



HENDRY COUNTY PLANNING & ZONING DEPARTMENT

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STAFF REPORT

RZ11-0001

REZONE FROM GENERAL AGRICULTURE (A-2) TO PLANNED UNIT DEVELOPMENT (PUD)

Local Planning Agency

5/11/2011

Application Information

Applicant: MCDANIEL RESERVE REALTY HOLDINGS, LLC
 Owner(s): McDaniel Reserve Realty Holdings, LLC
 Agent: Mr. Rock Aboujaoudé, P.E., Rock Enterprises, Inc.
 Request action: Rezone the subject properties from General Agriculture (A-2) to the Planned Unit Development (PUD) zoning district to allow utility uses, specifically a “Clean Energy Center” which would include, but is not limited to natural gas and solar energy.

Location: CR 833, north of the Big Cypress Reservation
 1334722A000002.0000; 1334721A000002.0000;
 1334720A000002.0000; 1334729A000002.0000;
 1334728A000002.0000; 1334727A000002.0000;
 1334734A000002.0000; 1334733A000003.0000;
 1334733A000001.0000; 1334728A000001.0000;
 13347350200000-002.0

Zoning: A-2
 Future Land Use Map: Agriculture
 Size: 3,127+/- acres
 Existing use on the site: Semi-improved pasture, farming activities

All required application material has been received. All required notices have been made.

Surrounding Area Information

	<u>Adjacent existing uses</u>	<u>Adjacent zoning</u>	<u>Adjacent Future Land Use Map Category</u>
North	Agriculture	A-2	Agriculture
South	Seminole Tribe of Florida	A-2	Reservation
East	Agriculture	A-2	Agriculture
West	Agriculture	A-2	Agriculture

Summary of Request and Background Information

McDaniel Reserve Realty Holdings, LLC, represented by Rock Enterprises, Inc. has requested a rezone from the General Agriculture (A-2) zoning district to the Planned Unit Development (PUD) to allow utility uses, specifically a “Clean Energy Center” which would be powered by natural gas and solar

energy.

The applicant intends to develop the site in association with Florida Power & Light Company. Approval by the local government is the first leg in the process to permit the facility under the Power Plant Siting Act (PPSA), F.S. 403.501-.518. The PPSA is the state's centralized process for licensing large power plants and regulating their design and construction. There will be extensive environmental and water use/management permitting required. The analysis required for these permits will be accomplished at a future phase of the process and the County will be a participant in the process.

The second leg of the process is for the applicant to obtain a Need Determination from the Florida Public Service Commission (PSC). The Need Determination is critical to then obtain Certification under the PPSA. The Governor and Cabinet or Department of Environmental Protection (DEP) Secretary ultimately issues the Certification.

Consistency with the Comprehensive Plan

The Future Land Use Map designation for the properties is Agriculture. According to Policy 2.1.1, this category allows for utilities, but requires the rezoning of the property to PUD at which time the appropriateness of the use on the particular parcel may be determined. County staff made a determination that the use was appropriate on the proposed site in a letter dated March 16, 2011 via the County Attorney. The letter is located in Section 13 of the application.

Consistency with the Land Development Code (LDC)

The PUD district was established to provide a process for coordination of large-scale development for a variety of purposes permitted by the LDC and the comprehensive plan. Only uses which are consistent with the comprehensive plan and are deemed by the Board of County Commissioners to be compatible with adjacent land uses may be approved as a PUD. The PUD rezone application is consistent with the LDC.

Compatibility with Surrounding Uses

Surrounding uses include various types of agriculture. There are 3041.34 +/- acres within the McDaniel Reserve Realty Holdings, LLC site footprint which received preliminary plat approval in September 2007 for the Deer Run (PL05-0001) and Everglades Plantation (PL05-0002) residential developments. The applicant will withdraw the preliminary plats upon approval of the PUD. In addition, there is a partial vacation of plats for Lincoln Square Park No. 2 as recorded in Plat Book 2, Pages 23 through 25, lying westerly of the west right-of-way line of CR 833, which has been applied for concurrently with the PUD rezone petition.

There are residences in the vicinity of the proposed energy center. There are at least three homes surrounding the site.

The PUD for buffering purposes is considered under the industrial category. The requirement for buffering of an industrial use adjacent to agriculture uses is a Type "C", which includes a minimum width: 25-ft, minimum number of trees: seven, or five with a hedge, or three with a wall. The buffering requirement for an industrial use adjacent to residential is a Type "D", which includes a minimum width:

30-ft, minimum number of trees: ten or five and a wall, minimum number of shrubs: 60-inch tall hedge or 18 shrubs with a wall.

