

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20060421

1. ACTION REQUESTED/PURPOSE: Adopt a resolution amending the Deep Lagoon Marina DRI Development Order to increase the building height from 42 feet to 48 feet.

2. WHAT ACTION ACCOMPLISHES: If the Resolution is adopted, it will serve to amend the Deep Lagoon Marina DRI Development Order, through an expedited process in accordance with Florida Statutes and the Lee County Land Development Code, to increase the building height from 42 feet to 48 feet.

3. MANAGEMENT RECOMMENDATION:

4. Departmental Category: 12 **A12A** **5. Meeting Date:** **04-25-2006**

6. Agenda:		7. Requirement/Purpose: (specify)		8. Request Initiated:	
<input type="checkbox"/>	Consent	<input checked="" type="checkbox"/>	Statute	380.06(19)(e) (2)	
<input checked="" type="checkbox"/>	Administrative	<input checked="" type="checkbox"/>	Ordinance	LDC § 34-145(d)(1)c	
<input type="checkbox"/>	Appeals	<input type="checkbox"/>	Admin. Code	Department DCD and County Attorney	
<input type="checkbox"/>	Public Walk-On	<input type="checkbox"/>	Other	Division Zoning and Land Use	
				By: <i>Dawn E. Perry-Lehnert</i> 4-10-06 Dawn E. Perry-Lehnert Assistant County Attorney	

9. Background:
The Deep Lagoon Marina DRI was adopted by the Board of County Commissioners in March 1987. Since that time, the development order has been amended three times. On February 16, 2006, Deep Lagoon Boat Club, Ltd. petitioned to amend the governing DRI Development Order to increase the allowed building height from 42 feet to 48 feet.

The Lee County Land Development Code states that after staff review and recommendation, certain amendments to the DRI development orders, may proceed directly to the Board of County Commissioners for consideration during a regular weekly Board meeting as part of the Administrative Agenda. The Board may adopt this amendment based upon the staff recommendation. Hearing Examiner review is not required.

(continued on page 2)

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services <i>John 4/13</i>				County Manager/P.W. Director
				<i>Janice</i>	Analyst <i>4/10/06</i>	Risk <i>4/10/06</i>	Grants <i>4/10/06</i>	Mgr. <i>4/13/06</i>	<i>[Signature]</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

[Handwritten signature and date]

RECEIVED BY COUNTY ADMIN: 4-10-06 12:19
COUNTY ADMIN FORWARDED TO: 4-10-06 2:00

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Page #: 2
Subject: Deep Lagoon Marina DRI

Staff supports the proposed amendment to the DRI Development Order. The change will not create a likelihood of additional regional impact. Accordingly, staff recommends adoption of the attached resolution amending the Deep Lagoon Marina DRI Development Order.

Attachment:

Resolution amending the DRI Development Order and adopting the codification of the Fourth Amendment to the Deep Lagoon Marina DRI Development Order.

RESOLUTION NO. 06_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, AMENDING THE DEEP LAGOON MARINA DRI DEVELOPMENT ORDER.

WHEREAS, the Lee County Board of Commissioners adopted a DRI Development Order for the Deep Lagoon Marina DRI on March 23, 1987 (State DRI No. 5-8586-66); and

WHEREAS, the DRI Development Order was subsequently amended on April 23, 1997, June 7, 1999, and June 20, 2005; and

WHEREAS, Deep Lagoon Boat Club, Ltd. has petitioned to amend the DRI Development Order to increase the building height from 42 feet to 48 feet; and

WHEREAS, the Southwest Florida Regional Planning Council staff has opined that amendment of the DRI Development Order approval to increase the building heights is a minor change as contemplated by Section 380.06(19)(e)(2)), Florida Statutes; and

WHEREAS, the proposed amendment of the Deep Lagoon Marina DRI Development Order does not constitute a substantial deviation and qualifies for expedited processing pursuant to Florida Statutes §380.06(19)(e)2 and Land Development Code §34-145(d)(1)c.

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. Section I.E. of the Deep Lagoon Marina DRI Development Order is hereby amended as follows:
 - I. FINDINGS OF FACTS/CONCLUSIONS OF LAW:
 - E. Zoning: The current zoning on the property is CPD (Commercial Planned Development). Maximum building height is ~~42~~ 48 feet.
3. This Resolution and its exhibits constitute the Fourth Development Order Amendment to the Deep Lagoon Marina Development of Regional Impact. All other terms and conditions of the Development Order as previously amended remain unchanged.
4. Certified copies of this Resolution and the revised DRI Development Order 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 appeals 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.

