) may drive and/or in locations where construction materials may be placed. Results of this survey are to be documented and submitted to the City.

#### Bald Eagle (*Haliaeetus leucocephalus*)

The bald eagle was delisted by USFWS and FWC in August 2007 as a result of positive recovery of the species. Although the bald eagle was delisted, it continues to be protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act.

Initial research of databases containing information from the (FWC)/(USFWS) bald eagle nest identified one (1) documented active nest site within a one (1) mile radius of the project. Nest LE055 is located approximately 0.90 miles northeast of the project site and was last active during the 2012 survey season. One additional bald eagle nest (Nest LE062) was also identified outside, but adjacent to the east, of the one mile radius. This nest is located approximately 1.04 miles northeast of the Project site and was last active during the 2009 survey season.

Federal and state guidelines for the bald eagle require that certain activities may be conducted outside a 660-foot radius distance outward from a nest tree (USFWS 2007). Per the 2007 USFWS Bald Eagle Monitoring Guidelines, monitoring of the active nest is required if construction activities are to take place within the 660-foot radius during the nesting season (October 1 – May 15).

No bald eagles were observed on-site during the site inspections (September, 2017). The proposed project is **“Not Likely to Adversely Affect”** this species.

Florida Scrub Jay (*Aphelocoma coerulescens*)

The subject property is located within the USFWS Consultation Area for the Florida scrub-jay. The Florida scrub-jay is state and federally listed as “Threatened”.

Although the Project site is considered to be within Florida Scrub Jay Consultation Areas, the site does not contain suitable scrub-jay nesting and foraging habitat. Results of the site inspections showed that no scrub-jay species were observed on-site during the site inspections and the nearest documented scrub jays are located approximately 9.43 miles northeast (ID: 2302) and 9.9 miles north (ID: 2248) of the Project site. If, in the future, scrub jays are discovered during land clearing activities, all appropriate measures will be taken to minimize impact on habitat, nesting, and foraging areas.

Based on the data researched and the current site conditions observed during the assessments, it is expected that the proposed project will have **“No Affect”** on this species.

Sherman’s Fox Squirrel (*Sciurus niger shermani*)

Sherman’s fox squirrel is classified by the state of Florida as “Species of Special Concern”. While there are no specific guidelines for permitting, the 2013 FWC Species Action Plan recommends surveying suitable habitat immediately prior to construction for fox squirrel nests. If an active nest is identified, construction should avoid the nest by providing a 125 foot buffer during the nesting season.

No Sherman’s fox squirrels were observed onsite during the site inspections (September 28<sup>th</sup>, 2017) and the site does not contain marginal Sherman’s fox squirrel habitat. Therefore, the proposed project will have **“No Affect”** on this species.

Wood Stork (*Mycteria americana*)

The wood stork is federally and state listed as a “Threatened” species. Research of databases containing information from the FWC, USFWS, and other agencies identified no documented active nest sites within a one (1) mile radius of the project. The closest wood stork nest, Nest: 619041, is located approximately 13.6 miles northeast of the Project. In relation to Nest: 619041, the project area is therefore, located within one Wood Stork Core Foraging Area (619041).

No wood storks were observed onsite during the site inspections. Following the criteria established by the USFWS’s 2010 Programmatic Key for the Wood Stork, any impacts/losses of Suitable Foraging wood stork wetland habitats within Wood Stork Core Foraging Areas may reduce foraging opportunities for the wood stork, which in turn could result with adverse impacts to the species. Therefore, by utilizing the criteria set forth within the Programmatic Key, the USFWS has established recommendations for determining compensation for these impacts to these impacted, foraging habitats.

Based on the Project's final, approved total acreages of impacts to occur to suitable wood stork foraging habitat, the following determinations associated with this Project, as set by the USFWS's 2010 Programmatic Key, are to be applied regarding the future status of onsite SFH:

- Project impacts to SFH is less than one-half acre....."**Not Likely to Adversely Affect**"
- Project impacts to SFH are greater than one-half acre, are within the Core Foraging Area of a colony site, have been avoided and minimized to the extent practicable, compensation for unavoidable impacts is proposed, and habitat compensation will replace the foraging value similar to, or higher than, that of the impacted wetlands....."**Not Likely to Adversely Affect**"
  - o Project not as above....."**May Affect**"
- Project provides SFH compensation within the appropriate CFA, or within the service area of an approved mitigation bank, and habitat compensation replaces foraging value consisting of wetland enhancement or restoration of the wetlands affected, and provides foraging value similar to, or higher than, that of impacted wetlands....."**Not Likely to Adversely Affect**"
  - o Project does not satisfy these elements....."**May Affect**"

In reference to the criteria summarized above, any determination resulting with an outcome of "**Not Likely to Adversely Affect**", as outlined in the 2010 Programmatic Key, and the project has less than 50 acres of total wetland impacts, the requirements of section 7 of the Endangered Species Act of 1973 are fulfilled for the wood stork and no further action is required. However, if the results produced after applying the Key determine that the Project "**May Affect**" suitable foraging habitat, consultation with the USFWS will be required.

Also to note, if the total wetland impacts (this includes the SFH as well as any additional wetland impacts throughout the Project's entirety) are greater than five acres, the USFWS will require an analysis of foraging prey base losses and enhancements from the proposed action. If wetland impacts are less than 5 acres, an individual foraging prey base analysis is not necessary although type for type wetland compensation is still a requirement of the Key.

In summary, after final wetland(s) and SFH impacts (acreages) set to occur within the Project limits are calculated, a final determination based on the criteria of the 2010 Programmatic Key will be established. Based on this determination, any future consultations to the Project's associated Agencies will be established and carried out accordingly.

#### Florida Burrowing Owl (*Athene cunicularia*)

The burrowing owl is listed by the state of Florida as a species of special concern. The burrowing owl is commonly found on open native prairies and cleared areas that offer short groundcover. Burrowing owls and their nests are afforded protection under the Federal Migratory Bird Treaty Act issued by the U.S. Fish and Wildlife Service.

Construction activities are only permitted outside of the nesting season which takes place from February 15<sup>th</sup> – July 10<sup>th</sup> during which, the burrows are considered active. If a burrow is found on site it is recommended that a 50 foot radius buffer be roped off prior to initiating construction. An updated



burrowing owl survey may be required prior to construction. As mentioned previously in relation to the gopher tortoises, a City of Cape Coral Burrowing Owl/Gopher Tortoise Affidavit will need to be completed prior to construction initiation (please reference **Attachment B**).

Due to a lack of suitable onsite conditions and preferred habitat types, no Florida burrowing owls nor burrowing owl habitats were identified on site during the September 2017 site visits.

#### Florida Sandhill Crane (*Grus canadensis pratensis*)

The Florida sandhill crane is listed as threatened by FWC. The Florida sandhill crane is commonly found in wet prairies, marshy lake regions, low-lying pastures (including improved pastures), and shallow water open areas. Nesting occurs in marshy depressional ponds vegetated by pickerelweed, arrowhead, fire flag, maidencane, and other herbaceous vegetation. Nesting usually begins in January and may extend through August. In Central and Southwest Florida, the average egg-laying date is usually between February 22 and March 3 and incubation lasts for 29-31 days.

There were no adult sandhill cranes observed during the site visit and there have been no nests identified in the project area. Therefore, there will be **"no affect"** to the Florida sandhill crane in relation to the Project due to a lack of preferred habitat and no previous documentation relating to the occurrence of this species onsite.

#### Wading Birds

No shore or wading birds, or their nests were observed during the site inspection. FWC's 1999 Waterbird Colony Locator database of documented colonies was queried and yielded no documented occurrences within one (1) mile of the proposed project and is the only published data available to the public. The closest documented wading bird colony is approximately 1.72 miles southwest of the property (Colony #615101).

Listed wading birds protected under the federal and state ESA that were considered in this study include the reddish egret (*Egretta rufescens*), snowy egret (*Egretta caerulea*), little blue heron (*Egretta thula*), tricolored heron (*Egretta tricolor*), white ibis (*Eudocimus albus*), roseate spoonbill (*Platalea ajaja*), and wood stork. The closest active wading bird rookery is located approximately 2.9 miles southwest of the project site. Although the site does contain wading bird nesting and foraging habitat, no wading birds were observed on-site during the September 2017 site inspection.

Based on the current onsite conditions, the proposed project **"May Affect, Not Likely to Adversely Affect"** wading bird species.

Prior to construction, an updated nesting survey conducted during the breeding season (March to August) may be required to determine if listed wading birds are nesting within project wetlands. If nesting is identified, the project may be required to maintain a 328 foot buffer around the nest.

## **Conclusion**

WRA staff performed a database review and conducted site inspections on September 26<sup>th</sup> and 27<sup>th</sup> of 2017 and May 24, 2018. The purpose was to evaluate general site conditions and environmental constraints that may influence site development. The following listed species were considered, either due to the project's location in the USFWS Formal Consultation Area and/or due to the proximity of known habitat: gopher tortoise, eastern indigo snake, Florida scrub-jay, Florida sandhill crane, bald eagle, Sherman's fox

squirrel, wood stork, Florida burrowing owl and listed wading birds, though all appropriate species were considered. No listed species were identified nesting, denning or foraging within the subject property. Updated species specific surveys for the gopher tortoise, eastern indigo snake, bald eagle, wood stork, Florida burrowing owl, Florida sandhill crane and wading birds may be required prior to site development.

Mr. Smith, we appreciate the opportunity to work on the Cape 160 East Project with you and the En-site team. Should you have any questions or require additional information, please contact us via email at [jkohlbecker@wraengineering.com](mailto:jkohlbecker@wraengineering.com) and/or [mmiller@wraengineering.com](mailto:mmiller@wraengineering.com), or via phone at our office at (813) 265-3130.

Sincerely,



Josh Kohlbecker  
Sr. Environmental Scientist



Matthew P. Miller, P.W.S.  
Environmental Manager

**Attachments:**

- Exhibit 1. Regional Map
- Exhibit 2. Aerial Location Map
- Exhibit 3. Florida Land Use, Cover and Forms Classification System (FLUCCS) Map
- Exhibit 4. USDA-NRCS Soils Map
- Exhibit 5. Wildlife Map
- Exhibit 6. Regional Wildlife Map

Attachment A: Lee County, FL Protected Species List

Attachment B: City of Cape Coral Burrowing Owl/Gopher Tortoise Affidavit



## Exhibit 1: Regional Location Map

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**Legend**

 Regional Marker

Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, NGCC, © OpenStreetMap contributors, and the GIS User Community, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community



Engineering - Planning - Environmental Science  
4260 W. Linebaugh Ave.  
Tampa, FL 33624  
Phone: 813-265-3130  
www.wraengineering.com

PROJECT: En-Site - Cape 160

**En-Site - Cape 160 East Parcel  
Cape Coral, FL - Lee County  
Regional Map**

ORIGINAL DATE: 10/16/2017

REVISION DATE:

JOB NUMBER:

FILE NAME: Regional Map

GIS OPERATOR: JK



1 inch = 2,500 feet

## Exhibit 2: Aerial Location Map

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## Legend



Project Boundary (approx. 85.1 ac.)

Basemap obtained from FDOT Aerials, 2014.

Parcel boundaries obtained from Department of Revenue, 2010.

Path: S:\PROJECT FILES\1482 - EnSite - Cape 160 East\ENVIRONMENTAL\GIS\MAPS\Aerial\_Map.mxd



Engineering - Planning - Environmental Science

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www.wraengineering.com

PROJECT: En-Site - Cape 160

En-Site - Cape 160 East Parcel  
Cape Coral, FL - Lee County  
Aerial Map

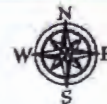
ORIGINAL DATE: 10/16/2017

REVISION DATE:

JOB NUMBER:

FILE NAME: Aerial Map

GIS OPERATOR: .JK



1 inch = 300 feet

## **Exhibit 3: Florida Land Use Cover & Forms Classification System (FLUCCS) Map**

---





Engineering - Planning - Environmental Science

4260 W. Linebaugh Ave.  
 Tampa, FL 33624  
 Phone: 813-265-3130  
 www.wraengineering.com

PROJECT: En-Site - Cape 160

# En-Site - Cape 160 East Parcel Cape Coral, FL - Lee County FLUCCS Map

ORIGINAL DATE: 10/19/2017

REVISION DATE: 10/23/2017

JOB NUMBER:

FILE NAME: FLUCCS Map East

GIS OPERATOR: JK

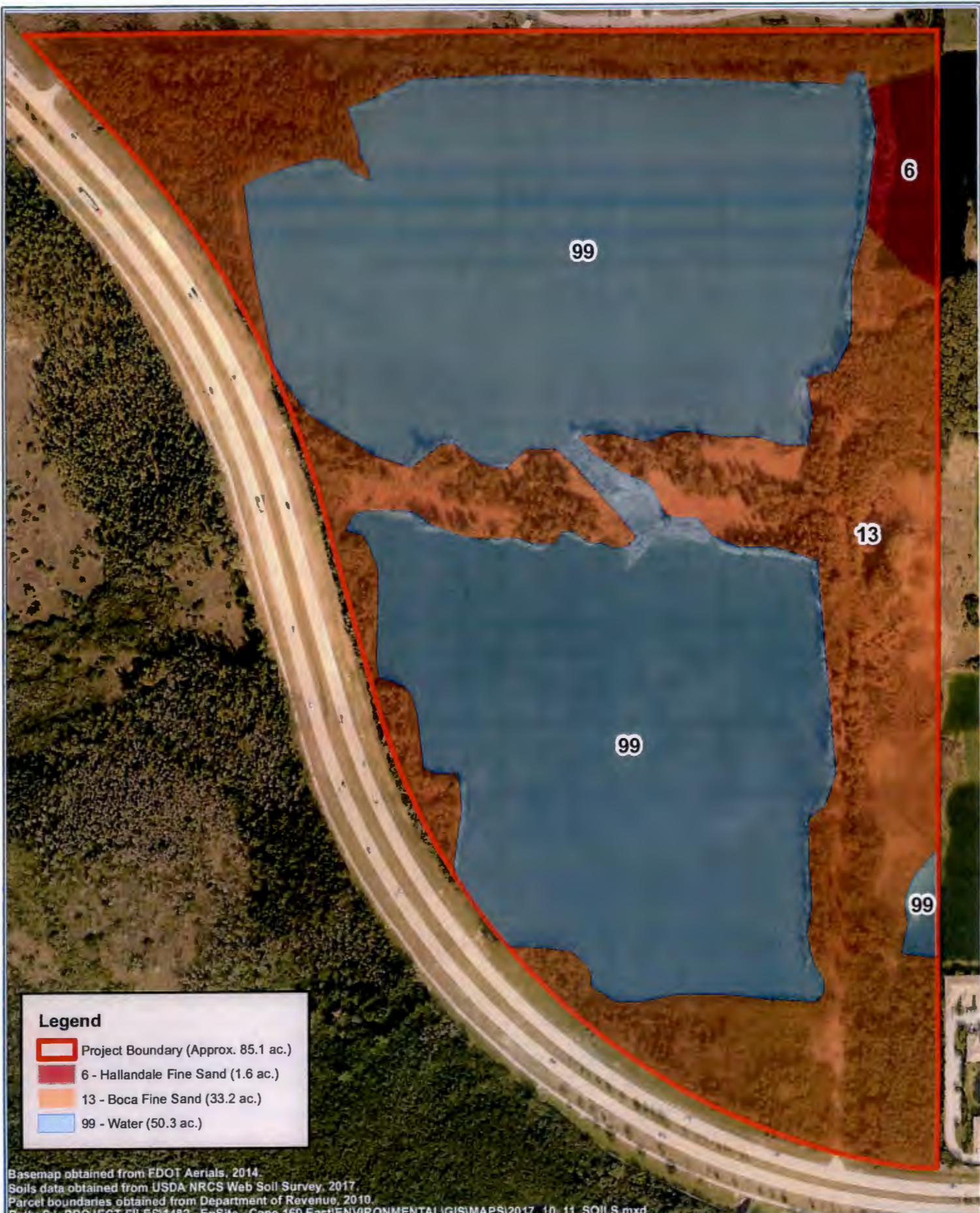


1 inch = 300 feet

## Exhibit 4: USDA-NRCS Soils Map

---





**Legend**

- Project Boundary (Approx. 85.1 ac.)
- 6 - Hallandale Fine Sand (1.6 ac.)
- 13 - Boca Fine Sand (33.2 ac.)
- 99 - Water (50.3 ac.)

Basemap obtained from FDOT Aerials, 2014.  
 Soils data obtained from USDA NRCS Web Soil Survey, 2017.  
 Parcel boundaries obtained from Department of Revenue, 2010.  
 Path: S:\PROJECT FILES\1482 - EnSite - Cape 160 East\ENVIRONMENTAL\GIS\MAPS\2017\_10\_11\_SOILS.mxd



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 www.wraengineering.com

PROJECT: En-Site - Cape 160

**En-Site - Cape 160 East Parcel**  
**Cape Coral, FL - Lee County**  
**USDA - Soils Map**

ORIGINAL DATE: 10/12/2017

REVISION DATE: 10/23/2017

JOB NUMBER:

FILE NAME: Soils Map - East

GIS OPERATOR: JK



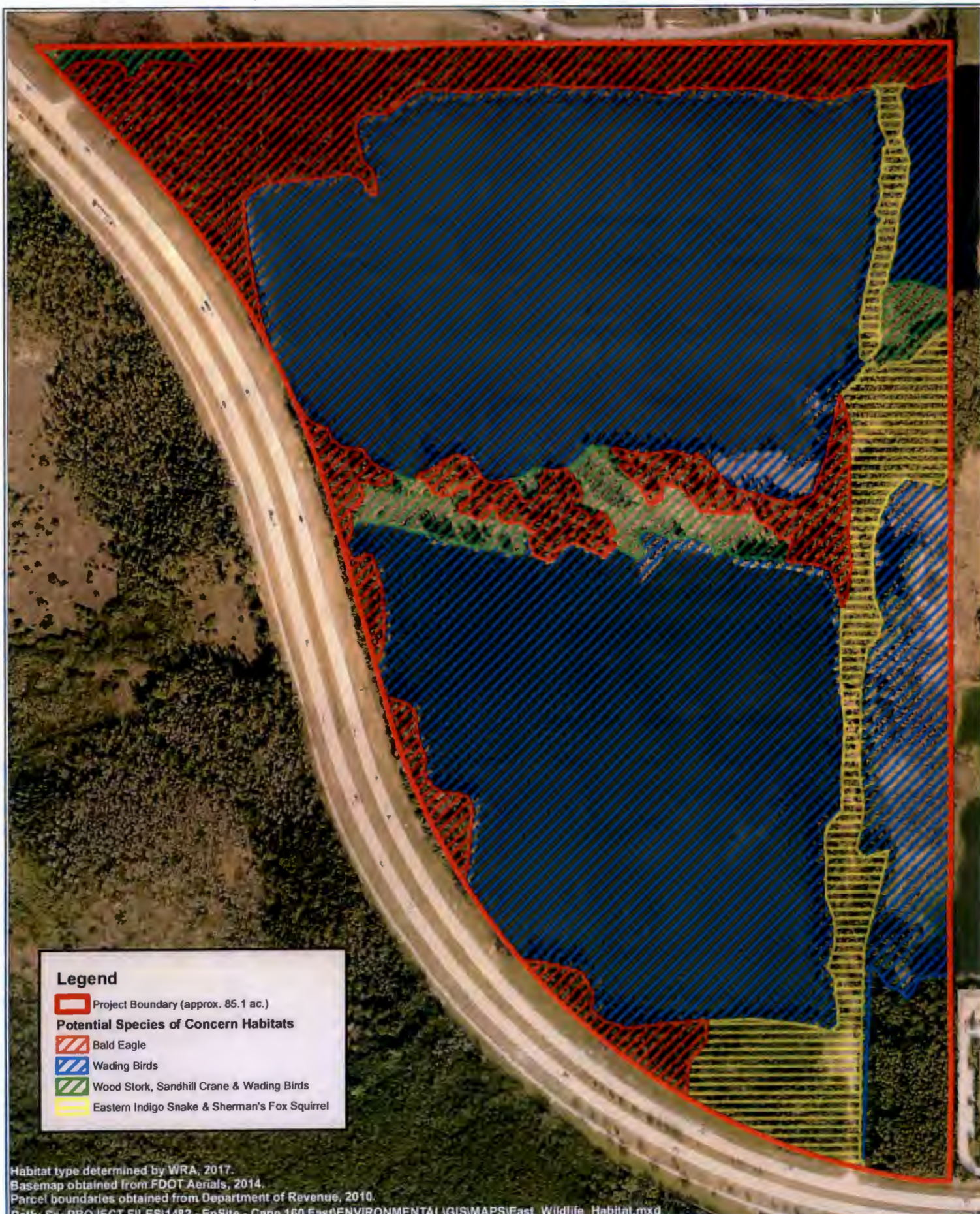
1 inch = 300 feet



## Exhibit 5: Wildlife Map

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### Legend

Project Boundary (approx. 85.1 ac.)

#### Potential Species of Concern Habitats

Bald Eagle

Wading Birds

Wood Stork, Sandhill Crane & Wading Birds

Eastern Indigo Snake & Sherman's Fox Squirrel

Habitat type determined by WRA, 2017.

Basemap obtained from FDOT Aerials, 2014.

Parcel boundaries obtained from Department of Revenue, 2010.

Path: S:\PROJECT FILES\1482 - EnSite - Cape 160 East\ENVIRONMENTAL\GIS\MAPS\East\_Wildlife\_Habitat.mxd



Engineering - Planning - Environmental Science

4260 W. Linebaugh Ave.  
Tampa, FL 33624  
Phone: 813-265-3130  
www.wraengineering.com

PROJECT: En-Site - Cape 160

## En-Site - Cape 160 East Parcel Cape Coral, FL - Lee County Wildlife Map

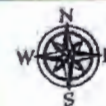
ORIGINAL DATE: 10/19/2017

REVISION DATE: 10/23/2017

JOB NUMBER:

FILE NAME: Wildlife Map - East

GIS OPERATOR: JK



1 inch = 300 feet



## Exhibit 6: Regional Wildlife

---

Path: S:\PROJECT FILES\1482 - EnSite - Cape 160 East\ENVIRONMENTAL\GIS\MAPS\2017\_10\_23\_Regional\_Wildlife\_Map.mxd

Project Location obtained from Department of Revenue, 2010.

Wildlife data provided by FWC.



### Legend



Regional Marker



Bald Eagle Nests (Nests LE062 & LE055)



Wood Stork Nest (Nest: 619041)



Florida Scrub Jay (ID: 2248 & 2302)



Wading Bird Colony (Colony: 615101)

Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



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PROJECT: En-Site - Cape 160

En-Site - Cape 160 East Parcel  
Cape Coral, FL - Lee County  
Regional Wildlife Map

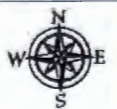
ORIGINAL DATE: 10/18/2017

REVISION DATE: 10/23/2017

JOB NUMBER:

FILE NAME: Regional Wildlife Map - East

GIS OPERATOR: JK



1 inch = 12,000 feet



## Attachment A: Lee County, FL Protected Species List

---

Item Number: 2.B.  
Meeting Date: 2/25/2020  
Item Type: HEARINGS

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Case #ZA19-0006\*; Address: 2500 & 2560 NE Pine Island Rd., 1570 Orchid Rd.; Applicant: Harry Lowell, Trustee

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No  
If Yes, Priority Goals Supported are listed below.  
If No, will it harm the intent or success of the Strategic Plan? No

**Planning & Zoning Recommendations:**

**SUMMARY EXPLANATION AND BACKGROUND:**

The applicant requests a rezone from Agricultural (AG-2)[1] to Commercial Corridor (CC) for three parcels totaling 9.21 acres.