The applicant has provided conditions for the PUD and requested some modifications to the PUD requirements:

1. **Environmental Considerations:** Applicant shall provide evidence of authorization by applicable State and Federal agencies having jurisdiction of wetland and wildlife habitat.
2. **Site Access:** Ingress and egress is directly from CR 833 and shall utilize two existing drives (for personnel and authorized visitors) and one proposed drive (for emergency access). Improvements within the CR 833 right of way shall be, at minimum, per the Traffic Impact Statement recommendations and designed per FDOT standards. Lighting on CR 833 shall be approved by the County Engineer prior to installation. A traffic maintenance plan during construction shall be submitted and approved by the County Engineer prior to construction.
3. **Driveways and Parking:** Onsite vehicular movement and parking shall utilize paved or unpaved surfaces as necessary per regulatory permitting; vehicular movement shall be controlled by signage and electronic security devices. Roads will be designed in a manner facilitating the free range of wildlife through the wildlife corridor which bisects the site.
4. **Sanitary Sewer:** Wastewater disposal improvements shall be designed and located pursuant to Health Department permitting criteria.
5. **Structures:** The character, extent, and general location of all buildings and operations structures with appurtenances shall be where designated on the Conceptual Master Plan.
6. **Signage:** Site signage may be erected at each point of entry; posted and/or warning signage and other informational signage may be erected as necessary.
7. **Fence:** Operational areas of the combined cycle plant shall be fenced with an 8' high chain link fence topped with three strands of barbed wire; site access shall be secured and restricted to authorized personnel and guests; preserve areas shall be fenced pursuant to regulatory criteria.
8. **Setbacks:**
 - a. Solar panels and appurtenant structures/equipment – a minimum of 50 feet from the property line;
 - b. Combined cycle plant – a minimum of 1,000 feet from the property line;
 - c. No setback shall apply to the property line along the existing, contiguous transmission corridor where power is connected to the transmission line; and
 - d. Water management and/or buffer improvements may be placed within any such setback.
9. **Buffer:** Buffer(s) shall be required as shown on the Conceptual Master Plan described as follows:
 - a. Type A buffer along CR 833 less the frontage along Preserve Area B;
 - b. Vegetated (only) Type D buffer:
 - (i) Adjacent to the residential parcel along CR 833, but not where said parcel abuts Site Preserve Area A and,
 - (ii) Along the north property line between Preserve Area A and CR 833.
10. **Height:** Improvements shall be limited to a maximum height of 150 feet; a communication tower(s) may be erected in excess of said height.
11. **Excavation:** Water management, water use and drainage improvements, and other excavation required to effectuate the site's permitted design shall be allowed.

- Material generated from such excavation shall be used on site and not removed for off site disposal.
12. **Phasing:** Four (4) phases (each including ancillary improvements as necessary) of development are envisioned. Phase numbering is for identification purposes and does not necessarily describe the order of phased development. Phases are identified as follows:
 - a. Phase I – Unit One of the combined cycle plant;
 - b. Phase II - Solar Installation;
 - c. Phase III – Unit Two of the combined cycle plant; and
 - d. Phase IV – Unit Three of the combined cycle plant.
 13. **PUD Term:** The PUD zoning shall remain in effect provided the landowner diligently pursues all regulatory approvals/licenses and shall be permanently vested upon approval of Phase I by the State of Florida Siting Board.

A surrounding landowner, Mr. McDaniel, has been in contact with the applicant’s engineer, and has requested two modifications to the amended conditions that the applicant is seeking:

8. Setbacks:

- a. Solar panels and appurtenant structures/equipment – a minimum of 50 feet from the property line;
- b. Combined cycle plant – a minimum of 1,000 feet from the property line;
- c. ~~No~~ The setbacks shall apply to the property line along the existing, contiguous transmission corridor except for the area where power is connected to the transmission line; and
- d. Water management and/or buffer improvements may be placed within any such setback.

9. Buffer: Buffer(s) shall be required as shown on the Conceptual Master Plan described as follows:

- a. Type A buffer along CR 833 less the frontage along Preserve Area B;
- b. ~~Vegetated (only)~~ Type D buffer with a wall:
 - (i) Adjacent to the residential parcel along CR 833, but not where said parcel abuts Site Preserve Area A and,
 - (ii) Along the north property line except for the ~~between~~ Preserve Area A, and ~~CR 833.~~

Staff is amenable to the applicant’s requested condition modifications with the additional amendments proposed by the surrounding landowner.

Level of Service Impacts

Potable Water

Potable water is not available to the site. The proposed use will be served by one or more onsite wells in accordance with County Health Department rules and regulations.

Sanitary Sewer

Public sanitary sewer service is not available to the site. The applicant will permit any temporary and permanent wastewater and sanitary sewage systems in accordance with applicable rules and regulations of the Hendry County Health Department.

Arterial and Collector Roads

The site fronts and is directly accessed from CR 833. Ingress and egress is directly from CR 833 and shall utilize two existing drives (for personnel and authorized visitors) and one proposed drive (for emergency access).

