



LEE COUNTY BOARD OF COUNTY COMMISSIONERS

ZONING HEARING
AGENDA

Wednesday, October 2, 2019

9:30AM

REZ2018-10009
Z-19-020

LAREDO AVENUE REZONING

DRI2019-00001
Z-19-027

MERCHANTS CROSSING DRI (MASTER DRI# 89-0202)

DCI2018-00004
Z-18-038

LEETANA RPD

NOTICE OF PUBLIC HEARING

The Lee County Board of County Commissioners will hold a public hearing at 9:30 am on Wednesday, October 2, 2019 in the Board Chambers at 2120 Main St., Ft. Myers, FL, to review the written recommendations made by the Hearing Examiner and make a final decision on the case(s) below. (Lee County Land Development Code is abbreviated below as **LDC**.)

REZ2018-10009 / LAREDO AVENUE REZONING

Request to rezone the subject property from Agricultural (AG-2) to Light Industrial (IL).

Located At 9280 Laredo Avenue, Fort Myers Planning Community, Lee County, FL.

DRI2019-00001 / Merchants Crossing DRI (Master DRI# 89-0202)

Rescind DRI Development Order for Merchants Crossing DRI (State DRI #7-8889-92 and County Case #DRI89-0202) pursuant to Florida Statute Section 380.115.

Located At 15201 N. Cleveland Avenue, North Fort Myers Planning Community, Lee County, FL

DCI2018-00004 / LEETANA RPD

Request to rezone 216± acres from Agricultural (AG-2) to Residential Planned Development (RPD) to permit a maximum of 201 dwelling units and associated accessory uses with a maximum building height of 35 feet.

Located At 18300 Leetana Road, Bayshore Planning Community, Lee County, FL.

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

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

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

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

In accordance with the Americans with Disabilities Act, Lee County will not discriminate against qualified individuals with disabilities in its services, programs, or activities. To request an auxiliary aid or service for effective communication or a reasonable modification to participate, contact Joan LaGuardia, (239) 533-2314, ADArequests@leegov.com or Florida Relay Service 711.

Accommodation will be provided at no cost to the requestor. Requests should be made at least five business days in advance.

**REZ2018-10009
LAREDO AVENUE
REZONING**

Staff Summary

CASE NUMBER & NAME: REZ2018-10009 / LAREDO AVENUE REZONING

REQUEST: Request to rezone the subject property from Agricultural (AG-2) to Light Industrial (IL).

RESOLUTION NUMBER: Z-19-020

LOCATION: 9280 Laredo Avenue, Fort Myers Planning Community, Lee County, FL.

OWNER: LAREDO INVESTMENTS LLC

AGENT: Gary Muller
Johnson Engineering Inc.
2122 Johnson Street
Fort Myers, FL 33901



HEARING EXAMINER
RECOMMENDATION: Approve

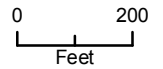
PARTICIPANTS: (0) None

REZ2018-10009
Aerial



Legend

-  Subject Parcel
-  City of Fort Myers



Summary of Hearing Examiner Recommendation

LAREDO AVENUE REZONING
by Gary Muller on behalf of Laredo
Investments, LLC

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

Location: 9260-9280 Laredo Avenue
Fort Myers Planning Community
(District 5)

Size: 8.77+/- acres

Recommendation: Approve

Public Concerns: None Present

Hearing Examiner Remarks:

The property is in the Industrial Development Future Land Use Category. It is virtually surrounded by Industrial or High Intensity Commercial zoning.

The Department of Community Development Staff recommended approval of the IL zoning district, finding the request satisfied the review criteria in the Lee Plan and LDC.

The Hearing Examiner concurs with the Staff's recommendation. The request implements the Goals of the Lee Plan and is appropriate for the location of the property.

Detailed recommendation follows

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: REZ2018-10009

Regarding: LAREDO AVENUE REZONING

Location: 9260-9280 Laredo Avenue
Fort Myers Planning Community
(District 5)

Hearing Date: August 8, 2019

I. Request:

Rezone 8.77+/- acres from Agricultural (AG-2) to Light Industrial (IL). The property is legally described in Exhibit A.

II. Hearing Examiner Recommendation:

Approval.

III. Discussion:

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

In preparing a recommendation to the Board, the job of the Hearing Examiner is to apply the Lee County Comprehensive Plan (Lee Plan), the Land Development Code (LDC) and other County regulations to facts adduced at hearing. The record must contain substantial competent evidence to support the Hearing Examiner's recommendation.

Discussion supporting the recommendation of approval follows below.

The property consists of two parcels zoned AG-2. One parcel of about one-half acre abuts the south side of Laredo Avenue. It has a single-family home. The second parcel is adjacent to the south and is about 8.5 acres. It has a single structure used as warehousing.

There are no previous zoning actions on the property.

The property is approximately 2,800 feet east of Ortiz Avenue and 850 feet west of Interstate 75. Property to the north is in the City of Fort Myers and zoned IL. Property to the south is also in the City of Fort Myers and zoned Heavy Commercial Intensive (CI)

¹ LDC 34-145(d)(1)a.

Property to the east is partly Lee County and partly City of Fort Myers. The Fort Myers parcel is zoned Heavy Industrial and used as preserve/open space for an industrial development. The Lee County parcel is zoned AG-2 and consists of a single-family home and a large borrow pit.

Property to the west is undeveloped, partly in Lee County and City of Fort Myers. The Lee County parcel is zoned Industrial Planned Development (IPD). The City of Fort Myers parcel is zoned CI.

Consistency with Lee Plan and County Regulations

The Industrial Development land use category is intended for industrial uses with limited commercial and recreational uses.²

The Lee Plan encourages growth in areas where adequate public facilities exist.³

Water and wastewater service are available approximately 2,000 feet west of the property. When the property is developed with a use that exceeds the thresholds in the Lee Plan, connection to water and sewer will be required.⁴

Police, fire and emergency services are available within 3.7 miles of the property.

There are no active transit routes near the property.

Laredo Avenue, a county maintained local road, provides sufficient access. Specific development plans have not been submitted. The traffic impacts will be adequately addressed by the requirements of the LDC at the time of Development Order approval.

No variances or deviations are requested. Future development will be required to comply with all county regulations.

Compatibility

The surrounding properties are approved for intensive commercial and industrial uses, except for the AG-2 property to the east. The residential use on this parcel will be protected by separation and buffer requirements in the LDC.⁵

Environmental

The property is cleared and partially developed. There will be no negative impacts on any environmentally critical or sensitive areas.

Public Concerns

There were no members of the public at the hearing.

² Lee Plan Policy 1.1.7.

³ Lee Plan Objective 2.2.

⁴ Lee Plan Standards 4.1.1 and 4.1.2.

⁵ Staff Report.

IV. Findings and Conclusions:

Based on the testimony and exhibits presented in the record of this Request, the Hearing Examiner makes the following findings and conclusions:

- A. Complies with the Lee Plan;
- B. Meets the requirements of the LDC and other applicable County regulations;
- C. Is compatible with existing and planned uses in the surrounding area;
- D. Will provide access sufficient to support the proposed development intensity;
- E. The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;
- F. Will not adversely affect environmentally critical or sensitive areas and natural resources; and
- G. Will be served by urban services, defined in the Lee Plan.

Date of Recommendation: September 6, 2019.



Timothy Jones
Hearing Examiner

Office of the Lee County Hearing Examiner
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398

Exhibits to Hearing Examiner's Recommendation

- Exhibit A Legal Description and Vicinity Map
- Exhibit B Exhibits Presented at Hearing
- Exhibit C Hearing Participants
- Exhibit D Information

Exhibit A

LEGAL DESCRIPTION AND VICINITY MAP

EXHIBIT A

DESCRIPTION OF #9260 AND #9280 LAREDO AVENUE FORT MYERS, FL 33905 FOR ZONING APPLICATION LYING IN THE SOUTHWEST 1/4, SECTION 15, TOWNSHIP 44 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA

Applicant's Legal Checked
by JM 5/20/19

DESCRIPTION:

A PARCEL OF LAND LYING IN THE SOUTHWEST 1/4, SECTION 15, TOWNSHIP 44 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE SOUTHWEST 1/4, SECTION 15, TOWNSHIP 44 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE N88°56'27"E, ON THE SOUTH LINE OF SAID SOUTHWEST 1/4, A DISTANCE OF 1,323.61 FEET TO THE SOUTHWEST CORNER OF THE SOUTHEAST 1/4 OF SAID SOUTHWEST 1/4 OF SECTION 15, AND THE **POINT OF BEGINNING**; THENCE N01°21'37"W, ON THE WEST LINE OF SAID SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 15, A DISTANCE OF 658.72 FEET TO THE NORTH LINE OF THE SOUTH 1/2 OF SAID WEST 1/2 OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 15; THENCE N89°02'52"E, ON SAID NORTH LINE, A DISTANCE OF 164.80 FEET TO THE EAST LINE OF WEST 1/2 OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 15; THENCE N01°25'01"W, ON SAID EAST LINE, A DISTANCE OF 658.42 FEET TO THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 15, ALSO BEING THE SOUTH RIGHT-OF-WAY OF LAREDO AVE. (50 FEET WIDE); THENCE N89°09'20"E, ON SAID LINE, A DISTANCE OF 132.09 FEET TO THE WEST BOUNDARY OF LANDS DESCRIBED IN OFFICIAL RECORDS INSTRUMENT 2015000141794, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE S00°56'03"E, ON SAID WEST BOUNDARY, A DISTANCE OF 183.39 FEET TO THE BOUNDARY OF LANDS DESCRIBED IN OFFICIAL RECORDS INSTRUMENT 2007000112756, OF SAID PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE ON THE BOUNDARY OF SAID LANDS FOR THE FOLLOWING THREE (3) COURSES:

1. S89°08'19"W, A DISTANCE OF 71.00 FEET;
2. S00°56'05"E, A DISTANCE OF 696.67 FEET;
3. N89°08'19"E, A DISTANCE OF 441.40 FEET TO THE WEST LINE OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 15;

THENCE S01°35'15"E, ON SAID WEST LINE, A DISTANCE OF 434.99 FEET TO THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 15; THENCE S88°56'27"W, ON SAID SOUTH LINE, A DISTANCE OF 661.80 FEET TO THE **POINT OF BEGINNING**.

SAID PARCEL CONTAINING 388,307 SQUARE FEET OR 8.91 ACRES, MORE OR LESS.

RECEIVED
MAY 10 2019

COMMUNITY DEVELOPMENT

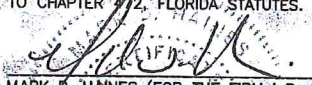
RE72018-10009

NOTES:

1. THIS IS NOT A BOUNDARY SURVEY, NOR IS IT INTENDED TO BE USED AS ONE.
2. COORDINATES AND HORIZONTAL DATA SHOWN HEREON ARE IN FEET AND ARE PROJECTED ONTO THE FLORIDA STATE PLANE COORDINATE SYSTEM, WEST ZONE, NORTH AMERICAN DATUM OF 1983 (NAD83), 2011 ADJUSTMENT.
3. BEARINGS SHOWN HEREON ARE BASED ON THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 15 BEING N88°56'27"E.
4. PARCEL CONTAINS 388,307 SQUARE FEET OR 8.91 ACRES, MORE OR LESS.
5. P.O.C. = POINT OF COMMENCEMENT
6. P.O.B. = POINT OF BEGINNING
7. ORB = OFFICIAL RECORDS BOOK/PAGE
8. ORI = OFFICIAL RECORDS INSTRUMENT
9. TOB = TOP OF BANK
10. STRAP = LEE COUNTY PARCEL NUMBER
11. R/W = RIGHT-OF-WAY
12. SQ. FT. = SQUARE FEET
13. N = NORTHING
14. E = EASTING

NOT A SURVEY

I HEREBY CERTIFY, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THE LEGAL DESCRIPTION AND ATTACHED SKETCH WERE PREPARED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF CHAPTER 5J-17.05, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 172, FLORIDA STATUTES.


MARK D. HAINES (FOR THE FIRM L.B. 642)
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5312

DATE SIGNED: 5/19/19

NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

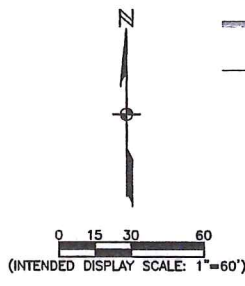
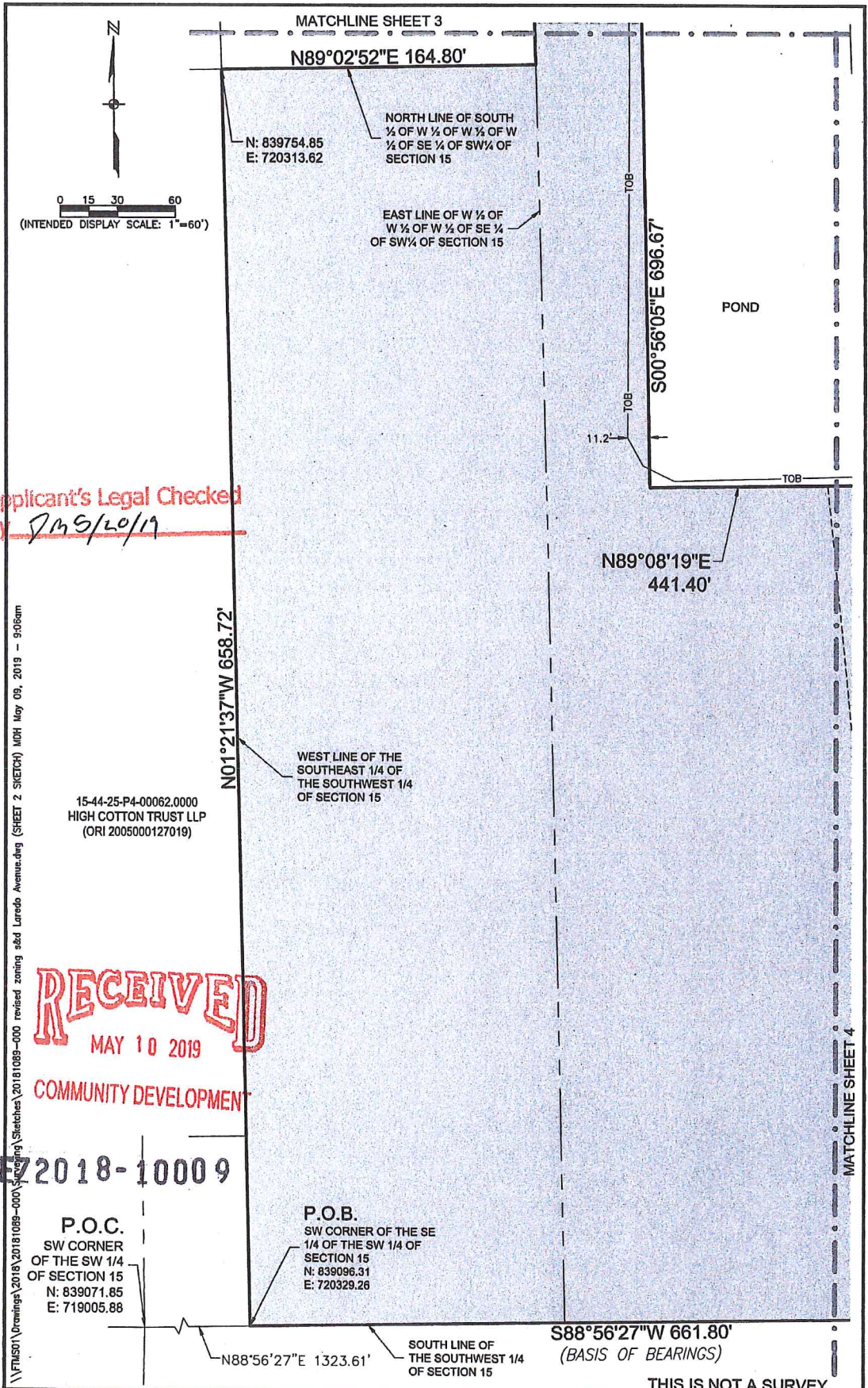
JOHNSON
ENGINEERING

JOHNSON ENGINEERING, INC.
2122 JOHNSON STREET
P.O. BOX 1550
FORT MYERS, FLORIDA 33902-1550
PHONE: (239) 334-0046
FAX: (239) 334-3661
E.B. #642 & L.B. #642

SKETCH AND DESCRIPTION OF
#9260 AND #9280 LAREDO AVENUE
FOR ZONING APPLICATION

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
05/09/19	20181089	15-44-25		1 OF 4

\\FMS01\Drawings\2018\20181089-000\Surveying\Sketches\20181089-000 revised zoning s&d Laredo Avenue.dwg (SHEET 1 DESC) MDT May 09, 2019 - 9:06am



Applicant's Legal Checked
by JMS/20/19

\\FMS01\Drawings\2018\2018 1089-000\Zoning\Sketches\2018 1089-000 revised zoning s&d Laredo Avenue.dwg (SHEET 2 SKETCH) MDH May 09, 2019 - 9:05am

15-44-25-P4-00062.0000
HIGH COTTON TRUST LLP
(ORI 2005000127019)

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MAY 10 2019
COMMUNITY DEVELOPMENT

RE 2018-10009

P.O.C.
SW CORNER
OF THE SW 1/4
OF SECTION 15
N: 839071.85
E: 719005.88

P.O.B.
SW CORNER OF THE SE
1/4 OF THE SW 1/4 OF
SECTION 15
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E: 720329.26

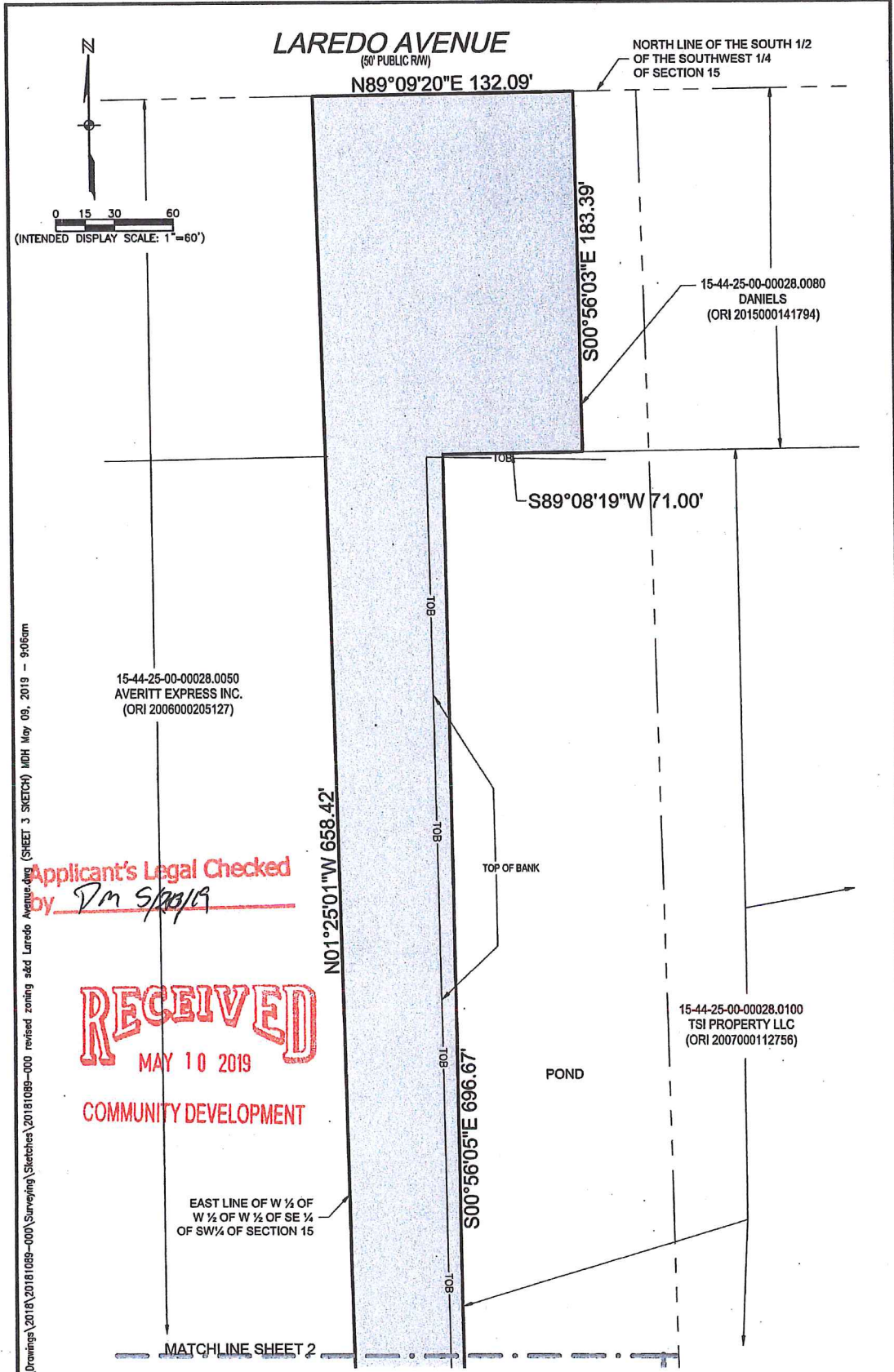
THIS IS NOT A SURVEY

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SKETCH AND DESCRIPTION OF
#9260 AND #9280 LAREDO AVENUE
FOR ZONING APPLICATION

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
05/09/19	20181089	15-44-25	1"=60'	2 OF 4



Applicant's Legal Checked by DM S/03/19

RECEIVED
MAY 10 2019

COMMUNITY DEVELOPMENT

REZ2018-10009

THIS IS NOT A SURVEY



JOHNSON ENGINEERING, INC.
2122 JOHNSON STREET
P.O. BOX 1550
FORT MYERS, FLORIDA 33902-1550
PHONE: (239) 334-0046
FAX: (239) 334-3661
E.B. #642 & L.B. #642

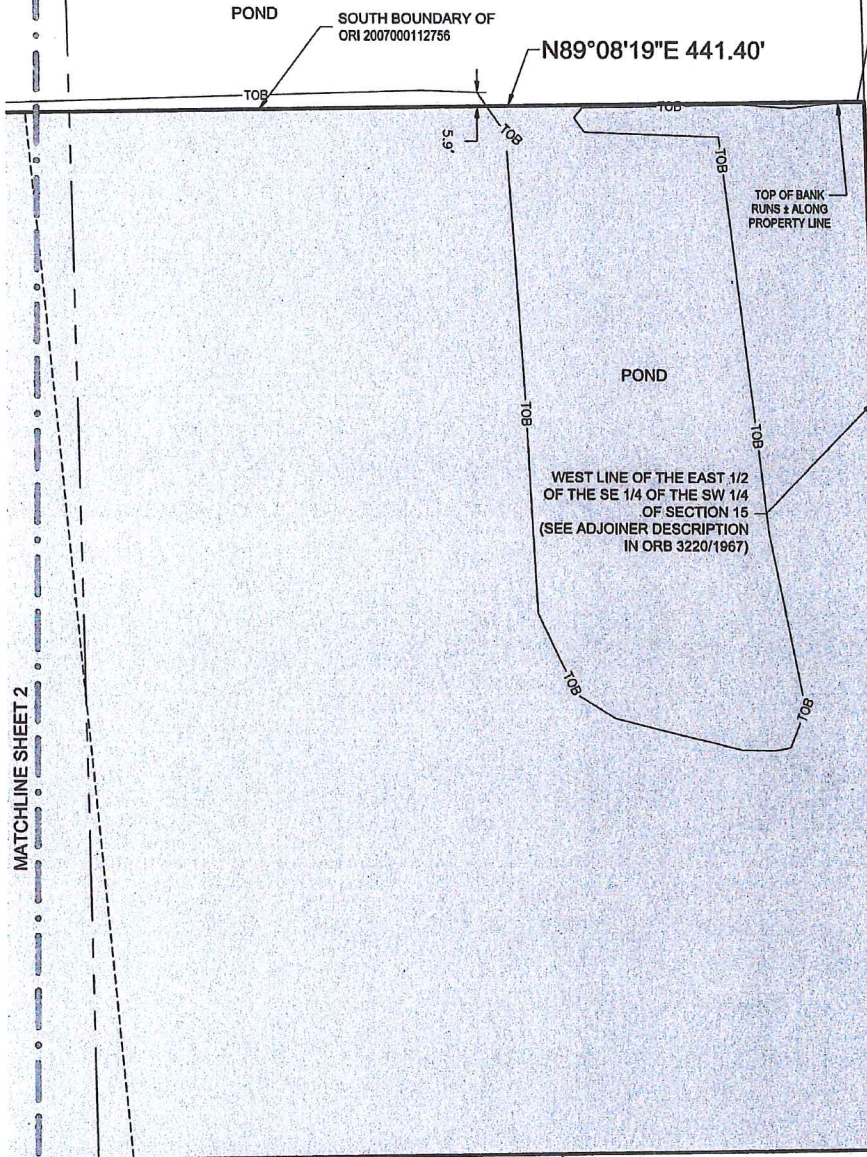
SKETCH AND DESCRIPTION OF
#9260 AND #9280 LAREDO AVENUE
FOR ZONING APPLICATION

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
05/09/19	20181089	15-44-25	1"=60'	3 OF 4

Applicant's Legal Checked
by Jm 5/20/19

15-44-25-00-00028.0100
TSI PROPERTY LLC
(ORI 2007000112756)

0 15 30 60
(INTENDED DISPLAY SCALE: 1"=60')



15-44-25-P4-00060.0000
TSI PROPERTY LLC
(ORB 3220/1967)

S01°35'15\"/>

S88°56'27\"/>

RECEIVED
MAY 10 2019

22-44-25-P1-00066.0000
I-75 LLC
(ORB 4844/3849)

RE22018-10009

COMMUNITY DEVELOPMENT

THIS IS NOT A SURVEY

**JOHNSON
ENGINEERING**

JOHNSON ENGINEERING, INC.
2122 JOHNSON STREET
P.O. BOX 1550
FORT MYERS, FLORIDA 33902-1550
PHONE: (239) 334-0046
FAX: (239) 334-3561
E.B. #642 & L.B. #642

SKETCH AND DESCRIPTION OF
#9260 AND #9280 LAREDO AVENUE
FOR ZONING APPLICATION

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
05/09/19	20181089	15-44-25	1"=60'	4 OF 4

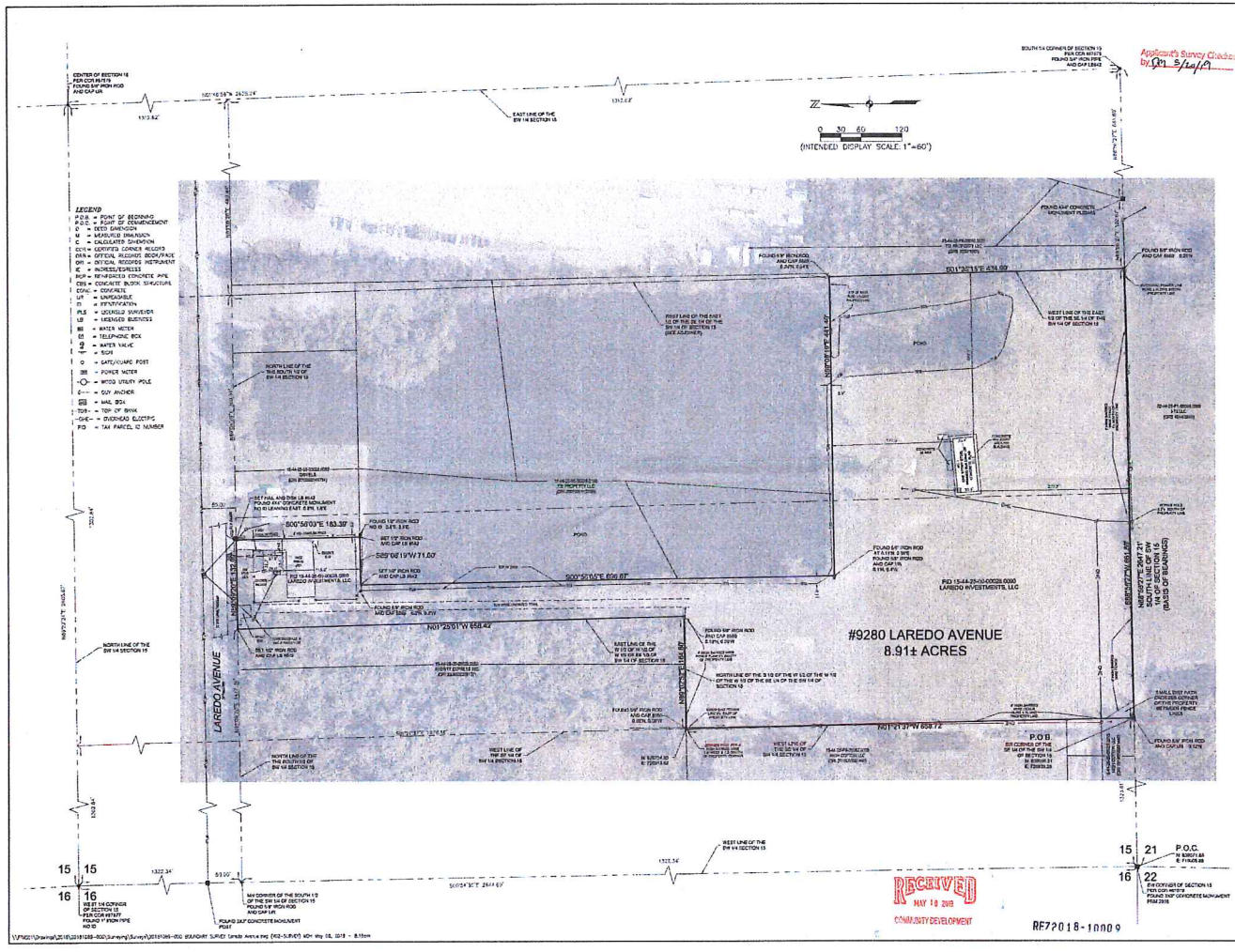
\\FMS01\Drawings\2018\20181089-000\Surveying\Sketches\20181089-000 revised zoning s&d Laredo Avenue.dwg (SHEET 4 SKETCH) MDH May 09, 2019 - 9:06am

MATCHLINE SHEET 2

DATE	DESCRIPTION

BOUNDARY SURVEY

SHEET NUMBER
V02



Applicant's Survey Closed
by 01/31/17

RECEIVED
MAY 18 2018
COMMUNITY DEVELOPMENT

RF22018-10009

REZ2018-10009 Zoning



Legend

-  Subject Parcel
-  City of Fort Myers

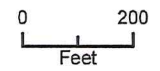


Exhibit B

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

1. *DCD Staff Report with attachments:* Prepared by Dirk Danley, Jr., Senior Planner, dated July 24, 2019 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]

Exhibit C
HEARING PARTICIPANTS

County Staff:

1. Dirk Danley

Applicant Representatives:

1. Gary Muller
2. Matthew Uhle, Esq.

Exhibit D
INFORMATION

UNAUTHORIZED COMMUNICATIONS:

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

HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS:

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

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

COPIES OF TESTIMONY AND TRANSCRIPTS:

A. Every hearing is recorded. Recordings are public records that become part of the case file maintained by the Department of Community Development. The case file and recordings are available for public examination Monday through Friday between 8:00 a.m. and 4:30 p.m.

B. A verbatim transcript may also be available for purchase from the court reporting service.

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

CASE NUMBER: REZ2018-10009

CASE NAME: LAREDO AVENUE REZONING

TYPE OF CASE: CONVENTIONAL REZONING

HEARING EXAMINER DATE: August 8, 2019

REQUEST:

An application has been submitted by Gary Muller, AICP of Johnson Engineering on behalf of Laredo Investments, LLC to rezone an 8.77± acre parcel from Agricultural (AG-2) to Light Industrial (IL).

The subject property is located at 9260-9280 Laredo Avenue, Fort Myers Planning Community, Lee County, FL. (District #5), STRAP Number 15-44-25-00-00028.0000 and 15-44-25-00-00028.0090.

SUMMARY:

Staff recommends APPROVAL of the applicant's request.

HISTORY OF PARCEL:

The property is currently zoned Agricultural (AG-2), and is comprised of two different parcels. The parcel adjacent to Laredo Avenue is approximately one-half acre and is developed with a single-family home. The parcel immediately to the south is approximately 8.5 acres and is currently developed with a single structure used as warehousing.

There have been no zoning actions on the subject property.

CHARACTER OF THE AREA:

The subject property fronts Laredo Avenue, a county maintained local road, which travels east-west. The subject property is approximately 2,800 feet east of the Ortiz Avenue and Laredo Avenue intersection. The property has been gated to limit access to both parcels from Laredo Avenue. This property is located west of Interstate 75 by approximately 850 feet, and is surrounded by the City of Fort Myers on three sides. The surrounding properties are largely undeveloped, in primarily industrial and commercial zoning districts. The following are the surrounding zoning districts, and existing land uses:

North

Property to the north is separated by Laredo Avenue and is developed with a single family home. This property is located within the jurisdiction of the City of Fort Myers and is zoned Light Industrial (IL) according to the City of Fort Myers mapping system.

East

Property to the east is located partially in the City of Fort Myers, and partially within unincorporated Lee County. The portion located in unincorporated Lee County is zoned Agricultural (AG-2) and is developed with a single-family home. The portion located in the City of Fort Myers is zoned Heavy Industrial (IH) according to the City of Fort Myers mapping system is being used as preserve/open space for an industrial development.

South

Property to the South is located in the jurisdiction of the City of Fort Myers and is zoned Commercial Intensive (CI) according to the City of Fort Myers mapping system. Property to the south is undeveloped.

West

Property to the east is located partially in the City of Fort Myers, and partially within unincorporated Lee County. The portion located in unincorporated Lee County is zoned Industrial Planned Development (IPD). The portion located in the City of Fort Myers is zoned Heavy Commercial Intensive (CI) according to the City of Fort Myers mapping system. Property to the west is undeveloped.

The subject property is designated Industrial Development category within the Lee County Future Land Use Map. This Future Land Use designation is defined in Policy 1.1.7 of the Lee Plan, and is reserved mainly for industrial activities and selective land use mixtures. Additionally, the property is within the Fort Myers Planning Community.

ANALYSIS:

This request is for a conventional rezoning from Agricultural (AG-2) to Light Industrial (IL). The intent of this rezoning is to permit industrial uses on the property in accordance with the Land Development Code (LDC) and to become consistent with the underlying land use category and surrounding development pattern.

Conventional Rezoning

Decision-making criteria for conventional rezoning requests is established in LDC Sec. 34-145(d)4. The applicant has provided a request statement that describes the reasoning for the proposed rezoning and an analysis of Lee Plan policies (Attachment C). Below is analysis of the decision-making criteria established in LDC Sec. 34-145(d)4 based upon the applicant's request:

1. Compliance with the Lee Plan;

Policy 1.1.7 of the Lee plan describes the Industrial Development land use category as intended for primarily industrial uses, including manufacturing and research with limited commercial/recreational uses. This rezoning request to Light Industrial (IL) is consistent with the land use category and consistent with Policy 1.1.7.

Objective 2.1 and Objective 2.2 speak to the development location and timing and promoting compact growth patterns in areas where adequate public facilities exist, containing urban sprawl and minimizing impact on natural resources. This rezoning will facilitate a contiguous development pattern of industrial and heavy commercial uses. Staff finds the rezoning request consistent with Objectives 2.1 and 2.2 of the Lee plan.

Goal 7 intends to promote orderly and well planned industrial development within appropriate locations in the county. Policy 7.1.3 states that industrial land uses must be located in areas appropriate to their needs and constraints. This property is surrounded by other industrial and heavy commercial zoning districts and uses, and is located in an area that is appropriate given the uses that the Light Industrial (IL) zoning district permits. The property to the east that is zoned Agricultural (AG-2) will be protected by required landscape buffers and additional separation requirements for certain permitted uses in the Light Industrial (IL) zoning district.

Policy 5.1.5 of the Lee Plan protects the existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of residential development. The proposed rezoning facilitates an appropriate development pattern for the surrounding areas. There is agriculturally-zoned property to the east of the subject property that is currently developed with a single-family home. This rezoning is not a further detriment to the character of the single-family home, as the majority of the properties in the area are either industrially or commercially zoned. Additionally, the Code provides for protections for non-residential uses adjacent to existing residential uses as noted above. The applicant has not requested deviations or variances from the Land Development Code as part of this request. Staff finds the proposed rezoning consistent with policy 5.1.5.

The subject property is located in the Fort Myers planning community. While there are no direct objectives and policies within this planning community, staff finds the request consistent with the vision of the Fort Myers Planning Community. Staff has notified the City of Fort Myers Community Development of the pending application. Staff has reviewed the surrounding zoning districts in the City of Fort Myers for compatibility with the requested zoning district.

2. *Ability to comply with Code and other applicable County regulations or qualifies for deviations;*

The subject property meets the dimensions required by the Light Industrial (IL) zoning district. LDC Sec. 34-904 establishes property development regulations for industrial districts. The Light Industrial (IL) district requires a minimum of 100 feet of width, 100 feet of depth, and a minimum lot area of 20,000 square feet. Additional property development regulations are established in Chapters 34 and 10 of the Lee County Land Development Code including maximum height, setbacks, buffer requirements, and open space. The applicant has not requested deviations or variances from these requirements and therefore must comply with the Land Development Code.

3. *Compatibility with existing and planned uses in the surrounding area;*

This property is surrounded by industrially and commercially zoned properties. The request is compatible and consistent with the surrounding properties, as well as existing and permitted uses. Property to the east that is zoned Agricultural (AG-2) is located in the Industrial Development Land Use Category, and are able to request a similar rezoning, but cannot be rezoned to commercial or residential zoning districts. The existing residential use on the agricultural property will be protected by separation and buffer requirements found in the Land Development Code.

4. *Provision with sufficient access to support the proposed development intensity;*

The subject property fronts Laredo Avenue for approximately 120 linear feet. The roadway system that will be used to access the property will provide sufficient access to the subject property. Additional off-site improvements may be required at the time of Development Order Approval.

5. *Expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;*

While no development plans have been specifically stated by the applicant, staff finds the requirements of the Land Development Code sufficient to address any roadway traffic impacts at time of Development Order approval.

6. *No adverse impacts to environmentally critical or sensitive areas and natural resources; and*

The subject parcel has already been cleared and developed with a single family home. The rezoning will not have a negative impact on any critical or sensitive areas.

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

Urban Services are defined by the Lee Plan as: the requisite services, facilities, capital improvements, and infrastructure necessary to support growth and development at levels of urban density and intensity.

Public sewer and water: A letter of utility availability has been provided by the applicant (Attachment D). At the time the property develops into an industrial use and exceeds the thresholds in Standards 4.1.1 and 4.1.2, then connection to water and sewer will be required.

Public Transit: There are no active transit routes near the subject property.

Police, fire, and emergency services: There is a Sheriff's substation 3.0 miles north, an EMS station 3.7 miles to the northwest and a fire station 2.0 miles west of the subject property.

Urban surface water management: Any future development will be required to comply with the Land Development Code, including all provisions for surface water management.

Bicycle and Pedestrian Facilities: The subject property is not located on Map 3D – Lee County Walkways and Bikeways. At the time of Development Order approval, the applicant must comply with the requirements of the Land Development Code.

Other urban services are available to the site, but are not relevant to the analysis of this case. Staff finds that there are adequate urban services to facilitate future industrial development on the subject property.

CONCLUSION:

The proposed Conventional Rezoning from Agricultural (AG-2) to Light Industrial (IL) is consistent with the Lee Plan. This request has been reviewed against the decision-making criteria set forth in LDC Sec. 34-145(d)4, and staff has found the request:

- Complies with the Lee Plan;
- Meets this Code and other applicable County regulations or qualifies for deviations;
- Is compatible with existing and planned uses in the surrounding area;
- Will provide access sufficient to support the proposed development intensity;
- The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;
- Will not adversely affect environmentally critical or sensitive areas and natural resources; and
- Will be served by urban services, defined in the Lee Plan, if located in a Future Urban area category.

Staff recommends approval of the request to rezone the Subject property from Agricultural (AG-2) to Light Industrial (IL).

ATTACHEMENTS:

- A. Expert Witness Information
- B. Maps: surrounding zoning, future land use and aerial photograph
- C. Request Statement
- D. Letter of Utility Availability
- E. Legal Description

**DRI2019-00001
MERCHANTS
CROSSING DRI**

Staff Summary

CASE NUMBER & NAME: DRI2019-00001 / MERCHANTS CROSSING DRI (MASTER DRI# 89-0202)

REQUEST: Rescind DRI Development Order for Merchants Crossing DRI (State DRI #7-8889-92 and County Case #DRI89-0202) pursuant to Florida Statute Section 380.115.

RESOLUTION NUMBER: Z-19-027

LOCATION: 15351 N. Cleveland Avenue, North Fort Myers Planning Community, Lee County, FL.

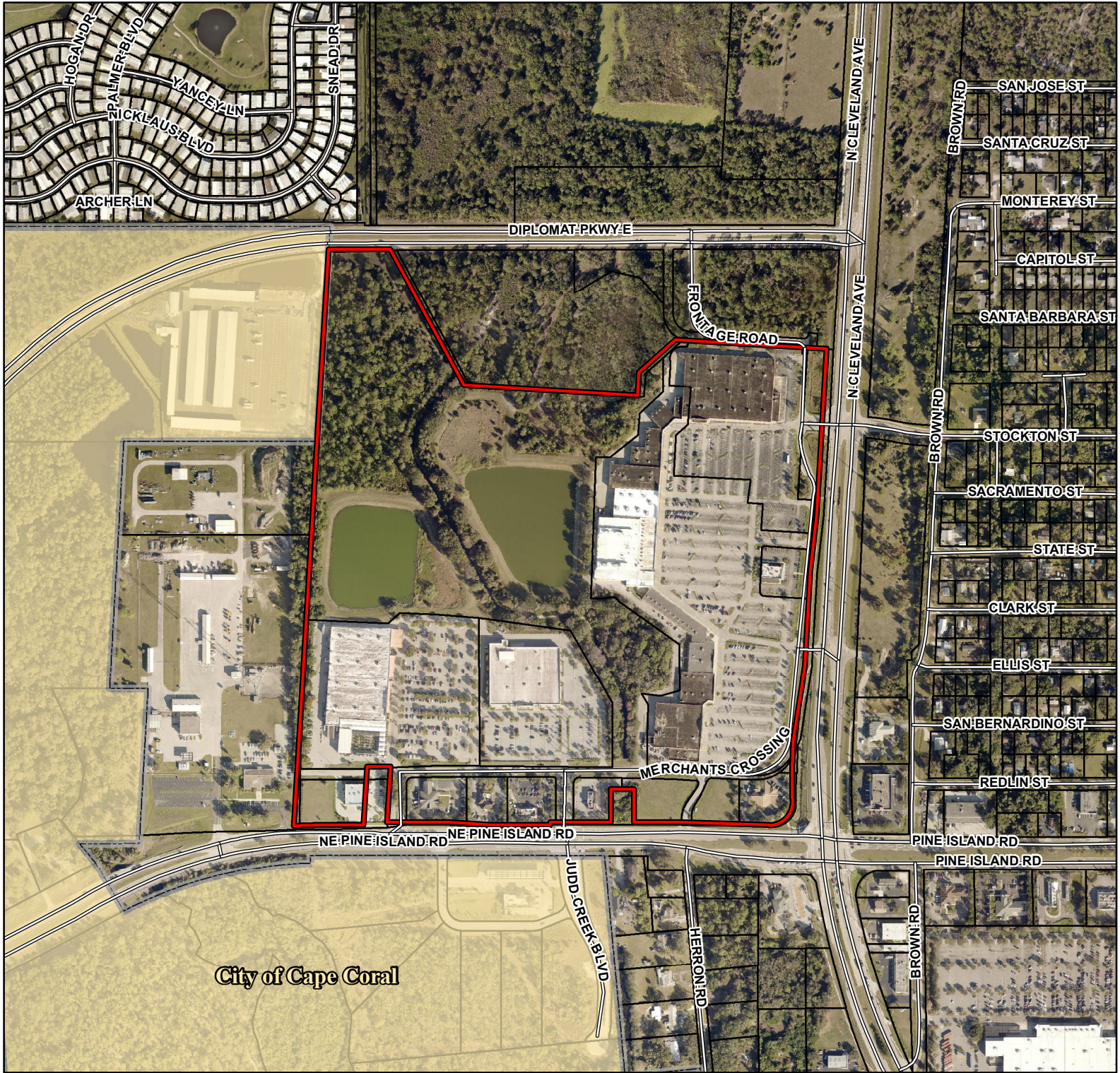
OWNER: RB MERCHANTS LLC 33.34% +

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



STAFF'S RECOMMENDATION: Approval

PARTICIPANTS: Open to the public

DRI2019-00001
Aerial



Legend

-  Subject Parcel
-  City Limits



**LEE COUNTY, FLORIDA
DEPARTMENT OF COMMUNITY DEVELOPMENT
ZONING SECTION
STAFF REPORT**

TYPE OF CASE: DRI RESCISSION
CASE NUMBER: DRI2019-00001
BOCC HEARING DATE: 10/2/2019

APPLICATION SUMMARY

Applicant: RD Management, LLC on behalf of RB Merchants, LLC, YBF Merchants, LLC & Merchants/ Owner, LLC in reference to Merchants Crossing Development of Regional Impact, DRI #7-8889-92.

Request: Request for a rescission of the Merchants Crossing Development of Regional Impact in accordance with §380.115(2) Florida Statutes.

Location: The subject property is located at 15201 North Cleveland Avenue. North Fort Myers Planning Community, Lee County, FL. STRAP Numbers: 33-43-24-03-0000A.0000, 34-43-24-03-0000B.0000, 34-43-24-03-0000C.00CE, 34-43-24-03-0000G.0000, 34-43-24-03-0000H.0000, 34-43-24-03-0000I.0000, 34-43-24-03-0000K.0000, 34-43-24-03-0000M.0000, 34-43-24-03-0000N.0000, 34-43-24-03-0000O.0000, 34-43-24-03-0000P.0000, 34-43-24-03-0000Q.0000, 34-43-24-03-0000R.0000, 34-43-24-03-0000S.0000, and 34-43-24-03-0000T.00CE. The legal Description is included as Attachment G.

RECOMMENDATION:

Staff recommends APPROVAL of this rescission from the Merchants Crossing Development of Regional Impact in accordance with §380.115(2) Florida Statutes. The amendment request meets the requirements of §380.115(2) Florida Statutes and all other applicable Lee County Land Development Code and Lee County Comprehensive Plan requirements.

ANALYSIS:

The applicant has proposed a rescission to the existing Development of Regional Impact (DRI) Development Order #7-8889-92 in accordance with Florida Statute §380.115(2). Florida Statute §380.115(2) establishes the authority for the process for rescissions to Development or Regional Impacts:

"If requested by the developer or landowner, the development-of-regional-impact development order shall be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as defined in s. 380.031(6), if such permit or authorization is subject to enforcement through administrative or judicial remedies."

Staff has reviewed the application based on this statutory provision, and provides the following analysis:

Concurrent Zoning Review

This rescission request is considered concurrently with an amendment to the existing Commercial Planned Development under case number ADD2019-00089. This administrative amendment request could not be accomplished without either a change or rescission to the existing DRI, due to changes to development density and intensity as well as changes to the approved Master Concept Plan. Additionally, conditions that exist in the existing zoning DRI Development Order that may not exist in the Commercial

Planned Development zoning resolution will be transferred to the zoning approval through this administrative amendment. This administrative approval will be completed upon the rescission of this DRI.

DRI Project History (Actions found in Attachment D)

The Merchants Crossing Development of Regional Impact (State DRI Number 7-8889-92) was originally approved under Resolution Z-90-034. The original DRI Development Order approved a total of 629,000 square foot of commercial development on 104.06 acres, which included 461,000 square feet of retail and service commercial, 99,000 square feet of office, and 150 hotel rooms. The remainder of the development property was set aside for water management, wetland mitigation, and preservation.

Since the Original approval, the Merchants Crossing Development of Regional Impact has been amended 9 times. The 9th amendment was approved under County Resolution 11-12-06, establishes a maximum development potential of 570,000 square feet of retail commercial, with the remainder of the land set aside for water management, wetland mitigation, and preservation.

Conditions of Approval

As part of the DRI Development Order approval, the developer accepts responsibility of a number of conditions that address water quality, energy conservation measures, hurricane management plan, transportation impacts, fire impact fees, compliance with water conservation devices, and solid waste. As part of the rescission application, the applicant provided documentation that demonstrates that the DRI Development has complied with the conditions of the DRI up to the point that the DRI has been developed (Attachment B). Staff finds that the development complies with the conditions DRI Development Order and that the County will continue to have sufficient enforcement mechanisms through the conditions of the existing Commercial Planned Development (CPD) zoning under Resolution Z-18-035 (as amended by ADD2019-00089), existing state and local permits, and state and local regulations.

BACKGROUND INFORMATION:

Surrounding Zoning and Land Use:

The following are the surrounding zoning districts, and existing land uses:

North

Properties to the north are zoned Residential Planned Development (RPD) and Commercial Planned Development (CPD), and are currently undeveloped.

East

Properties to the east are separated by North Cleveland Avenue and are zoned Commercial (C-1), and Community Commercial (CC). Properties to the east are largely undeveloped, with the exception of a bank and a pharmacy at the intersection of Pine Island Road and North Cleveland Avenue.

South

Properties to the south are separated by Northeast Pine Island Road and are zoned Commercial (C-1), Commercial (C-1A), and include properties within the jurisdictional limits of the City of Cape Coral. Properties to the south contain a convenience food and beverage store and multi-family residential development.

West

Properties to the west are zoned Agricultural (AG-2), and are also located within the jurisdictional limits of the City of Cape Coral. These properties include a government maintenance facility operated by the Florida Department of Transportation, and a mini-warehouse.

The subject property is identified as Central Urban and Intensive Development within the Lee County Future Land Use Map. These Future Land Use designations are defined in Policy 1.1.2 and 1.1.3 of the Lee Plan, and promote a mixture of intense commercial and residential uses. Additionally, the property is within the North Fort Myers Planning Community.

CONCLUSION:

Staff recommends **approval** of the proposed rescission of DRI #7-8889-92 based upon consistency with upon §380.115(2) Florida Statutes. The applicant has provided sufficient evidence that the conditions of the DRI Development order have been met to the point of current development. As it exists today, and as proposed in the concurrent zoning action (ADD2019-00089), the DRI would no longer meet the threshold for a new Development of Regional Impact. After this DRI has been rescinded, the Planned Development Resolution Z-18-035 (as amended by ADD2019-00089) will remain in effect as an enforcement mechanism for conditions of the Merchants Crossing Development.

ATTACHMENTS:



- A. Maps
 - Zoning
 - Future Land Use
 - Aerial Photograph
- B. Request Statement
 - State DRI Application of Rescission
 - Traffic Monitoring Report
- C. List of All Zoning Actions
- D. Development of Regional Impact Development Orders
 - Original Development Order, Resolution Number Z-90-034
 - First Amendment, Resolution Number Z-91-092
 - Second Amendment, Resolution Number Z-93-023
 - Third Amendment, Resolution Number #90-4-17-1 DRI
 - Fourth Amendment, Resolution Number Z-01-014
 - Fifth Amendment, Resolution Number 07-09-18
 - Sixth Amendment, Resolution Number Z-08-027
 - Seventh Amendment, Resolution Number 10-01-24
 - Eighth Amendment, Resolution Number 11-01-04
 - Ninth Amendment, Resolution Number 11-12-06
- E. South Florida Water Management District Notice of Compliance
- F. Waiver of Submittal Requirements
- G. Legal Description

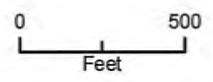
cc: Applicant
County Attorney
Zoning File

DRI2019-00001
Aerial



Legend

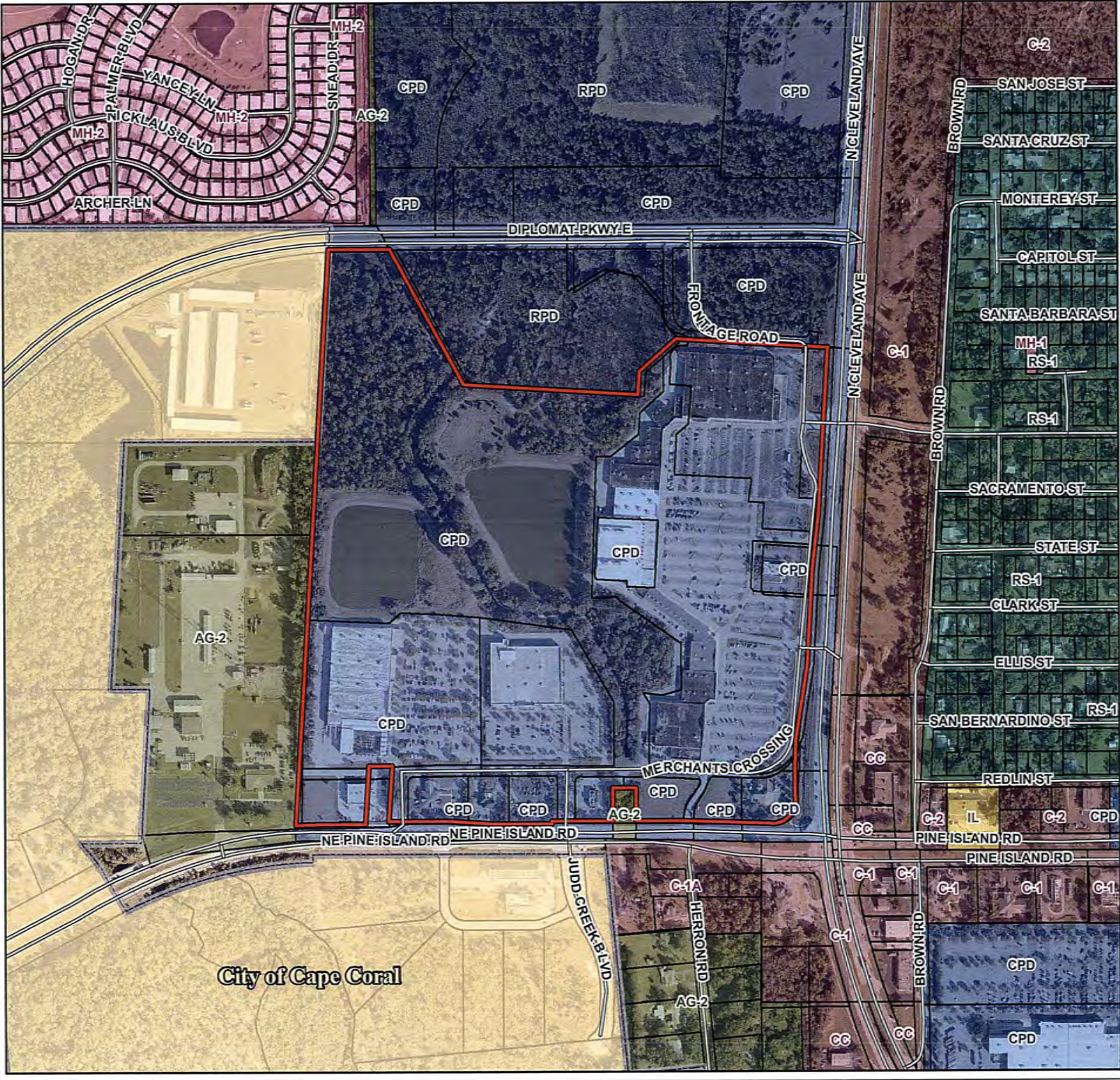
-  Subject Parcel
-  City Limits





ATTACHMENT A

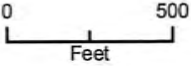


DRI2019-00001 Zoning











Legend

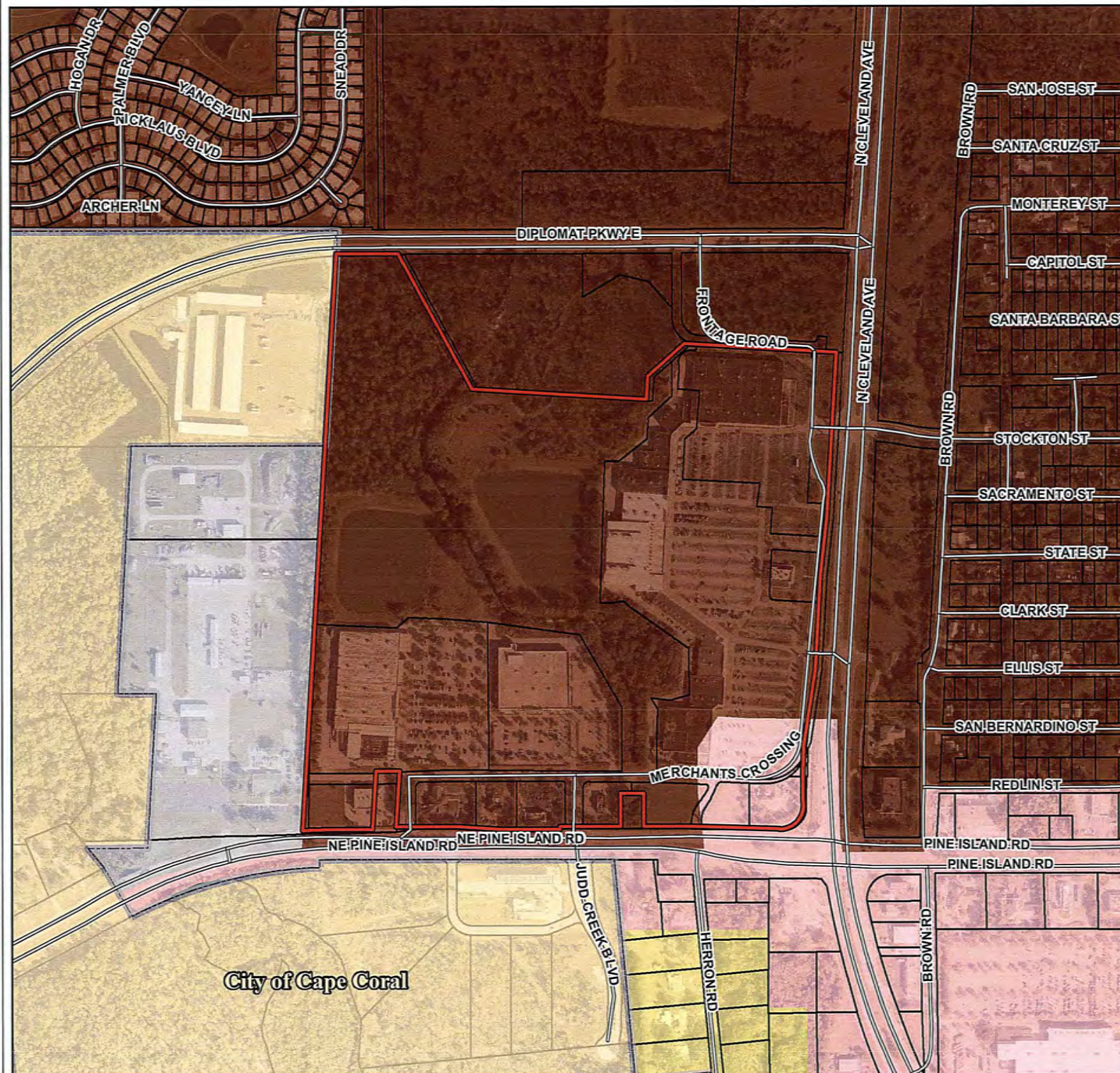
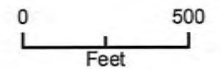
-  Subject Parcel
-  City Limits



DRI2019-00001 Future Land Use

Legend

-  Subject Parcel
-  City Limits
-  Intensive Development
-  Central Urban
-  Sub-Outlying Suburban
-  Commercial
-  Public Facilities
-  Wetlands



ATTACHMENT B

DRI 2019-00001

FORM DEO-BCP-ABANDON DRI-1
Rule 73C-40.0251, FAC., Effective 11-20-90
(Renumbered 10-01-11)

STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY
DIVISION OF COMMUNITY PLANNING & DEVELOPMENT
The Caldwell Building, MSC 160
107 East Madison Street
Tallahassee, Florida 32399

**APPLICATION FOR RESCISSION OF
A DEVELOPMENT OF REGIONAL IMPACT
Pursuant to Fla. Stat. §380.115(b)**

I, Richard Birdoff, the undersigned owner or authorized representative of RD Management, LLC on behalf of RB Merchants, LLC, YBF Merchants, LLC and Merchant Owners, LLC hereby request that the Lee County Board of County Commissioners issue a notice of RESCISSION for the Development of Regional Impact (DRI), NINTH DEVELOPMENT ORDER AMENDMENT (STATE DRI#7-8889-92) which was issued on December 6, 2011 for the Merchants Crossing development. I agree to record the notice of the rescission, in accordance with Section 28.222, Florida Statutes, with the clerk of the circuit court for each county in which land covered by the terms of the DRI is located.

I hereby certify that "all required mitigation related to the amount of development that existing on the date of rescission has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as defined in §380.031(6), is such permit or authorization is subject to enforcement through administrative or judicial remedies" in accordance with Florida Statutes §380.115(1)(b). Furthermore, I certify and acknowledge that, if this request for rescission of the DRI is approved, the project will lose vested rights protection under

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COMMUNITY DEVELOPMENT

DRI 2019-00001

Subsection 163.3167(5), Florida Statutes, for approved DRIs but may be entitled to other vested rights protection under that statute or otherwise under law.

I hereby certify that all information submitted with and pursuant to this application of rescission of the DRI is true and correct to the best of my knowledge and belief and that on this date a copy of this application has been submitted to the appropriate local government, appropriate regional planning agency and the Division of Community Planning & Development in the Department of Economic Opportunity.

Date



Signature

810 Seventh Avenue, 10th Floor
Street or P.O. Address

New York, NY 1019
City State Zip

(212) 265-6600
Phone Number

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A. Describe the actual amount of development completed, the size and scope of the resulting plan of development (after abandonment). Further, describe the extent to which existing permits or approvals authorize development which would exceed that allowed under the resulting plan of development (after abandonment) and:

1. Provide the amount of existing development as defined under Section 380.04, Florida Statutes (F.S.), that has occurred on site including the amount of existing vertical development by land use in gross square feet, dwelling units, or other applicable units of measure; the amount of infrastructure completed at the site; etc. Attach a copy of the approved site plan for this development as EXHIBIT A.

RESPONSE: *To the best of our knowledge, the following information is accurate as obtained from the Lee County Biennial Monitoring Report dated February 16, 2015.*

*Square footage constructed to date: 532,203 SF
Square footage remaining to be constructed 37,797 SF
Total: 570,000 SF*

All infrastructure necessary to serve the project is in place.

2. Identify the amount of development that is planned (after abandonment) including the amount of vertical development by land use in gross square feet, dwelling units, or other applicable units of measure; the percentage of any applicable guidelines and standards identified in s.380.0651 F.S., or Rule 28-24, Florida Administrative Code (F.A.C.); the amount of infrastructure to be completed at the site; etc. Attach a site plan for the project as proposed after abandonment as EXHIBIT B.

RESPONSE: *The Applicant has requested rescission of the DRI under F.S. §380.115. The Applicant is not pursuing abandonment, so the abandonment application and above referenced item is not applicable. However, any development or redevelopment taking place after the DRI Rescission will be consistent with the underlying Future Land Use and Planned Development zoning district, and all other applicable local regulations.*

3. Identify all state and federal permits applied for or obtained to date. Specify the agency, type of permit and function of each permit. Attach copies for each permit or permit application (if no permit has been issued) as EXHIBIT C.

RESPONSE: *The Applicant has requested rescission of the DRI under F.S. §380.115. The Applicant is not pursuing abandonment, so the abandonment application and above referenced item is not applicable.*

4. Identify all undeveloped tracts of land (other than individual single family lots) sold to separate entities or developers. Specify the size and buyer of each tract or parcel. Attach a map identifying the undeveloped tracts as EXHIBIT D.

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RESPONSE: *The Applicant has requested rescission of the DRI under F.S. §380.115. The Applicant is not pursuing abandonment, so the abandonment application and above referenced item is not applicable.*

B. Provide the following as attachments:

1. A certification of concurrence with abandonment from all DRI property owners who were owners at the time of the development order (D.O.) approval, or their successors. Use Attached Signatory Certification and attach as EXHIBIT E.

RESPONSE: *The Applicant has requested rescission of the DRI under F.S. §380.115. The Applicant is not pursuing abandonment, so the abandonment application and above referenced item is not applicable.*

2. An explanation of the reason for seeking an abandonment of the DRI. Attach as EXHIBIT F.

RESPONSE: *The Applicant has requested rescission of the DRI under F.S. §380.115. The Applicant is not pursuing abandonment, so the abandonment application and above referenced item is not applicable. The rescission is requested due to substantial build-out of the project and the satisfaction of all required mitigation.*

3. Statement from local government of jurisdiction indicating whether all development to date is in compliance with all applicable local regulations. If evidence is presented that a request was made to the local government for such a statement but no statement is provided within 30 days of the request, the developer should provide evidence in support of such a claim of compliance. Attach as EXHIBIT G.

RESPONSE: *The Applicant has requested rescission of the DRI under F.S. §380.115. The Applicant is not pursuing abandonment, so the abandonment application and above referenced item is not applicable.*

4. A discussion of any material adverse impacts for the development on any existing resources or existing or planned facilities and the mitigation of these impacts. Attach as EXHIBIT H.

RESPONSE: *The Applicant has requested rescission of the DRI under F.S. §380.115. All impacts of the project have been addressed by mitigation required by the DRI DO.*

5. A list of each of the conditions in the DRI development order included to protect or mitigate the project's impact to resources or facilities. Include an explanation and documentation that each condition was adhered to by the developer. Attach as EXHIBIT I.

RESPONSE: *See enclosed DRI DO conditions, as set forth in the Ninth Amendment.*

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COMMUNITY DEVELOPMENT

DRI 2019-00001

6. A copy of the binding letter (Form DEO-BCP-BLID-1) identifying the DRI status for the proposed project which has been issued by the Division of Community Planning for disposition, in all cases where there is a proposal to abandon a project which has not commenced development under Section 380.04, F.S., and is proposed to consist of development which is between 80-120 percent of any applicable threshold after abandonment.

***RESPONSE:** The Applicant has requested rescission of the DRI under F.S. §380.115. All impacts of the project have been addressed by mitigation required by the DRI DO.*

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COMMUNITY DEVELOPMENT

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**MERCHANTS CROSSING CPD/DRI
LIST OF PARCEL/STRAP NUMBERS & OWNERSHIP**

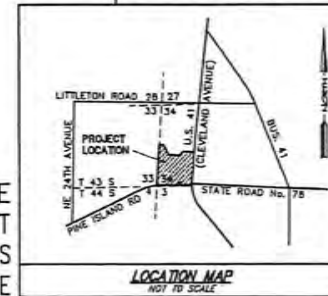
STRAP NO.	OWNER NAME	LOT/ PARCEL PER PLAT	AUTHORIZATION PROVIDED
34-43-24-03-0000A.0000	RB MERCHANTS LLC; YBF MERCHANTS LLC + MERCHANTS OWNER LLC T/C	A	Y
34-43-24-03-0000B.0000	RB MERCHANTS LLC; YBF MERCHANTS LLC + MERCHANTS OWNER LLC T/C	B	Y
34-43-24-03-0000C.00CE	RB MERCHANTS LLC; YBF MERCHANTS LLC + MERCHANTS OWNER LLC T/C	C	Y
34-43-24-03-0000C.00CE	RB MERCHANTS LLC; YBF MERCHANTS LLC + MERCHANTS OWNER LLC T/C	D	Y
34-43-24-03-0000C.00CE	RB MERCHANTS LLC; YBF MERCHANTS LLC + MERCHANTS OWNER LLC T/C	E	Y
34-43-24-03-0000C.00CE	RB MERCHANTS LLC; YBF MERCHANTS LLC + MERCHANTS OWNER LLC T/C	F	Y
34-43-24-03-0000G.0000	SCF RC FUNDING I LLC	G	N
34-43-24-03-0000H.0000	HART CENTERS NINE LLC	H	Y
34-43-24-03-0000I.0000	HOME DEPOT USA INC #0268	I	N
34-43-24-03-0000C.00CE	RB MERCHANTS LLC; YBF MERCHANTS LLC + MERCHANTS OWNER LLC T/C	J	Y
34-43-24-03-000K0.0000	LOFORTI RICHARD V TR FOR RICHARD V LOFORTI LIVING TRUST	K	N
34-43-24-03-000K0.0000	LOFORTI RICHARD V TR FOR RICHARD V LOFORTI LIVING TRUST	L	N
34-43-24-03-000M0.0000	WACHOVIA BANK NA	M	N
34-43-24-03-000N0.0000	CRC INVESTORS LLC	N	N
34-43-24-03-000O0.0000	MCDONALDS CORP	O	Y
34-43-24-03-000P0.0000	POP FLORIDA PROPERTIES LLC	P	N
34-43-24-03-000Q0.0000	ADI ASHISH MIDLAND TRUST COMPANY + SHARMA NITHYA + MIDLAND TRUST COMPANY	Q	Y
34-43-24-03-000R0.0000	SHARMA FAMILY TRUST + ADI ASHISH + MIDLAND TRUST COMPANY	R	Y
34-43-24-03-00S00.0000	SUN BANK OF LEE COUNTY	S	N
34-43-24-03-00T00.00CE	RB MERCHANTS LLC; YBF MERCHANTS LLC + MERCHANTS OWNER LLC T/C	T	Y

DRI 2019-000011

MERCHANTS CROSSING

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 43 SOUTH, RANGE 24 EAST LEE COUNTY, FLORIDA

PLAT BOOK 22 PAGE 37



NOTICE

THERE MAY BE ADDITIONAL RESTRICTIONS THAT ARE NOT RECORDED ON THIS PLAT THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY.

DESCRIPTION OVERALL PARCEL:

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 34; THENCE N3° 25' 58" E, ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 34, A DISTANCE OF 73.52 FEET, TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

THENCE CONTINUE N03° 25' 58" E, ALONG THE LAST DESCRIBED COURSE, A DISTANCE OF 2484.86 FEET, TO A POINT ON A LINE PARALLEL WITH AND 100 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO, THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 34; THENCE S89° 56' 05" E, ALONG SAID PARALLEL LINE, A DISTANCE OF 264.68 FEET; THENCE S28° 32' 36" E, A DISTANCE OF 664.99 FEET; THENCE S88° 34' 00" E, A DISTANCE OF 747.11 FEET; THENCE N03° 28' 00" E, A DISTANCE OF 100.0 FEET; THENCE N48° 25' 58" E, A DISTANCE OF 212.13 FEET; THENCE S86° 34' 00" E, A DISTANCE OF 850.0 FEET, TO THE WESTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY NO. 41 (CLEVELAND AVENUE); THENCE S03° 25' 53" W, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 718.01 FEET; THENCE S06° 17' 38" W, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 240.30 FEET; THENCE S03° 25' 53" W, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 408.75 FEET; THENCE S80° 42' 37" W, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 315.30 FEET, TO A POINT ON THE ARC OF A CIRCULAR CURVE TO THE LEFT, WHOSE RADIUS POINT BEARS S86° 34' 07" E FROM SAID POINT; THENCE SOUTHERLY ALONG SAID RIGHT-OF-WAY LINE AND THE ARC OF SAID CURVE, HAVING A RADIUS OF 3005.79 FEET, A CENTRAL ANGLE OF 05° 09' 06", AND A CHORD BEARING OF S00° 51' 20" W, AN ARC DISTANCE OF 270.27 FEET, TO THE POINT OF REVERSE CURVATURE OF A CIRCULAR CURVE TO THE RIGHT; THENCE SOUTHERLY AND WESTERLY, ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 100.0 FEET, A CENTRAL ANGLE OF 93° 29' 08" AND A CHORD BEARING OF S45° 01' 21" W, AN ARC DISTANCE OF 153.16 FEET, TO THE POINT OF TANGENCY AND THE NORTHERLY RIGHT-OF-WAY LINE OF PINE ISLAND ROAD (STATE ROAD NO. 78); THENCE N88° 14' 02" W, A DISTANCE OF 383.15 FEET; THENCE N89° 57' 42" W, A DISTANCE OF 198.50 FEET, TO THE EASTERLY LINE OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 421 PAGE 480, AS RECORDED IN PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THE LAST 2 COURSES BEING ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID PINE ISLAND ROAD (STATE ROAD NO. 78); THENCE N00° 04' 40" E, ALONG SAID EASTERLY LINE, A DISTANCE OF 142.10 FEET, TO THE NORTHERLY LINE OF THOSE LANDS DESCRIBED IN SAID OFFICIAL RECORDS BOOK 421, PAGE 480; THENCE N89° 55' 20" W, ALONG SAID NORTHERLY LINE, A DISTANCE OF 100.0 FEET, TO THE WESTERLY LINE OF THOSE LANDS DESCRIBED IN SAID OFFICIAL RECORDS BOOK 421, PAGE 480; THENCE S00° 04' 40" W, ALONG SAID WESTERLY LINE, A DISTANCE OF 142.17 FEET, TO THE NORTHERLY LINE OF SAID PINE ISLAND ROAD (STATE ROAD NO. 78); THENCE N89° 57' 42" W, A DISTANCE OF 259.57 FEET; THENCE S00° 02' 18" W, A DISTANCE OF 12.0 FEET; THENCE N89° 57' 42" W, A DISTANCE OF 235.32 FEET; THENCE N86° 08' 51" N, A DISTANCE OF 180.40 FEET; THENCE N89° 57' 42" W, A DISTANCE OF 274.68 FEET; THENCE S00° 02' 18" W, A DISTANCE OF 12.0 FEET; THENCE N89° 57' 42" W, A DISTANCE OF 230.03 FEET, TO THE POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE WESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 2944.29 FEET, A CENTRAL ANGLE OF 03° 10' 09" AND A CHORD BEARING OF S88° 27' 14" W, AN ARC DISTANCE OF 162.66 FEET, TO THE POINT OF BEGINNING, THE LAST 8 COURSES BEING ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID PINE ISLAND ROAD (STATE ROAD NO. 78), CONTAINING 101.442 ACRES.

NOTICE

LANDS DESCRIBED IN THIS PLAT ARE SUBDIVIDED BY THE DEVELOPER WITHOUT THE ROADS, DRAINAGE AND SEWER FACILITIES BEING ACCEPTED FOR MAINTENANCE BY LEE COUNTY. ANY PURCHASER OF A LOT IN THIS SUBDIVISION IS ADVISED THAT HE MAY BE SUBJECT TO ASSESSMENT OR CALLED UPON TO BEAR A PORTION OR ALL OF THE EXPENSE OF CONSTRUCTION, MAINTENANCE OR IMPROVEMENT OF ROADS, DRAINAGE AND SEWER FACILITIES.

APPROVALS:

THIS PLAT IS ACCEPTED THIS 28th DAY OF JULY, A.D. 1993 IN OPEN MEETING OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA.

John E. Manning
CHAIRMAN OF THE BOARD JOHN E. MANNING

Charlie Green
CLERK OF COURT CHARLIE GREEN

John E. McCall
JOHN E. MCCALL
COUNTY ATTORNEY

Walter J. McCall
WALTER J. MCCALL
DIRECTOR: DIVISION OF ZONING AND DEVELOPMENT REVIEW

Nancy Gibbs NANCY GIBBS
DIRECTOR: DEPARTMENT OF COMMUNITY DEVELOPMENT

CLERK OF COURT CERTIFICATION: 9430073

I HEREBY CERTIFY THAT THE ATTACHED PLAT OF MERCHANTS CROSSING HAS BEEN EXAMINED BY ME, AND FROM MY EXAMINATION, I FIND THAT SAID PLAT COMPLIES IN FORM WITH THE REQUIREMENTS OF CHAPTER 177 OF THE FLORIDA STATUTES. I FURTHER CERTIFY THAT THIS PLAT WAS FILED FOR RECORD AT LEE COUNTY, THIS 28th DAY OF JULY, A.D. 1993, AND DULY RECORDED IN PLAT BOOK 22 AT PAGES 37 THROUGH 47, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

Charlie Green
CLERK OF THE COUNTY COURT CHARLIE GREEN
IN AND FOR COUNTY

SURVEYOR'S CERTIFICATE:

I HEREBY CERTIFY THAT THE ATTACHED PLAT OF MERCHANTS CROSSING, IS A TRUE AND CORRECT REPRESENTATION OF THE HEREIN DESCRIBED LAND ACCORDING TO A RECENT SURVEY MADE AND PLATTED UNDER MY DIRECTION AND SUPERVISION AND THAT THE SURVEY DATA COMPLY WITH ALL OF THE REQUIREMENTS OF CHAPTER 177 OF THE FLORIDA STATUTES, AND THAT THE PERMANENT REFERENCE MONUMENTS (P.R.M.'S) HAVE BEEN PLACED AT THE LOCATIONS SHOWN ON THIS PLAT.

DATE: 7-19-93
Lynn E. White
LYNN E. WHITE
PROFESSIONAL LAND SURVEYOR
FLORIDA CERTIFICATE #2479

ABRAMS PROPERTIES
PREPARED BY DMK GROUP, INC., 4315 McCall ROAD, ENGLEWOOD, FL 34224, DMK JOB NO. 91-389

SHEET 1 OF 11

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D.O. #91-12-008.000

MERCHANTS CROSSING

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 43 SOUTH, RANGE 24 EAST LEE COUNTY, FLORIDA

PLAT BOOK 52 PAGE 38

DEDICATION:

KNOW ALL MEN BY THESE PRESENTS THAT MERCHANTS CROSSING OF NORTH FORT MYERS, INC., A FLORIDA CORPORATION, AND SUN BANK OF LEE COUNTY, N/A, A NATIONAL BANKING ASSOCIATION, THE OWNERS OF THE HEREIN DESCRIBED LAND HAVE CAUSED THIS PLAT OF MERCHANTS CROSSING TO BE MADE AND DO HEREBY DEDICATE ALL PUBLIC UTILITY EASEMENTS AS SHOWN ON THE PLAT TO THE PERPETUAL USE OF THE PUBLIC, AND DO HEREBY DEDICATE THE 20-FOOT NORTH FORT MYERS UTILITY COMPANY EASEMENT AND SANITARY SEWER EASEMENT TO NORTH FORT MYERS UTILITY, INC. THE 16-FOOT LEE COUNTY ELECTRIC COOPERATIVE EASEMENT IS DEDICATED TO LEE COUNTY ELECTRIC COOPERATIVE, INC. THE D.O.T. EASEMENT IS DEDICATED TO THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, AND PARCELS "C", "D", "E", "F" AND "J" ARE DEDICATED TO ALL LOT OWNERS.

WITNESS WHEREOF, MERCHANTS CROSSING OF NORTH FORT MYERS, INC. AND SUN BANK OF LEE COUNTY, N.A., A NATIONAL BANKING ASSOCIATION, HAVE HEREUNTO SET OUR HANDS AND SEALS ON THE DATE SHOWN.

MERCHANTS CROSSING OF NORTH FORT MYERS, INC.
BY: William G. Phillips PRESIDENT
ATTESTED: Jack T. Cottrhan ASSISTANT SECRETARY
DATE: JULY 15, 1993

SUN BANK OF LEE COUNTY, N.A., A NATIONAL BANKING ASSOCIATION
BY: Michael T. McGehee EXECUTIVE VICE PRESIDENT
ATTESTED: C. Michael Napp SENIOR V.P.
DATE: July 16, 1993

ACKNOWLEDGEMENT:

I HEREBY CERTIFY THAT ON THIS DAY BEFORE ME, AN OFFICER DULY AUTHORIZED TO TAKE ACKNOWLEDGEMENTS, PERSONALLY APPEARED WILLIAM G. PHILLIPS PRESIDENT, AND JACK T. COTTRHAN ASSISTANT SECRETARY, OF MERCHANTS CROSSING OF NORTH FORT MYERS, INC. TO ME KNOWN TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION, THAT THEY EXECUTED THE SAME FOR THE PURPOSE THEREIN MENTIONED.
WITNESS MY HAND AND OFFICIAL SEAL, THIS 15th DAY OF July, A.D. 1993.

Barry D. Anderson
NOTARY PUBLIC FULTON COUNTY
STATE OF Georgia AT LARGE
MY COMMISSION EXPIRES: January 31, 1994

ACKNOWLEDGEMENT:

I HEREBY CERTIFY THAT ON THIS DAY BEFORE ME, AN OFFICER DULY AUTHORIZED TO TAKE ACKNOWLEDGEMENTS, PERSONALLY APPEARED MARKEL T. McGehee EXECUTIVE VICE PRESIDENT, AND C. Michael Napp SENIOR V.P. SECRETARIES OF SUN BANK OF LEE COUNTY, N.A., A NATIONAL BANKING ASSOCIATION TO ME KNOWN TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION, THAT THEY EXECUTED THE SAME FOR THE PURPOSE THEREIN MENTIONED.
WITNESS MY HAND AND OFFICIAL SEAL, THIS 16th DAY OF July, A.D. 1993.

Crystal D. McGehee
NOTARY PUBLIC
STATE OF Georgia AT LARGE
MY COMMISSION EXPIRES: March 31, 1995

SURVEYOR'S NOTATION:

1. BEARINGS ARE BASED ON THE DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAPS FOR STATE ROAD NO. 78 (PINE ISLAND ROAD), SECTION NO. 12006-2519.

LEGEND:

1. \square DENOTES PERMANENT REFERENCE MONUMENT.
2. 12' WATER LINE EASEMENT = 12.0' LEE COUNTY UTILITIES WATER EASEMENT, OFFICIAL RECORDS BOOK 2400, PAGE 2459.
3. 20' NFW UTILITY COMPANY EASEMENT = 20.0' NORTH FORT MYERS UTILITY COMPANY SEWER EASEMENT.
4. ϵ DENOTES CENTERLINE.
5. ϵ DENOTES CENTERLINE.

EASEMENT NOTES:

1. ACCESS ROAD (PARCEL J) IS ALSO A PUBLIC UTILITY EASEMENT.
2. THERE IS A 10 FOOT PUBLIC UTILITY EASEMENT LYING ON BOTH SIDES OF PARCEL J (ACCESS ROAD) BEING ACROSS ALL ADJACENT PARCELS AND BEING CONTIGUOUS TO AND PARALLEL WITH THE OUTSIDE LIMITS OF SAID PARCEL J (ACCESS ROAD).
3. ALL OTHER EASEMENTS SHOWN HEREON ARE FOR THE USES DESCRIBED.

MORTGAGEE'S CONSENT:

KNOWN ALL MEN BY THESE PRESENTS: TRUST COMPANY BANK, HOLDER OF A CERTAIN MORTGAGE RECORDED IN OFFICIAL RECORDS BOOK 2295 AT PAGE 4380 IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, OF THE HEREIN DESCRIBED LANDS, DOES HEREBY JOIN IN THE PLAT DEDICATION APPEARING HEREON AND SET THEIR HAND AND SEAL, THIS 15th DAY OF July, 1993.

George N. Sandell, FVP TRUST COMPANY BANK
BY: William Hattink
WITNESS: William Hattink WILLEM HATTINK, VICE PRESIDENT
Dawn M. Embreau
WITNESS

ACKNOWLEDGEMENT:

I HEREBY CERTIFY THAT ON THIS DAY BEFORE ME, AN OFFICER DULY AUTHORIZED TO TAKE ACKNOWLEDGEMENTS, PERSONALLY APPEARED WILLEM HATTINK TO ME KNOWN TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION, THAT HE EXECUTED THE SAME FOR THE PURPOSE THEREIN MENTIONED.
WITNESS MY HAND AND OFFICIAL SEAL, THIS 15th DAY OF July, A.D. 1993.