---

[1] A Lee County Designation

**LEGAL REVIEW:**

**EXHIBITS:**

See attached backup materials

**PREPARED BY:**

Shawn Baker      Division- Planning      Department- Community Development

**SOURCE OF ADDITIONAL INFORMATION:**

Chad Boyko, AICP, Principal Planner

**ATTACHMENTS:**

**Description**

**Type**

▢ Backup materials

Backup Material



DEPARTMENT OF COMMUNITY DEVELOPMENT  
REQUEST FOR REZONING APPLICATION  
Questions: 239-574-0776

Case # 2A19-0006

REQUEST FOR A REZONING

FEE \$2,050.00 first 3 acres plus \$220.00 each additional acre over 3 up to 20 acres; \$22.00 per acre over the first 20 acres. In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 5.4). Advertising costs will be billed and must be paid prior to hearing.

Following the approval of your request, the applicant shall be responsible for paying the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the city from issuing any applicable building permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

OWNER OF PROPERTY

Harry Lowell, Trustee

Email: hlowell42@yahoo.com

Address: 12995 S. Cleveland Ave., Ste. PBS-34

City Fort Myers State: FL Zip 33907

Phone: \_\_\_\_\_

AUTHORIZED REPRESENTATIVE

Banks Engineering

Email: shewitt@bankseng.com

Address: 10511 Six Mile Cypress Parkway, Ste. 101

City Fort Myers State: FL Zip 33966

Phone: 239-939-5490

Unit \_\_\_\_\_ Block \_\_\_\_\_ Lot(s) \_\_\_\_\_ Subdivision \_\_\_\_\_

Address of Property 2500 & 2560 NE Pine Island Rd., & 1570 Orchid Rd.

Current Zoning AG-2 Plat Book \_\_\_\_\_, Page \_\_\_\_\_

Proposed Zoning Commercial Corridor (CC) Strap Number 04-44-24-00-00009.0000, 0020, & .0030

THIS APPLICATION SHALL ALSO HAVE ANY ADDITIONAL REQUIRED SUPPORTING DOCUMENTS

The owner of this property, or the applicant agrees to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State, and County laws and certifies that all information supplied is correct to the best of their knowledge.

If the owner does not own the property in his/her personal name, the owner must sign all applicable forms in his/her corporate capacity.





**DEPARTMENT OF COMMUNITY DEVELOPMENT  
REQUEST FOR REZONING APPLICATION**

**Questions: 239-574-0776**

**Case #** \_\_\_\_\_

**PROCEDURE LIST FOR REZONING REQUEST**

1. Applicant's portion of request shall be typewritten and signature notarized.
  - a) All forms (Application, Acknowledgement Form, Authorization to Represent) must be signed by the property owner or the applicant. If the Authorized Representative is an attorney, the application and the Acknowledgement Form may be signed by the attorney and an Authorization to Represent Form is not required.
  - b) If there are any deed restrictions on the property, a copy of the restrictions will be required.
2. Letter of intent stating the actual request and why the request is being made.
3. Certified survey done within past six (6) months MAY be required.
4. If the subject property is within 500 feet of any County properties, the applicant must provide a typewritten list of all affected property owners within the area. The list must be prepared in label format and contain the following information; name, address, city, state, and zip code.

In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 5.4). Advertising costs will be billed and must be paid prior to hearing.

Following the approval of your request, the applicant shall be responsible for paying the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the city from issuing any applicable building permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

IT IS REQUIRED THAT APPLICANT AND/OR REPRESENTATIVE ATTEND BOTH THE HEARING EXAMINER AND CITY COUNCIL MEETINGS.

11/11



DEPARTMENT OF COMMUNITY DEVELOPMENT  
REQUEST FOR REZONING APPLICATION  
Questions: 239-574-0776

Case # \_\_\_\_\_

REQUEST FOR A REZONING

FEE \$2,050.00 first 3 acres plus \$220.00 each additional acre over 3 up to 20 acres; \$22.00 per acre over the first 20 acres. In addition to the application fee, all required advertising costs are to be paid by the applicant (ORD 39-03, Sec. 5.4). Advertising costs will be billed and must be paid prior to hearing.

Following the approval of your request, the applicant shall be responsible for paying the City to electronically record the final signed Resolution or Ordinance with the Lee County Clerk of Court. Until this fee is paid, restrictions on the issuance of any City permits will remain on the affected property that will prevent the city from issuing any applicable building permits, site plans, certificates of use, or certificates of occupancy for any property covered by the Resolution or Ordinance.

OWNER OF PROPERTY

Harry Lowell

Email: hlowell42@yahoo.com

Address: 12995 S. Cleveland Ave., Ste. PBS-34

City Fort Myers State: FL Zip 33907

Phone: \_\_\_\_\_

AUTHORIZED REPRESENTATIVE

Banks Engineering

Email: shewitt@bankseng.com

Address: 10511 Six Mile Cypress Parkway, Ste. 101

City Fort Myers State: FL Zip 33966

Phone: 239-939-5490

Unit \_\_\_\_\_ Block \_\_\_\_\_ Lot(s) \_\_\_\_\_ Subdivision \_\_\_\_\_

Address of Property 2500 & 2560 NE Pine Island Rd., & 1570 Orchid Rd.

Current Zoning AG-2 Plat Book \_\_\_\_\_, Page \_\_\_\_\_

Proposed Zoning Corridor (Corr) Strap Number 04-44-24-00-00009.0000, 0020, & .0030

THIS APPLICATION SHALL ALSO HAVE ANY ADDITIONAL REQUIRED SUPPORTING DOCUMENTS

The owner of this property, or the applicant agrees to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State, and County laws and certifies that all information supplied is correct to the best of their knowledge.

If the owner does not own the property in his/her personal name, the owner must sign all applicable forms in his/her corporate capacity.



DEPARTMENT OF COMMUNITY DEVELOPMENT  
REQUEST FOR REZONING APPLICATION  
Questions: 239-574-0776

Case # \_\_\_\_\_

(SIGNATURE MUST BE NOTARIZED)

Harry M. Lowell - Trustee  
Harry Lowell  
NAME (PLEASE TYPE OR PRINT)

Harry M. Lowell - Trustee  
APPLICANT'S SIGNATURE

STATE OF FL, COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me this 7 day of February, 2019, by  
Harry M. Lowell who is personally known or produced  
as identification.

Exp. Date: 11/16/21 Commission Number: GG 134321

Signature of Notary Public: Jennifer M. Sheppard

Printed name of Notary Public: Jennifer M. Sheppard  
(SIGNATURE MUST BE NOTARIZED)







DEPARTMENT OF COMMUNITY DEVELOPMENT  
REQUEST FOR REZONING APPLICATION  
Questions: 239-574-0776

Case # \_\_\_\_\_

AUTHORIZATION TO REPRESENT PROPERTY OWNER(s)

PLEASE BE ADVISED THAT

Banks Engineering

(Name of person giving presentation)

IS AUTHORIZED TO REPRESENT ME IN THE REQUEST TO THE HEARING EXAMINER, OR CITY COUNCIL FOR  
Zoning Amendment

(Type of Public Hearing – i.e., PDP, Zoning, Special Exception, Variance, etc.)

UNIT                      BLOCK                      LOT(S)                      SUBDIVISION

OR LEGAL DESCRIPTION

LOCATED IN THE CITY OF CAPE CORAL, COUNTY OF LEE, FLORIDA.

Harry Lowell

PROPERTY OWNER (Please Print)

PROPERTY OWNER (Signature & Title)

Harry M. Lowell - Trustee

PROPERTY OWNER (Please Print)

PROPERTY OWNER (Signature & Title)

STATE OF FL, COUNTY OF

Lee

Subscribed and sworn to (or affirmed) before me this 7 day of February, 2019 by

Harry M. Lowell who is personally known or produced  
as identification.

Exp. Date: 11/16/21 Commission Number: 66 134321

Signature of Notary Public:



Printed name of Notary Public:

Jennifer M. Sheppard

Note: Please list all owners. If a corporation, please supply the Planning Division with a copy of corporation papers.



DEPARTMENT OF COMMUNITY DEVELOPMENT  
REQUEST FOR REZONING APPLICATION  
Questions: 239-574-0776

Case # \_\_\_\_\_

ACKNOWLEDGEMENT FORM

I have read and understand the above instructions. Hearing date(s) will be confirmed when I receive a copy of the Notice of Public Hearing stipulating the day and time of any applicable hearings.

I acknowledge that I, or my representative, must attend any applicable meetings scheduled for the Hearing Examiner, Planning & Zoning Commission/Local Planning Agency, and City Council.

I will have the opportunity, at the hearing, to present verbal information pertaining to my request that may not be included in my application.

I understand any decision rendered by the CITY shall be subject to a thirty (30) day appeal period. Any work performed within the thirty (30) day time frame or during the APPEAL process will be completed at the applicant's risk.

I understand I am responsible for all fees, including advertising costs. All fees are to be submitted to the City of Cape Coral with the application or the item may be pulled from the agenda and continued to future date after fees are paid.

Please obtain all necessary permits prior to commencing any phase of construction.

Please indicate on a separate sheet those persons to whom you wish a copy of the Public Hearing Notice sent.

By submitting this application, I acknowledge and agree that I am authorizing the City of Cape Coral to inspect the subject property and to gain access to the subject property for inspection purposes reasonably related to this application and/or the permit for which I am applying.

I hereby acknowledge that I have read and understood the above affidavit on the 7 day of February, 2019

Harry M. Lowell - Trustee  
NAME (PLEASE TYPE OR PRINT)

Harry M. Lowell - Trustee  
APPLICANT'S SIGNATURE

STATE OF FL COUNTY OF Lee

Subscribed and sworn to (or affirmed) before me this 7 day of February, 2019 by  
Harry M. Lowell who is personally known or  
as identification.

Exp. Date: 11/16/21 Commission Number: GG 134321



Signature of Notary Public: Jennifer M. Sheppard  
Printed name of Notary Public: Jennifer M. Sheppard



DEPARTMENT OF COMMUNITY DEVELOPMENT  
REQUEST FOR REZONING APPLICATION  
Questions: 239-574-0776

Case # \_\_\_\_\_

**DOCUMENTARY EVIDENCE (LUDR, Section 8.3.1.C.6.f)**

A copy of all documentary evidence shall be made available to the decision-making body or the Hearing Examiner and to staff no later than two business days prior to the hearing of the application. This requirement includes information that the applicant intends to present at public hearing.

I have read the above requirement and agree to comply with this provision.

Harry M. Lowell - Trustee      Harry M. Lowell - Trustee  
OWNER/APPLICANT (PLEASE TYPE OR PRINT)      OWNER/APPLICANT SIGNATURE

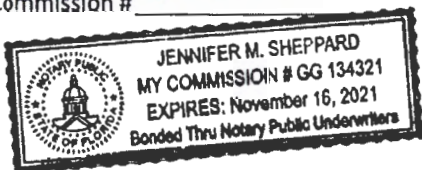
(SIGNATURE MUST BE NOTARIZED)

STATE OF FL      COUNTY OF Lee

Sworn to (or affirmed) and subscribed before me on this 7 day of February, 2019  
by Harry M. Lowell, who is personally known or who has produced \_\_\_\_\_ as identification.

Exp. Date 11/16/21  
Commission # \_\_\_\_\_

Jennifer M. Sheppard  
Signature of Notary Public  
Jennifer M. Sheppard  
Print Name of Notary Public







Professional Engineers, Planners & Land Surveyors

February 14, 2020

Mr. Chad Boyko, AICP, Principal Planner  
Department of Community Development  
City of Cape Coral  
1015 Cultural Park Boulevard  
Cape Coral, Florida 33990

RE: REQUEST FOR REZONING – ZA19-0006  
**UPDATED** LETTER OF INTENT – ORCHID RD & NE PINE ISLAND RD  
STRAP Nos. 04-44-24-00-00009.0000, 04-44-24-00-00009.0020 & 04-44-24-00-00009.0030

Dear Mr. Boyko:

Please accept this updated letter of intent and attached updated page 2 of 6 of the zoning application since the City has adopted a new Land Development Code since the application was initially submitted on April 5, 2019. On behalf of the property owner, Harry Lowell, Trustee of Laurel Center Management Company Profit Sharing Plan Dated November 1, 1978, we respectfully request a rezoning of the subject 9.21 ± acre parcel located at the southeast corner of NE Pine Island Road and Orchid Road that was annexed into the City of Cape Coral in 2019 and is the subject of a concurrent general future land use map amendment application. The applicant is requesting that the property receive a future land use classification of Pine Island Road District (PIRD) and a zoning designation of Commercial Corridor (CC). The existing Lee County future land use classification for the property is Commercial and the existing Lee County zoning is AG-2. This letter of intent is provided along with the following attachments in support of the request for rezoning application:

1. Updated Application
2. Acknowledgement
3. Authorization to Represent
4. Survey
5. List and Map of Surrounding Property Owners within 500' radius

Below is a table demonstrating the existing and proposed future land use and zoning of the subject property as well as future land use and zoning of the surrounding properties.

	<i>Future Land Use</i>	<i>Zoning</i>
<i>Subject Property Existing</i>	Lee County - Commercial (Mixed Use Overlay)	Lee County - Agricultural (AG-2)
<i>Subject Property Proposed</i>	Pine Island Road District	Commercial Corridor (CC)
	<i>Surrounding Future Land Use</i>	<i>Surrounding Zoning</i>
<i>North</i>	Pine Island Road District	Commercial Corridor
<i>South</i>		
<i>West 1/2</i>	Lee County - Sub-Outlying Suburban	Lee County - Residential Single-Family (RS-1)
<i>East 1/2</i>	Lee County - Commercial (Mixed Use Overlay)	Lee County - Residential Single-Family (RS-1)
<i>East</i>	Lee County - Commercial (Mixed Use Overlay)	Lee County - Agricultural (AG-2)
<i>West</i>	Pine Island Road District	Commercial Corridor (CC)

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The subject property consists of three parcels under the same ownership located at the southeast corner of NE Pine Island Road and Orchid Road. Approval of the requested rezoning to Commercial Corridor on the subject site will be consistent with the adjacent properties to the west and north and will be consistent with the requested Pine Island Road District future land use category. Please refer to below Figure 1 for existing surrounding future land use classifications and zoning in Lee County and Figure 2 for existing surrounding future land use classifications in the City. Figure 3 provides the existing surrounding zoning designations within the City.

Figure 1: Existing Surrounding Future Land Use Classifications and Zoning (Lee County)

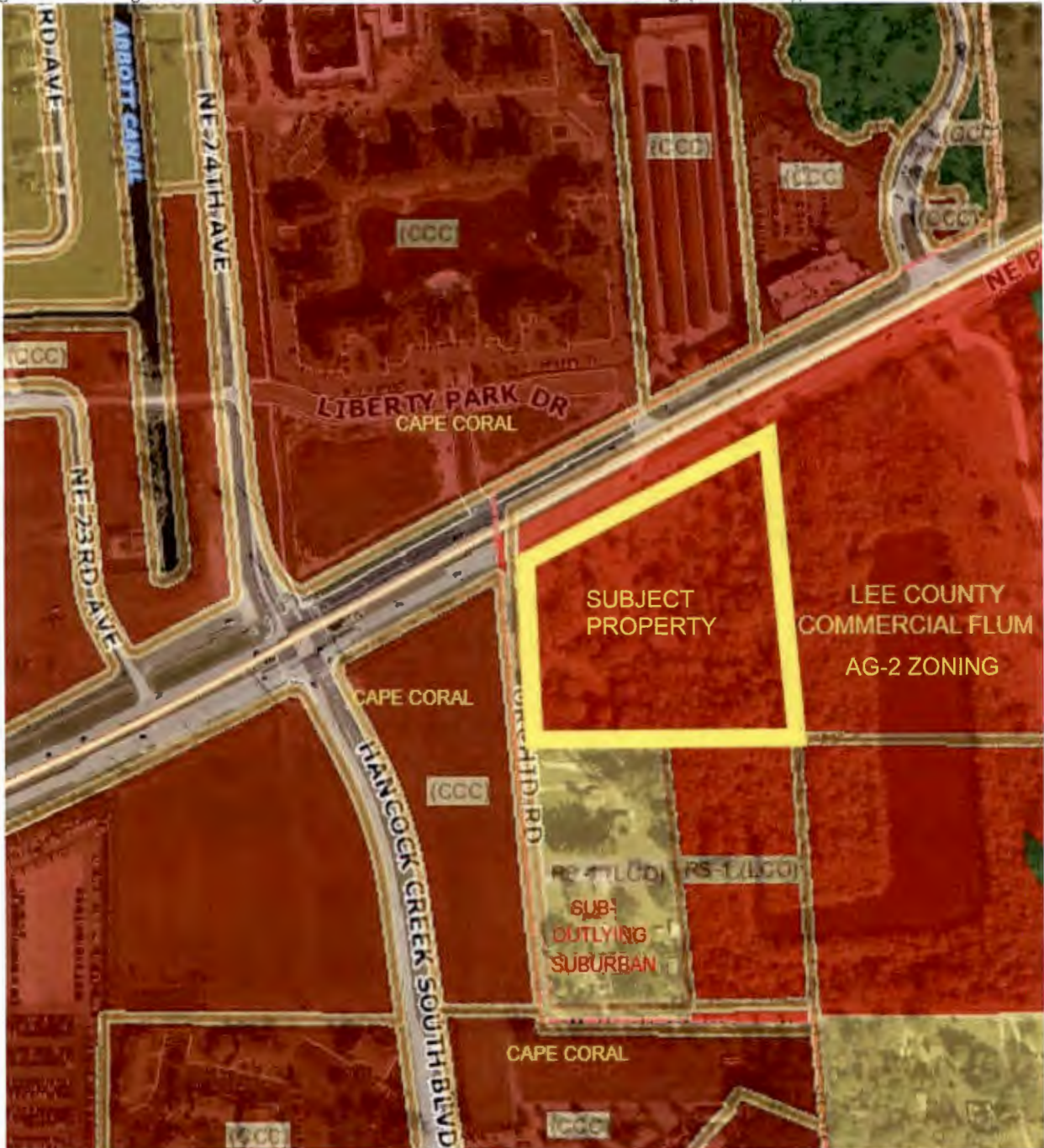




Figure 2: Existing Surrounding Future Land Use Classifications (City)

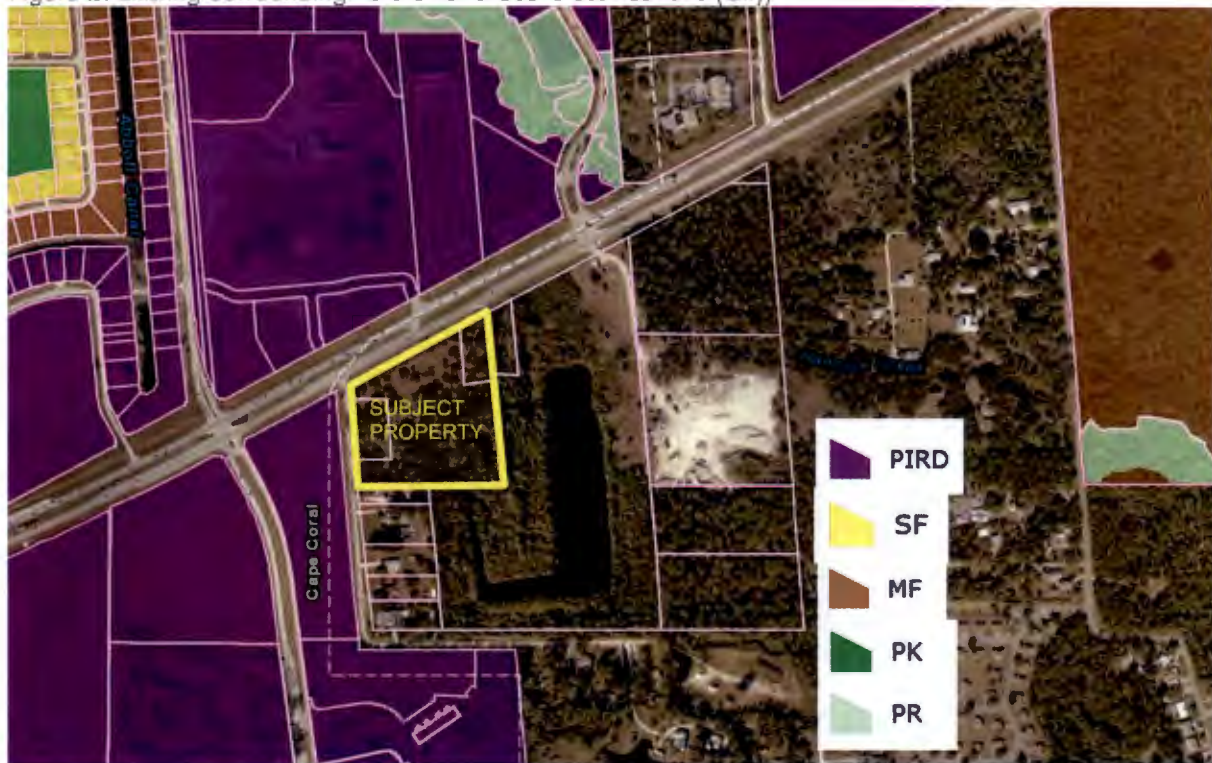


Figure 3: Existing Surrounding Zoning Categories (City)



The character of the neighborhood consists of a commercial corridor along a principal arterial roadway, NE Pine Island Road at its intersection with a local roadway, Orchid Rd. The site is less than 600 feet east of an intersection with a 2-lane collector road, NE 24th Ave/Hancock Creek South Blvd. The subject property is a portion of a larger parcel that was designated as Commercial future land use by Lee County on February 25, 2009. To the west across Orchid Rd. is vacant property within the City limits that is designated as Commercial Corridor zoning. The property to the north across NE Pine Island Road is within the City limits and is designated as Commercial Corridor zoning. At the northeast corner of NE Pine Island Road and NE 24th Avenue is the Liberty Health Park development that is developed with Uptown apartments in the rear with an assisted living facility in the rear and commercial outparcels along NE Pine Island Road. To the east of Liberty Health Park is an existing self-storage facility then medical offices with a bank at the northwest corner of NE Pine Island Rd and Commerce Creek Blvd. To the east of the subject property is within Lee County and is currently vacant land within the Commercial future land use designation, zoned AG-2. To the south of the subject property is within Lee County and is vacant land with Commercial future land use designation, zoned residential RS-1 along the eastern ½ and within the western ½ has Lee County Sub-Outlying Suburban future land use designation, Zoned residential RS-1 and developed with an existing single-family residential node that consists of five (5) single family homes that were developed between the 1950's to 1980's. This area transitions into the City limits south of Orchid Rd. and the existing Casa di Fiori multi-family development which also contains the Commercial Corridor zoning designation. The proposed zoning change is compatible and consistent with the character of the neighborhood and is consistent with the existing development pattern.