The County Engineer reviewed the Traffic Impact Statement submitted by the applicant's engineer and found it to be acceptable for purposes of the zoning change request. The Engineer's recommended conditions of approval are located at the end of this staff report.

Stormwater Management

The site is located in the Feeder Canal Basin. The applicant states FDEP will take jurisdiction over stormwater, the treatment and attenuation shall comply with South Florida Water Management District (SFWMD) Basis of Review, the provisions of the Hendry County Comprehensive Plan, as well as the PPSA.

The design of the required stormwater management system for the proposed development shall accommodate runoff generated from a 25-year, 3-day storm event, and detention shall be designed such that post-development runoff rates mimic pre-development runoff rates.

Solid Waste

The applicant shall comply with the LOS standard of 6.5 pounds per capita per day.

The applicant shall enter into a commercial solid waste disposal agreement with the County's Solid Waste franchise hauler.

Recreation and Open Space

The County's recreation and open space program will not be impacted by this development.

Law Enforcement

The proposed use will not negatively impact law enforcement. A letter from the Sheriff's office has been included.

Emergency Medical Services

Onsite First Aid and evacuation assistance will be made available by the applicant. Public safety is a significant design consideration for the proposed uses. A letter from the Director of Hendry County Public Safety has been included in the petition.

Conclusion

Based upon staff's review of the application, staff finds the petition RZ11-0001 consistent with the Hendry County Comprehensive Plan and the LDC.

Recommendation

Staff recommends **APPROVAL** of petition RZ11-0001, which consists of a change in zoning from A-2 to PUD, subject to the conditions set forth below:

1. The PUD rezone is approved for utility uses, specifically a “Clean Energy Center” which would include, but is not limited to natural gas and solar energy.
2. The PUD zoning shall remain in effect provided the landowner diligently pursues all regulatory approvals/licenses and shall be permanently vested upon approval of Phase I by the State of Florida Siting Board.
3. County personnel shall have the right to enter the property permitted for the PUD and may, from time to time, carry out inspections of the site to determine compliance with the provisions of the County code and any conditions specified herein. Upon reasonable notice from county personnel that an inspection is to be conducted, which requires the assistance and/or presence of the permittee or his/her representative, the permittee or his/her representative shall be available to assist and/or accompany county personnel in the inspection of the site.
4. Uses shall be setback from all property lines as follows:
 - i. Solar panels and appurtenant structures/equipment – minimum of 50’
 - ii. Power generation facility – minimum of 1,000’
 - iii. The setbacks shall apply to property line along the existing, contiguous transmission corridor except for the area where power is connected to the transmission line; and
 - iv. Water management and/or buffer improvements may be placed within any such setback. This does not include water management excavations such as ponds or lakes which must meet the setback requirements listed in Section 1-53-6.16 (c)(8).
5. The buffering shall consist of :
 - i. Type “A” buffer along CR 833 less the frontage along Preserve Area B;
 - ii. Type “D” with a wall:
 - Adjacent to the residential parcel along CR 833, but not where said parcel abuts Site Preserve Area A and,
 - Along the north property line except for the Preserve Area AType “A”: Minimum width: 5-ft, Minimum number of trees: 4 per 100-linear-Foot, Minimum number of shrubs: zero.
Type “D”: Minimum width: 30-ft, Minimum number of trees: five and a wall, Minimum number of shrubs: 18 shrubs with a wall.
6. The Planned Unit Development is limited to three access connections to CR 833.
7. A left turn lane and a right turn lane shall be installed at the main entrance prior to onsite construction activities. This entrance will also serve as the point of ingress and egress for construction traffic.
8. The main entrance shall be paved a minimum of 250-ft west of the westerly right-of-way line of CR 833 prior to onsite construction.
9. All connections to CR 833 shall be paved within the right-of-way and include a stop sign and thermoplastic stop bar.
10. The applicant is required to provide compensating right-of-way to the County due to the installation of turn lanes.
11. The applicant is required to communicate with the Seminole Tribe of Florida in regards to when construction activities are anticipated to commence.

