

August 13, 2008



Chairman Buermann, Chair, Governing Board
South Florida Water Management District
P.O. Box 24680
West Palm Beach, FL 33416-4680

CONSERVANCY
Of Southwest Florida

*Preserving Southwest Florida's
natural environment and
quality of life ... now and forever.*

RE: Stoneybrook North, Appl. No. 011121-14

Dear Chairman Buermann and the South Florida Water Management District Governing Board,

The Conservancy understands that the Stoneybrook North, Appl. No 011121-14, is coming before you tomorrow for your consideration. The proposed project is within a FEMA floodway and an existing sheetflow area that is seasonally inundated under several feet of water. The Conservancy of Southwest Florida, as well as the affected property owners in the vicinity of the project (the Concerned Citizens of Bayshore), are greatly concerned that this proposed project will decrease floodplain storage and cause adverse flooding impacts to the adjacent properties.

We have reviewed the South Florida Water Management District (SFWMD) staff report that was only issued four business days ago, and have serious concerns with the adequacy of the hydrological modeling of this project. Boyle Engineering, who is doing the North Fort Myers Surface Water Management (NFMSWM) study, found that the existing data, which is also being used by the applicant's consultants for this project, was insufficient and outdated. Additionally, the HEC-RAS modeling that was relied upon by the applicant's consultants were using was thought to be not sufficient by Lee County Natural Resources staff. Thus, Lee County staff's recommended that the ICPR watershed modeling should be required by the District in order to provide adequate analysis of this project.

Though the staff report indicates that the SFWMD staff coordinated with Lee County Natural Resources to ensure this proposed project is compatible with the NFMSWM study and plan underway, our communication with Lee County staff has indicated that the ICPR modeling has not been provided to them to date. There is no demonstration or technical data that we have been able to locate that supports the claim that "the project design is consistent with the Lee County Surface Water Management Plan and is not anticipated to cause adverse impacts to Lee County's future surface water management improvements" as the staff report purports. Therefore, we request that a demonstration using ICPR modeling consistent with the NFMSWM effort be provided by the permit applicant, and that the results of such modeling be carefully assessed by both Lee County Natural Resources and the SFWMD, to ensure that no adverse hydrological impacts will occur from the proposed project design prior to permit issuance.

The Concerned Citizens of Bayshore have repeatedly asked the applicant's representatives to ensure the project is incorporated into the NFMSWM study modeling and to wait until the results of such watershed modeling are available to ensure no adverse hydrological impacts to the adjacent properties. The other alternative is for the applicant to conduct the ICPR modeling of the project consistent with the NFMSWM as suggested by Lee County staff. This could still be accomplished if the Governing Board would defer the item until the September governing board meeting, requiring the applicant to provide such a demonstration to be reviewed by Lee County Natural Resources and SFWMD staff prior to the September governing board meeting.

Though the Concerned Citizens of Bayshore have asked for the item to be deferred until September in order to allow for the opportunity to reach resolution, they have been denied such opportunity. The Notification of Complete Application letter sent from the SFWMD to the applicant was dated July 28, 2008. Rule 40E 1.6065(3) says that "In no case shall agency action be taken later than 90 days after the application for a conceptual approval, individual environmental resource permit, or individual water use permit is declared complete unless waived by the applicant or stayed by the filing of a petition for an administrative hearing" (emphasis added). Accordingly, the Governing Board can postpone consideration of the Stoneybrook application until the September governing board meeting and remain well within the 90-day time frame (90 days from July 28th).


Therefore, the Conservancy would emphatically request that this item be deferred until the September governing board meeting in order to allow for a resolution of the Concerned Citizens of Bayshore and our concerns, without requiring our groups to file a petition in order to do so. This would be the best option for all to allow sufficient time to create a timely mutually acceptable solution. We would request the SFWMD staff convey to the applicant our desire to resolve these concerns without having to resort to administrative litigation, to see whether they may be amenable to this.

If the item for whatever reason is not delayed, the Conservancy would request that the item be pulled from the consent agenda and that a special permit condition be placed on the permit similar to the following:

This permit will be contingent on the demonstration via ICPR modeling, and any project design modifications that may be necessitated as a result, to ensure that the proposed project (1) will not diminish flows needed to restore or retain natural predevelopment flow regimes of Bayshore and Popash Creeks; (2) will not cause adverse flooding impacts to any adjacent properties; (3) will not cause or contribute to an adverse changes in the hydrology of wetlands both on-site and off-site; (4) appropriately account for all offsite watershed flows, including those within the watershed that originate from Charlotte County ; (5) provides adequate compensatory storage and (6) will not cause or contribute to any degradation of water quality in any on-site or off-site waterbodies or wetlands. If the District or Lee County do not concur that the modeling and technical data demonstrates each of (1) through (6) have been satisfactorily assured through the current proposed project design, then a major permit modification change will be required in order to create a design for the proposed project that will attain (1) through (6).

Please be advised that the development order for this project was denied on July 30, 2008 so that in delaying this decision until adequate data is collected and reviewed will in no way be delaying construction and unduly burdening the applicant. We respectfully ask for your considerations of our comments and requests, and thank you for the opportunity to provide comment on behalf of the public.

Sincerely,



Jennifer Hecker
Natural Resource Policy Manager

cc: Carol Wehle, SFWMD
Ricardo Valera, SFWMD
Charles Dauray, SFWMD Governing Board
Commissioner Ray Judah, Lee County
Roland Ottolini, Lee County