William Hattink
NOTARY PUBLIC
STATE OF Georgia AT LARGE
MY COMMISSION EXPIRES: March 31, 1995

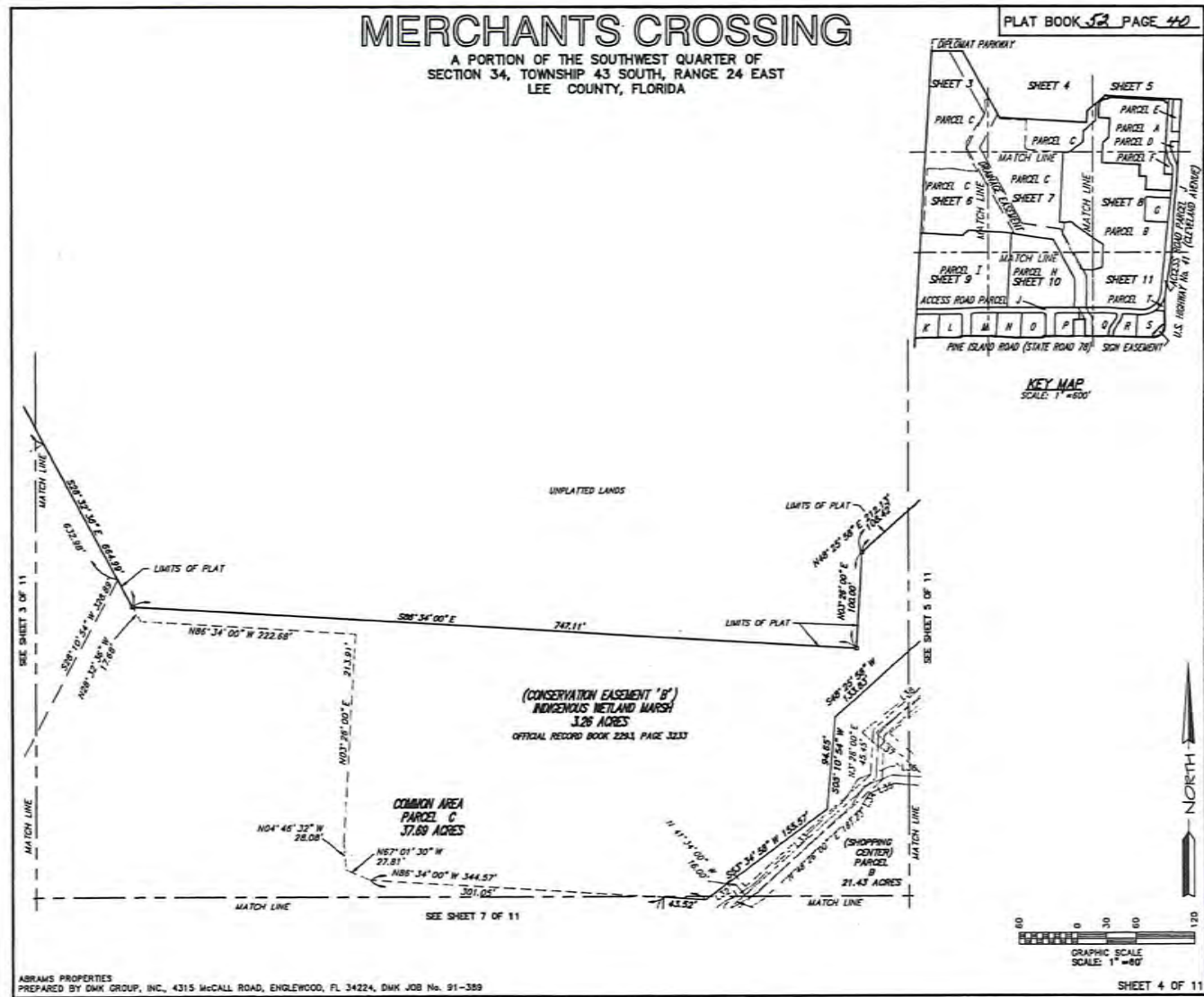
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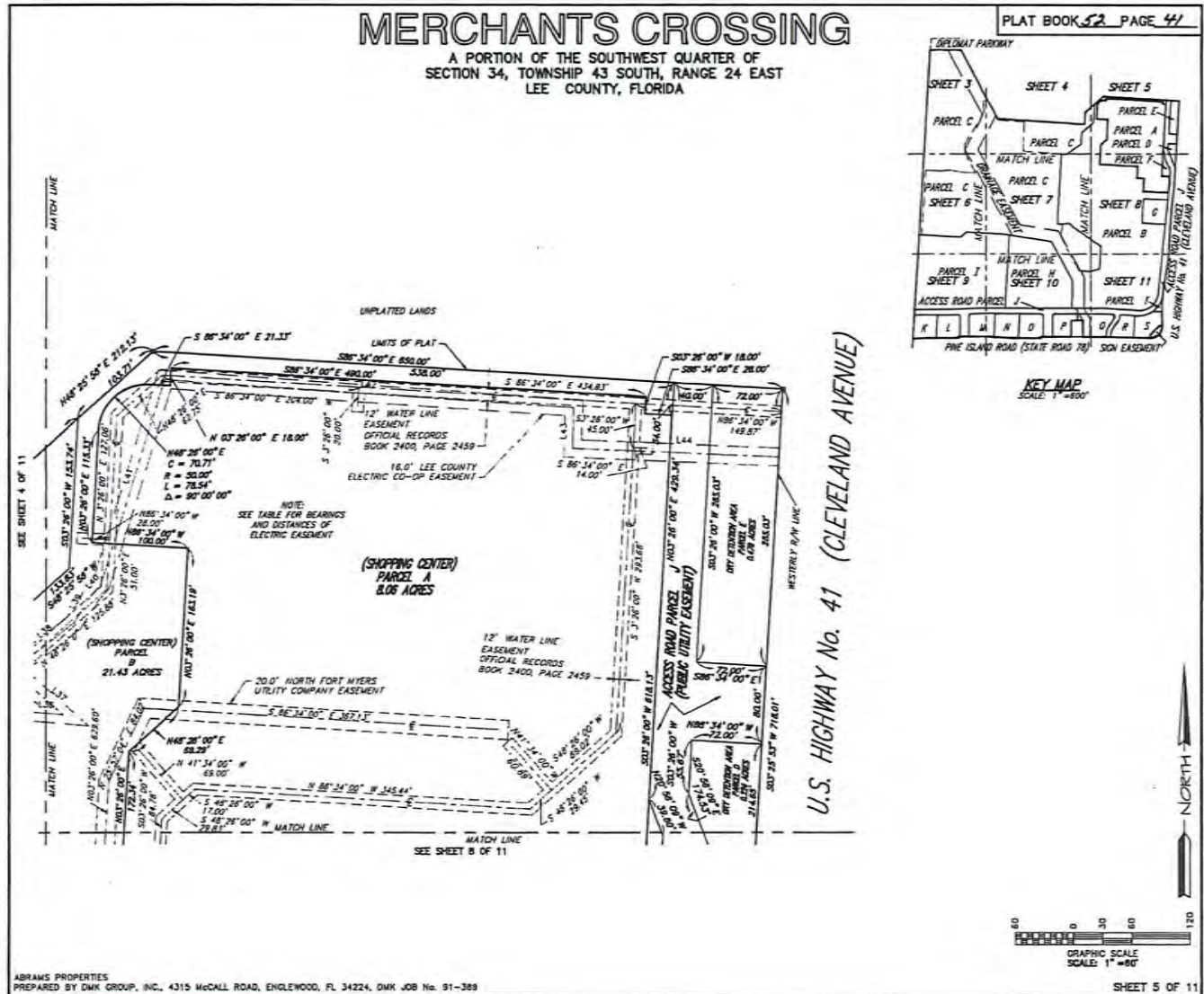
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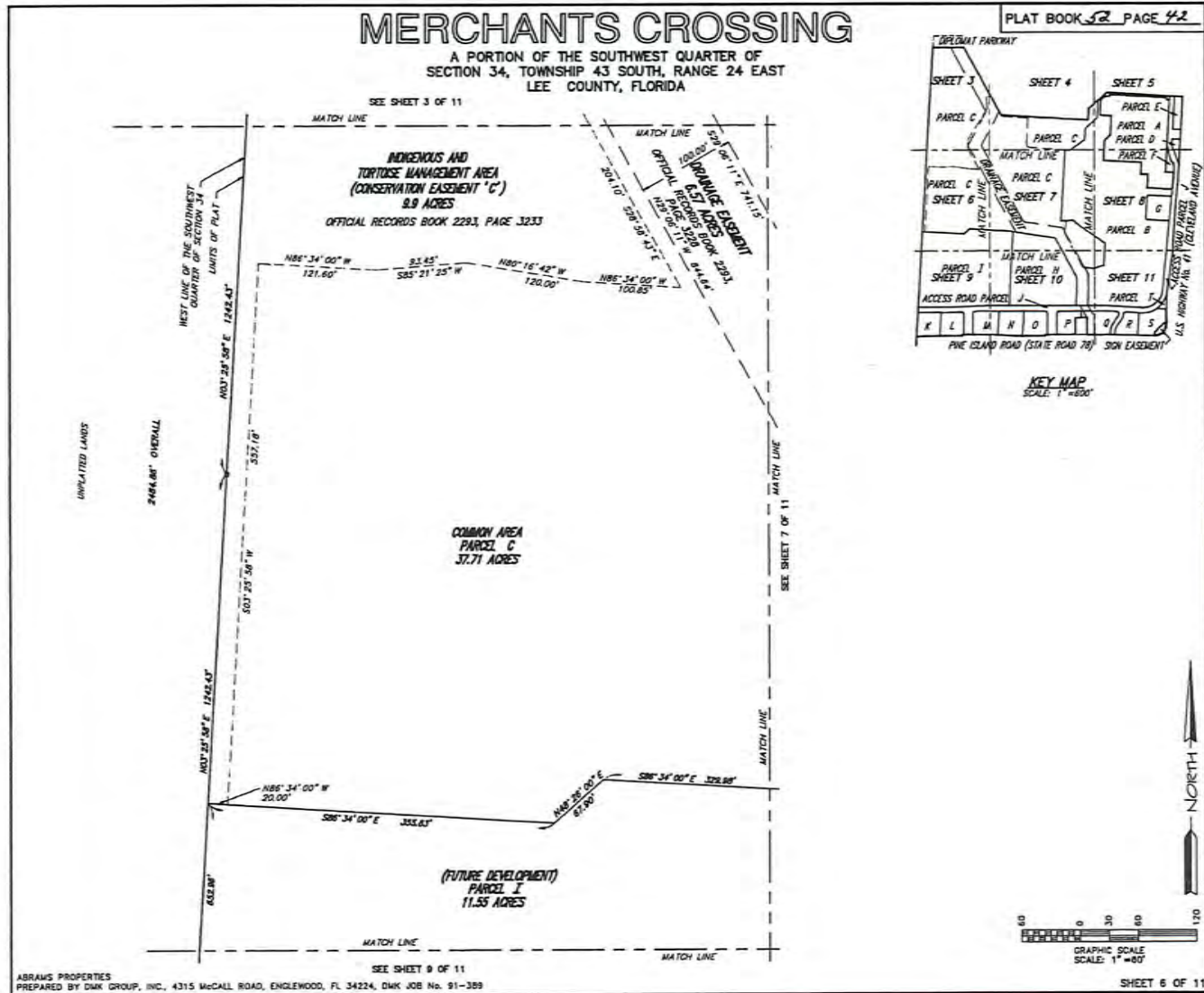
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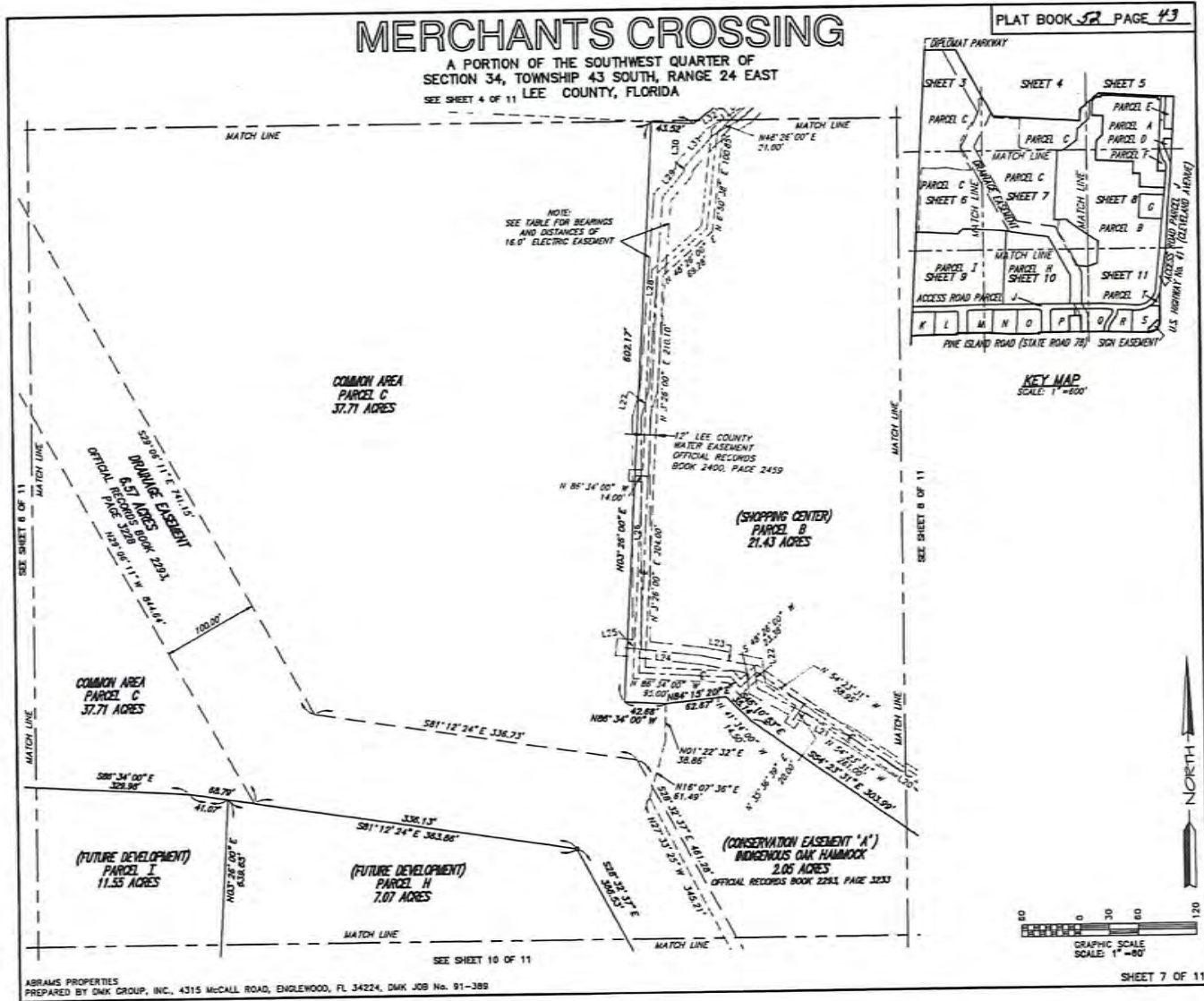
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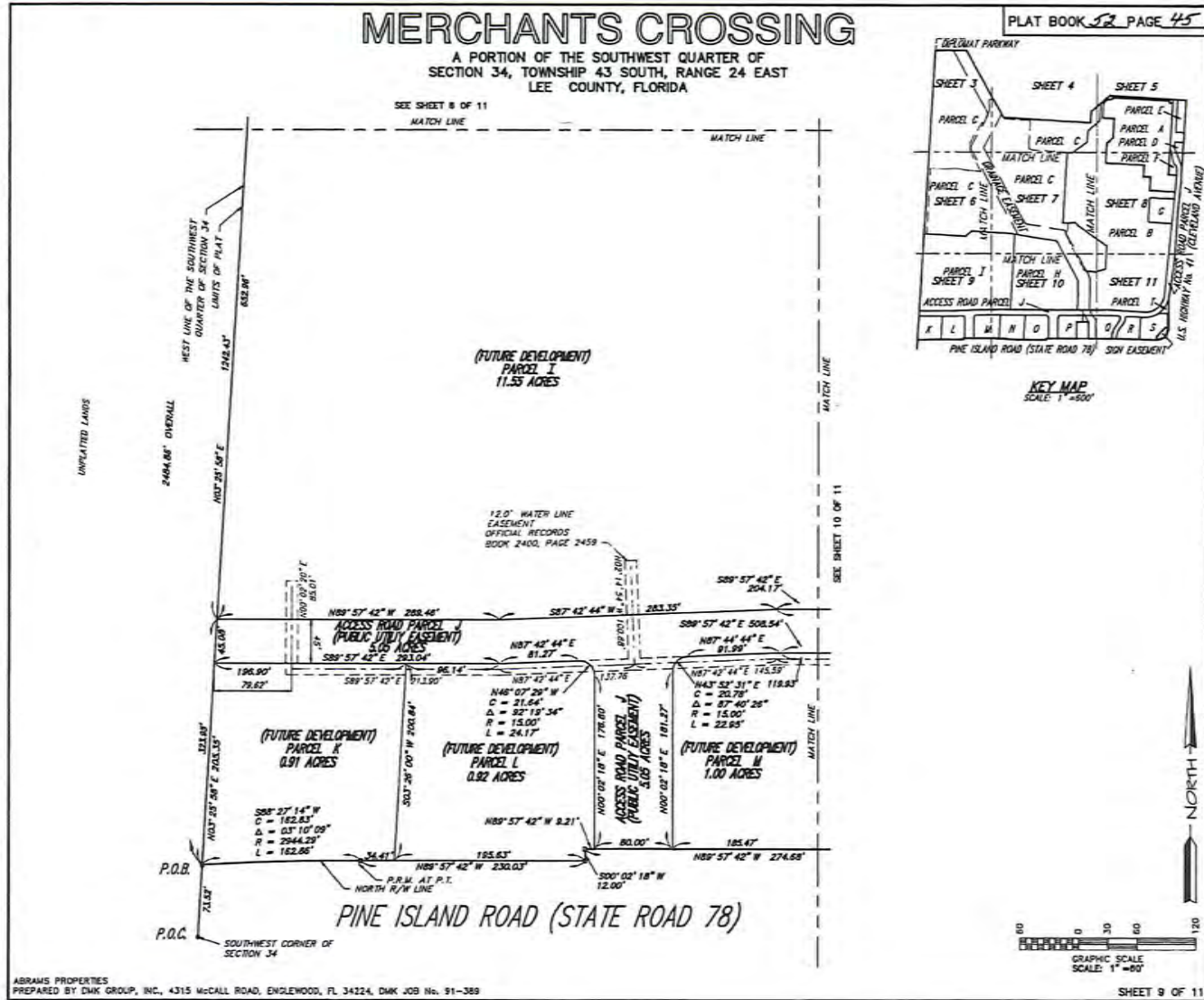
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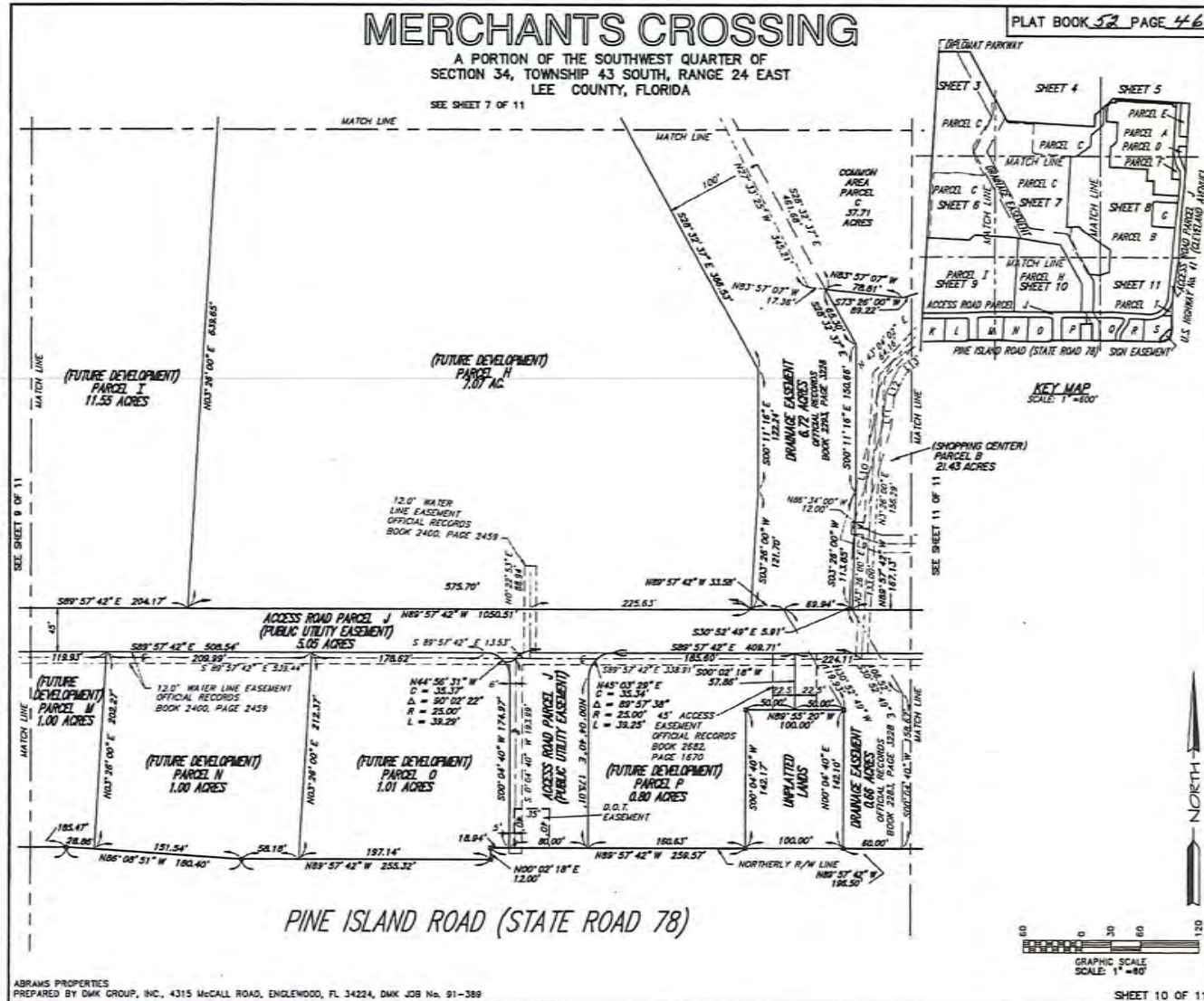
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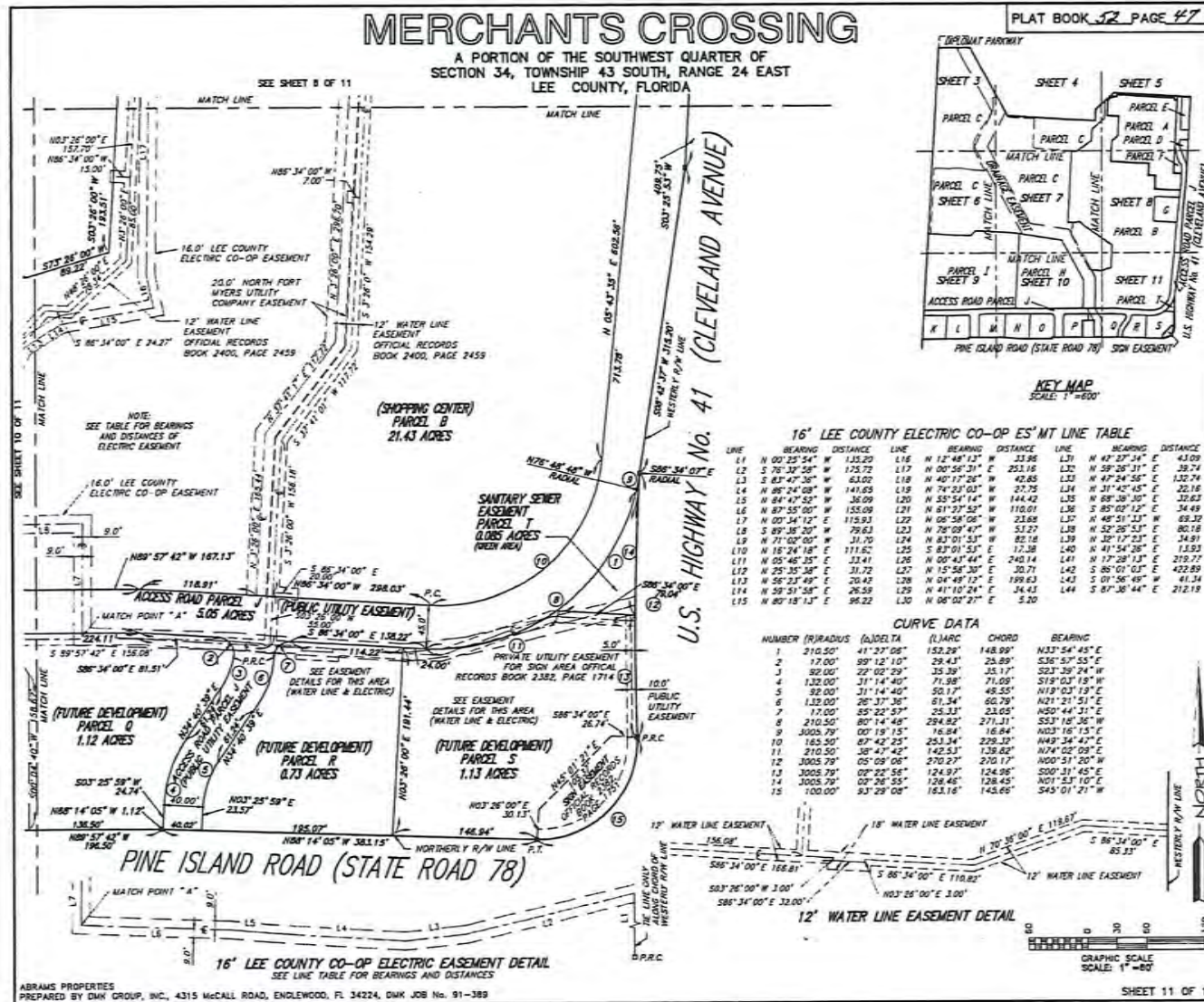
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MERCHANTS CROSSING
TRAFFIC MONITORING REPORT

Project #14502

March 5, 2014

Prepared by:
DAVID PLUMMER & ASSOCIATES, INC.
2149 McGregor Boulevard
Fort Myers, FL 33901

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MERCHANTS CROSSING
TRAFFIC MONITORING REPORT

Introduction

Merchants Crossing is an approved commercial/office Development of Regional Impact (DRI), located in the northwest quadrant of the intersection of US 41 and SR 78 (Pine Island Road), Exhibit 1.

Study Requirements

In lieu of the standard traffic analysis as described in the Transportation Condition G.2 of the Merchants Crossing Seventh DRI Development Order Amendment (Appendix I), which requires an annual traffic monitoring report be prepared for the Project, the Lee County Department of Transportation and the Southwest Florida Regional Planning Council have agreed to accept actual PM peak hour traffic counts at the Project Entrances for the traffic monitoring report.

Existing Traffic Volumes

PM peak hour turning movement counts were conducted in February, 2014 from 4:00 to 6:00 PM at the Project driveways.

Since the peak hours for the intersections are at different time periods, the peak hour and thru volumes on US 41 at the US 41/Stockton Street/North Project Entrance were fixed and the resultant traffic volumes south of the intersection were carried to the US 41/South Project Entrance intersection. Similarly, on Pine Island Road, the peak hour and traffic volumes at the Pine Island Road/East Project Entrance were fixed and carried to the Pine Island Road/Project Middle Entrance and the Pine Island Road/Project West Entrance. Since the traffic counts were conducted in the peak season, the volumes were not adjusted.

Turning movement counts are summarized in Exhibits 2A to 2B and provided in Appendix II.

Existing Merchants Crossing Trip Generation

The field measured inbound and outbound PM peak hour traffic volumes at the six Project Entrances are provided in Exhibits 2A, 2B and 3 and summarized below.

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Project Entrance Volume Summary
Peak Hour Volumes

<u>Entrance</u>	<u>PM Peak Hour Volume</u>
Diplomat Parkway/Project Entrance	52
US 41/North Project Entrance	298
US 41/South Project Entrance	205
Pine Island Road/East Project Entrance	146
Pine Island Road/Middle Project Entrance	362
Pine Island Road/West Project Entrance	<u>265</u>
 Total	 1,328

It must be noted that the above volumes are total external volumes and, therefore, include a certain amount of pass-by trips. Consequently, the volumes do not represent net new external trips for the Project.

The Merchants Crossing DRI traffic study forecasted the trip generation for the Project. The forecasted and field measured volumes are compared below.

Traffic Volume Comparison
PM Peak Hour

Forecasted Volume	2,908 ⁽¹⁾
Field Measured Volume	1,328
Field Measured/Forecasted	0.46

Footnote:

(1) DRI Impact Assessment For Merchants Crossing 7-8889-92, SWERPC's Official Recommendations, February 1990.

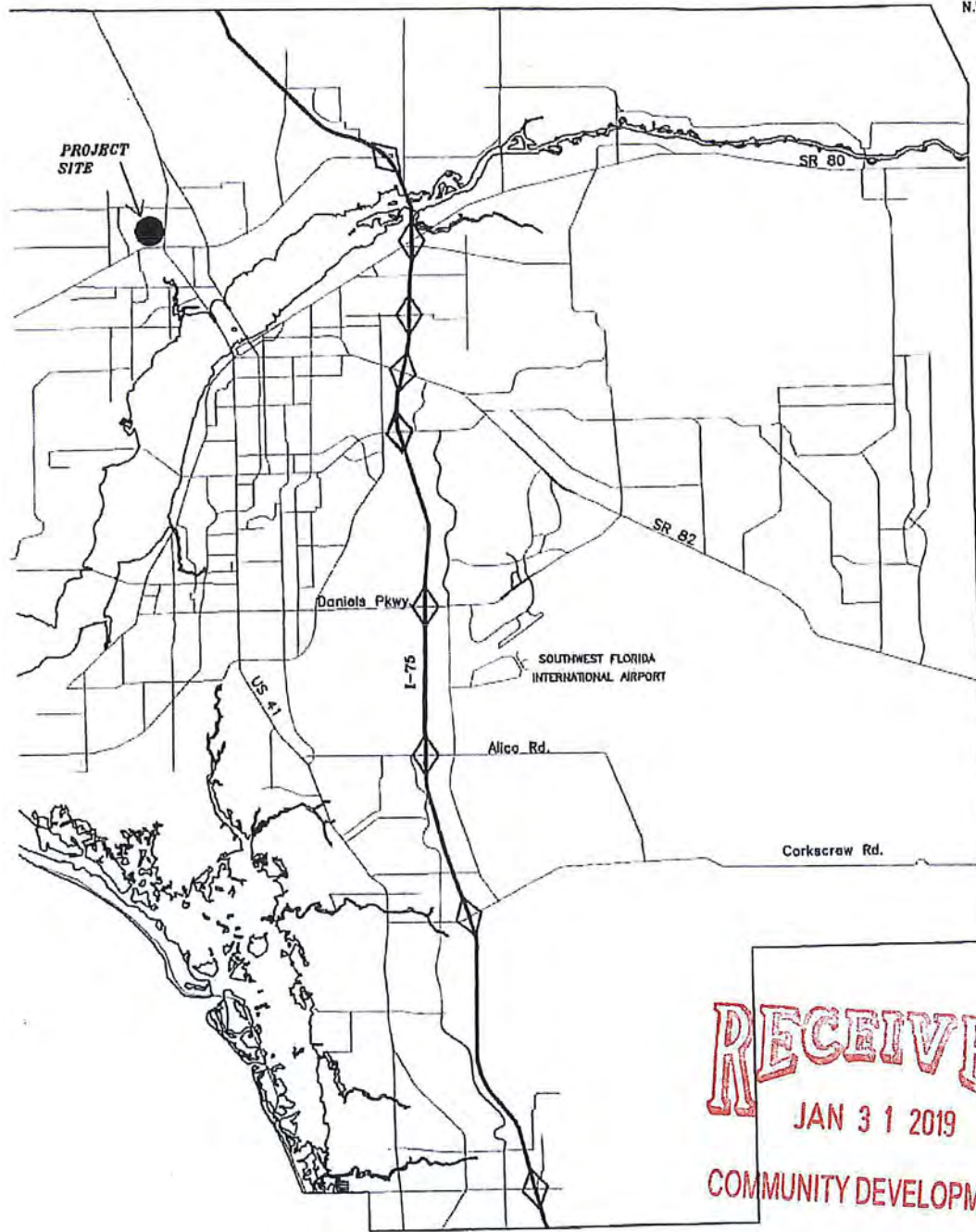
Conclusions

The Traffic Monitoring Report for Merchants Crossing has shown that the Project's field measured peak hour trip generation is 1,328 PM peak hour trips. These trips include a certain amount of pass-by trips and are external volumes and not net new external trips. The field-measured Project volumes are significantly less (i.e., approximately 54% less) than the peak hour trip generation estimates of the DRI traffic study.

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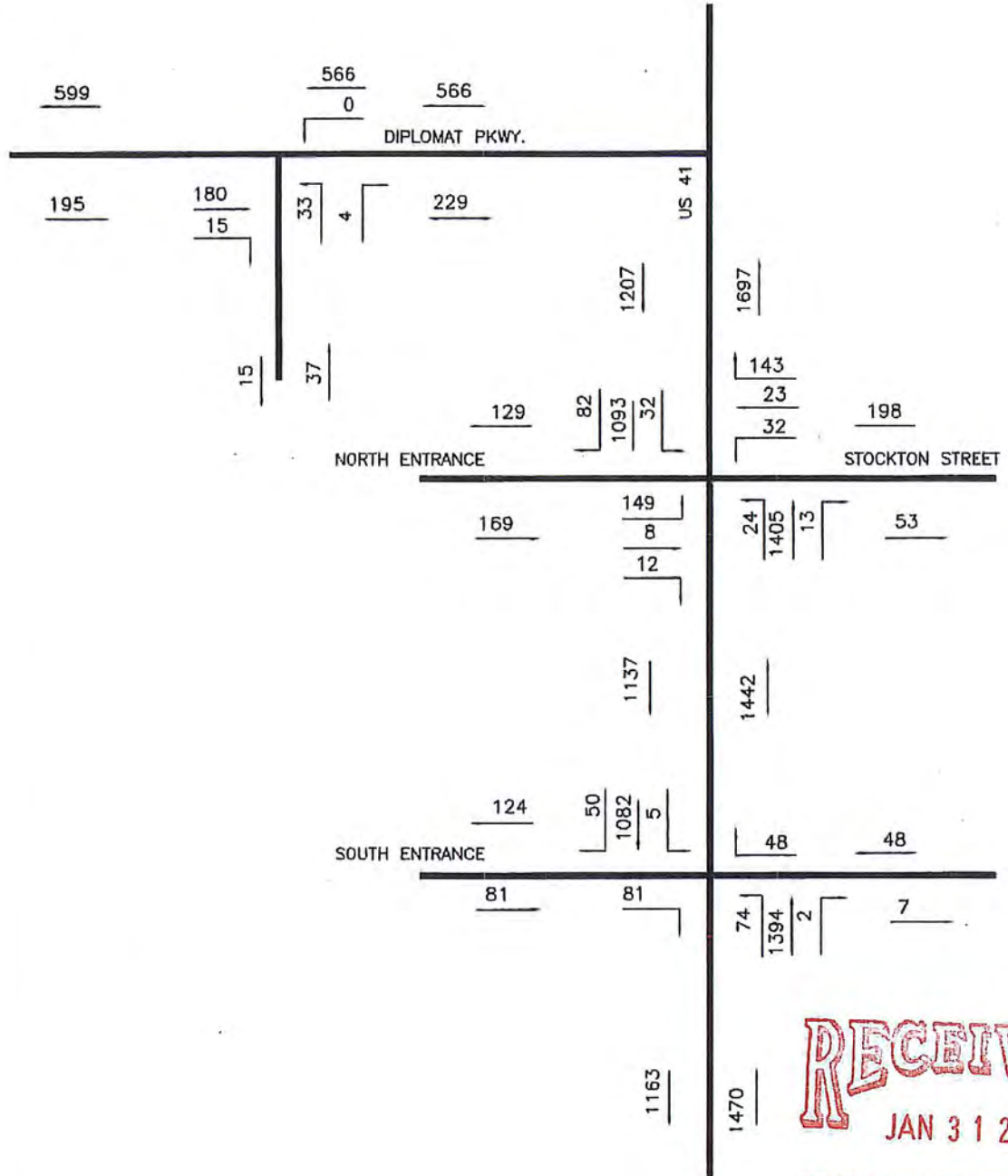


MERCHANTS CROSSING
 TRAFFIC MONITORING REPORT

PROJECT LOCATION

14502/01A/0314

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MERCHANTS CROSSING
TRAFFIC MONITORING REPORT

EXISTING
PM PEAK HOUR
TRAFFIC VOLUMES

14502/02A/0413

2A

EXHIBIT 3
MERCHANTS CROSSING
TRAFFIC MONITORING REPORT
FIELD MEASURED ENTRANCE VOLUME SUMMARY
EXISTING (2014) - PM PEAK HOUR

<u>Intersection</u>	<u>Inbound</u>	<u>Outbound</u>	<u>Total</u>
Diplomat Parkway/Project Entrance	15	37	52
US 41/North Project Entrance	129	169	298
US 41/South Project Entrance	124	81	205
Pine Island Road/East Project Entrance	81	65	146
Pine Island Road/Middle Project Entrance	153	209	362
Pine Island Road/West Project Entrance	<u>120</u>	<u>145</u>	<u>265</u>
Total	622	706	1,328

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APPENDIX I

THE MERCHANTS CROSSING SEVENTH DRI
DEVELOPMENT ORDER AMENDMENT
CONDITION G.2 TRANSPORTATION

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Incorporated as conditions for development order approval.

G. TRANSPORTATION

1. The transportation impact assessment upon which this Development Order is based assumes the development patterns and land uses reflected in the Merchants Crossing DR/ADA application. The application assumes one continuous phase of development with build out by the year 2010/2012.

2. Merchants Crossing must submit an annual traffic monitoring report. The monitoring program must be designed in cooperation with the Lee County Department of Transportation the Southwest Florida Regional Planning Council and the Florida Department of Transportation. The annual monitoring report must contain at a minimum AM and PM, peak-hour peak season traffic counts (with turning movements) and mutually agreed

upon professionally acceptable level of service analyses at all project access points onto the roadway network and at the following intersections:

SR 78 (Pine Island Rd.) at:
US 41
Pondella Rd.
Del Prado Blvd.
Santa Barbara Blvd.
SR 78 (Bayshore Rd.) at:
Business 41
Hart Rd.

Del Prado Blvd. at:
SR 78 (Pine Island Rd.)
Viscaya Pkwy.
Hancock Bridge Pkwy.
US 41 at:
Pondella Rd.

In addition, peak season daily traffic counts and level of service calculations must be submitted as part of the annual monitoring report for all project access roads and the roadway links listed below:

SR 78 (Pine Island Rd.)
Piney Rd. to Santa Barbara Blvd.

SR 78 (Bayshore Rd.)
Business 41 to Slater Rd.

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Del Prado Blvd.
SR 78 to Viscaya Pkwy.

US 41
Hancock Bridge Pkwy. to Business 41

Business 41 from
SR 78 to Littleton Rd.

Pondella Rd.
US 41 to Orange Grove Blvd.

Merchants Crossing must submit the annual monitoring report to Lee County DOT, the Southwest Florida Regional Planning Council and the Florida Department of Transportation SW Area Office for review. The first report must be submitted one year after the issuance of the DRI Development Order for the property included in the Merchants Crossing DRI/ADA application. Reports must be submitted annually until project build out. Actual build out will occur when the developer has completed the construction authorized by this Development Order. Declared build out occurs if the developer formally declares in writing to the County Administrator that nothing more will be constructed despite the fact that less than the permissible maximum had been built to date. The purposes of the annual monitoring program are to:

- (a) Determine whether or not the traffic levels projected in the traffic impact assessment for Merchants Crossing are exceeded by actual impacts;
- (b) Assist Lee County and F.D.O.T. in determining the proper timing of necessary roadway improvements; and
- (c) Determine the project's external trip generation.

It is recognized and understood that traffic counts may be obtained from original machine and manual peak hour counts, Lee County traffic volume reports, Florida Department of Transportation, other ADA developments with similar monitoring requirements, and other reliable sources of traffic counts.

3. As mitigation for the transportation impacts of Merchants Crossing, the developer must provide the following:

a. The developer must make a cash payment of \$1,500,000 into an escrow account on or before October 1, 1993, or upon issuance of the first building permit, whichever occurs earlier. All interest earned on this account will accrue to the benefit of the County. A portion of this money (up to a maximum of \$1 million as further limited in paragraph (3.3.f)) may be used for the widening of SR 78. The use of funds and terms of the escrow will be governed by a separate escrow agreement between the

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COMMUNITY DEVELOPMENT

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parties, and subject to approval by the County Attorney's office, which approval will not be unreasonably withheld. *This requirement has been satisfied.*

b. The developer must make a cash payment of \$791,370 on or before December 1, 1994, or upon issuance of the first building permit for Tract II, whichever occurred earlier as shown on the Master Concept Plan (M-1A, last revised July 1, 1991) attached to Zoning Resolution Z-90-034. The cash payments totaling \$2,291,370 may be considered as full credit against road impact fees. *This requirement has been satisfied.*

Should those provisions be repealed, amended or otherwise no longer in effect as part of Ordinance 89-17, as amended, they must nevertheless govern availability of credits under this Development Order as those provisions existed on the effective date of this Development Order.

c. Within 90 days of approval of the DR! Development Order, the developer must donate the right-of-way needed for widening SR 78 (Pine Island Road) and US 41 to the Florida Department of Transportation (FDOT), and must donate the 100 feet of right-of-way needed to extend Diplomat Parkway to the County. No roads impact fee credits may be applied for, or granted for, this right-of-way. *This requirement has been satisfied.*

d. The developer must construct, at no cost to the County, the following improvements to SR 78:

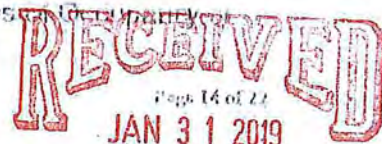
1) Re-sign the northbound US 41 approach to encourage northbound right turns at SR 78 to be made as right turns at Brown Road.

2) Reconstruct the eastbound/westbound approaches to provide a four-lane cross-section through the US 41 intersection and eliminate the "plateau" effect.

3) Re-time/re-phase the signal at the US 41/SR78 intersection to reflect the above improvements and to provide for protected and permissive left-turn movements.

The developer may not request or be granted roads impact fee credits to offset the cost of these intersection improvements.

The developer must submit the construction plans for the above intersection improvements within 120 days following approval of the DR! for filing with the County and State for their review. The developer may commence construction of the intersection improvements within 90 days of obtaining the permits for such improvements and will diligently pursue the work to its completion. The intersection improvements must be completed prior to obtaining any Certificates of Occupancy.



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Completion for any portion of the development.

Intersection improvements must be depicted on construction drawings prepared by the developer, which are subject to review and approval by Lee County DOT and FDOT. These plans are subject to modification as necessary to obtain FDOT approval, and as determined by DOT, to comply with the specifications for the interim improvements as recommended in the Lee County/DCA Settlement Agreement. The development cost includes the total engineering costs for the intersection.

The developer's obligation includes the full cost of design and engineering, drainage and relocation, right-of-way acquisition and dedication, construction of turn-lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing and signalization (as needed and warranted). The alignment, design, signalization and construction schedule must be approved by the County Engineer. *This requirement has been satisfied.*

e. The developer must donate the right-of-way for the remaining enclaved out-parcel on SR 78, or pay the full cost of condemnation if the property cannot be acquired, including attorney and appraisal fees. *This requirement has been satisfied.*

f. The developer must construct two additional travel lanes to SR 78 from US 41 west to the developer's westerly property line, then tapering back into the existing roadway. The improvements for SR 78 will be depicted on construction plans for SR 78, prepared by the developer, which are subject to review and approval by Lee County DOT and FDOT to ensure that they are consistent with the four-lane divided facility designed for SR 78, west of Piney Road. The developer may be reimbursed from the \$1,500,000 deposited in escrow by the developer pursuant to paragraph G.3.a. above for the non-site-related cost, up to a total of \$1 million. The amount is subject to review and approval by DOT, via approval of bid documents or any other necessary documentation. These improvements must be completed prior to obtaining any Certificates of Occupancy or Completion for any portion of the development. Merchants Crossing will pay all costs in excess of \$1 million to complete the SR 78 highway improvements at no cost to the County or FDOT. *This requirement has been satisfied.*

g. Once funds are placed in escrow, \$200,000 will be immediately transferred to FDOT for the acquisition of future right-of-way for SR 78 from the westerly boundary of the developer's property to Piney Road. In lieu of an additional payment of \$300,000 to FDOT from the escrow account for SR 78 right-of-way acquisition, Lee County, pursuant to its agreement with FDOT, has applied \$800,000 in County road impact fees toward the construction of the four-lane improvements on SR 78 from US 41 east, one half mile. After making the payments identified above, the balance of the funds in the escrow account were released to Lee County.



DRI 2019-00001

the ZVL calculation list updated through March 3, 2008 is attached as Exhibit E.

10. Compliance with all of the terms of the transportation related provisions of the development order satisfy the substantive requirements related to transportation facilities of Section 163.3202(2)(g), Florida Statutes (1989), Lee County Ordinance 89-33, the Lee County Comprehensive Plan and Rule 9J-5.0055, Florida Administrative Code, as they currently apply.

II. SOLID WASTE

1. The developer and tenants of the project must incorporate the solid waste demands of the project into the county solid waste management program and investigate methods of reducing solid waste volume, to include but not be limited to, conservation, recycling, trash compaction, and mechanical shredding at the project.

2. The developer and subsequent tenants of the project, must identify the proper methods for the on-site handling, and temporary storage procedures for any hazardous wastes that may be generated on-site, in accordance with local, regional, state and federal hazardous waste programs.

I. WASTEWATER MANAGEMENT

1. Treatment of wastewater will be provided by North Fort Myers Utility, Inc.

2. Septic tanks may be used only for the temporary construction trailer and temporary leasing office, but must be removed as soon as service is available from North Fort Myers Utilities.

3. Septic tanks may not be used for the disposal of any substance which is identified in federal, state or local lists as a hazardous substance.

4. As the Merchants Crossing DRI may eventually reuse treated effluent for spray irrigation, the developer must ensure that on-site ponds, lakes and wetlands are adequately buffered from possible effluent contamination.

5. The developer must provide assurance that commercial effluent, if generated by the project, will be treated separately from domestic wastewater and handled in accordance with FDER criteria.

6. The developer must obtain all necessary permits from SFWMD and Florida Department of Environmental Regulation (FDER) for the use of spray irrigation/effluent reuse.

J. CONCURRENCY

DRI 2019-00001

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COMMUNITY DEVELOPMENT

APPENDIX II

INTERSECTION TURNING MOVEMENT COUNTS

DRI 2019-00001

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COMMUNITY DEVELOPMENT

David Plummer & Associates
 Based On
 MSHA Highway Information Services Division
 Turning Counts Study - Field Street

Request No.: Charts Crossing Monitoring Re
 Job No.: 14502
 Location: US 41 @ North Project Entrance (Stocks)
 Date: 02/14/2011 Friday
 Recorder: DOTH
 Interval (MI):
 (In Minutes)

County: Lee
 Town: 0
 Weather: Good

PEAK HOURS	AM PERIOD 6:00AM-12:00PM	Start #/M/CH/2	End LED AM	Volume 0	PM PERIOD 12:00PM-7:00PM	Start 5:00 PM	End 6:00 PM	Volume 3016
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Street Name >	02-11				02-11				Stocks Street				North Project Entrance				GRAND TOTAL
	Southbound				Northbound				Westbound				Eastbound				
HOURLY ENDING	L	T	R	TOI	L	T	R	TOI	L	T	R	TOI	L	T	R	TOI	
7:15 AM				0				0				0				0	0
7:30 AM				0				0				0				0	0
7:45 AM				0				0				0				0	0
8:00 AM				0				0				0				0	0
8:15 AM				0				0				0				0	0
8:30 AM				0				0				0				0	0
8:45 AM				0				0				0				0	0
9:00 AM				0				0				0				0	0
9:15 AM				0				0				0				0	0
9:30 AM				0				0				0				0	0
9:45 AM				0				0				0				0	0
10:00 AM				0				0				0				0	0
10:15 AM				0				0				0				0	0
10:30 AM				0				0				0				0	0
10:45 AM				0				0				0				0	0
11:00 AM				0				0				0				0	0
11:15 AM				0				0				0				0	0
11:30 AM				0				0				0				0	0
11:45 AM				0				0				0				0	0
12:00 PM				0				0				0				0	0
12:15 PM				0				0				0				0	0
12:30 PM				0				0				0				0	0
12:45 PM				0				0				0				0	0
1:00 PM				0				0				0				0	0
1:15 PM				0				0				0				0	0
1:30 PM				0				0				0				0	0
1:45 PM				0				0				0				0	0
2:00 PM				0				0				0				0	0
2:15 PM				0				0				0				0	0
2:30 PM				0				0				0				0	0
2:45 PM				0				0				0				0	0
3:00 PM				0				0				0				0	0
3:15 PM				0				0				0				0	0
3:30 PM				0				0				0				0	0
3:45 PM				0				0				0				0	0
4:00 PM				0				0				0				0	0
4:15 PM	12	395	20	337	8	356	0	354	5	5	27	37	26	1	0	37	765
4:30 PM	12	286	25	323	7	351	4	352	8	1	28	38	49	8	2	42	765
4:45 PM	8	259	25	333	3	339	2	344	2	3	19	24	39	3	2	44	745
5:00 PM	7	268	23	298	7	302	5	314	5	9	26	40	40	0	1	41	693
5:15 PM	8	282	26	316	5	357	5	367	5	3	20	39	29	1	7	37	769
5:30 PM	8	289	22	319	5	347	1	356	9	10	43	62	47	2	0	49	786
5:45 PM	10	291	10	310	6	335	3	347	6	7	29	37	38	2	4	44	747
6:00 PM	6	231	16	253	5	363	4	372	9	5	43	60	35	3	1	39	724
TOTAL	77	2251	175	2498	49	2733	24	2800	53	41	243	337	304	17	17	333	5974
AM Peak Vol	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PM Peak Vol	32	1693	82	1207	24	1405	13	1442	32	23	143	195	149	6	12	169	3016
Peak Hour Factor (PHF)																	
AM Peak Hour		0.00				0.00				0.00				0.00		0.00	
PM Peak Hour		0.95				0.97				0.90				0.86		0.93	

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 COMMUNITY DEVELOPMENT

David Flimmer & Associates
 Based On
 MSHA Highway Information Services Division
 Turning Counts Study - Field Sheet

Request No: Chant's Crossing Monitoring Re
 Job No: 14502

Location: US-41 @ South Project Entrance / BES I
 Date: 02/12/201 Wednesday
 Recorder: KWJW
 Interval (dd):
 (In Minutes)

County: Lee
 Town: 0
 Weather: Overcast

PEAK HOURS	AM PERIOD 6:00AM-12:00PM	Start Mileage	End 1.00 MI	Volume 0	PM PERIOD 12:00PM-7:00PM	Start 4:15 PM	End 5:15 PM	Volume 2847
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Street Name >	US 41				US 41				CVS @ Entrance				South Project Entrance				GRAND TOTAL
	Southbound				Northbound				Westbound				Eastbound				
	L	T	R	TOI	L	T	R	TOI	L	T	R	TOI	L	T	R	TOI	
7:15 AM				0				0				0				0	0
7:30 AM				0				0				0				0	0
7:45 AM				0				0				0				0	0
8:00 AM				0				0				0				0	0
8:15 AM				0				0				0				0	0
8:30 AM				0				0				0				0	0
8:45 AM				0				0				0				0	0
9:00 AM				0				0				0				0	0
9:15 AM				0				0				0				0	0
9:30 AM				0				0				0				0	0
9:45 AM				0				0				0				0	0
10:00 AM				0				0				0				0	0
10:15 AM				0				0				0				0	0
10:30 AM				0				0				0				0	0
10:45 AM				0				0				0				0	0
11:00 AM				0				0				0				0	0
11:15 AM				0				0				0				0	0
11:30 AM				0				0				0				0	0
11:45 AM				0				0				0				0	0
12:00 PM				0				0				0				0	0
12:15 PM				0				0				0				0	0
12:30 PM				0				0				0				0	0
12:45 PM				0				0				0				0	0
1:00 PM				0				0				0				0	0
1:15 PM				0				0				0				0	0
1:30 PM				0				0				0				0	0
1:45 PM				0				0				0				0	0
2:00 PM				0				0				0				0	0
2:15 PM				0				0				0				0	0
2:30 PM				0				0				0				0	0
2:45 PM				0				0				0				0	0
3:00 PM				0				0				0				0	0
3:15 PM				0				0				0				0	0
3:30 PM				0				0				0				0	0
3:45 PM				0				0				0				0	0
4:00 PM				0				0				0				0	0
4:15 PM	3	272	24	299	23	370	2	395	0	0	9	9	0	0	21	34	737
4:30 PM	8	279	18	303	9	353	0	342	0	0	8	8	0	0	33	33	686
4:45 PM	4	218	15	237	12	339	1	343	0	0	11	11	0	0	27	27	618
5:00 PM	5	395	15	325	16	386	0	401	0	0	13	13	0	0	19	19	785
5:15 PM	0	392	13	315	26	401	0	426	0	0	19	19	0	0	25	25	785
5:30 PM	3	195	11	209	16	365	0	321	0	0	8	8	0	0	27	27	565
5:45 PM	1	234	11	246	19	363	2	384	0	0	12	12	0	0	19	19	652
6:00 PM	1	239	15	254	14	329	0	343	0	0	9	9	0	0	19	19	626

TOTAL	23	2644	122	2189	133	2017	5	2955	0	0	83	89	0	0	194	194	5427
AM Peak Vol	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PM Peak Vol	15	1184	61	1189	61	1490	1	1512	0	0	51	51	0	0	104	104	2817

Peak Hour Factor (PHF)	AM Peak Hour	PM Peak Hour
	0.00	0.00
	0.91	0.89
		0.67
		0.79
		0.91

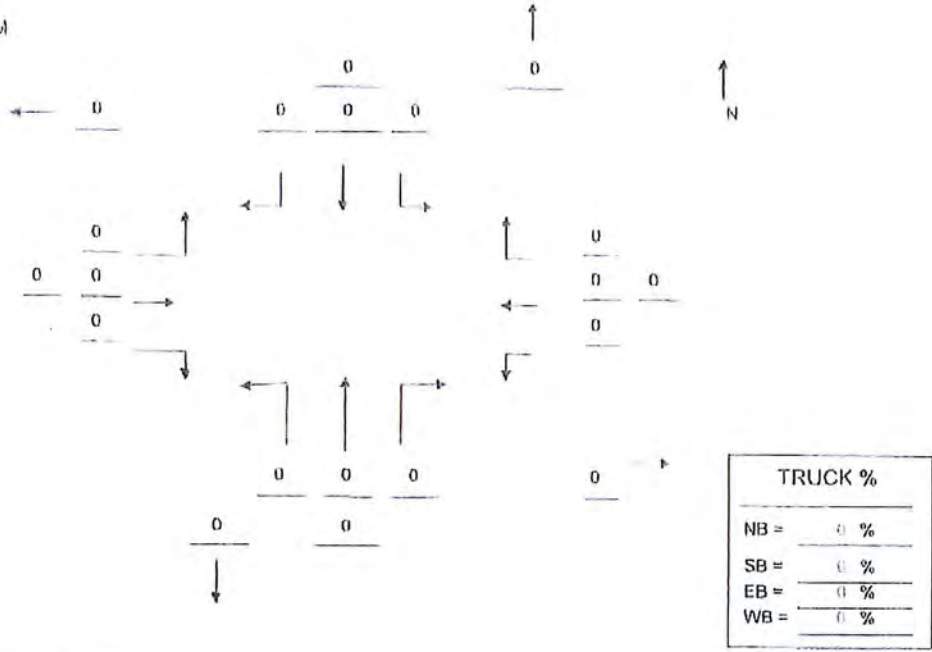
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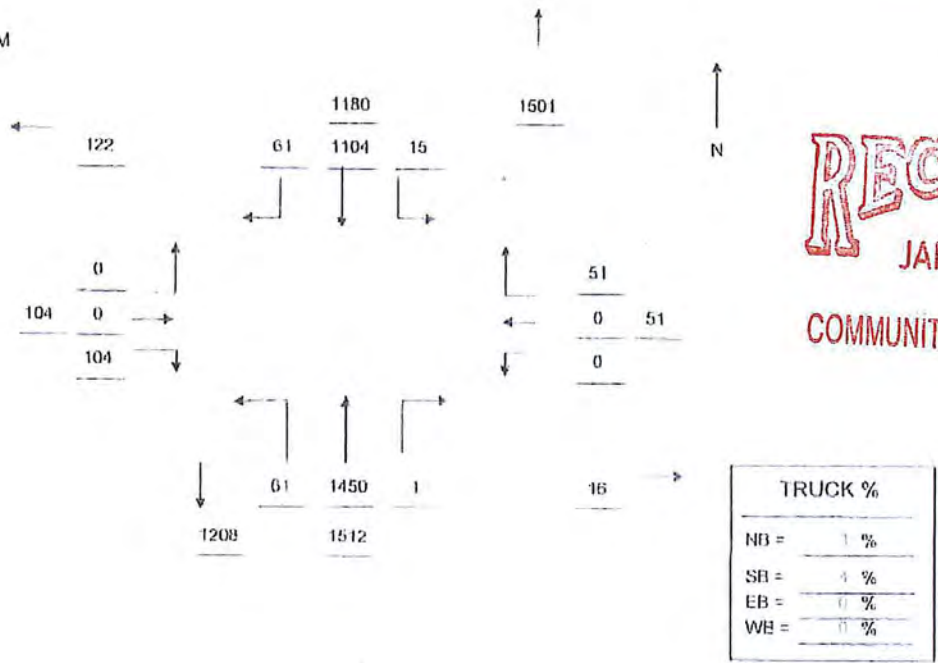
**DPA
RAW TURNING MOVEMENT DIAGRAM**

LOCATION:	US 41 @ South Project Entrance / BB&T and CVS	CITY:	0
COUNTY :	Lee	DATE:	02/12/2014 Wednesday
OBSERVER:	AW/JV		

AM Peak Hour
12:00 AM 1:00 AM



PM Peak Hour
4:15 PM 5:15 PM



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David Plummer & Associates
 Based On
 MSHA Highway Information Services Division
 Turning Counts Study - Field Sheet

Request No: Clients Crossing Monitoring Re
 Job No: 14502

Location: Oxford Parkway @ Project Entrance
 Date: 02/12/201 Wednesday
 Recorder: DC/RC
 Interval (d): 15
 (h Minutes)

County: Lee
 Town: 0
 Weather: Overcast

PEAK HOURS	AM PERIOD 5:00AM-12:00PM	Start	End	Volume	PM PERIOD 12:00PM-7:00PM	Start	End	Volume
		5:00 AM	1:00 AM	0		5:03 PM	6:00 PM	788

Street Name -> HOUR ENDING	Southbound				Northbound				Westbound				Eastbound				GRAND TOTAL
	L	T	R	TOI	L	T	R	TOI	L	T	R	TOI	L	T	R	TOI	
	7:15 AM				0				0				0				
7:30 AM				0				0				0				0	0
7:45 AM				0				0				0				0	0
8:00 AM				0				0				0				0	0
8:15 AM				0				0				0				0	0
8:30 AM				0				0				0				0	0
8:45 AM				0				0				0				0	0
9:00 AM				0				0				0				0	0
9:15 AM				0				0				0				0	0
9:30 AM				0				0				0				0	0
9:45 AM				0				0				0				0	0
10:00 AM				0				0				0				0	0
10:15 AM				0				0				0				0	0
10:30 AM				0				0				0				0	0
10:45 AM				0				0				0				0	0
11:00 AM				0				0				0				0	0
11:15 AM				0				0				0				0	0
11:30 AM				0				0				0				0	0
11:45 AM				0				0				0				0	0
12:00 PM				0				0				0				0	0
12:15 PM				0				0				0				0	0
12:30 PM				0				0				0				0	0
12:45 PM				0				0				0				0	0
1:00 PM				0				0				0				0	0
1:15 PM				0				0				0				0	0
1:30 PM				0				0				0				0	0
1:45 PM				0				0				0				0	0
2:00 PM				0				0				0				0	0
2:15 PM				0				0				0				0	0
2:30 PM				0				0				0				0	0
2:45 PM				0				0				0				0	0
3:00 PM				0				0				0				0	0
3:15 PM				0				0				0				0	0
3:30 PM				0				0				0				0	0
3:45 PM				0				0				0				0	0
4:00 PM				0				0				0				0	0
4:15 PM	0	0	0	0	4	0	3	7	0	95	0	95	0	82	0	50	102
4:30 PM	0	0	0	0	9	0	0	9	0	112	0	112	0	85	0	94	216
4:45 PM	0	0	0	0	4	0	1	5	0	110	0	110	0	90	4	100	215
5:00 PM	0	0	0	0	8	0	1	9	0	106	0	106	0	49	2	51	160
5:15 PM	0	0	0	0	13	0	0	13	0	126	0	126	0	46	5	51	190
5:30 PM	0	0	0	0	9	0	2	11	0	133	0	133	0	53	3	56	200
5:45 PM	0	0	0	0	0	0	0	0	0	165	0	165	0	41	2	43	214
6:00 PM	0	0	0	0	5	0	2	7	0	142	0	142	0	40	5	45	194

TOTAL	0	0	0	0	58	0	9	67	0	980	0	929	0	492	33	530	1580
AM Peak Vol	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PM Peak Vol	0	0	0	0	33	0	4	37	0	566	0	566	0	189	16	195	793

Peak Hour Factor (PHF)																	
AM Peak Hour	0.00				0.00				0.00					0.00			0.00
PM Peak Hour	0.00				0.71				0.88					0.87			0.93

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COMMUNITY DEVELOPMENT

David Plummer & Associates
 Based On
 MSHA Highway Information Services Division
 Turning Counts Study - Field Street

Request No: charts Crossing Monitoring Re
 Job No.: 11502

Location: Pine Island Road (SR 76) @ East Project
 Date: 02/13/2019 Thursday
 Recorder: DC/RC
 Interval (in Minutes): 15

County: Lee
 Town: 0
 Weather: Overcast

PEAK HOURS	AM PERIOD 6:00AM-12:00PM	Stat			End			Volume	PM PERIOD 12:00PM-7:00PM	Stat			End			Volume
		L	T	R	L	T	R			L	T	R	L	T	R	
								0								288

Street Name >	East Project Entrance				N. Pine Island Street				Pine Island Road (SR 76)				Pine Island Road (SR 76)				GRAH TOTAL
	Southbound				Northbound				Westbound				Eastbound				
	L	T	R	TOT	L	T	R	TOT	L	T	R	TOT	L	T	R	TOT	
7:15 AM				0				0				0				0	0
7:30 AM				0				0				0				0	0
7:45 AM				0				0				0				0	0
8:00 AM				0				0				0				0	0
8:15 AM				0				0				0				0	0
8:30 AM				0				0				0				0	0
8:45 AM				0				0				0				0	0
9:00 AM				0				0				0				0	0
9:15 AM				0				0				0				0	0
9:30 AM				0				0				0				0	0
9:45 AM				0				0				0				0	0
10:00 AM				0				0				0				0	0
10:15 AM				0				0				0				0	0
10:30 AM				0				0				0				0	0
10:45 AM				0				0				0				0	0
11:00 AM				0				0				0				0	0
11:15 AM				0				0				0				0	0
11:30 AM				0				0				0				0	0
11:45 AM				0				0				0				0	0
12:00 PM				0				0				0				0	0
12:15 PM				0				0				0				0	0
12:30 PM				0				0				0				0	0
12:45 PM				0				0				0				0	0
1:00 PM				0				0				0				0	0
1:15 PM				0				0				0				0	0
1:30 PM				0				0				0				0	0
1:45 PM				0				0				0				0	0
2:00 PM				0				0				0				0	0
2:15 PM				0				0				0				0	0
2:30 PM				0				0				0				0	0
2:45 PM				0				0				0				0	0
3:00 PM				0				0				0				0	0
3:15 PM				0				0				0				0	0
3:30 PM				0				0				0				0	0
3:45 PM				0				0				0				0	0
4:00 PM				0				0				0				0	0
4:15 PM	0	0	23	23	0	0	1	1	0	418	27	449	0	260	0	263	747
4:30 PM	0	0	10	10	0	0	4	4	0	341	27	368	0	269	0	269	679
4:45 PM	0	0	15	15	0	0	3	3	0	415	26	441	0	256	1	257	716
5:00 PM	0	0	21	21	0	0	4	4	0	310	20	330	0	264	2	266	624
5:15 PM	0	0	15	15	0	0	1	1	0	449	20	469	0	311	2	313	798
5:30 PM	0	0	22	22	0	0	4	4	0	320	20	340	0	257	2	259	675
5:45 PM	0	0	10	10	0	0	4	4	0	424	24	448	0	293	5	298	760
6:00 PM	0	0	10	10	0	0	0	0	0	350	17	367	0	245	0	245	630
TOTAL	0	0	142	142	0	0	21	21	0	3075	131	3206	0	2195	15	2210	5629
AM Peak Vol	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PM Peak Vol	0	0	65	65	0	0	9	9	0	1503	61	1674	0	1166	9	1175	2863

Peak Hour Factor (PHF)	
AM Peak Hour	0.00
PM Peak Hour	0.74

AM Peak Hour	0.00	0.00	0.00	0.00
PM Peak Hour	0.74	0.55	0.69	0.59

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COMMUNITY DEVELOPMENT

David Plummer & Associates
 Based On
 MSHA Highway Information Services Division
 Turning Counts Study - Field Sheet

Request No.: Charts Crossing Monitoring Re
 Job No.: 14592
 Location: Pine Island Road (SR 76) @ Middle Prvy
 Date: 02/13/201 Thursday
 Recorder: DOT/LS
 Interval (mi): 5
 (In Minutes)

County: Lee
 Town: 0
 Weather: Overcast

PEAK HOURS	AM PERIOD 6:00AM-12:00PM	Start	End	Volume	PM PERIOD 12:00PM-7:00PM	Start	End	Volume
		8:00AM	1:00 AM	0		4:45 PM	5:45 PM	2135

Street Name ->	Middle Prvy (SR 76)				None				Pine Island Road (SR 76)				Pine Island Road (SR 76)				GRAND TOTAL
	Southbound		Northbound		Westbound		Eastbound		Westbound		Eastbound		Westbound		Eastbound		
	L	T	R	TOI	L	T	R	TOI	L	T	R	TOI	L	T	R	TOI	
7:15 AM				0				0				0				0	0
7:30 AM				0				0				0				0	0
7:45 AM				0				0				0				0	0
8:00 AM				0				0				0				0	0
8:15 AM				0				0				0				0	0
8:30 AM				0				0				0				0	0
8:45 AM				0				0				0				0	0
9:00 AM				0				0				0				0	0
9:15 AM				0				0				0				0	0
9:30 AM				0				0				0				0	0
9:45 AM				0				0				0				0	0
10:00 AM				0				0				0				0	0
10:15 AM				0				0				0				0	0
10:30 AM				0				0				0				0	0
10:45 AM				0				0				0				0	0
11:00 AM				0				0				0				0	0
11:15 AM				0				0				0				0	0
11:30 AM				0				0				0				0	0
11:45 AM				0				0				0				0	0
12:00 PM				0				0				0				0	0
12:15 PM				0				0				0				0	0
12:30 PM				0				0				0				0	0
12:45 PM				0				0				0				0	0
1:00 PM				0				0				0				0	0
1:15 PM				0				0				0				0	0
1:30 PM				0				0				0				0	0
1:45 PM				0				0				0				0	0
2:00 PM				0				0				0				0	0
2:15 PM				0				0				0				0	0
2:30 PM				0				0				0				0	0
2:45 PM				0				0				0				0	0
3:00 PM				0				0				0				0	0
3:15 PM				0				0				0				0	0
3:30 PM				0				0				0				0	0
3:45 PM				0				0				0				0	0
4:00 PM				0				0				0				0	0
4:15 PM	45	0	12	57	0	0	0	0	2	308	33	343	25	239	0	264	664
4:30 PM	44	0	14	58	0	0	0	0	3	336	21	357	11	239	-0	241	651
4:45 PM	34	0	16	50	0	0	0	0	3	346	34	380	0	219	0	225	629
5:00 PM	39	0	30	69	0	0	0	0	2	347	36	383	11	220	0	231	685
5:15 PM	39	0	18	57	0	0	0	0	1	343	31	374	12	233	0	245	677
5:30 PM	38	0	14	52	0	0	0	0	3	364	34	401	9	237	0	246	699
5:45 PM	36	0	10	46	0	0	0	0	0	342	22	364	12	245	0	262	674
6:00 PM	42	0	10	52	0	0	0	0	2	345	19	364	9	191	0	200	618
TOTAL	319	0	124	443	0	0	0	0	16	2703	236	2940	100	1814	0	1914	5306
AM Peak Vol	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PM Peak Vol	154	0	22	226	0	0	0	0	6	1396	123	1525	49	935	0	984	2735

Peak Hour Factor (PHF)	AM Peak Hour	PM Peak Hour
	0.00	0.67
	0.00	0.67
	0.00	0.67
	0.00	0.67
	0.00	0.67

DRI 2019-00001

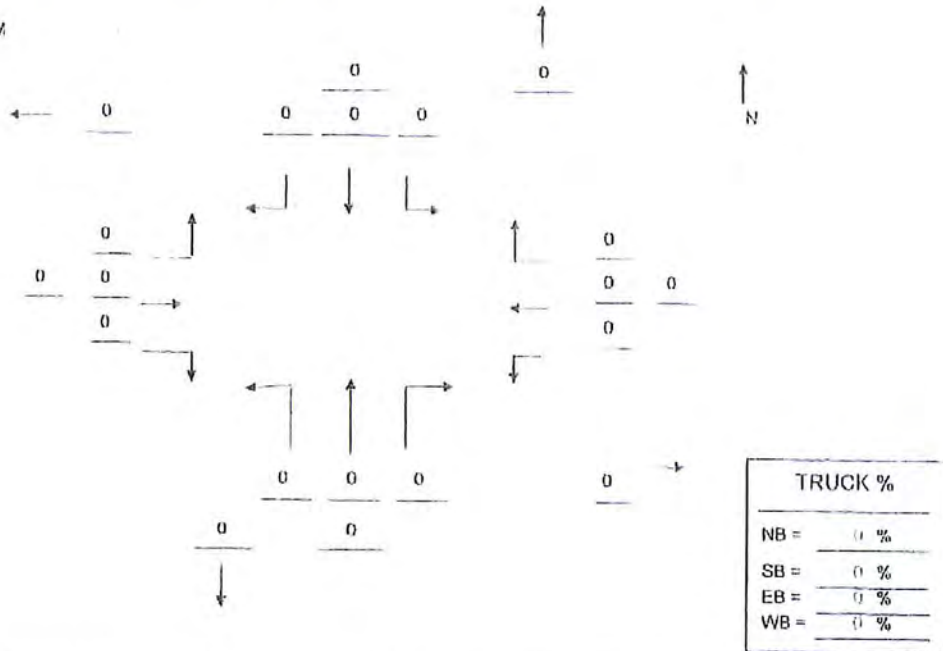
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 JAN 31 2019

COMMUNITY DEVELOPMENT

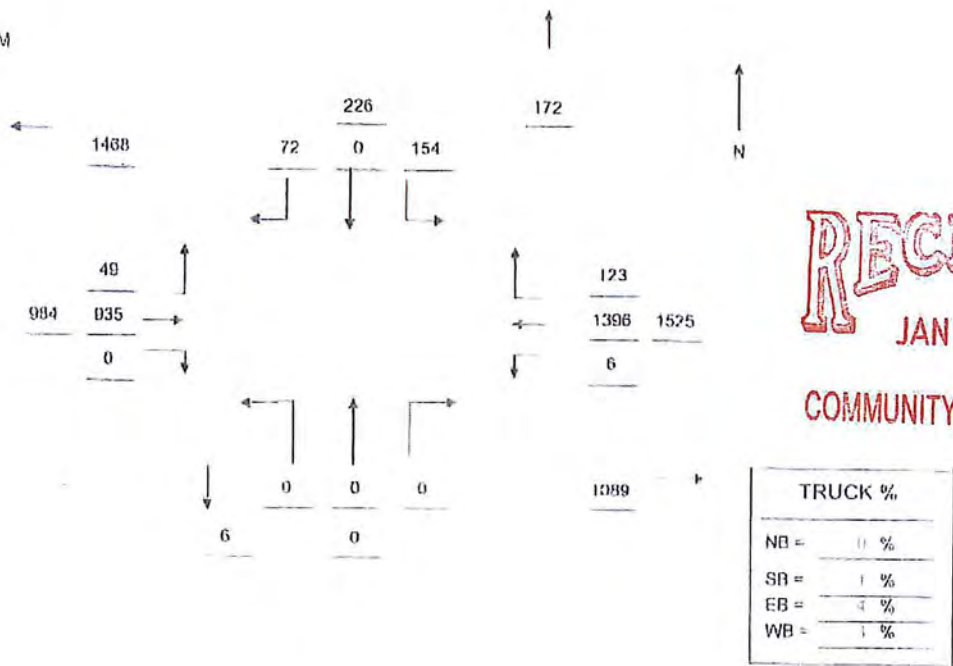
**DPA
RAW TURNING MOVEMENT DIAGRAM**

LOCATION:	Pine Island Road (SR 78) @ Middle Project Entrance	CITY:	0
COUNTY :	Lee	DATE:	02/13/2014 Thursday
OBSERVER:	DD/HH		

AM Peak Hour
12:00 AM 1:00 AM



PM Peak Hour
4:45 PM 5:45 PM



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COMMUNITY DEVELOPMENT

David Plummer & Associates
 Based On
 MSBA Highway Information Services Division
 Turning Counts Study - Field Sheet

Request No: 14502
 Job No: 14502

Location: Pine Island Road (SR 78) @ West Project
 Date: 02/13/2019 Thursday
 Recorder: AWJWJ
 Interval (td): 15 (in Minutes)

County: Lee
 Town: 0
 Weather: Overcast

PEAK HOURS	AM PERIOD 6:00AM 12:00PM	Start	End	Volume	PM PERIOD 12:00PM 7:00PM	Start	End	Volume
		1:00 AM		0		5:00 PM	6:00 PM	755

Street Name →	West Project Entrance				Junction				Pine Island Road (SR 78)				Pine Island Road (SR 78)				GRAND TOTAL
	Southbound				Northbound				Westbound				Eastbound				
	L	T	R	TOI	L	T	R	TOI	L	T	R	TOI	L	T	R	TOI	
7:15 AM				0				0				0				0	0
7:30 AM				0				0				0				0	0
7:45 AM				0				0				0				0	0
8:00 AM				0				0				0				0	0
8:15 AM				0				0				0				0	0
8:30 AM				0				0				0				0	0
8:45 AM				0				0				0				0	0
9:00 AM				0				0				0				0	0
9:15 AM				0				0				0				0	0
9:30 AM				0				0				0				0	0
9:45 AM				0				0				0				0	0
10:00 AM				0				0				0				0	0
10:15 AM				0				0				0				0	0
10:30 AM				0				0				0				0	0
10:45 AM				0				0				0				0	0
11:00 AM				0				0				0				0	0
11:15 AM				0				0				0				0	0
11:30 AM				0				0				0				0	0
11:45 AM				0				0				0				0	0
12:00 PM				0				0				0				0	0
12:15 PM				0				0				0				0	0
12:30 PM				0				0				0				0	0
12:45 PM				0				0				0				0	0
1:00 PM				0				0				0				0	0
1:15 PM				0				0				0				0	0
1:30 PM				0				0				0				0	0
1:45 PM				0				0				0				0	0
2:00 PM				0				0				0				0	0
2:15 PM				0				0				0				0	0
2:30 PM				0				0				0				0	0
2:45 PM				0				0				0				0	0
3:00 PM				0				0				0				0	0
3:15 PM				0				0				0				0	0
3:30 PM				0				0				0				0	0
3:45 PM				0				0				0				0	0
4:00 PM				0				0				0				0	0
4:15 PM	0	0	37	37	0	0	0	0	0	207	17	324	0	27	265	292	653
4:30 PM	0	0	42	42	0	0	0	0	0	201	15	319	0	20	237	267	616
4:45 PM	0	0	25	25	0	0	0	0	0	256	12	269	0	20	232	258	651
5:00 PM	0	0	31	31	0	0	0	0	0	324	7	331	0	17	232	249	611
5:15 PM	0	0	39	39	0	0	0	0	0	391	14	406	0	22	264	276	720
5:30 PM	0	0	38	38	0	0	0	0	0	382	10	392	0	20	260	270	700
5:45 PM	1	0	34	35	0	0	0	0	0	328	10	338	0	19	261	280	653
6:00 PM	0	0	33	33	0	0	0	0	0	263	10	273	0	15	205	220	616

TOTAL	1	0	279	280	0	0	0	0	0	2745	95	2840	0	166	1936	2102	6222
AM Peak Vol	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PM Peak Vol	1	0	144	145	0	0	0	0	0	1454	44	1498	0	76	976	1056	2699

Peak Hour Factor (PHF)	AM Peak Hour	PM Peak Hour
	0.00	0.63
	0.00	0.92
	0.00	0.93
	0.00	0.95

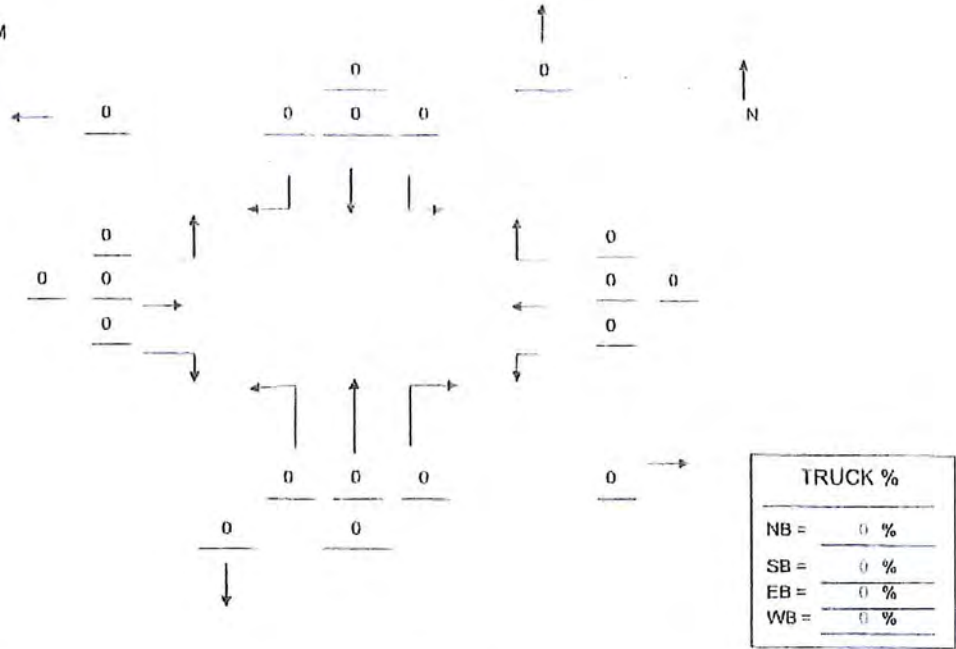
ORI 2019-00001

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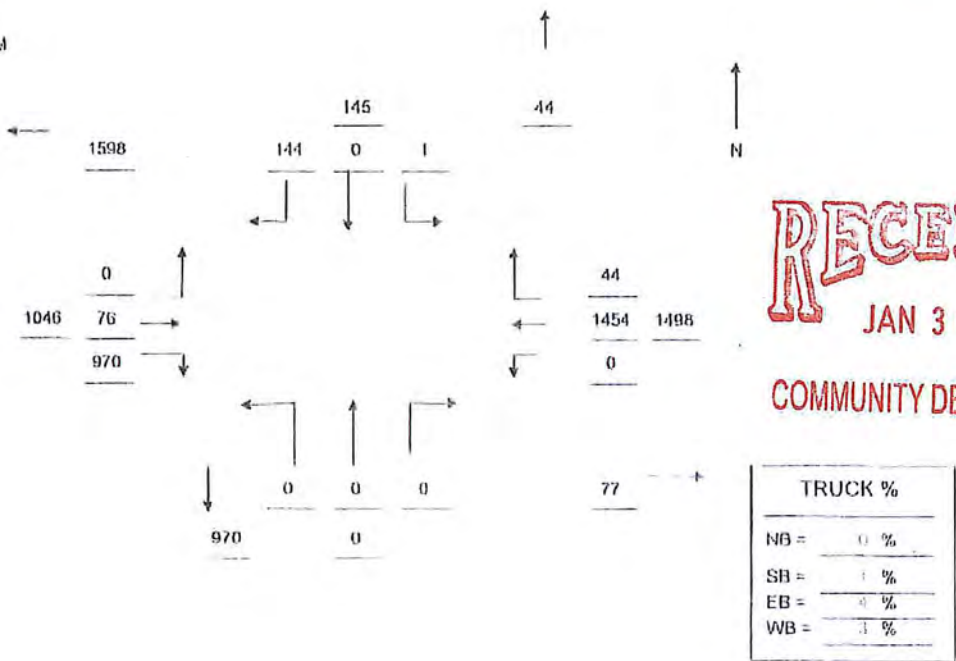
DPA
RAW TURNING MOVEMENT DIAGRAM

LOCATION:	Pine Island Road (SR 78) @ West Project Entrance	CITY:	0
COUNTY :	Lee	DATE:	02/13/2014 Thursday
OBSERVER:	AW/JW		

AM Peak Hour
12:00 AM 1:00 AM



PM Peak Hour
5:00 PM 6:00 PM



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COMMUNITY DEVELOPMENT

David Plummer & Associates
 Based On
 MSHA Highway Information Services Division
 Tarrant County Study - Field Sheet

Request No.: Charts Crossing Monitoring Re
 Job No.: 14502

Location: Pine Island Road (SR 78) @ West Project
 Date: 02/13/201 Thursday
 Recorder: AW/JW
 Interval (min): 15
 (In Minutes)

County: Lee
 Town: 0
 Weather: Overcast

PEAK HOURS	AM PERIOD 6:00AM-12:00PM	Start	End	Volume	PM PERIOD 12:00PM-5:00PM	Start	End	Volume
		6:00 AM	1:01 AM	0		5:00 PM	6:00 PM	2689

Street Name ->	West Project (SR 78)				Dover				Pine Island Road (SR 78)				Pine Island Road (SR 78)				GRAND TOTAL
	Southbound		Northbound		Westbound		Eastbound		Westbound		Eastbound		TOI				
HOUR ENDING	L	T	R	TOI	L	T	R	TOI	L	T	R	TOI	L	T	R	TOI	
7:15 AM				0				0				0				0	
7:30 AM				0				0				0				0	
7:45 AM				0				0				0				0	
8:00 AM				0				0				0				0	
8:15 AM				0				0				0				0	
8:30 AM				0				0				0				0	
8:45 AM				0				0				0				0	
9:00 AM				0				0				0				0	
9:15 AM				0				0				0				0	
9:30 AM				0				0				0				0	
9:45 AM				0				0				0				0	
10:00 AM				0				0				0				0	
10:15 AM				0				0				0				0	
10:30 AM				0				0				0				0	
10:45 AM				0				0				0				0	
11:00 AM				0				0				0				0	
11:15 AM				0				0				0				0	
11:30 AM				0				0				0				0	
11:45 AM				0				0				0				0	
12:00 PM				0				0				0				0	
12:15 PM				0				0				0				0	
12:30 PM				0				0				0				0	
12:45 PM				0				0				0				0	
1:00 PM				0				0				0				0	
1:15 PM				0				0				0				0	
1:30 PM				0				0				0				0	
1:45 PM				0				0				0				0	
2:00 PM				0				0				0				0	
2:15 PM				0				0				0				0	
2:30 PM				0				0				0				0	
2:45 PM				0				0				0				0	
3:00 PM				0				0				0				0	
3:15 PM				0				0				0				0	
3:30 PM				0				0				0				0	
3:45 PM				0				0				0				0	
4:00 PM				0				0				0				0	
4:15 PM	0	0	37	37	0	0	0	0	0	307	17	324	27	265	0	292	653
4:30 PM	0	0	42	42	0	0	0	0	0	304	16	319	20	237	0	257	618
4:45 PM	0	0	25	25	0	0	0	0	0	356	12	368	26	232	0	258	651
5:00 PM	0	0	31	31	0	0	0	0	0	324	7	331	17	232	0	249	611
5:15 PM	0	0	39	39	0	0	0	0	0	391	14	405	22	254	0	276	720
5:30 PM	0	0	38	38	0	0	0	0	0	382	10	392	20	250	0	270	700
5:45 PM	1	0	34	35	0	0	0	0	0	376	10	386	19	261	0	280	653
6:00 PM	0	0	33	33	0	0	0	0	0	353	10	363	15	205	0	220	616
TOTAL	1	0	279	280	0	0	0	0	0	2745	95	2840	166	1936	0	2102	5922
AM Peak Vol	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PM Peak Vol	1	0	144	145	0	0	0	0	0	1464	41	1493	70	979	0	1016	2609

Peak Hour Factor (PHF)	AM Peak Hour	PM Peak Hour
AM Peak Hour	0.00	0.00
PM Peak Hour	0.94	0.92

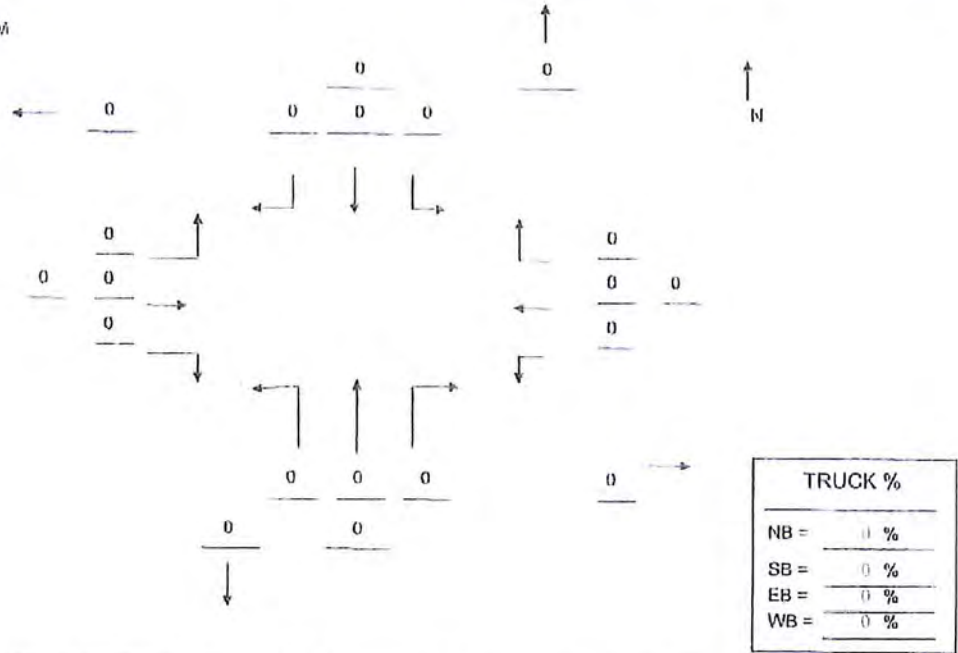
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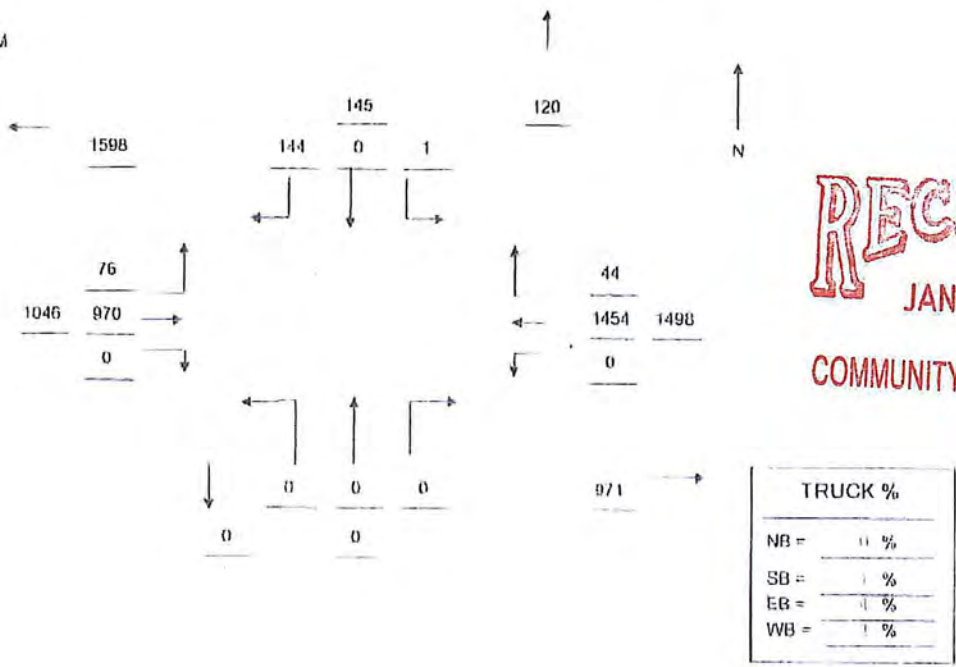
DPA
RAW TURNING MOVEMENT DIAGRAM

LOCATION:	Pine Island Road (SR 76) @ West Project Entrance	CITY:	0
COUNTY :	Lee	DATE:	02/13/2014 Thursday
OBSERVER:	AWW/IW		

AM Peak Hour
12:00 AM 1:00 AM



PM Peak Hour
5:00 PM 6:00 PM



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ATTACHMENT C



BONITA SPRINGS Tampa Orlando Sarasota

28100 Bonita Grande Dr., Suite 305, Bonita Springs, FL 34135
p. (239) 405-7777 f. (239) 405-7899

MERCHANTS CROSSING CPD/DRI
LIST OF ZONING ACTIONS

- ADD2017-00123
- ADD2016-00038
- ADD2012-00018
- Z-09-023
- Z-08-027
- Z-08-027
- ADD2006-00056
- ADD2005-00244
- ADD2005-00114
- ADD2004-00002
- Z-01-014
- PD-98-039
- PD-96-028
- PD-93-019
- Z-93-023
- Z-93-002
- PD-92-003
- Z-91-092
- Z-90-034
- Z-18-035 (Pending)

DRI 2019-00001

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COMMUNITY DEVELOPMENT

ATTACHMENT D

RESOLUTION NUMBER Z-90-034

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA

WHEREAS, Merchants Crossing of North Fort Myers, Inc., has properly filed an application for:

- a) Consideration of the Application for Development Approval (ADA) for a Development of Regional Impact (DRI) known as Merchants Crossing, State DRI No. 7-8889-92. This application was filed by William G. Phillips, authorized representative of Merchants Crossing Corporation, 5775-A Glenridge Drive, Suite 203, Atlanta, Georgia 30328.
- b) A rezoning from AG-2 and C-1A to Commercial Planned Development (CPD), to permit a mixed use commercial development of 629,000 square feet on 104.06 acres. The project proposal is to construct 461,000 square feet of retail and service commercial, 99,000 square feet of office and 150 hotel rooms, 28 acres of lakes and sloughs for water management and wetland mitigation, five (5) acres of preservation area and four (4) acres of roads. The project is planned over three and one-half (3.5) years in one phase to the year 1994. As proposed, the retail/entertainment tract and some perimeter parcels heights will be up to 50 feet above minimum flood elevation. The hotel/office campus and the remaining perimeter parcels are proposed at a maximum 135 feet above minimum flood elevation.

NOTE: If approved, the Master Concept Plan will deviate from the following Lee County standards:

- (1) The requirement that properties which exhibit soils, hydrology and vegetation characteristic of saltwater inundation or freshwater ponding be subject to certain additional regulations and ordinances [DSO Section C.1.b.(4)], to allow development in approved areas;
- (2) The requirement that all commercial and industrial uses shall provide a continuous visual screen of at least eight (8) feet in height along any lot line abutting a residential use (202.14.E.1), to require no screen;
- (3) The minimum excavation setback to a private property line of 50 feet (509.C.4.), to 15 feet;
- (4) Excavation depth for water retention from 12 feet (Section 509.B.), to the confining layer;
- (5) The minimum water retention excavation setbacks to a street right-of-way of 150 feet (509.C.4.), to 10 feet for internal frontage and access roads, and to 25 feet for US 41 and SR 78;
- (6) The requirement that a 4-foot fence be placed around excavations for water retentions when located less than 100 feet from any property under separate ownership (509.F.), to require no fencing;
- (7) The requirement that a development provide a parallel access road [DSO Section C.3.j.(2)], to allow the parallel access road to be placed behind the property out-parcels;

- (8) Withdrawn by the applicant;
- (9) Sections IV.C.1.a.4 and C.1.b.1, and Sections IV.C.2.a.1) a) and C.2.b. of the Lee County Sign Ordinance No. 85-26, as amended by Ordinance Nos. 88-33, 89-29 and 89-38 to exceed the maximum of 400 square feet of sign area for each street frontage of a corner parcel with over 330 feet of frontage on each street; and to exceed the apparent maximum number of two (2) ground-mounted identification signs (with or without directory signs attached) on any street frontage exceeding 330 feet of frontage. This deviation will allow one (1) corner sign; three (3) signs on Pine Island Road, one (1) at each permitted access along Pine Island Road; and two (2) signs along US 41, one at each permitted access along US 41;
- (10) The requirement that no more than an average of ten (10) parking spaces shall occur in an uninterrupted row [DSO Section C.5.e.2.b. (ii)], to allow an uninterrupted row with an average of 30 parking spaces;
- (11) The requirement that the intersection separation of an access road and arterial shall be 660 feet from centerline to centerline (DSO Section C.3.h.), to allow a separation of 609 feet± from the centerline of US 41 to the centerline of the entrance on SR 78 (C); and to allow an intersection separation between two access roads of 513 feet± from centerline to centerline (D); and to allow the intersection separations of an access road and driveway of 110 feet± from centerline to centerline (E); and to allow an intersection separation of two access roads of 490 feet± from centerline to centerline (F);
- (12) The requirement that buildings be set back from an arterial road with a required frontage road easement, a distance of ½ the right-of-way, plus 40 feet, plus 25 feet, (Zoning Section 202.18.B.2.a.), to allow a building setback of a distance of ½ the right-of-way plus 25 feet;
- (13) The requirement that an open drainage water course or retention pond include, on one side, a 20-foot width for maintenance purposes be kept clear (DSO Section C.2.q.), to allow a meandering, non-typical, maintenance way.
- (14) Off-street parking requirements (Section 202.16.J. 2.a. through n.), to allow four and one-half (4½) spaces per 1,000 square feet of total floor area;
- (15) and (16) Withdrawn by the applicant;
- (17) The minimum area open space requirements for large developments which requires that 50% of the required open space area shall include existing indigenous vegetation where such conditions exist (Section C.5.c.1.d.), to allow the applicant to utilize planted indigenous vegetation in landscaped areas, parking islands and buffer area;
- (18), (19) and (20) Withdrawn by the applicant;
- (21) Deviation from the requirement that in commercial areas a 10-inch minimum diameter line be used for water main installations, constructed in an external loop system with intersecting water mains installed every 2,000 feet [Section D.7.d.(3)(c)(iii)] to allow the applicant to design the on-site fire distribution system in accordance with recognized hydraulic design principles, with all hydraulic design calculations to be submitted to Lee County for review and approval; and
- (22) and (23) Withdrawn by the applicant.

WHEREAS, the subject property is located at 15131 North Cleveland Avenue, North Fort Myers, described more particularly as:

LEGAL DESCRIPTION: In Section 34, Township 43 South, Range 24 East, Lee County, Florida:

A parcel of land lying in Section 34, Township 43 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

COMMENCE at the Southwest corner of said Section 34;
THENCE N03°25'49"E, 43.75 feet to the POINT OF BEGINNING;
THENCE continue N03°25'49"E, 2,614.85 feet to the Northwest corner of the Southwest Quarter (SW¼) of said Section 34;
THENCE N89°55'09"E along the North line of said Quarter (¼) section line 200.45 feet;
THENCE N00°20'36"W, 6.51 feet;
THENCE S28°32'46"E, 786.93 feet;
THENCE S86°34'10"E, 747.11 feet;
THENCE N03°25'50"E, 100.00 feet;
THENCE N48°25'48"E, 212.13 feet;
THENCE S86°34'10"E, 650.00 feet to intersect the Westerly right-of-way of US 41 (SR 45, 200-foot right-of-way);
THENCE along said Westerly right-of-way S03°25'50"W, 1,680.99 feet to the Point of Curvature of a circular curve to the left, having a radius of 2,964.79 feet;
THENCE along the arc of said curve for a distance of 418.61 feet, the arc of which is subtended by a chord bearing S00°36'51"E, 418.26 feet to intersect the Northerly right-of-way of Pine Island Road (SR 78, 66-foot right-of-way)
THENCE along the said Northerly right-of-way, the following four courses: N89°55'30"W, 864.70 feet;
THENCE N00°00'10"E, 17.00 feet;
THENCE N89°59'50"W, 1,166.90 feet to the Point of Curvature of a circular curve to the left, having a radius of 2,914.79 feet;
THENCE along the arc of said curve for a distance of 164.61 feet, the arc of which is subtended by a chord bearing S88°23'06"W, 164.59 feet, to the POINT OF BEGINNING.

LESS

A parcel of land lying in Section 34, Township 43 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

From the Southwest corner of Section 34, Township 43 South, Range 24 East;
THENCE East along the South line of said Section 34 for a distance of 300.00 feet;
THENCE North and parallel with the West line of said Section 34 for a distance of 50.00 feet to the POINT OF BEGINNING of the lands herein described;
THENCE continue North and parallel with the West line of said Section 34 for a distance of 280.00 feet;
THENCE East a distance of 100.00 feet to a point 329.985 feet North of the South line of said Section 34 on a line parallel with the West line of said Section 34;
THENCE South parallel with the West line of said Section 34 a distance of 279.985 feet to the North side of Pine Island Road;
THENCE go West along the North side of Pine Island Road and parallel with the South line of said Section 34 a distance of 100.00 feet to the POINT OF BEGINNING.

continued....

ALSO LESS

A parcel of land lying in Section 34, Township 43 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

From the Southwest corner of Section 34, go East along the South line of said section a distance of 1,366.77 feet;
THENCE North 33.00 feet to the North right-of-way line of State Road 78 and the POINT OF BEGINNING. From said POINT OF BEGINNING run North 200.00 feet;
THENCE East 100.00 feet;
THENCE South 200.00 feet;
THENCE West along the North right-of-way line 100.00 feet to the POINT OF BEGINNING.

Containing 105 acres, more or less.

WHEREAS, the applicant has indicated the property's current STRAP number is 34-43-24-00-00001.0040; and

WHEREAS, proper authorization has been given to Humphrey & Knott, P.A., by Merchants Crossing of North Fort Myers, Inc., et al, the owners of the subject parcel, to act as agent to pursue this zoning application; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Hearing Examiner, with full consideration of all the evidence available; and

WHEREAS, the Lee County Hearing Examiner fully reviewed the matter in a public hearing held on April 17, 1990; and subsequently continued to September 28, 1990; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Board of County Commissioners; and

WHEREAS, in the legislative process the Lee County Board of County Commissioners gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on file with the county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that the Board of County Commissioners does hereby APPROVE with conditions a rezoning to Commercial Planned Development.

This approval is subject to the following conditions:

1. The development of this project shall be in accordance with the four-page Master Concept Plan identified as "Exhibits M.1 and M.2 dated last revised on May 9 and May 10, 1990, and submitted to the Zoning Division on May 11, 1990, M.3 dated May 29, 1990 and M.4 dated April 30, 1990," except as modified by the conditions in the DRI Development Order and the conditions below. This approval does not alleviate the need to comply with all state and county development regulations except as specifically modified by this approval.

2. Property development regulations and uses for this development shall be limited as follows:

Hotel Office Campus

Uses shall be as limited below:

Hotel

Hotel/Motel

Convention - not to exceed 150 units
As further limited by Section 528:
Rental & Leasing Establishments, Group I
Specialty Retail Shops, Groups I & II
Personal Services, Group I
Consumption-on-Premises, one
Cocktail Bar or Lounge, one
Essential Services (df)
Essential Service Facility, Group I only
Excavation, Water retention
Leasing Office, temporary
(One temporary leasing office to serve the entire project, not to exceed 1,800 square feet, shall be permitted on site. The use shall be removed within thirty days of the day of final inspection for the project.)
Signs, in compliance with the Zoning Ordinance, except as permitted by Deviation (9) approval
The combined hotel uses shall be limited to 69,000 square feet.

