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February 19, 2013

Dear Applicants, Representatives, Hearing Participants, and Other Interest Parties:

**DR12008-00004 &
DC12008-00018**

**WINDHAM/MAGNOLIA LANDING, LLC, in
reference to HERONS GLEN**

Enclosed please find the above referenced Lee County Hearing Examiner's Recommendation.

Thank you for your interest and participation in the Hearing Examiner process.

Sincerely,

DIANA M. PARKER
CHIEF HEARING EXAMINER
LEE COUNTY, FLORIDA

Enclosure

OFFICE OF THE HEARING EXAMINER, LEE COUNTY, FLORIDA

HEARING EXAMINER RECOMMENDATION

REZONING: DRI2008-00004 & DCI2008-00018
APPLICANT: WINDHAM/MAGNOLIA LANDING, LLC, in
reference to HERONS GLEN
ORIGINAL HEARING DATE: OCTOBER 10, 2012 [CONTINUED ON THE
RECORD]
CONT'D DATE: DECEMBER 7, 2012
ADD'L HEARING DATES: DECEMBER 21, 2012
JANUARY 4, 2013
JANUARY 11, 2013
CONT'D. FOR WRITTEN SUBMISSION: FEBRUARY 1, 2013 (EXTENDED DUE DATE TO
FEBRUARY 8, 2013)

I. APPLICATION:

This matter came before the Lee County Hearing Examiner as an Application to consider a Notice of Proposed Change (NOPC) to a Development of Regional Impact (DRI) Development Order, and a rezoning to a Residential Planned Development (RPD) pursuant to the Lee County Land Development Code (LDC).

Filed by WINDHAM/MAGNOLIA LANDING, LLC, c/o HERBERT LAWSON, 36400 Woodward Avenue, Suite #205, Bloomfield Hills, MI 48304 (Applicant/Owner); DAVE PAWLACYK, 36400 Woodward Avenue, Suite #205, Bloomfield Hills, MI 48304; and WINDHAM/MAGNOLIA LANDING, LLC, c/o BRIAN WASSER, 3501 Avenida Del Vera Boulevard, North Fort Myers, FL 33917 (Agents).

Requests are:

DRI2008-00004

Application for Notice of Proposed Change (NOPC) for Herons Glen DRI (DRI#6-8687-77) to:

- 1) Add Multiple-Family to the allowed residential unit types.
- 2) Add Adult Living Facility to the allowed residential types.
- 3) Increase the amount of commercial space to 24,000 square feet.
- 4) Relocate the phase line, between Phase 1B & Phase 2 in order to match the Boundaries as approved in the Boundary Amendment approved by the Board of County Commissioners on May 22, 2012.
- 5) Remove the requirement that the Applicant construct Nalle Grade Road.
- 6) Redefine the spine road between Phase 1 & Phase 2.

- 7) Add approximately 417 acres to the Herons Glen DRI & RPD
- 8) Revise the number of acres related to the Red-cockaded Woodpecker habitat, monitoring period and number of acres of conservation area.

DCI2008-00018

Rezone 1,569.07+ acres from RPD and AG-2 to RPD to allow for the development of up to 2,700 residential units and 24,000 square feet of commercial use with building heights, as defined in the Land Development Code, as follows:

Single Family Residential	35 ft
Multi Family Residential	35 ft
Adult Living Facility	60 ft
Clubhouse	50 ft

Blasting is not a proposed development activity. The development will connect to public utilities. NOTE: If approved, the Master Concept Plan may deviate from certain Land Development Code (LDC) standards.

The subject property is located at 2550 Avenida Del Vera, North Fort Myers Planning Community, Sections 2, 3, 4, 5, 9, 10 and 11, Township 43 South, Range 24 East, Lee County, FL. (District #4)

II. STAFF REPORT AND RECOMMENDATION: APPROVAL WITH CONDITIONS

The Department of Community Development Staff Report was prepared by Alvin Block, AICP. The Staff Report is incorporated herein by this reference.

III. RECOMMENDATION OF HEARING EXAMINER:

The undersigned Lee County Hearing Examiner recommends that the Lee County Board of County Commissioners **APPROVE** the Applicant's request for the Notice of Proposed Change (NOPC) to a Development of Regional Impact (DRI) Development Order, and **MAKE A FINDING** that the proposed changes do not constitute a finding of Substantial Deviation, under the criteria set out in Section 380.06(19), Florida Statutes.

The undersigned Lee County Hearing Examiner recommends that the Lee County Board of County Commissioners **APPROVE** the Applicant's request for the rezoning and amendment to the Residential Planned Development (RPD) for the real estate described in Section IX. Legal Description **WITH THE FOLLOWING CONDITIONS AND DEVIATIONS.**

A. CONDITIONS:

1. Master Concept Plan/Development Parameters

The development of this project must be consistent with the four-page Master Concept Plan entitled "Herons Glen," stamped received February 1, 2013, last revised 1/24/13 (Exhibit B), except as modified by the conditions below.

The development is limited to 2,700 dwelling units and 24,000 square feet of commercial use. If an Assisted Living Facility is developed in Phase 2, density must be consistent with LDC Section 34-1494, Density Equivalents and will be considered as part of the maximum approved residential units within this planned development.

This development must comply with all requirements of the Lee County Land Development Code (LDC), except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

The following Administrative actions remain in force as part of this planned development:

PD-90-017
ADD2004-00018
ADD2004-00021(located in Phase I-B)
ADD2004-00217
ADD2004-00245 (Phase I-B)
ADD2005-00209
ADD2006-00080
ADD2009-00054(Phase 1A)
ADD2011-00039(Phase 1A)

2. All conditions and commitments of the Development of Regional Impact (DRI) Development Order are incorporated as part of the approved planned development.

3. Uses and Site Development Regulations

The following Limits apply to the project and uses:

a. Schedule of Uses

Residential "R"

Administrative Offices
Clubs, Country
Consumption on Premises – limited to country club use
Assisted Living Facility
Dwelling units
Single Family Detached

Two Family Attached
Zero Lot Line
Townhouse
Multi-Family
Model Homes, Model Units and Model Display Center, limited to the residential uses within Herons Glen RPD
Speculative Home
Residential Accessory Uses, including but not limited to:
Private Garages, Carports and Parking Areas
Private Swimming Pools and Enclosures
Private Tennis Courts
Entrance Gates and Gatehouse
Essential Services
Essential Service Facilities, Groups I and II, limited to sewer disposal or treatment facilities and above-ground water storage facilities, water treatment facilities
Excavations, water retention (as further limited by other conditions)
Fences, Walls
Home Occupation (in compliance with LDC §34-1771 et seq.)
Real Estate Sales Office – limited to sales of lots, homes or units within the development
Recreation Facilities, Private On-Site and Private Off-Site such as:
Swimming pools, basketball courts, biking, hiking, fishing piers, picnic areas and nature trails, private gymnasium, health club including optional swimming pool
Signs (in conformance with LDC Ch. 30)
Temporary Use:
Temporary contractor's office and equipment storage shed

Residential Open Space "RO" (Open Space, Golf Course, and Buffers)

Recreation Facilities, Private On-site such as: Basketball Courts, Biking, Hiking, Fishing Piers, Picnic Areas and Nature Trails
Clubs, Country
Golf Courses, including practice areas/ranges and a Pro Shop - must be located within the Club House)
Commercial Uses - limited to clubhouse/amenity centers & limited to those uses permitted by right or by Special Exception in the CN-1 and CN-2 districts plus one massage establishment to be located in Phase 1A and limited to Herons Glen residents and their guests
Essential Services
Essential Service Facilities, Groups I and II, limited to sewer disposal or treatment facilities and above-ground water storage facilities, water treatment facilities
Entrance Gates and Gatehouses
Excavation, Water Retention
Fences and Walls

Indoor & Outdoor seating for the Consumption on Premises, in compliance with LDC §34-1261 et seq.
Golf Course Maintenance Facility
Personal Services,
Group I
Group II – limited to Health Clubs only
Real Estate Sales Office – limited to sales of lots, homes or units within the development
Recreation Facilities, Private On-site and Private Off-site such as: Basketball Courts, Biking, Hiking, Fishing Piers, Picnic Areas and Nature Trails
Signs (in compliance with LDC Ch. 30)
Storage, outdoor (as further limited by other conditions)
Temporary Use:
Temporary contractor's office and equipment storage shed

Conservation "CO"

Interpretative Areas, Rain Shelters, Gazebos, Nature and Pedestrian trails (subject to further review and conditions by Lee County)
Water Management Facilities, Utility and/or Roadway Crossings (subject to further review and conditions by Lee County)
Signs (in compliance with LDC Ch. 30)

b. **Site Development Regulations**
See attached Exhibit C.

3. **Sherman Fox Squirrel Management Plan**

As part of Development Order approval, the Applicant must provide a Sherman Fox Squirrel management plan in compliance with LDC requirements to also include:

- 5-day nesting surveys prior to vegetation permit approval; and
- Florida Fish and Wildlife Conservation Commission approval to remove any nest; and
- Details for proposed roadway signage and informational pamphlets for residents on the Sherman fox squirrel.

4. **Wading Bird Management Plan**

As part of Development Order approval, the Applicant must provide a Wading Bird management plan in compliance with LDC requirements to also include:

- Pre-construction surveys prior to vegetation permit approval; and
- Details on informational pamphlets for residents on the importance of the littoral areas and adjacent preserves for providing nesting and forging habitat.

5. **Red-cockaded Woodpecker**

- a. The project must be in substantial compliance with the "Revised Red-cockaded Woodpecker (*Picoides borealis*) Monitoring and Management Plan for Herons Glen DRI" dated revised January 2013.

b. A Red-cockaded Woodpecker (RCW) survey, according to the current United States Fish and Wildlife Service (USFWS) RCW survey protocol, must be conducted within one year prior to the initiation of any clearing or construction within the area to be removed from the preserve. Any evidence of RCWs, by direct observation or active cavity trees, during a pre-construction survey will require a new USFWS analysis of the effects of development in the RCW preserve.

6. Least Tern Management Plan

As part of Development Order approval, the Applicant must provide a Least tern management plan to include the requirement of pre-construction surveys to be conducted during least tern nesting season (April-September) of any open sandy areas within the proposed development area. If nesting is observed signage will be posted and the nest with the required buffer will not be disturbed until the young have fledged.

7. American Alligator Management Plan

As part of Development Order approval, the Applicant must provide an American alligator management plan in compliance with LDC requirements to also include:

- Informational pamphlets for residents on the presence of alligators; and
- Details of signage that identify alligators may be present and inform it is dangerous and illegal to feed or harass alligators. Development Order plans must depict signage locations.

8. Eastern Indigo Snake Management Plan

As part of Development Order approval, the Applicant must provide an Eastern Indigo snake management plan in compliance with LDC requirements to also include pre-construction protection measures.

9. Florida Black Bear Management Plan

As part of Development Order approval, the Applicant must provide a Florida Black bear management plan in compliance with LDC requirements to also include:

- Informational pamphlets for residents on the possible presence of black bears with protection measures for bear and residents;
- Details on wildlife alert signage; and
- Recommended usage of bear proof containers.

10. Catesby Lilly Management Plan

As part of Development Order approval, the Applicant must provide a Catesby Lilly management plan in compliance with LDC requirements to also include pre-construction surveys and potential relocation measures.

11. Open Space

The overall project must provide a minimum of 1,017 acres of open space in substantial compliance with the approved Master Concept Plan.

12. Total Conservation Area

The overall project must provide a minimum of 514 acres of conservation area in substantial compliance with the approved Master Concept Plan.

13. Revised Wetland Management Plan

Revised Wetlands Management Plan For The Herons Glen DRI (F.K.A. Del Vera, Villages of Nantucket, and Del Tura North) dated July 2000 (see attached DRI Exhibit D) to prevail for the existing 271.6 acres of conservation area except as revised through modifications to SFWMD ERP36-0196-S for the proposed impacts and additions to the existing conservations area. As part of Development Order approval, a copy of the revised wetlands management plan must be provided to Lee County Environmental Sciences Staff.

14. Indigenous Management Plan

As part of Development Order approval for the 417 acres parcel addition, the Applicant must provide an indigenous management plan as per LDC requirements for the 256.89 acres of new conservation land.

15. Conservation Easement

If, as a condition of the state and/or federal permits the Applicant is required to provide a conservation easement over any portion of the preservation area required under the zoning resolution, the Applicant must name Lee County as a third party grantee to the conservation easement. If such an easement is required, the Applicant must submit a copy of the draft conservation easement to Division of Environmental Sciences Staff as part of the first local Development Order approval. The conservation easement must be recorded prior to issuance of a Certificate of Compliance.

16. Buffer/Landscape Plans

As part of Development Order approval, if the Development Order includes land that abuts US 41 or the Lakeville subdivision then the buffer depicted on the Master Concept Plan must be provided.

17. Prescribed Burn Notification

Prior to prescribed burn management activities occurring on the adjacent public preserve lands, the Home Owners Association (HOA), if notified by County Staff, must notify residents of the prescribed burn activities and provide general education material on prescribe burn management activities. If covenants or deed restrictions are required, then the documents must include language requiring each deed holder will be informed of their purchase of a lot adjacent to public preserve land which is managed with prescribed burning and each deed holder will be presented with education material on prescribe burn management activities at the time of purchase.

18. Entrance Gate/ Gatehouse

Except as may be granted by deviation as part of this planned development, all Entrance Gates or Gatehouses must be in compliance with LDC Section 34-1748.

19. Lakeville Connection

The Magnolia Landing development will provide cross access from the Lakeville subdivision, or the commercial parcels between US 41 and the Lakeville subdivision, to the Magnolia Landing entrance roadway at such time as the closure of the existing Lakeville Drive median opening is required to address future safety or operational issues resulting from the construction of a full median opening at Magnolia Landing Lane. (Also refer to Condition E.9 of the Herons Glen DRI Development Order)

20. Pedestrian/Vehicular Access to the East

No pedestrian or vehicular access may be permitted through the eastern boundary of this development.

21. 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 local Development Order.

22. Lee Plan Consistency

Approval of this zoning 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).

23. 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 issuance of a local Development Order. Chapter 163, F.S. has been amended to remove transportation concurrency. If transportation concurrency is removed from the Lee Plan or the Land Development Code, the developer would no longer be subject to this condition.

24. Solid Waste Management

As part of any local Development Order approval for vertical development, the Development Order plans must include facilities in compliance with LDC Section 10-261 and Solid Waste Ordinance # 11-27 for the pick-up/disposal of solid waste and recyclables. The minimum area required for, and specific locations of, these facilities will be reviewed at the time of local Development Order application.

25. Interconnection between Herons Glen and Magnolia Landing

An emergency only interconnection between Herons Glen and Magnolia Landing is permitted to remain on Avenida Del Vera, as depicted on the latest Master Concept Plan. Another emergency / limited access interconnection is permitted at the Dennisport Lane and Magnolia Landing Lane intersection, as depicted for location purposes on the latest Master Concept Plan, subject to compliance with the deviation requirements. The Dennisport gate is intended to provide limited ingress/egress for the nine Dennisport Lane units on the south side of Magnolia Landing Lane. These interconnections shall serve both communities (Herons Glen and Magnolia Landing) for ingress and egress in emergency situations or where ingress or egress to the other community is blocked by

emergency conditions in that community. Amended and updated Emergency Preparation Plans, to include emergency protocols for operation of these two gates, shall be submitted for County approval, when the Development Order request for the first gate(s) is made.