Please accept the following evaluation of the proposed zoning amendment with respect to determining consistency with the review criteria found in the City of Cape Coral's Land Development Code Section 3.4.6:

*1. Whether the proposed zoning district is consistent with the City Comprehensive Plan;*

The proposed Commercial Corridor (CC) district will be compatible with the Comprehensive Plan pursuant to the City of Cape Coral adopting the Pine Island Road District (PIRD) for the site under the concurrent future land use map amendment application (LU19-0002). The Planning & Zoning Commission/Local Planning Agency unanimously recommended approval of the land use amendment scheduled for City Council on March 2, 2020. The CC zoning district is the only district that is consistent with the PIRD future land use designation.

*Policy 1.15.l: Pine Island Road District: This Land Use designation will encourage mixed-use development at key intersections with major North-South streets along Pine Island Road.*

*Corridor: Includes such uses as retail, office, office/warehouse, light manufacturing, institutional (schools, colleges), single-family residential, multifamily residential, larger scale commercial retail (big box stores over 50,000 square feet) and government uses such as parks and public facilities. Multi-family residential uses may be developed at a density of twenty-five units per acre, for sites of four acres or more. Multi-family residential uses may consist of no less than fifty units or have a density no less than ten or more units per acre. No duplexes are permitted. Commercial and light manufacturing uses shall not exceed a floor to lot area ratio (FAR) of 1.25 in accordance with City design standards. Public facilities shall be subject to Policy 1.15.h., of the Future Land Use Element and parks and recreation shall be subject to Policy 1.15.i. of the Future Land Use Element.*

*At build-out, the mix of uses along the Pine Island Road District shall be under the following ranges:  
Pine Island Road District. Build-Out Mixed-Use Ranges*

<b>RANGE</b>			
<b>Use</b>	<b>Units</b>	<b>From</b>	<b>To</b>
<b>Retail</b>	<b>SF</b>	<b>3,583,500</b>	<b>4,379,700</b>
<b>Office/warehouse/ light manufacturing</b>	<b>SF</b>	<b>1,144,800</b>	<b>1,582,500</b>
<b>Hotels</b>	<b>Rooms</b>	<b>700</b>	<b>790</b>
<b>Residential</b>	<b>Units</b>	<b>3,720</b>	<b>5,030</b>

The criteria to be used for evaluating proposed Commercial Corridor zonings in relation to the intent of the City Comprehensive Plan, the Pine Island Road Master Plan and other planning principles are contained in the following tables:

*Commercial Corridor Criteria*

CRITERIA	PERFORMANCE
1. Does the property abut an existing and developed corridor zoned area?	If yes, good candidate for Corridor zoning.
No – However there are three properties adjacent to the north (across Pine Island Road) that are a developed Commercial Corridor zoned area.	
2. Does the property abut corridor-zoned area on two sides or more?	If yes, good candidate for Corridor zoning.
No – However the property is adjacent to corridor-zoned properties on two sides - to the north (across Pine Island Road) and to the west (across Orchid Road).	
3. Is the property part of a larger tract, a portion of which is already zoned Corridor?	If yes, good candidate for Corridor zoning.
No.	
4. Is the parcel a large-lot assemblage of three or more acres?	If yes, good candidate for Corridor zoning.
Yes. The property consists of three parcels under the same ownership with a combined total of 9.21 ± acres.	
5. Does the property front Pine Island Road on at least 180 feet?	If yes, good candidate for Corridor zoning.
Yes – the subject properties have a combined frontage of ±715 feet on Pine Island Road.	

The subject property meets 2 of the 5 criteria for Commercial Corridor zoning and although it is not abutting Commercial Corridor zoning on its property lines, it is adjacent to Commercial Corridor zoning to the north and west and is a good candidate for Commercial Corridor zoning. The proposed rezoning to Commercial Corridor is consistent with Policy 1.15.I.

*Policy 3.3: Application of the commercial areas along and proximate to commercial corridors at key locations is intended to address the projected demand for commercial development as summarized in the Table below, or other subsequent analysis.*

The table provided in Policy 3.3 indicates that the total projected demand for commercial acres of land within the Pine Island Road Corridor is 399 acres. The proposed rezoning is consistent with policy 3.3.

*OBJECTIVE 4: Location of Future Development: Future private development requiring public water and wastewater will be directed into the Urban Services Infill Area and the Urban Services Transition Area illustrated on the Future Land Use Map, unless specifically accepted by the provisions of this plan.*

*Policy 4.1: Future development requiring access or connection to public water and sewer facilities will*



*be located within either the Urban Services Infill or Transition areas.*

The subject property lies within the Urban Services Transition Area, consistent with Objective 4 and Policy 4.1.

*Economic Development Element Policy 3.2: The City of Cape Coral shall provide for the location of industrial and commercial development according to the following guidelines:*

- The Future Land Use Element's Commercial Node Criteria;*
- Access to the transportation network, notably proximity to arterials and collectors;*
- Access to utilities;*
- Acceptable impacts on the environment and adjacent land uses;*
- A focus on scale and clustered development, such as research and technology parks, as valuable economic assets to the City and give such projects high priority;*
- Developments will also attract post-secondary education assets, including vocational schools, undergraduate colleges and universities and post-graduate education and research institutions.*

The proposed rezoning is consistent with Policy 3.2 of the Economic Development Element. As demonstrated in the above analysis, the subject property meets 2 of the 5 criteria for Commercial Corridor zoning and although not abutting a property line, has existing Commercial Corridor zoning adjacent to the north and west and is a good candidate for Commercial Corridor zoning. The site is also located on an arterial roadway in close proximity to its intersection with a collector, furthering appropriateness.

- 2. Whether the full range of uses allowed in the proposed zoning district will be compatible with existing uses in the area under consideration;*

The CC District allows a wide variety of non-residential uses such as retail, office, restaurant, limited warehouse and light manufacturing and large-scale commercial retail uses. The CC district also allows multi-family residential with a minimum parcel size and a minimum density.

As previously described, the Liberty Health Park development to the north across NE Pine Island Road is within the Commercial Corridor and developing with multi-family, assisted living, and commercial outparcels governed by the same zoning district. There are five single-family homes south of the site, however the subject property has been designated for Commercial development since 2009. The area to the west is zoned Commercial Corridor and currently vacant.

The permitted uses in the CC district will be compatible with the surrounding area. The Pine Island Road corridor has been developed with a variety of uses including multi-family residential, commercial, and light industrial. The LDC provides development standards that will increase compatibility. The CC district does allow some light industrial uses, however, these uses must be approved through a special exception or conditional use that would allow for conditions to be placed on the development.

- 3. Whether the range of uses allowed in the proposed zoning district will be compatible with existing and potential uses in the area under consideration*

The permitted uses in the CC district will be compatible with the surrounding area. All City properties within the area have already been designated Commercial Corridor zoning, consistent with the subject request. The uses allowed in the CC district are similar to existing development along Pine Island Road. The CC District allows a wide variety of non-residential uses such as retail, office, restaurant, limited warehouse and light manufacturing and large-scale commercial retail uses. The CC district also allows multi-family residential with a minimum parcel size and a minimum density. The subject property is a portion of a larger parcel that was designated as Commercial future land use by Lee County on February 25, 2009 so the proposed uses are consistent with that which would have been allowed in Lee County. The existing single-family lots have this Lee County Commercial future land use designation to the north and east today and City Commercial Corridor

zoning to the west and south across Orchid Road.

*4. Whether the proposed zoning district will serve a community need or broader public purpose;*

The City of Cape Coral has a well-documented need for non-residential and multi-family residential housing. The rezone to CC, along with the future land use amendment to PIRD, will result in development of non-residential, multi-family uses or a mix of these uses. Single-family homes are not an allowed use in the CC district. The site serves a community need by providing a  $\pm 9.21$  acre development parcel with ample frontage and depth under common ownership to accommodate a quality non-residential or multi-family development. The site has  $\pm 715$  feet of frontage along Pine Island Road, a principal arterial which furthers the appropriateness for the City's needed non-residential or multi-family uses.

*5. The characteristics of the proposed rezone area are suitable for the uses permitted in the proposed zoning district; and*

The proposed rezone area is a  $9.21 \pm$  acre development parcel with  $\pm 715$  feet of frontage along Pine Island Road a principal arterial, and frontage along Orchid Road, a local road. The site has adequate depth to accommodate the uses permitted in the CC zoning district. The CC District allows a wide variety of non-residential uses such as retail, office, restaurant, limited warehouse and light manufacturing and large-scale commercial retail uses. The CC district also allows multi-family residential with a minimum parcel size and a minimum density. Some light industrial uses are included, but must be approved through a special exception or conditional use that would allow for conditions to be placed on the development.

*6. Whether a zoning district other than the district requested will create fewer potential adverse impacts to existing uses in the surrounding area.*

The proposed Commercial Corridor (CC) zoning district is the only district that is consistent with the PIRD future land use designation and will be compatible with existing uses in the surrounding area. The Planning & Zoning Commission/Local Planning Agency unanimously recommended approval of the concurrent future land use amendment which is scheduled for City Council on March 2, 2020.

As demonstrated by the above analysis, the proposed rezoning of the subject  $9.21 \pm$  acre parcel to Commercial Corridor (CC) is appropriate for the subject location. Should you or your staff have any questions or require further information, please do not hesitate to contact me at (239) 770-2527 or shewitt@bankseng.com.

Sincerely,

BANKS ENGINEERING



Stacy Ellis Hewitt, AICP  
Director of Planning



**PLANNING DIVISION STAFF REPORT**  
**ZA19-0006**

Staff Report prepared by Chad Boyko, AICP, Principal Planner

<b>SITE ADDRESSES</b> 1570 Orchid Road 2500 NE Pine Island Road 2560 NE Pine Island Road	<b>APPLICANT/PROPERTY OWNER</b> Harry Lowell
<b>AUTHORIZED REPRESENTATIVE</b> Banks Engineering, Inc.	

**SUMMARY OF REQUEST**

The applicant requests a rezone from Agricultural (AG-2)<sup>1</sup> to Commercial Corridor (CC) for three parcels totaling 9.21 acres.



MAP SOURCE

**STAFF RECOMMENDATION:** Approval

<b>Positive Aspects of Application:</b>	Rezone will allow for commercial uses along a commercial corridor. Site was recently annexed into City of Cape Coral.
<b>Negative Aspects of Application:</b>	Four single-family homes are adjacent to the south.
<b>Mitigating Factors:</b>	The site is large enough to provide adequate buffering and screening from any new commercial or multi-family development.

<sup>1</sup> A Lee County Designation

**SITE INFORMATION**

<b>Urban Service Area:</b>	The site was recently annexed, and due to the availability municipal utilities, the site is considered to be in the Transition area.
<b>City Water and Sewer:</b>	The site was recently annexed into the City of Cape Coral and water and sewer are available by extension.
<b>Street Access:</b>	The site has road frontage on Pine Island Road, a state-maintained principal arterial, and Orchid Road, a Lee County maintained local road.
<b>STRAP Numbers:</b>	04-44-24-C1-00009.0000 04-44-24-C2-00009.0020 04-44-24-C3-00009.0030
<b>Block/Lot(s):</b>	The site is not platted within a subdivision.
<b>Site Area:</b>	9.21 acres

<i>Site:</i>	<i>Future Land Use</i>	<i>Zoning</i>
<b>Current:</b>	Commercial (Lee County Designation)	Agricultural (AG-2) <sup>2</sup> (Lee County Designation)
<b>Proposed:</b>	Pine Island Road District (PIRD) <sup>3</sup>	Commercial Corridor (CC)
	<b>Surrounding Future Land Use</b>	<b>Surrounding Zoning</b>
<b>North:</b>	PIRD	Commercial Corridor (CC)
<b>South:</b>	Sub-Outlying Suburban (Lee County designation)	Residential (RS-1/Lee County Designation)
<b>East:</b>	Commercial (Lee County Designation)	AG-2 (Lee County Designation)
<b>West:</b>	PIRD	CC

**Urban Service**

**Area:** Transition

**City Water/Sewer:** Yes

**FINDINGS OF FACT**

The site is three parcels that were recently annexed into the City of Cape Coral. The site is 9.21 acres and is at the intersection of Pine Island Road and Orchid Road. The site is undeveloped and contains a mix of native vegetation and some scattered exotic vegetation. Surrounding development includes single-family homes to the south, and a multi-family development as well as a storage facility to the north across Pine Island Road. Areas to the east and west are undeveloped.

<sup>2</sup> A Lee County zoning designation

<sup>3</sup> Comprehensive Plan Amendment has been submitted under separate application.

The site was annexed into the City of Cape Coral in late 2019. Per Florida Statute, parcels annexed into a municipality retain their County future land use and zoning designations, therefore, the site has retained the Commercial future land use designation and the Agricultural (AG-2) zoning designation.

The applicant, Harry Lowell, is seeking to rezone the site from Agricultural (AG-2) to Commercial Corridor (CC). The applicant has also filed an application for a comprehensive plan amendment to amend the site's future land use designation from Commercial to Pine Island Road District (PIRD). The rezone, along with the comprehensive plan amendment, would allow the applicant to develop the site with commercial, multi-family, or mixed-use development.

## ANALYSIS

### Land Development Code:

Staff reviewed this application based on the review criteria found in LDC, Section 3.4.6 for evaluating rezones. This application was also reviewed based on the provisions of the Commercial Corridor (CC) district.

*1. Whether the proposed zoning district is consistent with the City Comprehensive Plan;*

The proposed Commercial Corridor (CC) district will be compatible with the Comprehensive Plan pursuant to the City of Cape Coral adopting the Pine Island Road District (PIRD) for the site. The CC zoning district is the only district that is consistent with the PIRD future land use designation.

*2. Whether the full range of uses allowed in the proposed zoning district will be compatible with existing uses in the area under consideration;*

The CC District allows a wide variety of non-residential uses such as retail, office, restaurant, and some light manufacturing. The CC district also allows multi-family residential with a minimum parcel size and a minimum density.

The areas to the south and east are within undeveloped Lee County and the only existing development is four single-family homes south of the site. The areas to the west and north are within City of Cape Coral. The area to the west is undeveloped, however, an apartment complex with some undeveloped commercial outparcels is to the north.

The majority of the uses in the CC district should be compatible with the surrounding area. The Pine Island Road corridor has been developed with a variety of uses including multi-family residential, commercial, and light industrial. There could be some adverse effects on the single-family homes south of the site depending on the future development of the site. Impacts such as vehicular trips, noise, and light vary between businesses. The CC district does allow some light industrial uses, however, these uses must be approved through a special exception that would allow for conditions to be placed on the development.

*3. Whether the range of uses allowed in the proposed zoning district will be compatible with existing and potential uses in the area under consideration;*

The uses allowed in the CC district are similar to uses that are present along the length of Pine Island Road. Office, big box retail, restaurants (fast-food and sit-down), personal and professional services, and light industrial. The site is unique due to the fact that the site was recently annexed into Cape Coral and is still

bordered by property within unincorporated Lee County on two sides. The existing single-family could experience some adverse impacts from the proposed CC zoning, however, the property to the west is likely to develop with commercial uses or multi-family due to its frontage on Pine Island Road. The undeveloped property to the west of the site is in Cape Coral and has CC zoning. Development on this parcel is likely to mirror the development along Pine Island Road in some capacity.

4. *Whether the proposed zoning district will serve a community need or broader public purpose;*

The City of Cape Coral has a well-documented need for non-residential and multi-family residential housing. The rezone to CC, along with the future land use amendment to PIRD, will result in development of non-residential or multi-family uses. Single-family homes are not an allowed use in the CC district.

The site is large enough to accommodate a quality non-residential or multi-family development and is the site's frontage on a principal arterial also makes the site suitable for the needed non-residential or multi-family uses.

5. *The characteristics of the proposed rezone area are suitable for the uses permitted in the proposed zoning district; and*

The site is a little over nine acres in size and has frontage along a principal arterial and a local street. The site is suitable for a wide range of uses including office, retail, restaurant, or light industrial. The CC zoning district would allow those uses as either permitted uses, special exceptions, or conditional uses, depending on final development.

6. *Whether a zoning district other than the district requested will create fewer potential adverse impacts to existing uses in the surrounding area.*

According to Policy 1.15 of the Comprehensive Plan, the only zoning district that is compatible with the Pine Island Road District (PIRD) future land use designation is the CC district. If the PIRD future land use designation is not adopted for the site, then a new rezone application would need to be filed to rezone the site to a zoning designation that is consistent with site's future land use designation.

**Comprehensive Plan:**

The following Comprehensive Plan policy is applicable to ZA19-0006:

**Chapter 4 Future Land Use Element, Policy 1.15.L, Pine Island Road District (PIRD):**

The PIRD future land use designation provides criteria to determine if a site is a good candidate for a rezone to Commercial Corridor. The criteria are listed and analyzed below:

1. Does the property abut an existing and developed corridor zoned area?

**Staff Response:** The site is not adjacent to any developed area except for a single-family home that is south of the site and within unincorporated Lee County.

2. Does the property abut corridor-zoned area on two sides or more?



**Staff Response:** The site does not share a property line with a site zoned Commercial Corridor (CC), however, the site is east of a CC zoned and separated by a two-lane local road. The site is also separated from CC zoned properties to the north by Pine Island Road.

3. Is the property part of a larger tract, a portion of which is already zoned Corridor?

**Staff Response:** The property is not part of a large tract that is already zoned Corridor, although, staff note that the site was recently annexed into Cape Coral and abuts properties within unincorporated Lee County on two sides.

4. Is the parcel a large-lot assemblage of three or more acres?

**Staff Response:** The site is a collection of three parcels totaling more than nine acres.

5. Does the property front Pine Island Road on at least 180 feet?

**Staff Response:** The site has over 700 feet of frontage along Pine Island Road.

## ECONOMIC DEVELOPMENT MASTER PLAN ANALYSIS

The rezone is supported by the City Economic Development Master Plan. The site is not within an Economic Opportunity Area, however, the rezone will ensure that commercial or multi-family development is built in the future.

## PUBLIC NOTIFICATION

This case will be publicly noticed as required by LUDR, Section 8.3.2.A and 8.3.4 as further described below.

**Publication:** A display ad will be prepared and sent to the *News-Press* announcing the intent of the petitioners to amend the land use of the property described within this report. The ad will appear in the *News-Press* a minimum of 10 days prior to the public hearing scheduled before the Cape Coral Hearing Examiner. Following the public hearing before the Commission, the display ad announcing the final public hearing before the City Council will appear once in the *News-Press*. The ad will appear in the newspaper not less than 10 days prior to the date of the final public hearing before the City Council. The display ads will not be published in the legal section of the *News-Press*.

**Written notice:** Property owners located within 500 feet from the property line of the land which the petitioners request to vacate will receive written notification of the scheduled public hearing. These letters will be mailed to the aforementioned parties a minimum of 10 days prior to the public hearing scheduled before the Hearing Examiner.

**Posting of a Sign:** A sign identifying the case and providing salient information will be posted on the property, as another means of providing notice of the land use amendment request.

## RECOMMENDATION

Through the analysis of the Cape Coral Comprehensive Plan and specifically the Future Land Use Element, the proposed rezone to Commercial Corridor (CC) zoning is consistent with the Comprehensive Plan, the Land Use and Development



February 6, 2020

ZA19-0006

Page 6

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Regulations, and is compatible with the surrounding area, therefore, Planning Division staff recommends approval of the rezone request.

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Chad Boyko, AICP, Principal Planner  
239-573-3162 / [cboyko@capecoral.net](mailto:cboyko@capecoral.net)





**CITY OF CAPE CORAL**  
Department of  
Community Development  
Planning Division

**AERIAL MAP**

Case No. ZA19-0006

**LEGEND**

 SUBJECT PARCELS



This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.