Office

Administrative Offices
Banks & Financial Establishments, Group I & II only
Business Services, Group I only (all groups requested)
Drive Thru, accessory to permitted use
Essential Services (df)
Essential Service Facility, Group I only
Excavation, water retention
Offices, Medical (df)
These following uses shall be the only subordinated use permitted by Section 528.C if the requirements of that section can be met:
Government services
Pharmacy & Personal Services, Group I
Restaurant, Group II only
Insurance Companies
Leasing Office, temporary
(One temporary leasing office to serve the entire project, not to exceed 1,800 square feet, shall be permitted on site. The use shall be removed within thirty days of the day of final inspection for the project.)
Schools, Commercial
Signs (in compliance with the Zoning Ordinance)
Social Services, Group I only

The combined office uses shall be limited to 90,000 square feet

Retail and Entertainment Center

Administrative Offices
Auto Parts Store (as limited by definition)
Banks and Financial Institutions, Groups I and II
Boat Parts Store (as limited by definition)
Building Material, Sales (as limited by Section 527 and no open or outdoor storage)
Clothing Stores, General
Cocktail Bar or Lounge, one
Consumption-on-Premises, one
Up to 3 may be approved by the director; pending review (pursuant to Zoning ordinance Section 202.03) on a case-by-case basis
Department Store
Essential Service facilities

Excavation, Water retention
 Drive-thru
 Drug Store
 Hardware store
 Food Stores, Group I (except as limited by Condition 13)
 Hobby, Toy and Game Shops
 Household/Office Furnishings, Groups I and II
 Insurance Companies
 Laundry and dry cleaning, Group I
 Lawn and Garden Supply
 Leasing Office, temporary
 (One temporary leasing office to serve the entire project, not to exceed 1,800 square feet, shall be permitted on site. The use shall be removed within thirty days of the day of final inspection for the project.)
 Medical Office
 Music Store
 Package Store (subject to compliance with Zoning Ordinance Section 202.03
 Paint, Glass and Wallpaper Store
 Pharmacy
 Pet Shop (no kennels)
 Recreation, Commercial, limited to Groups I, II and IV
 Repair Shops, Group I and II
 Restaurant, Fast food (A maximum of 3 fast food restaurants may be permitted.) The fast food restaurants shall only be located in the entertainment area of the retail/entertainment center. This use is not permitted anywhere else on this site.
 Restaurant, Standard; Groups I, II and III
 Rental Establishments, Group II only
 Schools, Commercial (excluding Aviation)
 Shopping Center
 Signs, in compliance with the zoning ordinance except as permitted by Deviation (9) approval
 Specialty Retail Shops, All Groups
 Variety Store
 Vehicle and Equipment Dealers, Groups I, II, and III
 (As limited by Sections 507 and 527)

Perimeter Parcels

Automobile Repair and Service, Group I only (one only in conjunction with the one auto service station) only as limited by Section 504
 Automobile Service Station/Self Service Fuel Pumps/Convenience Food and Beverage Store (one location only)
 Banks & Financial Institutions, Group I
 Building material sales (as limited by Section 527 and also, no open or outdoor storage)
 Business Services, Group I
 Essential Services Facilities, Group I
 Excavation, Water retention
 Drive thru
 Food and Beverage Service, limited:
 The provision of food and/or beverages for members and guests of a private club or recreational center, but not available to the general public
 Hardware Store
 (One use only, in conjunction with Lawn and Garden Supply (no propagation or growing of plants)
 Hobby, Toy and Game Shops
 Insurance Companies
 Leasing Office, temporary
 (One temporary leasing office to serve the entire project, not to exceed 1,800 square feet, shall be permitted on site. The use shall be removed within thirty days of the day of final inspection for the project.)
 Paint, Glass and Wallpaper Store
 Personal Services, Group I

Pet Shop (no boarding or kennels)
 Recreation, Commercial, Groups I, II and IV only
 (one use from this only)
 Repair Shops, Group I & II
 Restaurant, Standard, Group III limited to 2 only (No fast food
 restaurants are permitted.)
 Signs in compliance with the Zoning Ordinance, except as permitted by
 Deviation (9) approval
 Vehicle and Equipment Dealers, Group I, II & III (as limited by
 Sections 507 & 527) (only one use from this activity)

3. The maximum height above road elevation of the buildings in each tract shall be as follows: [The height may be further limited by applicable fire safety codes, sprinkler requirements and/or FAA regulations.] Hotel and Office - 5 stories & 75 feet (except as limited by Condition 15); Retail, Entertainment - 50 feet, 2 stories; Perimeter = 35 feet; 2 stories (except as limited by Condition 15)
4. The total maximum square footages/limits of development in each tract shall be as follows:

<u>Use</u>	<u>Tract</u>	<u>Sub-Totals</u>	<u>Total Square Feet</u>
<u>Retail Commercial Uses</u>			
Restaurants	(perimeter)		
Gas Station	(perimeter)		
Theater	(retail/ entertainment tract)		
Retail/Service	(retail/ entertainment tract)		
		470,000	
<u>Office Use</u>			
Office Portion of combined Hotel/Office Campus		90,000	
<u>Motel</u>			
Up to 150 units, convention type, 850 square feet		69,000	
			629,000 *

* As limited by all other conditions of the Zoning Resolution and DRI Development Order

5. All access to perimeter parcels shall be from the internal roadway. No access shall be from US 41, Pine Island Road or accessways to the internal roads.
6. Transportation mitigation shall be provided as outlined in the DRI Development Order.
7. a. Prior to final development order approval for any phase of development, the developer shall submit a detailed mitigation plan which will be subject to approval by the Division of Environmental Sciences and will include the following:

- To mitigate the encroachment into Resource Protection Areas, the applicant shall create marsh and hardwood hammock with vegetation similar to the disturbed area at a ratio one to one (created to disturbed). The location of these newly created wetlands shall be in conformance with the mitigation map (M-3) revised May 29, 1990. The acreages for encroachment shall not exceed 1.40 acres of marsh and 1.81 acres of wetland hardwoods. Encroachment shall not deviate from either of these figures more than 5% without prior approval by the Lee County Division of Environmental Sciences. Additionally, the applicant shall preserve the tree save areas delineated on M-3.
 - The mitigation plan shall include a detailed plan indicating extent of wetland encroachment, acreage of wetland creation, planting lists, location of created wetlands, monitoring, and other design features. At a minimum, plantings for the created wetlands shall consist of native, herbaceous vegetation (density based on planting herbaceous vegetation on three foot centers), native shrubs (density based on planting shrubs on ten foot centers), and native trees (density based on planting trees at twenty-five foot centers). Planting of trees are not a requirement for the plantings in the proposed marsh. Eighty percent (80%) survival of the plantings are required over a five (5) year period to ensure that establishment has occurred. Additional alternative plantings, if necessary, shall be subject to approval by the Division of Environmental Sciences.
 - Evidence of a five (5) year biological monitoring program of the created marsh and creek. A copy of a report if required by the South Florida Water Management District, subject to approval by Division of Environmental Sciences, will suffice for this provision.
- b. Prior to the approval of a final development order for any phase of development, the applicant shall submit and subsequently follow a Florida Game and Freshwater Fish Commission approved gopher tortoise management plan.
8. Wastewater service shall be provided by North Fort Myers Utilities. There shall be no wastewater treatment plant on site. A temporary septic tank shall be permitted for the temporary construction trailer and temporary leasing office, but it shall be removed within 90 days of the date central service is available.
 9. The applicant shall submit all pertinent surface water management and water use permit submittal documents to Lee County at or about the same time as those documents are submitted to the South Florida Water Management District for review and comment.
 10. Each perimeter out-parcel shall provide its own parking in compliance with Zoning Ordinance Section 202.15. There shall be no shared parking with the other tracts of this site.
 11. Any Automatic Teller Machine uses that are ancillary to another unrelated permitted use, e.g., an Automatic Teller Machine in a grocery store, shall be required to delineate 1 parking space for Automatic Teller Machine customers.
 12. If any uses not previously reviewed, e.g., supermarkets, are located on site, then other uses (any combination of the approved uses) shall be reduced so that there will be no net increase in traffic generation. Therefore, as part of the annual DRI monitoring report required by Chapter 380.06, Florida Statutes the applicant shall indicate the uses and square feet of each use that has been constructed in that monitoring year. No uses shall be allowed that were not part of the DRI review, unless the applicant demonstrates

that a comparable reduction has been implemented elsewhere on site and shall further indicate the type of use and its location within the project. It shall be incumbent on the applicant to demonstrate that increases or changes in any uses shall be balanced by decreases or changes in other uses so that there is no net change in impacts, especially, but not limited to, the areas of traffic, surface water management, etc. The uses and impacts will be subject to substantial deviation determination per Chapter 380.06 F.S.

13. All structures on the out-parcels as shown shall be bound by a covenant running with the property to an architectural design compatible with and similar to the main center buildings. The signage permitted for out-parcels along SR 78 under the sign ordinance will be limited to ground mounted signs only to be located within the 40-foot buffer area. Signs conforming with the requirements of Lee County Sign Ordinance shall be allowed to be mounted on individual buildings for the purpose of identifying tenants. All signs and out-parcels shall be coordinated so as to give the center a fully integrated, well-designed look.
14. The hotel/motel use shall comply with the requirements of Section 514 of the Zoning Ordinance.
15. The perimeter parcels adjacent to the developed parcel along Pine Island Road shall be limited to Financial Institutions uses. No retail commercial uses shall locate in this area as long as the single-family home site is occupied and is not under the control of the applicant. In addition, the parcel shall be buffered at double the width and vegetative requirements of the "C" buffer. No deviations are approved for this area and building height shall be limited to one (1) story. If this parcel later comes under the control of the applicant, the areas surrounding the home site parcel can be developed within the approval for all other perimeter parcels.
16. The developer shall meet with Lee Transit staff prior to preliminary local development order approvals to resolve the following:
 - a) Provision of architecturally compatible, covered bus shelters that will accommodate 10-12 passengers. In addition, the applicant shall provide a bus pull-over area for any shelters in compliance with Lee Transit's requirements.
 - b) The internal street network shall be designed to adequately accommodate bus travel through the project.

The developer shall provide a copy of any agreements and letters from Lee Transit, to Lee County Development Review to show such compliance prior to (local) preliminary development order approval.

17. The notes on maps M.1 and M.2 shall be removed prior to final plan approval. The height and use restrictions contained in the Zoning resolution and DRI Development Order shall be incorporated onto the M.1 and M.2 maps prior to final plan approval.
18. Action on the deviations shall be as follows:

Deviation (1) is APPROVED subject to Condition 7.

Deviation (2) is APPROVED for the vacant parcel area and denial for the homesite parcel for so long as the homesite parcel is occupied as a residence.

Deviation (3) is APPROVED for the western boundary of the 2.76 acre retention pond adjacent to the Florida Department of Transportation depot site and DENIED for the remainder of the tract.

Deviation (4) is APPROVED with the condition that the depth of the confining layer shall be established by the submittal of test borings from a registered engineer prior to the approval of a final development order.

Deviation (5) is APPROVED conditioned only to 25 feet from the right-of-way shown on the Official Trafficways Map (not existing) on any road, with the condition that any roadway damage which is attributable to the excavation shall be the sole responsibility of the developer to repair to the satisfaction of the Lee County Department of Transportation and Engineering.

Deviation (6) is APPROVED with the condition that any liabilities associated with the lack of fencing shall remain with the owner/developer, not Lee County.

Deviation (7) is APPROVED with the condition that all internal roads shall be built to at least local road standards.

Deviation (8) is WITHDRAWN.

Deviation (9) has been amended by the applicant at the Board of County Commissioners meeting of October 22, 1990, to delete all subsections. The amended request would allow the applicant to place a sign at each of the three accesses along SR 78 and at each of the two accesses on US 41 as well as one at the intersecting corner of the two roads. This deviation is approved to allow 122 square foot signs (one for each access), and one 199 square foot marquee sign at the intersection of US 41/SR 78, as it is depicted in the design plan attached to this resolution.

Deviation (10) is APPROVED.

Deviation (11) is APPROVED subject to the following conditions:

- 11.c) The access being limited to a right turn in and right turn out. If the project is developed prior to Pine Island Road being widened, a temporary left turn lane may be required.
- 11.d) The traffic signal design demonstrating that adequate vehicular storage can be provided.
- 11.e) The out parcels being required to access Pine Island Road, via the Merchants Crossing reverse access road upon its redevelopment.

Access to US 41 and SR 78 from the Merchants Crossing proposed access points located closest to the US 41/SR78 intersection is subject to FDOT permitting requirements and is to be limited to right-turn-in/right-turn-out and left-turn-in only movements for US 41.

Deviation (12) is APPROVED.

Deviation (13) is APPROVED with the condition that the realigned water course and lakes shall be privately maintained. In addition, the relocated ditch with created wetlands (created creek) shall comply with DSO Sections D.4.a.(7)&(8) per littoral planting guidelines established by Division of Environmental Sciences.

Deviation (14) is APPROVED for six (6) spaces per 1,000 square feet of total floor area for the entertainment area of the Retail and Entertainment area of the project only.

Deviations (15) and (16) are WITHDRAWN.

Deviation (17) is APPROVED from the 15 acres required to allow a minimum of 6.1 acres. This approval is further conditioned as follows:

Prior to any impacts to the existing wetlands on the subject property (freshwater marsh and hardwood wetland) the riparian wetland mitigation area, which is part of the rerouted DOT drainage ditch, shall be constructed and planted in accordance with an approved Mitigation Plan and the Mitigation Map stamped "Received May 29, 1990".

The created riparian wetland system shall be subject to the approval by the Division of Environmental Sciences' staff prior to commencing any alterations to the existing wetlands.

Deviations (18), (19), and (20) are WITHDRAWN.

Deviation (21) is DENIED.

Deviations (22) and (23) are WITHDRAWN.

19. All commitments made by the applicant in the Application for Development Approval and Sufficiency reports that are not in conflict with the above conditions are hereby incorporated. All conditions of the DRI Development Order are hereby adopted by reference.
20. Prior to the issuance of any Final Development Order, the applicant shall cause a professional archeological survey of the subject real estate to be conducted to include full and complete surface reconnaissance and test excavations. Any archeological resources located will be subject to designation pursuant to the Lee County Historical Preservation Ordinance #88-62 and subject to its requirements and terms.
21. It has been determined to be in the County's interest to realign the watercourse as shown on the Master Concept Plan (MI) and to exchange its interest in the existing drainage ditch (totaling 3.8± acres) for conveyance by applicant of a drainageway easement (totaling 6.5± acres). Applicant and County Staff shall proceed to effect the exchange pursuant to Chapter 125, F.S., and Applicant shall execute or cause to be executed and delivered to Lee County at the time of the exchange a drainage easement covering the realigned watercourse (6.5 acres) as shown on the Master Concept Plan.

Site Plan 90-034 is attached hereto and incorporated herein by reference, as a reduced copy of the Master Concept Plan.

The following findings of fact were made in conjunction with this approval of Commercial Planned Development zoning:

- A. That the real estate which is the subject of this requested rezoning is correctly described on Pages 3 and 4 of this document.
- B. That there are changed or changing conditions relating to the area in which the proposed rezoning is located, including but not limited to the development of adjacent projects and the scheduled improvement of roadways which make the approval of the requested rezoning appropriate under the circumstances.
- C. That the approval of the requested rezoning is consistent with the goals, objectives, policies and intent of the Lee Plan, as last amended.
- D. That the approval of the requested rezoning is consistent with the densities, intensities and general uses set for the in the Lee Plan, as last amended.

- E. That the approval of the requested rezoning will protect, conserve and preserve environmentally critical areas and protect, preserve and conserve natural resources.
- F. That the approval of the requested rezoning will be compatible with existing and planned uses in the immediate and general area.
- G. That the approval of the requested rezoning will not cause damage, hazard or nuisance or other detriment to persons or property.
- H. That the approval of the requested rezoning, subject to the traffic conditions in the DRI Development Order, will not place an undue burden upon existing government services and facilities and will be served by streets and highways with the apparent capacity to carry the traffic generated by the requested development.
- I. That each of the deviations is supported by testimony and other evidence in the record which demonstrate that the planned development will be enhanced and that the intent of the ordinances to protect the public health, safety and welfare will be served.
- J. That it is appropriate and consistent with applicable law and regulation that the applicant be required to pay road impact fees in effect at the time each permit is obtained in view of the length of time in which the project will be constructed and the inherent uncertainties involved in predicting actual traffic and development in the area over such a lengthy term.

The foregoing Resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner Bill Fussell, and seconded by Commissioner Donald D. Slisher and, upon being put to a vote, the result was as follows:

John E. Manning	<u>Nay</u>
Douglas R. St. Cerny	<u>Aye</u>
Ray Judah	<u>Nay</u>
Bill Fussell	<u>Aye</u>
Donald D. Slisher	<u>Aye</u>

DULY PASSED AND ADOPTED this 31st day of October, A.D., 1990.

ATTEST:
 CHARLIE GREEN, CLERK
 By: Clara J. W. [Signature]
 Deputy Clerk

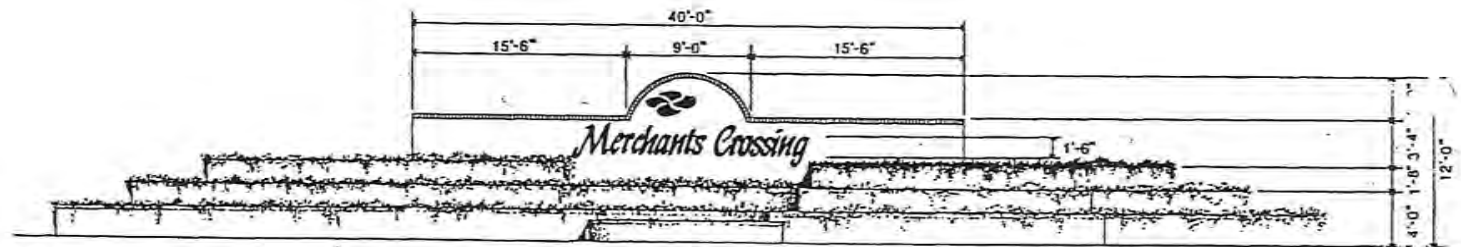
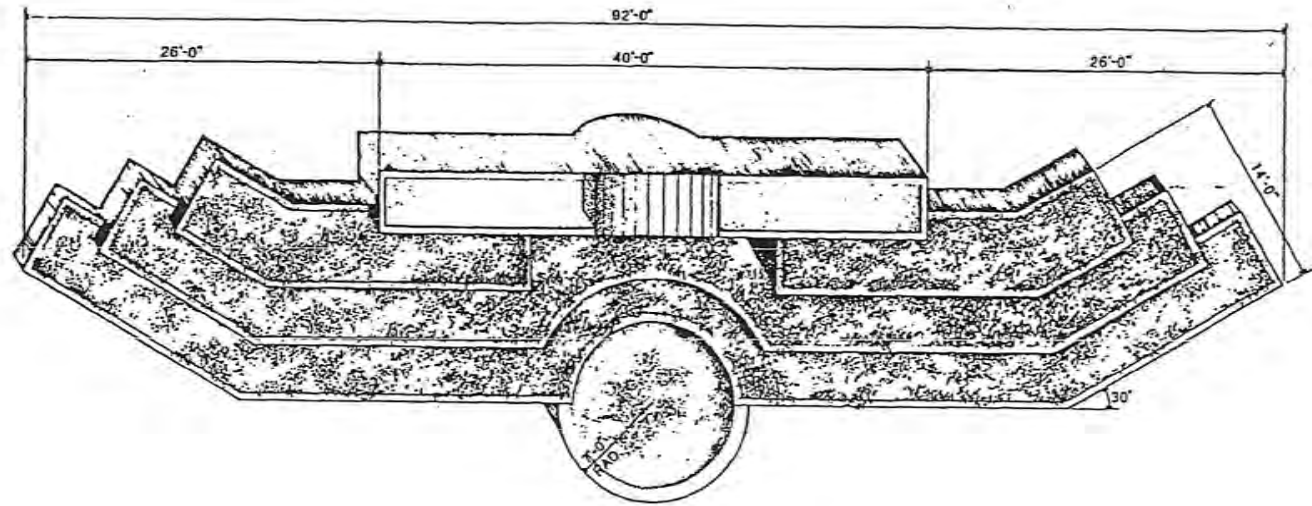
FILED
 MAR 06 91
 CLERK CIRCUIT COURT
 BY [Signature] D.C.

BOARD OF COUNTY COMMISSIONERS
 OF LEE COUNTY, FLORIDA

BY: [Signature]
 Chairman

Approved as to form by:

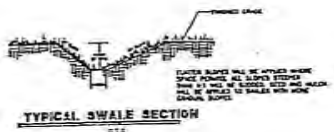
Jack Mac'Kie
 County Attorney's Office



Merchants Crossing
Signage System for North Ft. Myers

Project Identification
Setback 15' off right-of-way
Reference plan location

4' x 40'
Aggregate square feet = 199.5
reflective ground illumination



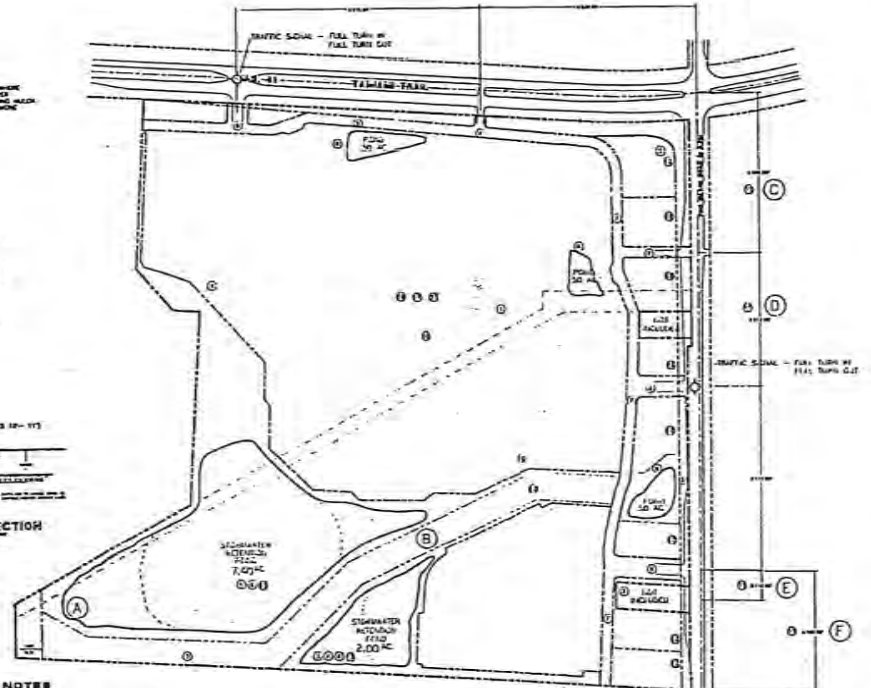
TYPICAL SWALE SECTION
A1A



TYPICAL DRY RETENTION SECTION
A2A



TYPICAL WET RETENTION SECTION
A3A



GENERAL NOTES

1. The information and data on this plan were obtained from the applicant and are not to be construed as a warranty of accuracy or completeness. The engineer assumes no responsibility for the accuracy or completeness of the information and data furnished by the applicant.

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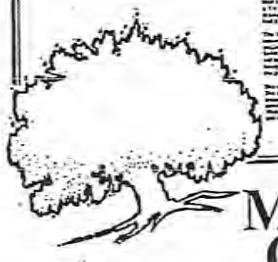
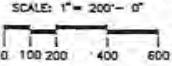
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APPROVED

Master Concept Plan
Site Plan No. 02-074, Rev. 2, W.H.
Subject to conditions in Resolution 2-92-034
Zoning Code # 92-4-17-DRI-1



Merchants Crossing

APPLICANT
MERCHANTS CROSSING
OF LEE COUNTY, INC.

A COMMERCIAL PLANNED DEVELOPMENT
APPLICATION FOR PLURIC HEARING

DAVID M. JONES JR. & ASSOCIATES INC. PLANNERS AND LANDSCAPE ARCHITECTS 1801 HUNTER STREET FORT WORTH, TX 76104 (817) 336-1821
ABRAMS PROPERTIES 5715 A KENNEDY DR. SUITE 303 ARLINGTON TX 76010 (817) 322-2522
FLORIDA ENVIRONMENTAL INC. 2211 W. PALM BLVD. SUITE 100 FORT WORTH TX 76102 (817) 336-1821

REVISIONS	DATE
SUFFICIENCY RESPONSE	2-1-90
REPAIR APP	4-16-90
APPLICANT'S REVISED SUBMITTAL	5-1-79

MAP-M.2

PROJECT NO. 258-043-001 MAP-M.2A.2 BAYEN AUGUST 31, 1989

MASTER CONCEPT PLAN

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, Merchants Crossing of North Fort Myers, Inc. has properly filed an application for:

- a) To consider an amendment to the Development of Regional Impact Development Order and to make a substantial deviation determination
- b) An amendment to the Commercial Planned Development zoning granted by Resolution Z-90-034, to allow modifications to the Master Concept Plan and the resolution because of a reduction in the project's allowable square footage and the elimination of the previously permitted 150 unit motel and 90,000 square foot office campus; and

WHEREAS, the subject property is located at the northwest intersection of US 41/Pine Island Road, North Fort Myers, described more particularly as:

LEGAL DESCRIPTION: In Section 34, Township 43 South, Range 24 East, Lee County, Florida:

A parcel of land lying in Section 34, Township 43 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

COMMENCE at the Southwest corner of said Section 34;
THENCE N03°25'49"E, 43.75 feet to the POINT OF BEGINNING;
THENCE continue N03°25'49"E, 2,614.85 feet to the Northwest corner of the Southwest Quarter (SW $\frac{1}{4}$) of said Section 34;
THENCE N89°55'09"E, along the North line of said quarter section line, 200.45 feet;
THENCE N00°20'36"W, 6.51 feet;
THENCE S28°32'46"E, 786.93 feet;
THENCE S86°34'10"E, 747.11 feet;
THENCE N03°25'50"E, 100.00 feet;
THENCE N48°25'48"E, 212.13 feet;
THENCE S86°34'10"E, 650.00 feet to intersect the Westerly right-of-way of US 41 (SR 45, 200 feet of right-of-way);
THENCE along said Westerly right-of-way, S03°25'50"W, 1,680.99 feet to the Point of Curvature of a circular curve to the left, having a radius of 2,964.79 feet;
THENCE along the arc of said curve for a distance of 418.61 feet, the arc of which is subtended by a chord bearing S00°36'51"E, 418.26 feet to intersect the Northerly right-of-way Pine Island Road (SR 78, 66.00 feet right-of-way);
THENCE along the said Northerly right-of-way, the following four courses:
(1) N89°55'30"W, 864.70 feet;
(2) THENCE N00°00'10"E, 17.00 feet;
(3) THENCE 89°59'50"W, 1,166.90 feet to the Point of Curvature of a circular curve to the left, having a radius of 2,914.79 feet;
(4) THENCE along the arc of said curve for a distance of 164.61 feet, the arc of which is subtended by a chord bearing S88°23'06"W, 164.59 feet, to the POINT OF BEGINNING.

continued...

LESS

A parcel of land lying in Section 34, Township 43 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

From the Southwest corner of Section 34, Township 43 South, Range 24 East;
THENCE East along the South line of said Section 34 for a distance of 300.00 feet;
THENCE North and parallel with the West line of said Section 34 for a distance of 50.00 feet to the POINT OF BEGINNING of the lands herein described;
THENCE continue North and parallel with the West line of said Section 34 for a distance of 280.00 feet;
THENCE East a distance of 100.00 feet to a point 329.985 feet North of the South line of said Section 34 on a line parallel with the West line of said Section 34;
THENCE South parallel with the West line of said Section 34 a distance of 279.985 feet to the North side of Pine Island Road;
THENCE go West along the North side of Pine Island Road and parallel with the South line of said Section 34 a distance of 100.00 feet to the POINT OF BEGINNING.

ALSO LESS:

A parcel of land lying in Section 34, Township 43 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

From the Southwest corner of Section 34, go East along the South line of said section a distance of 1,366.77 feet;
THENCE North 33.00 feet to the North right-of-way line of SR 78 and the POINT OF BEGINNING;
From said POINT OF BEGINNING run North 200.00 feet;
THENCE East 100.00 feet;
THENCE South 200.00 feet;
THENCE West along the North right-of-way line 100.00 feet to the POINT OF BEGINNING.

WHEREAS, the applicant has indicated the property's current STRAP number is 34-43-24-00-00001.0040; and

WHEREAS, proper authorization has been given to Humphrey & Knott, P.A., by Merchants Crossing of North Fort Myers, Inc., the owner of the subject parcel, to act as agent to pursue this zoning application; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Hearing Examiner, with full consideration of all the evidence available; and

WHEREAS, the Lee County Hearing Examiner fully reviewed the matter in a public hearing held on August 27, 1991; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Board of County Commissioners; and

WHEREAS, in the legislative process the Lee County Board of County Commissioners gave full and complete consideration to the recommendations of

the staff, the Hearing Examiner, the documents on file with the county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that the Board of County Commissioners does hereby:

- a) FIND THAT THE AMENDMENT DOES NOT CONSTITUTE A SUBSTANTIAL DEVIATION
- b) APPROVE THE AMENDMENT WITH CONDITIONS.

This approval is subject to the following conditions:

Request a) - Render a finding of no substantial deviation and adopt the DRI Development Order Amendment.

Request b) - Approve with the following conditions which replace those found in Resolution Z-90-034.

1. The development of this project shall be in accordance with the 3-page Master Concept Plan identified as Exhibit M.1A dated last revised on July 1, 1991, and submitted to the Zoning Division on July 17, 1991, and M.2A dated March 29, 1991, stamped received April 10, 1991; and M.3A last revised May 9, 1991 stamped received dated May 31, 1991, except as modified by the conditions in the DRI Development Order and the conditions below. This approval does not alleviate the need to comply with all state and county development regulations except as specifically modified by this approval.
2. The uses for this development shall be limited as follows:
 - a) The motel and office uses referenced in Zoning Resolution Z-90-034 shall be deleted.
 - b) The retail/entertainment uses and the perimeter parcels shall be limited as shown in Condition #2 of Zoning Resolution Z-90-034.
3. The maximum height above road elevation of the buildings in each tract shall be as follows: (The height may be further limited by applicable fire safety codes, sprinkler requirements and/or FAA regulations); Retail, Entertainment - 50 feet; perimeter - 50 feet.
4. The total maximum square footages/limits of development in this project shall not exceed the Construction Target Plan.
5. Condition #5 of Resolution Z-90-034 shall remain in full force and effect.
6. Condition #6 of Resolution Z-90-034 shall remain in full force and effect.
7. Condition #7 of Resolution Z-90-034 shall remain in full force and effect except that M-3 shall be replaced with M-3A, last revised 09 May, 1991, stamped received May 31, 1991.
8. Condition #8 of Resolution Z-90-034 shall remain in full force and effect.
9. Condition #9 of Resolution Z-90-034 shall remain in full force and effect.
10. Condition #10 of Resolution Z-90-034 shall remain in full force and effect.
11. Condition #11 of Resolution Z-90-034 shall remain in full force and effect.
12. Condition #12 of Resolution Z-90-034 shall remain in full force and effect.

13. Condition #13 of Resolution Z-90-034 shall remain in full force and effect.
14. Condition #14 of Resolution Z-90-034 shall be deleted.
15. Condition #15 of Resolution Z-90-034 shall be deleted.
16. Condition #16 of Resolution Z-90-034 shall remain in full force and effect.
17. Condition #17 of Resolution Z-90-034 shall remain in full force and effect except that all references to M.1 and M.2 shall be replaced by M.1A and M.2A respectively.
18. The action on the deviations shall be revised as follows (all other actions remain in full force and effect):
 - Deviation 10 is withdrawn.
 - Deviation 17 is withdrawn.
19. Condition #19 of Resolution Z-90-034 shall remain in full force and effect.
20. Condition #20 of Resolution Z-90-034 shall remain in full force and effect.
21. Condition #21 of Resolution Z-90-034 shall remain in full force and effect.
22. The design of the rerouted ditch and mitigation area shall be done in compliance with the cross-sectional drawings on file with the Division of Environmental Sciences dated received August 13, 1991.
23. Prior to issuance of a local final development order, the applicant shall execute and record a conservation easement for the 9.64 acres of pine flatwoods, subject to the approval of the County Attorney's Office and the Division of Environmental Sciences.
24. Prior to the issuance of a Certificate of Occupancy for any structure exceeding two stories in height, the applicant shall have provided funding for the purchase of a "Tele-Squirt" fire fighting apparatus by the North Fort Myers Fire District, and such apparatus shall have been acquired and made operational. This project shall also be subject to an agreement between the North Fort Myers Fire District and the applicant.

Site Plan 91-092 is attached hereto and incorporated herein by reference, as a reduced copy of the Master Concept Plan.

The following findings of fact were made in conjunction with this approval of an amendment to the Commercial Planned Development zoning:

- A. That the proposed amendment to the Development of Regional Impact (DRI) Development Order for Merchants Crossing, as set forth in the Draft First Development Order Amendment attached hereto, and further amended and conditioned in the manner set forth herein, does not constitute a substantial deviation from the original Development Order Approved by the Lee County Board of County Commissioners on October 31, 1990.

- B. That the proposed amendment, accomplished in the manner and under the conditions set forth herein, in the Draft First Development Order Amendment and on the amended Master Concept Plan and Mitigation Plan dated March 29, 1991 as partially revised through July 1, 1991 remains consistent with the Goals, Objectives, Policies and general intent of the Lee Plan.
- C. That the amendments and modifications proposed will not act to create any incompatibilities with existing and planned uses on adjacent or near vicinity real estate, and will not cause nuisance, damage, hazard or other detriment to persons or property situated near the subject property.
- D. That the proposed amendments will not result in any additional adverse impacts to environmentally sensitive lands or valued natural resources, and, to the contrary, will act to provide for additional preservation areas as compared to those provided for in the original development order.

The foregoing Resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner Manning, and seconded by Commissioner Judah and, upon being put to a vote, the result was as follows:

John E. Manning	AYE
Douglas R. St. Cerny	AYE
Ray Judah	AYE
Vicki Lopez-Wolfe	AYE
Donald D. Slisher	AYE

DULY PASSED AND ADOPTED this 14th day of October, A.D., 1991.

ATTEST:
CHARLIE GREEN, CLERK

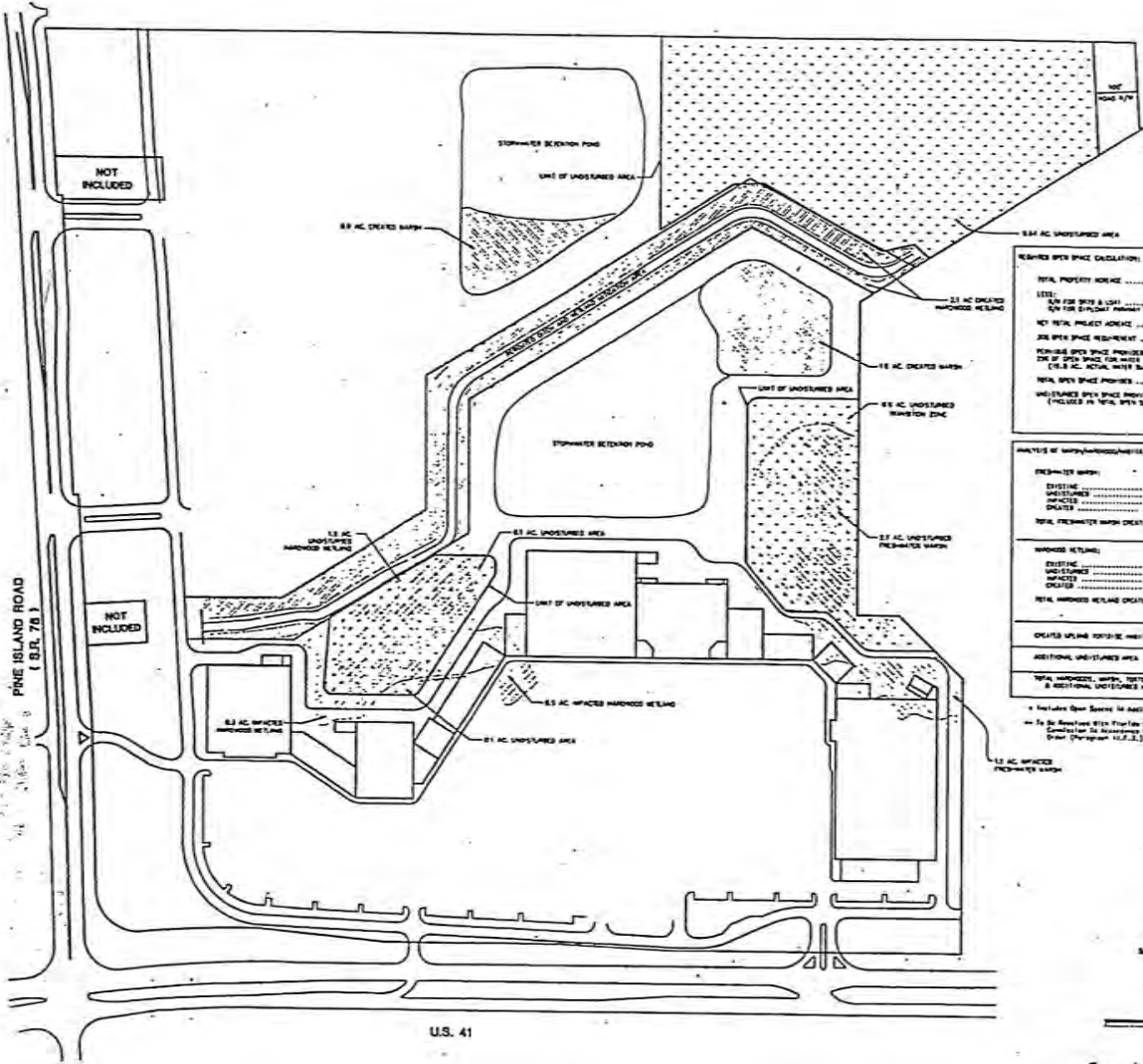
BY: Clare J. Wauch
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: [Signature]
Chairman

Approved as to form by:

[Signature]
County Attorney's Office



REQUIRED OPEN SPACE CALCULATION:

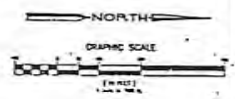
TOTAL PROPERTY ACRES	101.8 AC.
LESS:	
FOR OPEN SPACE	2.7 AC.
FOR STIPULATED PURPOSES	2.5 AC.
NET OPEN SPACE REQUIREMENT	106.5 AC.
PLUS OPEN SPACE PROVIDED	30.2 AC.
NET OPEN SPACE PROVIDED	136.7 AC.
EXCESS AC. ACTUAL OPEN SPACE	30.2 AC.
TOTAL OPEN SPACE PROVIDED	30.2 AC.
WETLANDS OPEN SPACE PROVIDED	15.1 AC.
(INCLUDED IN TOTAL OPEN SPACE)	

ANALYSIS OF WETLANDS/UNDISTURBED AREAS:

EXISTING WETLANDS:	
EXISTING	2.8 AC.
UNDISTURBED	2.7 AC.
CREATED	2.5 AC.
TOTAL PRE-EXISTING WETLANDS AND SHEDS	8.0 AC.
WETLANDS RELAND:	
EXISTING	2.7 AC.
UNDISTURBED	2.5 AC.
CREATED	2.5 AC.
TOTAL WETLANDS RELANDS CREATED AND SHEDS	7.7 AC.
CREATED WETLANDS (TOTAL)	7.7 AC.
ADDITIONAL UNDISTURBED AREA	15.1 AC.
TOTAL WETLANDS, WASHED, RESTORED WETLANDS, & ADDITIONAL UNDISTURBED AREA	29.5 AC.

** Includes Open Space in Addition to those Detailed Below.
 ** To Be Revisited With Final Site & Engineering Plan.
 † Confirmed in accordance with Wetland Delineation Draft (Paragraph 1.3.1.1).*

APPROVED
 [Signature]
 Date: 11/17/2011
 Subject to conditions in Resolution 2011-16
 Issued Date: 11/17/2011



ABRAMS
 PROFESSIONAL ENGINEERS
 1170 N. W. 10th St.
 Ft. Lauderdale, Florida 33304
 954/782-8778
 Fax: 954/782-2881

RECEIVED
 2011 NOV 17
 10:30 AM
 ENGINEERING DIVISION

Project: MERCHANTS CROSSING NORTH FORT MYERS, FLORIDA
Developer: MERCHANTS CROSSING OF NORTH FORT MYERS, INC., ATLANTA, GEORGIA

Revisions	Date

Drawing Title: MITIGATION PLAN
 Drawing No.: MAP-M-23A

FIRST
DEVELOPMENT ORDER
AMENDMENT

FOR

MERCHANTS CROSSING
A DEVELOPMENT OF REGIONAL IMPACT

STATE DRI #7-8889-92
COUNTY CASE #90-4-17-DRI-1(a)

WHEREAS, a Development Order for the Merchants Crossing Development of Regional Impact was adopted by the Board of County Commissioners on October 31, 1990; and

WHEREAS, the Applicant/Developer of Merchants Crossing Development of Regional Impact has proposed changes to eliminate 90,000 square feet of office use and 150 motel units; increase the retail commercial uses from 470,000 sq.ft. to 530,000 sq.ft.; increase the indigenous open space from 6.1 acres to 15.1 acres; and change the time of the transportation mitigation payments and change the Construction Target Plan; and

WHEREAS, under Chapter 380.06(19), Florida Statutes, the proposed changes must be reviewed and evaluated to determine whether or not the changes constitute a substantial deviation from the original Development Order; and

WHEREAS, the Board of County Commissioners has reviewed the proposed change and finds the changes outlined above not to be a substantial deviation if subject to the conditions in this Development Order Amendment, but any further changes will be re-reviewed cumulatively for determination as to whether or not a substantial deviation has occurred.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, that the Development of Regional Impact Development Order for Merchants Crossing DRI, adopted by the Board of County Commissioners on October 31, 1990, is amended as follows, with additions underlined and deletions struck through. (All other portions of the original Development Order remain in full force and effect.)

SECTION ONE:

Add the following to Section A of the Development Order:

The amended Construction Target Plan proposed by the Applicant is attached as Exhibit A-1.

SECTION TWO:

Delete the project description in Section E and replace with the following:

<u>Use</u>	<u>Tract</u>	<u>Total Square Feet</u>
<u>Retail & Entertainment Center Uses</u>		
<u>Restaurants</u>	<u>(perimeter & Tracts I&II)</u>	
<u>Gas Station</u>	<u>(perimeter)</u>	
<u>Theater</u>	<u>Entertainment Area of Tract II</u>	
<u>Retail/Service</u>	<u>Retail/Service/Entertainment Tracts</u>	
<u>Total Square Feet</u>		<u>530,000</u>

Add the following to Section F:

Approximately ~~6.3~~ 6.5 acres of the Merchants Crossing site occurs as two types of wetlands: 3.8 acres of freshwater marsh and ~~2.5~~ 2.7 acres of mixed hardwood wetlands. The Applicant has committed to significant wetland mitigation which features wetland marshes and a north/south creek, with adjacent floodplain vegetation. A portion of the ~~5.1~~ 3.1 acres of the floodplain will be planted with hydric hammock species. This portion shall not be less than the hardwood wetland area to be impacted.

Also on site is an approximate ~~4.7~~ 4.9 acre oak and cabbage palm hammock/wetland hardwood system (2.2 hammock/~~2.5~~ 2.7 wetland). The Applicant has committed to save the significant elements of this system, representing ~~1.66~~ 1.9 acres.

1. Prior to issuance of local Final Development Order, the Applicant shall submit a vegetation plan. The presentation preservation of the significant elements of the Oak/Cabbage Palm Hammock and adjacent Hardwood Wetland System shall be in accordance with the Mitigation Plan (~~M-3~~ M-3A) which is attached as Exhibit C.

Add the following to Section G:

3. As mitigation for the transportation impacts of Merchants Crossing, the Developer shall provide the following:

- a. The Developer shall make a cash payment of ~~\$2,000,000~~ \$1,500,000 into an escrow account on or before October 1, 1993, or upon issuance of the first building permit whichever occurs earlier. All interest earned on this account shall accrue to the benefit of the County. A portion of this money (up to a maximum of \$1 million as further limited in paragraph G.3.f.) shall be used for the widening of SR 78. The use of funds and terms of the escrow shall be governed by a separate escrow agreement between the parties, and is subject to approval by the County Attorney's office, which approval shall not be unreasonably withheld.
- b. The Developer shall make a cash payment of ~~\$291,370~~ \$791,370 on or before 12/1/94, or at ~~the time upon issuance of the first building permit is pulled for the office/hotel site Tract II~~ whichever occurs earlier as shown on the Master Concept Plan (M-1 M-1A, last revised May 11, 1990 July 1, 1991) attached to Zoning Resolution Z-90-034. The cash payments totaling \$2,291,370 may be considered as full credit against road impact fees.
- f. The Developer shall construct ~~road improvements~~ two additional travel lanes to SR 78 from US 41 west to the Developer's westerly property line, then tapering back into the existing roadway. The improvements for SR 78 will be depicted on construction plans for SR 78, prepared by the Developer, which are subject to review and approval by Lee County DOT&E and FDOT to insure that they are consistent with the four lane divided facility currently under design for SR 78, west of Piney Road. The Developer shall be reimbursed from the ~~\$2,000,000~~ \$1,500,000 deposited in escrow by the Developer pursuant to paragraph G.3.a. above for the non-site-related cost, up to a total of \$1 million. The amount is subject to review and approval by DOT&E, via approval of bid documents or any other necessary documentation. These improvements shall be completed prior to obtaining any Certificates of Occupancy or Completion for any portion of the development. Merchants Crossing will pay all costs in excess of \$1 million to complete the SR 78 highway improvements at no cost to Lee County or FDOT.

- g. Once funds are placed in escrow, \$200,000 ~~one half of the available funds not to exceed \$600,000~~ shall be immediately transferred to FDOT for the acquisition of future right-of-way for SR 78 from the westerly boundary of the applicant's property to Piney Road, and an additional \$400,000 shall be transferred to FDOT upon development of "Tract II."

SECTION THREE:

THE MOTION TO ADOPT this Resolution approving and adopting this Development Order Amendment was offered by Commissioner Manning and seconded by Commissioner Judah and upon poll of the members present, the vote was as follows:

Commissioner Manning	Aye
Commissioner St. Cerny	Aye
Commissioner Judah	Aye
Commissioner Lopez-Wolfe	Aye
Commissioner Slisher	Aye

DULY PASSED AND ADOPTED this 14th day of October, 1991.

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

By: [Signature]
(Chairman)

APPROVED AS TO FORM

By: [Signature]
County Attorney's Office

ATTEST:
CHARLIE GREEN, CLERK

By: [Signature]
Deputy Clerk



State of Florida
County of Lee
I, Charlie Green, Clerk of the Circuit Court for Lee County, Florida, do hereby certify this document to be a true and correct copy of the original document on file in the Minutes Department.

Given, under my hand and official seal at Fort Myers, Florida, this 14th day of October, A.D. 1991

CHARLIE GREEN, CLERK
By: [Signature]
Deputy Clerk

EXHIBIT A

CONSTRUCTION TARGET PLAN

<u>Type</u>	<u>Square Footage</u>	<u>Construction Start</u>	<u>Target Opening</u>
Retail & Service	400,400 SF	5-90	5-91
Entertainment	24,000 SF	10-90	1-92
Restaurants	36,600 SF	5-90	5-91/1-94
Office/Financial Inst.	99,000 SF	9-92	9-93
Motel (150 unit)	69,000 SF	12-92	9-93
	629,000 SF		

SF = square feet

NOTE: ~~461,000 SF of retail commercial uses referenced in the SWFRPC report is the combined retail & service, entertainment or restaurant areas from above.~~

EXHIBIT A-1
CONSTRUCTION TARGET PLAN
MERCHANTS CROSSING OF NORTH FT. MYERS

		<u>Projected Start Date</u>	<u>Projected Opening Date</u>
CONSTRUCTION STAGE I:			
RETAIL & ENTERTAINMENT CENTER:			
RETAIL	353,000 sf		
ENTERTAINMENT	6,000 sf		
	359,000 sf	9-91	11-92
PERIMETER PARCELS:			
BANKS (2)	8,000 sf	9-92	6-93
GAS STA./CONV. (1)	1,000 SF	9-92	6-93
GENERAL RETAIL (1)	3,000 SF	11-92	6-93
	12,000 sf		
TOTAL CONSTRUCTION STAGE I	371,000 sf		
CONSTRUCTION STAGE II:			
RETAIL & ENTERTAINMENT CENTER:			
RETAIL	107,400 SF	12-93	12-94
ENTERTAINMENT:			
CINEMA (4)	32,000 SF	12-93	12-94
RESTAURANT W/COP (1)	4,000 SF	12-93	12-94
SHOPS	1,600 SF	12-93	12-94
	145,000 sf		
PERIMETER PARCELS:			
BANKS (1)	3,000 SF	1-94	11-94
RESTAURANTS (2)	6,000 SF	4-94	12-94
GENERAL RETAIL (2)	5,000 SF	4-94	12-94
	14,000 sf		
TOTAL, CONSTRUCTION STAGE II	159,000 sf		
TOTAL, CONSTRUCTION STAGES I & II	530,000 sf		

1. sf = Square Feet

2. The square footage amounts for the different uses provided above are estimates and are subject to being reallocated within each construction stage. Any square footage not developed in construction stage I can be transferred to construction stage II. However, any transfers from stage II to stage I shall be reviewed by Lee County Department of Community Development to determine if additional payments are required. The total square footage for both construction stages I and II shall not exceed 530,000 square feet.

3. The dates shown are estimates and, therefore, are subject to change.

4. The theater use located in the Entertainment Area of Tract II was originally submitted and approved as a 10 plex cinema estimated at 24,000 square feet and containing 1,800 seats. The use and number of screens have not been revised; however, the 10 plex cinema is now estimated to be 32,000 square feet in size and has approximately 2,500 seats.

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, Merchants Crossing of North Fort Myers, Inc. has properly filed an application to:

- a) consider a second amendment to the Development of Regional Impact Development Order and to make a substantial deviation determination;
- b) amend the Commercial Planned Development zoning granted by Resolution Z-90-034 as amended by Resolution Z-91-092; and
- c) rezone from the AG-2 district to the Commercial Planned Development district; and

WHEREAS, the subject property is located at 15131 North Cleveland Avenue, North Fort Myers, described more particularly as:

LEGAL DESCRIPTION: In Section 34, Township 43 South, Range 24 East, Lee County, Florida:

A portion of the Southwest Quarter (SW1/4) of Section 34, Township 43 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

COMMENCING AT the Southwest corner of said Section 34;
THENCE N03°25'58"E, along the West line of the Southwest Quarter (SW1/4) of said Section 34, a distance of 73.52 feet, to the POINT OF BEGINNING of this description;
THENCE continue N03°25'58"E, along the last described course, a distance of 2,484.86 feet, to a point on a line parallel with and 100 feet South of, as measured at Right angles to the North line of the Southwest Quarter (SW1/4) of said Section 34;
THENCE S89°56'05"E, along said parallel line, a distance of 264.66 feet;
THENCE S28°32'36"E, a distance of 664.99 feet;
THENCE S86°34'00"E, a distance of 747.11 feet;
THENCE N03°26'00"E, a distance of 100.00 feet;
THENCE N48°25'58"E, a distance of 212.13 feet;
THENCE S86°34'00"E, a distance of 650.00 feet, to the Westerly right-of-way line of US 41 (SR 45);
THENCE S03°25'53"W, along said right-of-way line, a distance of 718.01 feet;
THENCE S06°17'38"W, along said right-of-way line, a distance of 240.30 feet;
THENCE S03°25'53"W, along said right-of-way line, a distance of 409.75 feet;
THENCE S08°42'37"W, along said right-of-way line, a distance of 315.20 feet, to a point on the arc of a circular curve to the left, whose radius point bears S86°34'07"E from said point;
THENCE Southerly along said right-of-way line and the arc of said curve, having a radius of 3,005.79 feet, a central angle of 05°09'06", and a chord bearing of S00°51'20"W, an arc distance of 270.27 feet, to the Point of Reverse Curvature of a circular curve to the right;

continued...

THENCE Southerly and Westerly, along the arc of said curve, having a radius of 100.00 feet, a central angle of 93°29'08" and a chord bearing of S45°01'21"W, an arc distance of 163.16 feet, to the Point of Tangency and the Northerly right-of-way line of Pine Island Road (SR 78);

THENCE N88°14'05"W, a distance of 383.15 feet;

THENCE N89°57'42"W, a distance of 196.50 feet, to the Easterly line of those lands described in Official Records Book 421, Page 480, as recorded in the Public Records of Lee County, Florida; the last two courses being along the Northerly right-of-way line of said Pine Island Road (SR 78);

THENCE N00°04'40"E, along said Easterly line, a distance of 142.10 feet, to the Northerly line of those lands described in said Official Records Book 421, Page 480;

THENCE N89°55'20"W, along said Northerly line, a distance of 100.00 feet, to the Westerly line of those lands described in said Official Records Book 421, Page 480;

THENCE S00°04'40"W, along said Westerly line, a distance of 142.17 feet, to the Northerly line of said Pine Island Road (SR 78);

THENCE N89°57'42"W, a distance of 259.57 feet;

THENCE S00°02'18"W, a distance of 12.00 feet;

THENCE N89°57'42"W, a distance of 255.32 feet;

THENCE N86°08'51"W, a distance of 180.40 feet;

THENCE N89°57'42"W, a distance of 274.68 feet;

THENCE S00°02'18"W, a distance of 12.00 feet;

THENCE N89°57'42"W, a distance of 230.03 feet, to the Point of Curvature of a circular curve to the left;

THENCE Westerly along the arc of said curve, having a radius of 2,944.29 feet, a central angle of 03°10'09" and a chord bearing of S88°27'14"W, an arc distance of 162.86 feet, to the POINT OF BEGINNING, the last eight (8) courses being along the Northerly right-of-way line of said Pine Island Road (SR 78).

CONTAINING 101.44± acres

WHEREAS, the applicant has indicated the property's current STRAP number is 34-43-24-00-00001-0040; and

WHEREAS, proper authorization has been given to Humphrey & Knott, P.A. by J. Andrew Abrams, Vice-President of Merchants Crossing of North Fort Myers, Inc., the fee simple owner of the subject parcel, to act as agent to pursue this zoning application; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Hearing Examiner, with full consideration of all the evidence available; and the Lee County Hearing Examiner fully reviewed the matter in a public hearing held on April 13, 1993; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Board of County Commissioners; and in the legislative process the Lee County Board of County Commissioners gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on file with the county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that
the Board of County Commissioners does hereby:

APPROVE Request a) for a second amendment to the Development of Regional Impact Development Order and make a formal finding of No Substantial Deviation by adopting the draft Development Order Amendment;

APPROVE With Conditions Request b) to amend the Commercial Planned Development zoning granted by Resolution Z-90-034, as amended by Resolution Z-91-092, to allow modifications to the Master Concept Plan and the resolutions by increasing the total building square footage from 530,000 square feet to 555,000 square feet and amend the uses for the perimeter parcels; and

APPROVE With Conditions Request c) for a rezoning from the AG-2 district of 0.6 acres to the Commercial Planned Development district for inclusion into the existing CPD district for Merchants Crossing.

The rezoning and Master Concept Plan, which deviate from certain Lee County Standards and Requests b) and c) are subject to the following conditions:

1. The development of this project shall be in accordance with the two-page Master Concept Plan identified as Exhibits M.1A and M.2A last revised on October 14, 1992, and submitted to the Zoning Division on February 18, 1993, and Drawing No. C-37 last revised 27-Apr-92 stamped received dated December 9, 1992, except as modified by the conditions in the DRI Development Order and the conditions below. This approval does not alleviate the need to comply with all state and county development regulations except as specifically modified by this approval.
2. The uses for this development shall be amended as follows:
 - a. The Retail & Entertainment Center Restaurant, fast food use limitation (in Resolution Z-90-034) that prohibits this use anywhere else on site is amended to allow up to 2 of the 3 fast food uses permitted in the project to be located in the perimeter parcels.
 - b. The Automobile Repair and Service, Group I, use on the perimeter parcels are permitted to be a freestanding use, separate from any auto service station use. (This condition removes the limitation on the Automobile Repair and Service Use to be done only in conjunction with the auto service station use.)
 - c. The perimeter parcel schedule of uses are amended to include: Drug Store, Package Store and Rental Establishments, Group II.
 - d. The retail/entertainment uses and all other perimeter parcel uses are limited as shown in Condition 2 above and in Condition 2 of Zoning Resolution Z-90-034.
3. Condition 7 of Resolution Z-90-034 remains in full force and effect except that M-3 is augmented with Drawing C-37, last revised 27-Apr-92, stamped received December 9, 1992.
4. All other conditions of Resolutions Z-90-034 and Z-91-092 remain in full force and effect except as modified above.

Site Plan 93-023 is attached hereto and incorporated herein by reference, as a reduced copy of the Master Concept Plan.

The following findings of fact were made in conjunction with this approval of CPD zoning:

HEARING NUMBER 90-04-17-DRI-01(d)

RESOLUTION NUMBER Z-93-023

- A. That changed conditions in the area warrant approval of the rezoning to CPD, and amending the CPD zoning to increase the total buildable square footage and uses permitted on the perimeter parcels.
- B. That the rezoning and changes to CPD zoning, as conditioned, will not have an adverse impact on the Zoning Ordinance.
- C. That the rezoning and changes to CPD zoning, as conditioned, are consistent with the goals, objectives, policies and intent of the Lee Plan, and with the densities, intensities and general uses set forth in the Lee Plan.
- D. That the rezoning and changes to CPD zoning, as conditioned, meets or exceeds all performance and locational standards set forth for the proposed uses.
- E. That the rezoning and changes to CPD zoning, as conditioned, will protect, conserve or preserve environmentally critical areas and natural resources.
- F. That the rezoning and changes to CPD zoning, as conditioned, will be compatible with the other existing or planned uses and will not cause damage, hazard, nuisance or other detriment to persons or property.
- G. That the rezoning and changes to CPD zoning, as conditioned, will not place an undue burden upon existing transportation or other services and facilities, and will be served by streets with the capacity to carry traffic generated upon completion of the development.
- H. That the rezoning and changes to CPD zoning, as conditioned, will be in compliance with all applicable general zoning provisions and supplemental regulations pertaining to the use, as set forth elsewhere in the Zoning Ordinance.
- I. That the additions of the 0.6 acre tract and 25,000 square feet of commercial use, and the revised starting and opening dates and Schedule of Uses, individually and in conjunction with previous DRI Development Order amendments, do not constitute a Substantial Deviation under the criteria set out in Section 380.06(19), Florida Statutes.

The foregoing Resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner Franklin B. Mann, and seconded by Commissioner John E. Albion and, upon being put to a vote, the result was as follows:

John E. Manning	Absent
Douglas R. St. Cerny	Absent
Ray Judah	Aye
Franklin B. Mann	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 30th day of June, A.D., 1993.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: Ray Judah
Deputy Clerk

BY: Ray Judah
Chairman

FILED

JUL 9 1993

CLERK CIRCUIT COURT
BY Ray Judah D.C.

Approved as to form by:

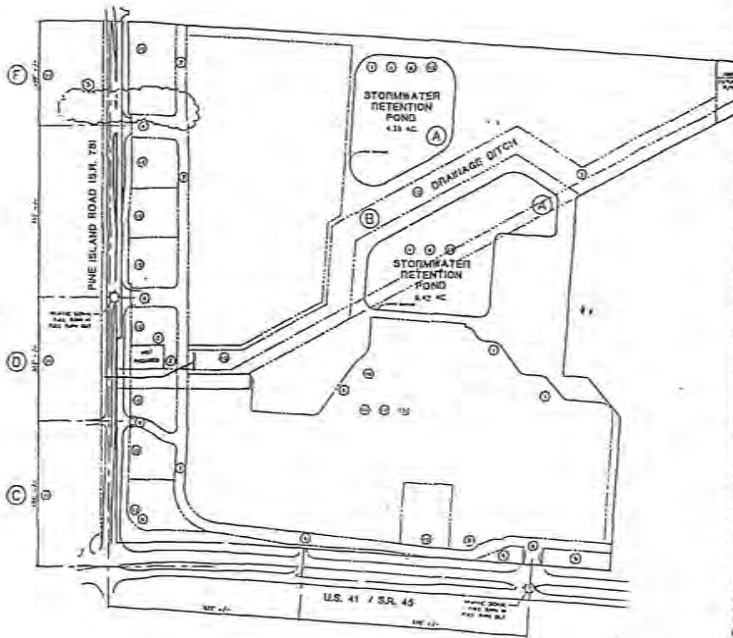
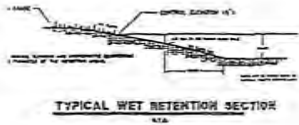
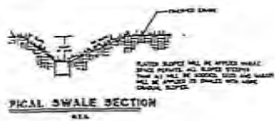
Raymond Harris Collins
County Attorney's Office

HEARING NUMBER 90-04-17-DRI-01(d)

RESOLUTION NUMBER Z-93-023

7350

Page 4 of 5



GENERAL NOTES

1. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES AND AGENCIES OF STATE AND FEDERAL GOVERNMENT. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES AND AGENCIES OF STATE AND FEDERAL GOVERNMENT.

2. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES AND AGENCIES OF STATE AND FEDERAL GOVERNMENT. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES AND AGENCIES OF STATE AND FEDERAL GOVERNMENT.

3. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES AND AGENCIES OF STATE AND FEDERAL GOVERNMENT. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES AND AGENCIES OF STATE AND FEDERAL GOVERNMENT.

4. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES AND AGENCIES OF STATE AND FEDERAL GOVERNMENT. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM ALL APPLICABLE AGENCIES AND AGENCIES OF STATE AND FEDERAL GOVERNMENT.

EXPLANATION OF SYMBOLS

1. RETENTION POND: A rectangular pond with a depth of 4 feet and a capacity of 131 AC. The pond shall be constructed of concrete or masonry and shall have a minimum depth of 4 feet. The pond shall be located within the site boundaries and shall be accessible to the street. The pond shall be surrounded by a concrete curb and shall have a drainage ditch on the top. The pond shall be located within the site boundaries and shall be accessible to the street. The pond shall be surrounded by a concrete curb and shall have a drainage ditch on the top.

2. DRAINAGE DITCH: A drainage ditch with a depth of 2 feet and a width of 4 feet. The ditch shall be constructed of concrete or masonry and shall have a minimum depth of 2 feet. The ditch shall be located within the site boundaries and shall be accessible to the street. The ditch shall be surrounded by a concrete curb and shall have a drainage ditch on the top.

3. CURB: A concrete curb with a height of 4 inches and a width of 12 inches. The curb shall be constructed of concrete and shall have a minimum height of 4 inches. The curb shall be located within the site boundaries and shall be accessible to the street. The curb shall be surrounded by a concrete curb and shall have a drainage ditch on the top.

4. STREET: A street with a width of 40 feet and a depth of 4 feet. The street shall be constructed of concrete or masonry and shall have a minimum width of 40 feet. The street shall be located within the site boundaries and shall be accessible to the street. The street shall be surrounded by a concrete curb and shall have a drainage ditch on the top.

ABRAMS
PROPERTIES
1375-J Granada Blvd
Suite 201
North Fort Myers, Florida 33916
404/733-8723
FAX 404/733-2841

Project
MERCHANTS CROSSING
NORTH FORT MYERS, FLORIDA

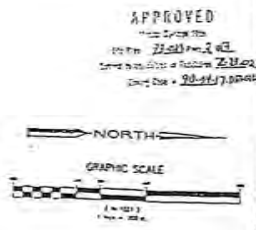
Applicant
MERCHANTS CROSSING OF NORTH FORT MYERS, INC.

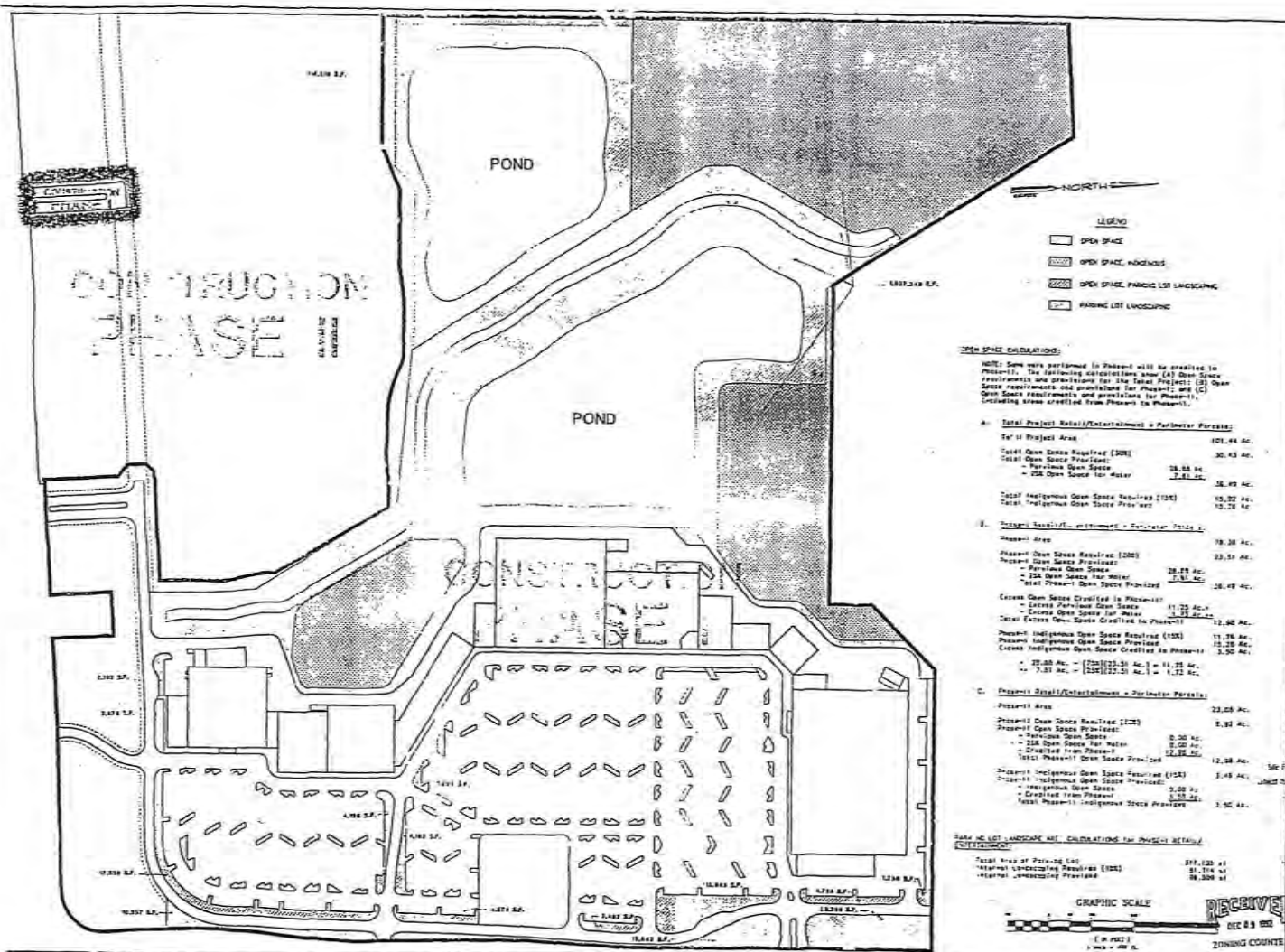
Revisions	By
1. APPROVE FOR PERMITS	2/2/02
2. APPROVE FOR PERMITS	2/2/02
3. APPROVE FOR PERMITS	2/2/02
4. APPROVE FOR PERMITS	2/2/02
5. APPROVE FOR PERMITS	2/2/02

Drawing Title
MASTER CONCEPT PLAN

Scale: 1" = 100'
Date: 2/2/02

A COMMERCIAL PLANNED DEVELOPMENT APPLICATION FOR PUBLIC HEARING





ABRAMS
 ARCHITECTS
 1775-A Georgia Ave
 Suite 201
 Atlanta, Georgia 30328
 404/525-8700
 fax 404/252-2811

- LEGEND**
- OPEN SPACE
 - ▨ OPEN SPACE, HATCHED
 - ▩ OPEN SPACE, PARKING LOT LANDSCAPING
 - ▧ PARKING LOT LANDSCAPING

OPEN SPACE CALCULATIONS:

NOTE: Some work performed in Phase-1 will be credited to Phase-2. The following calculations show (a) Open Space requirements and provisions for the total Project; (b) Open Space requirements and provisions for Phase-1; and (c) Open Space requirements and provisions for Phase-2, including areas credited from Phase-1 to Phase-2.

A. Total Project Retail/Entertainment + Parkmeter Parcels:

Total Project Area	101.44 Ac.
Total Open Space Required (OSR)	30.43 Ac.
- Parked Open Space	28.58 Ac.
- OSR Open Space for Water	1.85 Ac.
Total Impervious Open Space Required (IOSR)	15.22 Ac.
Total Impervious Open Space Provided	15.28 Ac.

B. Phase-1 Retail/Entertainment + Parkmeter Parcels:

Phase-1 Area	79.38 Ac.
Phase-1 Open Space Required (OSR)	23.51 Ac.
- Parked Open Space	22.57 Ac.
- OSR Open Space for Water	0.94 Ac.
Total Phase-1 Open Space Provided	26.49 Ac.
Excess Open Space Credited to Phase-2	12.98 Ac.
- Excess Parked Open Space	11.25 Ac.
- Excess Open Space for Water	1.73 Ac.
Total Phase-1 Open Space Credited to Phase-2	12.98 Ac.
Phase-1 Impervious Open Space Required (IOSR)	11.26 Ac.
Phase-1 Impervious Open Space Provided	12.28 Ac.
Excess Impervious Open Space Credited to Phase-2	1.02 Ac.
- IOSR Ac. - (22.57 Ac.) = 11.26 Ac.	
+ 1.02 Ac. - (1.24 Ac.) = 1.02 Ac.	

C. Property Detail/Entertainment + Parkmeter Parcels:

Phase-2 Area	22.06 Ac.
Phase-2 Open Space Required (OSR)	6.92 Ac.
Phase-2 Open Space Provided:	
- Parked Open Space	6.00 Ac.
- OSR Open Space for Water	0.92 Ac.
Total Phase-2 Open Space Provided	6.92 Ac.
Phase-2 Impervious Open Space Required (IOSR)	3.45 Ac.
Phase-2 Impervious Open Space Provided:	
- Impervious Open Space	3.22 Ac.
- Credited from Phase-1	0.23 Ac.
Total Phase-2 Impervious Open Space Provided	3.45 Ac.

NET OPEN SPACE AND LANDSCAPING CALCULATIONS FOR PHASE-1 RETAIL/ENTERTAINMENT:

Total Area of Parked Lot	817,120 sq ft
Impervious Landscaping Required (IOSR)	81,116 sq ft
Impervious Landscaping Provided	88,308 sq ft



Project
 MERCHANTS CROSSING
 NORTH FORT MYERS, FLORIDA

Developer
 MERCHANTS CROSSING OF NORTH FORT MYERS
 ATLANTA, GEORGIA

Revisions

Rev. No.	Date
001	10-14-92
002	11-10-92
003	11-10-92
004	11-10-92
005	11-10-92
006	11-10-92
007	11-10-92
008	11-10-92
009	11-10-92
010	11-10-92

Drawing Title
 OPEN SPACE
 CALCULATIONS

Sheet No. **C-37**
 Drawing No. **C-37**

SECOND
DEVELOPMENT ORDER
AMENDMENT
FOR

MERCHANTS CROSSING

A DEVELOPMENT OF REGIONAL IMPACT

STATE DRI #7-8889-92
COUNTY CASE #90-04-17-DRI-01(d)(d)

WHEREAS, a Development Order for the Merchants Crossing Development of Regional Impact (DRI) was adopted by the Board of County Commissioners on October 31, 1990; and amended on October 14, 1991; and

WHEREAS, the Developer of Merchants Crossing DRI has proposed changes to add 0.6+ acres of land to the development; increase the gross floor area of retail commercial uses from 530,000 square feet to 555,000 square feet; and change the Construction Target Plan; and

WHEREAS, under Section 380.06(19), Florida Statutes, proposed changes must be reviewed to determine whether or not a substantial deviation from the original Development Order would result; and

WHEREAS, the Board of County Commissioners has reviewed the proposed changes and finds that they are not a substantial deviation if subject to the conditions in this Development Order Amendment, but any further changes will be reviewed cumulatively for determination as to whether or not a substantial deviation has occurred.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, that the Development of Regional Impact Development Order for Merchants Crossing DRI is hereby further amended as follows with additions underlined and deletions struck through. All other portions of the original Development Order or the First Development Order Amendment, whichever is appropriate, remain in full force and effect.

SECTION ONE:

Paragraph A: Merchants Crossing DRI is a ~~mixed-use~~ commercial development in northern Lee County which consists of ~~104/06~~ 104.66 acres.

The Construction Target Plan identified in Section A as Exhibit "A-1" in the First Development Order Amendment is amended to increase the total square footage of gross floor area which may be constructed in stage II from 159,000 square feet to 184,000 square feet and to change the project's starting dates

and projected opening dates. A revised Exhibit "A-1.a" is attached hereto. The legal description contained in Section B is revised to include the additional lands as follows: delete the previous legal description and replace with the following:

A portion of the Southwest Quarter (SW1/4) of Section 34, Township 43 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

COMMENCING AT the Southwest corner of said Section 34;
THENCE N03°25'58"E, along the West line of the Southwest Quarter (SW1/4) of said Section 34, a distance of 73.52 feet, to the POINT OF BEGINNING of this description;

THENCE continue N03°25'58"E, along the last described course, a distance of 2,484.86 feet, to a point on a line parallel with and 100 feet South of, as measured at Right angles to the North line of the Southwest Quarter (SW1/4) of said Section 34;

THENCE S89°56'05"E, along said parallel line, a distance of 264.66 feet;

THENCE S28°32'36"E, a distance of 664.99 feet;

THENCE S86°34'00"E, a distance of 747.11 feet;

THENCE N03°26'00"E, a distance of 100.00 feet;

THENCE N48°25'58"E, a distance of 212.13 feet;

THENCE S86°34'00"E, a distance of 650.00 feet, to the Westerly right-of-way line of US 41 (SR 45);

THENCE S03°25'53"W, along said right-of-way line, a distance of 718.01 feet;

THENCE S06°17'38"W, along said right-of-way line, a distance of 240.30 feet;

THENCE S03°25'53"W, along said right-of-way line, a distance of 409.75 feet;

THENCE S08°42'37"W, along said right-of-way line, a distance of 315.20 feet, to a point on the arc of a circular curve to the left, whose radius point bears S86°34'07"E from said point;

THENCE Southerly along said right-of-way line and the arc of said curve, having a radius of 3,005.79 feet, a central angle of 05°09'06", and a chord bearing of S00°51'20"W, an arc distance of 270.27 feet, to the Point of Reverse Curvature of a circular curve to the right;

THENCE Southerly and Westerly, along the arc of said curve, having a radius of 100.00 feet, a central angle of 93°29'08" and a chord bearing of S45°01'21"W, an arc distance of 163.16 feet, to the Point of Tangency and the Northerly right-of-way line of Pine Island Road (SR 78);

THENCE N88°14'05"W, a distance of 383.15 feet;

THENCE N89°57'42"W, a distance of 196.50 feet, to the Easterly line of those lands described in Official Records Book 421, Page 480, as recorded in Public Records of Lee County, Florida; the

last two courses being along the Northerly right-of-way line of said Pine Island Road (SR 78);
THENCE N00°04'40"E, along said Easterly line, a distance of 142.10 feet, to the Northerly line of those lands described in said Official Records Book 421, Page 480;
THENCE N89°55'20"W, along said Northerly line, a distance of 100.00 feet, to the Westerly line of those lands described in said Official Records Book 421, Page 480;
THENCE S00°04'40"W, along said Westerly line, a distance of 142.17 feet, to the Northerly line of said Pine Island Road (SR 78);
THENCE N89°57'42"W, a distance of 259.57 feet;
THENCE S00°02'18"W, a distance of 12.00 feet;
THENCE N89°57'42"W, a distance of 255.32 feet;
THENCE N86°08'51"W, a distance of 180.40 feet;
THENCE N89°57'42"W, a distance of 274.68 feet;
THENCE S00°02'18"W, a distance of 12.00 feet;
THENCE N89°57'42"W, a distance of 230.03 feet, to the Point of Curvature of a circular curve to the left;
THENCE Westerly along the arc of said curve, having a radius of 2,944.29 feet, a central angle of 03°10'09" and a chord bearing of S88°27'14"W, an arc distance of 162.86 feet, to the POINT OF BEGINNING, the last eight (8) courses being along the Northerly right-of-way line of said Pine Island Road (SR 78).

CONTAINING 101.44+ acres.

Section C is amended to address the parcel that is added as follows:

The land that is added (0.6 acres) is currently zoned AG-2 and is undeveloped. The rezoning approved with the subject Development Order is Commercial Planned Development (CPD), pursuant to the authority of Chapter 163, Florida Statutes, Laws of Florida 61-2405, and the Lee County Zoning Regulations, as amended.

D. The proposed changes to the Merchants Crossing DRI Development Order described herein are consistent with the adopted Comprehensive Plan of Lee County and applicable local land development regulations.

E. The proposed changes to the Merchants Crossing DRI will not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.

F. The proposed changes are consistent with the State Comprehensive Plan.

SECTION TWO

Amend the project description in Section B of the Amended Development Order to replace the total square foot figure with the following:

Total Square Feet ~~330,000~~ 555,000

Certified copies of this Development Order Amendment Order Amendment will be forwarded to the Southwest Florida Regional Planning Council, the developer, and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but shall not be effective until the expiration of the statutory appeals period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater. Upon this Development Order Amendment becoming effective, notice of its adoption shall be recorded by the developer as provided in Chapter 380, Florida Statutes.

THE MOTION TO ADOPT this Resolution approving and adopting this Development Order was offered by Commissioner Franklin B. Mann, and seconded by Commissioner John E. Albion and upon poll of the members present, the vote was as follows:

Commissioner Manning	Absent
Commissioner St. Cerny	Absent
Commissioner Judah	Aye
Commissioner Mann	Aye
Commissioner Albion	Aye

DULY PASSED AND ADOPTED this 30th day of June, 1993.

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

By: Ray Judah
(Chairman)

ATTEST:
Charlie Green, Ex - Officio Clerk
Board of County Commissioners
Clerk

By: Clara J. Green
Deputy Clerk

APPROVED AS TO FORM

By: Anna Marie Collins
County Attorney's Office

[CATTYLU]DRI7429

4 of 4

FILED

JUL 9 1993

CLERK CIRCUIT COURT
RY c.l. D.C

EXHIBIT A-1.a
 CONSTRUCTION TARGET PLAN
 MERCHANTS CROSSING OF NORTH PT. MYERS

		Projected Start Date	Projected Opening Date
CONSTRUCTION STAGE I:			
RETAIL & ENTERTAINMENT CENTER:			
RETAIL	353,000 sf		
ENTERTAINMENT	6,000 sf	4-92	8-93
	359,000 sf	<u>0/92</u>	<u>11/92</u>
PERIMETER PARCELS:			
BANKS (2)	8,000 sf	9/92 1-93	6/93 8-93
GAS STA./CONV. (1)	1,000 sf	9/92 1-93	6/93 8-93
GENERAL RETAIL (1)	3,000 sf	11/92 1-93	6/93 8-93
	12,000 sf		
TOTAL CONSTRUCTION STAGE I	371,000 sf		
 CONSTRUCTION STAGE II:			
RETAIL & ENTERTAINMENT CENTER:			
RETAIL	107,400/sf 132,400 sf	12-93	12-94
ENTERTAINMENT:			
CINEMA (4)	32,000 SF	12-93	12-94
RESTAURANT W/COP (1)	4,000 SF	12-93	12-94
SHOPS	1,600 SF	12-93	12-94
	143,000/sf 170,000 sf		
PERIMETER PARCELS:			
BANKS (1)	3,000 sf	1-94	11-94
RESTAURANTS (2)	6,000 sf	4-94	12-94
GENERAL RETAIL (2)	5,000 sf	4-94	12-94
	14,000 sf		
TOTAL, CONSTRUCTION STAGE II	189,000/sf 184,000 sf		
 TOTAL, CONSTRUCTION STAGES I & II		 <u>330,000/sf</u>	 <u>555,000 sf</u>

The parenthetical numbers shown above identify the number of actual uses.
 Note 1. sf = Square Feet

Note 2. The square footage amounts for the different uses provided above are estimates and are subject to being reallocated within each construction stage. Any square footage not developed in construction stage I can be transferred to construction stage II. However, any transfers from stage II to stage I shall be reviewed by Lee County Department of Community Development to determine if additional payments are required. The total square footage for both construction stages I and II shall not exceed ~~330,000~~ 555,000 square feet.

Note 3. The dates shown are estimates and, therefore, are subject to change.

Note 4. The theater use located in the Entertainment Area of Tract II was originally submitted and approved as a 10 plex cinema estimated at 24,000 square feet and containing 1,800 seats. The use and number of screens have not been revised; however, the 10 plex cinema is now estimated to be 32,000 square feet in size and has approximately 2,500 seats.

Charlie Green
Clerk Of Circuit Court
Lee County, Florida

STATE OF FLORIDA

COUNTY OF LEE

I, Charlie Green, Clerk of Circuit Court, Lee County, and ex-Officio Clerk to the Board of County Commissioners, Lee County, Florida, do hereby certify that the foregoing is a true and photostatic copy of the Second Development Order Amendment for Merchants Crossing, DRI, State DRI #7-8889-92, County Case #90-04-17-DRI-01 (d), adopted by the Board of County Commissioners on June 30, 1993.

Given under my hand and seal at Fort Myers, Florida, this 9th day of July, 1993.

CHARLIE GREEN,
Clerk, Circuit Court
Lee County, Florida

By Clara J. Wauke
Deputy Clerk

THIRD DEVELOPMENT ORDER AMENDMENT

**FOR
MERCHANTS CROSSING
A DEVELOPMENT OF REGIONAL IMPACT
STATE DRI #7-8889-92
COUNTY CASE #90-4-17-1 DRI**

WHEREAS, pursuant to section 380.06 of the Florida Statutes, the Board of County Commissioners of Lee County, Florida, (Board) heard at a public hearing, the application for development approval for Merchants Crossing, a commercial development in Lee County which consisted of approximately one hundred four acres to be developed in accordance with the application filed on July 11, 1989; and

WHEREAS, the Board adopted the Merchants Crossing DRI Development Order on October 31, 1990; and

WHEREAS, the DRI Development Order was subsequently amended on October 14, 1991 to increase the approved square footage of retail development, delete motel and office uses, increase the indigenous open space, adjust the transportation mitigation payment and change the construction target plan; and

WHEREAS, the DRI Development Order was thereafter amended a second time on June 30, 1993 to (1) increase the square footage approved for retail uses, (2) amend the construction target plan, and (3) add additional property to the development order; and

WHEREAS, on September 26, 1994, the County authorized the construction of a sixteen screen movie theater without a formal Notice of Proposed Change by subtracting the square footage of the expanded movie theater from the approved retail square footage; and

WHEREAS, the owner/developer of the project seeks to amend the DRI Development Order a third time to extend by less than five years the start date, build out date, termination date and down zone protection date of the project; and

WHEREAS, the County Department of Community Development is taking this opportunity to codify all previous amendments and existing conditions into one development order; and

WHEREAS, the County is also taking this opportunity to correct and restate the commitments to FDOT; and

WHEREAS, the Board finds and determines the following:

I. FINDINGS OF FACT CONCLUSIONS OF LAW

- A. Merchants Crossing DRI is a commercial development in northern Lee County which consists of 104.66 acres (includes property ultimately used for right-of-way improvements on State Route 78 and US 41). The development is proposed to consist of 555,000 square feet of retail commercial, 28 acres of lakes and sloughs for water management and wetland mitigation, 6.1 acres of preservation area and 4 acres of roads. The project is planned in one phase to the year ~~1994~~2000. The construction target plan proposed by the developer is attached as Exhibit A-1a.
- B. The legal description of the project is as follows:

A portion of the Southwest Quarter (SW1/4) of Section 34, Township 43 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

COMMENCING AT the Southwest corner of said Section 34; THENCE N 03°25'58" E, along the West line of the Southwest Quarter (SW1/4) of said Section 34, a distance of 73.52 feet, to the POINT OF BEGINNING of this description; THENCE continue N 03°25'58" E, along the last described course, a distance of 2,484.86 feet, to a point on a line parallel with and 100 feet South of, as measured at Right angles to the North line of the Southwest Quarter (SW1/4) of said Section 34; THENCE S 89°56'05" E, along said parallel line, a distance of 264.66 feet; THENCE S 28°32'36" E, a distance of 664.99 feet; THENCE S 86°34'00" E, a distance of 747.11 feet; THENCE N 03°26'00" E, a distance of 100.00 feet; THENCE N 48°25'58" E, a distance of 212.13 feet; THENCE S 86°34'00" E, a distance of 650.00 feet, to the Westerly right-of-way line of US 41 (SR 45); THENCE S 03°25'53" W, along said right-of-way line, a distance of 718.01 feet; THENCE S 06°17'38" W, along said right-of-way line, a distance of 240.30 feet; THENCE S 03°25'53" W, along said right-of-way line, a distance of 409.75 feet; THENCE S 08°42'37" W, along said right-of-way line, a distance of 315.20 feet, to a point on the arc of a circular curve to the left, whose radius point bears S 86°34'07" E from said point; THENCE Southerly along said right-of-way line and the arc of said curve, having a radius of 3,005.79 feet, a central angle of 05°09'06", and a chord bearing of S 00°51'20" W, an arc distance of 270.27 feet, to the Point of Reverse Curvature of a circular curve to the right; THENCE Southerly and Westerly, along the arc of said curve, having a radius of 100.00 feet, a central angle of 93°29'08" and a chord bearing of S 45°01'21" W, an arc distance of 163.16 feet, to the Point of Tangency and the Northerly right-of-way line of Pine Island Road (SR 78); THENCE N 88°14'05" W, a distance of 383.15 feet; THENCE N 89°57'42" W, a distance of 196.50 feet, to the Easterly line of those lands described in Official Records Book 421, Page 480, as recorded in Public Records of Lee

County, Florida; the last two courses being along the Northerly right-of-way line of said Pine Island Road (SR 78); THENCE N 00°04'40" E, along said Easterly line, a distance of 142.10 feet, to the Northerly line of those lands described in said Official Records Book 421, Page 480; THENCE N 89°55'20" W, along said Northerly line, a distance of 100.00 feet, to the Westerly line of those lands described in said Official Records Book 421, Page 480; THENCE S 00°04'40" W, along said Westerly line, a distance of 142.17 feet, to the Northerly line of said Pine Island Road (SR 78); THENCE N 89°57'42" W, a distance of 259.57 feet; THENCE S 00°02'18" W, a distance of 12.00 feet; THENCE N 89°57'42" W, a distance of 255.32 feet; THENCE N 86°08'51" W, a distance of 180.40 feet; THENCE N 89°57'42" W, a distance of 274.68 feet; THENCE S 00°02'18" W, a distance of 12.00 feet; THENCE N 89°57'42" W, a distance of 230.03 feet, to the Point of Curvature of a circular curve to the left; THENCE Westerly along the arc of said curve, having a radius of 2,944.29 feet, a central angle of 03°10'09" and a chord bearing of S 88°27'14" W, an arc distance of 162.86 feet, to the POINT OF BEGINNING, the last eight (8) courses being along the Northerly right-of-way line of said Pine Island Road (SR 78).

CONTAINING 101.44+ acres. (Does not include property used for right-of-way improvements to State Road 78 and US 41)

- C. The project's zoning is Commercial Planned Development (CPD), pursuant to the authority of Chapter 163, Florida Statutes, Laws of Florida 61-2405, and the Lee County Zoning Regulations, as amended.
- D. The Application for Development Approval is consistent with the requirements of Chapter 380.06, Florida Statutes.
- E. The development is not located in an area designated as an Area of Critical State Concern, pursuant to the provisions of Chapter 380.05, Florida Statutes.
- F. The development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.
- G. The development has been reviewed by the Southwest Florida Regional Planning Council and is the subject of the report and recommendations adopted by that body. The development, as proposed in the Application for Development Approval and modified by this Development Order, is consistent with the report and the recommendations of the Southwest Florida Regional Planning Council pursuant to Section 380.06(11).
- H. Concurrently with the adoption of the original DRI Development Order, the property was rezoned in accordance with Lee County Zoning Ordinance 86-17, as amended.

The Zoning Resolution contains additional details and conditions pertaining to the Merchants Crossing development, and also provides for certain deviations from Lee County zoning and development regulations.

- I. The development is located in the Intensive Development and Central Urban classifications of the Lee Plan and is consistent with the Lee County Comprehensive Plan and Lee County's Land Development Regulations if subject to the conditions contained in this Development Order.
- J. The proposed conditions below meet the criteria found in Chapter 380.06(15)(d), Florida Statutes.

II. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Lee County, Florida, in a public meeting that the Development of Regional Impact Application for Development Approval submitted by ~~William G. Phillips~~, hereinafter referred to as "~~Developer~~" or "~~Applicant~~", is hereby ordered Approved subject to the following conditions, restrictions, and limitations:

A. DRAINAGE/WATER QUALITY

1. The ~~applicant~~ developer shall participate in any on-going or future efforts by Lee County to establish a County-wide Watershed Basin Management Plan.
2. The developer and his successor(s) shall implement and maintain an on-going monitoring and maintenance program that regularly inspects, maintains, and samples the stormwater drainage system, including lake and wetlands monitoring during and after the development of Merchants Crossing. The developer shall establish the legal entity which will carry out this program after tracts and/or units are sold; the documents creating such entity must be approved by the Lee County Attorney's Office and the South Florida Water Management District prior to the implementation of the monitoring program. The program shall be designed in consultation with the staffs of the Southwest Florida Regional Planning Council, the South Florida Water Management District, and Lee County. Final approval of the program rests with the Lee County Department of Community Development. The purpose of this program is to insure that the stormwater drainage system functions in every aspect as planned. Should the monitoring program indicate that the system is not functioning as planned, ~~and/or~~ is not constructed in accordance with all approved plans, permits, ~~and/or~~ county

requirements, and/or is not meeting water quality standards of the applicable agencies, further development approvals shall not be granted until the developer has completed corrective measures as specified by Lee County. A monitoring and maintenance program has been approved by the Lee County Department of Community Development.

3. The project shall have District permits for construction and operation of the surface water management system, and for any dewatering activities associated with the construction of lakes, roads or building foundations.
4. The allowable discharge offsite for Merchants Crossing shall not exceed 0.09 cubic feet per second/acre over the whole project area, or as determined appropriate by SFWMD. Final allowable discharge must be determined by the developer and SFWMD staff, using a 72-hour storm duration model, prior to issuance of a surface water permit. A surface water permit has been issued by SFWMD. (Permit issued October 16, 1991 #36-02069-S.)
5. All water retention/detention areas shall meet District criteria. Any areas which do not meet this criteria may not be used in the calculation of water quality or quantity volumes.
6. Based on information provided by the developer, the entire freshwater marsh at the project's northern boundary, shall be indirectly impacted as a result of water table drawdown associated with lake control elevations, and irrigation withdrawals from the adjacent detention lake. To obtain a construction and operation permit, the developer shall provide detailed plans that indicate: buffer areas adjacent to wetlands, the extent of encroachment into wetlands, information which verifies that control elevations will maintain adequate wetland hydroperiods, acreage figures and cross-sections for all mitigation areas, a mitigation proposal that does not result in a net loss of wetlands and a mitigation proposal which includes a wetland monitoring and maintenance program.
7. The developer shall confirm, to the satisfaction of all federal, state and local review agencies, and the SFWMD, that the proposed water management system will not impact habitats of the golden polypody, prickly pear cactus, wild coco and gopher tortoise, as well as other endangered species potentially occurring on-site, or that such impacts will be mitigated to the benefit of on-site populations of these species.
8. The developer has indicated that the north-south watercourse will be relocated and redesigned to simulate a natural creek. The water course

shall be designed to meet District criteria in effect at the time of permit application. This requirement has been satisfied.

9. Provisions for the drainage of off-site areas and out-parcels that presently drain through the site shall be provided at the time of permit application.
10. The developer shall undertake a regularly scheduled vacuum sweeping of all streets and parking facilities, to be incorporated as a Best Management Practice.
11. In areas adjacent to retail or office uses, the developer shall provide dry pre-treatment, as determined by SFWMD at time of permitting (retention or detention), in order to provide reasonable assurance that hazardous materials will not enter the stormwater management system.
12. The operation of the Merchants Crossing Stormwater Management System is dependent on Yellow Fever Creek for an outlet. Therefore, a final Stormwater Management Plan shall demonstrate that the system is designed in accordance with existing design parameters for Yellow Fever Creek. A man-made ditch (the East Branch of Yellow Fever Creek) flows through the Merchants Crossing DRI which eventually drains to Yellow Fever Creek and the Caloosahatchee River in northern Lee County. Post developed runoff will be directed across the site through a series of surface water management ponds to a rerouted ditch that will also carry the offsite flows from the north. The rerouted ditch will flow through a culvert under Pine Island Road and eventually to Yellow Fever Creek.
13. Best Management Practices (BMP's) and monitoring and maintenance of the stormwater management system shall be implemented by the developer in accordance with District guidelines.
14. Any off-site road improvements constructed by the applicant or the developer shall address water quality in accordance with the South Florida Water Management District criteria.
15. The use of septic tanks shall be limited to temporary use with the temporary construction trailer and temporary leasing office only. Such use shall be eliminated when service is available on site from North Fort Myers Utilities.
16. All commitments made by the developer within the ADA related to Question 22 (Drainage) and Question 15 (Water Quality) and subsequent sufficiency round information, not in conflict with the above recommendations, are

hereby incorporated as conditions for approval.

B. ENERGY

All site plans or architectural programs shall incorporate, to the extent possible, the following energy conservation features into all site plans and architectural programs or the property owner/developer shall insure to the extent possible that following features are implemented through deed restrictions and/or covenants with successors in title. All applications for site plan approvals and building permits shall be accompanied by a document detailing proposed compliance with these conditions. If deed restrictions or covenants are utilized to insure compliance, such documents shall be approved by the Lee County Attorney's Office prior to recordation. If no deed restrictions are approved and recorded, the prior alternative shall be utilized and the following features shall be included;

1. Provision of bicycle racks or storage facilities in all tracts.
2. Use of energy-efficient features in window design.
3. Installation of energy-efficient appliances and equipment.
4. Prohibition of deed restrictions or covenants that would prevent or unnecessarily hamper energy conservation efforts (e.g. building orientation, and solar water heating systems).
5. Reduced coverage by asphalt, concrete, rock, and similar substances in streets, parking lots, and other areas to reduce local air temperatures and reflected light and heat.
6. Installation of energy-efficient lighting for streets, parking areas, and other interior and exterior public areas.
7. Use of water closets with a maximum flush of 3.5 gallons and shower heads and faucets with a maximum flow rate of 3.0 gallons per minute (at 60 pounds of pressure per square inch).
8. Selection of native plants, trees, and other vegetation and landscape design features that reduce requirements for water, fertilizer, maintenance, and other needs.
9. Planting of native shade trees to provide reasonable shade for all streets, recreation areas and parking areas.

10. Placement of trees to provide needed shade in the warmer months while not overly reducing the benefits of sunlight in the cooler months.
11. Orientation of structures, as possible, to reduce solar heat gain by walls to utilize the natural cooling effects of the wind.
12. Use of operable windows and ceiling fans.
13. Provision for structural shading (e.g., trellises, awnings, and roof overhangs) wherever practical, when natural shading cannot be used effectively.
14. Consideration by any project architectural review committee(s) of energy conservation measures (both those noted here and others) to assist builders in their efforts to achieve greater energy efficiency in the development.

The incorporation of these energy conservation measures in this Development Order does not preclude the provision of additional energy conservation measures by the developer. It also does not prevent the local government of jurisdiction or any state, regional, or other agency under whose jurisdiction this project falls from requiring additional energy measures or measures that may be more stringent.

C. POTABLE WATER/WATER SUPPLY

1. The developer shall incorporate the use of water saving devices as required by State law (Section 553.14., Florida Statutes).
2. The developer shall show that the proposed deep well, to supplement irrigation from the large lake, is of compatible water quality with surface waters. Furthermore, the developer shall show that proposed mitigation measures address possible damage from watertable drawdown.
3. The project shall require a water use permit for any withdrawals from groundwater, project lakes and/or any other surface water bodies for irrigation or potable uses and for any dewatering activities associated with the construction of project lakes, and/or road, or building foundations.
4. At the time of permit application, the developer shall provide verification that the proposed system designs will meet District criteria.
5. For the purpose of potable water conservation, Merchants Crossing shall utilize low water use plumbing/fixtures, self-closing and/or metered water

faucets, and other water conserving devices.

6. For the purpose of non-potable water conservation, Merchants Crossing shall utilize xeriscape principles in the design and maintenance of the project's landscaping.
7. The developer shall utilize Lee County Utilities for potable water.
8. In the project area, the lower Hawthorn aquifer has a chloride ion concentration greater than 500 mg/1. To utilize this as a recharge source for the project lake system, the permit developer shall show that the addition of this water to the lake system will not raise the chloride ion concentration of the lake above 200 mg/1.
9. The lake system is adjacent to wetland preserve areas. At the time of permit application, the developer shall show that the wetland hydroperiod will not be adversely affected by proposed irrigation withdrawals from the large lake at the north western corner of the site.
10. As the developer has committed to eventually using reclaimed wastewater for irrigation, the developer shall ensure that on-site lakes and wetlands are adequately buffered from possible effluent contamination.
11. Any spray irrigation using treated wastewater shall be accomplished in accordance with state and local regulations. The developer shall use treated wastewater for all or part of the project's irrigation demand, at such time as adequate amounts of treated wastewater are available for such purpose.
12. All construction plans, technical specifications, and proposed plats, if applicable, for the proposed water distribution system shall be reviewed and approved by the Lee County Utilities prior to commencement of construction.
13. The lowest quality of water possible shall be utilized for all outdoor non-potable water use.
14. Landscaping irrigation and all outdoor water uses, e.g. hosing concrete, shall be restricted to the hours of 5:00 P.M. to 9:00 A.M., or as restricted by SFWMD watering guidelines, after the establishment of the landscape foliage, unless the irrigation is done with treated effluent.
15. All commitments made by the developer within the ADA related to question 23 (Water Supply) and subsequent sufficiency round information, not in

conflict with the above recommendations, are hereby incorporated as conditions for approval.