26. Notice to Property Owners

Notice shall be provided to future and existing property owners of Herons Glen and Magnolia Landing about the emergency access interconnect plan. Information as to where a resident may obtain a copy of the Emergency Preparation Plan should be provided by the Herons Glen Homeowners Association for Herons Glen residents, and by the developer (its assigns and successors) for Magnolia Landing residents.

27. Dwelling Unit: Multiple Family Building Prohibited in Herons Glen

No multiple family building is permitted within the boundaries of Herons Glen, as described in the Board of County Commissioners' Boundary Amendments approved May 22, 2012 in Ordinance 12-12. The Herons Glen legal description, as attached to Ordinance 12-12, is incorporated herein.

28. Entrance Gate/Gatehouse at Magnolia Landing Lane and US 41

The CDD will not operate the guardhouse at Magnolia Landing Lane and US 41 until the Chapter 190 Florida Statutes securities powers petition is granted. Until such time as those security powers are granted, the CDD will operate the guardhouse consistent with its establishment ordinance, as amended, and Chapter 190 of the Florida Statutes.

B. DEVIATIONS:

Deviations 1 through 11 were previously approved as part of this development. The Applicant desires to have them re-approved as part of this application. Some of these Deviations are no longer necessary, and, in other instances, Staff does not know of a current LDC regulation related to the Deviation.

Deviation 1 sought relief from Lee County Land Development Code (LDC) Section 10-295, to eliminate the requirement to provide street stubs to adjacent properties for all adjacent properties, except for the entrance along US 41.

Even though previously approved, Staff recommended denial of this Deviation, to allow for the possibility of access being provided to Nalle Grade Road, in the event it is ever constructed between the subject property and US 41. When the Deviation was previously approved, Applicant was required to construct Nalle Grade Road and to provide an access onto that roadway, as part of their site related impact mitigation.

Justification - Applicant responded that the Deviation was already approved by the BOCC, and that its approval in this case would not have any adverse impacts to the public health, safety and welfare. They also noted that Staff has deleted the condition in the DRI DO that required them to construct Nalle Grade Road,

because that roadway is no longer part of the regional east/west roadway network.

The Hearing Examiner recommends **APPROVAL** of Deviation 1, on the condition that Applicants provide an interconnection to Nalle Grade Road, if/when such roadway is constructed in accordance with Deviation 15 and Section II.E, Transportation, of the DRI – Development Order.

APPLICANT HAS WITHDRAWN DEVIATION 2

Deviation 3 sought relief from Lee County Land Development Code (LDC) Section 10-329(e)(1)a.3 (now 10-329(d)(1)a.3), that the setback for an excavation from a private property line be reduced from 50 feet to 35 feet for those locations as shown on the Master Concept Plan, in order to create larger, more attractive lakes plus aquatic habitat as an element of the stormwater management system.

Staff recommended approval.

The Hearing Examiner recommends **APPROVAL** of Deviation 3.

Deviation 4 sought relief from Lee County Land Development Code (LDC) Section 10-329(e)(3) (now 10-329(d)(3)), that the maximum permitted depth for excavations be permitted to extend to the depth of 25 feet or the confining layer; whichever would occur first, and:

- A) That the waters of each lake excavated to a depth greater than 12 feet shall be circulated through pumping of water from the aquifer floor for irrigation, an irrigation, an aeration/destratification system, or such other manner which will assure destratification and oxygenation of the depths of these lakes.

If irrigation does not provide adequate destratification, then the Applicant shall install an aeration/destratification system which is designed to circulate water vertically from top to bottom, be adequate for the volume and depth of the lake, and subject to the approval of the Lee County Division of Natural Resources Management prior to local Development Order approval for any phase of the development.

- B) A lake management plan shall be submitted and approved by the Lee County Division of Natural Resources Management prior to the local Development Order approval for any phase. This plan shall include the following:

- 1) Utilization of the in-site wetlands in conjunction with the excavated lakes and naturally vegetated buffer strips around all resource protection areas and transition zone areas to reduce pollutant and silt loads; and;
- 2) Emergent and submergent aquatic plantings throughout the littoral zone of all lakes; and

- 3) Annual monitoring reports to Division of Natural Resources Management regarding lake depth and slope, plantings, destratification and water quality compliance.

Staff recommended approval for the existing lakes only.

The Hearing Examiner recommends **APPROVAL** of Deviation 4, for the existing lakes only.

Deviation 5 requested a reduction in the required setback for a water retention excavation from a street Right-of-Way as depicted on the Official Trafficways Map. A barrier will be erected and any road damage incurred within the Nalle Grade Road right-of-way will be repaired by the developer to the satisfaction of the Department of Transportation. A "Hold Harmless Agreement" releasing Lee County from liability will be provided.

Staff recommended approval for the existing locations where it has been used in the current development.

The Hearing Examiner recommends **APPROVAL** of Deviation 5, for the existing locations where it has been used in the current development.

APPLICANT HAS WITHDRAWN DEVIATION 6

APPLICANT HAS WITHDRAWN DEVIATION 7

APPLICANT HAS WITHDRAWN DEVIATION 8

Deviation 9 (approved in Case 97-12-277.02A) sought relief from Lee County Land Development Code (LDC) Section 10-296(k) (now 10-296(p)), which requires a minimum outside edge of pavement and minimum right-of-way diameters for the cul-de-sac on Portofino Way of 45', 90' and 110', to allow a reduction in those requirements to 25', 70' and 90' respectively.

Staff recommended approval of this request.

The Hearing Examiner recommends **APPROVAL** of Deviation 9.

Deviation 10 (approved in Case 99-06-260-02A) sought relief from Lee County Land Development Code (LDC) Section 10-296(k)(3) (now 10-296(p)(3)), which requires a cul-de-sac transition regular pavement to be a radius of 100', to allow a radius of 50' at the designated cul-de-sac in Unit 8.

Staff recommended approval of this request.

The Hearing Examiner recommends **APPROVAL** of Deviation 10.

Deviation (11) (approved in Case 99-06-260-02A) sought relief from Lee County Land Development Code (LDC) Section 10-329(e)(1)(a) 10-329(d)(1)(a), to reduce lake excavation setback from designated local streets from the required 25 feet, to allow a setback of 9 feet to the edge of a private local street right-of-way in Units 7, 8, and 9.

Staff recommended approval of this request with the corrected LDC Section number.

The Hearing Examiner recommends **APPROVAL** of the corrected Deviation 11.

APPLICANT HAS WITHDRAWN DEVIATION 12

APPLICANT HAS WITHDRAWN DEVIATION 13

APPLICANT HAS WITHDRAWN DEVIATION 14

Deviation 15 seeks relief from Lee County Land Development Code (LDC) Section 10-291(3) Required Street Access – Residential development of more than five acres and commercial or industrial development of more than ten acres must provide more than one means of ingress or egress for the development. Access points designated for emergency use may not be used to meet this requirement.

There is a difference of opinion on this request. The Applicant and the public (Herons Glen Homeowner Association) seek approval of the request and County Staff recommends denial.

Applicant:

The Applicant proposes that the Deviation be approved subject to the creation of a plan agreed to by both Magnolia Landing and Herons Glen as set forth in the condition below:

The Homeowner's Association for Herons Glen and the Homeowner's Association or Community Development District for Magnolia Landing must create a procedure to open the gate on Dennisport and/or Avenida Del Vera should the entrance to Hero's Glen or Magnolia Landing or major internal roadways be blocked by vehicular accidents, utility breaks, debris created by acts of God or other emergency situation that impedes the free flow of traffic. The parties must provide the procedure they will use to address such emergency situations to the County during the review of any Development Order application for the gate(s) at Dennisport and/or Avenida Del Vera. The County will review the procedure to ensure that there is a procedure in place to ensure that the gate(s) at Dennisport and/or Avenida Del Vera are promptly opened once an emergency situation has been identified.

Lee County Staff:

Lee County Staff recommends denial of this Deviation. Staff does not support the gates, but Staff would support placement of only one gate at Dennisport Lane so long as the paving of Avenida Del Vera Boulevard is completed, the

temporary construction gate is removed, and the roadway is opened to full traffic operation. In such an instance, Deviation 15 is no longer necessary, and the gate conditions related to "all gates" and Dennisport Lane gates below would apply. This is consistent with the Staff's comments provided during rebuttal at the end of the hearing.

Herons Glen Homeowners Association

The following condition was offered for approval of Deviation 15:

This deviation is APPROVED SUBJECT TO providing one (1) emergency only interconnection on Avenida between Herons Glen and Magnolia Landing with provision of an additional lock box, and providing a gated access at Dennisport limited to only nine (9) residential units within Herons Glen (located south of Magnolia Landing Lane) and as an emergency access interconnection at Dennisport and Magnolia Landing Lane and subject to: a) providing appropriate signage b) obtaining a limited Development Order where the gate design and operation will be coordinated with emergency service providers.

The Hearing Examiner recommends that this Deviation be **APPROVED, SUBJECT TO** the following conditions:

1. The DRI is required to construct that portion of Nalle Grade Road right-of-way that abuts the DRI's boundary and to provide the access point depicted on the original MCP and Map H, if Nalle Grade Road is constructed between the DRI and US 41 by other developers or property owners. The term "DRI" is used herein to indicate that the responsibility for constructing that link of Nalle Grade Road and the access point is not intended to be the sole responsibility of the current Applicant.
2. A written agreement must be created by the appropriate entities of Herons Glen and Magnolia Landing that will establish procedures for opening the gates at Dennisport and Avenida Del Vera in the event an emergency situation occurs that results in the closure of the entrance/front gates for either community, or the closure of either Magnolia Landing Lane or Avenida Del Vera. A copy of this agreement shall be provided to the County for review at the time any Development Order application for the gate(s) is requested, and must be recorded in the Public Records of Lee County.
3. Appropriate signage, regarding the restricted nature of the gate, shall be installed at the 4-way stop intersection of Dennisport Lane / Magnolia Landing Lane, and on Dennisport Lane and Mystic Way.

Deviation 16 seeks relief from Lee County Land Development Code (LDC) Section 10-710 - Private Local Street with Closed Drainage – Requiring 1" S-111 asphalt concrete, 6" base and 6" stabilized subgrade, to allow a 770-foot portion of Avenida Del Vera to remain stabilized and sodded.

There was a difference of opinion regarding the approval of this deviation. The Applicant and Herons Glen Homeowners Association seek approval of the request and Staff recommends its denial.

Applicant and Public

Applicant recommended that this Deviation be approved, with the understanding that the 770-foot portion of Avenida Del Vera will remain stabilized in a manner that will support emergency vehicles and vehicular traffic should it become necessary to open the gate at Avenida Del Vera during an emergency situation.

Staff

Staff recommended denial of this Deviation, arguing that the gate at Avenida Del Vera needed to be removed and the roadway interconnection needed to be completed as approved in the local Development Order. They explained that they are recommending denial of Deviation 15, which, in turn, requires the denial of this Deviation request. They conceded that if Deviation 15 is approved, this Deviation should also be approved.

The Hearing Examiner recommends that Deviation 16 be **APPROVED**.

Deviation 17 seeks relief from Lee County Land Development Code (LDC) Section 34-1748(d), Entrance Gates and Gatehouse, which requires a 100-foot setback from intersecting street rights-of-way, stacking for 5 vehicles, or the construction of auxiliary right and left turn lanes on the intersecting street at the project entrance and a paved turn around, to allow the construction of a limited access gate on Dennisport Lane, north of Magnolia Landing Lane, to serve as access for nine single-family units to Herons Glen and for emergency access between the two communities.

As with Deviation 15, there is a difference of opinion on this request. The Applicant and Heron's Glen residents (the public) seek approval of the request and County Staff recommends denial.

Lee County Staff:

Although having recommended denial in the Staff Report, at the end of the public hearing, Staff indicated that they could recommend a conditional approval of the gate at Dennisport for the use of those nine homeowners and for emergency purposes - only if the request for the emergency gate on Avenida Del Vera was withdrawn or denied and the construction of Avenida Del Vera was completed, as approved in the local Development Order.

The following are the conditions offered by Staff during the rebuttal portion of the public hearing:

For gates in general:

1. Approval of the design must be obtained from the appropriate Fire District at the time of local Development Order approval.

2. The gates must be fully operational during emergencies per Condition 25.
3. Consent to place the gates must be obtained from the property owners within the community, in accordance with the requirements of LDC 34-1748(1)b.
4. Notice to all future property owners must be recorded by the developer in the Lee County Public Records, in accordance with LDC 10-291(3).

For Dennisport Lane Gate

1. The gate, gate structure, and concrete separator must be placed in such a way so as not to impede the operation of the driveway for the home on the northwest corner of the Magnolia Landing Lane/Dennisport Lane intersection. Specifically, a passenger car must be able to back out of the residential driveway into the northbound travel lane in a manner that would allow the vehicle to proceed northward without entering the southbound travel lane. Based on passenger car turning templates, this would appear to require a separation of approximately 17 feet or more from the edge of the residential driveway to the concrete separator and gate.
2. Dennisport Lane, on the approach to Magnolia Landing Lane, must be widened to 14-foot-wide lanes as indicated within the preliminary gate design.
3. A single-unit truck must be able to complete a u-turn maneuver in the intersection of Magnolia Landing Lane and Dennisport Lane.

Avenida Del Vera Boulevard Gate – If Deviation 15 is approved for this gate

1. A cul-de-sac or hammerhead turn-around must be provided on Avenida Del Vera Boulevard on both the Magnolia Landing and the Heron's Glen sides, in advance of the unpaved section of Avenida Del Vera Boulevard.

Applicant's Comment on the Avenida Del Vera Boulevard Condition:

The Applicant does not agree that a cul-de-sac or turnaround is necessary or should be required for Avenida Del Vera as provided in Staff's recommended condition. They have requested the following as an alternative:

No cul-de-sac or turn-around is required on the Magnolia Landing side of Avenida Del Vera, provided the road continues to be looped and signage is provided that advises the driver that no through traffic is allowed, only emergency access.

Heron's Glen Homeowners Association

The following condition was offered by the Homeowners Association for approval of Deviation 17:

This Deviation is approved subject to obtaining a Development Order for a gated entrance with access limited to serving nine (9) residential lots in Heron's Glen and as an emergency access with no turn-around, no right and

left turn lanes and reduced stacking to two (2) cars in 40 feet to provide emergency service to both communities.

The Hearing Examiner recommends **APPROVAL** of Deviation 17, with the following conditions:

For gates in general:

1. Approval of the design must be obtained from the appropriate Fire District at the time of local Development Order approval.
2. The gates must be fully operational during emergencies, in accordance with Condition 25.
3. Consent to place the gates must be obtained from the property owners within the community, in accordance with the requirements of LDC 34-1748(1)b.
4. Notice to all future property owners must be recorded by the developer in the Lee County Public Records, in accordance with LDC Section 10-291(3),

For Dennisport Lane Gate

5. The gate, gate structure, and concrete separator must be placed in such a way so as not to impede the operation of the driveway for the home on the northwest corner of the Magnolia Landing Lane/Dennisport Lane intersection. Specifically, a passenger car must be able to back out of the residential driveway into the northbound travel lane in a manner that would allow the vehicle to proceed northward without entering the southbound travel lane. Based on passenger car turning templates, this would appear to require a separation of approximately 17 feet or more from the edge of the residential driveway to the concrete separator and gate.
6. Dennisport Lane, on the approach to Magnolia Landing Lane, must be widened to 14-foot-wide lanes, as indicated within the preliminary gate design.
7. A single-unit truck must be able to complete a u-turn maneuver in the intersection of Magnolia Landing Lane and Dennisport Lane.
8. Stacking for at least two cars must be provided on the Dennisport Lane, on the south side of the gate into Herons Glen.