The motion to adopt this Resolution was offered by Commissioner _____, and seconded by Commissioner _____, and, upon poll of the members present, the vote was as follows:

Robert P. Janes
Douglas R. St. Cerny
Ray Judah
Tammara Hall
John E. Albion

DULY PASSED AND ADOPTED this _____ day of _____, 2006.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairwoman

APPROVED AS TO FORM:

By: _____
Dawn E. Perry-Lehnert
Office of the County Attorney

Exhibit A: Proposed Fourth Amendment to the Deep Lagoon Marina DRI Development Order

FOURTH DEVELOPMENT ORDER AMENDMENT¹
FOR
DEEP LAGOON MARINA

A Development of Regional Impact

#5-8586-66

LET IT BE KNOWN that, pursuant to §380.06 of the Florida Statutes, the Board of County Commissioners of Lee County, Florida, heard, at a public hearing on the March 23, 1987, the Application for Development Approval of DEEP LAGOON MARINA, a partially constructed marina and commercial development on approximately 26.61 acres of land, developed in accordance with the application filed on May 23, 1986.

WHEREAS, the Board of County Commissioners of Lee County, Florida, considered the report and recommendations of the Southwest Florida Regional Planning Council, the Lee County Administrative Review Staff, the Lee County Planning and Zoning Commission (the Local Planning Agency), and the documents and comments upon the record made before the Board in public hearing; and after full consideration of those reports, recommendations, comments and documents, the Board adopted the Deep Lagoon DRI Development Order on March 23, 1987; and

WHEREAS, §380.06, Florida Statutes, provides for an automatic extension of the buildout, downzone protection, and termination dates during the pendency of administrative hearings; and

WHEREAS, the buildout, downzone protection, and termination dates were extended by operation of law due to a challenge filed by the Department of Environmental Protection that precluded development activity for the duration of the proceedings; and

WHEREAS, the DEP proceedings lasted for a period of four years, nine months, 21 days; and

WHEREAS, the Deep Lagoon Marina DRI Development Order was subsequently amended on April 23, 1997 to extend the build-out date, termination date and downzone protection date by just under five years and to acknowledge the effect of the challenge to the original DRI Development Order by the Department of Environmental Protection; and

¹ This is a codification and restatement of all DRI Development Orders rendered with respect to the Deep Lagoon Marina DRI, including actions taken on March 23, 1987, April 23, 1997, June 7, 1999, and June 20, 2005 and _____, 2006.

EXHIBIT A

WHEREAS, on June 7, 1999, the DRI Development Order was amended a second time to add .58 acres, revise Map H, change the buildout date to 2000 and amend conditions related to transportation, environmental protection and fire protection; and

WHEREAS, a second round of administrative and judicial proceedings lasted two years, two months and 26 days; and

WHEREAS, DEP issued a Notice of Intent to issue an Environmental Resource Permit (ERP) for Deep Lagoon Marina on January 22, 2003, which precipitated an administrative challenge filed on February 15, 2003; and

WHEREAS, a third round of administrative and judicial proceedings lasted one year, 11 months and nine days; and

WHEREAS, on June 20, 2005, the Board approved a third amendment to the DRI Development Order granting an extension of the buildout date to December 31, 2006, which represents a cumulative extension of 15 years, of which eight years, nine months and 26 days are eligible for automatic extension of the buildout, termination and downzoning dates under §380.06(19)(c); and

WHEREAS, Deep Lagoon Boat Club, Ltd. filed an NOPC on February 16, 2006 to increase the building height from 42 feet to 48 feet; and

WHEREAS, the Southwest Florida Planning Council Staff has opined that the amendment of the DRI development order approval to increase the building height from 42 feet to 48 feet constitutes a minor change as contemplated by Florida Statutes §380.06(19)(e)(2); and

WHEREAS, the proposed amendment of the Deep Lagoon Marina DRI Development Order does not constitute a substantial deviation and qualifies for expedited processing pursuant to Florida Statutes §380.06(19)(e)(2) and Land Development Code §34-145(d)(1)c.

NOW, THEREFORE, it is resolved by the Board of County Commissioners that the Deep Lagoon Marina DRI Development Order is further amended as follows:

Note: New language is underlined and deleted text is struck through.