12. Approval of rezone does not constitute approval of the conceptual site plan. The County shall be involved in the future processes on the State level for the Site Development Plan (SDP) and shall receive a copy of the approved SDP prior to any onsite construction.
13. All necessary permits shall be obtained prior to onsite construction and a copy of all applicable Federal, State, and local government permits will be submitted to the Hendry County Planning and Zoning Department prior to onsite construction. The applicant shall provide evidence of approval by applicable State and Federal agencies having jurisdiction of wetland and wildlife habitat.
14. Improvements shall be limited to a maximum height of 150 feet; a communications tower(s) may be erected in excess of said height. An approved site plan from Hendry County is required for the communication tower(s) if not included on the plan approved through the state processes.
15. The applicant shall contact FAA for determination if airspace review per FAR Part 77 is required prior to constructing a communication tower(s) onsite. Applicant is to provide documentation from FAA with the determination indicating if the tower will or will not affect any adjacent airports.
16. Communication tower(s) constructed on site shall be located so that the fall zone for the tower(s) is located within the PUD.
17. If the permitting for the activities listed in the PUD requires conservation easements, then a copy of the recorded conservation easement along with the electronic copy of the easements in a format suitable to Hendry County Planning & Zoning shall be submitted within 30 days of being recorded to ensure compliance.
18. If during the course of site clearing, excavation, or other construction activity, a historic or archaeological artifact, or other indicator is found, all development within the minimum area necessary to protect the discovery shall cease immediately.
19. All exotics as defined by the Florida Exotic Pest Plant Council shall be removed from the PUD for perpetuity.
20. The applicant will incorporate standard fire protection features in the design of future facilities located within the PUD.
21. Upon PUD approval, the preliminary plats known as Everglades Plantation (PL05-0002) and Deer Run (PL05-0001) are hereby nullified.
22. A copy of all applicable Federal, State, and local government permits will be submitted to the Hendry County Planning and Zoning Department.
23. Subsurface conditions and soil types shall be sufficient to accommodate the loads and stresses of the proposed facilities.
24. Floodplain encroachments must meet state and federal regulations.
25. Safeguards must be provided to ensure that any negative impact on air quality shall not exceed state or federal regulations.
26. Safeguards must be provided to ensure that state and federal surface water and groundwater contamination regulations are not exceeded.
27. Ingress and egress is directly from CR 833 and shall utilize two existing drives (for personnel and authorized visitors) and one proposed drive (for emergency access). The northern most point will be limited to emergency use only. Improvements within the CR 833 right-of-way shall be, at minimum, per the Traffic Impact Statement recommendations and designed per FDOT standards. Street lighting at the entrances to CR 833 will be required and shall be approved by the County Engineer prior to installation.
28. A traffic maintenance plan during construction shall be submitted and approved by the County Engineer prior to construction.
29. Onsite vehicular movement and parking shall utilize paved or unpaved surfaces as necessary per regulatory permitting; vehicular movement shall be controlled by signage and electronic security devices. Roads will be designed in a manner facilitating the free range of wildlife through the wildlife corridor which bisects the site.
30. Wastewater disposal improvements shall be designed and located pursuant to Health Department permitting criteria. All wells, limited use water systems, and individual onsite sewage treatment

disposal systems located on the subject property must be permitted, constructed, and approved in accordance with the applicable chapter of Florida Administrative Code. Utilization of portable toilets must be in compliance with Florida Administrative Code, chapter 64E-6. Permanent structures shall not rely upon the use of holding tanks or portable toilets for wastewater treatment and disposal. Portable restrooms shall be allowed, on a temporary basis for field locations and other locations which lack permanent structures, and at commercial building sites for the duration of construction anytime workers are present.

31. Petroleum storage tanks located on the parcels shall be registered with the Department of Environmental Protection and shall be constructed in accordance with Florida Administrative Code, chapters 62-761 and 62-762.
32. The character, extent, and general location of all buildings and operations structures with appurtenances shall be where designated on the Conceptual Master Plan.
33. Site signage may be erected at each point of entry; posted and/or warning signage and other informational signage may be erected as necessary. The necessary permits for the signage must be obtained from the Hendry County Building Department.
34. Operational areas of the combined cycle plant shall be fenced with an 8' high chain link fence topped with three strands of barbed wire; site access shall be secured and restricted to authorized personnel and guests; preserve areas shall be fenced pursuant to regulatory criteria.
35. Water management, water use and drainage improvements, and other excavation required to effectuate the site's permitted design shall be allowed. Material generated from such excavation shall be used on site and not removed for off site disposal.
36. Four (4) phases (each including ancillary improvements as necessary) of development are envisioned. Phase numbering is for identification purposes and does not necessarily describe the order of phased development. Phases are identified as follows:
 - a. Phase I – Unit One of the combined cycle plant;
 - b. Phase II - Solar Installation;
 - c. Phase III – Unit Two of the combined cycle plant; and
 - d. Phase IV – Unit Three of the combined cycle plant.
37. The applicant must take corrective measures in regards to the secondary access point to CR 833, specifically the southern entrance, approved by the County Engineer within 180 days of notification by the County that one of the following conditions exists:
 - a. warrant exists for a turn lane;
 - b. warrant exists for a deceleration lane; or
 - c. two or more accidents take place as a result of traffic issues specifically related to the operation of the facility within any 180-day period.

If corrective measures are not completed within the 180-day period, the applicant shall be required to close the operation until the approved corrective measures are completed.

Any disputes between the applicant and County staff concerning the corrective measures will be brought to the County Commission for consideration at its next regularly scheduled meeting.