Avenida Del Vera Gate

9. No cul-de-sac or turn-around is required on the Magnolia Landing side of Avenida Del Vera, provided the road continues to be looped and signage is provided that advises the driver that through traffic is not allowed; that the gate is only for emergency access.
10. No cul-de-sac or turn-around is required on the Herons Glen side of Avenida Del Vera, provided appropriate signage is provided that advises

the driver that through traffic is not allowed; that the gate is only for emergency access.

IV. HEARING EXAMINER DISCUSSION:

This is a request to amend an existing RPD to reflect the current development plan and to rezone and add 417 acres to the RPD. The request also includes an amendment to update the terms and conditions of the Development of Regional Impact (DRI) Development Order for the Heron Glen DRI. The DRI is comprised of 1,569+ acres (with the addition of the 417 acres) and is located on the east side of US 41 at the Charlotte/Lee County lines. It is abutted on the north by agricultural and residential uses in Charlotte County, on the east by the Prairie Pines Preserve, on the south by a partially developed residential community (Lakeville subdivision) and AG-2 zoned lands, and on the west by US 41, and vacant agricultural lands within the city of Cape Coral. It is designated Suburban, Outlying Suburban and Wetlands in the Lee Plan.

Issues:

The only unresolved issues in the case involve Deviations 15, 16 and 17. Applicant and the residents of both Magnolia Landing and Herons Glen desire to install two restricted access gates on internal roadways within the DRI. The two gates will effectively sever the open access between the two communities, and will result in each community having only one access to the local roadway network. The two gates will operate as emergency access points that can be opened by either Herons Glen or Magnolia Landing, in the event of an emergency situation in either of the communities.

Given the location of the property, there are no existing or planned roadways in the area to which either community can connect. With the County's purchase of the Prairie Pines Preservation area, Nalle Grade Road cannot/will not be extended over to and east of I-75 to provide east/west access. LDC Section 10-291(3) requires any residential development over five acres to have two access points, and states that an emergency access is not acceptable as the "second" access point. Hence, Applicant's request for a Deviation from this LDC Section (Deviation #15).

Deviation 16 relates to the 770-foot section of Avenida Del Vera Boulevard (Avenida) that has not been paved. Avenida has been gated in the northeast section of Herons Glen for the past five or more years, and the roadway on both sides of that gate have been stabilized and sodded, but not paved. LDC Section 10-710 requires private local streets to be paved, and Applicant is asking not to have to do the paving for that section of roadway, because of the existing gate, which they want to remain in that location.

Deviation 17 applies to the proposed gate at the Dennisport/Magnolia Landing Lane (ML Lane) intersection. LDC Section 34-2748(d) requires entrance gates to be set back at least 100 feet from the intersection, and to be able to provide sufficient stacking for five vehicles. Given the design and location of the single-family homes along Dennisport, the 100-foot setback is impossible, and the plan can only accommodate a two car

stacking lanes. Applicant is requesting a deviation from that section, so that they can install a gate on Dennisport to prevent non-resident traffic from accessing Herons Glen.

Staff is recommending denial of all three Deviations, arguing that their approval would be inconsistent with the intent and cited requirements of the Land Development Code. They also asserted that the three Deviations would be inconsistent with the Lee Plan, since the separation of these two communities would result in more traffic on a half-mile stretch of US 41, between Avenida and the median opening for the Lakeville subdivision.

Background:

The following are the basic facts in this case:

- The Herons Glen DRI was originally approved and rezoned, in 1988, to allow a golf course community, having a total of 2,700 residential units, two golf courses, with associated commercial uses, and other residential amenities. The DRI and zoning have been amended several times over the past 25 years.
- In 1988, the project was envisioned as an age restricted community, for residents aged 55 or older, and was to be marketed as such. However, no such limitation – other than marketing – was placed in the DRI DO or the zoning resolution. Although 90+ percent of the residents are aged 55 or older, the DRI is not registered with the Secretary of State as an age restricted community, and the units in both Herons Glen and Magnolia Landing can be sold to a buyer of any age.
- The project was approved with two Phases. The Herons Glen community (1,300 single-family units), lying along the north and northeast boundaries, is Phase 1, and is almost completely built out. Phase 2 is the south portion of the DRI, and is developing as Magnolia Landing, with 1,400 mixed single-family and multi-family units. This Phase is being developed and marketed to a younger, family-oriented buyer.
- The property is long and narrow, and was planned with a “spine road,” constructed to collector standards, to provide access to the numerous residential pods depicted on the Master Concept Plan (MCP). Now, however, there are two “spine” roads – Avenida provides access to the existing Herons Glen neighborhoods, and ML Lane provides access to the Magnolia Landing lands. When ML Lane was constructed, the DRI property ended at the lots on the Dennisport cul-de-sac. For that reason, ML Lane was constructed to cross over Dennisport Lane, thereby separating the nine lots on the cul-de-sac from the rest of the Dennisport neighborhood.
- The MCP, in 1988, also depicted three access points: two on US 41, and one on Nalle Grade Road. As noted above, Nalle Grade Road will no longer be constructed as an east/west traffic corridor, due to the Prairie Pine Preserve, and Staff suggested, in 2005, that the requirement be deleted from the DRI DO transportation element. That suggestion is one of the requests contained in the NOPC.

- The property is bisected by a wide flowway, which essentially divides the project into upland development areas on the east and west sides of the property. The two Phases of development have further divided the east and west development areas into north and south portions. As noted above, Herons Glen is the north portion of the property, and Magnolia Landing is the south portion.
- Herons Glen is a private, gated community, with roads, amenities and infrastructure paid for by the residents of the community – as annual assessments/dues - to their Homeowner's Association (HOA). That infrastructure is managed and under the control of their HOA, while their amenities are under the control of a separate Recreational District board. Access to Herons Glen properties and residents can be and is frequently denied to non-residents at the front gate.
- Since the construction of ML Lane, some of the Dennisport/Mystic Way residents have used the gate at Magnolia Landing for access. Those homes are closer to that gate than to the Herons Glen front gate.
- The Dennisport/ML Lane intersection is a 4-way stop intersection, but there is nothing to prevent Magnolia Landing residents or members of the public from using Dennisport to access Herons Glen roadways and neighborhoods. (The Hearing Examiner noted signage advising that Dennisport is not a through street and is "restricted" to Herons Glen residents, but there is nothing to prevent non-residents from using that roadway.)
- Avenida has been gated for the past 5 or so years at the boundary line between Phase 1 and Phase 2 in the northeast portion of the property. That gate was installed to prevent Magnolia Landing construction traffic from traveling through Herons Glen's narrow single-family streets. The gate has been constructed in a manner that allows it to be used as an alternate access for either Herons Glen or Magnolia Landing residents in the event an emergency situation blocks their access to US 41. The governing bodies of both of these communities have the means to open this gate in such an emergency. The gate has been opened on at least one occasion in response to an emergency situation within Herons Glen.
- Magnolia Landing, on the other hand, has a gated entry, but is without the power to deny access to anyone who wishes to enter that community. A Community Development District (CDD) was created to provide roads, amenities and infrastructure in Magnolia Landing. Since public bonds were used to construct the roads and other infrastructure, public access to those roads cannot be denied, at this time.
- Magnolia Landing can, however, obtain the proper authority to restrict access to their roads and amenities. It requires them to obtain approval by the BOCC to establish that power. It was noted, in the hearing, that Magnolia Landing is pursuing that special power, but that application is not part of this request and must be brought separately to the BOCC.

- The "openness" of the Magnolia Landing gate results in the "trespass" into Herons Glen neighborhoods and amenities by members of the public, as well as Magnolia Landing residents, who have no right or need to be there.
- The Herons Glen residents assert that the many instances of crime in their neighborhoods and to their residents are a result of the unrestricted access into their community. Thus, they desire to have both Avenida and Dennisport gated against entry by non-residents of Herons Glen, which would require vendors, delivery persons, and contractors to utilize the front gate into Herons Glen, instead of being able to access Herons Glen through the gate at Magnolia Landing. This would allow Herons Glen to keep track and better control of their non-resident traffic.
- There are three vacant lots and six Herons Glen families residing at the south end of Dennisport, which is a small cul-de-sac community on the south side of ML Lane. Those residents must have access to the amenities of Herons Glen, so any gate installed at Dennisport and ML Lane must allow both ingress and egress – by key card, bar code, etc. – for the residents of those nine lots.
- Magnolia Landing residents support Herons Glen's request to install a limited access gate on Dennisport and to leave the Avenida gate at its current location.
- Staff initially recommended denial of Deviations 15, 16 and 17, but revised those recommendations during the hearing, to allow approval of Deviation 15 for the gate at Dennisport, provided the gate at Avenida is removed and the unimproved portion of Avenida is paved. This would allow unimpeded traffic flow between Herons Glen and Magnolia Landing through Avenida, while restricting traffic at the Dennisport gate to the residents of the Dennisport cul-de-sac.
- The residents of Herons Glen are opposed to removing the Avenida gate, as it will still allow traffic associated with the Magnolia Landing community to traverse Herons Glen roadways, and use Herons Glen amenities. Applicant supports this opposition.

Rezoning Request

Applicant's requests are listed toward the top of this Recommendation and require two actions by the BOCC: the rezoning and addition of conditions for the new lands and new uses being proposed for the RPD; and the determination if the proposed changes to the DRI DO constitute a Substantial Deviation, under the provisions of Section 380.06(19), Florida Statutes.

Applicant advised that the requested changes reflect the current development situation for the DRI/RPD. They argued that the original intent of the DRI was to have a senior residential community, with certain recreational amenities; all the external impacts were based on that type of residential community. However, since the DRI was approved, market conditions have caused changes in the ultimate residential product type and buyer demographics. They asserted that these changes in the "vision" of the residential development have created the need to separate these two communities.

Hérons Glen was designed and marketed as a gated community, and most of their residents purchased their homes because of the security provided by gated situation. Visitors, contractors, vendors and non-residents entering Herons Glen through the front gate are registered, their purpose is known, and their destination in the community is monitored. The residents of Herons Glen know that non-resident traffic is coming in through the Magnolia Landing front gate, because those vehicles are not registered at the Herons Glen front gate.

They explained that their community is already experiencing assaults, burglaries, vandalism and use of their amenities by the non-residents, who are entering from Magnolia Landing. The Herons Glen residents want to completely secure their community by closing the Dennisport access at ML Lane to all non-residents. They understood that the Dennisport gate would have to be limited ingress/egress for the residents of the nine lots on the Dennisport cul-de-sac. With the closure of that street, anyone wishing entrance to Herons Glen would have to enter through the front gate.

Applicant advised that the gates at Dennisport and Avenida would be accessible by both Herons Glen and Magnolia Landing residents in case of an emergency. The two communities have entered or will enter a cross-access agreement, in which both governing entities have the ability to open either or both gates in the event of an emergency to provide both communities with an alternate route to US 41.

In addition, Applicant would provide signage at the intersection of Dennisport and ML Lane, and in strategic locations on Dennisport Lane and Mystic Way, that document the restricted access of the Dennisport gate. The nine property owners on the Dennisport cul-de-sac will have a key card, transponder or some other means to open the gates at Dennisport. Applicant believed that the presence of such signage will prevent drivers from attempting to get through the gate, either from the Magnolia Landing or Herons Glen side.

Applicant asserted that Deviations 15, 16, and 17 should be approved, as they would enhance the objective of the RPD, by providing security and safety for the residents of both Herons Glen and Magnolia Landing. In addition, those Deviations would provide an economic benefit to both the residential communities, as it would restrict use of the each community's roadways and amenities to the residents that are paying for the maintenance and provision of that infrastructure and amenities.

Staff concurs with Applicant on the other changes to the RPD and the DRI DO, noting that the changes would result in more open space and preserved lands, particularly in the flowway, and the continued protection of listed flora and fauna species. In addition, the additional uses in Magnolia Landing would be consistent with the principles of growth management, as it would provide a variety of housing types, and would provide a walkable community.

Staff, however, does not agree with the approval of Deviations 15, 16, and 17. Staff's arguments – in a nutshell – are:

- That Herons Glen DRI was evaluated and approved as a unified project, which gave one entity that would be responsible for the development, operation and maintenance of the residential project. The installation of internal gates will result in the loss of unification, which could create problems for County Staff in its future monitoring, permitting and enforcement endeavors.
- The DRI was approved with two full access points. Physically separating the two communities by the installation of the internal gates would be inconsistent with the approval of that DRI and could result in unanticipated, unreviewed impacts.
- If the internal gates are not installed, then there is no need for Deviations 15 or 17, as there would still be two entrances for the DRI. While Avenida would remain gated, Dennisport would provide the interconnection that would allow traffic to move north or south to get out of the project at either entrance.
- The installation of the two internal gates will increase traffic on the half-mile southbound link of US 41, from Avenida to the median cut at the Lakeville subdivision. Staff conceded that the increase in traffic would be minimal, and would not affect the level of service on that link, but argued that the regulations "required" there to be NO impacts on the adjacent roadways from the loss of a second access.
- Applicant has indicated that the internal gates would be used as emergency accesses, and would be opened – by either development community – in the event an emergency blocks the internal roadways or front gates to either of the communities. This intent is inconsistent with LDC Section 10-291(3), which specifically states that emergency gates cannot be used to fulfill the two access point requirement.
- Staff was concerned about the safety of thru-traffic on ML Lane, because there is insufficient room on Dennisport for the stacking of more than two vehicles. Staff feared that vehicles would queue for entrance at the Dennisport gate and the back end of vehicles – particularly delivery trucks – would block the westbound lane of ML Lane. They understood that the gate would only be for the "everyday" use of the nine lots at the end of Dennisport, but argued that other drivers unfamiliar with the limited access would attempt to use the gate to get into Herons Glen, and would have to back out into the intersection. This was the basis for their recommendation of denial of Deviation 17.

After hearing Applicant's and the public's testimony and arguments, Staff offered a compromise in the "gate" situation. Staff offered to approve Deviations 15 and 17 for the Dennisport gate only, allowing the gate to be a limited ingress/egress gate for the residents of the nine lots on the south side of ML Lane. Staff acknowledged that the narrow streets of the Dennisport and Mystic Way neighborhoods were not designed nor constructed to accommodate lots of traffic or heavier vehicles. They conceded that

routing traffic through those small neighborhoods would be detrimental to the residents of those neighborhoods.

They could agree to close off that entrance, but only if the Avenida gate is opened, and the 770-foot long portion of Avenida connecting Herons Glen with Magnolia Landing is paved, in accordance with the LDC standards for a minor collector. They asserted that opening the Avenida gate would allow unrestricted access between the two communities, which was consistent with the intent of the DRI when it was adopted in 1988. Staff also believed that putting the open gate at the rear of the DRI would discourage contractors, vendors and other non-residents from using that gate to get into Herons Glen. They advised that, when Magnolia Landing receives the special powers to restrict access to Magnolia Landing properties, there should be no problems with outsiders gaining access to Herons Glen.