I. FINDINGS OF FACT/CONCLUSIONS OF LAW

A. The Deep Lagoon Marina Development is a partially completed Development of Regional Impact (DRI). The development consists of 26.61 acres of marina and commercial land uses. A substantial portion of the project has been completed and

EXHIBIT A

currently consists of 61 wet slips; 32,800 square feet of dry storage (approximately 167 slips); launching facilities; and 44,000 square feet of marina retail, maintenance supply and warehousing. The developer proposes 150 permanent wet slips; of which 30 will be reserved only for temporary moorings; 115,000 square feet of dry storage (427 slips); 10,000 square feet of corporate office space; an 8,500 square-foot restaurant; 31,500 square feet of mini-warehouses; 36,750 square feet of marina-related office, service, and retail uses; marina accessory uses; and a 4,950 square-foot boat club house. The project will provide fueling and waste pump-out facilities. The marina will enforce a "no live-aboard" policy. Development will occur in two phases in accordance with attached Exhibits A (Phasing Schedule) and B (Map H).

B. The legal description of the property is set forth in attached Exhibit A.

C. Existing Development: At present, the existing portion of the Deep Lagoon Marina consists of 61 wet slips; 32,800 square feet of dry storage (approximately 167 slips); launching facilities; and 44,000 square feet of marina retail, maintenance supply and warehousing.

D. Proposed Development: The developer proposes a development consisting of: 150 permanent wet slips, of which 30 will be reserved for temporary boat mooring; 115,000 square feet of dry storage (427 slips); 10,000 square feet of corporate office space; an 8,500-square-foot restaurant; 31,500 square feet of mini-warehouses (already existing); 36,750 square feet of marina-related office, service, and retail uses; marina accessory uses; and a 4,950-square-foot boat club. The project will provide fueling and waste pump-out facilities. The marina will enforce a no live-aboard policy. The buildout date is December 31, 2006.

E. Zoning: The current zoning on the property is CPD (Commercial Planned Development). Maximum building height is ~~42~~ 48 feet.

F. This application for development approval is consistent with the requirements of §380.06, Florida Statutes.

G. The proposed development is not located in an area designated as an Area of Critical State Concern, pursuant to the provisions of §380.05, Florida Statutes.

H. The proposed development does not unreasonably interfere with the achievement of the objectives of the adopted state land development plan.

I. The originally proposed development was reviewed by the Southwest Florida Regional Planning Council and is the subject of the report and recommendations adopted by that body on December 18, 1986, and subsequently forwarded to Lee County pursuant to the provisions of §380.06, Florida Statutes; the development, as proposed in the

EXHIBIT A

application for development approval and as modified by this amended development order, is consistent with that report and the recommendations of the Southwest Florida Regional Planning Council.

J. The proposed conditions below meet the criteria found in §380.06(15) (d), Florida Statutes.

K. As conditioned, the proposed development, as noted, is consistent with the adopted Lee County Comprehensive Plan.

L. The request to extend the buildout date by 15 years (of which eight years, nine months and 26 days constitutes administrative tolling period) does not constitute a substantial deviation.

M. The changes requested as part of the Third Development Order Amendment were reviewed cumulatively with previous changes to the DRI and found not be a substantial deviation from the original development order approvals.

II. ACTION ON REQUEST

A. DRAINAGE/WATER QUALITY

1. All commitments provided within the Deep Lagoon ADA and supplemental sufficiency documents, with respect to Question 22 (Drainage), are incorporated as conditions for approval.

2. The developer must coordinate with FDER and Lee County in the development of an ongoing sampling, monitoring, and maintenance program, for the lifetime of the project, that regularly inspects the site's stormwater runoff. The developer, or his successors, is responsible for the implementation of this program.

3. The developer must obtain all appropriate DEP permit approvals prior to the initiation of any expansion of the Deep Lagoon Marina site.

4. The developer must adhere to all conditions of DEP Permit #362504599 prior to the initiation of any expansion of the Deep Lagoon Marina site.

B. ENERGY

The Developer must incorporate the following energy conservation measures into the development:

EXHIBIT A

1. Bus stops, shelters, and other passenger and system accommodations for a transit system to serve the project area.
2. Energy efficient features in window design (e.g., tinting and exterior shading).
3. Operable windows and ceiling fans.
4. Energy-efficient appliances and equipment.
5. Reduce 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. Energy-efficient lighting for streets, parking areas, recreation areas, and other interior and exterior public areas.
7. Use of water closets with a maximum flush to 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) as specified in the Water Conservation Act, §553.14, F.S.
8. Select native plants, trees, and other vegetation and landscape design features that reduce requirements for water, fertilizer, maintenance, and other needs.
9. Plant native shade trees to provide reasonable shade for all recreation areas, streets, and parking areas.
10. Place trees to provide needed shade in the warmer months while not overly reducing the benefits of sunlight in the winter.
11. Provide for structural shading (e.g., trellises, awnings, and roof overhangs), wherever practical when natural shading cannot be used effectively.