# CITY OF CAPE CORAL

Department of  
Community Development  
Planning Division

## CURRENT FUTURE LAND USE MAP

Case No. ZA19-0006

### LEGEND

-  SUBJECT PARCELS
-  500' BOUNDARY
-  PIRD
-  PR
-  Ownership Lee County

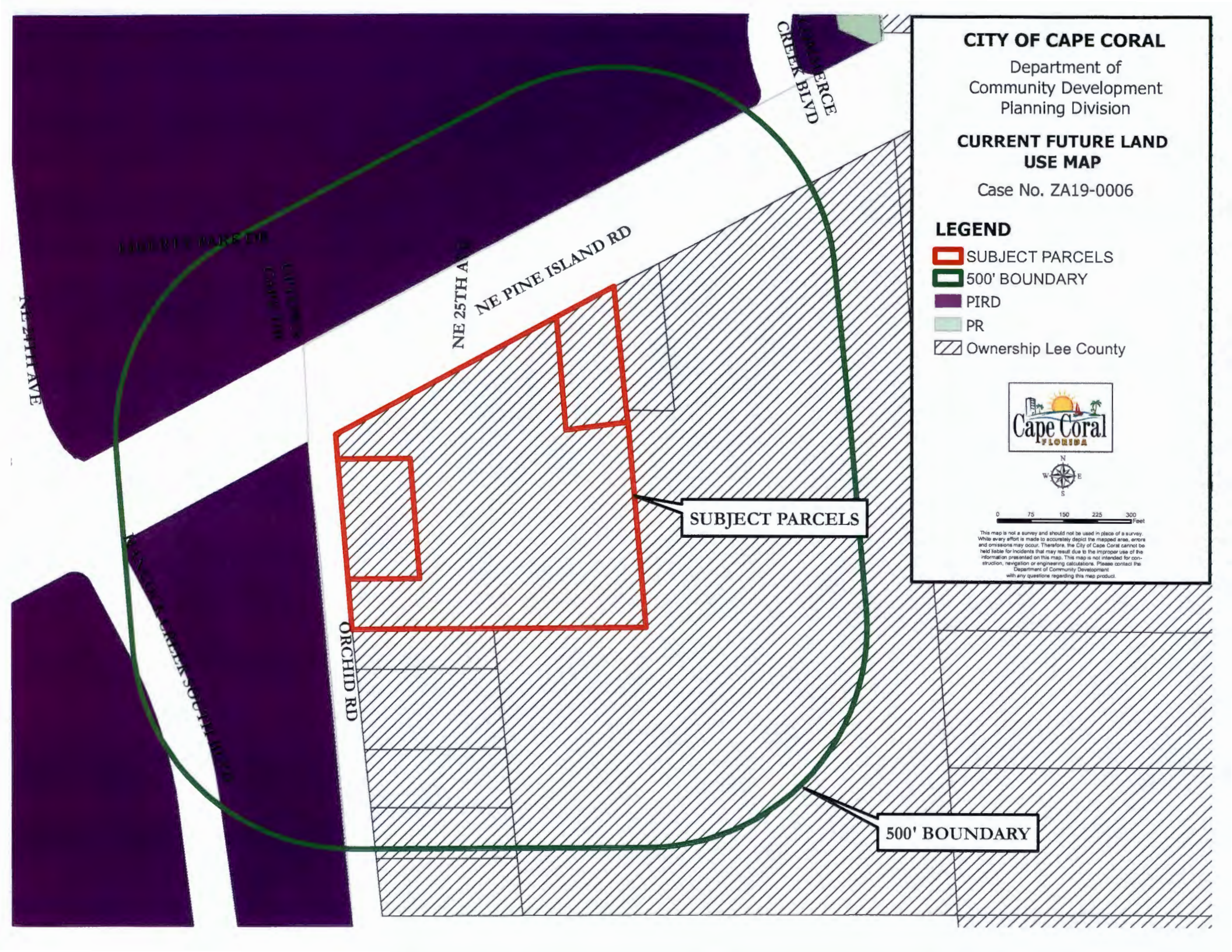


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SUBJECT PARCELS

500' BOUNDARY










# CITY OF CAPE CORAL

Department of  
Community Development  
Planning Division

## CURRENT ZONING MAP

Case No. ZA19-0006

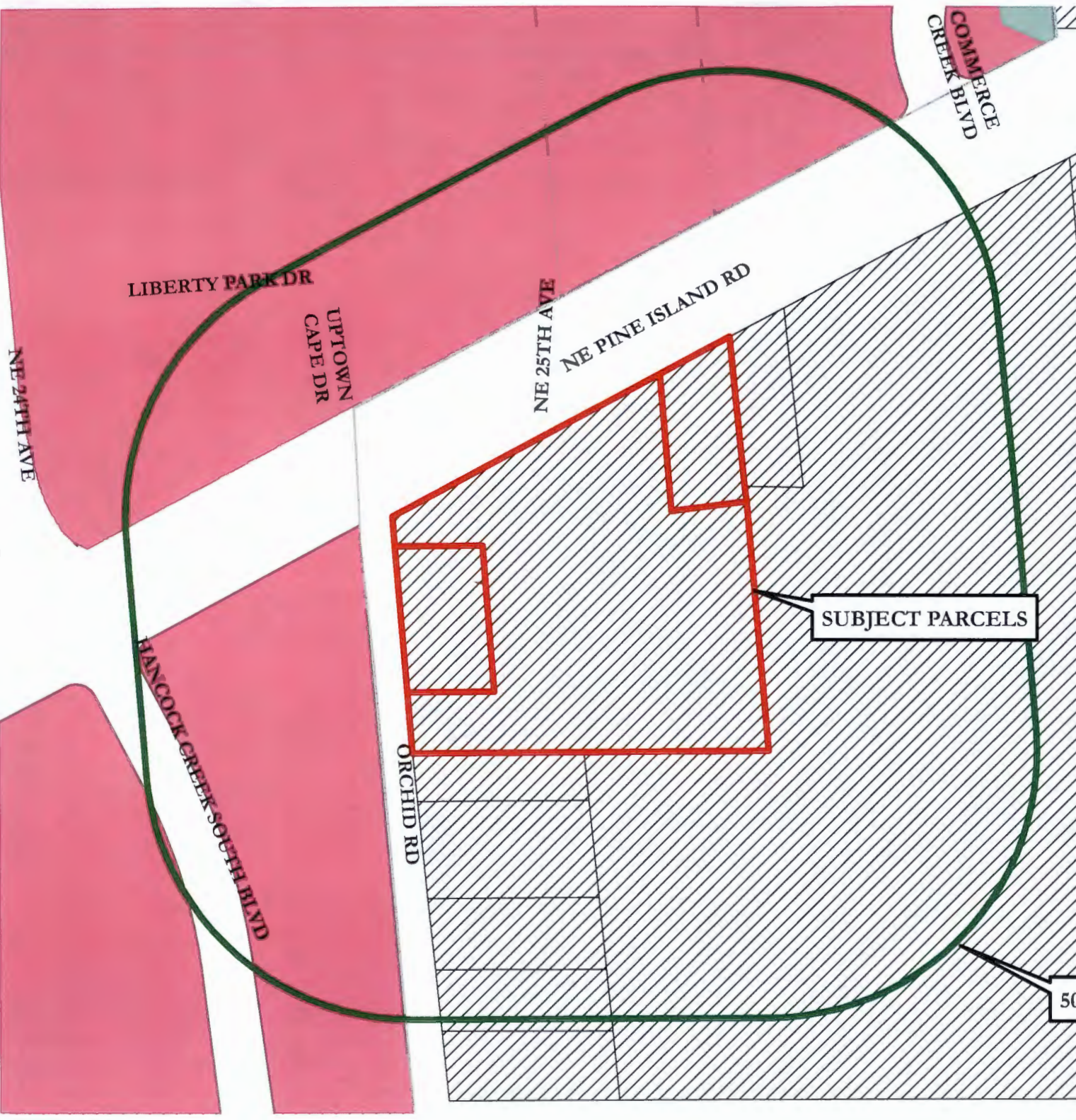
### LEGEND

-  SUBJECT PARCELS
-  500' BOUNDARY
-  CC - Commercial Corridor
-  PV - Preservation
-  Ownership Lee County



0 75 150 225 300 Feet

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

# CITY OF CAPE CORAL

Department of  
Community Development  
Planning Division

## PROPOSED ZONING MAP

Case No. ZA19-0006

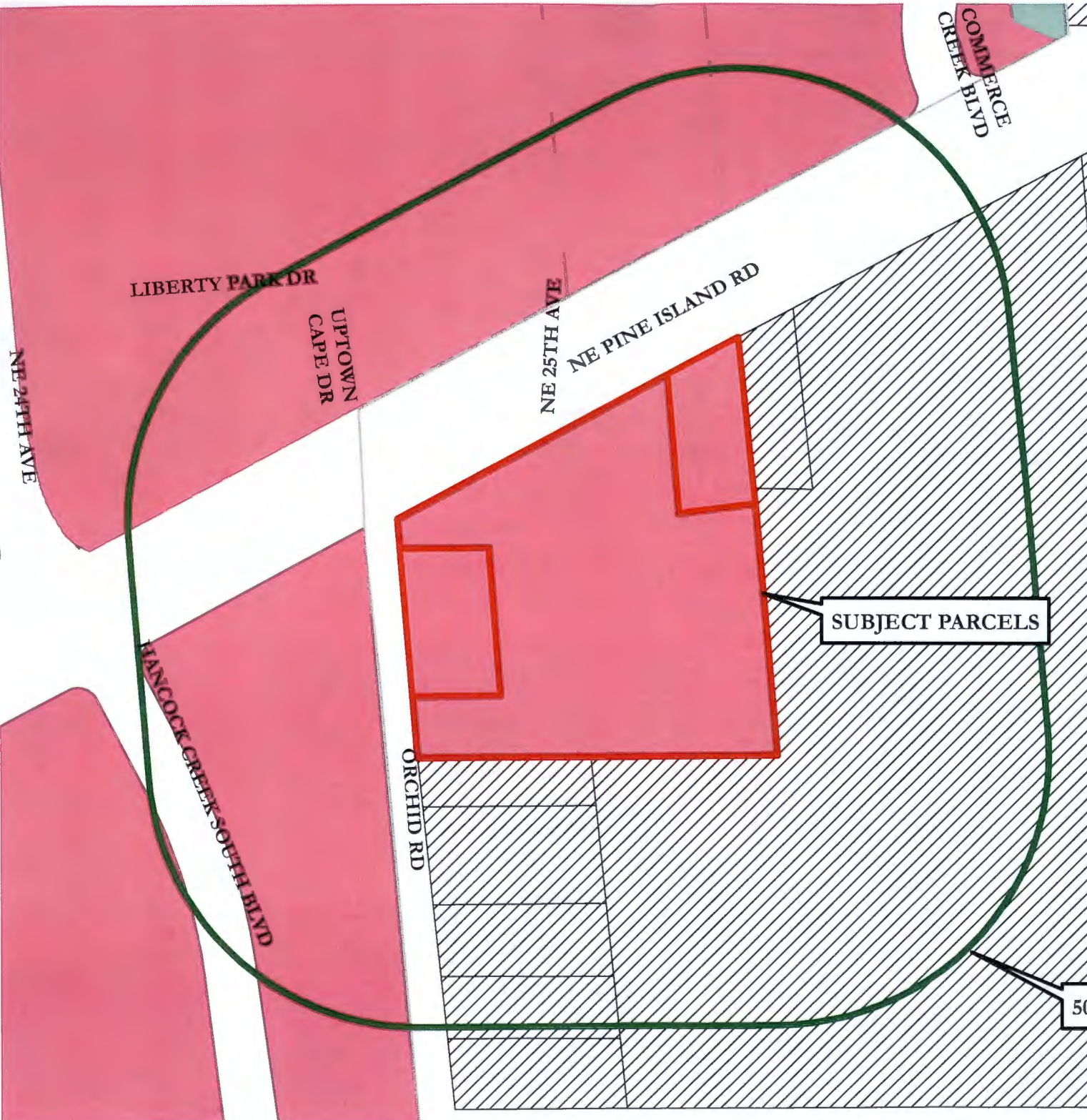
### LEGEND

-  PROPOSED CC ZONING
-  SUBJECT PARCELS
-  500' BOUNDARY
-  CC - Commercial Corridor
-  PV - Preservation
-  Ownership Lee County



0 75 150 225 300 Feet

This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.





Classified Ad Receipt  
(For Info Only - NOT A BILL)

Customer: CITY OF CAPE CORAL\_DEPT OF COM

Ad No.: 0004053158

Address: 1015 CULTURAL PARK BLVD  
CAPE CORAL FL 33990  
USA

Net Amt: \$365.62

Run Times: 1

No. of Affidavits: 1

Run Dates: 02/15/20

Text of Ad:

NOTICE OF PUBLIC HEARING ADVERTISEMENT  
CASE NUMBER: ZA19-0006

REQUEST: The applicant requests a rezone from Agricultural (AG-2) to Commercial Corridor (CC) for three parcels totaling 9.21 acres.  
CAPE CORAL STAFF CONTACT: Chad Boyko, AICP, Principal Planner, 239-573-3162, cboyko@capecoral.net

PROPERTY OWNER: Harry Lowell

UPCOMING PUBLIC HEARING: Notice is hereby given that the Hearing Examiner will hold a public hearing at 9:00 A.M. on February 25, 2020 on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

All interested parties are invited to appear and be heard. All materials presented before the Hearing Examiner will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available five days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

DETAILED INFORMATION: The case report and colored maps for this application are available at the City of Cape Coral website, [www.capecoral.net/publichearing](http://www.capecoral.net/publichearing) (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM.

HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 153027, Cape Coral, FL 33915-0027

ADA PROVISIONS: In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

by order of  
Kimberly Bruns, CMC  
City Clerk  
REF # ZA19-0006  
LEGAL AD - DCD  
AD# 4053158, February 15, 2020

Department of Community Development  
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: FL Lee Hancock, LLC

APPLICATION NO: ZA19-0006

STATE OF FLORIDA       )  
                                      ) §  
COUNTY OF LEE        )

I, Vincent A. Cautero, AICP having first been duly sworn according to law, state on my oath the following:

That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral.

That pursuant to City of Cape Coral Code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also, posting of a sign has been done when applicable per Section 8.3.2A.

DATED this 18<sup>th</sup> day of February, 2020.

Vincent A. Cautero

Vincent A. Cautero, AICP

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of February, 2020, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath.

Exp. Date 12/16/20 Commission # 66030474



Elisabeth A. Delgado  
Signature of Notary Public

Elisabeth A Delgado  
Print Name of Notary Public

**Item Number:** 2.C.  
**Meeting Date:** 2/25/2020  
**Item Type:** HEARINGS

**AGENDA REQUEST FORM**  
CITY OF CAPE CORAL



**TITLE:**

Case # PDP19-0003\*; Address: 5822, 5826, 5870, 5874, 5878, and 5882 Shell Cove Drive ;Fish House Lot 1, 8, 9, 12, 13, 14, 15, LLCs

**REQUESTED ACTION:**

Approve or Deny

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision? No  
If Yes, Priority Goals Supported are listed below.  
If No, will it harm the intent or success of the Strategic Plan? No

**Planning & Zoning Recommendations:**

**SUMMARY EXPLANATION AND BACKGROUND:**

An amendment to an approved Planned Development Project (PDP), Ordinance 89-06, to rezone two parcels from Commercial (C) to Residential Multi-Family Low (RML), increase the size of Lot 1 of the Waterfront at Cape Harbour Subdivision by 1,427 square feet, extend the previously approved dimensional deviations to the enlarged Lot 1, and replat Lots 1, 12, 13, 14, and 15.

**LEGAL REVIEW:**

**EXHIBITS:**

See attached backup materials

**PREPARED BY:**

Shawn Baker      Division- Planning      Department- Community Development

**SOURCE OF ADDITIONAL INFORMATION:**

Katherine Woellner, Planner, 239-242-3255, mstruve@capecoral.net

**ATTACHMENTS:**

Description	Type
▢ Revised application	Backup Material
▢ 2. Sunbiz Info	Backup Material

▣ 4. Supporting Docs-Survey	Backup Material
▣ 5. Supporting Docs Ordinance 89-06	Backup Material
▣ 6. Deed for Lots	Backup Material
▣ PDP19-0003 HEX ad Proof Ord	Backup Material
▣ 12 Aerial Map Revision	Backup Material
▣ 13 Current Zoning	Backup Material
▣ Letter of Intent	Backup Material





## PLANNED DEVELOPMENT PROJECT (PDP) APPLICATION

PROPERTY OWNER IS A CORPORATION, LIMITED LIABILITY COMPANY (LLC),  
LIMITED COMPANY (LC), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUST

Project Name: Waterfront Cape Harbour PDP Amendment

Project Number: PDP19-0003

To help prepare this application, the applicant should obtain copies of the following:

- Land Use and Development Regulations (this document is linked)
  1. Land Development Regulations (Article 4)
  2. Parking Requirements (Article 5.1)
  3. Landscape Ordinance (Article 5.2)
  4. Sign Ordinance (Article 7)
- NFPA 1 Fire Prevention Code
- Engineering Design Standards

The advisory review is conceptual only and any staff comments are subject to change based on detailed information with an application to the City of Cape Coral. Formal review may result in additional changes not noted at this time. The final design or project must comply with the Land Use and Development Regulations, Engineering Design Standards, City Code of Ordinances, Comprehensive Plan and other applicable laws and regulations.

### ACKNOWLEDGEMENT

I, Stephanee Wallace, as the owner of this property or the duly Authorized Representative, agree to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State and County laws, and certify that all information supplied is correct to the best of my knowledge.

In addition, I understand that prior to the issuance of the Certificate of Occupancy for this development, the engineer of record must supply the Department of Community Development with record drawings and a letter of substantial compliance for the project.

In addition, I authorize the staff of the City of Cape Coral to enter upon the property for purposes of investigating and evaluating the request made through this application.

**Please note: Advertising fees must be paid in full at least 10 days prior to public hearing or the item may be pulled from the agenda and continued to a future date once the fees have been paid.**

(Name of Entity)

\* See Listing of Entities involved in this application

By: NAME AND TITLE (PLEASE TYPE OR PRINT)

Stephanee Wallace, AMBR

SIGNATURE

*Stephanee Wallace*

(SIGNATURE MUST BE NOTARIZED)

STATE OF FL, COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me this 23 day of July, 2019 by

Stephanee Wallace who is personally known or produced

FLORIDA DRIVER LICENSE

as identification.

**Luis Alvarez**  
Notary Public  
State of Florida

Exp. Date: 7/30/2023 Commission Number: GG 347720

My Commission Expires 07/30/2023  
Commission No. GG 347720

Signature of Notary Public:

Printed name of Notary Public:

*Luis Alvarez*

\*Please include additional pages for multiple property owners.

*SW*

authorized representative  
or property owner's initials

## PDP Applicant Checklist

Project Name: \_\_\_\_\_

Waterfront at Cape Harbour PDP Amendment

Applicant must submit the completed application and the associated documentation listed below, collated into 17 separate packets (one (1) original and 16 copies). These are minimum requirements for all PDP applications. Based on the nature of your project, additional items may be required by staff.

### Incomplete submittals will not be accepted

- \_\_\_\_\_ All application pages must be initialed by the property owner or their authorized representative
- \_\_\_\_\_ 24" x 36" engineered PDP Development Plans, including landscape buffer areas and building elevations – See pages 7 – 10 for further information
- \_\_\_\_\_ Certified Boundary Surveys, in NGVD 1929, completed within the last six (6) months showing elevations – See page 7 for further information
- \_\_\_\_\_ PDP application fees paid in full at time of application – See page 11 for further information
- \_\_\_\_\_ Letter of Intent (LOI) – See page 6 for further instructions
- \_\_\_\_\_ Environmental Survey/Report – See page 7 for further instructions
- \_\_\_\_\_ Warranty or Quit Claim Deed – Applicant shall provide a copy of Warranty or Quit Claim Deed for one hundred (100) percent of the property comprising the Planned Development Project.
- \_\_\_\_\_ Vacation of Plat requests must include letter of "No Objection" from the electric company, the telephone company, and the cable company – See page 9 for further instructions
- \_\_\_\_\_ Page 1 must be signed and notarized by either all property owner(s) or the authorized agent
- \_\_\_\_\_ The "Authorization to Represent Property Owners", page of the application, must be signed by all property owner(s) and notarized
- \_\_\_\_\_ Properties owned by corporations, limited liability companies, limited partnerships, general partnerships, and trustees must provide legal documentation (For example, the Articles of Incorporation) listing persons authorized to sign for the entity and in these situations the property owner(s) must sign all applicable PDP forms in their corporate capacity.

### As an alternative to submitting everything in paper format, the applicant may opt to submit the following:

- 11 11 sets of plans, in paper format, as described above
- 11 11 signed and sealed Boundary Surveys, in paper format, as described above
- 1 One (1) copy of the application & all other documents you are submitting for review
- 1 1 CD/DVD with PDFs of documents you are submitting:
  - o Each document you are submitting needs to be a separate PDF, appropriately identified by name. For example, the application will be one PDF, titled "Application", the Letter of Intent will be another PDF, titled "Letter of Intent", plans, boundary surveys, etc.

authorized representative  
or property owner's initials

## GENERAL INFORMATION

Project Name: Waterfront at Cape Harbour PDP Amendment  
Applicant: Fish House Lots by Stephanie Wallace  
Address: 5207 Stratford Court, Cape Coral, Florida 33904  
Phone: 239-410-1750 Fax: N/A E-Mail: rdurling@marvin-homes.com  
stepheelynn@gmail.com

\*Property Owner: same

Address \_\_\_\_\_  
Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-Mail \_\_\_\_\_

Authorized Representative Avalon Engineering, Inc  
Address 2503 Del Prado Blvd Suite 200, Cape Coral, Florida 33904  
Phone 239-573-2077 Fax 239-573-2076 E-Mail linda@avalcneng.com

### Location

Unit N/A Block \_\_\_\_\_ Lot(S) \_\_\_\_\_  
Subdivision Waterfront at Cape Harbour Strap Number(s) See Listing

Legal Description ☐ (Described as Exhibit A in Microsoft Word Format and attached hereto)

Property Address: 5826 Shell Cove Drive  
Plat Book \_\_\_\_\_ Page \_\_\_\_\_ Current Zoning R-3 and C-1 Future Land Use Mixed Use  
Proposed Zoning R-3 / RML

This application includes the following requests: (Please check all that apply)			
<input checked="" type="checkbox"/> Subdivision	<input type="checkbox"/> Special Exception	<input checked="" type="checkbox"/> Rezoning	<input type="checkbox"/> Variance
<input type="checkbox"/> Deviation to Landscaping	<input type="checkbox"/> Deviation to Non-residential Design Standards	<input type="checkbox"/> Deviation to Engineering Design Standards (EDS)	<input checked="" type="checkbox"/> All Other Deviation Requests
<input type="checkbox"/> Borrow Pit	<input type="checkbox"/> Vacation of Plat		

\*Please include additional pages for multiple property owners.

## PROPERTY and PROJECT DEVELOPMENT DATA

a.	Zoning District	<u>R-3 and C-1</u> (Proposed: R-3) /RML	
b.	Future Land Use Class	<u>Mixed Use</u>	
c.	Area of Subject Property	<u>1,825</u> acres existing Adding 1,415 square feet	
d.	Type of Development	<u>Residential</u>	
e.	Estimated Number of Employees	<u>N/A</u>	
	Number of Seats in Assembly	<u>N/A</u>	
f.	Parking Spaces Required	<u>N/A</u>	
g.	Parking Spaces Provided	<u>N/A</u>	
h.	Parking and Street Area	<u>N/A</u> sq. ft.	<u>      </u> % of Site
i.	Ground Floor Building Area	<u>N/A</u> sq. ft.	<u>      </u> % of Site
j.	Total Floor Area	<u>N/A</u> sq. ft.	<u>      </u> % of Site
k.	Building Heights	<u>N/A</u> feet	<u>      </u> stories
l.	Total Proposed Impervious Surface Area	sq. ft. <u>N/A</u>	% of Site <u>      </u>
m.	Permanent Open Space	sq. ft. <u>      </u>	% of Site <u>      </u>
	Landscaped Area	<u>N/A</u> sq. ft.	% of Site <u>      </u>
n.	Recreation Area	<u>N/A</u> sq. ft.	% of Site <u>      </u>

If the proposed project is a multifamily residential development, the following additional data shall be shown on the plans.

Not Applicable

o.	Number of Dwelling Units (du)	<u>      </u>
p.	Gross Density (du/acres)	<u>      </u>
q.	Number, Type, and Floor Area of each Dwelling Unit:	
1.	Efficiency	<u>      </u> Floor Area <u>      </u> sq. ft. <u>      </u>
2.	1 Bedroom	<u>      </u> Floor Area <u>      </u> sq. ft. <u>      </u>
3.	2 Bedroom	<u>      </u> Floor Area <u>      </u> sq. ft. <u>      </u>
4.	3 Bedroom	<u>      </u> Floor Area <u>      </u> sq. ft. <u>      </u>
5.	4 Bedroom	<u>      </u> Floor Area <u>      </u> sq. ft. <u>      </u>



### **LETTER OF INTENT**

Please include a Letter of intent (LOI), stipulating your request, addressed to the Community Development Director. This letter must specify all applicable requests. Such requests may include any and/or all of the following:

- a. General purpose and intent of the PDP
- b. Subdivision requests – See Article 4.1 and 4.2.5
- c. Rezoning requests specifying the actual request and explanation of need for the rezoning
- d. Special exception requests and explanation of need for the special exception
- e. Variance requests specifying the actual request and explanation of need. All variance requests must address the five (5) criteria for the granting the a variance, per Land Use and Development Regulations, section 8.10. Note: Variances run with the land.
- f. Vacation of Plat as outlined in section 8.11 and explanation of vacation request
- g. Borrow pit requests as outlined in section 3.23, 4.2.5, and 8.3.2

### **DEVIATION REQUEST LETTER(S)**

Applicant must complete a separate deviation request letter for each deviation type requested. Please ensure that proper justification for the requested deviation accompanies each request. Staff will not analyze any requested deviation that does not include justification for the deviation sought and this may result in a rejection of your application. Refer to the appropriate section of the LUDRs for guidance on the criteria for which a particular deviation may be sought. Note: Deviations do not run with the land.