D. FIRE PROTECTION

1. To mitigate its impacts upon provision of adequate fire protection, the developer shall:
 - (a) Pay fire protection and emergency medical services impact fees; and,
 - (b) Sprinkler all buildings in the project. (With the exception of the SunBank parcel on the corner of SR 78 and U.S. 41 south.)
 - (c) Provide funds to North Fort Myers Fire Protection District to purchase a 65-foot telesquirt fire truck or comparable equipment. This provision must be met within sixty days after the first building permit is obtained from Lee County for any building over two stories in height.

2. The Merchants Crossing DRI shall comply with any duly adopted fire code and life safety code regulations unless deviations or variances are obtained from such regulations.

E. REGIONAL SHOPPING CENTER

The total maximum square footages/limits of development in each tract shall be as follows:

USE	TRACT	SUB-TOTALS	TOTAL SQUARE FEET
<u>Retail & Entertainment Center and Perimeter Parcel Uses*</u>			
Restaurants	(perimeter & Tracts I and II)	<u>10,000 sf</u>	
Gas Station	(perimeter)	<u>1,000 sf</u>	
Theater <u>(Sixteen Screen)</u>	(entertainment area of Tract II)	<u>60,000 sf</u>	
Retail/Service	(retail/service/entertainment tract & perimeter)	<u>484,000 sf</u>	
			<u>555,000**</u>

USE	TRACT	SUB-TOTALS	TOTAL SQUARE FEET
<p><u>*The square footage subtotals for the different uses provided above are estimates and are subject to reallocation among the other uses. The complete schedule of permitted uses for the Merchants Crossing Shopping Center is found in "Master Concept Plan," drawing number Map-M.1A, revised through August 31, 1993.</u></p>			
<p>** As limited by all other conditions of the Zoning Resolution and DRI Development Order</p>			

F. VEGETATION/WILDLIFE/WETLANDS

Approximately 6.5 acres of the Merchant's Crossing site occurs as two types of wetlands; 3.8 acres of freshwater marsh and 2.7 acres of mixed hardwood wetlands. The Developer has committed to significant wetland mitigation which features wetland marshes and a north/south creek, with adjacent floodplain vegetation. A portion of the 3.1 acres of the floodplain will be planted with hydric hammock species. This portion shall not be less than the hardwood wetland area to be impacted.

Also on site is an approximate 4.9 acre oak and cabbage palm hammock/wetland hardwood system, (2.2 hammock/2.7 wetland). The developer has committed to save the significant elements of this system, representing 1.9 acres.

1. Prior to issuance of local Final Development Order, the developer shall submit a vegetation plan. The preservation of the significant elements of the Oak/Cabbage Palm Hammock and adjacent Hardwood Wetland System shall be in accordance with the Mitigation Plan (M-3A) which is attached as Exhibit C.
2. At the time of permit application to the SFWMD, the developer shall provide detailed plans that indicate buffer areas adjacent to wetlands, the extent of encroachment into wetlands, information verifying that control elevations will maintain adequate wetland hydroperiods, acreage figures and cross-sections for all mitigation areas, a mitigation proposal that does not result in a net loss of wetlands, and a mitigation proposal which includes a wetland monitoring and maintenance program, developed in accordance with adopted policies of the regulatory agencies.
3. Prior to the approval of a local Final Development Order for any phase of the development, the developer shall submit and subsequently follow a Florida Game and Freshwater Fish Commission approved Gopher Tortoise Management Plan.

4. The developer shall provide for preservation and/or relocation on-site of the four listed plant species found on-site (e.g. golden polypody, prickly pear cactus, wild coco and whisk fern) to the satisfaction of Florida Game and Fresh Water Fish Commission and Lee County Division of Environmental Sciences.
5. All other commitments made by the developer in either the ADA or sufficiency round information, not in conflict with the above recommendations, shall be incorporated as conditions for development order approval.

G. TRANSPORTATION

1. The transportation impact assessment upon which this Development Order is based assumes the development patterns and land uses reflected in the Merchants Crossing DRI/ADA application. The application assumes one continuous phase of development with build out by the year ~~1994~~2000.
2. Merchants Crossing shall submit an annual traffic monitoring report. The monitoring program shall be designed in cooperation with the Lee County Department of Transportation ~~and Engineering~~, the Southwest Florida Regional Planning Council and the Florida Department of Transportation. The annual monitoring report shall contain at a minimum AM and PM, peak-hour peak season traffic counts (with turning movements) and mutually agreed upon professionally acceptable level of service analyses at all project access points onto the roadway network and at the following intersections:

SR 78 (Pine Island Rd.) at:
US 41
Pondella Rd.
Del Prado Blvd.
Santa Barbara Blvd.
SR 78 (Bayshore Rd.) at:
Business 41
Hart Rd.

Del Prado Blvd. at :
SR 78 (Pine Island Rd.)
Viscaya Pkwy.
Hancock Bridge Pkwy.

US 41 at:

Pondella Rd.

In addition, peak season daily traffic counts and level of service calculations shall be submitted as part of the annual monitoring report for all project access roads and the roadway links listed below:

SR 78 (Pine Island Rd.)
Piney Rd. to Santa Barbara Blvd.

SR 78 (Bayshore Rd.)
Business 41 to Slater Rd.

Del Prado Blvd.
SR 78 to Viscaya Pkwy.

US 41
Hancock Bridge Pkwy. to Business 41

Business 41 from
SR 78 to Littleton Rd.

Pondella Rd.
US 41 to Orange Grove Blvd.

Merchants Crossing shall submit the annual monitoring report to Lee County DOT, the Southwest Florida Regional Planning Council and the Florida Department of Transportation SW Area Office for review. The first report shall be submitted one year after the issuance of the DRI Development Order for the property included in the Merchants Crossing DRI/ADA application. Reports shall be submitted annually until project build-out. Actual build-out will occur when the developer has completed the construction authorized by this Development Order. Declared build-out would occur if the developer formally declared in writing to the County Administrator that nothing more will be constructed despite the fact that less than the permissible maximum had been built to date. The purposes of the annual monitoring program are to:

- (a) Determine whether or not the traffic levels projected in the traffic impact assessment for Merchants Crossing are exceeded by actual impacts,
- (b) Assist Lee County and F.D.O. T. in determining the proper timing of necessary roadway improvements, and

- (c) Determine the project's external trip generation.

It is recognized and understood that traffic counts may be obtained from original machine and manual peak hour counts, Lee County traffic volume reports, Florida Department of Transportation, other ADA developments with similar monitoring requirements, and other reliable sources of traffic counts.

3. As mitigation for the transportation impacts of Merchants Crossing, the developer shall provide the following:

- a. The developer shall make a cash payment of \$1,500,000 into an escrow account on or before October 1, 1993, or upon issuance of the first building permit, whichever occurs earlier. All interest earned on this account shall accrue to the benefit of the County. A portion of this money (up to a maximum of \$1 million as further limited in paragraph G.3.f.) shall be used for the widening of SR 78. The use of funds and terms of the escrow shall be governed by a separate escrow agreement between the parties, and is subject to approval by the County Attorney's office, which approval shall not be unreasonably withheld. *This requirement has been satisfied.*
- b. The developer shall make a cash payment of \$791,370 on or before December 1, 1994, or upon issuance of the first building permit for Tract II, whichever occurred earlier as shown on the Master Concept Plan (M-1A, last revised July 1, 1991) attached to Zoning Resolution Z-90-034. The cash payments totaling ~~\$7,291,370~~ \$2,291,370 may be considered as full credit against road impact fees.

Should those provisions be repealed, amended or otherwise no longer in effect as part of Ordinance 89-17, as amended, they shall nevertheless govern availability of credits under this Development Order as those provisions existed on the effective date of this Development Order. *This requirement has been satisfied.*

- c. Within 90 days of approval of the DRI Development Order, the developer shall donate the right-of-way needed for widening SR 78 (Pine Island Road) and US 41 to the Florida Department of Transportation (FDOT), and shall donate the 100 feet of right-of-way needed to extend Diplomat Parkway to the County. The necessary right-of-way which is intended to be sufficient to accommodate a four lane divided highway built to FDOT standards is shown on Exhibit D. No roads impact fee credits shall be applied for, or granted for, this right-of-way. *This requirement has been satisfied.*

d. The developer shall construct, at no cost to the County, the following improvements to SR 78:

- 1) Re-sign the northbound US 41 approach to encourage northbound right turns at SR 78 to be made as right turns at Brown Road.
- 2) Reconstruct the eastbound/westbound approaches to provide a four-lane cross-section through the US 41 intersection and eliminate the "plateau" effect.
- 3) Re-time/re-phase the signal at the US 41/SR78 intersection to reflect the above improvements and to provide for protected and permissive left-turn movements.

The developer shall not request or be granted roads impact fee credits to offset the cost of these intersection improvements.

The developer shall submit the construction plans for the above intersection improvements within 120 days following approval of the DRI for filing with the County and State for their review. The developer shall commence construction of the intersection improvements within 90 days of obtaining the permits for such improvements and will diligently pursue the work to its completion. The intersection improvements shall be completed prior to obtaining any Certificates of Occupancy or Completion for any portion of the development.

Intersection improvements shall be depicted on construction drawings prepared by the developer, which are subject to review and approval by Lee County DOT&E and FDOT. These plans are subject to modification as necessary subject to obtain FDOT approval, and as determined by DOT&E, to comply with the specifications for the interim improvements as recommended in the Lee County/DCA Settlement Agreement. The development cost shall include the total engineering costs for the intersection.

The developer's obligation shall include the full cost of design and engineering, drainage and relocation, right-of-way acquisition and dedication, construction of turn-lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing and signalization (as needed and warranted). The alignment, design, signalization and construction schedule shall be approved by the

County Engineer. This requirement has been satisfied.

- e. The developer shall donate the right-of-way for the remaining enclaved out-parcel on SR 78, or pay the full cost of condemnation if the property cannot be acquired, including attorney and appraisal fees. This requirement has been satisfied.
- f. The developer shall construct two additional travel lanes to SR 78 from US 41 west to the developer's westerly property line, then tapering back into the existing roadway. The improvements for SR 78 will be depicted on construction plans for SR 78, prepared by the developer, which are subject to review and approval by Lee County DOT&E and FDOT to insure that they are consistent with the four lane divided facility currently under designed for SR 78, west of Piney Road. The developer shall be reimbursed from the \$1,500,000 deposited in escrow by the developer pursuant to paragraph G.3.a. above for the non-site-related cost, up to a total of \$1 million. The amount is subject to review and approval by DOT, via approval of bid documents or any other necessary documentation. These improvements shall be completed prior to obtaining any Certificates of Occupancy or Completion for any portion of the development. Merchants Crossing will pay all costs in excess of \$1 million to complete the SR 78 highway improvements at no cost to the County or FDOT. This requirement has been satisfied.
- g. Once funds are placed in escrow, \$200,000 shall be immediately transferred to FDOT for the acquisition of future right-of-way for SR 78 from the westerly boundary of the developer's property to Piney Road, and an additional \$400,000 shall be transferred to FDOT upon development of Tract H. In lieu of an additional payment of \$300,000 to FDOT from the escrow account for SR 78 right-of-way acquisition, Lee County, pursuant to its agreement with FDOT, has applied \$800,000 in County road impact fees toward the construction of the four-lane improvements on SR 78 from US 41 east, one-half mile. After making the payments identified above, the balance of the funds in the escrow account were released to Lee County.
- ~~h. After making the payments listed in paragraphs f. and g. above, the balance of the funds in the escrow account shall then be released to Lee County to be applied toward the funding of one or more of the following improvements:~~

Pine Island Road (SR 78)

US 41 and Pondella Road intersection
Pine Island Road (SR 78) and Pondella Road intersection
Bayshore Road (SR 78)

4. In addition to the payment of monies and other obligations specified in the Development Order, the developer or its successor shall be required to construct, at no cost to Lee County and the Florida Department of Transportation, all site-related improvements deemed necessary by Lee County and the Florida Department of Transportation. Site-related improvements shall be any improvement deemed site-related at the time of construction under the definition contained in the Roads Impact Fee Ordinance and/or Development Standards Ordinance, as either may be amended. The developer's obligation shall include the full cost of design and engineering, drainage and utility relocation, right-of-way acquisition and dedication, construction of turn lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing and signalization (as needed and warranted). The alignment, design, signalization, and construction schedule shall be approved by the Lee County Engineer. The developer shall pay the full cost for any site-related intersection improvements found necessary by the County or FDOT for the project's access intersection onto US 41 and SR 78. The developer may construct said improvements if approved by the County Engineer.
5. Nothing contained in the Development Order is to imply or supersede Florida DOT permitting requirements.
6. Access to US 41 and SR 78 from the Merchants Crossing proposed access points located closest to the US 41/SR 78 intersection is subject to FDOT permitting requirements and is to be limited to right-turn-in/right-turn-out and left-turn-in only movements for US 41.
7. Nothing contained in this Development Order shall be construed to exempt this development from participation in the funding, through Municipal Services Benefit Units (MSBU) or other special assessment districts, of improvements to various State and County arterial and collector roads to the degree to which this development generates demand or is benefited.
8. Merchants Crossing's proportionate share responsibility for any improvements required in this Development Order is discharged in full upon payment of the entire proportionate share contribution due under the terms of Paragraph G.3., which contribution shall not be reduced or refunded; provided, however, that all other provisions of the Development Order also shall govern. All contributions due under the terms of Paragraph G.3 have

been paid.

9. If the proportionate share contribution due under the terms of Paragraph G.3 is not paid in a timely manner, development activities within and issuance of development approvals and building permits for Merchant's Crossing shall immediately cease. All contributions due under the terms of Paragraph G.3 have been paid.
10. Compliance with all of the terms of the transportation related provisions of this development order shall satisfy the substantive requirements related to transportation facilities of Section 163.3202(2)(g), Florida Statutes (1989), Lee County Ordinance 89-33, the Lee County Comprehensive Plan and Rule 9J-5.0055, Florida Administrative Code, as they currently apply.

H. SOLID WASTE

1. The developer and tenants of the project shall incorporate the solid waste demands of the project into the county solid waste management program and investigate methods of reducing solid waste volume, to include but not be limited to, conservation, recycling, trash compaction, and mechanical shredding at the project.
2. The developer and subsequent tenants of the project, shall identify the proper method(s) for the on-site handling, and temporary storage procedures for any hazardous wastes that may be generated on-site, in accordance with local, regional, state and federal hazardous waste programs.

I. WASTEWATER MANAGEMENT

1. Treatment of wastewater shall be provided by North Fort Myers Utility, Inc.
2. Septic tanks shall be used only for the temporary construction trailer and temporary leasing office, but shall be removed as soon as service is available from North Fort Myers Utilities.
3. Any septic tanks used shall not be for the disposal of any substance which is identified in federal, state or local lists as a hazardous substance.
4. As the Merchants Crossing DRI may eventually reuse treated effluent for spray irrigation, the developer shall insure that on-site ponds, lakes and wetlands are adequately buffered from possible effluent contamination.
5. The developer shall provide assurance that commercial effluent, if generated

by the project, will be treated separately from domestic wastewater and handled in accordance with FDER criteria.

6. The developer shall obtain all necessary permits from South Florida Water Management District, and DER for the use of spray irrigation/effluent reuse.

J. CONCURRENCY

Approval of this Development Order does not exempt the ~~applicant/developer/owner~~ from compliance with State concurrency rules or any concurrency management system adopted by Lee County, except for transportation which is addressed separately in condition G.10. of this Development Order.

K. GENERAL CONSIDERATIONS

1. All commitments and impact mitigating actions provided in the Application for Development Approval (and supplementary documents) that are not in conflict with specific conditions for project approval outlined above are officially adopted as conditions of approval.
2. Pursuant to Chapter 380.06(16), the developer may be subject to credit for contributions, construction, expansion or acquisition of public facilities, if the developer is also subject by local ordinances to impact fees or exactions to meet the same needs. The local government and the developer may enter into a capital contribution front-ending agreement to reimburse the developer for voluntary contributions in excess of his fair share.
3. The development construction target plan presented within the Application for Development Approval and as adjusted to date of Development Order approval shall be incorporated as a condition of approval. If Development Order conditions and developer commitments incorporated within the development order to mitigate regional impacts are not carried out as indicated to the extent or in substantial accordance with the Development Order, then this shall be presumed to be a substantial deviation for the affected regional issue. The development construction target plan has been amended and the amendments contained in the current development construction target plan attached hereto as Exhibit A-1.a do not create a presumption of a substantial deviation for any affected regional issue.
4. As required by Chapter 380.06(18) Florida Statutes, the developer shall submit an annual monitoring report (see Exhibit B) to Lee County, the SWFRPC, and the Department of Community Affairs.

**III. LEGAL EFFECT AND LIMITATIONS OF THIS DEVELOPMENT ORDER,
AND ADMINISTRATIVE REQUIREMENTS**

1. This Development Order shall constitute a resolution of Lee County, adopted by the Board of County Commissioners in response to the Development of Regional Impact Application for Development Approval filed for the Merchants Crossing DRI.
2. All commitments and impact mitigating actions volunteered by the developer in the Application for Development Approval and supplementary documents which are not in conflict with conditions or stipulations specifically enumerated above are hereby incorporated by reference into this Development Order. These documents include the following:
 - (a) Merchants Crossing Application for Development Approval, July 11, 1989;
 - (b) Merchants Crossing DRI sufficiency response, September 27, 1989; and
 - (c) Merchants Crossing DRI sufficiency response, November 22, 1989.
3. This Development Order shall be binding upon the developer(s) and its assignees or successors in interest. Those portions of this Development Order which clearly apply only to the project developer, shall be binding upon any builder/developer who acquires any tract of land within Merchants Crossing, but shall not be construed to be binding upon future tenants.
4. It is hereby declared that the terms and conditions set out in this document constitute a basis upon which the developer and County may rely in future actions necessary to implement fully the final development contemplated by this Resolution and Development Order.
5. All conditions, restrictions, stipulations and safeguards contained in this Resolution and 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.
6. It is understood that any reference herein to any governmental agency shall be construed to mean any future instrumentality which may be created and designated as successors 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.

7. In the event that any portion or section of this Development Order is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portion or sections of the Development Order which shall remain in full force and effect.
8. 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. Such approval shall also not obviate the duty of the developer to comply with any County Ordinance or other regulations adopted after the effective date of this Development Order, to the extent that those regulations and requirements do not negate any rights granted herein.
9. Subsequent requests for local development permits shall not require further review pursuant to Section 380.06, Florida Statutes, unless it is found by the Board of County Commissioners, after due notice and hearing, that one or more of the following is present:
 - (a) 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 regional impacts or other regional impacts which were not evaluated in the review by the Southwest Florida Regional Planning Council; or
 - (b) An expiration of the period of effectiveness of this Development Order as provided herein.

Upon a finding that either of the above is present, the Board shall order a termination of all development activity in such area of the development affected by such substantial deviation or such expiration of time until such time as a new DRI Application for Development Approval has been submitted, reviewed and approved in accordance with Section 380.06, Florida Statutes, and all local approvals have been obtained.

10. The deadline for commencing physical development under this Development Order shall be three years from the date of its adoption ; provided that all conditions are met in a timely manner and further provided that this effective period may be extended by this Board upon a finding of excusable delay in any proposed development activity and that conditions have not changed sufficiently to warrant further consideration of the development.
11. In the event the developer fails to commence significant physical

development of that property identified in this Development Order within three (3) years from the date of adoption of this Development Order, development approval shall terminate and the development shall be subject to further consideration. Significant physical development shall include obtaining a Certificate of Completion or Occupancy on some substantial portion of the project (e.g., water management system or major road system). This Development Order shall otherwise terminate ~~in five (5) years from the date of this Development Order~~ on October 28, 2000 at mid night, unless an extension is approved by the Board. An extension may be granted by the Board of County Commissioners if the project has been developing substantially in conformance with the original plans and approval conditions, and if no substantial adverse impacts not known to the Southwest Florida Regional Planning Council or to Lee County at the time of their review and approval, or arising due to the extension, have been identified.

12. However, an extension of the date of buildout of a development by five (5) or more years shall be presumed to create a substantial deviation subject to further development-of-regional-impact review. The presumption may be rebutted by substantial, competent evidence at the public hearing held by Lee County. For the purpose of calculating when a buildout date has been exceeded, the time shall be tolled during the pendency of administrative and judicial proceedings relating to development permits.
13. The Administrative Director of the Lee County Department of Community Development or his/her designee, shall be the local official responsible for assuring compliance with this Development Order.
14. The development will not be subject to down-zoning, unit density reduction, or intensity reduction, ~~for five (5) years following the approval of zoning, until October 28, 2000~~, unless the County demonstrates that substantial changes have occurred in the conditions underlying the approval of this Development Order including, but not limited to, such factors as a finding that the Development Order was based on substantially inaccurate information provided by the developer, or that the change is clearly established by local government to be essential to the public health, safety and welfare.
15. The developer, or its successor(s) in title to the undeveloped portion of the subject property, shall submit a report annually to Lee County, the Southwest Florida Regional Planning Council, the State land planning agency (the Department of Community Affairs), and all affected permit agencies. This report shall describe the state of development and compliance as of the date of submission, and shall further be consistent with the rules of the State land planning agency. The annual report shall include information contained in

Exhibit B, as further modified or otherwise updated by the State land planning agency. The first monitoring report shall be submitted to the Administrative Director of the Department of Community Development not later than one year after the effective date of this Development Order, and further reporting shall be submitted not later than May 1st of subsequent calendar years thereafter, until buildout. Failure to comply with this reporting procedure is governed by Section 380.06 (18) Florida Statutes, and the developer shall so inform any successor in title to any undeveloped portion of the real property covered by this Development Order. This shall not be construed to require reporting from tenants or owners of individual lots or units.

16. Certified copies of this Development Order will be forwarded to the Southwest Florida Regional Planning Council, the developer, and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but shall not be effective until the expiration of the statutory appeals period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater. Upon this Development Order becoming effective, notice of its adoption shall be recorded by the Developer in the office of the Clerk of the Circuit Court, as provided in Chapter 380.06(15) Florida Statutes.

THE MOTION TO ADOPT this Development Order Amendment was offered by Commissioner John E. Manning, and seconded by Commissioner Ray Judah and upon poll of the members present, the vote was as follows:

Commissioner Manning	AYE
Commissioner St. Cerny	ABSENT
Commissioner Judah	AYE
Commissioner Coy	AYE
Commissioner Albion	AYE

DULY PASSED AND ADOPTED this 2nd day of April, 1997.

ATTEST:

By: David H. Perce
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

By: [Signature]
Chairman

FILED

APR 7 1997

APPROVED AS TO FORM
[Signature]
County Attorney's Office

CLERK CIRCUIT COURT

Merchants Crossing 3rd DO Amendment
April 1, 1997
BY David H. Perce D.C.

EXHIBIT A-1.a
CONSTRUCTION TARGET PLAN
MERCHANTS CROSSING OF NORTH FT. MYERS

		Projected Start Date	Projected Opening Date
<u>ALL CONSTRUCTION STAGES:</u>		<u>10-99</u>	<u>12-99</u>
CONSTRUCTION STAGE I:			
RETAIL & ENTERTAINMENT CENTER:			
RETAIL	353,000 sf		
ENTERTAINMENT	6,000 sf		
	359,000 sf	4-92	8-93
PERIMETER PARCELS:			
BANKS (2)	8,000 sf	4-93	8-93
GAS STA./CONV. (1)	1,000 sf	4-93	8-93
GENERAL RETAIL (1)	3,000 sf	4-93	8-93
	12,000 sf		
TOTAL CONSTRUCTION STAGE I	371,000 sf		
CONSTRUCTION STAGE II:			
RETAIL & ENTERTAINMENT CENTER:			
RETAIL	132,400 104,400 sf	42-93	42-94
ENTERTAINMENT:			
CINEMA (4)	32,000 60,000sf	42-93	42-94
RESTAURANT W/COP (4)(3)	4,000 sf	42-93	42-94
SHOPS	1,600 sf	42-93	42-94
	170,000 sf		
PERIMETER PARCELS:			
BANKS (1)	3,000 sf	4-94	11-94
RESTAURANTS (2)	6,000 sf	4-94	42-94
GENERAL RETAIL (2)	5,000 sf	4-94	42-94
	14,000 sf		
TOTAL, CONSTRUCTION STAGE II	184,000 sf		
TOTAL, CONSTRUCTION STAGES I & II	555,000 sf		

The parenthetical numbers shown above identify the number of actual uses.

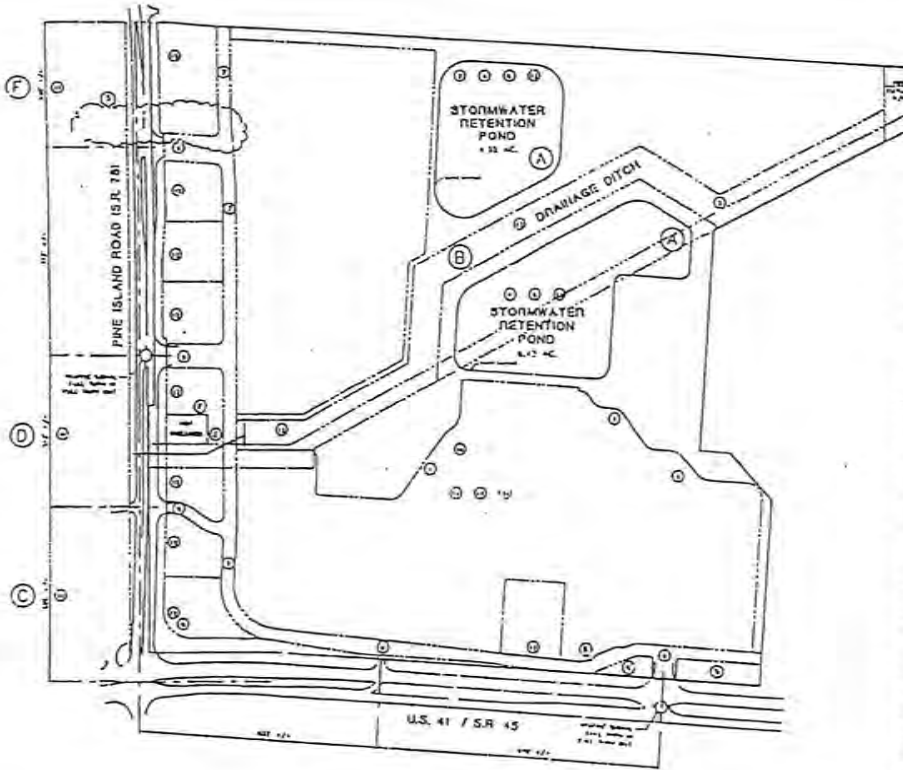
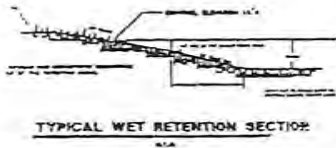
Note 1. sf = Square Feet

- Note 2. The square footage amounts subtotals for the different uses provided above are estimates and are subject to being reallocated ~~within each construction stage among the other uses.~~ Any square footage not developed in construction stage I can be transferred to construction stage II and vice versa. However, ~~any transfers from stage II to stage I shall be reviewed by Lee County Department of Community Development to determine if additional payments are required.~~ The total square footage for both construction stages I and II shall not exceed 555,000 square feet. The complete schedule of permitted uses for the Merchants Crossing Shopping Center is as stated in the schedule of uses found in the drawing entitled "Master Concept Plan," drawing number Map-M.1A, as revised through August 31, 1993.
- Note 3. The dates shown are estimates and, therefore, are subject to change.
- Note 4. The theater use located in the Entertainment Area of Tract II ~~were originally submitted and approved as a 10-plex cinema estimated at 24,000 square feet and containing 1,800 seats. The use and number of screens have not been revised; however, the 10-plex cinema is now estimated to be 32,000 square feet in size and has approximately 2,500 seats; includes a sixteen screen movie theater estimated at 60,000 square feet. This represents an amendment from the previous approval of ten screens at 32,000 square feet. The amendment was authorized administratively by the county in 1994 pursuant to the developer's demonstration that the increase in traffic was not significant during peak hour and pursuant to the developer's consent to reduce the other retail square footage approved in Stage II by 28,000 square feet (the amount over the previously approved 32,000 square feet of theater use) .~~

EXHIBIT B

INFORMATION TO BE INCLUDED IN ANNUAL MONITORING REPORT

- (a) Any changes in the plan of development, or in the representations contained in the ADA, or in the construction target plan for the reporting year and for the next year;
- (b) A summary comparison of development activity proposed and actually conducted for the year;
- (c) Undeveloped tracts of land that have been sold to a separate entity or developer;
- (d) Identification and intended use of lands purchased, leased or optioned by the developer adjacent to the original DRI site since the development order was issued;
- (e) An assessment of the developer's and the local government's compliance with the conditions of approval contained in the DRI development order and the commitments which are contained in the Application for Development Approval and which have been identified by the local government, the Regional Planning Council or the Department of Community Affairs as being significant;
- (f) Any known incremental DRI applications for development approval of requests for a substantial deviation determination that were filed in the reporting year and to be filed during the next year;
- (g) An indication of a change, if any, in local government jurisdiction for any portion of the development since the development order was issued;
- (h) A list of significant local, state and federal permits which have been obtained or which are pending by agency, type of permit, permit number and purpose of each;
- (i) A statement that all persons have been sent copies of the annual report in conformance with Subsection 380.06(14) and (16), Florida Statutes;
- (j) A copy of any recorded notice of the adoption of a development order or the subsequent modification of an adopted development order that was recorded by the developer pursuant to Subsection 380.06(14)(d), Florida Statutes; and
- (k) Monitoring reports, including:
 - (i) Water quality annual monitoring report (for review by Lee County and South Florida Water Management District);
 - (ii) Transportation annual monitoring report (for review by Lee County, FDOT and SWFRPC).



GENERAL NOTES

1. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies.

2. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies.

3. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies.

4. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies.

5. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies.

6. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies.

7. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies. The applicant shall be responsible for obtaining all necessary permits from the appropriate agencies.

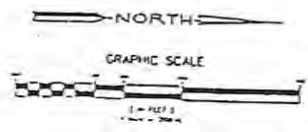
ABRAMS
 PROPERTIES
 3775-A Sandalwood Blvd
 Suite 201
 Orlando, Florida 32818
 407/253-8720
 Fax 407/253-3861

Project
**MERCHANTS CROSSING
 NORTH FORT MYERS, FLORIDA**
 Applicant
MERCHANTS CROSSING OF NORTH FORT MYERS, INC.

Revisions

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMITS	12/17
2	ISSUED FOR PERMITS	12/17
3	ISSUED FOR PERMITS	12/17
4	ISSUED FOR PERMITS	12/17

APPROVED
 12/17/17
 12/17/17
 12/17/17
 12/17/17



A COMMERCIAL PLANNED DEVELOPMENT APPLICATION FOR PUBLIC HEARING

Drawing Title
MASTER CONCEPT PLAN
 Drawing
 17-000-01

Charlie Green
Clerk Of Circuit Court
Lee County, Florida


STATE OF FLORIDA

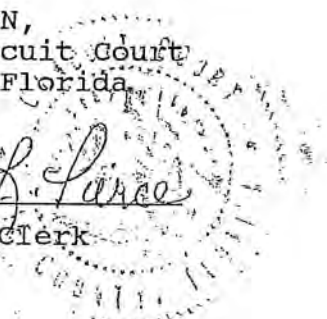
COUNTY OF LEE

I Charlie Green, Clerk of Circuit Court, Lee County, Florida, and ex-Officio Clerk of the Board of County Commissioners, Lee County, Florida, do hereby Certify that the above and foregoing, is a true and correct copy of the Third Development Order Amendment for Merchants Crossing, adopted by the Board of Lee County Commissioners, at their meeting held on the 2nd day of April, 1997.

Given under my hand and seal, at Fort Myers, Florida, this 7th day of April, 1997.

CHARLIE GREEN,
Clerk of Circuit Court
Lee County, Florida

By: 
Deputy Clerk



RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, an application was filed by the property owner, Merchants Crossing of North Fort Myers, Inc., for an amendment to the Merchants Crossing DRI Development Order #7-8889-92; and

WHEREAS, a public hearing was advertised and held on March 21, 2001, before the Lee County Zoning Hearing Examiner, who gave full consideration to the evidence in the record for Case #DRI2000-00014; and

WHEREAS, a second public hearing was advertised and held on April 30, 2001, before the Lee County Board of Commissioners, who gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS:

SECTION A. REQUEST

The applicant filed a request to:

1. Amend the Merchants Crossing DRI Development Order to extend the buildout date to October 28, 2007; extend the projected start date to October, 2007; and extend the time period for protection from down-zoning, unit density reduction or intensity reductions through October 28, 2007; and
2. Determine that the proposed changes do not constitute a substantial deviation from the original development approvals under the provisions of Section 380.06(19), Florida Statutes.

The property is located in the Central Urban and Intensive Development Land Use Category and is legally described in attached Exhibit A. The request is APPROVED SUBJECT TO the conditions specified in Section B below.

SECTION B. CONDITIONS:

All references to uses should be interpreted consistent with those set forth in the Lee County Land Development Code (LDC).

1. Development must be consistent with the Merchants Crossing DRI Development Order #7-8889-92, as amended.

2. Development must also be in compliance with the governing zoning resolutions.

SECTION C. EXHIBITS:

The following exhibits are attached to this resolution and incorporated by reference:

- Exhibit A: The legal description and STRAP number of the property.
Exhibit B: Zoning Map
Exhibit C: Fourth Development Order Amendment for Merchant's Crossing DRI

SECTION D. FINDINGS AND CONCLUSIONS:

1. The applicant has demonstrated entitlement to the requested amendment to the DRI Development Order by demonstrating compliance with Chapter 380, Florida Statutes.
2. The requested amendment results in a cumulative time extension in excess of seven years creating a presumption that there has been a substantial deviation from the original development approvals. This presumption has been rebutted by the applicant in the form of a transportation study/analysis demonstrating that the requested time extension will not create additional regional impacts.
3. The requested amendment to the DRI development order does not constitute a substantial deviation from the original approvals necessitating further DRI review.

The foregoing resolution was adopted by the Lee County Board of Commissioners upon the motion of Commissioner Andrew W. Coy, seconded by Commissioner Ray Judah and, upon being put to a vote, the result was as follows:

Robert P. Janes	Aye
Douglas R. St. Cerny	Aye
Ray Judah	Aye
Andrew W. Coy	Aye
John E. Albion	Aye

DULY PASSED AND ADOPTED this 30th day of April, 2001.



ATTEST:
CHARLIE GREEN, CLERK

BY: Lisa S. Pierce
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: [Signature]
Chairman

Approved as to form by:

[Signature]
County Attorney's Office

EXHIBIT "A"
LEGAL DESCRIPTION
Property located in Lee County, Florida

MERCHANTS CROSSING SUBDIVISION, as recorded in Plat Book 52, Page 37, of the Public Records of Lee County, Florida, lying in Section 34, Township 43 South, Range 24 East, Lee County, Florida.

The applicant has indicated that the STRAP numbers for the subject property are:

34-43-24-03-0000A.0000	34-43-24-03-0000B.0000
34-43-24-03-0000C.0000	34-43-24-03-0000H.0000
34-43-24-03-0000K.0000	34-43-24-03-0000L.0000
34-43-24-03-0000M.0000	34-43-24-03-0000N.0000
34-43-24-03-0000P.0000	34-43-24-03-0000Q.0000
34-43-24-03-0000R.0000	34-43-24-03-0000T.0000
34-43-24-03-0000G.0000	34-43-24-03-0000S.0000
34-43-24-03-00000.0000	34-43-24-03-0000I.0000

ZONING & LAND USE MAP

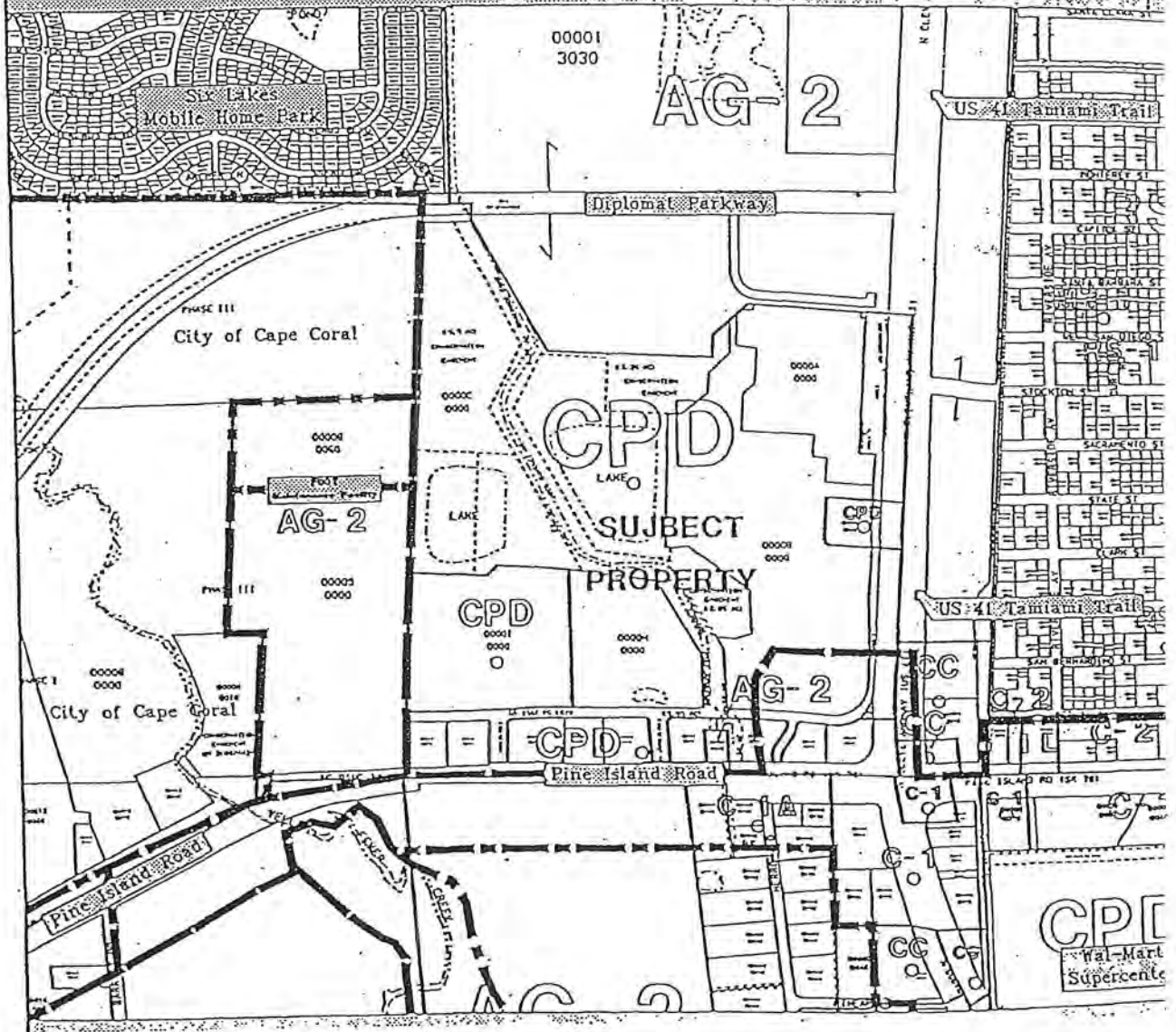


Exhibit B

FOURTH DEVELOPMENT ORDER AMENDMENT
FOR
MERCHANTS CROSSING
A DEVELOPMENT OF REGIONAL IMPACT
STATE DRI #7-8889-92
COUNTY CASE #90-4-17-1 DRI

WHEREAS, pursuant to Section 380.06 of the Florida Statutes, the Board of County Commissioners of Lee County, Florida, (Board) heard at a public hearing, the application for development approval for Merchants Crossing, a commercial development in Lee County which consisted of approximately one hundred four acres to be developed in accordance with the application filed on July 11, 1989; and

WHEREAS, the Board adopted the Merchants Crossing DRI Development Order on October 31, 1990; and

WHEREAS, the DRI Development Order was subsequently amended on October 14, 1991 to increase the approved square footage of retail development, delete motel and office uses, increase the indigenous open space, adjust the transportation mitigation payment and change the construction target plan; and

WHEREAS, the DRI Development Order was thereafter amended a second time on June 30, 1993 to (1) increase the square footage approved for retail uses, (2) amend the construction target plan, and (3) add additional property to the development order; and

WHEREAS, on September 26, 1994, the County authorized the construction of a 16-screen movie theater without a formal Notice of Proposed Change by subtracting the square footage of the expanded movie theater from the approved retail square footage; and

WHEREAS, the DRI Development Order was amended a third time to extend the start date, build-out date, termination date, and down zone protection date of the project by less than five years to October 28, 2000; and

WHEREAS, the owner/developer seeks to amend the DRI Development Order a fourth time to extend the build-out, termination, and down zone protection dates of the project to October 28, 2007; and

WHEREAS, the requested change creates a presumption of substantial deviation from the original development order approvals under Chapter 380.06(19) because the request entails a cumulative extension of greater than seven years from the original date; and

WHEREAS, the owner/developer has successfully rebutted the presumption, through the submittal of transportation data; and

WHEREAS, the DRI Development Order that follows is a codification of all previous changes to the development order; and

WHEREAS, the Board finds and determines the following:

I. FINDINGS OF FACT CONCLUSIONS OF LAW

- A. Merchants Crossing DRI is a commercial development in northern Lee County which consists of 104.66 acres (includes property ultimately used for right-of-way improvements on State Route 78 and US 41). The development is proposed to consist of 555,000 square feet of retail commercial, 28 acres of lakes and sloughs for water management and wetland mitigation, 6.1 acres of preservation area and 4 acres of roads. ~~The project is planned in one phase to the year 2000.~~ The construction target plan proposed by the developer is attached as Exhibit A-1a.
- B. The legal description of the project is as follows:

A portion of the Southwest Quarter (SW1/4) of Section 34, Township 43 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

COMMENCING AT the Southwest corner of said Section 34; THENCE N 03°25'58" E, along the West line of the Southwest Quarter (SW1/4) of said Section 34, a distance of 73.52 feet, to the POINT OF BEGINNING of this description; THENCE continue N 03°25'58" E, along the last described course, a distance of 2,484.86 feet, to a point on a line parallel with and 100 feet South of, as measured at Right angles to the North line of the Southwest Quarter (SW1/4) of said Section 34; THENCE S 89°56'05" E, along said parallel line, a distance of 264.66 feet; THENCE S 28°32'36" E, a distance of 664.99 feet; THENCE S 86°34'00" E, a distance of 747.11 feet; THENCE N 03°26'00" E, a distance of 100.00 feet; THENCE N 48°25'58" E, a distance of 212.13 feet; THENCE S 86°34'00" E, a distance of 650.00 feet, to the Westerly right-of-way line of US 41 (SR 45); THENCE S 03°25'53" W, along said right-of-way line, a distance of 718.01 feet; THENCE S 06°17'38" W, along said right-of-way line, a distance of 240.30 feet; THENCE S 03°25'53" W, along said right-of-way line, a distance of 409.75 feet; THENCE S 08°42'37" W, along said right-of-way line, a distance of 315.20 feet, to a point on the arc of a circular curve to the left, whose radius point bears S 86°34'07" E from said point; THENCE Southerly along said right-of-way line and the arc of said curve, having a radius of 3,005.79 feet, a central angle of 05°09'06", and a chord bearing of S 00°51'20" W, an arc distance of 270.27 feet, to the Point of Reverse Curvature of a circular curve to the right; THENCE Southerly and Westerly, along the arc of

said curve, having a radius of 100.00 feet, a central angle of 93°29'08" and a chord bearing of S 45°01'21" W, an arc distance of 163.16 feet, to the Point of Tangency and the Northerly right-of-way line of Pine Island Road (SR 78); THENCE N 88°14'05" W, a distance of 383.15 feet; THENCE N 89°57'42" W, a distance of 196.50 feet, to the Easterly line of those lands described in Official Records Book 421, Page 480, as recorded in Public Records of Lee County, Florida; the last two courses being along the Northerly right-of-way line of said Pine Island Road (SR 78); THENCE N 00°04'40" E, along said Easterly line, a distance of 142.10 feet, to the Northerly line of those lands described in said Official Records Book 421, Page 480; THENCE N 89°55'20" W, along said Northerly line, a distance of 100.00 feet, to the Westerly line of those lands described in said Official Records Book 421, Page 480; THENCE S 00°04'40" W, along said Westerly line, a distance of 142.17 feet, to the Northerly line of said Pine Island Road (SR 78); THENCE N 89°57'42" W, a distance of 259.57 feet; THENCE S 00°02'18" W, a distance of 12.00 feet; THENCE N 89°57'42" W, a distance of 255.32 feet; THENCE N 86°08'51" W, a distance of 180.40 feet; THENCE N 89°57'42" W, a distance of 274.68 feet; THENCE S 00°02'18" W, a distance of 12.00 feet; THENCE N 89°57'42" W, a distance of 230.03 feet, to the Point of Curvature of a circular curve to the left; THENCE Westerly along the arc of said curve, having a radius of 2,944.29 feet, a central angle of 03°10'09" and a chord bearing of S 88°27'14" W, an arc distance of 162.86 feet, to the POINT OF BEGINNING, the last eight (8) courses being along the Northerly right-of-way line of said Pine Island Road (SR 78).

CONTAINING 101.44+ acres. (Does not include property used for right-of-way improvements to State Road 78 and US 41)

- C. The project's zoning is Commercial Planned Development (CPD), pursuant to the authority of Chapter 163, Florida Statutes, Laws of Florida 61-2405, and the Lee County Zoning Regulations, as amended.
- D. The Application for Development Approval is consistent with the requirements of Chapter 380.06, Florida Statutes.
- E. The development is not located in an area designated as an Area of Critical State Concern, pursuant to the provisions of Chapter 380.05, Florida Statutes.
- F. The development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.
- G. The development has been reviewed by the Southwest Florida Regional Planning Council and is the subject of the report and recommendations adopted by that body. The development, as proposed in the Application for Development Approval and modified by this Development Order, is consistent with the report and the

recommendations of the Southwest Florida Regional Planning Council pursuant to Section 380.06(11).

- H. Concurrently with the adoption of the original DRI Development Order, the property was rezoned in accordance with Lee County Zoning Ordinance 86-17, as amended. The Zoning Resolution contains additional details and conditions pertaining to the Merchants Crossing development, and also provides for certain deviations from Lee County zoning and development regulations.
- I. The development is located in the Intensive Development and Central Urban classifications of the Lee Plan and is consistent with the Lee County Comprehensive Plan and Lee County's Land Development Regulations if subject to the conditions contained in this Development Order.
- J. The proposed conditions below meet the criteria found in Chapter 380.06(15)(d), Florida Statutes.

II. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Lee County, Florida, in a public meeting that the Development of Regional Impact Application for Development Approval is hereby ordered Approved subject to the following conditions, restrictions, and limitations:

A. DRAINAGE/WATER QUALITY

1. The developer shall participate in any on-going or future efforts by Lee County to establish a County-wide Watershed Basin Management Plan.
2. The developer and his successor(s) shall implement and maintain an on-going monitoring and maintenance program that regularly inspects, maintains, and samples the stormwater drainage system, including lake and wetlands monitoring during and after the development of Merchants Crossing. The developer shall establish the legal entity which will carry out this program after tracts and/or units are sold; the documents creating such entity must be approved by the Lee County Attorney's Office and the South Florida Water Management District prior to the implementation of the monitoring program. The program shall be designed in consultation with the staffs of the Southwest Florida Regional Planning Council, the South Florida Water Management District, and Lee County. Final approval of the program rests with the Lee County Department of Community Development. The purpose of this program is to ensure that the stormwater drainage system

functions in every aspect as planned. Should the monitoring program indicate that the system is not functioning as planned, or is not constructed in accordance with all approved plans, permits, or county requirements, or is not meeting water quality standards of the applicable agencies, further development approvals shall not be granted until the developer has completed corrective measures as specified by Lee County. A monitoring and maintenance program has been approved by the Lee County Department of Community Development.

3. The project shall have District permits for construction and operation of the surface water management system, and for any dewatering activities associated with the construction of lakes, roads or building foundations.
4. The allowable discharge offsite for Merchants Crossing shall not exceed 0.09 cubic feet per second/acre over the whole project area, or as determined appropriate by SFWMD. Final allowable discharge must be determined by the developer and SFWMD staff, using a 72-hour storm duration model, prior to issuance of a surface water permit. *A surface water permit has been issued by SFWMD. (Permit issued October 16, 1991 #36-02069-S.)*
5. All water retention/detention areas shall meet District criteria. Any areas which do not meet this criteria may not be used in the calculation of water quality or quantity volumes.
6. Based on information provided by the developer, the entire freshwater marsh at the project's northern boundary, shall be indirectly impacted as a result of water table drawdown associated with lake control elevations, and irrigation withdrawals from the adjacent detention lake. To obtain a construction and operation permit, the developer shall provide detailed plans that indicate: buffer areas adjacent to wetlands, the extent of encroachment into wetlands, information which verifies that control elevations will maintain adequate wetland hydroperiods, acreage figures and cross-sections for all mitigation areas, a mitigation proposal that does not result in a net loss of wetlands and a mitigation proposal which includes a wetland monitoring and maintenance program.
7. The developer shall confirm, to the satisfaction of all federal, state and local review agencies, and the SFWMD, that the proposed water management system will not impact habitats of the golden polypody, prickly pear cactus, wild coco and gopher tortoise, as well as other endangered species potentially occurring on-site, or that such impacts will be mitigated to the benefit of on-site populations of these species.

8. The developer has indicated that the north-south watercourse will be relocated and redesigned to simulate a natural creek. The water course shall be designed to meet District criteria in effect at the time of permit application. *This requirement has been satisfied.*
9. Provisions for the drainage of off-site areas and out-parcels that presently drain through the site shall be provided at the time of permit application.
10. The developer shall undertake a regularly scheduled vacuum sweeping of all streets and parking facilities, to be incorporated as a Best Management Practice.
11. In areas adjacent to retail or office uses, the developer shall provide dry pre-treatment, as determined by SFWMD at time of permitting (retention or detention), in order to provide reasonable assurance that hazardous materials will not enter the stormwater management system.
12. The operation of the Merchants Crossing Stormwater Management System is dependent on Yellow Fever Creek for an outlet. Therefore, a final Stormwater Management Plan shall demonstrate that the system is designed in accordance with existing design parameters for Yellow Fever Creek. A man-made ditch (the East Branch of Yellow Fever Creek) flows through the Merchants Crossing DRI which eventually drains to Yellow Fever Creek and the Caloosahatchee River in northern Lee County. Post developed runoff will be directed across the site through a series of surface water management ponds to a rerouted ditch that will also carry the offsite flows from the north. The rerouted ditch will flow through a culvert under Pine Island Road and eventually to Yellow Fever Creek.
13. Best Management Practices (BMP's) and monitoring and maintenance of the stormwater management system shall be implemented by the developer in accordance with District guidelines.
14. Any off-site road improvements constructed by the developer shall address water quality in accordance with the South Florida Water Management District criteria.
15. The use of septic tanks shall be limited to temporary use with the temporary construction trailer and temporary leasing office only. Such use shall be eliminated when service is available on site from North Fort Myers Utilities.
16. All commitments made by the developer within the ADA related to Question 22 (Drainage) and Question 15 (Water Quality) and subsequent sufficiency

round information, not in conflict with the above recommendations, are hereby incorporated as conditions for approval.

B. ENERGY

All site plans or architectural programs shall incorporate, to the extent possible, the following energy conservation features into all site plans and architectural programs or the property owner/developer shall ensure to the extent possible that following features are implemented through deed restrictions and/or covenants with successors in title. All applications for site plan approvals and building permits shall be accompanied by a document detailing proposed compliance with these conditions. If deed restrictions or covenants are utilized to ensure compliance, such documents shall be approved by the Lee County Attorney's Office prior to recordation. If no deed restrictions are approved and recorded, the prior alternative shall be utilized and the following features shall be included;

1. Provision of bicycle racks or storage facilities in all tracts.
2. Use of energy-efficient features in window design.
3. Installation of energy-efficient appliances and equipment.
4. Prohibition of deed restrictions or covenants that would prevent or unnecessarily hamper energy conservation efforts (e.g. building orientation, and solar water heating systems).
5. Reduced coverage by asphalt, concrete, rock, and similar substances in streets, parking lots, and other areas to reduce local air temperatures and reflected light and heat.
6. Installation of energy-efficient lighting for streets, parking areas, and other interior and exterior public areas.
7. Use of water closets with a maximum flush of 3.5 gallons and shower heads and faucets with a maximum flow rate of 3.0 gallons per minute (at 60 pounds of pressure per square inch).
8. Selection of native plants, trees, and other vegetation and landscape design features that reduce requirements for water, fertilizer, maintenance, and other needs.
9. Planting of native shade trees to provide reasonable shade for all streets, recreation areas and parking areas.

10. Placement of trees to provide needed shade in the warmer months while not overly reducing the benefits of sunlight in the cooler months.
11. Orientation of structures, as possible, to reduce solar heat gain by walls to utilize the natural cooling effects of the wind.
12. Use of operable windows and ceiling fans.
13. Provision for structural shading (e.g., trellises, awnings, and roof overhangs) wherever practical, when natural shading cannot be used effectively.
14. Consideration by any project architectural review committee(s) of energy conservation measures (both those noted here and others) to assist builders in their efforts to achieve greater energy efficiency in the development.

The incorporation of these energy conservation measures in this Development Order does not preclude the provision of additional energy conservation measures by the developer. It also does not prevent the local government of jurisdiction or any state, regional, or other agency under whose jurisdiction this project falls from requiring additional energy measures or measures that may be more stringent.

C. POTABLE WATER/WATER SUPPLY

1. The developer shall incorporate the use of water saving devices as required by State law (Section 553.14., Florida Statutes).
2. The developer shall show that the proposed deep well, to supplement irrigation from the large lake, is of compatible water quality with surface waters. Furthermore, the developer shall show that proposed mitigation measures address possible damage from watertable drawdown.
3. The project shall require a water use permit for any withdrawals from groundwater, project lakes and/or any other surface water bodies for irrigation or potable uses and for any dewatering activities associated with the construction of project lakes, and/or road, or building foundations.
4. At the time of permit application, the developer shall provide verification that the proposed system designs will meet District criteria.
5. For the purpose of potable water conservation, Merchants Crossing shall utilize low water use plumbing/fixtures, self-closing and/or metered water

faucets, and other water conserving devices.

6. For the purpose of non-potable water conservation, Merchants Crossing shall utilize xeriscape principles in the design and maintenance of the project's landscaping.
7. The developer shall utilize Lee County Utilities for potable water.
8. In the project area, the lower Hawthorn aquifer has a chloride ion concentration greater than 500 mg/1. To utilize this as a recharge source for the project lake system, the permit developer shall show that the addition of this water to the lake system will not raise the chloride ion concentration of the lake above 200 mg/1.
9. The lake system is adjacent to wetland preserve areas. At the time of permit application, the developer shall show that the wetland hydroperiod will not be adversely affected by proposed irrigation withdrawals from the large lake at the north western corner of the site.
10. As the developer has committed to eventually using reclaimed wastewater for irrigation, the developer shall ensure that on-site lakes and wetlands are adequately buffered from possible effluent contamination.
11. Any spray irrigation using treated wastewater shall be accomplished in accordance with state and local regulations. The developer shall use treated wastewater for all or part of the project's irrigation demand, at such time as adequate amounts of treated wastewater are available for such purpose.
12. All construction plans, technical specifications, and proposed plats, if applicable, for the proposed water distribution system shall be reviewed and approved by the Lee County Utilities prior to commencement of construction.
13. The lowest quality of water possible shall be utilized for all outdoor non-potable water use.
14. Landscaping irrigation and all outdoor water uses, e.g. hosing concrete, shall be restricted to the hours of 5:00 P.M. to 9:00 A.M., or as restricted by SFWMD watering guidelines, after the establishment of the landscape foliage, unless the irrigation is done with treated effluent.
15. All commitments made by the developer within the ADA related to question 23 (Water Supply) and subsequent sufficiency round information, not in

conflict with the above recommendations, are hereby incorporated as conditions for approval.

D. FIRE PROTECTION

1. To mitigate its impacts upon provision of adequate fire protection, the developer shall:
 - (a) Pay fire protection and emergency medical services impact fees; and,
 - (b) Sprinkler all buildings in the project. (With the exception of the SunBank parcel on the corner of SR 78 and U.S. 41 south.)
 - (c) Provide funds to North Fort Myers Fire Protection District to purchase a 65-foot telesquirt fire truck or comparable equipment. This provision must be met within sixty days after the first building permit is obtained from Lee County for any building over two stories in height.

2. The Merchants Crossing DRI shall comply with any duly adopted fire code and life safety code regulations unless deviations or variances are obtained from such regulations.

E. REGIONAL SHOPPING CENTER

The total maximum square footages/limits of development in each tract shall be as follows:

USE	TRACT	SUB-TOTALS	TOTAL SQUARE FEET
Retail & Entertainment Center and Perimeter Parcel Uses*			
Restaurants	(perimeter & Tracts I and II)	10,000 sf	
Gas Station	(perimeter)	1,000 sf	
Theater (Sixteen Screen)	(entertainment area of Tract II)	60,000 sf	
Retail/Service	(retail/service/entertainment tract & perimeter)	484,000 sf	
			555,000**

USE	TRACT	SUB-TOTALS	TOTAL SQUARE FEET
<p>*The square footage subtotals for the different uses provided above are estimates and are subject to reallocation among the other uses. The complete schedule of permitted uses for the Merchants Crossing Shopping Center is found in "Master Concept Plan," drawing number Map-M.1A, revised through August 31, 1993.</p> <p>** As limited by all other conditions of the Zoning Resolution and DRI Development Order</p>			

F. VEGETATION/WILDLIFE/WETLANDS

Approximately 6.5 acres of the Merchant's Crossing site occurs as two types of wetlands; 3.8 acres of freshwater marsh and 2.7 acres of mixed hardwood wetlands. The Developer has committed to significant wetland mitigation which features wetland marshes and a north/south creek, with adjacent floodplain vegetation. A portion of the 3.1 acres of the floodplain will be planted with hydric hammock species. This portion shall not be less than the hardwood wetland area to be impacted.

Also on site is an approximate 4.9 acre oak and cabbage palm hammock/wetland hardwood system, (2.2-acre hammock/2.7-acre wetland). The developer has committed to save the significant elements of this system, representing 1.9 acres.

1. Prior to issuance of local Final Development Order, the developer shall submit a vegetation plan. The preservation of the significant elements of the Oak/Cabbage Palm Hammock and adjacent Hardwood Wetland System shall be in accordance with the Mitigation Plan (M-3A) which is attached as Exhibit C.
2. At the time of permit application to the SFWMD, the developer shall provide detailed plans that indicate buffer areas adjacent to wetlands, the extent of encroachment into wetlands, information verifying that control elevations will maintain adequate wetland hydroperiods, acreage figures and cross-sections for all mitigation areas, a mitigation proposal that does not result in a net loss of wetlands, and a mitigation proposal which includes a wetland monitoring and maintenance program, developed in accordance with adopted policies of the regulatory agencies.
3. Prior to the approval of a local Final Development Order for any phase of the development, the developer shall submit and subsequently follow a Florida Game and Freshwater Fish Commission approved Gopher Tortoise Management Plan.

4. The developer shall provide for preservation and/or relocation on-site of the four listed plant species found on-site (e.g. golden polypody, prickly pear cactus, wild coco and whisk fern) to the satisfaction of Florida Game and Fresh Water Fish Commission and Lee County Division of Environmental Sciences.
5. All other commitments made by the developer in either the ADA or sufficiency round information, not in conflict with the above recommendations, shall be incorporated as conditions for development order approval.

G. TRANSPORTATION

1. The transportation impact assessment upon which this Development Order is based assumes the development patterns and land uses reflected in the Merchants Crossing DRI/ADA application. The application assumes one continuous phase of development with build-out by the year ~~2000~~ 2007.
2. Merchants Crossing shall submit an annual traffic monitoring report. The monitoring program shall be designed in cooperation with the Lee County Department of Transportation the Southwest Florida Regional Planning Council and the Florida Department of Transportation. The annual monitoring report shall contain at a minimum AM and PM, peak-hour peak season traffic counts (with turning movements) and mutually agreed upon professionally acceptable level of service analyses at all project access points onto the roadway network and at the following intersections:

SR 78 (Pine Island Rd.) at:
US 41
Pondella Rd.
Del Prado Blvd.
Santa Barbara Blvd.
SR 78 (Bayshore Rd.) at:
Business 41
Hart Rd.

Del Prado Blvd. at :
SR 78 (Pine Island Rd.)
Viscaya Pkwy.
Hancock Bridge Pkwy.

US 41 at:

Pondella Rd.

In addition, peak season daily traffic counts and level of service calculations shall be submitted as part of the annual monitoring report for all project access roads and the roadway links listed below:

SR 78 (Pine Island Rd.)
Piney Rd. to Santa Barbara Blvd.

SR 78 (Bayshore Rd.)
Business 41 to Slater Rd.

Del Prado Blvd.
SR 78 to Viscaya Pkwy.

US 41
Hancock Bridge Pkwy. to Business 41

Business 41 from
SR 78 to Littleton Rd.

Pondella Rd.
US 41 to Orange Grove Blvd.

Merchants Crossing shall submit the annual monitoring report to Lee County DOT, the Southwest Florida Regional Planning Council and the Florida Department of Transportation SW Area Office for review. The first report shall be submitted one year after the issuance of the DRI Development Order for the property included in the Merchants Crossing DRI/ADA application. Reports shall be submitted annually until project build-out. Actual build-out will occur when the developer has completed the construction authorized by this Development Order. Declared build-out would occur if the developer formally declared in writing to the County Administrator that nothing more will be constructed despite the fact that less than the permissible maximum had been built to date. The purposes of the annual monitoring program are to:

- (a) Determine whether or not the traffic levels projected in the traffic impact assessment for Merchants Crossing are exceeded by actual impacts,
- (b) Assist Lee County and F.D.O.T. in determining the proper timing of necessary roadway improvements, and

- (c) Determine the project's external trip generation.

It is recognized and understood that traffic counts may be obtained from original machine and manual peak hour counts, Lee County traffic volume reports, Florida Department of Transportation, other ADA developments with similar monitoring requirements, and other reliable sources of traffic counts.

3. As mitigation for the transportation impacts of Merchants Crossing, the developer shall provide the following:

- a. The developer shall make a cash payment of \$1,500,000 into an escrow account on or before October 1, 1993, or upon issuance of the first building permit, whichever occurs earlier. All interest earned on this account shall accrue to the benefit of the County. A portion of this money (up to a maximum of \$1 million as further limited in paragraph G.3.f.) shall be used for the widening of SR 78. The use of funds and terms of the escrow shall be governed by a separate escrow agreement between the parties, and is subject to approval by the County Attorney's office, which approval shall not be unreasonably withheld. *This requirement has been satisfied.*
- b. The developer shall make a cash payment of \$791,370 on or before December 1, 1994, or upon issuance of the first building permit for Tract II, whichever occurred earlier as shown on the Master Concept Plan (M-1A, last revised July 1, 1991) attached to Zoning Resolution Z-90-034. The cash payments totaling \$2,291,370 may be considered as full credit against road impact fees.

Should those provisions be repealed, amended or otherwise no longer in effect as part of Ordinance 89-17, as amended, they shall nevertheless govern availability of credits under this Development Order as those provisions existed on the effective date of this Development Order. *This requirement has been satisfied.*

- c. Within 90 days of approval of the DRI Development Order, the developer shall donate the right-of-way needed for widening SR 78 (Pine Island Road) and US 41 to the Florida Department of Transportation (FDOT), and shall donate the 100 feet of right-of-way needed to extend Diplomat Parkway to the County. The necessary right-of-way which is intended to be sufficient to accommodate a four lane divided highway built to FDOT standards is shown on Exhibit D. No roads impact fee credits shall be applied for, or granted for, this right-of-way. *This requirement has been satisfied.*

- d. The developer shall construct, at no cost to the County, the following improvements to SR 78:
- 1) Re-sign the northbound US 41 approach to encourage northbound right turns at SR 78 to be made as right turns at Brown Road.
 - 2) Reconstruct the eastbound/westbound approaches to provide a four-lane cross-section through the US 41 intersection and eliminate the "plateau" effect.
 - 3) Re-time/re-phase the signal at the US 41/SR78 intersection to reflect the above improvements and to provide for protected and permissive left-turn movements.

The developer shall not request or be granted roads impact fee credits to offset the cost of these intersection improvements.

The developer shall submit the construction plans for the above intersection improvements within 120 days following approval of the DRI for filing with the County and State for their review. The developer shall commence construction of the intersection improvements within 90 days of obtaining the permits for such improvements and will diligently pursue the work to its completion. The intersection improvements shall be completed prior to obtaining any Certificates of Occupancy or Completion for any portion of the development.

Intersection improvements shall be depicted on construction drawings prepared by the developer, which are subject to review and approval by Lee County DOT and FDOT. These plans are subject to modification as necessary to obtain FDOT approval, and as determined by DOT, to comply with the specifications for the interim improvements as recommended in the Lee County/DCA Settlement Agreement. The development cost shall include the total engineering costs for the intersection.

The developer's obligation shall include the full cost of design and engineering, drainage and relocation, right-of-way acquisition and dedication, construction of turn-lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing and signalization (as needed and warranted). The alignment, design, signalization and construction schedule shall be approved by the County Engineer. *This requirement has been satisfied.*

- e. The developer shall donate the right-of-way for the remaining enclaved out-parcel on SR 78, or pay the full cost of condemnation if the property cannot be acquired, including attorney and appraisal fees. *This requirement has been satisfied.*
 - f. The developer shall construct two additional travel lanes to SR 78 from US 41 west to the developer's westerly property line, then tapering back into the existing roadway. The improvements for SR 78 will be depicted on construction plans for SR 78, prepared by the developer, which are subject to review and approval by Lee County DOT and FDOT to ensure that they are consistent with the four-lane divided facility designed for SR 78, west of Piney Road. The developer shall be reimbursed from the \$1,500,000 deposited in escrow by the developer pursuant to paragraph G.3.a. above for the non-site-related cost, up to a total of \$1 million. The amount is subject to review and approval by DOT, via approval of bid documents or any other necessary documentation. These improvements shall be completed prior to obtaining any Certificates of Occupancy or Completion for any portion of the development. Merchants Crossing will pay all costs in excess of \$1 million to complete the SR 78 highway improvements at no cost to the County or FDOT. *This requirement has been satisfied.*
 - g. Once funds are placed in escrow, \$200,000 shall be immediately transferred to FDOT for the acquisition of future right-of-way for SR 78 from the westerly boundary of the developer's property to Piney Road, In lieu of an additional payment of \$300,000 to FDOT from the escrow account for SR 78 right-of-way acquisition, Lee County, pursuant to its agreement with FDOT, has applied \$800,000 in County road impact fees toward the construction of the four-lane improvements on SR 78 from US 41 east, one-half mile. After making the payments identified above, the balance of the funds in the escrow account were released to Lee County.
4. In addition to the payment of monies and other obligations specified in the Development Order, the developer or its successor shall be required to construct, at no cost to Lee County and the Florida Department of Transportation, all site-related improvements deemed necessary by Lee County and the Florida Department of Transportation. Site-related improvements shall be any improvement deemed site-related at the time of construction under the definition contained in the Roads Impact Fee Ordinance and/or Development Standards Ordinance, as either may be amended. The developer's obligation shall include the full cost of design and

engineering, drainage and utility relocation, right-of-way acquisition and dedication, construction of turn lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing and signalization (as needed and warranted). The alignment, design, signalization, and construction schedule shall be approved by the Lee County Engineer. The developer shall pay the full cost for any site-related intersection improvements found necessary by the County or FDOT for the project's access intersection onto US 41 and SR 78. The developer may construct said improvements if approved by the County Engineer.

5. Nothing contained in the Development Order is to imply or supersede Florida DOT permitting requirements.
6. Access to US 41 and SR 78 from the Merchants Crossing proposed access points located closest to the US 41/SR 78 intersection is subject to FDOT permitting requirements and is to be limited to right-turn-in/right-turn-out and left-turn-in only movements for US 41.
7. Nothing contained in this Development Order shall be construed to exempt this development from participation in the funding, through Municipal Services Benefit Units (MSBU) or other special assessment districts, of improvements to various State and County arterial and collector roads to the degree to which this development generates demand or is benefited.
8. Merchants Crossing's proportionate share responsibility for any improvements required in this Development Order is discharged in full upon payment of the entire proportionate share contribution due under the terms of Paragraph G.3., which contribution shall not be reduced or refunded; provided, however, that all other provisions of the Development Order also shall govern. All contributions due under the terms of Paragraph G.3 have been paid.
9. If the proportionate share contribution due under the terms of Paragraph G.3 is not paid in a timely manner, development activities within and issuance of development approvals and building permits for Merchant's Crossing shall immediately cease. All contributions due under the terms of Paragraph G.3 have been paid.
10. Compliance with all of the terms of the transportation related provisions of this development order shall satisfy the substantive requirements related to transportation facilities of Section 163.3202(2)(g), Florida Statutes (1989), Lee County Ordinance 89-33, the Lee County Comprehensive Plan and Rule 9J-5.0055, Florida Administrative Code, as they currently apply.

H. SOLID WASTE

1. The developer and tenants of the project shall incorporate the solid waste demands of the project into the county solid waste management program and investigate methods of reducing solid waste volume, to include but not be limited to, conservation, recycling, trash compaction, and mechanical shredding at the project.
2. The developer and subsequent tenants of the project, shall identify the proper method(s) for the on-site handling, and temporary storage procedures for any hazardous wastes that may be generated on-site, in accordance with local, regional, state and federal hazardous waste programs.

I. WASTEWATER MANAGEMENT

1. Treatment of wastewater shall be provided by North Fort Myers Utility, Inc.
2. Septic tanks shall be used only for the temporary construction trailer and temporary leasing office, but shall be removed as soon as service is available from North Fort Myers Utilities.
3. Any septic tanks used shall not be for the disposal of any substance which is identified in federal, state or local lists as a hazardous substance.
4. As the Merchants Crossing DRI may eventually reuse treated effluent for spray irrigation, the developer shall ensure that on-site ponds, lakes and wetlands are adequately buffered from possible effluent contamination.
5. The developer shall provide assurance that commercial effluent, if generated by the project, will be treated separately from domestic wastewater and handled in accordance with FDER criteria.
6. The developer shall obtain all necessary permits from South Florida Water Management District, and DER for the use of spray irrigation/effluent reuse.

J. CONCURRENCY

Approval of this Development Order does not exempt the developer from compliance with State concurrency rules or any concurrency management system adopted by Lee County, except for transportation which is addressed separately in condition G.10. of this Development Order.

K. GENERAL CONSIDERATIONS

1. All commitments and impact mitigating actions provided in the Application for Development Approval (and supplementary documents) that are not in conflict with specific conditions for project approval outlined above are officially adopted as conditions of approval.
2. Pursuant to Chapter 380.06(16), the developer may be subject to credit for contributions, construction, expansion or acquisition of public facilities, if the developer is also subject by local ordinances to impact fees or exactions to meet the same needs. The local government and the developer may enter into a capital contribution front-ending agreement to reimburse the developer for voluntary contributions in excess of his fair share.
3. The development construction target plan presented within the Application for Development Approval and as adjusted to date of Development Order approval shall be incorporated as a condition of approval. If Development Order conditions and developer commitments incorporated within the development order to mitigate regional impacts are not carried out as indicated to the extent or in substantial accordance with the Development Order, then this shall be presumed to be a substantial deviation for the affected regional issue. The development construction target plan has been amended and the amendments contained in the current development construction target plan attached hereto as Exhibit A-1.a do not create a presumption of a substantial deviation for any affected regional issue.
4. As required by Chapter 380.06(18), Florida Statutes, the developer shall submit an annual monitoring report (see Exhibit B) to Lee County, the SWFRPC, and the Department of Community Affairs.

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

1. This Development Order shall constitute a resolution of Lee County, adopted by the Board of County Commissioners in response to the Development of Regional Impact Application for Development Approval filed for the Merchants Crossing DRI.
2. All commitments and impact mitigating actions volunteered by the developer in the Application for Development Approval and supplementary documents which are not in conflict with conditions or stipulations specifically enumerated above are hereby incorporated by reference into this Development Order. These documents include the following:

- (a) Merchants Crossing Application for Development Approval, July 11, 1989;
 - (b) Merchants Crossing DRI sufficiency response, September 27, 1989; and
 - (c) Merchants Crossing DRI sufficiency response, November 22, 1989.
3. This Development Order shall be binding upon the developer(s) and its assignees or successors in interest. Those portions of this Development Order which clearly apply only to the project developer, shall be binding upon any builder/developer who acquires any tract of land within Merchants Crossing, but shall not be construed to be binding upon future tenants.
 4. It is hereby declared that the terms and conditions set out in this document constitute a basis upon which the developer and County may rely in future actions necessary to implement fully the final development contemplated by this Resolution and Development Order.
 5. All conditions, restrictions, stipulations and safeguards contained in this Resolution and 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.
 6. It is understood that any reference herein to any governmental agency shall be construed to mean any future instrumentality which may be created and designated as successors 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.
 7. In the event that any portion or section of this Development Order is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portion or sections of the Development Order which shall remain in full force and effect.
 8. 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. Such approval shall also not obviate the duty of the developer to comply with any County Ordinance or other regulations adopted after the effective date of this Development Order, to the extent that those regulations and requirements do not negate any rights granted herein.

9. Subsequent requests for local development permits shall not require further review pursuant to Section 380.06, Florida Statutes, unless it is found by the Board of County Commissioners, after due notice and hearing, that one or more of the following is present:
- (a) 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 regional impacts or other regional impacts which were not evaluated in the review by the Southwest Florida Regional Planning Council; or
 - (b) An expiration of the period of effectiveness of this Development Order as provided herein.

Upon a finding that either of the above is present, the Board shall order a termination of all development activity in such area of the development affected by such substantial deviation or such expiration of time until such time as a new DRI Application for Development Approval has been submitted, reviewed and approved in accordance with Section 380.06, Florida Statutes, and all local approvals have been obtained.

10. The deadline for commencing physical development under this Development Order shall be three years from the date of its adoption ; provided that all conditions are met in a timely manner and further provided that this effective period may be extended by this Board upon a finding of excusable delay in any proposed development activity and that conditions have not changed sufficiently to warrant further consideration of the development.
11. In the event the developer fails to commence significant physical development of that property identified in this Development Order within three (3) years from the date of adoption of this Development Order, development approval shall terminate and the development shall be subject to further consideration. Significant physical development shall include obtaining a Certificate of Completion or Occupancy on some substantial portion of the project (e.g., water management system or major road system). This Development Order shall otherwise terminate on October 28, ~~2000~~ 2007 at midnight, unless an extension is approved by the Board. An extension may be granted by the Board of County Commissioners if the project has been developing substantially in conformance with the original plans and approval conditions, and if no substantial adverse impacts not known to the Southwest Florida Regional Planning Council or to Lee County at the time of their review and approval, or arising due to the extension, have been identified.

12. However, an extension of the date of build-out of a development by five (5) or more years shall be presumed to create a substantial deviation subject to further development-of-regional-impact review. The presumption may be rebutted by substantial, competent evidence at the public hearing held by Lee County. For the purpose of calculating when a build-out date has been exceeded, the time shall be tolled during the pendency of administrative and judicial proceedings relating to development permits.
13. The Administrative Director of the Lee County Department of Community Development or his/her designee, shall be the local official responsible for assuring compliance with this Development Order.
14. The development will not be subject to down-zoning, unit density reduction, or intensity reduction, until October 28, ~~2000~~ 2007, unless the County demonstrates that substantial changes have occurred in the conditions underlying the approval of this Development Order including, but not limited to, such factors as a finding that the Development Order was based on substantially inaccurate information provided by the developer, or that the change is clearly established by local government to be essential to the public health, safety and welfare.
15. The developer, or its successor(s) in title to the undeveloped portion of the subject property, shall submit a report annually to Lee County, the Southwest Florida Regional Planning Council, the State land planning agency (the Department of Community Affairs), and all affected permit agencies. This report shall describe the state of development and compliance as of the date of submission, and shall further be consistent with the rules of the State land planning agency. The annual report shall include information contained in Exhibit B, as further modified or otherwise updated by the State land planning agency. The first monitoring report shall be submitted to the Administrative Director of the Department of Community Development not later than one year after the effective date of this Development Order, and further reporting shall be submitted not later than May 1st of subsequent calendar years thereafter, until build-out. Failure to comply with this reporting procedure is governed by Section 380.06 (18), Florida Statutes, and the developer shall so inform any successor in title to any undeveloped portion of the real property covered by this Development Order. This shall not be construed to require reporting from tenants or owners of individual lots or units.
16. Certified copies of this Development Order will be forwarded to the Southwest Florida Regional Planning Council, the developer, and appropriate state agencies. This Development Order is rendered as of the

date of that transmittal, but shall not be effective until the expiration of the statutory appeals period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater. Upon this Development Order becoming effective, notice of its adoption shall be recorded by the Developer in the office of the Clerk of the Circuit Court, as provided in Chapter 380.06(15), Florida Statutes.

THE MOTION TO ADOPT this Development Order Amendment was offered by Commissioner Andrew W. Coy, and seconded by Commissioner Ray Judah and, upon poll of the members present, the vote was as follows:

Commissioner Janes	Aye
Commissioner St. Cerny	Aye
Commissioner Judah	Aye
Commissioner Coy	Aye
Commissioner Albion	Aye

DULY PASSED AND ADOPTED this 30th day of April, 2001.

ATTEST:
CHARLIE GREEN, CLERK

By: Lisa S. Pierce
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

By: [Signature]
Chairman

APPROVED AS TO FORM

[Signature]
County Attorney's Office

State of Florida
County of Lee

I, Charlie Green, Clerk of the Circuit Court for Lee County, Florida, do hereby certify this document to be a true and correct copy of the original document filed in the Minutes Department.

Given under my hand and official seal at Fort Myers, Florida, this 2nd day of May, A.D. 2001

CHARLIE GREEN, CLERK

By: Lisa S. Pierce
Deputy Clerk

EXHIBIT A-1.a
CONSTRUCTION TARGET PLAN
MERCHANTS CROSSING OF NORTH FT. MYERS

	Projected Start Date	Projected Opening Date
<u>ALL CONSTRUCTION STAGES:</u>	<u>10-07</u>	<u>10-07</u>
CONSTRUCTION STAGE I:		
RETAIL & ENTERTAINMENT CENTER:		
RETAIL	353,000 sf	
ENTERTAINMENT	6,000 sf	
		359,000 sf
PERIMETER PARCELS:		
BANKS (2)	8,000 sf	
GAS STA./CONV. (1)	1,000 sf	
GENERAL RETAIL (1)	3,000 sf	
		12,000 sf
TOTAL CONSTRUCTION STAGE I		371,000 sf
CONSTRUCTION STAGE II:		
RETAIL & ENTERTAINMENT CENTER:		
RETAIL	104,400 sf	
ENTERTAINMENT:		
CINEMA	60,000 sf	
RESTAURANT W/COP (3)	4,000 sf	
SHOPS	1,600 sf	
		170,000 sf
PERIMETER PARCELS:		
BANKS (1)	3,000 sf	
RESTAURANTS (2)	6,000 sf	
GENERAL RETAIL (2)	5,000 sf	
		14,000 sf
TOTAL, CONSTRUCTION STAGE II		184,000 sf
TOTAL, CONSTRUCTION STAGES I & II		555,000 sf

The parenthetical numbers shown above identify the number of actual uses.

Note 1. sf = Square Feet

Note 2. The square footage subtotals for the different uses provided above are estimates and are subject to being reallocated among the other uses. Any square footage not developed in construction stage I can be transferred to construction stage II and vice versa. The total square footage for both construction stages I and II shall not exceed 555,000 square feet. The complete schedule of permitted uses for the Merchants Crossing Shopping Center is as stated in the schedule of uses found in the drawing entitled "Master Concept Plan," drawing number Map-M.1A, as revised through August 31, 1993.

Note 3. The dates shown are estimates and, therefore, are subject to change.

Note 4. The theater use located in the Entertainment Area of Tract II includes a sixteen screen movie theater estimated at 60,000 square feet. This represents an amendment from the previous approval of ten screens at 32,000 square feet. The amendment was authorized administratively by the county in 1994 pursuant to the developer's demonstration that the increase in traffic was not significant during peak hour and pursuant to the developer's consent to reduce the other retail square footage approved in Stage II by 28,000 square feet (the amount over the previously approved 32,000 square feet of theater use) .

EXHIBIT B

INFORMATION TO BE INCLUDED IN ANNUAL MONITORING REPORT

- (a) Any changes in the plan of development, or in the representations contained in the ADA, or in the construction target plan for the reporting year and for the next year;
- (b) A summary comparison of development activity proposed and actually conducted for the year;
- (c) Undeveloped tracts of land that have been sold to a separate entity or developer;
- (d) Identification and intended use of lands purchased, leased or optioned by the developer adjacent to the original DRI site since the development order was issued;
- (e) An assessment of the developer's and the local government's compliance with the conditions of approval contained in the DRI development order and the commitments which are contained in the Application for Development Approval and which have been identified by the local government, the Regional Planning Council or the Department of Community Affairs as being significant;
- (f) Any known incremental DRI applications for development approval of requests for a substantial deviation determination that were filed in the reporting year and to be filed during the next year;
- (g) An indication of a change, if any, in local government jurisdiction for any portion of the development since the development order was issued;
- (h) A list of significant local, state and federal permits which have been obtained or which are pending by agency, type of permit, permit number and purpose of each;
- (i) A statement that all persons have been sent copies of the annual report in conformance with Subsection 380.06(14) and (16), Florida Statutes;
- (j) A copy of any recorded notice of the adoption of a development order or the subsequent modification of an adopted development order that was recorded by the developer pursuant to Subsection 380.06(14)(d), Florida Statutes; and
- (k) Monitoring reports, including:
 - (i) Water quality annual monitoring report (for review by Lee County and South Florida Water Management District);
 - (ii) Transportation annual monitoring report (for review by Lee County, FDOT and SWFRPC).

RESOLUTION NO. 07-09-18

RESOLUTION PERTAINING TO STATUTORY EXTENSION
OF PHASE, BUILDOUT, AND EXPIRATION DATES FOR THE
MERCHANTS CROSSING DRI.

WHEREAS, the Governor of the State of Florida signed House Bill 7203 (Engrossed 3) into law on June 19, 2007 (hereinafter HB7203); and,

WHEREAS, HB7203 provides, among other things, for an amendment to Florida Statutes, Section 380.06(19)(c), so as to grant a three-year extension of all phase, buildout, and expiration dates for Developments of Regional Impact that are under active construction on July 1, 2007; and,

WHEREAS, the statutory extension is in recognition of the 2007 real estate market conditions; and,

WHEREAS, HB7203 provides that the three-year extension is not a substantial deviation, is not subject to further Development of Regional Impact review, and may not be considered when determining whether a subsequent extension is a substantial deviation under Section 380.06(19)(c), Florida Statutes; and,

WHEREAS, the Merchants Crossing DRI has been determined to be under active construction on July 1, 2007; and, therefore, is entitled to the statutory extension of all phase, buildout, and expiration dates by operation of law.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Lee County, Florida, that the Merchants Crossing DRI is hereby amended as follows with strikethrough text indicating deletions and underlined text indicating additions to the provisions of the DRI Development Order as follows:

I. FINDINGS OF FACT CONCLUSIONS OF LAW

K. The buildout date is October 28, 2010.

L. Merchants Crossing DRI qualified for the statutory three-year extension to all phase, buildout and expiration dates granted by the 2007 Florida Legislature under House Bill 7203 (amending F.S. §380.06(19)(c)) and signed into law on June 19, 2007. The Board of County Commissioners granted the extension pursuant to Lee County Resolution 07-09-17, as the Fifth Amendment to the Merchants Crossing DRI Development Order, adopted on September 11, 2007. Under HB7203, the three-year extension is not a

C.3.D.
9/11/07

may not be considered when determining whether a subsequent extension is a substantial deviation under F.S. §380.06(19)(c).

II. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

G. TRANSPORTATION

1. The transportation impact assessment upon which this Development Order is based assumes the development patterns and land uses reflected in the Merchants Crossing DRI/ADA application. The application assumes one continuous phase of development with build-out by the year 20072010. . . .

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

11. In the event the developer fails to commence significant physical development of that property identified in this Development Order within three (3) years from the date of adoption of this Development Order, development approval shall terminate and the development shall be subject to further consideration. Significant physical development shall include obtaining a Certificate of Completion or Occupancy on some substantial portion of the project (e.g., water management system or major road system). This Development Order shall otherwise terminate on October 28, 20072010 at midnight, unless an extension is approved by the Board. An extension may be granted by the Board of County Commissioners if the project has been developing substantially in conformance with the original plans and approval conditions, and if no substantial adverse impacts not known to the Southwest Florida Regional Planning Council or to Lee County at the time of their review and approval, or arising due to the extension, have been identified. . . .
14. The development will not be subject to down-zoning, unit density reduction, or intensity reduction, until October 28, 20072010, unless the County demonstrates that substantial changes have occurred in the conditions underlying the approval of this Development Order including, but not limited to, such factors as a finding that the Development Order was based on substantially inaccurate information provided by the developer, or that the change is clearly established by local government to be essential to the public health, safety and welfare.

IV. EXHIBIT A-1.a. CONSTRUCTION TARGET PLAN MERCHANTS CROSSING OF NORTH FORT MYERS.

Exhibit A-1.a to the Merchants Crossing DRI Development Order is hereby amended to reflect extension of the phase dates as indicated on the attached exhibit.

V. TRANSMITTAL AND EFFECTIVE DATE

Certified copies of this Development Order will be forwarded to the Southwest Florida Regional Planning Council, the developer, and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but shall not be effective until the expiration of the statutory appeals period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater. Upon this Development Order becoming effective, notice of its adoption shall be recorded by the Developer in the office of the Clerk of the Circuit Court, as provided in Section 380.06(15), Florida Statutes.

Commissioner Hall made a motion to adopt the foregoing resolution, seconded by Commissioner Mann. The vote was as follows:

Robert P. Janes	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 11th day of September 2007.

ATTEST:
CHARLIE GREEN, CLERK

BY: Marcia Wilson
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: [Signature]
Robert P. Janes, Chair



Approved as to form by:

[Signature]
Dawn E. Perry-Lehnert
County Attorney's Office

EXHIBIT A-1.a
CONSTRUCTION TARGET PLAN
MERCHANTS CROSSING OF NORTH FT. MYERS

		Projected Start Date	Projected Opening Date
<u>ALL CONSTRUCTION STAGES:</u>		<u>10-07</u>	<u>10-07</u>
		<u>2010</u>	<u>2010</u>
CONSTRUCTION STAGE I:			
RETAIL & ENTERTAINMENT CENTER:			
RETAIL	353,000 sf		
ENTERTAINMENT	6,000 sf		
			359,000 sf
PERIMETER PARCELS:			
BANKS (2)	8,000 sf		
GAS STA./CONV. (1)	1,000 sf		
GENERAL RETAIL (1)	3,000 sf		
			12,000 sf
TOTAL CONSTRUCTION STAGE I			371,000 sf
CONSTRUCTION STAGE II:			
RETAIL & ENTERTAINMENT CENTER:			
RETAIL	104,400 sf		
ENTERTAINMENT:			
CINEMA	60,000 sf		
RESTAURANT W/COP (3)	4,000 sf		
SHOPS	1,600 sf		
			170,000 sf
PERIMETER PARCELS:			
BANKS (1)	3,000 sf		
RESTAURANTS (2)	6,000 sf		
GENERAL RETAIL (2)	5,000 sf		
			14,000 sf
TOTAL, CONSTRUCTION STAGE II			184,000 sf
TOTAL, CONSTRUCTION STAGES I & II			555,000 sf

The parenthetical numbers shown above identify the number of actual uses.

Note 1. sf = Square Feet

Note 2. The square footage subtotals for the different uses provided above are estimates and are subject to being reallocated among the other uses. Any square footage not developed in construction stage I can be transferred to construction stage II and vice versa. The total square footage for both construction stages I and II shall not exceed 555,000 square feet. The complete schedule of permitted uses for the Merchants Crossing Shopping Center is as stated in the schedule of uses found in the drawing entitled "Master Concept Plan," drawing number Map-M.1A, as revised through August 31, 1993.

Note 3. The dates shown are estimates and, therefore, are subject to change.

Note 4. The theater use located in the Entertainment Area of Tract II includes a sixteen screen movie theater estimated at 60,000 square feet. This represents an amendment from the previous approval of ten screens at 32,000 square feet. The amendment was authorized administratively by the county in 1994 pursuant to the developer's demonstration that the increase in traffic was not significant during peak hour and pursuant to the developer's consent to reduce the other retail square footage approved in Stage II by 28,000 square feet (the amount over the previously approved 32,000 square feet of theater use).

**SIXTH DEVELOPMENT ORDER AMENDMENT¹
FOR
MERCHANTS CROSSING
A DEVELOPMENT OF REGIONAL IMPACT
STATE DRI #7-8889-92
COUNTY CASE #DRI2007-00001**

WHEREAS, pursuant to Section 380.06 of the Florida Statutes, the Board of County Commissioners of Lee County, Florida, (Board) heard at a public hearing, the application for development approval for Merchants Crossing, a commercial development in Lee County which consisted of approximately one hundred four acres to be developed in accordance with the application filed on July 11, 1989; and

WHEREAS, the Board adopted the Merchants Crossing DRI Development Order on October 31, 1990; and

WHEREAS, the DRI Development Order was subsequently amended on October 14, 1991 to increase the approved square footage of retail development, delete motel and office uses, increase the indigenous open space, adjust the transportation mitigation payment and change the construction target plan; and

WHEREAS, the DRI Development Order was thereafter amended a second time on June 30, 1993 to (1) increase the square footage approved for retail uses; (2) amend the construction target plan; and (3) add additional property to the development order; and

WHEREAS, on September 26, 1994, the County authorized the construction of a 16-screen movie theater without a formal Notice of Proposed Change by subtracting the square footage of the expanded movie theater from the approved retail square footage; and

WHEREAS, the DRI Development Order was amended a third time to extend the start date, buildout date, termination date, and down zone protection date of the project by less than five years to October 28, 2000; and

WHEREAS, on April 30, 2001 the DRI Development Order was amended a fourth time to extend the buildout, termination, and down zone protection dates of the project to October 28, 2007; and

¹This is a codification and restatement of all DRI Development Orders rendered with respect to Merchants Crossing DRI, including actions taken on October 31, 1990, October 14, 1991, June 30, 1993, April 2, 1997, April 30, 2001, September 11, 2007, and August 18, 2008.

WHEREAS, the buildout date was extended to October 28, 2010, as a result of HB7203 as reflected in Board Resolution 07-09-18, adopted September 11, 2007.

WHEREAS, on March 27, 2007, Hart Center VII, LTD., filed a Notice of Proposed Change to (1) add 15,000 square feet of retail commercial; and, (2) eliminate the limitation on the number of restaurants permitted within the development; and

WHEREAS, under F.S. §380.06(19), the proposed changes must be reviewed cumulatively with previous changes to determine whether they constitute a substantial deviation from the terms of the original development order approval; and

WHEREAS, a public hearing was advertised and held on August 18, 2008 before the Lee County Board who gave full and complete consideration of the report and recommendations of the Southwest Florida Regional Planning Council, the Lee County Staff, the Lee County Hearing Examiner, the documents in the record, and the testimony of all interested parties; and

WHEREAS, the Board found the proposed amendments do not constitute a substantial deviation.

NOW THEREFORE, be it resolved by the Board of County Commissioners that the development order for Merchants Crossing DRI is further amended as follows:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Merchants Crossing DRI is a commercial development in northern Lee County ~~which consists~~ ing of 104.66 acres (includes property ultimately used for right-of-way improvements on State Route 78 and US 41). The development is proposed to consist of ~~555,000~~ 570,000 square feet of retail commercial, 28 acres of lakes and sloughs for water management and wetland mitigation, 6.1 acres of preservation area and 4 acres of roads. The ~~construction target~~ plan proposed by the developer is depicted in Map H, attached as Exhibit A-1 and described further in the phasing plan attached as Exhibit B.