While Applicant and Heron's Glen HOA appreciated Staff's offered compromise, they responded that the proposed compromise did not resolve the issues with Magnolia Landing residents using the Herons Glen recreational areas and amenities. Nor did it address the fact that Herons Glen residents would suffer economically, because they would end up paying more for the maintenance of their roads, infrastructure and amenities under Staff's compromise.

Public

Over 200 residents of the Herons Glen and Magnolia Landing communities attended the 4-day public hearing. The overwhelming majority of those residents spoke in favor of the two gates, for all the reasons discussed in the Issues section hereinabove. They cited specifically to the need for a secured community, which would provide safety for their residents and protection for their properties. The Herons Glen residents stressed that they paid for the provision and maintenance of their roadways, infrastructure and amenities. Use of these facilities by Magnolia Landing families, which will include children, would require increased maintenance costs, which would be a hardship on many of the retired Herons Glen residents.

They believed that these two gates would not create or result in any detrimental impacts to public health, safety and welfare, or any "real" external impacts, particularly since Magnolia Landing and Herons Glen had entered into an agreement that would allow cross-use of the respective roadways in the event of an emergency. Given that agreement, there was no possibility of the residents being "trapped" in either community, which appeared to be the basis for LDC Section 10-291(3).

Several residents, however, objected to the deletion of the Nalle Grade Road access point. They believed that it was important to have that entrance, which would shorten the distance between the homes in the southeast corner of Magnolia Landing and US 41. They had questions and concerns about County Staff recommending that the requirement be deleted from the DRI DO, stating that their development should be required to provide an access if Nalle Grade Road was ever developed.

Staff responded that they are recommending the deletion of the condition in the DRI DO that requires Applicant to construct Nalle Grade Road, and to receive impact fee credits for that construction. That condition was required when Nalle Grade Road was going to be a prominent east/west collector, which is no longer the case. They advised that a future connection for Magnolia Landing to Nalle Grade Road might be possible. A planned development rezoning is currently under review for a property on the south side of the Nalle Grade Road easement, but it is too soon to state whether that development would be required to construct Nalle Grade Road from its boundaries to US 41.

Hearing Examiner Analysis

The undersigned Hearing Examiner concurs, for the most part, with Staff's analysis, findings and recommendation of approval, with conditions, of the rezoning, finding that the request – as conditioned herein – meets the criteria for approval as set out in LDC Section 34-145, and is consistent with the intent and provisions of Section 380.06, Florida Statutes. She finds that the request, as conditioned herein, is consistent with the intent of the Lee Plan and the Land Development Code, and will be compatible with the existing and future development of the area. She also finds that the mix of uses, as conditioned, are consistent with the mix of uses in the area, and will not be detrimental nor injurious to the persons or properties in the vicinity of the DRI or within the DRI itself.

While the Hearing Examiner concurs with the recommendation of approval of most of the Deviations, she cannot agree with Staff's recommendations of denial of Deviations 15, 16, and 17. The purpose of allowing deviations from the land development regulations is to provide the developer with some flexibility in the design and development of the proposed project. In this case, that flexibility would enable Herons Glen to protect their residents, properties and lifestyle from unwanted intrusions, and their residents' financial well-being by not having the added cost of more frequent repairs to their infrastructure and recreational amenities.

The approval criteria for a deviation require a finding that the deviation enhances the planned development and promotes "the general intent of the LDC to protect the public health, safety and welfare." (LDC Section 34-377) The conditions imposed on the approval of these Deviations protect the health, safety and welfare of both Herons Glen and Magnolia Landing residents, by setting in place (through a signed agreement) a plan for access between the two communities in the event of an emergency compromising access to the front gate of one of the communities.

In their compromise, Staff acknowledged that the safety of the drivers at the Dennisport/ML Lane intersection was not as significant a matter as they had first believed. The purpose of the 100-foot gate setback is to provide stacking for at least five cars to ensure that the cars exiting a high speed roadway did not create a hazardous situation for themselves and the thru traffic. In this instance, the gate would be located at a 4-way stop intersection, where the posted traffic speed is 25 miles per hour on ML Lane. Backing into thru traffic would greatly reduce the oncoming driver's response time and could result in serious injury to both drivers and occupants of these vehicles. However, any vehicle backing out of Dennisport would not be backing into thru traffic, and the backing vehicle would be clearly visible to any driver approaching that 4-way

stop intersection. The 4-way stop intersection actually protects the backing driver and the approaching drivers, and will give the backing driver the time necessary to complete his maneuvering.

Given Staff's stated concerns about the safety of the residents in the eastern half of the DRI, the Hearing Examiner does not clearly understand Staff's recommended condition in the DRI DO regarding an access point onto Nalle Grade Road. The Hearing Examiner understands that Applicant was initially required to construct the entire Nalle Grade Road from the DRI's east boundary out to US 41 as part of the DRI traffic mitigation. At the time that condition was included in the DRI DO, Nalle Grade Road was envisioned as a collector or arterial roadway providing access between US 41 and the roadway network on the east side of I-75. Since the County has deleted that roadway corridor, because of the Prairie Pines Preserve, Staff is correct in recommending that the construction requirement for the entire road and impact fee crediting be deleted from the DRI DO.

However, it appears from Staff's proposed DRI DO language that no access point for this DRI is required to Nalle Grade Road, unless Nalle Grade Road and that access point are constructed by someone other than Applicant. In other words, it appears, from the wording of these conditions, that Staff is exempting Applicant from construction of any portion of Nalle Grade Road or any access point onto Nalle Grade Road for its communities.

Staff's proposed revision of that condition can be found at three locations in DRI DO Sections II E 2 and 3. The revisions found in the Section II E 2, the topic of which is the biennial traffic monitoring program, reads, in pertinent parts:

. . . . and must contain daily and P.M. Peak-Hour traffic counts with turning movements during peak season traffic condition, intersection analysis performed utilizing the 'Highway Capacity Manual' and level of service calculations as adopted and updated for all project access locations onto US 41 and onto Nalle Grade Road (if that road is constructed by others and access is provided to the DRI)
(Underlining contained in the condition) (Page 14 of DRI DO)

. . . . In the event that the developer contributes the funding for these permanent traffic county locations, the developer or their successor(s) will only be obligated to report the counts from the permanent count stations, annually monitor the number size and type of constructed and occupied on-site development at the time of monitoring, and annually monitor the daily and P.M. peak hour traffic conditions, during the peak season, from all Herons Glen / Magnolia Landing access locations onto: US 41 and

Nalle Grade Road (if constructed by others and access is provided to the DRI)
(Underlining and strike-thru contained in the condition) (Page 15 of the DRI DO)

The revision found in Section II E 3, the topic of which is site related traffic improvements, reads, in pertinent part:

The developer or their successor(s) are required to construct, at no cost to Lee County or FDOT, all site related improvements deemed necessary by the FDOT and the Lee County DOT at all project access locations onto US 41 and onto Nalle Grade Road (if constructed by others and access provided) as well as construct Nalle Grade Road itself and all site-related improvements required within Herons Glen DRI. ~~Nalle Grade Road Access onto Nalle Grade Road (if constructed by others) and access to the road~~ must meet all requirements of the Lee County Land Development Code.
(Underlining and strike thru contained in the condition) (Page 16 of the DRI DO)

Noting the large flowway down the center of the DRI, Staff had mentioned concern about the ability of the residents, of the eastern portion of the DRI, getting to US 41. The Hearing Examiner does not believe that Staff intended for the above referenced conditions to be read in such a manner as to completely exempt Applicant from providing an access point on Nalle Grade Road, if that roadway is constructed between the DRI's boundaries and US 41.

If Nalle Grade Road is constructed by other developers to provide an access point onto US 41, it is the Hearing Examiner's recommendation that this DRI be required to construct that portion of Nalle Grade Road that abuts the DRI's boundary and to provide the access point depicted on the original MCP and Map H. She recommends that such a condition be added as a condition of approval to Deviation 15, and that the three provisions in DRI DO Sections II E 2 and 3 should be revised to state that requirement.

The Hearing Examiner concurs with Staff's finding that the changes proposed in the NOPC, as conditioned in the DRI DO, do not constitute a Substantial Deviation under the criteria set forth in Section 380.06(19), Florida Statutes.

It is the Hearing Examiner's opinion that the conditions imposed herein are rationally related to the impacts anticipated from the proposed development, and, with other regulations, will safeguard the public's interests.

It is also the opinion of the Hearing Examiner that the Deviations approved herein meet the criteria for approval as set out in LDC Section 34-377, and that the conditions imposed on those approvals will ensure the protection of the public health, safety and welfare.

V. FINDINGS AND CONCLUSIONS:

Based upon the Staff Report, the testimony and exhibits presented in connection with this matter, the undersigned Hearing Examiner makes the following findings and conclusions:

A. That the Applicant has proved entitlement to this requested rezoning and RPD amendment, as conditioned, by demonstrating compliance with the Lee Plan, the Land Development Code, Section 380.06, Florida Statutes, and other applicable codes or regulations.

B. That this RPD request, as conditioned, will meet or exceed all performance and locational standards set forth for the potential uses allowed by the request.

C. That the RPD request, as conditioned, is consistent with the densities, intensities and general uses set forth in the Lee Plan, and is compatible with existing or planned uses in the surrounding area.

D. That approval of the RPD request, as conditioned, will not place an undue burden upon existing transportation or planned infrastructure facilities, and the development will be served by streets with the capacity to carry traffic it generates.

E. That the RPD request, as conditioned, will protect the environmentally critical areas and natural resources within its boundaries and in the area.

F. That the proposed mix of uses, as conditioned, are appropriate at the subject location.

G. That the recommended conditions to the Master Concept Plan are rationally related to the impacts anticipated from the proposed development, and, with other regulations, will provide sufficient safeguard to the public interest.

H. That the approved Deviations, as conditioned, will enhance the objective of the proposed development, and will promote the protection of the public health, safety and welfare.

I. That urban services, as defined in the Lee Plan, are available and are adequately serving the DRI development.

J. That the requests to the RPD MCP and the DRI DO, as conditioned, do not create new or additional unreviewed regional impacts, and, as such, do not constitute a Substantial Deviation, under the criteria set forth in Section 380.06(19), Fla. Stat.

VI. LIST OF EXHIBITS:

STAFF'S EXHIBITS

1. Improvement Plan, Exhibit F, for the Windham/Magnolia Landing/Eagle Parcels, in draft format, prepared by Johnson Engineering, Sheet 1 of 2, dated February 23, 2009 (1 page – 8.5"x 11")
2. Letters from members of the public to Mr. Alvin Block, A Senior Planner with the Department of Community Development (multiple pages – 8.5"x11")

3. Two 2012 aerial photographs on one page, printed August 2012, prepared by Lee County Department of Community Development, & a 2012 aerial photograph, mapped August 2012, prepared by Lee County DCD (1 page – 8.5"x11" & 1 page – 24"x36")
4. A memorandum to Ms. Diana M. Parker, Chief Hearing Examiner, from Alvin Block, Principal Planner, dated February 7, 2013 (multiple pages – 8.5"x11"){post hearing submittal}

Résumés of Lee County Staff are on file with the Hearing Examiner's Office and are incorporated herein.

APPLICANT'S EXHIBITS

1. An aerial map prepared by Johnson Engineering, Sheet Number 1 (1 page – 8.5"x11")[color]
2. Exhibit list, prepared by Johnson Engineering, containing, the Master Concept Plan, Schedule of Uses/Deviations, Property Development Regulations-Master Concept Plan Details, Master Concept Plan Details, Map H, Aerial, Open Space, Conservation Area Exhibit, Figure 2 RCW/Preserve Modifications, Indigenous preservation Exhibit, and Gate Location Aerial (multiple pages – 11"x17")
3. Language agreed upon with Lee County Environmental Staff on 12/6/12 for the DRI Development Order, Condition F.2 (1 page – 8.5"x11")
4. Herons Glen/Magnolia Landing DRI Updated NOPC Traffic Analysis Sufficiency Response, prepared by David Plummer & Associates, Inc. (coil binded multiple pages – 8.5"x11"), & Herons Glen DRI2008-00004 – NPC Application (NOPC), DPA Job #10511 Response to LC DOT Sufficiency Checklist (Ord 05-29) dated June 14, 2010, prepared by Suresh K. Karre, with David Plummer & Associates (multiple pages – 8.5"x11"), & Herons Glen RPD, DCI2008-00018 – PDL Application (Major PD), DPA Job #10511 Response to LC DOT Sufficiency Checklist (Ord 05-29) dated June 14, 2010, prepared by Suresh K. Karre, with David Plummer & Associates (multiple pages – 8.5"x11")
5. Magnolia Landing Access Interim Improvements Traffic Study, prepared by David Plummer & Associates, Inc. (coil binded multiple pages – 8.5"x11"), & Magnolia Landing Access Improvements – Section 12010; US 41 Milepost 32.490 Revised Analysis in Response to FDOT Comments Dated May 26, 2010, #10512 (multiple pages – 8.5"x11")
6. A letter from Ryan M. Lazenby, P.E., with the Florida Department of Transportation, to Dave Pawlaczkyk, with Windham Magnolia Landing, LLC, dated May 2, 2011, regarding Section 12010; S.R. 45 (U.S. 41) at Magnolia Landing (Milepost 32,490) (2 pages – 8.5"x11"), & a letter from Lawrence Massey, with the Florida Department of Transportation, to Alvin Block, with Lee

County Department of Community Development, dated November 19, 2012, regarding Herons Glen Development of Regional Impact (DRI), Draft 6th Development Order (DO) – FDOT Review Comments (2 pages – 8.5"x11")

7. Aerial Map prepared by Johnson Engineering, Sheet Number 1 (1 page – 11"x17")[color]
8. Proposed ALF/MF prepared by Johnson Engineering, Sheet Number 1 (1 page – 11"x17")[color]
9. Master Concept Plan prepared by Johnson Engineering, Sheet Number 1 of 4, last updated 10/12 (1 page – 11"x17")[color]
10. Administrative Amendment (PD) ADD2011-00039 (multiple pages – 8.5"x11")

Résumés of Applicant's consultants are on file with the Hearing Examiner's Office and are incorporated herein.