- Landscaping Deviations shall be in accordance with Section 5.2.19
- Non-residential Design Standards Deviations shall be in accordance with Section 5.6.10 Deviation,
- Engineering Design Standards (EDS) Deviations in accordance with sheet 1, "Foreword" paragraph 5,
- All Other Deviation Requests, shall be in accordance with Section 4.2.4.K

### **TRAFFIC GENERATION ESTIMATE**

The following will determine the need of a Traffic Impact Statement. Trip Generation Estimate, based on the most current edition of the Institute of Transportation Engineers (ITE) Trip Generation manual:

ITE Code \_\_\_\_\_ Is estimate based on locally collected data? \_\_\_\_\_

Regression equation (if used) \_\_\_\_\_

Independent Variable \_\_\_\_\_

Daily Two Way Trip Estimate \_\_\_\_\_

Peak Hour (of generator) Entering \_\_\_\_\_

Peak Hour (of generator) Exiting \_\_\_\_\_

Total Peak Hour (of generator) \_\_\_\_\_

Peak Hour Entering and Exiting trips greater than 300 trips \_\_\_\_\_

If the total peak hour traffic exceeds 300 trips, a Traffic Impact Statement (TIS) will be required. A methodology meeting with the City staff is required prior to submitting the TIS. The methodology meeting will be scheduled after the initial submittal of the PDP application.

## GRAPHIC STANDARDS: GENERAL INFORMATION

**Sheet # of submitted plans:** The Development Plan shall be of sufficient scale to show all detail. The scale of the Plan shall be illustrated by a graphic scale on every sheet. The date and true north arrow shall be shown on every sheet. The following general information is required:

All Sheets

1. Names and addresses of the owners, planner, architect, landscape architect Engineer and surveyor.

Sheet 1

2. A General Location and Vicinity Map (plat sheet). Please indicate the relationship of the proposed project site to surrounding existing land uses, zonings, future land uses, community facilities, major streets, utilities and any other principal buildings or physical features in and adjoining the subject property. These features shall be indicated for a distance of three hundred (300) feet from the outside boundaries of the subject property. Indicate all names and locations of adjoining subdivisions, development projects, unplatted properties, and streets within unincorporated Lee County.

Provided

3. Certified Boundary Survey, completed within the last 6 months, meeting the Minimum Technical Standards as set forth in Chapter 5J-17, Florida Administrative Code.

## EXISTING PROPERTY CONDITIONS

**Sheet # of submitted plans:**

Sheet 1 & 2

1. Acreage of land within property.

Sheet 1 & 2

2. Boundary lines of the project and their bearings and distances.

N/A

3. Existing and proposed easements and their locations, widths and distance, as well as existing structures.

Sheet 1 & 2

4. Streets and waterways on and adjacent to the project, their names, widths and other dimensions as may be required.

N/A

5. The location of all existing utilities connections available to the property site.

N/A

6. Tree Survey: The location, quantity, diameter/caliper, botanical and common name, and native status of all heritage trees and other existing trees with a caliper of two inches or greater, and whether they are proposed to be preserved or removed. Trees to be removed, if any, shall be indicated on a separate sheet. Reference 5.2.6 of the City's Land Development Regulations. The City is a designated "Tree City" and tree retention is encouraged.

N/A

7. Environmental Site Survey - see the City's guidelines for conducting an environmental survey

N/A

8. Flood elevation data and flood zone boundary lines delineated, if applicable.

N/A

9. Any other significant existing features, as may be required by the Director.

## DEVELOPMENT PLANS - Not applicable

**Sheet # of submitted plans:** The Development Plan should be viewed as a conceptual plan and not construction drawings or a site plan. A high level detailed site plan with information not needed will be rejected at submittal. The Development Plan shall show the following information, as applicable to the type of project being proposed, including the proposed dimensions, size, location and arrangement of the following.

- \_\_\_\_\_ 1. Name of project, north arrow, date and scale.
- \_\_\_\_\_ 2. Elevations, (drawing of front, sides, and rear faces of buildings), and use of all proposed buildings and structures.
- \_\_\_\_\_ 3. Internal and peripheral landscaping locations showing landscape area sizes and overall dimensions of the various planting areas, providing calculations per Article 5.2.
- \_\_\_\_\_ 4. Approximate location of curb cuts, driveways, access roads, alleys, and parking areas indicating the number of spaces and all dimensions.
- \_\_\_\_\_ 5. Location of existing and proposed pedestrian walks, malls, yards, and open areas.
- \_\_\_\_\_ 6. Location, number, dimensions, character and orientation of all existing and proposed signs.
- \_\_\_\_\_ 7. Location and heights of all proposed buffers, fences, screens, and walls.
- \_\_\_\_\_ 8. Location of all existing and proposed buildings and structures with setback distances from the property lines and roadways.
- \_\_\_\_\_ 9. Location of all known existing and proposed water, sewer and irrigation mains including the point of connection to the existing system and buildings, if applicable, including:
  - a) Estimate of the average daily flow for potable water.
  - b) Estimate of the average daily flow of wastewater
  - c) Estimate of the average daily flow for irrigation water.
- \_\_\_\_\_ 10. Location of all known existing and proposed easements and /or right of way.
- \_\_\_\_\_ 11. Location of proposed outdoor lighting, showing direction, height and type.
- \_\_\_\_\_ 12. An exhibit providing the peak hour trip distribution at the project entrance and adjacent local streets out to a collector.
- \_\_\_\_\_ 13. Location and character of all outside waste disposal facilities and existing or proposed appropriate screening.
- \_\_\_\_\_ 14. Phasing Plan: Where a project will be developed in phases, a Phasing Plan shall be presented for review of the entire project. Proposed development phases shall be numbered in sequence, and shall indicate the density for residential and/or floor area for non-residential uses, as applicable, for each phase. The phasing plan shall identify size, location, sequence and timing of the various phases of the development.

## ADDITIONAL INFORMATION

Sheet # of  
submitted  
plans:

- |  |  |
|--|--|
| <u>Will be</u><br>provided upon<br>request | 1. <b>Landscape Maintenance:</b><br>The proposed method of assuring the provision and permanent maintenance of areas required for landscaping, screening, and common uses, including a proposed statement of such assurance. The coordinated development of the site shall be compatible with the surrounding area.  |
| <u>Will be</u><br>provided<br>upon request | 2. <b>Maintenance Assurance:</b><br>The proposed method of assuring the perpetual ownership and maintenance of areas within the project that area to be used for open space, recreation or other quasi-public purposes, including a detailed statement of such assurance, including covenants, agreements or other specific documents as required.   |
| <u>Will be</u><br>provided<br>upon request | 3. <b>If seeking Subdivision approval; Covenants:</b><br>Copies of proposed restriction or protective covenants, if any.   |
| <u>Will be</u><br>provided<br>upon request | 4. <b>Economics:</b><br>The Commission or City Council, as applicable, may also require that the applicant provide additional supporting data, such as economic justification, financing, and construction scheduling, topographic data or similar information when deemed necessary for project review.   |
| <u>N/A</u>                                 | 5. <b>Vacation of Plat</b><br>In the case of vacation of plats submitted in conjunction with a PDP, the following additional information shall be required:<br>a. Affidavits of city and county tax collectors stating that all city and county taxes levied against land covered by the portion of the plat of which vacation is sought have been paid;<br>b. Sketches and descriptions; and<br>c. Letter of no objection from the following utilities:<br>i. Lee County Electric Cooperative, Inc (LCEC)<br>ii. Century Link Telephone Company<br>iii. Comcast Cable Company |



**SUBDIVISION, PER FLORIDA STATUTES, CHAPTER 177 – IF APPLICABLE** Not applicable at this time

**Sheet # of submitted plans**

The Subdivision Plan shall show the following information, as applicable to the type of project being proposed, including the proposed dimensions, size, location and arrangement of the following with accurate dimensions to the nearest one-hundredth of a foot. If flexibility is requested for property lines prior to Plat recording, this request must be requested in the Letter of Intent (LOI).

- \_\_\_\_\_ 1. Contours at an interval of not greater than one foot.
- \_\_\_\_\_ 2. Access roads and their relationship to existing and proposed streets, alleys and other public ways.
- \_\_\_\_\_ 3. Setback lines, permanent open space, recreation areas, separation strips, existing and proposed landscape areas and general land use activity areas.
- \_\_\_\_\_ 4. Location of areas and their acreages, if any, to be reserved or dedicated for public parks, playgrounds, schools, or other public uses, including bikeways or walks.
- \_\_\_\_\_ 5. Proposed lot numbers, lot lines, lot dimensions, lot areas, lot descriptions, lot locations, minimum yard requirements, and any other appropriate data and information for areas or parcels within the project property lines which have been designated for subdivision for any purpose or use.
- \_\_\_\_\_ 6. Utility locations on and adjacent to the project showing proposed dimensions and connections to existing utility systems.
- \_\_\_\_\_ 7. All dimensions, angles, bearings and similar data on the plan shall be tied to primary control points approved by the City Engineer. The location and description of said control points shall be given.
- \_\_\_\_\_ 8. Approximate location of proposed and existing surface water management system components including treatment, storage, conveyance, and discharge locations.
- \_\_\_\_\_ 9. Project boundary lines, right-of-way lines of streets, waterways, easements and other rights-of-way. Bearings or deflection angles, radii, arcs and central angles of all curves with dimensions to the nearest minute shall be provided for the center line of all streets and easements. Block corner radii dimensions shall also be shown.
- \_\_\_\_\_ 10. Name of each street, waterway, easement or other right-of-way and the designation of all buildings, parking areas, access roads, permanent open spaces, recreation areas, separation strips, landscaped areas, dedication or reserved areas, and other land use activity areas by name, use, purpose or other appropriate method as well as by width, length, land area or floor area devoted to such use or purpose.
- \_\_\_\_\_ 11. Certification of title and dedication, on plat, showing that the applicant is the owner and a statement by such owner dedicating streets, rights-of-way and any other sites for public use, if any.
- \_\_\_\_\_ 12. Certification by the City Engineer, on plat, that a surety bond, certified check or other guarantee has been posted with the City in sufficient amount to assure completion of all such required site improvements.
- \_\_\_\_\_ 13. Certificate of approval for recording, on plat, suitable to be signed by the Mayor as applicable, to indicate that the plan has been approved for recording.
- \_\_\_\_\_ 14. Any other appropriate certification required by the Governing Body or Necessary to comply with Florida Statutes, Chapter 177.

### Planned Development Project (PDP) Application Fees \*

	Administrative Review	Fees	Your Costs
<input type="checkbox"/>	PDP - without Subdivision	\$2,525.00	\$
<input type="checkbox"/>	** Additional charge for PDP's in excess of ten (10) acres: _____ acres x \$55.00 for each acre or portion thereof in excess of 10 acres.	(with maximum cap of \$3,625.00 for additional acres)	\$
<input checked="" type="checkbox"/>	PDP - with Subdivision	\$2,815.00	\$ 2,815.00
<input type="checkbox"/>	** Additional charge for PDP's in excess of ten (10) acres: _____ acres x \$55.00 for each acre or portion thereof in excess of 10 acres.	(with maximum cap of \$3,915.00 for additional acres)	\$ 0
	<b>Fire Review</b>		
<input checked="" type="checkbox"/>	Fire review (mandatory)	\$104.00	\$ 104.00
<b>Public Hearing</b>			
<input type="checkbox"/>	PDP - without Subdivision	\$665.00	\$
<input checked="" type="checkbox"/>	PDP - with Subdivision	\$1,415.00	\$ 1,415.00
<input checked="" type="checkbox"/>	Zoning Amendment within PDP	\$1,165.00	\$ 1,165.00
<input type="checkbox"/>	Vacation of Plat within PDP	\$880.00	\$
<input checked="" type="checkbox"/>	Variance/Deviation within PDP	\$1,250.00	\$ 1,250.00
<input type="checkbox"/>	Special Exception within PDP	\$1,365.00	\$
<input type="checkbox"/>	Borrow Pit within PDP	\$1,725.00	\$
		Total	\$ 6,749.00

\* Advertising fees will be due at time of advertising.

\*\* PDP – Acres x \$55.00 for each acre or portion thereof in excess of 10 acres (i.e. A 20.2 acre of land is calculated as follows.

20.2 – 10.00 = 10.2, then the 10.2 acres is rounded up to 11 acres)



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Detail By Document Number](#) /

## Detail by Entity Name

Florida Limited Liability Company  
FUNKY FISH HOUSES, LLC

### Filing Information

<b>Document Number</b>	L16000227768
<b>FEI/EIN Number</b>	NONE
<b>Date Filed</b>	12/16/2016
<b>Effective Date</b>	12/16/2016
<b>State</b>	FL
<b>Status</b>	ACTIVE
<b>Last Event</b>	LC AMENDED/RESTATED
ARTICLE/NAME CHANGE	
<b>Event Date Filed</b>	11/15/2019
<b>Event Effective Date</b>	NONE

### Principal Address

5207 STRATFORD COURT  
CAPE CORAL, FL 33904

### Mailing Address

5207 STRATFORD COURT  
CAPE CORAL, FL 33904

### Registered Agent Name & Address

WALLACE, STEPHANEE  
5207 STRATFORD COURT  
CAPE CORAL, FL 33904

### Authorized Person(s) Detail

#### **Name & Address**

Title AMBR

WALLACE, STEPHANEE  
5207 STRATFORD COURT  
CAPE CORAL, FL 33904

### Annual Reports

<b>Report Year</b>	<b>Filed Date</b>
2017	04/03/2017
2018	03/18/2018
2019	03/15/2019

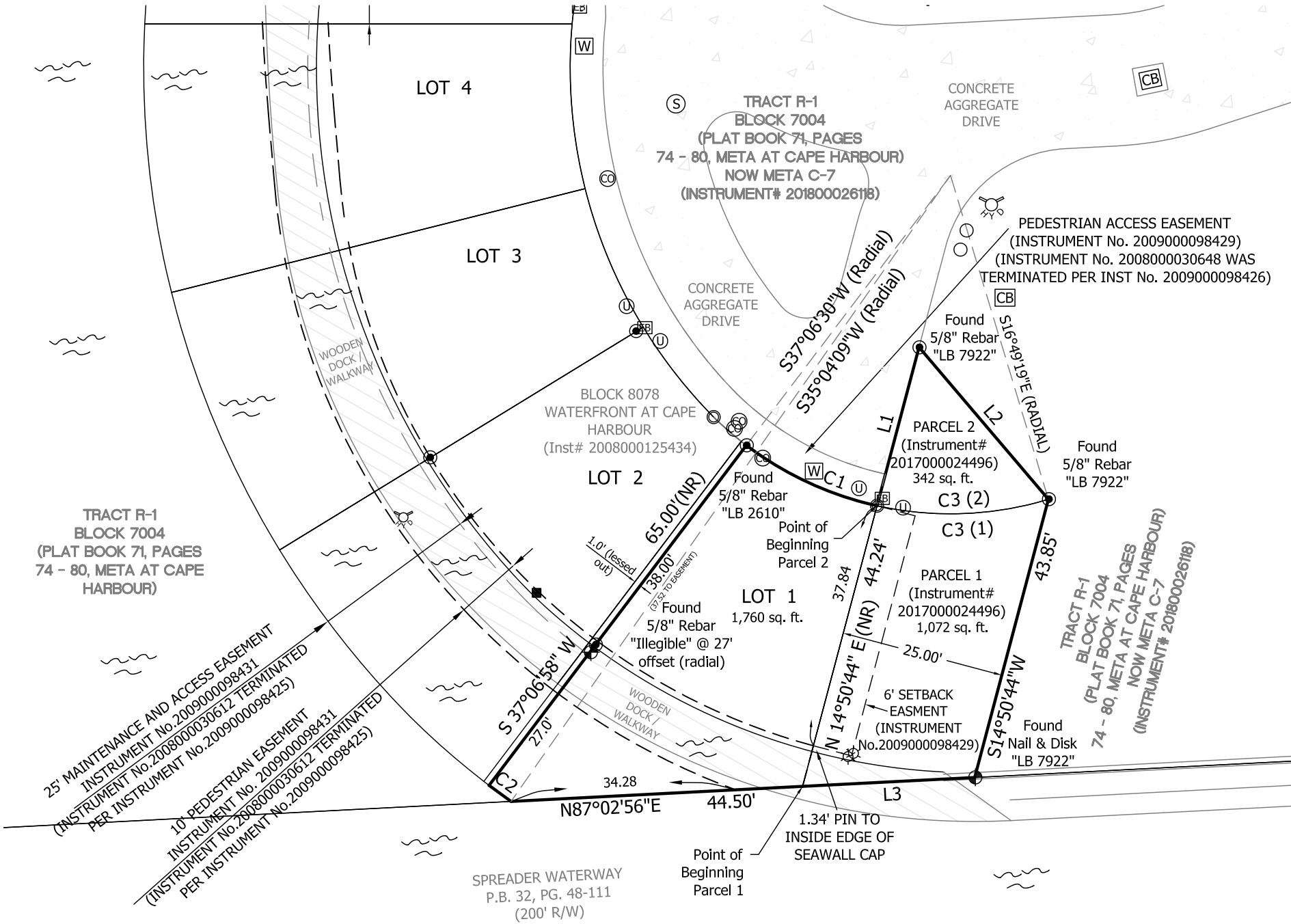
2019

02/07/2019

**Document Images**

<a href="#"><u>11/15/2019 -- LC Amended/Restated Article/NC</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>11/15/2019 -- Merger</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>02/07/2019 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>03/18/2018 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>04/03/2017 -- ANNUAL REPORT</u></a>	<a href="#">View image in PDF format</a>
<a href="#"><u>12/16/2016 -- Florida Limited Liability</u></a>	<a href="#">View image in PDF format</a>





PARCEL DESCRIPTION:

Lot 1, Block 8078, WATERFRONT AT CAPE HARBOUR (Instrument Number 2008000125434) LESS AND EXCEPT the Westerly 1.00 foot thereof (Instrument Number 2013000106573 ) Said Parcel Contains 1,760 sq. ft. (more or less)  
TOGETHER WITH: (Parcel 1)  
A parcel of land lying in Section 21, Township 45 South, Range 23 East, City of Cape Coral, Lee County, Florida being a portion of Tract R-1, Block 7004, META AT CAPE HARBOUR as recorded in Plat Book 71 at Pages 74-80 in the Public Records of Lee County, Florida being more particularly described as follows:  
Beginning at the Southeast corner of Lot 1, Block 8078, WATERFRONT AT CAPE HARBOUR as recorded in Instrument Number 2008000125434 of the Public Records of Lee County, Florida thence run N14°50'44"E, along the East line of said Lot 1, a distance of 44.24 feet to an intersection with a non-tangent curve; thence run 26.43 feet along the arc of said non-tangent curve to the left of radius 51.56 feet, concave to the North, to which a radial line bears S12°32'47"W, having a delta angle of 29°22'03", a chord bearing of N87°51'42"E and a chord length of 26.14 feet to a point on a non-tangent line; thence run S14°50'44"W, parallel to and 25.00 feet Easterly of the East line of said Lot 1, a distance of 43.85 feet, to an intersection with the South line of said Tract R-1 and the North line of a spreader waterway (200' R/W) as recorded in Plat Book 32 at Pages 48 through 111 of said Public Records; thence run S87°02'56"W, along said South and North line, a distance of 26.26 feet to the Point of Beginning.  
Said Parcel Contains 1,072 sq. ft. (more or less)  
TOGETHER WITH: (Parcel 2)  
A parcel of land lying in Section 21, Township 45 South, Range 23 East, City of Cape Coral, Lee County, Florida being a portion of Tract R-1, Block 7004, META AT CAPE HARBOUR as recorded in Plat Book 71 at Pages 74-80 in the Public Records of Lee County, Florida being more particularly described as follows:  
Beginning at the Northeast corner of Lot 1, Block 8078, WATERFRONT AT CAPE HARBOUR as recorded in Instrument Number 2008000125434 of the Public Records of Lee County, Florida thence run N14°50'44"E, along a prolongation of the East line of said Lot 1, a distance of 25.00; thence run S40°22'18"E a distance of 30.44 feet to an intersection with a non-tangent curve; thence run 26.43 feet along the arc of said non-tangent curve to the right of radius 51.56 feet, concave to the North, to which a radial line bears S16°49'19"E, having a delta angle of 29°22'03", a chord bearing of S87°51'42"W and a chord length of 26.14 feet to the Point of Beginning.  
Said Parcel Contains 342 sq. ft. (more or less)  
Bearings are based on the East line of Lot 1, Block 8078, WATERFRONT AT CAPE HARBOUR (Instrument Number 2008000125434) being N14°50'44"E.

DATE	REVISION
<div>SURVEY NOTES:</div> <div><div>1. MEASUREMENTS SHOWN ARE IN FEET AND DECIMALS THEREOF.</div><div>2. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.</div><div>3. UNDERGROUND STRUCTURES AND UTILITIES, IF ANY, ARE NOT INCLUDED, UNLESS OTHERWISE SHOWN.</div><div>4. NOT VALID WITHOUT SIGNATURE AND RAISED OR ELECTRONIC SEAL OF FLORIDA LICENSED SURVEYOR AND MAPPER (P.S.M.)</div><div>5. THE NATIONAL FLOOD INSURANCE INFORMATION: COMMUNITY NUMBER: 125095 PANEL NUMBER: 12071 C 1395 SUFFIX: F EFFECTIVE DATE: 08/28/2008 FIRM ZONE: AE BASE FLOOD ELEVATION: 8' (FIRM PANEL LISTED ABOVE SHOULD BE CONSULTED FOR VERIFICATION OF ALL FLOOD RELATED INFORMATION)</div><div>6. BEARINGS ARE BASED ON THE EAST LINE OF LOT 1, BLOCK 8078, WATERFRONT AT CAPE HARBOUR (INSTRUMENT NUMBER 2008000125434) BEING N14°50'44"E.</div><div>7. DATE OF LAST FIELD WORK : APRIL 1, 2019.</div><div>8. RECORDING INSTRUMENTS LISTED HEREON SHOULD BE CONSULTED AND REVIEWED FOR ADDITIONAL INFORMATION.</div><div>9. THIS SURVEY WAS COMPLETED WITHOUT BENEFIT OF AN UP TO DATE TITLE COMMITMENT.</div><div>10. ADDITIONS TO OR DELETIONS FROM SURVEY OR REPORTS BY OTHER THAN THE SIGNING SURVEYOR AND MAPPER ARE PROHIBITED BY LAW WITHOUT THE EXPRESS WRITTEN CONSENT OF THE SIGNING SURVEYOR AND MAPPER. COPYRIGHT 2019, KING ENGINEERING ASSOCIATES, INC., ALL RIGHTS RESERVED. DO NOT COPY WITHOUT THE WRITTEN CONSENT OF KING ENGINEERING, INC.</div></div>	
<div>CERTIFIED TO:</div> <div>Avalon Engineering</div>	
JOB # 18-4138	PREPARED FOR: Avalon Engineering
SECTION 21, TOWNSHIP 45S, RANGE 23E	

CURVE TABLE					
CURVE	RADIUS	LENGTH	DELTA	CHORD BEARING	CHORD LENGTH
C1	51.56	22.10	24°33'39"	S65°10'27"E	21.93
C2	116.54	4.14	2°02'08"	S53°54'47"E	4.14
C3 (1)	51.56	26.43	29°22'03"	N87°51'42"E	26.14
C3 (2)	51.56	26.43	29°22'03"	S87°51'42"W	26.14

LINE TABLE		
LINE	BEARING	LENGTH
L1	N14°50'44"E	25.00'
L2	S40°22'18"E	30.44'
L3	S87°02'56"W	26.26'

Boundary Survey of  
5826 & 5822 Shell Cove Drive,  
Lot 1, Block 8078, Waterfront at Cape Harbour, less the Westerly 1 foot thereof, According to Instrument Number 2008000125434, together with Parcels 1 & 2 as recorded in Instrument Number 2017000024496 of the Public Records of Lee County, Florida.