C. FLOOD PLAIN/HURRICANE EVACUATION

1. The condominium documents for the wet and dry slips will include provisions delineating evacuation and securing procedures and responsibilities in the event of hurricanes and other emergencies or natural disasters. The Developer will prepare/update a hurricane preparedness plan, as well as an emergency preparedness plan for other emergencies or natural disasters, for the marina, and submit the plan(s) to the Lee County Department of Public Safety for review and approval.

EXHIBIT A

2. In the event of a tropical storm warning, boat owners will be responsible for relocating their boats to safe harborage.

3. All boats remaining in dry storage will be secured by marina personnel.

4. Handouts and pamphlets relating to boating safety, disaster, or environmental protection as published by the Florida Marine Advisory Program, Lee County Marine Advisory Program, Lee County Department of Public Safety, Disaster Preparedness Agency, or any other related agency must be available and be placed in plain sight for all marina customers.

5. Displays will be developed that show the following: Marine Navigational Charts (Local Waters); Safe Moorings Up-River; List of Procedures to be taken by boat owners in the event of a tropical storm; and liabilities and responsibilities of the boat owners.

6. The above policies and programs will be reviewed annually with the Lee County Department of Public Safety and other applicable agencies. The Developer must send a letter to all agencies concerned after each tropical storm informing them of the successful/unsuccessful evacuation of boats; any problems that may have arisen during the storm; damages sustained during the storm; and any comments or revised procedures that will be incorporated to reduce any further problems.

D. TRANSPORTATION

1. The traffic impact assessment upon which this Development Order for Deep Lagoon Marina DRI is based assumes expected project buildout by year end 2000. The traffic impact assessment included the expected impacts of both the existing, non-vested land uses as well as the proposed land uses and phasing schedule shown in Exhibit "A".

2. An annual monitoring program to be performed by traffic engineers engaged by the Developer must be established to monitor the development's impact upon the area's roadways. The monitoring program must be designed in cooperation with the Lee County Department of Transportation and the Florida Department of Transportation. These agencies will determine specific information needed, frequency of information gathered, critical roadway points; and any other necessary information. At a minimum, the annual monitoring report must contain A.M. and P.M. peak-hour traffic counts with turning movements at all project access points onto McGregor Boulevard (S.R. 867). If the annual monitoring program reveals that any segment of McGregor Boulevard, between Cypress Lake Drive and Gladiolus Drive, is significantly impacted, then the Developer must monitor

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traffic at the intersections of McGregor Boulevard with Cypress Lake Drive and Gladiolus Drive.

The Developer or his representative must submit the first monitoring report to the Lee County Engineer, the Southwest Florida Regional Planning Council and the Florida Department of Transportation (FDOT) within one year of approval of this Development Order. Reports will then be submitted to the agencies listed above each year until actual buildout of the Deep Lagoon Marina DRI. Actual buildout will occur when the Developer has constructed the maximum number of boat berths and commercial area permitted by the Development Order Amendment. Declared buildout would occur if the Developer formally declares in writing to the County Manager that no more berths or commercial structures will be constructed despite the fact that less than the permissible maximum had been built to date. The purpose of this program is to (1) determine whether the traffic levels projected in the traffic impact assessment for Deep Lagoon Marina have been accurately projected; and (2) assist Lee County and FDOT in determining the proper timing of necessary roadway improvements.

3. During each phase of development, the Developer must construct, at no cost to Lee County or FDOT, all site-related improvements deemed necessary by the Lee County Engineer or FDOT at the project's access points onto McGregor Boulevard. The Developer's obligation for these improvements includes the full costs of design and engineering, utility relocation, right-of-way acquisition, construction of turn lanes, acceleration and deceleration lanes, construction inspection, contract administration, testing and signalization (as needed). The alignment, design, signalization and construction schedule for these improvements must be approved by the Lee County and FDOT.

The Developer is not eligible for credits against roads impact fees for construction or dedication of right-of-way associated with improvements at the project's access points that are site-related as defined in the Roads Impact Fee section of the Lee County Land Development Code.