Other Exhibits:

Gerald Strohmenger:

1. Testimony of Gerald Strohmenger dated January 4, 2013 (multiple pages – 8.5"x11")

Herbert W. Page:

1. Letter from Herbert W. Page (1 page – 8.5"x11")
2. Letter from Herbert W. Page (1 page – 8.5"x11")

Herons Glen Homeowners Association, Inc.:

1. Hearing Index containing the 48 Hour Notice Letter to Hearing Examiner, a Letter of Understanding from FDOP, Composite Exhibit for CDD – Ordinance No. 12-11, Portion of May 22, 2012 BOCC Minutes, Blue Sheet for 5/22/12 to consider adoption of Ordinance 02-01, Composite Exhibit for Lee County granting deviation from requirement of more than one access for RV park, Letter from North Fort Myers Fire District regarding Emergency Gate, Herons Glen Emergency Gate procedures, Report from Stephen Leung of David Plummer & Associates regarding Access Evaluation, Taylor Woodrow Letter to Property Owners Herons Glen, Magnolia Landing/Herons Glen Notice of Proposed Change, Cypress Woods/Sloanes Gate LLC Hearing Examiners Recommendation & Resolution, and Herons Glen Security Policies and Procedures (multiple pages – 8.5"x11")

2. Master Concept Plan Exhibit D-7-M.1, prepared by Johnson Engineering, sheet number 1 of 4 (1 page – 11"x17")
3. Dennisport Lane Gate Plan prepared by Hole Montes, date 9/12 (24"x36")(board)
4. Hearing Index Exhibit 3 containing the Riverwood Estates Variance VAR2008-00059 from Section 10-291(3), Hearing Examiner's Approval of Riverwood Estates Variance dated February 22, 2010, Windjammer RV Resort, DCI2012-00016 – Staff Recommendation of Approval of deviation from Section 10-291(3), PowerPoint regarding Deviations #15 and #17 justification, Letter to John Fredyma regarding Sixth Development Order Amendment, and Herons Glen Plats (multiple pages – 8.5"x11")
5. Index of Boundary Agreements - Herons Glen Exhibit 4 containing the Boundary Agreement 2003 between Herons Glen Recreation District & Coolidge-Fort Myers Realty Limited Partnership, October 2007 Agreement between Herons Glen Recreation District & Taylor Woodrow Communities at Herons Glen, LLC, Agreement Regarding Boundary Amendments, Assignment & Assumption of Agreement between Taylor Woodrow Communities of Herons Glen, LLC & Windham/Magnolia Landing, LLC, May 2004 Termination of Agreement, June 2004 Notice & Termination of Easement, Declaration of Gate Covenant for Dennisport Lane Cul-da-sac, and January 5, 2001 Hearing Examiner Recommendation – Herons Glen DCI1964596 & DCI1964597 (multiple pages – 8.5"x11")
6. Master Concept Plan with Deviations 15 & 17 depicted, prepared by Johnson Engineering, Sheet Number 1 of 4 (24"x36")(board)
7. Emails from Rick Jones to Tom McLean & Chris Noble, including the Dennisport Lane Gate Plan (5 pages – 8.5"x11")
8. Lee County Ordinance No. 12-12 (multiple pages – 8.5"x11")
9. Proposed Conditions 25, 26 & 27 & Deviations 15 & 17, for Herons Glen, Case No. DCI2008-00018 & Case No. DRI2008-00004 (multiple pages – 8.5"x11")

James Lumb:

1. Testimony of James Lumb (2 pages – 8.5"x11")

Michael Land:

1. Letter from Michael Land (multiple pages – 8.5"x11")
2. Email from Dave & Jill Knowlton (multiple pages – 8.5"x11")

Patricia Colucci:

1. Letter from Patricia Colucci (3 pages – 8.5"x11")

Penar's

1. Letter from Ellen M. Penar to the Lee County Hearing Examiner dated December 7, 2012 (multiple pages – 8.5"x11")
2. Letter from Frederick M. Penar to the Lee County Hearing Examiner dated December 7, 2012 (2 pages – 8.5"x11")
3. January 2013 Testimony (red folder with multiple pages – 8.5"x11")

William Beadle:

1. Letter from William Beadle (2 pages – 8.5"x11")

VII. PRESENTATION SUMMARY:

October 10, 2012 Hearing

The Hearing Examiner, Diana M. Parker, announced case DRI2008-00004 & DCI2008-00018, Wyndham/Magnolia Landing, LLC, in reference to Herons Glen. For the record, she requested everyone at the table to identify themselves. In attendance were John Fredyma, Assistant County Attorney; Chip Block with Lee County Zoning; Debra L. Pendlebury with Johnson Engineering; and Dana Hume with Johnson Engineering. The Hearing Examiner remarked that she had a request in front of her for a continuance of this hearing in order to revise the Development Order Amendment and prepare additional witnesses. She asked if a date had been agreed upon and was advised that everyone had settled on Friday, December 7, 2012. The Hearing Examiner asked Beverly Grady if that date was good for her and she said that it was. The Hearing Examiner also asked if there were going to be 200 people at the hearing since the Commission chambers had been reserved for today and asked Ms. Grady if she represented the Homeowners Association or the residents. Ms. Grady replied that she represented the Herons Glen Homeowners Association which is basically the north half of the DRI, and yes, it should be anticipated that 200 people would be there. The Hearing Examiner said that the Commission Chambers would be reserved again. She asked Ms. Grady to notify her clients of the date and she would be sent the Continuance Order so she could notify her constituents. She asked the two gentlemen who they were representing and was told that they represented Magnolia Landing, the Applicant. The Hearing Examiner said that they would get their notice from Debra.

The Hearing Examiner set the continuance for Friday, December 7, 2012, and said that a Continuance Order would be issued. The meeting place would be the Commission Chambers. She asked for notification if somebody finds out that only 90 people would attend as the Hearing Examiners room could seat 100 people. Mr. Fredyma wanted to

confirm the time of 9:00 a.m. and the Hearing Examiner confirmed 9:00 a.m., Friday, December 7, 2012. There being no further business, the hearing was closed.

December 7, 2012, December 21, 2012, January 4, 2013, & January 11, 2013 Hearings:

See Official Court Reporting Transcripts.

VIII. OTHER PARTICIPANTS AND SUBMITTALS:

ADDITIONAL APPLICANT'S REPRESENTATIVES:

1. Mark Gillis, c/o David Plummer & Associates, 2149 McGregor Boulevard, Fort Myers, Florida 33901
2. Laura B. Herrero, c/o Johnson Engineering, 2122 Johnson Street, Fort Myers, Florida 33901
3. Dava Hume, c/o Johnson Engineering, 2122 Johnson Street, Fort Myers, Florida 33901
4. Stephen Leung, c/o David Plummer & Associates, 2149 McGregor Boulevard, Fort Myers, Florida 33901
5. Debi Pendlebury, c/o Johnson Engineering, 2122 Johnson Street, Fort Myers, Florida 33901
6. Neale Montgomery, Esquire, c/o Pavese Law Firm, 1833 Hendry Street, Fort Myers, Florida 33901
7. Michael Dady, 5020 Linebaugh Avenue, Tampa, Florida 33624

ADDITIONAL COUNTY STAFF:

1. John Fredyma, Assistant County Attorney, P. O. Box 398, Fort Myers, Florida 33902
2. Robert Price, Lee County Development Services, P.O. Box 398, Fort Myers, Florida 33902
3. Suzanne Derheimer, Environmental Sciences, P. O. Box 398, Fort Myers, Florida 33902

PUBLIC PARTICIPATION:

A. THE FOLLOWING PERSONS TESTIFIED OR SUBMITTED EVIDENCE FOR THE RECORD AT THE HEARING (SEE SECTION VII.):

For:

1. Tom Arbogast, 2891 Corinthia Circle, North Fort Myers, Florida 33917
2. Frances Beadle, 3445 Via Montana Way, North Fort Myers, Florida 33917
3. William Beadle, 3445 Via Mantana Way, North Fort Myers, Florida 33917
4. Wayne Bowling, 3525 Barnstable Court, North Fort Myers, Florida 33917
5. Carol Bryan, 20763 Mystic Way, North Fort Myers, Florida 33917
6. Wayne Bryan, 20763 Mystic Way, North Fort Myers, Florida 33917
7. Janet Bunch, 20789 Mystic Way, North Fort Myers, Florida 33917
8. Mel Castle, 20929 Skyler Drive, North Fort Myers, Florida 33917
9. Rachel Cecchini, 20731 Kaidon Lane, North Fort Myers, Florida 33917
10. Charles H Chalfin, 20956 Skyler Drive, North Fort Myers, Florida 33917
11. Edward Coleman, 20765 Kaidon Lane, North Fort Myers, Florida 33917
12. Patricia Colucci, 20880 Ocho Rios Drive, North Fort Myers, Florida 33917
13. Tillotson Cook, 2131 Corona Del Sire, North Fort Myers, Florida 33917
14. John Corda, 1960 Embarcadero Way, North Fort Myers, Florida 33917
15. Margaret A. Crishal, 2080 Valparaiso Boulevard, North Fort Myers, Florida 33917
16. Larry Cummings, 1901 Embarcadero Way, North Fort Myers, Florida 33917
17. Patricia Cummings, 1901 Embarcadero Way, North Fort Myers, Florida 33917
18. Joseph Cyr, 3600 Rue Alec Loop, #6, North Fort Myers, Florida 33917
19. Mona Lee Davis, 2230 Palo Duro Boulevard, North Fort Myers, Florida 33917
20. Richard Davis, 2230 Palo Duro Boulevard, North Fort Myers, Florida 33917
21. Bruce Emerson, 3573 Via Montana Way, North Fort Myers, Florida 33917

22. Cindy Farley, 1921 Embarcadero Way, North Fort Myers, Florida 33917
23. Buddy Fisher, 3516 Odyssea Court, North Fort Myers, Florida 33917
24. William Joseph Fluharty, 2190 Valparaiso Boulevard, North Fort Myers, Florida 33917
25. Rita Foster, 3513 Barnstable Court, North Fort Myers, Florida 33917
26. Walter Foster, 3513 Barnstable Court, North Fort Myers, Florida 33917
27. Cheryl Gabe, 20923 Skyler Drive, North Fort Myers, Florida 33917
28. Joyce Gillespie, 2250 Avenida Del Vera, North Fort Myers, Florida 33917
29. Ronald E. Glasgow, 2411 Palo Duro Boulevard, North Fort Myers, Florida 33917
30. Cynthia L. Glorioso, 2630 Palo Duro Boulevard, North Fort Myers, Florida 33917
31. H. David Goers, 20806 Wheelock Drive, North Fort Myers, Florida 33917
32. James Gormley, 20707 Tisbury Lane, North Fort Myers, Florida 33917
33. Janice Griffin, 20961 Skyler Drive, North Fort Myers, Florida 33917
34. Kathleen M. Hollander, 20987 Skyler Drive, North Fort Myers, Florida 33917
35. Ronald G. Hollander, 20987 Skyler Drive, North Fort Myers, Florida 33917
36. Elizabeth Hopkins, 1870 Embarcadero Way, North Fort Myers, Florida 33917
37. George Huger, 20687 Dennisport Lane, North Fort Myers, Florida 33917
38. John D. Janis, 20718 Mystic Way, North Fort Myers, Florida 33917
39. Dorothy M. Klewicki, 2141 Corona Del Sire, North Fort Myers, Florida 33917
40. Fred Koehler, 2130 Valparaiso Boulevard, North Fort Myers, Florida 33917
41. Mary Koenig, 20724 Kaidon Lane, North Fort Myers, Florida 33917
42. Jean Lombard, 3385 Via Montana Way, North Fort Myers, Florida 33917
43. Steve Lucas, 20671 Dennisport Lane, North Fort Myers, Florida 33917
44. James Lumb, 3378 Via Montana Way, North Fort Myers, Florida 33917

45. Karen Mars, 1861 Embarcadero Way, North Fort Myers, Florida 33917
46. David McDonald, 20789 Kaidon Lane, North Fort Myers, Florida 33917
47. Steve Moros, 2481 Palo Duro Boulevard, North Fort Myers, Florida 33917
48. Jerome D. Murray, 2391 Palo Duro Boulevard, North Fort Myers, Florida 33917
49. Teresa Nitting, 3468 Via Montana Way, North Fort Myers, Florida 33917
50. Cliff O'dea, 20794 Wheelock Drive, North Fort Myers, Florida 33917
51. Herbert W. Page, 2441 Palo Duro Boulevard, North Fort Myers, Florida 33917
52. Larry R. Pedersen, 20733 Wheelock Drive, North Fort Myers, Florida 33917
53. Barbara Peet, 2490 Valparaiso Boulevard, North Fort Myers, Florida 33917
54. Ellen Penar, 20838 Kaidon Lane, North Fort Myers, Florida 33917
55. Fred Penar, 20838 Kaidon Lane, North Fort Myers, Florida 33917
56. John R. Penfield, 20651 Dennisport Lane, North Fort Myers, Florida 33917
57. Dennis Porche, 3630-2 Rue Alec Loop, North Fort Myers, Florida 33917
58. John Riley, 2081 Embarcadero Way, North Fort Myers, Florida 33917
59. Gerald Robinson, 20683 Dennisport Lane, North Fort Myers, Florida 33917
60. Jayne Schwarz, 20857 Wheelock Drive, North Fort Myers, Florida 33917
61. Ron Seller, 20730 Athenian Lane, North Fort Myers, Florida 33917
62. A.J. Sembiente, 20995 Skyler Drive, North Fort Myers, Florida 33917
63. Charles Skurka, 20681 Athenian Lane, North Fort Myers, Florida 33917
64. Karen Stevens, 1980 Embarcadero Way, North Fort Myers, Florida 33917
65. Gerald Strohmenger, 20923 Skyler Drive, North Fort Myers, Florida 33917
66. Carole Sweeney, 20727 Tisbury Lane, North Fort Myers, Florida 33917
67. Frankie Ann Vasicek, 2061 Palo Duro Boulevard, North Fort Myers, Florida 33917
68. Christine Wappes, 20834 Kaidon Lane, North Fort Myers, Florida 33917

69. Conrad Weyer, 2461 Valparaiso Boulevard, North Fort Myers, Florida 33917
70. Thomas F. Winters, 20746 Wheelock Drive, North Fort Myers, Florida 33917
71. Virginia Winters, 20821 Wheelock Drive, North Fort Myers, Florida 33917
72. Harry Wright, 1740 Palo Duro Boulevard, North Fort Myers, Florida 33917

Against:

1. Gordon Cooke, 1891 Embarcadero Way, North Fort Myers, Florida 33917
2. David Curtis, 3541 Crosswater Drive, North Fort Myers, Florida 33917
3. Louie Grasso, 20615 Dennisport Lane, North Fort Myers, Florida 33917
4. Veronica Grasso, 20615 Dennisport Lane, North Fort Myers, Florida 33917
5. Michael Land, 20750 Tisbury Lane, North Fort Myers, Florida 33917
6. Judi Peterson, 3468 Crosswater Drive, North Fort Myers, Florida 33917
7. Julius B. Sigety, 20784 Castle Pines Court, North Fort Myers, Florida 33917
8. Bernhard Soostmeyer, 20796 Castle Pines Court, North Fort Myers, Florida 33917
9. Sandra Watkins, 20644 Dennisport Lane, North Fort Myers, Florida 33917

General:

1. Beverly Grady, Esquire, c/o Roetzel & Andress, 2320 First Street, Fort Myers, Florida 33901 (**representing Herons Glen Homeowners Association, Inc.**)
2. Thomas B. Hart, Esquire, c/o Knott, Consoer, Ebelini, Hart & Swett, P.A., 1625 Hendry Street, Fort Myers, Florida 33901 (**representing Herons Glen Recreation District**)
3. Ron Madl, 2270 Rio Nuevo, North Fort Myers, Florida 33917
4. Thomas McLean, c/o Hole Montes, 6200 Whiskey Creek Drive, Fort Myers, FL 33919 (**Beverly Grady's Witness**)
5. Rhea Rivers, c/o North Fort Myers Fire District, 2900 Trail Dairy Circle, North Fort Myers, Florida 33918 (**representing the North Fort Myers Fire District**)
6. Beth Smith, 20788 Castle Pines Court, North Fort Myers, Florida 33917