STOUTENCRAMER

A KING ENGINEERING COMPANY

King

ENGINEERING ASSOCIATES, INC.

CERTIFICATE OF AUTHORIZATION: LB2610  
324 Nicholas Parkway West, Suite A, Cape Coral, FL 33991  
Phone: (239) 673-9541 Fax: (239) 424-8181  
www.kingengineering.com

FOUND NAIL AND TAB

SET NAIL AND TAB "LB 2610"

FOUND STEEL PIN

SET 5/8" IRON ROD & CAP "LB2610"

WATER METER

WATER VALVE

FIRE HYDRANT

UTILITY RISER

CATCH BASIN

LIGHT POLE

SANITARY MANHOLE

CLEAN OUT

ELECTRIC BOX

SQ. FT.

SQUARE FEET

CONC.

CONCRETE

MON.

MONUMENT

R/W

RIGHT OF WAY

E/P

EDGE OF PAVEMENT

D.E.

DRAINAGE EASEMENT

P.U.E.

PUBLIC UTILITY EASEMENT

(P)

PLAT MEASUREMENT

(M)

FIELD MEASUREMENT

(C)

CALCULATED MEASUREMENT

F.F.

FINISHED FLOOR ELEVATION

-P-

OVERHEAD POWER LINES

I hereby certify that, to the best of my knowledge and belief, the survey represented hereon, made under my direction on **April 1, 2019** is in accordance with Standards of Practice as set forth by the Florida Board of Professional Surveyors & Mappers in Chapter 51-17, Florida Administrative Code, pursuant to Section 472.027 Florida Statutes.

JEFFREY D. STOUTEN (FOR THE FIRM)  
FLORIDA PROFESSIONAL SURVEYOR & MAPPER NO.6584  
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL  
RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

06/13/06

06/19/06

06/20/06

08/14/06

## ORDINANCE 89 - 06

AN ORDINANCE AMENDING ORDINANCE 28-97, AS PREVIOUSLY AMENDED BY ORDINANCES 60-97, 8-98, 82-98, 3-01, 80-01, 42-03, 120-04, AND 69-05, A PLANNED DEVELOPMENT PROJECT ENTITLED "META AT CAPE HARBOUR" FOR A PORTION OF CERTAIN PROPERTY DESCRIBED AS CAPE CORAL SUBDIVISION, UNIT 75 (CAMELOT), CAPE HARBOUR SUBDIVISION, PHASE 2-A, AND PHASE 2-B, AND META AT CAPE HARBOUR SUBDIVISION TRACTS C-1 THROUGH C-6, BLOCK 7005, AND TRACTS R-1, R-4, R-5 AND R-6, BLOCK 7004, LEE COUNTY, FLORIDA, AS MORE PARTICULARLY DESCRIBED HEREIN; PROPERTY LOCATED AT EL DORADO PARKWAY WEST AND CHIQUITA BOULEVARD SOUTH; GRANTING REPLAT AND SUBDIVISION OF 0.95 ACRES OF TRACT B, BLOCK 7004, INTO NINETEEN (19) SINGLE-FAMILY LOTS TO BE KNOWN AS LOTS 1-19, BLOCK 7003; APPROVING THE REZONING OF 4.30 ACRES WITHIN TRACT B, BLOCK 7004, FROM MULTI-FAMILY RESIDENTIAL (R-3) TO PEDESTRIAN COMMERCIAL (C-1); GRANTING, FOR LOTS 1 THROUGH 19, BLOCK 7003 ONLY, THE FOLLOWING DEVIATIONS FROM SECTIONS 2.7.2.D.3, TABLE R-3, DIMENSIONAL REGULATIONS, SECTION 3.1.2A.1.A, GARAGES, SECTION 3.16.2.E, MARINE IMPROVEMENTS, AND SECTION 5.1.7.G, PARKING STANDARDS, OF THE LAND USE AND DEVELOPMENT REGULATIONS AS FOLLOWS: A DEVIATION OF EIGHT THOUSAND FIVE HUNDRED TWENTY-SEVEN (8,527) SQUARE FEET FROM THE MINIMUM LOT AREA OF TEN THOUSAND (10,000) SQUARE FEET, TO ALLOW A LOT AREA OF ONE THOUSAND FOUR HUNDRED SEVENTY-THREE (1,473) SQUARE FEET; A DEVIATION OF SIXTY (60) FEET FROM THE MINIMUM LOT WIDTH AT THE BUILDING LINE OF EIGHTY (80) FEET TO ALLOW A LOT WIDTH AT THE BUILDING LINE OF TWENTY (20) FEET; A DEVIATION OF FIFTY-SIX (56) FEET FROM THE MINIMUM LOT DEPTH OF ONE HUNDRED (100) FEET TO ALLOW A LOT DEPTH OF FORTY-FOUR (44) FEET; A DEVIATION OF FIVE HUNDRED (500) SQUARE FEET FROM THE MINIMUM LIVING AREA OF ONE THOUSAND (1,000) SQUARE FEET TO ALLOW A MINIMUM LIVING AREA OF FIVE HUNDRED (500) SQUARE FEET; A DEVIATION OF TWENTY FIVE (25) FEET FROM THE MINIMUM FRONT YARD REQUIREMENT OF TWENTY-FIVE (25) FEET IN ORDER TO ELIMINATE THE REQUIREMENT FOR A FRONT YARD AND ALLOW CONSTRUCTION UP TO THE FRONT PROPERTY LINE; A DEVIATION OF SEVEN AND ONE-HALF (7.5) FEET FROM THE MINIMUM SIDE YARD REQUIREMENT OF SEVEN AND ONE-HALF (7.5) FEET IN ORDER TO ELIMINATE THE REQUIREMENT FOR A SIDE YARD AND ALLOW CONSTRUCTION UP TO THE SIDE PROPERTY LINE; A DEVIATION OF TWENTY (20) FEET FROM THE MINIMUM REAR YARD REQUIREMENT OF TWENTY (20) FEET IN ORDER TO ELIMINATE THE REQUIREMENT FOR A REAR YARD AND ALLOW CONSTRUCTION UP TO THE REAR PROPERTY LINE; A DEVIATION FROM THE REQUIREMENT THAT SINGLE FAMILY HOMES HAVE A GARAGE, IN ORDER TO ALLOW THE STRUCTURES WITHOUT A GARAGE; A DEVIATION FROM THE REQUIREMENT OF TWO PARKING SPACES FOR A SINGLE-FAMILY HOME, IN ORDER TO ALLOW THE SINGLE FAMILY HOMES WITH ONE SPACE; A DEVIATION OF TWELVE (12) FEET FROM THE REQUIREMENT THAT MARINE IMPROVEMENTS PROJECTING SIX (6) FEET INTO THE WATERWAY BE AT LEAST TWELVE (12) FEET FROM THE WATERFRONTAGE LINE ENDS, TO ALLOW SUCH MARINE IMPROVEMENTS TO EXTEND TO THE ENDS OF THE WATERFRONTAGE LINE; A DEVIATION FROM THE PROHIBITION OF OVERHEAD STRUCTURES ON ANY DOCK OTHER THAN AN APPROVED BOAT CANOPY OR SUN SHELTER, IN ORDER TO ALLOW SUCH OVERHEAD STRUCTURES; GRANTING, FOR TRACT C-1 BLOCK 7005, AND TRACT B, BLOCK 7004 ONLY, THE FOLLOWING DEVIATIONS FROM SECTION 2.7.7.D, TABLE C-1, MINIMUM YARDS, AS FOLLOWS: A DEVIATION OF TWENTY FIVE (25) FEET FROM THE MINIMUM FRONT YARD REQUIREMENT, IN ORDER TO ELIMINATE THE REQUIREMENT FOR A FRONT YARD AND ALLOW CONSTRUCTION UP TO THE FRONT PROPERTY LINE; A DEVIATION OF TEN (10) FEET FROM THE MINIMUM SIDE AND REAR YARD REQUIREMENTS OF TEN (10)

FEET IN ORDER TO ELIMINATE THE REQUIREMENT FOR A SIDE AND REAR YARD, AND ALLOW CONSTRUCTION UP TO THE SIDE AND REAR PROPERTY LINES; GRANTING, FOR TRACTS C-2 THROUGH C-6, AND TRACT B, BLOCK 7004 ONLY, THE FOLLOWING DEVIATIONS FROM SECTION 5.1.7.G. OF THE LAND USE AND DEVELOPMENT REGULATIONS THAT REQUIRES TWO (2) AND THREE (3) BEDROOM UNITS TO PROVIDE TWO (2.0) AND TWO AND ONE HALF (2.5) PARKING SPACES RESPECTIVELY, IN ORDER TO ALLOW 1.36 PARKING SPACES FOR EACH TWO (2) OR THREE (3) BEDROOM MULTI-FAMILY UNIT; A DEVIATION FROM THE REQUIREMENT OF ONE PARKING SPACE PER ONE HUNDRED (100) SQUARE FEET OF RESTAURANT USE, AND ONE SPACE PER EVERY TWO HUNDRED (200) SQUARE FEET OF RETAIL USE, TO ALLOW ONE SPACE PER TWO HUNDRED-FIFTY (250) SQUARE FEET; GRANTING, FOR TRACT B, BLOCK 7004 ONLY, A DEVIATION FROM THE REQUIREMENT THAT A MARINA (DRY STORAGE) USE PROVIDE ONE SPACE PER FOUR (4) UNIT STALLS IN ORDER TO ALLOW A MARINA (DRY STORAGE) USE TO PROVIDE NO ADDITIONAL PARKING; GRANTING APPROVAL TO CONSTRUCT TEMPORARY PARKING LOTS ON ANY TRACT TO PROVIDE PARKING DURING CONSTRUCTION OF THE PROJECT; GRANTING A DEVIATION FROM THE REQUIREMENTS OF ARTICLE VII, SIGNS, OF THE LAND USE AND DEVELOPMENT REGULATIONS ONLY AS THEY PERTAIN TO THE SIZE, HEIGHT, LOCATION, AND TOTAL SIGNS PERMITTED IN ACCORDANCE WITH THE CONDITIONS DESCRIBED HEREIN; PROVIDING THAT PHYSICAL DEVELOPMENT FOR ALL PROPERTIES LOCATED IN THE "META AT CAPE HARBOUR" DEVELOPMENT PROJECT SHALL TERMINATE TWENTY (20) YEARS FROM THE DATE OF ADOPTION OF THIS ORDINANCE; PROVIDING FOR SUBMITTAL OF ANNUAL TRAFFIC MONITORING REPORT(S), AT THE CITY'S REQUEST; PROVIDING THAT EXISTING AND PROPOSED USES WITHIN THE META AT CAPE HARBOUR DEVELOPMENT PROJECT GENERATE NO MORE THAN THE MAXIMUM NUMBER OF WEEKDAY PM PEAK HOUR TRIPS OF 970; PROVIDING FOR ALL PERMITTED USES WITHIN THE PEDESTRIAN COMMERCIAL (C-1) ZONING DISTRICT BE ALLOWED RATHER THAN THOSE SPECIFIED IN THE MATRIX OF ALLOWABLE COMMERCIAL USES; REDUCING THE SETBACK FOR ALL STRUCTURES ALONG EL DORADO PARKWAY AND CHIQUITA BOULEVARD TO THIRTY (30) FEET; INCREASING THE HEIGHT FOR ALL STRUCTURES ALONG EL DORADO PARKWAY AND CHIQUITA BOULEVARD FROM THIRTY-EIGHT (38) FEET TO FIFTY (50) FEET, AND ALLOWING AN ADDITIONAL FOOT OF HEIGHT FOR EVERY FOOT OF ADDITIONAL SETBACK; EXPANDING THE AREA UPON WHICH DRY STORAGE OF BOATS IS ALLOWED FROM TRACT C-1, BLOCK 7004 ONLY, TO INCLUDE TRACT B, BLOCK 7004; APPROVING AN AMENDED DEVELOPMENT PLAN APPROVAL PURSUANT TO SECTION 4.2 OF THE LAND USE AND DEVELOPMENT REGULATIONS; PROVIDING FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW; PROVIDING FOR ACTION ON REQUEST AND CONDITIONS OF APPROVAL; PROVIDING FOR LEGAL EFFECT AND LIMITATIONS OF THIS PDP DEVELOPMENT ORDER AND ADMINISTRATIVE REQUIREMENTS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the "Cape Harbour" Planned Development Project was approved by the City Council of the City of Cape Coral, by Ordinance 28-97, and as amended by Ordinance 60-97, Ordinance 8-98, Ordinance 82-98, Ordinance 3-01, Ordinance 80-01, Ordinance 42-03, Ordinance 120-04, and Ordinance 69-05; and

WHEREAS, an application from Realmark Cape Marina, LLC, Realmark Cape Harbour, LLC Realmark Meta, LLC, Realmark Marina South, LLC, Realmark Marina South II, LLC, and Realmark Marina Grill LLC, has been received requesting amendment to a portion of a Planned Development Project (PDP) Development Plan for Meta at Cape Harbour; requesting amendment of Ordinance 28-97 as amended by Ordinances 60-97, 8-98, 82-98, 3-01, 80-01, 42-03, 120-04 and 69-05; and

WHEREAS, said application received is by parties holding title to ownership of one hundred percent (100%) of the property included in the requested amendment; and

WHEREAS, the request has been reviewed by the Cape Coral Planning and Zoning Commission/Local Planning Agency; and

WHEREAS, the City Council has considered the recommendations of the Planning and Zoning Commission/Local Planning Agency.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

SECTION I. PDP APPROVAL AMENDING ORDINANCE 28-97 AS AMENDED BY ORDINANCES 60-97, 8-98, 82-98, 3-01, 80-01, 42-03, 120-04, AND 69-05, REPLAT AND SUBDIVISION, REZONING, DEVIATIONS, AND AMENDMENT TO DEVELOPMENT ORDER CONDITIONS.

Having reviewed the application requesting amendment of a Planned Development Project for Meta at Cape Harbour, requesting amendment to a portion of a Planned Development Project (PDP) Development Plan, requesting amendment of Ordinance 28-97, as amended by Ordinances 60-97, 8-98, 82-98, 3-01, 80-01, 42-03, 120-04 and 69-05, to include replat and subdivision, rezoning, deviations, amendment to development order conditions, and requesting approval to utilize all tracts for temporary parking during the construction of the project; and having considered the recommendations of the Planning and Zoning Commission and the Local Planning Agency, the City Council of the City of Cape Coral, Florida, does hereby grant the following from the date of adoption of this ordinance subject to the terms and conditions set forth below:

A. REPLAT AND SUBDIVISION APPROVAL

Replat of a portion of Tract B, Block 7004, Meta at Cape Harbour, for nineteen (19) single-family lots hereinafter known as Lots 1-19, Block 7003, as shown on the Subdivision Plan, pursuant to Section 4.2 of the City of Cape Coral Land Use and Development Regulations. Final platting shall be accomplished in accordance with Chapter 177 of the Florida Statutes:

B. REZONING

That the City of Cape Coral Official Zoning District Map of all of the property within the limits of the City of Cape Coral is hereby amended with respect to real property described as:

From Multi-Family Residential (R-3) To Pedestrian Commercial (C-1)

The 4.30+/- acres situated in Tract B, Block 7004, Meta at Cape Harbour, as more particularly described in the attached Exhibit "A".

C. DEVIATIONS FROM THE LAND USE AND DEVELOPMENT REGULATIONS

1. The following Deviations are approved herein for Lots 1-19, Block 7003 from Section 2.7.2.D.3 Table R-3, Dimensional Regulations, and are subject to the conditions stated in Section III.B. General Considerations:
  - a. A deviation of eight thousand five hundred twenty-seven (8,527) square feet from the Minimum Lot Area of ten thousand (10,000) square feet to allow single family lots of one thousand four hundred seventy-three (1,437) square feet for single-family residential use only.
  - b. A deviation of sixty (60) feet from the Minimum Lot Width at the building line of eighty (80) feet to allow a single-family home to be constructed on a lot with a width of twenty (20) feet at the building line.
  - c. A deviation of fifty-six (56) feet from the Minimum Lot Depth of one hundred (100) feet to allow a single-family lot with a depth of forty-four (44) feet.
  - d. A deviation of five hundred (500) square feet from the Minimum Living Area of 1,000 square feet to allow the construction of single-family homes with a minimum living area of five hundred (500) square feet.
  - e. A deviation of twenty-five (25) feet from the Minimum Front Yard requirement of twenty-five (25) feet in order to eliminate the requirement for a front yard and allow construction up to the front property line.



- f. A deviation of seven and one-half (7.5) feet from the Minimum Side Yard requirement of seven and one-half (7.5) feet in order to eliminate the requirement for a side yard and allow construction up to the side property line.
  - g. A deviation of twenty (20) feet from the Minimum Rear Yard requirement of twenty (20) feet in order to eliminate the requirement for a rear yard and allow construction up to the rear property line.
2. A deviation from Section 3.1.2.A.1.a., to eliminate the requirement that all single-family structures have a garage, in order to allow the single-family structures on Lots 1-19, Block 7003, without a garage.
3. A deviation of twelve (12) feet from Section 3.16.2.B.1, Marine Improvements, that requires a marine improvement which extends more than six (6) feet into a waterway to be located not less than twelve (12) feet from the ends of the water frontage line, to allow for the construction of a dock to extend to the property lines of Lots 1-19, Block 7003.
4. A deviation from the prohibition of overhead structures on any dock other than an approved boat canopy or sun shelter, in order to allow such overhead structures on the docks constructed at Lots 1-19, Block 7003. No structure, other than the deck approved herein, shall be permitted over water. Overhead structures for purposes of this ordinance shall be non-habitable, open air decking to be used only for casual outdoor activities. Railings and/or guardrails shall be constructed in accordance with the 2004 Florida Building Code, Sections 1012.1, 1012.2, and 1012.3. A solid masonry wall in place of a railing shall be permitted.
5. The following deviations from Section 2.7.7.D. Table C-1, Dimensional Regulations, are approved herein for Tract C-1, Block 7005, and Tract B, Block 7004;
  - a. A twenty-five (25) foot deviation from the twenty-five (25) foot minimum front yard requirement to allow a zero (0) foot front yard.
  - b. A ten (10) foot deviation from the ten (10) foot side, and the ten (10) foot rear yard requirements, except for the Restaurant along Chiquita Boulevard on Tract C-1, Block 7005.
6. Approving a parking deviation from Section 5.1.7.G. of the Land Use and Development Regulations which requires two (2) bedroom and three (3) bedroom multi-family units to provide two (2.0), and two and one half (2.5) parking spaces respectively, to provide 1.36 parking spaces for either a two or three bedroom multi-family unit on Tracts C-2 through C-6, and Tract B, Block 7004.
7. Approving a parking deviation for Tracts C-2, through C-6, and Tract B, Block 7004, from Sections 5.1.7.I. and J. of the Land Use and Development Regulations which requires one parking space per every one hundred (100) square feet of restaurant use and one parking space per every two hundred (200) square foot of retail use, to allow a Restaurant, Standard Group III, and retail uses to provide one space per every two hundred-fifty (250) square feet. For any use other than restaurant or retail, the aforementioned parking deviations shall not apply to any use that requires a higher parking standard.
8. Approving a parking deviation from Section 5.1.7.M. of the Land Use and Development Regulations which requires a Marina-Dry Storage use to provide one space per four unit stalls in order to require no additional parking for a Marina-Dry Storage use on Tract B, Block 7004.

#### D. AMENDMENT TO CONDITIONS OF APPROVAL

1. Physical development for all of the property within the "Meta at Cape Harbour" development project shall terminate twenty (20) years from the date of adoption of this ordinance.

2. The Traffic Impact Statement (TIS) was performed by Metro Transportation on August 27, 2001 addressing the impact on the surrounding network of 970 trips per weekday P.M. peak hour for the expected combined total impacts of the following land uses as described in the 6th Edition of the Trip Generation Report published by the Institute of Transportation Engineers (ITE): Single-Family Detached Housing (ITE Land Use Code 210) Residential Condominium/Townhouse (ITE Land Use Code 230) including dwelling units within compound use buildings, Quality Restaurant (ITE Land Use Code 931), Shopping Center (ITE 820), Hotel (ITE Land Use Code 310), General Office Building (ITE Land Use Code 710), and Marina (ITE Land Use Code 420). The following conditions shall apply:
- a. Calculations of the number of trips generated by the Meta development will be determined using the latest version of the Trip Generation, Internal Capture and Pass by (TIPS) software developed and owned by the Florida Department of Transportation for use in traffic analysis by and for the Florida Department of Transportation, public and private entities. Calculations of the trip generation will be based on the following ITE Land Use Code independent variables: ITE LU 210/Dwelling Units, ITE LU 230/Dwelling Units, ITE LU 931/s.f. Gross Floor Area, ITE LU 310/Rooms, ITE LU 710/ s.f. Gross Floor Area, ITE LU 420/Berths. The trip reduction calculation will be based on the following internal capture percentages: 25% rate for residential uses and 10% for each of the following uses: shopping center, general office, and quality restaurant.
  - b. In the event TIPS software is not available, trip generation calculations shall be based on the latest version of the Trip Generation Book, the Trip Generation Handbook both published by the Institute of Transportation Engineers(ITE) and the latest version of the Site Impact Handbook developed by the Florida Department of Transportation (FDOT).
  - c. With each application for a site plan or building permit within the Meta development, the Developer shall document to the City the number of trips generated by the portion of the development already built, plus the number of trips generated by the portion of the development that is seeking site or building permit.
  - d. No site plan or building permit will be issued and no development will be approved when the City determines, based on the information and documentation provided pursuant to paragraphs a., b., and c. above, that the combined total of the uses within the Meta development generate more than 970 trips, regardless of the fact that the use was previously approved.
  - e. When existing and proposed uses within the Meta development generate more than 970 trips, an amendment to the Meta Planned Development Project must be adopted in order to accommodate a new threshold for total number of trips as well as for proposed transportation improvement. The Developer shall perform a new TIS following the guidelines set forth in the Engineering Design Standards, to ensure that the proposed development meets concurrency for roads, and in order to accommodate a new threshold for total number of trips as well as for proposed transportation improvement. No site plan or building permit will be issued until an amendment to the Meta Planned Development Project is adopted. Prior to adoption of a Planned Development Project amendment, the new TIS must be approved by the Public Works Director or his designee, that establishes a new threshold for the combined total of trips generated by the Meta development during the weekday peak hour.
3. All restrictions on the square footage of a hotel are hereby deleted. The trips generated by the hotel and any accessory uses in the development are subject to the PM peak hours trips.
4. The Developer shall not be required to submit either an annual report or a yearly monitoring report. Instead, the City of Cape Coral reserves the right to request Annual Traffic Monitoring Report(s) before the development reaches buildout.