4. Lee County has estimated that the pro-rata share cost of mitigating the traffic impacts of the existing non-vested development within Deep Lagoon Marina DRI is \$84,000. Unless waived by FDOT, the Developer must contribute \$84,000.00 to FDOT for improvements to McGregor Boulevard (S.R. 867) as mitigation for the impacts of the existing, non-vested development within the DRI. Payment of this \$84,000 will be made in the following manner:

(a) The Developer must dedicate, at no cost to Lee County or FDOT, whatever right-of-way is needed on the northwest side of McGregor Boulevard from the north boundary to the south boundary of Deep Lagoon Marina DRI (excluding land not included in the DRI). The amount of right-of-way to be dedicated, if any, will be established

EXHIBIT A

by the design study for the widening of McGregor Boulevard, as amended and approved by FDOT, but will not exceed 14 feet. At the time of dedication, the Developer must submit to Lee County and FDOT two independent appraisals of the value of the land thus dedicated.

(b) FDOT will then calculate the difference between the required \$84,000 contribution and the value of the land dedicated in accordance with Condition D.4.(a) above. If the value of the land dedicated is less than \$84,000, the Developer must make a cash payment to FDOT so that the total contribution from the value of the land dedicated plus the cash payment equals \$84,000. If the value of the land dedicated exceeds \$84,000, then the Developer may claim a credit against roads impact fees paid in accordance with Condition D.5. equal to, but not exceeding, the value of the land in excess of \$84,000.

5. As mitigation for the impacts of Deep Lagoon Marina DRI, the Developer must pay roads impact fees in effect at the time building permits are issued for all applicable development within the DRI.

If roads impact fees are repealed, reduced or made unenforceable by court action, a substantial deviation will be deemed to have occurred, and the traffic impacts of Deep Lagoon Marina DRI will be reanalyzed to determine alternative mitigation.

6. Nothing contained in this Development Order may be construed to exempt this development from participation in the funding, through Municipal Services Taxing or Benefit Units or other special assessment districts, for improvements that were not addressed above to State and County arterial and collector roads to the degree to which this development generates demand or is benefitted.

E. FIRE PROTECTION

1. The developer must pay fire impact fees in accordance with the Land Development Code.

2. The developer must review site development plans with the Lee County Fire Official in order to incorporate in the storage buildings either a fire sprinkler system or other fire protection measure as deemed required.

3. In order to minimize the impact on fire protection services and utilities, the project shall include fire protection in accordance with the Florida Building Code and Life Safety Code.

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F. WATER CONSERVATION

1. The developer must incorporate the use of water conserving devices as required by state law (§553.14, Florida Statutes).
2. Water conservation measures and practices must be utilized in the Deep Lagoon Marina DRI site. At a minimum, water conservation devices as described within the water conservation act must be used, landscape irrigation should be restricted to the hours of 5:00 p.m. to 9:00 a.m. after the establishment of landscaping. Non-potable water sources and/or reuse should be utilized for irrigation where possible.

G. SOLID WASTE

1. The developer and tenants of the project must take steps to investigate methods of reducing solid waste volume at the project.
2. The developer and tenants of the project must identify the proper on-site handling and temporary storage procedures for hazardous waste, in accordance with local, regional and state regulations.
3. The developer must inform the waste hauler and disposer as to the nature of the hazardous waste for any special precautions that may be needed.

H. WASTEWATER MANAGEMENT

Any wastewater, especially that associated with the commercial and boat maintenance portions of the project, containing hazardous waste materials must be segregated from everyday wastewater and handled in accordance with FDER criteria.

I. MARINA/WETLANDS/VEGETATION & WILDLIFE

1. All gazebo and dock development along the north side of the northern canal is prohibited to help ensure the continued utilization of the adjacent mangrove habitat for wading bird habitat.
2. The existing gas pump facility in the south canal, the oil/fuel containment system, the diesel gas pump, and the sewage pump-out station by must be relocated to areas within the existing inner basin, east of the northwest corner of the southern peninsula, to ensure containment in case of accidental spillage, as shown on Map H. (Attached Exhibit B)
3. Construction and relocation of the gas/diesel pumping facilities and oil/fuel containment systems must be shifted to Phase I.

EXHIBIT A

4. All motor boat testing must immediately cease within the Deep Lagoon area.

5. The marina will contain a maximum of 150 permanent wet slips, of which 30 will be reserved for temporary boat mooring only.

6. The developer must coordinate with Lee County in the posting of "Idle Speed" and "Caution, Manatee Awareness" signs from the marina site, out to the Caloosahatchee River main channel. The developer must also coordinate with the Florida Marina Patrol and Lee County regarding the continued enforcement of boating speed limits through this restrictive zone.