7. John Sullivan, 2781 Valparaiso Boulevard, North Fort Myers, Florida 33917

B. THE FOLLOWING PERSONS SUBMITTED A LETTER/COMMENT CARD, OR OTHERWISE REQUESTED A COPY OF THE HEARING EXAMINER RECOMMENDATION:

For:

1. George Adolph, 2590 Palo Duro Boulevard, North Fort Myers, Florida 33917
2. Patricia Adolph, 2590 Palo Duro Boulevard, North Fort Myers, Florida 33917
3. Jack Alexander, 20875 Santorini Way, North Fort Myers, Florida 33917
4. Sherryl Alexander, 20875 Santorini Way, North Fort Myers, Florida 33917
5. Charles Allen, 20754 Athenian Lane, North Fort Myers, Florida 33917
6. Patricia Allen, 20754 Athenian Lane, North Fort Myers, Florida 33917
7. Patricia Amico, 20891 Mystic Way, North Fort Myers, Florida 33917
8. Kathy Arnold, 2351 Valparaiso Boulevard, North Fort Myers, Florida 33917
9. Russ Arnold, 2351 Valparaiso Boulevard, North Fort Myers, Florida 33917
10. Philip Austin, 2001 Embarcadero Way, North Fort Myers, Florida 33917
11. Mark Bainbridge, c/o Herons Glen Recreation District, 2250 Avenida Del Vera, North Fort Myers, Florida 33917
12. Charles Barrow, 20767 Mystic Way, North Fort Myers, Florida 33917
13. Doug Bass, 20865 Wheelock Drive, North Fort Myers, Florida 33917
14. Karen Bass, 20865 Wheelock Drive, North Fort Myers, Florida 33917
15. Stephen Belhorn, 3537 Via Athena, North Fort Myers, Florida 33917
16. Bonnie Bickel, 20835 Wheelock Drive, North Fort Myers, Florida 33917
17. Michael Bickel, 20835 Wheelock Drive, North Fort Myers, Florida 33917
18. Hilary Bint, 2031 Corona Del Sire, North Fort Myers, Florida 33917
19. John Bint, 2031 Corona Del Sire, North Fort Myers, Florida 33917

20. Ann Bolwing, 3525 Barnstable Court, North Fort Myers, Florida 33917
21. Violet Busch, 20905 Athenian Lane, North Fort Myers, Florida 33917
22. James Bushdorf, 3544 Barnstable Court, North Fort Myers, Florida 33917
23. Patricia Bushdorf, 3544 Barnstable Court, North Fort Myers, Florida 33917
24. Patrick Campbell, 20750 Athenian Lane, North Fort Myers, Florida 33917
25. Mel Castle, 20929 Skler Drive, North Fort Myers, Florida 33917
26. Sandy Castle, 20929 Skler Drive, North Fort Myers, Florida 33917
27. Nicholas Celia, 1830 Embarcadero Way, North Fort Myers, Florida 33917
28. Bev Chalfin, 20956 Skyler Drive, North Fort Myers, Florida 33917
29. Christy Coleman, 20765 Kaidon Lane, North Fort Myers, Florida 33917
30. Bob Creed, 1811 Palo Duro Boulevard, North Fort Myers, Florida 33917
31. Mary Lee Creed, 1811 Palo Duro Boulevard, North Fort Myers, Florida 33917
32. Bruce Critchlow, 2230 Valparaiso Boulevard, North Fort Myers, Florida 33917
33. Suellen Critchlow, 2230 Valparaiso Boulevard, North Fort Myers, Florida 33917
34. Dave Dalrymple, 20728 Wheelock Drive, North Fort Myers, Florida 33917
35. Pauline Dalrymple, 20728 Wheelock Drive, North Fort Myers, Florida 33917
36. Frank Desmel, 2150 Valparaiso Boulevard, North Fort Myers, Florida 33917
37. Carolyn Dobson, 2241 Valparaiso Boulevard, North Fort Myers, Florida 33917
38. Sidney Dobson, 2241 Valparaiso Boulevard, North Fort Myers, Florida 33917
39. Esta Doliner, 2090 Embarcadero Way, North Fort Myers, Florida 33917
40. Irwin Doliner, 2090 Embarcadero Way, North Fort Myers, Florida 33917
41. Carlene Emerson, 3573 Via Montana Way, North Fort Myers, Florida 33917
42. Henry E. Fenske, 2380 Palo Duro Boulevard, North Fort Myers, Florida 33917
43. Bob Filler, 20888 Ocho Rios, North Fort Myers, Florida 33917

44. Mary Filler, 20888 Ocho Rios, North Fort Myers, Florida 33917
45. Carol Fisher, 3494 Via Montana Way, North Fort Myers, Florida 33917
46. Charles Fisher, 3494 Via Montana Way, North Fort Myers, Florida 33917
47. Denise Fisher, 3516 Odyssea Court, North Fort Myers, Florida 33917
48. Thomas R. Fleming, 2491 Palo Duro Boulevard, North Fort Myers, Florida 33917
49. Susan Foster, 2540 Palo Duro Boulevard, North Fort Myers, Florida 33917
50. Mary Gates, 3490 Via Montana Way, North Fort Myers, Florida 33917
51. Wendell Gates, 3490 Via Montana Way, North Fort Myers, Florida 33917
52. Karlyn Gies, 20860 Wheelock, North Fort Myers, Florida 33917
53. Joyce Goers, 20806 Wheelock Drive, North Fort Myers, Florida 33917
54. Joe Gossman, 20983 Skyler Drive, North Fort Myers, Florida 33917
55. Stan Greene, 2111 Rio Nuevo Drive, North Fort Myers, Florida 33917
56. Francis Gressley, 1871 Corona Del Sire Drive, North Fort Myers, Florida 33917
57. Sandra Gressley, 1871 Corona Del Sire Drive, North Fort Myers, Florida 33917
58. Robert Griffin, 20961 Skyler Drive, North Fort Myers, Florida 33917
59. Barbara Hardin, 20978 Skyler Drive, North Fort Myers, Florida 33917
60. Richard Hardin, 20978 Skyler Drive, North Fort Myers, Florida 33917
61. Abe Heitin, 20775 Athenian Lane, North Fort Myers, Florida 33917
62. Cheryl Heitin, 20775 Athenian Lane, North Fort Myers, Florida 33917
63. Ruth Hodne, 209 Strawtown Road, New City, New York 10956
64. Thomas T. Hodne, 209 Strawtown Road, New City, New York 10956
65. Patricia Holder, 20818 Wheelock Drive, North Fort Myers, Florida 33917
66. Barry Hopper, 2791 Valparaiso Boulevard, North Fort Myers, Florida 33917
67. Lee Hopper, 2791 Valparaiso Boulevard, North Fort Myers, Florida 33917

68. Candice Huetteman, 20639 Kayla Way, North Fort Myers, Florida 33917
69. Ed Huetteman, 20639 Kayla Way, North Fort Myers, Florida 33917
70. Richard Jenison, 2131 Palo Duro Boulevard, North Fort Myers, Florida 33917
71. Kenneth Johnson, 3493 Via Montana Way, North Fort Myers, Florida 33917
72. Ivy Jones, 1821 Corona Del Sire Drive, North Fort Myers, Florida 33917
73. Bonnie Keller, 3464 Via Montana Way, North Fort Myers, Florida 33917
74. Danna Klewin, 20630 Dennisport Lane, North Fort Myers, Florida 33917
75. Ronald L. Klewin, 20630 Dennisport Lane, North Fort Myers, Florida 33917
76. Joseph R. Koenig Jr., 2610 Palo Duro Boulevard, North Fort Myers, Florida 33917
77. Christine M. Kozak, 2261 Corona Del Sire Drive, North Fort Myers, Florida 33917
78. Robert C. Kozak, 2261 Corona Del Sire Drive, North Fort Myers, Florida 33917
79. Erich J. Kumdat Jr., 2080 Embarcadero Way, North Fort Myers, Florida 33917
80. John Lauer, 2240 Corona Del Sire Drive, North Fort Myers, Florida 33917
81. William Ling, 2061 Corona Del Sire Drive, North Fort Myers, Florida 33917
82. Frank Lonigro, 2291 Palo Duro Boulevard, North Fort Myers, Florida 33917
83. Retha Lumb, 3378 Via Montana Way, North Fort Myers, Florida 33917
84. Susan Magee, 3313 Via Montana Way, North Fort Myers, Florida 33917
85. Gail Mahoney, 20712 Kaidon Lane, North Fort Myers, Florida 33917
86. Douglas Manning, 2780 Via LaQuinta, North Fort Myers, Florida 33917 & 13 Templeton Cres, Barrie, ON L4N 6G1, Canada
87. Vivian Manning, 2780 Via LaQuinta, North Fort Myers, Florida 33917 & 13 Templeton Cres, Barrie, ON L4N 6G1, Canada
88. Anthony Martino, 20787 Tisbury Lane, North Fort Myers, Florida 33917
89. Barbara Martino, 20787 Tisbury Lane, North Fort Myers, Florida 33917

90. Sean McDonald, 20789 Kaidon Lane, North Fort Myers, Florida 33917
91. Juanne McDonough, 20725 Athenian Lane, North Fort Myers, Florida 33917
92. Nancy McDonough, 20725 Athenian Lane, North Fort Myers, Florida 33917
93. Theresa McGarry, 20736 Kaidon Lane, North Fort Myers, Florida 33917
94. Murray McMullen, 20840 Santorini Way, North Fort Myers, Florida 33917
95. Charles B. Miller, 3561 Via Montana Way, North Fort Myers, Florida 33917
96. Paulette Miller, 3561 Via Montana Way, North Fort Myers, Florida 33917
97. Rebecca Moore, 20930-2 Calle Cristal Lane, North Fort Myers, Florida 33917
98. Kathleen Mootrey, 20765 Wheelock Drive, North Fort Myers, Florida 33917
99. Warren Mootrey, 20765 Wheelock Drive, North Fort Myers, Florida 33917
100. Lorraine I. Moscardini, 20710 Wheelock Drive, North Fort Myers, Florida 33917
101. William Moscardini, 20710 Wheelock Drive, North Fort Myers, Florida 33917
102. Inede Mosier, 3500 Odyssea Court, North Fort Myers, Florida 33917
103. Ron Mosier, 3500 Odyssea Court, North Fort Myers, Florida 33917
104. Tom Myers, 3301 Via Montana Way, North Fort Myers, Florida 33917
105. Constance Naylor, 20840 Santorini Way, North Fort Myers, Florida 33917
106. Nancy Odom, 20920-3 Calle Cristal Lane, North Fort Myers, Florida 33917
107. Kathleen Olsen, 1660 Palo Duro Boulevard, North Fort Myers, Florida 33917
108. Gary Olson, 2751 Valparaiso Boulevard, North Fort Myers, Florida 33917
109. Joan Page, 2441 Palo Duro Boulevard, North Fort Myers, Florida 33917
110. Arthur Pavlucik, 1840 Corona Del Sire Drive, North Fort Myers, Florida 33917
111. Marcia Pavlucik, 1840 Corona Del Sire Drive, North Fort Myers, Florida 33917
112. Alfred Petrosinelli, 2381 Valparaiso Boulevard, North Fort Myers, Florida 33917
113. Harry Pietras, 20850 Kaidon Lane, North Fort Myers, Florida 33917

114. Dale Prescott, 3527 Odyssey Court, North Fort Myers, Florida 33917
115. Neal Prescott, 3527 Odyssey Court, North Fort Myers, Florida 33917
116. David Puckett, 20759 Kaidon Lane, North Fort Myers, Florida 33917
117. Wilma Puckett, 20759 Kaidon Lane, North Fort Myers, Florida 33917
118. Egils Purins, 2760 Via La Quinta, North Fort Myers, Florida 33917
119. Gregory Pysarchuk, 2131 Embarcadero Way, North Fort Myers, Florida 33917
120. Colleen Richardson, 20702 Mystic Way, North Fort Myers, Florida 33917
121. Dennis Richardson, 20702 Mystic Way, North Fort Myers, Florida 33917
122. Laurence Riggan, 3337 Via Montana Way, North Fort Myers, Florida 33917
123. Craig W. Robb, 3630-5 Rue Alec Loop, North Fort Myers, Florida 33917
124. Ronald C. Roberts, 3474 Via Montana Way, North Fort Myers, Florida 33917
125. Janet Robinson, 20683 Dennisport Lane, North Fort Myers, Florida 33917
126. Richard Romine, 20740 Mystic Way, North Fort Myers, Florida 33917
127. Gwendolyn Schaaf, 2380 Valparaiso Boulevard, North Fort Myers, Florida 33917
128. Bernadette Schirra, 3478 Via Montana Way, North Fort Myers, Florida 33917
129. Gerald Schirra, 3478 Via Montana Way, North Fort Myers, Florida 33917
130. Patricia A. Schmidt, 2271 Palo Duro Boulevard, North Fort Myers, Florida 33917
131. Ronald A. Schmidt, 2271 Palo Duro Boulevard, North Fort Myers, Florida 33917
132. Kenneth Schmit, 2460 Valparaiso Boulevard, North Fort Myers, Florida 33917
133. Arnold Schwartz, 20680 Dennisport Lane, North Fort Myers, Florida 33917
134. Barbara Schwartz, 20680 Dennisport Lane, North Fort Myers, Florida 33917
135. Don Seifert, 20838 Athenian Lane, North Fort Myers, Florida 33917
136. Christine Sembiente, 20995 Skyler Drive, North Fort Myers, Florida 33917
137. Margaret Shaffer, 20755 Athenian Lane, North Fort Myers, Florida 33917

138. Diane Signal, 2271 Valparaiso Boulevard, 2271 Valparaiso Boulevard, North Fort Myers, Florida 33917
139. Peter Signal, 2271 Valparaiso Boulevard, 2271 Valparaiso Boulevard, North Fort Myers, Florida 33917
140. Russell Skinner, 3503 Odyssea Court, North Fort Myers, Florida 33917
141. Joanne Skolnik, 2231 Corona Del Sire Drive, North Fort Myers, Florida 33917
142. Ron Skolnik, 2231 Corona Del Sire Drive, North Fort Myers, Florida 33917
143. D.P. Smith, 2221 Valparaiso Boulevard, North Fort Myers, Florida 33917
144. Brenda Springstead, 1811 Corona Del Sire Drive, North Fort Myers, Florida 33917 & 20942 Skyler Drive, North Fort Myers, Florida 33917
145. Carol Springstead, 20611 Dennisport Lane, North Fort Myers, Florida 33917
146. Charles Springstead, 20611 Dennisport Lane, North Fort Myers, Florida 33917
147. Donald Springstead, 1811 Corona Del Sire Drive, North Fort Myers, Florida 33917 & 20942 Skyler Drive, North Fort Myers, Florida 33917
148. Mary Jo Stanten, 2021 Palo Duro Boulevard, North Fort Myers, Florida 33917
149. George Starsmeare, 2281 Valparaiso Boulevard, North Fort Myers, Florida 33917
150. Judith Stefani, 20927 Athenian Lane, North Fort Myers, Florida 33917
151. Wayne Stefani, 20927 Athenian Lane, North Fort Myers, Florida 33917
152. Patricia A. Steiper, 2490 Palo Duro Boulevard, North Fort Myers, Florida 33917
153. Jim Stone, 3555 Via Montana Way, North Fort Myers, Florida 33917
154. Mike Sweeney, 20727 Tisbury Lane, North Fort Myers, Florida 33917
155. Rod Taylor, 2540 Palo Duro Boulevard, North Fort Myers, Florida 33917
156. Shirlyn Terbrack, 3531 Via Athena, North Fort Myers, Florida 33917
157. Thomas Terbrack, 3531 Via Athena, North Fort Myers, Florida 33917
158. Joan Thompson, 20631 Marathona Court, North Fort Myers, Florida 33917
159. Carol Urtz, 2090 Walker Road, Palmyra, New York 14522