Preparation of the report shall not begin until the Developer provides the Public Works Director or designee with an acceptable methodology for preparing the report. If this report shows impacts greater than those estimated at the time of original approval and/or determines that the LOS is degraded below adopted LOS standards, the Developer shall provide mitigation actions to assure that all roadways and intersections shall be improved so as to maintain the adopted peak hour LOS standard.

5. The setback for all structures in Tract C-6 fronting El Dorado Parkway and Tract C-6 and Tract C-1 fronting Chiquita Boulevard is reduced from forty (40) feet to thirty (30) feet.
6. In the event a hotel or other commercial use is located on Tract C-6, the setback requirement is hereby reduced from one hundred (100) feet to thirty (30) feet from the property line adjacent to Chiquita Boulevard or from the property line adjacent to El Dorado Parkway.
7. The maximum height at the building setback line parallel to El Dorado Parkway (West) and Chiquita Boulevard (South) of thirty-eight (38) feet is increased to fifty (50) feet for the construction of a hotel or other structure. The maximum building heights may be increased by one foot for every one foot of additional setback measured from El Dorado Parkway (West) and Chiquita Boulevard (South).
8. Dry storage of boats may be located on Tract B, Block 7004 in addition to Tract C-1, Block 7005.
9. In the event a restaurant use is located on Tract C-1, the setback requirement is hereby reduced from seventy-five (75) feet to thirty (30) feet from the property line adjacent to Chiquita Boulevard.
10. The Developer is not limited to uses identified in the "Matrix of Allowable Commercial Uses". Instead, all commercial uses permitted by the City's Land Use and Development Regulations in the Pedestrian Commercial (C-1) zoning district are allowed.

## SECTION II. FINDING OF FACT/CONCLUSION OF LAW

- A. The Cape Harbour development is a mixed use Planned Development Project (PDP). The extant PDP development consists of three (3) phases. The first phase is platted as Cape Harbour Subdivision-Phase 2-A. The second phase is platted as Cape Harbour Subdivision-Phase 2-B. The third phase is known as the "Meta at Cape Harbour" phase.
  1. The first and second phases of the Cape Harbour development have been approved for the following:
    - a. Homesites for 84 detached single-family dwelling units with associated infrastructure including gated private roads, surface water management tracts, and a development wall/fountain/clocktower buffering system. The first two phases, including infrastructure for 84 detached dwelling units are complete.
    - b. The provisions of this Ordinance apply only to the "Meta at Cape Harbour" property as more particularly described in Section II.D.2. of this development order.
  2. The "Meta at Cape Harbour" phase has been approved for the following uses:

Single-family and multi-family dwelling units within Multi-Family Residential (R-3) tracts, compound use buildings on Pedestrian Commercial (C-1) tracts, boat slips, a hotel, retail uses, restaurants, office uses, private roads, surface water management tracts, and a wall buffering system.
- B. The "Meta at Cape Harbour" phase is not subject to conditions or terms of approval provided in Ordinance 28-97 as amended by Ordinance 3-01. All of the provisions and conditions of approval of Ordinance 28-97 as amended by Ordinance 3-01, 80-01, and 42-

03, 120-04 and 69-05, which are not addressed herein, shall remain in full force and effect for the Cape Harbour Planned Development Project including the "Meta at Cape Harbour" phase.

- C. The name(s) of the legal and equitable owner(s) of the property described in Section II.D.2 of this development order are Realmark Cape Marina, LLC, Realmark Cape Harbour, LLC, Realmark Meta, LLC, Realmark Marina South, LLC, Realmark Marina South II, LLC, and Realmark Marina Grill LLC.

D. LEGAL DESCRIPTIONS

1. The legal description of the entire property that is subject to the extant PDP Development Order(s) is described as follows:

All of the Meta At Cape Harbour Subdivision, in its entirety, according to Plat Book 71, Pages 74 through 80 of the Public Records Of Lee County, Florida;

together with all of Cape Harbour Subdivision Phase 2-A, in its entirety, according to Plat Book 60, Pages 27 through 28;

together with all of Cape Harbour Subdivision, Phase 2-B, in its entirety, according to Plat Book 65, Pages 55 through 57 of The Public Records Of Lee County, Florida,

together with a tract of land situated in Lots 14, 15, and 30, Block 6501, in Cape Coral Unit 75 (Camelot) according to Plat Book 33, Pages 37 through 49 of the Public Records of Lee County, Florida and Tract "A", Cape Harbour Subdivision, Phase 2-A, according to Plat Book 60, Pages 27 through 28 of the Public Records of Lee County, Florida being more particularly described as follows:

Beginning at the intersection of the centerline of Merlyn Lane and the south right-of-way line of El Dorado Parkway West (100 foot right-of-way); thence run N89°43'07"W along said south right-of-way line for 64.50 feet; thence run S00°16'53"W, leaving said right-of-way line, for 20.00 feet; thence run S89°43'07"E for 12.41 feet; thence run S40°29'26"E for 23.11 feet; thence run S00°16'53"W for 10.00 feet; thence run S89°43'07"E for 74.00 feet; thence run N00°16'53"E for 10.00 feet; thence run N45°16'53"E for 21.92 feet to a point of intersection with a line parallel to and 22.00 feet south of said right-of-way line; thence run S89°43'07"E along said parallel line for 117.00; thence run S00°16'53"W for 22.00 feet; thence run N89°43'07"W to the Point of Beginning, excepting from the preceding description the following described portion of Merlyn Lane right-of-way: Beginning at said intersection of said centerline of said Merlyn Lane and said south right-of-way line; thence run N89°43'07"W along said south right-of-way line for 50.00 feet to a non-tangent point of intersection with a curve concave to the southwest, being also the westerly right-of-way line of said Merlyn Lane; thence run along said westerly right-of-way line on said curve having a radius of 25.00 feet and a central angle of 90°00'00" (chord = S44°43'07"E 35.36 feet) for 39.27 feet to a point of tangency; thence run S00°16'53"W along said westerly right-of-way line for 22.50 feet; thence run S89°43'07"E, leaving said westerly right-of-way line, for 50.00 feet to a point of intersection with the easterly right-of-way line of said Merlyn Lane; thence run N00°16'53"E along said easterly right-of-way line for 22.50 feet to the point of curvature of a curve concave to the southeast; thence run along said easterly right-of-way line on said curve having a radius of 25.00 feet and a central angle of 90°00'00" (chord = N45°16'53"E, 35.36 feet) for 39.27 feet to a point of intersection with said south right-of-way line; thence run N89°43'07"W along said south right-of-way line for 50.00 feet to the point of beginning of said exception.

2. The legal description of the portion of the Planned Development Project (PDP) Development Plan for Cape Harbour that is amended by this Development Order is described as follows:



A parcel of land lying in Sections 16 and 21, Township 45 South, Range 23 East, consisting of Tracts R-1, and R-4, Block 7004, and Tracts C-1, C-2, C-3, C-4, C-5, and C-6, Block 7005, Meta At Cape Harbour Subdivision in the City of Cape Coral according to Plat Book 71, Pages 74 through 80 of the Public Records of Lee County, Florida.

- E. The subject property as described above in Section II.D.2. has approximately 55.64 acres with a Future Land Use designation of Mixed Use. The developable property, excluding private right-of-way within Tract E "Meta at Cape Harbour" phase of the Cape Harbour PDP has 35.93 acres zoned C-1 (Pedestrian Commercial) and 14.17 acres zoned R-3 (Multi-Family Residential), pursuant to the authority of Chapter 166, Florida Statutes, and the Land Use and Development Regulations, Cape Coral, Florida, as same may hereafter be amended.
- F. All existing and future structures and uses, population density, building intensity, and building height shall conform to the respective provisions of the Pedestrian Commercial (C-1) and Multi-Family Residential (R-3) Zoning Districts of the Land Use and Development Regulations, Cape Coral, Florida, as same may hereafter be amended. In addition, the development shall obtain all local development permits from the City of Cape Coral, Florida, and other governmental jurisdictions. Failure of this development order to address a particular permit, condition, term, restriction, or zoning regulation shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, restrictions, or zoning regulations.
- G. The proposed development is not located in an Area of Critical State Concern, pursuant to the provisions of Chapter 380.05, Florida Statutes.
- H. The proposed development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.
- I. The proposed development, as noted, is consistent with the adopted City of Cape Coral Comprehensive Plan, and the City of Cape Coral Land Use and Development Regulations.
- J. The term Developer for purposes of this development order shall mean and refer to Realmark Cape Marina LLC, Realmark Cape Harbour LLC, Realmark Meta, LLC, Realmark Marina South, LLC, Realmark Marina South II, LLC, and Realmark Marina Grill, LLC, their successors in interest, lessees, and/or assigns.

### SECTION III. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

NOW, THEREFORE, be it ordained by the City Council of Cape Coral, Florida, in public meeting duly advertised, constituted and assembled, that the application for the amended Planned Development Project for approval submitted by Realmark Cape Marina LLC, Realmark Cape Harbour LLC, Realmark Meta LLC, Realmark Marina South, LLC, Realmark Marina South II, LLC, and Realmark Marina Grill LLC is hereby ordained approved, subject to the following conditions, restrictions, and limitations deemed necessary for the public health, safety, and welfare:

#### A. SUBDIVISION

1. The Developer shall meet all requirements of Section 4.2.11., Minimum Design Standards, City of Cape Coral Land Use and Development Regulations.
2. Prior to any final subdivision plat approval, and after the City of Cape Coral approves the construction plans for the required site improvements, either the Developer shall satisfactorily complete all of the required site improvements, or the Developer shall provide a surety bond or certified check in an amount of the estimated cost to complete all required site improvements, as determined by the City. Such surety bond or certified check shall be returned to the Developer after the Director has determined that all required improvements have been satisfactorily completed.

The Director shall submit the subdivision plat for the Mayor's signature after all required site improvements have been satisfactorily completed or the City has received a surety bond or certified check in an amount of the estimated cost to complete all required site improvements. Such Plat shall then be recorded with the

Lee County Clerk pursuant to Chapter 177, Florida Statutes. A duplicate recorded Mylar copy of the Plat shall be submitted to the City.

B. GENERAL CONSIDERATIONS

1. The developer may install, without restriction as to size, height, location, and number of signs, any sign(s) that are not prohibited in the Multi-Family Residential (R-3) zoning district, and the Pedestrian Commercial (C-1) zoning district, so long as such sign(s) are not visible from outside of the subject property. The foregoing waiver of regulation of sign(s) in the development as to size, height, location, and number of signs granted herein do not preclude the Director of the Department of Community Development from making further administrative sign deviations. However, a sign deviation request will be reviewed in accordance with Chapter 7.1 of the Land Use and Development Regulations. Neither any waiver approved herein nor any deviation that may be approved hereafter shall be approved if it would have the effect of allowing a type or category of sign that would otherwise be prohibited by Article VII of the Land Use and Development Regulations.
2. All deviations to the Land Use and Development Regulations approved herein for Lots 1-19, Block 7003, shall only apply as long as the use of the property is single-family. In the event the developer seeks a use other than single-family through an amendment to this development order, then the deviations approved herein shall be null and void. Such other use shall also comply with all other regulations of the zoning district as well as this development order. Rental of the structures on Lots 1-19, Block 7003, for periods of less than one (1) week shall not be construed as use of the properties for other than single-family residential use.
3. No structure, other than the overhead deck approved herein, shall be permitted over water. Overhead structures for purposes of this ordinance shall be non-habitable, open air decking to be used only for casual outdoor activities. Railings and/or guardrails shall be constructed in accordance with the Florida Building Code in effect at the time of application for building permits.

SECTION IV. LEGAL EFFECT AND LIMITATIONS OF THIS DEVELOPMENT ORDER, AND ADMINISTRATIVE REQUIREMENTS

- A. This Development Order shall constitute an ordinance of the City of Cape Coral, adopted by this Council in response to the Planned Development Project Application filed for the "Meta at Cape Harbour" PDP amendment.
- B. This Development Order shall be binding on the Developer. Those portions of this Development Order, which clearly apply only to the project Developer, shall not be construed to be binding upon future owners of the project lots. It shall be binding upon any builder/developer who acquires any tract of land within the project.
- C. The terms and conditions set out in this document constitute a basis upon which the Developer and City may rely in future actions necessary to implement fully the final development contemplated by this Development Order.
- D. All conditions, restrictions, stipulations, and safeguards contained in this Development Order may be enforced by either party hereto by action at law or equity, and all costs of such proceedings, including reasonable attorney's fees, shall be paid by the defaulting party.
- E. Any references herein to any governmental agency shall be construed to mean to include any future instrumentality which may be created and designated as successor in interest to or which otherwise possesses any of the powers and duties of any referenced governmental agency in existence on the effective date of this Development Order.
- F. The approval granted by this Development Order is limited. Such approval shall not be construed to obviate the duty of the Developer to comply with all applicable local or state review and permitting procedures, except where otherwise specifically provided.
- G. Subsequent requests for local development permits shall not require further review unless it is found by the Cape Coral Planning and Zoning Commission/Local Planning Agency after

due notice and hearing, that a substantial deviation from the terms or conditions of this Development Order, or other changes to the approved development plans which create a reasonable likelihood of adverse impacts which were not evaluated in the review by the City, has occurred and/or would result from the issuance of the local development permit. Substantial deviations include but are not limited to:

1. A greater than five (5) percent increase in the square footage of the development.
2. Any change that requires a variance to code or other requirements over and above those specifically incorporated herein.
3. An expiration of the period of effectiveness of this Development Order as herein provided.
4. A failure to carry out Development Order conditions and/or Developer commitments incorporated within the Development Order to mitigate impacts to the extent indicated in the Development Order, or in accordance with the Development Order.

Upon a finding that any of the above is present, the City may order a termination of all development activity until such time as a new PDP Application for Development Approval has been submitted, reviewed and approved, and all local approvals have been obtained.

- H. The time for which all physical development on all property within the "Meta at Cape Harbour" development project shall occur shall be twenty years from the date of adoption of this Development Order. The Council may grant an extension if the project has been developing substantially in conformance with the original plans and approved conditions, and if no substantial adverse impacts not known to Cape Coral at the time of their review and approval, or arising due to the extension, have been identified. For purposes of determining when the buildout date has been exceeded, the time shall be tolled during the pendency of administrative and judicial proceedings relating to development permits. All conditions imposed on the subject development shall remain in full force and effect throughout the life of the development unless rescinded or amended by the City and shall not be affected by any termination of the authorization for physical development.
- I. The Director of the Cape Coral Department of Community Development or his/her designee shall be the local official responsible for assuring compliance with this Development Order. Upon reasonable notice by the City and at all reasonable times, the Developer shall allow the City of Cape Coral, its agents, employees, and/or representatives, access to the project site for the purpose of assuring compliance with this Development Order.
- J. The Developer, or its successors, shall submit a new Traffic Impact Study if the proposed development plans to exceed the total Weekday PM trips of 970. Preparation of the report shall not begin until the Developer provides the City of Cape Coral with an acceptable methodology for preparing the report. If this report shows impacts greater than those estimated at the time of original approval and/or determines that the LOS is degraded below adopted LOS standards, the Developer shall provide mitigation actions to assure that all roadways and intersections shall be improved so as to maintain the adopted peak hour LOS standard.
- K. Within thirty (30) days of adoption of this Ordinance, this Development Order shall be recorded in the Office of the Clerk of the Circuit Court by the Developer or Authorized Representative, who shall thereafter return the original recorded Development Order to the City.

## SECTION V. SEVERABILITY.

In the event that any portion or section of this Ordinance is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance, which shall remain in full force and effect.

SECTION VI. EFFECTIVE DATE.

This ordinance shall take effect immediately upon its adoption by the Cape Coral City Council. Permits issued prior to or after the effective date of this Ordinance are obtained solely at the risk of the Developer.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS 14<sup>th</sup> DAY OF August, 2006.

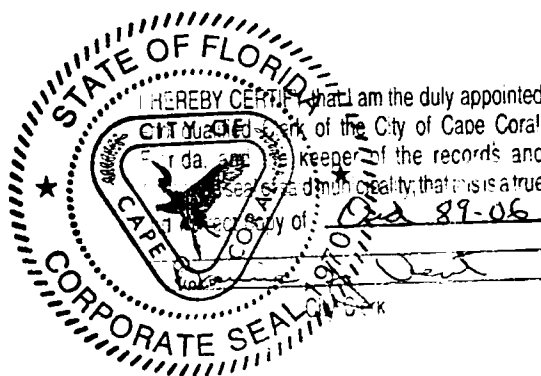
Eric Feichthaler  
ERIC FEICHTHALER, MAYOR

ATTESTED TO AND FILED IN MY OFFICE THIS 18<sup>th</sup> DAY OF August, 2006.

Bonnie J. Vent  
BONNIE J. VENT, CITY CLERK

APPROVED AS TO FORM:

Dolores D. Menendez  
DOLORES D. MENENDEZ  
CITY ATTORNEY  
pdp058-7-Meta





LEGAL DESCRIPTION

A PORTION OF TRACT R-1, BLOCK 7004, META AT CAPE HARBOUR ACCORDING TO PLAT BOOK 71, PAGES 74 THROUGH 80 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND SITUATED IN SECTION 21, TOWNSHIP 45 SOUTH, RANGE 23 EAST, CITY OF CAPE CORAL, LEE COUNTY, FLORIDA.

BEGIN AT THE SOUTHWEST CORNER OF TRACT R-1, META AT CAPE HARBOUR. FROM SAID POINT OF BEGINNING RUN N02°57'06"W FOR A DISTANCE OF 45.70 FEET TO A POINT ON THE CENTERLINE OF A 60.00 FOOT INGRESS / EGRESS EASEMENT; THENCE RUN N29°01'53"E ALONG SAID CENTERLINE FOR A DISTANCE OF 402.63 FEET TO THE POINT OF CURVATURE OF A 400 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, SAID CURVE HAVING A CENTRAL ANGLE OF 28°26'31", A CHORD AND CHORD BEARING OF N43°15'08"E, 196.53 FEET, RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 198.56 FEET; THENCE RUN N57°28'24"E FOR A DISTANCE OF 137.41 FEET TO THE WESTERLY LINE OF TRACT C-3; THENCE LEAVING SAID CENTERLINE, RUN S32°33'01"E ALONG SAID WESTERLY LINE OF TRACT C-3 FOR A DISTANCE OF 207.40 FEET TO THE NORTHWEST CORNER OF TRACT C-2; THENCE RUN S02°57'05"E ALONG THE WESTERLY LINE OF SAID TRACT C-2 FOR A DISTANCE OF 248.20 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF CAPE HARBOUR DRIVE, ALSO BEING THE POINT OF CURVATURE OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST, THE RADIUS POINT OF WHICH BEARS N08°24'34"W, 125.00 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 5°26'57", A CHORD AND CHORD BEARING OF S84°18'55"W, 11.88 FEET, RUN ALONG THE ARC OF SAID CURVE FOR 11.89 FEET; THENCE RUN S87°02'24"W FOR A DISTANCE OF 1.79 FEET; THENCE RUN S02°57'05"E FOR A DISTANCE OF 62.56 FEET TO THE POINT OF CURVATURE OF A NON-TANGENT CURVE CONCAVE TO THE NORTHEAST, THE RADIUS POINT OF WHICH BEARS N90°00'00"E, 75.00 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 38°13'02", A CHORD AND CHORD BEARING OF S19°06'31"E, 49.10 FEET, RUN ALONG THE ARC FOR A DISTANCE OF 50.03 FEET TO A NON-TANGENT INTERSECTION WITH A LINE THAT BEARS S02°57'05"E; THENCE RUN S02°57'05"E FOR A DISTANCE 52.22; THENCE RUN S87°02'56"W FOR A DISTANCE OF 577.07 FEET TO THE POINT OF BEGINNING.

LESS :

COMMENCING AT THE SOUTHWEST CORNER OF TRACT R-1, META AT CAPE HARBOUR, RUN ALONG THE SAID SOUTH LINE OF SAID TRACT R-1 N87°02'56"E, 257.01 FEET TO A NON-TANGENT POINT OF CURVATURE, BEING ALSO THE POINT OF BEGINNING.