B. The legal description of the project is as follows:

A portion of the Southwest Quarter (SW1/4) of Section 34, Township 43 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

COMMENCING AT the Southwest corner of said Section 34; THENCE N 03°25'58" E, along the West line of the Southwest Quarter (SW1/4) of said Section 34, a distance of 73.52 feet, to the POINT OF BEGINNING of this description; THENCE continue N 03°25'58" E, along the last described course, a distance of 2,484.86 feet, to a point on a line parallel with and 100 feet South of, as measured at Right

angles to the North line of the Southwest Quarter (SW1/4) of said Section 34; THENCE S 89°56'05" E, along said parallel line, a distance of 264.66 feet; THENCE S 28°32'36" E, a distance of 664.99 feet; THENCE S 86°34'00" E, a distance of 747.11 feet; THENCE N 03°26'00" E, a distance of 100.00 feet; THENCE N 48°25'58" E, a distance of 212.13 feet; THENCE S 86°34'00" E, a distance of 650.00 feet, to the Westerly right-of-way line of US 41 (SR 45); THENCE S 03°25'53" W, along said right-of-way line, a distance of 718.01 feet; THENCE S 06°17'38" W, along said right-of-way line, a distance of 240.30 feet; THENCE S 03°25'53" W, along said right-of-way line, a distance of 409.75 feet; THENCE S 08°42'37" W, along said right-of-way line, a distance of 315.20 feet, to a point on the arc of a circular curve to the left, whose radius point bears S 86°34'07" E from said point; THENCE Southerly along said right-of-way line and the arc of said curve, having a radius of 3,005.79 feet, a central angle of 05°09'06", and a chord bearing of S 00°51'20" W, an arc distance of 270.27 feet, to the Point of Reverse Curvature of a circular curve to the right; THENCE Southerly and Westerly, along the arc of said curve, having a radius of 100.00 feet, a central angle of 93°29'08" and a chord bearing of S 45°01'21" W, an arc distance of 163.16 feet, to the Point of Tangency and the Northerly right-of-way line of Pine Island Road (SR 78); THENCE N 88°14'05" W, a distance of 383.15 feet; THENCE N 89°57'42" W, a distance of 196.50 feet, to the Easterly line of those lands described in Official Records Book 421, Page 480, as recorded in Public Records of Lee County, Florida; the last two courses being along the Northerly right-of-way line of said Pine Island Road (SR 78); THENCE N 00°04'40" E, along said Easterly line, a distance of 142.10 feet, to the Northerly line of those lands described in said Official Records Book 421, Page 480; THENCE N 89°55'20" W, along said Northerly line, a distance of 100.00 feet, to the Westerly line of those lands described in said Official Records Book 421, Page 480; THENCE S 00°04'40" W, along said Westerly line, a distance of 142.17 feet, to the Northerly line of said Pine Island Road (SR 78); THENCE N 89°57'42" W, a distance of 259.57 feet; THENCE S 00°02'18" W, a distance of 12.00 feet; THENCE N 89°57'42" W, a distance of 255.32 feet; THENCE N 86°08'51" W, a distance of 180.40 feet; THENCE N 89°57'42" W, a distance of 274.68 feet; THENCE S 00°02'18" W, a distance of 12.00 feet; THENCE N 89°57'42" W, a distance of 230.03 feet, to the Point of Curvature of a circular curve to the left; THENCE Westerly along the arc of said curve, having a radius of 2,944.29 feet, a central angle of 03°10'09" and a chord bearing of S 88°27'14" W, an arc distance of 162.86 feet, to the POINT OF BEGINNING, the last eight (8) courses being along the Northerly right-of-way line of said Pine Island Road (SR 78).

CONTAINING 101.44+ acres. (Does not include property used for right-of-way improvements to State Road 78 and US 41)

- C. The project's zoning is Commercial Planned Development (CPD), pursuant to the authority of Chapter 163, Florida Statutes, Laws of Florida 61-2405, and the Lee County Zoning Regulations, as amended.

- D. The Application for Development Approval is consistent with the requirements of Section 380.06, Florida Statutes.
- E. The development is not located in an area designated as an Area of Critical State Concern, pursuant to the provisions of Section 380.05, Florida Statutes.
- F. The development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.
- G. The development has been reviewed by the Southwest Florida Regional Planning Council and is the subject of the report and recommendations adopted by that body. The development, as proposed in the Application for Development Approval and modified by this Development Order Amendment, is consistent with the report and the recommendations of the Southwest Florida Regional Planning Council pursuant to Section 380.06(1112).
- H. Concurrently with the adoption of the original DRI Development Order, the property was rezoned in accordance with Lee County Zoning Ordinance 86-17, as amended. The Zoning Resolution contains additional details and conditions pertaining to the Merchants Crossing development, and also provides for certain deviations from Lee County zoning and development regulations.
- I. The development is located in the Intensive Development and Central Urban classifications of the Lee Plan and is consistent with the Lee County Comprehensive Plan and Lee County's Land Development Regulations if subject to the conditions contained in this Development Order.
- J. The proposed conditions below meet the criteria found in Section 380.06(15)(d), Florida Statutes.
- K. The buildout date is October 28, 2010.
- L. Merchants Crossing DRI qualified for the statutory three-year extension to all phase, buildout and expiration dates granted by the 2007 Florida Legislature under House Bill 7203 (amending F.S. §380.06(19)(c)) and signed into law on June 19, 2007. The Board of County Commissioners granted the extension pursuant to Lee County Resolution 07-09-18, as the Fifth Amendment to the Merchants Crossing DRI Development Order, adopted on September 11, 2007. Under HB7203, the three-year extension is not a substantial deviation, is not subject to further Development of Regional Impact review, and may not be considered when determining whether a subsequent extension is a substantial deviation under F.S. §380.06(19)(c).²

²The three-year extension granted pursuant to HB7203 established a buildout date of October 28, 2010
S:\LU\DRIFINALDO\Merchants Crossing\Merchants Crossing - 6th Amendment.wpd

II. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Lee County, Florida, in a public meeting that the ~~Development of Regional Impact Application for Development Approval is that the requested amendments to the Merchants Crossing DRI are hereby ordered Approved,~~ subject to the following conditions, restrictions, and limitations:

A. DRAINAGE/WATER QUALITY

1. The developer ~~shall~~must participate in any on-going or future efforts by Lee County to establish a County-wide Watershed Basin Management Plan.
2. The developer and his successor(s) ~~shall~~ must implement and maintain an on-going monitoring and maintenance program that regularly inspects, maintains, and samples the stormwater drainage system, including lake and wetlands monitoring during and after the development of Merchants Crossing. The developer ~~shall~~must establish the legal entity ~~which that~~ will carry out this program after tracts and/or units are sold; the documents creating such entity must be approved by the Lee County Attorney's Office and the South Florida Water Management District (SFWMD) prior to the implementation of the monitoring program. The program ~~shall~~must be designed in consultation with the staffs of the Southwest Florida Regional Planning Council (SWFRPC), the South Florida Water Management District, and Lee County. Final approval of the program rests with the Lee County Department of Community Development. The purpose of this program is to ensure that the stormwater drainage system functions in every aspect as planned. Should the monitoring program indicate that the system is not functioning as planned, or is not constructed in accordance with all approved plans, permits, or county requirements, or is not meeting water quality standards of the applicable agencies, further development approvals ~~shall~~may not be granted until the developer has completed corrective measures as specified by Lee County.

A monitoring and maintenance program has been approved by the Lee County Department of Community Development.

3. The project ~~shall~~must have ~~District~~SFWMD permits for construction and operation of the surface water management system, and for any dewatering activities associated with the construction of lakes, roads or building foundations.
4. The allowable discharge offsite for Merchants Crossing ~~shall~~may not exceed 0.09 cubic feet per second/acre over the whole project area, or as determined appropriate by SFWMD. Final allowable discharge must be

determined by the developer and SFWMD staff, using a 72-hour storm duration model, prior to issuance of a surface water permit. *A surface water permit has been issued by SFWMD. (Permit issued October 16, 1991 #36-02069-S.)*

5. All water retention/detention areas ~~shall~~must meet ~~District~~SFWMD criteria. Any areas ~~which~~that do not meet this criteria may not be used in the calculation of water quality or quantity volumes.
6. Based on information provided by the developer, the entire freshwater marsh at the project's northern boundary, ~~shall~~may be indirectly impacted as a result of water table drawdown associated with lake control elevations, and irrigation withdrawals from the adjacent detention lake. To obtain a construction and operation permit, the developer ~~shall~~must provide detailed plans that indicate: buffer areas adjacent to wetlands, the extent of encroachment into wetlands, information ~~which verifies~~verifying that control elevations will maintain adequate wetland hydroperiods, acreage figures and cross-sections for all mitigation areas, a mitigation proposal that does not result in a net loss of wetlands and a mitigation proposal which includes a wetland monitoring and maintenance program.
7. The developer ~~shall~~must confirm, to the satisfaction of all federal, state and local review agencies, and the SFWMD, that the proposed water management system will not impact habitats of the golden polypody, prickly pear cactus, wild coco and gopher tortoise, as well as other endangered species potentially occurring on-site, or that such impacts will be mitigated to the benefit of on-site populations of these species.
8. The developer has indicated that the north-south watercourse will be relocated and redesigned to simulate a natural creek. The water course ~~shall~~must be designed to meet ~~District~~SFWMD criteria in effect at the time of permit application. *This requirement has been satisfied.*
9. Provisions for the drainage of off-site areas and out-parcels that presently drain through the site ~~shall~~must be provided at the time of permit application.
10. The developer ~~shall~~must undertake a regularly scheduled vacuum sweeping of all streets and parking facilities, to be incorporated as a Best Management Practice (BMP).
11. In areas adjacent to retail or office uses, the developer ~~shall~~must provide dry pre-treatment, as determined by SFWMD at time of permitting (retention or detention), in order to provide reasonable assurance that hazardous materials will not enter the stormwater management system.

12. The operation of the Merchants Crossing Stormwater Management System is dependent on Yellow Fever Creek for an outlet. Therefore, a final Stormwater Management Plan ~~shall~~must demonstrate that the system is designed in accordance with existing design parameters for Yellow Fever Creek. A man-made ditch (the East Branch of Yellow Fever Creek) flows through the Merchants Crossing DRI ~~which~~that eventually drains to Yellow Fever Creek and the Caloosahatchee River in northern Lee County. Post developed runoff will be directed across the site through a series of surface water management ponds to a rerouted ditch that will also carry the offsite flows from the north. The rerouted ditch will flow through a culvert under Pine Island Road and eventually to Yellow Fever Creek.
13. Best Management Practices (BMP's) and monitoring and maintenance of the stormwater management system ~~shall~~must be implemented by the developer in accordance with ~~District~~SFWMD guidelines.
14. Any off-site road improvements constructed by the developer ~~shall~~must address water quality in accordance with the ~~South Florida Water Management District~~SFWMD criteria.
15. The use of septic tanks ~~shall be~~is limited to temporary use with the temporary construction trailer and temporary leasing office only. Such use ~~shall~~must be eliminated when service is available on site from North Fort Myers Utilities.
16. All commitments made by the developer within the ADA related to Question 22 (Drainage) and Question 15 (Water Quality) and subsequent sufficiency round information, not in conflict with the above recommendations, are hereby incorporated as conditions for approval.

B. ENERGY

All site plans or architectural programs ~~shall~~must incorporate, to the extent possible, the following energy conservation features into all site plans and architectural programs or the property owner/developer ~~shall~~must ensure to the extent possible that the following features are implemented through deed restrictions ~~and/or~~ covenants with successors in title. All applications for site plan approvals and building permits ~~shall~~must be accompanied by a document detailing proposed compliance with these conditions. If deed restrictions or covenants are utilized to ensure compliance, such documents ~~shall~~must be approved by the Lee County Attorney's Office prior to recordation. If no deed restrictions are approved and recorded, the prior alternative ~~shall~~must be utilized ~~and~~with the following features ~~shall be included;~~:

1. Provision of bicycle racks or storage facilities in all tracts.

2. Use of energy-efficient features in window design.
3. Installation of energy-efficient appliances and equipment.
4. Prohibition of deed restrictions or covenants that would prevent or unnecessarily hamper energy conservation efforts (e.g. building orientation, and solar water heating systems).
5. Reduced coverage by asphalt, concrete, rock, and similar substances in streets, parking lots, and other areas to reduce local air temperatures and reflected light and heat.
6. Installation of energy-efficient lighting for streets, parking areas, and other interior and exterior public areas.
7. Use of water closets with a maximum flush of 3.5 gallons and shower heads and faucets with a maximum flow rate of 3.0 gallons per minute (at 60 pounds of pressure per square inch).
8. Selection of native plants, trees, and other vegetation and landscape design features that reduce requirements for water, fertilizer, maintenance, and other needs.
9. Planting of native shade trees to provide reasonable shade for all streets, recreation areas and parking areas.
10. Placement of trees to provide needed shade in the warmer months while not overly reducing the benefits of sunlight in the cooler months.
11. Orientation of structures, as possible, to reduce solar heat gain by walls to utilize the natural cooling effects of the wind.
12. Use of operable windows and ceiling fans.
13. Provision for structural shading (e.g., trellises, awnings, and roof overhangs) wherever practical, when natural shading cannot be used effectively.
14. Consideration by any project architectural review committee(s) of energy conservation measures (both those noted here and others) to assist builders in their efforts to achieve greater energy efficiency in the development.

The incorporation of these energy conservation measures in this Development Order does not preclude the provision of additional energy conservation measures by the developer. It also does not prevent the local government of jurisdiction or any state, regional, or other agency under

whose jurisdiction this project falls from requiring additional energy measures or measures that may be more stringent.

C. POTABLE WATER/WATER SUPPLY

1. The developer ~~shall~~must incorporate the use of water saving devices as required by State law (Section 553.14., Florida Statutes).
2. The developer ~~shall~~must show that the proposed deep well, to supplement irrigation from the large lake, is of compatible water quality with surface waters. Furthermore, the developer ~~shall~~must show that proposed mitigation measures address possible damage from watertable drawdown.
3. The project ~~shall~~requires a water use permit for any withdrawals from groundwater, project lakes ~~and/or~~ any other surface water bodies for irrigation or potable uses and for any dewatering activities associated with the construction of project lakes, ~~and/or~~ road, or building foundations.
4. At the time of permit application, the developer ~~shall~~must provide verification that the proposed system designs will meet District criteria.
5. For the purpose of potable water conservation, Merchants Crossing ~~shall~~must utilize low water use plumbing/fixtures, self-closing ~~and/or~~ metered water faucets, and other water conserving devices.
6. For the purpose of non-potable water conservation, Merchants Crossing ~~shall~~must utilize xeriscape principles in the design and maintenance of the project's landscaping.
7. The developer ~~shall~~must utilize Lee County Utilities for potable water.
8. In the project area, the lower Hawthorn aquifer has a chloride ion concentration greater than 500 mg/1. To utilize this as a recharge source for the project lake system, the permit developer ~~shall~~must show that the addition of this water to the lake system will not raise the chloride ion concentration of the lake above 200 mg/1.
9. The lake system is adjacent to wetland preserve areas. At the time of permit application, the developer ~~shall~~must show that the wetland hydroperiod will not be adversely affected by proposed irrigation withdrawals from the large lake at the north western corner of the site.
10. As the developer has committed to eventually using reclaimed wastewater for irrigation, the developer ~~shall~~must ensure that on-site lakes and wetlands are adequately buffered from possible effluent contamination.

11. Any spray irrigation using treated wastewater ~~shall~~must be accomplished in accordance with state and local regulations. The developer ~~shall~~must use treated wastewater for all or part of the project's irrigation demand, at such time as adequate amounts of treated wastewater are available for such purpose.
12. All construction plans, technical specifications, and proposed plats, if applicable, for the proposed water distribution system ~~shall~~must be reviewed and approved by the Lee County Utilities prior to commencement of construction.
13. The lowest quality of water possible ~~shall~~must be utilized for all outdoor non-potable water use.
14. Landscaping irrigation and all outdoor water uses, e.g. hosing concrete, ~~shall~~are ~~be~~ restricted to the hours of 5:00 P.M. to 9:00 A.M., or as restricted by SFWMD watering guidelines, after the establishment of the landscape foliage, unless the irrigation is done with treated effluent.
15. All commitments made by the developer within the ADA related to question 23 (Water Supply) and subsequent sufficiency round information, not in conflict with the above recommendations, are hereby incorporated as conditions for approval.

D. FIRE PROTECTION

1. To mitigate its impacts upon provision of adequate fire protection, the developer ~~shall~~must:
 - (a) Pay fire protection and emergency medical services impact fees; and,
 - (b) Sprinkler all buildings in the project. (With the exception of the SunBank parcel on the corner of SR 78 and U.S. 41 south.); and
 - (c) Provide funds to North Fort Myers Fire Protection District to purchase a 65-foot telesquirt fire truck or comparable equipment. This provision must be met within sixty days after the first building permit is obtained from Lee County for any building over two stories in height.
2. The Merchants Crossing DRI ~~shall~~must comply with any duly adopted fire code and life safety code regulations unless deviations or variances are obtained from such regulations.

E. REGIONAL SHOPPING CENTER

~~The total maximum square footages/limits of development in each tract shall~~ must be as follows:

USE	TRACT	SUB-TOTALS	TOTAL SQUARE FEET
Retail & Entertainment Center and Perimeter Parcel Uses*			
Restaurants	(perimeter & Tracts I and II)	10,000-sf	
Gas Station	(perimeter)	1,000-sf	
Theater (Sixteen Screen)	(entertainment area of Tract II)	60,000-sf	
Retail/Service	(retail/service/entertainment tract & perimeter)	484,000-sf	
			555,000**
<p>*The square footage subtotals for the different uses provided above are estimates and are subject to reallocation among the other uses. The complete schedule of permitted uses for the Merchants Crossing Shopping Center is found in "Master Concept Plan," drawing number Map-M.1A, revised through August 31, 1993.</p> <p>** As limited by all other conditions of the Zoning Resolution and DRI Development Order</p>			

The square footage and phasing of the development within each tract is set forth in attached Exhibit B.

The DRI development is limited to a maximum of 570,000 square feet.

F. VEGETATION/WILDLIFE/WETLANDS

Approximately 6.5 acres of the Merchant's Crossing site occurs as two types of wetlands; 3.8 acres of freshwater marsh and 2.7 acres of mixed hardwood wetlands. The Developer has committed to significant wetland mitigation ~~which~~ that features wetland marshes and a north/south creek, with adjacent floodplain vegetation. A portion of the 3.1 acres of the floodplain will be planted with hydric hammock species. This portion ~~shall~~ may not be less than the hardwood wetland area to be impacted.

Also on site is an approximate 4.9 acre oak and cabbage palm hammock/wetland hardwood system, (2.2-acre hammock/2.7-acre wetland). The developer has committed to save the significant elements of this system, representing 1.9 acres.

1. Prior to issuance of local Final Development Order, the developer ~~shall~~must submit a vegetation plan. The preservation of the significant elements of the Oak/Cabbage Palm Hammock and adjacent Hardwood Wetland System ~~shall~~must be in accordance with the Mitigation Plan (M-3A) which is attached as Exhibit C.
2. At the time of permit application to the SFWMD, the developer ~~shall~~must provide detailed plans that indicate buffer areas adjacent to wetlands, the extent of encroachment into wetlands, information verifying ~~that~~ control elevations will maintain adequate wetland hydroperiods, acreage figures and cross-sections for all mitigation areas, a mitigation proposal that does not result in a net loss of wetlands, and a mitigation proposal ~~which that~~ includes a wetland monitoring and maintenance program, developed in accordance with adopted policies of the regulatory agencies.
3. Prior to the approval of a local Final Development Order for any phase of the development, the developer ~~shall~~must submit and subsequently follow a Florida Game and Freshwater Fish Commission (FGFWFC) approved Gopher Tortoise Management Plan.
4. The developer ~~shall~~must provide for preservation and/or relocation on-site of the four listed plant species found on-site (e.g. golden polypody, prickly pear cactus, wild coco and whisk fern) to the satisfaction of ~~Florida Game and Fresh Water Fish Commission~~ FGFWFC and Lee County Division of Environmental Sciences.
5. All other commitments made by the developer in either the ADA or sufficiency round information, not in conflict with the above recommendations, ~~shall be~~are incorporated as conditions for development order approval.

G. TRANSPORTATION

1. The transportation impact assessment upon which this Development Order is based assumes the development patterns and land uses reflected in the Merchants Crossing DRI/ADA application. The application assumes one continuous phase of development with buildout by the year 2010.
2. Merchants Crossing ~~shall~~must submit an annual traffic monitoring report. The monitoring program ~~shall~~must be designed in cooperation with the Lee County Department of Transportation the Southwest Florida Regional Planning Council and the Florida Department of Transportation. The annual monitoring report ~~shall~~must contain at a minimum AM and PM, peak-hour peak season traffic counts (with turning movements) and mutually agreed

upon professionally acceptable level of service analyses at all project access points onto the roadway network and at the following intersections:

SR 78 (Pine Island Rd.) at:
US 41
Pondella Rd.
Del Prado Blvd.
Santa Barbara Blvd.
SR 78 (Bayshore Rd.) at:
Business 41
Hart Rd.

Del Prado Blvd. at :
SR 78 (Pine Island Rd.)
Viscaya Pkwy.
Hancock Bridge Pkwy.

US 41 at:
Pondella Rd.

In addition, peak season daily traffic counts and level of service calculations ~~shall~~must be submitted as part of the annual monitoring report for all project access roads and the roadway links listed below:

SR 78 (Pine Island Rd.)
Piney Rd. to Santa Barbara Blvd.

SR 78 (Bayshore Rd.)
Business 41 to Slater Rd.

Del Prado Blvd.
SR 78 to Viscaya Pkwy.

US 41
Hancock Bridge Pkwy. to Business 41

Business 41 from
SR 78 to Littleton Rd.

Pondella Rd.
US 41 to Orange Grove Blvd.

Merchants Crossing ~~shall~~must submit the annual monitoring report to Lee County DOT, the Southwest Florida Regional Planning Council and the Florida Department of Transportation SW Area Office for review. The first

report ~~shall~~must be submitted one year after the issuance of the DRI Development Order for the property included in the Merchants Crossing DRI/ADA application. Reports ~~shall~~must be submitted annually until project buildout. Actual buildout will occur when the developer has completed the construction authorized by this Development Order. Declared buildout ~~would~~occurs if the developer formally ~~declareds~~declares in writing to the County Administrator that nothing more will be constructed despite the fact that less than the permissible maximum had been built to date. The purposes of the annual monitoring program are to:

- (a) Determine whether or not the traffic levels projected in the traffic impact assessment for Merchants Crossing are exceeded by actual impacts;
- (b) Assist Lee County and F.D.O.T. in determining the proper timing of necessary roadway improvements; and
- (c) Determine the project's external trip generation.

It is recognized and understood that traffic counts may be obtained from original machine and manual peak hour counts, Lee County traffic volume reports, Florida Department of Transportation, other ADA developments with similar monitoring requirements, and other reliable sources of traffic counts.

3. As mitigation for the transportation impacts of Merchants Crossing, the developer ~~shall~~must provide the following:
 - a. The developer ~~shall~~must make a cash payment of \$1,500,000 into an escrow account on or before October 1, 1993, or upon issuance of the first building permit, whichever occurs earlier. All interest earned on this account ~~shall~~will accrue to the benefit of the County. A portion of this money (up to a maximum of \$1 million as further limited in paragraph G.3.f.) ~~shall~~may be used for the widening of SR 78. The use of funds and terms of the escrow ~~shall~~will be governed by a separate escrow agreement between the parties, and subject to approval by the County Attorney's office, which approval ~~shall~~will not be unreasonably withheld. *This requirement has been satisfied.*
 - b. The developer ~~shall~~must make a cash payment of \$791,370 on or before December 1, 1994, or upon issuance of the first building permit for Tract II, whichever occurred earlier as shown on the Master Concept Plan (M-1A, last revised July 1, 1991) attached to Zoning Resolution Z-90-034. The cash payments totaling \$2,291,370 may be considered as full credit against road impact fees. *This requirement has been satisfied.*

Should those provisions be repealed, amended or otherwise no longer in effect as part of Ordinance 89-17, as amended, they shall nevertheless govern availability of credits under this Development Order as those provisions existed on the effective date of this Development Order. ~~This requirement has been satisfied.~~

- c. Within 90 days of approval of the DRI Development Order, the developer shall donate the right-of-way needed for widening SR 78 (Pine Island Road) and US 41 to the Florida Department of Transportation (FDOT), and shall donate the 100 feet of right-of-way needed to extend Diplomat Parkway to the County. ~~The necessary right-of-way which is intended to be sufficient to accommodate a four-lane divided highway built to FDOT standards is shown on Exhibit D.~~ No roads impact fee credits shall be applied for, or granted for, this right-of-way. ~~This requirement has been satisfied.~~
- d. The developer shall construct, at no cost to the County, the following improvements to SR 78:
- 1) Re-sign the northbound US 41 approach to encourage northbound right turns at SR 78 to be made as right turns at Brown Road.
 - 2) Reconstruct the eastbound/westbound approaches to provide a four-lane cross-section through the US 41 intersection and eliminate the "plateau" effect.
 - 3) Re-time/re-phase the signal at the US 41/SR78 intersection to reflect the above improvements and to provide for protected and permissive left-turn movements.

The developer shall not request or be granted roads impact fee credits to offset the cost of these intersection improvements.

The developer shall submit the construction plans for the above intersection improvements within 120 days following approval of the DRI for filing with the County and State for their review. The developer shall commence construction of the intersection improvements within 90 days of obtaining the permits for such improvements and will diligently pursue the work to its completion. The intersection improvements shall be completed prior to obtaining any Certificates of Occupancy or Completion for any portion of the development.

Intersection improvements ~~shall~~must be depicted on construction drawings prepared by the developer, which are subject to review and approval by Lee County DOT and FDOT. These plans are subject to modification as necessary to obtain FDOT approval, and as determined by DOT, to comply with the specifications for the interim improvements as recommended in the Lee County/DCA Settlement Agreement. The development cost ~~shall~~includes the total engineering costs for the intersection.

The developer's obligation ~~shall~~includes the full cost of design and engineering, drainage and relocation, right-of-way acquisition and dedication, construction of turn-lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing and signalization (as needed and warranted). The alignment, design, signalization and construction schedule ~~shall~~must be approved by the County Engineer. *This requirement has been satisfied.*

- e. The developer ~~shall~~must donate the right-of-way for the remaining enclaved out-parcel on SR 78, or pay the full cost of condemnation if the property cannot be acquired, including attorney and appraisal fees. *This requirement has been satisfied.*
- f. The developer ~~shall~~must construct two additional travel lanes to SR 78 from US 41 west to the developer's westerly property line, then tapering back into the existing roadway. The improvements for SR 78 will be depicted on construction plans for SR 78, prepared by the developer, which are subject to review and approval by Lee County DOT and FDOT to ensure that they are consistent with the four-lane divided facility designed for SR 78, west of Piney Road. The developer ~~shall~~may be reimbursed from the \$1,500,000 deposited in escrow by the developer pursuant to paragraph G.3.a. above for the non-site-related cost, up to a total of \$1 million. The amount is subject to review and approval by DOT, via approval of bid documents or any other necessary documentation. These improvements ~~shall~~must be completed prior to obtaining any Certificates of Occupancy or Completion for any portion of the development. Merchants Crossing will pay all costs in excess of \$1 million to complete the SR 78 highway improvements at no cost to the County or FDOT. *This requirement has been satisfied.*
- g. Once funds are placed in escrow, \$200,000 ~~shall~~will be immediately transferred to FDOT for the acquisition of future right-of-way for SR 78 from the westerly boundary of the developer's property to Piney Road;. In lieu of an additional payment of \$300,000 to FDOT from the escrow account for SR 78 right-of-way acquisition, Lee County,

pursuant to its agreement with FDOT, has applied \$800,000 in County road impact fees toward the construction of the four-lane improvements on SR 78 from US 41 east, one-half mile. After making the payments identified above, the balance of the funds in the escrow account were released to Lee County.

4. In addition to the payment of monies and other obligations specified in the Development Order, the developer or its successor ~~shall be~~ required to construct, at no cost to Lee County and the Florida Department of Transportation, all site-related improvements deemed necessary by Lee County and the Florida Department of Transportation. Site-related improvements ~~shall be~~ include any improvement deemed site-related at the time of construction under the definition contained in the Roads Impact Fee Ordinance and/or Development Standards Ordinance, as either may be amended Land Development Code Chapter 10. The developer's obligation ~~shall~~ includes the full cost of design and engineering, drainage and utility relocation, right-of-way acquisition and dedication, construction of turn lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing and signalization (as needed and warranted). The alignment, design, signalization, and construction schedule ~~shall~~ must be approved by the Lee County Engineer. The developer ~~shall~~ must pay the full cost for any site-related intersection improvements found necessary by the County or FDOT for the project's access intersection onto US 41 and SR 78. The developer may construct said improvements if approved by the County Engineer.
5. Nothing contained in ~~the~~ this Development Order is to imply or supersede Florida DOT permitting requirements.
6. Access to US 41 and SR 78 from the Merchants Crossing proposed access points located closest to the US 41/SR 78 intersection is subject to FDOT permitting requirements and is to be limited to right-turn-in/right-turn-out and left-turn-in only movements for US 41.
7. Nothing contained in this Development Order ~~shall~~ may be construed to exempt this development from participation in the funding, through Municipal Services Benefit Units (MSBU) or other special assessment districts, of improvements to various State and County arterial and collector roads to the degree to which this development generates demand or is benefitted.
8. ~~Merchants Crossing's proportionate share responsibility for any improvements required in this Development Order is discharged in full upon payment of the entire proportionate share contribution due under the terms of Paragraph G.3., which contribution shall not be reduced or refunded; provided, however, that all other provisions of the Development Order also~~

~~shall govern. All contributions due under the terms of Paragraph G.3 have been paid. The \$2,291,307 proportionate share payment made in accordance with paragraphs G.3.a. and b. discharges the Merchants Crossing DRI traffic impact responsibility for 555,000 square feet of development as approved under the 5th DRI Development Order Amendment and preceding DRI Development Order approvals.~~

9. ~~If the proportionate share contribution due under the terms of Paragraph G.3 is not paid in a timely manner, development activities within and issuance of development approvals and building permits for Merchants Crossing shall immediately cease. All contributions due under the terms of Paragraph G.3 have been paid. An additional 15,000 square feet of commercial development was approved under the 6th DRI Development Order Amendment. As to this 15,000 square feet, the developer is required to pay all impact fees, including roads, attributable to development in accord with Land Development Code Chapter 2. In effect this means that all square footage added or constructed above 555,000 square feet is required to pay impact fees.~~

To ensure this occurs, the developer must submit a cumulative update to the square footage calculation attached to ZVL2006-00079 as support for the issuance of any building permit issued after June 1, 2008. A copy of the ZVL calculation list updated through March 3, 2008 is attached as Exhibit E.

10. Compliance with all of the terms of the transportation related provisions of this development order ~~shall~~ satisfy the substantive requirements related to transportation facilities of Section 163.3202(2)(g), Florida Statutes (1989), Lee County Ordinance 89-33, the Lee County Comprehensive Plan and Rule 9J-5.0055, Florida Administrative Code, as they currently apply.

H. SOLID WASTE

1. The developer and tenants of the project ~~shall~~must incorporate the solid waste demands of the project into the county solid waste management program and investigate methods of reducing solid waste volume, to include but not be limited to, conservation, recycling, trash compaction, and mechanical shredding at the project.
2. The developer and subsequent tenants of the project, ~~shall~~must identify the proper method(s) for the on-site handling, and temporary storage procedures for any hazardous wastes that may be generated on-site, in accordance with local, regional, state and federal hazardous waste programs.

I. WASTEWATER MANAGEMENT

1. Treatment of wastewater ~~shall~~will be provided by North Fort Myers Utility, Inc.
2. Septic tanks ~~shall~~may be used only for the temporary construction trailer and temporary leasing office, but ~~shall~~must be removed as soon as service is available from North Fort Myers Utilities.
3. ~~Any s~~Septic tanks ~~used~~ ~~shall~~may not be used for the disposal of any substance which is identified in federal, state or local lists as a hazardous substance.
4. As the Merchants Crossing DRI may eventually reuse treated effluent for spray irrigation, the developer ~~shall~~must ensure that on-site ponds, lakes and wetlands are adequately buffered from possible effluent contamination.
5. The developer ~~shall~~must provide assurance that commercial effluent, if generated by the project, will be treated separately from domestic wastewater and handled in accordance with FDER criteria.
6. The developer ~~shall~~must obtain all necessary permits from ~~South~~SFWMD and Florida Water Management District, and DERDepartment of Environmental Regulation (FDER) for the use of spray irrigation/effluent reuse.

J. CONCURRENCY

Approval of this Development Order does not exempt the developer from compliance with State concurrency rules or any concurrency management system adopted by Lee County, except for transportation ~~which is~~ addressed separately in condition G.10. of this Development Order.

K. GENERAL CONSIDERATIONS

1. All commitments and impact mitigating actions provided in the Application for Development Approval (and supplementary documents) that are not in conflict with specific conditions for project approval outlined above are officially adopted as conditions of approval.
2. Pursuant to Section 380.06(16), the developer may be subject to credit for contributions, construction, expansion or acquisition of public facilities, if the developer is also subject by local ordinances to impact fees or exactions to meet the same needs. The local government and the developer may enter into a capital contribution front-ending agreement to reimburse the developer for voluntary contributions in excess of his fair share.

3. The development ~~construction target~~ phasing plan (f/k/a ~~construction target plan~~) presented within the ~~Application for Development Approval~~ ADA and as adjusted to date of Development Order approval ~~shall be~~ incorporated as a condition of approval. If Development Order conditions and developer commitments incorporated within the development order to mitigate regional impacts are not carried out as indicated to the extent or in substantial accordance with the Development Order, then this ~~shall~~ will be presumed to be a substantial deviation for the affected regional issue. The development ~~construction target~~ phasing plan has been amended and the amendments contained in the current development ~~construction target~~ phasing plan attached ~~hereto~~ as Exhibit ~~A-1.a~~ B do not create a presumption of a substantial deviation for any affected regional issue.
4. As required by Section 380.06(18), Florida Statutes, the developer ~~shall~~ must submit an ~~annual~~ biennial monitoring report (see Exhibit ~~BD~~) to Lee County, the SWFRPC, and the Department of Community Affairs.

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

1. Resolution. This Development Order ~~shall~~ constitutes a resolution of Lee County, adopted by the Board of County Commissioners in response to the Development of Regional Impact Application for Development Approval filed for the Merchants Crossing DRI.
2. Additional Developer Commitments. All commitments and impact mitigating actions volunteered by the developer in the ~~Application for Development Approval~~ ADA and supplementary documents ~~which are not~~ in conflict with conditions or stipulations specifically enumerated above are hereby incorporated by reference into this Development Order. These documents include the following:
 - (a) Merchants Crossing ~~Application for Development Approval~~ ADA, July 11, 1989;
 - (b) Merchants Crossing DRI sufficiency response, September 27, 1989; and
 - (c) Merchants Crossing DRI sufficiency response, November 22, 1989.
3. Binding Effect. This Development Order ~~shall be~~ binding upon the developer(s) and its assignees or successors in interest. Those portions of this Development Order ~~which that~~ clearly apply only to the project developer, ~~shall be~~ binding upon any builder/developer who acquires any tract of

land within Merchants Crossing, but ~~shall~~may not be construed to be binding upon future tenants.

4. Reliance. It is hereby declared that the terms and conditions set out in this document constitute a basis upon which the developer and County may rely in future actions necessary to implement fully the final development contemplated by this Resolution and Development Order.
5. Enforcement. All conditions, restrictions, stipulations and safeguards contained in this Resolution and 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~~will be paid by the defaulting party.
6. Successor Agencies. ~~It is understood that a~~Any reference herein to any governmental agency ~~shall~~will be construed to mean any future instrumentality ~~which that~~ may be created and designated as successors 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.
7. Severability. In the event that any portion or section of this Development Order is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision ~~shall~~will in no manner affect the remaining portion or sections of the Development Order which ~~shall~~will remain in full force and effect.
8. Applicability of Regulations. The approval granted by this Development Order is limited. Such approval ~~shall~~may 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. Such approval ~~shall also~~does not obviate the duty of the developer to comply with ~~any~~County Ordinances or other regulations adopted after the effective date of this Development Order, to the extent that those regulations and requirements do not negate any rights granted herein.
9. Further Review. Subsequent requests for local development permits ~~shall~~may not require further review pursuant to Section 380.06, Florida Statutes, unless it is found by the Board of County Commissioners, after due notice and hearing, that one or more of the following is present:
 - (a) A substantial deviation from the terms or conditions of this Development Order, or other changes to the approved development plans ~~which that~~ create a reasonable likelihood of adverse regional

impacts or other regional impacts which were not evaluated in the review by the Southwest Florida Regional Planning Council SWFRPC; or

- (b) An expiration of the period of effectiveness of this Development Order as provided herein.

Upon a finding that either of the above is present, the Board ~~shall~~may order a termination of all development activity in ~~such~~the area of the development affected by ~~such~~the substantial deviation or ~~such~~ expiration of time until such time as a new DRI Application for Development Approval ADA has been submitted, reviewed and approved in accordance with Section 380.06, Florida Statutes, and all local approvals have been obtained.

~~10.~~ The deadline for commencing physical development under this Development Order shall be three years from the date of its adoption; provided that all conditions are met in a timely manner and further provided that this effective period may be extended by this Board upon a finding of excusable delay in any proposed development activity and that conditions have not changed sufficiently to warrant further consideration of the development.

~~11~~10. In the event the developer fails to commence significant physical development of that property identified in this Development Order within three (3) years from the date of adoption of this Development Order, development approval shall terminate and the development shall be subject to further consideration. Significant physical development shall include obtaining a Certificate of Completion or Occupancy on some substantial portion of the project (e.g., water management system or major road system).

Termination Date. This Development Order shall otherwise terminate on October 28, 2010 at midnight, unless an extension is approved by the Board. An extension may be granted by the Board of County Commissioners if the project has been developing substantially in conformance with the original plans and approval conditions, and if no substantial adverse impacts not known to the Southwest Florida Regional Planning Council or to Lee County at the time of their review and approval, or arising due to the extension, have been identified.

~~12~~11. Buildout date. The established buildout date is October 28, 2010. Extension of the buildout date beyond 2010 maybe subject to further development of regional impact review pursuant to Section 380.06(19), Florida Statutes. However, ~~a~~An extension of the date of buildout of a development by ~~five~~ seven or more years shall be presumed to create a substantial deviation subject to further development-of-regional-impact review. The presumption may be rebutted by substantial, competent evidence at the public hearing

held by Lee County. For the purpose of calculating when a buildout date has been exceeded, the time ~~shall be~~ tolled during the pendency of administrative and judicial proceedings relating to development permits.

- +312. Assurance of Compliance. The Administrative Director of the Lee County Department of Community Development or his/her designee, ~~shall be~~ the local official responsible for assuring compliance with this Development Order.
- +413. Protection of Development Rights. The development will not be subject to down-zoning, unit density reduction, or intensity reduction, until October 28, 2010, unless the County demonstrates that substantial changes have occurred in the conditions underlying the approval of this Development Order including, but not limited to, such factors as a finding that the Development Order was based on substantially inaccurate information provided by the developer, or that the change is clearly established by local government to be essential to the public health, safety and welfare.
- +514. Biennial Reports. The developer, or its successor(s) in title to the undeveloped portion of the subject property, ~~shall~~ must submit a report ~~annually~~biennially to Lee County, the Southwest Florida Regional Planning Council, the State land planning agency (the Department of Community Affairs), and all affected permit agencies. This report ~~shall~~must describe the state of development and compliance as of the date of submission, and ~~shall~~ further be consistent with the rules of the State land planning agency. The ~~annual~~ report ~~shall~~must include information contained in Exhibit BD, as further modified or otherwise updated by the State land planning agency. The first monitoring report ~~shall~~must be submitted to the Administrative Director of the Department of Community Development not later than one year after the effective date of this Development Order, and further reporting ~~shall~~must be submitted not later than May 1st of subsequent calendar years thereafter, until buildout. Failure to comply with this reporting procedure is governed by Section 380.06 (18), Florida Statutes, and the developer ~~shall~~must so inform any successor in title to any undeveloped portion of the real property covered by this Development Order. This ~~shall~~may not be construed to require reporting from tenants or owners of individual lots or units.
- +615. Transmittal and Effective Dates. Certified copies of this Development Order will be forwarded to the Southwest Florida Regional Planning Council, the developer, and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but ~~shall~~is not be effective until the expiration of the statutory appeals period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater.

Upon this Development Order becoming effective, notice of its adoption ~~shall~~must be recorded by the Developer in the office of the Clerk of the Circuit Court, as provided in Section 380.06(15), Florida Statutes.

Commissioner Hall made a motion to adopt the Sixth Development Order Amendment, seconded by Commissioner Mann. The vote was as follows:

Robert P. Janes Aye
Brian Bigelow Aye
Ray Judah Aye
Tammara Hall Aye
Frank Mann Aye

DULY PASSED AND ADOPTED this 18th day of August, 2008.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

By: Marcia Wilson
Deputy Clerk

By: Ray Judah
Ray Judah, Chairman



APPROVED AS TO FORM

By: Dawn E. Perry-Lehnert
Dawn E. Perry-Lehnert
County Attorney's Office

- Exhibits
- A - Map H
- B - Phasing Plan
- C - Mitigation Plan
- D - Monitoring
- E - Square Footage Calculation

State of Florida
County of Lee

I Charlie Green, Clerk of the Circuit Court for Lee County, Florida, do hereby certify this document to be a true and correct copy of the original document filed in the Minutes Department.

Given under my hand and official seal at Fort Myers, Florida, this 22nd day of August, A.D. 2008

CHARLIE GREEN, CLERK

By: Marcia Wilson
Deputy Clerk



EXHIBIT A-1.a
CONSTRUCTION TARGET PLAN
MERCHANTS CROSSING OF NORTH FT. MYERS

	Projected Start Date	Projected Opening Date
<u>ALL CONSTRUCTION STAGES:</u>	10-2010	10-2010
<u>CONSTRUCTION STAGE I:</u>		
<u>RETAIL & ENTERTAINMENT CENTER:</u>		
RETAIL	353,000-sf	
ENTERTAINMENT	6,000-sf	
	359,000-sf	
<u>PERIMETER PARCELS:</u>		
BANKS (2)	8,000-sf	
GAS STA./CONV. (1)	1,000-sf	
GENERAL RETAIL (1)	3,000-sf	
	12,000-sf	
<u>TOTAL CONSTRUCTION STAGE I</u>	371,000-sf	
<u>CONSTRUCTION STAGE II:</u>		
<u>RETAIL & ENTERTAINMENT CENTER:</u>		
RETAIL	104,400-sf	
<u>ENTERTAINMENT:</u>		
CINEMA	60,000-sf	
RESTAURANT W/COP (3)	4,000-sf	
SHOPS	1,600-sf	
	170,000-sf	
<u>PERIMETER PARCELS:</u>		
BANKS (1)	3,000-sf	
RESTAURANTS (2)	6,000-sf	
GENERAL RETAIL (2)	5,000-sf	
	14,000-sf	
<u>TOTAL CONSTRUCTION STAGE II</u>	184,000-sf	
<u>TOTAL CONSTRUCTION STAGES I & II</u>	555,000-sf	

The parenthetical numbers shown above identify the number of actual uses:

Note 1. —sf — Square Feet

Note 2. —The square footage subtotals for the different uses provided above are estimates and are subject to being reallocated among the other uses. Any square footage not developed in construction stage I can be transferred to construction stage II and vice versa. The total square footage for both construction stages I and II shall not exceed 555,000 square feet. The complete schedule of permitted uses for the Merchants Crossing Shopping Center is as stated in the schedule of uses found in the drawing entitled "Master Concept Plan," drawing number Map-M.1A, as revised through August 31, 1993.

Note 3. —The dates shown are estimates and, therefore, are subject to change.

Note 4. —The theater use located in the Entertainment Area of Tract II includes a sixteen-screen movie theater estimated at 60,000 square feet. This represents an amendment from the previous approval of ten screens at 32,000 square feet. The amendment was authorized administratively by the county in 1994 pursuant to the developer's demonstration that the increase in traffic was not significant during peak hour and pursuant to the developer's consent to reduce the other retail square footage approved in Stage II by 28,000 square feet (the amount over the previously approved 32,000 square feet of theater use).

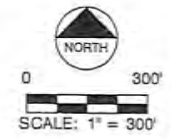
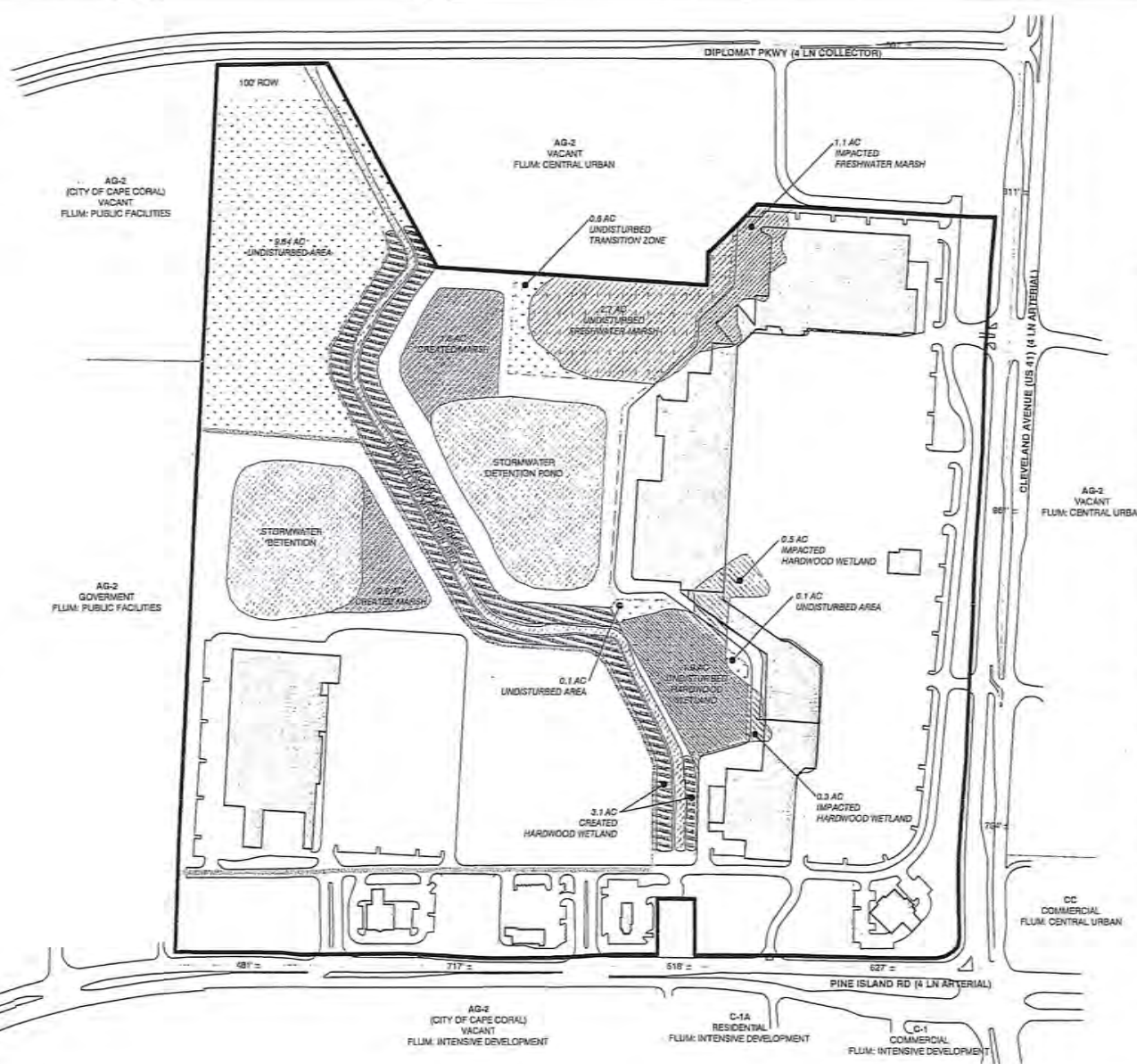
**EXHIBIT B
PHASING PLAN
MERCHANTS CROSSING OF NORTH FORT MYERS**

	EXISTING	BUILDOUT (Oct. 2010)
PHASE I:		
RETAIL & ENTERTAINMENT CENTER	359,000	359,000 sf
PERIMETER PARCELS	12,000	12,000 sf
TOTAL PHASE I:	371,000	371,000 sf
PHASE II:		
RETAIL & ENTERTAINMENT CENTER	154,819	166,819 sf
PERIMETER PARCELS	6,384	32,181sf
TOTAL PHASE II:	161,203	199,000 sf
TOTAL PHASES I & II:	532,203	570,000 sf

Note:

Total square footage allocated to the Perimeter Parcels is 44,181 square feet. The Applebee's parcel is not considered to be a Perimeter Parcel for purposes of this calculation.

Any unallocated Perimeter Parcel square footage may be reallocated to the Retail and Entertainment Center.



REQUIRED OPEN SPACE CALCULATION:

TOTAL PROPERTY ACREAGE	101.44 AC
30% OPEN SPACE REQUIREMENT	30.43 AC
PERVIOUS OPEN SPACE PROVIDED	28.88 AC
25% OF OPEN SPACE FOR WATER (10.8 AC ACTUAL WATER SURFACE)	7.51 AC
TOTAL OPEN SPACE PROVIDED	36.49 AC*
UNDISTURBED OPEN SPACE REQUIRED	15.22 AC
UNDISTURBED OPEN SPACE PROVIDED	15.26 AC

THIS MAP AND CALCULATIONS ARE BASED ON MAP M3A OF ZONING RESOLUTION 2-91-092 AND DRAWING NO. C-37 OF ZONING RESOLUTION 2-93-023

ANALYSIS OF MARSH/HARDWOOD/HABITAT AREAS:

FRESHWATER MARSH:	
EXISTING UNDISTURBED	3.8 AC
IMPACTED	2.7 AC
CREATED	1.1 AC
TOTAL FRESHWATER CREATED AND SAVED	2.5 AC
HARDWOOD WETLAND:	
EXISTING UNDISTURBED	2.7 AC
IMPACTED	1.9 AC
CREATED	0.8 AC
TOTAL HARDWOOD WETLAND CREATED AND SAVED	3.1 AC
CREATED UPLAND TORTOISE HABITAT	0.0 AC**
ADDITIONAL UNDISTURBED AREA	10.5 AC
TOTAL HARDWOODS, MARSH TORTOISE HABITAT & ADDITIONAL UNDISTURBED AREA	20.7 AC

* INCLUDES OPEN SPACES IN ADDITION TO THOSE DETAILED BELOW

** TO BE RESOLVED WITH FLORIDA GAME & FRESHWATER FISH COMMISSION IN ACCORDANCE WITH APPROVED DEVELOPMENT ORDER (PARAGRAPH 10)

REMOVED DISTURB

MITIGATION PLAN

MERCHANTS CROSSING DRI

Fort Myers
 • Fort Myers
 • Collier County
 • Collier County
 2515 Cleveland Avenue
 Fort Myers, Florida 33901
 Phone: 941.933.3333
 Fax: 941.933.3333

MORRIS
DEPEW
 ENGINEERS • PLANNERS • SURVEYORS

EXHIBIT C

RECEIVED

FEB 04 2008

CONCURRENCY DEVELOPMENT

DRI 2007-00001

EXHIBIT BD

INFORMATION TO BE INCLUDED
IN ANNUAL MONITORING REPORT

- (a) Any changes in the plan of development, or in the representations contained in the ADA, or in the ~~construction target~~phasing plan for the reporting year and for the next year;
- (b) A summary comparison of development activity proposed and actually conducted for the ~~year~~reporting period;
- (c) Undeveloped tracts of land that have been sold to a separate entity or developer;
- (d) Identification and intended use of lands purchased, leased or optioned by the developer adjacent to the original DRI site since the development order was issued;
- (e) An assessment of the developer's and the local government's compliance with the conditions of approval contained in the DRI development order and the commitments ~~which are contained in the Application for Development Approval and which that~~ have been identified by the local government, the Regional Planning Council or the Department of Community Affairs as being significant;
- (f) Any known incremental DRI applications for development approval of requests for a substantial deviation determination that were filed in the reporting year and to be filed during the next year;
- (g) An indication of a change, if any, in local government jurisdiction for any portion of the development since the development order was issued;
- (h) A list of significant local, state and federal permits ~~which that~~ have been obtained or ~~which are~~ pending by agency, type of permit, permit number and purpose of each;
- (i) A statement that all persons have been sent copies of the ~~annual~~biennial report in conformance with ~~Subsection 380.06(14) and (16)~~(18), Florida Statutes;
- (j) A copy of any recorded notice of the adoption of a development order or the subsequent modification of an adopted development order that was recorded by the developer pursuant to ~~SubSection 380.06(14)(d)~~(15), Florida Statutes; and
- (k) Monitoring reports, including:
 - (i) Water quality ~~annual~~ monitoring reports (for review by Lee County and South Florida Water Management District);
 - (ii) Transportation ~~annual~~ monitoring reports (for review by Lee County, FDOT and SWFRPC).

MERCHANTS CROSSING DRI: SQUARE FOOTAGE CALCULATIONS		
STRAP #	Built Square Footage	Use Type
34-43-24-03-0000A.0000	107,689	K-Mart ⁽¹⁾
34-43-24-03-0000B.0000		
Building 1 ⁽¹⁾	5,916	Heavenly Pizza occupies 1,500 sf of total(no outdoor seating)
Building 2 ⁽¹⁾	35,154	
Building 3 ⁽¹⁾	18,388	
Building 4 ⁽¹⁾	41,214	
Building 5 ⁽¹⁾	23,500	
Building 6 ⁽¹⁾	53,015	Movie Theater
Building 7 ⁽¹⁾	12,494	Obee's Subs occupies 1,110 sf J's & B's occupies 3,100 sf
Building X	29,295	COM2005-00072
34-43-24-03-0000G.0000	5,152	Applebee's
34-43-24-03-0000H.0000	<u>75,217</u>	Beall's COM2007-00397 ⁽²⁾
34-43-24-03-0000I.0000	106,785	Home Depot
34-43-24-03-0000K.0000	0	Vacant
34-43-24-03-0000M.0000	4,491	Wachovia Bank
34-43-24-03-0000N.0000	<u>2,499</u>	Lion's Choice COM2006-00048 ⁽³⁾
34-43-24-03-0000O.0000	2,878	McDonald's
34-43-24-03-0000P.0000	2,242	Popeye's
34-43-24-03-0000Q.0000	3,750 ⁽⁴⁾	Vacant ⁽⁴⁾
34-43-24-03-0000R.0000	0	Vacant
34-43-24-03-0000S.0000	6,274	Sun Bank
Total Restaurant Square Footage	18,481	
Total Non-Restaurant Square Footage	<u>513,722</u>	
Total Square Footage Built	<u>532,203</u>	
Total Square Footage Remaining (from original 555,000 square feet)	<u>22,797</u>	

Note:

- (1) Building numbers as shown on the Lee Property Appraiser's website.
(2) Square footage permitted and under construction but not complete as of 03/03/08.
(3) Square footage permitted and built, but not added to table until 03/03/08 update.
(4) Proposed bank DOS2008-00030, under review by RSM 03/03/08

EXHIBIT E

ZVL 2006-00079

RESOLUTION NO. 10-01-24

RESOLUTION PERTAINING TO STATUTORY
EXTENSION OF DRI BUILDOUT AND
TERMINATION DATES FOR THE MERCHANTS
CROSSING DRI.

WHEREAS, the Governor of the State of Florida signed Senate Bill 360 into law on June 1, 2009 (hereinafter SB360); and,

WHEREAS, the SB360 was adopted in recognition of the current real estate and economic conditions within the State; and,

WHEREAS, SB360 provides for two-year extensions of local government issued development permits that have an expiration date between September 1, 2008 through January 1, 2012; and,

WHEREAS, SB360 requires the holder of a valid permit eligible for the two-year extension to notify the local government in writing no later than December 31, 2009, that the holder intends to utilize the extension and the anticipated timeframe for acting on the authorization; and,

WHEREAS, the Merchants Crossing DRI qualifies for the statutory two-year extension to the build out and termination date; and,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA that:

1. The above stated recitals are incorporated into this Resolution by reference.
2. The DRI Development Order for Merchants Crossing DRI is hereby amended as reflected in the attached Exhibit "A."
3. This Resolution and its exhibits constitute the Fourth Codified Development Order Amendment to the Merchants Crossing Development of Regional Impact. Development of the project must be consistent with the DRI Development Order attached as exhibit A and the governing zoning approvals.
4. Certified copies of this Resolution will be forwarded to the Southwest Florida Regional Planning Council, the Florida Department of Community Affairs, and other appropriate agencies. This amendment is rendered as of the date of transmittal, but will not be effective until the expiration of the statutory appeal period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater. Once effective, the Notice

of Adoption of this Development Order Amendment must be recorded as provided for in Chapter 380, Florida Statutes.

Commissioner Janes made a motion to adopt the foregoing resolution. The motion was seconded by Commissioner Judah. The vote was as follows:

Robert P. Janes	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 26th day of January 2010.

ATTEST:

CHARLIE GREEN, CLERK

BOARD OF COUNTY
COMMISSIONERS
LEE COUNTY, FLORIDA

By: Marcia Wilson
Deputy Clerk

By: Tammara Hall
Tammara Hall, Chairwoman

APPROVED AS TO FORM



By: W. A. J.
County Attorney's Office

Exhibits:

Exhibit A - Fourth Amendment to Miromar Lakes DRI Development Order

SEVENTH DEVELOPMENT ORDER AMENDMENT¹
FOR
MERCHANTS CROSSING
A DEVELOPMENT OF REGIONAL IMPACT
STATE DRI #7-8889-92
COUNTY CASE #DRI2009-00005

WHEREAS, pursuant to Section 380.06 of the Florida Statutes, the Board of County Commissioners of Lee County, Florida, (Board) heard at a public hearing, the application for development approval for Merchants Crossing, a commercial development in Lee County which consisted of approximately one hundred four acres to be developed in accordance with the application filed on July 11, 1989; and

WHEREAS, the Board adopted the Merchants Crossing DRI Development Order on October 31, 1990; and

WHEREAS, the DRI Development Order was subsequently amended on October 14, 1991 to increase the approved square footage of retail development, delete motel and office uses, increase the indigenous open space, adjust the transportation mitigation payment and change the construction target plan; and

WHEREAS, the DRI Development Order was thereafter amended a second time on June 30, 1993 to (1) increase the square footage approved for retail uses; (2) amend the construction target plan; and (3) add additional property to the development order; and

WHEREAS, on September 26, 1994, the County authorized the construction of a 16-screen movie theater without a formal Notice of Proposed Change by subtracting the square footage of the expanded movie theater from the approved retail square footage; and

WHEREAS, on April 2, 1997, the DRI Development Order was amended a third time to extend the start date, build out date, termination date, and down zone protection date of the project by less than five years to October 28, 2000; and

WHEREAS, on April 30, 2001 the DRI Development Order was amended a fourth time to extend the build out, termination, and down zone protection dates of the project to October 28, 2007; and

¹This is a codification and restatement of all DRI Development Orders rendered with respect to Merchants Crossing DRI, including actions taken on October 31, 1990, October 14, 1991, June 30, 1993, April 2, 1997, April 30, 2001, September 11, 2007, and August 18, 2008, and January 26, 2010.

WHEREAS, pursuant to HB7203, as reflected in Board Resolution 07-09-18, adopted September 11, 2007, the Development Order was amended a fifth time to extend the build out date to October 28, 2010; and,

WHEREAS, on August 18, 2008 the DRI Development Order was amended a sixth time to (1) add 15,000 square feet of retail commercial; and, (2) eliminate the limitation on the number of restaurants permitted within the development; and

WHEREAS, on June 1, 2009, Senate Bill 360 (SB360) was signed into law by the Governor of the State of Florida. SB360 provided a statutory two-year extension for DRIs with build out dates expiring between September 1, 2008 through January 1, 2012; and,

WHEREAS, the Board of County Commissioners recognized the statutory extension and established a procedure for implementing SB360 in Lee County Resolution 09-06-22 on June 23, 2009; and,

WHEREAS, on September 22, 2009, Lee County received a request for an extension of the DRI build out date and Concurrency Certificate for the Project; and,

WHEREAS, Merchants Crossing DRI qualifies for the two-year extension of its build out date from October 28, 2010 to October 28, 2012; and,

WHEREAS, under Lee County Resolution 09-06-22, concurrency vesting is also extended to October 28, 2012, consistent with the build out extension; and,

WHEREAS, under SB 360, the two-year extension does not constitute a substantial deviation from the original DRI approvals warranting further DRI review; and,

NOW THEREFORE, be it resolved by the Board of County Commissioners that the development order for Merchants Crossing DRI is further amended as follows:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Merchants Crossing DRI is a commercial development in northern Lee County originally consisting of 104.66 acres (includes property ultimately used for right-of-way improvements on State Route 78 and US 41). The development is proposed to consist of 570,000 square feet of retail commercial, 28 acres of lakes and sloughs for water management and wetland mitigation, 6.1 acres of preservation area and 4 acres of roads. The plan proposed by the developer is depicted in Map H, attached as Exhibit A and described further in the phasing plan attached as Exhibit B.

B. The legal description of the project is as follows:

A portion of the Southwest Quarter (SW1/4) of Section 34, Township 43 South,

Range 24 East, Lee County, Florida, being more particularly described as follows:

COMMENCING AT the Southwest corner of said Section 34; THENCE N 03°25'58" E, along the West line of the Southwest Quarter (SW1/4) of said Section 34, a distance of 73.52 feet, to the POINT OF BEGINNING of this description; THENCE continue N 03°25'58" E, along the last described course, a distance of 2,484.86 feet, to a point on a line parallel with and 100 feet South of, as measured at Right angles to the North line of the Southwest Quarter (SW1/4) of said Section 34; THENCE S 89°56'05" E, along said parallel line, a distance of 264.66 feet; THENCE S 28°32'36" E, a distance of 664.99 feet; THENCE S 86°34'00" E, a distance of 747.11 feet; THENCE N 03°26'00" E, a distance of 100.00 feet; THENCE N 48°25'58" E, a distance of 212.13 feet; THENCE S 86°34'00" E, a distance of 650.00 feet, to the Westerly right-of-way line of US 41 (SR 45); THENCE S 03°25'53" W, along said right-of-way line, a distance of 718.01 feet; THENCE S 06°17'38" W, along said right-of-way line, a distance of 240.30 feet; THENCE S 03°25'53" W, along said right-of-way line, a distance of 409.75 feet; THENCE S 08°42'37" W, along said right-of-way line, a distance of 315.20 feet, to a point on the arc of a circular curve to the left, whose radius point bears S 86°34'07" E from said point; THENCE Southerly along said right-of-way line and the arc of said curve, having a radius of 3,005.79 feet, a central angle of 05°09'06", and a chord bearing of S 00°51'20" W, an arc distance of 270.27 feet, to the Point of Reverse Curvature of a circular curve to the right; THENCE Southerly and Westerly, along the arc of said curve, having a radius of 100.00 feet, a central angle of 93°29'08" and a chord bearing of S 45°01'21" W, an arc distance of 163.16 feet, to the Point of Tangency and the Northerly right-of-way line of Pine Island Road (SR 78); THENCE N 88°14'05" W, a distance of 383.15 feet; THENCE N 89°57'42" W, a distance of 196.50 feet, to the Easterly line of those lands described in Official Records Book 421, Page 480, as recorded in Public Records of Lee County, Florida; the last two courses being along the Northerly right-of-way line of said Pine Island Road (SR 78); THENCE N 00°04'40" E, along said Easterly line, a distance of 142.10 feet, to the Northerly line of those lands described in said Official Records Book 421, Page 480; THENCE N 89°55'20" W, along said Northerly line, a distance of 100.00 feet, to the Westerly line of those lands described in said Official Records Book 421, Page 480; THENCE S 00°04'40" W, along said Westerly line, a distance of 142.17 feet, to the Northerly line of said Pine Island Road (SR 78); THENCE N 89°57'42" W, a distance of 259.57 feet; THENCE S 00°02'18" W, a distance of 12.00 feet; THENCE N 89°57'42" W, a distance of 255.32 feet; THENCE N 86°08'51" W, a distance of 180.40 feet; THENCE N 89°57'42" W, a distance of 274.68 feet; THENCE S 00°02'18" W, a distance of 12.00 feet; THENCE N 89°57'42" W, a distance of 230.03 feet, to the Point of Curvature of a circular curve to the left; THENCE Westerly along the arc of said curve, having a radius of 2,944.29 feet, a central angle of 03°10'09" and a chord bearing of S 88°27'14" W, an arc distance of 162.86 feet, to the POINT OF BEGINNING, the last eight

(8) courses being along the Northerly right-of-way line of said Pine Island Road (SR 78).

CONTAINING 101.44+ acres. (Does not include property used for right-of-way improvements to State Road 78 and US 41)

C. The project's zoning is Commercial Planned Development (CPD), pursuant to the authority of Chapter 163, Florida Statutes, Laws of Florida 61-2405, and the Lee County Zoning Regulations, as amended.

D. The Application for Development Approval is consistent with the requirements of Section 380.06, Florida Statutes.

E. The development is not located in an area designated as an Area of Critical State Concern, pursuant to the provisions of Section 380.05, Florida Statutes.

F. The development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.

G. The development has been reviewed by the Southwest Florida Regional Planning Council and is the subject of the report and recommendations adopted by that body. The development, as proposed in the Application for Development Approval and modified by this Development Order Amendment, is consistent with the report and the recommendations of the Southwest Florida Regional Planning Council pursuant to Section 380.06(12).

H. Concurrently with the adoption of the original DRI Development Order, the property was rezoned in accordance with Lee County Zoning Ordinance 86-17, as amended. The Zoning Resolution, as amended, contains additional details and conditions pertaining to the Merchants Crossing development, and also provides for certain deviations from Lee County zoning and development regulations.

I. The development is located in the Intensive Development and Central Urban classifications of the Lee Plan and is consistent with the Lee County Comprehensive Plan and Lee County's Land Development Regulations ~~if subject to the conditions contained as conditioned~~ in this Development Order.

J. The proposed conditions below meet the criteria found in Section 380.06(15)(d), Florida Statutes.

K. The build out date is October 28, ~~2010~~2012.

L. Merchants Crossing DRI qualified for the statutory three-year extension to all phase, build out and expiration dates granted by the 2007 Florida Legislature under House Bill 7203 (amending F.S. §380.06(19)(c)) and signed into law on June 19, 2007. The Board of County Commissioners granted the extension pursuant to Lee County

Resolution 07-09-18, as the Fifth Amendment to the Merchants Crossing DRI Development Order, adopted on September 11, 2007. Under HB7203, the three-year extension is was not a substantial deviation, is was not subject to further Development of Regional Impact review, and may not be considered when determining whether a subsequent extension is a substantial deviation under F.S. §380.06(19)(c).

M. Senate Bill 360 was signed into law by the Governor of the State of Florida on June 1, 2009 (codified as a note to F.S. §§373.414 and 380.06). SB360 provided a statutory two-year extension for DRIs with build out dates between September 1, 2008 through January 1, 2012. The Board of County Commissioners recognized the statutory extension in Lee County Resolution 09-06-22, adopted by the Board on June 23, 2009,

Merchants Crossing DRI qualifies for a two-year extension of its build out date from October 28, 2010 to October 28, 2012. Under Lee County Resolution 09-06-22, concurrency vesting is also extended to October 28, 2012, consistent with the build out extension. Under SB 360, the two-year extension does not constitute a substantial deviation from the original DRI development approvals warranting further DRI review.

II. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Lee County, Florida, that the requested amendments to the Merchants Crossing DRI are hereby approved, subject to the following conditions, restrictions, and limitations:

A. DRAINAGE/WATER QUALITY

1. The developer must participate in any on-going or future efforts by Lee County to establish a County-wide Watershed Basin Management Plan.

2. The developer and his successor must implement and maintain an on-going monitoring and maintenance program that regularly inspects, maintains, and samples the storm water drainage system, including lake and wetlands monitoring during and after the development of Merchants Crossing. The developer must establish the legal entity that will carry out this program after tracts and/or units are sold; the documents creating such entity must be approved by the Lee County Attorney's Office and the South Florida Water Management District (SFWMD) prior to the implementation of the monitoring program. The program must be designed in consultation with the staffs of the Southwest Florida Regional Planning Council (SWFRPC), the South Florida Water Management District, and Lee County. Final approval of the program rests with the Lee County Department of Community Development. The purpose of this program is to ensure that the storm water drainage system functions in every aspect as planned. Should the monitoring program indicate that the system is not functioning as planned, or is not constructed in accordance with all approved plans, permits, or county requirements, or is not meeting water quality standards of the applicable agencies, further development approvals may not be

granted until the developer has completed corrective measures as specified by Lee County.

A monitoring and maintenance program has been approved by the Lee County Department of Community Development.

3. The project must have SFWMD permits for construction and operation of the surface water management system, and for any dewatering activities associated with the construction of lakes, roads or building foundations.

4. The allowable discharge offsite for Merchants Crossing may not exceed 0.09 cubic feet per second/acre over the whole project area, or as determined appropriate by SFWMD. Final allowable discharge must be determined by the developer and SFWMD staff, using a 72-hour storm duration model, prior to issuance of a surface water permit. *A surface water permit has been issued by SFWMD. (Permit issued October 16, 1991 #36-02069-S.)*

5. All water retention/detention areas must meet SFWMD criteria. Any areas that do not meet this criteria may not be used in the calculation of water quality or quantity volumes.

6. Based on information provided by the developer, the entire freshwater marsh at the project's northern boundary, may be indirectly impacted as a result of water table drawdown associated with lake control elevations, and irrigation withdrawals from the adjacent detention lake. To obtain a construction and operation permit, the developer must provide detailed plans that indicate: buffer areas adjacent to wetlands, the extent of encroachment into wetlands, information verifying that control elevations will maintain adequate wetland hydroperiods, acreage figures and cross-sections for all mitigation areas, a mitigation proposal that does not result in a net loss of wetlands and a mitigation proposal which includes a wetland monitoring and maintenance program.

7. The developer must confirm, to the satisfaction of all federal, state and local review agencies, and the SFWMD, that the proposed water management system will not impact habitats of the golden polypody, prickly pear cactus, wild coco and gopher tortoise, as well as other endangered species potentially occurring on-site, or that such impacts will be mitigated to the benefit of on-site populations of these species.

8. The developer has indicated that the north-south watercourse will be relocated and redesigned to simulate a natural creek. The water course must be designed to meet SFWMD criteria in effect at the time of permit application. *This requirement has been satisfied.*

9. Provisions for the drainage of off-site areas and out-parcels that presently drain through the site must be provided at the time of permit application.

10. The developer must undertake a regularly scheduled vacuum sweeping of

all streets and parking facilities, to be incorporated as a Best Management Practice (BMP).

11. In areas adjacent to retail or office uses, the developer must provide dry pre-treatment, as determined by SFWMD at time of permitting (retention or detention), in order to provide reasonable assurance that hazardous materials will not enter the storm water management system.

12. The operation of the Merchants Crossing Storm water Management System is dependent on Yellow Fever Creek for an outlet. Therefore, a final Storm water Management Plan must demonstrate that the system is designed in accordance with existing design parameters for Yellow Fever Creek. A man-made ditch (the East Branch of Yellow Fever Creek) flows through the Merchants Crossing DRI that eventually drains to Yellow Fever Creek and the Caloosahatchee River in northern Lee County. Post developed runoff will be directed across the site through a series of surface water management ponds to a rerouted ditch that will also carry the offsite flows from the north. The rerouted ditch will flow through a culvert under Pine Island Road and eventually to Yellow Fever Creek.

13. Best Management Practices (BMPs) and monitoring and maintenance of the storm water management system must be implemented by the developer in accordance with SFWMD guidelines.

14. Any off-site road improvements constructed by the developer must address water quality in accordance with the SFWMD criteria.

15. The use of septic tanks is limited to temporary use with the temporary construction trailer and temporary leasing office only. Such use must be eliminated when service is available on site from North Fort Myers Utilities.

16. All commitments made by the developer within the ADA related to Question 22 (Drainage) and Question 15 (Water Quality) and subsequent sufficiency round information, not in conflict with the above recommendations, are hereby incorporated as conditions for approval.

B. ENERGY

All site plans or architectural programs must incorporate, to the extent possible, the following energy conservation features into all site plans and architectural programs or the property owner/developer must ensure to the extent possible that the following features are implemented through deed restrictions or covenants with successors in title. All applications for site plan approvals and building permits must be accompanied by a document detailing proposed compliance with these conditions. If deed restrictions or covenants are utilized to ensure compliance, such documents must be approved by the Lee County Attorney's Office prior to recordation. If no deed restrictions are approved and

recorded, the prior alternative must be utilized with the following features included:

1. Provision of bicycle racks or storage facilities in all tracts.
2. Use of energy-efficient features in window design.
3. Installation of energy-efficient appliances and equipment.
4. Prohibition of deed restrictions or covenants that would prevent or unnecessarily hamper energy conservation efforts (e.g. building orientation, and solar water heating systems).
5. Reduced coverage by asphalt, concrete, rock, and similar substances in streets, parking lots, and other areas to reduce local air temperatures and reflected light and heat.
6. Installation of energy-efficient lighting for streets, parking areas, and other interior and exterior public areas.
7. Use of water closets with a maximum flush of 3.5 gallons and shower heads and faucets with a maximum flow rate of 3.0 gallons per minute (at 60 pounds of pressure per square inch).
8. Selection of native plants, trees, and other vegetation and landscape design features that reduce requirements for water, fertilizer, maintenance, and other needs.
9. Planting of native shade trees to provide reasonable shade for all streets, recreation areas and parking areas.
10. Placement of trees to provide needed shade in the warmer months while not overly reducing the benefits of sunlight in the cooler months.
11. Orientation of structures, as possible, to reduce solar heat gain by walls to utilize the natural cooling effects of the wind.
12. Use of operable windows and ceiling fans.
13. Provision for structural shading (e.g., trellises, awnings, and roof overhangs) wherever practical, when natural shading cannot be used effectively.
14. Consideration by any project architectural review committee of energy conservation measures (both those noted here and others) to assist builders in their efforts to achieve greater energy efficiency in the development.

The incorporation of these energy conservation measures in this Development Order does not preclude the provision of additional energy conservation measures by the developer. It also does not prevent the local government of jurisdiction or any state, regional, or other agency under whose jurisdiction this project falls from requiring additional energy measures or measures that may be more stringent.

C. POTABLE WATER/WATER SUPPLY

1. The developer must incorporate the use of water saving devices as required by State law (Section 553.14., Florida Statutes).
2. The developer must show that the proposed deep well, to supplement irrigation from the large lake, is of compatible water quality with surface waters. Furthermore, the developer must show that proposed mitigation measures address possible damage from watertable drawdown.
3. The project requires a water use permit for any withdrawals from groundwater, project lakes or any other surface water bodies for irrigation or potable uses and for any dewatering activities associated with the construction of project lakes, or road or building foundations.
4. At the time of permit application, the developer must provide verification that the proposed system designs will meet District criteria.
5. For the purpose of potable water conservation, Merchants Crossing must utilize low water use plumbing/fixtures, self-closing or metered water faucets, and other water conserving devices.
6. For the purpose of non-potable water conservation, Merchants Crossing must utilize xeriscape principles in the design and maintenance of the project's landscaping.
7. The developer must utilize Lee County Utilities for potable water.
8. In the project area, the lower Hawthorn aquifer has a chloride ion concentration greater than 500 mg/1. To utilize this as a recharge source for the project lake system, the permit developer must show that the addition of this water to the lake system will not raise the chloride ion concentration of the lake above 200 mg/1.
9. The lake system is adjacent to wetland preserve areas. At the time of permit application, the developer must show that the wetland hydroperiod will not be adversely affected by proposed irrigation withdrawals from the large lake at the north western corner of the site.
10. As the developer has committed to eventually using reclaimed wastewater

for irrigation, the developer must ensure that on-site lakes and wetlands are adequately buffered from possible effluent contamination.

11. Any spray irrigation using treated wastewater must be accomplished in accordance with state and local regulations. The developer must use treated wastewater for all or part of the project's irrigation demand, at such time as adequate amounts of treated wastewater are available for such purpose.

12. All construction plans, technical specifications, and proposed plats, if applicable, for the proposed water distribution system must be reviewed and approved by the Lee County Utilities prior to commencement of construction.

13. The lowest quality of water possible must be utilized for all outdoor non-potable water use.

14. Landscaping irrigation and all outdoor water uses, e.g. hosing concrete, are restricted to the hours of 5:00 P.M. to 9:00 A.M., or as restricted by SFWMD watering guidelines, after the establishment of the landscape foliage, unless the irrigation is done with treated effluent.

15. All commitments made by the developer within the ADA related to question 23 (Water Supply) and subsequent sufficiency round information, not in conflict with the above recommendations, are hereby incorporated as conditions for approval.

D. FIRE PROTECTION

1. To mitigate its impacts upon provision of adequate fire protection, the developer must:

(a) Pay fire protection and emergency medical services impact fees; and,

(b) Sprinkler all buildings in the project. (With the exception of the SunBank parcel on the corner of SR 78 and U.S. 41 south.); and

(c) Provide funds to North Fort Myers Fire Protection District to purchase a 65-foot telesquirt fire truck or comparable equipment. This provision must be met within sixty days after the first building permit is obtained from Lee County for any building over two stories in height.

2. The Merchants Crossing DRI must comply with any duly adopted fire code and life safety code regulations unless deviations or variances are obtained from such regulations.

E. REGIONAL SHOPPING CENTER

The square footage and phasing of the development within each tract is set forth in attached Exhibit B.

The DRI development is limited to a maximum of 570,000 square feet.

F. VEGETATION/WILDLIFE/WETLANDS

Approximately 6.5 acres of the Merchants Crossing site occurs as two types of wetlands; 3.8 acres of freshwater marsh and 2.7 acres of mixed hardwood wetlands. The Developer has committed to significant wetland mitigation that features wetland marshes and a north/south creek, with adjacent floodplain vegetation. A portion of the 3.1 acres of the floodplain will be planted with hydric hammock species. This portion may not be less than the hardwood wetland area to be impacted.

Also on site is an approximate 4.9 acre oak and cabbage palm hammock/wetland hardwood system, (2.2-acre hammock/2.7-acre wetland). The developer has committed to save the significant elements of this system, representing 1.9 acres.

1. Prior to issuance of local Final Development Order, the developer must submit a vegetation plan. The preservation of the significant elements of the Oak/Cabbage Palm Hammock and adjacent Hardwood Wetland System must be in accordance with the Mitigation Plan attached as Exhibit C.

2. At the time of permit application to the SFWMD, the developer must provide detailed plans that indicate buffer areas adjacent to wetlands, the extent of encroachment into wetlands, information verifying control elevations will maintain adequate wetland hydroperiods, acreage figures and cross-sections for all mitigation areas, a mitigation proposal that does not result in a net loss of wetlands, and a mitigation proposal that includes a wetland monitoring and maintenance program, developed in accordance with adopted policies of the regulatory agencies.

3. Prior to the approval of a local Development Order for any phase of the development, the developer must submit and subsequently follow a Florida Game and Freshwater Fish Commission (FGFWFC) approved Gopher Tortoise Management Plan.

4. The developer must provide for preservation and/or relocation on-site of the four listed plant species found on-site (e.g. golden polypody, prickly pear cactus, wild coco and whisk fern) to the satisfaction of FGFWFC and Lee County Division of Environmental Sciences.

5. All other commitments made by the developer in either the ADA or sufficiency round information, not in conflict with the above recommendations, are

incorporated as conditions for development order approval.

G. TRANSPORTATION

1. The transportation impact assessment upon which this Development Order is based assumes the development patterns and land uses reflected in the Merchants Crossing DRI/ADA application. The application assumes one continuous phase of development with build out by the year ~~2010~~2012.

2. Merchants Crossing must submit an annual traffic monitoring report. The monitoring program must be designed in cooperation with the Lee County Department of Transportation the Southwest Florida Regional Planning Council and the Florida Department of Transportation. The annual monitoring report must contain at a minimum AM and PM, peak-hour peak season traffic counts (with turning movements) and mutually agreed

upon professionally acceptable level of service analyses at all project access points onto the roadway network and at the following intersections:

SR 78 (Pine Island Rd.) at:

US 41

Pondella Rd.

Del Prado Blvd.

Santa Barbara Blvd.

SR 78 (Bayshore Rd.) at:

Business 41

Hart Rd.

Del Prado Blvd. at:

SR 78 (Pine Island Rd.)

Viscaya Pkwy.

Hancock Bridge Pkwy.

US 41 at:

Pondella Rd.

In addition, peak season daily traffic counts and level of service calculations must be submitted as part of the annual monitoring report for all project access roads and the roadway links listed below:

SR 78 (Pine Island Rd.)

Piney Rd. to Santa Barbara Blvd.

SR 78 (Bayshore Rd.)

Business 41 to Slater Rd.

Del Prado Blvd.
SR 78 to Viscaya Pkwy.

US 41
Hancock Bridge Pkwy. to Business 41

Business 41 from
SR 78 to Littleton Rd.

Pondella Rd.
US 41 to Orange Grove Blvd.

Merchants Crossing must submit the annual monitoring report to Lee County DOT, the Southwest Florida Regional Planning Council and the Florida Department of Transportation SW Area Office for review. The first report must be submitted one year after the issuance of the DRI Development Order for the property included in the Merchants Crossing DRI/ADA application. Reports must be submitted annually until project build out. Actual build out will occur when the developer has completed the construction authorized by this Development Order. Declared build out occurs if the developer formally declares in writing to the County Administrator that nothing more will be constructed despite the fact that less than the permissible maximum had been built to date. The purposes of the annual monitoring program are to:

- (a) Determine whether or not the traffic levels projected in the traffic impact assessment for Merchants Crossing are exceeded by actual impacts;
- (b) Assist Lee County and F.D.O.T. in determining the proper timing of necessary roadway improvements; and
- (c) Determine the project's external trip generation.

It is recognized and understood that traffic counts may be obtained from original machine and manual peak hour counts, Lee County traffic volume reports, Florida Department of Transportation, other ADA developments with similar monitoring requirements, and other reliable sources of traffic counts.

3. As mitigation for the transportation impacts of Merchants Crossing, the developer must provide the following:

- a. The developer must make a cash payment of \$1,500,000 into an escrow account on or before October 1, 1993, or upon issuance of the first building permit, whichever occurs earlier. All interest earned on this account will accrue to the benefit of the County. A portion of this money (up to a maximum of \$1 million as further limited in paragraph G.3.f.) may be used for the widening of SR 78. The use of funds and terms of the escrow will be governed by a separate escrow agreement between the

parties, and subject to approval by the County Attorney's office, which approval will not be unreasonably withheld. *This requirement has been satisfied.*

b. The developer must make a cash payment of \$791,370 on or before December 1, 1994, or upon issuance of the first building permit for Tract II, whichever occurred earlier as shown on the Master Concept Plan (M-1A, last revised July 1, 1991) attached to Zoning Resolution Z-90-034. The cash payments totaling \$2,291,370 may be considered as full credit against road impact fees. *This requirement has been satisfied.*

Should those provisions be repealed, amended or otherwise no longer in effect as part of Ordinance 89-17, as amended, they must nevertheless govern availability of credits under this Development Order as those provisions existed on the effective date of this Development Order.

c. Within 90 days of approval of the DRI Development Order, the developer must donate the right-of-way needed for widening SR 78 (Pine Island Road) and US 41 to the Florida Department of Transportation (FDOT), and must donate the 100 feet of right-of-way needed to extend Diplomat Parkway to the County. No roads impact fee credits may be applied for, or granted for, this right-of-way. *This requirement has been satisfied.*

d. The developer must construct, at no cost to the County, the following improvements to SR 78:

- 1) Re-sign the northbound US 41 approach to encourage northbound right turns at SR 78 to be made as right turns at Brown Road.
- 2) Reconstruct the eastbound/westbound approaches to provide a four-lane cross-section through the US 41 intersection and eliminate the "plateau" effect.
- 3) Re-time/re-phase the signal at the US 41/SR78 intersection to reflect the above improvements and to provide for protected and permissive left-turn movements.

The developer may not request or be granted roads impact fee credits to offset the cost of these intersection improvements.

The developer must submit the construction plans for the above intersection improvements within 120 days following approval of the DRI for filing with the County and State for their review. The developer may commence construction of the intersection improvements within 90 days of obtaining the permits for such improvements and will diligently pursue the work to its completion. The intersection improvements must be completed prior to obtaining any Certificates of Occupancy or

Completion for any portion of the development.

Intersection improvements must be depicted on construction drawings prepared by the developer, which are subject to review and approval by Lee County DOT and FDOT. These plans are subject to modification as necessary to obtain FDOT approval, and as determined by DOT, to comply with the specifications for the interim improvements as recommended in the Lee County/DCA Settlement Agreement. The development cost includes the total engineering costs for the intersection.

The developer's obligation includes the full cost of design and engineering, drainage and relocation, right-of-way acquisition and dedication, construction of turn-lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing and signalization (as needed and warranted). The alignment, design, signalization and construction schedule must be approved by the County Engineer. *This requirement has been satisfied.*

e. The developer must donate the right-of-way for the remaining enclaved out-parcel on SR 78, or pay the full cost of condemnation if the property cannot be acquired, including attorney and appraisal fees. *This requirement has been satisfied.*

f. The developer must construct two additional travel lanes to SR 78 from US 41 west to the developer's westerly property line, then tapering back into the existing roadway. The improvements for SR 78 will be depicted on construction plans for SR 78, prepared by the developer, which are subject to review and approval by Lee County DOT and FDOT to ensure that they are consistent with the four-lane divided facility designed for SR 78, west of Piney Road. The developer may be reimbursed from the \$1,500,000 deposited in escrow by the developer pursuant to paragraph G.3.a. above for the non-site-related cost, up to a total of \$1 million. The amount is subject to review and approval by DOT, via approval of bid documents or any other necessary documentation. These improvements must be completed prior to obtaining any Certificates of Occupancy or Completion for any portion of the development. Merchants Crossing will pay all costs in excess of \$1 million to complete the SR 78 highway improvements at no cost to the County or FDOT. *This requirement has been satisfied.*

g. Once funds are placed in escrow, \$200,000 will be immediately transferred to FDOT for the acquisition of future right-of-way for SR 78 from the westerly boundary of the developer's property to Piney Road. In lieu of an additional payment of \$300,000 to FDOT from the escrow account for SR 78 right-of-way acquisition, Lee County, pursuant to its agreement with FDOT, has applied \$800,000 in County road impact fees toward the construction of the four-lane improvements on SR 78 from US 41 east, one-half mile. After making the payments identified above, the balance of the funds in the escrow account were released to Lee County.

4. In addition to the payment of monies and other obligations specified in the Development Order, the developer or its successor is required to construct, at no cost to Lee County and the Florida Department of Transportation, all site-related improvements deemed necessary by Lee County and the Florida Department of Transportation. Site-related improvements include any improvement deemed site-related at the time of construction under the definition contained in the Roads Impact Fee Land Development Code Chapter 10. The developer's obligation includes the full cost of design and engineering, drainage and utility relocation, right-of-way acquisition and dedication, construction of turn lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing and signalization (as needed and warranted). The alignment, design, signalization, and construction schedule must be approved by the Lee County Engineer. The developer must pay the full cost for any site-related intersection improvements found necessary by the County or FDOT for the project's access intersection onto US 41 and SR 78. The developer may construct said improvements if approved by the County Engineer.

5. Nothing contained in this Development Order is to imply or supersede Florida DOT permitting requirements.

6. Access to US 41 and SR 78 from the Merchants Crossing proposed access points located closest to the US 41/SR 78 intersection is subject to FDOT permitting requirements and is to be limited to right-turn-in/right-turn-out and left-turn-in only movements for US 41.

7. Nothing contained in this Development Order may be construed to exempt this development from participation in the funding, through Municipal Services Benefit Units (MSBU) or other special assessment districts, of improvements to various State and County arterial and collector roads to the degree to which this development generates demand or is benefited.

8. The \$2,291,307 proportionate share payment made in accordance with paragraphs G.3.a. and b. discharges the Merchants Crossing DRI traffic impact responsibility for 555,000 square feet of development as approved under the 5th DRI Development Order Amendment and preceding DRI Development Order approvals.

9. An additional 15,000 square feet of commercial development was approved under the 6th DRI Development Order Amendment. As to this 15,000 square feet, the developer is required to pay all impact fees, including roads, attributable to development in accord with Land Development Code Chapter 2. In effect this means that all square footage added or constructed above 555,000 square feet is required to pay impact fees.

To ensure this occurs, the developer must submit a cumulative update to the square footage calculation attached to ZVL2006-00079 as support for the issuance of any building permit issued after June 1, 2008. A copy of

the ZVL calculation list updated through March 3, 2008 is attached as Exhibit E.

10. Compliance with all of the terms of the transportation related provisions of this development order satisfy the substantive requirements related to transportation facilities of Section 163.3202(2)(g), Florida Statutes (1989), Lee County Ordinance 89-33, the Lee County Comprehensive Plan and Rule 9J-5.0055, Florida Administrative Code, as they currently apply.

H. SOLID WASTE

1. The developer and tenants of the project must incorporate the solid waste demands of the project into the county solid waste management program and investigate methods of reducing solid waste volume, to include but not be limited to, conservation, recycling, trash compaction, and mechanical shredding at the project.

2. The developer and subsequent tenants of the project, must identify the proper methods for the on-site handling, and temporary storage procedures for any hazardous wastes that may be generated on-site, in accordance with local, regional, state and federal hazardous waste programs.

I. WASTEWATER MANAGEMENT

1. Treatment of wastewater will be provided by North Fort Myers Utility, Inc.

2. Septic tanks may be used only for the temporary construction trailer and temporary leasing office, but must be removed as soon as service is available from North Fort Myers Utilities.

3. Septic tanks may not be used for the disposal of any substance which is identified in federal, state or local lists as a hazardous substance.

4. As the Merchants Crossing DRI may eventually reuse treated effluent for spray irrigation, the developer must ensure that on-site ponds, lakes and wetlands are adequately buffered from possible effluent contamination.

5. The developer must provide assurance that commercial effluent, if generated by the project, will be treated separately from domestic wastewater and handled in accordance with FDER criteria.

6. The developer must obtain all necessary permits from SFWMD and Florida Department of Environmental Regulation (FDER) for the use of spray irrigation/effluent reuse.

J. CONCURRENCY

Approval of this Development Order does not exempt the developer from compliance with State concurrency rules or any concurrency management system adopted by Lee County, except for transportation addressed separately in condition G.10. of this Development Order.

K. GENERAL CONSIDERATIONS

1. All commitments and impact mitigating actions provided in the Application for Development Approval (and supplementary documents) that are not in conflict with specific conditions for project approval outlined above are officially adopted as conditions of approval.

2. Pursuant to Section 380.06(16), the developer may be subject to credit for contributions, construction, expansion or acquisition of public facilities, if the developer is also subject by local ordinances to impact fees or exactions to meet the same needs. The local government and the developer may enter into a capital contribution front-ending agreement to reimburse the developer for voluntary contributions in excess of his fair share.

3. The development phasing plan (f/k/a construction target plan) presented within the ADA and as adjusted to date of Development Order approval is incorporated as a condition of approval. If Development Order conditions and developer commitments incorporated within the development order to mitigate regional impacts are not carried out as indicated to the extent or in substantial accordance with the Development Order, then this will be presumed to be a substantial deviation for the affected regional issue. The development phasing plan has been amended and the amendments contained in the current development phasing plan attached as Exhibit B do not create a presumption of a substantial deviation for any affected regional issue.

4. As required by Section 380.06(18), Florida Statutes, the developer must submit a biennial monitoring report (see Exhibit D) to Lee County, the SWFRPC, and the Department of Community Affairs.

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

1. Resolution. This Development Order constitutes a resolution of Lee County, adopted by the Board of County Commissioners in response to the Development of Regional Impact Application for Development Approval filed for the Merchants Crossing DRI.

2. Additional Developer Commitments. All commitments and impact mitigating actions volunteered by the developer in the ADA and supplementary documents not in conflict with conditions or stipulations specifically enumerated above are hereby incorporated by reference into this Development Order. These documents

include the following:

- (a) Merchants Crossing ADA, July 11, 1989;
- (b) Merchants Crossing DRI sufficiency response, September 27, 1989; and
- (c) Merchants Crossing DRI sufficiency response, November 22, 1989.

3. Binding Effect. This Development Order is binding upon the developer and its assignees or successors in interest. Those portions of this Development Order that clearly apply only to the project developer, are binding upon any builder/developer who acquires any tract of land within Merchants Crossing, but may not be construed to be binding upon future tenants.

4. Reliance. It is hereby declared that the terms and conditions set out in this document constitute a basis upon which the developer and County may rely in future actions necessary to implement fully the final development contemplated by this Resolution and Development Order.

5. Enforcement. All conditions, restrictions, stipulations and safeguards contained in this Resolution and 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, will be paid by the defaulting party.

6. Successor Agencies. Any reference herein to a governmental agency will be construed to mean any future instrumentality that may be created and designated as successors 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.

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

8. Applicability of Regulations. The approval granted by this Development Order is limited. Such approval may 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. Such approval does not obviate the duty of the developer to comply with County Ordinances or other regulations adopted after the effective date of this Development Order, to the extent that those regulations and requirements do not negate any rights granted herein.

9. Further Review. Subsequent requests for local development permits may not require further review pursuant to Section 380.06, Florida Statutes, unless it is

found by the Board of County Commissioners, after due notice and hearing, that one or more of the following is present:

(a) A substantial deviation from the terms or conditions of this Development Order, or other changes to the approved development plans that create a reasonable likelihood of adverse regional impacts or other regional impacts not evaluated in the review by the SWFRPC; or

(b) An expiration of the period of effectiveness of this Development Order as provided herein.

Upon a finding that either of the above is present, the Board may order a termination of all development activity in the area of the development affected by the substantial deviation until such time as a new DRI ADA has been submitted, reviewed and approved in accordance with Section 380.06, Florida Statutes, and all local approvals have been obtained.

10. Termination Date. This Development Order terminates on October 28, ~~2010~~ 2012 at midnight, unless an extension is approved by the Board. An extension may be granted by the Board of County Commissioners if the project has been developing substantially in conformance with the original plans and approval conditions, and if no substantial adverse impacts not known to the Southwest Florida Regional Planning Council or to Lee County at the time of their review and approval, or arising due to the extension, have been identified.

11. Build out date. The established build out date is October 28, ~~2010~~ 2012. Extension of the build out date beyond ~~2010~~ 2012 maybe subject to further development of regional impact review pursuant to Section 380.06(19), Florida Statutes. An extension of the date of build out of a development by seven or more years is presumed to create a substantial deviation subject to further development-of-regional-impact review. The presumption may be rebutted by substantial, competent evidence at the public hearing held by Lee County. For the purpose of calculating when a build out date has been exceeded, the time is tolled during the pendency of administrative and judicial proceedings relating to development permits.

12. Assurance of Compliance. The Administrative Director of the Lee County Department of Community Development or his/her designee, is the local official responsible for assuring compliance with this Development Order.

13. Protection of Development Rights. The development will not be subject to down-zoning, unit density reduction, or intensity reduction, until October 28, ~~2010~~ 2012, unless the County demonstrates that substantial changes have occurred in the conditions underlying the approval of this Development Order including, but not limited to, such factors as a finding that the Development Order was based on substantially inaccurate information provided by the developer, or that the change is clearly

established by local government to be essential to the public health, safety and welfare.