160. William Urtz, 2090 Walker Road, Palmyra, New York 14522
161. Charles Vasicek, 2061 Palo Duro Boulevard, North Fort Myers, Florida 33917
162. Joan White, 2010 Embarcadero Way, North Fort Myers, Florida 33917
163. David Wingert, 20818 Wheelock Drive, North Fort Myers, Florida 33917
164. Cecile M. Winters, 20746 Wheelock Drive, North Fort Myers, Florida 33917
165. Pam Wolf, 20955 Skyler Drive, North Fort Myers, Florida 33917
166. Todd Wolf, 20955 Skyler Drive, North Fort Myers, Florida 33917
167. Lavon Zasada, 2071 Rio Nuevo Drive, North Fort Myers, Florida 33917
168. Robert Zasada, 2071 Rio Nuevo Drive, North Fort Myers, Florida 33917

Against:

1. Anne Bendon, 2341 Palo Duro Boulevard, North Fort Myers, Florida 33917
2. Robert Bendon, 2341 Palo Duro Boulevard, North Fort Myers, Florida 33917
3. Anne Billings, 20751 Kaidon Lane, North Fort Myers, Florida 33917
4. Joseph Billings, 20751 Kaidon Lane, North Fort Myers, Florida 33917
5. Bill Breeden, 3520 Crosswater Drive, North Fort Myers, Florida 33917
6. Pat Breeden, 3520 Crosswater Drive, North Fort Myers, Florida 33917
7. Joanne Curtis, 3541 Crosswater Drive, North Fort Myers, Florida 33917
8. Jon Edinger, 20975 Skyler Drive, North Fort Myers, Florida 33917
9. Linda Edinger, 20975 Skyler Drive, North Fort Myers, Florida 33917
10. Louella Janicki, 20803 Kaidon Lane, North Fort Myers, Florida 33917 & 2001 Westwind Drive, Sandusky Ohio 44870
11. Paul Janicki, 20803 Kaidon Lane, North Fort Myers, Florida 33917 & 2001 Westwind Drive, Sandusky Ohio 44870
12. Margaret Latimer, 2141 Faliron Road, North Fort Myers, Florida 33917

13. Robert Latimer, 2141 Faliron Road, North Fort Myers, Florida 33917
14. Kenneth Watkins, 20644 Dennisport Lane, North Fort Myers, Florida 33917
15. James Perkins, 20949 Skyler Drive, North Fort Myers, Florida 33917
16. Stephanie Romine, 20740 Mystic Way, North Fort Myers, Florida 33917
17. Gisela Soostmeyer, 20796 Castle Pines Court, North Fort Myers, Florida 33917

General:

1. Linda Madl, 2270 Rio Nuevo Drive, North Fort Myers, Florida 33917
2. Michaela Mohr, 20924 Skyler Drive, North Fort Myers, Florida 33917
3. Walter Mohr, 20924 Skyler Drive, North Fort Myers, Florida 33917
4. Barbara L. Schmit, 2460 Valparaiso Boulevard, North Fort Myers, Florida 33917
5. Dennis Walling, 20648 Dennisport Lane, North Fort Myers, Florida 33917

IX. LEGAL DESCRIPTION:

See Exhibit A (scanned legal description).

X. UNAUTHORIZED COMMUNICATIONS:

Unauthorized communication (Hearing Examiner) means communication in any form, whether written, verbal, or graphic, with the Hearing Examiner or the Hearing Examiner's staff, by any person outside of a public hearing and not on the record, concerning substantive issues in any proposed, anticipated, or pending matter relating to appeals, variances, special permits, rezonings, special exceptions or any other matter assigned by statute, ordinance or administrative code to the Hearing Examiner for discussion or recommendation, except as permitted in the County Administrative Code. Communications regarding procedural aspects of a proceeding are not deemed unauthorized.....[LDC Section 2-191(a)]

No person may communicate with a Hearing Examiner or the Hearing Examiner's staff regarding the substance (non-procedural aspects) of a pending rezoning action or appeal to be considered by the Hearing Examiner under Sections 2-420 through 2-429, or 34-145.....[LDC Section 2-191(b)(2)]

Penalties. Any person who intentionally makes or attempts to initiate an unauthorized communication to or with a Hearing Examiner, a member of the Hearing Examiner's staff, a County Commissioner or an Assistant to a County Commissioner, or any Hearing Examiner or County Commissioner who fails to publicly disclose and report an unauthorized communication or an attempt to initiate an unauthorized communication, may be subject to the following penalties: [LDC Section 2-291(c)]

Revocation, suspension or amendment of any permit, variance, special exception or rezoning granted as a result of the Hearing Examiner action that is the subject of the unauthorized communication.....[LDC Section 2-191(c)(2)] or

A fine not exceeding \$500.00 per offense, by imprisonment in the County jail for a term not exceeding 60 days, or by both such fine and imprisonment.....[LDC Section 1-5(c)]

XI. HEARING BEFORE LEE COUNTY BOARD OF COUNTY COMMISSIONERS:

A. This Recommendation is made this 19th day of February, 2013. Notice or copies will be forwarded to the offices of the Lee County Board of County Commissioners.

B. The original file and documents used at the hearing will remain in the care and custody of the Department of Community Development. The documents are available for examination and copying by all interested parties during normal business hours.

C. The Board of County Commissioners will hold a hearing at which they will consider the record made before the Hearing Examiner. The Department of Community Development will send written notice to all hearing participants of the date this hearing before the Board of County Commissioners. Only participants, or their representatives, will be allowed to address the Board. The content of all statements by persons addressing the Board shall be strictly limited to the correctness of Findings of Fact or Conclusions of Law contained in the Recommendation, or to allege the discovery of relevant new evidence which was not known by the speaker at the time of the earlier hearing before the Hearing Examiner and not otherwise disclosed in the record.

D. The original file containing the original documents used in the hearing before the Hearing Examiner will be brought by the Staff to the hearing before the Board of County Commissioners. Any or all of the documents in the file are available on request at any time to any County Commissioner.

XII. COPIES OF TESTIMONY AND TRANSCRIPTS:

A verbatim transcript of the testimony presented at the hearing can be purchased from the court reporting service under contract to the Hearing Examiner's Office. The original documents and file in connection with this matter are located at the Lee County Department of Community Development, 1500 Monroe Street, Fort Myers, Florida.

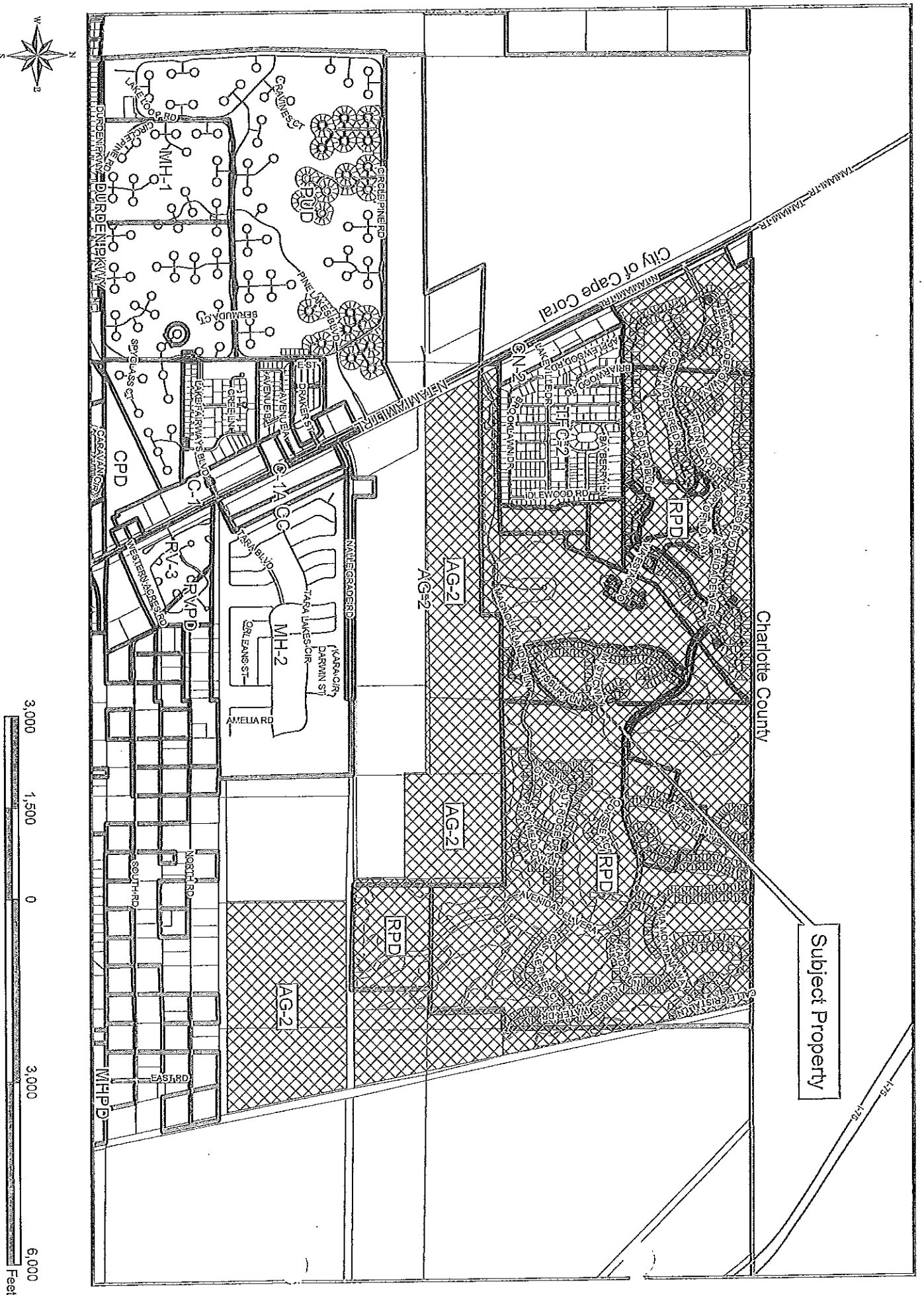
A handwritten signature in cursive script, appearing to read "Diana M. Parker", is written over a horizontal line.

DIANA M. PARKER
LEE COUNTY CHIEF HEARING EXAMINER
1500 Monroe Street, Suite 218
Post Office Box 398
Fort Myers, FL 33902-0398
Telephone: 239/533-8100
Facsimile: 239/485-8406

ATTACH MAP A
ATTACH SITE PLAN (if approved)

Attachment "A" Zoning Map

8/28/2012



DRI 2008-00004
DCI 2008-00018

RECEIVED
MAY 01 2012

DESCRIPTION:

A TRACT OR PARCEL OF LAND LYING IN SECTIONS 2, 3, 4, 5, 9, 10 AND 11, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF THE AFORESAID SECTION 3; THENCE RUN N.89°57'30"W. ALONG THE NORTH LINE OF THE NORTHEAST QUARTER (NE1/4) OF SAID SECTION 3 FOR 355.01 FEET TO AN INTERSECTION WITH THE WESTERLY RIGHT-OF-WAY LINE OF THE FORMER S.A.L. RAIL ROAD AND THE POINT OF BEGINNING; THENCE CONTINUE N.89°57'30"W. ALONG SAID NORTH LINE FOR 2313.55 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW1/4) OF THE AFORESAID SECTION 3; THENCE RUN S.89°48'38"W. ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER (NW1/4) FOR 2667.53 FEET TO THE NORTHWEST CORNER OF SAID SECTION 3; THENCE RUN N.89°42'40"W. ALONG THE NORTH LINE OF THE AFORESAID SECTION 4 FOR 5335.96 FEET TO THE NORTHWEST CORNER OF SAID SECTION 4; THENCE RUN S.89°33'20"W. ALONG THE NORTH LINE OF THE NORTHEAST QUARTER (NE1/4) OF THE AFORESAID SECTION 5 FOR 1871.76 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF THE NORTH FORT MYERS PARK ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 9, PAGE 113, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN S.26°03'40"E. ALONG SAID NORTHEASTERLY LINE FOR 318.64 TO AN INTERSECTION WITH THE SOUTHEASTERLY LINE OF LOT 3 OF SAID PLAT OF NORTH FORT MYERS PARK; THENCE RUN S.63°56'20"W. ALONG SAID SOUTHEASTERLY LINE FOR 300.71 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY RIGHT-OF-WAY LINE OF TAMiami TRAIL (S.R. 45, U.S. 41), BEING A POINT ON A CURVE; THENCE RUN SOUTHEASTERLY ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE FOR 96.66 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 7739.44 FEET, A CENTRAL ANGLE OF 00°42'56", A CHORD BEARING OF S.26°25'08"E. AND A CHORD DISTANCE OF 96.66 FEET TO A POINT OF TANGENCY; THENCE RUN S.26°03'40"E. ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE FOR 1943.40 FEET TO AN INTERSECTION WITH THE SOUTHEASTERLY LINE OF THE NORTHWESTERLY ONE-HALF (NW1/2) OF LOT 24 OF THE AFORESAID PLAT OF NORTH FORT MYERS PARK; THENCE RUN N.63°56'20"E. ALONG SAID SOUTHEASTERLY LINE FOR 300.17 FEET TO AN INTERSECTION WITH THE AFORESAID NORTHEASTERLY LINE OF NORTH FORT MYERS PARK; THENCE RUN N.26°03'40"W. ALONG SAID NORTHEASTERLY LINE FOR 4.46 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORD BOOK 1032 AT PAGE 707 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN N.89°48'47"E. ALONG SAID SOUTHERLY LINE FOR 3354.47 FEET TO AN INTERSECTION WITH THE EAST LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORD BOOK 410 AT PAGE 690 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN S.00°11'07"E. ALONG SAID EAST LINE FOR 2040.37 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED BOOK 224, PAGE 437, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN S.89°48'47"W. ALONG SAID SOUTH LINE FOR 2074.90 FEET TO THE SOUTHEAST CORNER OF LOT 18, BLOCK 6, SECTION No. 1 - UNIT No. 1, LAKEVILLE, AS RECORDED IN PLAT BOOK 10 PAGE 48, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN N.00°11'13"W. ALONG THE EAST LINE OF SAID LOT 18 FOR 155.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 18; THENCE RUN S.89°48'47"W. ALONG THE NORTH LINE OF SAID LOT 18 AND LOT 17 OF SAID LAKEVILLE SUBDIVISION FOR 100.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 17; THENCE RUN S.00°11'13"E. ALONG THE WEST LINE OF SAID LOT 17 FOR 155.00 FEET TO A POINT ON THE SOUTH LINE OF SAID LAKEVILLE SUBDIVISION; THENCE RUN S.89°48'47"W. ALONG SAID SOUTH LINE FOR 523.50 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF THE AFORESAID TAMiami TRAIL (S.R. 45, U.S. 41); THENCE RUN S.26°03'40"E. ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE FOR 1360.01 FEET TO A POINT ON THE NORTH LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 4291, PAGE 4900, PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN S.89°53'55"E. ALONG THE NORTH LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS

APPROVED 5.10.12
LEGAL *MAH*

SHEET 1 OF

EXHIBIT A

BOOK 4291, PAGE 4900 AND OFFICIAL RECORDS BOOK 4292, PAGE 193, PUBLIC RECORDS OF LEE COUNTY, FLORIDA FOR 6065.72 FEET; THENCE RUN S.00°03'31"W. FOR 342.55 FEET; THENCE RUN S.89°54'56"E. FOR 1711.49 FEET; THENCE RUN S.00°02'36"W. FOR 844.78 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF NALLE GRADE ROAD (125 FEET WIDE); THENCE RUN S.89°54'56"E. ALONG SAID NORTH RIGHT-OF-WAY LINE FOR 3417.92 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF THE AFORESAID FORMER S.A.L. RAIL ROAD; THENCE RUN N.11°11'01"W. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 6702.44 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 1,402.52 ACRES, MORE OR LESS.