FROM SAID POINT OF BEGINNING RUN ALONG THE ARC OF A 106.83 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, THE RADIUS POINT OF WHICH BEARS N17°39'35"E, 106.83 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 18°52'29", A CHORD AND CHORD BEARING OF N62°54'10"W, 35.03 FEET, RUN ALONG THE ARC OF SAID CURVE FOR 35.19 FEET; THENCE RUN S37°06'58"W FOR A DISTANCE OF 18.67 FEET TO THE NON-TANGENT POINT OF CURVATURE OF A 116.54 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, THE RADIUS POINT OF WHICH BEARS N37°35'47"E, 116.54 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 7°17'47", A CHORD AND CHORD BEARING OF N48°45'19"W, 14.83 FEET, RUN ALONG THE ARC OF SAID CURVE FOR 14.84 FEET TO THE POINT OF NON-TANGENT COMPOUND CURVATURE OF A 140.78 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, THE RADIUS POINT OF WHICH BEARS N45°18'46"E, 140.78 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 49°40'27", A CHORD AND CHORD BEARING OF N19°51'01"W, 118.27 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 122.05 FEET TO THE NON-TANGENT POINT OF COMPOUND CURVATURE OF A 383.23 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, THE RADIUS POINT OF WHICH BEARS N88°47'27"E, 383.23 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 16°16'25", A CHORD AND CHORD BEARING OF N06°55'39"E, 108.48 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 108.85 FEET TO THE NON-TANGENT POINT OF COMPOUND CURVATURE OF A 486.97 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, THE RADIUS POINT OF WHICH BEARS S74°02'08"E, 486.97 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 11°23'00", A CHORD AND CHORD BEARING OF N21°39'22"E, 96.59 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 96.75 FEET TO THE POINT OF NON-TANGENT COMPOUND CURVATURE OF A 536.60 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, THE RADIUS POINT OF WHICH BEARS S58°03'12"E, 536.60 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 10°15'02", A CHORD AND CHORD BEARING OF N37°04'19"E, 95.87 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 96.00 FEET TO THE NON-TANGENT POINT OF COMPOUND CURVATURE OF A 122.76 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, THE RADIUS POINT OF WHICH BEARS S47°48'10"E, 122.76 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 47°40'38", A CHORD AND CHORD BEARING OF N66°02'09"E 99.23, FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 102.15 FEET; THENCE RUN N89°52'29"E, 121.04 FEET TO THE NON-TANGENT POINT OF CURVATURE OF A 131.81 FOOT RADIUS CURVE CONCAVE TO THE NORTHWEST, THE RADIUS POINT OF WHICH BEARS N02°40'48"E, 131.81 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 13°02'55", A CHORD AND CHORD BEARING OF N86°09'20"E, 29.95 FEET; THENCE RUN ALONG SAID ARC FOR 30.02 FEET; THENCE RUN S10°22'07"E, 65.00 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 196.81 FOOT RADIUS CURVE CONCAVE TO THE NORTHWEST, THE RADIUS POINT OF WHICH BEARS N10°22'01"W, 196.81 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 12°32'20", A CHORD AND CHORD BEARING OF S85°54'03"W, 42.99 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 43.07 FEET; THENCE RUN S89°52'29"W, 119.61 FEET TO THE NON-TANGENT POINT OF CURVATURE OF A 57.76 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, THE RADIUS POINT OF WHICH BEARS S00°07'31"E, 57.76 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 47°40'38", A CHORD AND CHORD BEARING OF S66°02'09"W, 46.69 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 48.06 FEET TO THE NON-TANGENT POINT OF COMPOUND CURVATURE OF A 471.60 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, THE RADIUS POINT OF WHICH BEARS S47°48'10"E, 471.60 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 9°55'56", A CHORD AND CHORD BEARING OF S37°13'52"W, 81.65 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 81.75 FEET TO THE NON-TANGENT POINT OF COMPOUND CURVATURE OF A 421.97 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, THE RADIUS POINT OF WHICH BEARS S63°00'18"E, 421.97 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 10°57'37", A CHORD AND CHORD BEARING OF S21°30'52"W, 80.60 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 80.72 FEET TO THE NON-TANGENT POINT OF COMPOUND CURVATURE OF A 318.23 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, THE RADIUS POINT OF WHICH BEARS S75°01'37"E, 318.23 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 16°53'07", A CHORD AND CHORD BEARING OF S06°31'52"W, 93.44 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 93.78 FEET TO THE NON-TANGENT POINT OF COMPOUND CURVATURE OF A 75.78 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, THE RADIUS POINT OF WHICH BEARS S82°38'18"E, 75.78 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 52°00'11", A CHORD AND CHORD BEARING OF S18°38'24"E, 66.44 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 68.78 FEET TO THE POINT OF NON-TANGENT COMPOUND CURVATURE OF A 51.56 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, THE RADIUS POINT OF WHICH BEARS N44°26'38"E, 51.56 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 31°53'55", A CHORD AND CHORD BEARING OF S61°30'19"E, 28.34 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 28.71 FEET; THENCE RUN S14°50'44"W, 44.24 TO A POINT ON SAID SOUTH LINE OF SAID TRACT R-1; THENCE RUN ALONG SAID SOUTH LINE S87°02'56"W FOR A DISTANCE OF 6.14 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 4.3 ACRES , MORE OR LESS.

DESCRIPTION TO ACCOMPANY SKETCH

A PORTION OF TRACT R-1, BLOCK 7004, META AT CAPE HARBOUR ACCORDING TO PLAT BOOK 71, PAGES 74 THROUGH 80 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA

REVISED 6-22-06 (FOR CITY COMMENTS)

PAGE 2 OF 2

STOUTEN & ASSOCIATES, INC.  
SURVEYING & MAPPING  
4423 SE 16TH PLACE, UNIT 18, CAPE CORAL, FL 33904  
Phone: (239) 842-7499 Fax: (239) 846-0244  
www.stoutenandassociates.com

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*This Instrument Prepared by:*

*TINA M. FISCHER  
Fletcher & Fischer, P.L.  
501 E. Kennedy Blvd. Ste. 802  
Tampa, Florida 33602  
(813)898-2828*

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**CORRECTIVE SPECIAL WARRANTY DEED**

**This Corrective Special Warranty Deed is being recorded to correct a scrivener's error in this original Special Warranty Deed recorded on January 3, 2017 in the as Instrument Number 2017000001277 in the Public Records of Lee County, Florida. The original instrument failed to include the required witness signatures. All required documentary stamp taxes were paid at the time of the first recording.**

THIS CORRECTIVE SPECIAL WARRANTY DEED is made this 30<sup>th</sup> day of January, 2017, by **CRE CAPE HARBOUR MARINA LLC, a Delaware limited liability company**, having an address at 8117 Preston Road, Ste. 450, Dallas, TX 75225, and **CRE CAPE HARBOUR LAND, LLC, a Delaware limited liability company**, having an address at 8117 Preston Road, Ste. 450, Dallas, TX 75225, hereinafter collectively called the "Grantor", to **FISH HOUSE LOT 1, LLC, a Florida limited liability company**, having an address at 5207 Stratford Court, Cape Coral, FL 33904, hereinafter called the Grantee:

WITNESSETH: That the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration the receipt and sufficiency whereof are hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee, all that certain real property situate in Lee County, Florida, more particularly described as:

See Attached Exhibit "A."

TOGETHER with all the tenements, hereditaments, and appurtenances, with every privilege, right, title, interest and estate, dower and right of dower, reversion, remainder and easement thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

SUBJECT TO (i) real estate taxes and assessments for the year 2017 and thereafter; (ii) applicable zoning ordinances, regulations and governmental regulations; and (iii) covenants, conditions, restrictions and easements of record.

AND the Grantor hereby covenants with the Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land, and hereby specially warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under the said Grantor.

IN WITNESS WHEREOF, the Grantor has executed this Deed as of the date first above set forth.

Witness

*Mark White*  
 Print Name: MARK WHITE

*Ashley Rebarckek*  
 Print Name: Ashley Rebarckek

**CRE CAPE HARBOUR Marina, LLC,**  
**a Delaware limited liability company**

By: CRE GS Properties, LLC  
 A Delaware limited liability company

Its: Managing Member

*Judd Gilats*  
 By: Judd Gilats  
 Its: Vice President

STATE OF Minnesota )  
 )  
 COUNTY OF Hennepin )

ss

THIS INSTRUMENT was acknowledged before me this 30 day of January, 2017 by Judd Gilats, as Vice President of CRE GS Properties, LLC as the Managing Member of CRE Cape Harbour Marina, LLC, a Delaware limited liability company, who is personally known to me or who produced as identification and did not take an oath.

My Commission Expires:

January 31, 2021

*Cristina Aurora Zhang*  
 NOTARY PUBLIC, State of Minnesota  
 Print Name: Cristina Aurora Zhang

Witness

*Mark White*  
 Print Name: MARK WHITE

*Ashley Rebarckek*  
 Print Name: Ashley Rebarckek

**CRE CAPE HARBOUR LAND, LLC,**  
**a Delaware limited liability company**

By: CRE GS Properties, LLC  
 A Delaware limited liability company

Its: Managing Member

*Judd Gilats*  
 By: Judd Gilats  
 Its: Vice President

STATE OF Minnesota )  
 )  
 COUNTY OF Hennepin )

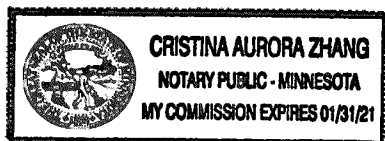
ss

THIS INSTRUMENT was acknowledged before me this 30 day of January, 2017 by Judd Gilats, as Vice President of CRE GS Properties, LLC as the Managing Member of CRE Cape Harbour Land, LLC, a Delaware limited liability company, who is personally known to me or who produced as identification and did not take an oath.

My Commission Expires:

January 31, 2021

*Cristina Aurora Zhang*  
 NOTARY PUBLIC, State of Minnesota





**EXHIBIT A**

Lot 1, less and except the Westerly 1.00 foot thereof, Block 8078, Waterfront At Cape Harbour, according to the plat thereof, as recorded in Clerk's File Number 2008-125434, Public Records of Lee County, Florida.

Together with a perpetual non-exclusive vehicular ingress and egress easement for the benefit of the above described Parcel 25 by virtue of the Amended And Restated Access Easement Agreement recorded in Clerk's File Number 2009-169759, Public Records of Lee County, Florida.

AND;

Parcel 1

A parcel of land lying in Section 21, Township 45 South, Range 23 East, City of Cape Coral, Lee County, Florida being a portion of Tract R-1, Block 7004, Meta At Cape Harbour as recorded in Plat Book 71 at Pages 74-80 in the Public Records of Lee County, Florida being more particularly described as follows:

Beginning at the Southeast corner of Lot 1, Block 8078, Waterfront At Cape Harbour as recorded in Instrument Number 2008000125434 of the Public Records of Lee County, Florida thence run N 14° 50' 44" E, along the East line of said Lot 1, a distance of 44.24 feet to an intersection with a non-tangent curve; thence run 26.43 feet along the arc of said non-tangent curve to the left of radius 51.56 feet, concave to the North, to which a radial line bears S 12° 32' 47" W, having a delta angle of 29° 22' 03", a chord bearing of N 87° 51' 42" E and a chord length of 26.14 feet to a point on a non-tangent line; thence run S 14° 50' 44" W, parallel to and 25.00 feet Easterly of the East line of said Lot 1, a distance of 43.85 feet, to an intersection with the South line of said Tract R-1 and the North line of a spreader waterway (200' R/W) as recorded in Plat Book 32 at Pages 48 through 111 of said Public Records; thence run S 87° 02' 56" W, along said South and North line, a distance of 26.26 feet to the Point of Beginning.

Parcel 2

A parcel of land lying in Section 21, Township 45 South, Range 23 East, City of Cape Coral, Lee County, Florida being a portion of Tract R-1, Block 7004, Meta At Cape Harbour as recorded in Plat Book 71 at Pages 74-80 in the Public Records of Lee County, Florida being more particularly described as follows:

Beginning at the Northeast corner of Lot 1, Block 8078, Waterfront At Cape Harbour as recorded in Instrument Number 2008000125434 of the Public Records of Lee County, Florida thence run N 14° 50' 44" E, along a prolongation of the East line of said Lot 1, a distance of 25.00 feet; thence run S 40° 22' 18" E a distance of 30.44 feet to an intersection with a non-tangent curve; thence run 26.43 feet along the arc of said non-tangent curve to the right of radius 51.56 feet, concave to the North, to which a radial line bears S 16° 49' 19" E, having a delta angle of 29° 22' 03", a chord bearing of S 87° 51' 42" W and a chord length of 26.14 feet to the Point of Beginning.

**Classified Ad Receipt**  
**(For Info Only - NOT A BILL)**

**Customer:** CITY OF CAPE CORAL\_DEPT OF COM

**Ad No.:** 0004053120

**Address:** 1015 CULTURAL PARK BLVD  
CAPE CORAL FL 33990  
USA

**Net Amt:** \$380.38

**Run Times:** 1

**No. of Affidavits:** 1

**Run Dates:** 02/15/20

**Text of Ad:**

**NOTICE OF PUBLIC HEARING ADVERTISEMENT**

CASE NUMBER: PDP19-0003

**REQUEST:** The applicant, Funky Fish Houses, LLC., is requesting an amendment to the Meta at Cape Harbour Planned Development Project (PDP) located near the intersection of El Dorado Parkway West and Chiquita Boulevard South. The applicant requests to rezone a portion of Tract R-1, Block 7004 from Commercial (C) to Residential Multi-family Low (RML) and extend the previously approved deviations granted in Ordinance 89-06 to those rezoned portions of Tract R-1, Block 7004.

**CAPE CORAL STAFF CONTACT:** Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator, 239-242-3255, mstruve@capecoral.net

**UPCOMING PUBLIC HEARING:** Notice is hereby given that the Hearing Examiner will hold a public hearing at 9:00 A.M. on February 25, 2020 on the above mentioned case. The public hearing will be held in the City of Cape Coral Council Chambers, 1015 Cultural Park Boulevard, Cape Coral, FL.

All interested parties are invited to appear and be heard. All materials presented before the Hearing Examiner will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available five days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

**DETAILED INFORMATION:** The case report and colored maps for this application are available at the City of Cape Coral website, [www.capecoral.net/publichearing](http://www.capecoral.net/publichearing) (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM.

**HOW TO CONTACT:** Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027

**ADA PROVISIONS:** In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

by order of  
Kimberly Bruns, CMC  
City Clerk  
REF # PDP19-0003  
LEGAL AD - DCD  
AD# 4053120 , February 15, 2020



RAMP

MERLYN LN

EL DORADO PKWY W

LAGOON LN

SW 56TH TER

SW 57TH ST

CAPE HARBOUR

VD S

AFFECTED COMMUNITY

**CITY OF CAPE CORAL**  
Department of  
Community Development  
Planning Division

**AERIAL MAP**

Case No. PDP19-0003

**LEGEND**

- DIRECTLY AFFECTED
- COMMUNITY
- SUBJECT PARCELS



0 80 160 240 320 Feet

This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding the map product.

HARBOUR CIR

SHELL COVE DR

DIRECTLY AFFECTED PROPERTIES

SUBJECT PARCELS



# CITY OF CAPE CORAL

Department of  
Community Development  
Planning Division

## CURRENT ZONING MAP

Case No. PDP19-0003

### LEGEND

- 500' BOUNDARY NEW
- DIRECTLY AFFECTED PROPERTIES
- SUBJECT PARCELS
- COMMUNITY
- C - Commercial
- PRFLU - PRES Reg. by FLU
- R1- Single Family Residential
- RE - Residential Estate
- RML - Residential Multi-Family Low



0 140 280 420 560 Feet

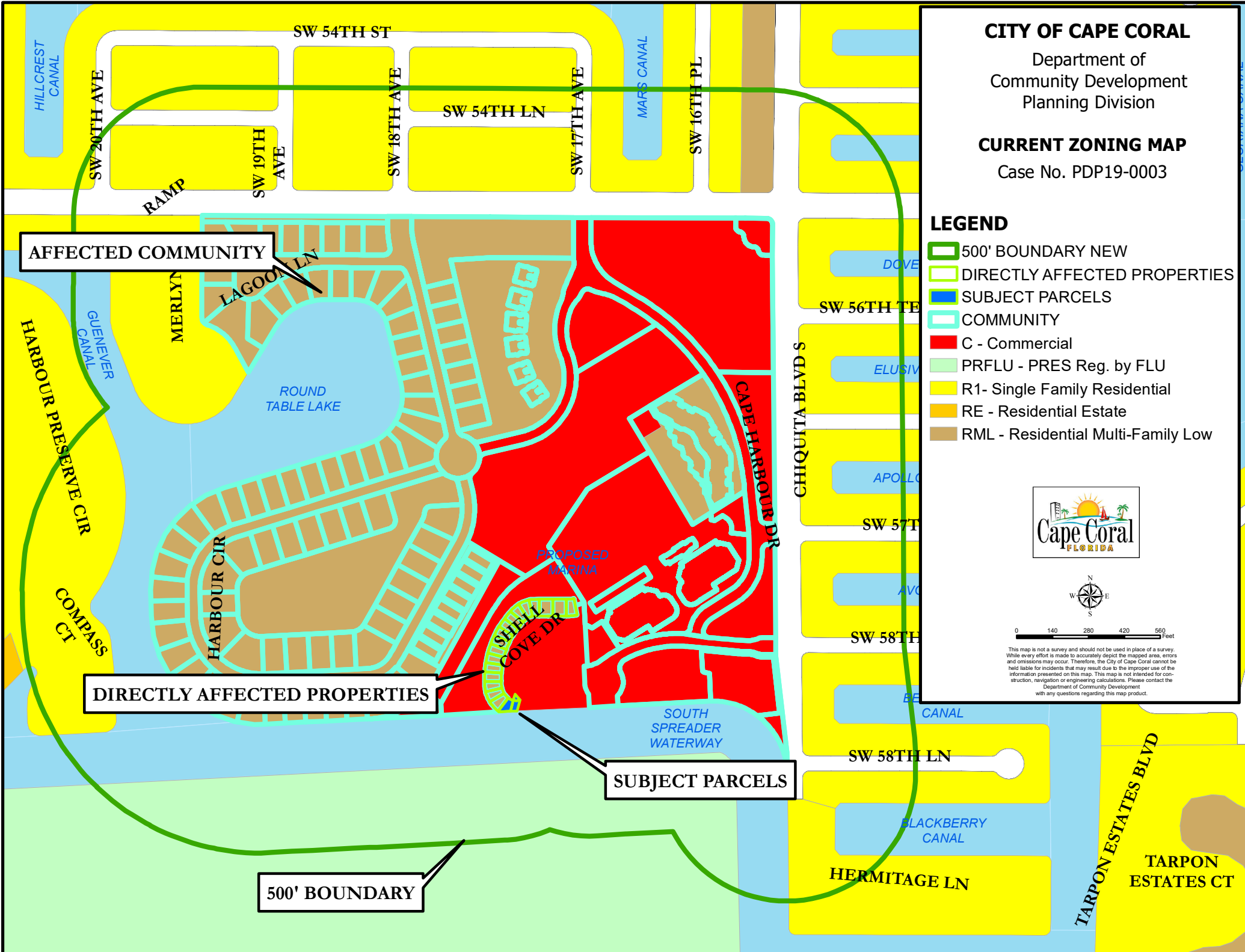
This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.

AFFECTED COMMUNITY

DIRECTLY AFFECTED PROPERTIES

SUBJECT PARCELS

500' BOUNDARY







**Avalon Engineering, Inc.**  
2503 Del Prado Boulevard South, Suite 200  
Cape Coral, Florida 33904  
Phone: (239) 573-2077 Fax: (239) 573-2076  
#AA C001936 #EB 0003128

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January 21, 2020

Mr. Vince Cautero, Director  
Department of Community Development  
City of Cape Coral  
1015 Cultural Park Boulevard  
Cape Coral, Florida 33990

**PROJECT: META AT CAPE HARBOUR PDP AMENDMENT FOR ONLY A PORTION OF  
THE WATERFRONT AT CAPE HARBOUR SUBDIVISION**

**SUBJECT: PLANNED DEVELOPMENT PROJECT (PDP) AMENDMENT OF ORDINANCE  
28-97, AS AMENDED BY ORDINANCES 60-97, 8-98, 82-98, 3-01, 80-01, 42,03,  
120-04, 69-05, 89-06, and 49-18.**

Dear Mr. Cautero:

On behalf of our property owner, Funky Fish Houses, LLC, we are requesting an amendment to the above referenced Ordinances.

The PDP Amendment will request the approval of the following: increase the boundary of the Waterfront At Cape Harbour Subdivision, approved by Ordinance 89-06 and platted by Instrument # 2008000125434; Increase the size of Lot # 1 by 1,414 square feet from 1,760 square feet to 3,174 square feet; rezone the two parcels (21-45-23-C2-004R1.0010 and 21-45-23-C2-004R1.0020) containing 1,414 square feet that are being added to Lot #1 from C-1 to R-3/RML; and request dimensional deviations for development on this Lot as previously approved in Ordinance 89-06.

#### PROJECT HISTORY

The Meta at Cape Harbour development, as part of Cape Harbour Subdivision, was approved by Ordinance 80-0, in October of 2001. When approved, the development plan consisted of a specific number of traditionally zoned Tracts that were designated for a specific type of commercial or multi-family residential use.

Over the years, the development plan for Meta at Cape Harbour has evolved, and the project currently is approved for a variety of uses, including compound use buildings, commercial, multi-family, recreational areas, and single family homesites within the waterfront lots.

Construction has been completed on the Recreation Tract (A), three (3) of the Residential Tracts, (R-3, R-2, R-5), three (3) of the Commercial Tracts (C-1, C-2, C-3) and a few of the residential waterfront lots.

This PDP requests the following:

**INCREASE IN THE BOUNDARY AREA OF THE WATERFRONT AT CAPE HARBOUR SUBDIVISION**

The applicant requests approve to increase the boundary area of the Waterfront at Cape Harbour Subdivision by adding 1,475 square feet to the platted boundary area of 41,907 square feet.

**REZONE PARCELS FROM C-1 TO R-3/RML**

The applicant requests approval to rezone two parcels containing a total of 1,475 square feet from C-1 (Pedestrian Commercial) to R-3 Multi-Family/ RML (Residential Multi-family Low). The Legal Description and Sketch of the two parcels are provided in Exhibit B and C.

**LOT 1 GRANTED DEVIATIONS**

The applicant requests approval to utilize the approved dimensional deviations obtained in Ordinance 89-06 for the expanded area of Lot 1.

**PROJECT CONSISTENCY WITH THE COMPREHENSIVE PLAN**

The following Comprehensive Plan policies and goals are relevant to this project.

*Housing Element*

Goal: To provide good quality housing in safe, clean neighborhoods, offering a broad choice of options in both type (single family and multi-family) and tenure (owner and renter occupied) to meet the needs of present and future residents of the City, regardless of age or income status.

*Future Land Use Element*

Policy 1.15. f. Mixed Use: The mixed use designation is intended to encourage the development of planned projects that include more than one type of use.

Policy 4.1: Future development requiring access or connection to public water and sewer facilities will be located within either the Urban Services Infill or Transition areas.

Policy 8.5: The City encourages the use of multi-family residential, compound buildings, professional offices, and parks as transitional uses between commercial development and low-density residential neighborhood.

Cautero/Waterfront at Cape Harbour PDP Amendment  
January 21, 2020  
Page 3

Adoption of these refinements to the development order will allow the design team to continue to make the vision of this distinct development a reality. Should you or your staff have questions regarding this request please let me know.

Sincerely,

AVALON ENGINEERING, INC.



Linda Miller, AICP  
Senior Planner

Item Number:	3.A.
Meeting Date:	2/25/2020
Item Type:	DATE AND TIME OF NEXT MEETING

**AGENDA REQUEST  
FORM**  
CITY OF CAPE CORAL



**TITLE:**

A Special Hearing of the Hearing Examiner was scheduled for Thursday, March 5, 2020, at 9:00 a.m. in Council Chambers.

**REQUESTED ACTION:**

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
  - If Yes, Priority Goals Supported are listed below.
  - If No, will it harm the intent or success of the Strategic Plan?

**Planning & Zoning Recommendations:**

**SUMMARY EXPLANATION AND BACKGROUND:**

**LEGAL REVIEW:**

**EXHIBITS:**

**PREPARED BY:**

Division- Department-

**SOURCE OF ADDITIONAL INFORMATION:**



<b>Item Number:</b>	<b>3.B.</b>
<b>Meeting Date:</b>	<b>2/25/2020</b>
<b>Item Type:</b>	<b>DATE AND TIME OF NEXT MEETING</b>

**AGENDA REQUEST  
FORM**  
CITY OF CAPE CORAL



**TITLE:**

Regular Meeting of the Hearing Examiner Hearing was scheduled for Tuesday, March 10, 2020, at 9:00 a.m., in Council Chambers

**REQUESTED ACTION:**

**STRATEGIC PLAN INFO:**

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
  - If Yes, Priority Goals Supported are listed below.
  - If No, will it harm the intent or success of the Strategic Plan?

**Planning & Zoning Recommendations:**

**SUMMARY EXPLANATION AND BACKGROUND:**  
WHAT THE ORDINANCE ACCOMPLISHES:

**LEGAL REVIEW:**

**EXHIBITS:**

**PREPARED BY:**

Division- Department-

**SOURCE OF ADDITIONAL INFORMATION:**