7. The developer will coordinate with Lee County and the Florida Department of Environmental Protection (DEP) to allow DEP's Bureau of Marine Science utilization and access to the Deep Lagoon Marina facilities, as warranted.

8. The developer will provide public awareness educational programs and literature concerning manatee protection.

9. All other commitments made by the owner/developer within the ADA and subsequent sufficiency documents, not in conflict with the above recommendations shall be incorporated as conditions for development order approval.

J. GENERAL CONSIDERATIONS

1. The Developer will submit an annual report on the Development of Regional Impact to Lee County, the Southwest Florida Regional Planning Council, the Department of Community Affairs and all affected permit agencies as required in §380.06(18), Florida Statutes.

2. The development phasing schedule, as shown in Exhibit "A," 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 accordance with the phasing schedules specified within this development order, then this may be deemed to be a substantial deviation for the affected regional issues.

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

A. This resolution constitutes the Development Order of this Board issued in response to the Development of Regional Impact Application for Development Approval

EXHIBIT A

filed for Deep Lagoon Marina and subsequent amendments and incorporates the requested extension of the buildout, downzone protection and termination date.

B. All commitments and impact mitigating actions volunteered by the Developer in the Application for Development Approval and supplementary documents, not in conflict with conditions or stipulations specifically enumerated above, are hereby adopted into this Development Order by reference.

C. This Development Order is binding on the Developer and its heirs, assigns, or successors in interest. Those portions of this Development Order which clearly apply only to the project developer will not be construed to be binding upon future residents of dwelling units. It will be binding upon any builder/developer who acquires any tract of land within Deep Lagoon Marina.

D. 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 Development Order.

E. All conditions, restrictions, stipulations and safeguards contained in this Development Order may be enforced by either party hereto by action at law or equity. All costs of such proceedings, including reasonable attorney's fees, will be paid by the defaulting party.

F. Any reference herein to any governmental agency will be construed to mean any future instrumentality which may be created and designated as successor in interest to or which otherwise possesses any of the powers and duties of any referenced governmental agency in existence on the effective date of this Development Order.

G. 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, that decision will in no manner affect the remaining portions or sections of the Development Order, which will remain in full force and effect.

H. The approval granted by this Development Order is limited. The approval will 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. The approval also does not obviate the duty of any developer to comply with any County Ordinance or other regulations adopted after the effective date of this Development Order.

I. Subsequent requests for local development permits will not require further review pursuant to §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:

EXHIBIT A

1. 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 that were not evaluated in the review by the Southwest Florida Regional Planning Council; or

2. An expiration of the period of effectiveness of this Development Order as herein provided.

Upon a finding that either of the above is present, the Board must order a termination of all development activity until a new DRI Application for Development Approval has been submitted, reviewed and approved in accordance with §380.06, Florida Statutes, and all local approvals have been obtained.

J. Substantial physical development of the project has already commenced. Further development of the project must occur in accordance with Section II of this Development Order provided that all conditions contained herein are met. Development Approval will otherwise terminate on December 31, 2014, unless an extension is approved by this Board. An extension may be granted if the project has been developing substantially in conformance with the original plans and approved conditions, and if no substantial adverse impacts not known to 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. For the purposes of determining when the build-out date has been exceeded, the time will be tolled during the pendency of administrative and judicial proceedings relating to development permits.

K. The administrative director of the Lee County Department of Community Development, or his designee, is the local official responsible for assuring compliance with this Development Order.

L. The developer, or its successors in title to the undeveloped portion of the subject property, must submit a report ~~annually~~ biennially to the Lee County Board of County Commissioners, the Southwest Florida Regional Planning Council, the State Land Planning Agency, and all affected permit agencies. This report must describe the state of development and compliance as of the date of submission, and must be consistent with the rules of the State Land Planning Agency. The ~~annual~~ report must contain information as specified in Exhibit "D." The first monitoring report must be submitted to the administrative director of the Department of Community Development not later than May 1, 1988, and further reportings must be submitted not later than May 1 of subsequent calendar years. Failure to comply with this reporting procedure is governed by §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 requirement does not require reporting from residents or successors of individual dwelling units.

EXHIBIT A

M. The development will not be subject to downzoning or intensity reduction until December 31, 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 changes clearly established by local government to be essential to the public health, safety, and welfare.

N. 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 does not become effective until the expiration of the statutory appeal period (forty-five days from rendition) or until the completion of any appellate proceedings, whichever time is later. Upon this Development Order becoming effective, the developer must record a notice of its adoption in the Office of the Clerk of the Circuit Court consistent with §380.06(15), F.S.