14. Biennial Reports. The developer, or its successor(s) in title to the undeveloped portion of the subject property must submit a report biennially to Lee County, the Southwest Florida Regional Planning Council, the State land planning agency (the Department of Community Affairs), and all affected permit agencies. This report must describe the state of development and compliance as of the date of submission, and be consistent with the rules of the State land planning agency. The report must include information contained in Exhibit D, as further modified or otherwise updated by the State land planning agency. The first monitoring report must be submitted to the Administrative Director of the Department of Community Development not later than one year after the effective date of this Development Order, and further reporting must be submitted not later than May 1st of subsequent calendar years thereafter, until build out. Failure to comply with this reporting procedure is governed by Section 380.06 (18), Florida Statutes, and the developer must so inform any successor in title to any undeveloped portion of the realproperty covered by this Development Order. This may not be construed to require reporting from tenants or owners of individual lots or units.

15. Transmittal and Effective Dates. Certified copies of this Development Order will be forwarded to the Southwest Florida Regional Planning Council, the developer, and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but is not effective until the expiration of the statutory appeals period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater.

Upon this Development Order becoming effective, notice of its adoption must be recorded by the Developer in the office of the Clerk of the Circuit Court, as provided in Section 380.06(15), Florida Statutes.

Commissioner Janes made a motion to adopt the Seventh Development Order Amendment to the Merchants Crossing DRI. The motion was seconded by Commissioner Judah. The vote was as follows:

Robert P. Janes	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 26th day of January 2010.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

By: Marcia Wilson
Deputy Clerk

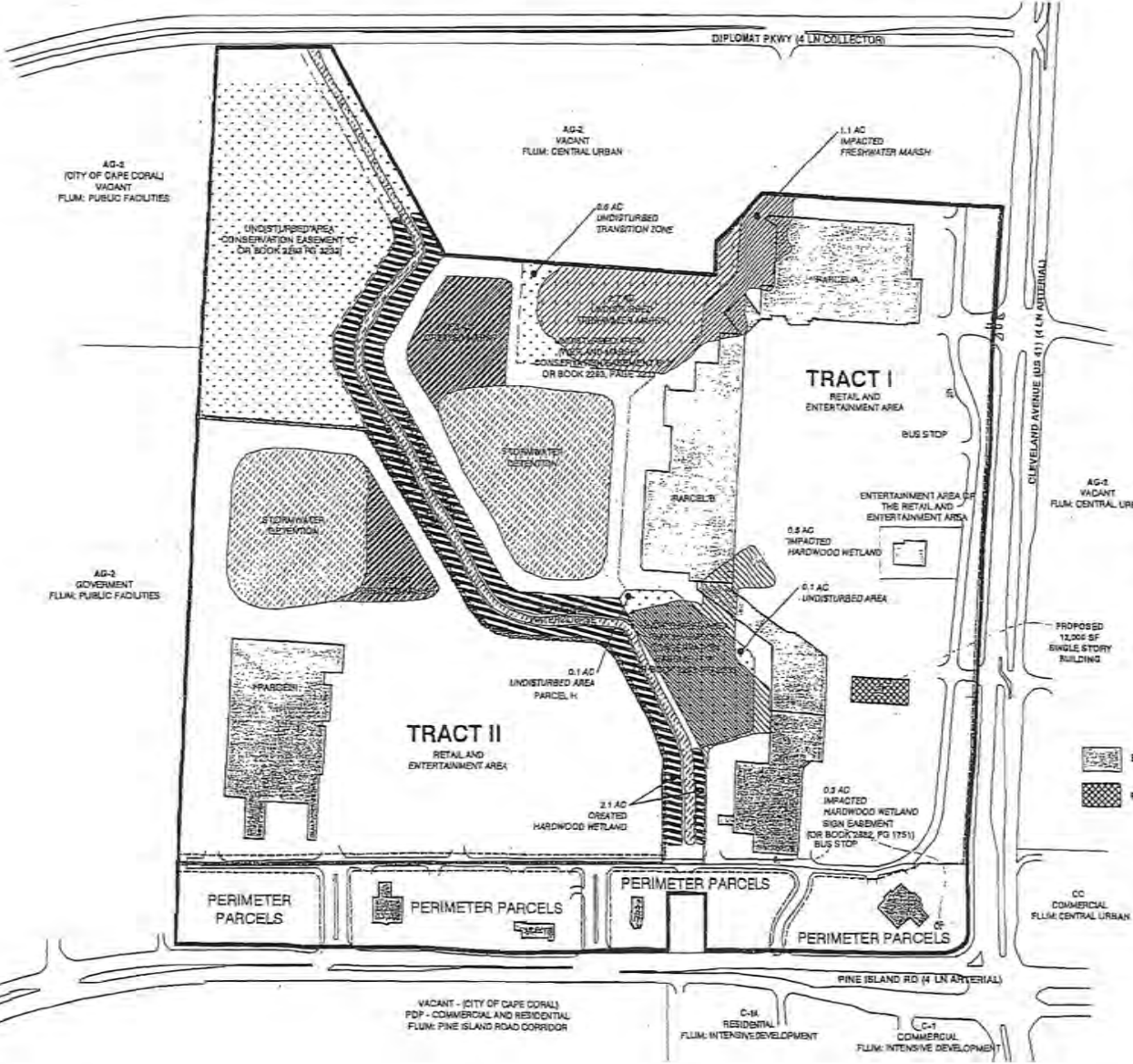
By: T. Hall
Tammara Hall, Chairwoman



APPROVED AS TO FORM

By: Michael D. Jacob
Michael D. Jacob
County Attorney's Office

- Exhibits
A - Map H
B - Phasing Plan
C - Mitigation Plan
D - Monitoring
E - Square Footage Calculation



ANALYSIS OF MARSH/HARDWOOD/HABITAT AREAS:

FRESHWATER MARSH:	
EXISTING UNDISTURBED	3.6 AC
IMPACTED	2.7 AC
CREATED	1.1 AC
TOTAL FRESHWATER CREATED AND SAVED	5.2 AC
HARDWOOD WETLAND:	
EXISTING UNDISTURBED	2.7 AC
IMPACTED	1.9 AC
CREATED	0.5 AC
TOTAL HARDWOOD WETLAND CREATED AND SAVED	5.0 AC
CREATED UPLAND TORTOISE HABITAT	0.0 AC
ADDITIONAL UNDISTURBED AREA	10.5 AC
TOTAL HARDWOODS, MARSH TORTOISE HABITAT & ADDITIONAL UNDISTURBED AREA	25.7 AC

SITE DATA

F.U.:	INTENSIVE COMMERCIAL
	CENTRAL URBAN
ZONING:	COU
TOTAL PROJECT AREA:	101.44 AC
OPEN SPACE REQUIRED (30%):	30.43 AC
OPEN SPACE PROVIDED:	28.88 AC
-PERVIOUS OPEN SPACE:	2.81 AC
-25% OPEN SPACE (WATER):	2.81 AC
TOTAL PROVIDED:	35.48 AC
INDIGENOUS OPEN SPACE REQUIRED:	15.22 AC
INDIGENOUS OPEN SPACE PROVIDED:	15.29 AC



DC 2007-00024

RECEIVED
APR 18 2008

PERMIT COUNTER

EXHIBIT H

REVISED 04/20/08
04/17/08

MAP 11

• Fresh Marsh
• Freshwater
• Wetland
• Marsh
• Hardwood
• Tortoise
• Other

MORRIS
DEPEW
ENGINEERS - PLANNERS - ARCHITECTS

MAP NUMBER: 06136
DRAWN BY: JLU
CHECKED BY: AZ
DATE: 10/24/07

MERCHANTS CROSSING DISI
Section 11, 11-131, 11-132, 11-133, 11-134, 11-135, 11-136, 11-137, 11-138, 11-139, 11-140, 11-141, 11-142, 11-143, 11-144, 11-145, 11-146, 11-147, 11-148, 11-149, 11-150, 11-151, 11-152, 11-153, 11-154, 11-155, 11-156, 11-157, 11-158, 11-159, 11-160, 11-161, 11-162, 11-163, 11-164, 11-165, 11-166, 11-167, 11-168, 11-169, 11-170, 11-171, 11-172, 11-173, 11-174, 11-175, 11-176, 11-177, 11-178, 11-179, 11-180, 11-181, 11-182, 11-183, 11-184, 11-185, 11-186, 11-187, 11-188, 11-189, 11-190, 11-191, 11-192, 11-193, 11-194, 11-195, 11-196, 11-197, 11-198, 11-199, 11-200, 11-201, 11-202, 11-203, 11-204, 11-205, 11-206, 11-207, 11-208, 11-209, 11-210, 11-211, 11-212, 11-213, 11-214, 11-215, 11-216, 11-217, 11-218, 11-219, 11-220, 11-221, 11-222, 11-223, 11-224, 11-225, 11-226, 11-227, 11-228, 11-229, 11-230, 11-231, 11-232, 11-233, 11-234, 11-235, 11-236, 11-237, 11-238, 11-239, 11-240, 11-241, 11-242, 11-243, 11-244, 11-245, 11-246, 11-247, 11-248, 11-249, 11-250, 11-251, 11-252, 11-253, 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EXHIBIT A

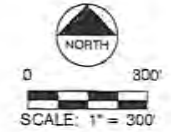
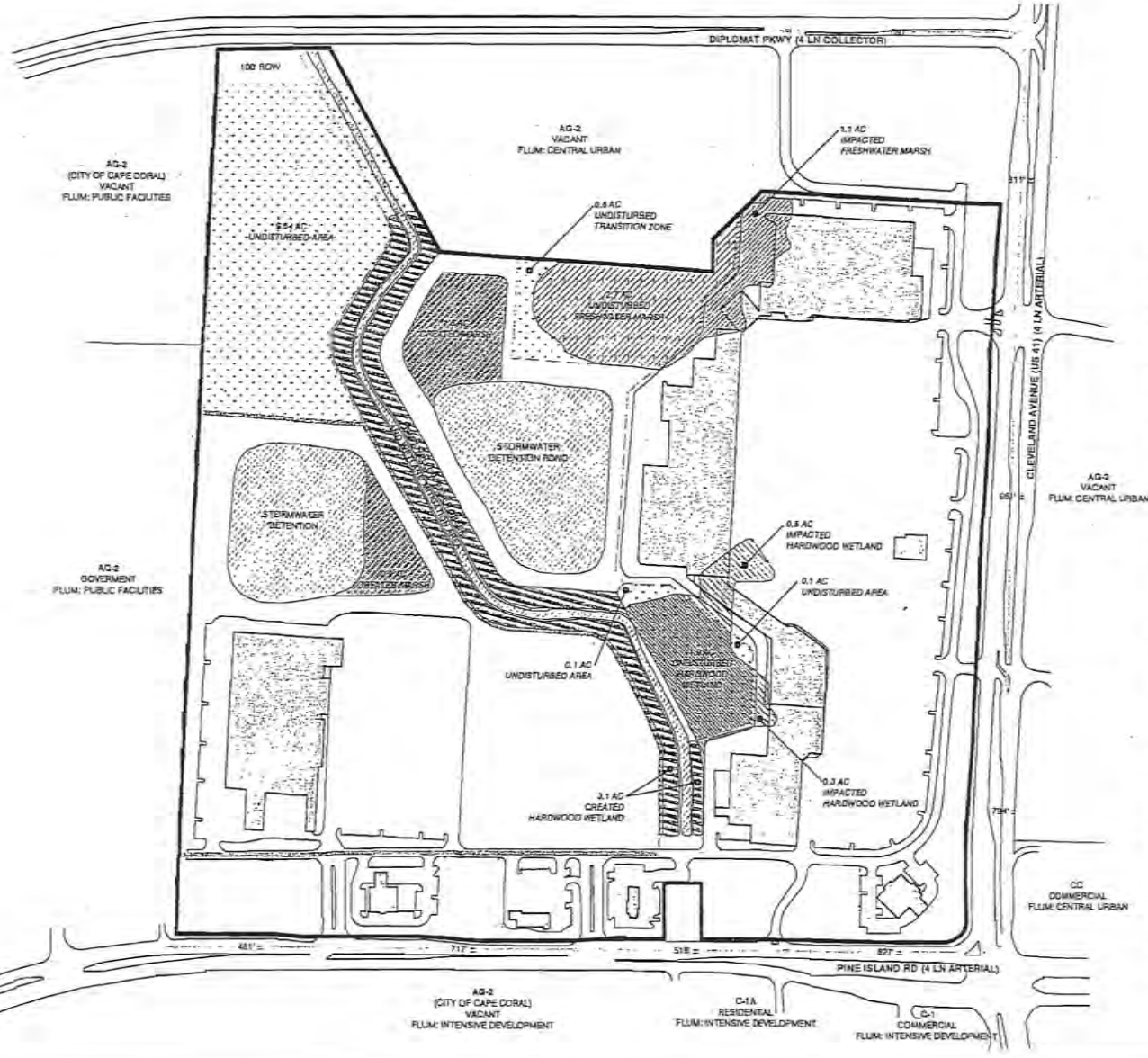
**EXHIBIT B
PHASING PLAN
MERCHANTS CROSSING OF NORTH FORT MYERS**

	EXISTING	BUILDOUT (Oct. 2010/2012)
PHASE I:		
RETAIL & ENTERTAINMENT CENTER	359,000	359,000 sf
PERIMETER PARCELS	12,000	12,000 sf
TOTAL PHASE I:	371,000	371,000 sf
PHASE II:		
RETAIL & ENTERTAINMENT CENTER	154,819	166,819 sf
PERIMETER PARCELS	6,384	32,181sf
TOTAL PHASE II:	161,203	199,000 sf
TOTAL PHASES I & II:	532,203	570,000 sf

Note:

Total square footage allocated to the Perimeter Parcels is 44,181 square feet. The Applebee's parcel is not considered to be a Perimeter Parcel for purposes of this calculation.

Any unallocated Perimeter Parcel square footage may be reallocated to the Retail and Entertainment Center.



REQUIRED OPEN SPACE CALCULATION:

TOTAL PROPERTY ACREAGE	101.44 AC
30% OPEN SPACE REQUIREMENT	30.43 AC
PERVIOUS OPEN SPACE PROVIDED	28.56 AC
25% OF OPEN SPACE FOR WATER (10.8 AC ACTUAL WATER SURFACE)	7.51 AC
TOTAL OPEN SPACE PROVIDED	36.49 AC
UNDISTURBED OPEN SPACE REQUIRED	15.22 AC
UNDISTURBED OPEN SPACE PROVIDED	15.28 AC

THIS MAP AND CALCULATIONS ARE BASED ON MAP MSA OF ZONING RESOLUTION Z-91-582 AND DRAWING NO. C-37 OF ZONING RESOLUTION Z-93-023

ANALYSIS OF MARSH/HARDWOOD HABITAT AREAS:

FRESHWATER MARSH:	
EXISTING UNDISTURBED	3.5 AC
IMPACTED	2.7 AC
CREATED	1.5 AC
TOTAL FRESHWATER CREATED AND SAVED	2.5 AC
HARDWOOD WETLAND:	
EXISTING UNDISTURBED	2.7 AC
IMPACTED	1.9 AC
CREATED	0.8 AC
TOTAL HARDWOOD WETLAND CREATED AND SAVED	3.1 AC
TOTAL HARDWOOD WETLAND CREATED AND SAVED	5.0 AC
CREATED UPLAND TORTOISE HABITAT	0.0 AC
ADDITIONAL UNDISTURBED AREA	10.5 AC
TOTAL HARDWOODS, MARSH TORTOISE HABITAT & ADDITIONAL UNDISTURBED AREA	20.7 AC

* INCLUDES OPEN SPACES IN ADDITION TO THOSE DETAILED BELOW

** TO BE RESOLVED WITH FLORIDA GAME & FRESHWATER FISH COMMISSION IN ACCORDANCE WITH WOODLAND DEVELOPMENT ORDER (PARAGRAPH 10.0)

REVISION HISTORY

MITIGATION PLAN

MERCHANT'S CROSSING DRI

FOR MORRIS

DEPEW

EXPERIENCE • PLANNERS • DESIGNERS

RECEIVED

FEB 04 2008

COMMUNITY DEVELOPMENT

EXHIBIT C

EXHIBIT D

INFORMATION TO BE INCLUDED IN MONITORING REPORT

- (a) Any changes in the plan of development, or in the representations contained in the ADA, or in the phasing plan for the reporting year and for the next year;
- (b) A summary comparison of development activity proposed and actually conducted for the reporting period;
- (c) Undeveloped tracts of land that have been sold to a separate entity or developer;
- (d) Identification and intended use of lands purchased, leased or optioned by the developer adjacent to the original DRI site since the development order was issued;
- (e) An assessment of the developer's and the local government's compliance with the conditions of approval contained in the DRI development order and the commitments contained in the Application for Development Approval that have been identified by the local government, the Regional Planning Council or the Department of Community Affairs as being significant;
- (f) Any known incremental DRI applications for development approval of requests for a substantial deviation determination that were filed in the reporting year and to be filed during the next year;
- (g) An indication of a change, if any, in local government jurisdiction for any portion of the development since the development order was issued;
- (h) A list of significant local, state and federal permits that have been obtained or are pending by agency, type of permit, permit number and purpose of each;
- (i) A statement that all persons have been sent copies of the biennial report in conformance with section 380.06(18), Florida Statutes;
- (j) A copy of any recorded notice of the adoption of a development order or the subsequent modification of an adopted development order that was recorded by the developer pursuant to Section 380.06(15), Florida Statutes; and
- (k) Monitoring reports, including:
 - (i) Water quality monitoring reports (for review by Lee County and South Florida Water Management District);
 - (ii) Transportation monitoring reports (for review by Lee County, FDOT and SWFRPC).

MERCHANTS CROSSING DRI: SQUARE FOOTAGE CALCULATIONS		
STRAP #	Built Square Footage	Use Type
34-43-24-03-0000A.0000	107,689	K-Mart ⁽¹⁾
34-43-24-03-0000B.0000		
Building 1 ⁽¹⁾	5,916	Heavenly Pizza occupies 1,500 sf of total(no outdoor seating)
Building 2 ⁽¹⁾	35,154	
Building 3 ⁽¹⁾	18,388	
Building 4 ⁽¹⁾	41,214	
Building 5 ⁽¹⁾	23,500	
Building 6 ⁽¹⁾	53,015	Movie Theater
Building 7 ⁽¹⁾	12,494	Obee's Subs occupies 1,110 sf J's & B's occupies 3,100 sf
Building X	29,295	COM2005-00072
34-43-24-03-0000G.0000	5,152	Applebee's
34-43-24-03-0000H.0000	<u>75,217</u>	Beall's COM2007-00397 ⁽²⁾
34-43-24-03-0000I.0000	106,785	Home Depot
34-43-24-03-000K0.0000	0	Vacant
34-43-24-03-000M0.0000	4,491	Wachovia Bank
34-43-24-03-000N0.0000	<u>2,499</u>	Lion's Choice COM2006-00048 ⁽³⁾
34-43-24-03-000O0.0000	2,878	McDonald's
34-43-24-03-000P0.0000	2,242	Popeye's
34-43-24-03-000Q0.0000	3,750 ⁽⁴⁾	Vacant ⁽⁴⁾
34-43-24-03-000R0.0000	0	Vacant
34-43-24-03-00S00.0000	6,274	Sun Bank
Total Restaurant Square Footage	18,481	
Total Non-Restaurant Square Footage	<u>513,722</u>	
Total Square Footage Built	<u>532,203</u>	
Total Square Footage Remaining (from original 555,000 square feet)	<u>22,797</u>	

Note:

- (1) Building numbers as shown on the Lee Property Appraiser's website.
- (2) Square footage permitted and under construction but not complete as of 03/03/08.
- (3) Square footage permitted and built, but not added to table until 03/03/08 update.
- (4) Proposed bank DOS2008-00030, under review by RSM 03/03/08

EXHIBIT E

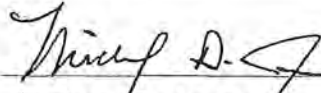
ZVL 2006-00079

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: January 27, 2010

TO: Commissioner Hall
Chairwoman, BOCC

FROM:


Michael D. Jacob
Assistant County Attorney

RE: **DRI Adoptions under SB360**
Development Order Amendments
Merchants Crossing DRI Seventh Development Order Amendment
Deep Lagoon Marina DRI Fifth Development Order Amendment
Cypress Lake Center DRI Eighth Development Order Amendment
Miromar Lakes DRI Fourth Development Order Amendment

The Board of County Commissioners approved amendments to the above referenced DRI's to comply with SB 360 (2009) on January 26, 2009, Consent Agenda Items C14a (Bluesheet #20100012), C14b (#20100013), C14c (Bluesheet #20100014), and C14d (Bluesheet #20100015).

The original resolutions and development order amendments are attached to this memorandum for execution. Kindly execute these documents at your earliest convenience and then forward them to Lisa Pierce in the Minutes Department.

By copy of this memorandum to Lisa Pierce, I request that a clerk attest to the Chairman's signature on each resolution and development order amendment. Once this has been accomplished, please prepare one certified copy of each resolution with all exhibits, and three certified copies of each executed development order only with exhibits. Please forward these copies to my attention no later than February 2, 2010 at 12:00 noon.

Thank you for your assistance.

DMC/amp
Attachments

Via e-mail only: (w/o attachments)
Lisa Pierce, Supervisor, Minutes Department

RESOLUTION NO. 11-01-04

RESOLUTION PERTAINING TO STATUTORY
EXTENSION OF DRI BUILDOUT AND
TERMINATION DATES FOR THE MERCHANTS
CROSSING DRI.

WHEREAS, in 2010, the Governor of the State of Florida signed Senate Bill 360 (hereinafter SB360) into law, which provided a two-year extension of local government issued development permits that have an expiration date between September 1, 2008 through January 1, 2012; and,

WHEREAS, on May 28, 2010, the Governor signed Senate Bill 1752 into law (hereinafter SB1752); and,

WHEREAS, SB1752 provides for an additional two-year extension of local government issued development permits that have an expiration date between September 1, 2008 through January 1, 2012; and,

WHEREAS, SB1752 requires the holder of a valid permit eligible for the two-year extension to notify the local government in writing no later than December 31, 2010, that the holder intends to utilize the extension and the anticipated timeframe for acting on the authorization; and,

WHEREAS, the Merchants Crossing DRI qualifies for the statutory two-year extension to the build out and termination date; and,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA that:

1. The above stated recitals are incorporated into this Resolution by reference.
2. The DRI Development Order for Merchants Crossing DRI is hereby amended as reflected in the attached Exhibit "A."
3. This Resolution and its exhibits constitute the Eighth Codified Development Order Amendment to the Merchants Crossing Development of Regional Impact. Development of the project must be consistent with the DRI Development Order attached as exhibit A and the governing zoning approvals.
4. Certified copies of this Resolution will be forwarded to the Southwest Florida Regional Planning Council, the Florida Department of Community Affairs, and other appropriate agencies. This amendment is rendered as of the date of transmittal, but will not be effective until the expiration

COPY

of the statutory appeal period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater. Once effective, the Notice of Adoption of this Development Order Amendment must be recorded as provided for in Chapter 380, Florida Statutes.

Commissioner Hall made a motion to adopt the foregoing resolution. The motion was seconded by Commissioner Manning. The vote was as follows:

John E. Manning	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 4th day of January 2011.

ATTEST:

CHARLIE GREEN, CLERK

By: Marcia Wilson
Deputy Clerk

BOARD OF COUNTY
COMMISSIONERS
LEE COUNTY, FLORIDA

By: Frank Mann
Frank Mann, Chair

APPROVED AS TO FORM

By: Tom A. J.
County Attorney's Office



Exhibits:

Exhibit A - Eighth Amendment to Merchants Crossing DRI Development Order

EIGHTH DEVELOPMENT ORDER AMENDMENT¹
FOR
MERCHANTS CROSSING
A DEVELOPMENT OF REGIONAL IMPACT
STATE DRI #7-8889-92
COUNTY CASE #DRI2009-00005

WHEREAS, pursuant to Section 380.06 of the Florida Statutes, the Board of County Commissioners of Lee County, Florida, (Board) heard at a public hearing, the application for development approval for Merchants Crossing, a commercial development in Lee County which consisted of approximately one hundred four acres to be developed in accordance with the application filed on July 11, 1989; and

WHEREAS, the Board adopted the Merchants Crossing DRI Development Order on October 31, 1990; and

WHEREAS, the DRI Development Order was subsequently amended on October 14, 1991 to increase the approved square footage of retail development, delete motel and office uses, increase the indigenous open space, adjust the transportation mitigation payment and change the construction target plan; and

WHEREAS, the DRI Development Order was thereafter amended a second time on June 30, 1993 to (1) increase the square footage approved for retail uses; (2) amend the construction target plan; and (3) add additional property to the development order; and

WHEREAS, on September 26, 1994, the County authorized the construction of a 16-screen movie theater without a formal Notice of Proposed Change by subtracting the square footage of the expanded movie theater from the approved retail square footage; and

WHEREAS, on April 2, 1997, the DRI Development Order was amended a third time to extend the start date, build out date, termination date, and down zone protection date of the project by less than five years to October 28, 2000; and

WHEREAS, on April 30, 2001 the DRI Development Order was amended a fourth time to extend the build out, termination, and down zone protection dates of the project to October 28, 2007; and

¹This is a codification and restatement of all DRI Development Orders rendered with respect to Merchants Crossing DRI, including actions taken on October 31, 1990, October 14, 1991, June 30, 1993, April 2, 1997, April 30, 2001, September 11, 2007, August 18, 2008, January 26, 2010, and January 4, 2010.

WHEREAS, pursuant to HB7203, as reflected in Board Resolution 07-09-18, adopted September 11, 2007, the Development Order was amended a fifth time to extend the build out date to October 28, 2010; and,

WHEREAS, on August 18, 2008 the DRI Development Order was amended a sixth time to (1) add 15,000 square feet of retail commercial; and, (2) eliminate the limitation on the number of restaurants permitted within the development; and

WHEREAS, on January 26, 2010, pursuant to Senate Bill 360 the DRI Development Order was amended a seventh time to extend the DRI build out date from October 28, 2010 to October 28, 2012; and,

WHEREAS, on May 28, 2010, the Governor signed Senate Bill 1752 into law (hereinafter SB1752); and,

WHEREAS, SB1752 provides for an additional two-year extension of local government issued development permits that have an expiration date between September 1, 2008 through January 1, 2012; and,

WHEREAS, SB1752 requires the holder of a valid permit eligible for the two-year extension to notify the local government in writing no later than December 31, 2010, that the holder intends to utilize the extension and the anticipated timeframe for acting on the authorization; and,

WHEREAS, on September 22, 2010, Lee County received a request for an extension of the DRI build out date for the Merchants Crossing DRI Development Order, pursuant to SB1752; and,

WHEREAS, the Merchants Crossing DRI qualifies for the additional two-year extension of its build out date from October 28, 2012 to October 28, 2014; and

NOW THEREFORE, be it resolved by the Board of County Commissioners that the development order for Merchants Crossing DRI is further amended as follows:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Merchants Crossing DRI is a commercial development in northern Lee County originally consisting of 104.66 acres (includes property ultimately used for right-of-way improvements on State Route 78 and US 41). The development is proposed to consist of 570,000 square feet of retail commercial, 28 acres of lakes and sloughs for water management and wetland mitigation, 6.1 acres of preservation area and 4 acres of roads. The plan proposed by the developer is depicted in Map H, attached as Exhibit A and described further in the phasing plan attached as Exhibit B.

B. The legal description of the project is as follows:

A portion of the Southwest Quarter (SW1/4) of Section 34, Township 43 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

COMMENCING AT the Southwest corner of said Section 34; THENCE N 03°25'58" E, along the West line of the Southwest Quarter (SW1/4) of said Section 34, a distance of 73.52 feet, to the POINT OF BEGINNING of this description; THENCE continue N 03°25'58" E, along the last described course, a distance of 2,484.86 feet, to a point on a line parallel with and 100 feet South of, as measured at Right angles to the North line of the Southwest Quarter (SW1/4) of said Section 34; THENCE S 89°56'05" E, along said parallel line, a distance of 264.66 feet; THENCE S 28°32'36" E, a distance of 664.99 feet; THENCE S 86°34'00" E, a distance of 747.11 feet; THENCE N 03°26'00" E, a distance of 100.00 feet; THENCE N 48°25'58" E, a distance of 212.13 feet; THENCE S 86°34'00" E, a distance of 650.00 feet, to the Westerly right-of-way line of US 41 (SR 45); THENCE S 03°25'53" W, along said right-of-way line, a distance of 718.01 feet; THENCE S 06°17'38" W, along said right-of-way line, a distance of 240.30 feet; THENCE S 03°25'53" W, along said right-of-way line, a distance of 409.75 feet; THENCE S 08°42'37" W, along said right-of-way line, a distance of 315.20 feet, to a point on the arc of a circular curve to the left, whose radius point bears S 86°34'07" E from said point; THENCE Southerly along said right-of-way line and the arc of said curve, having a radius of 3,005.79 feet, a central angle of 05°09'06", and a chord bearing of S 00°51'20" W, an arc distance of 270.27 feet, to the Point of Reverse Curvature of a circular curve to the right; THENCE Southerly and Westerly, along the arc of said curve, having a radius of 100.00 feet, a central angle of 93°29'08" and a chord bearing of S 45°01'21" W, an arc distance of 163.16 feet, to the Point of Tangency and the Northerly right-of-way line of Pine Island Road (SR 78); THENCE N 88°14'05" W, a distance of 383.15 feet; THENCE N 89°57'42" W, a distance of 196.50 feet, to the Easterly line of those lands described in Official Records Book 421, Page 480, as recorded in Public Records of Lee County, Florida; the last two courses being along the Northerly right-of-way line of said Pine Island Road (SR 78); THENCE N 00°04'40" E, along said Easterly line, a distance of 142.10 feet, to the Northerly line of those lands described in said Official Records Book 421, Page 480; THENCE N 89°55'20" W, along said Northerly line, a distance of 100.00 feet, to the Westerly line of those lands described in said Official Records Book 421, Page 480; THENCE S 00°04'40" W, along said Westerly line, a distance of 142.17 feet, to the Northerly line of said Pine Island Road (SR 78); THENCE N 89°57'42" W, a distance of 259.57 feet; THENCE S 00°02'18" W, a distance of 12.00 feet; THENCE N 89°57'42" W, a distance of 255.32 feet; THENCE N 86°08'51" W, a distance of 180.40 feet; THENCE N 89°57'42" W, a distance of 274.68 feet; THENCE S 00°02'18" W, a distance of 12.00 feet; THENCE N 89°57'42" W, a distance of 230.03 feet, to the Point of Curvature of a circular curve to the left; THENCE Westerly along the arc of said curve, having a radius of 2,944.29 feet, a central angle of 03°10'09" and a chord bearing of S 88°27'14" W, an arc distance of 162.86 feet, to the POINT OF BEGINNING, the last eight (8) courses being along the Northerly right-of-way line of said Pine Island Road (SR 78).

CONTAINING 101.44+ acres. (Does not include property used for right-of-way improvements to State Road 78 and US 41)

C. The project's zoning is Commercial Planned Development (CPD), pursuant to the authority of Chapter 163, Florida Statutes, Laws of Florida 61-2405, and the Lee County Zoning Regulations, as amended.

D. The Application for Development Approval is consistent with the requirements of Section 380.06, Florida Statutes.

E. The development is not located in an area designated as an Area of Critical State Concern, pursuant to the provisions of Section 380.05, Florida Statutes.

F. The development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.

G. The development has been reviewed by the Southwest Florida Regional Planning Council and is the subject of the report and recommendations adopted by that body. The development, as proposed in the Application for Development Approval and modified by this Development Order Amendment, is consistent with the report and the recommendations of the Southwest Florida Regional Planning Council pursuant to Section 380.06(12).

H. Concurrently with the adoption of the original DRI Development Order, the property was rezoned in accordance with Lee County Zoning Ordinance 86-17, as amended. The Zoning Resolution, as amended, contains additional details and conditions pertaining to the Merchants Crossing development, and also provides for certain deviations from Lee County zoning and development regulations.

I. The development is located in the Intensive Development and Central Urban classifications of the Lee Plan and is consistent with the Lee County Comprehensive Plan and Lee County's Land Development Regulations as conditioned in this Development Order.

J. The proposed conditions below meet the criteria found in Section 380.06(15)(d), Florida Statutes.

K. The build out date is October 28, ~~2012~~2014.

L. Merchants Crossing DRI qualified for the statutory three-year extension to all phase, build out and expiration dates granted by the 2007 Florida Legislature under House Bill 7203 (amending F.S. §380.06(19)(c)) and signed into law on June 19, 2007. The Board of County Commissioners granted the extension pursuant to Lee County Resolution 07-09-18, as the Fifth Amendment to the Merchants Crossing DRI Development Order, adopted on September 11, 2007. Under HB7203, the three year extension was not a substantial deviation, was not subject to further Development of Regional Impact review, and may not

be considered when determining whether a subsequent extension is a substantial deviation under F.S. §380.06(19)(c).

M. Senate Bill 360 was signed into law by the Governor of the State of Florida on June 1, 2009 (codified as a note to F.S. §§373.414 and 380.06). SB360 provided a statutory two-year extension for DRIs with build out dates between September 1, 2008 through January 1, 2012. The Board of County Commissioners recognized the statutory extension in Lee County Resolution 09-06-22, adopted by the Board on June 23, 2009,

Pursuant to SB360, Merchants Crossing DRI ~~qualifies~~ qualified for a two-year extension of its build out date from October 28, 2010 to October 28, 2012. Under Lee County Resolution 09-06-22, concurrency vesting is was also extended to October 28, 2012, consistent with the build out extension. Under SB 360, the two-year extension does did not constitute a substantial deviation from the original DRI development approvals warranting further DRI review.

N. On May 28, 2010, Senate Bill 1752 into law (hereinafter SB1752) was signed into law by the Governor. SB1752 provides for an additional two-year extension of local government issued development permits that have an expiration date between September 1, 2008 through January 1, 2012. Pursuant to SB1752, Merchants Crossing DRI qualifies for a two-year extension of its build out date from October 28, 2012 to October 28, 2014. Under SB1752, the two-year extension does not constitute a substantial deviation from the original DRI development approvals warranting further DRI review.

II. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Lee County, Florida, that the requested amendments to the Merchants Crossing DRI are hereby approved, subject to the following conditions, restrictions, and limitations:

A. DRAINAGE/WATER QUALITY

1. The developer must participate in any on-going or future efforts by Lee County to establish a County-wide Watershed Basin Management Plan.

2. The developer and his successor must implement and maintain an on-going monitoring and maintenance program that regularly inspects, maintains, and samples the storm water drainage system, including lake and wetlands monitoring during and after the development of Merchants Crossing. The developer must establish the legal entity that will carry out this program after tracts and/or units are sold; the documents creating such entity must be approved by the Lee County Attorney's Office and the South Florida Water Management District (SFWMD) prior to the implementation of the monitoring program. The program must be designed in consultation with the staffs of the Southwest Florida Regional Planning Council (SWFRPC), the South Florida Water Management District, and Lee County. Final

approval of the program rests with the Lee County Department of Community Development. The purpose of this program is to ensure that the storm water drainage system functions in every aspect as planned. Should the monitoring program indicate that the system is not functioning as planned, or is not constructed in accordance with all approved plans, permits, or county requirements, or is not meeting water quality standards of the applicable agencies, further development approvals may not be granted until the developer has completed corrective measures as specified by Lee County.

A monitoring and maintenance program has been approved by the Lee County Department of Community Development.

3. The project must have SFWMD permits for construction and operation of the surface water management system, and for any dewatering activities associated with the construction of lakes, roads or building foundations.

4. The allowable discharge offsite for Merchants Crossing may not exceed 0.09 cubic feet per second/acre over the whole project area, or as determined appropriate by SFWMD. Final allowable discharge must be determined by the developer and SFWMD staff, using a 72-hour storm duration model, prior to issuance of a surface water permit. *A surface water permit has been issued by SFWMD. (Permit issued October 16, 1991 #36-02069-S.)*

5. All water retention/detention areas must meet SFWMD criteria. Any areas that do not meet this criteria may not be used in the calculation of water quality or quantity volumes.

6. Based on information provided by the developer, the entire freshwater marsh at the project's northern boundary, may be indirectly impacted as a result of water table drawdown associated with lake control elevations, and irrigation withdrawals from the adjacent detention lake. To obtain a construction and operation permit, the developer must provide detailed plans that indicate: buffer areas adjacent to wetlands, the extent of encroachment into wetlands, information verifying that control elevations will maintain adequate wetland hydroperiods, acreage figures and cross-sections for all mitigation areas, a mitigation proposal that does not result in a net loss of wetlands and a mitigation proposal which includes a wetland monitoring and maintenance program.

7. The developer must confirm, to the satisfaction of all federal, state and local review agencies, and the SFWMD, that the proposed water management system will not impact habitats of the golden polypody, prickly pear cactus, wild coco and gopher tortoise, as well as other endangered species potentially occurring on-site, or that such impacts will be mitigated to the benefit of on-site populations of these species.

8. The developer has indicated that the north-south watercourse will be relocated and redesigned to simulate a natural creek. The water course must be designed to meet SFWMD criteria in effect at the time of permit application. *This*

requirement has been satisfied.

9. Provisions for the drainage of off-site areas and out-parcels that presently drain through the site must be provided at the time of permit application.

10. The developer must undertake a regularly scheduled vacuum sweeping of all streets and parking facilities, to be incorporated as a Best Management Practice (BMP).

11. In areas adjacent to retail or office uses, the developer must provide dry pre-treatment, as determined by SFWMD at time of permitting (retention or detention), in order to provide reasonable assurance that hazardous materials will not enter the storm water management system.

12. The operation of the Merchants Crossing Storm water Management System is dependent on Yellow Fever Creek for an outlet. Therefore, a final Storm water Management Plan must demonstrate that the system is designed in accordance with existing design parameters for Yellow Fever Creek. A man-made ditch (the East Branch of Yellow Fever Creek) flows through the Merchants Crossing DRI that eventually drains to Yellow Fever Creek and the Caloosahatchee River in northern Lee County. Post developed runoff will be directed across the site through a series of surface water management ponds to a rerouted ditch that will also carry the offsite flows from the north. The rerouted ditch will flow through a culvert under Pine Island Road and eventually to Yellow Fever Creek.

13. Best Management Practices (BMPs) and monitoring and maintenance of the storm water management system must be implemented by the developer in accordance with SFWMD guidelines.

14. Any off-site road improvements constructed by the developer must address water quality in accordance with the SFWMD criteria.

15. The use of septic tanks is limited to temporary use with the temporary construction trailer and temporary leasing office only. Such use must be eliminated when service is available on site from North Fort Myers Utilities.

16. All commitments made by the developer within the ADA related to Question 22 (Drainage) and Question 15 (Water Quality) and subsequent sufficiency round information, not in conflict with the above recommendations, are hereby incorporated as conditions for approval.

B. ENERGY

All site plans or architectural programs must incorporate, to the extent possible, the following energy conservation features into all site plans and architectural

programs or the property owner/developer must ensure to the extent possible that the following features are implemented through deed restrictions or covenants with successors in title. All applications for site plan approvals and building permits must be accompanied by a document detailing proposed compliance with these conditions. If deed restrictions or covenants are utilized to ensure compliance, such documents must be approved by the Lee County Attorney's Office prior to recordation. If no deed restrictions are approved and recorded, the prior alternative must be utilized with the following features included:

1. Provision of bicycle racks or storage facilities in all tracts.
2. Use of energy-efficient features in window design.
3. Installation of energy-efficient appliances and equipment.
4. Prohibition of deed restrictions or covenants that would prevent or unnecessarily hamper energy conservation efforts (e.g. building orientation, and solar water heating systems).
5. Reduced coverage by asphalt, concrete, rock, and similar substances in streets, parking lots, and other areas to reduce local air temperatures and reflected light and heat.
6. Installation of energy-efficient lighting for streets, parking areas, and other interior and exterior public areas.
7. Use of water closets with a maximum flush of 3.5 gallons and shower heads and faucets with a maximum flow rate of 3.0 gallons per minute (at 60 pounds of pressure per square inch).
8. Selection of native plants, trees, and other vegetation and landscape design features that reduce requirements for water, fertilizer, maintenance, and other needs.
9. Planting of native shade trees to provide reasonable shade for all streets, recreation areas and parking areas.
10. Placement of trees to provide needed shade in the warmer months while not overly reducing the benefits of sunlight in the cooler months.
11. Orientation of structures, as possible, to reduce solar heat gain by walls to utilize the natural cooling effects of the wind.
12. Use of operable windows and ceiling fans.

13. Provision for structural shading (e.g., trellises, awnings, and roof overhangs) wherever practical, when natural shading cannot be used effectively.

14. Consideration by any project architectural review committee of energy conservation measures (both those noted here and others) to assist builders in their efforts to achieve greater energy efficiency in the development.

The incorporation of these energy conservation measures in this Development Order does not preclude the provision of additional energy conservation measures by the developer. It also does not prevent the local government of jurisdiction or any state, regional, or other agency under whose jurisdiction this project falls from requiring additional energy measures or measures that may be more stringent.

C. POTABLE WATER/WATER SUPPLY

1. The developer must incorporate the use of water saving devices as required by State law (Section 553.14., Florida Statutes).

2. The developer must show that the proposed deep well, to supplement irrigation from the large lake, is of compatible water quality with surface waters. Furthermore, the developer must show that proposed mitigation measures address possible damage from watertable drawdown.

3. The project requires a water use permit for any withdrawals from groundwater, project lakes or any other surface water bodies for irrigation or potable uses and for any dewatering activities associated with the construction of project lakes, or road or building foundations.

4. At the time of permit application, the developer must provide verification that the proposed system designs will meet District criteria.

5. For the purpose of potable water conservation, Merchants Crossing must utilize low water use plumbing/fixtures, self-closing or metered water faucets, and other water conserving devices.

6. For the purpose of non-potable water conservation, Merchants Crossing must utilize xeriscape principles in the design and maintenance of the project's landscaping.

7. The developer must utilize Lee County Utilities for potable water.

8. In the project area, the lower Hawthorn aquifer has a chloride ion concentration greater than 500 mg/l. To utilize this as a recharge source for the project lake system, the permit developer must show that the addition of this water to

the lake system will not raise the chloride ion concentration of the lake above 200 mg/l.

9. The lake system is adjacent to wetland preserve areas. At the time of permit application, the developer must show that the wetland hydroperiod will not be adversely affected by proposed irrigation withdrawals from the large lake at the north western corner of the site.

10. As the developer has committed to eventually using reclaimed wastewater for irrigation, the developer must ensure that on-site lakes and wetlands are adequately buffered from possible effluent contamination.

11. Any spray irrigation using treated wastewater must be accomplished in accordance with state and local regulations. The developer must use treated wastewater for all or part of the project's irrigation demand, at such time as adequate amounts of treated wastewater are available for such purpose.

12. All construction plans, technical specifications, and proposed plats, if applicable, for the proposed water distribution system must be reviewed and approved by the Lee County Utilities prior to commencement of construction.

13. The lowest quality of water possible must be utilized for all outdoor non-potable water use.

14. Landscaping irrigation and all outdoor water uses, e.g. hosing concrete, are restricted to the hours of 5:00 P.M. to 9:00 A.M., or as restricted by SFWMD watering guidelines, after the establishment of the landscape foliage, unless the irrigation is done with treated effluent.

15. All commitments made by the developer within the ADA related to question 23 (Water Supply) and subsequent sufficiency round information, not in conflict with the above recommendations, are hereby incorporated as conditions for approval.

D. FIRE PROTECTION

1. To mitigate its impacts upon provision of adequate fire protection, the developer must:

(a) Pay fire protection and emergency medical services impact fees;
and,

(b) Sprinkler all buildings in the project. (With the exception of the SunBank parcel on the corner of SR 78 and U.S. 41 south.); and

(c) Provide funds to North Fort Myers Fire Protection District to

purchase a 65-foot telesquirt fire truck or comparable equipment. This provision must be met within sixty days after the first building permit is obtained from Lee County for any building over two stories in height.

2. The Merchants Crossing DRI must comply with any duly adopted fire code and life safety code regulations unless deviations or variances are obtained from such regulations.

E. REGIONAL SHOPPING CENTER

The square footage and phasing of the development within each tract is set forth in attached Exhibit B.

The DRI development is limited to a maximum of 570,000 square feet.

F. VEGETATION/WILDLIFE/WETLANDS

Approximately 6.5 acres of the Merchants Crossing site occurs as two types of wetlands; 3.8 acres of freshwater marsh and 2.7 acres of mixed hardwood wetlands. The Developer has committed to significant wetland mitigation that features wetland marshes and a north/south creek, with adjacent floodplain vegetation. A portion of the 3.1 acres of the floodplain will be planted with hydric hammock species. This portion may not be less than the hardwood wetland area to be impacted.

Also on site is an approximate 4.9 acre oak and cabbage palm hammock/wetland hardwood system, (2.2-acre hammock/2.7-acre wetland). The developer has committed to save the significant elements of this system, representing 1.9 acres.

1. Prior to issuance of local Final Development Order, the developer must submit a vegetation plan. The preservation of the significant elements of the Oak/Cabbage Palm Hammock and adjacent Hardwood Wetland System must be in accordance with the Mitigation Plan attached as Exhibit C.

2. At the time of permit application to the SFWMD, the developer must provide detailed plans that indicate buffer areas adjacent to wetlands, the extent of encroachment into wetlands, information verifying control elevations will maintain adequate wetland hydroperiods, acreage figures and cross-sections for all mitigation areas, a mitigation proposal that does not result in a net loss of wetlands, and a mitigation proposal that includes a wetland monitoring and maintenance program, developed in accordance with adopted policies of the regulatory agencies.

3. Prior to the approval of a local Development Order for any phase of the development, the developer must submit and subsequently follow a Florida Game and

Freshwater Fish Commission (FGFWFC) approved Gopher Tortoise Management Plan.

4. The developer must provide for preservation and/or relocation on-site of the four listed plant species found on-site (e.g. golden polypody, prickly pear cactus, wild coco and whisk fern) to the satisfaction of FGFWFC and Lee County Division of Environmental Sciences.

5. All other commitments made by the developer in either the ADA or sufficiency round information, not in conflict with the above recommendations, are incorporated as conditions for development order approval.

G. TRANSPORTATION

1. The transportation impact assessment upon which this Development Order is based assumes the development patterns and land uses reflected in the Merchants Crossing DRI/ADA application. The application assumes one continuous phase of development with build out by the year ~~2012~~2014.

2. Merchants Crossing must submit an annual traffic monitoring report. The monitoring program must be designed in cooperation with the Lee County Department of Transportation the Southwest Florida Regional Planning Council and the Florida Department of Transportation. The annual monitoring report must contain at a minimum AM and PM, peak-hour peak season traffic counts (with turning movements) and mutually agreed upon professionally acceptable level of service analyses at all project access points onto the roadway network and at the following intersections:

SR 78 (Pine Island Rd.) at:
US 41
Pondella Rd.
Del Prado Blvd.
Santa Barbara Blvd.
SR 78 (Bayshore Rd.) at:
Business 41
Hart Rd.

Del Prado Blvd. at:
SR 78 (Pine Island Rd.)
Viscaya Pkwy.
Hancock Bridge Pkwy.
US 41 at:
Pondella Rd.

In addition, peak season daily traffic counts and level of service calculations must be submitted as part of the annual monitoring report for all project access roads and the roadway links listed below:

SR 78 (Pine Island Rd.)
Piney Rd. to Santa Barbara Blvd.

SR 78 (Bayshore Rd.)
Business 41 to Slater Rd.

Del Prado Blvd.
SR 78 to Viscaya Pkwy.

US 41
Hancock Bridge Pkwy. to Business 41

Business 41 from
SR 78 to Littleton Rd.

Pondella Rd.
US 41 to Orange Grove Blvd.

Merchants Crossing must submit the annual monitoring report to Lee County DOT, the Southwest Florida Regional Planning Council and the Florida Department of Transportation SW Area Office for review. The first report must be submitted one year after the issuance of the DRI Development Order for the property included in the Merchants Crossing DRI/ADA application. Reports must be submitted annually until project build out. Actual build out will occur when the developer has completed the construction authorized by this Development Order. Declared build out occurs if the developer formally declares in writing to the County Administrator that nothing more will be constructed despite the fact that less than the permissible maximum had been built to date. The purposes of the annual monitoring program are to:

- (a) Determine whether or not the traffic levels projected in the traffic impact assessment for Merchants Crossing are exceeded by actual impacts;
- (b) Assist Lee County and F.D.O.T. in determining the proper timing of necessary roadway improvements; and
- (c) Determine the project's external trip generation.

It is recognized and understood that traffic counts may be obtained from original machine and manual peak hour counts, Lee County traffic volume reports, Florida Department of Transportation, other ADA developments with similar monitoring requirements, and other reliable sources of traffic counts.

3. As mitigation for the transportation impacts of Merchants Crossing, the developer must provide the following:

a. The developer must make a cash payment of \$1,500,000 into an escrow account on or before October 1, 1993, or upon issuance of the first building permit, whichever occurs earlier. All interest earned on this account will accrue to the benefit of the County. A portion of this money (up to a maximum of \$1 million as further limited in paragraph G.3.f.) may be used for the widening of SR 78. The use of funds and terms of the escrow will be governed by a separate escrow agreement between the parties, and subject to approval by the County Attorney's office, which approval will not be unreasonably withheld. *This requirement has been satisfied.*

b. The developer must make a cash payment of \$791,370 on or before December 1, 1994, or upon issuance of the first building permit for Tract II, whichever occurred earlier as shown on the Master Concept Plan (M-1A, last revised July 1, 1991) attached to Zoning Resolution Z-90-034. The cash payments totaling \$2,291,370 may be considered as full credit against road impact fees. *This requirement has been satisfied.*

Should those provisions be repealed, amended or otherwise no longer in effect as part of Ordinance 89-17, as amended, they must nevertheless govern availability of credits under this Development Order as those provisions existed on the effective date of this Development Order.

c. Within 90 days of approval of the DRI Development Order, the developer must donate the right-of-way needed for widening SR 78 (Pine Island Road) and US 41 to the Florida Department of Transportation (FDOT), and must donate the 100 feet of right-of-way needed to extend Diplomat Parkway to the County. No roads impact fee credits may be applied for, or granted for, this right-of-way. *This requirement has been satisfied.*

d. The developer must construct, at no cost to the County, the following improvements to SR 78:

1) Re-sign the northbound US 41 approach to encourage northbound right turns at SR 78 to be made as right turns at Brown Road.

2) Reconstruct the eastbound/westbound approaches to provide a four-lane cross-section through the US 41 intersection and eliminate the "plateau" effect.

3) Re-time/re-phase the signal at the US 41/SR78 intersection to reflect the above improvements and to provide for protected and permissive left-turn movements.

The developer may not request or be granted roads impact fee credits to offset the cost of these intersection improvements.

The developer must submit the construction plans for the above intersection improvements within 120 days following approval of the DRI for filing with the County and State for their review. The developer may commence construction of the intersection improvements within 90 days of obtaining the permits for such improvements and will diligently pursue the work to its completion. The intersection improvements must be completed prior to obtaining any Certificates of Occupancy or Completion for any portion of the development.

Intersection improvements must be depicted on construction drawings prepared by the developer, which are subject to review and approval by Lee County DOT and FDOT. These plans are subject to modification as necessary to obtain FDOT approval, and as determined by DOT, to comply with the specifications for the interim improvements as recommended in the Lee County/DCA Settlement Agreement. The development cost includes the total engineering costs for the intersection.

The developer's obligation includes the full cost of design and engineering, drainage and relocation, right-of-way acquisition and dedication, construction of turn-lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing and signalization (as needed and warranted). The alignment, design, signalization and construction schedule must be approved by the County Engineer. *This requirement has been satisfied.*

e. The developer must donate the right-of-way for the remaining enclaved out-parcel on SR 78, or pay the full cost of condemnation if the property cannot be acquired, including attorney and appraisal fees. *This requirement has been satisfied.*

f. The developer must construct two additional travel lanes to SR 78 from US 41 west to the developer's westerly property line, then tapering back into the existing roadway. The improvements for SR 78 will be depicted on construction plans for SR 78, prepared by the developer, which are subject to review and approval by Lee County DOT and FDOT to ensure that they are consistent with the four-lane divided facility designed for SR 78, west of Piney Road. The developer may be reimbursed from the \$1,500,000 deposited in escrow by the developer pursuant to paragraph G.3.a. above for the non-site-related cost, up to a total of \$1 million. The amount is subject to review and approval by DOT, via approval of bid documents or any other necessary documentation. These improvements must be completed prior to obtaining any Certificates of Occupancy or Completion for any portion of the development. Merchants Crossing will pay all costs in excess of \$1 million to complete the SR 78 highway improvements at no cost to the County or FDOT. *This requirement has been satisfied.*

g. Once funds are placed in escrow, \$200,000 will be immediately transferred to FDOT for the acquisition of future right-of-way for SR 78 from the

westerly boundary of the developer's property to Piney Road. In lieu of an additional payment of \$300,000 to FDOT from the escrow account for SR 78 right-of-way acquisition, Lee County, pursuant to its agreement with FDOT, has applied \$800,000 in County road impact fees toward the construction of the four-lane improvements on SR 78 from US 41 east, one-half mile. After making the payments identified above, the balance of the funds in the escrow account were released to Lee County.

4. In addition to the payment of monies and other obligations specified in the Development Order, the developer or its successor is required to construct, at no cost to Lee County and the Florida Department of Transportation, all site-related improvements deemed necessary by Lee County and the Florida Department of Transportation. Site-related improvements include any improvement deemed site-related at the time of construction under the definition contained in the Roads Impact Fee Land Development Code Chapter 10. The developer's obligation includes the full cost of design and engineering, drainage and utility relocation, right-of-way acquisition and dedication, construction of turn lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing and signalization (as needed and warranted). The alignment, design, signalization, and construction schedule must be approved by the Lee County Engineer. The developer must pay the full cost for any site-related intersection improvements found necessary by the County or FDOT for the project's access intersection onto US 41 and SR 78. The developer may construct said improvements if approved by the County Engineer.

5. Nothing contained in this Development Order is to imply or supersede Florida DOT permitting requirements.

6. Access to US 41 and SR 78 from the Merchants Crossing proposed access points located closest to the US 41/SR 78 intersection is subject to FDOT permitting requirements and is to be limited to right-turn-in/right-turn-out and left-turn-in only movements for US 41.

7. Nothing contained in this Development Order may be construed to exempt this development from participation in the funding, through Municipal Services Benefit Units (MSBU) or other special assessment districts, of improvements to various State and County arterial and collector roads to the degree to which this development generates demand or is benefited.

8. The \$2,291,307 proportionate share payment made in accordance with paragraphs G.3.a. and b. discharges the Merchants Crossing DRI traffic impact responsibility for 555,000 square feet of development as approved under the 5th DRI Development Order Amendment and preceding DRI Development Order approvals.

9. An additional 15,000 square feet of commercial development was approved under the 6th DRI Development Order Amendment. As to this 15,000 square feet, the developer is required to pay all impact fees, including roads, attributable to development in accord with Land Development Code Chapter 2. In effect this means

that all square footage added or constructed above 555,000 square feet is required to pay impact fees.

To ensure this occurs, the developer must submit a cumulative update to the square footage calculation attached to ZVL2006-00079 as support for the issuance of any building permit issued after June 1, 2008. A copy of the ZVL calculation list updated through March 3, 2008 is attached as Exhibit E.

10. Compliance with all of the terms of the transportation related provisions of this development order satisfy the substantive requirements related to transportation facilities of Section 163.3202(2)(g), Florida Statutes (1989), Lee County Ordinance 89-33, the Lee County Comprehensive Plan and Rule 9J-5.0055, Florida Administrative Code, as they currently apply.

H. SOLID WASTE

1. The developer and tenants of the project must incorporate the solid waste demands of the project into the county solid waste management program and investigate methods of reducing solid waste volume, to include but not be limited to, conservation, recycling, trash compaction, and mechanical shredding at the project.

2. The developer and subsequent tenants of the project, must identify the proper methods for the on-site handling, and temporary storage procedures for any hazardous wastes that may be generated on-site, in accordance with local, regional, state and federal hazardous waste programs.

I. WASTEWATER MANAGEMENT

1. Treatment of wastewater will be provided by North Fort Myers Utility, Inc.

2. Septic tanks may be used only for the temporary construction trailer and temporary leasing office, but must be removed as soon as service is available from North Fort Myers Utilities.

3. Septic tanks may not be used for the disposal of any substance which is identified in federal, state or local lists as a hazardous substance.

4. As the Merchants Crossing DRI may eventually reuse treated effluent for spray irrigation, the developer must ensure that on-site ponds, lakes and wetlands are adequately buffered from possible effluent contamination.

5. The developer must provide assurance that commercial effluent, if generated by the project, will be treated separately from domestic wastewater and handled in accordance with FDER criteria.

6. The developer must obtain all necessary permits from SFWMD and Florida Department of Environmental Regulation (FDER) for the use of spray irrigation/effluent reuse.

J. **CONCURRENCY**

Approval of this Development Order does not exempt the developer from compliance with State concurrency rules or any concurrency management system adopted by Lee County, except for transportation addressed separately in condition G:10. of this Development Order.

K. **GENERAL CONSIDERATIONS**

1. All commitments and impact mitigating actions provided in the Application for Development Approval (and supplementary documents) that are not in conflict with specific conditions for project approval outlined above are officially adopted as conditions of approval.

2. Pursuant to Section 380.06(16), the developer may be subject to credit for contributions, construction, expansion or acquisition of public facilities, if the developer is also subject by local ordinances to impact fees or exactions to meet the same needs. The local government and the developer may enter into a capital contribution front-ending agreement to reimburse the developer for voluntary contributions in excess of his fair share.

3. The development phasing plan (f/k/a construction target plan) presented within the ADA and as adjusted to date of Development Order approval is incorporated as a condition of approval. If Development Order conditions and developer commitments incorporated within the development order to mitigate regional impacts are not carried out as indicated to the extent or in substantial accordance with the Development Order, then this will be presumed to be a substantial deviation for the affected regional issue. The development phasing plan has been amended and the amendments contained in the current development phasing plan attached as Exhibit B do not create a presumption of a substantial deviation for any affected regional issue.

4. As required by Section 380.06(18), Florida Statutes, the developer must submit a biennial monitoring report (see Exhibit D) to Lee County, the SWFRPC, and the Department of Community Affairs.

III. **LEGAL EFFECT AND LIMITATIONS OF THIS DEVELOPMENT ORDER, AND ADMINISTRATIVE REQUIREMENTS**

1. **Resolution.** This Development Order constitutes a resolution of Lee County, adopted by the Board of County Commissioners in response to the Development of Regional Impact Application for Development Approval filed for the Merchants Crossing DRI.

2. Additional Developer Commitments. All commitments and impact mitigating actions volunteered by the developer in the ADA and supplementary documents not in conflict with conditions or stipulations specifically enumerated above are hereby incorporated by reference into this Development Order. These documents include the following:

- (a) Merchants Crossing ADA, July 11, 1989;
- (b) Merchants Crossing DRI sufficiency response, September 27, 1989; and
- (c) Merchants Crossing DRI sufficiency response, November 22, 1989.

3. Binding Effect. This Development Order is binding upon the developer and its assignees or successors in interest. Those portions of this Development Order that clearly apply only to the project developer, are binding upon any builder/developer who acquires any tract of land within Merchants Crossing, but may not be construed to be binding upon future tenants.

4. Reliance. It is hereby declared that the terms and conditions set out in this document constitute a basis upon which the developer and County may rely in future actions necessary to implement fully the final development contemplated by this Resolution and Development Order.

5. Enforcement. All conditions, restrictions, stipulations and safeguards contained in this Resolution and 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, will be paid by the defaulting party.

6. Successor Agencies. Any reference herein to a governmental agency will be construed to mean any future instrumentality that may be created and designated as successors 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.

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

8. Applicability of Regulations. The approval granted by this Development Order is limited. Such approval may 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. Such approval does not obviate the duty of the developer to comply with County Ordinances or other regulations adopted after the effective date of this Development Order, to the extent that those regulations and

requirements do not negate any rights granted herein.

9. Further Review. Subsequent requests for local development permits may not require further review pursuant to Section 380.06, Florida Statutes, unless it is found by the Board of County Commissioners, after due notice and hearing, that one or more of the following is present:

(a) A substantial deviation from the terms or conditions of this Development Order, or other changes to the approved development plans that create a reasonable likelihood of adverse regional impacts or other regional impacts not evaluated in the review by the SWFRPC; or

(b) An expiration of the period of effectiveness of this Development Order as provided herein.

Upon a finding that either of the above is present, the Board may order a termination of all development activity in the area of the development affected by the substantial deviation until such time as a new DRI ADA has been submitted, reviewed and approved in accordance with Section 380.06, Florida Statutes, and all local approvals have been obtained.

10. Termination Date. This Development Order terminates on October 28, ~~2012~~ 2014 at midnight, unless an extension is approved by the Board. An extension may be granted by the Board of County Commissioners if the project has been developing substantially in conformance with the original plans and approval conditions, and if no substantial adverse impacts not known to the Southwest Florida Regional Planning Council or to Lee County at the time of their review and approval, or arising due to the extension, have been identified.

11. Build out date. The established build out date is October 28, ~~2012~~ 2014. Extension of the build out date beyond ~~2012~~ 2014 maybe subject to further development of regional impact review pursuant to Section 380.06(19), Florida Statutes. An extension of the date of build out of a development by seven or more years is presumed to create a substantial deviation subject to further development-of-regional-impact review. The presumption may be rebutted by substantial, competent evidence at the public hearing held by Lee County. For the purpose of calculating when a build out date has been exceeded, the time is tolled during the pendency of administrative and judicial proceedings relating to development permits.

12. Assurance of Compliance. The Administrative Director of the Lee County Department of Community Development or his/her designee, is the local official responsible for assuring compliance with this Development Order.

13. Protection of Development Rights. The development will not be subject to

down-zoning, unit density reduction, or intensity reduction, until October 28, ~~2012~~ 2014, unless the County demonstrates that substantial changes have occurred in the conditions underlying the approval of this Development Order including, but not limited to, such factors as a finding that the Development Order was based on substantially inaccurate information provided by the developer, or that the change is clearly established by local government to be essential to the public health, safety and welfare.

14. Biennial Reports. The developer, or its successor(s) in title to the undeveloped portion of the subject property must submit a report biennially to Lee County, the Southwest Florida Regional Planning Council, the State land planning agency (the Department of Community Affairs), and all affected permit agencies. This report must describe the state of development and compliance as of the date of submission, and be consistent with the rules of the State land planning agency. The report must include information contained in Exhibit D, as further modified or otherwise updated by the State land planning agency. The first monitoring report must be submitted to the Administrative Director of the Department of Community Development not later than one year after the effective date of this Development Order, and further reporting must be submitted not later than May 1st of subsequent calendar years thereafter, until build out. Failure to comply with this reporting procedure is governed by Section 380.06 (18), Florida Statutes, and the developer must so inform any successor in title to any undeveloped portion of the realproperty covered by this Development Order. This may not be construed to require reporting from tenants or owners of individual lots or units.

15. Transmittal and Effective Dates. Certified copies of this Development Order will be forwarded to the Southwest Florida Regional Planning Council, the developer, and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but is not effective until the expiration of the statutory appeals period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater.

Upon this Development Order becoming effective, notice of its adoption must be recorded by the Developer in the office of the Clerk of the Circuit Court, as provided in Section 380.06(15), Florida Statutes.

Commissioner Hall made a motion to adopt the ~~Seventh~~ Eighth Development Order Amendment to the Merchants Crossing DRI. The motion was seconded by Commissioner Manning. The vote was as follows:

John E. Manning	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 4th day of January 2011.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

By: Marcia Wilson
Deputy Clerk

By: Frank Mann
Frank Mann, Chair

APPROVED AS TO FORM

By: Michael D. Jacob
County Attorney's Office



- Exhibits
- A - Map H
- B - Phasing Plan
- C - Mitigation Plan
- D - Monitoring
- E - Square Footage Calculation



I CERTIFY THIS DOCUMENT TO BE A
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE
CHARLIE GREEN, CLERK CIRCUIT COURT
LEE COUNTY, FLORIDA
DATED: 1-10-11

BY: Marcia Wilson
Deputy Clerk

**EXHIBIT B
PHASING PLAN
MERCHANTS CROSSING OF NORTH FORT MYERS**

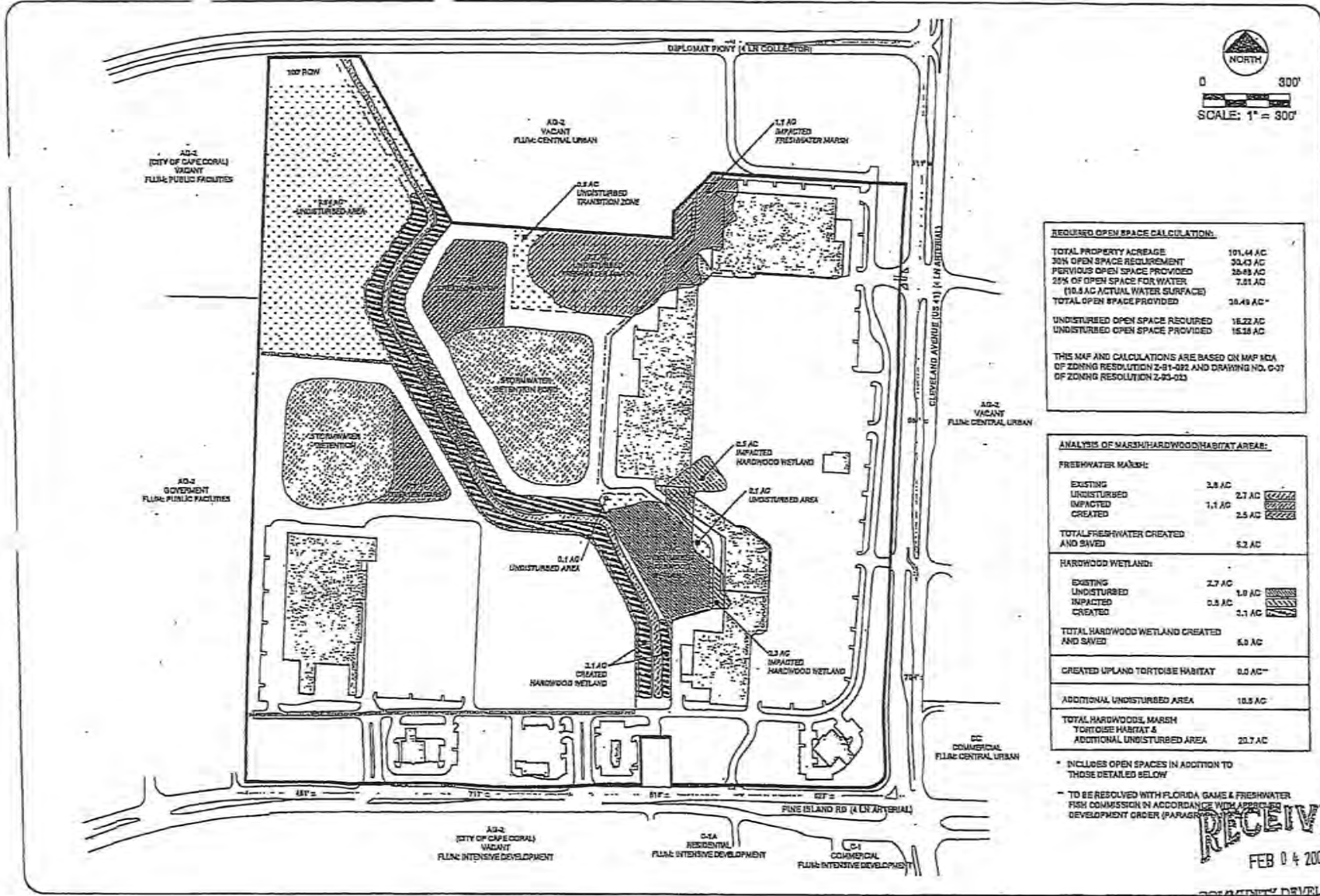
	EXISTING	BUILDOUT (Oct. 2012-2014)
PHASE I:		
RETAIL & ENTERTAINMENT CENTER	359,000	359,000 sf
PERIMETER PARCELS	12,000	12,000 sf
TOTAL PHASE I:	371,000	371,000 sf
PHASE II:		
RETAIL & ENTERTAINMENT CENTER	154,819	166,819 sf
PERIMETER PARCELS	6,384	32,181sf
TOTAL PHASE II:	161,203	199,000 sf
TOTAL PHASES I & II:	532,203	570,000 sf

Note:

Total square footage allocated to the Perimeter Parcels is 44,181 square feet. The Applebee's parcel is not considered to be a Perimeter Parcel for purposes of this calculation.

Any unallocated Perimeter Parcel square footage may be reallocated to the Retail and Entertainment Center.

Exhibit C



REQUIRED OPEN SPACE CALCULATION:

TOTAL PROPERTY ACREAGE	101.64 AC
30% OPEN SPACE REQUIREMENT	30.43 AC
PERVIOUS OPEN SPACE PROVIDED	35.83 AC
25% OF OPEN SPACE FOR WATER (10.5 AC ACTUAL WATER SURFACE)	25.81 AC
TOTAL OPEN SPACE PROVIDED	38.49 AC*
UNDISTURBED OPEN SPACE REQUIRED	18.22 AC
UNDISTURBED OPEN SPACE PROVIDED	18.28 AC

THIS MAP AND CALCULATIONS ARE BASED ON MAP NO. 4 OF ZONING RESOLUTION 2-91-022 AND DRAWING NO. C-37 OF ZONING RESOLUTION 2-93-023

ANALYSIS OF MARSH/HARDWOOD/HABITAT AREAS:

FRESHWATER MARSH:		
EXISTING UNDISTURBED	2.8 AC	
IMPACTED	1.1 AC	2.7 AC
CREATED		2.5 AC
TOTAL FRESHWATER CREATED AND SAVED		5.2 AC
HARDWOOD WETLAND:		
EXISTING UNDISTURBED	2.7 AC	
IMPACTED	0.5 AC	1.8 AC
CREATED		2.1 AC
TOTAL HARDWOOD WETLAND CREATED AND SAVED		6.9 AC
CREATED UPLAND TORTOISE HABITAT	0.0 AC**	
ADDITIONAL UNDISTURBED AREA	10.5 AC	
TOTAL HARDWOODS, MARSH TORTOISE HABITAT & ADDITIONAL UNDISTURBED AREA	20.7 AC	

* INCLUDES OPEN SPACES IN ADDITION TO THOSE DETAILED BELOW

** TO BE RESOLVED WITH FLORIDA GAME & FRESHWATER FISH COMMISSION IN ACCORDANCE WITH APPROVED DEVELOPMENT ORDER (PARAGRAPH 10.0)

RECEIVED

MORRIS DEWEY

11/1/07

FEB 04 2008

COMMUNITY DEVELOPMENT

MITIGATION PLAN

MERCHANTS CROSSING DR

RECEIVED

OCT 16 2007

AZ

11/1/07

11/1/07

11/1/07

EXHIBIT D

INFORMATION TO BE INCLUDED
IN MONITORING REPORT

- (a) Any changes in the plan of development, or in the representations contained in the ADA, or in the phasing plan for the reporting year and for the next year;
- (b) A summary comparison of development activity proposed and actually conducted for the reporting period;
- (c) Undeveloped tracts of land that have been sold to a separate entity or developer;
- (d) Identification and intended use of lands purchased, leased or optioned by the developer adjacent to the original DRI site since the development order was issued;
- (e) An assessment of the developer's and the local government's compliance with the conditions of approval contained in the DRI development order and the commitments contained in the Application for Development Approval that have been identified by the local government, the Regional Planning Council or the Department of Community Affairs as being significant;
- (f) Any known incremental DRI applications for development approval of requests for a substantial deviation determination that were filed in the reporting year and to be filed during the next year;
- (g) An indication of a change, if any, in local government jurisdiction for any portion of the development since the development order was issued;
- (h) A list of significant local, state and federal permits that have been obtained or are pending by agency, type of permit, permit number and purpose of each;
- (i) A statement that all persons have been sent copies of the biennial report in conformance with section 380.06(18), Florida Statutes;
- (j) A copy of any recorded notice of the adoption of a development order or the subsequent modification of an adopted development order that was recorded by the developer pursuant to Section 380.06(15), Florida Statutes; and
- (k) Monitoring reports, including:
 - (i) Water quality monitoring reports (for review by Lee County and South Florida Water Management District);
 - (ii) Transportation monitoring reports (for review by Lee County, FDOT and SWFRPC).

MERCHANTS CROSSING DRI: SQUARE FOOTAGE CALCULATIONS		
STRAP #	Built Square Footage	Use Type
34-43-24-03-0000A.0000	107,689	K-Mart ⁽¹⁾
34-43-24-03-0000B.0000		
Building 1 ⁽¹⁾	5,916	Heavenly Pizza occupies 1,500 sf of total(no outdoor seating)
Building 2 ⁽¹⁾	35,154	
Building 3 ⁽¹⁾	18,388	
Building 4 ⁽¹⁾	41,214	
Building 5 ⁽¹⁾	23,500	
Building 6 ⁽¹⁾	53,015	Movie Theater
Building 7 ⁽¹⁾	12,494	Obee's Subs occupies 1,110 sf J's & B's occupies 3,100 sf
Building X	29,295	COM2005-00072
34-43-24-03-0000G.0000	5,152	Applebee's
34-43-24-03-0000H.0000	75,217	Beall's.COM2007-00397 ⁽²⁾
34-43-24-03-0000I.0000	106,785	Home Depot
34-43-24-03-0000K.0000	0	Vacant
34-43-24-03-0000M.0000	4,491	Wachovia Bank
34-43-24-03-0000N.0000	2,499	Lion's Choice COM2006-00048 ⁽³⁾
34-43-24-03-0000O.0000	2,878	McDonald's
34-43-24-03-0000P.0000	2,242	Popeye's
34-43-24-03-0000Q.0000	3,750 ⁽⁴⁾	Vacant ⁽⁴⁾
34-43-24-03-0000R.0000	0	Vacant
34-43-24-03-0000S.0000	6,274	Sun Bank
Total Restaurant Square Footage	18,481	
Total Non-Restaurant Square Footage	513,722	
Total Square Footage Built	532,203	
Total Square Footage Remaining (from original 555,000 square feet)	22,797	

Note:

- ⁽¹⁾ Building numbers as shown on the Lee Property Appraiser's website.
- ⁽²⁾ Square footage permitted and under construction but not complete as of 03/03/08.
- ⁽³⁾ Square footage permitted and built, but not added to table until 03/03/08 update.
- ⁽⁴⁾ Proposed bank DOS2008-00030, under review by RSM 03/03/08

EXHIBIT E

ZVL-2006-00079

RESOLUTION NO. 11-12-06

RESOLUTION PERTAINING TO STATUTORY
EXTENSION OF DRI COMMENCEMENT DATE FOR
THE MERCHANTS CROSSING DRI.

WHEREAS, in 2011, the Governor of the State of Florida signed House Bill 7207 into law, which provided a four-year extension of DRI Development Orders; and,

WHEREAS, HB7207 now Chapter 2011-139, Laws of Florida allows for a four-year extension of the commencement, phase, build out, and expiration dates of DRI Development Orders upon written request that have an expiration date; and,

WHEREAS, the holder of a valid DRI Development Order must notify the local government in writing no later than December 31, 2011, of the intention to utilize the extension and the anticipated timeframe for acting on the authorization; and,

WHEREAS, the Board finds that the Merchants Crossing DRI qualifies for the extension contemplated by Chapter 2011-139, Laws of Florida since a request for extension was submitted within the necessary time frame established by Statute; and,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA that:

1. The above stated recitals are incorporated into this Resolution by reference.
2. The DRI Development Order for Merchants Crossing DRI is hereby amended as reflected in the attached Exhibit A.
3. This Resolution and its exhibits constitute the Ninth Codified Development Order Amendment to the Merchants Crossing Development of Regional Impact. Development of the project must be consistent with the DRI Development Order attached as Exhibit A and the governing zoning approvals.
4. Certified copies of this Resolution will be forwarded to the Southwest Florida Regional Planning Council, the Florida Department of Economic Opportunity, and other appropriate agencies. This amendment is rendered as of the date of transmittal, but will not be effective until the expiration of the statutory appeal period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater. Once effective, the Notice of Adoption of this

Development Order Amendment must be recorded as provided for in Chapter 380, Florida Statutes.

Commissioner Tammara Hall made a motion to adopt the foregoing resolution. The motion was seconded by Commissioner Frank Mann. The vote was as follows:

John E. Manning	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 6th day of December 2011.

ATTEST:

CHARLIE GREEN, CLERK

BOARD OF COUNTY
COMMISSIONERS
LEE COUNTY, FLORIDA

By: Marcia Wilson
Deputy Clerk

By: John E. Manning
John E. Manning, Chair

APPROVED AS TO FORM

By: [Signature]
County Attorney's Office



Exhibit A - Ninth Amendment to Merchants Crossing DRI Development Order

STATE OF FLORIDA

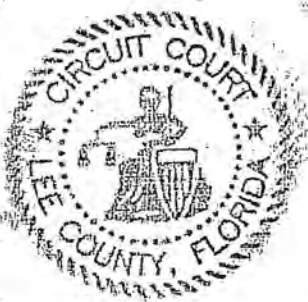
COUNTY OF LEE

I Charlie Green, Clerk of Circuit Court, Lee County, Florida, and ex-Officio Clerk of the Board of County Commissioners, Lee County, Florida, do hereby Certify that the above and foregoing is a true and correct copy of Resolution No. 11-12-06 adopted by the Board of Lee County Commissioners at their meeting held on the 6th day of December, 2011.

Given under my hand and seal, at Fort Myers, Florida, this 12th day of December, 2011.

CHARLIE GREEN,
Clerk of Circuit Court
Lee County, Florida

By: *Marcia Wilson*
Deputy Clerk



NINTH DEVELOPMENT ORDER AMENDMENT¹
FOR
MERCHANTS CROSSING
A DEVELOPMENT OF REGIONAL IMPACT
STATE DRI #7-8889-92
COUNTY CASE #DRI2011-00019

WHEREAS, pursuant to Section 380.06 of the Florida Statutes, the Board of County Commissioners of Lee County, Florida, (Board) heard at a public hearing, the application for development approval for Merchants Crossing, a commercial development in Lee County which consisted of approximately one hundred four acres to be developed in accordance with the application filed on July 11, 1989; and

WHEREAS, the Board adopted the Merchants Crossing DRI Development Order on October 31, 1990; and

WHEREAS, the DRI Development Order was subsequently amended on October 14, 1991 to increase the approved square footage of retail development, delete motel and office uses, increase the indigenous open space, adjust the transportation mitigation payment and change the construction target plan; and

WHEREAS, the DRI Development Order was thereafter amended a second time on June 30, 1993 to (1) increase the square footage approved for retail uses; (2) amend the construction target plan; and (3) add additional property to the development order; and

WHEREAS, on September 26, 1994, the County authorized the construction of a 16-screen movie theater without a formal Notice of Proposed Change by subtracting the square footage of the expanded movie theater from the approved retail square footage; and

WHEREAS, on April 2, 1997, the DRI Development Order was amended a third time to extend the start date, build out date, termination date, and down zone protection date of the project by less than five years to October 28, 2000; and

WHEREAS, on April 30, 2001 the DRI Development Order was amended a fourth time to extend the build out, termination, and down zone protection dates of the project to October 28, 2007; and

¹This is a codification and restatement of all DRI Development Orders rendered with respect to Merchants Crossing DRI, including actions taken on October 31, 1990, October 14, 1991, June 30, 1993, April 2, 1997, April 30, 2001, September 11, 2007, August 18, 2008, January 26, 2010, ~~and~~ January 4, 2011, and December 6, 2011.

WHEREAS, pursuant to HB7203, as reflected in Board Resolution 07-09-18, adopted September 11, 2007, the Development Order was amended a fifth time to extend the build out date to October 28, 2010; and,

WHEREAS, on August 18, 2008 the DRI Development Order was amended a sixth time to (1) add 15,000 square feet of retail commercial; and, (2) eliminate the limitation on the number of restaurants permitted within the development; and

WHEREAS, on January 26, 2010, pursuant to Senate Bill 360 the DRI Development Order was amended a seventh time to extend the DRI build out date from October 28, 2010 to October 28, 2012; and,

WHEREAS, on January 4, 2011, pursuant to Senate Bill 1752, the DRI Development Order was amended an eighth time to extend the DRI build out date from October 28, 2012 to October 28, 2014; and,

WHEREAS, on June 2, 2011, House Bill 7207 (HB 7207) was signed into law by the Governor of the State of Florida. HB 7207, as codified in Chapter 2011-139, Laws of Florida, authorizes a four year extension for all valid DRI Development Orders. At the option of the developer, all commencement, phase, buildout and expiration dates for valid Developments of Regional Impacts may be extended by four (4) years regardless of previous extensions issued in the past; and

WHEREAS, on August 9, 2011, Lee County received a request to extend the DRI compliance dates as contemplated under HB 7207; and

WHEREAS, Merchants Crossing DRI qualifies for the extension of the DRI compliance dates.

NOW THEREFORE, be it resolved by the Board of County Commissioners that the development order for Merchants Crossing DRI is further amended as follows:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Merchants Crossing DRI is a commercial development in northern Lee County originally consisting of 104.66 acres (includes property ultimately used for right-of-way improvements on State Route 78 and US 41). The development is proposed to consist of 570,000 square feet of retail commercial, 28 acres of lakes and sloughs for water management and wetland mitigation, 6.1 acres of preservation area and 4 acres of roads. The plan proposed by the developer is depicted in Map H, attached as Exhibit A and described further in the phasing plan attached as Exhibit B.

B. The legal description of the project is as follows:

A portion of the Southwest Quarter (SW1/4) of Section 34, Township 43 South, Range 24 East, Lee County, Florida, being more particularly described as follows:

COMMENCING AT the Southwest corner of said Section 34; THENCE N 03°25'58" E, along the West line of the Southwest Quarter (SW1/4) of said Section 34, a distance of 73.52 feet, to the POINT OF BEGINNING of this description; THENCE continue N 03°25'58" E, along the last described course, a distance of 2,484.86 feet, to a point on a line parallel with and 100 feet South of, as measured at Right angles to the North line of the Southwest Quarter (SW1/4) of said Section 34; THENCE S 89°56'05" E, along said parallel line, a distance of 264.66 feet; THENCE S 28°32'36" E, a distance of 664.99 feet; THENCE S 86°34'00" E, a distance of 747.11 feet; THENCE N 03°26'00" E, a distance of 100.00 feet; THENCE N 48°25'58" E, a distance of 212.13 feet; THENCE S 86°34'00" E, a distance of 650.00 feet, to the Westerly right-of-way line of US 41 (SR 45); THENCE S 03°25'53" W, along said right-of-way line, a distance of 718.01 feet; THENCE S 06°17'38" W, along said right-of-way line, a distance of 240.30 feet; THENCE S 03°25'53" W, along said right-of-way line, a distance of 409.75 feet; THENCE S 08°42'37" W, along said right-of-way line, a distance of 315.20 feet, to a point on the arc of a circular curve to the left, whose radius point bears S 86°34'07" E from said point; THENCE Southerly along said right-of-way line and the arc of said curve, having a radius of 3,005.79 feet, a central angle of 05°09'06", and a chord bearing of S 00°51'20" W, an arc distance of 270.27 feet, to the Point of Reverse Curvature of a circular curve to the right; THENCE Southerly and Westerly, along the arc of said curve, having a radius of 100.00 feet, a central angle of 93°29'08" and a chord bearing of S 45°01'21" W, an arc distance of 163.16 feet, to the Point of Tangency and the Northerly right-of-way line of Pine Island Road (SR 78); THENCE N 88°14'05" W, a distance of 383.15 feet; THENCE N 89°57'42" W, a distance of 196.50 feet, to the Easterly line of those lands described in Official Records Book 421, Page 480, as recorded in Public Records of Lee County, Florida; the last two courses being along the Northerly right-of-way line of said Pine Island Road (SR 78); THENCE N 00°04'40" E, along said Easterly line, a distance of 142.10 feet, to the Northerly line of those lands described in said Official Records Book 421, Page 480; THENCE N 89°55'20" W, along said Northerly line, a distance of 100.00 feet, to the Westerly line of those lands described in said Official Records Book 421, Page 480; THENCE S 00°04'40" W, along said Westerly line, a distance of 142.17 feet, to the Northerly line of said Pine Island Road (SR 78); THENCE N 89°57'42" W, a distance of 259.57 feet; THENCE S 00°02'18" W, a distance of 12.00 feet; THENCE N 89°57'42" W, a distance of 255.32 feet; THENCE N 86°08'51" W, a distance of 180.40 feet; THENCE N 89°57'42" W, a distance of 274.68 feet; THENCE S 00°02'18" W, a distance of 12.00 feet; THENCE N 89°57'42" W, a distance of 230.03 feet, to the Point of Curvature of a circular curve to the left; THENCE Westerly along the arc of said curve, having a radius of 2,944.29 feet, a

central angle of 03°10'09" and a chord bearing of S 88°27'14" W, an arc distance of 162.86 feet, to the POINT OF BEGINNING, the last eight (8) courses being along the Northerly right-of-way line of said Pine Island Road (SR 78).

CONTAINING 101.44+ acres. (Does not include property used for right-of-way improvements to State Road 78 and US 41)

C. The project's zoning is Commercial Planned Development (CPD), pursuant to the authority of Chapter 163, Florida Statutes, Laws of Florida 61-2405, and the Lee County Zoning Regulations, as amended.

D. The Application for Development Approval is consistent with the requirements of Section 380.06, Florida Statutes.

E. The development is not located in an area designated as an Area of Critical State Concern, pursuant to the provisions of Section 380.05, Florida Statutes.

F. The development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.

G. The development has been reviewed by the Southwest Florida Regional Planning Council and is the subject of the report and recommendations adopted by that body. The development, as proposed in the Application for Development Approval and modified by this Development Order Amendment, is consistent with the report and the recommendations of the Southwest Florida Regional Planning Council pursuant to Section 380.06(12).

H. Concurrently with the adoption of the original DRI Development Order, the property was rezoned in accordance with Lee County Zoning Ordinance 86-17, as amended. The Zoning Resolution, as amended, contains additional details and conditions pertaining to the Merchants Crossing development, and also provides for certain deviations from Lee County zoning and development regulations.

I. The development is located in the Intensive Development and Central Urban classifications of the Lee Plan and is consistent with the Lee County Comprehensive Plan and Lee County's Land Development Regulations as conditioned in this Development Order.

J. The proposed conditions below meet the criteria found in Section 380.06(15)(d), Florida Statutes.

K. The build out date is October 28, ~~2014~~2018.

L. Merchants Crossing DRI qualified for the statutory three-year extension to all phase, build out and expiration dates granted by the 2007 Florida Legislature under House Bill 7203 (amending F.S. §380.06(19)(c)) and signed into law on June 19, 2007. The Board of County Commissioners granted the extension pursuant to Lee County Resolution 07-09-18, as the Fifth Amendment to the Merchants Crossing DRI Development Order, adopted on September 11, 2007. Under HB7203, the three year extension was not a substantial deviation, was not subject to further Development of Regional Impact review, and may not be considered when determining whether a subsequent extension is a substantial deviation under F.S. §380.06(19)(c).

M. Senate Bill 360 was signed into law by the Governor of the State of Florida on June 1, 2009 (codified as a note to F.S. §§373.414 and 380.06). SB360 provided a statutory two-year extension for DRIs with build out dates between September 1, 2008 through January 1, 2012. The Board of County Commissioners recognized the statutory extension in Lee County Resolution 09-06-22, adopted by the Board on June 23, 2009.

Pursuant to SB360, Merchants Crossing DRI qualified for a two-year extension of its build out date from October 28, 2010 to October 28, 2012. Under Lee County Resolution 09-06-22, concurrency vesting was also extended to October 28, 2012, consistent with the build out extension. Under SB 360, the two-year extension did not constitute a substantial deviation from the original DRI development approvals warranting further DRI review.

N. On May 28, 2010, Senate Bill 1752 into law (hereinafter SB1752) was signed into law by the Governor. SB1752 provides for an additional two-year extension of local government issued development permits that have with an expiration date between September 1, 2008 through January 1, 2012. Pursuant to SB1752, Merchants Crossing DRI qualified for a two-year extension of its build out date from October 28, 2012 to October 28, 2014. Under SB1752, the two-year extension does did not constitute a substantial deviation from the original DRI development approvals warranting further DRI review.

O. House Bill 7207 (HB7207), signed into law by the Governor of the State of Florida on June 2, 2011 (as codified in Chapter 2011-139, Laws of Florida), authorized a four (4) year extension for all valid DRI Development Orders. At the option of the developer, all commencement, phase, buildout and expiration dates for valid Developments of Regional Impacts may be extended by four years regardless of previous extensions issued in the past.

In accord with HB 7207, Merchants Crossing DRI qualified for the extension of the DRI's compliance dates. Under HB 7207, the extension of the DRI's compliance dates does not constitute a substantial deviation of the original development order approvals warranting further DRI review.

II. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Lee County, Florida, that the requested amendments to the Merchants Crossing DRI are hereby approved, subject to the following conditions, restrictions, and limitations:

A. DRAINAGE/WATER QUALITY

1. The developer must participate in any on-going or future efforts by Lee County to establish a County-wide Watershed Basin Management Plan.

2. The developer and his successor must implement and maintain an on-going monitoring and maintenance program that regularly inspects, maintains, and samples the storm water drainage system, including lake and wetlands monitoring during and after the development of Merchants Crossing. The developer must establish the legal entity that will carry out this program after tracts and/or units are sold; the documents creating such entity must be approved by the Lee County Attorney's Office and the South Florida Water Management District (SFWMD) prior to the implementation of the monitoring program. The program must be designed in consultation with the staffs of the Southwest Florida Regional Planning Council (SWFRPC), the South Florida Water Management District, and Lee County. Final approval of the program rests with the Lee County Department of Community Development. The purpose of this program is to ensure that the storm water drainage system functions in every aspect as planned. Should the monitoring program indicate that the system is not functioning as planned, or is not constructed in accordance with all approved plans, permits, or county requirements, or is not meeting water quality standards of the applicable agencies, further development approvals may not be granted until the developer has completed corrective measures as specified by Lee County.

A monitoring and maintenance program has been approved by the Lee County Department of Community Development.

3. The project must have SFWMD permits for construction and operation of the surface water management system, and for any dewatering activities associated with the construction of lakes, roads or building foundations.

4. The allowable discharge offsite for Merchants Crossing may not exceed 0.09 cubic feet per second/acre over the whole project area, or as determined appropriate by SFWMD. Final allowable discharge must be determined by the developer and SFWMD staff, using a 72-hour storm duration model, prior to issuance of a surface water permit. *A surface water permit has been issued by SFWMD. (Permit issued October 16, 1991 #36-02069-S.)*

5. All water retention/detention areas must meet SFWMD criteria. Any areas that do not meet this criteria may not be used in the calculation of water quality or quantity volumes.

6. Based on information provided by the developer, the entire freshwater marsh at the project's northern boundary, may be indirectly impacted as a result of water table drawdown associated with lake control elevations, and irrigation withdrawals from the adjacent detention lake. To obtain a construction and operation permit, the developer must provide detailed plans that indicate: buffer areas adjacent to wetlands, the extent of encroachment into wetlands, information verifying that control elevations will maintain adequate wetland hydroperiods, acreage figures and cross-sections for all mitigation areas, a mitigation proposal that does not result in a net loss of wetlands and a mitigation proposal which includes a wetland monitoring and maintenance program.

7. The developer must confirm, to the satisfaction of all federal, state and local review agencies, and the SFWMD, that the proposed water management system will not impact habitats of the golden polypody, prickly pear cactus, wild coco and gopher tortoise, as well as other endangered species potentially occurring on-site, or that such impacts will be mitigated to the benefit of on-site populations of these species.

8. The developer has indicated that the north-south watercourse will be relocated and redesigned to simulate a natural creek. The water course must be designed to meet SFWMD criteria in effect at the time of permit application. *This requirement has been satisfied.*

9. Provisions for the drainage of off-site areas and out-parcels that presently drain through the site must be provided at the time of permit application.

10. The developer must undertake a regularly scheduled vacuum sweeping of all streets and parking facilities, to be incorporated as a Best Management Practice (BMP).

11. In areas adjacent to retail or office uses, the developer must provide dry pre-treatment, as determined by SFWMD at time of permitting (retention or detention), in order to provide reasonable assurance that hazardous materials will not enter the storm water management system.

12. The operation of the Merchants Crossing Storm water Management System is dependent on Yellow Fever Creek for an outlet. Therefore, a final Storm water Management Plan must demonstrate that the system is designed in accordance with existing design parameters for Yellow Fever Creek. A man-made ditch (the East Branch of Yellow Fever Creek) flows through the Merchants Crossing DRI that eventually drains to Yellow Fever Creek and the Caloosahatchee River in northern Lee County. Post developed runoff will be directed across the site through a series of surface water management ponds to a rerouted ditch that will also carry the offsite flows from the north.

The rerouted ditch will flow through a culvert under Pine Island Road and eventually to Yellow Fever Creek.

13. Best Management Practices (BMPs) and monitoring and maintenance of the storm water management system must be implemented by the developer in accordance with SFWMD guidelines.

14. Any off-site road improvements constructed by the developer must address water quality in accordance with the SFWMD criteria.

15. The use of septic tanks is limited to temporary use with the temporary construction trailer and temporary leasing office only. Such use must be eliminated when service is available on site from North Fort Myers Utilities.

16. All commitments made by the developer within the ADA related to Question 22 (Drainage) and Question 15 (Water Quality) and subsequent sufficiency round information, not in conflict with the above recommendations, are hereby incorporated as conditions for approval.