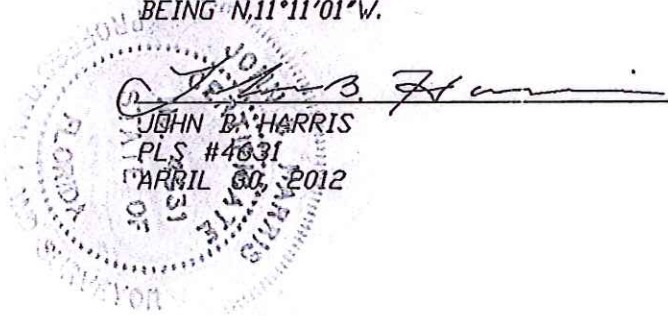
TOGETHER WITH:

A TRACT OR PARCEL OF LAND LYING IN SECTIONS 10 AND 11, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 3, TOWNSHIP 43 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA; THENCE RUN N.89°57'30"W. ALONG THE NORTH LINE OF THE NORTHEAST QUARTER (NE1/4) OF SAID SECTION 3 FOR 355.01 FEET TO AN INTERSECTION WITH THE WESTERLY RIGHT-OF-WAY LINE OF THE FORMER S.A.L. RAIL ROAD; THENCE RUN S.11°11'01"E. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 6829.90 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF NALLE GRADE ROAD (125 FEET WIDE) AND THE POINT OF BEGINNING; THENCE CONTINUE S.11°11'01"E. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 1985.05 FEET; THENCE RUN N.89°55'40"W. FOR 3468.04 FEET; THENCE RUN N.00°05'56"E. FOR 1947.53 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF THE AFORESAID NALLE GRADE ROAD; THENCE RUN S.89°54'56"E. ALONG SAID SOUTH RIGHT-OF-WAY LINE FOR 3079.67 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 146.34 ACRES, MORE OR LESS.

BEARINGS ARE BASED ON THE WESTERLY LINE OF THE FORMER S.A.L. RAIL ROAD AS BEING N.11°11'01"W.



DCI 2008-00018

RECEIVED
MAY 31 2012

COMMUNITY DEVELOPMENT

A PARCEL OF LAND LYING
IN SECTIONS 2, 3, 4, 5, 9, 10, & 11
TOWNSHIP 43 S. 27TH. RANGE 24 EAST
1ST. COUNTY ALBERTA

[illegible]

Line	Describing	Starts
L1	REASON	15
L2	SUPPLEMENTARY	16
L3	ACCLIMATED	17
L4	ACCLIMATED	18

LEGEND

PROPOSED ADDITION
TO ORIGINAL DRY

DECLASSIFICATION

A PRISON OF AMERICA, LONG IN EXISTENCE, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 8

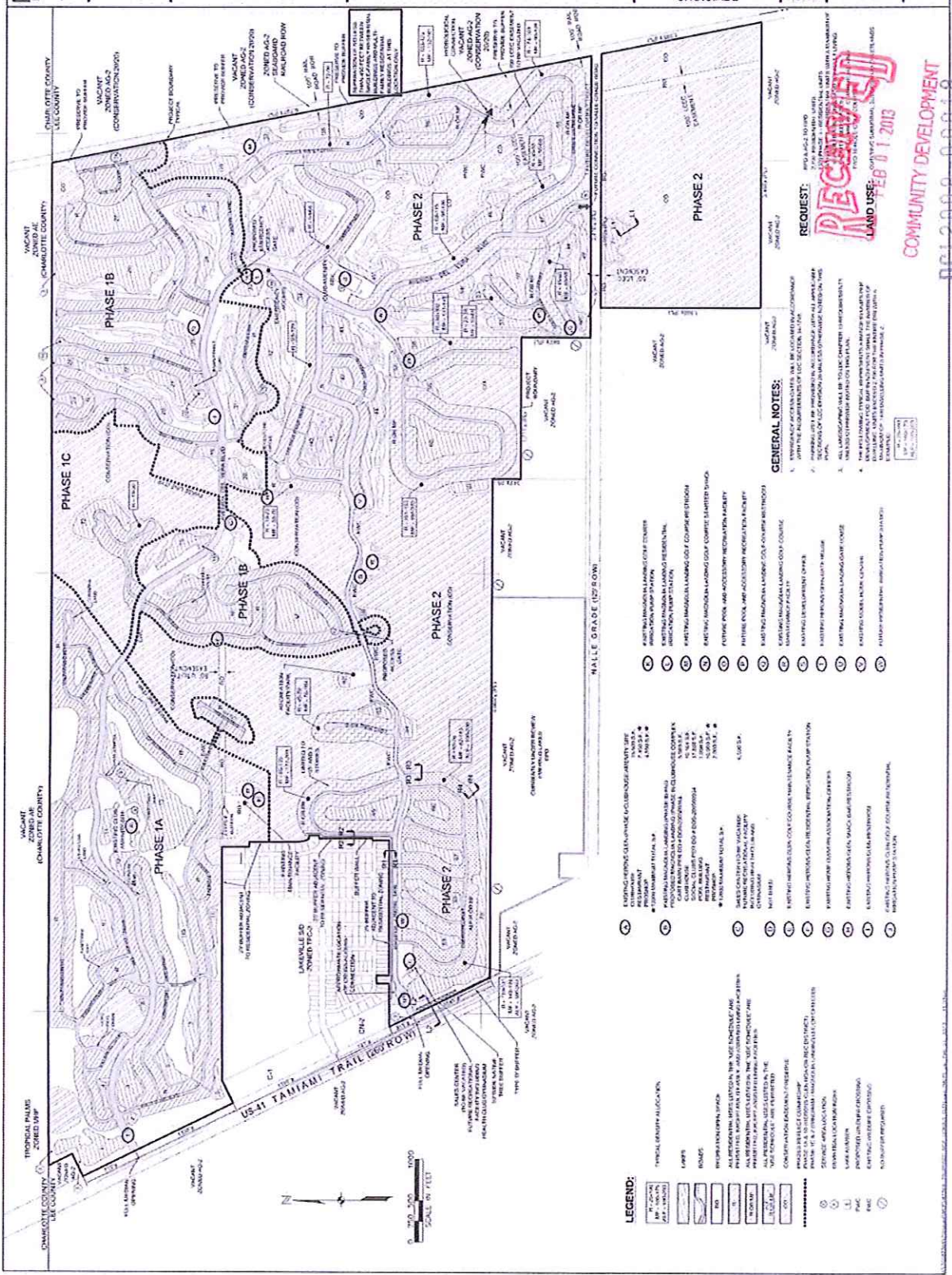
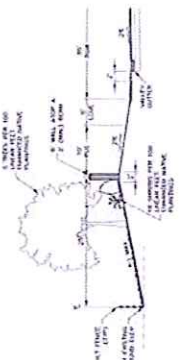
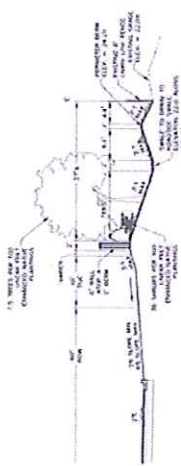




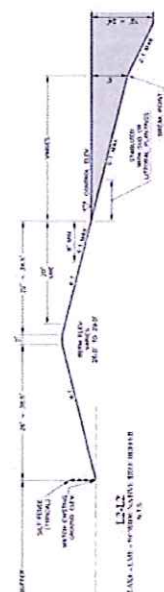
TABLE I

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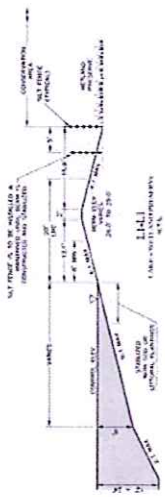


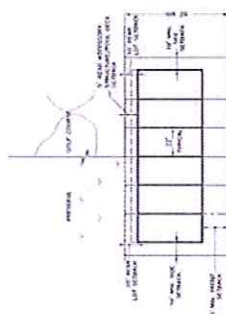
Table 1
A summary of the results

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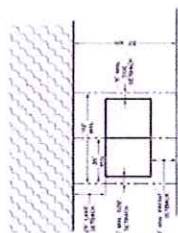
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COMMUNITY DEVELOPMENT
NCI 2008-00018

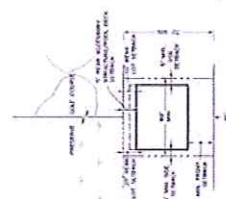
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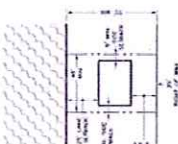
TOWNHOUSE LOT
(PRELIMINARY CONCEPT)



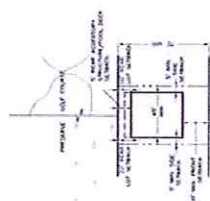
ZERO SETBACK LOT
(PRELIMINARY CONCEPT)



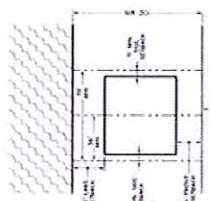
SINGLE FAMILY 40' LOT
(PRELIMINARY CONCEPT)



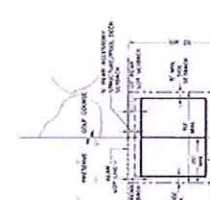
SINGLE FAMILY 45' LOT
(PRELIMINARY CONCEPT)



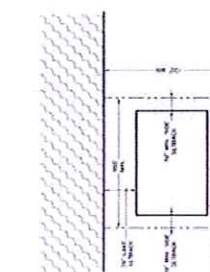
SINGLE FAMILY 45' LOT
(PRELIMINARY CONCEPT)



TWO FAMILY ATTACHED LOT
(PRELIMINARY CONCEPT)



ZERO SETBACK LOT
(PRELIMINARY CONCEPT)

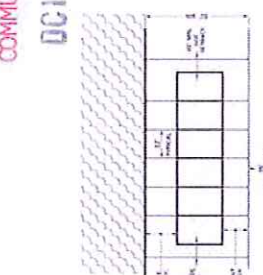


TOWNHOUSE LOT
(PRELIMINARY CONCEPT)

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COMMUNITY DEVELOPMENT
DC12008-00018



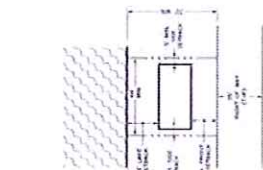
MULTIFAMILY AND ALE LOT
(PRELIMINARY CONCEPT)



TOWNHOUSE LOT
(PRELIMINARY CONCEPT)



TWO FAMILY ATTACHED LOT
(PRELIMINARY CONCEPT)



SINGLE FAMILY 40' LOT
(PRELIMINARY CONCEPT)

EXHIBIT C

PROPERTY DEVELOPMENT REGULATIONS (USE SCHEDULE)

RESIDENTIAL USES -R-	MINIMUM LOT			MINIMUM SETBACKS (3)						MAX HEIGHT	# OF HABITABLE FLOORS	MIN. BLDG SEPARATIO N (1)	MAX LOT COVERAGE (2)
	AREA	DEPTH	WIDTH (3)	SIDE (INSIDE/OUT SIDE)	REAR	FRONT / ROAD	WATER BODY	PRESERVE	GOLF COURSE				
SINGLE FAMILY	3,150	70	45	5	10**	20/12*	25	20	10**	35	2	10	70
TWO FAMILY ATTACHED	3,500	100	35	0/5 ****	10**	20/12*	25	20	10**	35	2	10	70
ZERO LOT LINES	2,800	80	35	0/5 ****	10**	20/12*	25	20	10**	35	2	10	70
TOWNHOUSES	1,760	80	22	0/10 ****	10**	20/12*	25	20	10**	35	2	20	70
MULTI-FAMILY	10,000	100	100	10	20	20	25	30	10**	35	5	20	70
ASSISTED LIVING FACILITY	10,000	100	100	10	20	20	25	30	10**	60	5	20	70
ACCESSORY STRUCTURES	N/A	N/A	N/A	5	5	10	25	20	5	35	N/A	10	N/A
POOL DECK	N/A	N/A	N/A	5	5	10	25	20	5	35	N/A	N/A	N/A
RECREATION, OPEN SPACE, GOLF COURSES, BUFFER & LAKES -RO-	MINIMUM LOT			MINIMUM SETBACKS (3)						MAX HEIGHT	# OF HABITABLE FLOORS	MIN. BLDG SEPARATIO N (1)	MAX LOT COVERAGE (2)
	AREA	DEPTH	WIDTH (3)	SIDE (INSIDE/OUT SIDE)	REAR	FRONT / ROAD	WATER BODY	PRESERVE	GOLF COURSE				
CLUBHOUSE	N/A	N/A	N/A	15	20	20	0	30	0	50	3	15	N/A
ACCESSORY STRUCTURES	N/A	N/A	N/A	5	5	10	0	20	5	45	N/A	10	N/A
POOL DECKS	N/A	N/A	N/A	5	5	10	5	20	5	N/A	N/A	N/A	N/A

* WITH SIDE ENTRY GARAGES

** 5' FOR ACCESSORY STRUCTURE (POOL / LANAI)

*** LIMITED TO NO MORE THAN SIX (6) UNITS PER BUILDING

**** INSIDE REFERS TO SIDE OF THE UNIT ATTACHED TO NEIGHBORING UNIT; OUTSIDE REFERS TO SIDE OF UNIT WITH EXTERIOR EXPOSURE

NOTES

1 ANY STRUCTURE MORE THAN TWO STORIES IN HEIGHT WILL MAINTAIN A 20 FOOT MINIMUM BUILDING SEPARATION

2 LOT COVERAGE MEANS THAT PORTION OF THE LOT AREA, EXPRESSED AS A PERCENTAGE, OCCUPIED BY ALL ROOFED BUILDINGS OR STRUCTURES

3 SETBACKS FOR PROJECT WALL ARE ALLOWED 1 FOOT OFF THE RIGHT OF WAY LINE

RECEIVED

AUG 31 2012

COMMUNITY DEVELOPMENT

DCI 2008-00018