THE MOTION TO ADOPT the above development order amendment was offered by Commissioner _____ and seconded by Commissioner _____, and upon poll of the members present, the vote was as follows:

Robert P. Janes
Douglas R. St. Cerny
Ray Judah
Tammara Hall
John E. Albion

DULY PASSED AND ADOPTED THIS _____ DAY OF _____, 2006.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairwoman

APPROVED AS TO FORM

By: _____
Dawn E. Perry-Lehnert
County Attorney's Office

EXHIBIT A

EXHIBIT "A"

DEEP LAGOON MARINA
PHASING SCHEDULE

Proposed Phase		
I	Marine Retail	3,000 S.F.
I	Wet Slips	106
I	Dry Storage	80,000 S.F.
I	Marine Office	2,000 S.F.
I	Boat Club	4,950 S.F.
I	Snack Bar	850 S.F.
I	Marina Accessory Uses	2,600 S.F.
I	Government Agencies	400 S.F.
II	Restaurant	8,500 S.F.
II	Wet Slips	44
II	Corporate Offices	10,000 S.F.
II	Dry Storage	35,000 S.F.
II	Sales, Service, Repairs etc. of Boats	28,000 S.F.
II	Boat Sales Offices	2,500 S.F.

Phases I and II will both terminate at the end of the year 2006. The developer retains the right to treat the uses in Phase I and II interchangeably for the purpose of obtaining local development orders.



METRON
 SURVEYING & MAPPING, LLC
 LAND SURVEYORS • PLANNERS

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTIONS 20 & 29, TOWNSHIP 45 SOUTH, RANGE 24 EAST, BEING PART OF THE PARCELS AS DESCRIBED IN OFFICIAL RECORD BOOK 1828, PAGE 1740, OFFICIAL RECORD BOOK 1850, PAGES 2125 AND 2134 AND OFFICIAL RECORD BOOK 2178, PAGE 1894, LEE COUNTY PUBLIC RECORDS AND BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 20, ALSO BEING THE NORTHEAST CORNER OF SAID SECTION 29; THENCE S.88°58'26"W. ALONG THE SOUTH LINE OF SAID SECTION 20, ALSO BEING THE NORTH LINE OF SAID SECTION 29, FOR 40.05 FEET TO THE NORTHWESTERLY RIGHT OF WAY LINE OF McGREGOR BOULEVARD 80' WIDE; THENCE CONTINUE S.88°58'26"W. ALONG SAID SOUTH LINE AND SAID NORTH LINE, FOR 143.31 FEET; THENCE S.26°40'19"E., FOR 102.83 FEET TO AN INTERSECTION WITH SAID NORTHWESTERLY RIGHT OF WAY LINE; THENCE S.45°48'00"W. ALONG SAID NORTHWESTERLY RIGHT OF WAY LINE, FOR 688.36 FEET; THENCE N.44°12'00"W., FOR 65.00 FEET TO A POINT IN AN EXISTING CANAL; THENCE N.45°48'00"E., FOR 40.00 FEET; THENCE N.44°12'00"W. ALONG SAID EXISTING CANAL FOR 557.81 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING: A RADIUS OF 30.00 FEET, A CENTRAL ANGLE OF 131°52'40", A CHORD BEARING AND DISTANCE OF N.21°44'20"E., 54.79 FEET; THENCE ALONG THE ARC OF SAID CURVE AND SAID EXISTING CANAL, AN ARC LENGTH OF 69.05 FEET TO THE END OF SAID CURVE; THENCE N.87°40'40"E. ALONG SAID EXISTING CANAL FOR 127.40 FEET; THENCE N.44°12'00"W. ALONG SAID EXISTING CANAL FOR 39.56 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF SAID SECTION 20, ALSO BEING THE NORTH LINE OF SAID SECTION 29; THENCE S.88°58'28"W. ALONG SAID SOUTH LINE AND SAID NORTH LINE, FOR 154.84 FEET TO THE SOUTHWEST CORNER OF A PARCEL DESCRIBED IN OFFICIAL RECORD BOOK 1262, PAGE 481, ALSO BEING THE SOUTHEAST CORNER OF A PARCEL DESCRIBED IN OFFICIAL RECORD BOOK 1828, PAGES 1741 & 1745, SAID CORNER BEING 20.00 FEET WEST OF THE SOUTHEAST CORNER OF A PARCEL DESCRIBED IN OFFICIAL RECORD BOOK 1331, PAGE 1706; THENCE S.85°03'47"W. ALONG THE CENTER OF SAID EXISTING CANAL, FOR 607 FEET, MORE OR LESS TO THE SHORELINE OF DEEP LAGOON; THENCE CONTINUE S.85°03'47"W. ALONG THE EXTENSION OF SAID CENTER OF EXISTING CANAL, FOR 208 FEET, MORE OR LESS TO THE CENTERLINE OF DEEP LAGOON; THENCE N.04°40'13"E. ALONG SAID CENTERLINE OF DEEP LAGOON, FOR 55.72 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF SAID SECTION 20, ALSO BEING THE NORTH LINE OF SAID SECTION 29; THENCE CONTINUE N.04°40'13"E. ALONG SAID CENTERLINE OF DEEP LAGOON, FOR 444.28 FEET TO AN INTERSECTION WITH THE EXTENSION OF THE CENTERLINE OF THE FORMER IONA DRAINAGE CANAL "F" EASEMENT; THENCE N.89°33'20"E. ALONG SAID CENTERLINE, FOR 1836.93 FEET; THENCE S.84°32'27"E. FOR 365.57 FEET TO AN INTERSECTION WITH THE NORTHWESTERLY RIGHT OF WAY OF McGREGOR BOULEVARD (80' WIDE); THENCE S.45°48'00"W. ALONG SAID NORTHWESTERLY LINE FOR 68.38 FEET; THENCE N.83°47'42"W. FOR 199.49 FEET; THENCE S.01°00'30"E. FOR 93.49 FEET; THENCE N.88°59'30"E. FOR 125.00 FEET TO SAID NORTHWESTERLY LINE; THENCE S.45°48'00"W. ALONG SAID NORTHWESTERLY RIGHT OF WAY LINE, FOR 392.38 FEET TO THE POINT OF BEGINNING.