B. ENERGY

All site plans or architectural programs must incorporate, to the extent possible, the following energy conservation features into all site plans and architectural programs or the property owner/developer must ensure to the extent possible that the following features are implemented through deed restrictions or covenants with successors in title. All applications for site plan approvals and building permits must be accompanied by a document detailing proposed compliance with these conditions. If deed restrictions or covenants are utilized to ensure compliance, such documents must be approved by the Lee County Attorney's Office prior to recordation. If no deed restrictions are approved and recorded, the prior alternative must be utilized with the following features included:

1. Provision of bicycle racks or storage facilities in all tracts.
2. Use of energy-efficient features in window design.
3. Installation of energy-efficient appliances and equipment.
4. Prohibition of deed restrictions or covenants that would prevent or unnecessarily hamper energy conservation efforts (e.g. building orientation, and solar water heating systems).

5. Reduced coverage by asphalt, concrete, rock, and similar substances in streets, parking lots, and other areas to reduce local air temperatures and reflected light and heat.

6. Installation of energy-efficient lighting for streets, parking areas, and other interior and exterior public areas.

7. Use of water closets with a maximum flush of 3.5 gallons and shower heads and faucets with a maximum flow rate of 3.0 gallons per minute (at 60 pounds of pressure per square inch).

8. Selection of native plants, trees, and other vegetation and landscape design features that reduce requirements for water, fertilizer, maintenance, and other needs.

9. Planting of native shade trees to provide reasonable shade for all streets, recreation areas and parking areas.

10. Placement of trees to provide needed shade in the warmer months while not overly reducing the benefits of sunlight in the cooler months.

11. Orientation of structures, as possible, to reduce solar heat gain by walls to utilize the natural cooling effects of the wind.

12. Use of operable windows and ceiling fans.

13. Provision for structural shading (e.g., trellises, awnings, and roof overhangs) wherever practical, when natural shading cannot be used effectively.

14. Consideration by any project architectural review committee of energy conservation measures (both those noted here and others) to assist builders in their efforts to achieve greater energy efficiency in the development.

The incorporation of these energy conservation measures in this Development Order does not preclude the provision of additional energy conservation measures by the developer. It also does not prevent the local government of jurisdiction or any state, regional, or other agency under whose jurisdiction this project falls from requiring additional energy measures or measures that may be more stringent.

C. POTABLE WATER/WATER SUPPLY

1. The developer must incorporate the use of water saving devices as required by State law (Section 553.14., Florida Statutes).

2. The developer must show that the proposed deep well, to supplement irrigation from the large lake, is of compatible water quality with surface waters. Furthermore, the developer must show that proposed mitigation measures address possible damage from watertable drawdown.

3. The project requires a water use permit for any withdrawals from groundwater, project lakes or any other surface water bodies for irrigation or potable uses and for any dewatering activities associated with the construction of project lakes, or road or building foundations.

4. At the time of permit application, the developer must provide verification that the proposed system designs will meet District criteria.

5. For the purpose of potable water conservation, Merchants Crossing must utilize low water use plumbing/fixtures, self-closing or metered water faucets, and other water conserving devices.

6. For the purpose of non-potable water conservation, Merchants Crossing must utilize xeriscape principles in the design and maintenance of the project's landscaping.

7. The developer must utilize Lee County Utilities for potable water.

8. In the project area, the lower Hawthorn aquifer has a chloride ion concentration greater than 500 mg/l. To utilize this as a recharge source for the project lake system, the permit developer must show that the addition of this water to the lake system will not raise the chloride ion concentration of the lake above 200 mg/l.

9. The lake system is adjacent to wetland preserve areas. At the time of permit application, the developer must show that the wetland hydroperiod will not be adversely affected by proposed irrigation withdrawals from the large lake at the north western corner of the site.

10. As the developer has committed to eventually using reclaimed wastewater for irrigation, the developer must ensure that on-site lakes and wetlands are adequately buffered from possible effluent contamination.

11. Any spray irrigation using treated wastewater must be accomplished in accordance with state and local regulations. The developer must use treated wastewater for all or part of the project's irrigation demand, at such time as adequate amounts of treated wastewater are available for such purpose.

12. All construction plans, technical specifications, and proposed plats, if applicable, for the proposed water distribution system must be reviewed and approved by the Lee County Utilities prior to commencement of construction.

13. The lowest quality of water possible must be utilized for all outdoor non-potable water use.

14. Landscaping irrigation and all outdoor water uses, e.g. hosing concrete, are restricted to the hours of 5:00 P.M. to 9:00 A.M., or as restricted by SFWMD watering guidelines, after the establishment of the landscape foliage, unless the irrigation is done with treated effluent.

15. All commitments made by the developer within the ADA related to question 23 (Water Supply) and subsequent sufficiency round information, not in conflict with the above recommendations, are hereby incorporated as conditions for approval.

D. FIRE PROTECTION

1. To mitigate its impacts upon provision of adequate fire protection, the developer must:

(a) Pay fire protection and emergency medical services impact fees; and,

(b) Sprinkler all buildings in the project. (With the exception of the SunBank parcel on the corner of SR 78 and U.S. 41 south.); and

(c) Provide funds to North Fort Myers Fire Protection District to purchase a 65-foot telesquirt fire truck or comparable equipment. This provision must be met within sixty days after the first building permit is obtained from Lee County for any building over two stories in height.

2. The Merchants Crossing DRI must comply with any duly adopted fire code and life safety code regulations unless deviations or variances are obtained from such regulations.

E. REGIONAL SHOPPING CENTER

The square footage and phasing of the development within each tract is set forth in attached Exhibit B.

The DRI development is limited to a maximum of 570,000 square feet.

F. VEGETATION/WILDLIFE/WETLANDS

Approximately 6.5 acres of the Merchants Crossing site occurs as two types of wetlands; 3.8 acres of freshwater marsh and 2.7 acres of mixed hardwood wetlands. The Developer has committed to significant wetland mitigation that features wetland marshes and a north/south creek, with adjacent floodplain

vegetation. A portion of the 3.1 acres of the floodplain will be planted with hydric hammock species. This portion may not be less than the hardwood wetland area to be impacted.

Also on site is an approximate 4.9 acre oak and cabbage palm hammock/wetland hardwood system, (2.2-acre hammock/2.7-acre wetland). The developer has committed to save the significant elements of this system, representing 1.9 acres.

1. Prior to issuance of local Final Development Order, the developer must submit a vegetation plan. The preservation of the significant elements of the Oak/Cabbage Palm Hammock and adjacent Hardwood Wetland System must be in accordance with the Mitigation Plan attached as Exhibit C.

2. At the time of permit application to the SFWMD, the developer must provide detailed plans that indicate buffer areas adjacent to wetlands, the extent of encroachment into wetlands, information verifying control elevations will maintain adequate wetland hydroperiods, acreage figures and cross-sections for all mitigation areas, a mitigation proposal that does not result in a net loss of wetlands, and a mitigation proposal that includes a wetland monitoring and maintenance program, developed in accordance with adopted policies of the regulatory agencies.

3. Prior to the approval of a local Development Order for any phase of the development, the developer must submit and subsequently follow a Florida Game and Freshwater Fish Commission (FGFWFC) approved Gopher Tortoise Management Plan.

4. The developer must provide for preservation and/or relocation on-site of the four listed plant species found on-site (e.g. golden polypody, prickly pear cactus, wild coco and whisk fern) to the satisfaction of FGFWFC and Lee County Division of Environmental Sciences.

5. All other commitments made by the developer in either the ADA or sufficiency round information, not in conflict with the above recommendations, are incorporated as conditions for development order approval.

G. TRANSPORTATION

1. The transportation impact assessment upon which this Development Order is based assumes the development patterns and land uses reflected in the Merchants Crossing DRI/ADA application. The application assumes one continuous phase of development with build out by the year ~~2014~~1994.

2. Merchants Crossing must submit an annual traffic monitoring report. The monitoring program must be designed in cooperation with the Lee County Department of Transportation the Southwest Florida Regional Planning Council and the Florida

Department of Transportation. The annual monitoring report must contain at a minimum AM and PM, peak-hour peak season traffic counts (with turning movements) and mutually agreed upon professionally acceptable level of service analyses at all project access points onto the roadway network and at the following intersections:

SR 78 (Pine Island Rd.) at:
US 41
Pondella Rd.
Del Prado Blvd.
Santa Barbara Blvd.
SR 78 (Bayshore Rd.) at:
Business 41
Hart Rd.

Del Prado Blvd. at:
SR 78 (Pine Island Rd.)
Viscaya Pkwy.
Hancock Bridge Pkwy.
US 41 at:
Pondella Rd.

In addition, peak season daily traffic counts and level of service calculations must be submitted as part of the annual monitoring report for all project access roads and the roadway links listed below:

SR 78 (Pine Island Rd.)
Piney Rd. to Santa Barbara Blvd.

SR 78 (Bayshore Rd.)
Business 41 to Slater Rd.

Del Prado Blvd.
SR 78 to Viscaya Pkwy.

US 41
Hancock Bridge Pkwy. to Business 41

Business 41 from
SR 78 to Littleton Rd.

Pondella Rd.
US 41 to Orange Grove Blvd.

Merchants Crossing must submit the annual monitoring report to Lee County DOT, the Southwest Florida Regional Planning Council and the Florida Department of Transportation SW Area Office for review. The first report must be submitted one year after the issuance of the DRI Development Order for the property included in the Merchants Crossing DRI/ADA application. Reports must be submitted annually until project build out. Actual build out will occur when the developer has completed the construction authorized by this Development Order. Declared build out occurs if the developer formally declares in writing to the County Administrator that nothing more will be constructed despite the fact that less than the permissible maximum had been built to date. The purposes of the annual monitoring program are to:

(a) Determine whether or not the traffic levels projected in the traffic impact assessment for Merchants Crossing are exceeded by actual impacts;

(b) Assist Lee County and F.D.O.T. in determining the proper timing of necessary roadway improvements; and

(c) Determine the project's external trip generation.

It is recognized and understood that traffic counts may be obtained from original machine and manual peak hour counts, Lee County traffic volume reports, Florida Department of Transportation, other ADA developments with similar monitoring requirements, and other reliable sources of traffic counts.

3. As mitigation for the transportation impacts of Merchants Crossing, the developer must provide the following:

a. The developer must make a cash payment of \$1,500,000 into an escrow account on or before October 1, 1993, or upon issuance of the first building permit, whichever occurs earlier. All interest earned on this account will accrue to the benefit of the County. A portion of this money (up to a maximum of \$1 million as further limited in paragraph G.3.f.) may be used for the widening of SR 78. The use of funds and terms of the escrow will be governed by a separate escrow agreement between the parties, and subject to approval by the County Attorney's office, which approval will not be unreasonably withheld. *This requirement has been satisfied.*

b. The developer must make a cash payment of \$791,370 on or before December 1, 1994, or upon issuance of the first building permit for Tract II, whichever occurred earlier as shown on the Master Concept Plan (M-1A, last revised July 1, 1991) attached to Zoning Resolution Z-90-034. The cash payments totaling \$2,291,370 may be considered as full credit against road impact fees. *This requirement has been satisfied.*

Should those provisions be repealed, amended or otherwise no longer in effect as part of Ordinance 89-17, as amended, they must nevertheless govern

availability of credits under this Development Order as those provisions existed on the effective date of this Development Order.

c. Within 90 days of approval of the DRI Development Order, the developer must donate the right-of-way needed for widening SR 78 (Pine Island Road) and US 41 to the Florida Department of Transportation (FDOT), and must donate the 100 feet of right-of-way needed to extend Diplomat Parkway to the County. No roads impact fee credits may be applied for, or granted for, this right-of-way. *This requirement has been satisfied.*

d. The developer must construct, at no cost to the County, the following improvements to SR 78:

1) Re-sign the northbound US 41 approach to encourage northbound right turns at SR 78 to be made as right turns at Brown Road.

2) Reconstruct the eastbound/westbound approaches to provide a four-lane cross-section through the US 41 intersection and eliminate the "plateau" effect.

3) Re-time/re-phase the signal at the US 41/SR78 intersection to reflect the above improvements and to provide for protected and permissive left-turn movements.

The developer may not request or be granted roads impact fee credits to offset the cost of these intersection improvements.

The developer must submit the construction plans for the above intersection improvements within 120 days following approval of the DRI for filing with the County and State for their review. The developer may commence construction of the intersection improvements within 90 days of obtaining the permits for such improvements and will diligently pursue the work to its completion. The intersection improvements must be completed prior to obtaining any Certificates of Occupancy or Completion for any portion of the development.

Intersection improvements must be depicted on construction drawings prepared by the developer, which are subject to review and approval by Lee County DOT and FDOT. These plans are subject to modification as necessary to obtain FDOT approval, and as determined by DOT, to comply with the specifications for the interim improvements as recommended in the Lee County/DCA Settlement Agreement. The development cost includes the total engineering costs for the intersection.

The developer's obligation includes the full cost of design and engineering, drainage and relocation, right-of-way acquisition and dedication, construction of turn-lanes, acceleration and deceleration lanes, construction inspection, contract

administration, testing and signalization (as needed and warranted). The alignment, design, signalization and construction schedule must be approved by the County Engineer. *This requirement has been satisfied.*

e. The developer must donate the right-of-way for the remaining enclaved out-parcel on SR 78, or pay the full cost of condemnation if the property cannot be acquired, including attorney and appraisal fees. *This requirement has been satisfied.*

f. The developer must construct two additional travel lanes to SR 78 from US 41 west to the developer's westerly property line, then tapering back into the existing roadway. The improvements for SR 78 will be depicted on construction plans for SR 78, prepared by the developer, which are subject to review and approval by Lee County DOT and FDOT to ensure that they are consistent with the four-lane divided facility designed for SR 78, west of Piney Road. The developer may be reimbursed from the \$1,500,000 deposited in escrow by the developer pursuant to paragraph G.3.a. above for the non-site-related cost, up to a total of \$1 million. The amount is subject to review and approval by DOT, via approval of bid documents or any other necessary documentation. These improvements must be completed prior to obtaining any Certificates of Occupancy or Completion for any portion of the development. Merchants Crossing will pay all costs in excess of \$1 million to complete the SR 78 highway improvements at no cost to the County or FDOT. *This requirement has been satisfied.*

g. Once funds are placed in escrow, \$200,000 will be immediately transferred to FDOT for the acquisition of future right-of-way for SR 78 from the westerly boundary of the developer's property to Piney Road. In lieu of an additional payment of \$300,000 to FDOT from the escrow account for SR 78 right-of-way acquisition, Lee County, pursuant to its agreement with FDOT, has applied \$800,000 in County road impact fees toward the construction of the four-lane improvements on SR 78 from US 41 east, one-half mile. After making the payments identified above, the balance of the funds in the escrow account were released to Lee County.

4. In addition to the payment of monies and other obligations specified in the Development Order, the developer or its successor is required to construct, at no cost to Lee County and the Florida Department of Transportation, all site-related improvements deemed necessary by Lee County and the Florida Department of Transportation. Site-related improvements include any improvement deemed site-related at the time of construction under the definition contained in the Roads Impact Fee Land Development Code Chapter 10. The developer's obligation includes the full cost of design and engineering, drainage and utility relocation, right-of-way acquisition and dedication, construction of turn lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing and signalization (as needed and warranted). The alignment, design, signalization, and construction schedule must be approved by the Lee County Engineer. The developer must pay the full cost for any site-related intersection improvements found necessary by the County or FDOT for the project's access intersection

onto US 41 and SR 78. The developer may construct said improvements if approved by the County Engineer.

5. Nothing contained in this Development Order is to imply or supersede Florida DOT permitting requirements.

6. Access to US 41 and SR 78 from the Merchants Crossing proposed access points located closest to the US 41/SR 78 intersection is subject to FDOT permitting requirements and is to be limited to right-turn-in/right-turn-out and left-turn-in only movements for US 41.

7. Nothing contained in this Development Order may be construed to exempt this development from participation in the funding, through Municipal Services Benefit Units (MSBU) or other special assessment districts, of improvements to various State and County arterial and collector roads to the degree to which this development generates demand or is benefitted.

8. The \$2,291,307 proportionate share payment made in accordance with paragraphs G.3.a. and b. discharges the Merchants Crossing DRI traffic impact responsibility for 555,000 square feet of development as approved under the 5th DRI Development Order Amendment and preceding DRI Development Order approvals.

9. An additional 15,000 square feet of commercial development was approved under the 6th DRI Development Order Amendment. As to this 15,000 square feet, the developer is required to pay all impact fees, including roads, attributable to development in accord with Land Development Code Chapter 2. In effect this means that all square footage added or constructed above 555,000 square feet is required to pay impact fees.

To ensure this occurs, the developer must submit a cumulative update to the square footage calculation attached to ZVL2006-00079 as support for the issuance of any building permit issued after June 1, 2008. A copy of the ZVL calculation list updated through March 3, 2008 is attached as Exhibit E.

10. Compliance with all of the terms of the transportation related provisions of this development order satisfy the substantive requirements related to transportation facilities of Section 163.3202(2)(g), Florida Statutes (1989), Lee County Ordinance 89-33, the Lee County Comprehensive Plan and Rule 9J-5.0055, Florida Administrative Code, as they currently apply.

H. SOLID WASTE

1. The developer and tenants of the project must incorporate the solid waste demands of the project into the county solid waste management program and investigate methods of reducing solid waste volume, to include but not be limited to, conservation, recycling, trash compaction, and mechanical shredding at the project.

2. The developer and subsequent tenants of the project, must identify the proper methods for the on-site handling, and temporary storage procedures for any hazardous wastes that may be generated on-site, in accordance with local, regional, state and federal hazardous waste programs.

I. WASTEWATER MANAGEMENT

1. Treatment of wastewater will be provided by North Fort Myers Utility, Inc.
2. Septic tanks may be used only for the temporary construction trailer and temporary leasing office, but must be removed as soon as service is available from North Fort Myers Utilities.
3. Septic tanks may not be used for the disposal of any substance which is identified in federal, state or local lists as a hazardous substance.
4. As the Merchants Crossing DRI may eventually reuse treated effluent for spray irrigation, the developer must ensure that on-site ponds, lakes and wetlands are adequately buffered from possible effluent contamination.
5. The developer must provide assurance that commercial effluent, if generated by the project, will be treated separately from domestic wastewater and handled in accordance with FDER criteria.
6. The developer must obtain all necessary permits from SFWMD and Florida Department of Environmental Regulation (FDER) for the use of spray irrigation/effluent reuse.

J. CONCURRENCY

Approval of this Development Order does not exempt the developer from compliance with State concurrency rules or any concurrency management system adopted by Lee County, except for transportation addressed separately in condition G.10. of this Development Order.

K. GENERAL CONSIDERATIONS

1. All commitments and impact mitigating actions provided in the Application for Development Approval (and supplementary documents) that are not in conflict with specific conditions for project approval outlined above are officially adopted as conditions of approval.
2. Pursuant to Section 380.06(16), the developer may be subject to credit for contributions, construction, expansion or acquisition of public facilities, if the developer is

also subject by local ordinances to impact fees or exactions to meet the same needs. The local government and the developer may enter into a capital contribution front-ending agreement to reimburse the developer for voluntary contributions in excess of his fair share.

3. The development phasing plan (f/k/a construction target plan) presented within the ADA and as adjusted to date of Development Order approval is incorporated as a condition of approval. If Development Order conditions and developer commitments incorporated within the development order to mitigate regional impacts are not carried out as indicated to the extent or in substantial accordance with the Development Order, then this will be presumed to be a substantial deviation for the affected regional issue. The development phasing plan has been amended and the amendments contained in the current development phasing plan attached as Exhibit B do not create a presumption of a substantial deviation for any affected regional issue.

4. As required by Section 380.06(18), Florida Statutes, the developer must submit a biennial monitoring report (see Exhibit D) to Lee County, the SWFRPC, and the Department of Community Affairs.

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

1. Resolution. This Development Order constitutes a resolution of Lee County, adopted by the Board of County Commissioners in response to the Development of Regional Impact Application for Development Approval filed for the Merchants Crossing DRI.

2. Additional Developer Commitments. All commitments and impact mitigating actions volunteered by the developer in the ADA and supplementary documents not in conflict with conditions or stipulations specifically enumerated above are hereby incorporated by reference into this Development Order. These documents include the following:

(a) Merchants Crossing ADA, July 11, 1989;

(b) Merchants Crossing DRI sufficiency response, September 27, 1989;

and

(c) Merchants Crossing DRI sufficiency response, November 22, 1989.

3. Binding Effect. This Development Order is binding upon the developer and its assignees or successors in interest. Those portions of this Development Order that clearly apply only to the project developer, are binding upon any builder/developer who acquires any tract of land within Merchants Crossing, but may not be construed to be binding upon future tenants.

4. Reliance. It is hereby declared that the terms and conditions set out in this document constitute a basis upon which the developer and County may rely in future actions necessary to implement fully the final development contemplated by this Resolution and Development Order.

5. Enforcement. All conditions, restrictions, stipulations and safeguards contained in this Resolution and 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, will be paid by the defaulting party.

6. Successor Agencies. Any reference herein to a governmental agency will be construed to mean any future instrumentality that may be created and designated as successors 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.

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

8. Applicability of Regulations. The approval granted by this Development Order is limited. Such approval may 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. Such approval does not obviate the duty of the developer to comply with County Ordinances or other regulations adopted after the effective date of this Development Order, to the extent that those regulations and requirements do not negate any rights granted herein.

9. Further Review. Subsequent requests for local development permits may not require further review pursuant to Section 380.06, Florida Statutes, unless it is found by the Board of County Commissioners, after due notice and hearing, that one or more of the following is present:

(a) A substantial deviation from the terms or conditions of this Development Order, or other changes to the approved development plans that create a reasonable likelihood of adverse regional impacts or other regional impacts not evaluated in the review by the SWFRPC; or

(b) An expiration of the period of effectiveness of this Development Order as provided herein.

Upon a finding that either of the above is present, the Board may order a termination of all development activity in the area of the development affected by the

substantial deviation until such time as a new DRI ADA has been submitted, reviewed and approved in accordance with Section 380.06, Florida Statutes, and all local approvals have been obtained.

10. Termination Date. This Development Order terminates on October 28, ~~2014~~2018 at midnight, unless an extension is approved by the Board. An extension may be granted by the Board of County Commissioners if the project has been developing substantially in conformance with the original plans and approval conditions, and if no substantial adverse impacts not known to the Southwest Florida Regional Planning Council or to Lee County at the time of their review and approval, or arising due to the extension, have been identified.

11. Build out date. The established build out date is October 28, ~~2014~~2018. Extension of the build out date beyond ~~2014~~2018 maybe subject to further development of regional impact review pursuant to Section 380.06(19), Florida Statutes. An extension of the date of build out of a development by seven or more years is presumed to create a substantial deviation subject to further development-of-regional-impact review. The presumption may be rebutted by substantial, competent evidence at the public hearing held by Lee County. For the purpose of calculating when a build out date has been exceeded, the time is tolled during the pendency of administrative and judicial proceedings relating to development permits.

12. Assurance of Compliance. The Administrative Director of the Lee County Department of Community Development or his/her designee, is the local official responsible for assuring compliance with this Development Order.

13. Protection of Development Rights. The development will not be subject to down-zoning, unit density reduction, or intensity reduction, until October 28, ~~2014~~2018, unless the County demonstrates that substantial changes have occurred in the conditions underlying the approval of this Development Order including, but not limited to, such factors as a finding that the Development Order was based on substantially inaccurate information provided by the developer, or that the change is clearly established by local government to be essential to the public health, safety and welfare.

14. Biennial Reports. The developer, or its successor(s) in title to the undeveloped portion of the subject property must submit a report biennially to Lee County, the Southwest Florida Regional Planning Council, the State land planning agency (the Department of Community Affairs), and all affected permit agencies. This report must describe the state of development and compliance as of the date of submission, and be consistent with the rules of the State land planning agency. The report must include information contained in Exhibit D, as further modified or otherwise updated by the State land planning agency. The first monitoring report must be submitted to the Administrative Director of the Department of Community Development not later than one year after the effective date of this Development Order, and further reporting must be submitted not later

than May 1st of subsequent calendar years thereafter, until build out. Failure to comply with this reporting procedure is governed by Section 380.06 (18), Florida Statutes, and the developer must so inform any successor in title to any undeveloped portion of the real property covered by this Development Order. This may not be construed to require reporting from tenants or owners of individual lots or units.

15. Transmittal and Effective Dates. Certified copies of this Development Order will be forwarded to the Southwest Florida Regional Planning Council, the developer, and appropriate state agencies. This Development Order is rendered as of the date of that transmittal, but is not effective until the expiration of the statutory appeals period (45 days from rendition) or until the completion of any appellate proceedings, whichever time is greater.

Upon this Development Order becoming effective, notice of its adoption must be recorded by the Developer in the office of the Clerk of the Circuit Court, as provided in Section 380.06(15), Florida Statutes.

(page intentionally left blank)

Commissioner Tammara Hall made a motion to adopt the Ninth Development Order Amendment to the Merchants Crossing DRI. The motion was seconded by Commissioner Frank Mann. The vote was as follows:

John E. Manning	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 6th day of December 2011.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

By: Marcia Wilson
Deputy Clerk

By: John E. Manning
John E. Manning, Chair

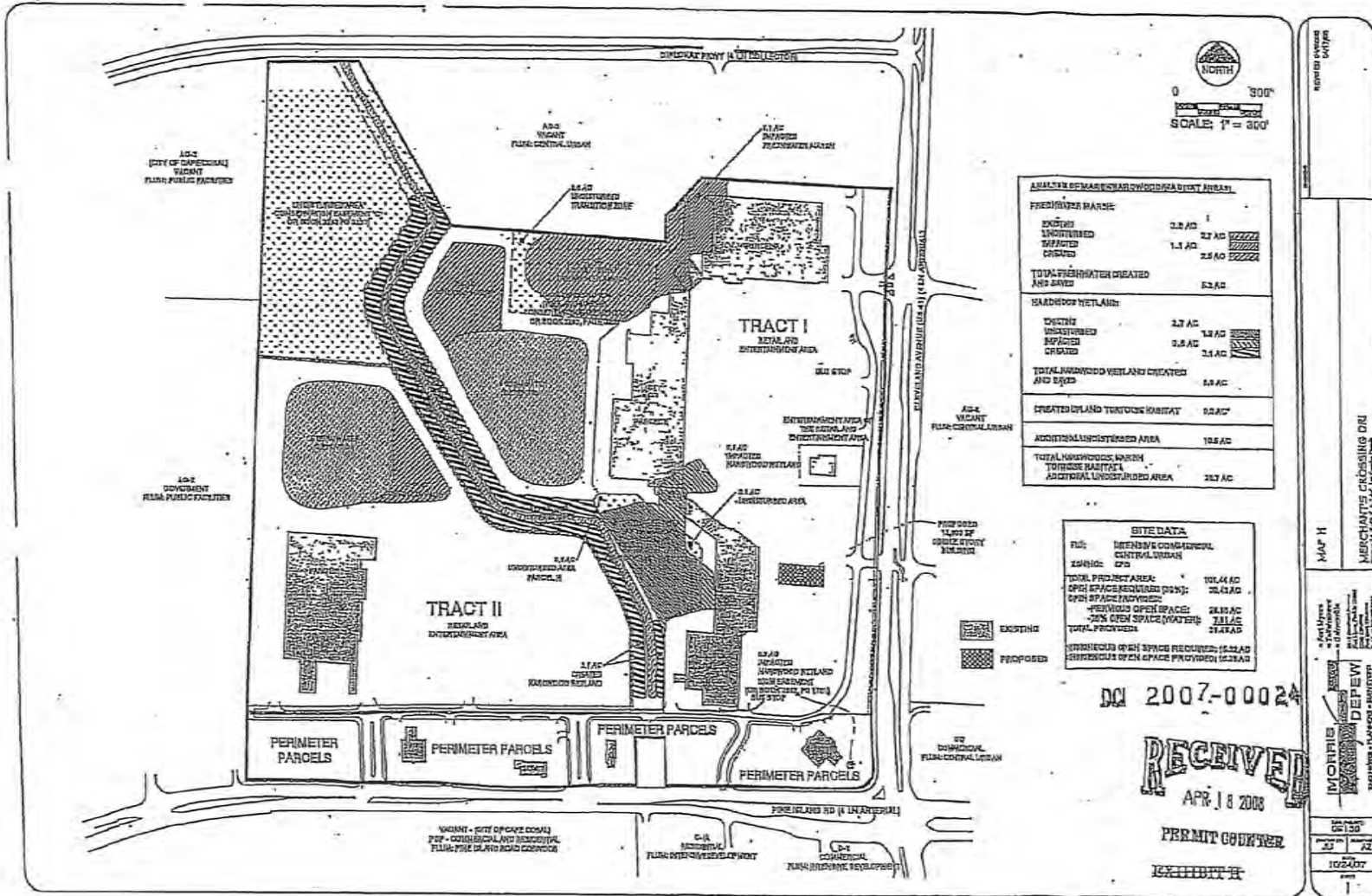
APPROVED AS TO FORM

By: Susan M. Henderson
Susan M. Henderson
County Attorney's Office



- Exhibits
A - Map H
B - Phasing Plan
C - Mitigation Plan
D - Monitoring
E - Square Footage Calculation

Exhibit A



QUALITY OF MASS HARBORWOOD DEVELOPMENT AREAS	
FRESHWATER RANGE	
EXISTING UNDISTURBED	3.8 AC
DEVELOPED	2.7 AC
TOTAL FRESHWATER CREATED AND SAVED	6.5 AC
HARBORWOOD WETLANDS	
EXISTING UNDISTURBED	2.7 AC
DEVELOPED	2.8 AC
TOTAL HARBORWOOD WETLANDS CREATED AND SAVED	5.5 AC
CREATED WETLAND THROUGH HABITAT	0.2 AC
ADDITIONAL UNDISTURBED AREA	10.6 AC
TOTAL HARBORWOOD WETLAND THROUGH HABITAT ADDITIONAL UNDISTURBED AREA	10.7 AC

SITE DATA	
PLU:	INTERMEDIATE COMMERCIAL CONTROL URBAN
ZONING:	CU
TOTAL PROJECT AREA:	104.4 AC
OPEN SPACE REQUIRED (20%):	20.88 AC
OPEN SPACE PROVIDED:	21.1 AC
PERMISSIBLE OPEN SPACE:	21.1 AC
OPEN SPACE (WATERS):	21.1 AC
TOTAL PROVIDED:	21.1 AC
EXCESSIBLE OPEN SPACE REQUIRED:	0.0 AC
EXCESSIBLE OPEN SPACE PROVIDED:	0.0 AC

DCI 2007-00024

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APR 18 2008

PERMIT CENTER
EXHIBIT H

MAP H
 MERCHANTS CROSSING DR
 102-207
 APR 18 2008
 PERMIT CENTER
 EXHIBIT H

**EXHIBIT B
PHASING PLAN
MERCHANTS CROSSING OF NORTH FORT MYERS**

	EXISTING	BUILDOUT (Oct. 2014-2018)
PHASE I:		
RETAIL & ENTERTAINMENT CENTER	359,000	359,000 sf
PERIMETER PARCELS	12,000	12,000 sf
TOTAL PHASE I:	371,000	371,000 sf
PHASE II:		
RETAIL & ENTERTAINMENT CENTER	154,819	166,819 sf
PERIMETER PARCELS	6,384	32,181sf
TOTAL PHASE II:	161,203	199,000 sf
TOTAL PHASES I & II:	532,203	570,000 sf

Note:

Total square footage allocated to the Perimeter Parcels is 44,181 square feet. The Applebee's parcel is not considered to be a Perimeter Parcel for purposes of this calculation.

Any unallocated Perimeter Parcel square footage may be reallocated to the Retail and Entertainment Center.

EXHIBIT D

INFORMATION TO BE INCLUDED
IN MONITORING REPORT

- (a) Any changes in the plan of development, or in the representations contained in the ADA, or in the phasing plan for the reporting year and for the next year;
- (b) A summary comparison of development activity proposed and actually conducted for the reporting period;
- (c) Undeveloped tracts of land that have been sold to a separate entity or developer;
- (d) Identification and intended use of lands purchased, leased or optioned by the developer adjacent to the original DRI site since the development order was issued;
- (e) An assessment of the developer's and the local government's compliance with the conditions of approval contained in the DRI development order and the commitments contained in the Application for Development Approval that have been identified by the local government, the Regional Planning Council or the Department of Community Affairs as being significant;
- (f) Any known incremental DRI applications for development approval of requests for a substantial deviation determination that were filed in the reporting year and to be filed during the next year;
- (g) An indication of a change, if any, in local government jurisdiction for any portion of the development since the development order was issued;
- (h) A list of significant local, state and federal permits that have been obtained or are pending by agency, type of permit, permit number and purpose of each;
- (i) A statement that all persons have been sent copies of the biennial report in conformance with section 380.06(18), Florida Statutes;
- (j) A copy of any recorded notice of the adoption of a development order or the subsequent modification of an adopted development order that was recorded by the developer pursuant to Section 380.06(15), Florida Statutes; and
- (k) Monitoring reports, including:
 - (i) Water quality monitoring reports (for review by Lee County and South Florida Water Management District);
 - (ii) Transportation monitoring reports (for review by Lee County, FDOT and SWFRPC).

MERCHANTS CROSSING DRI: SQUARE FOOTAGE CALCULATIONS		
STRAP #	Built Square Footage	Use Type
34-43-24-03-0000A.0000	107,689	K-Mart ⁽¹⁾
34-43-24-03-0000B.0000		
Building 1 ⁽¹⁾	5,916	Heavenly Pizza occupies 1,500 sf of total(no outdoor seating)
Building 2 ⁽²⁾	35,154	
Building 3 ⁽²⁾	18,388	
Building 4 ⁽²⁾	41,214	
Building 5 ⁽²⁾	23,500	
Building 6 ⁽²⁾	53,015	Movie Theater
Building 7 ⁽²⁾	12,494	Obee's Subs occupies 1,110 sf J's & B's occupies 3,100 sf
Building X	29,295	COM2005-00072
34-43-24-03-0000G.0000	5,152	Applebee's
34-43-24-03-0000H.0000	<u>75,217</u>	Beall's.COM2007-00397 ⁽³⁾
34-43-24-03-0000I.0000	106,785	Home Depot
34-43-24-03-0000K.0000	0	Vacant
34-43-24-03-0000M.0000	4,491	Wachovia Bank
34-43-24-03-0000N.0000	2,499	Lion's Choice COM2006-00048 ⁽⁴⁾
34-43-24-03-0000O.0000	2,878	McDonald's
34-43-24-03-0000P.0000	2,242	Popeye's
34-43-24-03-0000Q.0000	3,750 ⁽⁴⁾	Vacant ⁽⁴⁾
34-43-24-03-0000R.0000	0	Vacant
34-43-24-03-0000S.0000	6,274	Sun Bank
Total Restaurant Square Footage	18,481	
Total Non-Restaurant Square Footage	<u>513,722</u>	
Total Square Footage Built	<u>532,203</u>	
Total Square Footage Remaining (from original 555,000 square feet)	<u>22,797</u>	

Note:

- ⁽¹⁾ Building numbers as shown on the Lee Property Appraiser's website.
⁽²⁾ Square footage permitted and under construction but not complete as of 03/03/08.
⁽³⁾ Square footage permitted and built, but not added to table until 03/03/08 update.
⁽⁴⁾ Proposed bank DOS2008-00030, under review by RSM 03/03/08

EXHIBIT E

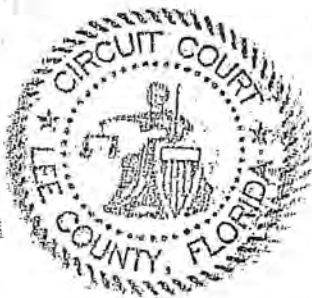
ZVL-2006-00079

STATE OF FLORIDA

COUNTY OF LEE

I Charlie Green, Clerk of Circuit Court, Lee County, Florida, and ex-Officio Clerk of the Board of County Commissioners, Lee County, Florida, do hereby certify that the above and foregoing is a true and correct copy of Development Order for Merchants Crossing (Ninth Amendment) State DRI #7-8889-92, County Case #DRI2011-00019, adopted by the Board of Lee County Commissioners at their meeting held on the 6th day of December, 2011.

Given under my hand and seal, at Fort Myers, Florida, this 12th day of December, 2011.



CHARLIE GREEN,
Clerk of Circuit Court
Lee County, Florida

By: Marcia Wilson
Deputy Clerk

Tony Palermo	Lee County	CHAIR - PROMISED LANDS
Max Forgey	Zoning Technologies	SPEAKER/SPONSOR
Mike Haymans	Attorney	SPEAKER
Charlotte Commissioner	TBD	SPEAKER
Adam Cummings	Edward Jones	SPEAKER
TBD	TBD	SPEAKER
Derek Rooney	Gray Robinson	SPEAKER
Shaun Cullinan	Zoning Official Charlotte	SPEAKER
Gene Boles	U of F	SPEAKER TO BE CONFIRMED
Michelle Norton	North Port Planning Mgr.	
Sherry Wilette-Grondin	North Port Planning	
James McAllister	North Port Planning	
Jennifer Malone	North Port Planning	
Christopher Whitaker	North Port Planning	
Ned Baier	Jacobs	
Mark Gillis	David Plummer	
Ron Talone	David Plummer	
Margaret Wuestle	RPC	
Dave Loveland	Lee County	PAID
Lucas Cruse	City of St Pete	
Kathy Combass	Clewiston	
Deborah Chesna	Dept of Health Collier	
Julia Galofre	Charlotte	HOST
David Hilston	Punta Gorda	
Joan LeBeau	Punta Gorda	
Diane Clim	Charlotte	HOST
Lynda Lafferty	Charlotte	HOST
Liz Donley	Charlotte NEP	
Salvator Castronovo	Punta Gorda	
Dawn Huff	Lee County School Distirct	



South Florida Water Management District

Fort Myers Service Center • 2301 McGregor Boulevard • Fort Myers, FL 33901
(941) 338-2929 • Fax (941) 338-2936 • 1-800-248-1201 • Suncom 748-2929

CON 24-05

REGULATION DEPARTMENT
APPLICATION NO: 930107-2

July 15, 1998

Andy Abrams
Abrams Property, Inc
5775 Glenridge Road
Atlanta, GA 30328

Dear Mr. Abrams:

SUBJECT: NOTICE OF COMPLIANCE (FINAL INSPECTION)
MERCHANTS CROSSING AT N. FT MYERS
LEE COUNTY, S34/T43S/R24E

This letter is written to inform you that a July 9, 1998 inspection and a review of our files indicate that the environmental special conditions of Permit Number 36-02069-S have been satisfied.

The District appreciates your efforts to maintain compliance with the environmental conditions of the permit. Please be advised that the District rules require that these wetlands/uplands remain in their natural state. The only activities allowed would be for the removal of exotic/nuisance vegetation. Please be advised that this notice pertains only to the environmental conditions of your permit.

Should you have any questions or require further assistance, please contact me at (941) 338-2929.

Sincerely,

Kim B. Fikoski, Staff Environmental Analyst
Ft. Myers Service Center

KBF/kbf

c: Brown Collins/Synecological Analysts
Rick Joyce/Lee County ES
Dan VanNorman/FDEP/Fort Myers
Don Borda/USACOE/Jacksonville

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APR 04 2019

COMMUNITY DEVELOPMENT

ORI 2019-00001

Governing Board:

Frank Williamson, Jr., Chairman
Eugene K. Pettis, Vice Chairman
Mitchell W. Berger

Vera M. Carter
William E. Graham
William Hammond

Richard A. Macheck
Michael D. Minton
Miriam Singer

Samuel E. Poole III, Executive Director
Michael Slayton, Deputy Executive Director



Form #015 /
Rev 10/89

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
MODIFICATION OF SURFACE WATER MANAGEMENT PERMIT NO. 36-02069-S
 CERTIFICATION FOR STORMWATER DISCHARGE

ISSUED TO: **ABRAMS PROPERTY, INC.**
 (MERCHANTS CROSSING NORTH FORT MYERS)
 5775 1 GLENRIDGE ROAD
 ATLANTA, GA 30328.

DATE ISSUED: JUNE 10, 1993

LOCATION: LEE COUNTY, SECTION 34 TWP. 43S. RGE. 24E

ORIGINAL PERMIT AUTHORIZATION: CONSTRUCTION AND OPERATION OF A WATER MANAGEMENT SYSTEM SERVING 123 ACRES OF COMMERCIAL LANDS DISCHARGING VIA THE EAST BRANCH OF YELLOW FEVER CREEK INTO C-43.

APPROVED MODIFICATION: CONSTRUCTION AND OPERATION APPROVAL TO ALLOW MODIFICATION OF THE MITIGATION PLAN TO ALLOW FOR IRRIGATION FROM THE DETENTION AREA.

This Permit Modification is approved pursuant to a request dated JAN. 6, 1993. Permittee agrees to hold and save the South Florida Water Management District and its successors harmless from any and all damages, claims or liabilities which may arise by reason of the construction, operation, maintenance or use of any work or structure involved in the Permit. The original Permit, including all plans and specifications attached thereto, as addressed by the staff report and those addressed by the Modification Staff Report are by reference made a part hereof.

All specifications and special and Limiting Conditions attendant to the original Permit, unless specifically recinded by this or previous Modifications, remain in effect.

SPECIAL CONDITIONS: SEE SHEETS 2, 3 & 4 OF 6 - 17 SPECIAL CONDITIONS.
 SEE SHEETS 5 & 6 OF 6 - 12 LIMITING CONDITIONS.

ORIGINAL PERMIT ISSUED: OCTOBER 10, 1991

PERMIT MODIFICATION APPROVED BY THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

FILED WITH THE CLERK OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

[Signature]
 ANTHONY M. WATERHOUSE, P.E.,
 DEPUTY DIRECTOR
 WATER MANAGEMENT DIVISION
 RESOURCE CONTROL DEPARTMENT

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APR 04 2019

DRI 2019-00001

COMMUNITY DEVELOPMENT

IN 6-11-93
[Signature]
 DEPUTY CLERK

ATTACHMENT F



**REQUEST FOR
SUBMITTAL REQUIREMENT WAIVER
FOR UNINCORPORATED AREAS ONLY**

Upon written request, the Director may modify the submittal requirements for Public Hearings, Development Orders, Limited Review Development Orders and other Administrative Action Applications where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request and the Director's written response must accompany the application submitted and will become a part of the permanent file.

**APPLICATION FOR WAIVER OF REQUIRED SUBMITTAL ITEMS
(indicate the appropriate application type)**

- Public Hearing - General Requirements (34-202)
 - Public Hearing - Mining Excavation Planned Development (12-110)
 - Public Hearing - Additional Requirements for:
 - Development of Regional Impact (34-203(a))
 - Planned Developments (34-203(b))
 - Planned Development Amendment (34-203(b))
 - Rezoning other than Planned Developments (34-203(c))
 - Special Exceptions (34-203(e))
 - Variances (34-203(f))
 - Limited Amendment to Existing Mine Zoning Approval [12-121(j)]
 - Private Recreational Facilities Planned Development (34-941(g))
 - Development Order - Submittal Requirements (10-152)
 - Application Form and Contents (10-153)
 - Additional Required Submittals (10-154)
 - Limited Review Development Order - Submittal Requirements (10-152)
 - Required Submittals (10-175)
 - Administrative Action Application Requirements [34-204(a)]
- State the Type of Administrative Application: _____

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JAN 07 2019

COMMUNITY DEVELOPMENT
GEN 2019-00006

DRI 2019-00001

PLEASE PRINT OR TYPE:

STRAP Number: See Attached STRAP List
 Name of Project: Merchants Crossing DRI
 Name of Agent: Waldrop Engineering, P.A. c/o Alexis Crespo, AICP
 Street Address: 28100 Bonita Grande Drive, Suite 305
 City, State, Zip: Bonita Springs, FL 34135
 Phone Number: (239) 850-8525 Email Address: Alexis.Crespo@waldropengineering.com

Name of Applicant*: RD Management, LLC on behalf of RB Merchants, LLC, YBF Merchants, LLC & Merchants Owner, LLC
 Street Address: 810 Seventh Avenue, 10th Floor
 City, State, Zip: New York, NY 10019
 Phone Number: (212) 265-6600 Email Address: emoran@rdmanagement.com

***If applicant is not the owner, a letter of authorization from the owner must be submitted.**

LEE COUNTY COMMUNITY DEVELOPMENT
 P.O. BOX 398 (1500 MONROE STREET), FORT MYERS, FLORIDA 33902
 PHONE (239) 533-8585

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JAN 31 2019

COMMUNITY DEVELOPMENT
Page 1

A. SPECIFIC SECTION(S) AND REQUIREMENT(S) FOR WHICH A WAIVER IS SOUGHT:

	Section Number	Requirement
#1	34-202(a)(3)	Certificate of Title
#2	34-202(a)(1)	Legal Description & Sketch
#3	34-202(a)(2); 34-373(a)(4)(2)	Boundary Survey
#4	34-204	Master Concept Plan (for DRI Rescission application only)
#5		
#6		
#7		
#8		
#9		

B. SCOPE OF PROJECT AND REASON(S) FOR REQUEST:

Please provide an explanation of the scope of the project and the reason(s) why you think the request for submittal waiver(s) should be approved. Use additional sheets if necessary and attach to this application form. (Please print or type)

The Applicant is requesting to rescind the Merchants Crossing DRI Development Order based upon mitigation completed to date. The overall DRI and the subject parcel have extensive information existing in Lee County files dating back to 1989. The applicant respectfully requests to submit a copy of the legal description, sketch and boundary survey as previously provided, as these items will have no bearing on the request to rescind the DRI DO.

Under penalties of perjury, I declare that I have read the foregoing application and that the facts stated in it are true.

ACreger

Signature of Applicant

January 7, 2019

Date

.....
FOR STAFF USE ONLY

DIRECTOR'S DECISION:

- Request Denied
- Request Approved
- Request Approved Per Attached Comments

Judith G...

Director Signature

DRI 2019-00001

1-23-19

Date

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 JAN 31 2019

COMMUNITY DEVELOPMENT

CASE NUMBER: DRI2019-00001

LEGAL DESCRIPTION

MERCHANTS CROSSING, LOCATED IN SECTION 34, TOWNSHIP
43, RANGE 24 EAST AS RECORDED IN PLAT BOOK 52 PAGE 38
OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

Applicant's Legal Checked
by DM 4/16/19

DCI2018-00004
LEETANA RPD

Staff Summary

CASE NUMBER & NAME: DCI2018-00004 / LEETANA RPD

REQUEST: Request to rezone 216± acres from Agricultural (AG-2) to Residential Planned Development (RPD) to permit a maximum of 201 dwelling units and associated accessory uses with a maximum building height of 35 feet.

RESOLUTION NUMBER: Z-18-038

LOCATION: 18300 Leetana Road, Bayshore Planning Community, Lee County, FL.

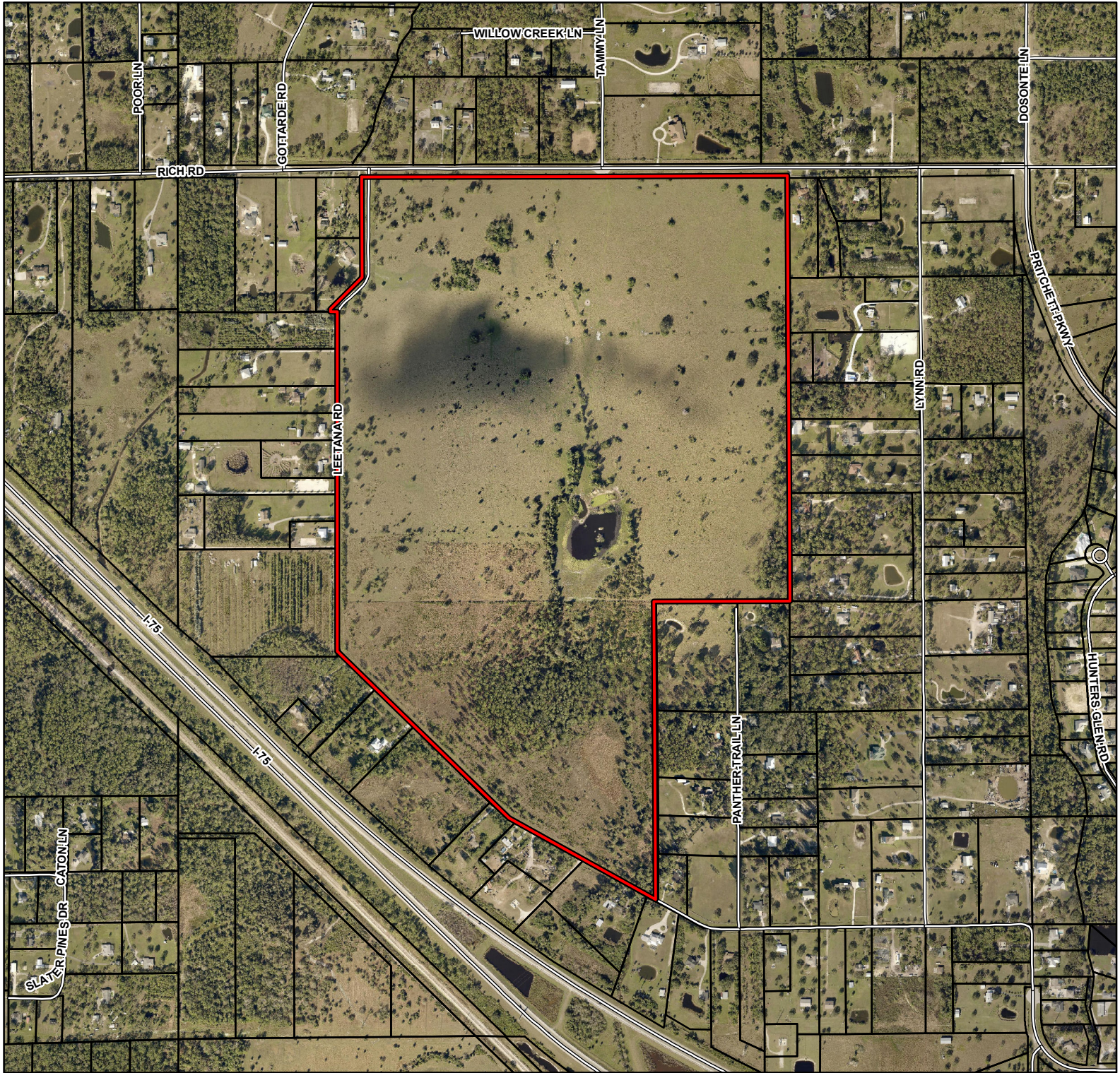
OWNER: SWK LLC

AGENT: Stacy Hewitt
Banks Engineering
10511 Six Mile Cypress Pkwy., Ste. 101
Fort Myers, FL 33966



HEARING EXAMINER RECOMMENDATION: Approve, subject to conditions and deviations

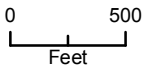
PARTICIPANTS: (16) Steven Brodkin
Heather Cox
Gail Easterly
Stephanie Eller
Debbie Jackow
Doris Maitland
Teresa McCarty
Ken Nichols
Rick Parker
Roy Packer
Jennifer Petersdorff
Frederick Price
Lauren Price
Lee Royer
Rachel Singletary
Dena Wentz

DCI2018-00004
Aerial



Legend

-  Subject Parcel
-  Parcel Boundary



Summary of Hearing Examiner Recommendation

LEETANA RPD

by Banks Engineering on behalf of
SWK, LLC

Request: Rezone from Agricultural (AG-2) to Residential Planned Development (RPD) to permit a residential community with up to 201 dwelling units and associated accessory uses.

Location: 18300 Leetana Road, North Fort Myers
Bayshore Planning Community
District 5

Size: 216.03 Acres

Recommendation: Approve, subject to conditions and deviations

Deviations: 3 requested, 2 recommended for approval.

Conditions of Note: Septic Upgrade, Water Quality Monitoring

Public Concerns: Flooding, Traffic, Suburban design of project

Hearing Examiner Remarks:

After reviewing the record in its entirety, the Hearing Examiner finds the project will not be destructive to the character of the Bayshore community. The Lee Plan/LDC does not impose minimum lots sizes in the Bayshore Planning Community, nor does it prohibit subdivisions of the type proposed in this application. Without those directives, the Hearing Examiner concludes the RPD is compatible with development patterns in the Bayshore community, which include scattered single-family subdivisions.

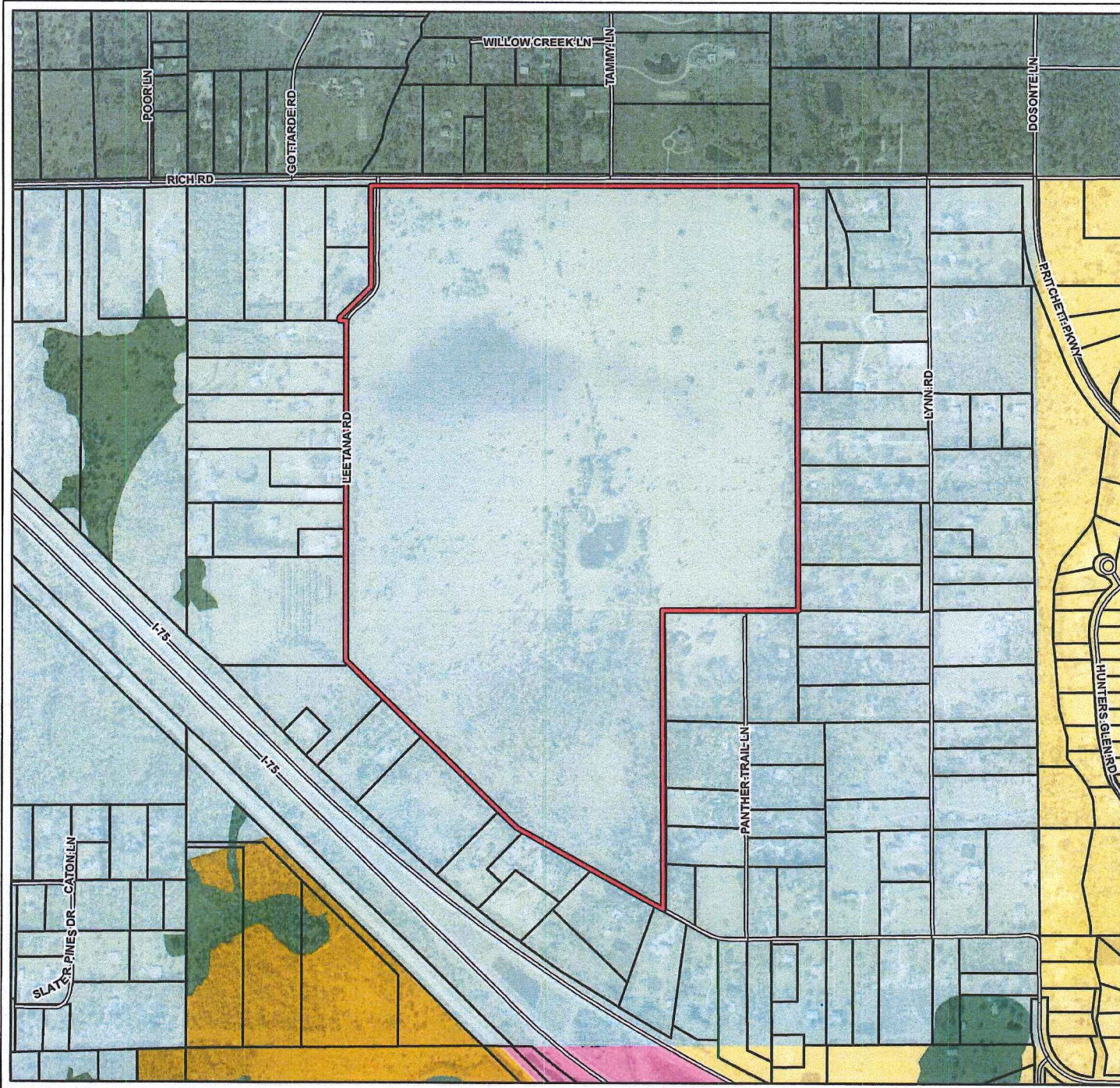
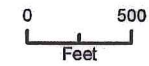
The site design accommodates sheet flow from the north and provides additional water quality treatment of water destined for Chapel Branch Creek and the Caloosahatchee River. Environmentally enhanced septic systems reduce the likelihood of further impairment of water quality. These benefits would not be available were the property to be subdivided and developed under the existing AG zoning designation.

Detailed recommendation follows

DCI2018-00004 Future Land Use



Legend

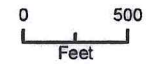
-  Subject Parcel
-  Parcel Boundary
-  Suburban
-  Sub-Outlying Suburban
-  Industrial
-  Rural
-  Open Lands
-  Wetlands



DCI2018-00004
Aerial

Legend

-  Subject Parcel
-  Parcel Boundary



OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DCI2018-00004
Regarding: LEETANA RPD
Location: 18300 Leetana Road
Bayshore Planning Community
(District 5)
Hearing Date: November 28, 2018
Record Closed: December 21, 2018

I. **Request:**

Rezone approximately 216.03 acres from Agricultural (AG-2) to Residential Planned Development (RPD) to permit the development of a residential community containing a maximum of 201 dwelling units and associated accessory uses.

The legal description is set forth in Exhibit A.

II. **Hearing Examiner Recommendation:**

Approval, subject to the conditions and deviations set forth in Exhibit B.

III. **Discussion:**

The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners (Board) on applications to rezone property.¹ In furtherance of this duty, the Hearing Examiner accepted testimony and evidence on the application to rezone the subject property to Residential Planned Development (RPD).

In preparing a recommendation to the Board, the job of the Hearing Examiner is to apply the Lee County Comprehensive Plan (Lee Plan), the Land Development Code (LDC) and other County regulations to the facts adduced at the hearing. There must be substantial competent evidence in the record to support the Hearing Examiner's recommendation.

Discussion supporting the recommendation of approval of the request follows below.

¹ LDC 34-145(d)(1)b. 1 and 6; LDC 34-145(d)(4)a.

Synopsis of Request

The request seeks to change the zoning classification of 216.03 +/- acres in the Bayshore Planning Community from agriculture to residential planned development.

The property is located in North Fort Myers southeast of the intersection of Leetana and Rich Roads. The proposed residential community includes up to 201 dwelling units. The dwelling type will be single-family homes, 35 feet in height. The community will access Rich Road in two locations.

Department of Community Development Staff recommended approval of the request subject to conditions, finding the proposed RPD satisfied the LDC review criteria.

History

The property has been zoned for agriculture since the County first instituted zoning. The site is comprised of cleared pasture and scattered tree cover. Applicant submitted an Affidavit confirming active cattle grazing.

Character of the surrounding Area

Property east, west and south of the site lies in the Rural land use category.² Abutting properties consist of single-family residences and pastureland.³ Across Rich Road is the Open Lands category, which is characterized by low-density residential uses and agriculture.⁴

The property is in the Bayshore planning community.⁵ Rural land use patterns such as low-density residential development and ranches typify much of the Bayshore community. However, pockets of low-density "suburban style" subdivisions are scattered throughout the general vicinity of the project.⁶

² Lee Plan Map 1

³ The Hearing Examiner observed one horse farm on Lynn Road abutting the site's eastern property line during the site visit.

⁴ Lee Plan Policy 1.4.4. Maximum residential densities in Open Lands is one dwelling per 10 acres, however planned development zoning districts may develop at one dwelling per 5 acres to avoid adversely impacting environmentally sensitive land. Clustering residential units is permitted in Open Lands.

⁵ Description of the Bayshore planning community set forth in Lee Plan Vision Statement paragraph 22; See Goal 18 Bayshore Community Plan.

⁶ During the site check authorized by Lee County Administrative Code 2-6 Section 3.1, the Hearing Examiner observed the following "suburban style" subdivisions in the general vicinity: Hunters Glen (Pritchett Pkwy, Stoneybrook North/Heritage Creek (741 acres on both sides of Pritchett Pkwy marketed as Brightwater of Fort Myers), Chesterfield Road, Boonesboro Road (Colony Pines off Leetana). Sandy Pines Circle, Sedgfield Road (High Point Subdivision off Leetana.)

Planned Development Zoning Appropriate

Applicant seeks to rezone the property to a planned development-zoning district.⁷ Planned development zoning is appropriate because it offers flexibility in project design while still implementing the goals, objectives and policies of the Lee Plan.⁸

The planned development zoning designation provides the flexibility in site design necessary to achieve compatibility with surrounding rural development patterns.

Lee Plan

The County's Vision for 2030 is to maintain a distinction between urban and rural areas.⁹ The Rural land use designation permits maximum residential densities of one dwelling unit per acre.¹⁰ The proposed project density is within the permissible range.¹¹ The Rural land use category does not impose minimum lot sizes, or require residential development on acreage *per se*.¹²

The property lies within the Bayshore planning community.¹³ Development patterns throughout the community are consistent with the vision for Bayshore expressed in the Lee Plan: The Bayshore community will be "predominately a rural residential area of single-family homes on large acreages... (t)here are also scattered single-family subdivisions ...on smaller lots, which provide for a full range of housing prices."¹⁴

The Hearing Examiner must evaluate zoning requests for compatibility with surrounding land uses and community character as a whole. Compatibility exists between land uses when no single land use unduly affects other uses in a negative manner.¹⁵ Appropriate intensity of development is determined on a

⁷ LDC 34-931(b), 34-932.

⁸ Lee Plan Glossary; LDC 34-612(2), 34-935.

⁹ The Lee Plan, A Vision for 2030. The Plan notes the success of this vision will depend on two things: the continuing viability of agricultural uses and the amount of publicly owned land in outlying areas.

¹⁰ Lee Plan Policy 1.4.1.

¹¹ Lee Plan Policy 1.4.1. The Lee Plan description of Rural area includes "low-density" residential development as a "predominant" use. Even at the maximum density permitted in the Rural category, the proposed RPD is low density residential development. Most of the land use categories permitting residential development permit higher densities. (Only Coastal Rural, DR/GR, Open Lands, and Wetlands categories impose lower residential densities.)

¹² *Compare with:* Lee Plan Policy 1.4.3 (Rural Community Preserves – minimum lot size requirements) It is noteworthy that the Open Lands and DR/GR categories permit clustered residential development patterns. See Lee Plan Policy 1.4.4 (Open Lands) and 1.4.5 (Density Reduction/Groundwater Recourse)

¹³ Lee Plan Vision Statement paragraph 22; See Goal 18.

¹⁴ Lee Plan Vision Statement Paragraph 22 (Bayshore) (No minimum lot sizes established for residential development in Bayshore community.)

¹⁵ Florida Statutes s. 163.3164(9); The County evaluates compatibility during the zoning process. LDC 34-145(d), 34-411(c); The Lee Plan provides guideposts to measure compatibility, particularly adjacent to established residential development. See Lee Plan Policies 5.1.5, 135.9.5, 135.9.6.

case-by-case basis taking into account the uses permitted by the Lee Plan and the nature of land uses surrounding the project.¹⁶ New development adjacent to established residential neighborhoods must be compatible with, or improve the area's existing character.¹⁷

Neither the Lee Plan nor the LDC require density of adjacent properties to match. The site's current agricultural zoning designation potentially allows development of more than 200 dwellings on one-acre lots.¹⁸ For this reason, the proposed number of dwellings were not a consideration in the Hearing Examiner's evaluation of compatibility.¹⁹

Several members of the public expressed dismay over proposed lot sizes, finding them incompatible with the surrounding development pattern.²⁰ However, the Lee Plan does not impose minimum lot sizes on residential development in the Bayshore Community.²¹

The planning communities of Buckingham, Northeast Lee County, Alva, and North Olga all promote a rural lifestyle yet permit clustered development.²² The Vision Statement for the Bayshore Planning Community recognizes that scattered single-family subdivisions on smaller lots are part of the fabric of the community.²³

The Lee Plan encourages a diverse mix housing options.²⁴ The RPD will contribute to emerging development patterns in Bayshore, which include single-family homes on acreage as well as scattered subdivisions on smaller lots.²⁵

¹⁶ LDC 34-413.

¹⁷ Lee Plan Policy 135.9.5.

¹⁸ The site is 216 acres. The Rural land use classification permits residential development at densities of one dwelling per acre, potentially allowing for its subdivision into 200 or more one-acre home sites.

¹⁹ The request seeks approval of a 201 unit residential subdivision. If the property were subdivided into one-acre lots under the existing agricultural zoning designation, there would be no dedicated water management plan to address sheet flow from the north or to improve water quality of surface water runoff. Septic tanks would serve the dwelling units, but there could be no requirement for upgraded/enhanced septic systems. Finally, there would be no requirement for buffers or preservation of native vegetation.

²⁰ The Bayshore Community Plan does not require minimum lot sizes generally or even along the perimeter of projects. Cf. North Olga Community Plan. In North Olga, proposed residential development adjacent to an "existing large lot residential area(s)" must provide minimum lot sizes of one unit per acre for lots abutting the perimeter of the property. Lee Plan Policy 29.2.2 (North Olga policy defines "large lot residential" as residential lot sizes of one acre or larger.)

²¹ There no land development regulations implementing the Bayshore Community Plan providing clarification on lot sizes. Therefore, the Hearing Examiner must rely on a plain reading of Lee Plan Policies.

²² See Lee Plan Policies 20.1.3, 20.1.5 (Buckingham), Objective 27.1, Policy 27.1.1(Northeast Lee County), Policy 28.2.3 (Alva), Objective 29.2 and Policies 29.1.1, 29.2.1 (North Olga), See also Policy 33.3.2 (Southeast Lee County);

²³ Lee Plan: A Vision for 2030, Paragraph 22.

²⁴ Lee Plan Policy 158.1.9.

²⁵ The Board must evaluate compatibility with surrounding land uses and community character. Lee Plan Objective 2.1 and Policy 2.2.2. There are single-family subdivisions on smaller lots in proximity to the site. Most notably, Hunter's Glen, Brightwater and development off Leetana Road.

The Hearing Examiner finds the proposed RPD complies with Lee Plan directives to protect the rural residential character of the Bayshore community because the vision for the community specifically includes scattered subdivisions on smaller lots.²⁶

Environmental Features²⁷

The majority of the site consists of pastureland with cattle ponds.²⁸ Approximately 30 acres in the center of the site is comprised of indigenous vegetation including Freshwater Marsh, Palmetto Prairie, Pine Flatwoods, Mesic Oak and forested wetlands.²⁹ The southernmost tip of the property includes a portion of Chapel Branch Creek.

The MCP meets code requirements for open space.³⁰ Applicant/Developer will enhance the function of onsite wetlands by removing exotic vegetation and adding plant material.³¹ Wetland restoration plantings will provide water quality treatment for off-site flows.³²

The project developer must submit a listed species management plan with the application for development order.³³ The site plan design will provide foraging habitat for wading birds within preserved wetlands and littoral areas surrounding the proposed lake tracts.³⁴

The property drains into Chapel Branch Creek, which runs the length of the eastern boundary of the site.³⁵ The Chapel Creek/Bayshore Creek watershed is an impaired waterway exceeding DEP established limits for fecal coliform. Applicant proposes to distance septic systems at least 30 feet from on-site lakes and 100 feet from Chapel Branch Creek to mitigate potential impacts to the creek and public wellfields.³⁶

²⁶ Lee Plan Goal 18, Policies 2.2.1, 5.1.3, 5.1.5, 135.9.5; Lee Plan Vision Statement Paragraph 22. There is sufficient separation between the proposed RPD and the two closest subdivisions of Hunter's Glen and Brightwater to meet the definition of "scattered."

²⁷ Expert testimony provided by Tyler King, President and Principal Biologist, W. Dexter Bender and Associates.

²⁸ Approximately 137 of the 213 acres is improved pasture.

²⁹ Staff Report Attachment Q: Memorandum Dated November 8, 2018 from Beth Workman, Environmental Planner to Anthony Rodriguez, Principal Planner. Testimony of Tyler King: The South Florida Water Management District's formal jurisdictional wetland determination in 2017 found 15.34 acres of wetlands.

³⁰ Lee Plan Goal 77, Objectives 77.1, 77.3.

³¹ Lee Plan Objective 123.2

³² Wetland restoration plantings provide nutrient uptake in the off-site flows. Lee Plan Goals 123, 125, Policy 61.3.11.

³³ LDC 10-473.

³⁴ Testimony of Tyler King.

³⁵ The Chapel Branch crosses the southeastern corner of the property, eventually draining into the Caloosahatchee River. The proposed site design will not impede the floodway. Lee Plan Policy 59.1.5.

³⁶ Staff Report page 10 of 16. See Lee Plan Goals 123, 125, Policy 125.1.4.

The MCP reflects a 50-foot open space area along Rich Road separating residential lots from the roadway. Applicant/Developer will install a 30-foot planted buffer within this area.³⁷ Applicant/Developer will install a standard 15-foot wide planted buffer along Leetana Road, except where project roads lie between home sites and Leetana. In those areas, there will be an enhanced buffer 30 feet in width.³⁸

There is no buffer proposed along the eastern property boundary where project lots are at least an acre in size. If a project road lies within 125 feet of this property line, Applicant/Developer will install a 30-foot wide buffer planted with trees and hedges.

Water Management³⁹

Chapel Branch Creek and east Branch Daugherty Creek bound the property to the east and west respectively.⁴⁰ Area storm water flows from north to south. Roadside swales along Rich Road divert water to the two creeks.

County development regulations require developers to demonstrate development will not adversely influence drainage of adjacent properties.⁴¹ Proposed berms along Leetana and Rich Roads have the potential to impede historic water flow patterns through the property. In response, Applicant proposes a conveyance system through or around the property to maintain historic flows from the north.⁴²

Project water management consists of open swales along internal roadways and interconnected wet detention lakes. The site design enlarges the water management system to accommodate additional water storage during storm events.⁴³ Enlarged retention features will hold more water than necessary to support the project and control the outfall of storm water to Chapel Branch Creek. In addition, the design provides an additional 50% water quality treatment prior to

³⁷ The LDC requires only a 15-foot planted roadside buffer. The planted buffer along Rich Road will be 30 feet in width planted with 5 trees every 100 linear feet along with a double staggered hedgerow maintained at 36 inches high.

³⁸ Along Leetana Road, buffer plantings will include 10 trees every 100 linear feet with a double staggered hedgerow maintained at 36 inches high in areas where the buffer is 30 feet wide.

³⁹ Expert testimony provided by Brent Addison, PE Banks Engineering.

⁴⁰ The property lies within the Chapel Branch Creek watershed.

⁴¹ Lee Plan Policy 61.3.1., 61.3.6.

⁴² Applicant/Developer proposes to replace the existing culverts at the intersection of Leetana and Rich Roads and restore the function of the existing drainage swale along the project frontage on Leetana Road. Applicant/Developer will maintain the Leetana swale and culvert in perpetuity to ensure both features function as designed. In addition, Applicant/Developer will accommodate existing storm water flows from the north by constructing a bypass directly to the onsite wetland or, by constructing a perimeter ditch along the eastern boundary into the wetland. Lee Plan Goals 59, 60, Objective 61.2, Policy 59.1.5.

⁴³ Lee Plan Policy 59.1.6.

discharge into onsite wetlands.⁴⁴ This design will likely improve drainage conditions in the area as well as the quality of water entering the creek.⁴⁵

The Lee Plan requires private surface water management systems to protect receiving waters.⁴⁶ A portion of Chapel Branch Creek crosses the property along its southern boundary. Chapel Branch Creek flows into the Caloosahatchee River.⁴⁷ Currently, storm water enters and leaves the site untreated and un-attenuated. The proposed water management system will accommodate offsite flows and also provide water quality treatment that does not exist today.⁴⁸

Existing conditions will likely improve because of the design of the water management system, which incorporates lakes and natural features to receive/ manage storm water.⁴⁹ The design routes storm water into retention ponds for pretreatment, improving the quality of water entering site preserves and Chapel Branch Creek.⁵⁰ Together with retention ponds, the preserves trap nutrients and pollutants thereby protecting the quality of water entering Chapel Creek.⁵¹

The proposed site design alleviates area drainage issues by accommodating existing flows, clears the blocked culvert under Leetana Road and provides for additional water storage during storm events. These design features and conditions of approval will protect surrounding property owners from adverse impacts from the project.⁵²

Transportation⁵³

The MCP reflects two access driveways onto Rich Road, a two-lane County maintained collector road.⁵⁴ Application of LDC standards show that project traffic will not significantly affect traffic conditions in the Bayshore area.⁵⁵ Trips generated by the project at build out do not create capacity limitations or the need for intersection improvements.⁵⁶

⁴⁴ Staff Report Attachment J: Description of Surface Water Management Plan, prepared by Banks Engineering. See Lee Plan Policy 125.1.3.

⁴⁵ Lee Plan Goals 60 and 122.

⁴⁶ Lee Plan Goal 61, Policy 125.1.3.

⁴⁷ Flows from the Caloosahatchee River eventually reach San Carlos Bay and the Gulf of Mexico.

⁴⁸ Lee Plan Goals 60 and 61, Objective 61.2; LDC 34-411(g) and (h).

⁴⁹ Lee Plan Goal 77, Objectives 60.4, 61.2, Policies 60.4.2, 61.2.4.

⁵⁰ Lee Plan Policy 125.1.3.

⁵¹ Lee Plan Policies 61.2.1, 61.3.11.

⁵² Lee Plan Goal 59.

⁵³ Expert testimony provided by Ted Treesh, Transportation Planner, TR Transportation Consultants, Inc.

⁵⁴ Lee County AC 11-1. There are no sidewalks or bike path facilities on Rich Road.

⁵⁵ Testimony of Ted Treesh and TIS prepared by TR Transportation Consultants, Inc. dated January 17, 2018. (Staff Report Attachment N). In evaluating transportation impacts, planners examine projected traffic conditions at build out (2023) taking into consideration a combination of historical growth rates for the area and approved development.

⁵⁶ The TIS concludes there will be sufficient road capacity to accommodate project traffic on all roadways except Bayshore Road, west of Slater Road. The segment of Bayshore Road west of Slater Road will operate at level of service F both with *and without* the project in 2023. Because this segment of Bayshore

Accordingly, the proposed RPD does not trigger developer funded capital improvements to the County road network other than site-related improvements.⁵⁷ The developer must construct road improvements necessary to address site related impacts at the development order stage.⁵⁸ Further, each home will be subject to road impact fees.⁵⁹

Applicant volunteered to incorporate a school bus stop on Rich Road⁶⁰.

Wastewater Management.⁶¹

The property is located in the Florida Governmental Utility Association wastewater franchise area for sewer service, but there is no infrastructure to serve the property.⁶² Staff recommended an on-site wastewater package plant.

Applicant did not support using a package plant to address project wastewater citing compatibility issues arising from noise, odor, and weekly sludge disposal.⁶³ Applicant proposed "individual advanced treatment systems," which are septic tanks with advanced processing to provide 65% greater nitrogen removal than a standard septic tank. Improved uptake of nutrients produces less sludge and higher water quality.⁶⁴

Applicant proposes a groundwater-monitoring plan to ensure the advanced treatment systems work well.⁶⁵ In addition, wastewater systems must be located at least 115 feet from waterbodies and 100 feet from Chapel Branch Creek.⁶⁶

Road will operate below adopted level of service even without the project, it is a pre-existing transportation deficiency under Florida law.

⁵⁷ Testimony of Ted Treesh, Transportation Planner. See Memorandum from M. Evans to A. Rodriguez dated August 31, 2018, Staff Report Attachment P.

⁵⁸ Site related improvements include capital improvements and right-of-way dedications for direct access improvements to the project. These improvements may include site driveways, road, turn lanes, deceleration or acceleration lanes, etc. Lee Plan Objective 39.1, Policy 39.1.1.

⁵⁹ LDC 2-261 *et seq.*

⁶⁰ The MCP specifies the proposed location of the bus stop.

⁶¹ Expert testimony provided by W. Kirk Martin, PG, President and Principal Scientist, Water Science Associates.

⁶² Project density does not warrant connection to central sanitary sewer system. LDC 10-353. In addition, the Florida Department of Environmental Protection limited FGUA's expansion potential due to limited disposal capacity.

⁶³ Applicant's expert testified the site hydrology was conducive to disperse disposal provided by septic systems.

⁶⁴ Mr. Martin testified the current agricultural use of the property generates 2,700 pounds of nitrogen a year from roughly 65 cows. In contrast, 201 advanced treatment septic systems will produce about 700 pounds of nitrogen a year, a significant improvement over current conditions.

⁶⁵ The developer will install groundwater monitoring wells to ensure the project does not degrade the quality of surface and groundwater. The plan includes ongoing maintenance of septic systems and data reporting. Lee Plan Goal 63, Policies 125.1.2, and 125.1.4.

⁶⁶ Staff Report page 10 of 16. See Lee Plan Goal 125.

Applicant also proposes a condition requiring maintenance of individual septic systems by the Homeowner's Association.⁶⁷

Ultimately, the parties agreed to a condition allowing Applicant/Developer the option of choosing between onsite package plant and advanced treatment septic tank systems at the local development order stage.

Urban Services and Infrastructure

Urban services are the services, facilities, capital improvements, and infrastructure necessary to support development.⁶⁸ The Lee Plan requires an evaluation of the availability of urban services during the rezoning process.⁶⁹

The property is in a non-urban area with access to limited urban services.⁷⁰ Future residents must drive several miles to access libraries, schools, parks, medical services, and shopping. This is a lifestyle choice for many evidenced by numerous communities in Bayshore, Olga, Alva, Buckingham, Pine Island and Southeast Lee County.

Applicant proposes individual wells to serve as the project's potable water source.⁷¹ Applicant proposes "individual advanced treatment systems" to serve each residence.⁷² Staff initially recommended an onsite package plant as the method to address wastewater collection/treatment. The parties ultimately agreed to allow the developer to choose either a package plant or individual advanced treatment septic systems at the time of local development order.

Public safety available to serve the project include police, fire, and emergency services.⁷³

Employment opportunities in North Fort Myers are limited to minor commercial business and a small industrial park west of I-75. The large employment centers are located in Fort Myers, Cape Coral, and adjacent counties accessible via the interstate.

⁶⁷ Staff found the proposed conditions problematic, preferring a package plant for wastewater collection/treatment.

⁶⁸ Lee Plan Glossary; Urban services include; public water and sewer, paved streets and roads, public transit, parks and recreation facilities, urban levels of police, fire and emergency services, urban surface water management, schools, employment, industrial, and commercial centers, institutional, public, or administrative facilities, community facilities such as senior citizens centers, libraries and community centers.

⁶⁹ Lee Plan Policy 2.2.1.

⁷⁰ Lee Plan Objective 1.4, Policy 1.4.1. The applicant is not required to construct bikeway and pedestrian facilities on Rich Road. LDC 10-256.

⁷¹ Water source: Sandstone Aquifer.

⁷² The Bayshore Community Plan *discourages* new central sewage service north of Bayshore Road within non-urban land use categories. Lee Plan Objective 18.3, Policy 18.3.1. In addition, project density does not trigger requirement to connect to central sanitary sewer system. LDC 10-353(a)(1).

⁷³ Bayshore Fire Protection and Rescue Services District Station on Nalle Road.

Deviations

Application seeks approval of three deviations from the LDC. Deviations are departures from land development regulations.⁷⁴ Applicants seeking deviations must demonstrate the deviation enhances project objectives and not be detrimental to public interests.⁷⁵ All three deviations pertain to setbacks. Two deviations relate to setbacks for excavations for water retention/detention features,⁷⁶ and one relates to accessory structure setbacks from indigenous plants subject to fire.⁷⁷

Applicant provided sufficient testimony and evidence to support the first two deviations based on the LDC standard of review.⁷⁸ However, no evidence in the record demonstrated the third deviation meets the review criteria.

The LDC establishes structure setbacks from indigenous plants subject to fire to protect the public from fire related impacts.⁷⁹ Staff's proposed condition suggests the deviation *may be approved if the fire department does not object, but there is no evidence in the record confirming the deviation will not be detrimental to public interests.*⁸⁰ The Hearing Examiner is unable to make the necessary finding without evidence.⁸¹

It is noteworthy the LDC authorizes the Director of Development Services to grant a deviation from this standard at the development order stage.⁸² The Hearing Examiner recommends Applicant pursue the third deviation at that time.

Conditions

The County must administer the zoning process so that proposed land uses acceptably minimize adverse impacts to adjacent property as specified in the development regulations.⁸³ Conditions must plausibly relate to the impacts anticipated from proposed development and must be pertinent to the mitigation of those impacts on the public health, safety and welfare.⁸⁴

⁷⁴ LDC 34-2.

⁷⁵ LDC 34-373(a)(9).

⁷⁶ LDC 10-329(d)(1)a.2. and 10-329(d)(1)a.3.

⁷⁷ LDC 10-415(b)(1)c.

⁷⁸ LDC 34-377(a)(4).

⁷⁹ Lee Plan Policy 72.2.3.

⁸⁰ The record must include evidence Bayshore Fire Department does not object to the deviation.

⁸¹ Applicant may request to supplement the record at the Board hearing.

⁸² LDC 10-104(a)(16).

⁸³ Lee Plan Policy 135.9.6.

⁸⁴ LDC 34-932(b).

The RPD will be subject to several conditions of approval. The conditions relate to impacts anticipated from the project.⁸⁵ The Hearing Examiner recommends:

- (1) Revisions to conditions to improve clarity.
- (2) The deletion of conditions that restate LDC standards and criteria applicable the project pursuant to Condition 1.

Public

Several members of the public participated in the hearing. Public concerns centered on flooding, traffic and desire to maintain the rural ambiance of Leetana and Rich Roads.

Conclusion

Bayshore Community Plan requires the exclusion of uses "destructive to the character of the rural residential environment."⁸⁶ After reviewing the record in its entirety, the Hearing Examiner concludes the project will not be destructive to the character of the Bayshore community.⁸⁷ The RPD is compatible with development patterns in the Bayshore community, which include scattered single-family subdivisions.⁸⁸

The site design accommodates sheet flow from the north and provides additional water quality treatment of water destined for Chapel Branch Creek and the Caloosahatchee River. Environmentally enhanced septic systems reduce the likelihood of further impairment of water quality. **These benefits would not be available were the property to be subdivided and developed under the existing AG zoning designation.**

In conclusion, the Hearing Examiner recommends approval of the request subject to the conditions set forth in Exhibit B.

IV. Findings and Conclusions:

Based on the testimony and exhibits presented in the record, the Hearing Examiner finds:

A. The request for RPD zoning on the 216-acre parcel is consistent with the Lee Plan. See Lee Plan Vision Statement - Paragraph 22 (Bayshore Fort Myers Planning Community), Goals 4, 5, 17, 18, 77, 124, 125, 126, 135; Objectives 1.4,

⁸⁵ LDC 34-83(b)(4)a.3.

⁸⁶ Lee Plan Goal 18.

⁸⁷ The requested density falls in line with varied residential densities throughout the community.

⁸⁸ The Board must evaluate compatibility with surrounding land uses and community character. Lee Plan Policy 2.2.2. There are single-family subdivisions on similarly sized lots in proximity to the site. Most notably, Hunter's Glen, Brightwater, and development off Leetana Road.

2.1, and Policies 1.4.1, 1.7.6, 2.1.2, 2.2.1, 17.3.5, 18.1, 18.3, and 135.1.9; Lee Plan Tables 1(b). Lee Plan Maps 1 and 16.

B. As conditioned, the RPD zoning designation:

1. is consistent with County regulations. See LDC 34-411, 34-413, 34-341, 34-491, 34-612(2), 34-931(b), 34-932, 34-934, and 34-2175(b)(5);

2. is compatible with existing or planned uses in the surrounding area. See Lee Plan Goals 5, 18; Objective 2.1, and Policies 1.4.1, 5.1.5, 5.2.4, 135.9.5, LDC 34-411(j), 34-413;

3. provides access sufficient to support the proposed development intensity. See Lee Plan Objective 18.2, LDC 34-411(d);

4. expected impacts on transportation facilities will be addressed by county regulations and conditions of approval. See Lee Plan Policy 39.1.1;

5. will not adversely affect environmentally sensitive areas or natural resources. See Lee Plan Objective 4.1, Standard 4.1.4, Objectives 61.3, 77.1, Policies 61.3.1, 61.3.11; LDC 34-411(g).

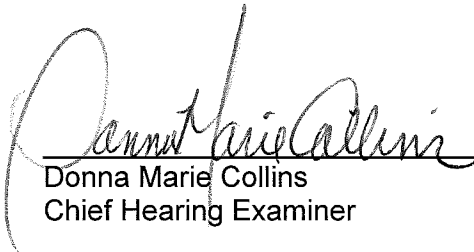
C. Although in a rural area, some urban services are available to serve the development. These services include paved streets, police, fire, and emergency services, urban-style surface water management, and schools. See Lee Plan Goals 4, 70, Objectives 1.4, 18.3, Policy 18.3.1, 53.1.5; Standards 4.1.1, 4.1.2, 4.1.3;

D. Residential development is appropriate at the proposed location. See Lee Plan Goals 5, 18; Policies 1.4.1, 2.2.1, 2.2.2, 5.1.2, 5.1.5, 135.1.9, 135.9.5, 135.9.6, LDC 34-411(c), (j);

E. The County regulations and recommended conditions of approval provide sufficient safeguards to protect the public interest and are reasonably related to the impacts expected from the proposed development. See Lee Plan Goals 59, 60, Objective 4.1, Policies 5.1.5, 59.1.5, 59.1.6, 61.2.1, 61.3.1, 61.3.6, 125.1.3, 135.9.6; LDC 34-411, and 34-932.

F. Two of the requested three deviations enhance the planned development and protect public health, safety and welfare. See LDC 34-377(a)(4).

Date of Recommendation: September 11, 2019.



Donna Marie Collins
Chief Hearing Examiner

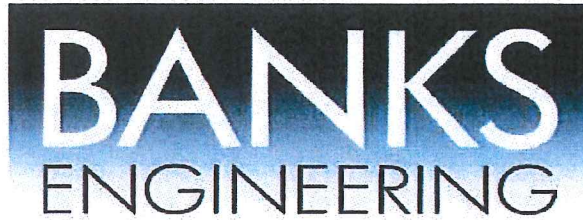
Office of the Lee County Hearing Examiner
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Fort Myers, FL 33902-0398

Exhibits to Hearing Examiner's Recommendation

- Exhibit A Legal Description and Vicinity Map
- Exhibit B Recommended Conditions and Deviations
- Exhibit C Exhibits Presented at Hearing
- Exhibit D Hearing Participants
- Exhibit E Information

Exhibit A

LEGAL DESCRIPTION AND VICINITY MAP



Professional Engineers, Planners & Land Surveyors

DESCRIPTION OF A TRACT OR PARCEL OF LAND LYING IN SECTION 17, TOWNSHIP 43 SOUTH, RANGE 25 EAST LEE COUNTY, FLORIDA

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTION 17, TOWNSHIP 43 SOUTH, RANGE 25 EAST, BEING FURTHER BOUND AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 17; THENCE N 89°49'39" E ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER FOR 1,129.56 FEET; THENCE S 00°10'21" E FOR 50.00 FEET TO AN INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF RICH ROAD (100 FEET WIDE) AS DESCRIBED IN OFFICIAL RECORDS BOOK 2723 AT PAGES 1304 AND 1306 OF THE PUBLIC RECORDS OF SAID LEE COUNTY AND THE POINT OF BEGINNING OF A PARCEL OF LAND HEREIN DESCRIBED; THENCE N 89°49'39" E ALONG SAID SOUTH RIGHT-OF-WAY LINE FOR 1,474.72 FEET; THENCE N 89°49'48" E ALONG SAID SOUTH RIGHT-OF-WAY LINE FOR 1,139.13 FEET; THENCE S 00°20'10" E FOR 2,611.72 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 17; THENCE S 89°43'56" W ALONG SAID SOUTH LINE FOR 835.53 FEET; THENCE S 00°23'05" E FOR 1,829.76 FEET TO AN INTERSECTION WITH THE CENTERLINE OF A ROAD RIGHT-OF-WAY (80 FEET WIDE) AS SHOWN ON TRIPLE R ACRES, AN UNRECORDED SUBDIVISION; THENCE N 61°02'39" W ALONG SAID CENTERLINE FOR 1,029.46 FEET; THENCE N 45°47'41" W ALONG SAID CENTERLINE FOR 1,471.27 FEET; THENCE N 00°05'30" W ALONG SAID CENTERLINE FOR 296.42 FEET; THENCE N 00°03'24" W ALONG SAID CENTERLINE FOR 1,790.66 FEET; THENCE S 89°43'56" W FOR 39.28 FEET; THENCE N 00°10'34" W FOR 16.60 FEET TO AN INTERSECTION WITH THE WESTERLY LINE OF SAID ROAD RIGHT-OF-WAY (80 FEET WIDE); THENCE N 44°44'56" E ALONG SAID WESTERLY LINE FOR 274.13 FEET; THENCE N 00°10'34" W ALONG SAID WESTERLY LINE FOR 615.08 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS: 216.03 ACRES, MORE OR LESS

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.

BEARINGS AND DISTANCES ARE BASED ON THE "STATE PLANE COORDINATE SYSTEM" FLORIDA ZONE WEST NAD 83 (CORS), WHEREIN THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 43 SOUTH, RANGE 25 EAST BEARS N 89°49'39" E. THE SCALE FACTOR IS 0.999944534.

DESCRIPTION PREPARED: 3-19-2018.

RICHARD M. RITZ REGISTERED LAND SURVEYOR FLORIDA CERTIFICATION NO. 3009 DATE SIGNED 3-19-2018

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Applicant's Legal Counsel by 7/31/18 MJL

RECEIVED JUL 23 2018

COMMUNITY DEVELOPMENT

DCI 2018-00004

SHEET 1 OF 2 • SERVING THE STATE OF FLORIDA •

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Professional Engineers, Planners, & Land Surveyors
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FT. MYERS, FLORIDA 33966
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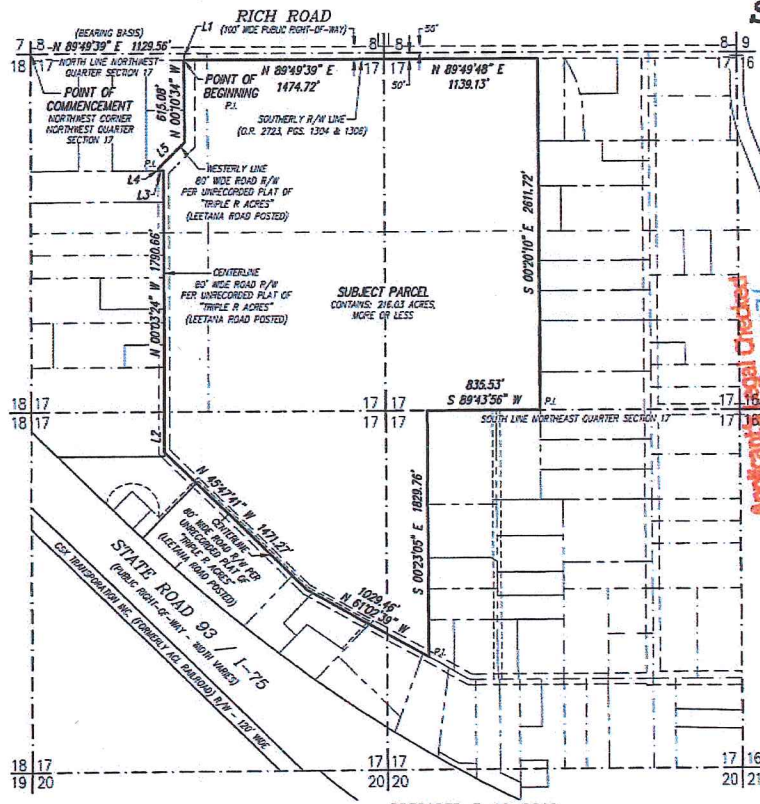


1" = 800'

LEGEND:

- P.G.S. INDICATES PAGES
- P/W INDICATES RIGHT-OF-WAY
- O.R. INDICATES ORIGINAL RECORDS
- P.I. INDICATES POINT OF INTERSECTION
- L1 INDICATES LINE 1 FROM LINE TABLE

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SKETCH OF DESCRIPTION

OF
A TRACT OR PARCEL OF LAND LYING IN
SECTION 17, TOWNSHIP 43 SOUTH, RANGE 25 EAST,
LEE COUNTY, FLORIDA

NOTES:

- 1.) SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.
- 2.) BEARINGS AND DISTANCES ARE BASED ON THE "STATE PLANE COORDINATE SYSTEM" FLORIDA ZONE WEST NAD 83 (CORES), WHEREIN THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 43 SOUTH, RANGE 25 EAST BEARS N 89°49'39" E. THE SCALE FACTOR IS 0.999944534.

LINE TABLE

LINE	BEARING	DISTANCE
L1	S 00°20'21" E	50.00'
L2	N 00°05'30" W	296.42'
L3	S 89°43'56" W	39.28'
L4	N 00°10'34" W	16.60'
L5	N 44°44'56" E	274.13'

SEE SHEET 1 OF 2 FOR COMPLETE METES AND BOUNDS DESCRIPTION.
THIS SKETCH OF DESCRIPTION IS NOT A BOUNDARY SURVEY

Richard M. Ritz

RICHARD M. RITZ
REGISTERED LAND SURVEYOR
FLORIDA CERTIFICATION NO. 4009

DATE SIGNED: 3-19-2018
THIS SKETCH OF DESCRIPTION IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.



PREPARED 3-19-2018
SHEET 2 OF 2

JUL 23 2018

COMMUNITY DEVELOPMENT

DCI2018-00004 Zoning

Legend

-  Subject Parcel
-  Parcel Boundary

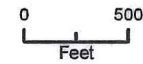


Exhibit B

RECOMMENDED CONDITIONS AND DEVIATIONS

CONDITIONS:

All references to uses are as defined or listed in the Lee County Land Development Code (LDC).

Hearing Examiner Note: Reference above is redundant with Condition 1, which requires compliance with LDC. Suggest deletion.

1. Master Concept Plan/Development Parameters

- a. Development must be substantially consistent with the one-page Master Concept Plan (MCP) entitled *Master Concept Plan, Leetana RPD*, prepared by Banks Engineering, stamped "received" by Community Development on December 18, 2018 (MCP, Exhibit B1), except where modified by the conditions herein.
- b. Development must comply with the Land Development Code (LDC) except where deviations have been approved in this resolution. Subsequent changes to the MCP, conditions, or deviations, require further development approvals.
- c. Approved development parameters: Up to 201 single-family units.

~~The maximum height is limited to 35 feet.~~

- d. References to applicant and developer include successors and assigns.

Hearing Examiner Note: Reference to height is redundant with Condition 3, which addresses the property development regulations. Suggest deletion.

2. Schedule of Uses

Accessory uses and structures

Community gardens

Dwelling unit: Single-family

Entrance gates and gatehouse

Essential services

Essential service facilities, Group I

Excavation: Water retention

Fences, walls

Fishing piers

Home occupation

Models: Display center, display group, model home

Parking Lot: Accessory

Real estate sales office
Recreation facilities: Personal, Private-on-site
Residential accessory uses

Signs

Stable: Boarding, Private, limited to lots 40,000 square feet or greater in area (see Condition 3)

Temporary uses, limited to temporary construction trailers and equipment storage sheds

Hearing Examiner Note: Reference to condition 3 does not further illuminate the use. Suggest deletion of highlighted language.

3. Property Development Regulations

Minimum Lot Area and Dimensions

Area, perimeter lots ¹	1 acre (43,560 square feet)
Area, interior lots	20,000 square feet
Width, perimeter lots ¹	100 feet
Width, interior lots	65 feet
Depth	100 feet

Minimum Setbacks

Street (collector/private)	25 feet/20 feet ²
Side	5 feet
Rear (principal/accessory)	10 feet/5 feet
Preserve (principal/accessory)	20 feet/0 feet
Preserve, fire dependent (principal/accessory)	30 feet
Waterbody (principal/accessory)	20 feet/0 feet

Maximum building height	35 feet
Maximum lot coverage	45%

¹ Perimeter lots located within 50 feet of property perimeter and not separated by right-of-way or landscape buffer.

² Reduced to 15 feet for side entry garage.

Hearing Examiner Note: There is no evidence in the Hearing Examiner's record to support the requested zero foot setback from indigenous plant communities subject to fire. Hearing Examiner recommends Applicant seek an administrative deviation from the Development Services when evidence of no objection from the fire department is available to support a finding of no detriment to public interest.

4. No Blasting

Blasting prohibited.

5. Dewatering

Temporary dewatering during construction is subject to the approval of the Department of Environmental Protection or the South Florida Water Management District. Discharge of dewatering effluent into the County's MS4 system is prohibited, unless it can be

demonstrated through monitoring that the discharge meets State water quality standards.

6. Environmental Conditions

- a. Landscape Plan. Development order landscape plans must depict planting of proposed swales outside of the 15.34-acre wetland preserve with one-gallon native grasses mulched with pine straw installed three feet on center. The general tree requirement may be reduced by one 10-foot general tree for every 400 square feet of swale planted with one gallon native grasses.
- b. Indigenous Management Plan. The development order application must include an Indigenous Management Plan reflecting: the spreader swale, the bypass swale, pipe system, or other off-site storm water conveyance system, width of work limit areas within the preserve impacted by installation of conveyance swale, pipe or system, and the area covered by the planting plan for proposed wetland restoration areas (See Condition 8.b).

The design of the wetland restoration area must allow conveyance of surface water and include wetland ground cover in Hydric Unimproved Pasture (212H) areas, totaling 2.84 acres. Herbaceous material must consist of species such as: lovegrass (*Eragrostis sp.*), beakrush (*Rhynchospora sp.*), spikerush (*Eleocharis sp.*), sand cordgrass (*Spartina bakeri*), panicum grass (*Panicum sp.*), and soft rush (*Juncus effusus*). Material must be planted three feet on center and consist of four-inch liners, or be six inches in height at time of planting. The final species list will be based upon site-specific conditions and on plant material availability.

- c. Baseline Monitoring Report. The development order application must include a baseline monitoring report for areas included in the Indigenous Management Plan. The report must include photos and photo station points shown on a map and a "Five-year Monitoring Schedule" that includes a "Time Zero Monitoring Report" at time of Certificate of Compliance request for the preserve.
- d. Time Zero Monitoring Report. Prior to the issuance of a Certificate of Compliance for areas included in the Indigenous Management Plan, the developer must submit the "Time Zero Monitoring Report" including photos and photo station points shown on a map.
- e. Replanting Wetland Restoration Areas. If restoration plantings within wetland restoration areas do not comply with the development order during the five-year monitoring schedule, the developer must replant restoration plant materials and revise the monitoring schedule to restart the five-year monitoring period.

7. Wastewater Collection and Treatment

- a. Election of Method. The developer must provide for collection and treatment of wastewater generated by the development either by an on-site sewage treatment facility (package plant) or by individual on-site "advanced-treatment disposal units" (septic systems). The developer has the option of selecting either method of wastewater treatment subject to the following conditions:

(1) Package Plant

- (a) The MCP must depict the location and area dedicated to the package plant.
- (b) The developer must construct the wastewater infrastructure consistent with the Lee County Utilities' Design Manual.
- (c) The development must connect to central sanitary sewer service if sanitary sewer infrastructure with adequate capacity to provide minimum service to the development is extended within one-quarter mile of the development.

(2) Individual On-Site Advanced-Treatment Disposal Units (septic systems).

- (a) On-site septic systems must meet or exceed the requirements of NSF-245 certification for aerobic treatment and nitrogen removal.
- (b) Individual septic systems must be set back a minimum of 115 feet from water bodies.
- (c) The developer must include copies of the Homeowner Association (HOA) documents, including Declarations and Covenants with the development order application. The documents will be subject to review and approval by the Department of Community Development and the County Attorney.

HOA documents must include:

- (i) Maintenance Schedule. A maintenance schedule for individual septic systems that exceeds the manufacturer recommended maintenance schedule. The documents must also require individual property owners to submit proof of compliance with the maintenance schedule to the HOA.
- (ii) Right of HOA Inspection and Remediation. Provisions obligating the HOA to conduct inspections and complete remedial action measures not completed by individual property owners and granting the HOA the authority and easements necessary to undertake this obligation.
- (iii) Annual Reporting. A provision requiring the HOA to file annual reports documenting compliance with this condition with the Division of Development Services.
- (iv) Replacement. Provisions requiring replacement of individual septic systems with systems that meet or exceed the requirements of NSF-245 certification for aerobic treatment and nitrogen removal in accordance with this condition.

8. Surface Water Management

- a. Minimal Impacts from Storm Water. The MCP must maintain historic flow patterns and accommodate storm water runoff from the north. Storm water from the north must route through the site in a manner that minimizes adverse impacts to adjacent property.
- b. Drainage Improvement Plans. Plans submitted with the first development order must depict drainage improvements to facilitate flow of off-site storm water through or around the property from north to south as follows:
 - (1) Culvert Replacement. Replacement of existing culvert under Leetana Road at the intersection of Rich Road. The design of the replacement culvert is subject to review and approval by Lee County.
 - (2) Bypass. A spreader swale and a bypass swale, bypass pipe system, or other conveyance system to convey off-site storm water from north of the property to the 15.34-acre wetland preserve. Development order plans must depict cross sections, limits of work within preserves and open space areas, and a proposed wetland restoration-planting plan, with plant specifications, to provide conveyance into Chapel Branch. Design of the bypass swale, bypass pipe system, or other conveyance system must maintain historic flow patterns and is subject to review and approval by the County and South Florida Water Management District.
- c. Maintenance of Swale on Leetana Frontage. Applicant/developer must maintain the following drainage features in perpetuity: drainage swale along the property's Leetana road frontage, the portion of Chapel Branch traversing the property's southeast corner, and the existing Chapel Branch culvert under Leetana Road.

Further, applicant/developer must maintain and restore surface water flow through and around the property prior to the approval of the first development order on the property.

Hearing Examiner Note: *The highlighted text requires improvements "prior to" approving the first development order. Will it be possible to make improvements to restore the flow of surface water without a development order? If improvements are necessary to accomplish this condition, it is likely a development order will be necessary to perform the work. Applicant and staff should examine/clarify this requirement prior to final Board Hearing.*

- d. Reports. Applicant/developer must submit the following reports with the application for the first local development order:
 - (1) Baseline Conditions Report. A "Baseline Conditions Report" documenting the existing conditions of the Leetana Road drainage swale, the portion of Chapel Branch traversing the southeast corner of the property, and the

existing Chapel Branch culvert under Leetana Road. The applicant/developer must submit the Baseline Conditions Report to the County Divisions of Natural Resources and Environmental Sciences for review and approval.

The Report must include the following information on each drainage feature:

- (a) Topographic data for each drainage feature and surrounding areas sufficient to depict slope and depth of the drainage features;
 - (b) Documentation of existing vegetation within each drainage feature to the extent applicable;
 - (c) Summary of obstructions by drainage feature including the type of obstruction, severity of obstruction, and location of each obstruction. Obstructions must be keyed to a map of the property depicting the location of each obstruction; and
 - (d) Photographs of existing vegetation and obstructions within each drainage feature keyed to a site map depicting the location of each photograph.
- (2) Maintenance and Restoration Activities Report. A "Maintenance and Restoration Activities Report" summarizing actions taken to restore surface water flow documenting:
- (a) Actions to restore the flow of surface water;
 - (b) Post-maintenance topographic data on each drainage feature and surrounding areas documenting changes in topography resulting from maintenance and restoration activities; and
 - (c) Post-maintenance photographs depicting restored drainage features keyed to a site map.
- (3) Pre-Construction Meeting. Prior to County issuance of a vegetation removal permit, the applicant/developer must conduct an on-site pre-construction meeting with the County Divisions of Environmental Sciences, Natural Resources and the South Florida Water Management District to inspect the existing condition of culverts, swales, and preserve areas. At the preconstruction meeting, the applicant/developer may survey-stake the work limits of the spreader swale or pipes for inspection.

Hearing Examiner Note: *The Hearing Examiner re-structured Condition 8 for clarity.*

9. Monitoring of Groundwater and Surface Water

- a. Irrigation. Landscape irrigation must comply with the Water Conservation Ordinance (Ordinance #17-04), as amended.

- b. Development Order Submittals. Applicant/developer must submit the following information to the Division of Natural Resources with the first development order application:
- (1) Baseline Surface Water and Water Table Aquifer Quality Data. On-site baseline surface water and water table aquifer quality data for wet and dry seasons. The applicant/developer must provide data from a minimum of two locations: one location to the north of the property and one location to the south of the property. Applicant/developer must coordinate the location of sampling locations with the Division of Natural Resources.
 - (2) Existing Wells. A survey depicting locations of existing wells on the property. Applicant/developer must permanently plug and abandon wells not part of the groundwater-monitoring network in accordance with applicable regulations prior to approval of the first development order. Applicant/developer must provide well abandonment documentation on wells not part of the groundwater-monitoring network to the Department of Community Development.
- c. Installation of Monitoring Wells. Prior to the approval of the first development order, Applicant/Developer must install a monitoring well to the Sandstone Aquifer within a common element area on the MCP to provide water level data on the property.
- d. Monitoring Requirements. Applicant/Developer must monitor the Sandstone Aquifer in accordance with the following requirements:
- (1) Frequency of Measurement. Water levels measured four times per 24-hour period.
 - ~~(2) Records retrieved monthly and submitted to the County Division of Natural Resources on a quarterly basis.~~
- Hearing Examiner Note:** *The above paragraph repeats the content of the paragraph below. Suggest deletion.*
- ~~(3)~~(2) Data Submittal. Groundwater monitoring data collection must commence within 30 days of monitoring well completion. Groundwater monitoring data must be downloaded monthly and reported quarterly to County Division of Natural Resources. Monitoring will continue in perpetuity, however the program may be revised to increase or decrease monitoring frequency and reporting intervals depending on the results of the previous five-year monitoring period. Reporting will consist of a plot of elevation versus time and an Electronic Data Deliverable (EDD) in a format approved by Lee County Division of Natural Resources.
- e. County Right of Entry. During severe drought conditions, after providing a reasonable notification to the Developer, HOA or other appropriate entity, Lee County may enter the property to measure water levels in the monitoring well.

- f. Water Use Contingency Plan. Applicant/Developer must submit a "Water Use Contingency Plan" with the application for the first development order for review/approval by the County Division of Natural Resources. At a minimum, the Water Use Contingency Plan must:
- (1) Potable Water Use. Prioritize water use from the Sandstone Aquifer for potable water,
 - (2) Irrigation Water. Establish protocols to minimize water use from the Sandstone Aquifer for irrigation, and
 - (3) Drought Conditions. Establish actions to mitigate impacts to existing legal users during drought conditions.
- g. Discharge into County Municipal Separate Storm Sewer System. The County Division of Natural Resources prohibits discharge of storm water into the County Municipal Separate Storm Sewer System (MS4) without written authorization. Prior to discharge of storm water into the MS4, Applicant/Developer must submit a "Water Quality-Monitoring Plan" for review and approval by the Division of Natural Resources.

The Water Quality Monitoring Plan must establish:

- (1) Goals and Objectives. Goals and Objectives of the Monitoring Plan;
- (2) Monitoring Schedule. An outfall-monitoring schedule that provides for outfall monitoring on a quarterly basis for a minimum of five (5) years from the date of acceptance of construction of the storm water management system by the South Florida Water Management District. Applicant/Developer must report water quality monitoring data annually and include a report comparing state water quality standards, plots of parameters, and recommendations. Applicant/Developer must also report results in an Electronic Data Deliverable (EDD) format approved by the Division of Natural Resources;
- (3) Re-evaluation of the Monitoring Plan. After five (5) years of monitoring, Applicant/Developer may reevaluate the Water Quality Monitoring Plan to change its parameters and reporting frequency, if the data demonstrates no additional pollutants have been introduced to the MS4 or waters of the state. Monitoring will continue in perpetuity, however the program may be revised to increase or decrease monitoring frequency and reporting intervals depending on the results of the previous five-year monitoring period. Requests to reduce the frequency of outfall monitoring is subject to approval by the Division of Natural Resources;
- (4) Contingency Plan. A contingency plan and anticipated corrective actions to address potential abnormalities or exceedances of state water quality standards; and

- (5) Notification. A process to provide notification to impacted residents and applicable authorities in the event of abnormality or exceedance of state water quality standards.

Hearing Examiner Note: *The Hearing Examiner re-structured Condition 9 for clarity.*

10. Agricultural Uses

- a. Grazing Uses. Bona fide agricultural uses consisting of “grazing lands” in existence upon filing of the zoning application may continue consistent with the Agricultural Use Affidavit attached to this resolution until the County approves a development order over the area containing grazing lands. (Agricultural Use Affidavit Exhibit B2)
- b. Clearing of Native Vegetation Prohibited. Applicant/developer may not clear or injure native trees, native vegetation, and understory in agricultural areas. Applicant/developer may mow existing grass pasture(s) but may not clear or expand those pastures. The prohibition is not intended to preclude County approved requests for removal of invasive exotic vegetation. Violations of this condition will require restoration in accordance with the LDC.
- c. Submittals. Prior to development order approval, Applicant/Developer must provide written proof of the following, which is subject to approval by the Lee County Attorney’s Office:
- (1) Termination of agricultural use on the portion of property included in the development order application. Proof must include a sworn affidavit from the person/entity holding title to the property specifically providing:
- (a) The date agricultural uses ceased;
- (b) The legal description of property subject to development order approval;
- (c) An affirmative statement that applicant/developer acknowledges and agrees agricultural uses are illegal and prohibited on the property and that the owner covenants with the County that they will not allow agricultural use on the property until the property is rezoned to permit agricultural uses; and,
- (d) The affidavit constitutes a covenant between the applicant/developer and the County binding on the applicant/developer’s successors. The applicant/developer must record the covenant in the public records of Lee County at its own expense.
- (2) Termination of the agricultural tax exemption for any portion of the property included in the development order application/approval. Proof as to the termination must include a copy of the request to terminate the tax exemption provided to the property appraiser.

~~11. Vehicular/Pedestrian Impacts~~

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

~~12. Lee Plan Consistency~~

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

~~13. Concurrency~~

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

Hearing Examiner Note: *The three conditions above restate requirements of the LDC applicable to the project pursuant to Condition 1. Recommend deletion.*

~~4411. Development Permits~~

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

~~4512. School Bus Stop~~

~~The site plan on the first development order for vertical construction must depict a school bus stop on Rich Road. The location and design of the bus stop is subject to review and approval by the Lee County School District.~~

DEVIATIONS:

- ~~1. Excavation Setbacks from Right of Way. Deviation (1) seeks relief from LDC 10-329(d)(1)a.2, which prohibits excavations for water retention/detention within 50 feet of existing or proposed right-of-way lines or easements for collector or arterial streets, to allow excavation for water retention within 25 feet of Rich Road.~~

Hearing Examiner Recommendation: Approved, *subject to* the following conditions:

- ~~Approval is limited to "Lake Tract A" depicted on Exhibit B1 (MCP).~~
- ~~Development order plans must demonstrate provisions to protect wayward vehicles with guardrails, berms, swales, vegetation or other suitable methods determined by the Director.~~

2. Excavation Setbacks from Private Property. Deviation (2) seeks relief from LDC 10-329(d)(1)a.3, which prohibits excavations for water retention/detention within 50 feet of private property lines under separate ownership, to permit excavation for water retention within 25 feet of certain private properties to the east of the property.

Hearing Examiner Recommendation: Approved, *subject to* the following conditions:

- a. Deviation is limited to "Lake Tract C" depicted on Exhibit B1 (MCP).
 - b. Prior to development order approval, development order plans must depict an enhanced Type "A" buffer containing five trees and a single hedgerow installed at a minimum height of 48 inches where the distance between the proposed excavation and private property under separate ownership is less than 50 feet.
3. Building Setback from Indigenous Plant Communities Subject to Fire. Deviation (3) seeks relief from LDC 10-415(b)(1)c, which requires buildings be set back a minimum of 20 feet from indigenous plant communities, and 30 feet from indigenous plant communities subject to fire, to allow accessory buildings to be set back zero feet from indigenous plant communities

Hearing Examiner Recommendation: Denied.

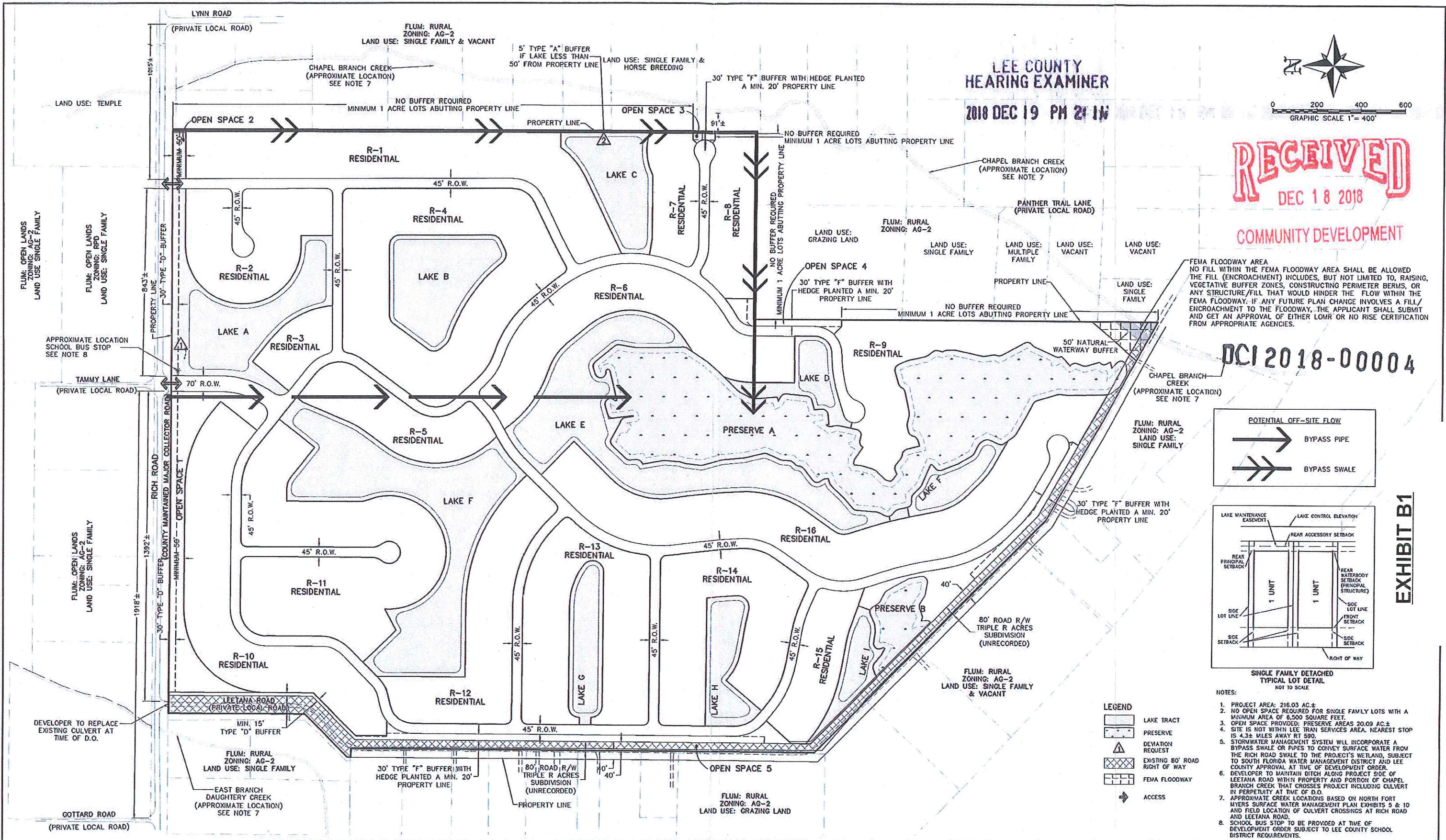
Hearing Examiner Note: *No evidence in the Hearing Examiner's record to support requested zero foot setback from indigenous plant communities subject to fire. (limited to accessory structures. Hearing Examiner recommends Applicant seek an administrative deviation from the Development Services when evidence from the fire department is available to support a finding of no detriment to public interest.*

Exhibits to Conditions:

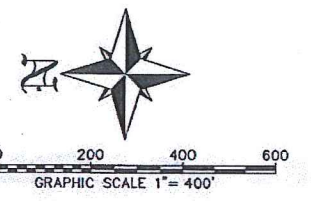
B1 Master Concept Plan

B2 Agricultural Use Affidavit

S:\JOBS\24XX\2465\MASTER CONCEPT\2465 - MCP - 12DEC2018.DWG 12/18/2018 8:46 AM RJ VELOTT



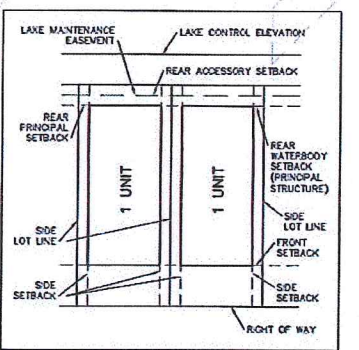
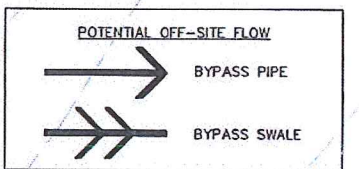
LEE COUNTY
HEARING EXAMINER
2018 DEC 19 PM 2:14



RECEIVED
DEC 18 2018

COMMUNITY DEVELOPMENT

DCI 2018-00004



- NOTES:
- PROJECT AREA: 216.03 AC ±
 - NO OPEN SPACE REQUIRED FOR SINGLE FAMILY LOTS WITH A MINIMUM AREA OF 6,500 SQUARE FEET.
 - OPEN SPACE PROVIDED: PRESERVE AREAS 20.09 AC ±. SITE IS NOT WITHIN LEE TRAN SERVICES AREA. NEAREST STOP IS 4.34 MILES AWAY RT 500.
 - STORMWATER MANAGEMENT SYSTEM WILL INCORPORATE A BYPASS SWALE OR PIPES TO CONVEY SURFACE WATER FROM THE RICH ROAD SWALE TO THE PROJECT'S WETLAND, SUBJECT TO SOUTH FLORIDA WATER MANAGEMENT DISTRICT AND LEE COUNTY APPROVAL AT TIME OF DEVELOPMENT ORDER.
 - DEVELOPER TO MAINTAIN DITCH ALONG PROJECT SIDE OF LEETANA ROAD WITH PROPERTY AND PORTION OF CHAPEL BRANCH CREEK THAT CROSSES PROJECT INCLUDING CULVERT IN PERPETUITY AT TIME OF D.O.
 - APPROXIMATE CREEK LOCATIONS BASED ON NORTH FORT MYERS SURFACE WATER MANAGEMENT PLAN EXHIBITS 5 & 10 AND FIELD LOCATION OF CULVERT CROSSINGS AT RICH ROAD AND LEETANA ROAD.
 - SCHOOL BUS STOP TO BE PROVIDED AT TIME OF DEVELOPMENT ORDER SUBJECT TO LEE COUNTY SCHOOL DISTRICT REQUIREMENTS.

- LEGEND
- LAKE TRACT
 - PRESERVE
 - DEVIATION REQUEST
 - EXISTING 80' ROAD RIGHT OF WAY
 - FEMA FLOODWAY
 - ACCESS

PREPARED FOR:
SWK, LLC.
1045 FIFTH AVENUE
NEW YORK, NY, 10028

NO.	DATE	REVISION DESCRIPTION	BY
8	12/17/2018	SCHOOL BUS STOP	RJV
5	11/28/2018	HEX HEARING	RJV
4	11/06/2018	POST SUFFICIENCY SUBMITTAL	RJV
3	10/18/2018	NATURAL WATERWAY BUFFER	RJV
2	10/21/2018	POST SUFFICIENCY SUBMITTAL	RJV
1	12/17/2018	1ST SUFFICIENCY RESPONSE	RJV

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PHONE: (813) 625-1165 FAX: (813) 625-1149
ENGINEERING LICENSE # EB 6459
SURVEY LICENSE # LB 8690
WWW.BANKSENG.COM

DATE		PROJECT		DRAWING		DESIGN		DRAWN		CHECKED		SCALE		SHEET	
1-30-18		2465		_MCP		DSZ		TBV		SEH		1"=400'		1	

EXHIBIT B1

EXHIBIT B2

**BONA FIDE AGRICULTURAL USES
AT TIME OF ZONING APPLICATION**

I, Thomas P. Kikis, as Managing Partner of SWK, LLC, after having been duly sworn in accordance with law, hereby depose and say:

A bona fide agricultural use, grazing lands, exists on the property known as Leetana RPD, a portion of STRAP no. 17-43-25-00-00001.0000 (18300 Leetana Rd, North Fort Myers, FL 33917) and is in existence at the time the application for this project will be filed.

The entire 216.03± acres of the parcel (as described in the attached Exhibit A) is utilized for grazing lands.

SWK, LLC:

Thomas P. Kikis
Signature

7/16/18
Date

STATE OF FL
COUNTY OF Lee

The foregoing instrument was SUBSCRIBED AND SWORN before me this 16 date of July, 20 18, by Thomas P. Kikis who is personally known to me or has produced _____ as identification.

Jennifer M. Sheppard
Notary Public

STAMP/SEAL
MY COMMISSION EXPIRES: 11/16/2021



RECEIVED
JUL 23 2018

COMMUNITY DEVELOPMENT

DCI 2018-00004

Exhibit C

EXHIBITS PRESENTED AT HEARING

STAFF EXHIBITS

- a. *48-Hour Notice*: From Anthony Rodriguez, Principal Planner, to Donna Maria Collins, Chief Hearing Examiner, dated November 27, 2018 (multiple pages – 8.5"x11")
1. *DCD Staff Report with attachments*: Prepared by Anthony Rodriguez, Principal Planner, date stamped received November 14, 2018 (multiple pages – 8.5"x11" & 11"x14") [black & white, color]
2. *Emails & Letters*: (multiple pages – 8.5"x11")
3. *Post Hearing Written Submissions*: Memorandum dated December 18, 2018 from Anthony Rodriguez, Principal Planner, to Donna Marie Collins, Chief Hearing Examiner. Containing revised Master Concept Plan and conditions/deviations (reflecting changes discussed at hearing) (multiple –pages – 8.5"x11" & 1 page – 11"x17" & 1 page – 24"x 36")

APPLICANT EXHIBITS

- a. *48-Hour Notice*: From Russell Schropp, Esq., Henderson, Franklin, Starnes & Holt, P.A., to Hearing Examiner, with copies to Audra Ennis, Anthony Rodriguez, John Fredyma, Michael Jacob, & Stacy Hewitt, dated Monday, November 26, 2018 8:29 AM (5 pages – 8.5"x11")
1. *PowerPoint Presentation*: Prepared for zoning case number DCI2018-00004, Leetana RPD, dated November 28, 2018 (multiple pages – 8.5"x11"){color]
2. *Résumé*: For Stacy Ellis Hewitt, AICP, Banks Engineering (2 pages – 8.5"x11")
3. *Résumé*: For Tyler C. King, President/Principal Biologist, Dex Bender Environmental Consulting (1 page – 8.5"x11")
4. *Résumé*: For Ted B. Treesh, TR Transportation (1 page – 8.5"x11")
5. *Résumé*: For D. Brent Addison, P.E., Banks Engineering (1 page – 8.5"x11")
6. *Résumé*: For W. Kirk Martin, President/Principal Scientist, Water Science Associates (multiple pages – 8.5"x11")
7. *Letter*: From Kirk Martin, P.G., Principal Scientist, Water Science Associates, Inc., to Stacy Hewitt, Director of Planning, Banks Engineering, dated November 8, 2018, regarding Response to Lee County's Proposed Conditions 7 & 9 (multiple pages – 8.5"x11")
8. *Existing Drainage Map*: Prepared by Banks Engineering (1 page – 8.5"x11")[color]

OTHER EXHIBITS

Steven Brodtkin

1. *Summary of Testimony*: (2 pages – 8.5"x11")

Stephanie Eller

1. *Photographs*: (2 pages – 8.5"x11")
2. *Summary of Testimony & Lee Plan Map 8*: (4 pages – 8.5"x11")

Karen Kamener

1. *Letter*: From Karen Kamener, dated November 28, 2018, read into the record by Steve Brodtkin (2 pages – 8.5"x11")

Jon Kio

1. *Letter*: From Jon Kio, dated November 22, 2018, read into the record by Stephanie Eller (2 pages – 8.5"x11")

Fred Price

1. *Photograph*: (1 page – 8.5"x11")[color]

Dena Wentz

1. *Summary of Testimony*: (2 pages – 8.5"x11")

Exhibit D
HEARING PARTICIPANTS

County Staff:

1. Anthony Rodriguez
2. Elizabeth Workman

Applicant Representatives:

1. Brent Addison
2. Stacy Ellis Hewitt
3. Tyler King
4. Kirk Martin
5. Russell Schropp
6. Ted Treesh

Public Participants:

1. Steven Brodtkin
2. Heather Cox
3. Gail Easterly
4. Stephanie Eller
5. Debbie Jackow
6. Doris Maitland
7. Teresa McCarty
8. Ken Nichols
9. Rick Parker
10. Roy Packer
11. Jennifer Petersdorff
12. Frederick Price
13. Lauren Price

Case: DCI2018-00004

14. Lee Royer
15. Rachel Singletary
16. Dena Wentz

Exhibit E
INFORMATION

UNAUTHORIZED COMMUNICATIONS:

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

HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS:

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

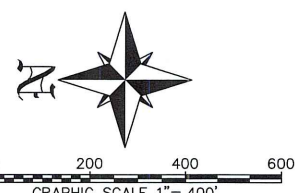
B. The Board will hold a final hearing to consider the Recommendation and record made before the Hearing Examiner. The Department of Community Development will notify hearing participants of the final hearing date. Only Parties and participants may address the Board at the final hearing. Presentation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

COPIES OF TESTIMONY AND TRANSCRIPTS:

A. Every hearing is recorded. Recordings are public records that become part of the case file maintained by the Department of Community Development. The case file and recordings are available for public examination Monday through Friday between 8:00 a.m. and 4:30 p.m.

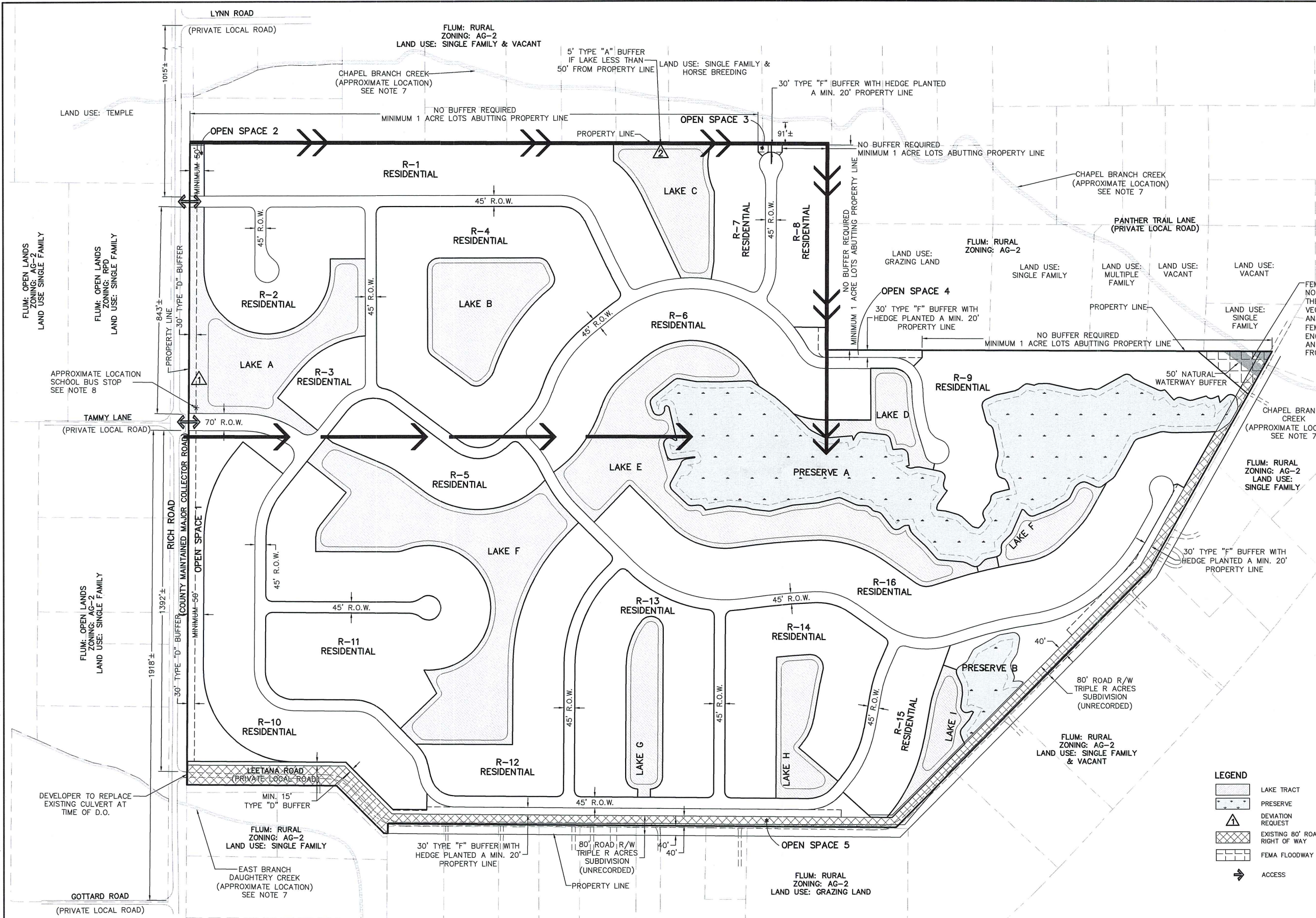
B. A verbatim transcript may also be available for purchase from the court reporting service.

S:\JOBS\244X\2465\MASTER CONCEPT\2465 - MCP - 12DEC2018.DWG 12/18/2018 8:46 AM RJ VELOTTI

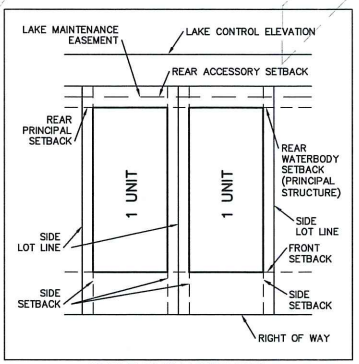
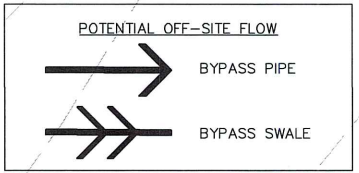


RECEIVED
DEC 18 2018

COMMUNITY DEVELOPMENT
DCI 2018-00004



FEMA FLOODWAY AREA
NO FILL WITHIN THE FEMA FLOODWAY AREA SHALL BE ALLOWED. THE FILL (ENCROACHMENT) INCLUDES, BUT NOT LIMITED TO, RAISING VEGETATIVE BUFFER ZONES, CONSTRUCTING PERIMETER BERMS, OR ANY STRUCTURE/FILL THAT WOULD HINDER THE FLOW WITHIN THE FEMA FLOODWAY. IF ANY FUTURE PLAN CHANGE INVOLVES A FILL/ENCROACHMENT TO THE FLOODWAY, THE APPLICANT SHALL SUBMIT AND GET AN APPROVAL OF EITHER LOMR OR NO RISE CERTIFICATION FROM APPROPRIATE AGENCIES.



- NOTES:
- PROJECT AREA: 216.03 AC.±
 - NO OPEN SPACE REQUIRED FOR SINGLE FAMILY LOTS WITH A MINIMUM AREA OF 6,500 SQUARE FEET.
 - OPEN SPACE PROVIDED: PRESERVE AREAS 20.09 AC.±
 - SITE IS NOT WITHIN LEE TRAN SERVICES AREA. NEAREST STOP IS 4.3+ MILES AWAY RT 590.
 - STORMWATER MANAGEMENT SYSTEM WILL INCORPORATE A BYPASS SWALE OR PIPES TO CONVEY SURFACE WATER FROM THE RICH ROAD SWALE TO THE PROJECT'S WETLAND, SUBJECT TO SOUTH FLORIDA WATER MANAGEMENT DISTRICT AND LEE COUNTY APPROVAL AT TIME OF DEVELOPMENT ORDER.
 - DEVELOPER TO MAINTAIN DITCH ALONG PROJECT SIDE OF LEETANA ROAD WITHIN PROPERTY AND PORTION OF CHAPEL BRANCH CREEK THAT CROSSES PROJECT INCLUDING CULVERT IN PERPETUITY AT TIME OF D.O.
 - APPROXIMATE CREEK LOCATIONS BASED ON NORTH FORT MYERS SURFACE WATER MANAGEMENT PLAN EXHIBITS 5 & 10 AND FIELD LOCATION OF CULVERT CROSSINGS AT RICH ROAD AND LEETANA ROAD.
 - SCHOOL BUS STOP TO BE PROVIDED AT TIME OF DEVELOPMENT ORDER SUBJECT TO LEE COUNTY SCHOOL DISTRICT REQUIREMENTS.

- LEGEND
- LAKE TRACT
 - PRESERVE
 - DEVIATION REQUEST
 - EXISTING 80' ROAD RIGHT OF WAY
 - FEMA FLOODWAY
 - ACCESS

PREPARED FOR:
SWK, LLC.
1045 FIFTH AVENUE
NEW YORK, NY, 10028

NO.	DATE	REVISION DESCRIPTION	BY
6	12/17/2018	SCHOOL BUS STOP	RJV
5	11/28/2018	HEX HEARING	RJV
4	11/06/2018	POST SUFFICIENCY SUBMITTAL	RJV
3	9/18/2018	NATURAL WATERWAY BUFFER	RJV
2	8/21/2018	POST SUFFICIENCY SUBMITTAL	RJV
1	7/17/2018	1ST SUFFICIENCY RESPONSE	RJV

BANKS ENGINEERING
Professional Engineers, Planners, & Land Surveyors
Serving The State Of Florida

4161 TAMiami TRAIL - BLDG 5 UNIT 501
PORT CHARLOTTE, FLORIDA 33952
PHONE: (941) 625-1165 FAX: (941) 625-1149
ENGINEERING LICENSE # EB 6469
SURVEY LICENSE # LB 6690
WWW.BANKSENG.COM

DATE	PROJECT	DRAWING	DESIGN	DRAWN	CHECKED	SCALE	SHEET
1-30-18	2465	_MCP	DSZ	TBV	SEH	1"=400'	1

MASTER CONCEPT PLAN
LEETANA RPD
LEE COUNTY, FLORIDA

A. Conditions

All references to uses are as defined or listed in the Lee County Land Development Code (LDC).

1. Master Concept Plan/Development Parameters

- a. Development of the subject property must be substantially consistent with the one-page Master Concept Plan (MCP) entitled Master Concept Plan, Leetana RPD, prepared by Banks Engineering, stamped "received" by Community Development on November 9, 2018, except as modified by the conditions below.

Development must comply with all the requirements of the LDC at the time of local development order approval, except as may be granted by deviation as part of this planned development. Subsequent amendments to the Master Concept Plan or the conditions or deviations attached thereto are subject to the planned development amendment process established by the Land Development Code.

This Mixed Use Planned Development allows a maximum of 201 single-family units on a total of ±216.03 acres of land. The maximum height is limited to 35 feet.

2. Schedule of Uses

Accessory uses and structures
 Community gardens
 Dwelling unit: Single-family
 Entrance gates and gatehouse
 Essential services
 Essential service facilities, Group I
 Excavation: Water retention
 Fences, walls
 Fishing piers
 Home occupation
 Models: Display center, display group, model home
 Parking Lot: Accessory
 Real estate sales office
 Recreation facilities: Personal, Private-on-site
 Residential accessory uses
 Signs
 Stable: Boarding, Private, limited to perimeter lots (see Condition 3)
 Temporary uses, limited to temporary construction trailers and equipment storage sheds

3. Property Development Regulations

Minimum Lot Area and Dimensions

Area, perimeter lots ¹	1 acre (43,560 square feet)
Area, interior lots	20,000 square feet
Width	65 feet
Depth	100 feet

Minimum Setbacks

Street (collector/private)	25 feet/20 feet ²
Side	5 feet
Rear (principal/accessory)	10 feet/5 feet
Preserve (principal/accessory)	20 feet/0 feet
Preserve, fire dependent (principal/accessory)	30 feet/0 feet
Waterbody (principal/accessory)	20 feet/0 feet

Maximum building height 35 feet

Maximum lot coverage 45 percent

¹ Perimeter lots are those lots located within 50 feet of the perimeter of the subject property that are not separated by a right-of-way or landscape buffer.

² Reduced to 15 feet for side entry garage.

4. No Blasting

No development blasting is permitted as part of this project unless approved at a subsequent public hearing as an amendment to the planned development.

5. Dewatering

No dewatering activities have been requested as part of this Planned Development rezoning. Temporary dewatering during construction is permitted subject to the approval of the Department of Environmental Protection or the South Florida Water Management District. Discharge of dewatering effluent into the County's MS4 system is not authorized unless it can be demonstrated through monitoring that such discharge meets State water quality standards.

6. Environmental Conditions

- a. Prior to local development order approval, the landscape plans must depict the planting of proposed swales outside of the 15.34-acre wetland preserve with one gallon native grasses mulched with pine straw installed three feet on center. The general tree requirement for the development may be reduced by one ten-foot general tree for every 400 square feet of swale planted with one gallon native grasses.
- b. Prior to local development order approval, the applicant, its successors or assigns must submit an Indigenous Management Plan that encompasses the following areas:

the spreader swale, the area of the bypass swale, pipe system, or other off-site stormwater conveyance system, the width of the work limit area within the preserve impacted by the installation of the conveyance swale, pipe or system, and the area covered by the planting plan for the proposed wetland restoration area (see Condition 8.b). The wetland restoration area must be designed to allow conveyance of surface water and must be comprised of wetland ground cover in the Hydric Unimproved Pasture (212H) areas, totaling 2.84 acres. Herbaceous material will consist of species such as: lovegrass (*Eragrostis* sp.), beakrush (*Rhynchospora* sp.), spikerush (*Eleocharis* sp.), sand cordgrass (*Spartina bakeri*), panicum grass (*Panicum* sp.), and soft rush (*Juncus effusus*). Material will be planted three feet on center and will consist of four-inch liners or will be six inches in height at the time of planting. The final species list will be based upon site specific conditions and on plant material availability at the time of planting.

- c. Prior to local development order approval, the applicant, its successors or assigns must submit a baseline monitoring report for the areas included in the Indigenous Management Plan. The baseline monitoring report must include photos and photo station points shown on a map and a five-year monitoring schedule that includes a time zero monitoring report at time of Certificate of Compliance request for the preserve.
- d. Prior to the issuance of a Certificate of Compliance for the areas included in the Indigenous Management Plan, the applicant, its successors or assigns must submit a time zero monitoring report that includes photos and photo station points shown on a map.
- e. If the restoration plantings within the wetland restoration area are not in compliance with the approved local development order at any time during the five-year monitoring schedule established by the Indigenous Management Plan and time zero monitoring report, then the restoration plant material must be replanted and the monitoring schedule must be revised to restart the five-year monitoring schedule.

7. Wastewater Collection and Treatment

- a. The collection and treatment of wastewater generated by the development must be provided by either an on-site sewage treatment facility (package plant) or by individual, on-site, advanced-treatment disposal units (septic systems), in accordance with the following requirements:
 - i. Package Plant
 - (a) The Master Concept Plan must depict the location and area dedicated to the package plant.

- (b) The requisite wastewater infrastructure must be constructed in accordance with the Lee County Utilities' Design Manual, as may be amended from time to time.
- ii. Individual On-Site Advanced-Treatment Disposal Units
 - (a) On-site wastewater treatment and disposal systems (septic systems) must meet or exceed the requirements of NSF-245 certification for aerobic treatment and nitrogen removal.
 - (b) Individual septic systems must be set back a minimum of 115 feet from water bodies.
 - (c) Prior to local development order approval, the applicant, its successors or assigns must provide a copy of the Homeowner's Association (HOA) documents, including Declarations and Covenants, to the Department of Community Development and the County Attorney for review and approval. At a minimum, the HOA documents must contain:
 - (i) A required maintenance schedule for individual septic systems. The maintenance schedule required by the HOA must exceed the manufacturer recommended maintenance schedule and must contain provisions requiring individual property owners to provide proof of compliance with the required schedule to the HOA.
 - (ii) Provisions obligating the HOA to conduct inspections and complete any remedial action measures not completed by individual property owners and granting the HOA the authority and easements necessary to undertake this obligation.
 - (iii) A provision requiring the HOA to file an annual report with the Development Services Section documenting compliance with this condition.
 - (iv) Provisions requiring the replacement of individual septic systems with systems that meet or exceed the requirements of NSF-245 certification for aerobic treatment and nitrogen removal in accordance with this condition.
- b. The development must connect to central sanitary sewer service if sanitary sewer infrastructure with adequate capacity to provide minimum service to the development is extended within one-quarter mile of the development subsequent to approval of this request.

8. Surface Water Management

- a. The Master Concept Plan must demonstrate that storm water collected north of the subject property is conveyed through this project to minimize adverse impacts to adjacent properties and to maintain historic flow patterns and accommodate stormwater runoff from the north.
- b. Prior to the approval of the first local development order on the subject property, the plans must depict the following drainage improvements to facilitate the flow of off-site stormwater through or around the subject property from north to south:
 - i. The replacement of the existing culvert under Leetana Road at the intersection of Rich Road. The design of the replacement culvert is subject to the review and approval of Lee County.
 - ii. A spreader swale and a bypass swale, bypass pipe system, or other conveyance system to convey off-site stormwater water from the north of the subject property to the 15.34-acre wetland preserve on the southerly portion of the property. The plans must depict cross sections, the limits of work within any preserve or open space area, and a proposed wetland restoration planting plan, including plant specifications, to provide conveyance into Chapel Branch. The design of the bypass swale, bypass pipe system, or other conveyance system must maintain historic flow patterns and is subject to the review and approval of Lee County and the South Florida Water Management District.
- c. The existing drainage swale along the subject property's frontage on Leetana Road, the portion of Chapel Branch that traverses the southeast corner of the subject property, and the existing Chapel Branch culvert under Leetana Road, must be maintained in perpetuity by the applicant, its successors or assigns. The applicant, its successors or assigns must complete maintenance and restoration activities in these areas to the extent necessary to provide for the flow of surface water through and around the subject property prior to the approval of the first local development order on the subject property. The applicant, its successors or assigns must complete the following prior to local development order approval:
 - i. A Baseline Conditions Report documenting the existing conditions of the existing Leetana Road drainage swale, the portion of Chapel Branch that traverses the southeast corner of the subject property, and the existing Chapel Branch culvert under Leetana Road. Copies of the Baseline Conditions Report must be submitted for review by Natural Resources and Environmental Sciences staff, and must contain:
 - (a) Topographic data for each drainage feature and the surrounding areas sufficient to depict the slope and depth of each drainage feature;

- (b) Information documenting existing vegetation within each drainage feature to the extent applicable;
 - (c) A summary of obstructions by drainage feature that includes information on the type of obstruction, severity of the obstruction, and location of each obstruction. Obstructions must be keyed to a map of the subject property that depicts the location of each obstruction; and
 - (d) Photographs depicting existing vegetation and obstructions within each drainage feature. Photographs must be keyed to a map of the subject property that depicts the location of the photograph.
- ii. A Maintenance and Restoration Activities Report summarizing the activities undertaken to restore the flow of surface water through these drainage features. The Maintenance and Restoration Activities Report must document:
 - (a) The activities undertaken to restore the flow of surface water through these drainage features;
 - (b) Post-maintenance topographic data for each drainage feature and the surrounding areas sufficient to document any changes in topography resulting from maintenance and restoration activities;
 - (c) Post-maintenance photographs depicting the restored drainage features. Photographs must be keyed to a map of the subject property that depicts the location of the photograph.
- iii. Prior to the issuance of a Vegetation Removal Permit, the applicant, its successors or assigns must coordinate with Environmental Sciences, the Division of Natural Resources and South Florida Water Management District staff to conduct an on-site pre-construction meeting to inspect the existing conditions of the culverts, swales, and preserve area. The work limits for surface water management spreader swale or pipes may be survey staked for inspection at this time.

9. Monitoring of Groundwater and Surface Water

- a. Landscape irrigation must comply with the Water Conservation Ordinance (Ordinance #17-04), as may be amended from time to time.
- b. Prior to approval of the first local development order, the applicant, its successors or assigns must provide the following information to the Division of Natural Resources:

- i. On-site baseline surface water and water table aquifer quality data for both the wet and dry seasons. Surface water and water table aquifer quality data must be provided at a minimum of two locations, with one location being to the north of the subject property and one location being to the south of the subject property. The applicant, its successors or assigns must coordinate the location of surface water and water table aquifer sampling locations with the Division of Natural Resources.
 - ii. A survey depicting the locations of any existing wells on the subject property. Any well that is not part of the groundwater monitoring network must be permanently plugged and abandoned in accordance with applicable regulations prior to approval of the first local development order. The applicant, its successors or assigns must provide well abandonment documentation for any well not part of the groundwater monitoring network to the Department of Community Development.
- c. Prior to the approval of the first development order on the subject property, the applicant, its successors or assigns must install a monitoring well constructed to the Sandstone Aquifer for the purpose of providing water level data on the subject property. The monitoring well must be installed within a common element area of the proposed development.
- d. Monitoring of the Sandstone Aquifer must be conducted in accordance with the following requirements:
- i. Water levels must be measured four times per 24-hour period.
 - ii. Records must be retrieved monthly and must be submitted to the Lee County Division of Natural Resources on a quarterly basis.
 - iii. Groundwater monitoring data collection must commence within thirty (30) days of monitoring well completion. Groundwater monitoring data must be downloaded monthly and reported quarterly to Lee County Division of Natural Resources. Monitoring is to continue in perpetuity, but the program may be revised to increase or decrease monitoring frequency and reporting intervals depending on the results of the previous five-year monitoring period. Reporting shall consist of a plot of elevation versus time and an Electronic Data Deliverable (EDD) in a format approved by Lee County Division of Natural Resources.
- e. During severe drought conditions, after providing a reasonable notification to the Developer, HOA or other entity as appropriate, Lee County staff may enter the property to measure water levels in the monitoring well.

- f. Prior to the approval of the first local development order on the subject property, the applicant, its successors or assigns must submit a Water Use Contingency Plan for review and approval by the Lee County Division of Natural Resources. At a minimum, the Water Use Contingency Plan must:
 - i. Prioritize the use of water from the Sandstone Aquifer for potable water use;
 - ii. Establish protocols to minimize the use of water from the Sandstone Aquifer for irrigation; and
 - iii. Establish actions to mitigate impacts to existing legal users during drought conditions.

- g. The discharge of stormwater into the County's Municipal Separate Storm Sewer System (MS4) is prohibited unless written authorization is granted by the Lee County Division of Natural Resources. Prior to the discharge of stormwater into any County MS4, the applicant, its successors or assigns must submit a water quality monitoring plan for review and approval by the Lee County Division of Natural Resources. At a minimum, the Water Quality Monitoring Plan must establish:
 - i. The overall Goals and Objectives of the Water Quality Monitoring Plan;
 - ii. An outfall monitoring schedule that, at a minimum, provides for outfall monitoring on a quarterly basis for a minimum of five (5) years from the date of acceptance of construction of the stormwater management system by the South Florida Water Management District. Water quality monitoring data must be reported annually and must include a report with a comparison of State water quality standards, plots of parameters, and recommendations. Results shall also be reported as an Electronic Data Deliverable (EDD), in a format approved by the Division of Natural Resources.
 - iii. After five (5) years of monitoring, the applicant, its successors or assigns may reevaluate the monitoring plan to change frequency and parameters, providing that the applicant, its successors or assigns can provide data demonstrating that no additional pollutants are introduced to the MS4 or Waters of the State. Monitoring is to continue in perpetuity, but the program may be revised to increase or decrease monitoring frequency and reporting intervals depending on the results of the previous five-year monitoring period. Any request to reduce the frequency of outfall monitoring is subject to the approval of the Division of Natural Resources.
 - iv. A contingency plan and anticipated corrective actions to address any potential abnormalities or exceedances of State water quality standards; and

- v. A process to provide notification to impacted residents and applicable authorities in the event that any abnormality or exceedance of State water quality standards is identified.

10. Agricultural Uses

- a. Bona fide agricultural uses consisting of “grazing lands” that were in existence when the application for this project was filed may continue in accordance with the Agricultural Use Affidavit filed with the zoning application until such time as a local development order is approved for the area that contains these uses.
- b. Clearing or injury of native trees and/or other native vegetation, including understory, in agricultural areas is prohibited. Existing areas of bona fide agricultural use that include existing grass pasture(s) may be mowed but may not be cleared or expanded. This prohibition of clearing or expansion is not intended to preclude County approved requests for removal of invasive exotic vegetation. Violations of this condition will require restoration in accordance with Section 10-423 of the LDC.
- c. Prior to issuance of a local development order, the applicant, its successors or assigns must provide written proof, subject to approval by the Lee County Attorney’s Office, of the following:
 - i. Termination of all agricultural use on any portion of the property included in the development order application/approval. Proof must include a sworn affidavit from the person or entity holding title to the subject property that specifically provides:
 - (a) The date the agricultural uses ceased;
 - (b) The legal description of the property subject to the development order approval;
 - (c) An affirmative statement that the applicant, its successors or assigns acknowledges and agrees that all agricultural uses are illegal and prohibited on the property and that the owner covenants with the County that they will not allow any such uses on the property unless and until the property is rezoned to permit such uses; and,
 - (d) That the affidavit constitutes a covenant between the applicant, its successors or assigns, and the County that is binding on the applicant, its successors or assigns. The covenant must be properly recorded in the public records of the County at the expense of the applicant, its successors or assigns.

- ii. Termination of the agricultural tax exemption for any portion of the property included in the development order application/approval. Proof as to the termination must include a copy of the request to terminate the tax exemption provided to the property appraiser.

11. Vehicular/Pedestrian Impacts

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

12. Lee Plan Consistency

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

13. Concurrency

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

14. Development Permits

Issuance of a development permit by Lee County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertake actions that result in a violation of state or federal law.

B. Deviations

1. Deviation (1) seeks relief from Section 10-329(d)(1)a.2 of the Land Development Code, which prohibits excavations for water retention and detention within 50 feet of any existing or proposed right-of-way line or easement for a collector or arterial street, to permit excavation for water retention within 25 feet of Rich Road, which is classified as a major collector. This deviation is APPROVED, subject to the following conditions:
 - a. Approval is limited to Lake Tract A as depicted on the attached Master Concept Plan.

- b. Prior to local development order approval, the development order plans demonstrate provisions for the protection of wayward vehicles through the use of guardrails, berms, swales, vegetation or other suitable methods as determined by the Director where the distance between the proposed excavation and the right-of-way line of Rich Road is less than 50 feet.
- 2. Deviation (2) seeks relief from Section 10-329(d)(1)a.3 of the Land Development Code, which prohibits excavations for water retention and detention within 50 feet of any private property line under separate ownership, to permit excavation for water retention within 25 feet of certain private properties to the east of the subject property. This deviation is APPROVED, subject to the following conditions:
 - a. Approval is limited to Lake Tract C as depicted on the attached Master Concept Plan.
 - b. Prior to local development order approval, the development order plans must depict an enhanced Type "A" buffer containing five trees and a single hedgerow installed at a minimum height of 48 inches where the distance between the proposed excavation and any private property under separate ownership is less than 50 feet.
- 3. Deviation (3) seeks relief from Section 10-415(b)(1)c. of the Land Development Code, which requires buildings to be set back a minimum of 20 feet from indigenous plant communities and 30 feet from indigenous plant communities subject to fire, to permit accessory buildings to be set back zero feet from indigenous plant. This deviation is APPROVED, subject to the following condition:
 - a. Prior to building permit approval for any accessory building that does not comply with the required 30-foot setback from an indigenous plant community subject to fire pursuant to Section 10-415(b)(1)c. of the Land Development Code, the applicant, its successors or assigns must provide written correspondence from the Bayshore Fire Control District indicating approval or no objection to the reduced setback.

Lee County, Florida
Department of Community Development
Zoning Section
Staff Report

Case Number: DCI2018-00004

Case Name: Leetana RPD

Type of Case: Minor Residential Planned Development

Area Affected by Request: ±216.03 Acres

Hearing Date: November 28, 2018

Request

Banks Engineering, on behalf of SWK, LLC, filed a request to rezone approximately 216.03 acres from Agricultural (AG-2) to Residential Planned Development (RPD) to permit the development of a residential community containing a maximum of 201 dwelling units and associated accessory uses on the subject property.

The subject property consists of one parcel located at the southeast corner of the intersection of Rich Road and Leetana Road in the Bayshore Planning Community (Commission District #5). The STRAP number associated with the subject property is 17-43-25-00-00001.0000. A legal description and sketch of the subject property is attached as Attachment S.

Summary

Staff recommends **APPROVAL** of the applicant's request with the conditions found in Attachment C.

Conditions of approval to monitor surface and groundwater quality and quantity, to provide for centralized collection and treatment of wastewater, to provide for the reconstruction, restoration, and maintenance of existing drainage infrastructure, and to provide for the conveyance of off-site water flows through or around the subject property are recommended to safeguard public water supply, protect estuarine ecosystems, and mitigate the potential adverse impacts of development of the subject property on historic surface water flows in the area.

Two deviations from excavation setback requirements from rights-of-way and adjacent properties under separate ownership have been requested by the applicant to accommodate the excavation of the surface water management system required for the proposed development. One additional deviation relative to required setbacks from indigenous preserve areas has been identified by Staff.

Property History and Character of the Area

The subject property is a tract of land comprised of a portion of one parcel located at the southeast corner of the intersection of Rich Road and Leetana Road (see Attachment B). The property is bordered by Rich Road to the north, Leetana Road to the west and south, and low-density

residential and agricultural uses to the east. The property is unimproved agricultural land that is utilized for grazing of livestock (see Attachment T).

The subject property exhibits a limited permitting history and has been zoned for agricultural use since the County first instituted zoning. A Limited Development Order (LDO2014-00086) was issued to permit the construction of wellhead facilities and associated infrastructure on the portion of the subject property located on the southwest side of Leetana Road in 2014. The part of the property containing the wellhead was subsequently conveyed to Lee County in 2014, while other parts of the subject property are encumbered by utility, access, well protection, and temporary construction easements associated with the wellhead (see Attachment R). However, this portion of the property was subsequently conveyed to Lee County and is not included in this request for rezoning.

The subject property is located within the Rural Future Land Use Map category as designated by the Lee Plan (see Attachment B). The areas surrounding the subject property can be characterized as follows:

North

Rich Road abuts the subject property to the north. Lands to the north of the subject property (across Rich Road) are designated Open Lands by the Lee Plan and are zoned Agricultural (AG-2) and Residential Planned Development (RPD) (see Attachment B). These lands are developed with low-density residential uses and agricultural uses on tracts of land that are typically several acres in size.

East, West, and South

Lands to the east, west, and south of the subject property are designated Rural by the Lee Plan and are zoned Agricultural (AG-2) (see Attachment B). Much like the area to the north, these areas are developed with low-density residential uses and agricultural uses that are typically several acres in size.

Analysis

The intent of the request for rezoning to Residential Planned Development is to permit the development of a 201-unit, single-family residential development on the subject property (see Attachments D and H). Section 34-145 of the Land Development Code (LDC) establishes the review criteria for all rezoning requests. Before recommending approval of a rezoning request, the Hearing Examiner must find the request:

- a) Complies with the Lee Plan;
- b) Meets the Land Development Code and other applicable County regulations or qualifies for deviations;
- c) Is compatible with existing and planned uses in the surrounding area;
- d) Will provide access sufficient to support the proposed development intensity;
- e) The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;

- f) Will not adversely affect environmentally critical or sensitive areas and natural resources; and
- g) Will be served by urban services, defined in the Lee Plan, if located in a Future Urban Area category.

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

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

The following sections provide an analysis of the request and whether it meets the criteria to be entitled to a planned development rezoning in accordance with the Land Development Code.

Lee Plan Compliance

The subject property is located within the Bayshore Community Plan area established by the Lee Plan. The Lee Plan notes that Bayshore "is predominantly a rural residential area of single-family homes on large acreages, small horse farms, citrus groves, and plant nurseries, interspersed by some larger cattle grazing operations" that also contains "scattered single-family subdivisions and mobile homes on smaller lots, which provide for a full range of housing prices." The vision for Bayshore notes that "by and large, the residents of Bayshore want to see this land use pattern maintained," and that the vision for the community "would include slow but steady growth with the building of large single-family homes on 2.5 to 5-acre tracts, as well as some higher density development in the Outlying Suburban category (i.e., up to two units per acre with property zoning)."

The subject property is located within the Rural Future Land Use category established by the Lee Plan. According to the **Lee Plan Policy 1.4.1**, areas designated Rural by the Lee Plan are intended to be developed with low density residential uses and/or utilized for agricultural purposes. Minimal non-residential land uses that are needed to serve the rural community are also envisioned within the Rural Future Land Use category. Areas designated Rural by the Lee Plan are not programmed to receive urban-type capital improvements and are typically served by a level of public services below that of urban areas. The maximum residential density permitted within this future land use category is one dwelling unit per acre.

The request will facilitate the development of the subject property with a clustered residential development exhibiting a gross residential density of less than one unit per acre, which is consistent with the maximum residential density permitted in the Rural Future Land Use category. The proposed clustering of residential units on the property results in a prevailing minimum lot size of 20,000 square feet (see Attachment F), which is out of character with the vision of Bayshore

with respect to the placement of single-family homes on large acreages; however, the vision for the community acknowledges the presence of single-family subdivisions that exhibit smaller lot sizes within Bayshore, and the applicant proposes to provide for a minimum lot size of one acre for individual lots located along the perimeter of the development to provide an appropriate transition between large tract residential uses surrounding the subject property and the approximate half-acre lot sizes that will characterize the proposed development. Therefore, the request, as conditioned, is generally consistent with the vision for Bayshore and is **CONSISTENT with Policy 1.4.1 of the Lee Plan.**

Lee Plan Policy 1.5.1 limits uses in wetlands to very low density residential uses and recreational uses that will not adversely affect the ecological functions of wetlands. This Policy establishes a maximum residential density of one dwelling unit per 20 acres. The subject property contains a 15.34-acre wetland area that is proposed to remain undeveloped if the request is approved. However, the applicant relies upon the wetland area to derive the maximum density associated with the request in accordance with the following calculation:

$$\begin{aligned} 200.69 \text{ acres of uplands designated Rural @ } 1 \text{ DU/Acre} &= 200.69 \text{ units} \\ \underline{15.34 \text{ acres of wetlands @ } 1 \text{ DU/20 Acres}} &= \underline{0.77 \text{ units}} \\ \text{Maximum Permitted Density} &= 201.46 \text{ (201) dwelling units} \end{aligned}$$

As noted above, the request is **CONSISTENT with Policy 1.5.1 of the Lee Plan.**

Policy 1.7.6 of the Lee Plan establishes the Planning Communities Map and Lee Plan Table 1(b), which depict the proposed distribution, extent, and location of generalized land uses for the year 2030. Table 1(b) establishes acreage totals for residential, commercial, and industrial uses within each Planning Community of unincorporated Lee County. According to Lee Plan Table 1(b), there are 1,350 acres allocated for residential development within the Rural Future Land Use category in the Bayshore Community Plan Area, and 286 acres of land remain available for residential development in this Future Land Use category. While typically reviewed at time of local development order, it should be noted that the request, if approved, will not exceed the acreage allocation established in Table 1(b) of the Lee Plan. Therefore, the request is **CONSISTENT with Policy 1.7.6 of the Lee Plan.**

Objective 2.1 of the Lee Plan requires the use of the rezoning process to promote contiguous and compact growth patterns to contain urban sprawl, minimize energy costs, conserve land, water, and natural resources, minimize the cost of services, and prevent development patterns where large tracts of land are bypassed in favor of development more distant from services and existing communities. The proposed development incorporates clustering of residential units at a low density, which will facilitate a compact development footprint that conserves land and limits sprawl while providing for the protection of an existing wetland area on the property. The request is **CONSISTENT with Objective 2.1 of the Lee Plan.**

Policy 2.1.1 of the Lee Plan directs most residential, commercial, industrial, and public development to occur in future urban areas through the assignment of very low residential densities to non-urban Future Land Use categories. **Policy 2.1.2** requires development to be

consistent with the goals, objectives, policies, and standards of the Lee Plan. The subject property is located within a non-urban future land use category with maximum permitted residential density of one dwelling unit per acre; the request contemplates the development of single-family residential uses at a density that complies with the future land use designation of the property. The development proposed by this request is, as a whole, consistent with the goals, objectives, policies, and standards of the Lee Plan with respect to development in the Rural Future Land Use category and the Bayshore Community Plan Area. Therefore, the request is **CONSISTENT with Policies 2.1.1 and 2.1.2 of the Lee Plan.**

Objective 2.2 of the Lee Plan seeks to “direct new growth to those portions of the future urban areas where adequate public facilities exist or are assured and where compact and contiguous development patterns can be created.” The request seeks to establish regulations to facilitate low-density, clustered residential development on a property that is predominantly surrounded by single-family residences on large tracts and agricultural uses. The use of clustering promotes a relatively compact development area (see Attachment D), and the subject property is contiguous to other residential uses. However, the availability of public facilities and infrastructure to serve the subject property is limited due to the property’s location within a non-urban Future Land Use category. Furthermore, while the request complies with the maximum density permitted within the Rural Future Land Use category, the request proposes property development regulations intended to maximize the number of dwelling units on the property.

While the request promotes a compact development pattern that is contiguous to other low-density development and agricultural uses, the request does not serve to direct growth to future urban areas that have adequate access to public facilities. The property is located in a non-urban Future Land Use category in the Bayshore Community Plan Area and has limited access to public facilities, services, and infrastructure. Improvements to public facilities, services, and infrastructure are not contemplated because of the Rural Future Land Use designation of the property and the goals, objectives, and policies established in the Bayshore Community Plan (**Goal 18 of the Lee Plan** and its attendant objectives and policies). Therefore, the request is **INCONSISTENT with Objective 2.2 of the Lee Plan.**

Policy 2.2.1 of the Lee Plan states that rezoning proposals “will be evaluated as to the availability and proximity of the road network, central sewer and water lines, community facilities and services such as schools, EMS, fire and police protection, and other public facilities, [and] compatibility with surrounding land uses.” The subject property is bordered by Rich Road to the north and Leetana Road to the west and south. Access to the subject property is proposed from Rich Road, which is classified as a County-maintained major collector road. Leetana Road is classified as a non-County-maintained local road; however, access to the property from Leetana Road is not proposed by this request.

The subject property is not located within a potable water franchise area; however, the property is located within the Florida Governmental Utility Authority’s (FGUA) wastewater franchise area. Neither potable water nor sanitary sewer infrastructure is available within one-quarter mile of the subject property. While the FGUA indicates that sufficient treatment capacity exists to

accommodate the proposed development, FGUA correspondence notes that future connections to the wastewater collection system may be limited as a result of a settlement agreement between the FGUA and the Florida Department of Environmental Protection (DEP) in response to seasonal effluent overflow incidents at an FGUA wastewater treatment plant (see Attachment K).

The Lee County School District indicates that sufficient elementary school capacity exists within the Concurrency Service Area (CSA) to serve the proposed development, but that the development must rely on capacity within the contiguous Concurrency Service Area (CSA) to accommodate middle- and high school-aged student populations associated with the development (see Attachment L).

The subject property is surrounded by the large tract single-family residences and agricultural uses that characterize the Bayshore Community Plan Area. The proposed development will consist of single-family residential uses and associated accessory structures on lots that are smaller than the prevailing lot sizes of the surrounding area. The uses contemplated by the request are generally compatible with the surrounding residential and agricultural uses, and conditions of approval requiring larger lot sizes along the perimeter of the subject property have been recommended to provide for an appropriate transition between the proposed development and the surrounding area.

The subject property is served by public facilities and services at levels consistent with the property's location within a non-urban area. The property is located several miles from schools, EMS, fire, and Sheriff's stations. As noted above, potable water and sanitary sewer infrastructure is not available to the property. However, the proposed development does not meet the density threshold to require connections to potable water and sanitary sewer systems established in **Standards 4.1.1 and 4.1.2 of the Lee Plan**. Generally, the availability and proximity of the road network and community facilities and services is sufficient to serve the proposed development and the uses and development standards proposed as part of the request are compatible with surrounding land uses. Therefore, the request is **CONSISTENT with Policy 2.2.1 of the Lee Plan**.

Standards 4.1.1 and 4.1.2 of the Lee Plan require new residential development with a density exceeding 2.5 dwelling units per gross acre to connect to a public water system or a "community" water system as defined by Chapter 62-550, Florida Administrative Code (F.A.C.) and to a sanitary sewer system. The requested planned development rezoning proposes a density of approximately one unit per acre and does not meet the threshold for connection established by these Standards. The subject property is not located within an established water franchise area and is located more than one-half mile from the nearest sanitary sewer infrastructure. The applicant has proposed individual wells and septic systems to provide potable water and to collect and treat wastewater for individual residences. However, there are significant concerns relative to the degradation of surface water and groundwater quality, impacts to the Sandstone Aquifer, and well field protection associated with the provision of potable water and wastewater collection and treatment through individual wells and septic systems. Staff has recommended several conditions intended to mitigate the impact of the proposed development on surface water and groundwater quality, on the

Sandstone Aquifer, and on a number of public wells in the vicinity of the subject property. The request, as conditioned, is **CONSISTENT with Standards 4.1.1 and 4.1.2 of the Lee Plan.**

Standard 4.1.4 of the Lee Plan requires that any developer or applicant proposing to develop any land containing environmentally sensitive areas to prepare an environmental assessment, ensure that land uses and structures are well integrated, properly oriented, and functionally related to existing topographic and natural resources, and ensure that development minimizes the need for expansion and construction of street and utility improvements. The southerly portion of the subject property contains a wetland area that is approximately 15.34 acres in area. In addition, Chapel Branch and its associated floodplain traverse the southeasterly portion of the subject property. The existing wetland area, watercourse, and its associated floodplain are proposed to be preserved as part of the request. The Master Concept Plan integrates development tracts around the existing wetland area, watercourse, and floodplain (see Attachment D). The surface water management system will consist of open swales along internal roads connected to wet detention lakes that will eventually discharge into the existing wetland area (see Attachment J). The request contemplates the preservation of existing environmentally sensitive areas on the subject property, does not propose any utility improvements, and proposes a network of private streets that will serve individual lots within the development. Therefore, the request is **CONSISTENT with Standard 4.1.4 of the Lee Plan.**

Objective 5.1 of the Lee Plan requires all development approvals for residential land uses to be consistent with the attendant policies of Objective 5.1, the general standards under Goal 4, and other provisions of the Lee Plan. **Policy 5.1.2 of the Lee Plan** requires the density and design of residential developments to be adjusted accordingly where physical constraints or hazards exist. **Policy 5.1.5 of the Lee Plan** requires the protection of existing and future residential areas from any encroachment of uses that are potentially destructive to the character and integrity of the residential environment and permits the attachment of conditions to planned development applications where development regulations are deemed to be inadequate. The request contemplates a residential development containing single-family dwelling units at a density of approximately one dwelling unit per acre. The Master Concept Plan and property development regulations for the proposed development utilize clustering to preserve existing environmentally sensitive lands on the property. The request, as conditioned, provides for buffering and increased lot sizes around the perimeter of the development to ensure compatibility between the subject property and established uses in the surrounding area.

The applicant has requested two deviations associated with the excavation of surface water management lakes on the subject property (See Attachment G). The approvals of the requested deviations are conditioned to protect public health, safety, and welfare (see Attachment C). The request, as conditioned, is sensitive to existing on-site environmental constraints and is generally compatible with the established uses in the area; therefore, the request is **CONSISTENT with Objective 5.1, Policy 5.1.2 and Policy 5.1.5 of the Lee Plan.**

The subject property is located in the Bayshore Community Plan Area as established by the Lee Plan. **Goal 18 of the Lee Plan** and its attendant objectives and policies comprise the Bayshore Community Plan. The established goal of the Bayshore Community Plan is to:

Protect the existing rural residential, agricultural and equestrian-oriented character of the community by maintaining low residential densities and minimal commercial activities and exclude incompatible uses that are destructive to the character of this rural residential environment.

The proposed planned development rezoning will facilitate the development of a single-family residential community on the subject property. The density proposed by the request is consistent with the maximum residential density of one dwelling unit per acre permitted within the Rural Future Land Use category and can be generally characterized as low-density residential development. The single-family residential development proposed by the request is compatible with the surrounding single-family residential development and agricultural uses that surround the subject property and no commercial activities are proposed as part of the request. While the development pattern contemplated by the request is markedly different than the large tract residential uses that surround the property and characterize the Bayshore community, the request is consistent with the low-density character of the community and with the future land use designation of the subject property and the surrounding area. Therefore, the request is **CONSISTENT with Goal 18 of the Lee Plan**.

Lee Plan Objective 18.1 notes that “the County will continue to enforce land development regulations that ensure separation of urban and rural land uses through the implementation of open space, buffers, and setback requirements that protect high quality environmental areas, such as creeks, oak hammocks, floodplains and wetlands from potential impacts of development. Planned developments, through appropriate conditions of approval, will be required to locate low residential densities along the perimeters of the development. Amendments to the future land use map that increase density or intensity must demonstrate compatibility through a concurrent planned development rezoning.” The request proposes to provide Code-compliant buffers around much of the perimeter of the subject property and proposes to provide buffer enhancements in areas affected by the requested excavation setback deviations noted above. The conditions of approval include property development regulations that protect environmentally sensitive upland, wetland and floodplain areas and require larger minimum lot sizes for individual lots around the perimeter of the development to enhance compatibility with the surrounding development pattern. The request, as conditioned, is **CONSISTENT with Objective 18.1 of the Lee Plan**.

Objective 18.3 of the Lee Plan acknowledges the desire to maintain a low residential density north of Bayshore Road and discourages new central sewage service in this area. This Objective encourages central water service within these areas for the purpose of providing enhanced fire protection. **Policy 18.3.1** exempts landowners from connecting to central sewer or water utilities unless there is a documented threat to public health or a new development exceeds the thresholds requiring connection to central water and sewage systems established by **Standards 4.1.1 and 4.1.2 of the Lee Plan**. As noted above, the request proposes a maximum density of approximately one dwelling unit per acre, which does not exceed the threshold to require connection to central

water and sewage systems. No extension of central water or sewer infrastructure is contemplated by this request, and the applicant is proposing individual wells and septic systems to provide potable water and wastewater service for the development. However, as noted above, there are significant concerns relative to the degradation of surface water and groundwater quality, impacts to the Sandstone Aquifer, and well field protection associated with the provision of potable water and wastewater treatment through individual wells and septic systems. Staff has recommended several conditions intended to mitigate the impact of the proposed development on surface water and groundwater quality, on the Sandstone aquifer, and on a number of public well fields that utilize the Lower Hawthorn Aquifer in the vicinity of the subject property. The request, as conditioned, is **CONSISTENT with Objective 18.3 and Policy 18.3.1 of the Lee Plan**.

Goal 59 of the Lee Plan promotes the reduction of life, health, and property hazards created by flooding due to rainfall in a manner that preserves environmental values and conserves natural resources. **Policy 59.1.5 of the Lee Plan** requires the County to control the introduction of obstructions or impediments into floodways through appropriate land use and engineering regulations. According to empirical evidence from area residents, the areas surrounding Chapel Branch are prone to regular flooding during significant rain events. The development of the subject property will incorporate berming into the perimeter buffers along Rich Road and portions of Leetana Road, which may impede the historic flow pattern of surface water from north to south through the subject property (see Attachment J).

The applicant proposes several measures to ensure consistency with this Lee Plan Goal and Objective. The applicant will construct and maintain a conveyance system through or around the subject property to maintain the historic north-to-south flow of surface water and to mitigate the impedance of surface water flow and flooding in the area. The conveyance system will consist of a bypass swale, bypass pipe system, or other similar constructed drainage feature and will serve to advance **Objective 61.2 of the Lee Plan**, which promotes a surface water management strategy that mimics the functions of a natural system. The applicant also proposes to replace an existing culvert at the intersection of Leetana Road and Rich Road, restore the function of an existing drainage swale along the property's Leetana Road frontage, and restore the function of the existing culvert under Leetana Road that allows Chapel Branch to flow to the south of the subject property. The applicant proposes to maintain the existing Leetana Road swale and culvert, as well as the proposed conveyance system in perpetuity to ensure each feature's continued function. The restoration and maintenance activities proposed by the applicant advance **Goal 61 of the Lee Plan** by ensuring the operation and maintenance of existing and proposed drainage infrastructure in a manner that protects the receiving waters of the Caloosahatchee River. Conditions reflecting these measures have been incorporated into the conditions of approval (see Attachment C). The request, as conditioned, is **CONSISTENT with Goal 59, Policy 59.1.5, Goal 61 and Objective 61.2 of the Lee Plan**.

Objective 60.5 of the Lee Plan and its attendant policies (**Policies 60.5.1, 60.5.2, and 60.5.3**) acknowledge the long term benefits of incorporating green infrastructure into surface water management systems and encourage new developments to design surface water management systems to incorporate best management practices, preserve existing natural flow-ways and

restore historic natural flow-ways. The applicant's Request Narrative and Surface Water Management Plan note the incorporation of best management practices including grassed swales, detention lakes with littoral zones, and the preservation of the existing wetland and watercourse that traverse the southerly portion of the property (see Attachments H and J). The request, if approved, will maintain the hydrology of the existing wetland area to accommodate the overflow of Chapel Branch in times of high water and to provide additional treatment of surface water generated by the project prior to discharging into Chapel Branch. The request also proposes drainage improvements and restoration activities that serve to preserve and restore existing flow-ways as noted above. Environmental Staff has reviewed the request and has recommended conditions of approval to ensure the implementation of best management practices and to facilitate the preservation and restoration of the existing on-site wetlands in a manner consistent with this Objective its attendant Policies. The request, as conditioned, **is CONSISTENT with Objective 60.5 and Policies 60.5.1, 60.5.2, and 60.5.3 of the Lee Plan).**

As noted above, the development of the subject property proposes individual wells and septic systems to provide potable water and wastewater collection and treatment for the proposed development. The use of individual wells and septic systems presents significant concerns relative to impacts on surface water and groundwater quality, water levels within the Sandstone Aquifer, and existing public water supply wells in the vicinity of the subject property.

The subject property drains into Chapel Branch, which runs north to south alongside the eastern boundary of the subject property before crossing the southeasterly corner of the subject property. According to Total Maximum Daily Load (TMDL) data from FDEP, the Chapel Creek/Bayshore Creek watershed, which includes Chapel Branch, is an impaired waterway that exceeds DEP-established limits for fecal coliform (see Attachment M). Chapel Branch eventually drains into the Caloosahatchee River approximately two miles south of the subject property.

Goal 63 of the Lee Plan requires the protection of the County's groundwater supplies from those activities having the potential for depleting or degrading those supplies. Similarly, **Goal 115 of the Lee Plan** and its attendant objective and policies seek to maintain and improve water quality within the County through the identification, control, and elimination of sources of water pollution, a prohibition of surface and groundwater quality degradation as a result of new development, the initiation of a well field protection program, and the minimization of nutrient loading and pollution of freshwater and estuarine systems. The introduction of approximately 200 individual septic systems in close proximity to an impaired waterway and a number of public well fields that utilize the Lower Hawthorn Aquifer may further degrade surface and groundwater quality and may impact the water quality of the public water supply.

To mitigate these impacts, the applicant proposed conditions requiring individual septic systems to be located a minimum of 30 feet from on-site lakes and 100 feet from Chapel Branch Creek. The applicant also proposed a condition requiring maintenance of individual septic systems by the development's Homeowners' Association to ensure individual septic systems are maintained. However, the permitting of individual septic systems at the time of construction is subject to the review and approval of the State Department of Health, while the maintenance of individual septic

systems by the Homeowners' Association does not ensure that individual septic systems will be properly maintained and may present legal issues with respect to Association contractors' ability to access private properties to conduct maintenance activities. The conditions proposed by the applicant present a limited opportunity for the County to provide for enforcement in a manner that ensures the protection of water quality and public health, safety, and welfare.

Staff recommends a condition requiring a package plant to provide for wastewater collection and treatment for the proposed development in lieu of individual septic systems (see Attachment C). Utilizing a package plant for wastewater collection and treatment provides for greater control and monitoring of a known source of water pollution and nutrient loading, provides for greater regulatory oversight through both State and County permitting and monitoring processes, and provides the requisite infrastructure to facilitate connections to central sanitary sewer service if such service becomes available at some point in the future. The request, as conditioned by Staff, is **CONSISTENT with Goal 115 of the Lee Plan and its attendant objective and policies.**

Given the impaired nature of Chapel Branch and the Chapel Creek/Bayshore Creek Watershed, the proximity of the subject property to public well fields, and the lack of availability of central water and sewer service to serve the proposed development, Staff recommends conditions to establish comprehensive surface water and groundwater monitoring protocols for the proposed development (see Attachment C). These monitoring protocols are recommended to ensure the protection, conservation, and management of the County's estuarine ecosystems and water resources **CONSISTENT with Goals 108 and 117 of the Lee Plan. Lee Plan Objective 108.1 and Policies 108.1.1 and 117.1.6** provide the basis to establish and support surface and groundwater monitoring programs to advance these Lee Plan goals. The surface and groundwater quality monitoring conditions require coordination between the applicant and County Staff to monitor surface water quality and groundwater quality and quantity and to provide for contingencies to address any adverse impacts on surface water quality and groundwater quality and quantity resulting from the proposed development in a manner **CONSISTENT with Policies 117.1.3 and 117.1.7 of the Lee Plan.**

In conclusion, **the request, as conditioned by Staff, is CONSISTENT with the Lee Plan as a whole.** The request seeks to facilitate the development of a low-density, single-family residential community on the subject property at a density consistent with the maximum permitted density of the Rural Future Land Use category established by the Lee Plan. Although the request does not serve to direct growth to designated urban areas with available urban services and infrastructure to facilitate compact and contiguous development patterns, the proposed Master Concept Plan and accompanying property development regulations incorporate clustering to create a compact development footprint that preserves environmentally sensitive areas on the subject property and provides for Code-compliant buffers where required and enhanced buffers along perimeter areas impacted by excavation.

The request, as conditioned, contemplates the incorporation of green infrastructure best management practices to provide for water quality, provides for the restoration, reconstruction, and maintenance existing drainage features and infrastructure to ensure adequate surface water

flow, and provides for the continued flow of off-site surface water through or around the subject property to mitigate the potential for off-site flooding. Concerns relative to the impacts of development on surface water quality, groundwater quality and quantity, and public water supply are adequately addressed through the recommended establishment of monitoring protocols and through the provision of a centralized wastewater collection and treatment system. Finally, the request, as conditioned, is compatible with surrounding uses and is consistent with the provisions of the Bayshore Community Plan.

Land Development Code Compliance and Deviations

Section 34-411 of the Lee County Land Development Code requires all planned developments to be consistent with the Lee Plan and the Land Development Code except to the extent that deviations from the Land Development Code are requested as part of an application for a planned development. As noted above, the request for rezoning to Residential Planned Development, as conditioned, is consistent with the Lee Plan.

The applicant has requested two deviations from certain provisions of the Land Development Code pursuant to Section 34-373(a)(9) of the LDC (see Attachment G). The requested deviations are as follows:

Deviation 1 seeks relief from Section 10-329(d)(1)a.2 of the Land Development Code, which prohibits excavations for water retention and detention within 50 feet of any existing or proposed right-of-way line or easement for a collector or arterial street, to permit excavation for water retention within 25 feet of Rich Road, which is classified as a major collector.

LDC Section 10-329(d)(1)a.2 permits the reduction of the required 50-foot excavation setback to 25 feet through the administrative deviation process. To be entitled to this deviation through the administrative deviation process, a developer must provide for the protection of wayward vehicles through the use of guardrails, berms, swales, vegetation or other suitable methods as determined by the Director. The applicant's justification for the requested deviation indicates that mounding and the required landscape buffer will be provided along the subject property's Rich Road frontage, thereby providing for protection of wayward vehicles. Staff finds that the deviation, as conditioned, protects public health, safety, and welfare and advances the objectives of the planned development. Staff recommends **APPROVAL** of the requested deviation, subject to the following conditions:

- *Approval is limited to Lake Tract A as depicted on the attached Master Concept Plan.*
- *Prior to local development order approval, the development order plans must demonstrate provisions for the protection of wayward vehicles through the use of guardrails, berms, swales, vegetation or other suitable methods as determined by the Director where the distance between the proposed excavation and the right-of-way line of Rich Road is less than 50 feet.*

Deviation 2 seeks relief from Section 10-329(d)(1)a.3 of the Land Development Code, which prohibits excavations for water retention and detention within 50 feet of any private property line under separate ownership, to permit excavation for water retention within 25 feet of certain private properties to the east of the subject property.

LDC Section 10-329(d)(1)a.3 permits the reduction of the required 50-foot excavation setback to a minimum of 25 feet through the administrative deviation process. The applicant's justification for the requested deviation notes that an enhanced Type "A" buffer containing five trees and a single hedgerow installed at a minimum height of 48 inches will be provided where the distance between the perimeter of the subject property and the proposed lake does not meet the required 50-foot setback. Staff finds that the requested deviation, as conditioned, protects public health, safety, and welfare and advances the objectives of the planned development. Staff recommends **APPROVAL** of the requested deviation, subject to the following conditions:

- *Approval is limited to Lake Tract C as depicted on the attached Master Concept Plan.*
- *Prior to local development order approval, the development order plans must depict an enhanced Type "A" buffer containing five trees and a single hedgerow installed at a minimum height of 48 inches where the distance between the proposed excavation and any private property under separate ownership is less than 50 feet.*

Staff has identified an additional deviation that is precipitated by the property development regulations proposed by the applicant as part of the request (see Attachment F). Relief is required from Section 10-415(b)(1)c. of the Land Development Code, which requires buildings to be set back a minimum of 20 feet from indigenous plant communities and 30 feet from indigenous plant communities subject to fire, to permit zero-foot setbacks to indigenous plant communities for accessory buildings as proposed by the applicant. Staff recommends **APPROVAL** of the required deviation subject to the following condition:

- *Prior to building permit approval for any accessory building that does not comply with the required 30-foot setback from an indigenous plant community subject to fire pursuant to Section 10-415(b)(1)c. of the Land Development Code, the applicant, its successors or assigns must provide written correspondence from the Bayshore Fire Control District indicating approval or no objection to the reduced setback.*

Staff finds that the deviation, as conditioned, will enhance the objectives of the planned development and protect public health, safety, and welfare.

Compatibility with Surrounding Uses

The subject property is surrounded by lands that are zoned to accommodate agricultural and residential uses. The proposed Residential Planned Development is consistent with the Future Land Use Map designation on the subject property. The request, as conditioned, is generally compatible with the existing and planned uses in the surrounding area. The Master Concept Plan and recommended conditions of approval propose buffering that complies with or exceeds the requirements of the Land Development Code. The limited schedule of uses proposed by the request provides for single-family detached residential uses and associated accessory uses and structures, while the property development regulations require larger lot sizes for individual residential lots along the perimeter of the development to ensure compatibility with existing and planned uses that surround the subject property (see Attachment C).

Sufficiency of Access and Transportation Considerations

Access to the subject property is proposed to be provided by two full movement access points from Rich Road. The proposed means of access to the subject property is sufficient to accommodate the proposed development. Development Services Staff notes that elements associated with the proposed project access, including but not limited to permissible access movements, will be further considered at the time of local development order review (see Attachment P).

Traffic Impacts

The applicant has provided a Traffic Impact Statement for the proposed Residential Planned Development as required by the LDC (see Attachment N). Infrastructure Planning Staff and Development Services Staff provided comments regarding the Traffic Impact Statement prepared in support of the requested Planned Development rezoning (see Attachments O and P).

The Traffic Impact Statement notes that the request is anticipated to generate 148 AM Peak Hour and 199 PM Peak Hour trips based on the maximum density proposed by the request. Development Services Staff notes that the request, if approved, will have significant impacts (defined as ten percent of LOS "C" service volumes for the links at build out) on segments of Pritchett Parkway, Rich Road, and Slater Road. Development Services Staff also notes that Bayshore Road, between Hart Road and Slater Road, is projected to operate at Level of Service "F" in pre- and post-build out conditions, while all other analyzed roadway segments are projected to operate at Level of Service "E" or better in pre- and post-build out conditions. The proposed development will be further reviewed at the time of local development order to determine required site-related traffic improvements to nearby roadways.

With respect to impacts of the proposed development on intersection volumes in the vicinity of the subject property, Development Services Staff notes that the intersection of Pritchett Parkway and Rich Road will be significantly impacted (defined as ten percent or more of the total peak intersection volume of all four approaches at build out) by the proposed development. However, this intersection, as well as the intersections of Rich Road with the proposed site accesses, will operate at Level of Service "B" or better in pre- and post-build out conditions. Additional analysis will be undertaken at time of local development order to determine whether additional site-related traffic improvements to nearby roadways will be required.

Development Services Staff recommends conditions of approval limiting the maximum density in accordance with the applicant's request and requiring tracking of development on the subject property during construction. These conditions have been considered and incorporated into the recommended conditions and deviations where appropriate (see Attachment C).

Environmental Considerations

Lee County Environmental Staff reviewed the rezone request and has provided substantive review comments (see Attachment Q). Environmental Staff notes that the Master Concept Plan depicts compliant buffers along Leetana Road and enhanced buffering along Rich Road and along a portion of the easterly boundary of the subject property. Environmental Staff has proposed several conditions to provide for the incorporation of green infrastructure best management practices within the proposed surface water management system, the restoration, management, and

monitoring of the existing on-site wetland area, the discharge of surface water into the existing on-site wetland through a proposed spreader swale, and the reconstruction, maintenance, and restoration of existing drainage swales and culverts.

As noted herein, the subject property is not required to connect to central water and sewer infrastructure, and no such infrastructure is available in the vicinity of the subject property to serve the proposed development. Staff has recommended conditions to monitor surface and groundwater quality and quantity on the subject property to identify any adverse impacts the proposed development may have on surface water quality and groundwater quality and quantity, and to provide for centralized collection and treatment of wastewater through the use of a package plant in lieu of the individual septic systems proposed by the applicant to provide for additional regulatory oversight and monitoring of the impacts of the proposed development.

Findings and Conclusion

The proposed rezoning to Residential Planned Development to permit a maximum of 201 single-family dwelling units on the subject property, as conditioned, is consistent with the Lee Plan. The request includes deviations intended to provide relief from excavation setback requirements from rights-of-way and adjacent properties under separate ownership associated with the excavation of the surface water management system for the proposed development and to permit the location of accessory buildings within indigenous preserve setbacks otherwise required by the LDC. Staff finds that the approval of the requested deviations, as conditioned, enhance the objectives of the planned development and preserve and promote public health, safety, and welfare. Conditions of approval to monitor surface and groundwater quality and quantity, provide for centralized collection and treatment of wastewater, provide for the reconstruction, restoration, and maintenance of existing drainage infrastructure, and to provide for the conveyance of off-site water flows through or around the subject property are recommended to safeguard public water supply, protect estuarine ecosystems, and mitigate the potential adverse impacts of development of the subject property on historic surface water flows.

The proposed planned development rezoning, as conditioned, meets all the criteria for rezoning and is compliant with the Land Development Code. The request, as conditioned, is compatible with existing and planned uses in the surrounding area. The conditions attached hereto are proposed to limit adverse impacts to environmentally critical or sensitive areas or natural resources. Sufficient access will be provided to support the proposed development, and the proposed uses are appropriate for the subject property. The conditions proposed are intended to safeguard the public interest and are reasonably related to the impacts on the public interest expected from the proposed development.

Attachments

- A. Expert Witness List
- B. Aerial, Current Zoning, and Future Land Use Maps
- C. Conditions and Deviations
- D. Master Concept Plan
- E. Applicant's Proposed Schedule of Uses

- F. Applicant's Proposed Property Development Regulations
- G. Applicant's Schedule of Deviations and Justifications
- H. Applicant's Request Narrative and Lee Plan Consistency
- I. Applicant's Proposed Conditions of Approval
- J. Surface Water Management Plan Description
- K. FGUA Wastewater Availability Correspondence
- L. Lee County School District School Capacity Correspondence
- M. Verified Assessment Period Report Card, Chapel Creek/Bayshore Creek
- N. Traffic Impact Statement
- O. Lee County Infrastructure Planning Staff Memorandum
- P. Lee County Development Services Transportation-Related Analysis and Recommendations
- Q. Lee County Environmental Staff Memorandum
- R. North Lee County WTP Well field Expansion Legal Description
- S. Legal Description and Sketch
- T. Agricultural Use Affidavit