BEARINGS ARE BASED ON THE NORTHWESTERLY RIGHT OF WAY LINE OF McGREGOR BOULEVARD AS BEARING S.45°48'00"W.

PARCEL CONTAINS 1,159,109 SQUARE FEET OR 26.61 ACRES, MORE OR LESS.

PARCEL SUBJECT TO THE FORMER IONA DRAINAGE DISTRICT CANAL "F" EASEMENT.

PARCEL SUBJECT TO AND TOGETHER WITH A NON-EXCLUSIVE ROADWAY EASEMENT AS RECORDED IN OFFICIAL RECORD BOOK 1366, PAGE 802, LEE COUNTY PUBLIC RECORDS.

PARCEL SUBJECT TO AND TOGETHER WITH AN EASEMENT OVER AND ACROSS THE WATERS OF THE EXISTING CANAL ALONG THE NORTH SIDE OF SAID PARCEL AS RECORDED IN OFFICIAL BOOK 1366, PAGE 802, LEE COUNTY PUBLIC RECORDS.

PARCEL SUBJECT TO A NAVIGATIONAL EASEMENT OVER AND ACROSS THE EXISTING CANAL ALONG THE SOUTH BOUNDARY OF SAID PARCEL AS RECORDED IN OFFICIAL RECORD BOOK 1331, PAGE 1706 AND OFFICIAL RECORD BOOK 1262, PAGE 488, LEE COUNTY PUBLIC RECORDS.

PARCEL SUBJECT TO A 50' WIDE ROADWAY EASEMENT AS RECORDED IN OFFICIAL RECORD BOOK 1262, PAGE 481, LEE COUNTY PUBLIC RECORDS.

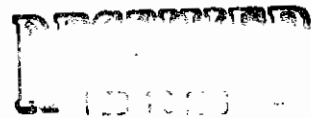
PARCEL SUBJECT TO A 10' WIDE WATER MAIN EASEMENT AS RECORDED IN OFFICIAL RECORD BOOK 1413, PAGE 1875, LEE COUNTY PUBLIC RECORDS.

PARCEL SUBJECT TO ALL EASEMENTS, RIGHTS OF WAY AND RESTRICTIONS (RECORDED & UNRECORDED, WRITTEN & UNWRITTEN).

METRON SURVEYING & MAPPING, LLC
 FLORIDA CERTIFICATE OF AUTHORIZATION LB# 7071

Scott M. Shore 2-16-2006

SCOTT M. SHORE
 PROFESSIONAL SURVEYOR AND MAPPER
 FLORIDA CERTIFICATE NO. 5743



PERMIT COUNTER

EXHIBIT C
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EXHIBIT "D"

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 phasing 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, other than individual single-family lots, 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 or 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, including 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 Subsections 380.06(14) and (16), Florida Statutes; and
- (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.